



C O U N T Y A D M I N I S T R A T O R

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COUNTY ADMINISTRATOR

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ASSISTANT COUNTY ADMINISTRATOR

February 4, 2009

Honorable Board of Supervisors
Administration Building
Oakland, CA 94612

Dear Board Members:

**SUBJECT: ADOPT A RESOLUTION TO APPROVE A LETTER OF CREDIT AND
REIMBURSEMENT AGREEMENT WITH UNION BANK IN SUPPORT OF THE
CONTRACTOR BONDING ASSISTANCE PROGRAM**

RECOMMENDATION:

In order to support the Contractor Bonding Assistance Program for small, local vendors participating in the County's Construction Outreach; Enhanced Construction Outreach; and Small, Local, and Emerging Business Programs, it is recommended that your Board:

1. Adopt a resolution to approve a Letter of Credit and Reimbursement Agreement with Union Bank of California (Principal: Amelia Hong, Vice President; Location: Walnut Creek) for the establishment of a \$5 million Standby Letter of Credit Line.

SUMMARY/DISCUSSION:

On December 9, 2008 your Board approved the execution of a Commitment Letter with Union Bank of California as an initial step in establishing a Standby Letter of Credit to support the Contractor Bonding Assistance Program. The present action before your Board would finalize these arrangements and allow for the implementation of the Bonding Guarantee portion of this program.

Your Board's approval of the Commitment Letter with Union Bank followed the July 22, 2008 approval of a contract with Merriwether and Williams Insurance Services to implement the Contractor Bonding Assistance Program. A key feature of this initiative is a Bonding Guarantee Program that would enable qualified small, local vendors to receive assistance in obtaining bid, performance and payment bonds required to bid on County construction projects. Previous examinations of County contracting, including the 2005 Availability Study have identified bonding requirements as a key obstacle to the participation of smaller firms. The Contractor Bonding Assistance Program will provide financial backing to qualified small, local vendors in the form of a Letter of Credit, which will allow them to obtain bonds in higher amounts, and to bid on larger contracts, than would otherwise be possible. In this manner, the Contractor Bonding Assistance Program is expected to assist qualified small, local vendors in expanding their businesses.

BOARD OF SUPERVISORS OF THE COUNTY OF ALAMEDA

A RESOLUTION OF THE BOARD OF SUPERVISORS OF THE COUNTY OF ALAMEDA APPROVING A LETTER OF CREDIT AND REIMBURSEMENT AGREEMENT WITH UNION BANK OF CALIFORNIA

WHEREAS, the County has identified removing barriers to the expansion of contracting opportunities for small, local, and emerging businesses as a priority, and has adopted numerous policies, resolutions and ordinances in support of this goal; and

WHEREAS, previous examinations of County contracting, including the 2005 Availability Study, have identified bonding requirements as a key obstacle to the participation of smaller firms on County contracts; and

WHEREAS, the County desires to establish a Bonding Guarantee Program to assist small businesses in obtaining the necessary bonding to compete for County contracts; and

WHEREAS, the County has entered into an agreement with Merriwether and Williams Insurance Services to provide a Contractor Bonding Assistance Program (“the Program”) for the County, and as part of the Program, the County must obtain a letter to credit to secure its obligations under the Program; and

WHEREAS, the County of Alameda (the “County”) and Union Bank of California (“Union Bank”) have heretofore entered into a Commitment Letter dated as of December 9, 2008 to fund a Standby Letter of Credit Line up to \$5 million in support of the Contractor Bonding Assistance Program;

NOW THEREFORE, BE IT RESOLVED by the Board of Supervisors of the County of Alameda, as follows:

Section 1. The foregoing recitals are true and correct and this Board of Supervisors hereby so finds and determines.

Section 2. The Letter of Credit and Reimbursement Agreement with Union Bank is approved.

Section 3. All consents, approvals, notices, orders, requests and other actions permitted or required by any of the documents or agreements entered into in connection with the execution of the Letter of Credit and Reimbursement Agreement which may be necessary or desirable in connection with this transaction may be taken or given by the President of the Board of Supervisors, the Auditor-Controller, the Treasurer-Tax Collector, the County Administrator, the Assistant County Administrator, or any such official’s designee, without further authorization by this Board, and any such official, or any such official’s designee, is hereby authorized and directed to give such consent, approval, notice, order or request and to take any such action which such official may deem necessary or desirable to further the purposes of this resolution and the transaction contemplated hereby.

LETTER OF CREDIT
AND
REIMBURSEMENT AGREEMENT

By

and

Between

COUNTY OF ALAMEDA

and

UNION BANK, N.A.

_____, 2009

TABLE OF CONTENTS

	Page
ARTICLE I DEFINITIONS	1
1.1. Certain Defined Terms.....	1
1.2. Computation of Time Periods.....	3
1.3. Accounting Terms.....	3
1.4. References to Other Documents	4
ARTICLE II THE LETTERS OF CREDIT.....	4
2.1. The Letters of Credit.....	4
2.2. Procedures for Issuing Letters of Credit	4
2.3. Fees	4
2.4. Reimbursement on Demand.....	4
2.5. Payment of Interest	5
2.6. Increased Costs	5
2.7. Payments and Computations.....	6
2.8. Evidence of Indebtedness	6
2.9. Obligations Absolute	7
2.10. Security for the County’s Obligations	7
ARTICLE III CONDITIONS PRECEDENT	8
3.1. Conditions Precedent to the Issuance of the Initial Letter of Credit.....	8
3.2. Conditions Precedent to the Issuance of All Letters of Credit.....	8
ARTICLE IV REPRESENTATIONS AND WARRANTIES	9
4.1. Due Creation	9
4.2. Power	9
4.3. Due Authorization.....	9
4.4. Approvals.....	9
4.5. Enforceable Nature of Obligations	9
4.6. No Actions	10
4.7. No Immunity	10
4.8. Compliance With Law	10
4.9. No Margin Stock.....	10
ARTICLE V COVENANTS OF THE COUNTY	10
5.1. Affirmative Covenants.....	10
5.2. Negative Covenants	11
ARTICLE VI DEFAULT	11
6.1. Events of Default	11
6.2. Remedies of the L/C Bank.....	13

TABLE OF CONTENTS

(continued)

	Page
ARTICLE VII GENERAL PROVISIONS.....	13
7.1. Amendments	13
7.2. Notices	13
7.3. No Waiver	14
7.4. Rights Cumulative	14
7.5. Right of Set-off	14
7.6. Indemnification	15
7.7. Liability of the L/C Bank.....	15
7.8. Costs, Expenses and Taxes	15
7.9. Subrogation of the L/C Bank	16
7.10. Survival of Representations and Warranties.....	16
7.11. Participations.....	16
7.12. Alternative Dispute Resolution.....	16
7.13. Binding Effect.....	17
7.14. Severability	17
7.15. Governing Law	17
7.16. Headings	17
7.17. Execution in Counterparts.....	17
7.18. The Patriot Act Notice	17

EXHIBITS

- EXHIBIT A – FORM OF L/C APPLICATION
- EXHIBIT B – FORM OF LETTER OF CREDIT

LETTER OF CREDIT AND REIMBURSEMENT AGREEMENT

This LETTER OF CREDIT AND REIMBURSEMENT AGREEMENT (this “Agreement”), dated as of _____, 2009, is entered into by and between COUNTY OF ALAMEDA, a political subdivision of the State of California (the “County”), and UNION BANK, N.A., a national banking association organized and existing under the laws of the United States of America (the “L/C Bank”), in reliance upon the following:

RECITALS

A. The County desires to increase the participation by small contractors in bidding on County contracts. To that end, the County has established a [Contractor Bonding and Contract Financing Assistance Program (the “Program”)].

B. The County has requested that the L/C Bank issue standby letters of credit (each, a “Letter of Credit” and collectively, the “Letters of Credit”) in the aggregate amount of up to Five Million Dollars (\$5,000,000.00) in support of the bids of contractors under the Program, and the L/C Bank is willing to do so, all upon the terms of this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the premises set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

1.1. Certain Defined Terms. As used in this Agreement, the capitalized terms defined in the Preamble and the Recitals shall have the respective meanings accorded to them therein and the following terms shall have the corresponding meanings accorded to them in this Section 1.1 (such meanings to be equally applicable to both the singular and plural forms of the terms defined):

“Anti-Terrorism Laws” means each of: (i) the Executive Order; (ii) the Patriot Act; (iii) the Money Laundering Control Act of 1986 (18 U.S.C. § 1956); and (iv) any other law, rule, regulation, ordinance, order, code interpretation, judgment, decree, directive, guideline, policy or similar form of decision of any Governmental Body now or hereafter enacted to monitor, deter or otherwise prevent terrorism or the funding or support of terrorism.

“Available Amount” in effect at any time means the maximum amount available for issuance as Letters of Credit, taking into account the face amount of all outstanding Letters of Credit at any one time.

“Bankruptcy Code” means the Bankruptcy Code of the United States, Title 11 of the United States Code, as amended.

“Business Day” means any day other than a Saturday, a Sunday or any other day on which banks located in the City of San Francisco, California are required or authorized by law to remain closed.

“Closing Date” means the date on which all of the conditions precedent to the issuance of the first Letter of Credit have been satisfied in full.

“Code” means the Internal Revenue Code of 1986, as the same may be from time to time amended.

“Collateral” means that certain Certificate of Deposit Number _____ of the L/C Bank in the amount of the Commitment and all successor certificates of deposit thereto and other evidence thereof, and all interest paid thereon, all of which shall be held by the L/C Bank as security for the obligations of the County hereunder.

“Commitment” means Five Million and No/100s Dollars (\$5,000,000.00).

“Debt” of any Person means, at any date and without duplication: (i) all obligations of such Person for borrowed money and reimbursement obligations which are not contingent; (ii) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments; (iii) obligations of such Person to pay the deferred purchase price of property or services which purchase price is due twelve (12) months or more from the date of incurrence of the obligation in respect thereof; (iv) all obligations of such Person as lessee under capital leases; and (v) all payment obligations of such Person, in addition to any obligations set forth in clauses (i) through (iv) above, arising under any interest rate swap agreement, interest rate cap agreement, interest rate collar agreement, interest rate futures contract, interest rate option contract or other similar arrangement and under any foreign exchange contract, currency swap agreement, foreign exchange futures contract, foreign exchange option contract, synthetic cap or other similar agreement.

“Default Rate” means a fluctuating rate of interest per annum equal to the sum of the Reference Rate plus three percent (3.00%), calculated on the basis of a year of 360 days and the actual number of days elapsed.

“Draw Date” has the meaning assigned to that term in Section 2.04 hereof.

“Draw Rate” means a fluctuating interest rate equal to the Reference Rate in effect from time to time for the first thirty (30) aggregate days and, thereafter, a fluctuating interest rate equal to two percent (2%) per annum in excess of the Reference Rate in effect from time to time.

“Drawing” means a demand for payment under a Letter of Credit.

“Event of Default” has the meaning assigned to that term in Section 6.1 hereof.

“Executive Order” means Executive Order No. 13224 on Terrorist Financings: Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten To Commit, or Support Terrorism, issued on September 23, 2001, and any successor order thereto.

“Expiration Date” means the earlier to occur of (i) _____, 2012 or such later date as may be agreed to in writing by the County and the L/C Bank from time to time (the “Stated Expiration Date”) and (ii) the occurrence of an Event of Default.

“Governmental Body” means the government of the United States of America, any other nation or any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

“Interest Payment Date” means the _____ day of each month.

“Participant” means a banking or financial institution participating in the Letters of Credit and this Agreement pursuant to Section 7.11 hereof.

“Participation Agreement” means the document by which a Participant participates in the Letters of Credit and this Agreement, as provided in Section 7.11 hereof.

“Patriot Act” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act, as amended (USA PATRIOT Act of 2001) (Title III of Pub.L. 107-56, signed into law on October 26, 2001).

“Person” means any natural person, corporation, firm, association, partnership, Governmental Body, including the County, or any other entity, whether acting in an individual, fiduciary or other capacity.

“Reference Rate” means the rate of interest publicly announced by the L/C Bank from time to time as its reference rate; *provided*, that without prejudice to the terms hereof the L/C Bank may from time to time make loans to certain customers at rates less than the Reference Rate. It is a rate set by the L/C Bank based upon various factors including the L/C Bank’s costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in the Reference Rate announced by the L/C Bank shall take effect at the opening of business on the day specified in the public announcement of such change.

1.2. Computation of Time Periods. In this Agreement, in the computation of a period of time from a specified date to a later specified date, the word “from” means “from and including” and the words “to” and “until” each means “to but excluding.”

1.3. Accounting Terms. All accounting terms not specifically defined herein shall be construed in accordance with generally accepted accounting principles and practices consistent with those principles and practices promulgated or adopted by the Financial Accounting Standards Board and the Board of the American Institute of Certified Public Accountants, their respective predecessors and successors.

1.4. References to Other Documents. All terms defined herein by reference to another document shall have the meanings ascribed to such terms in such other documents existing as of the date hereof without regard to subsequent modification or amendment unless the L/C Bank shall have consented otherwise in writing.

ARTICLE II

THE LETTERS OF CREDIT

2.1. The Letters of Credit. From time to time on and after the Closing Date and up to the Expiration Date, the L/C Bank shall, under the terms and conditions hereinafter set forth, issue one or more Letters of Credit, each pursuant to an L/C Application as set forth in Section 2.2 hereof; *provided*, that at no time shall the aggregate face amount of all Letters of Credit exceed the Commitment and *provided further*, that at no time shall the L/C Bank be obligated to issue a Letter of Credit with a face amount in excess of the Available Amount.

2.2. Procedures for Issuing Letters of Credit. The County shall send the L/C Bank an executed L/C Application in the form of Exhibit A hereto, completed with all required information, not less than three (3) Business Days before the date on which the Letter of Credit is to be issued. On the date specified in such L/C Application and so long as all conditions to issuance of such Letter of Credit have been fulfilled, the L/C Bank shall issue such Letter of Credit in the form of Exhibit B hereto. No Letter of Credit may have an expiry date that is later than the Stated Expiration Date.

2.3. Fees.

(a) The County shall pay the L/C Bank, on the issuance date of each Letter of Credit and on each anniversary of such issuance date, an issuance fee (the "Issuance Fee") in an amount equal to three-quarters of one per percent (0.75%) of the face amount of the Letter of Credit. Each Issuance Fee shall be fully earned upon payment and non-refundable.

(b) The County shall pay the L/C Bank all other fees associated with standby letters of credit as are detailed in the L/C Bank's Government Services Fee Schedule (as the same may be amended from time to time by the L/C Bank, the "Fee Schedule"), a copy of which has been provided to the County. All such fees shall be paid as specified in the Fee Schedule or, if not so specified, promptly upon demand.

2.4. Reimbursement on Demand. The County shall pay to the L/C Bank in immediately available funds, on each date on which the L/C Bank shall honor a Drawing under a Letter of Credit (the "Draw Date"), a sum equal to the Drawing, plus interest on the unreimbursed amount at the Draw Rate from the Draw Date until reimbursement is received by the L/C Bank in full; *provided*, that no interest shall accrue and be payable if the County reimburses the L/C Bank for a draw by 1:00 P.M. (Pacific Time) on the Draw Date of such Drawing. Notwithstanding the foregoing, the County shall reimburse the L/C Bank in full for all amounts drawn on Letters of Credit on or before the Expiration Date. From and after the Expiration Date, all amounts outstanding hereunder shall bear interest until paid in full at the Default Rate.

2.5. Payment of Interest. So long as any amount drawn under a Letter of Credit is unreimbursed and is subject to the provisions of Section 2.4 hereof, such amount shall bear interest at the Draw Rate (or the Default Rate, as the case may be). Accrued and unpaid interest shall be paid to the L/C Bank each month on the Interest Payment Date. The L/C Bank will use commercially reasonable efforts to provide the County with a written statement prior to each Interest Payment Date, which statement shall set forth the aggregate amount of interest due and payable as of such Interest Payment Date; *provided, however*, that any failure by the L/C Bank to provide such statement shall not limit or abrogate in any manner the obligations of the County to pay interest from time to time accrued hereunder.

2.6. Increased Costs.

(a) If any change in any law or regulation or in the interpretation thereof by any court or Governmental Body charged with the administration thereof shall either (i) impose, modify or deem applicable any reserve, special deposit or similar requirement against letters of credit issued by, or assets held by, or deposits in or for the account of, the L/C Bank or (ii) impose on the L/C Bank any other condition regarding this Agreement, the Letters of Credit, and the result of any event referred to in clause (i) or (ii) above shall be to (A) increase the cost to the L/C Bank of issuing or maintaining the Letters of Credit or (B) reduce the amount receivable or to be received with respect to the Letters of Credit (which increase in cost or reduction in amount shall be determined by the L/C Bank's reasonable allocation of the aggregate of such cost increases or such reduced amounts resulting from such event), then, within thirty (30) days after a written demand by the L/C Bank, the County shall pay to the L/C Bank, from time to time as specified by the L/C Bank, additional amounts which shall be sufficient to compensate the L/C Bank for such increased cost or such reduced amount. A certificate setting forth such increased cost incurred by the L/C Bank as a result of any event mentioned in clause (i) or (ii) above and giving a reasonable explanation thereof, submitted by the L/C Bank to the County, shall constitute such demand and shall, in the absence of manifest error, be conclusive and binding for all purposes as to the amount thereof.

(b) If the L/C Bank shall have determined that the adoption after the date hereof of any law, rule or regulation regarding capital adequacy, or any change therein or in the interpretation or application thereof or compliance with any request or directive regarding capital adequacy (whether or not having the force of law) from any central bank or Governmental Body, does or shall have the effect of reducing the rate of return on the L/C Bank's capital as a consequence of its obligations hereunder to a level below that which the L/C Bank could have achieved but for such adoption, change or compliance (taking into consideration the L/C Bank's policies with respect to capital adequacy) by any amount deemed by the L/C Bank to be material, then from time to time, within thirty (30) days after demand by the L/C Bank, the County shall pay to the L/C Bank such additional amount or amounts as will compensate the L/C Bank for such reduction. With such demand, the L/C Bank shall provide the County with a statement in reasonable detail setting forth the calculation of the amount of such compensation. Such statement shall constitute demand for payment of the amount or amounts set forth therein and shall, in the absence of manifest error, be conclusive and binding for all purposes as to the amount or amounts thereof.

2.7. Payments and Computations.

(a) The County shall make each payment hereunder not later than 1:00 P.M. (Pacific Time) on the day when due without deduction or offset in lawful money of the United States of America to the L/C Bank at its address referred to in Section 7.2 hereof in same-day funds or in accordance with the wire instructions in said Section 7.2 or, in the alternative, the L/C Bank may debit the County's account(s) with the L/C Bank for any payment when due, which the County hereby authorizes the L/C Bank so to do. Amounts not paid by 1:00 P.M. (Pacific Time) on the day when due will accrue interest at the Draw Rate (or the Default Rate, as the case may be) until paid. Computations of all commissions and fees established herein shall be made on the basis of a year of 360 days for the actual number of days elapsed, except as otherwise provided herein.

(b) It is the intent of the L/C Bank and the County in the execution of this Agreement to contract in strict compliance with the usury laws of the State of California (the "Usury Law"). In furtherance thereof, the L/C Bank and the County stipulate and agree that none of the terms and provisions contained in this Agreement, or in any other instrument executed in connection herewith, shall ever be construed to create a contract to pay for the use, forbearance or detention of money at a rate of interest in excess of the maximum interest rate permitted to be charged by the L/C Bank in compliance with the Usury Law. Neither the County nor any guarantors, endorsers or other parties now or hereafter becoming liable for payment under this Agreement shall ever be required to pay interest thereon at a rate in excess of the maximum rate of interest that may be lawfully charged by the L/C Bank in compliance with the Usury Law, and the provisions of this Section 2.7(b) shall control over all other provisions of this Agreement, and of any other instruments now or hereafter executed in connection herewith or therewith, which may be in apparent conflict herewith. If the maturity of any obligations of the County shall be accelerated for any reason or if the principal of all Drawings is paid prior to the Expiration Date, and as a result thereof the interest received exceeds the applicable maximum lawful rate permitted to be charged by the L/C Bank in compliance with the Usury Law, the L/C Bank shall refund to the County the amount of such excess or shall, at its option, credit the amount of such excess against the principal balance then outstanding. In the event that the L/C Bank shall collect monies which are deemed to constitute interest in excess of the lawful rate which the L/C Bank may charge, for any reason whatsoever, such monies shall, upon such determination and at the option of the L/C Bank, be immediately either returned to the County or credited against the principal balance of the Drawings then outstanding.

(c) Whenever any payment to be made hereunder shall be stated to be due on a day which is not a Business Day, such payment shall be made on the next succeeding Business Day, and such extension of time shall in such case be included in the computation of payment of interest or commission, as the case may be.

2.8. Evidence of Indebtedness. The L/C Bank shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of the County resulting from each drawing under every Letter of Credit and the amounts of principal and interest payable and paid from time to time hereunder; *provided, however*, that any failure of the L/C Bank to make entries in such account or accounts or any error in doing so shall not limit or otherwise affect the obligations of the County under this Agreement.

2.9. Obligations Absolute. The payment obligations of the County under this Agreement shall be unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including without limitation the following circumstances:

(a) any lack of validity or enforceability of this Agreement, any Letter of Credit or any other agreement or instrument relating hereto;

(b) any amendment or waiver of, or any consent to departure from, all or any of the terms of this Agreement, unless the County has received the prior written consent from the L/C Bank;

(c) the existence of any claim, set-off, defense or other right which the County may have at any time against any beneficiary, or any transferee, of any Letter of Credit (or any persons or entities for whom any such beneficiary or any such transferee may be acting), the L/C Bank, or any other person or entity, whether in connection with this Agreement, the transactions contemplated by this Agreement, or any unrelated transaction;

(d) any statement or any other document presented under any Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect, or any statement therein being untrue or inaccurate in any respect;

(e) payment by the L/C Bank under any Letter of Credit against presentation of a Drawing or certificate that does not substantially comply with the terms of such Letter of Credit;

(f) any non-application or misapplication by the beneficiary of the proceeds of any Drawing; or

(g) the failure by the L/C Bank to honor any Drawing under any Letter of Credit or to make any payment demanded under any Letter of Credit on the grounds that the demand for such payment does not conform to the terms and conditions of such Letter of Credit.

2.10. Security for the County's Obligations. To secure the performance by the County of its obligations hereunder and the payment of all amounts due or to become due hereunder to the L/C Bank, the County does hereby grant, bargain, mortgage, pledge, transfer, assign, set over and confirm to the L/C Bank all of the County's right, title and interest in and to the Collateral, to have and to hold as collateral security for the performance by the County of each and every one of its obligations hereunder. Upon the performance in full of all of the obligations of the County and the passage of all time periods in which such performance might be set aside (whether in bankruptcy or a proceeding in equity or at law, or other wise), the L/C Bank shall return the Collateral to the County at the expiration of the then-current term of the certificate of deposit comprising the Collateral.

ARTICLE III

CONDITIONS PRECEDENT

3.1. Conditions Precedent to the Issuance of the Initial Letter of Credit. The obligation of the L/C Bank to issue the first Letter of Credit under this Agreement is subject to the satisfaction of the conditions precedent that the L/C Bank shall have received, on or before the date of the issuance of such first Letter of Credit, the following, each appropriately dated and in form, number and substance satisfactory to the L/C Bank:

(a) originals (or copies certified to be true copies by an appropriate official of the County) of all governmental and regulatory approvals necessary for the County to enter into this Agreement and to perform its obligations as contemplated hereby, and of all other documents evidencing any other necessary action by the County in connection herewith;

(b) to the extent not included in clause (a) above, copies of the resolutions of the County authorizing the execution, delivery and performance of this Agreement, certified by an appropriate official of the County, which certification shall include a statement to the effect that such resolutions are in full force and effect on the date of the issuance of the first Letter of Credit;

(c) a certificate of the County certifying the names and true signatures of the officials of the County authorized to sign this Agreement and the other documents to be delivered by the County hereunder;

(d) an executed original of this Agreement, signed by both parties hereto; and

(e) an opinion of outside legal counsel to the County, in form and substance satisfactory to the L/C Bank and its counsel.

3.2. Conditions Precedent to the Issuance of All Letters of Credit. The obligation of the L/C Bank to issue each Letter of Credit shall be subject to the satisfaction of the further conditions precedent that, on the date of the issuance of such Letter of Credit:

(a) The following statements shall be true and the L/C Bank shall have received a certificate signed by a duly authorized official of the County, dated the date of such issuance, stating that:

(i) the representations and warranties in this Agreement are correct on and as of the date of issuance of such Letter of Credit as though made on and as of such date; and

(ii) no event has occurred and is continuing, or would result from the issuance of such Letter of Credit, which constitutes an Event of Default or would constitute an Event of Default but for the requirement that notice be given or time elapse (or both).

(b) The L/C Bank shall have received a completed L/C Application pertaining to the Letter of Credit to be issued.

(c) The L/C Bank shall have received such other approvals, opinions or documents as the L/C Bank may reasonably request.

(d) The L/C Bank shall have a fully perfected first priority lien upon the Collateral.

(e) The County shall have paid or reimbursed the L/C Bank (or provided for such payment or reimbursement) for all fees as provided in Section 2.3 hereof and all costs and expenses as provided in Section 7.8 hereof.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES

The County represents and warrants to the L/C Bank as follows:

4.1. Due Creation. The County is a political subdivision of the State of California, duly organized and existing pursuant to the laws of the State of California.

4.2. Power. The County is possessed of full powers to enter into contracts such as this Agreement, which powers have been validly exercised in connection with the transactions effected by this Agreement.

4.3. Due Authorization. The execution, delivery and performance by the County of this Agreement are within the County's powers, have been duly authorized by all necessary governmental action, and do not and will not contravene or constitute a default under any provision of applicable law or regulation or of any law, determination, award, regulation, judgment, injunction, order, decree, rule or writ applicable to the County, or any indenture, lease, instrument, agreement or other contractual restriction binding on the County or its properties, and do not and will not result in or require the creation or imposition of any lien, security interest or other charge or encumbrance upon or with respect to any of its properties, except as contemplated by this Agreement. The County is not in violation of or in default under any law, order, rule, regulation, writ, judgment, injunction, decree, determination or award or any indenture, agreement, lease, instrument or other contractual restriction binding on or affecting the County, which violation or default would adversely impair the ability of the County to perform its obligations hereunder.

4.4. Approvals. All authorizations, approvals, legally required orders, consents and other actions by, and notice to or filing or registration with, any Governmental Bodies or other public boards or bodies have been obtained or will be obtained for the due execution, delivery and performance by the County of this Agreement, and all of the transactions contemplated hereby.

4.5. Enforceable Nature of Obligations. This Agreement has been duly authorized, executed and delivered by the County and, assuming the due authorization, execution and delivery by the other parties hereto, constitutes the legal, valid and binding obligation of the County, enforceable against the County in accordance with its terms subject to any applicable bankruptcy, insolvency, fraudulent conveyance or transfer, moratorium, reorganization or other similar laws affecting creditors' rights.

4.6. No Actions. There are no actions, suits or proceedings, and no proceedings before any Governmental Body, pending or (to the best knowledge of the County) threatened against or affecting the County which will (to the extent not covered by insurance), in the reasonable opinion of the County, have a material adverse effect on the business, financial condition or results of operations of the County or the Collateral or which in any manner questions the validity of this Agreement.

4.7. No Immunity. Under California law, the County is not entitled to claim governmental immunity or immunity on similar grounds with respect to itself or its revenues, assets or property in any suit, action or proceeding brought against it for breach of contract, including but not limited to its obligations under this Agreement or the transactions contemplated hereby; *provided*, that a claimant must comply with the provisions of the Tort Claims Act set forth in California Government Code Section 810 *et seq.* in suits, actions or proceedings brought against the County. To the extent that the County has or hereafter may acquire under any applicable law any right to immunity from set-off or legal proceedings on the grounds of sovereignty, the County hereby irrevocably waives, to the fullest extent permitted by law, such rights to immunity for itself in respect of its obligations arising under or related to this Agreement.

4.8. Compliance With Law. The County has complied with all laws, including but not limited to all Anti-Terrorism Laws.

4.9. No Margin Stock. No Letter of Credit shall be requested to be issued for the purpose, whether immediate, incidental or ultimate, of purchasing or carrying any “margin stock” (within the meanings of Regulation U or X of the Board of Governors of the Federal Reserve System, as amended from time to time), or to extend credit to others for the purpose of purchasing or carrying any “margin stock”, or for any other purpose which would violate any regulations of said Board of Governors.

ARTICLE V

COVENANTS OF THE COUNTY

5.1. Affirmative Covenants. So long as a Drawing is available under a Letter of Credit or the L/C Bank shall have any Commitment hereunder, or the County shall have any obligation to pay any amount to the L/C Bank hereunder, the County shall, unless the L/C Bank shall otherwise consent in writing:

(a) preserve and maintain its existence and rights as a political subdivision of the State of California, organized and existing pursuant to the laws of the State of California, and preserve and maintain its status;

(b) comply with the requirements of all applicable laws, rules, regulations and orders of any Governmental Body, the non-compliance with which would materially adversely affect its operations, including all Anti-Terrorism Laws;

(c) at any reasonable time and from time to time upon reasonable advance notice, permit the L/C Bank or any agents or representatives thereof to examine and make copies of and

abstracts from all public records and books of account of the County and to discuss the affairs, finances and accounts of the County;

(d) keep proper books of record and account, in which full and correct entries shall be made of all financial transactions and the assets and business of the County, in accordance with generally accepted accounting principles consistently applied;

(e) perform and comply with each of the terms, covenants and conditions set forth in this Agreement; and

(f) maintain its primary deposit accounts with the L/C Bank at all times, and maintain the Collateral at the L/C Bank.

5.2. Negative Covenants. As long as this Agreement is in effect, and until all amounts payable hereunder are indefeasibly paid in full, the County shall not, unless the L/C Bank shall otherwise consent in writing:

(a) violate any law, rule, regulation or governmental order to which it is subject, which violation involves a reasonable likelihood of materially and adversely affecting the financial condition, business or results of operations of the County or its ability to perform its obligations under this Agreement;

(b) take any action inconsistent with the rights of the L/C Bank under this Agreement; or

(c) take any action which would result in the County's obligations to the L/C Bank under this Agreement not ranking prior in right of payment to all unsecured obligations of the County to other creditors.

ARTICLE VI

DEFAULT

6.1. Events of Default. The occurrence of any of the following events shall constitute an Event of Default hereunder:

(a) the County shall fail to pay when due the principal of the drawn portion of all Letters of Credit on or before the Expiration Date or pay interest thereon on each Interest Payment Date; or

(b) any representation or warranty made, or deemed made, by or on behalf of the County (or any of its respective officials) in connection with this Agreement shall prove to have been incorrect in any material respect when made or deemed made; or

(c) the County shall fail to perform or observe any term, covenant or agreement contained in Section 5.2 hereof on its part to be performed or observed; or

(d) the County shall fail to perform or observe any other term, covenant or agreement contained in any other section of this Agreement on its part to be performed or observed and any such failure shall remain unremedied for thirty (30) days after written notice thereof shall have been given to the County by the L/C Bank; or

(e) the County shall default in the payment of any Debt, whether such Debt now exists or shall hereafter be created, and any period of grace with respect thereto shall have expired, or an event of default as defined in any mortgage, indenture or instrument, under which there may be issued, or by which there may be secured or evidenced, any Debt, whether such Debt now exists or may be hereafter created, shall occur, which default in payment or event of default shall result in such Debt becoming or being declared due and payable prior to the date on which it would otherwise become due and payable; or

(f) an order for relief shall have been entered against the County under the Bankruptcy Code or any other similar applicable Federal or state law, and such decree or order shall have continued undischarged and unstayed for a period of sixty (60) days; or a decree or order of a court having jurisdiction in the premises for the appointment of a receiver, trustee, liquidator or custodian of the County or of its property, or for the winding up or liquidation of its affairs, shall have been entered, and such decree or order shall have remained in force undischarged and unstayed for a period of sixty (60) days; or

(g) the County shall institute a voluntary case, or shall consent to the institution of an involuntary case against it, or shall file a petition or answer or consent seeking reorganization or arrangement under the Bankruptcy Code or any other similar applicable Federal or state law, or shall consent to the filing of any such petition, or shall consent to the appointment of a receiver, trustee, liquidator or custodian of it or of its property, or shall make an assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due, or corporate action shall be taken by the County in furtherance of any of the aforesaid purposes; or

(h) any provision of this Agreement shall at any time for any reason cease to be valid and binding upon the County, or shall be declared to be null and void, or the validity or enforceability thereof shall be contested by the County, or the County shall deny that it has any or further liability or obligation under this Agreement; or

(i) any event which materially and adversely affects the ability of the County to observe or perform the terms of this Agreement shall have occurred and be continuing; or

(j) any pledge or security interest created by this Agreement shall fail to be fully enforceable with the priority required under this Agreement by reason of a final, non-appealable judgment of a court of competent jurisdiction; or

(k) the Collateral shall become subject to any stay, writ, judgment, warrant of attachment, execution or similar process by any of the creditors of the County and such stay, writ, judgment, warrant of attachment, execution or similar process shall not be released, vacated or stayed within thirty (30) days after its issue or levy.

6.2. Remedies of the L/C Bank. If any Event of Default shall have occurred and be continuing, the L/C Bank may (but shall not be obligated to), by notice to the County, declare the obligation of the L/C Bank to issue Letters of Credit to be terminated (whereupon the same shall forthwith terminate) and accelerate the County's repayment obligations to be due and payable in full forthwith, and the L/C Bank may take such action as may be necessary to cure such Event of Default on behalf and for the account of the County, exercise any and all of the rights available to it hereunder, and exercise any other rights and remedies available to it at law or in equity, including but not limited to taking all or any portion of the Collateral and applying the Collateral to any amounts owing hereunder to the L/C Bank; *provided, however*, that upon the occurrence of an Event of Default described in clause (f) or clause (g) of Section 6.1, the L/C Bank's obligation to issue Letters of Credit shall automatically terminate and the County's repayment obligations shall automatically accelerate and be due and payable in full, all without the need of any action or notice on the part of the L/C Bank.

ARTICLE VII

GENERAL PROVISIONS

7.1. Amendments. This Agreement may be amended only by a written instrument duly executed by each of the parties hereto. No course of dealing between the County and the L/C Bank, nor any delay in exercising any rights hereunder, shall operate as a waiver of any rights of the L/C Bank or the County hereunder. Unless otherwise specified in such waiver or consent, a waiver or consent given hereunder shall be effective only in the specific instance and for the specific purpose for which given.

7.2. Notices. All notices, requests and other communications provided for hereunder shall be in electronic, telephonic or written form (including bank wire, telegram, telecopier, telex or similar writing) and shall be given to the party to whom sent, addressed to it, at its address or other address or telephone, telecopier or telex number as such party may hereafter specify for the purpose by notice to the other parties set forth below. Each such notice, request or communication shall be effective (i) if given by telephone, telex, telecopier or other electronic means, when such communication is transmitted to the address specified below and any appropriate answerback or confirmation is received, (ii) if given by certified or registered mail, return receipt requested, on the date of receipt appearing on the return postal receipt for notices given by certified or registered mail, (iii) if given by hand delivery, when delivered at the address specified below:

If to the L/C Bank, to:

Union Bank of California, N.A.
Public Finance Unit
200 Pringle Ave., Suite 250
Walnut Creek, CA 94596
Re: County of Alameda
Telephone No.: (925) 947-3044
Telecopier No.: (925) _____

Attention: Ms. Amelia Hong

Wire instructions for Letter of Credit reimbursement of Drawings and payments of interest and fees:

Union Bank of California, N.A.
ABA No. 1220-00496
Reference: _____
Credit to Account No. _____
Attention: _____

If to the County, to:

County of Alameda
1221 Oak Street
Oakland, CA 92101
Attention: _____
Telephone No.: _____
Facsimile No.: _____

or (iv) in any of the foregoing cases, at such other address or telex, bank wire or telephone number as the addressee may hereafter specify for the purpose in a notice to the other party.

7.3. No Waiver. Any waiver, consent or approval by the L/C Bank of any Event of Default or breach by the County of any provision, condition, or covenant of this Agreement must be in writing and shall be effective only to the extent set forth in writing. No waiver of any breach or default shall be deemed a waiver of any later breach or default of the same or any other provision of this Agreement. No failure or delay on the part of the L/C Bank in exercising any power, right, or privilege under this Agreement shall operate as a waiver thereof, and no single or partial exercise of any such power, right, or privilege shall preclude any further exercise thereof or the exercise of any other power, right or privilege. The L/C Bank has the right at its sole option to continue to accept interest and/or principal payments due under this Agreement after default, and such acceptance shall not constitute a waiver of said default or an extension of the Expiration Date unless the L/C Bank agrees otherwise in writing.

7.4. Rights Cumulative. All rights and remedies of the L/C Bank and the County existing under this Agreement are cumulative to, and not exclusive of, any other rights or remedies available under contract or applicable law.

7.5. Right of Set-off.

(a) Upon the occurrence and during the continuance of any Event of Default, the L/C Bank is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other indebtedness at any time owing by the L/C Bank to or for the credit or the account of the County against any and all of the obligations of the County now or hereafter existing under this Agreement, irrespective of whether or not the L/C Bank shall have made any demand hereunder and although such obligations may be contingent or unmatured.

(b) The L/C Bank agrees promptly to notify the County after any such setoff and application referred to in subsection (a) above; *provided*, that the failure to give such notice shall not affect the validity of such setoff and application. The rights of the L/C Bank under this Section 7.5(b) are in addition to other rights and remedies (including, without limitation, other rights of setoff) which the L/C Bank may have.

7.6. Indemnification. To the extent permitted by law, the County agrees to indemnify and hold harmless the L/C Bank and its officers, directors, employees and agents (each an "Indemnified Party") from and against any and all claims, damages, losses, liabilities, reasonable costs or expenses whatsoever which an Indemnified Party may incur (or which may be claimed against an Indemnified Party by any Person) by reason of or in connection with the County's performance of, or failure to perform, its obligations under this Agreement; *provided, however*, that the County shall not be required to indemnify any Person for any claims, damages, losses, liabilities, costs or expenses to the extent, but only to the extent, caused by the wilful misconduct or gross negligence of the L/C Bank. Nothing in this Section 7.6 is intended to limit the County's obligations contained in Article II hereof. Without prejudice to the survival of any other obligation of the County hereunder, the indemnities and obligations of the County contained in this Section 7.6 shall survive the payment in full of amounts payable pursuant to Article II hereof and termination of all Letters of Credit.

7.7. Liability of the L/C Bank. The County assumes all risks of the acts or omissions of any beneficiary or transferee of a Letter of Credit with respect to its use of such Letter of Credit. Neither the L/C Bank nor any of its officers or directors shall be liable or responsible for: (i) the use which may be made of any Letter of Credit or any acts or omissions of any beneficiary or transferee in connection therewith; (ii) the validity, sufficiency or genuineness of documents, or of any endorsement thereon, even if such documents should prove to be in any or all respects invalid, insufficient, fraudulent or forged; (iii) payment by the L/C Bank against presentation of documents which do not comply with the terms of a Letter of Credit, including failure of any documents to bear any reference or adequate reference to such Letter of Credit; or (iv) any other circumstances whatsoever in making or failing to make payment under any Letter of Credit, except that the County shall have a claim against the L/C Bank, and the L/C Bank shall be liable to the County to the extent of any direct, as opposed to consequential, damages suffered by the County which the County proves were caused by the L/C Bank's gross negligence or wilful failure to make lawful payment under a Letter of Credit after the presentation to it by a beneficiary or a transferee to whom a Letter of Credit has been transferred in accordance with its terms of a Drawing and certificate strictly complying with the terms and conditions of such Letter of Credit. In furtherance and not in limitation of the foregoing, the L/C Bank may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary.

7.8. Costs, Expenses and Taxes. In addition to any other amounts payable by the County under this Agreement, the County agrees to pay on the Closing Date all costs and expenses of the L/C Bank including without limitation the reasonable fees and expenses of legal counsel for the L/C Bank in an amount not to exceed Eighteen Thousand and No/100s Dollars (\$18,000.00), in connection with the preparation, issuance and delivery of this Agreement and any other documents that may be delivered in connection with any of the foregoing. In addition, the County agrees to pay promptly all costs and expenses of the L/C Bank (including reasonable

counsel fees and expenses) in connection with (i) the filing, recording, administration, transfer, amendment, maintenance, renewal or cancellation of a Letter of Credit, this Agreement, or any other document that the L/C Bank or its counsel reasonably determines that it must review or issue in connection with this Agreement, and (ii) any and all stamp and other taxes and fees payable or determined to be payable in connection with a Letter of Credit, this Agreement, and any other documents which may be delivered in connection with this Agreement after the Closing Date. The L/C Bank shall give written notice to the County of any amounts as to which the L/C Bank is entitled to reimbursement or indemnification under this Section 7.8, and the County, to the extent the L/C Bank prevails in such proceeding or action, shall pay such amounts to the L/C Bank forthwith. Each of the parties hereto also agrees to pay promptly all costs and expenses, including without limitation all reasonable attorneys' fees and disbursements (and fees and disbursements of the L/C Bank's in-house counsel, if applicable) expended or incurred by the other party in any arbitration judicial reference or other legal action brought in connection with this Agreement to the extent that the other party prevails in such proceeding or action.

7.9. Subrogation of the L/C Bank. From and after payment by the L/C Bank of a Drawing under any Letter of Credit and until the L/C Bank is paid in full, the County agrees that the L/C Bank shall succeed to all of the right, title and interest of the beneficiary of the Letter of Credit on which payment was made. Such subrogation of the L/C Bank shall constitute additional security and shall not be deemed a substitution for the performance by the County of its obligations hereunder.

7.10. Survival of Representations and Warranties. All statements contained in any certificate, financial statement or other instrument delivered by or on behalf of the County pursuant to or in connection with this Agreement (including but not limited to any such statement made in or in connection with any amendment hereto or thereto) shall constitute representations and warranties made under this Agreement. All representations and warranties made under this Agreement (i) shall be made and shall be true at and as of the date of this Agreement, the date on which each Letter of Credit is issued and the date of each Drawing under each Letter of Credit and (ii) shall survive the execution and delivery of this Agreement, regardless of any investigation made by the L/C Bank or on its behalf.

7.11. Participations. The L/C Bank may participate to other banking or financial institutions of the L/C Bank's choosing all or any portion of its obligations under the Letters of Credit and this Agreement (to be evidenced by one or more Participation Agreements or similar documents). The L/C Bank has no obligation to disclose the participation of such other institution. In calculating any amounts owing to the L/C Bank hereunder, the Participants shall be entitled, subject to the terms thereof, to the payments set forth in Section 2.6 as if they were the L/C Bank, to the extent such Participants are affected by the provisions of such Section 2.6. The foregoing notwithstanding, no such participation by the L/C Bank shall in any way affect any of the obligations of the L/C Bank under the Letter of Credit, and the County shall have no obligation to deal in any manner with any such Participant.

7.12. Alternative Dispute Resolution. The L/C Bank and the County agree that any claim, cause of action, proceeding or other dispute concerning this Agreement, any L/C Application or any Letter of Credit (each, a "Claim"), including any question of law or fact

relating thereto, shall be determined by judicial reference pursuant to the terms of that certain Alternative Dispute Resolution Agreement entered into by the parties on even date herewith.

7.13. Binding Effect. This Agreement shall become effective when it shall have been executed by the County and the L/C Bank and thereafter shall be binding upon and inure to the benefit of the County and the L/C Bank and their respective successors and assigns, except that the County shall not have the right to assign its rights hereunder or any interest herein without the prior written consent of the L/C Bank.

7.14. Severability. Any provision of this Agreement which is prohibited, unenforceable or not authorized in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition, unenforceability or non-authorization without invalidating the remaining provisions hereof or affecting the validity, enforceability or legality of such provision in any other jurisdiction.

7.15. Governing Law. This Agreement and the obligations of the parties hereunder shall be governed by, and construed in accordance with, the laws of the State of California, without application of California's principles of conflicts of law.

7.16. Headings. Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

7.17. Execution in Counterparts. It shall not be necessary that all parties execute and deliver the same counterpart of this Agreement. This Agreement shall therefore become effective when each party has executed any counterpart hereof and delivered the same to the other parties. All such counterparts, collectively, shall be deemed a single agreement.

7.18. The Patriot Act Notice. The L/C Bank hereby notifies the County that, pursuant to the requirements of the Patriot Act, the L/C Bank is required to obtain, verify and record information that includes the name and address of the County and other information that will allow the L/C Bank to identify the County in accordance with the requirements of the Patriot Act.

[SIGNATURE PAGE FOLLOWS IMMEDIATELY]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first above written.

COUNTY OF ALAMEDA, a political subdivision
of the State of California

By: _____
Name: _____
Title: _____

UNION BANK, N.A., a national banking
association

By: _____
Name: _____
Title: _____

EXHIBIT A

FORM
OF
L/C APPLICATION

(Attached)



APPLICATION AND AGREEMENT FOR IRREVOCABLE STANDBY LETTER OF CREDIT

PLEASE CHECK AND COMPLETE APPLICABLE BOXES BELOW.

We ("Applicant") request you, Union Bank of California, N.A. ("Bank") to issue an irrevocable standby letter of credit ("Credit") with the following terms and conditions for delivery to the beneficiary named below ("Beneficiary") by: Telex/SWIFT or Courier					
AMOUNT (In words and figures, including currency type)					EXPIRY DATE
APPLICANT (Complete name and address)			BENEFICIARY (Complete name and address)		
ADVISING BANK (name and address)--If left blank, Bank will select at its option			ACCOUNT PARTY (name and address)--Complete only if Account Party is not Applicant		
Account Party's name shall appear as applicant in the Credit.					
PARTIAL DRAWINGS: Allowed or Not Allowed					
ANY CHARGES OF ADVISING BANK ARE FOR THE ACCOUNT OF: Applicant or Beneficiary					
CREDIT AVAILABLE BY PAYMENT: Against presentation of the documents detailed herein.					
DOCUMENTS REQUIRED: A dated statement purportedly signed by an authorized officer or representative of Beneficiary stating: "The undersigned being a duly authorized officer or representative of _____ hereby represents <small style="margin-left: 150px;">(BENEFICIARY NAME)</small> and warrants that the amount of the accompanying draft represents and covers: See text set forth in attached Form of Letter of Credit. Others (Specify): A sight draft and the original credit					
SPECIAL CONDITIONS: Final Expiry Date: (Month/Day/Year) Others (Specify):					
IMPORTANT NOTICE					
(A) Applicant understands that the risk is greater if Applicant requests a standby letter of credit which requires only a simple demand without any supporting documentation. Typically, standby letters of credit require the beneficiary to provide some written statement in order to obtain payment. However, a beneficiary that can obtain a standby letter of credit available only against presentation of a simple demand, relieves itself of any documentary requirements. (B) Applicant understands that the final form of Credit may be subject to such revision and changes as are deemed necessary or appropriate by Bank and Applicant hereby consents to such revisions and changes.					
The opening of the Credit is subject to the terms and conditions appearing on the subsequent page(s) hereof to which Applicant agrees and, if Applicant has entered into a master letter of credit issuance agreement with Bank, then the Credit is subject to the terms and provisions set forth therein to the extent they are inconsistent with the terms and conditions provided herein.					
THE UNDERSIGNED AGREES TO BE BOUND BY THE TERMS AND CONDITIONS SET FORTH ABOVE AND ON THE SUBSEQUENT PAGE(S) HEREOF.					
NAME OF APPLICANT					
AUTHORIZED SIGNATURE			DATE	ADDITIONAL AUTHORIZED SIGNATURE	
X				X	
BANK USE ONLY					
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
P = PERFORMANCE BOND A standby letter of credit qualifies as a performance bond if the underlying contract between the account party and the beneficiary concerns a "commercial non-financial" undertaking. Examples include guaranty of labor and material, and bid and performance bonds. F = FINANCIAL OBLIGATION A standby letter of credit qualifies as a financial obligation substitute if the underlying contract between the account party and the beneficiary is "financial" in nature and concerns the payment or repayment of monetary amounts (cash, credit, securities, bills due, etc.).					
OPENING COMMISSION % P.A. (min. \$ _____) + (\$ _____) or Flat Fee \$ _____			PAYMENT COMMISSION % per Drawing or Minimum \$ _____		
ACCOUNT OFFICER PRINT NAME & TITLE		ACCOUNT OFFICER APPROVAL	OFFICE PHONE NO.	RC NUMBER	OFFICE NO.
		X			
ADDITIONAL APPROVAL PRINT NAME & TITLE				ADDITIONAL APPROVAL	
				X	
SIGNATURE VERIFIED BY LIABILITY CONTROL		TELETRANSMISSION AGREEMENT		LINE AVAILABILITY (Unit \$1,000)	
Initials: _____ Date: _____		Yes or No or N/A		Current Amount: \$ _____ This L/C \$ _____	

In consideration of Union Bank, N.A. ("Bank") issuing an irrevocable standby letter of credit (as amended or modified from time to time, the "Credit") as provided on the previous page(s) of this Application and Agreement for Irrevocable Standby Letter of Credit (the "Agreement") for the account of the party or parties executing such previous pages as applicant (individually and collectively, "Applicant" or "you"), you hereby agree with Bank as follows:

1. That you shall:

(a) Pay Bank, on demand, such amounts as are required to pay or reimburse Bank for all disbursements ("Disbursement(s)") made or to be made by Bank or Bank's correspondents in connection with the Credit.

(b) Pay Bank, on demand, all commissions, fees and other charges ("Charge(s)") arising out of or in connection with the Credit (including without limitation those for the account of the person or entity in whose favor the Credit is issued (the "Beneficiary")) if the Beneficiary fails to pay on first demand).

(c) Pay Bank, on demand, all expenses ("Expense(s)") which Bank or Bank's correspondents may sustain or incur in connection with the Credit.

(d) Make each such payment in immediately available funds in the currency of the applicable Disbursement, Charge or Expense; provided, however, if such payment is to be in a currency other than U.S. Dollars, Bank may, at its option, require such amount to be paid in an equivalent amount of U.S. Dollars converted at Bank's then current rate of exchange.

You agree that Bank may make demand for payment in writing or by telephone, facsimile, SWIFT, telex, Bank's Global Trade Services web product or other method of teletransmission (collectively, "Telecommunications"), and expressly authorize Bank to debit any of your accounts maintained with Bank or any of Bank's affiliates or subsidiaries for any or all of your obligations hereunder as and when the same become due.

2. In addition to all other amounts required to be paid hereunder, you agree to pay Bank, on demand: (a) all charges, costs and expenses (including without limitation the allocated costs of Bank's business staff and reasonable attorneys' fees and costs of all kinds, including the allocated costs of Bank's in-house legal counsel and staff) incurred by Bank in connection with

(i) any amendments or negotiations in respect of any documents evidencing your obligations hereunder; (ii) any legal advice sought by Bank in connection with Bank's rights, remedies, legal position or obligations; (iii) enforcing your obligations hereunder; and (iv) any proceeding for declaratory relief, interpleader, injunction, restraining order or similar relief, or any counterclaim or appeal to any such proceeding brought by or against Bank; (b) all taxes levied or imposed by any government agency in connection with this Agreement or the Credit; and (c) interest on any amount owed hereunder which is not paid when due at a per annum rate (computed for actual days elapsed on the basis of a 360-day year) equal to (i) 5% in excess of the Reference Rate in the case of amounts due in U.S. Dollars; or (ii) 5% in excess of the rate Bank determines to be its cost of funding the relevant loan or advance (the "Funding Rate") in the case of amounts due in a currency other than U.S. Dollars. Each of these rates shall change from time to time as and when the Reference Rate or the applicable Funding Rate, as the case may be, changes. As used herein, "Reference Rate" means the rate announced by Bank from time to time at its corporate headquarters as its Reference Rate. The Reference Rate is an index rate determined by Bank from time to time as a means of pricing certain extensions of credit and is neither directly tied to any external rate or index nor necessarily the lowest rate of interest charged by Bank at any given time. No provision of this Agreement shall require the payment or permit the collection of interest in excess of the maximum rate permitted by applicable law.

3. In connection with the Credit, you acknowledge and agree:

(a) That the Credit may be issued by any branch of Bank.

(b) That Bank and Bank's correspondents shall be entitled to make payments or to accept or negotiate drafts drawn under the Credit if the documents presented thereunder appear on their face to be in compliance with the terms and conditions of the Credit. In addition, neither Bank nor Bank's correspondents shall have any liability or responsibility for the form, sufficiency, accuracy, genuineness, falsification or legal effect of the documents presented under the Credit, for the authority of any persons signing such documents, for the description, quantity, quality, weight, condition, packing, delivery, value or existence of the goods represented by such documents, for the acts, omissions, good faith, solvency, performance or capacity of the Beneficiary of the Credit, the consignors, carriers, forwarders, consignees or insurers of the goods described therein, or any other persons, for the performance of any contracts which you enter into with the Beneficiary of the Credit, or for the consequences arising out of any delay or loss in transit of any messages, letters or documents, any delay, interruption, mutilation or other error in the transmission of any communications by any method of Telecommunications or any error in the translation or interpretation of any technical terms or any messages or documents relating to the Credit.

(c) Except in the case where the Credit expressly provides otherwise, the Credit shall be subject to, and performance by Bank, Bank's correspondents and the Beneficiary under the Credit shall be governed by, the Uniform Customs and Practice for Documentary Credits, 2007 Revision, ICC Publication No. 600, or such subsequent revision thereof, adopted by the International Chamber of Commerce, as is in effect on the date the Credit is issued.

(d) If the Credit is expressed to be governed by the laws of any jurisdiction other than the laws of the State of California, or any other state that has adopted into law a law in the same form as Section 5113 of the California Commercial Code as in effect on the date the Credit is issued, and the Credit expressly provides that it shall be available to successors in interest (or parties similar in nature) to the named Beneficiary, that Bank shall regard any person or entity purporting to be such a successor as such a successor, without any responsibility for verifying the facts of such purported succession, all on your complete responsibility, even if the wrong party is paid.

(e) If you, or some other person or entity acting on your behalf, grant Bank a security interest in any real or personal property as collateral for your obligations arising in connection with the Credit, that Bank, at its discretion, may continue to hold such collateral even after the expiration date of the Credit until the Credit is returned to Bank undrawn, and that in no event shall any release of the collateral be construed to be a release or discharge of your obligations relating to the Credit.

(f) If you have requested that the Credit recite that it is issued for a party other than you ("Account Party"), that such Account Party has and will have no interest in the Credit or its subject matter and that all interests in the Credit and its subject matter will be held exclusively and absolutely by you.

(g) That you irrevocably waive and surrender, and agree not to exercise, any rights that would otherwise accrue to you through Bank or Bank's making payment under the Credit, whether by operation of law, equity or contract and whether under the doctrine of subrogation or otherwise, and that you agree that you will pursue only such remedies as you may have or such obligations as you may be owed in respect of such payments solely and directly on the basis of the contract(s) you have with, or the tort liability of, the Beneficiary or transferee of the Credit, the assignee of the proceeds of the Credit, or other persons or entities, as applicable.

(h) If the Credit is the subject of an "extend or pay" request received by Bank from the Beneficiary and provided by Bank to you, that you will continue to be liable to Bank for the Credit even though an expiry or reduction in amount thereof might otherwise appear or occur after Bank's receipt, until the matter has been resolved to Bank's satisfaction. You understand that Bank retains every right to decline to amend or extend the Credit.

(i) If the Beneficiary of the Credit is a bank or other financial institution (other than Bank) which, in reliance upon the Credit, is asked to issue its own guaranty or other form of undertaking (including a letter of credit) on your behalf (a "Local Bank") and, in fact, issues such guaranty or other form of undertaking on your behalf, that Bank shall have no responsibility to you for the wording of such guaranty or other form of undertaking, or its legal effect, whether under foreign law or otherwise, and that you will have complete,

FORM 04119 (Rev. 08/2004)

continuing liability to the Local Bank and to Bank for any and all claims made under such guaranty or other form of undertaking until it terminates, whether or not the Credit has expired.

(j) If any commercial type documents (such as invoices or bills of lading, but not a default or claim statement) are required to be presented under the Credit, that Bank shall have no responsibility whatsoever for examining any such documents under any standard under any circumstances.

4. The occurrence of any one or more of the following shall constitute a Default ("Default") hereunder: (a) your failure to make any payment required hereunder when due, or to perform or observe any other covenant, obligation or agreement contained herein; (b) any breach, misrepresentation or other default by you, any guarantor or any person or entity other than you providing security for your obligations hereunder (each, including you, an "Obligor") under any security agreement, guaranty or other agreement between Bank and any Obligor; (c) the insolvency of any Obligor or the failure of any Obligor generally to pay such Obligor's debts as such debts become due; (d) the commencement as to any Obligor of any voluntary or involuntary proceeding under any laws relating to bankruptcy, insolvency, reorganization, arrangement, debt adjustment or debtor relief; (e) the assignment by any Obligor for the benefit of such Obligor's creditors; (f) the appointment or commencement of any proceeding for the appointment of a receiver, trustee, custodian or similar official for all or substantially all of such Obligor's property; (g) the commencement of any proceeding for the dissolution or liquidation of any Obligor; (h) the termination of existence or death (if an individual) of any Obligor; (i) the revocation of any guaranty or subordination agreement given in connection with your obligations hereunder; (j) the failure of any Obligor to comply with any order, judgment, injunction, decree, writ or demand of any court or other public authority; (k) the filing or recording against any Obligor or the property of any Obligor of any notice of levy, notice to withhold or other legal process for taxes other than property taxes; (l) the default by any Obligor who or which is personally liable for your obligations hereunder on any other obligation concerning the borrowing of money; (m) the issuance against any Obligor or the property of any Obligor of any writ of attachment, execution or other judicial lien; or (n) the deterioration of the financial condition of any Obligor which results in Bank deeming itself, in good faith, insecure.

Immediately and without notice upon the occurrence of a Default specified in clauses (c), (d), (e) or (f) of this Section 4, or, at the option and upon the declaration of Bank, upon the occurrence of any other Default, your obligations hereunder shall immediately become due and payable, without presentment, demand, protest or notice of any kind, all of which are hereby expressly waived, and Bank may immediately, and without the expiration of any period of grace, enforce payment of such obligations and exercise any and all other rights and remedies granted to it hereunder or by law. If at the time of any such Default and acceleration of your obligations hereunder, Bank remains liable under the Credit for any reason, then you will provide Bank on demand, with sufficient funds ("Contingent Security") from which to pay all amounts which Bank may thereafter be called upon to pay in respect of the Credit. All amounts constituting Contingent Security shall be deposited in an account to be maintained with Bank and are hereby pledged to Bank by you as security for your obligations hereunder.

5. This Agreement may not be amended, modified or waived except by a written instrument signed by the party or parties against whom enforcement thereof is sought. No failure or delay on Bank's part in exercising any right hereunder shall operate as a waiver of any right, nor shall any partial exercise of any such right preclude any other further exercise thereof or the exercise of any other right. Each waiver or consent under any provision hereof shall be effective only in the specific instance and for the specific purpose for which given. If this Agreement is executed by more than one person or entity, the obligations of each of you hereunder shall be joint and several, and each of you agree that any one of you, acting alone, shall have full right and authority, binding on all of you, to request or consent to amendments, renewals, extensions, waivers or modifications of the Credit. You hereby acknowledge and agree that Bank is authorized, at any time and from time to time, without notice to you (any such notice being expressly waived), and to the fullest extent permitted by law, to set off and apply any and all deposits (whether general or special, time or demand, or provisional or final) at any time held, and all other indebtedness at any time owing by Bank to or for your credit, against any and all of your obligations hereunder.

6. You shall indemnify and hold Bank and each of Bank's employees, officers, shareholders, affiliates, correspondents, agents and representatives and, as to each entity, each of its respective employees, officers, shareholders, affiliates, correspondents, agents and representatives (each, a "Bank-related Person") harmless from and against any and all claims, demands, actions, causes of action, liabilities, damages, losses, costs and expenses (including without limitation the allocated costs of Bank's business staff and reasonable attorneys' fees and costs of all kinds, including the allocated costs of Bank's in-house legal counsel and staff) incurred by Bank and each Bank-related Person arising from (a) the matters contemplated by this Agreement or the Credit; (b) any contention that you have failed to comply with any law, rule, regulation, order or directive applicable to your sales, leases or performance of services to your customers; or (c) any dispute with the Beneficiary or a transferee of the Credit, an assignee of the proceeds of the Credit or any third party relating to the Credit (including without limitation actions brought by you to enforce payment or drawings under the Credit); provided, however, that this indemnity shall not apply to any of the foregoing incurred solely as a result of the gross negligence or willful misconduct of Bank or any Bank-related Person. The obligation to indemnify set forth in this section shall survive the payment and satisfaction of all of your obligations and liabilities to Bank.

7. Any written notice or other written communication to be given by Bank under this Agreement will be addressed to you at the address specified on the previous page(s) of this Agreement, or at such other address as you may specify in writing. Unless Bank advises you otherwise, all written communications to Bank should be sent to your office of account. Notices are effective upon receipt; provided, however, that notices received after 3:00 p.m., California time, on a Business Day, or on a day other than a Business Day, shall be deemed received as of the next Business Day. As used herein, "Business Day" means a day (other than a Saturday or Sunday) on which banks are open for business in California. Bank shall be protected in acting on any oral or written request or instruction, whether received in writing, by telephone or other form of Telecommunication, which Bank in good faith believes to be genuine and to have been made by you or your authorized agents.

8. This Agreement shall be binding upon and inure to the benefit of Bank, Applicant and each of our respective successors and permitted assigns (and the heirs and personal representatives of Applicant if Applicant is an individual); provided, however, that Applicant may not assign its rights or delegate its duties without the prior written consent of Bank. If, at the request of Applicant, the amount of the Credit is increased, the maturity of the Credit or the time for presentation of drafts or acceptance of documents thereunder is extended or the terms of the Credit are otherwise modified, this Agreement shall continue to be binding on Applicant with regard to the Credit as so increased, extended or otherwise modified, to the drafts and documents covered thereby, and to any actions taken by Bank or Bank's correspondents in accordance with such increase, extension or other modification.

9. This Agreement hereby incorporates any alternative dispute resolution agreement previously, concurrently or hereafter executed between Bank and Applicant. In the event of any challenge to the legality or enforceability of any provision of this Agreement, the prevailing party shall be entitled to recover its costs and expenses, including reasonable attorneys' fees and the allocated costs of Bank's in-house legal counsel and staff, incurred in connection therewith. This Agreement will control in the event of any conflict between it and any other document or agreement entered into between Bank and Applicant. This Agreement shall be governed by and construed in accordance with the laws of the State of California, and Applicant hereby consents to service of process by any means authorized by California law. Applicant hereby waives notice of acceptance by Bank of this Agreement.

EXHIBIT B

FORM
OF
LETTER OF CREDIT

(Attached)

Irrevocable Standby Letter of Credit No. _____

Trade Service Operations
1980 Saturn Street, V01-519
Monterey Park, California 91755-7417
Attention: Standby Letter of Credit Section

Irrevocable
Standby Letter of Credit No.

Date of Issue: Our Irrevocable Standby
Letter of Credit No.:

Date of Expiry: Place of Expiry: At our Above
Counters

Beneficiary: Applicant:
Surety Company County of Alameda
Authority
Address [Insert physical address}
Airport, State Zip San Diego, CA _____

We hereby establish our Irrevocable Standby Letter of Credit ["Letter of Credit"] in your favor, at the request of the County of Alameda (the "Applicant"). We hereby authorize you to draw on Union Bank, N.A. ("Bank"), at its offices at Trade Service Operation, 1980 Saturn Street, V01-519 Monterey Park, California, 91755-7417, up to an aggregate amount of _____ U.S. Dollars \$ _____ available by your drafts at sight together with the original of this Letter of Credit and your written certification which states expressly that any one or more of the following conditions have been fulfilled in connection with any bond(s) executed by you on behalf of County of Alameda in connection with the County of Alameda Project Number _____:

1. [Surety Company] has paid liabilities, losses or expenses to third parties in an amount certified by [Surety Company] which arise by reason of the [surety] bond(s) issued on behalf of County of Alameda in connection with the Project No. _____.

2. [Surety Company] suffered damages in an amount certified by [Surety Company] as a result of County of Alameda's failure to pay a premium on the surety bonds issued in connection with the Project No. _____.

3. Union Bank N.A.'s Standard & Poor's long-term debt rating has fallen below "BBB" and the County of Alameda has failed, within five (5) business days of written notice from [Surety

EXHIBIT TO APPLICATION, PAGE 1 OF 2

APPLICANT'S SIGNATURE _____ APPLICANT'S SIGNATURE _____

DATE OF APPLICATION _____ DATE OF APPLICATION _____

Company] of such an event, to replace this Letter of Credit with substitute collateral reasonably acceptable to [Surety Company] and the Applicant; or

4. The Applicant has failed to renew this Letter of Credit at least forty-five (45) business days prior to its expiration date, and (1) [Surety Company] has given the Applicant written notice, at least five (5) business days prior to such date, that this Letter of Credit is about to expire; and (2) [Surety Company] shall not have released or agreed to release this Letter of Credit in accordance with the collateral security receipt and agreement dated [date _____], by and between the [Surety Company _____] and the Applicant.

By submitting a draw request [Surety Company] certifies to Union Bank, N.A. and to the County of Alameda, either (i) that it has suffered losses, expenses or damages in the amount of the draw request, or (ii) the condition described above in paragraph 3 or 4 has occurred and [Surety Company] shall hold the draw request funds as security. Upon any such submission, [Surety Company] assigns its rights and remedies against the County of Alameda with respect to the amounts paid under this letter of credit. [Surety Company] further agrees to execute any agreement to effectuate such assignment.

All drafts so drawn must be marked drawn under Union Bank, N.A. Letter of Credit No. _____. In no event may the draw exceed the lesser of (i) the loss certified by [Surety Company] or (ii) the face amount of this Letter of Credit less the sum of all amounts previously drawn hereunder.

Partial draws will be permitted under this Letter of Credit, and the face amount of this Letter of Credit shall automatically be decreased by each partial draw. This Letter of Credit may not be assigned or otherwise transferred.

Union Bank, N.A. will honor all drafts drawn under and in compliance with this Letter of Credit if presented at the office indicated above on or before [Expiration Date _____] ("Expiration Date").

Except as otherwise expressly stated, this Letter of Credit is subject to the "Uniform Customs and Practice for Documentary Credit (2007 Revision), International Chamber of Commerce Publication No. 600 (the "UCP")." To the extent that the UCP is not applicable hereto, this Letter of Credit shall be governed by the Uniform Commercial Code as adopted by the State of California.

Any dispute under this Letter of Credit must be brought in a court of competent jurisdiction sitting in the County of Los Angeles, California.

Yours very truly,

Yours very truly,

Signature

Signature

Print name and title

Print name and title

EXHIBIT TO APPLICATION, PAGE 2 OF 2

APPLICANT'S SIGNATURE _____

APPLICANT'S SIGNATURE _____

DATE OF APPLICATION _____

DATE OF APPLICATION _____