

1 RETROACTIVE LICENSE AGREEMENT

2 This RETROACTIVE LICENSE AGREEMENT ("Agreement") is made and entered into this  
3 \_\_\_\_\_ day of \_\_\_\_\_, 2022, by and between the COUNTY OF FRESNO, a political  
4 subdivision of the State of California, 333 W. Pontiac Way, Clovis, CA 93612, ("COUNTY"), and the  
5 CITY OF FRESNO, a California municipal corporation, on behalf of its police department, whose  
6 address is 2323 Mariposa Street, Room 2075, Fresno, CA 93721 ("CITY"). COUNTY and CITY may,  
7 hereinafter, be referred to collectively as "Parties" or individually as "Party".

8 W I T N E S S E T H:

9 WHEREAS, COUNTY owns the building located at 1925 E. Dakota Ave., Fresno, CA 93726  
10 ("Building");

11 WHEREAS, the Board of Supervisors approved Facility Use Agreement No. 18-075 with CITY  
12 on March 6, 2018, until July 1, 2020, with two additional one-year extensions (the Agreement could not  
13 be extended beyond June 30, 2022), with no request for compensation. The CITY operated the Fresno  
14 Police Department's Crisis Intervention Team (FPD CIT) at the Building and occupied three hundred  
15 (300) square feet;

16 WHEREAS, the metropolitan Fresno Crisis Intervention Team (Metro CIT) program consists of  
17 specially trained law enforcement officers and behavioral health clinicians, who co-locate and co-  
18 respond to behavioral health crisis calls for service dispatched by 9-1-1 operators. Services include  
19 crisis intervention, post-crisis follow up, community and law enforcement training, education, and  
20 outreach; and

21 WHEREAS, the COUNTY has determined that CITY's services will not conflict or interfere with  
22 the use of the Building and desires to enter into Agreement with CITY to allow for the ongoing  
23 operation of the Metro CIT program in the Building.

24 NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions  
25 hereinafter contained, the sufficiency and receipt of which are hereby acknowledged by the parties,  
26 such parties, and each of them, do agree as follows:

- 27 1. PREMISES – The premises for the Agreement are approximately one thousand, two  
28 hundred (1,200) square feet of office space in the Building in the locations as shown in Exhibit A,

1 which is attached and incorporated by this reference (“Premises”).

2       2.     LICENSE – Subject to the terms and conditions set forth in this Agreement by the  
3 COUNTY for the CITY, to use the Premises as provided herein, this Agreement is not a lease and  
4 does not confer upon CITY, a possessory interest in the Premises, or any portion thereof.

5       CITY acknowledges and agrees that the license granted herein constitutes a limited, revocable,  
6 non-possessory, and non-assignable privilege to use the Premises solely for those permitted activities  
7 expressly identified in this Agreement. CITY further acknowledges and agrees that the Agreement is  
8 subject to all of the following:

9           A. The consideration by CITY, as identified in this Agreement, which includes the absence  
10 of monetary consideration, is consistent with the value of rights comprising this  
11 Agreement and that this consideration is *not* consistent with higher market value for a  
12 greater right, privilege or interest (such as a lease) in the Premises, Building, or  
13 similarly situated parcels.

14           B. This Agreement and/or any prior acts or omissions of COUNTY and/or any future  
15 omissions of COUNTY, shall not create (or be construed as creating) a leasehold,  
16 tenancy or any other interest in the Premises, Building, or similarly situated parcels.

17           C. In consideration of COUNTY’s grant of the Agreement, CITY specifically and expressly  
18 waives, releases and relinquishes any and all right(s) to assert any claim of right,  
19 privilege or interest in the Premises and Building.

20       3.     TERM AND REVOCATION – The term of this Agreement shall be for a period of one  
21 (1) year, commencing retroactively on July 1, 2022 and ending on June 30, 2023. This Agreement may  
22 be extended for one (1) additional consecutive twelve (12) month period on an automatic basis, unless  
23 either COUNTY or CITY provides written notice of non-renewal to the other Party no later than sixty  
24 (60) days prior to June 30, 2023. In no event shall the term of this Agreement extend beyond June 30,  
25 2024.

26       However, notwithstanding anything to the contrary herein, both CITY and COUNTY shall have  
27 the absolute right to terminate this Agreement and/or revoke this Agreement at any time and for any  
28 reason, or for no reason. As to COUNTY, the Director of Internal Services may provide written notice

1 of non-renewal, revocation, or termination of this Agreement.

2 4. CONSIDERATION – There is no monetary consideration for this Agreement.

3 5. UTILITIES – COUNTY shall be responsible for electricity, natural gas, water, sewer,  
4 garbage, and telephone costs.

5 6. USE – CITY may use the Premises from 7:00am to 5:00pm Monday through Friday,  
6 including holidays, to conduct Metro CIT program services. CITY agrees that the use of the Premises  
7 shall, at all times, be consistent with providing the services as set forth in this Agreement. CITY  
8 agrees not to commit, suffer, or permit any waste or nuisance on the Premises, and not to use or  
9 permit the use of the Premises for any illegal purposes. CITY further agrees to comply with all  
10 applicable federal, state, and local laws and regulations in the performance of its obligations under this  
11 Agreement, including but not limited to workers compensation, labor, and confidentiality laws and  
12 regulations with respect to CITY’s use of the Premises and Building.

13 COUNTY shall make the Premises available in “as is” condition, except as expressly provided  
14 in this Agreement. Upon the expiration, revocation or termination of this Agreement, CITY will leave  
15 the Premises to COUNTY in such condition as existed at the commencement of this Agreement, less  
16 reasonable wear and tear. CITY will not be responsible for any damage which CITY was not obligated  
17 hereunder to repair.

18 7. MAINTENANCE AND REPAIRS OF PREMISES – COUNTY shall be responsible for  
19 the structural condition of the Premises and for all exterior and interior maintenance, including but not  
20 limited to, the air conditioning, heating, plumbing, roof, painting, landscaping, and parking lot.  
21 COUNTY covenants that the Premises shall be maintained in substantially the same condition as the  
22 Effective Date of this Agreement, less reasonable wear and tear.

23 CITY shall report damages to the Premises within twenty-four (24) hours after they occur to the  
24 Director of Internal Services and the Director of the Department of Behavioral Health. CITY shall pay  
25 for all damages caused by the actions of CITY’s employees, agents, contractors, and invitees.

26 8. IMPROVEMENTS TO THE PREMISES – If CITY desires to make improvements to the  
27 Premises, CITY shall provide drawings and plans describing the improvements to the Director of  
28 Internal Services and to the Director of the Department of Behavioral Health for his or her requested

1 review and approval; such approval, if any is given, is only for purposes of determining whether such  
2 improvements are compatible with COUNTY's use of the Building and Premises, and shall in no way  
3 bind COUNTY as a governmental agency, or serve as a representation that said improvements  
4 comply with any applicable CITY, COUNTY, or state building requirements, or other legal  
5 requirements. In the event an improvement is approved, CITY shall advance to COUNTY all costs  
6 associated with any such improvement, including, but not limited to, labor, materials, equipment, and  
7 clean-up. The construction of any and all improvements to the Premises and Buildings shall be  
8 performed only by COUNTY or its approved agent. Notwithstanding anything to the contrary herein,  
9 upon the termination of this Agreement, CITY shall not have the right to remove any such  
10 improvements unless approved in writing in advance by COUNTY. CITY agrees that any equipment,  
11 fixtures or apparatus installed in or on the Premises and Buildings by CITY shall become the property  
12 of COUNTY at the time of installation, and may not be removed by CITY at any time unless prior  
13 written approval by COUNTY is given to CITY.

14 9. NOTICES – the persons and their addresses having authority to give and receive  
15 notices under this Agreement include the following:

COUNTY	CITY
County of Fresno Director of Internal Services 333 W. Pontiac Way Clovis, CA 93612	City of Fresno Chief of Police 2323 Mariposa Street, Room 2075 Fresno, CA 93721

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

1 related to this Agreement, nothing in this section establishes, waives, or modifies any claims  
2 presentation requirements or procedures provided by law, including but not limited to the Government  
3 Claims Act (Division 3.6 of Title 1 of the Government Code, beginning with section 810).

4 10. INSPECTIONS, AUDITS, AND PUBLIC RECORDS

5 A. **Inspection of Documents.** The CITY shall make available to the COUNTY, and the  
6 COUNTY may examine at any time during business hours and as often as the  
7 COUNTY deems necessary, all of the CITY's records and data with respect to the  
8 matters covered by this Agreement, excluding attorney-client privileged  
9 communications. The CITY shall, upon request by the COUNTY, permit the COUNTY  
10 to audit and inspect all of such records and data to ensure the CITY's compliance with  
11 the terms of this Agreement.

12 B. **Public Records.** The COUNTY is not limited in any manner with respect to its public  
13 disclosure of this Agreement or any record or data that the CITY may provide to the  
14 COUNTY. The COUNTY's public disclosure of this Agreement or any record or data  
15 that the CITY may provide to the COUNTY may include but is not limited to the  
16 following: The COUNTY may voluntarily, or upon request by any member of the public  
17 or governmental agency, disclose this Agreement to the public or such governmental  
18 agency; the COUNTY may voluntarily, or upon request by any member of the public or  
19 governmental agency, disclose to the public or such governmental agency any record  
20 or data that the CITY may provide to the COUNTY, unless such disclosure is prohibited  
21 by court order; this Agreement, and any record or data that the CITY may provide to the  
22 COUNTY, is subject to public disclosure under the Ralph M. Brown Act (California  
23 Government Code, Title 5, Division 2, Part 1, Chapter 9, beginning with section 54950);  
24 This Agreement, and any record or data that the CITY may provide to the COUNTY, is  
25 subject to public disclosure as a public record under the California Public Records Act  
26 (California Government Code, Title 1, Division 7, Chapter 3.5, beginning with section  
27 6250) ("CPRA"); this Agreement, and any record or data that the CITY may provide to  
28 the COUNTY, is subject to public disclosure as information concerning the conduct of

1 the people's business of the State of California under California Constitution, Article 1,  
2 section 3, subdivision (b); any marking of confidentiality or restricted access upon or  
3 otherwise made with respect to any record or data that the CITY may provide to the  
4 COUNTY shall be disregarded and have no effect on the COUNTY's right or duty to  
5 disclose to the public or governmental agency any such record or data.

6 **C. Public Records Act Requests.** If the COUNTY receives a written or oral request under  
7 the CPRA to publicly disclose any record that is in the CITY's possession or control,  
8 and which the COUNTY has a right, under any provision of this Agreement or  
9 applicable law, to possess or control, then the COUNTY may demand, in writing, that  
10 the CITY deliver to the COUNTY, for purposes of public disclosure, the requested  
11 records that may be in the possession or control of the CITY. Within five business days  
12 after the COUNTY's demand, the CITY shall (a) deliver to the COUNTY all of the  
13 requested records that are in the CITY's possession or control, together with a written  
14 statement that the CITY, after conducting a diligent search, has produced all requested  
15 records that are in the CITY's possession or control, or (b) provide to the COUNTY a  
16 written statement that the CITY, after conducting a diligent search, does not possess or  
17 control any of the requested records. The CITY shall cooperate with the COUNTY with  
18 respect to any COUNTY demand for such records. If the CITY wishes to assert that any  
19 specific record or data is exempt from disclosure under the CPRA or other applicable  
20 law, it must deliver the record or data to the COUNTY and assert the exemption by  
21 citation to specific legal authority within the written statement that it provides to the  
22 COUNTY under this section. The CITY's assertion of any exemption from disclosure is  
23 not binding on the COUNTY, but the COUNTY will give at least 10 days' advance  
24 written notice to the CITY before disclosing any record subject to the CITY's assertion  
25 of exemption from disclosure. The CITY shall indemnify the COUNTY for any court-  
26 ordered award of costs or attorney's fees under the CPRA that results from the CITY's  
27 delay, claim of exemption, failure to produce any such records, or failure to cooperate  
28 with the COUNTY with respect to any COUNTY demand for any such records.

1           11.    HOLD HARMLESS/INDEMNIFICATION – CITY shall indemnify, hold harmless and  
2 defend COUNTY and each of its officers, officials, employees, agents and volunteers from any and all  
3 loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability,  
4 including but not limited to personal injury, death at any time and property damage) incurred by  
5 COUNTY, CITY or any other person, and from any and all claims, demands and actions in law or  
6 equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or  
7 indirectly from the negligent or intentional acts or omissions, or willful misconduct of CITY or any of its  
8 officers, officials, employees, agents or volunteers in the performance of this Agreement; provided  
9 nothing herein shall constitute a waiver by CITY of governmental immunities including California  
10 Government Code section 810 et seq.

11           COUNTY shall indemnify, hold harmless and defend CITY and each of its officers, officials,  
12 employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and  
13 damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at  
14 any time and property damage) incurred by the CITY, COUNTY or any other person, and from any and  
15 all claims, demands and actions in law or equity (including attorney's fees and litigation expenses),  
16 arising or alleged to have arisen directly or indirectly from the negligent or intentional acts or  
17 omissions, or willful misconduct of COUNTY or any of its officers, officials, employees, agents or  
18 volunteers in the performance of this Agreement; provided nothing herein shall constitute a waiver by  
19 COUNTY of governmental immunities including California Government Code section 810 et seq.. In  
20 the event of concurrent negligence on the part of CITY or any of its officers, officials, employees,  
21 agents or volunteers, and COUNTY or any of its officers, officials, employees, agents or volunteers,  
22 the liability for any and all such claims, demands and actions in law or equity for such losses, fines,  
23 penalties, forfeitures, costs and damages shall be apportioned under the State of California's theory of  
24 comparative negligence as presently established or as may be modified hereafter.

25           This section shall survive termination or expiration of this Agreement.

26           12.    INSURANCE – Without limiting the indemnification of each party as stated herein, it is  
27 understood and agreed that COUNTY and CITY shall each maintain, at their sole expense, insurance  
28 policies or self-insurance programs including, but not limited to, an insurance pooling arrangement

1 and/or Joint Powers Agreement to fund their respective liabilities including general liability, automotive  
2 liability, workers' compensation and employers liability. Evidence of Insurance, e.g., Certificates of  
3 Insurance or other similar documentation, shall be provided at the request of either party under this  
4 Agreement.

5 13. INDEPENDENT CONTRACTOR – In performance of the work, duties and obligations  
6 assumed CITY under this Agreement, it is mutually understood and agreed that CITY, including any  
7 and all of the CITY 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 venture, partner, or associate of the COUNTY. Furthermore, COUNTY shall have no  
10 right to control or supervise or direct the manner or method by which CITY shall perform its work and  
11 function. However, COUNTY shall retain the right to administer monitor this Agreement so as to verify  
12 that CITY is performing its obligations in accordance with the terms and conditions thereof.

13 COUNTY and CITY 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 Because of its status as an independent contractor, CITY shall have absolutely no right to  
16 employment rights and benefits available to COUNTY'S employees. CITY shall be solely liable and  
17 responsible for providing to, or on behalf of, its employees all legally required employee benefits. In  
18 addition, CITY shall be solely responsible and save COUNTY harmless from all matters, except for  
19 COUNTY and COUNTY'S employee's gross negligence and/or willful misconduct, relating to payment  
20 of CITY employees, including compliance with Social Security withholding and all other regulations  
21 governing such matters.

22 14. POSSESSORY INTEREST TAX – The underlying Agreement is provided to the  
23 CITY, a governmental entity. However, should it ever be determined that that there is a possessory  
24 interest, CITY agrees to pay any possessory interest tax (property tax) which may be levied upon the  
25 Premises. In this respect, CITY understands that a leasehold interest of property, should it be  
26 determined that such an interest exists, owned by a tax-exempt public agency, such as the COUNTY,  
27 may be subject to property taxation and CITY (the person in whom it may be determined the  
28 possessory interest is vested) will then be subject to the payment of property taxes levied on such



1 interest.

2 15. RIGHT OF ENTRY – COUNTY, or its representative(s), shall have the right to enter  
3 the Premises and Building at any time and for any reason with reasonable notice, to make any  
4 alterations, repairs or improvements to the Premises and Building. The normal business of CITY or its  
5 invitees shall not be unnecessarily inconvenienced.

6 16. MODIFICATION – Any matters of this Agreement may be modified from time to time  
7 by the written consent of all Parties without, in any way, affecting the remainder.

8 17. NON-ASSIGNMENT – Neither party shall assign, transfer or sub-contract this  
9 Agreement nor their rights or duties under this Agreement without the prior written consent of the other  
10 party.

11 18. ELECTRONIC SIGNATURE – The parties agree that this Agreement may be executed  
12 by electronic signature as provided in this section. An “electronic signature” means any symbol or  
13 process intended by an individual signing this Agreement to represent their signature, including but not  
14 limited to (1) a digital signature; (2) a faxed version of an original handwritten signature; or (3) an  
15 electronically scanned and transmitted (for example by PDF document) of a handwritten signature.  
16 Each electronic signature affixed or attached to this Agreement (1) is deemed equivalent to a valid  
17 original handwritten signature of the person signing this Agreement for all purposes, including but not  
18 limited to evidentiary proof in any administrative or judicial proceeding, and (2) has the same force and  
19 effect as the valid original handwritten signature of that person. The provisions of this section satisfy  
20 the requirements of Civil Code section 1633.5, subdivision (b), in the Uniform Electronic Transaction  
21 Act (Civil Code, Division 3, Part 2, Title 2.5, beginning with section 1633.1). Each party using a digital  
22 signature represents that it has undertaken and satisfied the requirements of Government Code  
23 section 16.5, subdivision (a), paragraphs (1) through (5), and agrees that each other party may rely  
24 upon that representation. This Agreement is not conditioned upon the parties conducting the  
25 transactions under it by electronic means and either party may sign this Agreement with an original  
26 handwritten signature.

27 19. GOVERNING LAW – Venue for any action arising out of or relating to this  
28 Agreement shall be in Fresno County, California.

1           20.     DISCLOSURE OF SELF DEALING TRANSACTIONS – This provision is only  
2 applicable if the CITY is operating as a corporation (a for-profit or non-profit corporation) or if during  
3 the term of this Agreement, the CITY changes its status to operate as a corporation.

4           Members of CITY’s Board of Directors shall disclose any self-dealing transactions that they are  
5 a party to while CITY is providing goods or performing services under this Agreement. A self-dealing  
6 transaction shall mean a transaction to which the CITY is a party and in which one or more of its  
7 directors has a material financial interest. Members of the Board of Directors shall disclose any self-  
8 dealing transactions that they are a party to by completing and signing a *Self-Dealing Transaction*  
9 *Disclosure Form* (Exhibit B) and submitting it to the County of Fresno prior to commencing with the  
10 self-dealing transaction or immediately thereafter.

11           21.     AUTHORITY – CITY represents and warrants that that individual executing this  
12 Agreement on behalf of CITY is duly authorized to execute and deliver this Agreement on behalf of  
13 CITY and that this Agreement is binding upon CITY in accordance with its terms.

14           22.     ENTIRE AGREEMENT – This Agreement constitutes the entire agreement between  
15 the COUNTY and CITY with respect to the subject matter hereof, and supersedes all prior  
16 agreements, whether oral or written, negotiations, proposals, commitments, writings, advertisements,  
17 publications, and understandings of any nature whatsoever, unless expressly referenced in this  
18 Agreement.

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

3  
4 **CITY OF FRESNO POLICE  
5 DEPARTMENT**

**COUNTY OF FRESNO**

6 \_\_\_\_\_  
7 Name

\_\_\_\_\_ Brian Pacheco, Chairman of the Board of  
Supervisors of the County of Fresno

8 \_\_\_\_\_  
9 Authorized Signature

10 **APPROVED AS TO FORM  
11 CITY ATTORNEY'S OFFICE  
12 BY: Pauline B. [Signature]  
13 **DEPUTY CITY ATTORNEY**  
14 *9/14/22***

\_\_\_\_\_ **ATTEST:**  
Bernice E. Seidel  
Clerk of the Board of Supervisors  
County of Fresno, State of California

15  
16 By: \_\_\_\_\_  
17 Deputy

18 **FOR ACCOUNTING USE ONLY:**

19 Fund: 0001

20 Subclass: 10000

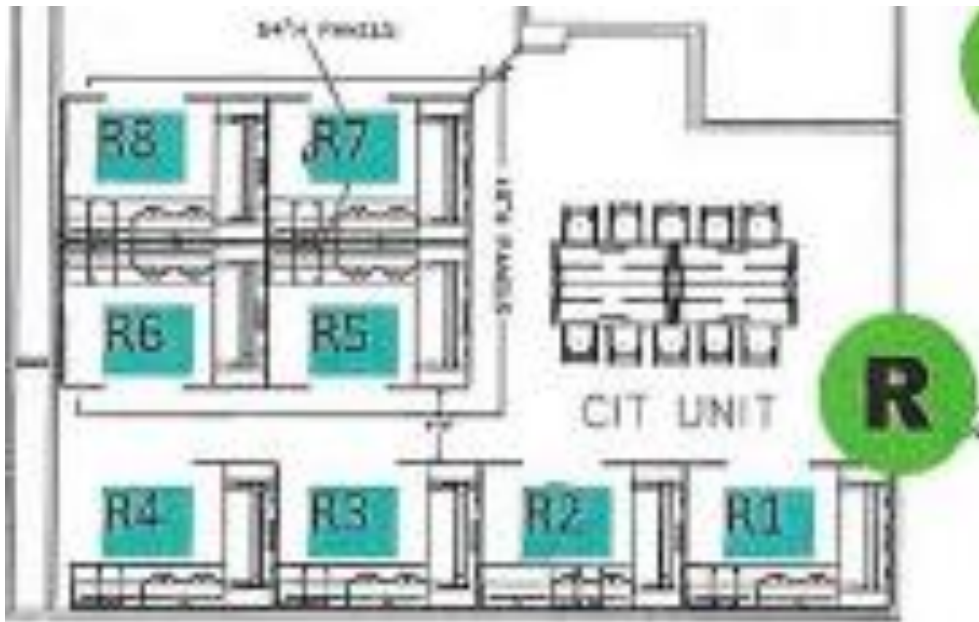
21 ORG: 56304763

22 Account: 7295  
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**Health and Wellness Center – First Floor**

**Suite R**

**City of Fresno Police Department – Crisis Intervention Team**



(Approximately 1,200 sq ft.)

## Exhibit B

### Self-Dealing Transaction Disclosure Form

In order to conduct business with the County of Fresno ("County"), members of a contractor's board of directors ("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 in which one or more of its directors has a material financial interest."

The definition above will be used for purposes of completing this disclosure form.

#### Instructions

- (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 Code.

The form must be signed by the board member that is involved in the self-dealing transaction described in Sections (3) and (4).

## Exhibit B

<b>(1) Company Board Member Information:</b>			
<b>Name:</b>		<b>Date:</b>	
<b>Job Title:</b>			
<b>(2) Company/Agency Name and Address:</b>			
<b>(3) Disclosure (Please describe the nature of the self-dealing transaction you are a party to)</b>			
<b>(4) Explain why this self-dealing transaction is consistent with the requirements of Corporations Code § 5233 (a)</b>			
<b>(5) Authorized Signature</b>			
<b>Signature:</b>		<b>Date:</b>	