

AGREEMENT

THIS AGREEMENT ("Agreement") is made and entered into this 21st day of August 2018 by and between the COUNTY OF FRESNO, a Political Subdivision of the State of California, ("COUNTY"), and ACE Parking Management, Inc., a California corporation,, whose address is 645 Ash Street, San Diego, California 92101, ("CONTRACTOR").

WITNESSETH:

WHEREAS, COUNTY operates certain park facilities located in the County of Fresno (collectively the "Facilities"), which are separately listed and further identified in Section I(A); and

WHEREAS, COUNTY requires special professional services in regards to the Facilities, including but not limited to management, operations, record-keeping, accounting, auditing, revenue control and providing certain limited services, as specified to users of such Facilities; and

WHEREAS, in return for the consideration hereinafter set forth, CONTRACTOR desires to enter into this Agreement to operate and manage the Facilities upon the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions herein contained, the parties hereto agree as follows:

I. CONTRACTOR'S OBLIGATIONS:

A. CONTRACTOR shall operate the vehicle fee collection services at following COUNTY-operated Facilities: Kearney, Lost Lake, Laton-Kingston, Skaggs, and Avocado. The full scope of CONTRACTOR's work is described in Exhibit A, attached and incorporated by this reference.

B. CONTRACTOR shall provide a detailed monthly report listing all revenues received and Approved Expenses (as defined in Section I(C)., below) incurred under this Agreement, including all necessary backup documentation for such revenues received and Approved Expenses incurred ("Monthly Report"). CONTRACTOR shall provide the Monthly Report to the COUNTY by the 20th day of the following month. The Monthly Report shall include daily and monthly maintenance, customer service, incident, accident, and occupancy details. COUNTY may also require other reports. COUNTY may also request an electronic copy of the detailed Monthly Report and access to CONTRACTOR's proprietary on-line "ACE Parking Client Portal" to review current and past profit/loss statements.

1 C. Approved Expenses are defined as expense that have been pre-approved by the
2 COUNTY and agreed to by the CONTRACTOR.

3 D. If the overall monthly revenue obtained by that month's parking fees does not exceed
4 that month's operational costs, CONTRACTOR shall record an operating loss for that month. The
5 CONTRACTOR shall work closely with the County representative in drafting monthly operating
6 schedules so as to minimize the possibility of such a monthly loss. The CONTRACTOR shall modify the
7 operating schedule and hours of operation as needed in order to ensure a net revenue return to the
8 COUNTY. Prior to modifying operational hours, CONTRACTOR shall provide that month's revenue and
9 cost information to COUNTY and obtain written permission from COUNTY to modify operational hours.

10 E. CONTRACTOR shall respond in a timely manner to all inquiries by the staff of the
11 Department of Public Works and Planning or the Auditor-Controller/Treasurer-Tax Collector's office on
12 the accounting or budgeting of the services being provided.

13 II. OBLIGATIONS AND RIGHTS OF THE COUNTY:

14 A. COUNTY will provide timely access to the Facilities so CONTRACTOR may
15 install necessary equipment and train CONTRACTOR'S staff on the collection of vehicle entrance fees.

16 B. COUNTY will provide a "County Representative" who will represent the
17 COUNTY and who will coordinate with the CONTRACTOR in matters relating to the parties'
18 performance under the provisions of this Agreement. The County Representative will be the COUNTY
19 Director of the Department of Public Works and Planning or his/her designee.

20 C. COUNTY shall have the right, but not the obligation, exercisable from time to time
21 and at any time during the Term of this Agreement, to improve, expand, replace, or modify any of the
22 Facilities, and/or to construct additional Facilities.

23 D. COUNTY shall issue annual passes to the Facilities.

24 E. COUNTY shall service COUNTY-owned cash registers to ensure proper operation on
25 an annual basis, or as needed.

26 III. TERM:

27 The term of this Agreement shall be for a period of three (3) years, commencing on September 10,
28

1 2018 through and including September 9, 2021. This Agreement may be extended for two (2) additional
2 consecutive twelve (12) month periods upon written approval of both parties no later than thirty (30) days
3 prior to the first day of the next twelve (12) month extension period. The Director of Public Works and
4 Planning or his or her designee is authorized to execute such written approval on behalf of COUNTY based
5 on CONTRACTOR'S satisfactory performance.

6 IV. TERMINATION:

7 A. Non-Allocation of Funds - The terms of this Agreement, and the services to be provided
8 hereunder, are contingent on the approval of funds by the appropriating government agency. Should
9 sufficient funds not be allocated, the services provided may be modified, or this Agreement terminated, at
10 any time by giving the CONTRACTOR thirty (30) days advance written notice.

11 B. Breach of Contract - The COUNTY may immediately suspend or terminate this
12 Agreement in whole or in part, where in the determination of the COUNTY there is:

- 13 1) An illegal or improper use of funds;
- 14 2) A failure to comply with any term of this Agreement;
- 15 3) A substantially incorrect or incomplete report submitted to the COUNTY;
- 16 4) Improperly performed service.

17 In no event shall any payment by the COUNTY constitute a waiver by the COUNTY of any breach
18 of this Agreement or any default which may then exist on the part of the CONTRACTOR. Neither shall such
19 payment impair or prejudice any remedy available to the COUNTY with respect to the breach or default.
20 The COUNTY shall have the right to demand of the CONTRACTOR the repayment to the COUNTY of any
21 funds disbursed to the CONTRACTOR under this Agreement, which in the judgment of the COUNTY were
22 not expended in accordance with the terms of this Agreement. The CONTRACTOR shall promptly refund
23 any such funds upon demand.

24 C. Without Cause - Under circumstances other than those set forth above, COUNTY
25 may terminate this Agreement by giving thirty (30) days advance written notice of an intention to
26 terminate to CONTRACTOR.

27 V. COMPENSATION/INVOICING:

28 On a monthly basis, CONTRACTOR shall compile all park revenues received under this

1 Agreement, deduct only Approved Expenses from such park revenues, and return to COUNTY the net
2 revenue. CONTRACTOR shall return the net revenue to the County by the 20th day of the following
3 month.

4 VI. INDEPENDENT CONTRACTOR:

5 A. In performance of the work, duties and obligations assumed by CONTRACTOR
6 under this Agreement, it is mutually understood and agreed that CONTRACTOR, including any and all of
7 the CONTRACTOR'S officers, agents, and employees will at all times be acting and performing as an
8 independent contractor, and shall act in an independent capacity and not as an officer, agent, servant,
9 employee, joint venturer, partner, or associate of the COUNTY. Furthermore, COUNTY shall have no right
10 to control or supervise or direct the manner or method by which CONTRACTOR shall perform its work and
11 function. However, COUNTY shall retain the right to administer this Agreement so as to verify that
12 CONTRACTOR is performing its obligations in accordance with the terms and conditions thereof.
13 CONTRACTOR and COUNTY shall comply with all applicable provisions of law and the rules and
14 regulations, if any, of governmental authorities having jurisdiction over matters the subject thereof.

15 B Because of its status as an independent contractor, CONTRACTOR shall have
16 absolutely no right to employment rights and benefits available to COUNTY employees. CONTRACTOR
17 shall be solely liable and responsible for providing to, or on behalf of, its employees all legally-required
18 employee benefits. In addition, CONTRACTOR shall be solely responsible and save COUNTY harmless
19 from all matters relating to payment of CONTRACTOR'S employees, including compliance with Social
20 Security withholding and all other regulations governing such matters. It is acknowledged that during the
21 term of this Agreement, CONTRACTOR may be providing services to others unrelated to the COUNTY
22 or to this Agreement.

23 VII. MODIFICATION:

24 Any matters of this Agreement may be modified from time to time by the written consent of
25 all the parties without, in any way, affecting the remainder.

26 VIII. NON-ASSIGNMENT:

27 Neither party shall assign, transfer or sub-contract this Agreement nor their rights or
28 under this Agreement without the prior written consent of the other party.

1 IX. HOLD HARMLESS:

2 CONTRACTOR agrees to indemnify, save, hold harmless, and at COUNTY'S request,
3 defend the COUNTY, its officers, agents, and employees from any and all costs and expenses (including
4 attorney's fees and costs), damages, liabilities, claims, and losses occurring or resulting to COUNTY in
5 connection with the performance, or failure to perform, by CONTRACTOR, its officers, agents, or
6 employees under this Agreement, and from any and all costs and expenses (including attorney's fees and
7 costs), damages, liabilities, claims, and losses occurring or resulting to any person, firm, or corporation who
8 may be injured or damaged by the performance, or failure to perform, of CONTRACTOR, its officers,
9 agents, or employees under this Agreement.

10 X. INSURANCE

11 Without limiting the COUNTY's right to obtain indemnification from CONTRACTOR
12 or any third parties, CONTRACTOR, at its sole expense, shall maintain in full force and effect, the following
13 insurance policies or a program of self-insurance, including but not limited to, an insurance pooling
14 arrangement or Joint Powers Agreement (JPA) throughout the term of the Agreement:

15 A. Commercial General Liability

16 Commercial General Liability Insurance with limits of not less than Two Million Dollars
17 (\$2,000,000.00) per occurrence and an annual aggregate of Four Million Dollars (\$4,000,000.00). This
18 policy shall be issued on a per occurrence basis. COUNTY may require specific coverages including
19 completed operations, products liability, contractual liability, Explosion-Collapse-Underground, fire legal
20 liability or any other liability insurance deemed necessary because of the nature of this contract.

21 B. Automobile Liability

22 Comprehensive Automobile Liability Insurance with limits of not less than One Million
23 Dollars (\$1,000,000.00) per accident for bodily injury and for property damages. Coverage should include
24 any auto used in connection with this Agreement.

25 C. Professional Liability

26 If CONTRACTOR employs licensed professional staff, (e.g., Ph.D., R.N., L.C.S.W.,
27 M.F.C.C.) in providing services, Professional Liability Insurance with limits of not less than One Million
28 Dollars (\$1,000,000.00) per occurrence, Three Million Dollars (\$3,000,000.00) annual aggregate.

1 D. Worker's Compensation

2 A policy of Worker's Compensation insurance as may be required by the California Labor Code.

3 Additional Requirements Relating to Insurance

4 CONTRACTOR shall obtain endorsements to the Commercial General Liability insurance
5 naming the County of Fresno, its officers, agents, and employees, individually and collectively, as additional
6 insured, but only insofar as the operations under this Agreement are concerned. Such coverage for
7 additional insured shall apply as primary insurance and any other insurance, or self-insurance, maintained
8 by COUNTY, its officers, agents and employees shall be excess only and not contributing with insurance
9 provided under CONTRACTOR's policies herein. This insurance shall not be cancelled or changed without
10 a minimum of thirty (30) days advance written notice given to COUNTY.

11 CONTRACTOR hereby waives its right to recover from COUNTY, its officers, agents, and
12 employees any amounts paid by the policy of worker's compensation insurance required by this
13 Agreement. CONTRACTOR is solely responsible to obtain any endorsement to such policy that may be
14 necessary to accomplish such waiver of subrogation, but CONTRACTOR's waiver of subrogation under
15 this paragraph is effective whether or not CONTRACTOR obtains such an endorsement.

16 Within Thirty (30) days from the date CONTRACTOR signs and executes this Agreement,
17 CONTRACTOR shall provide certificates of insurance and endorsement as stated above for all of the
18 foregoing policies, as required herein, to the County of Fresno, (Name and Address of the official who will
19 administer this contract), stating that such insurance coverage have been obtained and are in full force; that
20 the County of Fresno, its officers, agents and employees will not be responsible for any premiums on the
21 policies; that such Commercial General Liability insurance names the County of Fresno, its officers, agents
22 and employees, individually and collectively, as additional insured, but only insofar as the operations under
23 this Agreement are concerned; that such coverage for additional insured shall apply as primary insurance
24 and any other insurance, or self-insurance, maintained by COUNTY, its officers, agents and employees,
25 shall be excess only and not contributing with insurance provided under CONTRACTOR's policies herein;
26 and that this insurance shall not be cancelled or changed without a minimum of thirty (30) days advance,
27 written notice given to COUNTY.

28 In the event CONTRACTOR fails to keep in effect at all times insurance coverage as herein

1 provided, the COUNTY may, in addition to other remedies it may have, suspend or terminate this
2 Agreement upon the occurrence of such event.

3 All policies shall be issued by admitted insurers licensed to do business in the State of California
4 and such insurance shall be purchased from companies possessing a current A.M. Best, Inc. rating of A
5 FSC VII or better.

6 XI. AUDITS AND INSPECTIONS:

7 The CONTRACTOR shall at any time during business hours, and as often as the COUNTY
8 may deem necessary, make available to the COUNTY for examination all of its records and data with
9 respect to the matters covered by this Agreement. The CONTRACTOR shall, upon request by the
10 COUNTY, permit the COUNTY to audit and inspect all of such records and data necessary to ensure
11 CONTRACTOR'S compliance with the terms of this Agreement.

12 If this Agreement exceeds ten thousand dollars (\$10,000.00), CONTRACTOR shall be subject to
13 the examination and audit of the California State Auditor for a period of three (3) years after final payment
14 under contract (Government Code Section 8546.7).

15 XII. NOTICES: The persons and their addresses having authority to give and receive notices
16 under this Agreement include the following:

17 COUNTY

18 Director of the
19 Department of Public Works and
20 Planning
2220 Tulare ST., STE. 600
Fresno, CA. 93721

CONTRACTOR

John Baumgardner
ACE Parking Management Inc.
645 Ash Street
San Diego, CA 92101
(619) 233-6624

21 All notices between the COUNTY and CONTRACTOR provided for or permitted under this
22 Agreement must be in writing and delivered either by personal service, by first-class United States mail, by
23 an overnight commercial courier service, or by telephonic facsimile transmission. A notice delivered by
24 personal service is effective upon service to the recipient. A notice delivered by first-class United States
25 mail is effective three COUNTY business days after deposit in the United States mail, postage prepaid,
26 addressed to the recipient. A notice delivered by an overnight commercial courier service is effective one
27 COUNTY business day after deposit with the overnight commercial courier service, delivery fees prepaid,
28 with delivery instructions given for next day delivery, addressed to the recipient. A notice delivered by

1 telephonic facsimile is effective when transmission to the recipient is completed (but, if such transmission is
2 completed outside of COUNTY business hours, then such delivery shall be deemed to be effective at the
3 next beginning of a COUNTY business day), provided that the sender maintains a machine record of the
4 completed transmission. For all claims arising out of or related to this Agreement, nothing in this Section
5 XII establishes, waives, or modifies any claims presentation requirements or procedures provided by law,
6 including but not limited to the Government Claims Act (Division 3.6 of Title 1 of the Government Code,
7 beginning with section 810).

8 XIII. GOVERNING LAW: Venue for any action arising out of or related to this Agreement shall
9 only be in Fresno County, California.

10 The rights and obligations of the parties and all interpretation and performance of this Agreement
11 shall be governed in all respects by the laws of the State of California.

12 XIV. DISCLOSURE OF SELF-DEALING TRANSACTIONS

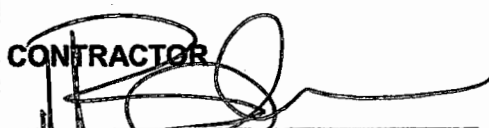
13 This provision is only applicable if the CONTRACTOR is operating as a corporation (a for-profit
14 or non-profit corporation) or if during the term of the agreement, the CONTRACTOR changes its status
15 to operate as a corporation.

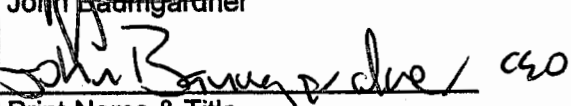
16 Members of the CONTRACTOR's Board of Directors shall disclose any self-dealing transactions
17 that they are a party to while CONTRACTOR is providing goods or performing services under this
18 agreement. A self-dealing transaction shall mean a transaction to which the CONTRACTOR is a party
19 and in which one or more of its directors has a material financial interest. Members of the Board of
20 Directors shall disclose any self-dealing transactions that they are a party to by completing and signing
21 a Self-Dealing Transaction Disclosure Form, attached hereto as Exhibit B and incorporated herein by
22 reference, and submitting it to the COUNTY prior to commencing with the self-dealing transaction or
23 immediately thereafter.

24 XV. ENTIRE AGREEMENT: This Agreement constitutes the entire agreement between the
25 CONTRACTOR and COUNTY with respect to the subject matter hereof and supersedes all previous
26 Agreement negotiations, proposals, commitments, writings, advertisements, publications, and
27 understanding of any nature whatsoever unless expressly included in this Agreement.
28

1 IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year
2 first hereinabove written.

3
4
5 **CONTRACTOR**

6 
7 John Baumgardner

8  cso
9 Print Name & Title

10 645 Ash Street

11 San Diego, CA 92101

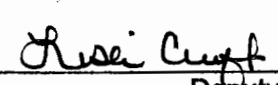
12 Mailing Address
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COUNTY OF FRESNO


Sal Quintero, Chairperson of the Board of
Supervisors of the County of Fresno

ATTEST:

Bernice E. Seidel
Clerk of the Board of Supervisors
County of Fresno, State of California

By: 

Deputy

21 FOR ACCOUNTING USE ONLY:
22 ORG No.: 7910/5055
23 FUND/SUBCLASS: 0001/10000
24 Account No.:
25 Requisition No.:
26
27
28

EXHIBIT A

Facilities /Collection of Fees

Each of the five (5) Facilities have fee collection booths located near their entrances. CONTRACTOR will be responsible for collecting vehicle entry fees (VEF) at the following locations:

AVOCADO LAKE PARK is located 23 miles east of the City of Fresno via Highway 180 and Piedra Road; the park address is 3625 N. Piedra Road, Piedra, CA 93649. The park is 210 acres in size. The fee booth is generally operated from mid-March to the end of September.

KEARNEY PARK is located on Kearney Boulevard seven miles west of the City of Fresno; the park's address is 6725 Kearney Blvd, Fresno, CA 93706. It is comprised of 225-acres. The fee booth is generally operated from mid-March to the end of September.

LATON-KINGSTON PARK is located 25 miles southeast of the City of Fresno on Fowler Road (west of Laton) on the Kings River; the park address is 20055 S. Fowler Ave., Laton, CA 93242. The park consists of 22 developed acres. The fee booth is generally operated from mid-March to mid-September.

LOST LAKE RECREATION AREA is located 19 miles north of the City of Fresno below Friant Dam along the San Joaquin River; the park's address is 16385 N. Friant Road, Friant, CA 93720. The park is approximately 305 acres in size. The fee booth is generally staffed continually from mid-March to the end of September; beginning in October and extending through mid-March, the fee booth is operated only on the weekends.

SKAGGS BRIDGE PARK is located off of Highway 145 (Madera Avenue) and Barstow Ave; the park's address is 5901 N. Madera Ave., Kerman, CA 93630. The park is 17 acres in size. The fee booth is generally operated from mid-March through the end of September.

.FACILITIES and EQUIPMENT Each of the five locations are equipped with an enclosed, secure fee booth, the SysParc VP2010 Electronic Valet ticket dispenser, and 110 VAC (volts alternating current). Phone lines are not currently available.

Facility Hours of Operation

Most of the Facilities are open year-round; Laton-Kingston and Skaggs Bridge parks are the exception. Both parks close on October 1 and re-open just before Easter. The hours of fee booth staffing vary depending on Facility location. During March, April and May, the fee booths are operated on weekends only (except for Lost Lake Recreation Area), however, this schedule depends on many variables such as weather conditions and volume of water flowing in adjacent rivers. During the summer months, the fee booths are operated between 8 - 12 hours per day, seven (7) days per week.

Each September, the fee booths schedules revert to weekends only, depending on weather conditions and volume of water flowing in the waterways. During holidays (Easter, Memorial Day and Labor Day, etc.), additional staff and entry lines are required at the Facilities to prevent

the obstruction of the flow of traffic coming into the parks. During holidays, Kearney Park, Lost Lake Recreation Area, and Avocado Lake may have up to four (4) different entry points that require staffing to issue entrance tickets. The County Representative will work with CONTRACTOR to coordinate the booth staffing hours on a monthly basis, depending on weather conditions, number of vehicles entering per hour (min. target is between 4-5/ hour), scheduled events and historical or recent revenue data.

Avocado Lake Park – April 1 through September 30 – 7:00 am to 10:00 pm
October 1 through March 31 – 7:00 am to 7:00pm

Kearney Park – April 1 through September 30 – 7:00 am to 10:00 pm
October 1 through March 31 – 7:00 am to 7:00 pm

Laton-Kingston Park – April 1 through September 30 – 7:00 am to 10:00 pm
October 1 through March 31 – 7:00 am to 7:00 pm
(Generally Closed from November 1 to March 15)

Lost Lake Rec Park – April 1 through September 30 – 7:00 am to 10:00 pm
October 1 through March 31 – 7:00 am to 7:00 pm
Daily

Skaggs Bridge Park – April 1 through September 30 – 7:00 am to 10:00 pm
October 1 through March 31 – 7:00 am to 7:00 pm
(Generally Closed from November 1 to March 15)
Daily

Contractor's Responsibilities:

Contractor shall be solely responsible for the day-to-day operations of each Facility's fee booth. At a minimum, Contractor's responsibilities include but are not limited to the following:

- A. Operate, manage, direct, and superintend the entry fee booths in a diligent, economical, and efficient manner, so that revenues per month exceed expenses. Through the use of revenue information and other related reports and analysis, CONTRACTOR shall make diligent efforts to schedule CONTRACTOR'S staff to ensure that the collected revenues exceed costs, including salary, benefits and administrative overhead.
- B. Only cash registers provided by COUNTY shall be used in handling all transactions. CONTRACTOR shall provide copies of the "Z" tapes of each branch to COUNTY on a monthly basis.
- C. On a monthly basis, CONTRACTOR will compile and submit the Monthly Report to COUNTY, as discussed in Section I(B) of the Agreement.

- D. A net revenue check will be submitted to the County within 20 days of the following month.
- E. If a toll booth is equipped with a loop counter data, CONTRACTOR shall utilize this equipment to assist COUNTY in the development and maintenance of operation schedules. All operation schedules for each Facility shall be approved in writing by COUNTY.
- F. Any vandalism, problems, and disturbances arising with the public shall be reported to the Fresno County Sheriff's Office at (559) 600-6111.
- G. CONTRACTOR shall notify COUNTY of all problems or disturbances that arise in the Facilities within twenty four (24) hours of the occurrence.
- H. CONTRACTOR will provide a detailed Organizational chart describing the staffing levels that apply to COUNTY operations. CONTRACTOR shall meet with the County Representative on a regular basis to discuss staffing levels.
- I. CONTRACTOR must have a local office and manager.
- J. From time to time, CONTRACTOR'S staff shall distribute COUNTY flyers, maps, or other information to the public, at COUNTY'S request.
- K. CONTRACTOR shall keep all fee booths neat and clean at all times. Modifications, both interior and exterior, to the fee booths are not permitted unless approved in writing by COUNTY.
- L. CONTRACTOR will be responsible for resolving refund claims made by the public.
- M. During special events requested by the COUNTY, CONTRACTOR will be responsible for having additional staffing to collect vehicle entry fees at multiple entrances into each Facility. Operation of multiple entrances into the Facilities is intended to alleviate traffic congestion and minimize unsafe conditions of vehicles backing up onto major roadways.

Material Costs

CONTRACTOR shall be reimbursed at direct cost for materials used in the process of providing services under the Agreement. Costs must be approved in writing by the County Representative to be eligible for reimbursement, and must be incurred for materials necessary to provide services and authorized under the Agreement.

EXHIBIT B

SELF-DEALING TRANSACTION DISCLOSURE FORM INSTRUCTIONS

In order to conduct business with the County of Fresno (hereinafter referred to as "County"), members of a contractor's board of directors (hereinafter referred to as "County Contractor"), must disclose any self-dealing transactions that they are a party to while providing goods, performing services, or both for the County. A self-dealing transaction is defined below:

"A self-dealing transaction means a transaction to which the corporation is a party and which one or more of its directors has a material financial interest"

The definition above will be utilized for purposes of completing the disclosure form.

- (1) Enter board member's name, job title (if applicable), and date this disclosure is being made.
- (2) Enter the board member's company/agency name and address.
- (3) Describe in detail the nature of the self-dealing transaction that is being disclosed to the County. At a minimum, include a description of the following:
 - a. The name of the agency/company with which the corporation has the transaction; and
 - b. The nature of the material financial interest in the Corporation's transaction that the board member has.
- (4) Describe in detail why the self-dealing transaction is appropriate based on applicable provisions of the Corporations Codes.
- (5) Form must be signed by the board member that is involved in the self-dealing transaction described in Sections (3) and (4).

Form provided on following page.

SELF-DEALING TRANSACTION DISCLOSURE FORM

(1) Company Board Member Information:

Name: _____ Date: _____

Job Title: _____

(2) Company/Agency Name and Address:

(3) Disclosure (Please describe the nature of the self-dealing transaction you are a party to)

(4) Explain why this self-dealing transaction is consistent with the requirements of Corporations Code 5233 (a)

(5) Authorized Signature

Signature: _____ Date: _____