MINUTES OF THE CITY-COUNTY COUNCIL
AND
SPECIAL SERVICE DISTRICT COUNCILS
OF
INDIANAPOLIS, MARION COUNTY, INDIANA

REGULAR MEETINGS
MONDAY, AUGUST 28, 1995

The City-County Council of Indianapolis, Marion County, Indiana and the Indianapolis Police Special Service District Council, Indianapolis Fire Special Service District Council and Indianapolis Solid Waste Collection Special Service District Council convened in regular concurrent sessions in the Council Chamber of the City-County Building at 7:10 p.m. on Monday, August 28, 1995, with Councillor SerVaas presiding.

Councillor McClamroch led the opening prayer and invited all present to join him in the Pledge of Allegiance to the Flag.

ROLL CALL

The President instructed the Clerk to take the roll call and requested members to register their presence on the voting machine. The roll call was as follows:

29 PRESENT: Beadling, Black, Borst, Boyd, Brents, Coughenour, Curry, Dowden, Franklin, Giffin, Gilmer, Golc, Gray, Hinkle, Jimison, Jones, McClamroch, Moriarty Adams, Mullin, O'Dell, Rhodes, Schneider, SerVaas, Shambaugh, Short, Smith, Tilford, West, Williams
0 ABSENT:

A quorum of twenty-nine members being present, the President called the meeting to order.

INTRODUCTION OF GUESTS AND VISITORS

Councillor Jimison acknowledged the presence of State Representative William Crawford, State Representative Mae Dickinson, Center Township Trustee Julia Carson, distinguished clergy and many citizens concerned with the Metro Bus service issue. Ms. Jimison asked for consent to permit Rev. Wayne T. Harris to speak to the Council on this matter. Consent was given.

Rev. Harris stated that he represents the people who are trying to save the Metro Bus service. They are against the City's effort to break the union, cut bus routes, and privatize the bus routes. He said they want the residents of Indianapolis to have good bus transportation and they want to save Metro's bus drivers' jobs.

The President stated that the Municipal Corporations Committee will review Metro's budget and will send its recommendation to the Council. The Council will then discuss the Committee's report. The President stated that the public will be notified of the date of the Council meeting at which Metro's budget will be heard.

OFFICIAL COMMUNICATIONS

The President called for the reading of Official Communications. The Clerk read the following:

TO ALL MEMBERS OF THE CITY-COUNTY COUNCIL AND POLICE, FIRE AND SOLID WASTE COLLECTION SPECIAL SERVICE DISTRICT COUNCILS OF THE CITY OF INDIANAPOLIS AND MARION COUNTY, INDIANA

Ladies And Gentlemen :

You are hereby notified the REGULAR MEETINGS of the City-County Council and Police, Fire and Solid Waste Collection Special Service District Councils will be held in the City-County Building, in the Council Chambers, on Monday, August 28, 1995, at 7:00 p.m., the purpose of such MEETINGS being to conduct any and all business that may properly come before regular meetings of the Councils.

Respectfully,
s/Beurt SerVaas
President, City-County Council

August 2, 1995

TO THE HONORABLE PRESIDENT AND MEMBERS OF THE CITY-COUNTY COUNCIL AND POLICE, FIRE AND SOLID WASTE COLLECTION SPECIAL SERVICE DISTRICT COUNCILS OF THE CITY OF INDIANAPOLIS AND MARION COUNTY, INDIANA.

Ladies and Gentlemen:

Pursuant to the laws of the State of Indiana, I caused to be published in the Indianapolis NEWS and the Indianapolis COMMERCIAL on Friday, August 4, 1995, a copy of NOTICE TO TAXPAYERS of a Public Hearing on Proposal Nos. 443, 445, 487, 488, and 505, 1995, and a NOTICE OF PUBLIC HEARING on Proposal No. 483, 1995, to be held on August 28, 1995 at 7:00 p.m., in the City-County Building.

Respectfully,
s/Suellen Hart
Clerk of the City-County Council

August 7,1995

TO THE HONORABLE PRESIDENT AND MEMBERS OF THE CITY-COUNTY COUNCIL AND POLICE, FIRE AND SOLID WASTE COLLECTION SPECIAL SERVICE DISTRICT COUNCILS OF THE CITY OF INDIANAPOLIS AND MARION COUNTY, INDIANA.

Ladies and Gentlemen:

Pursuant to the laws of the State of Indiana, I caused to be published in the Indianapolis NEWS and the Indianapolis COMMERCIAL on Thursday, August 10, 1995, a copy of LEGAL NOTICE on General Ordinance No. 114, 1995.

Respectfully,
s/Suellen Hart
Clerk of the City-County Council

August 4, 1995

TO THE HONORABLE PRESIDENT AND MEMBERS OF THE CITY-COUNTY COUNCIL AND POLICE, FIRE AND SOLID WASTE COLLECTION SPECIAL SERVICE DISTRICT COUNCILS OF THE CITY OF INDIANAPOLIS AND MARION COUNTY, INDIANA:

Ladies and Gentlemen:

I have this day approved with my signature and delivered to the Clerk of the City-County Council, Suellen Hart, the following ordinances:

GENERAL ORDINANCE NO. 113, 1995 - consolidates the Ordinance Violations Bureau and the Revenue Enhancement Division within the Office of Corporation Counsel

GENERAL ORDINANCE NO. 114, 1995 - establishes increased penalties for air pollution control violations

GENERAL ORDINANCE NO. 115, 1995 - authorizes intersection controls in the East Avalon Hills area (District 4)

GENERAL ORDINANCE NO. 116, 1995 - authorizes a stop sign for the Chestnut Hills subdivision (District 1)

GENERAL ORDINANCE NO. 117, 1995 - authorizes multi-way stops for the Eagle Creek North subdivision (District 1)

GENERAL ORDINANCE NO. 118, 1995 - authorizes multi-way stops at Arabian Run and Duffer Circle, and at Arabian Run and Kinnett Lane (Districts 2, 9)

GENERAL ORDINANCE NO. 119, 1995 - authorizes a multi-way stop at 14th Street and Bosart Avenue (District 15)

GENERAL ORDINANCE NO. 120, 1995 - authorizes a multi-way stop at Kilmer Lane and Susan Drive South (District 3)

GENERAL ORDINANCE NO. 121, 1995 - authorizes a multi-way stop at 48th Street and Park Avenue (District 6)

GENERAL ORDINANCE NO. 122, 1995 - authorizes a multi-way stop at Rolling Ridge Road and Winding Way Lane (District 4)

GENERAL ORDINANCE NO. 123, 1995 - authorizes a multi-way stop at State Avenue and National Avenue (Districts 20, 24)

GENERAL ORDINANCE NO. 124, 1995 - authorizes a multi-way stop at Alabama Street and St. Joseph Street (District 22)

GENERAL ORDINANCE NO. 125, 1995 - authorizes a multi-way stop at Glen Coe Drive and 63rd Street (District 2)

GENERAL ORDINANCE NO. 126, 1995 - authorizes a one-way east bound on Westfield Boulevard from College Avenue to Guilford Avenue (Districts 2, 7)

GENERAL ORDINANCE NO. 127, 1995 - authorizes a 35 mph speed limit for 59th Street from Moller Road to Guion Road (Districts 1, 9)

FISCAL ORDINANCE NO. 74, 1995 - an appropriation of $515,098 to fund the Collections Division in the Office of Corporation Counsel financed by a transfer of funds from the Department of Capital Asset Management's Parking Meter Fund and from the Office of the Controller's Consolidated County Fund

FISCAL ORDINANCE NO. 75, 1995 - an appropriation of $44,031 for the Franklin Township Assessor to pay relocation expenses financed from the County General Fund balances

FISCAL ORDINANCE NO. 76, 1995 - an appropriation to reclassify fringes to salary for the Marion County Justice Agency in the amount of $6,500 financed by a transfer of funds within the Drug Free Community Fund

SPECIAL RESOLUTION NO. 68, 1995 - recognizes the 100th Anniversary of The Indianapolis Recorder

SPECIAL RESOLUTION NO. 69, 1995 - recognizes Mary A. "Dubbie" Buckler

SPECIAL RESOLUTION NO. 70, 1995 - requests the city administration to conduct a feasibility study about placing an edu-care center in the City-County Building

SPECIAL RESOLUTION NO. 71, 1995 - amends Special Resolution No. 48, 1995 to correct the schedule of approved Community Development Block Grant programs

Respectfully,
s/Stephen Goldsmith, Mayor

ADOPTION OF THE AGENDA

The President proposed the adoption of the agenda as distributed. Without objection, the agenda was adopted.

APPROVAL OF JOURNALS

The President called for additions or corrections to the Journals of August 1, 1995. There being no additions or corrections, the minutes were approved as distributed.

PRESENTATION OF PETITIONS, MEMORIALS, SPECIAL RESOLUTIONS AND COUNCIL RESOLUTIONS

PROPOSAL NO. 554, 1995. The proposal, sponsored by Councillors Hinkle, Shambaugh and O'Dell, recognizes the 25 years of city service by Gary Isterling. Councillor Hinkle read the resolution and presented a copy of the document to Mr. Isterling who expressed appreciation for the recognition. Members of Mr. Isterling's family were present. Councillor Moriarty Adams also commended Mr. Isterling. Councillor Hinkle moved, seconded by Councillor Shambaugh, for adoption. Proposal No. 554, 1995 was adopted by a unanimous voice vote.

Proposal No. 554, 1995 was retitled SPECIAL RESOLUTION NO. 72, 1995 and reads as follows:

CITY-COUNTY SPECIAL RESOLUTION NO. 72, 1995

A SPECIAL RESOLUTION recognizing the 25 years of city service by Gary Isterling.

WHEREAS, shortly after the turn of the century John Ellenberger, a prosperous farmer and Irvington-area pioneer originally from Cincinnati, sold forty acres of what was called Ellenberger Woods for a city park; and

WHEREAS, decades later, Ellenberger's great-great grandson, Gary Isterling, became facilities supervisor of the park on land that his ancestors once trod; and

WHEREAS, Mr. Isterling was hired by the Indianapolis Department of Parks and Recreation by Mayor Lugar in 1969, the year before UNIGOV came into being, to help build and maintain trails, playgrounds and boating ramps at Eagle Creek Park; and

WHEREAS, from 1973 to 1995, Isterling oversaw the facilities at Ellenberger and Perry Parks managing ice skating rinks, pool operations, roller skating and concessions; and

WHEREAS, during his Parks Department career the Ben Davis High School graduate received awards by Mayor Lugar and by *The Indianapolis Star*, implemented an amateur ice review of 125 skaters, began a Christmas food program that fed 575 families in 15 years and held "Skate-a-thons" for Danny Thomas and Jerry Lewis charities; now, therefore:

BE IT RESOLVED BY THE CITY-COUNTY COUNCIL OF THE
CITY OF INDIANAPOLIS AND OF MARION COUNTY, INDIANA:

SECTION 1. The Indianapolis City-County Council recognizes the quarter century of dedicated service to the people of this city and county by Gary Isterling.

SECTION 2. The Council wishes him well in the future as he is able to devote more time to his family and in managing his real estate investments.

SECTION 3. The Mayor is invited to join in this resolution by affixing his signature hereto.

SECTION 4. This resolution shall be in full force and effect upon adoption and compliance with IC 36-3-4-14.

PROPOSAL NO. 555, 1995. The proposal, sponsored by Councillor Short, recognizes the South East Community Organization ("SECO"). Councillor Short read the resolution and presented copies of the document to members of SECO. Deputy Chief of the South District James J. Meyer voiced his admiration and support for this group. Councillor Short moved, seconded by Councillor Jimison, for adoption. Proposal No. 555, 1995 was adopted by a unanimous voice vote.

Proposal No. 555, 1995 was retitled SPECIAL RESOLUTION NO. 73, 1995 and reads as follows:

CITY-COUNTY SPECIAL RESOLUTION NO. 73, 1995

A SPECIAL RESOLUTION recognizing the South East Community Organization and the Indianapolis Police Department.

WHEREAS, the South East Community Organization bounded by the Conrail Tracks, Pleasant Run Drive, State Street and Earhart Street has only one candle on its birthday cake, but has already rallied the neighbors with anti-illegal drug marches that have helped close eighteen drug houses; and

WHEREAS, averaging forty-five citizens in the marches, and with the full cooperation of the Indianapolis Police Department, the young neighborhood group has clearly caught the attention of the illegal drug predators as the honest law-abiding residents have resolved to take back their streets; and

WHEREAS, through this somewhat sensational process, a more quiet and mundane community improvement has also occurred: Neighbors have begun to know each other, crime watches and court watches have been established, clean-ups are occurring, youth athletic activities are taking place and block clubs have taken root--all contributing to an increased long term upbeat mood for the neighborhood; now, therefore:

BE IT RESOLVED BY THE CITY-COUNTY COUNCIL OF THE
CITY OF INDIANAPOLIS AND OF MARION COUNTY, INDIANA:

SECTION 1. The Indianapolis City-County Council recognizes the South East Community Organization and its officers, members and volunteers, and extends a special commendation to Indianapolis Police Department personnel who have worked with SECO's neighborhood efforts: Deputy Chief Joe Meyer, Detective Gary MacDonald, and police reserves Larry Coy, Greg Hranec and Phillip Malicoat.

SECTION 2. It is refreshing and encouraging that neighborhoods and local government are teaming up to rid the streets of illegal drugs and its attendant vices, and helping an area help itself to become a more civilized and friendly place in which to live, invest, raise children, retire, garden, talk with neighbors, take walks in the early evenings and enjoy peaceful lives.

SECTION 3. Most importantly, these folks have made a significant difference.

SECTION 4. The Mayor is invited to join in this resolution by affixing his signature hereto.

SECTION 5. This resolution shall be in full force and effect upon adoption and compliance with IC 36-3-4-14.

PROPOSAL NO. 556, 1995. The proposal, sponsored by Councillor SerVaas, urges the completion of I-69 from Indianapolis to Texas. Councillor SerVaas read the resolution. Councillor Williams stated that she wanted it clarified that no Indianapolis/Marion County communities will be decimated as a result of this extension. Councillor SerVaas replied that he has been assured by all parties that no communities will be effected. Councillor Gilmer voiced his support of this proposal and asked for consent for James Newland to make some remarks concerning this project. Consent was given.

Mr. Newland, Executive Director, I-69 Mid-Continent Highway Coalition, presented a background report on the extension of I-69.

Councillor Boyd stated that he will support this proposal if no neighborhoods will be disrupted by this project.

Councillor Gray remarked that he would like a map of this I-69 extension. Councillor SerVaas said that it is going from Indianapolis to Bloomington, down to Memphis, and then to Houston. I-69 also feeds in from Montreal and Toronto south to Fort Wayne. He said a detailed map has not been drawn at this time.

Councillor SerVaas moved, seconded by Councillor Gilmer, for adoption. Proposal No. 556, 1995 was adopted by a unanimous voice vote.

Proposal No. 556, 1995 was retitled SPECIAL RESOLUTION NO. 74, 1995 and reads as follows:

CITY-COUNTY SPECIAL RESOLUTION NO. 74, 1995

A SPECIAL RESOLUTION urging the completion of I-69 from Indianapolis to Texas.

WHEREAS, because of its unique geographic location and because the city has worked hard over the years to make it happen, Indianapolis lives up to its official motto: CROSSROADS OF AMERICA;" and

WHEREAS, from canals, railroads, interurbans, air, automobiles, trucks and interstates, Indianapolis citizens and businesses have been fortunate for the community's transportation foresight; and

WHEREAS, however today, with seven interstate highway spokes radiating to and from the city, one interstate leg is still missing, that being I-69 which really begins in Montreal and Toronto, Canada, swings through Michigan, Fort Wayne, and then dead ends at the Northeastern edge of Indianapolis; and

WHEREAS, but now in the 1990's, with NAFTA, GATT and increased exporting, it is time to finish I-69 beginning in Southwest Indianapolis to Bloomington, Evansville and on to Texas, thus finishing a direct connection route of Canada, the United States and Mexico through Indianapolis and Indiana; now, therefore:

BE IT RESOLVED BY THE CITY-COUNTY COUNCIL OF THE
CITY OF INDIANAPOLIS AND OF MARION COUNTY, INDIANA:

SECTION 1. The Indianapolis City-County Council lends its support along with many other organizations for Congress to forthwith approve the completion of the quarter century-delayed I-69 leg from Indianapolis to Texas.

SECTION 2. Finishing I-69 would spur economic development, create jobs, reduce congestion, improve highway safety, help America's competitiveness and improve the standard of living throughout this region.

SECTION 3. The Mayor is invited to join in this resolution by affixing his signature hereto.

SECTION 4. This resolution shall be in full force and effect upon adoption and compliance with IC 36-3-4-14.

PROPOSAL NO. 557, 1995. The proposal, sponsored by Councillor Curry, urges full membership of the Republic of China (Taiwan) by the United Nations. Councillor Curry read the resolution and presented a copy of the document to Dr. Chou Lee, head of the sister-city Taipei committee in Indianapolis, who expressed appreciation for the resolution. Councillor Golc voiced his support of this proposal. Councillor Curry moved, seconded by Councillor Golc, for adoption.

Councillor Boyd asked what will happen with this resolution. Councillor Curry replied that copies of this resolution will be sent to the Taipei Economic and Cultural Office in Chicago, Taipei City Council, and Senator Richard Lugar. There have been similar resolutions adopted throughout the country, and they will be presented to the United Nations.

Proposal No. 557, 1995 was adopted by a unanimous voice vote. Proposal No. 557, 1995 was retitled SPECIAL RESOLUTION NO. 75, 1995 and reads as follows:

CITY-COUNTY SPECIAL RESOLUTION NO. 75, 1995

A SPECIAL RESOLUTION urging full membership of the Republic of China (Taiwan) by the United Nations.

WHEREAS, Taipei, the capital and largest city of the Republic of China (Taiwan), and Indianapolis enjoy an official Sister City relationship; and

WHEREAS, Taiwan has a strong and vibrant economy, a 90 per cent literacy rate, is a major player in international trade and has been a solid friend of the United States since the island republic was founded 49 years ago; and

WHEREAS, in 1971, the United Nations expelled Taiwan, and admitted the People's Republic of China (Communist China) in its place; and

WHEREAS, today, nearly a quarter century later, Taiwan has dramatically improved its record on human rights, routinely holds free elections, and actively participates in other international organizations such as the Asian Development Bank and the Asia-Pacific Economic Cooperation Group; and

WHEREAS, the United Nations has often admitted separate parts of divided countries such as North and South Korea and the former East and West Germany; and

WHEREAS, Taiwan's participation in the United Nations would not prevent nor imperil a future voluntary union between Taiwan and Mainland China, as witness the voluntary reunification of Germany; now, therefore:

BE IT RESOLVED BY THE CITY-COUNTY COUNCIL OF THE
CITY OF INDIANAPOLIS AND OF MARION COUNTY, INDIANA:

SECTION 1. The Indianapolis City-County Council determines that the twenty-one million people of Taiwan should no longer be denied full membership in the United Nations.

SECTION 2. Taiwan has much that it could contribute to the United Nations, and the Council asks that the United States immediately use its influence to encourage the U.N. to act expeditiously upon this matter.

SECTION 3. The Mayor is invited to join in this resolution by affixing his signature hereto.

SECTION 4. This resolution shall be in full force and effect upon adoption and compliance with IC 36-3-4-14.

PROPOSAL NO. 558, 1995. The proposal, sponsored by Councillor Beadling, recognizes the 75th Anniversary of the Women's Suffrage Amendment. Councillor Beadling read the resolution and stated that it will be presented at a later date. Councillor Jimison voiced her support of this proposal and asked to be added as a co-sponsor. Councillor Beadling moved, seconded by Councillor Jimison, for adoption. Proposal No. 558, 1995 was adopted by a unanimous voice vote.

Proposal No. 558, 1995 was retitled SPECIAL RESOLUTION NO. 76, 1995 and reads as follows:

CITY-COUNTY SPECIAL RESOLUTION NO. 76, 1995

A SPECIAL RESOLUTION recognizing the 75th Anniversary of the Women's Suffrage Amendment.

WHEREAS, the 19th Amendment to the U.S. Constitution is very simple and straightforward: *The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex. Congress shall have power to enforce this Article by appropriate legislation.*; and

WHEREAS, the movement for women's right to vote preceded the Amendment for many decades by early suffragettes such as Susan B. Anthony, Elizabeth Cady Stanton and Lucretia Mott, but with the support of a Democrat President and a Republican Congress the resolution passed Washington in 1919 and was turned over to the states to work their will; and

WHEREAS, on August 26, 1920, the Tennessee Legislature adopted the Amendment giving it the three-fourths majority of states needed for ratification; and

WHEREAS, contrary to the predictions by many men -- and women, the 19th Amendment did not cause havoc with the Republic; instead twice as many citizens were granted the right to vote in elections, more people could take an active part in the election process and the available talent pool for addressing national and local problems was greatly enlarged; now, therefore:

BE IT RESOLVED BY THE CITY-COUNTY COUNCIL OF THE
CITY OF INDIANAPOLIS AND OF MARION COUNTY, INDIANA:

SECTION 1. The Indianapolis City-County Council pauses to recognize the 75th Anniversary of the bipartisan 19th Amendment, and reflects upon the struggle by many people for many years to achieve this right.

SECTION 2. The Council encourages citizens to actively participate in the governmental process including voting, remembering that our ancestors struggled for a long time so that we can have these freedoms.

SECTION 3. The Mayor is invited to join in this resolution by affixing his signature hereto.

SECTION 4. This resolution shall be in full force and effect upon adoption and compliance with IC 36-3-4-14.

PROPOSAL NO. 440, 1995. The proposal, sponsored by Councillors McClamroch and SerVaas, appoints Dr. Philip Borst to the Capital Improvement Board of Managers. Councillor McClamroch moved for its adoption. Proposal No. 440, 1995 was adopted by a unanimous voice vote.

Proposal No. 440, 1995 was retitled COUNCIL RESOLUTION NO. 57, 1995 and reads as follows:

CITY-COUNTY COUNCIL RESOLUTION NO. 57 , 1995

A COUNCIL RESOLUTION appointing Dr. Philip Borst to the Capital Improvement Board of Managers.

BE IT RESOLVED BY THE CITY-COUNTY COUNCIL OF THE
CITY OF INDIANAPOLIS AND OF MARION COUNTY, INDIANA:

SECTION 1. As a member of the Capital Improvement Board of Managers, the Council appoints:

Dr. Philip Borst

SECTION 2. The appointment made by this resolution is for a term ending January 14, 1997. The person appointed by this resolution shall serve at the pleasure of the Council and until his respective successor is appointed and has qualified.

PROPOSAL NO. 480, 1995. The proposal, sponsored by Councillor McClamroch, appoints Charles Hiltunen to the Cable Franchise Board. Councillor McClamroch moved for its adoption. Proposal No. 480, 1995 was adopted by a unanimous voice vote.

Proposal No. 480, 1995 was retitled COUNCIL RESOLUTION NO. 58, 1995 and reads as follows:

CITY-COUNTY COUNCIL RESOLUTION NO. 58, 1995

A COUNCIL RESOLUTION appointing Charles Hiltunen to the Cable Franchise Board.

BE IT RESOLVED BY THE CITY-COUNTY COUNCIL OF THE
CITY OF INDIANAPOLIS AND OF MARION COUNTY, INDIANA:

SECTION 1. As a member of the Cable Franchise Board, the Council appoints:

Charles Hiltunen

SECTION 2. The appointment made by this resolution is for a term ending December 31, 1996. The person appointed by this resolution shall serve at the pleasure of the Council and until his respective successor is appointed and has qualified.

INTRODUCTION OF PROPOSALS

PROPOSAL NO. 515, 1995. Introduced by Councillor Schneider. The Clerk read the proposal entitled: "A Proposal for a General Resolution reviewing, modifying and approving the operating and maintenance budget and tax levies of the Indianapolis Airport Authority District"; and the President referred it to the Municipal Corporations Committee.

PROPOSAL NO. 516, 1995. Introduced by Councillor Schneider. The Clerk read the proposal entitled: "A Proposal for a General Resolution reviewing, modifying and approving the operating and maintenance budget and tax levies of the Capital Improvement Board of Managers of Marion County"; and the President referred it to the Municipal Corporations Committee.

PROPOSAL NO. 517, 1995. Introduced by Councillor Schneider. The Clerk read the proposal entitled: "A Proposal for a General Resolution reviewing, modifying and approving the operating and maintenance budget and tax levies of the Health and Hospital Corporation of Marion County"; and the President referred it to the Municipal Corporations Committee.

PROPOSAL NO. 518, 1995. Introduced by Councillor Schneider. The Clerk read the proposal entitled: "A Proposal for a General Resolution reviewing, modifying and approving the operating and maintenance budget and tax levies of the Indianapolis-Marion County Public Library Board"; and the President referred it to the Municipal Corporations Committee.

PROPOSAL NO. 519, 1995. Introduced by Councillor Schneider. The Clerk read the proposal entitled: "A Proposal for a General Resolution reviewing, modifying and approving the operating and maintenance budget and tax levies of the Indianapolis Public Transportation Corporation"; and the President referred it to the Municipal Corporations Committee.

PROPOSAL NO. 520, 1995. Introduced by Councillor Rhodes. The Clerk read the proposal entitled: "A Proposal for a General Ordinance which gives employees who are affected by the information technology outsourcing an additional opportunity to convert accrued sick leave to

benefit leave and receive pay for it upon separation"; and the President referred it to the Administration and Finance Committee.

PROPOSAL NO. 521, 1995. Introduced by Councillor Curry. The Clerk read the proposal entitled: "A Proposal for a Fiscal Ordinance which is an appropriation of $666,000 for Information Services Agency to pay for increased contractual services, maintenance, and telephone expenses financed by a transfer of funds within the Information Services Internal Service Fund; and a reduction in its 1995 budget of $260,000 due to reasons associated with the Huron project"; and the President referred it to the Administration and Finance Committee.

PROPOSAL NO. 522, 1995. Introduced by Councillor Giffin. The Clerk read the proposal entitled: "A Proposal for a Fiscal Ordinance which is an appropriation of $150,000 for the Department of Parks and Recreation to purchase additional land for the expansion of Juan Solomon Park financed by revenues from the Park Land Fund"; and the President referred it to the Parks and Recreation Committee.

PROPOSAL NO. 523, 1995. Introduced by Councillor Giffin. The Clerk read the proposal entitled: "A Proposal for a Fiscal Ordinance which is an appropriation of $783,500 for the Department of Parks and Recreation to cover repair and renovation expenses at numerous park facilities financed by revenues from the Consolidated County Cumulative Capital Development Fund"; and the President referred it to the Parks and Recreation Committee.

PROPOSAL NO. 524, 1995. Introduced by Councillor McClamroch. The Clerk read the proposal entitled: "A Proposal for a Council Resolution which appoints Eli Bloom to the Indianapolis Greenways Development Board"; and the President referred it to the Parks and Recreation Committee.

PROPOSAL NO. 526, 1995. Introduced by Councillor McClamroch. The Clerk read the proposal entitled: "A Proposal for a Council Resolution which appoints Jerry Papenmeir to the Indianapolis Greenways Development Board"; and the President referred it to the Parks and Recreation Committee.

PROPOSAL NO. 527, 1995. Introduced by Councillor Dowden. The Clerk read the proposal entitled: "A Proposal for a Fiscal Ordinance which distributes $489,942 of Uniform Traffic Ticket revenue to the Prosecutor, Sheriff, Presiding Judge of the Municipal Courts, and the Auditor"; and the President referred it to the Public Safety and Criminal Justice Committee.

PROPOSAL NO. 528, 1995. Introduced by Councillor Dowden. The Clerk read the proposal entitled: "A Proposal for a Fiscal Ordinance which is an appropriation of $15,812 for the County Sheriff to pay overtime to officers assigned to the FBI Task Force Program financed by a FBI grant"; and the President referred it to the Public Safety and Criminal Justice Committee.

PROPOSAL NO. 529, 1995. Introduced by Councillor Moriarty Adams. The Clerk read the proposal entitled: "A Proposal for a Fiscal Ordinance which is an appropriation of $2,000 for the Superior Court, Criminal Division, Room One, to cover supplies and other court expenses financed by a transfer within the court's budget"; and the President referred it to the Public Safety and Criminal Justice Committee.

PROPOSAL NO. 530, 1995. Introduced by Councillor Golc. The Clerk read the proposal entitled: "A Proposal for a Fiscal Ordinance which is an appropriation of $1,500 for the Marion County Drug Court to cover supply expenses financed by a transfer within the court's budget"; and the President referred it to the Public Safety and Criminal Justice Committee.

PROPOSAL NO. 531, 1995. Introduced by Councillor Gilmer. The Clerk read the proposal entitled: "A Proposal for a General Ordinance empowering the Board of Capital Asset Management to promulgate rules and regulations concerning the administration of public construction contracts"; and the President referred it to the Capital Asset Management Committee.

PROPOSAL NO. 532, 1995. Introduced by Councillor Gilmer. The Clerk read the proposal entitled: "A Proposal for a General Ordinance which authorizes the Department of Capital Asset Management to permit Ogden Martin Systems to establish a steam line within the public right-of-way on Harding Street from 1000 feet south of Raymond Street to Kentucky Avenue"; and the President referred it to the Capital Asset Management Committee.

PROPOSAL NO. 533, 1995. Introduced by Councillors Coughenour and Smith. The Clerk read the proposal entitled: "A Proposal for a General Ordinance which authorizes a traffic signal at Shelbyville Road and Emerson Avenue (Districts 23, 24)"; and the President referred it to the Capital Asset Management Committee.

PROPOSAL NO. 534, 1995. Introduced by Councillor Golc. The Clerk read the proposal entitled: "A Proposal for a General Ordinance which authorizes a traffic signal for Lilly Technology Center West Driveway located at 1530 South at Harding Street (District 17)"; and the President referred it to the Capital Asset Management Committee.

PROPOSAL NO. 535, 1995. Introduced by Councillor Brents. The Clerk read the proposal entitled: "A Proposal for a General Ordinance which authorizes a traffic signal at St. Clair Street and Dr. Martin Luther King Jr. Street"; and the President referred it to the Capital Asset Management Committee.

PROPOSAL NO. 536, 1995. Introduced by Councillor Golc. The Clerk read the proposal entitled: "A Proposal for a General Ordinance which authorizes a multi-way stop at Lyons Avenue and Ray Street (District 17)"; and the President referred it to the Capital Asset Management Committee.

PROPOSAL NO. 537, 1995. Introduced by Councillor Golc. The Clerk read the proposal entitled: "A Proposal for a General Ordinance which authorizes a multi-way stop at Farnsworth Street and Lyons Avenue (District 17)"; and the President referred it to the Capital Asset Management Committee.

PROPOSAL NO. 538, 1995. Introduced by Councillor Moriarty Adams. The Clerk read the proposal entitled: "A Proposal for a General Ordinance which authorizes a multi-way stop at 20th Street and Riley Avenue (District 15)"; and the President referred it to the Capital Asset Management Committee.

PROPOSAL NO. 539, 1995. Introduced by Councillor Moriarty Adams. The Clerk read the proposal entitled: "A Proposal for a General Ordinance which authorizes a multi-way stop at

Bosart Avenue and St. Clair Street (District 15)"; and the President referred it to the Capital Asset Management Committee.

PROPOSAL NO. 540, 1995. Introduced by Councillor Moriarty Adams. The Clerk read the proposal entitled: "A Proposal for a General Ordinance which authorizes a multi-way stop at Irvington Avenue and 18th Street (District 15)"; and the President referred it to the Capital Asset Management Committee.

PROPOSAL NO. 541, 1995. Introduced by Councillor Rhodes. The Clerk read the proposal entitled: "A Proposal for a General Ordinance which authorizes a multi-way stop at Carrollton Avenue and 62nd Street (District 7)"; and the President referred it to the Capital Asset Management Committee.

PROPOSAL NO. 542, 1995. Introduced by Councillor Rhodes. The Clerk read the proposal entitled: "A Proposal for a General Ordinance which authorizes a multi-way stop at Burlington Avenue and Maple Drive (District 7)"; and the President referred it to the Capital Asset Management Committee.

PROPOSAL NO. 543, 1995. Introduced by Councillor Rhodes. The Clerk read the proposal entitled: "A Proposal for a General Ordinance which authorizes a multi-way stop at 58th Street and Crestview Avenue (District 7)"; and the President referred it to the Capital Asset Management Committee.

PROPOSAL NO. 544, 1995. Introduced by Councillor Short. The Clerk read the proposal entitled: "A Proposal for a General Ordinance which authorizes a multi-way stop at Villa Avenue and Woodlawn Avenue (District 21)"; and the President referred it to the Capital Asset Management Committee.

PROPOSAL NO. 545, 1995. Introduced by Councillor Brents. The Clerk read the proposal entitled: "A Proposal for a General Ordinance which authorizes a multi-way stop at Senate Avenue and Wilkins Street (District 16)"; and the President referred it to the Capital Asset Management Committee.

PROPOSAL NO. 546, 1995. Introduced by Councillor Gilmer. The Clerk read the proposal entitled: "A Proposal for a General Ordinance which authorizes a multi-way stop at Diana Drive and Echo Lane (District 1)"; and the President referred it to the Capital Asset Management Committee.

PROPOSAL NO. 547, 1995. Introduced by Councillor Gilmer. The Clerk read the proposal entitled: "A Proposal for a General Ordinance which authorizes intersection controls for Legendary Hills subdivision (District 1)"; and the President referred it to the Capital Asset Management Committee.

PROPOSAL NO. 548, 1995. Introduced by Councillor Gilmer. The Clerk read the proposal entitled: "A Proposal for a General Ordinance which authorizes intersection controls for Hunters Green subdivision (District 1)"; and the President referred it to the Capital Asset Management Committee.

PROPOSAL NO. 549, 1995. Introduced by Councillor Giffin. The Clerk read the proposal entitled: "A Proposal for a General Ordinance which authorizes intersection controls for the Pheasant Run subdivision (District 19)"; and the President referred it to the Capital Asset Management Committee.

PROPOSAL NO. 550, 1995. Introduced by Councillor Moriarty Adams. The Clerk read the proposal entitled: "A Proposal for a General Ordinance which authorizes a one-way southbound on Chester Avenue from New York Street to Washington Street (District 15)"; and the President referred it to the Capital Asset Management Committee.

PROPOSAL NO. 551, 1995. Introduced by Councillor Borst. The Clerk read the proposal entitled: "A Proposal for a General Ordinance which authorizes weight limit restrictions for Lake Road from Wicker Road to a point 4,335 feet south of Southport Road (District 25)"; and the President referred it to the Capital Asset Management Committee.

PROPOSAL NO. 552, 1995. Introduced by Councillor Golc. The Clerk read the proposal entitled: "A Proposal for a General Ordinance which authorizes speed restrictions on Rockville Road from Interstate 465 to Holt Road (District 17)"; and the President referred it to the Capital Asset Management Committee.

PROPOSAL NO. 553, 1995. Introduced by Councillor Coughenour. The Clerk read the proposal entitled: "A Proposal for a General Ordinance which requires tobacco vendors to determine the age of any person to whom tobacco products are sold or delivered"; and the President referred it to the Rules and Public Policy Committee.

PROPOSAL NO. 559, 1995. Introduced by Councillor Dowden. The Clerk read the proposal entitled: "A Proposal for a Council Resolution which confirms the Marion County Public Defender Board's nomination of David Cook as Marion County Chief Public Defender"; and the President referred it to the Public Safety and Criminal Justice Committee.

PROPOSAL NO. 560, 1995. Introduced by Councillor Curry. The Clerk read the proposal entitled: "A Proposal for a Council Resolution which affirms the policy of providing deferred compensation for county elected officials"; and the President referred it to the Rules and Public Policy Committee.

SPECIAL ORDERS - PRIORITY BUSINESS

PROPOSAL NO. 514, 1995. Councillor Borst reported that the Economic Development Committee heard Proposal No. 514, 1995 on August 17, 1995. The proposal authorizes the issuance of economic development water facilities revenue bonds in an aggregate principal amount not to exceed $18 million for the Indianapolis Water Company. By a 5-0 vote, the Committee reported the proposal to the Council with the recommendation that it do pass. Councillor Borst moved, seconded by Councillor Smith, for adoption.

Councillor Golc stated that several months ago when another Indianapolis Water Company project was heard by this Council, an area called the Bottoms was discussed. Councillor Golc asked if the Bottoms is included in this project.

Councillor West suggested that Councillor Giffin, who is a senior vice president of the Indianapolis Water Company, make some telephone calls in order to answer Councillor Golc's question and to leave Proposal No. 514, 1995 on the table and move to the next item on the agenda. By consent, the President called for the next item of business.

PROPOSAL NO. 561, 1995. Introduced by Councillor West. The Clerk read the proposal entitled: "REZONING ORDINANCE certified by the Metropolitan Development Commission on August 18, 1995." The Council did not schedule Proposal No. 561, 1995 for hearing pursuant to IC 36-7-4-608. Proposal No. 561, 1995 was retitled REZONING ORDINANCE NO. 116, 1995 and is identified as follows:

> REZONING ORDINANCE NO. 116, 1995. 95-Z-45 (Amended) PIKE TOWNSHIP.
> COUNCILMANIC DISTRICT # 1.
> 6950 NORTH MICHIGAN ROAD (approximate address), INDIANAPOLIS.
> TOM and SALLY MCNAMARA request the rezoning of 2.08 acres, being in the D-A and C-3 District, to the C-S classification to provide for the continued use and expansion of an existing landscape, garden center and pet supply center.

PROPOSAL NO. 562, 1995. Introduced by Councillor West. The Clerk read the proposal entitled: "REZONING ORDINANCE certified by the Metropolitan Development Commission on August 18, 1995." The Council did not schedule Proposal No. 562, 1995 for hearing pursuant to IC 36-7-4-608. Proposal No. 562, 1995 was retitled REZONING ORDINANCE NO. 117, 1995 and is identified as follows:

> REZONING ORDINANCE NO. 117, 1995. 95-Z-79 PIKE TOWNSHIP.
> COUNCILMANIC DISTRICT # 9.
> 5891 WEST 56TH STREET (approximate address), INDIANAPOLIS.
> CARPENTER CO., INC., BETTER HOMES AND GARDENS, by Raymond Good, requests the rezoning of 1.37 acres, being in the D-2 District, to the C-1 classification to provide for an office use.

PROPOSAL NO. 563, 1995. Introduced by Councillor West. The Clerk read the proposal entitled: "REZONING ORDINANCE certified by the Metropolitan Development Commission on August 23, 1995." The Council did not schedule Proposal No. 563, 1995 for hearing pursuant to IC 36-7-4-608. Proposal No. 563, 1995 was retitled REZONING ORDINANCE NO. 118, 1995 and is identified as follows:

> REZONING ORDINANCE NO. 118, 1995. 95-Z-81 WARREN TOWNSHIP
> COUNCILMANIC DISTRICT # 13.
> 8004 BROOKVILLE ROAD (approximate address), INDIANAPOLIS.
> TIM F. W. HANSON, by Michael J. Kias, requests the rezoning of 2.27 acres, being in the I-4-S District, to the C-3 classification to provide for commercial use.

PROPOSAL NO. 564, 1995. Introduced by Councillor West. The Clerk read the proposal entitled: "REZONING ORDINANCE certified by the Metropolitan Development Commission on August 18, 1995." The Council did not schedule Proposal No. 564, 1995 for hearing pursuant to IC 36-7-4-608. Proposal No. 564, 1995 was retitled REZONING ORDINANCE NO. 119, 1995 and is identified as follows:

> REZONING ORDINANCE NO. 119, 1995. 95-Z-103 LAWRENCE TOWNSHIP.
> COUNCILMANIC DISTRICT # 14.
> 10304 EAST 38TH STREET (approximate address), INDIANAPOLIS.
> ROCK OF FAITH BAPTIST CHURCH, by Raymond Good, requests the rezoning of 10 acres, being in the D-A(FF) District, to the SU-1(FF) classification to provide for church use.

PROPOSAL NO. 565-573, 1995. Introduced by Councillor West. The Clerk read the proposals entitled: "REZONING ORDINANCES certified by the Metropolitan Development Commission on August 18, 1995." The Council did not schedule Proposal Nos. 565-573, 1995 for hearing pursuant to IC 36-7-4-608. Proposal Nos. 565-573, 1995 were retitled REZONING ORDINANCE NOS. 120-128, 1995 and are identified as follows:

REZONING ORDINANCE NO. 120, 1995. 95-Z-94 (AMENDED) WARREN TOWNSHIP.
COUNCILMANIC DISTRICT # 10.
3045 NORTH ARLINGTON AVENUE (approximate address), INDIANAPOLIS.
TRUE BELIEF BAPTIST CHURCH & REV. GENE BAKER request the rezoning of 2.275 acre, being in the C-3 District, to the SU-2 classification to provide for construction of a building addition for an existing school.

REZONING ORDINANCE NO. 121, 1995. 95-Z-95 LAWRENCE TOWNSHIP.
COUNCILMANIC DISTRICT # 5.
11288 EAST 63RD STREET (approximate address), CITY OF LAWRENCE.
LAMAR A. and KAY E. ZIEGLER request the rezoning of 4.01 acres, being in the D-A District, to the D-2 classification to provide for construction of a single-family residence.

REZONING ORDINANCE NO. 122, 1995. 95-Z-101 LAWRENCE TOWNSHIP.
COUNCILMANIC DISTRICT # 14.
9003 EAST 46TH STREET (approximate address), CITY OF LAWRENCE.
INDIANA FULL GOSPEL CHURCH OF ROCK requests the rezoning of 6.67 acres, being in the D-4 District, to the SU-1 classification to provide for church use.

REZONING ORDINANCE NO. 123, 1995. 95-Z-102 PERRY TOWNSHIP.
COUNCILMANIC DISTRICT # 24.
3939 EAST STOP 11 ROAD (approximate address), INDIANAPOLIS.
INDIANAPOLIS WATER COMPANY, by Robert S. Spear, requests the rezoning of 3.267 acres, being in the D-A District, to the SU-39 classification to provide for construction of a municipal water booster pumping station and storage tank.

REZONING ORDINANCE NO. 124, 1995. 95-Z-111 (AMENDED) WARREN TOWNSHIP.
COUNCILMANIC DISTRICT # 5.
3550 NORTH MITTHOEFER ROAD (Rear) (approximate address), INDIANAPOLIS.
EASTSIDE PROPERTIES, INC., by Thomas Michael Quinn, requests the rezoning of 8.98 acres, being in the D-4 District, to the I-2-S classification to provide for light industrial suburban development.

REZONING ORDINANCE NO. 125, 1995. 95-Z-112 PERRY TOWNSHIP.
COUNCILMANIC DISTRICT # 24.
7801 MCFARLAND ROAD (approximate address), INDIANAPOLIS.
REV. DANIEL M. BUECHLEIN, O.S.B. ARCHBISHOP OF INDIANAPOLIS, by Michael J. Kias, requests the rezoning of 8.66 acres, being in the D-A District, to the D-3 classification to provide for a single-family residential development.

REZONING ORDINANCE NO. 126, 1995. 95-Z-114 LAWRENCE TOWNSHIP.
COUNCILMANIC DISTRICT # 4.
8277 CRAIG STREET (approximate address), INDIANAPOLIS.
EATON & LAUTH PROPERTIES, by Therese Fehribach Coffey, requests the rezoning of 4.5 acres, being in the C-2, C-4 and C-S Districts, to the C-S classification to provide for personal service establishments and all retail uses.

REZONING ORDINANCE NO. 127, 1995. 95-Z-115 CENTER TOWNSHIP.
COUNCILMANIC DISTRICT # 17.
1532 WEST WASHINGTON STREET (approximate address), INDIANAPOLIS.
BOBBIE D. COFFEY d/a/a THE CAR WORKS, by Lee T. Tarvin, requests the rezoning of 0.41 acre, being in the I-4-U(RC) District, to the C-5(RC) classification to provide for the continued operation of an automobile repair facility.

REZONING ORDINANCE NO. 128, 1995. 95-Z-118 CENTER TOWNSHIP.
COUNCILMANIC DISTRICT # 16.

955-985 INDIANA AVENUE (APPROXIMATE ADDRESS), INDIANAPOLIS.
DEPARTMENT OF PARKS & RECREATION requests the rezoning of 0.780 acre, being in the C-S District, to the PK-1 classification to provide for park use.

PROPOSAL NO. 574-582. Introduced by Councillor West. The Clerk read the proposals entitled: "REZONING ORDINANCES certified by the Metropolitan Development Commission on August 23, 1995."

Councillor Dowden read the following motion:

Mr. President:
I move that Proposal Nos. 574 and 575, 1995 (Rezoning Petition Nos. 95-Z-54 and 95-Z-55) be scheduled for a hearing before this Council at its next regular meeting on September 11, 1995 at 7:00 p.m. and that the Clerk read the announcement of such hearing and enter same in the minutes of this meeting.

Councillor Smith seconded the motion and it passed by consent. Proposal No. 574, 1995 is identified as follows:

95-Z-54 LAWRENCE TOWNSHIP. COUNCILMANIC DISTRICT # 4.
8377 EAST 96TH STREET (approximate address), INDIANAPOLIS.
BOEHRINGER MANNHEIM CORPORATION, by Thomas Michael Quinn, requests the rezoning of 36.82 acres, being in the I-2-S District, to the C-I classification to provide for permitted C-I uses.

Proposal No. 575, 1995 is identified as follows:

95-Z-55 LAWRENCE TOWNSHIP, COUNCILMANIC DISTRICT # 4.
9589 HAGUE ROAD (approximate address), INDIANAPOLIS.
BOEHRINGER MANNHEIM CORPORATION, by Thomas Michael Quinn, requests the rezoning of 49.60 acres, being in the C-6 & I-2-S Districts, to the C-4 classification to provide for retail and theater uses.

Councillor Williams said that several rezoning cases were heard by this Council this year, and suggested that the Council appoint new members to the Metropolitan Development Commission next year.

The Council did not schedule Proposal Nos. 576-582, 1995 for hearing pursuant to IC 36-7-4-608. Proposal Nos. 576-582, 1995 were retitled REZONING ORDINANCE NOS. 129-135, 1995 and are identified as follows:

REZONING ORDINANCE NO. 129, 1995. 95-Z-74 (Amended) WAYNE TOWNSHIP.
COUNCILMANIC DISTRICT # 18.
8330 CRAWFORDSVILLE ROAD (approximate address), INDIANAPOLIS.
ROY L. and NANCY A. LASITER, DENNIS E. COPENHAVER, PHILIP K. and JUDITH A. LONG, WILLIAM D. and DI ANN KASHMAN and MADELINE CAROL TOWELL, by Walter E. Wolf, Jr., request the rezoning of 1.75 acres, being in the D-A District, to the C-3 classification to provide for construction of a free-standing drug store retail building.

REZONING ORDINANCE NO. 130, 1995. 95-Z-75 (Amended) WAYNE TOWNSHIP.
COUNCILMANIC DISTRICT # 18.
8350 CRAWFORDSVILLE ROAD (approximate address), INDIANAPOLIS.
ROY L. and NANCY A. LASITER, DENNIS E. COPENHAVER, PHILIP K. and JUDITH A. LONG, WILLIAM D. and DI ANN KASHMAN and MADELINE CAROL TOWELL, by Walter E. Wolf, Jr., request the rezoning of 3.375 acres, being in the D-A District, to the D-2 classification to provide for four existing single-family residences.

REZONING ORDINANCE NO. 131, 1995. 95-Z-106 WARREN TOWNSHIP.
COUNCILMANIC DISTRICT # 13.
6715 EAST WASHINGTON STREET (approximate address), INDIANAPOLIS.
SANDLIAN INVESTMENTS COMPANY, by Thomas Michael Quinn, requests the rezoning of 3.995 acres, being in the D-5 District, to the C-S classification to provide for the development of mini-warehouses.

REZONING ORDINANCE NO. 132, 1995. 95-Z-120 CENTER TOWNSHIP.
COUNCILMANIC DISTRICT # 15.
3816-3820 EAST WASHINGTON STREET (approximate address), INDIANAPOLIS.
DONALD J. and MARSHA J. THARP, by Peter D. Cleveland, request the rezoning of 0.966 acre, being in the D-5, C-S and C-5 Districts, to the C-4 classification to provide for the development of a retail drug store.

REZONING ORDINANCE NO. 133, 1995. 95-Z-123 CENTER TOWNSHIP.
COUNCILMANIC DISTRICT # 16.
618 and 622 SOUTH MERIDIAN STREET (approximate address), INDIANAPOLIS.
JRC REAL ESTATE SERVICES, INC., by Joseph M. Scimia, requests the rezoning of 0.25 acre, being in the I-3-U District, to the CBD-2(RC) classification to provide for the construction of two single-family dwelling units and accessory garages/carriage houses.

REZONING ORDINANCE NO. 134, 1995. 95-Z-125 WASHINGTON TOWNSHIP.
COUNCILMANIC DISTRICT # 2.
1025 WEST 64TH STREET (approximate address), INDIANAPOLIS.
GTE MOBILNET OF INDIANAPOLIS L.P. requests the rezoning of 0.06 acre, being in the C-S District, to the C-S classification to provide for construction and operation of a cellular telephone facility.

REZONING ORDINANCE NO. 135, 1995. 95-Z-127 CENTER TOWNSHIP.
COUNCILMANIC DISTRICT # 16.
620 SOUTH CAPITOL AVENUE a/k/a 243 WEST MERRILL STREET (approximate address), INDIANAPOLIS.
ABACUS DEVELOPMENT, L.L.C., by Stephen D. Mears, requests the rezoning of 3.70 acres, being in the I-3-U(RC) District, to the CBD-2(RC) classification to provide for the reuse of an existing building for commercial uses.

SPECIAL ORDERS - PUBLIC HEARING

PROPOSAL NO. 441, 1995. Councillor O'Dell reported that the Community Affairs Committee heard Proposal No. 441, 1995 on August 10, 1995. The proposal is an appropriation of $15,530 for the County Sheriff to provide security at the Marion County Children's Guardian Home financed by a transfer of funds from the Children's Guardian Home's County General Fund. By a 7-0 vote, the Committee reported the proposal to the Council with the recommendation that it do pass.

The President called for public testimony at 8:39 p.m. There being no one present to testify, Councillor O'Dell moved, seconded by Councillor Smith, for adoption. Proposal No. 441, 1995 was adopted on the following roll call vote; viz:

27 YEAS: Beadling, Black, Borst, Boyd, Brents, Coughenour, Curry, Dowden, Franklin, Giffin, Gilmer, Golc, Gray, Hinkle, Jones, McClamroch, Moriarty Adams, Mullin, O'Dell, Schneider, SerVaas, Shambaugh, Short, Smith, Tilford, West, Williams
0 NAYS:
2 NOT VOTING: Jimison, Rhodes

Proposal No. 441, 1995 was retitled FISCAL ORDINANCE NO. 78, 1995 and reads as follows:

CITY-COUNTY FISCAL ORDINANCE NO. 78, 1995

A FISCAL ORDINANCE amending the City-County Annual Budget for 1995 (City-County Fiscal Ordinance No. 88, 1994) transferring and appropriating an additional Fifteen Thousand Five Hundred Thirty Dollars ($15,530) in the County General Fund for purposes of the County Sheriff and reducing certain other appropriations for the Marion County Children's Guardian Home in the County General Fund.

BE IT ORDAINED BY THE CITY-COUNTY COUNCIL OF THE CITY OF INDIANAPOLIS AND OF MARION COUNTY, INDIANA:

SECTION 1. To provide for expenditures the necessity for which has arisen since the adoption of the annual budget, Section 1.02(z) and (yy) of the City-County Annual Budget for 1995, be, and is hereby, amended by the increases and reductions hereinafter stated for purposes of the County Sheriff to provide security at the Marion County Children's Guardian Home.

SECTION 2. The sum of Fifteen Thousand Five Hundred Thirty Dollars ($15,530) be, and the same is hereby, transferred for the purposes as shown in Section 3 by reducing the accounts as shown in Section 4.

SECTION 3. The following increased appropriation is hereby approved:

COUNTY SHERIFF	COUNTY GENERAL FUND
1. Personal Services	7,760
2. Supplies	5,000
COUNTY AUDITOR	
1. Personal Services - fringes	2,770
TOTAL INCREASE	15,530

SECTION 4. The said increased appropriation is funded by the following reductions:

MARION COUNTY CHILDREN'S GUARDIAN HOME	COUNTY GENERAL FUND
3. Other Services and Charges	15,530
TOTAL DECREASE	15,530

SECTION 5. This ordinance shall be in full force and effect upon adoption and compliance with IC 36-3-4-14.

PROPOSAL NO. 443, 1995. Councillor Dowden reported that the Public Safety and Criminal Justice Committee heard Proposal No. 443, 1995 on July 26, 1995. The proposal is an appropriation of $294,000 for the County Sheriff, Community Corrections, and the Marion County Justice Agency to continue various programs to divert misdemeanant populations from state penal facilities financed by revenues from the County Correction Fund. By a 6-0 vote, the Committee reported the proposal to the Council with the recommendation that it do pass.

The President called for public testimony at 8:42 p.m. There being no one present to testify, Councillor Dowden moved, seconded by Councillor Schneider, for adoption. Proposal No. 443, 1995 was adopted on the following roll call vote; viz:

26 YEAS: Black, Borst, Boyd, Brents, Coughenour, Curry, Dowden, Franklin, Giffin, Gilmer, Golc, Gray, Hinkle, Jimison, Jones, McClamroch, Moriarty Adams, Mullin, O'Dell, Schneider, SerVaas, Shambaugh, Short, Smith, Tilford, West
0 NAYS:
3 NOT VOTING: Beadling, Rhodes, Williams

Proposal No. 443, 1995 was retitled FISCAL ORDINANCE NO. 79, 1995 and reads as follows:

CITY-COUNTY FISCAL ORDINANCE NO. 79, 1995

A FISCAL ORDINANCE amending the City-County Annual Budget for 1995 (City-County Fiscal Ordinance No. 88, 1994) appropriating an additional Two Hundred Ninety-four Thousand Dollars ($294,000) in the County Correction Fund for purposes of the County Auditor, County Sheriff, Community Corrections Agency and the Marion County Justice Agency and reducing the unappropriated and unencumbered balance in the County Corrections Fund.

BE IT ORDAINED BY THE CITY-COUNTY COUNCIL OF THE
CITY OF INDIANAPOLIS AND OF MARION COUNTY, INDIANA:

SECTION 1. To provide for expenditures the necessity for which has arisen since the adoption of the annual budget, Section 1.02(b), (z), (aa), and (dd) of the City-County Annual Budget for 1995 be, and is hereby, amended by the increases and reductions hereinafter stated for purposes of The County Auditor, County Sheriff, Community Corrections Agency and the Marion County Justice Agency to continue providing diversion programs for misdemeanant populations from the State of Indiana penal facilities.

SECTION 2. The sum of Two Hundred Ninety-four Thousand Dollars ($294,000) be, and the same is hereby, appropriated for the purposes as shown in Section 3 by reducing the unappropriated balances as shown in Section 4.

SECTION 3. The following additional appropriation is hereby approved:

COUNTY AUDITOR	COUNTY CORRECTIONS FUND
1. Personal Services - fringes	4,000
COUNTY SHERIFF	
3. Other Services and Charges	179,319
COMMUNITY CORRECTION AGENCY	
3. Other Services and Charges	94,681
MARION COUNTY JUSTICE AGENCY	
1. Personal Services	16,000
TOTAL INCREASE	294,000

SECTION 4. The said additional appropriation is funded by the following reductions:

	COUNTY CORRECTIONS FUND
Unappropriated and Unencumbered	
County Corrections Fund	294,000
TOTAL REDUCTION	294,000

SECTION 5. This ordinance shall be in full force and effect upon adoption and compliance with IC 36-3-4-14.

Councillor Borst asked for consent to vote on Proposal No. 514, 1995 at this time. Consent was given.

SPECIAL ORDERS - PRIORITY BUSINESS

PROPOSAL NO. 514, 1995. The President asked Councillor Golc to re-state his concern. Councillor Golc stated the Bottoms is a residential area of 39 homes that suffers from contaminated well water. The residents are presently receiving bottled water from IDEM. He said that he thought that the Bottoms was going to be included in Proposal No. 514, 1995, but it is not. He said that he has been assured by Councillor Giffin that both of them will meet with James Morris, president, Indianapolis Water Company, to resolve this matter.

Councillor West voiced his concern that this matter has not been resolved and suggested that Proposal 514, 1995 be postponed until there is a solution to this problem.

Councillor Giffin said that there is a problem in operating within the rules set forth by the Indiana Utility Regulatory Commission. Water mains cannot be extended unless there is an investment made by the property owner. He said that he and Councillor Golc will meet with Mr. Morris tomorrow morning to try and reach a solution for this problem.

Councillor Coughenour suggested that Cum Funds could be used to lower the costs for Bottoms residents.

The President asked Councillor West if he would act as a friend of the Council to facilitate this matter with the water company. Councillor West answered in the affirmative.

Councillor Franklin moved to postpone Proposal No. 514, 1995 until Councillor West meets with the Indianapolis Water Company. Councillor Coughenour seconded the motion.

Councillor McClamroch voiced his opposition to Councillor Franklin's motion because there have been assurances by Councillor Giffin and Mr. Morris that this matter will receive proper treatment. Councillor Borst also voiced his opposition to the motion to postpone.

Councillor Franklin's motion failed by a voice vote.

Councillors Giffin and Short asked for consent to abstain due to conflicts of interest. Consent was given.

Proposal No. 514, 1995 was adopted on the following roll call vote; viz:

24 YEAS: Beadling, Black, Borst, Boyd, Coughenour, Curry, Dowden, Gilmer, Golc, Gray, Hinkle, Jimison, Jones, McClamroch, Moriarty Adams, Mullin, O'Dell, Schneider, SerVaas, Shambaugh, Smith, Tilford, West, Williams
2 NAYS: Brents, Franklin
3 NOT VOTING: Giffin, Rhodes, Short

Proposal No. 514, 1995 was retitled SPECIAL ORDINANCE NO. 10, 1995 and reads as follows:

CITY-COUNTY SPECIAL ORDINANCE NO. 10, 1995

A SPECIAL ORDINANCE authorizing the City of Indianapolis to issue its "Economic Development Water Facilities Revenue Bonds, Series 1995 (Indianapolis Water Company Project)" in an aggregate principal amount not to exceed $18,000,000 and approving and authorizing other actions in respect thereto.

WHEREAS, the Indianapolis Economic Development Commission has rendered a report of the Indianapolis Economic Development Commission concerning the proposed financing of economic development facilities for the Indianapolis Water Company (the "Company"), and the Metropolitan Development Commission of Marion County has commented thereon; and

WHEREAS, the Indianapolis Economic Development Commission, has held a public hearing conducted pursuant to Indiana Code 36-7-12-24 and Section 147(f) of the Internal Revenue Code of 1986, as amended, and on August 16, 1995 adopted a Resolution, which Resolution has been previously transmitted hereto, finding that the financing of certain economic development facilities to be developed by the Company which will be initially owned and operated by the Company complies with the purposes and provisions of Indiana Code 36-7-12 and Indiana Code 36-7-11.9 (collectively, the "Act") and that such

financing will be of benefit to the health and general welfare of the City of Indianapolis and its citizens. The acquisition, installation, equipping and/or renovation of the economic development facilities will take place in the following locations, all of which are located in Indianapolis, Indiana:

1. Fall Creek Station (4300 block of Allisonville Road);
2. South Well Field (Southport Road and Harding Street);
3. Southeast County Station (Stop 11 and Sherman Drive);
4. White River Station (950 West 16th Street);
5. Riverside Station (1201 Waterway Boulevard);
6. T.W. Moses Station (West 56th Street and Dandy Trail);
7. Edmondson Station (Edmondson Avenue and East Washington Street);
8. Arlington Station (3408 N. Arlington Avenue);
9. Central Control System (1220 Waterway Boulevard); and
10. Ford Road Plant (96th and Ford Road).

The project will also include equipment purchases, constant growth items and distribution system improvements at various locations within Marion County (the "Project").

WHEREAS, the Indianapolis Economic Development Commission has approved the final forms of the Indenture of Trust, Loan Agreement, Guaranty Agreement, Bond Purchase Agreement, Preliminary Official Statement and the form of the City of Indianapolis, Indiana Economic Development Water Facilities Revenue Bonds, Series 1995 (Indianapolis Water Company Project) (the "Bonds) (hereinafter referred to collectively as the "Financing Documents"), by Resolution adopted prior in time to this date, which Resolution has been transmitted hereto; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY-COUNTY COUNCIL OF THE
CITY OF INDIANAPOLIS AND OF MARION COUNTY, INDIANA:

SECTION 1. It is hereby found that the financing of the economic development facilities referred to in the Financing Documents consisting of the Project previously approved by the Indianapolis Economic Development Commission now presented to this City-County Council, the issuance and sale of its revenue bonds, the loan of the net proceeds thereof to the Company for the purposes of financing the Project, and the repayment of said loan by the Company will be of benefit to the health and general welfare of the City of Indianapolis and its citizens and does comply with the purposes and provisions of the Act.

SECTION 2. The forms of the Financing Documents approved by the Indianapolis Economic Development Commission are hereby approved and all such documents shall be inserted in the minutes of the City-County Council and kept on file by the Clerk of the Council or City Controller. Two (2) copies of the Financing Documents are on file in the office of the Clerk of the Council for public inspection.

SECTION 3. Rule 15c2-12(b) (1) of the Securities Exchange Act of 1934, as amended (the "SEC Rule"), provides that, prior to the time a participating underwriter bids for, purchases, offers or sells municipal securities, the participating underwriter shall obtain and review an official statement that an issuer of such securities deems a "near final" official statement. The Preliminary Official Statement is hereby deemed final as of its date, except for the omission of no more than the following information: the offering price(s), interest rate(s), selling compensation, aggregate principal amount, principal amount per maturity, delivery dates, ratings and other terms of the securities depending on such matters. The Mayor, the City Clerk or any other officer of the City of Indianapolis familiar with the matters with respect to the City of Indianapolis set forth in the Preliminary Official Statement is hereby authorized to certify to the Underwriter (as defined in the Financing Documents) that the information in the Preliminary Official Statement with respect to the City of Indianapolis is deemed to be final within the meaning of the SEC Rule prior to the distribution of the Preliminary Official Statement.

SECTION 4. The City of Indianapolis shall issue its Bonds in an aggregate principal amount not to exceed $18,000,000 for the purpose of procuring funds to loan to the Company in order to finance the economic development facilities, heretofore referred to as the Project, which is more particularly set out in the Financing Documents incorporated herein by reference, which Bonds will be payable as to principal, premium, if any, and interest solely from the payments made by the Company pursuant to the Loan Agreement in the principal amount equal to the aggregate principal amount of the Bonds issued, which Loan Agreement will be executed and delivered by the Company to evidence and secure said loan and as otherwise provided in the above-described Financing Documents. The Bonds shall never constitute a general obligation of, an indebtedness of, or charge against the general credit of the City of Indianapolis.

SECTION 5. The City Clerk and the City Controller are authorized and directed to sell such Bonds to the Underwriter designated in the Bond Purchase Agreement at a price not less than 100% of the aggregate principal amount thereof, plus accrued interest, if any, and at a stated per annum rate of interest not to exceed 8%. The use of an Official Statement in substantially the same form as the Preliminary Official Statement approved herein is approved for use and distribution by the Underwriter and its agents in connection with the marketing of the Bonds.

SECTION 6. The Mayor and City Clerk are authorized and directed to execute those Financing Documents approved herein which require the signature of the Mayor and City Clerk and any other document which may be necessary or desirable to consummate the transaction, and their execution is hereby confirmed, on behalf of the City of Indianapolis. The signatures of the Mayor and City Clerk on the Bonds may be facsimile signatures. The City Clerk and City Controller are authorized to arrange for the delivery of such Bonds to the purchaser or purchasers thereof, payment for which will be made in the manner set forth in the Financing Documents. The Mayor and City Clerk may by their execution of the Financing Documents requiring their signatures and imprinting of their facsimile signatures on the Bonds or their manual signatures thereof approve changes therein and also in those Financing Documents which do not require the signature of the Mayor and/or City Clerk without further approval of this City-County Council or the Indianapolis Economic Development Commission if such changes do not affect terms set forth in this Ordinance and the Financing Documents pursuant to Indiana Code 36-7-12-27(a) (1) through (a) (10).

SECTION 7. The provisions of this Ordinance and the Financing Documents shall constitute a contract binding between the City of Indianapolis and the holder or holders of the Bonds and after the issuance of said Bonds this Ordinance shall not be repealed or amended in any respect which would adversely affect the right of such holder or holders so long as said Bonds or the interest thereon remains unpaid.

SECTION 8. This Ordinance shall be in full force and effect upon adoption and compliance with IC 36-3-4-14.

SPECIAL ORDERS - PUBLIC HEARING

PROPOSAL NO. 445, 1995. Councillor Coughenour reported that the Public Works Committee heard Proposal No. 445, 1995 on July 27, 1995. The proposal is an appropriation of $767,171 for the Department of Public Works, Environmental Resources Management Division, to meet the City's obligation to the Northside Landfill Superfund and to address USEPA's concerns at the City-owned Tibbs-Banta Landfill financed from Sanitation General Fund balances. By a 6-0 vote, the Committee reported the proposal to the Council with the recommendation that it do pass as amended.

The President called for public testimony at 9:06 p.m. There being no one present to testify, Councillor Coughenour moved, seconded by Councillor West, for adoption. Proposal No. 445, 1995 was adopted on the following roll call vote; viz:

24 YEAS: Black, Borst, Boyd, Brents, Coughenour, Curry, Dowden, Franklin, Giffin, Gilmer, Gray, Hinkle, Jimison, McClamroch, Moriarty Adams, Mullin, O'Dell, Schneider, SerVaas, Shambaugh, Short, Smith, Tilford, Williams
1 NAYS: Beadling
4 NOT VOTING: Golc, Jones, Rhodes, West

Councillor Beadling stated that her "no" vote is a protest vote.

Proposal No. 445, 1995 was retitled FISCAL ORDINANCE NO. 80, 1995 and reads as follows:

CITY-COUNTY FISCAL ORDINANCE NO. 80, 1995

A FISCAL ORDINANCE amending the City-County Annual Budget for 1995 (City-County Fiscal Ordinance No. 88, 1994) appropriating an additional Seven Hundred Eighty-five Thousand Two Hundred and Seventy-one Dollars ($785,271) in the Sanitation General Fund for purposes of the Department of Public Works, Environmental Resources and reducing the unappropriated and unencumbered balance in the Sanitation General Fund.

BE IT ORDAINED BY THE CITY-COUNTY COUNCIL OF THE CITY OF INDIANAPOLIS AND OF MARION COUNTY, INDIANA:

SECTION 1. To provide for expenditures the necessity for which has arisen since the adoption of the annual budget, Section 1.01 (l) of the City-County Annual Budget for 1995, be, and is hereby, amended by the increases and reductions hereinafter stated for purposes of Department of Public Works, Environmental Resources appropriating the General Sanitation Fund for the remediation of the Northside Landfill Superfund Site, technical and legal expertise in addressing concerns and issues for the Tibbs-Banta Landfill.

SECTION 2. The sum of Seven Hundred Eighty-five Thousand Two Hundred Seventy-one Dollars $785,271 be, and the same is hereby, appropriated for the purposes as shown in Section 3 by reducing the unappropriated balances as shown in Section 4.

SECTION 3. The following additional appropriation is hereby approved:

DEPARTMENT OF PUBLIC WORKS ENVIRONMENTAL RESOURCES	SANITATION GENERAL FUND
3. Other Services and Charges	785,271
TOTAL INCREASE	785,271

SECTION 4: The said additional appropriation is funded by the following reductions:

DEPARTMENT OF PUBLIC WORKS ENVIRONMENTAL RESOURCES	SANITATION GENERAL FUND
Unappropriated and Unencumbered Sanitation General Fund	785,271
TOTAL REDUCTION	785,271

SECTION 5. This ordinance shall be in full force and effect upon adoption and compliance with IC 36-3-4-14.

PROPOSAL NO. 483, 1995. Councillor Borst reported that the Economic Development Committee heard Proposal No. 483, 1995 on August 17, 1995. The proposal approves the issuance of $13 million of Notes for the purpose of paying the costs of certain infrastructure improvements in the Decatur Township portion of the Airport Industrial Economic Development Area. By a 5-0 vote, the Committee reported the proposal to the Council with the recommendation that it do pass.

The President called for public testimony at 9:12 p.m. There being no one present to testify, Councillor Borst moved, seconded by Councillor Jones, for adoption. Proposal No. 483, 1995 was adopted on the following roll call vote; viz:

24 YEAS: Beadling, Borst, Boyd, Brents, Coughenour, Curry, Dowden, Franklin, Giffin, Gilmer, Gray, Hinkle, Jimison, Jones, McClamroch, Moriarty Adams, Mullin, O'Dell, Schneider, SerVaas, Shambaugh, Short, Tilford, Williams

0 NAYS:
5 NOT VOTING: Black, Golc, Rhodes, Smith, West

Proposal No. 483, 1995 was retitled SPECIAL RESOLUTION NO. 53, 1995 and reads as follows:

CITY-COUNTY SPECIAL RESOLUTION NO. 53, 1995

A SPECIAL RESOLUTION approving the issuance of $13,000,000 in aggregate principal amount of notes, in one or more series (the "Notes") by the City of Indianapolis (the "City") for the purpose of paying the costs of the acquisition, construction, reconstruction and relocation of certain streets, water and sewer lines, drainage improvements and other infrastructure (collectively, the "Project") in the Decatur Township portion of the Airport Industrial Economic Development Area, as designated by the Metropolitan Development Commission of Marion County (the "Commission") in Resolution No. 90-281, adopted December 5, 1990, and as expanded by Resolution No. 91-220, adopted by the Commission on November 6, 1991 (the Decatur Township portion of the Airport Industrial Economic Development Area, as expanded, the "Area").

WHEREAS, the City, by and through its Department of Capital Asset Management, has, pursuant to a resolution adopted by the Board of Capital Asset Management on August 9, 1995, recommended that the Project be undertaken and the Notes be issued to finance the costs of the Project; and

WHEREAS, a public hearing concerning the appropriation of the proceeds of the Notes to the Project was held on August 28, 1995; and

WHEREAS, the City now desires to issue one or more series of Notes and, pursuant to one or more purchase agreements (the "Purchase Agreement") between the City and The Indianapolis Local Public Improvement Bond Bank (the "Bond Bank"), sell the Notes to the Bond Bank and appropriate the proceeds of the Notes to the costs of the Project;

WHEREAS, the City reasonably expects to reimburse expenditures for the Project with the proceeds of the Notes; now, therefore:

BE IT RESOLVED BY THE CITY-COUNTY COUNCIL OF THE
CITY OF INDIANAPOLIS AND OF MARION COUNTY, INDIANA:

SECTION 1. That the issuance of Thirteen Million Dollars ($13,000,000) in aggregate principal amount of Notes, in one or more series, as determined by the Mayor and the Controller, and in substantially the form attached hereto as Exhibit A, with such changes as are approved by the Mayor and the Controller, is hereby approved, and the Mayor and the Controller are hereby authorized to execute and attest, respectively, the Notes. Each Note shall have an initial maturity not exceeding two (2) years. Pursuant to IC 5-1.4-8-6, the Mayor and the Controller are hereby authorized to extend the maturity of each Note for an additional three (3) years.

SECTION 2. That the Purchase Agreement, in the form attached hereto as Exhibit B and with such changes as are approved by the Mayor and the Controller, is hereby approved, and the Mayor and the Controller are hereby authorized to execute and attest, respectively, a Purchase Agreement in connection with the issuance and sale of each series of Notes.

SECTION 3. The Mayor, Controller and any other officers of the City are hereby authorized and directed to take any action they deem necessary or appropriate to effectuate the issuance of the Notes, including, but not limited to, execution of any and all necessary appropriate documents.

SECTION 4. The proceeds derived from the issuance of the Notes, together with any and all investment earnings thereon, shall be, and they hereby are, appropriated and may be expended for the purpose of paying the costs of the Project. Such appropriation shall be in addition to all appropriations provided for in the regular budget and levy, and shall continue in effect until expenditure of all such appropriated funds on costs of the Project. Any surplus of such proceeds shall be used to prepay the Notes. The Clerk is hereby authorized and directed to certify a copy of this Special Resolution, together with such other proceedings and actions as may be necessary to the Controller for purposes of reporting to the State Board of Tax Commissioners in compliance with IC 6-1.1-18-5.

SECTION 5. To the extent provided in the Purchase Agreement, the revenues of the City collected pursuant to IC 6-3.5-4 (the "County Motor Vehicle Excise Surtax Act"), IC 6-3.5-5 (the "County Wheel Tax Act"), General Ordinance No. 112, 1992 passed by the City-County Council on October 26, 1992 and signed by the Mayor on November 2, 1992 (the "Surtax and Wheel Tax Ordinance") (collectively, the revenues of the City collected pursuant to the County Motor Vehicle Excise Surtax Act, the County Wheel Tax Act and the Surtax and Wheel Tax Ordinance, the "Wheel Tax Revenues"), together with ninety percent (90%) of the funds allocated to the City by the State of Indiana from the Motor Vehicle Highway Account pursuant to IC 8-14-1 and the Local Road and Street Account pursuant to IC 8-14-2 (collectively, the "State Distributions"), (together, the Wheel Tax Revenues and the State Distributions, the "Motor Vehicle Revenues") are hereby pledged to the payment of principal of and interest on the Notes, subject only to the prior use of the Motor Vehicle Revenues to the payment of principal of, redemption premium, if any, and interest on the City of Indianapolis Transportation Revenue Bond, Series 1992, dated December 1, 1992 (the "1992 Bond"). The City reserves the right to pledge the Motor Vehicle Revenues to other obligations ranking on a parity with the Notes, provided that the Motor Vehicle Revenues in the fiscal year immediately preceding the issuance of such other parity obligations shall not be less than one hundred twenty-five percent (125%) of the remaining maximum annual payment obligation on the 1992 Bond and any obligations issued on a parity therewith, and the Note and any obligations proposed to be issued on parity therewith.

SECTION 6. The City hereby declares its intent to reimburse expenditures for the Project with the proceeds of the Notes.

SECTION 7. This resolution shall be in full force and effect upon adoption and compliance with IC 36-3-4-14.

Exhibit A

CITY OF INDIANAPOLIS LIMITED RECOURSE NOTE, SERIES 1995A

Registered Owner: The Indianapolis Local Public Improvement Bond Bank

Maturity Date:

Principal Sum: $

FOR VALUE RECEIVED, the City of Indianapolis (the "Issuer"), a consolidated city of the first class with home rule powers located in Marion County, Indiana, hereby promises to pay, solely from the sources and as hereunder provided, to The Indianapolis Local Public Improvement Bond Bank, as Registered Owner (the "Registered Owner") or its duly registered assignee, upon presentation of this Note (the "Note") on the Maturity Date, unless earlier prepaid, the Principal Sum of _____ Dollars ($_____)) and to pay interest at the rate of _____ percent (__%) from the delivery date hereof. All payments of principal and interest on this Note shall be made to the Registered Owner in such coin or currency of the United States of America as at the time of payment is legal tender for the payment of public and private debts by check, draft or wire transfer.

Interest shall be calculated on the basis of a thirty (30) day month and a year consisting of 360 days on such advances and shall be payable on January 1 and July 1 each year commencing _____.

This Note has been issued to provide funds to the Issuer for the purpose of paying the cost of acquisition, construction, reconstruction and relocation of certain streets, water and sewer lines, drainage improvements and other infrastructure (collectively, the "Project") in the Decatur Township portion of the Airport Industrial Economic Development Area, as designated by the Metropolitan Development Commission of Marion County (the "Commission") in Resolution No. 90-281, adopted December 5, 1990, and as expanded by Resolution No. 91-220, adopted by the Commission on November 6, 1991 (the Airport Industrial Economic Development Area, as expanded, the "Area"). This Note is issued pursuant to and in full compliance with the constitution and laws of the State of Indiana, including particularly I.C. 5-1.4-8-6.

The principal of and interest on this note constitute a limited obligation of the Issuer, payable solely from the revenues of the Issuer collected pursuant to IC 6-3.5-4 (the "County Motor Vehicle Excise Surtax Act"), IC 6-3.5-5 (the "County Wheel Tax Act"), General Ordinance No. 112, 1992 passed by the City-County Council on October 26, 1992 and signed by the Mayor on November 2, 1992 (the "Surtax and Wheel Tax Ordinance") (collectively, the revenues of the Issuer collected pursuant to the County Motor Vehicle Excise Surtax Act, the County Wheel Tax Act and the Surtax and Wheel Tax Ordinance, the "Wheel Tax

Revenues"), together with ninety percent (90%) of the funds allocated to the Issuer by the State of Indiana from the Motor Vehicle Highway Account pursuant to IC 8-14-1 and the Local Road and Street Account pursuant to IC 8-14-2 (collectively, the "State Distributions") (together, the Wheel Tax Revenues and the State Distributions, the "Motor Vehicle Revenues"), subject only to the prior use of the Motor Vehicle Revenues to the payment of the principal of, redemption premium, if any, and interest on the City of Indianapolis Transportation Revenue Bond, Series 1992, dated December 1, 1992. THE ISSUER HAS NOT PLEDGED ITS FULL FAITH AND CREDIT OR TAXING POWER TO THE PAYMENT OF THE NOTE, AND THE NOTE SHALL NOT CONSTITUTE A GENERAL OBLIGATION OR INDEBTEDNESS OF THE ISSUER WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISION.

This Note is not prepayable at any time prior to maturity.

It is hereby certified, recited and declared that all acts, conditions and things required by the constitution or statutes of the State of Indiana to exist, to have happened or to have been performed precedent to or in the execution, issuance, sale and delivery of this Note exist, have happened and have been performed, and that the issuance of this Note, together with all other indebtedness of the Issuer, is within every debt and other limit prescribed by said constitution or statutes.

No recourse shall be had for the payment of the principal of or interest on this Note against any official, officers or employees of the Issuer past, present or future, under any constitutional provision, statute, rule of law, or by the enforcement of any assessment or by any legal or equitable proceedings or otherwise.

IN WITNESS WHEREOF, the City of Indianapolis, Indiana has caused this Note to be executed by the signature of its Mayor and attested to by the signature of its Controller, its corporate seal to be affixed, imprinted or reproduced hereon, and this Note to be dated and delivered this ___ day of _____, 19____.

CITY OF INDIANAPOLIS

(SEAL)

By: _____
Stephen Goldsmith, Mayor

ATTEST:

_____
James H. Steele, Jr., Controller

The Indianapolis Local Public Improvement Bond Bank, as Registered Owner of the above Note, and the City of Indianapolis, Indiana, as Issuer of the Note, hereby agree and consent to an extension of the Maturity Date of the Note from _____ 1, 19____ to _____ 1, 2_____, this ____ day of _____, 19____.

CITY OF INDIANAPOLIS

[SEAL]

By: _____
Stephen Goldsmith, Mayor

ATTEST:

_____
James H. Steele, Jr., Controller

THE INDIANAPOLIS LOCAL PUBLIC IMPROVEMENT BOND BANK

[SEAL]

By: _____
Glenn Scolnik, Chairman

ATTEST:

_____
James C. Snyder, Executive Director

Exhibit B

PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT, dated the ___ day of _____, 19____ ("Purchase Agreement"), between The Indianapolis Local Public Improvement Bond Bank, a body corporate and politic ("Bond

Bank"), created pursuant to the provisions of Indiana Code 5-1.4 ("Act"), having its principal place of business in the City of Indianapolis ("Qualified Entity"),

WITNESSETH:

WHEREAS, the Bond Bank has adopted a resolution authorizing the issuance of $_____ in aggregate principal amount of notes in one or more series, each designated "The Indianapolis Local Public Improvement Bond Bank, Series _____ Note," with the series designation to be completed at the time of issuance (the "Bond Bank Notes"); and

WHEREAS, pursuant to the Act and a resolution adopted by the Bond Bank, the Bond Bank is authorized to purchase securities (as defined in the Act) ("Securities") issued by qualified entities (as defined in the Act); and

WHEREAS, the Qualified Entity has by a resolution adopted _____, 1995 (the "Resolution") duly authorized the issuance of $_____ in aggregate principal amount of notes, in one or more series, each note designated "City of Indianapolis Limited Recourse Note, Series _____," with the series designation to be completed at the time of issuance in the principal amount of $_____ (the "Qualified Obligations"), and the Qualified Obligations are Securities to be purchased by the Bond Bank from proceeds of the Notes in accordance with this Purchase Agreement; and

WHEREAS, the Qualified Entity has adopted a resolution (the "Resolution") authorizing the issuance of the Qualified Obligations;

NOW, THEREFORE, the Bond Bank and the Qualified Entity agree:

1. The Bond Bank hereby agrees to purchase the Qualified Obligations, and the Qualified Entity hereby agrees to sell to the Bond Bank the Qualified Obligations concurrently with the issuance by the Bond Bank of its Notes. The price paid by the Bond Bank, the maturity date, interest rates and redemption provisions shall be determined for each Qualified Obligation at the time of issuance through negotiation between the Executive Director of the Bond Bank and the Mayor and Controller of the Qualified Entity. The Bond Bank and the Qualified Entity hereby agree that the Qualified Obligations are limited obligations of the Qualified Entity payable solely from a pledge of Motor Vehicle Revenues (as defined in the Resolution).

2. The Qualified Entity has taken all proceedings required by law to enable it to issue its Qualified Obligations to be purchased by the Bond Bank.

3. Subject to Section 8, the Qualified Entity agrees to pay the Bond Bank, on each interest payment date for the Qualified Obligations, reasonable fees and charges attributable to the administration of the Qualified Obligations acquired by the Bond Bank.

4. Simultaneously with the delivery to the Bond Bank of each of the Qualified Obligations, which Qualified Obligations shall be substantially in the form set forth in the Resolution and registered in the name of the Bond Bank, the Qualified Entity shall furnish to the Bond Bank a transcript of proceedings and the opinions of Barnes & Thornburg, bond counsel, as to, among other things, the validity of the Qualified Obligations and the excludability from gross income for federal tax purposes of interest on the Qualified Obligations under Section 103 of the Internal Revenue Code of 1986, as amended, and as in effect on such date ("Code").

5. The Qualified Entity and the Bond Bank agree that the Qualified Obligations and the payments to be made thereon may be pledged or assigned by the Bond Bank for the purposes of assuring repayment on the Bond Bank Notes.

6. The Qualified Entity agrees to furnish to the Bond Bank, as long as any of the Qualified Obligations remain outstanding, annual financial reports, audit reports and such other financial information as is reasonably requested by the Bond Bank.

7. The Qualified Entity covenants and agrees to comply with the rebate requirement of Section 148(f) of the Code. The Qualified Entity will keep records of the investments made and the earnings on those investments and report this information to the Bond Bank annually so that the Bond Bank may make the rebate or penalty calculation. The Bond Bank will assess the Qualified Entity annually for its share of the arbitrage profits or penalty owed to the United States of America as a fee and will use these fees and the

fees collected from any other qualified entities whose qualified obligations were purchased to pay the rebate amount owed. If the Bond Bank accumulates an amount in excess of what is required to be rebated or paid as a penalty to the United States of America, the Bond Bank shall reimburse the Qualified Entity for its allocable portion of such excess. The Qualified Entity further covenants and agrees to comply with any Memorandum on Compliance delivered to the Qualified Entity on the date of issuance of each Qualified Obligation.

8. If any provision of this Purchase Agreement shall for any reason by held to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this Purchase Agreement, and this Purchase Agreement shall be construed and be in force as if such invalid or unenforceable provision had not been contained herein.

9. This Purchase Agreement may be executed in one or more counterparts, any of which shall be regarded for all purposes as an original and all of which constitute but one and the same instrument. The Bond Bank and the Qualified Entity each agree that they will execute any and all documents or other instruments, and take such other actions as may be necessary to give effect to the terms of this Purchase Agreement.

10. No waiver by either the Bond Bank or the Qualified Entity of any term or condition of this Purchase Agreement shall be deemed or construed as a waiver of any other terms or conditions, nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach, whether of the same or of a different section, subsection, paragraph, clause, phrase or other provision of this Purchase Agreement.

11. This Purchase Agreement merges and supersedes all prior negotiations, representations and agreements between the Bond Bank and the Qualified Entity relating to the subject matter hereof and constitutes the entire agreement between the Bond Bank and the Qualified Entity in respect hereof.

IN WITNESS WHEREOF, we have hereunto set our hands as of the day and year first above-written.

THE INDIANAPOLIS LOCAL PUBLIC IMPROVEMENT BOND BANK

By: _____
Glenn Scolnik, Chairman

(SEAL)
Attest:

_____
James C. Snyder, Executive Director

CITY OF INDIANAPOLIS

By: _____
Stephen Goldsmith, Mayor

(SEAL)
Attest:

_____
James H. Steele, Jr., Controller

ACCEPTED AND APPROVED this ___ day of _____, 19____

DEPARTMENT OF CAPITAL ASSET MANAGEMENT

By: _____
Greg Henneke, Director

PROPOSAL NO. 487, 1995. The proposal is an appropriation of $7,754 for the Prosecuting Attorney to continue the Adult Protective Services Unit financed by revenues from a federal grant. PROPOSAL 488, 1995. The proposal is an appropriation of $89,957 for the Prosecuting Attorney to continue the Adult Protective Services Unit financed by revenues from a Family and Social Services Administration grant. Councillor Dowden asked for consent to postpone Proposal Nos. 487 and 488, 1995 until September 11, 1995. Consent was given.

PROPOSAL NO. 505, 1995. Councillor Dowden reported that the Public Safety and Criminal Justice Committee heard Proposal No. 505, 1995 on August 2, 1995. The proposal is an

appropriation of $770,000 for the County Sheriff to proceed with the jail expansion in the east wing of the City-County Building financed from the County General Fund balances. By a 7-0 vote, the Committee reported the proposal to the Council with the recommendation that it do pass.

The President called for public testimony at 9:19 p.m. There being no one present to testify, Councillor Dowden moved, seconded by Councillor Curry, for adoption. Proposal No. 505, 1995 was adopted on the following roll call vote; viz:

22 YEAS: Beadling, Borst, Brents, Coughenour, Curry, Dowden, Franklin, Gilmer, Golc, Hinkle, Jimison, McClamroch, Moriarty Adams, Mullin, O'Dell, Schneider, SerVaas, Shambaugh, Short, Smith, Tilford, West
5 NAYS: Black, Boyd, Gray, Jones, Williams
2 NOT VOTING: Giffin, Rhodes

Proposal No. 505, 1995 was retitled FISCAL ORDINANCE NO. 81, 1995 and reads as follows:

CITY-COUNTY FISCAL ORDINANCE NO. 81, 1995

A FISCAL ORDINANCE amending the City-County Annual Budget for 1995 (City-County Fiscal Ordinance No. 88, 1994) appropriating an additional Seven Hundred Seventy Thousand Dollars ($770,000) in the County General Fund for purposes of the County Sheriff and reducing the unappropriated and unencumbered balance in the County General Fund.

BE IT ORDAINED BY THE CITY-COUNTY COUNCIL OF THE CITY OF INDIANAPOLIS AND OF MARION COUNTY, INDIANA:

SECTION 1. To provide for expenditures the necessity for which has arisen since the adoption of the annual budget, Section 1.02(z) of the City-County Annual Budget for 1995 be, and is hereby, amended by the increases and reductions hereinafter stated for purposes of the County Sheriff to proceed with the jail expansion in the east wing of the City-County Building.

SECTION 2. The sum of Seven Hundred Seventy Thousand Dollars ($770,000) be, and the same is hereby, appropriated for the purposes as shown in Section 3 by reducing the unappropriated balances as shown in Section 4.

SECTION 3. The following additional appropriation is hereby approved:

COUNTY SHERIFF	COUNTY GENERAL FUND
3. Other Services and Charges	770,000
TOTAL INCREASE	770,000

SECTION 4. The said additional appropriation is funded by the following reductions:

	COUNTY GENERAL FUND
Unappropriated and Unencumbered County General Fund	770,000
TOTAL REDUCTION	770,000

SECTION 5. This ordinance shall be in full force and effect upon adoption and compliance with IC 36-3-4-14.

SPECIAL ORDERS - FINAL ADOPTION

PROPOSAL NO. 414, 1995. Councillor Curry reported that the Rules and Public Policy Committee heard Proposal No. 414, 1995 on August 8, 1995. The proposal recodifies the cable television regulations. By a 5-0 vote, the Committee reported the proposal to the Council with the recommendation that it do pass as amended.

Councillor Curry said there are four additional amendments to this proposal, which have been included in the Councillors' packets.

1 Technical amendments to Secs. 851-241, 851-242, 851-243, 851-244, 851-401, 851-403, and 851-603.
2 Deletes the last sentence in Sec. 851-406(a).
3 Deletes Sec. 851-707 and renumbers 851-708 through 851-713.
4 Adds a new Sec. 851-602(c) and reletters 851-602(d) through (e).

Councillor Curry moved, seconded by Councillor Gilmer, that the four amendments in the Councillors' packets be adopted. This motion passed by a unanimous voice vote.

Councillor Curry moved, seconded by Councillor Gilmer, for adoption. Proposal No. 414, 1995, as amended, was adopted on the following roll call vote; viz:

28 YEAS: Beadling, Black, Borst, Boyd, Coughenour, Curry, Dowden, Franklin, Giffin, Gilmer, Golc, Gray, Hinkle, Jimison, Jones, McClamroch, Moriarty Adams, Mullin, O'Dell, Rhodes, Schneider, SerVaas, Shambaugh, Short, Smith, Tilford, West, Williams
0 NAYS:
1 NOT VOTING: Brents

Proposal No. 414, 1995, as amended, was retitled GENERAL ORDINANCE NO. 128, 1995 and reads as follows:

CITY-COUNTY GENERAL ORDINANCE NO. 128, 1995

A GENERAL ORDINANCE recodifying and amending Chapter 8½ of the Code as a new Chapter concerning cable television.

BE IT ORDAINED BY THE CITY-COUNTY COUNCIL OF THE
CITY OF INDIANAPOLIS AND OF MARION COUNTY, INDIANA:

SECTION 1. The "Revised Code of the Consolidated City and County" be, and is hereby amended to add a NEW Chapter 851 (which is a revision and recodification of Chapter 8½ of the Code of Indianapolis and Marion County that deletes the stricken-through text and inserts the underlined text) to read as follows:

CHAPTER 851 CABLE TELEVISION
ARTICLE I. IN GENERAL

Sec. ~~8½-1~~ 851-101. Statutory authority; findings.

(a) The council determines that ~~it is proper and expedient to~~ the public interests will best be served by franchiseing cable ~~television systems~~ programming delivery systems to the extent authorized by law.

(b) The council hereby finds that it is in the interest of the City that the public ways be used to make cable ~~television~~ programming available to the people of the City. It is intended that the provisions of this chapter should facilitate and encourage orderly and responsible development of ~~a~~ systems which will provide the people of the City with cable ~~television~~ programming services which are versatile, reliable and efficient, which are responsive to the needs and interests of the community; and which provide the widest possible diversity of information sources and services to the public. The provisions of this chapter shall be construed liberally to further these purposes and to promote competition in the provision of such services.

Sec. ~~8½-1~~ 851-102. Definitions.

As used in this chapter:

(a1) The term *act* means the Cable Communications Policy Act of 1984, as amended by the Cable Television Consumer Protection and Competition Act of 1992, an amendment to the

Communications Act of 1934 (47 U.S.C. section 521 et seq.); as the same may be amended or supplemented from time to time;

(~~b~~2) The term *affiliate*, when used in relation to any person or entity, means another person or entity who owns or controls, is owned or controlled by, or is under common ownership or control with, such person or entity;

(~~c~~3) The term *board* means the cable franchise board of the City, created by Sec. 285-111 of the Revised Code of the Consolidated City and County;

(~~d~~4) The term *cable channel* or *channel* means a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television channel (as television channel is defined by the Federal Communications Commission by regulation);

(~~e~~5) The term *cable service* means the one-way transmission to subscribers of (i) video programming, or (ii) other programming service, and subscriber interaction, if any, which is required for the selection of such video programming or other programming service;

(~~f~~6) The term ~~*cable television system,*~~ *cable system* or *system* means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within the City~~, but such term does not include (A) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (B) a facility that serves only subscribers in one or more multiple unit dwellings under common ownership, control, or management, unless such facility or facilities use any public right of way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, as amended except that such facility shall be considered a cable system (other than for purposes of section 621(c) of the Act (47 U.S.C. section 541(c)) to the extent such facility is used in the transmission of video programming directly to subscribers; or (D) any facilities of any electric utility used solely for operating its electric utility systems~~;

~~(g) The term ``city'' means the Consolidated City of Indianapolis, Marion County, Indiana, a municipal corporation of the State of Indiana.~~

~~(h) The term ``clerk of the council'' or ``clerk'' means clerk of the city county council;~~

(7) The term *entity* means any corporation partnership, limited liability company, association, joint stock company, joint venture, trust, or governmental or business entity;

(~~i~~8) The term *franchise* means an initial authorization, or renewal thereof (including a renewal of an authorization which has been granted subject to section 626 of the Act (47 U.S.C. section 546)), issued by the City whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction and operation of a cable system;

(9) The term *franchise administrator* means that officer or employee of the City or cable franchise agency designated by the cable franchise board to perform the duties assigned to such position by this chapter;

(~~j~~10) The term *gross ~~accrued~~ revenues* means any and all revenues derived from the ~~cable television~~ operations of ~~grantee~~ operator's cable system. ~~under the franchise granted by the city as those terms are defined herein and as reflected in the financial statements of grantee, but specifically excluding (1) any and all taxes or fees or services furnished by the grantee imposed directly on any subscriber or user by any city, county, state or other governmental unit, and collected by the grantee for such entity, (2) any and all interest income from any source attributed to such cable television operations, (3) any and all income derived by grantee from the sale and transfer of cable television assets, and (4) any and all amounts of bad debts from such cable television operations that are written off by grantee~~;

(11) The term *institutional network* means a system or portion of a system whose use is restricted to governmental and educational operations;

(~~k~~12) The term *landlord restricted cable services* means cable television services provided to multiple dwelling units pursuant to a private cable service contract with the owner or manager;

(~~l~~13) The term ~~*limited cable television system or*~~ *limited cable system* means a cable system used ~~a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment, serviced from a principal headend, including any other headends or microwave receive sites that are technically integrated to the system's principal headend, that is designed~~ to provide cable service ~~which includes, but is not limited to, video programming and which is provided to multiple subscribers within the city but~~ only to ~~subscribers~~ (A) ~~in~~ one (1) or more multiple-unit dwellings under common ownership, control, or management, where such facility or facilities use any public right-of-way or (B) ~~in~~ one (1) or more multiple-unit dwellings not under common ownership, control, or management;

~~(m~~14) The term *manager* means the owner or any other person or entity authorized by the owner of a multiple-unit dwelling to contract for private cable services to such multiple-unit dwelling;

(~~n~~15) The term *operator* or *cable operator* means any person or entity or group of persons or entities (A) who provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in such cable system, or (B) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system and who has been granted a franchise by the City or by any predecessor, governmental officer or organization authorized to grant a franchise;

(~~o~~16) The term *other programming service* means information that a cable operator makes available to all subscribers generally;

(~~p~~17) The term *person* means an individual~~, partnership, association, joint stock company, trust, corporation, or governmental entity~~;

(~~q~~18) The term *private cable service contract* means a contract or agreement between the operator of a limited cable system, including an applicant, for landlord restricted cable services, and the owner or manager of a multiple-unit dwelling complex, which authorizes such operator to provide a limited cable ~~television~~ service to occupants of such multiple-unit dwelling complex;

(~~r~~19) The term *public, educational, or governmental access facilities* means (A) channel capacity designated for public, educational, or governmental use; and (B) facilities and equipment for the use of such channel capacity;

~~(s) The term ``public way'' means the surface and the area above and below the surface of any public street, highway, lane, alley, sidewalk path, right-of-way or easement, and any public utility easement or right-of-way dedicated generally for public utility uses;~~

(~~t~~20) The term *separate limited cable service area* means the area containing one (1) or more multiple-unit dwellings ~~under the same common ownership~~ which is included in the geographic area of a special cable franchise granted under this chapter;

(~~u~~21) The term *special cable franchise* means a franchise to operate a limited cable television system;

(~~v~~22) The term *special cable operator* has the same meaning as ``operator'' under this section, except that the term applies solely to a limited private cable system;

(~~w~~23) The term *subscriber* means any person or entity who contracts or agrees to purchase the regular subscriber service, pay television, or any other service provided by a cable system, and includes anyone actually using such service;

(24) The term *telecommunications services* means all transmissions of data, voice, or video, including cable services, unless the transmissions are regulated by some other federal or state authority; and

(~~x~~25) The term *video programming* means programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

~~Sec. 8-1/2-3. Administration and enforcement.~~

~~The board shall have the power and duty to:~~

~~(a) Execute franchising contracts under the terms and procedures provided in this chapter; and, in the event that more than one franchise is granted within the city, to ensure that all systems are compatible.~~

(b) ~~Promulgate any and all rules and regulations which it deems necessary to enable it to carry out its duties under this chapter; provided that, if within sixty (60) days after delivery of certification to the clerk of the adoption of rules and regulations by the board, the city-county council shall, by council action, disapprove or reject such rules and regulations, the adopted rules and regulations of the board shall be of no effect and the rules and regulations shall remain as they were in effect prior to disapproval or rejection by the council. If the council does not act within the sixty (60) days after delivery of certification, the rules and regulations adopted by the board shall become effective.~~

~~(c) Enforce the provisions of all franchises for any area of the city.~~

Sec. ~~8½-4~~ 851-103. Previously awarded franchises.

This chapter shall apply to all franchise contracts whether granted before, on or after the effective date of this ordinance. With respect to franchises validly existing on the effective date of this chapter, the provisions of this chapter shall be construed and applied (i) so as to be consistent with subsections 626 of the Act (a)-(g) (47 U.S.C. sec. 546(a)-(g)) and (ii) so as to impose no requirement contrary to applicable law.

Sec. ~~8½-5~~ 851-104. Franchise required.

No person or entity shall operate a cable ~~television~~ system within the City without having first obtained a franchise from the City. ~~Provided that any limited cable television system which is in operation on the effective date of this ordinance and for which application for a special cable franchise is made within ninety (90) days following such effective date may continue to operate such limited cable system, subject to the regulatory authority of the board, until a final decision has been rendered upon the application.~~ However, so long as federal law exempts the following from local regulation, a franchise is not required for:

(a) a facility that serves only to retransmit the television signals of one or more television broadcast stations;

(b) a facility that serves only subscribers in one or more multiple unit dwellings under common ownership, control, or management, unless such facility or facilities uses any public right-of-way;

(c) a facility of a common carrier which is subject, in whole or in part, to the provisions of title II of the Communications Act of 1934, as amended, unless such facility is used in the transmission of video programming, whether on a common carrier or noncommon carrier basis directly to customers; or

(d) any facilities of any electric utility used solely for operating its electric utility systems.

Sec. ~~8½-6~~ 851-105. Franchise's not exclusive.

(a) The granting of a cable franchise shall not grant the operator any rights to exclude any other franchised operator from providing services within the geographic areas included in the cable franchise.

(b) Any agreement between the operator and the owner of a multiple dwelling unit which restricts other franchised operators from providing services to the occupants of those units may be enforced only to the extent valid from time to time under applicable law. To the extent that such agreements may, at any time, become unenforceable under applicable law which applies to all franchise holders, the operator under a franchise shall take no action to enforce such exclusive rights.

(c) On or before January 1, 1997, the operator, under a franchise that is issued or renewed after May 1, 1994, shall file with the cable franchise board a list of all private cable service contracts which purport to grant the operator an exclusive right to provide cable services to occupants of multiple-dwelling units. Such list shall identify the owner or manager that made the agreement, the location of the units covered by the agreement, and the date the agreement expires. Thereafter, the operator shall file an amended or supplemental list within thirty (30) days after any change in such information becomes known to the operator.

(d) To the extent that payments are made to the owner or manager of a multiple dwelling unit for exclusive rights to provide cable services within a multiple dwelling unit, such payments shall not be deemed a cost of providing service for purposes of establishing rates to be charged to consumers of the cable ~~television~~ services.

ARTICLE II. PROCEDURES FOR APPLICATION, GRANT, ~~AND~~ RENEWAL, MODIFICATION OR TRANSFER OF CABLE FRANCHISES ~~PROCEDURES~~

DIVISION 1. ~~GENERALLY~~ AUTHORITY

Sec. ~~8½-11~~ 851-211. Authority to approve cable ~~and telecommunications~~ franchises.

Subject to the provisions of this article, the city-county council is hereby authorized to approve one (1) or more nonexclusive franchising contracts conveying the right to construct, operate and maintain, within the public ways in the City, poles, cables and any other equipment necessary to the operation of a cable ~~television~~ system ~~or other communications systems~~ within a designated area or areas for the period of time specified in the franchise.

DIVISION 2. ~~PROCEDURAL STEPS*~~ PETITIONS FOR GRANT OF CABLE FRANCHISE, OTHER THAN AN ACT RENEWAL FRANCHISE

Sec. ~~8½-21~~ 851-221. ~~Letter of intent~~ Petition for franchise.

Any person or entity interested in obtaining a cable ~~television~~ franchise may file ~~a letter of intent~~ a petition expressing such interest with the ~~board~~ franchise administrator. The ~~letter of intent~~ petition must contain or be accompanied by:

(1) A description of the geographic area proposed to be served with sufficient particularity as to enable a reasonable determination of the boundaries of such area and the proposed location of the cable system's facilities;

(2) A description of the type of service to be provided by the ~~applicant~~ petitioner; ~~and~~

(3) An explanation of the reasons why the granting of a franchise for the area described would be in the best interests of the City and its citizens and would not adversely affect the provision of cable service by existing franchisees~~.~~, and that the proposed facilities will not substantially and unreasonably interfere with current or planned uses of the public ways; and

(4) The filing fee specified in Sec. 851-261.

Sec. 851-222. Board action on petition.

(~~b~~a) Upon the receipt of ~~a letter of intent~~ a petition under Sec. 851-221 the franchise administrator shall review the petition and forward ~~the letter~~ to the board and to the clerk ~~shall determine whether to recommend~~ a recommendation ~~that~~ either: 1) that a request for proposals for a cable franchise should be issued; or ~~for the area described in the letter of intent.~~ 2) that the petitioner should be required to file an application containing certain of the information listed in Sec. 851-233; or 3) that the award of a franchise as proposed in the petition would not promote effective competition or serve the public interest.

(b) The board may determine to ~~recommend issuance of a request for proposals for an area larger than the area requested in the letter of intent~~ accept the franchise administrator's recommendation or to modify the recommendation. In making its ~~recommendation~~ decision the board may conduct such investigations as it deems appropriate to identify the future cable-related needs and interests of the community, provided that the board shall hold at least one (1) public hearing at which interested parties may appear and offer evidence concerning ~~whether a request for proposals should be issued~~ the recommendation made pursuant to subsection (a). Notice of the time and place of the public hearing shall be given in accordance with IC 5-3-1. Personal notice of the time and place of public hearing shall be given by mail to the ~~person who filed the notice of intent~~ petitioner and to all other operators of cable systems regulated by this chapter. The board's decision to ~~recommend~~ accept the franchise administrator's recommendation or ~~not recommend the issuance of a request for proposals~~ to modify the recommendation shall be made within ninety (90) days of the date on which the ~~letter of intent~~ petition was received by the ~~executive secretary~~ franchise administrator ~~of the agency~~.

(c) In making its determination ~~whether to recommend issuance of a request for proposals~~ the board shall consider ~~whether the grant of a franchise for the area would be in~~ the best interests of the City and its citizens and whether the refusal to award an additional competitive franchise as proposed in the petition would be unreasonable. ~~and in so determining shall consider the following factors:~~

~~(1) The need for cable service in the area.~~

~~(2) Whether the granting of an additional franchise for the area will provide an improvement in cable services in the area or in other areas in the county.~~

~~(3) Whether the granting of an additional franchise for the area will have a significantly adverse impact on the provision of cable service by other operators which have franchise to serve the area.~~

~~(4) Whether the granting of an additional franchise furthers or impedes the purposes contained in section 8 1/2 851-1.~~

~~(5) Any other factors which the board considers relevant to assure the continued provision of cable services that are responsive to the needs and interests of the city and its citizens.~~

(d) The board's recommendation will be ~~made~~ in writing ~~and~~ made a part of the records of the board, and provided to petitioner and to all other operators of cable systems regulated by this chapter.

Sec. 851-223. Council action on petition.

~~(e)~~The board's recommendation shall be filed with the clerk, and referred to the council committee assigned to review cable system franchises. Such committee ~~shall~~ may hold a public hearing to consider the recommendation of the board. The committee ~~shall~~ may propose that the council affirm or ~~reverse~~ modify the board's recommendation by adopting a resolution. ~~that a request for proposals be issued or not issued.~~ The council committee may hold such public hearings and meetings and conduct such investigations as it deems appropriate. ~~and may consider new evidence in making its determination.~~ The council's ~~decision shall be based on the factors set forth in subsection (c) hereof and~~ may specify such requirements for the request for proposals or applications as the council deems appropriate. The board's recommendation will be considered final if the council does not adopt a resolution as provided herein within ~~one hundred twenty (120)~~ sixty (60) days of the board's ~~decision~~ filing of its recommendation with the clerk.

~~(f) Nothing in this section shall be construed to limit the power of the council to issue a request for proposals on its own initiative.~~

Sec. 851-224. Reserved powers of board and council.

(a) Nothing in this chapter shall be construed to limit the power of the council to issue a request for proposals on its own initiative.

(b) The board may also at any time, on its own motion, conduct public hearings to determine whether it is feasible or desirable to recommend issuing a request for proposals. Such hearings shall be advertised in accordance with the provisions IC 5-3-1.

(c) The board or council may for good cause extend any of the time limits imposed in this article.

DIVISION 3. APPLICATIONS AND REQUESTS FOR PROPOSALS.

Sec. ~~8½-22~~ 851-231. Requests for proposals.

(a) ~~In the event the council determines~~ If the board's recommendation as approved by the council is to issue a request for proposals ~~for a cable television franchise, it~~ the council shall cause to be prepared, for board approval, a request for proposals. (RFP) ~~The request for proposals shall establish the term of the franchise and such requirements as the council and board deem appropriate, including, but not limited to, the following:~~

~~(1) That applicants provide designated channel capacity for public, educational or governmental uses and/or channel capacity on institutional networks for educational or governmental use;~~

~~(2) That applicants provide cable channels for commercial use in conformity with the requirements of section 612 of the Act (47 U.S.C. section 612);~~

~~(3) That applicants provide certain facilities and equipment related to the establishment or operation of the cable system;~~

~~(4) That applicants promise to provide cable service to subscribers on a nondiscriminatory basis and to provide such service to any group of residential subscribers regardless of the income of the residents of the local area in which such group resides;~~

~~(5) That the applicants agree to provide cable television service within all areas having a specified density of living units within the franchise territory. Such density shall be expressed in terms of number of living units per mile of system.~~

~~(b) The request for proposals shall require an application fee in the amount of one hundred dollars ($100.00) plus two and one-half cents ($0.025) for every home or apartment, hotel or motel unit in the geographic area covered by the request for proposals.~~

~~Sec. 8 1/2-23. Application for franchise~~.

(a~~b~~) Upon the approval of the request for proposals, the board shall give notice of the request for proposals ~~by~~:

~~(1) Posting the notice in three (3) public places;~~

~~(2) Publication of the notice once each week for two (2) weeks in two (2) newspapers of general circulation in the city; and~~

(1) In accordance with IC 5-3-1; and

(2) By ~~M~~mailing of the notice to any person or entity the board knows to be interested in submitting ~~an application~~ a proposal.

The board may, in its discretion, publish the notice in any newspaper of national circulation and in trade magazines or publications of the cable television or telecommunications services industry.

(~~b~~c) The notice shall name a date upon which ~~applications~~ proposals must be received at the office of the clerk and shall state that the forms of the request for proposals are available at the office of the board. The date for the receipt of the ~~applications~~ proposals shall not be sooner than thirty (30) days following the first publication of the notice required by ~~section 8 1/2-23(a)(2)~~ subsection (b).

(~~c~~d) All responses to a request for proposals shall be filed with the clerk and referred to the council committee assigned to review cable system franchises.

Sec. 851-232. Applications.

If the board's recommendation as approved by the council is that the petitioner be required to file an application containing certain of the information specified in Sec. 851-233, such application shall be filed with the clerk no later than sixty (60) days after the council action becomes final.

Sec. ~~8½-24~~ 851-233. Contents of requests for proposals and applications.

(a) ~~The council committee shall reject any application which does not contain the following~~ An RFP for the grant of a cable franchise, including a renewal franchise under subsection 626(c) of the Act (47 U.S.C. § 546(c)), shall require, at a minimum, the following information:

(1) Name and address of the person or entity applying for a franchise (hereinafter "the applicant") and identification of the ownership and control of the applicant, including: the names and addresses of the ten (10) largest holders of an ownership interest in the applicant and affiliates of the applicant, and all persons or entities with five (5) percent or more ownership interest in the applicant and its affiliates; the persons or entities who control the applicant and its affiliates; all officers and directors of the applicant and its affiliates; and any other business affiliation and cable system ownership interest of each named person or entity.

(2) A demonstration of the applicant's technical ability to construct and/or operate the proposed cable system, including identification of key personnel, their titles and responsibilities.

(3) A demonstration of the applicant's legal qualifications to construct and/or operate the proposed cable system, including but not limited to a demonstration that the applicant meets the following criteria:

a. The applicant must not have submitted an application for an initial or renewal franchise to the City, which was denied on the ground that the applicant failed to propose a system meeting the cable-related needs and interests of the community, or as to which any challenges to such franchising decision were finally resolved adversely to the applicant, within three (3) years preceding the submission of the application.

b. The applicant must not have had any cable television franchise validly revoked by any franchising authority within three (3) years preceding the submission of the application.

c. The applicant must have the necessary authority under Indiana law to operate a cable system.

d. The applicant shall not be issued a franchise if it may not hold the franchise as a matter of federal law. An applicant must have, or show that it is qualified to obtain, any necessary federal franchises or waivers required to operate the system proposed.

e. The applicant shall not be issued a franchise if, at any time during the ten (10) years preceding the submission of the application, the applicant was convicted of any act or omission of such character that the applicant cannot be relied upon to deal truthfully with the City and the subscribers of the cable system, or to substantially comply with its lawful obligations under applicable law, including obligations under consumer protection laws and laws prohibiting anticompetitive acts, fraud, racketeering, or other similar conduct.

f. The applicant shall not be issued a franchise if it files materially misleading information in its application or intentionally withholds information that the applicant lawfully is required to provide.

g. The applicant shall not be issued a franchise if an elected official of the City holds a controlling interest in the applicant or an affiliate of the applicant.

Notwithstanding the foregoing, the City shall provide an opportunity to an applicant to show that it would be inappropriate to deny it a franchise under Sec. 851-236, by virtue of the particular circumstances surrounding the matter and the steps taken by the applicant to cure all harms flowing therefrom and prevent their recurrence, the lack of involvement of the applicant's principals, or the remoteness of the matter from the operation of cable systems.

(4) A statement prepared by a certified public accountant regarding the applicant's financial ability to complete the construction and operation of the cable system proposed.

(5) A description of the applicant's prior experience in cable system ownership, construction, and operation, and identification of communities in which the applicant or any of its principals have, or have had, a cable franchise or franchise or any interest therein, provided that an applicant that holds a franchise for the City and is seeking renewal of that franchise need only provide this information for other communities where its franchise was scheduled to expire in the two (2) calendar years prior to and after its application was submitted.

(~~1~~6) A description of the area or areas of the requested franchise with sufficient particularity as to enable a reasonable determination of the boundaries of such area; provided that during the hearing process the board and council may consider modifications to the description of the area of franchise in any ~~bid~~ franchise application.

~~(2) A construction schedule. Such schedule must specify the period of time from the execution of the franchise contract within which cable television service shall be made available to areas having the density required under section 8-1/2-22(a)(5).~~

~~(3) A schedule indicating the initial tap-in and connection charges and the monthly rates to be charged subscribers.~~

(7) A detailed description of the physical facilities proposed, including channel capacity, technical design, performance characteristics, headend, and access facilities.

(8) Where applicable, a description of the construction of the proposed system, including an estimate of plant mileage and its location; the proposed construction schedule; a description, where appropriate, of how services will be converted from existing facilities to new facilities; and information on the availability of space in conduits including, where appropriate, an estimate of the cost of any necessary rearrangement of existing facilities.

(9) The proposed rate structure, including projected charges for each service tier, installation, converters, and all other proposed equipment or services.

(4~~1~~10) A description of the insurance policies to be acquired in satisfaction of the requirements of this chapter.

(11) A demonstration of how the applicant will reasonably meet the future cable-related needs and interests of the community, including descriptions of how the applicant will meet the needs described in any recent community needs assessment conducted by or for the City, and how the applicant will provide adequate public, educational, and governmental access channel capacity, facilities, or financial support to meet the community's needs and interests.

~~(5) A detailed statement of the corporate or other business entity organization of the applicant, including, but not limited to the following, and to whatever extent required by the city:~~

~~(i) The names, residence and business address of all officers, directors and associates of the applicant.~~

~~(ii) The names, residence and business addresses of all officers, persons and entities having, controlling or being entitled to have or control five (5) per cent or more of the ownership of the applicant and the respective ownership share of each such person or entity.~~

~~(iii) The names and addresses of any affiliate of the applicant and a statement describing the nature of any such affiliate's business activity, including but not limited to cable television systems owned or controlled by the applicant, its affiliates, and the area served thereby.~~

~~(iv) A detailed description of all previous experience of the applicant in providing cable television system service and in related or similar fields.~~

(~~v~~12) A detailed and complete financial statement of the applicant, prepared by a certified public accountant, for the fiscal year next preceding the date of the application hereunder, or a letter or other acceptable evidence in writing from a recognized lending institution or funding source, addressed to both the applicant and the board, setting forth a clear statement of its intent as a lending institution or funding source to provide whatever capital shall be required by the applicant to construct and operate the proposed system in the City, or a statement from a certified public accountant, certifying that the applicant has available sufficient free net and uncommitted cash resources to construct and operate the proposed system in the City, or other acceptable evidence in writing that the applicant is financially capable of constructing and operating the proposed system.

(13) Pro forma financial projections for the proposed franchise term, including a statement of projected income, and a schedule of planned capital additions, with all significant assumptions explained in notes or supporting schedules.

(14) If the applicant proposes to provide cable service to an area already served by an existing cable franchisee, the identification of the area where the overbuild would occur, the potential subscriber density in the area that would encompass the overbuild, and the ability of the public rights-of-way and other property that would be used by the applicant to accommodate an additional system.

~~(vi) A statement identifying, by place and date, any other cable television franchises awarded to the applicant or its affiliates; the status of such franchise(s) with respect to completion thereof; the total cost of completion of such system(s); and the amount of the applicant's and its affiliate's resources committed to the completion thereof.~~

(~~6~~15) A copy of any agreement covering the franchise area, if existing between the applicant and any public utility subject to regulation by the Indiana ~~Public Service~~ Utility Regulatory Commission, providing for use of any facilities of the public utility, including but not limited to poles, lines or conduits.

(16) Any other information as may be reasonably necessary to demonstrate compliance with the requirements of this chapter.

(17) Information that the City may request of the applicant that is relevant to the City's consideration of the application.

(18) An agreement by the applicant to reimburse the City its reasonable out-of-pocket expenses in considering the application in an amount set by the board.

(19) If the application is for a special cable franchise, evidence that the owner or manager of each multiple-unit dwelling to be served by the limited cable system has agreed to receive such service, which evidence may consist of a certification from such owner or manager certifying to the existence of a private cable service contract between such owner or manager and the applicant and a description of the property.

(20) If the application is for a special cable franchise, the number of multiple-dwelling units included in a proposed franchise area for a limited cable system that are being served under private cable service contracts that expire in less than four (4) years from the date of the franchise application.

(21) An affidavit or declaration of the applicant or authorized officer certifying the truth and accuracy of the information in the application, acknowledging the enforceability of application commitments, and certifying that the application meets all federal and state law requirements.

(b) Any application submitted for the grant, renewal, or transfer of a franchise (other than an application submitted pursuant to subsection 626(h) of the Act (47 U.S.C. § 546(h)) shall contain, at a minimum, the information listed in (a), unless the board or council determines that one or more of those items are not required.

Sec. ~~8½-25~~ 851-234. Report on applications or proposals and notification of operators.

Upon receipt of the applications or proposals for a franchise the clerk shall refer the same to the board, which may cause to be prepared an evaluation of the applications or proposals and a recommendation ~~of which~~ whether any applicant~~, if any,~~ should be granted a franchise. The board's evaluation and recommendation shall be filed with the clerk within sixty (60) days. The clerk shall also send written notification of the receipt of such applications or proposal(s) to all cable ~~television~~ system operators which have a franchise governed by this chapter.

Sec. ~~8½-26~~ 851-235. Hearing on ~~application~~ proposals or applications.

(a) Within seventy-five (75) days of receipt of the applications or proposals, the council committee shall hold a public hearing to take evidence and hear argument on whether to grant a cable franchise to one or more of the applicants either in the form proposed in ~~an~~ the applications or proposal, or proposed by the board, or otherwise, and if so, the nature and extent thereof. The council committee shall base its determination hereunder on the criteria contained in Sec.~~tion 8-1/2-27~~ 851-236. The clerk shall give notice of such hearing in accordance with IC 5-3-1, and if the council committee or board deems appropriate, in one (1) or more trade journals of the cable television or telecommunications services industry.

(b) At the time set for such hearing, or an adjournment thereof, the council committee shall proceed to hear all written protests and other submissions and to hear evidence and arguments from any interested persons or entities in addition to any applicants or potential applicants. A record shall be kept of such hearing and the evidence presented therein.

(c) The council or its committee may propound regulations to govern the conduct of such hearings so as to allow for the orderly and efficient presentation of evidence and argument, and to prevent unnecessary duplication or delay.

Sec. ~~8½-27~~ 851-236. Factors governing council's determination.

(a) In making any determination hereunder, the council committee shall base its decision on the following factors:

(1) The extent to which the applicant has substantially complied with the applicable law and the material terms of any existing cable franchise for the City.

(2) Whether the quality of the applicant's service under any existing franchise in the City, including signal quality, response to customer complaints, billing practices, and the like, has been reasonable in light of the needs and interests of the communities served.

(~~1~~3) The quality of the service which the applicant promises and of which the applicant is capable.

(4) Whether the applicant has the financial, technical, and legal qualifications to provide cable service.

(5) Whether the application satisfies any minimum requirements established by the City and is otherwise reasonable to meet the future cable-related needs and interests of the community, taking into account the cost of meeting such needs and interests.

(6) Whether the applicant will provide adequate public, educational, and governmental access channel capacity, facilities, equipment or financial support and/or channel capacity on institutional networks for educational and governmental uses.

(7) That applicant provides cable channels for commercial use in conformity with the requirements of section 612 of the Act (47 U.S.C. section 532).

(8) That applicant promises to provide cable service to subscribers on a nondiscriminatory basis and to provide such service to any group of residential subscribers regardless of the income of the residents of the local area in which such group resides.

(9) That the applicant agrees to provide cable service within all areas having a specified density of living units within the franchise territory. Such density shall be expressed in terms of number of living units per mile of system.

(~~2~~10) The rates to the subscribers.

(~~3~~11) The income and expense to the City.

(12) Whether issuance of a franchise is warranted in the public interest considering the immediate and future effect on the public ways and private property that would be used by the cable system, including the extent to which installation or maintenance as planned would require replacement of property or involve disruption of property, public services, or use of the public ways; the effect of granting a franchise on the ability of cable to meet the cable-related needs and interests of the community; and the comparative superiority or inferiority of competing applications.

~~(4) The needs of other users of the public right-of-way;~~

(~~5~~13) The effect on the ability of existing franchisees to perform their obligations under their franchise contracts.

~~(6) The experience, character, background and financial responsibility of any applicant, its management and owners; and~~

(~~7~~14) The technical and performance quality of facilities and equipment related to the establishment or operation of a cable system.

(15) Whether the applicant or an affiliate of the applicant owns or controls any other cable system in the City, or whether grant of the application may eliminate or reduce competition in the delivery of cable service in the City.

(~~8~~16) The demonstrated willingness and ability of any applicant to meet construction and physical requirements and to abide by policies and limitations imposed by law ~~of~~ or franchise agreements.

(~~9~~17) Any other considerations deemed pertinent by the board to its task of safeguarding the public health, safety and welfare, and facilitating and encouraging the orderly and responsible development of cable ~~television~~ systems which will provide the people of the City with cable ~~television~~ services which ~~is~~ are versatile, reliable, and efficient.

(b) The council committee shall make its determinations based on the record with a written statement of its findings and conclusions, and the reasons therefor.

Sec. ~~8½-28~~ 851-237. Council action on application.

Within forty-five (45) days after the conclusion of the hearing provided for in Sec.~~tion 8-1/2-26~~ 851-235, the council committee shall determine whether to grant a franchise to one (1) or more of the applicants.

(1) If the council committee shall determine after hearing that any application should be denied, such determination shall be final, subject to the appeal provisions of Sec.~~tion 8-1/2-30~~ 851-238.

(2) If the council committee shall determine after hearing that a franchise should be granted to one or more of the applicants, it shall approve a proposed form of franchise contract, to which the applicant shall indicate its agreement in writing within fifteen (15) days. If the applicant does not agree in writing to the terms of such form of a franchise contract within fifteen (15) days, then its application shall be deemed denied.

(3) An application may not be amended after it is received by the clerk, except in any case in which only one (1) application is received, said application may be amended for cause shown upon the unanimous consent of the council committee.

(4) The grantee or grantees shall pay the City a sum of money sufficient to reimburse it for all of its publication and other expenses (including but not limited to consultants and legal expenses) incurred in connection with the granting of a franchise pursuant to the terms of this division.

(5) No provision of this division shall be construed to require the City to grant any franchise contract, and the council may reject any and all applications.

~~Sec. 8-1/2-29. Additional powers of the board.~~

~~(a) The board may also at any time, on its own motion, conduct public hearings to determine whether it is feasible or desirable to grant any cable television franchise by issuing a request for proposals. The board shall base its determination on the criteria contained in section 8-1/2-21. Such hearings shall be advertised in accordance with the provisions IC 5-3-1.~~

~~(b) The board or council may for good cause extend any of the time limits imposed in sections 8-1/2-21 through 8-1/2-28.~~

Sec. ~~8½-30~~ 851-238. Council review of rejections.

Any person or entity whose application is rejected by the committee may, within ten (10) days of such action, petition the council for a review of that decision by filing notice thereof with the clerk of the council. If the council determines that the rejection is improper under this division, it may by resolution direct its committee to reconsider its action. In making its determination hereunder the council shall consider as evidence, and give due weight to, the findings and conclusions of its committee and shall consider the criteria contained in Sec.~~tion 8-1/2-27~~ 851-236.

Sec. ~~8½-31~~ 851-239. Council action on recommended contracts.

Within thirty (30) days of the council committee's recommendation of a franchise and contract, the council shall introduce an ordinance approving and confirming the contract as accepted by its committee. The council shall act upon the ordinance within sixty (60) days of its introduction, except that such time may be extended by the council for good cause. The council may:

(1) Adopt the ordinance, subject to the veto of the mayor, in which case the chairman of the cable franchise board and the mayor will be directed to execute the franchise contract~~, and ten (10) days after the mayor signs the ordinance, the franchise contract holder shall pay an award fee by certified check payable to the city, in an amount equal to twenty cents ($0.20) for every home or apartment,~~

~~hotel or motel unit in the geographic area covered by the franchise, provided that such award fee shall not be less than five hundred dollars ($500.00)~~; or

(2) Defeat the ordinance, in which case the application shall be denied; or

(3) By resolution direct its committee to consider certain modifications or amendments for the franchise contract, in which case its committee shall reconsider the application.

In making its determination hereunder, or under Sec.~~tion 8-1/2-30~~ 851-238, the council shall review the record of proceedings before its committee, and it may, in its discretion, consider new evidence. In making its determination hereunder, the council shall consider as evidence, and give due weight to, the findings and conclusions of its committee, and shall consider the criteria contained in Sec.~~tion 8-1/2-27~~ 851-236. Under no circumstances shall the council by ordinance approve or confirm any franchise contract unless the precise language has been accepted by its committee prior to the council's action.

~~Sec. 8-1/2-32. Renewal procedures.~~

~~Whenever the board or franchise holder desires to commence renewal proceedings under section 626(a) of the Act, the request for such proceedings shall be filed with the clerk, who shall refer it to the council committee responsible for cable franchise renewals. Upon receipt of such request the committee shall establish rules for the conduct of such renewal proceedings as it deems appropriate, consistent with the Act. All franchise holders, the cable franchise board and the city official designated by the mayor shall be parties to such proceedings. If more than one (1) franchise is subject to renewal at that time, the proceedings with respect to one (1) or more franchises may be conducted concurrently. The committee may hire such counsel and consultants as it deems advisable to assist in such proceedings. The committee's final recommendation on renewal or denial of renewal shall be subject to final action by the council as provided in sections 8-1/2-30 and 8-1/2-31.~~

~~DIVISION 3. GRANT SPECIAL CABLE FRANCHISES~~

~~Sec. 8-1/2-41. Procedure for granting special cable franchises.~~

~~(a) Any person or entity interested in operating only a limited cable system providing landlord restricted cable services, may in lieu of the procedures in sec. 8-1/2-21, apply for a special cable franchise by complying with this section.~~

~~(b) Any person or entity interested in obtaining one (1) or more special cable television franchises may apply to the board. The board shall prescribe the form of such application, which shall require:~~

~~(1) A diagram map showing the geographic area or areas for which the franchise is requested, and describing such areas with sufficient particularity as to enable a reasonable determination of the boundaries of such area and the proposed location of the facilities of the limited cable system;~~

~~(2) Evidence that the applicant is either currently operating a limited cable system or has the financial, legal and technical qualifications to construct, operate and maintain a limited cable television system;~~

~~(4) Descriptions of the cable services to be provided subscribers, of any other services or uses of the system, and of the rate structure to be charged for such services upon the grant of the franchise;~~

~~(5) A designation of channel capacity for public, educational and governmental access, proposing either (i) interconnection with an operator currently franchised by the city or (ii) the facilities and capacity (which may consist of playback equipment) for providing subscribers with public, educational and governmental access programming substantially equivalent to that provided by other franchises; and~~

~~(6) An application fee of either three thousand dollars ($3,000.00) if the applicant is not a current franchisee or fifteen hundred dollars ($1,500.00) if the applicant is a current holder of a special cable franchise; and~~

~~(d) Upon the submission of the application and the application fee, the board shall publish notice of and hold a public hearing on the application within sixty (60) days of the receipt thereof. At the conclusion of the public hearing (which may be continued beyond the sixty (60) days with consent of the applicant), the board shall recommend to the city-county council to grant the special cable franchise if the following is established:~~

~~(1) The applicant has the financial, legal and technical qualifications to operate the special cable system, provided that if at the time of its application, the applicant is providing limited cable television service in all or part of the geographic area or areas to which its application applies, such facts shall be evidence of such qualification;~~

~~(2) The grant of the special cable franchise will not have a material adverse effect on the economic ability of any other operator to fulfill any franchise obligation to assure that access to cable service is not denied to any group of potential residential cable subscribers because of the income of the residents of the local area in which such group resides;~~

~~(3) The proposed facilities to be constructed under the franchise will not substantially and unreasonably interfere with current or planned uses of the public ways; and~~

~~(4) The application complies with the requirements of subsection (b).~~

~~(e) In the event one (1) or more of the requirements set forth in subsection (d) is not established, the board shall advise the city county council that the application is denied. The applicant may within ten (10) days of such decision request the council committee to review such decision.~~

~~(f) The board shall include in its recommendation written findings of fact on the requirements specified in subsection (d), and if its recommendation is to grant a franchise, a proposed franchise agreement which is consistent with the terms of the application and the requirements of this chapter. Such findings and proposed franchise agreement shall be approved by the board no later than the next monthly meeting of the board following the public hearing. The time for taking such action may be extended by the board with the consent of the applicant.~~

~~(g) The board's recommendation to grant a special cable franchise shall be filed with the clerk and referred to the council committee responsible for cable franchising. At its first regularly scheduled meeting held more than ten (10) days following the receipt of such recommendation the committee shall determine whether it would be in the public interest to recommend the issuance of the special cable franchise, and cause to be introduced to the council an ordinance or resolution which would confirm such determination and approve a franchise agreement.~~

~~(h) A final decision denying an application is subject to appeal in the same manner as the denial of a franchise under the Act.~~

~~Sec. 8 1/2-42. Form and nature of franchise.~~

~~Upon council approval of the granting of a special cable franchise, the board shall execute a special cable franchise agreement in a form authorized by ordinance of the council. A special cable franchise shall constitute a nonexclusive authority to operate a limited cable television system within a designated area or areas, the same as any franchise as defined in section 8 1/2-2, for the period of time specified in the franchise, but not to exceed ten (10) years.~~

~~Sec. 8 1/2-43. Applicability of other provisions.~~

~~A franchised special cable operator that provides only landlord restricted services shall be subject to the regulations and requirements of sec. 8 1/2-44 but only the following provisions of article III through VII of this chapter 8 1/2, provided that any reference therein to a franchise contract shall be deemed to include a special cable franchise:~~

~~(a) Sections 8 1/2-51 through 8 1/2-54 of article III;~~

~~(b) Sections 8 1/2-61, 8 1/2-63, 8 1/2-65 and 8 1/2-66 of article IV;~~

~~(c) Sections 8 1/2-83 through 8 1/2-87 and 8 1/2-89 of article V;~~

~~(d) Sections 8 1/2-101 through 8 1/2-104 of article VI; and~~

~~(e) Sections 8 1/2-111 and 8 1/2-112 of article VII;~~

~~Sec. 8 1/2-44. Additional provisions.~~

~~(a) The franchisee shall pay to the city a franchise fee equal to five (5) percent of the special cable operator's gross revenues derived from the operation of the limited cable system, computed at the end of each calendar year and paid quarterly. Gross revenues shall include the gross revenues of any affiliate or contract manager who receives revenues derived from the operation of the system.~~

~~(b) A special cable operator shall be required to observe all customer service standards required under the Act. Notwithstanding the foregoing, a special cable operator may provide different levels of service at different areas included in a franchise, if permitted by the franchise agreement.~~

~~(c) All rates for limited cable service shall, to the extent permitted by applicable regulations pertaining to rates, be uniform among subscribers who receive the same service.~~

~~(d) A special cable operator shall comply with all applicable provisions of the Act.~~

~~(e) All limited cable television systems shall provide~~ public, educational and governmental access channels, in a manner that achieves substantially uniform access to such programming by all cable subscribers in the city. Unless otherwise agreed in the franchise agreement, a limited cable system shall interconnect with existing cable systems having a franchise which includes each separate limited service area if such franchisee is required to provide such programming by interconnection to other franchised cable systems. The special cable operator shall be responsible for all costs of interconnection, shall pay the operator of the connected system the per subscriber charges, if any, charged its subscribers for public, educational and governmental access programming, and to the extent that the city requires financial contributions from the cable operator, under agreements made or renewed after January 1, 1994, to provide facilities, support or programming of public, educational or governmental access, special cable operators shall contribute proportionally based on the average contribution per subscriber of all other operators in accordance with rules and regulations adopted by the board.

~~(f) To the extent applicable, a special cable operator shall provide institutional network availability within the areas included in the franchise.~~

~~Sec. 8-1/2-45. Further expansion of franchise area.~~

~~If the operator of a limited cable system,~~

~~(i) Enters into a private cable service agreement with the owner or manager to provide landlord restricted cable services to multiple dwelling units that are not in its special cable franchise area; and~~

~~(ii) The operator proposes to serve those units by interconnection with the operator's franchised system; and~~

~~(iii) The number of dwelling units in the franchise area after the expansion will not exceed fifteen thousand (15,000) dwelling units;~~

~~the area included within the special cable system franchise may abe expanded to include additional areas as follows:~~

~~(a) The special cable operator shall file with the executive secretary of the cable franchise board an application requesting such expansion, which shall include the description of the geographic area to be added and a certification of the owner or manager as to the existence of a private cable service contract or a letter of intent to enter into a private cable service contract, subject to the approval of the expansion.~~

~~(b) The application shall, at the time of its filing, be served by certified mail on the department of the city where right-of-way would be affected and on any operator holding a cable television franchise for an area which includes the area to be added to the limited cable system (``incumbent operator''). The application shall be accompanied by a certificate of service certifying that such service has been made.~~

~~(c) The application shall be deemed approved and the area included in the special cable franchise shall be expanded to include the additional area if no written objection thereto is delivered to the cable franchise board by either a department of the city or the incumbent operator within fifteen (15) days of the service of such application.~~

~~(d) In the event an objection is made to the application, the board shall automatically schedule the application for hearing at its next regular meeting, or may, in its discretion, schedule a special meeting to hear the same.~~

~~(e) At the conclusion of the hearing the board shall approve the application, and the special cable franchise shall be deemed thereafter to apply to the additional area unless:~~

~~(1) The city establishes that the grant of the expansion of the territory will substantially and unreasonably interfere with existing uses of the public ways; or~~

~~(2) The incumbent operator establishes by clear and convincing evidence that the grant of the expansion of the territory will serve to lessen competition for the provision of cable services within the county or will materially adversely affect the economic ability of the incumbent operator to fulfill its franchise obligation to assure that access to cable service is not denied to any group of potential residential cable subscribers because of the income of the residents of the local area in which such group resides.~~

~~Neither of the foregoing conditions will be deemed to exist solely because the territory which is sought to be added to the special cable franchise is currently served by the incumbent operator.~~

~~(f) The denial of application shall be subject to appeal to the same extent permitted by the Act for denials of a franchise.~~

~~Sec. 8-1/2-46. Term of special cable franchise.~~

~~(a) A special cable franchise granted under this chapter shall expire upon the date stated in the franchise agreement, subject to the renewal provisions of the Act and this chapter.~~

~~(b) The geographic area of a special cable franchise shall be the separate limited cable service areas described in the franchise agreement, including expansions approved under section 8-1/2-45; provided, that ninety (90) days after a private cable service contract to serve a separate limited cable service area expires by its terms or is terminated, such area shall no longer be included in the geographic area os such franchise unless extended within such ninety-day period. Provided, however, if the termination of such private cable service contract is the result of foreclosure, bankruptcy or insolvency of the owner or manager of the multiple-unit dwellings served under such private cable service contract and such dwellings are being managed under judicial supervision, said ninety-day period shall be tolled until such dwellings are transferred to a new owner or manager.~~

~~(c) Whenever under the terms of subsection (b) a separate limited cable service area ceases to be within the geographic area of a special cable franchise, the operator within thirty (30) days shall certify to the executive secretary of the cable franchise board the description of such separate limited cable service area.~~

~~Sec. 8-1/2-47. Revocation of special cable franchise.~~

~~A special cable franchise may be revoked by the board only in the event of default under the franchise agreement or the special cable operator is not in compliance with applicable federal, state or local laws with respect to the operation of the limited cable television system, and only following notice and a hearing thereon.~~

DIVISION 4. PROCEDURAL STEPS FOR GRANT OF ACT RENEWAL FRANCHISE

Sec. 851-241. Application for renewal; review of application.

Applications for renewal under the Act shall be filed with the clerk who shall refer them to the council committee assigned to review cable franchises for review in a manner consistent with section 626 of the Act, (47 U.S.C. § 546). Upon receipt of such application, the committee shall establish rules for the conduct of renewal proceedings as it deems appropriate, consistent with the Act, and Sec. 851-242 through Sec. 851-244. The committee may hire such counsel and consultants as it deems advisable to assist in the application review, or it may authorize the franchise board to do so. If neither the operator nor the City activates in a timely manner or can activate the renewal process set forth in subsection 626(a)-(g) of the Act (47 U.S.C. § 546(a)-(g)) or if those proceeding are not available for any reason (including, for example, if the provisions are repealed), and except as to applications submitted pursuant to subsection 626(h) of the Act (47 U.S.C. § 546(h)), the provisions of this division shall apply and a renewal request shall be evaluated using the same criteria as any other request for a franchise.

Sec. 851-242. Request for proposals; proposal evaluation.

(a) If the provisions of subsections 626(a)-(g) of the Act (47 U.S.C. § 546(a)-(g)) are properly invoked, the City shall issue a request for proposals (RFP) after conducting a proceeding to review the applicant's past performance and to identify future cable-related community needs and interests. The council committee, or its designee, shall establish deadlines and procedures for responding to the RFP, may seek additional information from the applicant, and shall establish deadlines for the submission of that additional information. Public notice of the RFP's issuance shall be given in accordance with IC 5-3-1 or other applicable provision of state law and shall also be given to the applicant for renewal.

(b) Following receipt of the response to that RFP (and such additional information as may be provided in response to requests), the council committee will determine that the franchise should be renewed, or make a preliminary assessment that the franchise should not be renewed. This determination shall be in accordance with the time limits established by the Act. The preliminary determination shall be made by adopting a resolution.

Sec. 851-243. Preliminary grant/denial of renewal application.

(a) If the council committee determines that the franchise should not be renewed, based on the response to an RFP issued as provided in Sec. 851-242, and the applicant that submitted the renewal application notifies the clerk, either in its RFP response or the later of four (4) months after renewal proceedings are commenced or within ten (10) working days of the preliminary assessment, that it wishes to pursue any rights to an administrative proceeding it has under the Act, then the City shall commence an administrative proceeding after providing prompt public notice thereof.

(b) If the Council committee decides preliminarily to grant renewal, the Council committee shall prepare and submit to the full Council within thirty (30) days of its recommendation a final franchise agreement that incorporates, as appropriate, the commitments made by the applicant in the renewal application or RFP response. If the applicant accepts the proposed franchise agreement, and the Council takes action of the recommended agreement as provided in Sec. 851-239 of this chapter, the franchise shall be renewed.

(c) If the franchise agreement is not so accepted and ratified within the time limits established by paragraph 626 (c)(1) of the Act (47 U.S.C. § 546(c)(1)), renewal shall be deemed preliminarily denied, and an administrative proceeding commenced if the applicant that submitted the renewal application requests it within ten (10) days of the expiration of the time limit established by paragraph 626 (c)(1) of the Act (47 U.S.C. § 546(c)(1)).

Sec. 851-244. Administrative hearing.

(a) If an administrative hearing is commenced pursuant to subsection 626(c) of the Act (47 U.S.C. § 546(c)), the applicant's renewal application or RFP response shall be evaluated considering such matters as may be considered consistent with federal law. The following procedures shall apply:

(1) The council shall, by resolution, appoint an administrative hearing officer or officers (referred to hereafter as "hearing officer"). The council may appoint itself or the board as hearing officer.

(2) Public notice of any proceeding conducted pursuant to subsection 626(c) of the Act (47 U.S.C. § 546(c)) shall be given in accordance with IC 5-3-1 or other applicable state law and shall also be given by the applicant on at least one channel of the cable system in accordance with rules for such notice established by the hearing officer.

(3) The hearing officer shall establish a schedule for proceeding which allows for documentary discovery and interrogatory responses, production of evidence, and cross-examination of witnesses. Discovery shall be conducted in the manner prescribed by the Administrative Adjudication Act (IC 4-21.5-3-1 through 4-21.5-3-37) or successor statutes thereto. Depositions shall not be permitted unless the party requesting the deposition shows that documentary discovery and interrogatory responses will not provide it an adequate opportunity to require the production of evidence necessary to present its case. The hearing officer shall have the authority to require the production of evidence as the interests of justice may require, including to require the production of evidence by the applicant that submitted the renewal application and any entity that owns or controls or is owned or controlled by, or under common control with, such applicant directly or indirectly. The

hearing officer may issue protective orders, but shall not prohibit discovery on the ground that evidence sought is proprietary or involves business secrets. Any order may be enforced by a court of competent jurisdiction or by imposing appropriate sanctions in the administrative hearing.

(4) The hearing officer may conduct a prehearing conference and establish appropriate prehearing orders. Intervention by non-parties is not authorized except to the extent required by the Act.

(5) The hearing officer shall require the City and the applicant to submit prepared testimony prior to the hearing.

(6) Any reports or the transcript or summary of any proceedings conducted pursuant to subsection 626(a) of the Act (47 U.S.C. § 546(a)) shall for purposes of the administrative hearing be regarded no differently than any other evidence. The City and the applicant must be afforded full procedural protection regarding evidence related to these proceedings, including the right to refute any evidence introduced by the other party. Both shall have the opportunity to submit additional evidence related to issues raised in the proceeding conducted pursuant to subsection 626(a) of the Act (47 U.S.C. § 546(a)).

(7) Following completion of any hearing, the hearing officer shall require the parties to submit proposed findings of fact with respect to the matters that the City is entitled to consider in determining whether renewal ought to be granted. Based on the record of the hearing, the hearing officer shall then prepare proposed written findings with respect to those matters, and submit those proposed findings to the council committee and to the parties (unless the hearing officer is the full council, in which case the written findings shall constitute the final decision of the City).

(8) If the hearing officer is not the full council, the parties shall have thirty (30) days from the date the proposed findings are submitted to the council to file exceptions to those findings. The council shall thereafter issue a written decision by adopting a resolution granting or denying the application for renewal, consistent with the requirements of the Act and based on the record of such proceeding. A copy of the final decision of the council shall be provided to the applicant.

(9) The proceedings shall be conducted with due speed.

(10) In conducting the proceedings, and except as inconsistent with the forgoing, the hearing officer shall follow the Administrative Adjudication Act (IC 4-21-5-3-1 through 4-21.5-3-1-37) or the successor statutes thereto. The hearing officer may request that the Council adopt procedures and requirements for the conduct of the hearing as necessary in the interest of justice.

(b) This section does not prohibit any franchisee from submitting an informal renewal application pursuant to subsection 626(h) of the Act (47 U.S.C. § 546(h)), which application may be granted or denied in accordance with the provisions of subsection 626(h) of the Act (47 U.S.C. § 546(h)). If such an informal renewal application is granted, then the steps specified in subsection (a) need not be taken, notwithstanding the provisions of this subsection.

(c) The provisions of this section shall be read and applied so that they are consistent with section 626 of the Act (47 U.S.C. § 546).

DIVISION 5. PROCEDURAL STEPS FOR MODIFICATION OR TRANSFER OF A FRANCHISE.

Sec. 851-251. Application for modification.

An application for modification of a franchise agreement shall be filed with the clerk and shall include, at minimum, the following information:

(1) The specific modification requested;

(2) The justification for the requested modification, including the impact of the requested modification on subscribers and others, and the financial impact on the applicant if the modification is approved or disapproved, demonstrated through, inter alia, submission of financial pro formas;

(3) A statement whether the modification is sought pursuant to section 625 of the Act (47 U.S.C. § 545), and, if so, a demonstration that the requested modification meets the standards set forth in section 625 of the Act (47 U.S.C. § 545);

(4) Any other information that the applicant believes is necessary for the City to make an informed determination on the application for modification; and

(5) An affidavit or declaration of the applicant or authorized officer certifying the truth and accuracy of the information in the application, and certifying that the application is consistent with all federal and state law requirements.

Sec. 851-252. Review of application.

The clerk shall refer the application for modification of the franchise agreement to the council committee assigned to review cable franchises for review and evaluation in accordance with the procedures for the grant of a general cable franchise, other than an Act renewal franchise.

Sec. 851-253. Further expansion of a special cable franchise area.

If the operator of a limited cable system,

(1) Enters into a private cable service agreement with the owner or manager to provide landlord restricted cable services to multiple dwelling units that are not in its special cable franchise area; and

(2) The operator proposes to serve those units by interconnection with the operator's franchised system; and

(3) The number of dwelling units in the franchise area after the expansion will not exceed fifteen thousand (15,000) dwelling units;

the area included within the special cable system franchise may be expanded to include additional areas as follows:

(1) The special cable operator shall file with the franchise administrator of the cable franchise board an application requesting such expansion, which shall include the description of the geographic area to be added and a certification of the owner or manager as to the existence of a private cable service contract or a letter of intent to enter into a private cable service contract, subject to the approval of the expansion.

(2) The application shall, at the time of its filing, be served by certified mail on the department of the City where right-of-way would be affected and on any operator holding a cable franchise for an area which includes the area to be added to the limited cable system (``incumbent operator''). The application shall be accompanied by a certificate of service certifying that such service has been made.

(3) The application shall be deemed approved and the area included in the special cable franchise shall be expanded to include the additional area if no written objection thereto is delivered to the board by either a department of the City or the incumbent operator within fifteen (15) days of the service of such application.

(4) In the event an objection is made to the application, the board shall automatically schedule the application for hearing at its next regular meeting, or may, in its discretion, schedule a special meeting to hear the same.

(5) At the conclusion of the hearing the board shall approve the application, and the special cable franchise shall be deemed thereafter to apply to the additional area unless:

a. The City establishes that the grant of the expansion of the territory will substantially and unreasonably interfere with existing uses of the public ways; or

b. The incumbent operator establishes by clear and convincing evidence that the grant of the expansion of the territory will serve to lessen competition for the provision of cable services within the county or will materially adversely affect the economic ability of the incumbent operator to fulfill its franchise obligation to assure that access to cable service is not denied to

any group of potential residential cable subscribers because of the income of the residents of the local area in which such group resides.

Neither of the foregoing conditions will be deemed to exist solely because the territory which is sought to be added to the special cable franchise is currently served by the incumbent operator.

(6) The denial of application shall be subject to appeal to the same extent permitted for denials of a franchise.

Sec. 851-254. Transfer of the franchise.

(a) Prior approval of the City shall be required before a franchise granted by the City shall be assigned or transferred, either in whole or in part, or leased or sublet in any manner, nor shall title thereto, either legal or equitable, or any right, interest or property therein, pass to or vest in any person, entity, persons or entities until such prior approval is granted.

(b) The proposed transferee shall make a written verified application for approval of the transfer. The application shall provide complete information regarding the proposed transfer, including (i) documents embodying the transaction; (ii) financing documents; (iii) documents describing the proposed transferee, identifying all persons or entities with a five (5) per cent or more ownership interest in the proposed transferee, and, if such persons or entities are corporations or partners, identifying their parent companies; (iv) documents identifying any person or entity who will be responsible, through any arrangement, for managing or controlling the system; (v) documents showing that the proposed transferee has the financial, technical and legal ability to operate the system after the transfer so as to satisfy all its obligations under the franchise without adversely affecting subscribers; and (vi) such other information as may be required in any ordinance governing applications for a franchise. The proposed transferee shall also pay all reasonable costs incurred by the City in reviewing and evaluating the application.

(c) The City shall reply in writing within one hundred and twenty (120) days of the date it receives the information specified above and information required by federal law and shall indicate whether it intends to grant, deny, or condition the proposed transfer. The City may seek additional information from operator or the proposed transferee and both will cooperate to provide the information to the City. The City shall be under no obligation to transfer the franchise if operator's acts or omissions make the franchise subject to revocation, nor shall the City be required to transfer unless it is fully satisfied that any interests it or the public has in the franchise will be fully preserved and protected; that past non-performance will be corrected; that claims that could be considered as part of any renewal proceeding are fully preserved; that the proposed transferee has the ability and is likely to comply with the franchise agreement for the future; and that the transfer does not constitute trafficking in the franchise. By way of illustration and not limitation, under no circumstances will the franchise be transferred unless the proposed transferee agrees to accept all the terms and conditions of the franchise agreement, except to the extent that the City may be willing to modify such terms and conditions as a part of the approval of the transfer; agrees that the transfer does not constitute a waiver of any rights by the City or indicate that the operator is or has been in compliance with the franchise agreement or applicable law. The City may conduct such public hearings as it deems appropriate to consider the transfer request.

(d) Operator, upon transfer, shall within sixty (60) days thereafter file with the City a copy of the deed, agreement, mortgage, lease or other written instrument evidencing transfer or ownership control or lease of the system, certified and sworn to as correct by operator.

(e) A transfer shall include any sale of system assets, a transfer of the franchise itself, or a change of control or ownership of operator. The term "control" includes actual working control in whatever manner exercised, and there shall be a rebuttable presumption that a transfer shall have occurred upon acquisition or accumulation by any person or entity of five (5) per cent of the shares or interest in operator or any entity which owns or controls operator.

DIVISION 6. FEES.

Sec. 851-261. Schedule of filing fees.

To be acceptable for filing, an application submitted after the effective date of this ordinance shall be accompanied by a filing fee in the following amount to cover costs incidental to the awarding or enforcement of the franchise, as appropriate:

(1) For an initial franchise, including a special cable franchise:	
a. Petition for franchise:	$ 5,000
b. A response to an RFP or an application:	$50,000
(2) For renewal of a franchise:	$60,000
(3) For modification of a franchise agreement:	$30,000
(4) For expansion of a special cable franchise during its term in accordance with section 851-253 of this chapter	$ 3,000
(5) For approval of a transfer of a franchise.	$30,000

Sec. 851-262. Reimbursement of City's out-of-pocket expenses.

In addition, the City may require the franchisee, or, where applicable, a transferor or transferee, to reimburse the City for its reasonable out-of-pocket expenses in considering the application, including consultants' fees, in an amount set by the board. A franchise agreement may provide that payments made by a franchisee hereunder are not a franchise fee and fall within one or more of the exceptions in paragraph 622(g)(2) of the Act (47 U.S.C. § 542(g)(2)), and that no such payments may be passed through to subscribers in any form.

ARTICLE III. CONSTRUCTION, OPERATION, AND MAINTENANCE OF SYSTEM

DIVISION 1. USE OF PUBLIC WAYS.

Sec. ~~8½-51~~ 851-311. Street occupancy.

(a) The operator shall comply with the street occupancy requirements of the City, including but not limited to payment of all generally applicable permit and licensing fees.

(~~a~~b) All poles, cables, towers, lines, and other equipment and fixtures placed by the operator within the public ways, whether above, on, or below ground, of the City shall be so located as to cause minimum interference with ~~the proper use~~ other authorized users of the public ways and adjoining premises.

(~~b~~c) If the disturbance of any public way is necessary, the operator shall comply with all ~~provisions~~ requirements of the City relevant to such disturbance.

(~~c~~d) If at any time during the period of the franchise the City shall ~~elect~~ deem it necessary to change the location of any pole, cable, tower, line and other equipment or fixture located in ~~grade of~~ any public way, either above, on, or below ground, the operator, upon reasonable notice by the City and reasonable time for compliance, shall relocate its poles, cables, towers, lines, and other equipment and fixtures at no expense to the City.

(~~d~~e) The operator shall have the authority to trim trees upon and overhanging the public ways of the City so as to prevent the branches of such trees from coming in contact with the cables and the equipment of the operator, except that, at the option of the City, such trimming may be done by it or under its supervision and direction.

(~~e~~f) In all sections of the City where the cables, wires or other like facilities of public utilities are placed underground, the operator shall place its cables and other equipment underground to the maximum extent it can be accomplished using proven technology generally used by the cable industry for comparable systems.

(~~f~~g) An operator having ~~cable television~~ a franchise to operate a cable system ~~rights~~ for a portion of the City shall have the right to use the public ways throughout the City as necessary or advisable for the efficient construction, operation and maintenance of ~~the operator's~~ that system, provided that cable ~~television~~ services may be provided only to subscribers located within the area of the operator's franchise~~, and u~~Use of the public ways outside the area of the operator's franchise to construct, operate, or maintain the operator's cable system shall not unreasonably interfere with the construction, operation and maintenance of a cable ~~television~~ system by an operator who has, or thereafter obtains, a franchise to serve

subscribers in such outside area. The ~~board~~ City shall have power to promulgate rules and regulations with respect to jointly used public ways as considered necessary or desirable.

Sec. 851-312. Public utility poles.

(a) The operator shall have the right, privilege, and authority to lease, rent, or in any other manner obtain the use of towers, poles, lines, cables, and other equipment and facilities, both above and below ground, from any and all holders of public utility licenses and franchises within the City, including but not limited to Ameritech and Indianapolis Power & Light Company, and to use such towers, poles, lines, cables, and other equipment and facilities: provided, however, that the operator shall file with the agency prior written disclosure of the towers, poles, lines, cables and other equipment and facilities it intends to use, which are subject to the board's approval. The facilities used for the operator's system shall be those erected and/or maintained by Ameritech and/or Indianapolis Power & Light Company, when and where practicable, providing mutually satisfactory rental agreements can be entered into with said companies. It is the intention of the City that all holders of public licenses and franchises within the City shall cooperate in making available to the operator their facilities whenever possible and wherever such use does not interfere with the normal use and operation of said facilities by the owners thereof. The operator shall have the right to erect, install, and maintain its own towers, poles, guys, cables, anchors, and ducts, both above and below ground, as may be necessary for the proper construction and maintenance of the system, provided that all equipment and facilities shall not be placed on City property ~~shall first have their locations~~ without the prior approval of the City.

(b) The operator shall have no vested interest in the location of any tower, pole, line, cable, or other equipment and facilities, and such towers, poles, lines, cables, and other equipment and facilities shall be removed or modified by the operator at no expense to the City whenever the City determines the public convenience so requires.

(c) The City shall have the right to install and maintain free of charge upon the operator-owned poles, lines, cables, and other equipment and facilities, both above and below ground, any fixtures, on the condition that such fixtures do not unreasonably interfere with the operator's operation of its system, and City indemnifies operator for losses, claims, causes of action, judgments, or liens caused by the City's negligent acts or omissions in using operator-owned poles, lines, cables, and other equipment and facilities.

Sec. 851-313. Notice to occupants of property.

Prior to the start of construction within any easement other than a public street right-of-way, the operator must give written notice to all affected property occupants informing them that the operator will be working in the area affecting such property occupants. Such notice shall include a telephone number, which may be called by property occupants who encounter any problems or damages as a result of such work by the operator.

Sec. 851-314. Operator Responsibility for Damages.

Operator shall be responsible for repairs to public or private property necessitated by damage caused by or resulting from operator's or operator's subcontractors' construction, operation, or maintenance of the system.

Sec. 851-315. Deadlines for the repair of public and private property; lawn repair.

(a) The repair of public and private property damage during construction, operation, or maintenance of the operator's system shall be completed no later than sixty (60) days after the date of the damage.

(b) Lawns shall be repaired to their preconstruction condition.

DIVISION 2. CONSTRUCTION.

Sec. 851-321. General construction standards.

(a) The construction, operation and repair of operator's system shall be performed in a safe, thorough and reliable manner using equipment of good and durable quality. The construction, operation and repair of the system shall be performed by experienced personnel familiar with their responsibilities under this franchise and applicable laws and construction standards. The operator shall at all times have sufficient,

trained personnel to satisfy all its obligations under this franchise (including under the customer service requirements set forth in Sec. 851-501) and applicable laws and regulations.

(b) Operator shall construct, operate and maintain its system in accordance with all applicable laws and regulations, including but not limited to federal, state and local building, zoning and other land use, and safety laws, codes and regulations now in effect or hereafter adopted. Without limiting the foregoing, the City, after consultation with the operator may direct the operator to follow standards for construction, operation or repair of the system as required to ensure that work continues to be performed in an orderly and workmanlike manner, or to reflect changes in the standards listed below which may occur over the term of the franchise. In any event, the construction, operation and repair of the operator's system shall at all times be in accordance with the requirements of the:

(1) National Electrical Code;

(2) National Electrical Safety Code;

(3) Rules and Regulations of the Federal Communications Commission, Parts 17, 76, and 78;

(4) Obstruction marking and Lighting, AC 70/7460-IE, Federal Aviation Administration;

(5) OSHA Safety and Health Standards; and

(6) NCTA Standards of Good Engineering Practices, NCTA 008-0477 EIA Standard RS-222C "Structural Standards for Steel Towers and Antenna Supporting Structures;"

and all amendments or successors to such codes, rules, standards, and regulations.

(c) All cabling shall be buried or secured above ground and shall not be placed on the surface.

Sec. 851-322. Construction bond.

(a) Within thirty (30) days after the effective date of the franchise, the franchise holder shall obtain and maintain at its cost and expense, and file with the corporation counsel of the City, a corporate surety bond issued by a company licensed to do surety business in the State of Indiana and in an amount required by the franchise agreement to guarantee the timely construction and full activation of the system, considering the nature and extent of the system and the estimated costs of construction. The bond shall include, but not be limited to, the following conditions: There shall be recoverable by the City, jointly and severally, from the principal and surety, any and all damages, cost or expense suffered by the City resulting from failure of the franchise holder to satisfactorily complete and fully activate the system within the construction schedule described in the franchise application and approved in the franchise contract.

(b) Any extension to the prescribed construction schedule must be authorized by the council. Such extension shall be authorized only when the council finds that such extension is necessary and appropriate due to causes beyond the control of the franchise holder.

(c) Upon satisfactory completion of construction required by the franchise agreement, the construction bond ~~may~~ shall be reduced by the board to an amount deemed reasonable by the board, considering the nature and extent of any anticipated construction during the remaining term of the franchise.

(d) The rights reserved to the City with respect to the construction bond are in addition to all other rights of the City, whether reserved by this franchise or authorized by law, and no action, proceeding, exercise or failure to exercise any right with respect to such construction bond shall affect any other right the City may have.

(e) The City may require operator to obtain new construction bonds throughout the franchise term as necessary for construction of system extensions or upgrades.

DIVISION 3. MAINTENANCE.

Sec. 851-331. General maintenance standards.

(a) Subject to the other provisions of this chapter, the operator shall promulgate and adhere to a preventative maintenance policy directed toward maximizing the reliability (mean-time-between-

malfunctions) and maintainability (mean-time-to-repair) of the system. Operator shall provide City with a copy of all written policies.

(b) The operator shall perform scheduled maintenance so that activities likely to result in an interruption of service are performed so as to minimize the extent of any such interruption and so that interruptions occur at the time of lowest system use. Except in emergency situations, service may only be interrupted after a minimum of forty-eight (48) hours advance notice to subscribers and the City of the anticipated service interruption.

(c) In the course of maintaining its system, the operator shall use replacement components of good and durable quality, with characteristics better than or equal to replaced equipment and at least satisfy all federal, state and local requirements.

(d) The operator shall identify and provide the telephone number for a senior employee or employees in the City who the City can contact concerning system maintenance whenever its business office is closed.

(e) The operator shall establish at least six permanent test points for the system in the franchise territory and shall notify the City of the location of the test points. In addition to conducting such tests as may be required under federal or state law, as part of its preventive maintenance program the operator shall monthly test summation sweep across the entire band; signal-to-noise ratio measurements on at least two randomly selected channels; hum-to-carrier level measurements on at least one randomly selected channel; and subjective picture quality evaluations on all channels. The operator shall promptly correct any defects in system performance and re-test the system. Copies of all test results shall be provided to the City. The City, at its own option and expense, may conduct independent tests at the permanent test points.

(f) If, based on subscriber complaints or based on its own investigation, the City believes that the system may not be operating in compliance with its franchise, the City may require the operator to perform tests, and to prepare a report to the City on the results of those tests, including a report identifying any problem found and steps taken to correct the problem.

Sec. ~~8½-52~~ 851-332. Safety requirements.

(a) The operator shall at all times comply with all safety requirements of the Code.

(~~a~~b) The operator shall at all times employ ~~ordinary~~ reasonable care and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injury or nuisance to the public.

~~(b) The operator shall install and maintain its cables and other equipment in accordance with the requirements of the National Electrical Safety Code promulgated by the National Bureau of Standards.~~

(c) All cables and other equipment within the public ways of the City shall at all times be kept and maintained in as safe condition as can be reasonably accomplished using proven technology generally used by the cable industry for comparable systems. ~~existing technology reasonably permits~~.

(d) Operation of the system shall not cause any interference to television and radio reception, telephone communication, or other similar operations within the county.

~~Sec. 8-1/2-53. Erection and removal of poles.~~

~~No location of any pole or other wire-holding structure of the operator shall be a vested interest and such poles or structures shall be removed or modified by the operator at no expense to the city whenever the board determines that the public convenience so requires.~~

DIVISION 4. INSPECTIONS AND SUBCONTRACTS.

Sec. ~~8½-54~~ 851-341. Inspection.

The City shall have the right at any time upon reasonable notice to make such inspections of the system and operator's equipment used in the construction, operation or maintenance of the system as it shall find necessary to ensure compliance with the terms of this chapter, the franchising contract, and other pertinent provisions of law.

~~Sec. 8-1/2-55. Extension of construction schedule deadlines.~~

~~Upon a determination that the operator, through no fault of its own, would otherwise be faced with undue hardship in meeting its construction schedule, the board may modify the construction schedule.~~

Sec. 851-342. Subcontract approval.

The operator shall give notice to the agency before entering into any subcontract having a price in excess of $10,000 for the construction of or maintenance to the system unless such subcontract relates to emergency circumstances, in which event notice shall be given within three working days after entering the contract.. Operator shall provide to the board the following information: the name of each subcontractor, the subcontractor's headquarters/main office address, names of subcontractor's officers or owners, a telephone number for handling questions concerning the subcontractor's work, and evidence of both workers' compensation and general liability insurance. Operator agrees to assume responsibility for any act or omission of its subcontractors and to hold its subcontractors to the applicable standards in this chapter and the franchise agreement. The City shall not be liable to any such subcontractor of the operator. Any City review of operator's subcontractors or failure to review operator's subcontractors does not in any way relieve operator of its obligation under this chapter.

ARTICLE IV. ~~RIGHTS AND DUTIES OF OPERATOR AND CUSTOMERS~~
GENERAL SYSTEM REQUIREMENTS.

~~Sec. 8-1/2-61. Subscribers' rates and charges.~~

~~(a) To the extent permitted by section 623 of the Act (47 U.S.C. section 543) and any regulations promulgated pursuant thereto by the Federal Communications Commission (herein F.C.C., the city shall regulate rates and charges for cable service to subscribers. The authority of the city to regulate such rates and charges is delegated to the cable franchise board, subject to the procedures and limitations of this section.~~

~~(b) The following procedures shall be used to review and approve changes in rates and charges:~~

~~(1) The cable franchise board shall adopt rules and regulations for the review and a regulation of rates and charges for cable services provided by franchisees consistent with the requirements of the Act, applicable F.C.C. regulations and this chapter. Because of the deadlines contained in current F.C.C. regulations, the procedures contained in section 8-1/2-3 shall not apply to the initial rules and regulations adopted by the cable franchise board pursuant to this paragraph but such rules and regulations shall be in effect upon adoption by the board, provided that the council may suspend or reject such regulations by resolution adopted within sixty (60) days of the date of certification of such rules and regulations to the clerk. Subsequent rules and regulations or amendments thereto shall become effective as provided in section 8-1/2-3.~~

~~(2) The cable franchise board shall adopt final rate orders in accordance with the rules and regulations adopted by the board. Such orders shall be final upon adoption for purposes of time limits set forth in F.C.C. rules but may be reviewed by the council upon request by any participating party as set forth in this paragraph. ``Participating party'' means the franchisee, the executive secretary, of the cable franchise board, and any person who participated orally or by filing written positions with the board in the rate proceedings before the board. Review by the council shall be initiated by filing a request with the clerk directed to the administration and finance committee of the council. Such request shall state briefly the reasons that review is requested and shall be filed within fifteen (15) days of the date of the board's final rate order. Within thirty (30) days of the filing of such request, the administration shall hold a hearing upon the request, which hearing may be continued as deemed appropriate by the committee. The committee may recommend to the council that the final rate order be returned to the board for further proceedings. If the council adopts a resolution returning the order to the board, the board shall hold such additional hearings as appropriate and may either affirm or amend its final rate order. If the order is amended or modified such amended or modified order shall be subject to further review as provided in this paragraph for final rate orders. If the council fails to act upon a final rate order within ninety (90) days of its adoption by the board, the order of the board shall be final, subject only to review as provided by law. Notwithstanding the above, an interested party may appeal the order of the board to the F.C.C. or a court of competent jurisdiction in accordance with F.C.C. rules without seeking review by council.~~

~~(3) The city reserves the right to review the purchase price of any transfer or assignment of the system, and any assignee to the franchise expressly agrees that any negotiated sale value which the council deems unreasonable will not be considered in the rate base for any subsequent request for service increases.~~

~~(c) Regardless of whether the city regulates or is authorized to regulate rates and charges to subscribers, the operator shall not discriminate as to rates and charges among customers of basic service.~~

~~(d) In any request for proposals or as a condition of the renewal of existing franchises, the city may require and regulate the installation or rental of equipment which facilitates the reception of basic cable service by hearing-impaired individuals.~~

Sec. ~~8½-62~~ 851-401. Public service systems.

The operator shall provide one connection to its cable system ~~At least one outlet for the basic regular subscriber service may be made available~~ free of installation charge to all public and accredited private schools and to all public ~~and accredited private schools which the system passes. Additional service outlets for other public institutions and local government offices may be proposed in any applicant's bid~~ institutions in the operator's franchise territory, including city, county, and township agencies, and other local government facilities and shall provide without charge those services specified in the franchise agreement.

Sec. ~~8½-63~~ 851-402. Signal quality requirements.

(a) The operator shall install and maintain it cable system (including cables, equipment and devices) so that the signal transmitted to each subscriber at all outlets and on all channels, including public access, education, and government channels, shall be of adequate strength and quality to produce, without causing cross modulation in the cables or interfering with other electrical or electronic systems, pictures and sound as good as can be reasonably accomplished using proven technology generally used by the cable industry for comparable systems.

(b) Compliance with the regulations of the Federal Communications Commission regarding signals transmitted, including at a minimum the technical standards set forth in 47 C.F.R. § 76.601, as amended from time to time, shall constitute compliance with ~~this section~~ subsection (a) so long as such regulations exist;. ~~h~~However, if such ~~FCC~~ regulations do not exist, the ~~city-county-council~~ City hereby reserves the right to adopt by ordinance or regulation, and after good faith negotiations with operators whose franchise requires it, standards for complying with subsection (a).

(c) The operator shall provide public, educational, and governmental access channels without deterioration in signal quality from that of broadcast channels.

(d) The City reserves the right to enact by ordinance additional technical standards, except as it may be preempted by federal or state law from doing do.

Sec. ~~8½-64~~ 851-403. ~~Cable channels for p~~Public, educational, ~~or~~ and governmental ~~use~~ access channels, facilities, and equipment.

(a) The operator shall provide at least one public access channel, two educational access channels, and one governmental access channel. In addition, if the operator serves additional municipalities in Marion County, the operator shall provide, if City requests or if it is required by the franchise agreement, a second governmental access channel for shared use by other governmental units. In addition, if the operator's franchise territory includes more than one school corporation in Marion County and operator's cable system provides digital service, the operator shall provide, if City requests or if the operator's franchise agreement so requires, up to two additional educational access channels and any other channels, facilities, equipment, and other support ~~any public, educational or governmental access channel~~ required under its franchise on a nondiscriminatory basis. ~~The operator shall provide such services, facilities, or equipment relating to public, educational, or governmental use of channel capacity as are required under this franchise.~~

(b) The operator shall interconnect its system with all other systems operating under a franchise granted by the City so that the channels designated for public, educational, and governmental access hereunder shall be transmitted on all systems simultaneously and on the same channels. This obligation includes the provision of all devices required to accomplish such interconnection.

(c) To the extent that an operator is providing facilities, support or programming for public, educational, and governmental access channels which another operator is required to carry by interconnection, the interconnecting operator shall reimburse such operator for a portion of its costs on a per subscriber basis in accordance with rules and regulations adopted by the board.

(~~b~~d) The board may promulgate rules and procedures for the use of channels, facilities, equipment, and other support ~~capacity~~ designated for public, educational or governmental access.

(~~c~~e) In the case of any franchise under which channel capacity is designated for public, educational, or governmental use, the board may promulgate rules and procedures under which the operator is permitted to use such channel capacity for the provision of other services if such channel capacity is not being used for such designated purposes and rules and procedures under which such permitted uses will cease.

(~~d~~f) The operator shall be responsible for preventing the presentation on public, educational or governmental access channels of:

(1) Any material designed to promote the sale of commercial products or services; and

(2) Prerecorded programming which violates the provisions of the Code of Indianapolis and Marion County, Indiana, with respect to obscenity ~~and pornography~~.

(~~e~~g) The operator shall not exercise any editorial control over ~~have no authority to control the programs presented over~~ any public, educational or governmental use of ~~access~~ channel capacity except as federal law expressly provides otherwise or as required to comply with subsection (f) and shall have no legal liability for obscenity in accordance with the Act. ~~or pornography except for productions originating from facilities within the control of the operator.~~ Operator shall provide to City copies of any written and published policies concerning indecent programming on leased access channels.

~~Sec. 8-1/2-65. Complaint and service procedure.~~

~~(a) The operator shall maintain an office in the city, which shall be open during all usual business hours, have a listed telephone, and be so operated that complaints and requests for repairs or adjustments may be received at any time, whether the office is open or closed.~~

~~(b) Maintenance service shall be immediately available to correct major outages from 8:00 a.m. until 12:30 a.m. every day, including Saturdays, Sundays and holidays.~~

~~(c) Investigative action shall be initiated in response to all service calls, other than major outages, not later than the next business day after the call is received. Corrective action shall be completed as promptly as practicable. Appropriate records shall be made of service calls, showing when and what corrective action was taken.~~

~~(d) The operator shall furnish each subscriber written instructions that clearly set forth procedures for placing a service call or requesting an adjustment. These instructions shall also include a name, address and telephone number provided by the board, and a reminder that he subscriber can call or write for information regarding terms and conditions of the operator's franchise if the operator fails to respond to the subscriber's request for installation, service or adjustment with a reasonable period of time.~~

~~(e) In the event a subscriber does not obtain a satisfactory response or resolution to his request for service or an adjustment within a reasonable period of time, he may advise the board of his dissatisfaction in writing and the board shall investigate the m eater and keep records with respect to all complaints.~~

~~(f) The operator shall interrupt system service after 7:00 a.m. and before 1:00 a.m. only with good cause and for the shortest time possible and, except in emergency situations, only after publishing notice of service interruption at least twenty-four (24) hours in advance. Service may be interrupted between 1:00 a.m. and 7:00 a.m. for routine testing, maintenance and repair, without notification, on not more than two (2) nights in any week. (G.O. 125, 1979, § 1; G.O. 25, 1985 § 3)~~

~~Sec. 8-1/2-66. Termination of service.~~

~~(a) Upon termination of service to any subscriber, the operator shall promptly remove all its facilities and equipment from the premises of such subscriber upon request.~~

~~(b) If any subscriber terminates service during the first year of subscription because of the operator's failure to render service to such subscriber in compliance with the provisions of this chapter, or if service to a subscriber is terminated without good cause or because the operator ceases to operate the cable television~~

~~system for any reason except expiration of the franchise, the operator shall refund to such subscriber an amount equal to the initial tap in and connection charges paid by the subscriber.~~

Sec. 851-404. Parental control devices.

The operator shall provide to subscribers on request parental control devices to permit subscribers to block out both the audio and video of specified channels. Such devices shall be provided for channels whose programs are not appropriate for children without cost if permitted by federal law. In addition, the operator shall install devices (i) so that access to pay-per-view programming is restricted through the use of a confidential "personal identification number" or other confidential validating information that can be assigned at the local business office or through the mail upon subscriber request; and (ii) so that the sound and video portion of any scrambled channel that carries programming can be blocked out on subscriber request. Operator must notify all subscribers that this option is available, when it first begins providing cable services to a subscriber and at least annually thereafter.

Sec. 851-405. Interconnection of institutional networks.

If an operator's franchise agreement requires the provision of an institutional network, the operator shall design the network so that it may be interconnected to institutional networks provided by any other operator granted a franchise by the City and shall be constructed to include all equipment, including active and passive electronic and optical devices, needed to achieve compatibility so as to transmit video, sound and data between users of such networks without modification of user's equipment and without deterioration in signal quality between networks.

Sec. 851-406. Emergency use of facilities.

(a) In the case of any disaster duly declared by the mayor or other official legally able to declare a disaster, the operator shall, upon request of the mayor or director of City's Emergency Management Division, make available to the City for emergency use during the disaster period all facilities, as are necessary, for the term of such disaster.

(b) The system shall incorporate an emergency alert system that permits the City to override the video and audio portions of all signals on all channels which operator may lawfully override. The operator shall design the emergency alert system to permit the City to do the following:

(1) access and activate the emergency alert system using a touch-tone telephone and a special security code. The telephone can be connected to the emergency alert system via the local exchange company or a dedicated connection installed by the operator.

(2) replace video and audio on all channels with an emergency message that may be originated from a single location to be designated by the City using a telephone and character generator.

(3) playback a prerecorded message over the emergency alert system.

The operator's obligations under this section include the obligation to provide the character generator, modulators, playback equipment and all facilities and equipment for the system required to ensure the system works. The operator shall work with the City to develop a plan for the regular testing of the emergency alert system. However, it is the sole responsibility of the City to determine whether and under what circumstances the emergency alert system shall be used for county-wide alerts.

Sec. 851-407. Technological advances.

The operator, at its expense, shall make regular biannual reports to the board on technological advances in the industry and how such advances are being applied or could be applied in the City. To the extent provided in a franchise agreement, the City may periodically reopen negotiations with the operator to insure that the system is kept up to date.

ARTICLE V. CUSTOMER SERVICE STANDARDS.

Sec. 851-501. Complaint and service procedure.

(a) The City has adopted the Federal Communication Commission customer service standards, and operator shall comply with these standards ~~and any modifications to the standards~~ and any modifications to

the standards adopted by the Federal Communication Commission during the term of its franchise. The City reserves the right to enact from time to time by ordinance additional customer service standards, including subscriber remedies, and standards for system extension.

(b) The operator shall maintain an office in the Marion County, Indiana, with local staffing and convenient hours of operation including operating hours at least six days per week (Monday through Saturday) with extended hours at least two days per week. Usual business hours shall be 8:00 a.m. to 6:00 p.m., with extended hours of 8:00 a.m. to 8:00 p.m., and Saturday hours of 9:00 a.m. to 2:00 p.m. In addition, operator shall have a listed telephone, and be so operated that complaints and request for repairs or adjustments may be received at any time, whether the office is open or closed.

(c) Maintenance service shall be immediately available to correct major outages from 8:00 a.m. until 12:30 a.m. every day, including Saturdays, Sundays and holidays.

(d) Investigative action shall be initiated in response to all service calls, other than major outages, not later than the next business day after the call is received. Corrective action shall be completed as promptly as practicable.

(e) Operator shall maintain records of customer complaints, of responses to customer complaints, and ~~requests for~~ of service calls in a form adequate for the board to determine compliance with this article.

(f) The operator shall furnish each subscriber written instructions that clearly set forth procedures for placing a service call or requesting an adjustment. These instructions shall also include a name, address and telephone number of the agency and a reminder that the subscriber can call or write for information regarding terms and conditions of the operator's franchise if the operator fails to respond to the subscriber's request for installation, service or adjustment within a reasonable period of time.

(g) In the event a subscriber does not obtain a satisfactory response or resolution to his request for service or an adjustment within a reasonable period of time, he may advise the board of his dissatisfaction in writing and the board shall investigate the matter and keep records with respect to all complaints.

(h) The operator shall interrupt system service after 7:00 a.m. and before 1:00 a.m. only with good cause and for the shortest time possible and, except in emergency situations, only after publishing notice of service interruption at least twenty-four (24) hours in advance. Service may be interrupted between 1:00 a.m. and 7:00 a.m. for routine testing, maintenance and repair, without notification, on not more than two (2) nights in any week.

(i) Operator shall bill subscribers no more frequently than once a month not to exceed 12 times per calendar year, and shall not bill for services not being provided to subscribers.

(j) The operator shall maintain lists of current subscribers, recently installed subscribers, and subscribers having repairs performed along with telephone numbers and provide such lists monthly in an appropriate format to the contractor selected by the City to conduct cable subscriber surveys to assist the board in evaluating operator's quality of service.

(k) Operator shall have authority to promulgate such written rules, regulations, policies, prices and subscriber practices as are reasonably necessary for its business, including installation and disconnection policies, delinquent accounts collection procedures and late payment penalties, but subscribers may not be required to waive rights they would otherwise have under applicable law in order to obtain service. Operator shall provide the City with a copy of all such rules, regulations, policies, prices and subscriber practices promulgated by operator for the administration of its business as it relates to its franchise and maintained by operator in writing, whether now existing or hereafter promulgated. No such written policy may be enforced unless it has been so provided. Nothing in this section shall allow operator to promulgate rules which are inconsistent with its franchise agreement with the City or applicable law, and the City shall have the right to regulate or prohibit any practice or charge which the City may regulate or prohibit under applicable law.

Sec. 851-502. Termination of service.

(a) Upon termination of service to any subscriber, the operator shall promptly remove all its facilities and equipment from the premises of such subscriber upon request or if subscriber declines to acquire the facilities and equipment from the operator.

(b) If any subscriber terminates service during the first year of subscription because of the operator's failure to render service to such subscriber in compliance with the provisions of this chapter, or if service to a subscriber is terminated without good cause or because the operator ceases to operate the cable system for any reason except expiration of the franchise, the operator shall refund to such subscriber an amount equal to the initial tap-in and connection charges paid by the subscriber.

Sec. 851-503. Preferential or Discriminatory Practices Prohibited; service provided by special cable operator.

(a) Except to the extent required by federal, state, or local law, the operator shall not, as to rates, charges, service facilities, rules, regulations or in any respect, make or grant any undue advantage; provided, however, connection and service charges may be waived or modified during operator's promotional campaigns which shall be offered on an equal basis to all similarly situated customers.

(b) Notwithstanding the foregoing, a special cable operator may provide different levels of service at different areas included in a franchise, if permitted by the franchise agreement and applicable Federal Communication Commission regulations.

Sec. 851-504. Subscriber Privacy.

(a) The provisions of section 631 of the Act (47 U.S.C. § 551) with regard to the protection of subscriber privacy are incorporated into this section. Specifically, operator shall not use the system to collect personally identifiable information concerning any subscriber nor shall the operator disclose any personally identifiable information concerning any subscriber without the prior written or electronic consent of the subscriber concerned. Operator shall take all steps required so that it may provide the information required to the City's cable subscriber survey contractor, including by providing any required notice to subscribers that such information may be provided to the City's contractor for subscriber surveys to assist the City in evaluating operator's quality of service and otherwise to administer the franchise agreement. In addition, operator shall take such actions as are necessary to prevent unauthorized access to such information by a person or entity other than the subscriber or operator, including "blacking out" all information that operator may not transmit to the City or City's survey contractor.

(b) No monitoring of any terminal connected to a system shall take place without specific authorization by the subscriber of other user of the terminal in question, nor shall aural or visual monitoring of any kind take place without a clear indication to the subscriber that such monitoring is presently taking place. Such indication may be in the form of an audible sound signal or light signal or any other form the operator deems reasonable, with the subscriber's approval. This indication to the subscriber is not required where a terminal is merely "polled" by a digital signal pursuant to a prior authorization, as opposed to a voice or visual monitoring. It is the intent of this section to give absolute protection against unwarranted invasion of privacy to each subscriber on the system. If at any time the operator initiates a subscriber response system for use in the system, the operator shall notify the board in writing, and demonstrate to the board that the system can operate effectively in an articular mode without any unwarranted invasion of privacy.

ARTICLE VI. RIGHTS AND DUTIES OF OPERATOR. ~~AND CITY.~~

Sec. ~~8½-80~~ 851-601. Franchise fee.

(a) General requirement: Unless otherwise provided by its franchise agreement or this chapter, the operator of a cable system for which a franchise is required under this chapter shall pay to the City franchise fees in aggregate amounts equal to five percent (5%) of its gross revenues derived annually from its operations of the cable system within the City.

(b) Previously granted franchise: As to franchises granted prior to August 1, 1995, the operator shall pay the franchise fee specified in the respective franchise agreements, as amended.

(c) Direct payments: A franchise granted or renewed after August 1, 1995, shall require the operator to make direct payments to the City as franchise fees an amount equal to five percent (5%) of its gross revenues reduced by (1) any and all taxes or fees or services furnished by the grantee imposed directly on any subscriber or user by any city, county, state or other governmental unit, and collected by the grantee for such entity, (2) any and all interest income from any source attributed to such cable system operations, (3) any and all income derived by grantee from the sale and transfer of cable system assets, and (4) any and all amounts of bad debts from such cable system operations that are written off by grantee.

(d) Credits: If the franchise requires the operator to pay other amounts which are deemed franchise fees under federal law and the sum of those payments and those required by subsection (c) exceeds the maximum franchise fees permitted by federal law, the payments under subsection (c) shall be reduced by such amount so that the total franchise fees shall not exceed the maximum permitted by federal law.

(~~b~~c) The operator shall be prohibited from prepaying franchise fees on estimated annual revenues at the time of bidding for a new or renewal franchise.

(~~c~~f) Should applicable federal law change so that the law no longer specifies a limit on franchise fee payments, City shall specify the limit by ordinance.

(~~d~~e) City reserves the right to conduct periodic audits of operator's records to determine compliance with this provision. City acceptance of operator's franchise fee payments does not constitute an accord and satisfaction nor are such payments in lieu of any other fees, taxes, or payments owed by operator.

(~~e~~f) Operator shall pay simple interest at the rate of ten (10) percent per annum on all franchise fees which remain unpaid after the date they are due until the fees are paid.

~~Sec. 8 1/2-81. Construction bond.~~

~~(a) Within thirty (30) days after the effective date of the franchise, the franchise holder shall obtain and maintain at its cost and expense, and file with the corporation counsel of the City of Indianapolis, a corporate surety bond issue by a company licensed to do surety business in the State of Indiana and deemed acceptable by the corporation counsel, in an amount deemed reasonable by the board to guarantee the timely construction and full activation of the cable television system, considering the nature and extent of the system and the estimated costs of construction. The bond shall include, but not be limited to, the following conditions: There shall be recoverable by the city, jointly and severally, from the principal and surety, any and all damages, cost or expense suffered by the city resulting from failure of the franchise holder to satisfactorily complete and full activate the cable television system within the construction schedule described in the franchise application and approved in the franchise contract.~~

~~(b) Any extension to the prescribed construction schedule must be authorized by the council. Such extension shall be authorized only when the council finds that such extension is necessary and appropriate due to causes beyond the control of the franchise holder.~~

~~(c) The construction bond shall be terminated only after the council finds that the franchise holder has satisfactorily completed and fully activated the cable television system in the franchise area.~~

~~(d) The rights reserved to the city with respect to the construction bond are in addition to all other rights of the city, whether reserved by this franchise or authorized by law, and no action, proceeding, exercise or failure to exercise any right with respect to such construction bond shall affect any other right the city may have.~~

Sec. ~~8½-82~~ 851-602. Security Fund.

(a) Within thirty (30) days after the execution of ~~the~~ a franchise agreement, the operator shall deposit with the City the sum of One Hundred Fifty Thousand Dollars ($150,000) ~~or such other lesser amount as the board deems reasonable considering the nature and extent of the system and the estimated costs of construction,~~ in monies, a bond, a letter of credit, or a combination of these instruments as security for the faithful performance of all the provisions of the franchise ~~contract~~ agreement, for payment of liquidated damages described in Sec. 851-605 of this chapter, and ~~the~~ for payments by the operator of any claims, liens, and taxes due the City which arise by reason of the construction, operation, or maintenance of the system. Any monies deposited pursuant to this section shall be placed by the controller of the City in an interest-bearing demand account at a bank or local savings institution agreeable to both parties. Interest on this account will accrue to the benefit of the operator upon completion and activation of the system as required in the franchise contract, and. Upon completion of construction required by the franchise agreement, the security fund ~~may~~ shall be reduced by the board thereafter to an amount which the board deems reasonable, considering the nature and extent of any anticipated liabilities during the remaining term of the franchise, which amount shall be maintained during the period of the franchise contract.

(b) If the franchise administrator determines that operator has failed to perform under the franchise agreement, that City or County taxes are due from the operator and are unpaid, that the City has been compelled to pay damages, costs, or expenses by reason of any act or default of the operator in connection

with the franchise agreement, or that any other claims against the operator have arisen by reason of the construction, operation, or maintenance of the system, such that the City may draw monies from the security fund, the franchise administrator shall make a written report to the board outlining both the circumstances which the franchise administrator believes entitles the City to withdraw monies from the security fund and the amount proposed to be withdrawn. The franchise administrator shall provide a copy of the report to the operator. The board shall hold a hearing on the proposed withdrawal during which the operator may respond to the franchise administrator's report. Following the hearing, the board shall decide whether a withdrawal should occur and the amount of any withdrawal. The franchise administrator may immediately withdraw the amount, and, upon such withdrawal, the franchise administrator shall notify the operator of the amount and the withdrawal date. Within ten (10) days after notice to it that any amount has been withdrawn from the security fund deposited pursuant to subsection (a), the operator shall pay to, or deposit with, the City a sum of money or securities sufficient to restore such security fund to the full amount required by subsection (a). If ~~the franchise holder~~ operator fails ~~to pay to the city any compensation within the time fixed herein; or fails, after ten (10) days' notice, to pay to the city or county any taxes due and unpaid; or fails to repay to the city, within such ten (10) days, any damages, costs or expenses which the city shall be compelled to pay by reason of any act or default of the operator in connection with the franchise contract; or fails, after three (3) days' notice of such failure by the mayor or his designee to comply with any provision of this chapter, and the mayor or his designee reasonably determines that such failure can be remedied by an expenditure from the security fund, the mayor or his designee may immediately withdraw the amount thereof, with interest and any penalties, from the security fund. Upon such withdrawal, the mayor or his designee shall notify the operator of the amount and date thereof~~ to restore such security fund within the specified ten (10) day period, the City may withdraw the entire security fund deposit remaining which shall be forfeited.

(c) With respect to violations of this chapter for with liquidated damages are specified in Sec. 851-605, the franchise administrator or other authorized city official may initiate a proceeding before the board, which board is hereby designated pursuant to IC 36-1-6-9 as the administrative board before which violations of this chapter may be enforced. Such proceeding shall be initiated by filing a complaint with the board, which shall issue a summons to the operator setting a time and date at which the board will hold a hearing on the violations alleged in the complaint. If after a hearing conducted in compliance with IC 36-1-6-9 the board finds that the operator has violated the ordinance as alleged, the board shall enter an order fixing the amount of the liquidated damage penalty. If the operator fails to appeal the order of the board within sixty (60) days after the date of the order as provided in IC 36-1-6-9(f), the city shall withdraw the amount of liquidated damages fixed in such order from the security fund.

(~~c~~d) The security fund deposited pursuant to this section shall become the property of the City in the event that the franchise ~~contract~~ agreement is cancelled by reason of the default of the operator. ~~The operator, however, shall be entitled to the return of such security fund, or portion thereof, as remains on deposit with the city at the expiration of the term of the franchise contract, provided that there is then no outstanding default on the part of the operator.~~ Notwithstanding the foregoing, operator shall have the right to contest the Board's decision to authorize a withdrawal from the security fund by filing an action in a court of competent jurisdiction. If operator prevails in such an action, the City shall repay to operator the amount of the sum so withdrawn from the security fund together with interest at the statutory rate which applies to judgments from the date of such withdrawal.

(e) The operator, shall be entitled to the return of such security fund, or portion thereof, and interest as remains on deposit with the City at the expiration of the term of its franchise, provided that there is then no outstanding default on the part of the operator.

(~~d~~f) The rights reserved to the City with respect to the security fund are in addition to all other rights of the City, whether reserved by this chapter, the franchise or contract, or authorized by law; and no action, proceeding, or exercise of a right with respect to such security fund shall affect any other right the City may have.

Sec. ~~8½-83~~ 851-603. Liability, Indemnification and Insurance.

(a) The operator shall ~~pay all damages and penalties which the city may legally be required to pay as a result of~~ indemnify the City and its officers, employees, and agents for all expenses and costs, including reasonable attorneys' fees and other out-of-pocket expenses, arising out of or resulting from the grant of a franchise under this chapter, including ~~all damages arising out of the installation, operation, or maintenance of the cable television system, whether or not any act or omission complained of is authorized, allowed, or prohibited by this chapter or the franchising contract.~~ any such expenses and costs incurred by the City in defending the validity of the grant of a franchise, provided that the operator shall have the right to agree to

the selection of counsel and the fees to be charged for such defense and shall have the right, together with the City, to give direction to counsel in such defense.

(b) The operator shall pay all ~~expenses incurred by the city in defending itself with regard to all damages and penalties described in subsection (a) of this section. These expenses shall include all out-of-pocket expenses, including attorneys fees.~~ damages and penalties which the City may legally be required to pay as a result of the grant of its franchise under this chapter, including all damages arising out of the installation, operation, or maintenance of the system, whether or not any act or omission complained of is authorized, allowed, or prohibited by the Code. Operator's payment shall include all amounts expended by the City in defending itself in such action, including but not limited to attorneys' fees and out-of-pocket expenses.

(c) In order for the City to assert its rights to be indemnified, defended, and held harmless, the City shall:

(1) Notify the operator of any claim or legal proceeding which gives rise to such right,

(2) Afford the operator the opportunity to participate in any compromise, settlement, or other resolution or disposition of such claim or proceeding and to fully control the financial terms of any payments to be made in such final disposition,

(3) Fully cooperate with the reasonable request of the operator in its participation in, and control, compromise, settlement, or resolution or disposition of such claim or proceeding.

and operator and City shall act reasonably under all circumstances so as to mutually protect each other against liability and to mutually refrain from compromising the rights of each other.

(d) Operator shall purchase and maintain throughout the term of the franchising contract, ~~a policy or policies of general comprehensive public liability and property damage insurance insuring the city and the operator.~~ such commercial general liability and other insurance as is appropriate and as will protect operator and City, by their employees, officers, or agents from (i) claims under workers' or workmen's compensation, disability benefits and other similar employee benefit acts; (ii) claims for damages because of bodily injury, occupational sickness or disease, or death of operator's employees; (iii) claims for damages because of bodily injury, sickness or disease, or death of any person other than operator's employees; (iv) claims for damages insured by personal injury liability coverage which are sustained by any person as a result of an offense directly or indirectly related to the employment of such person by operator, or by any other person or entity for any other reason; (v) claims for damages because of physical injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; (vi) claims arising out of operation of any laws or regulations for damages because of bodily injury or death of any person or for damage to property; and (vii) claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle, which may arise out of the ownership, maintenance or use of any motor vehicle, which may arise out of or result from operator's other obligations under the franchise agreement whether it is to be performed or furnished by operator, by any subcontractor, by anyone directly or indirectly employed by any of them to perform or furnish any of the work under the agreement, or by anyone for whose acts any of them may be liable. Written evidence of payment of premiums and copies of such insurance ~~policy or policies~~ certificates shall be filed with the board within thirty (30) days of the effective date of the franchise.

(1) The insurance required by this section shall be written for not less than the limits of liability and coverages as provided herein or as required by law, whichever is greater. The Commercial General Liability Insurance shall include coverage of (a) Premises and operations, (b) Contractual Liability as applicable to any indemnification hold harmless agreements in the agreement, (c) Products and Completed Operations, (d) Broadform Property Damage -including completed operations, (e) Fellow Employee claims under Personal Injury, and (f) Independent contractors. Such insurance shall specifically include coverage for property damage from explosion, collapse of structures or structural injury due to grading of land, excavation, filling, back filling, tunneling, pile driving, caisson work, moving, shoring, underpinning, raising of or demolition of any structure, or removal or rebuilding of any structural support of a building or structure. Such insurance shall further include coverage for damage to wires, conduits, pipes, mains, sewers, or other similar apparatus encountered below the surface of the ground when such damage is caused by any occurrence arising out of work performed by operator or by any operator's subcontractor or anyone directly or indirectly employed by either.

(2) The operator's insurance shall be written for not less than the following limits of liability:

a. Workers Compensation & Disability: Statutory Limits

b. Employer's Liability:

(i) Bodily Injury by Accident: $100,000 each accident

(ii) Bodily Injury by Disease: $500,000 policy limit

(iii) Bodily Injury by Disease: $100,000 each employee

c. Commercial General Liability (Occurrence Basis) Bodily injury, personal injury, property damage, contractual liability, products-completed operations.

(i) General Aggregate Limit (other than Products/Completed Operations): $2,000,000

(ii) Products/Completed Operations: $2,000,000

(iii) Personal & Advertising Injury Limit: $1,000,000
Each Occurrence: $1,000,000
Fire Damage (any one fire): $50,000
Medical Expense Limit (any one person): $5,000

d. Comprehensive Auto Liability (single limit) (owned, hired and non-owned)
Bodily injury and property damage: $1,000,000 each accident

e. Umbrella Excess Liability: $5,000,000 each occurrence and aggregate
The Deductible on the Umbrella Liability shall not be more than $10,000

(3) Operator shall be responsible for paying all deductible amounts.

(4) Before commencing work, operator shall submit a "Certificate of Insurance" indicating the above necessary coverages as well as naming City, its employees and representatives as "Additional Insureds" on all policies except Workers' Compensation to City for review and approval. Such insurance shall be carried with financially responsible insurance companies authorized to do business in the State of Indiana, have a general policyholder's rating of A+, A, or A-, in the edition of Alfred M. Bests Insurance Reports and be satisfactory in form and coverage to City. Such coverages shall be kept in force at all times during the term of the franchise agreement. Operator's insurer(s) shall provide by Certified Mail to the City sixty (60) days prior written notice in the event of cancellation, non-renewal or material change in the policies. In the event the board determines that the certificates do not clearly show that operator's coverages and liability limits are those required by this chapter or litigation involving the scope or amount of operator's coverage under this chapter is commenced, the board reserves the right to request, and the operator shall provide, copies of the underlying insurance policies for the certificates required above.

(5) The Commercial General Liability insurance required by this section shall include contractual liability insurance applicable to indemnity and hold harmless obligations under the franchise agreement.

(e) The rights reserved to the City with respect to indemnification and insurance are in addition to all other rights of the City, whether reserved by this code, the franchise agreement, or authorized by law, and no action, proceedings, or exercise of a right with respect to such indemnification and insurance shall affect any other right the City may have.

~~Sec. 81-1/2-84. Expansion outside franchise area.~~

~~The grantee may be required to interconnect its system with any other broadband communications facility. Such interconnection shall be made within the time limit established by the city. The interconnection shall, at the city's discretion, be accomplished according to the method and technical standards determined by the city, in a manner consistent with applicable Federal Communications Commission standards.~~

~~Sec. 8 1/2-85. City's use of poles.~~

~~The city shall have the right to install and maintain free of charge upon the poles of the operator any wire and pole fixtures, on the condition that such wire and pole fixtures do not unreasonably interfere with the operator's operation of the cable television system.~~

~~Sec. 8 1/2-86. Emergency use of facilities.~~

~~In the case of any disaster, duly declared by the mayor, the grantee shall, upon request of the mayor, make available to the city, for emergency use during the disaster period, all facilities not necessary to the grantee in fulfilling its other legal obligations.~~

~~Sec. 8 1/2-87. Transfer of franchise.~~

~~(a) In the event the franchise is transferred, in whole or in part, prior consent of the board to such transfer shall be required.~~

~~(b) In the event the operator is a corporation and any person owning or controlling more than five (5) percent of the operator's voting stock, through the acquisition of any amount of stock, comes to own or control more than five (5) per cent of the operator's voting stock, prior approval of the board to such acquisition shall be required.~~

~~(c) Any transaction of stock representing a partnership share or any other beneficial interest, having the effect of changing in the aggregate more than fifty (50) per cent of the voting or equity rights, or having the effect of increasing the ownership of any single owner whose prior interest was five (5) per cent or more and his ownership increases by an amount of twenty (20) per cent or more, shall be deemed a transfer under this section.~~

~~(d) Any prior consent of the board required by this section shall not be unreasonably withheld, shall be expressed by resolution, and shall be subject to any reasonable conditions prescribed in that resolution and shall be effective only upon approval by the city-county council.~~

~~Sec. 8 1/2-88. Private security.~~

~~The operator or an affiliate of the operator shall not engage in the private security business in Marion County, either directly or indirectly, except to the extent that communications lines are leased or made available to third parties for that purpose. An "affiliate" for the purpose of this section, is any corporation or other business entity or association of which fifty (50) per cent or greater equity interest is owned or controlled by the operator. Any corporation or business entity of which the operator maintains an equity interest shall be subject to the same rate structure as charged by the operator to other third parties for the lease or availability of lines for the providing of private security service.~~

~~Sec. 8 1/2-89. Modifications of franchise.~~

~~Any operator may obtain a modification of the requirements of its franchise to the extent permitted by and in accordance with the procedures set forth in Section 625 of the Act (47 U.S.C. Section 625). A request for modification shall be filed with the board and must be approved by the board and the council in order to be effective.~~

Sec. 851-604. No Recourse.

The operator shall have no recourse whatsoever against the City or its officers, employees, or agents, for any loss, cost, expense or damage on account of claims arising out of any provision or requirements of its franchise because of its enforcement or non enforcement, and without regard to whether the act or omission giving rise to the loss, cost, expense or damage was required or not required by the grant of the franchise. Nothing in this section shall be read to waive or limit any immunities granted by state or federal law to the City.

Sec. 851-605. Liquidated Damages.

(a) For certain violations of the provisions of this chapter for which damages are otherwise not ascertainable, liquidated damages shall be chargeable to the security fund described in Sec. 851-602 of this chapter as follows:

(1) For the failure to complete construction and installation of the system in accordance with Article III of this chapter, unless the council specifically approves the delay by resolution because of reasons beyond the control of the operator, the operator shall forfeit One Thousand Dollars ($1,000.00) each day or part thereof that the failure continues.

(2) For failure to provide data and reports as requested by the council or board or required by this chapter, the operator shall forfeit Fifty dollars ($50.00) each day or part thereof that the failure continues.

(3) For failure to comply with the transfer requirements of Sec. 851-254 of this chapter, the operator shall forfeit One Thousand Dollars ($1,000.00) each day or part thereof that the failure continues.

(4) For failure to comply with the system and customer service standards of Articles IV and V of this chapter, the operator shall forfeit Seven Hundred Fifty Dollars ($750.00) each day or part thereof that the failure continues.

(5) For persistent failure to comply with such reasonable requests and recommendations as may be made by the council and board pursuant to authority granted by the code, the operator shall forfeit Seven Hundred Fifty Dollars ($750.00) each day or part thereof that the failure continues.

(6) Recovery of liquidated damages shall not excuse non-performance, and the City may, in addition to recovering such damages, obtain any other relief or apply any other remedy which it may seek under the code, the franchise agreement, or otherwise at law or equity.

(b) In addition, the City retains all other rights and powers it has by virtue of the code, the franchise agreement or otherwise, including the right to impose civil penalties, and shall have the right to terminate and cancel the franchise and all rights and privileges of the operator in the event that the operator:

(1) Fails to cure any violation (except where such violation is an event not within the operator's control) of any material provision of the code, the franchise agreement, or any rule, regulation, order, or determination of the City, the board, or the council made pursuant to the code, except where such violation is cured within a reasonable time before termination as determined by the City.

(2) Fails to meet the construction schedule as established in the franchise agreement or as modified by the council at the end of any two (2) years unless such failure is not an event within the operator's control.

(c) An event not within operator's control includes, but is not limited to, natural disasters, civil disturbances, power outages, telephone network outages and severe weather. Those events which are ordinarily within the operator's control, include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the system.

(d) Termination and cancellation may be effected only as specified by ordinance and in accordance with federal, state, and local law; however, before the franchise may be terminated and canceled under this section, the operator must be provided with thirty (30) days notice and an opportunity to be heard before the council or its designated committee.

Sec. 851-606. Non-collusion Warranty.

The operator shall warrant that it has neither paid nor agreed to pay any commission, fee, percentage, gift, or any other consideration, including providing service without charge, contingent upon, or resulting from the award, transfer or renewal of its franchise to any officer (whether elected or appointed), employee, or agent of the City or of Marion County, Indiana.

ARTICLE VII. GENERAL REGULATORY PROVISIONS

Sec. 851-701. Subscribers' rates and charges.

(a) To the extent permitted by section 623 of the Act (47 U.S.C. section 543) and any regulations promulgated pursuant thereto by the Federal Communications Commission, the City shall regulate rates and charges for cable service to subscribers. The authority of the City to regulate such rates and charges is delegated to the board, subject to the procedures and limitations of this section.

(b) The following procedures shall be used to review and approve changes in rates and charges:

(1) The cable franchise board shall adopt rules and regulations for the review and a regulation of rates and charges for cable services provided by franchisees consistent with the requirements of the Act, applicable Federal Communications Commission, regulations and this chapter. Because of the deadlines contained in current Federal Communications Commission regulations, such rules and regulations shall be in effect upon adoption by the board, provided that the council may suspend or reject such regulations by resolution adopted within sixty (60) days of the date of certification of such rules and regulations to the clerk.

(2) The cable franchise board shall adopt final rate orders in accordance with the rules and regulations adopted by the board. Such orders shall be final upon adoption for purposes of time limits set forth in Federal Communications Commission rules but may be reviewed by the council upon request by any participating party as set forth in this paragraph. ``Participating party'' means the franchisee, the franchise administrator, and any person or entity who participated orally or by filing written positions with the board in the rate proceedings before the board. Review by the council shall be initiated by filing a request with the clerk of the council. Such request shall state briefly the reasons that review is requested and shall be filed within fifteen (15) days of the date of the board's final rate order. Within thirty (30) days of the filing of such request, the committee shall hold a hearing upon the request, which hearing may be continued as deemed appropriate by the committee. The committee may recommend to the council that the final rate order be returned to the board for further proceedings. If the council adopts a resolution returning the order to the board, the board shall hold such additional hearings as appropriate and may either affirm or amend its final rate order. If the order is amended or modified such amended or modified order shall be subject to further review as provided in this paragraph for final rate orders. If the council fails to act upon a final rate order within ninety (90) days of its adoption by the board, the order of the board shall be final, subject only to review as provided by law. Notwithstanding the above, an interested party may appeal the order of the board to the Federal Communication Commission or a court of competent jurisdiction in accordance with Federal Communication Commission rules without seeking review by council.

(3) The City reserves the right to regulate subscribers' rates and charges by ordinance if the applicable federal law is changed or repealed and the City is not prohibited from doing so by law.

(c) Regardless of whether the City regulates or is authorized to regulate rates and charges to subscribers, the operator shall not discriminate as to rates and charges among customers of basic service.

(d) In any request for proposals or as a condition of the renewal of existing franchises, the City may require and regulate the installation or rental of equipment which facilitates the reception of basic cable service by hearing-impaired individuals.

Sec. 851-702. Administration and enforcement.

The operator's franchise is subject to such ordinances or regulations that may be lawfully adopted from time to time (i) to permit the City to exercise its rights under the franchise agreement or the Code; or (ii) pursuant to the City's police and regulatory powers under applicable law.

Sec. ~~8½-101~~ 851-703. Compliance with other applicable laws.

(a) The operator shall comply with all statutes, codes, ordinances, rules and regulations applicable to its business.

(b) A franchise granted pursuant to this chapter authorizes only the operation of a cable ~~television~~ system, and does not take the place of any other franchise, license or permit which law requires of the operator.

(c) The council, the board and any other agency of the City shall have the power to adopt, in addition to the provisions contained in this chapter, the franchising contract, and any other applicable ordinances or regulations, ~~as of December 7, 1979,~~ such additional ordinances or regulations as they shall find necessary in the exercise of police power~~,; provided, that such ordinances or relations shall be reasonable and not unconstitutionally in conflict with the rights granted in the franchising contract.~~

~~Sec. 8 1/2-102. New developments.~~

~~It shall be the policy of the city liberally to amend this chapter and franchising contract, upon application of the operator, when necessary to enable the operator to take advantage of any developments in the field of cable television which will afford it an opportunity to better serve customers; however, this section shall not be construed to reuire the city to initiate any amendment.~~

Sec. ~~8½-103~~ 851-704. Reports to be filed with board.

(a) The operator shall ~~file with~~ file and maintain ~~the board~~ with Indianapolis Mapping and Geographic Infrastructure System (IMAGIS) Consortium or successors true and accurate ~~maps or plats~~ mapping data in digital format of all existing and proposed ~~installations~~ plant extensions.

~~(b) The operator shall file annually with the board, not later than one hundred twenty (120) days after the end of the operator's fiscal year, a copy of its reports to its stockholders, if any, an income statement applicable to its operations under the franchising contract during the preceding twelve-month period, a balance sheet as of the beginning of the fiscal year, and a statement of its properties devoted to cable television operations, by categories, giving its investment in such properties on the basis of original cost, less applicable depreciation. These reports shall be prepared or approved by a certified public accountant as being in accordance with generally accepted accounting practices.~~

(b) The operator shall file with the agency all quarterly and annual financial reports and statements required to be filed with the Securities and Exchange Commission. The operator shall also provide the agency with quarterly statements of gross revenues by category of revenue with regard to payment of franchise fees as well as an annual report of gross revenues by category of revenue from the operation of its system in the City.

(c) The operator shall file with the ~~board~~ agency a copy of any formal communications received from or required to be filed with any other governmental agency, except tax returns and determinations, including the Federal Communications Commission, concerning the operation of its system in the City or affecting operator's ability to perform its franchise agreement with the City.

(d) ~~Upon the request of the board, t~~The operator shall file with the ~~board~~ agency written evidence at least annually of payment of premiums on insurance policies required by this chapter.

(e) The operator shall file annually with the agency the Equal Employment Opportunity reports described in section 634 of the Act (47 U.S.C. § 554). These reports shall be filed with the agency within thirty (30) days after the reports are filed with the Federal Communication Commission.

(e~~f~~) The operator shall keep on file with the ~~board~~ agency current copies of insurance certificates evidencing the coverages and liability limits required by this chapter.

(~~f~~g) The operator shall ~~keep on~~ monthly file with the ~~board~~ agency an operations report, showing such information as changes in subscriber totals, subscribers for each tier of service, a summary of complaints, and a summary of outages. ~~a current list of its shareholders, partners, bondholders, and all other persons owning any financial interest in the operator.~~

(~~g~~h) The operator shall file or keep on file with the ~~board~~ agency any information which may be required by the code or which the board reasonably deems necessary to ensure that the duties of the operator, its customers, the agency, and the board are carried out.

Sec. ~~8½-104~~ 851-705. Inspection of records and facilities; maintenance of records.

~~The city shall have the right to inspect the operator's books, plans, income tax returns and other business records, and its studios, equipment and other facilities at any time during normal business hours.~~

(a) At any reasonable time during normal business hours, the City shall have the right to inspect the studios, equipment, operating facilities and business records maintained by the operator to ensure that the obligations to the City, its customers, the agency, and the board are carried out.

(b) Operator shall maintain all records related to the franchise for the term of the franchise, and all such records shall stay with the system in the event of a transfer.

Sec. 851-706. Limitation on Ownership by Certain Parties.

(a) No officer (whether elected or appointed), employee, or agent of the City or of Marion County, Indiana, or member of his immediate family (meaning spouse or children), whose official duties require him to administer, enforce, or regulate the business of the operator or the terms or conditions of the franchise agreement, shall, during the term of the franchise or until after a period of one (1) year following the termination of his duties as such officer, employee, or agent, own, either directly or indirectly, any beneficial interest in the business of the operator.

(b) Without limiting the generality of the description of persons or entities described in subsection (a), the limitation set forth in this section shall apply to members of the board, members of the council, the officers, employees, and agents of the council and of the agency.

Sec. 851-707. Performance evaluations.

The City shall conduct regular performance evaluations at least every three (3) years during the term of the franchise to determine operator's compliance with the terms of his franchise agreement and the code.

Sec. 851-708. Reimbursement of City's expenses.

Operator shall reimburse City its expenses for conducting the franchise audits described in Sec. 851-601 and the performance evaluations described in Sec. 851-708.

~~ARTICLE VII. TERMINATION OF FRANCHISE~~

~~Sec. 8-1/2-111. Term and renewal of franchise.~~

~~(a) Any franchise contract granted pursuant to Article II hereof shall take effect and be in force from and after its effective date for a term specified in the franchise contract not to exceed fifteen (15) years upon the conditions set forth in this chapter and the franchise contract, except that any franchise awarded prior to the date stated in section 8-1/2-4 shall be in force from and after its effective date for such term as may be provided in said franchise contract.~~

~~(b) A franchise contract may be renewed in accordance with the procedures and standards specified in Section 626 546 of the Act (47 U.S.C. Section 626 546). Such renewal procedures and standards shall apply to any franchise contract, notwithstanding any contract provision to the contrary and regardless of when such franchise was granted.~~

~~(c) Any requirement for public notice of any proceeding conducted pursuant to Section 626 546 of the Act (47 U.S.C. Section 626) shall be given in accordance with I.C. 5-3-1 or other applicable provision of state law and shall also be given by the cable operator who's franchise is being considered for renewal on at least one channel of the cable system pursuant to rules for such notice established by the board.~~

~~(d) If the city conducts a proceeding authorized by Section 626(a) 546(a) of the Act (47 U.S.C. Section 626(a)), the board shall, at the completion of such proceedings, notify the cable operator of the following:~~

~~(1) The date such proceedings were completed;~~

~~(2) Whether the board is requesting the operator to submit a proposal for a renewal, and if so, setting forth the requirements for such a proposal;~~

~~(3) The date by which a renewal proposal shall be submitted by the operator.~~

~~(e) The decision to grant or deny a proposal for renewal shall be made by the board, subject to approval by the council.~~

~~Sec. 8-1/2-112. Penalties and forfeiture of franchise.~~

~~(a) For certain violations of the provisions of this chapter, civil penalties shall be chargeable to the security fund as follows:~~

~~(1) For failure to complete construction and installation of the system and commencement of providing service in accordance with section 8-1/2-41(b), unless the council specifically approves the delay by~~

~~resolution because of reasons beyond the control of the operator, the operator shall forfeit two hundred dollars ($200.00) each day or part thereof that the failure continues.~~

~~(2) For failure to provide data and reports as requested by the council or board or required by this chapter, the operator shall forfeit fifty dollars ($50.00) each day or part thereof that the failure continues.~~

~~(3) For failure to pay the franchise fee when due pursuant to section 8 1/2-80, the franchise holder shall forfeit two hundred fifty dollars ($250.00) each day or part thereof that the failure continues.~~

~~(4) For persistent failure to comply with such reasonable requests and recommendations as may be made by the council and board pursuant to authority granted by this chapter, the franchise holder shall forfeit fifty dollars ($50.00) each day or part thereof that the failure continues.~~

~~(5) For failure to restore the cash deposit, as required in section 8 1/2-82, within the specified ten (10) days, the entire security fund deposit remaining shall be forfeited.~~

~~(b) If the civil penalties of subsection (a) are inapplicable or fail to secure compliance, in addition to all other rights and powers retained by the city by virtue of this chapter and the franchising contract, or otherwise, the city shall have the right to terminate and cancel the franchise and all rights and privileges of the operator in the event that the operator:~~

~~(1) Violates any material provision of this chapter, the franchising contract, or any rule, regulation, order or determination of the city, the board or the council made pursuant to this chapter, except where such violation is cured within a reasonable time or where such violation, other than of section 8 1/2-87, is without fault or through excusable neglect;~~

~~(2) Attempts to evade any of the provisions of this chapter or the franchising contract or practices any fraud or deceit upon the city; or~~

~~(3) Fails to meet the construction schedule as established in the franchising contract or as modified by the board at the end of any two (2) years, unless such failure is without fault or through excusable neglect.~~

~~(c) Termination and cancellation may be effected only by ordinance of the council, subject to the ordinary veto power of the mayor, and shall in no way affect any other of the city's rights under this chapter, the franchising contract, or any provision of law. Any finding of fact, determined by the council under this section, shall be conclusive; however, before the franchise may be terminated and canceled under this section, the operator must be provided with thirty (30) days' notice and an opportunity to be heard before the council or its designated committee.~~

~~Sec. 8 1/2-113. Removal of system.~~

~~Upon expiration or forfeiture of the franchise, as provided for in this chapter, the council shall have the right to determine whether the operator shall continue to maintain and operate the cable television system pending the decision of the city as to the future maintenance and operation of the system.~~

Sec. 851-709. Termination of a portion of a special cable franchise.

(a) The geographic area of a special cable franchise shall be the separate limited cable service areas described in the franchise agreement, including expansions approved under Sec. 851-253; provided, that ninety (90) days after a private cable service contract to serve a separate limited cable service area expires by its terms or is terminated, such area shall no longer be included in the geographic area of such franchise unless extended within such ninety-day period. Provided, however, if the termination of such private cable service contract is the result of foreclosure, bankruptcy or insolvency of the owner or manager of the multiple-unit dwellings served under such private cable service contract and such dwellings are being managed under judicial supervision, said ninety-day period shall be tolled until such dwellings are transferred to a new owner or manager.

(b) Whenever under the terms of subsection (a) a separate limited cable service area ceases to be within the geographic area of a special cable franchise, the operator within thirty (30) days shall certify to the franchise administrator of the cable franchise board the description of such separate limited cable service area.

Sec. 851-710. Removal of System.

Upon expiration or forfeiture of the franchise, the City shall have the right to order the operator to continue to maintain and operate the system or limited cable system pending operator's replacement.

~~ARTICLE VIII. RULES OF CONSTRUCTION~~

Sec. 851-711. ~~Reserved~~ Reservation of City rights; franchise limitations.

(a) No privilege or power of eminent domain is bestowed by the grant of a franchise under this chapter; the grant of franchise does not confer any rights other than as expressly provided by this chapter or the franchise agreement.

(b) The franchise and the right it grants to use and occupy the public ways shall not be exclusive and do not explicitly or implicitly preclude the issuance of other franchises to operate cable systems or other communications systems within Marion County, Indiana, affect the City's right to authorize use of public ways by other persons or entities to operate cable systems or other communications systems or for other purposes as it determines appropriate for the same or a different franchise territory, or affect the City's right to itself construct, operate or maintain a cable system or other communications system, with or without a franchise as permitted by federal or state law.

(c) By its acceptance of the franchise, the operator agrees to comply with all requirements of the cable ordinance (Chapter 851 and 285 of the code) and any validly enacted amendments to the ordinance during the term of the franchise.

(d) All rights and privileges granted pursuant to this chapter are subject to the valid exercise of the police powers of the City and its rights under applicable laws and regulations to regulate the operator and the construction, operation, or maintenance of its system, including but not limited to, the right to adopt and enforce additional regulations as the City shall find necessary in the exercise of its police powers; the right to adopt and enforce applicable zoning, building and permitting and safety codes; the right to adopt ordinances and regulations relating to equal employment opportunities; and any right the City has to adopt and enforce laws, ordinances and regulations including cable television consumer protection laws and service standards pursuant to the Act.

~~Sec. 8-1/2-122. Severability.~~

~~Should any provision (section, paragraph, sentence, clause or any other portion) of this chapter be declared by a court of competent jurisdiction to be invalid for any reason, the remaining provisions shall not be affected, if and only if such remaining provisions can, without the invalid provision or provisions, be given the effect intended by the council in adoption of this chapter. To this end the provisions of this chapter are severable.~~

Sec. 851-712. Public records standard.

Public records generated under this chapter shall be available in accordance with the provisions of IC 5-14-3.

SECTION 2. Chapter 8½ of the Code of Indianapolis and Marion County, Indiana, is hereby superseded and repealed as of the effective date of this ordinance.

SECTION 3. The expressed or implied repeal or amendment by this ordinance of any other ordinance or part of any other ordinance does not affect any rights or liabilities accrued, penalties incurred, or proceedings begun prior to the effective date of this ordinance. Those rights, liabilities, and proceedings are continued, and penalties shall be imposed and enforced under the repealed or amended ordinance as if this ordinance had not been adopted.

SECTION 4. Should any provision (section, paragraph, sentence, clause, or any other portion) of this ordinance be declared by a court of competent jurisdiction to be invalid for any reason, the remaining provisions shall not be affected, if and only if such remaining provisions can, without the invalid provision or provisions, be given the effect intended by the Council in adopting this ordinance. To this end the provisions of this ordinance are severable.

SECTION 5. This ordinance shall be in effect from and after its passage by the Council and compliance with IC 36-3-4-14.

PROPOSAL NO. 481, 1995. Councillor Rhodes reported that the Administration and Finance Committee heard Proposal No. 481, 1995 on August 14, 1995. The proposal authorizes the lease of office space for the Franklin Township Assessor at 4531 Independence Square. By a 7-0 vote, the Committee reported the proposal to the Council with the recommendation that it do pass. Councillor Rhodes moved, seconded by Councillor Smith, for adoption. Proposal No. 481, 1995 was adopted on the following roll call vote; viz:

26 YEAS: Beadling, Black, Borst, Boyd, Curry, Dowden, Franklin, Gilmer, Golc, Gray, Hinkle, Jimison, Jones, McClamroch, Moriarty Adams, Mullin, O'Dell, Rhodes, Schneider, SerVaas, Shambaugh, Short, Smith, Tilford, West, Williams
0 NAYS:
3 NOT VOTING: Brents, Coughenour, Giffin

Proposal No. 481, 1995 was retitled SPECIAL RESOLUTION NO. 77, 1995 and reads as follows:

CITY-COUNTY SPECIAL RESOLUTION NO. 77, 1995

A SPECIAL RESOLUTION authorizing the lease of office space for the Franklin Township Assessor at 4531 Independence Square, Indianapolis, Indiana.

BE IT RESOLVED BY THE CITY-COUNTY COUNCIL OF THE
CITY OF INDIANAPOLIS AND OF MARION COUNTY, INDIANA:

SECTION 1. The Franklin Township Assessor desires to lease office space located at 4351 Independence Square, Indianapolis, Indiana 46203.

SECTION 2. The property at 4351 Independence Square, Indianapolis, Indiana is owned by Duffers Realty, an Indiana Partnership , whose sole principals are Larry J. Sablosky, Richard L. Kidwell, David M. Fagin, Dennis A. Stephenson, and Daniel E. Stephenson. Said property is currently being leased by Franklin Township of Marion County through a lease-purchase agreement pursuant to IC 39-1-10.

SECTION 3. The City-County Council, pursuant to IC 36-1-10-7, has investigated the conditions requiring the need for office space and hereby determines that the office space described in Section 1 is needed.

SECTION 4. This resolution shall be in full force and effect upon adoption and compliance with IC 36-3-4-14.

PROPOSAL NO. 482, 1995. Councillor Rhodes reported that the Administration and Finance Committee heard Proposal No. 482, 1995 on August 14, 1995. The proposal approves a public purpose grant in the amount of $65,000 to Indiana University at Indianapolis for the purpose of financing educational access cable television programming. By a 6-0 vote, the Committee reported the proposal to the Council with the recommendation that it do pass. Councillor Rhodes moved, seconded by Councillor Borst, for adoption. Proposal No. 482, 1995 was adopted on the following roll call vote; viz:

24 YEAS: Beadling, Black, Borst, Curry, Dowden, Gilmer, Golc, Gray, Hinkle, Jimison, Jones, McClamroch, Moriarty Adams, Mullin, O'Dell, Rhodes, Schneider, SerVaas, Shambaugh, Short, Smith, Tilford, West, Williams
0 NAYS:
5 NOT VOTING: Boyd, Brents, Coughenour, Franklin, Giffin

Proposal No. 482, 1995 was retitled SPECIAL RESOLUTION NO. 78, 1995 and reads as follows:

CITY-COUNTY SPECIAL RESOLUTION NO. 78, 1995

A SPECIAL RESOLUTION approving a public purpose grant to Indiana University at Indianapolis in the amount of $65,000 for the purpose of financing educational access cable television programming.

WHEREAS, the City-County Council for the City of Indianapolis and Marion County proposes to authorize a public purpose grant in the amount of $65,000 to Indiana University at Indianapolis for the purpose of financing educational access programming over the educational access channels of the two franchised cable television systems within Marion County (the Grant); and

WHEREAS, Section 2-428 of the Code of Indianapolis and Marion County, Indiana, requires that all public purpose grants shall be subject to appropriation by the City-County Council; and

WHEREAS, Section 4.01(c) of City-County Fiscal Ordinance No. 88, 1994, Annual Budget and Tax Levies for the Consolidated City of Indianapolis and for Marion County, Indiana, requires that sums appropriated therein for public purpose grants shall not be spent until the City-County Council of the City of Indianapolis and of Marion County, Indiana, approves the amount and identity of the recipient of each grant; and

WHEREAS, the Council now finds that the Grant should be approved; now, therefore:

BE IT RESOLVED BY THE CITY-COUNTY COUNCIL OF THE
CITY OF INDIANAPOLIS AND OF MARION COUNTY, INDIANA:

SECTION 1. The Grant in the amount of $65,000 to Indiana University at Indianapolis is hereby approved. No grant funds shall be used in whole or in part to fund any program which endorses a political candidate or which attempts to promote or influence legislation.

SECTION 2. This resolution shall be in full force and effect upon adoption and compliance with IC 36-3-4-14.

PROPOSAL NO. 485, 1995. Councillor Giffin reported that the Public Works Committee heard Proposal No. 485, 1995 on August 24, 1995. The proposal authorizes the lease by the Indianapolis Department of Parks and Recreation of approximately 35 acres of land formerly known as the Riverside Nursery to R. N. Thompson & Associates, Inc. for the construction, development, and management of a golf academy. By a 6-0 vote, the Committee reported the proposal to the Council with the recommendation that it do pass. Councillor Giffin moved, seconded by Councillor Franklin, for adoption.

Councillor Gilmer moved that Proposal No. 485, 1995 and Proposal No. 486, 1995 be tabled until the next Council meeting; he needs more information on the proposals. Councillor Hinkle seconded the motion.

Councillors Short and Franklin voiced their opposition to Councillor Gilmer's motion.

Councillor Hinkle stated that he believes that sometime in the future the taxpayers will have to pay some of the cost for this golf academy.

Councillor McClamroch said he opposes the motion to table because if construction is to begin this fall, the proposal needs to be passed tonight.

Councillor Gilmer's motion to table failed by a voice vote.

Councillor Hinkle asked Leon Younger, Director, Department of Parks and Recreation, what happens if R.N. Thompson & Associates decides to abandon this project. Mr. Younger replied that the Council would decide if the City should keep it as a golf academy or use it for some other park purpose.

Proposal No. 485, 1995 was adopted on the following roll call vote; viz:

26 YEAS: Beadling, Black, Borst, Boyd, Brents, Coughenour, Curry, Dowden, Franklin, Giffin, Golc, Jimison, Jones, McClamroch, Moriarty Adams, Mullin, O'Dell, Rhodes, Schneider, SerVaas, Shambaugh, Short, Smith, Tilford, West, Williams
3 NAYS: Gilmer, Gray, Hinkle
0 NOT VOTING:

Proposal No. 485, 1995 was retitled SPECIAL ORDINANCE NO. 11, 1995 and reads as follows:

CITY-COUNTY SPECIAL ORDINANCE NO. 11, 1995

A SPECIAL ORDINANCE authorizing the lease by the City of Indianapolis Department of Parks and Recreation of approximately thirty-five (35) acres of land formerly known as the Riverside Nursery to R.N. Thompson & Associates, Inc. for the construction, development and management of a golf academy.

WHEREAS, the Board of Parks and Recreation of the City of Indianapolis, Indiana (the "Board"), being the governing body of the Department of Parks and Recreation of the City of Indianapolis, Indiana, has determined that it would be in the best interest of the citizens of the City of Indianapolis, Indiana ("City") to construct and develop a golf academy on the property bordered by Cold Springs Road, 38th Street, White River Parkway and I-65, formerly known as the Riverside Nursery ("Golf Academy"); and

WHEREAS, the Board and R.N. Thompson & Associates, Inc. ("Thompson") have negotiated the terms by which Thompson would construct, develop and manage the Golf Academy, and encompassed such terms in the proposed Form of Lease which is in substantially final form and attached hereto as Exhibit "A" (the "Lease"); and

WHEREAS, Ind. Code 36-1-11-3 requires that such Lease be approved by the City-County Council of the City ("Council"); now, therefore:

BE IT ORDAINED BY THE CITY-COUNTY COUNCIL OF THE
CITY OF INDIANAPOLIS AND OF MARION COUNTY, INDIANA

SECTION 1. The Council hereby approves the construction, development and management of the Golf Academy by Thompson pursuant to the terms of the Lease which is in substantially final form and attached hereto and incorporated herein.

SECTION 2. The Council hereby delegates to the Board the authority to finalize and execute the Lease on behalf of the City.

SECTION 3. This Resolution shall be effective upon adoption and compliance with Ind. Code 36-3-4-14.

APPENDIX A
INDIANAPOLIS GOLF ACADEMY LEASE

THIS LEASE AGREEMENT, effective as of July __, 1995, by and between the Department of Parks and Recreation of the City of Indianapolis (the "Department"), and R. N. Thompson & Associates, Inc. (the "Lessee").

W I T N E S S E T H:

WHEREAS, the City of Indianapolis (the "City"), in the past owned and operated a nursery, through its Department of Parks and Recreation, and desires to now use the land on which the nursery had been located as a public golf training facility (the "Golf Academy"); and

WHEREAS, the Department has duly advertised for proposals and received proposals for the lease of said land for the purpose of developing the Golf Academy; and

WHEREAS, the proposal of the Lessee was determined to be in the best interest of the City.

NOW THEREFORE, in consideration of the mutual covenants and provisions contained herein, the Department and the Lessee agree as follows:

1. DEFINITIONS

A. The term "Commencement Date" shall mean July __, 1995.

B. The term "Finance Term" shall mean fifteen (15) years from the Commencement Date.

C. The term "Golf Academy" refers to all buildings, site improvements and other existing improvements and future improvements made to the Premises for the operation of a golf training, practice and playing facility located entirely upon the property as described in Exhibit A.

D. The term "Gross Receipts" shall mean the gross sales of green fees, golf lessons, concessions and driving range whether such sales be evidenced by check, credit, charge account or otherwise. Gross Receipts shall not include (i) the amount of any sales, use or gross receipts tax imposed by any federal, state, municipal or other governmental authority directly, (ii) the sales tax collected from customers, provided the amount thereof is added to the selling price and absorbed therein and paid by the Lessee to such governmental authority or (iii) drafts returned to the Lessee because of nonsufficient funds. No franchise or capital stock tax and no income or similar tax based upon income or profits as such shall be deducted from Gross Receipts.

E. The term "Original Term" shall mean the period of time from the Commencement Date to December 31, 2000.

F. The term "Phase I" shall mean an indoor training facility and driving range as further described in Exhibit B.

G. The term "Phase II" shall mean a nine hole training course as further described in Exhibit B.

H. The term "Premises" refers to the real property described in Exhibit A and to any improvements made thereto from time to time by the Lessee during the term of this Lease.

I. Following the completion of Phase I, the term "Termination Payment" is hereby defined to mean $2,500 multiplied by the number of months remaining in the Finance Term after termination of the Lease. Following the completion of Phase II, the Termination Payment shall be as set forth on Exhibit D depending on the month of termination. If the termination occurs after completion of Phase I and before the completion of Phase II, then the Termination Payment shall be the fair market value of the improvements to the Premises at the date of termination as determined by the average of two appraisals, one by a qualified real estate appraiser selected by the Department and one real estate appraiser selected by the Lessee. The appraisals shall not include the value of the unimproved land.

2. PURPOSE

The Department hereby grants unto the Lessee and the Lessee hereby accepts from the Department, a Lease of designated space as set forth in Exhibit A for the purpose of developing and operating:

(a) a driving range; and

(b) a training golf course; and

(c) other facilities as appropriate to operate the Golf Academy.

3. OPTION TO RENEW

Subject to and upon the conditions set forth herein, the Original Term of this Lease may be modified or extended only upon the mutual, written agreement of the Department and the Lessee.

4. USGA PARTICIPATION

If the Department and the Lessee enter into a written agreement with the United States Golf Association ("USGA") whereby the USGA would assist in the development and programming for the Golf Academy, then this Agreement shall be assigned or terminated and replaced with a subsequent agreement mutually agreeable to the Department and the Lessee that provides for the lease of the Golf Academy to the Indianapolis Junior Golf Foundation ("Foundation") and the employment of the Lessee by the Foundation as the construction contractor for and manager of the Golf Academy, all in accordance with the terms sheet attached as Exhibit E.

5. GOLF ACADEMY OPERATION

The Lessee shall construct and operate the Golf Academy subject to plans and permits acceptable to the parties and in accordance with Exhibit B to this Agreement. Phase I shall be completed by December 31, 1995 and Phase II shall be completed by December 31, 1996.

6. RENT

Commencing on the Commencement Date, the Lessee shall pay the Department, in the manner, upon the conditions and at the times hereinafter set forth during each year of the Original Term, a sum equivalent to ten percent (10%) of the first $500,000 of Gross Receipts, seven percent (7%) of Gross Receipts greater than $500,000 and less than $750,000 and five percent (5%) of all Gross Receipts equal to or in excess of $750,000 (hereinafter referred to as "Rent"). Rent shall be due and payable fifteen (15) days following the last day of each calendar month, based on the Gross Receipts generated during the prior calendar month.

7. PAYMENT OF FEES

The Lessee shall pay all rentals, fees and charges required by this Agreement to the following:

Indianapolis Department of Parks and Recreation
1426 W. 29th Street
Indianapolis, Indiana 46208-4999
Attention: Golf Services Division

In the event the Lessee fails to pay any of the rentals, fees or charges as required to be paid under the provisions of this Lease agreement within ten (10) days after same shall become due, interest at the rate of 1% per month shall accrue against the delinquent payment(s) until same are paid. Interest shall be charged from the date payment is due. This provision shall not preclude the Department from terminating this Lease Agreement for default in the payment of rentals, fees or charges, or from enforcing any other provision contained herein.

8. FINANCIAL REPORTS

The Lessee shall furnish the Department a statement of the Lessee's Gross Receipts within fifteen (15) days following the last day of each calendar month. Within ninety (90) days following the end of each fiscal year, the Lessee, at its sole cost and expense, will furnish the Department with "reviewed financial statements" (as such term is defined by the American Institute for Certified Public Accountants) for such Year which shall be prepared in accordance with generally accepted accounting principles.

9. INSPECTION OF RECORDS

The Lessee shall keep and maintain at the Premises, or its home office, full and accurate books of account, records and all pertinent data related to the operation of the Golf Academy. The Lessee shall make available for the Department's inspection sales and use tax returns and records. Such books of account, records and other pertinent data shall be kept by the Lessee for a period of Ten (10) years following the current operating year. The Department shall be entitled, upon reasonable notice not exceeding thirty (30) days during the Original Term and within sixty (60) days after the expiration or termination of this Lease, to inspect and examine all of the Lessee's books of account, records and other pertinent data. The Lessee

shall cooperate fully with the Department in making said inspection. The Department, at its sole cost and expense, shall also be entitled to conduct one or more independent audits of the Lessee's books of account, records or other pertinent data to determine the Lessee's Gross Receipts by a Certified Public Accountant of its choosing. Such audits shall be limited to the determination of Gross Receipts and shall be conducted, unless otherwise agreed, during normal business hours at the Premises or the Lessee's home office. In the event said audit shows that there is a deficiency in the payment of any rent, said deficiency shall be immediately due and payable as hereinafter provided. The cost of the Department's audit shall be paid by the Department unless such audit shows that the Lessee understated Gross Receipts by more than five percent (5%), in which case the Lessee shall pay all of the Department's costs of said audit. The Department hereby agrees to keep all information from such statements, inspections or audits confidential and shall not, unless required by law, disclose any of said information to any third parties other than to carry out the purposes of this Lease.

10. INSPECTION OF PREMISES BY THE DEPARTMENT

The Department shall have the authority and right to make periodic inspections of all of the leased Premises, equipment and operations during the normal operating hours thereof to determine if such are being maintained in a neat and orderly condition. Such periodic inspections may also be made at the Department's discretion to determine whether the Lessee is operating in compliance with the terms and provisions of this Agreement. It is understood by the Department and the Lessee that maintenance and appearance of the Golf Academy is extremely important. Consequently, should the Department determine at any time that the overall maintenance and appearance of the Golf Academy is no longer in substantial compliance with the quality standards set forth in Exhibit C (the "Quality Standards"), the Department will provide notice in writing to the Lessee. The Lessee will be deemed to be in default of this Agreement if the Lessee fails to cure the concerns detailed in the written notice within thirty (30) days, or if the concerns are of such a nature that they cannot be cured within said thirty (30) day period, the Lessee fails to commence to cure such concerns or fails thereafter to proceed to cure such concerns with all possible diligence.

11. MAINTENANCE OF IMPROVEMENTS

The Lessee shall, at its sole cost and expense, keep and maintain the Premises, including all building and improvements of every kind that may be a part thereof, and all appurtenances thereto in good and neat order, condition and repair, and except as specifically provided herein, restore and rehabilitate any improvements which may be damaged or destroyed by fire, casualty, or any other cause. The Department shall not be obligated to make repairs or replacements of any kind, nature, or description whatsoever to the Premises or any buildings or improvements thereon. The Lessee shall comply with and abide by all federal, state, county, municipal and other governmental statutes, ordinances, laws and regulations affecting the Premises, the improvements thereon or any activity or condition on or in the Premises.

12. USE

The Lessee shall use the Premises for no unlawful purpose or act, and shall comply with and obey all laws, regulations, including zoning and sign regulations, or orders of any governmental authority or agency. The Lessee shall not use, or permit the Premises (or any part thereof), to be used for any purpose or purposes other than those for which the Premises are hereby leased. The Lessee shall not commit, or suffer to be committed any waste on or about the Premises, or create any nuisance.

13. GOLF ACADEMY FACILITIES

A. Any and all plans for construction and installation by the Lessee are subject to the Department's approval. The Lessee shall bear the total cost associated with such construction, installation and use. It is the intent of the parties that the Lessee shall be responsible for obtaining all necessary permits and the Department covenants to use its best efforts to assist the Lessee in obtaining such permits. All construction shall be done in accordance with applicable federal, state and local laws and ordinances.

B. The Department shall give the Lessee notice to proceed with construction of the Golf Academy after its review and approval of (i) the final plans and specifications for the construction of the Golf Academy and (ii) the tree preservation plan. After such notice to proceed is given, any changes to the tree preservation plan or any material change to the design, structure or any pertinent feature of the Golf Academy to be constructed by or for the Lessee shall be subject to such change only upon the mutual consent of the Department and the Lessee.

C. The Lessee agrees to maintain said Premises in the same condition, order and repair as at the commencement of operations, after improvements, excepting only reasonable wear and tear arising from the use thereof under this Agreement.

D. The Lessee shall maintain all utilities within the leased Premises including but not limited to drains, sewer pipes, air conditioning, plumbing and electrical lines, services, outlets, meters to monitor utility usage, except as otherwise maintained by the electric, gas and water utility companies. Further, the Lessee shall be responsible for maintenance, repair and restoration of its property within all utility easements.

14. MARKETING

A Marketing Plan and Marketing Budget shall be submitted at the beginning of each year for the Department's non-binding review. The Lessee shall obtain prior approval of the Department before using the name of the Department or the City in any promotional materials.

15. GENERAL MANAGER AT GOLF ACADEMY

The Lessee shall hire and assign a full-time qualified, experienced general manager for its operations at the Golf Academy who shall be a licensed Class A PGA of America golf professional. Scott Morris shall be the initial general manager. The general manager may not be changed without the prior written consent of the Department, which shall not be unreasonably withheld. Said general manager will be physically available during reasonable operation hours. During the hours when the manager is not on duty or available, there shall be a designated assistant manager.

16. MINIMUM HOURS OF OPERATION

The Golf Academy's days and hours of operation shall at a minimum equal those of the other municipal golf courses from March 1 through October 31. For the period November 1 through March 1, the Golf Academy's days and hours of operation shall be those submitted by the Lessee prior to the beginning of operations and each January 1, thereafter and approved by the Department.

17. RATES AND PRICES

Maximum greens fees (when applicable) and driving range fees (collectively, the "Primary Fees") shall be established by the Board of Parks and Recreation by December 31st of the preceding year. Initially, the fees shall be Four Dollars and Seventy-Five cents ($4.75) for a bucket of golf balls at least 8 inches high and 8 1/2 inches in diameter (approximately 55 golf balls on average) for use on the driving range.

The initial rates for group lessons, private lessons, golf carts, pull carts, rental clubs, memberships, merchandise sold in the golf shop and club repair (collectively, the "Secondary Fees") are to be proposed by the Lessee and approved by the Department. After the initial year, increases in the Secondary Fees shall be subject to prior approval by the Department if, and only if, such Secondary Fees exceed the amount charged during the prior year by more than 20%. Price lists of all merchandise are not required -- only the prices for balls, gloves, and hats must be submitted.

All rates and charges shall apply until new rates and charges are determined effective by the Department pursuant to the provisions set forth in this Section 16.

18. QUALITY OF THE LESSEE'S SERVICES

A. The Lessee shall conduct its operations according to the Quality Standards in an orderly manner and not annoy, disturb or be offensive to customers, patrons, or others in the immediate vicinity of such operations.

B. The Lessee shall control the conduct, demeanor and appearance of its officers, members, employees, agents and representatives, and upon objection of the Department concerning the conduct, demeanor or appearance of any such person, the Lessee shall immediately take all necessary steps to correct the cause of such objection. The Lessee's employees in contact with the public shall perform their duties in an efficient and courteous manner, as prescribed by the Quality Standards.

C. The Lessee shall not conduct any business or activity not specifically authorized by this Agreement, unless approved in advance by the Department.

D. The Lessee and the Department agree to meet at a minimum on a quarterly basis in order to review Golf Academy operations, problems and other issues relating to the Golf Academy.

19. ASSURANCE OF ADHERENCE TO QUALITY STANDARDS

As set forth throughout this Agreement, the Lessee has agreed to accomplish the goals and objectives of the Golf Academy by providing quality, reasonably priced golf services to youth and adults. Exhibit B details the operation and facilities to be constructed to provide these services. The Lessee understands the importance of maintaining and providing to the public top quality service. Consequently, the Lessee shall maintain the highest standards in adhering to these goals. Furthermore, the Department reserves the right to conduct any reasonable surveys, questionnaires, inspections, etc. in order to judge how the public or other third parties view various aspects of the Golf Academy within the parameters set forth in the Quality Standards.

If the surveys, questionnaires, inspections, etc. recognize material shortcomings or deficiencies in any aspect of services and/or facilities as required by the Quality Standards, the Department will notify the Lessee, in writing, of such deficiencies. The Lessee will have thirty (30) days to respond with appropriate corrective action, demonstrating the Lessees substantial compliance with the Quality Standards. In the event the Lessee fails to respond or the response is reasonably deemed to be inadequate, the Department shall have the right to terminate this Agreement in accordance with the provisions specified in Clause 36.

20. FACILITIES AND SERVICES PROVIDED BY THE DEPARTMENT

The Department shall, at its cost, provide the following:

(a) The Real Estate, as existing.

(b) Land Title Survey and current appraisal of the existing unimproved Real Estate.

(c) Water facilities as existing.

(d) Sewage collection facilities as existing.

(e) Other utilities as existing.

(f) Any environmental surveys conducted at the option of the Department with the exception of a Phase I environmental survey which is to be paid for by the Lessee.

The Department makes no warranties about the current condition of the Real Estate, and the Lessee agrees to take the Real Estate "as is".

21. FACILITIES, EQUIPMENT AND SERVICES PROVIDED BY THE LESSEE

The Lessee, at its sole cost, shall provide and maintain the leased Premises, including but not limited to:

(a) Janitorial service within the Premises and provision of waste removal from the Premises.

(b) All construction and maintenance.

(c) Fire sprinkler system, as required.

(d) Complete air handling system, as required.

(e) Connection, maintenance, metering and use of utilities.

(f) All operating equipment on the leased Premises.

(g) All interior and exterior maintenance and repair of Premises.

(h) Pest control within and around operational areas of the Golf Academy.

(i) Garbage and trash collection from the Golf Academy.

(j) Public rest rooms.

(k) Any other equipment necessary to operate the Golf Academy.

22. EQUIPMENT INSTALLED BY THE LESSEE

A. All equipment, furnishings, signage and advertising installed by the Lessee shall be in keeping with the appropriate standards of decor at the Golf Academy and consistent with the plans outlined in Exhibit B. Any deviations must be approved in advance by the Department.

B. The Lessee agrees that all equipment, furnishings and improvements provided shall meet the requirements of all applicable building, fire, pollution and other related codes.

23. SECURITY

The Department makes no warranties as to any obligation to provide security for the Golf Academy. The Lessee shall provide the required fencing around the perimeter of the Golf Academy as provided for in its proposal to the Department and any additional security deemed appropriate in the Lessee's sole determination shall be provided at the Lessee's sole expense.

24. QUIET ENJOYMENT OF LEASED PROPERTY

The Department covenants and agrees that so long as no default exists in the performance of the Lessee's covenants and agreements contained herein, the Lessee shall peaceably and quietly hold and enjoy the leased Premises and all parts thereof for that portion of the Original Term free from eviction or disturbance by the Department or any person claiming under, by or through the Department.

25. TAXES ON THE LESSEE'S BUSINESS AND PROPERTY

The Lessee shall pay and discharge when due all taxes and charges imposed upon the conduct of its business on or about the Premises and all property taxes, if any, imposed upon its fixtures, equipment, merchandise and other personal property on or about the Premises.

26. PAYMENT OF UTILITIES

The Lessee shall pay for all water, gas, electric, telephone and other public utilities of every kind furnished to the Premises for the exclusive use by the Lessee throughout the Original Term and all other costs and expenses of every kind whatsoever of, or in connection with the use, operation and maintenance of the Premises and all activities conducted thereon and to indemnify and hold harmless the Department from any liability resulting from any non-payment of any such services.

27. NON-DISCRIMINATION

The Lessee shall not discriminate against any employee, or applicant for employment, in the performance of this Agreement, with respect to hire, tenure, terms, conditions or privileges of employment, because of race, religion, color, age, sex, handicap, national origin, ancestry, disabled veteran or Vietnam era veteran status.

28. LIABILITY FOR DAMAGE OR INJURY

The Department shall not be liable for any damage or injury which may be sustained by any party or persons on the Premises other than the damage or injury caused by the negligence or intentional actions of the Department, its agents and employees while in the course of the Department business.

29. INSURANCE COVERAGE

The Lessee shall procure and maintain in force at all times during the term of this Lease public liability, property damage and workmen's compensation insurance against loss, cost and expense by reason of injury to or the death of persons or damage to or the destruction of property arising out of or in connection with the occupancy or use of the Premises by the Lessee. Said insurance shall be carried with established

insurers as approved by the Department (such approval not to be unreasonably withheld), and shall have the following minimum limits:

(a) Property Damage - one hundred percent (100%) of full replacement cost of all improvements to the Premises, with loss payable to the Lessee.

(b) Commercial General Liability - for personal injury and property damage covering the Premises and its appurtenances in the amount of $5,000,000. Such insurance shall insure both the Department and the Lessee, and shall be so endorsed as to create the same liability on the part of the insured as though separate policies had been written for the Department and the Lessee, provided however, that in no event shall total insurance proceeds exceed required policy limits.

(c) Umbrella/Blanket Liability - notwithstanding anything to the contrary contained in this Clause 29, the Lessee's obligations to carry the insurance provided for herein may be provided with the coverage of so-called blanket policy or policies of insurance carried and maintained by the Lessee.

(d) Workmen's Compensation according to the statutory limits as provided in IC 22-3-5-1 et seq. and in the Indiana Workmen's Occupational Diseases Act, IC 22-3-7-1 et seq.

(e) The Lessee shall maintain in effect at all times a policy of liquor liability insurance covering sales and serving of alcoholic beverages in an amount not less than $1,000,000.

Said insurance policies must be maintained in full force and effect at the Lessee's sole expense throughout the term of this Lease and any policy or policies concerning subparagraphs (a), (b), (c) and (e) above must contain the following provisions:

"The City of Indianapolis and the County of Marion are additional insured for all coverage provided by this policy and shall be fully and completely protected by the policy, subject to policy terms, conditions, limitations and exclusions contained therein for risks and for every injury, death, damage or loss of any sort sustained by any person, organization, or corporation in connection with [the Lessee's/Insured's] acts/omissions, the acts or omissions of [the Lessee's/Insured's] employees, agent, servants and invitees while upon or during their use or occupation of the Golf Academy, as well as any activity performed by [the Lessee/Insured], his employees, agents, servants and invitees by virtue of the rights granted to [the Lessee/Insured] by an Agreement with the City of Indianapolis, by and through the Department and its Board of Parks and Recreation."

"The coverage provided by this policy to [the Lessee/Insured], the City of Indianapolis or Marion County or any other named insured shall not be terminated, reduced or otherwise changed in any respect without providing at least thirty (30) days written notice to the City of Indianapolis at the following address: Corporation Counsel, Legal Division, 200 East Washington Street, Suite 1601, Indianapolis, Indiana 46204."

30. EVIDENCE OF INSURANCE

The Lessee shall furnish the Department with certificates of insurance referred to in the foregoing paragraphs of Clause 29 evidencing such coverage prior to the Commencement Date and furnish all renewals thereof. At the request of the Department, the Lessee shall provide certified copies of the insurance policies.

31. INDEMNIFICATION OF THE DEPARTMENT

The Lessee shall indemnify, defend, exculpate, and hold harmless the Department, its Board, the Consolidated City of Indianapolis, County of Marion, and all their officials, employees or agents from any liability due to loss, damage, injury or other casualties of whatsoever kind or by whomsoever caused to the person or property of anyone on or about the Golf Academy or resulting from the performance or breach of any of the terms of this Lease or from the installation, existence, use, maintenance, condition, repairs, alterations or removal of any equipment or material, arising from any and all acts or omissions of the Lessee or his employees, contractors, agents, and invitees. The Lessee also agrees to pay all reasonable expenses and attorneys' fees incurred by or imposed on the City of Indianapolis, County of Marion, the Department, or any of their officials, agents or employees in connection herewith in the event that the Lessee shall default under the provisions of this Lease. It is specifically agreed by and between the parties executing this Lease that it is not intended by any of the provisions of any part of this Lease to establish the public or any member thereof, as a third party beneficiary hereunder, or to authorize anyone not a party to

this Lease to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Lease.

32. DAMAGE OR DESTRUCTION TO IMPROVEMENTS

The damage, destruction or partial destruction of any building or other improvement which is a part of the Golf Academy shall not release the Lessee from any obligation hereunder, except as hereinafter expressly provided, and in case of damage to or destruction of any such building or improvement, the Lessee shall, at its sole expense, promptly repair and restore the same to a condition as good as, or better, than that which existed prior to such damage or destruction.

33. THE LESSEE'S CONSTRUCTION

The Department hereby agrees to deliver possession of the Premises to the Lessee on the effective date of this Lease, and the Lessee agrees that promptly after delivery of possession of the Premises by the Department, to commence and proceed with due diligence to make all improvements to the Premises in accordance with Exhibit B, and install on the Premises all fixtures and other equipment which may be necessary or proper in the operation of the Lessee's business. Lessor's approval of subsequent improvements after completion of the Golf Academy shall not be unreasonably withheld.

34. LIENS

The Lessee shall keep the Premises free of liens. The Lessee shall keep all of the Premises and every part thereof free and clear of any and all mechanic's, materialmen's and other liens for or arising out of or in connection with work or labor done, services performed, or material or appliances used or furnished for or in connection with any operations of the Lessee, any alteration, improvement, or repairs or additions which the Lessee may make or permit or cause to be made, or any work or construction by, for or permitted by the Lessee on or about the Premises, or any obligation of any kind incurred by the Lessee, and at all times promptly and fully to pay and discharge any and all claims of liens and suits of other proceedings pertaining thereto. If the Lessee desires to contest any such lien, it shall notify the Department of its intention to do so within ten (10) days after the filing of such lien. In such case the Lessee shall, on demand, protect the Department by a surety bond against such lien and any cost, liability, or damage arising out of such contest. The Lessee shall not be considered in default hereunder until thirty (30) days after the final determination of the validity of such lien(s), within which time the Lessee shall satisfy and discharge such lien(s) to the extent held valid. In the event of such contest, the Lessee shall protect and indemnify the Department against all loss, expense and damage resulting therefrom.

35. DEFAULT BY THE LESSEE

Each of the following shall be deemed a default by the Lessee under this Lease:

(a) The Lessee's failure to pay any installment of rent when the same becomes due and the failure continues for ten (10) days.

(b) The Lessee's failure to perform or observe any other covenant, term or condition of this Lease to be performed or observed by the Lessee and if curable, the failure continues for thirty (30) days after notice thereof is given to the Lessee;

(c) Abandonment of the Leased Premises by the Lessee;

(d) The filing or execution or occurrence of:

(i) A voluntary petition in bankruptcy by the Lessee or an involuntary petition in bankruptcy against the Lessee and the failure of the Lessee, in good faith, to promptly commence and diligently pursue action to dismiss the petition.

(ii) A petition against the Lessee seeking a reorganization, arrangement, composition, readjustment, liquidation, dissolution, or other relief of the same or different kind under any provision of the Bankruptcy Act, and the failure of the Lessee in good faith to promptly commence and diligently pursue action to dismiss the petition.

(iii) A general assignment for the benefit of creditors by the Lessee.

(iv) The taking of any part of the leasehold created hereby, or any part thereof, upon foreclosure, levy, execution, attachment or other process of law or equity.

36. THE DEPARTMENT'S REMEDIES

A. Upon the occurrence of any Event of Default the Department may, at its option, in addition to any other remedy or right it has hereunder by law:

(i) Re-enter the Leased Premises, without demand or notice, and resume possession by an action in law or equity or by force or otherwise and without being liable in trespass or for any damages without terminating this Lease. The Department may remove all persons and property from the Leased Premises and such property may be removed and stored at the cost of the Lessee. The Lessee's liability for damages shall survive such termination; or

(ii) Terminate this Lease at any time upon the date specified in a notice to the Lessee. The Lessee's liability for damages shall survive such termination. Upon termination such damages recoverable by the Department from the Lessee shall be an amount equal to the cost and expenses paid or incurred by the Department in connection with:

(a) Obtaining possession of the Leased Premises;

(b) Care, maintenance, and repair of the Leased Premises while vacant;

(c) Removal and storage of the Lessee's or other occupant's property;

(d) Reletting the whole or any part of the Leased Premises as a golf academy and golf course;

(e) Making all repairs, alterations, and improvements reasonably required to be made by the Lessee hereunder and of performing all covenants of the Lessee relating to the condition of the Leased Premises, less the rent and other payments, if any, actually collected and allocable to the Leased Premises or to the portions thereof relet by the Department. The Lessee shall on demand make such payments on a monthly basis.

(iii) Relet the Leased Premises without the same being deemed an acceptance of a surrender of this Lease nor a waiver of the Department's rights or remedies and the Department shall be entitled to receive from the Lessee such payments as defined in this Clause 36. Any reletting by the Department may be for a period equal to or less than, or extending beyond the remainder of the original term, or for the whole or any part of the Leased Premises, separately or with other premises or for any sum, or to any the Lessee or for any reasonable use the Department deems appropriate.

B. By executing this Lease, the Department and the Lessee acknowledge that a significant investment will be made to the Premises and the Golf Academy and such value will extend beyond the original term of this Lease. The Parties each agree that all improvements made to the Golf Academy shall become and remain a part of the Premises and be included in the definition thereof. Each party further acknowledges that disagreements may occur and litigation to resolve any such disagreement may be costly. At the termination of this Lease, all improvements made to the Premises shall be the property of the Department, free and clear of all liens and encumbrances. The payment of the Termination Payment as provided for in Paragraph C of this clause 36 shall serve as the sole remedy of the Lessee for the termination of this Lease by the Department.

C. Upon termination of this Lease by the Department,

(i) The Department shall pay to the Lessee or cause to be paid to the Lessee the Termination Payment, less any amount due the Department by the Lessee as provided in paragraph (A) of this Clause 36;

(ii) The Lessee shall immediately vacate the Premises and the Golf Academy, leaving all property, facilities and improvements on the Premises in place;

The amount of the Termination Payment has been determined by the Department and the Lessee based in part upon (a) the estimated cost of the improvements to be made by the Lessee as

described in Exhibit B, (b) the amount of capital to be invested by the Lessee in such improvements and (c) the amount of debt to be incurred by the Lessee to finance such improvements. No payment of the Termination Payment shall be made by the Department under this Clause 36(c) without proper documentation by the Lessee that the total amount of the Termination Payment is equal to or less than the lesser of (1) the sum of sub-paragraph (b) and the outstanding amount of any debt under sub-paragraph (c) of this Clause 36(C) or (2) the replacement value of the improvements as determined by the average of two appraisals, one performed by a qualified appraiser selected by the Department and one performed by a qualified appraiser selected by the Lessee.

37. OWNERSHIP OF THE LESSEE

The ownership of the Lessee is very important to the Department. Therefore, the Department reserves the right to terminate this Agreement at any time a change of more than 50% of the ownership of the Lessee occurs which has not been approved by the Department.

38. ASSIGNMENT

A. The Lessee shall not sublet or assign this Lease nor any portion thereof, nor any property associated with this Lease without the prior written approval, which shall not be unreasonably withheld, of the Department. Unapproved subletting or assignment shall be an event of default in accordance with Clause 35 of this Lease and shall be grounds for immediate termination of this Lease.

B. It is agreed that all terms and conditions of this Lease shall extend to and be binding on assignees, sub-lessees and other successors as may be approved by the Department.

C. The Lessee shall be liable for acts and omissions by any subcontractor affecting this Lease. The Department reserves the right to directly terminate any sublessee or assignee for any cause for which the Lessee may be terminated.

39. NOTICES

All notices, demands, or other writings required under this Lease shall be deemed to be delivered (whether or not actually received) when deposited in the United States mail, registered or certified and postage prepaid, and addressed as follows:

To Department:
Department of Parks and Recreation
1426 W. 29th Street
Indianapolis, Indiana 46208
Attn: Director

To Lessee:
R. N. Thompson & Associates, Inc.
234 S. Franklin Road
Indianapolis, Indiana 46219
Attn: President

The address to which any notice, demand, or other writing may be given, made or sent to any party as above provided, may be changed by written notice given by such party as above provided.

40. AMENDMENTS

This Agreement may be amended, modified or supplemented only by a written instrument signed by each of the parties hereto, and any such amendment may pertain to one or more provisions of this Lease without affecting other provisions of this Lease.

41. ATTORNEYS' FEES

If any action at law or in equity shall be brought to recover any rent or other sum due under this Lease, or for or on account of any breach of, or to enforce or interpret any of the covenants, terms, or conditions of this Lease, or for the recovery of the possession of the Premises, the prevailing party shall be entitled to recover from the other party at part of the prevailing party's costs, reasonable attorneys' fees, the amount of which shall be fixed by the court and shall be made a part of any judgment or decree rendered.

42. LEASE MEMORANDUM

This Lease shall not be recorded, however, upon request of either party, the Department and the Lessee shall execute and acknowledge a memorandum or short form lease setting forth the parties, description of the Premises, the original term, options for extension of the original term and any other provisions hereof, the inclusions of which may be mutually agreed upon by the Department and the Lessee, which memorandum or short form lease may be recorded by either party at any time after the execution of this Lease.

43. COOPERATION OF THE DEPARTMENT

The Department hereby agrees to cooperate and assist the Lessee in obtaining all necessary governmental approvals and permits, and other reasonable requests made by the Lessee from time to time.

44. BROKER'S COMMISSION

The Lessee warrants that there are no claims for brokers commission or finders fees in connection with its execution of this Lease, and agrees to indemnify and save harmless the Department from any liability that may arise from such claims, including reasonable attorneys' fees.

45. FORCE MAJEURE

In the event that the Lessee shall be delayed or hindered in or prevented from doing or performing any act or thing required in this Lease by reason of strikes, lock-outs, causalities, acts of God, labor troubles, inability to procure materials or equipment, governmental laws or regulations or other causes beyond the Lessee's reasonable control, then the Lessee shall not be liable or responsible for any such delays and the doing or performing of such act or thing shall be excused for the period of such delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay.

46. SEVERABILITY

In the event any provision contained in this Lease is determined invalid by a forum of competent jurisdiction, such provision shall be stricken and all other provisions which can be effected independently of the stricken provision shall remain in full force and effect.

47. RELATIONSHIP OF PARTIES

Nothing contained herein shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent, or of joint venture, between the parties hereto.

48. SUCCESSORS IN INTEREST

The covenants, agreements, terms, conditions and warranties of this Lease shall be binding upon and inure to the benefit of the Department and the Lessee and their respective successors and assigns, but shall create no rights in any other person except as may be specifically provided for herein.

49. GOVERNING LAW

This Lease has been executed under and shall be governed by the laws of the State of Indiana.

50. HEADINGS

The section headings are inserted as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this Lease, nor in any way affect this Lease.

51. TIME OF THE ESSENCE

Time is of the essence of this Lease, and of each and every covenant, term and provision hereof.

52. INDULGENCE NOT WAIVER

The indulgence of either Party with regard to any breach or failure to perform any provision of this Agreement shall not be deemed to constitute a waiver of the provision or any portion of this Agreement,

either at the time of the breach or when a failure occurs or at any time throughout the term of this Agreement.

53. APPROVALS AND CONSENTS

All approvals and consents required from or on behalf of the parties to this Agreement shall not be unreasonably withheld.

54. INTERPRETATIONS

Exhibits A, B, C, D & E are attached and made a part of this Agreement. The Exhibits are as follows:

Exhibit A - Property Description
Exhibit B - Golf Academy Detailed Plans & Operation
Exhibit C - Quality Standards
Exhibit D - Termination Payment Schedule
Exhibit E - USGA Participation Terms Sheet

55. ENTIRE AGREEMENT

This Lease and the exhibits attached hereto set forth all the covenants, agreements, conditions, understandings and promises between the Department and the Lessee concerning the Premises and the Golf Academy, and there are no covenants, agreements, conditions, understandings or promises, either oral or written, between the parties other than herein set forth. Except as otherwise herein provided, no subsequent alteration, amendment, change or addition to this Lease shall be binding upon the Department or the Lessee unless reduced to writing and signed by them.

EXECUTED on the date first above written.

DEPARTMENT:

"DEPARTMENT OF PARKS AND RECREATION OF THE CITY OF INDIANAPOLIS"

By: _____
Leon Younger, Director

Date: _____

LESSEE:

"R.N. THOMPSON & ASSOCIATES"

By: _____
R.N. Thompson, President

Date: _____

APPROVED AS TO FORM AND CONTENT:

BINGHAM SUMMERS WELSH & SPILMAN
as Contract Counsel:

By: _____
Joseph E. DeGroff

Date: _____

By: _____
James H. Steele, Jr., City Controller

Date: _____

EXHIBIT A
PROPERTY DESCRIPTION

Approximately 35 acres, bounded by 38th Street on the north, White River Parkway West Drive on the east, Interstate 65 on the south, and Cold Springs Road on the west.

EXHIBIT B
GOLF ACADEMY OPERATION & DETAILED PLANS

The Golf Academy will operate as a facility for youth to learn the game of golf and for groups and adults to use as a practice/learning center. It is understood that the entire Golf Academy operation will be fully Americans with Disabilities Act compliant.

The Academy will require improvements to the existing Premises, including but not limited to, the following:

Phase I (to be completed by December 31, 1995)

1. Construction of a clubhouse approximately 14,400 square feet in size that includes a pro shop, concession area, range visibility, pass-through security, and a covered 80 x 20 feet training area with eighteen (18) tee positions, a training video viewing area and a club fitting and repair area. In addition, the facility will include a classroom greater than 600 square feet in area that will include video analysis and at least two (2) golf simulators (which can be leased). While this facility is under construction, the driving range would operate out of a temporary trailer or other suitable structure.

2. Construction of a driving range facility oriented in a north-south direction and related practice tees with at least forty (40) outdoor tee positions. The dimensions of the practice tee area will be approximately 350 yards deep, 150 yards long and 40 yards wide with separate teachings areas for youths and adults.

3. Construction of two (2) practice holes which shall be designed and constructed in order to be consistent with plans for Phase II.

4. Construction of a practice putting green that will be greater than 7500 square feet in area.

5. Construction of a pitching practice area that will be greater than 6000 square feet in area.

6. Construction of a sand trap practice area that will be greater than 6000 square feet in area.

7. All greens on all practice areas will be planted with bent grass.

8. Parking lot and related facility for 180 (10 feet x 20 feet) parking spaces plus an additional 2 spaces for handicap parking.

9. Implementation of the approved tree planting/landscaping program pertaining to Phase I.

10. Implementation of the approved drainage plan pertaining to Phase I.

11. Installation of low angle outdoor lighting for driving range.

12. Implementation of approved irrigation system pertaining to Phase I.

13. Installation of signage pertaining to Phase I.

14. Installation of a six (6) foot chain link perimeter fence to require passage through the clubhouse for access to the facility.

Phase II
(to be completed by December 31, 1996)

1. Construction of a training golf course (the exact number of holes to be determined by the Parties) with greens built to PGA standards which includes an expanded pond area in addition to the existing pond, which will be enlarged and deepened. All greens will consist of bent grass.

2. Construction of an 80 feet x 20 feet maintenance building along with a paved access road from the parking lot to the maintenance building. Mounding will be built around the area to screen the maintenance building.

3. Construction of a pump house.

4. Implementation of the approved tree planting/landscaping program pertaining to Phase II.

5. Implementation of the approved drainage plan pertaining to Phase II.

6. Implementation of the approved irrigation system pertaining to Phase II.

7. Installation of signage pertaining to Phase II.

EXHIBIT C
GOLF ACADEMY PERFORMANCE STANDARDS

Note: Certain standards will not be applicable until the completion of Phase II.

A. Customer Service

1. Tee times scheduled easily
2. Bag stand near clubhouse to drop clubs
3. Receipts are given for fees
4. Rules and regulations, including dress codes, attractively displayed
5. Information on passes, leagues, lessons, etc., readily available
6. Score cards, pencils, etc. readily available
7. Hole signs with yardage, par, etc., are well placed
8. Ball washers are operational
9. Towels are available at ball washers
10. Benches are adequate in number and well placed
11. Trash containers are available on the course
12. Wildlife Management Areas are designated with appropriate signage
13. Cold water and drinking cups are available on the course
14. Pace of play is appropriately monitored
15. Dress code is enforced
16. Shoe cleaners are available at clubhouse entrance

B. Staff

1. Professional staff are clearly identifiable
2. Staff consistently greet customers
3. Staff members present neat and clean appearance
4. Staff members are knowledgeable and communicate clearly
5. Ranger is friendly and courteous

C. Clubhouse

1. Clubhouse is clean and swept
2. Lighting fixtures are operating
3. Rest room floors are clean and swept
4. Sink and toilet fixtures are clean and without odor
5. Rest room supplies are available (e.g. soap, toilet tissue, towels)

D. Indoor Teaching Facility

1. Video cameras/replay units are available
2. Golf simulators are available
3. Safety features are functional
4. Teaching staff available at identified times

E. Pro Shop

1. Shop is adequately stocked and merchandise is attractively displayed
2. Pricing is competitive with municipal golf courses

F. Snack Bar/Concession Area

1. Concession area is clean
2. Menu board is clearly visible
3. Food and drink prices are clearly stated on menu board

G. Driving Range

1. Both grass and hitting mat surfaces are available
2. Hitting surfaces are well maintained
3. Balls are clean and uncut
4. Heated outdoor hitting areas are functional during appropriate times
5. Lighting is functional
6. Adequate rental clubs are available
7. Yardage signs are in place for 100, 150, 200, and 250 yards
8. Hitting area safety features are in place

H. Grounds

1. Entrance clearly visible
2. Entrance well landscaped
3. Parking lot clean and well maintained
4. Parking lot has designated handicapped slots
5. Area surrounding clubhouse is neatly groomed and landscaped
6. Area surrounding maintenance building is neatly groomed and landscaped
7. Maintenance building is neat and clean
8. First tee is nicely landscaped
9. Tee boxes are well maintained, with multiple markers where space allows
10. Grounds and bunkers will be maintained in a professional manner
11. Greens are consistent in speed, appearance and playability
12. Fairways are distinguishable from rough

I. Business operations

1. Where required, employee PGA credentials are maintained in good standing
2. All transactions are properly entered into the Department-provided cash registers
3. Cash registers are available for daily polling
4. All business provisions of contract with the Department (e.g. insurance, compliance with federal, state and local laws and regulations, non-discrimination, etc.) are consistently performed

J. Golf Carts and Cars

1. Adequate quantity and quality of rental golf carts* and pull carts are available for the course
2. Car is clean and refueled/recharged*
3. Car is undamaged (seats, body dents, etc.)*
4. Car performs well at all speeds and in all directions*
5. Car is equipped with score cards and pencils*

*If golf cars are used on the course

K. Programming

1. Willingness to participate and encourage youth golf programs
2. A Variety of types of instruction from which the public may choose

EXHIBIT E
TERMS FOR USGA PARTICIPATION

If the USGA enters into an agreement to participate in the development of the Golf Academy, this Agreement between the Department and R.N. Thompson shall be terminated without the payment of the Termination Payment as long as a new agreement containing the terms set forth below between the Department and R.N. Thompson is executed at the time of termination. The new agreement shall include but not be limited to the following terms.

1. The Department shall enter into a 15 year land lease of the Premises with the Indianapolis Junior Golf Foundation ("Foundation"), or a similar 501(c)(3) organization.

2. The Foundation shall execute an agreement with R.N. Thompson for the construction and management of the Golf Academy.

   a. The agreement shall have a four year term.

   b. R.N. Thompson shall build Phase I and design Phase II of the Golf Academy at its expense (estimated cost $450,000).

   c. The management agreement for the Golf Academy shall provide that not less than 15% of the gross revenues of the Golf Academy shall be used for programming expenses. The programming would be determined by the Department, USGA and R.N. Thompson and will include at a minimum, youth golf programs and youth golf discounts.

   d. Additionally, Thompson shall be required to set aside on an annual basis not less than 5% of the gross revenues of the Golf Academy to be used for a capital improvement fund.

3. The USGA shall provide a grant in an amount currently estimated to be $100,000 for programming and equipping the Golf Academy. Additionally, the USGA shall provide technical assistance with the design, construction and operation of the Golf Academy.

4. The estimated cost of Phase II is $1,300,000. The City of Indianapolis shall solicit the corporate community for donated funds totalling $1,200,000 within six months unless extended by mutual agreement.

5. The USGA grant and the corporate donations shall fund the construction of Phase II and if necessary initial working capital. If the corporate capital campaign raises less than $1,200,000 ("Deficit"), then (i) Thompson shall provide the Deficit and (ii) the percentage of gross revenues to be paid to fund programming and capital improvements as set forth in paragraph 2(c) and 2(d) shall be reduced 1% for every $100,000 of Deficit provided by Thompson.

6. Additionally, the Department and R.N. Thompson shall execute an agreement whereby R.N. Thompson would manage Riverside Municipal Golf Course ("Riverside") for the period beginning January 1, 1996 to December 31, 1999. R.N. Thompson would be required to pay the City 20% of all gross revenues in cash or capital improvements (not to exceed 5%), and all remaining net revenues would be donated to St. Mary's Childrens Home.

7. In the event the Riverside management agreement is not extended after January 1, 2000, R.N. Thompson would have the right to terminate the management agreement for the Golf Academy and to receive, on a sliding scale, a return of all or a portion of its capital contribution utilized to construct Phase I of the Academy.

   The sliding scale would begin at $450,000 ("Termination Payment") if the appraised value of the Phase I improvements on January 1, 2000 and the appraised value of the land after to Thompson's improvements ("Termination Value") exceeds $450,000 and the value of the Real Estate as provided in paragraph 20(b) of the Lease ("Minimum Value"). The Termination Value shall be determined by taking the average of two appraisals obtained from qualified real estate appraisers, one selected by the Department and one selected by Thompson. If the Termination Value does not exceed the Minimum Value, then the Termination Payment shall be reduced proportionately.

   If Thompson is not offered the operator's position at Riverside for January 1, 2000, then it would receive 100% of the Termination Payment. The percentage of the Termination Payment that Thompson would receive if the Riverside Management Agreement is extended but is terminated in subsequent years would then be reduced by 10% each year.

   If there is a Deficit and the Deficit is less than $500,000, then the Deficit will be added to the $450,000 in this paragraph 7 and amortized as set forth herein. If the Deficit is equal to or greater than $500,000, then the Deficit shall be added to the $450,000 and amortized over 10 years at 10% beginning January 1, 2000 consistent with Exhibit D. In each case, the amount of the Deficit shall also be added to the Minimum Value.

Councillor O'Dell questions the appropriateness of publicizing that some of the proceeds will go to charity in this project and in future projects.

PROPOSAL NO. 486, 1995. Councillor Giffin reported that the Parks and Recreation Committee heard Proposal No. 486, 1995 on August 24, 1995. The proposal authorizes the lease by the Indianapolis Department of Parks and Recreation of approximately 150 acres of land currently consisting of a nine-hole golf course and driving range and commonly referred to as Winding River Municipal Golf Course to R. H. West Management Corporation for the construction, development, and management of an eighteen-hole golf course. By a 5-1 vote, the Committee reported the proposal to the Council with the recommendation that it do pass. Councillor Giffin moved, seconded by Councillor Franklin, for adoption.

Councillor Gilmer stated that he will not support this ordinance because he did not receive enough information on the proposal.

Proposal No. 486, 1995 was adopted on the following roll call vote; viz:

23 YEAS: Beadling, Borst, Brents, Coughenour, Curry, Dowden, Franklin, Giffin, Golc, Hinkle, Jones, McClamroch, Moriarty Adams, Mullin, O'Dell, Rhodes, Schneider, SerVaas, Shambaugh, Short, Smith, Tilford, West
6 NAYS: Black, Boyd, Gilmer, Gray, Jimison, Williams
0 NOT VOTING:

Councillor Gray asked for consent to explain his vote. Consent was given. Councillor Gray stated that he voted against this proposal because he opposes long-term leases.

Proposal No. 486, 1995 was retitled SPECIAL ORDINANCE NO. 12, 1995 and reads as follows:

CITY-COUNTY SPECIAL ORDINANCE NO. 12, 1995

A SPECIAL ORDINANCE authorizing the lease by the City of Indianapolis Department of Parks and Recreation of approximately one hundred fifty (150) acres of land located at 8400 S. Mann Road, Indianapolis, Indiana, currently consisting of a nine hole golf course and driving range and commonly referred to as Winding River Municipal Golf Course to R.H. West Management Corporation for the construction, development and management of an eighteen hole golf course.

WHEREAS, the Board of Parks and Recreation of the City of Indianapolis, Indiana (the "Board"), being the governing body of the Department of parks and Recreation of the City of Indianapolis, Indiana, has determined that it would be in the best interest of the citizens of the City of Indianapolis, Indiana ("City") to construct and develop an eighteen hole golf course on the property located at 8400 S. Mann Road, Indianapolis, Indiana ("Golf Course"); and

WHEREAS, the Board and R.H. West Management Corporation ("West") have negotiated the terms by which West would construct, develop and manage the Golf Course, and encompassed such terms in the proposed Form of Lease which is in substantially final form and attached hereto as Exhibit "A" (the "Lease"); and

WHEREAS, Ind. Code 36-1-11-3 requires that such Lease be approved by the City-County Council of the City ("Council"); now, therefore:

BE IT ORDAINED BY THE CITY-COUNTY COUNCIL OF THE
CITY OF INDIANAPOLIS AND OF MARION COUNTY, INDIANA

SECTION 1. The Council hereby approves the construction, development and management of the Golf Course by West pursuant to the terms of the Lease which is in substantially final form and attached hereto and incorporated herein.

SECTION 2. The Council hereby delegates to the Board the authority to finalize and execute the Lease on behalf of the City.

SECTION 3. This Resolution shall be effective upon adoption and compliance with Ind. Code 36-3-4-14.

APPENDIX A
GOLF COURSE LEASE

THIS LEASE, effective as of August 1, 1995, by and between the Department of Parks and Recreation of the City of Indianapolis ("Department"), and R. H. West Management Corporation ("Tenant").

W I T N E S S E T H:

In consideration of the mutual covenants hereinafter contained, and each act performed hereunder by either of the parties, Department and Tenant agree as follows:

ARTICLE 1

EXHIBITS AND DEFINITIONS

SECTION 1.01 EXHIBITS

The following are attached hereto and made a part of this Lease:

A. Exhibit "A". Description of the real property leased by Tenant and comprising the premises as hereinafter defined, including the site plan showing the locations of Tenant's improvements relating to Tenant's use of the premises as a Golf Course as hereinafter defined.

B. Exhibit "B". Winding River Proposal dated August 30, 1993.

C. Exhibit "C". Description of the improvement work to be performed by Tenant on the Premises (as defined herein).

D. Exhibit "D". Schedule for determining rental payments pursuant to Section 4.01 herein.

E. Exhibit "E". Quality standards applicable to the operation and maintenance of the Golf Course.

SECTION 1.02 DEFINITIONS

A. The term "Premises" refers to the real property described in Exhibit A and to any improvements made thereto from time to time by Tenant during the term of this Lease.

B. The term "Golf Course" refers to all buildings, site improvements and other existing improvements and future improvements made to the Premises located entirely upon the property described on Exhibit A.

C. The term "Gross Receipts" shall mean the gross sales from green fees, golf pass surcharge fees, cart rentals, food and beverage concessions and the driving range whether such sales be evidenced by check, credit, charge account or otherwise. Gross Receipts shall not include the amount of any sales, use or gross receipts tax imposed by any federal, state, municipal or other governmental authority directly or the sales tax collected from customers, provided that the amount thereof is added to the selling price and absorbed therein and paid by Tenant to such governmental authority. No franchise or capital stock tax and no income or similar tax based upon income or profits as such shall be deducted from Gross Receipts.

D. The term "Lease Year" shall mean a period of twelve consecutive calendar months. The first Lease Year shall commence on (i) the Commencement Date (as defined herein) of this Lease if such Commencement Date shall occur on the first day of a calendar month, or (ii) on the first day of the calendar month next following the Commencement Date. Each succeeding Lease Year shall commence on the anniversary date of the first Lease Year.

E. The term "Termination Payment" is hereby defined, subject to adjustment in accordance with the provisions of Article 13, to mean $1,500,000 for the first 36 months of this Lease and thereafter $10,417 multiplied by the number of months (and pro-rated portion of the month of Termination) remaining in the original fifteen (15) year term of this Lease (and not including any extensions beyond the original fifteen (15) year Lease term).

ARTICLE 2

DEMISE, DESCRIPTION AND USE OF PREMISES

SECTION 2.01 DESCRIPTION AND USE OF PREMISES

For the rent and upon the terms contained in this Lease, Department leases to Tenant and Tenant leases from Department the Premises, consisting of approximately 150 acres, more or less, located at 8400 Mann Road, in the City of Indianapolis, State of Indiana, for the purpose of operating thereon a golf course.

ARTICLE 3

LEASE TERM

SECTION 3.01 TERM

Subject to and upon the conditions set forth herein, the term of this Lease shall be for fifteen (15) consecutive years ("Term"), commencing on August 1, 1995 ("Commencement Date"). The Term of this Lease shall end on the last day of the fifteenth (15th) consecutive full Lease Year. This Lease may be extended for one (1) additional five (5) year term upon the conditions mutually agreed to by Tenant and the Department, provided Tenant is not in default hereunder and notifies Department in writing ninety (90) days prior to the expiration of the Lease term of Tenant's intention to extend the Lease for the additional term. Subject to the provisions of Section 14.07 hereof, in the event Department, for any reason whatsoever, cannot deliver possession of the Premises, Tenant shall have the right to terminate this Lease.

ARTICLE 4

RENT

SECTION 4.01 RENT

Commencing on the Commencement Date, Tenant shall pay Department, in the manner, upon the conditions and at the times hereinafter set forth during each year of the Term, and any extensions or renewals thereof, a sum equivalent to the percentages of Gross Receipts listed on Exhibit D (hereinafter referred to as "Rent"). Rent shall be due and payable fifteen (15) days following the last day of each calendar month, with respect to the Gross Receipts generated during the prior calendar month.

SECTION 4.02 REPORTS OF GROSS RECEIPTS

Tenant shall furnish Department a statement of Tenant's Gross Receipts within fifteen (15) days following the last day of each calendar month. Within sixty (60) days following the end of each calendar year, Tenant, at its sole cost and expense, will furnish Department with a statement of Gross Receipts for the prior calendar year prepared by a Certified Public Accountant chosen by Tenant.

SECTION 4.03 INSPECTION OF RECORDS

Tenant shall keep and maintain at the Premises, or its home office, full and accurate books of account, records and all pertinent data showing its Gross Receipts. Tenant shall make available for Department's inspection sales and use tax returns and records. Such books of account, records and other pertinent data shall be kept by Tenant for a period of three (3) years following the current operating year. Department shall be entitled, upon reasonable notice not exceeding thirty (30) days during the Term and within sixty (60) days after the expiration or termination of this Lease, to inspect and examine all of tenant's books of account, records and other pertinent data so Department can ascertain Tenant's Gross Receipts. Tenant shall cooperate fully with Department in making said inspection. Department, at its sole cost and expense, shall also be entitled to conduct one or more independent audits of Tenant's books of account, records or other pertinent data to determine Tenant's Gross Receipts by a Certified Public Accountant of its choosing.

Such audits shall be limited to the determination of Gross Receipts and shall be conducted, unless otherwise agreed, during normal business hours at the Premises or Tenant's home office. In the event said audit shows that there is a deficiency in the payment of any rent, said deficiency shall be immediately due and payable as hereinafter provided. The cost of Department's audit shall be paid by Department unless such audit shows that Tenant understated Gross Receipts by more than five percent (5%), in which case Tenant shall pay all Department's costs of said audit. Department hereby agrees to keep all information from such statements, inspections or audits confidential and shall not, unless required by law, disclose any of said information to any third parties other than to carry out the purposes of this Lease.

ARTICLE 5

OCCUPANCY, USE AND OPERATION

SECTION 5.01 OCCUPANCY

The Premises shall be used and occupied by Tenant for a public golf course described in Exhibits A and B and for no other purpose without the prior written consent of Department.

SECTION 5.02 USE

Tenant shall use the Premises for no unlawful purpose or act, and shall comply with and obey all laws, regulations, including zoning and sign regulations, or orders of any governmental authority or agency. Tenant shall not use, or permit the Premises (or any part thereof), to be used for any purpose or purposes other than those for which the Premises are hereby leased. Tenant shall not commit, or suffer to be committed any waste on or about the Premises, or create any nuisance.

SECTION 5.03 OPERATION

Tenant shall be responsible to the Department and the general public for rendering, on a full-time basis, golf-related services and conducting its business on or about the Golf Course in a manner generally accepted and established by the Professional Golfers' Association of America ("PGA").

A. The Tenant shall employ a Class "A-1" member of the Professional Golfer's Association of America (a "Golf Professional"). Evidence of such status shall be submitted annually on the anniversary date of this Lease, or, as requested by the Golf Services Administrator of the Department ("Golf Services Administrator").

B. The Tenant shall establish and maintain a good credit rating with suppliers and manufacturers as evidenced by a Credit Rating Report furnished annually by the Tenant.

C. The Tenant shall cooperate with the Department, through the Golf Services Administrator in initiating, seeking and promoting golf activities throughout the City of Indianapolis and Marion County.

D. The Tenant, or its designee, agrees to attend regular staff meetings, Board meetings, and golf-related functions of the Department, golf organizations and golf leagues; provided such meetings and functions do not adversely affect Tenant's ability to comply with the terms of this Lease.

E. The Tenant shall be responsible for the operation and management of the golf shop, and the collection of greens fees, equipment rental fees and any and all other fees and charges related to the operation of the Golf Course through the cash register system provided by the Department at no cost to Tenant.

F. The Tenant shall promote the game of golf and actively seek and administer golf leagues, outings, golf clinics, youth golf (including clinics to be offered during the season to promote youth golf) and other programs which will be in the best interest of the public as determined by the Department.

G. The Tenant shall order and be responsible for payment of all golf equipment, golf merchandise and supplies, sportswear and other similar items, offered for sale and all sales tax and other taxes that might be due and payable as a result of the operation and maintenance of the Golf Course. All City, State and other licenses required for the appropriate operation of the golf shop must be obtained by the Tenant and at the Tenant's expense.

H. The Tenant shall be responsible for all telephone charges, office supplies, postage, and other administrative expenses.

I. The Tenant is responsible for furnishing all rental clubs, rental bags, pull carts, driving range retriever, ballwasher and range balls, and to ensure that their condition is reasonably acceptable as determined by the Golf Services Administrator.

J. The Tenant shall be responsible for the sale of all daily fee tickets and shall keep accurate records in the form prescribed by the Department.

Tenant shall also be responsible for the preparation of reports and bookkeeping and shall adhere to all policies and procedures of the Department heretofore existing and as reasonably modified by the Department.

K. Clubhouse. Tenant shall operate at its own cost and expense the clubhouse and monitor the sales and concession areas therein, each of which shall be open during the times that the Golf Course is open for play.

(i) At all times when the Golf Course is open for play, Tenant's designated employees shall be on duty in the clubhouse. The Tenant shall provide that an adequate staff is on duty at all times between March 1 and October 30 of each year this Lease is in effect. During other months, the Tenant may make personnel adjustments based on weather and playing conditions of the course.

(ii) Tenant shall maintain in the clubhouse a reasonable and adequate supply of merchandise customarily maintained at municipal golf courses.

(iii) Tenant shall in a neat, clean and organized fashion maintain the clubhouse and grounds.

(iv) Tenant shall at all times maintain the interior of the clubhouse building and the cart storage area(s) in a clean and attractive manner.

(v) Tenant shall be responsible for the day-to-day maintenance of the clubhouse.

L. Tenant will employ, manage and supervise all employees, and be ultimately responsible for the efficient operation of the Golf Course, including, but not limited to, the rental of pull carts, golf clubs and golf carts; the operation of the driving range including the purchasing and selling of rangeballs; all janitorial services; and the monitoring and policing of the parking area and clubhouse grounds, thereby providing a safe environment and quality service throughout the Golf Course.

M. The Golf Course.

(i) Tenant shall have the immediate responsibility for and actively supervise and assist in all matters relating to the maintenance and condition of the Golf Course and employees working at the Golf Course. Unless otherwise determined by the Department, all maintenance work performed on the land which comprises the Golf Course shall be at the expense of the Tenant. Tenant shall submit to the Department, on an annual basis a written plan for the continued maintenance and improvement of the Golf Course.

(ii) Tenant shall be responsible for hiring, supervising and managing all persons employed at the Golf Course. Tenant shall determine and pay wages and FICA benefits for employees. Tenant shall file a wage report with the Golf Services Administrator on a quarterly basis. With respect to the hiring of a greens superintendent, the Golf Services Administrator reserves the right to approve the individual selected by the Tenant (such approval not to be unreasonably withheld).

(iii) Tenant or his designee shall, at least twice daily, tour the Golf Course to observe and control play, making sure that all players abide by the applicable rules, that all carts are kept a minimum of thirty (30) feet from tees and greens or on cart paths. During busy hours of play, Tenant or an assistant professional shall monitor the pace of play on the Golf Course to ensure that players commence play at their scheduled tee times.

N. The hours and dates for the operation of the Golf Course and driving range shall be proposed by the Tenant and approved (not to be unreasonably withheld) by the Golf Services Administrator.

O. Golf Carts. Tenant shall provide and maintain an adequate number of riding and pull golf carts as may be necessary to satisfy the reasonable demands of the public. The golf carts shall be maintained in good operating conditions by Tenant and Tenant shall further provide any necessary repowering and refueling.

Department shall have the right at all reasonable times to inspect the golf carts to insure that the maintenance, performance, safety and appearance of the golf carts are reasonably acceptable.

P. Golf Clubs. Tenant will foster, assist and support men's and women's golf clubs at the Golf Course.

Q. Junior Golf Activities. Tenant will organize and facilitate junior golf activities at the Golf Course.

R. Golf Tournaments. Tenant will assist and cooperate with the U.S.G.A. Amateur Public Links Sectional Qualifying Committee or any other golf governing body, as may be identified from time to time by the Department in the scheduling of golf tournaments at the Golf Course as long as Tenant receives its reasonable and customary compensation for the use of the Golf Course.

S. Concessions. Tenant shall be responsible for all concessions sold in the clubhouse and on the Golf Course during the term of this Lease. Tenant shall maintain the kitchen and food and drink concession areas in a clean and sanitary condition, and shall comply with all applicable sanitary codes and other regulations of the City of Indianapolis, Marion County and the State of Indiana. The Tenant shall provide all concession-related equipment, adequate staffing of concessions, appropriate hours of operation, and be responsible for the cleanliness and quality of food service. Each month's concession receipts shall be submitted to the designated Department personnel by the 15th day of the month following receipt.

T. Rates and Prices. The Tenant shall keep at all times on public display, the prices, rates and charges for sale of goods and services to the public. Maximum greens fees shall be established by the Board of Parks and Recreation by December 31st of the preceding year. In the event that the 18 hole greens fees are less than (i) $15.00 for years 1997-2000, (ii) $17.00 for years 2001-2004 and (iii) $19.00 for years 2005-2010, then the percentages of Gross Receipts set forth in Section 4.01 shall be adjusted for the applicable years. The adjustments shall be made so that the Gross Receipts retained by the Tenant shall be equal to the Gross Receipts which the Tenant would have retained had the 18 hole greens fees been at the $15, $17, $19 levels for the applicable years. Rates and charges for golf carts, pull carts, rental clubs, range balls, memberships and outing fees are to be proposed by Tenant and approved (not to be unreasonably withheld) by the Department if, and only if, such fee(s) exceeds the amount for such fee(s) from the prior year by more than 20%. Pricing of merchandise sold in the golf shop, club repair and private lesson fees shall be established by the Tenant and submitted to the Department annually. Price lists of all merchandise are not required -- only the prices for balls, gloves, and hats must be submitted.

U. Real Estate Taxes. Tenant shall not be responsible for any real estate taxes or assessments on the Golf Course or any of the improvements thereon.

V. Apartments. If the Golf Course has a building or a portion of a building that may be used as an apartment, the Tenant shall not use such building or portion thereof as an apartment without the approval of the Department (not to be unreasonably withheld). Tenant shall submit to the Department a written request, setting forth the intended use of the building or portion thereof and verify that appropriate insurance coverage is in place, covering the contents of the building and its intended use.

W. Signs. Tenant shall maintain and continue to use all existing signs at the Golf Course.

X. With the exception of private lessons and golf club repair, all revenue must be processed through Department's cash register system to be supplied by the Department at the Department's cost.

Y. Tenant shall, by March 1st of each year during the term of this Lease, furnish for Department's review, a list of: food and drink concession items and their prices, golf lesson charges and cart rental fees, merchandise items (limited to hats, gloves, and balls), a Golf Course budget and any other report the Department may reasonably request from time to time.

Z. Tenant agrees that its operation of the Golf Course will be in accordance with all rules, regulations, procedures, conditions and terms of Department now in force or as may hereafter be reasonably adopted by Department which are intended to affect the operation of all City owned or operated golf courses. The operation of the Golf Course shall be acceptable to the Department in its reasonable determination and in substantial compliance with the quality standards set forth in Exhibit "E" (the "Quality Standards") to this Agreement. Department's Golf Services Administrator will meet annually with all golf pros contracted with Department to formulate such rules, regulations, procedures, conditions or terms. Any rules, regulations, procedures, conditions or terms adopted by the Department after the date of this Lease which are inconsistent with the provisions of this Lease shall not be binding on Tenant unless it shall agree to the same in writing.

AA. Security. The Pro shall maintain security service for both fire and theft comparable to the existing service on the Commencement Date. Any additional security deemed appropriate in the Pro's sole determination shall be provided at the Pro's sole expense. The Department makes no warranties as to any obligation to provide security for the Golf Facilities.

BB. Golf Course Evaluation. As set forth throughout this Agreement, Tenant has agreed to accomplish the goals and objectives of the Department of operating and managing the Golf Course by providing quality, reasonably priced golf services to youth and adults. Tenant understands the importance of maintaining and providing to the public top quality service. The Department reserves the right to conduct any reasonable surveys, questionnaires or inspections in order to determine how the public or other third parties view various aspects of the Golf Course within the parameters set forth in the Quality Standards.

If the surveys, questionnaires or inspections recognize material shortcomings or deficiencies in any aspect of services and/or facilities as required by the Quality Standards, the Department will notify the Tenant in writing of such deficiencies. The Pro will have thirty (30) days to respond with appropriate corrective action, demonstrating the Tenant's substantial compliance with the Quality Standards. In the event the Tenant fails to respond or the response is reasonably deemed to be inadequate, the Tenant shall be considered in default under this Agreement pursuant to Article 11.

ARTICLE 6

TAXES, UTILITIES AND LICENSES

SECTION 6.01 TAXES ON TENANT'S BUSINESS AND PROPERTY

Tenant shall pay and discharge when due all taxes and charges imposed upon the conduct of its business on or about the Premises and all property taxes imposed upon its fixtures, equipment, merchandise and other personal property on or about the Premises.

SECTION 6.02 PAYMENT OF UTILITIES

Tenant shall pay for all water, gas, electric, telephone and other public utilities of every kind furnished to the Premises for the exclusive use by Tenant throughout the Term and all other costs and expenses of every kind whatsoever of, or in connection with the use, operation and maintenance of the Premises and all activities conducted thereon and to indemnify and hold harmless Department from any liability resulting from any non-payment of any such services.

SECTION 6.03 LICENSES

Tenant shall obtain all necessary licenses for the operation of the pro shop, clubhouse, sales area and food and drink concession and furnish copies to the Department. Any permit from the Indiana Alcoholic Beverage Commission ("ABC") shall be obtained by Tenant or its designee at its sole expense and such permit will be assigned to Department at the end of this Lease or any extensions thereof without any cost whatsoever to be paid by Department except for any transfer fee assessed by the ABC and the pro-rata amount of the ABC annual renewal fee. Tenant shall monitor the alcohol sales so that consumption does not exceed amounts prescribed by the ABC. In addition, Tenant agrees to obtain liquor liability insurance in the amount specified in this Lease.

ARTICLE 7

NON-DISCRIMINATION

SECTION 7.01 NON-DISCRIMINATION

Tenant shall not discriminate against any employee, or applicant for employment, in the performance of this Lease, with respect to hire, tenure, terms, conditions or privileges of employment, because of race, religion, color, age, sex, handicap, national origin, ancestry, disabled veteran or Vietnam era veteran status.

ARTICLE 8

INSURANCE AND INDEMNIFICATION

SECTION 8.01 INSURANCE COVERAGE

Tenant shall procure and maintain in force at all times during the term of this Lease public liability, property damage and workmen's compensation insurance against loss, cost and expense by reason of injury to or the death of persons or damage to or the destruction of property arising out of or in connection with the occupancy or use of the Premises by Tenant. Said insurance shall be carried with established insurers as approved by Department (such approval not to be unreasonably withheld), and shall have the following minimum limits:

A. Property Damage - one hundred percent (100%) of full replacement cost of all improvements to the Premises, with loss payable to Tenant.

B. Commercial General Liability - for personal injury and property damage covering the Premises and its appurtenances in the amount of $1,000,000. Such insurance shall specifically insure Tenant against all liability assumed hereunder, as well as liability imposed by law, and shall insure both Department and Tenant, but shall be so endorsed as to create the same liability on the part of the insured as though separate policies had been written for Department and Tenant.

C. Umbrella/Blanket Liability - notwithstanding anything to the contrary contained in this Section 8.01, Tenant's obligations to carry the insurance provided for herein may be provided with the coverage of so-called blanket policy or policies of insurance carried and maintained by Tenant; provided, however, that coverage afforded Department shall not be reduced or diminished or otherwise be different from that which would exist under separate policies.

D. Workmen's Compensation according to the statutory limits as provided in IC 22-3-5-1 et seq. and in the Indiana Workmen's Occupational Diseases Act, IC 22-3-7-1 et seq.

E. Tenant shall maintain in effect at all times a policy of liquor liability insurance covering sales and serving of alcoholic beverages in an amount not less than $300,000.00.
Said insurance policies must be maintained in full force and effect at Tenant's sole expense throughout the term of this Lease and any policy or policies concerning subparagraphs (a), (b), (c) and (e) above must contain the following provisions:
"The City of Indianapolis and the County of Marion are additional insured for all coverage provided by this policy and shall be fully and completely protected by the policy for risks and for every injury, death, damage or loss of any sort sustained by any person, organization, or corporation in connection with [Tenant's/Insured's] acts/omissions, the acts or omissions of [Tenant's/Insured's] employees, agent, servants and invitees while upon or during their use or occupation of the Golf Course, as well as any activity performed by [Tenant/Insured], his employees, agents, servants and invitees by virtue of the rights granted to [Tenant/Insured] by an agreement with the City of Indianapolis, by and through Department and its Board of Parks and Recreation."
"The coverage provided by this policy to [Tenant/Insured], the City of Indianapolis or Marion County or any other named insured shall not be terminated, reduced or otherwise changed in any respect without providing at least thirty (30) days written notice to the City of Indianapolis at the following address: Corporation Counsel, Legal Division, 200 East Washington Street, Suite 1601, Indianapolis, Indiana 46204."

SECTION 8.02 MISCELLANEOUS INSURANCE PROVISIONS

Department and Tenant acknowledge and agree that Tenant shall be solely responsible for all supplies and equipment maintained in the clubhouse and at the Golf Course. Any insurance on any supplies, equipment or fixtures owned by Tenant or supplies in Tenant's possession for sale shall be covered by Tenant's own property insurance policy and Tenant agrees not to make any claim against Department for any losses to any such equipment, supplies or fixtures.

SECTION 8.03 EVIDENCE OF INSURANCE

Tenant shall furnish Department with certificates of insurance referred to in the foregoing sections of this Article 8 evidencing such coverage prior to the Commencement Date and furnish all renewals thereof.

SECTION 8.04 INDEMNIFICATION OF DEPARTMENT

Tenant shall indemnify, defend, exculpate, and hold harmless Department, its Board of Directors, the Consolidated City of Indianapolis, County of Marion, and all their officials, employees or agents from any liability due to loss, damage, injury or other casualties caused to the person or property of anyone on the Premises or resulting from the performance or breach of any of the terms of this Lease or from the installation, existence, use, maintenance, condition, repairs, alterations or removal of any equipment or material, arising from any and all acts or omissions of Tenant or his employees, contractors, agents, and invitees. Tenant also agrees to pay all reasonable expenses and attorneys' fees incurred by or imposed on the City of Indianapolis, County of Marion, the Department, or any of their officials, agents or employees in connection herewith in the event that Tenant shall default under the provisions of this Lease. It is specifically agreed by and between the parties executing this Lease that it is not intended by any of the provisions of any part of this Lease to establish the public or any member thereof, as a third party beneficiary hereunder, or to authorize anyone not a party to this Lease to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Lease.

ARTICLE 9

REPAIRS AND DESTRUCTION OF IMPROVEMENTS

SECTION 9.01 MAINTENANCE OF IMPROVEMENTS

Tenant shall, at its sole cost and expense, keep and maintain the Premises, including all building and improvements of every kind (excepting a two-story barn located at the southwest end of Premises) that may be a part thereof, and all appurtenances thereto in good and neat order, condition and repair, and except as specifically provided herein, restore and rehabilitate any improvements which may be damaged or destroyed by fire, casualty, or any other cause. Department shall not be obligated to make repairs or replacements of any kind, nature, or description whatsoever to the Premises or any buildings or improvements thereon. If Tenant desires to make any capital improvements, Tenant shall (i) obtain the prior written consent of the Department (not to be unreasonably withheld) for the design and cost of such capital improvement project and (ii) if required comply with and abide by all federal, state, county, municipal and other governmental statutes, ordinances, laws and regulations affecting the Premises, the improvements thereon or any activity or condition on or in the Premises.

SECTION 9.02 DAMAGE OR DESTRUCTION TO IMPROVEMENTS

The damage, destruction or partial destruction of any building or other improvement which is a part of the Premises shall not release Tenant from any obligation hereunder, except as hereinafter expressly provided, and in case of damage to or destruction of any such building or improvement, Tenant shall, at its sole expense, promptly repair and restore the same to a condition as good as, or better, than that which existed prior to such damage or destruction. Tenant's obligation to repair and restore is limited to the use of proceeds received by Tenant of any insurance covering such damage or destruction. Any amount over and above insurance proceeds spent by Tenant shall be at its sole discretion.

SECTION 9.03 DAMAGE OR DESTRUCTION OCCURRING TOWARD END OF TERM

Anything to the contrary in the immediately preceding paragraphs of this Article 9 notwithstanding, in the case of destruction of buildings or improvements on the Premises or damage thereto from any cause so as to make same unusable during the last two (2) years of the Term hereof, Tenant, at its sole discretion, may terminate this Lease by written notice to Department within thirty (30) days after the occurrence of

such damage or destruction. In the event of such termination, there shall be no obligation on the part of Tenant to repair or restore the building or improvements, but any proceeds from policies of insurance relating to the buildings or improvements so damaged shall remain the property of the Department. Upon such termination rent, taxes, and any other sums payable by Tenant shall be prorated as of the termination date, and in the event rent, taxes or other sums payable by Tenant have been paid in advance, Department shall promptly rebate same for the unexpired period for which payment shall have been made.

ARTICLE 10

CONSTRUCTION

SECTION 10.01 TENANT'S CONSTRUCTION

A. Department hereby agrees to deliver possession of the Premises to Tenant on the effective date of this Lease, and Tenant agrees that promptly after delivery of possession of the Premises by Department, to commence and proceed with due diligence to make all improvements to the Premises in accordance with Exhibit B and C, and install on the Premises all fixtures and other equipment which may be necessary or proper in the operation of Tenant's business. Tenant shall submit all plans and specifications related to its construction work to Department for approval, which approval shall not be unreasonably withheld or delayed. Tenant shall also provide to Department on a monthly basis a written construction status report and copies of all periodic construction draw requests provided to the Bank.

B. The projects described in Exhibit "B" shall not be considered complete until a completion certificate, certifying completion of the project, is executed by an authorized Department employee.

C. Tenant shall use its best efforts to minimize the disruption to the Golf Course during the construction of any capital improvements.

D. All equipment, furnishings, signs and advertising installed by Tenant shall be consistent with the Quality Standards and project plans outlined in Exhibits "B" and "C". Any deviations must be approved in advance by the Department.

E. Tenant agrees that all equipment, furnishings and improvements provided shall meet the requirements of all applicable building, fire, pollution and other related statutes, regulations and codes.

SECTION 10.02 LICENSES AND PERMITS

Tenant shall be responsible for obtaining all appropriate licenses and/or permits necessary for construction purposes and shall bear all related costs. Tenant shall ensure that all construction shall be done in accordance with applicable federal, state and local laws and ordinances.

SECTION 10.03 LIENS

Tenant's duty is to keep the Premises free of liens. Tenant shall keep all of the Premises and every part thereof and all buildings and other improvements at any time located thereon, free and clear of any and all mechanic's, materialmen's and other liens for or arising out of or in connection with work or labor done, services performed, or material or appliances used or furnished for or in connection with any operations of Tenant, any alteration, improvement,or repairs or additions which Tenant may make or permit or cause to be made, or any work or construction by, for or permitted by Tenant on or about the Premises, or any obligation of any kind incurred by Tenant, and at all times promptly and fully to pay and discharge any and all claims of liens and suits of other proceedings pertaining thereto. If Tenant desires to contest any such lien, it shall notify Department of its intention to do so within ten (10) days after the filing of such lien. In such case Tenant shall, on demand, protect Department by a surety bond against such lien and any cost, liability, or damage arising out of such contest. Tenant shall not be considered in default hereunder until thirty (30) days after the final determination of the validity of such lien(s), within which time Tenant shall satisfy and discharge such lien(s) to the extent held valid. In the event of such contest, Tenant shall protect and indemnify Department against all loss, expense and damage resulting therefrom.

ARTICLE 11

DEFAULT

SECTION 11.01 DEFAULT BY TENANT

Each of the following shall be deemed a default by Tenant under this Lease:

A. Tenant's failure to pay any installment of rent when the same becomes due and the failure continues for fifteen (15) days.

B. Tenant's failure to perform or observe any other covenant, term or condition of this Lease to be performed or observed by Tenant and if curable, the failure continues for thirty (30) days after notice thereof is given to Tenant;

C. Abandonment of the Leased Premises by Tenant;

D. The filing or execution or occurrence of:

(i) An involuntary petition in bankruptcy against Tenant and the failure of Tenant, in good faith, to promptly commence and diligently pursue action to dismiss the petition.

(ii) A petition against Tenant seeking a reorganization, arrangement, composition, readjustment, liquidation, dissolution, or other relief of the same or different kind under any provision of the Bankruptcy Act, and the failure of Tenant in good faith to promptly commence and diligently pursue action to dismiss the petition.

(iii) A general assignment for the benefit of creditors by Tenant.

(iv) The taking any part of the leasehold created hereby, or any part thereof, upon foreclosure, levy, execution, attachment or other process of law or equity.

E. Tenant's failure to perform its obligations under any written Agreement resulting in a default pursuant to the terms of such Agreement.

SECTION 11.02 NOTICE OF DEFAULT

In the event of a default as provided in subparagraph (A) of the foregoing Section 11.01, Tenant shall have thirty (30) days from the receipt of written notice from Department to cure such default. Tenant shall not be deemed to be in default concerning all other events of default listed in the foregoing Section 11.01 unless Department shall have first provided Tenant with written notice detailing said default, and Tenant fails to cure such default within thirty (30) days from receipt of Department's written notice, or if the default is of such a nature that it cannot be cured within said thirty (30) day period, Tenant fails to commence to cure such default or fails thereafter to proceed to cure such default with all possible diligence. Provided, however, that the 30 day cure period provided in this section 11.02 shall commence upon the receipt by the Department of any notice of default by the Tenant from any financial institution providing financing for the improvements to be made under this Lease by the Tenant.

SECTION 11.03 DEPARTMENT'S REMEDIES

A. Upon the Termination of the Lease, Department may, at its option in addition to any other remedy or right it has hereunder of by Law:

(i) Re-enter the Leased Premises, without demand or notice, and resume possession by an action in law or equity or by force or otherwise and without being liable in trespass or for any damages pursuant to Article 13 hereof. Department may remove all persons and property from the Leased Premises and such property may be removed and stored at the cost of Tenant. Tenant's liability for damages shall survive such termination; or

(ii) Terminate this Lease at any time pursuant to Sections 11.01 and 11.02 upon the date specified in a notice to Tenant. Tenant's liability for damages shall survive such termination. Upon termination such damages recoverable by Department from Tenant shall be the cost and

expenses paid or incurred by Department, less any revenues received by Department from the operations of the Premises in connection with:

(a) Obtaining possession of the Leased Premises;

(b) Care, maintenance, and repair of the Leased Premises while vacant;

(c) Removal and storage of Tenant's or other occupant's property;

(d) Reletting the whole or any part of the Leased Premises;

ARTICLE 12

ASSIGNMENT

SECTION 12.01 ASSIGNMENT

Tenant shall not sublet or assign this Lease nor any portion thereof, nor any property associated with this Lease without prior written approval, which shall not be unreasonably withheld, of the Department. Unapproved subletting or assignment shall be an event of default in accordance with Section 11.01 of this Lease and shall be grounds for immediate termination of this Lease. The Tenant may assign its rights to the Termination Payment with the prior written consent of the Department.

It is agreed that all terms and conditions of this Lease shall extend to and be binding on assignees, sub-lessees and other successors as may be approved by the Department.

Tenant shall be liable for acts and omissions by any subcontractor affecting this Lease. The Department reserves the right to directly terminate any sublessee or assignee for any cause for which Tenant may be terminated.

SECTION 13

TERMINATION

SECTION 13.01 TERMINATION

A. Either party may terminate this Lease with cause by giving at least thirty (30) days written notice to the other party. Department may also terminate this Lease pursuant to the terms of Section 11.

B. It is agreed by the parties hereto that the work described in this Lease to be performed by the primary shareholder of Tenant is of a personal service, highly professional in nature, and that the identity of the individual who is to be personally responsible for such work is of prime importance to Department. The parties therefore agree that in the event of the death or disability of Ronald H. West, wherein Ronald H. West is unable to substantially perform on behalf of Tenant for a period in excess of sixty (60) days, this Lease will automatically terminate as of December 31 of the year in which such event occurs provided that Tenant can provide evidence reasonably satisfactory to the Department of the continued operation of the Golf Course by Tenant under the terms of this Lease until December 31. If Tenant is unable to so satisfy the Department, this Lease may be terminated by Department upon 15 days notice. Department shall thereafter be free to engage a replacement for the operation and maintenance of the Golf Course. Provided, however, Tenant shall also have the right to provide evidence to the Department to allow continued operation of the Golf Course by Tenant beyond December 31 in accordance with the terms of this Lease. While under no obligation to do so in the event of the death or disability of Ronald H. West under this paragraph, the Department may elect to waive the automatic termination provision and allow this Lease to continue in accordance with its terms. The Department shall make its determination within sixty (60) days of receipt of evidence supporting the continuation of this Lease.

C. For purposes of this Lease, "cause" shall be defined as (i) incompetence, gross inefficiency, dishonesty, drunkenness, immoral conduct, insubordination, discourteous treatment of the public, neglect of duty, violation of the laws, ordinances, regulations and policies or any other failure of good behavior, or any other acts of misfeasance, malfeasance or nonfeasance under this Lease by Tenant or a representative thereof or conduct of the golf operations in such a manner as to bring discredit upon the Department or to create a financial loss to the Department or the City of Indianapolis, or (ii) the breach of the terms of this Lease by the Department which has not been cured within 30 days of the date notice of breach is received by the Department.

D. Upon termination of this Lease, (i) the Department shall pay to Tenant or its assignee or cause to be paid to Tenant or its assignee the Termination Payment, subject to the provisions of this Article 13 hereof; and (ii) Tenant shall immediately vacate the Premises and the Golf Course. The Termination Payment shall be paid within five (5) business days of termination. The Termination Payment shall be paid in full notwithstanding any asserted right of set off or other claim of Department.

E. Upon termination of this Lease, the Tenant shall immediately vacate the Premises and the Golf Course, and Tenant shall be accountable to the Department for any and all damage to the Golf Course, beyond normal depreciation, as such is determined by the Department.

F. By executing this Lease, the Department and the Tenant acknowledge that a significant investment will be made to the Premises and the Golf Course and such value will extend beyond the original term of this Lease. The Parties each agree that all improvements made to the Premises and the Golf Course shall become and remain a part of the Golf Course and be included in the definition thereof. Each party further acknowledges that disagreements may occur and litigation to resolve any such disagreement may be costly. At the termination of this Lease, all improvements made to the Premises and the Golf Course shall be the property of the Department, free and clear of all liens and encumbrances. The Termination Payment as provided for in Paragraph D of this Section 13.01 shall serve as the sole remedy of Tenant for any termination of this Lease by the Department after 36 months from the Commencement Date.

G. The amount of the Termination Payment has been determined by the Department and the Tenant based in part upon (a) the estimated cost of the improvements to be made by Tenant as described in Exhibit "B", (b) the amount of capital invested by Tenant in such improvements and (c) the amount of debt incurred by Tenant to finance such improvements. In the event of termination during the first 36 months of this Lease, (i) the Termination Payment shall be adjusted so that the Termination Payment shall not exceed the total of (b) and the outstanding balance of (c) at the time of termination; and (ii) no payment of the Termination Payment shall be made by the Department under this Section without proper documentation by Tenant. The Termination Payment after 36 months shall be adjusted if Tenant has not completed the improvements set forth in Exhibit C to be the lesser of (i) the Termination Payment or (ii) the Termination Payment as adjusted in the preceding sentence.

SECTION 13.02 DISPOSITION OF IMPROVEMENTS ON TERMINATION OF LEASE

Upon termination of this Lease, for any cause, Tenant shall not remove any capital improvements from the Premises including, but not limited to: clubhouse, maintenance building(s), sidewalks, walkways or paths, concrete site improvements, parking lots, or underground improvements.

ARTICLE 14

MISCELLANEOUS

SECTION 14.01 NOTICES

A. All rental and other payments to be made by Tenant shall be payable to Department at the address set forth below.

B. All notices, demands, or other writings required under this Lease shall be deemed to be delivered (whether or not actually received) when deposited in the United States mail, registered or certified and postage prepaid, and addressed as follows:

To Department:	Department of Parks and Recreation 1426 W. 29th Street Indianapolis, Indiana 46208 Attn: Leon Younger, Director
To Tenant:	R. H. West Management Corporation 8400 Mann Road Indianapolis, Indiana 46221 Attn: Ronald H. West, President

With a Copy To: First Indiana Bank
135 N. Pennsylvania Street
Indianapolis, IN 46204
Attn: Chris Barham

The address to which any notice, demand, or other writing may be given, made or sent to any party as above provided, may be changed by written notice given by such party as above provided.

SECTION 14.02 WARRANTIES OF TITLE AND QUIET ENJOYMENT

Department covenants that it is the fee simple owner of the Premises and has full right to enter into this Lease, and further covenants and agrees that if Tenant shall perform all the covenants and agreements herein stipulated to be performed on Tenant's part, Tenant shall at all times during the term of this Lease have peaceable and quiet enjoyment and possession of the Premises without any manner of hindrance from Department or any person or persons lawfully claiming the Premises.

SECTION 14.03 ENCUMBRANCE OF TENANT'S LEASEHOLD INTEREST

Tenant may not encumber by mortgage, deed of trust or other instrument its leasehold interest and estate in the Premises with an agreement which provides for the subordination of Department's fee simple interest in the property or Premises.

SECTION 14.04 AMENDMENTS

This Lease may be amended, modified or supplemented only by a written instrument signed by each of the parties hereto, and any such amendment may pertain to one or more provisions of this Lease without affecting other provisions of this Lease.

SECTION 14.05 ATTORNEYS' FEES

If any action at law or in equity shall be brought to recover any rent or other sum due under this Lease, or for or on account of any breach of, or to enforce or interpret any of the covenants, terms, or conditions of this Lease, or for the recovery of the possession of the Premises, the prevailing party shall be entitled to recover from the other party at part of the prevailing party's costs, reasonable attorneys' fees, the amount of which shall be fixed by the court and shall be made a part of any judgment or decree rendered.

SECTION 14.06 LEASE MEMORANDUM

This Lease shall not be recorded, however, upon request of either party, Department and Tenant shall execute and acknowledge a memorandum or short form lease setting forth the parties, description of the Premises, the original term, options for extension of the original term and any other provisions hereof, the inclusions of which may be mutually agreed upon by Department and Tenant, which memorandum or short form lease may be recorded by either party at any time after the execution of this Lease.

SECTION 14.07 FORCE MAJEURE

In the event that Tenant shall be delayed or hindered in or prevented from doing or performing any act or thing required in this Lease by reason of strikes, lock-outs, causalities, acts of God, labor troubles, inability to procure materials or equipment, governmental laws or regulations or other causes beyond Tenant's reasonable control, then Tenant shall not be liable or responsible for any such delays and the doing or performing of such act or thing shall be excused for the period of such delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay.

SECTION 14.08 SEVERABILITY

In the event any provision contained in this Lease is determined invalid by a forum of competent jurisdiction, such provision shall be stricken and all other provisions which can be effected independently of the stricken provision shall remain in full force and effect.

SECTION 14.09 RELATIONSHIP OF PARTIES

Nothing contained herein shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent, or of joint venture, between the parties hereto.

SECTION 14.10 SUCCESSORS IN INTEREST

The covenants, agreements, terms, conditions and warranties of this Lease shall be binding upon and inure to the benefit of Department and Tenant and their respective successors and assigns, but shall create no rights in any other person except as may be specifically provided for herein.

SECTION 14.11 GOVERNING LAW

This Lease has been executed under and shall be governed by the laws of the State of Indiana.

Tenant shall comply with all applicable Federal laws and regulations, state statutes and City-County ordinances and regulations relative to the operation of the Golf Course and this Lease.

SECTION 14.12 HEADINGS

The section headings are inserted as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this Lease, nor in any way affect this Lease.

SECTION 14.13 TIME OF THE ESSENCE

Time is of the essence of this Lease, and of each and every covenant, term and provision hereof.

SECTION 14.14 ENTIRE AGREEMENT

This Lease and the exhibits attached hereto set forth all the covenants, agreements, conditions, understandings and promises between Department and Tenant concerning the Premises, and there are no covenants, agreements, conditions, understandings or promises, either oral or written, between the parties other than herein set forth. Except as otherwise herein provided, no subsequent alteration, amendment, change or addition to this Lease shall be binding upon Department or Tenant unless reduced to writing and signed by them.

ARTICLE 15

OTHER PROVISIONS

SECTION 15.01 COOPERATION OF Department

Department hereby agrees to cooperate and assist Tenant in obtaining all necessary governmental approvals and permits, and other reasonable request made by Tenant from time to time.

SECTION 15.02 BROKER'S COMMISSION

Tenant warrants that there are no claims for brokers commission or finders fees in connection with its execution of this Lease, and agrees to indemnify and save harmless Department from any liability that may arise from such claims, including reasonable attorneys' fees.

EXECUTED on the date first above written.

DEPARTMENT:

DEPARTMENT OF PARKS AND RECREATION of the Consolidated City of Indianapolis

By: _____
Leon Younger, Director

TENANT:

R. H. WEST MANAGEMENT CORPORATION

By:_____
Ronald H. West, President

APPROVED AS TO FORM AND CONTENT
BINGHAM SUMMERS WELSH & SPILMAN,
Contract Counsel
By: _____
Joseph E. DeGroff

APPROVED BY:

_____
James H. Steele, Jr., City Controller

EXHIBIT A

DESCRIPTION OF REAL ESTATE

The Real Estate consists of approximately 150 acres, more or less located at 8400 S. Mann Rd., Indianapolis, Indiana, 46227. The Facility currently consists of a nine hole golf course, driving range with covered stalls, golf car storage building, maintenance building, clubhouse which includes a snackbar, restrooms, and office space. The property adjoining golf course allows for the expansion of an additional nine golf holes.

EXHIBIT B

Winding River Proposal
Dated August 30, 1993

EXHIBIT C

DESCRIPTION OF PROJECT

GENERAL PLAN FOR CONSTRUCTION PHASING

Winding River Golf Course Expansion

The intent of this plan is to construct a high quality golf facility which will have excellent playing surfaces along with aesthetically pleasing and strategic golf features. Players of all abilities will be able to play and enjoy this golf course. It will be maintainable within a reasonable budget with regard to the type and scope of the facility.

PHASE ONE - Assuming a November 1995 start date, rough shaping and excavation would commence on the practice range, practice putting green as well as new hole numbers 3, 4, 5, 11 through 18. Work would also begin on enlarging the irrigation lake. Construction would continue, in 1995, until weather would not permit further work. The existing golf course would remain open at all times.

As early as weather permits in 1996, work would commence to complete the new golf holes, practice range and practice putting green. This would involve construction of drainage features, greens, tees, bunkers, the irrigation system, finishing shaping and grassing. The target date for the project to be grassed is September 15, 1996. At this point grow-in of the golf course will begin. The existing golf course would remain open at all times.

In the late fall or early winter of 1996, work will begin on the required buildings (clubhouse and/or cart barn and the parking lot).

The facility will be operated from the new clubhouse location starting in the 1997 season. All efforts will be made so that the practice range and putting green will be open as soon as possible in the Spring of 1997. Some limited play will be allowed on the new holes if they are mature enough to handle the level of play expected as necessary to accommodate play on nine holes as remodeling of old holes start. At this point Phase Two will commence.

PHASE TWO - In 1997, grow-in of the new golf course will continue. When feasible, construction to remodel the old holes will begin. This will consist of bunkers and/or mounding on holes 1, 2, 7, 8 and 9. Sodding will be used at in-play areas which are remodeled so as to expedite the time frame required to return these holes to play. A new lake will be constructed between holes 3 and 7. Also, new greens will be constructed on holes 6 and 10. Irrigation automation of existing fairways will be done at times and in

locations on holes that are out of play for remodeling. Nine holes will be open at all times to accommodate play.

It is planned that in the Spring of 1998 all eighteen holes will be open for play. The timing of this plan ensures a well grown in golf facility that is appealing and impressive to the public and mature enough to endure play and maintain the highest quality playing conditions.

PHASE THREE - The final phase involves reconstruction (and enlargement where necessary) of the tees and additions of forward tees on the old holes. This will be necessary to accommodate the amount of play expected to maintain high quality playing conditions. Also, the completion of forward tees on all holes will encourage the enjoyment of the facility by beginners, ladies and seniors. A new tee complex will be constructed at approximately the location of the old clubhouse giving the hole its final, proposed length. All tees will be sodded so that they may be returned to play as soon as possible. Assuming a November, 1995 project start date, Phase Three shall be completed by May 31, 1999.

During all phases tree planting will be an ongoing operation. Groups of conifers and deciduous trees will be planted adjacent to fairways and greens. Spring flowering trees will be located at tee complexes.

THOUGHTS AND CONSIDERATIONS

The logic involved in expanding Winding River Golf Course was determined by many of the following factors:

1. Playability, Enjoyment and Challenge as a Par 70

Playability, able to play course repeatedly without losing the pleasure of golf. Capable of playing in a reasonable time. As a par 70 the net effect would be a reduction in playing time. This reduction in playing time would allow for more rounds per day and increase total player count. Maintaining the exercise and relaxation aspects of the sport. Challenge the player through variety of ball positions and club selections.

2. Meeting Future Community Recreational Needs

With the airport expansions, proposed commercial development and expected housing increases the southwest portion of Indianapolis and Marion County will need additional recreational facilities to meet the burgeoning population.

Continued improvement and development of the total park complex via increased visibility and usage.

3. Privatization Model

Excellent example of government working with the private sector for the betterment of the taxpayer with additional recreational services.

Independent funding with a minimum of government revenue needed.

Ability to expedite the expansion and renovation.

Job creation without being a direct burden to current government payroll.

Long range asset appreciation and revenue generation.

4. Maintenance and Environment

Course design compliments the maintenance needed for 50,000 plus rounds a year.

Conservative use of available lands.

Minimum tree displacement and maximum tree replanting.

Lakes which incorporate course beautification, player challenge and provide habitat for nature's animals.

DESIGN FEATURES

Tees: Tees will provide a variety of shot selections and ample tee marker movement, thus eliminating severely worn areas.

Fairways: Fairways will have needed width to accommodate the player's skill levels. The fairway width will also allow for planting of trees parallel to the fairways offering protection as well as appearance.

Greens: Greens will be gently contoured and open in the front. All greens will gather, not reject, shots.

Lakes: Will provide aesthetics to the course as well as shot development. Lakes will have the capability of maintaining a constant water level.

Bunkers: Bunkers will have minimum depth and lip size. Sand will be USGA approved and sand texture will provide for speed of play by having the needed compactness to avoid buried lies.

HOLE BY HOLE DESCRIPTIONS

HOLE #1 (old hole #2)	380 yards rear
PAR 4	365 yards middle
	300 yards front

This hole lends itself very well to being the starting hole. It is a medium length, straight hole with a downhill tee shot and an uphill second shot. The addition of a bunker at the right front of the green will improve the aesthetics and depth perception of the opening hole.

HOLE #2 (old hole #3)	210 yards rear
PAR 3	195 yards middle
	140 yards front

The second hole is a medium long par three. The hole travels down a hill thirty feet in altitude, making this hole play shorter than its measured length. A bunker will be added to the right side of the green to "catch" errant shots from running down the hill.

HOLE #3 (old #4 green)	420 yards rear
PAR 4	400 yards middle
	330 yards front

This hole will be relocated to the right of its existing location, yet still play to the old green. Relocating the tee and fairway straightens the hole, and a straight shot will be required considering the addition of two lakes around the green. Mounding will be added behind the green to improve definition and aesthetics. This medium-long par 4 will be one of the most challenging and beautiful holes at Winding River.

HOLE #4	350 yards rear
PAR 4	320 yards middle
	270 yards front

The fourth hole is an uphill, short par 4. The tee shot is played adjacent to two lakes. The second shot will be played uphill to a green located in front of the old #4 tee. The new green will be bunkered front right and have a grassy bunker along the left side of the green to gather errant shots. The best approach to this green will be from the left side of the fairway.

HOLE #5	490 yards rear
PAR 5	480 yards middle
	420 yards front

This hole is a "reachable" par 5 in two shots for the better players. Being downhill and short, all players will have a good chance at a birdie. The tee shot is hit into an open area. However, the hole progressively gets tighter on the second shot. The green will snug up to the bluff on the left requiring precision from the better players trying to reach in two. The green is shallow, but will gather in approach shots.

HOLE #6 (old #5 green)	350 yards rear
PAR 4	335 yards middle
	280 yards front

When completed (new green constructed), the sixth hole will be a solid, dogleg right par 4. The green will be cut into a hill and require a precise second shot, especially if the pin is tucked left behind a bunker. The front of the green is open to allow a "run up" shot. A bunker behind the green will add definition and help depth perception for the second shot.

HOLE #7 (old #4)	410 yards rear
PAR 4	390 yards middle
	310 yards front

The tees will be rebuilt to provide visibility to the fairway, allowing this hole to become a good medium length par 4. Construction of a lake between holes 3 and 7 will add a great deal of beauty and strategy, and also precision on the second shot (especially after an errant drive). Mounding will be added behind the green to improve aesthetics and definition.

HOLE #8 (old #7)	390 yards rear
PAR 4	370 yards middle
	320 yards front

A medium length par 4 swinging slightly left to right. Addition of trees adjacent to the fairway, left and right, will tighten the tee shot landing area. A bunker constructed to the front left of the green will allow a good placed drive in the right half of the fairway the best angle to the green.

HOLE #9 (old #8)	170 yards rear
PAR 3	145 yards middle
	100 yards front

A good, solid par 3 playing slightly uphill. A large bunker placed front left will make the hole look shorter, placing a great need for accurate club selection. Mounding will be constructed behind the green for definition and to help provide depth perception.

HOLE #10 (old #9)	530 yards rear
PAR 5	500 yards middle
	440 yards front

The tenth is a long par 5 which will be improved by construction of a new green and bunker complex. The new green will be lowered and the hill in front of the green will be removed to provide visibility to the green from the tee landing area. Fairway bunkers short of the green will make a player play a precise second shot. The green will be well bunkered, yet open in front allowing for "knock-down" shots.

HOLE #11	200 yards rear
PAR 3	180 yards middle
	130 yards front

Hole #11 is a par three of varying lengths and angles of tee shots. The green is bunked front left and the fairway swings well left of the green offering a player a "bail out" area. As the tee shortens, they move to the right to lessen the difficulty of the shot required. The green will be gently contoured and gather shots which land on the putting surface.

HOLE #12	450 yards rear
PAR 4	430 yards middle
	350 yards front

The twelfth hole is a long par 4 with a relatively open tee shot. The second shot plays to a rather large green with bunkers on the left. The green is long so a running second shot will have a chance to come to rest on the green. This hole will be located in the field such that it will not interfere with play on the old first hole during construction.

HOLE #13	190 yards rear
PAR 3	165 yards middle
	110 yards front

The thirteenth is a straight forward par 3 of medium length. A precise approach shot will not guarantee you a par, because a rolling green will require great touch when putting.

HOLE #14	310 yards rear
PAR 4	300 yards middle
	250 yards front

Hole #14 is a short par 4 requiring accuracy on the tee shot as trees border the left side of the hole and trees are on the right side of the fairway just short of the landing area. Bunkers left and right of the green will provide direction for the tee shot. The green will be cut into the hill and bunkered front left. It will be on the small side, so good approach shots are required to get a good score.

HOLE #15	430 years rear
PAR 4	410 yards middle
	350 yards front

The 15th hole is the beginning of a series of finishing holes. It is a medium long par 4. It is a fine hole with an existing downhill tee shot lined by trees. The second shot plays slightly uphill to a green well bunkered. A "bail out" area will exist at the front right side of the green.

HOLE #16	450 yards rear
PAR 4	430 yards middle
	350 yards front

This long hole plays straightaway. A tee shot which is placed on the right side of the fairway will give the player the best angle for their second shot. The second shot is slightly downhill to a green bunkered on the left along with a grassy hollow which runs the length of the green. The best shot to play into the green is to play to the right and allow the ball to run down to the green.

HOLE #17	160 yards rear
PAR 3	145 yards middle
	120 yards front

Hole #17 plays downhill to a gently rolling green with a bunker front right protecting a premium pin position.

HOLE #18	540 yards rear
PAR 5	520 yards middle
	450 yards front

Hole #18 is the longest hole at Winding River and will require good shot making to make a par. The tee shot needs to avoid a fairway bunker on the right side of the fairway. Only the longest players will be able to carry the bunker. The fairway swings left on the tee shot to guide players away from the out of bounds. The second shot will need to negotiate a fairway bunker on the right to set up for the third short. The third shot is to a small green nestled into a hillside, surrounded by trees and bunkers. This is a premium par 5, possibly the best hole at Winding River.

CLUBHOUSE AND CART BARN

The clubhouse layout will consist of a total square footage of approximately 6,000 square feet. The cart barn will be capable of holding and maintaining 80 carts. The square footage of the cart barn will be approximately 2,000 square feet.

The features of the clubhouse will be as follows:

1. Enlarged Pro Shop and receipt sales area;

2. Enlarged Snack Bar area complimented by a three-sided vista of the golf course;

3. Huge outdoor canopy covered deck area, for food and beverage consumption while enjoying a beautiful full view of the golf course, practice green and driving range;

4. Activity room with smoking area;

5. Handicap accessible;

6. Spacious restrooms that will be easily cleaned and maintained;

7. Ample office and storage areas.

The overall design will accommodate outings or group activities for seating. Video training could also be available with the new design layout.

EXHIBIT D

PERCENTAGE OF REVENUES PAID TO THE DEPARTMENT				
Period	Green Fees	Carts	Concessions	Driving Range
Years 1-3	0%	0%	0%	0%
Year 4	3	5	5	25
Year 5	4	5	5	25
Year 6	5	5	5	25
Year 7	8	5	5	25
Years 8-15	15	5	5	25

EXHIBIT E

QUALITY STANDARDS

A. Customer Service

1. Tee times scheduled easily

2. Bag stand near Clubhouse to drop clubs

3. Receipts are given for fees

4. Rules and regulations, including dress codes, attractively displayed

5. Information on passes, leagues, lessons, etc., readily available

6. Score cards, pencils, etc. readily available

7. Hole signs with yardage, par, etc., are well placed

8. Ball washers are operational

9. Towels are available at ball washers

10. Benches are adequate in number and well placed

11. Trash containers are available on the course

12. Wildlife Management Areas are designated with appropriate signage

13. Cold water is available on the course

14. Pace of play is appropriately monitored

15. Dress code is enforced

16. Shoe cleaners are available at clubhouse entrance

B. Staff

1. Professional staff are clearly identifiable
2. Staff consistently greet customers
3. Staff members present neat and clean appearance
4. Staff members are knowledgeable and communicate clearly
5. Ranger is friendly and courteous

C. Clubhouse

1. Clubhouse is clean and swept
2. Lighting fixtures are operating
3. Rest room floors are clean and swept
4. Sink and toilet fixtures are clean and without odor
5. Rest room supplies are available (e.g. soap, toilet tissue, towels)
6. Grounds are nicely landscaped

D. Pro Shop

1. Shop is adequately stocked and merchandise is attractively displayed
2. Pricing is competitive with comparable municipal golf courses

E. Snack Bar/Concession Area

1. Concession area is clean
2. Menu board is clearly visible
3. Food and drink prices are clearly stated on menu board

F. Grounds

1. Entrance clearly visible
2. Entrance well landscaped
3. Parking lot clean and well maintained
4. Parking lot has designated handicapped slots
5. Area surrounding Clubhouse is neatly groomed and landscaped
6. Area surrounding maintenance building is neatly groomed and landscaped
7. Maintenance building is neat and clean
8. First tee is nicely landscaped and attractive in appearance
9. Tee boxes are well maintained, with multiple markers where space allows
10. Grounds and bunkers will be maintained in a professional manner

11. Greens are consistent in speed, appearance and playability

12. Fairways are distinguishable from rough

G. Golf Carts and Cars

1. Adequate quantity and quality of rental golf carts* and pull carts are available for the course

2. Car is clean and refueled/recharged

3. Car is undamaged (seats, body dents, etc.)

4. Car performs well at all speeds and in all directions

5. Car is equipped with score cards and pencils

H. Driving Range (if applicable)

1. Hitting surfaces are well maintained

2. Balls are clean and uncut

3. Lighting is functional (where applicable)

4. Adequate rental clubs are available

5. Yardage signs are in place for 100, 150, 200, and 250 yards

6. Hitting area safety features are in place

I. Business operations

1. Where required, employee PGA credentials are maintained in good standing

2. All transactions are properly entered into the Department-provided cash registers

3. Cash registers are available for daily polling

4. All business provisions of contract with the Department (e.g. insurance, compliance with federal, state and local laws and regulations, non-discrimination, etc.) are consistently performed

PROPOSAL NO. 490, 1995. Councillor Curry reported that the Rules and Public Policy Committee heard Proposal No. 490, 1995 on August 8, 1995. The proposal authorizes the Agreement for the Operation and Maintenance of the Indianapolis International Airport Facilities by and Between the Indianapolis Airport Authority, BAA Indianapolis LLC, and BAA USA Holdings, Inc. Councillor Curry stated that the airport is not being sold and it is not being leased. By a 5-0 vote, the Committee reported the proposal to the Council with the recommendation that it do pass. Councillor Curry moved, seconded by Councillor Short, for adoption.

Councillor Curry introduced Betty Johnson, member, Indianapolis Airport Authority Board; Dennis Rosebrough, Director of Public Affairs, Airport Authority; Michael Stayton, Director of the Department of Public Works; and David Roberts, Director of the Airport Authority, BAA.

Councillor Golc voiced his support of this proposal. Councillor Gilmer asked if the Airport Authority Board will still be responsible for policy at the airport. Councillor Curry answered in the affirmative.

Councillor Jimison asked what is being changed by this venture and if the control of the airport is being sold. Mr. Stayton answered that this is a management contract. The Board retains all the authority it has had before this contract--the only change is that Mr. Roberts will be executive director of the airport rather than Dan Orcutt. The employees will be hired by BAA rather than the Airport Authority at comparable pay and benefits. This is simply a management contract; it is not a sale of the airport nor a lease of the airport.

Proposal No. 490, 1995 was adopted on the following roll call vote; viz:

27 YEAS: Beadling, Black, Borst, Boyd, Brents, Coughenour, Curry, Dowden, Franklin, Gilmer, Golc, Hinkle, Jones, McClamroch, Moriarty Adams, Mullin, O'Dell, Rhodes, Schneider, SerVaas, Shambaugh, Short, Smith, Tilford, West, Williams
0 NAYS: Gray
2 NOT VOTING: Giffin, Jimison

Proposal No. 490, 1995 was retitled SPECIAL ORDINANCE NO. 13, 1995 and reads as follows:

CITY-COUNTY SPECIAL ORDINANCE NO. 13, 1995

A SPECIAL ORDINANCE authorizing the Agreement for the Operation and Maintenance of the Indianapolis International Airport Facilities by and between the Indianapolis Airport Authority ("Authority"), BAA Indianapolis LLC, and BAA USA Holdings, Inc. (collectively, "BAA").

WHEREAS, the Authority previously requested proposals from parties interested in operating and maintaining the Indianapolis International Airport, three reliever airports, one general aviation airport, one heliport, and a foreign trade zone, all within the Indianapolis area; and

WHEREAS, BAA's response to the Request for Proposal was selected by the Authority because of BAA's unique and specialized professional experience in operating and managing highly-regarded, world-class airports of similar or larger size; and

WHEREAS, the Authority and BAA have negotiated the terms by which BAA would manage the Authority's facilities, and encompassed such terms in the proposed Form of Operating Agreement which is in substantially final form and attached hereto as Exhibit "A" (the "Operating Agreement"); and

WHEREAS, Ind. Code 36-1-14.3 requires that such Operating Agreement be approved by the City-County Council of the City ("Council"); now, therefore:

BE IT ORDAINED BY THE CITY-COUNTY COUNCIL OF THE
CITY OF INDIANAPOLIS AND OF MARION COUNTY, INDIANA

SECTION 1. The Council hereby approves the operation and maintenance of the Indianapolis International Airport, three reliever airports, one general aviation airport, one heliport, and the foreign trade zone by BAA pursuant to the terms of the Operating Agreement which is in substantially final form and attached hereto and incorporated herein.

SECTION 2. The Council hereby delegates to the Authority the authority to execute the Operating Agreement.

SECTION 3. This Resolution shall be effective upon adoption and compliance with Ind. Code 36-3-4-14.

EXHIBIT A

**AGREEMENT FOR THE OPERATION AND MAINTENANCE
OF
THE INDIANAPOLIS INTERNATIONAL AIRPORT FACILITIES**

THIS AGREEMENT FOR THE OPERATION AND MAINTENANCE OF THE INDIANAPOLIS INTERNATIONAL AIRPORT FACILITIES (hereinafter referred to as this "Agreement"), dated

_____, 1995, and executed by the **Indianapolis Airport Authority** (hereinafter referred to as the "Authority"), and **BAA Indianapolis LLC, an Indiana limited liability company**, and **BAA USA Holdings, Inc., a Delaware corporation** (hereinafter collectively referred to as the "Contractor"),

WITNESSETH

PREAMBLE

WHEREAS, the Authority owns and is responsible for the operation and maintenance of the Indianapolis International Airport, three reliever airports, one general aviation airport, one heliport, and a foreign trade zone, all in the Indianapolis area (hereinafter referred to collectively as the "Airport Facilities," as described in Schedule 1.07 attached hereto); and

WHEREAS, the Authority desires to have the Airport Facilities maintained and operated in the most efficient manner possible, while complying with all Legal Requirements; and

WHEREAS, the efficient operation and maintenance of the Airport Facilities requires unique and specialized professional skills together with experience in improving and managing highly-regarded, world-class airports of similar or larger size; and

WHEREAS, the Authority desires to maintain ownership of the Airport Facilities and to contract for the operation and maintenance of the Airport Facilities with an organization which has the specialized professional skills and experience to operate the Airport Facilities in the most efficient manner possible; and

WHEREAS, the Contractor responded to the RFP issued by the Authority for the operation and maintenance of the Airport Facilities; and

WHEREAS, the Contractor has available to it experienced professionals in the business of supplying operation, maintenance, and management services for facilities such as the Airport Facilities; and

WHEREAS, the Authority and the Contractor wish to enter into this Agreement setting forth their respective rights, duties, privileges, and responsibilities.

NOW, THEREFORE, in consideration of the mutual promises and commitments hereinafter described, the Authority and the Contractor agree as follows:

ARTICLE I.
DEFINITIONS

Section 1.01 Adjusted Baseline. The Baseline Projection, as adjusted in Article VI or elsewhere.

Section 1.02. Administrative Services Component. The support services for the Airport Facilities, including, but not limited to, finance and human resources services and those services more fully described in Section 3.06 herein.

Section 1.03. Agreement Year. The period commencing with the Effective Date and ending at 12:00 midnight on December 31, 1996, and for each subsequent Agreement Year thereafter, the period commencing on 12:00 midnight on December 31 of the preceding Agreement Year and ending on 12:00 midnight on December 31 of the applicable Agreement Year or the Termination Date.

Section 1.04. Airfield Services Component. The airfield activities and the oversight of aircraft services at the Airport Facilities, including those services more fully described in Section 3.06 herein.

Section 1.05. Airlines. Those airlines which utilize the Airport Facilities, including, without limitation, those airlines set forth in Schedule 1.05 attached hereto.

Section 1.06. Airport Director. The person selected by the Contractor pursuant to Section 3.04 herein to be in charge of the operation, maintenance, and management of the Airport Facilities on the Contractor's behalf pursuant to the terms of this Agreement. In no event shall the Airport Director be deemed to be the airport director or other official described in any documents relating to the issuance of bonds by the Authority and neither the Contractor nor the Airport Director shall have any liability whatsoever thereunder.

Section 1.07. Airport Facilities. The Indianapolis International Airport, three reliever airports, one general aviation airport, the Downtown Heliport, and the Foreign Trade Zone, all in the Indianapolis area, and any additions to or replacements thereof (including capital improvements), owned by the Authority and operated and maintained by the Contractor, all as further described in Schedule 1.07 attached hereto. The three reliever airports are Eagle Creek Airport, Metropolitan Airport, and Mount Comfort Airport. Speedway Airport is the general aviation airport. Except with respect to Speedway Airport, which is to be replaced by Hendricks County Airport, the term "Airport Facilities" shall not include any airport facility in addition to or in replacement of any existing airport facility.

Section 1.08. Annual Capital Budget. The capital budget prepared by the Contractor on an annual basis, as approved by the Authority and the City-County Council of the City of Indianapolis and not disapproved by the Airlines.

Section 1.09. Annual Operating Budget. The operating budget prepared by the Contractor on an annual basis, as approved by the Authority and the City-County Council of the City of Indianapolis.

Section 1.10. Authority Agreements. All leases, agreements, contracts, documents, and instruments to which the Authority is a party, which are in excess of $50,000 per annum, which relate to the Contractor's operation, maintenance, and management of the Airport Facilities, and which are listed in Schedule 1.10 attached hereto.

Section 1.11. Baseline Projection. The baseline projection attached hereto as Schedule 1.11 which projects the Net Airline Cost from the actual 1994 level of $____ per Enplaned Passenger (an aggregate of $) for the first Agreement Year through the tenth Agreement Year based on the number of Projected Enplaned Passengers, all expressed in average 1994 dollars.

Section 1.12. Beginning Inventory. The spare parts, tools, materials, and supplies at the Airport Facilities as of December 31, 1995, which are intended to be used by the Contractor.

Section 1.13. Business Day. A day on which banks in Indianapolis, Indiana are open for business.

Section 1.14. Capital Expenditures. Those items of capital expenditures costing more than $2,500 but less than $100,000, as set forth on line _____ of the Baseline Projection, which amounts may be adjusted by mutual agreement of the Authority and the Contractor from time to time.

Section 1.15. Capital Improvements. The improvements to the Airport Facilities costing $100,000 or more, including major repairs and replacements to the Airport Facilities, which amounts may be adjusted by mutual agreement of the Authority and the Contractor from time to time.

Section 1.16. CERCLA. The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 USC 9601 *et seq.*, and any future amendments.

Section 1.17. Code. The Internal Revenue Code of 1986, as amended.

Section 1.18. Consumer Price Index or CPI. The Consumer Price Index, all Urban Consumers, U.S. City Annual Index, published by the U.S. Department of Labor, Bureau of Labor Statistics or some other agreeable index if the CPI is discontinued.

Section 1.19. Contractor's Proposal. The Proposal submitted by the Contractor to the Authority dated December 9, 1994, as modified by the supplemental proposals dated February 24, 1995, February 28, 1995, March 6, 1995, March 13, 1995, and March 17, 1995.

Section 1.20. Damages. All damages, including without limitation, punitive damages, liabilities, costs and expenses, losses, diminutions in value, fines, penalties, injunctions, demands, claims, injuries, cost recovery actions, lawsuits, administrative proceedings, orders, response action costs (including, but not limited to, the cost of any investigation, testing, monitoring, repair, cleanup, detoxification or corrective or remedial action), compliance costs, consultants' fees, attorneys' and paralegals' fees, and litigation expenses.

Section 1.21. Effective Date. The date on which the Contractor takes responsibility for the day-to-day operation and maintenance of the Airport Facilities, which date shall be 12:01 a.m., Indianapolis time, on October 1, 1995, or a different date mutually agreed upon by the Authority and the Contractor.

Section 1.22. Enplaned Passengers. Ticketed passengers departing Indianapolis International Airport on a scheduled or charter airline. The term Enplaned Passengers includes both originating and transfer passengers. It excludes (a) passengers who do not deplane at Indianapolis International Airport to change airplanes, (b) crew members, (c) non-revenue passengers, and (d) general aviation passengers.

Section 1.23. Environmental Claim. Any investigation, notice, violation, demand, allegation, action, suit, injunction, judgment, order, consent decree, penalty, fine, lien, proceeding or claim (whether administrative, judicial or private in nature) arising (a) pursuant to, or in connection with, an actual or alleged violation of, any Environmental Law, (b) in connection with any Hazardous Material or actual or alleged Hazardous Material Activity, (c) from any abatement, removal, remedial, corrective or other response action in connection with a Hazardous Material, a Hazardous Material Activity or an Environmental Law or (d) from any actual or alleged damage, injury, threat or harm to health, safety, natural resources or the environment.

Section 1.24. Environmental Law. Any current or future Legal Requirement pertaining to (e) the protection of health, safety, and the indoor or outdoor environment, (f) the conservation, management or use of natural resources and wildlife, (g) the protection or use of surface water and groundwater, (h) the management, manufacture, possession, presence, use, generation, transportation, treatment, storage, disposal, Release, threatened Release, abatement, removal, remediation or handling of, or exposure to, any Hazardous Material or (i) pollution (including any Release to air, land, surface water, and groundwater), including, without limitation, CERCLA, RCRA, Federal Water Pollution Control Act, as amended, 33 USC 1251 *et seq.*, Clean Air Act of 1966, as amended, 42 USC 7401 *et seq.*, Toxic Substances Control Act of 1976, 15 USC 2601 *et seq.*, Hazardous Materials Transportation Act, 49 USC 5101 *et seq.*, Occupational Safety and Health Act of 1970, as amended, 29 USC 651 *et seq.*, Oil Pollution Act of 1990, 33 USC 2701 *et seq.*, Emergency Planning and Community Right-to-Know Act of 1986, 42 USC 11001 *et seq.*, National Environmental Policy Act of 1969, 42 USC 4321 *et seq.*, Safe Drinking Water Act of 1974, as amended, 42 USC 300(f) *et seq.*, The Aviation Safety and Noise Abatement Act of 1979, Indiana Code 13-1-1 *et seq.*, Indiana Code 13-1-3 *et seq.*, Indiana Code 13-7 *et seq.*, and any similar, implementing or successor law, and any amendment, rule, regulation, order, or directive issued thereunder.

Section 1.25. Environmental Record. Any document, correspondence, pleading, report, assessment, analytical result, Governmental Approval or other record concerning a Hazardous Material, compliance with an Environmental Law, an Environmental Claim or other environmental subject.

Section 1.26. Equipment. All Vehicles, machinery, structures, components, parts, and materials contained within the Airport Facilities which are utilized in the operation and maintenance of the Airport Facilities.

Section 1.27. Event of Default. The occurrences described in Article XV herein which constitute an Event of Default under this Agreement.

Section 1.28. Federal Aviation Administration or FAA. The Federal Aviation Administration created under the Federal Aviation Act of 1958, as amended, or any successor agency thereto.

Section 1.29. Governmental Approval. Any permit, license, variance, certificate, consent, letter, clearance, closure, exemption, decision, decree, order, action or approval of a Governmental Authority.

Section 1.30. Governmental Authority. Any international, federal, state, regional, county or local entity, agency or body, or subdivision thereof, having governmental or quasi-governmental authority.

Section 1.31. Guarantee. The guarantee of the Contractor as set forth in Section 6.03 herein.

Section 1.32. Hazardous Material. Any substance, chemical, compound, product, solid, gas, liquid, waste, by-product, pollutant, contaminant or material which is hazardous or toxic, and includes, without limitation, (j) asbestos, polychlorinated biphenyls, and petroleum (including crude oil or any fraction thereof) and (k) any such material classified or regulated as "hazardous" or "toxic" pursuant to any Environmental Law.

Section 1.33. Hazardous Material Activity. Any activity, event or occurrence involving a Hazardous Material, including, without limitation, the manufacture, possession, presence, use, generation, transportation, treatment, storage, disposal, Release, threatened Release, abatement, removal, remediation or handling of, or corrective or response action to, any Hazardous Material.

Section 1.34. IAA Board. The Board of Directors of the Authority.

Section 1.35. IAA Board President. The President of the IAA Board.

Section 1.36. ITFA Leases. Collectively and individually, the Lease Agreement dated December 1, 1991, by and between the Indiana Transportation Finance Authority, as landlord, and the Authority, as tenant, and the Lease Agreement dated November 1, 1992, by and between the Indiana Transportation Finance Authority, as landlord, and the Authority, as tenant, each as supplemented or amended from time to time.

Section 1.37. Indianapolis International Airport. The Indianapolis International Airport owned by the Authority.

Section 1.38. Legal Requirement. Any treaty, convention, statute, law, rule, code, regulation, ordinance, permit, Governmental Approval, injunction, judgment, order, directive, consent decree or other enforceable requirement of any Governmental Authority.

Section 1.39. Material Adverse Effect. Any changes or effects that individually or in the aggregate are or are reasonably likely to be materially adverse to (a) the assets, business, operations, income or condition (financial or otherwise) of the applicable party or entity, (b) transactions contemplated by this Agreement, (c) the ability of a party to perform its respective obligations under this Agreement, or (d) the condition or fair market value of the Airport Facilities.

Section 1.40. Net Airline Cost. The actual operating costs and actual capital costs of the Airport Facilities minus actual non-airline revenues calculated on a consistent basis in accordance with the past practice of the Authority and the Airlines. The Net Airline Cost is computed by subtracting the total of those items on lines _____ through _____ on Schedule 1.11 attached hereto within the section entitled "Non-Airline Revenue" from the total of those items on lines _____ through _____ on Schedule 1.11 attached hereto within the sections entitled "Operating Expenses" and "Capital and Other Airline Costs."

Section 1.41. Operating Documents. All existing warranties, guarantees, contracts, easements, and licenses that have been granted to the Authority as the owner or lessor of the Airport Facilities and Equipment, specifically relating to the Equipment and other tangible property used in the operation of the Airport Facilities, but not including the Authority Agreements.

Section 1.42. Parent Company. BAA plc.

Section 1.43. Projected Enplaned Passengers. The estimated total number of Enplaned Passengers for each Agreement Year as reflected in the Baseline Projection.

Section 1.44. RCRA. The Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 and subsequent amendments, 42 USC 6901 *et seq.*, and any future amendments.

Section 1.45. Release. Any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the indoor or outdoor environment, including, without limitation, the abandonment or discarding of barrels, drums, containers, tanks, and other receptacles containing or previously containing any Hazardous Material.

Section 1.46. RFP. The Authority Request for Proposals dated September 23, 1994.

Section 1.47. Tax-Exempt Obligations. Any obligations issued by, or for the benefit of, the Authority (whether such obligations are now outstanding or hereafter issued), the interest on which is excludable from gross income for federal income tax purposes pursuant to Section 103 of the Code (or any successor or similar provision of federal tax law hereafter enacted in lieu of Section 103 of the Code).

Section 1.48. Terminal. The terminal at the Indianapolis International Airport.

Section 1.49. Terminal Services Component. All management and services provided inside the Terminal and other services related to grounds and terminal maintenance and passenger service at the Indianapolis International Airport, including those services more fully described in Section 3.06 herein.

Section 1.50. Termination Date. The date on which this Agreement terminates and is no longer in force or effect, which date shall be the tenth (10th) anniversary of the Effective Date unless extended or earlier terminated as provided herein.

Section 1.51. Transition Plan. The written transition plan submitted by the Contractor to the Authority prior to the Effective Date.

Section 1.52. Unforeseen Circumstances. Any event or condition which has a material effect on the rights or obligations of the parties to this Agreement or upon the Airport Facilities, including their operation and maintenance, which is beyond the reasonable control of the party relying thereon as justification for a delay in, or non-performance of, action required under this Agreement, including but not limited to (i) an act of God, lightning, earthquake, tornado, fire, explosion, flood, acts of a public enemy, war, blockade, sabotage, insurrection, riot or civil disturbance; (ii) preliminary or final order of any Governmental Authority; (iii) any change in any Legal Requirement; (iv) labor disputes, strikes, work slowdowns or work stoppages, provided that the Contractor undertakes its best efforts to resolve such matters through any lawful means, and provided further, the ultimate resolution of any such disputes shall be within the sole discretion of the Contractor; and (v) loss of, or inability to obtain, service from a utility necessary for the operation and maintenance of the Airport Facilities.

Section 1.53. Vehicles. All cars, trucks, vans or other modes of transportation owned or leased by the Authority and used in connection with operation of the Airport Facilities for transporting people or things or used for other necessary functions in the operation or maintenance of the Airport Facilities.

ARTICLE II.

SPIRIT OF AGREEMENT

It is the intent of the Authority and the Contractor that both parties shall benefit from the execution and performance of this Agreement. Specifically, the Authority will benefit from being able to offer reductions in the Net Airline Cost on a per Enplaned Passenger basis due to savings in operating costs or increases in non-airline revenues without a deterioration in the quality of service, and the Contractor will benefit from the receipt of compensation. If, because of Unforeseen Circumstances, one party appears to benefit and the other does not or there is an apparent relative disparity in benefit, it is agreed that the parties to this Agreement will resolve all such issues in accordance with the provisions of Article XVI herein. It is intended that the Contractor shall not be subject to windfall improvements or risks not subject to its control.

ARTICLE III.

GENERAL RIGHTS AND RESPONSIBILITIES OF CONTRACTOR

Section 3.01. Relationship of Parties. The relationship of the parties to this Agreement shall be that of owner and independent contractor except as may otherwise be specifically stated herein. The Authority is owner of the Airport Facilities and the Contractor shall act as an independent contractor to the Authority for the safe, professional, and cost efficient management and operation of the Airport Facilities.

Section 3.02. Appointment of Contractor.

(a) The Contractor shall have the exclusive right, during the Term and any Renewal Term (as such terms are defined in Article V of this Agreement), to serve as the independent contractor to the Authority for the operation, maintenance, and management of the Airport Facilities in accordance with the terms of this Agreement. The Contractor shall also provide input and recommendations to the Authority with respect to the establishment by the Authority of policy, plans, budgets, rules, and regulations for the management, operation, and development of the Airport Facilities. The Contractor shall assist the Authority, to the degree that may be specified by the Authority, with respect to the Authority's dealings with all applicable federal and state authorities; provided, however, that the Authority shall remain solely responsible to the FAA for the compliance with the Authority's obligations under the law and under federal grant agreements. For services which are already provided for under any of the Authority Agreements or any other leases, agreements, contracts, documents, and instruments to which the Authority is a party, the Contractor shall administer those agreements until their expiration, renewal, termination or re-bid in accordance with their terms.

(b) The Contractor shall have the right and responsibility, within the parameters of the established policies, plans, and budgets of the Authority, and within the parameters of all applicable Legal Requirements and in accordance with all applicable contracts and agreements, to carry out its obligations under this Agreement in the manner it shall, in its best professional judgment, determine to be the safest, best, and most cost efficient.

(c) Subject to the limitations set forth in Section 9.01 herein, the Contractor shall have the right to hire, employ, and sub-contract with such persons as the Contractor shall deem necessary or desirable for the operation, maintenance, and management of the Airport Facilities, including without limitation, specialists in such areas as legal, retail marketing, and real estate. The Authority authorizes the Contractor and its employees, contractors, and agents to enter upon and use all parts of the Airport Facilities and grants the Contractor and its employees, contractors, and agents the right to use all assets owned or leased by the Authority.

(d) The Contractor shall not conduct operations in or on the Airport Facilities in a manner which in the reasonable judgment of the Authority:

(1) interferes with the reasonable use by others of the Airport Facilities;

(2) hinders police, fire fighting or other emergency personnel in the discharge of their duties at the Airport Facilities;

(3) would constitute a hazardous condition at the Airport Facilities;

(4) would involve any illegal purpose;

(5) is not materially in accordance with the Contractor's Proposal; or

(6) is not in accordance with the commitment of the Contractor to provide first class food, beverage, and retail facilities and services at the Airport Facilities.

Section 3.03. Contract Administration.

(a) The Contractor shall administer and enforce on behalf of and in the name of the Authority all of the Authority Agreements or any other leases, agreements, contracts, documents, and instruments to which the Authority is a party, consistent with the terms of this Agreement and in a manner that the Contractor shall deem necessary or desirable for the efficient operation, maintenance, and management of the Airport Facilities including, without limitation, the collection and payment of all sums due under the Authority Agreements or any other leases, agreements, contracts, documents, and instruments to which the Authority is a party and the giving and receiving of notices and requests to and from the parties to the Authority Agreements or any other leases, agreements, contracts, documents, and instruments to which the Authority is a party. Without limiting the foregoing, the Authority specifically authorizes the Contractor to request and demand all rent and other such charges and to institute legal proceedings through such collection agencies or law firm(s) as the Contractor shall deem necessary or appropriate, on behalf of, and in the name of, the Authority. All rent and other charges shall be paid directly to the Authority. All actions taken by the Contractor pursuant to this Section 3.03(a) shall be ratified and confirmed by the IAA Board as necessary or appropriate.

(b) Consistent with the terms of the Delegation of Authority document attached hereto as Schedule 4.01 and Section 9.01 herein, the Contractor shall negotiate and execute on behalf of and in the name of the Authority, all contracts, documents, and agreements and any extensions, renewals, modifications, supplements or terminations thereof; provided, however, that the obligations of the Authority under such agreements shall not exceed the Annual Operating Budget.

Section 3.04. Appointment of Airport Director.

(a) The Contractor shall at all times employ a person designated as the Airport Director who shall, among his or her other duties, serve as the Contractor's liaison with the Authority and who shall be the Contractor representative primarily responsible for dealing with the IAA Board. The Contractor has appointed David Roberts as the Airport Director. Any change in the Airport Director shall be subject to the prior approval of the IAA Board.

(b) The Airport Director shall meet and communicate with the IAA Board President on a regular basis. In particular, and without limitation, the Airport Director shall, as timely as reasonably possible, inform the IAA Board President of all emergencies and the occurrence of all Unforeseen Circumstances relating to the Airport Facilities which an independent contractor would be expected to report to an owner under customary and prudent business practices.

(c) The Contractor, through the Airport Director, shall timely advise the IAA Board President of any and all conditions, circumstances, issues, suggestions, recommendations, and the like relating to the Airport Facilities which are either required by the terms hereof to be brought, or which the Contractor may reasonably believe should be brought, to the attention of the Authority as owner of the Airport Facilities. In this regard, the Contractor shall at all times bring to the attention of the Authority all matters of which the Contractor is or reasonably should be aware materially affecting the safe, professional, and cost efficient management, operation, and development of the Airport Facilities in a first class manner.

Section 3.05. Tax Matters. The Contractor irrevocably determines and states (which shall be deemed to be an irrevocable election within the meaning of Section 142(b)(1)(B)(i) of the Code) that it will not claim depreciation or investment credit with respect to any of the Airport Facilities financed by the net proceeds of Tax-Exempt Obligations. As and to the extent instructed from time to time by the Authority, the Contractor shall not take, or cause or permit to be taken by it or by any party under its control, or fail to take or cause to permit to be taken by it or by any party under its control, any action in connection with the management and operation of the Airport Facilities (or as is otherwise related to the Airport Facilities) that in the reasonable judgment of the Authority would result in the loss of the exclusion from gross income for federal income tax purposes of interest on the Tax-Exempt Obligations. If any action taken under the preceding sentence changes the scope of the services to be provided under this Agreement, the Authority and the Contractor shall make an appropriate adjustment to the Baseline Projection. The Authority shall retain complete control over the tenancies created pursuant to the ITFA Leases. Notwithstanding anything else contained herein, the Contractor shall have no liability to the owners of any existing or future Tax-Exempt Obligations. The Authority represents that the execution and performance of this Agreement will not result in the loss of the exclusion from gross income for federal income tax purposes of interest on the Tax-Exempt Obligations.

Section 3.06. Scope of Services. The Authority hereby contracts with the Contractor for the exclusive right to provide professional services hereinafter described, which services the Contractor hereby agrees to render in accordance with the terms of this Agreement, including the schedules attached hereto:

(a) The Terminal Services Component includes, but is not limited to, all of the following services:

(1) Terminal Maintenance and Janitorial;
(2) Terminal Operation;
(3) Terminal Concessions;
(4) Parking and Rental Car;
(5) Terminal Advertising;
(6) Grounds Maintenance;
(7) Terminal Security;
(8) Planning and Engineering for Terminal; and
(9) Terminal Land Development.

(b) The Airfield Support Services Component includes, but is not limited to, all of the following services:

(1) Airfield Maintenance and Snow Removal;
(2) Ramp Operations;
(3) Airfield Signage and Navigation;
(4) Fire and Rescue;
(5) Reliever and General Aviation Airports and Heliport;
(6) Non-Terminal Buildings Maintenance;
(7) FBO and GA Facilities Maintenance;
(8) Vehicle Maintenance;
(9) Intermodal and Cargo Support;
(10) Planning and Engineering for Airfield;
(11) De-icing;

(12) Airside Land Development;
(13) Airside Security; and
(14) Fuel Farms and Fill Stands.

(c) The Administrative Services Component includes, but is not limited to, all of the following services:

(1) Finance and Accounting;
(2) Grant Management (subject to ultimate control by the Authority over grant assurance compliance);
(3) Management Information Systems;
(4) Public Relations, including noise abatement programs;
(5) Human Resources Management;
(6) Purchasing and Contracts Management;
(7) Administration of Bond Issuance and PFC Collection and Accounting;
(8) Land Acquisition and Relocation Implementation;
(9) Legal; and
(10) Marketing of Indianapolis International Airport.

The planning functions contained in this Section 3.06 shall include strategic planning to the extent such planning previously was performed by staff of the Authority. Where such planning moves to the stage where it would normally be contracted out by the Authority, such costs shall be capitalized as appropriate and the Authority and the Contractor shall discuss and agree upon appropriate compensation to the Contractor for such services and such costs shall be at the expense of the Authority. In addition, the Contractor shall have the right to propose to the Authority initiatives (i) to provide competitively, as appropriate, goods and services to users of the Airport Facilities outside the scope of this Agreement (such as passenger security checks), and (ii) to contract with the Authority on the same basis as other third parties (such as obtaining ground leases for development purposes). All revenue received by the Contractor from these initiatives which are approved by the Authority shall be retained by the Contractor for its own account.

Section 3.07. Cooperation. The Contractor shall at all times act in good faith and cooperate fully with (i) the Authority, its agents, employees, contractors, subcontractors, and concessionaires, (ii) any Airline, its agents, employees, contractors, and subcontractors, (iii) any other parties leasing or using space or providing services in the Airport Facilities, and (iv) the patrons of the Airport Facilities. If this Agreement is terminated for any reason, or if it is to expire on its own terms, the Contractor shall make every effort to assure to the fullest extent possible under the circumstances (i) an orderly transition to another provider of the services required under this Agreement, (ii) an orderly demobilization of its own operations in connection with the such services, (iii) uninterrupted provision of such services during any transition period, and (iv) compliance with the reasonable requests and requirements of the Authority in connection with such termination or expiration.

Section 3.08. Contractor's Office and Parking. Consistent with current practice, the Authority shall provide for the Contractor throughout the Term and any Renewal Term, (i) rent free, such office space at the Airport Facilities as may be necessary or appropriate to carry out the Contractor's obligations under this Agreement, and (ii) rent free parking spaces at the Airport Facilities for employees of the Contractor designated by the Contractor.

ARTICLE IV.

GENERAL RIGHTS AND RESPONSIBILITIES OF AUTHORITY

Section 4.01. Retained Authority Powers. The Authority, as owner of the Airport Facilities, shall retain under its direct control and shall provide certain strategic and policy making functions with respect to the Airport Facilities, as set forth in Schedule 4.01 attached hereto, including, but not limited to:

(1) On-going compliance with all applicable airline use agreements;
(2) Final Assurance of FAA/AIP Regulatory and Grant Assurance Compliance;
(3) Passenger and Cargo Air Service Development Policy Formulation and Implementation;
(4) Policy for Issuance of Debt in the Authority's Name (or which would encumber the Authority's Assets);
(5) Aviation Rates and Charges Regulation;
(6) Long-Range Planning;

(7) Land Acquisition and Development Policy Formulation and Implementation Planning;
(8) Airport Industrial and Economic Development Policy Formulation and Implementation Planning;
(9) Wetlands and Environmental Policy;
(10) Capital Expenditure Policy; and
(11) Any powers, rights or duties of the Authority or the IAA Board under I.C. 8-22-3 et seq. unless otherwise contractually delegated to the Contractor under this Agreement.

The Authority shall have the right to make any and all of its determinations regarding the Airport Facilities in the manner it solely decides, consistent with any Legal Requirement, to be in the best interests of the Authority, the City of Indianapolis, its residents, the traveling public, the Airport Facilities, and those operating at and using the Airport Facilities.

Section 4.02. Contract Compliance. The Authority may employ or engage one or more persons who shall assist the IAA Board President and the IAA Board in monitoring compliance by the Contractor with the terms of this Agreement. The Airport Director shall not report to any such persons but shall cooperate with them at all times. The Contractor shall provide information promptly to such persons upon their reasonable request.

Section 4.03. Operation Pending Effective Date. Until the Effective Date, the Authority shall operate and maintain the Airport Facilities in the normal course of business.

Section 4.04. Necessary FAA Approvals. The Authority shall assist the Contractor in securing any appropriate approvals from the FAA for the Contractor to operate and maintain the Airport Facilities under the Authority's FAA Operating Certificate. The Authority and the Contractor jointly shall cooperate so as to maintain the FAA Operating Certificate throughout the Term and any Renewal Term. This Agreement shall be of no force or effect unless such approvals are obtained from the FAA prior to the Effective Date.

Section 4.05. Authority Expenditures. The Authority anticipates that during the Term and any Renewal Term it will incur costs for Capital Improvements in a manner similar to that which is reflected in the Baseline Projection and will not unreasonably withhold such expenditures within those figures.

Section 4.06. Authority Costs. Notwithstanding anything herein, all costs and expenses related or attributable to (i) closing and maintaining security for the Speedway Airport, and (ii) opening the Hendricks County Airport, shall be at the expense of the Authority. The Contractor shall, at the request of the Authority, prepare and implement a plan for the closing of the Speedway Airport and for the opening of the Hendricks County Airport.

Section 4.07. Tax Matters. The Authority shall retain ownership of the Airport Facilities for federal tax purposes including, specifically, ownership for purposes of Section 142(b)(1)(A) of the Code. The Authority and the Contractor intend to satisfy Section 142(b)(1)(B) of the Code (and general federal tax law) for having the Airport Facilities treated as owned by the Authority for purposes of Section 142(b)(1)(A) of the Code. The Authority shall retain all interests, rights, obligations, and duties as tenant under the ITFA Leases. The Authority shall retain complete control over the tenancies created pursuant to the ITFA Leases.

ARTICLE V.

TERM OF AGREEMENT

Section 5.01. Term. The term of this Agreement (hereinafter referred to as the "Term") shall commence on the Effective Date and shall expire on the tenth (10th) anniversary of the Effective Date, unless extended or sooner terminated in accordance with the provisions herein.

Section 5.02. Renewal Term. The Authority and the Contractor may extend the Term for an additional period of not more than ten (10) years (hereinafter referred to as the "Renewal Term"). At any time during the seventh (7th) Agreement Year, the Contractor may propose that this Agreement be extended for the Renewal Term. Assuming that the Contractor has delivered high quality service under this Agreement and has complied with the terms and conditions contained herein, the Authority may extend this Agreement for a duration and upon terms and conditions mutually acceptable to the Authority and the Contractor; provided, however, that the Authority has no obligation to extend the Agreement for the Renewal Term.

ARTICLE VI.

COMPENSATION

Section 6.01. Compensation. In exchange for the services to be provided by the Contractor hereunder, the Authority shall pay the Contractor a management fee based upon the improvements in the Net Airline Cost on a per Enplaned Passenger basis as compared to the Adjusted Baseline on a per Enplaned Passenger basis. The Contractor shall receive no fixed compensation.

Section 6.02. Method of Compensation.

(a) The Contractor and the Authority shall share any improvement in the Net Airline Cost on a per Enplaned Passenger basis from the Adjusted Baseline on a per Enplaned Passenger basis assuming that the Guarantee is delivered.

(b) It is the intent of the Authority and the Contractor that the risk associated with the operation and maintenance of the Airport Facilities and the delivery of improvements in the Net Airline Cost on a per Enplaned Passenger basis after the Effective Date properly rests with the Contractor except (i) for costs or expenses which relate to act(s) or omission(s) of the Authority or its agents (not including the Contractor, its employees and agents) or to the existence of a condition at the Airport Facilities prior to the Effective Date or which relate to any increases in operating expenses or decreases in non-airline revenues which are imposed on the Contractor by the Authority, and (ii) for those items which adjust the Baseline Projection as provided below. The Baseline Projection shall be adjusted on an annual basis to develop the Adjusted Baseline so that the foregoing and the following will be neutral when comparing the Net Airline Cost on a per Enplaned Passenger basis to the Baseline Projection on a per Enplaned Passenger basis. The Baseline Projection shall be adjusted in the same manner to render neutral the effect of the following:

(1) Capital and Other Airline Costs (as such term is defined in the Baseline Projection);

(2) Authority contract compliance costs;

(3) Sixty percent (60%) of voluntary severance costs;

(4) Across the board car parking fee increases or decreases over and above the CPI;

(5) The impact of changes in accounting regulations and policies or any Legal Requirement;

(6) Any cost or liability stated in this Agreement to be an Authority cost or liability;

(7) Except for capital invested by the Contractor pursuant to Section 11.06 herein, adjustments necessary to provide BAA with the return of the cost of capital invested by it and a sharing of the financial benefit of a project as approved by the Authority pursuant to Article XI herein;

(8) Any defaults by the Airlines in the payment of amounts owed to the Authority and any other bad debts of the Authority except with respect to any contracts entered into by or upon the recommendation of the Contractor after the Effective Date;

(9) As to Capital Expenditures, the Contractor may at its sole option, take any cost savings in Capital Expenditures as a savings in any Agreement Year or, alternatively, roll over such amount into the Baseline Projection for the following Agreement Year and any subsequent Agreement Year until such cost savings in Capital Expenditures is captured in the Annual Operating Budget;

(10) Inflation based on the CPI (excluding any leases in the Baseline Projection that have inflation already reflected therein); and

(11) Such other reconciliations as shall be agreed upon by the Contractor and the Authority.

Provided, however, that none of the above listed items shall result in an adjustment to the Baseline Projection if the reason for the adjustment is the result of the negligent act(s) or omissions(s) or willful or intentional misconduct of the Contractor, its employees or agents.

(c) The Contractor shall have one hundred eighty (180) days from the Effective Date within which to identify any (i) leases, agreements, contracts, documents or instruments to which the Authority is a party, or (ii) circumstances or inappropriate operating practices relating to the Airport Facilities, which had not previously been disclosed to the Contractor and which have the effect of either increasing operating expenses or decreasing non-airline revenues ("Post Effective Date Contingencies"). Prior to the expiration of such one hundred eighty (180) day period, the Contractor shall give written notice to the Authority of any Post Effective Date Contingencies, unless the circumstances are seasonal in nature beyond such one hundred eighty (180) day period, in which case the period shall be three hundred sixty (360) days. The Authority and the Contractor shall agree to any adjustment in the Baseline Projection to make the Post Effective Date Contingencies neutral consistent with the provisions of Section 6.02(a) herein.

(d) The Contractor and the Authority shall share any improvement in the Net Airline Cost on a per Enplaned Passenger basis from the Adjusted Baseline on a per Enplaned Passenger basis in each Agreement Year in the following proportions:

	Contractor	Authority
Year 1	40%	60%
Year 2	35%	65%
Year 3-10	30%	70%

(e) Any compensation earned by the Contractor shall be calculated by (i) determining the difference between (w) the Net Airline Cost on a per Enplaned Passenger basis and (x) the Adjusted Baseline on a per Enplaned Passenger basis for the applicable Agreement Year and then (ii) multiplying the difference times (y) the actual number of Enplaned Passengers for the applicable Agreement Year and (z) the Contractor's sharing percentage set forth above. [The formula is (x minus w) times y times z = Contractor's compensation.]

(f) In addition to the compensation outlined in subparagraph (a) above, the Contractor shall also be eligible during the second Agreement Year and any subsequent Agreement Year for an additional five percent (5%) quality bonus (in addition to the Contractor's percentage set forth in Section 6.02(d) herein) of any improvement which recognizes improvements made by the Contractor over certain quality targets. Such quality targets shall be mutually agreed upon by the Authority and the Contractor during the budget process each Agreement Year.

Section 6.03. Guarantee.

(a) As an inducement to the Authority to enter into this Agreement, the Contractor hereby guarantees a minimum annual improvement of the Net Airline Cost on a per Enplaned Passenger basis in each Agreement Year from the Adjusted Baseline on a per Enplaned Passenger basis as follows:

	Guaranteed Improvement Per Enplaned Passenger (1994 Dollars)	Equivalent Total Improvement (Based on Projected Enplaned Passengers) (1994 Dollars)
Year 1	$ .148	$499,335
Year 2	.570	$2,000,039
Year 3	.685	$2,499,698
Year 4	.685	$2,599,686
Year 5	.685	$2,703,673
Year 6	.685	$2,795,598
Year 7	.685	$2,890,649
Year 8	.685	$2,988,930
Year 9	.685	$3,090,554
Year 10	.685	$3,195,632
	Total	$25,263,794

The Guarantee shall be adjusted each Agreement Year by the CPI and by changes in the actual number of Enplaned Passengers.

Section 6.04. Disbursement of Funds. All revenues of the Authority shall be deposited by the Contractor into the bank account of the Authority. All disbursements by the Contractor for operating expenses (including staff costs) of the Airport Facilities and Capital Expenditures within the Annual Operating Budget shall be paid by the Contractor from monies provided by the Authority pursuant to this Section 6.04. No less frequently than once a month, the Contractor shall submit to the Authority an itemized statement of operation and maintenance expenses for the Airport Facilities which are to be paid by the Contractor. The manner of payment from the Authority to the Contractor shall be as follows:

(a) From the Effective Date until December 31, 1995 (the "1995 Short Period"), and for calendar years beginning January 1, 1996 and thereafter, the Contractor shall be paid in advance on the first Business Day of each month, a sum equal to one-twelfth (1/12th) times the Annual Operating Budget for the applicable year. For Capital Improvements, the Contractor shall be paid in arrears within seven (7) days of the last day of each month, a sum equal to the expenditures incurred by the Contractor in such month. In the event that it becomes necessary for the Contractor to propose an increase to the Annual Operating Budget because of unanticipated operating expenses, the monthly amount payable to the Contractor shall be adjusted proportionately upon approval of the amendment to the Annual Operating Budget. On a monthly basis, the Contractor shall provide an itemized statement of operating expenses incurred no later than the fifteenth (15th) day of the month following. Any difference between the amount paid in advance by the Authority to the Contractor and the actual operating expenses incurred shall be reconciled on a monthly basis and shall adjust the following monthly payment.

(b) If the Contractor shall have received payments in excess of an amount equal to the applicable Annual Operating Budget (the "Overpayment"), then the Contractor shall pay the Authority the amount of the Overpayment within fourteen (14) days of the submission of the itemized statement set forth in Section 6.04(a) herein. If the Contractor shall have received payments less than an amount equal to the applicable Annual Operating Budget (the "Underpayment"), then the Authority shall pay the Contractor the amount of any Underpayment within fourteen (14) days of the submission of the itemized statement set forth in Section 6.04(a) herein. Provided, however, that the payment of any Underpayment by the Authority shall always be subject to the provisions of Section 6.03 herein regarding the delivery of improvement in Net Airline Cost.

Section 6.05. Annual Reconciliation. For the first Agreement Year and every Agreement Year thereafter, the Authority and its independent auditors shall report the improvement in the Net Airline Cost on a per Enplaned Passenger basis from the Adjusted Baseline on a per Enplaned Passenger basis for the prior year no later than March 31. The Contractor and its independent auditors shall review such report and supporting work papers to confirm the improvement in the Net Airline Cost on a per Enplaned Passenger basis from the Adjusted Baseline on a per Enplaned Passenger basis for the prior year and shall have a period of twenty-eight (28) days following the delivery of such report to approve it. If the Contractor fails to object to the report within such period, then the report shall be deemed to have been approved. The review shall compare the actual improvement in the Net Airline Cost on a per Enplaned Passenger basis from the Adjusted Baseline on a per Enplaned Passenger basis for the applicable year to the Guarantee for the applicable year as set forth in Section 6.03 herein. If the Guarantee has not been delivered, then the Contractor shall pay the Authority within fourteen (14) days the difference between the actual improvement in the Net Airline Cost on a per Enplaned Passenger basis from the Adjusted Baseline on a per Enplaned Passenger basis and the Guarantee. The Contractor, at its expense, shall have its independent auditors audit the 1995 Short Period. The audit of the 1995 Short Period shall be used by the Contractor to demonstrate any improvement in the Net Airline Cost on a per Enplaned Passenger basis from the Adjusted Baseline on a per Enplaned Passenger basis for the 1995 Short Period.

Section 6.06. Accounting System and Financial Data. The Contractor agrees to maintain its accounting system and financial data so as to allow the inspection thereof by Authority representatives during normal business hours.

Section 6.07. Special Adjustments. The Baseline Projection shall be subject to annual adjustments (a) if actual Enplaned Passengers increase or decrease by more than ten percent (10%) when compared to the Projected Enplaned Passengers for the applicable Agreement Year as projected in 1994 and reflected on the Baseline Projection, and (b) any extraordinary items agreed to by the Authority and the Contractor. If there is a change in Enplaned Passengers in excess of ten percent (10%), the Contractor and the Authority shall discuss and negotiate in good faith the appropriate adjustment to the Baseline

Projection. Any changes in actual Enplaned Passengers which do not exceed ten percent (10%) shall not adjust the Baseline Projection.

Section 6.08. Interest. If either party hereto fails to make payment to the other party within ten (10) days when due of any undisputed amount due such party pursuant to the terms of Section 6.04 herein, then the party who failed to make payment shall pay interest to the other party on such undisputed amount at a per annum rate based on a 360-day year equal to the sum of the prime rate of interest then quoted by NBD Bank, Indiana (or successor financial institution) plus two percent (2%) per annum.

Section 6.09. Apportionment. During the 1995 Short Period and within two calendar months of the Termination Date, the Contractor shall prepare a statement of operating expenses and Capital Expenditures incurred relating to the period prior to (a) the Effective Date and (b) the Termination Date, as appropriate, which such statement shall apportion such sums as of such applicable date. Each such statement shall be submitted to the Authority and if such statement is not objected to by the Authority within seven (7) days of receipt by the Authority of the statement submitted during (a) the 1995 Short Period and (b) the end of such two calendar months, as appropriate, such statement shall be binding upon the Authority and the Contractor. In respect of the statement prepared as of the Effective Date, the Authority shall bear all responsibility for pre-existing operating expenses and Capital Expenditures. In respect of the statement submitted as of the Termination Date, the statement shall be used to calculate and adjust the calculation of the compensation payable to the Contractor for the period ending on the Termination Date.

Section 6.10. Baseline Projection Conversion. Prior to the first anniversary date of this Agreement, the Baseline Projection (which has been prepared on an encumbrance basis) shall be converted to an accrual basis. The Contractor shall prepare and submit to the IAA Board the converted Baseline Projection for approval by the IAA Board. The Baseline Projection shall be adjusted if, during the conversion process, matters are discovered which adversely affect the Contractor's performance and right to compensation under this Agreement.

ARTICLE VII.

REPRESENTATIONS AND WARRANTIES OF CONTRACTOR

BAA USA Holdings, Inc. and BAA Indianapolis LLC, jointly and severally, represent to the Authority as follows:

Section 7.01. Organization; Authorization; etc.

(a) BAA USA Holdings, Inc. is a corporation duly formed and existing under the laws of the State of Delaware, is duly authorized to conduct its business in the State of Delaware and all other states where the failure to obtain such authorization would have a Material Adverse Effect on BAA USA Holdings, Inc., and has the power to enter into this Agreement and any documents related hereto to which it is a party.

(b) BAA Indianapolis LLC is a limited liability company duly formed and existing under the laws of the State of Indiana, is duly authorized to conduct its business in the State of Indiana and all other states where the failure to obtain such authorization would have a Material Adverse Effect on BAA Indianapolis LLC, and has the power to enter into this Agreement and any documents related hereto to which it is a party.

(c) The Parent Company is a corporation duly formed and existing under the laws of England, is duly authorized to conduct its business in countries and states where the failure to obtain such authorization would have a Material Adverse Effect on the Parent Company, and has the power to enter into any documents related hereto to which it is a party.

(d) The execution and delivery of this Agreement was duly authorized by all necessary action of the Contractor, none of which action has been rescinded or otherwise modified. The Contractor has full power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement. Except for any consent from the FAA which is the responsibility of the Contractor to secure, no consents, approvals or permits are required for the performance of the terms and provisions herein, or, if any such consents, approvals or permits are required, they have been or will be, prior to

the Effective Date, obtained. This Agreement is a legal, valid, and binding obligation of the Contractor, enforceable against the Contractor in accordance with its terms.

(e) The execution and delivery of this Agreement and any other documents related thereto to which the Contractor and the Parent Company are a party, the consummation of the transactions contemplated thereby, and the fulfillment of the terms and conditions thereof do not and will not (i) conflict with or result in a breach of any of the terms or conditions of the Articles of Organization or Operating Agreement of BAA Indianapolis LLC, the Certificate of Incorporation or Bylaws of BAA USA Holdings, Inc. or the Articles or Memorandum of Association of the Parent Company, or any restriction or any agreement or instrument to which the Contractor or the Parent Company is now a party or by which it is bound or to which any property of the Contractor or the Parent Company is subject, (ii) constitute a default under any of the foregoing, or, to the best knowledge of the Contractor, cause either of them to be in violation of any order, decree, statute, rule or regulation of any court or any state or federal regulatory body having jurisdiction over the Contractor or the Parent Company or their properties, or (iii) result in the creation or imposition of any lien, charge or encumbrance of any nature upon any of the property or assets of the Contractor or the Parent Company contrary to the terms of any instrument or agreement to which either of them is a party or by which they are bound, except where such breach, default, violation or imposition would not have a Material Adverse Effect on the Airport Facilities, the operation of the Airport Facilities or the ability of the Contractor or the Parent Company to perform its obligations under this Agreement or any other documents related thereto to which it is a party.

Section 7.02. Litigation.

(a) Except for actions, suits, claims, investigations, and proceedings identified in Schedule 7.02 attached hereto, (i) there are no actions, suits, claims, investigations or proceedings pending or, to the best of the Contractor's knowledge, threatened against the Contractor in any court or before any Governmental Authority that relate to its operation and maintenance of airport facilities or that would materially affect the Contractor's entering into, or performance of, this Agreement and, to the best of the Contractor's knowledge, there are no circumstances which might give rise to any such actions, suits, claims, investigations or proceedings, and (ii) the Contractor is not charged by any Governmental Authority with a material violation of or, to the best of the Contractor's knowledge, threatened by any Governmental Authority with a charge of a violation of, any Legal Requirement in a manner that relates to its operation and maintenance of airport facilities or that would materially affect the Contractor's entering into, or performance of, this Agreement.

(b) The Contractor is not subject to any Legal Requirement that would materially affect the Contractor's entering into, or performance of, this Agreement.

Section 7.03. No Default. The Contractor is not in default under, and no condition exists that with notice or lapse of time or both would constitute a default under, (i) any mortgage, loan agreement, lease, lease purchase, indenture or evidence of indebtedness for borrowed money to which the Contractor is a party or by which any material amount of the assets of the Contractor is bound that would materially affect its entering into, or performance of, this Agreement or (ii) any Legal Requirement, which default or potential default could reasonably be expected to have a Material Adverse Effect on the Contractor's ability to perform its obligations under this Agreement.

Section 7.04. Ability to Perform. The Contractor is financially solvent. The Contractor and each of its employees, agents, subcontractors, and contractors are competent to perform the services required under this Agreement.

Section 7.05. Agreement Feasible. The Contractor has carefully examined and analyzed the provisions and requirements of this Agreement. The Contractor understands the nature of the services required under this Agreement. From its own analysis, the Contractor has satisfied itself as to the nature of all things needed for the performance of this Agreement, the general and special conditions, and all other matters which in any way affect this Agreement or its performance. The time available to the Contractor for such examination, analysis, and preparation was adequate subject to other provisions herein regarding claims of the Contractor. This Agreement is feasible of performance in accordance with all of its provisions and requirements.

Section 7.06. Accuracy of Contractor Representations. The representations made by the Contractor in the Contractor's Proposal were true and accurate as of the date they were made and are true and accurate as of the date of this Agreement, except to the extent such representations are modified herein or therein

. The representations made by the Contractor in the Contractor's Proposal did not contain any material misrepresentations or omissions of any material facts as of the date that they were made and the representations made therein, except to the extent such representations are modified herein or therein, and the representations made herein do not contain any material misrepresentations or omissions of any material facts as of the date of this Agreement.

ARTICLE VIII.

REPRESENTATIONS AND WARRANTIES OF AUTHORITY

The Authority represents and warrants to the Contractor that:

Section 8.01. Organization; Authorization; etc.

(a) The Authority is a municipal corporation duly organized and existing under the laws of the State of Indiana and is duly authorized and empowered to enter into and perform this Agreement and to execute all documents related thereto.

(b) The execution and delivery of this Agreement was duly authorized by all necessary governmental action, none of which action has been rescinded or otherwise modified. The Authority has full power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement. Except for any consent from the FAA which is the responsibility of the Contractor to secure, no consents, approvals or permits are required for the execution of this Agreement or to operate the Airport Facilities prior to the Effective Date or the performance of the terms and provisions herein by the Authority, or, if any such consents, approvals or permits are required, they have been or, prior to the Effective Date, will be obtained. This Agreement is a legal, valid, and binding obligation of the Authority, enforceable against the Authority in accordance with its terms.

(c) The execution and delivery of this Agreement and any other documents related thereto to which the Authority is a party, the consummation of the transactions contemplated thereby, and the fulfillment of the terms and conditions thereof do not and will not (i) conflict with or result in a breach of any of the terms or conditions of any restriction or any agreement or instrument to which the Authority is now a party or by which it is bound or to which any property of the Authority is subject, (ii) constitute a default under any of the foregoing, or, to the best knowledge of the Authority, cause the Authority to be in violation of any order, decree, statute, rule or regulation of any court or any state or federal regulatory body having jurisdiction over the Authority or its properties, or (iii) result in the creation or imposition of any lien, charge or encumbrance of any nature upon any of the property or assets of the Authority contrary to the terms of any instrument or agreement to which it is a party or by which it is bound, except where such breach, default, violation or imposition would not have a Material Adverse Effect on the Airport Facilities, the operation of the Airport Facilities or the ability of the Authority to perform its obligations under this Agreement or any other related documents to which it is a party.

Section 8.02. Litigation.

(a) Except for actions, suits, claims, investigations, and proceedings identified in Schedule 8.02 attached hereto, (i) there are no actions, suits, claims, investigations or proceedings pending or, to the best of the Authority's knowledge, threatened against the Authority in any court or before any Governmental Authority that relate to its operation and maintenance of the Airport Facilities or that would materially affect the Authority's entering into, or performance of, this Agreement and, to the best of the Authority's knowledge, there are no circumstances which might give rise to any such actions, suits, claims, investigations or proceedings, and (ii) the Authority is not charged by any Governmental Authority with a material violation of or, to the best of the Authority's knowledge, threatened by any Governmental Authority with a charge of a violation of, any Legal Requirement in a manner that relates to its operation and maintenance of the Airport Facilities or that would materially affect the Authority's entering into, or performance of, this Agreement.

(b) The Authority is not subject to any Legal Requirement that would materially affect the Authority's entering into, or performance of, this Agreement.

Section 8.03. No Default. The Authority is not in default under, and, to the best of its knowledge, no condition exists that with notice or lapse of time or both would constitute a default under, (i) any mortgage, loan agreement, lease, lease purchase, indenture or evidence of indebtedness for borrowed money to which the Authority is a party or by which any material amount of the assets of the Authority

is bound that would materially affect its entering into, or performance of, this Agreement or (ii) any Legal Requirement, which default or potential default could reasonably be expected to have a Material Adverse Effect on the Authority.

Section 8.04. Compliance with Law. Except as otherwise disclosed in Schedule 8.02 attached hereto, the Authority is, to the best of its knowledge, now, and at the Effective Date shall be, in compliance with the terms of all applicable Legal Requirements. To the best of its knowledge, the Authority has properly prepared and timely filed prior to the Effective Date, all permit applications required by any applicable Legal Requirement. Except as otherwise disclosed in Schedule 8.02 attached hereto, there are, to the best of its knowledge, no outstanding complaints, orders, citations, notices or orders of violation or non-compliance issued to the Authority relating to the operation, maintenance or condition of the Airport Facilities.

Section 8.05. Employment; Labor. Except as disclosed in Schedule 8.02 attached hereto and prior to the Effective Date, there are no employment, union or labor agreements or pending or, to the best of the Authority's knowledge, threatened claims or litigation of any nature, applicable to or covering the employment of the employees of the Authority.

Section 8.06. Leases; Agreements. The Authority has provided to the Contractor true and accurate copies of the Authority Agreements. The Authority Agreements are in full force and effect. No default exists under any of the Authority Agreements. To the best knowledge of the Authority, no condition exists that with notice or lapse of time or both would constitute a default under any of the Authority Agreements.

Section 8.07. Inventory and Assets. The spare parts, tools, materials, and supplies at the Airport Facilities on the Effective Date are adequate for the operation and maintenance of the Airport Facilities in accordance with the terms of this Agreement. For purposes of the inventory and assets in existence on the Effective Date, the audit prepared by Geo. S. Olive & Company as of December 31, 1995, shall be utilized.

Section 8.08. Liens; Encumbrances. There are no covenants, restrictions, liens, encumbrances, mortgages or easements with respect to the Airport Facilities which would materially interfere with the Contractor's operation, maintenance or management of the Airport Facilities in accordance with the terms of this Agreement.

Section 8.09. Environmental. Except as set forth in Schedule 8.09 attached hereto (hereinafter referred to as the "Scheduled Conditions"):

(a) the Authority and the Airport Facilities comply with any applicable Environmental Law;

(b) to its knowledge, there has been no Release, threatened Release, or disposal of any Hazardous Material at the Airport Facilities in any material quantity, nor are the Airport Facilities adversely affected in any material respect by any Release, threatened Release or disposal of a Hazardous Material originating or emanating from any other property;

(c) the Airport Facilities do not contain and have not contained any: (i) underground storage tank; (ii) material amounts of asbestos-containing building material; (iii) any landfills or dumps; or (iv) hazardous waste management facility as defined pursuant to RCRA or any comparable state law;

(d) the Airport Facilities, or any portion thereof, are not on or been nominated for the National Priority List promulgated pursuant to CERCLA or any state remedial priority list promulgated or published pursuant to any comparable state law;

(d) the Authority has used no material quantity of any Hazardous Material in violation of any Environmental Law and has conducted no Hazardous Material Activity at the Airport Facilities in violation of any Environmental Law;

(e) to its knowledge: (i) the Authority has no material liability for response or corrective action, natural resource damage, or other harm pursuant to an Environmental Law; (ii) the Authority is not subject to, has no notice or knowledge of, and is not required to give any notice of any Environmental Claim involving the Authority or the Airport Facilities; and (iii) there are no conditions or occurrences at the Airport Facilities which could form the basis for a material Environmental Claim against the Authority or the Airport Facilities;

(f) to its knowledge, the Airport Facilities are not subject to, and the Authority has no knowledge of, any imminent restriction on the operation and management of the Airport Facilities in connection with any (i) Environmental Law or (ii) Release, threatened Release, or disposal of a Hazardous Material; and

(g) the Authority has provided or otherwise made available to the Contractor any Environmental Record concerning the Authority and the Airport Facilities which the Authority possesses or could reasonably have procured.

Section 8.10. Accuracy of Authority Representations. The representations made by the Authority in the RFP and those documents described in Schedule 8.10 attached hereto were true and accurate as of the date they were made and are true and accurate as of the date of this Agreement, except to the extent such representations are modified herein or therein. The representations made by the Authority in the RFP did not contain any material misrepresentations or omissions of any material facts as of the date they were made, and the representations made therein, except to the extent such representations are modified herein or therein, and the representations made herein do not contain any material misrepresentations or omissions of any material facts as of the date of this Agreement.

ARTICLE IX.

COVENANTS OF CONTRACTOR

The following covenants and conditions shall apply during the Term and any Renewal Term:

Section 9.01. Restrictions on Subcontracting. The Contractor shall not subcontract any of its management responsibilities with respect to the operation and maintenance of the Airport Facilities without the prior written consent of the Authority if the annual payments to or from such subcontracting party exceed Fifty Thousand and no/100 Dollars ($50,000.00) per Agreement Year (which amount may be adjusted from time to time by the mutual agreement of the Contractor and the Authority). The Authority's consent to any subcontract arrangement shall not act as a release or waiver of the Contractor's liabilities under this Agreement.

Section 9.02. Compliance with Law. The Contractor shall comply with all Legal Requirements. The Authority shall cooperate with and assist the Contractor in gathering all reports, forms, statements, and other documentation required by local, state, and federal authorities. Such information shall be provided to the Contractor in a timely manner so as to allow the Contractor adequate time to prepare and submit any necessary documentation within required deadlines. Notwithstanding the foregoing, the Contractor shall have the right to contest in good faith, by appropriate legal proceedings, the validity or application of any Legal Requirement of the nature herein referred to, and if by the terms of any such Legal Requirement, compliance therewith pending the prosecution of any such proceeding may legally be held in abeyance, the Contractor may postpone compliance therewith until the final determination of any such proceedings, provided that all such proceedings shall be prosecuted with all due diligence and dispatch.

Section 9.03. Environmental Compliance. In addition to the obligation to comply with all Legal Requirements as set forth in Section 9.02 herein, the Contractor shall comply with all Environmental Laws in connection with its operation and maintenance of the Airport Facilities after the Effective Date, subject to the right to contest set forth in Section 9.02 herein, including, without limitation, the following: (i) the Clean Air Act, 42 USC 7401 *et seq.*; (ii) the Clean Water Act, 33 USC 1251 *et seq.*; (iii) CERCLA; (iv) RCRA; (v) the Emergency Planning and Community Right-to-Know Act, 42 USC 11001, *et seq.*; (vi) the Toxic Substances Control Act, 15 USC 2601, *et seq.*; (vii) the Aviation Safety and Noise Abatement Act of 1979; (viii) Indiana Code 13-1-1 *et seq.*; (ix) Indiana Code 13-1-3 *et seq.*; (x) Indiana Code 13-7 *et seq.*; (xi) all regulations promulgated in implementation of the foregoing statutes; and (xii) all future amendments to such statutes and regulations. The Contractor shall be responsible for the preparation, on behalf of the Authority, of any and all regulatory filings.

Section 9.04. Delivery of Reports; Cooperation with Authority. The Contractor shall deliver to the IAA Board, at the Contractor's cost, the reports listed on Schedule 9.04 attached hereto, together with additional reports reasonably requested by the IAA Board. In addition, the Contractor shall cooperate and assist the Authority in gathering the information and documentation necessary to complete reports, forms, statements, and other documentation required by any Governmental Authority. Such information shall be provided to the Authority in a timely manner to allow the Authority adequate time to prepare and submit any necessary documentation within required deadlines.

Section 9.05. Transition. The Contractor and the Authority shall each take all necessary steps to ensure a smooth transition on the Effective Date in accordance with the Transition Plan.

Section 9.06. Quality Service Monitor.

(a) The Contractor shall implement its Quality Service Monitor Program (as such term is defined in the Contractor's Proposal). The Quality Service Monitor Program shall include regular surveys of a sample of passengers and other individual users of the Airport Facilities for their opinions on the range of services provided by the Contractor, concessionaires, and service contractors, including questions asked about attitude and helpfulness of staff, cleanliness of the Airport Facilities, crowding levels, waiting times, value for money, security, baggage claim times, parking, etc. The Contractor shall share the results of any such surveys with the IAA Board on at least a quarterly basis.

(b) As part of the Transition Plan, the Contractor shall submit to the Authority, for the Authority's approval, a proposed schedule of quality of service monitoring, which schedule shall thereafter be updated from time to time as agreed upon by the Authority and the Contractor. In addition and also as part of the Transition Plan, the Contractor shall conduct, at the Authority's expense for any out-of-pocket costs associated therewith which are incurred by the Contractor, a market research survey of the individual users of the Airport Facilities so as to establish a base level. Depending upon the results of such quality of service monitoring, the Contractor shall take corrective action by making any necessary improvements in services provided at the Airport Facilities and/or provide such results to the appropriate parties who are able to take such corrective action, including the IAA Board when its approval is needed.

(c) The Contractor shall from time to time survey the Airlines, concessionaires, and other tenants operating at the Airport Facilities about the helpfulness, attitude, and performance of the staff and management of the Contractor and the services provided by it.

(d) The Authority shall have the right at any time at its expense to have its own market research studies conducted to test the quality of service being provided by the Contractor. Any such studies shall not interfere with the operation and maintenance of the Airport Facilities by the Contractor or be done at the same time the Contractor is performing its quality of service monitoring.

Section 9.07. Safety, Security, and Protection. The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the operation and maintenance of the Airport Facilities. The Contractor shall take reasonable and prudent precautions for the safety of, and to prevent injury or loss to, all employees of the Contractor and other persons at the Airport Facilities. The Contractor's safety program shall comply with all applicable Legal Requirements, subject to the ability to contest as set forth in Section 9.02 herein. The Contractor shall designate a responsible representative on site at the Airport Facilities whose duty shall be the prevention of accidents and safety and security plan compliance.

Section 9.08. Community Relations. The Contractor shall take an active role in the community of Indianapolis and report thereon to the IAA Board. The Contractor shall also institute programs for the education of the citizens of Indianapolis with respect to the operation of the Airport Facilities.

Section 9.09. Minority and Women-Owned Business Participation. The Contractor shall use its best efforts to utilize Indianapolis-based minority-owned and women-owned businesses in connection with the operation, maintenance, and professional services to be provided under this Agreement in an amount equal to at least twelve percent (12%) of the purchases/contracts available for placement on an annual basis, comprised of at least ten percent (10%) of minority-owned businesses and at least two percent (2%) of women-owned businesses. It is the intention of the Contractor to exceed these targets and progressively improve minority and women-owned business participation during the Term and any Renewal Term.

Section 9.10. Pricing. Subject to existing contractual arrangements, the Contractor shall ensure that on average, through the enforcement of contractual provisions, that the prices for goods, including food and beverage items, at the Airport Facilities are the same as for those sold off the premises of the Airport Facilities in Indianapolis, a program known as "street pricing."

Section 9.11. Construction of Improvements.

(a) Except as expressly provided in this Agreement or as are delegated by the IAA Board to the Contractor in Schedule 4.01 attached hereto, the Contractor shall not construct any alterations, additions or improvements to or installations on the Airport Facilities without the prior approval of the IAA Board.

(b) Before the commencement of any such work, detailed plans and specifications, or any material amendments thereto, shall be filed with and approved by the IAA Board and all Governmental Authorities having jurisdiction over the Airport Facilities. All such work shall be done subject to and in accordance with the requirements of all applicable Legal Requirements, and, where required, each affected public utility company.

(c) The Contractor shall cause all work to be performed in a good and workmanlike manner and substantially in accordance with the plans and specifications approved by the IAA Board for the same. At all times during such work, the Contractor shall have on file with the IAA Board and on the construction site for inspection by the Authority, a copy of the approved plans and specifications. If requested by the Authority, the Contractor shall promptly commence to reconstruct or replace and diligently pursue to completion, prior to or after completion of such work, any work which is not done substantially in accordance with such plans and specifications as approved by the IAA Board.

(d) The Contractor shall obtain or cause to be obtained all necessary Government Approvals prior to constructing any improvements to the Airport Facilities and shall ensure that such improvements are constructed and equipped in compliance with all Legal Requirements. Upon completion of the construction of such improvements, the Contractor shall furnish to the Authority all required occupancy permits and authorizations from appropriate Governmental Authorities, if any are required, authorizing the occupancy and use of such improvements for the purposes approved by the Authority.

(e) Upon completion of the construction thereof, any fixture, structure, alteration, addition or improvement to the Airport Facilities undertaken pursuant to this Agreement, whether temporary or permanent in character, excluding personal property and trade fixtures which can be removed without damage to the Airport Facilities, shall immediately become part of the Airport Facilities for purposes of this Agreement and shall automatically become the property of the Authority as owner, without compensation to the Contractor upon the termination of this Agreement except as otherwise agreed to by the Contractor and the Authority in the case of improvements funded by the Contractor (which may upon mutual agreement of the Authority and the Contractor be the property of the Contractor), and shall remain in place upon the termination of this Agreement.

(f) The Contractor and its agents shall comply with all applicable Legal Requirements regarding any construction of additions or material improvements to the Airport Facilities.

Section 9.12. Inspections and Audits of Records and Reports. The Contractor shall permit the Authority and its duly authorized representatives, during the Term and any Renewal Term, at the Authority's expense and without unreasonable disruption to the Contractor, to:

(a) examine, during normal business hours any and all of the records and reports described in Sections 6.04, 6.06, 9.02, 9.04, 9.09, 11.03, 13.02(h), 13.02(j), 13.03(b), and 14.06, and make copies of and take extracts from such records and reports and from all other documents of the Contractor relative to the Airport Facilities, as may be necessary to ensure compliance by the Contractor with the terms of this Agreement; and

(b) cause to be made a complete audit of any of the records and reports described in subparagraph (a) above.

Section 9.13. FAA Operating Certificate. The Contractor shall secure the necessary approvals from the FAA so that the Contractor may operate and maintain the Airport Facilities under the Authority's FAA Operating Certificate and so that the FAA Operating Certificate for the Airport Facilities remains in full force and effect during the Term and any Renewal Term.

Section 9.14. Environmental Compliance Assurance Program.

(a) The Contractor shall develop and implement an environmental compliance assurance program (the "ECAP") for the Airport Facilities. The ECAP shall include compliance monitoring procedures

that are sufficient to provide reasonable assurance of compliance by the Authority, the Contractor, and by tenants of the Airport Facilities (subject to existing contractual arrangements with tenants of the Airport Facilities) with all Environmental Laws which are applicable to the operations at the Airport Facilities. Within one hundred eighty (180) days after the Effective Date, the Contractor shall submit proposed compliance monitoring procedures to the IAA Board for its approval. The Contractor shall have such procedures in place and begin implementing the same within thirty (30) days following notice from the IAA Board of its approval of the procedures.

(b) At a minimum, the ECAP shall address compliance with the following Environmental Laws: (i) spill reporting and response; (ii) environmental permitting, including, but not limited to, air permitting, NPDES permitting of stormwater and any other discharges, and industrial pretreatment requirements for discharge to DPW sewers; (iii) UST regulatory mandates, including, but not limited to, ongoing implementation of leak detection monitoring, Release response and corrective action, and tank upgrade standards; (iv) hazardous waste management requirements for hazardous waste generators; (v) solid waste management requirements; (vi) reporting requirements under the Emergency Planning and Community Right-to-Know Act (42 USC 11001, *et seq.*); and (vii) any other pertinent Environmental Laws presently existing or which may be adopted or enacted subsequent to the Effective Date.

(c) As an element of the ECAP, the Contractor shall designate an individual as the ECAP coordinator, who shall be the point of contact with the IAA Board and tenants of the Airport Facilities with respect to environmental compliance matters.

(d) The ECAP shall clearly delineate responsibilities among the Contractor, the Authority, and tenants of the Airport Facilities (subject to existing contractual arrangements with tenants of the Airport Facilities) for communications with pertinent Governmental Authorities with respect to spill or Release reporting, compliance reporting, agency inspections, and other relevant matters.

Section 9.15. Litigation and Claim Protocol. The Contractor shall immediately provide the Authority with written notice of the commencement of any litigation or the receipt of any material claim which relates to the Airport Facilities or to the execution or performance of this Agreement. The Contractor shall promptly refer any such matter(s) to the appropriate insurance company, if appropriate. If the matter is not or may not be adequately covered by insurance, the Contractor shall promptly submit to the Authority a written plan for the litigation and/or claim, including recommended counsel to defend such matter(s). Subject to the provisions of Section 20.06, if both the Authority and the Contractor are parties to the litigation and/or claim, each may employ its own counsel, but at its own expense; provided, however, that it is understood by the parties hereto that the litigation costs relating to litigation in the normal course shall be an operating expense of the Airport Facilities. All decisions regarding settlement by the Authority with respect to matter(s) to which the Authority is a party shall rest with the Authority unless specifically delegated to the Contractor

Section 9.16. Representations and Warranties Certificate. On the Effective Date, the Contractor shall execute a certificate, in form and substance acceptable to the Authority, recertifying each of its representations and warranties contained in Article VII herein effective as of the Effective Date.

ARTICLE X.

COVENANTS OF AUTHORITY

Section 10.01. Cooperation. As to the following matters, the Authority shall allow the Contractor to make recommendations to the Authority: (i) construction at the Airport Facilities by the Authority or others; and (ii) new agreements of any nature or changes to Authority Agreements or the imposition of covenants, restrictions, liens or encumbrances with respect to the Airport Facilities that would affect the Contractor's operation, maintenance or management of the Airport Facilities. The Authority shall cooperate in good faith with the Contractor so that the Contractor may operate and maintain the Airport Facilities and attempt to achieve the Net Airline Cost Savings in accordance with the terms of this Agreement. The Authority shall in good faith operate in accordance with the Delegation of Authority document attached hereto as Schedule 4.01 and shall negotiate adjustments to the Baseline Projection when appropriate or necessary to carry out the agreement of the parties to this Agreement. The Authority understands the importance of flexibility when dealing with Unforeseen Circumstances. Provided, however, that the Contractor recognizes that the ultimate decisions on matters affecting the Airport Facilities as specified in this Agreement must rest with the Authority. The Authority shall also cooperate in good faith with the Contractor in (i) dealing with all Governmental Authorities in connection with the operation, maintenance, and management of the Airport Facilities and the future

development thereof, including, but not limited to, the application for and obtaining of any Governmental Approvals in connection therewith, (ii) the administration and enforcement of the Authority Agreements, and (iii) the general performance by the Contractor of its rights, duties, and obligations under this Agreement.

Section 10.02. Retained Powers. The Authority assumes and agrees to discharge any retained Authority powers set forth in Section 4.01 herein.

Section 10.03. FAA Operating Certificate. The Authority shall cooperate with the Contractor to secure the necessary approvals from the FAA so that the FAA Operating Certificate for the Airport Facilities remains in full force and effect during the Term and any Renewal Term.

Section 10.04. Sale of Airport Facilities. The Authority shall provide the Contractor with ninety (90) days prior written notice of any sale of all or a material portion of the Airport Facilities.

Section 10.05. Representations and Warranties Certificate. On the Effective Date, the Authority shall execute a certificate, in form and substance acceptable to the Contractor, recertifying each of its representations and warranties contained in Article VIII herein effective as of the Effective Date.

ARTICLE XI.

REVENUE ENHANCEMENT AND COST SAVINGS PROJECTS

Section 11.01. Identification and Approval.

(a) The Contractor shall identify initiatives which it believes will materially increase non-airline revenues ("Revenue Projects") and lower operating expenses ("Cost Projects") of the Airport Facilities. For purposes of this Section 11.01, "material" shall be defined to include any Revenue Project or Cost Project which would require an Authority expenditure in excess of $25,000 or which is estimated to have an annual benefit in excess of $25,000. Other than those initiatives set forth in sub-paragraph (b) of this Section 11.01, any Revenue Project or Cost Project shall first be presented to the Authority in conceptual form for approval. Following preliminary approval, the Contractor shall prepare a complete summary of the project including, without limitation:

(1) Detailed outline of the benefits of the Revenue Project or Cost Project;

(2) Estimated cost to the Authority;

(3) Estimated financial return to the Authority; and

(4) Projected payback period for any capital to be invested by the Authority.

The IAA Board shall promptly consider and approve any Revenue Projects or Cost Projects which it deems to be meritorious in its reasoned judgment. Any disagreement between the Authority and the Contractor shall be submitted to the dispute resolution mechanism of Article XVI herein. Certain or all of these projects may be included in the Annual Operating Budget or Annual Capital Budget submitted to the Authority for its approval pursuant to Sections 13.04 and 13.05 herein.

(b) As a part of the approval of this Agreement, the Authority has approved the Revenue Projects and Cost Projects summarized in Schedule 11.01 attached hereto.

(c) The Contractor may at its sole discretion choose to invest its own capital in any Cost Project or Revenue Project subject to the approval of such projects by the Authority.

Section 11.02. Non Revenue-Generating Projects. From time to time, the Contractor shall submit proposals to the Authority for Capital Improvements and Capital Expenditures which are necessary for the safe operation of the Airport Facilities or are required by any Legal Requirement and which are not intended to be revenue generating. All such Capital Improvements and Capital Expenditures shall be promptly approved by the Authority.

Section 11.03. Reports on Revenue Projects and Cost Projects. In addition to those reports set forth in Section 9.04 herein, the Authority may request periodic reports on the operational and financial status of Revenue Projects and Cost Projects.

Section 11.04. Cost Projects. In order to effect cost improvements at the Airport Facilities, the Contractor shall by example and without limitation:

(a) Review all services previously provided by the Authority in order to seek bids from outside contractors where quality can be added at a lower unit cost while keeping safety and security paramount;

(b) Review all utility usage at the Airport Facilities and make appropriate adjustments resulting in reductions in electricity and water consumption; and

(c) Examine purchasing systems previously utilized by the Authority to identify those suppliers who can offer the most competitive prices.

Section 11.05. Revenue Projects. In order to positively affect revenue generation at the Airport Facilities, the Contractor shall by example and without limitation:

(a) Subject to the terms of contractual arrangements with the Authority, increase sales per passenger from retail operations at the Airport Facilities by introducing the concepts of street pricing, branding, choice, and competition;

(b) Aggressively market the remaining available unleased space at the Indianapolis International Airport;

(c) Develop new leasable space at the Airport Facilities;

(d) Examine certain large scale cash handling operations at the Airport Facilities (such as parking) to ensure that no revenue leakage is occurring;

(e) Develop aggressive market promotions to attract new air services, cargo operations, and noise compatible light industrial units to the Airport Facilities;

(f) Subject to the terms of contractual arrangements with the Authority, introduce competing food and beverage operations at the Airport Facilities; and

(g) Extend the range of retail operations at the Airport Facilities.

Section 11.06. Capital Investment by Contractor. During the first two (2) Agreement Years, the Contractor shall invest, in the aggregate, at least Five Hundred Thousand Dollars ($500,000) of its own capital in Revenue Project(s) which have received the prior approval of the Authority. The Contractor shall not be reimbursed by the Authority for any such capital investment.

Section 11.07. Airline Use Agreements. The Contractor shall be responsible for all daily contact and coordination with the Airlines. As part of this responsibility, the Contractor shall obtain the approval of the City-County Council of the City of Indianapolis of the Annual Operating Budget and the Annual Capital Budget and shall submit the Annual Capital Budget to the Airlines for their review. Any significant disputes with the Airlines shall immediately be referred to the IAA Board President. The Contractor shall, at the direction of the IAA Board, also be responsible for negotiations leading up to any new airline use agreements with the Airlines.

ARTICLE XII.

INSURANCE

Section 12.01. Contractor to Provide Insurance. The Contractor shall obtain and continuously maintain without interruption, during the Term and any Renewal Term, the following insurance for the operations and activities on or at the Airport Facilities from a licensed insurance company or companies approved by the Authority and rated by Best's Rating at A-XII or better:

(a) Comprehensive General Liability or Commercial General Liability Insurance ("Primary") and Excess Liability Insurance ("Excess") with a minimum total aggregate limit of $250,000,000. The exact breakdown of Primary and Excess shall be upon the recommendation of the Contractor. Both the Authority and the Contractor shall be insured under the Primary and Excess policies. There shall be no

deductible and no self-insured retention aspects to such insurance. The Excess shall serve as excess coverage for all insurance forms specified in Sections 12.01(b), (c), (d), and (e). Coverage shall include, but not be limited to:

i. bodily injury, property damage, and personal injury liability;

ii. the operation of Vehicles on and/or at the Airport Facilities. Coverage for such liability may be limited to liability in excess of the limits of the Comprehensive Automobile Liability Insurance discussed below in Section 12.01(b);

iii. independent contractors and contractors protective;

iv. collapse, explosion or underground;

v. incidental host liquor liability;

vi. aircraft liability, ground hangarkeepers liability, and airport operator's liability;

vii. completed operations;

viii. claims of discrimination and/or harassment;

ix. liabilities (including cleanup and remediation costs) arising out of a Release;

x. advertising injury liability; and

xi. medical malpractice liability.

(b) Comprehensive Automobile Liability Insurance with minimum limits of $1,000,000 per occurrence for bodily injury and property damage liability. There shall be no deductible and no self-insured retention aspects to the insurance. Coverage shall include, but not be limited to, the operation of all Vehicles owned/leased by the Authority, both at and away from the Airport Facilities.

(c) Directors' and Officers' Liability Insurance with respect to Authority personnel with a minimum $1,000,000 policy limit. The insurance may have a deductible of no more than $15,000.

(d) Property Loss Insurance with a minimum $150,000,000 policy limit. The insurance may have a deductible of no more than $25,000. The insurance must be placed on a repair/replacement basis. It is understood and agreed that the policy limit may fluctuate as new property is acquired and/or relinquished. Coverage shall include, but not be limited to:

i. the loss of buildings, contents, personal property, boilers, Vehicles, and machinery;

ii. rental insurance, service interruption (time element), repair or replacement, agreed amount endorsement, earth movement, flood, valuable papers and records, demolition and increased cost of construction, debris removal at each location, extra expense, errors and omissions, automatic coverage, expediting expense, transportation, off premises floater, and decontamination expense; and

iii. the loss of Equipment that the Authority owns as well as Equipment that the Authority does not own but has in its custody and/or possession and/or that is otherwise under its control.

(e) Workers' Compensation Insurance with limits in amounts that fully comply with applicable statutory limits in the State of Indiana. The scope of coverage afforded by the insurance shall also comply with applicable statutory requirements in the State of Indiana. This scope shall include, but not be limited to, coverage for injury, death or occupational disease of employees of the Contractor arising out of and/or in the scope of their employment.

(f) Fidelity Insurance with limits in the amount of $500,000 per occurrence. There shall be no deductible and/or self insured retention aspects to the insurance. The scope of coverage afforded by the

insurance shall include, but not be limited to, indemnification to the Authority for losses arising out of the Contractor's and the Authority's "agents'" act(s) or omission(s) of dishonesty, infidelity and/or lack of integrity. The Contractor's "agents" and the Authority's "agents" shall be defined (for purposes of this Section 12.01(f) only) as including all employees, agents, officers, and directors of the Contractor or the Authority who are involved in, or employed in connection with, the performance of the Contractor's obligations under this Agreement or in connection with the Authority's activities at the Airport Facilities.

Subparagraphs under each of the listed forms of insurance (Sections 12.01 (a), (b), (c), (d), (e), and (f)) are not limitations on the scope of coverage required and the Contractor shall secure the listed coverages as they are commercially available. The Contractor may obtain additional forms of insurance and coverages.

Section 12.02. Special Conditions. The following conditions shall apply to all insurance obtained by the Contractor:

(a) The Contractor shall be responsible for recommending to the Authority all limits of coverage on all policies described herein and all types of coverage and their respective scopes and deductibles, on an annual basis.

(b) The Authority shall be specifically named as an additional insured on all insurance policies of the Contractor.

(c) Each policy of insurance hereunder shall contain waivers of subrogation by the insurer as to both the Authority and the Contractor.

(d) Each of the Airport Facility locations shall be specifically identified as covered locations in each insurance policy.

(e) Prior to the Effective Date, the Authority shall be provided with a certificate and declarations page for each of the policies referred to in this Article XII. Within thirty (30) days of the Effective Date, the Authority shall be provided with a certified copy of each of the policies referred to in this Article XII.

(f) The insurance described in this Article XII may be carried under a policy or policies covering other liabilities and locations of the Contractor or a parent, subsidiary or affiliate of the Contractor, provided that the applicable limits of coverage and/or the insurance proceeds available for coverage are not thereby reduced for purposes of this Article XII and will not be reduced by losses, occurrences, and other covered events that the Contractor or its parents, subsidiaries or affiliates experience from such other liabilities and locations of the Contractor or its parents, subsidiaries or affiliates.

(g) The Contractor shall require the respective insurance companies to provide notice of cancellation and/or non-renewal directly to the Authority at least sixty (60) days in advance of such cancellation and/or non-renewal.

(h) All insurance companies and coverages must be acceptable to and approved in writing by the Authority.

(i) All premiums reimbursed to the Authority as a result of the termination of its existing insurance policies shall be revenues of the Airport Facilities subsequent to the Effective Date.

(j) To the extent the Contractor recommends that the Authority and the Contractor be insured under the same policies of insurance and, as a result, the cost of such insurance to the Authority increases, the Contractor shall pay any such increased cost. Otherwise, the cost of such insurance shall be an operating cost of the Airport Facilities.

ARTICLE XIII.

OPERATION AND MAINTENANCE OF AIRPORT FACILITIES

Section 13.01. Condition of Airport Facilities. The Authority has not made any representation as to the condition of the Airport Facilities, or any buildings, structures, improvements, Equipment, Vehicles, machinery or tools situated at the Airport Facilities. The Contractor shall conduct and complete a

comprehensive inspection of the Airport Facilities for the purpose of documenting the operational and maintenance status of the Airport Facilities, and any resulting necessary adjustments to the Baseline Projection shall be made pursuant to Section 6.02 herein.

Section 13.02. Operation of Airport Facilities. During the Term and any Renewal Term, the Contractor shall operate the Indianapolis International Airport on a continuous 24-hours per day, 7 days per week basis, at least to the extent such airport is currently operated, in compliance with all Legal Requirements. All other Airport Facilities shall be operated on a daily and hourly schedule consistent with current operation by the Authority. Operation of the Airport Facilities shall include, but not be limited to, the following:

(a) The Contractor shall provide the scope of services set forth in Section 3.06 herein and shall provide or obtain (i) all personnel and associated wages, salaries, and benefits, (ii) all necessary inventory to operate and maintain properly the Airport Facilities at the level required by this Agreement, (iii) all necessary utilities (to the extent within the control of the Contractor), and (iv) any other services necessary to operate the Airport Facilities in accordance with all applicable Legal Requirements.

(b) The Contractor shall provide all personnel, materials, and services necessary to support the operation and maintenance of the Airport Facilities in the manner required by this Agreement including, but not limited to, the following functions: operations, engineering, training, computer systems maintenance, administration, public relations (in consultation with the Authority), purchasing, regulatory compliance and reporting, transportation, janitorial, security, and general building and grounds maintenance at the Airport Facilities.

(c) The Contractor shall transport and handle, in accordance with any Legal Requirement, all chemicals, fuel, wastes and residues generated on the Airport Facilities.

(d) Except to the extent that it is the responsibility of third parties at the Airport Facilities, the Contractor shall maintain the cleanliness and appearance of the Airport Facilities in a professional manner and shall be responsible for the maintenance of the lawn, trees, flowers, and plants at the Airport Facilities.

(e) The Contractor shall actively pursue improvements in effectiveness, efficiency, and the cost of operations and maintenance of the Airport Facilities and at least annually or upon written request by the IAA Board, evaluate all Equipment and notify the IAA Board of specific Equipment needs.

(f) The Contractor shall maintain a professional, positive, and responsive working relationship with the Airlines, the IAA Board, and other representatives of the Authority, regulatory authorities, suppliers of materials, utilities, and services, and the public.

(g) The Contractor shall review and update, where appropriate, the Authority's Emergency Preparedness Plan for interaction and coordination with the Authority. The Contractor shall use its best efforts to deal with emergencies and to maintain or restore normal operations. In the event of an emergency, the Contractor shall make every reasonable effort to contact the IAA Board President to authorize any needed emergency major repairs, Capital Expenditures or Capital Improvements. Any truly emergency matters may be undertaken at the direction of the Airport Director if he/she is unable to contact the IAA Board President.

(h) The Contractor shall prepare, in a timely manner, any required regulatory reports and submit them to the IAA Board for transmittal to the appropriate agencies.

(i) The Contractor shall provide twenty-four (24) hour per day security at the Airport Facilities in accordance with the terms of the security plan which shall be a part of the Transition Plan.

(j) The Contractor shall honor and administer the Operating Documents. The Authority shall make available to the Contractor the Operating Documents, as well as calculations, maintenance manuals, operational records, logs, reports, submittals, repair records, cost records, audits, and general correspondence which may be in the Authority's possession or that of its agents, related to the design, condition or operation of the Airport Facilities. Neither the Authority nor the Contractor shall take any action or omit to take any action which would invalidate or void the Operating Documents.

Section 13.03. Maintenance of Airport Facilities. During the Term and any Renewal Term, the Contractor shall be responsible for performing routine maintenance, predictive maintenance, preventive maintenance, and corrective maintenance of the Airport Facilities, all in a manner at least as effective as the manner in which the Airport Facilities were maintained by the Authority on a consistent basis prior to the Effective Date. Such maintenance shall include, but not be limited to, the following:

(a) The Contractor shall provide the scope of services set forth in Section 3.06 herein and shall provide all personnel, materials, and services necessary to maintain the Airport Facilities' structures, Vehicles, Equipment, mechanical, electrical, HVAC, instrumentation, and communication and computer systems adequately to insure efficiency, long-term reliability, and conservation of capital investment. The Contractor shall implement its maintenance management program in order to provide prudent maintenance in accordance with industry standards, equipment manufacturers' instructions, and existing operating and maintenance manuals (taking into account the specific maintenance requirements of each piece of Equipment) so that at the Termination Date the Airport Facilities are returned to the Authority in the same or better condition than at the Effective Date, normal wear and tear excepted. The Authority and the Contractor, as the case may be, shall make provisions for enforcing the Operating Documents, and for maintaining all warranties on new Equipment purchased after the Effective Date. The Contractor shall employ routine, predictive, preventive, and corrective maintenance programs. Within six (6) months of the Effective Date, the Contractor shall complete a full review of the Airport Facilities' maintenance management program and make appropriate recommendations to the Authority regarding a predictive and preventative maintenance plan that is at least as effective as the manner in which the Airport Facilities were maintained by the Authority on a consistent basis prior to the Effective Date. Changes and/or enhancements to the existing maintenance management program may include corrective and/or Capital Improvements as mutually agreed upon by the Authority and the Contractor.

(b) The Contractor shall maintain detailed records and reports of maintenance work performed and shall make such reports available to the Authority. The reports shall identify all maintenance activities and orders pending or completed since the most recent report.

(c) The Contractor shall regularly review and inspect the Airport Facilities to determine the necessity of any major repair and maintenance activities and prepare written recommendations to the Authority related to all such activities.

Section 13.04. Annual Operating Budget. On an annual basis, the Contractor shall prepare and submit the Annual Operating Budget to the IAA Board. The Annual Operating Budget shall include all projected revenues, including non-airline revenues, as well as projected operating costs and Capital Expenditures. At the option of the Contractor, the Annual Operating Budget may include an estimate of the compensation due the Contractor pursuant to Section 6.04 herein so long as the Contractor includes in such Annual Operating Budget the projected improvements in the Net Airline Cost on a per Enplaned Passenger basis. The Authority shall review and make any recommended changes to the proposed Annual Operating Budget. The final Annual Operating Budget shall be completed so that it can be submitted to the City-County Council of the City of Indianapolis for approval. All such actions shall be taken on a time schedule to ensure compliance with the requirements of the Authority and the City-County Council of the City of Indianapolis.

Section 13.05. Capital Improvements. On an annual basis, the Contractor shall prepare and submit the Annual Capital Budget to the IAA Board. The Authority, in its discretion, shall determine whether to accept the Contractor's proposal for the Capital Improvements as set forth in the proposed Annual Capital Budget. The Authority shall make any recommended changes to the proposed Annual Capital Budget. The final Annual Capital Budget shall be completed so that it can be timely submitted to the Airlines and the City-County Council of the City of Indianapolis. All such actions shall be taken on a time schedule to ensure compliance with the requirements of the Authority, the Airlines, and the City-County Council of the City of Indianapolis.

Section 13.06. Mechanic's Liens. The Contractor shall not allow any mechanic's liens for labor and/or materials furnished, or alleged to be furnished, to the Contractor to attach to any portion of the Airport Facilities. If any such lien shall at any time be filed, the Contractor shall, without cost or expense to the Authority, within thirty (30) days of receipt of notice by the Contractor, cause the same to be effectively discharged of record by payment, bond, order of a court of competent jurisdiction or otherwise, unless the Contractor furnishes to the Authority security in the amount of such lien to protect the interests of the Authority. If any lien so attaches and the Contractor fails to discharge it or furnish such security to the Authority, the Authority may remove it at the Contractor's expense and offset the cost against the

Contractor's compensation in accordance with Article VI. This Section 13.06 shall apply to all materials and/or labor furnished, or alleged to be furnished, to the Contractor in connection with its services under this Agreement, whether for the Airport Facilities or otherwise.

Section 13.07. Inventory. During the Term and any Renewal Term, the Contractor shall utilize the Beginning Inventory in the operation and maintenance of the Airport Facilities. On the Termination Date, the Contractor shall turn over to the Authority inventory (less any liquidated excess inventory) which is reasonably necessary to operate and maintain the Airport Facilities.

Section 13.08. Equipment and Vehicles. The Authority shall provide the Contractor with the Equipment needed by the Contractor for its services under this Agreement. A list of Vehicles is attached hereto as Schedule 13.08. Proper maintenance of the Vehicles shall be conducted by the Contractor.

Section 13.09. Proprietary Rights. The Contractor and the Authority shall agree on a case by case basis as to the ownership of any patentable or copyrightable discoveries or inventions that result from the work described herein.

ARTICLE XIV.

PERSONNEL

Section 14.01. Staffing. The Contractor shall employ adequate staff to operate and maintain the Airport Facilities in accordance with the terms of this Agreement.

Section 14.02. Contractor to Interview Airport Employees. Before the Effective Date, the Contractor shall complete its interviewing of all employees of the Airport Facilities who are interested in and apply for a position with the Contractor. Subject to its normal and customary interview practices, the Contractor shall use its best efforts to employ all interested and qualified employees of the Authority as its employees at the Airport Facilities. The Contractor shall have the right to require substance abuse tests of all persons to whom it offers a position of employment and the right to reject for employment any person not passing or declining to take such a test.

Section 14.03. Comparable Employment.

(a) The Contractor shall provide Authority employees who are employed by the Contractor with a total package of initial compensation and benefits for such employees essentially similar to the compensation and benefits currently provided by the Authority assuming comparable levels of work responsibilities, the minimum specifications of which are set forth in Schedule 14.03 attached hereto. The Contractor shall provide the Authority with final wages and benefits specifics at least thirty (30) days prior to the Effective Date.

(b) From the Effective Date until January 1, 1996, the Contractor shall provide health insurance coverage to employees of the Authority whom it has hired under its own group health insurance plan(s) which shall be substantially identical to the existing insured and self-insured group health insurance plans of the Authority. With respect to the self-insured group health insurance plan of the Authority, the Authority shall provide the Contractor with the right to request reimbursement from such plan for any claims of employees of the Authority whom the Contractor has hired incurred beginning on and after the Effective Date through December 31, 1995. However, the Contractor shall not acquire any right, title or interest in or to any of the assets which the Authority holds for the funding of any claims under such self-insured group health insurance plan. The nature of this reimbursement shall be in the form of a loan from the Authority to the Contractor and, accordingly, the Contractor shall also reimburse the Authority for the cost of such funds, as reasonably determined by the Authority. On January 1, 1996 (or as soon as possible thereafter when the amount of the reimbursable claims is known), the Contractor shall reimburse the Authority the amount, if any, that the Authority has expended on the Contractor's behalf for claims incurred from the Effective Date through December 31, 1995. Any claims incurred by an employee who is a participant in any of the Authority's group health insurance plans prior to his/her date of hire with the Contractor shall be the obligation of the Authority's group health insurance plans. Effective as of January 1, 1996, the Contractor shall provide health insurance coverage to its employees under its own group health insurance plan, which coverage shall be comparable (including coverage for dependents, if applicable) to that which such employees were receiving under the group health insurance plan sponsored by the Authority, without regard to any waiting periods or pre-existing conditions. This coverage shall be at a cost to such employees equal to

or less than that which such employees paid for comparable coverage as an employee of the Authority under whichever plan is providing coverage to such employees (and his/her dependents, if applicable) (it being understood that such costs may increase in the future as a result of normal health care cost increases). The Contractor shall provide COBRA health care continuation coverage or, if such coverage is unavailable, alternate coverage to any employees of the Authority who do not become participants in the Contractor's group health insurance plan, at the expense of such employees.

(c) Each employee of the Authority who is hired by the Contractor shall be credited with the years of service accumulated under the Authority's pension and welfare benefit plans for eligibility and vesting purposes under all such plans sponsored by the Contractor. The Authority shall transfer all accrued vacation and sick time to the Contractor for each employee of the Authority hired by the Contractor and shall reimburse the Contractor for any liability associated with such accrued vacation and sick time when actually incurred by the Contractor up to the amount of vacation and/or sick time of the affected employee on the Effective Date.

(d) The Authority's defined benefit pension plan shall be terminated as of the Effective Date and the Authority shall secure a favorable determination letter from the Internal Revenue Service to the effect that such plan's termination does not adversely affect its qualified status. The ability of the employees of the Authority to rollover funds into the 401(k) plan of the Contractor is contingent upon the receipt of such letter. The Authority shall amend its plan as necessary to bring it into compliance with all existing Legal Requirements and to permit the payment of a lump sum form of benefit. Upon termination of the Authority's existing defined benefit pension plan, the Authority shall ensure that its employees shall receive their respective accrued benefits thereunder. The Contractor shall establish a 401(k) plan as of the Effective Date and shall therein provide for discretionary employee pre-tax salary deferral contributions and employer contributions. During the Term and any Renewal Term, the Contractor shall, to the extent permitted by any Legal Requirement, make an annual employer contribution for eligible participants equal to at least (i) the Authority contribution to the Authority's defined benefit plan during 1994, divided by the total base compensation of eligible Authority employees for 1994 times (ii) the total base compensation of all eligible employees of BAA Indianapolis LLC for the applicable year.

Section 14.04. Training of Airport Employees. The Contractor shall implement a comprehensive training program for its employees at the Airport Facilities.

Section 14.05. Personnel Changes by Contractor. The Transition Plan shall provide for voluntary attrition of employees of the Authority following the Effective Date. Consistent with the terms of the Transition Plan, there shall be no involuntary layoff of employees of the Authority who are subsequently employed by the Contractor. The Contractor and the Authority shall share in the costs associated with such voluntary attrition at forty percent (40%) and sixty percent (60%), respectively. The Authority's voluntary attrition costs shall not exceed $480,000 and such costs shall be paid from improvements in the Net Airline Cost on a per Enplaned Passenger basis in any Agreement Year until paid in full. The Contractor shall pay such costs until such time as there are sufficient improvements in the Net Airline Cost on a per Enplaned Passenger basis from the Adjusted Baseline on a per Enplaned Passenger basis.

Section 14.06. Nondiscrimination.

(a) The Contractor and any subcontractors shall not discriminate against any employee or applicant for employment in the performance of this Agreement, with respect to hire, tenure, terms, conditions or privileges of employment, or any other matter directly or indirectly related to employment, because of race, religion, color, age, sex, handicap, national origin, ancestry, disabled veteran status or Vietnam-era veteran status.

(b) The Contractor shall not discriminate on the grounds of race, religion, color, age, sex, handicap, national origin, ancestry, disabled veteran status or Vietnam-era veteran status in the selection and retention of subcontractors, or in the procurement of materials or supplies or leases of equipment.

(c) The Contractor shall permit access to its books, records, accounts, other sources of information, and the Airport Facilities as may be determined by the Authority or the FAA to be pertinent to ascertain compliance with this Section 14.06.

(d) The Contractor shall include as covenants, agreements, and obligations of concessionaires and subcontractors, the nondiscrimination provisions contained in this Section 14.06 in every lease,

contract, and agreement, including, but not limited to, contracts for the procurement of materials or supplies or leases of equipment. The Contractor shall take such action with respect to any lease, contract or procurement as the Authority or the FAA may direct as a means of enforcing such provisions, including the enforcement of sanctions for noncompliance.

(e) The Contractor agrees that it shall furnish to any Governmental Authority or the Authority, as required, any and all documents, reports, and records required by Title 14, Code of Federal Regulations, Part 152, Subpart E.

(f) These provisions are required by the FAA pursuant to Title 14, Code of Federal Regulations, Part 152, 45 Federal Register 10184 (February 14, 1980), as a condition of and a prerequisite to the Authority's receipt of federal assistance in connection with the Airport Facilities.

Section 14.07. No Restriction on Employment. At the Termination Date, the Contractor shall not place any restriction upon the ability of the employees at the Airport Facilities to become employees of the Authority or employees of any contractor which may in the future operate and maintain the Airport Facilities.

Section 14.08. Authority not Employer. Nothing in this Agreement shall be construed to place the Authority in the relationship of the employer of, or to grant the Authority the rights to direct or control, employees of the Contractor or displaced employees.

ARTICLE XV.

DEFAULTS AND REMEDIES

Section 15.01. Contractor Events of Default. The occurrence of any of the following shall constitute an "Event of Default" by the Contractor for purposes of this Agreement:

(a) The institution against the Contractor or the Parent Company of bankruptcy, insolvency, reorganization, arrangement, debt adjustment, liquidation or receivership proceedings in which it is alleged that the Contractor or the Parent Company is insolvent or unable to meet its debts as they mature;

(b) The breach by the Contractor of any representation, covenant, warranty or obligation of the Contractor under this Agreement, except in the event of Unforeseen Circumstances;

(c) The Contractor or the Parent Company shall become a corporation in dissolution under applicable bankruptcy or insolvency laws; or

(d) A lien which exceeds Twenty-Five Thousand Dollars ($25,000), or liens which in the aggregate exceed Fifty Thousand Dollars ($50,000), shall be filed against the Airport Facilities, or any portion thereof, because of any act(s) or omission(s) of the Contractor, its employees or agents, and shall not be discharged within thirty (30) days after receipt of notice or other knowledge thereof by the Contractor, unless the Contractor shall within the aforesaid thirty (30) days, furnish to the Authority security in the amount of such lien or liens to protect the interests of the Authority.

Section 15.02. Authority Events of Default. The occurrence of any of the following shall constitute an "Event of Default" by the Authority for purposes of this Agreement:

(a) The failure by the Authority to pay any fee, charge or other monetary payment due the Contractor pursuant to the terms of this Agreement within ten (10) days after demand therefor;

(b) The breach by the Authority of any representation, covenant, warranty or obligation of the Authority under this Agreement, except in the event of Unforeseen Circumstances;

(c) The institution against the Authority of bankruptcy, insolvency, reorganization, arrangement, debt adjustment, liquidation or receivership proceedings in which it is alleged that the Authority is insolvent or unable to meet its debts as they mature;

(d) The Authority shall become a municipal corporation in dissolution under applicable bankruptcy or insolvency laws;

(e) The consistent and continued failure of the Authority to approve any Revenue Projects and/or Cost Projects which failure, in the reasonable judgment of the Contractor, has a Material Adverse Effect on the ability of the Contractor to (i) meet or exceed its quality targets as set forth in Section 6.02(f) herein or (ii) produce the Guarantee; or

(f) The taking of any actions by the Authority under Sections 3.05, 4.01, 4.07, 22.03 or 22.21 herein, the taking of any action by the FAA or any other Governmental Authority or any material change in applicable Legal Requirements that, in the reasonable judgment of the Contractor, materially interferes with the Contractor's ability to perform adequately its obligations under this Agreement.

Section 15.03. Notice and Cure. The non-defaulting party shall give written notice to the party in default of any Event of Default. For Events of Default under Sections 15.01(a) and (b) and Sections 15.02(b),(c), (e) and (f), the party in default shall have thirty (30) days from the date of receipt of such notice to take action to cure the default (hereinafter referred to as the "First Cure Period"). If such default is not cured at the expiration of the First Cure Period, and the defaulting party is diligently pursuing a cure, such cure period shall be extended for an additional thirty (30) day period (hereinafter referred to as the "Second Cure Period"). If such default has not been cured at the expiration of the Second Cure Period or if the defaulting party is not diligently pursuing a cure at the end of the First Cure Period, the party not in default may exercise any of the remedies set forth in Section 15.04 herein.

Section 15.04. Remedies. Subject to the provisions of Article XVI herein, the following remedies against a party which has committed an Event of Default which does not cure its Event of Default as set forth in Section 15.03 herein shall be available to the non-defaulting party:

(a) If the party in default is the Contractor, the Authority may (i) withhold payment of the compensation payable to the Contractor pursuant to Article VI, without such non-payment constituting an Event of Default, until such time as the default is cured; and/or (ii) terminate this Agreement.

(b) If the party in default is the Authority, the Contractor may terminate this Agreement.

The party in default shall reimburse the non-defaulting party and be responsible for all the expenses incurred as a result of the default, including Damages.

The foregoing remedies shall be in addition to, and not in lieu or limitation of, all remedies available at law or in equity to the non-defaulting party. Notwithstanding the foregoing or any other provision of this Agreement, the parties agree that any remedy sought by a party as a result of an uncured Event of Default by the other party shall be just, reasonable, and appropriate in relation to the nature of the Event of Default.

ARTICLE XVI.

DISPUTE RESOLUTION

Except with respect to an Event of Default by the Authority under Sections 15.02(a), (c) and (d) and by the Contractor under Sections 15.01(a) and (c) herein and except for a Termination Default by the Contractor under Sections 17.01(a) and (b), prior to seeking any remedy for an Event of Default, the Authority and the Contractor shall attempt in good faith to resolve any and all controversies or claims arising out of or relating to this Agreement promptly by negotiation, including referring such matter to the most senior official of the Authority and the most senior official of the Contractor available in the United States.

In the event such efforts fail to resolve such controversies or claims, the disputing party shall give the other party written notice of the dispute. Within twenty (20) days after receipt of said notice, the receiving party shall submit to the other a written response. The notice and response shall include (a) a statement of each party's position and a summary of the facts and arguments supporting its position, and (b) the name and title of the executive who will represent that party. The executives shall meet at a mutually acceptable time and place within thirty (30) days of the date of the disputing party's notice and thereafter as often as they reasonably deem necessary to exchange relevant information and to attempt to resolve the dispute.

If the matter has not been resolved within sixty (60) days of the disputing party's notice, or if the party receiving said notice will not meet within said thirty (30) days, either party may initiate mediation of the controversy or claim generally in the manner described in Rule 2 of the Indiana Rules of

Alternative Dispute Resolution, as adopted by the Supreme Court of the State of Indiana; provided, however, in no event shall the party desiring to initiate mediation be required to first initiate legal proceedings.

Notwithstanding the provisions of this Article XVI, a party may seek a preliminary injunction or other preliminary judicial relief if in its good faith judgment such action is necessary to avoid irreparable harm.

ARTICLE XVII.

TERMINATION

Section 17.01. Termination Defaults by Contractor. Notwithstanding anything to the contrary in this Agreement, the occurrence of any of the following shall constitute a "Termination Default" by the Contractor:

(a) The operation and maintenance of (or the failure to operate and maintain) the Airport Facilities by the Contractor in such a manner as to create a situation which poses a real, serious, and immediate threat to the health and public welfare of the City of Indianapolis, its citizens or the traveling public; or

(b) Any act or omission by the Contractor which constitutes a felony under applicable law; or

(c) The Parent Company does not maintain controlling ownership interest in the Contractor.

Section 17.02. Termination Defaults by Authority. Notwithstanding anything to the contrary in this Agreement, the occurrence of any of the following shall constitute a "Termination Default" by the Authority:

(a) The failure of the Authority to approve any project described at Section 11.02 herein;

(b) Subject to the terms of Article XIX herein, the Airport Facilities or any material part thereof shall be sold, vacated or abandoned or shall fail to be operated and open to the public other than as the result of an act or omission of the Contractor, its employees or agents; or

(c) In the event of the significant expansion or modifications of the Airport Facilities which would impose material financial burdens on the Contractor, and the Authority and the Contractor are unable to resolve such matters pursuant to Article XVIII herein.

Section 17.03. Termination of Agreement.

(a) In the event of a Termination Default by the Contractor as described in Section 17.01(a) herein, the Authority shall have the right, upon written notice to the Contractor as to the specific circumstances of the asserted Termination Default, to immediately enter upon the premises of the Airport Facilities, suspend this Agreement, and assume responsibility for the maintenance and operation of the Airport Facilities. The Authority shall have the right to utilize such personnel of the Contractor as is necessary for the continued operation and maintenance of the Airport Facilities and shall reimburse the Contractor for the reasonable cost thereof. The suspension shall continue until the event is ended (including by action of the Parent Company) provided that if such event has not ended within thirty (30) days from such written notice then the Authority may terminate this Agreement and the Contractor shall refund to the Authority any unearned compensation that may have been paid by the Authority and the Contractor shall pay any and all Damages incurred by the Authority resulting from the Contractor's Termination Default. The foregoing remedies shall be in addition to, and not in limitation of, all remedies available at law or in equity to the Authority.

(b) In the event of a Termination Default by the Contractor or the Authority as described in Sections 17.01(b) and (c), and Section 17.02 herein, the non-defaulting party shall have the right to terminate this Agreement upon ninety (90) days prior written notice to the defaulting party. Upon such termination, the defaulting party shall pay any and all Damages incurred by the terminating party resulting from the defaulting party's Termination Default.

(c) Upon termination of this Agreement pursuant to Article XV, this Article XVII, Article XIX or otherwise herein, the Authority, if an Event of Default has not occurred under Section 15.01 herein and if a Termination Event has not occurred under Section 17.01 herein, (i) shall promptly pay to the

Contractor the unamortized cost of all improvements made or installed by the Contractor during the Term or any Renewal Term which received the approval of the Authority in accordance with the terms of this Agreement, (ii) shall promptly reimburse the Contractor for its direct costs in transitioning the Airport Facilities back to the Authority upon proper documentation of the same to the Authority, (iii) shall pro-rate the Guarantee of the Contractor under Section 6.03 herein for any partial Agreement Year to the Termination Date, and (iv) shall pay to the Contractor an appropriately adjusted pro-rata portion of the compensation calculated in accordance with Article VI herein.

(d) If an Event of Default has occurred under Section 15.01 herein or if a Termination Event has occurred under Section 17.01 herein, the Authority shall pay the Contractor the amounts set forth in Section 17.03(c) herein (except for the amount set forth in Section 17.03(c)(ii)) but only such amounts as have been reduced by any Damages suffered by the Authority as a result of such Event of Default or Termination Event.

(e) Upon the expiration of the Term or any Renewal Term, the Authority shall promptly pay the Contractor any compensation due the Contractor under Article VI herein and any unamortized cost of all improvements made or installed by the Contractor during the Term or any Renewal Term with the approval of the Authority.

Section 17.04. Transition at Termination Date. On the Termination Date, the Contractor shall cooperate with the Authority to ensure a smooth transition of the operation and maintenance of the Airport Facilities. This transition shall include, without limitation, appropriate arrangements to address existing agreements, employment arrangements and benefits, and health insurance coverage. Unless otherwise agreed by the Authority, the Authority shall not be responsible for any transition costs of the Contractor that would not normally have been paid out of the Annual Operating Budget during the Term or any Renewal Term. The Contractor shall also ensure that the spare parts, tools, materials, and supplies at the Airport Facilities are adequate for the operation and maintenance of the Airport Facilities.

Section 17.05. Airport Operating Expenses at Termination. Notwithstanding the other provisions of this Article XVII, the Authority shall be responsible for all normal and customary operating and capital expenses of the Airport Facilities immediately following the Termination Date.

ARTICLE XVIII.

EXPANSION AND MODIFICATION

Section 18.01. Purpose. Inasmuch as significant expansion or modifications may need to be made to the Terminal or the operation of the Airport Facilities as a result of new and/or revised Legal Requirements, it is the intention of the Authority and the Contractor to provide a mechanism, if permitted by law, whereby such needs may be accomplished under the terms of this Agreement.

Section 18.02. Notice and Negotiation. The Authority and the Contractor agree to keep each other informed as to circumstances and information indicating a need for expansion or modification of the Airport Facilities. Either party may give notice at any time that it desires to commence negotiations for amendment of this Agreement to provide for expansion or modification of the Airport Facilities and for the payment of additional compensation in consideration of the increased duties of the Contractor. Upon receipt of such notice, the Authority and the Contractor shall attempt to resolve all such matters in good faith. If the Authority is not in a position, either financially or legally, to agree to any proposed amendment of this Agreement, a disclosure of such inability shall be a good faith response on the part of the Authority.

Section 18.03. Absence of Agreement. In the event the Authority and the Contractor cannot agree upon an amendment to this Agreement, the Contractor and the Authority shall continue to comply with their respective duties pursuant to this Agreement unless otherwise terminated.

ARTICLE XIX.

RESTORATION OF AIRPORT FACILITIES; TAKING

Section 19.01. Repair; Rebuild.

(a) If any part of the Airport Facilities shall be destroyed or damaged in whole or in part by fire or other casualty, the Contractor shall recommend to the Authority whether to repair or rebuild the Airport

Facilities as a result of such casualty loss. Based upon such recommendation, the Authority shall decide whether to rebuild or repair the damaged Airport Facilities. To the extent any damage or destruction results in loss of revenue or increased expense, the Authority and the Contractor shall negotiate in good faith an appropriate adjustment to the Baseline Projection. Any lost improvement in the Net Airline Cost on a per Enplaned Passenger basis shall be subject to recovery through insurance by the Contractor and the Authority as their interests may appear.

(b) The Contractor shall cooperate with the Authority with respect to the repair and/or restoration of the damaged Airport Facilities and shall, at the direction of the Authority, administer and supervise the repair and/or restoration of the damaged Airport Facilities.

Section 19.02. Termination. If the Authority determines that any damaged or destroyed property which represents a significant portion of the Airport Facilities and which has a Material Adverse Effect on the Contractor's ability to operate the Airport Facilities pursuant to the terms of this Agreement, will not be repaired or rebuilt, then the Contractor may, upon ninety (90) days prior written notice to the Authority, terminate this Agreement.

Section 19.03. Taking. In the event of any action or other proceedings by any Governmental Authority for the taking for a public use of any interest in all or any part of the Airport Facilities, or in the case of any deed, lease or other conveyance in lieu thereof (all of which are hereinafter referred to as a "Taking"), and any such Taking results in loss of revenue or increased expense, the Baseline Projection shall be appropriately adjusted to reflect such lost revenue or increased expense; provided, however, that if the property which is the subject of the Taking was constructed and financed by the Contractor, then the Contractor shall also receive the unamortized cost of such property. If the property which is the subject of the Taking is owned by the Contractor, any proceeds from the Taking shall belong to the Contractor. In the event of such a Taking, the Contractor shall make a recommendation regarding a proposed response or negotiating position with the Taking Authority, however, the final decision rests with the Authority. Notwithstanding anything herein, if any property necessary or desirable for the efficient operation of the Airport Facilities shall be the subject of a Taking, then the Contractor may, upon written notice to the Authority, terminate this Agreement. Section 19.04. Insurance Proceeds. The Authority shall have the sole right to settle and adjust any insurance claims pertaining to any damage to the Airport Facilities and, subject to the Contractor's rights under this Article XIX, to receive and retain the proceeds thereof. The Authority shall control the disbursement of such insurance proceeds with respect to the repair and/or restoration of the damaged Airport Facilities.

ARTICLE XX.

INDEMNIFICATION AND OBLIGATIONS

Section 20.01. Contractor to Indemnify Authority. The Contractor (BAA USA Holdings, Inc. and BAA Indianapolis LLC, jointly and severally) shall defend, protect, indemnify, and hold harmless the Authority and its directors, officers, employees, agents, attorneys, successors, and assigns from all liability, claims, actions, charges, allegations, demands, administrative proceedings, costs, fines, penalties, investigations, and Damages of any nature whatsoever, including attorneys' fees (hereinafter referred to as "Claims"), which arise from the negligent act(s) or omission(s) or willful or intentional misconduct of the Contractor, its employees or agents in connection with the performance of this Agreement. Such Claims include, but are not in any way limited to, Claims relating to (a) personal injury (including bodily injury and mental injury) and/or damage to, loss of use of and/or loss of any personal or real property which is caused by or arises out of the negligent act(s) or omissions(s) or willful or intentional misconduct of the Contractor, its employees or agents; (b) any breach of any representation, covenant or warranty of the Contractor set forth in this Agreement; and/or (c) any violation by the Contractor, its employees or agents of any Legal Requirement.

Section 20.02. Authority to Indemnify Contractor. To the fullest extent permitted by law, the Authority agrees to defend, protect, indemnify, and hold harmless the Contractor, its parents (including, without limitation, the Parent Company), and subsidiaries and their shareholders, members, directors, officers, employees, agents, attorneys, successors, and assigns from all Claims which arise from or are due to (a) the operation of the Airport Facilities prior to the Effective Date; (b) the negligent act(s) or omission(s) or willful or intentional misconduct of the Authority, its agents or employees (excluding the Contractor, its employees or agents), including but not limited to Claims relating to personal injury and/or damage to, loss of use of and/or loss of any personal or real property; (c) any breach of any representation, covenant or warranty of the Authority set forth in this Agreement; and/or (d) any violation by the Authority, its employees or agents (excluding the Contractor and its employees and agents) of any

Legal Requirement. To the extent for any reason the Authority is unable to indemnify the Contractor as provided in this Article XX, the Authority and the Contractor shall negotiate in good faith to make appropriate adjustments to the Baseline Projection with the intent and purpose that the Contractor shall be benefitted by an amount equal to the indemnity that would otherwise have been paid.

Section 20.03. Environmental Indemnity to Contractor. Without limiting the applicability of Section 20.02 herein in any respect, the Authority shall indemnify and hold harmless the Contractor, its parents (including, without limitation, the Parent Company), and subsidiaries and their shareholders, members, directors, officers, employees, agents, attorneys, successors, and assigns for any Damages to the extent they arise from any of the following:

(a) any Scheduled Condition;

(b) any Release, threatened Release or disposal of any Hazardous Material at the Airport Facilities;

(c) the violation of any Environmental Law at, or with respect to, the Airport Facilities;

(d) any Environmental Claim in connection with the Airport Facilities;

(e) the de-icing of airplanes at the Airport Facilities;

(f) the exposure, whether or not resulting in disease or injury, of any person to Hazardous Materials at any time located on, released, released from, disposed on or migrating from the Airport Facilities;

(g) any event, circumstance, occurrence, Release, threatened Release or condition that occurred or was in existence at the Airport Facilities; or

(h) the inaccuracy or breach of any representation or warranty by the Authority contained in Section 8.09 herein.

All except for any such matter caused by or attributable to the negligent act(s) or omission(s) or willful or intentional misconduct of the Contractor, its employees or agents.

Section 20.04. Environmental Indemnity to Authority. Without limiting the applicability of Section 20.01 herein in any respect, the Contractor shall indemnify and hold harmless the Authority and its directors, officers, employees, agents, attorneys, successors, and assigns for any Damages to the extent they arise from any of the following on or after the Effective Date which are caused or attributable to the negligent act(s) or omission(s) or willful or intentional misconduct of the Contractor, its employees or agents:

(a) any Release, threatened Release or disposal of any Hazardous Material at the Airport Facilities;

(b) the violation of any Environmental Law at, or with respect to, the Airport Facilities;

(c) any Environmental Claim in connection with the Airport Facilities;

(d) the de-icing of airplanes at the Airport Facilities;

(e) the exposure, whether or not resulting in disease or injury, of any person to Hazardous Materials at any time located on, released, released from, disposed on or migrating from the Airport Facilities; or

(f) any violation of the terms of Sections 9.03 and 9.14 herein by the Contractor.

Section 20.05. Fines and Penalties. The Contractor shall be liable for civil or criminal penalties and/or fines imposed by any Governmental Authority for violation of any Legal Requirement, which civil or criminal penalties and/or fines are a result of the failure of the Contractor, its employees or agents to operate and maintain the Airport Facilities in accordance with the terms of this Agreement and/or otherwise arise out of or relate to the negligent act(s) or omission(s) or willful or intentional misconduct of the Contractor, its employees or agents. The Authority shall be liable for all other civil or criminal penalties and/or fines imposed by any Governmental Authority for violation of any Legal Requirement relating to the Airport Facilities for which the Authority is responsible (except for liability of the Contractor, its employees or agents). Each party hereby agrees to assist the other, to the extent warranted, in defending or contesting any such civil or criminal penalties and/or fines in any

administrative or court proceeding prior to the payment of such civil or criminal penalty and/or fine. Each party shall be responsible for the cost of contesting any civil or criminal penalty and/or fine for which it is liable hereunder.

Section 20.06. Demand for Indemnification. If any action is brought against a party to this Agreement entitled to indemnification pursuant to this Article XX (hereinafter referred to as an "Indemnified Party") in respect of which indemnity may be sought against the party granting indemnification (hereinafter referred to as an "Indemnifying Party") pursuant to this Article XX, the following provisions shall apply:

(a) Such Indemnified Party shall promptly notify such Indemnifying Party in writing of the commencement thereof;

(b) The failure to notify the Indemnifying Party of any such action shall not release the Indemnifying Party from any liability it may have to such Indemnified Party, unless the Indemnifying Party is prejudiced thereby, in which case the latter is released to the extent of the prejudice.

(c) In case any such action is brought against an Indemnified Party and it notifies an Indemnifying Party of the commencement thereof, the Indemnifying Party against which an indemnity claim is to be made shall be entitled to assume and conduct the defense of that action and to otherwise participate therein at its own expense, with counsel reasonably satisfactory to such Indemnified Party. The Indemnified Party shall still be entitled to have counsel chosen by the Indemnified Party participate in, but not conduct, the defense.

(d) If the defendants/opposing parties to any such action include both the Indemnified Party and the Indemnifying Party, and the Indemnified Party shall have reasonably concluded, based upon advice of counsel, that there may be legal defenses available to it and/or other indemnified parties which are different from or additional to those available to the Indemnifying Party, the Indemnified Party shall have the right to select separate counsel to assume such legal defenses and otherwise to participate in the defense of such action on behalf of such Indemnified Party or indemnified parties.

(e) Upon receipt of notice from the Indemnifying Party to such Indemnified Party of its election to assume the defense of such action and approval by the Indemnified Party of counsel, the Indemnifying Party shall not be liable to such Indemnified Party under this Article XX for any legal or other expenses subsequently incurred by such Indemnified Party in connection with the defense thereof unless, (i) the Indemnified Party shall have employed such counsel in connection with the assumption of legal defenses in accordance with Section 20.06(d) herein (it being understood, however, that the Indemnifying Party shall not be liable for the expenses of more than one separate counsel); (ii) the Indemnifying Party shall not have employed counsel reasonably satisfactory to the Indemnified Party to represent the Indemnified Party within a reasonable time after notice of commencement of the action; or (iii) the Indemnifying Party has authorized the employment of counsel for the Indemnified Party at the expense of the Indemnifying Party.

(f) An Indemnifying Party shall not be liable for any settlement of any Claim, action or proceeding effected without its written consent.

Section 20.07. Survival of Obligations. The obligations set forth under this Article XX shall survive the Termination Date.

ARTICLE XXI.

LIMITATIONS

Section 21.01. Occupation of Airport Facilities. The Contractor shall be entitled to occupy the Airport Facilities during the Term and any Renewal Term.

Section 21.02. Access to Airport Facilities. The Contractor shall allow the Authority access to all of the Airport Facilities at all times. The Authority shall have the right to conduct a performance audit and evaluation of the Contractor at such times as the Authority deems necessary and at the Authority's expense provided that such audit shall not unreasonably interfere with the Contractor's performance of its obligations hereunder. The Contractor agrees to cooperate with any such audit. The Authority may employ consultants, at its expense, to assist the Authority in the audit.

Section 21.03. Control. The Authority shall have no right to control or direct the Contractor or its employees in its operation of the Airport Facilities except as expressly provided in this Agreement.

ARTICLE XXII.

MISCELLANEOUS

Section 22.01. Entire Agreement; Modification. This Agreement and the schedules attached hereto contain the entire understanding between the Authority and the Contractor with respect to the subject matter hereof, and supersede all prior and contemporaneous agreements and understandings, inducements, and conditions, expressed or implied, oral or written, except as herein contained. The express terms herein control and supersede any course of performance or usage of the trade inconsistent with any of the terms herein. This Agreement and the schedules attached hereto may not be modified or amended other than by an agreement in writing signed by the Authority and the Contractor.

Section 22.02. Waiver. Neither the failure nor any delay on the part of any party to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver shall be effective unless it is in writing and is signed by the party asserted to have granted such waiver.

Section 22.03. Authority's Ability to Waive Certain Provisions. If, based upon the advice of nationally recognized bond counsel, the Authority reasonably concludes that any provision of this Agreement would adversely affect any exclusion of interest for federal income tax purposes on any Tax-Exempt Obligations, the Authority may, at its option, either (i) waive such provision(s), in which case this Agreement shall be deemed to have been amended to delete such provision(s), or (ii) request the Contractor to negotiate in good faith to amend such provision(s) to reduce or eliminate such risk while preserving the original intent of the Authority and the Contractor to the extent practical. If any action taken under this Section 22.03 changes the scope of the services to be provided under this Agreement, the Authority and the Contractor shall make an appropriate adjustment to the Baseline Projection.

Section 22.04. Remedies. In the event of the breach of any provisions of this Agreement, the non-breaching party shall be entitled to reasonable attorneys' fees incurred for the enforcement of said provisions, in addition to Damages for the breach thereof. The remedies provided in this Agreement shall be cumulative and no one remedy shall be construed as exclusive of any other or of any remedy provided by law.

Section 22.05. Governing Law. This Agreement and all questions relating to its validity, interpretation, performance, and enforcement shall be governed by the laws and decisions of the courts of the State of Indiana, notwithstanding any Indiana or other conflict-of-law provision or court decision to the contrary.

Section 22.06. Consent to Jurisdiction. The Contractor hereby irrevocably consents to the jurisdiction of the Courts of the State of Indiana and of the Federal Court located in the Southern District of the State of Indiana, Indianapolis Division, in connection with any action or proceeding arising out of or relating to this Agreement or any document or instrument delivered with respect to any of the obligations hereunder. The Contractor hereby waives personal service of any process in connection with any such action or proceeding and agrees that the service thereof may be made by hand delivery or by certified or registered mail directed to the Contractor at any address of the Contractor set forth in this Agreement. In the alternative, in its sole discretion, the Authority may effect service upon the Contractor in any other form or manner permitted by law.

Section 22.07. Confidentiality. As used herein, the term "Confidential Information" shall mean any material information which is acquired by the Contractor or the Parent Company in carrying out the duties under this Agreement and which had not become part of the body of public information prior to its disclosure in violation of this Section 22.07. Except as otherwise required by any law or court order or by stock exchanges, as required to be disclosed to trustees under existing indebtedness of the Contractor or its affiliates, or as authorized or permitted by the Authority, the Contractor and the Parent Company shall not disclose or permit the disclosure of any Confidential Information to anyone other than each other, the Authority, its agents or representatives, except as reasonably required to carry out the duties of the Contractor under this Agreement. The Contractor shall (i) immediately notify the Authority of any court order or subpoena requiring disclosure of Confidential Information; (ii)

cooperate with the Authority in the appeal or challenge of any such order or subpoena, provided the cost of any such appeal or challenge shall be the sole obligation of the Authority; and (iii) not disclose, to the extent legally permitted, any Confidential Information pursuant to such court order or subpoena until the Authority has exhausted or has failed to diligently pursue any lawful and timely appeal or challenge that the Authority elects to file or make.

Section 22.08. Notices. All notices, requests, demands, and other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been received when delivered by hand or by facsimile (with confirmation by registered or certified mail) or on the third Business Day following the mailing, by registered or certified mail, postage prepaid, return receipt requested, thereof, addressed as set forth below:

To the Authority:
Michael W. Wells, President
Indianapolis Airport Authority
Indianapolis International Airport
Indianapolis, Indiana 46241
Telephone _____
Facsimile _____

With a copy to:
Joseph E. DeGroff, Esq.
BINGHAM SUMMERS WELSH & SPILMAN
2700 Market Tower
10 West Market Street
Indianapolis, Indiana 46204
Telephone (317)635-8900
Facsimile (317)236-9907

To the Contractor:
David Roberts, Airport Director
BAA Indianapolis LLC
Indianapolis International Airport
Indianapolis, Indiana 46241
Telephone _____
Facsimile _____

With a copy to:
Robert D. Swhier, Jr., Esq.
DANN PECAR NEWMAN & KLEIMAN, P.C.
One American Square, Suite 2300
Box 82008
Indianapolis, Indiana 46282
Telephone (317)632-3232
Facsimile (317)632-2962

Any party hereto may change the address to which notices are to be sent by giving notice of such change of address in conformity with this Section 22.08.

Section 22.09. Binding Nature of Agreement; No Assignment. This Agreement shall be binding upon and inure to the benefit of the Authority and the Contractor and their successors and assigns, except that no party may assign or transfer its rights or obligations under this Agreement without the prior written consent of the other party hereto.

Section 22.10. Nature of Relationship. The relationship which the Authority and the Contractor intend to create under this Agreement is that of owner and independent contractor. Nothing herein is intended to, or shall be construed to, create the relationship of partners, of joint venturers or of employment between the Authority and the Contractor. The Authority shall not have the right to direct or control the activities or practices of the Contractor except as expressly provided in this Agreement. The Contractor may at its discretion for the purpose of purchasing goods and services act as an agent for the Authority and so certify to the providers.

Section 22.11. Execution in Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, and all of which shall together constitute one and the same instrument. This Agreement shall become binding when one or more counterparts thereof, individually or taken together, shall bear the signatures of the Authority and the Contractor reflected hereon as the signatories.

Section 22.12. Severability. The provisions of this Agreement and of each section or other subdivision herein are independent of and separable from each other, and no provision shall be affected or rendered invalid or unenforceable by virtue of the fact that for any reason any other or others of them may be invalid or unenforceable in whole or in part unless this Agreement is rendered totally unenforceable thereby.

Section 22.13. Article and Section Headings. The article and section headings in this Agreement are for convenience of reference only. The article and section headings form no part of this Agreement and shall not affect its interpretation.

Section 22.14. Gender. Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, whether masculine, feminine or neuter, which the context may require.

Section 22.15. Sections. This Agreement is divided into sections, numbered in whole arabic numbers, each of which is subdivided into subdivisions numbered with the whole arabic designation of the section in which it is located, followed by a decimal point and an arabic numeral designating the subdivision. Both the sections and the subdivisions are referred to as "Sections." In construing this Agreement, the word Section should be given the meaning which its context suggests and doubts should be resolved in favor of the broader designation.

Section 22.16. Business Conduct. The maintenance of extremely high standards of honesty, integrity, impartiality, and conduct by the Contractor, its employees and agents is essential to assure the proper performance of this Agreement and the maintenance of public confidence in the Authority. The Contractor shall uphold and meet these high standards and use its best judgment to avoid misconduct and conflicts of interest and require the same of its employees and agents. Other employment or financial interests that are held to conflict with the interests of the Authority shall not be permitted; provided that certain employment or financial interests of the Contractor with respect to the Airport Facilities have been authorized herein.

Section 22.17. No Third Party Beneficiaries. Nothing herein is intended to give, nor shall it have the effect of giving, any enforceable rights to any third parties who are not parties hereto or successors or permitted assigns of the parties hereto, whether such claims are asserted as third party beneficiary rights or otherwise.

Section 22.18. Number of Days. Except as expressly stated to the contrary elsewhere herein, in computing the number of days, for purposes of this Agreement, all days shall be counted, including Saturdays, Sundays, and legal holidays; provided, however, that if the final day of any time period falls on a Saturday, Sunday or legal holiday, then the final day shall be deemed to be the next day which is not a Saturday, Sunday or legal holiday.

Section 22.19. Consents. Unless otherwise specified, the IAA Board shall have full power and authority to agree, consent, and approve on the Authority's behalf for all purposes of this Agreement. Whenever the consent or approval of a party is required by this Agreement, it shall not be unreasonably withheld or delayed.

Section 22.20. Non-liability of Officials. No official, director, officer, employee or agent of the Authority, the Contractor or the Parent Company shall be charged personally by the other party, its employees or agents with any liabilities or expenses of defense or be held personally liable to the other party under any term or provision of this Agreement or because of the execution by such party of this Agreement or because of any default by such party hereunder.

Section 22.21. Subordination. To the extent of a conflict or inconsistency between this Agreement and any agreement described in subparagraphs (a) or (b) below, those provisions in this Agreement so conflicting or inconsistent shall be performed as required by those agreements described in subparagraphs (a) or (b) below.

(a) This Agreement shall be and remain subordinate to the provisions of any existing or future agreements between the Authority and the United States government, or other Governmental Authority, relative to the operation or maintenance of the Airport Facilities, the execution of which has been or will be required as a condition precedent to the granting of federal or other governmental funds for the development of the Airport Facilities.

(b) This Agreement and all rights granted to the Contractor hereunder are expressly subordinate and subject to any existing airline use agreement with any airline operating at the Airport Facilities. In connection with the execution of this Agreement, the Contractor acknowledges and agrees that it has received the existing airline use agreements and it has read and understands the relevant provisions of such agreements as they apply to this Agreement.

If any agreement entered into by the Authority under Sections 22.21(a) or (b) herein changes the scope of the services to be provided under this Agreement, an appropriate adjustment to the Baseline Projection shall be negotiated in good faith by the Authority and the Contractor.

Section 22.22. Advertising and PromotionThe Contractor shall not erect, install, place or use at the Airport Facilities any advertising or promotional device intended to attract attention to the Contractor as a business entity or otherwise, including, but not limited to, signs and electronic or radio loudspeakers, without obtaining the prior written consent of the Authority. Notwithstanding the foregoing, the Contractor may use those trademarks and servicemarks set forth in Schedule 22.22 attached hereto at the locations and in the manner described in said schedule. The Authority shall obtain no rights in any of such marks and on the Termination Date all such marks shall be removed or covered. Nothing contained in this Section 22.22 shall limit the Contractor's responsibility to erect directional, warning or safety signs or signals.

Section 22.23. Schedules. Each schedule to this Agreement is incorporated in and made part of this Agreement as if set forth in full whenever in this Agreement reference is made thereto.

Section 22.24. Surrender of Possession. On the Termination Date, the Contractor shall forthwith surrender the Airport Facilities to the Authority in good order, repair, and condition, ordinary wear and tear excepted.

Section 22.25. Survival of Representations and Warranties. The representations and warranties of the Contractor set forth in Article VII herein and the representations and warranties of the Authority set forth in Article VIII herein shall survive until May 1, 1997.

Section 22.26. Primary Contractor. It is the intent of the parties hereto that BAA Indianapolis LLC shall be the primary contractor under this Agreement, that all obligations of the Contractor under this Agreement shall be performed by BAA Indianapolis LLC, and that all payments of any kind required to be made to the Contractor hereunder shall be made to BAA Indianapolis LLC.

Section 22.27. Due Inquiry. Where any representation or warranty contained herein refers to the knowledge, information or belief of the Authority or the Contractor, it shall be deemed to incorporate a statement that reasonable and proper inquiry into the subject matter of such representation or warranty has been made by the party giving that representation or warranty.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

BAA Indianapolis LLC
By:_____
Printed:_____
Title:_____

BAA USA Holdings, Inc.
By:_____
Printed:_____
Title:_____

Indianapolis Airport Authority
By:_____
Michael W. Wells, President

✓ PROPOSAL NO. 491, 1995. Councillor Curry reported that the Rules and Public Policy Committee heard Proposal No. 491, 1995 on August 8, 1995. The proposal elects to fund MECA in 1996 with COIT revenues. By a 6-0 vote, the Committee reported the proposal to the Council with the recommendation that it do pass. Councillor Curry moved, seconded by Councillor Borst, for adoption. Proposal No. 491, 1995 was adopted on the following roll call vote; viz:

20 YEAS: Black, Borst, Boyd, Brents, Coughenour, Curry, Dowden, Franklin, Hinkle, McClamroch, Moriarty Adams, Mullin, O'Dell, Rhodes, Schneider, SerVaas, Shambaugh, Smith, Tilford, West
3 NAYS: Gilmer, Gray, Williams
6 NOT VOTING: Beadling, Giffin, Golc, Jimison, Jones, Short

Proposal No. 491, 1995 was retitled SPECIAL ORDINANCE NO. 14, 1995 and reads as follows:

CITY-COUNTY SPECIAL ORDINANCE NO. 14 , 1995

A SPECIAL ORDINANCE election to fund MECA in 1996 with County Option Income Tax Revenues.

WHEREAS, IC 36-8-15-19(b) provides that the City-County Council may elect to fund the operation of a public safety communications system and computer facilities special taxing district from part of the certified distribution the county is to receive during a particular calendar year under IC 6-3.5-6-17; and

WHEREAS, the Marion County Metropolitan Emergency Communications Agency ("MECA") is the governing body of the Consolidated City of Indianapolis and Marion County public safety communications system and computer facilities district ("District"); and

WHEREAS, to make such an election for 1996, the City-County Council, prior to September 1, 1995, must pass an ordinance specifying the amount of the certified distribution to be used to fund the District; now, therefore:

BE IT ORDAINED BY THE CITY-COUNTY COUNCIL OF THE
CITY OF INDIANAPOLIS AND OF MARION COUNTY, INDIANA:

SECTION 1. The City-County Council hereby elects to fund the operation of the District through MECA in 1996 from part of the certified distribution the county is to receive under IC 6-3.5-6-17.

SECTION 2. The amount of the certified distribution to be used for this purpose is $2,000,000.

SECTION 3. This ordinance shall be in full force and effect upon adoption and compliance with IC 36-3-4-14.

PROPOSAL NO. 389, 1995. The proposal, sponsored by Councillor Smith, authorizes a multi-way stop at Fairlane West Drive and Indian Creek Road South (District 23). PROPOSAL NO. 492, 1995. The proposal, sponsored by Councillor Moriarty Adams, authorizes a multi-way stop at Wallace Avenue and Walnut Street (District 15). PROPOSAL NO. 493, 1995. The proposal, sponsored by Councillor Moriarty Adams, authorizes a multi-way stop at Euclid Avenue and 15th Street (District 15). Councillor Gilmer reported that the Capital Asset Management Committee heard Proposal Nos. 389, 492 and 493, 1995 on August 16, 1995. By 7-0 votes, the Committee reported the proposals to the Council with the recommendation that they do pass. Councillor Gilmer moved, seconded by Councillor Moriarty Adams, for adoption. Proposal Nos. 389, 492 and 493, 1995 were adopted on the following roll call vote; viz:

28 YEAS: Beadling, Black, Borst, Boyd, Brents, Coughenour, Curry, Dowden, Franklin, Gilmer, Golc, Gray, Hinkle, Jimison, Jones, McClamroch, Moriarty Adams, Mullin, O'Dell, Rhodes, Schneider, SerVaas, Shambaugh, Short, Smith, Tilford, West, Williams
0 NAYS:
1 NOT VOTING: Giffin

Proposal No. 389, 1995 was retitled GENERAL ORDINANCE NO. 129, 1995 and reads as follows:

CITY-COUNTY GENERAL ORDINANCE NO. 129, 1995

A GENERAL ORDINANCE amending the "Code of Indianapolis and Marion County, Indiana," Sec. 29-92, Schedule of intersection traffic controls.

BE IT ORDAINED BY THE CITY-COUNTY COUNCIL OF THE CITY OF INDIANAPOLIS AND OF MARION COUNTY, INDIANA:

SECTION 1. The "Code of Indianapolis and Marion County, Indiana," specifically, Chapter 29, Sec. 29-92, Schedule of intersection traffic controls, be, and the same is hereby, amended by the deletion of the following, to wit:

BASE MAP	INTERSECTION	PREFERENTIAL	TYPE OF CONTROL
49, Pg. 2	Fairlane West Dr & Indian Creek Rd S	Indian Creek Rd	Stop

SECTION 2. The "Code of Indianapolis and Marion County, Indiana," specifically, Chapter 29, Sec. 29-92, Schedule of intersection traffic controls, be, and the same is hereby, amended by the addition of the following, to wit:

BASE MAP	INTERSECTION	PREFERENTIAL	TYPE OF CONTROL
49, Pg. 2	Fairlane West Dr & Indian Creek Rd S	None	All Stop

SECTION 3. This ordinance shall be in full force and effect upon adoption and compliance with IC 36-3-4-14.

Proposal No. 492, 1995 was retitled GENERAL ORDINANCE NO. 130, 1995 and reads as follows:

CITY-COUNTY GENERAL ORDINANCE NO. 130, 1995

A GENERAL ORDINANCE amending the "Code of Indianapolis and Marion County, Indiana," Sec. 29-92, Schedule of intersection traffic controls.

BE IT ORDAINED BY THE CITY-COUNTY COUNCIL OF THE CITY OF INDIANAPOLIS AND OF MARION COUNTY, INDIANA:

SECTION 1. The "Code of Indianapolis and Marion County, Indiana," specifically, Chapter 29, Sec. 29-92, Schedule of intersection traffic controls, be, and the same is hereby, amended by the deletion of the following, to wit:

BASE MAP	INTERSECTION	PREFERENTIAL	TYPE OF CONTROL
26, Pg. 35	Wallace Av & Walnut St	Wallace Av	Stop

SECTION 2. The "Code of Indianapolis and Marion County, Indiana," specifically, Chapter 29, Sec. 29-92, Schedule of intersection traffic controls, be, and the same is hereby, amended by the addition of the following, to wit:

BASE MAP	INTERSECTION	PREFERENTIAL	TYPE OF CONTROL
26, Pg. 35	Wallace Av & Walnut St	None	All Stop

SECTION 3. This ordinance shall be in full force and effect upon adoption and compliance with IC 36-3-4-14.

Proposal No. 493, 1995 was retitled GENERAL ORDINANCE NO. 131, 1995 and reads as follows:

CITY-COUNTY GENERAL ORDINANCE NO. 131, 1995

A GENERAL ORDINANCE amending the "Code of Indianapolis and Marion County, Indiana," Sec. 29-92, Schedule of intersection traffic controls.

BE IT ORDAINED BY THE CITY-COUNTY COUNCIL OF THE CITY OF INDIANAPOLIS AND OF MARION COUNTY, INDIANA:

SECTION 1. The "Code of Indianapolis and Marion County, Indiana," specifically, Chapter 29, Sec. 29-92, Schedule of intersection traffic controls, be, and the same is hereby, amended by the deletion of the following, to wit:

BASE MAP	INTERSECTION	PREFERENTIAL	TYPE OF CONTROL
26, Pg. 18	Euclid Av & 15th St	Euclid Av	Stop

SECTION 2. The "Code of Indianapolis and Marion County, Indiana," specifically, Chapter 29, Sec. 29-92, Schedule of intersection traffic controls, be, and the same is hereby, amended by the addition of the following, to wit:

BASE MAP	INTERSECTION	PREFERENTIAL	TYPE OF CONTROL
26, Pg. 18	Euclid Av & 15th St	None	All Stop

SECTION 3. This ordinance shall be in full force and effect upon adoption and compliance with IC 36-3-4-14.

ANNOUNCEMENTS AND ADJOURNMENT

General Counsel read the following announcement:

Mr. President:

This Council will hold a public hearing on Rezoning Petition Nos. 95-Z-54 and 95-Z-55, Proposal Nos. 574 and 575, 1995, at its next regular meeting on September 11, 1995, such meeting to convene at 7:00 p.m. in these Council Chambers in the City-County Building in Indianapolis. Petition No. 95-Z-54 proposes to rezone 36.82 acres at 8377 East 96th Street from I-2-S District to C-1 classification to provide for permitted C-1 uses. Petition No. 95-Z-55 proposes to rezone 49.60 acres at 9589 Hague Road from C-6 and I-2-S Districts to C-4 classification to provide for retail and theater uses.

Written objections that are filed with the Clerk of the Council shall be heard at such time, or the hearing may be continued from time to time as found necessary by the Council.

There being no further business, and upon motion duly made and seconded, the meeting adjourned at 10:35 p.m.

We hereby certify that the above and foregoing is a full, true and complete record of the proceedings of the regular concurrent meetings of the City-Council of Indianapolis-Marion County, Indiana, and Indianapolis Police, Fire and Solid Waste Collection Special Service District Councils on the 28th day of August, 1995.

In Witness Whereof, we have hereunto subscribed our signatures and caused the Seal of the City of Indianapolis to be affixed.

Beurt SerVaas
President

ATTEST:

Sue Ellen Hart
Clerk of the Council

(SEAL)