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**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**



SUBMITTAL DATE:
October 14, 2009

FROM: County Executive Office

SUBJECT: Eastvale Incorporation Revenue Neutrality Agreement

RECOMMENDED MOTION: That the Board of Supervisors approve the attached revenue neutrality agreement necessary to remediate the net financial losses to the county that will result should LAFCO approve incorporation of community of Eastvale.

BACKGROUND: As reported to the Board on October 6, 2009, in Agenda Item No. 3.5, LAFCO is currently processing an application for incorporation of the community of Eastvale. State law prohibits LAFCO from approving incorporation if the base year net revenue impact on the county is negative, unless mitigating terms and conditions are negotiated with the county.

To mitigate the county's financial loss, the county and the Eastvale Incorporation Committee negotiated the terms and conditions of a tax sharing arrangement, the deal points of which the Board approved on October 6, 2009, as part of Agenda Item No. 3.5. The attached revenue neutrality agreement formalizes those terms and conditions. Board action on this item today is necessary so the agreement is in place before the LAFCO hearing on October 22, 2009, at which the Eastvale incorporation will be heard.

Denise C. Harden
Denise C. Harden, Principal Management Analyst

(continued)

FORM APPROVED COUNTY COUNSEL
BY: *Pamela J. Walls* 10/14/09
PAMELA J. WALLS
DATE: 10/14/09
Dep. Chief Concurrence

FINANCIAL DATA	Current F.Y. Total Cost:	\$	In Current Year Budget: Budget Adjustment: For Fiscal Year:
	Current F.Y. Net County Cost:	\$	
	Annual Net County Cost:	\$	

SOURCE OF FUNDS: NA	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION:
APPROVE
Paul McDonnell
BY: Paul McDonnell
County Executive Office Signature

Dep't Recomm.:
Per Exec. Ofc.:
 Consent
 Policy
 Consent
 Policy

10/15/09 5:13

Prev. Agn. Ref.: 09/29/09 #3.13
10/06/09 #3.5
District: 2nd
Agenda Number: **3.72**

Subject: Eastvale Incorporation Revenue Neutrality Agreement

October 14, 2009

Page 2

The figures for boundary scenario #1 in the newly revised Eastvale CFA dated October 2, 2009, calculates \$5,057,186 in transferrable FY2008 base year revenue, and \$4,095,394 in transferrable net county cost for municipal-type services to be taken over by the new city. Of that \$5 million in revenue, \$2.44 million – nearly half – is from sales tax that would transfer to the city. This represents 6.2 percent of the \$39.53 million in total sales tax received by the county in FY2008.

The difference of \$946,142 between the revenue and net cost transferred supports the county services that remain the county's statutory responsibility in perpetuity. The terms and conditions contained in the attached agreement are intended to offset erosion of the base year amount of the financial loss in order to sustain those county services by splitting annual revenue growth with the proposed city 60/40 for a period of 30 years.

Based on the figures in the most recent Eastvale CFA, the Executive Office projects the net loss over just the ten-year study period alone may be \$12.5 million or more, and \$26 million or more over thirty years. The intent of this agreement is to enable the county to partially mitigate a portion of this loss by recovering an estimated \$10.6 million or more during the first ten years to continue support of the county's ongoing responsibilities. These include essential countywide services such as the coroner, district attorney, public defender, jails, court services, child and adult protective services, public and environmental health, as well as general government functions such as the offices of the treasurer-tax collector, auditor-controller, and assessor-clerk-recorder.

LAFCO will be hearing this matter on October 22, 2009. The Executive Office recommends the Board approve the attached revenue neutrality agreement so it may be submitted to LAFCO in advance of that Commission hearing. Highlights of the terms of the agreement are:

1. Requires no other action to take effect once incorporation is approved by the voters at the incorporation election.
2. Establishes the FY2008 base year net financial loss as the base payment to the county.
3. Splits both the growth and risk of decline with the city 60/40 to the city's benefit.
4. Defers the first three years of revenue neutrality payments, which are to be paid back in ten equal installments over ten years.
5. Offers repayment of the amount deferred at an interest rate of 3 percent, which is less than the Treasurer's average historic pool rate.
6. Allows for prepayment of the amount deferred without penalty.
7. Entails a total period of revenue neutrality payments of 30 years from the date of incorporation.
8. Provides ways to deal with defaults, delays and requests for extensions of time.
9. Provides for negotiating amendments to the agreement.

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REVENUE NEUTRALITY AGREEMENT
BY AND BETWEEN
THE COUNTY OF RIVERSIDE AND
THE CITY OF EASTVALE

THIS REVENUE NEUTRALITY AGREEMENT (“Agreement”) is entered into on October 20, 2009, by and between THE COUNTY OF RIVERSIDE, a subdivision of the State of California (“County”), the undersigned petitioner(s) (the “Chief Petitioners”) and upon incorporation, THE CITY OF EASTVALE, a municipal corporation (“City”) (hereinafter the “Parties”).

1. RECITALS. This Agreement is entered into with reference to the following facts:

- 1.1. On September 22, 2008, Jeffrey DeGrandpre on behalf of the Eastvale Incorporation Committee (collectively the “Chief Petitioners”) submitted an application proposing incorporation of the community of Eastvale (the “Incorporation”) which was certified by the Local Agency Formation Commission (“LAFCO”) on September 14, 2009.
- 1.2. Government Code Section 56815(a) states the intent of the Legislature that any proposal that includes an incorporation should result in a similar exchange of both revenue and responsibility for service delivery among the county, the proposed city, and other subject agencies; and that it is the further intent of the Legislature that an incorporation should not occur primarily for financial reasons.
- 1.1. Government Code Section 56815(b) currently states that LAFCO shall not approve a proposal that includes an incorporation unless it finds the following two quantities are substantially equal: (1) revenues currently received by the local agency transferring the affected territory which, but for the provisions of this section, would accrue to the local agency receiving the affected territory; and, (2) expenditures, including direct and indirect expenditures, currently made by the local agency transferring the affected territory for services that will be assumed by the local agency receiving the affected territory.
- 1.2. Government Code Section 56815(c) states that, notwithstanding Section 56815(b), LAFCO may approve a proposal that includes an incorporation if it finds either of the following: (1) the county and all of the subject agencies agree to the proposed transfer; or, (2) the negative fiscal effect has been adequately mitigated by tax sharing agreements, lump-sum payments, payments over a fixed period of time, or any other terms and conditions pursuant to Section 56886.
- 1.3. Pursuant to Government Code Section 56800, LAFCO caused to be prepared by contract funded by the Chief Petitioners a Comprehensive Fiscal Analysis of the proposed Incorporation (the “CFA”) as the basis for determining fiscal feasibility and for revenue neutrality negotiations between the County and the Chief Petitioners. The CFA includes projections of revenue generated within the Incorporation area, the present and projected costs of services performed by the County that would transfer to the City in the event of incorporation, and the base year net costs of statutory services that would remain the responsibility of the County.
- 1.4. Based on a careful review of the CFA, the County and the Chief Petitioners mutually conclude that in the event of incorporation the revenue transferring to the City would be greater than the net cost of services to be transferred, and consequently that the Incorporation would result in an negative fiscal

1 impact to the County. This Agreement creates no obligation for County services beyond those
2 required by law.

3 1.5. Pursuant to Government Code Section 56815(c), the County and the Chief Petitioners mutually agree
4 to an alternative transfer of revenue to mitigate the negative fiscal impact on the County resulting
5 from the Incorporation to a level acceptable to the County that would take effect upon incorporation
6 of the City according to the terms in this Agreement.

7 1.6. Pursuant to Government Code Section 56815(c), approval and execution of this Agreement by the
8 County, and the payments and other terms and conditions set forth herein, satisfy the requirement to
9 mitigate the negative fiscal effects of the Incorporation on the County. Without the terms and
10 conditions contained in this Agreement, LAFCO would be unable to make the required findings under
11 56815 Section (c). Therefore, this Agreement is essential to LAFCO's determinations regarding the
12 Incorporation under the Government Code Sections 56880, 56375, and 56720.

13 1.7. Approval of this Agreement is implied by an affirmative vote of the people casting votes at an
14 incorporation election held in accord with all applicable provisions of California law and shall be
15 binding on the City. The terms of this agreement shall take effect without further action by any party
16 once the County Registrar of Voters certifies election results approving the Incorporation.

17 2. DEFINITIONS. In this Agreement, unless the context otherwise requires:

18 2.1. "Fiscal Year" means July 1 through June 30.

19 2.2. Use of the word "incorporation" without capitalization means the act of incorporating, forming,
20 creating, or establishing a city with corporate powers as defined in Section 56043 of the Cortese-
21 Knox-Hertzberg Local Government Reorganization Act of 2000.

22 2.3. Effective Date means the date of incorporation.

23 3. REVENUE TRANSFERS.

24 3.1. Mitigation Obligation. Pursuant to Government Code Section 56815(c), the Parties understand and
25 agree that once the City incorporates, the County will continue to have ongoing obligations to provide
26 certain public services within the City. In order to mitigate the negative fiscal impact on the County
27 resulting from the Incorporation, the Parties agree the City shall pay the County a portion of its tax
28 revenues as follows:

29 3.1.1. Establish the base year County deficit amount as whatever amount is established by LAFCO in
30 their approved CFA;

31 3.1.2. Assume Net County Cost would escalate from the base year amount established by LAFCO at
32 approximately 3.5% annually;

33 3.1.3. Calculate the County's annual net financial loss as the difference between the adjusted Net
34 County Cost and amount of actual revenue for that year as reported by the City Treasurer in the
35 City's year-end financial statements, adjusted as necessary on reconciliation with the City's
36 audited annual financial report;

1 3.1.4. Calculate the annual tax revenue payment from the City to the County as the sum of the
2 County's base year net loss plus 40 percent of the net growth in the net loss over that base year
3 amount for any given year, as follows:

4
$$\text{Annual Payment} = \text{Base Year Net Loss} + ((\text{Year X Net Loss} - \text{Base Year Net Loss}) * 40\%);$$

5 3.1.5. Deferral of tax revenue payments for FY2011, FY2012 and FY2013;

6 3.1.6. Repayment of amount deferred in **ten (10) equal annual installments** beginning in FY2014;

7 3.1.7. Accrual of interest on amounts owed at a rate of **3%** compounded quarterly;

8 3.1.8. Payment of the estimated total annual amount owed, with interest, within **60 days** following
9 the end of the City's fiscal year.

10 3.1.9. Payment of reconciling adjustments within **60 days** following completion of the City's audited
11 annual financial report; and,

12 3.1.10. City's Mitigation Obligation under this Agreement shall extend through the end of the **30th**
13 **fiscal year** from the date of incorporation.

14 3.2. Pre-payment. The City may pre-pay amounts deferred or other amount due as set forth in this
15 Agreement without penalty on terms mutually agreed on in writing by the City and the County.

16 4. DEFAULTS, DELAYS AND REMEDIES.

17 4.1. Events of Default. A default under this Agreement shall exist if one or more of the following events
18 or conditions occurs:

19 4.1.1. One Party to this Agreement knowingly makes a material false representation to the other; or,

20 4.1.2. The City or County fails to make any payment due hereunder; or,

21 4.1.3. Any other act or omission by City or County that materially interferes with the terms of this
22 Agreement.

23 4.2. Notice of Default. On discovering default by the other Parties, the City or County shall provide the
24 other Party written notice specifying the nature of the alleged default and, when appropriate, the
25 manner in which said default may be satisfactorily cured. Delay in providing notice of any default
26 shall not constitute a waiver of such default, nor shall it change the time of default. The Party in
27 default shall cure the default within **thirty (30) days** of the date of the notice or within such period of
28 time mutually agreed to in writing by the Parties.

29 4.3. Delay, Extension of Time for Performance. Either Party may request an extension of time in which to
30 perform its obligations under this Agreement if reasons beyond the control of that Party prevent, delay
31 or cause default of that Party in performing those obligations. Such reasons shall include, but not be
32 limited to acts of Nature; enactment of new conflicting federal or state laws or regulations; judicial
33 actions such as the issuance of restraining orders and injunctions; riots; strikes; or, damage to work in
34 process caused by fire, floods, earthquake, or other such casualties. If either Party seeks extension of
35 time for performance of its obligations under this Agreement, it shall, within **thirty (30) days** of the
36 commencement of the cause of the delay, provide the other Party written notice specifying the nature

1 of the delay and the length and terms of the extension of time requested. If it is agreed by both Parties
2 the delay or default is beyond the control of the Party requesting an extension of time, that extension
3 of time for such cause may be granted in writing for the period of the enforced delay, or longer as
4 mutually agreed necessary by both Parties.

5 4.4. Escrow of Taxes until Cure Accomplished. In the event the City fails to cure default on any payment
6 due under this Agreement, the County may demand the County Auditor retain in escrow any amount
7 on hand due the City pending resolution of the default.

8 4.5. Other Remedies. All other remedies at law or in equity consistent with the provisions of this
9 Agreement are available to the City and County to pursue in the event of default.

10 4.6. Institution of Legal Action. In addition to any other rights or remedies, either Party may institute
11 legal action to cure, correct, or remedy any default or breach, to specifically enforce any covenants or
12 agreement set forth in this Agreement, to enjoin any threatened or attempted violation of the
13 Agreement, or to obtain any remedies consistent with the purpose of this Agreement. Legal actions
14 shall be instituted in the Superior Court of the County of Riverside, State of California. In the event a
15 legal proceeding is commenced to enforce this Agreement, the prevailing Party shall be entitled to
16 reasonable attorneys' fees and costs from the other Party.

17 4.7. Court Actions pursuant to Government Code Section 56810(h). Should the calculation of property
18 taxes prepared pursuant to Government Code Section 56810 be modified as a result of a court action
19 brought pursuant to Government Code Section 56810 (h) to provide that a larger percentage be
20 retained by the County and a smaller percentage transferred to the City than that specified by LAFCO
21 pursuant to Government Code Section 56810 in approving the Incorporation, the County shall transfer
22 the amount of annual property tax resulting from such difference to the City for the purpose of
23 maintaining revenue neutrality pursuant to Government Code Section 56810 and this Agreement.
24 Should the calculation prepared pursuant to Government Code Section 56810 be modified as a result
25 of a court action brought pursuant to Government Code Section 56810 (h) to provide that a smaller
26 percentage be retained by the County and a larger percentage transferred to the City than that
27 specified by LAFCO pursuant to Government Code Section 56810 in approving the Incorporation, the
28 City shall transfer the amount of annual property tax resulting from such difference to the County for
29 the purpose of maintaining revenue neutrality pursuant to Government Code Section 56810 and this
30 Agreement.

31 5. AMENDMENTS.

32 5.1. Mutual Agreement. This Agreement may be modified or amended only by an instrument in writing
33 signed by both the City and the County.

34 5.2. Negotiation of Amendments. The Parties acknowledge circumstances may arise that may call for or
35 require mutual good faith negotiations for amendment of this Agreement. Without limitation due to
36 enumeration, the Parties agree to meet and confer regarding the possible mutual amendment of this
37 Agreement within **thirty (30) days** written notice by one Party to the other Party of the occurrence of
38 one or more of the following:

39 5.2.1. The passage of a statute or issuance of a legislative or executive order from a federal, state or
40 local governmental entity that materially alters the manner in which revenues to the City or
41 County are paid or allocated.

1 5.2.2. Unanticipated loss of revenue to the City by circumstances outside the City's jurisdictional
2 control, other than statute or legislative or executive order that materially alters the City's
3 anticipated revenue or materially increases services costs over those anticipated in this
4 Agreement or in the CFA.

5 5.2.3. Natural disasters that materially destroy City or County infrastructure to an extent that the
6 County's ability to provide services or the City's ability to make payments would be materially
7 impaired.

8 5.2.4. The discovery by the City or the County of any error or omission in the data utilized for
9 development of the CFA and this Agreement that materially affects the basis for the amount of
10 payments due hereunder, or the projection of future revenues and/or costs on which the payment
11 schedule was based.

12 5.3. Upon receipt of such written notice, the Parties shall, within **thirty (30) days**, hold at least one meeting
13 to negotiate in good faith a mutual amendment of this Agreement. However, nothing contained herein
14 shall require the mutual amendment of the Agreement or authorizes the unilateral amendment hereof.

15 6. TERM OF AGREEMENT. Term of agreement to extend through the end of the **30th fiscal year** from date
16 of incorporation.

17 7. MISCELLANEOUS PROVISIONS

18 7.1. Rules of Construction. The singular includes the plural; the masculine gender includes the feminine;
19 "shall" is mandatory; "may" is permissive.

20 7.2. Entire Agreement. This Agreement constitutes the entire understanding and agreement of the Parties
21 with respect to the matters set forth in this Agreement. This Agreement supersedes all negotiations or
22 previous agreements between the County, the Chief Petitioners and the City respecting this
23 Agreement.

24 7.3. Incorporation of Recitals. The recitals set forth in Section 1 of this Agreement are part of this
25 Agreement.

26 7.4. Captions. The captions of this Agreement are for convenience and reference only and shall not
27 define, explain, modify, construe, limit, amplify or aid in the interpretations, construction or meeting
28 of any of the provisions of this Agreement.

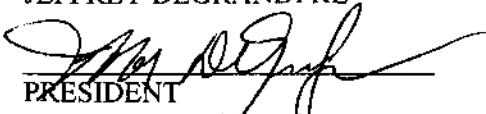
29 7.5. Attorney Review. The Parties acknowledge that they have had the opportunity to consult with their
30 legal counsel regarding this Agreement and that accordingly the terms of this Agreement are not to be
31 construed against any Party because that Party drafted this Agreement or construed in favor of any
32 Party because that Party failed to understand the legal effect of the provisions of this Agreement.

33 7.6. Notices. Any notices required to be given under this Agreement shall be deemed to have been
34 delivered when actually received in the case of hand or overnight delivery, or **five (5) days** after
35 mailing by first class mail, postage paid.

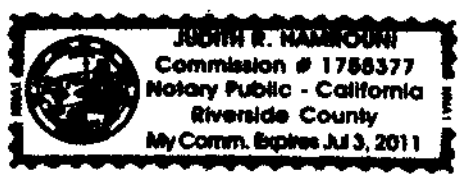
36 7.7. Successor and Assigns. This Agreement shall be binding on successors and assigns. The City shall
37 be deemed a successor to Chief Petitioners and this Agreement shall be binding on the City.

- 1 7.8. Covenant of Cooperation. The County and the City shall deal with each other cooperatively in good
- 2 faith, and assist each other in the performance of the provisions of this Agreement.
- 3 7.9. Interpretation and Governing Law. This Agreement and any dispute arising in relation to it shall be
- 4 governed by and interpreted in accordance with the laws of the State of California.
- 5 7.10. Time of Essence. Time is of the essence in the performance of the provisions of this Agreement as to
- 6 which time is an element.
- 7 7.11. Recordation. The Clerk of the Board of Supervisors shall cause a copy of this Agreement be to be
- 8 recorded with the Office of the County Recorder of Riverside County, California, within ten (10) days
- 9 following the Effective Date.
- 10 7.12. Counterparts. This Agreement may be executed and acknowledged in multiple counterparts, each of
- 11 which shall be deemed an original, but all of which shall constitute one (1) Agreement, binding on the
- 12 Parties hereto.
- 13 7.13. Severability. If any term, covenant, condition, provision or agreement contained in this Agreement is
- 14 held to be invalid, void or unenforceable by any court of competent jurisdiction, the invalidity of any
- 15 such term, covenant, condition, provision or agreement shall in no way affect any other term,
- 16 covenant, condition, provision agreement and the remainder of this Agreement shall remain in full
- 17 force and effect.

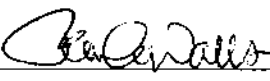
18
 19 COUNTY OF RIVERSIDE
 20 JEFF STONE
 21
 22 BY: _____
 23 CHAIRMAN
 24 BOARD OF SUPERVISORS
 25
 26
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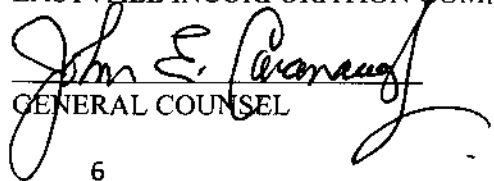
CHIEF PETITIONERS
 JEFFREY DEGRANDPRE

 PRESIDENT
 EASTVALE INCORPORATION COMMITTEE

28 ATTEST:
 29 KECIA HARPER-IHEM
 30 CLERK OF THE BOARD
 31
 32
 33
 34
 35
 36



BY: _____

37 APPROVED AS TO FORM:
 38 PAMELA J. WALLS
 39 COUNTY COUNSEL
 40
 41 BY: 
 42 COUNTY COUNSEL

APPROVED AS TO FORM:
 JOHN E. CAVANAUGH
 EASTVALE INCORPORATION COMMITTEE

 GENERAL COUNSEL

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of

Riverside

On

October 14, 2009

before me,

Judith R. Hamrouni, Notary Public

Here Insert Name and Title of the Officer

personally appeared

Jeffrey DeGrandpre

Name(s) of Signer(s)

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

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

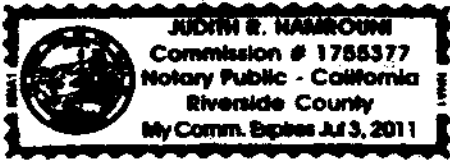
WITNESS my hand and official seal.

Signature

Judith R. Hamrouni

Signature of Notary Public

Place Notary Seal Above



OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document:

Revenue Neutrality Agreement

Document Date:

October 14, 2009

Number of Pages:

6

Signer(s) Other Than Named Above:

Jeffrey DeGrandpre

Capacity(ies) Claimed by Signer(s)

Signer's Name:

Jeffrey DeGrandpre

Individual

Corporate Officer — Title(s):

Partner — Limited General

Attorney in Fact

Trustee

Guardian or Conservator

Other:

Signer Is Representing:

Signer's Name:

Individual

Corporate Officer — Title(s):

Partner — Limited General

Attorney in Fact

Trustee

Guardian or Conservator

Other:

Signer Is Representing:

RIGHT THUMBPRINT OF SIGNER

Top of thumb here

RIGHT THUMBPRINT OF SIGNER

Top of thumb here

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Riverside

On October 15, 2009 before me, Judith R. Hamrouni, Notary Public

Date

Here Insert Name and Title of the Officer

personally appeared John E. Cavanaugh

Name(s) of Signer(s)

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



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

WITNESS my hand and official seal.

Signature

Judith R. Hamrouni
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Revenue Neutrality Agreement

Document Date: October 14, 2009

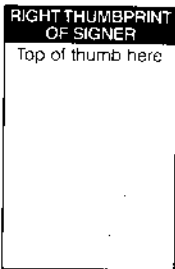
Number of Pages: 6

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: John E. Cavanaugh

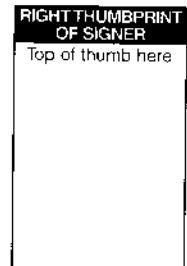
- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____