REGULAR MEETING

MONTGOMERY COUNTY COMMISSION

NOVEMBER 23, 2009

AGENDA

INFORMATION SESSION

Call to Order, Welcome at 8:00 a.m.

Prayer Led by Commissioner Williams

Reports from Staff:

- County Administrator
- Deputy Administrator
- County Attorney
- County Engineer

Comments from Scheduled Attendees:

- Cassandra Crosby and Ron Drinkard with Crosby Drinkard Group
- Chief Deputy District Attorney Daryl Bailey and Lee Meriwether with John Stanley and Associates
- Assistant Chief Clerk Pat Murphy
- Larry Carter with T.C.U. Consulting Services, LLC

Recess to Formal Session

FORMAL SESSION

Welcome at 9:30 a.m.

Invocation by Commissioner Williams

Pledge of Allegiance Led By Commissioner Wilson

Call of Roll to Establish Quorum

Presentation of the Minutes of the Regular Meeting of November 9, 2009

CONSENT AGENDA:

Consider Approval of Accounts Payable Checks and Payroll Checks

NEW BUSINESS:

1. Consider Approval of the 2010 County Commission Meeting Schedule, County Commission

2. Consider Approval of Grant Application to the ADECA for the Recovery Act STOP Violence Against Women Formula Grant Program and Adoption of Related Resolution of Applicant for Matching Funds, District Attorney's Office

3. Consider Approval of Change Order Number 14 with Bell and Associates Construction, LP Regarding Montgomery County Detention Facility, County Commission

4. Consider Approval of Miscellaneous Appropriations Reprogramming Requests, County Commission

5. Consider Approval of Bid Award for Catering of Meals at the Community Centers, Bid Number 51100-09B-028, County Commission

6. Consider Approval of Bid Award for Computer Equipment, Bid Number 51260-09B-026, District Attorney's Office

7. Consider Approval of Bid Award for Self-Propelled Diesel Road Widener, Bid Number 53100-09B-024, Engineering Department

8. Consider Approval of Bid Award for Transmission Service, Bid Number 52110-09C-023, Sheriff's Office

9. Consider Approval of Budget Change Request Number 2, County Commission Appropriations

10. Consider Approval of Travel/Training Requests (4)

Reports from Staff:

County Administrator
Deputy Administrator
County Engineer
County Attorney

Comments from Citizens

Discussion Items by Commissioners

Recess to Information Session

INFORMATION SESSION

Comments from Scheduled Attendees:

BONDS Program Director Regina Berry
Cathy Gerachis with Goodwyn, Mills and Cawood
Information Systems Director Lou Ialacci

Reports from Staff:

County Administrator
Deputy Administrator
Manager of Public Affairs

Adjourn

CALENDAR OF EVENTS

NOVEMBER 23, 2009	Regular County Commission Meeting 8:00 a.m. - Information Session 9:30 a.m. - Formal Session After Conclusion of the Formal Session, an Information Session will be conducted until 12:00 Noon.
NOVEMBER 26 & 27, 2009	County Holiday (Thanksgiving Day)
DECEMBER 7, 2009	Regular County Commission Meeting 8:00 a.m. - Information Session 9:30 a.m. - Formal Session After Conclusion of the Formal Session, an Information Session will be conducted until 12:00 Noon.
DECEMBER 21, 2009	Regular County Commission Meeting 8:00 a.m. - Information Session 9:30 a.m. - Formal Session After Conclusion of the Formal Session, an Information Session will be conducted until 12:00 Noon.
DECEMBER 25, 2009	County Holiday (Christmas Day)
JANUARY 1, 2010	County Holiday (New Year's Day)

PERSONNEL ACTIONS

Fill action continues for 1 Clerk Typist II – County Commission Office
Fill action continues for 1 Grant Specialist – Public Affairs Department
Fill action continues for 2 Customer Service Clerks – Probate Judge's Office
Fill action continues for 1 Clerk III – Probate Judge's Office
Fill action continues for 1 Probate Court Clerk – Probate Judge's Office
Fill action continues for 1 Clerk III – Revenue Commissioner's Office
Fill action continues for 1 Revenue Auditor – Tax & Audit Department
Fill action continues for 1 Clerk Typist II – Support Services Department
Fill action continues for 1 Program Analyst I – Information Systems Department
Fill action continues for 1 Identification Officer – Sheriff's Office
Fill action continues for 2 Fingerprint Classifier II's – Sheriff's Office
Fill action continues for 2 Deputy Sheriff Sergeants – Sheriff's Office
Fill action continues for 1 Deputy Sheriff Lieutenant – Sheriff's Office
Fill action continues for 1 Emergency Communications Operator I or II – Sheriff's Office
Fill action continues for 2 Clerk Typist II's – Sheriff's Office
Fill action continues for 2 Deputy Sheriff Trainees – Sheriff's Office
Fill action continues for 9 Correction Officer Trainees – Detention Facility
Fill action continues for 1 Correction Officer Sergeant – Detention Facility
Fill action continues for 1 Correction Officer Corporal – Detention Facility
Fill action continues for 1 Correction Officer Captain – Detention Facility
Fill action continues for 1 Correction Officer Lieutenant – Detention Facility
Fill action continues for 4 Clerk II's – Detention Facility
Fill action continues for 1 Detention Facility Director – Detention Facility
Fill action continues for 1 Relief Juvenile Detention Officer – Youth Facility
Fill action continues for 1 Maintenance Mechanic – Youth Facility
Fill action continues for 2 County Road Equipment Operator I's – Engineering Department
Fill action continues for 1 County Road Equipment Operator II – Engineering Department
Fill action continues for 1 Civil Engineer Tech I – Engineering Department
Fill action continues for 1 Community Corrections Officer – Community Corrections
Fill action continues for 1 Worthless Check Director – District Attorney's Worthless Check Unit
Fill action continues for 1 Clerk IV – District Attorney's Worthless Check Unit
Fill action continues for 1 Clerk II – District Attorney's Worthless Check Unit
Fill action continues for 1 Case Manager I – District Attorney's Child Support Unit

November 23, 2009

Agenda

NOV 23 2009

11-23-09 Meeting

MONTGOMERY COUNTY COMMISSION

THE FOLLOWING ACCOUNTS PAYABLE WERE AUDITED AND ORDERED PAID

CHECKS ARE DATED 11-06-09

Check Number	To	Check Number
203588		203692
Total Checks Paid		$600,279.50

INFORMATION PERTAINING TO PAYEES OF THE CHECKS AND AMOUNTS PAID ARE MAINTAINED IN THE FINANCE DEPARTMENT IN THE ACCOUNTS PAYABLE CHECK REGISTER

Agenda

NOV 23 2009

11-23-09 Meeting

MONTGOMERY COUNTY COMMISSION

THE FOLLOWING ACCOUNTS PAYABLE WERE AUDITED AND ORDERED PAID

CHECKS ARE DATED 11-13-09

Check Number	To	Check Number
203694		203813
Total Checks Paid		$253,437.97

CHECK #	PAYEE	AMOUNT	DATE
203693	Doyin Ogunbi	$ 4,631.25	11/12/09

INFORMATION PERTAINING TO PAYEES OF THE CHECKS AND AMOUNTS PAID ARE MAINTAINED IN THE FINANCE DEPARTMENT IN THE ACCOUNTS PAYABLE CHECK REGISTER

Agenda

NOV 23 2009

11-23-09 Meeting

MONTGOMERY COUNTY COMMISSION

THE FOLLOWING ACCOUNTS PAYABLE WERE AUDITED AND ORDERED PAID

CHECKS ARE DATED 11-13-09

Check Number	To	Check Number
203814		203900
Total Checks Paid		$385,089.68

INFORMATION PERTAINING TO PAYEES OF THE CHECKS AND AMOUNTS PAID ARE MAINTAINED IN THE FINANCE DEPARTMENT IN THE ACCOUNTS PAYABLE CHECK REGISTER

Agenda

NOV 23 2009

11-23-09 Meeting

MONTGOMERY COUNTY COMMISSION

THE FOLLOWING ACCOUNTS PAYABLE WERE AUDITED AND ORDERED PAID

CHECKS ARE DATED 11-20-09

Check Number	To	Check Number
203903		203989
Total Checks Paid		$319,430.24

CHECK #	PAYEE	AMOUNT	DATE
203901	Ben Atkinson Chevy, Inc.	$53,338.00	11/18/09
203902	Ben Atkinson Motors, Inc.	$53,338.00	11/18/09

INFORMATION PERTAINING TO PAYEES OF THE CHECKS AND AMOUNTS PAID ARE MAINTAINED IN THE FINANCE DEPARTMENT IN THE ACCOUNTS PAYABLE CHECK REGISTER

Agenda

NOV 23 2009

11-23-09 Meeting

MONTGOMERY COUNTY COMMISSION

THE FOLLOWING ACCOUNTS PAYABLE WERE AUDITED AND ORDERED PAID

CHECKS ARE DATED 11-20-09

Check Number	To	Check Number
203990		204077
Total Checks Paid		$272,787.69

INFORMATION PERTAINING TO PAYEES OF THE CHECKS AND AMOUNTS PAID ARE MAINTAINED IN THE FINANCE DEPARTMENT IN THE ACCOUNTS PAYABLE CHECK REGISTER

11/23/09 Meeting

Agenda

NOV 23 2009

MONTGOMERY COUNTY COMMISSION

THE FOLLOWING TRANSACTIONS WERE AUDITED AND ORDERED PAID

CHECKS ARE DATED 11/20/09

Payroll Check Number	100708	To	Payroll Check Number	100875	$ 128,819.61
Direct Deposits					$ 811,311.87
Payroll Check Number	100876	To	Payroll Check Number	100905	$ 278,318.70
Direct Deposits					$ 329,551.81
Federal Deposits					$ 320,467.20
Total Payroll Paid					$ 1,868,469.19

CHECK #	PAYEE	AMOUNT	DATE
100703	Anna Goodwin	$ 248.48	11/09/09
100704	Angela Howard	$ 226.35	11/09/09
100705	La Shasta Sankey	$ 224.81	11/09/09
100706	Linda Carter	$ 164.03	11/09/09
100707	Employees Retirement System of AL	$ 170.15	11/10/09

INFORMATION PERTAINING TO PAYEES OF THE CHECKS AND AMOUNTS PAID ARE MAINTAINED IN THE FINANCE DEPARTMENT IN THE PAYROLL CHECK REGISTER

Office of Public Affairs
P.O. Box 1667
Montgomery, AL 36102
(334) 832-1270

Agenda
NOV 23 2009

To: Montgomery County Commissioners

From: DiDi Henry
Public Affairs Manager

RE: 2010 County Commission Meeting Schedule

Please find attached the proposed 2010 Meeting Schedule for the County Commission. As I discussed in the information session at the last Commission meeting, we will again have a scheduling conflict for our meetings in December 2010. Christmas Eve will be on a Friday and Christmas Day on a Saturday. The Governor could possibly give employees time off on either Christmas Eve or on the Monday afterwards, which is the regularly scheduled County Commission meeting date.

Therefore, I am proposing that the County Commission meetings be moved to the 1st and 3rd Mondays in December 2010, to better accommodate the preparation of the meetings' agendas and scheduling of attendees, during the Christmas holiday season. I am asking that this be approved by the Commission during the November 23rd meeting, so that the 2010 Meetings Calendar can be sent out to the media and posted on the County's website in December.

Thank you for your consideration.

Office of Public Affairs
P.O. Box 1667
Montgomery, Alabama
(334) 832-1270

To: Local Media
From: DiDi Henry
Public Affairs Manager
(334) 832-1270

Subject: 2010 Montgomery County Commission Meeting Schedule

January	July
Monday, January 11th	Monday, July 12th
Monday, January 25th	Monday, July 26th
February	**August**
Monday, February 8th	Monday, August 9th
Monday, February 22nd	Monday, August 23rd
March	**September**
Monday, March 8th	Monday, September 13th
Monday, March 22nd	Monday, September 27th
April	**October**
Monday, April 12th	Tuesday, October 12th *
Monday, April 26th	Monday, October 25th
May	**November**
Monday, May 10th	Monday, November 8th
Monday, May 24th	Monday, November 22nd
June	**December**
Monday, June 14th	Monday, December 6th
Monday, June 28th	Monday, December 20th

The Information Session begins at 8:00 a.m. at the Commissioner's Conference Room. The Formal Session begins at 9:30 a.m., in the Commissioners' Court. All sessions are held on the first floor of the Montgomery County Administration Building, Courthouse Annex III, located at 101 S. Lawrence Street.

* This is a Tuesday meeting, in keeping with the County Commission policy, adopted November 12, 2008, which provides for Tuesday meetings when either the second or fourth Monday falls on a holiday. The corresponding holiday is as follows: 10/11/10 - Columbus Day.

1-2

Offices of
Ellen Brooks
District Attorney
Fifteenth Judicial Circuit of Alabama

DARYL D. BAILEY
CHIEF DEPUTY DISTRICT ATTORNEY
RHONDA B. CAPE
ADMINISTRATIVE ASSISTANT
JERRY N. BLOODSWORTH
CHIEF INVESTIGATOR

MONTGOMERY COUNTY COURTHOUSE
251 SOUTH LAWRENCE STREET
P.O. BOX 1667
MONTGOMERY, ALABAMA 36102-1667

(334) 832-2550
FAX (334) 832-1615

Agenda
NOV 23 2009

MEMORANDUM

TO: Donald L. Mims
County Administrator

FROM: Rhonda B. Cape
Administrative Assistant

DATE: November 18, 2009

RE: Recovery Act STOP Violence Against Women Formula Grant Program

The Montgomery County District Attorney's Office is applying to ADECA for a grant through the Recovery Act STOP Violence Against Women Formula Grant Program. The County Commission serves as the sub grantee. The District Attorney's Office provides the matching funds so there is no cost to the County General Fund.

Please place this grant application request on the Montgomery County Commission agenda for Monday, November 23.

Thank you.

ADECA
Law Enforcement/Traffic Safety Division
401 Adams Avenue
P.O. Box 5690
Montgomery, AL 36103-5690

GRANT APPLICATION | **Page 1**

Date Received by LETS
Grant # Assigned (Leave Blank)

Form Revised January 10, 2004

Application is hereby made for a grant under the program described in item 7 below in the amount and for the purpose set forth in this application

1. Applicant
Name Montgomery County Commission
Address 101 South Lawrence Street
Montgomery, AL 36104
Phone #: (334) 832-1259
Fax # (334) 832-2533
E-Mail

2. Implementing Agency

Name Montgomery County District Attorney
Phone # (334) 832-2550

3. Authorizing Official
Name Elton N. Dean, Sr., Chairman
Title Montgomery County Commission
Address 101 South Lawrence Street
Montgomery, AL 36104

Phone # (334) 832-1259
Fax # (334) 832-2533
E-Mail

Signature Date:

4. Project Director

Name Rhonda B. Cape, Administrative Assistant
Address 251 South Lawrence Street
Montgomery, AL 36104
Phone # (334) 832-2550
Fax # (334) 832-1615
E-Mail rhonda.cape@alada.gov

Signature Rhonda B Cape Date: 11/18/09

5. Financial Officer

Name Sherrill Thomas, Finance Director
Address 101 South Lawrence Street
Montgomery, AL 36104
Phone # (334) 832-1268
Fax # (334) 832-2533
E-Mail sherrillthomas@mc-ala.org

Signature Date:

6. Type of Application
☑ Original
☐ Continuation of Previous Grant
Number:

7. Program Under Which Application is Made
Recovery Act Stop Violence Against Women Formula Grant Program

8. Project Start Date (Estimated)
1-Oct-09

9. Project Ending Date (Estimated)
31-Mar-11

10. Does this application require a prior cost approval? ☑ Yes ☐ No

11. Name of the Project (Brief Descriptive Title)
Montgomery County District Attorney's Office System Development

12. Grant Funds Requested

$ 75,000.00

13. Will other Federal Support be available for any part of this project? ☐Yes ☑No

(If yes, identify and explain on Page 9)

14. Total Project Duration *(in Months)*

18

15. Project Summary: (Suitable for a news release pertaining to this project)

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PROJECT SUMMARY

The Montgomery County District Attorney's Office (MCDA) continues to work in all aspects of domestic violence investigation, prosecution and support of victims and related service entities. With full support of the MCDA and a grant to fund a Violence Against Women Prosecution Unit (VAWPU), the office has diligently addressed this problem. In addition to the specialized prosecution unit, VAWPU is involved in numerous outreach efforts to increase awareness overall and to protect the rights of the victims during the law enforcement investigation and judicial process. There is high cooperation with law enforcement and victim service entities that is a model for Alabama and leads to successful prosecution and restorative justice.

The VAWPU has identified a problem in which the solution will further aid both prosecution and victims. An electronic record keeping system is needed that will organize records both individually by case and comprehensively by person, both defendant and victim. This system will aid the VAWPU in case preparation and provide a chronological view of all prior incidents involving the defendant and victim.

Funding is requested for 1) professional services to design and deploy the application and 2) purchase of the hardware related to this project.

ADECA Law Enforcement/Traffic Safety Division 401 Adams Avenue P.O. Box 5690 Montgomery, AL 36103-5690	GRANT APPLICATION	Page 6
	20. Project Narrative **Detailed Budget** Explain computations in the Budget Narrative on Page 8.	
	Form Revised January 10, 2004	

A. Personnel:

List each individual with salary

Name of Employee	Position / Title	Salary	Rate Of Pay (BW, SM)	% of Time Devoted to Project	Annual Income / Unit Cost	Category Total
		$ -	24	100%	$ -	$ -
		$ -	24	100%	$ -	$ -
		$ -	24	100%	$ -	$ -
		$ -	24	100%	$ -	$ -
		$ -	24	100%	$ -	$ -
		$ -	24	100%	$ -	$ -
		$ -	24	100%	$ -	$ -
		$ -	24	100%	$ -	$ -
See Attachment 1 (Personnel)					$ -	$ -
					Salaries Sub-Total	**$ -**

Fringe Benefit Computation

FICA	$ -		7.650%	$ -
SUI	$ -		0.000%	$ -
W/C	$ -		0.000%	$ -
Health Insurance	$ -	0	100.00%	$ -
Health Insurance	$ -	0	0.00%	$ -
Retirement	$ -	0	11.94%	$ -
Other	$ -	0	100.00%	$ -
Other	$ -	0	100.00%	$ -
Other	$ -	0	100.00%	$ -
			Fringe Sub-Total	**$ -**

Total Personnel Expenditures $ -

B. Confidential Expenditures:

Prior approval of procedures is required

1. Purchase of Services	$ -
2. Purchase of Evidence	$ -
3. Purchase of Specific Information	$ -

Total Confidential Expenditures $ -

Professional Services:

Must be itemized

List by individual or type of individual, with fee basis limited
to a reasonable rate not to exceed $450 per day.

1. Individual Consultants and/or Contracting of Service Organizations

Integrated Justice Solutions, LLC	$ 75,000.00
	$ -
	$ -
	$ -
	$ -
	$ -
	$ -

Total Professional Services $ 75,000.00

2-4

ADECA Law Enforcement/Traffic Safety Division 401 Adams Avenue P.O. Box 5690 Montgomery, AL 36103-5690	GRANT APPLICATION	Page 7
	20. Project Narrative **Detailed Budget (Continued)** Form Revised January 10, 2004	

D. Travel:

Transportation & associated cost of project personnel. (Consultant travel is to be included in Category C)

Mileage:		$ -
Per Diem:		$ -
Conference Cost:		$ -
Other:		$ -

Total Travel $ -

E. Operating Expenses:

Must be itemized

	$ -
	$ -
	$ -
	$ -
	$ -
	$ -
	$ -

Total Operating Expense $ -

F. Equipment Purchase:

Must be itemized

Item	Qty	Unit Price	Total Item Cost
Dell PowerEdge R610 Server	1	$ 7,200.00	$ 7,200.00
vSphere 4 Enterprise - 1 socket license - Consolidation	1	$ 1,000.00	$ 1,000.00
Availability Auto Resource Mgmt Features		$ -	$ -
SAN Equipment Central Processing Unit	1	$ 16,800.00	$ 16,800.00
		$ -	$ -
		$ -	$ -
		$ -	$ -
See Attachment 2 (Equipment)			$ -

Equipment Purchase Total $ 25,000.00

Lease or Rental Equipment

		$ -	$ -
		$ -	$ -
See Attachment 2 (Equipment)			$ -

Lease or Rental Total $ -

Total Equipment Expense $ **25,000.00**

Total Project Cost $ **100,000.00**

$ 100,000.00

Matching Ratio:				
	ADECA / LETS %	75%	ADECA / LETS Support	$ 75,000.00
	Match %	25%	Matching Contribution	$ 25,000.00

2-5

ADECA Law Enforcement/Traffic Safety Division 401 Adams Avenue P.O. Box 5690 Montgomery, AL 36103-5690	GRANT APPLICATION Source of Match and Continuation Projection Form Revised January 10. 2004	Page 9

22. Source of Contribution:
(Indicate Sources Per Instructions)

	$ -
District Attorney Fund	$ 25,000.00
	$ -
	$ -
	$ -
	$ -
	$ -
	$ -

Total Matching Contribution: $25,000.00 Match from page 7 $ 25,000.00
Match Differential: $0.00

23. Budget Summary and Projection: **APPLICATION IS INCOMPLETE WITHOUT THIS**
(Total budget of applicant or implementing agency)

Budget Categories	Prior Phase	Present Phase	Successive Phase
A Personnel and Fringe	$ -	$ -	$ -
B Confidential Expenditures	$ -	$ -	$ -
C Professional Services	$ -	$ 100,000.00	$ -
D Travel	$ -	$ -	$ -
E Operating Expenses	$ -	$ -	$ -
F Equipment	$ -	$ -	$ -
Total Budget of Applicant	$ -	$ 100,000.00	$ -
Duration of Project Phase	12	18	12

24. Federal Support:
Will other Federal support be available for any part of this project?
Yes ☐ No ☑ If "Yes", Explain:

25. Federal Submissions:
Have other Federal agencies been contacted for assistance on this or similar projects?
Yes ☐ No ☑ If "Yes", Explain:

Resolution of Applicant for Matching Funds

Whereas, the State of Alabama, through the Alabama Department of Economic and Community Affairs, Law Enforcement/Traffic Safety Division, under the Omnibus Crime Control and Safe Streets Act of 1968, (PL 90-351 as amended and other appropriate federal authorizations, is offering financial aid to combat rising crime, improve the criminal justice system, assist victims of crime, and assist in the problems of juvenile justice; and

Whereas, the **Montgomery County Commission** hereinafter referred to as Applicant, is of the opinion that it would be beneficial to make application for such assistance and

Whereas, said applicant agrees to be accountable for providing the cash match toward the total cost of said project,

NOW, THEREFORE, BE IT RESOLVED by the Applicant

that, **Elton N. Dean, Sr.**, in his/her official capacity

as **Chairman**, be authorized to make

application to the Alabama Department of Economic and Community Affairs, Law Enforcement/Traffic Safety Division, for said financial Assistance.

Adopted this the ________ day of **November** **2009**

I, **Donald L. Mims** (Name), **County Administrator** (Title)

In and for the **Montgomery County Commission**

Do hereby certify that the above is a true and correct copy of a resolution adopted at their regular meeting of ________________, **2009**, and the same appears in the minutes of said meeting.

Witness by hand and official seal of the **Montgomery County Commission**

This the ______ day of **November**, **2009.**

____
(Name)

____
(Title)

A COUNTY OLDER THAN THE STATE

MONTGOMERY COUNTY COMMISSION
P.O. BOX 1667
MONTGOMERY, ALABAMA 36102-1667

ESTABLISHED 1816

Donald L. Mims, CPA, MPA
Administrator
John A. Mitchell, Sr.
Deputy Administrator
(334) 832-1210
FAX (334) 832-2533
TDD (334) 265-3568
www.mc-ala.org

Agenda
NOV 23 2009

November 13, 2009

MEMORANDUM

TO: Montgomery County Commission

FROM: John A. Mitchell, Sr.
Deputy Administrator

SUBJECT: Change Order No. Fourteen
Bell & Associates Construction
Montgomery County Detention Facility

Attached is Change Order No. Fourteen from Goodwin, Mills & Cawood, Inc. and T.C.U. Consulting for the Detention Facility construction project. Change Order No. Fourteen is comprised of items in the amount of $100,681.29 and is forwarded to you for your approval at the next County Commission meeting on November 23, 2009. This change order was previously discussed during the Information Session of the October 12, 2009 Commission meeting.

I agree with the recommendations and ask the Commission to approve the attached change order. Your careful consideration of this matter is greatly appreciated.

JAM/rw

Attachments

T.C.U. CONSULTING SERVICES, LLC

CONSTRUCTION CONSULTANTS

334-279-8765 • 334-272-5731 Fax
P.O. Box 230487
MONTGOMERY, ALABAMA 36123-0487

November 12, 2009

John Mitchell
Montgomery County Commission
P. O. Box 1667
Montgomery, AL. 36102-1667

Dear John:

Enclosed are four (4) originals of Change Order #14 for approval by the Commission. You have previously briefed the Commission on these items at the 10/12/09 Information Session. I recommend approval of the Change Order by the Commission. Please include on the agenda for approval at the next Commission Meeting. Secure Elton Dean's signature and return three to me.

Sincerely,

Larry Carter
Enclosures (4)

cc: file MCDF: a1.1.4 and i2.6
W. K. Upchurch III, letter only
Vicki Loyd, Goodwin, Mills & Cawood, Inc., letter only
Donnie Mims, letter only

AIA® Document G701™ – 2001

Change Order

PROJECT *(Name and address)*: Montgomery County Detention Facility Montgomery, Alabama	**CHANGE ORDER NUMBER:** 014	OWNER: ☒
	DATE: October 22, 2009	ARCHITECT: ☒
TO CONTRACTOR *(Name and address)*: Bell and Associates Construction, LP 255 Wilson Pike Circle Brentwood, TN 39249	**ARCHITECT'S PROJECT NUMBER:** 6-5-010	CONTRACTOR: ☒
	CONTRACT DATE: October 17, 2006	FIELD: ☒
	CONTRACT FOR: General Construction	OTHER: ☐

THE CONTRACT IS CHANGED AS FOLLOWS:
(Include, where applicable, any undisputed amount attributable to previously executed Construction Change Directives)
Items 14.01-14.06 COP 14 (see attached) $ 100,681.29

RECEIVED OCT 27 2009

The original Contract Construction Sum was	$	46,362,000.00
The net change by previously authorized Change Orders	$	1,090,308.97
The Contract Sum prior to this Change Order was	$	47,452,308.97
The Contract Sum will be increased by this Change Order in the amount of	$	100,681.29
The new Contract Sum including this Change Order will be	$	47,552,990.26

The Contract Time will be ** by ** ( ) days.
The date of Substantial Completion as of the date of this Change Order therefore is September 15, 2008

** Resolution of days pending.

NOTE: This Change Order does not include changes in the Contract Sum, Contract Time or Guaranteed Maximum Price which have been authorized by Construction Change Directive until the cost and time have been agreed upon by both the Owner and Contractor, in which case a Change Order is executed to supersede the Construction Change Directive.

NOT VALID UNTIL SIGNED BY THE ARCHITECT, CONTRACTOR AND OWNER.

Goodwyn, Mills and Cawood, Inc.	Bell and Associates Construction, LP	Montgomery County Commission
ARCHITECT *(Firm name)*	**CONTRACTOR** *(Firm name)*	**OWNER** *(Firm name)*
2660 EastChase Lane, Suite 200 (36117) P O Box 242128 Montgomery, AL 36124-2128	255 Wilson Pike Circle Brentwood, TN 39249	P O Box 1667 Montgomery, AL 36102-1667
ADDRESS	**ADDRESS**	**ADDRESS**
Freddie Lynn	Elvis Butler	
BY *(Signature)*	**BY** *(Signature)*	**BY** *(Signature)*
Freddie E. Lynn, Jr., AIA, VP Arch.	Elvis H. Butler, Jr.	Elton N. Dean, Sr.
(Typed name)	*(Typed name)*	*(Typed name)*
11-11-09	11-3-09	
DATE	**DATE**	**DATE**

CHANGE ORDER PROPOSALS #14a for CHANGE ORDER NO. 14
Date: 10/05/09
Please review line by line and initial in the appropriate space whether item is accepted or rejected. Also sign on signature line at the bottom.

		Total	Accept	Reject
14.05	Metal Panel Claim settlement. (COR 191) By agreement.	$ 216,371.10		
14.06	Credit to Owner for acceptance of floors in new facility, en lieu of correction. (COR 195) By agreement.	$ (122,001.00)		
	CHANGE ORDER PROPOSAL #14a TOTAL	**$ 94,370.10**		

Recommended by:	Recommended by:	Reviewed by:
Goodwyn, Mills and Cawood, Inc.	T.C.U. Consulting, Inc.	Montgomery County Commission
Architect (Firm Name)	Owner's Representative (Firm Name)	Owner (Firm Name)
Victoria P. Loyd	LC	Elton Dean
By (Signature)	By (Signature)	By (Signature)
Victoria P. Loyd, AIA	Larry Carter	Elton Dean, Commission Chairman
(Typed Name)	(Typed Name)	(Typed Name)
Date: October 5, 2009	Date: 10/07/09	Date: 10\13\09

3-4

CHANGE ORDER PROPOSAL #14 for CHANGE ORDER NO. 14

Date: 10/05/09

Please review line by line and initial in the appropriate space whether item is accepted or rejected. Also sign on signature line at the bottom.

		Total	Accept	Reject
14.01	Credit for contractual concrete work not performed in existing Vehicular Sally-port. (COR 193). Requested by Contractor.	$ (3,494.00)		
14.02	Add to furnish and install VCT on Control Room raised platforms, Corridor 2000, and Sally-port 2060. (COR ~~107~~) Requested by owner, recommended by Architect. 194 dk	$ 5,835.00		
14.03	Add for additional voice/data outlet in Pharmacy. Field coordination. (COR 144R) By agreement.	$ 2,021.88		
14.04	Add for MAC SIM BUTLER signage at new facility. (COR 197) Requested by Owner.	$ 1,948.31		

CHANGE ORDER PROPOSAL #14 TOTAL **$ 6,311.19**

Recommended by:
Goodwyn, Mills and Cawood, Inc.
Architect (Firm Name)
Victoria P. Loyd
By (Signature)
Victoria P. Loyd, AIA
(Typed Name)
Date: October 5, 2009

Recommended by:
T.C.U. Consulting, Inc.
Owner's Representative (Firm Name)
By (Signature)
Larry Carter
(Typed Name)
Date: 10/07/09

Reviewed by:
Montgomery County Commission
Owner (Firm Name)
D L Mims
By (Signature)
Donald L. Mims, County Admin.
(Typed Name)
Date: 10\13\09

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ELTON N. DEAN, SR.
CHAIRMAN

REED INGRAM
VICE CHAIRMAN

DIMITRI POLIZOS
JILES WILLIAMS, JR.
HAM WILSON, JR.

A COUNTY OLDER THAN THE STATE

MONTGOMERY COUNTY COMMISSION
P.O. BOX 1667
MONTGOMERY, ALABAMA 36102-1667

ESTABLISHED 1816

DONALD L. MIMS, CPA, MPA
ADMINISTRATOR
JOHN A. MITCHELL, SR.
DEPUTY ADMINISTRATOR
(334) 832-1210
FAX (334) 832-2533
TDD (334) 265-3568
www.mc-ala.org

Agenda

NOV 23 2009

November 23, 2009

MEMORANDUM

TO: Montgomery County Commission

FROM: Donald L. Mims, County Administrator DLM

SUBJECT: Miscellaneous Appropriations Reprogramming Requests

I am requesting authority to reprogram the following from fund code 001-59320-499 (Agency, Miscellaneous Appropriations) to:

C-2009-18: Alabama Baseball Coaches Association, Inc., for the 2009 Community College Fall Sophomore Workouts and Fall Classic - $500; (Polizos)

C-2009-19: Iron Men Outdoor Ministries, Inc., for Various Outdoor Activities Assisting Children in Need, Handicap Citizens and the Homeless - $2,000; (Ingram)

C-2009-20: Shepherd's Ministries, Inc., for The Shepherd's Food Bank Program - $200; (Ingram)

C-2009-21: Have a Heart for Children, for the 8th Annual Christmas Party, for Special Needs Children - $500; (Williams)

C-2009-22: Youth Leadership Corps Inc., for Youth Educational Program - $500; (Williams)

NC-2009-34: City of Montgomery, to be used by BONDS to Support Brookview Neighborhood Association, with Funding to Promote the Community Enhancement and Beautification Programs/Projects - $500; (Williams)

NC-2009-35: City of Montgomery, to be used by BONDS to Support the Macedonia Neighborhood Senior Citizens Center - $250; (Ingram)

DLM/tll

Agenda
NOV 23 2009

MEMORANDUM

TO: Donald L. Mims, Administrator

FROM: Pat Silas, Assistant Director
Support Services

DATE: November 17, 2009

SUBJECT: Bid No. 51100-09B-028, Catering of Meals
At the Community Centers

Request approval of award on the above referenced bid to the low bid of King Table Catering, in the amount of $1,921.50, be placed on the agenda for the County Commission meeting on November 23, 2009. (copy of spread sheet attached)

Attachment

Purchasing Department
Montgomery County Commission

ABSTRACT FOR BIDS:				BID # 1		BID # 2		BID # 3		BID # 4		BID # 5	
BID NO. 51100-09B-028 ISSUED: NOVEMBER 9, 2009 OPENING DATE: NOVEMBER 17, 2009 COUNTY COMMISSION TERMS OF PAYMENT / DISCOUNT:				KING TABLE CATERING; ATTN: AL STEINEHER; PHONE#270-0200; FAX#270-8882		SILVER SPOON CATERS; PHONE#264-1116; FAX#264-0965		BANDANAS RESTAURANT; ATTN: GWEN MASSEY; PHONE#265-7181; FAX#265-9113		COOKMA'S KITCHEN & CATERING; ATTN: KENNETH WILLIAMS; PHONE#284-5608; FAX#284-5618		H & T CAFÉ; ATTN: TIMOTHY TILLMAN; PHONE#262-3350	
ITEM NO.	DESCRIPTION OF ITEM	Units	QTY	UNIT PRICE	EXTENDED AMOUNT	UNIT PRICE	EXTENDED AMOUNT	UNIT PRICE	EXTENDED AMOUNT	UNIT PRICE	EXTENDED AMOUNT	UNIT PRICE	EXTENDED AMOUNT
	CATERING MEALS												
1	FLATWOOD COM.CTR	EA	100	$5.49	$549.00	$7.75	$775.00	$10.00	$1,000.00	$11.00	$1,100.00	$12.00	$1,200.00
2	GIBBS VILLAGE	EA	50	$5.49	$274.50	$7.75	$387.50	$12.00	$600.00	$11.00	$550.00	$12.00	$600.00
3	RICHARDSON TERR	EA	100	$5.49	$549.00	$7.75	$775.00	$10.00	$1,000.00	$11.00	$1,100.00	$12.00	$1,200.00
4	KING HILL COM CTR	EA	100	$5.49	$549.00	$7.75	$775.00	$10.00	$1,000.00	$11.00	$1,100.00	$12.00	$1,200.00
	55 BIDS MAILED												
TOTAL BID AMOUNTS					$1,921.50		$2,712.50		$3,600.00		$3,850.00		$4,200.00

Notes:

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Purchasing Department
Montgomery County Commission

ABSTRACT FOR BIDS:				BID # 6		BID # 7							
BID NO. 51100-09B-028 ISSUED: NOVEMBER 9, 2009 OPENING DATE: NOVEMBER 17, 2009 COUNTY COMMISSION TERMS OF PAYMENT / DISCOUNT:				FARMERS MARKET CAFÉ; ATTN: JOANN NORTON; PHONE#262-9163; FAX#262-1970		CITY OF MONTGOMERY FOOD & CATERING; ATTN: JIMMY LISENBY; PHONE#240-4921; FAX#240-4913							
ITEM NO.	DESCRIPTION OF ITEM	Units	QTY	UNIT PRICE	EXTENDED AMOUNT	UNIT PRICE	EXTENDED AMOUNT	UNIT PRICE	EXTENDED AMOUNT	UNIT PRICE	EXTENDED AMOUNT	UNIT PRICE	EXTENDED AMOUNT
	CATERING MEALS												
1	FLATWOOD COM.CTR	EA	100	$12.50	$1,250.00	$16.45	$1,645.00						
2	GIBBS VILLAGE	EA	50	$12.50	$625.00	$16.45	$822.50						
3	RICHARDSON TERR	EA	100	$12.50	$1,250.00	$16.45	$1,645.00						
4	KING HILL COM CTR	EA	100	$10.50	$1,050.00	$16.45	$1,645.00						
	55 BIDS MAILED												
TOTAL BID AMOUNTS					$4,175.00		$5,757.50						

Notes:

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SPRTSHTCOMCTRPAGE2

Agenda

NOV 23 2009

MEMORANDUM

TO: Donald L. Mims, Administrator

FROM: Pat Silas, Assistant Director
Support Services ps

DATE: November 13, 2009

SUBJECT: Bid No. 51260-09B-026, Computer Equipment

Request approval of award on the above referenced bid to the only bid received, Save Systems, Inc., in the amount of $16,835.00, be placed on the agenda for the County Commission meeting on November 23, 2009. (copy of spread sheet attached)

Coordination of award made with Mr. Lou Ialacci, Director of Information Systems.

Attachment

Purchasing Department
Montgomery County Commission

ABSTRACT FOR BIDS:				BID # 1		BID # 2		BID # 3		BID # 4		BID
INVITATION TO BID NO. 51260-09B-026 ISSUED: OCTOBER 30, 2009 BID OPENING DATE: NOVEMBER 12, 2009 DISTRICT ATTORNEY'S OFFICE TERMS OF PAYMENT / DISCOUNT:				SAVE SYSTEMS, INC.; ATTN: JOHN P. O'BRIEN; PHONE#440-543-3388; FAX#440-543-3406								
ITEM NO.	DESCRIPTION OF ITEM	Units	QTY	UNIT PRICE	EXTENDED AMOUNT	UNIT PRICE	EXTENDED AMOUNT	UNIT PRICE	EXTENDED AMOUNT	UNIT PRICE	EXTENDED AMOUNT	UNIT PRICE
	PART 1 - NEW											
1	15 DISK DRIVE TRAY	EA	1									
2	DISK DRIVE	EA	15									
	PART 2-USED EQUIP											
1	15 DISK DRIVE TRAY	EA	1	$1,850.00	$1,850.00							
2	DISK DRIVE	EA	15	$999.00	$14,985.00							
	29 BIDS MAILED											
TOTAL BID AMOUNTS					$16,835.00							

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Notes:

Agenda

NOV 23 2009

MEMORANDUM

TO: Donald L. Mims, Administrator

FROM: Pat Silas, Assistant Director PS
Support Services

DATE: November 17, 2009

SUBJECT: Bid No. 53100-09B-024, Self-Propelled Diesel
Road Widener

Request approval of award on the above referenced bid to the low bid of Joe Money Machinery Co. in the amount of $142,638.00, be placed on the agenda for the County Commission meeting on November 23, 2009. (copy of spread sheet attached)

Coordination of award made with Mr. George C. Speake, County Engineer.

Attachment

7-1

Purchasing Department
Montgomery County Commission

ABSTRACT FOR BIDS:				BID # 1		BID # 2		BID # 3		BID # 4		BID
INVITATION TO BID NO. 53100-09B-024 ISSUED: OCT. 22, 2009 BID OPENING DATE: NOVEMBER 10, 2009 ENGINEERING TERMS OF PAYMENT / DISCOUNT:				JOE MONEY MACHINERY CO., INC. - ATTN: ROBERT INGRAM; PHONE#265-8234; FAX NO.263-6873		THOMPSON TRACTOR CO., INC. - ATTN: HARDY TRAYLOR; PHONE#215-5205; FAX#215-8435		COWIN EQUIPMENT COMPANY; DONALD R. MCLEOD; PHONE#262-6642; FAX#834-2272		NO BIDS RECEIVED: ASC CONSTRUCTION;WARRIOR TRACTOR; CAPITAL VOLVO TRUCK;DYNA-LIFT;SOUTHLAND MACHINERY;TRACTOR & EQUIPMENT		
ITEM NO.	DESCRIPTION OF ITEM	Units	QTY	UNIT PRICE	EXTENDED AMOUNT	UNIT PRICE	EXTENDED AMOUNT	UNIT PRICE	EXTENDED AMOUNT	UNIT PRICE	EXTENDED AMOUNT	UNIT PRICE
	SELF-PROPELLED	EA	1	$142,638.00	$142,638.00	$144,435.00	$144,435.00	$195,214.00	$195,214.00			
	DIESEL ROAD											
	WIDENER											
	WARRANTY				6 MONTHS		1 YEAR		12 MOS/			
									1500 HRS			
	30 BIDS MAILED											
TOTAL BID AMOUNTS					$142,638.00		$144,435.00		$195,214.00			

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Notes:

Agenda

NOV 23 2009

MEMORANDUM

TO: Donald L. Mims, Administrator

FROM: Pat Silas, Assistant Director pa
Support Services

DATE: November 18, 2009

SUBJECT: Bid No. 52110-09C-023, Transmission Service

Request approval of award on the above referenced Invitation to Bid to low bid of AAMCO Transmission for the amount of $98.00, based on unit pricing, be placed on the agenda for the County Commission meeting on November 23, 2009. (copy of spread sheet attached)

Coordination of award made with Sheriff D.T. Marshall.

Attachment

8-1

Purchasing Department
Montgomery County Commission

ABSTRACT FOR BIDS:				BID # 1		BID # 2		BID # 3		BID # 4		BID # 5	
BID NO. 52110-09C-023 ISSUED: OCTOBER 26, 2009 OPENING DATE: NOVEMBER 16, 2009 SHERIFF'S OFFICE TERMS OF PAYMENT / DISCOUNT:				AAMCO TRANSMISSION-ATTN: MICHAEL MCDONALD; PHOHE#277-8500; FAX#277-8502		ATCO TRANSMISSION; ATTN: MICHAEL ROBBINS; PHONE#272-0899; FAX#272-4965		HARLOW'S TRANSMISSION; PHONE#263-2111; FAX#263-9811		NO BID RECEIVED: CAPITOL CHEVROLET			
ITEM NO.	DESCRIPTION OF ITEM	Units	QTY	UNIT PRICE	EXTENDED AMOUNT	UNIT PRICE	EXTENDED AMOUNT	UNIT PRICE	EXTENDED AMOUNT	UNIT PRICE	EXTENDED AMOUNT	UNIT PRICE	EXTENDED AMOUNT
	TRANSMISSION												
	SERVICE												
	NON-GM VEHICLES	EA	1	$49.00	$49.00	$59.95	$59.95	$60.00	$60.00				
	GM VEHICLES	EA	1	$49.00	$49.00	$48.95	$48.95	$60.00	$60.00				
	24 BIDS MAILED												
	15 BIDS MAILED												
TOTAL BID AMOUNTS					$98.00		$108.90		$120.00				

8-2

Notes:

BUDGET FORM 5

Agenda

NOV 23 2009

MONTGOMERY COUNTY COMMISSION
BUDGET CHANGE REQUEST
REQUEST NUMBER 2

DEPARTMENT: County Commission Appropriations REVIEWED: S. Thomas 11/6/2009
DATE: 11/6/2009 Finance Director Date
REQUESTED BY: Donald Mims, Administrator APPROVED:
Elected Official/Dept. Head Administrator Date

ACCOUNT NAME	ACCOUNT NUMBER	CURRENT BUDGET	INCREASE (DECREASE)	REVISED BUDGET
Envision 2020	001-51955-438	22,500	30,000	52,500
Sale of Property	001-40000.47315	0	-30,000	-30,000
				0
				0
				0
				0
				0
				0
				0
				0
				0
				0
				0
				0
				0
				0
				0
				0
	TOTAL	22,500	0	22,500

JUSTIFICATION:
To provide additional funding for Envision 2020 to implement objectives going forward for delivery of Health Care in the River Region. Proceeds from property sales to fund the additional amount.

9-1

Montgomery County Commission
Travel / Training Request Approval

Appendix C

Agenda
NOV 23 2009

Request # 3

Date: November 3, 2009
To: Donald L. Mims, Administrator
From: Jane Mardis, Chief Appraiser
Re: Travel / Training Request

Request approval to be granted for the following:

Destination: Montgomery, Alabama
Departure Date: December 14, 2009 Return Date: December 18, 2009
Conference Leave (Days / Hours): 5 Days
Purpose of Travel: Attend IAAO 600: Cadastral Mapping sponsored by Auburn University Governmental Services

Traveler (s) Name:
1. James Widgeon
2.
3.
4.
5.
6.

Check Mode of Transportation:

County Vehicle [ ]
Private Vehicle [x]
Commercial Air [ ]
Other (Specify) [ ]

Total (est.) Cost: $500.00 Advance Registration Required: $500.00
Department Name: Appraisal Fund Name: Reappraisal
Additional Comments: Registration Only

To: Jane Mardis, Chief Appraiser
From: Donald L. Mims, Administrator

The above request is app. 11/23/09 reimbursement of actual and necessary expenses in the approximate amount of $500.00 and advance registration of $500.00 is authorized.

To be completed by the Finance Department		
Fund Code:	120-51985-265	(ex: 000-00000-000)
Description:	Registration & Training	
Current Budget:	$25,000.00	
Approved Requests:	$2,635.00	
Budget Available:	$22,365.00	
Current Requests:	$500.00	
Budget Balance:	$21,865.00	

Donald L. Mims, Administrator

Reviewed by: S. Thomas
Date: 11/6/2009
cc: Finance Director / Buyer

10-1

Montgomery County Commission
Travel / Training Request Approval

Appendix C

Agenda
NOV 23 2009

Request # 2

Date: November 9, 2009
To: Donald L. Mims, Administrator
From: George C. Speake, County Engineer
Re: Travel / Training Request

Request approval to be granted for the following:

Destination: Renaissance Hotel, Montgomery, AL

Departure Date: December 8, 2009 Return Date: December 9, 2009

Conference Leave (Days / Hours): 16 hrs.

Purpose of Travel: Attend Association of County Engineers of Alabama "Communication & Media Relations" course presented by Jacksonville State University

Traveler (s) Name:
1. George C. Speake
2.
3.
4.
5.
6.

Check Mode of Transportation:

County Vehicle [X] Commercial Air [ ]
Private Vehicle [ ] Other (Specify) [ ]

Total (est.) Cost: $155.00 Advance Registration Required: $155.00

Department Name: Engineering Fund Name: Gasoline Tax 111-53600-265

Additional Comments:

To: George C. Speake, County Engineer
From: Donald L. Mims, Administrator

The above request is app. 11/23/09 reimbursement of actual and necessary expenses in the approximate amount of $155.00 and advance registration of $155.00 is authorized.

To be completed by the Finance Department

Fund Code:	111-53600-265 (ex: 000-00000-000)
Description:	Registration & Training
Current Budget:	$5,000.00
Approved Requests:	$100.00
Budget Available:	$4,900.00
Current Requests:	$155.00
Budget Balance:	$4,745.00

Donald L. Mims, Administrator

Reviewed by: S. Thomas
Date: 11/10/2009
cc: Finance Director / Buyer

10-2

Revised October 12, 2005

Montgomery County Commission
Travel / Training Request Approval

Appendix C

Request # 4

Agenda
NOV 23 2009

Date: November 3, 2009
To: Donald L. Mims, Administrator
From: Jane Mardis, Chief Appraiser
Re: Travel / Training Request

Request approval to be granted for the following:

Destination: Montgomery, Alabama
Departure Date: January 25, 2010 Return Date: January 29, 2010
Conference Leave (Days / Hours): 5 Days
Purpose of Travel: Attend IAAO 102: Income Approach to Valuation sponsored by Auburn University Governmental Services

Traveler (s) Name:
1. Brenda Ayers
2. Tracy Powell
3.
4.
5.
6.

Check Mode of Transportation:

County Vehicle	[ ]	Commercial Air	[ ]
Private Vehicle	[x]	Other (Specify)	[ ]

Total (est.) Cost: $1,000.00 Advance Registration Required: $1,000.00
Department Name: Appraisal Fund Name: Reappraisal
Additional Comments: Registration Only 2 @ $500.00

To: Jane Mardis, Chief Appraiser
From: Donald L. Mims, Administrator
The above request is app. 11/23/09 reimbursement of actual and necessary expenses in the approximate amount of $1,000.00 and advance registration of $1,000.00 is authorized.

To be completed by the Finance Department

Fund Code:	120-51985-265	(ex: 000-00000-000)
Description:	Registration & Training	
Current Budget:	$25,000.00	
Approved Requests:	$2,635.00	
Budget Available:	$22,365.00	
Current Requests:	$1,500.00	
Budget Balance:	$20,865.00	

Donald L. Mims, Administrator

Reviewed by: S. Thomas
Date: 11/6/2009
cc: Finance Director / Buyer

10-3

Revised October 12, 2005

Appendix C

Montgomery County Commission
Travel / Training Request Approval

Request # 5

Agenda
NOV 23 2009

Date: November 5, 2009
To: Donald L. Mims, Administrator
From: Ellen Brooks
Re: Travel / Training Request

Request approval to be granted for the following:

Destination: Savannah, Georgia
Departure Date: February 28, 2010 Return Date: March 3, 2010
Conference Leave (Days / Hours): 4 Days
Purpose of Travel: To Attend: 21st Annual National Youth-at-Risk Conference

Traveler (s) Name:
1. Sandra Edwards
2.
3.
4.
5.
6.

Check Mode of Transportation: County Vehicle [ ] Private Vehicle [ ] Commercial Air [X] Other (Specify) [ ]

Total (est.) Cost: $130.00 Advance Registration Required: $130.00
Department Name: District Attorney Fund Name: 762-51264-265
Additional Comments: HMFI-responsible for registration only

To: Ellen Brooks
From: Donald L. Mims, Administrator

The above request is app. 11/23/09 reimbursement of actual and necessary expenses in the approximate amount of $130.00 and advance registration of $130.00 is authorized.

To be completed by the Finance Department	
Fund Code:	762-51264-265 (ex: 000-00000-000)
Description:	Registration & Training
Current Budget:	$6,000.00
Approved Requests:	$0.00
Budget Available:	$6,000.00
Current Requests:	$130.00
Budget Balance:	$5,870.00

Donald L. Mims, Administrator

Reviewed by: S. Thomas
Date: 11/6/2009
cc: Finance Director / Buyer

10-4

Revised October 12, 2005

Agenda

NOV 23 2009

BUDGET FORM 5

MONTGOMERY COUNTY COMMISSION

BUDGET CHANGE REQUEST

REQUEST NUMBER 5

DEPARTMENT:	County Comm Appropriati	REVIEWED:	S. Thomas	11/12/2009
DATE:	11/12/2009	Finance Director		Date
REQUESTED BY:	Donald L. Mims	APPROVED:		
Elected Official/Dept. Head		Administrator		Date

ACCOUNT NAME	ACCOUNT NUMBER	CURRENT BUDGET	INCREASE (DECREASE)	REVISED BUDGET
DYS Grant-After School Program	125-52702-307	0	100,000	100,000
State of Alabama DYS Grant	125-40000.44760	0	-100,000	-100,000
		0		0
		0		0
				0
				0
				0
				0
				0
				0
				0
				0
				0
				0
				0
				0
				0
				0
				0
	TOTAL	0	0	0

JUSTIFICATION:

To budget the revenue and expense for the State of Alabama Youth Services after school grant.

11-1

Agenda

NOV 23 2009

BUDGET FORM 5

MONTGOMERY COUNTY COMMISSION
BUDGET CHANGE REQUEST

REQUEST NUMBER 3

DEPARTMENT:	Engineering	REVIEWED:	
		Finance Director	Date
REQUESTED BY:	George C. Speake	APPROVED:	
Elected Official/Dept. Head	11/16/2009	Administrator	Date

ACCOUNT NAME	ACCOUNT NUMBER	CURRENT BUDGET	INCREASE (DECREASE)	REVISED BUDGET
Construction Equipment	111-53100-561	638,947	(142,638)	496,309
Construction Equipment	111-53199-561	26,669	142,638	169,307
TOTAL		665,616	0	665,616

JUSTIFICATION:

Transfer from the Construction Equipment Code to cover the purchase of 1 - Self Propelled Road Widender for Construction.

11-2

Offices of
Ellen Brooks
District Attorney
Fifteenth Judicial Circuit of Alabama

DARYL D. BAILEY
CHIEF DEPUTY DISTRICT ATTORNEY
RHONDA B. CAPE
ADMINISTRATIVE ASSISTANT
JERRY N. BLOODSWORTH
CHIEF INVESTIGATOR

MONTGOMERY COUNTY COURTHOUSE
251 SOUTH LAWRENCE STREET
P.O. BOX 1667
MONTGOMERY, ALABAMA 36102-1667

(334) 832-2550
FAX (334) 832-1615
www.mc-ala.org/da

Agenda
NOV 23 2009

2009 NOV 19 AM 8:37

November 18, 2009

Montgomery County Commission
Annex III
Montgomery, Alabama 36104

RE: Purchase and Sale Agreement for Family Justice Center Building

Dear Sirs:

I am requesting that the Montgomery County Commission at its meeting on November 23, 2009, approve the Purchase and Sale Agreement for 530 South Lawrence Street for use by the Family Justice Center.

You will recall the Seller agreed to a reduced purchase price on the condition that the date of closing be on or before December 30, 2009. In order to do the necessary due diligence, it is necessary that the Commission approve the Agreement at the meeting on November 23, 2009. This would require the Commission to waive rule.

Chief Deputy District Attorney Daryl Bailey will attend the Commission meeting on my behalf to answer any questions. I cannot be present in person as I will be attending a state District Attorneys meeting out of town at that time. Daryl will be able to reach me by radio or telephone if you wish.

Attached is the "Purchase and Sale Agreement" and the Appraisal dated October 25, 2007.

I have also included a reprint of a blog by Casey Gwinn, President of the National Family Justice Center Alliance. This article was posted on the website of the National Alliance. The Commission's commitment is being recognized and applauded across the country.

Your vision and leadership will save lives for years to come. Thank you.

Sincerely,

Eleanor I. Brooks
District Attorney

EIB:sps
Enclosures
cc: Chief Deputy District Attorney Daryl Bailey

12-1

STATE OF ALABAMA

COUNTY OF MONTGOMERY

PURCHASE AND SALE AGREEMENT

This PURCHASE AND SALE AGREEMENT (this "Agreement") is made and entered into by and between CPA PROPERTIES, a general partnership (hereinafter referred to as "Seller"), and MONTGOMERY COUNTY COMMISSION (hereinafter referred to as "Buyer");

WITNESSETH:

1. PROPERTY. Seller hereby agrees to sell and convey to Buyer, and Buyer hereby agrees to purchase and take from Seller, under and subject to the terms, conditions and provisions hereof, that certain real property initially described as follows:

530 S. Lawrence Street
Montgomery, AL 36104

containing approximately ±9,237 square feet of building and ±24,064 S.F. of land lying and being situated in Montgomery County, Alabama, as more particularly highlighted in yellow and designated on Exhibit "A" attached hereto and made a part hereof as though set forth in full herein (hereinafter referred to as the "Property"), together with all appurtenances, rights of way, privileges, easements, and other rights benefiting or pertaining to the Property and all right, title and interest, if any, of the Seller in and to any land lying in the right-of-way in front or adjoining the Property to the centerline thereof. An exact legal description of the Property shall be based on the Survey to be provided by Buyer pursuant to Paragraph 7. hereof.

2. PURCHASE PRICE. The Purchase Price of the Property (the "Purchase Price") shall be $585,000.00. The Purchase Price shall be payable as follows:

(a) The sum of One Thousand and No/100 Dollars ($1,000.00), as Initial Earnest Money (the "Earnest Money"), to be deposited with John Stanley & Associates, Inc. (the "Escrow Agent"), within three (3) business days after Buyer's receipt of a fully executed copy of this Agreement; and Additional Earnest Money of None and No/100 Dollars ($ None) to be paid to the Escrow Agent not later than the expiration date of the Inspection Period provided Buyer has not delivered to Seller the Termination Notice as provided in Paragraph 3. herein.

(b) The balance of the Purchase Price, after deductions for credits and prorations as herein provided, shall be paid in full at the Closing by certified funds or cash. The Initial Earnest Money and Additional Earnest Money shall be paid to Seller at Closing and credited against the Purchase Price.

IN THE EVENT THE INITIAL EARNEST MONEY IS NOT PAID AS PROVIDED HEREIN, THIS AGREEMENT SHALL IMMEDIATELY BECOME NULL AND VOID AT THE OPTION OF SELLER.

(c) The Seller and Buyer hereby authorize the Escrow Agent to hold the Initial Earnest Money and the Additional Earnest Money (and as used herein, the Earnest Money and Additional Earnest Money are sometimes collectively referred to as the "Earnest Money") in trust pending the fulfillment of this Agreement. The Escrow Agent is not a party to this Agreement and does not make any warranty or representation to either party regarding the subject matter of this Agreement and does not warrant or guarantee performance of any covenant, agreement, representation or warranty of any party to this Agreement. Any check or other form of payment representing the Earnest Money will be deposited into an escrow account established by the Escrow Agent and shall be held without interest or other charges to or for the benefit of any party. In the event either Buyer or Seller claims the Earnest Money, the Escrow Agent has the right to request from the other party a written release of liability which authorizes the release of the Earnest Money. Further, without the written authorization of the other party, the Escrow Agent, in accordance with Alabama Real Estate License Law Rule: 790-X-3-03(4) and (5), shall, at its option, either retain the Earnest Money until there is a written agreement among the parties or interplead the disputed portion of the Earnest Money into court. The Escrow Agent shall be entitled to deduct from the Earnest Money any court costs, attorney's fees and other expenses relating to the interpleader, as well as an administration fee on account thereof. Seller, at Seller's option, may cancel this Agreement if any check representing Earnest Money is rejected by the financial institution.

3. INSPECTION PERIOD.

(a) Buyer shall have until December 29, 2009 (the "Inspection Period") to satisfy itself as to any or all matters or conditions pertaining to the Property and the intended use and development thereof (subject to the rezoning limitation provided in Paragraph 4. below). During the Inspection Period, Buyer shall have the right to inspect the Property, to conduct land use, engineering and environmental studies and reviews with respect to the Property, to conduct a market analysis of the Property and the intended use thereof, to confirm and seek, as necessary, zoning variance(s) and other governmental land use approvals, permits and licenses with respect to the Property and the intended use and development thereof. Notwithstanding anything contained herein to the contrary, in the event that Buyer determines, in its sole and absolute discretion, that the Property is not satisfactory for any reason, Buyer shall have the right to terminate this Agreement at any time, without explanation for its reason of termination, on or before the expiration of the Inspection Period by delivering to Seller of its' notice in writing (the "Termination Notice") and, in such event, the Earnest Money shall be refunded to Buyer, and all rights and obligations hereunder shall cease and terminate. In the event this Agreement is NOT terminated by Buyer within the Inspection Period, it shall be deemed accepted and the parties hereto shall proceed to close this sale as set forth herein; and

(b) The parties hereto agree and acknowledge that Buyer will be furnished access to the Property for the purpose of assessing its condition and allowing Buyer to make Buyer's own determination as to whether or not Buyer wishes to purchase the Property. Accordingly, by consummating this sale, the Buyer shall be conclusively deemed to have accepted the Property and any and all buildings and improvements thereon in its then "AS IS" condition, both as to property defects seen and unseen and conditions natural or artificial, without any warranties, express or implied (with the exception of any warranty of title provided for under the deed) and the Buyer hereby releases and discharges the Seller and its agents, servants and employees from any and all liability or claims of liability arising from or as the result of any condition existing on, in or under the Property or any buildings or improvements thereon.

4. GOVERNMENTAL APPROVALS. Except as otherwise provided below in this Paragraph 4., Buyer is hereby authorized to seek and obtain any and all permits, licenses, site and development plan approvals, permits and authorizations, zoning variance approvals, curb-cut approvals, and any and all other approvals or consents as Buyer may deem necessary in connection with its proposed acquisition, development and use of the Property and Seller agrees to cooperate with Buyer in such endeavor. If any such applications, approvals or permits are required to be sought in Seller's name, Seller shall upon Buyer's request seek same without cost to Seller. As part of the consideration for Buyer's payment of the Purchase Price, Seller shall assign, transfer and convey to Buyer at Closing all permits, approvals, licenses, site and development plans affecting the Property issued in Seller's name which Buyer requests Seller to assign to Buyer and shall deliver such originals to Buyer at Closing, provided such permits, licenses, approvals, and plans are assignable. BUYER SHALL NOT REZONE, OR ATTEMPT TO REZONE, THE PROPERTY, OR ANY PORTION THEREOF, PRIOR TO CLOSING THIS SALE WITHOUT THE PRIOR WRITTEN CONSENT OF SELLER.

5. ENTRY UPON PROPERTY. Upon execution of this Agreement, Buyer, its agents, employees, contractors, and all other persons authorized by it, or any of them, are permitted to enter upon the Property and to obtain and perform such tests, studies and maps as Buyer may deem necessary or advisable including, but not limited to, percolation, soils, hazardous waste, appraisals, topographic studies, environmental, and geological tests and studies all at Buyer's cost. In the event Buyer, its agents, or its employees disturbs any portion of the Property, or the surface thereof, as a result of such entry, tests, or inspections, Buyer agrees to restore the Property to its original condition at Buyer's sole cost and expense. The provisions of this Paragraph 5. shall survive the expiration or termination of this Agreement or the Closing as the case may be.

6. BUYER'S INDEMNIFICATION. Buyer hereby indemnifies and agrees to hold harmless Seller and John Stanley & Associates, Inc. from any and all damages, claims, costs and expenses (including, but not limited to, reasonable attorney's fees) arising from any injury or death to persons or damage or destruction to property arising from the act or omission of Buyer, its agents, employees or independent contractors, their respective agents or employees, on or near the Property. This provision shall survive the Closing.

7. SURVEY. Buyer may at Buyer's expense procure a current certified as-built survey (the "Survey") of the Property prepared by a surveyor selected by Buyer (the "Surveyor"). The Survey shall contain the metes and bounds description of the Property. The Survey shall also certify as to whether or not the Property is located within the 100 year flood plain (and, if so, what portion), and shall include a certification by the Surveyor of the number of square feet of land contained in the Property.

8. ABSTRACT OF TITLE. Seller agrees to furnish to Buyer within three (3) days after the Effective Date of this Agreement, an Abstract of Title. Buyer agrees, at its cost, to update the Abstract of Title. Buyer shall have its attorney examine the abstract of title; provided, however, it is Buyer's requirement that the Abstract of Title disclose Seller as present owner of fee simple title to the Property without exception except for ad valorem taxes not yet due and payable, any existing mortgage (from which the Property shall be released at Closing) and such other easements and exceptions as Buyer may, in its sole and absolute discretion, waive in writing (the "Permitted Exceptions"). If the Abstract of Title discloses a defect or defects in title to either the Property or discloses easements or other exceptions that Buyer is unwilling to waive, then Buyer agrees to notify Seller in writing of such matters within ten (10) days of Buyer's receipt of the Abstract and Seller, in its sole discretion may proceed to cure such matters at Seller's expense. If said matters are not cured within twenty (20) days after notice, then Buyer may grant Seller additional time to cure the defects and, further, Buyer may, at any time thereafter, at its option, in writing, waive such defect or unacceptable easements or other exceptions or cancel this Agreement. In any event, if the matters objected to are not cured within sixty (60) days after Buyer's notification of objections, then this Agreement shall terminate and the Earnest Money shall be refunded to Buyer. In which case of the latter event, Seller shall immediately refund to Buyer the Earnest Money and any Additional Earnest Money paid hereunder. Seller represents that it presently owns fee simple title to the Property, except for any existing mortgage which Seller covenants to have released with respect to the Property at the time of Closing, and Seller covenants that it will not permit any change in the status of the title to the Property until this Agreement has been consummated or otherwise terminated in accordance with the terms hereof. Risk of loss prior to Closing shall be borne by Seller.

9. CLOSING. Subject to the satisfaction of all the conditions hereof or the waiver in writing thereof by Buyer, the date of Closing shall be the date that is on or before December 30, 2009.The sale shall be closed in Montgomery, Alabama, at the office of Mr. Karl Benkwith attorney. At Closing, Seller shall deliver to Buyer a Statutory Warranty Deed conveying a good and merchantable, indefeasible fee simple title in and to the Property subject to (i) covenants, restrictions, reservations, easements and rights-of-way, if any, heretofore imposed of record affecting title to said Property, (ii) any municipal zoning ordinances now, or hereafter becoming applicable,(iii) matters of survey, and (iv) taxes and assessments becoming due against the Property. The description used in the deed shall be one and the same and shall coincide with the legal description of the Property as specified in the Survey. Seller shall pay at Closing, by deduction from the Purchase Price, any

outstanding mortgage, lien or deed of trust, any and all expenses herein provided to be paid by Seller and the cost of preparing the Deed. Buyer shall pay all costs, taxes and expenses for recording the deed. Ad valorem taxes, rents (if any), and utilities, if any, shall be prorated as of Closing. Any assessments due as of closing and levied against the Property shall be paid in full by Seller at Closing. At Closing, Buyer shall pay the balance of the Purchase Price, subject to adjustments and credits as herein provided, including the Earnest Money. Each party shall bear its own attorney's fees. Seller shall also execute and deliver at Closing such affidavits of title, lien and possession as may be required by Buyer, a FIRPTA Affidavit, and appropriate 1099 forms. Except for the right of entry granted herein, possession shall be given to Buyer on the date of Closing, free and clear of all tenancies and parties in possession.

10. DEFAULT: REMEDIES. If Seller has complied with all of its obligations herein contained and all of Seller's representations and warranties are true and correct, and all of the conditions herein have been met to Buyer's satisfaction or waived in writing by Buyer, but Buyer fails to proceed with the purchase of said Property, then Seller shall have, as its sole and exclusive remedy, the right to declare the entire Earnest Money forfeited to Seller as liquidated damages, the parties recognizing and agreeing that the actual damages will be unascertainable and speculative. If Seller defaults, violates, or breaches any of its warranties, covenants, obligations and representations and warranties herein provided, then, in such event, Buyer may declare this Agreement canceled and of no further force and effect and promptly receive a return of the entire Earnest Money. In no event shall Buyer be entitled to sue Seller for damages. If Seller or Buyer fails to comply with all of the terms, covenants and conditions of this Agreement, the prevailing party in any lawsuit will be entitled to all expenses, including a reasonable attorney's fee, incurred as a result of such failure.

11. ASSIGNMENT. This Agreement may NOT be assigned by Buyer, except to an affiliated entity of Buyer, and all powers, rights and privileges herein reserved and given to Buyer or the Seller shall inure to the benefit of and be held by the respective successors and assigns of the parties, and all liabilities or obligations imposed on each shall be binding upon the parties hereto and their respective heirs, successors and assigns. No assignment of this Agreement shall operate to release Buyer from any of its obligations herein.

12. ENVIRONMENTAL CONCERNS. Notwithstanding anything contained in this Agreement to the contrary, in the event that, as a result of Buyer's investigation, "hazardous substance(s)", "hazardous waste(s)" or "hazardous material(s)", as defined under applicable federal or state law, or both, are found on the Property, then Buyer shall have the right, within the Inspection Period, to terminate this Agreement and to receive a return of the Earnest Money; it being a condition precedent to Buyer's obligation to purchase the Property that the results of Buyer's environmental studies, reveal that the Property is free from any and all "hazardous substance(s)", "hazardous waste(s)", or "hazardous material(s)", as defined under applicable federal or state law, or both, provided such environmental studies are performed during the Inspection Period. Buyer, its agents and representatives, are hereby authorized to perform any and all studies, tests and inquiries as it may deem appropriate or necessary in furtherance of the foregoing, including entering upon the Property, as provided in Paragraph 5. herein, and performing tests and studies thereon. Seller agrees that Buyer may make inquiry of pertinent governmental and administrative bodies and agencies concerning environmental violations or citations regarding the Property. Seller hereby represents, to its actual knowledge, that the Property contains no hazardous substances, wastes, or materials. In the event Seller is notified by EPA, ADEM, or other similar agency with regard to the Property, Seller agrees to immediately notify Buyer regarding such notice.

If Buyer receives notice of any violation of any Environmental Law related to the Property, Buyer will give Seller written notice of the same and all information it receives with respect thereto within ten (10) days after Buyer receives notice of same.

IN NO EVENT SHALL SELLER BE LIABLE OR REQUIRED TO REMEDY ANY ENVIRONMENTAL CONDITION OR COMPLY WITH ANY ENVIRONMENTAL LAW REGARDING THE PROPERTY EITHER BEFORE OR AFTER THE CLOSING OF

THIS SALE. BY CLOSING THIS SALE, THE BUYER SHALL BE CONCLUSIVELY DEEMED TO HAVE ACCEPTED THE PROPERTY AND ANY IMPROVEMENTS THEREON IN ITS THEN "AS IS" CONDITION, AND THE BUYER HEREBY RELEASES AND DISCHARGES SELLER AND ALL OF SELLER'S RESPECTIVE HEIRS, PERSONAL REPRESENTATIVES, SUCCESSORS AND ASSIGNS, FROM AND AGAINST ANY AND ALL LIABILITY, CLAIMS OF LIABILITY, SUITS, ACTIONS, JUDGMENTS, DAMAGES, LOSSES, RIGHTS OR CLAIMS OF CONTRIBUTION, AND OTHER RIGHTS, REMEDIES AND CLAIMS OF ANY AND EVERY KIND OR NATURE WHATSOEVER NOW OR HEREAFTER ARISING FROM OR IN ANY WAY CONNECTED WITH OR RELATED TO THE PROPERTY OR ANY EXISTING OR FUTURE ENVIRONMENTAL LAW APPLICABLE TO THE PROPERTY OR ANY HAZARDOUS MATERIAL LOCATED ON, IN, UNDER OR IN THE VICINITY OF OR RELEASED OR DISCHARGED FROM THE PROPERTY. THE PROVISIONS OF THIS PARAGRAPH SHALL SURVIVE THE CLOSING.

Seller and Buyer expressly acknowledge that John Stanley & Associates, Inc. has NOT made an independent investigation or determination with respect to the existence or nonexistence of asbestos, mold, PCB transformers, or other toxic, hazardous or contaminated substances or gases in, on, or about the Property, or for the presence of underground storage tanks. Any such investigation or determination shall be the responsibility of Buyer and John Stanley & Associates, Inc. shall not be held responsible therefor. The provisions of this Paragraph 12. shall survive the Closing.

13. UTILITIES. Seller and Buyer hereby acknowledge that this sale does NOT require Seller to deliver sanitary sewer, water service, storm drainage facilities, or any other utilities to the Property. It shall be Buyer's responsibility to determine the locations, capabilities and costs required to serve the Property with utilities necessary for the Property's intended use. Any and all costs related to these matters shall be paid by the Buyer. The provisions of this Paragraph 13. shall survive the Closing.

14. CONDEMNATION. Seller covenants and agrees that to its actual knowledge there is no pending or threatened condemnation or similar proceeding affecting the Property or any portion thereof, nor does Seller have any knowledge that any such action is presently contemplated. Should any entity having the power of condemnation decide prior to the time of Closing to acquire any portion of or interest in the Property, Buyer, at Buyer's sole option, may elect to (a) terminate Buyer's obligation to purchase the Property by giving written notice to Seller at any time prior to the time of Closing and receive back all sums paid hereunder, or (b) complete the purchase of the Property with Seller immediately appointing Buyer its attorney in fact to negotiate with said condemning entity and assigning to Buyer all sums to be awarded.

15. NOTICES. Any notice permitted or required to be given hereunder shall be made in writing and sent to receiving party at the address set forth below by Certified Mail, return receipt requested, or a nationally recognized overnight delivery service and shall be deemed given by either party to the other as of the date of first attempted delivery by the U.S. Postal Service or overnight delivery service, as appropriate, whether or not the receiving party receives the same. The addresses of the parties are as follows:

Seller:	Buyer:
CPA Properties	Montgomery County Commission
c/o Mr. Tom Gilliland	c/o Donnie Mims
3815 Interstate Court	101 S. Lawrence St.
Montgomery, AL 36109	Montgomery, AL 36104
O: (334) 260-2363	O: (334) 832-1210
Fax: ( )________________	Fax: (334) 832-2533
Email: tomg@wilsonprice.com	Email: donaldmims@mc-ala.org

The listing of telephone and facsimile numbers is for the convenience of the parties but notice by such methods is not effective.

With Copy To (Which Does Not Constitute Notice):

Lee W. Meriwether, III, CCIM
John Stanley & Associates, Inc.
4747 Woodmere Blvd.
Montgomery, AL 36106
O: (334) 271-2475
Fax: (334) 271-2421
Email: lmeriwether@johnstanleyassociates.com

With Copy To (Which Does Not Constitute Notice):

Karl Benkwith
Benkwith & Heard, PC
Carmichael Center
4001 Carmichael Road, Ste 200
Montgomery, AL 36106
O: (334) 395-0900
Fax: (334) 395-9989
Email: Phyllis@benkwith-heardpc.com

16. NO WASTE. Seller agrees that from the Effective Date of this Agreement until the date of Closing, it will not commit or permit to be committed any waste or change in the condition or appearance of the Property or improvements thereon, or the cutting or severing of any growth or timber on the Property, or convey any mortgage, lien, easement, mining or mineral rights or other rights in or to the Property, nor consent to any zoning, rezoning, or other restrictions of the Property except with the written consent and approval of Buyer. This provision shall not prohibit Seller from performing routine maintenance on the Property prior to the date of Closing.

17. MISCELLANEOUS.

(a) Seller warrants and represents to Buyer the following, all of which are true as of the date hereof (unless otherwise specified) and shall also be true as of the date of Closing:

(i) The Property is now assessed on a "fair market value" classification rather than a "current use" classification and is not subject to any so-called "rollback taxes". In the event this warranty and representation shall prove to be untrue, Seller shall be solely responsible for, and agree to reimburse Buyer, for any additional ad valorem taxes in the nature of rollback or recapture taxes due under Code of Alabama 1975 Section 40-7-25.3, if such taxes are levied.

(ii) That Seller owns fee simple title to the Property and has the power and authority to enter into this Agreement, and the entering into of this Agreement and the performance of Seller's obligations hereunder shall not violate the terms or conditions of any applicable law, rule or regulation pertaining to Seller or the Property.

(iii) That unless excepted herein, Seller has not received notification from any lawful authority regarding any assessments, condemnations, environmental notices, pending public improvements, repairs, replacement, or alterations of the Property that have not been satisfactorily made.

(iv) Seller can deliver possession of the Property to Buyer free and clear from the claims of leasehold interests or other rights of occupancy.

(v) So long as this Agreement is in force, Seller shall not, without Buyer's consent, execute any easements or

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restrictions or otherwise take or permit any action which would, in Buyer's determination, constitute an exception to title.

(b) In the event it becomes necessary for either Seller or Buyer to employ the services of an attorney to enforce any term, covenant or provision of this Agreement, then each party agrees that the non-prevailing party shall pay the reasonable attorney's fees incurred by the prevailing party in enforcing this Agreement.

(c) This Agreement constitutes the entire and complete agreement between the parties hereto and supersedes any prior oral or written agreements between the parties with respect to the Property. It is expressly agreed that there are no verbal understandings, other options to purchase or lease any portion(s) of the Property, or any other agreements which in any way may affect or change the terms, covenants, and conditions herein set forth, and that no modification of this Agreement and no waiver of any of its terms and conditions shall be effective unless made in writing and duly executed by the parties hereto.

(d) Each party hereto has been represented, or had the opportunity to be represented, by separate counsel in connection with the negotiation and drafting of this Agreement. Accordingly, no ambiguity herein shall be resolved against either party based upon principles of draftsmanship.

(e) All personal pronouns used in this Agreement whether used in masculine, feminine, or neuter gender, shall include all other genders, the singular shall include the plural, and vice versa.

(f) Any provision of this Agreement or any paragraph, sentence, clause, phrase or wording appearing herein which shall prove to be invalid, void or illegal for any reason shall in no way affect, impair or invalidate any other provision hereof, and the remaining provisions, paragraphs, sentences, clauses, phrases and words hereof shall nevertheless remain in full force and effect.

(g) This Agreement shall be construed and enforced in accordance with the laws of the State of Alabama.

(h) As used herein, the "Effective Date of this Agreement" shall be the last date of execution of this Agreement by the parties comprising Seller and Buyer.

(i) If this Agreement has not been executed by both the Seller and the Buyer and the Earnest Money delivered to the Escrow Agent by December 8, 2009, this Agreement shall be null and void.

(j) Alabama Withholding Tax/Affidavit. At Closing, there shall be withheld from Seller's proceeds the amount of Alabama withholding tax required to be collected by or on behalf of Buyer on account of Ala. Code § 40-18-86 (1975), unless Seller executes and delivers at Closing an affidavit required under said Ala. Code § 40-18-86 (1975) that qualifies Seller as exempt from this withholding.

18. AGENCY DISCLOSURE AND BROKERS. Pursuant to Ala. Code Section 34-27-8(c), the following Agency Disclosure is given by the Selling Company and the Listing Company.

The Listing Company is John Stanley & Associates, Inc., 4747 Woodmere Blvd., Montgomery, AL 36106.

The Listing Company is: (Two Blocks May Be Checked)

X	An Agent of the Seller
______	An Agent of the Buyer
______	An Agent of both the Seller and Buyer and is acting as a Limited Consensual Dual Agent
______	Assisting the Buyer/Seller as a Transaction Broker

The Selling Company is John Stanley & Associates, Inc., 4747 Woodmere Blvd., Montgomery, AL 36106.

The Selling Company is: (Two Blocks May Be Checked)

X	An Agent of the Seller
______	An Agent of the Buyer
______	An Agent of both the Seller and Buyer and is acting as a Limited Consensual Dual Agent
______	Assisting the Buyer/Seller as a Transaction Broker

Seller's Initials: __________ Buyer's Initials: ___________

19. COMMISSIONS. In the event that this sale is consummated, Seller shall pay in cash, at Closing, a Real Estate Commission (hereinafter the "commission") equal to eight percent (8%) of the Purchase Price to John Stanley & Associates, Inc. and said commission shall be deducted from the Seller's gross proceeds at the Closing.

Except as set forth above, each of the parties agree to indemnify and hold the other harmless from and against any and all claims or demands with respect to any brokerage fees or agents' commissions or other compensation asserted by any person, firm or corporation in connection with this Agreement or the transactions contemplated hereby, insofar as any such claim is based upon any conversation, contact or contract with Seller or Buyer, respectively, relating to the proposed purchase of the Property by Buyer. Each party acknowledges to the other than it has not dealt with any Broker except as set forth above. The provisions of this Paragraph shall survive the Closing.

The commission payable to the Broker(s) in this sale is NOT set by the Montgomery Area Board of Realtors, Inc.

20. EXCHANGE. Each party agrees to cooperate with the other in the event either party elects to utilize an exchange to either purchase or sell the Property being conveyed herein, with other real estate in a transaction or transactions that will qualify as a like-kind exchange under Section 1031 of the Internal Revenue Code of 1986, as amended, and to execute any additional documents necessary to effect the exchange, including, without limitation, an exchange agreement, an escrow agreement or a qualified intermediary agreement. However, the party not initiating the exchange shall not incur any additional costs, expenses or liabilities in excess of the costs or liabilities that it would have incurred from a direct purchase/sale of the Property, nor shall it be required to accept a deed to such exchange property so that its name shall not appear in the chain of title with respect to such exchange property. Furthermore, neither party will provide any warranties of the tax treatment of the transaction to the other.

21. TERMITE BOND AND OTHER WARRANTIES. In the event Seller currently has a termite bond and/or other warranties in effect on the Property, Seller will provide a copy of the termite bond and/or any other warranties to Buyer within twenty (20) days after the Effective Date of this Agreement and Seller agrees to assign its interest therein to Buyer at Closing.

22. RISK OF LOSS. Seller agrees to keep in force sufficient hazard insurance on the Property to protect all interests until this sale is closed and the deed is delivered. If any portion of the Property is destroyed or materially damaged between the date hereon and the Closing, and Seller is unable or unwilling to restore it to its previous condition prior to Closing, Buyer shall have the option of canceling this Agreement and receiving a full refund of the Earnest Money or accepting the Property in its then condition. If Buyer elects to accept the Property in its damaged condition, any insurance proceeds otherwise payable to Seller by reason of such damage shall be applied to the balance of the Purchase Price or otherwise be payable to Buyer.

23. DISPOSITION OF INSPECTION STUDIES. In the event the Closing does not occur, Seller may request in writing that Buyer furnish Seller, at no cost to Seller, with a copy of any engineering plans, the Survey, any soil test results, environmental audits, and/or market analyses prepared for Buyer's contemplated development relating to the Property. Buyer shall provide the same unless release of information is proscribed by contractual arrangement between Buyer and the compiler of the information. Disclosure of proprietary information compiled by the Buyer or information regarding tenants or prospective tenants shall not be required.

24. CHARITABLE CONTRIBUTION. Seller is of the opinion that the purchase price stated herein is less than the appraised fair market value. Seller intends to make a charitable contribution to the Montgomery County Commission for the difference between the actual purchase price and the appraised fair market value. Buyer agrees to fully cooperate and assist the Seller to receive such charitable contribution.

25. COUNTERPARTS. In order to expedite the action contemplated herein, this Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall be taken to be one and the same Agreement, for the same effect as if all parties hereto had signed the same signature page, and a facsimile copy or electronic mail copy of an executed counterpart shall constitute the same as delivery of the original of such executed counterpart. Any signature page of this Agreement (whether original, facsimile or electronic mail) may be detached from any counterpart of this Agreement (whether original, facsimile or electric mail) without impairing the legal effect of any signatures thereof and may be attached to another counterpart of this Agreement (whether original, facsimile or electronic mail) identical in form hereto but having attached to it one or more additional signature pages (whether original, facsimile or electronic mail). The parties intend to be bound by the signatures on the facsimile or electronic mail document, are aware that the other parties will rely on the facsimile or electronic mail signatures, and hereby waive any defenses to the enforcement of the terms of this Agreement based on such form of signature.

26. DISCLAIMER. Seller and Buyer hereby acknowledge that they have not relied on the advice or representations of John Stanley & Associates, Inc. or its Agents relative to, but not limited to, (a) any legal advice, (b) the physical condition of the Property, (c) the age and square footage of any improvements, (d) the size or area of the Property, (e) the availability of utilities, (f) the character of the neighborhood, (g) the investment or resale value of the Property, (h) any flood zone, wetlands, or protected farm land concerning the Property, (i) tax advice, or (j) any other matter concerning the willingness to sell or purchase the Property, and that Seller and Buyer have sought and obtained or had the opportunity to seek and obtain, independent advice relative thereto.

IN WITNESS WHEREOF, Seller and Buyer have hereunto executed this Purchase and Sale Agreement on the dates appearing beneath their respective signature blocks.

WITNESS: SELLER: CPA PROPERTIES

_________________ By:_________________________

As Its: _________________________

Date Executed: _________ _____, 2009

WITNESS: BUYER: MONTGOMERY COUNTY COMMISSION

_________________ By:_________________________

As Its:_________________________

Date Executed: _________ _____, 2009

John Stanley & Associates, Inc. joins in and executes this Agreement only for the sole purpose of acknowledging the provisions of this Agreement regarding Earnest Money and for other purposes specified in this Agreement that relate to John Stanley & Associates, Inc.

WITNESS: AGENT: JOHN STANLEY & ASSOCIATES, INC.

_________________ By:_________________________
John C. Stanley, CCIM

As Its: President/Broker

Date Executed: _________ _______, 2009

WITNESS: AGENT: JOHN STANLEY & ASSOCIATES, INC.

_________________ By:_________________________
Lee W. Meriwether, III

As Its: Associate Broker

Date Executed: _________ ______, 2009

TAX MAP

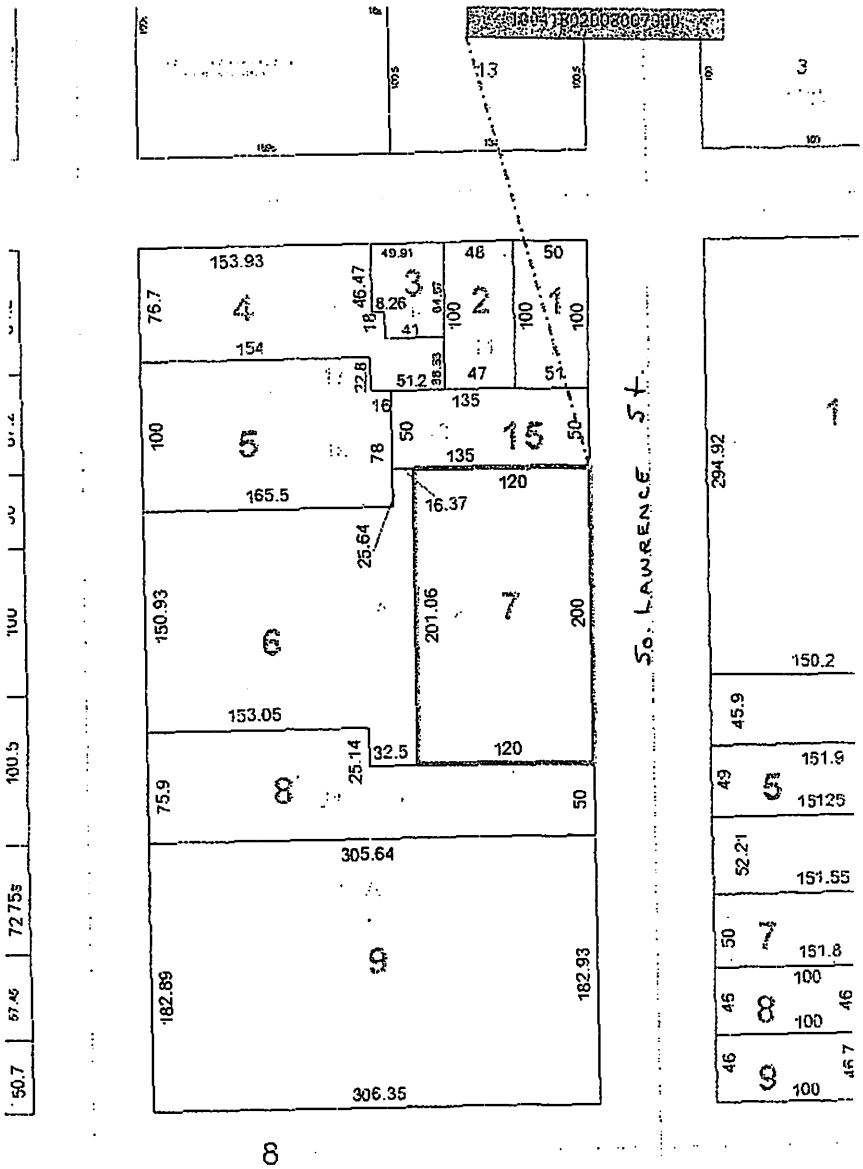

EXHIBIT A

REAL ESTATE APPRAISERS, LLC

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CONSULTING
APPRAISALS
INVESTMENT ANALYSIS

REAL ESTATE APPRAISERS, LLC

LAND AND IMPROVEMENTS
LOCATED AT
530 SOUTH LAWRENCE STREET
MONTGOMERY, ALABAMA

OWNED BY
CPA PROPERTIES

PREPARED FOR: DONALD MIMS
COUNTY ADMINISTRATOR
P.O. BOX 1667
MONTGOMERY, ALABAMA 36102-1667

PREPARED BY: G. MICHAEL SHANAHAN
CERTIFIED GENERAL REAL PROPERTY APPRAISER
ALABAMA LICENSE NO. G00741

APPRAISAL DATES: "AS IS" NOVEMBER 20, 2009

DATE OF REPORT: NOVEMBER 20, 2009

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CONSULTING
APPRAISALS
INVESTMENT ANALYSIS
REAL ESTATE APPRAISERS, LLC

November 20, 2009

Donald Mims
County Administrator
P.O. Box 1667
Montgomery, AL 36102-1667

Subject: Land and improvements located at 530 South Lawrence Street, Montgomery, Alabama

Dear Mr. Cabaniss:

In accordance with your request, I have completed an appraisal of the above referenced property.

Appraisal instructions were to provide an appraisal of the Fair Market Value in fee simple estate of the subject property "As Is" of the existing improvements.

This appraisal has been made subject to the Contingent and Limiting Conditions and the Certification of the appraisers contained herein. This appraisal is subject to the extraordinary assumptions and limiting conditions contained herein.

This appraisal is based on the following Extraordinary Assumption & Limiting Condition.

> **Portions of the building contain steel cages used for housing air conditioning units. The appraiser was unable to measure these portions of the building. As such, the square footage associated with this appraisal report is based on floor plans provided to the appraiser. In the event that the square footage is different from what is being used within this appraisal report the appraiser reserves the right to reappraise accordingly.**

This appraisal has been made subject to the following Hypothetical Conditions:

> **There are no hypothetical conditions.**

The appraiser identified the subject from a physical address provided by the client. In addition, the appraiser obtained copies of a legal description and tax map from the Office of the Judge of Probate and Montgomery County Tax Assessor's Office in Montgomery, Alabama. All measurements pertaining to the subject site, concerning length and area contained within this report, were taken from this legal description and tax map.

The appraiser is not qualified to determine if any pollution has occurred as a result of any past and/or current uses. The opinion of value for the property in this report is contingent upon the property being free and clear of any encumbrances resulting from any contamination unless an environmental assessment is provided indicating otherwise.

The appraiser is not responsible for detecting environmental hazards and potential contamination that may be related to the subject's current or past uses. The appraiser is not qualified to detect such substances and no responsibility is assumed for any such conditions or for any expertise or engineering knowledge required discovering them. The value estimate contained in this report is predicated on the assumption that the property contains no hazardous material or any other possible causes of environmental hazards.

I assume that there are no hidden conditions or conditions that are not apparent of the property, subsoil or structures not visible through ordinary careful inspection which would render it more or less valuable. I assume no responsibility for such conditions or for engineering that might be required to discover such factors.

This report has been made in conformity with and is subject to the requirements of the Code of Professional Ethics and Standards of Professional Practice of the Appraisal Institute.

This report is communicated as a summary appraisal report prepared under Standards Rule 2-2(B) in keeping with USPAP Standards as established by the Appraisal Standards Board of the Appraisal Foundation.

The following appraisal report contains 59 pages and exhibits. The report contains information about the subject property and surrounding area as well as the market data utilized in reaching an opinion of value and the appraisal methods used in arriving at that value.

Based on the information contained in this report and other information available to the appraisers, it is our opinion that the subject has market values as follows:

Market Value "As Is"
Fee Simple
Effective Date – November 20, 2009

SEVEN HUNDRED THOUSAND DOLLARS
($700,000)

Divide As:	**Land**	**$230,000**
	Improvements	**$470,000**

REAL ESTATE APPRAISERS, L.L.C.

G. Michael Shanahan
Certified General Real Property Appraiser
Alabama License No. G00741

Agenda

NOV 23 2009

MEMORANDUM

TO: Donald L. Mims, Administrator

FROM: Pat Silas, Assistant Director
Support Services

DATE: November 17, 2009

SUBJECT: Bid No. 51100-09B-027, Employee Luncheon

Request that you brief the Commissioners on the award of the above referenced bid to the low bid of Boomer T's BBQ in the amount of $3,115.00. (copy of spread sheet attached)

If the Commissioners agree, please waive rules and add to the agenda for the County Commission meeting on November 23, 2009.

Attachment

Purchasing Department
Montgomery County Commission

ABSTRACT FOR BIDS:				BID # 1		BID # 2		BID # 3		BID # 4		BID # 5	
BID NO. 51100-09B-027				BOOMER T'S BBQ - ATTN: TERESA M. STRICHIK; PHONE#262-4481; FAX#262-4481		KINGS TABLE CATERING; AL STEINEKER; PHONE#270-0020; FAX#2708882		SILVER SPOON CATERING; PHONE#264-1116; FAX#264-0965		BANDANAS RESTAURANT; ATTN: GWEN MASSEY; PHONE#2657181; FAX#265-9118		FARMERS MARKET CAFÉ; ATTN: JOANN NORTON; PHONE#262-9163; FAX#262-1970	
ISSUED: NOVEMBER 3, 2009													
OPENING DATE: NOVEMBER 17, 2009													
COUNTY COMMISSION													
TERMS OF PAYMENT / DISCOUNT:													
ITEM NO.	DESCRIPTION OF ITEM	Units	QTY	UNIT PRICE	EXTENDED AMOUNT	UNIT PRICE	EXTENDED AMOUNT	UNIT PRICE	EXTENDED AMOUNT	UNIT PRICE	EXTENDED AMOUNT	UNIT PRICE	EXTENDED AMOUNT
	EMPLOYEE LUNCH	EA	500	$6.23	$3,115.00	$6.24	$3,120.00	$7.50	$3,750.00	$10.00	$5,000.00	$10.00	$5,000.00
	CHRISTMAS 2009												
	QUANTITY IS APPROX												
	55 BIDS MAILED												
TOTAL BID AMOUNTS					$3,115.00		$3,120.00		$3,750.00		$5,000.00		$5,000.00

Notes:

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Purchasing Department
Montgomery County Commission

ABSTRACT FOR BIDS:				BID #6		BID #7		BID # 8		BID #9		NO BIDS	
BID NO. 51100-09B-027				H & T CAFÉ ; ATTN: TIMOTHY TILLMAN; PHONE#262-3350		PERSONAL TOUCH EVENTS; ATTN: CARRON MORROW; PHONE#239-6925; FAX#270-8030		COOKMA'S KITCHEN & CATERING; ATTN: KENNETH WILLIAMS; PHONE#284-5608; FAX#284-5618		CITY OF MONTGOMERY FOOD SERVICES; ATTN: JIMMY LISENBY; PHONE#240-4921; FAX#240-4913		NO BID: FAT BOY'S BBQ	
ISSUED: NOVEMBER 3, 2009													
OPENING DATE: NOVEMBER 17, 2009													
COUNTY COMMISSION													
TERMS OF PAYMENT / DISCOUNT:													
ITEM NO.	DESCRIPTION OF ITEM	Units	QTY	UNIT PRICE	EXTENDED AMOUNT	UNIT PRICE	EXTENDED AMOUNT	UNIT PRICE	EXTENDED AMOUNT	UNIT PRICE	EXTENDED AMOUNT	UNIT PRICE	EXTENDED AMOUNT
	EMPLOYEE LUNCH	EA	500	$15.00	$7,500.00	$15.00	$7,500.00	$15.00	$7,500.00	$17.95	$8,975.00		
	CHRISTMAS 2009												
	QUANTITY IS APPROX												
	55 BIDS MAILED												
TOTAL BID AMOUNTS					$7,500.00		$7,500.00		$7,500.00		$8,975.00		

Notes:

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Agenda

NOV 2 3 2009

Agreement for Permission to Use Parking Lot

The Montgomery County Commission gives permission to the Administrative Office of Courts (AOC) to use twenty designated parking spaces in the parking lot located next to 301 Adams Avenue, in Montgomery Alabama, for a one year term, beginning December 1, 2009 and ending November 30, 2010. The parking spaces are to be assigned to AOC employees only.

Administrative Office of Courts (AOC) agrees to indemnify and hold harmless the Montgomery County Commission from all damages and claims arising out of any act, omission or neglect by AOC employees, and from any and all actions or causes of action arising from the AOC's occupation or use of the property.

The Montgomery County Commission can terminate, without cause, this agreement with a 30 days written notice.

____

Administrative Office of Courts (AOC) **Date**

____

Elton N. Dean, Sr., Chairman, Montgomery County Commission **Date**

14-1

Agenda

NOV 2 3 2009

Personal Services Contract

The Montgomery County Commission and the Montgomery Election Center hereby enter into a personal services contract with Marjorie Smith, to perform voter outreach focused uon disability election programs, accessible absentee voting programs, coordination with Senior Citizen and Disability groups regarding voting in furtherance of the provisions of the Help America Vote Act all in conjunction with the Montgomery Election Center during the 2010 Election Cycle. A calendar and detailed listing of all voter outreach/disability efforts, initiatives, programs and activities along with a monthly journal will be provided to Trey Granger, Director of Elections. This contract is for a period not to exceed one year, beginning December 1, 2009 and ending November 30, 2010, with an option to extend the contract for an additional 90 days.

The Montgomery County Commission will pay Marjorie Smith $1250.00 bi-weekly, for a total Contract amount not to exceed $30,000.00. Ms. Smith will be compensated on a bi-weekly basis upon submission of a proper invoice and related documentation. Montgomery County, Alabama, will be reimbursed $27,734.49 of this agreement pursuant to Federal funding awarded to Montgomery County for Phase III of the Help America Vote Act to improve the accessibility of elections to individuals with disabilities. The remaining balance shall be paid by current fiscal year funding appropriated to the Montgomery Election Center for fiscal year 2010.

This contract may be terminated by either party, by giving thirty (30) days written notice.

Date	Marjorie Smith
Date	Elton Dean, Chairman Montgomery County Commission
Date	Reese H. McKinney, Jr. Judge of Probate

15-1

REESE MCKINNEY, JR.

JUDGE OF PROBATE

Montgomery County

November 13, 2009

Chairman Dean and Members of the Commission:

The Probate office has secured a grant in the amount of $27,734.00 in additional HAVA funding from the Federal government for election-based work that enhances voting opportunities for persons with disabilities, including senior citizens. This Section III grant is a great opportunity for our Election Center to utilize a contract employee for the 2010 election cycle that would focus upon the needs of our senior citizens and other disabled citizens. I would propose your approval of the use of this grant money along with $2,226.00 of current 2010 funding for the Election Center in order to hire a contract employee who would serve as a community resource for our senior citizens and persons with disabilities.

Marjorie Smith has served as a contract employee in our Election Center and would be an excellent resource for this position. Marjorie's knowledge, insight, kind demeanor, and professional experiences position her as the appropriate choice for this endeavor. We would like to engage Marjorie via contract for a period of one year beginning December 1, 2009 through November 30, 2010. This would encompass the entire 2010 election cycle and provide continuity to our efforts. Our Election Center continues to enhance the quality of voting in this county by providing the citizens of this county with efficient and effective elections.

The recommended funding is guaranteed from the Federal Government via the State of Alabama. I ask that you place this item on the upcoming November 23rd agenda, bring Ms. Smith on board as of December 1, 2009 and submit our funding documentation immediately. I look forward to working with you on this worthwhile opportunity.

Sincerely,

Reese McKinney, Jr.
Judge of Probate
Montgomery County

2009 NOV 17 AM 9:27

RMcKjr/cs

15-2

P.O. BOX 223 • MONTGOMERY, AL 36101-0223 • TELEPHONE 334-832-1240 • FAX 334-832-2588

Tammy Nix

From: Trey Granger
Sent: Thursday, November 19, 2009 12:09 PM
To: Donald Mims
Cc: 'Thompson, Adam'; Reese McKinney Jr.
Subject: Reimbursement for HAVA - Disability Grant

Per your call and request to me this morning, I just contacted and spoke with Adam Thompson, the HAVA Coordinator in the Secretary of State's Office. Adam indicates that he sees no problem with the contract and March 2010 reimbursement from the State/Federal Government to have a person work with voter outreach, training, and other components regarding voting opportunities for persons with disabilities in Montgomery County. He is going to double check with the federal funding source out of an abundance of caution.

Adam has graciously agreed to try and expedite his contact with the folks in Washington to accommodate the mailing of your Thursday package, which is scheduled to be disseminated to Commissioners later today. Adam will e-mail us to confirm this information. Thanks, Trey

Trey Granger
Director of Elections
The Montgomery Election Center
Office of Judge Reese McKinney
125 Washington Avenue
Montgomery, Alabama 36104
T 334.832.1326 C 334.315.0406
treygranger@mc-ala.org/elections
www.mc-ala.org/elections

REESE MCKINNEY, JR.
JUDGE OF PROBATE
Montgomery County

Agenda
NOV 23 2009

November 18, 2009

Chairman Dean and Members of the Commission:

RE: Judge of Probate Banking Services

My office has coordinated a search for a banking services provider with your administrative staff.

We sent out twenty-four RFP's from addresses provided by the Assistant Director of Support Services, Pat Silas. Six of those RFP's were answered by the banks. Of those six, the most informative responses were from Sterling Bank and River Bank and Trust. Although we appreciate all the banks that submitted an RFP, we felt they were not as informative as the two we chose to give us further information and to assist us in making a solid business decision.

After conducting a search for a bank that can give us cost effective service we selected Sterling Bank.

Sterling Bank gave us the most scenarios and options to choose from, which enabled Probate to come to this decision. The Probate Department not only needs to keep the bank costs down, they also need to take the tag offices to a more automated system, that includes, check scanning our deposits versus manually making the deposits. This is not only an "internal control", it also adds to the efficiency and accuracy of our deposits. Sterling also has a free Synovus check recovery system that will allow us to transition from our current system with Tiger Tranz.

The bullets listed below are among the reasons we chose Sterling Bank.

- Sterling Bank gave us options for automation that assists us in planning for the future
- Sterling gave us benefits and negatives of each scenario to assist us in making a decision
- Banking relationship in the past has proved excellent customer service and training
- Sterling uses the token security system and RBT use passwords (Security with a token versus passwords appears more secure)
- Sterling has a check collection system we can use if we decide to change from Tiger Tranz
- Sterling Bank is part of Synovus Financial Corp., a $35 Billion dollar holding company with back room operations that provides products and services that you would find in a large regional bank and a bank that provides personalized service like a community bank

P.O. BOX 223 • MONTGOMERY, AL 36101-0223 • TELEPHONE 334-832-1240 • FAX 334-832-2588 16-1

- Sterling Bank has two Cash Management representative's located here in Montgomery dedicated to servicing Sterling Bank's customers

- Sterling Bank has a Merchant Services representative located here in Montgomery that is your main contact for any issues you have with accepting and processing credit cards. No calling an 800 number and speaking to a voice on the phone

Sincerely,

Reese McKinney, Jr.
Judge of Probate
Montgomery County

RMcKjr/cs
Attachments/2

BANKING SERVICES AGREEMENT

This Agreement (the "Agreement") is made and entered into between Montgomery County Probate Office (or applicable Board) and Sterling Bank, a member of the Synovus Financial Corporation family of companies, (the "Bank"), on this 16th day of November, 2009. Bank acknowledges that this Agreement is not effective until it has received all requisite county government approvals. Bank shall not begin performing work under this Agreement until notified to do so by Montgomery County Probate Office. Bank is not entitled to compensation for work performed prior to the confirmed effective date of the Agreement."

WITNESSETH

WHEREAS, the Montgomery County Probate Office is responsible for establishing banking relationships and maintaining accounts with depositories for the purposes of making deposits and paying Banks; and,

WHEREAS, the Bank is a state depository and desires to provide such services on behalf of the Montgomery County Probate Office; now,

THEREFORE, for good and valuable consideration and in consideration of the services to be performed and payments to be made, together with the mutual terms, covenants and conditions hereinafter set forth, and promises hereinafter stipulated, the parties mutually agree as follows:

Section 1. Representations and Warranties: The Bank represents and warrants as follows:

(a) That it currently carries, and will maintain in full force and effect, commercially reasonable amounts of errors and omissions insurance covering Bank's negligent acts or omissions, under this Agreement.

(b) That its policy and practice is for equal employment opportunity and non-discrimination based on race, creed or gender.

(c) It is lawfully organized and constituted under all federal, state, and local laws, under ordinances of other authorities of its domicile, and is otherwise in full compliance with all legal requirements of its domicile as is necessary to perform is obligations under this Agreement.

(d) It possesses the legal authority and capacity to enter into and perform this Agreement.

(e) It has been duly authorized to operate and to do business in all places where it will be required to conduct business under this Agreement; that it has obtained, at no cost to the Montgomery County Probate Office, all necessary licenses and permits required in connection with this Agreement, and that it will fully comply with all laws, decrees, labor standards, and regulations of its domicile, and wherever performance occurs, as is necessary to and during the performance of this Agreement.

(f) It has no present interest, nor shall it acquire any interest, which would conflict in any manner with its duties and obligations under this Agreement, provided that nothing in this Agreement shall limit or restrict the right of any director, officer, or employee of the Bank to engage in any other business or to devote his or her time and attention in part to the management or other aspects of any other business or to render services of any kind to any other corporation, firm, individual, or association.

(g) It has in place and will maintain sufficient procedures and capabilities to ensure the timely and accurate backup and full recovery for all computers and other data storage systems related to this Agreement.

(h) It is a member of the Federal Reserve System and the National Automated Clearing House Association.

(i) It is designated as a Qualified Public Depository under the SAFE Program.

BANKING SERVICES AGREEMENT

(j) That all representations of the Bank contained it its response to the request for proposal (RFP No. 51300-09P-020) dated September 21, 2009 to the Montgomery County Probate Office are incorporated by reference as a part hereof the same as if fully set out herein.

Section 2. Effective Date and Term: The effective date of this contract is December 1, 2009, and it will continue in effect until September 30, 2011, or when terminated according to Section 10 of this Agreement, whichever shall first occur. The contract will automatically renew unless notification is delivered thirty (30) days in advance of the renewal date that the contract will not be renewed.

Section 3. Bank Services. (Include as specified in the RFP.)
(a) Depository Services: The Bank shall establish and maintain one or more deposit accounts in the name of the Montgomery County Probate Office for the receipt of funds in cash, checks, money orders, automated clearinghouse (ACH), and electronic fund transfers (EFT).
(b) Deposit Reconcilement: The Montgomery County Probate Office may order deposit tickets with the location specific serial number in the MICR line for segregation and aid in reconciling. Bank will provide the ability to segregate the activity by the serial number.
(c) On-Line System Services: Bank will provide secure web-based system access to the accounts through Business Online Access (BOA). BOA facilitates online balance reporting, account transfers, check image viewing, reporting, and various other services.
(d) Represented Check Entries (RCK): Bank offers a free service that automatically re-presents returned items via ACH. The Bank has an agreement with a third party, Infinity Business Group/FARS, to provide this service. The Probate Office plans to utilize this service to improve collection rates. Bank will assist the Probate Office with notification materials and education if needed.
(e) Remote Express Deposit (RED): RED allows the various Probate Office locations to process deposits electronically from their offices without physically traveling to the bank branch. Bank will provide the scanner equipment and the Probate Office will be charged a monthly fee per location for the service.
(f) Collateral: Any funds remaining in the Deposit Account overnight shall be collateralized in accordance with the collateral pledging levels of the Security for Alabama Funds Enhancement (SAFE ACT)

Section 5. Ownership of Data: The Montgomery County Probate Office shall own all materials and data produced by or on behalf of the Montgomery County Probate Office under this Agreement.

Section 6. Taxes: The Bank, including its agents and assignees, are solely responsible for, and shall pay all federal, state, or local taxes that become lawfully owed by such parties as a result of this Agreement; and, shall hold harmless, defend and indemnify the Montgomery County Probate Office, Treasury staff, and the State of Alabama in regard thereto.

Section 7. Standard of Performance:
(a) The Bank shall discharge its duties under this Agreement in all instances with reasonable care, professional skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity would provide and use in the conduct of an engagement of like character with like aims in performing its obligations under this Agreement.

(b) Bank will be liable for actual damages to the extent they result from its negligence, fraud, deception or willful misconduct, in performing its duties as set out in this Agreement

Section 8. Public Access /Confidentiality: All documents, papers, letters, or other materials relating to this Agreement that are made or received by the Bank in conjunction with this Agreement, and which are required by law to be maintained, shall be made available for public access and for audit purposes for the period of time so designated by law and by the Montgomery County Probate Office during and after termination of this Agreement. In all other circumstances, all information furnished by either party to the other shall be treated as confidential and shall not be disclosed to third parties except as required by law or upon the written agreement signed by each party to this Agreement.

BANKING SERVICES AGREEMENT

Section 9. Compensation and Expenses: The Bank shall be entitled to receive compensation for its services payable by compensating balances at an earnings credit rate based on the 90-day T-Bill. Compensating balances will be settled monthly. Deficit compensating balances will result in a direct fee to the Probate Office.

The following fees apply. Any other fees must be mutually agreed upon in writing by the Probate Office and the Bank.

Account Services	Unit Price	
Account Maintenance	$	7.00
Check/Debit	$	0.15
Deposit/Credit	$	0.35
Cash Deposited, per $100	$	0.10
Preauthorized Credit	$	0.10
Preauthorized Debit	$	0.10
Deposit Correction	$	3.00
Items Deposited - Unencoded		
On Us	$	0.08
CCH	$	0.08
Local Fed - City	$	0.08
Local Fed - RCPC	$	0.08
Non-Local Fed - City	$	0.08
Non-Local Fed - RCPC	$	0.08
Negative Collected Balance		Prime + 3%
Non-sufficient Funds, per item	$	35.00
Return of a Check Deposited		
Chargeback	$	3.00
Redeposit	$	3.00
Stop Payment Fee	$	35.00
Remote Express Deposit (RED)	**Unit Price**	
Monthly Maintenance fee per scanner	$	75.00
Implementation/ Set-up fee		No Charge
Business OnLine Access	**Unit Price**	
Level I - Monthly Service Charge		No Charge
Level III - Monthly Service Charge	$	100.00
Level III - Additional Account		No Charge
# of Accounts @ No Charge		Unlimited
Bill Pay		
Level I including up to 15 payments	$	6.95
Level I Additional Bill Pay over 15	$	0.60
Levels II & III Including up to 15 pmts	$	6.95
Stop Payment, Online	$	25.00
Wire, Outgoing Domestic, Online	$	12.00

Wire, Outgoing International, Online	$	45.00
Multifactor Authentication (estimated costs)		
Level I, II & III - Hard Token Required (first token free)	$	30.00
Replacement Token	$	30.00
Coin & Currency	**Unit Price**	
Night Depository		
Canvas Locking Bag	$	25.00
Plastic Bag	$	3.00
Lost Key	$	2.00
Wire Transfer Services		
Domestic - Incoming	$	15.00
Domestic - Outgoing	$	18.00
International - Incoming	$	50.00
International - Outgoing	$	50.00
Confirmations		
Fax	$	15.00
Telephone	$	15.00
Email	$	3.00

Section 10. Termination, Resignation, or Removal: The Bank may resign at any time by giving ninety (90) days written notice to the Montgomery County Probate Office. The Montgomery County Probate Office may remove the Bank and terminate this Agreement at any time by giving thirty (30) days written notice to the Bank. However, the contract may be terminated immediately in case of a breach of the contract by the Bank or notice of a prospective sale or merger of Bank. The Bank shall be entitled to receive its fees for the period through and including the effective date of the termination, resignation, or removal.

Section 11. Disposition of Files: The Bank shall immediately, upon request, turn over and deliver to the Montgomery County Probate Office copies of all data, reports, files, documents, and other tangible materials held by the Bank that contain data or other information relating to this Agreement upon termination of this Agreement. The Bank may keep its work product and one copy of materials necessary to comply with professional documentation requirements.

Section 12. Amendment: Any amendment to this Agreement shall be in writing executed by both parties with the same formality of this Agreement and in strict compliance with all applicable federal or State of Alabama laws.

Section 13. Assignment: This Agreement is not assignable in any part, manner or circumstance. Any attempted assignment is simultaneously void and shall constitute the simultaneous termination of this Agreement.

Section 14. Indemnification:

(a) The Bank is designated and shall act as an independent contractor and not as an employee of the County in the performance of all the tasks and duties of this Agreement. The Bank shall indemnify, defend, and hold harmless the Montgomery County Probate Office and the staff from all claims, suits, judgments, or damages including litigation costs and reasonable attorneys' fees The Bank is entitled to prompt and timely notice of any third party claims for which indemnity is sought and shall be given the opportunity to participate in the defense of such claims.

(b) No individual employee, officer, director or agent of the Montgomery County Probate Office shall be subject to or have any personal liability for the terms and conditions of this Agreement. The Bank, and on behalf of its assigns and successors, hereby waives, for all purposes, any claims now apparent or which may hereafter arise against any agent, employee, officer or director of the State of Alabama for personal liability of said agent or employee on behalf of the County including its various agencies, boards, commissions, and departments.

Section 15. Jurisdiction and Venue: The validity, interpretation, and performance of this Agreement shall be controlled and construed under the laws of the State of Alabama. Jurisdiction and venue shall be in Montgomery County, Alabama for any action brought which relates to this Agreement. Any claims against Bank will be resolved in federal or state court in Montgomery, Alabama pursuant to Alabama law. Bank and Montgomery County Probate Office agree that for any and all disputes arising under the Agreement, when considering settlement of such disputes, to utilize appropriate forms of non-binding alternative dispute resolution including, but not limited to, mediation by and through the Attorney General's Office of Administrative Hearings or where appropriate, private mediators.

Section 16. Waiver. The failure of either party to object to, or to take affirmative action with respect to any conduct or performance of the other that is, or may be, in violation of the terms of this Agreement shall not constitute a waiver of the violation or breach, or of any future violation or breach.

Section 17. Audits: The Montgomery County Probate Office reserves the right to designate persons to conduct periodic audits of the Bank's procedures and activities.

Section 18. Captions: The captions or headings in this Agreement are for convenience only and in no way define, limit, or describe the scope or intent of any provisions or sections of this Agreement.

Section 19. Publication: The Montgomery County Probate Office is the only entity authorized to issue information for public knowledge or news releases for publication concerning the terms or performance of this Agreement.

Section 20. Merit System Exclusion: The Bank is an independent contractor and nothing contained herein shall constitute or designate the Bank, or any of its agents or employees, as agents or employees of the Montgomery County Probate Office. The Bank, it agents or employees shall not receive any fringe benefits afforded merit system, appointed, or other regular, full or part-time employees of the Montgomery County Probate Office.

Section 21. Notices: All notices, requests, demands or other instruments which may be, or are required to be, given by either party to this Agreement, shall be in writing and shall be deemed given if (1) hand delivered with a signed receipt; (2) sent by facsimile, and confirmed as received; (3) served by a law enforcement officer or process server appointed by a valid court order; (4) by electronic communication ("e-mail") with a received electronic receipt or, (5) if mailed, on the fifth business day following deposit of such notice in the U. S. Mail, postage prepaid, by certified or registered mail, return receipt requested, to the other person at the address listed below, or at such other address which either party may so notify the other of in writing.

Notices sent to Bank will be addressed to:

W. Alan Worrell
President and Chief Executive Officer
P.O. Box 230849
4121 Carmichael Road
Montgomery, AL 36123-0849
334-244-4424 (Voice) 334-274-6474 (Facsimile)
alanworrell@sterlingmontgomery.com

BANKING SERVICES AGREEMENT

Notices sent to the Montgomery County Probate Office will be addressed to:

Judge Reese McKinney, Jr.
Montgomery County Probate Office
100 S Lawrence Street
Montgomery, AL 36104
334-832-1240 (Voice)
reesemckinney@mc-ala.org

With a copy to the Accounting Department

Kim Buzzard Brown, Accounting Supervisor
Montgomery County Probate Office
100 South Lawrence Street
Montgomery, AL 36104
334-832-7193 (Voice) 334-832-7716 (Facsimile)
kimbrown@mc-ala.org

Section 22. Non-Exclusive Contract. The Montgomery County Probate Office recognizes that the Bank provides professional services to other clients and may give advice, and take action, with respect to any of those other clients that may differ from the advice given, or the timing or nature of action taken, with respect to this Agreement.

Section 23. Severability: If any provision of this Agreement shall be held to be void or inoperative by a court of competent jurisdiction, such provision shall be deemed severed from the remaining provisions of this Agreement, and the remaining provisions shall remain in full force and effect.

Section 24. Entire Agreement This Agreement constitutes the entire understanding of the parties and supersedes any prior express or implied written or oral agreements between them.

IN WITNESS WHEREOF the Montgomery County Probate Office and the Bank have executed this instrument as of the day and year first below written.

MONTGOMERY COUNTY PROBATE OFFICE

By: ______________________________ DATE: ______________
Reese McKinney, Jr.

STERLING BANK

By: ______________________________ DATE: ______________
W Alan Worrell

Its: Chairman, President and CEO

Merchant Services

A division of Columbus Bank & Trust Company
1125 First Avenue
Columbus, GA 31901

Merchant Account Application

Reset Form | Print Form

TELL US ABOUT YOUR BUSINESS

Type of Business

- Sole Proprietorship
- Corporation
- Partnership
- Medical or Legal Corporation
- Association/Estate/Trust
- Tax Exempt
- Government
- Limited Liability Company

Industry Type:

- Retail (Card Present)
- Restaurant
- Fast Food
- Hotel/Motel
- Internet (Website)
- Direct Marketing
- Cash Advance (Bank)
- MO/TO (Card Not Present)
- Recurring Payments (Gym, etc.)
- Catalog

Business Name (Doing Business As, if applicable)			Date Business Began (MM/DD/YYYY)	Years at Location
Business Legal Name			Contact Name	
Federal Tax ID (Soc. Security # for Sole Proprietorship)	FEIN / SS#		Contact Phone #	
Business Phone Number			Mailing Address Name	
Business Street Address Line 1			Mailing Address Line 1	
Business Street Address Line 2			Mailing Address Line 2	
City	State	ZIP	City	State / ZIP
Business e-Mail Address			Business Fax Number	

Type of Account Setup: Single Location   Multiple Locations (Chain)   Additional Chain Location
Seasonal? If so, list months business is open:

Number of Locations: ________   Copy of Business License: Yes No

Type of Goods or Services Sold:

List Business Owners/Officers/Partners

Name of Primary Owner/Officer/Partner (First, Middle Initial and Last Name Required)	Social Security Number	Percent Owned	Phone Number	Date of Birth
Residence Address	City	State	Zip	
Drivers License #	Expiration Date	Date Issued	State License was Issued	
Name of Secondary Owner/Officer/Partner (First, Middle Initial and Last Name Required)	Social Security Number	Percent Owned	Phone Number	Date of Birth
Residence Address	City	State	Zip	
Drivers License #	Expiration Date	Date Issued	State License Issued	

Credit Card Processing History

Have You Accepted Credit Cards Before? Yes No

Has Your Merchant Account Ever Been Terminated? Yes No   If Yes, Please Name Your Processor: ________

Business Checking Information

Bank Name	Checking Account #	Transit Routing #	Years Open
Bank Address	City	State	Zip

How Do You Advertise

Please list methods of advertising your products and/or services. Please provide copies of ads, scripts, videos, web screen prints, etc.

Transaction Information

Total Annual Gross Sales	Est. Annual Gross Visa/MC Sales	Est. Average Ticket	Est. Highest Ticket

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Indicate Percentages of Transaction Types (Must Equal 100%): % Terminal Card Swiped ____ + % Terminal Manually Keyed (Card Present with Imprints) ____ + % Terminal Manually Keyed (Card NOT Present without Imprints) ____ = ____ %

Card Acceptance

☐ Visa® / MasterCard®	☐ American Express®	☐ Discover/Novus®	☐ JCB®	☐ EBT
☐ Consumer Debit/ Prepaid ☐ Credit/Business ☐ Both	SE# ____	Merchant # ____ ☐ Debit with PIN	Merchant # ____	FCS # ____

Refund Policy

☐ Refund in 30 Days or Less ☐ No Refund / Exchange Only ☐ Store Credit Only ☐ N/A

Visa/MasterCard Rates & Fees

Visa Credit Discount Rate	____ % + ____ per item	MasterCard Credit Discount Rate	____ % + ____ per item
Visa Check Card Discount Rate	____ % + ____ per item	MasterCard Check Card Discount Rate	____ % + ____ per item
Visa Business Discount Rate	____ % + ____ per item	MasterCard Business Discount Rate	____ % + ____ per item

Additional Interchange Pricing

Rewards 1: ____		☐ Retail ☐ MOTO	☐ Pass Thru ☐ Expense
Credit Card Mid Qual ____	Credit Card Non Qual ____	☐ Cost Plus ☐ Enhanced Pass Thru	☐ Enhanced Pass Thru Plus
Check Card Mid Qual ____	Check Card Non Qual ____		

Authorization Fees

☐ Visa/MC/DB $ ____ Per auth	☐ Amex $ ____ Per auth	☐ Discover $ ____ Per auth	☐ JCB $ ____ Per Auth
☐ Voice $ ____ Per auth	☐ ARU $ ____ Per auth	✓ Referral $ 3.00 Per auth	☐ Debit $ ____ Per Transaction

Miscellaneous Fees

✓ Chargeback Fee $ 25.00	☐ New Account Application Fee $	☐ Monthly Membership Fee $	
✓ Batch fee $ 0.20	☐ New Account Setup Fee $	☐ Minimum Monthly Discount $	
✓ Credit Transaction Fee $ 0.17	☐ Merchant Statement Fee $	☐ Web Reporting Fee $	
☐ Rush Fee $	Choose a Supply Option: ◯ Non Club ◯ Club	☐ Unique Fee:	$ ____ Unique Fee Description:

Product/Equipment

Communication Type:			Type	Cost	Quantity
☐ Dial Terminal ☐ IP	☐ Terminal/Printer Set	☐ Rent ☐ Purchase ☐ 3 Mo. Installment ☐ Plus Applicable Sales Tax			
	☐ Terminal/Printer/PIN Pad Set	☐ Rent ☐ Purchase ☐ 3 Mo. Installment ☐ Plus Applicable Sales Tax			
	☐ Terminal	☐ Rent ☐ Purchase ☐ 3 Mo. Installment ☐ Plus Applicable Sales Tax			
	☐ Printer	☐ Rent ☐ Purchase ☐ 3 Mo. Installment ☐ Plus Applicable Sales Tax			
	☐ PIN Pad	☐ Rent ☐ Purchase ☐ 3 Mo. Installment ☐ Plus Applicable Sales Tax			

Please note any special conditions under which Product or Equipment was provided to Merchant:

☐ Without Charge on Condition of Completion of Term of Merchant Agreement
☐ Reduced Charge on Condition of Completion of Term of Merchant Agreement

☐ Check if Merchant will process using **Dial Pay** ☐ Dial Pay Monthly Fee : $ ____

Terminal Features

☐ Receipt Header Line 4	☐ Receipt Footer	☐ Purchasing Card Flag On	☐ Phone Training for Merchant
☐ Receipt Header Line 5	☐ Reset Transaction # Daily	☐ Password Protect On	☐ Clerk/Server Prompt On
☐ CVV2	☐ Tip Option On	☐ Access Code (# To Get Outside Line) ____	
☐ Invoice #	☐ Is this a Multi-Merchant Account? (If so, list the Master Account #)		16-10
☐ Auto Batch Close HH: MM: ☐ AM ☐ PM		☐ Terminal Reminder - Check Totals HH: MM: ☐ AM ☐ PM	

Existing Software

☐ Certified Third Party Software	Name of Third Party Software: ______	Software Version: ______

☐ Merchant **has existing** PC Charge Express ☐ Merchant **has existing** PC Charge Pro ☐ Merchant **has existing** Pay Pal Account

☐ Internet Solution Option:	Name Internet Solution Provider: ______	Merchant Web URL: ______

New Software & Internet Products

POS Partner	☐ Purchase $	☐ 3 Mo. Installment $	☐ Plus Applicable Sales Tax $
	Version: ______		
PC Charge Pro	☐ Purchase $	☐ 3 Mo. Installment $	☐ Plus Applicable Sales Tax $
	Version: ______		
Pay Pal Pay Flow Pro	☐ Set-Up Fee $	☐ Monthly Fee $	
Pay Pal Pay Flow Link:	☐ Set-Up Fee $	☐ Monthly Fee $	
USA e-Pay Gateway	☐ Set-Up Fee $	☐ Monthly Fee $	
USA e-Pay Retail e-Pay	☐ Set-Up Fee $	☐ Software Fee $	☐ Monthly Fee $
USA e-Pay Cell Phone Wireless Device	☐ Set-Up Fee $	☐ Monthly Fee $	☐ License Fee $
USA e-Pay/Fi-Soft Quickbooks Solution	☐ Set-Up Fee $	☐ Monthly Fee $	☐ Fi-Soft One-Year License Fee $
USA e-Pay Exadigm XP 2000 Wireless	☐ Set-Up Fee $	☐ Monthly Fee $	☐ Exadigm Wireless Terminal (Purchase) $
	☐ Cell Phone/Wireless Cradle/Printer All-In-One Device $		

Digital Certificates

List Digital Certificates issued for your web site(s):	Issuer of Digital Certificate	Certificate #	Certificate Expiration Date	Ownership Status (Indiv. or Shared)
	1.			
	2.			

Data Access

List all agents or vendors with access to transaction or customer data:		
	1.	3.
	2.	4.

Term of Agreement

This Merchant Agreement will extend for a term (the "Term") of ______ months from the date on which this Application is approved by Bank, unless earlier terminated by Bank or Merchant in accordance with the provisions of the Merchant Agreement. Except as otherwise set forth in the Merchant Agreement, if this Merchant Agreement is terminated before expiration of the Term, Merchant agrees to pay an "Early Termination Fee" of $______.

Authorized Signatures

Merchant acknowledges that (i) Federal law requires financial institutions to obtain sufficient information to verify Merchant's identity, (ii) Merchant may be asked several questions and to provide one or more forms of identification to fulfill this requirement, (iii) and in some instances Bank may use outside sources to confirm the information.

ACCESS TO INFORMATION FROM AFFILIATED BANKS Merchant acknowledges that Columbus Bank and Trust Company ("Bank") is owned by Synovus Financial Corp. which is a financial services holding company that owns other banks ("Affiliated Bank's"), Merchant agrees and authorizes Bank access without limitation to financial information about Merchant possessed by Affiliated Banks so that Bank may have such information in evaluating whether to accept the Merchant Account application or to continue to terminate or amend the terms of Merchant's Account.

CREDIT CHECK OF OWNERS/OFFICERS/PARTNERS The undersigned owner(s)/officer(s)/partner(s) of Merchant hereby authorize Bank to obtain their business and personal credit reports, including reports from consumer reporting agencies, and to request information from credit references, including but not limited to any banking institution concerning such individual's financial or credit status and permit any such reference to release such information to Bank. If such individual(s) asks Bank whether or not a consumer report was requested, Bank will tell such person, and if Bank received a report, Bank will give such person the name and address of the agency that furnished it. The undersigned owner(s)/officer(s)/partner(s) waive any claim against and fully release such credit references and Bank from any and all liability related to disclosure of such information, and acknowledge receiving copies of the Merchant Agreement and Bank's privacy policy.

CONTROL AGREEMENT

By signing below, Participating Bank acknowledges that under Paragraph 14 of the Merchant Agreement Bank retains a security interest in the Merchant's business checking account listed above in this Application, and in any other deposit or reserve account referred to in Paragraph 14 of the Merchant Agreement. Participating Bank, Merchant and Bank agree that, with regard to each such deposit account now or hereafter maintained at Participating Bank, (i) this paragraph, together with the other provisions of the Merchant Agreement which are referenced herein, constitute a control agreement (this "Control Agreement") for purposes of Section 9-104 of the Uniform Commercial Code, (ii) Participating Bank shall comply with instructions originated by Bank directing disposition of the funds now or hereafter in any such deposit account from time to time without further consent by the Merchant, (iii) no such deposit account shall be closed without at least 30 days' prior written notice to Bank specifying the account to be closed, (iv) any security interest or offset right which Participating Bank may now or hereafter have in a such deposit account or funds now or hereafter in any such account or any proceeds of any of the foregoing, is hereby subordinated in all respects to Bank's security interest therein, (v) Participating Bank has not entered into, and while this Control Agreement remains in effect shall not enter into, any other control agreement with any other secured party with regard to any such deposit account, and will not permit anyone other than Merchant or Bank to be Participating Bank's customer with respect to any such deposit account, and (vi) this Control Agreement shall continue in effect and shall survive any expiration or termination of the Merchant Agreement until Bank shall have provided written notice to Participating Bank of the termination of this Control Agreement.

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MERCHANT AGREEMENT

Desiring to participate, or to continue participation, in the Merchant Services program of Bank, the above named Merchant ("Merchant") hereby agrees with the Bank to comply with the foregoing and with all of the terms and conditions specified herein and in the form of Merchant Agreement that accompanies this application, which, together with any Supplements, appendices, addenda, or schedules referenced therein, is incorporated herein by this reference and, together with this Application, is referred to herein as the "Merchant Agreement". The undersigned owner(s)/officer(s)/partner(s) represent and warrant to Bank that they have the power and authority to sign his Application on behalf of Merchant, that their signatures below are duly authorized and that, upon approval of this application by Bank, the Merchant Agreement shall be the valid and binding obligation of Merchant, enforceable against Merchant in accordance with its terms.

By signing the Merchant Account Application, Merchant acknowledges that Bank may in its sole discretion decline to accept Merchant's application to participate in its Card program.

Printed Name of Owner/Officer/Partner	Signature	Date
Printed Name of Owner/Officer/Partner	Signature	Date

DBA Name	Bank Name	Sales Rep. Name	Sales Rep Code

Guaranty

The undersigned Guarantor(s) hereby unconditionally guarantees, in accordance with the provisions hereof and of the accompanying Merchant Agreement (which the undersigned Guarantor(s) hereby acknowledges having received and read), including without limitation the Paragraph thereof entitled "Guaranty", which is incorporated into this Guaranty by this reference), payment of all indebtedness of Merchant to Bank of every nature whatsoever at any time or times heretofore or henceforth incurred or arising under or within the contemplation of said Merchant Agreement, or otherwise referred to in said "Guaranty" Paragraph of the Merchant Agreement. Each undersigned Guarantor hereby authorizes Bank to obtain such Guarantor's business and personal credit reports, including reports from consumer reporting agencies, and to request information from credit references, including but not limited to any banking institution concerning Guarantor's financial or credit status and permit any such reference to release such information to Bank. If such Guarantor asks Bank whether or not a consumer report was requested, Bank will tell such person, and if Bank received a report, Bank will give such person the name and address of the agency that furnished it. The undersigned waive any claim against and fully release such credit references and Bank from any and all liability related to disclosure of such information. Guarantor(s) acknowledges receiving copies of the Merchant Agreement and Bank's privacy policy.

(1) Printed Name of Guarantor	Guarantor Signature	Date
Home Street Address	City, State & ZIP	Telephone #
(2) Printed Name of Guarantor	Guarantor Signature	Date
Home Street Address	City, State & ZIP	Telephone #

Internal Use Only:

Bank: Columbus Bank and Trust Company

By: ____________________

Title: ____________________

Date:

Participating Bank is signing below solely for the purpose of agreeing to the Control Agreement among Merchant, Participating Bank and Bank:

Participating Bank: ____________________

By: ____________________

Title: ____________________

Date: ____________________

Merchant Services

A division of Columbus Bank & Trust Company
1125 First Avenue
Columbus, GA 31901

Merchant Agreement

Merchants participating in programs of COLUMBUS BANK AND TRUST COMPANY ("Bank") shall comply with and be bound by the following terms and conditions which, together with the Merchant Account Application and any Supplements, appendices, addenda, or schedules thereto or hereto, as amended from time to time as provided herein, are collectively hereinafter referred to as the "Merchant Agreement" or "Agreement":

1. GENERAL PROVISIONS. Merchant agrees to honor Cards (as defined below) and submit drafts or transmissions in connection with the sale of merchandise and/or services. Bank agrees to process Card Transactions in connection with the Operating Rules (as defined below) for the services to which Merchant subscribes, which may vary among Card Types. 'Operating Rules' are relevant portions of operating regulations, operating manuals, official rules, bulletins, notices and similar documents issued by Card organizations.

2. LAWS, RULES AND REGULATIONS. Merchant agrees to comply with all Operating Rules of VISA USA, Inc. ("Visa"), MasterCard International, Inc. ("MasterCard"), and other organizations and associations applicable to the use of Cards and processing of transactions. Bank may enable its terminal to connect with the processing, authorization, settlement and other processes provided by organizations supporting certain other debit and credit cards, such as American Express, Diner's Club, JCB, and Discover. Merchant acknowledges that Bank services with respect to such Cards is limited to the connection service and does not include processing. Merchant further agrees to comply with all applicable state or federal laws, rules and regulations as in effect from time to time affecting the use of the Cards, including but not limited to the Federal Truth-in-Lending Act and Regulation Z.

3. CARDS. All references in this Agreement to "Card" and "Cards" shall mean credit cards and debit cards bearing the distinctive Visa and/or MasterCard labels, symbols or designs authorized by Visa and MasterCard, and any other credit cards or debit cards approved by Bank in writing for the purposes hereof.

4. HONORING CARDS. Merchant agrees to honor credit/business Cards, consumer debit/prepaid cash Cards, or both categories of Cards, as indicated on Merchant's Merchant Account Application, and without discrimination against any valid Visa/ MasterCard Card properly tendered by a cardholder in payment for goods and services. A Merchant that accepts any category of Visa/MasterCard Cards, must accept any valid Visa/MasterCard Card issued by a non-U.S. Issuer.

5. CARDHOLDER IDENTIFICATION. Merchant shall identify the cardholder, check the expiration date and signature on each Card, and shall not honor any Card which has expired. If Merchant is presented with an unsigned Card, Merchant shall request further identification for verification, indicate the identification, including any serial number and expiration date on the transaction receipt (except to the extent such indication on the transaction receipt is prohibited under applicable law), and require the cardholder to sign the Card before completing the transaction. Merchant shall compare the signature on the Card (which signature may but need not be the name embossed on the Card) with the signature on the draft; and if the two signatures do not appear to be the same, or if for any other reason Merchant is uncertain as to the validity of the Card, the identity of the person presenting same or the authority of that person to use the Card, Merchant shall not complete the transaction without first telephoning and obtaining authorization from Bank's authorization center, using "Code 10" procedures. While Code 10 is designed to reduce chances of misrepresentation, Merchant nevertheless shall be deemed to warrant the true identity of the customer as the cardholder, or that the customer is authorized to use the Card. Merchant must not refuse to complete a MasterCard Card Transaction solely because a Cardholder who has complied with the conditions for presentment of a Card at the POI refuses to provide additional identification information, except as specifically permitted or required by the MasterCard Standards. A Merchant may require additional identification from the Cardholder if the information is required to complete the transaction, such as for shipping purposes. A Merchant in a country or region that supports use of the MasterCard Address Verification Service (AVS) may require the Cardholder's ZIP or postal code to complete a cardholder-activated terminal (CAT) Transaction, or the Cardholder's address and ZIP or postal code to complete a mail order, phone order, or e-commerce Transaction.

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6. PREREQUISITE TO CARD ACCEPTANCE. (a) Merchant understands that an authorization must be obtained for each transaction, regardless of dollar amount, and included in the sales receipt. In the event of the failure of electronic point-of-sale equipment, Merchant agrees to obtain voice authorization as instructed in the guidelines provided by Bank. Merchant shall follow any instructions received during the authorization process. Upon authorization, Merchant may consummate only the amount authorized and must note the amount authorized and the authorization number on the sales draft in the space provided. Merchant understands that an authorization is not a guarantee of payment, but an indication that at the time of the authorization, the card account is open and has available funds. Merchant will remain liable for cardholder disputes and any resulting chargebacks. Merchant agrees not to accept a Card or submit a transaction for settlement when authorization is declined. (b) Where Cards are used at electronic terminals, the Card number embossed on the Card must be compared with (and found to match) the stripereading number displayed on the terminal. Merchant shall not complete the transaction if the two numbers do not coincide and shall be liable for any resulting loss or damage if it does so. (c) Merchant shall complete a draft (either by electronic or manual means) for each transaction. All drafts shall be on forms/paper supplied or acceptable to Bank. Each draft shall be legibly imprinted with Merchant's name and number, the information embossed on the Card presented, the date of the transaction, a brief description of the goods or services involved, the total amount of the sale (including any applicable taxes), terminal location of where the transaction occurred, account number of the cardholder, and authorization number. Any of the foregoing supplied by magnetic stripe reading at the point of sale shall be deemed imprinted. In the event that a transaction is key entered, a manual imprint must be obtained. Cardholder signatures are required on all sales receipts unless the Merchant has arranged with the Bank to process transactions in which Cards are not present. If any such information is omitted or illegible, Merchant shall be responsible for all resulting consequences.

7. NO WAIVER OF RIGHT TO DISPUTE; NO ADDITIONAL CHARGE FOR USE OF CARD. Merchant may not require a cardholder as a condition to honoring a Card to waive the right to dispute the transaction with the Card Issuer. Merchant will not add an additional amount to the tag, posted or advertised price of goods or services offered by Merchant as a condition or consequence of the use of a Card in any transaction.

8. CONFIDENTIALITY. (a) Merchant shall not impose a requirement to provide any personal information such as a number as a condition for honoring Cards, except in specific cases where such is required by Operating Rules. (b) Merchant shall not request or use a Cardholder Account number for any purpose other than as payment for Merchant's goods or services. (c) Merchant shall not require a Cardholder to complete a postcard or similar device that includes the Cardholder Account Number, Card expiration date, signature or any other Card account data in plain view when mailed. (d) Merchant must NOT, in the event of its failure, including bankruptcy, insolvency, or other suspension of business operations (and shall ensure, and by contract provide, that Merchant's agents and Merchant Servicers must NOT), sell, transfer, or disclose any materials that contain Cardholder account numbers, personal information, or Visa transaction information or MasterCard transaction information to third parties. The Merchant must (and shall ensure, and by contract provide, that Merchant's agents and Merchant Servicers must) (1) return this information to Bank or (2) provide acceptable proof of destruction of this information to Bank.

9. WARRANTIES. (a) Merchant warrants and represents that all information regarding the nature of Merchant's business, its business locations, the form of its business organization, the identity of its principal owners and related matters at any time furnished to Bank by Merchant, whether in the form of a Merchant Application or otherwise is true, complete and correct. Any additional information regarding such matters at any time requested by Bank shall be promptly furnished by Merchant. In any event, MERCHANT AGREES TO NOTIFY BANK PROMPTLY OF ANY AND ALL CHANGES WHICH MAY OCCUR FROM TIME TO TIME REGARDING ANY SUCH INFORMATION INCLUDING BUT NOT LIMITED TO THE IDENTITY OF PRINCIPAL OWNERS, BUSINESS LOCATIONS, THE FORM OF BUSINESS ORGANIZATION (i.e., SOLE PROPRIETORSHIP, PARTNERSHIP, ETC.), TYPE OF GOODS AND SERVICES PROVIDED. Merchant shall be and remain fully liable to Bank for any and all losses, costs and expenses suffered or incurred by Bank, arising out of or resulting from Merchant's failure to report all such changes to Bank in accordance herewith. (b) Merchant warrants that with respect to each transaction presented by Merchant to Bank for payment: (1) such transaction is a valid transaction completed in accordance with rules and operating regulations issued by VISA, MasterCard and similar associations and networks and instructions provided by Bank; (2) such transaction is submitted following the delivery of merchandise or services to cardholders as described in the sales receipt; (3) such transaction was completed by Merchant identified in the Merchant Account Application and no other entity; (4) Merchant has not imposed, directly or indirectly, separate or additional fees or surcharges (except for a surcharge, if any, that is authorized by the Operating Rules) to the cardholder; (5) such transaction is not subject to any lien and (6) to the best of the Merchant's knowledge, the cardholder involved in a transaction has no reason to dispute the transaction.

10. INVESTIGATION AUTHORIZED. Merchant authorizes Bank to make from time to time whatever credit and/or investigative inquires it deems necessary to ascertain the accuracy of any information furnished by Merchant, to assess Merchant's financial condition and capacity to satisfy its obligations hereunder, or to monitor Merchant's compliance with the provisions hereof, and to exchange information with others regarding its credit transactions with Merchant.

NOTICE: Federal regulations enacted pursuant to the USA PATRIOT Act and other applicable laws require financial institutions to verify the identity of every person who seeks to open an account with a financial institution. As a result of Merchant's status as an account holder with Merchant Bank, Merchant shall provide documentary verification of Merchant's identity, such as a driver's license or passport for an individual and certified copy of organization documents for an entity in manner acceptable to Bank. Bank reserves the right to verify Merchant's identity through other non-documentary methods as Bank deems appropriate in its sole discretion. Bank may retain a copy of any document it obtains to verify Merchant's identity with the financial institution.

11.CARD RECOVERY. Merchant shall use its best efforts to recover any Card, (a) if Merchant is advised by the authorizing center to retain it, (b) if Merchant has reasonable grounds to believe such Card is counterfeit, fraudulent or stolen, or (c) if the Card presented is a VISA Card and the printed four digits above the embossed account number do not match the first four digits of the account number. Merchant's efforts to recover a Card will at all times be reasonable under the circumstances.

12.DELIVERY AND RETENTION OF SALES DRAFT COPY; ENTRY OF TRANSACTION; RETRIEVAL REQUESTS. The term "copy" when used in connection with sales drafts or credit vouchers means a paper or electronic record, in a form or medium approved by Bank, of the Card transaction. Merchant shall deliver a true and complete copy of the sales draft or credit voucher to the customer at the time of the transaction (except that on the customer's copy the Card expiration date and all but the last four digits of the Card account number must be suppressed). Merchant shall retain the "Merchant copy" of the sales draft or credit voucher for at least two (2) years following the completion date of the transaction. At the end of this period or such later time prescribed by Merchant's document retention policies, Merchant shall destroy the records, leaving no legible information. If Merchant is depositing drafts using an electronic data capture system, transmissions must be processed on a daily basis. All drafts must be deposited by the deadlines established by the Operating Rules. Merchant agrees to mail or send by facsimile copies of sales receipts to the Bank within 24 hours of receiving a retrieval request from the Bank. Merchant understands that failure to respond to a retrieval request within the time period with a copy of the transaction and proof of delivery to the Bank shall constitute a waiver of all rights of Merchant to dispute the chargeback. This may result in higher transaction fees and termination by Bank of Merchant's account. The sales draft must be legible, accurate, complete and signed by the cardholder to prevent a chargeback.

13. MERCHANT SHALL NOT ENGAGE IN SOLICITING OR ACCEPTING MAIL ORDERS, TELEPHONE ORDERS, INTERNET ORDERS, OR RECURRING TRANSACTIONS unless its intention to do so is reflected on its Merchant Account Application. Merchant shall comply with Bank rules and restrictions, if any, governing such solicitations, orders and transactions, including, but not limited to, the following:

(a) Additional Definitions: (i) "3-D Secure" - A Visa-approved authentication method that is the global authentication standard for Electronic Commerce Transactions. (ii) "Authentication Request" - A request for Cardholder authentication from a Merchant utilizing 3-D Secure to a Card Issuer. (iii) "Deferred Payment Transaction" - A CNP Transaction for which the Cardholder is billed once no more than 90 days after the first shipment of merchandise. (iv) "Electronic Commerce Transaction" - A Card Transaction conducted over the Internet or other network. (v) "Order Form" - A document bearing the Cardholder's signature, either written or electronic, authorizing goods or services to be charged to his or her account. An Order Form may be: (a) a mail order form, (b) a Recurring Transaction form, (c) a Preauthorized Health Care Transaction form, or (d) an e-mail or other electronic record that meets the requirements of applicable law. (vi) "Permanent Establishment" - A fixed place of business through which an Electronic Commerce or Mail Order/Phone Order Merchant conducts its business, regardless of its Web site or server locations.

(b) Acceptance of Card Not Present (CNP) Charge Transactions: (i) Merchant may accept Card Not Present (CNP) transactions and related Charges ("CNP Transactions") based upon the description of Merchant's business ("Business") on the Application and as authorized by the Bank. Bank reserves the right to terminate CNP Transactions in the event that there is any material change in the Business, including any material change in the customers, products, management or employees of the Business. (ii) Merchant agrees that, except as expressly permitted by the Operating Rules, no CNP Transactions shall be submitted for processing prior to shipping of the product purchased and/or the implementation of the service offered. (iii) Merchant understands and agrees that CNP Transactions: (1) do not require the Cardholder's signature on the Charge, sales draft or sales slip (with the exception of Order Forms authorizing a Recurring Transaction); (2) require the Merchant to obtain the valid Expiration Date for each Card used for a CNP Transaction; and (3) require the Expiration Date of the Card be submitted as part of the Authorization process. (iv) ***It is understood that Authorizations for CNP Transactions are subject to Chargeback and such Authorizations do not guarantee the validity or collectability of the Card Transaction.*** Merchant agrees to take reasonable additional steps to verify the identity of the authorized Cardholder on these types of transactions, especially when merchandise is shipped to a third party. Merchant acknowledges and agrees that the receipt of an Authorization Code indicating approval does not guarantee Merchant against Chargebacks. Merchant is encouraged to use fraud reduction systems offered by the Card Associations, such as AVS and CVV2/CVC2 in CNP Transactions. (v) Generally, in order to satisfy a retrieval request for CNP Transactions, the following transaction receipt information must be provided by Merchant: (1) the Cardholder Account number, (2) the Card expiration date, (3) the Cardholder name, (4) the transaction date, (5) the Transaction amount, (6) the Authorization Code, (7) Merchant's Name, (8) Merchant's location, (9) a description of the goods or services, (10) the "ship to" address, and (11) the AVS response code (if AVS was used).

(c) Processing Restrictions. If at any time Bank suspects fraud, money laundering or violations of the Operating Rules, Bank may, in its sole and absolute discretion and in addition to other remedies that the Bank may have: (1) refuse to process the excessive or suspect CNP Transactions; (2) process the CNP Transactions and retain the funds received from processing until such time as the excess or suspect Charges are found to be valid or invalid and processed in accordance with the Operating Rules; (3) suspend the CNP Transactions and/or terminate the Agreement; or (4) amend the Agreement to protect the interests of Bank.

(d) Electronic Commerce Transactions. (1) If Bank authorizes Merchant to accept Electronic Commerce Transactions, Merchant agrees to comply with all the provisions of the Operating Rules pertaining to Electronic Commerce Transactions. (2) Merchant shall at all times maintain a secure site for the transmission of data relating to the processing of Electronic Commerce Transactions. Merchant shall be responsible for ensuring, obtaining and maintaining site security, for the encryption of all data, and for any and all storage of data both in electronic and physical form. (3) Each Electronic Commerce Transaction must be identified as such when submitted by Merchant by using the appropriate Electronic Commerce Transaction indicator values specified by the Card Associations. (4) Merchant shall display on Merchant's web site in a prominent manner: (i) the address of the Merchant's Permanent Establishment, including Merchant's country of domicile, located on the same screen view as the checkout screen used to present the total purchase amount, or within the sequence of web pages the Cardholder accesses during the checkout process; (ii) a complete and accurate description of the goods or services offered; (iii) Merchant's merchandise return and refund policy clearly displayed on either the checkout screen, or on a separate screen that allows the purchaser to click an acceptance button; (iv) Merchant's consumer data privacy policy and the method of transaction security used to secure cardholder account data during the ordering and payment process; (v) a customer service contact, including electronic mail address or telephone number; (vi) transaction currency; (vii) export restrictions (if known); (viii) Merchant's delivery/fulfillment policy. (5) Merchant shall provide Cardholders a secure transaction method, such as Secure Socket Layer or 3-D Secure. (6) Merchant cannot refuse to complete an Electronic Commerce Transaction using a MasterCard-branded Card solely because the Cardholder does not have a digital certificate or other secured protocol. (7) Merchant agrees to include, in addition to the other data required under the Operating Rules, the following data on a transaction receipt completed for an Electronic Commerce Transaction: (i) Merchant's name most recognizable to the cardholder, such as: Merchant "doing business as" name or Merchant's "universal resource locator" (URL). (ii) Customer service contact information including telephone country code and area code. If Merchant delivers goods or services internationally, Merchant must list both local and internationally accessible telephone numbers. (iii) Terms and conditions of sale, if restricted. (iv) The exact date any free trial period ends, if offered. (v) Cancellation policies. (8) Merchant will provide a completed copy of the transaction record to the Cardholder at the time the purchased goods are delivered or services performed. Merchant may deliver the transaction receipt in either of the following formats: (i) electronic (e.g., e-mail or fax), or (ii) paper (e.g., hand-written or terminal-generated). Merchant may not transmit the Cardholder Account number or Card expiration date to the Cardholder over the Internet or on the transaction receipt.

(e) Recurring Transactions: You may complete a Recurring Charge (a repeated Charge for goods or services that are delivered or performed periodically) by meeting the following requirements: (1) Obtain from the Cardholder a completed Order Form containing a written request for the goods or services to be charged to the Cardholder's account. The Order Form must include, but is not limited to, the following: (a) Transaction amount, unless the Recurring Transactions are for varying amounts; (b) frequency of the recurring charges, and (c) duration of time for which Cardholder permission is granted. (2) Retain a copy of the Order Form for the duration of the recurring services and provide it to the Issuer upon request. (3) Write the words "Recurring Transaction" on the signature line of the Transaction Receipt (or "P.O." for MasterCard transactions). (4) Provide a subsequent Order Form when a Recurring Transaction is renewed. (5) Obtain the Cardholder signature, or an electronic signature or other similar authentication, that is effective under applicable law. (6) For an Electronic Commerce Transaction, include the frequency and duration of the Recurring Transaction, as agreed to by the Cardholder, on the Transaction Receipt. (7) For an Electronic Commerce Transaction, provide a simple and easily accessible online cancellation procedure, if the

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A Recurring Service Merchant must not: (1) Include partial payment for goods or services purchased in a single Transaction. (2) Include additional finance charges on a Recurring Transaction. (3) Complete a Recurring Transaction if it receives a negative response or a cancellation notice from the Cardholder or Acquirer.

For Recurring Transactions of varying amounts, all of the following apply: (1) The Order Form must allow the Cardholder to specify a minimum and maximum Transaction amount to be charged, unless the Cardholder will be notified of the amount and date of each charge, as specified in the remainder of this section. (2) The Merchant must inform the Cardholder of his/her right to receive, at least 10 calendar days prior to each scheduled Transaction Date, written notification of the amount and date of the next charge. (3) A Cardholder may choose to receive the notification in any of the following ways: (a) for every charge, (b) when the Transaction amount does not fall within the range of amounts specified on the Order Form, or (c) when the Transaction amount will differ from the most recent charge by more than an agreed-upon amount.

(f) Installment Billing Transactions. (1) If Merchant is so permitted by Bank, Merchant may offer Cardholders involved in Electronic Commerce Transactions or mail order/telephone order transactions an Installment Billing Transaction option. If Merchant offers an Installment Billing Option, Merchant must: (i) disclose in writing the terms, including but not limited to, whether the installment terms are limited to certain goods that a Cardholder may purchase, (ii) disclose in writing any shipping and handling charges and any applicable tax, (iii) inform a Cardholder not billed in the transaction currency of the Merchant that each Installment Billing Transaction amount may vary due to currency conversion rate fluctuations, (iv) ensure that the sum of the Installment Billing Transactions does not include any finance charge or exceed the total price for the goods, and (v) Authorize all Card Transactions (zero floor limit).
(2) Merchant may not add finance charges to an Installment Billing Transaction. (3) Merchant may not deposit the first Installment Billing Transaction until the shipment date of the goods. Thereafter, Merchant must deposit subsequent Installment Billing Transaction receipts at either of the following interval: (i) 30 calendar days or more, or (ii) the monthly anniversary of the shipment date.

(g) Deferred Payment Transaction. Merchant may use the status check procedure for a Deferred Payment Transaction to serve only as account verification at the time the Cardholder places the order. Merchant must (1) request Authorization for a Deferred Payment Transaction on the date the Cardholder is billed, which must be no later than 90 days from the initial shipment date, and (2) include disclosure of the deferred payment process, including the exact date of billing, with the initial shipment to the Cardholder. The billing date is considered to be the Transaction Date.

(h) Merchant, if a Direct Mail Cardholder Solicitation Merchant (as defined in the MasterCard Operating Rules), agrees that: Merchant acknowledges that the trademark "MasterCard" and the corresponding logotype are the property of MasterCard International Incorporated. Merchant shall not infringe upon the mark or logo, nor otherwise use the mark or logo in such a manner as to create the impression Merchant's goods or services are sponsored, produced, affiliated with, offered, or sold by MasterCard. Merchant shall not use the mark or logo on its stationery, letterhead, envelopes, or the like nor in its solicitation; provided, however, that Merchant may use one of the mark or logo in close proximity to the payment or enrollment space in the solicitation in a size not to exceed 1 1/4 inches in horizontal length if a logo is employed, or, if a mark is used, in type not to exceed the size of the type used in the major portion of the text on the same page; provided further that the legend, "Accepted for Payment" must accompany the mark or logo used and must be the equivalent size of the mark or logo. In no case, however, shall Merchant use any of the logo on the front or first page of its solicitation. One truthful statement that Merchant is directing or limiting its offer to MasterCard Cardholders may appear in the body of the solicitation, other than in close proximity to the payment or enrollment space, subject to the limitation that: (*i*) only the word mark may be used; (*ii*) the word mark may not (*a*) exceed in type size the size of any other type on the same page, (*b*) differ in color from the type used in the text (as differentiated from the titles) on the same page, (*c*) be as large or as prominent as the name of Merchant, (*d*) be the first item appearing on any page, nor (*e*) in any other way be the most prominent element of the page; (*iii*) Merchant's name and/or logo must appear prominently on the same page as the mark; and (*iv*) the following disclaimer must appear in close proximity to the mark on the same page and in an equal size and type of print: "MasterCard International Incorporated is not affiliated in any way with Merchant and has not endorsed or sponsored this offer."
Merchant further agrees to submit its first direct mail solicitation(s), prior to mailing, to the MasterCard Law Department, to be reviewed only for compliance with MasterCard's trademark rules and shall furthermore not distribute in any manner such solicitations until Merchant shall have obtained MasterCard's written approval of the manner in which it uses MasterCard mark and logo on such solicitations. Merchant shall likewise, upon request, submit to the Corporation any amended solicitations prior to mailing.

14. DEPOSIT AND RESERVE ACCOUNTS; SECURITY INTEREST. (a) If Bank determines that maintenance of an account by Merchant is necessary to the furnishing of credit card processing pursuant to this Agreement, Merchant shall establish and maintain with Bank or with a depository approved by Bank a demand deposit account. If Merchant's account is maintained with Bank or Participating Bank (as defined below), Bank shall make deposits thereto pursuant to the applicable provisions of this Agreement, and Merchant irrevocably authorizes Bank, without prior notice, to debit against such account from time to time any chargebacks, fees, amounts needed to fund or replenish a reserve account or other amounts payable by Merchant to Bank under this Agreement, and to make such entries with respect thereto as may be required for any necessary and appropriate adjustments or corrections therein. If Merchant's account is maintained at another depository approved by Bank, and if (but only if) Merchant has provided Bank with an Authorization Regarding Automatic Funds Transfer in form and content acceptable to Bank, Bank shall make deposits in said account pursuant to applicable provisions of this Agreement and the said Authorization. (b) Merchant expressly agrees and consents to any charges or debits made by Bank against any such account of Merchant for any chargebacks, fees, amounts needed to fund or replenish a reserve account or other amounts payable by Merchant hereunder. Merchant shall promptly and diligently examine and review all statements relating to Merchant's account, and within 30 days after receiving same shall give Bank written notice of any alleged errors or discrepancies noted therein. Such written notice shall include (1) Merchant's name and account number, (2) the dollar amount and description of the asserted discrepancy, and (3) an explanation of why the Merchant believes such discrepancy exists and the cause of same. Discrepancies alleged in a written notice received within said 30-day period will be investigated by Bank, and whatever if any adjustment Bank deems appropriate will be made. In all other cases, the figures shown in the statements and periodic chargebacks/adjustments shall be deemed correct and conclusively binding upon Merchant. (c) No such deposit account maintained by Merchant with Bank or Participating Bank shall be closed by Merchant unless Bank is provided 30 days prior written notice, Merchant has satisfied all payments owed to Bank, the dispute and chargeback time limitations have expired for all transactions submitted by Merchant. (d) Merchant authorizes the Bank at its discretion to establish one or more reserve accounts to be held by Bank with an amount determined by Bank to be used to offset chargebacks and other amounts owing to Bank. Bank has the right to increase or decrease the amount of the reserve account depending on the Merchant's chargeback activity or other risk factors determined by the Bank. In the event of termination of this Agreement by Merchant or Bank, Bank has the right to have a reserve account remain in effect for Merchant for at least 180 days following the date of termination. (e) To secure Merchant's performance of its existing and future obligations under this Merchant Agreement, and any other agreement with Bank, Merchant grants Bank a security interest in (1) each Card transaction and its proceeds, (2) any deposit account referred to above in (a) and any reserve account referred to above in (d), (3) any deposit account maintained at Participating Bank in connection with an exercise by Participating Bank of its rights under this Paragraph in accordance with Paragraph 40 hereof, (4) any other deposit account of Merchant with a financial institution, whether now existing or established in the future, (5) in all funds now or hereafter in any of the aforesaid accounts, (6) any funds due Merchant from Bank, (7) any of Merchant's property held by Bank, and (8) all proceeds of any of the foregoing. Bank may enforce these security interests without notice or demand. The security interests granted under this Merchant Agreement will continue after this Merchant Agreement terminates, until Merchant satisfies all its obligations to Bank. Furthermore, and with respect to any security interests granted herein, Bank will have all rights afforded under the Uniform Commercial Code, as the same may, from time to time, be in effect in the State of Georgia; provided, however, in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection or priority of the security interests granted herein is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of Georgia, then Bank will have all rights afforded under the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions relating to such attachment, perfection or priority of the security interests, as well as any other applicable law. Upon request of Bank, Merchant will execute one or more financing statements or other documents to evidence the security interests granted to Bank under this Paragraph 14. Merchant shall cooperate with Bank in obtaining any control agreement or similar agreement with a depository bank necessary to perfect the security interests granted herein. In addition, Merchant agrees that its signature on the Merchant Account Application will be considered Merchant's signature agreeing to any control agreement as defined in Article 9 of the Uniform Commercial Code among Merchant, Bank and any other financial institution under which Bank, Merchant and any other financial institution agree to the disposition of funds in any of the deposit accounts referred to above in this Paragraph 14 without further consent by Merchant.

15. AUTHORIZATION REGARDING AUTOMATIC FUNDS TRANSFER (ACH/ CREDITS/DEBITS). (a) Merchant authorizes Bank to initiate and/or transmit automatic credit/debit entries to Merchant's above designated demand deposit account or any other deposit account maintained by Merchant with Bank (hereinafter, "Merchant Account"). Said authority includes, but is not limited to the initiation and transmission of such entries, requests or orders as may be necessary to charge Merchant's Account for any chargebacks, fees, amounts needed to fund or replenish a reserve account or other amounts payable by Merchant to the Bank under the terms of the Merchant Agreement, to initiate and transmit such entries, requests or orders as may be necessary to reverse or adjust any entries made in error or by mistake, and to initiate, transmit or suspend such entries, requests or orders as may be necessary to grant, or effect, or revoke conditional credit with respect to any entry or group of entries. (b) Merchant acknowledges that Bank is a member of the National Automated Clearing House Association ("NACHA"). Merchant agrees to be bound by NACHA's operating rules, as the same exist and may be amended from time to time, and further acknowledges and agrees that this authorization is granted and made subject to NACHA's operating rules and is also governed by and subject to all applicable terms and provisions of this Merchant Agreement and the rules, regulations and laws which apply to and govern this Agreement. All payments to Merchant for authorized transactions shall be made through NACHA and to Merchant's deposit accounts designated by Merchant in the Merchant Account Application. (c) Nothing in this authorization shall obligate Bank to initiate or transmit entries to or from Merchant's Account pursuant to any schedule, or using any particular facilities, intermediaries or means of transmission. Bank may adopt and use such schedules, facilities, intermediaries and/or means of transmission, or alternatives thereto, as it deems suitable, and accepts no undertaking and makes no warranty or assurance regarding the date or time at which entries will be received by, credited to or debited from Merchant's Account. The time between the day of a transaction and payment to Merchant is dependent on when transactions are submitted and processed for settlement, when payments are processed by NACHA, and when Merchant's bank receives and processes payments from NACHA. Payments owed Merchant may be made in full, less discounts, credits, chargebacks, fees, and other adjustments. Payments owed to the Bank may be deducted from incoming transactions or debited against Merchant's designated deposit account at a time determined by Bank. (d) Merchant acknowledges that Bank has no control over persons (including Merchant and its agents and employees), entities, intermediaries, associations (such as NACHA) or facilities involved in the initiation and transmission of entries to and from Merchant's Account, other than Bank employees and facilities located at Bank's premises, and acknowledges that facilities located at the Bank's premises may be damaged or impaired, or may otherwise fail to function properly, due to circumstances beyond the Bank's control. Merchant agrees that Bank shall bear no responsibility or liability for any error, delay, damage and/or loss resulting, in whole or in part, from any act, omission, failure or condition which is beyond the Bank's control or right of control. Merchant expressly assumes the risk of all such errors, delays, damages and/or losses and shall indemnify Bank against and hold Bank harmless from all claims, liabilities, demands or suits arising from or relating to such errors, delays, damages and/or losses. Merchant further agrees that any delay in the initiation, transmission or receipt of any credit entry resulting from an act, failure, omission or condition of the Bank, its employees or facilities shall be subject to and excused by the Bank's right to grant conditional credit under the Agreement and this authorization. (e) Merchant acknowledges that the Bank provides automated clearing house ("ACH") services to Merchant at cost and realizes no profit from the provision of such services, and that the Bank would not provide ACH services were it exposed to potential liabilities and costs other than those which it is required by law to recognize and assume, and which cannot be waived or released by contract. Consequently, Merchant agrees that: (1) Bank shall bear no liability or responsibility for any act, error or omission related to the provision of ACH services, except to the extent such liability or responsibility is imposed by Article 4A of the Georgia Uniform Commercial Code and cannot be waived or released by contract; (2) Merchant otherwise discharges and releases Bank from liability and responsibility for losses, costs, expenses, fees, claims or damages arising from or relating in any way to the provision of ACH services, or relating to any dispute concerning such services; and (3) in no event shall Bank be liable or responsible for any indirect or consequential losses or damages, any losses or damages to person or property, or any loss of profits, notwithstanding notice to Bank of the possibility of such damages or losses. (f) If, under Article 4A of the Georgia Uniform Commercial Code, Bank is obligated to pay interest to Merchant, such interest shall be payable at the Federal Funds Rate published by the Federal Reserve Bank of Atlanta on the date Bank's obligation to pay interest arises, but shall in no event exceed the rate of 8% per annum (simple). (g) This authorization shall remain in effect for as long as Bank in its sole judgment shall deem necessary the credit/debit activity contemplated in this Paragraph 15.

16. SALES DRAFTS DEPOSITS. Subject to the ensuing provisions hereof, Bank agrees to deposit to Merchant's account all sales drafts complying with the provisions of this Agreement and to give Merchant credit therefore in the total face amount thereof, less credit memoranda, discounts, and chargebacks. All figures shall be subject to audit and review by Bank, and adjustments for inaccuracies will be made if deemed appropriate by Bank. Bank may elect to grant conditional credit for such sales drafts, either generally or with respect to specific sales drafts or groups thereof on a case-by-case basis, with final credit to be granted at such time and upon such additional terms and conditions as Bank may deem appropriate. Merchant shall promptly reimburse Bank for all cardholder refunds or adjustments necessitated by billing errors or other acts or omissions on the part of Merchant, by credit vouchers subsequently presented, or by other contingencies beyond the control of Bank; and to secure such reimbursement: (a) Bank and/or Participating Bank shall have the right and option to retain and hold, for reasonable periods of time, reserves consisting of such portion or percentage of the amount of the sales drafts presented for deposit as Bank in its discretion shall deem necessary for its reasonable protection against loss from such refunds and adjustments; and (b) at Bank's option and without notice to Merchant, Bank may appropriate and apply toward payment of such reimbursement the said reserves (if any) and/or any other funds or deposits of Merchant at any time held by Bank or Participating Bank. Merchant authorizes Bank, in accordance with this Agreement, or other obligations owed to the Bank or its agents, to initiate credit or debit entries to Merchant's designated deposit account, or any other account maintained by Merchant at any financial institution that receives ACH files. This authority shall remain in effect until Bank has received written notification from Merchant of Merchant's termination of this Agreement, Merchant has satisfied all payments owed to Bank, and the dispute and chargeback time limitations have expired for all transactions submitted by Merchant.

17. TRANSACTION RECEIPT DEPOSITS. (a) Merchant must deposit only transaction receipts that directly result from cardholder transactions with that Merchant. (b) An Internet Payment Service Provider may (but only if Bank has first approved, and entered into a written Internet Payment Service Provider Agreement with such Internet Payment Service Provider) deposit transaction receipts on behalf of a sponsored merchant. (c) Merchant must NOT deposit a transaction receipt until it does one of the following: (1) completes the transaction, (2) ships or provides the goods, (3) performs the purchased services, or (4) obtains the Cardholder's consent for a recurring transaction.

18. Prepayment for Services. (a) The Merchant may deposit a prepayment if the Merchant advises the Cardholder of the immediate billing at the time of the Transaction, for: (1) Prepayment of services, excluding estimates for services to be provided, **and** (2) full prepayment of custom-ordered merchandise, manufactured to the Cardholder's specifications.

19. Merchant Responsibility for Employees. The Merchant is responsible for its employees' actions while in its employ.

20. Merchant Prohibitions (a) Merchant shall not establish minimum or maximum transaction amounts. (b) Merchant shall not add any surcharge (except for a surcharge, if any, that is authorized by the Operating Rules) to Transactions. (c) Merchant shall not add any tax to Transactions, unless applicable law expressly requires that a Merchant be permitted to impose a tax. Any tax amount, if allowed, must be included in the Transaction amount and not collected separately in cash. (d) In no event shall Merchant make any cash disbursement to a cardholder or user of a Card, or accept a Card for the purchase of scrip. This prohibition applies to a Card held personally by Merchant as well as to a Card held by another person. (e) Merchant may not disburse funds in the form of traveler's checks for the sole purpose of allowing the cardholder to make a cash purchase. (f) Merchant shall not accept a Visa Card or Visa Electron Card for the purchase of Scrip (g) Merchant Shall not accept a Visa Electron Card for a Manual Cash Disbursement. (h) Merchant shall not accept a Visa TravelMoney Card for a Manual Cash Disbursement. (i) Merchant shall not disburse funds in the form of cash, unless: (1) Merchant is dispensing funds in the form of travelers cheques, Visa TravelMoney Cards, or Foreign Currency. In this case, the Transaction amount is limited to the value of the travelers cheques, Visa TravelMoney Card, or Foreign Currency plus any commission or fee charged by the Merchant, or (2) Merchant is participating in the Visa Cash Back Service. (j) Merchant shall not Accept Cardholder payments for previous Visa Card or Visa Electron Card charges incurred at the Merchant location. (k) Merchant must prominently and unequivocally inform the Cardholder of the identity of the Merchant at all points of interaction so that the Cardholder readily can distinguish the Merchant from any other party such as a supplier of goods or services to the Merchant.

21. PROHIBITED DEPOSITS. (a) Merchant shall not present for deposit any sales draft or other item (whether manually or by electronic means) that Merchant knows or should know to be fraudulent or unauthorized by the cardholder. (b) No previously deposited sales draft or other item which has been charged back to Merchant shall be presented for redeposit at any time, whether with or without the cardholder's consent. (c) Merchant shall not enter into Interchange a Transaction that represents collection of a dishonored check. (d) Merchant shall not enter into Interchange any Transaction Receipt for a Transaction that was previously charged back to the Acquirer and subsequently returned to the Merchant, irrespective of Cardholder approval. The Merchant may pursue payment from the customer outside the Visa or MasterCard system. (e) Merchant shall not use or permit the use of one Card on two or more sales drafts in the same transaction to avoid an authorization request. (f) Merchant shall not accept a Card to collect or refinance an existing debt that has been deemed uncollectible by the Merchant providing the associated goods or services. (g) The Merchant must not use an arbitrary or estimated amount to obtain Authorization.

22. CONVENIENCE FEES. Merchant that charges convenience fees must ensure that the fee is: (1) charged for a bona fide convenience in the form of an alternative payment channel outside the Merchant's customary payment channels; (2) disclosed to the Cardholder as a charge for the alternative payment channel convenience; (3) added only to a non face-to-face transaction (Mail/Telephone Order and Electronic Commerce Merchants whose payment channels are exclusively non face-to-face may NOT impose a Convenience Fee); (4) a flat or fixed amount, regardless of the value of the payment due; (5) applicable to all forms of payment accepted in the alternative payment channel; (6) disclosed prior to the completion of the transaction and the Cardholder is given the opportunity to cancel; and (7) included as part of the total amount of the transaction. A convenience fee may not be added to a Recurring Transaction.

23. EXCESSIVE CHARGEBACKS, ETC. Merchant agrees that in the event that Bank is presented, during any monthly period, with chargebacks and/or retrieval requests in excess of one percent (1%) of the average monthly dollar amount of transactions of the Merchant processed by Bank, such chargebacks and/or retrieval requests will conclusively be deemed excessive under applicable Operating Rules and a violation of this Agreement.

24. NO ACCEPTANCE OF PAYMENTS. Merchant shall not be entitled to receive payment for merchandise or services included in a sales draft unless Bank refuses to accept the sales draft or revokes its prior acceptance of same. Bank alone shall be entitled to receive cardholder payment on the sales drafts, and Merchant shall not accept any such payment from a cardholder without Bank's specific authorization to do so; and if so authorized, Merchant shall receive the payment in trust and promptly remit same to Bank.

25. NO LAUNDERING OR FACTORING. Merchant shall not discount, purchase, factor or otherwise deal with sales drafts generated by other merchants, dealers, or suppliers; and Merchant shall not directly or indirectly present to Bank for processing any sales draft or credit voucher that did not originate with or arise from a sale of goods or services made by Merchant directly to a cardholder and shall not present to Bank for processing any credit voucher for which there was not a preceding debit by Merchant to the same Card account. Merchant shall not accept, deposit, process or enter into Merchant's terminal, a fraudulent sale or any sale made by any other Merchant. If Merchant does so, Bank may, in addition to any other rights and remedies it may have, immediately terminate Merchant's account, hold payments owed to Merchant for at least 180 days, and add Merchant to the CTMF (as defined below). This action may result in preventing the Merchant from accepting Card payments again or establishing another merchant account.

26. RETURN OF MERCHANDISE. If a refund or price adjustment is allowed in a transaction for a return of merchandise or for any other reason, Merchant shall not make such refund or adjustment in cash but shall make same only by issuing a credit voucher in an appropriate amount not exceeding the original transaction amount. Merchant must complete a credit voucher signed by the cardholder at the time of a return that includes the refund date and amount and a brief description of the refund in sufficient detail to identify the Card used and the original charge. Merchant understands that when credits are issued, Merchant's designated deposit account is debited for the credit amounts. Per item transaction fees apply to credits as well as purchases. If Merchant desires to limit or restrict its acceptance of returned merchandise or its price adjustment policy, proper disclosure thereof shall be made to the cardholder at the time of the sale. Proper disclosure may consist of words such as the following printed on all copies of the signed sales draft in close proximity to the signature line: "NO REFUND," "EXCHANGE ONLY" OR "IN-STORE CREDIT ONLY."

27. COMPLIANCE AND COOPERATION; NONDISCLOSURE AND CONFIDENTIALITY; DATA SECURITY. Merchant agrees both (a) to comply with and (b) to cooperate with and assist Bank in complying in a complete and timely manner with all applicable laws, rules and regulations (including, without limitation, laws and regulations regarding anti-money laundering compliance and Office of Foreign Assets Control compliance) now or hereafter applicable to any Card transaction or this Agreement, and in connection therewith, Merchant agrees to execute and deliver to Bank all such instruments as Bank may from time to time reasonably deem necessary. Unless specifically required by law, Merchant shall not disclose to any third party other than Bank any cardholder's account information or other personal information. Merchant, in an area limited to select personnel, shall store and (when records retention requirements have been met) destroy in a manner rendering data unreadable, all material containing cardholder account numbers or Card imprints, such as sales drafts, credit vouchers, and carbons. Merchant warrants and agrees that without the cardholder's written consent, Merchant shall not sell, purchase, exchange or disclose a cardholder's account number or other information to any third party for any reason other than to Merchant's agents for the purpose of assisting Merchant in the delivery of merchandise or services as part of the transaction, or to Bank, VISA, MasterCard and similar networks, or pursuant to a government request. Merchant must notify Bank and receive Bank's approval prior to engaging any Merchant Servicer or Agent in connection with Merchant's acceptance of Cards or the submission of Card transactions to Bank or the processing or storage of any Card transaction data. Merchant shall provide Bank at least sixty (60) days advance written notice of Merchant's election to use a Merchant Servicer or Agent. Bank may approve or deny the use of a Merchant Servicer or Agent in its sole and absolute discretion and at any time. If a Merchant Servicer or Agent is required to certify, register, or act in any fashion pursuant to the Operating Rules, Merchant shall cause such Merchant Servicer or Agent to cooperate with Bank in completing any steps required for registration and/or certification and/or action. Merchant is solely responsible for any and all applicable fees, costs, expenses and liabilities associated with such registration and/or certification and/or action. Bank shall in no event be liable to Merchant or any third party for any actions or inactions of any Merchant Servicer or Agent used by Merchant, and Merchant hereby expressly assumes all such liability. Merchant will immediately notify Bank if Merchant decides to use electronic authorization or data capture terminals provided by any entity other than Bank or its authorized designee ("Third Party Terminals") to process Card transactions, including leasing a terminal from a third party. If Merchant elects to use Third Party Terminals: (a) the third party providing the terminals will be Merchant's Merchant Servicer in the delivery of Card transactions to Bank; and (b) Merchant assumes full responsibility and liability for any failure of that third party to comply with the Operating Rules, applicable laws, rules or regulations or this Merchant Agreement. Bank will not be responsible for any losses or additional fees incurred by Merchant as a result of any error by a third party agent or a malfunction in a Third Party Terminal. The use of a Merchant Servicer or Agent or software or systems provided by a Merchant Servicer or Agent that has connectivity to the Internet poses an increased risk, and Merchant assumes all liability for such increased risks. If Merchant utilizes software or hardware with a connection to the Internet and such hardware or software interacts in any capacity with the provision of services contemplated pursuant to this Merchant Agreement, Merchant is solely liable without limitation for any and all consequences of such interaction. Merchant shall ensure, and is responsible for demonstrating, that Merchant Servicers and Agents utilized by Merchant provide the same levels of security as those required of Merchant, that Merchant and such Merchant Servicers and Agents transmit data in accordance with: (a) the required format(s) of the Card Associations; (b) the Operating Rules; and (c) the requirements of Bank. Merchant must have a written contract between the Merchant and its Agent or between the Merchant and the Merchant Servicer that stipulates adherence to the provisions of such information security requirements. Merchant shall indemnify and hold Bank harmless against losses or damages arising from the acts or omissions of Merchant Servicers or Agents engaged by Merchant. Merchant must immediately notify Bank of any suspected or confirmed loss or theft of materials or records that contain Cardholder account numbers or Card transaction information. In the event of a suspected or confirmed loss or theft Merchant shall provide immediate access to all facilities, systems, procedures, equipment, and documents as may be deemed appropriate by Bank or its designated representatives for inspection, audit, and copying as deemed appropriate by Bank in Bank's sole discretion. Merchant shall be responsible for all costs associated with such inspection, audit, and copying however such costs may occur. Merchant authorizes Bank to release its name and address to any third party whom the Bank determines needs to know such information in order for Bank to perform the Card program services under this Merchant Agreement and who has requested such information. If requested in writing by Merchant, Bank may provide a list of Bank Identification Numbers (BIN) that apply to Debit Cards for the sole purpose of identifying Debit Cards presented at the Point of Sale. Merchant shall not use the BIN information for any reason other than to identify the Debit Cards presented at the Point of Sale. The BIN information is proprietary and confidential information belonging to Visa or MasterCard. A Merchant shall not disclose the BIN information to any third party without the prior written consent of Visa or MasterCard. Merchant is responsible for insuring its Merchant Identification Number ("MID") is kept confidential. When a change to a Merchant account is required, Merchant shall disclose its MID to the Bank representative as confirmation that the person requesting the change has authority. If the person requesting the change discloses the proper MID, Bank shall assume that person has the proper authority to make the change. Merchant shall be fully liable for any changes to its account after disclosure of the MID. Bank may request from Merchant additional information to further verify Merchant's identity. Merchant will not: (a) provide Cardholder Account numbers, personal Cardholder information or Transaction information to anyone except Bank, the Card Associations, or Merchant's Merchant Servicers or Agents for the purpose of assisting Merchant in completing Card Transactions, or as specifically required by law; (b) retain or store Card Magnetic Stripe, CVV, CVV2 or CVC2 data subsequent to Authorization for a Transaction; or (c) release any Cardholder information over the telephone under any circumstances. Merchant and any Merchant Servicer or Agent must not store in any system or in any manner, discretionary card-read data, CVC2 data, PIN data, Address Verification Service (AVS) data, or any other prohibited information, except during the Authorization process for a transaction, that is, from the time an Authorization Request message is transmitted and up to the time the Authorization Request Response message is received. MasterCard permits storage of only the Card Account Number, expiration date, Cardholder name, and Service Code, in a secure environment to which access is limited, and then only to the extent that this data is required for bona fide purposes and only for the length of time that the data is required for such purposes. Merchant agrees to establish security procedures to protect Cardholder information and comply with the Visa Cardholder Information Security Program (CISP), MasterCard Site Data Protection Program (SDP), and the Payment Card Industry (PCI) data security standards. The Card Associations or Bank, and the respective representatives, may inspect the premises of Merchant or any Merchant Servicer or Agent engaged by Merchant for compliance with security requirements. Merchant acknowledges that any failure to comply with security requirements may result in the imposition of restrictions on Merchant or the permanent prohibition of Merchant's participation in Card acceptance programs by the Card Associations.

28. REFUSAL OR REVOCATION OF CREDIT; REPAYMENT BY MERCHANT. Bank may refuse to accept any sales draft, or revoke its prior acceptance of any sales draft (and in the event of such revocation, Merchant agrees to repay Bank the amount previously credited to Merchant on the basis of such sales draft or to allow a chargeback of Merchant's account), in any one or more of the following circumstances: (a) The sales draft or the transaction giving rise thereto is deemed by Bank to be not in full compliance with the terms and conditions of this Agreement, or with applicable laws, rules or regulations, including but not limited to Operating Rules. (b) The cardholder successfully disputes liability to Bank for any reason, including but not limited to those currently and from time to time listed in Operating Rules. (c) The transaction giving rise to the sales draft was not directly between the Merchant and the customer. (d) The sales draft is illegible or incomplete or duplicates a sales draft from the same transaction. (e) The transaction was authorized or was performed with counterfeit, altered, or expired cards.

29. INDEMNIFICATION FOR CARDHOLDER DISPUTE. If a dispute regarding merchandise and/or services not resolved between Merchant and a cardholder should result in the cardholder's asserting a claim or defense against Bank, Merchant shall indemnify Bank and save it harmless from any resulting loss, damage and expense. Bank in its discretion may settle or compromise any such cardholder claim without notice to Merchant and without relieving Merchant of its obligation to indemnify Bank in the matter.

30. USE OF BANK AND CREDIT CARD PROGRAM MARKS. Merchant shall adequately display current and appropriate Visa and MasterCard program marks and signage at all of its locations and in all promotional materials, to inform the public that Visa and MasterCard credit/business, consumer debit/prepaid or both cards will be honored at the Merchant's place of business. All uses by Merchant of Visa and MasterCard marks shall fully comply with specifications contained in applicable Operating Rules. (Without limiting the generality of the foregoing, any use of a MasterCard mark by Merchant in acceptance advertising, acceptance decals, or signs, must be in accordance with the MasterCard Standards, including MasterCard's reproduction, usage, and artwork standards, as may be in effect from time to time. Chapter 2, Section 4 of the MasterCard Merchant Rules Manual contains usage guidelines for the MasterCard Marks.) The Merchant's use or display of the Visa or MasterCard Marks will terminate upon the termination of the Merchant Agreement or upon notification by Visa or MasterCard, as applicable, to discontinue such use or display. The use or display of the Visa or MasterCard marks does not give a Merchant any ownership or interest in the marks.

Use of Visa and MasterCard promotional materials by the Merchant shall not indicate that Visa or MasterCard endorse any goods or services other than their own. Merchant may not refer to Visa or MasterCard in stating eligibility for its products or services, nor use the Visa or MasterCard marks for any purpose other than those permitted in the Operating Rules. Merchant agrees to cooperate in the protection and preservation of the copyrights, trademarks, and service marks pertaining to the Visa and MasterCard plans and services, and Merchant will not use such material in any manner that might jeopardize same.

31. BANK CONTACT WITH CUSTOMERS. Merchant expressly authorizes Bank to or communicate with any of Merchant's customers whose sales drafts or other memorandum has been presented to Bank for processing, whether by electronic means or otherwise, in the event that Bank in its sole discretion should determine that such contact or communication is necessary or advisable to fully inform Bank with respect to the terms, particulars or circumstances surrounding any transactions between Merchant and its customers. Merchant expressly agrees that Bank shall be permitted to inform itself with respect to any such terms, particulars, or circumstances by any reasonable means it deems, in its discretion, to be appropriate.

32. PAYMENT WITHHOLDING. In the event Bank believes fraud by Merchant has occurred or Merchant fails to provide funds for debits or chargebacks, credits, or fees, Bank may hold all payments owed to Merchant for submitted transactions until Merchant fulfills financial obligations to Bank. Merchant understands that payments to Merchant's account that result from submitted transactions are provisional and may be debited from Merchant's account in accordance with Operating Rules. If Merchant fails to claim funds held under this provision within 180 days notice from Bank of the holding of the funds because Merchant has ceased to do business or for any other reason, the Bank may retain these funds.

33. PRICING TERMS. **(a)** Merchant agrees to pay Bank fees for its services hereunder, including but not limited to any applicable discounts or similar charges relating to Bank's acceptance of sales drafts as provided herein or in any other schedule promulgated by Bank and furnished to Merchant from time to time including any charges, fees or fines levied by the Card Issuer under its Operating Rules. Any specified fees or prices may be changed by Bank at any time, effective immediately upon notice given to Merchant. **(b)** If Merchant owes Bank amounts under the terms of this Agreement and fails to pay in full within 24 hours of a request for payment by the Bank, the Bank has the right to consider amounts as uncollected and can initiate collection procedures, which may include the use of outside collection agents. Merchant shall be responsible for any expenses, including reasonable attorneys' fees, incurred by Bank or its agents in an effort to collect amounts owed by Merchant. In the event that Bank incurs fines from Visa, MasterCard or other organizations due to excessive chargebacks, Merchant is responsible for such fines and authorizes Bank to debit Merchant's designated deposit account accordingly. **(c)** "Discount" refers to a percentage of the gross transactions processed by Merchant. "Interchange" refers to amounts assessed by Visa or MasterCard or similar organizations for the processing of transactions. "Fees" refers to amounts charged for any other purposes, including per transaction fees, chargeback fees, equipment use fees, or fees for other miscellaneous services. Bank has the right to modify the amounts of discounts, interchange or fees it charges as necessary to offset any increase in costs experienced by Bank due to: Visa, MasterCard or other association or network changes in rules, regulations, or operating procedures; any additional requirements imposed by federal or state government agencies or regulatory authorities; increases in telecommunication or other operating costs; or other increases in costs associated with providing services to Merchant under terms of this Agreement. Merchant agrees to pay the fees and charges identified in this Agreement, and understands the pricing schedule may be modified, amended, or supplemented in accordance with this Agreement. **(d)** Merchant understands that the initial discount rates assessed by Bank are based on Merchant's projected sales volume, average transaction amount, and card acceptance practices. If Merchant's actual sales volume and average transaction amount are less than Merchant's projected sales volume and average transaction amount, Bank reserves the right to adjust discount rates to reflect Merchant's actual sales volume and average transaction amount without providing any prior notice.

34. EQUIPMENT. **(a)** All equipment necessary for Merchant's processing of Card transactions pursuant to this Agreement (such as electronic authorization and data capture terminals, imprinters, and related point-of-sale hardware) must be provided and installed at Merchant's place(s) of business at Merchant's expense. Merchant may purchase or rent such equipment from or through Bank (the "Equipment"), at prices or rental rates reasonably established by Bank, and Merchant shall fully comply with any supplemental or separate agreements made with Bank regarding such purchase or rental. Merchant alone shall bear the risk and consequences of using Equipment obtained by Merchant from any other source. **(b)** As to Equipment rented or purchased from or through Bank, amounts due for Equipment Rental/Purchase shall, together with any applicable tax, (i) in the case of Equipment purchases, be paid in full upon approval by Bank of Merchant's Merchant Account Application, unless a different payment schedule is shown on Merchant's Merchant Account Application or other applicable Supplement or schedule constituting part of the Merchant Agreement, and (ii) in the case of Equipment rentals, be paid monthly in the amount each month shown as rental cost on Merchant's Merchant Account Application or other applicable Supplement or schedule constituting part of the Merchant Agreement, unless a different schedule for rental payment is shown thereon, and (iii) in the case of Equipment Service Fees (whether for purchased or rented Equipment), shall be paid monthly in the amount shown on the Merchant Account Application or other applicable Supplement or schedule constituting part of the Merchant Agreement, unless a different schedule for payment is shown thereon, and Bank is hereby authorized to draw upon Merchant's deposit account for all such payments. Monthly and other amounts indicated for purchase/rental of Equipment or for Equipment Service Fees in the schedule of fees set forth in the Merchant Account Application or other applicable Supplement or schedule, relate only to selected Equipment items presently rented or purchased by Merchant, and said indicated payment amounts will be adjusted by Bank for any future changes in those items and for any additional, upgraded or replacement Equipment items henceforth sold or rented by Bank. **(c)** If Equipment is purchased from Bank, title to the Equipment shall pass to Merchant upon delivery. Merchant shall bear all risk of loss thereafter, and Bank shall have a purchase-money security interest in the Equipment for any unpaid portion of its purchase price. If Equipment is rented from Bank (which is deemed to include, without limitation, Equipment designated in the applicable schedule as provided "Without Charge on Condition of Completion of Term of Merchant Agreement" or as provided at "Reduced Charge on Condition of Completion of Term of Merchant Agreement"), the Equipment shall remain the property of Bank, and Merchant shall bear the risk of (and indemnify for) any loss, damage or destruction of the Equipment during its rental. Upon termination of such rental (which shall automatically occur upon expiration of the Term of Agreement specified in the Merchant Account Application, or upon any earlier termination, of the Merchant Agreement), Merchant shall promptly return the Equipment to Bank in as good condition as when received by Merchant (normal wear and tear excepted), or pay to Bank (and Bank may debit any deposit or reserve account of Merchant for) the then current replacement cost of any Equipment which is not returned or which in Bank's sole judgment is deemed damaged beyond repair; except that if such termination occurs at or after the expiration of the Term specified in the Merchant Account Application, or occurs before such expiration but is a without cause termination by Bank, this sentence shall not apply to Equipment provided "Without Charge on Condition of Completion of Term of Merchant Agreement" or (provided Merchant shall have paid the full amount of the Reduced Charge) to Equipment provided at "Reduced Charge on Completion of Term of Merchant Agreement". Merchant authorizes Bank to file from time to time, at Merchant's expense, such financing statements as Bank may deem advisable, to evidence Bank's interest as secured party and/or lessor as to Equipment that is purchased or rented by Merchant. **(d)** The Equipment purchased or rented from Bank shall be used solely for purposes of this Agreement, and Merchant's use of same shall be governed by the provisions hereof. It shall not be used in transactions generated with any card or device other than the "Cards" defined in Paragraph 3 above, nor (unless Merchant has contracted to participate in Bank's "Check Guarantee Service") for any check guarantee purchases; and Merchant alone shall bear the risk and consequences of any such proscribed use of the Equipment. Bank will provide any necessary instruction for Merchant's designated employees in the proper use of the Equipment, and once installed, the Equipment shall not be moved to another location without Bank's prior consent, **(e)** The Equipment Service Fee will cover (during the period to which the Equipment Service Fee relates) updates and programming of Equipment, shipping fees and toll-free customer service help line, in case of purchased Equipment or pre-owned Equipment. Merchant must notify Bank of the malfunctioning or other Equipment problem that requires such services, and Bank will provide same during normal banking hours as promptly as reasonably possible after receiving such notice. Bank shall not be responsible for delays resulting from unavailability of materials or qualified service personnel, or from any circumstances beyond Bank's reasonable control. **(f)** Excepting its provision of maintenance services to the extent above indicated, Bank shall have no other or further obligation to Merchant or any other person regarding the Equipment, or its functioning or nonfunctioning. Bank warrants title to the Equipment BUT MAKES NO FURTHER WARRANTY OF ANY NATURE EXPRESS OR IMPLIED, WITH RESPECT THERETO, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

35. TERMINATION. (a) This Agreement may be terminated at any time by either party, with or without cause, upon notice given to the other party; PROVIDED, that if terminated by Merchant, 30 days' prior written notice of termination must be given to Bank. Notice of termination may be given orally or in writing, and it may but need not specify a reason for termination. If given orally such notice shall be confirmed in writing. Termination shall be effective on the date specified by the oral or written notice. Notwithstanding the foregoing, Bank may terminate this Agreement effectively immediately and without notice if Merchant's chargeback ratio is excessive or Bank determines in good faith that any of the following conditions exists: (i) Merchant has violated any provision of this Merchant Agreement; (ii) there is a material adverse change in Merchant's financial condition; (iii) a petition in bankruptcy has been filed by or against Merchant; (iv) Merchant is generally unable to pay its debts as they become due, a receiver, custodian, trustee, liquidator or similar official is appointed for a substantial portion of Merchant's business, there is a general assignment for the benefit creditors, or the business terminates; (v) any information which Merchant provided to Bank, including without limitation Merchant Account Application information, was false, incomplete or misleading when received; at any time during the term of this Merchant Agreement, Merchant has had a monthly ratio of Chargebacks to

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charges exceeding one percent (1%), or Chargebacks are in excess of three percent (3%) of any monthly dollar amount of charges; (vi) there is an overdraft for three (3) days or more in the Merchant's settlement account, or overdrafts in the Merchant's settlement account are otherwise excessive; (vii) Merchant or any of Merchant's officers or employees has been involved in processing charges with Bank or other parties arising from fraudulent or otherwise unauthorized transactions; (viii) Merchant is or will be unable or unwilling to perform its obligations under this Merchant Agreement or any applicable laws; (ix) Merchant has failed to pay Bank any amount when due; (x) Merchant has failed to promptly perform or discharge any obligation under this Merchant Agreement, Merchant's settlement account or any reserve account; (x) any of Merchant's representations or warranties made in connection with this Merchant Agreement was not true or accurate when given; (xi) Merchant has defaulted on any agreement it has with Bank; (xii) Bank is served with legal process seeking to attach or garnish any of Merchant's funds or property in Bank's possession, and Merchant does not satisfy or appeal the legal process within fifteen (15) days of the Bank being served; (xiii) the Operating Rules are amended in any way so that the continued existence of this Merchant Agreement would cause Bank to be in breach of such Operating Rules; (xiv) any Guaranty supporting Merchant's obligations is revoked, withdrawn or terminated or altered in any way; (xv) Merchant engages in any activity which causes the Bank to be in breach of the Operating Rules; (xvi) if any circumstances arise regarding Merchant or its business that create risk of harm or loss of goodwill to any Card Association, the Bank, or the payment system; (xvii) Merchant has entered into the Merchant Agreement under a new name with intent to circumvent the chargeback monitoring program of any Card Association, or (xviii) the circumstances otherwise warrant immediate termination. Bank will send notification to Merchant of such termination as of the date of termination or as soon thereafter as is reasonably practicable. In any event, all obligations of Merchant with respect to sales drafts accepted by Bank prior to the effective date of any termination shall survive such termination. In addition, Paragraphs 2, 3, 8, 9, 10, 12, 14, 15, 16, 19, 24, 25, 26, 27, 28, 29, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42 43, 44, 45, 46, 47, 48, and 49 hereof shall survive any termination of this Agreement. **(b)** It is specifically agreed that following any such termination, Merchant shall maintain on deposit with Bank (or, at Bank's discretion, with another depository approved by Bank), in a deposit account referred to in Paragraph 14(a), or on deposit with Bank in a reserve account referred to in Paragraph 14(d), for a reasonable period of time determined by Bank and based upon applicable Visa and MasterCard time frames for allotted chargebacks, an amount determined by Bank to be reasonably adequate to cover all chargebacks, refunds, fees and other expenses Bank might incur pursuant to this Agreement or anything contemplated herein, Bank shall be and hereby is expressly authorized to charge such account or any other account of Merchant for the amount of any and all such expenses and other amounts owing from Merchant without prior notice to Merchant. If Merchant does not have funds on deposit to cover such expenses, Merchant shall pay same to Bank upon demand. Merchant will be charged the Early Termination Fee referred to in the Merchant Account Application upon any termination of this Agreement (whether by Bank or by Merchant) before the expiration of the Term shown in the Merchant Account Application, except for an early termination by Bank without cause.

36. COMBINED TERMINATED MERCHANT FILE. Merchant expressly acknowledges that a Combined Terminated Merchant File ("CTMF") is maintained by Visa and MasterCard containing the business name and the names and identification of principals of merchants which have been terminated for one or more of the reasons specified in Operating Rules. Such reasons generally include but are not limited to fraud, counterfeit paper, unauthorized transactions, excessive chargebacks, highly suspect activity, and violation of this Agreement. Merchant acknowledges that Bank is required to report the business name of the merchant and the names and identification of its principals to the CTMF when a merchant is terminated due to one or more of such reasons. Merchant expressly agrees and consents to such reporting by Bank in the event of termination of this Agreement due (in Bank's opinion) to one or more of such reasons, and expressly waives any claim it may otherwise have against Bank for any such reporting. Merchant specifically authorizes Bank to access any CTMF file in connection with Bank's decision to accept or decline Merchant's account or to continue or terminate Merchant's account.

37. SUPPLEMENTS TO MERCHANT AGREEMENT. If in connection herewith Merchant and Bank are parties to any Supplements to Merchant Agreement wherein special provisions are made for certain types of merchants such as those providing lodging, travel or entertainment services, the provisions of each such Supplement shall override the provisions hereof to the extent of any conflict or inconsistency between the two.

38. AMENDMENT; ASSIGNMENT. This Agreement and/or any related Supplements may be unilaterally amended by Bank only at any time upon giving ten (10) days written notice to Merchant; and by continuing to present sales drafts to Bank (directly or through any Participating Bank) after the effective date of an amendment, Merchant shall be deemed to have accepted such amendment and agreed to be bound thereby. No amendment shall be required, however, for discount rate or service changes, which Bank in its reasonable discretion may make at any time upon notice to Merchant. No waiver of any obligation or requirement herein imposed upon Merchant shall be valid or binding upon Bank unless in writing dully executed by Bank. Merchant may not assign any of its rights or delegate any of its obligation under this Agreement without the prior written consent of the Bank. Merchant shall remain liable hereunder even if the Bank consents to any such assignment or delegation. This agreement may not be assigned by Merchant

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without the written consent of Bank. This Agreement is binding upon the parties hereto and their respective successors and permitted assigns.

39. INDEMNITY. Merchant agrees to indemnify and hold Bank harmless from and against any and all loss, liability, damage and expense, including attorneys', paralegals' and experts' fees and other costs of investigation, defense and settlement, which Bank might sustain or incur directly or indirectly by reason of (a) Merchant's breach or violation of any of the provisions of this Agreement, (b) breach of any warranty or representation made by Merchant set forth in this Agreement or provided in contemplation of its execution, (c) Merchant's non-compliance with applicable Operating Rules, or with applicable laws of any jurisdiction, (d) cardholder disputes, (e) Merchant's provision, failure to provide, or alleged failure to provide, goods and services to cardholders; (f) any action by federal or state agency, authority, or regulatory body involving Merchant; (g) any claim for funds owed by Merchant; or (h) any similar or related matters. Merchant acknowledges that it is liable for the actions or failures to act, of Merchant's employees and agents in regard to this Agreement.

40. PARTICIPATING BANK. As used herein, the term "Participating Bank" means a banking institution (other than Bank) with which Merchant maintains a banking relationship, which banking institution is a party to an agreement with Bank whereby it will participate with Bank in providing services to Merchant hereunder. If because of such relationship a Participating Bank is designated for the purposes of this Agreement, whether in Merchant's Merchant Application, hereinabove or otherwise in writing, Merchant may for as long as it so desires make presentment of sales drafts and credit vouchers to such Participating Bank (rather than Bank) for any necessary processing; and in such case the Participating Bank shall have the same rights, immunities and entitlement to indemnity as those herein provided for Bank in such matters, including but not limited to those regarding the deposit and reserve accounts and Automatic Funds Transfer provided for Bank in Paragraphs 14 and 15 above (except that Participating Bank's security interest and offset rights with regard to any deposit account referred to in Paragraph 14, or in any funds now or hereafter in any such account, or in any proceeds of any of the foregoing, shall be subordinate in all respects to Bank's security interest therein). In providing services to Merchant, neither Bank nor such Participating Bank shall be acting as the other's agent or as Merchant's agent, partner or joint venture, and each shall be deemed to be acting as an independent contractor.

41. ARBITRATION. Any controversy or claim between or among the parties hereto will be determined by binding arbitration in accordance with the Federal Arbitration Act, applicable state law and the Commercial Arbitration Rules of the American Arbitration Association. Bank shall choose the arbitrator. Judgment on any arbitration award may be entered in any court having jurisdiction. Any party to this Agreement may bring an action, including a summary or expedited proceeding, to compel arbitration of any controversy or claim to which this Agreement applies in any court having jurisdiction over such action in the state of Georgia.

42. ATTORNEY'S FEES. If a legal or arbitration proceeding is commenced in connection with any dispute under this Agreement, the prevailing party, as determined by the court or arbitrator(s), will be entitled to recover from the other attorneys' fees, costs, and in-house expenses incurred in connection with such action or proceeding. In addition, Merchant shall indemnify and hold Bank harmless for any costs, fees, or expenses, which Bank may incur in its enforcing its rights hereunder.

43. GOVERNING LAW. This Agreement shall be governed by the laws of the State of Georgia and shall, in addition, be subject to the by-laws and operating regulations of Visa and MasterCard and similar applicable associations and networks.

44. FORCE MAJEURE. A Party shall be excused from fulfilling its contractual obligations under this Agreement if and to the extent it is prevented or delayed in such performance by force majeure conditions beyond such party's reasonable control including, but not limited to, fire or explosions; lockouts; strikes; labor shortages or disturbances; acts of God, including, but not limited to, floods, hurricanes, tornadoes, earthquakes, unusually severe weather, and natural disasters; war; insurrection; acts of the public enemy; acts of governmental authority; embargo; quarantine; and acts or omissions of third parties. The Party claiming force majeure will promptly notify the other when it learns of the existence of a force majeure condition and will similarly notify the other when the force majeure condition has ended. The Party claiming force majeure shall exercise commercially reasonable efforts to continue to perform its obligations to the extent practicable and to recommence performing all obligations as soon as possible after the force majeure condition has ended.

45. NOTICES: Notices to Merchant will be sent to the same address provided by Merchant for the delivery of billing statements or other communications. Merchant shall notify Bank in writing at least 90 calendar days prior to any change in Merchant's name or location. Notices to Bank must be written and will be determined received when delivered in person or by other means providing a record of receipt from the U.S. Postal Service or other express mail or messenger service. Notices to Bank must be sent to: **Merchant Services, 1125 1st Avenue, Columbus, Georgia 31901 or such other address as may be specified by Bank.**

46. LIMITATION OF BANK LIABILITY. For transactions involving Cards, in no event will the Bank's liability to Merchant exceed the amount of the sales draft. For any cards other than Cards (which bear the distinctive applicable Visa and MasterCard logos), Bank accepts no responsibility other than to provide authorization and electronic capture service. For check authorization, validation, or guarantee service, Bank accepts no responsibility other than programming the electronic equipment to connect Merchant to third-party vendor. IN NO EVENT SHALL BANK BE LIABLE TO MERCHANT, ITS CUSTOMERS OR ANY OTHER PERSON FOR ANY INCIDENTAL, SPECIAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES, SUCH AS LOST PROFITS OR REVENUES OR FAILURE TO REALIZE ANTICIPATED SAVINGS, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
BANK SPECIFICALLY DISCLAIMS ALL WARRANTIES OF ANY KIND, EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABIITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE SERVICES PROVIDED HEREUNDER. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, BANK DOES NOT GUARANTEE OR WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE.

47. SEVERABILITY. If any court finds any portion of this Agreement invalid or unenforceable, the remaining provisions shall remain in full force and effect.

48. GUARANTY. For value received, and for the purpose of inducing Bank to enter this Merchant Agreement, the Guarantor(s), individually and collectively, who signed on the Guarantor signature line(s) on the Merchant Account Application, hereby unconditionally guarantees payment of all indebtedness of Merchant to Bank of every nature whatsoever at any time or times heretofore or henceforth incurred or arising under or within the contemplation of this Merchant Agreement or any other agreement currently in effect or in the future entered into between Merchant and Bank pertaining to acceptance, processing and/or settlement of Card transactions or any related matters, including but not limited to indebtedness arising from Merchant's obligations under this Merchant Agreement or under any such other agreement, regarding representations and warranties herein or therein made by Merchant and regarding reimbursements and indemnities of Bank and other Bank recourse against Merchant herein or therein provided, indebtedness arising from any noncompliance with or violation of this Merchant Agreement or any such other agreement by Merchant, and indebtedness arising from Merchant obligations which survive termination of this Merchant Agreement or any such other agreement, and Guarantor(s), individually and collectively, agree to pay all cost and expense including but not limited to attorneys' fees and other costs of defense, investigation and settlement incurred by Bank in the collection of said indebtedness and/or enforcement of this Guaranty.

Any such indebtedness not paid by Merchant when due shall be promptly paid by Guarantor(s) to Bank on demand, whenever and as often as each such non-payment shall occur. Guarantor(s) agree to be bound by all terms and conditions of this Merchant Agreement and any such other agreement, with equal and like effect as if all obligations of Merchant to Bank hereunder or thereunder were joint and several obligations of Merchant and Guarantor(s).

Guarantor(s) expressly waive notice of the existence or creation of any such indebtedness of Merchant, notice of any nonpayment or default on the part of Merchant, and notice of Bank's acceptance of this Guaranty. Guarantor(s) expressly waive demand, presentment, notice of or nonpayment dishonor and protest, and all other notices whatsoever. Guarantor(s) waive any right or claim of right to cause marshalling of Merchants' assets or other assets held as security for any such indebtedness. Guarantors agree that Bank from time to time may amend or supplement the Merchant Agreement, or any such other agreement, as herein or therein provided, may surrender, compromise, substitute or exchange all or any collateral contemplated herein or therein, may apply payment in such order as the Bank deems appropriate and may grant any releases compromises or indulgences with respect to this Merchant Agreement or any such other agreement, or any collateral contemplated herein or therein, and may grant any releases compromises or indulgences with respect to this Merchant Agreement or any such other agreement, or any extension or renewal hereof or thereof or any security for this Merchant Agreement or any such other agreement or any party liable hereunder or thereunder, or under this Guaranty (including but not limited to failure or refusal to exercise one or more of the rights or remedies provided or contemplated by this Merchant Agreement or any such other agreement), waive or delay the exercise of any of its right or remedies against Merchant or any other person, abstain from taking advantage of or realizing upon any security interest or other guarantee, all without notice to or consent of the Guarantor(s) and without affecting the liability of the Guarantor(s) under this Guaranty, any of whom may be sued by Bank, with or without joining Merchant or any other Guarantor(s) or party to this Merchant Agreement or any such other agreement and without first or contemporaneously suing such other persons or otherwise seeking or proceeding to collect from them, all rights of the Guarantor(s) under O.C.GA. 10-7-24 being hereby expressly waived and relinquished to the fullest extent permitted by law. To the fullest extent permissible under applicable law, Guarantor(s) waive any and all rights of subrogation, reimbursement or indemnity derived from Merchant, all other rights and defenses available to Merchant, and all other rights and defenses available to Guarantor(s).

This Guaranty shall constitute a primary, absolute independent and continuing obligation of the Guarantor(s) (and each of them, jointly and severally, if more than one), and shall not be affected or impaired by any bankruptcy, debtor-relief, receivership, dissolution, liquidation or other proceedings involving Merchant, by any termination of Merchant's existence by death, operation of law or otherwise, or by offsetting claim or defense Merchant may purport to have against Bank under this Merchant Agreement or otherwise.

If, by order or judgment in any bankruptcy, debtor-relief, dissolution or other judicial proceeding or otherwise, any payment made by Merchant to Bank is invalidated and Bank is required to surrender same, whether to a trustee or receiver or to any other person, the amount thus surrendered shall be reinstated as part of the indebtedness guaranteed hereby, and Guarantor(s), individually and collectively, agree to promptly repay same to Bank on demand. In such case, the obligation of Guarantor(s) to make such repayment shall survive any termination of this Guaranty.

This Guaranty shall be irrevocable until such time as Bank, acting in its sole and unlimited discretion, shall expressly consent to termination hereof in writing; and the obligations of Guarantor(s) under this Guaranty for Merchant indebtedness arising from any transactions and dealings which occur prior to termination shall survive such termination. The Guarantor(s) agree that this Guaranty shall be governed by the substantive law of the State of Georgia, without regard to principles of conflicts of law. This Guaranty shall not be modified except by instrument in writing signed by Guarantor(s) and the Bank. No waiver by the Bank of any term hereof shall be valid unless the Bank has executed a written waiver of such term. This Guaranty shall be binding upon and enforceable against the Guarantor(s)and each of them and their respective heirs, legal representatives, successors and assigns, and shall inure to the benefit of Bank and its successors and assigns. No delay in making demand on Guarantor(s) for satisfaction of liability of Guarantor(s) under this Guaranty shall prejudice Banks right to enforce such satisfaction.

49. BANKRUPTCY. Merchant acknowledges that this Merchant Agreement constitutes an executory contract to extend credit or financial accommodations as defined in 11 U.S.C. §365(c)(2) and that the Merchant Agreement cannot be assumed or assigned in the event of bankruptcy.

50. PARAGRAPH HEADINGS. Paragraph headings are included herein for convenience of reference only, and shall not be deemed to be a part of the text of this Agreement.

Agenda

NOV 2 3 2009

Strategic Marketing Plan to Encourage Montgomerians to buy local during the holidays

Presented to : Montgomery County Commission

Presented by: Darlene Dixon

Cumulus Broadcasting

1 Commerce Street Montgomery, AL 36104

Office(334) 240-9274

Cell 334 275-0486

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MONTGOMERY COUNTY-MY MONTGOMERY MATTERS

November 26 - December 31, 2010

:60 commercials	MON	TUES	WED	THURS	FRI	SAT	SUN		
WLWI									
6A - 7P	1	1	1	1	2			$52	1664
3P - 12A						2		$15	150
10a - 6p							2	$10	100
WMXS									
6A - 7P	1	1	1	1	2			$50	1600
3P - 12A						2		$15	150
10A - 12A							2	$10	100

104 COMMERCIALS TOTAL -$3764

PSAS							
WLWI							
6A - 12A	3	3	3	3	3	3	3
WMXS							
6A - 12A	3	3	3	3	3	3	3
WHHY							
6A - 12A	3	3	3	3	3	3	3
WXFX							
6A - 12A	3	3	3	3	3	3	3
WNZZ							
6A - 12A	3	3	3	3	3	3	3

540 COMMERCIALS TOTAL - $0

GRAND TOTAL - 644 COMMERCIALS TOTAL $3764

My Montgomery Matters, so Shop Locally

This holiday season the Montgomery County Commission will be airing :60 messages that talk to our local community about the benefits of shopping locally. Cumulus will provide our production facilities to produce your messages at no charge.

The messages will air, Monday – Sunday, on WMXS (Mix 103) and WLWI (I-92), Wednesday, November 24th – Friday December 31, 2010. Also as PSAa on WMXS, WLWI, WHHY, WXFX and WNZZ to cover all demographics.

Cumulus will provide 540 additional messages as no cost as public service announcements.

As our Partner, The Commission will purchase:

- A total of 104 messages to air November 24th – December 31st.

Total Investment = $3,764.00

- GRAND TOTAL OF :60 SECONDS COMMERCIALS – 644

During this campaign you will reach almost 124,000 adults 18+ with a frequency of nearly 14!!!!!!!!!!!

Accepted by: ______________________________ Date: ________________

Company: ______________________________

This offer becomes a binding contract upon acceptance by General Manager of Station(s) or his authorized agent. 1. Bills shall be rendered monthly and shall be due and payable within (10) days from the date of invoice. 2. Station shall have the right to cancel this contract upon default by advertiser in the payment of bills or other material breach. Upon cancellation all broadcasting done hereunder and not paid shall become immediately due and payable at the earned rate. Advertiser shall pay all attorney fees in the event legal action is necessary to enforce this agreement or any of the terms thereof. 3. Contract subject to termination by either party after 6 months upon fourteen (14) days prior written notice. 4. Political and entertainment advertising must be cash in advance. 5. Advertiser shall hold Station and it agents, employees and officers, harmless against liability for libel, slander, illegal competition or trade practice, infringement of trademarks, trade names or program titles, violations of rights of privacy and infringement of copyrights and proprietary rights resulting from the broadcasting of broadcast herein provided in the form furnished by advertiser. Advertiser warrants that all advertising copy submitted to Station will truly represent the product or services advertised and will be free from false claim or assertions. 6. Commercials may be made good in flight

Advertiser: MONTGOMERY COUNTY COMMISS
Spot Length(s): :60
Plan Number: Not Saved

Acct. Exec: Darlene Dixon
Email: darlene.dixon@cumulus.com

Flight Dates: 11/26/2010-12/31/2010

Station / Program / Length Time	NO 26	NO 29	DE 6	DE 13	DE 20	DE 27	MSA P18+ MS.CUME	Wks	Rate / Spots
WHHY-FM									
Mo-Su 6am-MID :60 Mo-Su 6:00a-12:00a	9	21	21	21	21	21	2.6 $0.00	6	$0.00 114
WLWI-FM									
Mo-Fr 6am-7pm :60 Mo-Fr 6:00a-7:00p	2	6	6	6	6	6	3.8 $13.68	6	$52.00 32
Mo-Su 6am-MID :60 Mo-Su 6:00a-12:00a	9	21	21	21	21	21	2.9 $0.00	6	$0.00 114
Sat 3:00p-12:00a :60 Sat 3:00p-12:00a	2	2	2	2	2	–	1.9 $7.89	5	$15.00 10
Sun 10:00a-6:00p :60 Sun 10:00a-6:00p	2	2	2	2	2	–	2.2 $4.55	5	$10.00 10
WMXS-FM									
Mo-Fr 6am-7pm :60 Mo-Fr 6:00a-7:00p	2	6	6	6	6	6	3 $16.67	6	$50.00 32
Mo-Su 6am-MID :60 Mo-Su 6:00a-12:00a	9	21	21	21	21	21	2.2 $0.00	6	$0.00 114
Sat 3:00p-12:00a :60 Sat 3:00p-12:00a	2	2	2	2	2	–	1.3 $11.54	5	$15.00 10
Sun 10:00a-12:00a :60 Sun 10:00a-12:00a	2	2	2	2	2	–	1.2 $8.33	5	$10.00 10
WNZZ-AM									
Mo-Su 6am-MID :60 Mo-Su 6:00a-12:00a	9	21	21	21	21	21	0.3 $0.00	6	$0.00 114
WXFX-FM									
Mo-Fr 6am-7pm :60 Mo-Fr 6:00a-7:00p	9	21	21	21	21	21	3.3 $0.00	6	$0.00 114

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MONTGOMERY COUNTY COMMISS SPRING 2010 NRAM

Advertiser: MONTGOMERY COUNTY COMMISS
Spot Length(s): :60
Plan Number: Not Saved

Acct. Exec: Darlene Dixon
Email: darlene.dixon@cumulus.com

General Summary

Name	Spots	Cost	Grps	Grimps	Reach	Freq	3+ Reach	CPP	CPM	Net Reach	Population	
WHHY-FM	114	$0	114.0	296.4	15.2	7.6	11.9	$0.00	$0.00	38,942	255,476	
WLWI-FM	166	$1,914	200.8	493.2	17.4	11.1	14.8	$9.53	$3.88	44,454	255,476	
WMXS-FM	166	$1,850	151.0	371.8	14.4	10.1	12.1	$12.25	$4.98	36,747	255,476	
WNZZ-AM	114	$0	11.4	34.2	2.3	5.8	1.6	$0.00	$0.00	5,930	255,476	
WXFX-FM	114	$0	148.2	376.2	12.0	12.3	10.2	$0.00	$0.00	30,542	255,476	
Montgomery AL	674	$3,764	625.4	1571.8	48.5	12.7	39.3	$6.02	$2.39	123,782	255,476	

To Turn On Your Marketing Power:

Darlene Dixon

Certified Branding Consultant

darlene.dixon@cumulus.com

334 240-9274 x267 office

334 240-9211 fax

334 275-0486 mobile

Business Office:

1 Commerce St., Suite 300

Montgomery, AL 36104

334 240-9274 phone

montgomery.cumulusradio.com

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ADJOURNMENT

There being no further business to come before the Commission at this time, the meeting stood adjourned until Monday, December 7, 2009, at 8:00 in the morning.

Administrator

Chairman