

March 25, 2014

AGENDA
REGULAR JOINT MEETING OF THE CITY COUNCIL OF THE
CITY OF DUARTE, SUCCESSOR AGENCY TO DISSOLVED REDEVELOPMENT
AGENCY OF THE CITY OF DUARTE, THE DUARTE HOUSING AUTHORITY, AND
THE DUARTE COMMUNITY FACILITIES FINANCING AUTHORITY

TUESDAY, MARCH 25, 2014

5:30 p.m. – Closed Session
7:00 p.m. – Regular Session

COUNCIL CHAMBERS, 1600 HUNTINGTON DRIVE, DUARTE, CALIFORNIA 91010

MISSION STATEMENT

With integrity and transparency, the City of Duarte provides exemplary public services in a caring and fiscally responsible manner with a commitment to our community's future

LIZ REILLY, MAYOR
TZEITEL PARAS-CARACCI, MAYOR PRO TEM
JOHN FASANA, COUNCILMEMBER
MARGARET FINLAY, COUNCILMEMBER
SAMUEL KANG, COUNCILMEMBER

City/Agency/Authority Staff:

Darrell George, City Manager
Kristen Petersen, Assistant City Manager and Director of Administrative Services
Craig Hensley, Community Development Director
Cesar Monsalve, Director of Parks and Recreation
Brian Villalobos, Director of Public Safety Services
Dan Slater, City Attorney
Marla Akana, City Clerk

ADDRESSING THE CITY COUNCIL/SUCCESSOR AGENCY/HOUSING AND FINANCING AUTHORITIES:

If you wish to address the City Council, Successor Agency, Housing Authority, or Financing Authority on any item on the Agenda, you should fill out a Speaker Card indicating which item or items on the Agenda you wish to speak about, and hand the card to the City Clerk. You will be called to the Podium when that item is heard by the City Council/Successor Agency/Housing Authority/Financing Authority. If you wish to address the City Council, Successor Agency, Housing Authority, or Financing Authority on any item that is not on the Agenda, but that is within the subject matter jurisdiction of the City/Agency/Housing Authority/Financing Authority, you may do so under the "Oral Communications" portion of the Agenda. At the podium, before starting your remarks, please state your name and city of residence for the record.

ADA ACCESSIBILITY NOTICE: In compliance with the Americans with Disabilities Act, if you need assistance to participate in this meeting, you should contact the City Manager's office at (626) 357-7931. Notification no later than 1:00 p.m. on the day preceding the meeting will enable the City to make reasonable arrangements to assist your accessibility to this meeting.

Notice: Any documents distributed by the City/Agency/Authorities to a majority of the City Council/Successor Agency/Housing Authority/Financing Authority Board less than 72 hours prior to the City Council/Successor Agency/Housing Authority/Financing Authority meeting will be made available for public inspection at City Hall, 1600 Huntington Drive, Duarte, CA 91010, during normal business hours, except such documents that relate to closed session items or which are otherwise exempt from disclosure under applicable law.

Notice: Duarte City Council meetings are videotaped for later broadcast on DCTV. Attendance at the meeting constitutes consent by members of the public to the City's and any third party's use in any media, without compensation or further notice, of audio, video, and/or pictures of meeting attendees.

THE FOLLOWING ITEMS WILL BE HEARD AT 5:30 P.M.

1. CALL TO ORDER OF CITY COUNCIL, SUCCESSOR AGENCY TO DISSOLVED REDEVELOPMENT AGENCY, HOUSING AUTHORITY, AND COMMUNITY FACILITIES FINANCING AUTHORITY, AND NOTATION OF ANY ABSENCES
2. ADOPTION OF THE AGENDA
3. CLOSED SESSION
 - A. Public Input – *Members of the public wishing to speak concerning the closed sessions listed below may do so at this time. Each person may speak once for no more than 3 minutes.*
 - B. Conference with Real Property Negotiators— Pursuant to Government Code Section 54956.8; Negotiating parties: Successor Agency to the Dissolved Duarte Redevelopment Agency and Weingarten Realty; Successor Agency Negotiators: Darrell George, Craig Hensley; Under negotiation: Price and terms of payment; Concerning property at 1263 Huntington Drive; APN 8530-003-930; 8530-003-931
 - C. Conference with Labor Negotiators – Pursuant to Government Code Section 54957.6; Negotiators: Darrell George, Kristen Petersen; Regarding SEIU Local 721 Management and Professional Employees and General Employee Units

THE FOLLOWING ITEMS WILL BE HEARD NOT EARLIER THAN 7:00 P.M.

4. PLEDGE TO THE FLAG
5. MOMENT OF REFLECTION
6. FITNESS/MENTAL WARM-UP
7. PUBLIC REPORT OF CLOSED SESSION ITEMS
8. SPECIAL ITEMS
 - A. Public Safety Update
 - B. Redevelopment Dissolution Update
 - C. Presentation – Cultural Diversity Award presented to Community Mediation Team by the National League of Cities National Black Caucus of Local Elected Officials
(A 15-minute reception will be held following the presentation of the award)
9. ANNOUNCEMENTS OF UPCOMING COMMUNITY EVENTS
Any person who wishes to make a brief announcement of a future community event that is open to the general public may do so at this time.
10. ORAL COMMUNICATIONS—ITEMS NOT ON THE AGENDA (30 MINUTES)
Any person wishing to speak on any issue that is not on the Agenda, but that is within the subject matter jurisdiction of the City/Agency or Authorities, may do so at this time. The opportunity to speak is on a first come, first serve basis. Each person may speak once for no more than 3 minutes and there is a maximum of 30 minutes for all Oral Communications at this time. Under the Brown Act, members of the City Council/ Successor Agency/Housing Authority/Financing Authority, and staff can respond only with a brief reply to issues raised in Oral Communications, and no action on such matters may take place at this meeting.
11. ITEMS TO BE ADDED TO THE CONSENT CALENDAR
12. CONSENT CALENDAR – Page 1
All matters listed on the Consent Calendar are to be approved with one motion unless a member of the City Council/Successor Agency/Housing Authority/Financing Authority removes an item for separate action. Any consent calendar item for which separate action is requested shall be heard as the next Agenda item. The respective entity's consent items are shown in parentheses at the end of each item as "CC" for City Council, "SA" for Successor Agency, "HA" for Housing Authority, and "FA" for C.F. Financing Authority.
 - A. Approval of Minutes – March 11, 2014 (CC/HA/SA/FA)
 - B. Approval of Warrants – March 25, 2014 (CC/HA/SA/FA)
 - C. Motion to introduce and/or adopt all resolutions and ordinances presented for consideration by title only and waive further reading (CC/HA/SA/FA)

- D. Request by Duarte Education Foundation for City co-sponsorship of Music Matters Benefit to be held on October 11, 2014, at the City of Hope Cooper Auditorium (CC)
- E. Notice of absence by Lisa Magno from Economic Development Commission meeting of 3/5/14 (Receive and File) (CC)
- F. Council Bill 14-R-04 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DUARTE, CALIFORNIA, APPROVING AND ADOPTING A HEALTH CARE FLEXIBLE SPENDING ARRANGEMENT AND DAY CARE FLEXIBLE SPENDING ARRANGEMENT (FSA), AND AUTHORIZING EXECUTION OF THE PLAN (CC)
- G. City Council/City Manager Conference Attendance—First Baptist Church 130th Anniversary Banquet, Monrovia, May 17, 2014; Foothill Unity Center Golden Plate Awards, Pasadena, April 26, 2014 (CC)

13. ITEMS REMOVED FROM CONSENT CALENDAR

14. PUBLIC HEARING – Page 61

14-R-03 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DUARTE, CALIFORNIA, ADOPTING AN UPDATED FEE SCHEDULE FOR THE RENTAL OF CITY FACILITIES

15. BUSINESS ITEMS – Page 87

- A. Approval of Outreach Consultant contracts
- B. Approval of Declaration of Covenants, Conditions, and Restrictions for Real Property including Settlement Agreement between the City of Duarte and Americasia Investment, LLC, resolving outstanding payment of fees awarded to the City in the litigation entitled *KUA Industry, Inc., etc. et al. v. City of Duarte, etc. et al.*, Los Angeles County Superior Court Case No. BS123299

16. CONTINUATION OF ORAL COMMUNICATIONS

*Any person who did **not** speak during the initial 30 minute Oral Communications period earlier in the meeting, who wishes to speak on any issue that is not on the Agenda but that is within the subject matter jurisdiction of the City Council/Successor Agency/Housing Authority/Financing Authority, may do so at this time. Each person may speak once for no more than 3 minutes. Under the Brown Act, members of the City Council/Successor Agency/Housing Authority/Financing Authority, and staff can respond only with a brief reply to issues raised in Oral Communications, and no action on such matters may take place at this meeting.*

17. ITEMS FROM CITY COUNCIL/SUCCESSOR AGENCY/HOUSING AUTHORITY/FINANCING AUTHORITY MEMBERS AND CITY MANAGER/EXECUTIVE DIRECTOR (AB 1234 reports on trips, conference attendance, and meetings)

18. ADJOURNMENT

MEMORANDUM

TO: City Council
FROM: City Manager
DATE: March 20, 2014
SUBJECT: Comments on Agenda Items, Meeting of March 25, 2014

ITEM 8.A. The Public Safety Director will give an update on all public safety matters undertaken over the past month.

ITEM 8.B. An update on any redevelopment dissolution issues will be provided by staff.

ITEM 8.C. A presentation will be given to recognize the Community Mediation Team (CMT) on its recently being awarded the First Place 2014 Cultural Diversity Award by the National League of Cities. The CMT was established in 2003 to identify and address the needs of at-risk families, and is made up of people from Duarte, Monrovia, and Los Angeles County leaders. The CMT has helped to curb gang violence by creating trusted facilitators from a range of cultures to connect at-risk individuals and families with necessary resources. A 15-minute reception will be held following the presentation of the award.

ITEM 12.D (Consent Calendar). A request has been made by the Duarte Education Foundation for the City to co-sponsor the 2014 Music Matters Benefit. The Duarte Education Foundation launched the Music Matters fundraising campaign to bring music education back to all Duarte schools. Exposure to formal music instruction can completely transform a child's mind, and open up endless possibilities to their learning potential that can help them to succeed in both career and life. The date of this year's fundraising dinner is October 11, 2014, starting at 6:30 p.m., in the City of Hope's Cooper Auditorium. Tickets for the dinner will be approximately \$50 per person. The group's fundraising goal is \$57,000, including revenue from ticket sales, sponsorships, and raffles.

ITEM 12.F. (Consent Calendar). This is a resolution for the City Council to consider approving and adopting a health care flexible spending arrangement and day care flexible spending arrangement. The City of Duarte has been offering an optional Section 125 Cafeteria Plan for City of Duarte employees since 2007. The current plan is managed by Flex Plan Services and provides a vehicle for employees to make voluntary contributions to a Health Care Flexible Spending Account and/or a Day Care Flexible Spending Account. Once a year, the City is required to review and sign the Plan Document and confirm that it is consistent with our City policies and administration of the plan. Recent revisions to the compliance requirements for Flexible Benefit Plans request that the City Council formally adopt the plan by resolution.

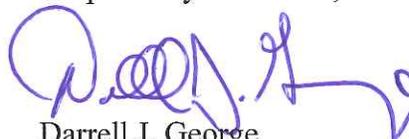
ITEM 14. This is a Public Hearing to consider a resolution to adopt and update the fee schedule for the rental of City facilities. Some sections of the Administrative Policies and Procedures for Community Facilities and the Sports Facilities Usage Policies and Procedures need to be updated. These packets need to include the new renter's requirements to purchase insurance through the City or to provide a certificate of insurance naming the City as co-insured. Additionally, some waiver language on the application forms needs to be updated, and the fee schedules for the rental of both the Community Facilities and Sports Fields/Parks need to be updated. Staff recommends that the City Council hold a Public Hearing, and review and approve the changes to the policies and procedures and fee schedule.

ITEM 15.A. Staff is seeking City Council approval to execute professional services agreements with two part-time Outreach Consultants for the period of April 1, 2014 – December 31, 2015. Both consultants and City staff have agreed to expand the scope of gang violence prevention and intervention services. The new emphasis will include creating a caring trusting relationship with individuals 17-35 years of age returning to the community from incarceration. The consultants will provide job leads, refer them to services and resources, and help them navigate the system so that they can be successful in their job/career search and reintegration back into our community. Consultants will report to the Duarte Public Safety Crime Prevention Specialist and be required to submit weekly reports to satisfy the grant terms showing actual services performed. The program will come at no cost to the City of Duarte. It is 100% financially supported by a CalGRIP award (2014/15) and approved by the Best Practices Approach Initiative from the Board of State and Community Corrections of California Department of Corrections.

ITEM 15.B. In 2010, the City obtained a nuisance abatement judgment against the then-owner of the Rancho Duarte Golf Course, U.S. Kuil Inc., and its operator KUA Industry. That judgment included an award of attorney fees to the City in the amount of \$219,308.09 plus interest. Before the attorney fees could be collected, the property went into foreclosure and was reacquired by the lender who quickly sold it to a developer, AMG Duarte LLC ("AMG"). AMG refused to pay the attorney fees, arguing it was the responsibility of the prior owner even though the City asserted the obligation to pay the amount attaches to the land and is the obligation of successor owners. Although AMG verbally agreed to settle the matter for \$200,000, AMG ultimately refused to sign the settlement agreement and so that proposed settlement was never presented to the City Council for consideration.

AMG then sold the property to the current owner, Americasia Investment LLC. The City sought payment of the attorney fees from Americasia. After lengthy negotiations with Americasia, the City Council is now presented with the proposed "Declaration of Covenants, Conditions, and Restrictions for Real Property Including Settlement Agreement" to resolve the issue of the golf course owner's obligation to pay the attorney fees. Americasia also disputes that it is obligated to pay the fee award amount but wishes to avoid having the City place a lien on the property and having to litigate the matter. The Agreement provides for Americasia to pay \$200,000 as the settlement amount on the same payment terms the City negotiated with AMG: \$50,000 payable at time of approval of the Agreement (Americasia has already deposited that initial payment with the City which the City is holding in trust pending City Council consideration of the Agreement), and the remainder payable in three installments of \$50,000 each in the next three years. If timely payments are not made, the City will record a lien on the property for the remaining amount due plus all of the accrued interest. The City Manager and City Attorney are recommending the City Council approve the Agreement to avoid further delay in payment of most of the fees awarded to the City in the nuisance abatement action (forgoing payment of the accrued interest) and also thereby avoiding the potential of additional protracted litigation over the payment of the fees. If the Council approves it, the Agreement will be recorded at the County Recorder's Office.

Respectfully submitted,



Darrell J. George
City Manager

MINUTES

JOINT CITY COUNCIL/CITY COUNCIL AS SUCCESSOR AGENCY TO DISSOLVED REDEVELOPMENT AGENCY/HOUSING AUTHORITY/COMMUNITY FACILITIES FINANCING AUTHORITY OF THE CITY OF DUARTE REGULAR MEETING – MARCH 11, 2014

CALL TO ORDER The City Council/City Council as Successor Agency to Dissolved Redevelopment Agency/Housing Authority/Community Facilities Financing Authority of the City of Duarte met in a regular meeting in the Council Chambers, 1600 Huntington Drive, Duarte, California. Mayor Reilly called the meeting to order at 5:37 p.m.

RECORDATION OF ATTENDANCE The following were in attendance:
PRESENT: Fasana (arrived prior to Closed Session), Finlay (arrived prior to Closed Session), Kang, Paras-Caracci, Reilly
ABSENT: None
ADMINISTRATIVE STAFF PRESENT: City Manager George, City Attorney Slater

ADOPTION OF AGENDA Paras-Caracci moved, Kang seconded to adopt the Agenda, and carried with Fasana and Finlay not in attendance.

CLOSED SESSION
1) Conference – Legal Counsel
2) Conference–Labor Negotiators
There was no public input. Slater announced the first Closed Session is pursuant to Government Code Section 54956.9(d)(2) and (e)(3); Conference with Legal Counsel; Threatened Litigation/Significant Exposure to Litigation; One potential case. The second Closed Session is pursuant to Government Code Section 54957.6; Conference with Labor Negotiators; Negotiators: Darrell George, Kristen Petersen; Regarding SEIU Local 721 Management and Professional Employees and General Employee Units. The Closed Session concluded at 7:05 p.m. City Council reconvened at 7:12 p.m., with all members present.

PLEDGE TO THE FLAG Paula Watson-Gardner led the Pledge of Allegiance to the Flag.

MOMENT OF REFLECTION Mayor Reilly displayed the First Place City Cultural Diversity Award that was presented to the Community Mediation Team by the National League of Cities National Black Caucus of Local Elected Officials at the National League of Cities Congressional Cities Conference in Washington, D.C.

FITNESS/MENTAL WARM-UP Fasana and Finlay provided the warm-up.

PUBLIC REPORT OF CLOSED SESSION ITEM Slater announced during the first Closed Session, City Council received information and directed that no action be taken at this time, and that the City Attorney’s office monitor the matter for potential future action. During the second Closed Session, City Council received a report from the negotiators, held a discussion, and provided direction, with no reportable action taken.

SPECIAL ITEM

Presentation – Deanna Armstead Youth and Government Program

Deanna Armstead, Duarte High School student, made a presentation about the YMCA’s Youth and Government Model Legislature and Court Program she attended last month, and provided an overview of the State Assembly Chambers, committees, and sessions.

ANNOUNCEMENTS

Mayor Reilly presented a plaque to outgoing Commissioner Ron Phadnis in recognition of his service as a Planning Commissioner from January 2010 – December 2013.

Sheryl Lefmann announced Taste of Duarte on May 21, and Relay for Life on May 3-4.

Joanna Gee, Duarte Library, announced upcoming programs, story times, and workshops in March.

Karen Herrera announced upcoming community events, programs, meetings, and projects in March, April, and May.

Cesar Monsalve announced Duarte Youth and Family Committee community meeting series at Royal Oaks School on April 9, Andres Duarte on April 30, and Maxwell on May 14.

ORAL COMMUNICATIONS

The following spoke on items not on the Agenda.

Jerry Lawrence – Edison retaining wall glare.

Miriam Fox – DUSD anti-bullying campaign.

CONSENT CALENDAR

Fasana moved, Finlay seconded to approve the Consent Calendar as follows, and carried unanimously.

Approve Items A, B, C, D, F, K.

Receive and File Item J.

Remove Items E, G, H, I

ITEMS REMOVED

Item E – Charter Line Up

Fasana inquired about the City’s ability to negotiate, and suggested a representative from Charter make a presentation about its intention to move the DCTV channel from 3 to 183.

Item E – Continued

Fasana moved, Kang seconded to continue this item to the next Council Meeting, and carried unanimously.

Item G – Letter of support Open Streets event

Cesar Monsalve presented a staff report about the City of South Pasadena’s grant application to Metro for a regional Open Streets event, and the City of Duarte’s letter of support and involvement.

Item G – Approved

Fasana moved, Finlay seconded to approve the letter of support for the City of South Pasadena’s grant application for a regional Open Streets event, and carried unanimously.

Item H – DUSD Agreement for Use of Fitness Center Pool

There was discussion about starting blocks, with the request for a staff report to include information as to cost, installation, use of portable blocks, and liability.

Steve Hernandez stated he was glad to see our joint ventures with the School District.

Item H – Approved

Finlay moved, Paras-Caracci seconded to approve the Agreement

between the City of Duarte and Duarte Unified School District for use of City-owned Fitness Center Pool for the Spring 2014 Swim Team season, and to authorize the City Manager to execute the Agreement, and carried unanimously.

Item I – Proclamation
Safety Belt Safe U.S.A.

Mayor Reilly read the Proclamation for Safety Seat Checkup Week, which will be observed March 30-April 5, 2014.

Item I – Approved

Fasana moved, Finlay seconded to approve the Proclamation for Safety Belt Safe U.S.A. “Safety Seat Checkup Week,” and carried unanimously.

ITEMS FROM CITY COUNCIL/
CITY MANAGER

GEORGE: Congratulated the Community Mediation Team for receiving the National League of Cities Award.

KANG: Stated he and the Mayor attended an AQMD tour, the AQMD is offering an electric lawn mower exchange program on April 16, he would like to work with the Duarte High School chemistry class students to have them take a field trip to the AQMD, announced that he will conduct a résumé workshop at the library on May 17, as well as entrepreneurship workshops on May 31 and June 7, he received a letter from a constituent who is concerned about parking and street sweeping, and stated he would like to have a discussion about that.

FINLAY: Stated she received calls regarding the hillside wall, she spoke with the project foreman, and staff is working on it, she enjoyed reading to the students in Mrs. Robertson’s class at Andres Duarte, and thanked Mayor Reilly for accepting the award in Washington, D. C.

FASANA: Congratulated the Community Mediation Team on receiving the award, thanked the partners who bring leadership to the team, and announced San Gabriel Valley COG transportation forum on March 26 at Pacific Palms.

PARAS-CARACCI: Congratulated staff and the Community Mediation Team, stated Duarte has an amazing way of partnering, attended the reception for Mr. Stone at City of Hope and looks forward to a continued positive relationship, stated the strategic planning retreat was productive, she saw the Hayden Walk on her way to DYAC Opening Day, and thanked staff for repairing the pothole.

REILLY: Thanked Mayor Pro Tem Paras-Caracci for attending DYAC Opening Day, attended State of the School District, stated her first Coffee and Conversation with the Mayor was well attended, announced the next one on March 22, stated participants at the planning workshop discussed leadership, decisions, behaviors, and communication styles, and stated 11 Duarte High School students have advanced from the Regional Skills competition, and will compete in the State event on April 24-27.

Steve Hernandez stated teamwork is important.

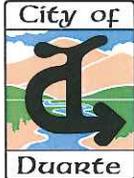
ADJOURNMENT

Finlay moved, Kang seconded to adjourn the meeting at 8:39 p.m., and carried unanimously.

Mayor Elizabeth Nowak Reilly

ATTEST:

City Clerk



AGENDA MEMO

TO: CITY COUNCIL

FROM: Karen A. Herrera, Deputy City Manager

SUBJECT: Duarte Education Foundation Music Matters Co-Sponsorship Request

DATE: 3/25/14

RECOMMENDATION: That the Duarte City Council, by motion, co-sponsor the Duarte Education Foundation Music Matters event on Saturday, October 11, 2014, at the City of Hope Cooper Auditorium.

BACKGROUND: The Duarte Education Foundation in Spring of 2013 launched the "Music Matters" fundraising campaign to bring music education back to all Duarte schools. Exposure to formal music instruction can completely transform a child's mind and open up endless possibilities to their learning potential that can help them to succeed in both career and life. Music education is one of the essential components of the District's "Shoulder Tapped" Graduates' educational experience.

The date of this year's fundraising dinner is October 11, 2014, starting at 6:30pm in the City of Hope's Cooper Auditorium. Tickets for the dinner will be approximately \$50.00 per person. The group's fundraising goal is \$57,000 including revenue from ticket sales, sponsorships, and raffles.

DISCUSSION: The Duarte Education Foundation supports numerous community endeavors, with a special emphasis on school-aged youth. For example, in its recently submitted Profit Utilization Plan in conjunction with the group's 2014 Fireworks submittal, it listed financial support for the following: City of Duarte Walking Club, Northview Intermediate School annual Washington D.C. trip, DUSD Wishing Well grants, All District Talent Show, and the DHS "Every 15 Minutes" Program. In terms of co-sponsorship, the group is looking to utilize City volunteers and access City marketing venues, such as the website, Nissan sign, DCTV, etc.

FISCAL IMPACT: None

ATTACHMENT: Email from Duarte Education Foundation

From: Lisa Magno
Date: Feb 18, 2014 9:42:51 AM
Subject: Fwd: Music Matters Ideas

Hello my friends,

It has been a long time coming, but the **Music Matters Benefit** is **FINALLY** under way. I appreciate your willingness to still help on this project! The attached Flyer outlines the "Sponsorship" opportunities that will be available. The event will be magical. **LET ME OUTLINE SOME IDEAS FOR YOU:**

The City of Hope has allowed us the use of their hall at no cost, as well as tables, chairs and linens!

I am in hopes that **THE CULINARY CLASS** at DHS will create the dinner. I will take charge of the decorating...I have already contacted **NORMAN NURSERIES** to loan us mature Trees for the venue. **CALIBER POOLS** will install a running fountain and **DUARTE FIAT** will loan us some cars to set the "mood". The wine hopefully will come from **D'AQUINO IMPORTS** and I will contact **DOLPHIN PARTY EVENTS** for use of the dishes, glasses, flatware. It is my hope that the jazz band from DHS will be strolling outside the venue as people arrive. Inside I would love it if Joilynn and Doug Edwards would act as **WINE STEWARDS**. while the Servers for the event will also come from the **CULINARY ARTS CLASS**. The event will host a silent auction of 10 "High-End" items that are valued at more than \$100.00 each, I would ask **LOIS GASTON** if she could help with acquiring these items. Jack Ochoa has agreed to go out and solicit **EVENT SPONSORS** (with all **OUR HELP**) and Donna Georgino will hopefully maintain records of ticket sales, while Jenny Owens has agreed to make a **SIMPLE** brochure explaining what **MUSIC MATTERS** is and what it has accomplished in the last year. (and envelopes to be printed for donations) and as last year I hope Jenny will be gracious enough to be at the **DOOR** at the event. Frank Figueroa will be working on a Grand Piano donation for the venue...Frank Figueroa has also agreed to asking for 2 round trip

tickets to Italy, I have acquired a company in Italy that will pick up and deliver winners to an apartment in Rome which I have gotten donated from ROMA RENTALS (my sister, Tina) that package plus another week in Northern California donated my MARGARET Finlay will be the prizes for a \$25.00 each raffle ticket.

I am in hopes that Mr. D'Aquino will work with me to arrange for the Musical Entertainment, I have yet to meet with him, hopefully this week.

The date of the Dinner is October 11, 2014 at 6:30pm

Tickets for this dinner should come in around \$50.00 per person.

Our Financial Goals:

Ticket Sales... 300 tickets @ \$50.00	(Some will be comped with Sponsorship)	\$12,000.00
Sponsorships		40,000.00
Raffle Tickets	200 Tickets @ \$25.00	5,000.00
Silent Auction		5,000.00

I do not LOVE meetings, I hope you feel the same. I will keep you well posted and updated via e-mail or calls.

Lisa Magno
The Leven Oaks



MEMORANDUM

RECEIVED

MAR 11 2014

CITY OF DUARTE

TO: CITY COUNCIL

FROM: COMMISSIONER Maguio

SUBJECT: NOTICE OF ABSENCE FROM ECONOMIC DEVELOPMENT COMMISSION MEETING

DATE: 3/5/14

REASON FOR ABSENCE:

ACCIDENT
 VACATION
 OTHER*
 SICKNESS
 DEATH IN FAMILY

DATE OF MEETING ABSENCE 3/5/14

* EXPLANATION OF ABSENCE I am hosting a
fundraising event @ The
Leben Oaks for YMCA

SIGNATURE Maguio

ABSENCE NOTED BY CITY COUNCIL

 DATE

MEMORANDUM

TO: Darrell J. George, City Manager
FROM: Kristen Petersen, Assistant City Manager
DATE: March 18, 2014
SUBJECT: Flex Plan Services FSA Plan Documents

Recommendation

It is recommended that the City Council adopt the City of Duarte Flexible Benefits Plan for 2014.

Background

The City of Duarte has been offering an optional Section 125 Cafeteria Plan for City of Duarte employees since 2007. The current plan is managed by Flex Plan Services and provides a vehicle for employees to make voluntary contributions to a Health Care Flexible Spending Account and/or a Day Care Flexible Spending Account. Once a year, the City is required to review and sign the Plan Document and confirm that it is consistent with our City policies and administration of the plan. Then a Summary Plan Description is furnished to all FSA participants. We currently have 14 participants in the FSA program.

Recent revisions to the compliance requirements for Flexible Benefit Plans request that the City Council formally adopt the plan by resolution.

RESOLUTION NO.

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DUARTE,
CALIFORNIA, APPROVING AND ADOPTING A HEALTH CARE FLEXIBLE
SPENDING ARRANGEMENT AND DAY CARE FLEXIBLE SPENDING
ARRANGEMENT (FSA), AND AUTHORIZING EXECUTION OF THE PLAN**

**THE CITY COUNCIL OF THE CITY OF DUARTE HEREBY FINDS AND
RESOLVES** as follows:

Section 1. That the form of the amended Cafeteria Plan including the Health Care Flexible Spending Arrangement and Day Care Flexible Spending Arrangement effective January 1, 2014 (Attachment A), is hereby approved and adopted, and that an authorized representative of the Employer is hereby authorized and directed to execute and deliver to the Administrator of the Plan one or more counterparts of the Plan.

Section 2. That the attached is a true copy of the City of Duarte Flexible Benefits Plan as amended and restated, and the Summary Plan Description (Attachment B) is approved and adopted.

PASSED, APPROVED, AND ADOPTED this 25th day of March, 2014.

Mayor Elizabeth Nowak Reilly

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss.
CITY OF DUARTE)

I, Marla Akana, City Clerk of the City of Duarte, County of Los Angeles, State of California, hereby attest to the above signature and certify that Resolution No. 14-04 was adopted by the City Council of said City of Duarte at a regular meeting of said Council held on the 25th day of March, 2014, by the following vote:

AYES: Councilmembers:
NOES: Councilmembers:
ABSENT: Councilmembers:

City Clerk Marla Akana
City of Duarte, California

14-R-04 ATTACHMENT "A"

**CITY OF DUARTE FLEXIBLE BENEFITS PLAN
AND ALL SUPPORTING FORMS HAVE BEEN PRODUCED FOR
CITY OF DUARTE**

Copyright 2014 SunGard
All Rights Reserved

CITY OF DUARTE FLEXIBLE BENEFITS PLAN

TABLE OF CONTENTS

**ARTICLE I
DEFINITIONS**

**ARTICLE II
PARTICIPATION**

2.1 ELIGIBILITY 2
2.2 EFFECTIVE DATE OF PARTICIPATION 3
2.3 APPLICATION TO PARTICIPATE..... 3
2.4 TERMINATION OF PARTICIPATION..... 3
2.5 TERMINATION OF EMPLOYMENT 3
2.6 DEATH 3

**ARTICLE III
CONTRIBUTIONS TO THE PLAN**

3.1 SALARY REDIRECTION..... 4
3.2 APPLICATION OF CONTRIBUTIONS 4
3.3 PERIODIC CONTRIBUTIONS..... 4

**ARTICLE IV
BENEFITS**

4.1 BENEFIT OPTIONS 4
4.2 HEALTH CARE FLEXIBLE SPENDING ARRANGEMENT BENEFIT 4
4.3 DAY CARE FLEXIBLE SPENDING ARRANGEMENT BENEFIT 5
4.4 HEALTH INSURANCE BENEFIT 5
4.5 DENTAL INSURANCE BENEFIT 5
4.6 VISION INSURANCE BENEFIT 5
4.7 NONDISCRIMINATION REQUIREMENTS 5

**ARTICLE V
PARTICIPANT ELECTIONS**

5.1 INITIAL ELECTIONS 6
5.2 SUBSEQUENT ANNUAL ELECTIONS 6
5.3 FAILURE TO ELECT..... 6
5.4 CHANGE IN STATUS 6

**ARTICLE VI
HEALTH CARE FLEXIBLE SPENDING ARRANGEMENT**

6.1 ESTABLISHMENT OF PLAN 8
6.2 DEFINITIONS..... 8
6.3 FORFEITURES 9
6.4 LIMITATION ON ALLOCATIONS 9
6.5 NONDISCRIMINATION REQUIREMENTS 9
6.6 COORDINATION WITH CAFETERIA PLAN 10
6.7 HEALTH CARE FLEXIBLE SPENDING ARRANGEMENT CLAIMS..... 10
6.8 DEBIT AND CREDIT CARDS..... 10

**ARTICLE VII
DAY CARE FLEXIBLE SPENDING ARRANGEMENT**

7.1	ESTABLISHMENT OF ACCOUNT	11
7.2	DEFINITIONS.....	11
7.3	DAY CARE FLEXIBLE SPENDING ARRANGEMENTS.....	12
7.4	INCREASES IN DAY CARE FLEXIBLE SPENDING ARRANGEMENTS.....	12
7.5	DECREASES IN DAY CARE FLEXIBLE SPENDING ARRANGEMENTS.....	12
7.6	ALLOWABLE DAY CARE REIMBURSEMENT	12
7.7	ANNUAL STATEMENT OF BENEFITS	12
7.8	FORFEITURES	12
7.9	LIMITATION ON PAYMENTS	13
7.10	NONDISCRIMINATION REQUIREMENTS	13
7.11	COORDINATION WITH CAFETERIA PLAN	13
7.12	DAY CARE FLEXIBLE SPENDING ARRANGEMENT CLAIMS	13

**ARTICLE VIII
BENEFITS AND RIGHTS**

8.1	CLAIM FOR BENEFITS	14
8.2	APPLICATION OF BENEFIT PLAN SURPLUS.....	16

**ARTICLE IX
ADMINISTRATION**

9.1	PLAN ADMINISTRATION	16
9.2	EXAMINATION OF RECORDS	17
9.3	PAYMENT OF EXPENSES.....	17
9.4	INSURANCE CONTROL CLAUSE.....	17
9.5	INDEMNIFICATION OF ADMINISTRATOR	17

**ARTICLE X
AMENDMENT OR TERMINATION OF PLAN**

10.1	AMENDMENT	17
10.2	TERMINATION.....	17

**ARTICLE XI
MISCELLANEOUS**

11.1	PLAN INTERPRETATION.....	17
11.2	GENDER AND NUMBER.....	17
11.3	WRITTEN DOCUMENT	18
11.4	EXCLUSIVE BENEFIT	18
11.5	PARTICIPANT'S RIGHTS	18
11.6	ACTION BY THE EMPLOYER	18
11.7	EMPLOYER'S PROTECTIVE CLAUSES	18
11.8	NO GUARANTEE OF TAX CONSEQUENCES.....	18
11.9	INDEMNIFICATION OF EMPLOYER BY PARTICIPANTS.....	18
11.10	FUNDING.....	18
11.11	GOVERNING LAW.....	19
11.12	SEVERABILITY.....	19

11.13	CAPTIONS	19
11.14	CONTINUATION OF COVERAGE (COBRA)	19
11.15	FAMILY AND MEDICAL LEAVE ACT (FMLA).....	19
11.16	HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA).....	19
11.17	UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT (USERRA)	19
11.18	COMPLIANCE WITH HIPAA PRIVACY STANDARDS.....	19
11.19	COMPLIANCE WITH HIPAA ELECTRONIC SECURITY STANDARDS	20
11.20	MENTAL HEALTH PARITY AND ADDICTION EQUITY ACT.....	21
11.21	GENETIC INFORMATION NONDISCRIMINATION ACT (GINA)	21
11.22	WOMEN'S HEALTH AND CANCER RIGHTS ACT	21
11.23	NEWBORNS' AND MOTHERS' HEALTH PROTECTION ACT	21

CITY OF DUARTE FLEXIBLE BENEFITS PLAN

INTRODUCTION

The Employer has amended this Plan effective January 1, 2014, to recognize the contribution made to the Employer by its Employees. Its purpose is to reward them by providing benefits for those Employees who shall qualify hereunder and their Dependents and beneficiaries. The concept of this Plan is to allow Employees to choose among different types of benefits based on their own particular goals, desires and needs. This Plan is a restatement of a Plan which was originally effective on January 1, 2010. The Plan shall be known as City of Duarte Flexible Benefits Plan (the "Plan").

The intention of the Employer is that the Plan qualify as a "Cafeteria Plan" within the meaning of Section 125 of the Internal Revenue Code of 1986, as amended, and that the benefits which an Employee elects to receive under the Plan be excludable from the Employee's income under Section 125(a) and other applicable sections of the Internal Revenue Code of 1986, as amended.

ARTICLE I DEFINITIONS

1.1 **"Administrator"** means the Employer unless another person or entity has been designated by the Employer pursuant to Section 9.1 to administer the Plan on behalf of the Employer. If the Employer is the Administrator, the Employer may appoint any person, including, but not limited to, the Employees of the Employer, to perform the duties of the Administrator. Any person so appointed shall signify acceptance by filing written acceptance with the Employer. Upon the resignation or removal of any individual performing the duties of the Administrator, the Employer may designate a successor.

1.2 **"Affiliated Employer"** means the Employer and any corporation which is a member of a controlled group of corporations (as defined in Code Section 414(b)) which includes the Employer; any trade or business (whether or not incorporated) which is under common control (as defined in Code Section 414(c)) with the Employer; any organization (whether or not incorporated) which is a member of an affiliated service group (as defined in Code Section 414(m)) which includes the Employer; and any other entity required to be aggregated with the Employer pursuant to Treasury regulations under Code Section 414(o).

1.3 **"Benefit" or "Benefit Options"** means any of the optional benefit choices available to a Participant as outlined in Section 4.1.

1.4 **"Cafeteria Plan Benefit Dollars"** means the amount available to Participants to purchase Benefit Options as provided under Section 4.1. Each dollar contributed to this Plan shall be converted into one Cafeteria Plan Benefit Dollar.

1.5 **"Code"** means the Internal Revenue Code of 1986, as amended or replaced from time to time.

1.6 **"Compensation"** means the amounts received by the Participant from the Employer during a Plan Year.

1.7 **"Dependent"** means any individual who qualifies as a dependent under an Insurance Contract for purposes of coverage under that Contract only or under Code Section 152 (as modified by Code Section 105(b)).

"Dependent" shall include any Child of a Participant who is covered under an Insurance Contract, as defined in the Contract, or under the Health Care Flexible Spending Arrangement or as allowed by reason of the Affordable Care Act.

For purposes of the Health Care Flexible Spending Arrangement, a Participant's "Child" includes his/her natural child, stepchild, foster child, adopted child, or a child placed with the Participant for adoption. A Participant's Child will be an eligible Dependent until reaching the limiting age of 26, without regard to student status, marital status, financial dependency or residency status with the Employee or any other person. When the child reaches the applicable limiting age, coverage will end at the end of the calendar year.

The phrase "placed for adoption" refers to a child whom the Participant intends to adopt, whether or not the adoption has become final, who has not attained the age of 18 as of the date of such placement for adoption. The term "placed" means the assumption and retention by such Employee of a legal obligation for total or partial support of the child in anticipation of adoption of the child. The child must be available for adoption and the legal process must have commenced.

1.8 **"Effective Date"** means January 1, 2010.

1.9 **"Election Period"** means the period immediately preceding the beginning of each Plan Year established by the Administrator, such period to be applied on a uniform and nondiscriminatory basis for all Employees and Participants. However, an Employee's initial Election Period shall be determined pursuant to Section 5.1.

1.10 **"Eligible Employee"** means any Employee who has satisfied the provisions of Section 2.1.

An individual shall not be an "Eligible Employee" if such individual is not reported on the payroll records of the Employer as a common law employee. In particular, it is expressly intended that individuals not treated as common law employees by the Employer on its payroll records are not "Eligible Employees" and are excluded from Plan participation even if a court or administrative agency determines that such individuals are common law employees and not independent contractors.

1.11 **"Employee"** means any person who is employed by the Employer. The term Employee shall include leased employees within the meaning of Code Section 414(n)(2).

1.12 **"Employer"** means City of Duarte and any successor which shall maintain this Plan; and any predecessor which has maintained this Plan. In addition, where appropriate, the term Employer shall include any Participating, Affiliated or Adopting Employer.

1.13 **"Grace Period"** means, with respect to any Plan Year, the time period ending on the fifteenth day of the third calendar month after the end of such Plan Year, during which Medical Expenses and Employment-Related Day Care Expenses incurred by a Participant will be deemed to have been incurred during such Plan Year.

1.14 **"Insurance Contract"** means any contract issued by an Insurer underwriting a Benefit.

1.15 **"Insurance Premium Payment Plan"** means the plan of benefits contained in Section 4.1 of this Plan, which provides for the payment of Premiums.

1.16 **"Insurer"** means any insurance company that underwrites a Benefit under this Plan.

1.17 **"Key Employee"** means an Employee described in Code Section 416(i)(1) and the Treasury regulations thereunder.

1.18 **"Participant"** means any Eligible Employee who elects to become a Participant pursuant to Section 2.3 and has not for any reason become ineligible to participate further in the Plan.

1.19 **"Plan"** means this instrument, including all amendments thereto.

1.20 **"Plan Year"** means the 12-month period beginning January 1 and ending December 31. The Plan Year shall be the coverage period for the Benefits provided for under this Plan. In the event a Participant commences participation during a Plan Year, then the initial coverage period shall be that portion of the Plan Year commencing on such Participant's date of entry and ending on the last day of such Plan Year.

1.21 **"Premiums"** mean the Participant's cost for the Benefits described in Section 4.1.

1.22 **"Premium Conversion Benefit"** means the account established for a Participant pursuant to this Plan to which part of his Cafeteria Plan Benefit Dollars may be allocated and from which Premiums of the Participant shall be paid or reimbursed. If more than one type of insured Benefit is elected, sub-accounts shall be established for each type of insured Benefit.

1.23 **"Salary Redirection"** means the contributions made by the Employer on behalf of Participants pursuant to Section 3.1. These contributions shall be converted to Cafeteria Plan Benefit Dollars and allocated to the funds or accounts established under the Plan pursuant to the Participants' elections made under Article V.

1.24 **"Salary Redirection Agreement"** means an agreement between the Participant and the Employer under which the Participant agrees to reduce his Compensation or to forego all or part of the increases in such Compensation and to have such amounts contributed by the Employer to the Plan on the Participant's behalf. The Salary Redirection Agreement shall apply only to Compensation that has not been actually or constructively received by the Participant as of the date of the agreement (after taking this Plan and Code Section 125 into account) and, subsequently does not become currently available to the Participant.

1.25 **"Spouse"** means "spouse" as defined in an Insurance Contract for purposes of coverage under that Contract only or the "spouse," as defined under Federal law, of a Participant, unless legally separated by court decree.

ARTICLE II PARTICIPATION

2.1 ELIGIBILITY

Any Eligible Employee shall be eligible to participate hereunder as of the date he satisfies the eligibility conditions for the Employer's group medical plan, the provisions of which are specifically incorporated herein by reference. However, any Eligible Employee who was a Participant in the Plan on the effective date of this amendment shall continue to be eligible to participate in the Plan.

2.2 EFFECTIVE DATE OF PARTICIPATION

An Eligible Employee shall become a Participant effective as of the first day of the month coinciding with or next following the date on which he met the eligibility requirements of Section 2.1.

2.3 APPLICATION TO PARTICIPATE

An Employee who is eligible to participate in this Plan shall, during the applicable Election Period, complete an application to participate in a manner set forth by the Administrator. The election shall be irrevocable until the end of the applicable Plan Year unless the Participant is entitled to change his Benefit elections pursuant to Section 5.4 hereof.

An Eligible Employee shall also be required to complete a Salary Redirection Agreement during the Election Period for the Plan Year during which he wishes to participate in this Plan. Any such Salary Redirection Agreement shall be effective for the first pay period beginning on or after the Employee's effective date of participation pursuant to Section 2.2.

Notwithstanding the foregoing, an Employee who is eligible to participate in this Plan and who is covered by the Employer's insured Benefits under this Plan shall automatically become a Participant to the extent of the Premiums for such insurance unless the Employee elects, during the Election Period, not to participate in the Plan.

2.4 TERMINATION OF PARTICIPATION

A Participant shall no longer participate in this Plan upon the occurrence of any of the following events:

- (a) **Termination of employment.** The Participant's termination of employment, subject to the provisions of Section 2.5;
- (b) **Death.** The Participant's death, subject to the provisions of Section 2.6; or
- (c) **Termination of the plan.** The termination of this Plan, subject to the provisions of Section 10.2.

2.5 TERMINATION OF EMPLOYMENT

If a Participant's employment with the Employer is terminated for any reason other than death, his participation in the Benefit Options provided under Section 4.1 shall be governed in accordance with the following:

- (a) **Insurance Benefit.** With regard to Benefits which are insured, the Participant's participation in the Plan shall cease, subject to the Participant's right to continue coverage under any Insurance Contract for which premiums have already been paid.
- (b) **Day Care FSA.** With regard to the Day Care Flexible Spending Arrangement, the Participant's participation in the Plan shall cease and no further Salary Redirection contributions shall be made. However, such Participant may submit claims for employment related Day Care Expense reimbursements for claims incurred through the remainder of the Plan Year in which such termination occurs and submitted within 90 days after the end of the Plan Year, based on the level of the Participant's Day Care Flexible Spending Arrangement as of the date of termination.
- (c) **COBRA applicability.** With regard to the Health Care Flexible Spending Arrangement, the Participant may submit claims for expenses that were incurred during the portion of the Plan Year before the end of the period for which payments to the Health Care Flexible Spending Arrangement have already been made. Thereafter, the health benefits under this Plan including the Health Care Flexible Spending Arrangement shall be applied and administered consistent with such further rights a Participant and his Dependents may be entitled to pursuant to Code Section 4980B and Section 11.14 of the Plan.

2.6 DEATH

If a Participant dies, his participation in the Plan shall cease. However, such Participant's spouse or Dependents may submit claims for expenses or benefits for the remainder of the Plan Year or until the Cafeteria Plan Benefit Dollars allocated to each specific benefit are exhausted. In no event may reimbursements be paid to someone who is not a spouse or Dependent. If the Plan is subject to the provisions of Code Section 4980B, then those provisions and related regulations shall apply for purposes of the Health Care Flexible Spending Arrangement.

**ARTICLE III
CONTRIBUTIONS TO THE PLAN**

3.1 SALARY REDIRECTION

Benefits under the Plan shall be financed by Salary Redirections sufficient to support Benefits that a Participant has elected hereunder and to pay the Participant's Premiums. The salary administration program of the Employer shall be revised to allow each Participant to agree to reduce his pay during a Plan Year by an amount determined necessary to purchase the elected Benefit Options. The amount of such Salary Redirection shall be specified in the Salary Redirection Agreement and shall be applicable for a Plan Year. Notwithstanding the above, for new Participants, the Salary Redirection Agreement shall only be applicable from the first day of the pay period following the Employee's entry date up to and including the last day of the Plan Year. These contributions shall be converted to Cafeteria Plan Benefit Dollars and allocated to the funds or accounts established under the Plan pursuant to the Participants' elections made under Article IV.

Any Salary Redirection shall be determined prior to the beginning of a Plan Year (subject to initial elections pursuant to Section 5.1) and prior to the end of the Election Period and shall be irrevocable for such Plan Year. However, a Participant may revoke a Benefit election or a Salary Redirection Agreement after the Plan Year has commenced and make a new election with respect to the remainder of the Plan Year, if both the revocation and the new election are on account of and consistent with a change in status and such other permitted events as determined under Article V of the Plan and consistent with the rules and regulations of the Department of the Treasury. Salary Redirection amounts shall be contributed on a pro rata basis for each pay period during the Plan Year. All individual Salary Redirection Agreements are deemed to be part of this Plan and incorporated by reference hereunder.

3.2 APPLICATION OF CONTRIBUTIONS

As soon as reasonably practical after each payroll period, the Employer shall apply the Salary Redirection to provide the Benefits elected by the affected Participants. Any contribution made or withheld for the Health Care Flexible Spending Arrangement or Day Care Flexible Spending Arrangement shall be credited to such fund or account. Amounts designated for the Participant's Premium Conversion Benefit shall likewise be credited to such account for the purpose of paying Premiums.

3.3 PERIODIC CONTRIBUTIONS

Notwithstanding the requirement provided above and in other Articles of this Plan that Salary Redirections be contributed to the Plan by the Employer on behalf of an Employee on a level and pro rata basis for each payroll period, the Employer and Administrator may implement a procedure in which Salary Redirections are contributed throughout the Plan Year on a periodic basis that is not pro rata for each payroll period. However, with regard to the Health Care Flexible Spending Arrangement, the payment schedule for the required contributions may not be based on the rate or amount of reimbursements during the Plan Year.

**ARTICLE IV
BENEFITS**

4.1 BENEFIT OPTIONS

Each Participant may elect any one or more of the following optional Benefits:

- (1) Health Care Flexible Spending Arrangement
- (2) Day Care Flexible Spending Arrangement

In addition, each Participant shall have a sufficient portion of his Salary Redirections applied to the following Benefits unless the Participant elects not to receive such Benefits:

- (3) Health Insurance Benefit
- (4) Dental Insurance Benefit
- (5) Vision Insurance Benefit

4.2 HEALTH CARE FLEXIBLE SPENDING ARRANGEMENT BENEFIT

Each Participant may elect to participate in the Health Care Flexible Spending Arrangement option, in which case Article VI shall apply.

4.3 DAY CARE FLEXIBLE SPENDING ARRANGEMENT BENEFIT

Each Participant may elect to participate in the Day Care Flexible Spending Arrangement option, in which case Article VII shall apply.

4.4 HEALTH INSURANCE BENEFIT

(a) **Coverage for Participant and Dependents.** Each Participant may elect to be covered under a health Insurance Contract for the Participant, his or her Spouse, and his or her Dependents.

(b) **Employer selects contracts.** The Employer may select suitable health Insurance Contracts for use in providing this health insurance benefit, which policies will provide uniform benefits for all Participants electing this Benefit.

(c) **Contract incorporated by reference.** The rights and conditions with respect to the benefits payable from such health Insurance Contract shall be determined therefrom, and such Insurance Contract shall be incorporated herein by reference.

4.5 DENTAL INSURANCE BENEFIT

(a) **Coverage for Participant and/or Dependents.** Each Participant may elect to be covered under the Employer's dental Insurance Contract. In addition, the Participant may elect either individual or family coverage under such Insurance Contract.

(b) **Employer selects contracts.** The Employer may select suitable dental Insurance Contracts for use in providing this dental insurance benefit, which policies will provide uniform benefits for all Participants electing this Benefit.

(c) **Contract incorporated by reference.** The rights and conditions with respect to the benefits payable from such dental Insurance Contract shall be determined therefrom, and such dental Insurance Contract shall be incorporated herein by reference.

4.6 VISION INSURANCE BENEFIT

(a) **Coverage for Participant and/or Dependents.** Each Participant may elect to be covered under the Employer's vision Insurance Contract. In addition, the Participant may elect either individual or family coverage.

(b) **Employer selects contracts.** The Employer may select suitable vision Insurance Contracts for use in providing this vision insurance benefit, which policies will provide uniform benefits for all Participants electing this Benefit.

(c) **Contract incorporated by reference.** The rights and conditions with respect to the benefits payable from such vision Insurance Contract shall be determined therefrom, and such vision Insurance Contract shall be incorporated herein by reference.

4.7 NONDISCRIMINATION REQUIREMENTS

(a) **Intent to be nondiscriminatory.** It is the intent of this Plan to provide benefits to a classification of employees which the Secretary of the Treasury finds not to be discriminatory in favor of the group in whose favor discrimination may not occur under Code Section 125.

(b) **25% concentration test.** It is the intent of this Plan not to provide qualified benefits as defined under Code Section 125 to Key Employees in amounts that exceed 25% of the aggregate of such Benefits provided for all Eligible Employees under the Plan. For purposes of the preceding sentence, qualified benefits shall not include benefits which (without regard to this paragraph) are includible in gross income.

(c) **Adjustment to avoid test failure.** If the Administrator deems it necessary to avoid discrimination or possible taxation to Key Employees or a group of employees in whose favor discrimination may not occur in violation of Code Section 125, it may, but shall not be required to, reduce contributions or non-taxable Benefits in order to assure compliance with this Section. Any act taken by the Administrator under this Section shall be carried out in a uniform and nondiscriminatory manner. If the Administrator decides to reduce contributions or non-taxable Benefits, it shall be done in the following manner. First, the non-taxable Benefits of the affected Participant (either an employee who is highly compensated or a Key Employee, whichever is applicable) who has the highest amount of non-taxable Benefits for the Plan Year shall have his non-taxable Benefits reduced until the discrimination tests set forth in this Section are satisfied or until the amount of his non-taxable Benefits equals the non-taxable Benefits of the affected Participant who has the second highest amount of non-taxable Benefits. This process shall continue until the nondiscrimination tests set forth in this Section are satisfied. With respect to any affected Participant who has had Benefits reduced pursuant to this Section, the reduction shall be made proportionately among Health Care Flexible

Spending Arrangement Benefits and Day Care Flexible Spending Arrangement Benefits, and once all these Benefits are expended, proportionately among insured Benefits. Contributions which are not utilized to provide Benefits to any Participant by virtue of any administrative act under this paragraph shall be forfeited and deposited into the benefit plan surplus.

ARTICLE V PARTICIPANT ELECTIONS

5.1 INITIAL ELECTIONS

An Employee who meets the eligibility requirements of Section 2.1 on the first day of, or during, a Plan Year may elect to participate in this Plan for all or the remainder of such Plan Year, provided he elects to do so on or before his effective date of participation pursuant to Section 2.2.

Notwithstanding the foregoing, an Employee who is eligible to participate in this Plan and who is covered by the Employer's insured benefits under this Plan shall automatically become a Participant to the extent of the Premiums for such insurance unless the Employee elects, during the Election Period, not to participate in the Plan.

5.2 SUBSEQUENT ANNUAL ELECTIONS

During the Election Period prior to each subsequent Plan Year, each Participant shall be given the opportunity to elect, on an election of benefits form to be provided by the Administrator, which spending account Benefit options he wishes to select. Any such election shall be effective for any Benefit expenses incurred during the Plan Year which follows the end of the Election Period. With regard to subsequent annual elections, the following options shall apply:

(a) A Participant or Employee who failed to initially elect to participate may elect different or new Benefits under the Plan during the Election Period;

(b) A Participant may terminate his participation in the Plan by notifying the Administrator in writing during the Election Period that he does not want to participate in the Plan for the next Plan Year;

(c) An Employee who elects not to participate for the Plan Year following the Election Period will have to wait until the next Election Period before again electing to participate in the Plan, except as provided for in Section 5.4.

5.3 FAILURE TO ELECT

With regard to Benefits available under the Plan for which no Premiums apply, any Participant who fails to complete a new benefit election form pursuant to Section 5.2 by the end of the applicable Election Period shall be deemed to have elected not to participate in the Plan for the upcoming Plan Year. No further Salary Redirections shall therefore be authorized or made for the subsequent Plan Year for such Benefits.

With regard to Benefits available under the Plan for which Premiums apply, any Participant who fails to complete a new benefit election form pursuant to Section 5.2 by the end of the applicable Election Period shall be deemed to have made the same Benefit elections as are then in effect for the current Plan Year. The Participant shall also be deemed to have elected Salary Redirection in an amount necessary to purchase such Benefit options.

5.4 CHANGE IN STATUS

(a) **Change in status defined.** Any Participant may change a Benefit election after the Plan Year (to which such election relates) has commenced and make new elections with respect to the remainder of such Plan Year if, under the facts and circumstances, the changes are necessitated by and are consistent with a change in status which is acceptable under rules and regulations adopted by the Department of the Treasury, the provisions of which are incorporated by reference. Notwithstanding anything herein to the contrary, if the rules and regulations conflict, then such rules and regulations shall control.

In general, a change in election is not consistent if the change in status is the Participant's divorce, annulment or legal separation from a Spouse, the death of a Spouse or Dependent, or a Dependent ceasing to satisfy the eligibility requirements for coverage, and the Participant's election under the Plan is to cancel accident or health insurance coverage for any individual other than the one involved in such event. In addition, if the Participant, Spouse or Dependent gains or loses eligibility for coverage, then a Participant's election under the Plan to cease or decrease coverage for that individual under the Plan corresponds with that change in status only if coverage for that individual becomes applicable or is increased under the family member plan.

Regardless of the consistency requirement, if the individual, the individual's Spouse, or Dependent becomes eligible for continuation coverage under the Employer's group health plan as provided in Code Section 4980B or any

similar state law, then the individual may elect to increase payments under this Plan in order to pay for the continuation coverage. However, this does not apply for COBRA eligibility due to divorce, annulment or legal separation.

Any new election shall be effective at such time as the Administrator shall prescribe, but not earlier than the first pay period beginning after the election form is completed and returned to the Administrator. For the purposes of this subsection, a change in status shall only include the following events or other events permitted by Treasury regulations:

- (1) **Legal Marital Status:** events that change a Participant's legal marital status, including marriage, divorce, death of a Spouse, legal separation or annulment;
- (2) **Number of Dependents:** Events that change a Participant's number of Dependents, including birth, adoption, placement for adoption, or death of a Dependent;
- (3) **Employment Status:** Any of the following events that change the employment status of the Participant, Spouse, or Dependent: termination or commencement of employment, a strike or lockout, commencement or return from an unpaid leave of absence, or a change in worksite. In addition, if the eligibility conditions of this Plan or other employee benefit plan of the Employer of the Participant, Spouse, or Dependent depend on the employment status of that individual and there is a change in that individual's employment status with the consequence that the individual becomes (or ceases to be) eligible under the plan, then that change constitutes a change in employment under this subsection;
- (4) **Dependent satisfies or ceases to satisfy the eligibility requirements:** An event that causes the Participant's Dependent to satisfy or cease to satisfy the requirements for coverage due to attainment of age, student status, or any similar circumstance; and
- (5) **Residency:** A change in the place of residence of the Participant, Spouse or Dependent, that would lead to a change in status (such as a loss of HMO coverage).

For the Day Care Flexible Spending Arrangement, a Dependent becoming or ceasing to be a "Qualifying Dependent" as defined under Code Section 21(b) shall also qualify as a change in status.

Notwithstanding anything in this Section to the contrary, the gain of eligibility or change in eligibility of a child, as allowed under Code Sections 105(b) and 106, and IRS Notice 2010-38, shall qualify as a change in status.

(b) **Special enrollment rights.** Notwithstanding subsection (a), the Participants may change an election for accident or health coverage during a Plan Year and make a new election that corresponds with the special enrollment rights provided in Code Section 9801(f), including those authorized under the provisions of the Children's Health Insurance Program Reauthorization Act of 2009 (CHIP); provided that such Participant meets the sixty (60) day notice requirement imposed by Code Section 9801(f) (or such longer period as may be permitted by the Plan and communicated to Participants). Such change shall take place on a prospective basis, unless otherwise required by Code Section 9801(f) to be retroactive.

(c) **Qualified Medical Support Order.** Notwithstanding subsection (a), in the event of a judgment, decree, or order (including approval of a property settlement) ("order") resulting from a divorce, legal separation, annulment, or change in legal custody which requires accident or health coverage for a Participant's child (including a foster child who is a Dependent of the Participant):

- (1) The Plan may change an election to provide coverage for the child if the order requires coverage under the Participant's plan; or
- (2) The Participant shall be permitted to change an election to cancel coverage for the child if the order requires the former Spouse to provide coverage for such child, under that individual's plan and such coverage is actually provided.

(d) **Medicare or Medicaid.** Notwithstanding subsection (a), a Participant may change elections to cancel accident or health coverage for the Participant or the Participant's Spouse or Dependent if the Participant or the Participant's Spouse or Dependent is enrolled in the accident or health coverage of the Employer and becomes entitled to coverage (i.e., enrolled) under Part A or Part B of the Title XVIII of the Social Security Act (Medicare) or Title XIX of the Social Security Act (Medicaid), other than coverage consisting solely of benefits under Section 1928 of the Social Security Act (the program for distribution of pediatric vaccines). If the Participant or the Participant's Spouse or Dependent who has been entitled to Medicaid or Medicare coverage loses eligibility, that individual may prospectively elect coverage under the Plan if a benefit package option under the Plan provides similar coverage.

(e) **Cost increase or decrease.** If the cost of a Benefit provided under the Plan increases or decreases during a Plan Year, then the Plan shall automatically increase or decrease, as the case may be, the Salary Redirections of all affected Participants for such Benefit. Alternatively, if the cost of a benefit package option increases significantly, the Administrator shall permit the affected Participants to either make corresponding changes in their payments or revoke their elections and, in lieu thereof, receive on a prospective basis coverage under another

benefit package option with similar coverage, or drop coverage prospectively if there is no benefit package option with similar coverage.

A cost increase or decrease refers to an increase or decrease in the amount of elective contributions under the Plan, whether resulting from an action taken by the Participants or an action taken by the Employer.

(f) **Loss of coverage.** If the coverage under a Benefit is significantly curtailed or ceases during a Plan Year, affected Participants may revoke their elections of such Benefit and, in lieu thereof, elect to receive on a prospective basis coverage under another plan with similar coverage, or drop coverage prospectively if no similar coverage is offered.

(g) **Addition of a new benefit.** If, during the period of coverage, a new benefit package option or other coverage option is added, an existing benefit package option is significantly improved, or an existing benefit package option or other coverage option is eliminated, then the affected Participants may elect the newly-added option, or elect another option if an option has been eliminated prospectively and make corresponding election changes with respect to other benefit package options providing similar coverage. In addition, those Eligible Employees who are not participating in the Plan may opt to become Participants and elect the new or newly improved benefit package option.

(h) **Loss of coverage under certain other plans.** A Participant may make a prospective election change to add group health coverage for the Participant, the Participant's Spouse or Dependent if such individual loses group health coverage sponsored by a governmental or educational institution, including a state children's health insurance program under the Social Security Act, the Indian Health Service or a health program offered by an Indian tribal government, a state health benefits risk pool, or a foreign government group health plan.

(i) **Change of coverage due to change under certain other plans.** A Participant may make a prospective election change that is on account of and corresponds with a change made under the plan of a Spouse's, former Spouse's or Dependent's employer if (1) the cafeteria plan or other benefits plan of the Spouse's, former Spouse's or Dependent's employer permits its participants to make a change; or (2) the cafeteria plan permits participants to make an election for a period of coverage that is different from the period of coverage under the cafeteria plan of a Spouse's, former Spouse's or Dependent's employer.

(j) **Change in Day Care provider.** A Participant may make a prospective election change that is on account of and corresponds with a change by the Participant in the Day Care provider. The availability of Day Care services from a new childcare provider is similar to a new benefit package option becoming available. A cost change is allowable in the Day Care Flexible Spending Arrangement only if the cost change is imposed by a Day Care provider who is not related to the Participant, as defined in Code Section 152(a)(1) through (8).

(k) **Health FSA cannot change due to insurance change.** A Participant shall not be permitted to change an election to the Health Care Flexible Spending Arrangement as a result of a cost or coverage change under any health insurance benefits.

ARTICLE VI HEALTH CARE FLEXIBLE SPENDING ARRANGEMENT

6.1 ESTABLISHMENT OF PLAN

This Health Care Flexible Spending Arrangement is intended to qualify as a medical reimbursement plan under Code Section 105 and shall be interpreted in a manner consistent with such Code Section and the Treasury regulations thereunder. Participants who elect to participate in this Health Care Flexible Spending Arrangement may submit claims for the reimbursement of Medical Expenses. All amounts reimbursed shall be periodically paid from amounts allocated to the Health Care Flexible Spending Arrangement. Periodic payments reimbursing Participants from the Health Care Flexible Spending Arrangement shall in no event occur less frequently than monthly.

6.2 DEFINITIONS

For the purposes of this Article and the Cafeteria Plan, the terms below have the following meaning:

(a) **"Health Care Flexible Spending Arrangement"** means the account established for Participants pursuant to this Plan to which part of their Cafeteria Plan Benefit Dollars may be allocated and from which all allowable Medical Expenses incurred by a Participant, his or her Spouse and his or her Dependents may be reimbursed.

(b) **"Highly Compensated Participant"** means, for the purposes of this Article and determining discrimination under Code Section 105(h), a participant who is:

- (1) one of the 5 highest paid officers;

(2) a shareholder who owns (or is considered to own applying the rules of Code Section 318) more than 10 percent in value of the stock of the Employer; or

(3) among the highest paid 25 percent of all Employees (other than exclusions permitted by Code Section 105(h)(3)(B) for those individuals who are not Participants).

(c) **"Medical Expenses"** means any expense for medical care within the meaning of the term "medical care" as defined in Code Section 213(d) and the rulings and Treasury regulations thereunder, and not otherwise used by the Participant as a deduction in determining his tax liability under the Code. "Medical Expenses" can be incurred by the Participant, his or her Spouse and his or her Dependents. "Incurred" means, with regard to Medical Expenses, when the Participant is provided with the medical care that gives rise to the Medical Expense and not when the Participant is formally billed or charged for, or pays for, the medical care.

A Participant may not be reimbursed for the cost of any medicine or drug that is not "prescribed" within the meaning of Code Section 106(f) or is not insulin.

A Participant may not be reimbursed for the cost of other health coverage such as premiums paid under plans maintained by the employer of the Participant's Spouse or individual policies maintained by the Participant or his Spouse or Dependent.

A Participant may not be reimbursed for "qualified long-term care services" as defined in Code Section 7702B(c).

(d) The definitions of Article I are hereby incorporated by reference to the extent necessary to interpret and apply the provisions of this Health Care Flexible Spending Arrangement.

6.3 FORFEITURES

The amount in the Health Care Flexible Spending Arrangement as of the end of any Plan Year (and after the processing of all claims for such Plan Year pursuant to Section 6.7 hereof) shall be forfeited and credited to the benefit plan surplus. In such event, the Participant shall have no further claim to such amount for any reason, subject to Section 8.2.

6.4 LIMITATION ON ALLOCATIONS

(a) Notwithstanding any provision contained in this Health Care Flexible Spending Arrangement to the contrary, the maximum amount that may be allocated to the Health Care Flexible Spending Arrangement by a Participant in or on account of any Plan Year is \$2,500.

(b) **Cost of Living Adjustment.** In no event shall the amount of salary redirections on the Health Care Flexible Spending Arrangement exceed \$2,500 as adjusted by law. Such amount shall be adjusted for increases in the cost-of-living in accordance with Code Section 125(i)(2). The cost-of-living adjustment in effect for a calendar year applies to any Plan Year beginning with or within such calendar year. The dollar increase in effect on January 1 of any calendar year shall be effective for the Plan Year beginning with or within such calendar year. For any short Plan Year, the limit shall be an amount equal to the limit for the calendar year in which the Plan Year begins multiplied by the ratio obtained by dividing the number of full months in the short Plan Year by twelve (12).

(c) **Participation in Other Plans.** All employers that are treated as a single employer under Code Sections 414(b), (c), or (m), relating to controlled groups and affiliated service groups, are treated as a single employer for purposes of the \$2,500 limit. If a Participant participates in multiple cafeteria plans offering Health Care Flexible Spending Arrangements maintained by members of a controlled group or affiliated service group, the Participant's total Health Care Flexible Spending Arrangement contributions under all of the cafeteria plans are limited to \$2,500 (as adjusted). However, a Participant employed by two or more employers that are not members of the same controlled group may elect up to \$2,500 (as adjusted) under each Employer's Health Care Flexible Spending Arrangement.

(d) **Grace Period.** Payment of expenses from a previous year in the first months of the next Plan Year, the \$2,500 limit applies to the Plan Year including the Grace Period. Amounts carried into the next Plan Year as part of the Grace Period shall not affect the limit for that next Plan Year.

6.5 NONDISCRIMINATION REQUIREMENTS

(a) **Intent to be nondiscriminatory.** It is the intent of this Health Care Flexible Spending Arrangement not to discriminate in violation of the Code and the Treasury regulations thereunder.

(b) **Adjustment to avoid test failure.** If the Administrator deems it necessary to avoid discrimination under this Health Care Flexible Spending Arrangement, it may, but shall not be required to, reject any elections or reduce contributions or Benefits in order to assure compliance with this Section. Any act taken by the Administrator

under this Section shall be carried out in a uniform and nondiscriminatory manner. If the Administrator decides to reject any elections or reduce contributions or Benefits, it shall be done in the following manner. First, the Benefits designated for the Health Care Flexible Spending Arrangement by the member of the group in whose favor discrimination may not occur pursuant to Code Section 105 that elected to contribute the highest amount to the fund for the Plan Year shall be reduced until the nondiscrimination tests set forth in this Section or the Code are satisfied, or until the amount designated for the fund equals the amount designated for the fund by the next member of the group in whose favor discrimination may not occur pursuant to Code Section 105 who has elected the second highest contribution to the Health Care Flexible Spending Arrangement for the Plan Year. This process shall continue until the nondiscrimination tests set forth in this Section or the Code are satisfied. Contributions which are not utilized to provide Benefits to any Participant by virtue of any administrative act under this paragraph shall be forfeited and credited to the benefit plan surplus.

6.6 COORDINATION WITH CAFETERIA PLAN

All Participants under the Cafeteria Plan are eligible to receive Benefits under this Health Care Flexible Spending Arrangement. The enrollment under the Cafeteria Plan shall constitute enrollment under this Health Care Flexible Spending Arrangement. In addition, other matters concerning contributions, elections and the like shall be governed by the general provisions of the Cafeteria Plan.

6.7 HEALTH CARE FLEXIBLE SPENDING ARRANGEMENT CLAIMS

(a) **Expenses must be incurred during Plan Year.** All Medical Expenses incurred by a Participant, his or her Spouse and his or her Dependents during the Plan Year including the Grace Period shall be reimbursed during the Plan Year subject to Section 2.5, even though the submission of such a claim occurs after his participation hereunder ceases; but provided that the Medical Expenses were incurred during the applicable Plan Year. Medical Expenses are treated as having been incurred when the Participant is provided with the medical care that gives rise to the medical expenses, not when the Participant is formally billed or charged for, or pays for the medical care.

(b) **Reimbursement available throughout Plan Year.** The Administrator shall direct the reimbursement to each eligible Participant for all allowable Medical Expenses, up to a maximum of the amount designated by the Participant for the Health Care Flexible Spending Arrangement for the Plan Year. Reimbursements shall be made available to the Participant throughout the year without regard to the level of Cafeteria Plan Benefit Dollars which have been allocated to the fund at any given point in time. Furthermore, a Participant shall be entitled to reimbursements only for amounts in excess of any payments or other reimbursements under any health care plan covering the Participant and/or his Spouse or Dependents.

(c) **Payments.** Reimbursement payments under this Plan shall be made directly to the Participant. However, in the Administrator's discretion, payments may be made directly to the service provider. The application for payment or reimbursement shall be made to the Administrator on an acceptable form within a reasonable time of incurring the debt or paying for the service. The application shall include a written statement from an independent third party stating that the Medical Expense has been incurred and the amount of such expense. Furthermore, the Participant shall provide a written statement that the Medical Expense has not been reimbursed or is not reimbursable under any other health plan coverage and, if reimbursed from the Health Care Flexible Spending Arrangement, such amount will not be claimed as a tax deduction. The Administrator shall retain a file of all such applications.

(d) **Grace Period.** Notwithstanding anything in this Section to the contrary, Medical Expenses incurred during the Grace Period, up to the remaining account balance, shall also be deemed to have been incurred during the Plan Year to which the Grace Period relates.

(e) **Claims for reimbursement.** Claims for the reimbursement of Medical Expenses incurred in any Plan Year shall be paid as soon after a claim has been filed as is administratively practicable; provided however, that if a Participant fails to submit a claim within 90 days after the end of the Plan Year, those Medical Expense claims shall not be considered for reimbursement by the Administrator.

6.8 DEBIT AND CREDIT CARDS

Participants may, subject to a procedure established by the Administrator and applied in a uniform nondiscriminatory manner, use debit and/or credit (stored value) cards ("cards") provided by the Administrator and the Plan for payment of Medical Expenses, subject to the following terms:

(a) **Card only for medical expenses.** Each Participant issued a card shall certify that such card shall only be used for Medical Expenses. The Participant shall also certify that any Medical Expense paid with the card has not already been reimbursed by any other plan covering health benefits and that the Participant will not seek reimbursement from any other plan covering health benefits.

(b) **Card issuance.** Such card shall be issued upon the Participant's Effective Date of Participation and reissued for each Plan Year the Participant remains a Participant in the Health Care Flexible Spending Arrangement.

Such card shall be automatically cancelled upon the Participant's death or termination of employment, or if such Participant has a change in status that results in the Participant's withdrawal from the Health Care Flexible Spending Arrangement.

(c) **Maximum dollar amount available.** The dollar amount of coverage available on the card shall be the amount elected by the Participant for the Plan Year. The maximum dollar amount of coverage available shall be the maximum amount for the Plan Year as set forth in Section 6.4.

(d) **Only available for use with certain service providers.** The cards shall only be accepted by such merchants and service providers as have been approved by the Administrator following IRS guidelines.

(e) **Card use.** The cards shall only be used for Medical Expense purchases at these providers, including, but not limited to, the following:

- (1) Co-payments for doctor and other medical care;
- (2) Purchase of drugs prescribed by a health care provider, including, if permitted by the Administrator, over-the-counter medications as allowed under IRS regulations;
- (3) Purchase of medical items such as eyeglasses, syringes, crutches, etc.

(f) **Substantiation.** Such purchases by the cards shall be subject to substantiation by the Administrator, usually by submission of a receipt from a service provider describing the service, the date and the amount. The Administrator shall also follow the requirements set forth in Revenue Ruling 2003-43 and Notice 2006-69. All charges shall be conditional pending confirmation and substantiation.

(g) **Correction methods.** If such purchase is later determined by the Administrator to not qualify as a Medical Expense, the Administrator, in its discretion, shall use one of the following correction methods to make the Plan whole. Until the amount is repaid, the Administrator shall take further action to ensure that further violations of the terms of the card do not occur, up to and including denial of access to the card.

- (1) Repayment of the improper amount by the Participant;
- (2) Withholding the improper payment from the Participant's wages or other compensation to the extent consistent with applicable federal or state law;
- (3) Claims substitution or offset of future claims until the amount is repaid; and
- (4) if subsections (1) through (3) fail to recover the amount, consistent with the Employer's business practices, the Employer may treat the amount as any other business indebtedness.

ARTICLE VII DAY CARE FLEXIBLE SPENDING ARRANGEMENT

7.1 ESTABLISHMENT OF ACCOUNT

This Day Care Flexible Spending Arrangement is intended to qualify as a program under Code Section 129 and shall be interpreted in a manner consistent with such Code Section. Participants who elect to participate in this program may submit claims for the reimbursement of Employment-Related Day Care Expenses. All amounts reimbursed shall be paid from amounts allocated to the Participant's Day Care Flexible Spending Arrangement.

7.2 DEFINITIONS

For the purposes of this Article and the Cafeteria Plan the terms below shall have the following meaning:

(a) **"Day Care Flexible Spending Arrangement"** means the account established for a Participant pursuant to this Article to which part of his Cafeteria Plan Benefit Dollars may be allocated and from which Employment-Related Day Care Expenses of the Participant may be reimbursed for the care of the Qualifying Dependents of Participants.

(b) **"Earned Income"** means earned income as defined under Code Section 32(c)(2), but excluding such amounts paid or incurred by the Employer for Day Care assistance to the Participant.

(c) **"Employment-Related Day Care Expenses"** means the amounts paid for expenses of a Participant for those services which if paid by the Participant would be considered employment related expenses under Code Section 21(b)(2). Generally, they shall include expenses for household services and for the care of a Qualifying Dependent, to the extent that such expenses are incurred to enable the Participant to be gainfully

employed for any period for which there are one or more Qualifying Dependents with respect to such Participant. Employment-Related Day Care Expenses are treated as having been incurred when the Participant's Qualifying Dependents are provided with the Day Care that gives rise to the Employment-Related Day Care Expenses, not when the Participant is formally billed or charged for, or pays for the Day Care. The determination of whether an amount qualifies as an Employment-Related Day Care Expense shall be made subject to the following rules:

(1) If such amounts are paid for expenses incurred outside the Participant's household, they shall constitute Employment-Related Day Care Expenses only if incurred for a Qualifying Dependent as defined in Section 7.2(d)(1) (or deemed to be, as described in Section 7.2(d)(1) pursuant to Section 7.2(d)(3)), or for a Qualifying Dependent as defined in Section 7.2(d)(2) (or deemed to be, as described in Section 7.2(d)(2) pursuant to Section 7.2(d)(3)) who regularly spends at least 8 hours per day in the Participant's household;

(2) If the expense is incurred outside the Participant's home at a facility that provides care for a fee, payment, or grant for more than 6 individuals who do not regularly reside at the facility, the facility must comply with all applicable state and local laws and regulations, including licensing requirements, if any; and

(3) Employment-Related Day Care Expenses of a Participant shall not include amounts paid or incurred to a child of such Participant who is under the age of 19 or to an individual who is a Dependent of such Participant or such Participant's Spouse.

(d) **"Qualifying Dependent"** means, for Day Care Flexible Spending Arrangement purposes,

(1) a Participant's Dependent (as defined in Code Section 152(a)(1)) who has not attained age 13;

(2) a Dependent or the Spouse of a Participant who is physically or mentally incapable of caring for himself or herself and has the same principal place of abode as the Participant for more than one-half of such taxable year; or

(3) a child that is deemed to be a Qualifying Dependent described in paragraph (1) or (2) above, whichever is appropriate, pursuant to Code Section 21(e)(5).

(e) The definitions of Article I are hereby incorporated by reference to the extent necessary to interpret and apply the provisions of this Day Care Flexible Spending Arrangement.

7.3 DAY CARE FLEXIBLE SPENDING ARRANGEMENTS

The Administrator shall establish a Day Care Flexible Spending Arrangement for each Participant who elects to apply Cafeteria Plan Benefit Dollars to Day Care Flexible Spending Arrangement benefits.

7.4 INCREASES IN DAY CARE FLEXIBLE SPENDING ARRANGEMENTS

A Participant's Day Care Flexible Spending Arrangement shall be increased each pay period by the portion of Cafeteria Plan Benefit Dollars that he has elected to apply toward his Day Care Flexible Spending Arrangement pursuant to elections made under Article V hereof.

7.5 DECREASES IN DAY CARE FLEXIBLE SPENDING ARRANGEMENTS

A Participant's Day Care Flexible Spending Arrangement shall be reduced by the amount of any Employment-Related Day Care Expense reimbursements paid or incurred on behalf of a Participant pursuant to Section 7.12 hereof.

7.6 ALLOWABLE DAY CARE REIMBURSEMENT

Subject to limitations contained in Section 7.9 of this Program, and to the extent of the amount contained in the Participant's Day Care Flexible Spending Arrangement, a Participant who incurs Employment-Related Day Care Expenses shall be entitled to receive from the Employer full reimbursement for the entire amount of such expenses incurred during the Plan Year or portion thereof during which he is a Participant.

7.7 ANNUAL STATEMENT OF BENEFITS

On or before January 31st of each calendar year, the Employer shall furnish to each Employee who was a Participant and received benefits under Section 7.6 during the prior calendar year, a statement of all such benefits paid to or on behalf of such Participant during the prior calendar year. This statement is set forth on the Participant's Form W-2.

7.8 FORFEITURES

The amount in a Participant's Day Care Flexible Spending Arrangement as of the end of any Plan Year (and after the processing of all claims for such Plan Year pursuant to Section 7.12 hereof) shall be forfeited and credited to the benefit plan surplus. In such event, the Participant shall have no further claim to such amount for any reason.

7.9 LIMITATION ON PAYMENTS

(a) **Code limits.** Notwithstanding any provision contained in this Article to the contrary, amounts paid from a Participant's Day Care Flexible Spending Arrangement in or on account of any taxable year of the Participant shall not exceed the lesser of the Earned Income limitation described in Code Section 129(b) or \$5,000 (\$2,500 if a separate tax return is filed by a Participant who is married as determined under the rules of paragraphs (3) and (4) of Code Section 21(e)).

7.10 NONDISCRIMINATION REQUIREMENTS

(a) **Intent to be nondiscriminatory.** It is the intent of this Day Care Flexible Spending Arrangement that contributions or benefits not discriminate in favor of the group of employees in whose favor discrimination may not occur under Code Section 129(d).

(b) **25% test for shareholders.** It is the intent of this Day Care Flexible Spending Arrangement that not more than 25 percent of the amounts paid by the Employer for Day Care assistance during the Plan Year will be provided for the class of individuals who are shareholders or owners (or their Spouses or Dependents), each of whom (on any day of the Plan Year) owns more than 5 percent of the stock or of the capital or profits interest in the Employer.

(c) **Adjustment to avoid test failure.** If the Administrator deems it necessary to avoid discrimination or possible taxation to a group of employees in whose favor discrimination may not occur in violation of Code Section 129 it may, but shall not be required to, reject any elections or reduce contributions or non-taxable benefits in order to assure compliance with this Section. Any act taken by the Administrator under this Section shall be carried out in a uniform and nondiscriminatory manner. If the Administrator decides to reject any elections or reduce contributions or Benefits, it shall be done in the following manner. First, the Benefits designated for the Day Care Flexible Spending Arrangement by the affected Participant that elected to contribute the highest amount to such account for the Plan Year shall be reduced until the nondiscrimination tests set forth in this Section are satisfied, or until the amount designated for the account equals the amount designated for the account of the affected Participant who has elected the second highest contribution to the Day Care Flexible Spending Arrangement for the Plan Year. This process shall continue until the nondiscrimination tests set forth in this Section are satisfied. Contributions which are not utilized to provide Benefits to any Participant by virtue of any administrative act under this paragraph shall be forfeited.

7.11 COORDINATION WITH CAFETERIA PLAN

All Participants under the Cafeteria Plan are eligible to receive Benefits under this Day Care Flexible Spending Arrangement. The enrollment and termination of participation under the Cafeteria Plan shall constitute enrollment and termination of participation under this Day Care Flexible Spending Arrangement. In addition, other matters concerning contributions, elections and the like shall be governed by the general provisions of the Cafeteria Plan.

7.12 DAY CARE FLEXIBLE SPENDING ARRANGEMENT CLAIMS

The Administrator shall direct the payment of all such Day Care claims to the Participant upon the presentation to the Administrator of documentation of such expenses in a form satisfactory to the Administrator. However, in the Administrator's discretion, payments may be made directly to the service provider. In its discretion in administering the Plan, the Administrator may utilize forms and require documentation of costs as may be necessary to verify the claims submitted. At a minimum, the form shall include a statement from an independent third party as proof that the expense has been incurred during the Plan Year including the Grace Period and the amount of such expense. In addition, the Administrator may require that each Participant who desires to receive reimbursement under this Program for Employment-Related Day Care Expenses submit a statement which may contain some or all of the following information:

- (a) The Dependent or Dependents for whom the services were performed;
- (b) The nature of the services performed for the Participant, the cost of which he wishes reimbursement;
- (c) The relationship, if any, of the person performing the services to the Participant;
- (d) If the services are being performed by a child of the Participant, the age of the child;
- (e) A statement as to where the services were performed;
- (f) If any of the services were performed outside the home, a statement as to whether the Dependent for whom such services were performed spends at least 8 hours a day in the Participant's household;
- (g) If the services were being performed in a day care center, a statement:

- (1) that the day care center complies with all applicable laws and regulations of the state of residence,
- (2) that the day care center provides care for more than 6 individuals (other than individuals residing at the center), and
- (3) of the amount of fee paid to the provider.
- (h) If the Participant is married, a statement containing the following:
 - (1) the Spouse's salary or wages if he or she is employed, or
 - (2) if the Participant's Spouse is not employed, that
 - (i) he or she is incapacitated, or
 - (ii) he or she is a full-time student attending an educational institution and the months during the year which he or she attended such institution.
- (i) **Grace Period.** Notwithstanding anything in this Section to the contrary, Employment-Related Day Care Expenses incurred during the Grace Period, up to the remaining account balance, shall also be deemed to have been incurred during the Plan Year to which the Grace Period relates.
- (j) **Claims for reimbursement.** If a Participant fails to submit a claim within 90 days after the end of the Plan Year, those claims shall not be considered for reimbursement by the Administrator.

**ARTICLE VIII
BENEFITS AND RIGHTS**

8.1 CLAIM FOR BENEFITS

- (a) **Insurance claims.** Any claim for Benefits underwritten by Insurance Contract(s) shall be made to the Insurer. If the Insurer denies any claim, the Participant or beneficiary shall follow the Insurer's claims review procedure.
- (b) **Health and Day Care Flexible Spending Arrangement Claims.** The Participant must submit all claims no later than 90 days after the end of the Plan Year. Any claims submitted after that time will not be considered.

If a claim under the Plan is denied in whole or in part, the Participant will receive written notification. The notification will include the reasons for the denial, with reference to the specific provisions of the Plan on which the denial was based, a description of any additional information needed to process the claim and an explanation of the claims review procedure.

A level one appeal must be submitted within 180 days of receipt of the denial. Any such request should be accompanied by documents or records in support of the appeal. The Participant may review pertinent documents and submit issues and comments in writing. The claims administrator will review the claim and provide, within 30 days, a written response to the appeal (extended by reasonable time if necessary). In this response, the claims administrator will explain the reason for the decision, with specific reference to the provisions of the Plan on which the decision is based. If the Participant disagrees with the level one appeal decision the Participant may submit a request for a level two appeal to be determined by the Employer. The Participant must submit the request for level two appeal within 60 days of receipt of the level one notice. The Participant will be notified within 30 days after the Employer receives the appeal (extended by reasonable time if necessary). The Employer has the exclusive right to interpret the appropriate plan provisions. Decisions of the Employer are conclusive and binding.

The following timetable for claims applies:

Notification of whether claim is accepted or denied	30 days
Extension due to matters beyond the control of the Plan	15 days
Denial or insufficient information on the claim: Notification of	15 days
Response by Participant	45 days
Review of claim denial	30 days

The Participant must file the appeal by submitting a written request by email, fax, or mail to Flex-Plan and indicate either level one or two appeal on the email, fax, or letter.

Email: claims@flex-plan.com

Fax: 425-451-7002 or 866-535-9227

Mail: Flex-Plan Services, PO Box 53250, Bellevue WA 98015.

The response will provide written or electronic notification of any claim denial. The notice will state:

- (a) The specific reason or reasons for the denial;
- (b) Reference to the specific Plan provisions on which the denial was based;
- (c) A description of any additional material or information necessary for the Participant to perfect the claim and an explanation of why such material or information is necessary;
- (d) A description of the Plan's review procedures and the time limits applicable to such procedures.
- (e) A statement that the Participant is entitled to receive, upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to the claim; and
- (f) If the denial was based on an internal rule, guideline, protocol, or other similar criterion, the specific rule, guideline, protocol, or criterion will be provided free of charge. If this is not practical, a statement will be included that such a rule, guideline, protocol, or criterion was relied upon in making the denial and a copy will be provided free of charge to the Participant upon request.

When the Participant receives a denial, the Participant will have 180 days following receipt of the notification in which to appeal the decision. The Participant may submit written comments, documents, records, and other information relating to the claim. If the Participant requests, the Participant will be provided, free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to the claim.

The period of time within which a denial on review is required to be made will begin at the time an appeal is filed in accordance with the procedures of the Plan. This timing is without regard to whether all the necessary information accompanies the filing.

A document, record, or other information shall be considered relevant to a claim if it:

- (a) was relied upon in making the claim determination;
- (b) was submitted, considered, or generated in the course of making the claim determination, without regard to whether it was relied upon in making the claim determination;
- (c) demonstrated compliance with the administrative processes and safeguards designed to ensure and to verify that claim determinations are made in accordance with Plan documents and Plan provisions have been applied consistently with respect to all claimants; or
- (d) constituted a statement of policy or guidance with respect to the Plan concerning the denied claim.

The review will take into account all comments, documents, records, and other information submitted by the Participant relating to the claim, without regard to whether such information was submitted or considered in the initial claim determination. The review will not afford deference to the initial denial and will be conducted by a fiduciary of the Plan who is neither the individual who made the adverse determination nor a subordinate of that individual.

- (e) **Forfeitures.** Any balance remaining in the Participant's Day Care Flexible Spending Arrangement or Health Care Flexible Spending Arrangement as of the end of the time for claims reimbursement for each Plan Year and Grace Period (if applicable) shall be forfeited and deposited in the benefit plan surplus of the Employer pursuant to Section 6.3 or Section 7.8, whichever is applicable, unless the Participant had made a claim for such Plan Year, in writing, which has been denied or is pending; in which event the amount of the claim shall be held in his account until the claim appeal procedures set forth above have been satisfied or the claim is paid. If any such claim is denied on appeal, the amount held beyond the end of the Plan Year shall be forfeited and credited to the benefit plan surplus.

8.2 APPLICATION OF BENEFIT PLAN SURPLUS

Any forfeited amounts credited to the benefit plan surplus by virtue of the failure of a Participant to incur a qualified expense or seek reimbursement in a timely manner may, but need not be, separately accounted for after the close of the Plan Year (or after such further time specified herein for the filing of claims) in which such forfeitures arose. In no event shall such amounts be carried over to reimburse a Participant for expenses incurred during a subsequent Plan Year for the same or any other Benefit available under the Plan; nor shall amounts forfeited by a particular Participant be made available to such Participant in any other form or manner, except as permitted by Treasury regulations. Amounts in the benefit plan surplus shall be used to defray any administrative costs and experience losses or used to provide additional benefits under the Plan.

ARTICLE IX ADMINISTRATION

9.1 PLAN ADMINISTRATION

The Employer shall be the Administrator, unless the Employer elects otherwise. The Employer may appoint any person, including, but not limited to, the Employees of the Employer, to perform the duties of the Administrator. Any person so appointed shall signify acceptance by filing written acceptance with the Employer. Upon the resignation or removal of any individual performing the duties of the Administrator, the Employer may designate a successor.

If the Employer elects, the Employer shall appoint one or more Administrators. Any person, including, but not limited to, the Employees of the Employer, shall be eligible to serve as an Administrator. Any person so appointed shall signify acceptance by filing written acceptance with the Employer. An Administrator may resign by delivering a written resignation to the Employer or be removed by the Employer by delivery of written notice of removal, to take effect at a date specified therein, or upon delivery to the Administrator if no date is specified. The Employer shall be empowered to appoint and remove the Administrator from time to time as it deems necessary for the proper administration of the Plan to ensure that the Plan is being operated for the exclusive benefit of the Employees entitled to participate in the Plan in accordance with the terms of the Plan and the Code.

The operation of the Plan shall be under the supervision of the Administrator. It shall be a principal duty of the Administrator to see that the Plan is carried out in accordance with its terms, and for the exclusive benefit of Employees entitled to participate in the Plan. The Administrator shall have full power and discretion to administer the Plan in all of its details and determine all questions arising in connection with the administration, interpretation, and application of the Plan. The Administrator may establish procedures, correct any defect, supply any information, or reconcile any inconsistency in such manner and to such extent as shall be deemed necessary or advisable to carry out the purpose of the Plan. The Administrator shall have all powers necessary or appropriate to accomplish the Administrator's duties under the Plan. The Administrator shall be charged with the duties of the general administration of the Plan as set forth under the Plan, including, but not limited to, in addition to all other powers provided by this Plan:

- (a) To make and enforce such procedures, rules and regulations as the Administrator deems necessary or proper for the efficient administration of the Plan;
- (b) To interpret the provisions of the Plan, the Administrator's interpretations thereof in good faith to be final and conclusive on all persons claiming benefits by operation of the Plan;
- (c) To decide all questions concerning the Plan and the eligibility of any person to participate in the Plan and to receive benefits provided by operation of the Plan;
- (d) To reject elections or to limit contributions or Benefits for certain highly compensated participants if it deems such to be desirable in order to avoid discrimination under the Plan in violation of applicable provisions of the Code;
- (e) To provide Employees with a reasonable notification of their benefits available by operation of the Plan and to assist any Participant regarding the Participant's rights, benefits or elections under the Plan;
- (f) To keep and maintain the Plan documents and all other records pertaining to and necessary for the administration of the Plan;
- (g) To review and settle all claims against the Plan, to approve reimbursement requests, and to authorize the payment of benefits if the Administrator determines such shall be paid if the Administrator decides in its discretion that the applicant is entitled to them. This authority specifically permits the Administrator to settle disputed claims for benefits and any other disputed claims made against the Plan;
- (h) To appoint such agents, counsel, accountants, consultants, and other persons or entities as may be required to assist in administering the Plan.

Any procedure, discretionary act, interpretation or construction taken by the Administrator shall be done in a nondiscriminatory manner based upon uniform principles consistently applied and shall be consistent with the intent that the Plan shall continue to comply with the terms of Code Section 125 and the Treasury regulations thereunder.

9.2 EXAMINATION OF RECORDS

The Administrator shall make available to each Participant, Eligible Employee and any other Employee of the Employer such records as pertain to their interest under the Plan for examination at reasonable times during normal business hours.

9.3 PAYMENT OF EXPENSES

Any reasonable administrative expenses shall be paid by the Employer unless the Employer determines that administrative costs shall be borne by the Participants under the Plan or by any Trust Fund which may be established hereunder. The Administrator may impose reasonable conditions for payments, provided that such conditions shall not discriminate in favor of highly compensated employees.

9.4 INSURANCE CONTROL CLAUSE

In the event of a conflict between the terms of this Plan and the terms of an Insurance Contract of an independent third party Insurer whose product is then being used in conjunction with this Plan, the terms of the Insurance Contract shall control as to those Participants receiving coverage under such Insurance Contract. For this purpose, the Insurance Contract shall control in defining the persons eligible for insurance, the dates of their eligibility, the conditions which must be satisfied to become insured, if any, the benefits Participants are entitled to and the circumstances under which insurance terminates.

9.5 INDEMNIFICATION OF ADMINISTRATOR

The Employer agrees to indemnify and to defend to the fullest extent permitted by law any Employee serving as the Administrator or as a member of a committee designated as Administrator (including any Employee or former Employee who previously served as Administrator or as a member of such committee) against all liabilities, damages, costs and expenses (including attorney's fees and amounts paid in settlement of any claims approved by the Employer) occasioned by any act or omission to act in connection with the Plan, if such act or omission is in good faith.

ARTICLE X AMENDMENT OR TERMINATION OF PLAN

10.1 AMENDMENT

The Employer, at any time or from time to time, may amend any or all of the provisions of the Plan without the consent of any Employee or Participant. No amendment shall have the effect of modifying any benefit election of any Participant in effect at the time of such amendment, unless such amendment is made to comply with Federal, state or local laws, statutes or regulations.

10.2 TERMINATION

The Employer reserves the right to terminate this Plan, in whole or in part, at any time. In the event the Plan is terminated, no further contributions shall be made. Benefits under any Insurance Contract shall be paid in accordance with the terms of the Insurance Contract.

No further additions shall be made to the Health Care Flexible Spending Arrangement or Day Care Flexible Spending Arrangement, but all payments from such fund shall continue to be made according to the elections in effect until 90 days after the termination date of the Plan. Any amounts remaining in any such fund or account as of the end of such period shall be forfeited and deposited in the benefit plan surplus after the expiration of the filing period.

ARTICLE XI MISCELLANEOUS

11.1 PLAN INTERPRETATION

All provisions of this Plan shall be interpreted and applied in a uniform, nondiscriminatory manner. This Plan shall be read in its entirety and not severed except as provided in Section 11.12.

11.2 GENDER AND NUMBER

Wherever any words are used herein in the masculine, feminine or neuter gender, they shall be construed as though they were also used in another gender in all cases where they would so apply, and whenever any words are used herein in the

singular or plural form, they shall be construed as though they were also used in the other form in all cases where they would so apply.

11.3 WRITTEN DOCUMENT

This Plan, in conjunction with any separate written document which may be required by law, is intended to satisfy the written Plan requirement of Code Section 125 and any Treasury regulations thereunder relating to cafeteria plans.

11.4 EXCLUSIVE BENEFIT

This Plan shall be maintained for the exclusive benefit of the Employees who participate in the Plan.

11.5 PARTICIPANT'S RIGHTS

This Plan shall not be deemed to constitute an employment contract between the Employer and any Participant or to be a consideration or an inducement for the employment of any Participant or Employee. Nothing contained in this Plan shall be deemed to give any Participant or Employee the right to be retained in the service of the Employer or to interfere with the right of the Employer to discharge any Participant or Employee at any time regardless of the effect which such discharge shall have upon him as a Participant of this Plan.

11.6 ACTION BY THE EMPLOYER

Whenever the Employer under the terms of the Plan is permitted or required to do or perform any act or matter or thing, it shall be done and performed by a person duly authorized by its legally constituted authority.

11.7 EMPLOYER'S PROTECTIVE CLAUSES

(a) **Insurance purchase.** Upon the failure of either the Participant or the Employer to obtain the insurance contemplated by this Plan (whether as a result of negligence, gross neglect or otherwise), the Participant's Benefits shall be limited to the insurance premium(s), if any, that remained unpaid for the period in question and the actual insurance proceeds, if any, received by the Employer or the Participant as a result of the Participant's claim.

(b) **Validity of insurance contract.** The Employer shall not be responsible for the validity of any Insurance Contract issued hereunder or for the failure on the part of the Insurer to make payments provided for under any Insurance Contract. Once insurance is applied for or obtained, the Employer shall not be liable for any loss which may result from the failure to pay Premiums to the extent Premium notices are not received by the Employer.

11.8 NO GUARANTEE OF TAX CONSEQUENCES

Neither the Administrator nor the Employer makes any commitment or guarantee that any amounts paid to or for the benefit of a Participant under the Plan will be excludable from the Participant's gross income for federal or state income tax purposes, or that any other federal or state tax treatment will apply to or be available to any Participant. It shall be the obligation of each Participant to determine whether each payment under the Plan is excludable from the Participant's gross income for federal and state income tax purposes, and to notify the Employer if the Participant has reason to believe that any such payment is not so excludable. Notwithstanding the foregoing, the rights of Participants under this Plan shall be legally enforceable.

11.9 INDEMNIFICATION OF EMPLOYER BY PARTICIPANTS

If any Participant receives one or more payments or reimbursements under the Plan that are not for a permitted Benefit, such Participant shall indemnify and reimburse the Employer for any liability it may incur for failure to withhold federal or state income tax or Social Security tax from such payments or reimbursements. However, such indemnification and reimbursement shall not exceed the amount of additional federal and state income tax (plus any penalties) that the Participant would have owed if the payments or reimbursements had been made to the Participant as regular cash compensation, plus the Participant's share of any Social Security tax that would have been paid on such compensation, less any such additional income and Social Security tax actually paid by the Participant.

11.10 FUNDING

Unless otherwise required by law, contributions to the Plan need not be placed in trust or dedicated to a specific Benefit, but may instead be considered general assets of the Employer. Furthermore, and unless otherwise required by law, nothing herein shall be construed to require the Employer or the Administrator to maintain any fund or segregate any amount for the benefit of any Participant, and no Participant or other person shall have any claim against, right to, or security or other interest in, any fund, account or asset of the Employer from which any payment under the Plan may be made.

11.11 GOVERNING LAW

This Plan is governed by the Code and the Treasury regulations issued thereunder (as they might be amended from time to time). In no event shall the Employer guarantee the favorable tax treatment sought by this Plan. To the extent not preempted by Federal law, the provisions of this Plan shall be construed, enforced and administered according to the laws of the State of California.

11.12 SEVERABILITY

If any provision of the Plan is held invalid or unenforceable, its invalidity or unenforceability shall not affect any other provisions of the Plan, and the Plan shall be construed and enforced as if such provision had not been included herein.

11.13 CAPTIONS

The captions contained herein are inserted only as a matter of convenience and for reference, and in no way define, limit, enlarge or describe the scope or intent of the Plan, nor in any way shall affect the Plan or the construction of any provision thereof.

11.14 CONTINUATION OF COVERAGE (COBRA)

Notwithstanding anything in the Plan to the contrary, in the event any benefit under this Plan subject to the continuation coverage requirement of Code Section 4980B becomes unavailable, each Participant will be entitled to continuation coverage as prescribed in Code Section 4980B, and related regulations. This Section shall only apply if the Employer employs at least twenty (20) employees on more than 50% of its typical business days in the previous calendar year.

11.15 FAMILY AND MEDICAL LEAVE ACT (FMLA)

Notwithstanding anything in the Plan to the contrary, in the event any benefit under this Plan becomes subject to the requirements of the Family and Medical Leave Act and regulations thereunder, this Plan shall be operated in accordance with Regulation 1.125-3.

11.16 HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA)

Notwithstanding anything in this Plan to the contrary, this Plan shall be operated in accordance with HIPAA and regulations thereunder.

11.17 UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT (USERRA)

Notwithstanding any provision of this Plan to the contrary, contributions, benefits and service credit with respect to qualified military service shall be provided in accordance with the Uniform Services Employment And Reemployment Rights Act (USERRA) and the regulations thereunder.

11.18 COMPLIANCE WITH HIPAA PRIVACY STANDARDS

(a) **Application.** If any benefits under this Cafeteria Plan are subject to the Standards for Privacy of Individually Identifiable Health Information (45 CFR Part 164, the "Privacy Standards"), then this Section shall apply.

(b) **Disclosure of PHI.** The Plan shall not disclose Protected Health Information to any member of the Employer's workforce unless each of the conditions set out in this Section are met. "Protected Health Information" shall have the same definition as set forth in the Privacy Standards but generally shall mean individually identifiable information about the past, present or future physical or mental health or condition of an individual, including genetic information and information about treatment or payment for treatment.

(c) **PHI disclosed for administrative purposes.** Protected Health Information disclosed to members of the Employer's workforce shall be used or disclosed by them only for purposes of Plan administrative functions. The Plan's administrative functions shall include all Plan payment functions and health care operations. The terms "payment" and "health care operations" shall have the same definitions as set out in the Privacy Standards, but the term "payment" generally shall mean activities taken to determine or fulfill Plan responsibilities with respect to eligibility, coverage, provision of benefits, or reimbursement for health care. Genetic information will not be used or disclosed for underwriting purposes.

(d) **PHI disclosed to certain workforce members.** The Plan shall disclose Protected Health Information only to members of the Employer's workforce who are designated and authorized to receive such Protected Health Information, and only to the extent and in the minimum amount necessary for that person to perform his or her duties with respect to the Plan. "Members of the Employer's workforce" shall refer to all employees and other persons under the control of the Employer. The Employer shall keep an updated list of those authorized to receive Protected Health Information.

- (1) An authorized member of the Employer's workforce who receives Protected Health Information shall use or disclose the Protected Health Information only to the extent necessary to perform his or her duties with respect to the Plan.
- (2) In the event that any member of the Employer's workforce uses or discloses Protected Health Information other than as permitted by this Section and the Privacy Standards, the incident shall be reported to the Plan's privacy official. The privacy official shall take appropriate action, including:
 - (i) investigation of the incident to determine whether the breach occurred inadvertently, through negligence or deliberately; whether there is a pattern of breaches; and the degree of harm caused by the breach;
 - (ii) appropriate sanctions against the persons causing the breach which, depending upon the nature of the breach, may include oral or written reprimand, additional training, or termination of employment;
 - (iii) mitigation of any harm caused by the breach, to the extent practicable; and
 - (iv) documentation of the incident and all actions taken to resolve the issue and mitigate any damages.
- (e) **Certification.** The Employer must provide certification to the Plan that it agrees to:
 - (1) Not use or further disclose the information other than as permitted or required by the Plan documents or as required by law;
 - (2) Ensure that any agent or subcontractor, to whom it provides Protected Health Information received from the Plan, agrees to the same restrictions and conditions that apply to the Employer with respect to such information;
 - (3) Not use or disclose Protected Health Information for employment-related actions and decisions or in connection with any other benefit or employee benefit plan of the Employer;
 - (4) Report to the Plan any use or disclosure of the Protected Health Information of which it becomes aware that is inconsistent with the uses or disclosures permitted by this Section, or required by law;
 - (5) Make available Protected Health Information to individual Plan members in accordance with Section 164.524 of the Privacy Standards;
 - (6) Make available Protected Health Information for amendment by individual Plan members and incorporate any amendments to Protected Health Information in accordance with Section 164.526 of the Privacy Standards;
 - (7) Make available the Protected Health Information required to provide an accounting of disclosures to individual Plan members in accordance with Section 164.528 of the Privacy Standards;
 - (8) Make its internal practices, books and records relating to the use and disclosure of Protected Health Information received from the Plan available to the Department of Health and Human Services for purposes of determining compliance by the Plan with the Privacy Standards;
 - (9) If feasible, return or destroy all Protected Health Information received from the Plan that the Employer still maintains in any form, and retain no copies of such information when no longer needed for the purpose for which disclosure was made, except that, if such return or destruction is not feasible, limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible; and
 - (10) Ensure the adequate separation between the Plan and members of the Employer's workforce, as required by Section 164.504(f)(2)(iii) of the Privacy Standards and set out in (d) above.

11.19 COMPLIANCE WITH HIPAA ELECTRONIC SECURITY STANDARDS

Under the Security Standards for the Protection of Electronic Protected Health Information (45 CFR Part 164.300 et seq., the "Security Standards"):

- (a) **Implementation.** The Employer agrees to implement reasonable and appropriate administrative, physical and technical safeguards to protect the confidentiality, integrity and availability of Electronic Protected Health Information that the Employer creates, maintains or transmits on behalf of the Plan. "Electronic Protected Health

Information" shall have the same definition as set out in the Security Standards, but generally shall mean Protected Health Information that is transmitted by or maintained in electronic media.

(b) **Agents or subcontractors shall meet security standards.** The Employer shall ensure that any agent or subcontractor to whom it provides Electronic Protected Health Information shall agree, in writing, to implement reasonable and appropriate security measures to protect the Electronic Protected Health Information.

(c) **Employer shall ensure security standards.** The Employer shall ensure that reasonable and appropriate security measures are implemented to comply with the conditions and requirements set forth in Section 11.18.

11.20 MENTAL HEALTH PARITY AND ADDICTION EQUITY ACT

Notwithstanding anything in the Plan to the contrary, the Plan will comply with the Mental Health Parity and Addiction Equity Act and ERISA Section 712.

11.21 GENETIC INFORMATION NONDISCRIMINATION ACT (GINA)

Notwithstanding anything in the Plan to the contrary, the Plan will comply with the Genetic Information Nondiscrimination Act.

11.22 WOMEN'S HEALTH AND CANCER RIGHTS ACT

Notwithstanding anything in the Plan to the contrary, the Plan will comply with the Women's Health and Cancer Rights Act of 1998.

11.23 NEWBORNS' AND MOTHERS' HEALTH PROTECTION ACT

Notwithstanding anything in the Plan to the contrary, the Plan will comply with the Newborns' and Mothers' Health Protection Act.

CITY OF DUARTE FLEXIBLE BENEFITS PLAN
SUMMARY PLAN DESCRIPTION

TABLE OF CONTENTS

**I
ELIGIBILITY**

1. When can I become a participant in the Plan?..... 1
2. What are the eligibility requirements for our Plan? 1
3. When is my entry date?..... 1
4. What must I do to enroll in the Plan? 1

**II
OPERATION**

1. How does this Plan operate?..... 2

**III
CONTRIBUTIONS**

1. How much of my pay may the Employer redirect?..... 2
2. What happens to contributions made to the Plan? 2
3. When must I decide which accounts I want to use? 2
4. When is the election period for our Plan? 2
5. May I change my elections during the Plan Year?..... 2
6. May I make new elections in future Plan Years? 3

**IV
BENEFITS**

1. What benefits are offered under the Plan? 3
2. Health Care Flexible Spending Arrangement 3
3. Day Care Flexible Spending Arrangement 4
4. Premium Expense Account 4

**V
BENEFIT PAYMENTS**

1. When will I receive payments from my accounts? 5
2. What happens if I don't spend all Plan contributions during the Plan Year? 5
3. Family and Medical Leave Act (FMLA)..... 5
4. Uniformed Services Employment and Reemployment Rights Act (USERRA)..... 5
5. What happens if I terminate employment? 5
6. Will my Social Security benefits be affected? 6

**VI
HIGHLY COMPENSATED AND KEY EMPLOYEES**

1. Do limitations apply to highly compensated employees?..... 6

**VII
PLAN ACCOUNTING**

1. Periodic Statements 6

**VIII
GENERAL INFORMATION ABOUT OUR PLAN**

1. General Plan Information..... 6
2. Employer Information 6

3.	Plan Administrator Information	7
4.	Service of Legal Process	7
5.	Type of Administration.....	7
6.	Claims Submission.....	7

**IX
ADDITIONAL PLAN INFORMATION**

1.	Claims Process	7
----	----------------------	---

APPENDIX I TO THE FLEXIBLE BENEFITS PLAN SUMMARY PLAN DESCRIPTION

**X
CONTINUATION COVERAGE RIGHTS UNDER COBRA**

1.	What is COBRA continuation coverage?	11
2.	Who can become a Qualified Beneficiary?	12
3.	What is a Qualifying Event?.....	12
4.	What factors should be considered when determining to elect COBRA continuation coverage?.....	13
5.	What is the procedure for obtaining COBRA continuation coverage?.....	13
6.	What is the election period and how long must it last?	13
7.	Is a covered Employee or Qualified Beneficiary responsible for informing the Plan Administrator of the occurrence of a Qualifying Event?	13
8.	Is a waiver before the end of the election period effective to end a Qualified Beneficiary's election rights?.....	14
9.	Is COBRA coverage available if a Qualified Beneficiary has other group health plan coverage or Medicare?.....	14
10.	When may a Qualified Beneficiary's COBRA continuation coverage be terminated?	14
11.	What are the maximum coverage periods for COBRA continuation coverage?	15
12.	Under what circumstances can the maximum coverage period be expanded?.....	15
13.	How does a Qualified Beneficiary become entitled to a disability extension?	15
14.	Does the Plan require payment for COBRA continuation coverage?	16
15.	Must the Plan allow payment for COBRA continuation coverage to be made in monthly installments?.....	16
16.	What is Timely Payment for COBRA continuation coverage?.....	16
17.	Must a Qualified Beneficiary be given the right to enroll in a conversion health plan at the end of the maximum coverage period for COBRA continuation coverage?	16
18.	How is my participation in the Health Care Flexible Spending Arrangement affected?	16

**XI
SUMMARY**

CITY OF DUARTE FLEXIBLE BENEFITS PLAN

INTRODUCTION

We have amended the "Flexible Benefits Plan" that we previously established for you and other eligible employees. Under this Plan, you will be able to choose among certain benefits that we make available. The benefits that you may choose are outlined in this Summary Plan Description. We will also tell you about other important information concerning the amended Plan, such as the rules you must satisfy before you can join and the laws that protect your rights.

One of the most important features of our Plan is that the benefits being offered are generally ones that you are already paying for, but normally with money that has first been subject to income and Social Security taxes. Under our Plan, these same expenses will be paid for with a portion of your pay before Federal income or Social Security taxes are withheld. This means that you will pay less tax and have more money to spend and save.

Read this Summary Plan Description carefully so that you understand the provisions of our amended Plan and the benefits you will receive. This SPD describes the Plan's benefits and obligations as contained in the legal Plan document, which governs the operation of the Plan. The Plan document is written in much more technical and precise language. If the non-technical language in this SPD and the technical, legal language of the Plan document conflict, the Plan document always governs. Also, if there is a conflict between an insurance contract and either the Plan document or this Summary Plan Description, the insurance contract will control. If you wish to receive a copy of the legal Plan document, please contact the Administrator.

This SPD describes the current provisions of the Plan which are designed to comply with applicable legal requirements. The Plan is subject to federal laws, such as the Internal Revenue Code and other federal and state laws which may affect your rights. The provisions of the Plan are subject to revision due to a change in laws or due to pronouncements by the Internal Revenue Service (IRS) or other federal agencies. We may also amend or terminate this Plan. If the provisions of the Plan that are described in this SPD change, we will notify you.

We have attempted to answer most of the questions you may have regarding your benefits in the Plan. If this SPD does not answer all of your questions, please contact the Administrator (or other plan representative). The name and address of the Administrator can be found in the Article of this SPD entitled "General Information About the Plan."

ELIGIBILITY

1. When can I become a participant in the Plan?

Before you become a Plan member (referred to in this Summary Plan Description as a "Participant"), there are certain rules which you must satisfy. First, you must meet the eligibility requirements and be an active employee. After that, the next step is to actually join the Plan on the "entry date" that we have established for all employees. The "entry date" is defined in Question 3 below. You will also be required to complete certain application forms before you can enroll in the Health Care Flexible Spending Arrangement or Day Care Flexible Spending Arrangement.

2. What are the eligibility requirements for our Plan?

You will be eligible to join the Plan once you have satisfied the conditions for coverage under our group medical plan. Of course, if you were already a participant before this amendment, you will remain a participant.

3. When is my entry date?

Once you have met the eligibility requirements, your entry date will be the first day of the month coinciding with or following the date you met the eligibility requirements.

4. What must I do to enroll in the Plan?

Before you can join the Plan, you must complete an application to participate in the Plan. The application includes your personal choices for each of the benefits which are being offered under the Plan. You must also authorize us to set some of your earnings aside in order to pay for the benefits you have elected.

However, if you are already covered under any of the insured benefits, you will automatically participate in this Plan to the extent of your premiums unless you elect not to participate in this Plan.

II OPERATION

1. How does this Plan operate?

Before the start of each Plan Year, you will be able to elect to have some of your upcoming pay contributed to the Plan. These amounts will be used to pay for the benefits you have chosen. The portion of your pay that is paid to the Plan is not subject to Federal income or Social Security taxes. In other words, this allows you to use tax-free dollars to pay for certain kinds of benefits and expenses which you normally pay for with out-of-pocket, taxable dollars. However, if you receive a reimbursement for an expense under the Plan, you cannot claim a Federal income tax credit or deduction on your return. (See the Article entitled "General Information About Our Plan" for the definition of "Plan Year.")

III CONTRIBUTIONS

1. How much of my pay may the Employer redirect?

Each year, we will automatically contribute on your behalf enough of your compensation to pay for the insurance coverage provided unless you elect not to receive any or all of such coverage. You may also elect to have us contribute on your behalf enough of your compensation to pay for any other benefits that you elect under the Plan. These amounts will be deducted from your pay over the course of the year.

2. What happens to contributions made to the Plan?

Before each Plan Year begins, you will select the benefits you want and how much of the contributions should go toward each benefit. It is very important that you make these choices carefully based on what you expect to spend on each covered benefit or expense during the Plan Year. Later, they will be used to pay for the expenses as they arise during the Plan Year.

3. When must I decide which accounts I want to use?

You are required by Federal law to decide before the Plan Year begins, during the election period (defined below). You must decide two things. First, which benefits you want and, second, how much should go toward each benefit.

If you are already covered by any of the insured benefits offered by this Plan, you will automatically become a Participant to the extent of the premiums for such insurance unless you elect, during the election period (defined below), not to participate in the Plan.

4. When is the election period for our Plan?

You will make your initial election on or before your entry date. (You should review Section I on Eligibility to better understand the eligibility requirements and entry date.) Then, for each following Plan Year, the election period is established by the Administrator and applied uniformly to all Participants. It will normally be a period of time prior to the beginning of each Plan Year. The Administrator will inform you each year about the election period. (See the Article entitled "General Information About Our Plan" for the definition of Plan Year.)

5. May I change my elections during the Plan Year?

Generally, you cannot change the elections you have made after the beginning of the Plan Year. However, there are certain limited situations when you can change your elections. You are permitted to change elections if you have a "change in status" and you make an election change that is consistent with the change in status. Currently, Federal law considers the following events to be a change in status:

- Marriage, divorce, death of a spouse, legal separation or annulment;
- Change in the number of dependents, including birth, adoption, placement for adoption, or death of a dependent;
- Any of the following events for you, your spouse or dependent: termination or commencement of employment, a strike or lockout, commencement or return from an unpaid leave of absence, a change in worksite, or any other change in employment status that affects eligibility for benefits;
- One of your dependents satisfies or ceases to satisfy the requirements for coverage due to change in age, student status, or any similar circumstance; and
- A change in the place of residence of you, your spouse or dependent that would lead to a change in status, such as moving out of a coverage area for insurance.

In addition, if you are participating in the Day Care Flexible Spending Arrangement, then there is a change in status if your dependent no longer meets the qualifications to be eligible for Day Care.

There are detailed rules on when a change in election is deemed to be consistent with a change in status. In addition, there are laws that give you rights to change health coverage for you, your spouse, or your dependents. If you change coverage due to rights you have under the law, then you can make a corresponding change in your elections under the Plan. If any of these conditions apply to you, you should contact the Administrator.

If the cost of a benefit provided under the Plan increases or decreases during a Plan Year, then we will automatically increase or decrease, as the case may be, your salary redirection election. If the cost increases significantly, you will be permitted to either make corresponding changes in your payments or revoke your election and obtain coverage under another benefit package option with similar coverage, or revoke your election entirely.

If the coverage under a Benefit is significantly curtailed or ceases during a Plan Year, then you may revoke your elections and elect to receive on a prospective basis coverage under another plan with similar coverage. In addition, if we add a new coverage option or eliminate an existing option, you may elect the newly-added option (or elect another option if an option has been eliminated) and make corresponding election changes to other options providing similar coverage. If you are not a Participant, you may elect to join the Plan. There are also certain situations when you may be able to change your elections on account of a change under the plan of your spouse's, former spouse's or dependent's employer.

These rules on change due to cost or coverage do not apply to the Health Care Flexible Spending Arrangement, and you may not change your election to the Health Care Flexible Spending Arrangement if you make a change due to cost or coverage for insurance.

You may not change your election under the Day Care Flexible Spending Arrangement if the cost change is imposed by a Day Care provider who is your relative.

6. May I make new elections in future Plan Years?

Yes, you may. For each new Plan Year, you may change the elections that you previously made. You may also choose not to participate in the Plan for the upcoming Plan Year. If you do not make new elections during the election period before a new Plan Year begins, we will assume you want your elections for insured benefits only to remain the same and you will not be considered a Participant for the non-insured benefit options under the Plan for the upcoming Plan Year.

IV BENEFITS

1. What benefits are offered under the Plan?

Under our Plan, you can pay for the following benefits or expenses during the year:

2. Health Care Flexible Spending Arrangement

The Health Care Flexible Spending Arrangement enables you to pay for expenses allowed under Sections 105 and 213(d) of the Internal Revenue Code which are not covered by our insured medical plan and save taxes at the same time. The Health Care Flexible Spending Arrangement allows you to be reimbursed by the Employer for expenses incurred by you and your dependents.

Drug costs, including insulin, may be reimbursed.

You may be reimbursed for "over the counter" drugs only if those drugs are prescribed for you. You may not, however, be reimbursed for the cost of other health care coverage maintained outside of the Plan, or for long-term care expenses. A list of covered expenses is available from the Administrator.

The most that you can contribute to your Health Care Flexible Spending Arrangement each Plan Year is \$2,500.

In order to be reimbursed for a health care expense, you must submit to the Administrator an itemized bill from the service provider. We will also provide you with a debit or credit card to use to pay for medical expenses. The Administrator will provide you with further details. Amounts reimbursed from the Plan may not be claimed as a deduction on your personal income tax return. Reimbursement from the fund shall be paid at least once a month. Expenses under this Plan are treated as being "incurred" when you are provided with the care that gives rise to the expenses, not when you are formally billed or charged, or you pay for the medical care.

You may be reimbursed for expenses for any child until the end of the calendar year in which the child reaches age 26. A child is a natural child, stepchild, foster child, adopted child, or a child placed with you for adoption. If a child gains or regains eligibility due to these new rules, that qualifies as a change in status to change coverage.

Newborns' and Mothers' Health Protection Act: Group health plans generally may not, under Federal law, restrict benefits for any hospital length of stay in connection with childbirth for the mother or newborn child to less than 48 hours following a vaginal delivery, or less than 96 hours following a cesarean section. However, Federal law generally does not prohibit the

mother's or newborn's attending provider, after consulting with the mother, from discharging the mother or her newborn earlier than 48 hours (or 96 hours as applicable). In any case, plans and issuers may not, under Federal law, require that a provider obtain authorization from the plan or the issuer for prescribing a length of stay not in excess of 48 hours (or 96 hours).

Women's Health and Cancer Rights Act: This plan, as required by the Women's Health and Cancer Rights Act of 1998, will reimburse up to plan limits for benefits for mastectomy-related services including reconstruction and surgery to achieve symmetry between the breasts, prostheses, and complications resulting from a mastectomy (including lymphedema). Contact your Plan Administrator for more information.

3. Day Care Flexible Spending Arrangement

The Day Care Flexible Spending Arrangement enables you to pay for out-of-pocket, work-related dependent day-care cost with pre-tax dollars. If you are married, you can use the account if you and your spouse both work or, in some situations, if your spouse goes to school full-time. Single employees can also use the account.

An eligible dependent is someone for whom you can claim expenses on Federal Income Tax Form 2441 "Credit for Child and Day Care Expenses." Children must be under age 13. Other dependents must be physically or mentally unable to care for themselves. Day Care arrangements which qualify include:

- (a) A Dependent (Day) Care Center, provided that if care is provided by the facility for more than six individuals, the facility complies with applicable state and local laws;
- (b) An Educational Institution for pre-school children. For older children, only expenses for non-school care are eligible; and
- (c) An "Individual" who provides care inside or outside your home: The "Individual" may not be a child of yours under age 19 or anyone you claim as a dependent for Federal tax purposes.

You should make sure that the Day Care expenses you are currently paying for qualify under our Plan.

The law places limits on the amount of money that can be paid to you in a calendar year from your Day Care Flexible Spending Arrangement. Generally, your reimbursements may not exceed the lesser of: (a) \$5,000 (if you are married filing a joint return or you are head of a household) or \$2,500 (if you are married filing separate returns); (b) your taxable compensation; (c) your spouse's actual or deemed earned income (a spouse who is a full time student or incapable of caring for himself/herself has a monthly earned income of \$250 for one dependent or \$500 for two or more dependents).

Also, in order to have the reimbursements made to you from this account be excludable from your income, you must provide a statement from the service provider including the name, address, and in most cases, the taxpayer identification number of the service provider on your tax form for the year, as well as the amount of such expense as proof that the expense has been incurred. In addition, Federal tax laws permit a tax credit for certain Day Care expenses you may be paying for even if you are not a Participant in this Plan. You may save more money if you take advantage of this tax credit rather than using the Day Care Flexible Spending Arrangement under our Plan. Ask your tax adviser which is better for you.

4. Premium Expense Account

A Premium Expense Account allows you to use tax-free dollars to pay for certain Premiums under various insurance programs that we offer you. These Premiums include:

- Health care premiums under our insured group medical plan.
- Dental insurance premiums.
- Vision insurance premiums.

Under our Plan, we will establish sub-accounts for you for each different type of insurance coverage that is available. Also, certain limits on the amount of coverage may apply.

The Administrator may terminate or modify Plan benefits at any time, subject to the provisions of any insurance contracts providing benefits described above. We will not be liable to you if an insurance company fails to provide any of the benefits described above. Also, your insurance will end when you leave employment, are no longer eligible under the terms of any insurance policies, or when insurance terminates.

Any benefits to be provided by insurance will be provided only after (1) you have provided the Administrator the necessary information to apply for insurance, and (2) the insurance is in effect for you.

If you cover your children up to age 26 under your insurance, you can pay for that coverage through the Plan.

V
BENEFIT PAYMENTS

1. When will I receive payments from my accounts?

During the course of the Plan Year, you may submit requests for reimbursement of expenses you have incurred. Expenses are considered "incurred" when the service is performed, not necessarily when it is paid for. The Administrator will provide you with acceptable forms for submitting these requests for reimbursement. If the request qualifies as a benefit or expense that the Plan has agreed to pay, you will receive a reimbursement payment soon thereafter. Remember, these reimbursements which are made from the Plan are generally not subject to federal income tax or withholding. Nor are they subject to Social Security taxes. Requests for payment of insured benefits should be made directly to the insurer. You will only be reimbursed from the Day Care Flexible Spending Arrangement to the extent that there are sufficient funds in the Account to cover your request.

2. What happens if I don't spend all Plan contributions during the Plan Year?

If you have not spent all the amounts in your Health Care Flexible Spending Arrangement or Day Care Flexible Spending Arrangement by the end of the Plan Year, you may continue to incur claims for expenses during the "Grace Period." The "Grace Period" extends 2 1/2 months after the end of the Plan Year, during which time you can continue to incur claims and use up all amounts remaining in your Health Care Flexible Spending Arrangement or Day Care Flexible Spending Arrangement.

Any monies left at the end of the Plan Year and the Grace Period will be forfeited. Obviously, qualifying expenses that you incur late in the Plan Year or during the Grace Period for which you seek reimbursement after the end of such Plan Year and Grace Period will be paid first before any amount is forfeited. For the Health Care Flexible Spending Arrangement, you must submit claims no later than 90 days after the end of the Plan Year. For the Day Care Flexible Spending Arrangement, you must submit claims no later than 90 days after the end of the Plan Year. Because it is possible that you might forfeit amounts in the Plan if you do not fully use the contributions that have been made, it is important that you decide how much to place in each account carefully and conservatively. Remember, you must decide which benefits you want to contribute to and how much to place in each account before the Plan Year begins. You want to be as certain as you can that the amount you decide to place in each account will be used up entirely.

3. Family and Medical Leave Act (FMLA)

If you take leave under the Family and Medical Leave Act, you may revoke or change your existing elections for health insurance and the Health Care Flexible Spending Arrangement. If your coverage in these benefits terminates, due to your revocation of the benefit while on leave or due to your non-payment of contributions, you will be permitted to reinstate coverage for the remaining part of the Plan Year upon your return. For the Health Care Flexible Spending Arrangement, you may continue your coverage or you may revoke your coverage and resume it when you return. You can resume your coverage at its original level and make payments for the time that you are on leave. For example, if you elect \$1,200 for the year and are out on leave for 3 months, then return and elect to resume your coverage at that level, your remaining payments will be increased to cover the difference - from \$100 per month to \$150 per month. Alternatively your maximum amount will be reduced proportionately for the time that you were gone. For example, if you elect \$1,200 for the year and are out on leave for 3 months, your amount will be reduced to \$900. The expenses you incur during the time you are not in the Health Care Flexible Spending Arrangement are not reimbursable.

If you continue your coverage during your unpaid leave, you may pre-pay for the coverage, you may pay for your coverage on an after-tax basis while you are on leave, or you and your Employer may arrange a schedule for you to "catch up" your payments when you return.

4. Uniformed Services Employment and Reemployment Rights Act (USERRA)

If you are going into or returning from military service, you may have special rights to health care coverage under your Health Care Flexible Spending Arrangement under the Uniformed Services Employment and Reemployment Rights Act of 1994. These rights can include extended health care coverage. If you may be affected by this law, ask your Administrator for further details.

5. What happens if I terminate employment?

If you terminate employment during the Plan Year, your right to benefits will be determined in the following manner:

(a) You will remain covered by insurance, but only for the period for which premiums have been paid prior to your termination of employment.

(b) You will still be able to request reimbursement for qualifying Day Care expenses incurred during the remainder of the Plan Year from the balance remaining in your Day Care account at the time of termination of employment. However, no further salary redirection contributions will be made on your behalf after you terminate. You must submit claims within 90 days after the end of the Plan Year in which termination occurs.

(c) For health benefit coverage and Health Care Flexible Spending Arrangement coverage on termination of employment, please see the Article entitled "Continuation Coverage Rights Under COBRA." Upon your termination of employment, your participation in the Health Care Flexible Spending Arrangement will cease, and no further salary redirection contributions will be contributed on your behalf. However, you will be able to submit claims for health care expenses that were incurred before the end of the period for which payments to the Health Care Flexible Spending Arrangement have already been made. Your further participation will be governed by "Continuation Coverage Rights Under COBRA."

6. Will my Social Security benefits be affected?

Your Social Security benefits may be slightly reduced because when you receive tax-free benefits under our Plan, it reduces the amount of contributions that you make to the Federal Social Security system as well as our contribution to Social Security on your behalf.

**VI
HIGHLY COMPENSATED AND KEY EMPLOYEES**

1. Do limitations apply to highly compensated employees?

Under the Internal Revenue Code, highly compensated employees and key employees generally are Participants who are officers, shareholders or highly paid. You will be notified by the Administrator each Plan Year whether you are a highly compensated employee or a key employee.

If you are within these categories, the amount of contributions and benefits for you may be limited so that the Plan as a whole does not unfairly favor those who are highly paid, their spouses or their dependents. Federal tax laws state that a plan will be considered to unfairly favor the key employees if they as a group receive more than 25% of all of the nontaxable benefits provided for under our Plan.

Plan experience will dictate whether contribution limitations on highly compensated employees or key employees will apply. You will be notified of these limitations if you are affected.

**VII
PLAN ACCOUNTING**

1. Periodic Statements

The Administrator will provide you with a statement of your account periodically during the Plan Year that shows your account balance. It is important to read these statements carefully so you understand the balance remaining to pay for a benefit. Remember, you want to spend all the money you have designated for a particular benefit by the end of the Plan Year.

**VIII
GENERAL INFORMATION ABOUT OUR PLAN**

This Section contains certain general information which you may need to know about the Plan.

1. General Plan Information

City of Duarte Flexible Benefits Plan is the name of the Plan.

Your Employer has assigned Plan Number 501 to your Plan.

The provisions of your amended Plan become effective on January 1, 2014. Your Plan was originally effective on January 1, 2010.

Your Plan's records are maintained on a twelve-month period of time. This is known as the Plan Year. The Plan Year begins on January 1 and ends on December 31.

2. Employer Information

Your Employer's name, address, and identification number are:

City of Duarte
1600 Huntington Dr
Duarte, California 91010
95-6005921

3. Plan Administrator Information

The name, address and business telephone number of your Plan's Administrator are:

City of Duarte
1600 Huntington Dr
Duarte, California 91010
(626) 357-7931

The Administrator keeps the records for the Plan and is responsible for the administration of the Plan. The Administrator will also answer any questions you may have about our Plan. You may contact the Administrator for any further information about the Plan.

4. Service of Legal Process

The name and address of the Plan's agent for service of legal process are:

City of Duarte
1600 Huntington Dr
Duarte, California 91010

5. Type of Administration

The type of Administration is Employer Administration.

6. Claims Submission

Claims for expenses should be submitted to:

Flex-Plan Services, Inc
PO Box 53250
Bellevue, WA 98015

**IX
ADDITIONAL PLAN INFORMATION**

1. Claims Process

You should submit all reimbursement claims during the Plan Year. For the Health Care Flexible Spending Arrangement, you must submit claims no later than 90 days after the end of the Plan Year. For the Day Care Flexible Spending Arrangement, you must submit claims no later than 90 days after the end of the Plan Year. Any claims submitted after that time will not be considered.

Claims that are insured or self-funded will be handled in accordance with procedures contained in the insurance policies or contracts. All other general requests should be directed to the Administrator of our Plan. If a Day Care or medical expense claim under the Plan is denied in whole or in part, you will receive written notification. The notification will include the reasons for the denial, with reference to the specific provisions of the Plan on which the denial was based, a description of any additional information needed to process the claim and an explanation of the claims review procedure. Within 180 days after receipt of the denial, you may submit a written request for reconsideration of the denial to the claims administrator.

Any such request should be accompanied by documents or records in support of your appeal. You may review pertinent documents and submit issues and comments in writing. The claims administrator will review the claim and provide, within 30 days, a written response to the appeal (extended by reasonable time if necessary). In this response, the claims administrator will explain the reason for the decision, with specific reference to the provisions of the Plan on which the decision is based. If you disagree with the level one appeal decision you may submit a request for a level two appeal to be determined by the Employer. You must submit your request for level two appeal within 60 days of receipt of the level one notice. You will be notified within 30 days after the Employer receives the appeal (extended by reasonable time if necessary). The Employer has the exclusive right to interpret the appropriate plan provisions. Decisions of the Employer are conclusive and binding.

You must file both level one and level two appeals by submitting a written request by email, fax, or mail. Indicate either level one or two appeal on the email, fax, or letter.

Email: claims@flex-plan.com

Fax: 425-451-7002 or 866-535-9227

Mail to: Flex-Plan Services, PO Box 53250, Bellevue WA 98015.

APPENDIX I TO THE FLEXIBLE SPENDING ARRANGEMENT SUMMARY PLAN DESCRIPTION

NOTICE OF PRIVACY PRACTICES

THIS NOTICE DESCRIBES HOW PHI ABOUT YOU MAY BE USED AND DISCLOSED AND HOW YOU CAN GET ACCESS TO THIS INFORMATION PLEASE REVIEW IT CAREFULLY

EFFECTIVE DATE: SEPTEMBER 23, 2013

This Notice of Privacy Practices ("Notice") describes the legal obligations of the Plan and your rights regarding your protected health information ("PHI") held by the Flexible Spending Arrangement Plan (the "Plan"). PHI is defined by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). PHI generally means information that is created or received by the Plan and relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and that identifies the individual or for which there is a reasonable basis to believe that the information can be used to identify the individual. PHI includes information of persons living or deceased.

This Notice describes how your PHI may be used or disclosed to carry out treatment, payment, or health care operations, or for any other purposes permitted or required by law.

We are required by law to:

- maintain the privacy of your PHI;
- provide you with the notice of our legal duties and privacy practices with respect to your PHI; and
- follow the terms of the Notice that is currently in effect.

Your PHI will be disclosed to certain employees of Employer who assist in administration of the Plan. These individuals may only use your PHI for Plan administration functions including those described below, provided they do not violate the provisions set forth herein. Any employee of Employer who violates the rules for handling PHI established herein will be subject to adverse disciplinary action. Employer will establish a mechanism for resolving privacy issues and will take prompt corrective action to cure any violations.

Employer may not use or disclose your PHI other than as summarized herein or as required by law. Your PHI may not be used by Employer for any employment-related actions or decisions or in connection with any other benefit or employee benefit plan of Employer. Employer must report to the Plan any uses or disclosures of your PHI of which the Employer becomes aware that are inconsistent with the provisions set forth herein.

HOW WE MAY USE AND DISCLOSE YOUR PHI

The following categories describe different ways that we use and disclose PHI for purposes of Plan administration. For each category of uses or disclosures we will explain what we mean and try to give some examples. Not every use or disclosure in a category will be listed. However, all of the ways we are permitted to use and disclose information will fall within one of the categories.

For Payment (as described in applicable regulations) We may use and disclose PHI about you to determine eligibility for Plan benefits, to facilitate payment for the treatment and services you receive from health care providers, to determine benefit responsibility under the Plan, or to coordinate Plan coverage.

For Health Care Operations (as described in applicable regulations) We may use and disclose PHI about you for other Plan operations. These uses and disclosures are necessary to administer the Plan.

To Business Associates, Subcontractors, Brokers, and Agents We may contract with entities known as Business Associates to perform various functions on the Plan's behalf or to provide certain types of services. In order to perform these functions or to provide these services, Business Associates will receive, create, maintain, transmit, use, and/or disclose your PHI, but only after they agree in writing to implement appropriate safeguards regarding your PHI in a Business Associate Agreement. Our Business Associates shall also require each of its subcontractors or agents to agree in writing to provisions that impose at least the same obligations to protect PHI as are imposed on Business Associate by the Business Associate Agreement or by HIPAA.

As Required By Law We will disclose PHI about you when required to do so by federal, state, or local law.

To Avert a Serious Threat to Health or Safety We may use and disclose PHI about you when necessary to prevent a serious threat to your health and safety or the health and safety of the public or another person. Any disclosure, however, would only

be to someone able to help prevent the threat.

Disclosure to Health Plan Sponsor Information may be disclosed to another health plan maintained by Employer for purposes of facilitating claims payments under that plan. In addition, PHI may be disclosed to Employer personnel solely for purposes of administering benefits under the Plan.

SPECIAL SITUATIONS

Organ and Tissue Donation If you are an organ donor, we may release PHI to organizations that handle organ procurement or organ, eye, or tissue transplantation or to an organ donation bank, as necessary to facilitate organ or tissue donation and transplantation.

Military and Veterans If you are a member of the armed forces, we may release PHI about you as required by military command authorities.

Workers' Compensation We may release PHI about you for workers' compensation or similar programs.

Public Health Risks We may disclose PHI about you for public health activities (e.g., to prevent or control disease, injury, or disability).

Health Oversight Activities We may disclose PHI to a health oversight agency for activities authorized by law.

Lawsuits and Disputes If you are involved in a lawsuit or a dispute, we may disclose PHI about you in response to a court or administrative order. We may also disclose PHI about you in response to a subpoena, discovery request, or other lawful process by someone else involved in the dispute, but only if efforts have been made to tell you about the request or to obtain an order protecting the information requested.

Law Enforcement We may release PHI if asked to do so by a law enforcement official for law enforcement purposes.

Coroners, Medical Examiners and Funeral Directors We may release PHI to a coroner or medical examiner. We may also release PHI about patients of the hospital to funeral directors as necessary to carry out their duties.

National Security and Intelligence Activities We may release PHI about you to authorized federal officials for intelligence, counterintelligence, and other national security activities authorized by law.

Inmates If you are an inmate of a correctional institution or under the custody of a law enforcement official, we may release PHI about you to the correctional institution or law enforcement official.

Research We may disclose your PHI for research if the individual identifiers have been removed or when an institutional review board or privacy board has reviewed the research proposal and established protocols to ensure the privacy of the requested information and approves the research.

REQUIRED DISCLOSURES

Government Audits We are required to disclose your PHI to Health and Human Services ("HHS") in the event of an audit in order to determine our compliance with HIPAA.

Disclosures to you We are required to disclose your PHI to you. We are also required, when requested, to provide you with an accounting of most disclosures of your PHI if the disclosure was for reasons other than for treatment, payment, or health care operations, and if the PHI was not disclosed pursuant to your authorization.

YOUR RIGHTS REGARDING YOUR PHI

You have the following rights regarding your PHI:

Right to Inspect and Copy You have the right to inspect and copy PHI that may be used to make decisions about your Plan benefits. To inspect and copy PHI that may be used to make decisions about you, you must submit your request in writing to your Human Resources Department. If the information you request is in electronic copy, and you request an electronic copy, we will provide a copy in electronic format unless the information cannot be readily produced in that format then we will work with you to come to an agreement on a different format. If we cannot agree, we will provide you with a paper copy.

If you request a copy of the information, we may charge a fee for the costs of copying, mailing or other supplies associated with your request.

In certain very limited circumstances, we may deny your request to inspect and copy. If you are denied access to PHI, you may request that the denial be reviewed by your Human Resources Department.

Right to Amend If you feel that the PHI we have about you is incorrect or incomplete, you may ask us to amend the information. You have the right to request an amendment for as long as the information is kept by or for the Plan.

To request an amendment, your request must be made in writing and submitted to your Human Resources Department. In addition, you must provide a reason that supports your request.

We may deny your request for an amendment if it is not in writing or does not include a reason to support the request. In addition, we may deny your request if you ask us to amend information that:

- Is not part of the PHI kept by or for the Plan;
- Was not created by us, unless the person or entity that created the information is no longer available to make the amendment;
- Is not part of the information which you would be permitted to inspect and copy; or
- Is accurate and complete.

Right to Receive Notice of Breach You have a right to be notified upon a breach of your unsecured PHI.

Right to an Accounting of Disclosures You have the right to request an "accounting of disclosures" of PHI made in the six years prior to the date on which the accounting is requested, except for disclosures:

- To carry out treatment, payment and health care operations as provided in §164.506;
- To individuals of PHI about them as provided in §164.502;
- Incident to a use or disclosure otherwise permitted;
- Pursuant to an authorization as provided in §164.508;
- to persons involved in the individual's care or other notification purposes as provided in §164.510;
- For national security or intelligence purposes as provided in §164.512(k)(2);
- To correctional institutions or law enforcement officials as provided in §164.512(k)(5);
- As part of a limited data set in accordance with §164.514(e); or
- That occurred prior to the compliance date for the Plan.

Please submit a written request of an accounting of disclosures to your Human Resources Department.

Employer must act on your request for an accounting of the disclosures of your PHI no later than 60 days after receipt of the request. Employer may extend the time for providing you an accounting by no more than 30 days, but it must provide you a written explanation for the delay. You may request one accounting in any 12-month period free of charge. Employer will impose a fee for each subsequent request within the 12-month period.

Right to Request Restrictions You have the right to request a restriction or limitation on the PHI we use or disclose for treatment, payment, or health care operations. You also have the right to request a limit on the PHI we disclose to someone involved in your care or the payment for your care, like a family member or friend. For example, you could ask that we not share information about a particular claim with your spouse. To request a restriction, you must make your request, in writing, to your Human Resources Department. We are not required to agree to your request unless you are asking us to restrict the use and disclosure of your PHI to a health plan for payment or health care operation purposes and such information you wish to restrict pertains solely to a health care item or service for which you have paid the health care provider "out-of-pocket" in full. If we agree, we will comply with your request unless the information is needed to provide you with emergency treatment.

Right to Request Confidential Communications You have the right to request that we communicate with you about your PHI a certain way or at a certain location. For example, you can ask that we only contact you at work or by mail.

To request confidential communications, you must make your request in writing to your Human Resources Department. We will not ask you the reason for your request. We will accommodate all requests we deem reasonable. Your request must specify how or where you wish to be contacted.

Right to a Paper Copy You have a right to a paper copy of this Notice. You may ask for a copy at any time. Even if you have agreed to receive this Notice electronically, you are still entitled to a paper copy. Contact the Human Resources Department for a paper copy of this Notice.

CHANGES TO THIS SUMMARY AND THE SEPARATE PRIVACY NOTICE

We reserve the right to change this Notice of Privacy Practices that may be provided to you. We reserve the right to make the revised or changed Notice effective for PHI we already have about you as well as any information we receive in the future. The Notice will indicate the effective date on the front page.

COMPLAINTS

If you believe your privacy rights have been violated, you may file a complaint with the Plan or with the Secretary of the Department of HHS. To file a complaint with the Plan, contact your Human Resources Department. All complaints must be submitted in writing.

You will not be penalized for filing a complaint.

OTHER USES OF PHI

Other uses and disclosures of PHI not covered by this Notice or the laws that apply to us will be made only with your written authorization. If you provide us with an authorization to use or disclose PHI about you, you may revoke that authorization, in writing, at any time. If you revoke your authorization, we will no longer use or disclose PHI about you for the reasons covered by your written authorization. We are unable to take back any disclosures we have already made with your authorization and that we are required to retain our records of the care that we provided to you.

Authorizations for Psychiatric Notes, Genetic Information, Marketing, & Sale In general, and subject to specific conditions, we will not use or disclose psychiatric notes without your authorization; we will not use or disclose PHI that is genetic information for underwriting purposes; we will not sell your PHI, i.e. receive direct or indirect payment in exchange for your PHI, without your authorization; we will not use your PHI for marketing purposes without your authorization; and we will not use or disclose your PHI for fundraising purposes unless we disclose that activity in this Notice.

Personal Representatives We may disclose your PHI to individuals authorized by you, or an individual designated as your personal representative, provided that we have received your authorization or some other Notice or documentation demonstrating the legal right of that individual to receive such information. Under HIPAA we do not have to disclose PHI to a personal representative if we have a reasonable belief that:

- 1) you have been or may be subjected to domestic violence, abuse, or neglect by such person; or
- 2) treating such person as your personal representative could endanger you; and
- 3) in the exercise of professional judgment, it is not in your best interest to treat the person as your personal representative.

Spouses and other Family Members With only limited exceptions, we will send all mail to the employee. This may include information regarding a spouse or dependents also covered under the Plan. Information includes, but is not limited to, Plan statements, benefit denials, and benefit debit cards and accompanying information.

X

CONTINUATION COVERAGE RIGHTS UNDER COBRA

Under federal law, the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), certain employees and their families covered under health benefits under this Plan will be entitled to the opportunity to elect a temporary extension of health coverage (called "COBRA continuation coverage") where coverage under the Plan would otherwise end. This notice is intended to inform Plan Participants and beneficiaries, in summary fashion, of their rights and obligations under the continuation coverage provisions of COBRA, as amended and reflected in final and proposed regulations published by the Department of the Treasury. This notice is intended to reflect the law and does not grant or take away any rights under the law.

The Plan Administrator or its designee is responsible for administering COBRA continuation coverage. Complete instructions on COBRA, as well as election forms and other information, will be provided by the Plan Administrator or its designee to Plan Participants who become Qualified Beneficiaries under COBRA. While the Plan itself is not a group health plan, it does provide health benefits. Whenever "Plan" is used in this section, it means any of the health benefits under this Plan including the Health Care Flexible Spending Arrangement.

1. What is COBRA continuation coverage?

COBRA continuation coverage is the temporary extension of group health plan coverage that must be offered to certain Plan Participants and their eligible family members (called "Qualified Beneficiaries") at group rates. The right to COBRA continuation coverage is triggered by the occurrence of a life event that results in the loss of coverage under the terms of the Plan (the "Qualifying Event"). The coverage must be identical to the coverage that the Qualified Beneficiary had immediately before the Qualifying Event, or if the coverage has been changed, the coverage must be identical to the coverage provided to similarly situated active employees who have not experienced a Qualifying Event (in other words, similarly situated non-COBRA beneficiaries).

2. Who can become a Qualified Beneficiary?

In general, a Qualified Beneficiary can be:

(a) Any individual who, on the day before a Qualifying Event, is covered under a Plan by virtue of being on that day either a covered Employee, the Spouse of a covered Employee, or a Dependent child of a covered Employee. If, however, an individual who otherwise qualifies as a Qualified Beneficiary is denied or not offered coverage under the Plan under circumstances in which the denial or failure to offer constitutes a violation of applicable law, then the individual will be considered to have had the coverage and will be considered a Qualified Beneficiary if that individual experiences a Qualifying Event.

(b) Any child who is born to or placed for adoption with a covered Employee during a period of COBRA continuation coverage, and any individual who is covered by the Plan as an alternate recipient under a qualified medical support order. If, however, an individual who otherwise qualifies as a Qualified Beneficiary is denied or not offered coverage under the Plan under circumstances in which the denial or failure to offer constitutes a violation of applicable law, then the individual will be considered to have had the coverage and will be considered a Qualified Beneficiary if that individual experiences a Qualifying Event.

The term "covered Employee" includes any individual who is provided coverage under the Plan due to his or her performance of services for the employer sponsoring the Plan. However, this provision does not establish eligibility of these individuals. Eligibility for Plan coverage shall be determined in accordance with Plan Eligibility provisions.

An individual is not a Qualified Beneficiary if the individual's status as a covered Employee is attributable to a period in which the individual was a nonresident alien who received from the individual's Employer no earned income that constituted income from sources within the United States. If, on account of the preceding reason, an individual is not a Qualified Beneficiary, then a Spouse or Dependent child of the individual will also not be considered a Qualified Beneficiary by virtue of the relationship to the individual. A domestic partner is not a Qualified Beneficiary.

Each Qualified Beneficiary (including a child who is born to or placed for adoption with a covered Employee during a period of COBRA continuation coverage) must be offered the opportunity to make an independent election to receive COBRA continuation coverage.

3. What is a Qualifying Event?

A Qualifying Event is any of the following if the Plan provided that the Plan participant would lose coverage (i.e., cease to be covered under the same terms and conditions as in effect immediately before the Qualifying Event) in the absence of COBRA continuation coverage:

(a) The death of a covered Employee.

(b) The termination (other than by reason of the Employee's gross misconduct), or reduction of hours, of a covered Employee's employment.

(c) The divorce or legal separation of a covered Employee from the Employee's Spouse. If the Employee reduces or eliminates the Employee's Spouse's Plan coverage in anticipation of a divorce or legal separation, and a divorce or legal separation later occurs, then the divorce or legal separation may be considered a Qualifying Event even though the Spouse's coverage was reduced or eliminated before the divorce or legal separation.

(d) A covered Employee's enrollment in any part of the Medicare program.

(e) A Dependent child's ceasing to satisfy the Plan's requirements for a Dependent child (for example, attainment of the maximum age for dependency under the Plan).

If the Qualifying Event causes the covered Employee, or the covered Spouse or a Dependent child of the covered Employee, to cease to be covered under the Plan under the same terms and conditions as in effect immediately before the Qualifying Event, the persons losing such coverage become Qualified Beneficiaries under COBRA if all the other conditions of COBRA are also met. For example, any increase in contribution that must be paid by a covered Employee, or the Spouse, or a Dependent child of the covered Employee, for coverage under the Plan that results from the occurrence of one of the events listed above is a loss of coverage.

The taking of leave under the Family and Medical Leave Act of 1993 ("FMLA") does not constitute a Qualifying Event. A Qualifying Event will occur, however, if an Employee does not return to employment at the end of the FMLA leave and all other COBRA continuation coverage conditions are present. If a Qualifying Event occurs, it occurs on the last day of FMLA leave and the applicable maximum coverage period is measured from this date (unless coverage is lost at a later date and the Plan provides for the extension of the required periods, in which case the maximum coverage date is measured from the date when the coverage is lost.) Note that the covered Employee and family members will be entitled to COBRA continuation coverage even if they failed to pay the employee portion of premiums for coverage under the Plan during the FMLA leave.

4. What factors should be considered when determining to elect COBRA continuation coverage?

You should take into account that a failure to continue your group health coverage will affect your rights under federal law. First, you can lose the right to avoid having pre-existing condition exclusions applied by other group health plans if there is more than a 63-day gap in health coverage and election of COBRA continuation coverage may help you avoid such a gap. (These pre-existing condition exclusions will only apply during Plan Years that begin before January 1, 2014.) Second, if you do not elect COBRA continuation coverage and pay the appropriate premiums for the maximum time available to you, you will lose the right to convert to an individual health insurance policy, which does not impose such pre-existing condition exclusions. Finally, you should take into account that you have special enrollment rights under federal law (HIPAA). You have the right to request special enrollment in another group health plan for which you are otherwise eligible (such as a plan sponsored by your Spouse's employer) within 30 days after Plan coverage ends due to a Qualifying Event listed above. You will also have the same special right at the end of COBRA continuation coverage if you get COBRA continuation coverage for the maximum time available to you.

5. What is the procedure for obtaining COBRA continuation coverage?

The Plan has conditioned the availability of COBRA continuation coverage upon the timely election of such coverage. An election is timely if it is made during the election period.

6. What is the election period and how long must it last?

The election period is the time period within which the Qualified Beneficiary must elect COBRA continuation coverage under the Plan. The election period must begin no later than the date the Qualified Beneficiary would lose coverage on account of the Qualifying Event and ends 60 days after the later of the date the Qualified Beneficiary would lose coverage on account of the Qualifying Event or the date notice is provided to the Qualified Beneficiary of her or his right to elect COBRA continuation coverage. If coverage is not elected within the 60 day period, all rights to elect COBRA continuation coverage are forfeited.

Note: If a covered Employee who has been terminated or experienced a reduction of hours qualifies for a trade readjustment allowance or alternative trade adjustment assistance under a federal law called the Trade Act of 2002, and the employee and his or her covered dependents have not elected COBRA coverage within the normal election period, a second opportunity to elect COBRA coverage will be made available for themselves and certain family members, but only within a limited period of 60 days or less and only during the six months immediately after their group health plan coverage ended. Any person who qualifies or thinks that he or she and/or his or her family members may qualify for assistance under this special provision should contact the Plan Administrator or its designee for further information.

The Trade Act of 2002 also created a tax credit for certain TAA-eligible individuals and for certain retired employees who are receiving pension payments from the Pension Benefit Guaranty Corporation (PBGC) (eligible individuals). Under the new tax provisions, eligible individuals can either take a tax credit or get advance payment of a part of the premiums paid for qualified health insurance, including continuation coverage. If you have questions about these new tax provisions, you may call the Health Coverage Tax Credit Consumer Contact Center toll-free at 1-866-628-4282. TTD/TTY callers may call toll-free at 1-866-626-4282. More information about the Trade Act is also available at www.doleta.gov/tradeact.

7. Is a covered Employee or Qualified Beneficiary responsible for informing the Plan Administrator of the occurrence of a Qualifying Event?

The Plan will offer COBRA continuation coverage to Qualified Beneficiaries only after the Plan Administrator or its designee has been timely notified that a Qualifying Event has occurred. The Employer (if the Employer is not the Plan Administrator) will notify the Plan Administrator or its designee of the Qualifying Event within 30 days following the date coverage ends when the Qualifying Event is:

- (a) the end of employment or reduction of hours of employment,
- (b) death of the employee,
- (c) commencement of a proceeding in bankruptcy with respect to the Employer, or
- (d) entitlement of the employee to any part of Medicare.

IMPORTANT:

For the other Qualifying Events (divorce or legal separation of the employee and spouse or a dependent child's losing eligibility for coverage as a dependent child), you or someone on your behalf must notify the Plan Administrator or its designee in writing within 60 days after the Qualifying Event occurs, using the procedures specified below. If these procedures are not followed or if the notice is not provided in writing to the Plan Administrator or its designee during the 60-day notice period, any spouse or dependent child who loses coverage

will not be offered the option to elect continuation coverage. You must send this notice to the Plan Administrator or its designee.

NOTICE PROCEDURES:

Any notice that you provide must be *in writing*. Oral notice, including notice by telephone, is not acceptable. You must mail, fax or hand-deliver your notice to the person, department or firm listed below, at the following address:

City of Duarte
1600 Huntington Dr
Duarte, California 91010

If mailed, your notice must be postmarked no later than the last day of the required notice period. Any notice you provide must state:

- the **name of the plan or plans** under which you lost or are losing coverage,
- the **name and address of the employee** covered under the plan,
- the **name(s) and address(es) of the Qualified Beneficiary(ies)**, and
- the **Qualifying Event** and the **date** it happened.

If the Qualifying Event is a **divorce or legal separation**, your notice must include a **copy of the divorce decree or the legal separation agreement**.

Be aware that there are other notice requirements in other contexts, for example, in order to qualify for a disability extension.

Once the Plan Administrator or its designee receives *timely notice* that a Qualifying Event has occurred, COBRA continuation coverage will be offered to each of the qualified beneficiaries. Each Qualified Beneficiary will have an independent right to elect COBRA continuation coverage. Covered employees may elect COBRA continuation coverage for their spouses, and parents may elect COBRA continuation coverage on behalf of their children. For each Qualified Beneficiary who elects COBRA continuation coverage, COBRA continuation coverage will begin on the date that plan coverage would otherwise have been lost. If you or your spouse or dependent children do not elect continuation coverage within the 60-day election period described above, the right to elect continuation coverage will be lost.

8. Is a waiver before the end of the election period effective to end a Qualified Beneficiary's election rights?

If, during the election period, a Qualified Beneficiary waives COBRA continuation coverage, the waiver can be revoked at any time before the end of the election period. Revocation of the waiver is an election of COBRA continuation coverage. However, if a waiver is later revoked, coverage need not be provided retroactively (that is, from the date of the loss of coverage until the waiver is revoked). Waivers and revocations of waivers are considered made on the date they are sent to the Plan Administrator or its designee, as applicable.

9. Is COBRA coverage available if a Qualified Beneficiary has other group health plan coverage or Medicare?

Qualified Beneficiaries who are entitled to elect COBRA continuation coverage may do so even if they are covered under another group health plan or are entitled to Medicare benefits on or before the date on which COBRA is elected. However, a Qualified Beneficiary's COBRA coverage will terminate automatically if, after electing COBRA, he or she becomes entitled to Medicare or becomes covered under other group health plan coverage (but only after any applicable preexisting condition exclusions of that other plan have been exhausted or satisfied).

10. When may a Qualified Beneficiary's COBRA continuation coverage be terminated?

During the election period, a Qualified Beneficiary may waive COBRA continuation coverage. Except for an interruption of coverage in connection with a waiver, COBRA continuation coverage that has been elected for a Qualified Beneficiary must extend for at least the period beginning on the date of the Qualifying Event and ending not before the earliest of the following dates:

- (a) The last day of the applicable maximum coverage period.
- (b) The first day for which Timely Payment is not made to the Plan with respect to the Qualified Beneficiary.
- (c) The date upon which the Employer ceases to provide any group health plan (including a successor plan) to any employee.
- (d) The date, after the date of the election, that the Qualified Beneficiary first becomes covered under any other Plan that does not contain any exclusion or limitation with respect to any pre-existing condition, other than such an exclusion or limitation that does not apply to, or is satisfied by, the Qualified Beneficiary.

(e) The date, after the date of the election, that the Qualified Beneficiary first becomes entitled to Medicare (either part A or part B, whichever occurs earlier).

(f) In the case of a Qualified Beneficiary entitled to a disability extension, the later of:

(1) (i) 29 months after the date of the Qualifying Event, or (ii) the first day of the month that is more than 30 days after the date of a final determination under Title II or XVI of the Social Security Act that the disabled Qualified Beneficiary whose disability resulted in the Qualified Beneficiary's entitlement to the disability extension is no longer disabled, whichever is earlier; or

(2) the end of the maximum coverage period that applies to the Qualified Beneficiary without regard to the disability extension.

The Plan can terminate for cause the coverage of a Qualified Beneficiary on the same basis that the Plan terminates for cause the coverage of similarly situated non-COBRA beneficiaries, for example, for the submission of a fraudulent claim.

In the case of an individual who is not a Qualified Beneficiary and who is receiving coverage under the Plan solely because of the individual's relationship to a Qualified Beneficiary, if the Plan's obligation to make COBRA continuation coverage available to the Qualified Beneficiary ceases, the Plan is not obligated to make coverage available to the individual who is not a Qualified Beneficiary.

11. What are the maximum coverage periods for COBRA continuation coverage?

The maximum coverage periods are based on the type of the Qualifying Event and the status of the Qualified Beneficiary, as shown below.

(a) In the case of a Qualifying Event that is a termination of employment or reduction of hours of employment, the maximum coverage period ends 18 months after the Qualifying Event if there is not a disability extension and 29 months after the Qualifying Event if there is a disability extension.

(b) In the case of a covered Employee's enrollment in the Medicare program before experiencing a Qualifying Event that is a termination of employment or reduction of hours of employment, the maximum coverage period for Qualified Beneficiaries ends on the later of:

(1) 36 months after the date the covered Employee becomes enrolled in the Medicare program. This extension does not apply to the covered Employee; or

(2) 18 months (or 29 months, if there is a disability extension) after the date of the covered Employee's termination of employment or reduction of hours of employment.

(c) In the case of a Qualified Beneficiary who is a child born to or placed for adoption with a covered Employee during a period of COBRA continuation coverage, the maximum coverage period is the maximum coverage period applicable to the Qualifying Event giving rise to the period of COBRA continuation coverage during which the child was born or placed for adoption.

(d) In the case of any other Qualifying Event than that described above, the maximum coverage period ends 36 months after the Qualifying Event.

12. Under what circumstances can the maximum coverage period be expanded?

If a Qualifying Event that gives rise to an 18-month or 29-month maximum coverage period is followed, within that 18- or 29-month period, by a second Qualifying Event that gives rise to a 36-months maximum coverage period, the original period is expanded to 36 months, but only for individuals who are Qualified Beneficiaries at the time of and with respect to both Qualifying Events. In no circumstance can the COBRA maximum coverage period be expanded to more than 36 months after the date of the first Qualifying Event. The Plan Administrator must be notified of the second qualifying event within 60 days of the second qualifying event. This notice must be sent to the Plan Administrator or its designee in accordance with the procedures above.

13. How does a Qualified Beneficiary become entitled to a disability extension?

A disability extension will be granted if an individual (whether or not the covered Employee) who is a Qualified Beneficiary in connection with the Qualifying Event that is a termination or reduction of hours of a covered Employee's employment, is determined under Title II or XVI of the Social Security Act to have been disabled at any time during the first 60 days of COBRA continuation coverage. To qualify for the disability extension, the Qualified Beneficiary must also provide the Plan Administrator with notice of the disability determination on a date that is both within 60 days after the date of the determination and before the end of the original 18-month maximum coverage. This notice must be sent to the Plan Administrator or its designee in accordance with the procedures above.

14. Does the Plan require payment for COBRA continuation coverage?

For any period of COBRA continuation coverage under the Plan, Qualified Beneficiaries who elect COBRA continuation coverage may be required to pay up to 102% of the applicable premium and up to 150% of the applicable premium for any expanded period of COBRA continuation coverage covering a disabled Qualified Beneficiary due to a disability extension. Your Plan Administrator will inform you of the cost. The Plan will terminate a Qualified Beneficiary's COBRA continuation coverage as of the first day of any period for which timely payment is not made.

15. Must the Plan allow payment for COBRA continuation coverage to be made in monthly installments?

Yes. The Plan is also permitted to allow for payment at other intervals.

16. What is Timely Payment for COBRA continuation coverage?

Timely Payment means a payment made no later than 30 days after the first day of the coverage period. Payment that is made to the Plan by a later date is also considered Timely Payment if either under the terms of the Plan, covered Employees or Qualified Beneficiaries are allowed until that later date to pay for their coverage for the period or under the terms of an arrangement between the Employer and the entity that provides Plan benefits on the Employer's behalf, the Employer is allowed until that later date to pay for coverage of similarly situated non-COBRA beneficiaries for the period.

Notwithstanding the above paragraph, the Plan does not require payment for any period of COBRA continuation coverage for a Qualified Beneficiary earlier than 45 days after the date on which the election of COBRA continuation coverage is made for that Qualified Beneficiary. Payment is considered made on the date on which it is postmarked to the Plan.

If Timely Payment is made to the Plan in an amount that is not significantly less than the amount the Plan requires to be paid for a period of coverage, then the amount paid will be deemed to satisfy the Plan's requirement for the amount to be paid, unless the Plan notifies the Qualified Beneficiary of the amount of the deficiency and grants a reasonable period of time for payment of the deficiency to be made. A "reasonable period of time" is 30 days after the notice is provided. A shortfall in a Timely Payment is not significant if it is no greater than the lesser of \$50 or 10% of the required amount.

17. Must a Qualified Beneficiary be given the right to enroll in a conversion health plan at the end of the maximum coverage period for COBRA continuation coverage?

If a Qualified Beneficiary's COBRA continuation coverage under a group health plan ends as a result of the expiration of the applicable maximum coverage period, the Plan will, during the 180-day period that ends on that expiration date, provide the Qualified Beneficiary with the option of enrolling under a conversion health plan if such an option is otherwise generally available to similarly situated non-COBRA beneficiaries under the Plan. If such a conversion option is not otherwise generally available, it need not be made available to Qualified Beneficiaries.

18. How is my participation in the Health Care Flexible Spending Arrangement affected?

You can elect to continue your participation in the Health Care Flexible Spending Arrangement for the remainder of the Plan Year, subject to the following conditions. You may only continue to participate in the Health Care Flexible Spending Arrangement if you have elected to contribute more money than you have taken out in claims. For example, if you elected to contribute an annual amount of \$500 and, at the time you terminate employment, you have contributed \$300 but only claimed \$150, you may elect to continue coverage under the Health Care Flexible Spending Arrangement. If you elect to continue coverage, then you would be able to continue to receive your health reimbursements up to the \$500. However, you must continue to pay for the coverage, just as the money has been taken out of your paycheck, but on an after-tax basis. The Plan can also charge you an extra amount (as explained above for other health benefits) to provide this benefit.

IF YOU HAVE QUESTIONS

If you have questions about your COBRA continuation coverage, you should contact the Plan Administrator or its designee. For more information about your rights under ERISA, including COBRA, the Health Insurance Portability and Accountability Act (HIPAA), and other laws affecting group health plans, contact the nearest Regional or District Office of the U.S. Department of Labor's Employee Benefits Security Administration (EBSA). Addresses and phone numbers of Regional and District EBSA Offices are available through EBSA's website at www.dol.gov/ebsa.

KEEP YOUR PLAN ADMINISTRATOR INFORMED OF ADDRESS CHANGES

In order to protect your family's rights, you should keep the Plan Administrator informed of any changes in the addresses of family members. You should also keep a copy, for your records, of any notices you send to the Plan Administrator or its designee.

**XI
SUMMARY**

The money you earn is important to you and your family. You need it to pay your bills, enjoy recreational activities and save for the future. Our flexible benefits plan will help you keep more of the money you earn by lowering the amount of taxes you pay. The Plan is the result of our continuing efforts to find ways to help you get the most for your earnings.

If you have any questions, please contact the Administrator.

MEMORANDUM

TO: Mayor and Councilmembers

FROM: Darrell J. George, City Manager

DATE: March 20, 2014

SUBJECT: Conference Attendance – City Council Meeting of March 25, 2014

First Baptist Church of Duarte
130th Anniversary Banquet
Saturday, May 17, 2014
Courtyard Marriott, Monrovia
\$40 per person

Foothill Unity Center
Golden Plate Awards
April 26, 2014
Trinity Ballroom, Pasadena
\$150 per person

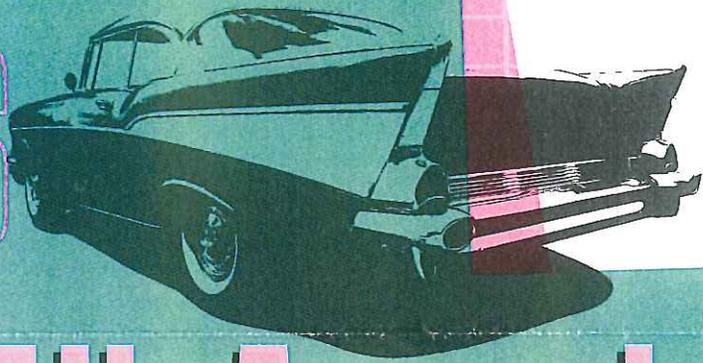
From: Karen Herrera <herrerakaren@accessduarte.com>
Subject: certificate presentation @ May 17, 2014 @ 6:00 pm
Date: March 13, 2014 2:29:25 PM PDT
To: Liz Reily <reillyl@accessduarte.com>, Tzeitel Paras-Caracci <tzeitelparas@yahoo.com>
Cc: yesenia serna <yserna@accessduarte.com>, Marla Akana <akanam@accessduarte.com>

First Baptist Church is celebrating their 130th anniversary and would like the mayor and mayor pro tem to attend the banquet at the Courtyard Marriott in Monrovia at at cost of \$40 per person. They would like a certificate presented at this time as well. Please rsvp to sandra robinson at 626 359-2055.

Karen Herrera
City of Duarte
Deputy City Manager
(626) 357-7931
Stay Connected
Visit our City website www.accessduarte.com
Duarte City News
Subscribe to our City eNews
Follow us on Twitter
Join the conversation on Nextdoor

The Fabulous

50's



**15th Annual
Golden Plate Awards**

Foothill Unity Center, INC.

Join us for trip back to a classic era of collector cars,
oldies hits and '50s food with a current spin ...
and make a this-minute difference for local people in need!

Saturday, April 26, 2014

At the Exclusive **Trinity Ballroom**

778 South Rosemead Boulevard, Pasadena, CA

5:30 p.m. Reception and Silent Auction

7:30 p.m. Dinner and Live Auction

\$150 per person

The Classics

Contact
Barbara

Call Barbara Rolf at (626) 358-3486,
or email barbara@foothillunitycenter.org
Foothill Unity Center, Inc., 415 W. Chestnut Avenue, Monrovia, CA 91016

Non Profit IRS 501 (c)3 Tax ID # 95-4310817

Honoring

Cynthia Kurtz, Heart in Hand Humanitarian

Colleen McEvoy, Neighbors Helping Neighbors: Volunteer

Simplicity Bank, Neighbors Helping Neighbors: Corporate

Temple Beth David, Weizmann Day School, Pasadena Jewish Temple and Center,
Jewish Federation of the San Gabriel and Pomona Valleys, Neighbors Helping Neighbors: Faith Based

Thank You!

Master of Ceremonies

Rob Fukuzaki, Sports Anchor, ABC 7 Eyewitness News

Duarte and Duarte Dispatch

Affiliated with SGV Newspaper Group
1210 N. Azusa Canyon Road
West Covina, CA 91790
626-962-8811 ext. 40918
sue.glynn@sgvn.com

5007700

CITY OF DUARTE
1600 E. HUNTINGTON DRIVE
DUARTE CA 91010

FILE NO. notice-ph-community facilities p

**PROOF OF PUBLICATION
(2015.5 C.C.P.)**

**STATE OF CALIFORNIA
County of Los Angeles**

I am a citizen of the United States, and a resident of the county aforesaid; I am over the age of eighteen years, and not a party to or interested in the above-entitled matter. I am the principal clerk of the printer of DUARTEAN and DUARTEAN DISPATCH, a newspaper of general circulation printed and published weekly in the City of Duarte, County of Los Angeles, and which newspaper has been adjudged a newspaper of general circulation by the Superior Court of the County of Los Angeles, State of California, on the date of July 6, 1948, Case Number POMO C986. The notice, of which the annexed is a true printed copy, has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to wit:

3/13/2014

I declare under the penalty of perjury that the foregoing is true and correct.

Executed at West Covina, LA Co. California
On this 13th day of March, 2014.



Signature

(Space below for use of County Clerk Only)

Legal No. 0010492156

**NOTICE OF PUBLIC HEARING
TO BE HELD BY THE DUARTE CITY COUNCIL**

NOTICE IS HEREBY GIVEN that, pursuant to State law, the City Council of the City of Duarte will hold a Public Hearing at 7:00 p.m., on Tuesday, March 25, 2014, in the Council Chambers, 1600 Huntington Drive, Duarte, California, to consider approving a revision to the community facilities fees and policies.

Any interested party may appear in person, or by agent, and be heard. If this matter is challenged in Court, there will be a limit to only those issues that were raised at the Public Hearing described in this Notice, or in written correspondence delivered to the City Council at, or prior to, the Public Hearing. Written correspondence may be sent to Duarte City Hall, City Clerk's Office, 1600 Huntington Drive, Duarte, CA 91010-2592.

Further information may be obtained from Cesar Monsalve, Director of Parks and Recreation, phone (626) 357-7931.

Marla Akana
City Clerk

PUBLISH: Duartean, Thursday, March 13, 2014 Ad#492156
POSTED: Duarte City Hall, Duarte Public Safety Office, Duarte Library

RESOLUTION NO.**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DUARTE,
CALIFORNIA, ADOPTING AN UPDATED FEE SCHEDULE FOR THE
RENTAL OF CITY FACILITIES**

WHEREAS, the City of Duarte is the owner of various community facilities including but not limited to a community center, teen center, and various parks and sports facilities (collectively, the “City Facilities”); and

WHEREAS, the City Council previously has adopted fee schedules for the rental of City Facilities; and

WHEREAS, the City Council desires to update the fee schedule for the rental of City Facilities; and

WHEREAS, City staff analyzed the cost of providing the rental of the City Facilities and the proposed rental fees do not exceed the cost to the City associated with providing the City Facilities for rental; and

WHEREAS, a duly noticed public hearing on the proposed updated fee schedule for rental of City Facilities was held by the City Council on March 25, 2014; and

WHEREAS, at the public hearing the City Council considered the staff report and all public input and testimony received;

NOW, THEREFORE, the City Council of the City of Duarte resolves as follows:

Section 1. The updated fee schedule for the City Facilities is shown on Exhibit A attached hereto and by this reference incorporated herein (“Updated Fee Schedule”). Changes to previous fee schedule are highlighted on the Updated Fee Schedule.

Section 2. The Updated Fee Schedule is hereby approved and shall take effect immediately.

Section 3. The City Council finds and determines the fees set forth on the Updated Fee Schedule do not exceed the cost to the City associated with providing the City Facilities for rental to the public.

Section 4. The City of Duarte Community Facilities Administrative Policies and Procedures are hereby amended to incorporate the terms of this Resolution.

Section 5. The City Clerk shall certify to the adoption of this and this Resolution shall take effect upon its adoption.

PASSED, APPROVED, AND ADOPTED this 25th day of March, 2014.

Mayor Elizabeth Nowak Reilly

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss.
CITY OF DUARTE)

I, Marla Akana, City Clerk of the City of Duarte, County of Los Angeles, State of California, hereby attest to the above signature and certify that Resolution No. 14-03 was adopted by the City Council of the City of Duarte at a regular meeting of said Council held on the 25th day of March, 2014, by the following vote:

AYES: Councilmembers:

NOES: Councilmembers:

ABSENT: Councilmembers:

City Clerk Marla Akana
City of Duarte, California

EXHIBIT "A"

UPDATED FEE SCHEDULE

DUARTE COMMUNITY FACILITIES

	"A" Non-Resident Rate	"B" Resident Rate
COMMUNITY CENTER:		
<u>Full Auditorium</u>		
First Hour	\$300.00	\$150.00
Each Additional House	\$100.00	\$ 50.00
Cleaning/Damage Bond	\$500.00	\$500.00
*Cleaning Fee	\$250.00	\$250.00
<u>Half Auditorium</u>		
First Hour	\$200.00	\$100.00
Each Additional House	\$ 80.00	\$ 40.00
Cleaning/Damage Bond	\$300.00	\$300.00
<u>Lounge</u>		
First Hour	\$100.00	\$ 50.00
Each Additional House	\$ 40.00	\$ 20.00
Cleaning/Damage Bond	\$100.00	\$100.00
DUARTE TEEN CENTER		
<u>Game/Meeting Room/Patio</u>		
First Hour	\$250.00	\$125.00
Each Additional Hour	\$ 90.00	\$ 45.00
Cleaning/Damage Bond	\$300.00	\$300.00
*Cleaning Fee	\$200.00	\$200.00
<u>Meeting Room Only</u>		
First Hour	\$100.00	\$ 50.00
Each Additional Hour	\$ 40.00	\$ 20.00
Cleaning/Damage Bond	\$100.00	\$100.00
<u>Gas BBQ Grill</u>	\$ 40.00	\$ 20.00
<u>Television/AV Equipment</u>	\$ 40.00	\$ 20.00

ROYAL OAKS PARK BUILDING		
First Hour	\$180.00	\$ 90.00
Each Additional Hour	\$ 70.00	\$ 35.00
Cleaning/Damage Bond	\$150.00	\$150.00

***OPTIONAL CLEANING FEE**

Renters who want to opt out of cleaning up after their rental can pay a cleaning fee for Community Center Full Auditorium and Duarte Teen Center rentals. Maximum 3 hours of cleaning. If cleaning extends beyond 3 hours an additional \$50 per hour fee would be deducted for the cleaning and damage bond.

DUARTE SPORTS FACILITIES

DUARTE SPORTS PARK AND OTIS GORDON PARK FIELDS

	Base Rate "A"	Duarte Resident "B"	Duarte Youth Non-Profit Group "C"
Lights	\$55.00/hr	\$30.00/hr	\$15.00/hr
Without Lights	\$30.00/hr	\$10.00/hr	FREE

ROYAL OAKS PARK & DUARTE PARK TENNIS COURTS & BASKETBALL COURTS

	Base Rate	Duarte Resident	Duarte Youth Non-Profit Group
All Courts With or Without Lights	\$34.00/hr	\$17.00/hr	FREE

GAZEBOS
(8 hrs. maximum)

	Base Rate	Duarte Resident
Small	\$75.00/day	\$50.00/day
Large	\$100.00/day	\$75.00/day
Cleaning/Damage Deposit for Small and Large Gazebos in addition to rental rate	\$50.00	\$50.00

SKATE PARK

Base Rate	Duarte Resident
\$55.00/hr	\$30.00/hr

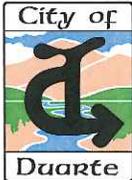
BEARDSLEE / ENCANTO / NORTHVIEW PARKS (NO LIGHTS)

	Base Rate	Duarte Resident	Duarte Youth Non-Profit Group
Soccer/Open Field	\$30.00/hr	\$10.00/hr	FREE

MISCELLANEOUS CHARGES FOR ALL FACILITIES

	Base Rate	Duarte Resident	Duarte Youth Non-Profit Group
Equipment Rental	\$25.00/day	\$25.00/day	\$25.00/day
Equipment Deposit	\$100.00	\$100.00	\$100.00
Person-On-Duty	\$40.00/hr	\$20.00/hr	\$12.00/hr
Sports Field Cleaning/ Damage Deposit	\$100.00	\$100.00	\$100.00
Rental of Park Restrooms	\$40.00/hr	\$20.00	\$20.00

[end]



MEMORANDUM

TO: MAYOR AND CITY COUNCIL

FROM: CESAR MONSALVE, PARKS AND RECREATION DIRECTOR

SUBJECT: COMMUNITY FACILITIES ADMINISTRATIVE POLICIES AND PROCEDURES REVISIONS FOR RENTER INSURANCE

DATE: MARCH 25, 2014

Recommendation: The City Council recently approved the requirement for facility renters to provide or purchase insurance and has approved the recommendation for fee changes to the rental of the Royal Oaks Park Building and Sports Fields/Parks. Staff is therefore recommending the following:

- That the City Council approve revisions and amendments to portions of the Administrative Policies and Procedures for Community Facilities and Sports Facilities Usage Policies and Procedures as they pertain to the new renter's insurance requirements.
- That the City Council approve the fee schedule changes by resolution and public hearing and review.

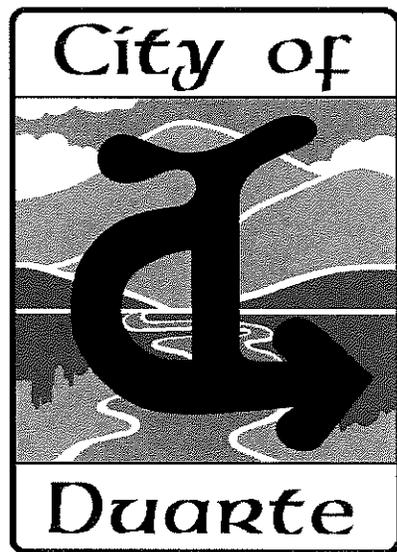
Background: Some sections of the Administrative Policies and Procedures for Community Facilities and the Sports Facilities Usage Policies and Procedures need to be updated. These packets need to include the new renter's requirements to purchase insurance through the City or to provide a certificate of insurance naming the City as co-insured. Additionally, some waiver language on the application forms need to be updated. Secondly, the fee schedules for the rental of both the Community Facilities and Sports Fields/Parks need to be updated.

Conclusion: Staff recommends that the City Council hold a public hearing and review and approve the changes to the policies and procedures and fee schedule. The revised packets, application forms and fee schedules are attached.

City of Duarte

Community Facilities

Administrative Policies and Procedures



Department Of Parks and Recreation

Revised March 2014

CITY OF DUARTE

PUBLIC FACILITIES POLICIES

GENERAL CONDUCT

In order for the activities and facilities to be enjoyed by everyone, the following basic rules of good conduct must be observed at all city facilities:

1. Specific permission is required to use or occupy every room and office.
2. Unless participating in a supervised activity, children under 5 years of age must be accompanied by an adult 16 years or older.
3. All persons or organizations using a facility must abide by all Municipal, State and Federal laws.
4. The following are regulated by State and Municipal Codes and will be strictly enforced:
 - Gambling is prohibited.
 - The dispensing and consumption of alcoholic beverages without a permit is prohibited.
 - The use or sale of dangerous restricted drugs is prohibited.
5. Eating and drinking are permitted only in designated areas.
6. Smoking is not allowed inside City buildings or enclosed outdoor areas, DMC, Chapter 6.20.060. Smoking is prohibited and is unlawful in all public parks located in the City. Smoking is prohibited and is unlawful in all public areas including but not limited to public sidewalks, streets, and alleys, located within 25' of the boundary of the public park. 6.20.60. (A "Public Park" includes "recreation center" "buildings, structures, facilities.")
7. Unruly behavior, such as shouting and profanity, which is disruptive of classes and other activities, is prohibited.
8. Bicycles may be ridden and parked only in designated areas.
9. The possession of a weapon or other dangerous device will subject the possessor to immediate removal from the premises and to possible arrest and prosecution.
10. Neither pets nor other animals are permitted on the premises except for Service animals.

Violation of any rule or regulation can result in the suspension of facility use privileges by an individual or group.

POLICIES AND PROCEDURES
PAGE 2

USAGE POLICIES AND PROCEDURES

1. An application for permission to use the facilities must be submitted by all organizations and individuals for all uses.
2. All users must submit some form of legal identification when submitting an application.
3. All applications for permission to use the facilities shall be issued by the City Manager or his designate, subject to the availability of the facilities and adherence to City rules and regulations. Application forms are available at the Parks and Recreation Department.
4. Applications shall be issued only to responsible adults who shall be in attendance at the function for which application is made.
5. The rental of the following facilities will require the renter to either provide a certificate of insurance covering a minimum of \$1,000,000 in liability naming the City of Duarte as additionally insured or purchase special event insurance through the City: Teen Center, Royal Oaks Park Building, Community Center and the Senior Center (as restricted). **See Indemnification/Insurance section.**
6. City facilities may not be used by an individual, group or organization which has as one of its objectives, the overthrow of the United States Government or by an individual or organization deemed subversive as defined in the State of California Code.
7. City government functions, City recreation programs and School Board meetings shall have first priority on use of all facilities. Furthermore, previously scheduled uses may be canceled for City functions and programs. This does not apply to wedding receptions.
8. All applications for use of facilities must be submitted at least eight (8) working days and not more than 90 days, prior to the time of use. In the case of wedding receptions, 180 days prior to use shall be granted. This does not apply to City sponsored or co-sponsored activities.
9. The City Manager shall have the authority to cancel or postpone use of a facility if the City deems such action necessary. Whenever possible, 24 hours notice will be given to the applicant.
10. Only teen dances sponsored or co-sponsored by the Parks and Recreation Department shall be permitted.
11. For all events open to the public, a certificate of insurance covering a minimum of \$1,000,000 in liability, naming the City of Duarte as additionally insured, will be

POLICIES AND PROCEDURES
PAGE 3

required. This requirement may extend to others whenever it is in the best interest of the City of Duarte.

12. An adult sponsor must make reservations for Youth groups. At least one adult chaperone for every 10 minors using the facility shall be required.
13. Only Duarte service groups and organizations may use the Senior Center.
14. The City will not be held responsible for loss, damage or theft of any equipment or personal articles owned, leased, or rented by people using the facilities.
15. Theft, damage or items missing from the facilities that are the property of the City of Duarte, shall be the responsibility of the applicant and is subject to replacement at cost, including administrative fees.
16. No equipment or furnishings shall be removed from the premises without permission of the City Manager or his designate.
17. When exclusive use of a park or facility restricts the availability of the general public to use the park or facility, approval of the Parks and Recreation Commission will be required. Applications for preferential use must be submitted at least 60 days prior to date of use.
18. Non-profit organizations can solicit through the Parks and Recreation Commission for the waiving of rental fees for a special event beneficial to the community. Solicitations must be submitted at least 60 days prior to the date of use and are subject to approval by the Parks and Recreation Commission.
19. Park restrooms are open on an as-scheduled basis.
20. A member of the City staff shall be on duty at all times while City buildings are being used, and shall have full access to all activities at any time in order to ensure that all rules, regulations, City and State laws are being observed.
21. Receptions and parties must use the entire Community Center auditorium. Only business conferences and meetings will be allowed to rent part of the auditorium. Duarte Teen Center rentals will not include offices, computer lab, or boxing room. Business conferences and meetings will be allowed to rent the Duarte Teen Center meeting room separately.
22. The use of rice, birdseed, confetti, glitter, silly string, or candles at wedding receptions/parties is strictly prohibited.
23. The serving of red wines and/or red-based punches is strictly prohibited in buildings.

POLICIES AND PROCEDURES
PAGE 4

- 24. If decorations are contemplated for any program, their use must have prior approval from the Parks and Recreation Department. No group may hammer, tape, stick or staple anything to floors, walls, or ceilings. Decorations may only be placed as designated by a City representative.
- 25. Users wishing to decorate for their event may do so the day before. This option is subject to availability of facility and personnel. Approval will be determined eight (8) working days prior to date of event. Duarte Teen Center decorating must take place on the rental date.
- 26. All activities must cease by 12:00 midnight unless written permission is granted for a longer period of usage. All Duarte Teen Center rental activities must cease by 10:00pm.
- 27. Amplification and video equipment consisting of two screens and a microphone with a podium or stand are available for rent to users of the Community Center auditorium for a flat fee. Television and video equipment are also available at the Duarte Teen Center for a flat fee. (See Fee Schedules)
- 28. The user may not store any equipment in the facility prior to or after the approved period of use. Any equipment left in the facility will be subject to rental fees.
- 29. Facility set-up capacities and kitchen use arrangements:

A. Seating capacity is as follows:

<u>Full Auditorium</u>		<u>Half Auditorium</u>		<u>Lounge</u>		<u>ROP</u>	<u>Teen Center</u>
Assembly	200	Assembly	72	Assembly	30	80	60
Dining & Dancing	150	Meeting	60	Meeting	24		

- B. The kitchen facilities are available at the Community Center and Senior Center only. Kitchens shall not be opened for any group unless specific written use is granted and the kitchen rental fees are paid.
- C. Groups using the kitchen shall furnish dishes, silverware, cooking utensils, all paper products, towels, soap, etc.
- D. Requests for table and chair arrangements for the Community Center must be submitted at least eight (8) working days prior to scheduled use of facility.
- E. The responsibility for cleaning supplies and clean up of the facilities after the event is the duty of the applicant.

30. Classification and Fees

A. Classifications

POLICIES AND PROCEDURES
PAGE 5

1. Base Rate - Fee Schedule "A"
Any and all uses by non-residents.
2. Resident Discount Rate - Fee Schedule "B"
(Up to 50% discount of Schedule "A")

(A Duarte resident *group* is defined as a non-profit organization based within the City limits or County and whose membership is composed of at least 51% Duarte residents. A resident is defined as a person who resides within the incorporated City of Duarte or that operates a business within the City of Duarte and has been issued a current business license.)

B. Fees

1. Fees shall be established periodically by the City Manager as needed.
2. Duarte and Duarte County non-profit resident groups and organizations may apply for an additional 10% discount from the resident rate by presenting documentation that verifies 51% of members are Duarte residents. Events must be sponsored activities or meetings of the group or organization as established in their Articles or Incorporation or Bylaws. Documents demonstrating IRS non-profit status and residency will be required.
3. For Duarte residents that qualify as low-to-moderate income families, a 10% rate reduction is available for use of the Community Center Auditorium. Complete details concerning the qualifying criteria are available at the Parks and Recreation Department.
4. A resident may not rent a facility for a non-resident. In the case of wedding receptions, only the resident parents of the bride or groom; or resident bride or groom, may rent the facility in order to qualify for the resident rate.
5. Fees include man-on-duty personnel. Double time hourly rate will be deducted from cleaning/damage deposit in the case of continued use over the approved allotted time.
6. Final approval is granted upon payment of total fees. Facilities are subject to automatic cancellation if balance of fees are not paid eight (8) working days prior to use.
7. Users not paying balance of fees in full eight (8) working days prior to scheduled use will be assessed a 10% charge of the unpaid balance for each day the balance of fees is late.

POLICIES AND PROCEDURES

PAGE 6

8. All late fees (those paid within eight (8) working days of the scheduled use) must be paid in cash or with a cashier's check.
9. Reservations may be canceled by applicant and all fees returned up to 60 calendar days prior to the event. The deposit will be retained if reservations are canceled 60-14 calendar days prior to event. All fees will be retained if reservations are canceled less than 14 calendar days prior to event.
10. Cleaning/damage bond is refundable by a City warrant subject to the condition of building or other reasons; and will be sent by mail approximately 3 weeks after date of use. The facility must be cleaned and returned to a reasonable condition.
11. Security police will be required in certain circumstances. The City will arrange for security from the Los Angeles County Sheriff's Department. (See Fee Schedule for security costs.)
12. Duarte service groups and organizations wishing to use park tables, park chairs, portable PA system or other City equipment, must post a bond and are subject to being charged rental fees. (Fee schedule for such items is available in the Parks and Recreation Department).
13. The City Manager's designate may establish special rate schedules for groups or individuals charging admission or soliciting donations, or when it is in the best financial interest of the City to do so.

ALCOHOLIC BEVERAGE POLICIES

Alcoholic drinks are not allowed in the Duarte Teen Center or Royal Oaks Park building during rentals or at any time. Individuals may request the use of the Community Center or Senior Center facilities including the serving of alcoholic beverages. The applicant will follow the requirements established hereafter.

1. Groups or individuals wishing to serve alcoholic beverages at the Community Center must submit an application at least eight (8) working days prior to the event.
2. The responsibility for obtaining all permits from the Alcoholic Beverage Control Agency is the duty of the applicant.
3. The City Manager or his designate has the right to approve or disapprove all applications for serving of alcoholic beverages.
4. If approved, the applicant must abide by all requirements of the California Department of Alcoholic Beverage Control.

POLICIES AND PROCEDURES

PAGE 7

5. Persons under 21 years of age shall not be served alcoholic beverages nor be permitted to consume alcoholic beverages in accordance with State law and the regulations of the Department of Alcoholic Beverage Control. Violators are subject to criminal prosecution, and reported violators will be denied approval of subsequent requests to use the facility.
6. City specified City of Duarte personnel are required to be in attendance at all functions. At all functions with attendance in excess of 25 persons, security police may be required by the City Manager or his designate.
7. The serving of alcoholic beverages may be authorized in accordance with the following conditions:
 - A. Alcoholic beverages may be served, sold, and consumed on the premises only in connection with a meal, which is being served at the site. Hot hors d'oeuvres can be considered as a meal when champagne or sparkling wine is being served.
 - B. Such service, sale, and consumption may be permitted at only those events for which the permit so specifies.
 - C. Bring your own bottle (B.Y.O.B.) events are prohibited.
 - D. Alcoholic beverages shall be sold only by a person possessing a current valid permit from the Alcoholic Beverage Control Board.
8. Selling of Alcoholic Beverages

The following requirements must be followed in order to sell and serve alcoholic beverages on the premises of City of Duarte facilities:

- A. The applicant shall apply in person or by letter to the State of California Department of Alcoholic Beverage Control and obtain the necessary alcoholic beverage permits.
- B. The request for the permit must be accompanied by a letter from the City of Duarte Parks and Recreation Department approving the use of the facility and the serving of alcoholic beverages.
- C. The permit must be presented no less than two weeks (8 working days) prior to the event, to the Duarte Parks and Recreation Department during normal office hours.
- D. The individual organization is responsible for displaying the permit over the bar at the event.

*** ANY VIOLATION OF THE ABOVE MAY RESULT IN IMMEDIATE CANCELLATION OF THE REQUEST FOR USE OF FACILITY AND DENIAL OF FURTHER REQUESTS FOR A PERIOD OF UP TO TWO (2) YEARS AT THE DISCRETION OF THE CITY MANAGER OR HIS DESIGNATE.

INDEMNIFICATION AND INSURANCE

1. The renter shall indemnify, defend, and hold harmless the City of Duarte, its officers, employees, and agents from any and all losses, costs, expenses, claims, liabilities, actions, or damages, including liability for injuries to any person or persons or damage to property arising at any time during and/or arising out of or in any way connected with the renter's use or occupancy of the facility and adjoining property, unless solely caused by gross negligence or willful misconduct of the City of Duarte, its officers, employees or agents.
2. The renter shall procure on their own or purchase through the City of Duarte general liability insurance against any and all losses, costs, expenses, claims, liabilities, actions, or damages, including liability for injuries to any person or persons or damage to property arising at any time during and /or arising out of or in any way connected with the renter's use or occupancy of the facility and adjoining property, in the minimum amount of \$1,000,000 (one million dollars) per occurrence. Such insurance shall name the City of Duarte, its officers, employees, and agents as additional insured. The renter shall provide a certificate or complete a **Request to Purchase Special Event Insurance Form** through the City of Duarte, a minimum of 14 days prior to the rental date of the facility. The certificates of such insurance shall provide 30 (thirty) days notice to the City of Duarte of cancellation or any change of coverage or limits. **If a copy of the insurance certificate is not on file prior to the event, the City of Duarte will deny access to the facility.**
3. The renters shall report any personal injuries or property damage arising at any time during and/or arising out of or in any way connected with the renter's use or occupancy of the City of Duarte's facilities and adjoining property, to the person-on-duty on the date of the rental and to the Parks and Recreation Director or his/her authorized representative, in writing, as soon as practicable.
4. The renter agrees to waive any right of recovery against the City of Duarte, its officers, employees, and agents for fires, floods, earthquakes, civil disturbances, regulation of any public authority, and other causes beyond their control. The renter shall not charge results of "acts of God" to the City of Duarte, its officers, employees or agents.
5. The renter waives any right of recovery against the City of Duarte, its officers, employees and agents for indemnification, contribution, or declaratory relief arising out of or in any way connected with the renter's use or occupancy of the facility and adjoining property, even if the City of Duarte, its officers, employees, and agents seek recovery against the renter.

MISCELLANEOUS CHARGES

Kitchen:	Kitchen facilities are available for a flat fee of \$100.00. (Kitchen facilities are available only at the Community Center.)
Amplification and Video Equipment:	This equipment is available in the Community Center auditorium for a flat fee of \$60.00. TV/AV equipment available at the Teen Center for a fee. (See Fee Schedule)
Personnel Charges:	A charge of \$40.00 per hour (minimum two (2) hours) will be made for services such as opening prior to event for decorating, delivery of supplies, equipment, etc.
Late Fees:	<p>Users not paying the balance of fees in full, eight (8) working days prior to use, will be assessed a 10% late charge of unpaid balance for each day fees are late.</p> <p>All late fees (those paid <u>within</u> eight (8) working days of event), must be paid with cash or a cashiers check.</p>
Security:	Under certain circumstances, security may be required. The City contracts with the Los Angeles County Sheriff Department deputies for such security. The rate is \$70.00 per hour per deputy.
Deposits Required:	Deposits range from a minimum \$50.00 to a maximum \$500 deposit, depending on the facility. A non-listed deposit amount may be set for special events or events open to the public.
Restrooms:	A charge of \$20.00 per hour for residents and \$40.00 per hour for all others (minimum of 2 hours) will be made for those wishing to have the park restrooms open during unsupervised park hours.
Administrative Fees:	Any cleaning and damage charges deducted from the bond will be assessed administrative fees of 15%.

FEE SCHEDULES

	"A" NON- RESIDENT RATE	"B" RESIDENT RATE
<u>COMMUNITY CENTER</u>		
<u>Full Auditorium</u>		
First Hour	\$ 300.00	\$ 150.00
Each Additional Hour	\$ 100.00	\$ 50.00
Cleaning/Damage Bond	\$ 500.00	\$ 500.00
*Cleaning Fee	\$ 250.00	\$ 250.00
 <u>Half Auditorium</u>		
First Hour	\$ 200.00	\$ 100.00
Each Additional Hour	\$ 80.00	\$ 40.00
Cleaning/Damage Bond	\$ 300.00	\$ 300.00
 <u>Lounge</u>		
First Hour	\$ 100.00	\$ 50.00
Each Additional Hour	\$ 40.00	\$ 20.00
Cleaning/Damage Bond	\$ 100.00	\$ 100.00
 <u>DUARTE TEEN CENTER</u>		
<u>Game/Meeting Room/Patio</u>		
First Hour	\$ 250.00	\$ 125.00
Each Additional Hour	\$ 90.00	\$ 45.00
Cleaning/Damage Bond	\$ 300.00	\$ 300.00
*Cleaning Fee	\$ 200.00	\$ 200.00
 <u>Meeting Room Only</u>		
First Hour	\$ 100.00	\$ 50.00
Each Additional Hour	\$ 40.00	\$ 20.00
Cleaning/Damage Bond	\$ 100.00	\$ 100.00
<u>Gas BBQ Grill</u>	\$ 40.00	\$ 20.00
<u>Television/AV Equipment</u>	\$ 40.00	\$ 20.00
 <u>ROYAL OAKS PARK BUILDING</u>		
First Hour	\$ 180.00	\$ 90.00
Each Additional Hour	\$ 70.00	\$ 35.00
Cleaning/Damage Bond	\$ 150.00	\$ 150.00

***OPTIONAL CLEANING FEE**

Renters who want to opt out of cleaning up after their rental can pay a cleaning fee for Community Center Full Auditorium and Duarte Teen Center rentals. Maximum 3 hours of cleaning. If cleaning extends beyond 3 hours an additional \$50 per hour fee would be deducted for the cleaning and damage bond.

Duarte Community Center



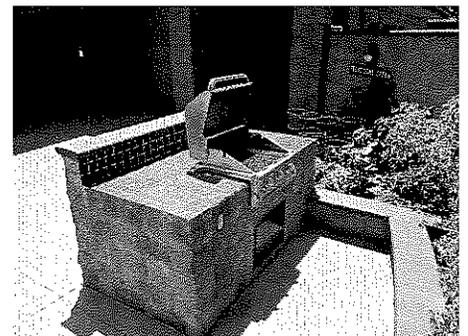
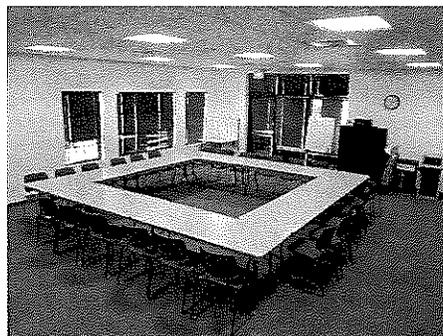
Royal Oaks Park Building



Duarte Picnic Gazebos



Duarte Teen Center



Date: _____

USE OF DUARTE CITY FACILITIES

____ Community Building: 100-4402

____ ROP Building: 100-4404

____ Deposit: 100-2120

APPLICATION AND AGREEMENT

I Will Purchase City Special Event Insurance: (Y/N) _____ I Will Provide Certificate of Insurance (Y/N) _____

Name of Organization/Responsible Person: _____

Address: _____ / _____ / _____ / _____ / _____
(Street) (City) (Zip) (Home Phone) (Work Phone)

Identification: _____ or _____ Email Address: _____
(Driver's License No.) (Calif. I.D. Card No.)

REQUEST _____ Community Center (Full) _____ Community Center (Half) _____ Community Center Lounge
USE OF: _____ Community Center Kitchen _____ Royal Oaks Park Building _____ Senior Center (Restricted Use)
_____ Duarte Teen Center _____ Duarte Teen Center Meeting Room

Purpose of Rental: _____
(If event is a wedding reception and/or ceremony, please provide the full name of Bride and Groom.)

Date of Use: _____ Activity Time: _____ to _____ Set-up Time: _____ to _____

Estimated Attendance: Adults _____ Teens _____ Children _____ TOTAL _____

Admission/Donation: _____ If so, what will proceeds be used for? _____

Are you using a caterer? _____
(Name) (Address) (Phone Number)

COMMUNITY CENTER/DUARTE TEEN CENTER (ALCOHOLIC BEVERAGES ARE PROHIBITED AT THE TEEN CENTER!)

Alcohol Served: _____ *Alcohol Sold: _____ * A permit must be obtained from the Dept. of Alcoholic Beverage Control.

EQUIPMENT REQUESTED: _____ Tables & Chairs (Banquet arrangement for _____ people)
_____ Chairs Only (Theater arrangement for _____ people)
_____ Portable Bar _____ Coffee Pot
_____ TV (Teen Center) _____ BBQ (Teen Center)

Specify Other: _____

EQUIPMENT AVAILABLE _____ Public Address System: _____ On Stage _____ On Floor
FOR MEETINGS ONLY: _____ Film Screen _____ Speaker's Podium: _____ On Stage _____ On Floor

By signing below I am certifying that I have read and understand the Policies and Procedures pertaining to the requested facility use and agree that I am responsible for their enforcement and that I must be present at the event on the date requested. I certify that all the above statements are true and correct. I understand that any misstatement or omission of a material fact may be sufficient cause for cancellation of use of the building. I am aware that all rental fees are due and payable eight (8) working days in advance of the activity. I am aware that all renters are required to carry insurance to rent a facility and I understand that I must provide a certificate of insurance covering \$1,000,000 in liability naming the City of Duarte as co-insured or I will purchase special event insurance through the City of Duarte. I understand that special event insurance must be purchased 14 days prior to the event date.

Signature of Applicant (Street) (City) (Telephone No.)

FOR OFFICE USE ONLY

Application Approved _____ Application Denied _____ Classification _____

FEES: First Hour \$ _____ **DEPOSIT:** Amount Rec'd \$ _____ Rec. # _____

Hours Thereafter _____ @ \$ _____ \$ _____ Date Received _____

Set-Up Hours _____ @ \$ _____ \$ _____

Cleaning/Damage Bond #2120 \$ _____

Kitchen (flat rate) \$ _____

BBQ _____ TV _____ \$ _____

Miscellaneous Charges:

_____ \$ _____

_____ \$ _____

TOTAL FEES \$ _____

Received By _____

BALANCE \$ _____ Due Date: _____

DUE: * A 10% charge per day of unpaid balance will be assessed if fees are not paid by above due date.

BALANCE Amount Rec'd \$ _____ Rec. # _____

PAID: Date Received _____

Received By _____

Director, Parks and Recreation Department
or Authorized Designate

If alcohol is being sold,
has a permit been obtained: _____ Date: _____

CITY OF DUARTE

**SPORTS FACILITIES
USAGE POLICIES AND PROCEDURES**

1. An application for permission to use the sports facilities must be submitted by all organizations, teams or individuals for all uses. Application forms are available at the Parks and Recreation Department.
2. Applications shall be issued only to responsible adults who shall be in attendance at the function for which application is made.
3. All applications for use of facilities must be submitted at least eight (8) working days and not more than ninety (90) days prior to the time of use.
4. All persons, groups or organizations using a public facility must abide by all Municipal, State and Federal laws.
5. All persons or organizations using a facility will be expected to abide by Municipal Code Title 9, Chapter 9.20 (All sections) regarding Conduct in Parks. This includes ***no consumption of alcoholic drinks at any park or parking lot and no smoking allowed***.
6. All persons, groups or organizations using a public facility must abide by the City's Administrative Policies and Procedures for Community Facilities on points not covered in these policies.
7. City recreation programs and City government functions shall have first priority on use of all facilities. Furthermore, previously scheduled uses may be cancelled for city functions.
8. The City will not be held responsible for loss, damage, or theft of equipment, or personal articles owned, leased, or rented by people utilizing the facilities.
9. All rentals involving league, tournament or organized game play including practice or non-season games will require the renter to either provide a certificate of insurance covering a minimum of \$1,000,000 in liability naming the City of Duarte as additionally insured or purchase special event insurance through the City.
10. Fees:
 - A. A deposit is required upon approval of the facility use request application.
 - B. Final approval is granted upon payment of the balance of fees. Facilities are subject to automatic cancellation if balance of fees are not paid eight (8) working days prior to use.
 - C. Cleaning/damage/equipment deposit is refundable by a city warrant subject to condition of facility, and will be returned by mail approximately 20 days after date of use.
 - D. Double time daily rate will be deducted from equipment deposit in the case of equipment not returned on the required date.
 - E. All late fees (those paid within eight (8) working days of scheduled use) must be paid in cash or with a cashier's check.

- F. Users not paying balance of fees in eight (8) full working days prior to scheduled use will be assessed a 10% charge of the unpaid balance for each day the balance of fees is late.
- G. Reservations may be cancelled by applicant and all fees returned up to 60 calendar days prior to the event. The deposit will be retained if reservations are cancelled 60-14 calendar days prior to event. All fees will be retained if reservations are cancelled less than 14 calendar days prior to event.
- H. To qualify for the Duarte Youth Non-Profit Group ("C") rate the group must be composed of at least 51% Duarte residents and have a 501C3 status. A Duarte resident *group* is defined as a non-profit organization based within the City limits or County and whose membership is composed of at least 51% Duarte residents or unincorporated area residents.
- I. A Duarte business resident is defined as a business operating within the incorporated City of Duarte and has been issued a current business license. A resident is defined as a person whose residence has a Duarte mailing address.

Violation of any rule or regulation can result in the suspension of facility use privileges by an individual or group.

DUARTE SPORTS FACILITIES

FEE SCHEDULE

DUARTE SPORTS PARK AND OTIS GORDON PARK FIELDS

	<u>Base Rate</u> <u>"A"</u>	<u>Duarte Resident</u> <u>"B"</u>	<u>Duarte Youth Non-Profit Group</u> <u>"C"</u>
Lights	\$55.00/hr	\$30.00/hr	\$15.00/hr
Without Lights	\$30.00/hr	\$10.00/hr	FREE

ROYAL OAKS PARK & DUARTE PARK TENNIS COURTS & BASKETBALL COURTS

	<u>Base Rate</u>	<u>Duarte Resident</u>	<u>Duarte Youth Non-Profit Group</u>
All Courts With or Without Lights	\$34.00/hr/ct	\$ 17.00/hr/ct	FREE

GAZEBOS

(8 hrs. maximum)

	<u>Base Rate</u>	<u>Duarte Resident</u>
Small	\$75.00/day	\$50.00/day
Large	\$100.00/day	\$75.00/day

SKATE PARK

	<u>Base Rate</u>	<u>Duarte Resident</u>
	\$55.00/hr	\$30.00/hr

BEARDSLEE / ENCANTO / NORTHVIEW PARKS (NO LIGHTS)

	<u>Base Rate</u>	<u>Duarte Resident</u>	<u>Duarte Youth Non-Profit Group</u>
Soccer/Open Field	\$30.00/hr	\$10.00/hr	FREE

MISCELLANEOUS CHARGES FOR ALL FACILITIES

	<u>Base Rate</u>	<u>Duarte Resident</u>	<u>Duarte Youth Non-Profit Group</u>
Equipment Rental	\$25.00/day	\$25.00/day	\$25.00/day
Equipment Deposit	\$100.00	\$100.00	\$100.00
Man-on-Duty	\$40.00/hr	\$20.00/hr	\$12.00/hr
Cleaning/Damage Deposit	\$100.00	\$100.00	\$100.00
Rental of Park Restrooms	\$40.00/hr	\$20.00/hr	

DUARTE SPORTS FACILITIES RENTAL APPLICATION AND AGREEMENT

Date: _____

Name of Organization/Responsible Person: _____

Address: _____ Telephone #: _____
 Street Address City Zip Bus. Phone #: _____

FACILITIES REQUESTED

DUARTE SPORTS FIELDS:

_____ Baseball Field
 _____ Lights
 _____ Softball Field "A"
 _____ Lights
 _____ Softball Field "B"
 _____ Lights
 _____ Softball Field "C"
 _____ Lights
 _____ Field Prep

OTIS GORDON SPORTS PARK

_____ Mt. Olive
 _____ Lights
 _____ Andres Duarte
 _____ Lights
 _____ Field Prep.

BEARDSLEE PARK

_____ Soccer Field
 _____ Restrooms

TENNIS COURTS (Circle one) BASKETBALL COURTS

_____ Duarte Sports Park
 _____ Royal Oaks Park
 _____ Encanto Park

ENCANTO PARK

_____ Restrooms
 _____ Gazebo # _____

ROYAL OAKS PARK

_____ Restrooms
 _____ Gazebo # _____

Date/s of Use: _____ Time: _____ to _____

OTHER PARK SITE:

Location: _____ Date: _____ Time: _____ to _____

Purpose of Rental: _____

Estimated Attendance: Adults _____ Teens _____ Children _____ Total _____
 Admission/Fee: _____ What will proceeds be used for? _____
 Concessions Served? _____ Concessions Sold? _____

Facilities approval subject to conditions listed below:

- 1. NO ALCOHOLIC BEVERAGES.
- 2. Must do own clean up.
- 3. Use of own equipment.
- 4. No/Yes attendant on duty.
- 5. _____
- 6. _____

I hereby certify that I shall be personally responsible on behalf of this group for any damage or unnecessary abuse of any building, grounds, or equipment growing out of the occupancy of said premises by our group. I agree to the conditions set forth in the approval of this application and further agree to abide by and enforce the rules and regulations of the City of Duarte. I certify that all above statements are true and correct. I understand that any misstatement or omission of a material fact may be sufficient cause for cancellation of use of the facility. I am aware that all fees are due and payable eight (8) working days in advance of the activity and I have inspected the facility and am satisfied with its condition as a safe and playable field. I, as participant or renter fully understand that the use of the listed facility exposes me to the risk of personal injury, death or property damage. I hereby release, discharge and agree not to sue the City of Duarte or its employees for any injury, death or damage to or loss of personal property arising out of, or in connection with participation in the rental of this field from whatever cause, including the active or passive negligence of the City of Duarte or its employees. The parties to this agreement understand that this document is not intended to release any party from any act of omission of "gross negligence," as that term is used in applicable case law and/or statutory provision. In consideration for being permitted to participate in the program/class/excursion, I hereby agree, for myself, my heirs, administrators, executors, and assigns, that I shall indemnify and hold harmless the City of Duarte or its employees from any and all claims, demands, actions or suits arising out of or in connection with the rental of this facility.

For Official Use Only

Application Approved: _____ Application Denied: _____ Classification: _____

Fees: Rental Hours _____ @ \$ _____ \$ _____ Deposit: Amount: \$ _____ Rcpt. #: _____

Cleaning/Damage Bond #2120 \$ _____ Date Rcvd.: _____ Rcvd. By: _____
Miscellaneous Charges Bal. Due: \$ _____ Due By: _____

TOTAL FEES \$ _____ Balance Paid: Amount Rcvd: _____ Rcpt. #: _____
Date Rcvd: _____ Rcvd. By _____

Director of Parks & Recreation Department or Authorized Designate

**AGENDA MEMO
CITY MANAGER'S OFFICE**



To: Mayor and Members of the Duarte City Council
From: Brian Villalobos, Director of Public Safety
Date: March 17, 2014
Subject: Announcement – Agreement for Professional Services

Recommendation: It is recommended that the City Council execute a professional services agreement with two part-time outreach consultants for the period of April 1, 2014 through December 31, 2015 at the current rate of \$1,485 per month per person.

Background: Following a long year of research and deliberation, the Duarte Public Safety office in collaboration with City of Pasadena and the Flintridge Center augmented their current gang prevention and intervention services to encompass reintegration services for individuals in the Duarte area. The program will help implement evidence based programming to reduce gang activity and recidivism among 17-35 year old gang impacted and formerly incarcerated persons in the area.

Discussion: With this new twenty-month contract, both Consultants and City staff have agreed to expand the scope of gang violence prevention and intervention services. The new emphasis will include creating a caring trusting relationship with individuals 17-35 years of age returning to the community from incarceration. The consultants will provide job leads, refer them to services and resources and help them navigate the system so that they can be successful in their job/career search and reintegration back into our community.

The coordinators will also work closely with the Flintridge Center staff to refer potential candidates to social services including the Apprenticeship Preparation Program (APP). They will coordinate the delivery of a periodic resource fair for the formerly incarcerated in the Duarte community. They will identify and form relationships with organizations that provide services to formerly incarcerated individuals and invite them to participate in the Duarte resource fair and the monthly Pasadena/Altadena Community Team (PACT) Resource Fair

Consultants will report to the Duarte Public Safety Crime Prevention Specialist and be required to submit weekly reports to satisfy the grant terms showing actual services performed.

Fiscal Impact: The program will come at no cost to the City of Duarte. It is 100% financially supported by a CAL GRIP award (2014-2015) and approved by the Best Practices Approach Initiative from the Board of State and Community Corrections of California Department Corrections. All costs associated are already budgeted for FY 13-14 and FY 14-15 in the amount of \$62,400 with an additional \$6,000 for Case Management related costs.

CITY OF DUARTE

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT FOR PROFESSIONAL SERVICES ("Agreement") is made and effective as of April 1, 2014 ("Effective Date"), by and between the **CITY OF DUARTE**, a municipal corporation ("City") and **FIRST NAME LAST NAME** ("Consultant"). City and Consultant may sometimes herein be referred to individually as a "party" and collectively as the "parties."

AGREEMENT:

In consideration of the mutual covenants and conditions set forth herein the foregoing Recitals which are incorporated herein and made a part hereof, and for good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties agree as follows:

1. TERM

This Agreement shall commence on the Effective Date and shall remain and continue in effect until December 31, 2015 unless sooner terminated pursuant to the provisions of this Agreement. The term may be extended upon execution of a written amendment between the parties.

2. SERVICES AND PERFORMANCE

- A. In compliance with all terms and conditions of this Agreement, the Consultant shall provide those services set forth in the "Scope of Services" attached hereto as **Exhibit "A"** and incorporated herein by this reference, which services may be referred to herein as the "services" or "work" hereunder.
- B. As a material inducement to the City entering into this Agreement, Consultant represents and warrants that Consultant is a provider of first class work and services and Consultant is experienced in performing the work and services contemplated herein and, in light of such status and experience, Consultant covenants that it shall follow the highest professional standards in performing the work and services required hereunder.
- C. The experience, knowledge, capability and reputation of Consultant, its principals and employees were a substantial inducement for City to enter into this Agreement. Therefore, without the prior written approval of City, which may be given or withheld at City's sole and absolute discretion, Consultant shall not (i) contract with any other entity to perform in whole or in part the services required hereunder, or (ii) transfer, assign, convey, or encumber (voluntarily or by operation of law) this Agreement.
- D. Consultant shall obtain at its sole cost and expense such licenses, permits and approvals as may be required by law for the performance of the services required by this Agreement.
- E. Consultant shall provide all services rendered hereunder in accordance with all ordinances, resolutions, statutes, rules, and regulations of the City and any Federal, State or local governmental agency having jurisdiction in effect at the time service is rendered. Each and every provision required by law to be included in this Agreement shall be deemed to be included, and this Agreement shall be read and enforced as though they were included.

3. MANAGEMENT

- A. The City's City Manager shall represent City in all matters pursuant to the administration of this Agreement, review and approval of the services performed by Consultant, including the authority, subject to the limitations set forth in Section 4, to enlarge the Scope of Services or increase the compensation due to Consultant.
- B. Consultant communications with the City shall be routed through the Director of Public Safety Services and Crime Prevention Specialist.

4. COMPENSATION

- A. City agrees to pay Consultant, in accordance with the payment rates and terms set forth in **Exhibit "B"** and incorporated herein by this reference; provided, however, that in the event of any inconsistency between the terms of **Exhibit "B"** and the main text of this Agreement, the main text of this Agreement shall apply. Subject to the Director of Public Safety Services authority set forth in subparagraph (B) below, the total compensation paid to Consultant hereunder shall not exceed THIRTY ONE THOUSAND & TWO HUNDRED DOLLARS (\$31,200) ("Total Compensation") for the total term of this Agreement, which shall be payable in (2) installments of \$_____biweekly FOR 21 MONTHS as set forth in Paragraph 4.C below. Consultant's Total Compensation shall be based on *33 hours per calendar month* and shall not include out-of-pocket expenses necessary for the performance of the services, such as those listed in **Exhibit "B"**, subject to the reasonable approval of the City. Such out-of-pocket expenses shall not, however, include (a) costs associated with the operation of Consultant's business, including but not limited to administrative costs, employee costs, overhead, insurance costs (including but not limited to the cost to provide the insurance required by this Agreement), cost of benefits, rent, and costs to procure required permits or licenses, or (b) extraordinary expenses unless Consultant, *prior to* incurring such extraordinary expenses notified City in writing and City determines such expenses are extraordinary and authorizes Consultant to incur such expenses, in which case City shall be responsible to reimburse Consultant for such extraordinary expenses. Consultant shall perform all or some services in a given month as assigned by City. If the time required to perform the assigned services would otherwise cause the compensation, if calculated on an hourly rate basis to exceed the total monthly compensation, Consultant must notify City in writing prior to incurring those expenses. The City will approve or disapprove the request in the City's sole discretion.
- B. Consultant shall not be compensated for any services rendered in connection with its performance of this Agreement, which are in addition to those set forth herein, unless such additional services are authorized in advance by the Director of Public Safety Services. Consultant shall be compensated for any additional services in the amounts and in the manner as agreed to by the Director of Public Safety Services and Consultant at the time City's authorization is given. The Director of Public Safety Services may approve additional work up to but not exceeding ten percent (10%) of the amount of this Agreement.
- C. Consultant shall be paid on bimonthly basis in (2) equal installments provided that Consultant submits bimonthly invoices as set forth in Paragraph A of *Exhibit B hereto and submits monthly reports to City showing actual services performed*. Consultant shall be paid on the next regular council warrant after all required paperwork is submitted. If

the City disputes whether Consultant has earned its fee or any portion, City shall give written notice to Consultant within thirty (30) days of receipt of Consultant's monthly report stating the basis for such dispute.

5. SUSPENSION OR TERMINATION OF AGREEMENT

- A. City may at any time, for any reason, with or without cause, suspend or terminate this Agreement, or any portion hereof, by serving written notice upon Consultant. Upon receipt of said *notice*, Consultant shall immediately cease all work under this Agreement, unless the notice provides otherwise. In the event this Agreement is suspended or terminated pursuant to this subparagraph (a), Consultant shall submit a final report to the City pursuant to Section 4, and Consultant shall be entitled to the pro rata portion of the fee earned to the date of termination, or if the reason for the termination is failure by Consultant to have timely performed the services set forth in **Exhibit "A"**, City shall be entitled to receive a return of the fee paid to Consultant, or applicable portion thereof. In City's sole and absolute discretion, prior to effecting a suspension or termination pursuant to this subparagraph (a), the City may first serve upon the Consultant a written notice of the default specifying the default and the amount of time that Consultant shall have to cure, correct, or remedy the default. In the event that the Consultant fails to cure the default within the specified period of time, the City shall have the right to immediately terminate this Agreement pursuant to subparagraph (a). Notwithstanding any other provision of this Agreement to the contrary, City's termination of this Agreement pursuant to this subparagraph (a) shall not preclude or prejudice any other remedy to which City may be entitled in law or in equity.
- B. Consultant may terminate this Agreement upon not less than thirty (30) days' prior written notice to the City.

6. RECORDS AND OWNERSHIP OF DOCUMENTS

- A. Consultant shall maintain complete and accurate records with respect to costs, expenses, receipts, and other such information required by City that relate to the performance of services under this Agreement. Consultant shall maintain adequate records of services provided in sufficient detail to produce an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Consultant shall provide free access to the representatives of City or its designees at reasonable times to examine and audit such books and records; shall permit City to make transcripts therefrom as necessary; and shall allow inspection of all work, data, documents, proceedings, and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of six (6) years after receipt of final payment.
- B. Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, computer files, surveys, notes, and other documents prepared in the course of providing the services to be performed pursuant to this Agreement shall become the sole property of the City and may be used, reused, or otherwise disposed of by the City without the permission of the Consultant. Consultant shall provide such items to City promptly upon completion of the Agreement. Any use of such documents for other projects by the City shall be without liability to Consultant.

- C. Any information gained by Consultant in the performance of this Agreement shall be considered confidential and such information and the reports, records, documents and other materials prepared by Consultant in the performance of services under this Agreement shall not be released publicly or to any other client of Consultant without the prior written approval of the Director of Public Safety Services.

7. INDEMNIFICATION

Consultant shall defend, indemnify and hold harmless the City from and against all damages and liability caused by the negligent actions or willful misconduct of the Consultant or its employees, agents, or representatives. Consultant shall not be responsible for any damages or liability to the extent caused by the negligence or willful misconduct of the City or any of its employees, agents, or representatives acting in an official capacity.

8. INSURANCE

Without limiting Consultant's indemnification obligations as set forth in this Agreement, the Consultant shall procure and maintain, at its sole cost and expense, during the entire term of this Agreement including any extension thereof, the following policies of insurance:

- A. Commercial General Liability insurance written on a per occurrence basis in an amount not less than \$1,000,000 per occurrence.
- B. Business Auto Coverage written on a per accident basis in an amount not less than \$1,000,000 per accident. If Consultant or Consultant's employees use personal autos in connection with the performance of work under this Agreement, Consultant shall provide evidence of personal auto liability coverage for each such person.
- C. If applicable, Worker's Compensation insurance providing statutory benefits as required by California law.
- D. All of the insurance policies required hereunder, except the worker's compensation insurance, shall comply with the following requirements:
 - (i) All insurance shall be written by insurers that are admitted and licensed to do business in the State of California and with A.M. Bests rating of B++ or better and a minimum financial size VII.
 - (ii) The policies shall be endorsed to name the City and its officers, officials, employees, agents, and volunteers as additional insureds.
 - (iii) All of Consultant's insurance: (i) shall contain no special limitations on the scope of protection afforded to the additional insureds; (ii) shall be primary insurance and any insurance or self-insurance maintained by the additional insureds or any of them shall be in excess of the Consultant's insurance and shall not contribute with it; (iii) shall be "occurrence" rather than "claims made" insurance except for professional liability; (iv) shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability; (v) shall prohibit Consultant from waiving the right of subrogation prior to a loss except for professional liability; and (vi) shall not contain any provision or definition that would serve to eliminate so-called "third party action over" claims, including any

exclusion for bodily injury to an employee of the insured.

- (iv) The City reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the Consultant ninety (90) days advance written notice of such change.
- E. Consultant shall renew the required coverage annually as long as City or its employees or agents face an exposure from the Consultant's operations pursuant to this Agreement. This obligation shall survive the termination or expiration of this Agreement and shall not be effective until City executes a written statement to that effect.
- F. No work or services under this Agreement shall commence until the Consultant has provided the City with Certificates of Insurance evidencing the above insurance coverages and said Certificates of Insurance are reasonably approved by the City. Certificates are to reflect that the insurer will provide 30 days written notice to City of any cancellation of coverage. In the event any of said policies of insurance are reduced in limits or cancelled for any reason, the Consultant shall, prior to the cancellation date, submit new evidence of insurance, in conformance with this Paragraph 8.
- G. The provisions of any workers' compensation or similar act will not limit the obligations of Consultant under this Agreement. Consultant expressly agrees not to use any statutory immunity defenses under such laws with respect to City, its employees, officials and agents.
- H. Consultant agrees to provide immediate notice to City of any claim or loss against Consultant arising out of the work performed under this Agreement. City assumes no obligation or liability by such notice, but has the right to monitor the handling of any such claim or claims if they are likely to involve City. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type.

9. INDEPENDENT CONSULTANT

- A. Consultant is and shall at all times remain as to the City a wholly independent Consultant. The personnel performing the services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Neither City nor any of its officers, officials, employees, or agents shall have control over the conduct of Consultant or any of Consultant's officers, employees, or agents. Consultant shall not at any time or in any manner represent that it or any of its officers, employees, or agents is in any manner officers, officials, employees, or agents of the City. Consultant shall not incur or have the power to incur any debt, obligation, or liability whatever against City, or bind City in any manner.
- B. No employee benefits shall be available to Consultant in connection with the performance of this Agreement. Except for the fees paid to Consultant as provided in this Agreement, City shall not pay salaries, wages, or other compensation to Consultant for performing services hereunder for City. City shall not be liable for compensation or indemnification to Consultant for injury or sickness arising out of performing services

hereunder.

10. NO UNDUE INFLUENCE

Consultant declares and warrants that no undue influence or pressure is used against or in concert with any officer or employee of the City in connection with the award, terms or implementation of this Agreement, including any method of coercion, confidential financial arrangement, or financial inducement. No officer or employee of the City shall receive compensation, directly or indirectly, from Consultant, or from any officer, employee or agent of Consultant, in connection with the award of this Agreement or any work to be conducted as a result of this Agreement.

11. NO BENEFIT TO ARISE TO LOCAL EMPLOYEES

No member, officer, or employee of City, or their designees or agents, and no public official who exercises authority over or has responsibilities with respect to the Agreement during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any agreement or sub-agreement, or the proceeds thereof, for work to be performed in connection with the services performed under this Agreement.

12. COVENANT AGAINST DISCRIMINATION

Consultant covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that in the performance of this Agreement there shall be no discrimination against or segregation of, any person or group of persons on account of any impermissible classification including, but not limited to, race, color, creed, religion, sex, marital status, sexual orientation, national origin, or ancestry.

13. NONLIABILITY OF CITY OFFICERS AND EMPLOYEES

No officer, official, employee, agent, representative, or volunteer of the City shall be personally liable to the Consultant, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Consultant or to its successor, or for breach of any obligation of the terms of this Agreement.

14. NOTICES

Any notices which either party may desire to give or may be required to give to the other party under this Agreement must be in writing and may be given either by (a) personal service, or (b) delivery by a reputable document delivery service, such as but not limited to, Federal Express, which provides a receipt showing date and time of delivery, or (c) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by notice:

If to City: City of Duarte
 City Manager's Office
 1600 Huntington Drive
 Duarte, CA 91010

If to Consultant: Name
 Company Name (If applicable)

Address

15. GOVERNING LAW; ATTORNEY'S FEES; LITIGATION MATTERS

The internal laws of the State of California, without regard to principles of conflicts of laws, shall govern the interpretation of this Agreement. In addition to any other rights or remedies, either party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement. Notwithstanding anything in this Agreement to the contrary, in no event shall Consultant be entitled to economic or consequential damages or to punitive damages. In the event of any litigation arising from or related to this Agreement, the prevailing party shall be entitled to recover all reasonable costs incurred, including staff time, court costs, attorney fees, expert witness fees, and other related expenses. The Municipal and Superior Court of the County of Los Angeles shall have exclusive jurisdiction over any litigation between the parties hereto concerning this Agreement. Service of process on City shall be made in the manner required by law for service on a public entity. Service of process on Consultant shall be made in any manner permitted by law and shall be effective whether served inside or outside of California.

16. RIGHTS AND REMEDIES ARE CUMULATIVE; AND WAIVER

- A. Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.
- B. No delay or omission in the exercise of any right or remedy by a non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. A party's consent to or approval of any act by the other party requiring the party's consent or approval shall not be deemed to waive or render unnecessary the other party's consent to or approval of any subsequent act. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

17. SEVERABILITY

In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder unless the invalid provision is so material that its invalidity deprives either party of the basic benefit of their bargain or renders this Agreement meaningless.

18. INTERPRETATION; ENTIRE AGREEMENT

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply. This Agreement contains the entire understanding between the parties relating to the obligations of the parties

described in this Agreement. All prior or contemporaneous agreements, understandings, representations, and statements, oral or written, are merged into this Agreement and shall be of no further force or effect.

19. EXECUTION OF CONTRACT

The persons executing this Agreement on behalf of each of the parties hereto represent and warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) that entering into this Agreement does not violate any provision of any other Agreement to which said party is bound.

20. EFFECTIVE DATE

The Effective Date of this Agreement shall be the date set next to the signature of the City Manager below, which date shall be inserted into the preamble of this Agreement.

[end –signature page follows]

IN WITNESS WHEREOF, the parties hereto have executed and entered into this Agreement as of the Effective Date.

<p>CITY OF DUARTE</p>	<p>CONSULTANT: Name /Company Name OUTREACH COORDINATOR</p>
<p>By: _____ Darrell George, City Manager</p>	<p>By: _____ Name</p>
<p>Date: _____</p>	<p>Date: _____</p>
<p>ATTEST:</p> <p>_____</p> <p>Marla Akana, City Clerk</p>	
<p>APPROVED AS TO FORM: RUTAN & TUCKER, LLP</p> <p>_____</p> <p>Dan Slater, City Attorney</p>	

EXHIBIT "A"

SCOPE OF SERVICES

OUTREACH COORDINATOR SERVICES

SCOPE OF SERVICES

Services which are normal and customary in the industry, but not limited to: Work closely with the City of Duarte's Crime Prevention Specialist and Director of Public Safety Services to identify and recruit gang impacted and formerly incarcerated African-American and Latino males and females in the Duarte and surrounding area; Work closely with Flintridge Center staff to refer potential candidates to social services including the Apprenticeship Preparation Program (APP); Cultivate a trusting relationship with participants, provide job leads, refer them to services and resources, and help them to navigate the system so that they can be successful in their job search and reintegration back into the community; Coordinate the delivery of a periodic resource fair for the formerly incarcerated in the Duarte community; Identify and form relationships with organizations that provide services to formerly incarcerated individuals and invite them to participate in the Duarte resource fair and the monthly Pasadena/Altadena Community Team (PACT) Resource Fair; Attend council meetings and other civic/special events, as requested by the Crime Prevention Specialist.

EXHIBIT B

PAYMENT RATE & TERMS

- A. The City of Duarte shall pay biweekly installments of _____ (\$00) toward the Total Compensation. Invoices for this monthly installment shall be submitted to City by Consultant on the first of each month, commencing on April 1, 2014, along with an itemized invoice of reimbursable expenses incurred in the prior month together with appropriate documentation for such reimbursable expenses. Payment for reimbursable expenses shall be subject to the reasonable approval of the City.

Recording Requested By &
When Recorded Return To:

City of Duarte
Attn: City Clerk
1600 Huntington Drive
Duarte, CA 91010

(Space Above For Recorder's Use)
(Exempt from Recording Fee per Gov. Code § 27383)

*Note to Recorder:
Recording Per Gov. Code § 27281.5
and Civil Code §1468*

**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR REAL
PROPERTY INCLUDING SETTLEMENT AGREEMENT**

**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR REAL
PROPERTY INCLUDING SETTLEMENT AGREEMENT**

This **DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR REAL PROPERTY INCLUDING SETTLEMENT AGREEMENT** (hereafter "**Agreement**") is entered into as of March 25, 2014 ("**Effective Date**"), by and between **AMERICASIA INVESTMENT LLC**, a California limited liability company ("**Owner**") and the **CITY OF DUARTE**, a municipal corporation (hereafter "**City**"). City and Owner may sometimes in this Agreement be individually referred to as a "**Party**" and collectively referred to as the "**Parties**." This Agreement is entered into with reference to the following facts:

RECITALS:

A. Owner is the owner of fee title to that certain real property located at 1000 Las Lomas Road, Duarte California, 91010, commonly known as the Rancho Duarte Golf Course which is legally described in Exhibit "A" (hereafter, the "**Golf Course Property**") attached hereto and by this reference incorporated herein.

B. City is the owner of fee title to that certain property which is a public street commonly known as Rancho Road that abuts the Golf Course Property running east to west along the southern border of the Golf Course Property (hereafter the "**City-Owned Rancho Road Property**"), which is legally described in Exhibit "B" attached hereto and by this reference incorporated herein.

C. In December 1964, the City issued a Conditional Use Permit to Canyon Park Development Company for the creation and operation of a Class III Landfill located on property formerly known as the Canyon Park Landfill, located at 1121 Fish Canyon Road, in the City of Duarte, California 91010 (hereafter the "**Landfill Site**").

D. From on or about March 1, 1965 through approximately 1971, inert waste, ordinary refuse, garbage and rubbish were believed to have been accepted for disposal at the Landfill Site. The Landfill Site was closed in 1971, but minor quantities of inert materials continued to be deposited in the Landfill Site until approximately 1975.

E. On or about March 26, 1974, the City requested the California Regional Water Quality Control Board, Los Angeles Region (hereafter "**RWQCB**") to conduct an investigation into the Landfill Site to determine the safety of the landfill operations.

F. On or about June 5, 1975, the RWQCB concluded that the landfill operations conducted by Canyon Park Development Company were being conducted in accordance with the requirements prescribed by the RWQCB, as set forth in Resolution No. 61-38, approved by the RWQCB in August of 1961. On this same date, the RWQCB issued recommendations to address the migration of landfill gas (hereafter "**LFG**") on the Landfill Site and in the surrounding areas.

G. As of July 1978, the Landfill Site was, and until February 1, 2012, the date when all redevelopment agencies in the State of California were dissolved pursuant to Assembly Bill 26 from the 2011-2012 First Extraordinary Session of the Legislature signed into law by

Governor Brown and effective June 28, 2011, as modified by the California Supreme Court pursuant to its opinion issued on December 29, 2011 in the case *California Redevelopment Association et al. v. Matosantos et al.* (2011) 53 Cal.4th 231 (“**ABx1 26**”), was within a redevelopment project area of the Redevelopment Agency of the City of Duarte, a public body, corporate and politic (“**Agency**”), which project area was known as the Duarte Merged Redevelopment Project Area (“**Project Area**”) as delineated in that certain Duarte Merged Redevelopment Plan (“**Redevelopment Plan**”). In July of 1978, the Agency purchased the Landfill Site to effectuate the recommendations of the RWQCB regarding the migration of LFG and to allow for the development of a portion of the Project Area by Kaufman and Broad Homes, Inc. or a related or affiliated entity thereof (hereafter the “**Project**”). The Project provided for the construction of the Rancho Duarte Golf Course on the Golf Course Property over the Landfill Site and the construction of several residential dwellings around the perimeter of the Landfill Site.

H. The City required the developer of the Project to install plastic membrane barriers under each home in the Project to help protect such residential dwellings from the intrusion of LFG.

I. Storm water and other water runoff from Rancho Road was expressly designed to drain onto the Golf Course Property to be drained through certain grated inlets on the Golf Course Property located adjacent to Rancho Road and into underground pipes on the Golf Course Property to take water to other storm drain pipes connected at the perimeter of the Golf Course Property. These drainage facilities on the Golf Course Property were also designed to drain waters on the Golf Course Property from sources other than runoff from Rancho Road. The foregoing described drainage facilities on the Golf Course Property are hereinafter referred to as the “**Golf Course Rancho Road Adjacent Drainage Facilities.**”

J. From 1979 to 1980, a perimeter gas collection system was installed on the Landfill Site. The perimeter gas collection system was comprised of a series of gas extraction wells connected to a piping system to transport the collected gas to a blower-burner station (hereafter “**Perimeter System**”).

K. In November of 1980, the Agency entered into an agreement with Watson Energy Systems (hereafter “**Watson**”) for Watson to install a second gas collection system in the interior of the Landfill Site consisting of another series of gas extraction wells (hereafter “**Interior System**”). The Interior System became operational in 1982. The Perimeter System and the Interior System are sometimes hereafter referred to collectively as the “**LFG Migration Systems**”.

L. In 1994, the Agency sold the Golf Course Property to a private party who assumed responsibility for the operation and maintenance of the LFG Mitigation Systems, as well as the operation of the golf course including maintenance of all of the drainage facilities on the Golf Course Property, including the drainage facilities designed to collect and drain runoff from Rancho Road. From and after the sale of the Golf Course Property by the Agency, neither the City nor the Agency have had any involvement in, or obligation for, the operation or maintenance of the LFG Mitigation Systems, the drainage facilities on the Golf Course Property, or any other facilities located on the Golf Course Property.

M. On or about October 24, 2006, the former California Integrated Waste Management Board (hereafter this agency and its successor are referred to as the “State”) issued an Interim Report of Field Activities to the Los Angeles County Department of Public Health, Solid Waste Local Enforcement Program, also known as the Solid Waste Local Enforcement Agency (hereafter “LEA”), stating that there was an indication of off-site LFG migration into soils adjacent to the Golf Course Property, particularly in the areas North and Northeast of said property.

N. On or about April 6, 2010, after issuing a series of modifications to the then-existing Abatement Order against KUA Industry, wherein KUA Industry was directed to perform various work and monitoring relating to the LFG Mitigating Systems, the South Coast Air Quality Management District (“SCAQMD”) issued a further modification to the Abatement Order requiring KUA Industry to “no later than April 30, 2010 commence construction of the system authorized under Permit to Construct Application No. 475738 and complete construction no later than December 31, 2010,” *i.e.*, to install a new gas collection system on the Golf Course Property, which requirement had not been complied with by KUA Industry (“SCAQMD Abatement Order”).

O. On or about December 31, 2008, the City issued a Notice of Public Nuisance and Order of Abatement (“City Nuisance Abatement Order”) to the then-owner and the then-operator of the Golf Course, *i.e.*, U.S. Kuil, Inc. (“U.S. Kuil”), the owner at the time, and KUA Industry, Inc. (“KUA”), the operator at the time, pursuant to Chapter 9.32 of the Duarte Municipal Code (“DMC”), based on the City’s determination that a public nuisance exists on the Golf Course Property due to the deficient LFG Mitigation Systems and U.S. Kuil and KUA’s lack of maintenance of the Golf Course Rancho Road Adjacent Drainage Facilities. The City ordered this former owner and operator (hereafter, collectively, “KUA”) to take all reasonable steps necessary to abate such nuisance. In accordance with DMC section 9.32.030(d), KUA filed a Notice of Appeal appealing the determination that a public nuisance existed. This Appeal was heard by the Honorable James L. Smith (Ret.) (“Judge Smith”) in four days of hearings occurring over a thirty-day period, *i.e.*, on May 12, May 19, June 2 and June 9, 2009.

P. On or about September 18, 2009, Judge Smith issued an Order (“Judge Smith’s Order”) affirming the City Nuisance Abatement Order, and finding that a nuisance existed on the Golf Course Property due to the actual and threatened off-site migration of methane gas and the problems with the Golf Course Rancho Road Adjacent Drainage Facilities, ordering abatement off the nuisance, and awarding the City its fees and costs in pursuing the matter totaling \$188,458.18. KUA appealed Judge Smith’s Order to the Duarte City Council. The City Council thereafter affirmed Judge Smith’s Order in its entirety.

Q. In or about October of 2009, KUA filed a lawsuit challenging the City Nuisance Abatement Order, Judge Smith’s Order, and determinations of the City Council, which lawsuit KUA voluntarily dismissed on July 23, 2010, and with the lawsuit being dismissed by the Court on or about that date. With the dismissal of the KUA lawsuit, the Judge Smith’s Order became a final binding determination which by its terms is applicable to KUA and all future owners of the Golf Course Property. On or about November 23, 2010, the court awarded the City an additional \$30,849.91 in attorney fees and costs. The total awarded attorney fees and costs are \$219,308.09. Interest accrues on the outstanding unpaid attorney fees and costs at 10% per

annum dating from the date of each portion of the total award of attorney fees and costs, which calculates to \$60.08 per day for each portion of the total award of attorney fees and costs. The total awarded attorney fees and costs of \$219,308.09, plus accruing interest until full payment of the \$219,308.09 and all accrued interest is paid, is referred to herein as the “**City’s 2009-2010 Nuisance Abatement Costs.**”

R. On or about August 11, 2010, following one or more transfers of ownership of the Golf Course Property, AMG Duarte, LLC, a California limited liability company (“**AMG**”), with actual or constructive knowledge of the foregoing history of the Golf Course Property and the existence of the SCAQMD Abatement Order and Judge Smith’s Order, purchased the Golf Course Property and became responsible for the operation and maintenance of the Golf Course Property including but not limited to the LFG Mitigation Systems and the drainage systems and facilities including the Golf Course Rancho Road Adjacent Drainage Facilities, as well as the operation and management of all other Golf Course Property activities.

S. In or about July, 2008, the City submitted an Application to the California Solid Waste Cleanup Grant Program requesting seven hundred and fifty thousand dollars (\$750,000) in “**Matching Grant Funds**” which the State approved. In October of 2008, the State and the City entered into a Grant Agreement which provided for the terms for the payment of the Matching Grant Funds to the City, including an expiration date of May 15, 2011. The Matching Grant Funds were permitted to be used to install a new gas collection, control and mitigation system (“**New GCCM System**”) on the Golf Course Property in accordance with approved design plans, (ii) reconstruction of Rancho Road including new drainage facilities to take runoff from Rancho Road to the property line separating Rancho Road from the Golf Course Property (“**Rancho Road Work**”), and construction and installation of certain new drainage facilities on the Golf Course Property to replace the existing Golf Course Rancho Road Adjacent Drainage Facilities in accordance with approved design plans (“**New Golf Course Rancho Road Adjacent Drainage Facilities**”).

T. City, with then-owner AMG’s acknowledgment and approval, and the approval of the State, commenced and completed a public works project entitled “Rancho Road Street & Storm Drain Improvement Project, Project 08-1,” (hereinafter, “**Project 08-1**”) which describes the Rancho Road Work and the New Golf Course Rancho Road Adjacent Drainage Facilities, which the City paid for with eligibility for 50% reimbursements from the Matching Grant Funds. Consistent with and to effect implementation of Project 08-1, then-owner AMG and City executed and recorded that certain Construction License, Grants of Easements, and Declaration of Covenants, Conditions, and Restrictions for Real Property, dated January 24, 2011, and recorded on February 20, 2011, as Instrument No. 20110222698 in the Office of the Los Angeles County Recorder. That instrument recited that the payment of the City’s 2009-2010 Nuisance Abatement Costs was the obligation of then-owner AMG and all subsequent owners of the Golf Course Property.

U. Subsequent to the completion of Project 08-1, then-owner AMG determined, without agreement of the City, that it would not install a New GCCM System and as a result of AMG’s action the Matching Grant Funds available for that installation lapsed and are no longer available. City had no obligation and has no obligation to install a New GCCM System or to maintain the existing GCCM system on the Golf Course Property or elsewhere.

V. On multiple occasions, including but not limited to letters to then-owner AMG, dated April 4, 2011, and January 19, 2012, City notified then-owner AMG that AMG owed City the City's 2009-2010 Nuisance Abatement Costs plus accrued interest. AMG agreed to make partial payment in settlement generally consistent with the terms of this Agreement but failed to execute the agreement and no payment was ever received by the City from AMG.

W. In April 2013, AMG sold the Golf Course Property to Owner. City, by letter to Owner dated on or about June 7, 2013, initiated a demand for payment from Owner of the City's 2009-2010 Nuisance Abatement Costs plus accrued interest thereon. City has asserted that Owner acquired the Golf Course Property with actual or constructive knowledge of the foregoing history of the Golf Course Property including the existence of the SCAQMD Abatement Order and Judge Smith's Order, the LFG Mitigation Systems, and the drainage systems and facilities including the Golf Course Rancho Road Adjacent Drainage Facilities, as well as the obligation to pay the City's 2009-2010 Nuisance Abatement Costs plus accrued and continuing interest, and that if such amount is not paid in full, City is entitled, pursuant to Duarte Municipal Code Section 9.32.130, to file a lien against the Golf Course Property for the City's 2009-2010 Nuisance Abatement Costs, plus accrued interest, which amount shall continue to accrue interest at the rate of ten percent (10%) per annum. Owner disputes that it has any actual or constructive knowledge of the history of the Golf Course Property and it was obligated to pay for the City's 2009-2010 Nuisance Abatement Costs and interest thereon and has asserted such costs are the liability of one or more prior owners of the Golf Course Property.

X. To compromise and settle the issue of whether Owner owes City the City's 2009-2010 Nuisance Abatement Costs plus interest, Owner agrees to pay City, and City agrees to accept from Owner, in compromise and settlement, the sum of Two Hundred Thousand Dollars (\$200,000.00) ("**Settlement Amount**"), payable in four equal installments of Fifty Thousand Dollars (\$50,000.00) each (each an "**Installment Payment**"), with the first Installment Payment due and payable within five (5) business days after City's notice to Owner or Owner's legal counsel of City Council approval of this Agreement (which shall be the Effective Date of this Agreement), and the second, third, and fourth Installment Payments due, respectively, on the second, third, and fourth annual anniversary date of the Effective Date. As long as Owner timely pays each Installment Payment, City agrees to forego, and Owner shall not owe, the remaining amount owing of the City's 2009-2010 Nuisance Abatement Costs plus accrued and continuing interest, and City further agrees to not record a lien against the Golf Course Property for the City's 2009-2010 Nuisance Abatement Costs, plus accrued and continuing interest, or any part thereof. If Owner fails to timely pay any Installment, the entire amount of the City's 2009-2010 Nuisance Abatement Costs and accrued and continuing interest at the rate of ten percent (10%) per annum, less any Installment Payment(s) made ("**Lien Amount**"), shall be immediately due and payable and City shall be permitted to record a lien against the Golf Course Property for the Lien Amount plus continuing costs as further described in this Agreement.

Y. Owner and City enter into this Agreement to effect the agreement of City and Owner with respect to the City's 2009-2010 Nuisance Abatement Costs and interest thereon as set forth in the immediately preceding Recital.

Z. Owner and City intend that this Agreement be binding on Owner, as the current owner of the Golf Course Property, and binding on all future owners of the Golf Course

Property, and shall be a covenant, condition, and restriction upon such property pursuant to Government Code Section 27281.5 and Civil Code Section 1468 for the benefit of the City until the Settlement Amount has been paid in full or, if Owner shall fail to timely make an Installment Payment, until the Lien Amount shall have been paid in full. Owner consents to the recordation of this Agreement against the Golf Course Property for the benefit of the City and the City-Owned Rancho Road Property.

AGREEMENT:

NOW, THEREFORE, in consideration of the foregoing Recitals and the terms, and conditions set forth herein, and for other good and valuable consideration, receipt of which is hereby acknowledged, the Parties agree as follows:

1. INCORPORATION OF RECITALS AND EXHIBITS

The above-referenced Recitals to this Agreement are hereby incorporated in their entirety into this Agreement, and are included as terms of this Agreement.

2. APPROVAL OF THIS AGREEMENT; OWNER'S PAYMENT OF INSTALLMENT PAYMENTS; EFFECT OF OWNER'S FAILURE TO TIMELY PAY INSTALLMENT PAYMENTS

(a) Approval of this Agreement

(1) Owner shall sign this Agreement first and shall deliver three (3) signed originals of this Agreement to the City. The City Council shall consider approval of this Agreement within sixty (60) days of Owner's delivery to City of Owner's three (3) signed originals of this Agreement. Nothing herein is a representation, warranty, or guaranty that the City Council shall approve this Agreement, as the City Council reserves full discretion to review and consider this Agreement at a regular, adjourned regular, or special meeting duly noticed in accordance with the Ralph M. Brown Act (Gov. Code §54950 *et seq.*).

(2) If the City Council fails to approve this Agreement within such sixty (60) day period, this Agreement shall automatically, and without any further action of the Parties, be null and void and of no force or effect.

(3) If this Agreement is approved by the City Council and signed by the Mayor following such approval, City or the City of Attorney shall deliver to Owner or Owner's legal counsel notice of the City Council's approval and one (1) fully signed original of this Agreement within five (5) business days of Mayor's signature on this Agreement following City Council approval.

(b) Owner's Delivery to City of First Installment Payment. Owner shall timely deliver the first Installment Payment of Fifty Thousand Dollars (\$50,000.00) in immediately available funds to City within five (5) business days of Owner's receipt of the notice from City of the City Council's approval of this Agreement. Payment to City shall be made by wire transfer, cashier's check, bank check, or other form of payment in immediately available funds. City shall provide Owner with wire instructions by letter delivered in accordance with Paragraph

8(D)(i). Payment by check that is required to “clear” shall not be an acceptable form of payment. Payment by Owner of less than the full amount of the first Installment Payment shall not be acceptable and shall not be accepted by City and shall constitute a default by Owner. If Owner delivers the first Installment Payment to City prior to the Effective Date and the City Council does not approve this Agreement, the City shall return the first Installment Payment amount, without interest, to Owner within seven (7) days after the date of the City Council meeting at which this Agreement was on the City Council agenda and the City Council did not approve this Agreement.

(c) Owner’s Delivery of the Second, Third, and Fourth Installment Payments. Not later than the first, second, and third annual anniversary dates of the Effective Date respectively, Owner shall deliver to City in immediately available funds, the second, third, and fourth Installment Payment of Fifty Thousand Dollars (\$50,000.00) each. Owner shall deliver the second, third, and fourth Installment Payments to City by wire transfer, cashier’s check, bank check, or other form of payment in immediately available funds. City’s provision of the wire instructions provided to Owner pursuant to subparagraph (b) immediately above apply to the Second, Third, and Fourth Installment Payments unless City shall have subsequently delivered new wire instructions to Owner by letter delivered in accordance with Paragraph 8(D)(i). Payment by check that is required to “clear” shall not be an acceptable form of payment. Payment by Owner of less than the full amount of an Installment Payment due shall not be acceptable and shall not be accepted by City and shall constitute a default by Owner. Nothing in this Agreement would restrict Owner from paying the Settlement Amount in full at any time prior to the due date of the fourth Installment Payment.

(d) Effect of Owner’s Timely Payment of Installment Payments on Lien Recordation. If Owner timely pays each and all of the Installment Payments, City agrees to forego and shall not seek to collect from Owner or Owner’s successors-in-interest, and Owner and Owner’s successor-in-interest shall not owe, the remaining amount owing of the City’s 2009-2010 Nuisance Abatement Costs, plus interest, and City further agrees to not record a lien against the Golf Course Property for the City’s 2009-2010 Nuisance Abatement Costs, plus interest, or any part thereof. Upon full and timely payment of all Installment Payments, City shall provide Owner with a Termination of this Agreement and waiver by the City of all claims against Owner and the Golf Course Property arising out of the City’s 2009-2010 Nuisance Abatement Costs plus interest, in a form to be recorded in the Official Records of Los Angeles County, within two (2) weeks from (i) City’s receipt of the fourth Installment Payment from Owner or (ii) the date City receives Owner’s payment of the entire Settlement Amount in full prior to the due date of the fourth Installment Payment.

(e) Effect of Owner’s Failure to Timely Pay an Installment Payment When Due on Lien Recordation; Owner Waiver of Hearing. If Owner fails to timely pay any of the Installment Payments when due, City, in its sole discretion, shall be permitted to record a lien against the Golf Course Property pursuant to Duarte Municipal Code Section 9.32.130 for the full amount of the City’s 2009-2010 Nuisance Abatement Costs and continuing interest at the rate of ten percent (10%) per annum, less the sum of any Installment Payments previously made (“Lien Amount”), until City receives payment in full of the Lien Amount. Owner acknowledges that no hearing as specified in Duarte Municipal Code Sections 9.32.110 and 9.32.120 shall be required prior to recordation of the lien, and Owner forever knowingly and expressly waives and discharges a

right to such hearing and any and all causes of actions, claims, counter-claims, defenses, or otherwise, based on any assertion of City's failure to hold the hearing specified in Duarte Municipal Code Sections 9.32.110 and 9.32.120 prior to recordation of a lien against the Golf Course Property for the Lien Amount subject to the provisions of Paragraph 9(f). The right of City to record the aforescribed lien shall survive the termination of this Agreement by City as set forth in Paragraph 9(f) if Owner defaulted during the term of this Agreement. By placing its initials in the space below, Owner, on behalf of itself and its successors and assigns to the Golf Course Property and any portion thereof, acknowledges that it has received advice of counsel concerning the terms of this subparagraph or has knowingly and voluntarily waived the right to consult with legal counsel concerning the terms of this subparagraph.

OWNER Initials: Y2

(f) Full Payment of All Installment Payments Outstanding Due by Owner At Time of Sale or Upon Financing or Refinancing of the Golf Course Property or Any Portion Thereof. If Owner sells the Golf Course Property or any portion equal to or more than fifty percent (50%) of the interests in the Golf Course Property thereof, Owner shall, concurrently with the close of escrow or recordation of the deed for the transfer of the Golf Course Property or applicable portion specified thereof, shall pay in full all remaining Installment Payments. Similarly, if Owner obtains financing of more than One Million Dollars (\$1,000,000.00) from a lender that records a deed of trust on the Golf Course Property, or refinances any loan secured by the Golf Course Property of more than One Million Dollars (\$1,000,000.00) that exists as of the Effective Date of this Agreement, then concurrent with the closing of such financing or refinancing, Owner shall pay in full all remaining Installment Payments. Upon receipt of full payment of the Settlement Amount (i.e., all outstanding Installment Payments) by City, City shall provide Owner with a Termination of this Agreement in a form to be recorded in the Official Records of Los Angeles County.

(g) Miscellaneous Terms Pertaining to Owner's Obligation to Timely Pay the Installment Payments.

(1) Owner expressly agrees that the due date for any Installment Payment hereunder may be extended from time to time at the City's sole and absolute discretion and that the City may require payment for any such extension and/or accept security in consideration for any such extension or release any security for Owner's obligation to make the Installment Payments, and each and all of them, at its sole and absolute discretion.

(2) No extension of time for payment of any Installment Payment made by agreement by the City with any person now or hereafter liable for the payment of the Installment Payments shall operate to release, discharge, modify, change or affect the original liability of Owner under this Agreement, either in whole or in part.

(3) The obligations of Owner under this Agreement shall be absolute and Owner waives any and all rights to offset, deduct, or withhold any payments due under this Agreement for any reasons whatsoever.

(4) No previous waiver and no failure or delay by City in acting with respect to the terms of this Agreement shall constitute a waiver of any breach, default, or failure or condition under this Agreement or the obligations secured thereby. A waiver of any term of this Agreement or of any of the obligations secured thereby must be made in writing and shall be limited to the express written terms of such waiver.

3. COVENANTS RUN WITH THE LAND

(a) All of the Golf Course Property shall be held, sold, conveyed, hypothecated, encumbered, used, occupied and improved subject to the covenants, conditions, and restrictions set forth herein which are hereby declared to be for the benefit of the City and the City-Owned Rancho Road Property.

(b) The covenants, conditions, restrictions, reservations, and equitable servitudes set forth herein in favor of the City shall run with the Golf Course Property (and each parcel thereof if there be more than one parcel) and shall be binding upon all persons having any right, title or interest in the Golf Course Property, or any part thereof, their heirs, successive owners and assigns, shall inure to the benefit of the City and its respective successors and assigns, and may be enforced by City and its respective successors and assigns.

(c) The covenants, conditions, restrictions, reservations, and equitable servitudes set forth herein in favor of Owner shall run with the City-Owned Rancho Road Property (and each parcel thereof) and shall be binding upon all persons having any right, title or interest in the City-Owned Rancho Road Property, or any part thereof, their heirs, successive owners and assigns; shall inure to the benefit of the Owner and its respective successors and assigns, and may be enforced by Owner and its respective successors and assigns.

(d) All covenants, conditions, restrictions, reservations and equitable servitudes contained in this Agreement, for benefit of City and the City-Owned Rancho Road Property and their heirs, successors, and assigns, including specifically, but without limitation, obligation to timely pay the Installment Payments, shall be covenants running with the land, and shall, in any event, and without regard to technical classification or designation, legal or otherwise, be, to the fullest extent permitted by law and equity, binding for the benefit and in favor of, and enforceable by, City, and its successors and assigns, against Owner, its successors and assigns, including its or their successors-in-interest to the Golf Course Property or any portion thereof.

(e) All covenants, conditions, restrictions, reservations and equitable servitudes contained in this Agreement, for benefit of Owner and its successors and assigns, including specifically, but without limitation, the obligation of City to not record a lien against the Golf Course Property as long as Owner timely pays City the Installment Payments as provided in this Agreement, shall be covenants running with the City-Owned Rancho Road Property and shall, in any event, and without regard to technical classification or designation, legal or otherwise, be, to the fullest extent permitted by law and equity, binding for the benefit and in favor of, and enforceable by Owner and its heirs, successors, and assigns, including its or their successors-in-interest to the Golf Course Property or any portion thereof.

(f) In amplification and not in restriction of the provisions set forth hereinabove, it is intended and agreed that the City shall be deemed a beneficiary of the agreements and the covenants in favor of City set forth in this Agreement, for and in its own right, including for the benefit of the City-Owned Rancho Road Property, and for the purposes of benefiting the interests of the community and other property adjacent to, or in the vicinity of the Golf Course Property and the City-Owned Rancho Road Property.

(g) All covenants without regard to technical classification or designation shall be binding for the benefit of City and such covenants shall run in favor of City for the entire period during which such covenants shall be in force and effect, without regard to whether the City remains an owner of the City-Owned Rancho Road Property.

(h) This Agreement is further designed to create equitable servitudes and covenants appurtenant to the City-Owned Rancho Road Property and running with the Golf Course Property in accordance with the provisions of Civil Code Section 1468. City is deemed the beneficiary of the terms and provisions of this Agreement and of the covenants running with the land, for and in its own right and for the purposes of protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit this Agreement and the covenants running with the land have been provided. Owner hereby declares its understanding and intent that the burden of the covenants set forth herein touches and concerns the land. Owner hereby further declares its understanding and intent that the benefit of such covenants touches and concerns the land by benefiting and enhancing and increasing the enjoyment and use of the City-Owned Rancho Road Property by the citizens of the City and by furthering the health, safety, and welfare of the residents of the City. City shall have the right to designate other or additional real property as benefited by the covenants contained herein during the term of this Agreement (“**City Benefited Public Property**”). Owner agrees to cooperate in executing any document necessary to designate such other real property as City Benefited Public Property in lieu of or in addition to the City-Owned Rancho Road Property. Owner further agrees that in the event the City no longer owns or has easement rights in all or any part of the City-Owned Rancho Road Property or other designated City Benefited Public Property, (1) the covenants, conditions, restrictions, reservations, and equitable servitudes set forth in this Agreement shall continue to be binding upon all persons having any right, title, or interest in the Golf Course Property, or any part thereof, their heirs, successive Owners, and assigns, and (2) Owner and its successors and assigns, including all successors in interest to the Golf Course Property, shall be estopped from arguing that the covenants, conditions, restrictions, reservations, and equitable servitudes set forth herein are unenforceable.

4. CIVIL CODE SECTION 1542

The Parties, for themselves, and for each and all of their respective successors in interest, assigns, heirs, executors, agents, representatives, consultants, transferees, predecessors, employees, affiliates, officers, directors, partners, co-venturers, attorneys, insurers, and administrators, expressly, knowingly, and voluntarily waive (except as otherwise expressly provided for in this Agreement), to the fullest extent permitted by law, all provisions, rights and benefits conferred upon them by the provisions of section 1542 of the California Civil Code, which provides as follows, but only with respect to the payment of the City’s 2009-2010 Nuisance Abatement Costs and the compromise with respect thereto set forth in this Agreement:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

Notwithstanding the foregoing, nothing stated in this Paragraph 4 or elsewhere in this Agreement shall release or be deemed to release any of the Parties from its executory obligations arising expressly under this Agreement.

By initialing below, each Party has read and understands the nature and effect of the releases given herein and of the waiver of Civil Code Section 1542 and has been advised by legal counsel of the nature and effect of the such releases and waiver or has knowingly chosen not to consult legal counsel in this regard.

OWNER Initials: YZ **CITY Initials:** _____

5. ACCORD AND SATISFACTION

Upon full performance by Owner under this Agreement, this Agreement constitutes an accord and satisfaction as to the amount due by owner for the City's 2009-2010 Nuisance Abatement Costs plus interest.

6. LATER DISCOVERED FACTS

The Parties acknowledge that they may hereafter discover facts different from or in addition to those they now know or believe to be true with respect to the Owner's obligation to pay the City's 2009-2010 Nuisance Abatement Costs plus interest or the amount City claims is the full amount of the City's 2009-2010 Nuisance Abatement Costs plus interest that City believes Owner is obligated to pay. Each of the Parties expressly agree to assume the risk of the possible discovery of additional or different facts, and agree that this Agreement shall be and remain effective in all respects regardless of such additional or different facts.

7. NO OWNER ADMISSION OF LIABILITY

The Parties acknowledge that by paying all of the Installment Payments (i.e., the Settlement Amount in full), Owner is not admitting any liability or responsibility to City for the City's 2009-2010 Nuisance Abatement Costs plus interest and that Owner expressly denies any such liability or responsibility. The Parties acknowledge that the terms set forth in this Agreement are in consideration of a settlement and compromise of the amount City asserts is due from Owner for the City's 2009-2010 Nuisance Abatement Costs plus interest.

8. ADDITIONAL REPRESENTATIONS AND WARRANTIES; INDEMNITY

(a) Each Party represents and warrants to each other Party that it has not assigned or transferred or purported to assign or transfer to any person, firm, entity, or corporation any claim, demand, right, damage, liability, debt, account, action, or cause of action, in any manner with

respect to the City's 2009-2010 Nuisance Abatement Costs plus interest as described herein. The Parties agree to indemnify and hold one another harmless against any claim, demand, right, damage, debt, liability, account, action, cause of action, cost or expense, including expert witness fees and attorneys' fees actually paid or incurred, arising out of or in connection with any such transfer or assignment or any such purported or claimed transfer or assignment in violation of this representation and warranty.

(b) Each Party represents and warrants to each other Party that it has the ability to carry out the obligations assumed and promised hereunder, and is not presently aware of any existing or pending event which would, or could, hamper, hinder, delay, or prevent its timely performance of said obligations.

(c) Owner represents and warrants to City that Owner is the owner of the fee interest in the Golf Course Property as of the Effective Date and that no other person or entity owns any portion of the Golf Course Property as of the Effective Date.

(d) Owner agrees to and shall indemnify, defend, and hold harmless the City and its elected and appointed officials, officers, employees, agents, and representatives, from and against any and all claims, demands, lawsuits, costs, fees, charges, judgments, awards, expert witness fees, attorney fees, and litigation costs, arising out of or related to any assertion, allegation, cause of action, or any attempt, effort, or undertaking, by Owner, in any form whatsoever, to seek reimbursement, contribution, offset, refund, compensation, damages, or settlement from any person or entity, including but not limited to from any prior owner of or predecessor-in-interest to the Golf Course Property or any portion thereof, for the Settlement Amount (or any Installment Payment) or for the Lien Amount.

9. GENERAL PROVISIONS

(a) Entire Agreement; Amendment. This instrument contains the entire agreement between the Parties on the matters addressed in this Agreement, and all negotiations and agreements between the Parties or their agents with respect to this transaction are merged herein. No amendment hereto shall be binding unless such amendment is in writing and signed by the Parties (or their successors-in-interest) hereto.

(b) No Broker's Fee or Finder's Fee. The Parties hereto each covenant to the other that no broker or finder is due any fee or commission as a result of this Agreement. The Parties hereto each indemnify and hold each other Party hereto harmless from and against any claim brought by any person asserting such person is due a broker or finder fee or commission arising from the acts of omissions of such Party. This subparagraph (b) shall survive the termination of this Agreement.

(c) Waivers. Any oral representation, modification, or waiver concerning this Agreement shall be of no force or effect except to the extent made in a subsequent agreement in writing, and signed by all the Parties or their successors, assigns, or successors-in-interest to the Property where such successors may exist. No delay or omission in the exercise of any right or remedy by a non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. A Party's consent to or approval of any act by the other party requiring the Party's

consent or approval shall not be deemed to waive or render unnecessary the other party's consent to or approval of any subsequent act.

(d) Time of the Essence. Time is of the essence in the performance of the Parties' respective obligations herein contained.

(e) Severability. The invalidity of any provision in this Agreement, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof. The Parties declare that the provisions of this Agreement are severable.

(f) Defaults; Termination; Limitation on Remedies. If Owner fails to timely pay any Installment Payment when due, or the Settlement Payment in full, in accordance with the terms of this Agreement, such failure shall constitute a default and City, after providing Owner with written notice of default and providing Owner with fifteen (15) days to cure the default by paying City the amount due and if Owner fails to make such full payment due before end of the fifteen (15) day cure period, may terminate this Agreement by written notice of termination to Owner, but the provisions of this Agreement that expressly survive termination shall continue to be in full force and effect. If City fails to timely deliver the fully signed original of this Agreement after City Council approval of, and the Mayor's signing, in accordance with the terms of this Agreement, such failure shall constitute a default and Owner may terminate this Agreement by written notice of termination to City, but the provisions of this Agreement that expressly survive termination shall continue to be in full force and effect. If, after full performance by the Parties of the terms of this Agreement, City records a lien on the Golf Course Property for the City's 2009-2010 Nuisance Abatement Costs plus interest, such action constitutes a breach of this Agreement and Owner's sole and exclusive remedy shall be an action for specific performance or injunctive relief. Notwithstanding any term or provision of this Agreement to the contrary, in no event shall Owner, during the effectiveness of this Agreement, or after termination of this Agreement for any reason, be entitled to damages from City for economic loss, lost profits, consequential damages, punitive damages, or any other monetary, economic, or consequential damages of any kind or nature, arising out of or related to this Agreement.

(g) Attorney's Fees; Litigation Costs; Venue. In the event any action is brought by any Party to interpret or enforce the terms of this Agreement, the prevailing Party in any such action shall be entitled to its expert witness fees and costs, and its reasonable attorneys' fees and litigation costs and expenses, including those incurred for discovery and on any appeal, and including those relating to any post-judgment collection, in addition to any and all other relief to which the prevailing Party may otherwise be entitled. The Superior Court of the State of California in and for the County of Los Angeles shall have exclusive jurisdiction over any litigation between the Parties hereto arising out of or related to this Agreement, or, where appropriate, the United States District Court in and for the Central District of California.

(h) Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of all the Parties and their respective successors, assigns, and, specifically, to their respective successors-in-interest to the Property.

(i) Interpretation. This Agreement and the provisions contained herein shall not be construed or interpreted for or against any Party hereto because of the authorship of this Agreement or any other rule of construction which might apply.

(j) Legal Advice. Each Party represents and warrants to each other Party to this Agreement that such Party was represented by legal counsel who explained the effects of entering into this Agreement.

(k) Third Party Beneficiaries. Nothing expressed or contained in this Agreement is intended to or shall be construed to give any person, other than the Parties and their respective heirs, successors, and assigns, any legal or equitable right, remedy, or claim under or in respect to this Agreement or any of the provisions hereof, and this Agreement is intended to be for the sole and exclusive benefit of the Parties and their respective heirs, successors, and assigns, and for the benefit of no other person or entity; provided, however, that notwithstanding the foregoing, the Successor Agency to the Dissolved Redevelopment Agency of the City of Duarte is an intended, express third party beneficiary of City to this Agreement but with no obligations or liability hereunder.

(l) Notices.

(i) Any notices that City may desire to give or may be required to give to Owner under this Agreement, including but not limited to the delivery of the fully signed original of this Agreement as set forth in Paragraph 2(a), must be in writing and may be given by (A) personal delivery, (B) delivery by a reputable same-day or overnight document delivery service that provides a receipt shown date and time of delivery, or (C) mailing with the United States Postal Service, certified mail, postage prepaid, return receipt requested. Notices delivered by personal delivery and by document delivery consistent with the foregoing requirements shall be effective upon receipt, and if Owner or an employee of Owner or person apparently associated with Owner is not at Owner's address as of the third attempted delivery, the notice may be left at the door and deemed delivered as of that date and time provided that a copy of the same notice is mailed to Owner via the United States Postal Service, certified mail, postage prepaid, return receipt requested. Notices delivered by mail shall be effective on the earlier of (x) actual receipt or (y) the third business day (which excludes a Saturday, Sunday, and legal holidays) following deposit in the United States mail. Notices by City to Owner shall be addressed as set forth in subparagraph (iii) or at any other address as that Owner may later designate to City by notice in writing complying with subparagraph (ii).

(ii) Any notices that Owner may desire to give or may be required to give to City under this Agreement must be in writing and may be given either by (A) personal delivery; (B) delivery by a reputable same-day or overnight document delivery service that provides a receipt showing date and time of delivery, or (C) mailing with the United States Postal Service, certified mail, postage prepaid, return receipt requested. Notices delivered by personal delivery and by document delivery consistent with the foregoing requirements shall be effective upon receipt. Special provisions apply to personal delivery or delivery by document delivery of notices to the City, as follows: (W) notices may only be delivered on a day that Duarte City Hall is open for business to the general public, which as of the Effective Date of this Agreement is Monday through Thursday between the hours of 8:00 a.m. and 6:00 p.m., except for City or State

or federal holidays; and (X) all notices shall be delivered directly to the City Manager, Assistant City Manager, Deputy City Manager, City Clerk, or to the City Receptionist (if on duty), and to no other person. Notices delivered by mail shall be effective on the earlier of (Y) actual receipt or (Z) the third business day (which, as applied to the City, excludes a Friday, Saturday, Sunday, and legal holidays) following deposit in the United States mail. Notices by Owner to City shall be addressed as set forth in subparagraph (iii) or at any other address as that City may later designate to Owner by notice in writing complying with subparagraph (i).

(iii) Notices shall be addressed to the address of the party as set forth below:

If to City: City of Duarte
Attn: City Manager
1600 Huntington Drive
Duarte, California 91010

If to Owner: Americasia Investment LLC
Attn: Yaxin Zheng
1000 Las Lomas Road
Duarte, CA 91010

(m) Days. As used in this Agreement, the term “business days” as applied to City shall mean any day that is not a Friday, Saturday, Sunday, or legal holiday. As used in this subparagraph, the term “business days” as applied to Owner shall mean any day that is not a Saturday, Sunday, or legal holiday.

(n) Governing Law. This Agreement shall be governed by and construed according to the internal laws of the State of California without regard to principles of conflicts of law.

(o) Further Assurances. The Parties hereto agree to perform their obligations hereunder in “good faith,” and to execute all documents and take all reasonable action necessary to effectuate the terms of this Agreement.

(p) Nondiscrimination. Owner covenants that, by and for itself and its respective heirs, executors, assigns, and all persons claiming under or through them, that in the performance of this Agreement there shall be no discrimination against or segregation of, any person or group of persons on account of any impermissible classification including, but not limited to, race, color, creed, religion, sex, marital status, sexual orientation, national origin, or ancestry.

(q) No Liability of Public Officials. No officer, official, employee, agent, representative, or volunteer of the City shall be personally liable to Owner or any successors-in-interest, in the event of any default or breach by City, or for any amount which may become due to Owner or to its successor in interest, or for breach by City of any obligation of the terms of this Agreement. This subparagraph (q) shall survive the termination of this Agreement.

(r) City’s Retention of Police Powers. Nothing in this Agreement shall be construed to limit or in any way affect the right of the City to enforce its laws and regulations pursuant to the City’s police powers; provided, however, the City expressly agrees to not record a lien against the Golf Course Property for the City’s 2009-2010 Nuisance Abatement Costs plus

interest, or any portion thereof, upon timely and full performance by Owner of the terms of this Agreement.

(s) Additional Representations and Warranties. Each Party hereto represents and warrants to the other Party hereto that (i) said party is duly organized and existing, (ii) the persons signing this Agreement are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, said party is formally bound to the provisions of this Agreement, and (iv) that entering into this Agreement does not violate any provision of any other Agreement to which said Party is bound. This subparagraph (s) shall survive the termination of this Agreement.

(t) Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

(u) Effective Date. The Effective Date of this Agreement shall be date of the Mayor's signature on this Agreement on behalf of the City as set forth below, which date shall be inserted into the preamble of this Agreement.

(v) Consent to Recordation. Owner consents to the recordation of this Agreement against the Golf Course Property in the Official Records of Los Angeles County. City consents to the recordation of this Agreement against the City-Owned Rancho Road Property in the Official Records of Los Angeles County.

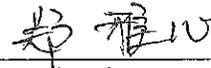
[end—signature page follows]

IN WITNESS WHEREOF, the Parties have executed and entered into this Agreement as of the Effective Date.

“OWNER”

AMERICASIA INVESTMENT LLC, a California limited liability company

DATE: 3/3/2014

By:  Yaxin Zheng
Yaxin Zheng
Its: Manager/Member

“CITY”

CITY OF DUARTE, a municipal corporation

DATE: _____

By: _____
Elizabeth Nowak Reilly, Mayor

ATTEST:

Marla Akana, City Clerk

APPROVED AS TO FORM:

Dan Slater, City Attorney

[end of signatures—notary pages and exhibits follow]

STATE OF CALIFORNIA)

) ss.

COUNTY OF LOS ANGELES)

On March 3, 2014, before me, RITA WAI TUNG WONG, Notary Public, personally appeared YAXIN ZHENG, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) ~~is/are~~ subscribed to the within instrument and acknowledged to me that ~~he/she/they~~ executed the same in ~~his/her/their~~ authorized capacity(ies), and that by ~~his/her/their~~ signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature *Rita Wong* (Seal)



STATE OF CALIFORNIA)

) ss.

COUNTY OF LOS ANGELES)

On _____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

INTERLOCUTORY JUDGMENT UNDER DISTRICT COURT CASE COURT NO. 2715-PH CIVIL, CENTRAL DIVISION, A COPY OF WHICH WAS RECORDED APRIL 19, 1944, AS INSTRUMENT NO. 1186, IN BOOK 20859, PAGE 101, OFFICIAL RECORDS, IN SAID OFFICE OF THE COUNTY RECORDER; THENCE ALONG LAST MENTIONED BOUNDARY, NORTH 79° 50' 40" WEST 60 FEET AND SOUTH 10° 30' 11" WEST 155.43 FEET TO THE NORTHERLY BOUNDARY OF THE LAND DESCRIBED IN THE DEED TO JOHNSON MOTORS, INC., RECORDED DECEMBER 30, 1963, AS INSTRUMENT NO. 1156, IN BOOK D-2303, PAGE 825, OF OFFICIAL RECORDS, IN SAID OFFICE OF THE COUNTY RECORDER; THENCE WESTERLY, NORTHWESTERLY AND WESTERLY ALONG THE NORTHERLY BOUNDARY OF SAID DEED TO JOHNSON MOTORS, INC., TO THE SOUTHERLY PROLONGATION OF THE EASTERLY LINE OF LAS LOMAS AVENUE (84 FEET WIDE) AS SHOWN ON THE MAP OF SAID TRACT NO. 35631; THENCE NORTH 0° 05' 24" WEST ALONG SAID SOUTHERLY PROLONGATION TO THE POINT OF BEGINNING.

EXHIBIT B

LEGAL DESCRIPTION OF THE CITY-OWNED RANCHO ROAD PROPERTY

That portion of land in the City of Duarte, County of Los Angeles, State of California more particularly described as:

Rancho Road as shown on the map of Tract No. 35415 as recorded in Book 926, pages 73 through 77 inclusive of Maps in the office of the County Recorder of said County.

CERTIFICATE OF ACCEPTANCE

This to certify that the interests in real property conveyed by the foregoing **DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR REAL PROPERTY INCLUDING SETTLEMENT AGREEMENT**, from AMERICASIA INVESTMENT LLC, a California limited liability company, to the CITY OF DUARTE, a municipal corporation, is hereby accepted by the undersigned officer of the City of Duarte, on behalf of the City of Duarte, pursuant to authority conferred by Resolution No. 10-31 of the City Council of the City of Duarte adopted on July 27, 2010, and the City of Duarte consents to the recordation of said Agreement by its undersigned duly authorized officer.

CITY OF DUARTE, a municipal corporation

By: _____
Darrell J. George, City Manager

Dated: _____

STATE OF CALIFORNIA)

) ss.

COUNTY OF LOS ANGELES)

On _____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)