AGENDA
WILDOMAR CITY COUNCIL

SPECIAL FIRST MEETING

July 1, 2008

Elsinore High School
21800 Canyon Drive
Wildomar, CA 92595

6:00 P.M.

AGENDA DESCRIPTIONS: The Agenda descriptions are intended to give notice to members of the public of a general summary of items of business to be transacted or discussed. The listed Recommended Action represents staff or a particular Committee's recommendation. The City Council may take any action which it deems to be appropriate on the agenda time and is not limited in any way by the recommended action.

SPEAKER REQUEST FORMS: Any person wishing to address the City Council on any matter that appears on this agenda, is requested to complete a "Request to Speak" form available at the door. The completed form is to be submitted to the Council Chair prior to an individual being heard by the City Council. Whenever possible, lengthy testimony should be presented to the City Council in writing (8 copies) and only pertinent points presented orally. Requests to speak to items on the agenda will be heard at the appropriate point on the agenda.

ITEMS NOT ON THE AGENDA: Requests to speak about subjects not on the agenda that are within the subject matter jurisdiction of the City Council will be heard during the Public Comment section of the meeting. Please hold your comments to a maximum of 3 minutes per person.

6:00 p.m. - CONVENE MEETING

PLEDGE OF ALLEGIANCE / INVOCATION

1.0 CALL TO ORDER

ROLL CALL: Councilmembers-elect
SWEARING IN CEREMONY FOR CITY COUNCILMEMBERS – COUNTY SUPERVISOR BOB BUSTER

2.0 ACTION ITEM

2.1 Mandatory Adoption of Riverside County Code provisions Relating to the City of Wildomar:

Open for public comment

Motion

2.1.1 ORDINANCE NO. 08-01

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, ADOPTING ALL ORDINANCES OF RIVERSIDE COUNTY AS CITY ORDINANCES FOR A PERIOD OF ONE HUNDRED TWENTY DAYS

Recommended Action: Determine that title to ordinance has been read and waive further reading. Approve Urgency Ordinance 08-01, which approval requires a 4/5ths vote of the Council.

3.0 CEREMONIAL ITEMS:

3.1 Selection of Mayor and Mayor Pro Tem

Mayor:
Mayor Pro Tem:

3.2 Resolutions and Proclamations in Appreciation of Cityhood Activists and Supporters

3.3 Approval of Agenda

4.0 CONSENT calendar

All matters listed under the Consent Agenda are considered routine and will be enacted by one vote. There will be no separate discussion of these items unless members of the Council, the public or staff request specific items be removed from the Consent Agenda for separate action.

4.1 **Approve the reading by title only of all remaining ordinances and resolutions. By listing the ordinance and resolution titles on the agenda, the Council may determine that the title has been read.**

Open for public comment

Recommended Action: Determine the titles to all ordinances and resolutions that appear on this agenda have been read and waive further reading.

5.0 ACTION ITEM – ADOPTION OF URGENCY ORDINANCES

5.1 **Adoption of Organizational Urgency Ordinances 08-02 through 08-09 Relating to the Wildomar Municipal Code:**

Open for public comment

Motion

5.1.1 ORDINANCE NO. 08-02

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, ESTABLISHING THE WILDOMAR MUNICIPAL CODE, AND ENACTING TITLES 1 AND 2 THEREOF RELATING TO GENERAL PROVISIONS, ADMINISTRATION AND PERSONNEL

5.1.2 ORDINANCE NO. 08-03

AN URGENCY ORDINANCE OF THE CITY OF WILDOMAR, CALIFORNIA, ADDING CHAPTER 3.01 TO THE WILDOMAR MUNICIPAL CODE TRANSFERRING TAX ASSESSMENT AND COLLECTION DUTIES TO THE COUNTY OF RIVERSIDE ASSESSOR AND TAX COLLECTOR

5.1.3 ORDINANCE NO. 08-04

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, ADDING CHAPTER 3.02 TO THE WILDOMAR MUNICIPAL CODE ESTABLISHING A SPECIAL GAS TAX STREET IMPROVEMENT FUND

5.1.4 ORDINANCE NO. 08-05

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, ADDING CHAPTER 3.03 TO THE WILDOMAR MUNICIPAL CODE ESTABLISHING PROCEDURES FOR CLAIMS AGAINST THE CITY

5.1.5 ORDINANCE NO. 08-06

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, ADDING CHAPTER 3.04 TO THE WILDOMAR MUNICIPAL CODE IMPOSING A DOCUMENTARY TRANSFER TAX

5.1.6 ORDINANCE NO. 08-07

AN URGENCY ORDINANCE OF THE CITY OF WILDOMAR, CALIFORNIA ADDING CHAPTER 3.05 TO THE WILDOMAR MUNICIPAL CODE IMPOSING A SALES AND USE TAX TO BE ADMINISTERED BY THE STATE BOARD OF EQUALIZATION

5.1.7 ORDINANCE NO. 08-08

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA ADDING CHAPTER 7.05 TO THE WILDOMAR MUNICIPAL CODE IMPOSING MAJOR THOROUGHFARE AND BRIDGE FEES

5.1.8 ORDINANCE NO. 08-09

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA ADOPTING A CITY SEAL

5.2 Adoption of Urgency Ordinances 08-10 through 08-14 Relating to Council, Boards, Commissions and Personnel:

Open for public comment

Motion

5.2.1 ORDINANCE NO. 08-10

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, ESTABLISHING AN INTERIM PLANNING AGENCY, AND APPOINTING THE CITY COUNCILMEMBERS AS THE MEMBERS OF THE INTERIM PLANNING AGENCY

5.2.2 ORDINANCE NO. 08-11

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, DECLARING THE CITY COUNCIL TO BE THE REDEVELOPMENT AGENCY FOR THE CITY AND APPOINTING THE CITY COUNCILMEMBERS AS THE MEMBERS OF THE REDEVELOPMENT AGENCY

5.2.3 ORDINANCE NO. 08-12

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, PARTIALLY SUPERSEDING COUNTY ORDINANCE NO. 457 REGARDING THE BUILDING BOARDS OF APPEAL

5.2.4 ORDINANCE NO. 08-13

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, AUTHORIZING THE REIMBURSEMENT OF CITY COUNCILMEMBERS FOR ACTUAL AND NECESSARY EXPENSES INCURRED IN THE PERFORMANCE OF THEIR OFFICIAL DUTIES

5.2.5 ORDINANCE NO 08-14

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, ADDING CHAPTER 2.06 TO THE WILDOMAR MUNICIPAL CODE ESTABLISHING THE CITY OF WILDOMAR PERSONNEL RULES

6.0 ACTION ITEM – ADOPTION OF ORGANIZATIONAL RESOLUTIONS

6.1 Adopt Organizational Resolutions 08-01 through 08-24 Related to Administrative Matters:

Open for public comment

Motion

6.1.1 RESOLUTION NO. 08-01

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, ADOPTING BY REFERENCE ALL APPLICABLE COUNTY OF RIVERSIDE RESOLUTIONS AS CITY OF WILDOMAR RESOLUTIONS

6.1.2 RESOLUTION NO 08-02

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, AUTHORIZING THE MAYOR TO EXECUTE THE COUNTY AUGMENTATION AGREEMENT

6.1.3 RESOLUTION NO. 08-03

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, REQUESTING CONTINUATION OF SERVICES BY THE COUNTY OF RIVERSIDE

6.1.4 RESOLUTION NO. 08-04

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, AUTHORIZING FILING OF DOCUMENTS WITH STATE AND COUNTY OFFICES AND OFFICERS

6.1.5 RESOLUTION NO. 08-05

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, DESIGNATING THE TIME, DATE AND LOCATION OF CITY COUNCIL MEETINGS

6.1.6 RESOLUTION NO. 08-06

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, AUTHORIZING THE CITY ATTORNEY TO ALLOW THE COUNTY COUNSEL OF THE COUNTY OF RIVERSIDE TO REPRESENT THE CITY OF WILDOMAR'S INTERESTS IN CERTAIN PROPERTY TAX REFUND MATTERS WITHIN CERTAIN PARAMETERS

6.1.7 RESOLUTION NO. 08-07

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, DESIGNATING LOCATIONS FOR POSTING OF AGENDAS, ORDINANCES AND/OR RESOLUTIONS REQUIRED BY LAW TO BE PUBLISHED OR POSTED

6.1.8 RESOLUTION NO. 08-08

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, RATIFYING THE LEASE AGREEMENT FOR THE USE OF SPACE AS CITY HALL

6.1.9 RESOLUTION NO. 08-09

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, ESTABLISHING A METHOD FOR THE SELECTION AND APPOINTMENT OF A MAYOR AND MAYOR PRO TEMPORE OF THE CITY OF WILDOMAR

6.1.10 RESOLUTION NO. 08-10

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, ESTABLISHING AN ADDRESS FOR THE RECEIPT OF THE UNITED STATES MAIL

6.1.11 RESOLUTION NO. 08-11

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, AUTHORIZING THE MAYOR AND INTERIM CITY CLERK TO PREPARE, EXECUTE, AND FILE THE STATEMENT OF BOUNDARY CREATION

6.1.12 RESOLUTION NO. 08-12

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, DESIGNATING CITY HOLIDAYS

6.1.13 RESOLUTION NO. 08-13

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, RATIFYING THE APPOINT MENT OF INTERM CITY MANAGER AND RATIFYING THE INTERIM CITY MANAGER EMPLOYMENT AGREEMENT

6.1.14 RESOLUTION NO. 08-14

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, APPOINTING THE INTERIM CITY MANAGER AS PURCHASING AGENT

6.1.15 RESOLUTION NO. 08-15

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, RATIFYING THE APPOINTMENT OF THE INTERIM CITY ATTORNEY AND RATIFYING THE INTERIM CITY ATTORNEY SERVICES AGREEMENT

6.1.16 RESOLUTION NO. 08-16

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, SETTING THE BOND AMOUNTS FOR THE CITY CLERK AND CITY TREASURER

6.1.17 RESOLUTION NO. 08-17

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, ESTABLISHING RULES OF CONDUCT FOR CITY COUNCIL MEETINGS

6.1.18 RESOLUTION NO. 08-18

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, APPOINTING A CITY ENGINEER AND TRANSFERRING ALL SURVEYING DUTIES CURRENTLY PERFORMED BY THE COUNTY SURVEYOR TO THE CITY ENGINEER

6.1.19 RESOLUTION NO. 08-19

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, REQUESTING THAT THE COUNTY DISCONTINUE PROVIDING AND ASSUMING RESPONSIBILITY FOR CERTAIN PUBLIC WORKS AND BUILDING SERVICES

6.1.20 RESOLUTION NO. 08-20

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, RATIFYING THE RATIFYING THE AGREEMENT FOR THE PROVISION OF INTERIM FINANCIAL MANAGEMENT SERVICES

6.1.21 RESOLUTION NO. 08-21

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, RATIFYING THE AGREEMENT WITH FITZWATER LEADERSHIP CONSULTING

6.1.22 RESOLUTION NO. 08-22

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, REQUESTING THAT THE COUNTY DISCONTINUE PROVIDING AND ASSUMING RESPONSIBILITY FOR CERTAIN PLANNING SERVICES

6.1.23 RESOLUTION NO. 08-23

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, PROPOSING A CONFLICT OF INTEREST CODE

6.1.24 RESOLUTION NO. 08-24

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, PROVIDING FOR THE ENFORCEMENT OF STATE LAWS AND REGULATIONS RELATING TO PUBLIC HEALTH BY THE COUNTY HEALTH OFFICER

6.2 Adopt Organizational Resolutions 08-25 through 08-36 Related to Financial Matters:

Open for public comment

Motion

6.2.1 RESOLUTION NO. 08-25

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, AUTHORIZING REIMBURSEMENTS FOR PRE-INCORPORATION AND POST-INCORPORATION EXPENSES

6.2.2 RESOLUTION NO. 08-26

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, AUTHORIZING THE INTERIM CITY MANAGER TO FILE THE STATEMENT OF FACTS FOR THE ROSTER OF PUBLIC AGENCIES WITH THE CALIFORNIA SECRETARY OF STATE AND TO FILE FOR A FEDERAL TAXPAYER IDENTIFICATION NUMBER

6.2.3 RESOLUTION NO. 08-27

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH THE CALIFORNIA STATE BOARD OF EQUALIZATION PROVIDING FOR STATE ADMINISTRATION OF LOCAL SALES AND USE TAXES

6.2.4 RESOLUTION NO. 08-28

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, ADOPTING THE PROPOSED CITY OF WILDOMAR FISCAL YEAR 2008-09 GENERAL FUND OPERATING BUDGET AND THE GAS TAX STREET IMPROVEMENT FUND BUDGET, AS SPECIFIED IN THE STAFF REPORT AND BUDGET DOCUMENT

6.2.5 RESOLUTION NO. 08-29

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, RATIFYING THE PROVISIONAL APPROPRIATIONS LIMIT FOR THE CITY SET BY THE LOCAL AGENCY FORMATION COMMISSION OF RIVERSIDE COUNTY

6.2.6 RESOLUTION NO. 08-30

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, CONTINUING THE LEVY AND COLLECTION OF PREVIOUSLY AUTHORIZED CHARGES, FEES, ASSESSMENTS AND TAXES

6.2.7 RESOLUTION NO. 08-31

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, ESTABLISHING A PETTY CASH FUND

6.2.8 RESOLUTION NO. 08-32

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, AUTHORIZING INVESTMENT OF MONIES IN THE LOCAL AGENCY INVESTMENT FUND

6.2.9 RESOLUTION NO. 08-33

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, SETTING FORTH PROCEDURES FOR PAYMENT OF CITY OBLIGATIONS

6.2.10 RESOLUTION NO. 08-34

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, DESIGNATING THE COUNTY OF RIVERSIDE AS ITS AGENT FOR SERVICE OF PROCESS FOR ACTIONS UNDER THE REVENUE AND TAXATION CODE

6.2.11 RESOLUTION NO. 08-35

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, AUTHORIZING BANK SERVICE WITH WELLS FARGO AND DESIGNATING THE PERSONS AUTHORIZED TO TRANSACT BUSINESS ON BEHALF OF THE CITY

6.2.12 RESOLUTION NO. 08-36

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, AUTHORIZING THE INTERIM CITY MANAGER TO ENTER INTO AN AGREEMENT WITH WELLS FARGO BANK FOR A REVOLVING LINE OF CREDIT

6.3 Adopt Organizational Resolutions 08-37 through 08-39 Related to Contracts:

Open for public comment

Motion

6.3.1 RESOLUTION NO. 08-37

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, REQUESTING MEMBERSHIP IN THE PUBLIC AGENCY RISK SHARING AUTHORITY OF CALIFORNIA AND PARTICIPATION IN THE PARSAC LIABILITY AND WORKERS' COMPENSATION PROGRAMS, ESTABLISHMENT OF A LIABILITY FUND RESERVE, AND DESIGNATION OF THE AUTHORIZED BOARD REPRESENTATIVE AND THEIR AUTHORITY

6.3.2 RESOLUTION NO. 08-38

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA ACCEPTING THE ASSIGNMENT OF THE COUNTY OF RIVERSIDE'S INTERESTS IN THE FRANCHISES EXISTING WITHIN THE CITY OF WILDOMAR

6.3.3 RESOLUTION NO. 08-39

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, RATIFYING THE AGREEMENT WITH VERIZON FOR TELEPHONE AND INTERNET SERVICES

6.4 **Adopt Organizational Resolutions 08-40 through 08-43 Related to Real Property Matters:**

Open for public comment

Motion

6.4.1 RESOLUTION NO. 08-40

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, ACCEPTING ALL PUBLIC STREETS WITHIN THE CITY OF WILDOMAR INTO THE CITY STREET SYSTEM

6.4.2 RESOLUTION NO. 08-41

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA ACCEPTING PARKS FROM THE COUNTY OF RIVERSIDE

6.4.3 RESOLUTION NO. 08-42

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, ACCEPTING THE AUTHORITY AND RESPONSIBILITY FOR THE WILDOMAR LANDSCAPE MAINTENANCE DISTRICT

6.4.4 RESOLUTION NO. 08-43

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA WAIVING AUTOMATIC DETACHMENT FROM COUNTY SERVICE AREA 152

6.5 **Adopt Organizational Resolutions 08-44 through 08-48 Related to Regional Organization Memberships and Continuation of Traffic Services:**

Open for public comment

Motion

6.5.1 RESOLUTION NO. 08-44

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, APPROVING MEMBERSHIP IN THE WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS

6.5.2 RESOLUTION NO. 08-45

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, APPROVING MEMBERSHIP IN THE RIVERSIDE COUNTY TRANSPORTATION COMMISSION

6.5.3 RESOLUTION NO. 08-46

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, APPROVING MEMBERSHIP IN THE LEAGUE OF CALIFORNIA CITIES

6.5.4 RESOLUTION NO. 08-47

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, APPROVING MEMBERSHIP IN THE WESTERN RIVERSIDE COUNTY REGIONAL CONSERVATION AUTHORITY

6.5.5 RESOLUTION NO. 08-48

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, REQUESTING THE CALIFORNIA HIGHWAY PATROL TO CONTINUE TO PROVIDE TRAFFIC ENFORCEMENT SERVICES WITHIN THE CITY

7.0 CITY MANAGER's REPORT

8.0 CITY ATTORNEY's REPORT

9.0 FUTURE AGENDA ITEMS

10.0 CITY COUNCIL COMMENTS

11.0 ADJOURNMENT

The next meeting of the Council will be a regular meeting and will be held at 7:00 pm on July 9, 2008 at David A. Brown Middle School, 21861 Grand Avenue, Wildomar, CA 92595 or at another location to be determined by the Council.

AMERICAN WITH DISABILITIES ACT: In compliance with American with Disabilities Act, if you need regular assistance to participate in this meeting, please contact Mr. John Danielson, the Interim City Manager at (916) 670-0019 or Ms. Julie Hayward Biggs, the Interim City Attorney at (951) 788-0100, 48 hours prior to the meeting or as soon as possible thereafter, and we will use our best efforts to make reasonable arrangements to assure accessibility to the meeting.

AGENDA: The Council agenda and related backup materials will be available for review and copying at the expense of those wishing copies immediately after posting of the agenda notice at the Mission Trail Library, 34303 Mission Trail Blvd., Wildomar, CA 92595. If you wish to be added to the e-mail or regular mail list to receive a copy of the agenda, a request must be made through the Interim City Attorney's office in writing or by e-mail. Copies of the agenda are mailed only if stamped, self-addressed envelopes are provided. The mailing and email address for the Interim City Attorney is as follows:

Ms. Julie Hayward Biggs
Burke, Williams & Sorensen, LLP
2280 Market Street, Suite 300
Riverside, CA 92501
jbiggs@bwslaw.com

CITY OF WILDOMAR – COUNCIL
Agenda Item 2.0
DISCUSSION/ACTION ITEM
Meeting Date: July 1, 2008

TO: Councilmembers – City of Wildomar

FROM: Julie Hayward Biggs, Interim City Attorney

SUBJECT: Adoption of County of Riverside Ordinances and Resolutions

STAFF REPORT

RECOMMENDATION:

Adopt all County Ordinances as required by California law as the first action take at the first City Council meeting.

BACKGROUND:

When the City of Wildomar convenes its first meeting of the City Council, there will be certain actions that must be taken to comply with state law to establish the City. Specifically, the first action to be taken must be adoption of all applicable County of Riverside ordinances. Additional ordinances and resolutions also need to be adopted so that the City is legally effective as a governmental body.

DISCUSSION:

Over the last several months, the City Council-elect has fully reviewed and considered the various ordinances and resolutions that are set forth in the Agenda Packet for the Special First Meeting of the Wildomar City Council on July 1, 2008. With the actions to be taken at this First Meeting, the City of Wildomar will be starting its operations very far ahead of the usual conditions under which new cities begin. Ordinarily, working out the details of planning and engineering consultants, lease arrangements for City Hall, operating procedures and transfer of responsibilities from the County to a new city takes about six months following the effective date. The City of Wildomar, however, will be operational in most of these areas because of the substantial effort that has gone in to accomplishing the work necessary to make the City immediately functional.

To move this process along, the Agenda has been set up so that groups of Ordinances and Resolutions may be acted upon in a single motion rather than on an item by item basis. A provision has been added noting that the titles of the ordinances and resolutions as written in the Agenda constitute reading of those items. The categories of documents are listed in bold and a motion should be made to adopt the

ordinances or resolutions in each category by simply announcing the numbers of the ordinances or resolutions included in that category, rather than reading the ordinance or resolution titles in full.

FISCAL IMPACTS:

The ordinances and resolutions are necessary for the City to take its full legal position as a California municipal corporation and to thereby receive tax revenues and operate in accord with normal city fiscal requirements.

Submitted by:

Julie Hayward Biggs
Interim City Attorney

Approved by:

John Danielson
Interim City Manager

ORDINANCE NO. 08-01

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, ADOPTING ALL ORDINANCES OF RIVERSIDE COUNTY AS CITY ORDINANCES FOR A PERIOD OF ONE HUNDRED TWENTY DAYS

THE CITY COUNCIL OF THE CITY OF WILDOMAR DOES ORDAIN AS FOLLOWS:

SECTION 1. County Ordinances Adopted. Pursuant to the provisions of California Government Code Section 57376, all ordinances of the County of Riverside, whether codified or uncodified, that were applicable within the City of Wildomar prior to its incorporation ("County Ordinances") shall remain in full force and effect as ordinances of the City of Wildomar.

SECTION 2. Amendments to County Ordinances. The following amendments are made to the County Ordinances:

(a) Whenever "Board of Supervisors" or "Board" is used in the County Ordinances, it shall mean the Wildomar City Council.

(b) Whenever "County" or "County of Riverside" is used in the County Ordinances, it shall mean the jurisdictional limits of the City of Wildomar unless a different geographical or jurisdictional area is clearly indicated by the context.

(c) Whenever "unincorporated territory of the County of Riverside" is used in the County Ordinances, it shall mean the City of Wildomar unless a different geographical area is clearly indicated by the context.

SECTION 3. Duration of County Ordinances Within City. Each County Ordinance shall remain in full force and effect as a City ordinance for a period of one hundred twenty (120) days from the effective date of this ordinance or until the City Council enacts a superseding ordinance, whichever occurs first.

SECTION 4. Manner of Superseding County Ordinances. No city ordinance enacted within the one hundred twenty (120) day period of time supersedes a County Ordinance unless the City ordinance specifically refers to the County Ordinance and states an intention to supersede it.

SECTION 5. Enforcement of County Ordinances Within City. Except insofar as enforcement services are provided by the County in accordance with Government Code section 57384, the City shall be responsible for the enforcement of each County Ordinance within the City from the effective date of this ordinance until the expiration of

the one hundred twenty (120) day period or until the County Ordinance is superseded by a City ordinance, whichever occurs first.

SECTION 6. Declaration of Facts Constituting Urgency. Government Code section 57376 provides that the City shall immediately upon organization and before performing any other act adopt an ordinance providing that all the County Ordinances applicable before the incorporation shall remain in full force and effect as City ordinances for one hundred twenty (120) days or until the City Council enacts ordinances superseding them, whichever occurs first. It is necessary that this ordinance take effect immediately in order to have continuity in the existence, application, administration and enforcement of the same ordinances in the City that applied before incorporation until the City Council may enact ordinances superseding them.

SECTION 7. Severability. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision will not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted this ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

SECTION 8. Effective Date. This ordinance shall take immediate effect upon its passage by the City Council.

SECTION 9. Publication. The City Clerk shall cause this ordinance to be published or posted in accordance with Government Code section 36933.

PASSED, APPROVED, AND ADOPTED this 1st day of July, 2008.

Bob Cashman, Mayor

ATTEST:

John Danielson, Interim City Clerk

APPROVED AS TO FORM:

_____

Julie Hayward Biggs, Interim City Attorney

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE)
CITY OF WILDOMAR)

I, John Danielson, Interim City Clerk of the City of Wildomar, do hereby certify that the foregoing Ordinance No. 08-01 was duly adopted by the City Council of the City of Wildomar at a regular meeting, held on the 1st day of July, 2008, by the following vote of the Council:

AYES:

NOES:

ABSTAIN:

ABSENT:

_____
John Danielson, Interim City Clerk

ORDINANCE NO. 08-02

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, ESTABLISHING THE WILDOMAR MUNICIPAL CODE, AND ENACTING TITLES 1 AND 2 THEREOF RELATING TO GENERAL PROVISIONS, ADMINISTRATION AND PERSONNEL

THE CITY COUNCIL OF THE CITY OF WILDOMAR DOES ORDAIN AS FOLLOWS:

SECTION 1. Municipal Code Established. A Municipal Code is established for the City of Wildomar and Titles 1 and 2 of the Municipal Code are enacted as set forth in Exhibit "A" to this ordinance.

SECTION 2. Intent to Supersede County Ordinances. The provisions of this ordinance shall supersede the County ordinances codified in Titles 1, 2 and 3 of the Riverside County Code, as those County ordinances were adopted by City Ordinance No. 08-01.

SECTION 3. Declaration of Facts Constituting Urgency. The City of Wildomar is newly incorporated and it is comprised of formerly unincorporated territory. It is necessary that this ordinance take effect immediately in order to provide a Municipal Code that classifies and organizes City ordinances as they are adopted. Furthermore, Titles 1 and 2 provide a framework of rules and regulations under which the fundamental operations of the newly established municipal government can be conducted. As such, it is necessary for those titles to take effect immediately. Therefore, the City Council finds that this ordinance is necessary for the immediate preservation of the public peace, health, and safety, and declares that it shall take effect immediately upon its adoption as an urgency ordinance.

SECTION 4. Severability. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted this ordinance, and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional, without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

SECTION 5. Effective Date. This ordinance shall take immediate effect upon its passage by the City Council.

SECTION 6. Publication. The City Clerk shall cause this ordinance to be published or posted in accordance with Government Code section 36933.

PASSED, APPROVED, AND ADOPTED this 1st day of July, 2008.

Bob Cashman, Mayor

ATTEST:

John Danielson, Interim City Clerk

APPROVED AS TO FORM:

Julie Hayward Biggs, Interim City Attorney

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE)
CITY OF WILDOMAR)

I, John Danielson, Interim City Clerk of the City of Wildomar, do hereby certify that the foregoing Ordinance No. 08-02 was duly adopted by the City Council of the City of Wildomar at a regular meeting, held on the 1st day of July, 2008, by the following vote of the Council:

AYES:

NOES:

ABSTAIN:

ABSENT:

_____
John Danielson, Interim City Clerk

EXHIBIT "A"

TITLES 1 & 2 OF THE WILDOMAR MUNICIPAL CODE

Title 1

GENERAL PROVISIONS

Chapters:

1.01 Code Adopted
1.02 General Provisions
1.03 Code Violations

Chapter 1.01

CODE ADOPTED

Sections:

1.01.010 Establishment of Municipal Code.
1.01.020 Contents of Code.
1.01.030 Outline of Code.
1.01.040 Maintenance of Code.

1.01.010 Establishment of Municipal Code. The ordinances embraced in the following titles, chapters and sections shall constitute and be designated as the "Wildomar Municipal Code." It shall be sufficient to refer to this Code as the Wildomar Municipal Code in any prosecution for the violation of any provision of this Code. It shall also be sufficient to designate any ordinance adding to, amending, or repealing provisions of this Code as an addition or amendment to, or a repeal of, the Wildomar Municipal Code, or any title, chapter, section or subsection thereof.

1.01.020 Contents of Code. The Wildomar Municipal Code shall consist of all ordinances adopted by the City Council which are of a general and permanent nature. An ordinance relating to any of the following subject matters is not considered an ordinance of general and permanent nature and need not be included within the Municipal Code:

(a) The naming of streets or roads;
(b) Granting, altering, or withdrawing franchises;
(c) Levying real property taxes;
(d) Calling an election;
(e) Annexation proceedings;
(f) Interim zoning measures;
(g) Zoning or rezoning a particular parcel of property; and
(h) Such other ordinances of a special or particular subject matter which the

Council deems inappropriate for inclusion in the Wildomar Municipal Code.

1.01.030 Outline of Code.

(a) The ordinances of the City which are of a general and permanent nature shall be organized and grouped according to subject matter.

(b) Ordinances which are adopted from time to time shall be classified and organized under the following scheme of titles:

(1) General Provisions
(2) Administration and Personnel
(3) Revenue and Finance
(4) Miscellaneous Regulations
(5) Business Regulations
(6) Health and Sanitation
(7) Subdivisions
(8) Buildings and Construction
(9) Planning and Zoning
(10) Animals
(11) Peace, Morals, and Safety
(12) Vehicles and Traffic
(13) Parks and Recreational Facilities
(14) Streets and Sidewalks
(15) Water and Sewers
(16) RESERVED

1.01.040 Maintenance of Code. At least three (3) copies of this Code, duly certified by the City Clerk, shall be maintained on file in the office of the City Clerk as official copies of this Code. Additional copies of this Code shall be distributed to the departments of the City as prescribed by the City Manager.

Duly certified copies of each ordinance making a change in this Code shall be filed in the office of the City Clerk in books for such purpose, duly indexed for ready reference.

At least semi-annually the City Clerk shall cause the loose leaf pages of this Code in which changes have been made to be reproduced, including a notation as to the ordinance number and the date on which such change was adopted. Such reprinted pages shall be distributed in order that the loose leaf copies of this Code, prepared for the use and convenience of the officers and employees of the City and the general public, may be brought up to date.

Chapter 1.02

GENERAL PROVISIONS

Sections:

1.02.010 Construction of Code.
1.02.020 Effect of Code on Past Actions and Obligations.
1.02.030 Provisions considered continuation of existing ordinances.
1.02.040 Partial Invalidity.
1.02.050 Territorial Limitation.
1.02.060 Local Signification.
1.02.070 Rules of Construction.
1.02.080 Effect of Headings.
1.02.090 Acts by Deputies.
1.02.100 Reference to Ordinances: Application to Amendments.
1.02.110 Statute of Limitations.
1.02.120 Definitions.
1.02.130 Grammatical interpretation.

1.02.010 Construction of Code. The provisions of this Code and all proceedings under it are to be construed to achieve the purposes of this Code and to promote justice.

1.02.020 Effect of Code on Past Actions and Obligations. The adoption of this Code does not affect prosecutions for ordinance violations committed prior to the effective date of this Code, does not waive any fee or penalty due and unpaid on the effective date of this Code, and does not affect the validity of any bond or cash deposit posted, filed or deposited pursuant to the requirements of any ordinance.

1.02.030 Provisions considered continuation of existing ordinances. The provisions of this Code, insofar as they are substantially the same as the provisions of existing ordinances applicable within the City of Wildomar at the time of the effective date of this Code, shall be considered as restatements and continuations thereof and not as new enactments.

1.02.040 Partial Invalidity. If any title, chapter, section, subsection, sentence, clause, or phrase of this Code is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Code.

1.02.050 Territorial Limitation. This Code shall refer only to the omission or commission of acts within the territorial limits of the City of Wildomar and that territory outside of the City over which the City has jurisdiction or control by virtue of the California Constitution, or any law, or by reason of ownership or control of property.

1.02.060 Local Signification. All references in this Code to places, acts, persons, or things and all else in relation to this Code shall be construed to mean that the same are applicable to this City, whether the City is mentioned in each particular section or not.

1.02.070 Rules of Construction. Unless the provisions of this Code otherwise specifically provide, or the context of this Code indicates to the contrary, the general provisions, rules of construction, and definitions set forth in the following sections of this Chapter shall govern the construction of this Code.

1.02.080 Effect of Headings. The title, chapter, section and subsection headings contained in this Code shall not be deemed to govern, limit, modify, or in any manner affect the scope, meaning, or intent of the provisions of any title, chapter, section or subsection of this Code.

1.02.090 Acts by Deputies. Whenever a power is granted to, or a duty is imposed upon, a public officer or employee, the power may be exercised or the duty may be performed by a deputy of such officer or employee or by a person otherwise duly authorized by law, unless this Code expressly provides otherwise.

1.02.100 References to Ordinances: Application to Amendments. Whenever any reference in this Code is made to an ordinance, the reference shall apply to such ordinance of the City, unless this Code expressly provides otherwise. Whenever any reference is made to any portion of this Code or to any ordinances of this City, the reference shall apply to all amendments and additions to this Code.

1.02.110 Statute of Limitations. When a limitation or period of time prescribed in any existing ordinance or statute for acquiring a right or barring a remedy, or for any other purpose, has begun to run before this Code goes into effect, the time which has already run shall be deemed a part of the time prescribed as such limitation.

1.02.120 Definitions. As used in this Code, unless a different meaning is apparent from the context or is specified elsewhere in the Code:

(a) "Calendar year" shall mean from January 1 through December 31 of any given year.

(b) "City" shall mean the City of Wildomar.

(c) "City Manager" shall mean the appointed official of the City who occupies the position of chief administrative officer of the City.

(d) "Council" shall mean the City Council of the City of Wildomar.

(e) "Councilmember" shall mean a person duly elected to the Council.

(f) "County" shall mean the County of Riverside.

(g) "Fiscal year" shall mean from July 1 of any given calendar year through June 30 of the following calendar year.

(h) "Goods" shall mean and include wares and merchandise.

(i) "May" shall be permissive.

(j) "Month" shall mean a calendar month, unless otherwise specially expressed.

(k) "Oath" shall include affirmation.

(l) "Official time standard." Wherever certain hours are named in this Code, they shall mean Standard Time or Daylight Saving Time as may be in current use in the City.

(m) "Operate" shall mean and include carrying on, keeping, conducting, or maintaining.

(n) "Owner" applied to a building or land, shall include any part owner, joint owner, tenant, tenant in common, or joint tenant of the whole or a part of such building or land.

(o) "Person" shall include any person, firm, company, corporation, partnership, association, public corporation, city (except the City of Wildomar), the County of Riverside, any district in the County of Riverside, the State of California, or the United States of America, or any department, agency, or political subdivision of the above, unless this Code expressly provides otherwise.

(p) "Personal property" shall include money, goods, chattels, things in action, and evidences of debts.

(q) "Police" shall mean the agency which performs the appropriate law enforcement function for the City. "Police Chief," "Chief of Police," or "Chief of Police Services," shall mean the head of the agency or division which at the time involved has responsibility for performing the police function for, or within, the City.

(r) "Property" shall include real and personal property.

(s) "Quarterly" where used to designate a period of time, shall mean the first three calendar months of any given year or succeeding period of three calendar months.

(t) "Real property" shall include land, tenements, and hereditaments.

(u) "Sale" shall include any sale, exchange, barter, or offer for sale.

(v) "Section" shall mean a section of this Code, unless some other source is specifically set forth.

(w) "State" shall mean the State of California.

(x) "Street" shall include all streets, highways, avenues, boulevards, alleys, courts, places, squares, or other public ways in the City which have been or may hereafter be dedicated and open to public use, or such other public property so designated in any State law.

(y) "Subsection" shall mean a subsection of the section in which the term occurs, unless some other section is expressly set forth.

(z) "Shall" shall be mandatory.

(aa) "Tenant or occupant" applied to a building or land, shall include any person who occupies the whole or a part of such building or land, whether alone or with others.

(bb) "Writing" includes any form of recorded message capable of comprehension by ordinary visual means. Whenever any notice, report, statement, or record is required or authorized by this Code, such notice, report, statement, or record shall be made in writing in the English language, unless this Code expressly provides otherwise.

Words and phrases not defined in this Code shall be construed according to the common and approved usage of the language, or, when appropriate, by reference to definitions contained in State or Federal law.

1.02.130 Grammatical interpretation. The following grammatical rules shall apply to this Code, unless it is apparent from the context that a different construction is intended.

(a) *Gender.* Each gender includes the masculine, feminine and neuter genders.
(b) *Singular and Plural.* The singular number includes the plural and vice versa.
(c) *Tenses.* Words used in the present tense include the past and future tenses and vice versa, unless manifestly inapplicable.

Chapter 1.03

CODE VIOLATIONS

Sections:

1.03.010 Violation of Municipal Code -- Misdemeanor.
1.03.020 Aiding and Abetting.
1.03.030 Punishments.
1.03.040 Imprisonment in County Jail.
1.03.050 Violations Public Nuisances.
1.03.060 Nuisances: Recovery of Abatement Expenses.
1.03.070 Violations of Administrative Provisions.

1.03.010 Violation of Municipal Code -- Misdemeanor. It shall be unlawful for any person to violate any provision or to fail to comply with any of the requirements of this Code, any Code adopted by reference by this Code, or any ordinance of the City not included within this Code. Any person violating any such provision or failing to comply with any such requirements shall be guilty of a misdemeanor, unless the violation is specifically designated as an infraction.

Each person convicted of a misdemeanor or infraction under the provisions of this Code shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision or failure to comply with any of the requirements of this Code, any Code adopted by reference by this Code, or any ordinance of the City not included within this Code is committed, continued or permitted by such person, and may be punished accordingly.

1.03.020 Aiding and Abetting. Whenever any act or omission is made unlawful by this Code, any Code adopted by reference by this Code, or any ordinance of the City not included within this Code, it shall include causing, permitting, aiding, abetting,

suffering, or concealing the fact of such act or omission.

1.03.030 Punishments.

(a) Any conviction of a misdemeanor under the provisions of this Code shall be punishable by a fine of not more than one thousand dollars ($1,000), or by imprisonment in the County jail for a period not exceeding six (6) months, or by both fine and imprisonment.

(b) Any conviction of an infraction under the provisions of this Code shall be punishable for a first conviction by a fine of not more than one hundred dollars ($100), for a second conviction within a twelve (12) month period by a fine of not more than two hundred dollars ($200), and for a third or any subsequent conviction within a twelve (12) month period by a fine of not more than five hundred dollars ($500).

Any provision or requirement of this Code or of any Code adopted by reference by this Code or of any ordinance of the City not included within this Code, the violation of which or the failure to comply with which is designated as an infraction, shall be prosecutable as a misdemeanor upon a fourth violation within a twelve (12) month period and upon each violation thereafter of the same provision by the same individual within a twelve (12) month period.

Any violation expressly declared to be punishable, in the discretion of the court by either a fine, or by imprisonment, or both, shall become an infraction for all purposes under any of the following circumstances:

(1) Where a judgment imposes a punishment of a fine not exceeding one hundred dollars ($100) in the case of a first offense; or

(2) When the court grants probation to a defendant without the imposition of a sentence and, at the time of granting probation, or on application of the defendant or probation officer thereafter, the court declares the offense to be an infraction; or

(3) When the City Attorney or the District Attorney files in a court having jurisdiction over misdemeanor offenses a complaint specifying that the offense is an infraction.

1.03.040 Imprisonment in County Jail. Imprisonment for violation of any City ordinance shall be in the County Jail.

1.03.050 Violations Public Nuisances. In addition to other penalties provided by law, any condition caused or permitted to exist in violation of any provision of this Code, any code adopted by reference by this Code, or any ordinance of the City not included within this Code, or any such threatened violation, shall be deemed a public nuisance and may be summarily abated as such by the City or may be abated by the City

Attorney in a civil judicial action.

1.03.060 Nuisances: Recovery of Abatement Expenses.

(a) Whenever any person creating, causing, committing, or maintaining a public nuisance, as defined in Section 1.03.050 of this Code, State law or other ordinances or regulations, has been given notice by or on behalf of the City Attorney, or by any other City officer, employee, or policing agent authorized to give such notice, to abate such nuisance or cease and desist from continuing such nuisance, and such person fails, refuses, or neglects to comply with the notice within the time specified therein, or if such a time is not specified, then within a time reasonably sufficient to enable such compliance, such person shall be liable to the City for any and all costs and expenses to the City involved in abating the nuisance.

(b) Costs and expenses, as referred to in Subsection (a) of this Section, may include, but are not limited to, any and all direct costs and expenses related to such things as personnel salaries and benefits, operational overhead, rent, interest, fees for experts or consultants, legal costs or expenses, including attorneys' fees, claims against the City arising as a consequence of the nuisance or violation, and procedures associated with collecting moneys due under this Section.

(c) The provisions of Subsection (a) of this Section shall also apply to any person who received a notice, as specified therein, abated the nuisance, but subsequently allowed or was responsible for a recurrence of the nuisance.

(d) The liability of any person for the payment of the costs and expenses provided for in Subsection (a) of this Section may be waived in whole or in part by the City Attorney in any case wherein the City Attorney determines, in the City Attorney's sole discretion, that the failure or refusal of such persons to comply with a notice to abate a nuisance or cease and desist from continuing a nuisance was based upon a good faith and bona fide issue of law or fact specially involved in the circumstances of the case. Any determination or decision of the City Attorney in this regard shall be final and conclusive and shall not be subject to appeal.

(e) Money due to the City pursuant to this Section may be recovered in an appropriate civil action. Alternatively, such liability may be enforced by special assessment proceedings against the parcel of land upon which the nuisance existed, which proceedings may be conducted in a manner substantively similar to proceedings described in Sections 39574 et seq. of the California Government Code relating to weed abatement assessments.

1.03.070 Violation of Administrative Provisions. The violation of, or the failure or omission to perform in accordance with, any administrative provision of this Code by any officer or employee of the City shall generally not be considered a criminal act, but may be deemed a failure to perform the duties or to observe the rules or regulations of the department, office, commission, or board within the meaning of the civil service

ordinances and rules and regulations of the City, if applicable.

Title 2

ADMINISTRATION AND PERSONNEL

Chapters:

2.01 Council
2.02 City Manager
2.03 City Clerk
2.04 City Treasurer
2.05 City Attorney

Chapter 2.01

COUNCIL

Sections:

2.01.010 Time and Place of Regular Meetings.
2.01.020 Council Meetings -- Rules of Order and Debate.
2.01.030 Approved Minutes as Official Record of Proceedings.
2.01.040 Compensation.

2.01.010 Time and Place of Regular Meetings. The regular meetings of the City Council shall be held at a location and times to be designated by resolution of the City Council.

2.01.020 Council Meetings-Rules of Order and Debate. The City Council may adopt rules of decorum and conduct at public meetings by resolution as deemed necessary or appropriate by the City Council.

2.01.030 Approved Minutes As Official Record of Proceedings.

(a) *Approval of Minutes.* Unless the reading of the minutes of a Council Meeting is requested by a Member of the Council, such minutes may be approved without reading if the City Clerk has previously furnished each Member with a copy thereof. Minutes shall be approved by voice or roll call vote.

(b) *Designated as Official Record.* The approved written minutes constitute the official record of City Council proceedings and actions and are superior to any other record, recordation, document, transcript, audiotape, videotape, or other memorial or writing of such proceedings and actions. Any other recordings, tapes, and records of Council proceedings which may be deemed duplicate records shall be kept only as required by Government Code Section 34090.7. The City Council hereby authorizes the City Clerk to store and destroy such duplicate records in accordance with

Government Code Section 34090.7.

(c) *Audio Tape Retention.* Whenever an audio tape of City Council proceedings is made by the City Clerk to assist in the preparation of the minutes, such tape should only be kept until the minutes for that meeting are prepared and approved by the City Council. Thereafter, any tape so made shall be destroyed in accordance with Government Code Section 34090.7.

(d) *Audio Tape Accessibility to the Public.* During the period that an audio tape of a City Council meeting is in the custody of the City Clerk, the City Clerk shall, upon request, make the tape available to interested members of the public during normal business hours.

(e) Subsections (a) through (d) shall apply to the minutes of the meetings of any City board, commission, committee, task force, or agency.

2.01.040 Compensation. Pursuant to Government Code section 36516(a)(1), each member of the City Council shall receive a salary of three hundred dollars ($300.00) per month. Any amounts paid by the City to reimburse a Councilmember for actual and necessary expenses pursuant to Government Code section 36514.5 shall not be included for purposes of determining salary pursuant to this section.

Chapter 2.02

CITY MANAGER

Sections:

2.02.010 Office Created - Term.
2.02.020 Residence.
2.02.030 Eligibility.
2.02.040 Compensation.
2.02.050 Designation of Acting City Manager.
2.02.060 Powers and Duties.
2.02.070 Relations With Council.
2.02.080 Departmental Cooperation.
2.02.090 Agreements With Council.

2.02.010 Office Created - Term. The office of the City Manager is created and established. The City Manager shall be appointed by the City Council wholly on the basis of administrative and executive ability and qualifications. The City Manager shall hold office at the pleasure of the City Council.

2.02.020 Residence. The City Manager need not be a resident of the City at the time of his or her appointment or at any point during his or her term of office.

2.02.030 Eligibility. No member of the City Council shall be eligible for appointment as City Manager until one (1) year has elapsed after such Councilmember has ceased to be a Member of the City Council.

2.02.040 Compensation. The City Manager shall receive such compensation and expense allowances as the City Council shall from time to time determine, and such compensation shall be a proper charge against such funds of the City as the City Council shall designate. The City Manager shall be reimbursed for all actual and necessary expenses he or she incurs in the performance of his or her official duties, including those incurred when traveling on business pertaining to the City.

2.02.050 Designation of Acting City Manager. The Assistant City Manager shall serve as the acting City Manager during the temporary absence or disability of the City Manager. If there is no Assistant City Manager, the City Manager shall designate a qualified City employee to exercise the powers and perform the duties of City Manager during his or her temporary absence or disability by filing a written notice with the City Clerk. If the City Manager's absence or disability extends over a two month period, the City Council may appoint an acting City Manager.

2.02.060 Powers and Duties. The City Manager shall be the administrative head of the City government and is under the direction and control of the City Council, except as otherwise provided in this Chapter. The City Manager shall be responsible for the efficient administration of all affairs of the City which are under his or her control. In addition to the general powers as administrative head of the City government, and not as a limitation thereon, the City Manager shall be expected to, and shall have the power to:

(a) Enforce all laws and ordinances of the City and to see that all franchises, contracts, permits, and privileges granted by the City Council are faithfully observed;

(b) Appoint, remove, promote, and demote any and all officers and employees of the City, including the City Clerk and City Treasurer, but not including elected officers and the City Attorney, subject to all applicable personnel rules and regulations which may be adopted by the City Council;

(c) Control, order, and give directions to all department heads who are subject to his or her appointment and removal authority and to subordinate officers and employees of the City under his or her jurisdiction through their department heads;

(d) Conduct studies and effect such organization and reorganization of offices, positions, or units under his or her direction as may be indicated in the interest of efficient, effective, and economical conduct of the City's business;

(e) Recommend to the City Council for adoption such measures and ordinances as he or she deems necessary.

(f) Attend all meetings of the City Council unless excused by the Mayor individually or the City Council as a whole, except when his or her evaluation or removal is under consideration;

(g) Prepare and submit the proposed annual budget and the proposed annual salary plan to the City Council for its approval;

(h) Keep the City Council at all times fully advised as to the financial condition and needs of the City;

(i) Make investigations into the affairs of the City, any City department or division, and any contract or other obligation of the City; and further to investigate all complaints in concerning the administration of the City government and concerning the service maintained by public utilities in the City;

(j) Exercise general supervision over all public buildings, public parks, and all other public properties which are under the control and jurisdiction of the City;

(k) Have the same authority as the Mayor, as the convenience of the parties may dictate, to sign documents specified in Section 40602 of the California Government Code whenever such documents have been approved by the City Council for execution by resolution, motion, minute order, or other appropriate action; and,

(l) Perform such other responsibilities and exercise such other powers as may be delegated to the City Manager from time to time by ordinance or resolution or other official action of the City Council.

2.02.070 Relations With Council. The City Council and its Members shall deal with the administrative services of the City only through the City Manager, except for the purpose of inquiry, and neither the City Council nor any Member thereof shall give orders to any subordinates of the City Manager. For purposes hereof, "inquiry" means any and all communications short of giving orders, directions, or instructions to any member of the administrative staff. Staff members shall provide all information reasonably requested by any Councilmember. The City Manager shall take orders and instructions from the City Council only when sitting in a duly convened meeting of the City Council and no individual Councilmember shall give any orders or instructions to the City Manager. The City Council shall instruct the City Manager in matters of policy. Any action, determination, or omission of the City Manager shall be subject to review by the City Council. The City Council may not overrule, change, or modify any such action, determination, or omission except by the affirmative vote of the majority of the Members of the City Council.

2.02.080 Departmental Cooperation. It shall be the duty of all subordinate officers and the City Attorney to assist the City Manager in administering the affairs of the City efficiently, economically, and harmoniously.

2.02.090 Agreements With Council. Nothing in this Chapter shall be construed as a limitation on the power or authority of the City Council to enter into any supplemental agreement with the City Manager delineating additional terms and conditions of employment not inconsistent with any provisions of this Chapter.

Chapter 2.03

CITY CLERK

Sections:

2.03.010 Authority and Appointment of Office.
2.03.020 Compensation.
2.03.030 Functions.
2.03.040 Bond.

2.03.010 Authority and Appointment of Office. The office of the City Clerk is established pursuant to Section 36501 of the California Government Code. The City Clerk shall be appointed by the City Manager.

2.03.020 Compensation. The City Clerk shall receive such compensation and expense allowance as the City Council shall from time to time determine, and such compensation shall be a proper charge against such funds of the City as the City Council shall designate.

2.03.030 Functions. The City Clerk shall have all of the powers, duties, and responsibilities granted to and imposed upon the office of the City Clerk by the provisions of Chapter 2 of Part 3 of Division 3 of Title 4 of the Government Code of the State (commencing with Section 40801), other general laws of the State, the provisions of this Code, and the ordinances and resolutions of the City Council.

The principal functions of the City Clerk shall be to:

(a) Attend all meetings of the Council and be responsible for the recording and maintenance of a record of all the actions of the Council;

(b) Keep all ordinances and resolutions of the Council in such a manner that the information contained therein will be readily accessible and open to the public. The City Clerk shall attach to the original copy of each ordinance a certificate which shall state the date the ordinance was adopted and, as to an ordinance requiring publication, that the ordinance has been published or posted in accordance with law;

(c) Keep all records of the Council and of the office of the City Clerk in such manner that the information contained therein will be readily accessible and open to the public until such time as any of the records may be destroyed, or reproduced and the

original destroyed, in accordance with State law;

(d) Serve as the official custodian of all City records;

(e) Be the custodian of the seal of the City;

(f) Prepare the Council agendas, in conjunction with and under the direction of the City Manager;

(g) Perform the duties prescribed by the California Elections Code in conducting municipal elections;

(h) Perform the duties imposed upon City Clerks by the California Political Reform Act;

(i) Be responsible for the publication of all official advertising for the City;

(j) Be responsible for the maintenance and distribution of the Municipal Code;

(k) Process all claims filed against the City and its officers, agents, or employees, pursuant to Chapters 1 and 2 of Part 3 of Division 3.6 of Title 1 of the California Government Code (commencing with Section 900) and Chapter 3.04 of Title 3 of this Code;

(l) Perform the financial and accounting duties imposed upon the City Clerk by Section 40802 through 40805 of the California Government Code; and,

(m) Perform such other duties consistent with this Code as may be required of the City Clerk by the City Council.

2.03.040 Bond. The City Clerk shall furnish a corporate surety bond approved by the City Council for an amount as required by resolution of the City Council. The bond shall be conditioned upon the faithful performance of the duties imposed upon the City Clerk. The premium for the bond is a proper charge against the City.

Chapter 2.04

CITY TREASURER

Sections:

2.04.010 Authority and Appointment of Office.
2.04.020 Compensation.
2.04.030 Functions.

2.04.040 Bond.

2.04.010 Authority and Appointment of Office. The office of the City Treasurer is established pursuant to Section 36501 of the California Government Code. The City Treasurer shall be appointed by the City Manager.

2.04.020 Compensation. The City Treasurer shall receive such compensation and expense allowance as the City Council shall from time to time determine, and such compensation shall be a proper charge against such funds of the City as the City Council shall designate.

2.04.030 Functions. The City Treasurer shall perform such duties as are prescribed by Sections 41001 through 41007 of the California Government Code and by any other provisions of law applicable to deposit, investment, and safekeeping of public funds of the City.

2.04.040 Bond. The City Treasurer shall furnish a corporate surety bond approved by the City Council for an amount as required by resolution of the City Council. The bond shall be conditioned upon the faithful performance of the duties imposed upon the City Treasurer. The premium for the bond is a proper charge against the City.

Chapter 2.05

CITY ATTORNEY

Sections:

2.05.010 Office Created.
2.05.020 Compensation.
2.05.030 Functions.

2.05.010 Office Created. The office of the City Attorney is hereby established. It shall consist of the City Attorney and such assistants as may be authorized by the City Council. The City Attorney shall administer the office and be responsible for the successful performance of its functions. The City Attorney shall serve under the direct supervision and control of the Council as its legal advisor.

The Council may retain or employ other attorneys, assistants, or special counsel as may be needed to take charge of any litigation or legal matters or to assist the City Attorney with such matters.

2.05.020 Compensation. The City Attorney shall receive such compensation and expense allowance as the City Council shall from time to time determine, and such compensation shall be a proper charge against such funds of the City as the City

Council shall designate.

2.05.030 Functions. The functions of the office of the City Attorney shall be to:

(a) Advise the Council and all City officers in all matters of law pertaining to their offices;

(b) Furnish legal service at all meetings of the Council, except when excused or disabled, and give advice or opinion on the legality of all matters under consideration by the Council or by any of the boards and commissions or officers of the City;

(c) Prepare and/or approve for consideration all ordinances, resolutions, agreements, contracts, and other legal instruments as shall be required for the proper conduct of the business of the City and approve the form of all contracts, agreements, and bonds given to the City; and,

(d) Perform such other legal duties as may be required by the Council or as may be necessary to complete the performance of the foregoing functions.

ORDINANCE NO. 08-03

AN URGENCY ORDINANCE OF THE CITY OF WILDOMAR, CALIFORNIA, ADDING CHAPTER 3.01 TO THE WILDOMAR MUNICIPAL CODE TRANSFERRING TAX ASSESSMENT AND COLLECTION DUTIES TO THE COUNTY OF RIVERSIDE ASSESSOR AND TAX COLLECTOR

THE CITY COUNCIL OF THE CITY OF WILDOMAR DOES ORDAIN AS FOLLOWS:

SECTION 1. Addition of Chapter 3.01. Chapter 3.01, "Transfer of Tax Functions," is hereby added to Title 3, "Revenue and Finance," of the Wildomar Municipal Code, and shall read as follows:

Chapter 3.01

TRANSFER OF TAX FUNCTIONS

Sections:

3.01.010 Assessment and Collection of City Taxes by County.
3.01.020 Utilization of Regular County Assessment Roll.

3.01.010 Assessment and Collection of City Taxes by County. Pursuant to Section 51501 of the California Government Code, the assessment and tax collection duties performed by the City Assessor and Tax Collector are hereby transferred to the Assessor and Tax Collector of the County of Riverside.

3.01.020 Utilization of Regular County Assessment Roll. The regular assessment roll of Riverside County shall be utilized."

SECTION 2. Declaration of Facts Constituting Urgency. Government Code section 51501 requires the City to adopt an ordinance transferring the duties of tax assessment and collection to the County Assessor and Tax Collector, and prohibits the City from establishing the offices of City tax assessor and collector. Therefore, the City Council finds that this ordinance is necessary for the immediate preservation of the public peace, health, and safety because it ensures the continued and uninterrupted tax assessment and collection by the County within the City, and declares that this ordinance shall take effect immediately upon its adoption as an urgency ordinance.

SECTION 3. Severability. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it

would have adopted this ordinance, and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional, without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

SECTION 4. Effective Date. This ordinance shall take immediate effect upon its passage by the City Council.

SECTION 5. Publication. The City Clerk shall cause this ordinance to be published or posted in accordance with Government Code section 36933.

PASSED, APPROVED, AND ADOPTED this 1st day of July, 2008.

Bob Cashman, Mayor

ATTEST:

John Danielson, Interim City Clerk

APPROVED AS TO FORM:

Julie Hayward Biggs, Interim City Attorney

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE)
CITY OF WILDOMAR)

I, John Danielson, Interim City Clerk of the City of Wildomar, do hereby certify that the foregoing Ordinance No. 08-03 was duly adopted by the City Council of the City of Wildomar at a regular meeting, held on the 1st day of July, 2008, by the following vote of the Council:

AYES:

NOES:

ABSTAIN:

ABSENT:

_____
John Danielson, Interim City Clerk

ORDINANCE NO. 08-04

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, ADDING CHAPTER 3.02 TO THE WILDOMAR MUNICIPAL CODE ESTABLISHING A SPECIAL GAS TAX STREET IMPROVEMENT FUND

THE CITY COUNCIL OF THE CITY OF WILDOMAR DOES ORDAIN AS FOLLOWS:

SECTION 1. Addition of Chapter 3.02. Chapter 3.02, "Special Gas Tax Street Improvement Fund," is hereby added to Title 3, "Revenue and Finance," of the Wildomar Municipal Code, and shall read as follows:

"Chapter 3.02

SPECIAL GAS TAX STREET IMPROVEMENT FUND

Sections:

3.02.010 Created.
3.02.020 Moneys Included.
3.02.030 Expenditures.

3.02.010 Created. To comply with the provisions of Section 2113 of the California Streets and Highways Code, and to avail the City of the benefits of Sections 2106 and 2107 of the Streets and Highways Code, there is hereby created in the City treasury a special fund to be known as the "Special Gas Tax Street Improvement Fund."

3.02.020 Moneys Included. All moneys received by the City from the State of California's Highway Users Tax Fund, as provided in Sections 2106 and 2107 of the Streets and Highways Code, shall be paid into the Special Gas Tax Street Improvement Fund.

3.02.030 Expenditures. All moneys in the Special Gas Tax Street Improvement Fund shall be expended subject to the provisions of Chapter 3 of Division 3 of the California Streets and Highways Code."

SECTION 2. Declaration of Facts Constituting Urgency. The City has just become incorporated, and is responsible for the maintenance and improvement of public roads. It is necessary that the City immediately identify a source of funding for this activity. To be eligible for money from the State Highway Users Tax Fund, State law requires the City to establish a Special Gas Tax Street Improvement Fund. Therefore, the City Council finds that this ordinance is necessary for the immediate

preservation of the public peace, health, and safety, and declares that it shall take effect immediately upon its adoption.

SECTION 3. Severability. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted this ordinance, and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional, without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

SECTION 4. Effective Date. This ordinance shall take immediate effect upon its passage by the City Council.

SECTION 5. Publication. The City Clerk shall cause this ordinance to be published or posted in accordance with Government Code section 36933.

PASSED, APPROVED, AND ADOPTED this 1st day of July, 2008.

Bob Cashman, Mayor

ATTEST:

John Danielson, Interim City Clerk

APPROVED AS TO FORM:

Julie Hayward Biggs, Interim City Attorney

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE)
CITY OF WILDOMAR)

I, John Danielson, Interim City Clerk of the City of Wildomar, do hereby certify that the foregoing Ordinance No. 08-04 was duly adopted by the City Council of the City of Wildomar at a regular meeting, held on the 1st day of July, 2008, by the following vote of the Council:

AYES:

NOES:

ABSTAIN:

ABSENT:

_____
John Danielson, Interim City Clerk

ORDINANCE NO. 08-05

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, ADDING CHAPTER 3.03 TO THE WILDOMAR MUNICIPAL CODE ESTABLISHING PROCEDURES FOR CLAIMS AGAINST THE CITY

THE CITY COUNCIL OF THE CITY OF WILDOMAR DOES ORDAIN AS FOLLOWS:

SECTION 1. Addition of Chapter 3.03. Chapter 3.03, "Claims Against the City," is hereby added to Title 3, "Revenue and Finance," of the Wildomar Municipal Code, and shall read as follows:

"Chapter 3.03

CLAIMS AGAINST THE CITY

Sections:

3.03.010 Claim Required.
3.03.020 Scope of Chapter.
3.03.030 Presentation and Consideration of Claims.
3.03.040 Claim Required to Bring Suit.
3.03.050 Auditing of Claims.
3.03.060 Register of Claims.
3.03.070 City Council Approval
3.03.080 Record of Approved Claims.
3.03.090 Prepayment of Claims.

3.03.010 Claim Required. Pursuant to Section 935 of the California Government Code, any and all claims against the City for money or damages that are excepted from the requirements of Title 1, Division 3.6, Part 3, Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of the California Government Code, and which are not expressly governed by any other statute or regulation, shall be governed by the procedures prescribed in this chapter.

3.03.020 Scope of Chapter. This chapter does not apply to the authority of the City Treasurer, the City Council, and other City officers to process and pay the just obligations of the City in the ordinary course of business, such as routine salaries and wages, principal and interest on bonds, payments for purchases, and other like expenditures for which there is an express budget appropriation and in connection with which there is no dispute as to the obligation and/or the amount payable.

3.03.030 Presentation and Consideration of Claims. Any and all claims for money or damages shall be presented and considered in accordance with Title 1,

Division 3.6, Part 3, Chapter 1 (commencing with section 900) and Chapter 2 (commencing with Section 910) of the California Government Code.

3.03.040 Claim Required to Bring Suit. The presentation of a claim, as provided in Section 3.03.030 of this chapter, shall be a prerequisite to bringing a suit based thereon, and such suit shall be subject to the provisions of Sections 945.6 and 946 of the Government Code.

3.03.050 Auditing of Claims. The City Council shall approve or reject claims only after such claims have been audited in the manner prescribed in this section.

(a) *Departmental Audit.* Except for tort claims, every claim received against the City shall be first presented to and approved in writing by the receiving department or office, which shall certify the actual delivery or rendition of the supplies, materials, property, or service for which payment is claimed. The receiving department or office shall determine whether the quality and prices correspond with the original specifications and contracts, if any, upon which the claim is based, and whether the claim in all other respects is proper and valid. If the receiving department or office determines that the claim is proper and valid, it shall indicate the budgetary account to which said claim is to be charged.

(b) *Audit by City Manager.* Each claim audited by the receiving department or office shall then be presented to the City Manager, who shall determine whether:

(1) The claim is legally due and owing by the City;

(2) There are budgeted or otherwise appropriated funds available to pay said claim;

(3) The claim conforms to a valid requisition or order;

(4) The prices and computations shown on the claim are verified;

(5) The claim contains the approval of other departments and officials as required.

3.03.060 Register of Claims. Following the audit of claims, the City Manager shall prepare a register of audited claims showing the claimant's name, amount of claim, the warrant number and date thereof, and transmit said register to the City Council, with a recommendation of approval or denial. The City Manager shall attach to the register an affidavit certifying the accuracy of the claims and the availability of funds for payment thereof.

3.03.070 City Council Approval. The register of claims shall be presented to the City Council at the next meeting thereof. The City Council may by resolution approve, deny, or conditionally or partially approve or deny such register of claims.

3.03.080 Record of Approved Claims. Following approval of the register of claims by the City Council, the Mayor and the City Manager shall endorse the register of audited claims to signify that the claims therein were properly processed prior to any action taken by the City Council.

3.03.090 Prepayment of Claims.

(a) Prepayment of claims prior to audit by the City Council may be made by the City Manager in conformance with the authority provided by Section 37208 the California Government Code.

(b) Whenever the City Manager determines that a refund of fees, taxes, or other receipts collected in error or in advance of being earned is due, or that a refund of money is otherwise required pursuant to specific provisions of this Code or of any other ordinance of this City is due, then any such refund shall be deemed as conforming to the currently approved budget, and may be prepaid in the same as other demands encompassed within the terms of Subsection (a) of this Section."

SECTION 2. Intent to Supersede County Ordinances. The provisions of this ordinance shall supersede the County ordinances codified in Chapter 4.04 of the Riverside County Code, as those County ordinances were adopted by City Ordinance No. 08-01.

SECTION 3. Declaration of Facts Constituting Urgency. State law requires that the City prescribe by ordinance an auditing procedure for the payment of claims. State law also authorizes the City to adopt procedures for claims that are not otherwise regulated by State law. This ordinance prescribes and auditing procedure and procedures for the presentation and consideration of claims not governed by State law. The City Council finds that this ordinance is necessary for the immediate preservation of the public peace, health, and safety, because it establishes procedures necessary for the processing and paying of claims against the City, and declares that it shall take effect immediately upon its adoption as an urgency ordinance.

SECTION 4. Severability. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted this ordinance, and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional, without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

SECTION 5. Effective Date. This ordinance shall take immediate effect upon its passage by the City Council.

SECTION 6. Publication. The City Clerk shall cause this ordinance to be published or posted in accordance with Government Code section 36933.

PASSED, APPROVED, AND ADOPTED this 1st day of July, 2008.

Bob Cashman, Mayor

ATTEST:

John Danielson, Interim City Clerk

APPROVED AS TO FORM:

Julie Hayward Biggs, Interim City Attorney

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE)
CITY OF WILDOMAR)

I, John Danielson, Interim City Clerk of the City of Wildomar, do hereby certify that the foregoing Ordinance No. 08-05 was duly adopted by the City Council of the City of Wildomar at a regular meeting, held on the 1st day of July, 2008, by the following vote of the Council:

AYES:

NOES:

ABSTAIN:

ABSENT:

_____
John Danielson, Interim City Clerk

ORDINANCE NO. 08-06

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, ADDING CHAPTER 3.04 TO THE WILDOMAR MUNICIPAL CODE IMPOSING A DOCUMENTARY TRANSFER TAX

THE CITY COUNCIL OF THE CITY OF WILDOMAR DOES ORDAIN AS FOLLOWS:

SECTION 1. Recitals.

(a) On July 1, 2008, the City of Wildomar became a general law city with the power and duty to enact all local police, sanitary and other ordinances not in conflict with general law, and to provide general law municipal services to the residents of Wildomar.

(b) The City will incur substantial costs in providing municipal services, parts of which costs can be paid through real property documentary transfer taxes.

(c) The Local Agency Formation Commission of the County of Riverside has authorized the City to continue the levying and collection of any previously authorized charge, fee, assessment or general or special tax levied within the City by the County or other subject agency, including, but not limited to, transient occupancy taxes, franchise fees, business license fees, property transfer taxes, sales and use taxes, and any taxes assessments, fees or charges by County Service Areas 22, 104 and 142.

(d) California Revenue and Taxation Code section 11911 authorizes the City to adopt a documentary transfer tax ordinance in accordance with Part 6.7 of Division 2 of the Revenue and Taxation Code.

SECTION 2. Addition of Chapter 3.04. Chapter 3.04, "Documentary Transfer Tax," is hereby added to Title 3, "Revenue and Finance," of the Wildomar Municipal Code, and shall read as follows:

"Chapter 3.04

DOCUMENTARY TRANSFER TAX

Sections:

3.04.010 Short title and authority.
3.04.020 Imposition of tax.

3.04.030 Persons required to pay.
3.04.040 Content of documents submitted for recordation.
3.04.050 Mobilehome installed on foundation system.
3.04.060 Exemptions.
3.04.070 Administration by County.
3.04.080 Refunds.

3.04.010 Short title and authority. This chapter is known and may be cited as the "Documentary Transfer Tax Ordinance of the City of Wildomar." It is adopted pursuant to Part 6.7 (commencing with section 11901) of Division 2 of the Revenue and Taxation Code.

3.04.020 Imposition of Tax. A documentary transfer tax is imposed on each deed, instrument or writing by which any lands, tenements or other realty sold within the City shall be granted, assigned, transferred or conveyed to, or vested in, the purchaser or purchasers, or any other person or persons at the direction of the purchaser or purchasers, when the net consideration or value of the interest or property conveyed (exclusive of the value of any lien or encumbrance remaining thereon at the time of sale) exceeds one hundred dollars ($100.00), at the rate of twenty-seven and one-half cents ($0.275) for each five hundred dollars ($500.00) of net consideration or value, or fractional part thereof.

3.04.030 Persons Required to Pay. Any person who makes, signs or issues any document or instrument subject to the tax, or for whose use or benefit the same is made, signed or issued, shall pay the documentary transfer.

3.04.040 Content of documents submitted for recordation. Pursuant to the authority set forth in Revenue and Taxation Code Section 11911.1, each deed, instrument or writing by which lands, tenements, or other realty is sold, granted, assigned, transferred, or otherwise conveyed, shall have noted upon it the assessor's parcel number(s) and tax rate area number(s). These numbers will be used only for administrative and procedural purposes and will not be proof of title, and in the event of any conflicts, the stated legal description noted upon the document shall govern. The validity of such a document shall not be affected by the fact that the assessor's parcel number(s) or tax rate area number(s) are erroneous or omitted, and there shall be no liability attaching to any person for an error in such numbers or for omission of such numbers.

3.04.050 Mobilehome installed on foundation system. The transfer of any mobilehome installed on a foundation system, pursuant to Section 18551 of the Health and Safety Code, and subject to local property taxation shall be subject to the tax imposed by this chapter.

3.04.060 Exemptions. Exemption from the tax imposed by this chapter may be claimed under the circumstances described in this section. When an exemption from the tax is claimed, a declaration thereof shall be shown on the face of the document to

be recorded, or in a separate document submitted with the document to be recorded, reciting the reason for the exemption as provided herein.

(a) *Conveyances in Dissolution of Marriage.* Any tax imposed by this chapter shall not apply with respect to any deed, instrument or other writing which purports to transfer, divide or allocate community, quasi-community, or quasi-marital property assets between spouses for the purpose of effecting a division of community, quasi-community, or quasi-marital property which is required by a judgment decreeing a dissolution of the marriage or legal separation, by a judgment of nullity, or by any other judgment or order rendered pursuant to the Family Code, or by a written agreement between the spouses, executed in contemplation of any such judgment or order, whether or not the written agreement is incorporated as part of any of those judgments or orders.

(b) *Conveyances to Secure Debt.* The tax imposed by this chapter shall not apply to any instrument in writing given to secure a debt.

(c) *Conveyances to Governmental Entities.* Any deed, instrument or writing to which the United States or any agency or instrumentality thereof, any state or territory, or political subdivision thereof, is a party shall be exempt from any tax imposed by this chapter when the exempt agency is acquiring title.

(d) *Conveyances Under Reorganization or Adjustment Plans.* The tax imposed pursuant to this chapter shall not apply to the making, delivering or filing of conveyances to make effective any plan of reorganization or adjustment that is any of the following:

(1) Confirmed under the Federal Bankruptcy Act, as amended;

(2) Approved in an equity receivership proceeding in a court involving a railroad corporation, as defined in Section 101 of Title 11 of the United States Code, as amended;

(3) Approved in an equity receivership proceeding in a court involving a corporation, as defined in Section 101 of Title 11 of the United States Code, as amended; or

(4) Whereby a mere change in identity, form, or place of organization is effected.

Numerals 1 through 4, inclusive, of this subsection shall only apply if the making, delivery or filing of instruments of transfer or conveyances occurs within five years from the date of such confirmation, approval or change.

(e) *Conveyances Under Order of the Securities and Exchange Commission.* The tax imposed by this chapter shall not apply to the making or delivery of conveyances to make effective any order of the Securities and Exchange Commission,

as defined in subdivision (a) of Section 1083 of the Internal Revenue Code of 1954; but only if:

(1) The order of the Securities and Exchange Commission in obedience to which such conveyance is made recites that such conveyance is necessary or appropriate to effectuate the provisions of Section 79k of Title 15 of the United States Code, relating to the Public Utility Holding Company Act of 1935;

(2) Such order specifies the property which is ordered to be conveyed;

(3) Such conveyance is made in obedience to such order.

(f) *Transfer of Certain Partnership Property and Exception to Exemption.*

(1) In the case of any realty held by a partnership or other entity treated as a partnership for federal income tax purposes, no tax shall be imposed pursuant to this chapter by reason of any transfer of an interest in the partnership or other entity or otherwise if both of the following occur:

a. The partnership or other entity treated as a partnership is considered a continuing partnership within the meaning of Section 708 of the Internal Revenue Code of 1986; and

b. The continuing partnership or other entity treated as a partnership continues to hold the realty concerned.

(2) If there is a termination of any partnership or other entity treated as a partnership for federal income tax purposes, within the meaning of Section 708 of the Internal Revenue Code of 1986, for purposes of this chapter, such partnership shall be treated as having executed an instrument whereby there was conveyed, for fair market value (exclusive of the value of any lien or encumbrance remaining thereon), all realty held by the partnership or other entity at the time of the termination.

(3) Not more than one tax shall be imposed pursuant to this chapter by reason of a termination described in numeral (2) of this subsection, and any transfer pursuant thereto, with respect to the realty held by the partnership or other entity treated as a partnership at the time of such termination.

(4) No tax shall be imposed pursuant to this chapter by reason of any transfer between an individual or individuals and a legal entity or between legal entities that results solely in a change in the method of holding title to the realty and in which proportional ownership

interests in the realty, whether represented by stock, membership interest, partnership interest, cotenancy interest, or otherwise, directly or indirectly, remain in the same immediately after the transfer.

(g) *Conveyances Taken in Lieu of Foreclosure and Exception to Exemption.* Any tax imposed by this chapter shall not apply with respect to any deed, instrument or writing to a beneficiary or mortgagee, which is taken from the mortgagor or trustor as a result of or in lieu of foreclosure; provided, that such tax shall apply to the extent that the consideration exceeds the unpaid debt, including accrued interest and cost of foreclosure. Consideration, unpaid debt amount and identification of grantee as beneficiary or mortgagee shall be noted on the deed, instrument or writing or stated in an affidavit or declaration under penalty of perjury for tax purposes.

(h) *Conveyances by Governmental Entities with Agreements by Purchasers to Reconvey.* Any tax imposed by this chapter shall not apply with respect to any deed, instrument or other writing by which realty is conveyed by the State of California, any political subdivision thereof, or any agency or instrumentality of either thereof, pursuant to an agreement whereby the purchaser agrees to immediately reconvey the realty to the exempt agency.

(i) *Conveyances by Governmental Entities to Certain Nonprofit Corporations.* Any tax imposed by this chapter shall not apply with respect to any deed, instrument or other writing by which the State of California, any political subdivision thereof, or any agency or instrumentality of either thereof, conveys to a nonprofit corporation realty the acquisition, construction or improvement of which was financed or refinanced by obligations issued by the nonprofit corporation on behalf of a government unit, within the meaning of Section I.103-(b) of Title 26 of the Code of Federal Regulations.

(j) *Gift Conveyances.* Any tax imposed pursuant to this chapter shall not apply to any deed, instrument, or other writing which purports to grant, assign, transfer, convey, divide, allocate, or vest lands, tenements, or realty, or any interest therein, if by reason of such inter vivos gift or by reason of the death of any person, such lands, tenements, realty, or interests therein are transferred outright to, or in trust for the benefit of, any person or entity.

3.04.070 Administration by County. The County of Riverside shall collect all taxes imposed pursuant to this chapter, in conformity with the provisions of Part 6.7 of Division 2 of the California Revenue and Taxation Code and the provisions of any County ordinances adopted pursuant thereto.

3.04.080 Refunds. Claims for refunds of the tax imposed by this chapter shall be governed by the provisions of Chapter 5 (commencing with section 5096) of Part 9 of Division 1 of the Revenue and Taxation Code."

SECTION 3. Intent to Supersede County Ordinances. The provisions of this ordinance shall supersede the County ordinances codified in Chapter 4.08 of the

Riverside County Code, as those County ordinances were adopted by City Ordinance No. 08-01.

SECTION 4. Declaration of Facts Constituting Urgency. The City has just been incorporated and has no funds available to provide for the usual and current expenses of the City. Enacting this ordinance will provide the City with a source of revenue. Therefore, the City Council finds that this ordinance is necessary for the immediate preservation of the public peace, health, and safety, and declares that it shall take effect immediately upon its adoption as an urgency ordinance.

SECTION 5. Severability. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted this ordinance, and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional, without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

SECTION 6. Effective Date. This ordinance shall take immediate effect upon its passage by the City Council.

SECTION 7. Publication. The City Clerk shall cause this ordinance to be published or posted in accordance with Government Code section 36933.

PASSED, APPROVED, AND ADOPTED this 1st day of July, 2008.

_____
Bob Cashman, Mayor

ATTEST:

_____
John Danielson, Interim City Clerk

APPROVED AS TO FORM:

_____
Julie Hayward Biggs, Interim City Attorney

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE)
CITY OF WILDOMAR)

I, John Danielson, Interim City Clerk of the City of Wildomar, do hereby certify that the foregoing Ordinance No. 08-06 was duly adopted by the City Council of the City of Wildomar at a regular meeting, held on the 1st day of July, 2008, by the following vote of the Council:

AYES:

NOES:

ABSTAIN:

ABSENT:

_____
John Danielson, Interim City Clerk

ORDINANCE NO. 08-07

AN URGENCY ORDINANCE OF THE CITY OF WILDOMAR, CALIFORNIA ADDING CHAPTER 3.05 TO THE WILDOMAR MUNICIPAL CODE IMPOSING A SALES AND USE TAX TO BE ADMINISTERED BY THE STATE BOARD OF EQUALIZATION

THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA DOES ORDAIN AS FOLLOWS:

SECTION 1. Recitals.

(a) On July 1, 2008, the City of Wildomar became a general law city with the power and duty to enact all local police, sanitary and other ordinances not in conflict with general law, and to provide general law municipal services to the residents of Wildomar.

(b) The City will incur substantial costs in providing municipal services, parts of which costs can be paid through sales and use taxes.

(c) The Local Agency Formation Commission of the County of Riverside has authorized the City to continue the levying and collection of any previously authorized charge, fee, assessment or general or special tax levied within the City by the County or other subject agency, including, but not limited to, transient occupancy taxes, franchise fees, business license fees, property transfer taxes, sales and use taxes, and any taxes assessments, fees or charges by County Service Areas 22, 104 and 142.

(d) California Revenue and Taxation Code section 7200 et seq., authorizes the City to adopt a local sales and use tax in accordance with Part 1 and Part 1.5 of Division 2 of the Revenue and Taxation Code.

SECTION 2. Addition of Chapter 3.05. Chapter 3.05, "Sales and Use Tax," is hereby added to Title 3, "Revenue and Finance," of the Wildomar Municipal Code, and shall read as follows:

Chapter 3.05

SALES AND USE TAX

Sections:

3.05.010 Short Title.
3.05.020 Rate.
3.05.030 Operative Date.
3.05.040 Purpose.
3.05.050 Contract With State.

3.05.060 Sales Tax.
3.05.070 Place of Sale.
3.05.080 Use Tax.
3.05.090 Adoption of Provisions of State Law.
3.05.100 Limitations on Adoption of State Law.
3.05.110 Permit Not Required.
3.05.120 Exclusions and Exemptions.
3.05.130 Amendments.
3.05.140 Enjoining Collection Forbidden.
3.05.150 Penalties.

3.05.010 Short Title. This Ordinance shall be known as the Uniform Local Sales and Use Tax Ordinance.

3.05.020 Rate. The rate of sales tax and use tax imposed by this Ordinance shall be one percent (1%).

3.05.030 Operative Date. This Ordinance shall be operative on July 1, 2008.

3.05.040 Purpose. The City Council hereby declares that this Ordinance is adopted to achieve the following, among other, purposes, and directs that the provisions hereof be interpreted in order to accomplish those purposes.

(a) To adopt a sales and use tax ordinance which complies with the requirements and limitations contained in Part 1.5 of Division 2 of the Revenue and Taxation Code;

(b) To adopt a sales and use tax ordinance which incorporates provisions identical to those of the Sales and Use Tax Law of the State of California insofar as those provisions are not inconsistent with the requirements and limitations contained in Part 1.5 of Division 2 of the Revenue and Taxation Code;

(c) To adopt a sales and use tax ordinance which imposes a tax and provides a measure therefore that can be administered and collected by the State Board of Equalization in a manner that adapts itself as fully as practicable to, and requires the least possible deviation from the existing statutory and administrative procedures followed by the State Board of Equalization in administering and collecting the California State Sales and Use Taxes;

(d) To adopt a sales and use tax ordinance which can be administered in a manner that will, to the degree possible consistent with the provisions of Part 1.5 of Division 2 of the Revenue and Taxation Code, minimize the cost of collecting city sales and use taxes and at the same time minimize the burden of record keeping upon persons subject to taxation under the provisions of this Ordinance.

3.05.050 Contract with State. Prior to the operative date this City shall contract with the State Board of Equalization to perform all functions incident to the administration and operation of this sales and use tax ordinance; provided, that if this

City shall not have contracted with the State Board of Equalization prior to the operative date, it shall nevertheless so contract and in such a case the operative date shall be the first day of the first calendar quarter followed the execution of such a contract rather than the first day of the first calendar quarter following the adoption of this Ordinance.

3.05.060 Sales Tax. For the privilege of selling tangible personal property at retail a tax is hereby imposed upon all retailers in the City at the rate stated in Section 2 of the gross receipts of the retailer from the sale of all tangible personal property sold at retail in this City on and after the operative date.

3.05.070 Place of Sale. For the purposes of this Ordinance, all retail sales are consummated at the place of business of the retailer unless the tangible personal property sold is delivered by the retailer or his agent to an out-of-State destination or to a common carrier for delivery to an out-of-State destination. The gross receipts from such sales shall include delivery charges, when such charges are subject to the State sales and use tax, regardless of the place to which delivery is made. In the event a retailer has no permanent place of business in the State or had more than one place of business, the place or places at which the retail sales are consummated shall be determined under rules and regulations to be prescribed and adopted by the State Board of Equalization.

3.05.080 Use Tax. An excise tax is hereby imposed on the storage, use or other consumption in this City of tangible personal property purchased from any retailer on and after the operative date for storage, use or other consumption in this City at the rate stated in Section 2 of the sales price of the property. The sales price shall include delivery charges when such charges are subject to State sales or use tax regardless of the place to which delivery is made.

3.05.090 Adoption of Provisions of State Law. Except as otherwise provided in this Ordinance and except insofar as they are inconsistent with the provisions of Part 1.5 of Division 2 of the Revenue and Taxation Code, all of the provisions of Part 1 of Division 2 of the Revenue and Taxation Code are hereby adopted and made a part of this Ordinance as though fully set forth herein.

3.05.100 Limitations on Adoption of State Law. In adopting the provisions of part 1 of Division 2 of the Revenue and Taxation Code, wherever the State of California is named or referred to as the taxing agency, the name of this City shall be substituted therefore. The substitution, however, shall not be made when the word "State" is used as part of the title of the State Controller, the State Treasurer, the State Board of Control, the State Treasury, or the constitution of the State of California; the substitution shall not be made when the result of that substitution would require action to be taken by or against the City, or any agency thereof rather than by or against the State Board of Equalization, in performing the functions incident to the administration or operation of this Ordinance; the substitution shall not be made in those sections, including, but not necessarily limited to, sections referring to the exterior boundaries of the State of California, where the result of the substitution would be to provide an exemption from this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not otherwise be exempt from this tax while such sales, storage, use or other consumption remain subject to tax by the State under

the provisions of Part 1 of Division 2 of the Revenue and Taxation Code, or to impose this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not be subject to tax by the State under the said provisions of that Code; the substitution shall not be made in Sections 670, 6702 (except in the last sentence thereof), 6711, 6715, 6737, 6797, or 6828 of the Revenue and Taxation Code; and the substitution shall not be made for the word "State" in the phrase "retailer engaged in business in this State" in Section 6203 or in the definition of that phrase in Section 6203.

3.05.110 Permit Not Required. If a seller's permit has been issued to a retailer under Section 6067 of the Revenue and Taxation Code, an additional seller's permit shall not be required by this Ordinance.

3.05.120 Exclusions and Exemptions.

(e) The amount subject to tax shall not include any sales or use tax imposed by the State of California upon a retailer or consumer.

(f) The storage, use, or other consumption of tangible personal property, the gross receipts from the sale of which have been subject to tax under a sales and use tax ordinance enacted in accordance with part 1.5 of Division 2 of the Revenue and Taxation Code by any city and county, county, or city in this State shall be exempt from the tax due under this ordinance.

(g) There are exempted from the computation of the amount of the sales tax the gross receipts from the sale of tangible personal property to operators of aircraft to be used or consumed principally outside the city in which the sale is made and directly and exclusively in the use of such aircraft as common carriers of persons or property under the authority of the laws of this state, the United States, or any foreign government.

(h) In addition to the exemptions provided in Sections 6366 and 6366.1 of the Revenue and Taxation Code the storage, use, or other consumption of tangible personal property purchased by operators of aircraft and used or consumed by such operators directly and exclusively in the use of such aircraft as common carriers of persons or property for hire or compensation under a certificate of public convenience and necessity issued pursuant to the laws of this state, the United States, or any foreign government is exempted from the use tax.

3.05.130 Amendments. All subsequent amendments of Part 1 of Division 2 of the Revenue and Taxation code which are not inconsistent with part 1.5 of Division 2 of the Revenue and Taxation Code shall automatically become part of this Ordinance. this Ordinance also shall be deemed to adopt by reference the provisions of Sections 7202 to 7203, inclusive, of the Revenue and Taxation Code, as now in effect or as later amended, which are required to be included in this Ordinance.

3.05.140 Enjoining Collection Forbidden. No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action or proceeding in any court against the State or this City, or against any officer of the State or this City, to

prevent or enjoin the collection under this Ordinance, or Part 1.5 of Division 2 of the Revenue and Taxation Code, of any tax or any amount of tax required to be collected.

3.05.150 Penalties. Any person violating any of the provisions of this Ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of not more than $500.00 or by imprisonment for a period of not more than six month, or by both such fine and imprisonment.

SECTION 3. Intent to Supersede County Ordinances. The provisions of this ordinance shall supersede the County ordinances codified in Chapter 4.12 of the Riverside County Code, as those County ordinances were adopted by City Ordinance No. 08-01.

SECTION 4. Declaration of Facts Constituting Urgency. The City has just been incorporated and has no funds available to provide for the usual and current expenses of the City. Enacting this ordinance will provide the City with a source of revenue. Therefore, the City Council finds that this ordinance is necessary for the immediate preservation of the public peace, health, and safety, and declares that it shall take effect immediately upon its adoption as an urgency ordinance.

SECTION 5. Severability. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted this ordinance, and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional, without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

SECTION 6. Effective Date. This ordinance shall take immediate effect upon its passage by the City Council.

SECTION 7. Publication. The City Clerk shall cause this ordinance to be published or posted in accordance with Government Code section 36933.

PASSED, APPROVED, AND ADOPTED this 1st day of July, 2008.

Bob Cashman, Mayor

ATTEST:

John Danielson, Interim City Clerk

APPROVED AS TO FORM:

_____

Julie Hayward Biggs, Interim City Attorney

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE)
CITY OF WILDOMAR)

I, John Danielson, Interim City Clerk of the City of Wildomar, do hereby certify that the foregoing Ordinance No. 08-07 was duly adopted by the City Council of the City of Wildomar at a regular meeting, held on the 1st day of July, 2008, by the following vote of the Council:

AYES:

NOES:

ABSTAIN:

ABSENT:

_____
John Danielson, Interim City Clerk

ORDINANCE NO. 08-08

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA ADDING CHAPTER 7.05 TO THE WILDOMAR MUNICIPAL CODE IMPOSING MAJOR THOROUGHFARE AND BRIDGE FEES

THE CITY COUNCIL OF THE CITY OF WILDOMAR DOES ORDAIN AS FOLLOWS:

SECTION 1. Recitals.

(a) On July 1, 2008, the City of Wildomar became a general law city with the power and duty to enact all local police, sanitary and other ordinances not in conflict with general law, and to provide general law municipal services to the residents of Wildomar.

(b) The Local Agency Formation Commission of the County of Riverside has authorized the City to continue the levying and collection of any previously authorized charge, fee, assessment or general or special tax levied within the City by the County or other subject agency, including, but not limited to, transient occupancy taxes, franchise fees, business license fees, property transfer taxes, sales and use taxes, and any taxes assessments, fees or charges by County Service Areas 22, 104 and 142.

(c) Section 66484 of the California Government Code authorizes the City to require by ordinance the payment of a fee as a condition of approval of a final subdivision map or as a condition of issuing a building permit for the purpose of defraying the cost of constructing major thoroughfares and bridges.

(d) The County of Riverside has established two major thoroughfare and bridge fee programs pursuant to Section 66484 of the Government Code that apply to property within the City, the Scott Road Road and Bridge Benefit District and the Southwest Road and Bridge Benefit District, and the City Council desires to continue the levying and collection of fees through these districts.

(e) The City Council desires to adopt a Major Thoroughfare and Bridge Fee Program to insure that future development shall pay a share of the costs of constructing transportation systems adequate to serve that development.

SECTION 2. Addition of Chapter 7.05. Chapter 7.05, "Major Thoroughfare and Bridge Fees," is hereby added to Title 7, "Subdivisions," of the Wildomar Municipal Code to read as follows:

"Title 7

SUBDIVISIONS

Chapters:

7.01 RESERVED
7.02 RESERVED
7.03 RESERVED
7.04 RESERVED
7.05 Major Thoroughfare and Bridge Fees

Chapter 7.05

MAJOR THOROUGHFARE AND BRIDGE FEES

Sections:

7.05.010 Fee Imposed.
7.05.020 Definitions.
7.05.030 General Plan Applicability.
7.05.040 Payment of Fees.
7.05.050 Establishment of Area of Benefit; Notice.
7.05.060 Establishment of Area of Benefit; Public Hearing.
7.05.070 Protests.
7.05.080 Deposit of Funds in Separate Accounts.
7.05.090 Advancement of Funds by City.
7.05.100 Subdivider Construction of Major Thoroughfare or Bridge; Reimbursement.
7.05.110 Continuation of Fees Established by the County.

7.05.010 Fee Imposed. As a condition of approval of a final map or as a condition of issuing a building permit, a fee shall be paid by the applicant for the final map or building permit, for purposes of defraying the actual or estimated cost of constructing bridges over waterways, railways, freeways, and canyons, or constructing major thoroughfares, the land that is the subject of the final map or building permit lies within an area of benefit. The amount of the fee shall be set by resolution of the City Council.

7.05.020 Definitions. As used in this chapter:

"Area of benefit" means a specified area wherein it has been determined that the real property located therein will benefit from the construction of a major thoroughfare or bridge facility. An area of benefit may include land or improvements in addition to the land or improvements which are the subject of any map or building permit application considered at the proceedings.

"Bridge facilities" mean those locations identified in the transportation or flood control provisions of the Circulation Element of the City's General Plan as requiring a bridge to span a stream, railway, freeway or canyon. Should the City not have a General Plan in effect, then, until such time as such a General Plan is adopted, the term "bridge facilities" shall mean those locations identified in the transportation or flood control provisions of the Circulation Element or other element of the General Plan of the County of Riverside as requiring a bridge to span a stream, railway, freeway or canyon.

"Construction" includes design, acquisition of right-of-way, administration of construction contracts, and actual construction.

"Major thoroughfare" means those major thoroughfares identified in the Circulation Element of the City's General Plan whose primary purpose is to carry through traffic and provide a network of connecting to the state highway system. Should the City not have a General Plan in effect, then, until such time as such a General Plan is adopted, the term 'major thoroughfare' shall mean those major thoroughfares identified in the Circulation Element of the General Plan of the County of Riverside whose primary purpose is to carry through traffic and provide a network of connecting to the state highway system.

7.05.030 General Plan Applicability. The provisions herein for payment of a fee shall apply only if the major thoroughfare or bridge facility has been included in the Circulation Element of the General Plan adopted by the City Council at least thirty (30) days prior to the filing of a map or application for a building permit and on land located within the boundaries of the area of benefit. Should the City not have a General Plan in effect, then, until such time as such a Plan is adopted, the provisions herein for the payment of a fee shall apply only if the major thoroughfare or bridge facility has been included in the Circulation Element of the General Plan of the County of Riverside.

7.05.040 Payment of Fees. Payment of major thoroughfare fees shall not be required unless the major thoroughfares are in addition to, or a reconstruction of, any existing major thoroughfare serving the area at the time of the adoption of the boundaries of the area of benefit. Payment of bridge fees shall not be required unless the planned bridge facility is an original bridge serving the area or an addition to an existing bridge facility serving the area at the time of the adoption of the boundaries of the area of benefit.

7.05.050 Establishment of Area of Benefit; Notice. Action to establish an area of benefit may be initiated by the City Council upon its own motion or upon the

recommendation of the Director of Public Works or other designated City employee. The proposal shall be forwarded to the Planning Commission for its review and recommendations at a regular or special meeting. The Planning Commission comments and recommendations, and the Public Works Director's report shall be transmitted to the City Council. The City Council will set a public hearing for each proposed area of benefit. Notice of the time and place of said hearing, including preliminary information related to the boundaries of the area of benefit, estimated costs and the method of fee apportionment, shall be given in accordance with Government Code section 65091.

7.05.060 Establishment of Area of Benefit; Conduct of Public Hearing.

(a) At the public hearing the City Council will consider the testimony, written protests, and other evidence. At the conclusion of the public hearing the City Council may, unless a majority written protest is filed and not withdrawn as specified in Subsection (3) hereof, establish an area of benefit. If an area of benefit is established at the public hearing, the boundaries of the area of benefit, the costs, whether actual or estimated, and a fair method of allocation of costs to the area of benefit and fee apportionment shall be established. The method of fee apportionment, in the case of major thoroughfares, shall not provide for higher fees on land which abuts the proposed improvement except where the abutting property is provided direct usable access to the major thoroughfare.

(b) A description of the boundaries of the area of benefit, the costs, whether actual or estimated, and the method of fee apportionment established at the hearing shall be incorporated in a resolution of the City Council, a certified copy of which shall be recorded by the City Council with Riverside County Recorder.

(c) Such apportioned fees shall be applicable to all property within the area of benefit and shall be payable as a condition of approval of a final map or as a condition of issuing a building permit for such property or portions thereof. Where the area of benefit includes lands not subject to the payment of fees pursuant to Section 66484 of the California Government Code, the City Council shall make provisions for payment of the share of improvement costs apportioned to such lands from other sources.

7.05.070 Protests.

(a) Written protest shall be received by the City Clerk any time prior to the close of the public hearing. Any protests may be withdrawn by the owner making the same, in writing, at any time prior to the close of the public hearing.

(b) If written protests are filed by the owners of more than one-half of the area of the property to be benefited by the improvement, and sufficient protest are not withdrawn so as to reduce the area represented by the protests to less than one-half of the area to be benefited, then the proposed proceedings shall be abandoned, and the City Council shall not, for one (1) year from the filing of said written protests, commence

or carry on any proceedings for the same improvement or acquisition under the provisions of this chapter.

(c) If any majority protest is directed against only a portion of the improvement then all further proceedings under the provisions of this chapter to construct that portion of the improvement so protested against shall be barred for a period of one (1) year, but the City Council may commence new proceedings not including any part of the improvement or acquisition so protested against. Nothing in this chapter prohibits the City Council, within that one (1) year period, from commencing and carrying on new proceedings for the construction of a portion of the improvement so protested against if it finds, by the affirmative vote of four-fifths of its members, that the owners of more than one-half of the area of the property to be benefited are in favor of going forward with that portion of the improvement or acquisition.

7.05.080 Deposit of Funds in Separate Accounts. Fees paid pursuant to this chapter shall be deposited in a planned bridge facility or major thoroughfare fund. A fund shall be established for each planned bridge facility project or each planned major thoroughfare project. If the area of benefit is one in which more than one bridge or major thoroughfare is required to be constructed, a separate fund may be established covering all of the bridge projects or major thoroughfares in the area of benefit. Moneys in the fund shall be expended solely for the construction or reimbursement for construction of the improvement serving the area to be benefited and from which the fees comprising the fund were collected, or to reimburse the City for the costs of constructing the improvement.

7.05.090 Advancement of Funds by City. The City Council may approve the advancement of money from the General Fund or Road Fund to pay the costs of constructing the improvements covered herein and may reimburse the General Fund or Road Fund for such advances from planned bridge facility or major thoroughfare funds established pursuant to this Chapter.

7.05.100 Subdivider Construction of Major Thoroughfare or Bridge; Reimbursement. If the subdivider, as a condition of approval of the subdivision, or the building permit applicant, as a condition of the issuance of the building permit, is required or desires to construct a bridge or major thoroughfare, the City Council may enter into a reimbursement agreement with the subdivider or building permit applicant. Such agreement may provide for payments to the subdivider or applicant from the bridge facility or major thoroughfare fund covering that specific project to reimburse the subdivider or applicant for costs not allocated to the subdividers or applicant's property in the resolution establishing the area of benefit. If the bridge or major thoroughfare fund covers more than one project, reimbursements shall be made on a pro rata basis reflecting the actual or estimated costs of the projects covered by the fund.

7.05.110 Continuation of Fees Established by the County. The City shall levy and collect all major thoroughfare and bridge fees established by the County prior to July 1, 2008 applicable to property within the City."

SECTION 3. Intent to Supersede County Ordinances. The provisions of this ordinance shall supersede the County ordinances codified in Chapter 16.28 of the Riverside County Code, as those County ordinances were adopted by City Ordinance No. 08-01.

SECTION 4. Declaration of Facts Constituting Urgency. The City of Wildomar has just been incorporated and has no funds available to provide for the usual and current expenses of the City. Enacting this ordinance will provide the City with a source of revenue. Therefore, the City Council finds that this ordinance is necessary for the immediate preservation of the public peace, health, and safety, and declares that it shall take effect immediately upon its adoption as an urgency ordinance.

SECTION 5. Severability. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted this ordinance, and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional, without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

SECTION 6. Effective Date. This ordinance shall take immediate effect upon its passage by the City Council.

SECTION 7. Publication. The City Clerk shall cause this ordinance to be published or posted in accordance with Government Code section 36933.The City Clerk shall certify the passage of this ordinance and shall cause the same to be posted as required by law.

PASSED, APPROVED, AND ADOPTED this 1st day of July, 2008.

Bob Cashman, Mayor

ATTEST:

John Danielson, Interim City Clerk

APPROVED AS TO FORM:

_____

Julie Hayward Biggs, Interim City Attorney

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE)
CITY OF WILDOMAR)

I, John Danielson, Interim City Clerk of the City of Wildomar, do hereby certify that the foregoing Ordinance No. 08-08 was duly adopted by the City Council of the City of Wildomar at a regular meeting, held on the 1st day of July, 2008, by the following vote of the Council:

AYES:

NOES:

ABSTAIN:

ABSENT:

_____
John Danielson, Interim City Clerk

ORDINANCE NO. 08-09

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA ADOPTING A CITY SEAL

THE CITY COUNCIL OF THE CITY OF WILDOMAR DOES ORDAIN AS FOLLOWS:

SECTION 1. City Seal Approved. A City Seal for the City of Wildomar is hereby approved. The Seal shall contain the name of the City and the date of incorporation and shall appear substantially as shown in Exhibit "A" to this ordinance.

SECTION 2. Intent to Supersede County Ordinances. The provisions of this ordinance shall supersede any conflicting provisions of the ordinances of Riverside County, as those County ordinances were adopted by City Ordinance No. 08-01.

SECTION 3. Declaration of Facts Constituting Urgency. The City of Wildomar is newly incorporated and it is comprised of formerly unincorporated territory. Section 34501 of the Government Code requires all cities to have a seal. Therefore, the City Council finds that this ordinance is necessary for the immediate preservation of the public peace, health, and safety, and declares that it shall take effect immediately upon its adoption as an urgency ordinance.

SECTION 4. Severability. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted this ordinance, and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional, without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

SECTION 5. Effective Date. This ordinance shall take immediate effect upon its passage by the City Council.

SECTION 6. Publication. The City Clerk shall cause this ordinance to be published or posted in accordance with Government Code section 36933.

PASSED, APPROVED, AND ADOPTED this 1st day of July, 2008.

_____
Bob Cashman, Mayor

ATTEST:

John Danielson, Interim City Clerk

APPROVED AS TO FORM:

Julie Hayward Biggs, Interim City Attorney

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE)
CITY OF WILDOMAR)

I, John Danielson, Interim City Clerk of the City of Wildomar, do hereby certify that the foregoing Ordinance No. 08-09 was duly adopted by the City Council of the City of Wildomar at a regular meeting, held on the 1st day of July, 2008, by the following vote of the Council:

AYES:

NOES:

ABSTAIN:

ABSENT:

_____
John Danielson, Interim City Clerk

EXHIBIT "A"

CITY SEAL

CITY OF WILDOMAR
INCORPORATED
July 1, 2008
STATE OF
CALIFORNIA

ORDINANCE NO. 08-10

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, ESTABLISHING AN INTERIM PLANNING AGENCY, AND APPOINTING THE CITY COUNCILMEMBERS AS THE MEMBERS OF THE INTERIM PLANNING AGENCY

THE CITY COUNCIL OF THE CITY OF WILDOMAR DOES ORDAIN AS FOLLOWS:

SECTION 1. Recitals.

(a) Section 65100 of the California Government Code establishes the Interim Planning Agency for the City, whose function is to carry out the purposes of the Government Code Title 7, Planning and Land Use, and requires the City Council to assign the functions of the Interim Planning Agency as it deems appropriate and necessary.

(b) Prior to incorporation, the Interim Planning Agency for Wildomar was the Riverside County Planning Agency, which is comprised of the County Board of Supervisors, the County Planning Commission, and the County Planning Department.

(c) It is the intent of the City to establish and appoint a permanent planning advisory body in the future.

(d) It is necessary for the efficient operation of the affairs of the City that the City Council establish an Interim Planning Agency.

SECTION 2. Establishment of Interim Planning Agency. An Interim Planning Agency for the City is hereby established. The members of the City Council shall serve as members of the Interim Planning Agency. They shall perform the planning agency functions described in Government Code section 65103, and shall fulfill the functions delegated to the Planning Commission for the County of Riverside under the County Code and relevant ordinances, which the City has adopted by reference.

SECTION 3. Intent to Supersede County Ordinances. The provisions of this ordinance shall supersede any County ordinances inconsistent with the provisions of this ordinance, as those County ordinances were adopted by City Ordinance No. 08-01.

SECTION 4. Declaration of Facts Constituting Urgency. Section 65100 of the Government Code requires the City Council to assign the duties of the Interim Planning Agency to a planning department, one or more planning commissions, administrative bodies or hearing officers, the City Council itself, or any combination thereof, as the City Council deems appropriate and necessary. This ordinance ensures that the functions of the City's Interim Planning Agency, as set forth in Section 61503 of

the Government Code, are carried out by the City Council while the City Council determines how the functions of the Interim Planning Agency should be assigned on a permanent basis. Therefore, the City Council finds that this ordinance is necessary for the immediate preservation of the public peace, health, and safety, and declares that it shall take effect immediately upon its adoption as an urgency ordinance.

SECTION 5. Severability. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted this ordinance, and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional, without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

SECTION 6. Effective Date. This ordinance shall take immediate effect upon its passage by the City Council.

SECTION 7. Publication. The City Clerk shall cause this ordinance to be published or posted in accordance with Government Code section 36933.

PASSED, APPROVED, AND ADOPTED this 1st day of July, 2008.

_____
Bob Cashman, Mayor

ATTEST:

_____
John Danielson, Interim City Clerk

APPROVED AS TO FORM:

_____
Julie Hayward Biggs, Interim City Attorney

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE)
CITY OF WILDOMAR)

I, John Danielson, Interim City Clerk of the City of Wildomar, do hereby certify that the foregoing Ordinance No. 08-10 was duly adopted by the City Council of the City of Wildomar at a regular meeting, held on the 1st day of July, 2008, by the following vote of the Council:

AYES:

NOES:

ABSTAIN:

ABSENT:

_____
John Danielson, Interim City Clerk

ORDINANCE NO. 08-11

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, DECLARING THE CITY COUNCIL TO BE THE REDEVELOPMENT AGENCY FOR THE CITY AND APPOINTING THE CITY COUNCILMEMBERS AS THE MEMBERS OF THE REDEVELOPMENT AGENCY

THE CITY COUNCIL OF THE CITY OF WILDOMAR DOES ORDAIN AS FOLLOWS:

SECTION 1. Recitals.

(a) The Community Redevelopment Law ("CRL"), California Health and Safety Code section 33000 and following, establishes the Redevelopment Agency for the City of Wildomar, and requires the City Council to adopt an ordinance declaring that there is a need for the Redevelopment Agency in the City for the Redevelopment Agency to exercise its powers under the CRL.

(b) Section 33200 of the CRL authorizes the City Council to declare itself to be the Redevelopment Agency for the community.

(c) Prior to incorporation, the Redevelopment Agency for the area within the City was the Riverside County Board of Supervisors, and a portion of the area within the City is part of the 1-1986 Redevelopment Project Area approved by County Board of Supervisors.

(d) Among the reasons for the incorporation of the City and the election of a City Council, was the desire of the citizens of the area to have greater control over local development, land use and planning matters.

(e) Declaring the City Council to be the Redevelopment Agency of the City will serve the public interest and promote the public safety and welfare in a more effective manner because it will allow the duly elected representatives of the City to control the redevelopment activities occurring within the City.

(f) Pursuant to Government Code section 57384 and the conditions of approval imposed by the Local Agency Formation Commission for Riverside County on the incorporation of the City of Wildomar, the County of Riverside shall continue to furnish all services provided to the area within the City prior to its incorporation for the remainder of the fiscal year or until the City Council requests

discontinuance of the services, whichever occurs first.

SECTION 2. Addition of Chapter 2.06. A new chapter 2.06, "Redevelopment Agency," is hereby added to Title 2, "Administration and Personnel," of the Wildomar Municipal Code, and shall read as follows:

Chapter 2.06

REDEVELOPMENT AGENCY

Sections:

2.06.010 Declaration of Need.
2.06.020 Agency Designated.
2.06.030 Compensation.

2.06.010 Declaration of Need. The City Council finds and declares that there is a need for a Redevelopment Agency to function in the City pursuant to the Community Redevelopment Law, Division 24, Part 1 of the California Health and Safety Code. The Redevelopment Agency is authorized to transact business and to exercise its powers under and in accordance with the Community Redevelopment Law of the state of California.

2.06.020 Agency Designated. Pursuant to section 33200 of the Health and Safety Code, the City Council shall be the Redevelopment Agency for the City, and all the rights, powers, duties, privileges and immunities vested by law in the Redevelopment Agency by the Community Redevelopment Law, shall be vested in the City Council.

2.06.030 Compensation. The members of the Redevelopment Agency shall receive their actual and necessary expenses, including traveling expenses, incurred in the discharge of their duties. They may receive such other compensation as the City Council prescribes, except that, pursuant to Section 33114.5 of the Health and Safety Code, such compensation shall not exceed thirty dollars ($30.00) per Redevelopment Agency meeting for each member, and no member shall be compensated for attending more than four (4) Redevelopment Agency meetings per calendar month."

SECTION 3. Assumption of County Functions. The Redevelopment Agency for the City shall fulfill the functions previously performed by the Riverside County Redevelopment Agency under the Riverside County Code and relevant County ordinances and resolutions, which the City has adopted by reference.

SECTION 4. Continuation of County Services. In accordance with Government Code section 57384 and the Local Agency Formation Commission of Riverside County conditions of approval for incorporation of the City of Wildomar, the County of Riverside shall fund and provide operations and staffing for the Redevelopment Agency, which services shall continue to be funded and provided by the

County until further action of the City Council or the termination of the fiscal year, whichever occurs first.

SECTION 5. Filing of Ordinance. The City Manager shall cause a certified copy of this ordinance to be filed with the Riverside County Clerk. and the California Secretary of State.

SECTION 6. Intent to Supersede County Ordinances. The provisions of this ordinance shall supersede any County ordinances inconsistent with the provisions of this ordinance, including those ordinances codified in Chapter 2.68 of the Riverside County Code, as those County ordinances were adopted by City Ordinance No. 08-01.

SECTION 7. Declaration of Facts Constituting Urgency. Unless this ordinance takes effect immediately upon its adoption, the functions of the Redevelopment Agency for the community will continue to be carried out by members of the Riverside County Board or Supervisors rather than the duly elected officers of the City. Therefore, the City Council finds that this ordinance is necessary for the immediate preservation of the public peace, health, and safety, and declares that it shall take effect immediately upon its adoption as an urgency ordinance.

SECTION 8. Severability. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted this ordinance, and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional, without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

SECTION 9. Effective Date. This ordinance shall take immediate effect upon its passage by the City Council.

SECTION 10. Publication. The City Clerk shall cause this ordinance to be published or posted in accordance with Government Code section 36933.

PASSED, APPROVED, AND ADOPTED this 1st day of July, 2008.

_____

Bob Cashman, Mayor

ATTEST:

_____
John Danielson, Interim City Clerk

APPROVED AS TO FORM:

_____
Julie Hayward Biggs, Interim City Attorney

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE)
CITY OF WILDOMAR)

I, John Danielson, Interim City Clerk of the City of Wildomar, do hereby certify that the foregoing Ordinance No. 08-11 was duly adopted by the City Council of the City of Wildomar at a regular meeting, held on the 1st day of July, 2008, by the following vote of the Council:

AYES:

NOES:

ABSTAIN:

ABSENT:

_____
John Danielson, Interim City Clerk

ORDINANCE NO. 08-12

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, PARTIALLY SUPERSEDING COUNTY ORDINANCE NO. 457 REGARDING THE BUILDING BOARDS OF APPEAL

THE CITY COUNCIL OF THE CITY OF WILDOMAR DOES ORDAIN AS FOLLOWS:

SECTION 1. Recitals.

(a) The City of Wildomar was incorporated on July 1, 2008, as a general law city of the State of California.

(b) The City Ordinance No. 08-01 adopts the Riverside County ordinances as City ordinances for a period of 120 days, or until such time as the City Council expressly supersedes any or all of the County ordinances.

(c) County Ordinance No. 457, as amended and codified in Section 15.08.020 of the Riverside County Code, creates seven Boards of Appeal whose functions are to hear and decide appeals of decisions made by the building official relative to the application and interpretation of the various technical codes.

(d) Subsection (A)(2) of Section 15.08.020 of the Riverside County Code requires the members of the various Boards of Appeal to have specific technical backgrounds and areas of expertise.

(e) The City Council desires to appoint itself as the sole Board of Appeal for to hear all appeals of decisions made by the building official relative to the application and interpretation of the various technical codes.

SECTION 2. Unified Board of Appeal Created. The City Council hereby ordains that there shall be one Board of Appeal consisting of five members that shall hear all appeals of decisions by the building official relative to the application and interpretation of the various technical codes.

SECTION 3. City Council Designated as the Board of Appeal. The City Council designates itself to act as the Board of Appeal under provisions of County Ordinance No. 457, which has been adopted as a City Ordinance for a period of 120 days, and hereby appoints the members of the City Council to serve on that Board.

SECTION 4. Intent to Supersede County Ordinances. The provisions of this ordinance shall supersede County Ordinance No. 457, as amended, to the extent that it

is inconsistent with the provisions of this ordinance, as that ordinance was adopted by City Ordinance No. 08-01.

SECTION 5. Declaration of Facts Constituting Urgency. County Ordinance No. 457, which was adopted as a City Ordinance for a period of 120 days, requires the City Council to establish seven Boards of Appeal, each consisting of five members with various technical backgrounds and areas of expertise. The City is unable at this time to identify and appoint thirty-five individuals with the required knowledge to serve on these Boards of Appeal. If an individual were to appeal a decision of the building official, there would be no body to hear the appeal. Therefore, the City Council finds that this ordinance is necessary or the immediate preservation of the public peace, health and safety, and declares that it shall take effect immediately upon its adoption as an urgency ordinance.

SECTION 6. Severability. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted this ordinance, and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional, without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

SECTION 7. Effective Date. This ordinance shall take immediate effect upon its passage by the City Council.

SECTION 8. Publication. The City Clerk shall cause this ordinance to be published or posted in accordance with Government Code section 36933.

PASSED, APPROVED, AND ADOPTED this 1st day of July, 2008.

_____
Bob Cashman, Mayor

ATTEST:

_____
John Danielson, Interim City Clerk

APPROVED AS TO FORM:

_____
Julie Hayward Biggs, Interim City Attorney

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE)
CITY OF WILDOMAR)

I, John Danielson, Interim City Clerk of the City of Wildomar, do hereby certify that the foregoing Ordinance No. 08-12 was duly adopted by the City Council of the City of Wildomar at a regular meeting thereof, held on the 1st day of July, 2008, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

_____
John Danielson, Interim City Clerk

ORDINANCE NO. 08-13

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, AUTHORIZING THE REIMBURSEMENT OF CITY COUNCILMEMBERS FOR ACTUAL AND NECESSARY EXPENSES INCURRED IN THE PERFORMANCE OF THEIR OFFICIAL DUTIES

THE CITY COUNCIL OF THE CITY OF WILDOMAR DOES ORDAIN AS FOLLOWS:

SECTION 1. Recitals.

(a) Government Code section 36514.5 authorizes the reimbursement of City Councilmembers for their actual and necessary expenses incurred in the performance of their official duties.

(b) In order to reimburse City Councilmembers for their actual and necessary expenses incurred in the performance of their official duties, State law requires the City Council to adopt a written policy, in a public meeting, specifying the types of occurrences that qualify a City Councilmember to receive reimbursement.

SECTION 2. Authorization for Reimbursement. The Interim City Manager, or his designee, is authorized to reimburse the members of the City Council for their actual and necessary expenses incurred in the performance of their official duties in accordance with the written policy attached hereto as Exhibit "A" and incorporated herein by reference.

SECTION 3. Declaration of Facts Constituting Urgency. It is necessary that this ordinance take effect immediately in order to ensure that the City Councilmembers may be reimbursed for their actual and necessary out of pocket expenses incurred while performing their official duties. If this ordinance does not take effect immediately, it may result in the City Councilmembers personally paying for proper City expenses. Therefore, the City Council finds that this ordinance is necessary for the immediate preservation of the public peace, health, and safety, and declares that it shall take effect immediately upon its adoption as an urgency ordinance.

SECTION 4. Severability. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted this ordinance, and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional, without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

SECTION 5. Effective Date. This ordinance shall take immediate effect upon its passage by the City Council.

SECTION 6. Publication. The City Clerk shall cause this ordinance to be published or posted in accordance with Government Code section 36933.

PASSED, APPROVED, AND ADOPTED this 1st day of July, 2008.

_____
Bob Cashman, Mayor

ATTEST:

_____
John Danielson, Interim City Clerk

APPROVED AS TO FORM:

_____
Julie Hayward Biggs, Interim City Attorney

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE)
CITY OF WILDOMAR)

I, John Danielson, Interim City Clerk of the City of Wildomar, do hereby certify that the foregoing Ordinance No. 08-13 was duly adopted by the City Council of the City of Wildomar at a regular meeting, held on the 1st day of July, 2008, by the following vote of the Council:

AYES:

NOES:

ABSTAIN:

ABSENT:

_____
John Danielson, Interim City Clerk

EXHIBIT "A"

REIMBURSEMENT POLICY FOR ELECTED AND APPOINTED OFFICIALS

CITY OF WILDOMAR

Reimbursement Policy for Elected and Appointed Officials

PURPOSE

To establish a policy for the reimbursement of expenses incurred by elected and appointed officials (hereinafter "officials") of the City of Wildomar ("City") in the performance of City business. This Policy will be applicable to all elected or appointed members of any legislative body (as defined in Government Code Section 54952(a), (b)) of the City, including the City Council and any other City-affiliated commission, committee, board, or other body created by ordinance, resolution, or formal action of the City Council.

POLICY

It is the policy of the City to reimburse actual and necessary expenses incurred by officials in the performance of City business.

A. Activities Eligible for Expense Reimbursement

Expenses incurred in connection with the following types of activities are eligible for reimbursement:

1. Attendance and participation at meetings of the official's legislative body or at meetings of an advisory body of the legislative body.

2. Attendance and participation at meetings of any body or organization to which the official has been appointed by the official's governing or legislative body or at which the official serves as a designated representative of the City.

3. Communicating with constituents on matters within the jurisdiction of the official's legislative body.

4. Attending community events as a representative of the City.

5. Communicating with representatives of local, regional, state and national government on City matters, policy positions, or legislation that may affect the City.

6. Participating in local, regional, state and national organizations and entities whose activities affect City interests.

7. Attending seminars designed to improve officials' skill and information levels.

Reimbursement for expenses incurred with respect to activities not authorized above require prior approval by the City Council or applicable legislative body.

B. Expenses Authorized for Reimbursement

1. Transportation. Transportation expenses incurred in connection with activities authorized under Section A of this Policy are subject to the following requirements:

a. Airlines and Other Commercial Carriers: Travel reimbursement is generally limited to coach class fare at government rates or group rates when available. Fares that are equal to or less than those available through the League of California Cities or the State of California (www.catravelsmart.com) are presumed to be economical and reasonable for purposes of reimbursement. If rates comparable to those available through the League of California Cities or the State are either not available or the fare to the applicable destination is not specified by these sources, then fares that do not exceed the median retail price of the fares posted on websites like www.expedia.com or www.travelocity.com, or an equivalent service will be considered reasonable.

b. Automobile (Personal Vehicle): Travel using personal vehicles will be reimbursed at the IRS mileage rate in effect at the time.

c. Car Rental: Rental vehicles may be used if more economical and reasonable than other forms of transportation. Rental is generally limited to the most economical and reasonable mid-sized vehicle. Government rates or rental rates that are equal or less than those listed by the State of California (www.catravelsmart.com) will be considered the most reasonable and economical for purposes of reimbursement. If government rates or rates comparable to those listed by the State are either not available or the State does not specify a rate for a particular location, then rental rates that do not exceed the median retail price of the rates posted on websites like www.expedia.com or www.travelocity.com, or an equivalent service will be considered reasonable.

d. Taxis/Shuttles: Taxi or shuttle fares, when reasonable and necessary, will be reimbursed, including a 15% gratuity per fare.

2. Lodging. Lodging expenses incurred in connection with activities authorized under Section A of this Policy when travel requires an overnight stay are subject to the following requirements:

a. Officials must use government or group rates for lodging when available.

b. If lodging is in connection with a conference or organized activity, lodging expenses must not exceed the maximum group rate published by the conference or activity sponsor if such rate is available at the time of booking.

c. If group or government rates are not available, lodging rates that do not exceed the median retail price for lodging in the area listed on websites like www.hotels.com or an equivalent service will be considered reasonable.

3. Meals. Meal expenses incurred in connection with activities authorized under Section A of this Policy will be reimbursed at the applicable IRS meal rates in effect at the time.

4. Miscellaneous Expenses. Actual and necessary miscellaneous business expenses, as defined by the IRS and incurred in connection with activities authorized under Section A of this Policy, may be reimbursed.

C. Reporting

1. Report Forms. Officials should submit their expense reports within 30 calendar days after the end of the month in which the expense was incurred, accompanied by receipts documenting each expense. In no event may a request for reimbursement be submitted later than the close of the fiscal year in which the expense was incurred absent exigent circumstances.

2. Reports to City Council, Board, or Commission. Each official must briefly report on outside meetings subject to the Brown Act that are attended at public expense at the next regular meeting of the official's legislative body. If multiple officials attended such a meeting, a joint report may be made.

3. Expense Reports As Public Records. All expense reports of officials and City reimbursement expenditures are public records subject to disclosure under the Public Records Act and other applicable laws.

ORDINANCE NO. 08-14

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, ADDING CHAPTER 2.06 TO THE WILDOMAR MUNICIPAL CODE ESTABLISHING THE CITY OF WILDOMAR PERSONNEL RULES

THE CITY COUNCIL OF THE CITY OF WILDOMAR DOES ORDAIN AS FOLLOWS:

SECTION 1. Recitals.

(a) The City Council adopted Ordinance No. 08-01 adopting all existing County of Riverside ordinances in effect upon the City's date of incorporation for a period of one-hundred twenty (120) days.

(b) The County of Riverside Ordinance No. 440, as amended, establishes the personnel rules for the County.

(c) The City of Wildomar desires to adopt Personnel Rules establishing the terms and conditions of employment with the City of Wildomar that differ from the personnel rules in County Ordinance No. 440.

SECTION 2. Addition of Chapter 2.06. Chapter 2.06, "Personnel Rules," is added to Title 2, "Administration and Personnel," of the Wildomar Municipal Code, to read as follows:

Chapter 2.06

PERSONNEL RULES

Sections:

2.06.010 General Provisions.
2.06.020 Classification
2.06.030 Compensation
2.06.040 Applications, Recruitment and Examining
2.06.050 Appointments
2.06.060 Probation
2.06.070 Performance Reports
2.06.080 Hours of Work/Overtime
2.06.090 Leaves
2.06.100 Layoff/Separation/Retirement
2.06.110 Outside Employment/Political Activities
2.06.120 Disciplinary Actions
2.06.130 Grievance and Complaint Procedure
2.06.140 Employment Benefits
2.06.150 Drug/Alcohol Policy

2.06.160 Harassment Policy
2.06.170 Educational Assistance
2.06.180 Uniforms and Equipment
2.06.190 Computer Use Policy

2.06.010 General Provisions.

(a) *Purpose*. These Rules are intended to establish and maintain an efficient and uniform personnel program for the City of Wildomar.

(b) *Applicability*. The provisions of these Rules apply to all employees in the classified service. The applicability of these Rules to all other employees, known as the exempt service, is limited to the provisions regarding position classification, attendance, vacation and holidays, leave policies, outside employment, political activity, and discrimination except where specified.

(c) *Amendment of Rules*. The City Council shall have authority to adopt, amend, or repeal these Rules. The Personnel Officer shall have authority to prepare and recommend revisions to the Personnel Rules.

(d) *Definitions*.

(i) General Definitions. All words and terms used in these Rules and in any resolution or ordinance dealing with personnel policies, system, or procedures shall be defined as they are normally and generally defined in the field of personnel administration.

(ii) Specific Definitions.

(1) "Advancement": A salary increase within the limits of a pay range established for a class.

(2) "Allocation": The assignment of a single position to its proper class in accordance with the duties performed, and the authority and responsibilities exercised.

(3) "Appointing Authority": The City Manager shall make the appointments to positions in the classified service.

(4) "Class": All positions sufficiently similar in duties, authority, and responsibility, to permit grouping under a common title in the application with equity of common standards of selection, transfer, demotion and salary.

(5) "Classified Service": All positions of employment in the service of the City except those in the exempt service.

(6) "Compensation": The salary, wage, allowance, and all other forms of valuable consideration earned by or paid to any employee by reason of service in any position, but does not include expenses authorized and incurred incidental to employment.

(7) "Continuous Service": Regular service in the employ of the City without a break or interruption. A severance of the employee from his/her employment initiated by either the City or the employee for periods of more than 15 days constitutes a break in continuous service.

(8) "Council": The City Council of the City of Wildomar.

(9) "Days": Calendar days unless otherwise stated.

(10) "Demotion": The movement of an employee from one class to another class having a lower maximum base rate of pay.

(11) "Disciplinary Action": The discharge, demotion, reduction in pay, or suspension of a regular employee for punitive reasons.

(12) "Eligibility List": The list which contains the names of successful applicants according to relative performance on the total weighted examinations.

(13) "Exempt Service": The exempt service shall include the following: All elected officials and members of boards and commissions; The City Manager, City Attorney, City Clerk, and City Treasurer; All department directors; Architects, consultants, counsel and others rendering temporary professional services; Voluntary personnel and personnel appointed to service without pay; Emergency employees who are hired to meet the immediate requirements of an emergency condition, such as fire, flood or earthquake which threatens life or property; Such other positions involving seasonal or part-time employment; and Any new position hereafter created at the department director, assistant department director, or staff level, if it is specified as exempt by the City Council at the time of creation.

(14) "Full-Time Employees": Employees whose positions require the total number of hours prescribed for normal employment in the class or position. All positions shall be full-time unless otherwise designated, or unless the compensation is fixed upon the basis of part-time work.

(15) "Lay-Off": The separation of employees from the active work force due to lack of work or funds, or to the abolition of positions by the City Council for the above reasons or due to organization changes.

(16) "Part-Time Employees": Employees whose positions work less than 1,000 hours per year, are paid on an hourly basis and only receive fringe benefits that are specifically provided to part-time employees by resolution of the City Council.

(17) "Position": A group of duties and responsibilities in the classified service requiring the full-time or part-time employment of one person.

(18) "Personnel Officer": The City Manager or his/her designee.

(19) "Probationary Period": A period to be considered an integral part of the examination, recruiting, testing and selection process during which an employee is required to demonstrate fitness for the position to which the employee is appointed by actual performance of the duties of the position.

(20) "Promotion": The movement of an employee from one class to another class having a higher maximum base rate of pay.

(21) "Provisional Appointment": An appointment of a person who possesses the minimum qualifications established for a particular class and who has been appointed to a position in that class in the absence of available eligible employees.

(22) "Regular Employee": An employee in the classified service who has successfully completed the probationary period and has been retained as hereafter provided in these Rules.

(23) "Reinstatement": The restoration without examination of a former regular employee or probationary employee to a classification in which the employee formerly served as a regular employee.

(24) "Suspension": The temporary separation from service of an employee without pay for disciplinary purposes.

(25) "Temporary Employee": An employee who is appointed to a non-position for a limited period of time and is only entitled to benefits as provided by resolution of the City Council.

(26) "Transfer": The movement of an employee from one position to another position in the same class or to another class with the same maximum base rate of pay.

(e) *Equal Employment Opportunity.* The City is committed to a policy of equal employment opportunity for applicants and employees. It does not discriminate against qualified applicants or employees with respect to terms or conditions of employment based on race, color, ancestry, sex, sexual orientation, age, religious or political affiliation or belief, ethnicity, national or geographical origin, creed, physical or mental disability, medical condition, marital status, membership in or attitude toward any employee organization, or any other characteristic protected by state or federal law or local ordinance.

2.06.020 Classification.

(a) *Preparation of Plan.* The Personnel Officer shall ascertain and record the duties, responsibilities, minimum standards, and minimum qualifications of all positions in the City and shall recommend a classification/compensation plan for all positions. The classification/compensation plan need not be contained in only one document, but may be comprised of various documents. The classification/compensation plan shall

consist of classes of positions defined by class specifications, including the title. The classification/compensation plan shall be so developed and maintained that all positions substantially similar with respect to duties, responsibilities, authority, and character of work are included within the same class, and that the same schedules of compensation may be made to apply with equity under similar working conditions to all positions in the same class. The classification/compensation plan will contain the General Salary Schedule and a General Benefits Schedule.

(b) *Allocation of Positions.* Following the adoption of the classification/compensation plan, the Personnel Officer shall allocate every position in the classified service to one of the classes established by the plan.

(c) *New Positions.* A new position shall not be created and filled until the classification plan has been amended to provide for such position and an appropriate eligibility list is established for such position.

(d) *Reclassification.* Positions, the assigned duties of which have been materially changed by the City so as to necessitate reclassification, whether new or already created, shall be allocated by the Personnel Officer to a more appropriate class. Reclassifications shall not be used for the purpose of avoiding restrictions concerning demotions and promotions, nor to effect a change in salary in the absence of a significant change in assigned duties and responsibilities.

2.06.030 Compensation.

(a) *Salary on Appointment.*

(i) New Employees. New employees shall be paid at the first step of the salary range for the position to which the employee is appointed except as provided for elsewhere in these Rules.

(ii) Advanced Step Hiring. The City Manager may authorize the Personnel Officer to appoint a new employee to an advanced step of the pay range if it is determined that qualified applicants cannot be successfully recruited at the first step of the salary range.

(iii) Reemployment. A person who previously held a regular position with the City and was in good standing may, at the discretion of the City Manager, when re-employed in a position with the same or lower pay range than held at separation, be appointed at the same salary rate which was paid at the effective date of the person's termination, or the nearest lower applicable step for the range to which the person is appointed.

(b) *Salary Anniversary Dates.* Employees shall have a salary anniversary date of the first or sixteenth day of the month, whichever is closer to the date of his/her most recent appointment, promotion, demotion, reinstatement or reemployment. The salary anniversary date may be modified by the action of the appointing authority under Section 2.06.070(f)(i)(4).

(c) *Increases Within Salary Range.* Employees will normally become eligible for an adjustment in pay after 12 months of service in the first or starting step. The adjustment shall be made only if recommended by the applicable department director, and if approved by the City Manager. The remaining steps are incentive adjustments, based on performance evaluation, to encourage an employee to perform at his/her highest level, and to recognize seniority and increased skill on the job. Employees are normally eligible for these adjustments any time after the completion of12 months of service at the preceding step. This period may be modified in conjunction with the performance report recommendations and as approved by the City Manager.

(d) *Salary Upon Promotion.* Except in instances where the granting of a full step increase would result in a salary in excess of the top step of the range, any employee who is promoted to a position in a class with a higher salary range shall be placed on the step in the new higher range which is at least equal to an advancement of a full step over the step he/she held in his/her former range. If the maximum of the range would be exceeded by such advancement, the employee shall receive the top step of the range. An employee thus promoted is assigned to a new salary anniversary date effective on the date of promotion.

(e) *Salary Upon Transfer.* Any employee who is transferred from one position to another position in the same class, or to another position in a class having the same salary range, shall be compensated at the same step in the salary range as he/she previously received and his/her salary anniversary date shall not change.

(f) *Salary on Change in Range Assignment.* Whenever a class is reassigned to either a higher or lower salary range by the Council, the salary of each incumbent in such class on the date the reassignment is effective shall be adjusted to the step/salary position in the new range that corresponds to the step/salary he/she was receiving in the former range and he/she shall retain the same salary anniversary date.

(g) *Salary on Relocation of Position.* If the position is reallocated to a class having the same salary range, the salary and the salary anniversary date of the incumbent shall not change. If the position is reallocated to a class which has a higher salary range, the City Manager shall adjust the salary of the incumbent employee to any step of the higher salary range which is at least as much as he/she was receiving in the former range and he/she shall retain the same salary anniversary date. If the position is reallocated to a class with a lower salary range, and the employee's salary exceeds the top step of the class to which his/her position is reallocated, his/her salary shall not change until it is exceeded by the top step of the class. The employee's salary anniversary date shall not change.

(h) *Salary on Demotion.* Any employee who is demoted to a position in a class with a lower salary range shall have his/her salary reduced to a salary step in the range for the lower class which is:

(i) If a disciplinary demotion, one or more steps less than that received in the salary range for the class from which demoted. A new salary anniversary date shall be established on the basis of the demotion.

(ii) If a non-disciplinary demotion, the step he/she would have attained in that lower class if his/her services had been continuous in such lower class. He/she shall retain his/her salary anniversary date.

(i) *Acting Pay.* An employee who is required on the basis of an acting appointment to serve in a class with a higher salary range than that of the class in which he/she is normally assigned, shall receive the entrance salary rate of the higher salary range or one rate higher than the rate he/she normally receives, whichever is greater, provided the employee shall perform all the duties and assume all the responsibilities of the higher class, and only after the employee has served for ten (10) consecutive working days in the higher classification.

(j) *Monthly Salary.* Monthly salary rates are based on a 40-hour work week and no authorization may be made for an employee to work less than such work week without a directly proportionate decrease in compensation.

(k) *Special Salary Adjustments.* Notwithstanding anything in these Rules to the contrary, in order to correct gross inequities, or to reward outstanding achievement and performance that the City Council may find justified, the City Council may by the affirmative vote of no less than three members, upon recommendation of the City Manager, adjust the salary rate of an incumbent of a particular position to any step within the salary range for the class to which the position is allocated.

(l) *Pay Periods.* The salaries and wages of all employees shall be paid semi-monthly, being the 15th day and the last day of every month. In the event a pay day falls on one of the holidays listed in these Rules, or on a Saturday or Sunday, the immediately previous working day shall become the pay day. Any employee wishing to have his/her pay check on their last working day before the normal pay day should notify the Finance Officer two (2) days prior to the day they wish to receive his/her pay check. Request for pay checks other than the regular pay days will be considered only under the following conditions:

(i) Employee is leaving on vacation;

(ii) Employee is taking compensatory time off;

(iii) Employee has a regular day off.

(m) *Advancement of Wages.* This subsection applies to all employees.

(i) Employees requesting payment of wages in advance of regular pay days as defined in Section 2.06.030(l) - Pay Period, shall submit such request to the City Manager, or his/her designated representative.

(ii) The City Manager may authorize the requested advancement of wages if the amount requested does not exceed the wages accrued (excluding applicable deductions) by the employee to the date of such request.

(iii) Pre-pay day advancement of wages is not a privilege which an employee may use at his/her discretion, but may be authorized by the City Manager at his/her discretion in case of employee necessity and/or personal financial emergency.

2.06.040 Applications, Recruitment and Examining.

(a) *Vacancies.* Vacant positions in the classified service may be filled only by selection from an eligibility list, by acting appointment, by transfer, by reinstatement or by demotion. Selection of employees for classified service is made by the department director for the position, subject to approval by the City Manager.

(b) *Announcement of Vacancies / Acceptance of Applications.* When a classified service position becomes vacant, the Personnel Officer shall be notified by the department director responsible for the position. If a continuing need for the position exists, the Personnel Officer will publicly advertise the position by a written announcement setting forth the basic requirements for the job, a closing date for acceptance of applications, and information where applications and the job description can be obtained. Applications will be available in the office of the Personnel Officer and will be collected by the Personnel Officer until the closing date for acceptance of applications.

(c) *Eligibility List / Selection for Testing.* Following the closing date for applications, an eligibility list shall be created. Examinations shall be conducted and used to aid in the selection of qualified employees. They shall consist of recognized selection techniques that will fairly test the qualifications of candidates. Examinations may include, but are not limited to, written tests, personal interviews, performance tests, physical agility tests, evaluation of daily work performance, work samples or any combination thereof. The Personnel Officer may set minimum standards for all tests. The City also retains the right to conduct a thorough background check of each applicant.

All job applicants are required to submit to a physician's examination and drug screen at the City's expense upon being made a conditional offer of employment. No job commitment shall be made until a negative drug screen result is obtained and a physician has certified that the applicant is medically qualified to perform the essential functions of the position. When the applicant reports to the medical facility for the scheduled examination, personal identification shall be provided to the facility in the form of a photograph and verifiable signature (for example, a driver's license). All test results will be kept confidential. The applicant will be told whether the tests were passed or failed, but only the Personnel Officer and his or her assistant will have access to the test results.

2.06.050 Appointments.

(a) *Appointment of New Employee.* The hire date of a new employee shall be that of the first day actually worked.

(b) *Provisional Appointments.* It shall be the policy of the City to require all department directors and other appointing authorities, whenever possible to notify the

Personnel Officer of impending or anticipated vacancies in their departments sufficient in advance so as to allow for the establishment of an appropriate eligibility list. However, when the demands of the services are such that it is not practicable to give such notification and if it is not practicable to delay appointment until a new eligibility list can be certified, the appointing authority may make a provisional appointment to the position. As soon as practicable, but not longer than six (6) months after a provisional appointment has been made, the Personnel Officer may cause an examination to be prepared, and all positions filled provisionally shall be filled by an appointment from an eligibility list. No person shall be employed by the City under provisional appointment for a total of more than six (6) months in any fiscal year except that the City Manager may, with approval of a majority of the Council, extend the period of any provisional appointment for not more than 90 days by any one action ; provided, however, no provisional appointment shall exceed a total of 12 months.

A person appointed to a regular position on a provisional basis shall not be entitled to credit for the time served under the provisional appointment toward the completion of his/her probationary period and shall be entitled to the same salary and other benefits as an employee appointed from an eligibility list except that he/she may not be employed under the provisional appointment for longer than the period authorized herein.

No special credit shall be allowed in any examination or the establishment of any eligibility lists for services rendered under a provisional appointment.

(c) *Acting Appointments to a Higher Class.* An acting appointment may be made to a higher class or position occupied by a person on temporary leave or disability. Such acting appointment shall not exceed six (6) months. The City Manager may extend acting appointments for successive 30-day periods with notification to the City Council. Acting appointments shall be made in accordance with the provisional appointments section of these Rules. Upon the return of the incumbent from leave or disability, the acting appointment shall be immediately terminated, and the appointee shall resume regular duties, compensation and privileges as if he/she had continued his/her duties in his/her regular classification.

(d) *Reinstatement.* The appointing authority may, with the approval of the Personnel Officer, reinstate any person who has resigned in good standing, provided that such reinstatement is accomplished within one (1) year of the date of resignation. Such reinstatement action may, at the discretion of the appointing authority, take precedence over any eligibility list except a reemployment list. Any person so reinstated shall be subject to a new probationary period of the same length as established for new appointees to a position in the class.

(e) *Transfer.* The Personnel Officer may transfer an employee from one position to another in the same class or a comparable class at the same salary level. While the Personnel Officer retains the right to order the transfer, consideration will be given to the affected employee's and the department directors' wishes.

(f) *Nepotism.*

(i) Inconsistent Relationships. The City retains the right:

(1) To refuse to place one party to a relationship under the direct supervision of the other party to a relationship where such has the potential for creating adverse impact on supervision, safety, security or morale.

(2) To refuse to place both parties to a relationship in the same department, division or facility where such has the potential for creating adverse impact on supervision, safety, security or morale, or involves potential conflicts of interest.

(ii) *Creation of Relationship - Current Employees.* Upon the marriage of two City employees or any other creation of relationships between two City employees due to a marriage, the Personnel Office shall be notified in writing by the employees involved and the department director(s). Notification of new or impending relationships shall include the anticipated effect of the relationship and recommendation as to possible action to be taken in assuring continued efficient departmental operation(s). The Personnel Officer and/or designated representative shall be responsible to consult with the department director(s) and/or specific employees in reaching a recommendation in accordance with previously stated guidelines and the following suggested options. The City Manager shall be the final determining authority in such matters.

(1) Definition - For the purpose of this Section, the definition of "relative" or "relationship" shall include persons related in the following contexts by blood or marriage or adoption, including step and half relationships: child, sibling, parent, grandparent, grandchild, in-laws.

(2) The employment relationship is acceptable if no adverse impact is anticipated, related employees are not in a supervisorial relationship, related employees are not in direct contact in the same or related departments or the relationship will in no way detrimentally affect departmental operations.

(3) Transferring one relative to an unrelated department may be approved where problems occur or are anticipated.

(4) Adjustment of shifts may be approved if it is believed the relationship will interfere with the work environment.

(5) Termination of one of the related employees may be recommended if the department director(s) finds the problems involved in the employment relationship are irresolvable.

(6) A relationship created between a full-time employee and a department director, the City Manager, or an elected City official will be evaluated on the same basis as the creation of a relationship between classified City employees.

(iii) *Full-Time Employment.* No person shall be hired in a full-time position who is related to any City employee, any department director, the City Manager/Personnel Officer, or a member of the City Council.

(iv) *Part-Time Employment.* No person shall be hired in a part-time position, in a department, who is related to that department's director.

2.06.060 Probation.

(a) *Probationary Status.* During the probationary period the employee may be rejected at any time, for any or no reason, without right of appeal or hearing.

(b) *Probationary Periods.* The probationary period shall not include time served under a temporary or provisional appointment. Periods of time on leaves longer than 30 days require that the probationary period be extended a period of time equal to the amount of time spent on leave.

(i) Length of Probationary Period.

(1) All original and promotional appointments shall have a probationary period of one (1) year.

(2) Probationary Period - Transfers. Whenever a transfer is made, at the initial request of the employee, the transfer shall be subject to the employee satisfactorily completing a six-month probation period in the new position or completing the remainder of the original probationary period, whichever is longer.

(3) Extension of Probationary Period. At the discretion of the appointing authority, any employee serving a probationary period may at the conclusion of such period have his/her probationary period extended for an additional six (6) months, but for no longer. The appointing authority shall notify the Personnel Officer of such contemplated extension of the probationary period.

(c) *Regular Status.*

(i) An employee's status shall be considered regular upon completion of the probationary period only if the appointing authority reports to the Personnel Officer that the services of the employee have been satisfactory and that the employee is recommended for regular status.

(ii) If recommendation is made for rejection of the probationer by the appointing authority, he/she should normally furnish a written report to the Personnel Officer indicating the individual did not meet conditions of probation.

(d) *Rejection During Probationary Period of Promoted Employees.*

(i) Regular Employees. An employee rejected during the probationary period from a position to which he/she has been promoted shall be reinstated to the position from which he/she was promoted, if such position is vacant, unless he/she is

discharged for cause, which would have been sufficient to cause his/her discharge from his/her former position as well. In such case, the employee shall be entitled to appeal his/her discharge as provided in these Rules.

(ii) Probationary Employees. Employees promoted to a higher class while on probation in a lower class and who subsequently fail to perform satisfactorily in the promoted position will be entitled to return to their former position provided the position has not been eliminated and is vacant. Such employee shall continue to serve a probationary period for the length of time remaining on the probationary period at the time of promotion.

2.06.070 Performance Reports

(a) *Policy.* It is the policy of the City that regular reports be made as to the efficiency, competency, conduct and merit of its employees. To this end, it is the responsibility of the City Manager, the department directors and their subordinate supervisors that these ratings be made. It is the responsibility of the Personnel Officer to provide and prescribe the forms and procedures to be used in such reports of performance and to assist in the training of supervisory personnel so that the program of performance reporting will be carried on in a sound and effective manner.

(b) *Authority to Make Reports.* The City Manager or his/her designee shall have the authority to prepare reports of performance. He/she may, however, delegate such authority to such subordinate supervisory employees who are most familiar with work of the employees to be reported on, provided that he/she shall review and approve all performance reports of personnel under his/her jurisdiction.

(c) *Time for Reporting.*

(i) Probationary Employees. Within ten (10) days prior to the completion of every three (3) months during the probationary period, the department director shall furnish the Personnel Officer with a report as to the progress and capacity of the probationary employee, a copy of which shall also be furnished to the probationer.

(ii) Regular Employees. A report for a regular employee shall be prepared and received within 30 days after his/her salary anniversary dates, provided that the employee may in addition be given a report of performance at any other time during the year upon his/her request or at the discretion of the appointing authority, and provided further that any employee who has been rated "improvement needed" or "unsatisfactory" shall be reported on again three (3) months from receiving such rating and again three (3) months subsequent to that.

(d) *Review with Employee.* It is acknowledged that one of the prime benefits of a sound performance rating system is that it can bring together the employee and his/her supervisor in a frank and constructive discussion and appraisal of the employee's work and the specific ways in which it may be improved. Therefore, each performance report shall be thoroughly discussed with the employee with this view in

mind. The employee shall sign the report to acknowledge its contents. Such signature shall not necessarily mean the employee endorses the content of the report.

(e) *Distribution of Reports.* Reports shall be prepared in three (3) copies. After review and approval of the appointing authority, one copy shall be retained by him/her for his/her files, one copy provided to the employee, and one copy shall be transmitted to the Personnel Officer. The Personnel Department copy shall be made a part of the employee's employment history.

(f) *Performance Ratings.*

(i) Effects of "Improvement Needed" and "Unsatisfactory" Ratings.

(1) Any employee who receives an "unsatisfactory" or "improvement needed" rating will not be eligible to be appointed off of any eligibility list until a satisfactory rating is established.

(2) Any employee who receives an "unsatisfactory" or "improvement needed" rating will not receive any merit salary increase during the period following the report, except as provided in subsection 4 below.

(3) In any case, where an employee is rated "unsatisfactory" on two (2) consecutive occasions or "improvement needed" on three (3) consecutive occasions, disciplinary action shall be taken by the appointing authority as provided for in these Rules, if such action has not already been taken.

(4) If an employee who has been denied a merit salary increase improves his/her performance to such an extent that the appointing authority believes a merit salary increase is now justified, the appointing authority shall indicate the improvement on a report of performance form and may specifically award a merit salary increase. Additionally, in awarding the merit salary increase under this subsection, the appointing authority may change the merit salary increase anniversary date to the date of the award of the merit salary increase or may permit the anniversary date to remain the same. Any merit salary increase awarded under this subsection shall not be made retroactive.

(5) *Protest of Ratings.* In any case of protest to an overall rating in a report of performance, the provisions of Section 2.06.130 shall apply.

2.06.080 Hours of Work/Overtime

(a) *Policy.* It is the policy of the City that eight (8) hours shall constitute a day's work and five (5) days shall constitute a week's work, for all full-time employees, except that work days and work weeks of a different number of hours may be established in order to meet the varying needs of the different City departments.

(b) *Work Periods.* The work period shall be seven (7) consecutive 24-hour periods. Forty (40) hours shall be worked during this period.

(c) *Daily Hours Of Work.* Daily hours of work or shifts for employees within departments shall be assigned by department directors as required to meet the operational requirements of such departments. The normal work shift for employees is eight (8) hours per day.

(d) *Change in Working Hours.* Any foreseeable absence or deviation from regular working hours desired by an employee shall, in advance, be cleared through the office of the Personnel Officer, and such absence shall be noted on the employee's time sheet.

(e) *Overtime.* It is the policy of the City to avoid the necessity for overtime work whenever possible. However, when overtime is necessary and approved by the department director, payment will be at time and one-half for all hours worked in excess of 40 hours in a work week to eligible employees. Vacation, sick leave, holidays, jury duty and compensatory time off shall not be considered hours worked. Although no department director shall be entitled to any compensation for overtime work, department directors shall receive management leave as specified in Section 2.06.090(m).

2.06.090 Leaves.

(a) *Holidays.*

(i) The following days shall be recognized and observed as paid holidays:

(1) New Years Day (January 1)

(2) Martin Luther King Jr.'s Birthday

(3) President's Day

(4) Memorial Day

(5) Independence Day (July 4)

(6) Labor Day

(7) Veteran's Day (November 11)

(8) Thanksgiving Day

(9) Day After Thanksgiving Day

(10) Christmas Eve (December 24)

(11) Christmas Day (December 25)

(ii) Employees shall receive one (1) day's pay for each of the holidays listed above for the number of hours they would have been regularly scheduled to work.

(iii) Whenever a holiday falls on Saturday or Sunday, the employee will be granted an additional vacation day, except for holidays that fall on Sunday and are observed nationally on the following Monday (at which time the City shall also observe the holiday).

(iv) If any employee works on the day the City observes any of the holidays listed above (excluding Admission Day), he/she shall be paid for all hours worked at the rate of two (2) times his/her regular rate of pay and shall be granted a different day off in lieu of the holiday.

(b) *Vacation.*

(i) Full-time regular and probationary employees in all classifications shall accrue vacation, on a daily basis, according to the following schedule:

(1) From the date of hire through five (5) years of service: ten (10) days per year.

(2) Beginning the sixth year through ten (10) years of service: fifteen (15) days per year.

(3) Beginning the eleventh year of employment: twenty (20) days per year.

(ii) The maximum number of vacation days that may be accumulated by an employee is 40 days. Once an employee reaches the maximum accumulation, he/she shall cease vacation accrual until his/her total number of vacation hours falls below the maximum allowable.

(iii) A maximum of five (5) vacation days per year may be converted to compensation and shall be paid at the employee's rate of pay at the time of the conversion.

(iv) At termination of employment for any reason, the City shall compensate the employee for the employee's accumulated vacation time at the employee's straight time rate of pay at the time of termination.

(v) The City will not require an employee to take vacation time in lieu of sick leave or leave of absence during periods of illness. However, the employee may elect to take vacation time in case of extended illness where sick leave has been fully used.

(vi) If a holiday falls on a work day during an employee's vacation period, that day shall be considered as a paid holiday and not vacation time.

(vii) Vacations may be scheduled at any time during the year upon approval of the City Manager.

(c) *Sick Leave.* This policy shall apply to full-time probationary and regular employees in all classifications.

(i) Sick leave is defined as absence from work due to illness, non-industrial injury or quarantine due to exposure to a contagious disease. In addition, dentist and doctor appointments and prescribed sickness prevention measures shall be subject to sick leave provided prior notice is provided to supervisory personnel.

(ii) Employees shall earn sick leave at the rate of one (1) working day per month. The accumulation of sick leave is unlimited.

(iii) Sick leave is not a privilege which an employee may use at his/her discretion, but shall be allowed only in case of necessity and actual sickness or disability of the employee, or because of illness in his/her immediate family (as defined in paragraph l).

(iv) In order to receive compensation while on sick leave, the employee shall notify his/her supervisor prior to the time for beginning the regular work day, or as soon thereafter as practical.

(v) If absence from duty by reason of illness occurs, satisfactory evidence may be required by the City Manager. If the absence is of an unusual nature, a release from the doctor to return to work may be required by the City Manager.

(vi) When an employee retires under the California Public Employees Retirement System (CalPERS), a credit for his/her unused sick leave shall be converted to additional service credit at the rate of 0.004 years of service credit for each day of unused sick leave (i.e., 250 days of sick leave equals one additional year of service credit) per CalPERS contract with the City. (Pending execution of a contract with CalPERS.)

(vii) Sick leave may also be used for bereavement leave in the event of death in the immediate family.

(viii) Immediate family shall be defined as spouse, parent, child, brother, sister, grandparent, father-in-law, mother-in-law, sister-in-law, brother-in-law, or any other person who is a legal dependent of the employee. Exceptions to this definition shall be reviewed and possibly approved by the City Manager.

(d) *Conversion of Sick Leave to Vacation.* Employees may convert sick leave to vacation in accordance with the following procedure. Sick leave is convertible to vacation at the rate of ten (10) days of sick leave to one (1) day of vacation. Conversion of sick leave shall not be permitted in any case where the conversion would reduce the employee's accumulated sick leave balance below ten (10) days of sick leave. For example, an employee with 30 days of accumulated sick leave could exchange 20 days of sick leave for two (2) days of vacation. After the conversion, the employee would have ten (10) days of sick leave and two (2) days of vacation. This request must be approved prior to being used and is at the discretion of the City.

(e) *Military Leave.* Military leave with pay shall be granted in accordance with Section 395 of the California Military and Veteran's Code.

(f) *Jury Duty.* This policy shall apply to probationary and regular employees in all classifications. An employee summoned for jury duty will immediately notify the City Manager. While serving on a jury, he/she will be given a leave of absence, with pay, for the duration of such jury duty. Such leave of absence with pay is conditional upon the employee returning to work upon his/her dismissal each day to complete his normal work day. It is also conditional upon the employee's conveyance to the City of any compensation received as a juror, not including any travel allowance received.

(g) *Pregnancy Disability Leave.* Female employees shall be granted a leave of absence not to exceed four (4) calendar months upon presentation of proof of a pregnancy disability. Sick leave pay must be used for any pregnancy disability leave of absence. Once the employee has exhausted all sick leave, the employee may use available vacation time before being placed on an unpaid pregnancy disability leave during the remainder of the disability. After the employee has been medically released from disability leave, the employee may then request a family care leave to care for the newborn child. Leave may be extended beyond four (4) months upon the request of the employee and the approval of the City Manager.

(h) *Family Care Leave.* Family care leave may be used for the birth or adoption of a child of the employee or to care for a seriously ill child, spouse or parent. This law works in conjunction with Section 2.06.090(g) – Pregnancy Disability Leave, and the maximum time off available under both of these Rules combined for pregnancy, child birth and child care is approximately seven (7) months. Employees with more than one year of service and who worked more than 1250 hours in the previous 12 months may request up to a total of 12 weeks of unpaid family care leave in a 12 month period. The family care leave does not need to be consecutive. Employees must request a family care leave as much in advance of the date for the leave as possible. Employees may be required to submit a doctor's certificate to verify the need for family care leave.

(i) *Absences and Leaves of Absence.*

(i) Unauthorized Absence – Termination. Any employee absent from his/her job for more than two (2) working days without prior permission of the department director may be considered to have voluntarily resigned from his/her employment with the City.

(ii) Unauthorized Absence - Other Disciplinary Action. Any unauthorized absence may be cause for disciplinary action as provided in these Rules.

(iii) Authorized Absence. Upon the request of the employee and the recommendation of the appointing authority, a leave of absence without pay may be granted by the Council or City Manager to an employee, who immediately preceding the effective date of such leave, shall have completed at least one year of continuous service. An employee shall not be entitled to a leave of absence as a matter of right, but only upon good and sufficient reason.

(j) *Leave of Absence Without Pay – Duration.*

(i) Request for leave of absence without pay shall be made as prescribed by the Personnel Officer, and shall state specifically the reason for the request, the date when it is desired to begin the leave, and the probable date of return. The Personnel Officer will transmit the request to the Council, in the case of leaves of more than 120 days. A request for a leave of 120 days or less may be approved by the City Manager, upon recommendation of the appointing authority. A physician's statement will be required of employees who request leave of absence without pay as a result of a medical condition.

(ii) A leave of absence without pay may be granted by the Council for a period not to exceed one (1) year provided that the Council may extend such leave for an additional year.

(k) *Leave of Absence – Injury.* The Council may grant a leave of absence without pay for an indefinite period of time to any employee who is injured on the job, or has a serious illness even though the employee does not meet the one (1) year of continuous service requirements as specified in Section 2.06.070(i)(iii).

(i) Accrual of Benefits. Leave of absence without pay granted by the Council shall not be construed as a break in service or employment, and rights accrued at the time of leave is granted shall be retained by the employee; however, vacation credits, sick leave credits, increases in salary and other similar benefits shall not accrue to a person granted such leave during the period of absence. An employee reinstated after leave of absence without pay shall receive the same step in the salary range he/she received when he began his/her leave of absence. Time spent on such leave without pay shall not count toward service for increases within the salary range, and the employee's salary anniversary date shall be set forward one month for each 30 consecutive days taken.

(l) *Failure to Return from Leave.* If an employee takes any action during his/her leave that is inconsistent with an intention to return to employment with the City, such as accepting full-time employment with another employer, he/she will be considered to have voluntarily terminated his/her employment. Failure of the employee to return to his/her employment upon the termination of any authorized leave of absence shall constitute an automatic termination from City service of that employee, unless such leave is extended. .

(m) *Management Leave.* Department directors shall receive five (5) days of management leave per calendar year. During their first year as a department director, they shall obtain a prorata amount of management leave commensurate with the time remaining in the calendar year. Management leave cannot be carried forward from year to year. Department directors will not be compensated for management leave at the time of termination of employment.

(n) *Sick Leave Donation Policy.*

(i) Purpose: The purpose of this Policy is to establish a program and procedures for employees to donate a portion of their accumulated sick leave time to fellow employees who are suffering from a catastrophic illness or injury and who have exhausted their paid leave entitlements.

(ii) Background: The City's employees accrue paid sick leave and other various forms of paid leave for their use when the employees are absent from work. There have been occasions when a City employee, due to a serious health condition, has exhausted all forms of paid time off. Such seriously ill employees have been forced to go without compensation for a length of time. This Policy is designed to address such circumstances.

(iii) Policy: This Policy allows City employees to provide assistance to a fellow employee who is facing a crisis due to their own catastrophic illness or injury. A catastrophic illness or injury is one that is expected to incapacitate a regular employee for an extended period of time and that creates a financial hardship because the employee has exhausted all of his or her accumulated leave. Participation by donors or recipients in the Sick Leave Donation Program is entirely voluntary.

(iv) Catastrophic Leave Donation Banks: The Sick Leave Donation Program will allow a employee, who is on medical leave, to request that a Catastrophic Leave Donation Bank be established on his or her behalf. A Catastrophic Leave Donation Bank shall not be established unless the City Manager or the City Manager's designee has approved the employee's request. Leave donations will be credited to a particular recipient's Catastrophic Leave Donation Bank and will be for use by that designated recipient only.

(1) Eligibility of Employee for Catastrophic Leave Donation Bank. To be eligible to receive Catastrophic Leave Donation Bank donations, an employee must meet all the following conditions:

a. Must be an employee who is eligible for the accrual of sick leave in accordance with Section 2.06.090(c); and,

b. Must have been employed by the City in a regular position for at least one year; and,

c. Must submit a confidential statement from his or her treating physician which indicates that the employee's absence is due to the employee's own "serious health condition" as defined in the Federal Family and Medical Leave Act. The statement must also estimate the duration of the employee's absence from work; and,

d. Must have applied for long-term disability insurance, if any, or for Workers' Compensation benefits, if eligible, and have authorized the City to integrate any such awarded benefits with available leave balances; and,

e. Must have exhausted all earned leave balances (including sick, vacation, compensatory time, and management leave). However, the City Manager may approve the solicitation and acceptance of sick leave donations prior to all balances being exhausted when the physician's statement and existing leave balances indicate that all such balances will be exhausted within the next two pay periods.

(2) Catastrophic Leave Donation Bank Guidelines. Leave donations will be credited to a recipient's Catastrophic Leave Donation Bank on an hour-for-hour basis, regardless of the hourly pay rate of any particular employee. While using leave from the recipient's Catastrophic Leave Donation Bank, the recipient will be treated as though he or she was merely using the recipient's own sick leave. Thus, the recipient will accrue additional vacation or sick leave, as usual, during the use of hours from the Catastrophic Leave Donation Bank. The maximum amount of sick leave which may be donated, in total, by City employees to a particular Catastrophic Leave Donation Bank is a total of 480 hours. Any hours of donated sick leave remaining in the Catastrophic Leave Donation Bank at the time the Bank is abolished will be returned pro rata (in proportion to the number of hours each employee donated) to all employees who donated to the Catastrophic Leave Donation Bank. The donated hours used by the recipient are taxable to him or her in accordance with Internal Revenue Service regulations and are subject to withholdings as required by law.

(v) Leave Donations: Donations of sick leave are subject to the following requirements:

(1) Minimum Donations: Employees may donate a minimum of four (4) hours from his or her accumulated sick leave balance. No donation from an employee will be permitted that would result in the donor's accumulated sick leave balance, immediately after the donation, being below 80 hours of accumulated sick leave.

(2) Whole Hour Donations: Leave donations must be in whole hours. No fractions of hours may be donated.

(3) Maximum Donation Per Employee: No individual employee may donate more than 40 hours to a particular Catastrophic Leave Donation Bank.

(4) Donation's Impact on Sick Leave Conversion: Sick leave donations may affect the donor's ability to convert sick leave to vacation.

(vi) Responsibilities Under the Policy: The development and use of a Catastrophic Leave Donation Bank carries with it a shared responsibility between City's management and individual employees desiring to participate in the program. The respective responsibilities are set forth below:

(1) The Requesting Employee: The requesting employee will prepare and submit to the Personnel Officer a "Request to Establish a Catastrophic Leave Donation Bank" form. Additionally, the requesting employee should submit a "Certification of Physician or Practitioner" form to the Personnel Officer in a sealed

envelope labeled "Confidential – Request to Establish a Catastrophic Leave Donation Bank." If the requesting employee is unable to make the request on their own behalf, the employee's department director may submit a request on the employee's behalf.

(2) The Program Administrator: The Personnel Officer will serve as the administrator of the Sick Leave Donation Program. The Administrator will receive the confidential statement from the requestor's physician in a manner consistent with the Federal Family and Medical Leave Act. The Personnel Officer will approve or deny the establishment of a requested Catastrophic Leave Donation Bank. If the request is approved, the Bank shall be established and the Administrator will publicize the request with the statement approved by the requestor. The Administrator shall approve or deny each offered donation, if any, to the Catastrophic Leave Donation Bank in accordance with the requirements of this Policy. The Administrator shall determine when the Catastrophic Leave Donation Bank shall be abolished.

(3) The Donating Employee: A donating employee will prepare and submit to the Personnel Officer a "Request to Donate to Catastrophic Leave Donation Bank" form.

(4) The Finance Department: The Finance Department will make the appropriate payroll and leave balance adjustments for both the recipient and any donors. The Finance Department will coordinate the usage of hours from the Catastrophic Leave Donation Bank and the integration of any other benefits therewith, if applicable. If hours are remaining in the Catastrophic Leave Donation Bank at the time it is abolished, the Finance Department will credit all donors' leave balances with a pro rata share of the hours remaining in the Bank in accordance with the number of hours each donor contributed.

2.06.100 Layoff/Separation/Retirement.

(a) *Elimination of Positions.* Public interest may require elimination or curtailment of a public service activity which may therefore require the layoff of one or more employees.

(b) *Layoff Procedure.* Any employee may be laid off because of either the abolishment of the position or a determination by the City Manager that there is a shortage of work funds. Such layoff shall not be subject to appeal.

(c) *Resignations.* Resigning employees shall be required to file a written resignation stating the effective date and reason(s) at least two (2) weeks prior to leaving the City's service, unless the time limit is waived by the City Manager. The resignation date should be the last day the employee actually worked.

(d) *Terminations.* The City Manager may terminate:

(i) Employees at any time while they are on probation.

(ii) Exempt employees at any time. This authority applies only to those exempt employees the City Manager has the authority to appoint.

(iii) Regular employees for disciplinary purposes in accordance with Section 2.06.120.

(e) *Retirement/Disability Retirement.* In accordance with the City's contract with the California Public Employees' Retirement System (CalPERS), employees who meet the age and service credit minimums may qualify for a service retirement from CalPERS. Under CalPERS laws, an employee who is unable to perform his/her job because of an illness or injury which is expected to be permanent or last indefinitely, may be entitled to receive a disability retirement. The cause of the disability need not be related to the employee's job. (Pending contract with CalPERS.)

2.06.110 Outside Employment/Political Activities.

(a) *Outside Employment.* During the employees' work day, they are expected to devote full attention to their prescribed duties. City employees may engage in outside employment under the following circumstances:

(i) They notify their appropriate supervisor.

(ii) The outside employment does not conflict with or is not incompatible or inconsistent with their City responsibilities.

(iii) The outside employment does not lessen their effectiveness as a City employee.

(iv) The outside employment does not create a conflict of interest.

(b) *Political Activities.* City employees may not solicit political funds or contributions from other employees, nor may any employee participate in political activities while in any uniform which would represent the City.

2.06.120 Disciplinary Actions.

(a) *Causes.* Disciplinary measures may be taken for any good and sufficient cause. The extent of the disciplinary action taken shall be commensurate with the offense provided that the prior employment history of the employee may also be considered pertinent. Cause may include violation of the Personnel Ordinance or of these Rules or any rules and/or regulations of the employee's department, any act of insubordination or act detrimental to the public service, refusal or inability to comply with the duties of the position occupied by the employee, or any other type of misfeasance, malfeasance or nonfeasance relating to his/her duties, office or position.

(i) Reduction in Pay. Reductions in pay which are part of a general plan to reduce salaries and wages as an economy measure are not disciplinary measures.

(b) *Authority for Disciplinary Actions.*

(i) The department directors and/or City Manager shall have authority to take disciplinary action and they may delegate to certain of their subordinate

supervisory employees the authority to make official reprimands. As specified in Section 2.06.100(d), only the City Manager may terminate employees.

(ii) The Personnel Officer shall be notified of any contemplated disciplinary action prior to the time it is taken, provided that in emergency situations or other instances when prior notification is not practicable, the Personnel Officer may be notified as soon as possible subsequent to the time the action is taken.

(c) *Kinds of Action.* There are two types of disciplinary actions. Category one is made up of lesser disciplinary actions which are not stigmatizing. These actions do not require prior notice or evidentiary hearings. The following examples constitute lesser disciplinary actions:

(i) Lesser Disciplinary Action. Items (c)(3) and (c)(4) are subject to the complaint procedure set forth in Section 2.06.130(d). The employee shall have no further right of response or appeal to these actions.

(1) Oral Reprimand - Oral reprimand as a disciplinary action means the employee is informed of his/her poor performance verbally by his/her supervisor.

(2) Written Reprimand - Written reprimand as a disciplinary action means an official notification to the employee that there is cause for dissatisfaction with his/her services and that further disciplinary measures may be taken if such cause is not corrected. Official reprimand shall be given in the manner and on forms prescribed by the Personnel Officer. Reprimand notices shall be made a part of the employee's official personnel record and may be considered as pertinent evidence or information in any appeal hearing.

(3) Suspension Without Pay For Less Than Five (5) Working Days - Suspension without pay shall be a temporary separation from City service.

(4) Reduction In Range - Reduction for a time period equivalent to less than a five (5) working day suspension. Reduction in step within range as a disciplinary measure is the withdrawal of increments granted for merit, efficiency and length of service. The maximum reduction in pay that may be given for any one disciplinary action shall be two (2) steps within the range for that class. Reduction in pay shall become effective on the first of the month following the effective date of the disciplinary action.

(ii) Serious Disciplinary Actions. Category two includes serious disciplinary actions. These actions require due process and an opportunity for an evidentiary hearing. Serious disciplinary actions include the following:

(1) Reduction in range equivalent to a five (5) or more working day suspension without pay.

(2) Suspension without pay for five (5) or more working days, but not more than thirty working days. Suspension without pay shall be a temporary separation from City service.

(3) Demotion without consent as disciplinary action, shall be a reduction in classification or rank, with reduction in salary.

(4) Dismissal means the discharge of an employee from the City service on the initiative of the City Manager. Such termination of employment shall be permanent.

(d) *Due Process.*

(i) Notice to Employees. In instances of serious disciplinary actions which result in financial detriment to the employee, written notice of the proposed disciplinary actions shall be submitted to regular employees five (5) working days prior to the effective date of the proposed action. In emergency situations when prior notification is not practicable, an employee may be suspended with pay until such notice is given and until the proposed action becomes effective.

(1) The written notice shall state the proposed disciplinary action and the effective date and specific reasons for the proposed disciplinary action.

(2) The written notice shall inform the employee that he/she may have access to copies of all written material supporting the proposed action.

(3) The written notice shall also inform the employee of his/her right to respond, either orally or in writing, to the department director or City Manager, as appropriate, before the disciplinary action is imposed.

(4) After completion of the above step and after the employee has his/her right to respond to the charges, the department director or City Manager, as appropriate, shall notify the employee in writing of the final decision on the matter.

(5) In cases involving lesser disciplinary actions, written notice shall be given to the employee during or within a reasonable time after the discipline is imposed.

(ii) Evidentiary Hearing - Right of Appeal. Any regular employee who has received a serious disciplinary action shall be entitled to request a hearing before the City Manager. The City Manager may choose to conduct the hearing himself/herself and make the final decision; refer the hearing to a hearing officer to conduct the hearing and provide findings and recommendations before the City Manager makes the final decision: or refer the hearing to a hearing officer to conduct the hearing and make the final decision on the appeal.

(iii) Appeal Procedure.

(1) Within five (5) working days of the receipt of the decision, as provided in Section 2.06.120(d)(i)(4), or within five (5) working days of the effective date

of a serious disciplinary action, the disciplined employee may answer or protest the disciplinary action. Such answer shall be filed with the Personnel Officer.

(2) The Personnel Officer shall then transmit to the City Manager, within ten (10) working days, such employee's request together with copies of all the above-mentioned documents pertinent to the case and such other documents and information as may be requested by the City Manager.

(3) In the course of hearing, the City Manager shall cause the employee to appear before him/her, such employee may be represented by a representative of his/her choice. The hearing may be conducted by an informal process to facilitate garnering of information and to expedite the process. The City and the employee may produce relevant evidence or witnesses at this hearing.

(4) Within ten (10) days of the conclusion of the City Manager's hearing, the City Manager shall certify his/her findings. The decision of the City Manager is final.

(5) Communication to the appellant shall be by personal signed receipt of document, certified mail or registered mail.

2.06.130 Grievance and Complaint Procedure.

(a) *Establishment.* These procedures are established in order to provide adequate opportunities for City employees to bring forth their views relating to any unfair or improper aspect of their employment situation and to seek correction thereof.

(b) *Scope of Limitations.* The procedures set forth in this Section shall apply to all employee grievances except where other methods have been specifically prescribed in the Personnel Ordinance and in these Rules, such as in the matters of dismissal, demotion and reduction.

(c) *Definitions.*

(i) "Complaint": An allegation or charge that the complaining employee has suffered a wrong as a result of management action or inaction.

(ii) "Complaint Procedure": The process by which a determination is made as to whether or not a wrong has been committed.

(iii) "Grievance": An expressed claim by an employee that the City has violated, misinterpreted, or misapplied an obligation to the employee as such obligation is expressed and written in the Personnel Ordinance, a resolution, or these Rules.

(iv) "Grievance Procedure": The process by which the validity of a grievance is determined.

(d) *Complaint Procedure.*

(i) Step 1. The employee shall discuss any complaint with his/her immediate supervisor. The supervisor is required to review every complaint and attempt to settle it as quickly and fairly as possible.

(ii) Step 2. If the action taken by his/her immediate supervisor is not satisfactory, the employee may take his/her complaint to successive levels of supervision as determined by the chart of administrative organization, up to and including the City Manager. The decision of the City Manager is final.

(e) *Grievance Procedure.*

(i) Step 1. The employee shall inform, in writing, his/her immediate supervisor of his/her grievance and relevant facts within seven (7) days after the employee knew, or in the exercise of reasonable diligence should have known, of the events giving rise to the grievance. At least one conference shall be held between the employee and his/her immediate supervisor after the employee has expressed his/her grievance. The supervisor shall advise the employee of his/her decision within fourteen (14) days following notification of the grievance.

(ii) Step 2. If the grievance is not satisfactorily resolved in Step 1, the grievant may, within seven (7) days after receipt of his/her supervisor's response, submit the grievance to his/her department director. Such submittal shall be by written memo and include the original of the grievance form. After receipt of the grievance, the department director will meet with the grievant and make such investigation as is required. Within seven (7) days of his/her meeting with the grievant, the department director shall return the original of the grievance form to the employee along with his/her written decision on the grievance.

(iii) Step 3. If the grievance is not satisfactorily resolved in Step 2, the grievant may, within seven (7) days of receipt of the department director's decision, submit the grievance to the Personnel Officer for consideration by the City Manager. Such submittal shall include the original of the grievance form, a written statement of any issues which are still in dispute, and the specific basis upon which the grievant takes issues with the position of his/her department director. The City Manager or his/her designee shall take such review and investigative action as he/she deems necessary and inform the grievant of his/her decision within fourteen (14) days of receipt of the grievance.

(iv) Step 4. If the grievance is not satisfactorily resolved in Step 3, the grievant may, within seven (7) days of receipt of the City Manager's decision, submit the grievance to the City Manager for consideration by the City Council. Such submittal shall include the original of the grievance form, a written statement of any issues which are still in dispute, and the specific basis upon which the grievant takes issues with the position of the City Manager. The City Council or its designee shall take such review and investigative action as it deems necessary and inform the grievant of its decision within 30 days of receipt of the grievance. The decision of the City Council or its designee is final.

(f) *General Provisions.*

(i) No retribution or prejudice shall be suffered by employees making use of the grievance or complaint procedures by reason of such use.

(ii) All documents, communications and records dealing with the processing of grievances shall be filed separately from personnel files.

(iii) Failure by management at any step of this procedure to communicate the decision of the grievance within the specified time limits shall permit the grievant to proceed to the next step.

(iv) The grievant shall be entitled to be present at all steps of the procedure.

(v) Failure at any step of this procedure to appeal a decision on a grievance within specified time limits shall be deemed acceptance of the decision rendered.

(vi) The time limits specified at any step in this procedure may be extended by mutual written agreement.

(vii) The original of the grievance form shall accompany all requests for institution of the next step in the grievance procedure.

(viii) Communication with grievant shall be processed by personal signed receipt of document, certified mail or registered mail.

2.06.140 Employment Benefits.

(a) *Health Benefits.*

(i) Accident, health, hospital, dental and vision insurance to cover non-occupational injuries and sickness for probationary and regular employees in all job classifications, and one dependent shall be provided by the City. The scope of coverage and the payment of premiums is subject to periodic review by the City Council.

(ii) Upon achieving regular employee status, regular, administrative and management employees shall be enrolled in the City's deferred compensation plan.

(b) *Retirement Benefits.* The City has contracted with the California Public Employees' Retirement System (CalPERS) for the two percent (2%) at age fifty-five (55) retirement plan. The City shall pay the employees' seven percent (7%) contribution and the employer's contribution to CalPERS. (Pending contract with CalPERS.)

2.06.150 Drug/Alcohol Policy.

(a) *General.*

(i) It is the desire of the City that all work environments of employees be safe and productive and free of the influence of drugs and alcohol. The City is concerned with the physical safety of all employees, potential damage to property and equipment, mental and physical health of employees, productivity and work quality, medical insurance costs, and the harm done to employees and their families by drug and alcohol abuse.

(ii) The use, sale, possession, purchase or transfer of illegal drugs by any City employee or officer on City property or work sites or while such employee or officer is on City business is prohibited. Employees are also prohibited from being under the influence of drugs, alcohol or other substances during hours of work where such substances could impair the fitness of an employee to perform his/her work. Commission of these actions will subject the employee to disciplinary action up to and including termination. For the purpose of applying this policy, being under the influence of drugs, alcohol or other substances means being impaired in any way from fully and proficiently performing job duties and/or having a detectable amount of illicit drugs in one's body.

(iii) To assure that employees, property and equipment are not endangered by other employees who are involved with, or under the influence of, drugs, alcohol and/or other substances, any employee whose conduct, appearance, speech or other characteristics create a reasonable suspicion of involvement with, or influence of, drugs, alcohol and/or other substances will be taken to a medical facility and be subject to an examination by a qualified physician at City expense. If such physician determines that a drug/alcohol screen is warranted, such employee will be subject to testing for the presence of alcohol or drugs in his/her body. Presence of such substances will result in disciplinary action up to and including termination. Immediately prior to reporting for drug testing, all job applicants and employees shall complete a consent and release form for purposes of the drug/alcohol test. An employee who is suspected of involvement as described above and refuses to cooperate in the physician's examination and/or drug/alcohol testing is subject to termination.

(iv) If a qualified physician, as a part of the examination specified, in paragraph C above, determines that an employee is not capable of working safely, the employee shall be transported to his/her home by a supervisor and not allowed to drive himself/herself home.

2.06.160 Harassment Policy.

(a) *Purpose.* The purpose is to define and forbid certain conduct that is harassment, to prohibit the condoning or perpetuating of such conduct and to provide an efficient means for reporting and resolving complaints of harassment and complaints of condoning harassment. It is intended to provide a procedure to be used for all complaints of harassment in an attempt to resolve all matters within City procedures.

(b) *Policy Statement - Employee Standards of Conduct.* It is the policy of this City that all employees are treated with respect. They have the right to work in an environment that is free of conduct that can be considered discriminatory or abusive. In keeping with this policy, the City strictly prohibits harassment of any form, including sexual harassment. Any employee who engages in or who perpetuates or condones harassment shall be subject to disciplinary action up to and including termination.

(c) *Definitions.* Harassment includes but is not limited to:

(i) Sexual Harassment. Unwelcome sexual advances, requests for sexual favors, and other verbal, physical or visual conduct of a sexual nature constitutes sexual harassment when:

(1) Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment. Such sexual harassment shall result in disciplinary action against the perpetrator.

(2) Submission to or rejection of such conduct by an individual is used as a basis for employment decisions affecting that individual. Such sexual harassment shall result in disciplinary action against the perpetrators.

(3) Such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment. Such sexual harassment shall result in disciplinary action against the perpetrators.

(ii) Verbal Harassment. For example, epithets, derogatory or lewd comments, slurs or jokes.

(iii) Physical Harassment. For example, assault, offensive touching, impeding or blocking movement, or any physical interference with normal work or movement.

(iv) Visual Forms of Harassment. For example, gestures, display of sexually suggestive objects, notices, bulletins, cartoons or drawings.

(d) *Consequences of Problem.* Harassment is employee misconduct that can decrease work productivity, decrease morale and cause emotional physical damage. Incidents of harassment can result in serious economic implications such as high turnover, ineffective use of time during working hours, costly salaries paid for nonproductive work hours, employee absences due to hearings and meetings related to discrimination complaints, withdrawal of Federal support funds, etc.

(e) *Responsibilities.*

Individuals with supervisory or managerial responsibility must ensure that all persons are provided a work environment free of harassment. Supervisors and managers are required to respond to complaints of harassment in a serious and professional manner.

Every employee is encouraged to immediately inform the person harassing him/her that the behavior is unwelcome, offensive or inappropriate. If the employee being harassed feels threatened or has difficulty expressing disapproval, assistance can be obtained from supervisors or the City Manager.

Supervisors and employees shall not take reprisals or retaliate against any person for filing a complaint of harassment. Such reprisal/retaliation or attempted reprisal/retaliation shall result in disciplinary action against the perpetrators.

Any individual who engages in conduct contrary to this policy may be personally liable in any legal action brought against him/her.

An employee shall not purposely file a false complaint of harassment.

(f) *Complaint Procedure.*

(i) Any employee who feels subjected to harassment should immediately contact his/her immediate supervisor. However, an employee may circumvent the employee chain of command in selecting which person to whom to make a complaint of harassment. Complaints may be submitted orally or in writing to:

The employee's immediate supervisor.
The employee's department director.
The City Manager.

Complaints should be made within 20 working days of the incident. Complaints must include the following information:

(1) Employee's name, department and position title.

(2) The name of the person or persons committing the harassment, including their title(s), if known.

(3) The specific nature of the harassment, how long it has gone on, and any employment action (demotion, failure to promote, dismissal, refusal to hire, transfer, etc.) taken against the employee as a result of the harassment, or any other threats made against the employee as a result of the harassment.

(4) Witnesses to the harassment.

(5) Whether the employee has previously reported such harassment and, if so, when and to whom.

(ii) Upon receipt of the written complaint, the Personnel Department will investigate the charges including contacting the person who allegedly engaged in the harassment, informing him or her of the basis of the complaint and providing an opportunity to respond.

(iii) Upon completion of the investigation, the department director, in consultation with the Personnel Department, will determine what, if any, disciplinary

action will be taken. Both parties will be notified of the action to be taken. In the event that a department director is accused, the Personnel Officer will make the determination.

(iv) If it is determined that harassment occurred, appropriate disciplinary action up to and including dismissal will be taken. The severity of the discipline will be determined by the severity and/or frequency of the offense.

(v) Any investigation related to a complaint under this policy will be conducted with confidentiality and respect for the rights of all individuals involved. Information related to the investigation will be provided on a "need to know" basis only.

(g) *Discipline.*

(i) Any employee who is found to have engaged in harassment, who is found to have knowingly condoned, encouraged or perpetuated an act or acts of harassment, or who is found to have in some way participated in retaliation or reprisal, shall be subject to disciplinary action, up to and including termination.

(ii) Any employee who is found to have purposely filed a false complaint of harassment shall be subject to disciplinary action, up to and including termination.

2.06.170 Educational Assistance.

(a) *Educational Assistance for Training and Advancement.*

(i) The responsibility for developing training programs for employees is with the City Manager and department directors, jointly. When a training course to be taken by an employee will benefit the City, the City Manager may authorize payment by the City of tuition charges and books.

(ii) If an employee is entitled to additional compensation by earning a degree, as specified in their job description, it will be the responsibility of the employee to pay all fees for their courses and upon completing the course and earning a grade of C or better, to submit a cancelled check and receipt for reimbursement of the tuition charges and books.

(b) *Licenses and Certification Assistance.*

(i) In cases of enrollment for Operator-in-Training, or any other certification which is a condition of employment, the City shall pay application fees in advance.

(ii) The cost of licensing fees, renewal fees, and test fees for all levels of certification are reimbursable, upon receipt of the certification or license. To obtain reimbursement after successful completion of the test/renewal/license process, the employee is responsible for submitting proof of payment for test fees, renewal fees, and license fees, along with proof of the certification or license, to the City Manager. In

unusual circumstances, the City Manager may authorize the payment of the test/renewal/license fees in advance.

2.06.180 Uniforms and Equipment.

(a) *Uniforms.* The cost of such uniforms as employees are required to wear shall be borne by the City.

(b) *Equipment.*

(i) The City shall provide employees with the essential equipment to perform the duties of their positions.

(ii) Employees are responsible for requesting training on equipment that they are unfamiliar with. Also, employees are responsible for the proper operation and maintenance of all equipment.

(c) *Safety Equipment and Protective Clothing.*

(i) All field employees will be required to wear approved safety shoes and other safety equipment and protective clothing. Such employees failing or refusing to wear such safety equipment and protective clothing as appropriate will be subject to disciplinary action. If any employee is unable to wear such safety equipment and protective clothing for medical reasons, the employee must submit to the City a doctor's statement covering the reasons.

(ii) The City will provide the following safety equipment and protective clothing:

(1) Hard hats

(2) Ear plugs

(3) Safety goggles

(4) Safety vests

(5) Raincoats

(iii) Approved Safety Shoes.

(1) The City requires that the approved safety shoes include both a steel toe and steel shank construction and meet the requirements of the American National Steel Institute (ANSI Z41.1). The shoes must be either low quarters, three quarter or full boot

(2) Employees must provide their own approved safety shoes meeting the above requirements. After obtaining approval from the Public Works Director, the employee will purchase a safety shoe which is approved by OSHA from a vendor pre-selected by the Public Works Director. After purchase of the approved

safety shoes, the employee will present a receipt of purchase to his/her supervisor for reimbursement. The maximum amount of reimbursement will $140, per year. Reimbursement will be made to the employee within ten (10) days after presentation of the receipt to the supervisor.

2.06.190 Computer Use Policy.

(a) General.

The City's computers and associated equipment, like all other City property, should only be used for official City business. As such, no personal use should be made of the City's computers and associated equipment. Employees will be subject to disciplinary action, including dismissal, for private use of the City's computers and associated equipment. The City Manager shall have the authority to permit limited personal use of the computers on a case-by-case basis.

To insure that the computer system is being properly used, and for reasons associated with the maintenance of the computer system, the City may periodically audit computer usage. Therefore, employees should be aware that no computer usage including messages transmitted or received on the computer system are private or confidential.

Security features provided by the computer system which appear to limit access to the computer systems and to messages which are transmitted and stored on the system will not prevent the City from accessing stored messages or documents, even those which are deleted. The City is able to access all stored items despite the following security features: passwords, employee specific access codes, "private" and/or "confidential" message designations and "delete" functions.

SECTION 3. Intent to Supersede County Ordinances. The provisions of this ordinance shall supersede County Ordinance No. 440, as amended, as County Ordinance No. 440 was adopted by City Ordinance No. 08-01.

SECTION 4. Declaration of Facts Constituting Urgency. County Ordinance No. 440 contains provisions which the City does not desire to include in its Personnel Rules. Therefore, the City Council finds that this ordinance is necessary for the immediate preservation of the public peace, health, and safety, and declares that it shall take effect immediately upon its adoption as an urgency ordinance.

SECTION 5. Severability. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted this ordinance, and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional, without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

SECTION 6. Effective Date. This ordinance shall take immediate effect upon its passage by the City Council.

SECTION 7. Publication. The City Clerk shall cause this ordinance to be published or posted in accordance with Government Code section 36933.The City Clerk shall certify the passage of this ordinance and shall cause the same to be posted as required by law.

PASSED, APPROVED, AND ADOPTED this 1st day of July, 2008.

Bob Cashman, Mayor

ATTEST:

John Danielson, Interim City Clerk

APPROVED AS TO FORM:

Julie Hayward Biggs, Interim City Attorney

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE)
CITY OF WILDOMAR)

I, John Danielson, Interim City Clerk of the City of Wildomar, do hereby certify that the foregoing Resolution No. 08-14 was duly adopted by the City Council of the City of Wildomar at a regular meeting thereof, held on the 1st day of July, 2008, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

John Danielson, Interim City Clerk

RESOLUTION NO. 08-01

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, ADOPTING BY REFERENCE ALL APPLICABLE COUNTY OF RIVERSIDE RESOLUTIONS AS CITY OF WILDOMAR RESOLUTIONS

THE CITY COUNCIL OF THE CITY OF WILDOMAR DOES RESOLVE AS FOLLOWS:

SECTION 1. Recitals.

(a) The City of Wildomar is newly incorporated and desires to continue the existing regulatory and management scheme in providing services to City residents as were previously provided to them by the County of Riverside during this transitional period.

(b) The County of Riverside has adopted numerous resolutions which, among other matters, set fee levels for services for building, planning, safety, and has also approved by resolution Specific Plans and related matters for projects located in whole or in part within the incorporated area of the City (collectively, the "County Resolutions").

(c) The City Council believes it is in the City's best interest to continue such County Resolutions in full force and effect until such time as they are superseded by City policies.

SECTION 2. Adoption of County Resolutions. All existing County Resolutions adopted by the Riverside County Board of Supervisors or the Riverside County Planning Commission in effect upon the City's date of incorporation shall remain in full force and effect until any such County Resolution is repealed or superseded by the actions of the City Council.

PASSED, APPROVED, AND ADOPTED this 1st day of July, 2008.

_____

, Mayor

ATTEST:

_____

John Danielson, Interim City Clerk

APPROVED AS TO FORM:

_____

Julie Hayward Biggs, Interim City Attorney

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE)
CITY OF WILDOMAR)

I, John Danielson, Interim City Clerk of the City of Wildomar, do hereby certify that the foregoing Resolution No. 08-01 was duly adopted by the City Council of the City of Wildomar at a regular meeting thereof, held on the 1st day of July, 2008, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

_____
John Danielson, Interim City Clerk

RESOLUTION NO. 08-02

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, AUTHORIZING THE MAYOR TO EXECUTE THE COUNTY AUGMENTATION AGREEMENT

THE CITY COUNCIL OF THE CITY OF WILDOMAR DOES RESOLVE AS FOLLOWS:

SECTION I. Recitals.

(a) The City of Wildomar was incorporated on July 1, 2008, as a general law city of the State of California.

(b) Based on the Comprehensive Fiscal Analysis for the incorporation of Wildomar, the Riverside County Board of Supervisors approved annual revenue augmentation payments to be made to the City of Wildomar in amounts equal to the projected cost savings to the County as a result of the incorporation of Wildomar.

(c) The Board of Supervisors further provided that if the annual sales and use taxes within the City of Wildomar exceeds the projected amounts in the Comprehensive Fiscal Analysis, the excess amount shall be deducted from the annual revenue augmentation payments.

(d) The County Augmentation Agreement, attached to this resolution as Exhibit "A," implements the annual revenue augmentation payments.

SECTION II. Authorization to Execute. The Mayor is authorized to executed the County Augmentation Agreement attached hereto as Exhibit "A" and incorporated herein by reference.

PASSED, APPROVED, AND ADOPTED this 1st day of July, 2008.

_____

Bob Cashman, Mayor

ATTEST:

_____
John Danielson, Interim City Clerk

APPROVED AS TO FORM:

_____
Julie Hayward Biggs, Interim City Attorney

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE)
CITY OF WILDOMAR)

I, John Danielson, Interim City Clerk of the City of Wildomar, do hereby certify that the foregoing Resolution No. 08-02 was duly adopted by the City Council of the City of Wildomar at a regular meeting thereof, held on the 1st day of July, 2008, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

_____
John Danielson, Interim City Clerk

EXHIBIT "A"

COUNTY AUGMENTATION AGREEMENT

COUNTY AUGMENTATION AGREEMENT
BY AND BETWEEN THE
COUNTY OF RIVERSIDE AND
CITY OF WILDOMAR

This County Augmentation Agreement is made and entered into by and between the CITY OF WILDOMAR ("City"), a municipal corporation incorporated under the laws of the State of California, and the COUNTY OF RIVERSIDE ("County"), a political subdivision of the State of California, as of the date of approval by both parties.

RECITALS

WHEREAS, on or about July 31, 2007, the County Board of Supervisors amended Board Policy A-46, entitled Positions on Local Agency Formation Commission Matters, to allow the County to authorize revenue augmentation payments to newly incorporating cities where a Comprehensive Fiscal Analysis approved by LAFCO clearly demonstrates that a proposed incorporation will be revenue neutral or result in a net reduction in County costs; and,

WHEREAS, during the same action, the County Board of Supervisors determined that, according to net savings calculation contained in the Comprehensive Fiscal Analysis for the proposed incorporation of the City of Wildomar, the County is not likely to be adversely affected by the incorporation of the City of Wildomar and the County will likely experience net savings as a result of the incorporation; and,

WHEREAS, based on the findings of the Wildomar CFA, the County Board of Supervisors concurrently approved the annual revenue augmentation payments equal to the projected annual cost savings to County in the net savings calculation contained in the Wildomar CFA for the first ten years following incorporation of the City of Wildomar; and,

WHEREAS, the action of the County Board of Supervisors further provided that, in the event actual annual sales and use taxes collected by the Board of Equalization pursuant to Part 1.5 of Division 2 of the Revenue and Taxation Code within the City of Wildomar for any year during the first ten years following incorporation exceed the sales and use tax projected for that year in the Wildomar CFA, such annual revenue augmentation payments shall be reduced by the amount of the difference between the actual sales and use tax and the projected sales and use taxes; and,

WHEREAS, on or about October 25, 2007, LAFCO adopted the Wildomar CFA for the proposed incorporation of the City of Wildomar; and,

WHEREAS, the City of Wildomar is a municipal corporation incorporated under the laws of the State of California with an effective date of incorporation on July 1, 2008;

NOW THEREFORE, in consideration of mutual promises and covenants contained herein, the Parties agree as follows:

1. DEFINITIONS

A. "Agreement" refers to this County Augmentation Agreement by and between the County of Riverside and the City of Wildomar.

B. "Board of Equalization" shall mean the State of California Board of Equalization.

C. "Board Policy A-46" refers to County Board of Supervisors Policy A-46 on the subject of Board of Supervisors' Positions on Local Agency Formation Commission Matters as amended on or about July 31, 2007.

D. "City" shall mean the City of Wildomar, a municipal corporation incorporated under the laws of the State of California with an effective date of incorporation on July 1, 2008.

E. "County" shall mean the County of Riverside, a political subdivision of the State of California.

F. "County Augmentation" shall mean the amount approved by the County Board of Supervisors on or about July 31, 2007, equal to the projected cost savings to County in the net savings calculation contained in the Wildomar CFA to be paid to the City of Wildomar for the first ten years following incorporation.

G. "Effective Date" shall mean the date of approval of this County Augmentation Agreement by both Parties.

H. "Excess Sales and Use Tax" shall mean the amount of the sales and use tax revenue collected by the Board of Equalization pursuant to and defined by Part 1.5 of Division 2 of the Revenue and Taxation Code within the City of Wildomar for any year during the first ten years following incorporation that exceeds the sales and use tax projected for that year in the Wildomar CFA.

I. "Fiscal Year" shall mean the County's fiscal year beginning July 1 and ending June 30 annually.

J. "LAFCO" refers to Riverside County Local Agency Formation Commission.

K. "Parties" shall mean the County of Riverside and the City of Wildomar.

L. "Sales and Use Tax" shall mean the sales and use tax revenue collected by the Board of Equalization pursuant to and as defined by the Bradley-Burns Uniform Local Sales and Use Tax Law contained in Part 1.5 of Division 2 of the Revenue and Taxation Code.

M. "Sales and Use Tax Analysis" shall mean the analysis produced by the City documenting the amount of Excess Sales and Use Tax, if any, collected within the

City for the previous fiscal year, and shall include summary documentation from the Board of Equalization of the sales and use tax collected within the City during the previous fiscal year.

N. "Wildomar Net Savings Calculations" shall refer to the calculations of the County's annual net savings projected to result from incorporation of the City of Wildomar contained in the Wildomar CFA.

O. "Wildomar Sales and Use Tax Projections" shall refer to the calculations of the projected annual sales and use taxes to be collected by the Board of Equalization within the City of Wildomar contained in the Wildomar CFA.

P. "Wildomar CFA" refers to the Public Hearing Draft Comprehensive Fiscal Analysis dated April 30, 2007, as revised on August 6, 2007, for the proposed incorporation of the City of Wildomar, which was adopted by LAFCO on or about October 25, 2007.

2. PURPOSE OF AGREEMENT

The purpose of this Agreement is to set forth the mutual understandings between the Parties of the terms and conditions relating to payments of County Augmentation to the City during the first ten years following its incorporation.

3. COUNTY OBLIGATIONS

A. The Parties agree the amounts in Table 1, Wildomar Net Savings Calculations, herein below, are the estimated net savings to the County projected in the Wildomar CFA.

Table 1
Wildomar Net Savings Calculations

Transition Year	2	3	4	5	6	7	8	9	10
FY 08/09	FY 09/10	FY 10/11	FY 11/12	FY 12/13	FY 13/14	FY 14/15	FY 15/16	FY 16/17	FY 17/18
$237,579	**$244, 706**	**$252,048**	**$259,609**	**$267,397**	**$275,419**	**$283,682**	**$292,192**	**$300,958**	**$309,987**

B. The County agrees to annually pay County Augmentation to the City commencing in Fiscal Year 2008/2009 and concluding in Fiscal Year 2017/2018, as follows:

(i) Within thirty (30) days from the Effective Date, the County shall pay the full amount of County Augmentation to the City equal to the amount in Table 1 for Fiscal Year 2008/2009.

(ii) Commencing in Fiscal Year 2009/2010 and concluding in Fiscal Year 2017/2018, by the end of each fiscal year, the County shall pay County Augmentation to the City equal to the amount in Table 1 for that fiscal year reduced by the amount of Excess Sales and Use Tax, if any, collected within the City in the prior fiscal year.

(iii) If the amount of Excess Sales and Use Tax collected within the City in the prior fiscal year is greater than or equal to the amount of County Augmentation due for a given fiscal year, the County shall not pay the County Augmentation that year.

4. CITY OBLIGATIONS

A. The Parties agree the amounts in Table 2, Wildomar Sales and Use Tax Projections, herein below, are the estimated total sales and use tax projected in the Wildomar CFA.

Table 2
Wildomar Sales and Use Tax Projections

Transition Year	2	3	4	5	6	7	8	9	10
FY 08/09	FY 09/10	FY 10/11	FY 11/12	FY 12/13	FY 13/14	FY 14/15	FY 15/16	FY 16/17	FY 17/18
$693,613	$1,551,379	$1,724,133	$1,862,523	$2,007,664	$2,159,838	$2,271,984	$2,388,915	$2,510,817	$2,606,838

B. By October 1st of each year, commencing in 2009 and concluding in 2018, the City shall provide the County a Sales and Use Tax Analysis that calculates the Excess Sales and Use Tax, if any, collected during the prior fiscal year.

C. By October 1, 2018, if the City determines any Excess Sales and Use Tax is due the County for the prior or any previous fiscal year, the City shall pay the County such amount of Excess Sales and Use Tax due.

5. BREACH AND REMEDIES

A. The Parties agree the City shall be in material breach for noncompliance with the terms of this Agreement, including, without limitations, if the City fails, neglects and/or refuses to timely provide a Sales and Use Tax Analysis of the prior fiscal year to the County by October 1st of each year, commencing with Years 2009 and concluding in 2018.

B. Upon determination by the County that the City is in material breach of the terms of this Agreement, the Parties agree:

(i) The County may at its sole discretion send a written notice of noncompliance to the City requiring compliance by the City within thirty (30) days from the date of the notice.

(ii) The County may at its sole discretion withhold payments of County Augmentation to the City for that and subsequent fiscal years until the breach is resolved.

6. DISPUTES

Should the County disagree with any Sales and Use Tax Analysis timely submitted by the City, the Parties shall meet and confer in good faith in an attempt to resolve such dispute before taking any legal action.

7. EFFECTIVE PERIOD OF AGREEMENT

This Agreement shall become effective upon the Effective Date and shall remain in full force and effect until the last and final Sales Tax and Use Analysis is received by the County from the City and the City pays the County the amount of any outstanding Excess Sales and Use Tax due.

8. NOTICES

The following individuals and their successors are designated by the County and the City as the authorized representative of the two Parties for implementation of this Agreement, and all notices and correspondences relative hereto shall be considered delivered when received by these individuals at the following addresses:

For the County: County Executive Officer
County Administrative Center
4800 Lemon Street, 4th Floor
Riverside, CA 92501

For the City: City Manager
Oakcreek Center – Wildomar City Hall
23873 Clinton Keith Road
Wildomar, CA 92595

9. GENERAL PROVISIONS

A. This Agreement shall be construed and interpreted according to the laws of the State of California. Any legal action related to the interpretation or performance of this Agreement shall be filed only in the appropriate courts located in the County of Riverside, State of California.

B. This Agreement constitutes the entire agreement between the Parties hereto with respect to the subject matter hereof, and all prior or contemporaneous agreements of any kind or nature relating to the same shall be deemed to be merged herein.

C. No addition or alteration of the terms of this Agreement, whether by written or verbal understanding of the parties, their officers, agents, or employees shall be valid unless made in writing and formally approved and executed by both parties.

D. If any provision of this Agreement is held by the court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force and effect without being impaired or invalidated in any way.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement by their respective authorized officers.

_____ _____

_____, _____ Date

_____

For City of Wildomar

_____ _____

Roy Wilson, Chairman Date
Riverside County Board of Supervisors
For Riverside County, California

RESOLUTION NO. 08-03

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, REQUESTING CONTINUATION OF SERVICES BY THE COUNTY OF RIVERSIDE

THE CITY COUNCIL OF THE CITY OF WILDOMAR DOES RESOLVE AS FOLLOWS:

SECTION 1. Recitals.

(a) The City of Wildomar was incorporated on July 1, 2008, as a general law city of the State of California; and

(b) Section 57384 of the California Government provides for the continuation of services by the County to the area of the County which is now the City of Wildomar.

(c) The Local Agency Formation Commission of Riverside County has provided in Resolution 91-07 approving the incorporation of Wildomar, that the County shall continue to furnish all services provided to the area prior to incorporation.

SECTION 2. Request for Continuation of Services. The City Council hereby requests that the Board of Supervisors of the County of Riverside continues to furnish to the City of Wildomar those services furnished prior to incorporation to the area of the County which is now the City of Wildomar for the remainder of the current fiscal year or until the City Council requests discontinuance of a service or services, whichever occurs first.

SECTION 3. Transmittal to Board of Supervisors. The Interim City Manager is directed to deliver a copy of this resolution to the Clerk of the Board of Supervisors of the County of Riverside.

PASSED, APPROVED, AND ADOPTED this 1st day of July, 2008.

Bob Cashman, Mayor

ATTEST:

John Danielson, Interim City Clerk

APPROVED AS TO FORM:

Julie Hayward Biggs, Interim City Attorney

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE)
CITY OF WILDOMAR)

I, John Danielson, Interim City Clerk of the City of Wildomar, do hereby certify that the foregoing Resolution No. 08-03 was duly adopted by the City Council of the City of Wildomar at a regular meeting thereof, held on the 1st day of July, 2008, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

_____
John Danielson, Interim City Clerk

RESOLUTION NO. 08-04

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, AUTHORIZING FILING OF DOCUMENTS WITH STATE AND COUNTY OFFICES AND OFFICERS

THE CITY COUNCIL OF THE CITY OF WILDOMAR DOES RESOLVE AS FOLLOWS:

SECTION 1. Recitals.

(a) State law requires copies of certain ordinances and other documents to be filed with the State of California and/or the County of Riverside.

(b) It is necessary that the City Council authorize certain officers of the City to file such ordinances and other documents with the State and/or County.

SECTION 2. Authorization to File. The City Clerk, and City Manager are each appointed as the authorized agent of the City of Wildomar for the purposes of filing of certified copies of ordinances and resolutions and such other documents with such offices and officers of the State of California and the County of Riverside as may be required by law.

PASSED, APPROVED, AND ADOPTED this 1st day of July, 2008.

Bob Cashman, Mayor

ATTEST:

John Danielson, Interim City Clerk

APPROVED AS TO FORM:

Julie Hayward Biggs, Interim City Attorney

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE)
CITY OF WILDOMAR)

I, John Danielson, Interim City Clerk of the City of Wildomar, do hereby certify that the foregoing Resolution No. 08-04 was duly adopted by the City Council of the City of Wildomar at a regular meeting thereof, held on the 1st day of July, 2008, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

_____
John Danielson, Interim City Clerk

RESOLUTION NO. 08-05

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, DESIGNATING THE TIME, DATE AND LOCATION OF CITY COUNCIL MEETINGS

THE CITY COUNCIL OF THE CITY OF WILDOMAR DOES RESOLVE AS FOLLOWS:

SECTION 1. Recitals.

(a) The City of Wildomar was incorporated on July 1, 2008, as a general law city of the State of California.

(b) Government Code sections 36805 and 54954 requires the City Council to hold regular meetings at least once a month at times set by resolution or ordinance.

(c) Section 2.01.010 of the Wildomar Municipal Code provides that the City Council shall set the time and place of city council meetings by resolution.

SECTION 2. Place of Regular Meetings. The regular meetings of the City Council shall be located at the Oak Creek Center, 23878 Clinton Keith Road, Wildomar, California, beginning in August of 2008.

SECTION 3. Time of Regular Meetings. The regular meetings of the City Council shall be held on the second and fourth Wednesdays of each month at the hour of 7:00 p.m., unless the same shall be a legal holiday, in which event such regular meeting shall be held on the next succeeding day.

PASSED, APPROVED, AND ADOPTED this 1st day of July, 2008.

_____
Bob Cashman, Mayor

ATTEST:

_____
John Danielson, Interim City Clerk

APPROVED AS TO FORM:

_____

Julie Hayward Biggs, Interim City Attorney

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE)
CITY OF WILDOMAR)

I, John Danielson, Interim City Clerk of the City of Wildomar, do hereby certify that the foregoing Resolution No. 08-05 was duly adopted by the City Council of the City of Wildomar at a regular meeting thereof, held on the 1st day of July, 2008, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

_____
John Danielson, Interim City Clerk

RESOLUTION NO. 08-06

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, AUTHORIZING THE CITY ATTORNEY TO ALLOW THE COUNTY COUNSEL OF THE COUNTY OF RIVERSIDE TO REPRESENT THE CITY OF WILDOMAR'S INTERESTS IN CERTAIN PROPERTY TAX REFUND MATTERS WITHIN CERTAIN PARAMETERS

THE CITY COUNCIL OF THE CITY OF WILDOMAR DOES RESOLVE AS FOLLOWS:

SECTION 1. Recitals.

(a) Many lawsuits have been initiated against each county in California regarding the method of property tax assessment and evaluation.

(b) The County Counsel of the County of Riverside must notify the City of the opportunity to intervene in such property tax refund matters, and provide the City with thirty (30) days to intervene in such property tax refund matters.

(c) Regardless of whether the City intervenes, any judgment rendered for a plaintiff is entered exclusively against the County, but the County is entitled to recover from each city and taxing entity in the County, including the City of Wildomar, those taxes collected by the County on behalf of each city or taxing entity which are subject to refund to the plaintiff as a result of the judgment.

(d) In general, allowing the County Counsel to represent the interest of cities in such property tax refund matters has proven to be the most economical use of taxpayers funds.

(e) The City Council finds it to be in the City's best interest to allow the County Counsel to represent the City's interest in certain circumstances with respect to such property tax refund matters.

SECTION 2. Authorization for Representation by County Counsel. The City Attorney is hereby authorized to allow the County Counsel of the County of Riverside to represent the City's interest in certain property tax refund matters under the following circumstances:

(a) The City is not an individually named defendant;

(b) A review of the complaint does not identify any separate or distinct defense that the City may have that differs from the County; and

(c) The City's potential liability does not exceed one hundred thousand dollars ($100,000), and a preliminary review of the complaint indicates that intervention by the City would be uneconomical.

SECTION 3. Notification of City Council. Whenever the City Attorney authorizes the County Counsel to represent the City's interest in such property tax refund matters, the City Attorney shall notify the City Council by memorandum of such authorization within thirty (30) days.

PASSED, APPROVED, AND ADOPTED this 1st day of July, 2008.

Bob Cashman, Mayor

ATTEST:

John Danielson, Interim City Clerk

APPROVED AS TO FORM:

Julie Hayward Biggs, Interim City Attorney

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE)
CITY OF WILDOMAR)

I, John Danielson, Interim City Clerk of the City of Wildomar, do hereby certify that the foregoing Resolution No. 08-06 was duly adopted by the City Council of the City of Wildomar at a regular meeting thereof, held on the 1st day of July, 2008, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

_____
John Danielson, Interim City Clerk

RESOLUTION NO. 08-07

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, DESIGNATING LOCATIONS FOR POSTING OF AGENDAS, ORDINANCES AND/OR RESOLUTIONS REQUIRED BY LAW TO BE PUBLISHED OR POSTED

THE CITY COUNCIL OF THE CITY OF WILDOMAR DOES RESOLVE AS FOLLOWS:

SECTION 1. Recitals.

(a) The City of Wildomar was incorporated on July 1, 2008, as a general law city of the State of California.

(b) State law requires the City Council, or its designee, to post the agendas for regular City Council meetings at least 72 hours prior to the meeting, and to post notice of a special City Council meeting at least 24 hours prior to the meeting, in a location that is freely accessible to the public.

(c) State law allows the city councils of newly incorporated cities to post enacted ordinances in lieu of publishing them in a newspaper of general circulation.

(d) It is necessary for the City to establish locations for posting of agendas, ordinances, resolutions and notices required by law to be published or posted.

SECTION 2. Places for Posting. All agendas, notices, ordinances and resolutions required by law to be posted, or required by law to be published or posted, shall be posted in at least three (3) public places within the City of Wildomar. All such agendas, notices, ordinances and resolutions shall be posted for public inspection at the following three (3) locations:

1. City Hall, City of Wildomar
   Oak Creek Center
   23878 Clinton Keith Road
   Wildomar, CA 92595

   [Or wherever City Council Meeting will be held.]

2. U.S. Post Office
   21392 Palomar St
   Wildomar, CA. 92595

3. Mission Trail Library
34303 Mission Trail Blvd.
Wildomar CA. 92595

SECTION 3. Posting of Ordinances and Resolutions. During its first year of operation, agendas, ordinances and resolutions required to be published or posted shall be posted as set forth herein.

PASSED, APPROVED, AND ADOPTED this 1st day of July, 2008.

Bob Cashman, Mayor

ATTEST:

John Danielson, Interim City Clerk

APPROVED AS TO FORM:

Julie Hayward Biggs, Interim City Attorney

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE)
CITY OF WILDOMAR)

I, John Danielson, Interim City Clerk of the City of Wildomar, do hereby certify that the foregoing Resolution No. 08-07 was duly adopted by the City Council of the City of Wildomar at a regular meeting thereof, held on the 1st day of July, 2008, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

_____
John Danielson, Interim City Clerk

RESOLUTION NO. 08-08

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, RATIFYING THE LEASE AGREEMENT FOR THE USE OF SPACE AS CITY HALL

THE CITY COUNCIL OF THE CITY OF WILDOMAR DOES RESOLVE AS FOLLOWS:

SECTION 1. Recitals.

(a) It is in the public's interest that the City provide a City Hall that houses the City's administrative offices and is open to the public during set business hours.

(b) The Interim City Manager has been authorized to receive lease proposals and desires to locate the City Hall at the Oak Creek Center, 23878 Clinton Keith Road, for convenience and accessibility to the public.

SECTION 2. Ratification of Lease Agreement. The Lease Agreement for the property located in the Oak Creek Center, 23878 Clinton Keith Road, Wildomar, California signed by the Interim City Manager, which is attached as Exhibit "A" to this resolution, is hereby ratified .

PASSED, APPROVED, AND ADOPTED this 1st day of July, 2008.

_____
Bob Cashman, Mayor

ATTEST:

_____
John Danielson, Interim City Clerk

APPROVED AS TO FORM:

_____
Julie Hayward Biggs, Interim City Attorney

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE)
CITY OF WILDOMAR)

I, John Danielson, Interim City Clerk of the City of Wildomar, do hereby certify that the foregoing Resolution No. 08-08 was duly adopted by the City Council of the City of Wildomar at a regular meeting thereof, held on the 1st day of July, 2008, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

_____
John Danielson, Interim City Clerk

EXHIBIT "A"

LEASE AGREEMENT

OFFICE BUILDING LEASE

OAK CREEK PLAZA II
Wildomar, California

Dated: _____, 2008

By and Between

Tenant: **The City of Wildomar**

and

Landlord: **Naples Plaza, Ltd., L.P., a California Limited Partnership**

OFFICE BUILDING LEASE
BY AND BETWEEN

Naples Plaza Ltd., L.P., a California Limited Partnership
Landlord

and

The City of Wildomar

Tenant

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The following drawings and special provisions are attached hereto as Exhibits and are hereby made a part of this Lease:

EXHIBIT "A-1" Premises
EXHIBIT "A" Site Plan
EXHIBIT "B-1" Landlord's Work
EXHIBIT "B-2" Tenant's Work
EXHIBIT "C": [Intentionally Omitted]
EXHIBIT "D": Rules and Regulations
EXHIBIT "E": Estoppel Certificate
EXHIBIT "F": Satellite Agreement
EXHIBIT "G": Guaranty of Lease
EXHIBIT "H": Notice of Delivery of Possession/Confirmation Agreement
EXHIBIT "I": Landlord Work Acceptance Checklist

OFFICE BUILDING LEASE

1. Fundamental Lease Provisions.

In consideration of the rents and covenants hereinafter set forth, Landlord leases to Tenant, and Tenant leases from Landlord, the Premises upon the terms and conditions of this Office Lease ("Lease") entered into and dated _____, 2008 ("Effective Date").

1.1 Landlord: Naples Plaza, Ltd., L.P., a California Limited Partnership

1.2 Tenant: The City of Wildomar, a California municipal corporation

1.3 Tenant's Trade Name: City of Wildomar (Section 4.1)

1.4 Premises: Landlord leases to Tenant and Tenant leases from Landlord that certain real property known as Suite 201 on the Second floor (the "Premises"), as shown cross hatched on Exhibit "A-1" attached hereto (the "Building Plan"), of the office building located at 23873 Clinton Keith Road (the "Building") located in the City of Wildomar, County of Riverside, as and outlined in red on Exhibit "A" attached hereto (the "Site Plan"), said Building and Premises being a part of the shopping center commonly known as Oak Creek II Shopping Center (the "Center"). The Premises contains approximately Three Thousand Eight Hundred Twenty Four (3,824) Rentable Square Feet (Three Thousand Two Hundred Forty One (3,241) Useable Square Feet of floor area with 18% core factor, measured using B.O.M.A. office building standards.) In no event shall the Premises core factor exceed eighteen percent (18%) throughout the entire lease term and any option periods. (Article 3)

1.5 Term: Unless extended or earlier terminated as provided herein, the Term of this Lease shall be for a period of Five (5) years commencing on the date Landlord initially tenders possession of the Premises to Tenant with Landlord's Work (as described in Exhibit "B-1") and the Tenant Improvement Work (as described in Exhibit B-2) substantially completed (the "Term Commencement Date"), and ending on the Expiration Date. (Sections 5.1, 5.4)

1.6 Expiration Date: The last day of the calendar month in which the Fifth (5th) anniversary of the Term Commencement Date occurs (the "Termination Date") unless extended or sooner terminated pursuant to any provision hereof. (Sections 5.4, 6.1)

1.7 Options To Extend: If Tenant (i) has not at any time during the Term of this Lease been in default as provided in Section 18.1, (ii) Tenant has not been late in payment of Rent on more than one (1) occasion in any twelve (12) month period during the Term of this Lease, (iii) Tenant is in occupancy and conducting business from the Premises; and (iv) Tenant has not assigned, subleased or otherwise transferred its interest in this Lease, Tenant shall have the right to extend the Term of this Lease for Two (2) periods of Twelve (12) months each ("Extended Term"), under the same terms and conditions contained in this Lease, except Minimum Rent which shall be adjusted as set forth herein. (Section 6.1.3)

At the commencement of the First Extended Term, the Minimum Rent shall be increased to reflect the Fair Market Rental Rate for like space in the trade area, but in no event shall the Minimum Rent be less than one hundred two and one-half percent (102.5%) nor greater than one hundred five percent (105%) of the Minimum Rent paid in the final year of the previous Term. At the commencement of the Second Extended Term, the Minimum Annual Rent shall be adjusted upward by two and one-half percent (2.5%).

Tenant shall have no further right to automatically extend this Lease at the expiration of the Extended Term. To exercise the option to extend the Term of this Lease, Tenant shall serve written notice to Landlord, no more than 360 days and no less than 180 days prior to the expiration of the Term indicating its intention to exercise the option to extend. Once Tenant has served the written notice to extend, such notice may not be rescinded. For purposes of the Lease, the definition of "Term" provided in Section 5.1 shall be deemed to include the Extended

Landlord's Initials _____ Tenant's Initials _____

Term(s) for which Tenant timely and properly exercised its option.

1.8 **Rent Commencement Date:** Thirty (30) days after the Term Commencement Date. (Section 6.1)

1.9 **Minimum Rent:** From and after the Rent Commencement Date, Tenant shall pay Minimum Rent as follows: (Section 6.1)

Tenant's Minimum Rent thereafter shall be Eighty Four Thousand Eight Hundred Ninety- Two 80/100 Dollars ($84,892.80) per year or Seven Thousand Seventy-Four & 40/100 Dollars ($7,074.40) per month, subject to future adjustment pursuant to Section 1.11 below.

Rental Abatement: The Minimum Rent shall be abated for the first month of the Lease Term and shall be reduced to half rent for the second and third months of the Lease Term. Thereafter, the Minimum Rent shall be Seven Thousand Seventy-Four & 40/100 Dollars per month, subject to the aforementioned future adjustments.

1.10 **[Intentionally Omitted]**

1.11 **Adjustment to Minimum Rent:** Commencing on the first day of the Thirty Seventh (37th) month following the Rent Commencement Date, the Minimum Rent shall be increased to Seven Thousand Two Hundred Fifty-One 26/100 Dollars ($7,251.26) per month. Every twelve (12) months thereafter (hereinafter collectively the "Adjustment Dates") during the Primary Term, the Minimum Rent shall be increased by Two and one-half (2.5%) percent. (Section 6.1.2.)

1.12 ~~**Percentage Rent.**~~ **[Intentionally Omitted]**

1.13 **Addresses for Notices:** (Section 22.14)

To Landlord:
Naples Plaza, Ltd., L.P., a California Limited Partnership
c/o C.W. Clark, Inc.
4180 La Jolla Village Drive, Suite 405
La Jolla, California 92037
(858) 452-7170 Telephone
(858) 453-7260 Facsimile

To Tenant:
The City of Wildomar
23873 Clinton Keith Road, Suite 201
Wildomar, CA 92595
(___) ___-____ Telephone
(___) ___-____ Facsimile
Email: _____

1.14 **Permitted Use:** The Tenant shall open as a general office under the name of The City of Wildomar, and generally offering the following services: administrative office, meeting room and other related uses in the performance of city business for the City of Wildomar. The Premises shall be used for no other use or purpose whatsoever. (Section 4.1)

1.15 **Exclusive Use. [Intentionally Omitted]**

1.16 **Security Deposit:** N/A (Article 7)

1.17 **Tenant's Share of Operating Expenses:** Tenant's Share of Operating Expenses shall be the proportion of all such expenses that the Rentable Square Feet of the Premises bears to the total gross leasable area in the Building, in the case of Building Operating Expenses, and the Center, in the case of Project Operating Expenses, and as set forth in Section 6.3. Tenant's prorata share of the Operating Expenses will be not exceed $.63 per square foot per month during the first twelve (12) months of the Term. (Section 6.3)

1.18 **Brokers:** Landlord's Broker: Grubb & Ellis / BRE (Phil Lyons, Chad Iafrate) (Section 22.17)

_____ Landlord's Initials

_____ Tenant's Initials

Tenant's Broker: Lee & Associates (Mary Piper, Sheri Shoemaker)

Landlord shall pay a commission equal to Twenty Four Thousand & no/100 Dollars pursuant to a separate written agreement between Landlord and Landlord's broker.
Said commission shall be payable as follows: (i) one half (1/2) upon Lease execution and receipt of building permits; (ii) the second half (1/2) upon Tenant opening for business, subject to the aforementioned separate written agreement.

1.19 Guarantor: N/A

1.20 Tenant Improvement Allowance: Landlord shall contribute Forty Five Dollars and no/100 ($45.00) per useable square foot to be used for the sole purpose of leasehold Tenant Improvements only to the Premises, as specifically set forth in **Exhibit "B-2,"** including but not limited to the cost of design, architectural and engineering fees, costs of all permits, labor, general contractor's fees, supervision and construction. (Exhibit B-2)

Upon Tenant's request made prior to the Term Commencement Date, Tenant may either (i) amortize up to an additional Ten Dollars & no/100 ($10.00) per usable square foot for Tenant Improvement costs amortized over the Primary Term of Five (5) years with interest at eight percent (8%) per annum, payable monthly or (ii) pay to the Landlord the overage amount prior to the commencement of construction.

1.21 Addendum: Articles 24 through 30 (Addendum)

1.22 Exhibits:

EXHIBIT "A-1"	Premises	(Exhibit A-1)
EXHIBIT "A"	Site Plan	(Exhibit A)
EXHIBIT "B-1"	Landlord's Work	(Exhibit B-1)
EXHIBIT "B-2"	Tenant's Work	(Exhibit B-2)
EXHIBIT "C":	Sign Criteria	(Exhibit C)
EXHIBIT "D":	Rules and Regulations	(Exhibit D)
EXHIBIT "E":	Estoppel Certificate	(Exhibit E)
EXHIBIT "F":	Satellite Agreement	(Exhibit F)
EXHIBIT "G":	N/A	(Exhibit G)
EXHIBIT "H":	Notice of Delivery of Possession/Confirmation Agreement	(Exhibit H)
EXHIBIT "I":	Landlord Work Acceptance Checklist	(Exhibit I)

The provisions of this Article 1 summarize for convenience certain terms of the Lease, which are more fully described in the balance of the Lease. In the event of a conflict between the provisions of Article 1 and the balance of the Lease, the latter shall control. Capitalized terms used in the Lease shall have the meanings defined in the body of the Lease.

Landlord's Initials _____ Tenant's Initials _____

2. Premises. The Premises and Site Plan are acknowledged to be tentative, with the shape, size, location, number and extent of improvements and tenancies in the Center, as depicted on the Site Plan, being subject to change at Landlord's discretion, provided that any change(s) in the size or location of the Premises shall be subject to the provisions of Section 22.22 below.

2.1 Fixturizing. The obligation(s) of Landlord and/or Tenant to prepare the Premises to the extent necessary for the conduct of Tenant's business as contemplated by this Lease are set forth in detail in **Exhibits "B-1"** and **"B-2"** attached hereto and made a part hereof. Landlord and Tenant shall expend all funds and do all acts required of them in **Exhibits "B-1"** and **"B-2"**, as applicable, and shall have the work performed promptly and diligently in a first-class workmanlike manner, with Tenant's work being subject to the provisions of Section 8.2. and **Exhibit "B-2"**.

2.2 Condition of Premises. The taking of possession of the Premises by Tenant shall conclusively establish that the Premises were, at such time, in satisfactory condition and Tenant shall be deemed to have accepted the Premises in their existing condition, subject to all applicable zoning, municipal, county and state laws, ordinances and regulations governing and regulating the use of the Premises, and any covenants or restrictions of record and all matters disclosed thereby and by any exhibits attached hereto. Notwithstanding the foregoing to the contrary, however, the taking of possession by Tenant will not be deemed to be Tenant's acceptance of deficiencies or defects (patent or latent) in Landlord's Work or the Tenant Improvement Work, including, but not limited to, defects in electrical systems, plumbing systems, fire and life safety systems, and materials and workmanship, all of which (together with any punch-list items) , provided that Tenant notifies Landlord of such defects in writing no later than one (1) year after the date of substantial completion of the Tenant Improvement Work, shall be the responsibility of Landlord to correct as its sole expense and not as a part of Operating Expenses. Landlord will assign to Tenant all assignable warranties relating to matters for which Tenant is responsible under this Lease, and will cooperate with Tenant in enforcing any non-assignable warranties.

2.3 No Air Space or Subsurface Rights. This Lease confers no rights to Tenant either with regard to the air space above the ceiling of the building in which the Premises are located or with regard to the subsurface of the land below the ground level of the building in which the Premises are located.

2.4 Development of the Center. Tenant acknowledges that the Center may consist of one or more separate legal parcels. Landlord reserves the right to subdivide all or a portion of the buildings and Common Areas in the Center. Tenant agrees to execute and deliver, upon demand by Landlord and in the form reasonably requested by Landlord, any additional documents reasonably needed to conform this Lease to the circumstances resulting from a subdivision and any and all maps in connection therewith. It is understood that the Preliminary Site Plan of the Center is preliminary and that Landlord may revise the Site Plan and change the shape, size, location and extent of the improvements or type of tenants (if any) shown thereon and eliminate or add any improvements and tenants to any portion of the Center, provided that Landlord shall not change the size or location of the Premises nor shall any such revision or change result in a material increase in the amount of Operating Expenses which would otherwise be payable by Tenant hereunder based upon the current Site Plan of the Center. If portions of the Center or property adjacent to the Center (collectively the "Other Improvements") are owned by an entity other than Landlord, Landlord, at its option, may enter into an agreement with the owner or owners of any of the Other Improvements to provide (i) for reciprocal rights of access and common utilities, use and/or enjoyment of the Center and the Other Improvements, (ii) for the common management, operation, maintenance, improvement and/or repair of all or any portion of the Center and all or any portion of the Other Improvements, (iii) for the allocation of a portion of the Operating Expenses to the Other Improvements and the allocation of a portion of the Operating Expenses of the Other Improvements to the Center (iv) for the use or improvement of the Other Improvements and/or the Center in connection with the improvement, construction, and/or excavation of the Other Improvements and/or the Center, and (v) for any other matter which Landlord deems necessary in its commercially reasonable, good faith judgment. Nothing contained herein shall be deemed or construed to limit or otherwise affect Landlord's right to sell all or any portion of the Center or any other of Landlord's rights described in this Lease. Tenant acknowledges that portions of the Center and/or the Other Improvements may be under construction following Tenant's occupancy of the Premises, and that such construction may result in levels of noise, dust, obstruction of access, etc., which are in excess of that present in a fully-constructed Center.

2.5 Standard Building Services. Landlord agrees to make available to the Premises, during the Building's normal business hours of 7:00 a.m. to 7:00 p.m. Monday through Friday, 7:00 a.m. to 3:00 p.m. Saturday (holidays excepted), such heat and air conditioning, water and electricity, as may be required for the comfortable use and occupation of the Premises for general office purposes and at a level which is usual and customary in similar office buildings in the area where the Building is located, all of which shall be subject to the Rules of the Building as well as any governmental requirements or standards relating to, among other things, energy conservation. Landlord shall not be liable for and Tenant shall not be entitled to any abatement or reduction of rent by reason of Landlord's failure to furnish or the interruption or termination of any utilities or services to the Premises and the Building when such failure, interruption or termination is caused by accidents, breakage, repairs, strikes, brownouts, blackouts, lockouts or other labor disturbances or labor disputes of any character, or by any other cause, similar or dissimilar, beyond the actual or reasonable control of Landlord, nor shall such failure, interruption or termination under such circumstances be construed as a constructive or actual eviction of Tenant. Landlord shall not be liable under any circumstances for loss or injury to property or business, however occurring, through or in connection with or incidental to Landlord's failure to furnish or the interruption or termination of any of said services or utilities. Notwithstanding the foregoing to the contrary, and without limiting Tenant's rights of access as provided in Article 25, Landlord acknowledges that the nature of Tenant's use of the Premises will involve the need for access to the

Landlord's Initials _____ Tenant's Initials _____

Building and the Premises by Tenant, its employees and members of the public during times other than the Building's normal business hours for meeting, specials events and other public purposes of Tenant (the "After Hours Uses"). Landlord agrees, at no out-of-pocket cost to Landlord, to reasonably cooperate with Tenant to accommodate such access, and to provide to the Common Areas of the Building, heat and air conditioning, water and electricity, elevator service, and restroom facilities as then existing in the Building, all at no additional cost or expense to Tenant, so long as Tenant notified Landlord of each occurrence of After Hours Use at least twenty-four (24) hours in advance.

~~2.6 **After-Hours Charges.** During non-business hours Landlord shall not be obligated to furnish HVAC to the Premises. If Tenant requires HVAC during non-business hours, Tenant shall give Landlord at least three (3) business days prior written notice of such requirement or shall follow such other procedure for activating the building energy management system as Landlord may advise Tenant, and Tenant shall pay Landlord for such extra service at $_____ per hour. Such rates are subject to increase from time to time based on notice from Landlord to Tenant. All payments required for such charges shall be deemed to be additional rent and Landlord shall have the same remedies for a default in payment thereof as for a default in payment of rent. If the Building is designed for individual tenant operation of the HVAC, Tenant agrees to pay the cost of operating the HVAC at any time other than the schedule of hours for providing the same set forth above, which cost may include the operation of the HVAC for space located outside the Premises when such space is serviced concurrently with the operation of the HVAC for the benefit of the Premises.~~

3. Common Areas.

3.1 Common Areas-Definition. The term "Common Area(s)" is defined as all areas and facilities within the exterior boundary line of the Center, including such portions of the Building as are not within the leased premises of tenants of the Building, that are provided and designated by Landlord from time to time for the general non-exclusive use of Landlord, Tenant and other lessees of the Center and their respective employees, suppliers, shippers, customers and invitees, with such Common Areas to include parking areas, loading and unloading areas available for use by all lessees of the Center and/or the Building, trash areas available for use by all lessees of the Center and/or the Building, roadways, sidewalks, walkways, parkways, driveways and landscaped areas and other areas which Landlord may from time to time designate as "Common Area(s)".

3.2 Common Areas-Tenant's Rights. Landlord hereby grants to Tenant, for the benefit of Tenant and its employees, suppliers, shippers, customers and invitees, during the term of this Lease, the non-exclusive right to use, in common with others entitled to such use, the Common Areas as they exist from time to time, subject to any rights, powers, and privileges reserved by Landlord under the terms hereof or under the terms of any rules and regulations or restrictions governing the use of the Center; provided that the condemnation or other taking by any public authority or any sale in lieu of condemnation, of any or all of such Common Areas, shall not constitute a violation of this covenant. Under no circumstances shall the right herein granted to use the Common Areas be deemed to include the right to store any property, temporarily or permanently, in the Common Areas. Any such storage shall be permitted only by the prior written consent of Landlord or Landlord's designated agent, which consent may be revoked at any time. In the event any unauthorized storage shall occur then Landlord shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove the property and charge the cost to Tenant, which cost shall be immediately payable by Tenant upon demand therefor from Landlord.

3.3 Common Areas-Landlord's Obligations. Landlord shall cause the Common Areas to be graded, surfaced, marked and landscaped. Thereafter, Landlord shall keep the Common Areas in a neat, clean and orderly condition and shall repair (including the making of necessary replacements) any damage to the facilities thereof, subject to reimbursement from Tenant and other lessees of the Center on a prorated basis in the manner set forth in Section 6.3 hereof.

3.4 Common Areas-Rules and Regulations. Landlord, or such other person(s) as Landlord may appoint, shall have exclusive control and management of the Common Areas and shall have the right, from time to time, to establish, modify, amend and enforce reasonable rules and regulations with respect thereto, as attached in **Exhibit "D"** and made a part of this Lease.

3.5 Common Areas-Changes. Landlord shall have the right, in Landlord's sole discretion from time to time to (i) make changes to the Common Areas, including, without limitation, changes in the location, size, shape and number of driveways, entrances, parking spaces, parking areas, loading and unloading areas, landscaped areas, walkways and changes regarding the ingress, egress and direction of traffic; (ii) close temporarily any of the Common Areas for maintenance purposes so long as reasonable access to the Premises remains available; (iii) designate other land outside the boundaries of the Center to be a part of the Common Areas; (iv) add additional buildings and improvements to the Common Areas; (v) use the Common Areas while engaged in making additional improvements, repairs or alterations to the Center, or any portion thereof; (vi) do and perform such other acts and make such other changes in, to or with respect to the Common Areas and Center as Landlord may, in the exercise of sound business judgment, deem appropriate, provided Tenant's visibility and accessibility is not unreasonably adversely affected.

4. Use.

4.1 Use. Tenant shall use the Premises only for the Permitted Use and only under the Trade Name, which Tenant represents it has the right to use. Tenant shall not use or permit the Premises to be used for any other purposes without the prior written consent of Landlord.

Landlord's Initials _____ Tenant's Initials _____

4.2 Suitability of Premises. Tenant acknowledges that neither Landlord nor any agent of Landlord has made any representations or warranty with respect to the Premises or the suitability of the Premises, the Building or the Center for the conduct of Tenant's business, nor has Landlord agreed to undertake any modification, alteration or improvement to the Premises to make the Premises suitable for Tenant's intended use, except as provided in this Lease.

4.3 Uses Prohibited. Tenant shall use the Premises only for the purpose specifically set forth in Section 1.14. Tenant shall not do or permit anything to be done in or about the Premises, nor bring or keep anything therein which will increase the existing rate of any fire or other insurance upon the Premises, the Center or any of its contents (unless Tenant shall first obtain Landlord's written consent and pay any increased premium resulting from such use or acts), or cause a cancellation of any insurance policy covering the Premises, the Center or any of its contents, nor shall Tenant sell or permit to be kept, used or sold in or about the Premises any articles which may be prohibited by a standard form policy of fire insurance. Tenant shall not do or permit anything to be done in or about the Premises which will in any way obstruct or interfere with the rights of the other lessees or occupants of the Center, or injure or annoy them, or use or allow the Premises to be used for any unlawful or objectionable purpose, nor shall Tenant cause, maintain or permit any nuisance in, on or about the Premises. Tenant shall not commit or allow to be committed any waste in or upon the Premises and Tenant shall keep the Premises in a neat, clean, orderly and wholesome condition, free of any objectionable noises, odors or nuisances. Tenant shall not cause or permit the presence, use, generation, release, discharge storage, disposal or transportation of any "Hazardous Materials" on, under, in, about, to or from, the Premises. Notwithstanding the foregoing to the contrary, Tenant may use normal quantities of cleaning materials, copier fluids and other materials customarily utilized in business offices, even though such materials are Hazardous Materials, so long as such use is in compliance with all applicable laws, rules and regulations. Landlord warrants that on the Term Commencement Date, the Premises will not contain any Hazardous Materials. As used herein, the term "Hazardous Materials" shall mean any hazardous or toxic substances, materials or waste, pollutants or contaminants, as defined, listed or regulated by federal, state or local law, regulation or order.

4.4 Trash. Tenant shall deposit all of its trash and rubbish in trash receptacles located either in the Premises or in Landlord-designated trash disposal areas in the Center. Tenant's trash receptacles located in the Premises shall be emptied and trash shall be removed at Tenant's own cost and expense or, at Landlord's option, trash removal shall be the responsibility of Landlord, at Tenant's expense as an Operating Expense. Landlord shall be responsible to provide and maintain the Landlord-designated trash disposal areas in the Center and to make arrangements for the regular removal and disposal of trash deposited therein, provided that Landlord's expenses of doing so will be an Operating Expense.

5. Term

5.1 Term. In the event the Premises is new construction, the possession delivery date ("Delivery Date") shall be the date Landlord or Landlord's Agent notifies Tenant in writing that the improvements to be provided by Landlord as set forth in Exhibit "B-1" ("Landlord's Work") and the Tenant Improvement Work (as set forth in Exhibit "B-2") are substantially complete, as defined below. Landlord shall within five (5) business days after notice of Delivery of Premises, complete a joint/ physical tour of the Premises with a representative of Tenant to examine the Landlord's Work and the Tenant Improvement Work and execute a Notice of Delivery of Possession and Confirmation Agreement (**Exhibit "H"**) and the Landlord Work Acceptance Checklist, as set forth in **Exhibit "I"** in which Tenant approves of Landlord's Work and the Tenant Improvement Work, and accepts delivery of the Premises. Within **Exhibit "H,"** Tenant shall also acknowledge the Term Commencement Date as referenced above. Upon the substantial completion of Landlord's Work and the Tenant Improvement Work, the Premises will be in the condition whereby Tenant can take possession of the Premises and commence installation of Tenant's equipment under Section 5.3 of Exhibit "B-2" and thereafter commence using the Premises for the purposes permitted by this Lease. Tenant's right to take physical possession of the Premises shall be conditioned upon Landlord's receipt of Tenant's insurance certificates pursuant to Section 15. Substantially Completed shall mean the date Landlord notifies Tenant in writing that "Landlord's Work" as specified in **Exhibit "B-1"** and the Tenant Improvement Work (as set forth in Exhibit "B-2"), is substantially complete to the point that Tenant may occupy the Premises for the purposes permitted by this Lease and that only minor "punch-list" items remain for repair and completion.

5.2 Delay in Possession. If, for any reason, Landlord cannot deliver possession of the Premises to Tenant on the Term Commencement Date, Landlord shall not be subject to any liability therefor, nor shall such failure affect the validity of this Lease or the obligations of Tenant hereunder or extend the Term hereof, but in such case, Tenant shall not be obligated to pay rent or perform any other obligation of Tenant under the terms of this Lease, except as may be otherwise provided in this Lease, until possession of the Premises is tendered to Tenant. Notwithstanding the foregoing or anything else in this Lease to the contrary, subject to Force Majeure Delays (as defined in Section 1.4 of Exhibit "B-2") and Tenant-Caused Delays (as defined in Exhibit "B-2"), if the Term Commencement Date has not occurred on or before June 1, 2009, Tenant may at any time thereafter and prior to the occurrence of the Term Commencement Date cancel this Lease upon the giving of not less than thirty (30) days' written notice of cancellation to Landlord, provided that if the Term Commencement Date occurs prior to the expiration of such 30-day period, Tenant's cancellation right hereunder shall be deemed null and void. Upon any such cancellation, Landlord shall refund all monies deposited by Tenant with Landlord (including any amounts in excess of the Tenant Improvement Allowance) and the parties will be released from all further liability and obligation under this Lease, except for such as has accrued prior to the date of such termination.

5.3 Early Possession. If Tenant occupies the Premises prior to the Term Commencement Date (excluding pursuant to Tenant's right of early access as provided in Section 5.3), the Term Commencement Date shall be deemed to have commenced as of the date of such

Landlord's Initials _____ Tenant's Initials _____

earlier occupation of the Premises by Tenant and such occupancy shall be subject to all provisions of this Lease. However, such occupancy shall not advance the Expiration Date.

5.4 Termination For Non-Appropriation. The Minimum Rent and other amounts payable by Tenant under this Lease are payable in consideration of Tenant's right to the use and occupancy and quiet enjoyment of the Premises for the periods covered by such Minimum Rent and other amounts, and Landlord and Tenant acknowledge that such Minimum Rent and other amounts represent fair consideration for such use and enjoyment and do not exceed the fair rental value of the Premises. If for any fiscal year of Tenant during the Term of this Lease, such Minimum Rent and other amounts are not included in Tenant's approved budget and are not appropriated, and further provided that no funds are otherwise approved or appropriated for purposes of Tenant occupying other space in the City of Wildomar, and provided that Tenant is not in default, then this Lease shall expire upon the later to occur of: (i) the end of Tenant's preceding fiscal year, and (ii) one hundred twenty (120) days after Landlord's receipt of written notice from Tenant certifying that (a) the Minimum Rent and other amounts payable under this Lease are not included in Tenant's approved budget and are not appropriated, (b) no funds are otherwise approved or appropriated for purposes of Tenant occupying other space in the City of Wildomar for a purpose which is similar to Tenant's occupancy of the Premises under this Lease, and (c) Tenant agrees that it will not lease or occupy any other space in the City of Wildomar for a purpose which is similar to Tenant's occupancy of the Premises under this Lease for a period of at least two (2) years after the date that Tenant provides the termination notice to Landlord under this Section 5.4. Subject to the conditions set forth herein, the later to occur of the foregoing subparagraphs (i) and (ii) shall be treated as the Termination Date of this Lease.

6. Rental.

6.1 Minimum Rent. Tenant shall pay to Landlord Minimum Rent, without deduction, set off, prior notice, or demand, in advance on the first day of each month, commencing as provided in Section 1.9. Minimum Rent for any partial month shall be prorated at the rate of 1/30th of the Minimum Rent per day.

6.1.1 [Intentionally Omitted].

6.1.2 Adjustment of Minimum Rent. Minimum Rent shall be subject to adjustment as provided in Section 1.11.

6.1.3 Determination of Fair Market Rent. For the purposes of Section 1.7 of the Lease, "**Fair Market Rental Rate**" shall mean the amount per rentable square foot that Landlord would accept in a transaction for new, non-expansion, non-renewal and non-equity tenants of comparable credit-worthiness, for comparable space, for a comparable use for a comparable period of time ("**Comparable Transactions**") in the Center. Comparable Transactions will also include what a comparable landlord of a Comparable Building (as defined below) with comparable vacancy factors would accept in Comparable Transactions. "**Comparable Buildings**" shall mean buildings of comparable size and vintage and construction in the surrounding southern Riverside County area.

Landlord shall determine the Fair Market Rental Rate by using its good faith judgment. Landlord shall provide written notice of such amount within fifteen (15) days after Tenant provides the notice to Landlord exercising Tenant's option rights under Section 1.7. Tenant shall have fifteen (15) days ("**Tenant's Review Period**") after receipt of Landlord's notice of the Fair Market Rental Rate within which to accept such amount in writing. In the event Tenant fails to accept the amount proposed by Landlord, Landlord and Tenant shall attempt to agree upon such Fair Market Rental Rate, using their best good faith efforts. If Landlord and Tenant fail to reach agreement within fifteen (15) days following Tenant's Review Period ("**Outside Agreement Date**"), then each party shall retain a commercial real estate broker to determine the Fair Market Rental Rate as set forth below:

(a) Landlord and Tenant shall each appoint one (1) independent commercial real estate broker who shall have been active over the five (5) year period ending on the date of such appointment in the leasing of retail properties in the County of Riverside. The determination of the commercial real estate brokers shall be limited solely to the issue of whether Landlord's or Tenant's submitted Fair Market Rental Rate for the Premises is the closest to the Fair Market Rental Rate for Comparable Transactions, taking into account the requirements specified hereinabove. Each such commercial real estate broker shall be appointed within fifteen (15) days after expiration of the foregoing thirty (30) day period. Landlord and Tenant shall be responsible for compensating their respective broker for their services.

(b) If such commercial real estate brokers cannot agree on the Fair Market Rental Rate for the Premises within thirty (30) days of their appointment hereunder, then the two (2) brokers shall select a third commercial real estate broker (which 3rd commercial real estate broker shall meet the same qualifications required hereunder of the first 2 commercial real estate brokers, and the expense of which shall be shared equally between Landlord and Tenant) to determine such Fair Market Rental Rate and the average of the three (3) Fair Market Rental Rates shall be conclusively considered to be the Fair Market Rental Rate for the Premises.

(c) If either Landlord or Tenant ("the Parties") fails to select a real estate broker with fifteen (15) days after the Outside Agreement Date, the retaining Party's real estate broker shall determine the Fair Market Rental Rate for the Premises and such determination shall be conclusive.

Landlord's Initials _____ Tenant's Initials _____

6.2 [Intentionally Omitted].

6.3 Operating Expenses. Beginning on the Rent Commencement Date, Tenant shall pay to Landlord during the Term, in addition to the Minimum Rent payable hereunder, Tenant's Share, as hereinafter defined, of all Operating Expenses (or the entire amount of such expenses, if directly and solely traceable to Tenant), as hereinafter defined, during each calendar year of the Term of this Lease, in accordance with the following provisions:

6.3.1 "Tenant's Share" is defined in Section 1.17 of the Fundamental Lease Provisions. Tenant acknowledges and agrees that Tenant's obligation hereunder to pay Tenant's Share of all Operating Expenses includes Tenant's obligation to pay both Tenant's Share of Project Operating Expenses and Tenant's Share of Building Operating Expenses (as those terms are defined herein). The term Project Operating Expenses shall mean all Operating Expenses relating to the Common Areas of the Center, and as otherwise described in Section 6.3.2 below, and the term Building Operating Expenses shall mean all Operating Expenses relating to the Building, as reasonably determined by Landlord. Common Areas within the Building may include, but shall not be limited to, such interior areas of the Building used in common with other tenants of the Building including the restrooms, hallways, elevators, stairways, lobby areas, directory and informational signs, and similar areas and items. Landlord shall, in its reasonable discretion, allocate Operating Expenses between the Center and the Building. The term Tenant's Share of Operating Expenses is used herein to collectively refer to Tenant's Share of Project Operating Expenses and Tenant's Share of Building Operating Expenses. In the event that any item or component of Operating Expenses is segregated and paid separately by any other tenant(s) in the Center, including the Building, with respect to such tenant(s)' premises, then Tenant's share of Operating Expenses shall be adjusted so that such tenant(s)' premises is not considered in computing the total leasable area of the Center, or the Building, as the case may be, solely with respect to that item or component of Operating Expenses, and (subject to Section 1.17 and Section 3.5) Tenant's Share of Operating Expenses shall be subject to adjustment in the event of any subsequent changes in the leasable area of the Center, including the Building. Notwithstanding anything to the contrary contained herein, Landlord shall have the right, from time to time, to equitably allocate some or all of the Operating Expenses for the Center and/or the Building among different portions or user groups of the Center and/or the Building, as applicable, (the "Cost Pool") in Landlord's good faith and reasonable business judgment.

6.3.2 "Operating Expenses" is defined, for purposes of this Lease, as all costs or expenses reasonably incurred or reserved by Landlord, if any, for (and without duplication of amounts payable pursuant to other provisions of this Lease):

(i) The operation, management, repair and maintenance of the Building and the Common Areas of the Center, including, but not limited to, the following:

(a) The Project Common Areas and Building Common Areas, including, but not limited to, parking areas, loading and unloading areas, trash areas, roadways, sidewalks, walkways, parkways, driveways, landscaped areas, striping, irrigation systems, backflow device, Project Common Areas and Building Common Areas lighting facilities and , fences, walls and gates, re-roofing, exterior painting, monument / pylon maintenance, rain gutters, elevators, restrooms, signage and mainline plumbing obstructions and repair:

(b) Trash disposal services;

(c) Tenant directories;

(d) Fire detection systems including sprinkler system maintenance and repair;

(e) Security services and security systems;

(f) The cost of water, gas, electricity and Storm Drain System (SWPPP requirements) and other utilities to service the Common Areas;

(g) Except as provided in Section 6.3.2(vi), below, the cost of any capital improvements, capital repairs, capital alterations and other capital items, provided that such costs shall be amortized (including interest at not to exceed eight percent (8%) per annum on the unamortized cost) over a twelve (12) year period and Tenant shall not be required to pay more than Tenant's Share of 1/144th of the cost of such capital expenditure in any given month;

(h) Regular scheduled maintenance and repair program to maintain the Building roof;

(i) Janitorial service for the Project Common Area; and the Building Common Areas; and

(j) Any other service to be provided by Lessor that is elsewhere in this Lease stated to be an "Operating Expense" or which is provided for the common benefit of tenants and/or the Common Areas of the Center or the Building;

Landlord's Initials _____ Tenant's Initials _____

(ii) Any deductible portion of an insured loss concerning any of the items or matters described in this Section 6.3;

(iii) The amount of the real property tax and other taxes paid by Landlord pursuant to Article 13;

(iv) The cost of any premiums for liability, property and rental value insurance policies maintained by Landlord pursuant to Article 15;

(v) Any management fee as may be paid to any third party in connection with providing the above services including a property management fee not to exceed four percent (4%) of the total rental income derived from the Center.

(vi) Notwithstanding the foregoing or anything else in this Lease to the contrary, "Operating Expenses" shall not include the following:

(a) Any charge for depreciation of the Common Areas, the Center, buildings in the Center, or equipment and any interest or other financing charge;

(b) Any charge for Landlord's income taxes, excess profit taxes, franchise taxes, or similar taxes on Landlord's business;

(c) To the extent Landlord is entitled to be reimbursed from any source, including, without limitation, other tenants or occupants of the Center, the cost of repair made by Landlord because of the total or partial damage or destruction of the Common Areas, Center or buildings in the Center or the condemnation of a portion of the Common Areas, Center or buildings in the Center;

(d) All costs relating to activities for the marketing, solicitation, negotiation and execution of leases or other occupancy arrangements relating to space in the Center, including without limitation, leasing commissions, real estate brokerage commissions, costs of tenant improvements and legal and accounting expenses;

(e) The cost of any items for which Landlord is entitled to be reimbursed by insurance or otherwise compensated by parties other than tenants of the Center;

(f) The cost (including, without limitation, permit, license and inspection costs) of alterations of or the installation of tenant improvements in space in the Center leased to other tenants;

(g) Ground rent or similar payments to a ground lessor or master lessor;

(h) Legal fees and related expenses incurred by Landlord (together with any damages awarded or fines or penalties imposed against Landlord) due to the negligence or willful misconduct of or the violations of any laws by Landlord, its directors, officers, partners, members, agents, contractors or employees;

(i) Salaries of management personnel above the level of property manager;

(j) All costs incurred by Landlord due to any violation of the terms or conditions of any lease of space or other occupancy agreement in the Center;

(k) All costs incurred in connection with any governmental laws, rules or regulations applicable to the Common Areas which were enacted prior to the date of this Lease;

(l) All interest, principal, attorneys' fees, environmental investigations or reports, points, fees and other lender costs and closing costs on debts or amortization on any mortgage or mortgages or any other debt instrument encumbering the Building, other buildings in the Center or the Center or any part thereof or on any unsecured debt;

(m) All costs for which Landlord is entitled to be reimbursed or compensated under any contractor, manufacturer or supplier warranty or service contract;

(n) All costs (including in connection therewith all attorneys' fees and costs of settlement judgments and payments in lieu thereof) arising from claims, disputes or potential disputes in connection with potential or actual claims, litigation or arbitrations pertaining to Landlord and/or all or any part of the Center not caused by or the responsibility of Tenant;

Landlord's Initials _____ Tenant's Initials _____

(o) All costs incurred in removing and storing the property of former tenants or occupants of the Center;

(p) The cost of correcting any defects in the original design or construction of the Common Areas, Building, other buildings in the Center or the Center;

(q) All costs incurred in connection with the original construction of the Common Areas, Building, other buildings in the Center or the Center, or in connection with any major renovation or major change in the Building, other buildings in the Center or the Center, including, but not limited to, the addition or deletion of floors;

(r) All costs arising from (i) the presence of Hazardous Materials in, on, under or about the Center, or any part thereof, or any buildings thereon, and (ii) the removal, encapsulation or other treatment of any asbestos-containing material;

(s) The cost of replacement of the Building, other buildings in the Center, and capital components thereof such as, but not limited to, roofs, foundations, structural or bearing walls, elevators, and structural walls;

(t) Except as provided in Section 6.3.2(v), any management fee or administration fee; and,

(u) All costs excluded from Operating Expenses elsewhere in this Lease.

6.3.3 The inclusion of the improvements, facilities and services set forth in subsection 6.3.2(i) of the definition of Operating Expenses shall not be deemed to impose an obligation upon Landlord to either have said improvements or facilities or to provide those services unless Landlord has agreed elsewhere in this Lease to provide the same or some of them.

6.3.4 Tenant's Share of Operating Expenses shall be payable by Tenant within ten (10) days after a reasonably detailed statement of actual expenses is presented to Tenant by Landlord. At Landlord's option, however, an amount may be estimated by Landlord (either orally or in writing) from time to time of Tenant's Share of annual Operating Expenses and the same shall be payable monthly or quarterly, as Landlord shall designate, during each twelve-month period of the Lease Term, on the same day as the Minimum Rent is due hereunder. In the event that Tenant pays Landlord's estimate of Tenant's Share of Operating Expenses as aforesaid, Landlord shall deliver to Tenant within one hundred twenty (120) days after the expiration of each calendar year a reasonably detailed statement showing Tenant's Share of the actual Operating Expenses incurred during the preceding year. If Tenant's payments under this subsection 6.3.4 during said preceding year exceed Tenant's Share of the actual Operating Expenses as indicated on said statement, Tenant shall be entitled to credit the amount of such overpayment against Tenant's Share of Operating Expenses next falling due. If Tenant's payments under this Section during said preceding year were less than Tenant's Share as indicated on said statement, Tenant shall pay to Landlord the amount of the deficiency within thirty (30) days after delivery by Landlord to Tenant of said statement. Landlord shall keep and maintain complete and accurate books and records of all Operating Expenses for at least one (1) year after the end of the calendar or fiscal year to which such books and records apply. Tenant shall have the right to examine, copy and audit Landlord's books and records establishing the Operating Expenses for any calendar year upon the giving of thirty (30) days' prior written notice to Landlord, which notice must be given within a period of one hundred eighty (180) days following the date that Tenant receives the statement of the Common Area Expenses for such year from Landlord. Such examination and audit shall take place during normal business hours at Landlord's place of business in California or at such other location in California as Landlord shall authorize or designate. All costs of the examination and audit shall be borne by Tenant; provided, however, that if such examination and audit establishes that the actual Operating Expenses for the year in question were less than the amount set forth on the statement delivered to Tenant by five percent (5%) or more, then Landlord shall pay the reasonable costs of such examination and audit. If, pursuant to the audit, the payments made for such year by Tenant exceed Tenant's required payment for such year, Landlord may either credit the excess against payments of Operating Expenses next thereafter to become due from Tenant to Landlord, or reimburse Tenant therefor within thirty (30) days after notice from Tenant; but, if the payments made by Tenant for such year are less than Tenant's required payment as established by the examination and audit, Tenant shall pay the deficiency to Landlord within thirty (30) days after conclusion of the examination and audit.

6.4 Additional Rent. All charges payable by Tenant hereunder, other than Minimum Rent, are herein referred to as "Additional Rent." Except as otherwise provided in this Lease, all Additional Rent shall be paid with the next monthly installment of Minimum Rent. The term "Rent," as used hereinafter, shall mean Minimum Rent, Additional Rent and any other charge or fee which Tenant may be required to pay under the terms of this Lease.

6.5 Payment of Rent. All rent shall be paid to Landlord, on or before the due date(s) specified herein, at the address to which notices to Landlord are given.

6.6 Interest on Past Due Obligations. Except, as expressly herein provided, any amount not paid to Landlord when due and within five (5) days following Tenant's receipt of written notice from Landlord shall bear interest from the date due at the maximum rate then chargeable by law. Payment of such interest shall not excuse or cure any default by Tenant under this Lease.

Landlord's Initials _____ Tenant's Initials _____

6.7 Late Charges. Tenant acknowledges that late payment by Tenant to Landlord of rent or other sums due hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting expenses and late charges, which may be imposed on Landlord by the terms of any mortgage or deed of trust covering the Premises. Accordingly, if any installment of rent or any other sum due from Tenant shall not be received by Landlord or Landlord's designee within five (5) days after such amount is due, Tenant shall pay to Landlord a late charge equal to five percent (5%) of such overdue amount, which charge shall be in addition to, and not in lieu of, the interest on past due obligations referred to in Section 6.6 above; provided, however, for the first time in any calendar year that Tenant has failed to pay any monthly installment of rent or any other sum due from Tenant, such late charge shall not apply unless Tenant has failed to make such payment within five (5) business days of receipt of Landlord's written notice of such delinquency. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs that Landlord would incur by reason of late payment by Tenant. Acceptance of such late charge by Landlord shall in no event constitute a waiver of Tenant's default with respect to such overdue amount, nor prevent Landlord from exercising any of the other rights and remedies granted hereunder.

7. Security Deposit. ~~Concurrently with Tenant's execution of this Lease, Tenant shall deposit with Landlord the Security Deposit. Said sum shall be held by Landlord as security for the faithful performance by Tenant of all the terms, covenants, and conditions of this Lease to be kept and performed by Tenant during the term hereof. If Tenant defaults with respect to any provision of this Lease, including, but not limited to, the provisions relating to the payment of rent, Landlord may (but shall not be required to) use, apply or retain all or any part of this security deposit for the payment of any rent or any other sum in default, or for the payment of any amount which Landlord may suffer by reason of Tenant's default. If any portion of said deposit is so used or applied Tenant shall, within five (5) days after written demand therefor, deposit cash with Landlord in an amount sufficient to restore the security deposit to its original amount and Tenant's failure to do so shall be a default under this Lease. Landlord shall not be required to keep this security deposit separate from its general funds, and Tenant shall not be entitled to interest on such deposit. If Tenant shall fully and faithfully perform every provision of this Lease to be performed by it, the security deposit or any balance thereof shall be returned to Tenant (or, at Landlord's option, to the last assignee of Tenant's interest hereunder) as provided by then existing California law. In the event of termination of Landlord's interest in this Lease, Landlord shall transfer said deposit to Landlord's successor in interest.~~

8. Maintenance and Repairs; Alterations and Additions; Fixtures.

8.1 Maintenance and Repairs.

8.1.1 Landlord Responsibilities. Subject to the provisions of Sections 2.2 (Condition of Premises), 6.3 (Operating Expenses), 8.1.2 (Tenant Responsibilities), 8.5 (Repairs and Alterations Required by Governmental Authorities), and Articles 16 (Damage or Destruction) and 17 (Condemnation), Landlord shall repair (including the making of necessary replacements) and maintain the structural portion of the Premises, including exterior walls, structural walls and roof membrane (but excluding windows, plate glass and doors), unless such maintenance or repair is caused in whole or in part by the neglect, fault or omission of Tenant, its agents, employees or invitees, or by unauthorized breaking and entering, in which event Tenant shall pay to Landlord the cost of such maintenance and repair. Landlord shall secure and pay for a service contract for the repair and maintenance of heating and air conditioning equipment (excluding kitchen or food service related cooking hoods or make up air systems) including the terms and requirements of any warranty, which may be in effect, and the cost thereof shall be included in Operating Expenses. Landlord shall have no obligation to repair until a reasonable time after receipt by Landlord or its Center manager or management company of written notice of the need for repairs. Unless otherwise specifically provided in this Lease, there shall be no abatement of rent and no liability of Landlord by reason of any injuring to or interference with Tenant's business arising from the making of any repairs, alterations or improvements in or to any portion of the Premises, the Building or the Center and Landlord shall incur no liability to Tenant by reason of undertaking the repairs required by this Section 8.1.1, provided that the foregoing shall not be deemed to limit any rights or remedies of Tenant which are otherwise expressly permitted under this Lease. Tenant waives the provisions of any law permitting Tenant to make repairs at Landlord's expense. Notwithstanding the foregoing or anything else in this Lease to the contrary, and without limiting the provisions of Section 2.2, for a period of twelve (12) months from and after the Term Commencement Date, Landlord shall maintain and repair (including the making of necessary replacements) all electrical and other utility systems and lighting fixtures (excluding fluorescent tubes, bulbs and ballasts), mechanical systems, plumbing and sewage systems, heating, ventilating and air conditioning systems and life safety systems within or serving the Premises, and to the extent the same were installed by Landlord as part of Landlord's Work or the Tenant Improvement Work, all at Landlord's sole cost and expense and not as a part of Operating Expenses; provided, however, that if the need for such repairs is due to the negligence or willful misconduct of Tenant or its agents, employees or contractors, or Tenant's failure to maintain such elements of the Premises as otherwise required of Tenant under the terms of this Lease, then the reasonable costs of such repairs shall be payable by Tenant within thirty (30) days following receipt of written demand.

8.1.2 Tenant Responsibilities. Subject to the provisions of Sections 2.2 (Condition of Premises) and 8.1.1 (Landlord Responsibilities), and Articles 16 (Damage or Destruction) and 17 (Condemnation), Tenant shall maintain in good order, condition and repair the interior of the Premises, including all electrical equipment, including interior light fixtures, plumbing and sprinkler systems installed therein, and the improvements and equipment installed by Tenant in the Premises, and Tenant shall replace all broken glass, including plate glass and exterior show windows, and repair any broken doors. Tenant shall also make all other nonstructural repairs, except those which Landlord is specifically obligated to make under the provisions of Section 8.1.1 hereof. ~~In addition and if applicable in the instance of a restaurant use, Tenant shall, at Tenant's sole cost and expense, obtain and maintain throughout the Term, a maintenance and service~~

Landlord's Initials _____ Tenant's Initials _____

~~contract covering the cooking hood(s), duct exhaust systems including make up air fans and related ductwork, grease traps, and fire extinguishing systems in the Premises, with a service provider reasonably acceptable to Landlord, and Tenant shall provide to Landlord copies of said service agreements, as well as provide to Landlord, at least one (1) time each calendar year, or from time to time within fifteen (15) days after request by Landlord, reasonable proof that the cooking hood(s), duct exhaust systems, grease traps, and fire extinguishing systems in the Premises, are being adequately serviced and maintained.~~ Tenant shall be solely liable for, and shall immediately reimburse Landlord for any costs incurred by Landlord, or any damages suffered by Landlord, to clear any back up, clogging, or other similar situation, of the plumbing or sewage systems which results from grease or other causes originating in the Premises, or otherwise caused by Tenant or Tenant's agents, employees or contractors.

8.1.3 Tenant's Failure to Maintain. If Tenant fails to maintain the Premises in good order, condition and repair as required by this Lease, Landlord may give Tenant notice to do such acts as are reasonably required so to maintain the Premises and if, thereafter, Tenant fails to promptly commence such work, or diligently prosecute the same to completion, Landlord may, at its option, do such acts and expend such funds, at the expense of Tenant, as are reasonably required to perform such work. Landlord shall notify Tenant as to all amounts so expended and Tenant shall thereafter pay the whole of said amounts to Landlord within thirty (30) days following Tenant's receipt of Landlord's notice; these amounts shall be considered Additional Rent.

8.1.4 Condition Upon Expiration of Term. Upon the expiration or earlier termination of this Lease, Tenant shall surrender the Premises in good condition, excepting ordinary wear and tear. Tenant shall indemnify Landlord against any loss or liability resulting from delay by Tenant in so surrendering the Premises, including, without limitation, any claims made by any succeeding Tenant based on such delay if Landlord has notified Tenant in writing at least thirty (30) days prior to the expiration date of the Lease that it has leased the Premises to such succeeding Tenant.

8.2 Alterations and Additions.

8.2.1 Tenant shall not make any alterations or additions to the Premises where the reasonably anticipated cost of such alterations or additions exceeds five thousand dollars ($5,000) or where such alterations or additions are structural in nature, without Landlord's prior written consent, which consent will not be unreasonably withheld. All alterations, additions, and improvements made by Tenant to or upon the Premises, except removable trade fixtures, shall at once when made or installed be deemed to have become the property of Landlord; provided, however, if not less than sixty (60) days prior to termination of this Lease, Landlord so directs by written notice to Tenant, Tenant shall promptly remove the additions, improvements, fixtures, trade fixtures and installations which were placed in the Premises by Tenant and which are designated in said notice and shall repair any damage occasioned by such removal and in default thereof, Landlord may effect said removal and repairs at Tenant's expense.

8.2.2 Before commencing any work in connection with any alterations, additions, or improvements in or about the Premises, Tenant shall notify Landlord in writing of the expected date of commencement thereof. Landlord shall have the right at any time and from time to time to post and maintain on the Premises such notices as Landlord deems necessary to protect the Premises and Landlord from mechanics' liens, materialmen's liens, or any other liens.

8.2.3 Any alterations, additions, or improvements in or about the Premises that Tenant shall desire to make and which require the consent of Landlord shall be presented to Landlord in written form, with proposed detailed plans. If Landlord shall give its consent, said consent shall be deemed conditioned upon Tenant acquiring a permit to do the work from appropriate governmental agencies, the furnishing of a copy of said permit to Landlord prior to commencement of the work, and compliance by Tenant with all conditions of said permit in a prompt and expeditious manner.

8.2.4 Any alterations, additions or improvements affecting the utility, mechanical, or other systems of the Premises or the Building, or which may in way interrupt services to other occupants or portions of the Building shall be undertaken only under the following conditions: (i) Landlord shall have approved such alterations, additions or improvements, in writing and in advance of the commencement of the same, (ii) the subject work shall be undertaken only before or after normal Building hours and in compliance with all legal requirements and the terms and conditions of this Lease, (iii) Tenant shall provide prior written notice to other occupants of the Building who may be affected by such work (which notice shall be submitted for approval by Landlord prior to Tenant delivering the same to any other tenants), and (iv) Tenant shall be solely liable for any claims made by other tenants arising from such work, and Tenant's indemnification obligation under Article 14 shall apply in all respects to such work.

8.3 Tenant's Improvements / Installation of Fixtures. In order to expedite the commencement of Tenant's business in the Premises, with prior written consent of the Landlord (except as otherwise provided in this Lease) and subject to all of the provisions listed in Exhibit "B-2", Tenant may enter upon the Premises for the purpose of installing Tenant's improvements / trade fixtures and furnishings during the construction period, provided that such activity on the part of Tenant shall be done only in such manner as not to interfere or delay in any way completion of Landlord's Work, inspections, or final inspection. Landlord shall not be liable to Tenant for damage to or loss of such fixtures, equipment or furnishings. Tenant shall pay for all utilities consumed by Tenant or its contractors in preparing the Premises for the opening of Tenant's business.

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TENANT SHALL HAVE NO RIGHT TO ACCESS, PENETRATE, USE OR PLACE ANY EQUIPMENT ON THE ROOF OF THE BUILDING, WITHOUT LANDLORD'S WRITTEN PERMISSION. TENANT UNDERSTANDS BY INITIALING ON THE SPACE BELOW, THAT ANY UNAUTHORIZED PENETRATION OR ACCESS ON THE ROOF WILL NULLIFY THE ROOF CONTRACTOR'S WARRANTY. THE EXACT AMOUNT OF THE DAMAGE WILL BE EXTREMELY DIFFICULT TO ASCERTAIN. IF TENANT VIOLATES THIS PROVISION, TENANT WILL BE CHARGED THE FULL COST TO REPAIR ANY DAMAGE CAUSED BY SUCH UNAUTHORIZED PENETRATION OR ACCESS AND ALL INCIDENTAL EXPENSES IN CONNECTION WITH THE VIOLATION.

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Tenant's Initials

8.4 Utility Additions. Landlord reserves the right to install, as may be reasonably necessary, new or additional utility facilities throughout the Center and the Common Areas for the benefit of Landlord, Tenant, and/or other lessees of the Center, including, but not limited to such utilities as plumbing, electrical systems, security systems, communication systems, and fire protection and detection systems, so long as such installations do not unreasonably interfere with Tenant's use of the Premises. The expense of any such utility addition(s) shall be considered an Operating Expense, as defined in paragraph 6.3.2 of this Lease.

8.5 Repairs and Alterations Required by Governmental Authorities. Excluding structural repairs, alterations or improvements (unless necessitated by Tenant's improvements or acts), Tenant shall, at its sole cost and expense, be responsible for all repairs, alterations or improvements to the Premises necessitated as a result of the requirement of any municipal, state or federal authority and/or any board of fire underwriters or other similar body and Tenant shall obtain and pay for all permits, including a Certificate of Occupancy, required for Tenant's occupancy of the Premises.

8.6 Americans with Disabilities Act. Despite any provision of this Lease to the contrary, the following provisions shall govern the responsibility of the Landlord and Tenant with respect to compliance with the Americans with Disabilities Act of 1990 and its implementing regulations, as amended or supplemented from time-to-time ("ADA"), related state and local laws, and rules and regulations promulgated to further the purpose thereof. Landlord shall be responsible for the ADA compliance of the Common Areas including, without limitation, parking facilities and auxiliary aids and services as now or hereafter required by the ADA; provided that any cost for such ADA compliance of the Common Areas hereafter required by the ADA will be included in Operating Expenses. Following the date that Landlord initially tenders possession of the Premises to Tenant, Tenant, at Tenant's sole cost and expense, shall be solely responsible for any and all ADA compliance of the Premises (including, without limitation, barrier removal, and auxiliary aids and services) as now or hereafter required by the ADA if such ADA compliance is required as a result of (i) any Alterations made or requested by Tenant, or (ii) Tenant's use and occupancy of the Premises. If Tenant's use of, or any Alterations to, the Premises results in the need for modifications to any portion of the Common Area in order to comply with the ADA, then Tenant shall additionally be solely responsible for the cost of such modifications and alterations to the Common Areas. Landlord's approval of the plans, specifications and working drawings for Tenant's initial improvements to the Premises, or any subsequent Alterations shall create no responsibility or liability on the part of Landlord for their completeness, design sufficiency, or compliance with all laws, rules and regulations of governmental agencies or authorities, including the ADA. Within ten (10) days after receipt, Landlord and Tenant shall advise the other party in writing, and provide the other with copies of any notices relating to the Premises which either allege a violation of ADA, present or threaten to present any claim regarding noncompliance with ADA, and / or provide notice of any governmental or regulatory actions or investigations instituted or threatened regarding noncompliance with ADA. Tenant agrees to indemnify, defend and hold Landlord and its agents, employees, lender and equity partner/member harmless from any Claims, as defined in Section 14.1, in connection with Tenant's failure to bring the Premises into compliance with the ADA. Landlord agrees to indemnify, defend and hold Tenant and its agents and employees harmless from any Claims, judgments, damages, fines, penalties, costs, and liabilities in connection with Landlord's failure to bring the Common Areas into compliance with the ADA. Landlord warrants that as of the Term Commencement Date, the Premises will be in compliance with ADA.

9. Liens and Bonds.

Except for such as are being contested by appropriate proceedings and as to which enforcement has been stayed, Tenant shall keep the Premises and the Center free from any liens arising out of any work performed, materials furnished or obligations incurred by or on behalf of Tenant. With respect to any alterations or additions costing more than twenty-five thousand dollars ($25,000), Landlord may require that Tenant provide, at Tenant's sole cost and expense, a lien and completion bond in an amount equal to one and one-half (1-1/2) times the estimated cost of any improvements, additions, or alterations to the Premises which Tenant desires to make, to insure Landlord against any liability for mechanics' and material suppliers liens and to insure completion of the work.

10. Utilities.

In addition to its obligation to pay the charges described in paragraph 6.3.2(v) of this Lease, Tenant shall pay for all water, gas, heat, light, power, telephone service and all other services and utilities supplied to the Premises, together with any taxes thereon. If any such services are not separately metered to Tenant, Tenant shall pay a reasonable proportion (without duplication of any amounts paid as a part of Operating Expenses), to be reasonably determined by Landlord, of all charges jointly metered with other premises in the Center, which proportion shall not exceed Tenant's Share (as defined in subsection 6.3.1).

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Landlord's Initials Tenant's Initials

11. Assignment and Subletting.

11.1 Landlord's Consent Required. Tenant shall not voluntarily or by operation of law assign, transfer, mortgage, sublet or license or otherwise encumber (collectively "assign") all or any part of Tenant's interest in this Lease or in the Premises, without the prior written consent of Landlord in each instance, and any attempted assignment without such consent shall be wholly void. Without in any way limiting Landlord's right to refuse to give such consent for any other reason or reasons, Landlord reserves the right to refuse to give such consent if, in Landlord's sole discretion and opinion, (i) the quality of the merchandising operations in the Premises and/or the Center may be in any way adversely affected, or (ii) the financial worth of the proposed new lessee is less than that of the Tenant executing this Lease at the time of such execution.

11.2 Tenant Affiliate. Notwithstanding Section 11.1 hereof, Tenant, after written notice to Landlord and complying with the provisions of this paragraph, may assign or sublet the Premises without Landlord's prior consent to (i) any subsidiary or parent or subsidiary of any parent of Tenant, (ii) any corporation with which Tenant may merge or consolidate, (iii) any corporation acquiring all or substantially all of the assets and/or stock of Tenant and/or (iv) a partnership in which Tenant owns a majority interest, each of which is referred to herein as a "Tenant Affiliate," provided that before such assignment shall be effective, said assignee shall, in writing, assume in full the obligations of Tenant under this Lease. The assignee's net worth and working capital shall not be less than that of the Tenant. Tenant may also sublet to or otherwise permit occupancy of portions of the Premises by individuals or entities performing contract services for Tenant (such as, but not limited to, engineering services and building department services) without Landlord's prior written consent, but subject to all the terms and conditions of the Lease (the "Contract Service Providers"). Any such assignment shall not in any way affect or limit the liability of Tenant under the terms of this Lease

11.3 Terms and Conditions of Assignment. Regardless of Landlord's consent, no assignment shall release Tenant of Tenant's obligations hereunder or alter the primary liability of Tenant to pay the rent or perform all other obligations to be performed of Tenant hereunder. Landlord may accept rent from any person other than Tenant pending approval or disapproval of such assignment. Neither a delay in the approval or disapproval of such assignment nor the acceptance of rent shall constitute a waiver or estoppel of Landlord's right to exercise its remedies for the breach of the terms or conditions of this Section. Consent to one assignment shall not be deemed consent to any subsequent assignment. The covenants and conditions, including but not limited to the restrictions on use herein contained shall apply to and bind the heirs, successors, executors, administrators and assigns of Tenant. In addition to the foregoing, Tenant agrees to pay to Landlord fifty percent (50%) of any "profit" realized by Tenant as a result of any such assignment (other than to a Tenant Affiliate or Contract Service Provider"), "profit" being defined as any and all consideration received by Tenant, which consideration is in excess of (i) amounts due or payable to Landlord under the Lease, (ii) brokerage fees or commissions paid by Tenant, (iii) legal fees paid in connection with such assignment and (iv) the amount of any tenant improvement allowance, free rent or other leasing concessions.

11.4 Attorneys' Fees. Tenant shall pay Landlord Five Hundred and no/100 Dollars ($500.00) as reasonable attorneys' fees and administrative and incidental fees incurred in connection with any assignment or proposed assignment of Tenant's interest in this Lease requiring Landlord's consent.

12. Entry by Landlord.

Landlord reserves, and shall at any and all times during Tenant's normal business hours have, the right to enter the Premises to inspect the same, to show said Premises to prospective purchasers or tenants, to post notices of non-responsibility and ordinary "For Sale" signs on the Building in which the Premises are located, or as Landlord may deem necessary or desirable, to repair the Premises and/or the Center, for which purpose Landlord may erect scaffolding and other necessary structures where reasonably required by the character of the work to be performed, provided that (i) the entrance to the Premises is not unreasonably blocked thereby, (ii) the business of Tenant is not interfered with unreasonably, and (iii) Landlord gives Tenant not less than twenty-four (24) hours prior written notice (except in emergency situations posing an immanent threat to life or property). Subject to the same notice requirements, Landlord may also, during the last six months of the Term, or during any period that Tenant is in default, have the right to enter the Premises for purposes of posting ordinary "'For Rent" or "For Lease" signs. Tenant hereby waives any claim for (i) abatement of rent, or (ii) damage, injury or inconvenience to or interference with Tenant's businesses, or (iii) any loss of occupancy or quiet enjoyment of the Premises, or (iv) any other loss occasioned thereby. Landlord shall have the right to use any and all means which Landlord may deem proper to open said doors in an emergency to obtain entry to the Premises, said entry to be without liability to Tenant except for any failure to exercise due care for Tenant's property and no entry to the Premises obtained by Landlord by any of said means, or otherwise, shall be construed to be a forcible or unlawful entry into, or a detainer of, the Premises, or an eviction of Tenant from the Premises or any portion thereof, provided, however, in the event that Tenant is unable to operate its business in the Premises for a period in excess of twenty four (24) hours (or longer) as a result of Landlord's entry hereunder, unless such entry is required as a result of the negligence or willful misconduct of Tenant, its employees, agents or contractors, or Tenant's failure to maintain or repair the Premises as required under this Lease, or otherwise as a result of a breach by Tenant of its obligations under this Lease (collectively, "Tenant Caused Entry"), then Minimum Rent shall abate from the second (2^{nd}) day until the date which Tenant can reasonably reopen for business. Landlord shall indemnify, defend and Tenant harmless from and against any and all claims, loss, liability or damages, including reasonable attorneys fees, resulting from Landlord's entry hereunder, provided such entry was not the result of a Tenant Caused Entry.

Landlord's Initials _____ Tenant's Initials _____

13. Taxes.

13.1 **Payment of Taxes.** Landlord shall pay the real property tax, as defined in Section 13.2, applicable to the Center subject to reimbursement by Tenant of Tenant's Share of such taxes in accordance with the provisions of Section 6.3. Tenant shall not be responsible for any taxes due (i) prior to the Rent Commencement Date or (ii) subsequent to the termination of this Lease and Tenant's surrender of possession of the Premises upon such termination. If any real property tax is permitted to be paid in a lump sum or in installments, then Tenant shall only be responsible for Tenant's Share of the installments which would be due during the Term of this Lease had Landlord elected to pay the same in installments.

13.2 **Definition of "Real Property Tax."** As used herein, the term "real property tax" shall include any form of real estate tax or assessment, general, special, ordinary or extraordinary, and any license fee, commercial rental tax, improvement bond or bonds, levy or tax (other than inheritance, personal income or estate taxes) imposed on the Center or any portion thereof by any authority having the direct or indirect power to tax, including any city, county, state or federal government, or any school, agricultural, sanitary, fire, street, drainage or other improvement district thereof, as against any legal or equitable interest of Landlord in the Center or in any portion thereof, as against Landlord's right to rent or other income therefrom, and as against Landlord's business of leasing the Center. The term "real property tax" shall also include any tax, fee, levy, assessment or charge (i) in substitution of, partially or totally, any tax, fee, levy, assessment or charge hereinabove included within the definition of "real property tax," or (ii) the nature of which was hereinbefore included within the definition of "real property tax," or (iii) which is imposed as a result of a transfer, either partial or total, of Landlord's interest in the Center or which is added to a tax or charge hereinbefore included within the definition of real property tax by reason of such transfer, or (iv) which is imposed by reason of this transaction, any modifications or charges hereto, or any transfers hereof. The term "real property tax" shall not include any increase in real estate taxes levied against the Center as a result of alterations, additions or improvements made to the premises of any tenant, the amount of any such increase being solely chargeable to such tenant, nor shall the term "real property tax" include any interest, penalties or fines imposed as a result of Landlord's failure to pay any real property tax on or prior to its due date.

13.3 **Joint Assessment.** If the Center is not separately assessed, Tenant's Share of the real property tax liability shall be an equitable proportion of the real property taxes for all of the land and improvements included within the tax parcel assessed, such proportion to be determined by Landlord from the respective valuations assigned in the assessor's work sheets or such other information as may be reasonably available. Landlord's reasonable determination thereof, in good faith, shall be conclusive.

13.4 **Personal Property Taxes.**

13.4.1 Tenant shall, prior to delinquency, pay all taxes assessed against and levied upon trade fixtures, furnishings, equipment and all other personal property of Tenant contained in the Premises or elsewhere. When possible, Tenant shall cause said trade fixtures, furnishings, equipment and all other personal property to be assessed and billed separately from Landlord's real property.

13.4.2 If any of Tenant's personal property shall be assessed with Landlord's real property, Tenant shall pay to Landlord the taxes attributable to Tenant within ten (10) business days after receipt of a written statement from Landlord setting forth the taxes attributable to Tenant's property.

14. Indemnity.

14.1 **Indemnity by Tenant.** Tenant shall indemnify, defend and hold Landlord, its shareholders, officers, directors, employees, property manager, contractors, equity member / partner, and lenders, harmless from and against any and all Claims arising from Tenant's use of the Premises or the conduct of its business or from any activity, work, or thing done, or permitted by Tenant in or about the Premises. For purposes of this Lease, the term "Claims" shall mean all liabilities, judgments, damages, losses, costs, fines, penalties, costs, expenses, attorneys' fees and claims. Tenant shall further indemnify, defend and hold Landlord harmless from and against any and all Claims arising from any breach or default in the performance of any obligation on Tenant's part to be performed under the terms of this Lease, or arising from any act or negligence of Tenant or any of its agents, employees, guests or invitees, and any action or proceeding brought against Landlord by reason of any such Claims. Such indemnification shall specifically apply to and include Claims that arise directly or indirectly in connection with the presence, suspected presence, release or suspected release (in each case as a result of the acts of Tenant or Tenant's agents, employees or contractors) of any Hazardous Materials in or into the air, soil, ground water, surface water or improvements at, on about, under or within the Premises.

14.2 Indemnity by Landlord. Landlord shall indemnify, defend and hold Tenant, its officials, officers, agents, contractors and employees harmless from and against any and all Claims arising from Landlord's conduct of its business or from any activity, work, or thing done by or on behalf of Landlord in or about the Center. Landlord shall further indemnify, defend and hold Tenant and its officials, officers, agents, contractors and employees harmless from and against any and all Claims arising from any breach or default in the performance of any obligation on Landlord's part to be performed under the terms of this Lease, or arising from any act or negligence of Landlord or any of its agents, contractors, property manager, or employees, and any action or proceeding brought against Tenant by reason of any such Claims. Such indemnification shall specifically apply to and include Claims that arise directly or indirectly in connection with the presence, suspected

Landlord's Initials _____ Tenant's Initials _____

presence, release or suspected release (except as a result a result of the acts of Tenant or Tenant's agents, employees or contractors) of any Hazardous Materials in or into the air, soil, ground water, surface water or improvements at, on, about, under or within the Common Areas, the Building, other buildings in the Center and the Center.

14.3 Exemption of Landlord From Liability. Except by reason of its active negligence or willful misconduct, and in all events subject to Section 15.7, Landlord shall not be liable for injury or damage which may be sustained by the person, goods, wares, merchandise or property of Tenant, its employees, invitees or customers, or any other person in or about the Premises, caused by or resulting from fire, steam, electricity, gas, water or rain, which may leak or flow from or into any part of the Premises, or from the breakage, leakage, obstruction or other defects of the pipes, sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures, whether the damage or injury results from conditions arising upon the Premises or upon other portions of the building of which the Premises are a part, or from any other source. Landlord shall not be liable for any damage arising from any act or neglect of any other lessee of the Center.

15. Insurance.

15.1 Public Liability and Property Damage Insurance-Tenant. Tenant shall, at Tenant's expense, obtain and keep in force during the Term a policy of Combined Single Limit Bodily Injury and Property Damage Insurance, insuring Tenant and Landlord against any liability arising out of the use, occupancy or maintenance of the Premises. Such insurance shall be in an initial amount of not less than Two Million and 00/100 Dollars ($2,000,000.00) per occurrence. The policy shall insure performance by Tenant of the indemnity provisions of Article 14. The limits of said insurance shall not limit the liability of Tenant hereunder, nor relieve Tenant of any obligation hereunder. Tenant shall, at Tenant's expense, maintain such other liability insurance, as Tenant deems necessary to protect Tenant. If Tenant sells alcoholic beverages for on site consumption, Tenant shall obtain liquor liability insurance, also known as Dram shop liability insurance, in the amount of One Million Dollars ($1,000,000.00) per occurrence.

15.2 Liability Insurance-Landlord. Subject to reimbursement by Tenant of Tenant's pro rata share of the premium per Section 6.3, Landlord shall obtain and keep in force, during the Term, a policy of Combined Single Limit Bodily Insurance and Property Damage Insurance, insuring Landlord, but not Tenant, against any liability arising out of the ownership, use, occupancy or maintenance of the Center, in an initial amount of Two Million and 00/100 Dollars ($2,000,000.00) per occurrence.

15.3 Property and Rental Value Insurance. Subject to reimbursement by Tenant of Tenant's pro rata share of the premium per Section 6.3, Landlord shall obtain and keep in force during the Term a policy or policies of insurance covering loss or damage to the buildings and improvements in the Center, but not Tenant's personal property, fixtures, equipment or tenant improvements, in an amount equal to the full replacement value of the buildings and improvements in the Center, as the same may exist from time to time, providing protection against all perils included within the classification of fire, extended coverage, vandalism, malicious mischief, flood (in the event same is required by a lender having a lien on the premises), special extended perils ("all risk," or "special form" as such terms are is used in the insurance industry), plate glass insurance and such other insurance, including earthquake insurance, if required by Lender, as Landlord deems advisable. In addition, Landlord shall obtain and keep in force, during the Term, a policy of rental value / interruption insurance covering a period of one year, with loss payable to Landlord, which insurance shall also cover all Operating Expenses for said period. If the Premises shall suffer an insured loss as defined in subsection 16.1.5 hereof, Tenant shall pay the deductible amounts under the casualty insurance policies relating to the Premises.

15.4 Other Insurance Required of Tenant. In addition to the public liability and property damage insurance required of Tenant pursuant to Section 15.1 above, Tenant shall also be required to maintain (i) worker's compensation insurance to the full extent required under California law, and (ii) insurance on all of Tenant's equipment, fixtures and furnishings as against all risks covered by a standard fire and extended coverage policy for one hundred percent (100%) of the insurable value thereof, including coverage for vandalism and malicious mischief and all other perils of direct physical loss or damage.

15.5 Payment of Premium Increase.

15.5.1 After the Term of this Lease has commenced, Tenant shall not be responsible for paying Tenant's Share of any increase in the property insurance premium for the Center specified by Landlord's insurance carrier as being caused by the use, acts or omissions of any other lessee of the Center, or by the nature of such other lessee's occupancy which creates an extraordinary or unusual risk.

15.5.2 Tenant, however, shall pay the entirety of any increase in the property insurance premium for the Center over what it was immediately prior to the commencement of the Term of this Lease if the increase is specified by Landlord's insurance carrier as being caused by the nature of Tenant's occupancy or any act or omission of Tenant.

15.6 Insurance Policies. Insurance required to be procured hereunder by Landlord and Tenant shall be in companies with a "General Policyholder's Rating" of at least "A" as set forth in the most current issue of "Best Insurance Guide," or such other rating as may be required by a lender having a lien on the Center and the amount of such insurance shall be subject to periodic increases based on inflation,

Landlord's Initials _____ Tenant's Initials _____

increased liability awards, recommendations of professional insurance advisors and other relevant factors. Landlord and Landlord's property manager and mortgagee shall be named as an additional insured in each such policy. Tenant shall not do or permit to be done anything, which shall invalidate the insurance policies carried by Landlord. Tenant shall deliver to Landlord copies of insurance policies required pursuant to this Article 15 or certificates evidencing the existence and amounts of such insurance within ten (10) days prior to the Term Commencement Date. No such policy shall be cancelable or subject to reduction of coverage or other modification except after twenty (20) days' prior written notice to Landlord. Tenant shall, at least thirty (30) days prior to the expiration of such policies, furnish Landlord with renewals or "binders" thereof.

15.7 Waiver of Subrogation. Tenant and Landlord, respectively, release each other from any and all liability or responsibility to the other for anyone claiming by, through or under it or them, by way of subrogation or otherwise, for any loss or damage to property of such party, whether or not covered by any insurance, even if such loss or damage shall have been caused by the fault or negligence of the other party or anyone for whom such party may be responsible. In addition, each party waives the subrogation rights of its property and liability insurers against such other party. Tenant and Landlord each agree to obtain (i) the aforementioned waivers from their respective property and liability insurers and (ii) any special endorsements required by their respective property and liability insurers to evidence compliance with the aforementioned waiver.

16. Damage or Destruction.

16.1 Definitions.

16.1.1 "Premises Partial Damage" shall mean damage or destruction to the Premises where the cost of repair is less than fifty percent (50%) of the then replacement cost of the Premises.

16.1.2 "Premises Total Destruction" shall mean damage or destruction to the Premises where the cost of repair is fifty percent (50%) or more of the then replacement cost of the Premises.

16.1.3 "Center or Building Partial Damage" shall mean damage or destruction to the Center or to the Building where the cost to repair is less than fifty percent (50%) of the then replacement cost of the Center.

16.1.4 "Center or Building Total Destruction" shall mean damage or destruction to the Center or to the Building where the cost to repair is fifty percent (50%) or more of the then replacement cost of the Center.

16.1.5 "Insured Loss" shall mean damage or destruction, which is caused by an event covered by the insurance described in Article 15. The fact that an Insured Loss has a deductible amount shall not make the loss an uninsured loss.

16.1.6 "Uninsured Loss" shall mean damage or destruction (i) for which the insurance proceeds available to repair or rebuild the damaged area are less than the Replacement Cost for same, or (ii) caused by an event not covered by the insurance described in Article 15.

16.1.7 "Replacement Cost" shall mean the amount of money necessary to be spent in order to repair or rebuild the damaged area to the condition that existed immediately prior to the damage occurring, excluding all improvements made by lessees.

16.2 Premises Partial Damage; Center Partial Damage

16.2.1 Insured Loss: Subject to the provisions of Sections 16.4 and 16.5, if at any time during the Term there is damage which is an Insured Loss and which falls into the classification of either Premises Partial Damage or Center or Building Partial Damage, and if the proceeds received by Landlord from said insurance are sufficient to pay for the necessary repairs, then Landlord shall, at Landlord's expense, repair such damage to the Premises, but not Tenant's fixtures, equipment or tenant improvements, as soon as reasonably possible and this Lease shall continue in full force and effect.

16.2.2 Uninsured Loss: Subject to the provisions of Sections 16.4 and 16.5, if at any time during the Term of this Lease there is damage which is an Uninsured Loss and which falls within the classification of Premises Partial Damage or Center or Building Partial damage, unless caused by a negligent or willful act of Tenant (in which event Tenant shall make the repairs at Tenant's expense), which damage prevents Tenant from using the Premises, Landlord may at Landlord's option either (i) repair such damage as soon as reasonably possible at Landlord's expense, in which event this Lease shall continue in full force and effect, or (ii) give written notice to Tenant within thirty (30) days after the date of the occurrence of such damage of Landlord's intention to cancel and terminate this Lease as of the date of the occurrence of such damage. In the event Landlord elects to give such notice of Landlord's intention to cancel the terminate this Lease, Tenant shall have the right within ten (10) days after the receipt of such notice to give written notice to Landlord of Tenant's intention to repair such damage at Tenant's expense, without reimbursement from Landlord, in which event this Lease shall continue in full force and effect, and Tenant shall proceed to make such repairs as soon as reasonably possible. If Tenant does not give such notice within such 10-day period this Lease shall be canceled and terminated as of the date of the occurrence of such damage.

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16.3 Premises Total Destruction; Center Total Destruction. Subject to the provisions of Sections 16.4 and 16.5, if at any time during the Term there is damage, whether or not it is an Insured Loss, and which falls into the classifications of either (i) Premises Total Destruction, or (ii) Center or Building Total Destruction, then Landlord may at Landlord's option either (i) repair such damage or destruction, but not Tenant's fixtures, equipment or Tenant improvements, as soon as reasonably possible at Landlord's expense, and this Lease shall continue in full force and effect, or (ii) give written notice to Tenant within sixty (60) days after the date of occurrence of such damage of Landlord's intention to cancel and terminate this Lease, in which case this Lease shall be canceled and terminated as of the date of the occurrence of such damage.

16.4 Damage Near End of Term. If at any time during the last six (6) months of the Term there is substantial damage, whether or not an Insured Loss, which falls within the classification of Premises Partial Damage or Center or Building Partial Damage, Landlord may at Landlord's option cancel and terminate this Lease as of the date of occurrence of such damage by giving written notice to Tenant of Landlord's election to do so within thirty (30) days after the date of occurrence of such damage.

16.5 Abatement of Rent; Tenant's Remedies.

16.5.1 If Landlord repairs or restores the Premises pursuant to the provisions of this Article 16, the rent payable hereunder for the period during which such damage, repair or restoration continues shall be abated in proportion to the degree to which Tenant's use of the Premises is impaired. Except for abatement of rent, if any, Tenant shall have no claim against Landlord for any damage suffered by reason of any such damage, destruction, repair or restoration. Tenant's right to rental abatement hereunder shall not impair or otherwise affect Landlord's right to collect rent abatement or rental value insurance.

16.5.2 If Landlord shall be obligated to repair or restore the Premises under the provisions of this Article 16 and shall not commence such repair or restoration within one hundred eighty (180) days after such obligation shall accrue, Tenant may at Tenant's option cancel and terminate this Lease by giving Landlord written notice of Tenant's election to do so at any time prior to the commencement of such repair or restoration. In such event this Lease shall terminate as of the date of such notice.

16.6 Termination-Advance Payment. Upon termination of this Lease pursuant to this Article 16, an equitable adjustment shall be made concerning advance rent and any advance payments made by Tenant to Landlord. Landlord shall, in addition, return to Tenant so much of Tenant's security deposit as has not theretofore been applied by Landlord.

16.7 Waiver. Landlord and Tenant waive the provisions of any statutes that relate to termination of Lease when leased property is destroyed and agree that such event shall be governed by the terms of this Lease.

17. Condemnation. If the Premises or any portion thereof or the Building or Center are taken under the power of eminent domain, or sold under the threat of the exercise of said power (all of which are herein called "condemnation"), this Lease shall terminate as to the part so taken as of the date the condemning authority takes title or possession, whichever first occurs. If more that twenty percent (20%) of (i) the floor area of the Premises, or (ii) more than twenty-five (25%) of that portion of the Common Areas designated as parking for the Center, or (iii) more than fifty percent (50%) of the Center is taken by condemnation, Tenant may, at Tenant's option, terminate this Lease as of the date the condemning authority takes possession of the Premises, such option to be exercised in writing within ten (10) days after the Landlord shall have given Tenant written notice of such taking (or in the absence of such notice, within ten (10) days after the condemning authority shall have taken possession). If Tenant does not terminate this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Premises remaining, except that the rent shall be reduced in the proportion that the floor area of the Premises taken bears to the total floor area of the Premises. No reduction of rent shall occur if the only area taken is that which does not have the Premises located thereon. Any award for the taking of all or any part of the Premises under the power of eminent domain or any payment made under threat of the exercise of such power shall be the property of Landlord, whether such award shall be made as compensation for diminution in value of the leasehold or for the taking of the fee, or as severance damages; provided, however, that Tenant shall be entitled to any award for loss or damage to Tenant's trade fixtures and removable personal property. In the event that this Lease is not terminated by reason of such condemnation, Landlord shall, to the extent of severance damages received by Landlord in connection with such condemnation, repair any damage to the Premises caused by such condemnation except to the extent that Tenant has been reimbursed therefor by the condemning authority. Tenant shall pay any amount in excess of such severance damages required to complete such repair.

18. Default; Remedies.

18.1 Default. The occurrence of any of the following shall constitute a default and breach of this Lease by Tenant:

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18.1.1 Any failure by Tenant to pay the rent or any other monetary sums required to be paid hereunder where such failure continues for five (5) days after Tenant's receipt of written notice by Landlord to Tenant);

18.1.2 Abandoning or vacating the Premises by Tenant;

18.1.3 A failure by Tenant to observe or perform any other provision of this Lease to be observed or performed by Tenant, where such failure continues for thirty (30) days after written notice thereof by Landlord to Tenant; provided, however, that if the nature of the default is such that the same cannot reasonably be cured within such thirty (30) day period, Tenant shall not be deemed to be in default if Tenant shall, within such period, commence to cure and thereafter diligently prosecute the same to completion;

18.1.4 The making by Tenant of any general assignment or general arrangement for the benefit of creditors; the filing by or against Tenant of a petition to have Tenant adjudged a bankrupt or of a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Tenant, the same is dismissed within sixty (60) days); the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where possession is not restored to Tenant within thirty (30) days; or the attachment, execution or other judicial seizure of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where such seizure is not discharged within thirty (30) days.

18.2 Remedies. In the event of any such default by Tenant, Landlord may at any time thereafter:

18.2.1 Maintain this lease in full force and effect and recover the rent and other monetary charges as they become due, without terminating Tenant's right to possession, irrespective of whether Tenant shall have abandoned the Premises. In the event Landlord elects not to terminate this Lease, Landlord shall have the right to attempt to re-let the Premises at such rent and upon such conditions and for such a term, and to do all acts necessary to maintain or preserve the Premises, as Landlord deems reasonable and necessary, without being deemed to have elected to terminate this Lease, including removal of all persons and property from the Premises; such property may be removed and stored in a public warehouse or elsewhere at the cost of and for the account of Tenant. In the event any such reletting occurs, this Lease shall terminate automatically upon the new tenant taking possession of the Premises. Notwithstanding that Landlord fails to elect to terminate this Lease initially, Landlord, at any time during the Term, may elect to terminate this Lease by virtue of such previous default of Tenant.

18.2.2 Terminate Tenant's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Tenant shall immediately surrender possession of the Premises to Landlord. This Lease shall not be deemed to have been terminated by efforts of Landlord to relet the Premises, by its acts of maintenance or preservation with respect to the Premises, or by appointment of a receiver to protect Landlord's interests hereunder. No action taken by Landlord pursuant to the provisions of this Section 18.2.2 shall be construed as an election to terminate this Lease nor shall it cause a forfeiture of rent remaining to be paid during the balance of the Term, unless a written notice expressly terminating the Lease and releasing Tenant from any further obligations of Tenant under this Lease has been delivered to Tenant by Landlord.

18.2.3 With or without terminating this Lease, re-enter the Premises and remove all persons and property from the Premises. Such property may be removed and stored in a public warehouse or elsewhere at the cost and risk of and for the account of Tenant, and Landlord shall have the right to sell such property and apply the proceeds therefrom pursuant to applicable law. In the event that Landlord shall elect to relet, then all rent received by Landlord from such reletting shall be applied: first, to the payment of any indebtedness (other than rent) due hereunder from Tenant to Landlord; second, to the payment of any cost of such reletting (including brokerage commissions); third, to the payment of the cost of any alterations and repairs to the Premises; fourth, to the payment of rent due and unpaid hereunder; and the residue, if any, shall be held by Landlord and applied in payment of future rent as the same may become due and payable hereunder. Should reletting, during any month to which such rent is applied, result in the actual payment of rent at less than the rent payable during that month by Tenant hereunder, then Tenant shall pay such deficiency to Landlord immediately upon demand therefor by Landlord. Such deficiency shall be calculated and paid monthly. Tenant shall also pay to Landlord as soon as ascertained, any costs and expenses incurred by Landlord in such reletting or in making such alterations and repairs not covered by the rentals received from such reletting.

18.2.4 Landlord, at any time after Tenant commits a default, may cure the default at Tenant's cost. If Landlord at any time, by reason of Tenant's default, pays any sum or does any act that requires the payment of any sum, the sum paid by Landlord shall be due immediately from Tenant to Landlord at the time the sum is paid, and if Tenant pays Landlord at a later date, said sum shall bear interest at the Interest Rate from the date the said sum is paid by Landlord until Landlord is reimbursed by Tenant. The sum, together with interest on it, shall constitute Additional Rent.

18.2.5 Pursue any other right or remedy at law or in equity which Landlord may have by reason of such default; provided, however, that there shall be no right under any circumstances to accelerate the Minimum Rent, Additional Rent or any other amounts payable by Tenant under this Lease.

18.2.6 No delay or omission in the exercise of any right or remedy of Landlord on any default by Tenant shall impair such a right or remedy or be construed as a waiver. The receipt and acceptance by Landlord of delinquent rent shall not constitute a waiver of any other

Landlord's Initials _____ Tenant's Initials _____

default; it shall constitute only a waiver of timely payment for the particular rent payment involved. No act or conduct of Landlord, including, without limitation, the acceptance of the keys to the Premises, shall constitute an acceptance of the surrender of the Premises by Tenant before the expiration of the term. Only a notice from Landlord to Tenant shall constitute acceptance of the surrender of the Premises and accomplish a termination of the Lease. Landlord's consent to or approval of any act by Tenant requiring Landlord's consent or approval shall not be deemed to waive or render unnecessary Landlord's consent to, or approval of, any subsequent act by Tenant. Any waiver by Landlord 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 the Lease.

18.3 Default by Landlord. Landlord shall not be in default unless Landlord fails to perform the obligations required of Landlord within a reasonable time, but in no event sooner than thirty (30) days after written notice by Tenant to Landlord and to the holder of any first mortgage or deed of trust covering the Premises whose name and address shall have theretofore been furnished to Tenant in writing, specifying wherein Landlord has failed to perform such obligation; provided, however, that if the nature of Landlord's obligation is such that more than thirty (30) days are required for performance, then Landlord shall not be in default if Landlord commences performance within such thirty (30)-day period and thereafter diligently prosecutes the same to completion. If Landlord is in default of this Lease, and as a consequence, Tenant recovers a money judgment against Landlord, said judgment shall be satisfied only out of the proceeds of sale received in execution of the judgment and levied against the right, title and interest of Landlord in the Center and out of rent or other income from the Center and the buildings therein receivable by Landlord, or out of the consideration received by Landlord from the sale or other disposition of all or any part of Landlord's right, title and interest in the Building. Neither Landlord, nor any partners comprising the partnership designated as Landlord, shall be personally liable for any deficiency.

19. Subordination; Attornment; Quiet Enjoyment.

19.1 Subordination. This Lease, at Landlord's option shall be subordinate to all ground or underlying leases which now exist or may hereafter be executed, affecting the Premises or the land upon which the Premises are situated or both, and to the lien of any mortgages or deeds of trust in any amount or amounts whatsoever now or hereafter placed on or against the land or improvements or either thereof, of which the Premises are a part, or on or against Landlord's interest or estate therein, or on or against any ground or underlying leases. Within thirty (30) days after written request from Landlord, Tenant agrees to execute any further instruments which may be reasonably requested or reasonably required to evidence such subordination; provided that Landlord's lender agrees to execute a customary attornment, subordination and nondisturbance agreement recognizing Tenant's interest and rights under this Lease. If any mortgagee, trustee or ground lessor shall elect to have this Lease prior to the lien of its mortgage, deed of trust or ground lease, and shall give written notice thereof to Tenant, this Lease shall be deemed prior to such mortgage, deed of trust or ground lease, whether this Lease is dated prior or subsequent to the date of said mortgage, deed of trust or ground lease or the date of the recording thereof.

19.2 Attornment. In the event any proceedings are brought for default under any ground or underlying lease or in the event of foreclosure or the exercise of the power of sale under any mortgage or deed of trust covering the Premises, Tenant shall attorn to the purchaser upon any such foreclosure or sale and recognize such purchaser as the Landlord under this Lease, provided said purchaser expressly agrees in writing to be bound by the terms of this Lease.

19.3 Quiet Enjoyment. Upon paying the rent reserved herein and observing and performing all of the provisions on Tenant's part to be observed and performed hereunder, including compliance with any covenants, conditions and restrictions affecting the Premises or the Center, Tenant shall have quiet possession of the Premises during the entire term of this Lease, subject to all provisions hereof and any such covenants, conditions and restrictions, and to the terms of any ground or underlying lease, mortgage or deed of trust.

20. Holding Over. If Tenant remains in possession of the Premises or any part thereof after the expiration of the current Term without the express consent of Landlord, such occupancy shall not be deemed to extend the Term of or renew this Lease, but such occupancy shall be deemed a tenancy from month to month upon all the terms hereof, except that the Minimum Rent beginning with the first month of any such holdover period shall be increased to a rate which is one hundred twenty five percent (125%) of the Minimum Rent in effect at the end of the Term.

21. Signs, Advertising.

21.1 Signs. Tenant shall not have the right to place, construct, or maintain any signs, advertisements, names, insignia, trademarks, descriptive materials, or any other similar item outside or upon or within the windows of the Premises without Landlord's prior written consent. Landlord acknowledges, however, that Tenant's Permitted Use may require the placement of signage outside the Premises identifying the Premises as Tenant's city hall, identifying the location of city departments and giving notice of public meetings, events and the like, and Landlord agrees that, to the extent Tenant is so required, Tenant shall be permitted to place such signage subject to Landlord's reasonable requirements respecting the location, size and appearance of the same. Landlord, at Tenant's expense, may remove any item placed, constructed, or maintained that does not comply with the provisions of this Section.

21.2 Tenant's Use of Name of Center. Tenant may use the name of the Center or the Building in Tenant's meeting and other public notices and literature in connection with Tenant's business at the Premises and for no other purpose, except with Landlord's consent. Tenant shall not have or acquire any property right or interest in the name of the Center. Landlord reserves the right to change the name,

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title, or address of the Building or the Center, or the address of the Premises at any time on not less than thirty (30) days prior written notice and Tenant waives all claims for damages caused by any such change.

21.3 Compliance with Laws. Any sign that Tenant has the right to place, construct and maintain shall comply with all laws, covenants, conditions and restrictions applicable to the Center and the Building, and Tenant shall obtain any approvals and/or permits required by any such laws. Landlord makes no representation with respect to Tenant's ability to obtain such approvals and/or permits.

21.4 Landlord's Sign Rights. Landlord shall have the right to use for its signs, the exterior walls and roof of the buildings and other improvements in the Center.

21.5 Restrictions on Tenant Advertising. Tenant shall not, without Landlord's consent, place, construct, or maintain on the Premises or on any part of the Building or in the Center any advertising medium which may be heard or seen outside the Premises, including, but not limited to flashing lights, searchlights, loudspeakers, phonographs, radio broadcasts, balloon and/or dirigibles. Tenant shall not, without Landlord's consent, solicit business in, on, or about the Common Areas, or distribute handbills or other advertising or promotional media in, or about the Common Areas, except that Tenant shall be entitled to engage in radio, television, newspaper and other advertising as is customarily used for the type of business in which Tenant is engaged.

22. General Provisions.

22.1 Rules and Regulations. Tenant shall faithfully observe and comply with the rules and regulations as set forth in **Exhibit "D"** attached hereto and made a part hereof, that Landlord shall from time to time promulgate and/or modify. Landlord shall not be responsible to Tenant for the nonperformance of any of said rules and regulations by any other lessees or occupants.

22.2 Estoppel Certificate. Tenant shall, at any time and from time to time, within fifteen (15) business days after a written request therefor from Landlord, execute, acknowledge and deliver to Landlord a statement in writing (i) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease as so modified is in full force and effect), and the date to which the rental and other charges are paid in advance, if any, (ii) acknowledging that there are not, to Tenant's knowledge, any uncured defaults on the part of Landlord hereunder, or specifying such defaults if any are claimed, and (iii) setting forth the date of commencement of rents and any other charges hereunder and expiration of the term hereof, in a form attached hereto as **Exhibit "E."** Any prospective purchaser or encumbrancer of all or any portion of the real property of which the Premises are a part may rely upon any such statement.

22.3 Transfer of Landlord's Interest. In the event of a sale or conveyance by Landlord of Landlord's interest in the Premises or the Building and/or the Center, or any part thereof, other than a transfer for security purposes only, Landlord shall be relieved of all obligations and liabilities accruing thereafter on the part of Landlord provided that any funds in the hands of Landlord at the time of transfer in which Tenant has an interest shall be delivered to Landlord's successor. The obligations contained in this Lease to be performed by Landlord shall be binding on Landlord's successors and assigns only during their respective periods of ownership.

22.4 Captions; Attachments; Defined Terms.

22.4.1 The captions of the Articles and Sections of this Lease are for convenience only and shall not be deemed to be relevant in resolving any question of interpretation or construction of any provision of this Lease.

22.4.2 Exhibits and addenda attached or affixed hereto are deemed a part of this Lease and are incorporated herein by reference.

22.4.3 If there be more than one Tenant, the obligations hereunder imposed shall be joint and several; as to a Tenant which consists of husband and wife, the obligations shall extend individually to each's sole and separate property as well as community property. The term "Landlord" shall mean only the owner or owners at the time in question of the fee title, or a tenant's interest in a ground lease, of the Premises or the Building.

22.5 Entire Agreement. This Lease constitutes the entire agreement between Landlord and Tenant relative to the Premises and supersedes any prior agreements, brochures or representations, whether written or oral. This Lease may be altered, amended or revoked only by an instrument in writing signed by both Landlord and Tenant. This lease shall not be effective or binding on any party until fully executed by both parties hereto.

Landlord's Initials _____ Tenant's Initials _____

22.6 Severability. If any provision of this Lease shall be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Lease shall not be affected thereby, and each term and provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

22.7 Attorneys' Fees. If Tenant or Landlord shall bring any action for any relief against the other, declaratory or otherwise, arising out of this Lease, including any suit by Landlord for the recovery of rent or possession of the Premises, the prevailing party shall be entitled to recover from the losing party its reasonable expenses, including attorneys' fees and costs incurred in connection with the action, or in the enforcement or collection of any judgment or award rendered therein. The "prevailing party" means the party determined by the trier of fact to have most nearly prevailed, and not necessarily the party in whose favor a judgment is rendered. In the event of any default by a party under this Lease, such defaulting party shall pay all expenses and attorneys' fees incurred by the other party in connection with such default, regardless of whether any litigation is commenced.

22.8 Time of the Essence. Time is of the essence of this Lease and each and each and every provision hereof, except as to the conditions relating to the delivery of possession of the Premises to Tenant.

22.9 Choice of Law. This Lease shall be governed by the laws of the state where the Center is situated.

22.10 No Waiver. No covenant, term or condition or the breach thereof shall be deemed waived, except by written consent of the party against whom the waiver is claimed, and any waiver of the breach of any one covenant, term or condition shall not be deemed to be a waiver of any subsequent breach of the same or any other covenant, term or condition. Acceptance by Landlord of any performance by Tenant, including Landlord's acceptance of Tenant's payment of rent or any other charge due under this Lease, after the time the same shall have become due shall not constitute a waiver by Landlord of the breach or default of any covenant, term or condition unless otherwise expressly agreed to by Landlord in writing and Landlord may accept partial payments of rent after a default by Tenant hereunder and Landlord shall not, thereafter, be precluded from instituting an action and/or proceeding to judgment based on said default.

22.11 Surrender of Premises. The voluntary or other surrender of this Lease by Tenant, or a mutual cancellation thereof, shall not work as a merger, but shall, at the option of Landlord, terminate all or any existing subleases or may at the option of Landlord operate as an assignment to it of any or all such subleases.

22.12 Inability to Perform. If either party hereto shall be delayed or prevented from the performance of any act required hereunder by reason of a strike, labor trouble, acts of God or any other cause beyond the reasonable control of such party (financial inability excepted), and such party is otherwise without fault, then performance of such act shall be excused for the period of the delay, provided that the foregoing shall not excuse Tenant from the prompt payment of any rental or other charge required of Tenant hereunder unless otherwise specifically so stated in this Lease.

22.13 Reasonable Consent. Except as otherwise expressly provided in this Lease, whenever in this Lease Landlord or Tenant is required to give its consent or approval to any action on the part of the other, such consent or approval shall not be unreasonably withheld.

22.14 Notices. All notices or demands of any kind required, or permitted, to be sent to those listed in Section 1.13 of the Fundamental Lease Provisions, shall be sent by certified mail, return receipt requested, postage prepaid, or by Federal Express or other reputable overnight courier service and shall be deemed to have been delivered on the date the same is (i) postmarked, if sent by certified mail, or (ii) deposited, if sent by Federal Express or such other reputable overnight courier service, but shall not be deemed received until (a) one business day following deposit with Federal Express or such other reputable overnight courier service, or (b) three (3) business days following deposit in the United States Mail if sent by certified mail to the address of Landlord or Tenant respectively at the addresses set forth below or such other address as the parties may hereinafter designate by giving thirty (30) days advance written notice to the other party.

22.15 Corporate Authority. If Tenant is a corporation, each individual executing this Lease on behalf of said corporation represents and warrants that said individual is duly authorized to execute and deliver this Lease on behalf of said corporation in accordance with the bylaws of said corporation, and that this Lease is binding upon said corporation in accordance with its terms. If Tenant is a married individual, both the individual and the individual's spouse must execute the Lease.

22.16 Recordation. Neither Landlord nor Tenant shall record this Lease. If Landlord so elects, it may record a memorandum hereof, in which case Tenant agrees to execute and deliver to Landlord a notarized copy of such memorandum.

22.17 Brokers. Tenant warrants that it has had no dealings with any real estate broker or agents in connection with the negotiation of this Lease excepting the Brokers set forth in Section 1.18 and it knows no other real estate broker or agent who is entitled to a commission in connection with this Lease, and covenants and agrees to indemnify and save Landlord harmless from any and all loss, cost and liability (including attorney's fees and costs) that may arise from a breach of the warranty.

22.18 Guarantor. If there is a guarantor of this Lease, said guarantor shall have the same obligations as Tenant under this Lease.

22.19 No Offer. Preparation of this Lease by Landlord and/or Landlord's agent and submission of same to Tenant shall not be deemed an offer to lease. This Lease shall become a binding agreement only when fully executed by Landlord and Tenant.

Landlord's Initials _____ Tenant's Initials _____

22.20 Successors and Assigns. Subject to the restrictions against assignment as herein contained, this Lease shall inure to the benefit of, and be binding upon, the assigns, successors in interest, personal representatives, estate, heirs, and legatees of each of the parties hereto.

22.21 Compliance with Recorded Covenants, Conditions and Restrictions. This Lease shall be subject and subordinate to, and Landlord reserves the right to record, covenants, conditions and restrictions governing the use, ownership and occupancy of the Project. Tenant agrees, as a material part of this Lease, to comply with the provisions of any such recorded covenants, conditions or restrictions, and the failure to so comply shall be deemed a breach of this Lease; provided however, no modifications to such provisions made by Landlord subsequent to the Term Commencement Date shall materially increase the Tenant's obligations or decrease rights under this Lease.

22.22 Landlord's Right to Relocate Premises. N/A

22.23 No Discrimination. Tenant covenants by and for itself, its successors and assigns, and all persons claiming under or through them and this Lease is made and accepted upon and subject to the following conditions:

That there shall be no discrimination against, or segregation, of any person or group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Premises, nor shall Tenant itself, or any person claiming under or through it, establish or permit such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Premises.

22.24 Addendum. Attached hereto is an addendum or addenda containing Articles 24 through 30, which constitute a part of this Lease.

[SIGNATURES FOLLOW ON NEXT PAGE]

Landlord's Initials

Tenant's Initials

Landlord:

Naples Plaza, Ltd., L.P., a California Limited Partnership

By: Naples-Clark, LLC
Its: General Partner

By: _____
Craig W. Clark, Sole Member

Date:_____

Tenant:

The City of Wildomar, a California municipal corporation

By:_____
John Danielson
Its: City Manager

Date:_____

Attest:

_____

Its: City Clerk

Approved as to Form:

_____

Its: City Attorney

_____
Landlord's Initials

_____
Tenant's Initials

ADDENDUM TO THE LEASE BY & BETWEEN

Naples Plaza, Ltd., L.P., a California limited partnership
Landlord

and

The City of Wildomar, a California municipal corporation
Tenant

Article 24. Temporary Suite:

The Landlord shall provide Tenant with temporary office space in Suite 111 of the Building ("Suite 111") until, except as provided below, the earlier of (i) completion of the build-out of Tenant's Premises as provided in this Lease or (ii) January 1, 2009. The Landlord shall paint and carpet Suite 111 no later than June 27, 2008. Tenant shall be allowed early access to Suite 111 to install data lines and phone equipment provided said installation does not adversely impact Landlord's timely delivery of Suite 111. Tenant shall not be obligated to pay any rent or Operating Expenses for its use of Suite 111, but Tenant shall be responsible for establishing service with Southern California Edison and Verizon and the payment of their utility usage expenses; provided, that, if the build-out of Tenant's Premises is not so completed by January 1, 2009, then Tenant shall be permitted to continue to occupy Suite 111 until the Delivery Date (as such term is defined in Section 5.1 of the Lease). Excepting the aforementioned modifications, Suite 111 will be delivered in its "as is" condition. Tenant acknowledges that, as of the Effective Date, Tenant is in possession of Suite 111 and Landlord has completed the work in Suite 111 required under this paragraph.

Until such time as Suite 110 of the Building ("Suite 110") is leased, Tenant shall have use of Suite 110 for City Council Meetings and Planning Meetings following Landlord's completion of the painting and carpeting. At such time that Suite 110 is leased, Tenant shall have use of any then vacant, demised and improved area in the Building to conduct the aforementioned meetings until that space is leased. Suite 110 and any other such vacant, demised and improved area being referred to as the "Temporary Meeting Suite". Tenant shall not be obligated to pay any rent or Operating Expenses for its use of Suite 110, but Tenant will be responsible for establishing service with Southern California Edison and the payment of their utility usage expenses.

Tenant shall be solely responsible for the cost of all utilities used at all times Tenant is in occupancy of Suite 111, Suite 110 and the Temporary Meeting Suite. Tenant shall accept Suite 111, Suite 110 and the Temporary Meeting Suite, as applicable, in its then-existing "as is" condition, except as otherwise expressly set forth herein, and Landlord shall have no responsibility to perform, or pay for, any work whatsoever therein. Any alterations by Tenant shall be at Tenant's sole cost and expense, and shall be subject to Landlord's prior written approval. Tenant's use and occupancy of Suite 111, Suite 110 and the Temporary Meeting Suite shall be subject to all the terms and conditions of the Lease, including the insurance and indemnification provisions, but not including the payment of rent.

Article 25. Building Access:

Notwithstanding Article 2.5, Tenant shall access to the Building 24 hours per day, 7 days per week through the key card entry system. Landlord shall issue key cards to Tenant and Tenant will provide the Landlord with a log of the recipients. Tenant will take full financial responsibility for the replacement of any lost key cards.

In the case of an "after hours" special event in the Tenant's suite, Landlord shall program the entry system to provide access, provided Tenant notifies the Landlord no less than 24 hours in advance. Access to the Temporary Meeting Suite will be through the storefront door.

Article 26. Electrical Service / Janitorial Service

Tenant, at Tenant's sole cost and expense, shall be responsible for the Premises janitorial and separately metered utilities.

Article 27. Limited Warranty

Landlord's Initials

Tenant's Initials

Landlord, at Landlord's sole cost and expense, shall warranty the Premises for the initial twelve (12) of the Lease Term unless damage is caused by the Tenant.

Article 28. First Right of Refusal to Expand

Provided Tenant is not in default at the time, Tenant shall have the First Right of Refusal to lease available space ("expansion space") within the Building during the Lease Term. When Landlord has finalized a letter of intent indicating the basic terms and conditions by which Landlord and a third party tenant are prepared to enter into a lease of the expansion space, Tenant shall have first and prior right to enter into a lease for such space on the terms and conditions accepted by Landlord. If Tenant fails to accept the offer in a written notice delivered to Landlord within thirty (30) days of Tenant being notified of the same, then effective on the expiration of said 30-day period the First Right of Refusal as to the subject space shall thereafter be null and void and of no further force or effect.

Article 29. Signage

Without limiting the provisions of Article 21, Tenant shall have the following signage rights.

Exterior Signage: Tenant shall have the opportunity to place illuminated signage on the exterior of the Building above their Suite subject to a City assisted revision to the Landlord's sign criteria.

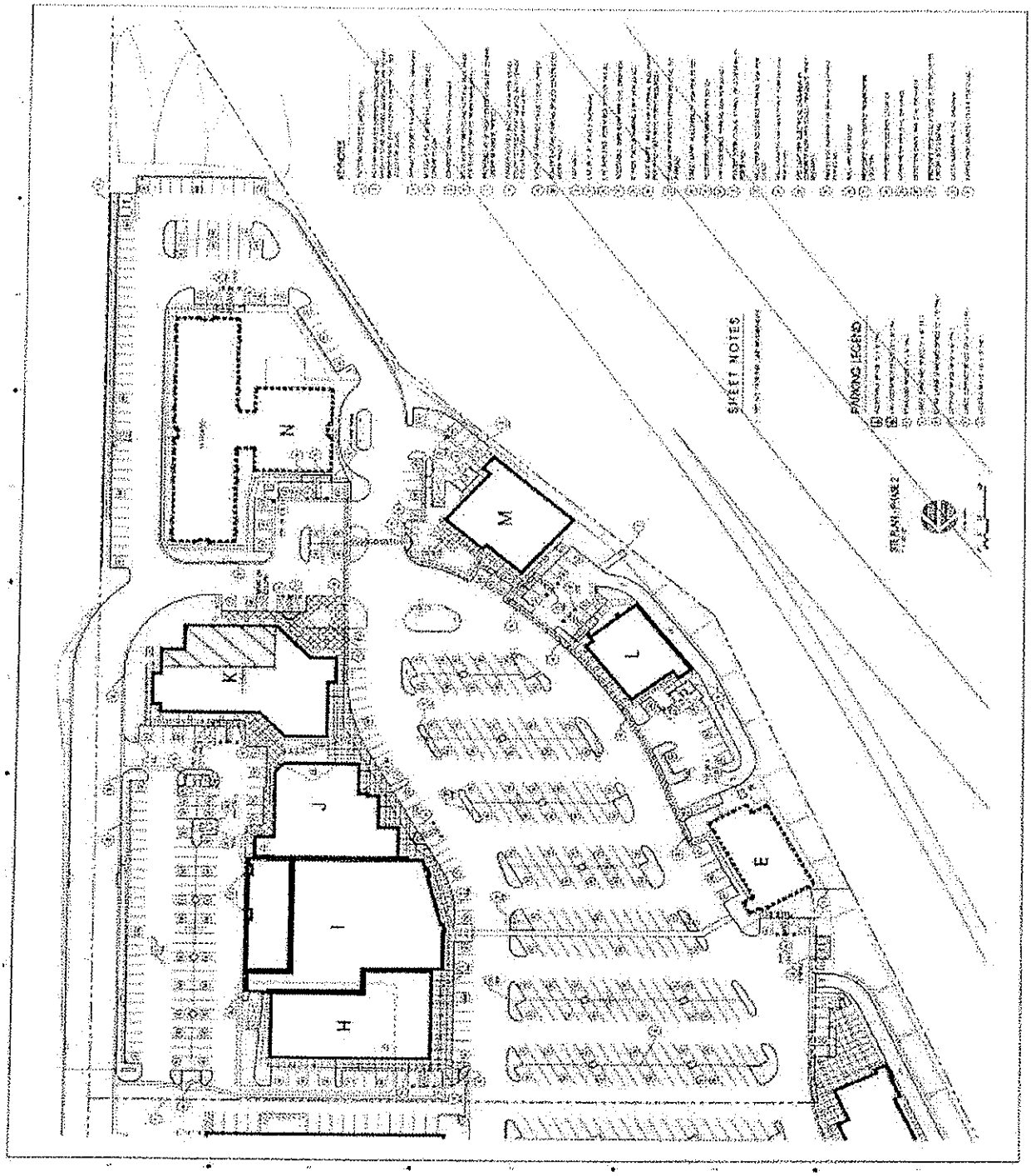
Interior Signage: Tenant shall be provided with an area on the Building directory and an area at the Premises entrance pursuant to Landlord's sign criteria for Tenant's identity signage. Landlord shall be responsible for the cost of said signage.

Article 30. Prevailing Wages

Landlord and Tenant acknowledge that the construction of the Tenant Improvements is a "public work" within the meaning of Labor Code Section 1720 and that Labor Code Section 1771 applies to and must be complied with respecting the Tenant Improvement Work.

Landlord's Initials _____ Tenant's Initials _____

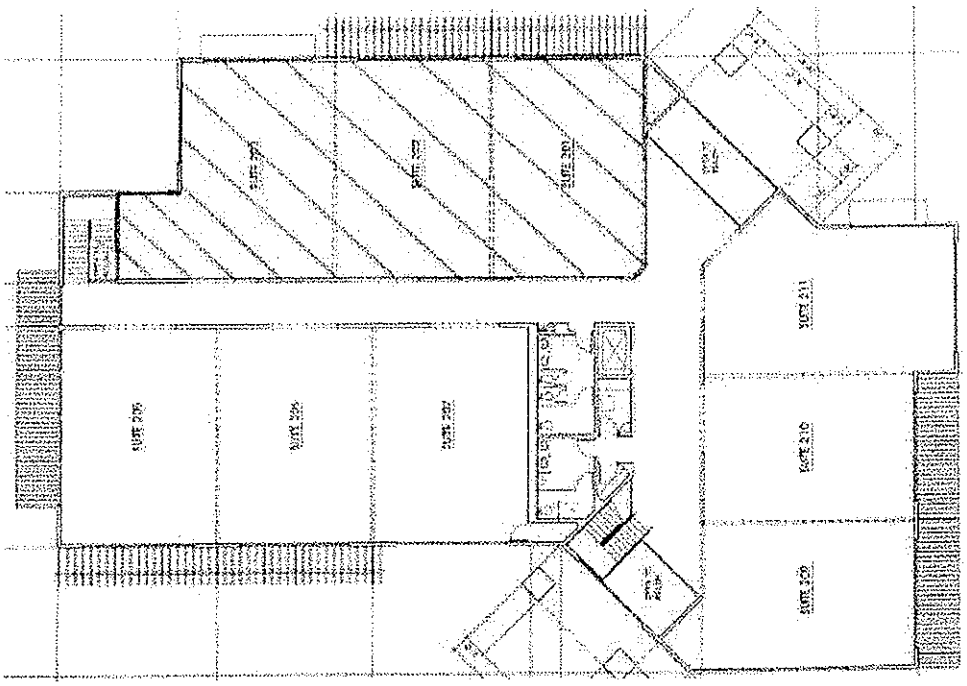
EXHIBIT "A"
SITE PLAN



Landlord's Initials

Tenant's Initials

EXHIBIT "A-1"
BUILDING and PREMISES PLAN



Landlord's Initials

Tenant's Initials

EXHIBIT "B-1"
LANDLORD'S WORK
Standard Office Space

CONSTRUCTION OF BUILDING SHELL.

Landlord has constructed the Building shell pursuant to the specifications set forth in this Section 1 ("Landlord's Shell Construction"). Except for the Landlord's Shell Construction as set forth herein, Landlord shall not be obligated to make or pay for any alterations or improvements to the Premises.

1. Common Area Corridors complete with wall, floor and ceiling finishes (multi-tenant floors only).

2. Common Area Lighting connected to a time clock.

3. After-hours access control at first floor main lobby entry doors.

4. Elevators as required by code.

5. Exterior wall construction including exterior finish, glass, framing system, insulation and drywall.

6. Corridor and core partitions with tenant-side taped and sanded drywall.

7. Suite Entry Door: 1 ea. building standard pre-finished wood door with building standard hardware lockset, and any code-required door closer; three keys, keyed separately to the suite and master keyed; metal door frames rated as required per code, factory finished.

8. Exposed structure above.

9. Smooth finish, unsealed concrete floor.

10. Access to common area electrical / telephone closets.

11. Provisions for cold water and sewer service stubbed to the suite.

12. Electrical service at 120/208V, three phase, 4 wire with a meter section located in building electrical room, and one empty electrical conduit with pullstring and one empty data/telephone conduit with pullstring stubbed to Tenant's suite. The maximum allotment of building electrical capacity for Tenant shall not exceed 32.4 watts per square foot of usable area or 90A per 1,000 square foot of usable area. (Landlord shall bear the expense of opening/closing the interior side of the hallway walls for the purpose of enabling conduit to access the suite ceiling.)

13. HVAC system per Landlord's design and Title 24 energy conservation requirements; standard capacity is one ton of air conditioning for three hundred square feet.

14. Gas is available stubbed to the building.

15. Fire Sprinklers: Main feed and distribution loop with up-heads.

16. Landlord has provided one men's and one women's handicap accessible toilet room on each floor of the Office Building.

17. Common use trash enclosures will be provided per Landlord's design.

Landlord's Initials _____ Tenant's Initials _____

EXHIBIT "B-2"

Tenant Work Letter
Tenant Improvements

This Work Letter ("Work Letter") dated _____, 2008, is made by and between Naples Plaza Ltd., L. P., a California limited partnership ("Landlord"), and The City of Wildomar, a California municipal corporation ("Tenant"), and is attached to and part of the Standard Office Lease for the Oak Creek II Shopping Center ("the Center") of the same date by and between such parties ("Lease").

The following attachments hereto are made a part of this Work Letter and the Lease:

"1"	--	Project Schedule
"2"	--	Preliminary Space Plan
"3"	--	Building Standard Improvements

ARTICLE 1 DEFINITIONS

Capitalized terms not otherwise defined in the Lease shall have the meaning set forth below. Except as defined in this Work Letter to the contrary, all terms utilized in this Work Letter shall have the same meaning ascribed to them in the Lease. When consents or approvals are to be provided by or on behalf of either party, the term "Landlord" or "Tenant", as the case may be, shall include Landlord's Representative and Tenant's Representative, as the case may be. The provisions of the Lease, except where clearly inconsistent or inapplicable to this Work Letter, are incorporated into this Work Letter.

1.1 **"BUILDING."** The building within which the Premises are located, also known as Oak Creek II Shopping Center, Building "K", Wildomar, California.

1.2 **"BUILDING SHELL."** The Building as it presently exists.

1.3 **"CONSTRUCTION PANEL."** A 4-person panel consisting of Landlord's Representative, Tenant's Representative, the Interior Designer, and the Tenant Improvement Contractor.

1.4 **"FORCE-MAJEURE DELAY."** Any delay (other than delay which a party should have reasonably foreseen and provided against) which is attributable to any: (i) actual delay or failure to perform attributable to any strike, lockout or other labor or industrial disturbance (whether or not on the part of the employees of either party hereto or their contractors or other representatives), civil disturbance, future order of any governmental entity claiming jurisdiction, act of a public enemy, war, riot, sabotage, terrorism, blockade, embargo, inability to secure customary materials, supplies or labor through ordinary sources by reason of regulation or order of any government or regulatory body; (ii) delay attributable to the failure to secure permits and approvals within the time periods set forth in the Project Schedule due to action or inaction of the Governing Agencies; (iii) delay in completing plans and specifications because of changes in any laws (including, without limitation, the Americans with Disabilities Act of 1990, Pub. L. 101-336 [the "ADA"]) or building requirements, or the interpretation thereof; or (iv) delay attributable to lightning, earthquake, fire, rain, storm, hurricane, tornado, flood, washout, explosion, or any other cause beyond the reasonable control of the party from whom performance is required, or any of its contractors or other representatives. A Force-Majeure Delay shall not include a delay due to financial inability of a party.

1.5 **"GOVERNING AGENCIES."** The City of Wildomar and/or The County of Riverside, and any other governmental agencies and entities involved in the permit and approval process for Landlord's Plans or the Tenant Improvement Construction Plans.

1.6 **"INTERIOR DESIGNER."** Moises Villegas at Creative Heights Designs located at 41880 Kalima Street, Suite 155, Murrieta, CA 92562, (951) 461-7906, the designer retained by Landlord for the design of the Project. The Interior Designer may be replaced by Landlord with a different Interior Designer

Landlord's Initials _____ Tenant's Initials _____

at any time for the Tenant Improvement Work, subject to Tenant's reasonable approval (such approval not to be unreasonably withheld, conditioned or delayed).

1.7 **"LAND IMPROVEMENTS."** The parking areas, landscaping, drainage and irrigation systems, gutters, sidewalks, arcades, lighting, walkways, courtyards, driveways and other improvements (excluding the Building) to the land described in Exhibit "A" – Site Plan of the Lease.

1.8 **"LANDLORD-CAUSED DELAY."** Any delay, unless attributable to a condition or event described as a Force-Majeure Delay or Tenant-Caused Delay, (i) caused by the failure of Landlord or the Interior Designer to act within the time limits set forth in the Project Schedule and this Work Letter, and (ii) any other delay defined as a Landlord-Caused Delay in this Work Letter.

1.9 **"LANDLORD'S CHANGE."** (i) Any change requested by Landlord to Landlord's Plans and Landlord's Work; (ii) any change requested by Landlord to the Tenant Improvement Plans and/or the Tenant Improvement Work after Landlord's approval of the Tenant Improvement Plans; (iii) any change requested by Landlord in construction of Landlord's Work and/or the Tenant Improvements, other than changes required by the Governing Agencies or due to the error or omission of Tenant or any party working for or on behalf of Tenant.

1.10 **"LANDLORD'S PLANS."** The final calculations, designs, drawings and specifications for Landlord's Work prepared by the Interior Designer and Landlord's engineers and other consultants, as approved by the Governing Agencies.

1.11 **"LANDLORD'S REPRESENTATIVE."** Laura Rottman at C.W. Clark, Inc., 4180 La Jolla Village Drive, Suite 405, La Jolla, California 92037, (858) 875-5157, or such other person acting as the single point of contact representing the Landlord as is designated from time to time in writing by Landlord with notice to Tenant and the Tenant Improvement Contractor.

1.12 **"LANDLORD'S WORK."** The construction and installation of the Building Shell and the Land Improvements referred to in Paragraphs 1.2 and 1.7, above. In addition, Landlord's Work shall include the responsibility of overseeing and coordinating the design and construction of the Approved Tenant Improvement Plans referred to in Paragraph 1.21 below.

1.13 **"PROJECT."** Landlord's Work and the Tenant Improvement Work.

1.14 **"PROJECT SCHEDULE."** The time and responsibility schedule for development, design and construction of the Tenant Improvements, including time periods for preparation and review of construction documents, obtaining necessary approvals, construction of Landlord's Work and the Tenant Improvement Work, and other performances required by this Work Letter, as such schedule may be adjusted from time to time by mutual written agreement of Landlord and Tenant or as otherwise set forth in this Work Letter. The Project Schedule shall also include phases of the Landlord's Work and Tenant Improvement Work, planned dates of submittal of the various phases, and milestone approval periods for the work. The initial Project Schedule is attached hereto as Attachment 1.

1.15 **"PROJECT WORK."** The improvements required to complete the Project.

1.16 **"SUBSTANTIALLY COMPLETE," "SUBSTANTIALLY COMPLETED," and "SUBSTANTIAL COMPLETION"** with respect to the Project means that the Landlord's Work for the Building Shell and approved Tenant Improvement Construction Plans as described herein have been substantially completed as determined by the Landlord's Representative and evidenced by receipt of a completed inspection card from the City of Wildomar Building Inspection Department. The final right to occupy shall be issued from the Governing Agencies (or check-off of the "approved to occupy" or "approved for interim occupancy" or comparable lines on the building inspection card) such that installation of Tenant's Equipment can commence and such that (subject to completion of the installation of the Tenant's Equipment) the Premises can be legally occupied for the Permitted Use. "Substantial Completion" is not dependent on (i) completion of punch-list items (which will be

Landlord's Initials _____ Tenant's Initials _____

completed within 30 days, or within a mutually agreed to schedule, from Substantial Completion) or (ii) receipt of a final certificate of occupancy. The parties agree that Substantial Completion will occur on or before the date set forth in the Project Schedule. Tenant understands and agrees that it will be Tenant's obligation to obtain any permits which are required for the installation of the Tenant Equipment and/or for Tenant's particular use/occupancy of the Premises on or before the date set forth in the Project Schedule.

1.17 **"TENANT-CAUSED DELAY."** Any delay, unless attributable to a condition or event described as a Force-Majeure Delay or Landlord-Caused Delay, (i) caused by the failure of Tenant to act within the time limits set forth in the Project Schedule and this Work Letter, including but not limited to timely design decisions and cost approvals; (ii) in receiving or installing equipment ordered to Tenant's specifications, provided Landlord gives written notice to Tenant before the equipment is ordered that a delay will or is likely to occur as a consequence of ordering equipment to Tenant's specifications; (iii) resulting from Tenant's request for materials, finishes or installations which are unavailable or nonstandard (all of which requests by Tenant must be in writing), provided Landlord gives written notice to Tenant before approving Tenant's request that a delay will or is likely to occur as a consequence of requesting materials, finishes or installations which are unavailable or nonstandard; (iv) resulting from the untimely delivery or installation of any of Tenant's Equipment; (v) caused by physical interference with or damage to Landlord's completion of the Building Shell or the Tenant Improvements by Tenant or its agents, vendors or employees, provided Landlord gives written notice to Tenant that a delay will or is likely to occur as a consequence of physical interference with or damage to Landlord's construction of the Building Shell or the Tenant Improvements by Tenant or its agents, vendors or employees; and (vi) defined as a Tenant-Caused Delay in this Work Letter. Tenant-Caused Delays will be at the sole cost and expense of Tenant and the Project shall be extended by one (1) day for each one (1) day of such Tenant-Caused Delay, however, the Rent Commencement Date as defined in the Lease shall not be extended on the same day for day basis.

1.18 **"TENANT IMPROVEMENT CONTRACTOR."** Legacy Building Services, 2505 Congress Street, San Diego, CA 92110, the Tenant Improvement Contractor retained by Landlord for the construction of the Project. The Tenant Improvement Contractor may be replaced by Landlord without Tenant's approval prior to start of construction of Tenant Improvements. Replacement of the Tenant Improvement Contractor after start of construction of Tenant Improvements shall be subject to Tenant's reasonable approval of the replacement Tenant Improvement Contractor (such approval not to be unreasonably withheld, conditioned or delayed). Landlord shall negotiate and sign a Stipulated Sum Price contract *(defined in Paragraph 4.2.4)* for the Tenant Improvements with the Tenant Improvement Contractor within the time provided in Paragraph 4.2. Pursuant to the contract, the Tenant Improvement Contractor will be required to competitively bid the work of certain trades as provided in Paragraph 4.1.

1.19 **"TENANT IMPROVEMENT COST ESTIMATES."** A preliminary estimate of the cost of construction for completing the Tenant Improvement Work, including without limitation the following: costs of labor and materials; general contractor's fee and Landlord's (or Landlord's affiliate's) construction management fee; architectural, engineering fees and costs; permitting and plan check costs; reproduction expenses, material testing and inspections, insurance; utility hook-up and/or service fees (the "Preliminary Cost Estimate")shall be provided within 15 business days of approval of the Tenant Improvement Plans. A revised cost estimate (the "Revised Cost Estimate") shall be provided prior to the bidding process within 10 business days of final approval of the Tenant Improvement Construction Plans, and a final estimate (the "Final Cost Estimate") shall be provided within 10 business days of approval of bids.

1.20 **"TENANT IMPROVEMENT PLANS." and "TENANT IMPROVEMENT CONSTRUCTION PLANS."** Final calculations, designs, drawings and specifications prepared by the Interior Designer and other consultants for the Tenant Improvement Plans (as modified by changes required by the Governing Agencies and otherwise required or permitted under this Work Letter), including one (1) set of prints of construction drawings, including all architectural, plumbing, mechanical, and electrical drawings, and identification of fixtures, furnishings and equipment (the "FF&E") provided by tenant, and all structural calculations, energy calculations and other engineering calculations necessary to acquire a Tenant Improvement building permit for the Tenant Improvement Work (the "Tenant Improvement Construction Plans"). Tenant Improvement Plans shall be prepared on sheets measuring 22 inches by 34 inches, and shall be reduced to sheets measuring 11 inches by

Landlord's Initials _____ Tenant's Initials _____

17 inches (to permit transmittal as electronic pdf files) with lettering and drawing information to be clearly legible at the reduced size.

1.21 **"TENANT IMPROVEMENT WORK."** The construction and installation of the Tenant Improvements shown on the Approved Tenant Improvement Plans.

1.22 **"TENANT IMPROVEMENTS."** The improvements within the Building Shell required by Tenant for the operation of its business and described in the Tenant Improvement Plans, including improvements required solely by Tenant and not included within the Building Shell, Land Improvements, or Tenant's fixture, furnishings and equipment.

1.23 **"TENANT'S CHANGES."** Any changes to the Tenant Improvement Plans and the Tenant Improvement Work requested by Tenant after approval of the Tenant Improvement Plans by Tenant. All requests for Tenant's Changes must be in writing, and will be the sole cost and expense of the Tenant including time delays incurred by Tenant's Change. Changes requested by the Tenant to the Tenant Improvement Plans that require redesign or extra work for each phase as defined below

Milestone Approvals shall mean:
a) Fixture/Space Plan (approx. 15%)
b) Design Development level (approx. 50%)
c) Construction Document level (approx. 90%)
d) Plan Check Submittal (approx 95%)
e) Permits (approx 100%)

1.24 **"TENANT'S EQUIPMENT."** Trade fixtures, equipment, furniture, and other personal property (the "FF&E") required by Tenant in the operation of its business, including equipment and other installations necessary for obtaining a certificate of occupancy from the Governing Agencies and not specifically included as part of the Tenant Improvement Work.

1.25 **"TENANT'S REPRESENTATIVE."** Jeff Thompson, or such other person or persons acting as the single point of contact representing the Tenant as designated from time to time in writing by Tenant with notice to Landlord.

ARTICLE 2 GENERAL REQUIREMENTS

2.1 **Description of Project.** The Project shall be constructed by Landlord ready for the installation of Tenant's Equipment as described in the approved Tenant Improvement Construction Plans.

2.2 **Consents and Approvals.** Whenever plans, drawings, schematics or like documents are to be approved or consented to by any party, such party will indicate approval by signing off the specific plans, drawings, schematics or other documents and providing a summary cover letter.

2.3 **Project Schedule; Time of the Essence.** Landlord and Tenant agree that the Project Work, including without limitation the design, plan check, permits and construction, shall be performed in accordance with this Work Letter and the time and responsibility criteria set forth in the Project Schedule, and that time and strict punctual performance are of the essence with respect to this Work Letter and the Project Schedule.

ARTICLE 3 LANDLORD'S AND TENANT'S PLANS

3.1 Approval of Landlord's Plans.

3.1.1 Tenant has reviewed and hereby accepts and approves Landlord's Plans for each phase as described in Section 1.14 Milestone Approvals. Landlord's Work shall not include any improvements which are not shown on Landlord's Plans or Tenant Improvement Plans.

Landlord's Initials _____ Tenant's Initials _____

3.2 **Preparation and Approval of Tenant Improvement Plans.**

3.2.1 On or before the date specified in the Project Schedule, Landlord shall cause the Tenant Improvement Plans to be prepared by the Interior Designer and delivered to Tenant as electronic pdf files for Tenant's review, acceptance and approval. The Tenant Improvement Plans shall be consistent with the Preliminary Space Plan (if any) attached or identified on Attachment 2 hereto.

3.2.2 Tenant shall review and approve or disapprove the Tenant Improvement Plans in writing within the time specified in the Project Schedule. If Tenant disapproves any portion of the Tenant Improvement Plans, then Tenant shall specifically (a) approve those portions which are acceptable to Tenant and (b) disapprove those portions which are not acceptable to Tenant and state with reasonable specific descriptions the reasons for such disapproval. Landlord shall cause the modifications reasonably requested by Tenant to be made to the Tenant Improvement Plans; provided, however, if Landlord does not agree with a modification requested by Tenant, Landlord and Tenant shall meet and confer and shall attempt in good faith to reach agreement on Tenant's Improvement Plans. Landlord's disapproval of Tenant's requested modifications to the Tenant Improvement Plans will be limited to matters which would make compliance with the Project Schedule difficult or infeasible, or which are in conflict with or would require a modification of Landlord's Plans for the existing Building Shell, or which are not technically feasible or which are illegal or unsafe, or would materially and adversely affect the market value of the Building, or materially and adversely would affect the reuse of the space in the event of early turnover to another tenant. Any dispute between Landlord and Tenant regarding Landlord's approval of the Tenant Improvement Plans shall be resolved in accordance with Article 7 hereof and any delay associated therewith shall be a Force-Majeure Delay.

3.3 **Building Permits for Tenant Improvement Work.** Landlord shall use commercially reasonable best efforts to cause the Interior Designer to obtain Tenant Improvement building permits (and any approvals and permits required from the local health department and any other governmental agencies) required for the construction of the Tenant Improvement Work from the Governing Agencies on or before the date set forth in the Project Schedule. If the Governing Agencies rejects or delays the approval of the Tenant Improvement Plans and thereby prevents the timely issuance of a building permit, Landlord, in consultation with Tenant, shall cause the Interior Designer to promptly make all necessary changes required by the Governing Agencies. Landlord and Tenant shall cooperate to minimize any adverse affect which Governing Agencies-required changes may have on Tenant's use of the Premises. Any delay incurred as a result of a change required by the Governing Agencies shall be a Force-Majeure Delay. Following approval by the Governing Agencies, Landlord shall provide to Tenant a print of all construction drawings for the Tenant Improvement Work stamped by the Governing Agencies as approved for construction, in reproducible form.

3.4 **Tenant Changes to Tenant Improvement Plans.** Any requests for Tenant Changes shall be instituted in accordance with the provisions of this Section 3.5 and shall be subject to the written approval of Landlord (which shall not be unreasonably withheld) after consultation with Interior Designer and Tenant Improvement Contractor.

3.4.1 From time to time after the date the Tenant Improvement Plans have been approved by Landlord and Tenant, Tenant may request a Tenant Change by notifying Landlord in writing of the nature and extent of any such Tenant Change and, if the nature of such Tenant Change requires revisions to the Tenant Improvement Plans, then Landlord shall cause the Interior Designer to revise the Tenant Improvement Plans. Such notice must be signed by Tenant's Representative or Landlord shall not be required to process such Tenant Change request. Landlord shall submit to Tenant in writing, within seven (7) business days after Tenant's request for a Tenant Change (or such longer period of time as may be reasonably required depending on the extent of the requested Tenant's Change), an analysis of design costs, construction costs or savings resulting from the Tenant Change, including without limitation architectural, engineering, permit costs or construction administration fees, and the period of time, if any, that the Tenant Change will extend the time for completion of the Tenant Improvement Work. Tenant shall approve or disapprove in writing Landlord's submission within five (5) business days of receipt thereof. If a requested Tenant's Change affects a critical path item and the Project Schedule must be delayed in order to analyze and process Tenant's request for a critical path Tenant Change, the time for Substantial Completion of the Project shall be extended by one (1) day

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for each day of such delay, whether or not the cost or savings and the extension of time for completion of the Tenant Improvement Work, if any, is approved, and such delay shall be a Tenant-Caused Delay (i.e. The Rent Commencement Date is not delayed.)

3.4.2 If Tenant approves in writing the costs or savings and the extension in the time for Substantial Completion of the Tenant Improvement Work, if any, resulting from the Tenant Change, Landlord shall cause the approved Tenant Change to be incorporated into the design and construction documents. Following completion of the design change in the construction documents, the Landlord shall cause the Tenant Improvement Contractor to re-bid and re-price the Tenant Change. Landlord shall cause the preparation of a Change Order, to change the Tenant Improvement Construction Plans accordingly. The time for Substantial Completion of the Project shall be extended one day for each day of delay caused by instituting the Tenant Change requested by Tenant, and such delay shall be a Tenant-Caused Delay, and subject to provisions set forth in Section 1.18. Following the preparation of the Change Order, Tenant's Representative shall sign the Change Order approving the additional cost and time (or savings). Tenant shall be solely responsible for the payment of increased costs or any cost savings resulting from the Tenant Change shall be applied to the Tenant Improvement Allowance as outlined in Section 1.20 of the Lease. To the extent the cost of the Tenant Improvements is less than the Tenant Improvement Allowance, that amount shall be retained by the Landlord.

3.5 Landlord Changes. Requested Landlord's Changes shall be subject to the written consent of Tenant (which shall not be unreasonably withheld, conditioned or delayed) and shall be made at no cost to Tenant, and any delay incurred as a result of such Landlord Change shall be a Landlord-Caused Delay, and both the Project Schedule and Rent Commencement Date will be extended day for day of delay.

3.6 Compliance With Laws. Landlord shall cause Landlord's Plans and the Tenant Improvement Plans and the Project Work to comply with applicable laws, codes, ordinances, and regulations in effect as of the Term Commencement Date as defined in the Lease. Tenant shall cause the Tenant's Equipment and installation thereof to comply with applicable laws, codes, or ordinances, and regulations in effect as of the Term Commencement Date and Tenant shall obtain and pay for all permits, including a Certificate of Occupancy, required for Tenant's occupancy of the Premises.

3.7 Effect of Delay. Each day of delay (beyond the time periods set forth herein or in the Project Schedule) incurred as a result of Tenant's disapproval of or request to make modifications in plans not previously approved, and any proceedings associated therewith under Article 7, shall be a Force-Majeure delay, unless Tenant's disapproval or request for change is made to cause plans prepared by or at the direction of Landlord to comply with the provisions of this Work Letter.

ARTICLE 4 COST ESTIMATES FOR TENANT IMPROVEMENT WORK; TENANT IMPROVEMENT WORK

4.1 Tenant Approval of Tenant Improvement Cost Estimate.

4.1.1 Within ten (10) business days after Landlord and Tenant have approved the Tenant Improvement Plans, Landlord shall cause the Tenant Improvement Contractor to prepare for submission to Tenant (by electronic transmission) a Revised Cost Estimate showing the breakdown of the various costs by standard line items, for the Tenant Improvement Work.

4.1.2 Tenant shall, within three (3) business days after receipt of the Revised Cost Estimate, notify Landlord in writing of either (i) Tenant's approval of the Revised Cost Estimate or (ii) Tenant's disapproval of the Revised Cost Estimate with specific comments in writing. If Tenant fails to respond within three (3) business days, the Revised Cost Estimate shall be deemed approved.

4.1.3 If Tenant disapproves the Revised Cost Estimate, Landlord and Tenant shall cause the Tenant Improvement Plans to be revised to lower the Revised Cost Estimate to an amount acceptable to Tenant. Within five (5) business days after receipt of the revised Tenant Improvement Plans, Landlord shall cause the Tenant Improvement Contractor to prepare a further revised Cost Estimate (the "Final Cost

Landlord's Initials _____ Tenant's Initials _____

Estimate") for Tenant's approval or disapproval in accordance with this Section 4.1. Any subsequent reduction in the scope of the Tenant Improvement Work and re-estimate shall be subject to the same procedures as set forth in this Paragraph 4.1 at the sole cost and expense of Tenant.

4.1.4 Promptly after Tenant's approval of the Final Cost Estimate, Landlord shall submit the revised Tenant Improvement Construction Plans to the Governing Agencies for Plan Check.

4.1.5 Each day of delay resulting from Tenant's disapproval of the original Preliminary Cost Estimate, shall be a Force-Majeure Delay. Each day of delay resulting from Tenant's disapproval of the Revised Cost Estimate(s) shall be a Tenant Caused Delay; provided, that if the Revised Cost Estimate(s) exceeds the Preliminary Cost Estimate by more than 10%, each day of delay resulting from Tenant's disapproval of the Revised Cost Estimate(s) shall be a Force-Majeure Delay (not to exceed a maximum of fifteen days).

4.2 Stipulated Sum Price.

4.2.1 Within fifteen (15) business days after the Governing Agencies has approved the Tenant Improvement Construction Plans, Landlord shall cause the Tenant Improvement Contractor to submit to Landlord and Tenant (by means of electronic transmission) a Stipulated Sum Price for the Tenant Improvement Work. In establishing the Stipulated Sum Price, the Tenant Improvement Contractor shall be required (unless impractical) to obtain at least three (3) bids from each Major trade. Such bids shall be for the overall Project to include all Tenant Improvement construction, with unit prices established, pro-rated, and applied to each Tenant Improvement Premises build-out in the Project. A "Major" trade is one which is reasonably expected to perform more than $10,000 worth of work (materials and/or services) for the Tenant Improvement Work.

4.2.2 Tenant shall, within three (3) business days after receipt of the Stipulated Sum Price, notify Landlord in writing of either (i) Tenant's approval of the Stipulated Sum Price or (ii) Tenant's disapproval of the Stipulated Sum Price along with detailed reasons for such disapproval.

4.2.3 If Tenant disapproves the Stipulated Sum Price, Landlord and Tenant shall cause the Tenant Improvement Construction Plans to be revised to redesign the Tenant Improvement Plans with the intent of lowering the Stipulated Sum Price to an amount acceptable to Tenant. The cost for the redesign, including the management fee, shall be at Tenant's sole cost and expense, and the responsibility of the Tenant. The project schedule shall be extended by one (1) day for each day of such delay, whether or not the cost or savings and the extension of time for completion of the Tenant Improvement Work, if any, is approved, and such delay shall be a Tenant-Caused Delay (i.e. The Rent Commencement Date is not delayed.). Within five (5) business days after receipt of the revised Tenant Improvement Construction Plans, Landlord shall cause the Tenant Improvement Contractor to prepare for submission to Tenant (by means of electronic transmission) a revised Stipulated Sum Price for Tenant's approval or disapproval in accordance with this Section 4.2. Any subsequent reduction in the scope of the Tenant Improvement Work and establishment of a revised Stipulated Sum Price shall be subject to the same procedures as set forth in this Paragraph 4.2.

4.2.4 Within three (3) business days after Tenant's approval of the Stipulated Sum Price, Landlord shall enter into a Stipulated Sum Price Contract with the Tenant Improvement Contractor for the construction of the Tenant Improvement Work, subject to the usual terms and conditions of such contracts. Tenant shall pay the costs of the Tenant Improvement Work only to the extent of the excess (if any) of the approved Stipulated Sum Price over the Tenant Improvement Allowance, plus all costs (in excess of the Tenant Improvement Allowance) attributable to Tenant Changes and Tenant-Caused Delay, within five (5) business days after a copy of the executed Stipulated Sum Contract is delivered to Tenant; provided, that Tenant shall only be required to pay such excess to the extent Tenant has not elected to have all or part of such excess amortized as provided in Section 1.20 of this Lease. Landlord shall not be required to begin construction until Tenant has paid said payment to the extent not so amortized.

4.2.5 Each day of delay resulting from Tenant's disapproval of the original Stipulated Sum Price, and from any revised Firm Price, shall be a Force-Majeure Delay. Each day of delay resulting from

Tenant's disapproval of the revised Stipulated Sum Price shall be a Tenant Caused Delay.

4.2.6 Notwithstanding anything herein to the contrary, Tenant may not approve Tenant Improvement Construction Plans or a Stipulated Sum Price which would result in the Tenant Improvement Work being below the quality of the Building Standard Improvements as reflected in Attachment 3 hereto.

4.3 Tenant Improvement Allowance. Landlord shall pay toward the cost of the Tenant Improvement Work an amount equal to the Tenant Improvement Allowance, which shall be Forty Five Dollars ($45.00) multiplied by the unfinished usable square footage of the Premises. The Tenant Improvement Allowance shall be used only to pay for Tenant's space planning and the design, architectural, engineering and permitting fees and costs for the Tenant Improvement Work and the construction of interior improvements which are non-removable fixtures, including network cabling, contractors' fees, and Landlord's construction management fee (which fee shall equal three percent [3%] of the total actual cost of the Tenant Improvements including design costs and shall be payable in proportion to the progress payments made to the Tenant Improvement Contractor). The Interior Designer's fees and other third party fees and costs incurred in preparing the Tenant Improvement Plans and performing the Tenant Improvement Work shall be deducted from the Tenant Improvement Allowance.

ARTICLE 5 CONSTRUCTION

5.1 **Construction of Landlord's Work**. Landlord agrees to cause the Tenant Improvement Contractor to construct Landlord's Work within the time period set forth in the Project Schedule and in accordance with Landlord's Plans. Where more than one (1) type of material is indicated, the selection will be by Landlord. As to all building materials and equipment which Landlord is obligated to supply pursuant to Landlord's Plans, Landlord shall select the manufacturer thereof, so long as the product from any such manufacturer complies with the specifications of Landlord's Plans. The costs and expenses incurred by Landlord in connection with the construction of Landlord's Work as to the Building Shell Plans shall be paid by Landlord. Modifications to the Building Shell Plans to accommodate Tenant Improvement Plans, shall be a cost paid out of the Tenant Improvement Allowance.

5.2 **Construction of Tenant Improvement Work**. Landlord agrees, as soon as practical after completion of Landlord's Work to the Building Shell to the point where construction can commence, and after receipt of the building permit for the Tenant Improvement Work, to cause the Tenant Improvement Contractor to construct, within the time period set forth in the Project Schedule, the Tenant Improvement Work in accordance with the approved Tenant Improvement Construction Plans.

5.3 **Installation of Tenant's Equipment**. Tenant agrees, at its own expense, to install Tenant's Equipment promptly after Substantial Completion or concurrently if mutually agreed to by the parties. Tenant shall be granted early access to the Premises forty-five (45) prior to Landlord's Substantial Completion for the purpose of installing phone/data lines. Tenant's Equipment shall be installed in compliance with all governmental ordinances, rules and regulations relating thereto and shall not be constructed in a manner inconsistent with the approved Landlord's Plans and the approved Tenant Improvement Plans. Installation of Tenant's Equipment should not interfere with the completion of Landlord's Work. In the event the installation of the Tenant's Equipment delays the completion of the Landlords Work, the delay shall be considered a Tenant-Caused Delay and subject to Section 1.18 of this Work Letter.

5.4 **Tenant's Construction Representatives**. Tenant's Representative shall be provided the opportunity to participate in all meetings with the Tenant Improvement Contractor and subcontractors involved in the construction of the Tenant Improvement Work. Participation by the Tenant's Representative shall not be mandatory and the Landlord has the right to proceed as required for the completion of the Tenant Improvement Work at each Milestone Approval as set forth in Section 1.14 above and in the Project Schedule.

5.5 **Construction Period Insurance**. From the commencement of Landlord's Work until the completion of the Tenant Improvement Work, Landlord shall obtain and maintain, or shall cause to be obtained and maintained, comprehensive general liability insurance, on an occurrence basis in the amount of not less

than Three Million Dollars ($3,000,000) combined single limit to protect Tenant and Landlord from and against liability for death or injury to persons and for damage to property caused by or arising from the performance of Landlord's Work and the Tenant Improvement Work. All such insurance shall name Tenant as additional insured.

In addition, from the commencement of Landlord's Work until the Substantial Completion of the Tenant Improvement Work, Landlord shall obtain and maintain, or shall cause to be obtained and maintained, "all risk" builder's risk insurance (covering both Landlord's Work and the Tenant Improvement Work), including, but not limited to, coverage against loss of damage by fire, vandalism and malicious mischief, covering improvements in place and all material and equipment at the job site furnished under contract, in an amount equal to full replacement cost thereof as required to be carried by Tenant under the Lease.

Landlord's responsibility to provide insurance under this Section 5.5 shall be satisfied to the extent such insurance is provided by contractors under the following Section 5.6 hereof.

5.6 **Contractor and Subcontractor Insurance**. The Tenant Improvement Contractor and all other contractors and subcontractors shall carry worker's compensation insurance covering all of their respective employees as more particularly specified below, and shall also carry public liability insurance, including property damage, with limits and in the same form as required to be carried by Tenant under the Lease except as stated otherwise below, and the policies therefor shall insure Landlord and Tenant as their interests may appear, as well as the contractor or subcontractor. Such policies shall name Landlord, Tenant, Landlord's Representative, Tenant's Representative, and, if requested by Landlord, Landlord's mortgagees or beneficiaries, as additional loss payees and shall be for the mutual and joint benefit and protection of Landlord, Tenant, and Landlord's mortgagees or beneficiaries, as their interests may appear. The Tenant Improvement Contractor's and all other contractor's and subcontractor's required minimum coverages and limits of liability are as follows:

(a) Worker's compensation insurance to the full extent required under California law.

(b) Comprehensive general liability insurance (including contractor's protective liability) in an amount not less than Two Million Dollars ($2,000,000.00) combined single limit (CSL) bodily injury and property damage. Such insurance shall provide for explosion, collapse, underground hazards (X.C.U.) coverage and broad form contractual liability and completed operations coverage and shall insure the general contractor and/or subcontractors against any and all claims for bodily injury, including death resulting therefrom, and damage to the property of others and arising from its operations under the contract and whether such operations are performed by the general contractor, subcontractor or any of their subcontractors, or by anyone directly or indirectly employed by any of them. Builder's risk insurance shall be maintained in the amount of the costs of construction or an appropriate amount deemed reasonable by the Landlord.

(c) Comprehensive automobile liability insurance, including the ownership, maintenance and operation of any automotive equipment owned, hired and non-owned in the following minimum amounts: Bodily Injury and Property Damage, each occurrence, Combined Single Limit of One Million Dollars ($1,000,000.00).

5.7 **As-Built Drawings**. Landlord shall cause Tenant Improvement Contractor to maintain a set of "as-built" drawings of the Premises, which shall be available for inspection by Tenant, if requested, at the Project office during normal business hours.

5.8 **Reliance on Construction Warranties**. Landlord shall have the non-exclusive benefit of any applicable warranties from design professionals, contractors, materialmen, manufacturers, or other responsible parties.

ARTICLE 6 COMPLETION AND RENT COMMENCEMENT

Landlord's Initials _____ Tenant's Initials _____

6.1 **Completion of the Work and Commencement Date.**

6.1.1 Landlord shall Substantially Complete the Project on or before the date set forth in the Project Schedule. Such date shall be extended one day for each day of Force-Majeure Delay and Tenant-Caused Delay.

6.1.2 If Substantial Completion of the Project is delayed due to Landlord-Caused Delay (after fairly apportioning and netting out delay as provided in Section 6.2, below), then the Rent Commencement Date shall be extended one (1) day for each day that Substantial Completion of the Project was delayed due to such Landlord-Caused Delay.

6.1.3 If it is determined (after fairly apportioning and netting out delay pursuant to Section 6.2, below) that Substantial Completion of the Project was delayed due to Tenant-Caused Delay, then Tenant's obligation to pay rent shall be deemed to have commenced on the date that the Rent Commencement Date would have occurred but for Tenant-Caused Delay, and Tenant shall pay such rent to Landlord on demand.

6.1.4 The remedies set forth in Sections 6.1.2 and 6.1.3, above, shall be Landlord's and Tenant's (respectively) sole and exclusive remedies for delay; provided, however, that if for any reason whatsoever (including Force Majeure) the Project has not been Substantially Completed by _____ then either party may terminate this Lease. In no event shall Landlord, its employees, or Landlord's lender (or any party acquiring Landlord's interest in this Lease by foreclosure or deed in lieu thereof) be liable for any damages caused by Landlord's Delay.

6.1.5 Early Termination. In the event Tenant terminates the Lease prior to completion of the Tenant Improvement Work, Tenant shall reimburse Landlord for Landlord's reasonable costs expended to the date of termination on space planning and design work, engineering and permitting fees, reproduction expenses, material testing, inspections, utility hook-up and/or service fees and costs for the Tenant Improvement Work to include the construction of the interior improvements which are non-removable fixtures, including network cabling, contractors' fees, and Landlord's construction management fee (which fee shall equal three percent [3%] of the actual cost of the Tenant Improvements expended to the date of termination including design costs.

6.2 **Calculations of Delays/Update of Project Schedule.** Any delay in Landlord's or Tenant's performance beyond the date and time for such performance set forth in this Work Letter or the Project Schedule shall be a Force-Majeure Delay, a Tenant-Caused Delay or a Landlord-Caused Delay. At each periodic on-site work review meeting, Landlord and Tenant through their designated construction representatives shall update the Project Schedule and account for and allocate all Force-Majeure Delays, Landlord-Caused Delays and Tenant-Caused Delays. If Landlord and Tenant through their designated construction representatives are unable to agree on the allocation of Force-Majeure Delays, Landlord-Caused Delays and Tenant-Caused Delays as they occur, then such dispute shall be resolved in accordance with Article 7. If a Force-Majeure Delay, a Landlord-Caused Delay, or a Tenant-Caused Delay is deemed to have occurred but such delay has no effect on the Project Schedule, then such delay shall be waived; if more than one type of delay contributed to a delay, the delay shall be fairly apportioned between or among the contributing types of delay. Before applying Sections 6.1.2 or 6.1.3, Landlord-Caused Delay and Tenant-Caused Delay shall be "netted out" against each other so that only one type remains. (By way of example only, if there were 25 days of Landlord-Caused Delay and 15 days of Tenant-Caused Delay, then for the purposes of Section 6.1.2 there would be 10 days of Landlord-Caused Delay.) Delays attributable to the Governing Agencies except as set forth in this Work Letter shall be Force-Majeure Delay. No delay shall be allowed for any period of time more than fifteen (15) business days prior to the time a party gives written notice that the delay has occurred.

6.3 **Delivery of the Premises.** Landlord shall deliver the Premises to Tenant upon Substantial Completion of the Tenant Improvement Work in "broom clean" condition, subject to typical punch-list items. The term "broom clean" condition shall include the following: (a) tile floors are wet mopped, waxed and buffed, and carpets are vacuumed; (b) walls and partitions are cleaned and holes are filled and touched up; (c) glass is cleaned; (d) trash, dirt and left-over materials are removed from the Premises; (e) air-conditioning, heating and

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ventilating system is in good operating condition and appropriately regulated; (f) plumbing, electrical and elevator systems are in good operating condition; (g) all cabinets and horizontal surfaces wiped clean of dust and dirt using materials appropriate to their construction; and (h) painting coats have been inspected for completeness and coverage. Punch-list items may include such minor "pick-up" work as would not materially interfere with Tenant's occupancy and use of the Premises for the purpose for which they are to be used. Any dispute between Landlord and Tenant regarding whether a punch-list item unreasonably interferes with Tenant's use of the Premises for the purpose for which they are intended shall be resolved in accordance with Article 7 of this Work Letter.

6.4 **Walk-Through.** Pursuant to Article 5.1 of the Lease, on or before the date Tenant accepts delivery of the Premises for the purpose of installing Tenant's Equipment, Landlord and Tenant shall conduct a walk-through inspection of the Premises and shall jointly prepare a list of construction items that need to be corrected. Landlord shall cause the Tenant Improvement Contractor to correct such items within a mutually agreed to schedule not to exceed thirty (30) business days thereafter, provided, however, if by the nature of such correction more than thirty (30) business days are required to effect such correction, Landlord shall not be in default hereunder if such correction is commenced within such thirty (30) business day period and is diligently pursued to completion. No sooner than ten (10) business days before the date Tenant occupies the Premises for the purpose of conducting its business therein, Landlord and Tenant shall conduct a second walk-through inspection of the Premises and shall jointly verify all items on the punch list have been completed or shall prepare a list of further construction items that need to be corrected. Landlord shall not be required to correct items damaged by the installation of Tenant's Equipment or Tenant's move-in. Landlord shall use reasonable best efforts to cause the Tenant Improvement Contractor to correct such items within ten (10) business days thereafter; provided, however, if by the nature of such correction more the ten (10) business days is required to effect such correction, Landlord shall not be in default hereunder if such correction is commenced within such ten (10) business day period and is diligently pursued to completion in not less than thirty (30) business days, subject to Force-Majeure Delay.

6.5 **Notice of Completion.** Within five (5) business days after Substantial Completion, Landlord shall execute and file a notice of the Substantial Completion with respect thereto and furnish a copy thereof to Tenant. Within five (5) business days after the punch list items have been completed and accepted, Landlord shall execute and file a notice of Completion with respect thereto and furnish a copy thereof to Tenant upon recordation.

6.6 **Warranties and Guarantees.** Landlord shall assign to Tenant (on a non-exclusive basis) only those warranties and guarantees relating to Landlord's Work and the Tenant Improvement Work Tenant assumes the responsibility of maintaining and shall reasonably cooperate with Tenant in enforcing such warranties and guarantees.

ARTICLE 7 CONSTRUCTION DISPUTE RESOLUTION

7.1 **Dispute Resolution.** If any dispute arises in connection with this Work Letter, such dispute shall be resolved in accordance with this Article. All proceedings contemplated by this Article shall take place at the location for all job-site meetings, unless the Construction Panel unanimously agrees to another location, or unless any arbitrator appointed hereunder selects another location.

7.2 **Notice.** All disputes to be determined in accordance with this Article shall be raised by Landlord or Tenant by written notice to the other party.

7.3 **Resolution by Construction Panel.** The Construction Panel shall meet within two (2) business days of receipt of the notice and attempt in good faith to resolve the dispute.

7.4 **Resolution by Arbitrator.** If the Construction Panel has not resolved the dispute for any reason within four (4) business days after receipt of the notice of dispute, either Landlord or Tenant may submit the dispute to binding arbitration to Judicial Arbitration and Mediation Services, Inc. ("JAMS") in San Diego County. If the parties do not mutually agree on a member of the JAMS' panel to hear the dispute within three

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(3) days after submission of the dispute to JAMS, then JAMS shall select the hearing officer (arbitrator). If for any reason JAMS does not accept the matter for binding resolution, an arbitrator shall be appointed by the presiding judge of the San Diego Superior Court, or any other judge assigned to the matter, on application by either party, and the arbitrator shall be instructed to resolve the dispute as soon as is reasonably practical in accordance with the provisions of Section 1280 et seq. of the Code of Civil Procedure. The cost of the arbitrator's services shall be paid by the non-prevailing party in the dispute being determined by the arbitrator, unless the arbitrator determines otherwise. Landlord agrees that the contract between Landlord and the Tenant Improvement Contractor and the contract between Landlord and the Interior Designer shall include provisions permitting the joinder of the Tenant Improvement Contractor and the Interior Designer in any arbitration proceeding in which Landlord and Tenant are parties.

7.5 **Interpretation and Resolution**. In determining any dispute, the Construction Panel and the Arbitrator shall apply the pertinent provisions of this Work Letter and the Lease, and where not in conflict with the Lease or this Work Letter, commonly accepted industry standards and practices with respect to similar projects in Riverside County. As part of resolving a dispute, the Construction Panel or the Arbitrator, as the case may be, shall determine the days of delay, if any, in completing Landlord's Work and the Tenant Improvement Work which directly result from the dispute being considered by the Construction Panel or the Arbitrator, and from the proceedings pursuant to this Article 7. The days of delay shall be designated as either Tenant-Caused Delays, Landlord-Caused Delays or Force-Majeure Delays or any combination thereof as determined by the Construction Panel or the Arbitrator, as the case may be.

7.6 **Continued Performance**. During any proceedings pursuant to this Article, Landlord and Tenant shall, to the extent possible, continue to perform and discharge all of their respective obligations under this Work Letter and the Lease.

7.7 **Binding Resolution**. Any and all decisions of the Construction Panel made by agreement as to the matter in dispute shall be binding upon both Landlord and Tenant. In the absence of such agreement, any and all decisions by the Arbitrator shall be binding upon both Landlord and Tenant. The provisions of this Article 7 are an arbitration agreement enforceable under Section 1280 et seq. of the Code of Civil Procedure.

Landlord's Initials _____ Tenant's Initials _____

EXHIBIT "C"
SIGN CRITERIA

Landlord's Initials

Tenant's Initials

EXHIBIT "D"
RULES AND REGULATIONS

Rules and Regulations: Tenant shall at all time during the term and any extension or renewal of the term of this Lease, at its sole cost and expense, follow the rules and regulations below.

1. Furnish, install, and maintain in the Premises all fixtures, equipment, and furnishings reasonably necessary for the operation of Tenant's business.

2. Maintain the Premises in a clean, neat, sanitary, orderly condition. If Tenant is a restaurant with exclusive patio dining, Tenant shall at all times maintain the exterior dining patio area in a clean and orderly condition including emptying of trashcans. Tenant shall steam clean the exterior dining patio area quarterly or when requested by Landlord.

3. No use shall be made or permitted of the Premises or any part thereof, nor any acts done which shall violate, make inoperative, or increase the existing rate of any insurance policy held by or in any way for the benefit of Landlord relating to any portion of the Center. In the event Tenant shall do anything in or about the Premises, which shall cause an increase in the rate of any such price, Tenant shall immediately pay the full amount of such increase. Landlord may, at its option, elect to make such payment itself in which case Tenant shall immediately reimburse Landlord the amount so advanced as additional rental under this Lease. Tenant shall not sell, or suffer, or permit to be kept, used or sold in, upon, or about the Premises, any gasoline, distillate or other petroleum of an explosive, inflammable or radiological nature, in such quantities as may be prohibited by any insurance policy held by or in any way for the benefit of Landlord pursuant to any provision of this Lease, or which may endanger any part of the Premises or its occupants, business patrons or invitees, without the prior written consent of Landlord and all insurance companies which have issued any insurance of any kind whatsoever pursuant to any provision hereof.

4. Comply with all governmental rules, regulations, ordinances, statutes, and laws now or hereafter in effect pertaining to the Premises and/or Tenant's use thereof. Tenant further agrees at all times to comply with all of the rules and regulations of the National Board of Fire Underwriters, the National Fire Protective Association, the Pacific Fire Rating Bureau and/or any similar body and will not do, suffer, or permit to be done in, upon, or about the Premises any act which will increase any insurance rate with respect thereto existing as of the Term Commencement Date hereof.

5. Refrain from burning any trash, papers, or garbage of any kind in or about the Premises.

6. Refrain from using or permitting the use of the Premises or any portion thereof as living quarters, sleeping apartments, or lodging rooms.

7. Refrain from keeping, displaying, or selling any merchandise or other objects on any portion of any sidewalk, walkway, or other portion of the Common Facilities.

8. Refrain from committing or suffering to be committed any waste upon the Premises, or any nuisance or act or thing, which may disturb the quiet enjoyment of any other tenant, concessionaire, licensee, occupant, customer, or business invitee in the Center.

9. Refrain from conducting any going out of business sale, bankruptcy sale, distress sale, or assignee sale.

10. Refrain from going onto the roof of the building or authorizing any other person to go onto the roof without written consent of Landlord. (See Section 8.3 of this Lease).

11. Comply with Landlord's designated employee parking area.

12. Refrain from posting or painting unauthorized signage or advertisements on doors, windows, and walls.

Landlord's Initials _____ Tenant's Initials _____

EXHIBIT "E"
TENANT ESTOPPEL CERTIFICATE

Tenant: [CURRENT TENANT] ("Tenant")

Lease: [NAME OF LEASE, DATE, LIST AMENDMENTS] ("Lease")

Leased Premises:[Street ADDR & SUITE NO] ("Premises")

The undersigned hereby certifies to _____ ("Lender") and its successors and assigns whose address is _____, _____, _____ as follows:

1. The undersigned is the Tenant under the above-referenced Lease for the Premises described above.

2. Attached as Exhibit "A" to this Estoppel Certificate is a complete and accurate copy of the Lease, including all amendments thereto.

3. The Lease constitutes the entire agreement between the Landlord and Tenant with respect to the Premises. The Lease has not been modified in any respect or any of its provisions waived or supplemented except as shown on Exhibit "A" attached to this Estoppel Certificate.

4. Tenant is in complete possession of the Premises and the Lease is in full force and effect in accordance with its terms. All work to be completed by Landlord has been completed and accepted by Tenant. Neither Landlord nor, to the best of Tenant's knowledge, Tenant is in default of its respective obligations under the Lease, and no event has occurred which, with the giving of notice or lapse of time or both, would constitute a default by either Landlord or Tenant under the Lease.

5. The term of the Lease commenced on _____, and will expire by its terms on _____.

6. Tenant is currently obligated to pay rent in monthly installments of $_____. Such monthly rent has been paid current through _____. No other rent has been paid in advance. Tenant covenants to Lender not to pay rent to Landlord more than 30 days in advance without Lender's written consent.

7. Tenant hereby acknowledges that the Premises consist of approximately _____ square feet.

8. Tenant has no claim against Landlord for any security, prepaid rent or other deposits except for $_____ which was paid to Landlord under the Lease.

9. Tenant has the option to extend the term of the lease for _____ further period(s) of _____ year(s), as specifically provided in, and subject to the terms of the Lease, and except as provided in the Lease, Tenant has no options to extend, purchase, or otherwise acquire or continue to possess the Premises.

10. Tenant has not sublet the Premises or assigned, transferred or encumbered any interest in the Lease, except as follows: _____. Tenant has received no written notice that Landlord has, and to the best of Tenant's knowledge, Landlord has not assigned, transferred, encumbered the Lease or any rents due hereunder other than to Lender.

11. The address for notices to be sent to Tenant is set forth in the Lease and is currently the address of the Premises.

12. Tenant has no charge, lien, or claim of offset under the Lease or against rent or other charges due or to become due under the Lease, and Tenant has no outstanding claim for credit or reimbursement on account of Tenant's improvements to the Premises; provided, that neither the foregoing nor anything else in this Estoppel Certificate shall be construed as a waiver by Tenant of any right it may have to question, challenge or audit Tenant's Share of Operating Expenses or any other charges or amounts payable by Tenant under the Lease, and all rights of Tenant with respect thereto are hereby expressly reserved..

13. Tenant has no knowledge and has received no notice of the existence and/or prior existence of any underground storage tank(s), petroleum products, cleaning or other solvents (other than readily available cleaning products customarily used in the ordinary course of business), asbestos-containing materials, PCB's, and/or other hazardous substances

Landlord's Initials _____ Tenant's Initials _____

or materials (as defined under applicable federal and state laws) in, on or about the Premises.

Tenant's use of any such hazardous substance or materials, if any, is in compliance with applicable federal and state laws and only for use in the ordinary course of Tenant's business as customarily used by other businesses in the same or similar lines of business. With respect to the existence of any hazardous substance or materials in, on or about the Premises, if any, Tenant has, to the extent required by law, notified all employees of Tenant working within the Premises concerning the existence and location of such hazardous substance and/or materials, and Tenant has no knowledge of and has received no notice of any requirement to take remedial action relating to the existence of any such hazardous substance and/or materials.

14. The individuals whose names are subscribed to this Estoppel Certificate on behalf of the undersigned are duly authorized to execute and deliver this Estoppel Certificate on behalf of the undersigned. This Estoppel Certificate is binding on the undersigned.

15. This Estoppel Certificate is made and delivered by the undersigned with the understanding that it will be relied on by Lender and its successors and assigns in connection with extending credit to Landlord secured by the Premises and an assignment of all right, title and interest of Landlord in and to the Lease to Lender, including without limitation, the right to receive all rents, condemnation awards, insurance proceeds and other sums from time to time due and payable by Tenant under the Lease and the right to make all waivers, consents, amendments and supplements relating to the Lease. Upon written request by Lender, Tenant agrees to pay and deliver to Lender all rents, condemnation awards, insurance proceeds and other sums from time to time due and payable by Tenant under the Lease without any further consent of Landlord and notwithstanding any instruction by Landlord to the contrary.

16. This Estoppel Certificate may be executed in one or more counterparts each of which will constitute an original, but which together shall constitute one and the same document.

Dated this [DAY] day of [MONTH], [YEAR]

TENANT:

[signature block for tenant]

ACKNOWLEDGED AND AGREED:

LANDLORD:

[signature block for Landlord/Borrower]

Exhibit A
To Tenant Estoppel Certificate
(Copy of Lease)

Landlord's Initials _____ Tenant's Initials _____

EXHIBIT "F"
SATELLITE LICENSE AGREEMENT

This Satellite License Agreement ("Agreement") is made this _____ day of _____, _____, by and between _____ ("Landlord"), and _____, a _____ ("Tenant") who is occupying _____ (space or suite) in the _____ Center located in the City of _____, County of _____, State of California ("Premises"), the parties do hereby covenant, declare and agree as set forth below:

1. License. Landlord hereby grants Tenant (hereafter referred to as "Licensee"), its agents, contractors, employees and guests a revocable non-exclusive License for the Premises, located within the Property, with the Licensee's compliance to the following restrictions:

a. Licensee shall retain the services of the Landlord's roofing contractor, _____, the point of contact is _____, at (___)___-_____. Tenant shall be responsible to retain Landlord's roofing contractor for all repairs and patching of roof that may be required as a result of Licensee's installation of roof-mounted equipment.

b. Licensee shall provide structural calculations for all roof-mounted equipment, and/or satellite dishes, taking into account the limitations of the existing roof structural system and determining what modifications may need to be performed to the structural elements.

c. Licensee shall obtain, prior to the commencement of any construction/installation, necessary federal, state and municipal permits, licenses and approvals.

d. Licensee shall be responsible for obtaining all required building permits including but not limited to permits for the establishment of compliance with view limitations. Specifically, Licensee shall not install any appurtenances to the roof that are not properly hidden by necessary screening devices and/or existing parapets. Licensee shall be solely responsible for obtaining all permits and approvals for these screens.

e. Licensee may run industrial standard telecommunication conduit from the satellite dish to the Licensee's Premises, located in the Property. After the conduit is installed, Licensee shall contact Landlord so that the area may be re-sealed by Landlord's roofing contractor in order to maintain the roofing warranty. Licensee shall pay cost of re-seal by Landlord's roofer. No other roof penetrations are allowed and should Licensee penetrate the roof without prior approval from Landlord, Licensee will then bear any and all expenses for roofing repairs.

f. Except in emergencies, Licensee's access to the rooftop shall be limited to normal business hours with advance notice to Landlord.

g. Licensee shall perform all construction/installation in a safe manner consistent with generally accepted construction standards.

h. Licensee shall perform all construction/installation in such a way as there will be no materially adverse interference with the operation of the Building.

g. Licensee shall operate the downlink satellite dish and related equipment in such a way to not interfere in any way whatsoever with any other communications related equipment at the Property as of the date of the Agreement. Landlord shall have the right to terminate this Agreement if Licensee fails to cure or remove any such interference within thirty (30) days after written notice of the same; provided if such interference cannot be corrected within such thirty (30) day period, Licensee shall be afforded an additional cure period as reasonably necessary. Licensee hereby agrees that during said notice and cure periods, the dish and related equipment shall be shut down and made inoperable until all interference is corrected. Licensee is only allowed to operate the dish and equipment temporarily during the notice and cure periods for any testing required to correct the interference.

h. Landlord will not provide any financial contribution to the satellite dish or cabling installation and/or maintenance. Licensee shall be responsible for any expenses related to moving the satellite for roof or HVAC repair and/or replacement.

i. Licensee shall be responsible for any additional property taxes as a result of new roof-mounted equipment.

_____ Landlord's Initials

_____ Tenant's Initials

j. Licensee's use of the Property pursuant to the License granted herein is conditioned upon its compliance with each and every obligation and covenant of Licensee as set forth herein.

k. Either party may terminate this License Agreement with sixty (60) days written notice with, or without, cause. In the event the Landlord elects to terminate the agreement due to a need for the space/location of the satellite dish, Landlord will provide an alternate location for satellite dish to be relocated to at the Tenant's expense.

2. Non-exclusivity. The license hereby granted is a non-exclusive License and shall in no way be deemed to prohibit Landlord from entering into any license, lease, contract or other agreement with any other party for the use of the surface of the Property, provided that such agreements shall not substantially interfere with the rights granted to Licensee hereunder including, but not limited to the quality of the transmissions received to the dish installed pursuant to the terms hereof.

3. Covenants or Licensee. Licensee, in consideration of the License granted herein, hereby covenants and agrees as follows:

a. The use of this License by Licensee and its agents or contractors or guests of Landlord of Landlord's tenants shall not interfere with the use and enjoyment of the Property by Landlord, Landlord's tenants or the invitees.

b. To maintain and repair the Property applicable to the installation of the dish in a safe condition and in compliance with all covenants, conditions and restrictions now or hereafter affecting the Property, and with any and all applicable laws, ordinances, rules and requirements of governmental authorities having jurisdiction thereon, including but not limited to obtaining any governmental permits which may be required to maintain and repair the Property, and in the event Licensee fails to take such action, Landlord shall have the right but not the obligation, after at least a 24 hour prior notice to Licensee, to take such action and Licensee shall promptly reimburse Landlord for any funds expended by Landlord in connection therewith.

4. Subject To. This License is hereby granted subject to all easements, restrictions, conditions, covenants, liens and encumbrances of record affecting the Property.

5. Miscellaneous.

a. Neither this License, nor a short form memorandum hereof, shall be recorded.

b. This License constitutes the complete and exclusive understanding between the parties and supersedes all proposals, oral and written, and any prior or contemporaneous communications, agreements and understandings between the parties relating to the subject hereof.

c. No alteration, modification, amendment or waiver hereto shall be valid unless signed on behalf of the party against whom enforcement is sought.

d. No waiver or any term, provision or condition of this License, whether by conduct or otherwise, in any one of more instances, shall be deemed to be, or construed to be, a further or continuing waiver of any such term, provision or condition or any other term, provision or condition or this License.

e. In the event of the bringing of any action or suit by a party hereto against the other party hereunder by reason of any breach of any of the covenants or agreements on the part of the other party arising out of this License, the prevailing party in such action or dispute, whether by final judgment, or out of court settlement, shall be entitled to have and recover of and from the other party, all costs and expenses of suit, including actual attorneys' fees.

f. Installation of satellite dish shall become part of the Property and shall not be removed by Licensee, unless Licensor shall require removal of same, in which Licensee shall remove at its sole cost and expense and repair any damage caused by the removal.

Landlord's Initials _____ Tenant's Initials _____

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

LANDLORD	LICENSEE
Naples Plaza, Ltd., L.P., a California Limited Partnership By: _____ Craig W. Clark, General Partner	By: _____ Print Name Title

Landlord's Initials

Tenant's Initials

EXHIBIT "G"
GUARANTY OF LEASE

[Intentionally Deleted]

EXHIBIT "H"
NOTICE OF DELIVERY OF POSSESSION AND CONFIRMATION AGREEMENT

Landlord's Initials

Tenant's Initials

THIS NOTICE OF DELIVERY OF POSSESSION AND CONFIRMATION AGREEMENT is made and agreed upon as of this _____day of_____, 200__, by and between Naples Plaza, Ltd., L.P., a California Limited Partnership (the "Landlord"), and _____, (the "Tenant").

WITNESSETH:

Landlord and Tenant have previously entered into a certain Lease Agreement dated _____, 200__ (the "Lease"), covering certain Premises located at_____, _____, as more particularly described in the Lease (the "Premises").

NOW, THEREFORE, in connection with the foregoing, the parties hereto mutually agree as follows:

1. For the purpose of confirming the establishment of the Commencement Date, as required by the Provisions of the Lease, Landlord and Tenant hereby agree that:

a. The date of _____, 200__, is hereby established as the "Term Commencement Date" referred to in the Lease;

b. The date of _____, 200__, is hereby established as the "Rent Commencement Date" referred to in the Lease, upon which Rent and Additional Rent commence to accrue;

c. The date of _____, 200__, is hereby established as the "Expiration Date" of the Term of the Lease; and

d. The gross leasable area of the Premises is _____(_____) square feet and the gross leasable area of the Center is _____(_____) square feet. Therefore, "Tenant's Share" of the Operating Expenses as defined in the Lease is _____percent (____%).

2. Landlord and Tenant acknowledge and agree that the Premises were tendered to Tenant on the Term Commencement Date noted above as follows:

☐ Landlord's Work as Defined in **Exhibit "B-1"** of the Lease is Substantially Complete with the exception of the items noted on the attached Landlord Work Acceptance Checklist, **EXHIBIT "I,"** dated _____. Tenant acknowledges the items on said Punch List are minor and agrees to accept the Premises with the provision that the items listed on the Punch List will be completed by the Landlord's Contractor within two weeks

☐ Landlord's Work is partially complete as noted on the attached Landlord Work Acceptance Checklist, **EXHIBIT "I"**, dated _____. Tenant has requested Landlord's permission to enter the Premises in order to perform Tenant's Work as defined in **Exhibit "B-1"** of the Lease concurrent with Landlord's Work. The attached list describes the Work to be performed by Tenant's Contractor concurrent with Landlord's Contractor. Tenant and Tenant's Contractor acknowledge and agree that Tenant's work shall in no way hinder or delay Landlord's Contractor in the completion of the Landlord's Work. Tenant understands and agrees to accept full responsibility for work installed by Tenant's Contractor and shall provide such evidence of insurance and permits as may be necessary per the local governing agency. Tenant acknowledges the Landlord and the Landlord's Contractor are not responsible for any work, materials either completed or stocked.

_____ Landlord's Initials

_____ Tenant's Initials

3. This Confirmation Agreement and each and all provisions hereof shall inure to the benefit of, or bind as the case may require the parties hereto and their respective heirs, successors and assigns.

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

Tenant: _____	**Naples Plaza, Ltd., L.P., a California Limited Partnership** **Landlord's Agent:** _____
By: _____	By: _____
Title: _____	Title: _____
Date: _____	Date: _____

Landlord's Initials _____ Tenant's Initials _____

EXHIBIT "I"

Landlord Work Acceptance Checklist
[To be inserted upon completion]

Landlord's Initials _____ Tenant's Initials _____

RESOLUTION NO. 08-09

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, ESTABLISHING A METHOD FOR THE SELECTION AND APPOINTMENT OF A MAYOR AND MAYOR PRO TEMPORE OF THE CITY OF WILDOMAR

THE CITY COUNCIL OF THE CITY OF WILDOMAR DOES RESOLVE AS FOLLOWS:

SECTION I. Recitals.

(a) The City of Wildomar was incorporated on July 1, 2008, as a general law city of the State of California.

(b) Government Code section 36801 requires the City Council to choose one of its number as mayor and one of its number as mayor pro tempore.

SECTION II. Method for Selecting Mayor and Mayor Pro Tempore. From the effective date of incorporation on July 1, 2008 until the first meeting in January of 2009, the City Councilmembers who received the highest and second highest number of votes in the incorporation election shall serve as Mayor and Mayor Pro Tempore respectively. Thereafter, the Mayor and Mayor Pro Tempore of the City of Wildomar shall each be selected by a simple majority vote of the City Council. Beginning in the year 2009, the City Council shall select a Mayor and Mayor Pro Tempore every year at their first regularly scheduled meeting in the month of January.

SECTION III. Term of Office. The Mayor and Mayor Pro Tempore serve at the pleasure of the City Council. Beginning in January of 2009, the term of office for the Mayor and Mayor Pro Tempore shall be for one (1) year, commencing on the first regular City Council meeting in January of each year, unless earlier terminated by a majority vote of the City Council. If the City Council removes the Mayor or Mayor Pro Tempore from the office before his or her one (1) year term is complete, a new Council Member shall be selected immediately thereafter to succeed to the office for the remainder of the one (1) year term.

PASSED, APPROVED, AND ADOPTED this 1st day of July, 2008.

_____
Bob Cashman, Mayor

ATTEST:

_____

John Danielson, Interim City Clerk

APPROVED AS TO FORM:

_____

Julie Hayward Biggs, Interim City Attorney

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE)
CITY OF WILDOMAR)

I, John Danielson, Interim City Clerk of the City of Wildomar, do hereby certify that the foregoing Resolution No. 08-09 was duly adopted by the City Council of the City of Wildomar at a regular meeting thereof, held on the 1st day of July, 2008, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

John Danielson, Interim City Clerk

RESOLUTION NO. 08-10

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, ESTABLISHING AN ADDRESS FOR THE RECEIPT OF THE UNITED STATES MAIL

THE CITY COUNCIL OF THE CITY OF WILDOMAR DOES RESOLVE AS FOLLOWS:

SECTION 1. Mailing Address Established. The mailing address of the City of Wildomar shall be 23873 Clinton Keith Road, Wildomar, California, 92595.

PASSED, APPROVED, AND ADOPTED this 1st day of July, 2008.

_____
Bob Cashman, Mayor

ATTEST:

_____
John Danielson, Interim City Clerk

APPROVED AS TO FORM:

_____
Julie Hayward Biggs, Interim City Attorney

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE)
CITY OF WILDOMAR)

I, John Danielson, Interim City Clerk of the City of Wildomar, do hereby certify that the foregoing Resolution No. 08-10 was duly adopted by the City Council of the City of Wildomar at a regular meeting thereof, held on the 1st day of July, 2008, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

John Danielson, Interim City Clerk

RESOLUTION NO. 08-11

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, AUTHORIZING THE MAYOR AND INTERIM CITY CLERK TO PREPARE, EXECUTE, AND FILE THE STATEMENT OF BOUNDARY CREATION

THE CITY COUNCIL OF THE CITY OF WILDOMAR DOES RESOLVE AS FOLLOWS:

SECTION 1. Recitals.

(a) The City of Wildomar was incorporated on July 1, 2008, as a general law city of the State of California.

(b) The City Council is required by Section 54900 of the California Government Code to cause to be filed a Statement of Boundary Creation.

SECTION 2. File Statement of Boundary Creation. The Mayor and Interim City Clerk are authorized to prepare and execute the Statement of Boundary Creation of the City of Wildomar, California, and to file the same with all appropriate State and County offices, and to pay any filing fee as may be required by Government Code Section 54902.5.

PASSED, APPROVED, AND ADOPTED this 1st day of July, 2008.

Bob Cashman, Mayor

ATTEST:

John Danielson, Interim City Clerk

APPROVED AS TO FORM:

Julie Hayward Biggs, Interim City Attorney

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE)
CITY OF WILDOMAR)

I, John Danielson, Interim City Clerk of the City of Wildomar, do hereby certify that the foregoing Resolution No. 08-11 was duly adopted by the City Council of the City of Wildomar at a regular meeting thereof, held on the 1st day of July, 2008, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

_____
John Danielson, Interim City Clerk

RESOLUTION NO. 08-12

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, DESIGNATING CITY HOLIDAYS

THE CITY COUNCIL OF THE CITY OF WILDOMAR DOES RESOLVE AS FOLLOWS:

SECTION 1. City Holidays. The following holidays shall be designated as City holidays and the public offices of the City will be closed for the transaction of business on these days:

New Year's Day
Dr. Martin Luther King, Jr. Day
Presidents' Day
Memorial Day
Independence Day
Labor Day
Columbus Day
Veterans' Day
Thanksgiving Day
Day after Thanksgiving Day
Christmas Day

PASSED, APPROVED, AND ADOPTED this 1st day of July, 2008.

Bob Cashman, Mayor

ATTEST:

John Danielson, Interim City Clerk

APPROVED AS TO FORM:

Julie Hayward Biggs, Interim City Attorney

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE)
CITY OF WILDOMAR)

I, John Danielson, Interim City Clerk of the City of Wildomar, do hereby certify that the foregoing Resolution No. 08-12 was duly adopted by the City Council of the City of Wildomar at a regular meeting thereof, held on the 1st day of July, 2008, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

_____
John Danielson, Interim City Clerk

RESOLUTION NO. 08-13

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, RATIFYING THE APPOINTMENT OF INTERM CITY MANAGER AND RATIFYING THE INTERIM CITY MANAGER EMPLOYMENT AGREEMENT

THE CITY COUNCIL OF THE CITY OF WILDOMAR DOES RESOLVE AS FOLLOWS:

SECTION 1. Recitals.

(a) Pursuant to action taken by the then City Council-Elect for the City of Wildomar on March 19, 2008, John Danielson was appointed Interim City Manager for the City and an Agreement for Employment of Interim City Manager was approved.

(b) The City's incorporation having become effective as of July 1, 2008 and the City Council now being properly sworn in and convened, the City Council wishes to ratify and affirm the Agreement for Employment of Interim City Manager.

(c) The Local Agency Formation Commission of Riverside County conditions of approval on the incorporation of the City provide that the City Manager shall appoint the City Clerk.

(d) The Interim City Manager has designated himself as the Interim City Clerk until such time as a permanent City Clerk can be hired.

(e) The City Council desires to acknowledge and ratify the Interim City Manager's designation of himself as the Interim City Clerk.

SECTION 2. Ratification of Interim City Manager Agreement. The City Council ratifies and authorizes the Mayor to execute the Agreement for Employment of Interim City Manager between John Danielson and the City as provided in Exhibit "A" attached hereto and fully incorporated herein by reference.

SECTION 3. Ratification of Appointment of Interim City Clerk. The City Council ratifies and acknowledges that the Interim City Manager has appointed himself as the Interim City Clerk.

PASSED, APPROVED, AND ADOPTED this 1st day of July, 2008.

Bob Cashman, Mayor

ATTEST:

John Danielson, Interim City Clerk

APPROVED AS TO FORM:

Julie Hayward Biggs, Interim City Attorney

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE)
CITY OF WILDOMAR)

I, John Danielson, Interim City Clerk of the City of Wildomar, do hereby certify that the foregoing Resolution No. 08-13 was duly adopted by the City Council of the City of Wildomar at a regular meeting thereof, held on the 1st day of July, 2008, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

_____
John Danielson, Interim City Clerk

EXHIBIT "A"

AGREEMENT FOR EMPLOYMENT OF INTERIM CITY MANAGER

March 15, 2008

Members-elect of the City Council
c/o Bob Cashman
City of Wildomar
P.O. Box 915
Wildomar, California 92595

Re: John Danielson, City Manager Services

Dear Mayor and City Councilmembers-Elect:

In response to the action taken by the City Council Elect Committee on March 19, 2008 I am submitting a best effort agreement to provide Interim City Manager Services.

Scope of Services

The mayor and councilmembers-elect (the "Council-elect") of the new City of Wildomar (the "City") are hiring John Danielson of Danielson Associates, Inc. as Interim City Manager to the new City of Wildomar prior to July 1, 2008 which is the effective date of the City's incorporation (the "Effective Date") and shall continue until decisions are made by the Council-elect after the Effective Date as to how and by whom permanent City Manager services will be provided to the new City.

Mr. Danielson will take reasonable steps to provide necessary advice and direction as Interim City Manager for the new City of Wildomar. Mr. Danielson will act as the Interim City Manager for so long as it may take for the City of Wildomar to appoint a permanent City Manager and will assist in any transition .

Danielson Associates, Inc.
(cell) 916-670-0019 (fax) 916-880-5673
9745 Silvergate Lane Elk Grove CA 95624
Danielson.Associates@gmail.com

Compensation

The Council-elect agrees on behalf of the new City of Wildomar to exercise its best efforts to assure that the City will pay John Danielson the services rendered hereunder as follows: 1) Monthly retainer of $15,000 based on up to three (3) days per week, on-site and/or electronically as needed. 2) Various costs and expenses such as travel, lodging, meals, incidental business costs will be reimbursed at cost.

John Danielson agrees to defer receipt of payment until after the Effective Date and after receipt of tax revenues to the general fund.

No member of the Council-elect shall have any personal responsibility or liability for payment of any fees or costs incurred under this Agreement.

Billings

John Danielson will bill the new City of Wildomar for its City Manager services, costs and expenses on a monthly basis. The Council-elect agrees that, to the extent that payment of fees is not paid from funds advanced by the County of Riverside, after the Effective Date and receipt of sufficient tax revenues to meet operating costs, the Council-elect will use its best efforts to assure that each such bill will be paid in full within 30 days of receipt.

Termination

The new City of Wildomar may discharge John Danielson at any time by written notice effective when it is received. John Danielson will provide no further services and advance no further costs on the City of Wildomar's behalf after receipt of the notice, unless specifically agreed to by the City. John Danielson may withdraw from this engagement with the City of Wildomar's consent or for good cause. Good cause may include the City of Wildomar's breach of this letter of agreement, its refusal to work cooperatively, or any fact

Danielson Associates, Inc.
(cell) 916-670-0019 (fax) 916-880-5673
9745 Silvergate Lane Elk Grove CA 95624
Danielson.Associates@gmail.com

or circumstance that would render John Danielson's continuing engagement unlawful or unethical.

Notwithstanding the discharge or withdrawal of John Danielson the City of Wildomar will remain obligated to pay for all services rendered, costs and expenses under this letter agreement and to reimburse for all costs incurred prior to its termination.

General Provisions

A. John Danielson is and shall at all times remain as to the City a wholly independent contractor

B. This Agreement constitutes the entire agreement of the parties concerning the subject matter hereof and all prior agreements or understandings are hereby merged herein. This Agreement shall not be amended in any way except by a writing expressly purporting to be such an amendment, signed and acknowledged by both of the parties hereto.

C. Should interpretation of this Agreement, or any portion thereof, be necessary, it is deemed that this Agreement was prepared by the parties jointly and equally, and shall not be interpreted against either party on the ground that the party prepared the Agreement or caused it to be prepared.

D. No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any such waiver constitute a continuing or subsequent waiver of the same provision. No waiver shall be binding, unless executed in writing by the party making the waiver.

E. This Agreement may be modified by the mutual consent of the City and the Firm to adjust for costs, fees, services or other matters other than termination at any time.

* * *

Please carefully review the terms of this letter agreement and, if they are acceptable to the City of Wildomar, provide an executed copy to John Danielson.

I look forward to working with the Council-elect and the new City of Wildomar. Please do not hesitate to contact me with any questions you may have.

Very truly yours,

John H. Danielson
of Danielson Associates, Inc.

The City Council-elect of the new City of Wildomar has read and understands the foregoing terms and conditions and agrees to them. The City Council-elect on behalf of the new City of Wildomar agrees to use its best efforts to assure that the new City of Wildomar will be liable for all obligations under the foregoing contract and acknowledges receipt of a copy of this letter agreement. The undersigned are authorized to execute this agreement on behalf of the new City of Wildomar.

DATED: _____, 2008

CITY COUNCIL-ELECT on behalf of the
NEW CITY OF WILDOMAR

By: _____
Bob Cashman, Councilmember-elect

By:_____
Sheryl Ade, Councilmember-elect

By:_____
Bridgette Moore, Councilmember-elect

By:_____
Marsha Swanson, Councilmember-elect

By:_____
Scott Farnam, Councilmember-elect

RESOLUTION NO. 08-14

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, APPOINTING THE INTERIM CITY MANAGER AS PURCHASING AGENT

THE CITY COUNCIL OF THE CITY OF WILDOMAR DOES RESOLVE AS FOLLOWS:

SECTION 1. Appointment of Purchasing Agent. The Interim City Manager, John Danielson, is hereby appointed Purchasing Agent of the City of Wildomar.

PASSED, APPROVED, AND ADOPTED this 1st day of July, 2008.

_____
Bob Cashman, Mayor

ATTEST:

_____
John Danielson, Interim City Clerk

APPROVED AS TO FORM:

_____
Julie Hayward Biggs, Interim City Attorney

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE)
CITY OF WILDOMAR)

I, John Danielson, Interim City Clerk of the City of Wildomar, do hereby certify that the foregoing Resolution No. 08-14 was duly adopted by the City Council of the City of Wildomar at a regular meeting thereof, held on the 1st day of July, 2008, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

_____
John Danielson, Interim City Clerk

RESOLUTION NO. 08-15

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, RATIFYING THE APPOINTMENT OF THE INTERIM CITY ATTORNEY AND RATIFYING THE INTERIM CITY ATTORNEY SERVICES AGREEMENT

THE CITY COUNCIL OF THE CITY OF WILDOMAR DOES RESOLVE AS FOLLOWS:

SECTION 1. Recitals.

(a) The City of Wildomar was incorporated on July 1, 2008, as a general law city of the State of California.

(b) The City Council-elect appointed the law firm of Burke, Williams & Sorensen, LLP, as an Interim City Attorney on March 19, 2008, and an Agreement for Interim City Attorney services was approved.

(c) The City's incorporation having become effective as of July 1, 2008 and the City Council now being properly sworn in and convened, the City Council wishes to ratify and affirm the Agreement for Interim City Attorney Services.

SECTION 2. Ratification of Interim City Attorney Services Agreement. The City Council ratifies and authorizes the Mayor to execute the Interim City Attorney Services Agreement between Burke, Williams & Sorensen, LLP and the City as provided in Exhibit "A" attached hereto and incorporated herein by this reference.

PASSED, APPROVED, AND ADOPTED this 1st day of July, 2008.

Bob Cashman, Mayor

ATTEST:

John Danielson, Interim City Clerk

APPROVED AS TO FORM:

_____

Julie Hayward Biggs, Interim City Attorney

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE)
CITY OF WILDOMAR)

I, John Danielson, Interim City Clerk of the City of Wildomar, do hereby certify that the foregoing Resolution No. 08-15 was duly adopted by the City Council of the City of Wildomar at a regular meeting thereof, held on the 1st day of July, 2008, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

_____
John Danielson, Interim City Clerk

EXHIBIT "A"

INTERIM CITY ATTORNEY SERVICES AGREEMENT

2280 Market Street Suite 300
Riverside, California 92501-2121
voice 951 788 0100 fax 951 788 5785
www.bwslaw.com

Direct No.: 951.801.6610
Our File No.: F0002-0001
jbiggs@bwslaw.com

March 25, 2008

Members-elect of the City Council
c/o Bob Cashman
City of Wildomar
P.O. Box 915
Wildomar, California 92595

Re: Legal Services

Dear Mayor and City Councilmembers-Elect:

In accordance with California Business and Professions Code § 6148, and to confirm your conversation with Julie Hayward Biggs of our firm, this letter agreement is written to set forth the scope of services to be provided by Burke, Williams & Sorensen, LLP ("Firm") on behalf of the new City of Wildomar and the terms and conditions for such services.

Scope of Services

The mayor and councilmembers-elect (the "Council-elect") of the new City of Wildomar (the "City") are hiring the Firm as Interim City Attorney to the new City of Wildomar prior to July 1, 2008 which is the effective date of the City's incorporation (the "Effective Date") and continuing until decisions are made by the Council-elect after the Effective Date as to how and by whom permanent City Attorney legal services will be provided to the new City.

The Firm will take reasonable steps to provide all necessary advice and documentation required by the new City of Wildomar to meet California statutory and constitutional requirements for the formation of a new city in a timely and efficient manner. In addition, the Firm will continue to act as Interim City Attorney for so long as it may take for the City of Wildomar to appoint a permanent City Attorney and will assist, if necessary, in any transition to another Firm or attorney at such time as that permanent decision is made.

Julie Hayward Biggs will be the primary attorney responsible for providing legal advice to the City of Wildomar and will act as its Interim City Attorney, but she may be assisted by other attorneys in the firm as needs may dictate, including without limitation Mr. Tom Jex who will serve as the Assistant City Attorney and Ms. Erica Ball who will assist with drafting the many resolutions and ordinances that will be needed for the first official meeting of the new City Council.

Compensation

The Council-elect agrees on behalf of the new City of Wildomar to exercise its best efforts to assure that the City will pay the Firm for the legal services rendered hereunder at a blended hourly rate of $235 per hour for partners and $215 per hour for associates in the firm and $125 per hour for all paralegals, from funds either advanced by the County of Riverside prior to the Effective Date or from general fund revenues of the new City of Wildomar once they are received. No retainer shall be required and the Firm agrees to defer receipt of payment until after the Effective Date and after receipt of tax revenues to the general fund.

No member of the Council-elect shall have any personal responsibility or liability for payment of any fees or costs incurred under this Agreement.

The Firm's hourly rates are subject to annual revision, however, the rate set forth above will remain in effect through July 1, 2009.

Costs and Expenses

In addition to its legal fees, the Firm may incur various costs and expenses in performing legal services under this letter agreement. The Council-elect agrees to use its best efforts to assure that the City will pay for those costs and expenses in addition to the hourly fees when general fund revenues become available. The costs and expenses commonly incurred include fees fixed by law or assessed by public agencies, long distance telephone calls, messenger and other delivery fees (which will not be incurred without your advance approval), postage, parking and other local travel expenses, photocopying and other reproduction costs, and other similar items.

Billings

The Firm will bill the new City of Wildomar for its professional services, costs and expenses on a monthly basis. The Council-elect agrees that after the Effective Date and receipt of its first regular tax revenues, the Council-elect will use its best efforts to assure that all bills received for work done prior to that time will be paid in full within 30 days of receipt of such funds and that all subsequent billings will be paid within 30 days of receipt.

Termination

The new City of Wildomar may discharge the Firm at any time by written notice effective when received by the Firm. The Firm will provide no further services and advance no further costs on the City of Wildomar's behalf after receipt of the notice, unless specifically agreed to by the City. The Firm may withdraw from this engagement with the City of Wildomar's consent or for good cause. Good cause may include the City of Wildomar's breach of this letter agreement, its refusal to cooperate with the Firm or to follow the Firm's advice on a material matter, or any fact or circumstance that would render the Firm's continuing representation unlawful or unethical.

Notwithstanding the discharge or withdrawal of the Firm, the City of Wildomar will remain obligated to pay the Firm for all legal services rendered, costs and expenses under this letter agreement and to reimburse the Firm for all costs incurred prior to its termination.

Potential Conflicts Of Interest

We know of no conflicts of interest that would preclude the Firm from representing the City on any matter that may come before it. Nevertheless, the Firm represents a wide variety of clients, including private individuals, businesses and other entities, and from time to time conflicts may arise that require disclosure to the City or disqualification of the Firm from representing either theCity or the other client or both.

We are not permitted, nor would we consider, representing another client in any matter that is potentially adverse to the City. It is possible, however, that we may represent clients that may have matters before the City on other matters that are unrelated to the City. For example, we might provide business advice to a national retail

business that at some time in the future may seek water or sewer connections from the City. In such a case, our representation of that company would be disclosed to the City at the earliest opportunity and the City would then need to evaluate whether it views that representation as in conflict with our representation of the City. Should the City find our representation of such a client objectionable, the City retains the ability to terminate our services or refer any matters that may be at issue to another attorney or law firm.

General Provisions

A. The Firm shall not assign this Agreement, or any of the rights, duties or obligations hereunder. It is understood and acknowledged by the parties that the Firm is uniquely qualified to perform the services provided for in this Agreement.

B. The Firm is and shall at all times remain as to the City a wholly independent contractor. Neither the City nor any of its officers, employees, servants or agents shall have control over the conduct of the Firm or any of the Firm's officers, employees or agents. The Firm shall not at any time or in any manner represent that it or any of its officers, employees or agents are in any manner employees of the City. City acknowledges and agrees that the attorneys representing the City will need to represent to others their capacity and relationship to the City.

C. In the performance of this Agreement, the Firm shall not engage in discrimination in employment of persons because of the age, race, color, sex, national origin or ancestry or religion of such persons.

D. Nothing contained in this Agreement shall be deemed, construed or represented by the City or the Firm to any third person to create the relationship of principal or agent, or of a partnership, or of a joint venture, or of any other association of any kind or nature between the City and the Firm other than attorney and client.

E. This Agreement constitutes the entire agreement of the parties concerning the subject matter hereof and all prior agreements or understandings are hereby merged herein. This Agreement shall not be amended in any way except by a writing expressly purporting to be such an amendment, signed and acknowledged by both of the parties hereto.

F. Should interpretation of this Agreement, or any portion thereof, be necessary, it is deemed that this Agreement was prepared by the parties jointly and equally, and shall

not be interpreted against either party on the ground that the party prepared the Agreement or caused it to be prepared.

G. No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any such waiver constitute a continuing or subsequent waiver of the same provision. No waiver shall be binding, unless executed in writing by the party making the waiver.

H. This Agreement may be modified by the mutual consent of the City and the Firm to adjust for costs, fees, services or other matters other than termination at any time.

* * *

In accordance with Business and Professions Code § 7149(a)(4), the City Council-elect and the new City of Wildomar are hereby informed that the Firm maintains errors and omissions insurance coverage applicable to the services to be rendered under this Agreement.

Please carefully review the terms of this letter agreement and, if they are acceptable to the City of Wildomar, execute the enclosed copy and return it to Ms. Biggs in the envelope provided.

The Firm looks forward to working with the Council-elect and the new City of Wildomar. Please do not hesitate to contact either Julie, or me with any questions you may have.

Very truly yours,

JULIE HAYWARD BIGGS
of BURKE, WILLIAMS & SORENSEN, LLP

The City Council-elect on behalf of the new City of Wildomar agrees to use its best efforts to assure that the new City of Wildomar honors all obligations under the foregoing contract and acknowledges receipt of a copy of this letter agreement. The undersigned is authorized to execute this agreement on behalf of the new City of Wildomar.

DATED: March 26, 2008

CITY COUNCIL-ELECT on behalf of the
NEW CITY OF WILDOMAR

By: _____
Bob Cashman, Councilmember-elect

RESOLUTION NO. 08-16

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, SETTING THE BOND AMOUNTS FOR THE CITY CLERK AND CITY TREASURER

THE CITY COUNCIL OF THE CITY OF WILDOMAR DOES RESOLVE AS FOLLOWS:

SECTION I. Recitals.

(a) Government Code section 36518 and Sections 2.03.040 and 2.04.040 of the Wildomar Municipal Code require the City Clerk and the City Treasurer to execute a bond to the City prior to taking office.

(b) Those sections further provide that the City Council shall set by resolution the penal amount of the bonds.

(c) The City Council finds that one-hundred thousand dollars ($100,000.00) is a reasonable penal sum for the bonds required of the City Clerk and the City Treasurer.

SECTION II. Penal Sum Set. The penal sum for the City Clerk and City Treasurer's bonds shall be one-hundred thousand dollars ($100,000.00).

PASSED, APPROVED, AND ADOPTED this 1st day of July, 2008.

_____
Bob Cashman, Mayor

ATTEST:

_____
John Danielson, Interim City Clerk

APPROVED AS TO FORM:

_____
Julie Hayward Biggs, Interim City Attorney

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE)
CITY OF WILDOMAR)

I, John Danielson, Interim City Clerk of the City of Wildomar, do hereby certify that the foregoing Resolution No. 08-16 was duly adopted by the City Council of the City of Wildomar at a regular meeting thereof, held on the 1st day of July, 2008, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

_____
John Danielson, Interim City Clerk

RESOLUTION NO. 08-17

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, ESTABLISHING RULES OF CONDUCT FOR CITY COUNCIL MEETINGS

THE CITY COUNCIL OF THE CITY OF WILDOMAR DOES RESOLVE AS FOLLOWS:

SECTION 1. Recitals.

(a) The City Council desires to encourage public participation in its meetings.

(b) State law authorizes the City Council to adopt rules for the conduct of its proceedings, and authorizes the City Council to punish a member or other person for disorderly behavior at a meeting.

(c) The City Council has determined that public participation in meetings is enhanced when members of the public and Council Members are aware of pre-established rules and parameters that allow the presentation of various viewpoints and perspectives on matters of community concern.

SECTION 2. Rules for City Councilmembers.

(a) *Decorum.* Members of the City Council shall conduct themselves in an orderly and business-like manner to ensure that the business of the City shall be attended to efficiently and thoroughly and to ensure that the integrity of the deliberative process of the City Council is maintained at all times. Members of the Council shall maintain a polite, respectful and courteous manner when addressing one another, City staff, and members of the public during the meetings.

(b) *Role of the Presiding Officer.* The presiding officer of the City Council, who shall be the Mayor, or in the Mayor's absence the Mayor Pro Tempore, or in their absence any other Councilmember designated by the City Council, shall be responsible for maintaining the order and decorum of meetings. It shall be the duty of the presiding officer to ensure that the rules of operation and decorum contained herein are observed. The presiding officer shall maintain control of communication between Councilmembers, and between the Council and the public.

(c) *Communication with Councilmembers.*

1. Councilmembers should request the floor from the presiding officer before speaking.

2. A Councilmember who is speaking shall remember that the purpose of the City Council meeting is to attend to and resolve City business. Councilmembers shall avoid repetition and shall endeavor to limit their comments to the subject matter at hand. Councilmembers should endeavor to express their views without engaging in lengthy debates.

3. When one Councilmember is speaking, other Councilmembers shall not interrupt or otherwise disturb the speaker.

(d) *Communication with Members of the Public Addressing the Council.*

1. Councilmembers may question the person addressing the Council at the conclusion of the speakers comments or upon expiration of the speaker's time to speak. Such questions shall be directed to the speaker through the presiding officer.

2. Councilmembers shall not engage the speaker addressing the Council in a dialogue with the City Council or City staff, but shall confine communication to a question-and-answer format conducted through the presiding officer.

3. If a member of the audience has addressed the Council on matters which are not on the agenda, Councilmembers shall refrain from extended discussions of the matter. If a Councilmember so wishes, the Councilmember may, during the Councilmember comments portion of the meeting, direct the City Manager to place the matter on the next agenda.

(e) *Participation in Council Votes.* Each Councilmember shall participate in each vote of the City Council unless that Councilmember has concluded, after consultation with the City Attorney, that he or she is disqualified due to a conflict of interest.

SECTION 3. Rules for City Staff.

(a) *Decorum.* City staff shall not engage in dialogue with members of the public during public meetings. When addressed by Council, staff shall respond in a polite and respectful manner.

(b) *Role of the City Manager.* The City Manager's duties during City Council meetings include keeping a record of concerns raised by the Council regarding staff matters and directions for future staff action.

SECTION 4. Rules for the Public.

(a) *Members of the Audience.* Members of the audience shall not engage in disorderly or boisterous conduct, including the utterance of loud language, whistling, stamping of feet or other acts which disturb, disrupt, impede or otherwise render the orderly conduct of the City Council meeting unfeasible. A member of the audience engaging in any such conduct shall, at the discretion of the presiding officer or a majority of the City Council, be subject to ejection from that meeting.

(b) *Persons Addressing the City Council.*

1. Any person wishing to speak during the public communication portion of the meeting or on an agenda item shall, if willing, first complete a speaker slip and submit the slip to the City Clerk prior to the commencement of the meeting.

2. No person shall address the City Council without first being recognized by the presiding officer.

3. Persons addressing the City Council shall be given three minutes to speak. The Council may, by majority vote, extend the time to speak if necessary to protect the speaker's right to due process and equal protection.

4. The purpose of addressing the Council is to formally communicate to the Council on matters relating to City business or citizen concerns. Persons addressing the Council shall confine the subject matter of their remarks to the particular matter before the Council unless speaking during the public communication portion of the meeting.

5. Each person addressing the City Council shall do so in an orderly manner and shall not engage in any conduct which disrupts or otherwise impedes the orderly conduct of the Council meeting. Any person who so disrupts the meeting may, at the discretion of the presiding officer or a majority of the City Council, be subject to ejection from that meeting.

6. Persons addressing the Council shall address the Council as a whole and shall not engage in a dialogue with individual Councilmembers, City staff or members of the audience.

SECTION 5. Enforcement. Upon a violation of the rules of order and decorum established in Sections 2, 3 and 4 of this resolution, the procedure to enforce the rules is as follows:

(a) *Warning.* The presiding officer shall request that a person who is violating the rules of decorum cease such conduct. If, after receiving a warning from the presiding officer, the person persists in disturbing the meeting, the presiding officer shall order the person to leave the City Council meeting. If the person does not leave the meeting, the presiding officer may order any law enforcement officer who is on duty at the City Council meeting as sergeant-at-arms to remove the person from the City Council chambers.

(b) *Removal.* Any law enforcement officer who is serving as sergeant-at-arms at the City Council meeting shall carry out the orders and instructions given by the presiding officer for the purpose of maintaining order and decorum. Upon instruction of the presiding officer, it shall be the duty of the sergeant-at-arms to remove from the City Council meeting any person who is disrupting the proceedings of the City Council.

(c) *Resisting Removal.* Any person who resists removal by the sergeant-at-arms may be charged with a violation of the rules of order and decorum as well as any other applicable ordinance or law.

(d) *Motion to Enforce.* If the presiding officer of the City Council fails to enforce the rules of order and decorum set forth in Sections 2, 3 and 4 of this resolution, any Councilmember may move to require the presiding officer to do so, and an affirmative vote of a majority of the City Council shall require the presiding officer to do so. If the presiding officer fails to carry out the will of the majority of the City Council, the majority may designate another Councilmember to act as presiding officer for the limited purpose of enforcing the rules of order and decorum established in Sections 2, 3 and 4 of this resolution.

(e) *Clearing the Room.* If a meeting of the City Council is disturbed or disrupted in such a manner as to make infeasible or improbable the restoration of order, the presiding officer or a majority of the City Council may exercise the authority granted in the California Government Code Section 54957.9 by ordering the meeting room

cleared and continuing in session in the manner authorized by Section 54957.9 of the Government Code.

SECTION 6. The Agenda.

(a) *Placement of Items on the Agenda.* Any two Councilmembers may place a matter on the agenda. Items to be placed on the agenda must be submitted to the City Manager not later than noon on the Thursday before the regular City Council meeting. Staff shall not prepare staff reports or written recommendations on items placed on the agenda by individual Councilmembers, but shall include as part of the agenda any materials submitted by the individual Council Member.

(b) *Written Material.* Persons scheduled to address the City Council on scheduled agenda items wishing to submit written materials to the Council should provide a copy of the material to the City Manager by noon of the Thursday before the regular City Council meeting. If the written materials are not received by that deadline, and reviewing the material is important to the Council's action, the item will be continued to the next scheduled meeting, if possible.

PASSED, APPROVED, AND ADOPTED this 1st day of July, 2008.

_____
Bob Cashman, Mayor

ATTEST:

_____
John Danielson, Interim City Clerk

APPROVED AS TO FORM:

_____
Julie Hayward Biggs, Interim City Attorney

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE)
CITY OF WILDOMAR)

I, John Danielson, Interim City Clerk of the City of Wildomar, do hereby certify that the foregoing Resolution No. 08-17 was duly adopted by the City Council of the City of Wildomar at a regular meeting thereof, held on the 1st day of July, 2008, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

_____
John Danielson, Interim City Clerk

RESOLUTION NO. 08-18

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, APPOINTING A CITY ENGINEER AND TRANSFERRING ALL SURVEYING DUTIES CURRENTLY PERFORMED BY THE COUNTY SURVEYOR TO THE CITY ENGINEER

THE CITY COUNCIL OF THE CITY OF WILDOMAR DOES RESOLVE AS FOLLOWS:

SECTION 1. Recitals.

(a) The City of Wildomar was incorporated on July 1, 2008, as a general law city of the State of California.

(b) Per Government Code Section 57384, the County of Riverside is obligated to furnish all services it provided to the area comprising the City prior to its incorporation for the 2008-2009 fiscal year or until the City Council requests that the services be discontinued, whichever occurs first.

(c) The City Council desires to request that the County discontinue the provision of surveying services to the City.

(d) The City Council desires to appoint a City Engineer and to have the City Engineer perform all of the statutory-mandated surveying duties previously performed by the County Surveyor of as of July 1, 2008.

SECTION 2. Request for Discontinuation of Services. The City Council hereby requests that the County cease to provide all surveying services authorized or required by Title 16 of the Riverside County Code and the Subdivision Map Act (Government Code sections 66410 and following) as of July 7, 2008. The City shall assume the responsibility for the provision of these services as of July 7, 2008

SECTION 3. Appointment of City Engineer. The City Council appoints Michael Kashiwagi, civil engineer license number C33176, as the City Engineer. The City Engineer shall be responsible for performing all surveying services authorizes or required by Title 16 of the Riverside County Code and the Subdivision Map Act as of July 7, 2008.

SECTION 4. Transmittal to County. The City Council authorizes the Interim City Manager to provide a copy of this resolution to the County.

PASSED, APPROVED, AND ADOPTED this 1st day of July, 2008.

Bob Cashman, Mayor

ATTEST:

John Danielson, Interim City Clerk

APPROVED AS TO FORM:

Julie Hayward Biggs, Interim City Attorney

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE)
CITY OF WILDOMAR)

I, John Danielson, Interim City Clerk of the City of Wildomar, do hereby certify that the foregoing Resolution No. 08-18 was duly adopted by the City Council of the City of Wildomar at a regular meeting thereof, held on the 1st day of July, 2008, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

_____
John Danielson, Interim City Clerk

RESOLUTION NO. 08-19

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, REQUESTING THAT THE COUNTY DISCONTINUE PROVIDING AND ASSUMING RESPONSIBILITY FOR CERTAIN PUBLIC WORKS AND BUILDING SERVICES

THE CITY COUNCIL OF THE CITY OF WILDOMAR DOES RESOLVE AS FOLLOWS:

SECTION 1. Recitals.

(a) The City of Wildomar was incorporated on July 1, 2008, as a general law city of the State of California.

(b) Per Government Code Section 57384, the County of Riverside is obligated to furnish all services it provided to the area comprising the City prior to its incorporation for the 2008-2009 fiscal year or until the City Council requests that the services be discontinued, whichever occurs first.

(c) The City Council desires to have the City commence providing certain services related to public works and building as of July 1, 2008.

SECTION 2. Request for Discontinuation of Services. The City Council hereby authorizes the Interim City Manager to request that the County cease to provide the services listed in Exhibit "A" to this resolution as of July 7, 2008. The City shall provide all of the services listed in Exhibit "A" commencing on July 7, 2008.

PASSED, APPROVED, AND ADOPTED this 1st day of July, 2008.

Bob Cashman, Mayor

ATTEST:

John Danielson, Interim City Clerk

APPROVED AS TO FORM:

_____

Julie Hayward Biggs, Interim City Attorney

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE)
CITY OF WILDOMAR)

I, John Danielson, Interim City Clerk of the City of Wildomar, do hereby certify that the foregoing Resolution No. 08-19 was duly adopted by the City Council of the City of Wildomar at a regular meeting thereof, held on the 1st day of July, 2008, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

John Danielson, Interim City Clerk

EXHIBIT "A"

LIST OF SERVICES THE CITY WILL ASSUME RESPONSIBILITY FOR COMMENCING JULY 1, 2008

LIST OF SERVICES THE CITY WILL ASSUME RESPONSIBILITY FOR COMMENCING JULY 1, 2008

PUBLIC WORKS

1. Accept First submittal plan check applications and plans for review.
2. Accept Encroachment Permit applications and begin review (note – County sets a 14 day review time for encroachment permits)

BUILDING

1. *Miscellaneous Permits, specifically:*
    a. Residential Electrical
    b. Electrical Safety, Meter Reset
    c. Electric To Well
    d. Temporary Power
    e. Residential Electrical Service Up-Grade
    f. Replace Hot Water Heater
    g. Miscellaneous Plumbing
    h. Conversion L.P.G. to Natural Gas
    i. Miscellaneous Residential Mechanical
    j. Demolitions
    k. Residential Roofing Installation / Replacement
    l. Residential Roofing Structural Alteration
    m. Commercial Roofing Installation / Replacement
    n. Commercial Roofing Structural Alteration
    o. Fences over 6-feet
    p. Special Temporary Event
2. *Residential Accessory Structures*
    a. Residential Deck
    b. Residential Lattice Patio Cover
    c. Residential Solid Patio Cover
    d. Residential Swimming Pool
    e. Residential Water Tank
    f. Garden Wall, County Standard, Single Lot
    g. Repeat Garden Walls (each additional Tract wall)
    h. Spa, Portable Spa or Fountain
    i. Shed
3. *Commercial Accessory Structures*
    a. Commercial Water Tank
    b. Commercial Swimming Pool
    c. Spa, Portable Spa or Fountain
    d. Light Standards
    e. Commercial Deck
    f. Commercial Patio Cover

RESOLUTION NO. 08-20

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, RATIFYING THE AGREEMENT FOR THE PROVISION OF INTERIM FINANCIAL MANAGEMENT SERVICES

THE CITY COUNCIL OF THE CITY OF WILDOMAR DOES RESOLVE AS FOLLOWS:

SECTION 1. Recitals.

(a) On May 28, 2008, Interim City Manager John Danielson entered into an agreement with Stephen C. Stark for the provision of interim financial management services for the City of Wildomar ("Agreement").

(b) The City's incorporation having become effective as of July 1, 2008 and the City Council now being properly sworn in and convened, the City Council wishes to ratify and affirm the Agreement.

SECTION 2. Ratification of Agreement. The City Council ratifies and authorizes the Mayor to execute the Agreement between Stephen C. Stark and the City as provided in Exhibit "A" attached hereto and fully incorporated herein by reference.

PASSED, APPROVED, AND ADOPTED this 1st day of July, 2008.

_____
Bob Cashman, Mayor

ATTEST:

_____
John Danielson, Interim City Clerk

APPROVED AS TO FORM:

_____

Julie Hayward Biggs, Interim City Attorney

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE)
CITY OF WILDOMAR)

I, John Danielson, Interim City Clerk of the City of Wildomar, do hereby certify that the foregoing Resolution No. 08-20 was duly adopted by the City Council of the City of Wildomar at a regular meeting thereof, held on the 1st day of July, 2008, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

_____
John Danielson, Interim City Clerk

EXHIBIT "A"

AGREEMENT FOR INTERIM FINANCIAL MANAGEMENT SERVICES

May 28, 2008

John Danielson, Interim City Manager
City of Wildomar
P.O. Box 915
Wildomar, California 92595

Re: Stephen C. Stark, Financial Management Services

Dear John:

In response to our discussions on May 16, 2008 regarding startup requirements to establish financial processes and procedures for the new City of Wildomar (the "City"), I am submitting a best effort agreement to provide contract financial management services.

Scope of Services

John Danielson, Interim City Manager of the City of Wildomar is hiring Stephen C. Stark to provide interim financial management services to the City prior to July 1, 2008 which is the effective date of the City's incorporation (the "Effective Date") and shall continue until decisions are made by the Interim City Manager after the Effective Date as to how and by whom permanent financial services will be provided to the new City.

Mr. Stark will take reasonable steps to provide necessary advice and direction to procure, establish and implement financial systems, policies, and procedures as a financial services consultant for the City. Mr. Stark will act as a financial consultant for so long as it may take for the City of Wildomar to appoint permanent city employees to provide financial support to the City. See attached "Detailed Scope of Services".

Compensation

The Interim City Manager agrees on behalf of the City to exercise its best efforts to assure that the City will pay Stephen C. Stark the services rendered hereunder as follows: 1) An hourly rate of $125.00

based on services rendered per the attached "Detailed Scope of Services" and only to the extent as approved by the Interim City Manager. 2) Various costs and expenses such as travel, lodging, meals, incidental business costs will be reimbursed at cost.

Stephen C. Stark agrees to defer receipt of payment until after the Effective Date and after receipt of tax revenues to the general fund.

No member of the Council-elect shall have any personal responsibility or liability for payment of any fees or costs incurred under this Agreement.

Billings

Stephen C. Stark will bill the City for his services, costs and expenses on a monthly basis. The City Manager agrees that, to the extent that payment of fees is not paid from funds advanced by the County of Riverside, after the Effective Date and receipt of sufficient tax revenues to meet operating costs, the City Manager will use his best efforts to assure that each such bill will be paid in full within 30 days of receipt.

Termination

The City Manager may discharge Stephen C. Stark at any time by written notice effective when it is received. Stephen C. Stark will provide no further services and advance no further costs on the City of Wildomar's behalf after receipt of the notice, unless specifically agreed to by the City. Stephen C. Stark may withdraw from this engagement by written notice to the Interim City Manager or for good cause. Good cause may include the City of Wildomar's breach of this letter of agreement, its refusal to work cooperatively, or any fact or circumstance that would render Stephen C. Stark's continuing engagement unlawful or unethical.

Notwithstanding the discharge or withdrawal of Stephen C. Stark, the City of Wildomar will remain obligated to pay for all services rendered, costs and expenses under this letter agreement and to reimburse for all costs incurred prior to its termination.

General Provisions

A. Stephen C. Stark is and shall at all times remain as to the City a wholly independent contractor

B. This Agreement constitutes the entire agreement of the parties concerning the subject matter hereof and all prior agreements or understandings are hereby merged herein. This Agreement shall not be amended in any way except by a writing expressly purporting to be such an amendment, signed and acknowledged by both of the parties hereto.

C. Should interpretation of this Agreement, or any portion thereof, be necessary, it is deemed that this Agreement was prepared by the parties jointly and equally, and shall not be interpreted against either party on the grounds that the party prepared the Agreement or caused it to be prepared.

D. No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any such waiver constitute a continuing or subsequent waiver of the same provision. No waiver shall be binding, unless executed in writing by the party making the waiver.

E. This Agreement may be modified by the mutual consent of the City and the Stephen C. Stark to adjust for costs, fees, services or other matters other than termination at any time.

* * *

Please carefully review the terms of this letter agreement and, if they are acceptable to the City of Wildomar, provide an executed copy to Stephen C. Stark.

I look forward to working with the Interim City Manager and the City of Wildomar. Please do not hesitate to contact me with any questions you may have.

Very truly yours,

Stephen C. Stark

The City Council-elect of the new City of Wildomar has read and understands the foregoing terms and conditions and agrees to them. The City Council-elect on behalf of the new City of Wildomar agrees to use its best efforts to assure that the new City of Wildomar will be liable for all obligations under the foregoing contract and acknowledges receipt of a copy of this letter agreement. The undersigned are authorized to execute this agreement on behalf of the new City of Wildomar.

DATED: _____, 2008

CITY COUNCIL-ELECT on behalf of the
NEW CITY OF WILDOMAR

By: _____
Bob Cashman, Councilmember-elect

By: _____
Sheryl Ade, Councilmember-elect

By: _____
Bridgette Moore, Councilmember-elect

By: _____
Marsha Swanson, Councilmember-elect

By: _____
Scott Farnam, Councilmember-elect

RESOLUTION NO. 08-21

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, RATIFYING THE AGREEMENT WITH FITZWATER LEADERSHIP CONSULTING

THE CITY COUNCIL OF THE CITY OF WILDOMAR DOES RESOLVE AS FOLLOWS:

SECTION 1. Recitals.

(a) On May 23, 2008, Interim City Manager John Danielson entered into an agreement with Terry Fitzwater and Fitzwater Leadership Consulting to assist the Interim City Manager and the City Council at their discretion ("Agreement").

(b) The City's incorporation having become effective as of July 1, 2008 and the City Council now being properly sworn in and convened, the City Council wishes to ratify and affirm the Agreement.

SECTION 2. Ratification of Agreement. The City Council ratifies and authorizes the Mayor to execute the Agreement between Terry Fitzwater / Fitzwater Leadership Consulting and the City as provided in Exhibit "A" attached hereto and fully incorporated herein by reference.

PASSED, APPROVED, AND ADOPTED this 1st day of July, 2008.

Bob Cashman, Mayor

ATTEST:

John Danielson, Interim City Clerk

APPROVED AS TO FORM:

_____

Julie Hayward Biggs, Interim City Attorney

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE)
CITY OF WILDOMAR)

I, John Danielson, Interim City Clerk of the City of Wildomar, do hereby certify that the foregoing Resolution No. 08-21 was duly adopted by the City Council of the City of Wildomar at a regular meeting thereof, held on the 1st day of July, 2008, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

_____
John Danielson, Interim City Clerk

EXHIBIT "A"

AGREEMENT WITH TERRY FITZWATER AND FITZWATER LEADERSHIP CONSULTING

7365 Hill Road
Granite Bay, CA 95746
Email:1fitzh2o@quiknet.com

Tel: 916-716-3683
Tel/Fax: 916-791-7938
www.fitzwaterleadershipconsulting.com

Members-elect of the City Council
c/o Bob Cashman
City of Wildomar
P.O. Box 915
Wildomar, CA 92595

Re: Terry L. Fitzwater-Consultant

Dear Mayor and City Councilmembers- Elect:

Per my discussion with John Danielson, Interim City Manager, I am submitting a best effort agreement to provide various consulting services to the City of Wildomar.

Scope of Services

The mayor and councilmembers-elect, ("the Council-elect") of the new City of Wildomar (the City) are utilizing the services of Terry L. Fitzwater and his firm Fitzwater Leadership Consulting, (FLC).

Mr. Fitzwater will assist the Interim City Manager, John Danielson, and the Council-elect at their direction and discretion. Initially, Mr. Fitzwater will provide consulting services as follows:

1. Contact, complete paperwork and meet with CalPERS to provide option(s) for the City to consider for health care and retirement benefits for future City employees.
2. Contact, complete paperwork and meet with an agency(s) to provide option(s) for the City to consider for workers compensation, risk management and liability coverage.
3. Contact the League of California Cities to process necessary paperwork for membership.

Compensation

The Council-elect agrees on behalf of the new City of Wildomar to exercise its best efforts to assure that the City will pay Terry L. Fitzwater for his services as follows: (1) $20,000 for this initial phase and (2) to reimburse various costs and expenses such as but not limited to travel, lodging, and a per diem of $75 per day for meals and incidentals.

Terry L. Fitzwater agrees to defer receipt of payment until after the Effective Date and after receipt of tax revenues to the general fund.

No member of the Council-elect shall have any personal responsibility or liability for payment of any fees or costs incurred under this Agreement.

Billing

Terry L. Fitzwater will bill the new City of Wildomar for his services, costs and expenses on a monthly basis. The Council-elect agrees that after the Effective Date and receipt of its first regular tax revenues, the Council-elect will use its best efforts to assure that all bills received for work performed prior to that time will be paid in full within 30 days of receipt of such funds and that all subsequent billings will be paid within 30 days of receipt.

Termination

The new City of Wildomar and/or FLC may end this agreement at any time by written notice effective when it is received. No further services will be provided after receipt of notice unless specifically agreed to by the City and/or the Interim City Manager, John Danielson. Notwithstanding the end of the agreement by City or withdrawal of Terry L. Fitzwater, the City of Wildomar will remain obligated to pay for all services rendered, costs and expenses under this agreement and to reimburse for all costs incurred prior to its termination.

General Provisions

A. Terry L. Fitzwater is and shall at all times remain as to the City a wholly independent contractor.

B. This Agreement constitutes the entire agreement of the parties concerning the subject matter. This Agreement shall not be amended in any way except by a writing expressly purporting to be such an amendment, signed and acknowledged by both of the parties hereto.

C. Should interpretation of this Agreement, or any portion thereof , be necessary, it is deemed that this agreement was prepared by the parties jointly and equally, and shall not be interpreted against either party on the ground that the party prepared the Agreement of caused it to be prepared.

D. No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any such waiver constitute a continuing or subsequent waiver of the same provision. No waiver shall be binding, unless executed in writing by the party making the waiver.

E. This Agreement may be modified by the mutual consent of the City and FLC to adjust for costs, fees, services or other matters other than termination at any time.

* * *

Please review the terms of this letter agreement and, if they are acceptable to the City of Wildomar, provide an executed copy to Terry L. Fitzwater.

I look forward to working with the City of Wildomar. Please contact me directly at 916-716-3683 if you have any questions.

My best regards,

Terry L. Fitzwater
Fitzwater Leadership Consulting

The City Council-elect on behalf of the new City of Wildomar agrees to use its best efforts to assure that the new City of Wildomar will honor the terms of the foregoing contract and acknowledges receipt of a copy of this letter Agreement. The undersigned is authorized to execute this agreement on behalf of the new City of Wildomar.

Dated:_____ ,2008

CITY COUNCIL ELECT on behalf of the
NEW CITY OF WILDOMAR

By: _____
Bob Cashman, Chairman of the City Council-elect

RESOLUTION NO. 08-22

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, REQUESTING THAT THE COUNTY DISCONTINUE PROVIDING AND ASSUMING RESPONSIBILITY FOR CERTAIN PLANNING SERVICES

THE CITY COUNCIL OF THE CITY OF WILDOMAR DOES RESOLVE AS FOLLOWS:

SECTION 1. Recitals.

(a) The City of Wildomar was incorporated on July 1, 2008, as a general law city of the State of California.

(b) Per Government Code Section 57384, the County of Riverside is obligated to furnish all services it provided to the area comprising the City prior to its incorporation for the 2008-2009 fiscal year or until the City Council requests that the services be discontinued, whichever occurs first.

(c) The City Council desires to have the City commence providing certain planning services as of July 7, 2008.

SECTION 2. Request for Discontinuation of Services. The City Council hereby authorizes the Interim City Manager to request that the County cease to provide the services listed in Exhibit "A" to this resolution as of July 7, 2008. The City shall provide all of the services listed in Exhibit "A" commencing on July 7, 2008.

PASSED, APPROVED, AND ADOPTED this 1st day of July, 2008.

Bob Cashman, Mayor

ATTEST:

John Danielson, Interim City Clerk

APPROVED AS TO FORM:

_____

Julie Hayward Biggs, Interim City Attorney

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE)
CITY OF WILDOMAR)

I, John Danielson, Interim City Clerk of the City of Wildomar, do hereby certify that the foregoing Resolution No. 08-22 was duly adopted by the City Council of the City of Wildomar at a regular meeting thereof, held on the 1st day of July, 2008, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

_____
John Danielson, Interim City Clerk

EXHIBIT "A"

LIST OF SERVICES THE CITY WILL ASSUME RESPONSIBILITY FOR COMMENCING JULY 7, 2008

LIST OF PLANNING SERVICES THE CITY WILL ASSUME RESPONSIBILITY FOR COMMENCING JULY 7, 2008

Beginning July 7, 2008, the City will assume responsibility for the processing of the following:

1. All new applications submitted on or after 7/1/08
2. All applications submitted to the County within the last 60 days (May 1st or later)
3. All pending projects that include a legislative decision that will be made after July 1st, 2008
4. All "incomplete" applications (these are applications that are either missing materials or information that are required by the County's application checklists)
5. All applications that were deemed complete for which the Planning Director has not yet, through the preparation of an Initial Study, determined the level or type of CEQA documentation required for the project. (It is the City's intention as lead agency for all projects for which it will be the final decision maker to exercise its lead agency responsibilities in the determination of the type of CEQA documentation required for the project application.)
6. All projects determined to require an EIR and for which a Notice of Completion was published after June 1, 2008
7. All projects requiring either a mitigated negative declaration or a negative declaration and for which a Notice of Intent to Adopt was published after June 15, 2008
8. Post-Entitlement (i.e. planning plan check) work associated with building permits, provided that the City's Building Department has received the approved project's files.
9. General Plan and zoning consistency review for all new building permit applications and business licenses.

RESOLUTION NO. 08-23

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, PROPOSING A CONFLICT OF INTEREST CODE

THE CITY COUNCIL OF THE CITY OF WILDOMAR DOES RESOLVE AS FOLLOWS:

SECTION 1. Recitals.

(a) The Political Reform Act, California Government Code Sections 81000 and following, requires the City to adopt of a conflict of interest code.

(b) The Fair Political Practices Commission has adopted a regulation, Section 18730 of Title 2 of the California Code of Regulations, which contains the terms of a standard conflict of interest code that can be incorporated by reference as the City's Conflict of Interest Code.

(c) Incorporation by reference of the standard conflict of interest code, as it may be amended from time to time, will help ensure compliance by the City with the Political Reform Act.

SECTION 2. Conflict of Interest Code Proposed. Section 18730 of Title 2 of California Code of Regulations, attached as Exhibit "A" to this resolution, along with Exhibit "B" (Designated Employees for the Conflict of Interest Code) and Exhibit "C" (Disclosure Categories), attached hereto and incorporated herein by reference, are proposed to be the Conflict of Interest Code of the City of Wildomar.

SECTION 3. Sixty (60) Day Comment Period. The public shall have an opportunity to comment on the proposed Conflict of Interest Code of the City of Wildomar for a period of sixty (60) days following the adoption of this resolution. At the close of the sixty (60) day comment period the City Council may adopt the proposed Conflict of Interest Code or adopt an amended version of the proposed Conflict of Interest Code.

SECTION 4. Statement of Economic Interests. Employees designated in Exhibit "B" shall file statements of economic interests (Form 700) with the City Clerk. The City Clerk shall forward the original Form 700s filed by the Mayor, Members of the City Council, Planning Commissioners, the City Manager, the City Attorney, and the City Treasurer to the Fair Political Practices Commission pursuant to California Government Code Sections 87200 and following. The City Clerk shall retain a copy of all statements of economic interests and make them available for public inspection and reproduction in accordance with Government Code Section 81008.

SECTION 5. Maintenance of Conflict of Interest Code. The City Clerk shall maintain at all times one copy of the City's Conflict of Interest Code for examination by the public and shall cause the filing of such code in the manner required by law.

PASSED, APPROVED, AND ADOPTED this 1st day of July, 2008.

Bob Cashman, Mayor

ATTEST:

John Danielson, Interim City Clerk

APPROVED AS TO FORM:

Julie Hayward Biggs, Interim City Attorney

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE)
CITY OF WILDOMAR)

I, John Danielson, Interim City Clerk of the City of Wildomar, do hereby certify that the foregoing Resolution No. 08-23 as duly adopted by the City Council of the City of Wildomar at a regular meeting thereof, held on the 1st day of July, 2008, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

_____
John Danielson, Interim City Clerk

EXHIBIT "A"

Section 18730 of Title 2 of California Code of Regulations

CALIFORNIA CODE OF REGULATIONS

TITLE 2. ADMINISTRATION

DIVISION 6. FAIR POLITICAL PRACTICES COMMISSION

CHAPTER 7. CONFLICTS OF INTEREST

ARTICLE 2. DISCLOSURE

Section 18730. Provisions of Conflict of Interest Codes

(a) Incorporation by reference of the terms of this regulation along with the designation of employees and the formulation of disclosure categories in the Appendix referred to below constitute the adoption and promulgation of a conflict of interest code within the meaning of Government Code section 87300 or the amendment of a conflict of interest code within the meaning of Government Code section 87306 if the terms of this regulation are substituted for terms of a conflict of interest code already in effect. A code so amended or adopted and promulgated requires the reporting of reportable items in a manner substantially equivalent to the requirements of article 2 of chapter 7 of the Political Reform Act, Government Code sections 81000, et seq. The requirements of a conflict of interest code are in addition to other requirements of the Political Reform Act, such as the general prohibition against conflicts of interest contained in Government Code section 87100, and to other state or local laws pertaining to conflicts of interest.

(b) The terms of a conflict of interest code amended or adopted and promulgated pursuant to this regulation are as follows:

(1) Section 1. Definitions.

The definitions contained in the Political Reform Act of 1974, regulations of the Fair Political Practices Commission (2 Cal. Code of Regs. sections 18110, et seq.), and any amendments to the Act or regulations, are incorporated by reference into this conflict of interest code.

(2) Section 2. Designated Employees.

The persons holding positions listed in the Appendix are designated employees. It has been determined that these persons make or participate in the making of decisions which may foreseeably have a material effect on economic interests.

(3) Section 3. Disclosure Categories.

This code does not establish any disclosure obligation for those designated employees who are also specified in Government Code section 87200 if they are

designated in this code in that same capacity or if the geographical jurisdiction of this agency is the same as or is wholly included within the jurisdiction in which those persons must report their economic interests pursuant to article 2 of chapter 7 of the Political Reform Act, Government Code sections 87200, et seq.

In addition, this code does not establish any disclosure obligation for any designated employees who are designated in a conflict of interest code for another agency, if all of the following apply:

(A) The geographical jurisdiction of this agency is the same as or is wholly included within the jurisdiction of the other agency;

(B) The disclosure assigned in the code of the other agency is the same as that required under article 2 of chapter 7 of the Political Reform Act, Government Code section 87200; and

(C) The filing officer is the same for both agencies.[1]

Such persons are covered by this code for disqualification purposes only. With respect to all other designated employees, the disclosure categories set forth in the Appendix specify which kinds of economic interests are reportable. Such a designated employee shall disclose in his or her statement of economic interests those economic interests he or she has which are of the kind described in the disclosure categories to which he or she is assigned in the Appendix. It has been determined that the economic interests set forth in a designated employee's disclosure categories are the kinds of economic interests which he or she foreseeably can affect materially through the conduct of his or her office.

(4) Section 4. Statements of Economic Interests: Place of Filing.

The code reviewing body shall instruct all designated employees within its code to file statements of economic interests with the agency or with the code reviewing body, as provided by the code reviewing body in the agency's conflict of interest code.[2]

(5) Section 5. Statements of Economic Interests: Time of Filing.

(A) *Initial Statements.*

All designated employees employed by the agency on the effective date of this code, as originally adopted, promulgated and approved by the code reviewing body, shall file statements within 30 days after the effective date of this code. Thereafter, each person already in a position when it is designated by an amendment to this code shall file an initial statement within 30 days after the effective date of the amendment.

(B) *Assuming Office Statements.*

All persons assuming designated positions after the effective date of this code shall file statements within 30 days after assuming the designated positions, or if subject to State Senate confirmation, 30 days after being nominated or appointed.

(C) *Annual Statements.*

All designated employees shall file statements no later than April 1.

(D) *Leaving Office Statements.*

All persons who leave designated positions shall file statements within 30 days after leaving office.

(5.5) Section 5.5. Statements for Persons Who Resign Prior to Assuming Office.

Any person who resigns within 12 months of initial appointment, or within 30 days of the date of notice provided by the filing officer to file an assuming office statement, is not deemed to have assumed office or left office, provided he or she did not make or participate in the making of, or use his or her position to influence any decision and did not receive or become entitled to receive any form of payment as a result of his or her appointment. Such persons shall not file either an assuming or leaving office statement.

(A) Any person who resigns a position within 30 days of the date of a notice from the filing officer shall do both of the following:

1. File a written resignation with the appointing power; and

2. File a written statement with the filing officer declaring under penalty of perjury that during the period between appointment and resignation he or she did not make, participate in the making, or use the position to influence any decision of the agency or receive, or become entitled to receive, any form of payment by virtue of being appointed to the position.

(6) Section 6. Contents of and Period Covered by Statements of Economic Interests.

(A) *Contents of Initial Statements.*

Initial statements shall disclose any reportable investments, interests in real property and business positions held on the effective date of the code and income received during the 12 months prior to the effective date of the code.

(B) *Contents of Assuming Office Statements.*

Assuming office statements shall disclose any reportable investments, interests in real property and business positions held on the date of assuming office or, if subject

to State Senate confirmation or appointment, on the date of nomination, and income received during the 12 months prior to the date of assuming office or the date of being appointed or nominated, respectively.

(C) *Contents of Annual Statements.*

Annual statements shall disclose any reportable investments, interests in real property, income and business positions held or received during the previous calendar year provided, however, that the period covered by an employee's first annual statement shall begin on the effective date of the code or the date of assuming office whichever is later, or for a board or commission member subject to Government Code section 87302.6, the day after the closing date of the most recent statement filed by the member pursuant to 2 Cal. Code Regs. section 18754.

(D) *Contents of Leaving Office Statements.*

Leaving office statements shall disclose reportable investments, interests in real property, income and business positions held or received during the period between the closing date of the last statement filed and the date of leaving office.

(7) Section 7. Manner of Reporting.

Statements of economic interests shall be made on forms prescribed by the Fair Political Practices Commission and supplied by the agency, and shall contain the following information:

(A) *Investment and Real Property Disclosure.*

When an investment or an interest in real property[3] is required to be reported,[4] the statement shall contain the following:

1. A statement of the nature of the investment or interest;

2. The name of the business entity in which each investment is held, and a general description of the business activity in which the business entity is engaged;

3. The address or other precise location of the real property;

4. A statement whether the fair market value of the investment or interest in real property equals or exceeds two thousand dollars ($2,000), exceeds ten thousand dollars ($10,000), exceeds one hundred thousand dollars ($100,000), or exceeds one million dollars ($1,000,000).

(B) *Personal Income Disclosure.*

When personal income is required to be reported,[5] the statement shall contain:

1. The name and address of each source of income aggregating five hundred dollars ($500) or more in value, or fifty dollars ($50) or more in value if the income was a gift, and a general description of the business activity, if any, of each source;

2. A statement whether the aggregate value of income from each source, or in the case of a loan, the highest amount owed to each source, was one thousand dollars ($1,000) or less, greater than one thousand dollars ($1,000), greater than ten thousand dollars ($10,000), or greater than one hundred thousand dollars ($100,000);

3. A description of the consideration, if any, for which the income was received;

4. In the case of a gift, the name, address and business activity of the donor and any intermediary through which the gift was made; a description of the gift; the amount or value of the gift; and the date on which the gift was received;

5. In the case of a loan, the annual interest rate and the security, if any, given for the loan and the term of the loan.

(C) *Business Entity Income Disclosure.*

When income of a business entity, including income of a sole proprietorship, is required to be reported,[6] the statement shall contain:

1. The name, address, and a general description of the business activity of the business entity;

2. The name of every person from whom the business entity received payments if the filer's pro rata share of gross receipts from such person was equal to or greater than ten thousand dollars ($10,000).

(D) *Business Position Disclosure.*

When business positions are required to be reported, a designated employee shall list the name and address of each business entity in which he or she is a director, officer, partner, trustee, employee, or in which he or she holds any position of management, a description of the business activity in which the business entity is engaged, and the designated employee's position with the business entity.

(E) *Acquisition or Disposal During Reporting Period.*

In the case of an annual or leaving office statement, if an investment or an interest in real property was partially or wholly acquired or disposed of during the period

covered by the statement, the statement shall contain the date of acquisition or disposal.

(8) Section 8. Prohibition on Receipt of Honoraria.

(A) No member of a state board or commission, and no designated employee of a state or local government agency, shall accept any honorarium from any source, if the member or employee would be required to report the receipt of income or gifts from that source on his or her statement of economic interests. This section shall not apply to any part-time member of the governing board of any public institution of higher education, unless the member is also an elected official.

Subdivisions (a), (b), and (c) of Government Code Section 89501 shall apply to the prohibitions in this section.

This section shall not limit or prohibit payments, advances, or reimbursements for travel and related lodging and subsistence authorized by Government Code section 89506.

(8.1) Section 8.1. Prohibition on Receipt of Gifts in Excess of $390.

(A) No member of a state board or commission, and no designated employee of a state or local government agency, shall accept gifts with a total value of more than $390 in a calendar year from any single source, if the member or employee would be required to report the receipt of income or gifts from that source on his or her statement of economic interests. This section shall not apply to any part-time member of the governing board of any public institution of higher education, unless the member is also an elected official.

Subdivisions (e), (f), and (g) of Government Code section 89503 shall apply to the prohibitions in this section.

(8.2) Section 8.2. Loans to Public Officials.

(A) No elected officer of a state or local government agency shall, from the date of his or her election to office through the date that he or she vacates office, receive a personal loan from any officer, employee, member, or consultant of the state or local government agency in which the elected officer holds office or over which the elected officer's agency has direction and control.

(B) No public official who is exempt from the state civil service system pursuant to subdivisions (c), (d), (e), (f), and (g) of Section 4 of Article VII of the Constitution shall, while he or she holds office, receive a personal loan from any officer, employee, member, or consultant of the state or local government agency in which the public official holds office or over

which the public official's agency has direction and control. This subdivision shall not apply to loans made to a public official whose duties are solely secretarial, clerical, or manual.

(C) No elected officer of a state or local government agency shall, from the date of his or her election to office through the date that he or she vacates office, receive a personal loan from any person who has a contract with the state or local government agency to which that elected officer has been elected or over which that elected officer's agency has direction and control. This subdivision shall not apply to loans made by banks or other financial institutions or to any indebtedness created as part of a retail installment or credit card transaction, if the loan is made or the indebtedness created in the lender's regular course of business on terms available to members of the public without regard to the elected officer's official status.

(D) No public official who is exempt from the state civil service system pursuant to subdivisions (c), (d), (e), (f), and (g) of Section 4 of Article VII of the Constitution shall, while he or she holds office, receive a personal loan from any person who has a contract with the state or local government agency to which that elected officer has been elected or over which that elected officer's agency has direction and control. This subdivision shall not apply to loans made by banks or other financial institutions or to any indebtedness created as part of a retail installment or credit card transaction, if the loan is made or the indebtedness created in the lender's regular course of business on terms available to members of the public without regard to the elected officer's official status. This subdivision shall not apply to loans made to a public official whose duties are solely secretarial, clerical, or manual.

(E) This section shall not apply to the following:

1. Loans made to the campaign committee of an elected officer or candidate for elective office.

2. Loans made by a public official's spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin, or the spouse of any such persons, provided that the person making the loan is not acting as an agent or intermediary for any person not otherwise exempted under this section.

3. Loans from a person which, in the aggregate, do not exceed five hundred dollars ($500) at any given time.

4. Loans made, or offered in writing, before January 1, 1998.

(8.3) Section 8.3. Loan Terms.

(A) Except as set forth in subdivision (B), no elected officer of a state or local government agency shall, from the date of his or her election to office through the date he or she vacates office, receive a personal loan of five hundred dollars ($500) or more, except when the loan is in writing and clearly states the terms of the loan, including the parties to the loan agreement, date of the loan, amount of the loan, term of the loan, date or dates when payments shall be due on the loan and the amount of the payments, and the rate of interest paid on the loan.

(B) This section shall not apply to the following types of loans:

1. Loans made to the campaign committee of the elected officer.

2. Loans made to the elected officer by his or her spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin, or the spouse of any such person, provided that the person making the loan is not acting as an agent or intermediary for any person not otherwise exempted under this section.

3. Loans made, or offered in writing, before January 1, 1998.

(C) Nothing in this section shall exempt any person from any other provision of Title 9 of the Government Code.

(8.4) Section 8.4. Personal Loans.

(A) Except as set forth in subdivision (B), a personal loan received by any designated employee shall become a gift to the designated employee for the purposes of this section in the following circumstances:

1. If the loan has a defined date or dates for repayment, when the statute of limitations for filing an action for default has expired.

2. If the loan has no defined date or dates for repayment, when one year has elapsed from the later of the following:

a. The date the loan was made.

b. The date the last payment of one hundred dollars ($100) or more was made on the loan.

c. The date upon which the debtor has made payments on the loan aggregating to less than two hundred fifty dollars ($250) during the previous 12 months.

(B) This section shall not apply to the following types of loans:

1. A loan made to the campaign committee of an elected officer or a candidate for elective office.

2. A loan that would otherwise not be a gift as defined in this title.

3. A loan that would otherwise be a gift as set forth under subdivision (A), but on which the creditor has taken reasonable action to collect the balance due.

4. A loan that would otherwise be a gift as set forth under subdivision (A), but on which the creditor, based on reasonable business considerations, has not undertaken collection action. Except in a criminal action, a creditor who claims that a loan is not a gift on the basis of this paragraph has the burden of proving that the decision for not taking collection action was based on reasonable business considerations.

5. A loan made to a debtor who has filed for bankruptcy and the loan is ultimately discharged in bankruptcy.

(C) Nothing in this section shall exempt any person from any other provisions of Title 9 of the Government Code.

(9) Section 9. Disqualification.

No designated employee shall make, participate in making, or in any way attempt to use his or her official position to influence the making of any governmental decision which he or she knows or has reason to know will have a reasonably foreseeable material financial effect, distinguishable from its effect on the public generally, on the official or a member of his or her immediate family or on:

(A) Any business entity in which the designated employee has a direct or indirect investment worth two thousand dollars ($2,000) or more;

(B) Any real property in which the designated employee has a direct or indirect interest worth two thousand dollars ($2,000) or more;

(C) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating five hundred dollars ($500) or more in value provided to, received by or promised to the designated employee within 12 months prior to the time when the decision is made;

(D) Any business entity in which the designated employee is a director, officer, partner, trustee, employee, or holds any position of management; or

(E) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating $390 or more provided to, received by, or promised to the designated employee within 12 months prior to the time when the decision is made.

(9.3) Section 9.3. Legally Required Participation.

No designated employee shall be prevented from making or participating in the making of any decision to the extent his or her participation is legally required for the decision to be made. The fact that the vote of a designated employee who is on a voting body is needed to break a tie does not make his or her participation legally required for purposes of this section.

(9.5) Section 9.5. Disqualification of State Officers and Employees.

In addition to the general disqualification provisions of section 9, no state administrative official shall make, participate in making, or use his or her official position to influence any governmental decision directly relating to any contract where the state administrative official knows or has reason to know that any party to the contract is a person with whom the state administrative official, or any member of his or her immediate family has, within 12 months prior to the time when the official action is to be taken:

(A) Engaged in a business transaction or transactions on terms not available to members of the public, regarding any investment or interest in real property; or

(B) Engaged in a business transaction or transactions on terms not available to members of the public regarding the rendering of goods or services totaling in value one thousand dollars ($1,000) or more.

(10) Section 10. Disclosure of Disqualifying Interest.

When a designated employee determines that he or she should not make a governmental decision because he or she has a disqualifying interest in it, the determination not to act may be accompanied by disclosure of the disqualifying interest.

(11) Section 11. Assistance of the Commission and Counsel.

Any designated employee who is unsure of his or her duties under this code may request assistance from the Fair Political Practices Commission pursuant to Government Code section 83114 and 2 Cal. Code Regs. sections 18329 and 18329.5 or from the attorney for his or her agency, provided that nothing in this section requires the attorney for the agency to issue any formal or informal opinion.

(12) Section 12. Violations.

This code has the force and effect of law. Designated employees violating any provision of this code are subject to the administrative, criminal and civil sanctions provided in the Political Reform Act, Government Code sections 81000-91014. In addition, a decision in relation to which a violation of the disqualification provisions of this code or of Government Code section 87100 or 87450 has occurred may be set aside as void pursuant to Government Code section 91003.

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[1] Designated employees who are required to file statements of economic interests under any other agency's conflict of interest code, or under article 2 for a different jurisdiction, may expand their statement of economic interests to cover reportable interests in both jurisdictions, and file copies of this expanded statement with both entities in lieu of filing separate and distinct statements, provided that each copy of such expanded statement filed in place of an original is signed and verified by the designated employee as if it were an original. See Government Code section 81004.

[2] See Government Code section 81010 and 2 Cal. Code of Regs. section 18115 for the duties of filing officers and persons in agencies who make and retain copies of statements and forward the originals to the filing officer.

[3] For the purpose of disclosure only (not disqualification), an interest in real property does not include the principal residence of the filer.

[4] Investments and interests in real property which have a fair market value of less than $2,000 are not investments and interests in real property within the meaning of the Political Reform Act. However, investments or interests in real property of an individual include those held by the individual's spouse and dependent children as well as a pro rata share of any investment or interest in real property of any business entity or trust in which the individual, spouse and dependent children own, in the aggregate, a direct, indirect or beneficial interest of 10 percent or greater.

[5] A designated employee's income includes his or her community property interest in the income of his or her spouse but does not include salary or reimbursement for expenses received from a state, local or federal government agency.

[6] Income of a business entity is reportable if the direct, indirect or beneficial interest of the filer and the filer's spouse in the business entity aggregates a 10 percent or greater interest. In addition, the disclosure of persons who are clients or customers of a business entity is required only if the clients or customers are within one of the disclosure categories of the filer.

EXHIBIT "B"

DESIGNATED EMPLOYEES

DESIGNATED EMPLOYEES FOR THE CONFLICT OF INTEREST CODE

The following positions involve the making or participation in the making of decisions that may forseeably have a material effect on financial interests of the individuals occupying the positions and are subject to the reporting requirement:

Positions

1. Mayor
2. City Councilmembers
3. Planning Commission Members
4. City Manager
5. City Clerk
6. City Treasurer
7. City Attorney[1]
8. Department Heads
9. Consultants[2]

---

[1] The disclosure obligations for positions 1-7 are set forth by Government Code Section 87200 and following. Such positions are only listed in this Conflict of Interest Code for the purpose of disqualification.

[2] Consultants shall be included in the list of designated employees subject to the following limitation: The City Manager may exempt a particular consultant, although a "designated position," if the City Manager determines, in consultation with the City Attorney, that the consultant is employed to perform a range of duties which are limited in scope and thus compliance with the disclosure requirements described in this Code is not required. The determination shall be a public record and shall be retained for public inspection in the same manner and location as this Conflict of Interest Code.

EXHIBIT "C"

DISCLOSURE CATEGORIES

DISCLOSURE CATEGORIES

All disclosure definitions are contained in the Political Reform Act.

All designated employees shall make disclosure in the following category:

A. All investments in business entities and sources of income of the type that contract to provide services, materials, supplies, or office equipment to the City.

B. All sources of income unless otherwise exempt from disclosure by the Political Reform Act.

C. All interests in real property located within the City.

RESOLUTION NO. 08-24

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, PROVIDING FOR THE ENFORCEMENT OF STATE LAWS AND REGULATIONS RELATING TO PUBLIC HEALTH BY THE COUNTY HEALTH OFFICER

THE CITY COUNCIL OF THE CITY OF WILDOMAR DOES RESOLVE, AS FOLLOWS:

SECTION 1. Authorization for Enforcement of Certain State Public Health Laws by the County. The Riverside County Community Health Agency is authorized to enforce State laws and regulations relating to public health within the boundaries of the City, as is required by State law.

SECTION 2. Transmittal to Board of Supervisors. The Interim City Manager is directed to provide a copy of this resolution to the Riverside County Community Health Agency.

PASSED, APPROVED, AND ADOPTED this 1st day of July, 2008.

Bob Cashman, Mayor

ATTEST:

John Danielson, Interim City Clerk

APPROVED AS TO FORM:

Julie Hayward Biggs, Interim City Attorney

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE)
CITY OF WILDOMAR)

I, John Danielson, Interim City Clerk of the City of Wildomar, do hereby certify that the foregoing Resolution No. 08-24 was duly adopted by the City Council of the City of Wildomar at a regular meeting thereof, held on the 1st day of July, 2008, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

_____
John Danielson, Interim City Clerk

RESOLUTION NO. 08-25

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, AUTHORIZING REIMBURSEMENTS FOR PRE-INCORPORATION AND POST-INCORPORATION EXPENSES

THE CITY COUNCIL OF THE CITY OF WILDOMAR DOES RESOLVE AS FOLLOWS:

SECTION 1. Recitals.

(a) The City of Wildomar was incorporated on July 1, 2008, as a general law city of the State of California.

(b) Prior to incorporation, it was necessary for members of the then City Council-Elect and professional consultants hired by the City Council-Elect to make expenditures and incur debts in order to prepare for the incorporation of the City and to commence operations of the City beginning July 1, 2008.

(c) Because the City has just been incorporated, it may not immediately have sufficient funds and revenue to pay for the usual and current expenses of the City, which may further require Members of the City Council, City officers and employees and professional consultants hired by the City to make additional expenditures and incur additional debts on behalf of the City.

(d) The City Council of the City of Wildomar desires to authorize the reimbursement from City funds of any and all properly documented City expenses and debts, whether incurred pre- or post-incorporation.

SECTION 2. Reimbursement Authorized. The City Council hereby authorizes the reimbursement from City funds, when available, for all expenses, costs and debts expended or incurred by City Councilmembers or the then City Council-Elect, the Interim City Manager, the Interim City Attorney and all other officers, employees and professional consultants of the City either prior to or after incorporation of the City of Wildomar provided such expenses, costs and debts were expended or incurred on behalf of the City and proper and accurate documentation is submitted to the Interim City Manager.

PASSED, APPROVED, AND ADOPTED this 1st day of July, 2008.

Bob Cashman, Mayor

ATTEST:

John Danielson, Interim City Clerk

APPROVED AS TO FORM:

Julie Hayward Biggs, Interim City Attorney

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE)
CITY OF WILDOMAR)

I, John Danielson, Interim City Clerk of the City of Wildomar, do hereby certify that the foregoing Resolution No. 08-25 was duly adopted by the City Council of the City of Wildomar at a regular meeting thereof, held on the 1st day of July, 2008, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

_____
John Danielson, Interim City Clerk

RESOLUTION NO. 08-26

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, AUTHORIZING THE INTERIM CITY MANAGER TO FILE THE STATEMENT OF FACTS FOR THE ROSTER OF PUBLIC AGENCIES WITH THE CALIFORNIA SECRETARY OF STATE AND TO FILE FOR A FEDERAL TAXPAYER IDENTIFICATION NUMBER

THE CITY COUNCIL OF THE CITY OF WILDOMAR DOES RESOLVE AS FOLLOWS:

SECTION I. Authorization to File the Statement of Facts. The Interim City Manager is authorized to complete and file the "Statement of Facts Roster of Public Agencies Filing" attached hereto as Exhibit "A" with the Secretary of State, as is required by Government Code section 53051.

SECTION II. Authorization to File for a Federal Taxpayer Identification Number. The Interim City Manager is authorized to file for a federal Taxpayer Identification Number for the City of Wildomar with the Internal Revenue Service.

PASSED, APPROVED, AND ADOPTED this 1st day of July, 2008.

_____
Bob Cashman, Mayor

ATTEST:

_____
John Danielson, Interim City Clerk

APPROVED AS TO FORM:

_____
Julie Hayward Biggs, Interim City Attorney

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE)
CITY OF WILDOMAR)

I, John Danielson, Interim City Clerk of the City of Wildomar, do hereby certify that the foregoing Resolution No. 08-26 was duly adopted by the City Council of the City of Wildomar at a regular meeting thereof, held on the 1st day of July, 2008, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

_____
John Danielson, Interim City Clerk

EXHIBIT "A

STATEMENT OF FACTS

ROSTER OF PUBLIC AGENCIES

State of California
Secretary of State

(Office Use Only)

STATEMENT OF FACTS
ROSTER OF PUBLIC AGENCIES FILING
(Government Code Section 53051)

Instructions:

1. Complete and mail to: Secretary of State,
   P.O. Box 942877, Sacramento, CA 94277-0001 (916) 653-3984
2. A street address must be given as the official mailing address or as the address of the presiding officer.
3. Complete addresses as required.
4. If you need additional space, please include information on an 8½ X 11 page.

New Filing ☐ Update ☐

Legal name of Public Agency: _____

_____

Nature of Update: _____

_____

County: _____

Official Mailing Address: _____

_____

Name and Address of each member of the governing board:

Chairman, President or other Presiding Officer (Indicate Title): _____

Name: _____ Address:

Secretary or Clerk (Indicate Title): _____

Name: _____ Address: _____

Members:

Name: _____ Address:
Name: _____ Address:
Name: _____ Address:
Name: _____ Address:
Name: _____ Address:

Date: _____ _____
Signature

_____
Typed Name and Title

RESOLUTION NO. 08-27

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH THE CALIFORNIA STATE BOARD OF EQUALIZATION PROVIDING FOR STATE ADMINISTRATION OF LOCAL SALES AND USE TAXES

THE CITY COUNCIL OF THE CITY OF WILDOMAR DOES RESOLVE AS FOLLOWS:

SECTION 1. Recitals.

(a) California Revenue and Taxation Code section 7202 requires the City to contract with the State Board of Equalization to perform all functions incident to the administration or operation of the Wildomar Uniform Local Sales and Use Tax Ordinance; and

(b) The Wildomar Uniform Local Sales and Use Tax Ordinance provides that if the City does not contract with the State Board of Equalization by July 1, 2008, the City must postpone the imposition of the sales and use taxes provided for in the ordinance.

SECTION 2. Approval of Agreement. The Agreement for State Administration of Local Sales and Use Taxes attached hereto as Exhibit "A" is hereby approved and the Mayor is hereby authorized to execute the Agreement on behalf of the City.

PASSED, APPROVED, AND ADOPTED this 1st day of July, 2008.

_____
Bob Cashman, Mayor

ATTEST:

_____
John Danielson, Interim City Clerk

APPROVED AS TO FORM:

_____

Julie Hayward Biggs, Interim City Attorney

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE)
CITY OF WILDOMAR)

I, John Danielson, Interim City Clerk of the City of Wildomar, do hereby certify that the foregoing Resolution No. 08-27 was duly adopted by the City Council of the City of Wildomar at a regular meeting thereof, held on the 1st day of July, 2008, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

John Danielson, Interim City Clerk

EXHIBIT "A"

AGREEMENT FOR STATE ADMINISTRATION OF LOCAL SALES AND USE TAXES

City of _____

AGREEMENT FOR STATE ADMINISTRATION OF LOCAL SALES AND USE TAXES

To carry out Part 1.5 of Division 2 of the Revenue and Taxation Code and the sales and use tax ordinance of the City hereinabove designated, hereinafter called the City, copy of which ordinance is attached hereto, the City and the State Board of Equalization, hereinafter called the Board, do agree as follows:

ARTICLE I
DEFINITIONS

Unless the context requires otherwise, wherever the following terms appear in this Agreement they shall be interpreted to mean the following:

1. **"Local Taxes"** shall mean the sales and use taxes, penalties, and interest imposed by the City under an ordinance which complies with Part 1.5, Division 2, of the Revenue and Taxation Code.

2. **"Conforming Taxing Jurisdiction"** shall mean any county, city, or city and county of this State which has adopted a sales and use tax ordinance of the kind described in Part 1.5 of Division 2 of the Revenue and Taxation Code and which has entered into a contract with the State Board of Equalization to perform all functions incident to the administration and operation of the ordinance.

3. **"City Ordinance"** shall mean the Uniform City Sales and Use Tax Ordinance attached hereto, as amended from time to time.

ARTICLE II
ADMINISTRATION AND COLLECTION OF LOCAL TAXES

A. Administration. The Board and the City agree that the Board shall perform exclusively all functions incident to the administration and operation of the City ordinance.

B. Other applicable laws. The City agrees that all provisions of law applicable to the administration and operation of the State Sales and Use Tax Law shall be applicable to the administration and operation of the City ordinance and that money collected pursuant to the City ordinance may be deposited in the State Treasury to the credit of the Retail Sales Tax Fund and may be drawn from that Fund for the purpose of making refunds, for the purpose of compensating and reimbursing the Board pursuant to Article IV of this Agreement and for the purpose of transmitting to the City the amount to which the City is entitled.

C. Transmittal of money. Except as otherwise provided herein, all local taxes collected under the provisions of the City ordinance shall be transmitted to the City periodically as promptly as feasible. Such transmittals shall be made at least twice in each calendar quarter. Transmittals may be made by mail or by deposit to the account of the City in a bank in Sacramento designated by the City. A statement shall be furnished indicating the amount withheld pursuant to Article IV of this agreement.

D. Rules. The Board shall prescribe and adopt such rules and regulations as in its judgment are necessary or desirable for the administration and operation of the City ordinance and the distribution of the local taxes collected thereunder.

E. Preference. Unless the payor instructs otherwise and except as otherwise provided in this Agreement, the Board shall give no preference in applying money received for sales and use taxes owed by a taxpayer but shall apply all monies collected to the satisfaction of the claims of the State and the claims of the City as their interests appear.

F. Security. The Board agrees that any security which it hereafter requires to be furnished under the State Sales and Use Tax Law will be upon such terms that it also will be available for the payment of the claims of the City for local taxes owing to it as its interest appears. The Board shall not be required to change the terms of any security now held by it and the City shall not participate in any security now held by the Board.

G. Names of sellers. The Board agrees to furnish the names, addresses, account numbers, and the business classification codes of all sellers holding sellers' permits within the City.

H. Records of the Board. When requested by resolution of the City Council of the City, the Board shall permit any duly authorized officer or employee of the City to examine the sales and use tax records of the Board pertaining to sales and use taxes collected for the City by the Board pursuant to this Agreement. Information obtained by the City from the examination of the Board's records shall be used by the City only for purposes related to the collection of local sales and use taxes by the Board pursuant to this Agreement.

I. City tax rate. The City agrees that any change in the rate of its conforming local sales and use tax will be made effective at the beginning of a calendar quarter and that it will give the Board at least two months' notice thereof and that it will also give notice to the Board of Supervisors of the County in which the City lies.

J. Annexation. The City agrees that the Board shall not be required to give effect to an annexation, for the purpose of collecting and distributing city sales and use taxes, earlier than the first day of the calendar quarter which commences not less than two months after notice to the Board. The notice shall include two maps of the annexed area together with the address of the property nearest to the extended city boundary on every street crossing that boundary.

ARTICLE III
ALLOCATION OF TAX

A. Deficiency determination. All local taxes collected as a result of determinations or billings made by the Board, and all amounts refunded or credited may be distributed or charged to the respective conforming taxing jurisdictions in the same ratio as the taxpayer's self-declared local tax for the period for which the determination, billing, refund, or credit applies.

B. Allocation. When the local tax is collected from or refunded or credited to the following:

(1) Retailers having traveling sellers' permits or certificates of authority to collect use tax issued by the Board;

(2) Persons regarded by the Board as retailers pursuant to Section 6015 of the Revenue and Taxation Code;

(3) Persons for whom no continuing account number was active at the date of payment; or

(4) Other retailers or purchasers having no permanent place of business within the State as determined by the Board;

or when the local tax is collected by way of deduction from, or when a refund of local tax is made in conjunction with, refunds of motor vehicle fuel license taxes, or when local tax is collected and direct allocation is impractical, the Board may distribute or charge such local tax to all conforming taxing jurisdictions in the county in which the sale or use occurred using the ratios reflected by the distribution of taxes collected from all other taxpayers in that county. To the extent that this cannot be done in a manner consistent with the economic and efficient performance of the duties of the Board under the Revenue and Taxation Code and the provisions of this Agreement, the Board may distribute or charge such local tax to all conforming taxing jurisdictions of this State using the ratios reflected by the distribution of taxes collected from all other taxpayers in the State. In making allocations under this paragraph county tax imposed at a rate in excess of 1 percent shall be excluded.

C. Vehicles, Vessels, and Aircraft. For the purposes of allocating local tax with respect to vehicles required to be registered or identified under the Vehicle Code, and with respect to vessels and aircraft, the address of the registered owner appearing upon the application for registration or identification may be used by the Board in determining the city of use. To the extent this cannot be done in a manner consistent with the economic and efficient performance of the duties of the Board under the Revenue and Taxation Code and this Agreement, the Board may allocate tax with respect to such vehicles, vessels, and aircraft in the manner provided in Paragraph B of this Article.

ARTICLE IV
COMPENSATION

The City agrees to pay the Board as the Board's cost of administering the City ordinances such amount as is provided by law. Such amounts shall be deducted from the taxes collected by the Board for the City.

ARTICLE V
MISCELLANEOUS PROVISIONS

A. Communications. Communications and notices may be sent by first-class United States Mail. A notification is complete when deposited in the mail. Communications and notices to be sent to the Board shall be addressed to:

State Board of Equalization
P.O. Box 942879
Sacramento, California 94279-0001

Attention: Executive Director

Communications and notices to be sent to the City shall be addressed to:

B. Term. The date of this Agreement is the date on which it is approved by the Department of General Services. The Agreement shall take effect on the first day of the calendar quarter next succeeding the date of such approval, but in no case before the operative date of the City ordinance, nor on a day other than the first day of a calendar quarter. This Agreement shall continue until September 30 next following the operative date of the City ordinance, and shall thereafter be renewed automatically from year to year unless one of the parties gives written notice of termination at least two months before the end of the term. The Board may terminate this Agreement in the manner provided by law.

STATE BOARD OF EQUALIZATION

By _____
Executive Director

CITY OF _____

By _____
(Signature on this line)

_____
(Type name here)

_____
(Type title here)

IMPORTANT INSTRUCTIONS

1. **Insert** name of the City at top of page 1; insert address for communications and notices to City in Section A, Article V.

2. **Sign** five copies of the Agreement, sending **all** of them to the Local Tax Section, State Board of Equalization, P.O. Box 942879, Sacramento, California 94279-0001. (If the City desires to keep a file copy of the Agreement, an additional copy should be prepared for that purpose.)

3. **Attach** to **each** copy of the Agreement sent to the Board, a certified copy of the City Sales and Use Tax Ordinance. **Also attach** to **each** copy a certified copy of the order, motion or resolution of the City Council authorizing the execution of the Agreement.

Explanation

When an Agreement is transmitted in accordance with the foregoing instructions, it will be executed on behalf of the Board and submitted to the Department of General Services for approval. When approved, one copy will be returned to the City with endorsement of approval. If a copy has been retained by the City, it may then be conformed to the approved copy.

RESOLUTION NO. 08-28

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, ADOPTING THE PROPOSED CITY OF WILDOMAR FISCAL YEAR 2008-09 GENERAL FUND OPERATING BUDGET AND THE GAS TAX STREET IMPROVEMENT FUND BUDGET, AS SPECIFIED IN THE STAFF REPORT AND BUDGET DOCUMENT

THE CITY COUNCIL OF THE CITY OF WILDOMAR DOES RESOLVE AS FOLLOWS:

SECTION 1. Budget Adopted. The City Council adopts the City Of Wildomar Fiscal Year 2008-09 General Fund Operating Budget And The Gas Tax Street Improvement Fund Budget set forth below and contained in the Staff Report and Exhibits A attached hereto:

	Exp by City	Exp by County	Total Appropriations
EXPENDITURES BY CATEGORY			
Salaries & Benefits	$ 430,710	$ -	$ 430,710
Operations & Maintenance	1,054,255	9,279,381	10,333,636
Capital Outlay	104,500		104,500
TOTAL	**$ 1,589,465**	**$ 9,279,381**	**$ 10,868,846**
EXPENDITURES BY DEPARTMENT			
City Council	$ 58,600	$ -	$ 58,600
City Manager	331,225	-	331,225
City Clerk	126,960	-	126,960
City Attorney	207,500	-	207,500
Engineering/Public Works	203,090	2,390,801	2,593,891
Finance	158,455	-	158,455
Community Development	86,060	861,018	947,078
Public Safety	-	6,027,562	6,027,562
Non-Departmental	417,575	-	417,575
TOTAL	**$ 1,589,465**	**$ 9,279,381**	**$ 10,868,846**

SECTION 2. Fiscal Policies.

SCOPE

The City of Wildomar Fiscal Year 2008-09 General Fund Operating Budget and Gas Tax Street Improvement Fund Budget, as specified in the Staff Report and Budget Document are hereby adopted and authorizes the Interim City Manager to implement the approved budget of the City of Wildomar.

Authorized Appropriations

The Interim City Manager is authorized to make any expenditure and resource adjustments to the Appropriations Budget based on the final City Council action to adopt the budget.

All increases in or decreases in excess of $50,000 to operating or capital appropriations shall be approved by the City Council by resolution. No increase in appropriations shall be made which would create a negative undesignated fund balance in any fund.

Operating appropriation transfers within the same department or fund must be approved be the Interim City Manager.

Unspent Appropriations and Encumbrances

All appropriations in the operating budget which remain unencumbered or unexpended on June 30, 2009, shall revert to the fund balance of their respective funds.

Miscellaneous Considerations

No expenditures at the department level shall exceed the Approved or Amended Budget, by fund.

PASSED, APPROVED, AND ADOPTED this 1st day of July, 2008.

_____

Bob Cashman, Mayor

ATTEST:

_____

John Danielson, Interim City Clerk

APPROVED AS TO FORM:

_____

Julie Hayward Biggs, Interim City Attorney

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE)
CITY OF WILDOMAR)

I, John Danielson, Interim City Clerk of the City of Wildomar, do hereby certify that the foregoing Resolution No. 08-28 was duly adopted by the City Council of the City of Wildomar at a regular meeting thereof, held on the 1st day of July, 2008, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

_____
John Danielson, Interim City Clerk

EXHIBIT "A"

CITY OF WILDOMAR – CITY COUNCIL
Agenda Item
ACTION ITEM
Meeting Date: July 1, 2008

TO: City Council

FROM: Stephen C. Stark, Interim Finance Director

SUBJECT: Resolution Adopting the FY 08/09 City Budget And Financial Policy Guidelines

STAFF REPORT

RECOMMENDATION:

1. Approve ResolutionNo.08-??, adopting the City of Wildomar FY 08-09 Operating Budget.
2. Approve Financial Policy Guidelines.

BACKGROUND:

The City of Wildomar must adopt a budget that appropriates revenues and expenditures allowing the City to receive funds and make expenditures to conduct the business of the City starting July 1st. LAFCO requires that the City's first adopted budget be the budget forecast outlined in the Comprehensive Fiscal Analysis (CFA) of the incorporation documents. The proposed budget includes both the General Fund and the Gas Tax Street Improvement Fund.

DISCUSSION: The city will adopt its first budget from the CFA base year of FY05-06 revenues and expenditures projected forward through FY 17-18. After adoption, these financial projections will be closely monitored and the cash flows analyzed to track the City's actual financial condition. The revenue and expenditure projections will be evaluated to ensure that the most current economic factors are being considered in determining the City's ability to operate in a financially responsible manner. Staff will return to Council at least on a quarterly basis with financial updates and any required adjustments to the operating budget.
Also included for consideration are financial policy guidelines for Council's consideration. These are financial guidelines that assist the staff in developing the budget as well as conducting the daily financial functions of the City. These Financial Guidelines are also important for the City in complying with new auditing standards (SAS 104-111).

The proposed FY 08-09 budget by category is:

	Exp. by City	Exp. by County	Total Appropriations
EXPENDITURES BY CATEGORY			
Salaries & Benefits	$ 430,710	$ -	$ 430,710
Operations & Maintenance	1,054,255	9,279,381	10,333,636
Capital Outlay	104,500		104,500
TOTAL	**$ 1,589,465**	**$ 9,279,381**	**$ 10,868,846**

The budget includes revenues received directly by the City as well as revenues received and retained by the County of Riverside on behalf of Wildomar that are used to offset its costs of providing services during the transition year. The budget also includes expenditures the City incurs directly as well as expenditures incurred by the County during the transition year. The "Salaries and Benefits" category is consistent with the proposed budget contained in the CFA. As discussed above, staff will monitor the budget and bring to Council updates regarding the movement of funds from Salaries and Benefits to Contractual Services during the period that Wildomar uses contractors instead of regular employees. Attached to this report are the following budget schedules:

Schedule A - Expenditure Budget Summary
Schedule B - Revenue Budget
Schedule C - Expenditure Budget
Schedule D - Transfers In/Out
Schedule E - Statement of Fund Balance

FISCAL IMPACTS:

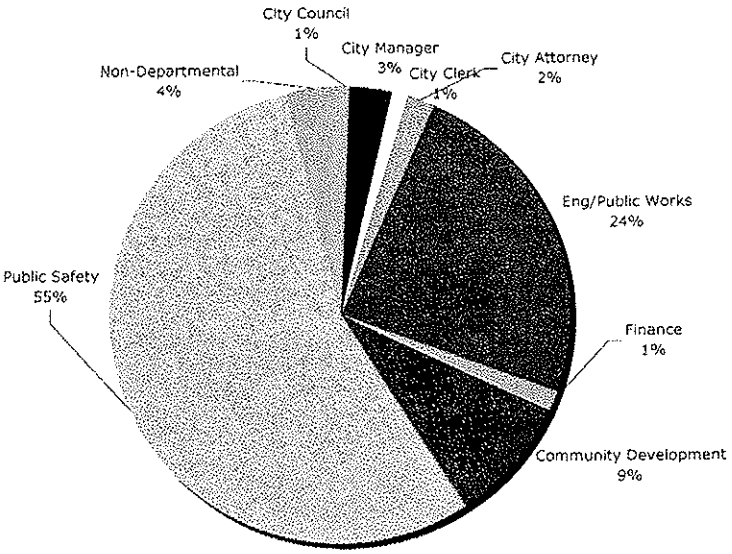
As indicated above and on attached schedules, total appropriations for FY 08-09 are $10,868,846. Adoption of this budget gives staff spending authority to conduct the business of the City of Wildomar effective July 1, 2008. The Financial Policy Guidelines have no direct fiscal impact.

ALTERNATIVES:

1. Take no action
2. Provide staff with further direction.

CITY OF WILDOMAR
EXPENDITURE BUDGET SUMMARY
FISCAL YEAR 2008/09

	Exp by City	Exp by County	TOTAL
EXPENDITURES BY CATEGORY			
Salaries & Benefits	$ 430,710	$ -	$ 430,710
Operations & Maintenance	1,054,255	9,279,381	10,333,636
Capital Outlay	104,500		104,500
TOTAL	**$ 1,589,465**	**$ 9,279,381**	**$ 10,868,846**
EXPENDITURES BY DEPARTMENT			
City Council	$ 58,600	$ -	$ 58,600
City Manager	331,225	-	331,225
City Clerk	126,960	-	126,960
City Attorney	207,500	-	207,500
Engineering/Public Works	203,090	2,390,801	2,593,891
Finance	158,455	-	158,455
Community Development	86,060	861,018	947,078
Public Safety	-	6,027,562	6,027,562
Non-Departmental	417,575	-	417,575
TOTAL	**$ 1,589,465**	**$ 9,279,381**	**$ 10,868,846**



CITY OF WILDOMAR
REVENUE BUDGET
FISCAL YEAR 2008/09

Account Number		Account Name	Received by City	Retained by County	TOTAL
GENERAL FUND					
10 3100	1	Sales & Use Tax	$ 924,818	$ 346,806	$ 1,271,624
10 3101	1	Sales & Use Tax - Triple Flip Loss	(231,205)		(231,205)
10 3102	1	Property Tax in Lieu of Sales Tax	-	462,409	462,409
TOTAL SALES TAX			$ 693,613	$ 809,215	$ 1,502,828
10 3105	1	Property Tax	$ -	$ 3,714,262	$ 3,714,262
10 3110	1	Property Transfer Tax	184,908		184,908
10 3150	1	Motor Vehicle in Lieu Fees (AB 1602)	2,869,715		2,869,715
10 3151	1	Off Highway Vehicle License Fees	920		920
10 3152	1	County Augmentation	237,579		237,579
10 3200	1	Community Development Fees		595,792	595,792
10 3210	1	Engineering/Building & Safety Fees		1,463,636	1,463,636
10 3220	1	Franchise Fees		585,833	585,833
10 3230	1	Animal Control Fees		183,026	183,026
10 3250	1	Fines & Forfeitures		208,428	208,428
10 3260	1	Interest Income	46,380		46,380
10 3800	1	Misc. Revenues	68,965		68,965
10 3890	1	Other Financing Sources	617,675		617,675
TOTAL GENERAL FUND			$ 4,719,755	$ 7,560,192	$ 12,279,947
GAS TAX STREET IMPROVEMENT FUND					
20 3130	1	Section 2105 Gas Tax Revenues	$ 286,435		$ 286,435
20 3131	1	Section 2106 Gas Tax Revenues	173,792		173,792
20 3132	1	Section 2107 Gas Tax Revenues	373,791		373,791
20 3133	1	Section 2107.5 Gas Tax Revenues	6,000		6,000
20 3153	1	Measure A Revenues	448,800		448,800
20 3154	1	Proposition 42 (TCRF) Revenues	137,930		137,930
20 3260	1	Interest Income	28,277		28,277
20 3890	1	Other Financing Sources	1,101,513		1,101,513
TOTAL GAS TAX STREET IMPROVEMENT FUND			$ 2,556,538	$ -	$ 2,556,538

CITY OF WILDOMAR
EXPENDITURE BUDGET
FISCAL YEAR 2008/09

			Exp by City	Exp by County	TOTAL
CITY COUNCIL					
10	411	13 Stipends	$ 24,000		$ 24,000
10	411	14 Benefits	9,600		9,600
		TOTAL SALARY & BENEFITS	$ 33,600	$ -	$ 33,600
10	411	20 Travel/Meetings	$ 10,000		$ 10,000
10	411	23 Supplies/Services	15,000		15,000
		TOTAL OPERATIONS & MAINTENANCE	$ 25,000	$ -	$ 25,000
		TOTAL CITY COUNCIL	$ 58,600	$ -	$ 58,600
CITY MANAGER					
10	412	10 Salaries	$ 78,375		$ 78,375
10	412	14 Benefits	31,350		31,350
		TOTAL SALARY & BENEFITS	$ 109,725	$ -	$ 109,725
10	412	20 Travel/Meetings	$ 5,000		$ 5,000
10	412	23 Supplies/Services	15,000		15,000
10	412	25 Contractual Services	175,000		175,000
		TOTAL OPERATIONS & MAINTENANCE	$ 195,000	$ -	$ 195,000
10	412	52 Equipment	$ 26,500		26,500
		TOTAL CAPITAL OUTLAY	$ 26,500	$ -	$ 26,500
		TOTAL CITY MANAGER	$ 331,225	$ -	$ 331,225

CITY OF WILDOMAR
EXPENDITURE BUDGET
FISCAL YEAR 2008/09

			Exp by City	Exp by County	TOTAL
CITY CLERK					
10	413	10 Salaries	$ 47,700		$ 47,700
10	413	14 Benefits	19,080		19,080
		TOTAL SALARY & BENEFITS	$ 66,780	$ -	$ 66,780
10	413	20 Travel/Meetings	$ 1,000		$ 1,000
10	413	23 Supplies/Services	15,000		15,000
10	413	30 Elections	38,180		38,180
		TOTAL OPERATIONS & MAINTENANCE	$ 54,180	$ -	$ 54,180
10	413	52 Equipment	$ 6,000		6,000
		TOTAL CAPITAL OUTLAY	$ 6,000	$ -	$ 6,000
TOTAL CITY CLERK			$ 126,960	$ -	$ 126,960
CITY ATTORNEY					
10	414	23 Supplies/Services	$ 2,500		$ 2,500
10	414	24 Reimbursable Expenses	5,000		5,000
10	414	27 Legal Services	200,000		200,000
		TOTAL OPERATIONS & MAINTENANCE	$ 207,500	$ -	$ 207,500
TOTAL CITY ATTORNEY			$ 207,500	$ -	$ 207,500

CITY OF WILDOMAR
EXPENDITURE BUDGET
FISCAL YEAR 2008/09

			Exp by City	Exp by County	TOTAL
FINANCE					
10	420	20 Salaries	$ 80,325		$ 80,325
10	420	14 Benefits	32,130		32,130
		TOTAL SALARY & BENEFITS	$ 112,455	$ -	$ 112,455
10	420	20 Travel/Meetings	$ 2,500		$ 2,500
10	420	23 Supplies/Services	7,500		7,500
10	420	25 Contractual Services	30,000		30,000
		TOTAL OPERATIONS & MAINTENANCE	$ 40,000	$ -	$ 40,000
10	420	52 Equipment	$ 6,000		6,000
		TOTAL CAPITAL OUTLAY	$ 6,000	$ -	$ 6,000
TOTAL FINANCE			$ 158,455	$ -	$ 158,455
COMMUNITY DEVELOPMENT					
10	430	10 Salaries	$ 35,400		$ 35,400
10	430	14 Benefits	14,160		14,160
		TOTAL SALARY & BENEFITS	$ 49,560	$ -	$ 49,560
10	430	20 Travel/Meetings	$ 5,000		$ 5,000
10	430	23 Supplies/Services	10,000		10,000
10	430	25 Contractual Services		$ 861,018	861,018
		TOTAL OPERATIONS & MAINTENANCE	$ 15,000	$ 861,018	$ 876,018
10	430	52 Equipment	$ 21,500		21,500
		TOTAL CAPITAL OUTLAY	$ 21,500	$ -	$ 21,500
TOTAL COMMUNITY DEVELOPMENT			$ 86,060	$ 861,018	$ 947,078

CITY OF WILDOMAR
EXPENDITURE BUDGET
FISCAL YEAR 2008/09

				Exp by City	Exp by County	TOTAL
ENGINEERING/PUBLIC WORKS						
10	450	10	Salaries	$ 41,850		$ 41,850
10	450	14	Benefits	16,740		16,740
	TOTAL SALARY & BENEFITS			$ 58,590	$ -	$ 58,590
10	450	20	Travel/Meetings	$ 2,500		$ 2,500
10	450	23	Supplies/Services	5,000		5,000
10	450	25	Contractual Services		1,289,288	1,289,288
20	450	25	Contractual Services - Road Maint.		1,101,513	1,101,513
10	450	26	AB939 & NPDES	125,000		125,000
	TOTAL OPERATIONS & MAINTENANCE			$ 132,500	$ 2,390,801	$ 2,523,301
10	450	52	Equipment	$ 12,000		12,000
	TOTAL CAPITAL OUTLAY			$ 12,000	$ -	$ 12,000
TOTAL ENGINEERING/PUBLIC WORKS				$ 203,090	$ 2,390,801	$ 2,593,891
PUBLIC SAFETY						
10	461	25	Contractual Services - Sheriff		$ 3,932,348	$ 3,932,348
10	465	25	Contractual Services - Fire		1,834,683	1,834,683
10	466	25	Contractual Services - Animal Control		260,531	260,531
	TOTAL OPERATIONS & MAINTENANCE			$ -	$ 6,027,562	$ 6,027,562
TOTAL PUBLIC SAFETY				$ -	$ 6,027,562	$ 6,027,562

CITY OF WILDOMAR
EXPENDITURE BUDGET
FISCAL YEAR 2008/09

				Exp by City	Exp by County	TOTAL
NON-DEPARTMENTAL						
10	480	25	Contractual Services	$ 20,000		$ 20,000
10	480	228	LAFCO Fee	2,575		2,575
10	480	29	Insurance	92,500		92,500
10	480	32	City Hall Lease & Operations	250,000		250,000
10	480	37	Misc. Services/Supplies	20,000		20,000
TOTAL OPERATIONS & MAINTENANCE				$ 385,075	$ -	$ 385,075
10	480	51	Furniture & Fixtures	$ 32,500		32,500
TOTAL CAPITAL OUTLAY				$ 32,500	$ -	$ 32,500
TOTAL NON-DEPARTMENTAL				$ 417,575	$ -	$ 417,575

CITY OF WILDOMAR
TRANSFERS IN/OUT
FISCAL YEAR 2008/09

		Transfers In	Transfers Out
GENERAL FUND			
10-3900-1	Transfer from Gas Tax Street Improvement Fund	$ 11,718	
TOTAL GENERAL FUND		$ 11,718	$ -
GAS TAX STREET IMPROVEMENT FUND			
20-490-01	Transfer to General Fund		$ 11,718
TOTAL GAS TAX STREET IMPROVEMENT FUND		$ -	$ 11,718
TOTAL TRANSFERS IN/OUT		$ 11,718	$ 11,718

CITY OF WILDOMAR
STATEMENT OF FUND BALANCE
FISCAL YEAR 2008/09

FUND #	FUND	JULY 1, 2008 BEGINNING BALANCE	REVENUES	TOTAL RESOURCES	OPERATING EXPENSES	CAPITAL PROJECTS	TRANSFERS IN	TRANSFERS OUT	JUNE 30, 2009 ENDING BALANCE
10	General Fund	$ -	12,279,947	$ 12,279,947	$ 9,767,333	$ -	$ 11,718	$ -	$ 2,524,332
20	Gas Tax Steet Imp. Fund	-	2,556,538	2,556,538	1,101,513	-	-	11,718	1,443,307
TOTAL ALL FUNDS		**$ -**	**$ 14,836,485**	**$ 14,836,485**	**$ 10,868,846**	**$ -**	**$ 11,718**	**$ 11,718**	**$ 3,967,639**

Fund Balance Analysis:	General Fund	Gas Tax Street Imp. Fund
Contingency	$ 158,947	$ 1,172
10% Operating Reserve	174,841	1,289
Reserve for Loans	617,675	1,101,513
Unreserved Fund Balance	1,572,869	339,333
TOTAL FUND BALANCE	**$ 2,524,332**	**$ 1,443,307**

FINANCIAL POLICY GUIDELINES

The FY08-09 Budget will be guided by certain financial policies and priorities. These financial policies set forth the framework for not only the development of the budget but also the ongoing operations of the City as a whole. It is important to continue developing these policies, as they are the financial foundation that supports the services to the community. Without a good financial foundation the City may not be able to provide the services that our citizens expect and deserve.

Operating Budget Policies

- The City will present to the City Council a budget that is a balanced document. Expenditures will not exceed revenues, including funding carried over from the previous year.

- The City will maintain a General Fund Reserve that provides the necessary cash flow for handling unbudgeted circumstances and providing flexibility in day-to-day operations. The CFA established a reserve at 10% of operating expenditures as the minimum desired level. Wildomar, like most cities, will experience the effects of economic cycles. The reserve policy should be reviewed to determine if a 10% reserve provides adequate protection for this new city.

Revenue Policies

- The City will attempt to maintain a diversified and stable revenue system to protect it from short-term fluctuations of any one revenue source.

- The City will seek out additional sources of revenue as a way of ensuring a balanced budget necessary for the quality of services expected by our citizens.

- The City will require user fees that cover the cost of services (e.g. building permits, etc.) provided to citizens.

- The City will do cost comparisons with other cities to ensure that our fee structure is reasonable.

- The City will update fees annually based on the prior year annual average consumer price index for the Los Angeles-Riverside-Orange Co. All Urban Consumers percentage change.

Cash Management/Investment Policies

- The City will deposit all funds within two days of receipt. Large receipts will be deposited the day they are received.

- The City will adopt an investment policy in the near future. Investment of City funds will be in accordance with the Investment Policy. Safety of principal will continue to be the number one priority, followed closely by ensuring that funds will be available when needed (liquidity). Only after these two priorities have been fully satisfied will the City consider yield as an investment criterion.

- The City will aggressively collect revenues, on a timely basis.

Reserve Policies

- The City will maintain an unallocated reserve in the General Fund equal to a minimum of 10% of expenditures to provide the ability to fund ongoing operations in the event of any unexpected change in the revenue/expenditure picture for the fiscal year. The reserve policy should be reviewed to determine if a 10% reserve provides adequate protection for this new city.

Accounting, Auditing and Financial Reporting Policies

- The City will have an independent audit performed annually. An interim audit will be performed mid-way through the Fiscal Year to ensure correct accounting and internal control procedures are followed.

- The City will produce a Comprehensive Annual Financial Report (CAFR) each year in accordance with Generally Accepted Accounting Principals (GAAP) as outlined by the Governmental Accounting Standards Board (GASB).

RESOLUTION NO. 08-29

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, RATIFYING THE PROVISIONAL APPROPRIATIONS LIMIT FOR THE CITY SET BY THE LOCAL AGENCY FORMATION COMMISSION OF RIVERSIDE COUNTY

THE CITY COUNCIL OF THE CITY OF WILDOMAR DOES RESOLVE AS FOLLOWS:

SECTION I. Recitals.

(a) The City of Wildomar was incorporated on July 1, 2008, as a general law city of the State of California.

(b) Pursuant to Government Code Section 56812, the Local Agency Formation Commission for Riverside County has set a provisional appropriations limit of $13,266,694 for the City of Wildomar.

(c) The City Council shall propose a permanent appropriations limit which shall be approved by the voters of the City at the first election held following the City's first full fiscal year of operation.

SECTION II. Ratify Provisional Appropriations Limit. The City Council of the City of Wildomar ratifies the provisional appropriations limit of $13,266,694 set by the Local Agency Formation Commission of Riverside County for the City's first full fiscal year of operation.

PASSED, APPROVED, AND ADOPTED this 1st day of July, 2008.

Bob Cashman, Mayor

ATTEST:

John Danielson, Interim City Clerk

APPROVED AS TO FORM:

_____

Julie Hayward Biggs, Interim City Attorney

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE)
CITY OF WILDOMAR)

I, John Danielson, Interim City Clerk of the City of Wildomar, do hereby certify that the foregoing Resolution No. 08-29 was duly adopted by the City Council of the City of Wildomar at a regular meeting thereof, held on the 1st day of July, 2008, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

John Danielson, Interim City Clerk

RESOLUTION NO. 08-30

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, CONTINUING THE LEVY AND COLLECTION OF PREVIOUSLY AUTHORIZED CHARGES, FEES, ASSESSMENTS AND TAXES

THE CITY COUNCIL OF THE CITY OF WILDOMAR DOES RESOLVE AS FOLLOWS:

SECTION 1. Recitals.

(a) The City of Wildomar was incorporated on July 1, 2008, as a general law city in the State of California.

(b) Government Code section 56886(t) provides that any change in organization, including an incorporation, may be made subject to the condition that any previously authorized charge, fee, assessment, or tax in the affected territory be extended or continued.

(c) The Local Agency Formation Commission of Riverside County conditions of approval for the incorporation of Wildomar provide: "In accordance with Government Code Sections 56886(t), the City shall have the authority to continue the levying and collection of any previously authorized charge, fee, assessment or general or special tax levied within the subject territory by the County or other subject agency, including, but not limited to, transient occupancy tax, franchise fees, business license fees, property transfer tax, sales and use tax, and any taxes, assessments, fees or charges by County Service Areas 22, 103 and 142."

(d) Continuing the levying and collection of previously authorized charges, fees, assessments or general or special taxes levied within the City prior to its incorporation will provide the City with revenues to pay for the substantial expenses it will incur as it assumes its municipal functions.

SECTION 2. Continuation of Charges. The City Council of the City of Wildomar, California, resolves to continue the levying and collection of any previously authorized charge, fee, assessment or general or special tax levied within the City prior to incorporation by the County or other subject agency, including, but not limited to, transient occupancy taxes, franchise fees, business license fees, property transfer taxes, sales and use taxes, and any taxes, assessments, fees or charges by County Service Areas 22, 103 and 142.

PASSED, APPROVED, AND ADOPTED this 1st day of July, 2008.

Bob Cashman, Mayor

ATTEST:

John Danielson, Interim City Clerk

APPROVED AS TO FORM:

Julie Hayward Biggs, Interim City Attorney

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE)
CITY OF WILDOMAR)

I, John Danielson, Interim City Clerk of the City of Wildomar, do hereby certify that the foregoing Resolution No. 08-30 was duly adopted by the City Council of the City of Wildomar at a regular meeting thereof, held on the 1st day of July, 2008, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

_____
John Danielson, Interim City Clerk

RESOLUTION NO. 08-31

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, ESTABLISHING A PETTY CASH FUND

THE CITY COUNCIL OF THE CITY OF WILDOMAR DOES RESOLVE AS FOLLOWS:

SECTION I. Petty Cash Fund Established. A petty cash fund of two-hundred and fifty dollars ($250) is established. The Interim City Manager or his delegate shall keep custody of the petty cash and shall keep an accounting of the purpose and amounts for which money from the petty cash fund is used.

PASSED, APPROVED, AND ADOPTED this 1st day of July, 2008.

_____
Bob Cashman, Mayor

ATTEST:

_____
John Danielson, Interim City Clerk

APPROVED AS TO FORM:

_____
Julie Hayward Biggs, Interim City Attorney

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE)
CITY OF WILDOMAR)

I, John Danielson, Interim City Clerk of the City of Wildomar, do hereby certify that the foregoing Resolution No. 08-31 was duly adopted by the City Council of the City of Wildomar at a regular meeting thereof, held on the 1st day of July, 2008, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

_____
John Danielson, Interim City Clerk

RESOLUTION NO. 08-32

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, AUTHORIZING INVESTMENT OF MONIES IN THE LOCAL AGENCY INVESTMENT FUND

THE CITY COUNCIL OF THE CITY OF WILDOMAR DOES RESOLVE AS FOLLOWS:

SECTION 1. Recitals.

(a) Section 16429.1 of the California Government Code created the Local Agency Investment Fund in the State Treasury for the deposit of money of a local agency for purposes of investment by the State Treasurer.

(b) That section further provides that if a city has money in its treasury that is not required for its immediate needs, the city council of the city may authorize a city officer to remit the money to the State Treasurer for the purposes of investment.

(c) The City Council does hereby find that the investment of City money not required for the City's immediate needs in the Local Agency Investment Fund is in the best interests of the City of Wildomar.

SECTION 2. Authorization for Investment. The City Council hereby authorizes the deposit of City of Wildomar monies not required for the immediate needs of the City in the Local Agency Investment Fund in accordance with the provisions of Section 16429.1 of the Government Code. The City Council further authorizes the withdrawal of all or a portion of such monies deposited in the Local Agency Investment Fund if and when such monies are required for the immediate needs of the City. The City officers who may exercise the power to deposit and withdraw monies pursuant to this Section are the City Manager and City Treasurer.

PASSED, APPROVED, AND ADOPTED this 1st day of July, 2008.

_____
Bob Cashman, Mayor

ATTEST:

_____
John Danielson, Interim City Clerk

APPROVED AS TO FORM:

_____
Julie Hayward Biggs, Interim City Attorney

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE)
CITY OF WILDOMAR)

I, John Danielson, Interim City Clerk of the City of Wildomar, do hereby certify that the foregoing Resolution No. 08-32 was duly adopted by the City Council of the City of Wildomar at a regular meeting thereof, held on the 1st day of July, 2008, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

John Danielson, Interim City Clerk

RESOLUTION NO. 08-33

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, SETTING FORTH PROCEDURES FOR PAYMENT OF CITY OBLIGATIONS

THE CITY COUNCIL OF THE CITY OF WILDOMAR DOES RESOLVE AS FOLLOWS:

SECTION 1. Recitals.

(a) Title 4, Division 3, Part 2, Chapter 4 of the Government Code governs the procedures for the payment of City obligations.

(b) The City Council has adopted a procedure for auditing claims for money or damages against the City, codified in Chapter 3.03 of the Wildomar Municipal Code.

(c) Section 37203 of the Government Code provides that the City Council may establish by resolution or ordinance an alternative procedure for drawing warrants and checks.

(d) Section 37206 of the Government Code provides that the City Council may establish by resolution or ordinance the time and method of paying the salaries and wages of City officers and employees.

SECTION 2. Payment of Demands. Except as specifically provided in Section 3, no demands may be paid prior to the performance of an audit by the City Council as required by Chapter 3.03 of the Wildomar Municipal Code. Upon completion of the City Council's audit, the Council may direct the City Manager to issue a check, which must be signed by at least two (2) of the following officials:

(1) Mayor;
(2) Mayor Pro Tem;
(3) City Manager

provided, however, that no one individual may sign on behalf of more than one (1) office.

SECTION 3. Prepayment of Certain Demands. The City Manager is expressly authorized to pay the following demands prior to the performance of an audit by the City Council: City employee payroll demands, any demand of five hundred dollars ($500) or less, any demand where the City Manager determines, in his or her discretion, that such prepayment is necessary for the efficient management of City business.

Prior to issuing any check for the prepayment of any demand, the City Clerk shall certify that the demand is in conformance with the City's budget. Upon certification, the City Manager may issue a check, which must be signed by at least two (2) of the officials listed in Section 2; provided, however, that no one individual may sign on behalf of more than one office.

PASSED, APPROVED, AND ADOPTED this 1st day of July, 2008.

Bob Cashman, Mayor

ATTEST:

John Danielson, Interim City Clerk

APPROVED AS TO FORM:

Julie Hayward Biggs, Interim City Attorney

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE)
CITY OF WILDOMAR)

I, John Danielson, Interim City Clerk of the City of Wildomar, do hereby certify that the foregoing Resolution No. 08-33 was duly adopted by the City Council of the City of Wildomar at a regular meeting thereof, held on the 1st day of July, 2008, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

_____
John Danielson, Interim City Clerk

RESOLUTION NO. 08-34

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, DESIGNATING THE COUNTY OF RIVERSIDE AS ITS AGENT FOR SERVICE OF PROCESS FOR ACTIONS UNDER THE REVENUE AND TAXATION CODE

THE CITY COUNCIL OF THE CITY OF WILDOMAR DOES RESOLVE AS FOLLOWS:

SECTION 1. Designation of Agent for Service of Process. The City Council designates the County of Riverside as its agent for service of process for any and all actions brought against the City under Article 2, Chapter 5, Part 9, Division 1, of the California Revenue and Taxation Code (commencing with Section 5140).

SECTION 2. Transmittal to Board of Supervisors. The Interim City Manager is hereby directed to deliver a copy of this resolution to the Clerk of the Riverside County Board of Supervisors.

PASSED, APPROVED, AND ADOPTED this 1st day of July, 2008.

_____
Bob Cashman, Mayor

ATTEST:

_____
John Danielson, Interim City Clerk

APPROVED AS TO FORM:

_____
Julie Hayward Biggs, Interim City Attorney

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE)
CITY OF WILDOMAR)

I, John Danielson, Interim City Clerk of the City of Wildomar, do hereby certify that the foregoing Resolution No. 08-34 was duly adopted by the City Council of the City of Wildomar at a regular meeting thereof, held on the 1st day of July, 2008, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

_____
John Danielson, Interim City Clerk

RESOLUTION NO. 08-36

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, AUTHORIZING THE INTERIM CITY MANAGER TO ENTER INTO AN AGREEMENT WITH WELLS FARGO BANK FOR A REVOLVING LINE OF CREDIT

THE CITY COUNCIL OF THE CITY OF WILDOMAR DOES RESOLVE AS FOLLOWS:

SECTION I. Recitals.

(a) The City of Wildomar was incorporated on July 1, 2008, as a general law city of the State of California.

(b) There are significant expenses that the City will incur as the City begins to assume responsibility for providing services within its boundaries.

(c) The City's projected revenues are sufficient to cover the costs associated with incorporation and the commencement of governance within the City, but those revenues are not immediately available.

(d) The City Council finds that it is necessary to secure a line of credit to ensure that it is able to pay its obligations as they become due.

SECTION II. Authorization to Enter Into an Agreement for a Line of Credit. The City Council authorizes the City Manager to execute an agreement with Wells Fargo Bank for a line of credit. The agreement for a line of credit shall conform with the terms and conditions attached as Exhibit "A" to this resolution.

PASSED, APPROVED, AND ADOPTED this 1st day of July, 2008.

Bob Cashman, Mayor

ATTEST:

John Danielson, Interim City Clerk

APPROVED AS TO FORM:

_____

Julie Hayward Biggs, Interim City Attorney

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE)
CITY OF WILDOMAR)

I, John Danielson, Interim City Clerk of the City of Wildomar, do hereby certify that the foregoing Resolution No. 08-36 was duly adopted by the City Council of the City of Wildomar at a regular meeting thereof, held on the 1st day of July, 2008, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

_____
John Danielson, Interim City Clerk

EXHIBIT "A"

TERMS AND CONDITIONS

WELLS FARGO

CITY OF WILDOMAR

$500,000 REVOLVING LINE OF CREDIT FACILITY

Summary of Terms and Conditions – For Discussion Purposes Only
Not a Commitment to Lend

BORROWER:	The City of Wildomar, California (the "Borrower")
FACILITY:	Twelve month $500,000 secured revolving credit line ("Facility"). Interest payable monthly. Principal due at maturity, with a minimum 30 consecutive day out-of-debt period during the term. Facility is offered as part of entire banking relationship, not as standalone.
LENDER:	Wells Fargo Bank, N.A.
MATURITY:	Up to twelve months from execution and delivery of the credit agreement ("Closing").
INTEREST RATE:	Taxable: Wells Fargo Bank Prime Interest plus 1.00% or LIBOR 1,2,3, or 6 month contract plus 3.50% (for reference, Wells Fargo Bank Prime was 5.00% as of 06/04/2008). Interest accrues on a 360-day basis.
FACILITY FEE:	$15,000 on the amount of the Facility, payable upfront in advance.
SECURITY:	Senior lien on all revenues and receivables of the Borrower.
OPTIONAL PREPAYMENT:	Borrower may prepay any Prime Rate loan without penalty. Borrower may prepay any LIBOR loan during an interest period on three business days' advance notice, subject to minimum prepayment amounts to be determined and break funding costs.
CONDITIONS PRECEDENT TO CLOSING:	The Facility will be subject to the satisfaction of conditions precedent usual and customary for transactions of this nature including but not limited to the following: 1) Due diligence satisfactory to Wells Fargo. 2) Receipt of legal opinions from the Borrower's counsel, in form and substance satisfactory to Wells Fargo. 3) Receipt of a certified copy of Borrower's Council Resolutions authorizing the Facility. 4) No material adverse change prior to closing. 5) Other conditions deemed appropriate.

LOAN DOCUMENTS:

The Facility will be subject to the negotiation, execution and delivery of a Credit Agreement and other loan documents, which will contain conditions to borrowings, representations and warranties, covenants, events of default, indemnification, and other provisions that are customary for similar financings by Wells Fargo, including without limitation those indicated below.

CONDITIONS TO ALL BORROWINGS:

The obligation of Wells Fargo to make each loan will be subject to all representations and warranties remaining true and correct in all material respects, and no Event of Default (as defined below) or other event which would, with the passage of time or the giving of notice, or both, constitute an Event of Default existing or resulting from the loan.

REPRESENTATIONS AND WARRANTIES:

As customary, including but not limited to the following, as applicable to Borrower: proper status and authority; loan documents valid, binding and enforceable against Borrower; loan documents not violating laws or existing agreements or requiring governmental, regulatory or other approvals; payment of taxes; no litigation that may have a material adverse effect; compliance with ERISA, environmental and other laws and regulations; no adverse agreements, existing defaults or non-permitted liens; financial statements true and correct.

PRINCIPAL COVENANTS:

The principal covenants expected to be included in the Credit Agreement are indicated below.

<u>General covenants</u>

- Annual audited Financial Statement with unqualified opinion within 180 days of fiscal year end.
- Minimum 30 consecutive day out-of-debt period, during which principal is repaid to zero.
- Annual budget is to be provided to the Lender by the first day of each fiscal year.
- Monthly cash flow report showing receipts and expenditures, within 30 days after the end of each fiscal quarter, prepared by the Borrower.
- Any other reasonable financial information, as requested by the Lender.

<u>Financial covenants</u>

- No new debt without permission of Lender.
- Borrower will not mortgage, pledge, grant or permit to exist a security interest in, or lien upon, all or any portion of Borrower's assets now owned or hereafter acquired, except any of the foregoing in favor of Bank, or which is existing as of, and disclosed to Bank in writing prior to, the date hereof.

EVENTS OF DEFAULT:	As customary for similar financings, including but not limited to the following: bankruptcy, insolvency, failure to make payments when due under the loan documents, debt moratorium declared, unenforceability, repudiation, illegality, failure to pay material judgment, breach of any representation or warranty, breach of any covenant, adverse ERISA event, change in control.
FEES, EXPENSES AND INDEMNIFICATION:	Borrower will pay Lender counsel costs relating to preparation of the loan documents.
GOVERNING LAW:	State of California
PROPOSAL EXPIRATION:	If Borrower wishes to move forward based on these terms and conditions, it may request to do so by June 23, 2008. If Borrower does not request to move forward based on these terms and conditions by such time and date, this proposal and the terms contained herein shall expire.
CLOSING DATE:	Not later than July 10, 2008.

This Summary of Terms and Conditions is not intended to be, and should not be construed as an attempt to establish all of the terms and conditions relating to the Facility. It is intended only to be indicative of certain terms and conditions around which the loan documents will be structured, and not to preclude negotiations within the general scope of these terms and conditions. The loan documents containing final terms and conditions will be subject to approval by Borrower and Wells Fargo.

RESOLUTION NO. 08-35

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, AUTHORIZING BANK SERVICE WITH WELLS FARGO BANK AND DESIGNATING THE PERSONS AUTHORIZED TO TRANSACT BUSINESS ON BEHALF OF THE CITY

THE CITY COUNCIL OF THE CITY OF WILDOMAR DOES RESOLVE AS FOLLOWS:

SECTION 1. Establish Bank Account. The City Council authorizes the Interim City Manager to establish a bank account with Wells Fargo Bank, National Association ("Bank"). The Interim City Manager is authorized to execute the agreements and documents necessary to establish a bank account with Bank, attached hereto in Exhibits "A" through "P."

SECTION 2. Authorization to Withdraw from Account. The Mayor and the Interim City Manager are authorized to draw checks on the City's account with the Bank and the Bank is authorized to honor and pay all checks if properly signed, including those drawn to the order of any officer or any other person authorized to sign such checks.

PASSED, APPROVED, AND ADOPTED this 1st day of July, 2008.

Bob Cashman, Mayor

ATTEST:

John Danielson, Interim City Clerk

APPROVED AS TO FORM:

Julie Hayward Biggs, Interim City Attorney

EXHIBIT "A"

CONTRACT FOR DEPOSIT OF MONEYS

WELLS FARGO

Contract for Deposit of Moneys

THIS CONTRACT, relating to the deposit of moneys, is made as of the _____ day of _____, 20____, between _____("Treasurer") acting in his or her official capacity as Treasurer of **Customer Name**_("Depositor"), and **WELLS FARGO BANK, NATIONAL ASSOCIATION** ("Bank"), having a shareholder's equity of $26,397,000,000.00 on December 31, 2007, and is made with reference to the following facts:

WHEREAS, the Treasurer proposes to deposit in the Bank from time to time, moneys in his or her custody in an aggregate amount on deposit at any one time not to exceed the total shareholder's equity of the Bank, and said moneys will be deposited subject to Title 5, Division 2, Part 1, Chapter 4, Article 2 (commencing with Section 53630) of the Government Code of the State of California (the "Local Agency Deposit Security Law").

WHEREAS, the Government Code requires the Treasurer to enter into a contract with the Bank setting forth the conditions upon which said moneys are deposited.

WHEREAS, in the judgment of the Treasurer, this Contract is to the public advantage.

NOW, THEREFORE, the parties agree as follows:

1. This Contract cancels and supersedes any previous contracts between the Treasurer and the Bank relating to the method of collateralization of Depositor's deposits. To the extent not inconsistent herewith, any such deposit shall be subject to the terms and conditions of the Bank's standard disclosure statement (as in effect from time to time) for deposits of that type.

2. This contract, but not deposits then held hereunder, is subject to termination by the Treasurer or the Bank at any time upon 30 days' written notice. Deposits may be withdrawn in accordance with the agreement of the parties and applicable federal and state statutes, rules and regulations. This contract is subject to modification or termination upon enactment of any statute, rule, or regulation, state or federal, which, in the opinion of the Administrator of Local Agency Security of the State of California (the "Administrator"), is inconsistent herewith, including any change relative to the payment of interest upon moneys so deposited by the Treasurer. The Treasurer may withdraw Depositor's deposits from the Bank immediately upon receiving notice from the Administrator that the Bank has failed to pay assessments, fines or penalties assessed by the Administrator. The Treasurer may immediately upon receiving notice from the Administrator withdraw authorization for the placement of securities with the Agent of the Bank in the event that the Agent of the Bank fails to pay fines or penalties assessed by the Administrator.

3. Interest shall accrue on any moneys so deposited as permitted by any act of Congress of the United States or by any rule or regulation of any department or agency of the Federal Government. If interest may legally be paid on the account into which the moneys are deposited, then all moneys deposited shall bear interest at a rate agreed upon by the Treasurer and the Bank.

4. The Bank shall issue to the Treasurer for each deposit a receipt on a form agreed to by the Bank and the Treasurer, stating the interest to be paid (if any), the duration of the deposit (if appropriate), the frequency of interest payments (if any) and the terms of withdrawal. Each such deposit receipt is by reference made a part of this contract.

5. The Bank will maintain at all times with the Agent of the Bank as security for Depositor's deposits: (a) eligible securities of the classes described in Government Code Section 53651 (except subdivisions (m) and (p)) having a market value at least 10% in excess of the total amount of deposits secured by those securities, (b) eligible securities of the class described in subdivision (m) of Government Code Section 53651 having a market value at least 50% in excess of the total amount of deposits secured by those securities and (c) eligible securities of the class described in subdivision (p) of Government Code Section 53651 having a market value at least 5% in excess of the total amount of deposits secured by those securities. If the Administrator determines that a security is not qualified to secure public deposits, the Bank will substitute other securities to comply with the requirements of this Paragraph.

6. The Treasurer hereby waives security for that portion of the total amount on deposit which is insured pursuant to Federal law.

7. The Agent of the Bank, which the Treasurer and the Bank hereby authorize to hold the eligible securities posted as collateral under this contract, is **BNY WESTERN TRUST COMPANY**. The Agent of the Bank has filed with the Administrator an agreement to comply in all respects with all provisions of the Local Agency Deposit Security Law.

8. Authority for placement of securities for safekeeping in accordance with Government Code Section 53659 is hereby granted to the Agent of the Bank, including placement with any one or more Federal Reserve Banks or branches thereof.

9. If the Bank fails to pay all or part of any moneys of the Depositor on deposit with the Bank which are subject to this contract when ordered to do so in accordance with the terms of withdrawal set forth on the applicable deposit receipt, the Treasurer will immediately notify the Administrator in writing. Action of the Administrator in converting the collateral required by Paragraph 5 above for the benefit of the Depositor is governed by Government Code Section 53665.

10. The Bank may add, substitute or withdraw eligible securities being used as security for deposits made hereunder in accordance with Government Code Section 53654, provided the requirements of Paragraph 5 above are met.

11. The Bank shall have and hereby reserves the right to collect and retain for the Bank's own account the interest or income on the securities, except in cases where the securities are liable to sale or are sold or converted in accordance with the provisions of Government Code Section 53665.

12. The Bank will pay all expenses incurred in transporting eligible securities maintained as collateral for moneys on deposit to and from the Agent of the Bank. The Depositor will pay (or promptly reimburse the Bank for or otherwise compensate the Bank for) all expenses incurred in transporting all moneys deposited with the Bank to and from the Depositor's offices. The Depositor will pay the Bank (or otherwise compensate the Bank for) the fees and charges stated in the Bank's then current Schedule of Charges (unless the Bank and the Treasurer otherwise agree) for handling, collecting and paying all checks, drafts and other exchange or securities according to the Bank's standard practices.

13. This contract, the parties hereto, and all deposits governed by this contract shall comply with and be subject in all respects to the Local Agency Deposit Security Law, and all other state and federal laws, statutes, rules and regulations applicable to such deposits, whether now in force or hereafter enacted to promulgated, all of which are by this reference made a part hereof.

IN WITNESS WHEREOF, the Treasurer in his or her official capacity on behalf of the Depositor, and the Bank by its duly authorized officer, have signed this contract in triplicate as of the day and year first above-mentioned.

TREASURER of: **Customer Name**
Name of Local Agency Depositor
By: _____

Address: _____

_____

WELLS FARGO BANK, NATIONAL ASSOCIATION

By: _____
Title: _____
Address: 333 Market Street MAC: A0119-173
San Francisco, CA 94105

EXHIBIT "B"

WIRE TRANSFER SERVICES SECURITY PROCEDURES AGREEMENT

WELLS FARGO

Wire Transfer Services Security Procedures Agreement

Section 1 - Agreement

☐ NEW
☐ REPLACEMENT **Account Number:**

This agreement is made this _____ day of _____, 20 by and between _____ ("Company") and Wells Fargo Bank, N.A. ("Bank"). By signing below or, if applicable, on the Acceptance of Services, Company acknowledges receiving and agreeing to be bound by these terms and conditions and those referred to in Bank's Wire Transfer Customer Setup Form (the "Setup Form") and the Wire Transfer Services Agreement or the Master Agreement for Treasury Management Services and Wire Transfer Services Description and, if applicable, the CEO Service Description. Company understands that in any instructions to transfer funds by wire from accounts Company maintain at Bank ("Orders"), Bank may rely solely (i) on the account number of the person ("Beneficiary") who is to receive the wire transfer rather than the Beneficiary's name, and (ii) if provided by Company, on the identification number of any other financial institution through or to which the funds are to be transferred, rather than the name of the financial institution. Company agrees that it is bound by any Order, whether or not authorized, issued in its name and accepted by Bank in compliance with the security procedure selected by Company.

Section 2 – Standard Security Procedures

2.1 Voice Initiated Orders. Bank's standard security procedures consist of confirming that the personal identification number ("PIN") that accompanies an Order corresponds with a valid PIN assigned to Company on voice-initiated Orders. A PIN is required for all voice-initiated transfers.

2.2 Terminal Initiated Orders. Bank's standard security procedures for terminal-initiated Orders (including Orders placed via the Internet) consist of RSA SecurID® or other system security features offered by Bank.

Section 3 - Additional Security Procedures for Specific Services. ***(Unless designated as "optional", the following security procedures are required in addition to the Standard Security Procedures.)***

3.1 Voice Initiated, Non-Repetitive Wires.

3.1.1 Telephone Verification Service: Non-Repetitive Outgoing wire of $_____ or more. By indicating an amount Company has agreed that Bank will make a reasonable attempt to telephone a person(s) designated by Company on the Bank's most current Setup form, to verify that a voice-initiated, non-repetitive Order is authorized if it exceeds the amount noted above. If Bank is unable to complete the call the Order will not be processed. Bank will not telephone to verify a Repetitive Order. A "Repetitive Order" is an Order to Bank to pay a specified amount of money to a previously designated Beneficiary at a previously designated beneficiary's financial institution.

3.2 Commercial Electronic Office Portal (CEO ®) Wire Transfer Service (or WellsNet Wire Transfer Service.)

3.2.1 ***Availability of Self-Administration.*** If Company requests Self-Administration of Company's access to the CEO, most of the set-up and administration of Company's access to CEO services (including the CEO Wire Transfer Service) will be performed by Company's Company Administrator rather than Bank. Three levels of access authorization are available: *Company Administrator*, *Administrator* and *Operator*. A "Company Administrator" has access to *all* services Company receives through the CEO and is able to set up and administer access for other Company Administrators, Administrators and Operators for all such services. An "Administrator" has access to specific CEO services and can set up other Administrators and Operators for such specific services. "Operators" are authorized to access specific services and functions (for example, the create/modify function or the verify function for wire transfer requests) within those services, but they are not authorized to set up or administer access for such services or functions.

3.2.1.1 *No Self-Administration.* If Company does not have Self-Administration, Company's designated security administrator will determine Operators and the dollar limits per transaction and per day assigned to each Operator and will communicate this information to Bank. Bank will set up the Operators by assigning each a personal ID code. Company's security administrator will also be responsible for communicating any changes in Operators or in Operator limits or authorization(s) to Bank. Company will promptly report to Bank any lost or stolen token cards.

3.2.1.2 ***Self-Administration.*** If Company has requested Self-Administration, Bank will assign a Company ID code and will set up Company's first Company Administrator by assigning a personal ID code and password to be used when he/she first enters the CEO number. He/She can then set up additional Company Administrators, Administrators or Operators. Any Company Administrator: (a) can set up additional Company Administrators, Administrators and Operators (issuing each a password that will be changed upon first entry to the CEO) and a personal ID code; (b) can reset passwords for all services; and (c) shall be required to immediately disable access to the CEO for any Company Administrator, Administrator or Operator who ceases to be a Company Administrator, Administrator or Operator. An Administrator can set up additional Administrators and Operators and reset passwords for the specific service(s) he/she is set up to access. Bank will not know the password of any Company Administrator, Administrator, or Operator except the initial password assigned to the first Company Administrator. Bank will give each Company Administrator and Administrator a token card and a PIN, known only by them individually and Bank. Self-Administration will also allow a Company Administrator or an Administrator to initiate a request to Bank to reassign an existing token card to another Company Administrator, Administrator or Operator.

3.2.1.3 ***Self-Administration with Dual Control.*** If Company has requested Self-Administration with dual control, Bank will assign a Company ID code and will set up Company's first *two* Company Administrators by assigning each a personal ID code and password to be used when each first enters the CEO. All actions that can be performed by a Company Administrator or an Administrator in Section 3.2.1.2 will require that one Company Administrator (or Administrator with appropriate function access) initiate the action and a second Company Administrator (or Administrator with appropriate function access) approve the action.

3.2.2 ***Token Cards.*** Bank will assign a token card to each Operator. The token card generates a random and unique security code every minute. The code combines with a PIN to provide a unique password (the "Passcode") every minute. The PIN is set by each Operator individually upon first logon. The Passcode must be presented with each request to access the Service and is used by Bank to authenticate the identity of Company and/or the person originating the request. Bank will verify each request to access the Service by determining if the Passcode is valid for the associated personal ID code for the Operator and if the personal ID code used by the person requesting access is the personal ID code of one of the persons Company has designated in writing as being authorized such access. Bank has no obligation to confirm in any other way the identity of any person making such a request.

3.2.3 ***Non-Repetitive Requests.*** For domestic and international non-repetitive wire transfer requests, Operators who create/modify such requests additionally will be required to use a Password which is initially provided to the Operator by Bank, or by a Company Administrator or Administrator if Company has Self-Administration, and is changed by the Operator upon first logon.

3.3 Electronic Commerce/Payment Manager Services. ***(Check applicable box.)***

3.3.1 ☐ Password - File Transmission (Non-Encrypted). This procedure requires that a unique eight-digit code separately agreed upon in writing by Company and Bank be presented with Company's wire file. Company may be required to change the password on a regular basis.

3.3.2. ☐ Secure File Transport (Encrypted). This procedure uses 128-bit SSL (Secure Sockets Layer) encryption and requires the use of a transmission ID and a customer selected transmission password. Use of a Bank issued digital certificate is optional.

Section 4 – Additional Provisions

4.1 **Separation of Operator Function**. Bank strongly recommends that Company separate among Operators using the Wire Transfer Service the ability to create/modify and to verify wire transfer requests. in order to reduce Company's risk of suffering a loss resulting from an unauthorized or fraudulent wire transfers

4.2 **Additional Actions by Bank.** Any actions Bank takes to detect erroneous wire transfer requests, or any actions Bank takes beyond those described above in an attempt to detect unauthorized requests or instructions will be taken at Bank's sole discretion. No matter how many times Bank takes these actions they will not become part of Bank's standard procedures for attempting to detect such erroneous or unauthorized requests or instructions, and Bank will not in any situation be liable for failing to take or to correctly perform these actions.

4.3 **Protection of Passwords, PINS, etc.** It is Company's responsibility to ensure that the ID codes, passwords, token cards, PINs, and Passcodes are known to, and used only by, persons who have been properly authorized by Company to use the Wire Transfer Service. Bank, in its sole discretion, may cancel or reissue any PIN it believes may have been compromised, including, without limitation, a PIN that has never been acknowledged as having been received and any PIN that has been used by anyone other than the intended authorized user.

Section 5 - Customer Approvals - Signature(s) as required by certificate of authority on signature card

Company Name as it appears on Company's account	
Printed Name of Authorized Signer	Printed Name of Authorized Signer
Signature **X**	Signature **X**
Date	Date

Section 7 - Bank Approvals

Bank Name	RAU/CC/AU	
Banker/Officer Name	MAC	
Banker/Officer Signature **X**	Phone Number ( )	Date

EXHIBIT "C"

ACCEPTANCE OF SERVICES

ACCEPTANCE OF SERVICES

WELLS FARGO

Part I – Certification.

☐ ***New Agreement***

☐ ***Designation of Sweep Option***
(If checked, complete Part II, below.)

Each person signing this Acceptance of Services ("Acceptance") certifies that:

(a) the company identified in the signature block of this Acceptance ("Company") has received and agrees to be bound by the Service Documentation, as defined in the Master Agreement for Treasury Management Services between Company and Wells Fargo Bank, N.A. ("Bank"), and any Sweep Option Company has designated in Part II of this Acceptance;

(b) he or she has full authority to execute this Acceptance on behalf of Company, to enter into other agreements with Bank for Treasury Management services now or hereafter offered by Bank (each, a "Service"), and to amend, terminate or otherwise act on behalf of Company with respect to each Service; and

(c) Company's use of any Service, including without limitation each Service that Company commences using after the Effective Date of this Acceptance, confirms Company's agreement to be bound by the Service Documentation relating to that Service.

Part II – Sweep Option.

A. DESIGNATION OF WELLS FARGO STAGECOACH SWEEP℠ OPTION.

Company designates the following Sweep Option (check one box only):

☐ **Wells Fargo Stagecoach Sweep, Preferred Option with secondary Wells Fargo Stagecoach Sweep, Repurchase Agreement.**

☐ **Wells Fargo Stagecoach Sweep, Preferred Option.**

☐ **Wells Fargo Stagecoach Sweep, Repurchase Agreement with secondary Wells Fargo Stagecoach Sweep, Preferred Option.**

☐ **Wells Fargo Stagecoach Sweep, Repurchase Agreement.**

☐ **Wells Fargo Stagecoach Sweep, Money Market Fund.** (Check one box only.)

- ☐ California Tax Free Money Market Fund - Class A - Fund 29.
- ☐ Treasury Plus Money Market Fund - Class A - Fund 453.
- ☐ National Tax-Free Money Market Fund - Class A - Fund 452.
- ☐ 100% Treasury Money Market Fund - Service Class - Fund 8.

B. ADDITIONAL INFORMATION.

- Checking Account Number: _____.
- Credit Sweep Option: ☐ Yes ☐ No LOC Number: _____.
- Statements and/or Confirmations will be sent to Company by electronic means unless otherwise requested by Company. Electronic means include Bank's Commercial Electronic Office®, facsimile and/or Secure E-Mail.

Part III – Signature.

Agreed To and Accepted By:

Company: _____

By: _____

Name: _____

Title: _____

Effective Date: _____

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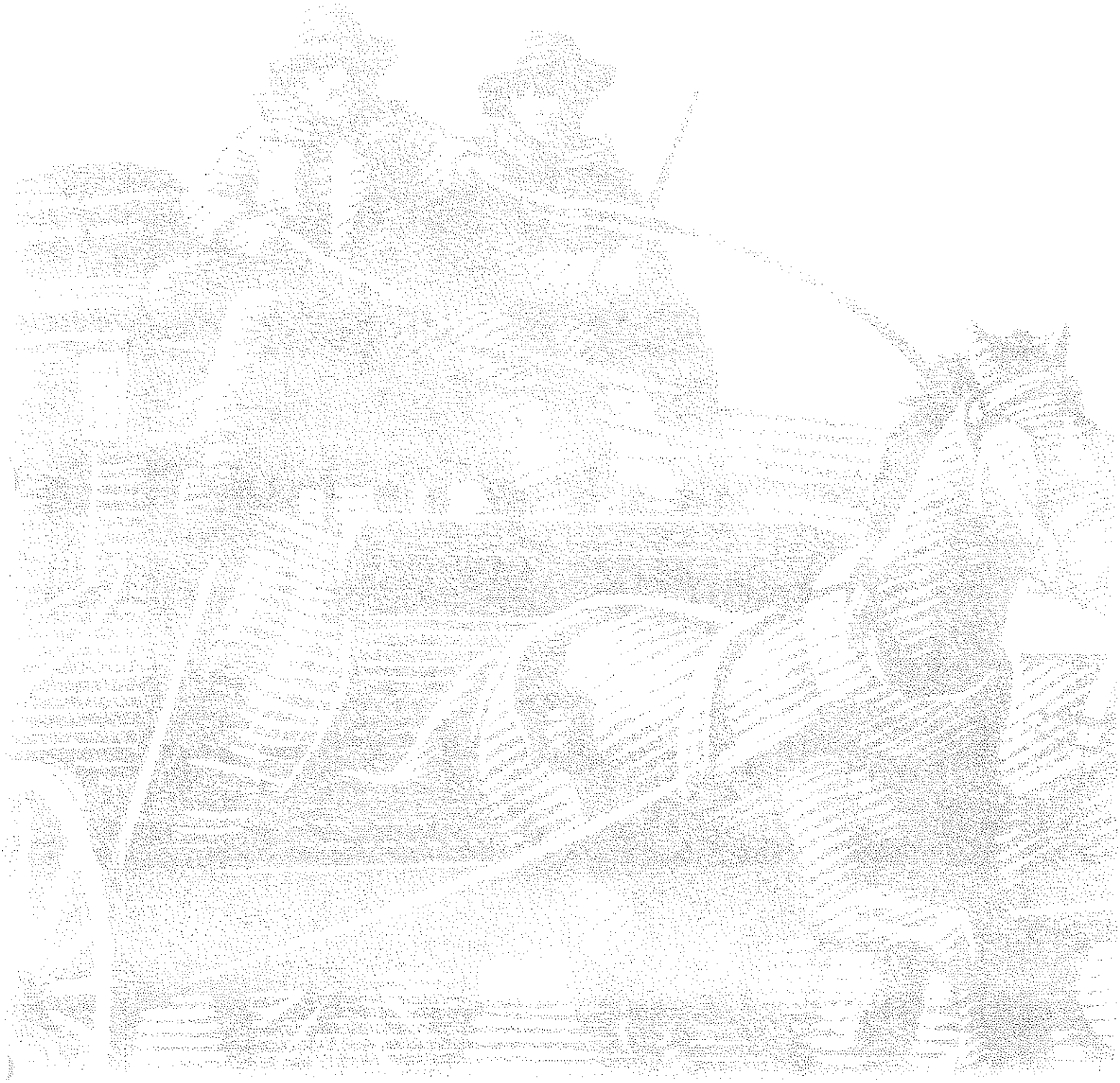
EXHIBIT "D"

PROGRAM GUIDE

WELLS FARGO



Program Guide

PREFACE

Thank you for selecting us for your payment processing needs. Accepting numerous payment options provides a convenience to your customers, increases your customers' ability to spend at your establishment, and helps speed payment to your account.

The majority of this Program Guide presents terms governing the acceptance of Credit Card payments.

The Program Guide also includes provisions controlling the acceptance of PIN Debit and Non-PIN Debit Card payments, Electronic Benefits Transfer payments, and TeleCheck® Check Services. Your Merchant Processing Application will indicate the types of payments and services you have elected to accept.

Credit Cards present risks of loss and non-payment that are different than those with other payment systems. In deciding to accept Credit Cards, you should be aware that you are also accepting these risks.

Visa U.S.A, Inc. ("Visa") and MasterCard International, Incorporated ("MasterCard") and Discover Financial Services LLC ("Discover") are payment card networks that electronically exchange Sales Drafts and Chargebacks for Credits and Debits. (We will refer to Visa, MasterCard and Discover as "Associations".) Sales Drafts are electronically transferred from banks (in the case of Visa and MasterCard transactions) or network acquirers (in the case of Discover transactions) that acquire them from merchants such as yourself (these banks and network acquirers are referred to as "Acquirers") through the appropriate Association, to the bank that issued the Cardholder's Credit Card (referred to as "Issuers"). The Issuers then bill their Cardholders for the transactions. The Associations charge the Acquirers interchange fees and assessments for submitting transactions into their systems. A substantial portion of the Discount or Transaction Fees that you pay will go toward these fees and assessments.

Discover is not a bank card network. Bank is not a sponsor of Discover Card transactions under this Agreement and is not a party to this Agreement insofar as it relates to Discover Card transactions. The provisions of this Agreement regarding Discover Card constitute an agreement solely between you and Processor.

In order to speed up the payment process, the Issuer transfers the funds back through the Association to the Acquirer at approximately the same time that the Issuer receives the electronic Sales Drafts. Even though the payments under this system are made simultaneously, all payments made through the Associations are conditional and subject to reversals and adjustments.

Each Association has developed rules and regulations ("Association Rules") that govern their Acquirers and Issuers and the procedures, responsibilities and allocation of risk for this process. The Association Rules and applicable banking laws give Cardholders and Issuers certain rights to dispute transactions, long after payment has been made to the merchant. These disputed transactions are referred to as Chargebacks.

We do not decide what transactions are charged back and we do not control the ultimate resolution of the Chargeback. While we can attempt to reverse a Chargeback to the Issuer, we can only do so if the Issuer agrees to accept it or the Association requires the Issuer to do so after a formal appeal process. Sometimes, your customer may be able to successfully charge back a Credit Card transaction even though you have provided your goods or services and are otherwise legally entitled to payment from your customer. While you may still be able to pursue claims directly against that customer, neither we nor the Issuer will be responsible for such transactions.

You will be responsible for all Chargebacks and adjustments associated with the transactions that you submit for processing.

Please refer to the Glossary for defined terms used in the Agreement.

This Program Guide, together with your Merchant Processing Application and the Schedules thereto (the "Agreement"), contains the terms and conditions under which we will provide Services for Card transactions and other types of payment. We will not accept any alterations or strike-outs to the Agreement. Please read this booklet completely as it contains important information.

Program Guide

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OPERATING PROCEDURES

This part of the Program Guide (through Section 13) describes the procedures and methods for submitting Credit Card transactions for payment, obtaining authorizations, responding to Chargebacks and Media rieval requests, and other aspects of the operations of our services.

Processor is a full-service financial transaction processor dedicated, among other processing services, to facilitating the passage of your Sales Drafts back to the thousands of institutions who issue the MasterCard,® Visa® and Discover® Cards carried by your customers, as well as to the independent Card Issuers of American Express®/Optima,® and JCB.® The Operating Procedures contained in this part focus primarily on the MasterCard, Visa and Discover Associations' operating rules and regulations, and seek to provide you with the principles for a sound Card program. They are designed to help you decrease your chargeback liability and train your employees. (In the event we provide authorization, processing or settlement of transactions involving Cards other than MasterCard, Visa and Discover, you should also consult those independent Card Issuers' proprietary rules and regulations.)

The requirements set forth in these Operating Procedures will apply unless prohibited by law. You are responsible for following any additional or conflicting requirements imposed by your state or local jurisdiction.

1. MasterCard, Visa And Discover Acceptance

1.1. Card Descriptions. At the point of sale, the Card must be carefully examined to determine whether it is a legitimate and valid Card. The name of the Card (e.g., Visa, MasterCard or Discover) should appear in bold letters on the Card. For all MasterCard and Visa Cards and some Discover Cards, the Card Issuer (e.g., XYZ Bank, etc.) should also appear in bold letters on the Card. The following is a description of the authorized Visa, MasterCard and Discover Card designs:

Visa: Visa Cards have the Visa symbol on the right-hand side of the Card. Above the Visa symbol is the 3-dimensional hologram of the Visa Dove design. The expiration date must be followed by one space and the symbol "V". Visa Cards contain a 16-digit account number embossed across the middle of the Cards and the first digit is always a four (4). In addition, the Classic and Preferred Cards have the first four digits of the account number printed directly below the embossed number. You must always check these numbers carefully to ensure that they are the same. Beginning January 2006, Visa has a new Card design which differs significantly from the previous description. You are required to familiarize yourself with the new design by consulting the document entitled "Rules for Visa Merchants – Card Acceptance and Chargeback Management Guidelines" (VRM 09.04.05). You may download the document free of charge from Visa's website at http://www.visa.com/merchant or order a hardcopy to be mailed to you for a nominal charge by telephoning Visa Fulfillment at 800-VISA-311. Both the old and new Visa Card designs will be circulating concurrently in the marketplace through the year 2010. Only Visa Cards fitting the old or new descriptions may be accepted.

MasterCard: MasterCard Cards are issued under the following names: MasterCard, EuroCard, Access, Union, Million and Diamond. The MasterCard symbol appears on the front or back of the Card. MasterCard and the Globe designs appear in a 3-dimensional hologram above the symbol. In addition, the words Classic, Preferred, Gold or Business may appear. MasterCard account numbers are sixteen (16) digits, and the first digit is always a five (5). The first four digits of the account must be printed directly below the embossed number. Only MasterCard Cards fitting this description may be accepted. Pursuant to an alliance with MasterCard, Diners Club Cards issued in the United States and Canada are being re-issued with a sixteen (16) digit account number the first two digits of which are now fifty-five (55) and with the MasterCard mark and hologram on the front of the Diners Club Card. These Diners Club Cards shall be accepted and processed in the same manner as MasterCard transactions. Diners Club International Cards that are issued outside the U.S. and Canada may be re-issued with the MasterCard mark on the back of the Card. These Diners Club Cards will have account numbers that are fourteen (14) digits, the first two digits or which are thirty-six (36). When these Diners Club Cards are used within the United States, Canada and other designated areas, they will be processed as MasterCard transactions. Beginning Jan 2006, MasterCard has a new Card design significantly different from the previous description. You are required to familiarize yourself with the new design by consulting a document "MasterCard Card Identification Features." You may download the document free of charge from MasterCard's website at http://www.mastercardmerchant.com. Both the old and new MasterCard Card designs will be circulating concurrently in the marketplace through the year 2010. Only MasterCard Cards fitting the old or new descriptions may be accepted.

Discover: Most standard, rectangular Discover Cards display the Discover Network Acceptance mark in the lower right corner on both sides of the Card or, through October 2008, the Discover/Novus Acceptance mark only on the back of the Card. After October 2008, however, Discover Cards will only display the Discover Network Acceptance Mark on both sides of the Card. Either the words "DISCOVER" or "DISCOVER NETWORK" appear in ultraviolet ink on the front of the card which becomes visible when held under an ultraviolet light. Discover account numbers are sixteen (16) digits embossed in clear and uniform size and spacing, and where a hologram is present, the last four digits of the account number extend into the hologram. Cards issued before April 15, 2006 will display either a circular or rectangular three-dimensional hologram of a globe with an arrow through it. Newer Cards will have a holographic magnetic stripe, and the holographic globe art on the front of the Card will not be present. The embossed expiration date, if present, appears in a MM/YY format below the words "Valid Thru." An underprint of the word "VOID" becomes visible on the signature line of Discover Cards if erasure of the signature is attempted. Most standard, rectangular Discover Cards have the cardholder's name embossed on the front of the Card and a scripted "D" embossed beneath the account number on the front of the card on the same line as the embossed expiration date. Also, for most standard, rectangular Cards the account number or last four (4) digits of the account number appear in reverse indent printing on the signature panel and must match the last four (4) digits of the account number embossed on the front of the Card. Standard, rectangular plastic, stored value Cards are not required to bear the cardholder name, and for certain merchants, may not bear the globe pattern hologram or the Discover Network Acceptance Mark. Valid Cards will not always be rectangular in shape (e.g., Discover 2GO™ Cards). Discover may implement new Card designs and/or security features. You are required to remain familiar with Discover Card designs and may reference the document "Discover Network Security Features." You may download the document free of charge from Discover's website at http://www.discovernetwork.com/merchant/home/data/index.html.

1.2. Effective/Expiration Dates. At the point of sale, the Card should be carefully examined for the effective (valid from) (if present) and expiration (valid thru) dates which are located on the face of the Card. The sale date must fall on or between these dates. Do not accept a Card prior to the effective date or after the expiration date. Otherwise, you are subject to a Chargeback and could be debited for the transaction.

1.3. Valid Signature. Check the back of the Card. Make sure that the signature panel has not been disfigured or tampered with in any fashion (an altered signature panel may appear discolored, glued or painted, or show erasure marks on the surface). The signature on the back of the Card must compare favorably with the signature on the Sales Draft. The Sales Draft must be signed by the Card presenter in the presence of your authorized representative (unless a Card

Not Present Sale) and in the same format as the signature panel on the Card; e.g., Harry E. Jones should not be signed H.E. Jones. The signature panels of Visa, MasterCard and Discover Cards now have a 3-digit number (CVV 2/CVC 2/CID) printed on the panel known as the Card Validation Code.

Visa: If the signature panel on the Card is blank, in addition to requesting an Authorization, you must do all the following:

- Review positive identification bearing the Cardholder's signature (such as a passport or driver's license that has not expired) to validate the Cardholder's identity.
- Indicate the positive identification, including any serial number and expiration date, on the transaction receipt.
- Require the Cardholder to sign the signature panel of the Card prior to completing the Transaction.

MasterCard: If the Card is not signed and the Cardholder refuses to sign the Card, do not accept it for a transaction. If the Cardholder is willing to sign the Card in your presence, request two pieces of valid and current identification (e.g., driver's license, another payment Card, etc.).

Discover: If the Card is not signed you must request two pieces of valid and current identification, one of which must be a government issued picture identification. After you confirm that the person presenting the Card is the Cardholder, require the Cardholder to sign the back of the Card.

1.4. Users Other Than Cardholders. A Cardholder may not authorize another individual to use his/her Card for purchases. Be sure the signature on the Card matches with the one on the Sales Draft. Furthermore, any Card having two signatures on the back panel is invalid and any sale made with this Card can result in a Chargeback. For Cards bearing a photograph of the Cardholder, ensure that the Cardholder appears to be the person depicted in the picture which appears on the Card. If you have any questions, call the Voice Authorization Center and request to speak to a Code 10 operator.

5. Special Terms. If you limit refund/exchange terms or impose other specific conditions for Card sales, the words "No Exchange, No Refund," etc. must be clearly printed (in 1/4" letters) on the Sales Draft near or above the Cardholder's signature. The Cardholder's copy, as well as your copy, must clearly show this information. During a liquidation and/or closure of any of your outlets, locations and/or businesses, you must post signs clearly visible to customers stating that "All Sales Are Final," and stamp the Sales Draft with a notice that "All Sales Are Final."

Never give cash, check or in store credit refunds for Card sales. **NOTE:** A disclosure does not eliminate your liability for a Chargeback. Consumer protection laws and Association Rules frequently allow the Cardholder to dispute these items notwithstanding such disclosures.

1.6. Delayed Delivery or Deposit Balance. In a delayed delivery transaction where a Cardholder makes a deposit toward the full amount of the sale, you should execute two separate Sales Drafts (each completed fully as described in Section 3.1.), the first for a deposit and the second for payment of the balance upon delivery of the merchandise or the performance of the services.

Visa: For Visa transactions, you must obtain separate authorizations for each of the two Sales Drafts. You must assign the separate authorization number to each Sales Draft, respectively. You must note on such Sales Drafts the words "delayed delivery," "deposit" or "balance," as appropriate, and the authorization dates and approval codes.

MasterCard: For MasterCard transactions, you must obtain one authorization. You must note on both Sales Drafts the words "delayed delivery," "deposit" or "balance," as appropriate, and the authorization date and approval code.

Discover: For Discover transactions, you must label one Sales Draft "deposit" and the other "balance," as appropriate. You must obtain the "deposit" authorization before submitting the sales data for the "deposit" or the "balance" to us. If delivery of the merchandise or service purchased will occur more than ninety (90) calendar days after the "deposit" authorization, you must obtain a subsequent authorization for the "balance." In addition, you must complete Address Verification at the time of the "balance" authorization, and you must obtain proof of delivery upon delivery of the services/merchandise purchased. You may not submit sales data relating to the "balance" to us for processing until the merchandise/service purchased has been completely delivered.

NOTE: For Visa and MasterCard transactions, If delivery is more than twenty-five (25) days after the original transaction date and the initial authorization request (as opposed to the ninety (90) days in Discover transactions), you should reauthorize the unprocessed portion of the transaction prior to delivery. If the transaction is declined, contact the Cardholder and request another form of payment. For example: On January 1, a Cardholder orders $2,200 worth of furniture and you receive an authorization for the full amount; however, only a $200 deposit is processed. The above procedures are followed, with a $2,000 balance remaining on the furniture; the $2,000 transaction balance should be reauthorized.

1.7. Recurring Transaction and Preauthorized Order Regulations. If you process recurring transactions and charge a Cardholder's account periodically for recurring goods or services (e.g., monthly insurance premiums, yearly subscriptions, annual membership fees, etc.), the Cardholder shall complete and deliver to you a Cardholder approval for such goods or services to be charged to his account. The approval must at least specify the Cardholder's name, address, account number and expiration date, the transaction amounts, the frequency of recurring charges and the duration of time for which the Cardholder's permission is granted. For Discover transactions, the approval must also include the total amount of recurring charges to be billed to the Cardholder's account, including taxes and tips and your Merchant Number.

- If the recurring transaction is renewed, the Cardholder must complete and deliver to you a subsequent written request for the continuation of such goods or services to be charged to the Cardholder's account. You may not complete a recurring transaction after receiving a cancellation notice from the Cardholder or Issuer or after a request for authorization has been denied.
- If we or you have terminated your Merchant Agreement, you may not submit authorization requests or sales data for recurring transactions that are due after the termination date of your Merchant Agreement.
- You must obtain an authorization for each transaction and write "Recurring Transaction" (or "P.O." for MasterCard transactions) on the Sales Draft in lieu of the Cardholder's signature. A positive authorization response for one recurring transaction Card Sale is not a guarantee that any future recurring transaction authorization request will be approved or paid.
- For all recurring transactions, you should submit the 3-digit Card Validation Code number with the first authorization request, but not subsequent authorization requests. Discover Association Rules specifically require that you follow this Card Validation Code procedure for Discover recurring transactions.
- Also, for Discover recurring transactions, the Sales Draft must include a general description of the transaction, your merchant name and a toll-free customer service number that the Cardholder may call to obtain customer assistance from you or to cancel the written approval for the recurring transaction.
- A Recurring Transaction or Preauthorized Order may not include partial payments for goods or services purchased in a single transaction.
- You may not impose a finance charge in connection with a Recurring Transaction or Preauthorized Order.
- If you process recurring payment transactions, the Recurring Payment Indicator must be included in each Authorization request. Penalties can be assessed by the Associations for failure to use the Recurring Payment Indicator.

1.8. Honoring Cards. The following rules are requirements strictly enforced by Visa, MasterCard and Discover:

- You cannot establish minimum or maximum amounts as a condition for accepting a Card, except that for Discover transactions, you may limit the maximum amount a Discover Cardholder may spend if, and only if, you have not received a positive authorization response from the Card Issuer.
- You cannot impose a surcharge or fee for accepting a Card.
- You cannot establish any special conditions for accepting a Card.
- You cannot establish procedures that discourage, favor or discriminate against the use of any particular Card. However, you may choose not to accept either U.S. issued Debit Cards or U.S. issued Credit Cards under the terms described in Section 1.9.
- You cannot require the Cardholder to supply any personal information (e.g., home or business phone number; home or business address; or driver's license number) unless instructed by the Authorization Center. The exception to this is for a mail/telephone/Internet order or delivery-required transaction, and zip code for a Card-present key entered transaction in order to obtain an Address Verification ("AVS").
- Any tax required to be collected must be included in the total transaction amount and not collected in cash.
- You cannot submit any transaction representing the refinance or transfer of an existing Cardholder obligation deemed uncollectable.
- You cannot submit a transaction or sale that has been previously charged back.
- You must create a Sales or Credit Draft for each Card transaction and deliver at least one copy of the Sales or Credit Draft to the Cardholder.
- You cannot submit a transaction or sale to cover a dishonored check.
- If you accept Card checks, your Card check acceptance policy must treat the acceptance of checks from all payment card brands that you accept equally. (e.g., if you accept MasterCard, Visa and Discover, your check acceptance policy must treat checks for all three payment card brands equally). You should handle these Card checks like any other personal check drawn upon a bank in the United States.
- Failure to comply with any of the Association Rules may result in fines or penalties.

1.9. Card Acceptance. If you have indicated either in the Application or by registering with us at least thirty (30) days in advance that, as between Non-PIN Debit Card transactions and Credit Card transactions, you will limit your acceptance to either (i) only accept Non-PIN Debit transactions; or (ii) only accept Credit Card transactions, then the following terms in this Section 1.9 will apply:

1.9.1. You will be authorized to refuse to accept for payment either Non-PIN Debit Cards or Credit Cards that are issued within the United States. You will, however, continue to be obligated to accept all foreign issued Credit or Debit Cards issued by MasterCard, Visa or Discover so long as you accept any type of MasterCard, Visa or Discover branded Card.

1.9.2. While many Debit Cards include markings indicating debit (such as "Visa Checkcard, Visa Buxx, Gift Card, DEBIT, or Mastermoney), many Debit Cards do not include such markings and you will not have such markings until January 2007. It will be your responsibility to determine at the point of sale whether a Card is of a type that you have indicated that you will accept. You agree to institute appropriate systems and controls to limit your acceptance to the Card types indicated. You may purchase a table of ranges of numbers currently associated with Debit Card transactions upon execution of confidentiality/non-disclosure agreements required by the Associations. You will be responsible for updating your systems to utilize such tables and to obtain updated tables.

1.9.3. To the extent that you inadvertently or intentionally accept a transaction other than the type anticipated for your account, such transaction will downgrade to a higher cost interchange and you will be billed the difference in interchange (a Non-Qualified Interchange Fee), plus a Non-Qualified Surcharge (see Section 18.1 and Glossary).

1.9.4. Based upon your choice to accept only the Card types indicated in the application, you must remove from your premises any existing signage indicating that you accept all Visa, MasterCard or Discover Cards and use approved specific signage reflecting your policy of accepting only Non-PIN Debit or Credit Cards.

1.9.5. Even if you elect not to accept Non-PIN Debit Card transactions as provided above, you may still accept PIN Debit Card transactions if you have signed up for PIN Debit Services.

1.10. Deposits of Principals. Owners, partners, officers and employees of your business establishment, and the guarantors who signed the Application, are prohibited from submitting Sales Drafts or Credit Drafts transacted on their own personal Cards, other than transactions arising from bona fide purchases of goods or services in the ordinary course of your business. Such use in violation of this Section 1.10 is deemed a cash advance, and cash advances are prohibited.

1.11. Merchants in the Lodging Industry.

1.11.1. Generally. There are additional rules and requirements that apply to merchants in the lodging industry for practices including, but not limited to, Guaranteed Reservations and charges for no shows, advance deposits, overbookings, and priority checkout. If you are a merchant in the lodging industry, you must contact us for these additional rules and requirements. Failure to do so could result in additional charges or termination of your Merchant Agreement.

1.11.2. Lodging Service Services Programs. In the event you are a lodging merchant and wish to participate in Visa's and/or MasterCard's lodging services programs, please contact your sales representative or relationship manager for details and the appropriate MasterCard and Visa requirements.

1.12. Customer Activated Terminals and Self-Service Terminals. Prior to conducting Customer Activated Terminal ("CAT") transactions or Self-Service Terminal transactions you must contact us for approval and further instructions, rules and requirements that apply to CAT and Self-Service Terminal transactions. Failure to do so could result in additional charges or termination of your Merchant Agreement.

1.13. Displays and Advertising. You must prominently display appropriate Visa, Master-Card, Discover and, if applicable, other Association decals and program marks at each of your locations, in catalogs, on websites and on other promotional materials as required by Association Rules. You may not indicate that Visa, MasterCard, Discover or any other Association endorses your goods or services.

Your right to use the program marks of either MasterCard, Visa or Discover terminates upon the earlier of (i) if and when your right to accept the Cards of the respective Association terminates (e.g., if your right to accept Discover Cards terminates, your are no longer permitted to use Discover program marks), (ii) delivery of notice by us or the respective Association to you of the termination of the right to use the program mark(s) for that Association, or (iii) termination of the license to use the program marks by the respective Association to us.

1.13.1. Discover Sublicense to Use Discover Program Marks. You are prohibited from using the Discover Program Marks, as defined below, other than as expressly authorized in writing by us. "Discover Program Marks" means the brands, emblems, trademarks and/or logos that identify Discover Cards. Additionally, you shall not use the Discover Program Marks other than as a part of the display of decals, signage, advertising and other forms depicting

the Discover Program Marks that are provided to you by us or otherwise approved in advance in writing by us.

You may use the Discover Program Marks only to promote the services covered by the Discover Program Marks by using them on decals, indoor and outdoor signs, advertising materials and marketing materials; provided that all such uses by you must be approved in advance by us in writing.

You shall not use the Discover Program Marks in such a way that customers could believe that the products or services offered by you are sponsored or guaranteed by the owners of the Discover Program Marks. You recognize that you have no ownership rights in the Discover Program Marks. You shall not assign to any third party any of the rights to use the Program Marks.

1.14. Cash Payments by and Cash Disbursements to Cardholders. You must not accept any direct payments from Cardholders for charges of merchandise or services which have been included on a Sales Draft; it is the right of the Card Issuer to receive such payments. You may not make any cash disbursements or cash advances to a Cardholder as part of a Card transaction unless you are a financial institution with express authorization except to the extent expressly authorized in writing in advance by Services and the Agreement .

1.15. Discover Cash Over Transactions. Cash Over transactions are not available for MasterCard or Visa transactions. You may issue Cash Over in connection with a Discover Card sale, provided that you comply with the provisions of this Program Guide including the following requirements:

- You must deliver to us a single authorization request for the aggregate total of the goods/services purchase amount and the Cash Over amount of the Card sale. You may not submit separate authorization requests for the purchase amount and the Cash Over amount.
- The Sales Draft must include both the purchase amount and the Cash Over amount, and you may not use separate Sales Drafts for the purchase amount and Cash Over amount.
- No minimum purchase is required for you to offer Cash Over to a Discover Cardholder, provided that some portion of the total Card sale must be attributable to the purchase of goods or services.
- The maximum amount of cash that you may issue as Cash Over is $100.00.

(Cash Over may not be available in certain markets. Contact us for further information.)

1.16. Telecommunication Transactions. Telecommunication Card Sales occur when a telephone service provider is paid directly using a Card for individual local or long-distance telephone calls. (**NOTE:** pre-paid telephone service cards are not and do not give rise to Telecommunication Card Sales). **Prior to conducting Telecommunication transactions you must contact us for approval and further instructions, rules and requirements. Failure to do so could result in additional charges or termination of your Merchant Agreement.**

2. Suspect Transactions

If the appearance of the Card being presented or the behavior of the person presenting the Card is suspicious in nature, you must immediately call the Voice Authorization Center and ask to speak to a Code 10 operator. Answer all their questions and follow their instructions. While not proof that a transaction is fraudulent, the following are some suggestions to assist you in preventing fraudulent transactions that could result in a Chargeback:

Ask yourself, does the Customer:

- appear nervous/agitated/hurried?
- appear to be making indiscriminate purchases (e.g., does not care how much an item costs, the size, etc.)?
- make purchases substantially greater than your usual customer (e.g., your average transaction is $60, but this transaction is for $360)?
- insist on taking the merchandise immediately (e.g., no matter how difficult it is to handle, is not interested in free delivery, alterations, etc.)?
- appear to be purchasing an unusual amount of expensive items?
- take an unusual amount of time to sign the Sales Draft, or look at the back of the Card as he signs?
- talk fast or carry on a conversation to distract you from checking the signature?
- take the Card from a pocket instead of a wallet?
- repeatedly come back, in a short amount of time, to make additional purchases?
- cause an unusual, sudden increase in the number and average sales transactions over a one- to three-day period?
- tell you he has been having some problems with his Card Issuer and request that you call a number (that he provides) for a "special" handling or authorization?

Does the Card:

- have embossed or imprinted characters the same size, height, style and all within alignment?
- appear to be re-embossed (the original numbers or letters may be detected on the back of the Card)?
- have a damaged hologram?
- have a Magnetic Stripe on the back on the Card?
- have an altered signature panel (e.g., appear discolored, glued or painted, or show erasure marks on the surface)?
- have "valid from" (effective) and "valid thru" (expiration) dates consistent with the sale date?

If you use an electronic terminal and swipe the Card, make sure the account number displayed on the terminal and/or the Sales Draft matches the embossed number on the Card. If you cannot or do not verify the account number and accept the sale, you are subject to a Chargeback and could be debited for the amount of the transaction. IF THE NUMBERS DO NOT MATCH, DO NOT ACCEPT THE CARD AS A FORM OF PAYMENT, EVEN THOUGH AN AUTHORIZATION CODE FOR THE MAGNETICALLY SWIPED CARD NUMBER MAY BE RECEIVED.

Fraud-Prone Merchandise Tips:

- Jewelry, video, stereo, computer and camera equipment, shoes and men's clothing are typically fraud-prone because they can easily be resold.
- Be suspicious of high dollar amounts and transactions with more than one fraud-prone item, e.g., two VCRs, three gold chains, etc.

If you suspect fraud:

- Call the Voice Authorization Center and ask to speak to a Code 10 operator.
- If the terminal does not display the Card number, call the POS Help Desk for terminal assistance.

Remember: An authorization code only indicates the availability of a Cardholder's credit at the time of the transaction. It does not warrant that the person presenting the Card is the rightful Cardholder. If proper procedures are not followed at the time of the transaction, you are subject to a Chargeback and your account may be debited for the amount of the transaction.

3. Completion of Sales and Credit Drafts

You must prepare a Sales Draft or Credit Draft, as applicable, for each Card transaction and provide a transaction receipt or copy of the Draft to the Cardholder at the time the Card transaction is completed.

3.1. Information Required. All of the following information must be contained on a single page document constituting a Sales Draft:

- Cardholder's account number. The complete account number must appear on the merchant copy of a Sales or Credit Draft. On the Cardholder's copy of the Sales or Credit Draft, the Cardholder's account number must be masked so that only the

last four digits appear, known as "PAN Truncation." You are responsible to determine if PAN Truncation is required in your jurisdiction for both the merchant or Cardholder copy of the Sales or Credit Draft. (Contact your state legislature to find out if truncation laws apply to your state.) ;

- The Card Expiration date must be masked on the Cardholder's Sales or Credit Draft;
- Clear imprint of the Card. Whenever the term "imprint" is used it refers to the process of using a manual imprinting machine to make an impression of the Card on a Sales Draft; it does not include the printout from a printer attached to an electronic device. If you use an electronic device (e.g., authorization/draft capture terminal, cash register, POS Device, etc.) and swipe the Card to read and capture the Card information via the Magnetic Stripe, you do not have to imprint the Card. **HOWEVER, IF THE TERMINAL FAILS TO READ THE MAGNETIC STRIPE OR IF YOU ARE REQUIRED TO OBTAIN A VOICE AUTHORIZATION, THEN YOU MUST IMPRINT THE CARD. IN ADDITION, THE SALES DRAFT MUST HAVE THE CARDHOLDER'S SIGNATURE. FAILURE TO FOLLOW THESE PROCEDURES WILL PREVENT YOU FROM DEFENDING A TRANSACTION IN THE EVENT THAT IT IS CHARGED BACK UNDER A CLAIM THAT THE RIGHTFUL CARDHOLDER DID NOT AUTHORIZE THE PURCHASE. ENTERING INFORMATION INTO A TERMINAL MANUALLY WILL NOT PREVENT THIS TYPE OF CHARGEBACK. FOR MAIL/ TELEPHONE/INTERNET AND OTHER CARD NOT PRESENT ORDERS SEE SECTION 3.2.;**
- Cardholder's Signature. However, eligible merchants participating in Master-Card's Quick Payment Service Program, Visa's Small Ticket, MasterCard's Small Ticket and/or certain Discover transactions (see note below) are not required to obtain the Cardholder's signature under certain conditions set forth by each program.
- Date of the transaction
- Amount of the transaction (including the approved currency of the sale);
- Description of the goods and/or services involved in the transaction (if there are too many items, combine them into one description; e.g. "clothing" instead of "one pair of pants, one shirt"). Do not carry information onto a second Sales Draft;
- A valid authorization code ; and
- Merchant's Doing Business As ("D/B/A") name and location (city and state required) and Merchant Account Number.
- When imprinting Sales Drafts, do not alter the Cardholder account number, circle or underline any information on the Sales Draft or alter a Sales Draft in any way after the transaction has been completed and signed. Stray marks and other alterations on a Sales Draft may render it electronically unscannable, unreadable or illegible. This may result in a Chargeback or summary adjustment to your account.
- For Discover sales using a paper Sales Draft (as opposed to Electronic Draft Capture), the paper sales draft must also contain the initials of your representative or employee that conducted the transaction. For Discover Credits, the Credit Draft must contain the signature of your authorized representative or employee that conducted the transaction.
- Eligible merchants participating in Quick Payment Service and/or Small Ticket are only required to provide the Cardholder with the completed Sales Draft when requested by the Cardholder.
- **NOTE:** For Discover transactions, if you are a merchant operating under certain merchant category codes approved by Discover, you are not required to obtain the Cardholder's signature so long as the full track data is transmitted in the authorization request and the sale amount is $25.00 or less.

3.2. Mail / Telephone/ Internet (Ecommerce) Orders and Other Card Not Present Sales. You may only engage in mail/ telephone/ Internet orders provided they do not exceed the percentage of your total payment card volume reflected on your application. Failure to adhere to this requirement may result in cancellation of your Agreement. Merchants conducting Internet transactions using MasterCard or Visa Cards must have special codes (an "Electronic Commerce Indicator") added to their authorization and settlement records. Discover does not use an Electronic Commerce Indicator. Failure to register as a merchant conducting Internet transactions can result in fines imposed by the Associations.

- Mail, Telephone, Internet and other Card Not Present transactions have a substantially higher risk of Chargeback. Since you will not have an imprinted or magnetically swiped transaction and you will not have the Cardholder's signature on the Sales Draft as you would in a face-to-face transaction, you will assume all risk associated with accepting a mail/telephone/Internet or other Card Not Present transaction. The following procedures, while they will not eliminate Chargebacks, are useful in reducing them and should be followed by you:
- Obtain the expiration date of Card.
- On the Sales Draft, clearly print the Cardholder's account number; effective and expiration dates; date of transaction; description of the goods and services; amount of the transaction (including shipping, handling, insurance, etc.); Cardholder's name, billing address and shipping address; authorization code; and merchant's name and address (city and state required).
- For mail orders, write "MO"; for telephone orders, write "TO" on the Cardholder's signature line.
- If feasible, obtain and keep a copy of the Cardholder's signature on file on a form authorizing you to submit telephone and mail order transactions.
- You should utilize the Address Verification Service for all Card Not Present Transactions (see note below). Address Verification is specifically required for all Discover Card Not Present Transactions, and **if you do not receive a positive match through AVS, you may not process the Discover Card Not Present Transaction. If you do not have AVS, contact us immediately.**
- You should obtain the 3-digit Card Validation Code number and include it with each authorization request. Discover Association Rules specifically require that you submit the Card Validation Code with the authorization request for all Discover Card Not Present Transactions.
- For telephone orders, it is recommended that written verification of the sale be requested from the Cardholder (sent by mail or fax).
- You may not submit a transaction for processing until after the merchandise has been shipped or the service has been provided to the customer. (Visa will permit the immediate billing of merchandise manufactured to the customer's specifications [i.e., special/custom orders] provided the Cardholder has been advised of the billing details.)
- You should provide a copy of the Sales Draft to the Cardholder at the time of delivery. You must also obtain proof of delivery of the goods or services to the address designated by the Cardholder (i.e., by getting a signature of the Cardholder or person designated by the Cardholder through the delivery carrier). If the Cardholder visits one of your locations to receive the goods or services purchased, obtain an imprint of the card and the Cardholder's signature.
- Notify the Cardholder of delivery time frames and special handling and/or of cancellation policies. Merchandise shipping dates must be within seven (7) days of the date authorization was obtained. If, after the order has been taken, additional delays will be incurred (e.g., out of stock), notify the Cardholder and reauthorize the transaction.
- You may not require a Cardholder to complete a postcard or other document that displays the Cardholder's account number in clear view when mailed.

- If you accept orders via the Internet, your Web site must include the following information in a prominent manner:
  - Complete description of the goods or services offered Merchandise return and refund policy;
  - Customer service contact, including email address and/or telephone number;
  - Transaction currency (U.S. dollars, unless permission is otherwise received from Servicers) ;
  - Any applicable export or legal restrictions;
  - Delivery policy;
  - Consumer data privacy policy;
  - A description of the transaction security used on your website; and
  - The sale or disclosure of databases containing Cardholder account numbers, personal information, or other Card transaction information to third parties is prohibited.
- You may not accept Card Account Numbers through Electronic Mail over the Internet.

NOTE: Address Verification Service ("AVS"), does not guarantee against Chargebacks, but used properly it assists in reducing the risk of fraud by confirming whether certain elements of the billing address provided by your customer match the billing address maintained by the Issuer. AVS also may help you avoid incurring additional interchange expenses. AVS is a separate process from obtaining an authorization and will provide a separate response. A transaction may not match addresses when submitted for AVS and still receive an authorization. It is your responsibility to monitor the AVS responses and use the information provided to avoid high-risk transactions.

3.2.1. Discover Protocol for Internet Transactions. Each Internet Discover Card transaction accepted by you and submitted to us shall comply with Discover standards, including, without limitation, Discover standards governing the formatting, transmission and encryption of data, referred to as the "designated protocol." You shall accept only those Internet Discover Card transactions that are encrypted in accordance with the designated protocol. As of the date of these Operating Procedures, the designated protocol for the encryption of data is Secure Socket Layer (SSL). We may, at our discretion, withhold Settlement until security standards can be verified. However, the designated protocol, including any specifications with respect to data encryption, may change at any time upon thirty (30) days advance written notice. You shall not accept any Internet Discover Card transaction unless the transaction is sent by means of a browser which supports the designated protocol.

3.3. Customer Service Telephone Numbers for Card types which are funded by individual non-bank Associations include:

American Express/Optima	**1-800-528-5200**
JCB, International	**1-800-366-4522**
TeleCheck	**1-800-366-1054**

4. Data Security

THE FOLLOWING IS IMPORTANT INFORMATION REGARDING THE PROTECTION OF CARDHOLDER DATA. PLEASE REVIEW CAREFULLY AS FAILURE TO COMPLY CAN RESULT IN SUBSTANTIAL FINES AND LIABILITIES FOR UNAUTHORIZED DISCLOSURE AS WELL AS TERMINATION OF THIS AGREEMENT.

4.1. Payment Card Industry (PCI) Data Security. Visa, MasterCard, American Express, Discover and JCB aligned data security requirements to create a global standard for the protection of Cardholder data. The resulting PCI Data Security Standard defines the requirements with which all entities that store, process, or transmit payment card data must comply. PCI is the name used to identify those common data security requirements. The Cardholder Information Security Program (CISP) is Visa USA's data security program, the Site Data Protection (SDP) program is MasterCard's data security program and Discover Information Security and Compliance (DISC) is Discover's data security program, each based on the PCI Data Security Standard and industry aligned validation requirements. PCI enables Acquirers, Issuers and merchants to implement a single security program, based on common security requirements, validation requirements, and tools, to ensure the protection of Cardholder data. PCI compliance validation is focused on any system(s) or system component(s) where Cardholder data is retained, stored, or transmitted, including:

- All external connections into your network (i.e., employee remote access, third party access for processing, and maintenance).
- All connections to and from the authorization and settlement environment (i.e., connections for employee access or for devices such as firewalls, and routers); and
- Any data repository outside of the authorization and settlement environment.

The Associations or we may impose fines or penalties, or restrict you from accepting Cards if it is determined that you are not compliant with the applicable data security requirements. We may in our sole discretion, suspend or terminate Card processing services under your Merchant Agreement for any actual or suspected data security compromise.

The PCI Data Security Standard and detailed information, including the PCI Self-Assessment Questionnaire which you should complete, can be found at the PCI Data Security Counsel's website: www.pcisecuritystandards.org.

Detailed information about Visa's CISP program can be found at Visa's CISP website: www.visa.com/cisp.

Detailed information about MasterCard's SDP program can be found at the MasterCard SDP website: https://sdp.mastercardintl.com.

The PCI Data Security Standard and information about DISC can be found at Discover's DISC website: http://www.discovernetwork.com/resources/data/data_security_overview.html.

The PCI Data Security Standard and detailed information about SDP, including the MasterCard Security Self-Assessment which you should complete, can be found at MasterCard's SDP website: https://sdp.mastercardintl.com.

4.2. You must comply with the data security requirements shown below:

- You must install and maintain a secure network firewall to protect data across public networks.
- You must encrypt stored data and data sent across networks.
- You must use and regularly update anti-virus software and keep security patches up-to-date.
- You must restrict access to data by business "need to know," assign a unique ID to each person with computer access to data and track access to data by unique ID.
- Don't use vendor-supplied defaults for system passwords and other security parameters.
- You must regularly test security systems and processes.
- You must maintain a policy that addresses information security for employees and contractors.
- You must restrict physical access to Cardholder information.
- You may not transmit Cardholder account numbers to Cardholders for Internet transactions.
- You cannot store or retain Card Validation Codes (three-digit values printed in the signature panel of most Cards, and a four-digit code printed on the front of an American Express Card).
- You cannot store or retain Magnetic Stripe data, PIN data or AVS data. Only Cardholder account number, Cardholder Name and Cardholder expiration date can be retained subsequent to transaction authorization.

- You must destroy or purge all Media containing obsolete transaction data with Cardholder information.
- You must keep all systems and Media containing Card account, Cardholder or transaction information (whether physical or electronic) in a secure manner so as to prevent access by, or disclosure to any unauthorized party.
- For Internet transactions, copies of the transaction records may be delivered to Cardholders in either electronic or paper format.

4.3. You may be subject to and we retain the right to conduct an audit performed by us or a third party designated by us to verify your compliance with security procedures and these Operating Procedures.

4.4. In the event that transaction data is accessed or retrieved by any unauthorized person or entity, you must contact Customer Service or your Relationship Manager immediately and in no event more than 24 hours after becoming aware of (i) any suspected or actual data security breach and (ii) any noncompliance by you with the security requirements.

4.5. You must, at you own expense (i) perform or cause to be performed an independent investigation (including a forensics analysis) of any data security breach of Card or transaction data, (ii) perform or cause to be performed any remedial actions recommended by any such investigation, and (iii) cooperate with us in the investigation and resolution of any security breach.

4.6. **Required Information for Discover Security Breaches.** For security breaches involving Discover transactions and/or data, you must provide us and/or Discover with the following information: (i) the date of breach; (ii) details concerning the data compromised (e.g., account numbers and expiration dates, Cardholder names and addresses, etc.); (iii) the method of such breach; (iv) your security personnel contacts; (v) the name of any person (including law enforcement) assisting you with your investigation of such breach; and (vi) any other information which we reasonably request from you concerning such breach, including forensics reports. You shall provide such information as soon as practicable, and the items listed in (i)-(v) shall be provided to us in any event within 48 hours of your initial notification to us of the breach.

4.7. **Third Parties.** The data security standards set forth above also apply to any agent or third party provider that you may use to store, process or transmit Cardholder data. In addition, such agents or third party providers must be registered with the applicable Association. Therefore, you must:

- Notify us in writing of any agent or third party processor that engages in, or proposes to engage in, the storing, processing or transmitting of Cardholder data on your behalf, regardless of the manner or duration of such activities.
- Ensure that all such agents or third party processors are (i) registered with the applicable payment card brands; and (ii) comply with all applicable data security standards, including, without limitation, the PCI Data Security Standard.

You are solely responsible for the compliance of any and all third parties that are given access by you, to Cardholder data, and for any third party software that you may use.

5. Authorizations

Each authorization request you submit to us must fully comply with the applicable provisions of this Agreement. Submission of an authorization request that does not fully comply may result in assessment of additional fees to you, a declined authorization response or a Chargeback to you.

You must obtain an Authorization Approval Codes from us (or as provided in Section 5.4) for all transactions. A positive authorization response for MasterCard and Visa transactions remains valid for thirty (30) days. A positive authorization response for Discover transactions remains valid for ninety (90) days.

Failure to obtain an Authorization Approval Code for a sales transaction may result in a Chargeback and/or the termination of your Agreement.

Authorization Approval Codes can be obtained through your POS Terminal or a Voice Response Unit ("VRU"). Any fees related to authorizations will be charged for a request for an Authorization Approval Code, whether or not the transaction is approved.

Do not attempt to obtain an Authorization Approval Code provided by someone other than us except as described in Section 5.4. If a Cardholder or another service provider provides you with either an authorization number or with a telephone number for obtaining authorizations, the Authorization Approval Code you receive may not be valid. Even if the transaction is initially processed and funded, it may be charged back at a later date. Also, if you receive a purported Authorization Approval Code from someone other than us, we will not have the supporting records and will be unable to verify that you received the authorization if that is later questioned in a Chargeback.

An Authorization Approval Code only indicates the availability of credit on an account at the time the authorization is requested. It does not warrant that the person presenting the Card is the rightful Cardholder, nor is it a promise or guarantee that you will not be subject to a Chargeback.

If you obtain Address Verification, you must review the AVS response separately from the authorization response and make your own decision about whether to accept the transaction. A transaction can receive an Authorization Approval Code from the Card Issuer even if AVS is unavailable or reflects that the address provided to you does not match the billing address on file at the Issuer. If the authorized Cardholder disputes such a transaction, you will be responsible for the resulting Chargeback.

If you receive a Referral response to an attempted authorization, you may not submit the transaction without calling for and receiving a voice authorization. After receiving a Referral response you may not attempt another authorization on the same Card through your POS Terminal.

If you fail to obtain an Authorization Approval Code or if you submit a Card transaction after receiving a decline (even if a subsequent authorization attempt results in an Authorization Approval Code), your transaction may be assessed fines or fees by the Associations for which you will be responsible. These currently range from $25 to $150 per transaction. To avoid these costs, always obtain an Authorization Approval Code directly from your terminal before submitting a transaction for settlement.

For Cards other than MasterCard, Visa and Discover (e.g., American Express, JCB, etc.) or for check acceptance, you must follow the procedures for authorization and acceptance for each.

You may not attempt to obtain multiple authorizations for a single transaction. If a sale is declined, do not take alternative measures with the same Card to obtain an approval of the sale from other authorization sources. Instead, request another form of payment. If you accept and process a transaction that was declined, or attempt multi-transactions and/or multi-authorizations, you are subject to a Chargeback, Association Fines and/or cancellation of your Agreement.

5.1. **Card Not Present Transactions.** You must obtain the 3-digit Card Validation Code (CVV2, CVC2, CID) and submit this Code with all authorization requests with respect to transactions where the Card is not present (e.g., telephone, mail or internet sales). However, for recurring transaction authorizations you should submit the Card Validation Code with the first authorization request only, and not with subsequent recurring transaction authorization requests. (See Section 1.7.) **NOTE: For each Card Not Present Discover transaction, you must also verify the name and billing address of the Discover Cardholder using the Address Verification System (AVS), and if you do not receive a positive match, do not process the Discover Card Not Present transaction.**

5.2. **Authorization via Telephone (Other than Terminal/Electronic Device Users).**

- Call your designated voice authorization toll free number and enter the authorization information into the VRU using a touch tone phone or hold for an authorization representative.
- If advised to pick up a Card, use reasonable and peaceful means to do so, and do not take any action that will alarm or embarrass the Card presenter. You will bear all responsibility for claims,

liabilities, costs and expenses as a result of any action by you, your employees, vendors or agents, that attempt to retain a Card without the Issuer's direct request or failure to use reasonable, lawful means in retaining or attempting to retain the Card. Forward the Card to: Attn: Rewards Department, P.O. Box 5019, Hagerstown, MD 21740. You may be paid a reward for the return of the Card.

- On occasion, the Authorization Center will ask you to obtain identification from the Cardholder before issuing an approval code. If you are instructed to do so, clearly write the appropriate identification source and numbers in the space provided on the Sales Draft unless otherwise prohibited by law.
- If the sale is declined, please remember that our operators are only relaying a message from the Card Issuer. The fact that a sale has been declined should not be interpreted as a reflection of the Cardholder's creditworthiness. The Cardholder should be instructed to call the Card Issuer.

5.3. Authorization via Electronic Devices.

- If you use an electronic terminal to obtain Authorization Approval Code, all sales should be authorized through this equipment. Authorizations through other methods will result in additional charges to you.
- If your terminal malfunctions, refer to your Quick Reference Guide, if necessary, or call the POS Help Desk. The problem will either be corrected promptly or may require terminal programming or replacement. During the period in which your terminal is not functioning, remember to check it periodically since most terminal problems are temporary in nature and are quickly corrected.
- If a terminal is moved or if wires are disconnected, causing malfunction, call the POS Help Desk immediately and follow their instructions. You may be responsible for any service charges incurred for reactivation of the terminal.
- Until the terminal becomes operable, you must call your designated voice authorization toll free number and enter authorization information into the VRU using a touchtone phone. During this time, each transaction must be imprinted using a manual imprinter machine. Failure to obtain an Authorization Approval Code and to imprint these transactions could result in a chargeback to your account.

5.4. Third Party Authorization System. If you have contracted with another authorization network to obtain Credit Card authorization, i.e., your terminal can Split Dial, liability resulting from discrepancies with that network must be resolved between you and that network. We will not research Chargebacks resulting from Authorization Approval Codes obtained from another authorization service organization. Such Chargebacks will be passed through to you for resolution. If an authorization provided by a third party authorization system is challenged in a Chargeback, you must obtain proof (e.g., third party authorization logs) from the authorization source and submit it to us within the time frame specified on the Chargeback documentation received.

IF YOU CONTRACTED TO USE ONE OF OUR AUTHORIZATION SERVICES, DO NOT USE ANOTHER THIRD PARTY SYSTEM WITHOUT NOTIFYING CUSTOMER SERVICE. OTHERWISE, WE WILL BE UNABLE TO SUCCESSFULLY RESEARCH AND DEFEND ANY AUTHORIZATION RELATED CHARGEBACKS ON YOUR BEHALF. THIS DELAY WILL SIGNIFICANTLY DECREASE YOUR TIME TO RESEARCH AND PROVIDE PROOF OF AUTHORIZATION, THUS REDUCING YOUR OPPORTUNITY TO REVERSE A CHARGEBACK.

If you utilize another authorization network, you will be responsible for the downgrade of any transactions to a higher cost interchange that result from a mismatch of information to our systems and those of third party authorization networks (see Section 18.1).

If you use a third party authorization network, you must also comply with Section 4.7.

Call the following for other card types:

American Express/Optima	**1-800-528-2121**
JCB, International	**1-800-522-8788**
TeleCheck	**1-800-366-5010**

Available 24 hours/day; 7 days/week

All approved sales authorized in this manner must be entered manually as "post authorization" transactions into the terminal, once the terminal becomes operational. All credit transactions must be entered into the terminal for data capture. You may be subject to a Chargeback if you receive a Referral and subsequently receive an approval. To reduce the risk of such a Chargeback, the Card should be imprinted using a manual Imprinter machine. (For specific procedures on Electronic Data Capture, refer to the Terminal Operating Instructions/Users Guide.) If the terminal malfunctions for more than twenty-four (24) hours, contact Customer Service for further instructions on processing your transactions.

5.5. Automated Dispensing Machines. Records must be produced for all transactions whose origin and data capture use automated dispensing machines or limited amount terminals. Records should include the Cardholder account number, merchant's name, terminal location, transaction date and amount.

5.6. Pre-Authorization for T&E (Travel & Entertainment) and Restaurant Merchants. If you are a business engaged in providing travel and/or entertainment services (e.g., car rentals, hotels, motels, etc.) or a restaurant business, and engage in the practice of "pre-authorization." You must comply with the following general procedures:

- A hotel, motel, or car rental merchant may obtain an estimated Visa,MasterCard or Discover authorization at the time of check-in. A restaurant may obtain a pre-authorization for an amount which would include anticipated gratuities.
- You must notify the Cardholder of the dollar amount you intend to "Pre-Authorize."
- If the customer decides to use another form of payment (e.g., cash, check, etc.) you must promptly call the Voice Authorization Response Unit to delete the authorization hold. Provide the Cardholder's account number, original dollar amount and date of the transaction, and the authorization code. If a new transaction takes place, a new imprinted and signed Sales Draft for the exact amount and a new authorization code for that amount must be obtained.
- **VEHICLE RENTAL PROVIDERS MAY NOT INCLUDE POTENTIAL VEHICLE DAMAGE OR INSURANCE DEDUCTIBLES IN ANY PREAUTHORIZATIONS.**

For MasterCard and Visa:

- If you receive a decline on a transaction, you must wait twenty-four (24) hours before attempting to reauthorize. If you reauthorize prior to this time frame and receive an approval, you may be subject to a chargeback and a fine imposed by the Associations.
- If the final amount charged to the Cardholder exceeds the original estimate by more than 15% above the preauthorization, you must authorize any additional amounts, and all incremental authorization codes must be written in the authorization area along with the date of authorization and the amount authorized.
- Restaurants are allowed up to a 20% (instead of 15%) variance above the amount authorized. If the final amount exceeds the amount "preauthorized" by more than 20%, you must authorize the additional amount.

For Discover:

- You should obtain an authorization for the initial estimated charges and then monitor the charges to ensure that the actual charges made do not exceed the estimated charges. If the actual charges exceed the amount of the initial estimated authorization (and any subsequent estimated authorizations), then you must

secure a positive authorization for the additional amount.
NOTE: Subsequent authorizations should only be for the additional amount of total charges and not include amounts already authorized.

- The estimated amount of any pre-authorization for lodging accommodations must be based on (i) the intended length of stay; (ii) the room rate; (iii) applicable taxes and service charges; and (iv) other miscellaneous charges as dictated by experience.
- If an authorization request is declined, no charges occurring after that date will be accepted for that Cardholder.
- You do not need to obtain a final authorization if the total sum of charges (the final amount) does not exceed 120% of the previously authorized charges. You must record the dates, authorized amounts, and their respective Authorization Approval Codes on the Sales Draft(s).

5.7. Discover Procedure for Request for Cancellation of Authorization. If a Discover Card sale is cancelled or the amount of the transaction changes following your receipt of authorization for the sale, you must call your authorization center directly and request a cancellation of the authorization. An authorization may be cancelled at any time within eight (8) days of your receipt of the authorization, but must be cancelled before the sales data relating to the transaction is submitted to us, after which the authorization cannot be changed. For an authorization cancellation, you must provide us with the following information, in this order:

- The Discover Merchant Number used in the authorization;
- The Card number;
- The original amount of the authorization being cancelled;
- The new amount of the total transaction (if any);
- The original authorization code for the authorization being cancelled;
- The expiration date of the Card; and
- A brief reason for the authorization cancellation.

6. Submission/Deposit of Sales and Credit Drafts

6.1. Submission of Sales for Merchants Other Than Your Business. You may present for payment only valid charges that arise from a transaction between a bona fide Cardholder and your establishment. If you deposit or attempt to deposit transactions that arise from sales between Cardholders and a different business than the one approved by us in our agreement with you, then the transaction may be charged back, we may suspend or debit funds associated with all such transactions, and we may immediately terminate your account and the Agreement.

6.1.1. Factoring. For Discover transactions, Factoring is considered merchant fraud and strictly prohibited, unless you are registered with us. Factoring is the submission of authorization requests and/or Sales Drafts by a merchant for Card transactions transacted by another business. If you submit Sales Drafts on behalf of another Person, you will suffer any losses associated with the disputes of the Discover Card Sales. Also if any fraud is involved, you could face criminal prosecution.

6.2. Timeliness. In order to qualify for the lowest interchange Discount Rate, all Sales and Credit Drafts must be properly completed and submitted daily. If you have not received payment for submitted Sales Drafts after one (1) week from your normal payment date, contact Customer Service. Late Submission of Sales or Credit Drafts may result in increased interchange rates or fees or in a Chargeback to you.

6.3. Mail/Branch Deposit Procedures. Complete the appropriate summary form designated for your use. Imprint the completed summary with your Merchant Identification Card, if applicable, and sign it. Please do not staple or clip Sales Drafts together or to summary forms. This will distort the Cardholder's account number and may result in a summary adjustment or Chargeback to you.

Mail your deposits daily to us, or, if your Agreement allows deposit at a local bank branch, you must make daily deposits.

Do not send us the merchant copies (which are for your records); submit only the Bank hard copies of the transactions. If merchant copies are submitted, they will be returned to you unprocessed.

6.4. Electronic Merchants: Daily Batching Requirements & Media Submission. Batches must be transmitted to us by the time indicated on the Additional Important Information Page in Section 37.2 of the Agreement in order to be processed on the date of transmission. Additionally, if you deposit via magnetic tape, electronic transmissions, or Electronic Data Capture terminal and have contracted to send the actual Sales and Credit Drafts to us for microfilming and retrieval, the Sales Drafts (Media) must be batched daily by register/terminal following the procedures below. Failure to do so may result in a processing fee and/or a Chargeback due to our inability to retrieve the Media as requested by the Card Issuer.

- A register/terminal Batch header form must be filled out for each Batch of Media.
- The Batch header must be imprinted with your Merchant Identification Card, and all areas completed properly (i.e., Batch number, date, amount, number of items, etc.).
- The Batch/deposit total must match to the settled/reconciled amount displayed on the terminal upon closing the Batch.
- Any discrepancies between the actual Media and electronic display must be reconciled and corrected before storing the Media (for merchants who contract to hold their Media) or before sending us the copies of the deposit. Otherwise, transactions may appear to be a new Submission and may be manually keyed (causing duplicate billing to Cardholders and resulting in Chargebacks) or we may not be able to retrieve an item when requested by the Card Issuer.
- It is your responsibility to ensure that the actual Media is Batched correctly and, depending on the terms of your Agreement, either stored at your location or sent to Processor. (In some cases, the actual Media is sent daily to your head office, and forwarded to Processor for microfilming.)
- **You must confirm that your equipment has transmitted its Batches to us at least once daily.** Even if your equipment is designed or programmed to close and submit Batches without your intervention, it is ultimately your responsibility to confirm that the Batches have been transmitted to us for processing.

7. Settlement

Your funds for MasterCard/Visa/Discover transactions will be processed and transferred to your financial institution within two (2) business days from the time a batch is closed (by 11:00 p.m. ET) if your financial institution is the Bank. If your financial institution is not the Bank, your MasterCard/Visa/Discover transactions will be processed and transferred to the Federal Reserve within two (2) business days from the time a batch is closed (by 11:00 p.m. ET); the Federal Reserve will transfer such amounts to your financial institution. Your Card transactions will be settled promptly after you submit Sales and Credit Drafts. You will be provided with settlement funds in one of the following manners:

- **Direct Settlement Account.** If you maintain a Settlement Account at a financial institution with which we have arrangements permitting direct payment of settlement funds, we will initiate a transfer of such applicable settlement funds through a credit to the Settlement Account. Such settlement will generally occur by the second banking day after we process the applicable Card transactions unless a different time is specified.
- **Wire Transfer.** If you receive payment of settlement funds by wire transfer, we will initiate a wire transfer of such applicable settlement funds to the Settlement Account. Settlement by wire generally occurs by 3:00 p.m. ET on the following banking day after we process the applicable Card transactions.

- **Automated Clearing House Credit.** If you receive payment of settlement funds through an automated clearing house ("ACH") credit, we will initiate a transfer of such applicable settlement funds through ACH to your Settlement Account. Settlement by ACH credit generally will take place on the second banking day after we process the applicable Card transactions.

8. Refunds/Exchanges (Credits)

8.1. Refunds.

- You must promptly complete and submit a Credit Draft for the total amount of the refund which must include the following information:
  - The account number and expiration date;
  - The Cardholder's name;
  - Your name, city, state and Merchant Account Number;
  - A description of the goods or services;
  - The transaction date of the Credit;
  - The total amount of the Credit; and
  - For Discover transactions, the approved currency used and the signature of your authorized representative or employee.
- Full refunds must be for the exact dollar amount of the original transaction including tax, handling charges, etc. (You must identify the shipping and handling charges incurred.) The refund amount may not be for more than the original Credit Card sale amount.
- All dollar amounts and other handwritten information must be clearly written. (Stray marks on the Credit Draft will render it unscannable/illegible.)
- Do not circle or underline any information on the Credit Draft.
- Imprint the draft with the same Card used by the Cardholder to make the original purchase. You should not credit an account that differs from the account used for the original transaction.
- Never give cash, check or in-store Credit refunds for Credit Card sales.
- Have the Cardholder sign the Credit Draft, give the Cardholder the appropriate copy, and deposit the Credit Draft immediately. Failure to process a credit within five (5) calendar days may result in a Chargeback.
- Authorization is not required for refunds.
- You cannot intentionally submit a sale and an offsetting credit at a later date solely for the purpose of debiting and crediting your own or a customer's account.

8.2. Exchanges.

- No additional paperwork is necessary for an even exchange. Just follow your standard company policy.
- For an uneven exchange, complete a Credit Draft (follow the procedures outlined in Section 8.1.) for the total amount of only the merchandise returned. The Cardholder's account will be credited for that amount. Then, complete a new Sales Draft for the total amount of any new merchandise purchased.

9. Retention of Records For Retrievals and Chargebacks

9.1. Retain Legible Copies.

For MasterCard and Visa: You must retain legible copies of all Sales and Credit Drafts or any other transaction records for a period of eighteen (18) months from the date of each transaction.

For Discover: You must retain legible copies of all Sales and Credit Drafts or any other transaction records for the longer of (i) 365 days or (ii) the resolution of any pending or threatened disputes, claims, disagreements or litigation involving the Card transaction. You must also keep microfilm or other copies of Sales Drafts for no less than three (3) years from the date of the Discover transaction.

9.2. Provide Sales and Credit Drafts. You must provide all Sales and Credit Drafts or other transaction records requested by us within the shortest time limits established by Association Rules. You are responsible for any deficiencies in Card transaction data transmitted or otherwise delivered to us.

9.3. Ensure Proper Retrieval Fulfillment. To ensure proper Retrieval fulfillment and/or chargeback processing, Sales and Credit Drafts must contain the full sixteen (16) digit account number and expiration date. Failure to retain this information could result in a future Chargeback to your account.

10. Chargebacks and Other Debits

10.1. Chargebacks.

10.1.1. Generally. Both the Cardholder and the Card Issuer have the right to question or dispute a transaction. If such questions or disputes are not resolved, a Chargeback may occur. A Chargeback is a Card transaction that is returned to us by the Card Issuer. As a result, we will debit your Settlement Account or settlement funds for the amount of the Chargeback. It is strongly recommended that, whenever possible, you contact the Cardholder directly to resolve a disputed transaction or Chargeback, unless the dispute involves a Discover Cardholder, in which case Discover rules and regulations expressly prohibit you from contacting the Discover Cardholder regarding the dispute. You are responsible for all Chargebacks and related costs arising from your transactions.

10.1.2. Transaction Documentation Requests. In some cases, before a Chargeback is initiated, the Card Issuer will request a copy of the Sales Draft via a request for transaction documentation. We will forward the request to you. **You must respond to the request within the time frame and manner set forth in the request. We will then forward your response to the Card Issuer. If you fail to timely respond, we will so notify the Card Issuer and a Chargeback may result.** Upon receipt of a transaction documentation request, immediately retrieve the requested Sales Draft(s) using the following guidelines:

- Make a legible copy, centered on 8-1/2 x 11-inch paper (only one (1) Sales Draft per page).
- Write the 'case number' from the request for transaction documentation on each copy/page.
- If applicable, make copies of a hotel folio, car rental agreement, or mail/phone/internet order form, or other form of receipt.
- If a credit transaction has been processed, a copy of the Credit Draft is also required.
- Letters are not acceptable substitutes for Sales Drafts.
- Fax or mail legible copies of the Sales Draft(s) to the fax number or mail address provided on the request form.
- If you fax your response, please set your fax machine to print your fax number and name on the documents that you send. We can use this information to help know immediately where the documentation received originated from and to know whom to contact in the event the transmission is not clear or complete.
- Additionally, please set the scan resolution on your fax machine to the highest setting. The higher resolution setting improves the clarity of characters and graphics on the Sales Drafts transmitted and helps reduce the number of illegible fulfillments and/or Chargebacks.
- If we do not receive a clear, legible and complete copy of the Sales Draft within the timeframe specified on the request, you may be subject to a Chargeback.
- A handling fee may be charged by the Issuer and will be debited from your Settlement Account or settlement funds if a transaction documentation request results from a difference in the following information on the Sales Draft and the transmitted record: merchant name or an incorrect city, state, foreign country and/or transaction date.

- You need to respond to all transaction documentation requests within the specified timeframe indicated on the request, or you may be without recourse for a Chargeback. You must respond to all requests related to fraud investigations. Subsequent Chargebacks for "non receipt of requested item relating to a transaction for fraud request" cannot be contested or represented.

10.1.3. Chargeback Process. Regardless of whether you respond to a transaction documentation request, a Chargeback may be debited to your Settlement Account for numerous reasons (see below). If the Card Issuer submits a Chargeback, we will send you a Chargeback notification, which may also include a request for transaction documentation. **Due to the short time requirements imposed by MasterCard, Visa and Discover, it is extremely important that you respond to a Chargeback notification and transaction documentation request within the time frame set forth in the notification.** Do not process a credit transaction once a Chargeback is received; the Card Issuer will credit the Cardholder's account (unless the Chargeback is reversed).

If the information you provide is both timely and, in our sole discretion, sufficient to warrant a representment of the transaction and/or reversal of the Chargeback, we will do so on your behalf. However, representment and/or reversal is ultimately contingent upon the Card Issuer and/or Cardholder accepting the transaction under applicable Association guidelines. Representment or reversal is not a guarantee that the Chargeback has been resolved in your favor.

For Visa Chargebacks: If we reverse the Chargeback and represent the transaction to the Card Issuer, the Card Issuer, at its sole discretion, may elect to submit the matter for arbitration before Visa. Visa charges a $150 filing fee and a $250 review fee. If a decision is made in favor of the Cardholder and/or Card Issuer, and the Chargeback is upheld, you will be responsible for all such fees and any other applicable fees and penalties imposed by Visa; such fees and penalties will be debited from your Settlement Account or settlement funds, in addition to the Chargeback.

For MasterCard Chargebacks: If MasterCard refuses to accept our representment, it may resubmit the Chargeback. In such event, at the discretion of Processor, we will debit your Settlement Account or settlement funds for the Chargeback. However, if you feel strongly that it is an invalid Chargeback, we may, on your behalf and at your request, submit the matter for arbitration before MasterCard. MasterCard charges a $150 filing fee and a $250 review fee. If a decision is made in favor of the Cardholder and/or Card Issuer, and the Chargeback is upheld, you will be responsible for all such fees and any other penalties imposed by MasterCard; such fees and penalties will be debited from your Settlement Account or settlement funds, in addition to the Chargeback.

For Discover Chargebacks: If Discover rejects our representment request and you feel strongly that the Chargeback is invalid, we may, at the discretion of Processor and on your behalf and at your request, submit the matter for dispute arbitration before Discover. Discover charges fees for representment requests and an arbitration fee as published in their fee schedule.

If the Chargeback is not disputed within the applicable time limits set forth by MasterCard, Visa, and Discover Association Rules, reversal rights are lost. Our only alternative, on your behalf, is to attempt a "good faith collection" from the Card Issuer. This process can take from 30 to 100 days. Good faith collections must meet the Card Issuer's criteria (e.g., above a set dollar amount, usually $100.00; within a specified time limit; etc.). Sometimes Card Issuers will only accept good faith collections after assessing collection fees. A good faith collection is not a guarantee that any funds will be collected on your behalf. If the good faith collection case is accepted by the Card Issuer, you will receive the amount that we are able to recover from the Card Issuer (which may be reduced by fees Card Issuers sometimes impose for accepting good faith collection claims).

MasterCard and Visa Association Rules require that a merchant make a good faith attempt and be willing and able to resolve any disputes directly with the Cardholder. Discover rules and regulations, however, prohibit you and/or us from contacting the Cardholder directly regarding dispute(s) or any other matter, except as required for acceptance of Discover transactions, and require you and/or us to submit any responses to dispute notices directly to Discover.

Due to Association Rules, you may not re-bill a Cardholder after a Chargeback is received for that transaction, even with Cardholder authorization.

We strongly recommend that you include a detailed rebuttal letter along with all pertinent documents when responding to a transaction request or a Chargeback notification (e.g., rental agreement, imprinted portion of the invoice or Sales Draft; the portion signed by the Cardholder; and the area where the authorization codes, with amounts and dates, are located).

Due to the short time frames and the supporting documentation necessary to successfully (and permanently) reverse a Chargeback in your favor, we strongly recommend the following:

- Avoid Chargebacks by adhering to the guidelines and procedures outlined in these Operating Procedures.
- If you do receive a Chargeback, investigate, and if you dispute the Chargeback, submit the appropriate documentation within the required time frame.
- Whenever possible, contact the Cardholder directly to resolve the dispute , unless the dispute relates to a Discover Cardholder, in which case direct contact with the Discover Cardholder regarding the dispute is prohibited by Discover Association Rules.
- If you have any questions, call Customer Service.

10.1.4. Chargeback Reasons. The following section outlines the most common types of Chargebacks. This list is not exhaustive. For ease of understanding, we have combined like Chargebacks into seven groupings. We have included recommendations on how to reduce the risk of Chargebacks within each group. These are recommendations only, and do not guarantee that you will be able to prevent Chargebacks.

1. **Authorization Issues. The following scenarios could cause an authorization related Chargeback to occur.**
   - No account number verification (for transactions below the floor limit).
   - Negative Account number verification.
   - Full Authorization not obtained.
   - Fraudulent transaction – No authorization.
   - Fraudulent Transaction prior to embossed Valid Date.
   - Authorization Request Declined.
   - Expired Card.
   - Early Warning Bulletin.
   - Non-Matching account number.
   - Mail Order transaction on Expired or Never Issued Account number.

   To reduce your risk of receiving an authorization-related Chargeback:
   - Authorize all transactions and use the proper method of authorization.
   - A valid approval authorization response indicates the Card is valid and can be accepted for payment. An approval code is usually a 4-6 digit number, along with an authorization response of "approval."
   - A decline authorization response indicates the Card should not be accepted for payment. Request a different form of payment from the Cardholder or do not release the merchandise.
   - "Pick-up" authorization response from the Issuer indicates the Credit Card account number is lost or stolen. The Credit Card should not be accepted for payment. Additionally, you can choose to retain the Credit Card and return it to the Acquirer for a reward.

- Referral authorization response prompts you to call the Voice Authorization Center for further instructions.
- If you used a third party to authorize, you must contact them immediately for proof of authorization and submit such proof to us.

2. **Cancellations and Returns. The following scenarios could cause a cancellation and return related Chargeback to occur:**
   - Credit transaction not processed.
   - Cancelled recurring transaction.
   - Cancelled guaranteed reservation.
   - Advance deposit service.
   - Cardholder not aware of your cancellation/return policies.

   To reduce your risk of receiving a cancellation and return related Chargeback:
   - For recurring transactions – ensure your customers are fully aware of the conditions of this type of transaction.
   - Process credits daily.
   - All credits must be applied to the account to which the debit originally posted.
   - Pre-notify the Cardholder of billing within 10 days (domestic) and 15 days (international) prior to billing, allowing the Cardholder time to cancel the transaction.
   - Do not continue to bill after proper cancellation or after receipt of Chargeback.
   - Ensure proper disclosure of your refund policy is on the Sales Draft; if applicable, the words "NO EXCHANGE, NO REFUND," etc. must be clearly printed (in 1/4" letters) on the Sales Draft (or electronic equivalent,i.e., the receipt printed when a Card is swiped through a terminal) near or above the Cardholder's signature.
   - Do not issue credit in the form of cash, a check or in-store/merchandise Credit.
   - Do not issue in-store or merchandise credit.
   - For Travel and Entertainment transactions, provide the cancellation policy at the time of reservation.
   - For Internet transactions ensure that there is an area on the web page where the Cardholder must acknowledge an understanding of the cancellation policy prior to completing the transaction.

3. **Fraud. The following scenarios could cause a fraud related Chargeback to occur:**
   - Unauthorized or fictitious account number.
   - Unauthorized ATM transaction.
   - Fraudulent processing of a transaction.
   - Fraudulent mail/phone Order transaction.
   - Counterfeit transaction.
   - Fraudulent transaction – no imprint obtained.
   - Fraudulent transaction – no signature obtained.
   - Risk Identification service.
   - Advance deposit service.

   To reduce your risk of receiving a fraud-related Chargeback:

   For Face to Face (Card Present) Transactions:
   - If you are an electronic merchant, swipe the Card through the electronic authorization device to capture Cardholder information and ensure the displayed Card number matches the number on the Card.
   - If you are unable to swipe a Card through an electronic authorization device to capture the Cardholder's information via the Magnetic Stripe, you must imprint the Card to prove the Cardholder was present at the time of transaction. Do not alter the imprint on the draft in any way. Manually entering the information into the terminal does not protect you from this type of Chargeback. All pertinent information relating to the transaction must be written on the manually imprinted ticket (date, dollar amount, authorization code, and merchandise description). This information ties the imprinted ticket to the transaction.
   - Obtain the Cardholder's signature on the Draft.
   - Carefully examine the front and back of the Card at the time of transaction, check the signature and compare it to the signature on the draft.
   - If you swipe the transaction and receive a Referral response and a subsequent voice authorization, you must manually imprint the Cardholder's Credit Card to prove Card presence.
   - Do not imprint the Cardholder's Credit Card on the back of the transaction receipt or a separate document unless all transaction elements are present.

   For Mail/Telephone/Internet (Card Not Present) Orders:
   - Follow recommended procedures – use Verified by Visa (VBV) for Internet transactions, obtain the 3-digit Card Validation Code (CVV2/CVC2/CID), and/or AVS. While transactions utilizing the AVS may still be disputed, the service may alert you to certain fraudulent transactions.
   - Obtain a signed proof of delivery for shipped merchandise.
   - Obtain the Cardholder's account number, name and address with city and state. At the time of the transaction, advise the Cardholder of any extra cost that they are responsible for (shipping, handling, insurance etc.).
   - Confirm the account number provided by the customer by repeating the number back to the customer.
   - Obtain the required Data Elements on the folio/registration documentation for a GNS (Guaranteed No Show) Transaction.

4. **Non-Receipt of Goods and Services. The following scenarios could cause a Non Receipt of Goods and Services related Chargeback to occur:**
   - Services not rendered.
   - Services not rendered at ATM.
   - Non-receipt of merchandise.
   - Advance deposit service.

   To reduce your risk of receiving a Non Receipt of Goods and Services related Chargeback:
   - Do not process a transaction until the merchandise is shipped.
   - Do not process any Credit Card transaction where the Cardholder has already paid for the goods or services using another method of payment.
   - Inform the Cardholder of any specific cancellation policies or advance deposits.
   - Obtain a signed proof of delivery

5. **Processing Errors. The following scenarios could cause a processing error related Chargeback to occur:**
   - Late presentment of Sales Draft.
   - Services or merchandise paid by other means.
   - Addition or transposition error.
   - Altered amount.
   - Incorrect account number, code or amount.
   - Duplicate processing.
   - Transaction exceeds limited amount.
   - Services not rendered.
   - Unauthorized ATM transaction.

- Credit posted as Debit.
- Incorrect transaction amount.
- Transaction amount changed.
- Merchandise paid by other means.

To reduce your risk of receiving a processing error related Chargeback:

- Settle and reconcile your Batches on your terminal/register daily. Ensure that the total amount settled and submitted (displayed on terminal) balances with, and matches to, the Credit Card receipts of the transactions.
- Obtain a Card imprint (or swipe the Card through an electronic authorization device to capture Cardholder information) and Cardholder signature.
- If you are a paper merchant or the Card cannot be magnetically stripe read, please clearly imprint the Card using the imprinter machine and do not alter in any way.
- If you are an electronic merchant, swipe the Card through the electronic authorization device and ensure the displayed Card number matches the number on the Card. The Card must be imprinted if the Magnetic Stripe cannot be read or the electronic equipment is inoperable.
- Carefully examine the front and back of the Card at the time of transaction.
- Compare the signature on the back of the Credit Card with the signature on the Sales Draft.
- Telephone orders – confirm the account number provided by the customer by repeating the number back to the customer.
- Properly authorize all transactions.
- If you used a third party to authorize, you must contact them immediately for proof of authorization and submit to us.
- If the terminal does not display the Card number, call the POS Help Desk for a terminal upgrade.

6. **Quality of Goods and Services. The following scenarios could cause a Quality of Goods and Services related Chargeback to occur:**
   - Defective merchandise.
   - Not as described.

   To reduce your risk of receiving a Quality of Goods and Services related Chargeback:
   - Ensure all merchandise is shipped properly.
   - Ensure all return policies are properly disclosed to the Cardholder at the time of sale.
7. **Non Receipt of Information. The following scenarios could cause a Non Receipt of Information related Chargeback to occur:**
   - Transaction receipt not received.
   - Copy illegible.
   - Cardholder does not recognize the transaction.
   - T&E document not fulfilled.

   To reduce your risk of receiving a Non Receipt of Information related Chargeback:
   - Prepare clean, legible Sales Drafts at the point of sale and send in your Media daily and/or respond to Media Retrieval requests within the required time frame (failure to properly respond to a fraud related Media Retrieval request eliminates any opportunity for a Chargeback reversal).
   - Retain copies of transaction documents for MasterCard and Visa transactions for a minimum of eighteen (18) months from the original sales/post date, and for Discover transactions, the longer of (i) 365 days from the original sales/post date or (ii) the resolution of any pending or threatened disputes, claims, disagreements or litigation involving the Card transaction.
   - Ensure that the most recognizable merchant name, location, and/or customer service phone number is provided on all transaction documentation.
   - Timely respond to all notifications and requests.

10.2. Other Debits. We may also debit your Settlement Account or your settlement funds in the event we are required to pay Association fees, charges, fines, penalties or other assessments as a consequence of your sales activities. Such debits shall not be subject to any limitations of time specified elsewhere in the Agreement. The following is a list of reasons for other debits. We may add to or delete from this list as changes occur in the Association Rules or our operational requirements:

- Association fees, charges, fines, penalties, registration fees, or other assessments including any fees levied against us or any amount for which you are obligated to indemnify us.
- Currency conversion was incorrectly calculated. **NOTE: For Discover transactions, you are not permitted to convert from your local Discover Network approved currency into another currency, nor may you quote the price of a transaction in U.S. Dollars if completed in another approved currency.**
- Discount not previously charged.
- Reversal of deposit posted to your account in error.
- Debit for Summary Adjustment not previously posted.
- Reversal of credit for deposit previously posted.
- Debit for Chargeback never posted to your account.
- Debit for EDC Batch error fee.
- Association Merchant Chargeback/Fraud Monitoring Fee – Excessive Chargeback Handling Fee.
- Failure of transaction to meet Member Controller Authorization Service ("MCAS") – Cardholder account number on exception file.
- Original transaction currency (foreign) not provided.
- Travel Voucher exceeds maximum value.
- Debit and/or fee for investigation and/or Chargeback costs related to our termination of the Agreement for cause, or for costs related to our collection activities.
- Costs arising from replacement or damage to equipment rented.
- Payment of current or past due amounts for any equipment purchase, rental or lease.
- Incorrect merchant descriptor (name and/or city, state) submitted.
- Incorrect transaction date submitted.
- Shipping and handling interchange fees.
- Costs or expenses associated with responding to any subpoena, garnishment, levy or other legal process associated with your account.

10.3. Summary (Deposit) Adjustments / Electronic Rejects. Occasionally, it is necessary to adjust the dollar amount of your summaries/Submissions (deposits) and credit or debit your Settlement Account or settlement funds accordingly. The following is a list of the most frequent reasons for Summary (Deposit) Adjustments/Electronic Rejects:

- Your summary reflected an arithmetic error.
- Submitted sales not included in your Agreement (e.g., American Express, JCB).
- The dollar amount is unreadable/illegible.
- The Cardholder's account number is unreadable/illegible.
- Duplicate Sales Draft submitted.
- Credit Card number is incorrect/incomplete.
- Summary indicated credits, but no credits were submitted.

10.4. Disputing Other Debits and Summary Adjustments. In order to quickly resolve disputed debits and Summary Adjustments, it is extremely important that the items listed in this section be faxed or sent to the address listed on the notification.

If the Summary Adjustment is for an unreadable or incorrect Cardholder number, resubmit the corrected Sales Draft with your next deposit. Also, if the transaction is over thirty (30) calendar days old, you must reauthorize and obtain a valid Authorization Code.

A clear and legible copy of the Sales Draft containing the following should be obtained from your files:

- Date of sale/Credit;
- Cardholder's account number, name and signature;
- Total amount of the sale and description of goods and services; and
- Date and Authorization Approval Code.

Include a dated cover letter detailing the reasons for requesting a review of the debit or Summary Adjustment and documentation to support your dispute. (You should retain a copy of the correspondence and all documentation for your files.) If the inquiry is related to prior correspondence, be sure to include the control number we previously used.

Immediately fax or mail the Sales or Credit Drafts to the fax number or address provided on your notification letter.

If you have any questions, please call the Customer Service number provided on the last page of this Program Guide. If a Customer Service Representative informs you that additional documentation is required in order to fully review the item, please immediately submit your rebuttal and transaction documentation to the fax number or address listed on the debit notification.

11. Account Maintenance

11.1. Change of Settlement Number. If you change the Settlement Account in which you receive the proceeds of your transactions, you must call Customer Service or your Relationship Manager immediately. If you accept payment types other than Visa, MasterCard and Discover (such as the American Express Card, and TeleCheck Services), you are also responsible for contacting the Associations or companies governing those Cards to notify them of this change.

11.2. Change in Your Legal Name or Structure. You must call Customer Service or your Relationship Manager and request a new Agreement.

11.3. Change in Company DBA Name, Address or Telephone/ Facsimile Number. To change your company DBA name, address or telephone/facsimile number, you must send the request in writing to the address on your statement.

11.4. Other Change(s) in Merchant Profile. You must immediately notify us of any change to the information on file with us in your merchant profile, including: (i) any new lines or types of business; (ii) change in ownership; (iii) closing or liquidation of business or any location; (iv) change in Card processing method (i.e., paper Sales Drafts to POS Device); (v) voluntary or involuntary party to a bankruptcy case; (vi) entry into a loan or other agreement with a third party that seeks to affect this Merchant Agreement; and/or (vii) change from a business that exclusively conducts card-present retail sales to one that accepts Card sales by mail, telephone or Internet transactions. We retain the right to terminate this Agreement if you fail to notify us of any change to the information in your merchant profile.

12. Association Compliance

MasterCard, Visa and Discover have established guidelines, merchant monitoring programs and reports to track merchant activity such as, but not limited to excessive credits and Chargebacks, and increased deposit activity. In the event you exceed the guidelines or submit suspicious transactions as identified by an Association or any related program or reports, you may be subject to: (i) operating procedure requirement modifications; (ii) incremental Chargebacks and/or fees; (iii) settlement delay or withholding; (iv) termination of your Agreement; or (v) audit and imposition of fines.

13. Supplies

Placing Orders.

- To order additional supplies, call Customer Service when you have two months' inventory left. We will ship you an adequate amount of supplies. The amount of supplies (based on usage) on hand should not exceed a three to six-month supply.
- In an EMERGENCY, please contact Customer Service using the number provided on the last page of this Program Guide. If supplies are sent via an express delivery service, the delivery charges will be debited to your account.
- You are responsible for unauthorized use of sales/credit and summary Media. We recommended that you store all supplies in a safe location.
- You may be charged for supplies and applicable shipping and handling charges.

GENERAL TERMS

In addition to the preceding Operating Procedures, our Agreement with you includes the following General Terms. If you fail to follow any of the provisions of the Operating Procedures or General Terms, you may incur certain liabilities or we may terminate our Agreement.

14. Services

Subject to Association Rules, Services may be performed by one or more of our affiliates, including the provision of terminals or other equipment and local support functions in connection with this Agreement.

15. Operating Procedures; Association Rules

You agree to follow all requirements of this Agreement in connection with each Card transaction and to comply with all applicable Association Rules. From time to time, we may amend the Operating Procedures, by providing you with at least 30 days' prior written notice, and those provisions will be deemed incorporated into this Agreement. However, for changes in the Association Rules or for security reasons, certain changes in Card procedures may become effective on shorter notice. If there are any inconsistencies between the General Terms and the Operating Procedures, the General Terms will govern.

16. Settlement of Card Transactions

16.1. We will only be required to settle Card transactions for Card types specified in your Application. Promptly after presentment of Sales Drafts pursuant to the Operating Procedures, we will initiate a transfer of the applicable settlement funds to you.

16.2. All settlements for Visa, MasterCard and Discover Card transactions will be net of credits/refunds, adjustments, applicable discount fees when due, Chargebacks and any other amounts then due from you. We may also set off from any payments otherwise due, any amounts owed to our affiliates (and/or affiliates of Bank) whether or not arising out of or related to this Agreement.

16.3. All credits to your Settlement Account or other payments to you are provisional and are subject to, among other things, our final audit, Chargebacks (including our related losses), fees and fines imposed by the Associations. You agree that we may debit or credit your Settlement Account for any deficiencies, overages, fees and pending Chargebacks, or may deduct such amounts from settlement funds due to you. Alternatively, we may elect to invoice you for any such amounts, net due 30 days after the invoice date or on such earlier date as may be specified.

16.4. We will not be liable for any delays in receipt of funds or errors in debit and credit entries caused by third parties including but not limited to any Association or your financial institution.

16.5. In addition to any other remedies available to us under this Agreement, you agree that should any Event of Default (see Section 23.4) occur, we may, with or without notice, change processing or payment terms and/or suspend credits or other payments of any and all funds, money and amounts now due or hereafter to become due to you pursuant to the terms of this Agreement, until we have had reasonable opportunity to investigate such event.

17. Exclusivity

During the term of this Agreement, you shall use us as your exclusive provider of all Services.

18. Fees; Adjustments; Collection of Amounts Due

18.1. You shall be charged fees for the Services, which shall be calculated and payable pursuant to this Agreement and any additional pricing supplements. You acknowledge that the fees agreed to are based on the assumption that your transactions will qualify for certain reduced interchange levels (your Anticipated Interchange Levels), as set by the applicable Association. If a transaction fails to qualify for your Anticipated Interchange Levels, then the Association will downgrade the transaction and process it at a more costly interchange level for which it does qualify. In that event, you shall be charged a Non-Qualified Interchange Fee, which is the difference in the interchange fee associated with the Anticipated Interchange Level and the interchange fee associated with the interchange level at which the transaction actually was processed; plus, any applicable Non-Qualified Surcharge for each non-qualifying transaction, the amount of which is set forth in the service fee schedule. For more information on visa's and MasterCard's interchange rates, please go to www.visa.com and www.mastercard.com.

18.2. **Should you have questions regarding any Non-Qualified fees (including Non-Qualified Interchange Fees or Non-Qualified Surcharge), submit a Non-Qualified Fee Inquiry (NFI) request in writing (either letter, fax or email) within 90 days from the mail date (post mark) of the monthly statement in question. Note that NFI requests received after the 90 day limit may not be considered for refund review. The subject line or reference at the top of your NFI request must state "Non-Qualified Fee Inquiry." Your NFI request must include your merchant name, merchant number, billing address, and the month of the processing statement on which the non-qualified fees appeared. When possible, also include a copy of the statement on which the fees in question appear. Written fee inquiries should be submitted by email to nfirequest@wellsfargomerchantservicesllc.com; via fax to (954) 509-1822; or if mailed, sent to: Wells Fargo Merchant, Services, LLC, P.O. Box 6699, Hagerstown, MD 21740, Attn: NFI Investigations Unit.**

We will provide a written response to your NFI with an explanation. If through our research, we find that a refund is due, we will credit your account within 30 days from the date our research was completed. NFI requests not received in accordance with the foregoing shall not be subject to the response times set forth in this Section.

18.3. Authorization/EDC Fees will be charged for each transaction that you attempt to authorize. Capture and/or Transaction fees will be charged for each transaction that you transmit to us for settlement.

18.4. The fees for Services set forth in this Agreement are based upon assumptions associated with the anticipated annual volume and average transaction size for all Services as set forth in this Agreement and your method of doing business. If the actual volume or average transaction size are not as expected or if you significantly alter your method of doing business, we may adjust your fees for Services without prior notice.

18.5. The fees for Services set forth in this Agreement may be adjusted to reflect increases or decreases by Associations in interchange, assessments and other Association fees or to pass through increases charged by third parties for on-line communications and similar items. All such adjustments shall be your responsibility to pay and shall become effective upon the date any such change is implemented by the applicable Association or third party.

18.6. Subject to Section 23.3, we may also increase our fees for Services for any other reason by notifying you thirty (30) days prior to the effective date of any such change.

18.7. If you receive settlement funds by wire transfer, we may charge a wire transfer fee per wire.

18.8. To the extent the Automated Clearing House (ACH) settlement process is used to effect debits or credits to your Settlement Account, you agree to be bound by the terms of the operating rules of the National Automated Clearing House Association, as in effect from time to time. You hereby authorize us to initiate credit and debit entries and adjustments to your account through the ACH settlement process and/or through direct instructions to the financial institution where your Settlement Account is maintained for amounts due under this Agreement and under any agreements with us or our affiliates for any related services, as well as for any credit entries in error. You hereby authorize the financial institution where your Settlement Account is maintained to effect all such debits and credits to your account. This authority will remain in

full force and effect until we have given written notice to the financial institution where your Settlement Account is maintained that all monies due under this Agreement and under any other agreements with us or our affiliates for any related services have been paid in full.

18.9. You agree to pay any fines imposed on us by any Association resulting from Chargebacks and any other fees or fines imposed by an Association with respect to your acts or omissions.

18.10. If your Chargeback percentage for any line of business exceeds the estimated industry Chargeback Percentage, you shall, in addition to the chargeback fees and any applicable Chargeback handling fees or fines, pay us an excessive Chargeback fee for all Chargebacks occurring in such month in such line(s) of business. Each estimated industry Chargeback Percentage is subject to change from time to time by us in order to reflect changes in the industry Chargeback Percentages reported by Visa, MasterCard or Discover. Your Chargeback Percentage will be calculated as the larger of (a) the total Visa, MasterCard and Discover Chargeback items in any line of business in any calendar month divided by the number of Visa, MasterCard and Discover transactions in that line of business submitted that month, or (b) the total dollar amount of Visa, MasterCard and Discover Chargebacks in any line of business received in any calendar month divided by the total dollar amount of your Visa, MasterCard and Discover transactions in that line of business submitted in that month.

18.11. If you believe any adjustments should be made with respect to your Settlement Account, you must notify us in writing within 45 days after any debit or credit is or should have been effected. If you notify us after such time period, we may, in our discretion, assist you, at your expense, in investigating whether any adjustments are appropriate and whether any amounts are due to or from other parties, but we shall not have any obligation to investigate or effect any such adjustments. Any voluntary efforts by us to assist you in investigating such matters shall not create any obligation to continue such investigation or any future investigation.

19. Chargebacks

19.1. You shall be responsible for reimbursing us for all transactions you submit that are charged back. See the Operating Procedures for additional information regarding Chargebacks and Chargeback procedures.

19.2. You shall reimburse us for any Chargebacks, return items, or other losses resulting from your failure to produce a Card transaction record requested by us hin the applicable time limits.

20. Representations; Warranties; Limitations on Liability; Exclusion of Consequential Damages

20.1. Without limiting any other warranties hereunder, you represent and warrant as to each Card transaction submitted under our Agreement that:

20.1.1. the Card transaction represents a bona fide sale/rental of merchandise or services not previously submitted;

20.1.2. the Card transaction represents an obligation of the Cardholder for the amount of the Card transaction;

20.1.3. the amount charged for the Card transaction is not subject to any dispute, setoff or counterclaim;

20.1.4. the Card transaction amount is only for the merchandise or services (including taxes, but without any surcharge) sold or rented and, except for any delayed delivery or advance deposit Card transactions expressly authorized by this Agreement, the merchandise or service was actually delivered to or performed for the person entering into the Card transaction simultaneously upon your accepting and submitting the Card transaction for processing;

20.1.5. the Card transaction does not represent the refinancing of an existing obligation of the Cardholder (including any obligation otherwise owed to you by a Cardholder or arising from the dishonor of a personal check);

20.1.6. you have no knowledge or notice of any fact, circumstances or defense which would indicate that the Card transaction was fraudulent or not authorized by the Cardholder or which would otherwise impair the validity or collectibility of the Cardholder's obligation arising from such Card transaction or relieve the Cardholder from liability with respect thereto;

20.1.7. the Card transaction submitted to us was entered into by you and the Cardholder;

20.1.8. the Card transaction was made in accordance with these General Terms, Association Rules and the Operating Procedures; and

20.1.9. the Card transaction is not a payment for a product or service that violates federal, state or local law in any jurisdiction that may be applicable.

20.2. THIS AGREEMENT IS A SERVICE AGREEMENT. WE DISCLAIM ALL REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, MADE TO YOU OR ANY OTHER PERSON, INCLUDING WITHOUT LIMITATION, ANY WARRANTIES REGARDING QUALITY, SUITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE OF ANY SERVICES OR ANY GOODS PROVIDED INCIDENTAL TO THE SERVICES PROVIDED UNDER THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, ANY SERVICES OR ANY GOODS PROVIDED BY A THIRD PARTY.

20.3. IN NO EVENT SHALL EITHER PARTY, OR THEIR AFFILIATES OR ANY OF THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR SUBCONTRACTORS, BE LIABLE UNDER ANY THEORY OF TORT, CONTRACT, STRICT LIABILITY OR OTHER LEGAL THEORY FOR LOST PROFITS, LOST REVENUES, LOST BUSINESS OPPORTUNITIES, EXEMPLARY, PUNITIVE, SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES, EACH OF WHICH IS HEREBY EXCLUDED BY AGREEMENT OF THE PARTIES, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE OR WHETHER ANY PARTY OR ANY ENTITY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. CLIENT ACKNOWLEDGES AND AGREES THAT PAYMENT OF ANY EARLY TERMINATION FEE OR LIQUIDATED DAMAGES AS PROVIDED ELSEWHERE IN THIS AGREEMENT SHALL NOT BE PROHIBITED BY THIS PARAGRAPH.

20.4. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY (INCLUDING BUT NOT LIMITED TO SECTIONS 26 or 20.5), OUR CUMULATIVE LIABILITY FOR ALL LOSSES, CLAIMS, SUITS, CONTROVERSIES, BREACHES OR DAMAGES FOR ANY CAUSE WHATSOEVER (INCLUDING, BUT NOT LIMITED TO, THOSE ARISING OUT OF OR RELATED TO THIS AGREEMENT) AND REGARDLESS OF THE FORM OF ACTION OR LEGAL THEORY SHALL NOT EXCEED, (I) $50,000; OR (II) THE AMOUNT OF FEES RECEIVED BY US PURSUANT TO THE AGREEMENT FOR SERVICES PERFORMED IN THE IMMEDIATELY PRECEDING 12 MONTHS, WHICHEVER IS LESS.

20.5. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY (INCLUDING BUT NOT LIMITED TO SECTION 26), OUR LIABILITY TO ANY DELAY IN FUNDING TRANSACTIONS TO YOU FOR ANY REASON WILL BE LIMITED TO INTEREST COMPUTED FROM THE DATE THAT YOU SUBMIT THE TRANSACTION TO THE DATE THAT WE FUND THE TRANSACTION AT THE RATE OF THE FEDERAL FUNDS, AS ESTABLISHED BY THE FEDERAL RESERVE BOARD FROM TIME TO TIME, LESS ONE PERCENT (1%).

21. Confidentiality

21.1. Unless you obtain consents from us and each applicable Association, Card Issuer and Cardholder, you must not use, disclose, store, sell or disseminate any Cardholder information obtained in connection with a Card transaction (including the names, addresses and Card account numbers of Cardholders) except for purposes of authorizing, completing and settling Card transactions and resolving any Chargebacks, Retrieval Requests or similar issues involving Card transactions, other than pursuant to a court or governmental agency request, subpoena or order. You shall use proper controls for and limit access to, and render unreadable prior to discarding, all records containing Cardholder

account numbers and card imprints. You may not retain or store Magnetic Stripe data or Card Validation Codes after a transaction has been authorized. If you store any electronically captured signature of a Cardholder, you may not reproduce such signature except upon our specific request.

21.2. You acknowledge that you will not obtain ownership rights in any information relating to and derived from Card transactions.

22. Assignments

22.1. Any transfer or assignment of this Agreement by you, without our prior written consent, by operation of law or otherwise, is voidable by us. Furthermore, you shall indemnify and hold us harmless from all liabilities, Chargebacks, expenses, costs, fees and fines arising from such transferee's or assignee's Submission of Card transactions to us for processing. For purposes of this Section 22, any transfer of voting control shall be considered an assignment or transfer of this Agreement.

22.2. The payment services provided by us require access to a single bank account in which we may initiate both credits and debits. You may not enter into any agreement that would require, in any circumstance or event, the transfer of any payments or proceeds from Credit Card transactions covered by this Agreement to the custody or control of any third party. You may not assign any rights, including the right of payment under this Agreement, to any other person. In the event that you make an assignment (or provide a security interest) of receivables covered by this Agreement, then we may, at our option, elect to (a) refuse to acknowledge such assignment unless accompanied by an authorization to both initiate debits or credits to the bank account of the assignee, (b) terminate this Agreement immediately, or (c) charge for any transfers that we are called upon to make manually to fulfill such an assignment at the rate of $100 per transfer.

22.3. Upon notice to you, another Visa and MasterCard member may be substituted for Bank under whose sponsorship this Agreement is performed with respect to Visa and MasterCard transactions. Upon substitution, such other Visa and MasterCard member shall be responsible for all obligations required of Bank for Visa and MasterCard transactions, including without limitation, full responsibility for its bank Card program and such other obligations as may be expressly required by applicable Association Rules.

Subject to Association Rules, we may assign or transfer this Agreement and our rights and obligations hereunder and/or may delegate our duties hereunder, in whole or in part, to any third party, whether in connection with a change in sponsorship, as set forth in the preceding sentence, or otherwise, without notice to you or your consent.

22.4. Except as set forth elsewhere in this Section and as provided in the following sentence, this Agreement shall be binding upon successors and assigns and shall inure to the benefit of the parties and their respective permitted successors and assigns. No assignee for the benefit of creditors, custodian, receiver, trustee in bankruptcy, debtor in possession, or other person charged with taking custody of a party's assets or business, shall have any right to continue, assume or assign this Agreement.

23. Term; Events of Default

23.1. This Agreement shall become effective upon the date this Agreement is approved by our Credit Department.

23.2. The initial term of this Agreement shall commence and shall continue in force for three years after it becomes effective. Thereafter, it shall continue until either party terminates the Agreement upon written notice to the other.

23.3. Notwithstanding the above or any other provisions of this Agreement, we may terminate this Agreement at any time and for any reason by providing 30 days' advance notice to you. We may terminate this agreement immediately or with shorter notice upon event of default as provided under Section 23.4. You may terminate this Agreement without penalty in the event of a material breach of this Agreement by Servicers. In the event we provide notice to you of an increase in the fees for Services, pursuant to Section 18.6, you may terminate this Agreement without further cause or penalty by providing us written notice of termination. You must terminate within 30 days after we provide notice of the Section 18.6 fee increase. The Section 18.6 fee increase shall not take effect in the event you provide timely notice of termination. However, your continued use of our Services after the effective date of any increase shall be deemed acceptance of the increased fees for Services, throughout the term of this Agreement.

23.4. If any of the following events shall occur (each an "Event of Default"):

23.4.1. a material adverse change in your business, financial condition, business procedures, prospects, products or services; or

23.4.2. any assignment or transfer of voting control of you or your parent; or

23.4.3. a sale of all or a substantial portion of your assets; or

23.4.4. irregular Card sales by you, excessive Chargebacks, noncompliance with any applicable data security standards, as determined by Servicers, of any Card Association, or any other entity, or an actual or suspected data security breach, non-conformance with any applicable data security standards, as determined by Servicers, any Card Association, or any other entity, or an actual or suspected data security breach, or any other circumstances which, in our sole discretion, may increase our exposure for your Chargebacks or otherwise present a financial or security risk to us; or

23.4.5. any of your representations or warranties in this Agreement are breached in any material respect or are incorrect in any material respect when made or deemed to be made; or

23.4.6. you shall default in any material respect in the performance or observance of any term, covenant, condition or agreement contained in this Agreement, including, without limitation, the establishment or maintenance of funds in a Reserve Account, as detailed in Section 24; or

23.4.7. you shall default in any material respect in the performance or observance of any term, covenant or condition contained in any agreement with any of our affiliates;

23.4.8. you shall default in the payment when due, of any material indebtedness for borrowed money or any material trade payable; or

23.4.9. you shall file a petition or have a petition filed by another party under the Bankruptcy Code or any other laws relating to bankruptcy, insolvency or similar arrangement for adjustment of debts; consent to or fail to contest in a timely and appropriate manner any petition filed against it in an involuntary case under such laws; apply for or consent to, or fail to contest in a timely and appropriate manner, the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of a substantial part of its property; or make a general assignment for the benefit of creditors; or take any corporate action for the purpose of authorizing any of the foregoing; or

23.4.10. your independent certified accountants shall refuse to deliver an unqualified opinion with respect to your annual financial statements and your consolidated subsidiaries; or

23.4.11. a violation by you of any applicable law or Association Rule or our reasonable belief that termination of this Agreement or suspension of Services is necessary to comply with any law including without limitation the rules and regulations promulgated by the Office of Foreign Assets Control of the US Department of the Treasury or your breach, as determined by Servicers, of Section 34.2 ("Compliance with Laws");

then, upon the occurrence of (1) an Event of Default specified in subsections 23.4.4, 23.4.9 or 23.4.11, we may consider this

Agreement to be terminated immediately, without notice, and all amounts payable hereunder shall be immediately due and payable in full without demand or other notice of any kind, all of which are expressly waived by you, and (2) any other Event of Default, this Agreement may be terminated by us giving not less than 10 days' notice to you, and upon such notice all amounts payable hereunder shall be due and payable on demand.

23.5. Neither the expiration nor termination of this Agreement shall terminate the obligations and rights of the parties pursuant to provisions of this Agreement which by their terms are intended to survive or be perpetual or irrevocable. Such provisions shall survive the expiration or termination of this Agreement. All obligations by you to pay or reimburse us for any obligations associated with transactions you have submitted to us are intended to survive termination of this Agreement.

23.6. If any Event of Default shall have occurred and regardless of whether such Event of Default has been cured, we may, in our sole discretion, exercise all of our rights and remedies under applicable law and this Agreement, including, without limitation, exercising our rights under Section 24.

23.7. In the event you file for protection under the Bankruptcy Code or any other laws relating to bankruptcy, insolvency, assignment for the benefit of creditors or similar laws, and you continue to use our services, it is your responsibility to open new accounts to distinguish pre and post filing obligations. You acknowledge that as long as you utilize the accounts you established prior to such filing, we will not be able to systematically segregate your post-filing transactions or prevent set-off of the pre-existing obligations. In that event, you will be responsible for submitting an accounting supporting any adjustments that you may claim.

23.8. The Associations often maintain lists of merchants who have had their Merchant Agreements or Card Acceptance rights terminated for cause. If this Agreement is terminated for cause, you acknowledge that we may be required to report your business name and the names and other information regarding its principals to the Associations for inclusion on such list(s). You expressly agree and consent to such reporting if you are terminated as a result of the occurrence of an Event of Default or for any reason specified as cause by Visa, MasterCard or Discover. Furthermore, you agree to waive and hold us harmless from and against any and all claims which you may have as a result of such reporting.

23.9. After termination of this Agreement for any reason whatsoever, you shall continue to bear total responsibility for all Chargebacks, fees, credits and adjustments resulting from Card transactions processed pursuant to this Agreement and all other amounts then due or which thereafter may become due under this Agreement.

24. Reserve Account; Security Interest

24.1. You expressly authorize us to establish a Reserve Account pursuant to the terms and conditions set forth in this Section 24. The amount of such Reserve Account shall be set by us, in our sole discretion, based upon your processing history and the potential risk of loss to us as we may determine from time to time.

24.2. The Reserve Account shall be fully funded upon three (3) days' notice to you, or in instances of fraud or suspected fraud an Event of Default reserve account funding may be immediate. Such Reserve Account may be funded by all or any combination of the following:

(i) one or more debits to your Settlement Account or any other accounts held by Bank or any of its affiliates; at any financial institution vested in the name of Client, any of its principals, or any of its guarantors, or if any of same are authorized signers on such account;

(ii) any payments otherwise due to you, including any amount due from TeleCheck;

(iii) your delivery to us of a letter of credit; or

(iv) if we so agree, your pledge to us of a freely transferable and negotiable certificate of deposit. Any such letter of credit or certificate of deposit shall be issued or established by a financial institution acceptable to us and shall be in a form satisfactory to us. In the event of termination or expiration of this Agreement by any party, an immediate Reserve Account may be established without notice in the manner provided above. Any Reserve Account will be held by us for the greater of ten (10) months after termination or expiration of this Agreement or for such longer period of time as is consistent with our liability for Card transactions and Chargebacks in accordance with Association Rules. Your funds will be held in an account commingled with reserve funds of our other Clients, without involvement by an independent escrow agent. Unless specifically agreed in writing by us or specifically required by applicable law, funds held by us in a Reserve Account shall not accrue interest.

24.3. If your funds in the Reserve Account are not sufficient to cover the Chargebacks, adjustments, fees and other charges due from you, or if the funds in the Reserve Account have been released, you agree to promptly pay us such sums upon request.

24.4.1. To secure your obligations to Servicers and our affiliates under this Agreement and any other agreement for the provision of related equipment or related services (including any obligations for which payments on account of such obligations are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party under any bankruptcy act, state or federal law, common law or equitable cause), you grant to Servicers a first priority lien and security interest in and to (i) the Reserve Account and (ii) any of your funds pertaining to the Card transactions contemplated by this Agreement now or hereafter in the possession of Servicers, whether now or hereafter due or to become due to you from Servicers. Any such funds, money or amounts now or hereafter in the possession of Servicers may be commingled with other funds of Servicers, or, in the case of any funds held pursuant to the foregoing paragraphs, with any other funds of other customers of Servicers. In addition to any rights now or hereafter granted under applicable law and not by way of limitation of any such rights, Servicers are hereby authorized by you at any time and from time to time, without notice or demand to you or to any other person (any such notice and demand being hereby expressly waived), to set off, recoup and to appropriate and to apply any and all such funds against and on account of your obligations to Servicers and their affiliates under this Agreement and any other agreement with Servicers or any of Servicers' affiliates for any related equipment or related services (including any check warranty and check verification services), whether such obligations are liquidated, unliquidated, fixed, contingent, matured or unmatured. You agree to duly execute and deliver to Servicers such instruments and documents as Servicers may reasonably request to perfect and confirm the lien, security interest, right of set off, recoupment and subordination set forth in this Agreement.

24.4.2. To the extent funds are held in a separate reserve account, the Reserve Account shall be subject to (i) Servicers' security interest pursuant to this subsection 24.4, and (ii) an account control agreement (as defined by the applicable sections of the Uniform Commercial Code, hereinafter referred to as "Control Agreement") among you, the institution at which the reserve account is held (such institution hereinafter referred to as "Depository") and Servicers (such investment account hereinafter referred to as the "Control Account"). The Control Agreement shall be in form and substance satisfactory to Servicers. The Depository shall be a National Association bank which is mutually acceptable to you and Servicers.

24.4.3. For sake of clarification and notwithstanding anything in the Agreement to the contrary, in the event Servicers deduct, holdback, suspend, off set or set off (collectively "Set Off Funds") any settlement monies or amounts otherwise due you pursuant to the terms of this Agreement, you acknowledge that such Set

Off Funds will be held in a commingled reserve account(s) of Servicers (as described in this subsection 24.4) unless such Set Off Funds are wired or deposited by Servicers into any Control Account, pursuant to a Control Agreement in which case Servicers will transfer Set Off Funds from their commingled reserve account(s) to the Control Account as soon as practicable using commercially reasonable efforts.

24.4.4. If in replacement of or in addition to the first priority lien and security interest in the Reserve Account, you grant to Servicers a first priority lien and security interest in and to one or more certificates of deposit, the certificates of deposit shall be uncertificated and shall be subject to an Acknowledgement of Pledge of Certificate of Deposit and Control Agreement (the "Certificate of Deposit Control Agreement") by, between and among Customers, Servicers and the financial institution that has established and issued the certificate of deposit. The form of the Certificate of Deposit Control Agreement and the financial institution that will establish and issue the certificate of deposit shall be satisfactory and acceptable to Servicers.

25. Financial and Other Information

25.1. Upon request, you will provide us quarterly financial statements within 45 days after the end of each fiscal quarter and annual audited financial statements within 90 days after the end of each fiscal year. Such financial statements shall be prepared in accordance with generally accepted accounting principles. You will also provide such other financial statements and other information concerning your business and your compliance with the terms and provisions of this Agreement as we may reasonably request. You authorize us to obtain from third parties financial and credit information relating to you in connection with our determination whether to accept this Agreement and our continuing evaluation of the financial and credit status of you. We may also access and use information which you have provided to Bank for any other reason. Upon request, you shall provide to us or our representatives reasonable access to your facilities and records for the purpose of performing any inspection and/or copying of your books and/or records deemed appropriate.

25.2. You will provide us with written notice of any judgment, writ, warrant of attachment, execution or levy against any substantial part (25% or more in value) of your total assets not later than three (3) days after you become aware of same.

26. Indemnification

26.1. You agree to indemnify and hold us harmless from and against all losses, liabilities, damages and expenses:

(a) resulting from any breach of any warranty, covenant or agreement or any misrepresentation by you under this Agreement;

(b) arising out of your or your employees' or your agents' negligence or willful misconduct, in connection with Card transactions or otherwise arising from your provision of goods and services to Cardholders;

(c) arising out of your use of our Service; or

(d) arising out of any third party indemnifications we are obligated to make as a result of your actions (including indemnification of any Association or Issuer).

26.2. We agree to indemnify and hold you harmless from and against all losses, liabilities, damages and expenses resulting from any breach of any warranty, covenant or agreement or any misrepresentation by us under this Agreement or arising out of our or our employees' gross negligence or willful misconduct in connection with this Agreement.

27. Special Provisions Regarding Non-Bank Cards

27.1. You authorize us to share information from your Application with American Express, JCB, or any other Non-Bank Card Association.

27.2. You understand that American Express transactions are processed, authorized and funded by American Express. American Express will provide you with its own agreement that governs those transactions. You understand and agree that we are not responsible and assume absolutely no liability with regard to any such transactions, including but not limited to the funding and settlement of American Express transactions, and that American Express will charge additional fees for the services they provide.

27.3. **If you accept JCB Cards**, you must retain original JCB Sales Drafts and JCB Credit Drafts for a period of at least 120 days from the date of the JCB Card transaction and you must retain microfilm or legible copies of JCB Sales Drafts and JCB Credit Drafts for a period of at least three (3) years following the date of the transaction.

27.4. **If you accept JCB Cards**, you agree to be bound by JCB rules. You also agree to be bound by all other provisions of this Agreement which are applicable to JCB.

28. Special Provisions For PIN Debit Card

The special provisions outlined in this Section 28 apply only to those PIN Debit Card transactions that are processed by a Cardholder entering a PIN. These provisions do not apply to Non-PIN Debit Card transactions which do not involve entry of a PIN.

28.1. **PIN Debit Card Acceptance.** Most, but not all, ATM Cards (Debit Cards) can be accepted at the point of sale at participating locations. Examine the back of the PIN Debit Card to determine if the Card participates in a network that you are authorized to accept. The Network mark(s) will usually be printed on the back of the Card. If the PIN Debit Card is valid and issued by a participating network, you must comply with the following general requirements for all participating networks, in addition to any specific requirements of the network.

- You must honor all valid PIN Debit Cards when presented that bear authorized network marks.
- You must treat transactions by Cardholders from all issuers in the same manner.
- You may not establish a minimum or maximum transaction amount for PIN Debit Card acceptance.
- You may not require additional information, beside the Personal Identification Number, for the completion of the transaction unless the circumstances appear suspicious. A signature is not required for PIN Debit Card transactions.
- You shall not disclose transaction related information to any party other than your agent, a network, or issuing institution and then only for the purpose of settlement or error resolution.
- You may not process a Credit Card transaction in order to provide a refund on a PIN Debit Card transaction.

28.2. **Transaction Processing.** The following general requirements apply to all PIN Debit Card transactions.

- All debit transactions must be authorized and processed electronically. There is no Voice Authorization or Imprinter procedure for PIN Debit Card transactions.
- You may not complete a PIN Debit Card transaction that has not been authorized. The Cardholder should be instructed to contact the Issuer to find out why a transaction has been declined. If you cannot obtain an authorization at the time of sale, you should request another form of payment from the customer or process the transaction as a Store and Forward or Resubmission, in which case you assume the risk that the transaction fails to authorize or otherwise declines. The Cardholder should be instructed to contact the Issuing Bank to find out why a transaction has been declined.
- You may not complete a PIN Debit Card transaction without entry of the Personal Identification Number (PIN) by the Cardholder.
- The PIN must be entered into the PIN pad only by the Cardholder. You cannot accept the PIN from the Cardholder verbally or in written form.

- The PIN Debit Network used to process your transaction will depend upon, among other things, the availability of the network at the time of the transaction, whether a particular PIN Debit Card is enabled for a particular network and the routing requirements established by the networks and the card issuers. We may, at our sole discretion, utilize any PIN Debit Network available to us for a given transaction.
- You must issue a receipt to the Cardholder upon successful completion of a transaction. The Cardholder account number will be masked so that only the last four digits will appear. The masked digits will appear as a non-numeric character such as an asterisk. This is referred to as PAN Truncation.
- You may not manually enter the account number. The account number must be read electronically from the Magnetic Stripe. If the Magnetic Stripe is unreadable, you must request another form of payment from the customer.
- Any applicable tax must be included in the total transaction amount for which authorization is requested. Tax may not be collected separately in cash.
- YOU ARE RESPONSIBLE TO SECURE YOUR TERMINALS AND TO INSTITUTE APPROPRIATE CONTROLS TO PREVENT EMPLOYEES OR OTHERS FROM SUBMITTING REFUNDS AND VOIDS THAT DO NOT REFLECT BONA FIDE RETURNS OR REIMBURSEMENTS OF PRIOR TRANSACTIONS.

28.3. Cash Back From Purchase. You have the option of offering cash back to your customers when they make a PIN Debit Card purchase. You may set a minimum and maximum amount of cash back that you will allow. If you are not now offering this service, your terminal may require additional programming to begin offering cash back.

28.4. Settlement. Within one Business Day of the original transaction, you must balance each location to the system for each Business Day that each location is open.

28.5. Adjustments. An adjustment is a transaction that is initiated to correct a PIN Debit Card transaction that has been processed in error. You will be responsible for all applicable adjustment fees that may be charged by a Debit Card network. Some networks may have established minimum amounts for adjustments.

There are several reasons for adjustments being initiated:

- The Cardholder was charged an incorrect amount, either too little or too much.
- The Cardholder was charged more than once for the same transaction.
- A processing error may have occurred that caused the Cardholder to be charged even though the transaction did not complete normally at the point of sale.
- All parties involved in processing adjustments are regulated by time frames that are specified in the operating rules of the applicable Debit Card network, The Electronic Funds Transfer Act, Regulation E, and other applicable law.

29. Special Provisions Regarding Electronic Benefit Transfer ("EBT")

If you elect to engage in EBT transactions, the terms and conditions of this Section 29 shall apply.

If you have agreed to issue Cash Benefits and will provide cash back or cash only transactions, you agree to maintain adequate cash on hand to issue confirmed Cash Benefits and will issue Cash Benefits to EBT customers in the same manner and to the same extent cash is provided to your other customers.

You may not require that any EBT customers purchase goods or services as a condition to receiving Cash Benefits, unless such condition applies to other customers as well. You may not designate special checkout lanes restricted to use by EBT customers unless you also designate special checkout lanes for Debit or Credit Cards and/or other payment methods.

29.1. Acceptance of EBT Benefits. You agree to issue benefits to EBT customers in accordance with the procedures specified in all documentation provided to you by us, as amended from time-to-time and pursuant to all applicable law, rules and regulations. You must provide each EBT customer a receipt for each EBT transaction.

You will issue EBT benefits to EBT customers, in accordance with our then current procedures, in the amount authorized through a point-of-sale terminal, with personal identification number pad and printer. In the event of an equipment failure, you must comply with applicable procedures regarding manual voucher authorization. You must also comply with the procedures set forth in the Quest Operating Rules, as amended from time-to-time, issued by the National Automated Clearing House Association and approved by the Financial Management Service of the U.S. Treasury Department, and any additional rules, regulations and procedures specified by any additional state or federal government or agency regarding lost EBT Cards, forgotten PINs, discrepancies in benefits authorized and similar matters by referring EBT customers to their applicable EBT customer service center.

You may not accept any EBT Card for any purpose other than the acceptance of benefits, including without limitation acceptance of any EBT Card as security for repayment of any customer obligation. In the event of any violation of this provision, you will be obligated to reimburse the applicable state or us for any benefits unlawfully received. Cash should never be dispensed for Food Stamp Benefits.

29.2. Manual EBT Vouchers. All manual voucher authorizations must be cleared on your POS terminal for payment of voucher to be made to you. Vouchers must be cleared within 10 business days of voice authorization. Vouchers cannot be cleared by any manner except by your POS terminal therefore you should never mail vouchers requesting payment. If a voucher expires before it has been cleared by your POS for payment, no further action can be taken to obtain payment for the voucher. You must not attempt to voice authorize a manual EBT transaction if the EBT customer is not present to sign the voucher. A copy of the voucher should be given to the EBT customer at the time of authorization and you should retain one copy for your records.

29.3. Acceptance of EBT Cash Benefits. If you have agreed to issue Cash Benefits and will provide cash back or cash only transactions, you agree to comply with all applicable laws, rules and regulations and maintain adequate cash on hand to issue confirmed Cash Benefits and will issue Cash Benefits to EBT customers in the same manner and to the same extent cash is provided to your other customers. You may not require that any EBT customers purchase goods or services as a condition to receiving Cash Benefits, unless such condition applies to other customers as well. You may not designate special checkout lanes restricted to use by EBT customers unless you also designate special checkout lanes for debit or Credit Cards and/or other payment methods.

29.4. Interoperability. If you issue EBT benefits (Food Stamps and/or Cash Benefits), you must issue EBT benefits from EBT customers from all states.

29.5. Required Licenses. If you issue benefits under this Agreement, you represent and warrant to us that you are properly authorized to enter such transactions and are not currently disqualified or withdrawn from redeeming food stamp coupons or otherwise disqualified or withdrawn by any applicable agency. You agree to secure and maintain at your own expense all necessary licenses, permits, franchises, or other authorities required to lawfully effect the issuance and distribution of benefits under this Agreement, including without limitation, any applicable franchise tax certificate and non-governmental contractor's certificate, and covenant that you will not issue benefits at any time during which you are not in compliance with the requirements of any applicable law.

29.6. Term and Termination. If you are disqualified or withdrawn from the food stamp program, your authority to issue benefits will be terminated contemporaneously therewith. Such disqualification

or withdrawal will be deemed a breach of this Agreement with respect to your authority to issue Cash Benefits and, in the event of such disqualification; we shall have the right to immediately terminate the provision of service under this Section 29.6 or the Agreement in its entirety. With respect to the issuance of Cash Benefits only, your authority to issue Cash Benefits may be suspended or terminated immediately at the sole discretion of us, the state or its EBT service provider, effective upon delivery of a notice of suspension or termination specifying the reasons for such suspension or termination if there shall be (i) any suspension, injunction, cessation, or termination of the EBT service provider's authority to provide EBT services to the state; (ii) failure by you, upon not less than thirty (30) days prior written notice, to cure any breach by you of the provisions of these terms and conditions, including without limitation, your failure to support the issuance of benefits during your normal business hours consistent with your normal business practices, your failure to comply with issuance procedures, impermissible acceptance of an EBT Card, or your disqualification or withdrawal from the food stamp program; or (iii) based on a state's or its EBT service provider's investigation of the relevant facts, evidence that you or any of your agents or employees are committing, participating in, or have knowledge of fraud or theft in connection with the dispensing of benefits. In the event you fail to cure any breach as set forth above, you may appeal such suspension of termination to the applicable state for determination in its sole discretion.

In the event that your authority to accept benefits is suspended or terminated by a state or its EBT service provider, and you successfully appeal such suspension or termination to the state or its EBT service provider, we shall be under no obligation to reinstate the services previously provided.

The provision of services under this Section 29.6 shall terminate automatically in the event that our Agreement or our service provider's agreement with any applicable state's EBT service provider terminates for any reason.

29.7. Confidentiality of EBT System Information. All information related to EBT recipients and/or the issuance of benefits shall be considered confidential information.

Individually identifiable information relating to a benefit recipient or applicant for benefits will be held confidential and will not be disclosed by you or your directors, officers, employees or agents, without prior written approval of the applicable state.

The use of information obtained by you in the performance of your duties under this Section 29.7 will be limited to purposes directly connected with such duties.

29.8. EBT Service Marks. You will adequately display any applicable state's service marks or other licensed marks, including the Quest mark, and other materials supplied by us, (collectively the "Protected Marks") in accordance with the standards set by the applicable state. You will use the Protected Marks only to indicate that benefits are issued at your location(s) and will not indicate that we, any state or its EBT service provider or we endorses your goods or services. Your right to use such Protected Marks pursuant to this Agreement will continue only so long as this Agreement remains in effect or until you are notified by us, any state or its EBT service provider to cease their use or display.

29.9. Miscellaneous.

29.9.1. Amendments. If any of these terms and conditions are found to conflict with federal or state law, regulation or policy of the rules, these terms and conditions are subject to reasonable amendment by a state or its EBT service provider to address such conflict upon thirty (30) days written notice to you provided that you may, upon written notice, terminate your obligation under this Section 29 upon receipt of notice of such amendment.

29.9.2. State Action. Nothing contained herein shall preclude a state from commencing appropriate administrative or legal action against you or for making any referral for such action to any appropriate federal, state, or local agency.

30. Special Provisions Regarding Wireless Service

If you elect to purchase any Wireless Equipment from us as indicated on the Application, then the following terms and conditions of this Section 30, referred to as the Wireless Services Terms, shall apply. THE WIRELESS SERVICES ARE NOT BEING SOLD TO YOU FOR HOME OR PERSONAL USE. Sale of Wireless Services is made by Processor and not the Bank.

Through our affiliates, we have acquired the right to resell and sublicense certain wireless POS Terminals and accessories (the "Wireless Equipment") and wireless data communication services using radio base stations and switching offered by the various cellular telephone and data networks throughout the country (the "Wireless Networks") in order to allow you to capture and transmit to us certain wireless Credit and Debit Card Authorization transactions or to transmit other communications to our system.

You acknowledge that one or more independent third party vendors ("Wireless Vendor(s)") has developed and provides the Wireless Equipment and Wireless Services to us through our affiliates under separate agreement(s).

In the event you elect to purchase voice and/or data services directly from a third party provider for use with the Wireless Equipment as permitted by Processor, you acknowledge and agree that the Agreement does not address or govern those voice and/or data services or your relationship with that third party provider, and Servicers are in no way responsible for providing, maintaining, servicing or supporting such third party voice and/or data services.

30.1. Purchase of Wireless Services. In connection with your purchase of Wireless Equipment, you will purchase the Wireless Networks' Service and obtain sublicenses to use any Wireless Software (as defined in Section 30.2) associated therewith) collectively "Wireless Services"). The prices that you will pay for the Wireless Services are set forth on the Service Fee Schedule.

- Licenses. You agree to obtain any and all licenses, permits or other authorizations required by the Federal Communications Commission ("FCC") or any other regulatory authority, if any, for the lawful operation of terminal Wireless Equipment used by you in connection with your receipt of Wireless Services. You will promptly provide us with all such information as we may reasonably request with respect to matters relating to the rules and regulations of the FCC.
- Improvements/General Administration. We and the Wireless Vendor(s) reserve the right to make changes, from time to time, in the configuration of the Wireless Services, Wireless Network(s), Wireless Equipment, Wireless Software, rules of operation, accessibility periods, identification procedures, type and location of equipment, allocation and quantity of resources utilized, programming languages, administrative and operational algorithms and designation of the control center serving you at the particular address. In addition, we reserve the right to schedule, from time to time, interruptions of service for maintenance activities.

30.2. Software Licenses. We hereby grant to you a non-exclusive, nontransferable limited sublicense to use any Wireless Software solely in connection with your purchase and use of the Wireless Services. As used in this Section 30, Wireless "Software" means all software used in, for or in connection with the Wireless Equipment, the Wireless Services or the access thereto in whatever form, including without limitation source code, object code and microcode, including any computer programs and any documentation relating to or describing the software. You acknowledge that the only right you obtain to the Wireless Software is the right to use the Wireless Software in accordance with the terms in this Section.

30.3. Limitation on Liability. We shall have no liability for any warranties by any party with respect to uninterrupted Wireless Services, as set forth in Section 30.10, or for any third party's unauthorized access to Client's data transmitted through either the Wireless Equipment or Wireless Services, or Wireless Networks, regardless of the form of action (whether in contract, tort

(including negligence), strict liability or otherwise). The foregoing notwithstanding, for any other liability arising out of or in any way connected with these Wireless Services Terms, including liability resulting solely from loss or damage caused by partial or total failure, delay or nonperformance of the Wireless Services or relating to or arising from your use of or inability to use the Wireless Services, Processor's, Bank's, and Vendor(s)' liability shall be limited to your direct damages, if any, and, in any event, shall not exceed the amount paid by you for the particular Wireless Services during any period of failure, delay, or nonperformance of the Wireless Services. In no event shall Servicers, Wireless Vendor(s) or our respective affiliates be liable for any indirect incidental, special or consequential damages. The remedies available to you under these Wireless Services terms will be your sole and exclusive remedies.

30.4. Indemnification. In addition to any other indemnifications as set forth in this Agreement, you will indemnify and hold Servicers, Vendor(s) and us and our respective officers, directors, employees, and affiliates harmless from against any and all losses, claims, liabilities, damages, costs or expenses arising from or related to:

(a) the purchase, delivery, acceptance, rejection, ownership, possession, use condition, liens against, or return of the Wireless Services;

(b) your negligent acts or omissions; or

(c) any breach by you of any of your obligations under this Section 30; or

(d) any third party's unauthorized access to Client's data and/or unauthorized financial activity occurring on your Merchant Account Number hereunder, except to the extent any losses, liabilities, damages or expenses result from our gross negligence or willful misconduct.

30.5. Confidentiality. All information or materials which could reasonably be considered confidential or competitively sensitive that you access from or relate to either vendors or us related to the subject matter of this Wireless Services Agreement will be considered confidential information. You will safeguard our confidential information with at least the same degree of care and security that you use for your confidential information, but not less than reasonable care.

30.6. Termination. In addition to any other provision in this Agreement, the Wireless Services being provided under this Section 30:

(a) Immediately upon termination of the agreement between us (or our affiliates) and Vendor(s), provided that we will notify you promptly upon our notice or knowledge of termination of such agreement, provided further that if Vendor(s) loses its authority to operate less than all of the Wireless Services or if the suspension of any authority or non-renewal of any license relates to less than all of the Wireless Services, then these Wireless Services Terms will terminate only as to the portion of the Wireless Services affected by such loss of authority, suspension or non-renewal; or

(b) Immediately if either we or our affiliates or Vendor(s) are prevented from providing the Wireless Services by any law, regulation, requirement, ruling or notice issued in any form whatsoever by judicial or governmental authority (including without limitation the FCC).

30.7. Effect of Termination. Upon termination of these Wireless Services Terms for any reason, you will immediately pay to us all fees due and owing to us hereunder. If these Wireless Services Terms terminate due to a termination of the agreement between us or our affiliates and Vendor(s), then we may, in our sole discretion, continue to provide the Wireless Services through Vendor(s) to you for a period of time to be determined as long as you continue to make timely payment of fees due under these Wireless Services Terms.

30.8. Third Party Beneficiaries. Our affiliates and Vendor(s) are third party beneficiaries of these Wireless Services Terms and may enforce its provisions as if a party hereto.

30.9. Other Applicable Provisions. You also agree to be bound by all other terms and conditions of this Agreement.

30.10. Disclaimer. Wireless Services use radio transmissions, so Wireless Services can't be provided unless your Wireless Equipment is in the range of one of the available Wireless Networks' transmission sites and there is sufficient network capacity available at that moment. There are places, particularly in remote areas, with no service at all. Weather, topography, buildings, your Wireless Equipment, and other conditions that we do not control may also cause failed transmissions or other problems. PROCESSOR, BANK, AND VENDOR(S) DISCLAIM ALL REPRESENTATIONS AND WARRANTIES RELATING TO WIRELESS SERVICES. WE CANNOT PROMISE UNINTERRUPTED OR ERROR FREE WIRELESS SERVICE AND DO NOT AUTHORIZE ANYONE TO MAKE ANY WARRANTIES ON OUR BEHALF.

31. Terms of Equipment Purchase or Rental

This Section 31 governs any equipment that is rented to you on a month to month basis or that is sold to you by us. If your Application or other documents reflect that your equipment is leased, then the provisions of your lease are governed by Section 32 in the Equipment Lease Agreement. Equipment rented to or purchased by you under this Section 31 is referred to in this section as the "Equipment." THE EQUIPMENT IS NOT BEING SOLD OR RENTED TO YOU FOR HOME OR PERSONAL USE. Sales and rentals of equipment are made by Processor, and for purposes of this section the words "we," "our," and "us" refer only to Processor and not to Bank. The agreement between Processor and you as set forth in this section is referred to as the "Equipment Agreement," and the full Agreement of which the Equipment Agreement is a part is referred to as the "Merchant Agreement."

YOU ACKNOWLEDGE THAT THE EQUIPMENT AND/OR SOFTWARE YOU PURCHASED OR RENT FROM US MAY NOT BE COMPATIBLE WITH ANOTHER PROCESSOR'S SYSTEMS. WE DO NOT HAVE ANY OBLIGATION TO MAKE SUCH SOFTWARE AND/OR EQUIPMENT COMPATIBLE WITH ANY OTHER PROCESSING SYSTEMS. IN THE EVENT THAT YOU ELECT TO USE ANOTHER PROCESSING SERVICE PROVIDER UPON THE TERMINATION OF THIS AGREEMENT, YOU ACKNOWLEDGE THAT YOU MAY NOT BE ABLE TO USE THE EQUIPMENT AND/OR SOFTWARE RENTED OR PURCHASED UNDER THIS AGREEMENT.

31.1. Purchased Equipment; Supplies. We will sell to you, and you will buy from us the Equipment identified in the Merchant Agreement as being purchased by you (the "Purchased Equipment"), free and clear of all liens and encumbrances (subject to Section 31.7), except that any "Software" (as defined in Section 31.8) will not be sold to you outright but instead will be provided to you pursuant to, and subject to the conditions of Section 31.8 of this Agreement. You shall pay the purchase price specified for the Purchased Equipment and the related software license(s), including all applicable tax, prior to the effective date of the Equipment Agreement or at our option, such amounts will be collected by us by debits or deductions pursuant to Section 31.5. We will provide you supplies as requested by you from time to time. You shall pay the purchase price for such supplies, plus shipping and handling charges, including all applicable tax, prior to delivery of the supplies or upon invoice, as specified by us, or at our option, such amounts will be collected by us by debits or deductions pursuant to Section 31.5. (Maintenance and repair of merchant-owned equipment is your responsibility. Should your terminal become inoperable, we can provide you with equipment at a monthly rental fee. There will also be a nominal shipping and handling fee. For such rental equipment contact the POS Help Desk.

31.2. Rental Equipment. We agree to rent to you and you agree to accept and rent from us the Equipment identified in the Merchant Agreement as being rented to you (the "Rental Equipment"), according to the terms and conditions of this Section 31. In addition, any rental equipment ordered by you during the term of the Merchant Agreement shall also be governed by the terms of this Equipment Agreement.

31.3. Effective Date and Term of Equipment Agreement. This Equipment Agreement shall become effective on the first date

you receive any piece of Equipment covered by this Equipment Agreement. This Equipment Agreement will remain in effect until all of your obligations and all of our obligations under this Equipment Agreement have been satisfied. We will deliver the Equipment to the site designated by you. You shall be deemed to have accepted each piece of Equipment at the earlier of: (a) your actual acceptance after installation, (b) delivery to you if your site is not prepared and ready for installation, or (c) for Equipment that we have not agreed to install for you, seven (7) days after shipment of each such piece of Equipment. The rental period with respect to each piece of Rental Equipment shall commence on the date such Equipment is deemed accepted and shall terminate at the scheduled termination date (but not upon any early termination) of your Merchant Agreement and/or any other agreement then in effect with us for Card services. The provisions of this Equipment Agreement shall survive the termination or expiration of the Merchant Agreement and continue until all equipment rented from us is returned or paid for.

31.4. Site Preparation. Installation & Maintenance. You will prepare the installation site(s) for the Equipment, including but not limited to the power supply circuits and phone lines, in conformance with the manufacturer's and our specifications and will make the site(s) available to us by the confirmed shipping date.

- Upon request, you must allow us (or our agents) reasonable access to the premises where authorization terminals or other communications equipment (e.g., printers) are or will be located.
- Any alterations required for installation of authorization terminal(s) or other communications equipment will be done at your expense.
- Only we or our agents can alter or modify authorization terminal(s) or other communications Equipment owned by us.
- If a terminal or printer appears to be defective, you must immediately call the POS Help Desk.
- You are responsible for safeguarding authorization terminals or other Equipment from loss, damage, unauthorized use, misuse or theft. We should be notified immediately regarding any damage to or loss of communications equipment.
- If necessary, we will assist you in obtaining replacement Equipment. If you fail to return any defective Equipment, you may be responsible for its replacement value and for any legal and/or collection costs incurred by the Equipment owner in connection with recovering Equipment.
- You are responsible for keeping all communication Equipment free of any claims, liens and legal processes initiated by creditors.
- Equipment may not be subleased at any time. The cost of comparable new Equipment, as well as any associated legal and/or collection costs incurred by us or the owner of the Equipment, will be assessed to you for each piece of equipment not returned upon termination of the Agreement by either party, or upon request for the return of the Equipment for any reason.
- You may not relocate, remove, disconnect, modify or in any way alter any Equipment used in connection with the services we are providing to you without first obtaining our permission.
- You must provide us with thirty (30) days prior written notice to request the relocation of any Equipment.
- Should you require additional Equipment, you must contact Relationship Management or Customer Service (there may be additional costs or fees charged to you in connection with any new Equipment ordered, including download fees).

31.5. Payment of Amounts Due.

(a) The monthly rental charge specified in the Merchant Agreement shall be due and payable on the first day of each month of the rental period for each piece of Rental Equipment, except that the first payment of the monthly rental charge for each piece of rental Equipment shall be due and payable upon acceptance of such Equipment by you at the location designated in the Merchant Agreement or, upon delivery if the site is not prepared for installation (as provided in Section 31.3). The monthly rental charge for fractions of a calendar month shall be prorated based on a thirty (30) day month.

(b) You hereby authorize us to collect all amounts due from you under this Equipment Agreement by initiating debit entries for such amounts to your account designated pursuant to the Merchant Agreement to be debited and credited for amounts due from and to you under the Merchant Agreement (the "Settlement Account") or by deducting such amounts from amounts due to you from TeleCheck or Servicers. All authorizations and other provisions in your Merchant Agreement regarding the debiting and crediting of your Settlement Account apply with equal force with respect to amounts due to or from you under this Equipment Agreement. This authority will remain in full force and effect until we have given written notice to your bank where your Settlement Account is maintained that all monies due from you under this Equipment Agreement have been paid in full.

(c) In addition to the purchase price or monthly rental charge due hereunder, you shall pay, or reimburse us for, amounts equal to any taxes, levies, duties or assessments, however designated, levied or based on such charges, or on this Equipment Agreement or the Equipment and related supplies or any services, use or activities hereunder, including without limitation, state and local sales, use, property, privilege and excise taxes, exclusive, however, of taxes based on our net income.

(d) As indicated in the Merchant Agreement, separate charges will apply for supplies; they are not included in monthly rental charges.

31.6. Use and Return of Equipment; Insurance.

(a) You shall cause the Equipment to be operated by competent and qualified personnel in accordance with any operating instructions furnished by us or the manufacturer and in connection with the services provided under your Merchant Agreement. You shall not use the Equipment, or permit the Equipment to be used, in any manner or for any purpose for which the Equipment is not designed or reasonably suited.

(b) You shall not permit any physical alteration or modification of the Equipment without our prior written consent.

(c) You shall not change the installation site of the Equipment without our prior written consent, which consent we will not unreasonably withhold.

(d) You shall not assign your rights or obligations under this Equipment Agreement, or pledge, lend, create a security interest in, directly or indirectly create, incur, assume or allow to exist any other consensually or judicially imposed liens or encumbrances on, or part with possession of, or sublease the Equipment to any other person, firm or organization without our prior written consent. Any such assignment, delegation, sublease, pledge, security interest or lien in the absence of such consent shall be void.

(e) You shall comply with all governmental laws, rules and regulations relating to the use of the Equipment. You are also responsible for obtaining all legally required permits for the Equipment.

(f) We or our representatives may, at any time, enter your premises for purposes of inspecting, examining or repairing the Equipment.

(g) Promptly upon termination of all applicable rental periods or promptly following any action by us pursuant to Section 31.11(b), you shall deliver possession of the Rental Equipment (including all attachments and parts) to us at your cost in the same operating order, repair, condition and appearance that the Rental Equipment had at the time of its delivery to you, reasonable wear and tear excepted.

(h) For each item of rental Equipment that you fail to return to us at your cost in the same operating order, repair, condition and appearance that it had at the time of delivery to you, reasonable wear and tear excepted, by the 10th Business Day after (i) termination of the applicable rental period, or (ii) any action by us pursuant to Section 31.11(b), you agree to pay us the greater of $250 or the fair market value of such item of Equipment if it were in the condition described above, as determined by us. We may collect such amounts in the manner provided in Section 31.5 and to the extent we are unable to do so, you agree to pay us the amounts owed promptly.

(i) Except for Purchased Equipment that has been paid for in full, the Equipment shall remain our personal property and shall not under any circumstances be considered to be a fixture affixed to your real estate. You shall permit us to affix suitable labels or stencils to the Equipment indicating our ownership.

(j) You shall keep the Equipment adequately insured against loss by fire, theft and all other hazards (comprehensive coverage). The loss, destruction, theft of or damage to the Equipment shall not relieve you from your obligation to pay the full purchase price or rent payable hereunder.

(k) Except for Purchased Equipment that has been paid in full, the Equipment shall be kept at the address indicated in the Merchant Agreement and shall not be removed from there without our prior written consent (except where normal use of the Equipment requires temporary removal).

(l) In order to return equipment, you should:

- Call Customer Service for the address of the location to send the equipment.
- The following information must be included within the shipping box:
  1. Company name, complete address and phone number.
  2. Name of person to contact if there are any questions.
  3. Your Merchant Account Number.
  4. Serial number of the terminal (found on the underside of the terminal).
- Please maintain proof of delivery documents for your records, and the serial number from the bottom of the terminal.
- Rental fees may be continued until equipment is returned.

31.7. Security Interest; Financing Statements. You hereby grant to us a security interest in (a) all Purchased Equipment and the related Software to secure payment of the purchase price, and (b) all Rental Equipment and the related Software to secure payment of the monthly payments therefore and authorize us to file financing statements with respect to the Equipment and the Software in accordance with the Uniform Commercial Code, signed only by us or signed by us as your attorney-in-fact.

31.8. Software License. Anything in this Equipment Agreement to the contrary notwithstanding, we retain all ownership and copyright interest in and to all software, computer programs, related documentation, technology, know-how and processes embodied in or provided in connection with the Equipment (collectively "Software"), and you shall have only a nonexclusive license to use the Software in your operation of the Equipment. You shall not reverse engineer, disassemble or decompile the Software. You shall not give any third party access to the Software without our prior written consent. Your obligations under this Section 31.8 shall survive the termination of this Equipment Agreement.

31.9. Limitation on Liability. Our liability arising out of or in any way connected with the Equipment shall not exceed the purchase price or prior twelve month's rent, as applicable, paid to us for the particular Equipment involved. In no event shall we be liable for any indirect, incidental, special or consequential damages. The remedies available to you under this Equipment Agreement will be your sole and exclusive remedies.

31.10. Indemnification. You shall indemnify and hold us harmless from and against any and all losses, liabilities, damages and expenses, resulting from (a) the purchase, delivery, installation, acceptance, rejection, ownership, leasing, possession, use, operation, condition, liens against, or return of the Equipment, or (b) any breach by you of any of your obligations hereunder, except to the extent any losses, liabilities, damages or expenses result from our gross negligence or willful misconduct.

31.11. Default; Remedies.

(a) If any debit of your Settlement Account initiated by us for rent and/or other charges due hereunder is rejected when due, or if you otherwise fail to pay us any amounts due hereunder when due, or if you default in any material respect in the performance or observance of any obligation or provision in this Equipment Agreement, or if any other default occurs under the Merchant Agreement, any such event shall be a default hereunder.

(b) Upon the occurrence of any default, we may at our option, effective immediately without notice, either: (i) terminate the period of rental and our future obligations under this Equipment Agreement, repossess the Equipment and proceed in any lawful manner against you for collection of all charges that have accrued and are due and payable, in which case this Equipment Agreement shall terminate as soon as your obligations to us are satisfied, or (ii) accelerate and declare immediately due and payable all monthly rental charges for the remainder of the applicable rental period and proceed in any lawful manner to obtain satisfaction of the same.

31.12. Assignment. Subject to the following provisions, this Equipment Agreement shall be binding upon successors and assigns and shall inure to the benefit of the parties and their respective permitted successors and assigns. You may not assign or transfer this Equipment Agreement, by operation of law or otherwise, without our prior written consent. For purposes of this Equipment Agreement, any transfer of voting control of you or your parent shall be considered an assignment or transfer hereof. We may assign or transfer this Equipment Agreement and our rights and obligations hereunder, in whole or in part, to any third party without the necessity of obtaining your consent. No assignee for the benefit of creditors, custodian, receiver, trustee in bankruptcy, debtor in possession, sheriff or any other officer of a court, or other person charged with taking custody of a party's assets or business, shall have any right to continue or to assume or to assign this Equipment Agreement.

32. Equipment Lease Agreement

This Section 32 governs any equipment that is leased to you by us. If your Application or other documents reflect that your equipment is purchased or rented, then the provisions of purchase or rental are governed by the Equipment Agreement set forth in Section 31.

The agreement between us and you as set forth in this section is referred to as the "Lease Agreement" and for purposes of this Section 32, the full Agreement of which this Lease Agreement is a part is referred to as the "Merchant Agreement". For purposes of this section, the words "we," "our" and "us" refer to Wells Fargo Merchant Services, L.L.C. and its successors and assigns and the words "you" and "your" refer to the Lessee identified in the signature panel of this Merchant Agreement and its permitted successors and assigns.

Lessee hereby authorizes us or our designees, successors or assigns (hereinafter "Lessor") to withdraw any amounts including any and all sales taxes now due or hereinafter imposed, owed by Lessee in conjunction with this Lease Agreement by initiating debit entries to the bank account designated by Lessee on the MPA (the Settlement Account). In the event of default of Lessee's obligations hereunder, Lessee authorizes debit of its account for the full amount due under this Lease Agreement. Further, Lessee authorizes its financial institution to accept and to charge any debit entries initiated by Lessor to Lessee's account. In the event that Lessor withdraws funds erroneously from Lessee's account, Lessee

authorizes Lessor to credit Lessee's account for an amount not to exceed the original amount of the debit. This authorization is to remain in full force and effect until Lessor has received written notice from Lessee of its termination in such time and in such manner as to afford Lessor a reasonable opportunity to act. Lessee also authorizes Lessor from time to time to obtain investigative credit reports from a credit bureau or a credit agency concerning Lessee.

.1. Leased Equipment. We agree to lease to you and you agree to lease from us the equipment identified on the Merchant Agreement or such other comparable equipment that we provide to you (the "Equipment"), according to the terms and conditions of this Lease Agreement. We are providing the Leased Equipment to you "as is" and make no representations or warranties of any kind as to the suitability of the Leased Equipment for any particular purpose. The term of Equipment includes the Equipment initially deployed under this Lease Agreement and/or any additions, replacements, substitutions, or additions thereto.

32.2. Effective Date: Term and Interim Rent.

(a) This Lease Agreement becomes effective on the earlier of the date we deliver any piece of Equipment to you (the "Delivery Date"), or acceptance by us. This Lease Agreement remains in effect until all of your obligations and all of our obligations under it have been satisfied. We will deliver the Leased Equipment to the site designated by you.

(b) The term of this Lease Agreement begins on a date designated by us after receipt of all required documentation and acceptance by us (the "Commencement Date"), and continues for the number of months indicated on the MPA. THIS IS A NON-CANCELABLE LEASE FOR THE TERM INDICATED ON THE MPA.

(c) You agree to pay an Interim Lease Payment in the amount of one-thirtieth (1/30th) of the monthly lease charge for each day from and including the Delivery Date until the date preceding the Commencement Date.

(d) YOU ACKNOWLEDGE THAT THE LEASED EQUIPMENT AND/OR SOFTWARE YOU LEASE UNDER THIS LEASE AGREEMENT MAY NOT BE COMPATIBLE WITH ANOTHER PROCESSOR'S SYSTEMS AND THAT WE DO NOT HAVE ANY OBLIGATION TO MAKE SUCH SOFTWARE AND/OR LEASED EQUIPMENT COMPATIBLE IN THE EVENT THAT YOU ELECT TO USE ANOTHER SERVICE PROVIDER. UPON TERMINATION OF THE MERCHANT PROCESSING AGREEMENT YOU ACKNOWLEDGE THAT YOU MAY NOT BE ABLE TO USE THE LEASED EQUIPMENT AND/OR SOFTWARE LEASED UNDER THIS LEASE AGREEMENT WITH SAID SERVICE PROVIDER.

32.3. Site Preparation. You will prepare the installation site(s) for the Leased Equipment, including but not limited to the power supply circuits and phone lines, in conformance with the manufacturer's and our specifications and will make the site(s) available to us by the confirmed shipping date.

32.4. Payment of Amounts Due.

(a) The monthly lease charge is due and payable monthly, in advance you agree to pay all assessed costs for delivery and installation of Leased Equipment.

(b) In addition to the monthly lease charge, you shall pay, or reimburse us for, amounts equal to any taxes, assessments on or arising out of this Lease Agreement or the Leased Equipment, and related supplies or any services, use or activities hereunder, including without limitation, state and local sales, use, property, privilege and excise tax, tax preparation, compliance expenses, but exclusive of taxes based on our net income. Property taxes are calculated and charged based on the average of the estimated annual property taxes over the course of the term of the lease. You will also be charged an annual Tax Handling Fee, as set forth on the MPA and/or applicable Fee Schedule.

(c) Your lease payments will be due despite dissatisfaction with the Leased Equipment for any reason.

(d) Whenever any payment is not made by you in full when due, you shall pay us as a late charge, an amount equal to ten percent of the amount due but no less than $10.00 for each month during which it remains unpaid (prorated for any partial month), but in no event more than the maximum amount permitted by law. You shall also pay to us an administrative charge of $25.00 for any debit we attempt to make against your Settlement Account that is rejected.

(e) In the event your account is placed into collections for past due lease amounts, you agree that we can recover a collection expense charge of $25.00 for each aggregate payment requiring a collection effort.

32.5. Use and Return of Leased Equipment; Insurance.

(a) You shall cause the Leased Equipment to be operated by competent and qualified personnel in accordance with any operating instructions furnished by us or the manufacturer. You shall maintain the Leased Equipment in good operating condition and protect it from deterioration, normal wear and tear excepted.

(b) You shall not permit any physical alteration or modification of the Leased Equipment, or change the installation site of the Leased Equipment, without our prior written consent.

(c) You shall not create, incur, assume or allow to exist any consensually or judicially imposed liens or encumbrances on, or part with possession of, or sublease the Leased Equipment without our prior written consent.

(d) You shall comply with all governmental laws, rules and regulations relating to the use of the Leased Equipment. You are also responsible for obtaining all permits required to operate the Leased Equipment at your facility.

(e) We or our representatives may, at any time, enter your premises for purposes of inspecting, examining or repairing the Leased Equipment.

(f) The Leased Equipment shall remain our personal property and shall not under any circumstances be considered to be a fixture affixed to your real estate. You shall permit us to affix suitable labels or stencils to the Leased Equipment evidencing our ownership.

(g) You shall keep the Leased Equipment adequately insured against loss by fire, theft, and all other hazards.

(h) You shall provide proof of insurance. The loss, destruction, theft or damage of or to the Leased Equipment shall not relieve you from your obligation to pay the full purchase price or total monthly lease charges hereunder.

32.6. Title to Leased Equipment. We at all times retain title to the Leased Equipment unless we agree otherwise in writing. You agree to execute and deliver to us any statement or instrument that we may request to confirm or evidence our ownership of the Leased Equipment, and you irrevocably appoint us as your attorney-in-fact to execute and file the same in your name and on your behalf. If a court determines that the leasing transaction contemplated by this Lease Agreement does not constitute a financing and is not a lease of the Leased Equipment, then we shall be deemed to have a first lien security interest on the Leased Equipment as of the date of this Lease Agreement, and you will execute such documentation as we may request to evidence such security interest. If this Lease Agreement is deemed a loan despite the intention of the parties, then in no contingency or event whatsoever shall interest deemed charged hereunder, however such interest may be characterized or computed, exceed the highest rate permissible under any law which a court of competent jurisdiction shall, in a final determination, deem applicable hereto.

32.7. Return or Purchase of Leased Equipment at End of Lease Period. Upon the completion of your lease term or any extension, you will have the option to (a) return the Leased

Equipment to us, or (b) purchase the Leased Equipment from us for the lesser of fair market value at the time (as determined in good faith by us) or an amount equal to ten-percent (10%) of the total lease payments under this Lease Agreement with respect to each item of Leased Equipment. If you wish to purchase the Equipment from us, you must give notice to us in writing prior to the end of the lease term in order to ascertain the purchase price. In the absence of an affirmative election by you to return or purchase the Leased Equipment, this lease will continue on a month-to-month basis at the existing monthly lease payment. If we terminate this Lease Agreement pursuant to Section 32.12 (b) due to a default by you, then you shall immediately return the Leased Equipment to us no later than the tenth Business Day after termination, or remit to us the fair market value of the Leased Equipment as determined in good faith by us. We may collect any amounts due to us under this Section 32.7 by debiting your Settlement Account, and to the extent we are unable to obtain full satisfaction in this manner, you agree to pay the amounts owed to us promptly upon our request.

32.8. Software License. We retain all ownership and copyright interest in and to all computer software, related documentation, technology, know-how and processes embodied in or provided in connection with the Leased Equipment other than those owned or licensed by the manufacturer of the Leased Equipment (collectively "Software"), and you shall have only a nonexclusive license to use the Software in your operation of the Leased Equipment.

32.9. Limitation on Liability. We are not liable for any loss, damage or expense of any kind or nature caused directly or indirectly by the Leased Equipment, including any damage or injury to persons or property caused by the Leased Equipment. We are not liable for the use or maintenance of the Leased Equipment, its failure to operate, any repairs or service to it, or by any interruption of service or loss of use of the Leased Equipment or resulting loss of business. Our liability arising out of or in any way connected with this Lease Agreement shall not exceed the aggregate lease amount paid to us for the particular Leased Equipment involved. In no event shall we be liable for any indirect, incidental, special or consequential damages. The remedies available to you under this Lease Agreement are your sole and exclusive remedies.

32.10. Warranties.

(a) All warranties, express or implied, made to you or any other person are hereby disclaimed, including without limitation, any warranties regarding quality, suitability, merchantability, fitness for a particular purpose, quiet enjoyment, or infringement.

(b) You warrant that you will only use the Leased Equipment for commercial purposes and will not use the Leased Equipment for any household or personal purposes.

32.11. Indemnification. You shall indemnify and hold us harmless from and against any and all losses, liabilities, damages and expenses resulting from (a) the operation, use, condition, liens against, or return of the Leased Equipment or (b) any breach by you of any of your obligations hereunder, except to the extent any losses, liabilities, damages or expenses result from our gross negligence or willful misconduct.

32.12. Default; Remedies.

(a) If any debit of your Settlement Account initiated by us is rejected when due, or if you otherwise fail to pay us any amounts due hereunder when due, or if you default in any material respect in the performance or observance of any obligation or provision of this Lease Agreement or any agreement with any of our affiliates or joint ventures, any such event shall be a default hereunder. Without limiting the foregoing, any default by you under a processing agreement with us or with an affiliate or joint venture to which we are a party will be treated as a default under this Lease Agreement. Such a default would include a default resulting from early termination of the Merchant Agreement.

(b) Upon the occurrence of any default, we may at our option, effective immediately without notice, either (i) terminate this lease and our future obligations under this Lease Agreement, repossess the Leased Equipment and proceed in any lawful manner against you for collection of all charges that have accrued and are due and payable, or (ii) accelerate and declare immediately due and payable all monthly lease charges for the remainder of the applicable lease period together with the fair market value of the Leased Equipment (as determined by us), not as a penalty but as liquidated damages for our loss of the bargain. Upon any such termination for default, we may proceed in any lawful manner to obtain satisfaction of the amounts owed to us and, if applicable, our recovery of the Leased Equipment, including entering onto your premises to recover the Leased Equipment. In any case, you shall also be responsible for our costs of collection, court costs as well as applicable shipping, repair and refurbishing costs of recovered Leased Equipment. You agree that we shall be entitled to recover any amounts due to us under this Lease Agreement by charging your Settlement Account or any other funds of yours that come into our possession or control, or within the possession or control of our affiliates or joint ventures, or by setting off amounts that you owe to us against any amounts we may owe to you, in any case without notifying you prior to doing so. Without limiting the foregoing, you agree that we are entitled to recover amounts owed to us under this Lease Agreement by obtaining directly from an affiliate or joint venture to which we are a party and with which you have entered into an Merchant Agreement any funds held or available as security for payment under the terms of the Merchant Agreement, including funds available under the "Reserve Account; Security Interest" section of the Merchant Agreement, if applicable.

32.13. Assignment. You may not assign or transfer this Lease Agreement, by operation of law or otherwise, without our prior written consent. For purposes of this Lease Agreement, any transfer of voting control of you or your parent shall be considered an assignment or transfer of this Lease Agreement. We may assign or transfer this Lease Agreement and our rights and obligations hereunder, in whole or in part, to any third party without the necessity of obtaining your consent. We intend to assign this Lease Agreement shortly after its execution to First Data Merchant Services Corporation.

32.14. Lease Guaranty. No guarantor shall have any right of subrogation to any of our rights in the Leased Equipment or this Lease Agreement or against you, and any such right of subrogation is hereby waived and released. All indebtedness that exists now or arises after the execution of this Lease Agreement between you and any guarantor is hereby subordinated to all of your present and future obligations, and those of your guarantor, to us, and no payment shall be made or accepted on such indebtedness due to you from a guarantor until the obligations due to us are paid and satisfied in full.

32.15. Notices. All notices must be in writing, and shall be given (a) if sent by mail, when received, and (b) if sent by courier, when delivered; if to you at the address appearing on the Merchant Agreement, and if to us at 4000 Coral Ridge Drive, Coral Springs, Florida 33065. Attn: Lease Department. Customer Service toll free number 1-877-257-2094.

32.16. Should your terminal become inoperable due to manufacturer's defect in our reasonable determination, we will provide you with a replacement unit at no cost for the term of your lease so long as you are actively processing with us. If the leased equipment is obsolete or defective due to operator error, you can upgrade to a new unit by entering into a new lease contract. For such replacements contact the POS Help Desk.

33. Choice of Law; Venue; Waiver of Jury Trial

33.1. Choice of Law. Our Agreement shall be governed by and construed in accordance with the laws of the State of New York (without regard to its choice of law provisions).

33.2. Venue. We have substantial facilities in the State of New York and many of the services provided under this Agreement are provided from these facilities. The exclusive venue for any actions or claims arising under or related to this Agreement shall be in the appropriate state or federal court located in Suffolk County, New York.

33.3. Waiver of Jury Trial. ALL PARTIES IRREVOCABLY WAIVE ANY AND ALL RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN ANY JUDICIAL PROCEEDING INVOLVING ANY CLAIM RELATING TO OR ARISING UNDER THIS AGREEMENT.

34. Other Terms

34.1. Force Majeure. No party shall be liable for any default or delay in the performance of its obligations under this Agreement if and to the extent such default or delay is caused, directly or indirectly, by (i) fire, flood, earthquake, elements of nature or other acts of God; (ii) any terrorist attacks or outbreak or escalation of hostilities, war, riots or civil disorders in any country; (iii) any act or omission of the other party or any government authority; (iv) any labor disputes (whether or not employees' demands are reasonable or within the party's power to satisfy); or (v) the nonperformance by a third party for any similar cause beyond the reasonable control of such party, including without limitation, failures or fluctuations in telecommunications or other equipment. In any such event, the non-performing party shall be excused from any further performance and observance of the obligations so affected only for as long as such circumstances prevail and such party continues to use commercially reasonable efforts to recommence performance or observance as soon as practicable. Notwithstanding anything to the contrary in this paragraph, your failure to receive payment of funds or from a third party shall not excuse the performance of your obligations to us under this Agreement.

34.2. Compliance with Laws. In performing its obligations under this Agreement, each party agrees to comply with all laws and regulations applicable to it. You further agree to cooperate and provide information requested by Servicers, as Servicers determine necessary, to facilitate Servicers compliance with any applicable law including without limitation the rules and regulations promulgated by the Office of Foreign Assets Control of the US Department of the Treasury.

34.3. Notices. Except as otherwise specifically provided, all notices and other communications required or permitted hereunder (other than those involving normal operational matters relating to the processing of Card transactions) shall be in writing, shall be sent by mail, courier or facsimile (facsimile notices shall be confirmed in writing by courier), if to you at your address appearing in the Application, and if to us at our address appearing on the Additional Important Information page, with a copy to Attention: General Counsel's Office, 3975 N.W. 120th Avenue, Coral Springs, FL 33065, and shall be deemed to have been given (i) if sent by mail or courier, when received, and (ii) if sent by facsimile machine, when the courier confirmation copy is actually received. Notice given in any other manner shall be effective when actually received.

34.4. Headings. The headings contained in this Agreement are for convenience of reference only and shall not in any way affect the meaning or construction of any provision of this Agreement.

34.5. Severability. The parties intend every provision of this Agreement to be severable. If any part of this Agreement is not enforceable, the remaining provisions shall remain valid and enforceable.

34.6. Entire Agreement; Waiver. This Agreement constitutes the entire agreement between the parties with respect to the subject matter thereof and supersedes any previous agreements and understandings. A party's waiver of a breach of any term or condition of this Agreement shall not be deemed a waiver of any subsequent breach of the same or another term or condition.

34.7. Amendment. We may modify any provision of this Agreement by providing written notice to you. You may choose not to accept the requirements of any such change by terminating the Agreement within thirty (30) days of receiving notice. If you choose to do so, notify us that you are terminating for this reason so that we may waive any early termination fee that might otherwise apply. For purposes of this section, an electronic or "click-wrap" notice intended to modify or amend this Agreement and which you check "I Accept" or "I Agree" or otherwise accept through an electronic process, shall constitute a writing as required herein.

34.8. No Third Party Beneficiaries. Nothing in this Agreement is intended to confer upon any person or entity other than the parties any rights or remedies, and the parties do not intend for any third parties to be third-party beneficiaries of this Agreement.

34.9. Association Rules. The parties acknowledge that the Visa, MasterCard and Discover Association Rules give Visa, MasterCard and Discover, certain rights to require termination or modification of this Agreement with respect to transactions involving Visa, MasterCard and Discover Cards and the Visa, MasterCard and Discover Card systems and to investigate you. The parties also acknowledge that issuers of other Cards, for which we perform services on your behalf, may have similar rights under their applicable Association Rules with respect to this Agreement's applicability to transactions involving such other Cards.

As used in this Program Guide, the following terms mean as follows:

Acquirer: In the case of MasterCard and Visa transactions or network acquirers in the case of Discover transactions that acquire Card sale transactions from merchants such as yourself.

Address Verification: A service provided through which the merchant verifies the Cardholder's address, in whole or in part. Primarily used by Mail / Telephone/Internet order merchants. Address verification is intended to deter fraudulent transactions. However, it is not a guarantee that a transaction is valid.

Agreement: The agreements among Client, Processor and Bank contained in the Application, the Program Guide and the Schedules thereto and documents incorporated therein, each as amended from time to time, which collectively constitute the Agreement among the parties.

Application: See Merchant Processing Application.

Association: Any entity formed to administer and promote Cards, including without limitation MasterCard International, Incorporated ("MasterCard"), Visa U.S.A., Inc. and Visa International ("Visa"), Discover Financial Services LLC ("Discover") and any applicable debit networks.

Association Rules: The rules, regulations, releases, interpretations and other requirements (whether contractual or otherwise) imposed or adopted by any Association.

Authorization: Approval by, or on behalf of, the Card Issuer to validate a transaction for a merchant or another affiliate bank. An authorization indicates only the availability of the Cardholder's credit limit at the time the authorization is requested.

Authorization Approval Code: A number issued to a participating merchant by the Authorization Center which confirms the authorization for a sale or service.

Authorization Center: A department that electronically communicates a merchant's request for authorization on Credit Card transactions to the Cardholder's bank and transmits such authorization to the merchant via electronic equipment or by voice authorization.

Authorization / EDC Fees: A fee that applies to all Visa, MasterCard and Discover Network Card approvals (pre-authorizations and authorizations), denials, batch inquiries, and batch entry transactions and includes any transaction fees and capture fees.

Bank: The bank identified on the application signed by you.

Bankruptcy Code: Title 11 of the United States Code, as amended from time to time.

Batch: A single Submission to us of a group of transactions (sales and credits) for settlement. A Batch usually represents a day's worth of transactions.

Business Day: A day (other than Saturday or Sunday) on which Bank is open for business.

Card: See either Credit Card or Debit Card.

Cardholder: Means the individual whose name is embossed on a Card (or Debit Card, as applicable) and any authorized user of such Card.

Card Issuer: The bank or Association that issues a Card to an individual.

Card Not Present Sale/transaction: A transaction that occurs when the Card in not present at the point-of-sale, including Internet, mail-order and telephone-order Card sales.

Card Verification Value (CVV) / Card Validation Code 2 (CVC2): A unique value encoded on the Magnetic Stripe of a Card used to validate Card information during the Authorization process.

Card Validation Codes: A three-digit value printed in the signature panel of most Cards and a four-digit value printed in the front of an American Express Card. Visa's Card Validation Code is known as CVV2; MasterCard's Card Validation Code is known as CVC2; Discover's Card Validation Code is known as a CID. Card Validation Codes are used to deter fraudulent use of an account number in a non-face-to-face environment, (e.g., mail orders, telephone orders and Internet orders).

Cash Benefits: An EBT account maintained by an Issuer that represents pre-funded or day-of-draw benefits, or both, administered by one or more Government entities, and for which the Issuer has agreed to provide access under the EBT program. Multiple benefits may be combined in a single cash benefit account.

Cash Over Transaction: Dispensing of cash by a merchant in connection with a Card sale, other than a PIN Debit Card transaction, for the purchase of goods or services.

Chargeback: The procedure by which a Sales Draft or other indicia of a Card transaction (or disputed portion) is returned to Bank, the Acquirer or the Issuer. Client is responsible for reimbursing us for all Chargebacks.

Check Warranty: A service provided through a merchant's POS equipment which guarantees payment up to a defined limit, provided the merchant follows proper steps in accepting the check.

Check Verification: A service provided in which a merchant accesses a national negative file database through its terminal/register to verify or authorize that a person has no outstanding bad check complaints at any of the member merchants. This is not a guarantee of payment to the merchant.

Client: The party identified as "Client" on the Application. The words "you," "your," "Customer" and "Merchant" also refer to Client.

Credit: A refund or price adjustment given for a previous purchase transaction.

Credit Card: A valid Card bearing the service mark of Visa, MasterCard or Discover and, to the extent the Schedules so provide, a valid Card issued by any other Associations specified on such Schedules.

Credit Draft: A document evidencing the return of merchandise by a Cardholder to a Client, or other refund made by the Client to the Cardholder.

Credit Limit: The credit line set by the Card Issuer for the Cardholder's account.

Customer Activated Terminal (CAT): A magnetic stripe terminal or chip-reading device (such as an automatic dispensing machine, Limited Amount Terminal, or Self-Service) that is not an ATM.

Debit Card: See either PIN Debit Card or Non-PIN Debit Card.

Dial-Up Terminal: An Authorization device which, like a telephone, dials an Authorization Center for validation of transactions.

Discount Rate: An amount charged a merchant for processing its qualifying daily Credit Card transactions. Transactions that fail to meet applicable interchange requirements will be charged additional amounts as set forth in Section 18.1.

Electronic Benefit Transfer (EBT): An electronic system that allows a government benefit recipient to authorize the transfer of their benefits from a Federal, State or local government account to a merchant account to pay for products and services received.

Electronic Draft Capture (EDC): A process which allows a merchant's Dial-Up Terminal to receive authorization and capture transactions, and electronically transmit them to a Card processor. This eliminates the need to submit paper for processing.

Factoring: The submission of authorization requests and/or Sales Drafts by a merchant for Card sales or Cash Advances transacted by another business.

General Terms: Section of the Program Guide, including any amendments or modifications.

Gross: When referred to in connection with transaction amounts or fees, refers to the total amount of Card sales, without set-off for any refunds or credits.

Imprinter: A manual or electric machine used to physically imprint the merchant's name and ID number as well as the Cardholder's name and Card number on Sales Drafts.

Issuer: The bank or Association which has issued a Card to an individual. MasterCard and Visa only issue Cards through banks ("Issuing Banks") while Discover may issue Cards directly or issue Cards through an Issuing Bank.

Limited Amount Terminal: A customer Activated Terminal that has data capture only capability, and accepts payment for items such as parking garage fees, road tolls, motion picture theater entrance, or magnetic stripe telephones.

Magnetic Stripe: A stripe of magnetic information affixed to the back of a plastic credit or debit Card. The Magnetic Stripe contains essential Cardholder and account information.

Media: The documentation of monetary transactions (i.e., Sales Drafts, Credit Drafts, computer printouts, etc.)

Merchant Identification Card: A plastic embossed Card supplied to each merchant to be used for imprinting information to be submitted with each batch of paper Sales Drafts. Embossed data includes Merchant Account Number, name and sometimes merchant ID code and terminal number.

Merchant Account Number (Merchant Number): A number that numerically identifies each merchant, outlet, or line of business to the Processor for accounting and billing purposes.

Merchant Processing Application: The application executed by Client, Processor and Bank, which is one of the documents comprising the Agreement.

Non-PIN Debit Card: A Debit Card with either a Visa, MasterCard or Discover mark that is tied to a Cardholder's bank account or a prepaid account and which is processed without the use of a PIN.

Non-Qualified Interchange Fee: The difference between the interchange fee associated with the Anticipated Interchange Level and the interchange fee associated with the more costly interchange level at which the transaction actually was processed.

Non-Qualified Surcharge: A surcharge applied to any transaction that fails to qualify for the Anticipated Interchange Level and is therefore downgraded to a more costly interchange level. The Non-Qualified Surcharge (the amount of which is set forth on the Service Fee Schedule) is in addition to the Non-Qualified Interchange Fee, which is also your responsibility (see above and Section 18.1).

Operating Procedures: The then-current manual prepared by Processor, containing operational procedures, instructions and other directives relating to Card transactions. The current Operating Procedures are set forth in the Program Guide.

PAN Truncation: A procedure by which a Cardholder's copy of a Sales or Credit Draft will only reflect the last four digits of the Card.

PIN: A Personal Identification Number entered by the Cardholder to submit an PIN Debit Card transaction.

PIN Debit Card: A debit Card used at a merchant location by means of a Cardholder-entered PIN in the merchant PIN Pad. PIN Debit Cards bear the marks of ATM networks (such as NYCE, Star).

Point of Sale (POS) Terminal: A device placed in a merchant location which is connected to the Processor's system via telephone lines and is designed to authorize, record and transmit settlement data by electronic means for all sales transactions with Processor.

Processor: The entity identified on this application (other than the Bank) which provides certain services under this Agreement.

Program Guide: The booklet which contains Operating Procedures, General Terms, Third Party Agreements, and Confirmation Page, which, together with the Merchant Processing Application and the Schedules thereto and documents incorporated therein, constitute your Agreement with Processor and Bank.

Recurring Payment Indicator: A value used to identify transactions for which a consumer provides permission to a merchant to bill the consumer's Card account at either a predetermined interval or as agreed by the Cardholder for recurring goods or services.

Referral: This message received from an issuer when an attempt for authorization requires a call to the Voice Authorization Center or Voice Response Unit (VRU).

Reserve Account: A fund established and managed by us to protect against actual or contingent liability arising from Chargebacks, adjustments, fees and other charges due to or incurred by us.

Resubmission: A transaction that the merchant originally processed as a Store and Forward transaction but received a soft denial from the respective debit network or Association. The resubmission transaction allows the merchant to attempt to obtain an approval for the soft denial, in which case you assume the risk that the transaction fails.

Retrieval Request/Transaction Documentation Request: A request for documentation related to a Card transaction such as a copy of a Sales Draft or other transaction source documents.

Sales Draft: Evidence of a purchase of goods or Services by a Cardholder from Client using a Card, regardless of whether the form of such evidence is in paper or electronic form or otherwise, all of which must conform to Association Rules.

Sales/Credit Summary: The identifying form used by a paper Submission merchant to indicate a Batch of Sales Drafts and Credit Drafts (usually one day's work). Not a Batch header, which is used by electronic merchants.

Schedules: The attachments, addenda and other documents, including revisions thereto, which may be incorporated into and made part of this Agreement.

Self Service Terminals: A Customer Activated Terminal that accepts payment of goods or services such as prepaid cards or video rental, has electronic capability, and does not accept PIN's.

Services: The activities undertaken by Processor and Bank to authorize, process and settle all United States Dollar denominated Visa, MasterCard and Discover Card transactions undertaken by Cardholders at Client's location(s) in the United States, and all other activities necessary for Processor and Bank to perform the functions required by this Agreement for all other Cards covered by this Agreement.

Servicers: Bank and Processor collectively. The words "us" and "we" refer to Servicers.

Settlement Account: An account at a financial institution designated by Client as the account to be debited and credited by Processor or Bank for Card transactions, fees, chargebacks and other amounts due under the Agreement or in connection with the Agreement.

Split Dial: A process which allows the authorization terminal to dial directly to different Card processors (e.g., Amex) for authorization. In this instance, the merchant cannot be both EDC and Split Dial. Split Dial is also utilized for Check Guarantee companies.

Split Dial/Capture: Process which allows the authorization terminal to dial directly to different Card processors (e.g., Amex) for authorization and Electronic Draft Capture.

Store and Forward: A transaction that has been authorized by a merchant when the merchant cannot obtain an authorization while the customer is present, typically due to a communications failure. The merchant will store the transaction electronically in their host system and retransmit the transaction when communications have been restored.

Submission: The process of sending Batch deposits to Processor for processing. This may be done electronically or by mail.

Summary Adjustment: An adjustment to your Submission and/or Settlement Accounts in order to correct errors. (See Sections 10.3 and 10.4.)

Telecommunication Card Sales: Individual local or long distance telephone calls, for which the telephone service provider is paid directly by use of a Card. These do not include, however, calls paid for with pre-paid telephone service cards. Telecommunication Card Sales are considered Card Not Present sales.

Transaction Fees: Service costs charged to a merchant on a per transaction basis.

Us, We: See Servicers.

You, Your: See Client.

Third Party Agreements

The following Agreements are Third Party Agreements entered into between Client and the Third Parties identified in the Third Party Agreements.

If Client desires to receive the products and/or services offered under a Third Party Agreement, Client must check the appropriate box or otherwise indicate such desire in the Merchant Processing Application, in which case the terms and conditions of the

Third Party Agreement shall be binding upon Client. The Signature page in the Merchant Processing Application or any Schedule thereto shall also serve as a signature page to the Third Party Agreements.

Client acknowledges that the Third Parties are relying upon the information contained on the Merchant Processing Application and the Schedules thereto, all of which are incorporated by reference into the Third Party Agreements.

36. TeleCheck Services Agreement

This TeleCheck Services Agreement (the "Agreement") is entered by and between TeleCheck Services, Inc. and Client as indicated on the Merchant Processing Application ("Client"). TeleCheck will provide the Electronic Check Acceptance® ("ECA®") Warranty Services ("ECA Warranty Services") or Paper Warranty Services, selected in the Merchant Processing Application. Upon processing Client's first check through the TeleCheck® service or from the date Client is entered into the TeleCheck system as a subscriber, whichever is earlier (the "Effective Date"), the terms and conditions of this Agreement, including payment and the Minimum Monthly Fee, shall apply from that point forward. Any of the TeleCheck services including, without limitation, funds settlement, billing and customer service, may be performed by one or more of TeleCheck's affiliates.

36.1. Term, Termination and Amendment. This Agreement shall be effective for an initial term of 12 or 24 months from the Effective Date (as specified on the Merchant Processing Application); provided, however, that Client may terminate this Agreement if Client gives and TeleCheck receives written notice of termination within the first 30 days of the Agreement. Thereafter, this Agreement shall automatically renew for successive 12 month terms until terminated as provided for herein. Client may terminate this Agreement at the end of the initial term or any renewal term upon at least 30 days' prior written notice to TeleCheck. TeleCheck reserves the right to amend, at its discretion, this Agreement, including, without limitation, any addenda and the TeleCheck Operational Procedures, by providing Client notice and such amendments shall be effective 30 days from the date notice is mailed to Client. In the event TeleCheck changes the rates, fees or warranty limits hereunder, Client may terminate this Agreement upon written notice received by TeleCheck within such 30 day period. TeleCheck may terminate this Agreement at any time upon notice to Client. Client may terminate this Agreement at anytime upon written notice if TeleCheck has failed to cure a material breach of this Agreement within 30 days following written notice of that breach given by Client.

36.2. Definitions. As used in this Agreement, the following definitions apply: **"ACH Network"** means the Automated Clearing House Network, a processing and delivery system that provides for the distribution and settlement of electronic credits and debits. **"Authorization Receipt"** means the written authorization receipt, in the form approved by TeleCheck, signed by Consumer for each ECA Warranty Transaction. **"Batch"** means a collection of saved transactions transmitted to TeleCheck for settlement processing. **"Claim"** means any claim, demand, directive, suit or other proceeding, notice, damage, expense (including reasonable attorney's fees), assessment, fine or liability of any kind. **"Consumer"** means a person or entity that authorizes an Item. **"ECA Warranty Transaction"** means a transaction processed by TeleCheck as an electronic funds transfer, a remotely created check or a paper check by TeleCheck for the contemporaneous purchase of goods or services by a Consumer. **"Item"** means an outstanding financial obligation pursuant to a paper check, electronic funds transfer or remotely created check processed under this Agreement. **"NACHA Rules"** means the National Automated Clearing House Association Operating Rules and Guidelines, as amended from time to time, that govern the ACH Network. **"Paper Warranty Transaction"** means a transaction for the contemporaneous purchase of goods or services pursuant to TeleCheck's Paper Warranty Services program. **"Return Item Fee"** means any fee or exemplary damages allowed by law that may be assessed on a Return Item. **"Return Items"** mean any Items that are dishonored, returned, reversed, charged back or otherwise unpaid by a Consumer's financial institution upon presentment for payment, regardless of the reason or timing. **"Returned Payment"** means any financial obligation pursuant to this Agreement not paid by Client's financial institution. **"Client's Account"** means Client's financial institution account. **"TeleCheck Approval Code"** means that TeleCheck has authorized an Item for warranty coverage under this Agreement. **"TeleCheck Operational Procedures"** means TeleCheck's published policies and procedures contained in various documents provided to Client concerning the services provided pursuant to this Agreement. **"TeleCheck Parties"** means TeleCheck and its affiliates and their respective officers, directors, employees, shareholders, agents and attorneys. **"Warranty Maximum"** (a) for an Item processed as an ECA Warranty Transaction means the lower of (i) the face amount of the Item; (ii) the amount set forth on the Merchant Processing Application; or (iii) $25,000.00; and (b) for an Item processed as a Paper Warranty Transaction means the lower of (i) the face amount of the Item; (ii) the amount set forth on the Merchant Processing Application; or (iii) $99,999.99.

TERMS APPLICABLE ONLY TO TELECHECK ECA WARRANTY SERVICES

36.3. ECA Warranty Services.

36.3.1. Description. The TeleCheck ECA Warranty Services provide Client with: (a) coded information to assist Client in deciding whether or not to accept an Item; (b) processing services; and (c) warranty services for ECA Warranty Transactions that comply with the warranty requirements of Section 36.3.3, all in accordance with this Agreement.

36.3.2. Processing Services. For each ECA Warranty Transaction that TeleCheck issues a TeleCheck Approval Code that is processed by TeleCheck as an electronic funds transfer or remotely created check, TeleCheck shall, via an electronic funds transfer, effect a credit to Client's Account for the amount of such transaction as part of a batch credit. Such credit shall typically occur within 2 banking days following Client's regular close-out of the point of sale terminal and transmission of the saved ECA Warranty Transactions to TeleCheck for settlement processing, provided that the Batch is closed and received by TeleCheck by 9:00 p.m. Central Time. TeleCheck may reduce such credit, or initiate a debit, by the amount of any necessary adjustments for ECA Warranty Transactions, including, without limitation, chargebacks or partial adjustments, to Client's Account. TeleCheck reserves the right to decline to process any transaction as an ECA Warranty Transaction.

TeleCheck shall not be liable for any delays in receipt of funds or errors in debit and credit entries caused by third parties, including, without limitation, any ACH Network participant or Client's financial institution. Notwithstanding anything contained herein to the contrary, TeleCheck shall be entitled without notice to place a hold on or suspend payment of any amounts now due or hereafter to become due should an excessive amount of Return Items or other questionable activity occur as determined by TeleCheck in its discretion, or as otherwise required by law. In addition to any other remedies available to TeleCheck under this Agreement, Client agrees that, if Client breaches or fails to comply with this Agreement, TeleCheck may, with notice to be provided within 3 business days following such action, change processing or payment terms, suspend settlement or other payments of any amounts now due, or hereafter to become due, until TeleCheck has had reasonable opportunity to investigate such event. Continuance of service and payment processing during any period of delinquency shall not constitute a waiver of TeleCheck's rights of suspension or termination. In the event TeleCheck makes a partial adjustment to an Item or a credit to a Consumer's account at the request of Client or as a result of a Client error, and the Item becomes a Return Item, TeleCheck may recover all such amounts from Client. TeleCheck may also recover from Client the amount of any fees paid by a Consumer to Consumer's financial institution which resulted from a Client error.

36.3.3. Warranty Requirements. TeleCheck warrants the accuracy of its information provided that all requirements set forth in this Section are strictly met. TeleCheck agrees to purchase from Client one Item per ECA Warranty Transaction for which a TeleCheck Approval Code was inaccurate; provided, however, that

TeleCheck's liability shall be limited by the Warranty Maximum and warranty requirements, and shall not exceed the amount of the Item. Client's sole and exclusive remedy for breach of warranty shall be the right to require TeleCheck to purchase such Item subject to the terms and conditions contained in this Agreement. Client represents and warrants with respect to each ECA Warranty Transaction submitted to TeleCheck for processing under this Agreement that:

(a) The check is a first party check drawn on Consumer's account at a United States financial institution and made payable to Client. The name of the Consumer is imprinted or typed on the check by the check manufacturer;

(b) Client made an inquiry to TeleCheck in strict accordance with TeleCheck Operational Procedures and obtained a single TeleCheck Approval Code. The transaction was not performed in an attempt to avoid the warranty requirements or Warranty Maximum (as more fully described in Section 36.3.6(f)), including through split sales;

(c) The transaction represents an obligation of Consumer at the point of sale (no phone, mail or internet orders) for goods sold or rented or services rendered for the price of such goods or services, and the transaction is not for credit, cash or payment on an account, debt or check already due Client;

(d) The signature of Consumer on the Authorization Receipt is not substantially different from the name imprinted on the check;

(e) The date of the check and the ECA Warranty Transaction accurately coincides within 1 calendar day of (i) the date of the inquiry call to TeleCheck, and (ii) the date the transaction actually occurred. (Checks may not pre-date or post-date by more than 1 calendar day the date of the inquiry call and the transaction date);

(f) Client has no reason to question or have notice of any fact, circumstance or defense which would impair the validity or collectibility of Consumer's obligation or relieve Consumer from liability;

(g) The transaction is not subject to any stop payment, dispute or set-off;

(h) Client complied with all applicable laws, rules, regulations, and NACHA Rules;

(i) Consumer authorized the debiting of Consumer's account and the debit entry is in an amount agreed to by Consumer. Client received a separate signed and completed Authorization Receipt from Consumer for each ECA Warranty Transaction;

(j) The paper check to which the ECA Warranty Transaction relates: (i) has not been used in for any other transaction, (ii) is voided on the front by Consumer or Client, and (iii) is returned to Consumer;

(k) The amount entered into the TeleCheck system and on the Authorization Receipt match exactly and does not exceed the Warranty Maximum; and

(l) If the ECA Warranty Transaction is approved as a paper check not eligible for processing as an electronic funds transfer, each representation and warranty set forth Section 36.4.2 shall be applicable to such ECA Warranty Transaction.

36.3.4. Authorization Receipts. Client shall (a) maintain the signed Authorization Receipt for a minimum period of 2 years from the date of the transaction or for the period specified by the NACHA Rules, whichever is longer, (b) physically deliver either the original or a legible copy of the signed Authorization Receipt to TeleCheck within 7 days of TeleCheck's request, and (c) permit TeleCheck to audit Client (upon reasonable notice and during normal business hours) for compliance with this requirement.

36.3.5. Assignment of ECA Warranty Transactions. By electing to subscribe to the TeleCheck ECA Warranty Services, Client ASSIGNS, TRANSFERS AND CONVEYS to TeleCheck all of Client's rights, title and interest in any ECA Warranty Transaction submitted by Client to TeleCheck under this Agreement. Client shall, at TeleCheck's request, endorse such check and take any action reasonably deemed necessary by TeleCheck to aid in the enforcement of TeleCheck's rights hereunder.

36.3.6. Chargeback and Reassignment. TeleCheck may chargeback to Client any ECA Warranty Transaction processed by TeleCheck, or reassign to Client any ECA Warranty Transaction which has been approved as a paper check and purchased by TeleCheck, in any of the following circumstances:

(a) The goods or services, in whole or in part, for which the ECA Warranty Transaction was submitted, have been returned to Client, have not been delivered by Client or are claimed by Consumer to have been unsatisfactory or are subject to any stop payment, dispute or set-off;

(b) Client has received full or partial payment or security in any form to secure payment of the Item, or the goods or services for which the Item was issued or authorized were initially delivered on credit or under a lease;

(c) The transaction is for any reason illegal, void or invalid; or purchase by or transfer to TeleCheck of the Item is not permitted by applicable law; or a court of law determines that the Item is, in whole or in part, not due and payable by Consumer, unless such determination results from Consumer's bankruptcy proceeding;

(d) Any of the representations made by Client as set forth in Section 36.3 are or become false or inaccurate;

(e) Client failed to comply with this Agreement;

(f) Client, or any of Client's owners, agents or employees (i) materially altered either the check or the Authorization Receipt; or (ii) processed the transaction with reason to know that the Item was likely to be dishonored (including failure to receive a TeleCheck Approval Code) or that the identification used was forged, altered or did not belong to Consumer; or (iii) processed the transaction in a manner which was an attempt to avoid the warranty requirements or Warranty Maximum. "Knowledge" shall be presumed in the presence of facts or circumstances which, if known, would cause a non-subscribing merchant, using commercially reasonable judgment, to independently refuse to accept a check. "Knowledge" is also presumed where there is evidence of Client's attempt to avoid warranty limitations through manipulation of transactions, including, but not limited to the splitting of a single transaction into smaller components or resubmission of a previously denied transaction;

(g) The Authorization Receipt was incomplete or unsigned, or a legible copy of the Authorization Receipt was not received by TeleCheck within 7 days of a request by TeleCheck;

(h) A duplicate ECA Warranty Transaction relating to the same transaction was received and processed, or the original paper check was deposited, thereby creating a duplicate entry against Consumer's financial institution account;

(i) Consumer disputes authorizing the ECA Warranty Transaction or the validity or accuracy of the transaction;

(j) Client received notice that Consumer filed bankruptcy and Client failed to notify TeleCheck of the bankruptcy within 3 business days of Client's receipt of such notice; or

(k) The closeout of the Batch and transmission of the ECA Warranty Transaction to TeleCheck for settlement processing did not occur within 7 days from the date the TeleCheck Approval Code was issued for the transaction

Client shall immediately notify TeleCheck upon the happening of any of the above circumstances. If the Item is charged back or reassigned as provided herein, (a) TeleCheck may debit Client's Account in the amount paid by TeleCheck for the Item, (b) deduct or offset such Item against any amounts to be paid to Client for ECA Warranty Transactions, or (c) upon request, Client shall remit

the amount of the Item to TeleCheck. TeleCheck may also chargeback to Client any amount over the Warranty Maximum on any ECA Warranty Transaction where TeleCheck has not received payment for such transaction within 60 days of the date of the ECA Warranty Transaction. Upon charging back or reassigning an Item, TeleCheck shall have no further liability to Client on such Item. Following termination of this Agreement, Client shall continue to bear total responsibility for any reassignments, chargebacks and adjustments made under this Section.

36.3.7. Account Reconciliation. Payments processed by TeleCheck will be reflected on settlement reports made available to Client by TeleCheck. Client agrees to notify TeleCheck promptly of any discrepancy between Client's records and the information provided in the reports, or of any funding failures or errors. In the event any ECA Warranty Transaction is not funded or otherwise paid by TeleCheck in accordance with Section 36.3.2, Client is required to notify TeleCheck in writing within 30 days from the date of such transaction. If Client fails to notify TeleCheck within such 30 day period of the discrepancy, funding failure or error, TeleCheck shall have no liability and Client is precluded from asserting any claims, damages or losses arising from such discrepancy, funding failure or error.

36.3.8. "Goodwill" of a Non-Compliance Item. TeleCheck, in its sole discretion, may voluntarily elect not to chargeback or reassign to Client a specific non-compliance Item which fails to comply with the warranty requirements set forth in Section 36.3.3. Such discretionary election by TeleCheck shall not (a) constitute a course of dealing or a waiver of TeleCheck's right to chargeback or reassign any other Return Item, or (b) relate to any other past or subsequent Return Item, or (c) act as a waiver of TeleCheck's right to decline to pay any other Return Item.

36.3.9. Reserve Account Establishment and Funding. Client expressly authorizes TeleCheck to establish a reserve account for ECA Warranty Transactions. The amount of the reserve account shall be set by TeleCheck, in its sole discretion, based upon Client's processing history and the anticipated risk of loss to TeleCheck. The reserve account shall be fully funded upon 3 days' notice to Client or in instances of fraud or breach of this Agreement, the reserve account may be funded immediately at TeleCheck's election. The reserve account may be funded by all or any combination of the following: (a) one or more debits to Client's Account (and TeleCheck is hereby authorized to make such debits); (b) one or more deductions or offsets to any payments otherwise due to Client from TeleCheck or any of its affiliates; or (c) Client's delivery to TeleCheck of a letter of credit issued or established by a financial institution acceptable to, and in a form satisfactory to, TeleCheck. In the event of termination of this Agreement by either TeleCheck or Client, an immediate reserve account may be established without notice in the manner provided above. Any reserve account will be held by TeleCheck for 10 months after termination of this Agreement. Client's funds may be held in a commingled reserve account for the reserve funds of TeleCheck's subscribers without involvement by an independent escrow agent, and shall not accrue interest. If Client's funds in the reserve account are not sufficient to cover the delinquent fees, chargebacks or rejected and reassigned warranty Items, or any other fees and charges due from Client to TeleCheck or its affiliates, or if the funds in the reserve account have been released, Client shall immediately pay TeleCheck such sums upon request. In the event of a failure by Client to fund the reserve account, TeleCheck may fund such reserve account in the manner set forth above.

36.3.10. Fees and Rates. Client shall pay TeleCheck the fees and rates set forth on the Merchant Processing Application and addenda, if any, or in this Agreement, as changed from time to time by TeleCheck, plus all applicable taxes. The "Inquiry Rate" is the percentage rate which shall apply to the face amount of each Item (up to the Warranty Maximum), for which an authorization inquiry is made to TeleCheck by telephone, electronically or otherwise. The "Transaction Fee" is the additional per transaction charge for each ECA Warranty Transaction. The "Monthly Minimum Fee" is the minimum aggregate amount of Inquiry Rate fees that Client shall pay on a monthly basis. If the total Inquiry Rate fees for Client's inquiries for any month are less than the Monthly Minimum Fee, then the Monthly Minimum Fee shall apply. The "Customer Requested Operator Call/Voice Authorization Fee" is an additional fee per operator-assisted call not requested by TeleCheck. "December Risk Surcharge" is an additional percentage charge for each transaction in December. The "Monthly Statement/Processing Fee" is a monthly fee for handling Client's account. The "Set Up Fees" are fees related to the establishment and set up of the first and subsequent locations on the TeleCheck Services.

The following additional fees may be also be charged by TeleCheck: The "ECA Conversion Fee" is the fee charged to convert an existing subscriber to the ECA services. The "Non-Imaging Surcharge" is a per transaction charge for every ECA Warranty Transaction that is not processed using a TeleCheck approved imaging device. The "Funding Report Fee" is an additional fee to receive daily or weekly ECA funding reports. The "POS Support Fee" is a monthly fee for point of sale support services. The "Chargeback Fee" is a $5.00 handling fee for each chargeback of an ECA Warranty Transaction. The "Correction Fee" is a $5.00 fee payable on each Item that must be corrected due to Client's error or at Client's request. The "Recovery Processing Fee" is a $5.00 fee for each Item that fails to meet warranty requirements for which TeleCheck elects, in its discretion, to reimburse Client as a "Goodwill Item" for a specific Return Item. A "Warranty Research Fee" of $7.50 may be charged each time Client requests substantiation of a warranty payment/non-payment. A "Terminal Application Update Fee" of $25.00 per terminal shall be charged for each occasion that a terminal application update is made available for additional features, different information or regulatory compliance. These above fees are in addition to any fees charged by TeleCheck to Client under any other agreement.

TERMS APPLICABLE ONLY TO TELECHECK PAPER WARRANTY SERVICES

36.4. Paper Warranty Services.

36.4.1. Description. The TeleCheck Paper Warranty services provide Client with: (a) coded information to assist Client in deciding whether or not to accept a check; and (b) warranty services for checks that meet the warranty requirements of Section 36.4.2, all in accordance with this Agreement.

36.4.2. Warranty Requirements. TeleCheck warrants the accuracy of its information provided that all requirements set forth in the warranty requirements set forth in this Section are strictly met. TeleCheck agrees to purchase from Client one check per Paper Warranty Transaction for which a TeleCheck Approval Code was inaccurate; provided, however, that TeleCheck's liability shall be limited by the Warranty Maximum and warranty requirements, and shall not exceed the amount of the check. Client's sole and exclusive remedy for breach of warranty shall be the right to require TeleCheck to purchase such check subject to the terms and conditions contained in this Agreement. Client represents and warrants with respect to each Paper Warranty Transaction submitted to TeleCheck for processing under this Agreement that:

(a) The check is a first party check drawn on Consumer's account at a United States or Canadian financial institution, completely and properly filled out, and made payable to Client. The name of the Consumer is imprinted or typed on the check by the check manufacturer. If a P.O. Box is used or an address is not imprinted by the check manufacturer, a physical address description is written on the check according to TeleCheck Operational Procedures;

(b) Client made an inquiry to TeleCheck in strict accordance with TeleCheck Operational Procedures and obtained a single TeleCheck Approval Code. The transaction was not performed in an attempt to avoid the warranty requirements or Warranty Maximum (as more fully described in Section 36.4.4 (f), including through split sales;

(c) The transaction represents an obligation of Consumer at the point of sale (no phone, mail or internet orders) for goods sold or rented or services rendered for the price of such goods or services, and the transaction is not for credit, cash or payment on an account, debt or check already due Client;

(d) The signature in the signature block on the check is not substantially different from the name imprinted on the check;

(e) The date of the check accurately coincides within 1 calendar day of (i) the date of the inquiry call to TeleCheck, and (ii) the date the transaction actually occurred. (Checks may not pre-date or post-date by more than 1 calendar day the date of the inquiry call and the transaction date);

(f) Client has no reason to question or have notice of any fact, circumstance or defense which would impair the validity or collectibility of Consumer's obligation or relieve Consumer from liability;

(g) The TeleCheck Client Number, Consumer's telephone number (including area code), identification type and number and TeleCheck Approval Code are printed or written on the check;

(h) The amount shown in words and figures on the check is (i) less than or equal to the amount entered into the TeleCheck system; or (ii) no more than $1.00 over the amount entered into the TeleCheck system;

(i) The check is deposited in Client's Account and received by TeleCheck for purchase within 30 days of the date of the check. Such check has been sent directly from Client's financial institution after being presented for payment only once (no representments shall be allowed, whether paper or electronic); and

(j) The transaction is not subject to any stop payment, dispute or set-off.

36.4.3. Assignment of Checks. By electing to subscribe to the Paper Warranty Services, Client ASSIGNS, TRANSFERS AND CONVEYS to TeleCheck all of Client's rights, title and interest in any check submitted to TeleCheck for coverage under this Agreement. Client shall, at TeleCheck's request endorse such check and take any action reasonably deemed necessary by TeleCheck to aid in the enforcement of TeleCheck's rights hereunder.

36.4.4. Reassignment. TeleCheck may reassign to Client any check purchased by TeleCheck pursuant to the Paper Warranty Services provisions of this Agreement, in any of the following circumstances:

(a) The goods or services, in whole or in part, for which the check was issued have been returned to Client, have not been delivered by Client or are claimed by Consumer to have been unsatisfactory or are subject to any stop payment, dispute or set-off;

(b) Client has received full or partial payment or security in any form to secure payment of the check, or the goods or services for which the check was issued were initially delivered on credit or under a lease;

(c) The transaction is for any reason illegal, void or invalid; or purchase by or transfer to TeleCheck of the check is not permitted by applicable law; or a court of law determines that the check is, in whole or in part, not due and payable by Consumer, unless such determination results from Consumer's bankruptcy proceeding;

(d) Any of the representations made by Client as set forth in Section 36.4.2 are or become false or inaccurate;

(e) Client failed to comply with this Agreement;

(f) Client, or any of Client's owners, agents or employees: (i) materially altered the check; or (ii) accepted the check with reason to know that it was likely to be dishonored (including failure to receive a TeleCheck Approval Code) or that the identification used was forged, altered or did not belong to Consumer, or (iii) processed the transaction in a manner which was an attempt to avoid the warranty requirements or Warranty Maximum. "Knowledge" shall be presumed in the presence of facts or circumstances which, if known, would cause a non-subscribing merchant, using commercially reasonable judgment, to independently refuse to accept a check. "Knowledge" is also presumed where there is evidence of Client's attempt to avoid warranty limitations through manipulation of transactions, including, but not limited to the splitting of a single transaction into smaller components or resubmission of a previously denied transaction; or

(g) Client received notice that Consumer filed bankruptcy and Client failed to notify TeleCheck of the bankruptcy within 3 business days of Client's receipt of such notice.

Client shall immediately notify TeleCheck upon the happening of any of the above circumstances. If the check is reassigned as provided herein, TeleCheck may debit Client's Account in the amount paid by TeleCheck for the check, or upon request, Client shall remit the amount of the check to TeleCheck. Upon reassignment of a check, TeleCheck shall have no further liability to Client on such check. Following termination of this Agreement, Client shall continue to bear total responsibility for any reassignments, chargebacks and adjustments made under this Section.

36.4.5. "Goodwill" of a Non-Compliance Item. TeleCheck, in its sole discretion, may voluntarily elect not to reassign to Client a specific non-compliance Item which fails to comply with the warranty requirements set forth in Section 36.4.2. Such discretionary election by TeleCheck shall not (a) constitute a course of dealing or a waiver of TeleCheck's right to reassign any other Return Item, or (b) relate to any other past or subsequent Return Item, or (c) act as a waiver of TeleCheck's right to decline to pay any other Return Item.

36.4.6. Fees and Rates. Client shall pay TeleCheck the fees and rates set forth on the Merchant Processing Application and addenda, if any, or in this Agreement, as changed from time to time by TeleCheck, plus all applicable taxes. The "Inquiry Rate" is the percentage rate which shall apply to the face amount of each Item (up to the Warranty Maximum), for which an authorization inquiry is made to TeleCheck by telephone, electronically or otherwise. The "Transaction Fee" is the additional per transaction charge for each Paper Warranty Transaction. The "Monthly Minimum Fee" is the minimum aggregate amount of Inquiry Rate fees that Client shall pay on a monthly basis. If the total Inquiry Rate fees for Client's inquiries for any month are less than the Monthly Minimum Fee, then the Monthly Minimum Fee shall apply. The "Customer Requested Operator Call/Voice Authorization Fee" is an additional fee per operator-assisted call not requested by TeleCheck . "December Risk Surcharge" is an additional percentage charge for each transaction in December. The "Monthly Statement/ Processing Fee" is a monthly fee for handling Client's account. The "Set Up Fees" are fees related to the establishment and set up of the first and subsequent locations on the TeleCheck Services.

The following additional fees may be also be charged by TeleCheck: The "POS Support Fee" is a monthly fee for point of sale support services. The "Recovery Processing Fee" is a $5.00 fee for each Item that fails to meet warranty requirements for which TeleCheck elects, in its discretion, to reimburse Client as a "Goodwill Item" for a specific Return. A "Warranty Research Fee" of $7.50 may be charged each time Client requests substantiation of a warranty payment/non-payment. A "Terminal Application Update Fee" of $25.00 per terminal shall be charged for each occasion that a terminal application update is made available for additional features, different information or regulatory compliance. These above fees are in addition to any fees charged by TeleCheck to Client under any other agreement.

GENERAL TERMS APPLICABLE TO ALL TELECHECK SERVICES

36.5. Payment. All fees and charges are due upon receipt of invoice. Client authorizes TeleCheck to debit from Client's Account, all

payments and other amounts owed (including, without limitation, all Return Items, Return Payments, chargebacks, adjustments, fees and charges, and delinquency charges) under this Agreement or any other agreement between Client and TeleCheck or its affiliates, and to credit all amounts owing to Client under this Agreement to Client's Account. If there are insufficient funds in Client's Account to pay amounts owed to TeleCheck or its affiliates, or if debits to Client's account are rejected due to ACH debit blocks, or if there are any amounts otherwise not paid by Client when due, including, without limitation, delinquency charges, chargebacks or rejected and reassigned warranty Items, Client shall immediately reimburse TeleCheck or its affiliates upon demand, or at TeleCheck's option, TeleCheck may offset or recoup such amounts against any amounts due Client under this Agreement or any other agreement between Client and TeleCheck or its affiliates. A delinquency charge of 1-1/2% per month or the highest amount permitted by law, whichever is lower, shall be added to the outstanding balance of any account over 15 days delinquent. TeleCheck shall have the right to suspend all services and obligations to Client, including the payment of all warranties due and all transactions previously authorized, during any period in which Client's account is delinquent. Client agrees to pay to TeleCheck a fee of $25.00 or the highest amount permitted by law, whichever is lower, for any Return Payment. Client shall also be responsible for paying for all of the point of sale supplies related to the TeleCheck services (i.e., paper and ink for terminals, rubber stamps, if applicable).

36. 6. Security Interest. To secure Client's obligations to TeleCheck and its affiliates under this Agreement and any other agreement (including any check or credit card processing services), Client grants to TeleCheck a lien and security interest in and to any of Client's funds pertaining to the transactions contemplated by this Agreement now or hereafter in the possession of TeleCheck or its affiliates, whether now or hereafter due or to become due to Client from TeleCheck. Any such funds may be commingled with other funds of TeleCheck, or, in the case of any funds held in a reserve account, with any other funds of other subscribers of TeleCheck. In addition to any rights now or hereafter granted under applicable law and not by way of limitation of any such rights, TeleCheck is hereby authorized by Client at any time and from time to time, without notice or demand to Client or to any other person (any such notice and demand being hereby expressly waived), to set off, recoup and to appropriate and to apply any and all such funds against and on account of Client's obligations to TeleCheck and its affiliates under this Agreement and any other agreement, including, without limitation, fees for any other services (including any check or credit card processing services), whether such obligations are liquidated, unliquidated, fixed, contingent, matured or unmatured. Client agrees to duly execute and deliver to TeleCheck such instruments and documents as TeleCheck may reasonably request to perfect and confirm the lien, security interest, right of set off, recoupment and subordination set forth in this Agreement.

36.7. Point of Sale Notices; Return Item Fees. Client agrees to follow procedures and post and provide at TeleCheck's direction any notices (including any updates to such notices) which in TeleCheck's opinion may be required for TeleCheck to process the Item and/or the Return Item Fee, as an electronic funds transfer, draft or otherwise. Client also agrees to assess a Return Item Fee on all Return Items, and that TeleCheck shall be entitled to collect and retain the Return Item Fee from Consumer.

36.8. TeleCheck Approval Code. Client acknowledges that TeleCheck will use its internal and proprietary risk management systems to evaluate the risk associated with any particular Item and to assist in its decision whether or not to issue a TeleCheck Approval Code. The decision to issue a TeleCheck Approval Code shall be within the discretion of TeleCheck.

36.9. Credit Law Compliance. Client certifies that (a) Client has a legitimate business need, in connection with a business transaction initiated by Consumer, for the information provided by TeleCheck under this Agreement regarding such Consumer, and (b) the information provided by TeleCheck shall only be used for permissible purposes as defined in the Fair Credit Reporting Act, and applicable state and federal laws, with the exception that the information shall not be used for employment purposes, and shall not be used by Client for any purpose other than a single business transaction between Consumer and Client occurring on the date of the inquiry call to TeleCheck. Neither Client, nor Client's agents or employees, shall disclose the results of any inquiry made to TeleCheck except to Consumer about whom such inquiry is made and in no case to any other person outside Client's organization. If Client decides to reject any transaction, in whole or in part, because of information obtained from TeleCheck, Client agrees to provide Consumer with all information required by law and TeleCheck.

36.10. Use of TeleCheck Materials and Marks. Pursuant to authorization granted to TeleCheck by TeleCheck International, Inc., the owner of the trademarks referenced in this Section, TeleCheck grants to Client, and Client accepts, a nonexclusive, nonassignable and non-transferable limited license, uncoupled with any right or interest, to use the **TELECHECK** and the **TELECHECK logo** service marks, and for those Clients who are receiving ECA Warranty Services or ECA Verification Services, the **TELECHECK ELECTRONIC CHECK ACCEPTANCE** and **ECA** service marks (collectively, the "TeleCheck Marks") as follows. Client may use and display decals, identification data and other materials provided by TeleCheck during the term of this Agreement at Client's location solely in connection with the offering of TeleCheck services as authorized under this Agreement. Client shall not permit any persons other than its own officers or employees at Client's locations to use the TeleCheck Client number assigned by TeleCheck. Client agrees that upon termination of this Agreement it will, at its own expense, either return or destroy all TeleCheck materials (including the prompt removal of any TeleCheck decals, electronic files, logos or other materials or references to TeleCheck that are displayed to the public, including those affixed to equipment, doors or windows). The monthly fees payable by Client will apply for all months or fractions of a month that any materials or TeleCheck-owned equipment remain in use. Client shall not create any print, electronic or Internet-based materials including but not limited to any advertising or promotional materials using any TeleCheck Marks without the prior written consent of TeleCheck. Client acknowledges TeleCheck International, Inc.'s ownership of the TeleCheck Marks and will not contest the validity of the marks or the ownership thereof. Client further agrees to refrain from performing any acts that might discredit, disparage, dilute, infringe or negatively affect the value of the TeleCheck Marks or constitute unfair competition to TeleCheck or TeleCheck International, Inc. Client agrees promptly to bring to TeleCheck's attention any unauthorized use of the TeleCheck Marks by third parties of which Client becomes aware. Client shall use the TeleCheck Marks pursuant to any guidelines provided by TeleCheck, as may be amended from time to time. The following shall appear at least once on every piece of advertising or promotional material created by Client which uses the TeleCheck Marks and has received prior written approval from TeleCheck: "The ("Applicable Mark") trademark is owned by TeleCheck International, Inc. and is licensed for use by ("Client Name")".

36.11. Use of Information. Client agrees that: (a) any data and other information relating to an Item or Consumer obtained by TeleCheck in connection with any service provided hereunder (including any electronic or other image of all or any portion of any check or driver's license or other identification) shall be owned by TeleCheck, with all right, title, and interest thereto; (b) TeleCheck may use any credit information provided to a TeleCheck affiliate for TeleCheck's credit review; and (c) TeleCheck may provide or receive any experiential information regarding Client or Client's customers to or from any TeleCheck affiliate.

36.12. TeleCheck Operational Procedures. Client shall strictly follow all TeleCheck Operational Procedures provided to Client, as may be amended from time to time by TeleCheck, in its discretion.

36.13. Limitation of Liability. In no event shall either TeleCheck or Client be liable to the other party, or to any other person or entity, under this Agreement, or otherwise, for any punitive, exemplary, special, incidental, indirect or consequential damages, including, without limitation, any loss or injury to earnings, profits or goodwill, regardless of whether such damages were foreseeable or whether such party has been advised of the possibility of such damages. Notwithstanding anything to the contrary contained in this Agreement, in no event shall TeleCheck's liability under this Agreement for all Claims arising under, or related to, this Agreement exceed, in the aggregate (inclusive of any and all Claims made by Client against TeleCheck, whether related or unrelated), the lesser of: (a) the total amount of fees paid to TeleCheck by Client pursuant to this Agreement during the 12 month period immediately preceding the date the event giving rise to such Claims occurred; or (b) $75,000.00.

36.14. DISCLAIMER. EXCEPT AS EXPRESSLY SET FORTH HEREIN, TELECHECK MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AND NO IMPLIED AT LAW WARRANTY SHALL ARISE FROM THIS AGREEMENT OR FROM PERFORMANCE BY TELECHECK, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE, ALL OF WHICH ARE EXPRESSLY WAIVED BY SUBSCRIBER. All decisions to reject any item, driver's license or other form of identification or payment for Client's products or services are solely Client's responsibility.

36.15. Changes in Law or NACHA Rules. Notwithstanding anything to the contrary in this Agreement, if the continued performance of all or any portion of the obligations of TeleCheck becomes impossible or illegal due to changes in applicable federal, state or local laws or regulations, or by NACHA Rules, as determined by TeleCheck in its reasonable discretion, TeleCheck may, upon 30 days written notice to Client, request to modify or discontinue TeleCheck's performance of its obligations to the extent necessary to avoid a violation of law or NACHA Rules or, if TeleCheck chooses in its sole discretion to incur additional expenses to comply, request to increase its fees to cover the additional cost of compliance. Additionally, if any fees or charges to TeleCheck increase for processing transactions through the ACH Network, TeleCheck may request to increase its fees to cover such increases. If TeleCheck makes such request and the parties are unable to agree upon corresponding changes to the terms and conditions of this Agreement within 30 days of such request, TeleCheck may terminate this Agreement upon 30 days written notice.

36.16. Updating Information. With regard to any Return Items submitted to TeleCheck, Client shall promptly notify TeleCheck if: (a)a Consumer makes any payment to Client; (b) there is a return of goods or services, in whole or in part; or (c) there is a dispute of any amount, notice of bankruptcy or any other matter.

36.17. Confidentiality. Client shall maintain the confidentiality of this Agreement and any information provided to Client by TeleCheck, including, without limitation, TeleCheck Operational Procedures, pricing or other proprietary business information, whether or not such information is marked confidential. Such information shall not be used except as required in connection with the performance of this Agreement or disclosed to third parties.

36.18. No Resale, Assignment of Agreement. This Agreement is solely between TeleCheck and Client. Client shall not provide or resell directly or indirectly, the services provided by TeleCheck to any other third party. This Agreement may be assigned by Client only with the prior written consent of TeleCheck. TeleCheck may freely assign this Agreement, its rights, benefits or duties hereunder. Subject to the foregoing, this Agreement shall inure to the benefit of and be binding upon the successors and assigns of TeleCheck and Client's heirs, executors, administrators, successors and assigns.

36.19. Indemnification. In the event Client (a) fails to strictly comply, in whole or in part, with any: (i) terms and conditions of this Agreement and any addenda hereto or TeleCheck Operational Procedures, or (ii) applicable law, rules, regulations and NACHA Rules, or (b) makes any false or inaccurate representation, Client shall indemnify, defend and hold harmless the TeleCheck Parties from and against any and all Claims arising therefrom, including payment of all costs and reasonable attorneys' fees for actions taken by TeleCheck, whether by suit or otherwise, to defend the TeleCheck Parties from any Claim related thereto or to preserve or enforce TeleCheck's rights under this Agreement. In the event of any legal action with third parties or regulatory agencies concerning any transaction or event arising under this Agreement, Client shall: (a) promptly notify TeleCheck of the Claims or legal action; (b) reasonably cooperate with TeleCheck in the making of any Claims or defenses; and (c) provide information, assist in the resolution of the Claims and make available at least one employee or agent who can testify regarding such Claims or defenses. Upon written notice from TeleCheck to Client, Client shall immediately undertake the defense of such Claim by representatives of its own choosing, subject to TeleCheck's reasonable approval; provided, however, that TeleCheck shall have the right to control and undertake such defense by representatives of its own choosing, but at Client's cost and expense, if the Claim arises out of patent, trademark, or other intellectual property rights or laws.

36.20. Notices. Any notice or other communication required or permitted to be given hereunder shall be delivered by facsimile transmission, overnight courier or certified or registered mail (postage prepaid return receipt requested) addressed or transmitted to the party to be notified at such party's address or number as provided on the Merchant Processing Application or at such party's last known address or number. Any notice delivered hereunder shall be deemed to have been properly given (a) upon receipt if by facsimile transmission, as evidenced by the date of transmission indicated on the transmitted material, (b) upon receipt if deposited on a prepaid basis with a nationally recognized overnight courier for next business day delivery, and (c) on the date of delivery indicated on the return receipt, if mailed by certified or registered mail. TeleCheck shall also be permitted to provide notice by regular mail and such notice shall be deemed effective 10 days after mailing. The parties' addresses may be changed by written notice to the other party as provided herein.

36.21. Force Majeure. TeleCheck shall not be held responsible for any delays in or failure or suspension of service caused by mechanical or power failure, computer malfunctions (including, without limitation, software, hardware and firmware malfunctions), transmission link failures, communication failures, failure, delay or error in clearing or processing a transaction through the ACH Network or Federal Reserve system, failure, delay or error by any third party or any other third party system, strikes, labor difficulties, fire, inability to operate or obtain service for its equipment, unusual delays in transportation, act of God or other causes reasonably beyond the control of TeleCheck.

36.22. Compliance with Laws, Governing Law and Integration. Client shall comply with all applicable laws, regulations and rules, including NACHA Rules, relating to the services provided hereunder. Client certifies that it has not been suspended by NACHA or any credit card association, or cancelled by an ODFI or Third Party Sender (as defined in the NACHA Rules). This Agreement, plus any addenda attached hereto, constitutes the entire Agreement between the parties concerning subject matter hereof and supersedes all prior and contemporaneous understandings, representations and agreements in relation to its subject matter. **THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT REGARD TO THE CONFLICT OF LAWS PRINCIPLES THEREOF.**

36.23. Severability and Interpretation. If any provision, in whole or in part, of this Agreement is held invalid or unenforceable for any reason, the invalidity shall not affect the validity of the remaining provisions of this Agreement, and the parties shall substitute for the invalid provision a valid provision which most closely

approximates the intent and economic effect of the invalid provision. Neither this Agreement, nor any addenda or TeleCheck Operational Procedures, shall be interpreted in favor or against any party because such party or its counsel drafted such document. No course of dealing, usage, custom of trade or communication between the parties shall modify or alter any of the rights or obligations of the parties under this Agreement. This Agreement is solely for the benefit of TeleCheck (and its affiliates) and Client and no other person or entity shall have any right, interest or claim under this Agreement.

36.24. Amendment and Waiver. No modification, amendment or waiver of any of the terms and conditions of this Agreement shall be binding upon TeleCheck unless made in writing and approved and signed by TeleCheck. No waiver of any rights hereunder shall be deemed effective unless in writing executed by the waiving party. No waiver by any party of a breach or any provision of this Agreement shall constitute a waiver of any prior or subsequent breach of the same or any other provision of this Agreement. The parties agree that no failure or delay in exercising any right hereunder shall operate as a waiver of any such right. All of TeleCheck's rights are cumulative, and no single or partial exercise of any right hereunder shall preclude further exercise of such right or any other right.

36.25. Damages. Upon Client's breach of this Agreement, including any unauthorized termination, TeleCheck shall be entitled to recover from Client liquidated damages in an amount equal to ninety percent (90%) of the aggregate Monthly Minimum Fees and Statement/Processing Fees payable for the unexpired portion of the then current term of this Agreement. TeleCheck and Client hereby acknowledge and agree that, after giving due consideration to the costs TeleCheck may incur by reason of Client's breach of this Agreement, to the possibility that TeleCheck will not be able to mitigate its damages, and to the expense savings that TeleCheck may obtain by not having to provide services or maintenance, the liquidated damages specified herein constitute a realistic pre-estimate of the loss to TeleCheck in the event of such breach and shall not be construed as a penalty.

36.26. Survivability. All representations, warranties, indemnities, limitations of liability and covenants made herein shall survive the termination of this Agreement and shall remain enforceable after such termination.

37. ADDITIONAL IMPORTANT INFORMATION PERTAINING TO THIS ENTIRE AGREEMENT

37.1. Electronic Funding Authorization

All payments to Client shall be through the Automated Clearing House ("ACH") and shall normally be electronically transmitted directly to the Demand Deposit Account ("DDA") you have designated or any successor account designated to receive provisional funding of Client's Card sales pursuant to the Agreement. Client agrees that any DDA designated pursuant to the preceding sentence will be an account primarily used for business purposes. Neither Wells Fargo Bank, N.A. ("Wells Fargo Bank") nor Wells Fargo Merchant Services, L.L.C. can guarantee the timeframe in which payment may be credited by Client's depository institution (DEPOSITORY).

Client hereby authorizes Wells Fargo Bank and its authorized representative, including Wells Fargo Merchant Services, L.L.C., to access information from the DDA and to initiate credit and/or debit entries by bankwire or ACH transfer and to authorize DEPOSITORY to block or to initiate, if necessary, reversing entries and adjustments for any original entries made to the DDA and to authorize DEPOSITORY to provide such access and to credit and/or debit or to block the same to such account. This authorization is without respect to the source of any funds in the DDA, is irrevocable and coupled with an interest. This authority extends to any equipment rental or purchase agreements which may exist with Client as well as to any fees and assessments and Chargeback amounts of whatever kind or nature due to Wells Fargo Merchant Services, L.L.C. or Wells Fargo Bank under terms of this Agreement whether arising during or after termination of the Agreement. This authority is to remain in full force and effect at all times unless and until Wells Fargo Merchant Services, L.L.C. and Wells Fargo Bank have consented to its termination at such time and in such a manner as to afford them a reasonable opportunity to act on it. In addition, Client shall be charged ten dollars ($10.00) for each ACH which cannot be processed, and all subsequent funding may be suspended until Client either (i) notifies Wells Fargo Merchant Services, L.L.C. that ACH's can be processed or (ii) a new electronic funding agreement is signed by Client. Client's Depository must be able to process or accept electronic transfers via ACH.

37.2. Funding Acknowledgement

utomated Clearing House (ACH). I acknowledge that the funds for asterCard,Visa and Discover transactions will be processed and transferred to my depository within two (2) Business Days from the time a Batch is closed (by 12:00 a.m. PT) and within one (1) Business Day from the time the Batch is closed (by 12:00 a.m. PT) if such account is a Wells Fargo Direct Deposit Account.

37.3. Additional Fees and Early Termination

The fees for Services as shown on your pricing disclosure are based on the assumption that your Credit Card and Non-PIN Debit transactions will qualify at the Anticipated Interchange Levels associated with your account.

If a transaction fails to qualify for your Anticipated Interchange Levels, you will be billed a Non-Qualified Interchange Fee, plus a Non-Qualified Surcharge for each such non-qualifying transaction (see Section 18.1 and Glossary).

Your initial fees for Services are stated on your Application and may be adjusted from time to time to reflect:

a. Any increases or decreases in the interchange and/or assessment portion of the fees,

b. The appropriate interchange level as is consistent with the qualifying criteria of each transaction submitted by Client, and

c. Increases in any applicable sales or telecommunications charges or taxes levied by any state, federal or local authority related to the delivery of the services provided by Wells Fargo Merchant Services, L.L.C. when such costs are included in the Service or other fixed fees.

In addition to the Debit Card transaction fees set forth on the Application, Client shall be responsible for the amount of any fees imposed upon a transaction by the applicable debit network.

A Monthly Minimum Processing Fee will be calculated beginning thirty (30) ays after the date Client's Application is approved. (Refer to your pricing disclosures.)

Authorization Fees are charges that apply each time you communicate directly with Processor. Authorization/EDC Fee applies to all Visa, MasterCard and Discover Network Card approvals (pre-authorizations and authorizations), denials, batch inquiries, and batch entry transactions and includes any transaction fees and capture fees.

An equipment rental fee will be charged each month for each piece of equipment rented, plus tax as applicable. Client will be charged for actual shipping fees for equipment and cost of supplies.

The parties further agree and acknowledge that, in addition to any remedies contained herein or otherwise available under applicable law and, if (a) CLIENT breaches this Agreement by improperly terminating it prior to the expiration of the applicable term of the Agreement, or (b) this Agreement is terminated prior to the expiration of the applicable term of the Agreement due to an Event of Default, then SERVICERS will suffer a substantial injury that is difficult or impossible to accurately estimate. Accordingly, in an effort to liquidate in advance the sum that should represent such damages, the parties have agreed that the amount calculated in the manner specified below is a reasonable pre-estimate of SERVICERS' probable loss. Such amount shall be paid to SERVICERS within 15 days after CLIENT's receipt of SERVICERS' calculation of the amount due.

If Client has twelve (12) or more months in Net Credit Card and Non-PIN Debit (MasterCard/Visa) volume ("Sales Volume") and terminates the Agreement prior to the end of the initial term of the Agreement, Client shall pay an early termination fee equivalent to one of the following:

(i) If the Client's total Sales Volume for the past 12 months is less than $3,000,000, the early termination fee is $500 per location; or

(ii) If the Client's total Sales Volume for the past 12 months is greater than or equal to $3,000,000, the early termination fee is 0.06% multiplied by the total Sales Volume for the past 12 months

For purposes of calculating the early termination fee above, where Client has twelve or more months of Sales Volume, the total Sales Volume is calculated by summing the monthly Sales Volume for the past 12 months.

If Client has less than twelve (12) months in Sales Volume and terminates the Agreement prior to the end of the initial term of the Agreement, Client shall pay an early termination fee equivalent to one of the following:

(i) If the Client's annualized Sales Volume for the past 12 months is less than $3,000,000, the early termination fee is $500 per location; or

(ii) If the Client's annualized Sales Volume for the past 12 months is greater than or equal to $3,000,000, the early termination fee is 0.06% multiplied by the annualized Sales Volume

For purposes of calculating the early termination fee above, where Client has less than twelve months of Sales Volume, the annualized Sales Volume is calculated by summing the monthly Sales Volume since the account was initially active, for months with a Sales Volume of $50 or greater for that month, divided by the number of months since active, and multiplied by 12.

Client's obligation with respect to any Monthly Minimum Processing Fee will end when SERVICERS receive the aforementioned liquidated damages. If Client terminates this agreement via facsimile, Client must keep a copy of the facsimile confirmation record. This facsimile confirmation record will be required to substantiate refund of fees that Client deems were incorrectly assessed after the termination of the Agreement.

American Express Definitions:
EDC – Wells Auth/Wells Capture
Split Dial – Amex Auth/Wells Capture
Reverse – Amex Auth/Amex Capture

37.4. Addresses for Notices

Wells Fargo Merchant Services, L.L.C.:
1307 Walt Whitman Road
Melville, NY 11747
Attn: Sales Manager

Wells Fargo Bank:
1200 Montego Way
Walnut Creek, CA 94598
Attn: Merchant Services

Important Phone Numbers:
(see also Sections 3.3 and 5.3)
Customer Service
1-800-451-5817 press 1

MasterCard/Visa/Discover Authorization Center
1-800-626-4480

POS Help Desk
1-800-622-0842

If this application for business credit is denied you may obtain a written statement of the specific reasons for the denial. To obtain the statement, please contact Credit Initiation, 1307 Walt Whitman Road, Melville, NY 11747, 1-800-767-2484 ext. 32900, within sixty (60) days from the date you are notified of our decision. We will send you a written statement of reasons for the denial within thirty (30) days of receiving your request.

Please read the foregoing merchant processing Program Guide in its entirety. It describes the terms under which we will provide merchant processing services to you.

From time to time you may have questions regarding the contents of your Agreement (which includes your Merchant Processing Application, the foregoing Program Guide, and the schedules thereto and documents incorporated herein) with us. The following information summarizes portions of your Agreement in order to assist you in answering some of the questions we are most commonly asked.

1. **Your discount rates are assessed** on transactions that qualify for certain reduced interchange rates imposed by MasterCard, Visa and Discover. Any transactions that fail to qualify for these reduced rates will be charged an additional fee (see Section 18).
2. **We may debit your bank account** from time to time for amounts owed to us under the Agreement.
3. **There are many reasons** why a Chargeback may occur. When they occur we will debit your settlement funds or settlement account. For a more detailed discussion regarding Chargebacks, see Section 10.
4. **If you dispute any charge or funding**, you must notify us within 45 days of the date of the statement where the charge or funding appears or should have appeared.
5. **The Agreement limits our liability to you.** For a detailed description of the limitation of liability, see Section 20.
6. **We have assumed certain risks** by agreeing to provide you with Card processing. Accordingly, we may take certain actions to mitigate our risk, including termination of the Agreement, and/or hold monies otherwise payable to you (see Section 23, Term; Events of Default and Section 24, Reserve Account; Security Interest), under certain circumstances.
7. **By executing this Agreement with us** you are authorizing us to obtain financial and credit information regarding your business and the signer and guarantor of the Agreement until all your obligations to us are satisfied.
8. **The Agreement contains a provision** that in the event you terminate the Agreement early you may be responsible for the payment of an early termination fee as set forth in Section 37.3 under "Additional Important Information."
9. **If you lease equipment from Processor,** it is important that you review Section 32. This lease is a non-cancelable lease for the full term indicated.

10. Association Disclosure

Member Bank Information: Wells Fargo Bank

The Bank's mailing address is Wells Fargo Bank, 1200 Montego Way, Walnut Creek, CA 94598 and its phone number is 1-800-451-5817.

Important Member Bank Responsibilities:

(a) The Bank is the only entity approved to extend acceptance of Association products directly to a Merchant.

(b) The Bank must be a principal (signer) to the Merchant Agreement.

(c) The Bank is responsible for educating Merchants on pertinent Visa and MasterCard Rules with which Merchants must comply; but this information may be provided to you by Processor.

(d) The Bank is responsible for and must provide settlement funds to the Merchant;

(e) The Bank is responsible for all funds held in reserve that are derived from settlement.

Important Merchant Responsibilities:

(a) Ensure compliance with cardholder data security and storage requirements.

(b) Maintain fraud and chargebacks below Association thresholds.

(c) Review and understand the terms of the Merchant Agreement.

(d) Comply with Visa and MasterCard rules.

Print Client's Business Legal Name: _____

By its signature below, Client acknowledges that it received (either in person, by facsimile, or by electronic transmission) and read the complete Program Guide (Version WFB1007) consisting of 42 pages (including this confirmation), which is incorporated into its Agreement, and agrees to comply with all terms set forth therein. Upon receipt of a signed original of this Confirmation Page by us, your Application for merchant processing services will be reviewed. Client understands that its Application is subject to approval by us. Client understands that a copy of the Program Guide is also available for downloading from the Internet at:

www.wellsfargo.com/downloads/pdf/biz/merchant/program_guide.pdf

CLIENT'S BUSINESS PRINCIPAL:

Signature (Please sign below):

X _____ _____ _____

Title Date

_____

Please Print Name of Signer

SAMPLE

WFB1007 CONFIRMATION PAGE

Please read the foregoing merchant processing Program Guide in its entirety. It describes the terms under which we will provide merchant processing services to you.

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3. **There are many reasons** why a Chargeback may occur. When they occur we will debit your settlement funds or settlement account. For a more detailed discussion regarding Chargebacks, see Section 10.
4. **If you dispute any charge or funding,** you must notify us within 45 days of the date of the statement where the charge or funding appears or should have appeared.
5. **The Agreement limits our liability to you.** For a detailed description of the limitation of liability, see Section 20.
6. **We have assumed certain risks** by agreeing to provide you with Card processing. Accordingly, we may take certain actions to mitigate our risk, including termination of the Agreement, and/or hold monies otherwise payable to you (see Section 23, Term; Events of Default and Section 24, Reserve Account; Security Interest), under certain circumstances.
7. **By executing this Agreement with us** you are authorizing us to obtain financial and credit information regarding your business and the signer and guarantor of the Agreement until all your obligations to us are satisfied.
8. **The Agreement contains a provision** that in the event you terminate the Agreement early, you may be responsible for the payment of an early termination fee as set forth in Section 37.3 under "Additional Important Information."
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(a) The Bank is the only entity approved to extend acceptance of Association products directly to a Merchant.

(b) The Bank must be a principal (signer) to the Merchant Agreement.

(c) The Bank is responsible for educating Merchants on pertinent Visa and MasterCard Rules with which Merchants must comply; but this information may be provided to you by Processor.

(d) The Bank is responsible for and must provide settlement funds to the Merchant;

(e) The Bank is responsible for all funds held in reserve that are derived from settlement.

Important Merchant Responsibilities:

(a) Ensure compliance with cardholder data security and storage requirements.

(b) Maintain fraud and chargebacks below Association thresholds.

(c) Review and understand the terms of the Merchant Agreement.

(d) Comply with Visa and MasterCard rules.

Print Client's Business Legal Name: _____

By its signature below, Client acknowledges that it received (either in person, by facsimile, or by electronic transmission) and read the complete Program Guide (Version WFB1007) consisting of 42 pages (including this confirmation), which is incorporated into its Agreement, and agrees to comply with all terms set forth therein. Upon receipt of a signed original of this Confirmation Page by us, your Application for merchant processing services will be reviewed. Client understands that its Application is subject to approval by us. Client understands that a copy of the Program Guide is also available for downloading from the internet at:

www.wellsfargo.com/downloads/pdf/biz/merchant/program_guide.pdf

CLIENT'S BUSINESS PRINCIPAL:
Signature (Please sign below):

X _____ _____ _____

Title Date

_____

Please Print Name of Signer

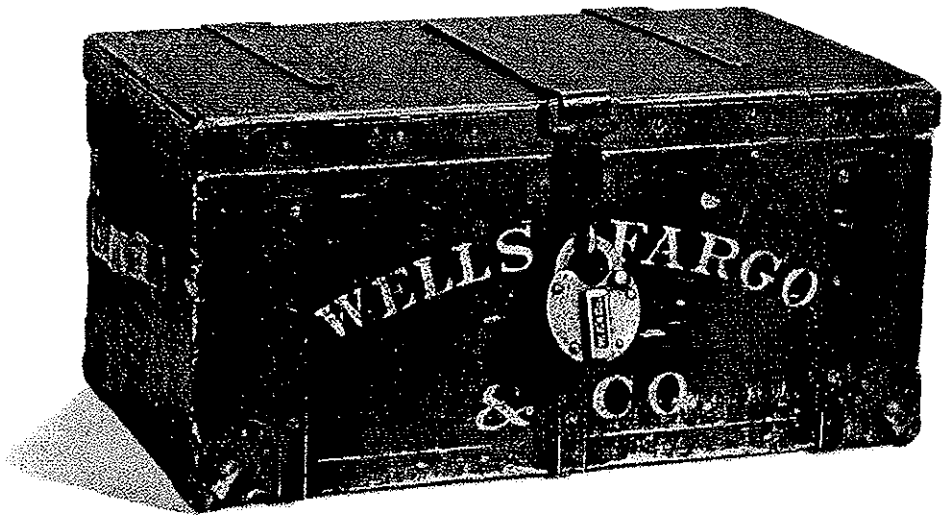
EXHIBIT "E"

COMMERCIAL ACCOUNT AGREEMENT

WELLS FARGO

Commercial Account Agreement

Effective May 1, 2005



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I. Terms Applicable to All Commercial Deposit Accounts

Introduction

In this Commercial Account Agreement ("Agreement"), "Company" refers to the owner or accountholder of a Wells Fargo bank commercial deposit account ("Account"). "Bank" refers to the Wells Fargo bank at which Company's Account is maintained. This Agreement includes the following disclosures applicable to Bank's commercial deposit accounts and related services (each, a "Service"), that Bank has separately provided to Company: (i) the schedule of Bank's fees and other account-related information (the "fee and information schedule"), (ii) the collection schedule, (iii) the funds availability policy, (iv) the privacy policy, (v) the rate sheets for interest-bearing accounts, each as modified by Bank from time to time, and (vi) any additional disclosures regarding Company's Account that Bank may provide to Company. Company is responsible for ensuring that each Authorized Signer is familiar with this Agreement. Unless Company has instructed Bank in writing to the contrary, Bank may consider communications about Company's Account from an Authorized Signer on Company's Account as communications from Company. Company agrees to notify Bank immediately in writing if any Authorized Signer's authority has been terminated. This Agreement replaces all prior agreements with Bank regarding Company's Account other than agreements regarding security interests in, or services utilizing, the Account. By signing Bank's signature card for Company's Account or by using Company's Account or a Service, Company will be deemed to have agreed to this Agreement. Company should retain a copy of this Agreement (and any information that Bank provides Company regarding changes to this Agreement) for as long as Company maintains its Account with Bank.

Defined Terms

In this Agreement, certain words have a special meaning and are therefore defined. Certain terms and their definitions are found in this Section, and others are found in the text of this Agreement.

Affiliate.
An "Affiliate" is a bank that is, directly or indirectly, a wholly or substantially owned subsidiary of Wells Fargo & Company.

Authorized Signer.
An "Authorized Signer" is a person who has Company's actual or apparent authority to transact business on Company's Account(s), whether or not such person has signed the signature card or other documentation for Company's Account(s). Bank may continue to recognize an Authorized Signer's authority until Bank has received and had a reasonable time to act upon Company's written modification or revocation of it.

Business Day.
A "Business Day" is every day except Saturdays, Sundays and federal holidays.

Collected Balance.
The "Collected Balance" is the Ledger Balance in Company's Account less Deposit Float.

Commercial Deposit Account.
A "commercial deposit account" is any deposit account, other than one of Bank's business deposit accounts, that is not held or maintained primarily for personal, family or household purposes. Examples of commercial deposit accounts include an account owned by an individual acting as a sole proprietor, a partnership, a limited partnership, a limited liability partnership, a limited liability company, a corporation, a joint venture, a non-profit corporation, an employee benefit plan or a governmental unit including an Indian tribal entity.

Deposit Float.
"Deposit Float" is the total dollar amount of Items deposited in Company's Account for which, based on the collection schedule used by Bank or the applicable Affiliate for this type of account, Company's Account has not yet been credited for purposes of calculating the Collected Balance.

Deposited Item.
A "Deposited Item" is an Item (including a non-U.S. Item) that Bank cashes or collects for Company or accepts for deposit to Company's Account.

Investable Balance.
The "Investable Balance" is the Collected Balance in Company's Account less (i) the portion of such Collected Balance that Bank is required by law to hold in reserve at a Federal Reserve Bank and (ii) other adjustments.

Item.
An "Item" includes a check, substitute check, purported substitute check, electronic item, draft, demand draft, preauthorized draft, remotely created check, remotely created item, remotely created consumer item, image replacement document or other order or instruction for the payment, transfer, or withdrawal of funds (including a withdrawal slip), automatic transfer, and electronic transaction (including a wire transfer, an ACH transfer and a Consumer ACH Debit Entry), any written document created or authorized in Company's name that would be a check or draft but for the fact that it has not been signed, and a cash-in ticket or a deposit adjustment or a photocopy or an image of any of the foregoing.

Ledger Balance.
The "Ledger Balance" is the balance in Company's Account after all debits and credits for the Business Day are posted.

Overdraft.
An "Overdraft" is any event that results in a negative balance in Company's Account.

Paper Item.
A "Paper Item" is an Item that is in paper form.

Service.
A "Service" is any service Bank provides to Company including without limitation any Treasury Management Service.

Arbitration Agreement

Agreement to Arbitrate.
Except as stated in "No Waiver of Self-Help or Provisional Remedies" below, Company and Bank agree, at Company's or Bank's request, to submit to binding arbitration all claims, disputes and controversies between or among Company and Bank (and their respective employees, officers, directors, attorneys, and other agents), whether in tort, contract or otherwise arising out of or relating in any way to Company's Account(s) and/or Service(s) and their negotiation, execution, administration, modification, substitution, formation, inducement, enforcement, default or termination (each, a "Dispute").

Governing Rules.
Any arbitration proceeding will (i) proceed in a location selected by the American Arbitration Association ("AAA") in the state whose laws govern Company's Account; (ii) be governed by the Federal Arbitration Act (Title 9 of the United States Code), notwithstanding any conflicting choice of law provision in any of the documents between Company and Bank; and (iii) be conducted by the AAA, or such other administrator as Company and Bank shall mutually agree upon, in accordance with the AAA's commercial dispute resolution procedures, unless the claim or counterclaim is at least $1,000,000.00 exclusive of claimed interest, arbitration fees and costs in which case the arbitration shall be conducted in accordance with the AAA's optional procedures for large, complex commercial disputes (the commercial dispute resolution procedures or the optional procedures for large, complex commercial disputes to be referred to, as applicable, as the "Rules"). If there is any inconsistency between the terms hereof and any such Rules, the terms and procedures set forth herein shall control. Any party who fails or refuses to submit to arbitration following a lawful demand by any other party shall bear all costs and expenses incurred by such other party in compelling arbitration of any Dispute. Nothing contained herein shall be deemed to be a waiver by Bank of the protections

afforded to it under 12 U.S.C. Section 91 or any similar applicable state law.

No Waiver of Self-Help or Provisional Remedies.
This arbitration requirement does not limit the right of either party to (i) exercise self-help remedies including setoff or (ii) obtain provisional or ancillary remedies such as injunctive relief or attachment, before, during or after the pendency of any arbitration proceeding. This exclusion does not constitute a waiver of the right or obligation of either party to submit any Dispute to arbitration or reference hereunder, including those arising from the exercise of the actions detailed in (i) and (ii) of this subsection.

Arbitrator Qualifications and Powers.
Any Dispute in which the amount in controversy is $5,000,000.00 or less will be decided by a single arbitrator selected according to the Rules, and who shall not render an award of greater than $5,000,000.00. Any Dispute in which the amount in controversy exceeds $5,000,000.00 shall be decided by majority vote of a panel of three arbitrators; provided however, that all three arbitrators must actively participate in all hearings and deliberations. Each arbitrator will be a neutral attorney licensed in the state whose laws govern Company's Account and who has a minimum of ten years experience in the substantive law applicable to the subject matter of the Dispute to be arbitrated. The arbitrator(s) will determine whether or not an issue is arbitratable and will give effect to the statutes of limitation in determining any claim. In any arbitration proceeding the arbitrator(s) will decide (by documents only or with a hearing at the discretion of the arbitrator(s)) any pre-hearing motions which are similar to motions to dismiss for failure to state a claim or motions for summary adjudication. The arbitrator(s) shall resolve all Disputes in accordance with the substantive law of the state whose laws govern Company's Account and may grant any remedy or relief that a court of such state could order or grant within the scope hereof and such ancillary relief as is necessary to make effective any award. The arbitrator(s) shall also have the power to award recovery of all costs and fees, to impose sanctions and to take such other action as deemed necessary to the same extent a judge could pursuant to the Federal Rules of Civil Procedure, the state rules of civil procedure for the state whose laws govern Company's Account or other applicable law. Judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction. The institution and maintenance of an action for judicial relief or pursuit of a provisional or ancillary remedy shall not constitute a waiver of the right of any party, including the plaintiff, to submit the controversy or claim to arbitration if any other party contests such action for judicial relief.

Discovery.
In any arbitration proceeding, discovery will be permitted in accordance with the Rules. All discovery shall be expressly limited to matters directly relevant to the Dispute being arbitrated and must be completed no later than twenty (20) days before the hearing date and within 180 days of the filing of the Dispute with the AAA. Any requests for an extension of the discovery periods, or any discovery Disputes, will be subject to final determination by the arbitrator(s) upon a showing that the request for discovery is essential for the party's presentation and that no alternative means for obtaining information is available.

Class Actions and Consolidations.
Company and Bank agree that the resolution of any Dispute arising pursuant to the terms of this Agreement shall be resolved by a separate arbitration proceeding and shall not be consolidated with other Disputes or treated as a class. Neither Company nor Bank shall be entitled to join or consolidate Disputes by or against others in any arbitration, or to include in any arbitration any Dispute as a representative or member of a class, or to act in any arbitration in the interest of the general public or in a private attorney general capacity.

Payment of Arbitration Costs and Fees.
The arbitrator(s) shall award all costs and expenses of the arbitration proceeding.

Miscellaneous.
To the maximum extent practicable, the AAA, the arbitrator(s), Company and Bank shall take all action required to conclude any arbitration proceeding within 180 days of the filing

of the Dispute with the AAA. The arbitrator(s), Company, or Bank may not disclose the existence, content or results thereof, except for disclosures of information by Company or Bank required in the ordinary course of business, by applicable law or regulation, or to the extent necessary to exercise any judicial review rights set forth herein. If more than one agreement for arbitration by or between Company and Bank potentially applies to a Dispute, the arbitration agreement most directly related to Company's Account or the subject matter of the Dispute shall control. This arbitration agreement shall survive the closing of Company's Account or termination of any Service or the relationship between Company and Bank.

Statements and Other Account-Related Information

Mailing Statements and Other Account-Related Information to Company.
Except as expressly provided otherwise in this Agreement, Bank will mail (or otherwise make available to Company) statements for Company's Account and notices and other information regarding Company's Account or any Service (collectively, "Account-Related Information") to the postal or electronic address reflected in Bank's records for Company's Account. Any statement or Account-Related Information will be deemed to have been sent to Company on the first Business Day following the date on it. A statement or other Account-Related Information that is held for Company to pick up will be deemed to be delivered to Company at the time that Bank makes it available for pick up.

Company's Obligation to Review Statements and Other Account-Related Information and to Notify Bank of Errors.
Company agrees to promptly and carefully examine each statement for Company's Account and any other Account-Related Information and any paid Items that are returned with (or described in) the statement and any other Account-Related Information and to promptly notify Bank of, and reimburse Bank for, any erroneous credit to Company's Account. Within thirty (30) days after Bank mails or otherwise makes the statement or other Account-Related Information available to Company, Company will notify Bank of any claim for credit or refund due, for example, to an erroneous or unauthorized debit, a missing signature, an unauthorized signature, or an alteration (each, an "unauthorized transaction"). Within six (6) months after Bank mails or otherwise makes the statement or other Account-Related Information available to Company, Company will notify Bank of any claim for credit or refund resulting from a forged, unauthorized, or missing endorsement. Such notification is to be made by (i) calling the telephone number listed on the statement for Company's Account or in the other Account-Related Information for such purpose and (ii) submitting a written report to Bank as soon as possible, but, in any event, within the timeframes specified above. If Company fails to notify Bank within the timeframes specified above, the balance shown on the statement for Company's Account or other Account-Related Information will be conclusively presumed to be correct, and Company will be deemed to have released Bank from all liability for the Items charged to Company's Account and for all other transactions covered by the statement or other Account-Related Information. In addition, if Company fails to notify Bank of an unauthorized transaction on Company's Account within thirty (30) days after Bank mails or otherwise makes the statement for Company's Account or other Account-Related Information describing the unauthorized transaction available to Company, Bank will not be liable to Company for any unauthorized transactions on Company's Account by the same person that could have been prevented if Company had complied with Company's obligations under this subsection. If Company notifies Bank of any claim for credit or refund later than required by this subsection, Bank may assert, at Company's request and on Company's behalf, any claim against a third party that Bank determines in Bank's sole discretion is permitted under the laws governing Company's Account or applicable rule.

Returned, Unclaimed Statements or Other Account-Related Information.
Unless otherwise prohibited by the laws governing Company's Account, (i) if two or more statements for Company's Account are returned, Bank may discontinue sending statements for Company's Account and other Account-Related Information to Company until Company provides a valid address to Bank; (ii) Bank may destroy statements for Company's Account

and other Account-Related Information that are sent to Company and returned to Bank as undeliverable; and (iii) if Bank holds the statement for Company's Account or other Account-Related Information for Company to pick up and the statement remains unclaimed for sixty (60) days, Bank may send the statement to the address reflected in Bank's records for Company's Account or destroy it.

Address Changes for Statements for Company's Account and Other Account-Related Information.
Company may instruct Bank to change the address to which Bank mails (or the means by which Bank otherwise makes available) statements for Company's Account and other Account-Related Information at any time. Bank may act on any such instruction purportedly made on Company's behalf within a reasonable time after Bank receives such instruction. Unless Company instructs Bank otherwise, Bank may in its sole discretion change the address only for the Account(s) Company specifies or for all or some of Company's other Accounts with Bank. Bank may change Company's address of record if Bank receives an address change notice from the U.S. Postal Service or if Bank receives information from a third party in the business of providing correct address information that the address in Bank's records no longer corresponds to Company's address.

Notices and Other Mail.
Any notice Company sends Bank will not be effective until Bank actually receives it and has a reasonable opportunity to act on it. If there is more than one Authorized Signer on Company's Account, Bank may send statements and other Account-Related Information to any one of them (unless Company has otherwise instructed Bank in writing). Company assumes the risk of loss in the mail. Any notice Bank sends Company will be effective when mailed or otherwise made available to Company.

Electronic Communications.
If Company provides Bank with an electronic address to which Bank may send electronic communications, Company agrees that Bank may send to Company by electronic communication any information that the laws governing Company's Account require be sent to Company in writing, provided such electronic communication does not violate the laws governing Company's Account. "Electronic communication" means a message transmitted electronically in a format that allows visual text or images to be displayed on equipment such as a personal computer monitor.

Fraud Prevention

Protection Against Unauthorized Items.
Company acknowledges that there is a growing risk of losses resulting from unauthorized Items. Bank offers Services that provide effective means for controlling the risk from unauthorized Items. These Services include:

- Positive Pay, or Positive Pay with Payee Validation, or Reverse Positive Pay (each offered by Bank in conjunction with Bank's Account Reconciliation Plan Service);
- ACH Fraud Filter; and
- Payment Authorization Service.

If Bank has expressly recommended that Company use one or more of these Services (or any other Service related to fraud prevention that Bank offers after the date of this Agreement), and Company either decides not to use the recommended Service or fails to use the recommended Service in accordance with the applicable Service Description or other Bank documentation applicable to the Service, Company will be treated as having assumed the risk of any losses that could have been prevented if Company had used the recommended Service in accordance with the applicable Service Description or applicable documentation.

Lost or Stolen Paper Items; Unauthorized Items.
If any of Company's unissued Paper Items has been lost or stolen, or if Company learns that unauthorized Items are being issued on Company's Account, Company agrees to notify Bank at once. To the extent that Company's failure to so notify Bank hampers Bank's ability

to prevent loss, Bank will be relieved of any liability for such Items. Upon receipt of any such notice, Bank may at its sole discretion and without any liability to Company take one or more of the following actions: (i) close Company's Account and open a new account for Company; (ii) dishonor any Paper Item Company or an Authorized Signer has indicated may have been lost or stolen (unless Company or an Authorized Signer subsequently has instructed Bank to honor such an Item); or (iii) pay any Paper Item presented for payment on Company's Account, provided Company has instructed Bank to pay such Paper Item and given Bank the number of that Paper Item. If Bank opens a new account for Company and Company has authorized a third party to automatically make regular deposits to or withdrawals from Company's Account (such as wire or ACH transfers), Bank shall have no liability to Company if Company does not receive any regularly scheduled deposit or if a regularly scheduled payment is not made for Company due to Company's failure to notify that third party in a timely fashion of the number of Company's new Account.

Preventing Misuse of Company's Account.
Company agrees to take reasonable steps to ensure the integrity of Company's internal procedures with respect to Company's Account and Items drawn on Company's Account or deposited to it. To help prevent embezzlement and protect Company's business assets, Bank recommends Company:

- Assign responsibilities for Company's Account to multiple individuals. Those who reconcile statements for Company's Account should be different from those who issue Items drawn on Company's Account.
- Reconcile statements for Company's Account as received and notify Bank immediately of any problem.
- Contact Bank immediately if Company does not receive the statement for Company's Account when Company would normally expect to.
- Watch for Paper Items cashed out of sequence or made out to cash. These are classic red flags for embezzlement.
- Secure Company's supply of Paper Items at all times. Stolen Paper Items are a common method of embezzlement.
- Periodically reassign accounting duties such as reconciling Company's Account or making a deposit.
- Review transaction activity on Company's Account for unexpected fluctuations. For example, compare the percentage of cash deposits to total deposit size. Most businesses will maintain a constant average. A large fluctuation might indicate embezzlement.
- Destroy any Paper Item that Company does not intend to use.
- Use tamper-resistant Paper Items at all times.
- Notify Bank immediately when an Authorized Signer's authority ends so that his/her name can be removed from all signature cards and Online Banking access, and any Cards that Bank has issued to him/her can be cancelled.
- Do not sign blank Paper Items.
- Obtain insurance coverage for these risks.

Claim of Unauthorized Transactions; Bank's Rights and Liability

Investigation by Bank; Company's Agreement to Cooperate.
Bank shall investigate any transaction Company has reported to Bank as unauthorized (a "Claim of Unauthorized Transaction"). Company agrees to (i) submit Company's Claim of Unauthorized Transaction in writing to Bank by completing or obtaining a declaration under penalty of perjury describing Company's Claim of Unauthorized Transaction (in an affidavit form approved by Bank, if so requested); (ii) file a police report; (iii) complete and return to Bank any documents requested of Company; and (iv) in all respects cooperate fully at Company's expense with Bank in Bank's investigation of Company's Claim of Unauthorized Transaction.

Standard of Care.
Bank will meet its standard of care for Company's Account by exercising ordinary care in the transaction at issue. When Bank takes an Item for processing by automated means, "ordinary care" does not require Bank to examine the Item. In all other cases, "ordinary care" requires only that Bank follow standards that do not vary unreasonably from the general standards followed by similarly situated banks. Bank's policies and procedures are general internal guidelines for Bank's use and do not establish a higher standard of care for Bank than is otherwise established by the laws governing Company's Account. A mere clerical error or an honest mistake will not be considered a failure of Bank to perform any of its obligations. If Bank waives any of its rights as to Company or Company's Account on one or more occasions, it will not be considered a waiver of Bank's rights on any other occasion.

Limitation of Liability; Indemnification.
Whether in connection with Company's Account or a Service, in no event will either party to this Agreement or its respective directors, officers, employees, or agents be liable to the other party for any special, consequential, indirect or punitive damages, whether any claim is based on contract or tort or whether the likelihood of such damages was known to either party. The foregoing limitation of liability will not apply where expressly prohibited by the laws governing Company's Account. Bank will not have any liability to Company if there are insufficient available funds in Company's Account to pay Company's Items due to actions taken by (i) Bank in accordance with this Agreement or (ii) any third party. Except to the extent that Bank fails to exercise ordinary care or breaches this Agreement, Company agrees to indemnify and hold Bank and its directors, officers, employees and agents harmless from all claims, demands, losses, liabilities, judgments, and expenses (including their attorneys' fees and legal expenses) arising out of or in any way connected with Bank's performance under this Agreement. Company agrees this indemnification will survive the closing of Company's Account and the termination of any Service.

Adverse Claims.
If any person or entity makes a claim against funds in Company's Account, or if Bank believes that a conflict exists between or among the Authorized Signers on Company's Account or that there is a dispute over matters such as the ownership of Company's Account or the authority to withdraw funds from Company's Account, Bank may, without any liability to Company, take one or more of the following actions: (i) continue to rely on Bank's records to determine the ownership of or the identity of the Authorized Signer(s) for Company's Account; (ii) honor the claim upon receipt of evidence satisfactory to Bank to justify such claim; (iii) freeze all or a part of the funds in Company's Account until the dispute is resolved to Bank's satisfaction; (iv) close Company's Account and send a check for the available balance in Company's Account payable to Company or to Company and each claimant; or (v) pay the funds into an appropriate court.

Legal Process.
Bank may accept and act on any legal process it believes is valid, whether served in person, by mail or by electronic notification, at any location of Bank. "Legal process" includes a levy, garnishment or attachment, tax levy or withholding order, injunction, restraining order, subpoena, search warrant, government agency request for information, forfeiture, seizure, or other legal process relating to Company's Account. Any such legal process is subject to Bank's security interest and right of setoff. Bank will not notify Company of a grand jury subpoena affecting Company or Company's Account.

"Freezing" Company's Account.
As part of Bank's loss prevention program, when Bank suspects that irregular, unauthorized, or unlawful activities may be occurring in connection with Company's Account, Bank may "freeze" (or place a hold on) the balance in Company's Account (and in other Account(s) Company maintains with Bank) pending an investigation of such suspected activities. If Bank freezes Company's Account, Bank will give any notice required by the laws governing Company's Account.

Force Majeure.
Neither party to this Agreement shall be deemed to be in default of any of its obligations under this Agreement if its performance is delayed, hindered or becomes impossible because of any act of God or of any public enemy, hostilities, war (declared or undeclared), guerilla or terrorist activities, act of sabotage, blockade, earthquake, flood, landslide, avalanche, tremor, ground movement, hurricane, storm, explosion, fire, labor disturbance, riot, insurrection, strike, sickness, accident, civil commotion, epidemic, act of government or its agencies or officers, power interruption or transmission failure or any cause beyond the control of either party.

Company's Insurance Coverage.
Many businesses carry special insurance for employee fraud/embezzlement. If Company does, Bank reserves the right to require Company to file a claim with its insurance company before making any claim against Bank. In such event, Bank will consider Company's claim only after Bank has reviewed Company's insurance company's decision, and Bank's liability to Company, if any, will be reduced by the amount Company's insurance company pays Company.

Substitute Checks

A federal law, known as the "Check Clearing for the 21st Century Act" or "Check 21," took effect on October 28, 2004. This law provides for an instrument called a "substitute check." A substitute check contains an accurate copy of the front and back of the original draft and bears the legend: "This is a legal copy of your check. You can use it the same way you would use the original check." As noted in the legend, a substitute check is the same as the original draft for all purposes, including proving that Company made a payment. Any Paper Item Company issues or deposits that is returned to Company may be returned in the form of a substitute check. Even if Company has cancelled Items returned with the statements for Company's Account, Bank may in its sole discretion withhold substitute checks therefrom. Company agrees Company will not transfer a substitute check to Bank, by deposit or otherwise, if Bank would be the first financial institution to take the substitute check, unless Bank has expressly agreed in writing to take it.

Deposits to Company's Account

General.
Unless otherwise agreed in writing, Bank may, without inquiry, accept a deposit to Company's Account at any time, from any person or entity, made in any manner including without limitation a deposit based on an image of an Item. Bank may also refuse to accept all or any part of any deposit. Bank may require that Company deposit an Item that is made payable to Company to Company's Account, instead of permitting Company to cash the Item. Bank is not responsible for a deposit until a Bank employee has received and verified it. The receipt received at the time of deposit is not evidence that a deposit has been verified. Bank may reverse or otherwise adjust any credit Bank believes it has erroneously made to Company's Account at any time without prior notice to Company.

Collection Items.
Bank may, in its sole discretion and with notice to Company, handle a Paper Item as a collection Item, instead of as a deposit. This means Bank sends the Item to the issuer's bank for payment and credits Company's Account for the Item when Bank receives payment for the Item. If the Item is returned unpaid, Bank will return the Item to Company.

Endorsements.
This subsection applies if an endorsement is necessary for the transfer or negotiation of an Item. Company authorizes Bank to supply Company's endorsement on any Item Bank takes for collection, payment or deposit to Company's Account. Company also authorizes Bank to collect any unendorsed Item that is made payable to Company without first supplying Company's endorsement, provided the Item was deposited to Company's Account. Bank may refuse to pay any Item or accept any Item for deposit or collection unless Bank is able to verify to its satisfaction that all of the necessary endorsements are present on the Item. For example, Bank may require that all endorsers be present at the time that an Item is presented to Bank for payment or accepted for deposit or collection.

Material Appearing on the Back of Paper Items; Legends on Paper Items.
Company is responsible for losses incurred by any person that cashes or accepts Company's Paper Items for deposit, if: (i) the loss is due to a delay in the return of the Item; and (ii) the delay is caused by material appearing on the back of the Item when it was issued or transferred by Company. This material may include, but is not limited to, carbon bands, blacked out areas, and printed or written text or numbers. Company is responsible for all losses, claims, damages or expenses that result from a restrictive legend or notation on Company's Paper Items.

Breach of Warranties.
If Company breaches any warranty Company makes under the laws governing Company's Account or rule with respect to any Item, Company shall not be released or otherwise discharged from any liability for such breach so long as Bank notifies Company of the breach within 120 days after Bank learns of the breach. If Bank fails to notify Company within this 120-day period, Company shall be released from liability and discharged only to the extent Bank's failure to notify Company within such time period caused a loss to Company.

When Deposits are Credited to Company's Account.
All over-the-counter deposits or ATM deposits to Company's Account which are received before Bank's established cut-off time on any Business Day will be credited (and will be considered deposited) to Company's Account as of the close of business that day, and will be reflected in that day's Ledger Balance for Company's Account. All other deposits (such as cash letter or lockbox) will be processed in accordance with the written agreements governing such deposits or, if there is no written agreement, banking practice. All deposits received after Bank's established cut-off time on a Business Day or at any time on a day which is not a Business Day will be credited (and will be considered deposited) to Company's Account at the end of the next Business Day. Deposits placed in one of Bank's "night depositories" before the established deadline on any Business Day will be credited to Company's Account at the close of business on that same day. All other deposits placed in the "night depository" will be credited to Company's Account at the end of the next Business Day.

Use of Funds.
Company's use of funds deposited to Company's Account will be governed by Bank's separately disclosed collection schedule and, if Company's Account is a checking account, funds availability policy. Bank's collection schedule describes when deposits of Items that satisfy certain criteria will be considered collected. A fee may be charged in connection with any use of uncollected funds permitted by Bank. The then-current rate will appear on the statement for Company's Account. Bank's funds availability policy describes when funds deposited to Company's checking Account will be available to be used for all purposes. Bank may change its collection schedule and funds availability policy from time to time without prior notice to Company.

Deposits at Affiliates.
Company may make deposits to Company's Account(s) at an Affiliate, provided the Affiliate agrees. If Company makes a deposit to Company's Account at an Affiliate, that Affiliate's collection schedule and funds availability policy will determine when the funds deposited to Company's Account will be considered collected and available.

Deposits of Non-U.S. Items.
Bank may refuse to accept for deposit or collection an Item that is payable in currency other than U.S. dollars or an Item that is not drawn on a financial institution chartered in the United States (each, a "non-U.S. Item"). If Bank accepts a non-U.S. Item for deposit to Company's Account or collection, Company accepts all risk associated with foreign currency fluctuation (exchange rate risk) and any late return of the non-U.S. Item. Company agrees Bank may use Bank's current buying and selling rate, as applicable, when processing a non-U.S. Item and may recover from Company's Account any loss Bank incurs as a result of processing such an Item for Company. Bank reserves the right to place longer holds on non-U.S. Items than the timeframes specified in Bank's funds availability policy for Deposited Items.

Acts and Omissions of Other Financial Institutions.
Bank is not liable for the insolvency, neglect, misconduct, mistake, or default of another bank or person, or for the loss or destruction of a Deposited Item or of a notice of nonpayment relating thereto. If a Deposited Item is lost or misrouted during the collection process: (i) Bank shall have no responsibility to Company for the actions or inactions of any collecting bank; (ii) Bank may charge Company's Account for the amount of the Deposited Item (and reverse any interest that may have accrued to Company's Account in connection with the Deposited Item); and (iii) Company agrees to cooperate with Bank in recreating the Deposited Item.

Deposited Items Returned.
Bank has the right to charge back to or otherwise debit any of Company's Account(s) for any Deposited Item that is returned (and to reverse or recover any associated interest that may have accrued), even if Company has made withdrawals against it. This right of charge back or debit is not affected by the expiration of any applicable midnight deadline, provided Bank does not have actual knowledge that such deadline has expired or, having such knowledge, Bank concludes that (i) the Deposited Item is returned in accordance with the laws governing Company's Account or a rule (including a clearing house rule); or (ii) Bank has received a claim that Company has breached a warranty made in connection with the Deposited Item. Bank has the right to pursue collection of such Deposited Item, even to the extent of allowing the payor bank to hold the Deposited Item beyond the midnight deadline in an attempt to recover payment. Bank may redeposit a returned Deposited Item and re-present it for payment by any means (including electronic means), unless Bank has received instructions from Company not to redeposit such Deposited Item. Bank will have no liability for taking or failing to take any action to recover payment of a returned Deposited Item. If one of Company's Deposited Items is returned with a claim that there is a breach of warranty (for example, that it bears a forged endorsement or is altered in any way), Bank may debit Company's Account for the amount of the Item (plus any associated fees) and pay the amount to the person or entity making the claim. Bank is under no duty to question the truth of the facts that are being asserted, to assess the timeliness of the claim, or to assert any defense. Bank need not give Company any prior notification of its actions with respect to the claim. Company agrees to immediately repay any Overdraft caused by the return of a Deposited Item.

Direct Deposits Returned by Bank.
If, in connection with a direct deposit plan funds are deposited to Company's Account and later returned to the originator, Bank may deduct the amount from that or any other Account Company maintains at Bank, without prior notice and at any time, except as prohibited by the laws governing Company's Account. Bank may also use any other legal remedy to recover the amount.

Reconstructing Lost or Destroyed Deposited Items.
If a Deposited Item is lost or destroyed during processing or collection (either at Bank or at another point in the payments system), Company agrees to cooperate fully with Bank to reconstruct the Deposited Item by promptly: (i) providing Bank with a copy of the front and back of the Deposited Item from Company's or the issuer's records; (ii) asking the issuer to place a stop payment on it (at Bank's expense) and issue a replacement Item to Company (if the Deposited Item has not been paid); or (iii) reviewing Company's records and other information and conducting any additional research as may be reasonable to determine the issuer's identity (if Company does not know the identity of the issuer of the Deposited Item). If Company fails to cooperate with Bank, Bank may, at any time and without advance notice to Company, reverse or otherwise adjust any credit made to Company's Account for a lost or destroyed Deposited Item.

Withdrawals from Company's Account

Determining Company's Account's Balance; Debiting Company's Account.
In determining the balance in Company's Account that is available to pay Items, Bank may reduce the available balance by the amount of any hold that Bank has placed on Company's Account under this Agreement. Additionally, Bank may place a hold on Company's Account

if Bank receives an electronic notice that an Item will be presented for payment or collection against Company's Account (a "Notice of Presentment"). The hold may remain in effect from the time the Notice of Presentment is received until the Item is presented or notice is received that the Item will not be presented, whichever first occurs. Bank may conclusively rely on the information it receives in an electronic presentment or notification when determining the available balance in Company's Account, and Bank will not have any liability for refusing to honor any of Company's Items because of insufficient funds, even if the electronic presentment or notification incorrectly describes the Item, including its amount. Bank may debit Company's Account on the day an Item is presented by any means, including without limitation electronically, or at an earlier time based on notification received by Bank that an Item drawn on Company's Account will be presented for payment or collection. A determination of the balance in Company's Account for purposes of making a decision to dishonor an Item for insufficiency or unavailability of funds may be made at any time between the presentment of the Item (or earlier upon receipt of any Notice of Presentment) and the time of return of the Item. No more than one such determination need be made.

Order of Posting.
Bank may post Items presented against Company's Account in any order Bank chooses, unless the laws governing Company's Account either require or prohibit a particular order. For example, Bank may, if it chooses, post Items in the order of highest dollar amount to lowest dollar amount. Bank may change the order of posting Items to Company's Account at any time without notice.

Paper Items Presented Over-the-Counter for Payment by a Non-Customer.
If a Paper Item drawn against Company's Account is presented over-the-counter for payment by a person who does not have a deposit account at Bank, Bank may charge a fee to the person presenting the Paper Item as a condition for payment of the Paper Item. Company should contact its banker if Company has questions or if Company is required for any reason to have a place where Company's Paper Items can be cashed without a fee. The amount of the fee is disclosed in the fee and information schedule. Bank may require identification acceptable to Bank and not prohibited by the laws governing Company's Account, including a fingerprint of the person presenting the Paper Item. Bank may dishonor the Paper Item if the person refuses to pay this fee or provide the identification Bank requests.

Large Cash Withdrawals.
If Company wants to cash a check (or make a cash withdrawal from Company's Account) for a very large amount, Bank may require five (5) Business Days' advance notice so that it can order the cash from its vault. Bank may, but is not obligated to, require that Company provide adequate security when Company picks up the cash and may also require Company to pick up the cash at Bank's central vault or other location.

Withdrawals at Affiliates.
Company may make withdrawals from Company's Account at an Affiliate, provided the Affiliate agrees. If an Affiliate cashes an Item for Company, Bank may place a hold on Company's Account(s) for a corresponding amount of funds. If the Item is later returned to the Affiliate for any reason, Bank may debit one or more of Company's Accounts for the amount of the Item.

Items Resulting From Company's Disclosure of Company's Account Number.
If Company voluntarily discloses Company's Account number to another person orally, electronically, in writing, or by some other means, and Bank determines that the context of such disclosure implies Company's authorization to debit Company's Account, Bank may treat such disclosure as Company's authorization to that person to issue Items drawn on Company's Account.

Missing Signatures; Alterations; Forgeries.
Bank will have no responsibility for reviewing the number or combination of signatures on an Item drawn on Company's Account. This means that if Company has indicated that more than one signature is required in connection with an Item drawn on Company's Account,

Bank will have no liability to Company if a transaction is conducted on or through Company's Account contrary to the signature requirements Company has specified, provided at least one of the required signatures appears on the Item. Bank will have no liability to Company for failing to detect a forgery of the signature of an Authorized Signer or an alteration of one of Company's Items, if the forgery or alteration is such that a reasonable person could not reasonably be expected to detect it.

Dates and Special Instructions on Paper Items.
Bank may, without inquiry or liability, pay one of Company's Paper Items even though: (i) special instructions written on the Paper Item indicate that Bank should refuse payment (e.g., "Void after thirty (30) days," "Paid-In-Full," or "Void over $100"); (ii) the Paper Item is stale-dated (e.g., it bears a date that is more than six (6) months in the past), even if Bank has knowledge of the date on the Paper Item; (iii) the Paper Item is post-dated (e.g., it bears a date in the future), unless an Authorized Signer has given Bank a notice of post-dating; or (iv) the Paper Item is not dated. In addition, Bank may pay in U.S. dollars the amount that has been MICR-encoded on Company's Paper Item, even though Company has purportedly drawn the Paper Item in a foreign currency.

Facsimile or Mechanical Signatures.
If Company has elected to use a facsimile or other mechanical signature (including a stamp) to sign or endorse Paper Items, Bank may rely on that signature (or any signature that purports to be the facsimile or other mechanical signature of an Authorized Signer) as Company's authorized signature without regard to when or by whom or by what means or in what ink color such signature may have been made or affixed to a Paper Item deposited to, drawn on or otherwise debited to Company's Account.

Consumer ACH Debit Entries.
Under the ACH Operating Rules, certain types of ACH entries may only be presented on a consumer account. These entries (each, a "Consumer ACH Debit Entry") include without limitation Point of Purchase ("POP"), account receivable ("ARC"), destroyed check ("XCK") and returned check ("RCK") entries. Bank shall have no obligation to pay, and no liability for paying, any Consumer ACH Debit Entry on Company's Account.

Stop Payment Orders; Notices of Post-Dating

General.
"Stop payment order" refers to both an order to Bank not to pay a Paper Item and to a notice of post-dating. To be effective, a stop payment order must be received in a time and manner that gives Bank a reasonable opportunity to act on it before paying, accepting, certifying, cashing or otherwise becoming obligated to pay Company's Paper Item as provided in the Uniform Commercial Code. Each stop payment order is subject to Bank's verification that the Paper Item described in the order has not been paid. This verification may occur subsequent to the time Bank accepts the stop payment order.

Content of Stop Payment Order.
Bank requires the exact (i) name of the payee, (ii) number of Company's Account on which Paper Item is drawn, (iii) Paper Item amount and (iv) the Paper Item number or a range of Paper Item numbers. Bank may, at its sole discretion, use only a portion of the required information in order to identify a Paper Item. Failure to provide correct and complete information may make it impossible for Bank to stop payment of a Paper Item. Company agrees to indemnify and hold Bank harmless from and against any loss incurred by Bank as a result of Bank's paying a Paper Item if any of the information relied upon in the stop payment order is incorrect or incomplete (or as a result of Bank's not paying a Paper Item for which a valid stop payment order is in effect).

Effective Period of Stop Payment Order; Renewal; Revocation.
Bank need not honor a written stop payment order for more than six (6) months. For accounts that do not have Bank's STOP AUTO-RENEWAL Service, Company must renew a stop payment order if Company does not want the stop payment order to expire after six (6)

months. Each renewal is treated as a new stop payment order. For accounts with Bank's STOP AUTO-RENEWAL Service, a stop payment order is subject to annual renewals for up to six (6) twelve-month periods, unless Company has otherwise notified Bank in writing. Bank may pay a Paper Item after a stop payment order has expired, even though the Paper Item is more than six (6) months old. An instruction to revoke a stop payment order must be received in a time and manner that gives Bank a reasonable opportunity to act on it.

Liability to Holder in Due Course.
Notwithstanding Bank's timely return of any Paper Item due to a valid stop payment order, Company may still be liable under the laws governing Company's Account for the amount of that Item.

Paper Items Paid Over Valid Stop Payment Orders.
If Bank pays a Paper Item over a valid stop payment order, Bank may require Company to provide Bank with an affidavit describing in detail Company's dispute with the payee. If Bank credits Company's Account after paying a post-dated Paper Item over a valid and timely notice of post-dating, Bank may charge Company's Account for the amount of the Paper Item as of the date of the Paper Item.

Overdrafts; Security Interest; Bank's Right to Setoff

Overdrafts and Insufficient Funds.
Bank may, at its option, pay or refuse to pay any Item if it would create an Overdraft on Company's Account, without regard to whether Bank may have previously established a pattern of honoring or dishonoring such an Item. Bank may take either of the following actions if Bank receives an Item drawn on Company's Account and there are insufficient available funds in Company's Account to cover the Item, without prior notice to Company:

- Pay the Item and create an Overdraft on Company's Account.
- Return the Item if the Item would create an Overdraft on Company's Account.

Company agrees to pay Bank's fee that may vary depending on the action Bank takes. Any Overdraft on Company's Account is immediately due and payable, unless Bank agrees otherwise in writing. Company agrees to reimburse Bank for the attorneys' fees and other costs and expenses Bank incurs in recovering the Overdraft (including Overdraft and associated fees). On a Business Day when Bank determines that there are sufficient funds in Company's Account to pay one or more but not all of the Items presented for payment on Company's Account, the order in which Bank posts such Items may affect the number of Items paid and the Overdraft and returned Item fees assessed. When Bank posts Items in the order of highest to lowest dollar amount, the Overdraft and returned Item fees may be more than these fees would be if Bank were to post the Items in the order of lowest to highest dollar amount.

Security Interest; Bank's Right to Setoff.
To secure Company's performance of this Agreement, Company grants Bank a lien on and security interest in Company's Account and Company's accounts with any Affiliate. In addition, Company acknowledges Bank may setoff against any Account(s) (including matured and unmatured time Account(s)) for any obligation Company owes Bank at any time and for any reason as allowed by the laws governing Company's Account. These obligations include both secured and unsecured debts and debts Company owes individually or together with another person. Bank may consider this Agreement as Company's consent to Bank's asserting its security interest or exercising its right of setoff should the laws governing Company's Account require Company's consent. If Company's Account is an unmatured time account, Bank may deduct any early withdrawal fee that may be due as a result of Bank having exercised its right of setoff. If Company has a Sweep Account, Company also authorizes Bank to redeem Company's shares in the Designated Money Market Fund and apply the proceeds to any obligation Company owes Bank. The rights described in this subsection are in addition to and apart from any other rights, including any rights granted under any security interest that Company may have granted to Bank.

Bank Fees and Expenses

General.
Company agrees to pay Bank in accordance with the fee and information schedule. Company also agrees to pay an amount equal to any applicable taxes, however designated, exclusive of taxes based on the net income of Bank.

Payment of Bank Fees and Expenses; Finance Charges.
Bank may either directly debit Company's Account or invoice Company for Bank fees and expenses and taxes incurred in connection with Company's Account and any Service. If an Earnings Allowance accrues on Company's Account, Bank will periodically apply Company's accrued Earnings Allowance to Bank fees and expenses (unless Bank otherwise indicates in writing). Bank may debit Company's Account (or any other Account Company maintains at Bank) or invoice Company for any amount by which the fees and expenses exceed the accrued Earnings Allowance on Company's Account. Bank may also debit Company's Account (and any other account Company maintains at Bank) for attorneys' fees and any other fees and expenses Bank incurs in exercising its rights under this Agreement including Bank's rights in connection with Overdrafts, Adverse Claims, Legal Process and "Freezing" Company's Account. If there are insufficient funds in Company's Account to cover the debit, Bank may overdraw Company's Account. Company agrees to promptly pay any invoiced amount. Bank may assess finance charges on any invoiced amounts that are not paid within forty-five (45) days of the date of invoice. Finance charges are assessed at a rate of 1.5% per month (18% per annum) or the highest amount permitted by the laws governing Company's Account, whichever is less. Charges for accrued and unpaid interest and previously assessed finance charges will not be included when calculating finance charges. Payments and other reductions of amounts owed will be applied first to that portion of outstanding fees attributable to charges for accrued and unpaid interest and previously assessed finance charges, then to other fees and expenses. Debiting of service fees occurs on the twentieth (20th) day of each month, or if the twentieth (20th) day is not a Business Day, on the next succeeding Business Day.

Earnings Allowance.
Each month, the average monthly Investable Balance in a commercial demand deposit account may earn an "Earnings Allowance" which, depending on the arrangement with Bank, may be applied against that month's fees for the account. An Earnings Allowance in excess of the total monthly fees cannot be credited to the account as interest and may not be carried forward to the following month. Earnings Allowances are calculated on a 365/366-day year basis using an "Earnings Allowance Rate," which is a variable rate established by Bank (and which may be as low as zero percent). Bank reserves the right to change this rate at any time without notice to Company. If the account is an interest-bearing account, the account is not eligible to earn an Earnings Allowance.

Checking Subaccounts

For each checking account, Bank may establish on Company's behalf a master account and two subaccounts. All information that is made available to Company about Company's Account will be at the master account level. The subaccounts are comprised of a savings account and a transaction account. On the first day of each month, Bank will allocate funds between the two subaccounts as it deems appropriate. Items received by Bank that are drawn against Company's master account will be presented for payment against the transaction subaccount. Funds will be transferred from the savings subaccount to cover Items presented against the transaction subaccount as may be needed. On the sixth (6th) transfer from the savings subaccount during a statement period all of the funds on deposit in the savings subaccount will be transferred to the transaction subaccount. If Company's Account earns interest, the use of subaccounts will not affect the interest Company earns.

Miscellaneous

Acceptable Form of Paper Items; Document and Image Quality.
Company agrees to comply with Bank's specifications for Paper Items, including without limitation paper stock, dimensions, and other generally applicable industry standards for Paper Items and to include on Company's Paper Items Bank's name and address as directed by Bank. Certain features (such as security features) of an originally issued Item or a Deposited Item may impair the image quality of a substitute check, purported substitute check or electronic Item created by Bank or any third party. Bank will not be liable for any claims, demands, judgments or expenses paid, suffered or incurred by Company, and Company will indemnify Bank from and hold Bank harmless against any claims, demands, judgments or expenses paid, suffered or incurred by Bank, arising directly or indirectly as a result of or in connection with (i) the untimely return of any Paper Item Company has issued as a result of, and any presentment-related problem resulting from, the failure of the Paper Item to conform in any respect to Bank's Paper Item specifications, including without limitation, failure to include Bank's full name and address on the Paper Item, and (ii) any claim based on the image quality of a substitute check, purported substitute check or electronic Item, whether created by Bank or any third party.

Closing Company's Account.
Company may close Company's Account at any time. Bank may, in its sole discretion, close Company's Account at any time. If Bank closes Company's Account, Bank may send the Collected Balance on deposit in Company's Account by ordinary mail to Company's most recent address shown on Bank's account records. Whether Company or Bank closes Company's Account, Company agrees to maintain on deposit in Company's Account sufficient funds (determined in Bank's sole discretion) to cover outstanding Items to be paid from Company's Account, charge-backs including without limitation returned Deposited Items and Bank's fees and expenses. This Agreement shall continue to govern Company's Account until Bank makes a final disbursement from it. In addition, Bank will not be liable for any loss or damage that may result from dishonoring any of Company's Items that are presented or otherwise received after Company's Account is closed.

Contract Language.
English is the controlling language of the relationship between Company and Bank. Bank may translate its agreements, forms, disclosures and advertisements into another language for Company's convenience. However, if there is a discrepancy between Bank's English language materials and the materials in another language, the English language version is controlling, unless (i) Bank otherwise agrees with Company in writing; or (ii) the laws governing Company's Account specifically provide for a different result.

Credit Reports.
Company authorizes Bank to make any inquiries that Bank considers appropriate to determine if Bank should open and maintain an Account for Company. This may include ordering a credit (or other) report (e.g., information from any motor vehicle department or other state agency) on Company.

Disclosure of Information.
Generally, absent Company's consent, Bank will not disclose information about Company's Account, but may do so under the following circumstances: (i) to comply with the laws governing Company's Account; (ii) in connection with examinations by state and federal banking authorities; (iii) to comply with any legal process, including without limitation a subpoena, search warrant or other order of a government agency or court; (iv) when Bank determines that disclosure is necessary or appropriate in order to complete a transaction; (v) to verify the existence and condition of Company's Account for a third party, such as a merchant or credit bureau; (vi) to provide information to Company's legal representative or successor; (vii) when reporting the involuntary closure of Company's Account; (viii) when Bank concludes that disclosure is necessary to protect Company, Company's Account, or the interests of Bank; (ix) to agents, independent contractors, and other representatives of

Bank in connection with the servicing or processing of Company's Account or Account transactions, Account analysis, or similar purposes; (x) to Bank's Affiliates and affiliated companies; or (xi) if Company gives Company's permission.

Dormant and Unclaimed Accounts.
Company's Account is dormant if, for one year for a checking account or three years for a Commercial savings or time account, there is no customer initiated activity (except where the laws governing Company's Account require otherwise). If Company's Account is dormant, Bank may hold all statements on Company's Account, but Bank's normal maintenance and other fees will continue to be assessed except where prohibited and ATM and Point-of-Sale ("POS") access may be blocked. If Company's Account remains dormant and is unclaimed by Company for the period required under the laws governing Company's Account, Bank is required by those laws to "escheat" the funds; that is, to deliver the funds in Company's Account to the state whose laws govern Company's Account. Bank may charge a fee to Company's Account for mailing an escheat notice. When the funds in Company's Account are delivered to the state, Company's Account is closed, and no interest accrues. To recover funds delivered to the state, Company must file a claim with the state.

Entire Agreement; Headings; No Third Party Beneficiary.
This Agreement constitutes the entire agreement between Company and Bank regarding the subjects addressed in it and supersedes prior oral or written representations, conditions, warranties, understandings, proposals or agreements regarding Company's Account. Headings do not constitute a part of this Agreement. No person or entity will be deemed to be a third party beneficiary under this Agreement.

Laws Governing Company's Account.
The laws governing Company's Account include the laws and regulations of the United States and, to the extent applicable, the laws of the state in which the Bank office that maintains Company's Account is located (unless Bank has notified Company in writing that the laws of another state shall govern Company's Account), without regard to conflicts of laws principles. If Company's Account was not opened in person at a Bank office (for example, if Company opened its Account by phone, through the mail, or over the Internet), Company's Account will be governed by the laws of the state in which Bank's main office is located, unless Bank notifies Company that its Account has been assigned to a particular Bank office, in which event the laws of the state in which that office is located will govern Company's Account. Any lawsuits, claims, or other proceedings relating in any way to Company's Account, any Service or this Agreement, including without limitation, the enforcement of the Arbitration Agreement in this Agreement and the entry of judgment on any arbitration award shall be venued exclusively in the courts of the state whose laws govern Company's Account, without regard to conflict of laws principles. Each provision of this Agreement stands alone. Any provision of this Agreement which is inconsistent with the laws governing Company's Account, either in its entirety or with respect to a particular type of transaction or Item, will be deemed modified and applied in a manner consistent with the laws governing Company's Account. Any provision of this Agreement which a court of competent jurisdiction determines to be unenforceable or invalid, either in its entirety or with respect to a particular type of transaction or Item, will not affect the enforceability or validity of the remaining provisions of this Agreement.

Minimum Balance Requirements; Other Restrictions.
Bank may impose minimum balance requirements or other applicable limitations, or restrictions on Company's Account, provided such requirements, limitations, or restrictions are disclosed to Company.

Modification of Agreement; Account Conversion.
Bank may in its sole discretion from time to time change this Agreement by adding new provisions or by modifying or deleting existing provisions. Each such addition, modification or deletion is referred to in this Agreement as a "modification." When applicable law requires Bank to notify Company of a modification, Bank may do so by posting notice of the modification in Bank or at Bank's home page (www.wellsfargo.com), by including

a message on or with the statement for Company's Account, or by any other means that Bank considers appropriate, unless the laws governing Company's Account requires notice by a specific means. In addition, Bank may agree in writing to waive a provision of this Agreement including without limitation a fee (a "waiver"). Bank may, upon prior written notice to Company, revoke any waiver. Company's continued use of Company's Account or a related Service following the effective date of any modification or revocation of any waiver will show Company's consent to that modification or revocation of waiver. Bank may convert Company's Account to another type of account at any time, provided Bank gives Company any advance notice that may be required.

Monitoring and Recording Communications.
Bank may without liability monitor, record and retain telephone conversations, electronic messages, electronic records and other data transmissions between Company and Bank at any time without further notice to Company, unless further notice is otherwise required by the laws governing Company's Account.

No Fiduciary Relationship.
Bank's relationship with Company concerning Company's Account is that of debtor and creditor; no fiduciary, quasi-fiduciary, or special relationship exists between Company and Bank.

Reliance on Bank Records.
Bank may rely solely on its records to determine the form of ownership of and the Authorized Signers on Company's Account.

Reordering Checks.
Company can reorder checks by mailing the reorder form enclosed in Company's current order of checks or by calling Bank at the telephone number shown on the statement for Company's Account. If Company or a third party prints its checks, Bank shall have no liability to Company if Bank is unable to process such checks by automated means.

Transferring an Interest in Company's Account.
Company's Account may not be pledged, assigned, or in any other manner transferred, whether in whole or in part, without Bank's written agreement.

II. Additional Terms Applicable to All Commercial Interest-Bearing, Savings and Time Accounts

Interest-Bearing Accounts

Variable/Fixed-Rate Accounts.
Company's interest-bearing Account may be either a variable-rate or fixed-rate account. Unless Bank has specified otherwise in writing, Company's Account will be a variable-rate account. That means Bank may in its sole discretion change the interest rate on Company's Account at any time. If Company's Account is a fixed-rate account and it is not a time account, Company will be paid the specified interest rate for at least thirty (30) days.

Method Used to Calculate Earned Interest.
Bank may use either the average daily balance or daily balance method to calculate interest. The average daily balance method applies a periodic rate to the average daily collected balance for the period. The average daily balance is calculated by adding principal for each day and dividing by the number of days in the period. The daily balance method applies a daily periodic rate to principal each day. Unless Bank has specified otherwise in writing, it will use the daily balance method to calculate interest. If Company's Account is a tiered-rate account, Bank may pay the same interest rate on more than one tier.

Interest Accrual.
If Company deposits a non-cash Item, such as a check, interest begins to accrue no later than the Business Day Bank receives credit for the deposit of that Item. This may not be the same day that Company deposits the non-cash Item to Company's Account.

Compounding and Crediting.
Interest will compound on a daily basis. For checking and savings accounts, interest will be credited on a monthly basis. For time accounts, Bank will notify Company separately as to the frequency with which interest will be credited to Company's Account.

Target Balance Accounts.
If Company maintains multiple accounts at Bank, Company may, with Bank's consent, designate in writing one such account as its "Principal Account" and one or more additional accounts as "Target Balance Accounts." For each Target Balance Account, Company will separately specify to Bank in writing the Ledger Balance or Collected Balance which Company wishes to maintain in such account (the "Target Balance"). At the end of each Business Day, Bank will determine the applicable balance on deposit in each Target Balance Account. If the applicable balance in a Target Balance Account exceeds its Target Balance, Bank will transfer from the Target Balance Account to the Principal Account such funds as are necessary to bring the applicable balance to the Target Balance. If the applicable balance is less than the Target Balance, Bank will transfer from the Principal Account to the Target Balance Account such funds as are necessary to bring the applicable balance to the Target Balance. Bank may, but will not be required to, transfer funds if the transfer would create an Overdraft or exceed the Collected Balance then on deposit in the Principal Account.

Interest Adjustments.
An interest adjustment may be reflected on the statement for Company's Account for the month after it occurs rather than the month in which it occurs.

Tax Identification Number Certification.
In most instances, Treasury regulations require Bank to obtain a Tax Identification Number ("TIN") for each account. To avoid backup withholding tax on accounts that earn interest or dividends, Company must submit Internal Revenue Service ("IRS") Form W-9 or Form W-8BEN to Bank. U.S. citizens or other U.S. persons, including resident alien individuals, must provide a Form W-9. If Company is a non-resident alien, Company must provide a Form W-8BEN. Other additional forms may be required if Company is a foreign partnership, foreign government, or is claiming an exemption based on Effectively Connected Income. Until Bank has received the completed and signed Form(s) W-9 or W-8BEN, Bank may either not pay interest or pay interest and comply with the backup withholding requirements of the IRS. If Company's Account is an interest-bearing checking or savings account, it will begin earning interest at the rate in effect on the date Bank receives Company's Form(s) W-9 or W-8BEN. If Company's Account is a time account, it will earn interest at the rate in effect on the date opened or the date of last maturity, whichever is later. If, at any time, Bank receives information which indicates that someone other than Company is using the same TIN that Company certified as its TIN on Form W-9, and Bank is not able to determine to its own satisfaction that the TIN has been assigned to Company, Bank may at its option and without notice (i) stop paying interest on Company's Account, (ii) continue paying interest but comply with the backup withholding requirements of the IRS and/or, (iii) take any other action which Bank believes is reasonable in the circumstances. If Company is an individual who owns its Account as a sole proprietor, upon that individual's death, Bank must be provided with the individual's estate's or successor's TIN or Bank may either refuse to pay interest earned on Company's Account since the date of the individual's death or withhold a portion of the interest that has been earned on Company's Account since the date of the individual's death.

Commercial Savings Accounts

Bank's Right to Require Notice.
Bank has the right to require seven (7) days' written notice before Company withdraws money from Company's savings Account.

Limitations on Transfers from Company's Savings Account.
Preauthorized transfers, automatic transfers, online transfers, payments to other persons, and transfers by telephone from Company's savings Account are limited to six (6) a month.

Preauthorized transfers include automatic bill payments, transfers to Company's other Accounts with Bank, or automatic transfers to other persons that Company has authorized Bank to make. If Bank permits transfers from Company's savings Account by check, draft, point of sale POS purchases, check card or any similar order for withdrawal, no more than three (3) of the six (6) transfers may be made by such means in a calendar month or statement cycle. If Bank determines that Company is exceeding the limits described above on more than an occasional basis, Bank will, at its option, either close Company's savings Account, transfer the funds on deposit in Company's Account to another account that Company is eligible to maintain, or terminate Company's right to make transfers and write Items against Company's savings Account.

Commercial Time Accounts

General.
Commercial Time ("time") Accounts include deposits which are payable, either on a specified date or at the expiration of a specified time, no less than seven (7) calendar days after the date of deposit. Bank may refer to a time account as a "certificate of deposit" or a "CD," even though the time account is not represented by a certificate.

Certificated Time Accounts.
If Company receives a certificate evidencing Company's time Account, Bank may require Company to present the certificate and any amendments to receive payment or transfer ownership.

Maturity Date.
Company's time Account will mature at the end of the term stated on Company's receipt, disclosure or certificate, as applicable.

Time Requirements.
Company agrees to keep Company's funds on deposit until the maturity date. Company may make withdrawals from Company's time Account on the maturity date or within the grace period after that date. Bank will not agree in advance to allow withdrawal before maturity.

Payment of Interest.
If Company has elected a payment of interest other than a credit to Company's time Account, Bank may in its sole discretion terminate it in favor of crediting Company's time Account. Ordinarily, such discretion will be exercised when an interest payment mailed to Company's Account address has been returned undelivered or when an Account to which Company's interest payments were automatically credited has been closed, or if the interest payment amount is less than any minimum amount disclosed in the fee and information schedule.

Additional Deposits.
Other than during the grace period, Company may not make additional deposits to Company's time Account, unless Bank otherwise agrees in writing.

Withdrawal of Interest Prior to Maturity.
A withdrawal of interest prior to maturity will reduce earnings.

Renewal Policies.
If Company's time Account is automatically renewable, at maturity it will renew (i) for a like term; and (ii) at Bank's interest rate in effect on the maturity date for a new time deposit of the same term and amount, unless Bank has notified Company that it will not renew Company's Account. Company may withdraw Company's funds anytime during the grace period without a fee. If Company does, Bank will not pay interest for that period on the funds withdrawn. If Company's time Account is not automatically renewable and Company does not withdraw the funds on the maturity date, the funds will no longer earn interest after the maturity date and will be placed in a non-interest-bearing checking Account.

III. Funds Transfers

General.

Funds transfers to or from Company's Account will be governed by the rules of any funds transfer system through which the transfers are made, as amended from time to time, including, without limitation, the National Automated Clearing House Association and any regional association (each, an "ACH") and Clearing House Interbank Payments System ("CHIPS"). The following terms are in addition to, and not in place of, any other agreements between Company and Bank regarding funds transfers.

Notice of Receipt of Funds.

Unless Bank has otherwise agreed in writing, it will notify Company of funds electronically debited or credited to Company's Account through the statement for Company's Account covering the period in which the transaction occurred. Bank is under no obligation to provide Company with any additional notice or receipt.

Reliance on Identification Numbers.

If a transfer instruction describes the person to receive payment inconsistently by name and account number, payment may be made on the basis of the account number even if the account number identifies a person different from the named person. If a transfer instruction describes a participating financial institution inconsistently by name and identification number the identification number may be relied upon as the proper identification of the financial institution.

Duty to Report Unauthorized and Erroneous Fund Transfers.

Company agrees to exercise ordinary care to determine whether a fund transfer to or from Company's Account was either erroneous or not authorized and will notify Bank of the facts within a reasonable time not exceeding fourteen (14) days after Bank sends or makes available to Company the statement for Company's Account on which the transfer appears or Company otherwise has notice of the transfer, whichever is earlier. Company will be precluded from asserting that Bank is not entitled to retain payment unless Company objects to payment within the fourteen (14) day period.

Erroneous Payment Orders.

Bank has no obligation to detect errors in payment orders (for example, an erroneous instruction to pay a beneficiary not intended by Company or to pay an amount greater than the amount intended by Company, or an erroneous transmission of a duplicate payment order previously sent by Company). Should Bank detect an error on one or more occasions, it shall not be construed as obligating Bank to detect errors in any future payment order.

Automated Clearing House (ACH) Transactions.

The following terms apply to payments to or from Company's Account that are transmitted through an ACH:

- Company's rights as to payments to or from Company's Account will be governed by the laws that govern Company's Account.
- Credit given by a receiving bank to its customer for a payment from Company's Account is provisional until final settlement has been made or until payment is considered received under the laws that govern Company's Account.
- If final settlement or payment is not made or received, the receiving bank will be entitled to a refund from its customer and Company, as the originator of the payment will not be considered to have paid Company's customer.
- If a payment is made to Company's Account and Bank does not receive final settlement or payment is not received under the laws governing Company's Account, Company will not be considered to have received payment, and Bank will be entitled to reimbursement from Company for that payment.
- Company hereby authorizes any Originating Depositary Financial Institution (ODFI) to initiate, pursuant to ACH Operating Rules, ACH debit entries to Company's Account for electronic presentment or re-presentment of Items written or authorized by Company.

IV. Selected Services

ATM Deposit Service.

Company may elect to utilize Bank's ATM Deposit Service by completing and returning to Bank an ATM Deposit Service Setup Form. This Service allows Company to make deposits to Company's Account using a Treasury Express Deposit® card ("Deposit Card") and a designated Wells Fargo® ATM ("ATM"). Company shall make such deposits according to the instructions Bank provides and shall gain access to the ATM using the Deposit Card and a Personal Identification Number ("PIN"), the risk of misuse of both of which Company assumes. Bank will provisionally credit each deposit to Company's Account based on the amount Company keys into the ATM. Company will receive same-day availability for cash subject to the standard cut-off time established for the ATM into which the deposit was made and Bank's funds availability policy applicable to Company's Account. If the dollar amount of Company's deposit as determined by Bank differs from Company's total (as shown on Company's ATM receipt), Bank will send Company a statement showing the amount of this difference. Company agrees Bank's count of the dollar amount of Company's deposit will be conclusive and binding on Company. Company will have full responsibility for each deposit and its contents until the deposit has been completely and physically accepted into the ATM. If Company claims any portion of a deposit was lost or stolen while in Bank's custody, Company acknowledges Company has the burden of proving its claim. If Company orders supplies for the ATM Deposit Service through the ATM, Company authorizes Bank to initiate debits to Company's Account and credits to the accounts of third party vendors to cover the cost of such supplies provided to Company. Such transfers may be processed through an automated clearing house or any other means chosen by Bank and will be subject to the rules of the funds transfer system used by Bank. Company's authorization will remain in full force and effect until Bank has received written notification from Company of its termination in such time and manner as to afford Bank and any third party vendor a reasonable opportunity to act on it.

Treasury Express Deposit® Service.

If Company elects to utilize Bank's Treasury Express Deposit ("TED") Service, Company will prepare, package and deliver TED deposits to Bank in accordance with Bank's instructions. Bank will provisionally credit Company's Account for the currency shown on the deposit ticket enclosed in Company's TED bag as follows: (i) same day credit for deposits delivered to an office of Bank before that office's cut-off time on any Business Day or for deposits placed in night depository of Bank before 6:00 a.m. on any Business Day; or (ii) next Business Day credit for deposits delivered to an office of Bank on any Business Day on or after Bank's office's cut-off time or on any non-Business Day. All TED deposits are subject to Bank's acceptance and verification. Bank will verify the currency in Company's TED bag either at a later time in Bank's office or when Company's TED bag is delivered to Bank's cash vault. Checks will be verified when they are delivered to Bank's check processing center. Bank reserves the right to adjust (debit or credit) Company's Account if Bank determines that the amount shown on Company's deposit ticket is incorrect. Because the frequency of armored courier transportation from Bank's offices to Bank's vaults varies from office to office, the time it takes to verify Company's TED deposit may vary, depending on the office to which Company's TED bag is delivered. In most cases, adjustments will be made and notification will be sent within three (3) Business Days. Adjustments will be effective when they are processed.

EXHIBIT "F"

COMMERCIAL DEPOSITORY SERVICE DESCRIPTION

WELLS FARGO

COMMERCIAL DEPOSITORY SERVICE DESCRIPTION

1. **Cash Orders from Bank's Cash Vault; Cash Vault Service.** Company agrees that the following procedures will govern Company's ordering of currency and coin ("cash") from Bank's cash vault and Bank's making such cash available to an armored car service acting as Company's agent ("Agent") at Bank's cash vault (collectively, the "Cash Vault Service.")

1.1 Cash Requests. Company may request in writing, telephonically by operator-assisted call or by touch-tone/automated response, or electronically via transmission, facsimile, or the Commercial Electronic Office® (CEO®) portal (each a "Cash Request") that Bank make available to Company's Agent at Bank's cash vault, in an amount designated in the Cash Request, shipments of cash (each a "Cash Shipment") in bags or other containers ("Cash Bags"). Bank is authorized to act upon any Cash Request Bank receives in accordance with this Service Description, and which Bank believes in good faith to have been made by an authorized representative of Company. Bank has no obligation whatsoever to verify, and will not be liable for its failure to verify or investigate, any Cash Request.

1.2 Making Cash Available to Company's Agent. Bank is authorized to make Cash Shipments available to any person whom Bank in good faith believes to be Company's Agent. Bank will have no further responsibility, and Company assumes all risk of loss, for cash made available to any such person. Bank will make Cash Shipments available only at the locations, on days, and during the hours published by Bank from time to time. Bank reserves the right to suspend its Cash Vault Service at any time without notice.

1.3 Company's Authorized Representatives. Company will promptly certify to Bank the identity of: (a) the person with whom Bank is authorized to communicate regarding authorization codes or other security procedures; (b) of Company's Agent authorized to accept delivery of cash; and (c) where applicable, the persons who are authorized users of the Cash Vault Service. Company agrees to give prior written notice to Bank of any change in the person(s) or Agent so authorized by Company. Bank will be fully protected in relying on each such notification and on the obligation of Company to promptly notify Bank of any change in the person(s) or Agent so authorized by Company

1.4 Security Procedures. For requests made in writing or by fascimile, operator-assisted telephone call or transmission, a Customer ID assigned by Bank is required. For CEO requests, a User ID assigned by Bank is required. For touch-tone/automatic response telephone requests, an Access Code is required which can be assigned either by Bank or by Company. Operator limits may also be required. It is Company's responsibility to put into place internal procedures that will minimize the risk of an unauthorized person gaining access to the Customer ID, User ID(s) and Access Code(s). Such internal procedures include, but are not limited to, requiring users to maintain such number(s) and code(s) in strict confidence. Company must notify Bank immediately in the event a breach of security is suspected.

1.5 Debit of Account. On the Business Day that Bank makes available any Cash Shipment to Company's Agent, Bank is authorized to debit Company's designated account ("Designated Account") for the aggregate amount of the shipment. Company must maintain collected balances in the Designated Account sufficient at all times to cover fully any debit. Bank has no obligation to release a requested Cash Shipment or any portion thereof to Company's Agent unless there are sufficient collected funds in the Designated Account to fully cover the amount of the Shipment at the time the Shipment is to be made available to Company's Agent. If Company fails to specify a Designated Account to Bank, Bank may debit any account which Company maintains with Bank for the amount of a requested Cash Shipment.

1.6 Packing Slip; Differences in Shipment Amount. Each Cash Shipment will be accompanied by a packing slip. The packing slip will disclose the aggregate amount of the Cash Shipment, the overall number of containers included in the Cash Shipment, and the number of containers delivered to Company's Agent for transmittal to Company. With respect to any Cash Shipment made available to Company's Agent, Company will notify Bank immediately in writing of any difference between the amount specified on the packing slip for that Shipment and the amount, as counted by Company, of the Shipment. In the event that the difference cannot be resolved, Bank's count of the amount of the disputed Shipment will be conclusive and binding on Company.

2. Delivery and Processing of Deposit Shipments at Bank's Cash Vault. The following procedures will govern Company's delivery of currency, coin, checks, other negotiable instruments or food coupons (each a "Deposit Shipment") to Bank's cash vault locations, and Bank's processing of such Deposit Shipments:

2.1 Use of Agent to Deliver Shipments. Company will deliver Deposit Shipments in deposit bags or other containers ("Deposit Bags") to one of Bank's cash vaults via an armored car service acting as Company's agent ("Agent"). Company is responsible for making all arrangements with its Agent for delivery of Deposit Shipments. Bank may accept Deposit Shipments from any person Bank believes in good faith to be Company's Agent. The delivery of a Deposit Bag to Bank or Bank's receipt for it on a manifest will not be deemed proof of Bank's receipt of the contents listed on the deposit slip contained in the Deposit Bag or Company's records. Bank will have no responsibility for any Deposit Bag or its contents delivered to one of Bank's cash vaults until the Deposit Bag is accepted by Bank in accordance with its procedures and the contents of the Deposit Bag are counted by Bank.

2.2 Delivery Procedures. In delivering a Deposit Shipment to Bank's cash vault, Company agrees to comply (and to cause its Agent to comply) with the following procedures:

- Deliver Deposit Bags only at the locations, on the days, and during the hours published by Bank from time to time;
- Properly endorse all checks and other negotiable instruments included in a Deposit Shipment;
- Use only Bank-approved Deposit Bags that are properly secured;
- Specify the number of Deposit Bags belonging to Company which are included in the overall shipment delivered to Bank, as well as the contents of each Deposit Bag, on a delivery manifest, a copy of which Company's Agent will provide to Bank at the time of delivery;
- Obtain the signature of Bank's employee who accepts delivery on that portion of the delivery manifest which the Agent retains; and
- Retain a copy of the receipt or other document covering each Deposit Bag delivered by Company to its Agent for at least one year from the date of delivery to Company's Agent.

Company agrees that Deposit Bags will be used only for the deposit of currency, coin, checks, other negotiable instruments or food coupons (collectively "items"), and will not be used in any unauthorized manner or for any unlawful purpose. As to any property other than items included in a Deposit Bag, Bank will not be deemed a bailee and will have no liability for any loss of or damage to such property which may occur.

2.3 Cut-off Time; Deposit to Designated Account. If a Deposit Shipment is received at one of Bank's cash vaults on a Business Day before Bank's published "cut-off time" for that cash vault, the aggregate amount of the deposits in such Shipment will be credited on that Business Day to the account with Bank specified on the deposit slip for that Shipment (the "Depository Account"). If a Deposit Shipment is received at a cash vault on a Business Day after Bank's "cut-off time," the aggregate amount of the deposits in that Shipment will be credited to the Depository Account on the next succeeding Business Day. Bank will not deposit any items received in any Deposit Shipment unless the account number of the Depository Account into which the deposit is to be made is specified on the deposit slip for that Shipment.

2.4 Processing of Deposit Shipments. Company authorizes Bank to open each Deposit Bag, count the contents, credit the amount of items to the Depository Account indicated on the deposit slip contained in the Deposit Bag and process any food coupons, all in accordance with Bank's customary procedures. All deposits are subject to verification, and Bank's count of the items will be conclusively deemed to be correct and complete for all purposes. No relationship of debtor and creditor will arise between Bank and Company until the count has been completed and the deposit credited to the Depository Account. Company acknowledges that it has had an opportunity to have Bank's applicable count and verification procedures explained to its representative and agrees that the same will be deemed commercially reasonable. Company understands that no photocopying or microfilming of items will be performed at any cash vault location.

2.5 Adjustment Procedures. If the aggregate amount of the items in any Deposit Shipment, as counted by Bank, is less than that reported on the deposit slip covering that Shipment, Bank will debit the Depository Account specified on the deposit slip by such difference and report the difference to Company. If that Depository Account has an insufficient collected and available balance to cover the debit, Bank will debit any of Company's other accounts with Bank for the difference, and Company agrees to promptly reimburse Bank for the difference (or any portion thereof) for which there are insufficient available balances in Company's accounts with Bank. If the aggregate amount of the items in any Deposit Shipment, as counted by Bank, is more than that reported on the deposit slip covering the Shipment, Bank will credit the Depository Account specified on the deposit slip for the difference and notify Company of the difference.

3. **Delivery and Processing of Deposit Shipments at Bank's Night Depository Locations.** The following procedures will govern Company's delivery of currency, coin, checks, other negotiable instruments or food coupons (each a "Night Deposit") to Bank's night depository locations, and Bank's processing of Night Deposits.

3.1 Night Depository Locations; Issuance of Keys. Company may make Night Deposits to its deposit account(s) with Bank by placing the items to be deposited into disposable bags furnished by Bank (each a "Night Bag") and then placing the Night Bags in the night depository receptacle ("Night Depository") at one of Bank's branches/stores (each a "Store") listed on Bank's Night Depository Set-up Form. Each office of Company listed on the Night Depository Set-up Form will receive one key to the Night Depository at a designated Store. Company will designate in writing to Bank the individuals to receive the key for each of its offices; Bank may require such individuals to sign a receipt for the keys they receive.

3.2 Contents of Night Bags; Deposit of Night Bags. Company agrees that Night Bags will be used only for the deposit of currency, coin, food coupons, checks or negotiable instruments properly endorsed by Company (collectively "items"), and will not be used in any unauthorized manner or for any unlawful purpose. As to any property other than items included in a Night Bag, Bank will not be deemed a bailee and will have no liability for any loss of or damage to such property which may occur. Each Night Bag must contain one or more deposit slips listing all the items contained in that Bag and their total dollar amount, and identifying the deposit account of Company into which the dollar amount of the deposit is to be credited (the "Designated Account"). After each Night Bag is placed in a Night Depository, the Night Depository must be securely locked. At the time each Night Bag is placed in a Night Depository the Bag must be securely closed and placed completely in the Night Depository.

3.3 Processing of Night Deposits. Bank may open each Night Bag and remove its contents without Company or any of its representatives being present. The contents of each Night Bag will be processed in accordance with Bank's standard procedures, and if placed in a Night Depository before Bank's established "cut-off time" on any Business Day, those items acceptable for deposit will be deposited into the Designated Account as of the close of business on that same Business Day. The cut-off time for deposits made through the night depository may be different from that for deposits made at the teller line. Night Deposits placed in a Night Depository after Bank's established "cut-off time" will be credited to the Designated Account on the next succeeding Business Day. Company understands and agrees that the contents of a Night Bag will not be credited to the Designated Account, nor will the relationship between Company and Bank be that of a debtor to a creditor with respect to any item in a Bag, until Bank has

accepted the item for deposit into the Designated Account after counting all the items in the Bag and calculating the total dollar amount of all such items.

3.4 Counting and Adjustment Procedures. If Company's records regarding the total dollar amount of the items in any Night Bag differ from Bank's calculation of the total dollar amount of the items in the Bag, Company has the burden of proving that its records show the correct amount in the Bag or Bank's total will be accepted as final. If there is a difference between Bank's total and Company's total for the amount of items in a Night Bag (as Company's total is shown on the deposit slip or slips in the Bag), Bank will send Company a statement indicating the amount of the difference. In the event that the difference cannot be resolved, Bank's count of the dollar amount will be conclusive and binding on Company.

3.5 Claims of Lost or Stolen Items. Company will have the burden of proving the amount of any item which it claims was lost or stolen while it was at a designated Store and that disappearance of the item occurred while it was at the designated Store. Company agrees to notify Bank immediately if Company determines that any Night Bag or any item in a Night Bag has been lost or stolen while at one of Bank's Stores. Company agrees that it will have total responsibility for each Night Bag and its contents until the Bag has dropped completely into a Night Depository.

4. **Special Instructions.** Company may submit to Bank in writing any special handling instructions it may have in connection with cash orders or deposits of items at Bank's cash vault or night depository locations. Bank may at its option accept or reject the instructions and so notify Company. Even if accepted, Bank may stop complying with the instructions upon prior notice to Company if, in Bank's opinion, continued compliance would increase Bank's costs or risks, interfere with its established or revised procedures, or diminish the efficiency of Bank's operations. Any loss attributable to increased risk resulting from a special handling procedure will be borne solely by Company.

5. **Survival.** Sections 1.6, 2.4, 2.5, 3.4, 3.5, and 5 will survive termination of the Service.

6. **Terminology.** Unless specifically defined in this Service Description, capitalized terms used in this Service Description have the meanings if any, provided in the Master Agreement for Trasury Management Services (the "Agreement") , as amended from time to time.

EXHIBIT "G"

COMMERCIAL ELECTRONIC OFFICE SERVICE DESCRIPTION

COMMERCIAL ELECTRONIC OFFICE[SM] ("CEO") SERVICE DESCRIPTION

WELLS FARGO

1. **Description of the CEO Service.** The CEO Service will allow Company to enter Bank's CEO website and access those treasury management services offered through the CEO (each, a "Service") for which Company has enrolled. Company agrees to use the CEO only as provided in the Service Documentation (which term includes notices and information posted on the CEO website.) Persons entering the CEO for Company (the "Users") must also accept the Terms of Use for the CEO which appears on the CEO when a User initially logs on. Before Company may use a Service, Company must sign or accept the Service Documentation for that Service.

2. **Security Procedures.**

   2.1 Unless Company requests self-administration of its access to the CEO, Bank will give each User an ID code and a password to be used when the User first enters the CEO. (Self-administration may not be available for all services offered through the CEO.) Bank will also assign a Company ID code for use each time a User enters the CEO. Although the Company ID code and the ID codes for each User will remain the same for each entry into the CEO, the password Bank assigns to each User must be changed to a new password the User selects when the User first enters the CEO. Bank will not know the new passwords or any subsequent passwords selected by the Users.

   2.2 If Company requests self-administration of its access to the CEO, Bank will assign a Company ID code and will set up the first Company administrator ("FCA") by assigning a personal ID code and password to be used when the FCA first enters the CEO. The FCA can then set up additional Company administrators (who will have access to all Services Company receives through the CEO) and administrators or Users (each of whom will have access only to the specific Service(s) they are set up to access.) Any Company administrator: (a) can set up additional Company administrators, administrators and Users, issuing them a password and a personal ID code; (b) can reset passwords for all Services; and (c) shall be required to immediately disable access to the CEO for any Company administrator, administrator or User who ceases to be a Company administrator, administrator or User. Administrators can set up additional administrators and Users and reset passwords for the specific Service(s) they are set up to access. The Company ID and each personal ID code will remain the same for each entry into the CEO, but the password assigned to each Company administrator, administrator, and User must be changed to a new password they select when they first enter the CEO. Bank will not know the password of any Company administrator, administrator, or User except the initial password assigned to the FCA. Company's administrative contact with respect to the CEO will be the FCA.

   2.3 If Company requests self-administration of Company's access to the CEO, Bank will give the Company administrators and the administrators a token card and a personal identification number ("PIN"), known only by them and Bank, to use each time they give personal ID codes and passwords to Company administrators, administrators, and Users. Token cards and PINs will be given to Users by Bank only if they have access to a Service which requires a token card for access. The token card generates a random and unique security code for each token card every minute. The code combines with the PIN to provide a unique password (the "Passcode") every minute.

   2.4 Company will be able to manage and control who in Company has access to the CEO and the Services by the ID codes, passwords, token cards, PINs, and Passcodes. It is Company's responsibility to ensure that the ID codes, passwords, token cards, PINs, and Passcodes are known to, and used only by, persons who have been properly authorized by Company to access the CEO and use the Services through the CEO.

2.5 **FAILURE TO PROTECT ID CODES, PASSWORDS, TOKEN CARDS, PINs, OR PASSCODES MAY ALLOW AN UNAUTHORIZED PARTY TO (1) USE THE SERVICES, (2) CORRECT, CHANGE, VERIFY, OR SEND DATA USED WITH THE SERVICES, (3) SEND INFORMATION AND COMMUNICATIONS TO, OR RECEIVE INFORMATION AND COMMUNICATIONS FROM, BANK OR (4) ACCESS COMPANY'S ELECTRONIC COMMUNICATIONS AND FINANCIAL DATA. ALL ENTRIES INTO THE CEO, ALL COMMUNICATIONS SENT, AND ALL USES OF THE SERVICES, THROUGH COMPANY'S ID CODES, PASSWORDS, TOKEN CARDS, PINs, OR PASSCODES WILL BE DEEMED TO BE ENTRIES, COMMUNICATIONS, AND USES AUTHORIZED BY COMPANY AND BE BINDING UPON COMPANY. COMPANY ASSUMES THE ENTIRE RISK FOR THE FRAUDULENT OR UNAUTHORIZED USE OF ALL ID CODES, PASSWORDS, TOKEN CARDS, PINs, AND PASSCODES.** Company acknowledges the importance of developing internal procedures to limit such risk, which procedures will include, at a minimum, (a) if Company is not on self-administration, notifying Bank immediately when any new person becomes a User or when any existing User stops being a User, (b) if Company is on self-administration, disabling access to the CEO immediately for each Company administrator, administrator, and User who stops being a Company administrator, administrator, or User, and (c) not keeping, in any form or in any place, lists of ID codes, passwords, PINs or Passcodes.

2.6 Company agrees to notify Bank immediately when Company becomes aware of any loss or theft of, or any unauthorized use of, any ID codes, passwords, token cards, Pins, or Passcodes. Company also agrees to notify Bank immediately when Company becomes aware of any unauthorized entry into the CEO.

3. **Financial Information.** Financial market data, quotes, news, research, and other financial information developed by third parties and transmitted to Bank (collectively, "Financial Information") will be available at the CEO. The posting of any Financial Information or any other information or data at the CEO will not be a recommendation by Bank that any particular Service or transaction is suitable or appropriate for Company or that Company should receive or in any way use any Service. Bank does not guarantee the accuracy, completeness, timeliness or correct sequencing of any Financial Information, nor is it in any way responsible for the actions or omissions of the third parties developing or transmitting Financial Information or for any decision made or action taken by Company in reliance upon any Financial Information.

4. **Use of Certain Software to Access the CEO.** In using the CEO, Company will be sending financial and other data as well as electronic messages directly to Bank through the Internet. Company acknowledges that when the Internet, or any other electronic communications facilities, are used to transmit or receive data and messages, the data and the messages may be accessed by unauthorized third parties. To reduce the likelihood of such third party access, Company agrees to transmit and receive data and messages through the CEO using only software, including, but not limited to, browser software, or other access devices that support the Secure Socket Layer (SSL) protocol- or other protocols required by, or acceptable to, Bank, and to follow the Bank log-on procedures that support such protocols.

5. **Disclaimers.** Bank will not be Company's advisor or fiduciary with respect to this Agreement or any Service.

6. **Limitation of Liability.** Bank will not be liable to Company for any direct or indirect damages or losses suffered or incurred by Company in connection with the CEO, any of the Services, any Financial Information, any other information or data Company receives through the CEO, or any failure to provide, or delay in providing, access to the CEO, any Service, or any Financial Information, except to the extent any Service Documentation specifically provides otherwise and except to the extent such damages or losses arise directly from the negligence or willful misconduct of Bank .

7. **Restricting or Terminating Access to the CEO.** In addition to, and not in substitution for, any provision in this Agreement or any of the other Service Documentation, Company understands and agrees that Bank will not in any way be obligated to permit Users access to any Financial Information or the use of any Service through the CEO if (a) such use or access is not in accordance with any term or condition applicable to the Service or the CEO or to the information to be accessed, (b) such use or access is not permitted by any state or federal law or regulation, (c) Bank has reasonable cause to believe that such use or access may not be authorized by Company or any third person whose authorization Bank believes is necessary for such use or access, or (d) Bank has reasonable cause to deny such use or access for Company's protection or the protection of Bank . If any Service cannot be used through the CEO, Bank will make reasonable efforts for such Service to be used by other means. Bank shall not have liability to Company for any losses or damages Company may suffer or incur as a result of any such termination.

8. **Survival.** Sections 3,6,7 and 8 will survive termination of the Service.

9. **Terminology.** Unless specifically defined in this Service Description, capitalized terms used in this Service Description have the meanings, if any, provided in the Master Agreement for Treasury Management Services (the "Agreement"), as amended from time to time.

EXHIBIT "H"

CHEXSTOR SERVICE DESCRIPTION

CheXstor[SM] Service Description

Description of Service. Company may elect to utilize Bank's *CheXstor* Service in connection with deposit accounts which Company maintains at Bank (each an "account"). As part of this Service, Bank will maintain microfilm records of all Items paid against the account for a period of seven years or any longer period required by applicable law ("Record Period"). Canceled Items are shredded and recycled. As part of this Service, Bank will provide a photocopy of any Item posted against the account which Company requests during the Record Period. Company may request a photocopy electronically via its personal computer or by contacting Bank at the telephone number listed on Company's account statement for such purpose. If Bank fails to provide Company with a copy of an Item Company requests during the Record Period, Bank will reimburse Company for (and Bank's liability will be limited to) any direct loss Company incurs as a result of the Item's unavailability (not to exceed the amount of the Item). Bank will require Company to substantiate any claimed loss.

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EXHIBIT "I"

DESKTOP DEPOSIT – CEO SERVICE DESCRIPTION

WELLS FARGO

DESKTOP DEPOSIT℠ – CEO® SERVICE DESCRIPTION

1. **Introduction.** This Service Description together with the other Service Documentation as defined in the Master Agreement for Treasury Management Services and Acceptance of Services (collectively, the "Master Agreement") between Bank and Company govern Bank's *Desktop Deposit CEO* Service (the "Service").

2. **Description of Service.** The Service enables Company to use hardware provided by Bank in conjunction with Bank's *Commercial Electronic Office®* ("*CEO*") portal to create electronic images of certain Paper Items (each, an "Electronic Image") and to transmit an electronic file of such Electronic Images and other information (collectively, the "Electronic File") to Bank for deposit to Company's checking account with Bank ("Company's Account"). After Bank receives Company's Electronic File, Bank, at its sole option, uses the Electronic File either (a) to create substitute check(s), that Bank presents to the bank on which the Paper Item is either (i) drawn or (ii) payable at or through (each, "Paying Bank"); or (b) to generate one or more electronic files (from the original Electronic File) for presentment directly or indirectly to Paying Bank.

3. **Conditions to Provision of the Service.** As conditions to Bank's provision of the Service, Company shall (a) maintain Company's Account in good standing, (b) subscribe to Bank's *CEO* service, and (c) comply with such restrictions on the Electronic File as Bank may communicate to Company from time to time.

4. **Creating Electronic Images and Transmitting Company's Electronic File to Bank.** Company shall use Bank provided or approved hardware and Bank's *CEO* service to scan checks and other Paper Items that Company wishes to deposit to Company's Account by means of the Service and to transmit Company's Electronic File to Bank.

5. **Processing Company's Electronic File.** If Company transmits Company's Electronic File to Bank before the cut-off time Bank separately discloses to Company (the "Cut-Off Time") on any Business Day, Bank shall review and process Company's Electronic File on that Business Day. If Company transmits Company's Electronic File to Bank after the Cut-Off Time on any Business Day, Bank shall review and process Company's Electronic File on the next Business Day.

6. **Exception Items.** When Bank reviews and processes Company's Electronic File, Bank shall reject any Electronic Image that Bank in its sole discretion determines to be ineligible for the Service (each, an "Exception Item") including,

without limitation, Electronic Images of Items drawn on banks located outside the United States, Electronic Images that are illegible, Electronic Images of Items previously converted to substitute checks, and Electronic Images with unreadable MICR information. Each Business Day on which Bank reviews and processes Company's Electronic File, Bank will notify Company of all Exception Items through Bank's *CEO* or other communication channels at Bank's discretion. Company agrees that if it wishes to attempt to deposit any Exception Item to Company's Account, it shall do so only by depositing the original Paper Item on which the Exception Item is based. Company acknowledges and agrees that even if Bank does not initially identify an Electronic Image as an Exception Item, the substitute check created by Bank therefrom may nevertheless be returned to Bank because, among other reasons, the Electronic Image is deemed illegible by Paying Bank. Bank's failure to identify an Exception Item shall not preclude or limit the obligation of Company to Bank under Paragraph 9.

7. **Funds Availability.** Bank shall make funds from accepted Electronic Files available according to Bank's Electronic Deposit Collected Funds Schedule ("Collected Funds Schedule"). Bank's Collected Funds Schedule will be provided to customer upon request and may be amended by Bank from time to time.

8. **Company's Warranties.** Company represents and warrants to Bank that:

   8.1. Company shall use the Service only for Paper Items payable to or endorsed or deposited by Company.

   8.2. Company shall, in accordance with instructions from Bank, dispose of original Paper Items from which Company has previously created and submitted to Bank an Electronic Image. In that regard, Company shall maintain control over and responsibility for retention and destruction of original Paper Items, as instructed by Bank.

   8.3. Company shall not submit any duplicate Electronic Images to Bank.

   8.4. Company shall not deposit to Company's Account or otherwise negotiate any original Paper Item from which Company has previously created and submitted to Bank an Electronic File, unless Bank has notified Company that the Electronic Image is an Exception Item.

   8.5. Company shall transmit to Bank only Electronic Images that are suitable for processing, including, but not limited to, Electronic Images that are legible and contain readable MICR data.

9. **Company's Agreement to Indemnify Bank.** Company shall indemnify, defend, and save harmless Bank, its parent company and its affiliates and each of their respective directors, officers, employees, and agents (collectively in this Paragraph 9, "Indemnitees") from and against all liabilities, damages, claims, obligations, demands, charges, costs, or expenses (including reasonable fees and disbursements of legal counsel and accountants) awarded against or

incurred or suffered (collectively, "Losses and Liabilities") by Indemnitees arising directly or indirectly from or related to the following (except for Losses and Liabilities arising directly or indirectly from or related to Bank's own gross negligence or wilful misconduct):

9.1. Any negligent or intentional act or omission by Company in the performance of its obligations under this Service Description and the Service Documentation;

9.2. Any material breach in a representation, warranty, covenant, or obligation of Company contained in this Service Description and the Service Documentation;

9.3. The violation of any applicable law, statute, or regulation in the performance of its obligations under this Service Description and the Service Documentation;

9.4. Bank acting as a "reconverting bank" under the Check Clearing for the 21st Century Act through the creation of "substitute checks" or purported substitute checks using an Electronic Image or Electronic File or an illegible Electronic Image;

9.5. Bank presenting to Paying Bank an Electronic File for payment; and

9.6. Company's failure to dispose of original Paper Items in accordance with Paragraph 8.2, in which event such Losses and Liabilities shall include without limitation consequential damages.

This Paragraph 9 shall survive the termination of the Service.

10. Termination. Bank may terminate the Service at any time upon prior notice to Company.

EXHIBIT "J"

INFORMATION REPORTING SERVICE DESCRIPTION

Information Reporting Service Description

This Service Description contains provisions which, in addition to the provisions contained in the Master Agreement for Treasury Management Services between Bank and Company (the "Agreement"), will govern the Information Reporting Service.

1. **The Service.** Company may, using a computer or a computer and a browser acceptable to Bank, receive account balance and certain other types of account information related to Customer's deposit account(s) or its accounts with other financial institutions.
2. **Terminology.** Unless specifically defined in this Service Description, terms used in this Service Description have the meanings, if any, provided in the Agreement and the other Service Documentation, as each may be amended from time to time.

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EXHIBIT "K"

MASTER AGREEMENT FOR TREASUREY MANAGEMENT SERVICES

WELLS FARGO

MASTER AGREEMENT FOR TREASURY MANAGEMENT SERVICES

The Service Documentation described below contains the terms under which Wells Fargo provides treasury management services ("Services"). The Wells Fargo bank through which the Services will be provided ("Bank") and the Company to which the Services will be provided are identified in the Acceptance of Services ("Acceptance").

Bank and Company agree:

1. **Service Documentation.** The Service Documentation includes:

   1.1 The Service Description for each Service.

   1.2 The Acceptance.

   1.3 This Master Agreement for Treasury Management Services ("Master Agreement").

   1.4 The account agreement for the business or commercial deposit account(s) (each, an "Account") that Company or Company's affiliate or subsidiary maintains at Bank or Bank's affiliate in connection with a Service. The account agreement includes the Dispute Resolution Program that Company and Bank agree to use to resolve any disagreements between Company and Bank regarding accounts and Services governed by the Service Documentation.

   1.5 User Guides which include software, software licenses, reset diskettes, price schedules, specifications, instructions, and notices.

   1.6 The set-up form(s) for each Service.

   The Service Documentation also applies to any Service that is provided by an affiliate of Bank and any Service that is used by an affiliate or a subsidiary of Company. "Bank" includes each such affiliate, and "Company" includes each such affiliate and subsidiary. All terms defined in this Master Agreement shall have the same meaning when used in the Service Documentation. If there is a conflict among the documents that make up the Service Documentation, the documents will govern in the order set forth above. Company acknowledges receiving a copy of the Service Documentation for each Service it requested when it entered into this Master Agreement.

2. **Services.** Bank and Company will agree upon the Service(s) to be provided.

3. **Changes to Services.** Bank may change (or add to) the terms and fees in the Service Documentation at any time upon prior written notification. If Company discontinues using the affected Service before the change becomes effective, it will not be bound by the change. If Company continues to use a Service after the change becomes effective, it will be bound by the change.

4. **Term and Termination.** Unless terminated sooner in accordance with the Service Documentation, this Master Agreement and all Services will continue in effect until terminated by either party upon thirty (30) days prior written notice to the other party (unless a Service is terminated sooner in accordance with the Service Documentation). Bank may terminate any Service following notice to Company of a breach of any provision of the Service Documentation and Company's failure to cure the breach within fifteen (15) days of the date of such notice. Bank may also terminate any Service without notice to Company if Company is subject to a petition under the U. S. Bankruptcy Code or if Bank determines, in its sole discretion, that a material adverse change has occurred in Company's ability to perform its obligations under the Service Documentation. The termination of a Service will not affect Company's or Bank's rights with respect to transactions which occurred before termination. Bank shall not be liable to Company for any losses or damages Company may incur as a result of any termination of any Service.

5. **Service Fees.** Company shall pay Bank the fees described in the Service Documentation and any taxes applicable to each Service, however designated, exclusive of taxes based on Bank's net income. Bank may debit Company's account(s) with Bank for any fees not covered by earnings credits and any taxes that are due, or it may send an invoice to Company for such amounts, which Company shall promptly pay. Bank may assess finance charges at a rate of 1.5% per month (18% per annum) or the highest rate permitted by law, whichever is less, on any invoiced fees or taxes that are not paid within thirty (30) days of the due date and shall apply payments and other reductions of amounts owed first to unpaid interest and then to other fees and charges.

6. **Confidential Information.** Unless otherwise provided in the Service Documentation, all User Guides and computer programs provided pursuant to this Master Agreement constitute Bank's or its vendor's confidential information ("Confidential Information"). Bank or its vendor will remain the sole owner of all such Confidential Information, and Company will not acquire any interest in or rights to it as a result of Company's use of any Service except as set forth in the Service Documentation. Company will maintain the confidentiality of the Confidential Information and will not disclose (or permit its employees or agents to disclose), copy, transfer, sublicense or otherwise make any of it available to any person or entity, other than its employees who have a need to use the Confidential Information in connection with the applicable Service. Company shall notify Bank immediately if it knows or suspects that there has been any unauthorized disclosure, possession, use or knowledge (each, an "Unauthorized Use") of any Confidential Information, and if it is responsible for the Unauthorized Use, it will, at its expense, promptly take all actions, including without limitation initiating court proceedings to recover possession or prevent further Unauthorized Use of the Confidential Information and obtain redress for any injury caused to Bank as a result of such Unauthorized Use. In addition, except as permitted by applicable law, Company may not decompile, reverse engineer, disassemble, modify, or create derivative works of any computer program provided pursuant to this Master Agreement.

7. **Third Party Networks; Data Transmission; Use of Required Software.**

7.1 If Bank determines that any funds transfer or communications network, Internet service provider, or other system(s) it has selected to provide a Service is unavailable, inaccessible or otherwise unsuitable for use by Bank or Company, Bank may, upon notice to Company, suspend or discontinue the affected Service.

7.2 If Company transmits data, information or instructions (collectively "Data") to Bank, or requires Bank to deliver Data to Company, using a leased line, or Value Added Network ("VAN") or any other third party provider (collectively, "Third Party Provider"), Company agrees that Bank shall have no responsibility for the accuracy, completeness, security or authenticity (collectively "Integrity") of the Data sent through such Third Party Provider, and Company agrees that Bank may rely upon the Data delivered to Bank by the Third Party Provider and that Bank shall have no independent obligation to verify the Integrity of such Data before receiving, or acting upon, any such Data.

7.3 If Company transmits data to Bank using a leased line or Value Added Network ("VAN"), Bank strongly recommends that Company secure a back-up means of transmission such as Secure File Transport for use in the event of a communications disruption.

7.4 Company shall use and maintain in good working order (and at its own expense) software, hardware and other equipment necessary for Company to use the Service(s) in accordance with the Service Documentation.

8. **No Representations or Warranties of Bank or Software Vendor.** Neither Bank nor any software vendor makes any express or implied representations or warranties with respect to the Services or any software used in connection with the Services including without limitation any warranty as to the merchantability or fitness for a particular purpose, other than those expressly set forth in the Service Documentation.

9. **Liability and Indemnification.**

9.1 Bank will perform each Service in accordance with reasonable commercial standards applicable to Bank's business; laws, regulations and operating circulars governing the activities of Bank; applicable funds transfer system(s) and clearinghouse rules; and the Service Documentation.

9.2 Bank is under no obligation to honor, in whole or in part, any entry, file, batch release, payment order, transaction or instruction (each, an "Order"), which a) exceeds Company's available funds on deposit in an Account with Bank related to the Order, unless otherwise provided in the Service Documentation; b) is not in accordance with the Service Documentation or Bank's applicable policies, procedures or practices as Bank may from time to time establish and make available to Company; c) Bank has reason to believe may not been duly authorized, should not be honored for its or Company's protection, or involves funds subject to a hold, dispute, restriction or legal process that prevents their withdrawal; or d) would possibly result in Bank violating any applicable rule or regulation of any federal or state regulatory authority including without limitation any Federal Reserve risk control program or guidelines such as the limitations on Bank's intra-day net funds position.

9.3 Company shall promptly furnish written proof of loss to Bank and notify Bank if it becomes aware of any third party claim related to a Service. Company shall cooperate fully (and at its own expense) with Bank in recovering a loss. If Company is reimbursed by or on behalf of Bank, Bank or its designee will be subrogated to all rights of Company.

9.4 Any claim, action or proceeding against Bank for losses or damages arising from a Service, including Bank's honoring or dishonoring a check covered by a Service, must be brought within one (1) year from the date of the act or omission or in the case of a check from the date the check was first paid or returned by Bank.

9.5 Bank will have no liability for failure to perform or delay in performing a Service if the failure or delay is due to circumstances beyond Bank's reasonable control.

9.6 Except in the case of Bank's gross negligence or intentional misconduct, Company shall indemnify and hold Bank, its directors, officers, employees and agents harmless from all losses or damages that arise out of a) the performance of a Service in accordance with the Service Documentation including without limitation any warranty Bank is required to make to a third party in connection with a Service; b) an act or omission of any agent, courier or authorized representative of Company; c) if the Service includes a license or sublicense of any software to Company, the use or distribution of the software by Company or any person gaining access to the software through Company that is inconsistent with the license or sublicense; and d) Company's failure to secure a back-up means of transmission for data transmissions using leased lines or VANs as set forth in Subsection 7.3 above

9.7 Bank will only be liable to Company for its direct monetary losses or damages due to Bank's negligence or breach of this Master Agreement. Except in the case of Bank's gross negligence or intentional misconduct, Bank's liability to Company will be limited to an amount not to exceed ten (10) times Bank fees incurred during the calendar month immediately preceding the calendar month in which such loss or damages were incurred (or, if no Bank fees were incurred in such month, Bank fees incurred in the month in which the losses or damages were incurred). In no event will either party to this Master Agreement be liable to the other party for any special, consequential, incidental (including without limitation court costs and attorneys' fees), indirect, or punitive losses or damages, whether any claim is based on contract or tort, or whether the likelihood of such losses or damages was known to the other party and regardless of the form of the claim or action.

10. General.

10.1 The Service Documentation will be governed by substantive federal laws, regulations and rules and, to the extent such laws, regulations and rules are not applicable, those of the state in which the principal office of the Bank identified on the Acceptance is located, without regard to conflicts of laws principles. Any portion of the Service Documentation which is inconsistent with applicable laws, regulations or rules will be deemed modified and applied in a manner consistent therewith, and Bank will incur no liability to Company as a result of the inconsistency or modification and application. If any portion of the Service Documentation is deemed unenforceable or invalid, it will not otherwise affect the enforceability or validity of the Service Documentation.

10.2 The Service Documentation is the entire agreement between Bank and Company and supersedes all prior representations, conditions, warranties, understandings, proposals or agreements regarding a Service. No course of dealing or waiver of any right on one occasion will constitute a modification of the Service Documentation or be a waiver of that right on a subsequent occasion.

10.3 Company agrees to provide Bank promptly upon Bank's request any existing financial statements or other information pertaining to Company's financial condition or any previously unprepared financial statements which Bank may require Company to prepare and/or to be audited or reviewed by independent certified public accountants acceptable to Bank.

10.4 Company expressly warrants that a Service will not be used in a manner which violates any federal or state law including without limitation any sanction or control administered by the Office of Foreign Assets Control or Bureau of Export Administration.

10.5 Sections 4, 5, 6, 8, 9, 10.4 and 10.5 of this Master Agreement will survive termination of this Master Agreement.

10.6 Either party may provide notice to the other party by mail, personal delivery, or electronic transmission. Bank shall use the most recent address for Company in Bank's records, and any notice from Bank will be effective when sent. Company shall use the address where Company's relationship manager or other manager is located and address any notice to the attention of such manager. Any notice from Company will be effective when actually received by Bank. Bank will be entitled to rely on any notice from Company that it believes in good faith was authorized by an authorized representative of Company and, except as expressly stated in the Service Documentation, shall have no obligation to verify the signature (including an electronic signature). Each party will have a reasonable time after receipt of any notice to act on it.

EXHIBIT "L"

PAYMENT AUTHORIZATION SERVICE DESCRIPTION

Payment Authorization Service Description

WELLS FARGO

Description of Service. Company may, by executing and delivering to Bank a Payment Authorization Service Set-up Form, elect to utilize the Service for deposit accounts which Company maintains at Bank (each an "account"). Under the terms of the Service, Bank will, without Company's specific approval as to any particular Item, (i) automatically return unpaid (marked "REFER TO MAKER") Items drawn against the account which are presented to Bank, and which exceed the "Maximum Dollar Authorized Payment Amount" specified on the Setup Form, (ii) refuse encashment of Items drawn against the account which are presented to Bank through its branch/store network, and which exceed the "Maximum Check Cashing Amount" specified on the Setup Form, (iii) refuse withdrawal requests against the account which are presented to Bank through its branch/store network, and which exceed the "Maximum over the Counter Withdrawal Amount" specified on the Setup Form, and/or (iv) refuse encashment of Items drawn against the account which are presented to Bank throught its branch/store network, and which are made payable to an individual.

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EXHIBIT "M"

STOPS – IMAGES – SERACH ("SIS")
SERVICE DESCRIPTION

WELLS FARGO

STOPS—IMAGES—SEARCH {"SIS") SERVICE DESCRIPTION

This Service Description contains provisions which, in addition to the provisions contained in the Master Agreement for Treasury Management Services between Bank and Company (the "Agreement"), will govern the Stops—Images--Search {"SIS"} Service (the "Service").

1. **The Service**. Company may, using a computer or a computer and browser acceptable to Bank, request stop payment orders on checks drawn on Company's deposit account(s) or Company's account(s) with another financial institution maintained in connection with the Controlled Disbursement Service (a "Controlled Disbursement Account") and, where applicable, request photocopies of checks that have cleared Company's deposit account(s) or Controlled Disbursement Account(s).

2. **Stop Payments.**

   2.1 Requirements. Bank may pay a check against Company's deposit account(s) whenever it is presented and without regard to its date. If Company does not want Bank to pay a check, it must place a stop payment order which is valid for the period specified when Company opened its deposit account and must be received within sufficient time for Bank to act.

   2.2 Limitations. A stop payment order will be ineffective with respect to (a) a check deposited to an account at a Wells Fargo Bank if it cannot be charged back without creating an overdraft in that account, and (b) a check that was cashed by any Wells Fargo Bank. Company authorizes Bank to accept telephone stop payment orders from any person who Bank in good faith believes is acting on Company's behalf. In Texas, Company must confirm an oral stop payment order in writing.

3. **Survival.** The provisions of this Service Description designated as Sections 2 and 3 will survive termination of the Service.

EXHIBIT "N"

WELLSIMAGE CD SERVICE DESCRIPTION

WELLS FARGO

WELLSIMAGE® CD SERVICE DESCRIPTION

1. **Introduction.** This Service Description and the other Service Documentation as defined in the Master Agreement for Treasury Management Services ("Master Agreement") between Wells Fargo Bank, N.A. ("Bank"), and the company identified in the signature block of the Acceptance of Services ("Company") between Bank and Company govern Bank's WellsImage CD Service (the "Service").

2. **Description of the Service.** The Service enables Company to receive a WellsImage CD-ROM ("CD-ROM") containing (a) an index of each Paper Item that has been paid against each Company checking account at Bank that is enrolled in the Service (each, an "Account") for the specified CD-ROM cycle; and (b) images of the front and back of each paid Paper Item. After the end of each CD-ROM cycle, CD-ROMs will be sent to Company at the address(es) designated by Company. CD-ROMs may be viewed using the WellsImage Viewer™ Software (the "Software") which will be provided pursuant to Section 7 below. "Paper Item" is defined in Bank's Commercial Account Agreement.

3. **Condition to Provision of the Service.** As conditions to Bank's provision of the Service, Company will (a) at all times maintain the Account(s) in good standing, and, (b) agree to the terms of the Software Sublicense (see Section 7).

4. **Rules Applicable to the Service.** Bank will provide the Service to Company in accordance with (a) the Service Documentation including, without limitation, the WellsImage Viewer User Guide(s) that Bank makes available to Company; and (b) state and federal laws and regulations, including the National Automated Clearing House Association Rules ("NACHA Rules") applying to Paper Item conversion.

5. **Paper Item Conversion.** The NACHA Rules allow for the conversion of certain Paper Items into ACH items. Images of Paper Items converted pursuant to the NACHA Rules may not be available through the Service.

6. **Images and Replacement CD-ROMs.** If a Paper Item on a CD-ROM index is not imaged on the CD-ROM (and the image is available), Bank will, upon request and without charge, send an image copy of the front and back of the Paper Item. However, each Paper Item will be indexed and the data contained on the Paper Item will be provided on the CD-ROM whether or not an image of the Paper Item is available. In addition, Bank will, at Company's request, recreate a CD-ROM, but only for a period of sixty (60) days after the CD-ROM is first created.

7. **Software Sublicense.** Company must use the Software in accordance with the terms of a non-exclusive, non-assignable sublicense ("Software Sublicense") from Bank. The Software Sublicense will be presented to Company during installation and Company will be required to accept it before being allowed to use the Software. This Section will survive termination of this Service.

8. **Termination.** In addition to the termination provisions of the Master Agreement, the Service may also be terminated by Bank immediately on written notice to Company if Company fails to comply with its obligations under the Software Sublicense.

EXHIBIT "O"

WIRE TRANSFER SERVICE DESCRIPTION

WIRE TRANSFER SERVICES DESCRIPTION

WELLS FARGO

1. **Description of the Wire Transfer Services (the "Services").** The Services will enable Company to give instructions ("Orders") to Bank to (i) transfer funds by wire from the account(s) designated in the Wire Transfer Services Set-up Forms (the "Account"), and (ii) instruct another depository institution to debit an account at that institution and transfer the funds to Bank or debit the Account at Bank and transfer the funds to that institution ("Drawdown Requests"). In this Service Description, the term "Transfer Instruction" refers to both Orders and Drawdown Requests. This Service Description is in addition to, and not in place of, any other agreement which Company may have entered into with Bank regarding Wire Transfer Instructions.

2. **Security Procedure.** Company agrees that Bank may verify that Company has authorized a Transfer Instruction solely in accordance with the Wire Transfer Services Security Procedure Agreement then in effect (the "Security Procedure"). The Security Procedure will not apply to Transfer Instructions delivered to Bank in person by Company or its authorized representative. The Security Procedure will not be used to detect erroneous Transfer Instructions. Company agrees that the Security Procedure it selected is commercially reasonable and is the Security Procedure that best meets its requirements given the size, type and frequency of the Transfer Instructions Company will issue to Bank. Company further agrees to safeguard any number, code, password, test key, or other identifier assigned to it from discovery by any unauthorized person. If Company has chosen the telephone verification option and the individual contacted by Bank identifies himself or herself as an individual designated by Company and confirms that the Transfer Instruction was sent to Bank by Company, Bank will be conclusively deemed to have complied with the telephone security procedure. If Company becomes aware of a breach of the Security Procedure, or suspects that a breach may occur, it will immediately notify Bank in a time and manner that gives Bank a reasonable opportunity to act on it.

3. **Identify Authorized Persons.** Company will notify Bank in writing of the identity of each individual authorized to receive information regarding the Security Procedure. Company will promptly notify Bank in writing of any change in an authorized individual. Company's notice will be binding on Bank if it is received in a time and manner that gives Bank a reasonable opportunity to act on it. Bank will be fully protected in relying on Company's notices. Bank may, but will not be required to, electronically record any oral communication that it receives from Company.

4. **Authorization to Pay.** Company authorizes and instructs Bank to pay any Order that complies with the Security Procedure. For each Transfer Instruction executed by Bank in accordance with the terms of this Service Description, Company authorizes Bank to debit or credit, as applicable, the account specified in the Transfer Instruction (and if no account is specified, the Account or any other account of Company at Bank or an affiliate) even if a debit results in an overdraft. Company agrees to have sufficient available funds in the account specified in the Transfer Instruction (and if no account is specified, the Account) at the time of each debit.

5. **Finality of Transfer Instructions.** A Transfer Instruction will be final and will not be subject to stop payment or recall, except that Bank may, at Company's request, make an effort to effect such stop payment or recall. In that case, Bank will incur no liability for its failure or inability to do so.

6. **Inconsistency of Name and Number.** If a Transfer Instruction describes the person to receive payment inconsistently by name and account number (i) payment may be made on the basis of the account number even if the account number identifies a person different from the named person or (ii) Bank may in its sole discretion refuse to accept or may return the Transfer Instruction. If a Transfer Instruction describes a participating financial institution inconsistently by name and identification number, the identification number may be relied upon as the proper identification of the financial institution. If a Transfer Instruction identifies a nonexistent or unidentifiable person or account as the beneficiary or beneficiary's account, Bank may in its sole discretion refuse to accept or may return the Transfer Instruction.

7. **Company's Duty to Exercise Ordinary Care.** Company will exercise ordinary care to determine whether a Transfer Instruction accepted by Bank was either erroneous or not authorized and to notify Bank of the facts within a reasonable time not exceeding fourteen (14) days after Company has received notification from Bank that the Transfer Instruction was accepted or that the Account was debited or credited with respect to the Transfer Instruction, whichever is earlier. Company will be precluded from asserting that Bank is not entitled to retain payment for a Transfer Instruction unless Company objects within the fourteen (14) day period.

8. **Information Requests**. Company may request the issuance of tracer messages concerning uncompleted transfers. Company will provide Bank with any transaction information it considers necessary to process Company's inquiry. In addition to Bank's fees for this service, Company will reimburse Bank for any charges it incurs from third parties in connection with Company's requested tracer messages.

9. **International Wire Transfers.** A Transfer Instruction expressed in U.S. Dollars will be sent in U.S. Dollars. Company may request that prior to executing an Order or outgoing Drawdown Request, Bank converts the amount to be transferred from U.S. Dollars to the currency of a designated foreign government or intergovernmental organization ("Foreign Currency") at Bank's selling rate for exchange in effect on the date the Order or outgoing Drawdown Request is executed by Bank. If the financial institution designated to receive the funds does not pay the beneficiary specified in the Order or outgoing Drawdown Request and it is payable in Foreign Currency, Bank will not be liable for a sum in excess of the value of the Order or outgoing Drawdown Request after it has been converted from Foreign Currency to U.S. Dollars at Bank's buying rate for exchange at the time the cancellation of the Order or outgoing Drawdown Request is confirmed by Bank.

10. **Responsibility of Bank.** Bank is only responsible for making a good faith effort to execute Company's Transfer Instructions. Transfer Instructions may be sent by wire, telegraph, telephone, cable or whatever other transmission method Bank considers to be reasonable. Orders and outgoing Drawdown Requests may be transmitted directly to the beneficiary's financial institution, or indirectly to the beneficiary's financial institution through another financial institution, government agency or other third party that Bank considers to be reasonable. Bank may execute an incoming Drawdown Request that conforms with instructions it receives through Fed Wire, SWIFT or any other funds transfer system, provided such instructions are not inconsistent with instructions contained in an applicable Set-up Form. The authority to execute the incoming Drawdown Request shall continue until Bank receives express written notice from Company that such authority is revoked. Bank will not be liable for any third party's failure to or delay or error in processing a Transfer Instruction. If the beneficiary bank does not pay the beneficiary specified in the Transfer Instruction, a refund will be made only after Bank has received confirmation of the effective cancellation of the Transfer Instruction and Bank is in free possession of the funds debited or earmarked in connection with the Transfer Instruction. If

Bank is notified that it did not transfer the full amount stated in a Transfer Instruction, Bank's sole obligation will be to promptly execute a second Transfer Instruction in the amount of the stated deficiency. If Bank executes a Transfer Instruction in excess of the amount stated in the Transfer Instruction, to the extent that the originator does not receive the benefit of the Transfer Instruction, Bank will only be liable for any loss of the principal amount transferred in excess of the amount stated in the Transfer Instruction. Additionally, Bank will be liable for the amount of interest the originator has lost due to the transfer of the excess amount, computed at the then current Federal Funds rate. However, Bank's liability for loss of interest will be limited to twenty (20) calendar day's interest. This section sets forth Bank's complete liability for a Transfer Instruction issued or received under this Service Description.

IN NO EVENT WILL BANK BE LIABLE FOR DAMAGES ARISING DIRECTLY OR INDIRECTLY IF THE TRANSFER INSTRUCTION IS EXECUTED BY BANK IN GOOD FAITH AND IN ACCORDANCE WITH THE TERMS OF THIS SERVICE DESCRIPTION.

As used in the Master Agreement for Treasury Management Services (the "Agreement"), with respect to the Services, "negligence" means a material failure to use the degree of care used under similar circumstances by a national bank having a similar volume of funds transfers and similar number, size and diversity of funds transfer customers.

11. **Governing Law; Rules and Regulations.** Bank's and Company's rights and obligations regarding Transfer Instructions will be governed solely by this Service Description and the other Service Documentation and, to the extent applicable, federal law and the law of the state in which Bank's principal office is located, as amended from time to time. Article 4A of the Uniform Commercial Code will, to the extent possible, be applied by analogy to any Drawdown Requests. All Transfer Instructions will also be subject to the rules and regulations of any funds transfer system used by Bank as amended from time to time. If a Transfer Instruction is to be processed in accordance with a statute, rule, regulation or license of the United States, or any federal agency, the Transfer Instruction will be governed by that statute, rule, regulation or license.

12. **Notices; Receipt of Confirmations.** In addition to the notice provision set forth in Section 10.6 of the Agreement, the following will apply: A bank statement showing a Transfer Instruction sent by first class mail to Company's last address as shown in Bank's records and not returned will be conclusively presumed to have been received by Company seven (7) days after it is sent.

13. **Agents.** Bank may use agents of its choice to perform any of its obligations.

14. **Survival.** Sections 4, 7, 9, 10 and 14 will survive termination of the Services.

15. **Terminology.** Unless specifically defined in this Service Description, terms used in this Service Description have the meanings, if any, provided in Article 4A of the Uniform Commercial Code, as amended from time to time. Each Bank request, instruction and set-up form completed by or on behalf of Company in connection with the Services will be deemed to be a "Set-up Form" as that term is used in the Service Documentation.

EXHIBIT "P"

ACH FRAUD FILTER SETUP FORM

ACH Fraud Filter Setup Form

WELLS FARGO

1. TYPE OF REQUEST – Select request type and enter corresponding start date. See reference guide for complete instructions and required documentation.

- ☐ New Service ..... Complete ALL sections
- ☐ Change of Service..... Complete ALL sections
- ☐ Discontinue Service..... Complete sections 2 and 5
- ☐ Remove Exception..... Complete section 4 (Company ID Exceptions ONLY)

*Start Date:
*Complete for ALL requests

2. ACCOUNT IDENTIFICATION – Complete all fields for New Service, Change of Service, or Discontinue Service request types ONLY.

Company Name	AU/Cost Center
Fraud Filter Account Number*	**Fraud Filter Routing Transit Number (RTN)**
Billing Account Number*	**Billing Account Routing Transit Number (RTN)**

* For subaccounts the Fraud Filter and Billing Accounts should be the same.

3. CUSTOMER CONTACT INFORMATION – Complete all fields for New Service or Change of Service (if contact information has changed) request types ONLY.

Contact Name – Primary Fraud Filter Contact

Phone	Fax
( ) - Ext:	( ) -

4. TRANSACTION FILTER OPTIONS – Complete all for New Service; select options for Change of Service; or complete Company ID Exceptions for Remove Exception.

ITEM TYPE	OPTIONS – Select all that apply.	COMPANY ID EXCEPTIONS – ACH Company IDs to be excluded and amount. NOTE: For Stop and Review options, all ACH credits/debits with this Company ID will be excluded from reporting and will post to the account.	
		COID	Amount
☐ Debits	• ☐ Stop option -OR- ☐ Review option		$ $
	• ☐ No dollar limit condition -OR- ☐ Filter all ACH debits above this dollar amount: $ NOTE: For Stop option, all ACH debits will be stopped that exceed this dollar amount. For Review option, all ACH debits will be reported that exceed this dollar amount.		$ $ $ $
	• ☐ Echeck option – Post All (P) -OR- ☐ Echeck option – Stop All (S)		
☐ Credits	• ☐ Stop option -OR- ☐ Review option		$ $
	• ☐ No dollar limit condition -OR- ☐ Filter all ACH credits above this dollar amount: $ NOTE: For Stop option, all ACH credits will be stopped that exceed this dollar amount. For Review option, all ACH credits will be reported that exceed this dollar amount.		$ $ $ $

5. CUSTOMER AUTHORIZATION – Complete for New Service, Change of Service, or Discontinue Service request types ONLY.

☐ I authorize the above setup criteria (New Service or Change of Service).

☐ I decline the review period and would like the account(s) immediately set up with the Stop option. Items are automatically returned.
NOTE: All customers requesting the Stop option are automatically set up for review of 2-4 weeks to monitor for authorized ACH activity.

☐ I authorize the ACH Fraud Filter service to be discontinued for this account.

FOR IMPLEMENTATION USE ONLY

riginator Name	Phone	Date
	( ) - Ext:	
Date – to switch customer from Review to Stop	**TED Case**	**Package ID**

REVOLVING LINE OF CREDIT NOTE

$500,000.00

San Francisco, California
July 1, 2008

FOR VALUE RECEIVED, the undersigned THE CITY OF WILDOMAR ("Borrower") promises to pay to the order of WELLS FARGO BANK, NATIONAL ASSOCIATION ("Bank") at its office at 707 Wilshire Blvd., 11th Floor Los Angeles, CA 90017, or at such other place as the holder hereof may designate, in lawful money of the United States of America and in immediately available funds, the principal sum of Five Hundred Thousand Dollars ($500,000.00), or so much thereof as may be advanced and be outstanding, with interest thereon, to be computed on each advance from the date of its disbursement as set forth herein.

1. DEFINITIONS:

As used herein, the following terms shall have the meanings set forth after each, and any other term defined in this Note shall have the meaning set forth at the place defined:

(a) "Business Day" means any day except a Saturday, Sunday or any other day on which commercial banks in California are authorized or required by law to close.

(b) "Default Interest" means the interest which accrues at the rate specified in Section 2(e) hereof – the "Default Rate."

(c) "Fixed Rate Term" means a period commencing on a Business Day and continuing for 1, 2, 3 or 6 months, as designated by Borrower, during which all or a portion of the outstanding principal balance of this Note bears interest determined in relation to LIBOR; provided however, that no Fixed Rate Term may be selected for a principal amount less than One Hundred Thousand Dollars ($100,000.00); and provided further, that no Fixed Rate Term shall extend beyond the scheduled maturity date hereof. If any Fixed Rate Term would end on a day which is not a Business Day, then such Fixed Rate Term shall be extended to the next succeeding Business Day.

(d) "LIBOR" means the rate per annum (rounded upward, if necessary, to the nearest whole 1/8 of 1%) determined pursuant to the following formula:

$$\text{LIBOR} = \frac{\text{Base LIBOR}}{\text{100\% - LIBOR Reserve Percentage}}$$

(i) "Base LIBOR" means the rate per annum for United States dollar deposits quoted by Bank as the Inter-Bank Market Offered Rate, with the understanding that such rate is quoted by Bank for the purpose of calculating effective rates of interest for loans making reference thereto, on the first day of a Fixed Rate Term for delivery of funds on said date for a period of time approximately equal to the number of days in such Fixed Rate Term and in an amount approximately equal to the principal amount to which such Fixed Rate Term applies. Borrower understands and agrees that Bank may base its quotation of the Inter-Bank Market Offered Rate upon such offers or other market indicators of the Inter-Bank Market as Bank in its discretion deems appropriate including, but not limited to, the rate offered for U.S. dollar deposits on the London Inter-Bank Market.

(ii) "LIBOR Reserve Percentage" means the reserve percentage prescribed by the Board of Governors of the Federal Reserve System (or any successor) for "Eurocurrency Liabilities" (as defined in Regulation D of the Federal Reserve Board, as amended), adjusted by Bank for expected changes in such reserve percentage during the applicable Fixed Rate Term.

(e) "Maximum Rate" means the maximum interest rate which is permissible under the provisions of Article 7.6 of Chapter 4, Part 1, Division 2 of the California Government Code.

(f) "Prime Rate" means at any time the rate of interest most recently announced within Bank at its principal office as its Prime Rate, with the understanding that the Prime Rate is one of Bank's base rates and serves as the basis upon which effective rates of interest are calculated for those loans making reference thereto, and is evidenced by the recording thereof after its announcement in such internal publication or publications as Bank may designate.

2. INTEREST:

(a) Interest. The outstanding principal balance of this Note shall bear interest (computed on the basis of a 360-day year, actual days elapsed) either (i) at a fluctuating rate per annum one half percent (0.50%) above the Prime Rate in effect from time to time, or (ii) at a fixed rate per annum determined by Bank to be three percent (3.00%) above LIBOR in effect on the first day of the applicable Fixed Rate Term, provided, however, that in no event shall interest hereunder (including without limitation, Default Interest) exceed the Maximum Rate, subject to the provisions of Section 2(f) hereof. When interest is determined in relation to the Prime Rate, each change in the rate of interest hereunder shall become effective on the date each Prime Rate change is announced within Bank. With respect to each LIBOR selection hereunder, Bank is hereby authorized to note the date, principal amount, interest rate and Fixed Rate Term applicable thereto and any payments made thereon on Bank's books and records (either manually or by electronic entry) and/or on any schedule attached to this Note, which notations shall be prima facie evidence of the accuracy of the information noted.

(b) Selection of Interest Rate Options. At any time any portion of this Note bears interest determined in relation to LIBOR, it may be continued by Borrower at the end of the Fixed Rate Term applicable thereto so that all or a portion thereof bears interest determined in relation to the Prime Rate or to LIBOR for a new Fixed Rate Term designated by Borrower. At any time any portion of this Note bears interest determined in relation to the Prime Rate, Borrower may convert all or a portion thereof so that it bears interest determined in relation to LIBOR for a Fixed Rate Term designated by Borrower. At such time as Borrower requests an advance hereunder or wishes to select a LIBOR option for all or a portion of the outstanding principal balance hereof, and at the end of each Fixed Rate Term, Borrower shall give Bank notice specifying: (i) the interest rate option selected by Borrower; (ii) the principal amount subject thereto; and (iii) for each LIBOR selection, the length of the applicable Fixed Rate Term. Any such notice may be given by telephone (or such other electronic method as Bank may permit) so long as, with respect to each LIBOR selection, (A) if requested by Bank, Borrower provides to Bank written confirmation thereof not later than three (3) Business Days after such notice is given, and (B) such notice is given to Bank prior to 10:00 a.m. on the first day of the Fixed Rate Term, or at a later time during any Business Day if Bank, at it's sole option but without obligation to do so, accepts Borrower's notice and quotes a fixed rate to Borrower. If Borrower does not immediately accept a fixed rate when quoted by Bank, the quoted rate shall expire and any subsequent LIBOR request from Borrower shall be subject to a redetermination by Bank of the applicable fixed rate. If no specific designation of interest is made at the time any advance is requested hereunder or at the end of any Fixed Rate Term, Borrower shall be

deemed to have made a Prime Rate interest selection for such advance or the principal amount to which such Fixed Rate Term applied.

(c) Taxes and Regulatory Costs. Borrower shall pay to Bank immediately upon demand, in addition to any other amounts due or to become due hereunder, any and all (i) withholdings, interest equalization taxes, stamp taxes or other taxes (except income and franchise taxes) imposed by any domestic or foreign governmental authority and related in any manner to LIBOR, and (ii) future, supplemental, emergency or other changes in the LIBOR Reserve Percentage, assessment rates imposed by the Federal Deposit Insurance Corporation, or similar requirements or costs imposed by any domestic or foreign governmental authority or resulting from compliance by Bank with any request or directive (whether or not having the force of law) from any central bank or other governmental authority and related in any manner to LIBOR to the extent they are not included in the calculation of LIBOR. In determining which of the foregoing are attributable to any LIBOR option available to Borrower hereunder, any reasonable allocation made by Bank among its operations shall be conclusive and binding upon Borrower.

(d) Payment of Interest. Interest accrued on this Note shall be payable on the last day of each calendar month, commencing July 31, 2008.

(e) Default Interest. From and after the maturity date of this Note, or such earlier date as all principal owing hereunder becomes due and payable by acceleration or otherwise, the outstanding principal balance of this Note shall bear interest until paid in full at an increased rate per annum (computed on the basis of a 360-day year, actual days elapsed) equal to four percent (4%) above the rate of interest from time to time applicable to this Note.

(f) Excess Interest Amount. The interest rates set forth in Section 2(a) above, without giving effect to the reference therein to this Section 2(f) or to the proviso limiting interest to the Maximum Rate, is herein referred to the "Section 2(a) Rate". The amount of interest, if any, which would accrue hereunder at the Section 2(a) Rate on any date but does not so accrue due to the application of the Maximum Rate shall constitute "Excess Interest." As of any date, the cumulative Excess Interest, if any, on all days since the effective date hereof, reduced as set forth in the next sentence, shall constitute the "Excess Interest Amount." If there is any Excess Interest Amount, on any date when the Section 2(a) Interest is less than the Maximum Rate, the interest rate for such date shall be the Maximum Rate rather than the Section 2(a) Rate or the Default Rate, as applicable, and the Excess Interest Amount shall be reduced on such date by the excess of the amount of interest that would have accrued on such date at the Section 2(a) Rate; provided, however, that if the accrual of interest under this Note at the Maximum Rate would result in a reduction of the Excess Interest Amount to a negative number, this Note shall accrue interest on such date at a lesser rate as shall result in the reduction of the Excess Interest Amount to zero. Any Excess Interest Amount remaining unpaid on the date on which all obligations owing to Bank under this Note are due and payable shall remain an obligation of Borrower until paid in full. Borrower shall pay, to the extent permitted by applicable law, to the Bank a fee in an amount equal to the Excess Interest Amount on such date.

3. BORROWING AND REPAYMENT:

(a) Borrowing and Repayment. Borrower may from time to time during the term of this Note borrow, partially or wholly repay its outstanding borrowings, and reborrow, subject to all of the limitations, terms and conditions of this Note and of any document executed in connection with or governing this Note; provided however, that the total outstanding borrowings

under this Note shall not at any time exceed the principal amount stated above. The unpaid principal balance of this obligation at any time shall be the total amounts advanced hereunder by the holder hereof less the amount of principal payments made hereon by or for any Borrower, which balance may be endorsed hereon from time to time by the holder. The outstanding principal balance of this Note shall be due and payable in full on July 15, 2009.

(b) Advances. Advances hereunder, to the total amount of the principal sum stated above, may be made by the holder at the oral or written request of (i) _____ or _____, any one acting alone, who are authorized to request advances and direct the disposition of any advances until written notice of the revocation of such authority is received by the holder at the office designated above, or (ii) any person, with respect to advances deposited to the credit of any deposit account of Borrower, which advances, when so deposited, shall be conclusively presumed to have been made to or for the benefit of Borrower regardless of the fact that persons other than those authorized to request advances may have authority to draw against such account. The holder shall have no obligation to determine whether any person requesting an advance is or has been authorized by Borrower.

(c) Application of Payments. Each payment made on this Note shall be credited first, to any interest then due and second, to the outstanding principal balance hereof. All payments credited to principal shall be applied first, to the outstanding principal balance of this Note which bears interest determined in relation to the Prime Rate, if any, and second, to the outstanding principal balance of this Note which bears interest determined in relation to LIBOR, with such payments applied to the oldest Fixed Rate Term first.

4. PREPAYMENT:

(a) Prime Rate. Borrower may prepay principal on any portion of this Note which bears interest determined in relation to the Prime Rate at any time, in any amount and without penalty.

(b) LIBOR. Borrower may prepay principal on any portion of this Note which bears interest determined in relation to LIBOR at any time and in the minimum amount of One Hundred Thousand Dollars ($100,000.00); provided however, that if the outstanding principal balance of such portion of this Note is less than said amount, the minimum prepayment amount shall be the entire outstanding principal balance thereof. In consideration of Bank providing this prepayment option to Borrower, or if any such portion of this Note shall become due and payable at any time prior to the last day of the Fixed Rate Term applicable thereto by acceleration or otherwise, Borrower shall pay to Bank immediately upon demand a fee which is the sum of the discounted monthly differences for each month from the month of prepayment through the month in which such Fixed Rate Term matures, calculated as follows for each such month:

(i) Determine the amount of interest which would have accrued each month on the amount prepaid at the interest rate applicable to such amount had it remained outstanding until the last day of the Fixed Rate Term applicable thereto.

(ii) Subtract from the amount determined in (i) above the amount of interest which would have accrued for the same month on the amount prepaid for the remaining term of such Fixed Rate Term at LIBOR in effect on the date of prepayment for

new loans made for such term and in a principal amount equal to the amount prepaid.

(iii) If the result obtained in (ii) for any month is greater than zero, discount that difference by LIBOR used in (ii) above.

Borrower acknowledges that prepayment of such amount may result in Bank incurring additional costs, expenses and/or liabilities, and that it is difficult to ascertain the full extent of such costs, expenses and/or liabilities. Borrower, therefore, agrees to pay the above-described prepayment fee and agrees that said amount represents a reasonable estimate of the prepayment costs, expenses and/or liabilities of Bank. If Borrower fails to pay any prepayment fee when due, the amount of such prepayment fee shall thereafter bear interest until paid at a rate per annum two percent (2.00%) above the Prime Rate in effect from time to time (computed on the basis of a 360-day year, actual days elapsed). Each change in the rate of interest on any such past due prepayment fee shall become effective on the date each Prime Rate change is announced within Bank.

5. EVENTS OF DEFAULT:

This Note is made pursuant to and is subject to the terms and conditions of that certain Credit Agreement between Borrower and Bank dated as of July 1, 2008, as amended from time to time (the "Credit Agreement"). Any default in the payment or performance of any obligation under this Note, or any defined event of default under the Credit Agreement, shall constitute an "Event of Default" under this Note.

6. MISCELLANEOUS:

(a) Remedies. Upon the occurrence of any Event of Default, the holder of this Note, at the holder's option, may declare all sums of principal and interest outstanding hereunder to be immediately due and payable without presentment, demand, notice of nonperformance, notice of protest, protest or notice of dishonor, all of which are expressly waived by each Borrower, and the obligation, if any, of the holder to extend any further credit hereunder shall immediately cease and terminate. Each Borrower shall pay to the holder immediately upon demand the full amount of all payments, advances, charges, costs and expenses, including reasonable attorneys' fees (to include outside counsel fees and all allocated costs of the holder's in-house counsel), expended or incurred by the holder in connection with the enforcement of the holder's rights and/or the collection of any amounts which become due to the holder under this Note, and the prosecution or defense of any action in any way related to this Note, including without limitation, any action for declaratory relief, whether incurred at the trial or appellate level, in an arbitration proceeding or otherwise, and including any of the foregoing incurred in connection with any bankruptcy proceeding (including without limitation, any adversary proceeding, contested matter or motion brought by Bank or any other person) relating to any Borrower or any other person or entity.

(b) Governing Law. This Note shall be governed by and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the undersigned has executed this Note as of the date first written above.

THE CITY OF WILDOMAR

By: _____
Title: Mayor

Attest:

_____
Title: City Clerk

CREDIT AGREEMENT

THIS AGREEMENT is entered into as of July 1, 2008, by and between THE CITY OF WILDOMAR, a California general law city and municipal corporation ("Borrower"), and WELLS FARGO BANK, NATIONAL ASSOCIATION ("Bank").

RECITALS

Borrower has requested that Bank extend or continue credit to Borrower as described below, and Bank has agreed to provide such credit to Borrower on the terms and conditions contained herein.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Bank and Borrower hereby agree as follows:

ARTICLE I
CREDIT TERMS

SECTION 1.1. LINE OF CREDIT.

(a) Line of Credit. Subject to the terms and conditions of this Agreement, Bank hereby agrees to make advances to Borrower from time to time up to and including July 15, 2009, not to exceed at any time the aggregate principal amount of Five Hundred Thousand Dollars ($500,000.00) ("Line of Credit"), the proceeds of which shall be used to fund operating expenses pending receipt of revenues. Borrower's obligation to repay advances under the Line of Credit shall be evidenced by a promissory note dated as of July 1, 2008 ("Line of Credit Note"), all terms of which are incorporated herein by this reference.

(b) Borrowing and Repayment. Borrower may from time to time during the term of the Line of Credit borrow, partially or wholly repay its outstanding borrowings, and reborrow, subject to all of the limitations, terms and conditions contained herein or in the Line of Credit Note; provided however, that the total outstanding borrowings under the Line of Credit shall not at any time exceed the maximum principal amount available thereunder, as set forth above. Notwithstanding the foregoing, Borrower shall maintain a zero balance on advances under the Line of Credit for a period of at least 30 consecutive days during the term of the Line of Credit.

SECTION 1.2. INTEREST/FEES.

(a) Interest. The outstanding principal balance of the Line of Credit shall bear interest at the rate(s) of interest set forth in the Line of Credit Note.

(b) Computation and Payment. Interest shall be computed on the basis of a 360-day year, actual days elapsed. Interest shall be payable at the times and place set forth in each promissory note or other instrument or document required hereby.

(c) Fees. Borrower shall pay to Bank a non-refundable commitment fee for the Line of Credit in the amount of $15,000.00, which fee shall be due and payable in full on July 15, 2008.

SECTION 1.3. COLLECTION OF PAYMENTS. Borrower authorizes Bank to collect all interest and fees due under the Line of Credit by charging Borrower's deposit account number _____ with Bank, or any other deposit account maintained by Borrower with Bank, for the full amount thereof. Should there be insufficient funds in any such deposit account to pay all such sums when due, the full amount of such deficiency shall be immediately due and payable by Borrower.

SECTION 1.4. PLEDGE OF REVENUES. The Line of Credit shall be payable as to both principal and interest from, and shall be secured by a pledge of, lien on and security interest in all of Borrower's General Fund revenues and all proceeds thereof (collectively, "Gross Revenues").

ARTICLE II
REPRESENTATIONS AND WARRANTIES

Borrower makes the following representations and warranties to Bank, which representations and warranties shall survive the execution of this Agreement and shall continue in full force and effect until the full and final payment, and satisfaction and discharge, of all obligations of Borrower to Bank subject to this Agreement.

SECTION 2.1. LEGAL STATUS. Borrower is a _____, California general law city and municipal corporation, duly organized and existing and in good standing under the laws of the State of California, and is qualified or licensed to do business (and is in good standing as a foreign corporation, if applicable) in all jurisdictions in which such qualification or licensing is required or in which the failure to so qualify or to be so licensed could have a material adverse effect on Borrower.

SECTION 2.2. AUTHORIZATION AND VALIDITY. This Agreement and each promissory note, contract, instrument and other document required hereby or at any time hereafter delivered to Bank in connection herewith (collectively, the "Loan Documents") have been duly authorized, and upon their execution and delivery in accordance with the provisions hereof will constitute legal, valid and binding agreements and obligations of Borrower or the party which executes the same, enforceable in accordance with their respective terms.

SECTION 2.3. NO VIOLATION. The execution, delivery and performance by Borrower of each of the Loan Documents do not violate any provision of any law or regulation, or result in any breach of or default under any contract, obligation, indenture or other instrument to which Borrower is a party or by which Borrower may be bound.

SECTION 2.4. LITIGATION. There are no pending, or to the best of Borrower's knowledge threatened, actions, claims, investigations, suits or proceedings by or before any governmental authority, arbitrator, court or administrative agency which could have a material adverse effect on the financial condition or operation of Borrower other than those disclosed by Borrower to Bank in writing prior to the date hereof.

SECTION 2.5. PROJECTIONS. The Public Hearing Draft Comprehensive Fiscal Analysis of Borrower dated April 30, 2007, revised August 6, 2007, a copy of which has been delivered by Borrower to Bank prior to the date hereof, is complete and correct and presents fairly the projected financial condition of Borrower.

SECTION 2.6. NO SUBORDINATION. There is no agreement, indenture, contract or instrument to which Borrower is a party or by which Borrower may be bound that requires the subordination in right of payment of any of Borrower's obligations subject to this Agreement to any other obligation of Borrower.

SECTION 2.7. PERMITS, FRANCHISES. Borrower possesses, and will hereafter possess, all permits, consents, approvals, franchises and licenses required and rights to all trademarks, trade names, patents, and fictitious names, if any, necessary to enable it to conduct the business in which it is now engaged in compliance with applicable law.

SECTION 2.8. ERISA. Borrower is in compliance in all material respects with all applicable provisions of the Employee Retirement Income Security Act of 1974, as amended or recodified from time to time ("ERISA"); Borrower has not violated any provision of any defined employee pension benefit plan (as defined in ERISA) maintained or contributed to by Borrower (each, a "Plan"); no Reportable Event as defined in ERISA has occurred and is continuing with respect to any Plan initiated by Borrower; Borrower has met its minimum funding requirements under ERISA with respect to each Plan; and each Plan will be able to fulfill its benefit obligations as they come due in accordance with the Plan documents and under generally accepted accounting principles.

SECTION 2.9. OTHER OBLIGATIONS. Borrower is not in default on any obligation for borrowed money, any purchase money obligation or any other material lease, commitment, contract, instrument or obligation.

SECTION 2.10. ENVIRONMENTAL MATTERS. Except as disclosed by Borrower to Bank in writing prior to the date hereof, Borrower is in compliance in all material respects with all applicable federal or state environmental, hazardous waste, health and safety statutes, and any rules or regulations adopted pursuant thereto, which govern or affect any of Borrower's operations and/or properties, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Superfund Amendments and Reauthorization Act of 1986, the Federal Resource Conservation and Recovery Act of 1976, and the Federal Toxic Substances Control Act, as any of the same may be amended, modified or supplemented from time to time. None of the operations of Borrower is the subject of any federal or state investigation evaluating whether any remedial action involving a material expenditure is needed to respond to a release of any toxic or hazardous waste or substance into the environment. Borrower has no material contingent liability in connection with any release of any toxic or hazardous waste or substance into the environment.

ARTICLE III
CONDITIONS

SECTION 3.1. CONDITIONS OF INITIAL EXTENSION OF CREDIT. The obligation of Bank to extend any credit contemplated by this Agreement is subject to the fulfillment to Bank's satisfaction of all of the following conditions:

(a) Approval of Bank Counsel. All legal matters incidental to the extension of credit by Bank shall be satisfactory to Bank's counsel.

(b) Documentation. Bank shall have received, in form and substance satisfactory to Bank, each of the following, duly executed:

(i) This Agreement and each promissory note or other instrument or document required hereby.
(ii) City Council Resolution.
(iii) Legal Opinion.
(iv) Such other documents as Bank may require under any other Section of this Agreement.

(c) Financial Condition. There shall have been no material adverse change, as determined by Bank, in the financial condition of Borrower as reflected in the Public Hearing Draft Comprehensive Fiscal Analysis of Borrower dated April 30, 2007, revised August 6, 2007.

SECTION 3.2. CONDITIONS OF EACH EXTENSION OF CREDIT. The obligation of Bank to make each extension of credit requested by Borrower hereunder shall be subject to the fulfillment to Bank's satisfaction of each of the following conditions:

(a) Compliance. The representations and warranties contained herein and in each of the other Loan Documents shall be true on and as of the date of the signing of this Agreement and on the date of each extension of credit by Bank pursuant hereto, with the same effect as though such representations and warranties had been made on and as of each such date, and on each such date, no Event of Default as defined herein, and no condition, event or act which with the giving of notice or the passage of time or both would constitute such an Event of Default, shall have occurred and be continuing or shall exist.

(b) Documentation. Bank shall have received all additional documents which may be required in connection with such extension of credit.

ARTICLE IV
AFFIRMATIVE COVENANTS

Borrower covenants that so long as Bank remains committed to extend credit to Borrower pursuant hereto, or any liabilities (whether direct or contingent, liquidated or unliquidated) of Borrower to Bank under any of the Loan Documents remain outstanding, and until payment in full of all obligations of Borrower subject hereto, Borrower shall, unless Bank otherwise consents in writing:

SECTION 4.1. PUNCTUAL PAYMENTS. Punctually pay all principal, interest, fees or other liabilities due under any of the Loan Documents at the times and place and in the manner specified therein.

SECTION 4.2. ACCOUNTING RECORDS. Maintain adequate books and records in accordance with generally accepted accounting principles consistently applied, and permit any representative of Bank, at any reasonable time, to inspect, audit and examine such books and records, to make copies of the same, and to inspect the properties of Borrower.

SECTION 4.3. FINANCIAL STATEMENTS. Provide to Bank all of the following, in form and detail satisfactory to Bank:

(a) not later than 180 days after and as of the end of each fiscal year, an audited financial statement of Borrower, prepared by independent certified public accountants acceptable to Bank, to include balance sheet, income statement, statement of cash flows, footnotes, if any, and unqualified opinion;

(b) not later than 30 days after the end of each fiscal quarter, a Monthly Cash Report with respect to each month in such fiscal quarter, prepared by Borrower detailing all receipts and expenditures;

(c) not later than the first day of each fiscal year, a copy of Borrower's annual budget for such fiscal year;

(d) not later than 30 days after each issuance thereof, copies of Official Statements (or similar published reports) issued by Borrower with respect to bonds or other debt to be incurred by Borrower; and

(e) from time to time such other information as Bank may reasonably request.

SECTION 4.4. COMPLIANCE. Preserve and maintain all licenses, permits, governmental approvals, rights, privileges and franchises necessary for the conduct of its business; and comply with the provisions of all documents pursuant to which Borrower is organized and/or which govern Borrower's continued existence and with the requirements of all laws, rules, regulations and orders of any governmental authority applicable to Borrower and/or its business.

SECTION 4.5. INSURANCE. Maintain and keep in force insurance of the types and in amounts customarily carried in lines of business similar to that of Borrower, including but not limited to fire, extended coverage, public liability, flood, property damage and workers' compensation, with all such insurance carried with companies and in amounts satisfactory to Bank, and deliver to Bank from time to time at Bank's request schedules setting forth all insurance then in effect.

SECTION 4.6. FACILITIES. Keep all properties useful or necessary to Borrower's business in good repair and condition, and from time to time make necessary repairs, renewals and replacements thereto so that such properties shall be fully and efficiently preserved and maintained.

SECTION 4.7. TAXES AND OTHER LIABILITIES. Pay and discharge when due any and all indebtedness, obligations, assessments and taxes, both real or personal, including without limitation federal and state income taxes and state and local property taxes and assessments, except such (a) as Borrower may in good faith contest or as to which a bona fide dispute may arise, and (b) for which Borrower has made provision, to Bank's satisfaction, for eventual payment thereof in the event Borrower is obligated to make such payment.

SECTION 4.8. LITIGATION. Promptly give notice in writing to Bank of any litigation pending or threatened against Borrower with a claim in excess of $250,000.00.

SECTION 4.9. NOTICE TO BANK. Promptly (but in no event more than ten (10) days after the occurrence of each such event or matter) give written notice to Bank in reasonable detail of: (a) the occurrence of any Event of Default, or any condition, event or act which with the giving of notice or the passage of time or both would constitute an Event of Default; (b) any

change in the name or the organizational structure of Borrower; (c) the occurrence and nature of any Reportable Event or Prohibited Transaction, each as defined in ERISA, or any funding deficiency with respect to any Plan; or (d) any termination or cancellation of any insurance policy which Borrower is required to maintain, or any uninsured or partially uninsured loss through liability or property damage, or through fire, theft or any other cause affecting Borrower's property in excess of an aggregate of $100,000.

SECTION 4.10. ACCOUNTS. Maintain Borrower's primary deposit account(s) at Bank.

ARTICLE V
NEGATIVE COVENANTS

Borrower further covenants that so long as Bank remains committed to extend credit to Borrower pursuant hereto, or any liabilities (whether direct or contingent, liquidated or unliquidated) of Borrower to Bank under any of the Loan Documents remain outstanding, and until payment in full of all obligations of Borrower subject hereto, Borrower will not without Bank's prior written consent:

SECTION 5.1. USE OF FUNDS. Use any of the proceeds of any credit extended hereunder except for the purposes stated in Article I hereof.

SECTION 5.2. OTHER INDEBTEDNESS. Create, incur, assume or permit to exist any indebtedness or liabilities resulting from borrowings, loans or advances, whether secured or unsecured, matured or unmatured, liquidated or unliquidated, joint or several, except (a) the liabilities of Borrower to Bank, (b) any other liabilities of Borrower existing as of, and disclosed to Bank prior to, the date hereof, and (c) additional indebtedness, provided that, concurrently with the incurrence of such indebtedness, proceeds of such indebtedness are used to repay in full and retire the Line of Credit.

SECTION 5.3. MERGER, CONSOLIDATION. Merge into or consolidate with any other entity.

SECTION 5.4. PLEDGE OF ASSETS. Mortgage, pledge, grant or permit to exist a security interest in, or lien upon, all or any portion of General Fund Revenues, except any of the foregoing in favor of Bank or which is existing as of, and disclosed to Bank in writing prior to, the date hereof or to secure indebtedness subject to the terms of Section 5.2(c).

ARTICLE VI
EVENTS OF DEFAULT

SECTION 6.1. The occurrence of any of the following shall constitute an "Event of Default" under this Agreement:

(a) Borrower shall fail to pay when due any principal, interest, fees or other amounts payable under any of the Loan Documents.

(b) Any financial statement or certificate furnished to Bank in connection with, or any representation or warranty made by Borrower or any other party under this Agreement or any

other Loan Document shall prove to be incorrect, false or misleading in any material respect when furnished or made.

(c) Any default in the performance of or compliance with any obligation, agreement or other provision contained herein or in any other Loan Document (other than those referred to in subsections (a) and (b) above), and with respect to any such default which by its nature can be cured, such default shall continue for a period of twenty (20) days from its occurrence.

(d) Any default in the payment or performance of any obligation, or any defined event of default, under the terms of any contract or instrument (other than any of the Loan Documents) pursuant to which Borrower has incurred any debt or other liability to any person or entity, including Bank.

(e) The filing of a notice of judgment lien against Borrower; or the recording of any abstract of judgment against Borrower in any county in which Borrower has an interest in real property; or the service of a notice of levy and/or of a writ of attachment or execution, or other like process, against the assets of Borrower; or the entry of a judgment against Borrower.

(f) Borrower shall become insolvent, or shall suffer or consent to or apply for the appointment of a receiver, trustee, custodian or liquidator of itself or any of its property, or shall generally fail to pay its debts as they become due, or shall make a general assignment for the benefit of creditors; Borrower shall file a voluntary petition in bankruptcy, or seeking reorganization, in order to effect a plan or other arrangement with creditors or any other relief under the Bankruptcy Reform Act, Title 11 of the United States Code, as amended or recodified from time to time ("Bankruptcy Code"), or under any state or federal law granting relief to debtors, whether now or hereafter in effect; or any involuntary petition or proceeding pursuant to the Bankruptcy Code or any other applicable state or federal law relating to bankruptcy, reorganization or other relief for debtors is filed or commenced against Borrower, or Borrower shall file an answer admitting the jurisdiction of the court and the material allegations of any involuntary petition; or Borrower shall be adjudicated a bankrupt, or an order for relief shall be entered against Borrower by any court of competent jurisdiction under the Bankruptcy Code or any other applicable state or federal law relating to bankruptcy, reorganization or other relief for debtors.

(g) There shall exist or occur any event or condition which Bank in good faith believes impairs, or is substantially likely to impair, the prospect of payment or performance by Borrower of its obligations under any of the Loan Documents.

(h) The dissolution or liquidation of Borrower.

SECTION 6.2. REMEDIES. Upon the occurrence of any Event of Default: (a) all indebtedness of Borrower under each of the Loan Documents, any term thereof to the contrary notwithstanding, shall at Bank's option and without notice become immediately due and payable without presentment, demand, protest or notice of dishonor, all of which are hereby expressly waived by each Borrower; (b) the obligation, if any, of Bank to extend any further credit under any of the Loan Documents shall immediately cease and terminate; and (c) Bank shall have all rights, powers and remedies available under each of the Loan Documents, or accorded by law, including without limitation the right to resort to any or all security for any credit subject hereto and to exercise any or all of the rights of a beneficiary or secured party pursuant to applicable law. All rights, powers and remedies of Bank may be exercised at any time by Bank and from

time to time after the occurrence of an Event of Default, are cumulative and not exclusive, and shall be in addition to any other rights, powers or remedies provided by law or equity.

ARTICLE VII
MISCELLANEOUS

SECTION 7.1. NO WAIVER. No delay, failure or discontinuance of Bank in exercising any right, power or remedy under any of the Loan Documents shall affect or operate as a waiver of such right, power or remedy; nor shall any single or partial exercise of any such right, power or remedy preclude, waive or otherwise affect any other or further exercise thereof or the exercise of any other right, power or remedy. Any waiver, permit, consent or approval of any kind by Bank of any breach of or default under any of the Loan Documents must be in writing and shall be effective only to the extent set forth in such writing.

SECTION 7.2. NOTICES. All notices, requests and demands which any party is required or may desire to give to any other party under any provision of this Agreement must be in writing delivered to each party at the following address:

BORROWER: THE CITY OF WILDOMAR
Attn: Steve Stark
23873 Clinton Keith Rd., Suite 201
Wildomar, CA 92595

BANK: WELLS FARGO BANK, NATIONAL ASSOCIATION
Attn: Lynn Love
707 Wilshire Blvd., 11th Floor, MAC E2818-114
Los Angeles, CA 90017

or to such other address as any party may designate by written notice to all other parties. Each such notice, request and demand shall be deemed given or made as follows: (a) if sent by hand delivery, upon delivery; (b) if sent by mail, upon the earlier of the date of receipt or three (3) days after deposit in the U.S. mail, first class and postage prepaid; and (c) if sent by telecopy, upon receipt.

SECTION 7.3. COSTS, EXPENSES AND ATTORNEYS' FEES. Borrower shall pay to Bank immediately upon demand the full amount of all payments, advances, charges, costs and expenses, including reasonable attorneys' fees (to include outside counsel fees and all allocated costs of Bank's in-house counsel), expended or incurred by Bank in connection with (a) the negotiation and preparation of this Agreement and the other Loan Documents (up to a maximum amount of $7,500.00), Bank's continued administration hereof and thereof, and the preparation of any amendments and waivers hereto and thereto, (b) the enforcement of Bank's rights and/or the collection of any amounts which become due to Bank under any of the Loan Documents, and (c) the prosecution or defense of any action in any way related to any of the Loan Documents, including without limitation, any action for declaratory relief, whether incurred at the trial or appellate level, in an arbitration proceeding or otherwise, and including any of the foregoing incurred in connection with any bankruptcy proceeding (including without limitation, any adversary proceeding, contested matter or motion brought by Bank or any other person) relating to any Borrower or any other person or entity.

SECTION 7.4. SUCCESSORS, ASSIGNMENT. This Agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, legal representatives, successors and assigns of the parties; provided however, that Borrower may not assign or transfer its interest hereunder without Bank's prior written consent. Bank reserves the right to sell, assign, transfer, negotiate or grant participations in all or any part of, or any interest in, Bank's rights and benefits under each of the Loan Documents. In connection therewith, Bank may disclose all documents and information which Bank now has or may hereafter acquire relating to any credit subject hereto, Borrower or its business or any collateral required hereunder.

SECTION 7.5. ENTIRE AGREEMENT; AMENDMENT. This Agreement and the other Loan Documents constitute the entire agreement between Borrower and Bank with respect to each credit subject hereto and supersede all prior negotiations, communications, discussions and correspondence concerning the subject matter hereof. This Agreement may be amended or modified only in writing signed by each party hereto.

SECTION 7.6. NO THIRD PARTY BENEFICIARIES. This Agreement is made and entered into for the sole protection and benefit of the parties hereto and their respective permitted successors and assigns, and no other person or entity shall be a third party beneficiary of, or have any direct or indirect cause of action or claim in connection with, this Agreement or any other of the Loan Documents to which it is not a party.

SECTION 7.7. TIME. Time is of the essence of each and every provision of this Agreement and each other of the Loan Documents.

SECTION 7.8. SEVERABILITY OF PROVISIONS. If any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity without invalidating the remainder of such provision or any remaining provisions of this Agreement.

SECTION 7.9. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, and all of which when taken together shall constitute one and the same Agreement.

SECTION 7.10. GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

SECTION 7.11. ARBITRATION.

(a) Arbitration. The parties hereto agree, upon demand by any party, to submit to binding arbitration all claims, disputes and controversies between or among them (and their respective employees, officers, directors, attorneys, and other agents), whether in tort, contract or otherwise in any way arising out of or relating to (i) any credit subject hereto, or any of the Loan Documents, and their negotiation, execution, collateralization, administration, repayment, modification, extension, substitution, formation, inducement, enforcement, default or termination; or (ii) requests for additional credit.

(b) Governing Rules. Any arbitration proceeding will (i) proceed in a location in California selected by the American Arbitration Association ("AAA"); (ii) be governed by the Federal Arbitration Act (Title 9 of the United States Code), notwithstanding any conflicting choice of law provision in any of the documents between the parties; and (iii) be conducted by the AAA, or such other administrator as the parties shall mutually agree upon, in accordance

with the AAA's commercial dispute resolution procedures, unless the claim or counterclaim is at least $1,000,000.00 exclusive of claimed interest, arbitration fees and costs in which case the arbitration shall be conducted in accordance with the AAA's optional procedures for large, complex commercial disputes (the commercial dispute resolution procedures or the optional procedures for large, complex commercial disputes to be referred to herein, as applicable, as the "Rules"). If there is any inconsistency between the terms hereof and the Rules, the terms and procedures set forth herein shall control. Any party who fails or refuses to submit to arbitration following a demand by any other party shall bear all costs and expenses incurred by such other party in compelling arbitration of any dispute. Nothing contained herein shall be deemed to be a waiver by any party that is a bank of the protections afforded to it under 12 U.S.C. §91 or any similar applicable state law.

(c) No Waiver of Provisional Remedies, Self-Help and Foreclosure. The arbitration requirement does not limit the right of any party to (i) foreclose against real or personal property collateral; (ii) exercise self-help remedies relating to collateral or proceeds of collateral such as setoff or repossession; or (iii) obtain provisional or ancillary remedies such as replevin, injunctive relief, attachment or the appointment of a receiver, before during or after the pendency of any arbitration proceeding. This exclusion does not constitute a waiver of the right or obligation of any party to submit any dispute to arbitration or reference hereunder, including those arising from the exercise of the actions detailed in sections (i), (ii) and (iii) of this paragraph.

(d) Arbitrator Qualifications and Powers. Any arbitration proceeding in which the amount in controversy is $5,000,000.00 or less will be decided by a single arbitrator selected according to the Rules, and who shall not render an award of greater than $5,000,000.00. Any dispute in which the amount in controversy exceeds $5,000,000.00 shall be decided by majority vote of a panel of three arbitrators; provided however, that all three arbitrators must actively participate in all hearings and deliberations. The arbitrator will be a neutral attorney licensed in the State of California or a neutral retired judge of the state or federal judiciary of California, in either case with a minimum of ten years experience in the substantive law applicable to the subject matter of the dispute to be arbitrated. The arbitrator will determine whether or not an issue is arbitratable and will give effect to the statutes of limitation in determining any claim. In any arbitration proceeding the arbitrator will decide (by documents only or with a hearing at the arbitrator's discretion) any pre-hearing motions which are similar to motions to dismiss for failure to state a claim or motions for summary adjudication. The arbitrator shall resolve all disputes in accordance with the substantive law of California and may grant any remedy or relief that a court of such state could order or grant within the scope hereof and such ancillary relief as is necessary to make effective any award. The arbitrator shall also have the power to award recovery of all costs and fees, to impose sanctions and to take such other action as the arbitrator deems necessary to the same extent a judge could pursuant to the Federal Rules of Civil Procedure, the California Rules of Civil Procedure or other applicable law. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction. The institution and maintenance of an action for judicial relief or pursuit of a provisional or ancillary remedy shall not constitute a waiver of the right of any party, including the plaintiff, to submit the controversy or claim to arbitration if any other party contests such action for judicial relief.

(e) Discovery. In any arbitration proceeding, discovery will be permitted in accordance with the Rules. All discovery shall be expressly limited to matters directly relevant to the dispute being arbitrated and must be completed no later than 20 days before the hearing date. Any requests for an extension of the discovery periods, or any discovery disputes, will be subject to

final determination by the arbitrator upon a showing that the request for discovery is essential for the party's presentation and that no alternative means for obtaining information is available.

(f) Class Proceedings and Consolidations. No party hereto shall be entitled to join or consolidate disputes by or against others in any arbitration, except parties who have executed any Loan Document, or to include in any arbitration any dispute as a representative or member of a class, or to act in any arbitration in the interest of the general public or in a private attorney general capacity.

(g) Payment Of Arbitration Costs And Fees. The arbitrator shall award all costs and expenses of the arbitration proceeding.

(h) Real Property Collateral; Judicial Reference. Notwithstanding anything herein to the contrary, no dispute shall be submitted to arbitration if the dispute concerns indebtedness secured directly or indirectly, in whole or in part, by any real property unless (i) the holder of the mortgage, lien or security interest specifically elects in writing to proceed with the arbitration, or (ii) all parties to the arbitration waive any rights or benefits that might accrue to them by virtue of the single action rule statute of California, thereby agreeing that all indebtedness and obligations of the parties, and all mortgages, liens and security interests securing such indebtedness and obligations, shall remain fully valid and enforceable. If any such dispute is not submitted to arbitration, the dispute shall be referred to a referee in accordance with California Code of Civil Procedure Section 638 et seq., and this general reference agreement is intended to be specifically enforceable in accordance with said Section 638. A referee with the qualifications required herein for arbitrators shall be selected pursuant to the AAA's selection procedures. Judgment upon the decision rendered by a referee shall be entered in the court in which such proceeding was commenced in accordance with California Code of Civil Procedure Sections 644 and 645.

(i) Miscellaneous. To the maximum extent practicable, the AAA, the arbitrators and the parties shall take all action required to conclude any arbitration proceeding within 180 days of the filing of the dispute with the AAA. No arbitrator or other party to an arbitration proceeding may disclose the existence, content or results thereof, except for disclosures of information by a party required in the ordinary course of its business or by applicable law or regulation. If more than one agreement for arbitration by or between the parties potentially applies to a dispute, the arbitration provision most directly related to the Loan Documents or the subject matter of the dispute shall control. This arbitration provision shall survive termination, amendment or expiration of any of the Loan Documents or any relationship between the parties.

(j) Small Claims Court. Notwithstanding anything herein to the contrary, each party retains the right to pursue in Small Claims Court any dispute within that court's jurisdiction. Further, this arbitration provision shall apply only to disputes in which either party seeks to recover an amount of money (excluding attorneys' fees and costs) that exceeds the jurisdictional limit of the Small Claims Court.

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

THE CITY OF WILDOMAR	WELLS FARGO BANK, NATIONAL ASSOCIATION
By: _____	By: _____
Title: Mayor _____.	Title: _____

RESOLUTION NO. 08-37

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, REQUESTING MEMBERSHIP IN THE PUBLIC AGENCY RISK SHARING AUTHORITY OF CALIFORNIA AND PARTICIPATION IN THE PARSAC LIABILITY AND WORKERS' COMPENSATION PROGRAMS, ESTABLISHMENT OF A LIABILITY FUND RESERVE, AND DESIGNATION OF THE AUTHORIZED BOARD REPRESENTATIVE AND THEIR AUTHORITY

THE CITY COUNCIL OF THE CITY OF WILDOMAR DOES RESOLVE AS FOLLOWS:

SECTION 1. Recitals.

(a) Pursuant to the provisions of the Government Code commencing with Section 6500, the City of Wildomar, California wishes to enter into an agreement with the Public Agency Risk Sharing Authority of California ("PARSAC") for the purposes of pooling the Liability and Workers' Compensation coverages as more fully set forth in the Joint Powers Agreement attached hereto as Exhibit "A" and incorporated herein by reference; and

(b) The PARSAC Liability and Workers' Compensation Programs offer significant advantages to the City of Wildomar, justifying the City's participation in such programs on the conditions set forth in Sections 2 and 3 of this Resolution, and is in the best interest of this City;

(c) A Deposit Premium is required to be paid in advance by the City of Wildomar for said liability and workers' compensation coverage; and

(d) The City of Wildomar is authorized under State law to delegate to a designated representative its authority to bind the City under contract.

SECTION 2. Liability Program. The City of Wildomar consents to participate in the PARSAC Liability Program on the conditions that:

(a) The City is subject to a minimum Deposit Premium of $25,000 for liability coverage as provided by PARSAC;

(b) The City hereby selects a self-insured retention (SIR) of $5,000, which represents the City's responsibility per occurrence for the program year beginning July 1, 2008;

(c) The City shall reserve a sum equal to three (3) times the SIR, or specifically $15,000, which shall be designated for the payment of liability claims only. The Reserve shall be replenished as necessary in amounts sufficient to maintain the designated minimum balance of the Reserve; and

(d) It is understood that Deposit Premiums may change from year to year.

SECTION 3. Workers' Compensation Program. The City of Wildomar consents to participate in the PARSAC Workers' Compensation Program on the conditions that:

(a) The City's Deposit Premium is based on a minimum payroll of $36,000 and shall be $1,731 for workers' compensation coverage as provided by PARSAC;

(b) The City hereby elects to participate with no self-insured retention (SIR), which indicates coverage shall be provided from the first dollar of each occurrence for the program year beginning July 1, 2008; and

(c) It is understood that Deposit Premiums may change from year to year.

SECTION 4. Designated Representatives. The City of Wildomar hereby designates _____ as its representative on the PARSAC Board of Directors to act on all matters coming before said Board on behalf of the City as a Member Entity, as if the City itself were present. The City also designates _____ as the alternate representative. In the Director's absence, the alternate representative shall have the same power and authority as the Director.

SECTION 5. Authority of Designated Representatives. The City of Wildomar hereby authorizes the designated representatives to approve and execute the PARSAC Joint Powers Agreement, as well as any future amendments to the Agreement, on behalf of the City of Wildomar. The Director, or the alternate in absence of the Director, shall execute future amendments only after such amendments have been duly and formally approved by the PARSAC Board of Directors.

SECTION 6. Authorization to Pay Premiums. The City of Wildomar is authorized to pay to PARSAC the amounts identified in Section 1.a and Section 2.a above for Liability and Workers' Compensation coverages.

SECTION 7. Mailing of Documents. The City Clerk of the City of Wildomar is directed to promptly forward by mail a certified copy of this Resolution, the executed and certified original Joint Powers Agreement, and Deposit Premium payment to PARSAC at 1525 Response Road Suite One, Sacramento, California 95815.

PASSED, APPROVED, AND ADOPTED this 1st day of July, 2008.

Bob Cashman, Mayor

ATTEST:

John Danielson, Interim City Clerk

APPROVED AS TO FORM:

Julie Hayward Biggs, Interim City Attorney

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE)
CITY OF WILDOMAR)

I, John Danielson, Interim City Clerk of the City of Wildomar, do hereby certify that the foregoing Resolution No. 08-37 was duly adopted by the City Council of the City of Wildomar at a regular meeting thereof, held on the 1st day of July, 2008, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

_____
John Danielson, Interim City Clerk

EXHIBIT "A"

PARSAC JOINT POWERS AGREEMENT

PARSAC

JOINT POWERS AGREEMENT

Revised & Adopted May 31, 2007

Public Agency Risk Sharing
Authority of California

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PUBLIC AGENCY RISK SHARING AUTHORITY OF CALIFORNIA [PARSAC]

JOINT POWERS AGREEMENT

THIS AGREEMENT is made in the State of California by and among those municipalities organized and existing under the laws of the State of California, hereinafter referred to as "Member Entity[ies]," which are parties signatory to this Agreement. All such Member Entities are listed in Appendix "A", which is attached hereto and made a part hereof.

RECITALS

A. California Government Code Section 6500 and following permits two or more public agencies by agreement to jointly exercise any power common to the contracting parties.

B. California Government Code Section 990.4 permits a local public entity to self-insure, purchase insurance through an authorized carrier, or purchase insurance through a surplus line broker, or any combination of these;

C. California Government Code Section 990.6 provides that the cost of insurance provided by a local public entity is a proper charge against that local public entity;

D. California Government Code Section 990.8 permits two or more local entities to, by a joint powers agreement, provide insurance for any purpose by any one or more of the methods specified in Government Code Section 990.4 and provides that such pooling of self-insured claims or losses does not constitute the business of insurance under the California Insurance Code;

E. California Labor Code Section 3700© permits all political subdivisions of the State of California, including each member of a pooling arrangement under a joint exercise of powers agreement to self-insure against workers' compensation claims by securing a certificate of consent from the Department of Industrial Relations;

F. Each of the Member Entities, which is a party to this Agreement, desires to join with the other Member Entities to fund programs of insurance for workers' compensation, liability, property and other coverages to be determined and for other purposes set forth in Article III of this Agreement;

G. The governing body of each Member Entity has determined that it is in its own best interest and in the public interest that this Agreement be executed and that it participate as a member of the Public Agency Risk Sharing Authority of California [PARSAC] created by this Agreement; and

H. As of the effective date of this Agreement, this Agreement shall replace and supersede the Joint Powers Agreement Creating the Public Agency Risk Sharing Authority of California, dated May 21, 1986, as amended on November 20, 1987, July 1, 1989, and November 19, 1993, May 31, 1996, December 13, 2002, December 12, 2003, and May 20, 2005.

Now, therefore, in consideration of the above facts and the mutual benefits, promises and agreements set forth below, the Member Entities hereby agree as follows:

AGREEMENT

ARTICLE I
DEFINITIONS

The following terms shall have the following definitions:

A. "**Agreement**" shall mean this Revised and Restated Joint Powers Agreement creating the Public Agency Risk Sharing Authority of California [PARSAC].

B. "**Alternate**" shall mean the person designated by the Member Entity to act as a director of PARSAC in the absence of the Director. The Alternate shall have the same responsibility, power and authority as the Director when acting in the Director's stead.

C. "**Board**" or "**Board of Directors**" shall mean the governing body of PARSAC.

D. "**Bylaws**" shall mean the Bylaws of PARSAC, revised as of November 30, 2006, and as they may be further amended or revised.

E. "**Claims**" shall mean any demand[s] made against a Member Entity to recover for monetary damages within, or alleged to be within, the scope of coverage provided by any of PARSAC's Memoranda of Coverage [or any commercial insurance policy related to a PARSAC Program].

F. "**PARSAC**" shall mean the Public Agency Risk Sharing Authority of California created by this Agreement.

G. "**Covered Loss**" shall mean any loss resulting from a claim or claims against a Member Entity which is in excess of its Self-Insured Retention and which is covered by any of PARSAC's Memoranda of Coverage [or insurance policy related to a PARSAC Program].

H. "**Deposit Premium**" shall mean the estimated amount determined for each Member Entity necessary to fund each layer of coverage for each Policy Year of each Program of PARSAC.

I. "**Executive Committee**" shall mean that committee of the Board, constituted and exercising the authority set forth in this Agreement and in the Bylaws.

J. "**Fiscal Year**" shall mean the period of time ending on June 30 of each year during which PARSAC is in existence.

K. "**Incurred Loss**" shall mean the amount of monies paid and reserved by PARSAC to investigate, defend and satisfy a demand or demands made against a Member Entity.

L. "**Insurance**" shall mean commercial insurance policies which PARSAC may purchase for its Member Entities, from time to time, in order to effect a transfer of risk. The term "Insurance" shall not mean any self-insurance, risk-sharing or pooling of losses or risks.

M. "**Liability Program Participant**" shall refer only to members of PARSAC that have been approved and are in good standing to participate in the Liability Program

N. "**Member Entity**" shall mean any California municipality which is a party signatory to this Agreement including any other agency for which the City Council sits as the Governing board.

O. "**Memorandum of Coverage**" shall mean the document or documents issued by PARSAC specifying the type and amount of coverages provided under any Program to the Member Entities by PARSAC.

P. "**Municipality**" shall mean an incorporated General Law City, defined by California Government Code Section 34102, or a Charter City, defined by California Government Code Section 34101.

Q. "**Program Year**" shall mean a period of time, usually 12 months, for which each Program is to determine Deposit Premiums, Retrospective Premiums, and Retrospective Premium Adjustments.

R. "**Program**" shall mean arrangements to cover specific types of claims which may include, but not be limited to, property, workers' compensation, and comprehensive liability claims.

S. "**Retrospective Premium**" shall mean, the amount determined retrospectively as each Member Entity's share of losses, reserves, expenses and interest income as may be determined periodically for any Program.

T. "**Retrospective Premium Adjustment**" shall mean the amount necessary to periodically adjust the Deposit Premium, or prior Retrospective Premiums if any, to the newly calculated Retrospective Premium amount.

U. "**Self-Insured Retention**" or "**SIR**" shall mean the amount of loss from each occurrence which the Member Entity shall retain and pay directly and which shall not be shared by the Member Entities of PARSAC.

V. "**Workers' Compensation Program Participant**" shall refer only to members of PARSAC that have been approved and are in good standing to participate in the Workers' Compensation Program.

W. "**Group Purchase Programs**" shall mean coverage programs provided by insurance policies where there is no self-insurance, risk sharing or pooling.

ARTICLE II
PARTIES TO THE AGREEMENT

Each Member Entity is a party to this Agreement and agrees that it intends to, and does contract with, all other parties who are signatories of this Agreement and with such other parties as may later be added. Each Member Entity also agrees that the expulsion or withdrawal of any Member Entity from this Agreement shall not affect this Agreement nor the remaining parties as to the other Member Entities then remaining.

ARTICLE III
PURPOSES

This Agreement is entered into by the Member Entities in order to:

A. Create the Public Agency Risk Sharing Authority of California to carry out the purposes listed below and to exercise the powers contained in this Agreement;

B. Develop effective risk management programs to reduce the amount and frequency of their losses;

C. Share some portion, or all, of the cost of their losses;

D. Jointly purchase commercial insurance, associate with other risk-sharing pools, or self-insure against risks;

E. Jointly purchase administrative and other services including, but not limited to, underwriting, risk management, loss prevention, claims adjusting, data processing, brokerage, accounting and legal services when related to any of the other purposes;

F. Provide other joint powers risk sharing authorities with management services; and

G. Do all things necessary to carry out the foregoing purposes, as well as all things necessary, to implement the terms of this Agreement as permitted by law.

ARTICLE IV
CREATION OF THE PUBLIC AGENCY RISK SHARING AUTHORITY OF CALIFORNIA

Pursuant to the California Government Code, the Member Entities hereby agree to continue in existence a public entity, separate and apart from the parties to this Agreement, to be known as the Public Agency Risk Sharing Authority of California ["PARSAC"]. The debts, liabilities or obligations of PARSAC shall not constitute debts, liabilities or obligations of any party to this Agreement. However, a Member Entity may separately contract for, or assume responsibility for, specific debts, liabilities or obligations of PARSAC.

ARTICLE V
TERM OF AGREEMENT

This Agreement shall become effective as of the date hereof and shall continue in full force and effect until terminated in accordance with Article XXVI.

ARTICLE VI
POWERS OF PARSAC

PARSAC shall have the powers common to its Member Entities in California and all additional powers permitted to a joint powers authority by California law, and the parties hereby authorize PARSAC to do all acts necessary to exercise such powers to fulfill the purposes of this Agreement including, but not limited to, the following:

A. Make and enter into contracts;

B. Incur debts, liabilities and obligations;

C. Acquire, hold, lease or dispose of real and personal property, contributions and donations of property, funds, services and other forms of assistance;

D. Sue and be sued in its own name and settle any claim against it;

E. Employ agents and employees;

F. Acquire, construct, manage, maintain or operate buildings, works or improvements;

G. Receive, collect, and disburse monies; and invest money not required for immediate necessities; and

H. Exercise all powers necessary and proper to carry out the terms and provisions of this Agreement.

ARTICLE VII
RESPONSIBILITIES OF MEMBER ENTITIES

Each member entity shall:

A. Sign this Agreement and its legally enacted amendments and participate in PARSAC's Liability Program and/or Workers' Compensation Program;

B. Sign a Membership Resolution for each Program;

C. Pay Deposit Premiums, Retrospective Premium Adjustments, and any Special Assessments to PARSAC on or before the due date;

D. Appoint, elect or remove representatives to serve as director and alternate on the Board, which representatives are expressly authorized to act on behalf of the Member Entity on all matters coming before the Board;

E. Assure that its representative director or alternate attends at least one meeting of the Board annually;

F. Assure that its representative director and alternate keep informed about PARSAC's activities and assist them in doing so;

G. Approve Amendments to this Agreement as set forth in Article XXIX; provided, however, the Member Entity may, by resolution or ordinance, authorize its director and alternate on the Board to approve and execute amendments on behalf of the Member Entity without the necessity of a resolution or ordinance of the legislative body of the Member Entity confirming or ratifying such amendment.

H. File, in a prompt and timely manner, all statewide, county, and locally-mandated reports and filings, including but not limited to the Fair Political Practices Commission's Statement of Economic Interests;

I. Undertake an annual risk management audit of its facilities and activities, conducted by a person and/or firm approved by PARSAC's Executive Committee and, based upon such audit report, to evidence correction, elimination and/or clarification of all noted deficiencies or audit recommended corrections to the satisfaction of PARSAC's Executive Committee. Risk management audits may be required by the Executive Committee more frequently than annually. Risk management audits may be paid by PARSAC and charged back to Member Entities as part of the Retrospective Premium Adjustment;

J. Provide PARSAC with a copy of its most recent audited annual financial statements prepared by a Certified Public Accountant; or, if not available, provide PARSAC with the most recent set of unaudited monthly financial statements, and any other financial material as may be requested by PARSAC from time to time;

K. Cooperate with, communicate and assist in a timely manner, PARSAC and any insurer, claims adjuster, legal counsel or other service provider engaged or retained by PARSAC in all matters relating to this Agreement;

L. Promptly cooperate with PARSAC to determine and/or clarify any incidents which might become losses, the cause of any and all actual losses, and methods to bring about settlement of claims;

M. Comply with its obligations and responsibilities under this Agreement, the Bylaws, the Memoranda of Coverage, the Risk Management Standards, PARSAC's policies and procedures, and any other contract or requirement [as any of the foregoing may be created or amended] necessary to implement this Agreement or any Program;

N. Pay any fines or penalties assessed by the Office of Benefits, Assistance and Enforcement (OBAE) that are attributable to the Member Entity's failure to perform in accordance with self-insurance regulations or comply with the provisions of this Agreement. The Member Entity may file a written request for a conference with the Administrative Director of Self-Insurance Plans should it wish to contest any assessments; and

O. Use an Executive Committee-approved third-party claims administrator for claims handling, under such circumstances as the Board of Directors may require.

Failure to comply with any of the obligations under this section may be grounds for expulsion pursuant to Article XXIV of this Agreement.

ARTICLE VIII
BOARD OF DIRECTORS

Except as otherwise provided in this Agreement or in the Bylaws, the powers of PARSAC

shall be exercised, its property shall be controlled, and its affairs shall be conducted by its Board of Directors whose meetings, functions and activities shall be governed by the Bylaws.

The Board shall be composed of one director who represents and acts on behalf of each respective Member Entity which participates in PARSAC's Liability and/or Workers' Compensation Program. The number of persons on the Board shall be equal to the number of Member Entities. In addition, each Member Entity shall appoint a second individual as alternate director, who shall have the authority to attend, participate in, and vote at any meeting of the Board when the respective director is absent. Each director and alternate director shall be an elected official or employee of the respective Member Entity, shall be appointed by the respective Member Entity's governing body, and shall serve at its pleasure. If a director or alternate ceases to be an employee or elected official of a Member Entity for any reason, his or her position on the Board and any of its committees shall immediately terminate.

The Board of Directors shall have the following powers and functions:

A. The Board shall exercise all powers and conduct all business of PARSAC, either directly or by delegation of authority to other bodies or persons pursuant to this Agreement and applicable law;

B. The Board shall form an Executive Committee from its membership. In the Bylaws the Board shall delegate to that Committee such powers as it sees fit;

C. The Board may form such other committees as it deems appropriate in conducting PARSAC's business;

D. The Board shall elect PARSAC's officers;

E. The Board shall cause to be prepared and adopt PARSAC's annual operating budget;

F. The Board shall develop, or cause to be developed, and shall review, modify as

necessary, and adopt each of PARSAC's Programs, including all provisions for reinsurance and administrative services necessary to carry out such Program;

G. The Board shall contract or otherwise provide for necessary services to PARSAC and to Member Entities. These necessary services may include, but shall not be limited to, risk management consulting, loss prevention and control, centralized loss reporting, actuarial consulting, claims adjusting, and legal defense services;

H. The Board, either directly or through the Executive Committee, shall provide policy direction to PARSAC's General Manager;

I. The Board shall receive and act upon reports of its committees and the General Manager, either directly or through the Executive Committee;

J. The Board shall establish monetary limits upon any delegation of the claims payment and settlement authority, beyond which a proposed settlement must be referred to the Board for approval;

K. The Board may require that PARSAC review, audit, report upon, and make recommendations with regard to the safety or claims administration functions of any Member Entity insofar as those functions are affecting PARSAC's liability or potential liability. The Board may forward any or all such recommendations to the Member Entity with a request for compliance and a statement of potential consequences for noncompliance;

L. The Board shall receive, review and act upon periodic reports and audits of PARSAC's funds;

M. The Board may amend, repeal or adopt new Bylaws, this Agreement or other key documents;

N. The Board may increase, decrease, or otherwise amend the coverages, limits and

other terms of any Memorandum of Coverage;

O. The Board shall approve any proposal by the Executive Committee for Special Assessments from the Member Entities before such Special Assessments are billed;

P. The Board may expel a Member Entity from any Program or from membership in PARSAC pursuant to Article XXIV of this Agreement;

Q. The Board may ratify actions of the Executive Committee, where such ratification is required before the action becomes final;

R. The Board may enter into a joint venture or contractual arrangement with any similar entity and may also enter into a merger or acquisition agreement with a similar entity, provided that if PARSAC is not the surviving entity in any such merger or acquisition, such action shall require approval by the vote of three-fourths of the Member Entities; and

S. The Board shall have such other powers and functions as are provided for in this Agreement, the Bylaws, and applicable law.

ARTICLE IX
OFFICERS

The officers of PARSAC shall be the President, Vice President, Treasurer, and Auditor/Controller, and their qualifications and duties shall be those set forth in the Bylaws.

ARTICLE X
EXECUTIVE COMMITTEE

There shall be an Executive Committee, all of whose members shall be directors. The Executive Committee shall set policy for and direct the administration of PARSAC on a day-to-day

basis and may, without limitation, provide incentives and impose penalties, financial or otherwise, for performing or failing to perform in conformance with PARSAC requirements, programs, standards and policies. The composition, specific authority and meeting arrangements of the Executive Committee shall be set forth in the Bylaws.

ARTICLE XI
WORKERS' COMPENSATION SUBCOMMITTEE

The Workers' Compensation Program Subcommittee shall oversee the operational activities of the Program and serve as an advisory committee to the Executive Committee and the Board of Directors as necessary. The composition and meeting arrangements of the Subcommittee shall be set forth in the Bylaws.

ARTICLE XII
ADMINISTRATION

PARSAC shall have a general manager, who shall be appointed or terminated by the Executive Committee, shall be responsible to the Executive Committee for the efficient and effective administration of PARSAC, and who shall serve as the Secretary of PARSAC. The General Manager shall attend all meetings of the Board, the Executive Committee, and other committees of the Board (but shall have no vote), shall prepare and maintain all minutes of meetings of the Board and its Committees, notices of meetings, and records of PARSAC, and shall carry out all duties set forth in the Bylaws.

ARTICLE XIII
BUDGET

The Executive Committee shall recommend and the Board shall adopt an annual operating budget prior to the beginning of each Fiscal Year.

ARTICLE XIV
ANNUAL AUDITS AND REVIEWS

A. **Financial Audit**. The Auditor/Controller shall cause an annual financial audit of the accounts and records to be prepared by a Certified Public Accountant in compliance with California Government Code Sections 6505 and 6505.5 or 6505.6 with respect to all receipts, disbursements, other transactions and entries into the books of PARSAC. The minimum requirements of the audit shall be those prescribed by the State Controller for special districts under Government Code Section 26909 and shall conform to generally accepted accounting standards. A report of each such audit shall be filed as a public record with the Board, each of the Member Entities, and the auditor/controller of the county in which PARSAC's administrative office is located. The report shall be filed within twelve [12] months of the end of the fiscal year under examination. PARSAC shall pay all costs for such financial audits.

B. **Actuarial Review**. The Board shall cause an annual actuarial review to be prepared for each of the Programs of PARSAC and a report of such actuarial review shall be made available for inspection by the Board and the Member Entities. PARSAC shall pay all costs for such actuarial review.

C. **Claims Audit**. The Board shall cause a biannual claims audit of the administration

of the claims for each of the Programs of PARSAC. A report of such claims review shall be made available for inspection by the Board and the Member Entities. PARSAC shall pay all costs of such claims reviews.

ARTICLE XV
ESTABLISHMENT AND ADMINISTRATION OF FUNDS

PARSAC shall be responsible for the strict accountability of all funds and the reporting of all receipts and disbursements in accordance with generally accepted accounting principles. It will comply with all provisions of law relating to this subject, including California Government Code Sections 6500-6525.

The Treasurer of PARSAC shall establish and maintain such funds and accounts as may be required by good accounting practices and by the Board. Separate accounts shall be established and maintained for each Program Year of each Program of PARSAC. Books and records of PARSAC in the hands of the Treasurer or other designated person shall be open to inspection at all reasonable times by members of the Board or authorized representatives of the Member Entities.

The Treasurer shall have the custody of and disburse PARSAC's funds. He or she may delegate disbursing authority to such persons as may be authorized by the Board to perform that function provided that, pursuant to Government Code Section 6505.5, the Treasurer shall:

A. Receive and acknowledge receipt of all funds of PARSAC and place them in the treasury to the credit of PARSAC;

B. Be responsible upon his or her official bond for the safekeeping and disbursement of PARSAC's funds so held by him or her;

C. Pay any sums due from PARSAC as approved for payment by the Board or by any

body or person to whom the Board has delegated approval authority, making such payments from PARSAC's funds upon warrants drawn by the Auditor;

D. Verify and report in writing to PARSAC and to Member Entities, as of the first day of each quarter of the fiscal year, the amount of money then held for PARSAC, the amount of receipts since the last report, and the amount paid out since the last report;

E. Prepare a complete written report of all financial activities within one hundred and twenty [120] days after the close of each fiscal year for such fiscal year to the Board and to each Member Entity; and

F. Receive, invest, and disburse funds in accordance with the procedures established by the Board or the Bylaws and in conformity with applicable law.

Pursuant to Government Code Section 6505.1, the General Manager, the Treasurer, and such other persons as the Board may designate shall have charge of, handle, and have access to PARSAC's property.

PARSAC shall secure and pay for a fidelity bond or bonds, in an amount or amounts and in form specified by the Board, covering all officers and employees of PARSAC who are authorized to hold or disburse PARSAC's funds and all officers and employees who are authorized to have charge of, handle, and have access to PARSAC's property.

The Authority shall defend and indemnify its directors, officers, and employees to the same extent as any other public entity of the State of California is obliged to defend and indemnify its public employees pursuant to California Government Code Section 825, *et seq.*, or other applicable provisions of law.

The Authority may insure or self-insure itself to the extent deemed necessary by the Board

against loss, liability and claims arising out of or connected to the conduct of the Authority's activities.

ARTICLE XVI
SUPPORT OF PARSAC'S GENERAL EXPENSES

Costs of staffing and supporting PARSAC [hereinafter called PARSAC's general expenses] shall be equitably allocated among the various Programs by the Board, and shall be funded by the Member Entities which participate in such Programs [and ex-Member Entities] in accordance with such allocations.

ARTICLE XVII
DEPOSIT PREMIUMS

The Deposit Premiums for the Liability and Workers' Compensation Programs shall be set at a level estimated to be sufficient, as determined by the Executive Committee, to cover PARSAC's budget for each Policy year. The Deposit Premiums for the Member Entities shall be set by PARSAC using various rating and underwriting criteria, such as:

[1] The Member Entity's payroll;

[2] The Member Entity's exposure base;

[3] The results of an on-site underwriting inspection;

[4] The Member Entity's prior claims history;

[5] Total insurable values; and/or

[6] Employee classification ratings.

Deposit Premiums for the Liability, Workers' Compensation, and Group Purchase Programs

shall be billed to the Member Entities at least thirty [30] days prior to the inception of coverage or a new Policy Year. All Deposit Premiums shall be due and payable before the inception of coverage, or on or before the first day of a new Program Year.

Alternatively, Workers' Compensation Program Participants may pay their Deposit Premium in two equal installments; the second installment shall be due January 1 each year. A finance charge shall be applied to Member Entities electing the installment payment option.

A 1% per month fee shall be assessed on late premium payments; this assessment will apply after sixty (60) days after the billing date. A courtesy reminder shall be mailed thirty (30) days prior to the assessment.

At the conclusion of each Program Year, PARSAC shall conduct a payroll audit of each Member Entity to adjust for any discrepancies between estimated and actual payroll. In the sole discretion of PARSAC, an on-site payroll audit may be conducted by PARSAC or an independent auditor. Any adjustments in payrolls, either debits or credits, shall result in an assessment of additional premiums or a return of overpaid premiums. This adjustment shall be made within sixty (60) days after the date of the audit.

ARTICLE XVIII
PARSAC MEMBERSHIP

Member Entities shall participate in PARSAC's Liability Program and/or Workers' Compensation Program as a condition of membership in PARSAC. Participation in either Program shall be a minimum of three years and the Term shall be renewed for subsequent one-year periods at the commencement of each Program Year upon payment of the applicable Deposit Premium, unless termination, withdrawal, or expulsion occurs pursuant to Articles

XXIII and XXIV of this Agreement. The Executive Committee shall establish the initial SIR for each Liability or Workers' Compensation Program Participant and may require a different SIR for Program Participants from time to time, in its sole discretion.

Program Years shall begin on July 1 of each year and shall continue through the following June 30. Retroactive coverage may be provided as approved by the Board and documented on the Declaration Page of the respective Memorandum of Coverage.

ARTICLE XIX
MEMORANDA OF COVERAGE

The types and amounts of coverage for each Program available to Member Entities shall be specified in a Memorandum of Coverage which shall be issued by PARSAC to each Member Entity for each Program Year in which the Member Entity has coverage. The Board shall have the power and authority to decrease, increase, or amend the coverage provided by a Memorandum of Coverage. If any such amendment is approved by the Board during a Program Year, no Member Entity participating in that Program Year shall be entitled to withdraw by reason of any said amendment prior to the termination of that Program Year.

ARTICLE XX
SIR MANDATORY RESERVES/PAYMENTS

A Member Entity participating in the Liability Program must establish by resolution a "Fund Balance Reserve" ("Reserve") equal to three times (3) the designated SIR, or any underlying insurance deductible chosen, and approved for the Member Entity by PARSAC. The Reserve will be recorded and maintained in the appropriate Member Entity Fund in accordance with Generally

Acceptable Accounting Principles.

PARSAC will be notified of any proposed adjustment to the Reserve prior to the Member Entity's adoption of such a resolution.

PARSAC may request certification, by the Member Entity, of the balance in the Reserve account at any time.

Applicants establishing coverage with PARSAC shall be required to submit the "Fund Balance Reserve Resolution" prior to coverage inception.

Any Member Entity which does not desire to establish a local Fund Balance Reserve at the required three-times its SIR, or underlying insurance deductible amount, may contract for an actuarial study of its losses and reserves by a Fellow of the Casualty Actuary Society (FCAS) to ascertain and represent to PARSAC adequate below SIR Reserves. Such below SIR amount shall be established as the correct Reserve for that Member Entity.

The claims payment procedures for members participating in the Workers' Compensation Program with a self-insured retention are as follows:

1. The Member Entity shall set up a checking account with the Third Party Administrator (TPA). The TPA shall pay all claim expenses within the Member's Entity's self-insured retention from the checking account. The Member Entity shall be responsible for ensuring sufficient funds are available for all costs related to the checking account, including any set-up fees charged by the TPA; or
2. PARSAC shall pay all claim expenses within the Member Entity's self-insured retention, which shall be reconciled and invoiced to the Member Entity quarterly. The Member Entity shall have 30 days from the date of invoice to submit its self-insured retention payment. A 10% penalty shall be applied to the balance if payment

is not received by the due date. This option is available to Member Entities with an SIR of $100,000 or lower.

ARTICLE XXI
RETROSPECTIVE PREMIUM ADJUSTMENTS AND ASSESSMENTS

Retrospective Premium Adjustments (RPA) for self funded Programs shall be calculated annually as determined by each Program's funding policy. The Board may determine and levy special assessments on Member Entities by majority vote.

The RPA is a financial reconciliation made by PARSAC to determine whether the Deposit Premium collected for that Policy Year was sufficient to cover the costs. A RPA summary is presented annually to the Board for approval. Distribution of credits or collection of assessments will follow each Program's funding policy.

If a Member Entity has withdrawn or been expelled from a Program, any Retrospective Premium Adjustment credit shall remain with PARSAC until all claims have been settled for the particular Policy Year(s) being reconciled. Any Retrospective Premium Adjustment debit shall be billed to the Member Entity for the particular Policy Years(s) being reconciled.

ARTICLE XXII
NEW MEMBERS

Any California municipality may apply for membership in PARSAC and participation in any of PARSAC's Programs at any time. Municipalities must participate in either t the Liability or Workers' Compensation program before participating in other Program offerings.

PARSAC shall review all requests for Program membership, and the Executive Committee

shall approve and the Board shall ratify, which applicants shall be accepted for membership, in which Programs they may participate, and when such participation shall begin. Municipalities shall become new Member Entities as of the effective date of coverage indicated on the Program Declarations Page and upon payment of the Deposit Premium. Municipalities which are in the process of incorporation shall be covered only as of the effective date of incorporation.

Deposit Premiums for coverage which begins during a Program Year may be prorated for the remainder of the Program Year. A Municipality applying for membership in the Workers' Compensation or Liability Program shall complete, return and comply with all of the following:

A. An "Application for a Certificate of Consent to Self-Insure" from the Department of Industrial Relations/Division of Self-Insurance Plans (DIR/SIP) (Workers' Compensation only);

B. Loss reports for the five (5) most recent policy years;

C. Estimated payroll for the current year;

D. Liability Exposure questionnaire from PARSAC, questionnaires from the excess carrier or reinsurer, and most recent three years' audited financial statements;

E. Undertake a risk management audit of its facilities and activities and, based upon such audit report, provide evidence of correction, elimination and/or clarification of all noted deficiencies revealed by such inspection; and

F. Such other information as is reasonably required by PARSAC to assure compliance with law and PARSAC policies.

ARTICLE XXIII
WITHDRAWAL

Any Member Entity who has been a member for at least three full fiscal years may withdraw from its status as a member and as a party to the Joint Powers Agreement.

In order to withdraw from participation from one of the Programs, a withdrawing Member Entity must notify PARSAC in writing of its intention to withdraw at least six (6) months prior to the end of the fiscal year in which the member intends to withdraw, unless a shorter withdrawal period is approved by the Executive Committee, in its sole discretion. The Executive Committee, in approving a shorter withdrawal period, may impose a fee as a condition of withdrawal. The Executive Committee may condition its withdrawal approval on the Member Entity's timely payment of the fee. Withdrawal from the Liability or Workers Compensation Program shall terminate coverage under that Program. If withdrawal would result in the Member Entity no longer being a member of either the Liability or the Workers Compensation Program, then such withdrawal shall constitute withdrawal from this Agreement and from membership in PARSAC, subject to the ex-Member Entity's continuing obligations under Article XXV below.

A notice of intent to withdraw may be rescinded in writing with Executive Committee consent at any time earlier than ninety (90) days before the expiration of the withdrawal period, except that any withdrawal approved by the Executive Committee upon less than 6 months notice shall be final.

Any Member Entity which withdraws as a participant in any Program may renew participation in that Program by complying with all Program rules and regulations.

ARTICLE XXIV
EXPULSION

Regardless of its three-year commitment under the Liability and/or Workers' Compensation Program, a Member Entity may be expelled from PARSAC or a Program either with or without cause. The General Manager shall review any lack of satisfactory performance or other problem with the Member Entity and shall attempt to resolve the matter. If the General Manager determines that the Member Entity is unwilling or unable to correct the problem, the General Manager shall present the matter to the Executive Committee. The Executive Committee may recommend to the Board that the Member Entity be expelled, either with or without cause. Action by the Board shall require the vote of a majority of the total number of directors.

A. **Expulsion Without Cause**. The Executive Committee may decide to recommend that a Member Entity be expelled without cause [for no stated cause]. Written notice of the Executive Committee's recommendation for expulsion shall be delivered to the Member Entity with return receipt at least fourteen [14] days before the Board meeting at which the matter will be discussed.

B. **Expulsion for Cause**. If the Executive Committee's recommendation is to expel a Member Entity for cause, the Board shall appoint a hearing officer to conduct a hearing on the mater, and the hearing officer shall be responsible for all notices, procedures and reports in connection with the hearing. Written notice of the date, time and place of the hearing, along with a summary of the reasons supporting the expulsion for cause shall be delivered with return receipt to the Member Entity at least fourteen [14] days before the hearing. The notice shall also include any guidelines concerning the procedures to be followed at the hearing. The hearing officer shall preside at the hearing and shall be responsible for the conduct of the hearing and all rulings on procedure, evidence and law during the hearing. Both the Member Entity and PARSAC shall be represented by

legal counsel at the hearing. Both parties may present written and oral evidence. A transcript of the proceedings shall be kept, either by a court reporter or by a good quality tape recorder, a written transcription of which may be prepared at the requesting party's expense. Within thirty [30] days after the hearing is declared closed by the hearing officer, he or she shall prepare written rulings of fact and law, with a recommendation for further action by the Board, and shall deliver the decision to the Member Entity and PARSAC. Within thirty [30] days after receipt of the hearing officer's decision, the Board shall consider and act on the hearing officer's recommendation. The Board shall permit the Member Entity to present a written response to the hearing officer's recommendations. The Board's decision shall be final, and if it decides to expel the Member Entity, it shall also state the effective date on which coverage terminates.

C. **Opportunity to Remedy**. In considering the expulsion of a Member Entity, the Executive Committee shall allow the affected Member Entity a reasonable opportunity to address and remedy the reasons, if any, for the proposed expulsion. The period of time so allowed shall be within the sole discretion of the Executive Committee. If such a reasonable opportunity is allowed, PARSAC may require quarterly audits to monitor the affected Member Entity's remedial actions or any other conditions to its continued participation in PARSAC or its Programs.

D. **Alternative Coverage**. A Member Entity which is the subject of a proposed expulsion shall be responsible for investigating the availability of alternate coverage. On the request of the Member Entity, the Board may permit the Member Entity a reasonable time to make arrangements for alternative coverage, but such period of time shall be at the Board's sole discretion.

ARTICLE XXV
EFFECT OF WITHDRAWAL OR EXPULSION ON MEMBER ENTITY'S RESPONSIBILITIES

The withdrawal or expulsion of any Member Entity after its participation in any Program shall not terminate its responsibility with respect to the following:

A. Provide PARSAC with such statistical and loss experience data and other information as may be necessary for PARSAC to carry out the purposes of this Agreement;

B. Pay to PARSAC when due any Deposit Premiums or Retrospective Premium Adjustments for each Policy Year of each Program in which it participated;

C. Cooperate fully with PARSAC in determining the cause of losses in the settlement of claims;

D. Cooperate with and assist PARSAC and any insurer, claims adjuster, legal counsel or other service provider engaged or retained by PARSAC in all matters relating to this Agreement ; and

E. Comply with the Bylaws and all policies and procedures of PARSAC not inconsistent with the provisions of this Agreement and not inconsistent with its withdrawal from PARSAC.

In addition, PARSAC may retain all deposit Premiums, assessments, property or other charges paid or transferred to PARSAC, and the ex-Member Entity is obligated to pay any future assessments made with respect to the Policy Years of any Program in which it participated, until all claims relating to such Policy Year[s] and Program[s] are settled, paid or resolved, at which time PARSAC shall refund to the ex-Member Entity any premiums, deposits, or property which it has retained and which were not expended in settling, paying or otherwise resolving claims against the ex-Member Entity.

ARTICLE XXVI
TERMINATION OF AGREEMENT AND DISTRIBUTION OF ASSETS

This Agreement shall continue in full force and effect until terminated. Termination of this Agreement shall also constitute the termination of all Programs. This Agreement may be terminated at any time by the vote of three-fourths of the Member Entities; provided, however, that this Agreement and PARSAC shall continue to exist for the purpose of disposing of all claims, the distribution of assets, and any other functions necessary to wind up the affairs of PARSAC.

Upon termination of this Agreement, all assets of each Program of PARSAC shall be distributed among the Member Entities [and ex-Member Entities which previously withdrew or were expelled] which participated in such Programs, in accordance with and proportionate to their net premium payments made during the term of this Agreement. Such distributions shall be determined within six [6] months after the disposal of the last pending claim or other liability covered by each Program.

Following the termination of this Agreement, any Member Entity which was a participant in any Program of PARSAC shall pay any additional amount of premium, determined by the Board or its designee in accordance with a retrospective premium adjustment, which may be necessary to enable final disposition of all claims arising from losses under that Program during the Member Entity's period of participation.

The Board is vested with all powers of PARSAC for the purpose of concluding and dissolving the business affairs of PARSAC. The Board may designate legal counsel and any committee or person to carry out a plan of dissolution adopted by the Board.

ARTICLE XXVII
NOTICES

Notices to Member Entities under this Agreement or the Bylaws shall be sufficient if mailed to their respective addresses on file with PARSAC. Notices to PARSAC shall be sufficient if mailed to the address of the principal executive office of PARSAC, addressed to the General Manager.

ARTICLE XXVIII
PROHIBITION AGAINST ASSIGNMENT

No Member Entity may assign any right, claim, or interest it may have under this Agreement, and no creditor, assignee or third party beneficiary of any Member Entity shall have any right, claim or title to any part, share, interest, fund, premium or asset of PARSAC.

ARTICLE XXIX
AMENDMENTS

This Agreement may be amended by a two-thirds vote of the Board present and voting at any duly convened regular or special meeting; provided that, any such amendment has been submitted to the directors and the Member Entities at least thirty [30] days in advance of such meeting. Member Entities may, by resolution or ordinance, grant their director and alternate on the Board explicit authorization to approve and execute amendments to this Agreement on behalf of the Member Entity without the necessity of a resolution or ordinance of the legislative body of the Member Entity confirming or ratifying such amendment. Any such amendment shall become effective immediately, unless otherwise stated therein.

ARTICLE XXX
SEVERABILITY

Should any portion, term, condition or provision of this Agreement be decided by a court of competent jurisdiction to be illegal or in conflict with any law of the State of California, or be otherwise rendered unenforceable or ineffectual, the validity of the remaining portions, terms, conditions and provisions shall not be affected thereby.

ARTICLE XXXI
AGREEMENT COMPLETE

The foregoing constitutes the full and complete agreement of the parties. There are no oral understandings or agreements not set forth in writing herein, except as noted with respect to the Bylaws and Memoranda of Coverage. If any provision of this Agreement conflicts with a provision of the Bylaws, Memoranda of Coverage or other document, such conflicting provisions shall be interpreted to avoid any such conflict, but this Agreement shall govern.

ARTICLE XXXII
EXECUTION OF COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, but altogether shall constitute one and the same Agreement.

Public Agency Risk Sharing Authority of California ["PARSAC"]

Date: By: _____

General Manager

Attest: _____

Deputy Secretary, PARSAC

Member Entity: **City of Wildomar**

Date: By: _____

Signature/Title

Attest: _____

City/Town Clerk

ARTICLE XXXII
EXECUTION OF COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, but altogether shall constitute one and the same Agreement.

Public Agency Risk Sharing Authority of California ["PARSAC"]

Date: By: _____

General Manager

Attest: _____

Deputy Secretary, PARSAC

Member Entity:____City of Amador City

Date: By: _____

Signature/Title

Attest: _____

City/Town Clerk

ARTICLE XXXII
EXECUTION OF COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, but altogether shall constitute one and the same Agreement.

Public Agency Risk Sharing Authority of California ["PARSAC"]

Date: By: _____

General Manager

Attest: _____

Deputy Secretary, PARSAC

Member Entity:____City of Avalon

Date: By: _____

Signature/Title

Attest: _____

City/Town Clerk

ARTICLE XXXII
EXECUTION OF COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, but altogether shall constitute one and the same Agreement.

Public Agency Risk Sharing Authority of California ["PARSAC"]

Date: By: _____

General Manager

Attest: _____

Deputy Secretary, PARSAC

Member Entity:____City of Blue Lake

Date: By: _____

Signature/Title

Attest: _____

City/Town Clerk

ARTICLE XXXII
EXECUTION OF COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, but altogether shall constitute one and the same Agreement.

Public Agency Risk Sharing Authority of California ["PARSAC"]

Date: By: _____

General Manager

Attest: _____

Deputy Secretary, PARSAC

Member Entity:____City of California City

Date: By: _____

Signature/Title

Attest: _____

City/Town Clerk

ARTICLE XXXII
EXECUTION OF COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, but altogether shall constitute one and the same Agreement.

Public Agency Risk Sharing Authority of California ["PARSAC"]

Date: By: _____

General Manager

Attest: _____

Deputy Secretary, PARSAC

Member Entity:____City of Calimesa

Date: By: _____

Signature/Title

Attest: _____

City/Town Clerk

ARTICLE XXXII
EXECUTION OF COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, but altogether shall constitute one and the same Agreement.

Public Agency Risk Sharing Authority of California ["PARSAC"]

Date: By: _____

General Manager

Attest: _____

Deputy Secretary, PARSAC

Member Entity:____City of Calistoga

Date: By: _____

Signature/Title

Attest: _____

City/Town Clerk

ARTICLE XXXII
EXECUTION OF COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, but altogether shall constitute one and the same Agreement.

Public Agency Risk Sharing Authority of California ["PARSAC"]

Date: By: _____

General Manager

Attest: _____

Deputy Secretary, PARSAC

Member Entity:____City of Canyon Lake

Date: By: _____

Signature/Title

Attest: _____

City/Town Clerk

ARTICLE XXXII
EXECUTION OF COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, but altogether shall constitute one and the same Agreement.

Public Agency Risk Sharing Authority of California ["PARSAC"]

Date: By: _____

General Manager

Attest: _____

Deputy Secretary, PARSAC

Member Entity:____City of Citrus Heights

Date: By: _____

Signature/Title

Attest: _____

City/Town Clerk

ARTICLE XXXII
EXECUTION OF COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, but altogether shall constitute one and the same Agreement.

Public Agency Risk Sharing Authority of California ["PARSAC"]

Date: By: _____

General Manager

Attest: _____

Deputy Secretary, PARSAC

Member Entity:____City of Clearlake

Date: By: _____

Signature/Title

Attest: _____

City/Town Clerk

ARTICLE XXXII
EXECUTION OF COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, but altogether shall constitute one and the same Agreement.

Public Agency Risk Sharing Authority of California ["PARSAC"]

Date: By: _____

General Manager

Attest: _____

Deputy Secretary, PARSAC

Member Entity:____City of Coalinga

Date: By: _____

Signature/Title

Attest: _____

City/Town Clerk

ARTICLE XXXII
EXECUTION OF COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, but altogether shall constitute one and the same Agreement.

Public Agency Risk Sharing Authority of California ["PARSAC"]

Date: By: _____

General Manager

Attest: _____

Deputy Secretary, PARSAC

Member Entity:____City of Elk Grove

Date: By: _____

Signature/Title

Attest: _____

City/Town Clerk

ARTICLE XXXII
EXECUTION OF COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, but altogether shall constitute one and the same Agreement.

Public Agency Risk Sharing Authority of California ["PARSAC"]

Date: By: _____

General Manager

Attest: _____

Deputy Secretary, PARSAC

Member Entity:____City of Ferndale

Date: By: _____

Signature/Title

Attest: _____

City/Town Clerk

ARTICLE XXXII
EXECUTION OF COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, but altogether shall constitute one and the same Agreement.

Public Agency Risk Sharing Authority of California ["PARSAC"]

Date: By: _____

General Manager

Attest: _____

Deputy Secretary, PARSAC

Member Entity:____City of Grass Valley

Date: By: _____

Signature/Title

Attest: _____

City/Town Clerk

ARTICLE XXXII
EXECUTION OF COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, but altogether shall constitute one and the same Agreement.

Public Agency Risk Sharing Authority of California ["PARSAC"]

Date: By: _____

General Manager

Attest: _____

Deputy Secretary, PARSAC

Member Entity:____City of Hesperia

Date: By: _____

Signature/Title

Attest: _____

City/Town Clerk

ARTICLE XXXII
EXECUTION OF COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, but altogether shall constitute one and the same Agreement.

Public Agency Risk Sharing Authority of California ["PARSAC"]

Date: By: _____

General Manager

Attest: _____

Deputy Secretary, PARSAC

Member Entity:____City of Highland

Date: By: _____

Signature/Title

Attest: _____

City/Town Clerk

ARTICLE XXXII
EXECUTION OF COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, but altogether shall constitute one and the same Agreement.

Public Agency Risk Sharing Authority of California ["PARSAC"]

Date: By: _____

General Manager

Attest: _____

Deputy Secretary, PARSAC

Member Entity:____City of Nevada City

Date: By: _____

Signature/Title

Attest: _____

City/Town Clerk

ARTICLE XXXII
EXECUTION OF COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, but altogether shall constitute one and the same Agreement.

Public Agency Risk Sharing Authority of California ["PARSAC"]

Date: By: _____

General Manager

Attest: _____

Deputy Secretary, PARSAC

Member Entity:____City of Pacific Grove

Date: By: _____

Signature/Title

Attest: _____

City/Town Clerk

ARTICLE XXXII
EXECUTION OF COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, but altogether shall constitute one and the same Agreement.

Public Agency Risk Sharing Authority of California ["PARSAC"]

Date: By: _____

General Manager

Attest: _____

Deputy Secretary, PARSAC

Member Entity:____City of Placentia

Date: By: _____

Signature/Title

Attest: _____

City/Town Clerk

ARTICLE XXXII
EXECUTION OF COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, but altogether shall constitute one and the same Agreement.

Public Agency Risk Sharing Authority of California ["PARSAC"]

Date: By: _____

General Manager

Attest: _____

Deputy Secretary, PARSAC

Member Entity:____City of Placerville

Date: By: _____

Signature/Title

Attest: _____

City/Town Clerk

ARTICLE XXXII
EXECUTION OF COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, but altogether shall constitute one and the same Agreement.

Public Agency Risk Sharing Authority of California ["PARSAC"]

Date: By: _____

General Manager

Attest: _____

Deputy Secretary, PARSAC

Member Entity:____City of Plymouth

Date: By: _____

Signature/Title

Attest: _____

City/Town Clerk

ARTICLE XXXII
EXECUTION OF COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, but altogether shall constitute one and the same Agreement.

Public Agency Risk Sharing Authority of California ["PARSAC"]

Date: By: _____

General Manager

Attest: _____

Deputy Secretary, PARSAC

Member Entity:____City of Point Arena

Date: By: _____

Signature/Title

Attest: _____

City/Town Clerk

ARTICLE XXXII
EXECUTION OF COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, but altogether shall constitute one and the same Agreement.

Public Agency Risk Sharing Authority of California ["PARSAC"]

Date: By: _____

General Manager

Attest: _____

Deputy Secretary, PARSAC

Member Entity:____City of Rancho Cucamonga

Date: By: _____

Signature/Title

Attest: _____

City/Town Clerk

ARTICLE XXXII
EXECUTION OF COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, but altogether shall constitute one and the same Agreement.

Public Agency Risk Sharing Authority of California ["PARSAC"]

Date: By: _____

General Manager

Attest: _____

Deputy Secretary, PARSAC

Member Entity:____City of Rancho Santa Margarita

Date: By: _____

Signature/Title

Attest: _____

City/Town Clerk

ARTICLE XXXII
EXECUTION OF COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, but altogether shall constitute one and the same Agreement.

Public Agency Risk Sharing Authority of California ["PARSAC"]

Date: By: _____

General Manager

Attest: _____

Deputy Secretary, PARSAC

Member Entity:____City of Rialto

Date: By: _____

Signature/Title

Attest: _____

City/Town Clerk

ARTICLE XXXII
EXECUTION OF COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, but altogether shall constitute one and the same Agreement.

Public Agency Risk Sharing Authority of California ["PARSAC"]

Date: By: _____

General Manager

Attest: _____

Deputy Secretary, PARSAC

Member Entity:_____City of Ridgecrest

Date: By: _____

Signature/Title

Attest: _____

City/Town Clerk

ARTICLE XXXII
EXECUTION OF COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, but altogether shall constitute one and the same Agreement.

Public Agency Risk Sharing Authority of California ["PARSAC"]

Date: By: _____

General Manager

Attest: _____

Deputy Secretary, PARSAC

Member Entity:____City of San Juan Bautista

Date: By: _____

Signature/Title

Attest: _____

City/Town Clerk

ARTICLE XXXII
EXECUTION OF COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, but altogether shall constitute one and the same Agreement.

Public Agency Risk Sharing Authority of California ["PARSAC"]

Date: By: _____

General Manager

Attest: _____

Deputy Secretary, PARSAC

Member Entity:____City of South Lake Tahoe

Date: By: _____

Signature/Title

Attest: _____

City/Town Clerk

ARTICLE XXXII
EXECUTION OF COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, but altogether shall constitute one and the same Agreement.

Public Agency Risk Sharing Authority of California ["PARSAC"]

Date: By: _____

General Manager

Attest: _____

Deputy Secretary, PARSAC

Member Entity:____City of Tehama

Date: By: _____

Signature/Title

Attest: _____

City/Town Clerk

ARTICLE XXXII
EXECUTION OF COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, but altogether shall constitute one and the same Agreement.

Public Agency Risk Sharing Authority of California ["PARSAC"]

Date: By: _____

General Manager

Attest: _____

Deputy Secretary, PARSAC

Member Entity:____City of Trinidad

Date: By: _____

Signature/Title

Attest: _____

City/Town Clerk

ARTICLE XXXII
EXECUTION OF COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, but altogether shall constitute one and the same Agreement.

Public Agency Risk Sharing Authority of California ["PARSAC"]

Date: By: _____

General Manager

Attest: _____

Deputy Secretary, PARSAC

Member Entity:____Town of Truckee

Date: By: _____

Signature/Title

Attest: _____

City/Town Clerk

ARTICLE XXXII
EXECUTION OF COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, but altogether shall constitute one and the same Agreement.

Public Agency Risk Sharing Authority of California ["PARSAC"]

Date: By: _____

General Manager

Attest: _____

Deputy Secretary, PARSAC

Member Entity:____City of Twentynine Palms

Date: By: _____

Signature/Title

Attest: _____

City/Town Clerk

ARTICLE XXXII
EXECUTION OF COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, but altogether shall constitute one and the same Agreement.

Public Agency Risk Sharing Authority of California ["PARSAC"]

Date: By: _____

General Manager

Attest: _____

Deputy Secretary, PARSAC

Member Entity:____City of Watsonville

Date: By: _____

Signature/Title

Attest: _____

City/Town Clerk

ARTICLE XXXII
EXECUTION OF COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, but altogether shall constitute one and the same Agreement.

Public Agency Risk Sharing Authority of California ["PARSAC"]

Date: By: _____

General Manager

Attest: _____

Deputy Secretary, PARSAC

Member Entity:____City of Wheatland

Date: By: _____

Signature/Title

Attest: _____

City/Town Clerk

ARTICLE XXXII
EXECUTION OF COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, but altogether shall constitute one and the same Agreement.

Public Agency Risk Sharing Authority of California ["PARSAC"]

Date: By: _____

General Manager

Attest: _____

Deputy Secretary, PARSAC

Member Entity:____Town of Yountville

Date: By: _____

Signature/Title

Attest: _____

City/Town Clerk

ARTICLE XXXII
EXECUTION OF COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, but altogether shall constitute one and the same Agreement.

Public Agency Risk Sharing Authority of California ["PARSAC"]

Date: By: _____

General Manager

Attest: _____

Deputy Secretary, PARSAC

Member Entity:____City of Yucaipa

Date: By: _____

Signature/Title

Attest: _____

City/Town Clerk

ARTICLE XXXII
EXECUTION OF COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, but altogether shall constitute one and the same Agreement.

Public Agency Risk Sharing Authority of California ["PARSAC"]

Date: By: _____

General Manager

Attest: _____

Deputy Secretary, PARSAC

Member Entity:_____Town of Yucca Valley

Date: By: _____

Signature/Title

Attest: _____

City/Town Clerk

APPENDIX "A

PUBLIC AGENCY RISK SHARING AUTHORITY OF CALIFORNIA [PARSAC]

MEMBER ENTITIES

City of Alturas
City of Amador City
City of Avalon
City of Blue Lake
City of California City
City of Calimesa
City of Calistoga
City of Canyon Lake
City of Citrus Heights
City of Clearlake
City of Coalinga
City of Elk Grove
City of Ferndale
City of Grass Valley
City of Hesperia
City of Highland
City of Nevada City
City of Pacific Grove
City of Placentia
City of Placerville
City of Plymouth
City of Point Arena
City of Rancho Cucamonga
City of Rancho Santa Margarita
City of Rialto
City of Ridgecrest
City of San Juan Bautista
City of South Lake Tahoe
City of Tehama
City of Trinidad
Town of Truckee
City of Twentynine Palms
City of Watsonville
City of Wheatland
Town of Yountville
City of Yucaipa
Town of Yucca Valley

RESOLUTION NO 08-38

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA ACCEPTING THE ASSIGNMENT OF THE COUNTY OF RIVERSIDE'S INTERESTS IN THE FRANCHISES EXISTING WITHIN THE CITY OF WILDOMAR

THE CITY COUNCIL OF THE CITY OF WILDOMAR DOES RESOLVE AS FOLLOWS:

SECTION I. Recitals.

(a) The County of Riverside has franchises in place for the provision of cable television, electricity, natural gas, and solid waste collection and disposal within the City of Wildomar.

(b) The County franchisees for services within Wildomar are Southern California Edison (electricity), Comcast Cable (cable television), and Southern California Gas Company (natural gas). The County has franchises with Waste Management of Inland Valley and CR&R Waste & Recycling Services in place for solid waste collection and disposal within the City of Wildomar.

(c) The Comprehensive Fiscal Analysis for the incorporation of the City of Wildomar provides that the existing County franchise agreements for the provision of electricity, cable television and natural gas within the City of Wildomar shall transfer to the City upon incorporation.

(d) The Comprehensive Fiscal Analysis for the incorporation of Wildomar provides that the existing solid waste collection and disposal franchises within the City shall not transfer to the City but shall remain in place until they expire. The City may establish a new City solid waste collection and disposal franchise five years after notice is given to the existing franchisees that the City intends to establish a City franchise for solid waste collection and disposal.

SECTION II. Acceptance of Transfer of the County's Interest in the Existing Franchises. The City Council accepts the transfer of the County of Riverside's interest in the franchises with Southern California Edison, the Southern California Gas Company, and Comcast Cable that are currently in effect in the City of Wildomar. The City of Wildomar reserves the right to renegotiate the terms and conditions of these franchises at a later date. The Southern California Edison franchise ordinances and related documentation are attached hereto as Exhibits "A," "B" and "C."

PASSED, APPROVED, AND ADOPTED this 1st day of July, 2008.

Bob Cashman, Mayor

ATTEST:

John Danielson, Interim City Clerk

APPROVED AS TO FORM:

Julie Hayward Biggs, Interim City Attorney

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE)
CITY OF WILDOMAR)

I, John Danielson, Interim City Clerk of the City of Wildomar, do hereby certify that the foregoing Resolution No. 08-38 was duly adopted by the City Council of the City of Wildomar at a regular meeting thereof, held on the 1st day of July, 2008, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

John Danielson, Interim City Clerk

EXHIBIT "A"

SOUTHERN CALIFORNIA EDISON FRANCHISE

SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

FROM: Clerk of the Board SUBMITTAL DATE: September 13, 1989

SUBJECT: Application of Southern California Edison Company for Electric Franchise

RECOMMENDED MOTION: That the Honorable Board of Supervisors adopt Resolution No. 89-488 entitled "Declaration of Intention to Grant an Electric Franchise to Southern California Edison Company".

JUSTIFICATION: On August 11, 1989, Southern California Edison Company applied to our office for a 50-year term Electric Franchise pursuant to the Franchise Act of 1937. By adopting the attached resolution, the Board of Supervisors declares its intention to grant the requested franchise and directs the Clerk of the Board to schedule a public hearing before the Board of Supervisors on October 10, 1989 at 1:30 p.m. at which time any and all persons having objections to the granting of said franchise may appear and be heard.

Respectfully Submitted,

Gerald A Maloney

Gerald A. Maloney
Clerk of the Board

C.A.O. RECOMMENDATION:

APPROVE.

FINANCIAL IMPACT:

Adoption of the "1937 Act" Franchise provisions allows the County to receive higher franchise fee revenue by more than $500,000 annually.

Administrative Officer Signature Gary L. Cottrell

FORM APPROVED COUNTY COUNSEL

SEP 14 1989

By: Deputy

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Larson, seconded by Supervisor Younglove and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Ceniceros, Dunlap, Larson, Abraham and Younglove
Noes: None
Absent: None
Date: September 19, 1989
xc: COB, So. Calif. Edison Co., Co.Co., Auditor

Gerald A Maloney
Clerk of the Board
By: Margaret Logano Deputy

Prev. Agn. ref. | Depts. Comments | Dist. ALL | AGENDA NO. 3.51

FORM 11 (Rev. 12/82)

Board of Supervisors County of Riverside

RESOLUTION NO. 89-488

DECLARATION OF INTENTION TO GRANT AN ELECTRIC FRANCHISE TO SOUTHERN CALIFORNIA EDISON COMPANY

WHEREAS, Southern California Edison Company, a California corporation, has filed with the Board of Supervisors of the County of Riverside, an application requesting that a franchise be granted to it of the character and for the purpose mentioned in the form of notice hereinafter set forth; and,

WHEREAS, the Board of Supervisors of the County of Riverside believes the public good requires that said franchise be granted; now, therefore,

BE IT RESOLVED, FOUND, DETERMINED AND ORDERED by the Board of Supervisors of the County of Riverside, State of California, in regular session assembled on September 19, 1989, that it intends to grant said franchise, that hearing of objections to the granting thereof will be held at the time and place specified in the form of notice hereinafter set forth which the Clerk of the Board is hereby directed to publish at least once in the Press-Enterprise, a newspaper of general circulation published in the County of Riverside, within fifteen (15) days after the passage of this resolution, and that said notice shall be substantially in the following words and figures:

"NOTICE OF INTENTION TO GRANT FRANCHISE

NOTICE IS HEREBY GIVEN that Southern California Edison Company, a California corporation, has filed its application with

ERALD J. GEERLINGS
COUNTY COUNSEL
SUITE 300
3535 - 10TH STREET
VERSIDE, CALIFORNIA

3.15

the Board of Supervisors of the County of Riverside, requesting that said Board of Supervisors grant to it a franchise for a period of fifty (50) years, pursuant to the Franchise Act of 1937, to use and to construct and use, for transmitting and distributing electricity for any and all purposes, poles, wires, conduits and appurtenances, including communication circuits necessary or proper therefor, in, along, across, upon, over and under the public streets, ways, alleys and places within the County of Riverside for all purposes.

If said franchise shall be granted to it, said Southern California Edison Company, its successors and assigns, hereinafter designated grantee, during the life of said franchise will pay to said County two percent (2%) of the gross annual receipts of said grantee arising from the use, operation or possession of said franchise; except provided that this payment shall not be less than one percent (1%) of the gross annual receipts derived by grantee from the sale of electricity within the limits of said County. Such percentage shall be paid annually from the date of the granting of the franchise applied for, and in the event such payment shall not be made said franchise shall be forfeited.

The Board of Supervisors of the County of Riverside proposes to grant said franchise for a period of fifty (50 years).

NOTICE IS HEREBY FURTHER GIVEN that any and all persons having any objections to the granting of said franchise may appear before said Board of Supervisors at the meeting room located on the 14th floor, County Administrative Center, 4080 Lemon Street, Riverside, California, at the hour of 1:30 p.m. on

SERALD J. GEERLINGS
COUNTY COUNSEL
SUITE 300
3535 - 10TH STREET
IVERSIDE, CALIFORNIA

Tuesday, the 10th day of October, 1989, and be heard thereon; and

NOTICE IS HEREBY FURTHER GIVEN that at any time not later than the hour set for hearing objections, any person interested may make written protest stating objections against the granting of said franchise; which protest must be signed by the protestant and be delivered to the Clerk of the Board of said County. The Board of Supervisors at the time set for hearing said objections shall proceed to hear and pass upon all protests so made; and

For further particulars reference is hereby made to said application which is on file in the office of said Clerk of the Board, and also to the resolution adopted by said Board of Supervisors on the 19th day of September, 1989, declaring its intention to grant said franchise.

DATED THIS 19th day of September, 1989.

By order of the Board of Supervisors of the County of Riverside, California."

Roll Call resulted as follows:
Ayes: Abraham, Dunlap, Larson, Younglove and Ceniceros
Noes: None
Absent: None

The foregoing is certified to be a true copy of a resolution duly adopted by said Board of Supervisors on the date therein set forth.
GERALD A. MALONEY, Clerk of said Board
By M. Rozzo, Deputy

KAL:re
4243LIT
9/18/89

GERALD J. GEERLINGS
COUNTY COUNSEL
SUITE 300
3535 - 10TH STREET
RIVERSIDE, CALIFORNIA

ORDINANCE NO. 390

AN ORDINANCE OF THE COUNTY OF RIVERSIDE, CALIFORNIA GRANTING TO SOUTHERN CALIFORNIA EDISON COMPANY, A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF CALIFORNIA, ITS SUCCESSORS AND ASSIGNS, A FRANCISE, FOR A PERIOD OF FIFTY (50) YEARS, TO CONSTRUCT, LAY, OPERATE, MAINTAIN, USE, RENEW, REPAIR, REPLACE, MOVE, CHANGE THE SIZE AND NUMBER OF, AND REMOVE OR ABANDON IN PLACE A SYSTEM OF PIPE LINES AND APPURTENANCES, FOR THE PURPOSE OF CONDUCTING, TRANSPORTING, CONVEYING AND CARRYING OIL, PETROLEUM, GAS AND OTHER SUBSTANCES, ON, ALONG, IN, UNDER AND ACROSS THE PUBLIC STREETS, ALLEYS, HIGHWAYS AND PUBLIC PLACES WITHIN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, EXCEPTING THEREFROM ANY PORTIONS THEREOF WHICH ARE NOW WITHIN THE LIMITS OF ANY INCORPORATED CITY, TOGETHER WITH THE RIGHT TO CONSTRUCT, OPERATE, MAINTAIN AND USE A PRIVATE COMMUNICATION SYSTEM TO BE USED IN CONNECTION WITH THE OPERATION AND MAINTENANCE OF SAID SYSTEM OF PIPE LINES AND APPURTENANCES AS AFORESAID.

The Board of Supervisors of the County of Riverside, California, does ordain as follows:

SECTION 1. That a franchise be, and the same is hereby granted to Southern California Edison Company, a corporation organized and existing under the laws of the State of California, its successors and assigns, for a period of fifty (50) years from the effective date of this ordinance granting said franchise, to construct, lay, operate, maintain, use, renew, repair, replace, move, change the size and number of, and remove or abandon in place a system of pipe lines, together with such valves, fittings, manholes, vaults, pumps and other appliances, appurtenances, attachments or equipment as the Grantee, it successors and assigns, may deem necessary or convenient, for the purpose of conducting, transporting, conveying and carrying oil, petroleum, gas and other substances, on, along, in, under and across the public streets, alleys, highways and public places within the County of Riverside, State of California, excepting therefrom any portions thereof which are now within the limits of any incorporated city; said system of pipe lines and appurtenances as aforesaid to extend generally along the following routes: along Bain Street from the northerly boundary of the County of Riverside to and including the intersection of said street with the prlongation of Edison Avenue extended from the west; together with the right of construct, operate, maintain and use a private communication system, consisting of poles, crossarms, conductors, wires, communication circuits and all other necessary or convenient appliances or attachments, to be used in connection with the operation and maintenance of said system of pipe lines and appurtenances as aforesaid, on, along, in, under, over and across the public streets, alleys, highways and public places within the County of Riverside, State of California, excepting therefrom the portions thereof which are now within the limits of any incorporated city.

SECTION 2. The word "Grantee" wherever used herein shall mean and include Grantee and its successors and assigns.

SECTION 3. The system for conducting, transporting, conveying and carrying oil, petroleum, gas and other substances to be constructed and operated under this franchise shall be built and constructed in a good and workmanlike manner and of good material, and any and all pipe lines laid, located or maintained under said franchise shall be so placed as not to interfere with the use of said public streets, alleys, highways and other public places by the traveling public or for public purposes to any greater extent than is reasonable necessary; and in laying said pipe lines the Grantee of said franchise shall make and backfill all excavations in such manner and way as to leave the surface of the public street, alley, highway or public place in as good condition as it was prior to said excavation, as well as to conform to the statutes of the State of California and such instructions and directions as the Board of Supervisors may, by ordinance or resolution, require, provided that said instructions and directions of the said Board of Supervisors are not in conflict with any paramount authority of the State of California. The work to erect or lay said system shall be commenced in good faith

within not more than four months from the granting of this franchise and if not so commenced the franchise shall be declared forfeited.

SECTION 4. The County of Riverside reserves the right to change the grade of any public street, alley or highway over which the franchise is granted and the Grantee of said franchise, within a reasonable time after receipt of written notice from the Board of Supervisors of said County of its intention so to do, at its own cost and expense shall change the location of all pipe lines and appurtenances, including communication lines, constructed hereunder so as to conform to such change of grade. Any damage done directly or indirectly any right, power or privilege under this franchise, or in performing any duty under or pursuant to the provisions of this Ordinance, shall be promptly repaired by said Grantee, at its sole cost and expense.

SECTION 5. The Grantee shall, during the life of this franchise, pay to the County of Riverside, in lawful money of the United States and in the manner provided by law, two per cent (2%) of the gross annual receipts of the Grantee arising from the use, operation or possession of this franchise within the County of Riverside. No percentage shall be paid for the first five (5) years succeeding the date of the franchise, but thereafter such percentage shall be payable annually; and in the event said payment is not made, said franchise shall be forfeited; provided, further, that if the franchise be a renewal of a right already in existence, the payment of said percentable of gross receipts shall begin at once upon the granting of the franchise.

The Grantee shall file with the County Clerk of the County of Riverside, within three (3) months after the expiration of the expiration of the calendar year, or fractional calendar year, following the effective date of this ordinance granting this franchise, and within three (3) months after the expiration of each and every calendar year thereafter, a duly verified statement showing in detail the total gross receipts of said Grantee during the preceding calendar year, or such fractional calendar year, arising from the use, operation or possession of this franchise within the County of Riverside, and within fifteen (15) days after the time for filing the aforesaid statement, the Grantee shall pay to the County Treasurer of the County of Riverside, in lawful money of the United States, the aforesaid two per cent (2%) of its gross receipts arising from the use, operation or possession of this franchise during said preceding calendar year, or such fractional calendar year. Any neglect, omission or refusal of said Grantee to file said verified statement, or to pay said percentage, at the time or in the manner hereinbefore provided, shall be grounds for the declaration of a forfeiture of this franchise and of all rights of the Grantee hereunder.

SECTION 6. Whenever any portion of the territory covered by this franchise shall be annexed to, or otherwise become a part of any municipal corporation, or of any other county, or of any other political subdivision of the State of California, the rights reserved under this franchise to the County of Riverside, or any officer thereof, shall inure to the benefit of such municipal corporation or county, and its appropriate officers.

SECTION 7. The said Grantee shall not sell, transfer or assign this franchise or any of the rights or privileges granted hereby, except by a duly executed instrument in writing, filed in the office of the County Clerk of the County of Riverside; and provided, further, that nothing in this franchise contained shall be construed to grant to said Grantee, any right to sell, transfer or assign this franchise, or any of the rights or privileges hereby granted, except in the manner aforesaid.

SECTION 8. Any neglect, failure or refusal to comply with any of the conditions of this franchise shall work a forfeiture hereof, and the said County, by its Board of Supervisors, may thereupon declare this franchise forfeited, and may exclude

said Grantee from further use of the public streets, alleys, highway and public places of said County under this franchise; and said Grantee shall thereupon surrender all rights in and to the same, and this franchise shall be deemed and shall remain null, void and of no effect.

SECTION 9. The Grantee shall, within thirty (30) days after the adoption of this ordinance, file with the Clerk of the Board of Supervisors of the County of Riverside a written acceptance of the terms and conditions of this ordinance.

SECTION 10. The Grantee of this franchise has filed a bond with the Board of Supervisors running to the County of Riverside, approved by the Board of Supervisors, with a duly qualified corporate surety, in the penal sum of One Thousand Dollars ($1,000.00), and conditioned that such Grantee shall well and truly observe, fulfill, and perform each term and condition of the franchise, and that in case of any breach of condition of the bond the whole amount of the penal sum therein named shall be deemed to be liquidated damages, and shall be recoverable from the principal and sureties upon the bond. Said bond was filed with the Board of Supervisors within five (5) days after the franchise was awarded.

SECTION 11. The provisions of this Franchise and all rights, obligations and duties hereunder shall inure to and be binding upon the Grantee, it successors and assigns.

SECTION 12. This ordinance shall take effect and be in force at the expiration of thirty (30) days from and after its passage, and before the expiration of fifteen (15) days after the passage hereof the same shall be published once in the Riverside Daily Press, a newspaper of general circulation printed and published in the County of Riverside, together with the names of the members of the Board of Supervisors voting for and against the same.

BOARD OF SUPERVISORS OF THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

By _____
Chairman

ATTEST:
G. A. PEQUEGNAT, County Clerk and ex officio Clerk of the Board of Supervisors of the County of Riverside

By _____
Deputy

STATE OF CALIFORNIA }
COUNTY OF RIVERSIDE } SS

I, G. A. PEQUEGNAT, County Clerk and ex officio Clerk of the Board of Supervisors, do hereby certify that at a regular meeting of the Board of Supervisors held on the 21st day of April, 1952, the foregoing ordinance, consisting of twelve (12) sections, was adopted by vote of the Board of Supervisors as follows:

Supervisor Jones voted Aye.
Supervisor Hayden voted Aye.
Supervisor Barnes voted Aye.
Supervisor Varner voted Aye.
Supervisor Lewis voted Aye.

Ayes: Five Noes: None Absent: None

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this 21st day of April, 1952.

G. A. PEQUEGNAT
County Clerk and ex-officio Clerk of the Board of Supervisors of the County of Riverside, State of California

By _____
Deputy

EXHIBIT "B"

SOUTHERN CALIFORNIA GAS COMPANY
FRANCHISE

MIN TES OF THE BOARD OF PER ORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

3.50 On motion of Supervisor Abraham, seconded by Supervisor Younglove and duly carried by unanimous vote, IT WAS ORDERED that t letter dated December 9, 1985, and its attachments, from Southern California Gas Company regarding Franchise Ordinance No. 272 with Southern California Gas Company and Franchise Ordinance No. 553 wit Pacific Lighting Gas Supply Company, concerning the merger of Pacif Lighting Gas Supply Company into Southern California Cas Company, a received and filed.

I hereby certify that the foregoing is a full, true and correct copy of an order made and entered on December 17, 1985 of Supervisors Minutes.

WITNESS my hand and the seal of the Board of Supervisors

Dated: December 17, 1985

Gerald A. Maloney, Clerk of the Board of Supervisors, in and for the County of Riverside, State of California.

(seal)

By: Joan Moody Deputy

AGENDA NO.

3.50

xc: So. Calif. Gas, COB

ATTACHMENT(S) FILED WITH THE CLERK OF THE BOARD

FORM 11 D (6-83)

SOUTHERN CALIFORNIA gas COMPANY

MAILING ADDRESS: BOX 3249 TERMINAL ANNEX, LOS ANGELES, CALIFORNIA 90051

PATRICK D BRADLEY
Franchise & Rights of Way Manager
Engineering Services Department

December 9, 1985

County Clerk
County of Riverside
County Administrative Center
4080 Lemon Street
Riverside, California 92501

Re: Franchise Ordinance No. 272
with Southern California Gas Company
Franchise Ordinance No. 553
with Pacific Lighting Gas Supply Company

On November 26, 1985, Pacific Lighting Gas Supply Company was merged into Southern California Gas Company. As a consequence of the merger, Southern California Gas Company, by operation of law, acquired all of the assets and obligations of its affiliate, Pacific Lighting Gas Supply Company. Enclosed is a certified copy of the merger agreement. It is being filed with the County within 30 days after the transfer in accordance with the terms of each franchise.

Prior to the merger, each of these companies installed its respective pipelines within public streets and paid annual franchise fees pursuant to the above-referenced ordinances.

In accordance with California Public Utilities Commission Decision 85-11-054, notice is hereby given that Southern California Gas Company as the surviving entity, will operate all of its pipelines within the County pursuant to Ordinance No. 553 and abandons Ordinance No. 272. Please conform your records to reflect this transfer of Ordinance No. 553 to Southern California Gas Company.

We would appreciate receiving a certified copy of the minutes of the Board meeting or copies of other action taken by the Board of Supervisors relative to this matter.

Should you have any questions regarding this matter, please do not hesitate to call me at (818) 307-2672 or Mrs. Sharon O'Rourke at (818) 307-2804.

Sincerely,

Patrick D Bradley

Patrick D. Bradley

SDO:tn

Enclosure

DEC 17 1985

3.50

State of California
OFFICE OF THE SECRETARY OF STATE

I, *MARCH FONG EU*, Secretary of State of the State of California, hereby certify:

That the annexed transcript has been compared with the record on file in this office, of which it purports to be a copy, and that same is full, true and correct.

IN WITNESS WHEREOF, I execute this certificate and affix the Great Seal of the State of California this

NOV 26 1985

THE GREAT SEAL OF THE STATE OF CALIFORNIA
EUREKA

March Fong Eu

Secretary of State

ENDORSED
FILED
In the office of the Secretary of State
of the State of California
NOV 26 1985
MARCH FONG EU, Secretary of State
By BILL HOLDEN
Deputy

AGREEMENT OF MERGER

AGREEMENT OF MERGER dated as of the 22nd day of November, 1985, by and between SOUTHERN CALIFORNIA GAS COMPANY ("SoCalGas") and PACIFIC LIGHTING GAS SUPPLY COMPANY ("PLGS").

WITNESSETH

WHEREAS, SoCalGas is a corporation duly organized and existing under the laws of the State of California;

WHEREAS, PLGS is also a corporation duly organized and existing under the laws of State of California;

WHEREAS, the respective Boards of Directors of SoCalGas and PLGS have determined that it is advisable that PLGS be merged into SoCalGas on the terms and conditions hereinafter set forth;

NOW, THEREFORE, SoCalGas and PLGS hereby agree that PLGS shall be merged into SoCalGas, which shall be the surviving corporation, pursuant to the General Corporation Law of the State of California, and that the terms and conditions of such merger and the mode of carrying it into effect shall be as follows:

ARTICLE I

On the effective date of the merger, PLGS shall be merged into SoCalGas, the separate existence of PLGS shall cease and SoCalGas, as the surviving corporation, shall continue in existence and, without other transfer, succeed to and possess all the rights, privileges, powers, franchises, properties and assets of PLGS, and shall be subject to all of the debts, liabilities and obligations of PLGS.

ARTICLE II

The Articles of Incorporation of SoCalGas as amended and in effect on the effective date of the merger, shall continue in full force and effect until altered, amended, or repealed as provided therein or as provided by law.

ARTICLE III

The By-Laws of SoCalGas, as amended and in effect on the effective date of the merger, shall continue in full force

force and effect until altered, amended or repealed as provided therein or as provided by law.

ARTICLE IV

The directors and officers of SoCalGas holding office on the effective date of the merger shall continue to hold office until removed as provided by law or until the election of their respective successors.

ARTICLE V

Upon the effective date of the merger each share of Common Stock of PLGS then outstanding and all rights in respect thereof, shall forthwith cease to exist and be cancelled.

ARTICLE VI

The merger shall become effective upon the filing in the office of the Secretary of State of the State of California of a copy of this Agreement of Merger with an officers' certificate of SoCalGas and PLGS as provided by Section 1103 of the General Corporation Law of the State of California.

ARTICLE VII

SoCalGas and PLGS shall do all other acts and things as shall be necessary or desirable in order to effect the merger and carry out the provisions hereof.

ARTICLE VIII

This Agreement of Merger may be terminated and the merger abandoned at any time prior to the effective date of the merger by the mutual consent of the Boards of Directors of SoCalGas and PLGS.

ARTICLE IX

This Agreement of Merger may be executed in counterparts, each of which when so executed shall be deemed to be an original, and such counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, SoCalGas and PLGS, pursuant to the approval and authority duly given by resolutions adopted by their respective Boards of Directors, have each caused this Agreement of Merger to be executed in their respective

corporate names by their respective officers duly authorized thereunto and their respective corporate seals to be hereunto affixed.

SOUTHERN CALIFORNIA GAS COMPANY

By _____
Robert J. Hohne
Senior Vice President

(Seal)

and _____
Virginia A. Robinson
Secretary

PACIFIC LIGHTING GAS SUPPLY COMPANY

By _____
Robert J. Hohne
President

(Seal)

and _____
David M. Turner
Secretary

CERTIFICATE OF APPROVAL

OF

AGREEMENT OF MERGER

Robert J. Hohne and David M. Turner certify that:

1. They are the duly elected and acting President and Secretary, respectively, of Pacific Lighting Gas Supply Company, a California corporation ("PLGS") and a subsidiary of Southern California Gas Company, a California corporation (the "Parent").

2. The Agreement of Merger in the form attached hereto has been approved by the Board of Directors of PLGS and the principal terms of the Agreement of Merger have been approved by a vote of the Parent as the sole shareholder of PLGS which vote equaled or exceeded the vote required, the percentage vote so required being any amount in excess of 50% of the total outstanding shares of Common Stock.

3. The only class of capital stock of PLGS outstanding is Common Stock of which 2,000,000 shares were outstanding and entitled to vote on the principal terms of the Agreement of Merger.

We each further declare under penalty of perjury that the matters set forth in this certificate are true of our own knowledge.

Executed at Los Angeles, California on November 22, 1985.

Robert J. Hohne
President

David M. Turner
Secretary

CERTIFICATE OF APPROVAL

OF

AGREEMENT OF MERGER

Robert J. Hohne and Virginia A. Robinson certify that:

1. They are the duly elected and acting Senior Vice President and Secretary, respectively, of Southern California Gas Company, a California corporation ("SoCalGas").

2. The Agreement of Merger in the form attached hereto has been and, under the provisions of Section 1201 of the General Corporation Law of the State of California, was entitled to be approved by the Board of Directors of SoCalGas alone.

We each further declare under penalty of perjury that the matters set forth in this certificate are true of our own knowledge.

Executed at Los Angeles, California on November 22, 1985.

Robert J. Hohne
Senior Vice President

Virginia A. Robinson
Secretary

ORDINANCE NO. 553

AN ORDINANCE OF THE COUNTY OF RIVERSIDE GRANTING TO PACIFIC LIGHTING SERVICE COMPANY, ITS SUCCESSORS AND ASSIGNS, THE RIGHT, PRIVILEGE AND FRANCHISE TO LAY AND USE PIPES AND APPURTENANCES FOR TRANSMITTING GAS FOR ANY AND ALL PURPOSES UNDER, ALONG, ACROSS, OR UPON THE PUBLIC STREETS, WAY, ALLEYS AND PLACES, AS THE SAME NOW OR MAY HEREAFTER EXIST, WITHIN SAID COUNTY.

The Board of Supervisors of the County of Riverside does ordain as follows:

Section 1. The franchise, privilege and right is hereby granted to Pacific Lighting Service Company, its successors and assigns, for a period of 40 years from and after the date of the adoption of this ordinance, from time to time to contruct, operate, maintain and use pipelines and appurtenances located or to be located in, upon, along, across, under or over the streets of the County and used or useful in transmitting gas on, along, upon, in, over, and across the public streets, alleys, public highways and public places within the County of Riverside, State of California.

Section 2.

(a) The word "Grantee" wherever used herein shall mean PACIFIC LIGHTING SERVICE COMPANY, its successors and assigns.

(b) The word "County" wherever used herein shall mean the County of Riverside, State of California, in its present form or in any later reorganized, consolidated or enlarged form.

(c) "Highways" wherever used herein shall mean and include public highways, streets, alleys, roads, ways, or other public places, as the same now or hereafter may be dedicated to

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UNTY COUNSEL
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the County of Riverside for street purposes in the unincorporated portions of the County of Riverside.

(d) The phrase "franchise property" wherever used herein shall mean pipes, pipelines and appurtenances located or to be located in, upon, along, across, under or over the streets of the County and used or useful in transmitting gas.

(e) The words "construct, maintain and use", wherever used herein, shall mean to construct, erect, install, lay, operate, alter, maintain, use, repair or replace.

Section 3. This ordinance granting said franchise shall take effect thirty (30) days after its passage provided said Grantee shall file with the Clerk of the Board of Supervisors of the County of Riverside a written acceptance thereof within thirty (30) days after its passage. This franchise and privilege is granted and shall be held and enjoyed only under the provisions and conditions prescribed by law and those contained in this ordinance.

This grant is made in lieu of all other franchises, rights, or privileges owned by the Grantee, or by any successor of the Grantee, to any rights under this franchise, for transmitting gas within the limits of the County, as said limits now or may hereafter exist, and the acceptance of the franchise hereby granted shall operate as an abandonment of all such franchises, rights and privileges within the limits of this County, as such limits now or may hereafter exist, in lieu of which this franchise is granted.

Section 4. All franchise property to be constructed and operated under this franchise shall be built and constructed

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in a good and workmanlike manner and of good material, and any and all pipes, pipelines, appurtenances, located, or maintained under said franchise shall be so placed as not to interfere with the use of said public streets, alleys, or highways for public purposes. In constructing, installing, repairing, and maintaining the franchise property, the Grantee shall make and backfill all excavations in accordance with the provisions of Riverside County Ordinance 499, the rules and regulations adopted by Riverside County Road Commissioner now in effect or any additions or amendments thereto, hereafter adopted, and in such manner and way as to leave the surface of the public street, alley, or highway in as good condition as it was prior to said excavation.

Section 5. Whenever any portion of the territory covered by this franchise shall be annexed to, or otherwise become a part of any municipal corporation, or of any other county, or of any other political subdivision of the State of California, the rights reserved under this franchise to the County of Riverside, or to any officer thereof, shall inure to the benefit of such municipal corporation of county, and its appropriate officers.

Section 6. All pipeline facilities authorized pursuant to this franchise shall be constructed in conformance with General Orders of the California Public Utilities Commission, and its rules and regulations now in effect, or any additions or amendments thereto, hereafter adopted.

Section 7. Grantee shall not sell, transfer or assign this franchise or any of the rights or privileges hereby granted without the prior consent of the Board of Supervisors, and except by a duly executed instrument in writing filed in the office of

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the County Clerk of the County of Riverside.

Section 8. The County of Riverside reserves the right to improve any highway, street, alley, or other public places, or any portions thereof, over and within which this franchise is granted, including the widening, change of grade, change of alignment, construction or reconstruction of such highway, street, or alley, or any portion thereof, and there is further reserved to the County of Riverside, or district within the County of Riverside, the right to construct, reconstruct, install, repair, and maintain in any such highway, street, alley, or other public places, or any portions thereof, any public improvement.

If notice in writing is given to the Grantee thirty (30) days in advance of the fact that work on a governmental use of the streets is to be done pursuant to any right reserved above in this section, specifying the general nature of the work and the area in which the same is to be performed, then the Grantee shall do all things necessary to protect its franchise property during the progress of such work, and if ordered by the Board of Supervisors of the County of Riverside, the Grantee shall relocate its franchise property within the highway, street, or alley to such extent, in such manner, and for such period as shall be necessary to permit the performance of such work in accordance with the generally recognized engineering and construction methods, and to permit the maintenance, operation and use of such public improvement, highway, street, or alley so improved. All of such things to be done and work to be performed by the Grantee shall be at the sole cost and expense, to the complete satisfaction of the County.

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Section 9. The Grantee shall comply with any instructions of the Board of Supervisors or the Road Commissioner of the County of Riverside with respect to the location or relocation of any of said franchise property, and shall coordinate the location or relocation of franchise property with said Road Commissioner. The Grantee shall repair any damage to streets, alleys, highways, or public improvements within ten (10) days after service of a written notice upon the Grantee to make any such repairs. In the event Grantee fails to comply with said written notice to repair then the Board of Supervisors may immediately do whatever work is necessary to carry out the instructions at the cost and expense of the Grantee, which cost by the acceptance of this franchise, the Grantee shall pay upon demand.

Section 10. The Grantee shall hold the County of Riverside, its authorized officers, agents and employees, harmless from and against any and all liability or loss resulting from claims for damages by any person arising out of the acts or omissions of the Grantee, its agents or employees in the performance of any work authorized hereunder.

Section 11. The Grantee shall, during the life of this franchise, pay to the County of Riverside, in lawful money of the United States, two per cent (2%) of the gross annual receipts of the Grantee arising from the use, operation, or possession of this franchise.

The Grantee shall file with the County Clerk of the County of Riverside within three (3) months after the expiration of the calendar year or fractional calendar year, following the effective date of this Ordinance granting this franchise, and

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COUNTY COUNSEL
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within three (3) months after the expiration of each and every calendar year thereafter, a duly verified statement showing in detail the total gross receipts of said Grantee during the preceding calendar year, or such fractional calendar year, arising from the use, operation or possession of this franchise. Within fifteen (15) days after the time for filing the aforesaid statement, the Grantee shall pay to the County Treasurer of the County of Riverside, in lawful money of the United States, the aforesaid two per cent (2%) of its gross receipts arising from the use, operation or possession of this franchise during said preceding calendar year, or such fractional calendar year. Any neglect, omission or refusal of said Grantee to file said verified statement, or to pay said percentage at the time or in the manner hereinbefore provided, which neglect, omission or refusal shall continue for more than fifteen (15) days following notice thereof to the Grantee from the County, shall be grounds for the declaration of a forfeiture of this franchise and of all rights of the Grantee hereunder.

Section 12. Any neglect, failure or refusal to comply with any of the conditions of this franchise, which neglect, failure or refusal shall continue for more than fifteen (15) days following notice thereof to the Grantee from the County, shall work a forfeiture hereof, and the said County, by its Board of Supervisors, may thereupon declare this franchise forfeited, and may exclude said Grantee from further use of the public streets, alleys, highways and public places of said County under this franchise; and said Grantee shall thereupon surrender all rights in and to the same, and this franchise shall be deemed and shall

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remain null, void and of no effect.

Section 13. This franchise is granted pursuant to Sections 6001 to 6017 of the California Public Utilities Code.

Section 14. The provisions of this franchise and all rights, obligations and duties hereunder shall inure to and be binding upon the Grantee, its successors and assigns.

Section 15. This ordinance shall take effect thirty (30) days after its adoption.

BOARD OF SUPERVISORS OF THE
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

By CLAYTON A. RECORD JR.
Chairman

ATTEST:

DONALD D. SULLIVAN, Clerk

By R. Haworth
Deputy

TM:vc
2-2-74

T. SULLIVAN, JR.
OUNTY COUNSEL
N LIBRARY BLDG.
RSIDE, CALIFORNIA

Board of Supervisors County of Riverside

RESOLUTION NO. 75-228

FILED
JUL 8 1975
DONALD B. SULLIVAN, Clerk
By _____ Deputy

AUTHORIZING THE PUBLICATION OF A NOTICE TO SELL A FRANCHISE AND PRIVILEGE FOR A PERIOD OF 40 YEARS TO CONSTRUCT, OPERATE, MAINTAIN AND USE PIPELINES AND APPURTENANCES LOCATED OR TO BE LOCATED IN, UPON, ALONG, ACROSS, UNDER OR OVER THE STREETS OF THE COUNTY AND USED OR USEFUL IN TRANSMITTING GAS, ON, ALONG, UPON, IN, OVER AND ACROSS THE PUBLIC STREETS, ALLEYS, PUBLIC HIGHWAYS AND PUBLIC PLACES WITHIN THE COUNTY OF RIVERSIDE, TOGETHER WITH THE RIGHT TO CARRY, TRANSPORT, CONVEY AND CONDUCT GAS IN AND THROUGH SAID SYSTEM OF PIPELINES.

The Board of Supervisors of the County of Riverside, State of California, do resolve as follows:

WHEREAS, the Pacific Lighting Service Company, a corporation existing by virtue of the laws of the State of California, has made application to the Board of Supervisors of the County of Riverside, State of California, for a franchise and privilege for a period of 40 years from time to time to construct, operate, maintain and use pipeline and appurtenances located or to be located in, along, under or over the streets of the County and used or useful in transmitting gas on, along, upon, in, over, and across the public streets, alleys, public highways and public places within the County of Riverside, State of California.

Together with the right to carry, transport, convey and conduct gas in and through said system of pipelines; and,

WHEREAS, it is the desire of the Board of Supervisors of the County of Riverside that a franchise for said privileges be advertised to be sold and the same be sold to the highest bidder according to law.

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NOW, THEREFORE, BE IT RESOLVED, that the Board of Supervisors of the County of Riverside, State of California, offers for sale to the highest bidder a franchise and privilege described as follows:

A franchise and privilege for a period of 40 years, from time to time to construct, operate, maintain and use pipeline and appurtenances located or to be located in, along, under or over the streets of the County and used or useful in transmitting gas on, along, upon, in, over and across the public streets, alleys, public highways and public places within the County of Riverside, State of California.

Together with the right to carry, transport, convey and conduct gas in and through said system of pipelines; and,

BE IT FURTHER RESOLVED, that the Clerk of the County of Riverside be, and he is hereby authorized and directed to advertise by publishing Notice of Sale of Franchise and Privilege in a newspaper of general circulation, printed and published in the County of Riverside, State of California, once a day for 10 successive days, beginning with the issue of the 14th day of July, 1975.

Said Notice to be in the form as follows:

NOTICE IS HEREBY GIVEN that an application in writing by the Pacific Lighting Service Company, a corporation, has been made to and filed with the Board of Supervisors of the County of Riverside, State of California, for a franchise and privilege, hereinafter described, and it is proposed by said Board of Supervisors to offer for sale, and grant by ordinance, to the highest bidder said franchise and privilege on the terms and conditions

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hereinafter stated.

Said Franchise and Privilege is described and will be granted substantially in the following form:

The Franchise Privilege and Right is hereby granted to _____, a person, firm or corporation organized and existing under and by virtue of the laws of _____, its successors or assigns, for a period of 40 years from and after the date of the adoption of said ordinance to construct, operate, maintain and use pipelines and appurtenances located or to be located in, upon, along, across, under or over the streets of the County and used or useful in transmitting on, along, upon, in, over and across the public streets, alleys, public highways and public places within the County of Riverside, State of California.

The terms and conditions upon which said franchise and privilege is to be granted are as follows:

Section 1. All franchise property to be constructed and operated under this franchise shall be built and constructed in a good workmanlike manner and of good material, and any and all pipes, pipelines, appurtenances, located or maintained under said franchise shall be so placed as not to interfere with the use of said public streets, alleys, or highways for public purposes. In constructing, installing, repairing, and maintaining the franchise property, the Grantee shall make and backfill all excavations in accordance with the provisions of Riverside County Ordinance 499, the rules and regulations adopted by Riverside County Road Commissioner now in effect or any additions or amendments thereto, hereafter adopted, and in such manner and way as to leave the

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surface of the public street, alley, or highway in as good condition as it was prior to said excavation.

Section 2. Whenever any portion of the territory covered by this franchise shall be annexed to, or otherwise become a part of any municipal corporation, or of any other county, or of any other political subdivision of the State of California, the rights reserved under this franchise to the County of Riverside, or to any officer thereof, shall inure to the benefit of such municipal corporation of county, and its appropriate officers.

Section 3. All pipeline facilities authorized pursuant to this franchise shall be constructed in conformance with General Orders of the California Public Utilities Commission, and its rules and regulations now in effect, or any additions or amendments thereto, hereafter adopted.

Section 4. Grantee shall not sell, transfer or assign this franchise or any of the rights or privileges hereby granted without the prior consent of the Board of Supervisors, and except by a duly executed instrument in writing filed in the Office of the County Clerk of the County of Riverside.

Section 5. The County of Riverside reserves the right to improve any highway, street, alley, or other public places, or any portions thereof, over and within which this franchise is granted, including the widening, change of grade, change of alignment, construction or reconstruction of such highway, street, or alley, or any portion thereof, and there is further reserved to the County of Riverside, or district within the County of Riverside, the right to construct, reconstruct, install, repair, and maintain in any such highway, street, alley, or other public

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OUNTY COUNSEL
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places, or any portions thereof, any public improvement.

If notice in writing is given to the Grantee thirty days in advance of the fact that work on a governmental use of the streets is to be done pursuant to any right reserved above in this section, specifying the general nature of the work and the area in which the same is to be performed, then the Grantee shall do all things necessary to protect its franchise property during the progress of such work, and if ordered by the Board of Supervisors of the County of Riverside, the Grantee shall relocate its franchise property within the highway, street, or alley to such extent, in such manner, and for such period as shall be necessary to permit the performance of such work in accordance with the generally recognized engineering and construction methods, and to permit the maintenance, operation and use of such public improvement, highway, street, or alley so improved. All of such things to be done and work to be performed by the Grantee shall be at the sole cost and expense, to the complete satisfaction of the County.

Section 6. The Grantee shall comply with any instructions of the Board of Supervisors or the Road Commissioner of the County of Riverside with respect to the location or relocation of any of said franchise property, and shall coordinate the location or relocation of franchise property with said Road Commissioner. The Grantee shall repair any damage to streets, alleys, highways, or public improvements within 10 days after service of a written notice upon the Grantee to make any such repairs. In the event Grantee fails to comply with said written notice to repair, then the Board of Supervisors may immediately do whatever

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OUNTY COUNSEL
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work is necessary to carry out the instructions at the cost and expense of the Grantee, which cost by the acceptance of this franchise, the Grantee shall pay upon demand.

Section 7. The Grantee shall hold the County of Riverside, its authorized officers, agents and employees, harmless from and against any and all liability or loss resulting from claims for damages by any person arising out of the acts or omissions of the Grantee, its agents or employees in the performance of any work authorized hereunder.

Section 8. The Grantee, shall during the life of this franchise, pay to the County of Riverside, in lawful money of the United States 2 % of the gross annual receipts of the Grantee arising from the use, operation, or possession of this franchise.

The Grantee shall file with the County Clerk of the County of Riverside within 3 months after the expiration of the calendar year or fractional calendar year, following the effective date of this ordinance granting this franchise, and within 3 months after the expiration of each and every calendar year thereafter, a duly verified statement showing in detail the total gross receipts of said Grantee during the preceding calendar year, or such fractional calendar year, arising from the use, operation or possession of this franchise. Within 15 days after the time for filing the aforesaid statement, the Grantee shall pay to the County Treasurer of the County of Riverside, in lawful money of the United States, the aforesaid 2 % of its gross receipts arising from the use, operation or possession of this franchise during said preceding calendar year, or such fractional calendar year. Any neglect, omission or refusal of said Grantee to file said

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COUNTY COUNSEL
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verified statement, or to pay said percentage at the time or in the manner hereinbefore provided, which neglect, omission or refusal shall continue for more than 15 days following notice thereof to the Grantee from the County, shall be grounds for the declaration of a forfeiture of this franchise and of all rights of the Grantee hereunder.

Section 9. Any neglect, failure or refusal to comply with any of the conditions of this franchise, which neglect, failure or refusal shall continue for more than 15 days following notice thereof to the Grantee from the County, shall work a forfeiture hereof, and the said County, by its Board of Supervisors, may thereupon declare this franchise forfeited, and may exclude said Grantee from further use of the public streets, alleys, highways and public places of said County under this franchise; and said Grantee shall thereupon surrender all rights in and to the same, and this franchise shall be deemed and shall remain null, void and of no effect.

Section 10. This franchise is granted pursuant to Sections 6001 to 6017 of the California Public Utilities Code.

Section 11. The provisions of this franchise and all rights, obligations and duties hereunder shall inure to and be binding upon the Grantee, its successors and assigns.

Section 12. The Ordinance granting said franchise and privilege shall take effect 30 days from and after the date of its passage, and said Grantee shall, within 30 days after the passage of the said Ordinance, file with the County Clerk of the County of Riverside a written acceptance of the terms and conditions of said Ordinance; and said franchise and privilege shall be granted

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upon each of the terms and conditions herein contained; and in consideration of the promise of the Grantee thereof to keep and observe each of said terms and conditions herein expressed to be kept and observed by him, and in the acceptance of said franchise and privilege, the said Grantee shall agree to keep and observe each and all of said terms and conditions.

Section 13. The County Clerk shall certify to the adoption of said Ordinance and shall cause the same tc be published in a newspaper of general circulation, printed and published in the County of Riverside, State of California.

Section 14. Notice is hereby given that sealed bids in writing will be received for said franchise and privilege up to 10:00 a.m. on the 12th day of August, 1975, and at the time above mentioned and in the Board Room of the Board of Supervisors of the County of Riverside, any and all sealed bids will be opened; that all bids must be for the payment of a stated sum in lawful money of the United States, and that the said franchise and privilege will be struck off, sold and awarded to the person, firm or corporation who makes the highest bid therefor, provided only that at the time of the opening of said bids any responsible person, firm or corporation present or represented may bid for said franchise and privilege a sum of not less than 10% above the highest sealed bid therefor, and said bid may be raised not less than 10% by any other responsible bidder, and said bidding may so continue until finally said franchise and privilege shall be struck off, sold and awarded to the highest bidder therefor in lawful money of the United States by said Board of Supervisors.

Each sealed bid shall be accompanied with cash or a

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certified check payable to the County Treasurer of the County of Riverside, for the full amount of such bid, and no sealed bid shall be considered unless said cash or check is enclosed therewith, and the successful bidder shall deposit at least 10% of the amount of his bid with the County Clerk of the County of Riverside, before the franchise and privilege shall be struck off to him. If the successful bidder shall fail to make such deposit immediately, then and in that case his bid shall not be received and shall be considered as void, and the said franchise and privilege shall then and there be again offered for sale to the bidder who shall make the highest cash bid therefor, subject to the same conditions as to deposit as above mentioned. Said procedure shall be had until said franchise and privilege is struck off, sold and awarded to a bidder who shall make the necessary deposit of at least 10% of the amount of his bid therefor, as herein provided.

The successful bidder shall deposit with the County Clerk of the County of Riverside, within 24 hours after the acceptance of his bid, the remaining 90% of the amount thereof, and in case he or it shall fail to do so, then the said deposit theretofore made shall be forfeited, and the said award of said franchise and privilege shall be void, and said franchise and privilege shall then and there, by said Board of Supervisors, in the same manner and under the same restrictions as hereinbefore provided, be again offered for sale to the highest bidder therefor, and be struck off, sold and awarded; and in case said person, firm or corporation shall fail to deposit with the County Clerk of the County of Riverside the remaining 90% of his bid or its bid within 24 hours after its acceptance, the award to him of said franchise

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OUNTY COUNSEL
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shall be set aside, and the deposit theretofore made by him shall be forfeited, and no further proceedings for a sale of said franchise and privilege shall be had unless the same shall be readvertised and again offered for sale in the manner hereinbefore provided.

Section 15. The grant of said franchise and privilege is effective only upon the further condition that the Grantee, its successors or assigns, shall, at all times during the life of said franchise and privilege, keep on file with the Board of Supervisors, a bond running to said County of Riverside, in the penal sum of $1,000, with sureties to be approved by said Board of Supervisors, conditioned upon said bidder well and truly observing fulfilling and performing each and every term and condition of said franchise and privilege, and that in case of any breach of condition of said bond the whole amount of the penal sum therein named shall be taken and deemed to be liquidated damages, and shall be recoverable from the principal and sureties on said bond. Said bond shall be filed with said Board of Supervisors within 5 days after the franchise and privilege is awarded, and upon the filing and approval of such bond the said franchise and privilege shall, by said Board of Supervisors, be granted to the person, firm or corporation to whom it has been struck off, sold or awarded, and in case said bond shall not be so filed, the award of said franchise and privilege shall be set aside, and any money paid therefor shall be forfeited, and said franchise and privilege shall,

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in the discretion of the Board of Supervisors, be readvertised and again offered for sale in the same manner and under the same restrictions as herein provided.

The foregoing resolution was passed and adopted by the Board of Supervisors of Riverside County, State of California, at a regular meeting thereof held on July 8, 1975, by the following vote:

Ayes: Supervisors Jones, Schroeder, McCandless, Younglove and Record.

Noes: None.

Absent: None.

WITNESS my hand and seal of said Board of Supervisors on July 8, 1975.

DONALD D. SULLIVAN, County Clerk
and ex officio Clerk of the
Board of Supervisors

By AGNES HUGHES
Deputy County Clerk

(SEAL)

WWM:vc
5-26-75

Y T. SULLIVAN, JR.
COUNTY COUNSEL
AW LIBRARY BLDG.
ERSIDE, CALIFORNIA

8-12-75
10:00 AM

INTER DEPARTMENTAL LETTER

COUNTY OF RIVERSIDE

OFFICE OF COUNTY COUNSEL

July 1, 1975

BOARD OF SUPERVISORS
FILED
JUL 8 1975
DONALD D. SULLIVAN, Clerk
By _____ Deputy

The Honorable Board of Supervisors
County of Riverside
Court House
Riverside, California

Re: Pipeline Franchise for Pacific Lighting Service Co.

Gentlemen:

Pursuant to Board Order, the County Counsel was authorized to negotiate with Pacific Lighting Service Company for an appropriate County Franchise covering use of County roads for the transmission of gas, and to present such franchise to the Board when the details had been worked out.

After long negotiations with Pacific Lighting Service Co., an appropriate franchise ordinance was agreed upon, pursuant to the provisions of the Broughton Act [Public Utilities Code Sections 6000 et seq]. Pacific Lighting Service Company has, following our agreement on the terms of the franchise, filed application to the Board for a Franchise, pursuant to Section 6004 of the Public Utilities Code. The application is attached herewith.

Also attached is proposed Resolution No. 75-228 authorizing the publication of a notice to sell a franchise. This Resolution of Publication is made pursuant to Section 6005 of the Public Utilities Code. This code section requires that full publication be made not less than 20, nor more than 30, days before any further action can be taken thereon. Accordingly, we have provided in the Resolution that the publication should start the day following the adoption of the Resolution and the public hearing be set for the Board Meeting of August 12, 1975, in order to meet the time requirements of the Broughton Act. The Pacific Lighting Service Co. will pay the advertising costs.

As a practical matter, although we are advertising and the Board will take bids, there will undoubtedly be no other bidder because of the fact that the Pacific Lighting Service Co. and its subsidiary companies hold the rights to serve this area under authority of the California Public Utilities

8.4

Commission. The purpose of Pacific Lighting's application for a franchise is to cover existing transmission lines in place and consists only of lateral street crossing throughout the length of the County and is approximately a mile and a half in length throughout the entire County in public street locations. The franchise payments under this franchise will be minimal (approximately $70.00 per annum), because of the short length of the transmission lines lying in the public streets.

It is respectfully requested that the Resolution No. 75-228 be adopted and publication ordered and the matter set for hearing August 12, 1975, as set forth in Section 14 of the Resolution.

Very truly yours,

Ray T. Sullivan, Jr.
County Counsel

by W. W Miller
W. W Miller
Deputy County Counsel

WWM:vc

Encl.

ORIGINAL

ORDINANCE NO. 272

AN ORDINANCE OF THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, GRANTING TO SOUTHERN CALIFORNIA GAS COMPANY, A CORPORATION ORGANIZED AND EXISTING UNDER AND BY VIRTUE OF THE LAWS OF THE STATE OF CALIFORNIA, ITS SUCCESSORS AND ASSIGNS, A FRANCHISE AND PRIVILEGE FOR A PERIOD OF FIFTY (50) YEARS, TO LAY, CONSTRUCT, OPERATE, MAINTAIN, USE, REPAIR, REPLACE AND REMOVE A SYSTEM OF CONDUITS, MAINS AND PIPE LINES, TOGETHER WITH SUCH VALVES, FITTINGS AND OTHER EQUIPMENT AS THE GRANTEE, ITS SUCCESSORS OR ASSIGNS, MAY DEEM NECESSARY OR CONVENIENT, IN, UPON, UNDER, ALONG AND ACROSS THE PUBLIC STREETS, ALLEYS, HIGHWAYS AND PUBLIC PLACES AS THE SAME NOW EXIST AND SUCH PUBLIC STREETS, ALLEYS, HIGHWAYS AND PUBLIC PLACES AS MAY HEREAFTER EXIST IN THE TERRITORY COMPRISING RIVERSIDE COUNTY, EXCEPTING THEREFROM ANY AND ALL PORTIONS OF SAID TERRITORY WITHIN THE LIMITS OF ANY INCORPORATED CITY, TOGETHER WITH THE RIGHT TO CARRY, TRANSPORT, CONVEY, CONDUCT AND DISTRIBUTE GAS IN AND THROUGH SAID CONDUITS, MAINS AND PIPE LINES, IN, UPON, UNDER, ALONG AND ACROSS SAID PUBLIC STREETS, ALLEYS, HIGHWAYS AND PUBLIC PLACES.

THE BOARD OF SUPERVISORS OF THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, DOES ORDAIN AS FOLLOWS:

Section 1. The franchise, privilege and right is hereby granted to Southern California Gas Company, a corporation organized and existing under and by virtue of the laws of the State of California, its successors or assigns, for a period of fifty (50) years from and after the date of the adoption of this ordinance, to lay, construct, operate, maintain, use, repair, replace and remove a system of conduits, mains and pipe lines, together with such valves, fittings and other equipment as the Grantee, its successors or assigns, may deem necessary or convenient, in, upon, under, along and across the public streets, alleys, highways and public places as the same now exist and such public streets, alleys, highways and public places as may hereafter exist in the unincorporated territory of the County of Riverside, State of California, together

gas through said conduits, mains and pipe lines in, upon, under, along and across said public streets, alleys, highways and public places.

Section 2. This franchise and privilege is granted on the terms and conditions hereinafter contained, and the Grantee shall file with the Clerk of the County of Riverside a written acceptance hereof within thirty (30) days after passage of this Ordinance.

Section 3. The system for carrying, transporting, conveying and conducting gas, to be constructed and operated under said franchise and privilege shall be built and constructed in a good and workmanlike manner and of good material, and any and all pipe lines laid, located or maintained under this franchise and privileg shall be so placed as not to interfere with the use of said public streets, alleys, highways and public places by the traveling public or for public purposes to any greater extent than is reasonably necessary; and in laying said pipe lines the Grantee of this franchise and privilege shall make and fill all excavations in such manner and way as to leave the surface of the street or highway in as good condition as it was prior to said excavation, as well as to conform to the statutes of the State of California and such instructions and directions as the Board of Supervisors has, or, by ordinance or resolution may require, provided that said instructior and directions of the said Board of Supervisors are not in conflict with any paramount authority of the State of California; and in so doing, the Grantee, its successors or assigns, shall at all times hold the County of Riverside harmless from any and all damage resulting from the laying, use, operation and maintenance of said system. In the event the improvement of any public streets, alleys

pipe line installed under this franchise and privilege, such relocation shall be done at the expense of the said Grantee.

Section 4. The said Grantee, its successors or assigns, shall in good faith commence to lay said conduits, mains and pipe lines and to construct the same within not more than four (4) months from the Granting of this franchise and privilege, and if not so commenced within said time this franchise and privilege shall be declared forfeited; provided, however, that, for good cause shown, the Board of Supervisors or the governing or legislative body of the said County of Riverside, may, by resolution, extend the time for completion thereof, not exceeding three (3) months; provided, further, that any existing gas system now constructed and operated within the unincorporated territory of said County of Riverside by the Grantee shall be considered as constructed under the provisions of this franchise and privilege. The work under this franchise and privilege shall be prosecuted diligently and in good faith by the Grantee so as to meet and fill the reasonable needs of the inhabitants of the territory for the service for which this franchise and privilege is granted.

Section 5. The said Grantee, its successors or assigns, shall, during the life of this franchise and privilege, pay annuall to the County Treasurer of the County of Riverside, in lawful money of the United States, and in the manner provided by law, two per cent (2%) of the gross annual receipts of such Grantee, its successors or assigns, arising each year from the use, operation or possession of this franchise and privilege within the County of Riverside. No percentage shall be paid for the five years succeeding the date of this franchise and privilege, but thereafter such percentage shall be paid annually, and in the event said payment is

benefit of such municipal corporation or county, and its appropriat officers.

Section 7. The said Grantee, its successors or assigns, shall not sell, transfer or assign this franchise and privilege, or any of the rights or privileges granted thereby, except by a duly executed instrument in writing, filed in the office of the County Clerk of the County of Riverside; and provided, further, that nothing in this franchise and privilege contained shall be construed to grant to said Grantee, its successors or assigns, any right to sell, transfer or assign said franchise and privilege, or any of the rights or privileges thereby granted, except in the manner aforesaid. The said franchise and privilege shall not be exclusive.

Section 8. Any neglect, failure or refusal to comply with any of the conditions of this franchise and privilege shall constitute cause for forfeiture thereof in the discretion of the Board of Supervisors, and upon such exercise of this discretion, the Coun of Riverside by its Board of Supervisors may declare this franchise and privilege forfeited and may exclude said Grantee, its successor or assigns, from any further use of the public streets, alleys, hig ways and public places in the unincorporated territory of the Coun of Riverside under this franchise and privilege; and said Grantee, its successors or assigns, shall thereupon surrender all rights in and to the same, and said franchise and privilege shall be deemed and shall remain null, void and of no effect.

Section 9. The grant of this franchise and privilege is effective only upon the further condition that the Grantee, its successors or assigns, shall, at all times during the life of this

a bond running to said County of Riverside, in the penal sum of One Thousand Dollars ($1000.00), with sureties to be approved by said Board of Supervisors, conditioned upon said Grantee well and truly observing, fulfilling and performing each and every term and condition of this franchise and privilege, and that in case of any breach of condition of said bond the whole amount of the penal sum therein named shall be taken and deemed to be liquidated damages, and shall be recoverable from the principal and sureties on said bond.

Section 10. This franchise and privilege is granted upon each of the terms and conditions herein contained and in consideration of the premises of the Grantee hereof to keep and observe each of the said terms and conditions herein expressed to be kept and observed by said Grantee, and in the acceptance of said franchise and privilege the said Grantee shall agree to keep and observe each and all of said terms and conditions. The provisions of this franchise and privilege and all rights, obligations and duties hereunder shall inure to and be binding upon the said Grantee, its successors or assigns.

Section 11. Since the franchise and privilege herein and hereby granted is the renewal of a right already in existence, and covers a system already constructed, which right and privilege was heretofore granted and which system was heretofore constructed under, in accordance with and by virtue of the provisions of Ordinanc No. 107 of the County of Riverside, State of California, adopted by the Board of Supervisors of said County on the 17th day of July, 1911, Ordinance No. 139 of the County of Riverside, State of California, adopted by the Board of Supervisors of said County on the 5th day of March, 1919, Ordinance No. 174 of the County of Riverside

County on the 6th day of September, 1927, and Ordinance No. 179, of the County of Riverside, State of California, adopted by the Board of Supervisors of said County on the 22nd day of October, 1928, all pursuant to the general law of the State applicable thereto; and since the franchise and privilege hereby granted supersedes said right heretofore granted; and since the provisions of this Ordinance are the same, co-extensive with or paramount to the provisions contained in said Ordinances No. 107, 139, 174 and 179 creating said right,, which by this Ordinance is renewed and extended, said Ordinances No. 107, 139, 174 and 179 are hereby repealed.

Section 12. This Ordinance shall take effect and be in force thirty (30) days from and after its passage, and prior to the expiration of fifteen (15) days after the passage thereof the same shall be published, with the names of the members of the Board of Supervisors voting for and against the same, for at least one (1) week in the Riverside News, a newspaper of general circulation published in the County of Riverside.

BOARD OF SUPERVISORS OF THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

(SEAL)

By E. C. Talbot.
Acting Chairman

ATTEST:

G. A. PEQUEGNAT
County Clerk and Ex-Officio Clerk
of the Board of Supervisors

By _____
Deputy

STATE OF CALIFORNIA)
) ss.
COUNTY OF RIVERSIDE)

I, G. A. PEQUEGNAT, County Clerk and Ex-Officio Clerk of the Board of Supervisors of said County, do hereby certify that at a regular meeting of the Board of Supervisors held on Monday, the 11th day of August, 1941, the foregoing Ordinance containing twelve (12) sections was considered section by section and that the said Ordinance was then passed and adopted as a whole by the following vote:

Supervisor Hill voted Aye

Supervisor Pittman voted Aye

Supervisor ~~Talbot~~ Dillon voted Aye

Supervisor ~~Dillon~~ Talbot voted Aye

Ayes: Four Noes: None

Absent: Supervisor Stanfield

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal this 11th day of August, 1941.

G. A. PEQUEGNAT
County Clerk and Ex-Officio Clerk of
the Board of Supervisors of Riverside
County, State of California

(SEAL)

By _____
Deputy

ORIGINAL

R E S O L U T I O N

A RESOLUTION OF THE BOARD OF SUPERVISORS OF THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AUTHORIZING THE PUBLICATION OF NOTICE TO SELL A FRANCHISE AND PRIVILEGE FOR A PERIOD OF FIFTY (50) YEARS, TO LAY, CONSTRUCT, OPERATE, MAINTAIN, USE, REPAIR, REPLACE AND REMOVE A SYSTEM OF CONDUITS, MAINS AND PIPE LINES, TOGETHER WITH SUCH VOWELS, FITTINGS AND OTHER EQUIPMENT AS THE GRANTEE, ITS SUCCESSORS OR ASSIGNS, MAY DEEM NECESSARY OR CONVENIENT, IN, UPON, UNDER, ALONG AND ACROSS THE PUBLIC STREETS, ALLEYS, HIGHWAYS AND PUBLIC PLACES AS THE SAME NOW EXIST AND SUCH PUBLIC STREETS, ALLEYS, HIGHWAYS AND PUBLIC PLACES AS MAY HEREAFTER EXIST IN THE TERRITORY COMPRISING RIVERSIDE COUNTY, EXCEPTING THEREFROM ANY AND ALL PORTIONS OF SAID TERRITORY WITHIN THE LIMITS OF ANY INCORPORATED CITY, TOGETHER WITH THE RIGHT TO CARRY, TRANSPORT, CONVEY, CONDUCT AND DISTRIBUTE GAS IN AND THROUGH SAID CONDUITS, MAINS AND PIPE LINES, IN, UPON, UNDER, ALONG AND ACROSS SAID PUBLIC STREETS, ALLEYS, HIGHWAYS AND PUBLIC PLACES.

The Board of Supervisors of the County of Riverside, State of California, does resolve as follows:

WHEREAS, the Southern California Gas Company, a corporation existing under and by virtue of the laws of the State of California has made Application to the Board of Supervisors of the County of Riverside, State of California, for a franchise and privilege for a period of fifty (50) years, to lay, construct, operate, maintain, use, repair, replace and remove a system of conduits, mains and pipe lines, together with such vowels, fittings and other equipment as the Grantee, its successors or assigns, may deem necessary or convenient, in, upon, under, along and across the public streets, alleys, highways and public places as the same now exist and such public streets, alleys, highways and public places as may hereafter exist in the unincorporated territory of the County of Riverside, State of California, together with the right to carry, transport, convey, conduct and distribute gas through said conduits, mains and pipe lines in, upon, under, along and across said public streets, alleys, highways and public places; and,

WHEREAS, it is the desire of the Board of Supervisors of the County of Riverside that a franchise and privilege for said purpose be advertised to be sold, and that the same be sold to the highest bidder according to law;

NOW, THEREFORE, BE IT RESOLVED, that the Board of Supervisor of the County of Riverside, State of California, offer for sale to the highest bidder, a franchise and privilege described as follows:

A franchise and privilege for a period of fifty (50) years, to lay, construct, operate, maintain, use, repair, replace and remove a system of conduits, mains and pipe lines, together with such vowels, fittings and other equipment as the Grantee, its successors or assigns, may deem necessary or convenient, in, upon, under, along and across the public streets, alleys, highways and public places as the same now exist and such public streets, alleys highways and public places as may hereafter exist in the unincorporated territory of the County of Riverside, State of California, together with the right to carry, transport, convey, conduct and distribute gas through said conduits, mains and pipe lines in, upon under, along and across said public streets, alleys, highways and public places; and,

BE IT FURTHER RESOLVED, that the Clerk of the County of Riverside be, and he is hereby authorized and directed to advertise by publishing Notice of Sale of Franchise and Privilege in the Riverside Enterprise, a newspaper of general circulation, printed and published in the City of Riverside, County of Riverside, State of California, once a day for ten (10) successive days, or as often during said period as said paper is published, beginning with the issue of the 3rd day of July, 1941.

Said Notice to be in the form as follows, to-wit:

NOTICE IS HEREBY GIVEN that an Application in writing by the Southern California Gas Company, a corporation, has been made to and filed with the Board of Supervisors of the County of Riverside, State of California, for a franchise and privilege hereafter described, and it is proposed by said Board of Supervisors to offer for sale, and grant by Ordinance, to the highest bidder, said franchise and privilege on the terms and conditions hereinafter stated.

Said franchise and privilege is described and will be granted substantially in the following form:

The franchise, privilege and right is hereby granted to _____, a person, firm or corporation organized and existing under and by virtue of the laws of the State of_____, its successors or assigns, for a period of fifty (50) years from and after the date of the adoption of said Ordinance to lay, construct, operate, maintain, use, repair, replace and remove a system of conduits, mains and pipe lines, together with such vowels, fittings and other equipment as the Grantee, its successors or assigns, may deem necessary or convenient, in, upon under, along and across the public streets, alleys, highways and public places as the same now exist and such public streets, alleys, highways and public places as may hereafter exist in the unincorporated territory of the County of Riverside, State of California, together with the right to carry, transport, convey, conduct and distribute gas through said conduits, mains and pipe lines in, upon under, along and across said public streets, alleys, highways and public places.

The terms and conditions upon which said franchise and privilege is to be granted are as follows:

Section 1. The system for carrying, transporting, conveying and conducting gas, to be constructed and operated under said franchise and privilege shall be built and constructed in a good and workmanlike manner and of good material, and any and all pipe lines laid, located or maintained under said franchise and privilege shall be so placed as not to interfere with the use of said public streets, alleys, highways and public places by the traveling public or for public purposes to any greater extent than is reasonably necessary; and in laying said pipe lines the Grantee of said franchise and privilege shall make and fill all excavations in such manner and way as to leave the surface of the street or highway in as good condition as it was prior to said excavation, as well as to conform to the statutes of the State of California and such instructions and directions as the Board of Supervisors may, by ordinance or resolution, require, provided that said instructions and directions of the said Board of Supervisors are not in conflict with any paramount authority of the State of California; and in so doing, the Grantee, its successors or assigns, shall at all times hold the County of Riverside harmless from any and all damage resulting from the laying, use, operation and maintenance of said system. In the event the improvement of any public streets, alleys highways and public places makes necessary the relocation of any pipe line installed under said franchise and privilege, such relocation shall be done at the expense of the Grantee of said franchise and privilege.

Section 2. The said Grantee, its successors or assigns, shall in good faith commence to lay said conduits, mains and pipe

months from the granting of said franchise and privilege, and if not so commenced within said time the said franchise and privilege shall be declared forfeited; provided, however, that, for good cause shown, the Board of Supervisors or the governing or legislative body of the said County of Riverside, may, by resolution, extend the time for completion thereof, not exceeding three (3) months; provided, further, that any existing gas system now constructed and operated within the unincorporated territory of said County of Riverside by the successful bidder for said franchise and privilege shall be considered as constructed under the provisions of said franchise and privilege. The work under said franchise and privilege shall be prosecuted diligently and in good faith by the Grantee so as to meet and fill the reasonable needs of the inhabitants of the territory for the service for which said franchise and privilege is granted.

Section 3. The said Grantee, its successors or assigns, shall, during the life of said franchise and privilege, pay annually to the County Treasurer of the County of Riverside, in lawful money of the United States, and in the manner provided by law, two per cent (2%) of the gross annual receipts of such Grantee, its successors or assigns, arising each year from the use, operation or possession of said franchise and privilege within the County of Riverside. No percentage shall be paid for the first five (5) years succeeding the date of said franchise and privilege, but thereafter such percentage shall be payable annually, and in the event said payment is not made, said franchise and privilege shall be forfeited; provided, further, that if the said franchise and privilege shall be a renewal of the right already in existence, or shall cover a system already constructed, the payment of said percentage of gross receipts shall begin at once.

The Grantee of said franchise and privilege, its successors or assigns, shall file with the Clerk of the Board of Supervisors of the said County of Riverside, within three (3) months after the expiration of the calendar year, or fractional calendar year, following the date of the granting of said franchise and privilege, and within three (3) months after the expiration of each and every calendar year thereafter, a duly verified statement showing the total gross receipts of such Grantee, its successors or assigns, during the preceding calendar year, or such fractional calendar year, arising from the use, operation or possession of said franchise and privilege within the County of Riverside. It shall be the duty of such Grantee, its successors or assigns, within fifteen (15) days after the filing of such statement, to pay to the County Treasurer of the County of Riverside, in lawful money of the United States, said two per cent (2%) of the gross annual receipts of said Grantee, its successors or assigns, arising from the use, operation or possession of said franchise and privilege. Any neglect, omission or refusal by said Grantee, its successors or assigns, to file such verified statement, or to pay said percentage at the times or in the manner hereinbefore provided shall be grounds for the declaration of a forfeiture of the franchise and privilege and all rights thereunder.

Section 4. Whenever any portion of the territory covered by the said franchise and privilege shall be annexed to, or otherwise become a part of any municipal corporation, or of any other county, the rights reserved under said franchise and privilege to the County of Riverside, or any officer thereof, shall inure to the benefit of such municipal corporation or county, and its appropriate

Section 5. The said Grantee, its successors or assigns, shall not sell, transfer or assign said franchise and privilege, or any of the rights or privileges granted thereby, except by a duly executed instrument in writing, filed in the office of the County Clerk of the County of Riverside; and provided, further, that nothing in said franchise and privilege contained shall be construed to grant to said Grantee, its successors or assigns, any right to sell, transfer or assign said franchise and privilege, or any of the rights or privileges thereby granted, except in the manner aforesaid. The said franchise and privilege shall not be exclusive.

Section 6. Any neglect, failure or refusal to comply with any of the conditions of said franchise and privilege shall constitute cause for forfeiture thereof in the discretion of the Board of Supervisors, and upon such exercise of this discretion, the County of Riverside by its Board of Supervisors may declare said franchise and privilege forfeited and may exclude said Grantee, its successors or assigns, from any further use of the public streets, alleys, highways and public places in the unincorporated territory of the County of Riverside under said franchise and privilege; and said Grantee, its successors or assigns, shall thereupon surrender all rights in and to the same, and said franchise and privilege shall be deemed and shall remain null, void and of no effect.

Section 7. The Ordinance granting said franchise and privilege shall take effect thirty (30) days from and after the date of its passage, and said Grantee shall, within thirty (30) days after the passage of the said Ordinance, file with the County Clerk of the County of Riverside a written acceptance of the terms and conditions of said Ordinance; and said franchise and privilege shall be granted upon each of the terms and conditions herein contained; and in consideration of the promise of the Grantee thereof to keep and observe each of said terms and conditions herein expressed to be kept and observed by him, and in the acceptance of said franchise and privilege, the said Grantee shall agree to keep and observe each and all of said terms and conditions.

Section 8. The County Clerk shall certify to the adoption of said Ordinance and shall cause the same to be published in the Riverside Enterprise, a newspaper of general circulation, printed and published in the City of Riverside, County of Riverside, State of California.

Section 9. Notice is hereby given that sealed bids in writing will be received for said franchise and privilege up to 10:00 o'clock a. m. on the 11th day of August, 1941, and at the time above mentioned and in the Board Room of the Board of Supervisors of the County of Riverside, any and all sealed bids will be opened; that all bids must be for the payment of a stated sum in lawful money of the United States, and that the said franchise and privilege will be struck off, sold and awarded to the person, firm or corporation who makes the highest bid therefor, provided only that at the time of the opening of said bids any responsible person, firm or corporation present or represented may bid for said franchise and privilege a sum of not less than ten per cent (10%) above the highest sealed bid therefor, and said bid may be raised not less than ten per cent (10%) by any other responsible bidder, and said bidding may so continue until finally said franchise and privilege shall be struck off, sold and awarded to the highest bidder therefor in lawful money of the United States by said Board of Supervisors

Each sealed bid shall be accompanied with cash or a certified check payable to the County Treasurer of the County of Riverside, for the full amount of such bid, and no sealed bid shall be considered unless said cash or check is enclosed therewith, and the successful bidder shall deposit at least ten per cent (10%) of the amount of his bid with the County Clerk of the County of Riverside, before the franchise and privilege shall be struck off to him. If the successful bidder shall fail to make such deposit immediately, then and in that case his bid shall not be received and shal be considered as void, and the said franchise and privilege shall then and there be again offered for sale to the bidder who shall make the highest cash bid therefor, subject to the same conditions as to deposit as above mentioned. Said procedure shall be had unti said franchise and privilege is struck off, sold and awarded to a bidder who shall make the necessary deposit of at least ten per cen (10%) of the amount of his bid therefor, as herein provided.

The successful bidder shall deposit with the County Clerk of the County of Riverside, within twenty-four (24) hours after the acceptance of his bid, the remaining ninety per cent (90%) of the amount thereof, and in case he or it shall fail to do so, then the said deposit theretofore made shall be forfeited, and the said award of said franchise and privilege shall be void, and the said franchise and privilege shall then and there, by said Board of Supervisors, in the same manner and under the same restrictions as hereinbefore provided, be again offered for sale to the highest bidder therefor, and be struck off, sold and awarded; and in case said person, firm or corporation shall fail to deposit with the County Clerk of the County of Riverside the remaining ninety per cent (90%) of his bid or its bid within twenty-four (24) hours after its acceptance, the award to him of said franchise shall be set aside, and the deposit theretofore made by him shall be forfeited, and no further proceedings for a sale of said franchise and privilege shall be had unless the same shall be readvertised and again offered for sale in the manner hereinbefore provided.

Section 10. The grant of said franchise and privilege is effective only upon the further condition that the Grantee, its successors or assigns, shall, at all times during the life of said franchise and privilege, keep on file with the Board of Supervisors a bond running to said County of Riverside, in the penal sum of One Thousand Dollars ($1000.00), with sureties to be approved by said Board of Supervisors, conditioned upon said bidder well and truly observing, fulfilling and performing each and every term and condition of said franchise and privilege, and that in case of any breach of condition of said bond the whole amount of the penal sum therein named shall be taken and deemed to be liquidated damages, and shall be recoverable from the principal and sureties on said bond. Said bond shall be filed with said Board of Supervisors within five (5) days after the franchise and privilege is awarded, and upon the filing and approval of such bond the said franchise and privilege shall, by said Board of Supervisors, be granted to the person, firm or corporation to whom it has been struck off, sold or awarded, and in case said bond shall not be so filed, the award of said franchise and privilege shall be set aside, and any money paid therefor shall be forfeited, and said franchise and privilege shall, in the discretion of the Board of Supervisors, be readvertised and again offered for sale in the same manner and under the same restrictions as herein provided.

Dated this 30th day of June, 1941.

On motion of Supervisor Dillon, seconded by Supervisor Pittman and duly carried, the foregoing Resoluti was adopted by the following vote:

Supervisor Hill voted Aye
Supervisor Pittman voted Aye
Supervisor Dillon voted Aye
Supervisor Talbot voted Aye
Supervisor Stanfield voted Aye

Ayes All Noes None
Absent None.

FILED
JUN 30 1941
Clerk

EXHIBIT "C"

COMCAST CABLE FRANCHISE

AT&T Broadband

December 2, 2002

VIA FACSIMILE AND U. S. MAIL

Ms. Nancy Romero
Clerk of the Board
County of Riverside CORONA
4080 Lemon Street
14th Floor
Riverside, CA 92501-3655
Facsimile: 909-955-1071

Dear Ms. Romero:

We are pleased to announce that the cable operator in your community, MediaOne of Los Angeles, Inc., has changed its name to Comcast of Los Angeles, Inc. This is merely a name change does not act to dissolve the corporation or transfer any of its assets. Accordingly, there has been no transfer of the franchise serving your community, and Comcast of Los Angeles, Inc.will continue to be obligated to abide by all terms and conditions of the franchise with your community, subject to applicable law.

Additionally, in connection with the closing of the merger between AT&T Broadband and Comcast, the name of the new ultimate parent company was changed from "AT&T Comcast Corporation" to "Comcast Corporation."

We are providing you notice of these name changes as a matter of courtesy and consistent with our desire to keep you fully informed regarding activities that relate to the cable service being provided in your community. No action is required on your part with respect to this matter.

Please note that the name change of the cable operator will not impact our local brand name at this time. Cable service will continue to be provided by Comcast of Los Angeles, Inc. under the name "AT&T Broadband" until further notice.

If you have any questions about this information, please call me at 714-549-7709.

Very truly yours,

Del Heintz / 2m2

Del Heintz
Director, Local Government Affairs

Recycled Paper

AT&T Broadband

December 2, 2002

VIA FACSIMILE AND U. S. MAIL

Ms. Nancy Romero
Clerk of the Board
County of Riverside LAKE ELSINORE
4080 Lemon Street
14th Floor
Riverside, CA 92501-3655
Facsimile: 909-955-1071

Dear Ms. Romero:

We are pleased to announce that the cable operator in your community, King Videocable Company, has changed its name to Comcast of California VII, Inc. This is merely a name change does not act to dissolve the corporation or transfer any of its assets. Accordingly, there has been no transfer of the franchise serving your community, and Comcast of California VII, Inc.will continue to be obligated to abide by all terms and conditions of the franchise with your community, subject to applicable law.

Additionally, in connection with the closing of the merger between AT&T Broadband and Comcast, the name of the new ultimate parent company was changed from "AT&T Comcast Corporation" to "Comcast Corporation."

We are providing you notice of these name changes as a matter of courtesy and consistent with our desire to keep you fully informed regarding activities that relate to the cable service being provided in your community. No action is required on your part with respect to this matter.

Please note that the name change of the cable operator will not impact our local brand name at this time. Cable service will continue to be provided by Comcast of California VII, Inc. under the name "AT&T Broadband" until further notice.

If you have any questions about this information, please call me at 714-549-7709.

Very truly yours,

Del Heintz

Del Heintz
Director, Local Government Affairs

Recycled Paper

AT&T Broadband
550 N. Continental Boulevard
Suite 250
El Segundo, CA 90245

November 18, 2002

VIA FACSIMILE AND U. S. MAIL

Ms. Nancy Romero
Clerk of the Board
County of Riverside
4080 Lemon Street
14th Floor
Riverside, CA 92501-3655
Facsimile: 909-955-1071

Dear Ms. Romero:

It is my great pleasure to let you know personally that earlier today Comcast Corporation completed its merger with AT&T Broadband. With the finalization of this merger Comcast is now the leading broadband communications services provider in the nation, serving over 22 million customers in 41 states. We are pleased that the residents, businesses, and institutions of your community are now a part of the new Comcast family.

Comcast is a company with a proud history dating back to 1963, when we started our first small cable system in Tupelo, Mississippi. Since then, Comcast has earned the reputation of being a company that is dedicated to serving its customers with integrity. Although our reach has broadened with this merger, our commitment to local communities like yours is firm. Indeed, our goal is to utilize the combined expertise and initiative of Comcast and AT&T Broadband to increase the choice of products and services we offer and to expand their availability.

The enclosed press release includes some additional information about the completed merger. In addition, I've enclosed a recent article from Business Week that will give you more background on Comcast. We are very excited about the future and the many possibilities that it holds for us. Also, we are confident that our experience, dedication, and forward-looking perspective will put us in good stead as we face the many competitive challenges that lie ahead.

We especially appreciate the support you gave us during the consent process. Everyone here at Comcast looks forward to continuing to work closely with you in the coming years. It is our hope that our ongoing relationship will prove to be a mutually successful one, benefiting both your community and our company alike. As always, if you have any questions about the completed merger or need additional information, please do not hesitate to give me a call.

Best regards,

Deborah Picciolo

Deborah Picciolo
Senior Vice President

Recycled Paper

Comcast

PRESS RELEASE

Media Contact:
Karen Dougherty Buchholz, Vice President, Corporate Communications 215-981-8520
Tim Fitzpatrick, Director of Corporate Communications 215-981-8515

Investor Contacts:
Marlene S. Dooner, Vice President, Investor Relations 215-981-7392
Kelley L. Claypool, Director, Investor Relations 215-981-7729
Daniel J. Goodwin, Director, Investor Relations 215-981-7518

COMCAST COMPLETES AT&T BROADBAND TRANSACTION

Company to Focus on Basic Video, Deploying Broadband Cable and Internet, and Customer Service

Philadelphia – November 18, 2002 – Comcast Corporation (NASDAQ: CMCSA; CMCSK) today announced that its transaction with AT&T Broadband is complete, bringing together cable assets serving more than 21.4 million subscribers in 41 states.

The new Comcast Corporation, formerly named AT&T Comcast Corporation, provides digital cable to 6.3 million customers, high-speed data to more than 3.3 million customers and cable phone service to more than 1.3 million customers.

Brian L. Roberts, Chief Executive Officer of Comcast, said, "This is an historic moment for the entire Comcast family – including our employees, customers and shareholders. This vibrant new company is a leader in serving consumers with exciting new products and technologies, and is focused on providing the highest standards in customer service.

"Comcast is a financially strong company uniquely positioned to generate significant benefits for our customers and shareholders alike. Our focus now turns to bringing all of our cable systems up to the Comcast standard, quickly moving to deploy digital cable and data to meet the growing demand for these products, and continuing to deliver consistently strong financial results. I'm excited for the many opportunities that lie ahead of us," said Mr. Roberts.

C. Michael Armstrong, Chairman of Comcast, said, "Today marks the birth of a leading national broadband communications media and entertainment company. The people of Comcast and AT&T Broadband should be proud of what they have created, and excited for the opportunities that the future is sure to bring. I'm looking forward to working closely with Brian and the management team to help realize the potential of this great new company."

Under the terms of the previously announced transaction, AT&T has spun off AT&T Broadband and combined it with Comcast. As a result, AT&T shareholders are entitled to receive 0.3235 shares of the new Comcast Corporation Class A common stock in respect of each share of AT&T common stock they owned at the close of business on Friday, November 15, 2002, the record date for the spin-off, and will continue to hold their shares of AT&T common stock. Comcast shareholders will receive for each share of old Comcast common stock one share of the corresponding class of the new Comcast common stock.

The new Comcast common stock will begin trading under the NASDAQ symbols CMCSA and CMCSK on Tuesday, November 19th.

The Comcast Board of Directors consists of 12 directors. The five directors appointed by Comcast from its board are: Decker Anstrom, Sheldon M. Bonovitz, Julian A. Brodsky, Brian L. Roberts and Ralph J. Roberts. The five directors appointed by AT&T from its board are: C. Michael Armstrong, J. Michael Cook, George M.C. Fisher, Louis A. Simpson and Michael I. Sovern. The jointly appointed board members are: Kenneth J. Bacon and Dr. Judith Rodin.

About Comcast

Comcast Corporation (www.comcast.com), formerly known as AT&T Comcast Corporation, is principally involved in the development, management and operation of broadband cable networks, and in the provision of electronic commerce and programming content. The company is the largest cable company in the United States, serving approximately 21.4 million cable subscribers. The Company's commerce and content businesses include majority ownership of QVC, Comcast Spectacor, Comcast SportsNet, E! Entertainment Television, Style, The Golf Channel, Outdoor Life Network and G4. Comcast Class A common stock and Class A Special common stock will be traded on The NASDAQ Stock Market under the symbols CMCSA and CMCSK, respectively.

-30-

SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA 533

FROM: County Counsel SUBMITTAL DATE: November 6, 2002

SUBJECT: AT&T Cable Franchise Renewal

RECOMMENDED MOTION: Approve the Renewal of AT&T Corp. franchise to install, operate and maintain cable television Franchise No. 2 and authorize the chair to execute the amendment to the franchise agreement.

BACKGROUND: Subsidiaries of AT&T Corp. currently hold franchises to install, operate and maintain cable television systems in the following unincorporated areas of Riverside County:

1. Corona, Elsinore, Hemet, Murrieta, Perris, San Jacinto and Temecula Areas (Franchise No. 1)
2. Norco-Corona, El Cerrito and Lake Matthews Areas (Franchise No. 2)

In both franchise areas the AT&T subsidiaries provide cable services under the name "AT&T Broadband". Franchise No. 1 is scheduled to expire in 2011, and Franchise No. 2 expired on September 14, 2002. For ease of administration, they have requested that the Board of Supervisors extend the term of Franchise No. 2 to January 01, 2011, so that it is coterminous with Franchise No. 1. They are not proposing any other changes to the terms of the franchises or the service areas.

Lee A. Vinocour
LEE A. VINOCOUR, Deputy County Counsel

FINANCIAL DATA:			
CURRENT YEAR COST:	$	ANNUAL COST:	$
NET COUNTY COST:	$	IN CURRENT YEAR BUDGET:	$
		BUDGET ADJUSTMENT:	$ FY:

SOURCE OF FUNDS:

C.E.O. RECOMMENDATION:

APPROVE.

County Executive Office Signature

☐ Policy ☒ Policy

☐ Consent ☐ Consent

Department Recommendation:

Per Executive Office:

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Buster, seconded by Supervisor Tavaglione and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes:	Buster, Tavaglione, Venable and Wilson
Noes:	None
Absent:	Mullen
Date:	December 10, 2002
xc:	Co.Co., COB, AT&T

Nancy Romero
Clerk to the Board
By: Deputy

Prev. Agn. ref. Dist. AGENDA NO. 9.10

FORM 11 (Rev. 7/93)

CLERK'S COPY

9.10 12/10/02

AMENDMENT NO. 1 TO
NON-EXCLUSIVE LICENSE OF THE COUNTY OF RIVERSIDE TO CONSTRUCT, OPERATE AND MAINTAIN A COMMUNITY ANTENNA TELEVISION SYSTEM ALONG, UNDER AND ACROSS SUCH PUBLIC ROADS AS NOW OR MAY HEREAFTER EXIST IN THE UNINCORPORATED AREAS OF NORCO-CORONA, EL CERRITO AND LAKE MATHEWS AREAS OF THE COUNTY OF RIVERSIDE

The County of Riverside and MediaOne of Los Angeles, Inc. (formerly American CableSystems of California, Inc.) hereby agree to amend the above referenced license ("License") approved by the Board of Supervisors of the County of Riverside, State of California, on September 9, 1987, as follows:

1. The term of the License to construct, operate and maintain a community antennae televisions system is extended to September 14, 2007.

2. In all other respects, the License shall remain unchanged.

Board of Supervisors of the County of Riverside, State of California

By: Bob Buster
Chairman, Board of Supervisors
BOB BUSTER

Date: 12/10/02

ATTEST:

Clerk of the Board

By: Margaret Lozano

MediaOne of Los Angeles, Inc.

By: _____

Title: _____

Date: _____

9.10

CLERK'S COPY

A NON-EXCLUSIVE LICENSE OF THE COUNTY OF RIVERSIDE FOR A PERIOD OF 15 YEARS TO CONSTRUCT, OPERATE AND MAINTAIN A TELEVISION ANTENNA CABLE SERVICE ALONG, UNDER AND ACROSS SUCH PUBLIC ROADS AS NOW OR MAY HEREAFTER EXIST IN THE NORCO-CORONA, EL CERRITO AND LAKE MATHEWS AREAS, COUNTY OF RIVERSIDE

1. After public hearing affording due process, and after full consideration of the licensee's legal, character, financial, technical and other qualifications, including the feasibility of its construction arrangements, a non-exclusive license is hereby granted to AMERICAN CABLESYSTEMS OF CALIFORNIA, INC., a wholly-owned subsidiary of American Cablesystems Corporation, a Massachusetts based corporation, herein called Licensee, for a period of 15 years from the date hereof to construct, operate and maintain a television antenna cable service which will transmit and distribute light and/or electrical impulses and signals to produce reproductions of sights and sounds for television or radio purposes, along, under and across such public roads as now or may hereafter exist within the NORCO-CORONA, EL CERRITO AND LAKE MATHEWS UNINCORPORATED AREAS of the County of Riverside, as shown on the map attached hereto as Exhibit "A".

a. "Public roads" as used in this license means any public highway, road, street, lane, alley, court, sidewalk, parkway, or easement therefor, dedicated or offered for dedication to the County of Riverside.

2. Licensee shall:

a. Construct, install and maintain all equipment and facilities in accordance with all requirements of the County, and shall make no installation or excavation, in, on or over any road under County's jurisdiction without first obtaining an encroachment permit under Ordinance No. 449 or any amendment or revision thereof. In any state highway, Licensee shall abide by all provisions of state laws relating to the construction, location and maintenance of such equipment and facilities. In any area of the County where existing pole lines for a public utility company are reasonbly avaiable for use by Licensee pursuant to a pole attachment agreement with the public utility company, Licensee shall not erect any poles for the purpose of installing its operating equipment.

b. Pay to the County on demand the cost of all repairs to public property made necessary by any of its operation.

c. Indemnify and hold the County, its officers and employees harmless from all liability for damages resulting from all operations under this license.

RALD J. GEERLINGS
OUNTY COUNSEL
SUITE 300
35 - 10TH STREET
RSIDE, CALIFORNIA

D... 75 ... Jun 30 1987

d. Remove, relocate or place underground, at its own expense, any equipment and facilities installed under this license, if the County determines that it is necessary for any reason, including construction of a new road, change of grade, alignment or width of any existing road, or the construction, use or maintenance of any bridge, subway, viaduct or other public work or the use of any public property, or the construction, maintenance or relocation of any installation of a public utility operating under a franchise.

e. Take out and maintain public liability insurance satisfactory to the County to protect Licensee and the County, its officers and employees, against loss from liability imposed by law for damages on account of bodily injury, including death, resulting therfrom, and property damage, suffered or alleged to be suffered by any person or persons whatsoever resulting directly or indirectly from any act or omission of Licensee or any person acting under Licensee's control or direction. The insurance shall be kept in force during the term of this license in the amounts of not less than $250,000.00 for one person injured in one accident and not less than $500,000.00 for more than one person injured in one accident, and not less than $50,000.00 property damage. Proof of insurance shall be filed with the Clerk of the Board of Supervisors.

3. In any area of the County where the transmission and distribution facilities of the public utilites providing telephone service and electric service are underground or hereafter may be placed underground, then the Licensee shall also place or relocate all of its transmission, amplification and distribution facilities underground.

4. Licensee, in making its service available shall not discriminate for or against any suppliers of television sets, and in those areas where service is made available, Licensee shall provide service to all applications in the order of receipt of orders therefor, so far as reasonable and practical.

5. The County, State, or any city or public agency may construct any new road, and improve, reconstruct, repair or maintain any existing road, or portion thereof, or other public facility in which Licensee's equipment and facilities have been constructed or installed, and may remove any such road or other public improvement. Upon 30 days notice being given to the Licensee of the work, and area in which it is to be performed, the Licensee shall do all things necessary to protect its property during the progress of the work and if ordered by the governmental agency performing such work, Licensee shall disconnect, remove or relocate its property in such manner as shall be required to permit the performance of the work, and the

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RSIDE, CALIFORNIA

maintenance, operation and use of the road or public improvement. Any private easements acquired by Licensee for the construction and installation of its equipment and facilities shall be construed to be subordinate to the rights of the County, presently existing or hereafter acquired, for future road construction or reconstruction. All of such things to be done and work to be performed shall be at the sole cost and expense of Licensee.

6. If the State, County, any city or public agency shall acquire the property of Licensee, either by purchase or through the right of eminent domain, this License shall not be assigned any value, before any court or other public authority, in excess of the sum paid by licensee to the County at the time of the application for the License.

7. The Licensee may, without the approval of the Board of Supervisors, increase the rates and charges for its basic CATV service by an amount not to exceed 5% per year; provided, however, that the Licensee shall have notified each subscriber at least 30 days in advance of such proposed increase and afforded such subscriber the right to terminate its CATV service with the Licensee and, provided further, that the Licensee shall file each such increase in the rates and charges for its basic CATV service with the Board of Supervisors within 10 days after such increase takes effect. Notwithstanding the foregoing, the Licensee may adjust the rates and charges for its basic CATV service without regard to the limitation contained in this paragraph if the rules and regulations of the Federal Communications Commission adopted pursuant to 47 U.S.C. Section 543(b), as amended, provided that the Licensee is subject to effective competition. If the Licensee is not determined to be subject to effective competition under such rules and regulations, the Licensee shall be permitted to adjust the rates and charges for its basic CATV service as provided in such rules and regulations. Except as otherwise provided in this paragraph or applicable law, the County shall not regulate the rates and charges for basic CATV service provided by the Licensee. For the purposes of this license, "basic CATV service" shall mean the service tier or tiers of the Licensee's CATV system which includes the retransmission of local televisiion broadcast signals.

8. Upon request, the Licensee shall provide CATV service, without charge, at the following locations:

a. Police and fire stations;
b. Public libraries;
c. Public schools; and,
d. Other public buildings owned and controlled by the County used for public purposes and not for residential use.

This obligation shall be limited to (i) making one standard installation at one point reasonably convenient to use at the location in question and shall not require the wiring of an entire building, and (ii) providing only the Licensee's

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ERSIDE, CALIFORNIA

basic CATV service. In the event service calls or repairs are required for any location as to which such service is rendered without charge following initial installation, the Licensee shall be entitled to charge therefor in accordance with its then effective rates and charges for such service.

9. This License shall not be construed to impose upon the County any duty or obligation to cnstruct, repair or maintain any road in which Licensee's property is located.

10. Licensee shall in good faith commence construction within 4 months from the issuance of this License and shall diligently proceed with the completion of the work. If significant construction has not been accomplished within one year of certification by the Federal Communications Commission, this License is forfeited.

11. All final, published rules of the Federal Communications Commission shall, to the extent applicable, be considered a part of this License on the date said final rule is adopted.

12. This License shall not be construed to require the Licensee to implement a policy of construction which will require a complete wiring of the service area. However, the Licensee shall be required to extend energized trunk cable from any existing terminus of the CATV system to any area immediately adjacent thereto having a density of at least 40 single-family residential dwelling units per cable/conduit mile; provided, however, that the Licensee shall not be obligated to service areas to which it is unable to obtain pole line facilities located in a direct route to such areas and the Licensee shall not be required to erect or obtain the use of pole line facilities along any indirect or circuitous route, nor is the Licensee required to use underground conduit where underground conduit is not otherwise required in order to supply service to any such areas.

13. The Licensee shall establish procedures for the investigation and resolution of all complaints regarding its cable television service and operations. These procedures shall include a system for reporting and resolving complaints regarding the quality of service, equipment malfunctions, billing disputes and similar matters. Licensee shall maintain an office with a toll free telephone number in the area to be served that will be open to receive inquiries or complaints during business hours, and in no event less than 9:00 A.M. to 5:00 P.M. Monday through Friday. Any complaints from subscribers shall be investigated and acted upon not less than 3 business days from their receipt by Licensee; provided, however, that where unusual circumstances exist, Licensee shall have a reasonable time to respond to said complaints. Licensee shall keep records of all maintenance service. Said records will indicate the nature of each service complaint, the date and time it was received, the disposition of said complaint and the time and date thereof. These records shall be made available for periodic inspection by the County.

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35 - 10TH STREET
RSIDE, CALIFORNIA

All such records shall be kept on a calendar year basis and no records less than 3 years old shall be destroyed by Licensee. Licensee shall, at the time the subscriber initially receives cable television service, provide each subscriber with a card upon which is printed the above information together with the toll free telephone number of the local office which will receive all complaints.

14. All actions of Licensee pursuant to this License shall be subject to review by the County Clerk or his designee.

15. Licensee shall pay annually to the County five percent (5%) of its annual revenue. Annual revenue, for purposes of this License, shall be limited to that revenue Licensee receives as a result of providing its customers located in the unincorporated area of the County serviced by the Licensee with regular subscriber services as that term is defined by the Federal Communications Commission; however, annual revenue shall not include (i) refunds made to subscribers in connection with such services to the extent that the amount of such refund has been included in the determination of annual revenue, (ii) bad debts written off by the Licensee in the usual and ordinary course of business to the extent that the amount thereof has been included in the determination of annual revenue, (iii) amounts received from subscribers in the nature of refundable security deposits, and (iv) taxes imposed by law on the subscribers which the Licensee is obligated to collect and pay to federal, state or county governments. Licensee shall file with the Clerk of the Board of Supervisors, within 3 months after the expiration of each calendar year, following the issuance of this License, a verified statement showing its total annual revenues during the preceding year. Not more than fifteen (15) days thereafter, Licensee shall pay to the County of Riverside an amount equal to five percent (5%) of said annual revenues.

16. This license may be terminated prior to its date of expiration by the Board of Supervisors in the event the Board finds, after 30 days, notice of proposed termination and after a full public hearing affording due process, that (a) the Licensee has failed to comply with any provision of this ordinance; or (b) any provision of this ordinance has become invalid or unenforceable and the Board of Supervisors further finds that such provision constituted a consideration material to the granting of the license; or (c) the County acquires the CATV property of the Licensee. Failure to comply with any of the conditions of this License shall constitute cause for forfeiture hereof, in addition to all other rights held by County. If County forfeits this License, Licensee shall be excluded from any further operations hereunder. If the License is forfeited by County, or if Licensee shall cease operations under the License for any reason, Licensee shall contact the Road Commissioner and perform all work necessary in the public road pursuant to encroachment permit have been removed or left in a condition that does not require removal, and that no further action is needed to protect the public interest.

RALD J. GEERLINGS
OUNTY COUNSEL
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535 - 10TH STREET
ERSIDE, CALIFORNIA

17. Licensee shall file an approved corporate surety bond in favor of County in the penal sum of $10,000.00, conditioned that Licensee shall well and truly perform every term and condition hereof and, in case of any breach of condition, the whole amount of the penal sum shall be taken and deemed to be liquidated damages and shall be recoverable from the principal and surety upon said bond. The bond shall be filed with the Clerk of the Board by the original licensee within ten (10) days after issuance of this License. Any subsequent holder of this License shall file a similar bond within thirty (30) days of the approval of the transfer by the Board of Supervisors. A cash deposit in the same amount may be made in lieu of said bond. This License shall not be effective until Licensee has filed an approved bond. If the License is forfeited, or if Licensee shall cease operations under the License for any reason, the surety bond or cash deposit shall not be released until Licensee obtains the required clearance from the Road Commissioner.

18. The Licensee shall not be liable or responsible for any failure or delay in the performance of any of its obligations under this license if such delay or failure arises from and cause or causes beyond the reasonable control of the Licensee, including without limitation labor dispute, strikes, other labor or industrial disturbances, acts of God, floods, lightning, shortage ofmaterials, rationing, utility or communication failures, earth quake casualties, war, acts of a public enemy, riots, insurrection, freight or other embargoes, blockages, actions, restrictions, regulations, orders or quotas imposed by any government, agency or subdivision thereof, inability to secure necessary parts or materials of any similar causes.

19. This license is not exclusive, and is issued pursuant to Section 53066 of the California Government Code.

20. Any transfer of this License requires the approval of the Board of Supervisors. No approval or disapproval of a proposed transfer shall take place unless and until a public hearing affording due process is held in accordance with the requirments of Sections 3, 4 and 5 of Riverside County Ordinance No. 503. The Board of Supervisors may, as a condition of approval of the transfer, require the new Licensee to pay to the County of Riverside that percentage of its annual revenues which new applicants are then required to pay.

21. All rights, obligations and duties imposed by this License are binding on Licensee, its successors and assigns.

22. The Licensee shall have the right to request renewal of its license upon written notice delivered to the Board of Supervisors not less than six (6) months before expiration of the original term of this license. The procedures and standards for renewal shall be consistent with those set forth in 47 U.S.C. Section 546, as amended. A filing fee of $750.00 shall accompany a request for a renewal. If the license is renewed, the renewal term shall be for five (6) years and upon such conditions as are

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contained in its license as in effect on the date of its expiration or upon such other conditions as the County and the Licensee shall agree. Should the County deny the renewal request, such denial shall be accompanied by a written statement setting forth the reasons for such denial. Should renewal proceedings not be completed prior to the expiration of the original term of this license, the Licensee shall have the right and authority to continue operation of its CATV system pursuant to the terms and conditions of its license until such time as the renewal proceedings are finally concluded unless the delay or failure to complete the proceedings is due primarily to the action or inaction of the Licensee; but in no event shall the right to continue operation under this provision continue for more than three months after the expiration date of the license.

Dated: Sept. 9, 1987

BOARD OF SUPERVISORS OF THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

By _____
Chairman

ATTEST:

GERALD A. MALONEY
Clerk of the Board

By _____
Deputy

(SEAL)

Licensee hereby accepts and agrees to faithfully perform and abide by all the terms and conditions of this License and understands that this License is not effective until an approved surety bond has been filed.

Dated: September 14, 1987

AMERICAN CABLESYSTEMS OF CALIFORNIA, INC. a wholly-owned subsidiary of American Cablesystems Corporation, a Massachusetts based corporation

By _____

Title: Senior Vice President

By _____

Title: Asst Vice President & Secretary

(Corporate Seal)

:rmh

RALD J. GEERLINGS
OUNTY COUNSEL
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535 - 10TH STREET
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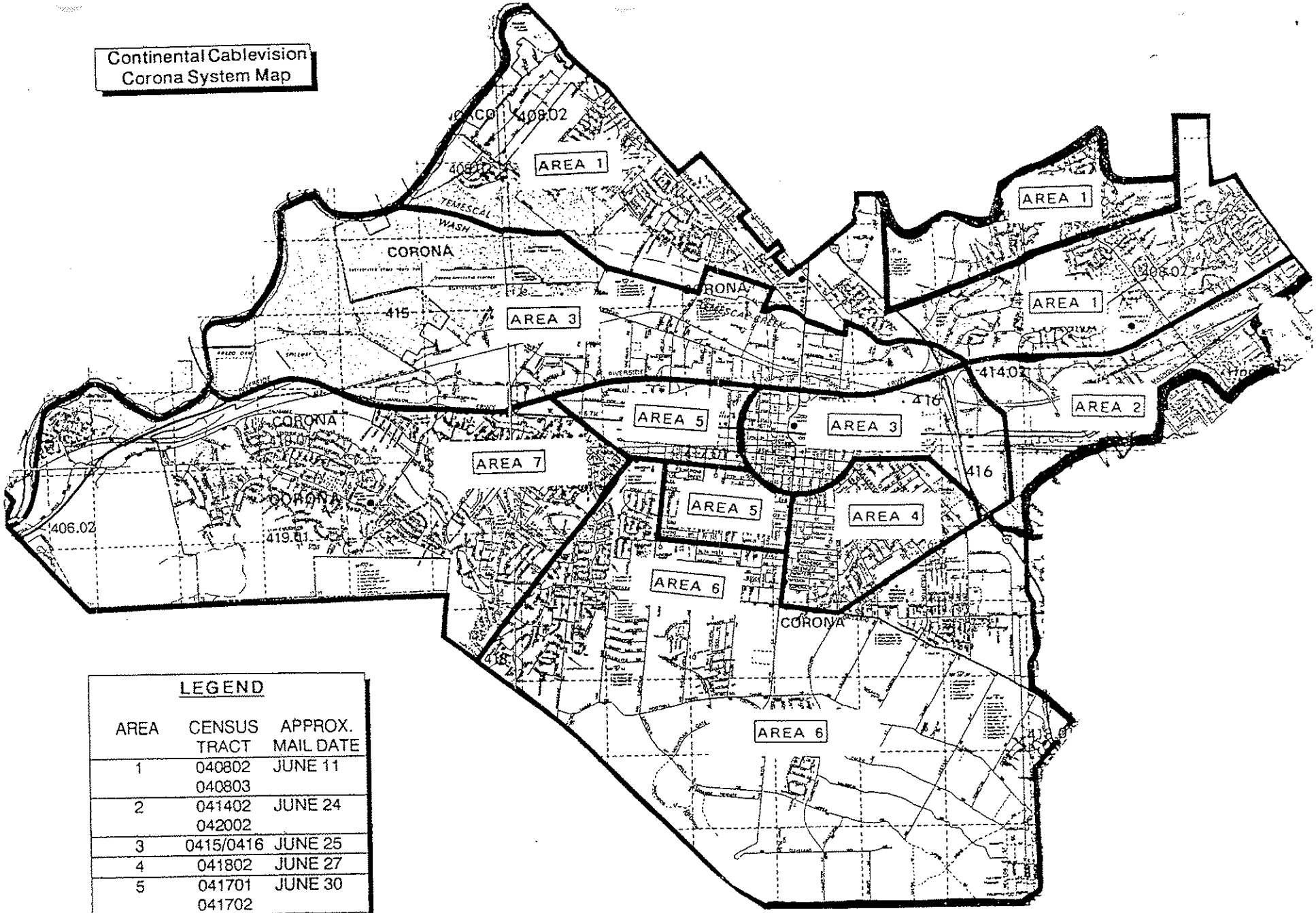
Continental Cablevision
Corona System Map



LEGEND

AREA	CENSUS TRACT	APPROX. MAIL DATE
1	040802	JUNE 11
	040803	
2	041402	JUNE 24
	042002	
3	0415/0416	JUNE 25
4	041802	JUNE 27
5	041701	JUNE 30
	041702	
6	041801	JULY 6
7	031502	JULY 14
	040602	
	041901	
	OTHER	

SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

435
A

FROM: Clerk of the Board SUBMITTAL DATE: June 15, 1995

SUBJECT: Transfer of Control of Community Antenna Television Licenses issued to Colony Cablevision of California, a Division of Providence Journal Company; and King Videocable Company to Continental Cablevision, Inc., to provide Cable Television Services in the First, Second, Third, Fourth and Fifth Supervisorial Districts.

RECOMMENDED MOTION: That the Honorable Board of Supervisors approve the transfer of control of Community Antenna Television Licenses from Colony Cablevision of California and King Videocable to Continental Cablevision, Inc., and that the Board approve the attached Resolution (Attachment 1), summarizing the necessary chain events which must occur to affect the requested transfer of control.

BACKGROUND: By the attached letter received June 5, 1995, Continental Cablevision made formal application to our office for transfer of Control of three Community Antenna Television Licenses currently held in the names of King Videocable and Colony Cablevision of California. The applicant has requested that the Board in addition to transference of control of these systems also adopt a Resolution recognizing those steps necessary in transacting this merger. Both County Counsel and our office have reviewed the attached application and find it responsive to Ordinance 503.9 and would therefore recommend that the Board approve the applicant's request based on the attached findings.

(See Attachment 1)

Respectfully Submitted,

Gerald A. Maloney
GERALD A. MALONEY,
CLERK OF THE BOARD

APPROVED
COUNTY COUNSEL
JUN 26 1995
BY Kay Lambourne

FINANCIAL DATA:

CURRENT YEAR COST	$	N/A	ANNUAL COST	$	N/A
NET COUNTY COST	$	N/A	IN CURRENT YEAR BUDGET:	YES/ NO/	N/A
SOURCE OF FUNDS:		N/A	BUDGET ADJUSTMENT: YES/ NO/ FOR FY:		N/A

C.A.O. RECOMMENDATION: APPROVE

Administrative Officer Signature Thomas M. Boyd

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Mullen, seconded by Supervisor Wilson and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as amended with Palm Desert area added, and that Resolution 95-208 is adopted.

Ayes: Buster, Tavaglione, Centeros, Wilson and Mullen
Noes: None
Absent: None
Date: July 11, 1995
XC: COB, Continental Cablevision, Co Counsel

Gerald A. Maloney
Clerk of the Board
By: Maryelle Moran Deputy

Dist. ALL
AGENDA NO. 8.2

Prev. Agn. Ref.
11.3 6/16/92
11.2 12/15/92
7.2 1/17/84

ATTACHMENTS FILED WITH THE CLERK OF THE BOARD

FORM 11 (Rev. 7/93)

FINDINGS:

A. Granting of the transfer of control will not result in negative impacts to the communities being served.

B. Transference of control of licenses will not create adverse economic or aesthetic impact upon the public or private property within Continental's proposed service areas.

C. Granting of transfer of control of license, license amendments and subsequent reissuance of King Videocable Company's license to be effective January 1, 1996, will not cause unreasonable disruption or inconvenience to the existing users, or any adverse effects on future use of poles, public easements and the pubic rights-of-ways, contrary to the intent of Section 767.5 of the Public Utilities Code.

D. The applicant has adequately demonstrated their financial and technical ability to perform.

E. Granting transference of control of licenses will not adversely impact societal interests or the County's interest in universal cable service.

F. That transference of control of the Community Antenna Licenses to Continental Cablevision, Inc., is found to be economically feasible.

ATTACHMENT 1

RESOLUTION NO. 95-208

RESOLUTION OF THE COUNTY OF RIVERSIDE ACKNOWLEDGING AND CONSENTING TO THE MERGER AND RELATED TRANSACTIONS BETWEEN PROVIDENCE JOURNAL COMPANY AND CONTINENTAL CABLEVISION, INC.

WHEREAS, Colony Cablevision of California, a division of Providence Journal Company, ("Licensee Colony") is the duly authorized holder of a license (as amended to date, the "Colony License") authorizing the operation and maintenance of a cable television system within the Beaumont, Banning, Cabazon, Desert Hot Springs, Palm Springs, Cathedral City, Rancho Mirage, Coachella, Thermal, Mecca, Oasis, San Gorgonio, Thousand Palms,Indian Wells and Indio areas of the County of Riverside and authorizing Licensee to serve these areas of the County of Riverside ("License Authority"); and

WHEREAS, King Videocable Company ("Licensee King") is the duly authorized holder of two licenses (as amended to date, the "King Licenses") authorizing the operation and maintenance of cable television systems within the Lake Elsinore unincorporated area of the County of Riverside and within the unincorporated areas of Corona, Elsinore, Hemet, Murrietta, Perris, San Jacinto and Temecula respectively and authorizing Licensee to serve those areas of the County of Riverside ("License Authority"); and

WHEREAS, Providence Journal Company ("PJC"), King Holding Corp. ("KHC"), King Broadcasting Company ("KBC") and Continental Cablevision, Inc. ("Continental") have entered into an Amended and

Restated Agreement and Plan of Merger dated as of November 18, 1994 (the "Agreement"), subject to, among other considerations, any required approval of the License Authority with respect thereto; and

WHEREAS, in connection with the merger and the other transactions (the "Transaction") contemplated by the Agreement, PJC will purchase the 50% interest in KHC held by affiliates of Kelso & Company, Inc. ("Kelso"), as a result of which KHC will become a wholly owned subsidiary of PJC; and

WHEREAS, as a result of the Transaction, the ultimate control of the Licensee will shift from PJC and affiliates of Kelso to Continental; and

WHEREAS, to the extent the License requires, and even if the License does not so require, Continental and PJC now seek acknowledgment of and consent to the Transaction; and

WHEREAS, the Transaction is deemed to be in the best interests of the residents of the County of Riverside;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF SUPERVISORS, COUNTY OF RIVERSIDE, IN REGULAR SESSION ASSEMBLED ON JULY 11, 1995, APPROVES AS FOLLOWS:

SECTION 1. The License Authority hereby acknowledges and consents to the Transaction, which includes the transfer of the Colony License from PJC to King Broadcasting Company and, immediately thereafter, to (i) Colony Communications, Inc., which as result of the Transaction will become a wholly owned subsidiary of Continental, or (ii) Continental, to the extent that the

acknowledgement and/or consent of the License Authority is required by the terms of the Colony License and applicable law, with such acknowledgement and consent to be effective as of the closing date of the Transaction.

SECTION 2. The License Authority hereby acknowledges and consents to the Transaction, which includes the transfer of ultimate control of the Licensee King from PJC and affiliates of Kelso to Continental, to the extent that the acknowledgment and/or consent of the License Authority is required by the terms of the King License and applicable law, with such acknowledgment and consent to be effective as of the closing date of the Transaction.

SECTION 3. The consent herein granted does not constitute and shall not be construed to constitute a waiver of any obligations of Licensee under either the Colony License or King License.

PASSED, ADOPTED AND APPROVED this 11th day of JULY, 1995.

By: Kay Ceniceros
Kay Ceniceros, Chairman
Board of Supervisors
KAY CENICEROS

ATTEST:

Margie Rogers Deputy
Gerald M. Maloney
Clerk of the Board

ROLL CALL:
Ayes: Buster, Tavaglione, Ceniceros, Wilson, Mullen
Noes: None
Absent: None

* * * * * * * *

I, the undersigned, being duly appointed, qualified and acting Clerk of the County of Riverside, hereby certify that the foregoing Resolution No. 95-208 is a true, correct and accurate copy as duly and lawfully passed and adopted by the governing body of the County of Riverside on the 11th day of JULY, 1995.

Deputy
Gerald R. Maloney
Clerk of the Board

FORM APPROVED
COUNTY COUNSEL

JUN 2 6 1995

BY D. Blankenship

7/11/95 8.2

5238

SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

502

FROM: Clerk of the Board SUBMITTAL DATE: May 18, 1992

SUBJECT: Adoption of Community Antenna Television License Amendments, and Approval for the Issuance of a Fifteen Year Non-Exclusive Community Antenna Television License to be effective on January 1, 1996.

RECOMMENDED MOTION:

A. Adopt amendments to existing Community Antenna Television Licenses granted to King Video Company; and

B. Approve issuance of a new Fifteen Year Non-Exclusive Community Antenna Television License to be effective January 1, 1996.

MAY 20 1992

BACKGROUND: King Video Company has provided cable television services throughout the Lake Elsinore and Rancho California areas since August 6, 1974 when the Board of Supervisors authorized the transfer to King Video Company of a Twenty-Five Year Community Antenna Television License previously issued to Cable-Meter Systems on April 14, 1970. King Video Company was issued a second cable television license by Board Order 7.3 on November 20, 1984 to serve a community Southeast of Lake Elsinore known as the Farm. In accordance with Federal Law, staff entered into negotiations with King Video Company on renewal of its Twenty-Five Year Community Antenna Television License thirty-six months in advance of expiration. This negotiation has resulted in King Video Company agreeing to the consolidation of their two existing licenses, and annual incremental increases in license payments to the County in exchange for the early closure of license renewal. Under this agreement, King Video Company will remit its license payments for the full calendar year of 1992 at a rate of 2%, 1993 at a rate of 3%, 1994 at a rate of 4%, and 1995 at a rate of 5% of gross annual revenues. The new consolidated license will continue to cover the unincorporated areas adjacent to the cities of Corona, Lake Elsinore, Canyon Lake, Temecula, Murrieta, Perris, San Jacinto and Hemet, as shown in the attached Exhibit "A".

Respectfully submitted,
Gerald A Maloney
GERALD A. MALONEY, CLERK OF THE BOARD

FINANCIAL DATA: Project a net increase of $55,000 in County revenues for Fiscal Year 1992/93.

CURRENT YEAR COST	$ N/A	ANNUAL COST	$ N/A
NET COUNTY COST	$ N/A	IN CURRENT YEAR BUDGET:	YES/ NO/
SOURCE OF FUNDS:			

C.A.O. RECOMMENDATION: APPROVE

Administrative Officer Signature Kimberly M Mobley

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Abraham, seconded by Supervisor Ceniceros and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Abraham, Dunlap, Ceniceros, Younglove and Larson
Noes: None
Absent: None
Date: June 16, 1992
xc: COB, King Video Cable

Gerald A. Maloney
Clerk of the Board
By: M. Graves Deputy

Prev. Agn. ref.
7.3 11-20-84

Dist.
1st, 2nd
3rd & 5th

AGENDA NO.
11.3

FORM 11 (Rev. 1/92)

CLERK'S COPY
11.3 of 4/16/92

A NON-EXCLUSIVE LICENSE OF THE COUNTY OF RIVERSIDE FOR A PERIOD OF 15 YEARS TO CONSTRUCT, OPERATE AND MAINTAIN A COMMUNITY ANTENNA TELEVISION SYSTEM ALONG, UNDER AND ACROSS SUCH PUBLIC ROADS AS NOW OR MAY HEREAFTER EXIST IN THE UNINCORPORATED AREAS OF CORONA, ELSINORE, HEMET, MURRIETA, PERRIS, SAN JACINTO AND TEMECULA THAT ARE WITHIN THE COUNTY OF RIVERSIDE

1. After public hearing affording due process, and after full consideration of the licensee's legal, character, financial, technical and other qualifications, including the feasibility of its construction arrangements, a non-exclusive license is hereby granted to **KING VIDEOCABLE COMPANY**, herein called "Licensee", for a new period of fifteen (15) years to commence on January 1, 1996, to construct, operate and maintain a community antenna television system comprised of a system of antennae coaxial cable or other transmission line and associated equipment and facilities installed, operated and maintained for the purpose of broadband communication services within the County of Riverside, including without limitation the distribution of broadcast television signals or radio signals, specialized programming or any other video, audio or data transmission to or from subscribers, along, under and across such public roads as now or may hereafter exist within the unincorporated areas of Corona, Elsinore, Hemet, Murrieta, Perris, San Jacinto and Temecula that are within the County of Riverside, as shown on the map attached hereto as Exhibit "A".

a. "Public roads" as used in this license means any public highway, road, street, lane, alley, court, sidewalk, parkway, or easement therefor, dedicated or offered for dedication to the County of Riverside.

2. Licensee shall:

a. Construct, install and maintain all equipment and facilities in accordance with all requirements of the County, and shall make no installation or excavation, in, on or over any road under the County's jurisdiction without first obtaining an encroachment permit under Ordinance No. 499 or any amendment or revision thereof. In any State highway, Licensee shall abide by all provisions of State laws relating to the construction, location and maintenance of such equipment and facilities. In any area of the County where existing pole lines of a public utility company are reasonably available for use by Licensee pursuant to a pole attachment agreement with the public utility company, Licensee shall not erect any poles for the purpose of installing its operating equipment.

b. Pay to the County on demand the cost of all repairs to public property made necessary by any of its operations.

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RIVERSIDE, CALIFORNIA

c. Defend, indemnify and hold harmless the County, its officers and employees from all liability for damages resulting from all operations under this license.

d. Remove, relocate or place underground, at its own expense, any equipment and facilities installed under this license, if the County determines that it is necessary for any reason, including construction of a new road, change of grade, alignment or width of any existing road, or the construction, use or maintenance of any bridge, subway, viaduct or other public work or the use of any public property, or the construction, maintenance or relocation of any installation of a public utility operating under a franchise.

e. Take out and maintain public liability insurance satisfactory to the County to protect Licensee and the County, its officers and employees, against loss from liability imposed by law for damages on account of bodily injury, including death, resulting therefrom, and property damage, suffered or alleged to be suffered by any person or persons whatsoever resulting directly or indirectly from any act or omission of Licensee or any person acting under Licensee's control or direction. The insurance shall be kept in force during the term of this license in the amounts of not less than $250,000.00 for one person injured in one accident and not less than $500,000.00 for more than one person injured in one accident, and not less than $50,000.00 property damage. Proof of insurance shall be filed with the Clerk of the Board of Supervisors.

3. In any area of the County where the transmission and distribution facilities of the public utilities providing telephone service and electric service are underground or hereafter may be placed underground, then Licensee shall also place or relocate all of its transmission, amplification and distribution facilities underground.

4. Licensee, in making its service available shall not discriminate for or against any suppliers of television sets, and in those areas where service is made available, Licensee shall provide service to all applicants in the order of receipt of orders therefor, so far as reasonable and practical. No person, firm or corporation in the approved service area of Licensee shall be arbitrarily refused service; provided, however, that Licensee shall not be required to provide service to any subscriber who does not pay the applicable connection fee or monthly service charge. Licensee shall not discriminate either in favor of or against any subscriber or potential subscriber of CATV services on the basis of sex, age, race, creed, color or national origin.

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5. The County, State, or any city or public agency may construct any new road, and improve, reconstruct, repair or maintain any existing road, or portion thereof, or other public facility in which Licensee's equipment and facilities have been constructed or installed, and may abandon or remove any such road or other public improvement. Upon thirty (30) days notice being given to Licensee of the work, and area in which it is to be performed, Licensee shall do all things necessary to protect its property during the progress of the work and if ordered by the governmental agency performing such work, Licensee shall disconnect, remove or relocate its property in such manner as shall be required to permit the performance of the work, and the maintenance, operation and use of the road or public improvement. Any private easements acquired by Licensee for the construction and installation of its equipment and facilities shall be construed to be subordinate to the rights of the County, presently existing or hereafter acquired, for future road construction or reconstruction. All of such things to be done and work to be performed shall be at the sole cost and expense of Licensee.

6. Except as provided in Section 627 of the Cable Communicaions Policy Act of 1984, if the State, County, any city or public agency shall acquire the property of Licensee, either by purchase or through the right of eminent domain, this license shall not be assigned any value, before any court or other public authority, in excess of the sum paid by Licensee to the County at the time of the application for the license.

7. Licensee may, without the approval of the Board of Supervisors, increase the rates and charges for its basic CATV service by an amount not to exceed five percent (5%) per year; provided, however, that Licensee shall have notified each subscriber at least thirty (30) days in advance of such proposed increase and afforded such subscriber the right to terminate its CATV service with Licensee and, provided further, that Licensee shall file each such increase in the rates and charges for its basic CATV service with the Board of Supervisors within ten (10) days after such increase takes effect. Notwithstanding the foregoing, Licensee may adjust the rates and charges for its basic CATV service without regard to the limitation contained in this paragraph if the rules and regulations of the Federal Communications Commission adopted pursuant to 47 U.S.C. Section 543(b), as amended, provide that Licensee is subject to effective competition. If Licensee is not determined to be subject to effective competition under such rules and regulations, Licensee shall be permitted to adjust the rates and charges for its basic CATV service as provided in such rules and regulations. Except as otherwise provided in this paragraph or applicable law, the County shall not regulate the rates and charges for basic CATV service provided by Licensee. For the purposes of this license, "basic CATV service" shall mean the service tier or tiers of Licensee's CATV system which includes the retransmission of local television broadcast signals.

8. Upon request, Licensee shall provide CATV service, without charge, at the following locations:

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a. Police and fire stations;

b. Public libraries;

c. Public schools; and,

d. Other public buildings owned and controlled by the County used for public purposes and not for residential use.

This obligation shall be limited to (i) making one standard installation at one point reasonably convenient to use at the location in question and shall not require the wiring of an entire building, and (ii) providing only Licensee's basic CATV service. In the event service calls or repairs are required for any location as to which such service is rendered without charge following initial installation, Licensee shall be entitled to charge therefor in accordance with its then effective rates and charges for such service.

9. This license shall not be construed to impose upon the County any duty or obligation to construct, repair or maintain any road in which Licensee's property is located.

10. The CATV system shall be installed and maintained in accordance with standards generally accepted in the cable television industry for similar cable television systems similarly situated, the requirements of this license and the rules and regulations of the Federal Communications Commission applicable to cable television systems.

11. All final, published rules of the Federal Communications Commission shall, to the extent applicable, be considered a part of this license on the date said final rule is adopted. This license shall, in all respects, be interpreted and applied so as to be consistent with the Cable Communications Policy Act of 1984, as from time to time amended (47 U.S.C. Sections 521, et seq.), applicable California law, and the rules and regulations of the Federal Communications Commission applicable to cable television systems. If any provision of this license or its application should be inconsistent with any of the foregoing, the Cable Communications Policy Act of 1984 shall prevail.

12. This license shall not be construed to require Licensee to implement a policy of construction which will require a complete wiring of the service area. However, Licensee shall be required to extend energized trunk cable from any existing terminus of the CATV system to any area immediately adjacent thereto having a density of at least forty (40) single-family residential dwelling units per cable/conduit mile; provided, however, that Licensee shall not be obligated to service areas to which it is unable to obtain pole line facilities located in a direct route to such areas and Licensee shall not be required to erect or obtain the use of pole line facilities along any indirect or circuitous route, nor is Licensee required to use underground conduit where underground

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conduit is not otherwise required in order to supply service to any such areas.

13. Licensee shall establish procedures for the investigation and resolution of all complaints regarding its cable television service and operations. These procedures shall include a system for reporting and resolving complaints regarding the quality of service, equipment malfunctions, billing disputes and similar matters. Licensee shall maintain an office with a toll free telephone number in the area to be served that will be open to receive inquiries or complaints during business hours, and in no event less than 9:00 A.M. to 5:00 P.M., Monday through Friday. Any complaints from subscribers shall be investigated and acted upon not less than three (3) business days from their receipt by Licensee; provided, however, that where unusual circumstances exist, Licensee shall have a reasonable time to respond to said complaints. Licensee shall keep records of all maintenance service. Said records will indicate the nature of each service complaint, the date and time it was received, the disposition of said complaint and the time and date thereof. These records shall be made available for periodic inspection by the County. All such records shall be kept on a calendar year basis and no records less than three (3) years old shall be destroyed by Licensee. Licensee shall, at the time the subscriber initially receives cable television service, provide each subscriber with the above information, together with the toll free telephone number of the local office which will receive all complaints, in a permanent written form which reasonably notifies the subscriber of this information.

14. All actions of Licensee pursuant to this license shall be subject to review by the Clerk of the Board of Supervisors or his designee.

15. Licensee shall pay annually to the County five percent (5%) of its annual gross receipts derived from the operation of the cable system; however, such receipts shall not include (a) refunds made to subscribers in connection with such services to the extent that the amount of such refund has been included in the determination of annual gross receipts, (b) bad debts written off by Licensee in the usual and ordinary course of business to the extent that the amount thereof has been included in the determination of annual gross receipts, (c) amounts received from subscribers in the nature of refundable security deposits, and (d) taxes imposed by law on the subscribers which Licensee is obligated to collect and pay to federal, state or county governments. Licensee shall file with the Clerk of the Board of Supervisors, within three (3) months after the expiration of each calendar year, following the issuance of this license, a verified statement showing its total annual gross receipts during the preceding year. Not more than fifteen (15) days thereafter, Licensee shall pay to the County of Riverside an amount equal to five percent (5%) of said annual gross receipts.

16. This license may be terminated prior to its date of expiration by the Board of Supervisors in the event the Board finds, after thirty (30) days notice of proposed termination and after a

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full public hearing affording due process, that (a) Licensee has failed to comply with any provision of this ordinance; or (b) any provision of this ordinance has become invalid or unenforceable and the Board of Supervisors further finds that such provision constituted a consideration material to the granting of the license; or (c) the County acquires the CATV property of Licensee. Failure to comply with any of the conditions of this license shall constitute cause for forfeiture hereof, in addition to all other rights held by the County. If the County forfeits this license, Licensee shall be excluded from any further operations hereunder. If the license is forfeited by the County, or if Licensee shall cease operations under the license for any reason, Licensee shall contact the Director of Transportation and perform all work necessary to attain certification that any facilities installed by Licensee in the public roads pursuant to encroachment permit have been removed or left in a condition that does not require removal, and that no further action is needed to protect the public interest.

17. Licensee shall file an approved corporate surety bond in favor of the County in the penal sum of $10,000.00, conditioned that Licensee shall well and truly perform every term and condition hereof and, in case of any breach of condition, the whole amount of the penal sum shall be taken and deemed to be liquidated damages and shall be recoverable from the principal and surety upon said bond. The bond shall be filed with the Clerk of the Board by the original licensee within ten (10) days after issuance of this license. Any subsequent holder of this license shall file a similar bond within thirty (30) days of the approval of the transfer of this license by the Board of Supervisors. A cash deposit in the same amount may be made in lieu of said bond. This license shall not be effective until Licensee has filed an approved bond. If the license is forfeited, or if Licensee shall cease operations under the license for any reason, the surety bond or cash deposit shall not be released until Licensee obtains the required clearance from the Director of Transportation.

18. Licensee shall not be liable or responsible for any failure or delay in the performance of any of its obligations under this license if such delay or failure arises from any cause or causes beyond the reasonable control of Licensee, including without limitation labor dispute, strikes, other labor or industrial disturbances, acts of God, floods, lightning, shortage of materials, rationing, utility or communication failures, earthquake casualties, war, acts of a public enemy, riots, insurrection, freight or other embargoes, blockages, actions, restrictions, regulations, orders or quotas imposed by any government, agency or subdivision thereof, inability to secure necessary parts or materials or any similar causes.

19. This license is not exclusive, and is issued pursuant to Section 53066 of the California Government Code.

20. Licensee agrees to obey all applicable statutes, regulations and ordinances.

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...LIAM C. KATZENSTEIN
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RIVERSIDE, CALIFORNIA

21. Licensee recognizes and understands that this license may create a possessory interest subject to property taxation and that licensee may be subject to the payment of the property taxes levied on such interest.

22. Any transfer of this license requires the approval of the Board of Supervisors. No approval or disapproval of a proposed transfer shall take place unless and until a public hearing affording due process is held in accordance with the requirements of Sections 3, 4 and 5 of Riverside County Ordinance No. 503, as amended. The Board of Supervisors may, as a condition of approval of the transfer, require the new licensee to pay to the County of Riverside that percentage of its annual gross receipts which new applicants are then required to pay.

23. All rights, obligations and duties imposed by this license are binding on Licensee, its successors and assigns.

24. Licensee shall have the right to request renewal of its license upon written notice delivered to the Board of Supervisors not less than six (6) months before expiration of the original term of this license. The procedures and standards for renewal shall be consistent with those set forth in 47 U.S.C. Section 546, as amended. A filing fee of $750.00 shall accompany a request for a renewal. Should the County deny the renewal request, such denial shall be accompanied by a written statement setting forth the reasons for such denial. Should renewal proceedings not be completed prior to the expiration of the original term of this license, Licensee shall have the right and authority to continue operation of its CATV system pursuant to the terms and conditions of its license until such time as the renewal proceedings are finally concluded unless the delay or failure to complete the proceedings is due primarily to the action or inaction of Licensee; but in no event shall the right to continue operation under this provision continue for more than five (5) months after the expiration date of the license.

25. By agreeing to grant and accept the non-exclusive license to construct, operate and maintain a community antenna television system on the terms set forth herein, neither the County nor Licensee waive any rights which they may have under federal, state or local law.

Dated: June 16, 1992

ATTEST:

GERALD A. MALONEY
Clerk of the Board

By Margaret Logan
Deputy

BOARD OF SUPERVISORS OF THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

By [signature]
Vice Chairman, Board of Supervisors

WILLIAM C. KATZENSTEIN
COUNTY COUNSEL
SUITE 300
3535 - 10TH STREET
RIVERSIDE, CALIFORNIA

Licensee hereby accepts and agrees to faithfully perform and abide by all the terms and conditions of this license and understands that this license is not effective until an approved surety bond has been filed.

Dated: 8-27-92

KING VIDEOCABLE COMPANY

By Bruce H. Clark

Title: President

By _____

Title: _____

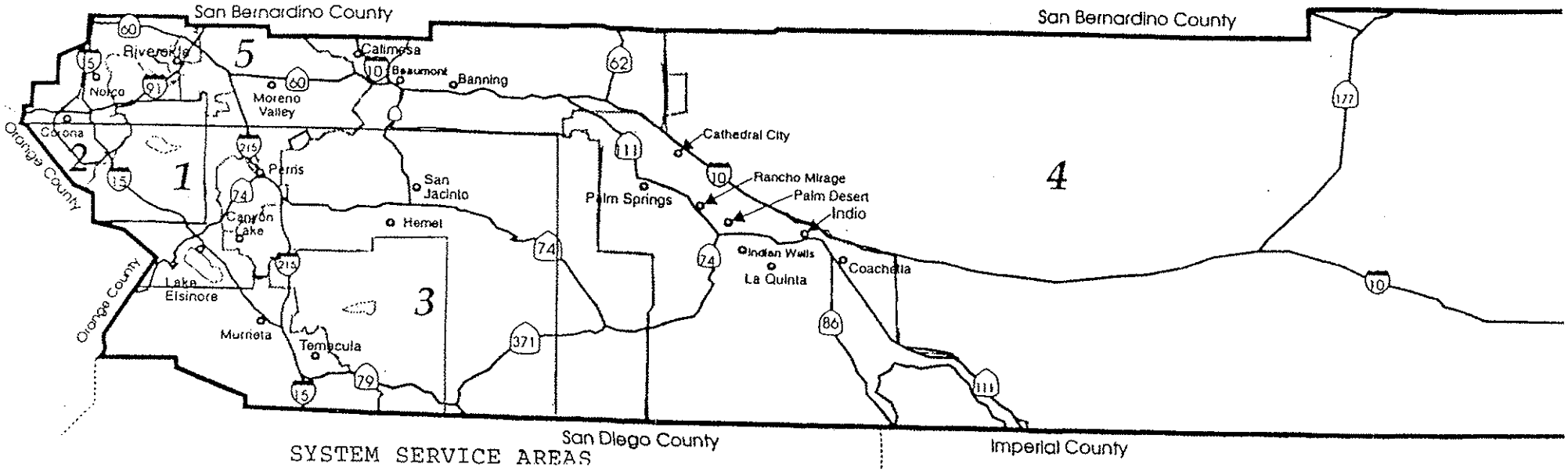
(Corporate Seal)

GB:jf-650/lit
pp.1-8:6/18/92

WILLIAM C. KATZENSTEIN
COUNTY COUNSEL
SUITE 300
3535 - 10TH STREET
RIVERSIDE, CALIFORNIA

RIVERSIDE COUNTY

SUPERVISORIAL DISTRICTS



SYSTEM SERVICE AREAS

KING CABLE LICENSE #1

KING CABLE (the Farm)

COLONY CABLEVISION

CONTINENTAL CABLEVISION

SUBMITTAL TO THE BOARD OF SUPER ...S
COUNTY OF RIVERSIDE, STATE OF CAL ...ORNIA

FROM: Clerk of the Board SUBMITTAL DATE: May 20, 1987

SUBJECT: Application of American Cablesystems of California, Inc. for issuance of a 15 year nonexclusive Cable Television license.

RECOMMENDED MOTION: That the Board consent to and approve the termination of the license issued to CommuniCom, aka Six Star Cablevision, and the issuance of a new 15 year nonexclusive license to American Cablesystems of California. Such revocation and issuance to be effective upon the consummation of the sale from CommuniCom to American Cablesystems of California, and that in the event that the sale of assets of CommuniCom to American is not consummated, CommuniCom's license dated July 27, 1982, shall remain in force.

JUSTIFICATION: By the letter dated April 24, 1987, American Cablesystems Corporation applied to the County for the transfer of an existing CATV license issued to CommuniCom aka Six Star Cablevision. The application of American Cablesystems of California was reviewed by County Counsel and approved as to form prior to scheduling of a public hearing in accordance with Ordinance No. 503.

The applicant proposes to acquire all assets of CommuniCom systems located in Riverside, Orange and Los Angeles Counties by July 1, 1987, at a purchase price of $70,370,000.00. American Cablesystems of California expects to invest an additional 94.9 million within their first ten years of operations in order to keep pace with projected growth forcasts.

American Cablesystems of California is a wholly-owned subsidiary of American Cablesystems Corporations, a Massachusetts based corporation. Founded in 1978, the parent company's only business is ownership and management of cable systems.

(Continued to Page Two)

C.A.O. RECOMMENDATION: APPROVE

FINANCIAL IMPACT: As noted in attachment.

FORM APPROVED COUNTY COUNSEL JUN 24 1987 Deputy

Administrative Officer Signature Kenneth N. Klark

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Abraham, seconded by Supervisor Younglove and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Dunlap, Ceniceros, Younglove and Abraham
Noes: None
Absent: Larson
Date: June 30, 1987
xc: COB, American Cablesystems, Co. Counsel

Gerald A. Maloney
Clerk of the Board
By: M. Rogers Deputy

Prev. Agn. ref. | Depts. Comments | Dist. | AGENDA NO. 7.5

FORM 11 (Rev. 12/82)

Based on our review of the application it is our opinion that the applicant, American Cablesystems of California, has demonstrated the financial commitment, technical expertise and quality of service necessary for the award of a CATV license.

With the Board's concurrence of our recommended motion, CommuniCom would until completion of their sale continue to operate and maintain their CATV services under their exiting license. In the event that the sale of CommuniCom to American Cablesystems does not materialize, CommuniCom's present license will remain in full force pending their expiration.

It should be further noted that the applicant has, as a part of their application, stated that their charges and rates will remain the same as they are now. Nonetheless, upon granting of this license the applicant will be exempt from future rate regulation unless their system is found not to have effective competition as defined by Public Law 98-549.

FINANCIAL DATA: Projected revenue for calendar year 1987 will be calculated based on 5% of the firm's gross revenue for all services offered in accordance with Ordinance 503. Revenue increase for the County will be negligible based on a total of less than 50 subscribers within the unincorporated area of the County.

Respectfully submitted,

Gerald A Maloney

Gerald A. Maloney
Clerk of the Board

RESOLUTION NO. 08-39

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, RATIFYING THE AGREEMENTS WITH VERIZON FOR TELEPHONE AND INTERNET SERVICES

THE CITY COUNCIL OF THE CITY OF WILDOMAR DOES RESOLVE AS FOLLOWS:

SECTION 1. Recitals.

(a) The City Council has ratified the execution of a lease of space for a City Hall, which will house the City's administrative offices.

(b) It is imperative that the City provide telephone and internet services for the City Hall.

(c) The Interim City Manager received a preliminary proposal from Verizon for the sale of phones and the installation and monthly maintenance of telephone lines and internet services.

(d) The Interim City Manager has executed agreements with Verizon for the establishment of a general phone line, an inspection request phone line, and internet services.

SECTION 2. Ratify of Agreements with Verizon. The City Council hereby ratifies the agreements with Verizon entered into by the Interim City Manager for the purchase, maintenance, installation and service of a main telephone line with broadband internet access and the agreements for a second telephone line to be used for inspection requests. The agreement for the general phone line with broadband internet access is attached as Exhibit "A," the agreement for the inspection request phone line is attached as Exhibit "B."

PASSED, APPROVED, AND ADOPTED this 1st day of July, 2008.

Bob Cashman, Mayor

ATTEST:

John Danielson, Interim City Clerk

APPROVED AS TO FORM:

_____

Julie Hayward Biggs, Interim City Attorney

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE)
CITY OF WILDOMAR)

I, John Danielson, Interim City Clerk of the City of Wildomar, do hereby certify that the foregoing Resolution No. 08-39 was duly adopted by the City Council of the City of Wildomar at a regular meeting thereof, held on the 1st day of July, 2008, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

_____
John Danielson, Interim City Clerk

EXHIBIT "A

AGREEMENT FOR GENERAL PHONE LINE

verizon

PLEASE READ - Contains important information about the terms and conditions of your service.

May 30, 2008

Dear Valued Business Customer,

Welcome to Verizon!

Thank you for choosing Verizon for your business communications needs. Fulfilling your business vision can be a demanding yet rewarding undertaking. We appreciate the opportunity to serve you and contribute to your success.

Over 2.5 million businesses trust their critical data and voice communications to Verizon. With Verizon you can spend more time on your business and less on your communications, knowing Verizon's quality products, service and network reliability are standing behind you. No matter how big your business gets or how much things change, we will still be there for you.

As a Verizon business customer, you will enjoy many advantages:

- Unparalleled network reliability. We know how important it is to avoid outages. That's why our network is 99.99% reliable.
- Superb value.
- Simple and clear pricing plans.
- Award-winning selection of data, Internet, and voice communication services.
- Live, 24x7 business-class technical support.
- Ability to upgrade communications without disruption.
- Specially-trained business consultants to answer your questions, handle your requests, keep you informed and work with you to ensure you are on the right plan for your business.
- Solutions tailored to the unique needs of your business. You are never forced into a one-size-fits-all solution.

Your satisfaction is very important to us. Please review the following enclosed important information to ensure we have provided you the services you

NLB CA

CITY OF WILDOMAR
1076 LINCOLN
BOULDER CO 80302

verizon

requested. If something is missing or unclear, please contact us.

- Service(s) you recently ordered
- Any instructions for your service(s) ordered
- Standard monthly rates for each service (any discounts will appear on your bill)
- Any service connection charges
- Your order number

Our business office hours are 8:00 AM to 5:30 PM Monday - Friday. If you should need to reach Repair, please call 1-800-483-2000 any time. You can also write to us at Verizon, P.O. Box 11328, St. Petersburg, FL 33733. For details on customer rights and responsibilities, please see the Customer Information Guide in your local telephone directory. All additional Verizon services, bills, area code changes, and regional calling areas can be found on our website at verizon.com.

Thanks again for selecting Verizon. If you have any questions, please call 1-800-483-5000 to speak to a specially-trained business consultant, or go to verizon.com/business for additional Verizon service information.

Sincerely,

Verizon

verizon

Billing Number: 951-677-7751
Order Number: I3490528
Date of Request: 05/29/2008

Activity	Qty.	Description	Monthly Rate	Service Connection Charges
ADD	1	ADDITIONAL EXPANSION CUSTOPAK LINE	30.00	
	1	ADDITIONAL EXPANSION CUSTOPAK LINE	30.00	
	1	ADDITIONAL EXPANSION CUSTOPAK LINE	30.00	
	1	VERIZON FREEDOM FOR BUSINESS EXPANSION CUSTOPAK MAIN LINE - 3 YR	68.00	
	1	ADDITIONAL EXPANSION CUSTOPAK LINE	30.00	
	1	CUSTOPAK INTERSTATE SLC	7.67	
	4	CUSTOPAK CALL FORWARDING - VARIABLE	.00	
	4	CUSTOPAK HUNTING	.00	
	5	CUSTOPAK NO RESTRICTIONS	.00	
	5	CUSTOPAK GROUP CALL PICK-UP	.00	
		SERVICE CONNECTION CHARGES		86.64
		TOTAL SERVICE CONNECTION CHARGES		86.64

Applicable discounts will appear on your bill.

All monthly service charges are billed one month in advance. For all services and packages, your first bill may show a partial month charge (which includes charges as of the day the service or package was installed up to the first billing date). If the first bill you receive includes a partial month charge, the bill may be higher than a normal one-month bill. If applicable, charges for connecting or changing other services usually appear on the first bill.

If your bill seems higher than expected, it may include partial month charges. You will find additional billing information and explanations on our website at www.verizon.com/helpbusiness.

Verizon uses electronic fund transfer to process check payments. Your payment may look like an electronic fund transfer from your account and you will not receive a cancelled check from your bank. Verizon will keep an image of your check in case there is a dispute. If you wish to be excluded from this process, please call 1-888-500-5358.

Your Voice Messaging access telephone number is 951-698-0590.

You have requested VERIZON to provide your IntraLATA long distance service. We recommend that you contact your chosen IntraLATA carrier to confirm that an account has been or is being established for you. Additional information pertaining to local exchange service may be found in the consumer information guide of the local telephone directory.

You have requested VERIZON LONG DISTANCE to provide your IntraLATA long distance service. We recommend that you contact your chosen IntraLATA carrier to confirm that an account has been or is being established for you. Additional

verizon

Billing Number: 951-677-7751
Order Number: I3490528
Date of Request: 05/29/2008

information pertaining to local exchange service may be found in the consumer information guide of the local telephone directory.

You have requested VERIZON LONG DISTANCE to provide your InterLATA long distance service. We recommend that you contact your chosen InterLATA carrier to confirm that an account has been or is being established for you. Additional information pertaining to local exchange service may be found in the consumer information guide of the local telephone directory.

This statement does not reflect Taxes and Surcharges. New or changed telephone number assignment is not guaranteed. Verizon assumes no liability in the event a different number is assigned. Verizon is required by the utilities commission to charge the rates that are listed in our tariffs. Should there be a conflict between the quoted rate and the tariff, the tariffed rate will prevail.

verizon

VERIZON FREEDOM® FOR BUSINESS EXPANSION PAK FACT SHEET

Thank you for selecting Verizon Freedom for Business Expansion PAK 3 year term package. In an effort to provide you with outstanding service, this Fact Sheet provides details about your new Package.

Your Main Expansion CustoPAK Line contains:
- CustoPAK Line
- Calling Features
- Unlimited Nationwide Calling

Your Additional Expansion CustoPAK Line(s) contain(s):
- CustoPAK Line
- Calling Features
- Unlimited Nationwide Calling (may be included depending on your selection)

Unlimited Nationwide Calling and Calling Features:
On your Main Expansion PAK Line and any Additional Expansion PAK lines with unlimited nationwide calling, all direct-dialed nationwide voice calling including Alaska and Hawaii and U.S. territories; Guam, Puerto Rico, U.S. Virgin Islands, and Northern Mariana Islands is included. Universal Service Fee, taxes and other charges may apply. Offer is for business customers and for voice use only. Call detail is not provided on lines with unlimited nationwide calling.

Here is some information on the calling features you may have ordered. They will help you keep in touch like never before:
- o Call Forwarding automatically reroutes your business call to the telephone number you designate, including your mobile phone.
- o Call Waiting alerts you to incoming calls when you are on the line. Cancel Call Waiting will cancel Call Waiting tones for the duration of the call you are on or are about to make.
- o Three-Way Calling allows you to collaborate on one telephone call with up to two other parties no matter where they are located.
- o Caller ID allows you to screen incoming calls and determine the appropriate course of action. It will display numbers, or names and numbers of most calls, including long distance. Some calls may appear as "out-of-Area" or "unavailable."
- o Voice Messaging ensures that your calls are answered even if you are on the phone or out of the office.

Verizon Broadband Service:
Once your Verizon High Speed Internet for Business or Verizon FiOS Internet for Business service is provisioned, you will receive separate information to confirm your order and important information regarding the terms and access of your service.

Important Restrictions:
Freedom for Business Expansion PAK is only available to business customers with 25 voice grade or voice grade equivalent lines or less at the time of initiation of this service. Unlimited nationwide calling may only be placed on 10 lines per account. This includes the Main and Additional Expansion PAK Lines plus any other Verizon Freedom for Business plans on the account.

Unlimited nationwide calling may only be used for voice applications and may not be used for the transmission of data, for internet connections, or for any other non-voice application. This service may also not be used for autodialing. Verizon reserves the right to restrict the number of other services and/or

verizon

equipment furnished or used in connection with any particular service in order to prevent any impairment in the quality of service furnished. If this service is used for any non-eligible purpose, including, but not limited to, the examples noted above, Verizon may suspend, restrict or cancel the service.

Calls from lines you may have that do not have unlimited nationwide calling will be rated at the appropriate toll or long distance rate in accordance with the package covering those lines.

In order to maintain the rate associated with the package you have selected, you must keep one Main Expansion PAK Line and one Additional Expansion PAK Line on your account. Verizon must be selected as your preferred regional toll and long distance carrier on all lines associated with the Freedom for Business Expansion PAK to retain the package pricing.

Should you select another provider for your regional toll and/or long distance service, the following will occur:

- The unlimited nationwide calling feature will be removed from the associated line(s),
- The line(s) and associated components will revert to a la carte rates, and

Should you select another regional toll provider, but keep Verizon Long Distance (VLD) as your long distance provider:

- Your long distance service will automatically be replaced with the VLD Firm Rate Advantage plan which carries a monthly minimum spend requirement and a per minute rate.

Term Commitment, Termination Liability Charges and Autorenewal:
This letter confirms your commitment to a 3 year term, which will become effective on the completion date of your Freedom for Business Expansion PAK order. Freedom for Business Expansion PAK offers a 3 year term option in exchange for discounted monthly recurring charges (MRCs).

An early termination charge will apply if you disconnect your Main Expansion PAK Line or your Verizon Broadband service, prior to the expiration of the term commitment.

The early termination fee is $100 for Verizon High Speed Internet for Business and $250 for Verizon FiOS Internet for Business. The following termination charges will be applied if the Main Expansion PAK Line is terminated:

- $225 fee will be charged if service is disconnected within the first year,
- $150 fee will be charged if service is disconnected between the first and the second year of the term, or
- $75 fee will be charged if service is disconnected between the second and the third year of the term.

The early termination charge for your Main Expansion PAK Line will not be charged if you disconnect the line prior to 60 calendar days of service of your order completion date.

Your 3 year term package will automatically renew for an additional 3 year term unless either party provides notice within 60 days of the renewal date that it does not wish to extend the package for a new term. Verizon will provide an advanced notification of the renewal date. At that time you may choose to leave your service as is, in which case the service will be renewed for an additional 3 year term. If you choose to remove your Freedom for Business Expansion PAK or switch to a different term agreement, you will need to call your local business office to make that change. Your monthly recurring charge will

increase if you remove the Freedom for Business Expansion PAK.

Verizon CustoPAK® service:
Your new CustoPAK system provides a comprehensive package of advanced functions that will enable your business to improve customer service, increase employee productivity and reduce internal costs. And because it's so flexible, it can grow as your business grows.

Best of all, CustoPAK is managed entirely from Verizon's central office, so you can rest easier knowing that Verizon will take responsibility for maintenance and service. We are confident that this system is the right solution for your business needs.

Your CustoPAK system comes with a 30-day satisfaction guarantee in all markets, except California, and you are entitled to a full credit of the CustoPAK installation (if applicable), fixed monthly charges and a change back to your previous Verizon service if you are not satisfied and notify us within 30 calendar days of initial installation. Please note: the guarantee does not include credit(s) for charges associated with any Customer Provided Equipment (CPE) or any charge(s) associated with such CPE, including but not limited to jacks and wiring.

Please refer to the User Guide for feature activation and deactivation. Please take some time to review these instructions and learn how simple even the most advanced CustoPAK features are to use. If your instructions are not attached with this letter, they are being mailed separately.

Local and Long Distance Service:
On your Main Expansion PAK Line and any Additional Expansion PAK lines with unlimited nationwide calling, long distance is provided by Verizon Long Distance (VLD) and the Verizon unlimited long distance is included with your package rate. A $15 portion of the monthly line charge is associated with long distance services.

Freedom for Business Expansion PAK is compatible with the following long distance services, which may be added to your account. Charges for calls associated with these services will be billed separately and are in addition to the Freedom for Business Expansion PAK charges:
- Talk to the World international calling plan
- Calling Cards
- Toll Free Numbers

If you have a Toll Free Number from VLD, you will automatically receive a discounted 6 cents per minute rate for inbound calls on VLD toll free service. If Freedom for Business Expansion PAK is removed from the account, your discounted usage rate will be charged at the rate associated with your new package.

On lines with unlimited calling, all nationwide directly-dialed voice calls are included. The following call types are not included and are, therefore billed at a la carte rates:

- Operator Handled Station to Station Service
- Operator Handled Person to Person Service
- Operator Handled Credit/Calling Card Calls
- Primelink 900 Service
- Primelink 976 Service
- Wide Area Telecommunications and 800 Service
- Additional Calling Features (per activation)

verizon

- Directory Assistance Service - Verification/Interrupt Service

Verizon Freedom for Business Expansion PAK and qualifying Verizon Broadband service must be billed to the same Verizon phone number. Minimum one-year voice and Broadband contracts required. Early termination fees apply. Set up and installation charges may apply. Service availability, speed and uninterrupted service not guaranteed. Prices for voice services vary by state. Minimum of two voice lines required. Unlimited nationwide calling includes direct-dialed domestic voice calls only. Voicemail availability varies. Eligibility restrictions, equipment fees, dial-up toll usage, additional charges, taxes and terms apply. Domain name registration and transfer fees not included. FiOS Internet Business customers purchasing Verizon voice service receive both services over fiber. Includes up to 8 hours battery back up (for non-IP voice service only). Copyright 2007 Verizon.

EXHIBIT "B"

AGREEMENT FOR INSPECTION REQUEST TELEPHONE LINE

verizon

PLEASE READ - Contains important information about the terms and conditions of your service.

June 10, 2008

Dear Valued Business Customer,

Welcome to Verizon!

Thank you for choosing Verizon for your business communications needs. Fulfilling your business vision can be a demanding yet rewarding undertaking. We appreciate the opportunity to serve you and contribute to your success.

Over 2.5 million businesses trust their critical data and voice communications to Verizon. With Verizon you can spend more time on your business and less on your communications, knowing Verizon's quality products, service and network reliability are standing behind you. No matter how big your business gets or how much things change, we will still be there for you.

As a Verizon business customer, you will enjoy many advantages:

- Unparalleled network reliability. We know how important it is to avoid outages. That's why our network is 99.99% reliable.
- Superb value.
- Simple and clear pricing plans.
- Award-winning selection of data, Internet, and voice communication services.
- Live, 24x7 business-class technical support.
- Ability to upgrade communications without disruption.
- Specially-trained business consultants to answer your questions, handle your requests, keep you informed and work with you to ensure you are on the right plan for your business.
- Solutions tailored to the unique needs of your business. You are never forced into a one-size-fits-all solution.

Your satisfaction is very important to us. Please review the following enclosed important information to ensure we have provided you the services you

HLB CA

CITY OF WILDOMAR
1076 LINCOLN STE 111
BOULDER CO 80302-7236

verizon

requested. If something is missing or unclear, please contact us.

- Service(s) you recently ordered
- Any instructions for your service(s) ordered
- Standard monthly rates for each service (any discounts will appear on your bill)
- Any service connection charges
- Your order number

Our business office hours are 8:00 AM to 5:30 PM Monday - Friday. If you should need to reach Repair, please call 1-800-483-2000 any time. You can also write to us at Verizon, P.O. Box 11328, St. Petersburg, FL 33733. For details on customer rights and responsibilities, please see the Customer Information Guide in your local telephone directory. All additional Verizon services, bills, area code changes, and regional calling areas can be found on our website at verizon.com.

Thanks again for selecting Verizon. If you have any questions, please call 1-800-483-5000 to speak to a specially-trained business consultant, or go to verizon.com/business for additional Verizon service information.

Sincerely,

Verizon

verizon

Billing Number: 951-677-7751
Order Number: C3798900
Date of Request: 06/09/2008

Activity	Qty.	Description	Monthly Rate	Service Connection Charges
ADD	1	ADDITIONAL EXPANSION CUSTOPAK LINE	30.00	
	1	CUSTOPAK CALL WAIT/CANCEL CALL WAIT	.00	
	1	CUSTOPAK NO RESTRICTIONS	.00	
	1	CUSTOPAK INTERSTATE SLC	7.67	
		SERVICE CONNECTION CHARGES		106.64
		TOTAL SERVICE CONNECTION CHARGES		106.64

Applicable discounts will appear on your bill.

All monthly service charges are billed one month in advance. For all services and packages, your first bill may show a partial month charge (which includes charges as of the day the service or package was installed up to the first billing date). If the first bill you receive includes a partial month charge, the bill may be higher than a normal one-month bill. If applicable, charges for connecting or changing other services usually appear on the first bill.

If your bill seems higher than expected, it may include partial month charges. You will find additional billing information and explanations on our website at www.verizon.com/helpbusiness.

Verizon uses electronic fund transfer to process check payments. Your payment may look like an electronic fund transfer from your account and you will not receive a cancelled check from your bank. Verizon will keep an image of your check in case there is a dispute. If you wish to be excluded from this process, please call 1-888-500-5358.

Your Voice Messaging access telephone number is 951-698-0590.

You have requested VERIZON to provide your IntraLATA long distance service. We recommend that you contact your chosen IntraLATA carrier to confirm that an account has been or is being established for you. Additional information pertaining to local exchange service may be found in the consumer information guide of the local telephone directory.

You have requested VERIZON LONG DISTANCE to provide your InterLATA long distance service. We recommend that you contact your chosen InterLATA carrier to confirm that an account has been or is being established for you. Additional information pertaining to local exchange service may be found in the consumer information guide of the local telephone directory.

This statement does not reflect Taxes and Surcharges. New or changed telephone number assignment is not guaranteed. Verizon assumes no liability in the event a different number is assigned. Verizon is required by the utilities commission to charge the rates that are listed in our tariffs. Should there be a conflict

verizon

Billing Number: 951-677-7751
Order Number: C3798900
Date of Request: 06/09/2008

between the quoted rate and the tariff, the tariffed rate will prevail.

RESOLUTION NO. 08-40

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, ACCEPTING ALL PUBLIC STREETS WITHIN THE CITY OF WILDOMAR INTO THE CITY STREET SYSTEM

THE CITY COUNCIL OF THE CITY OF WILDOMAR DOES RESOLVE AS FOLLOWS:

SECTION 1. Recitals.

(a) The Local Agency Formation Commission of Riverside County conditions of approval for the incorporation of the City of Wildomar provide that all roads and highways or portions thereof within the City that were accepted into the County road system prior to the effective date of incorporation shall become City streets on the effective date of incorporation.

(b) Government Code section 57385 provides that only those roads and highways that were accepted into the County road system prior to the first signature on the petition for incorporation, or prior to the adoption of a resolution of application, or prior to a date mutually agreed upon by the city and the county, shall become City streets on the effective date of incorporation.

(c) Section 1806 of the Streets and Highways Code requires the City Council to adopt a resolution accepting the roads and highways as part of the City's street system for the roads and highways to become City streets, except as provided in Government Code section 57385.

(d) The City Council desires to reaffirm the automatic conversion of County roads and highways to City streets as provided for in Government Code section 57385 and to accept all other County roads and highways within the City as part of the City's street system.

SECTION 2. Acceptance of County Roads and Highways as City Streets. The City of Wildomar hereby accepts into the City street system all roads and highways, or portions thereof, previously accepted by the County of Riverside as part of the County road system that are within the boundaries of the City.

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE)
CITY OF WILDOMAR)

I, John Danielson, Interim City Clerk of the City of Wildomar, do hereby certify that the foregoing Resolution No. 08-40 was duly adopted by the City Council of the City of Wildomar at a regular meeting thereof, held on the 1st day of July, 2008, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

_____
John Danielson, Interim City Clerk

RESOLUTION NO. 08-41

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA ACCEPTING PARKS FROM THE COUNTY OF RIVERSIDE

THE CITY COUNCIL OF THE CITY OF WILDOMAR DOES RESOLVE AS FOLLOWS:

SECTION 1. Recitals.

(a) The Local Agency Formation Commission of Riverside County conditions of approval for the incorporation of the City included a condition that, upon incorporation, the parks within the City previously owned by the Ortega Trail Recreation and Park District shall be transferred to the City.

(b) The Ortega Trail Recreation and Park District dissolved in 2000, and custody of the District's parks was transferred to the County of Riverside.

(c) The parks formerly owned by the Ortega Trail Recreation and Park District located within the City of Wildomar are the Regency Heritage Park, Marna O'Brien Community Park, and Windsong Park.

(d) Government Code section 37350 authorizes the City to acquire and hold property for the common benefit.

(e) The City Council desires to accept ownership of the parks within the City previously owned by the Ortega Trail Recreation and Park District from the County.

SECTION 2. Acceptance of Parklands. The City Council accepts title to the following parks

(a) Marna O'Brien Community Park, 20505 Palomar Street, Wildomar, California;

(b) Windsong Park, 35459 Prairie Road, Wildomar, California;

(c) Regency Heritage Park, 20171 Autumn Oaks Place, Wildomar, California.

PASSED, APPROVED AND ADOPTED this 1st day of July, 2008.

Bob Cashman, Mayor

ATTEST:

John Danielson, Interim City Clerk

APPROVED AS TO FORM:

Julie Hayward Biggs, Interim City Attorney

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE)
CITY OF WILDOMAR)

I, John Danielson, Interim City Clerk of the City of Wildomar, do hereby certify that the foregoing Resolution No. 08-41 was duly adopted by the City Council of the City of Wildomar at a regular meeting thereof, held on the 1st day of July, 2008, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

_____
John Danielson, Interim City Clerk

RESOLUTION NO. 08-42

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, ACCEPTING THE AUTHORITY AND RESPONSIBILITY FOR THE WILDOMAR LANDSCAPE MAINTENANCE DISTRICT

THE CITY COUNCIL OF THE CITY OF WILDOMAR DOES RESOLVE AS FOLLOWS:

SECTION I. Recitals.

(a) Government Code section 56886(u) provides that any change of organization, including an incorporation, may be conditioned upon the transfer of authority and for the administration of special tax and special assessment districts.

(b) The Local Agency Formation Commission of Riverside County conditions of approval for the incorporation of the City include a provision that "In accordance with Section 56886(u), the authority and responsibility for special assessment districts associated with the Wildomar Parks Landscape Maintenance District and County Service Areas 22, 103 and 142 shall be transferred to the new city upon incorporation."

(c) On September 12, 2006, the Board of Supervisors for Riverside County approved the formation of the Wildomar Landscape Maintenance District 2006-1, which funds the operation and maintenance costs of several public parks in Wildomar.

(d) The City Council desires to accept authority and responsibility for the Wildomar Landscape Maintenance District.

SECTION II. Acceptance of Wildomar Landscape Maintenance District. The City Council hereby accepts authority and responsibility for the Wildomar Landscape Maintenance District. The City resolves to operate the Wildomar Landscape Maintenance District in accordance with the Landscape and Lighting Act of 1972, Part 2 (commencing with Section 22500) of Division 15 of the Streets and Highways Code, and the County resolutions establishing the District and levying assessments, as those resolutions have been adopted in City Resolution No. 08-01.

PASSED, APPROVED AND ADOPTED this 1st day of July, 2008.

_____
Bob Cashman, Mayor

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE)
CITY OF WILDOMAR)

I, John Danielson, Interim City Clerk of the City of Wildomar, do hereby certify that the foregoing Resolution No. 08-42 was duly adopted by the City Council of the City of Wildomar at a regular meeting thereof, held on the 1st day of July, 2008, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

_____
John Danielson, Interim City Clerk

RESOLUTION NO. 08-43

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA WAIVING AUTOMATIC DETACHMENT FROM COUNTY SERVICE AREA 152

THE CITY COUNCIL OF THE CITY OF WILDOMAR DOES RESOLVE AS FOLLOWS:

SECTION I. Recitals.

(a) The City of Wildomar was incorporated on July 1, 2008, as a general law city in the State of California.

(b) Government Code section 56375(n) authorizes a Local Agency Formation Commission to waive the application of Section 25210.90 of the Government Code to a newly incorporated City if it finds the application would deprive an area of a service needed to ensure the health, safety, or welfare of the residents of the area and if it finds that the waiver would not affect the ability of a city to provide any service.

(c) Section 25210.90 of Government Code provides that the territory within a newly incorporated city shall be automatically excluded from any County Service Area ("CSA") upon the effective date of incorporation.

(d) The Local Agency Formation Commission of Riverside County included in the conditions upon the incorporation of the City of Wildomar a requirement that, in accordance with Government Code section 56375(n), the City waive automatic detachment from CSA 152.

SECTION II. Findings. The City Council of the City of Wildomar hereby finds that:

(a) CSA 152 is a funding mechanism for the implementation of the National Pollutant Discharge Elimination System ("NPDES") emanating from the federal 1972 Clean Water Act, and re-authorized under the federal 1987 Clean Water Act.

(b) Detachment of the territory within the City from CSA 152 would deprive the City's residents of services needed to ensure their health, safety and welfare.

(c) Waiving detachment from CSA 152 will not affect the ability of the City to provide any service.

SECTION III. Waiver of Automatic Detachment. The City Council of the City of Wildomar waives the automatic detachment of the territory within the City from CSA 152.

SECTION IV. Subsequent Detachment. The City Council reserves the right to adopt a resolution nullifying this waiver of automatic at any time within sixty (60) days of the incorporation of the City.

PASSED, APPROVED, AND ADOPTED this 1st day of July, 2008.

_____
Bob Cashman, Mayor

ATTEST:

_____
John Danielson, Interim City Clerk

APPROVED AS TO FORM:

_____
Julie Hayward Biggs, Interim City Attorney

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE)
CITY OF WILDOMAR)

I, John Danielson, Interim City Clerk of the City of Wildomar, do hereby certify that the foregoing Resolution No. 08-43 as duly adopted by the City Council of the City of Wildomar at a regular meeting thereof, held on the 1st day of July, 2008, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

_____
John Danielson, Interim City Clerk

RESOLUTION NO. 08-44

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, APPROVING MEMBERSHIP IN THE WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS

THE CITY COUNCIL OF THE CITY OF WILDOMAR DOES RESOLVE AS FOLLOWS:

SECTION 1. Recitals.

(a) The City of Wildomar was incorporated on July 1, 2008, as a general law city of the State of California.

(b) The City is eligible to participate in various organizations representing the interests of cities.

(c) The Western Riverside Council of Governments (WRCOG) is a council of governments formed under a joint powers agreement (JPA) to address problems that are regional in nature.

(d) Each of the cities located in western Riverside County is a member of WRCOG, and the City will benefit from membership in such organization.

SECTION 2. Join WRCOG. The City Manager shall take the necessary steps for the City to join the WRCOG, and the Mayor is hereby authorized to enter into the JPA for WRCOG on behalf of the City.

SECTION 3. Executive Committee. The Mayor, with the consent of the City Council, shall appoint one member of the City Council to serve on the WRCOG Executive Committee.

SECTION 4. Technical Advisory Committee. The City Manager shall serve on the WRCOG Technical Advisory Committee.

PASSED, APPROVED, AND ADOPTED this 1st day of July, 2008.

_____

Bob Cashman, Mayor

ATTEST:

_____
John Danielson, Interim City Clerk

APPROVED AS TO FORM:

_____
Julie Hayward Biggs, Interim City Attorney

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE)
CITY OF WILDOMAR)

I, John Danielson, Interim City Clerk of the City of Wildomar, do hereby certify that the foregoing Resolution No. 08-44 was duly adopted by the City Council of the City of Wildomar at a regular meeting thereof, held on the 1st day of July, 2008, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

_____
John Danielson, Interim City Clerk

RESOLUTION NO. 08-45

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, APPROVING MEMBERSHIP IN THE RIVERSIDE COUNTY TRANSPORTATION COMMISSION

THE CITY COUNCIL OF THE CITY OF WILDOMAR DOES RESOLVE AS FOLLOWS:

SECTION I. Recitals.

(a) The City of Wildomar was incorporated on July 1, 2008, as a general law city of the State of California.

(b) The City is eligible to participate in various regional organizations representing the interests of cities.

(c) The Riverside County Transportation Commission (RCTC) is an organization that coordinates highway and transit planning, identifies projects for state and federal funding, and is generally responsible to for all aspects of planning for Riverside County's mobility.

(d) Every city in the county holds a vote on the RCTC, along with the five members of the Riverside County Board of Supervisors, and the City will benefit from membership in this organization.

SECTION II. Join RCTC. The City Manager shall take the necessary steps for the City to join the RCTC.

SECTION III. Appointment of Commissioner. The Mayor, with the consent of the City Council, shall appoint one member of the City Council to serve on the RCTC.

PASSED, APPROVED, AND ADOPTED this 1st day of July, 2008.

_____
Bob Cashman, Mayor

ATTEST:

_____
John Danielson, Interim City Clerk

APPROVED AS TO FORM:

_____
Julie Hayward Biggs, Interim City Attorney

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE)
CITY OF WILDOMAR)

I, John Danielson, Interim City Clerk of the City of Wildomar, do hereby certify that the foregoing Resolution No. 08-45 was duly adopted by the City Council of the City of Wildomar at a regular meeting thereof, held on the 1st day of July, 2008, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

_____
John Danielson, Interim City Clerk

RESOLUTION NO. 08-46

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, APPROVING MEMBERSHIP IN THE LEAGUE OF CALIFORNIA CITIES

THE CITY COUNCIL OF THE CITY OF WILDOMAR DOES RESOLVE AS FOLLOWS:

SECTION 1. Recitals.

(a) The City of Wildomar was incorporated on July 1, 2008, as a general law city of the State of California; and

(b) The City is eligible for membership in various organizations representing the interests of cities; and

(c) The league of California Cities is an association of California City Officials who work together to enhance their knowledge and skills, exchange information, and combine resources so that they may influence policy decisions that affect cities.

(d) The City will benefit from membership in the League of California Cities.

SECTION 2. Join the League of California Cities. The City Manager is directed to take the necessary steps for the City to join the League of California Cities.

PASSED, APPROVED, AND ADOPTED this 1st day of July, 2008.

Bob Cashman, Mayor

ATTEST:

John Danielson, Interim City Clerk

APPROVED AS TO FORM:

Julie Hayward Biggs, Interim City Attorney

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE)
CITY OF WILDOMAR)

I, John Danielson, Interim City Clerk of the City of Wildomar, do hereby certify that the foregoing Resolution No. 08-46 was duly adopted by the City Council of the City of Wildomar at a regular meeting thereof, held on the 1st day of July, 2008, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

_____
John Danielson, Interim City Clerk

RESOLUTION NO. 08-47

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, APPROVING MEMBERSHIP IN THE WESTERN RIVERSIDE COUNTY REGIONAL CONSERVATION AUTHORITY

THE CITY COUNCIL OF THE CITY OF WILDOMAR DOES RESOLVE AS FOLLOWS:

SECTION 1. Recitals.

(a) The City of Wildomar was incorporated on July 1, 2008, as a general law city of the State of California.

(b) The City is eligible to participate in various organizations representing the interests of cities.

(c) The Western Riverside County Regional Conservation Authority (RCA) is a joint powers authority (JPA) charges with administering the Multiple Species Habitat Conservation Plan (MSHCP).

(d) The Local Agency Formation Commission conditions of approval for the incorporation of Wildomar require the City to join the RCA and participate in the MSHCP.

SECTION 2. Join RCA. The City Manager shall take the necessary steps for the City to join the RCA, and the Mayor is hereby authorized to enter into the JPA for RCA on behalf of the City.

SECTION 3. Board of Directors. The Mayor, with the consent of the City Council, shall appoint one member of the City Council to serve on the RCA Board of Directors.

PASSED, APPROVED, AND ADOPTED this 1st day of July, 2008.

_____
Bob Cashman, Mayor

ATTEST:

_____
John Danielson, Interim City Clerk

APPROVED AS TO FORM:

_____
Julie Hayward Biggs, Interim City Attorney

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE)
CITY OF WILDOMAR)

I, John Danielson, Interim City Clerk of the City of Wildomar, do hereby certify that the foregoing Resolution No. 08-47 was duly adopted by the City Council of the City of Wildomar at a regular meeting thereof, held on the 1st day of July, 2008, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

_____
John Danielson, Interim City Clerk

RESOLUTION NO. 08-48

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, REQUESTING THE CALIFORNIA HIGHWAY PATROL TO CONTINUE TO PROVIDE TRAFFIC ENFORCEMENT SERVICES WITHIN THE CITY

THE CITY COUNCIL OF THE CITY OF WILDOMAR DOES RESOLVE AS FOLLOWS:

SECTION 1. Request for Continuation of Services. The California Highway Patrol is respectfully requested to continue to furnish traffic enforcement services within the recently incorporated City of Wildomar.

SECTION 2. Transmittal to California Highway Patrol. The Interim City Manager is directed to deliver a copy of this resolution to the California Highway Patrol.

PASSED, APPROVED, AND ADOPTED this 1st day of July, 2008.

Bob Cashman, Mayor

ATTEST:

John Danielson, Interim City Clerk

APPROVED AS TO FORM:

Julie Hayward Biggs, Interim City Attorney

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE)
CITY OF WILDOMAR)

I, John Danielson, Interim City Clerk of the City of Wildomar, do hereby certify that the foregoing Resolution No. 08-48 was duly adopted by the City Council of the City of Wildomar at a regular meeting thereof, held on the 1st day of July, 2008, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

_____
John Danielson, Interim City Clerk

RESOLUTION NO. 08-49

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, RATIFYING THE AGREEMENT FOR THE PROVISION OF INTERIM CONSULTING SERVICES RELATED TO GENERAL PUBLIC WORKS ENGINEERING, CITY ENGINEERING, TRAFFIC ENGINEERING, BUILDING AND SAFETY, PLANNING, CODE ENFORCEMENT AND OTHER RELATED SERVICES

THE CITY COUNCIL OF THE CITY OF WILDOMAR DOES RESOLVE AS FOLLOWS:

SECTION 1. Recitals.

(a) On April 2, 2008, Interim City Manager John Danielson entered into an agreement with Interwest Consulting Group Inc. for the provision of interim consulting services related to general public works engineering, city engineering, traffic engineering, building and safety, planning, code enforcement and other related services for the City of Wildomar ("Agreement").

(b) The City's incorporation having become effective as of July 1, 2008 and the City Council now being properly sworn in and convened, the City Council wishes to ratify and affirm the Agreement.

SECTION 2. Ratification of Agreement. The City Council ratifies and authorizes the Mayor to execute the Agreement between Interwest Consulting Group Inc. and the City as provided in Exhibit "A" attached hereto and fully incorporated herein by reference.

PASSED, APPROVED, AND ADOPTED this 1st day of July, 2008.

_____

Bob Cashman, Mayor

ATTEST:

_____
John Danielson, Interim City Clerk

APPROVED AS TO FORM:

_____
Julie Hayward Biggs, Interim City Attorney

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE)
CITY OF WILDOMAR)

I, John Danielson, Interim City Clerk of the City of Wildomar, do hereby certify that the foregoing Resolution No. 08-49 was duly adopted by the City Council of the City of Wildomar at a regular meeting thereof, held on the 1st day of July, 2008, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

_____
John Danielson, Interim City Clerk

EXHIBIT "A"

AGREEMENT FOR INTERIM CONSULTING SERVICES RELATED TO GENERAL PUBLIC WORKS ENGINEERING, CITY ENGINEERING, TRAFFIC ENGINEERING, BUILDING AND SAFETY, PLANNING, CODE ENFORCEMENT AND OTHER RELATED SERVICES

COPY

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into this 2nd day of April, 2008, by and between City of Wildomar, hereinafter referred to as "CITY", and Interwest Consulting Group Inc., hereafter referred to as "CONSULTANT".

IN CONSIDERATION of the covenants to hereinafter set forth, the parties hereto mutually agrees as follows:

ARTICLE 1
SCOPE OF SERVICES

1.1 Description of Services

CONSULTANT shall perform general Public Works Engineering, City Engineering, Traffic Engineering, Building and Safety, Planning, Code Enforcement and other related services as described in the attached Exhibit A, Scope of Work and as directed by the CITY.

1.2 Schedule of Work

Upon receipt of written Notice to Proceed from the CITY, CONSULTANT shall perform with due diligence the services requested by the CITY and agreed on by CONSULTANT.

ARTICLE 2
COMPENSATION

2.1 Payment Address

All payments due CONSULTANT shall be paid to:

Interwest Consulting Group Inc.
4113 Bellflower Blvd
Long Beach CA 90808

2.2 Terms of Compensation

The Council-elect agrees on behalf of the new City of Wildomar to exercise its best efforts to assure that the City will pay CONSULTANT for services rendered hereunder in accordance with CONSULTANTS schedule of hourly rates and charges attached hereto as part of Exhibit B and incorporated by reference.

CONSULTANT agrees to defer receipt of payment until after the July 1, 2008 (the "Effective Date") and after receipt of tax revenues to the general fund.

No member of the Council-elect shall have any personal responsibility or liability for payment of any fees or costs incurred under this Agreement.

CONSULTANT will bill the new City of Wildomar for its services, costs and expenses on a monthly basis. The Council-elect agrees that after the Effective Date and receipt of its first regular tax revenues, the Council-elect will use its best efforts to assure that all bills received for work done prior to that time will be paid in full within 30 days of receipt of such funds and that all subsequent billings will be paid within 30 days of receipt.

ARTICLE 3
INDEMNIFICATION AND INSURANCE

3.1 Indemnification

CONSULTANT will indemnify and hold harmless CITY, its Boards and its officers and employees and (collectively "CITY"), against any claim, loss or liability that arises because of the sole or primary negligence or willful misconduct of CONSULTANT, its agents, officers, directors of employees, in performing any of the services under this Agreement.

3.2 General Liability

CONSULTANT shall at all times during term of the Agreement carry, maintain, and keep in full force and effect, a policy or policies of Comprehensive General Liability Insurance, with minimum limits of One Million ($1,000,000.00) Dollars for each occurrence and in the aggregate, combined single limit, against any personal injury, death, loss or damage resulting from the wrongful or negligent acts by CONSULTANT. Said policy or policies shall be issued by an insurer admitted to do business in the State of California and rated in Best's Insurance Guide with a rating of B++ or better.

3.3 Professional Liability

CONSULTANT shall at all times during the term of this Agreement, carry, maintain, and keep in full force and effect a policy or policies of professional liability insurance with a minimum limit of one million ($1,000,000.00) dollars. Said policy or policies shall be issued by an insurer admitted to do business in the State of California and rated in Best's Insurance Guide with a rating of B++ or better.

3.4 Worker's Compensation

CONSULTANT agrees to maintain in force at all times during the performance of work under this Agreement worker's compensation insurance as required by the law. CONSULTANT shall require any subcontractor similarly to provide such compensation insurance for their respective employees.

3.5 Notice of Cancellation

All insurance policies shall provide that the insurance coverage shall not be canceled by the insurance carrier without thirty (30) days prior written notice to CITY. CONSULTANT agrees that it will not cancel or reduce said insurance coverage.

CONSULTANT agrees that if it does not keep the aforesaid insurance in full force and effect, CITY may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, CITY may take out the necessary insurance and pay, at CONSULTANT'S expense, the premium thereon.

3.6 Certificate of Insurance

At all times during the term of this Agreement, CONSULTANT shall maintain on file with the CITY Clerk a certificate of insurance showing that the aforesaid policies are in effect in the required amounts. The comprehensive general liability policy shall contain endorsements naming the CITY, its officers, and employees as additional insured.

3.7 Primary Coverage

The insurance provided by CONSULTANT shall be primary to any coverage available to CITY. The insurance policies (other than worker's compensation and professional liability) shall include provisions for waiver of subrogation.

ARTICLE 4
TERMINATION

4.1 Termination of Agreement

(a) This Agreement may be terminated at any time, with or without cause, by either party upon thirty (30) days prior written notice. Notice shall be deemed served upon deposit in the United States Mail of a certified letter, postage prepaid, return receipt requested, addressed to the other party, or upon personal service of such notice to the other party, at the address set forth in Article 6.11.

(b) In the event of termination or cancellation of this Agreement by CONSULTANT or CITY, due to no fault or failure of performance by CONSULTANT, CONSULTANT shall be paid compensation for all services performed by CONSULTANT, in an amount to be determined as follows; for work done in accordance with all of the terms and provisions of this Agreement, CONSULTANT shall be paid an amount equal to the percentage of services performed prior to the effective date of termination or cancellation in accordance with the work items; provided in no event shall the amount paid exceed the amount which would have been paid to CONSULTANT for the full performance of the services.

ARTICLE 5
OWNERSHIP OF DOCUMENTS

5.1 Ownership of Documents and Work Product

All plans, specifications, reports and other design documents prepared by CONSULTANT pursuant to this Agreement are instruments of service, which shall be deemed the property of the CITY. CITY acknowledges and agrees that all plans,

specifications, reports and other design documents prepared by CONSULTANT pursuant to this Agreement shall be used exclusively on this Project and shall not be used for any other work without the written consent of CONSULTANT. In the event CITY and CONSULTANT permit the reuse or other use of the plans, specifications, reports or other design documents, CITY shall require the party using them to indemnify and hold harmless CITY and CONSULTANT regarding any and all references to CONSULTANT from the plans, specifications, reports and other design documents.

ARTICLE 6
GENERAL PROVISIONS

6.1 Representation

A CITY representative shall be designated by the City Manager and a CONSULTANT representative shall be designated by CONSULTANT as the primary contact person for each party regarding performance of this Agreement.

6.2 Fair Employment Practices/Equal Opportunity Acts

In the performance of this Agreement, CONSULTANT shall comply with all applicable provisions of the California Fair Employment Practices Act (California Government Code Sections 12940-48) and the applicable equal employment provisions of the Civil Rights Act of 1964 (42 U.S.C. 200e-217), and the Americans with Disabilities Act of 1992 (42 U.S.C. § 11200, et seq.).

6.3 Personnel

CONSULTANT represents that it has, or shall secure at its own expense, all personnel required to perform CONSULTANT'S services under this Agreement. CONSULTANT shall make reasonable efforts to maintain the continuity of CONSULTANT'S staff, who are assigned to perform the services hereunder and shall obtain the approval of the Director of Public Works of all proposed staff members who will perform such services. CONSULTANT may associate with or employ associates or subconsultants in the performance of its services under this Agreement, but at all times shall be responsible for their services.

6.4 Conflicts of Interest

CONSULTANT agrees not to accept any employment or representation during the term of this Agreement which is or may likely make CONSULTANT "financially interested" (as provided in California Government Code Section 1090 and 87100) in any decisions made by CITY on any matter in connection with which CONSULTANT has been retained pursuant to this Agreement.

6.5 Legal Action

(a) Should either party to this Agreement bring legal action against the other, the case shall be brought in a court of competent jurisdiction in Riverside County, California, and the party prevailing in such action shall be entitled to recover its costs of

litigation, including reasonable attorneys' fee which shall be fixed by the judge hearing the case and such fee shall be included in the judgement.

(b) Should any legal action about the Project between CITY and a party other than CONSULTANT require the testimony of CONSULTANT when there is no allegation that CONSULTANT was negligent, CITY shall compensate CONSULTANT for its testimony and preparation to testify at the hourly rates in effect at the time of such testimony.

6.6 Assignment

This Agreement shall not be assignable by either party without the prior written consent of the other party.

Notwithstanding the above, CONSULTANT may use the services of persons and entities not in CONSULTANT'S direct employ, when it is appropriate and customary to do so. Such persons and entities include, but are not necessarily limited to specialized consultants, and testing laboratories. CONSULTANT'S use of subcontractors for additional services shall not be unreasonably restricted by the CITY provided CONSULTANT notifies the CITY in advance.

6.7 Independent Contractor

CONSULTANT is and shall at all times remain, as to the CITY, a wholly independent CONTRACTOR. Neither the CITY nor any of its agencies shall have control over the conduct of CONSULTANT or any of the CONSULTANT'S employees, except as herein set forth. CONSULTANT expressly warrants not to, at any time or in any manner, represent that it, or any of its agents, servants or employees, are in any manner agents, servants or employees of CITY, it being distinctly understood that CONSULTANT is, and shall at all times remain to CITY, a wholly independent contractor and CONSULTANT'S obligations to CITY are solely such as are prescribed by this Agreement.

6.8 Hazardous Materials

Unless otherwise provided in this Agreement, CONSULTANT and its subconsultants and/or contractors shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to hazardous materials in any form at the site of the Project.

6.9 Titles

The titles used in this Agreement are for general reference only and are not part of the Agreement.

6.10 Extent of Agreement

This Agreement represents the entire and integrated Agreement between CITY and CONSULTANT and supersedes all prior negotiations, representations or

agreements, either written or oral. This Agreement may be modified or amended only by a subsequent written agreement signed by both parties.

6.11 Notices

All notice pertaining to this Agreement shall be in writing and addressed as follows:

If to CONSULTANT:

Mr. Terry J. Rodrigue
Interwest Consulting Group Inc.
4113 Bellflower Blvd
Long Beach, CA 90808

If to CITY:

_____
_____
_____
_____

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

Interwest Consulting Group, Inc.

BY: _____

Director, Municipal Services

Title

Dated: April 16, 2008

City of Wildomar

BY: _____

City Manager

Title

Dated: 4-16-2008

EXHIBIT A - 1
SCOPE OF WORK
Transition Services

During the Transition Period of April 1 to July 1, 2008, our focus and work efforts will be directed toward initiatives which will result in (1) the gathering of essential information and key data which will serve as the basis for confirming service area responsibilities for the City of Wildomar, (2) preparation of fiscally prudent and conservative operating budgets, (3) identifying cost effective, efficient, and innovative methods of providing Public Works, Planning, Building and Safety, and Code Enforcement activities and services transitioned from the County of Riverside, and (4) identifying those areas which should be transitioned immediately from the County and those services which the Council may choose to have provided by the County for the first fiscal year.

More specifically, Interwest Consulting Group will focus on the following:

Relationships with Key Regional Partners – Developing effective working relationships with key regional partners will be critical to the smooth transition of services. The ability to develop professional and cooperative working relationships will be important to gain valuable access to their experience, historical knowledge, and understanding of past, current, and future service and infrastructure issues and deficiencies. These relationships will also assist in the identification and agreement of specific service area boundaries to prevent wasteful duplication of services and to also eliminate the potential of service gaps after transition.

Key regional partners include:

- County of Riverside
- Riverside County Flood Control District
- Elsinore Valley Municipal Water District
- Riverside County Fire Department
- Riverside County Sheriff Department
- Southern California Edison
- Southern California Gas
- Riverside Transit Agency
- Riverside County Transportation Commission
- Western Riverside Council of Governments
- Southern California Association of Governments

Planning Review and Environmental Assessment – Transition services will include meeting with appropriate Riverside County staff members and creating a Comprehensive Development Matrix of all development projects currently in the development entitlement process. This comprehensive picture of pending development projects will facilitate the identification of potential issues which will be presented to the Wildomar City Council Elect for input and guidance. A review of existing Riverside County land use and zoning regulations will also be performed to ensure that future Wildomar development is consistent with the City Council's vision for the future. The transition of development project reviews and implementation from the County to the City will be guided by professional planning and environmental analysis staff. Current and pending projects will be a primary focus to ensure that applicants and their projects are not unnecessarily delayed.

Transition services will also include review of adopted land use regulations with the Wildomar Council elect to ensure the City's regulations are adequate, complete, and appropriate for the community. The current fee structure will also be reviewed and options for full cost recovery for development services will be explored.

Infrastructure Review and Assessment – As part of our initial contact with regional agencies currently providing services to Wildomar, we will begin accumulating existing and historical information regarding:

- Existing infrastructure – identifying current service areas, condition and known problems/issues
- Availability of master plans and studies
- Programmed capital improvements
- Infrastructure planning studies, designs, or projects in process

The primary focus of this activity during the Transition Period is not to gain intimate knowledge of the existence, location, and conditions of existing infrastructure systems. The purpose is to obtain a general understanding of the extent and nature of the level and cost of services currently provided to Wildomar in terms of transportation, drainage, and flood control.

Development Activity Review – It will be important to provide the City Council with a comprehensive picture of all development related activities within the City of Wildomar. Important information to collect includes:

- Historical and current information regarding building permits issued
- Historical and current information regarding valuation of private construction activity
- Numbers and types of building inspections performed
- Inventory of all development projects in each stage of the entitlement process including those permitted projects which have yet to begin construction
- Number and types of projects in the entitlement and plan review phase

Once again the purpose is not to gain intimate knowledge of historical development activities, but to prepare a comprehensive picture of all development related activities being undertaken in the City. This information will enable our team to identify development related demands and to estimate revenues for operating budget purposes, staffing needs, and to advise and make recommendations with regards to how to transition and treat projects under construction, in plan review, or in the "pipeline" on July 1st.

Municipal Service Delivery Methods – Services to be transferred from Riverside County to the City of Wildomar are identified in Figure 6 of the Wildomar Incorporation Comprehensive Fiscal Analysis. It will be important to meet with appropriate Riverside County staff to gain an understanding of current service levels and costs for each of the services to be transitioned. Based on our findings, several service method alternatives and recommendations will be presented. Our experience with newly incorporated cities have shown that despite genuine efforts to incorporate County staff, procedure, and practices into the City structure, inherent problems associated with differences in focus, policy direction, and priorities have ultimately led to a complete transition away from County staff.

Code Compliance Review – Transition services will include meeting with appropriate County agencies to obtain a listing of all code compliance activities currently underway in the City of Wildomar. Our Team will also meet with the City Council Elect to receive input on various issues that the City Council would like to see brought into compliance with the community's standards. The City Council Elect may wish to conduct a public meeting to obtain community input prior to initiating activities. Public involvement at the beginning of new code compliance programs is an excellent way to achieve community buy-in and participation.

Budget Development – We will work with the Finance Transition Team member to update and validate public works, planning, building and safety, and code enforcement fee revenue estimates along with Road Fund related revenues to develop a fiscally prudent operating budget for City Council consideration. In addition to the operating budget, it will also be important to assess the Transportation Capital Improvement needs for the City of Wildomar and your ability to compete for Regional, State and Federal transportation dollars.

Identification and Adoption of Ordinances/Resolutions –The County of Riverside already has in place the necessary ordinances and resolutions which give them full land use and zoning authority, the ability to issue citations for violation of various codes and ordinances, the ability to collect a variety of fees, fines, etc. These Rules and Regulations will be adopted by the City of Wildomar at its first City Council meeting.

In addition, the County collects a variety of Development Impact Fees assessed on new development primarily for the construction of transportation improvements, flood control improvements, fire stations, parks, libraries, etc. Our team will research and identify these ordinances and resolutions which must be adopted by the City of Wildomar to enable all of your

decision-making authority and to also continue the collection of impact fees on new development.

Many newly incorporated cities have missed a vital opportunity during the time period between Cityhood approval and the actual effective date of the City in terms of auditing all of the development services related fee accounts with their respective counties. Our team will review these accounts and ensure that all funds which should be transferred to the City of Wildomar get transferred.

Governance – As a new City, Wildomar has the opportunity to participate as voting members on numerous Regional Boards and Commissions. Participation on these Boards and Commissions are important since their actions has the potential of impacting Wildomar residents and businesses in terms of transportation funding, transit services, flood control, air quality policies, costs for regional services, etc. Accordingly, it will be important for Council Members to become informed advocates on policies and issues affecting your community. Our team will review the various Boards and Commissions available to Wildomar and prepare a brief synopsis of role and purpose, types of issues typically addressed, meeting frequency and location so the Wildomar City Council can make informed decisions regarding your interests and representation.

EXHBIT A - 2
SCOPE OF WORK
On-Call / Staff Augmentation Services

Consultant has contracted, on an on-call basis, to provide a variety of services that may be needed by the City over the contract period. The City may request, and Consultant shall perform, tasks in any one or a combination of services within Consultant's area of expertise, as described below. The City's requests of Consultant may include, but not be limited to comprehensive Public Works, Engineering, Planning, Building and Safety, and Code Enforcement services or, requests for task-specific scope of activities, schedules, budgets and performance measurements. The City has no obligation to request any services under this Contract.

For the purposes of performing the services contemplated by this Contract and giving official status to the performance thereof, where necessary, any one of Consultant's Personnel or Sub-consultant, as defined in this Contract, that is engaged in the performance of services authorized by this Contract, shall be deemed to be an agent of the City while performing such services, provided that such services are within the scope of services authorized by this Contract and are purely municipal functions. Consultant has specified that Mike Kashiwagi shall represent City as Manager of Public Works, Building, and Planning, and Consultant's Personnel serving under Mike Kashiwagi's direction shall act as his deputies.

Consultant's specific areas of services include but are not limited to the following:

- Provide qualified, experienced individuals to represent the City as City Public Works Director, City Engineer, City Building Official and City Planning Director;
- Provide qualified and experienced working managers and staff support to lead each key service area in the Public Works, Building and Safety, Planning Departments, and Code Enforcement Departments;
- Attend City Council, Planning Commission and other meetings as necessary to represent City engineering, building and safety, planning, code enforcement and other areas as necessary;
- Research and determine County activities related to Engineering/Public Works, Building and Safety, Planning, and Code Enforcement;
- As determined appropriate, transfer services and records from the County in a seamless manner;
- Provide development processing, plan and map checking, and on site inspection for all new development activity;
- Research, prepare, and coordinate grant funding requests;

- Coordinate the City's transportation program with the County of Riverside, Riverside County Transportation Commission, Western Riverside Council of Governments, Southern California Association of Governments, Riverside Transit Agency and other local, regional, state and federal programs;

- Represent the City at meetings with other agencies, special districts, community groups and members of the development community as needed;

- Prepare and administer the City's Development Services Budget and Capital Improvement Program Budget;

- Provide oversight, management and preparation of all environmental compliance efforts, environmental contracts and the implementation of mitigation monitoring programs;

- Provide advance planning on special projects;

- Develop specific finance plans and strategies necessary to implement development projects in the City;

- Prepare, review and administer public facilities infrastructure master plans

- Prepare, implement and administer the City's first General Plan and applicable planning documents including the creation of the City's Zoning Code;

- Manage and provide code enforcement and abatement;

- Provide environmental on-site inspections and field surveys;

- Assist with Regional Planning activities;

- Provide project management services for the preparation of contract documents and specifications for public infrastructure projects;

- Provide design services for various public works projects;

- Provide Real Estate Acquisition and Relocation Services for City projects;

- Provide services in the support of the preparation of environmental documents for City projects or for development projects being processed by the City;

- Provide construction management services including administering labor compliance and field observation of the construction of infrastructure projects;

- Establish and manage appropriate levels of proactive maintenance of the City's infrastructure;

- Prepare various legal descriptions, maps and field surveys as may be required;

- Manage third party agreements with the City;

- Provide City Traffic Engineering related services such as traffic safety investigations, speed zone surveys, route planning, corridor analysis, capacity evaluations, bicycle and pedestrian facilities analysis, traffic impact reports, computer modeling, congestion management programs, traffic signal and control systems, parking facilities, street signage and marking programs, and street lighting;

- Assist the City with environmental compliance efforts, environmental contracts, and the implementation of mitigation monitoring programs;

- Establish and maintain a City GIS system to meet the needs of various City departments;

- Direct street maintenance and beautification programs;

- Establish an on-site customer service team that provides a full range of project application processing and management to the public, which includes direct counter and phone assistance, project tracking, as needed field meetings, code interpretation assistance, a 24-hour inspection request line and on-line information.

- Prepare a comprehensive package of application forms, informational handouts, FEMA maps, and other materials in order to make information accessible and useful to the public and allow the processing of projects for Public Works, Building and Safety, and Planning Departments;

- Oversee and manage the preparation of a comprehensive pavement management system;

- Manage the City's storm water program and coordinate with other regional, state and federal agencies as may be necessary including the preparation for emergency situations, address specific areas of concern as may arise, coordinate the City's NPDES requirements with the County and take actions as may be appropriate for the City;

- As part of developing the City's long-range Capital Improvement Program, undertake a comprehensive review of all finance programs currently underway or proposed including all debt finance programs, developer fee programs, specific development finance plans, other regional, state and federal funding programs;

- Provide creative solutions to difficult and unforeseen problems;

- Keep the City Council and City Manager abreast in current technology, materials and methods in the public works and building and safety arena;

- Provide services to support other City departments as requested such as administrative, City Clerk Services, Finance and Accounting, Information Technology; and

- Provide additional expertise and services in the areas of public works, water/wastewater engineering, street and roadway engineering, traffic engineering, building and safety plan check and inspection, capital facilities and infrastructure financing, environmental planning, long range and current planning, code enforcement, or other areas, which may be required by the City.

Exhibit B-1
Transition Services
City of Wildomar

The rates shown below will serve as the billable rates for the Interwest Team for services performed in support of accomplishing the transition of Municipal Services from Riverside County to the City of Wildomar.

The Interwest Team will provide professional engineering and planning services to the City of Wildomar as necessary in accordance with the following Rate Schedule. Interwest will prepare and send monthly statements identifying staff costs as well as a summary of work performed. A summary of current month and total costs to date will also be provided with each statement.

Billing Classification		**Hourly Billing Rate**
Team Leader	$	**110.00**
Transition Team	$	**100.00**
Staff Engineers	$	**80.00-115.00**
Staff Planners	$	**80.00-115.00**
Administrative Support	$	**45.00-60.00**

All outside services and direct expenses are charged at cost plus 10%. Rates are reviewed annually on July 1st and may be subject to revision.

Exhibit B-2
On-Call / Staff Augmentation Services
City of Wildomar

Interwest Consulting Group proposes to be hired on an On-Call and staff augmentation basis to provide a variety of services as described in Exhibit A-2, Scope of Work. The City will be able to request the performance of tasks in any one or combination of services. The fee will be determined on a time and materials basis using the following hourly rates.

For private development related work activities, fixed fees per an agreed upon fee schedule can be developed if desired by the City of Wildomar.

Public Works		**Hourly Billing Rates**
Manager Engineering and Building	$	140.00
City Engineer	$	135.00
City Traffic Engineer	$	130.00
Supervising Engineer	$	130.00
Senior Engineer/Senior Proj. Manager	$	125.00
Engineering Associate III/Project Manager	$	110.00
Engineering Associate II/Project Engineer	$	105.00
Engineering Associate I	$	100.00
Engineering Technician III	$	90.00
Engineering Technician II	$	80.00
Engineering Technician I	$	70.00
Transportation Services Manager	$	125.00
Supervising Transportation Planner	$	120.00
Senior Transportation Planner	$	115.00
Associate Transportation Planner III	$	110.00
Associate Transportation Planner II	$	105.00
Associate Transportation Planner I	$	100.00
Construction Services Manager	$	125.00
Senior Construction Manager	$	115.00
Construction Manager	$	110.00
Assistant Construction Manager	$	100.00
Supervising Public Works Observer	$	100.00
Senior PW Observer III	$	97.00
Senior PW Observer II	$	92.00
Senior PW Observer I	$	87.00
Public Works Observer III	$	85.00
Public Works Observer II	$	80.00
Public Works Observer I	$	75.00
Building & Safety		
City Building Official	$	135.00
Deputy Building Official	$	130.00
Supervising Plan Review Engineer	$	125.00
Senior Plan Review Engineer	$	120.00

Supervising Building Inspector	$	115.00
Plan Review Engineer	$	110.00
Senior Plans Examiner	$	105.00
Senior Building Inspector	$	105.00
Plans Examiner III	$	100.00
Plans Examiner II	$	90.00
Plans Examiner I	$	80.00
Building Inspector II	$	85.00
Building Inspector I	$	75.00
Permit Technician II	$	70.00
Permit Technician I	$	60.00
Real Estate		
Real Estate Property Manager	$	125.00
Senior Real Property Agent	$	120.00
Real Property Agent III	$	110.00
Real Property Agent II	$	100.00
Real Property Agent I	$	90.00
Real Property Assistant	$	80.00
GIS		
GIS Manager	$	125.00
Senior GIS Analyst	$	120.00
GIS Analyst III	$	115.00
GIS Analyst II	$	110.00
GIS Analyst I	$	95.00
GIS Assistant	$	85.00
Information Technology		
IT Manager	$	125.00
Senior IT Specialist	$	105.00
IT Specialist	$	85.00
Assistant IT Specialist	$	75.00
IT Technician	$	60.00
Architectural		
Senior Architect	$	125.00
Architect	$	120.00
Landscape Architect	$	115.00
Associate Architect	$	110.00
Architect Assistant	$	100.00
Accounting		
Senior Accountant	$	100.00
Accountant	$	80.00
Accounting Assistant	$	60.00
Accounting Technician	$	40.00
Administrative		
Administrative Manager	$	80.00

Senior Administrative	$	60.00
Administrative III	$	55.00
Administrative II	$	50.00
Administrative I	$	45.00
Student Intern	$	35.00
Planning and Environmental		
Municipal Finance Director	$	160.00
Public Affairs Director	$	150.00
Municipal Finance Manager	$	140.00
Planning Director	$	135.00
Principal Planner	$	130.00
Municipal Finance Analyst	$	125.00
Housing Specialist	$	125.00
Public Finance Coordinator	$	125.00
Senior Planner II	$	125.00
Senior Public Information Officer II	$	120.00
Senior Park Planner	$	115.00
Cultural Resources Specialist	$	115.00
Senior Biologist I	$	115.00
Senior Communications Manager	$	105.00
Senior Planner I	$	105.00
Public Information Officer	$	100.00
Associate Planner II	$	95.00
Biologist/Ecologist II	$	95.00
Environmental Planner	$	95.00
Associate Planner I	$	90.00
Assistant Planner	$	80.00
Biologist/Ecologist I	$	80.00
Graphic Designer II	$	80.00
Associate Botanist I	$	75.00
Marketing Communications Specialist	$	75.00
Code Compliance Officer	$	75.00
Graphic Designer I	$	75.00
Grant Technician	$	60.00
Archaeological Technician	$	60.00
Planning Technician	$	55.00

All outside services and direct expenses are charged at cost plus 10%. Rates are reviewed annually on July 1st and may be subject to revision.