



Approvals:
City Manager [Signature]
Dept. Head [Signature]
Attorney JAG
Finance [Signature]

AGENDA REPORT

SAN CLEMENTE CITY COUNCIL MEETING
Meeting Date: October 1, 2013

Department: Finance & Administrative Services
Prepared By: Mark Taylor, City Treasurer

Subject: *RECOMMENDATION TO ENGAGE CHANDLER ASSET MANAGEMENT AS THE CITY'S EXTERNAL INVESTMENT ADVISORY FIRM.*

Fiscal Impact: Yes. An additional appropriation of \$30,000 will be needed in the City Treasurer's Division to Account #001-192-43690-000-00000 in order to fund the anticipated fees for Chandler Asset Management for nine months in FY 2013-14. The annual fees for Chandler Asset Management would vary each year depending on the total value of the portfolio, as well as the portion of the portfolio being managed. Fees are estimated at \$47,500 for FY 2014-2015. Once the City's entire portfolio is managed by Chandler, fees are estimated at \$82,000 per year, based on the size of the current portfolio.

Summary: The City's Investment Advisory Committee recommends the City Council select Chandler Asset Management as the City's external investment advisory firm to manage the City's investment portfolio.

Background: To fill the vacancy that resulted when the former elected City Treasurer was appointed to the City Manager position, the City Council appointed Mark Taylor as City Treasurer, effective March 21, 2013. As City Treasurer, Mr. Taylor is the chair for the City's Investment Advisory Committee, oversees the annual review of the City's Investment Policy and guides investment of the City's portfolio.

The former elected City Treasurer also held the position of Assistant City Manager/Finance and Administrative Services Director with the City and was completely involved in the City's day to day operations. The new City Treasurer is not involved in the day to day operations of the City and is fully employed, making it more difficult for him to spend substantial time guiding investment of the City's portfolio.

Discussion: In accordance with Government Code Section 53601, The City Council, by the annual adoption of the City's Investment Policy, delegates investment authority to the City Treasurer. In accordance with Government Code Section 53607, investment authority may be delegated for a one-year period by the City Council, and may be revoked by the City Council before that one year period is over. On December 18, 2012, the City Council adopted the City's Investment Policy, thereby delegating investment authority to the City Treasurer for calendar year 2013.

Per the City's Investment Policy (Section 4.4.1), "At the recommendation of the City Manager, and approval of the City Council, the City may engage the services registered external investment advisors to manage all or a part of the City's investment portfolio." Based on the change of City Treasurer and related time constraints, the City Manager is now recommending that the City engage an outside investment advisory firm to manage the City's investment portfolio.

Per the City's Investment Policy (4.4.1.1), "...the Investment Advisory Committee may, after review of external investment advisors qualifications, recommend to the City Council the selection of one or more firms to manage City investments." Based on the City Manager's recommendation, in June 2013 the City Treasurer issued a "Request for Proposals" soliciting proposals from investment advisory firms for portfolio management services.

Thirteen (13) proposals were received by July 12, 2013. The City's Investment Advisory Committee (IAC) reviewed the proposals and selected three firms to make formal presentations and answer questions from the IAC. The City Treasurer telephoned clients of the two firms considered to be the strongest candidates and presented their responses at two follow up meetings of the IAC. After review, discussion and analysis, the Investment Advisory Committee voted to recommend the City Council engage the services of Chandler Asset Management (CAM) for portfolio management services.

CAM has a professional staff of seven portfolio managers and associates, and manages over \$6 billion, of which 86% of those assets belong to governmental entities. CAM is based in San Diego and was founded by Kay Chandler who worked as the investment officer for both the City and County of San Diego before the firm's inception in 1988.

CAM will be required to comply with the City's Investment Policy including the policy's requirements regarding the use of City approved broker/dealers.

Recommended

Action:

STAFF RECOMMENDS THAT the City Council

- 1.) Approve the recommendation of the City Manager to engage the services of registered external investment advisors to manage all or a part of the City's investment portfolio, and
- 2.) Approve the recommendation of the City's Investment Advisory Committee and authorize the Mayor to execute an agreement to engage the services of Chandler Asset Management to manage the City's Investment portfolio, and
- 3.) Authorize an additional FY 2013-14 appropriation of \$30,000 to account 001-192-43690-000-00000 for first year investment management fees for Chandler Asset Management.

Attachments: 1. *City of San Clemente Professional Services Agreement*

Notification: None.

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**PROFESSIONAL SERVICES AGREEMENT
FOR INVESTMENT ADVISORY SERVICES**

THIS PROFESSIONAL SERVICES AGREEMENT (the "Agreement") is made and entered into this 1ST day of October, 2013 (the "Effective Date"), by and between the City of San Clemente, a municipal corporation, hereinafter referred to as the "CITY", and Chandler Asset Management located at 6225 Lusk Boulevard, San Diego, CA 92121 hereinafter referred to as the "CONTRACTOR".

RECITALS:

- A. CITY requires professional Investment Advisory services to be performed at or in connection with the City of San Clemente's Investment portfolio.
- B. CONTRACTOR has represented to CITY that CONTRACTOR is qualified to perform said services and has submitted a proposal to CITY for same.
- C. CITY desires to have CONTRACTOR perform said services on the terms and conditions set forth herein.

COVENANTS:

Based on the foregoing Recitals and for good and valuable consideration, the receipt and sufficiency of which is acknowledged by both parties, CITY and CONTRACTOR agree as follows:

ARTICLE 1
RESPONSIBILITIES OF CONTRACTOR

1.1 Term.

The term of this Agreement shall commence on the Effective Date, and shall continue and remain in effect, until December 31, 2014, unless terminated earlier pursuant to the terms hereof. Notwithstanding the forgoing, the City Manager or his or her designee shall have the authority on behalf of the City to administratively approve extensions to the term hereof not to exceed a cumulative total of one hundred eighty (180) days.

1.2 Scope of Services.

CONTRACTOR shall perform any and all work necessary for the completion of the tasks and services set forth in the "Scope of Services" attached hereto and incorporated herein as Exhibit "A" in a manner satisfactory to CITY. By execution of this Agreement, CONTRACTOR warrants that (i) it has thoroughly investigated and considered the work to be performed; (ii) it has carefully examined the location or locations at or with respect

to which the work is to be performed, as applicable; and (iii) it fully understands the difficulties and restrictions attending the performance of the work provided for under this Agreement. CONTRACTOR acknowledges that certain refinements to the Scope of Services may, on occasion, be necessary to achieve CITY's goals hereunder, and CONTRACTOR shall cooperate with and assist the CITY to identify and make such refinements prior to undertaking any tasks or services that may require refinement.

1.3 Schedule of Performance.

Prior to the City's execution of this Agreement, and as a condition to the effectiveness hereof, CONTRACTOR shall furnish to CITY proof of insurance coverage as required under Article 5, Insurance. Upon CITY's release to CONTRACTOR of a fully executed copy hereof and issuance of a written Notice to Proceed, CONTRACTOR shall promptly commence performance of the work. Until such time, CONTRACTOR is not authorized to perform and will not be paid for performing any work under this Agreement. CONTRACTOR shall exercise reasonable diligence to have the services as set forth in Exhibit "A" completed and submitted to CITY for final approval as soon as reasonably practicable and in accordance with the schedule of performance attached hereto and incorporated herein as Exhibit "B", provided that CONTRACTOR shall be entitled to an extension of time for any delays caused by events or occurrences beyond CONTRACTOR'S reasonable control.

1.4 Identity of Persons Performing Work.

CONTRACTOR represents that it employs or will employ at its own expense all personnel required for the satisfactory performance of any and all tasks and services required hereunder. CONTRACTOR shall not replace any of the principal members of the Project team, including any of the persons listed in Exhibit "A" (if CONTRACTOR'S personnel is listed on Exhibit "A"), or any successors to any of such persons, without CITY's prior written approval.

CONTRACTOR represents that the tasks and services required hereunder will be performed by CONTRACTOR or under its direct supervision, and that all personnel engaged in such work shall be fully qualified and shall be authorized and permitted under applicable State and local law to perform such tasks and services. In carrying out such tasks and services, CONTRACTOR shall not employ any undocumented aliens (i.e., persons who are not citizens or nationals of the United States).

This Agreement contemplates the personal services of CONTRACTOR and CONTRACTOR's employees, and it is recognized by the parties hereto that a substantial inducement to CITY for entering into this Agreement was, and is, the professional reputation and competence of CONTRACTOR and CONTRACTOR's employees. Neither this Agreement nor any interest therein may be assigned by CONTRACTOR, except upon written consent of CITY.

Furthermore, CONTRACTOR shall not subcontract any portion of the performance contemplated and provided for herein without the prior written approval of CITY, except for those subcontractors named in the proposal for the project. Nothing herein contained is intended to or shall be construed as preventing CONTRACTOR from employing or hiring as many employees as CONTRACTOR may deem necessary for the proper and efficient execution of this Agreement.

1.5 Cooperation and Coordination of Work With CITY.

CONTRACTOR shall work closely with CITY's designated representative, either individual or committee, who shall have the principal responsibility for liaison and who shall, on a continuous basis, review and approve CONTRACTOR's work. CONTRACTOR shall ensure that CITY has reviewed and approved all required work as the project progresses.

1.6 Compliance With Laws.

CONTRACTOR shall comply with all applicable Federal, State and local laws, ordinances and regulations, including without limitation all applicable fair labor standards. CONTRACTOR shall not discriminate against any employee or applicant for employment or any approved subcontractor, agent, supplier or other firm or person providing services to CONTRACTOR in connection with this Agreement on the basis of race, color, creed, ancestry, national origin, religion, sex, sexual orientation, marital status, or mental or physical disability. CONTRACTOR shall take affirmative action to ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, color, creed, ancestry, national origin, religion, sex, sexual orientation, marital status, and mental or physical disability. Such actions shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

Prior to execution of this Agreement, CONTRACTOR shall furnish to CITY proof that CONTRACTOR and all of its subcontractors have a current, valid business license issued by CITY.

1.7 Standard of Performance.

CONTRACTOR acknowledges and understands that the services and work contracted for under this Agreement require specialized skills and abilities and that, consistent with this understanding, CONTRACTOR's services and work shall be held to a standard of quality and workmanship prevalent in the industry for such service and work. CONTRACTOR represents to CITY that CONTRACTOR holds the necessary skills and abilities to satisfy the standard of work as set forth in this Agreement. CONTRACTOR shall perform the work and services under this Agreement in accordance with such standard of work and in accordance with the accepted standards of the professional disciplines involved in the project. All work shall be completed to the reasonable satisfaction of CITY. If CITY

reasonably determines that the work is not satisfactory, CITY shall have the right to: (i) meet with CONTRACTOR to review CONTRACTOR's work and resolve matters of concern; and/or (ii) require CONTRACTOR to repeat unsatisfactory work at no additional charge until it is satisfactory.

1.8 Contractor Ethics.

CONTRACTOR represents and warrants that it has not provided or promised to provide any gift or other consideration, directly or indirectly, to any officer, employee, or agent of CITY to obtain CITY's approval of this Agreement. CONTRACTOR shall not, at any time, have any financial interest in this Agreement or the project that is the subject of this Agreement other than the compensation to be paid to CONTRACTOR pursuant to Article 3, Compensation. In the event the work and/or services to be performed hereunder relate to a project and/or application under consideration by or on file with the City, (i) CONTRACTOR shall not possess or maintain any business relationship with the applicant or any other person or entity which CONTRACTOR knows to have a personal stake in said project and/or application, (ii) other than performing its work and/or services to CITY in accordance with this Agreement CONTRACTOR shall not advocate either for or against said project and/or application, and (iii) CONTRACTOR shall immediately notify CITY in the event CONTRACTOR determines that CONTRACTOR has or acquires any such business relationship with the applicant or other person or entity which has a personal stake in said project and/or application. The provisions in this Section 1.8 shall be applicable to all of CONTRACTOR's officers, directors, employees, and agents, and shall survive the termination of this Agreement.

1.9 Changes and Additions to Scope of Services.

CITY may make changes within the general scope of services provided for in this Agreement. CONTRACTOR shall agree to any such changes that are reasonable. CONTRACTOR shall make no change in or addition to the character or extent of the work required by this Agreement except as may be authorized in advance in writing by CITY. Such supplemental authorization shall set forth the specific changes of work to be performed and related extension of time and/or adjustment of fee to be paid to CONTRACTOR by CITY.

1.10 Hiring of Illegal Aliens Prohibited

CONTRACTOR shall not hire or employ any person to perform work within the City of San Clemente or allow any person to perform work required under this Agreement unless such person is a United States citizen or is properly documented and legally entitled to be employed within the United States.

ARTICLE 2
RESPONSIBILITIES OF CITY

2.1 Provision of Information.

CITY shall provide full information regarding its requirements for the project, and it shall furnish, without charge to CONTRACTOR, any and all information, data, plans, maps and records which are available to CITY and are necessary for the provision by CONTRACTOR of the tasks and services set forth herein.

2.2 Cooperation With CONTRACTOR.

CITY shall cooperate with CONTRACTOR in carrying out the work and services required hereunder without undue delay. In this regard, CITY, including any representative thereof, shall examine plans and documents submitted by CONTRACTOR, shall consult with CONTRACTOR regarding any such plans and documents, and shall render any necessary decisions pertaining to such plans and documents as promptly as is practicable.

ARTICLE 3
PAYMENT

3.1 Payment Schedule: Maximum Payment Amount.

CITY hereby agrees to pay CONTRACTOR a monthly fee as specified in the Scope of Services set forth in Exhibit "A" for services to be performed under this Agreement. Prior to the tenth of the month, CONTRACTOR shall submit to CITY an invoice itemizing the services rendered during the previous month. Within fifteen (15) working days after receipt of an invoice from CONTRACTOR, CITY shall determine whether and to what extent CONTRACTOR has adequately performed the services for which payment is sought. If CITY determines that CONTRACTOR has not adequately performed such services, CITY shall inform CONTRACTOR of those acts which are necessary for satisfactory completion. Subject to the provisions of Section 5.2 below, which provide for the City to withhold payment in the event CONTRACTOR's insurance expires during the term of this Agreement, CITY shall cause payment to be made to CONTRACTOR within fifteen (15) working days from CITY's determination that CONTRACTOR has adequately performed those services for which CITY has been invoiced. In no case shall CITY pay fees in excess of those fees set forth in Exhibit "A", Section 1, "Fees" for any particular task unless approved and authorized by the CITY in writing. The total compensation for the Scope of Services set forth in Exhibit "A" shall not exceed those fees set forth in Exhibit "A", Section 1, "Fees", including all amounts payable to CONTRACTOR for its overhead, payroll, profit, and all costs of whatever nature, including without limitation all costs for subcontracts, materials, equipment, supplies, and costs arising from or due to termination of this Agreement (the "Total Compensation").

3.2 Changes in Work.

If CONTRACTOR estimates that any proposed change within the general scope of services set forth in Exhibit "A" causes an increase or decrease in the cost and/or the time required for performance of this Agreement, CONTRACTOR shall so notify CITY of that fact in advance of commencing performance of such work. Any such change, and the cost for such change, shall be agreed upon by CITY and CONTRACTOR, and reduced to a writing that, once signed by both CITY and CONTRACTOR, shall modify this Agreement accordingly. In determining the amount of any cost increase for such change, the value of the incomplete portions of the original tasks and services affected by the change shall be credited back to CITY.

3.3 Additional Work.

CITY may request CONTRACTOR to perform additional services not covered by the specific scope of services set forth in Exhibit "A", and CONTRACTOR shall perform such extra services and will be paid for such extra services when the extra services and the cost thereof are reduced to writing, signed by both CITY and CONTRACTOR, and made a part of this Agreement. CITY shall not be liable for payment of any extra services nor shall CONTRACTOR be obligated to perform any extra services except upon such written amendment. To the extent that the extra services render all or a portion of the original tasks and services unnecessary, the value of the unnecessary and incomplete portions of original tasks and services shall be credited back to CITY.

ARTICLE 4 INDEPENDENT CONTRACTOR

CONTRACTOR is an independent contractor and not an employee of the CITY. Neither the CITY nor any of its employees shall have any control over the conduct of the CONTRACTOR or any of CONTRACTOR's employees, except as herein set forth, and CONTRACTOR expressly warrants not to, at any time or in any manner, represent that CONTRACTOR, or any of CONTRACTOR's agents, servants or employees, are in any manner employees of the CITY, it being distinctly understood that CONTRACTOR is and shall at all times remain as to the CITY a wholly independent contractor and that CONTRACTOR's obligations to the CITY are solely such as are prescribed by this Agreement.

ARTICLE 5 INDEMNITY AND INSURANCE

5.1 Indemnification

FOLLOWING PARAGRAPH APPLICABLE TO AGREEMENTS WHERE CONTRACTOR IS A "LICENSED DESIGN PROFESSIONAL" AND IS PROVIDING DESIGN PROFESSIONAL SERVICES:

To the fullest extent permitted by law (including, without limitation, California Civil Code Sections 2782 and 2782.6), CONTRACTOR shall defend (with legal counsel reasonably acceptable to the CITY), indemnify, and hold free and harmless CITY and CITY's agents, officers, and employees, and the San Clemente Redevelopment Agency and its agents, officers, and employees (collectively, the "Indemnitees") from and against any and all claims, loss, cost, damage, injury (including, without limitation, injury to or death of CONTRACTOR or any officers, agents, employees, representatives, or subcontractors of CONTRACTOR [collectively, the "CONTRACTOR ENTITIES"]), expense and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, attorney's fees, litigation expenses and fees of expert Contractors or expert witnesses incurred in connection therewith and costs of investigation) that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, the negligence, recklessness, or willful misconduct of CONTRACTOR, any of the CONTRACTOR ENTITIES, anyone directly or indirectly employed by any of them, or anyone that they control (collectively, the "Liabilities"). Such obligation to defend, hold harmless and indemnify any Indemnitee shall not apply to the extent that such Liabilities are caused in part by the sole negligence, active negligence, or willful misconduct of such Indemnitee.

FOLLOWING PARAGRAPH APPLICABLE TO AGREEMENTS WHERE CONTRACTOR IS NOT A "LICENSED DESIGN PROFESSIONAL":

CONTRACTOR shall defend (with legal counsel reasonably acceptable to the CITY), indemnify, and hold free and harmless CITY and CITY's agents, officers, and employees, and the San Clemente Redevelopment Agency and its agents, officers, and employees from and against any and all claims, loss, cost, damage, injury (including, without limitation, injury to or death of an employee of CONTRACTOR or CONTRACTOR's officers, agents, employees, representatives, or subcontractors [collectively, the "CONTRACTOR ENTITIES"]), expense and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, attorney's fees, litigation expenses and fees of expert Contractors or expert witnesses incurred in connection therewith and costs of investigation) that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, the actions or failure to act of CONTRACTOR, any of the CONTRACTOR ENTITIES, anyone directly or indirectly employed by any of them, or anyone that they control, under this Agreement.

For purposes of this Agreement, a "Licensed Design Professional" shall be limited to licensed architects, registered professional engineers, licensed professional land surveyors and landscape architects, all as defined under current law, and as may be amended from time to time by California Civil Code § 2782.8.

5.2 Insurance.

Prior to the City's execution of this Agreement, and as a condition to the effectiveness hereof, CONTRACTOR shall submit certificates and endorsements to CITY indicating

compliance with the following minimum insurance requirements, and CONTRACTOR shall maintain such insurance in effect during the entire term of this Agreement:

- A. Workers' Compensation insurance to cover CONTRACTOR's employees as required by the California Labor Code with employer's liability limits not less than One Million Dollars (\$1,000,000) per accident or disease. Before execution of this Agreement by CITY, CONTRACTOR shall file with CITY the attached signed Worker's Compensation Insurance Certification. CONTRACTOR shall require all subcontractors similarly to provide such compensation insurance for the respective employees.

None of the CITY, the San Clemente Redevelopment Agency, or any of their respective officers, employees, and agents will be responsible for any claims in law or equity occasioned by failure of CONTRACTOR to comply with this paragraph.

- B. Commercial General Liability, personal injury and property damage liability, contractual liability, independent contractor's liability, and automobile liability insurance, with minimum combined liability limits of One Million Dollars (\$1,000,000) per occurrence for all covered losses, and Two Million Dollars (\$2,000,000) in the aggregate. Any deductible or self-insured retention in excess of Five Thousand Dollars (\$5,000) shall be declared to the City and requires the prior approval of the City's Risk Manager. Each such policy of insurance shall:

- (1) be issued by companies that hold a current policy holder's alphabetic and financial size category rating of not less than A-VII, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by CITY's Risk Manager for all coverage except surety.
- (2) name and list as additional insureds CITY, CITY's officers, employees, and agents and, if the CITY's Risk Manager so requires, the City of San Clemente Redevelopment Agency and its officers, employees, and agents. An endorsement shall accompany the insurance certificate naming such additional insureds.
- (3) specify it acts as primary insurance and that no insurance held or owned by CITY (or, if applicable, the San Clemente Redevelopment Agency) shall be called upon to cover a loss under said policy;
- (4) contain a clause substantially in the following words: "it is hereby understood and agreed that this policy may not be canceled or materially changed except upon thirty (30) days prior written

notice to CITY of such cancellation or material change as evidenced by a return receipt for a registered letter;"

- (5) cover the operations of CONTRACTOR pursuant to the terms of this Agreement; and
- (6) be written on an occurrence and not a claims made basis.

C. Professional Liability or Errors and Omissions insurance specifically designed to protect against acts, errors or omissions of the CONTRACTOR and "covered professional services" as designated in the policy must specifically include work performed under this Agreement. The policy limit shall be not less than One Million Dollars (\$1,000,000) per claim and One Million Dollars (\$1,000,000) in the aggregate. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend.

If this box is checked and CITY has initialed below, the requirement for Professional Liability or Errors and Omissions insurance set forth in paragraph C above is hereby waived.

CITY's Initials: _____

Notwithstanding anything herein to the contrary, in the event any of CONTRACTOR's insurance as required pursuant to this Section 5.2 expires during the term of this Agreement, CITY shall withhold any payment due to CONTRACTOR hereunder until such time as CONTRACTOR obtains replacement insurance that meets all of the applicable requirements hereunder and submits certificates and endorsements evidencing such insurance to CITY.

CONTRACTOR shall require all of its subcontractors to procure and maintain during the course of their subcontract work with CONTRACTOR insurance that complies with the foregoing minimum insurance requirements. CONTRACTOR shall obtain from such subcontractors and retain in its files certificates evidencing such compliance.

ARTICLE 6 TERMINATION

This Agreement may be terminated by CITY for any reason, with or without cause, upon written notice to CONTRACTOR. In such event, CONTRACTOR shall be compensated for all services performed and costs incurred up to the date of notification for which CONTRACTOR has not been previously compensated, plus termination expenses reasonably incurred and properly accounted for (but in no event to exceed the amount which, when combined with other amounts paid, exceeds the amount for any uncompleted task set forth in Exhibit "A", as applicable). Upon receipt of notice of termination from CITY, CONTRACTOR shall immediately stop its services, unless

otherwise directed, and deliver to CITY all data, drawings, reports, estimates, summaries and such other information and materials as may have been accumulated by CONTRACTOR in the performance of this Agreement, whether completed or in process.

ARTICLE 7
MISCELLANEOUS

7.1 Ownership of Documents.

All reports, software programs, as well as original data collected, original reproducible drawings, plans, studies, memoranda, computation sheets and other documents assembled or prepared by CONTRACTOR or furnished to CONTRACTOR in connection with this Agreement shall be the property of CITY and delivered to CITY at completion of the project or termination of this Agreement, whichever occurs first. Copies of said documents may be retained by CONTRACTOR, but shall not be made available by CONTRACTOR to any individual or organization without the prior written approval of CITY.

Any use of completed documents for projects other than that covered by this Agreement and/or any use of uncompleted documents without specific written authorization from CONTRACTOR will be at CITY's sole risk and without liability or legal exposure to CONTRACTOR.

7.2 Notices.

Any notices to be given under this Agreement shall be given by enclosing the same in a sealed envelope, postage prepaid, and depositing the same in the United States mail, addressed to CONTRACTOR at Chandler Asset Management, Attn: Client Services, 6225 Lusk Boulevard, San Diego, CA 92121, and to the City of San Clemente, 100 Avenida Presidio, San Clemente, California 92672, Attention: City Treasurer.

7.3 Covenant Against Contingent Fees.

CONTRACTOR warrants that it has not employed or retained any company or person to solicit or secure this Agreement and that it has not paid or agreed to pay any company or person any fee or commission from the award or making of this Agreement. For breach or violation of this warranty, CITY shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee or commission.

7.4 Liquidated Damages.

APPLICABLE ONLY IF THIS BOX HAS BEEN CHECKED AND BOTH PARTIES HAVE INITIALED BELOW.

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If CITY seeks monetary damages for CONTRACTOR'S failure to complete all of the services required hereunder by the completion date set forth in Exhibit "B" (the "Completion Date"), CONTRACTOR shall be required to pay to CITY _____ Dollars (\$_____) per day for each day beyond the Completion Date that any of such services remain uncompleted; provided, however, that nothing herein shall be deemed to limit CITY's remedy for CONTRACTOR's failure to complete all services required hereunder by the Completion Date to seeking monetary damages, and CITY shall be entitled to pursue any other equitable remedy permitted by law, including, without limitation, specific performance.

THE PARTIES HERETO AGREE THAT THE AMOUNT SET FORTH IN THIS SECTION 7.4 (THE "DAMAGE AMOUNT") CONSTITUTES A REASONABLE APPROXIMATION OF THE ACTUAL DAMAGES THAT CITY WOULD SUFFER DUE TO CONTRACTOR'S FAILURE TO COMPLETE ALL OF THE SERVICES REQUIRED HEREUNDER BY THE COMPLETION DATE, CONSIDERING ALL OF THE CIRCUMSTANCES EXISTING ON THE EFFECTIVE DATE OF THIS AGREEMENT, INCLUDING THE RELATIONSHIP OF THE DAMAGE AMOUNTS TO THE RANGE OF HARM TO CITY, THAT REASONABLY COULD BE ANTICIPATED AND THE ANTICIPATION THAT PROOF OF ACTUAL DAMAGES WOULD BE COSTLY OR INCONVENIENT. THE DAMAGE AMOUNT SET FORTH IN THIS SECTION 7.4 SHALL BE THE SOLE DAMAGES REMEDY FOR CONTRACTOR'S FAILURE TO COMPLETE ALL OF THE SERVICES REQUIRED HEREUNDER BY THE COMPLETION DATE, BUT NOTHING IN THIS SECTION 7.4 SHALL BE INTERPRETED TO LIMIT CITY'S REMEDY FOR CONTRACTOR'S FAILURE TO COMPLETE ALL OF THE SERVICES REQUIRED HEREUNDER BY THE COMPLETION DATE TO SUCH A DAMAGES REMEDY. IN PLACING ITS INITIALS AT THE PLACES PROVIDED HEREINBELOW, EACH PARTY SPECIFICALLY CONFIRMS THE ACCURACY OF THE STATEMENTS MADE ABOVE AND THE FACT THAT EACH PARTY HAS BEEN REPRESENTED BY COUNSEL OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY COUNSEL TO EXPLAIN THE CONSEQUENCES OF THE LIQUIDATED DAMAGES PROVISION AT OR PRIOR TO THE TIME EACH EXECUTED THIS AGREEMENT.

CONTRACTOR'S INITIALS: _____ CITY'S INITIALS: _____

Notwithstanding any of the above, nothing herein is intended to preclude the CITY's recovery of its attorney's fees and costs incurred to enforce this Section 7.4, as provided in Section 7.10 below.

7.5 Interpretation and Enforcement of Agreement.

This Agreement shall be construed and interpreted both as to validity and performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim, or matter arising out of or in relation to this Agreement shall be instituted and maintained in the Superior Court of the County of Orange, State of

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California, or in any other appropriate court with jurisdiction in such county, and CONTRACTOR agrees to submit to the personal jurisdiction of such court.

7.6 Disputes.

In the event of any dispute arising under this Agreement, the injured party shall notify the defaulting party in writing of its contentions by submitting a claim therefor. The injured party shall continue performance of its obligations hereunder so long as the defaulting party immediately commences to cure such default and completes the cure of such default with reasonable diligence and in no event to exceed 30 days after service of the notice, or such longer period as may be permitted by the injured party; provided, that if the default results in an immediate danger to the health, safety, and general welfare, CITY may take such immediate action as CITY deems warranted.

7.7 Retention of Funds.

CITY may withhold from any monies payable to CONTRACTOR sufficient funds to compensate CITY for any losses, costs, liabilities or damages suffered by CITY due to default of CONTRACTOR in the performance of the services required by this Agreement.

7.8 Waiver.

No delay or omission in the exercise of any right or remedy by a nondefaulting party shall impair such right or remedy or be construed as a waiver. CITY's consent or waiver of one act or omission by CONTRACTOR shall not be deemed to constitute a consent or waiver of CITY's rights with respect to any subsequent act or omission by CONTRACTOR. Any waiver by either party of any default must be in writing.

7.9 Rights and Remedies are Cumulative.

Except as may be expressly set forth in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies or other rights or remedies as may be permitted by law or in equity shall not preclude the exercise by such party, at the same or different times, of any other rights or remedies to which such party may be entitled.

7.10 Attorneys' Fees.

In the event either party commences an action against the other party arising out of or in connection with this Agreement, the prevailing party in such action shall be entitled to recover its reasonable costs and expenses, including without limitation reasonable attorneys' fees and costs. Attorneys' fees shall include attorneys' fees on any appeal, and in addition, a party entitled to attorneys' fees shall be entitled to all other reasonable costs for investigating such action, including the taking of depositions and discovery, expert witness fees, and all other necessary costs incurred in the litigation, suit, or other action

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requiring attorney time. All such fees shall be enforceable whether or not such action is prosecuted to final judgment.

7.11 Integrated Agreement.

This Agreement contains all of the agreements of the parties and cannot be amended or modified except by written agreement. No prior oral or written understanding shall be of any force or effect with respect to those matters covered in this Agreement.

7.12 Authority.

The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties.

[APPLICABLE TO INDIVIDUAL CONTRACTORS ONLY]

7.13 Compliance with California Unemployment Insurance Code Section 1088.8:

Prior to signing the Contract, CONTRACTOR shall provide to CITY a completed and signed Form W-9, Request for Taxpayer Identification Number and Certification. CONTRACTOR understands that pursuant to California Unemployment Insurance Code Section 1088.8, the CITY will report the information from Form W-9 to the State of California Unemployment Development Department, and that the information may be used for the purposes of establishing, modifying, or enforcing child support obligations, including collections, or reported to the Franchise Tax Board for tax enforcement purposes.

[End – Signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed on the respective dates set forth opposite their signatures.

CITY OF SAN CLEMENTE

By: _____

Its: _____

Dated: _____, 20__

ATTEST:

CITY CLERK of the City of
San Clemente, California

APPROVED AS TO FORM:
RUTAN & TUCKER

By: _____
City Attorney

APPROVED AS TO AVAILABILITY
OF FUNDING

By: _____
Finance Authorization

("CONTRACTOR")

By: _____

Its: _____

Dated: _____, 20__

EXHIBIT "A"

SCOPE OF SERVICES

SCOPE OF SERVICES

CONTRACTOR shall provide the following services:

CONTRACTOR shall provide investment management and advisory services for the CITY on all funds authorized by the CITY. CONTRACTOR shall provide the additional related services, which shall include but not be limited to the following:

- a) Assisting the CITY, as the CITY deems necessary, in analyzing its cash flow requirements to determine the amount of funds to be invested with CONTRACTOR.
- b) Providing the CITY with credit analysis of investment instruments in CITY's portfolio and rebalancing the CITY's portfolio as necessary.
- c) Providing monthly, quarterly and annual reporting on all CITY funds.
- d) Attending quarterly meetings with CITY staff and the Investment Advisory Committee.
- e) Evaluating market risk and developing strategies that minimize the impact on the CITY's portfolio.
- f) Providing assurance of portfolio compliance with applicable policies and laws and the CITY's Investment Policy as set forth in Exhibit "C", or as later amended and provided to the CONTRACTOR.
- g) Assisting the CITY, as the CITY deems necessary, in determining its investment risk tolerance and appropriate portfolio benchmark.
- h) On an annual basis, reviewing and recommending changes to the CITY's Investment Policy based on legislative changes and other relevant market conditions.
- i) Providing other investment-related services as agreed upon.

FEE SCHEDULE AND ADDITIONAL PROVISIONS

1. Fees.

CITY shall compensate CONTRACTOR monthly an amount calculated on the average market value of assets designated as being under the CONTRACTOR's management, including accrued interest, in accordance with the following schedule:

| Assets under Management | Annual Asset Management Fee |
|----------------------------------|------------------------------------|
| First \$25 million | 0.10 of 1% (10 basis points) |
| Next \$25 million | 0.08 of 1% (8 basis points) |
| Assets in excess of \$50 million | 0.07 of 1% (7 basis points) |

Assets purchased by the CITY prior to this Agreement as well as funds not under CONTRACTOR's management, including investment pools and money market funds, will be excluded from fee calculations.

The fees expressed above do not include any custody fees that may be charged by CITY's bank or other third party custodian.

Fees shall be prorated to the effective date of termination on the basis of actual days elapsed, and any unearned portion of prepaid fees shall be refunded. CITY is not required to pay any start-up or closing fees; there are no penalty fees.

Fees shall be deducted monthly in arrears from CITY's custody account. An invoice detailing a calculation of the amount due for the prior month, and the amount deducted from the custody account shall be provided to the CITY prior to the tenth of each month.

2. CITY Representative.

In its capacity as investment manager, CONTRACTOR shall receive all instructions, directions and other communications on CITY's behalf respecting CITY's account from the City Treasurer or his/her designee ("Representative"). CONTRACTOR is hereby authorized to rely and act upon all such instructions, directions and communications from such Representative or any agent of such Representative.

3. Investment Policy.

In investing and reinvesting CITY's assets, CONTRACTOR shall comply with CITY's Investment Policy, the current version of which is attached hereto as Exhibit "C".

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4. Authority of CONTRACTOR.

CONTRACTOR is hereby granted full discretion to invest and reinvest all assets under its management in any type of security it deems appropriate, subject to compliance with the Investment Policy and instructions given or guidelines set by the Representative.

5. Electronic Delivery.

From time to time, CONTRACTOR may be required to deliver certain documents to CITY such as account information, notices and required disclosures. CITY hereby consents to CONTRACTOR's use of electronic means, such as email, to make such delivery. This delivery may include notification of the availability of such document(s) on a website, and CITY agrees that such notification will constitute "delivery". CITY further agrees to provide CONTRACTOR with CITY's email address(s) and to keep this information current at all times by promptly notifying CONTRACTOR of any change in email address(s).

CITY email address(s): citytreasurer@san-clemente.org

6. Proxy Voting.

CONTRACTOR will vote proxies on behalf of CITY unless otherwise instructed. CONTRACTOR has adopted and implemented written policies and procedures and will provide CITY with a description of the proxy voting procedures upon request. CONTRACTOR will provide information regarding how CITY's proxies were voted upon request. To request proxy policies or other information, please contact us by mail at the address provided, by calling 800-317-4747, or by emailing your request to compliance@chandlerasset.com.

7. Custody of Securities and Funds.

CONTRACTOR shall not have custody or possession of the funds or securities that CITY has placed under its management. CITY shall appoint a custodian to take and have possession of its assets. CITY recognizes the importance of comparing statements received from the appointed custodian to statements received from CONTRACTOR. CITY recognizes that the fees expressed above do not include fees CITY will incur for custodial services.

8. Valuation.

CONTRACTOR will value securities held in portfolios managed by CONTRACTOR no less than monthly. Securities or investments in the portfolio will be valued in a manner determined in good faith by CONTRACTOR to reflect fair market value.

9. Investment Advice.

CITY recognizes that the opinions, recommendations and actions of CONTRACTOR will be based on information deemed by it to be reliable, but not guaranteed to or by it. Provided that CONTRACTOR acts in accordance with the standards set out in Section 1.7 of the Agreement, CITY agrees that CONTRACTOR will not in any way be liable for any error in judgment or for any act or omission, except as may otherwise be provided for under the Federal Securities laws or other applicable laws.

10. Payment of Commissions.

CONTRACTOR may place buy and sell orders with or through such brokers or dealers as it may select, based on any restrictions in the City's Investment Policy. It is the policy and practice of CONTRACTOR to strive for the best price and execution and for commission and discounts which are competitive in relation to the value of the transaction and which comply with Section 28(e) of the Securities and Exchange Act. Nevertheless, it is understood that CONTRACTOR may pay a commission on transactions in excess of the amount another broker or dealer may charge, and that CONTRACTOR makes no warranty or representation regarding commissions paid on transactions hereunder.

11. Other Clients.

It is further understood that CONTRACTOR may be acting in a similar capacity for other institutional and individual clients, and that investments and reinvestments for CITY's portfolio may differ from those made or recommended with respect to other accounts and clients even though the investment objectives may be the same or similar. Accordingly, it is agreed that CONTRACTOR will have no obligation to purchase or sell for CITY's account any securities which it may purchase or sell for other clients.

12. Confidential Relationship.

The terms and conditions of this Agreement, and all information and advice furnished by either party to the other shall be treated as confidential and shall not be disclosed to third parties except (i) as required by law, rule, or regulation, (ii) as requested by a regulatory authority, (iii) for disclosures by either party of information that has become public by means other than wrongful conduct by such party or its officers, employees, or other personnel, (iv) for disclosures by either party to its legal counsel, accountants, or other professional advisers, (v) as necessary for CONTRACTOR to carry out its responsibilities hereunder, or (vi)

as otherwise expressly agreed by the parties.

13. Receipt of Brochure and Privacy Policy.

CITY has received the disclosure statement or "brochure" and "brochure supplement" also known as Part 2A and Part 2B of Form ADV, required to be delivered pursuant to Rule 204-3 of the Investment Advisers Act of 1940 (Brochure). CITY has received a copy of CONTRACTOR's Privacy Policy.

EXHIBIT "B"

PERFORMANCE SCHEDULE

| Performance Schedule | |
|---------------------------------|--|
| Monthly Investment Report | Due 3 rd business day of the month following month end. |
| Quarterly Investment Report | Due 15 days after end of quarter |
| GASB 40 & Other Annual Reports | Due 30 days after fiscal year end |
| Annual Investment Policy Review | Due by September 30 th each year |

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EXHIBIT "C"

CITY OF SAN CLEMENTE INVESTMENT POLICY

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INVESTMENT POLICY

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POLICY AND PROCEDURE

| | |
|--|--|
| Subject: Investment Policy | Index: Treasurer Number: 202-1 |
| Effective Date: December 18, 2012 | Prepared By: Finance and Administrative Services/City Treasurer |
| Supersedes: December 6, 2011 | Approved By: |

1.0 **PURPOSE:**

The purpose of the City's Investment Policy is to provide comprehensive guidelines for the responsible management of the City's funds that are available for investment. These may include, but are not limited to, temporarily idle cash, reserve funds, trust, agency, and capital funds.

2.0 **ORGANIZATIONS AFFECTED:**

All City departments/divisions.

3.0 **REFERENCES:**

- Civil Code Section 2261, et seq.
- Government Code Section 53600, et seq.
- Code of Ethics Policy, Administrative Policy # 102-1

4.0 **POLICY:**

It is the policy of the City of San Clemente ("the City") to invest public funds in a manner which will provide the maximum security of principal consistent with a market rate of return while meeting the cash flow needs of the City and conforming to all applicable State and City statutes governing the investment of public funds, as referenced in section 3.0. Every effort will be made to match investment maturities to cash flow needs.

- 4.1 **Scope:** This investment policy applies to all financial assets of the City. These funds are accounted for in the City of San Clemente's Comprehensive Annual Financial Report and include:

4.1.1 **Funds:**

- 4.1.1.1 General Fund
- 4.1.1.2 Special Revenue Funds
- 4.1.1.3 Capital Project Funds
- 4.1.1.4 Enterprise Funds
- 4.1.1.5 Internal Services Funds
- 4.1.1.6 Trust and Agency Funds
- 4.1.1.7 Debt Service Funds
- 4.1.1.8 Redevelopment Agency Funds
- 4.1.1.9 Any new fund created by the City Council

4.1.2 **Bond Proceeds:** The investment of bond proceeds will be made in accordance with applicable bond indentures.

4.2 **Objective:** The primary objectives, in priority order, of the City of San Clemente's investment activities shall be:

4.2.1 **Safety:** Safety of principal is the foremost objective of the City. Investments of the City shall be undertaken in a manner that seeks to ensure the preservation of capital in the overall portfolio. The objective will be to mitigate credit risk and interest rate risk.

Credit Risk - Credit Risk is the risk of loss due to the failure of the security issuer or backer. Credit risk may be mitigated by:

- Limiting investments authorized by this Policy by maturity and credit ratings.
- Pre-qualifying the financial institutions, broker/dealers, intermediaries, and advisors with which the City will do business; and
- Diversifying the investment portfolio so that potential losses on portfolio securities will be minimized.

Interest Rate Risk - Interest rate risk is the risk that the market value of securities in the portfolio will fall due to changes in general interest rates. Interest rate risk may be mitigated by:

- Structuring the investment portfolio so that securities mature to meet cash requirements for ongoing operations, thereby avoiding the need to sell securities on the open market prior to maturity, and
- By investing operating funds primarily in shorter-term securities.

4.2.2 **Liquidity:** The City's investment portfolio will remain sufficiently liquid to enable the City to meet all operating requirements which might be reasonably anticipated.

4.2.3 **Return on investment:** The City's investment portfolio shall be designed with the objective of attaining a market rate of return throughout budgetary and economic cycles, taking into account the City's investment risk constraints and the cash flow characteristics of the portfolio.

4.3 **Prudence:** The standard of prudence to be used in the investment function shall be the "prudent person" standard and shall be applied in the context of managing the overall portfolio. This standard states "Investments shall be made with judgment and care, under circumstances then prevailing, which persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the probable safety of their capital as well as the expected income to be derived."

4.4 **Delegation of Authority:** In accordance with Government Code Section 53601, The City Council, by adoption of this Investment Policy, delegates investment authority to the City Treasurer. In accordance with Government Code Section 53607, investment authority may be delegated for a one-year period by the City Council. In accordance with Government Code Section 53607, investment authority may be revoked by the City Council before that one year period is over.

4.4.1 **External Investment Advisor:** At the recommendation of the City Manager and approval of the City Council, the City may engage the services of registered external investment advisors to manage all or a part of the City's investment portfolio. Investment advisors may make all investment decisions in accordance with State law and the City's investment policy. External investment advisors may buy and sell approved securities only with broker/dealers that are approved by the City in accordance with this policy.

4.4.1.1 **Selection of External Investment Advisor:** The Investment Advisory Committee may, after review of external investment advisors qualifications, recommend to the City Council the selection of one or more firms to manage City investments.

4.4.2 The City Treasurer, with approval by the Finance & Administrative Services Director, shall develop and maintain written administrative procedures for the operation of the investment program which are consistent with this Investment Policy. Procedures will include reference to safekeeping, Public Securities Association (PSA) Master

Repurchase Agreements, wire transfer agreements, collateral and deposit agreements, banking service contracts, broker/dealer questionnaire and certification, and other investment related activities.

- 4.4.3 No person may engage in an investment transaction except as provided under terms of this Policy and the procedures established herein.
 - 4.4.4 The City Treasurer with approval by the Finance & Administrative Services Director shall establish a system of controls to regulate the investment activities of subordinate officials.
 - 4.4.5 The Finance & Administrative Services Director or his/her designee, is designated as the acting investment officer of the City when the primary investment officer is unavailable.
- 4.5 **Ethics and Conflicts of Interest:** Officers and employees involved in the investment process shall refrain from personal business activity that could conflict with proper execution of the investment program, or which could impair their ability to make impartial investment decisions.
- 4.5.1 Officers and employees involved in the investment process shall abide by the City's adopted Code of Ethics policy, which by reference is incorporated into this Policy.
- 4.6 **Authorized Financial Dealers and Institutions:** The City Treasurer will maintain a list of qualified financial institutions, as approved by the Investment Advisory Committee, including banks, savings and loans, and broker/ dealers, authorized to provide investment services.
- A list will be maintained of approved securities broker/dealers selected by credit worthiness, who maintain an office in the State of California. These may include "primary" dealers or regional dealers that meet the requirements stated in the City's Broker Dealer Questionnaire and Certification.
- All financial institutions and broker/dealers who desire to become qualified bidders for investment transactions must submit an application, including the completion of a Broker/Dealer Questionnaire and Certification, on an annual basis.
- 4.6.1 **Annual Review:** An annual review of the financial condition and registrations of qualified investment providers will be conducted by the Finance & Administrative Services Director and the City Treasurer. The review will be provided to the City's Investment Advisory Committee.

4.6.2 **Audited Financial Statement:** A current audited financial statement is required to be on file in the City Clerk's Office for each financial institution and broker/dealer with whom the City does business.

4.6.3 **Counterparty Risk:** Financial institutions with whom the city does business should be well capitalized and credit worthy to minimize Counterparty Risk.

4.7 **Authorized and Suitable Investments:**

4.7.1 **Authorized Investments:** In accordance with State law, investments may be made in the following media (California Government Code Section 16429.1, 53600-53609 and 53630- - Exhibit attached):

4.7.1.1 U.S. Treasury Securities or

4.7.1.2 Federal Agency Securities

- Federal Home Loan Bank (FHLB)
- Federal National Mortgage Association (FNMA)
- Federal Home Loan Mortgage Corporation (FHLMC)
- Federal Farm Credit Bank (FFCB)

4.7.1.3 Collateralized or insured Passbook Savings Accounts & Demand Deposits.

4.7.1.4 Collateralized or insured Certificates of Deposits (or Time Deposits) placed with commercial banks and/or savings and loan companies.

4.7.1.5 Bankers Acceptances with banks that have an A1/P1 rating. Banks may not be on "bank watch" by the top two largest credit agencies. Maturities may not exceed 180 days.

4.7.1.6 Commercial Paper rated A-1/P-1

Purchases of eligible Commercial Paper may not exceed 270 days maturity nor represent more than 10% of the outstanding paper of an issuing corporation. Investments in these corporations shall not exceed \$5 million par amount per issuer. Issuing corporations must have an A or A2 or better rating on longer term debt, if any, and must be organized and operating within the United States. Corporations must also have more than \$500 million in total assets.

4.1.7.7 Corporate Debentures (including Medium Term Notes issued by corporations organized and operating in the U.S.). Investments in these corporate securities shall not exceed \$2 million par amount per issuer.

Corporate issues purchased must be rated by Moody's and Standard and Poor's rating services subject to the following criteria:

- For maturities of two years or less from the settlement date of the transaction, A2 or better by Moody's or A or better by Standard and Poor's rating services at time of purchase.
- For maturities of two years to four years, Aa3 or better by Moody's or AA- or better by Standard and Poor's rating services at time of purchase.
- For maturities of four years to five years AAA and Aaa by both Moody's and Standard and Poor's rating services at time of purchase.

4.7.1.8 Repurchase agreements whose underlying collateral consists of the foregoing, provided a signed PSA Master Repurchase Agreement is on file with the counterpart bank or broker/dealer. Direct investments in Reverse Repurchase agreements are prohibited.

4.7.1.9 Local Agency Investment Fund (State of California Pool).

4.7.1.10 Orange County Investment Pool (OCIP)

4.7.1.11 Money market mutual funds whose portfolio consists of investments listed in Section 4.7.1. Money market mutual funds must be AAA rated by at least 2 of the 3 largest rating agencies

4.7.2 **Bank Savings Accounts and Certificates of Deposit:** No funds will be invested in an institution which has at the time the deposit or investment is made, a regulatory capital rating of less than "adequately capitalized."

4.7.3 **Leveraging:** Any form of leveraging is prohibited.

4.7.4 **Pool Investments:** A thorough investigation of the pool fund is required prior to investing, and on a continual basis. There shall be a

questionnaire developed which will answer the following general questions:

- (a) A description of eligible investment securities, and a written statement of investment policy and objectives.
- (b) A description of interest calculations and how it is distributed, and how gains and losses are treated.

4.7.5 Credit Rating Downgrade: In the event that an issue is later downgraded to below the required rating for that maturity, the Treasurer will assess the risk exposure to the City and will make a decision regarding course of action and will advise the Investment Advisory Committee accordingly.

4.8 Safekeeping & Collateralization:

4.8.1 Repurchase Agreements: Collateral is required for all repurchase agreements. In order to anticipate market changes and provide a level of security for all funds, the collateralization level will be a minimum of 102% of market value of principal and accrued interest. Collateral will always be held by an independent third party with whom the City has a current custodial agreement. The independent third party custodian must be a major financial institution, with at least \$5 billion in assets plus a long term rating of A or better.

The third party custodian shall be required to issue a safekeeping receipt to the City listing the specific instrument, rate, maturity and other pertinent information. The right of collateral substitution is granted for repurchase agreements.

Collateral securities shall be equal in quality and may only consist of those securities listed as authorized investments in sections 4.7.1.1 through 4.7.1.5.

4.8.2 Certificates of Deposit: Collateral or FDIC insurance is required for Certificates of Deposit.

4.8.3 Passbook Savings and Demand Deposits: Collateral or FDIC insurance is required for Passbook Savings and Demand Deposits.

4.9 Safekeeping & Custody:

All security transactions, including collateral for repurchase agreements, certificates of deposit, demand deposits, and time deposits entered into by the City shall be conducted on a delivery-versus-payment (DVP) basis.

Securities will be held by a third party qualified custodian designated by the City and will be evidenced by safekeeping receipts. Certificates of Deposit will be held in the City's vault.

4.10 Diversification and Maturity Limitations:

4.10.1 Diversification: It is the policy of the City to diversify its investment portfolio. Invested funds shall be diversified to minimize the risk of loss resulting from over concentration of assets in a specific maturity, specific issuer, or specific class of securities. Diversification strategies shall be established and reviewed quarterly by the City Treasurer and Investment Advisory Committee.

4.10.1.1 Portfolio Diversification: The portfolio will maintain diversification by imposing the following limits, at time of purchase, on eligible investments:

| | |
|--|------|
| U.S. Treasury | 100% |
| U.S. Agency (no more than 30% in any one agency) | 75% |
| Money Market Mutual Funds (No more than 10% in any on fund) | 15% |
| Commercial Paper | 15% |
| Corporate Debentures (including Medium Term Notes and Bank Notes) | 15% |

No more than 10% of the City's portfolio may be invested in any issuer of securities other than US Treasury and Agency obligations.

No more than 30% of the total portfolio may be invested in any one Federal Agency.

No more than 30% of the City's total investment portfolio will be invested in a single security type or with a single financial institution or pool except:

(a) The City may invest up to \$50 million into the Local Agency Investment Fund (LAIF)

(b) The City may invest up to 10% of its portfolio in the Orange County Investment Pool (OCIP)

4.10.1.2 Maturity Diversification: Every effort will be made to match investment maturities to cash flow needs. Matching maturities with cash flow dates will reduce the need

to sell securities prior to maturity, thus reducing market risk. Unless matched to a specific requirement, no more than 50% of the investment portfolio may be invested with maturities greater than 2 years. Unless matched to a specific requirement and approved by the City Council, no investment may be made with a maturity greater than 5 years.

- 4.11 **Marking to Market:** The City shall mark investments to market on a monthly basis.
- 4.12 **Investment Pools:** Prior to entering a pool, a pool questionnaire must be completed and kept on file in the City Treasurer's office.

5.0 **DEFINITIONS:**

- 5.1 **ADEQUATELY CAPITALIZED:** Capital group assignments are made in accordance with section 327.3(e)(1)(1) of the FDIC's amended assessment regulation. Not Well Capitalized and Total Risk-Based Capital Ratio equal to or greater than 8 percent, and Tier I Risk-Based Capital Ratio equal to or greater than 4 percent, and Tier I Leverage Capital Ratio equal to or greater than 4 percent.
(See Well Capitalized and Undercapitalized).
- 5.2 **AGENCIES:** Federal agency securities.
- 5.3 **BANKERS' ACCEPTANCE (BA):** A draft or bill or exchange accepted by a bank or trust company. The accepting institution guarantees payment of the bill, as well as the issuer.
- 5.4 **BROKER:** A broker brings buyers and sellers together for a commission paid by the initiator of the transaction or by both sides; he does not position or take ownership of the security. In the money market, brokers are active in markets in which banks buy and sell money and in inter-dealer markets.
- 5.5 **CERTIFICATE OF DEPOSIT (CD):** A time deposit with a specific maturity evidenced by a certificate. Large-denomination CD's are typically negotiable.
- 5.6 **COLLATERAL:** Securities, evidence of deposit or other property which a borrower pledges to secure repayment of a loan. Also refers to securities pledged by a bank to secure deposits of public monies.
- 5.7 **COMMERCIAL PAPER:** An unsecured promissory note with a fixed maturity of no more than 270 days. Commercial paper is normally sold at a discount from face value.

- 5.8 **COMPREHENSIVE ANNUAL FINANCIAL REPORT (CAFR):** The official annual report for the City of San Clemente. It includes five combined statements and basic financial statements for each individual fund and account group prepared in conformity with GAAP. It also includes supporting schedules necessary to demonstrate compliance with finance-related legal and contractual provisions, extensive introductory material, and a detailed Statistical Section.
- 5.9 **COUNTERPARTY:** One of the counterparts (participants) in a financial transaction.
- 5.10 **COUNTERPARTY RISK:** The risk that a counterparty might fail to fulfill its contractual obligations.
- 5.11 **COUPON:** (a) The annual rate of interest that a bond's issuer promises to pay the bondholder on the bond's face value. (b) A certificate attached to a bond evidencing interest due on a payment date.
- 5.12 **DEALER:** A dealer, as opposed to a broker, acts as a principal in all transactions, buying and selling for his own account.
- 5.13 **DELIVERY VERSUS PAYMENT (DVP):** There are two methods of delivery of securities: delivery versus payment and delivery versus receipt (also called free). Delivery versus payment is delivery of securities with an exchange of money for the securities with an exchange of a signed receipt for the securities.
- 5.14 **DEPOSITORY:** A state or national bank, savings association or federal association, a state or federal credit union, or a federally insured industrial loan company, in the state in which the moneys of a local agency are deposited.
- 5.15 **DIVERSIFICATION:** Dividing investment funds among a variety of securities, issuers, and maturities.
- 5.16 **DURATION:** A measure of the timing of the cash flows to be received from a security that provides the foundation for a measure of the interest rate sensitivity of a bond. Duration is an elasticity measure and represents the percentage change in price divided by the percentage change in interest rates. A high duration measure indicates that for a given level of movement in interest rates, prices of securities will vary considerably.
- 5.17 **FEDERAL CREDIT AGENCIES:** Agencies of the Federal government set up to supply credit to various classes of institutions and individuals, e.g.,

S&L's, small business firms, students, farmers, farm cooperatives, and exporters.

- 5.18 **FEDERAL DEPOSIT INSURANCE CORPORATION (FDIC)** A federal agency that insures bank deposits, currently up to \$250,000 per deposit until December 31, 2013.
- 5.19 **LEVERAGE:** The amplification in the return earned on funds when an investment is financed partly with borrowed money.
- 5.20 **LIQUIDITY:** A liquid asset is one that can be converted easily and rapidly into cash without a substantial loss of value. In the money market, a security is said to be liquid if the spread between bid and asked prices is narrow and reasonable size can be done at those quotes.
- 5.21 **LOCAL AGENCY INVESTMENT FUND (LAIF):** The aggregate of all funds from local governments that are placed in the custody of the State Treasurer for investment and reinvestment.
- 5.22 **MARKET RATE OF RETURN:** The average yield of the 90 day U.S. Treasury Bill or such other index that most closely matches the average maturity of the portfolio.
- 5.23 **MARKET VALUE:** The price at which a security is trading and could presumably be purchased or sold.
- 5.24 **MASTER REPURCHASE AGREEMENT:** A written contract covering all future transactions between the parties to repurchase--reverse repurchase agreements that establish each party's rights in the transactions. A master agreement will often specify, among other things, the right of the buyer-lender to liquidate the underlying securities in the event of default by the seller-borrower.
- 5.25 **MATURITY:** The date upon which the principal or stated value of an investment becomes due and payable.
- 5.26 **MONEY MARKET FUND:** Mutual fund that invests solely in money market instruments.
- 5.27 **ORANGE COUNTY INVESTMENT POOL:** City funds deposited into the County of Orange Pool of Funds.
- 5.28 **PAR VALUE:** the value printed on a security such as a share certificate or bond at the time of issue.
- 5.29 **PORTFOLIO:** Collection of securities held by an investor.

- 5.30 **PRIMARY BANK:** The bank utilized by the City for its main banking activities including daily cash and ACH transactions, direct deposit, check processing, trust services, etc.
- 5.31 **PRIMARY DEALER:** A group of government securities dealers that submit daily reports of market activity and positions and monthly financial statements to the Federal Reserve Bank of New York and are subject to its informal oversight. Primary dealers include Securities and Exchange Commission (SEC) registered securities broker-dealers, banks, and a few unregulated firms.
- 5.32 **QUALIFIED BIDDER:** Those broker/dealers that are deemed by the Assistant City Manager or City Treasurer, as applicable, to be qualified to bid on City investments. Specific qualifications of the financial institution or dealer are contained in the City's Broker/Dealer Questionnaire and Certification.
- 5.33 **PRUDENT PERSON RULE:** An investment standard. In some states the law requires that a fiduciary, such as a trustee, may invest money only in a list of securities selected by the state--the so-called legal list. In other states the trustee may invest in a security if it is one which would be bought by a prudent person of discretion and intelligence who is seeking a reasonable income and preservation of capital (Civic Code Section 2261).
- 5.34 **RATE OF RETURN:** The yield obtainable on a security based on its purchase price or its current market price. This may be the amortized yield to maturity on a bond or the current income return.
- 5.35 **REDEMPTION VALUE:** The price at which the issuing company may choose to repurchase a security before its maturity date.
- 5.36 **REPURCHASE AGREEMENT:** A purchase of securities by the City pursuant to an agreement by which the seller will repurchase the securities on or before a specified date, and for a specified amount and will deliver the underlying securities to the City by book entry, physical delivery, or a third-party custodial agreement.
- 5.37 **SAFEKEEPING:** Storage and protection of a customer's financial assets, valuables, or documents, provided as a service by an institution serving as agent and, where control is delegated by the customer, also as custodian.
- 5.38 **SURPLUS FUNDS:** Those funds that are available for investment and are not anticipated to be needed for City operations for the next six (6) months.

- 5.39 **TOTAL RETURN:** The sum of all investment income plus all changes in the capital value of the portfolio.
- 5.40 **TREASURY BILLS:** A non-interest bearing discount security issued by the U.S. Treasury to finance the national debt. Most bills are issued to mature in three months, six months, or one year.
- 5.41 **TREASURY BOND:** Long-term U. S. Treasury securities having initial maturities of more than ten years.
- 5.42 **TREASURY NOTES:** Intermediate term coupon bearing U. S. Treasury securities having initial maturities of from one to ten years.
- 5.43 **UNDERCAPITALIZED:** Capital group assignments are made in accordance with section 327.3(e)(1)(1) of the FDIC's amended assessment regulation. Neither Well Capitalized nor Adequately Capitalized.
- 5.44 **WELL CAPITALIZED:** Capital group assignments are made in accordance with section 327.3(e)(1)(1) of the FDIC's amended assessment regulation. Total Risk-Based Capital Ratio equal to or greater than 10 percent, and Tier I Risk-Based Capital Ratio equal to or greater than 6 percent, and Tier I Leverage Capital Ratio equal to or greater than 5 percent.

6.0 **PROCEDURE:**

- 6.1 **Internal Control:** In conjunction with the City's independent annual financial audit, a review of actual and documented internal controls of the City's investment program will be conducted. The review will assure that internal controls are adequate and assure compliance with policies and procedures. The City's Investment Advisory Committee will be provided with a copy of the annual audit within 30 days of completion.
- 6.2 **Performance Standards:** The investment portfolio will be designed to obtain an average market rate of return, taking into account the City's investment risk constraints (safety), cash flow needs, and maturities of the investments.
 - 6.2.1 **Market Rate of Return (Benchmark):** The City of San Clemente's investment strategy is active. The investment portfolio's return shall be measured using total return, yield, and interest earned.

The investment portfolio shall be designed to attain a total return commensurate with the risk constraints outlined by the City's Investment Policy. The benchmark for the City's portfolio is comprised of Barclays Capital:

- U.S. Agency Index
Treasury Index

It is understood that the portfolio's total return can and will differ from the index through different market cycles as the investment portfolio's priority is to meet the liquidity needs of the City. Nevertheless, it is the intent to use this benchmark as a tool with which to measure the relative risk and return of the portfolio.

6.3 **Competitive Bids:** A minimum of three bids or quotations will be obtained prior to the completion of secondary investment transactions with authorized financial institutions. This does not apply to authorized investment pools or money market mutual funds.

6.4 **Reporting:** The Finance & Administrative Services Director and City Treasurer are charged with the responsibility of including a market report on investment activity and returns in the City's Quarterly Financial Report. The report will be provided to the City's Investment Advisory Committee and City Council. The California Code requires the following components:

- Investment type, issuer, date of maturity, par value and dollar amount invested in all securities, and investments and monies held by the City;
- A description of the funds, investments and programs;
- A market value as of the date of the report (or the most recent valuation as to assets not valued monthly) and the source of this valuation;
- A statement of compliance with the investment policy or an explanation for non-compliance; and
- A statement of the City's ability to meet expenditure requirements for six months, and an explanation of why money will not be available if that is the case.

6.5 **Investment Advisory Committee:** The City Council shall appoint an Investment Advisory Committee (voluntary) consisting of the following members and staff:

6.5.1 **Members (Voting):**

- 6.5.1.1 City Treasurer (Chair)
- 6.5.1.2 Councilmember representative
- 6.5.1.3 Two citizen representatives
- 6.5.1.4 Industry Specialist

6.5.2 **Staff (Non-Voting)**

6.5.2.1 Finance & Administrative Services Director or designee (Staff)

6.5.3 **Role:**

6.5.3.1 To review and recommend City investment policies

6.5.3.2 To review investment practices for performance and conformance to adopted policies and procedures.

6.5.4 **Meetings:**

6.5.4.1 The Investment Advisory Committee shall meet no less than quarterly.

6.5.5 **Reports:**

6.5.5.1 A quarterly report shall be submitted to the Committee by the City Treasurer.

6.5.5.2 The City is required to forward to the California Debt and Investment Advisory Commissions copy of the investment policy each calendar year and within 60 days of any subsequent amendment to the policy.

6.6 **Investment Policy Adoption:** The City's investment policy shall be adopted by the City Council on an annual basis. The policy shall be reviewed on an annual basis by the City Treasurer, Assistant City Manager/Finance & Administrative Services Director and City's Investment Advisory Committee and any modifications made thereto must be recommended by the Committee and approved by the City Council.

6.7 **Investment Policy Distribution:** A copy of the City's adopted investment policy will be distributed to the Investment Advisory Committee, City Treasurer, State Treasurer, County Treasurer, Financial Services Manager, brokers, investment pools, financial auditors, rating agencies, primary bank, and City Attorney.

CALIFORNIA GOVERNMENT CODE

CALIFORNIA GOVERNMENT CODE

SECTIONS

16429.1

53600-53610

53630

16429.1. (a) There is in trust in the custody of the Treasurer the Local Agency Investment Fund, which fund is hereby created. The Controller shall maintain a separate account for each governmental unit having deposits in this fund.

(b) Notwithstanding any other provisions of law, a local governmental official, with the consent of the governing body of that agency, having money in its treasury not required for immediate needs, may remit the money to the Treasurer for deposit in the Local Agency Investment Fund for the purpose of investment.

(c) Notwithstanding any other provisions of law, an officer of any nonprofit corporation whose membership is confined to public agencies or public officials, or an officer of a qualified quasi-governmental agency, with the consent of the governing body of that agency, having money in its treasury not required for immediate needs, may remit the money to the Treasurer for deposit in the Local Agency Investment Fund for the purpose of investment.

(d) Notwithstanding any other provision of law or of this section, a local agency, with the approval of its governing body, may deposit in the Local Agency Investment Fund proceeds of the issuance of

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bonds, notes, certificates of participation, or other evidences of indebtedness of the agency pending expenditure of the proceeds for the authorized purpose of their issuance. In connection with these deposits of proceeds, the Local Agency Investment Fund is authorized to receive and disburse moneys, and to provide information, directly with or to an authorized officer of a trustee or fiscal agent engaged by the local agency, the Local Agency Investment Fund is authorized to hold investments in the name and for the account of that trustee or fiscal agent, and the Controller shall maintain a separate account for each deposit of proceeds.

(e) The local governmental unit, the nonprofit corporation, or the quasi-governmental agency has the exclusive determination of the length of time its money will be on deposit with the Treasurer.

(f) The trustee or fiscal agent of the local governmental unit has the exclusive determination of the length of time proceeds from the issuance of bonds will be on deposit with the Treasurer.

(g) The Local Investment Advisory Board shall determine those quasi-governmental agencies which qualify to participate in the Local Agency Investment Fund.

(h) The Treasurer may refuse to accept deposits into the fund if, in the judgment of the Treasurer, the deposit would adversely affect the state's portfolio.

(i) The Treasurer may invest the money of the fund in securities prescribed in Section 16430. The Treasurer may elect to have the money of the fund invested through the Surplus Money Investment Fund

as provided in Article 4 (commencing with Section 16470) of Chapter 3 of Part 2 of Division 4 of Title 2.

(j) Money in the fund shall be invested to achieve the objective of the fund which is to realize the maximum return consistent with safe and prudent treasury management.

(k) All instruments of title of all investments of the fund shall remain in the Treasurer's vault or be held in safekeeping under control of the Treasurer in any federal reserve bank, or any branch thereof, or the Federal Home Loan Bank of San Francisco, with any trust company, or the trust department of any state or national bank.

(l) Immediately at the conclusion of each calendar quarter, all interest earned and other increment derived from investments shall be distributed by the Controller to the contributing governmental units or trustees or fiscal agents, nonprofit corporations, and quasi-governmental agencies in amounts directly proportionate to the respective amounts deposited in the Local Agency Investment Fund and the length of time the amounts remained therein. An amount equal to the reasonable costs incurred in carrying out the provisions of this section, not to exceed a maximum of 5 percent of the earnings of this fund and not to exceed the amount appropriated in the annual Budget Act for this function, shall be deducted from the earnings prior to distribution. The amount of this deduction shall be credited as reimbursements to the state agencies, including the Treasurer, the Controller, and the Department of Finance, having incurred costs in carrying out the provisions of this section.

(m) The Treasurer shall prepare for distribution a monthly report of investments made during the preceding month.

(n) As used in this section, "local agency," "local governmental unit," and "local governmental official" includes a campus or other unit and an official, respectively, of the California State University who deposits moneys in funds described in Sections 89721, 89722, and 89725 of the Education Code.

53600. As used in this article, "local agency" means county, city, city and county, including a chartered city or county, school district, community college district, public district, county board of education, county superintendent of schools, or any public or municipal corporation.

53600.3. Except as provided in subdivision (a) of Section 27000.3, all governing bodies of local agencies or persons authorized to make investment decisions on behalf of those local agencies investing public funds pursuant to this chapter are trustees and therefore fiduciaries subject to the prudent investor standard. When investing, reinvesting, purchasing, acquiring, exchanging, selling, or managing public funds, a trustee shall act with care, skill, prudence, and diligence under the circumstances then prevailing, including, but not limited to, the general economic conditions and the anticipated needs of the agency, that a prudent person acting in a like capacity and familiarity with those matters would use in the conduct of funds of a like character and with like aims, to safeguard the principal

and maintain the liquidity needs of the agency. Within the limitations of this section and considering individual investments as part of an overall strategy, investments may be acquired as authorized by law.

53600.5. When investing, reinvesting, purchasing, acquiring, exchanging, selling, or managing public funds, the primary objective of a trustee shall be to safeguard the principal of the funds under its control. The secondary objective shall be to meet the liquidity needs of the depositor. The third objective shall be to achieve a return on the funds under its control.

53600.6. The Legislature hereby finds that the solvency and creditworthiness of each individual local agency can impact the solvency and creditworthiness of the state and other local agencies within the state. Therefore, to protect the solvency and creditworthiness of the state and all of its political subdivisions, the Legislature hereby declares that the deposit and investment of public funds by local officials and local agencies is an issue of statewide concern.

53601. This section shall apply to a local agency that is a city, a district, or other local agency that does not pool money in deposits or investments with other local agencies, other than local agencies that have the same governing body. However, Section 53635 shall apply to all local agencies that pool money in deposits or investments with other local agencies that have separate governing bodies. The legislative body of a local agency having moneys in a sinking fund or

moneys in its treasury not required for the immediate needs of the local agency may invest any portion of the moneys that it deems wise or expedient in those investments set forth below. A local agency purchasing or obtaining any securities prescribed in this section, in a negotiable, bearer, registered, or nonregistered format, shall require delivery of the securities to the local agency, including those purchased for the agency by financial advisers, consultants, or managers using the agency's funds, by book entry, physical delivery, or by third-party custodial agreement. The transfer of securities to the counterparty bank's customer book entry account may be used for book entry delivery.

For purposes of this section, "counterparty" means the other party to the transaction. A counterparty bank's trust department or separate safekeeping department may be used for the physical delivery of the security if the security is held in the name of the local agency. Where this section specifies a percentage limitation for a particular category of investment, that percentage is applicable only at the date of purchase. Where this section does not specify a limitation on the term or remaining maturity at the time of the investment, no investment shall be made in any security, other than a security underlying a repurchase or reverse repurchase agreement or securities lending agreement authorized by this section, that at the time of the investment has a term remaining to maturity in excess of five years, unless the legislative body has granted express authority

to make that investment either specifically or as a part of an investment program approved by the legislative body no less than three months prior to the investment:

(a) Bonds issued by the local agency, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by the local agency or by a department, board, agency, or authority of the local agency.

(b) United States Treasury notes, bonds, bills, or certificates of indebtedness, or those for which the faith and credit of the United States are pledged for the payment of principal and interest.

(c) Registered state warrants or treasury notes or bonds of this state, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by the state or by a department, board, agency, or authority of the state.

(d) Registered treasury notes or bonds of any of the other 49 United States in addition to California, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by a state or by a department, board, agency, or authority of any of the other 49 United States, in addition to California.

(e) Bonds, notes, warrants, or other evidences of indebtedness of a local agency within this state, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by the local agency, or by a department, board, agency, or authority of the local agency.

(f) Federal agency or United States government-sponsored

enterprise obligations, participations, or other instruments, including those issued by or fully guaranteed as to principal and interest by federal agencies or United States government-sponsored enterprises.

(g) Bankers' acceptances otherwise known as bills of exchange or time drafts that are drawn on and accepted by a commercial bank.

Purchases of bankers' acceptances shall not exceed 180 days' maturity or 40 percent of the agency's moneys that may be invested pursuant to this section. However, no more than 30 percent of the agency's moneys may be invested in the bankers' acceptances of any one commercial bank pursuant to this section.

This subdivision does not preclude a municipal utility district from investing moneys in its treasury in a manner authorized by the Municipal Utility District Act (Division 6 (commencing with Section 11501) of the Public Utilities Code).

(h) Commercial paper of "prime" quality of the highest ranking or of the highest letter and number rating as provided for by a nationally recognized statistical rating organization (NRSRO). The entity that issues the commercial paper shall meet all of the following conditions in either paragraph (1) or (2):

(1) The entity meets the following criteria:

(A) Is organized and operating in the United States as a general corporation.

(B) Has total assets in excess of five hundred million dollars (\$500,000,000).

(C) Has debt other than commercial paper, if any, that is rated "A" or higher by an NRSRO.

(2) The entity meets the following criteria:

(A) Is organized within the United States as a special purpose corporation, trust, or limited liability company.

(B) Has programwide credit enhancements including, but not limited to, overcollateralization, letters of credit, or a surety bond.

(C) Has commercial paper that is rated "A-1" or higher, or the equivalent, by an NRSRO.

Eligible commercial paper shall have a maximum maturity of 270 days or less. Local agencies, other than counties or a city and county, may invest no more than 25 percent of their moneys in eligible commercial paper. Local agencies, other than counties or a city and county, may purchase no more than 10 percent of the outstanding commercial paper of any single issuer. Counties or a city and county may invest in commercial paper pursuant to the concentration limits in subdivision (a) of Section 53635.

(i) Negotiable certificates of deposit issued by a nationally or state-chartered bank, a savings association or a federal association (as defined by Section 5102 of the Financial Code), a state or federal credit union, or by a state-licensed branch of a foreign bank. Purchases of negotiable certificates of deposit shall not exceed 30 percent of the agency's moneys that may be invested pursuant to this section. For purposes of this section, negotiable certificates of deposit do not come within Article 2 (commencing with Section 53630), except that the amount so invested shall be subject to the limitations of Section 53638. The legislative body of a local agency and the treasurer or other official of the local agency having

legal custody of the moneys are prohibited from investing local agency funds, or funds in the custody of the local agency, in negotiable certificates of deposit issued by a state or federal credit union if a member of the legislative body of the local agency, or a person with investment decisionmaking authority in the administrative office manager's office, budget office, auditor-controller's office, or treasurer's office of the local agency also serves on the board of directors, or any committee appointed by the board of directors, or the credit committee or the supervisory committee of the state or federal credit union issuing the negotiable certificates of deposit.

(j) (1) Investments in repurchase agreements or reverse repurchase agreements or securities lending agreements of securities authorized by this section, as long as the agreements are subject to this subdivision, including the delivery requirements specified in this section.

(2) Investments in repurchase agreements may be made, on an investment authorized in this section, when the term of the agreement does not exceed one year. The market value of securities that underlie a repurchase agreement shall be valued at 102 percent or greater of the funds borrowed against those securities and the value shall be adjusted no less than quarterly. Since the market value of the underlying securities is subject to daily market fluctuations, the investments in repurchase agreements shall be in compliance if the value of the underlying securities is brought back up to 102 percent no later than the next business day.

(3) Reverse repurchase agreements or securities lending agreements may be utilized only when all of the following conditions are met:

(A) The security to be sold using a reverse repurchase agreement or securities lending agreement has been owned and fully paid for by the local agency for a minimum of 30 days prior to sale.

(B) The total of all reverse repurchase agreements and securities lending agreements on investments owned by the local agency does not exceed 20 percent of the base value of the portfolio.

(C) The agreement does not exceed a term of 92 days, unless the agreement includes a written codicil guaranteeing a minimum earning or spread for the entire period between the sale of a security using a reverse repurchase agreement or securities lending agreement and the final maturity date of the same security.

(D) Funds obtained or funds within the pool of an equivalent amount to that obtained from selling a security to a counterparty using a reverse repurchase agreement or securities lending agreement shall not be used to purchase another security with a maturity longer than 92 days from the initial settlement date of the reverse repurchase agreement or securities lending agreement, unless the reverse repurchase agreement or securities lending agreement includes a written codicil guaranteeing a minimum earning or spread for the entire period between the sale of a security using a reverse repurchase agreement or securities lending agreement and the final maturity date of the same security.

(4) (A) Investments in reverse repurchase agreements, securities

lending agreements, or similar investments in which the local agency sells securities prior to purchase with a simultaneous agreement to repurchase the security may be made only upon prior approval of the governing body of the local agency and shall be made only with primary dealers of the Federal Reserve Bank of New York or with a nationally or state-chartered bank that has or has had a significant banking relationship with a local agency.

(B) For purposes of this chapter, "significant banking relationship" means any of the following activities of a bank:

(i) Involvement in the creation, sale, purchase, or retirement of a local agency's bonds, warrants, notes, or other evidence of indebtedness.

(ii) Financing of a local agency's activities.

(iii) Acceptance of a local agency's securities or funds as deposits.

(5) (A) "Repurchase agreement" means a purchase of securities by the local agency pursuant to an agreement by which the counterparty seller will repurchase the securities on or before a specified date and for a specified amount and the counterparty will deliver the underlying securities to the local agency by book entry, physical delivery, or by third-party custodial agreement. The transfer of underlying securities to the counterparty bank's customer book-entry account may be used for book-entry delivery.

(B) "Securities," for purposes of repurchase under this subdivision, means securities of the same issuer, description, issue date, and maturity.

(C) "Reverse repurchase agreement" means a sale of securities by

the local agency pursuant to an agreement by which the local agency will repurchase the securities on or before a specified date and includes other comparable agreements.

(D) "Securities lending agreement" means an agreement under which a local agency agrees to transfer securities to a borrower who, in turn, agrees to provide collateral to the local agency. During the term of the agreement, both the securities and the collateral are held by a third party. At the conclusion of the agreement, the securities are transferred back to the local agency in return for the collateral.

(E) For purposes of this section, the base value of the local agency's pool portfolio shall be that dollar amount obtained by totaling all cash balances placed in the pool by all pool participants, excluding any amounts obtained through selling securities by way of reverse repurchase agreements, securities lending agreements, or other similar borrowing methods.

(F) For purposes of this section, the spread is the difference between the cost of funds obtained using the reverse repurchase agreement and the earnings obtained on the reinvestment of the funds.

(k) Medium-term notes, defined as all corporate and depository institution debt securities with a maximum remaining maturity of five years or less, issued by corporations organized and operating within the United States or by depository institutions licensed by the United States or any state and operating within the United States.

Notes eligible for investment under this subdivision shall be rated

"A" or better by an NRSRO. Purchases of medium-term notes shall not include other instruments authorized by this section and may not exceed 30 percent of the agency's moneys that may be invested pursuant to this section.

(1) (1) Shares of beneficial interest issued by diversified management companies that invest in the securities and obligations as authorized by subdivisions (a) to (k), inclusive, and subdivisions (m) to (o), inclusive, and that comply with the investment restrictions of this article and Article 2 (commencing with Section 53630). However, notwithstanding these restrictions, a counterparty to a reverse repurchase agreement or securities lending agreement is not required to be a primary dealer of the Federal Reserve Bank of New York if the company's board of directors finds that the counterparty presents a minimal risk of default, and the value of the securities underlying a repurchase agreement or securities lending agreement may be 100 percent of the sales price if the securities are marked to market daily.

(2) Shares of beneficial interest issued by diversified management companies that are money market funds registered with the Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1 et seq.).

(3) If investment is in shares issued pursuant to paragraph (1), the company shall have met either of the following criteria:

(A) Attained the highest ranking or the highest letter and numerical rating provided by not less than two NRSROs.

(B) Retained an investment adviser registered or exempt from

registration with the Securities and Exchange Commission with not less than five years' experience investing in the securities and obligations authorized by subdivisions (a) to (k), inclusive, and subdivisions (m) to (o), inclusive, and with assets under management in excess of five hundred million dollars (\$500,000,000).

(4) If investment is in shares issued pursuant to paragraph (2), the company shall have met either of the following criteria:

(A) Attained the highest ranking or the highest letter and numerical rating provided by not less than two NRSROs.

(B) Retained an investment adviser registered or exempt from registration with the Securities and Exchange Commission with not less than five years' experience managing money market mutual funds with assets under management in excess of five hundred million dollars (\$500,000,000).

(5) The purchase price of shares of beneficial interest purchased pursuant to this subdivision shall not include commission that the companies may charge and shall not exceed 20 percent of the agency's moneys that may be invested pursuant to this section. However, no more than 10 percent of the agency's funds may be invested in shares of beneficial interest of any one mutual fund pursuant to paragraph (1).

(m) Moneys held by a trustee or fiscal agent and pledged to the payment or security of bonds or other indebtedness, or obligations under a lease, installment sale, or other agreement of a local agency, or certificates of participation in those bonds, indebtedness, or lease installment sale, or other agreements, may be

invested in accordance with the statutory provisions governing the issuance of those bonds, indebtedness, or lease installment sale, or other agreement, or to the extent not inconsistent therewith or if there are no specific statutory provisions, in accordance with the ordinance, resolution, indenture, or agreement of the local agency providing for the issuance.

(n) Notes, bonds, or other obligations that are at all times secured by a valid first priority security interest in securities of the types listed by Section 53651 as eligible securities for the purpose of securing local agency deposits having a market value at least equal to that required by Section 53652 for the purpose of securing local agency deposits. The securities serving as collateral shall be placed by delivery or book entry into the custody of a trust company or the trust department of a bank that is not affiliated with the issuer of the secured obligation, and the security interest shall be perfected in accordance with the requirements of the Uniform Commercial Code or federal regulations applicable to the types of securities in which the security interest is granted.

(o) A mortgage passthrough security, collateralized mortgage obligation, mortgage-backed or other pay-through bond, equipment lease-backed certificate, consumer receivable passthrough certificate, or consumer receivable-backed bond of a maximum of five years' maturity. Securities eligible for investment under this subdivision shall be issued by an issuer having an "A" or higher rating for the issuer's debt as provided by an NRSRO and rated in a

rating category of "AA" or its equivalent or better by an NRSRO.

Purchase of securities authorized by this subdivision may not exceed

20 percent of the agency's surplus moneys that may be invested

pursuant to this section.

(p) Shares of beneficial interest issued by a joint powers authority organized pursuant to Section 6509.7 that invests in the

securities and obligations authorized in subdivisions (a) to (o),

inclusive. Each share shall represent an equal proportional interest

in the underlying pool of securities owned by the joint powers

authority. To be eligible under this section, the joint powers

authority issuing the shares shall have retained an investment

adviser that meets all of the following criteria:

(1) The adviser is registered or exempt from registration with the Securities and Exchange Commission.

(2) The adviser has not less than five years of experience investing in the securities and obligations authorized in subdivisions (a) to (o), inclusive.

(3) The adviser has assets under management in excess of five hundred million dollars (\$500,000,000).

53601.1. The authority of a local agency to invest funds pursuant to Section 53601 includes, in addition thereto, authority to invest in financial futures or financial option contracts in any of the investment categories enumerated in that section.

53601.2. As used in this article, "corporation" includes a limited liability company.

53601.5. The purchase by a local agency of any investment

authorized pursuant to Section 53601 or 53601.1, not purchased directly from the issuer, shall be purchased either from an institution licensed by the state as a broker-dealer, as defined in Section 25004 of the Corporations Code, or from a member of a federally regulated securities exchange, from a national or state-chartered bank, from a savings association or federal association (as defined by Section 5102 of the Financial Code) or from a brokerage firm designated as a primary government dealer by the Federal Reserve bank.

53601.6. (a) A local agency shall not invest any funds pursuant to this article or pursuant to Article 2 (commencing with Section 53630) in inverse floaters, range notes, or mortgage-derived, interest-only strips.

(b) A local agency shall not invest any funds pursuant to this article or pursuant to Article 2 (commencing with Section 53630) in any security that could result in zero interest accrual if held to maturity. However, a local agency may hold prohibited instruments until their maturity dates. The limitation in this subdivision shall not apply to local agency investments in shares of beneficial interest issued by diversified management companies registered under the Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1 et seq.) that are authorized for investment pursuant to subdivision (1) of Section 53601.

53601.8. Notwithstanding Section 53601 or any other provision of this code, a local agency that has the authority under law to invest

funds, at its discretion, may invest a portion of its surplus funds in certificates of deposit at a commercial bank, savings bank, savings and loan association, or credit union that uses a private sector entity that assists in the placement of certificates of deposit, provided that the purchases of certificates of deposit pursuant to this section, Section 53635.8, and subdivision (i) of Section 53601 do not, in total, exceed 30 percent of the agency's funds that may be invested for this purpose. The following conditions shall apply:

(a) The local agency shall choose a nationally or state chartered commercial bank, savings bank, savings and loan association, or credit union in this state to invest the funds, which shall be known as the "selected" depository institution.

(b) The selected depository institution may submit the funds to a private sector entity that assists in the placement of certificates of deposit with one or more commercial banks, savings banks, savings and loan associations, or credit unions that are located in the United States, for the local agency's account.

(c) The full amount of the principal and the interest that may be accrued during the maximum term of each certificate of deposit shall at all times be insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration.

(d) The selected depository institution shall serve as a custodian for each certificate of deposit that is issued with the placement service for the local agency's account.

(e) At the same time the local agency's funds are deposited and

the certificates of deposit are issued, the selected depository institution shall receive an amount of deposits from other commercial banks, savings banks, savings and loan associations, or credit unions that, in total, are equal to, or greater than, the full amount of the principal that the local agency initially deposited through the selected depository institution for investment.

(f) Notwithstanding subdivisions (a) to (e), inclusive, no credit union may act as a selected depository institution under this section or Section 53635.8 unless both of the following conditions are satisfied:

(1) The credit union offers federal depository insurance through the National Credit Union Administration.

(2) The credit union is in possession of written guidance or other written communication from the National Credit Union Administration authorizing participation of federally insured credit unions in one or more certificate of deposit placement services and affirming that the moneys held by those credit unions while participating in a deposit placement service will at all times be insured by the federal government.

(g) It is the intent of the Legislature that nothing in this section shall restrict competition among private sector entities that provide placement services pursuant to this section.

53602. The legislative body shall invest only in notes, bonds, bills, certificates of indebtedness, warrants, or registered warrants which are legal investments for savings banks in the State, provided, that the board of supervisors of a county may, by a

four-fifths vote thereof, invest in notes, warrants or other evidences of indebtedness of public districts wholly or partly within the county, whether or not such notes, warrants, or other evidences of indebtedness are legal investments for savings banks.

53603. The legislative body may make the investment by direct purchase of any issue of eligible securities at their original sale or after they have been issued.

53604. The legislative body may sell, or exchange for other eligible securities, and reinvest the proceeds of, the securities purchased.

53605. From time to time, the legislative body shall sell the securities so that the proceeds may be applied to the purposes for which the original purchase money was placed in the sinking fund or the treasury of the local agency.

53606. The bonds purchased, which were issued by the purchaser, may be canceled either in satisfaction or sinking fund obligations or otherwise. When canceled, they are no longer outstanding, unless in its discretion, the legislative body holds them uncanceled. While held uncanceled, the bonds may be resold.

53607. The authority of the legislative body to invest or to reinvest funds of a local agency, or to sell or exchange securities so purchased, may be delegated for a one-year period by the legislative body to the treasurer of the local agency, who shall thereafter assume full responsibility for those transactions until

the delegation of authority is revoked or expires, and shall make a monthly report of those transactions to the legislative body. Subject to review, the legislative body may renew the delegation of authority pursuant to this section each year.

53608. The legislative body of a local agency may deposit for safekeeping with a federal or state association (as defined by Section 5102 of the Financial Code), a trust company or a state or national bank located within this state or with the Federal Reserve Bank of San Francisco or any branch thereof within this state, or with any Federal Reserve bank or with any state or national bank located in any city designated as a reserve city by the Board of Governors of the Federal Reserve System, the bonds, notes, bills, debentures, obligations, certificates of indebtedness, warrants, or other evidences of indebtedness in which the money of the local agency is invested pursuant to this article or pursuant to other legislative authority. The local agency shall take from such financial institution a receipt for securities so deposited. The authority of the legislative body to deposit for safekeeping may be delegated by the legislative body to the treasurer of the local agency; the treasurer shall not be responsible for securities delivered to and receipted for by a financial institution until they are withdrawn from the financial institution by the treasurer.

53609. Notwithstanding the provisions of this chapter or any other provisions of this code, funds held by a local agency pursuant to a

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written agreement between the agency and employees of the agency to defer a portion of the compensation otherwise receivable by the agency's employees and pursuant to a plan for such deferral as adopted by the governing body of the agency, may be invested in the types of investments set forth in Sections 53601 and 53602 of this code, and may additionally be invested in corporate stocks, bonds, and securities, mutual funds, savings and loan accounts, credit union accounts, life insurance policies, annuities, mortgages, deeds of trust, or other security interests in real or personal property. Nothing herein shall be construed to permit any type of investment prohibited by the Constitution.

Deferred compensation funds are public pension or retirement funds for the purposes of Section 17 of Article XVI of the Constitution.

53610. (a) For purposes of this section, "Proposition 1A receivable" means the right to payment of moneys due or to become due to a local agency, pursuant to clause (iii) of subparagraph (B) of paragraph (1) of subdivision (a) of Section 25.5 of Article XIII of the California Constitution and Section 100.06 of the Revenue and Taxation Code.

(b) Notwithstanding any other law, a local agency may purchase, with its revenue, Proposition 1A receivables sold pursuant to Section 53999.

(c) A purchaser of Proposition 1A receivables pursuant to this section shall not offer them for sale pursuant to Section 6588.

53630. As used in this article:

(a) "Local agency" means county, city, city and county, including a chartered city or county, a community college district, or other public agency or corporation in this state.

(b) "Treasurer" means treasurer of the local agency.

(c) "Depository" means a state or national bank, savings association or federal association, a state or federal credit union, or a federally insured industrial loan company, in this state in which the moneys of a local agency are deposited.

(d) "Agent of depository" means a trust company or trust department of a state or national bank located in this state, including the trust department of a depository where authorized, and the Federal Home Loan Bank of San Francisco, which is authorized to act as an agent of depository for the purposes of this article pursuant to Section 53657.

(e) "Security" means any of the eligible securities or obligations listed in Section 53651.

(f) "Pooled securities" means eligible securities held by an agent of depository for a depository and securing deposits of one or more local agencies.

(g) "Administrator" means the Administrator of Local Agency Security of the State of California.

(h) "Savings association or federal association" means a savings association, savings and loan association, or savings bank as defined by Section 5102 of the Financial Code.

(i) "Federally insured industrial loan company" means an industrial loan company licensed under Division 7 (commencing with Section 18000) of the Financial Code, the investment certificates of which are insured by the Federal Deposit Insurance Corporation.

(j) "Corporation" includes a limited liability company.

Broker/Dealer Questionnaire

CITY OF SAN CLEMENTE, CALIFORNIA BROKER/DEALER QUESTIONNAIRE

Date: _____

Firm Name: _____

CRD Number: _____

Local office servicing account: _____

Address: _____

Phone: _____

Corporate office: _____

Address: _____

Phone: _____

Primary Representative: _____

Please attach resumes of primary and secondary representatives covering this account.

Telephone: _____

Fax: _____

E-Mail: _____

CRD Number: _____

Secondary Representative or sales assistant: _____

Telephone: _____

Fax: _____

E-Mail: _____

CRD Number: _____

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CITY OF SAN CLEMENTE, CALIFORNIA
BROKER/DEALER QUESTIONNAIRE - Page 2

Branch Manager: _____
Telephone: _____
Fax: _____
E-Mail: _____
CRD Number: _____

Is firm designated as a *primary dealer* by the Federal Reserve? _____

If not, does your firm maintain its own inventory? _____

Is the firm registered with the State Securities Board? _____

Is the firm and all its representatives registered with the FINRA? _____

In what market sectors does the account representative specialize? _____

List three comparable public clients currently working with this representative.

Entity name, contact and phone number.

1. _____
2. _____
3. _____

What are the market sectors in which your firm specializes? Please feel free to provide additional information regarding your firm's involvement in these sectors.

US Treasuries _____
US Agencies _____
Repo _____
MBS _____
CP/BA _____
Corporate _____
CD's _____
Other _____

CITY OF SAN CLEMENTE, CALIFORNIA
BROKER/DEALER QUESTIONNAIRE- Page 3

Has this firm, or the representatives assigned to this account, been subject to a regulatory agency, state or federal investigation for alleged improper, disreputable, unfair or fraudulent activities related to the sale of securities or money market instruments in the past five years that resulted in a suspension or censure? Are there any outstanding/pending claims? If yes, please explain.

What documentation will be provided to us?

If requested, do you provide any fixed income research and economic commentary?
Please attach sample.

Please provide the firm's most recent audited financial statement. (The City will require an annual financial statement be provided.)

Describe the precautions taken by your firm to protect the interests of the public when dealing with a governmental agency.

Has your firm ever failed to meet the capital adequacy guidelines established by your regulatory organization?

Attach complete delivery instructions. **All transactions will be completed delivery versus payment.**

9/2/02

CITY OF SAN CLEMENTE, CALIFORNIA
BROKER/DEALER QUESTIONNAIRE- Page 4

Firm Name: _____

I hereby certify that I and all sales representatives assigned to the City's account have received, reviewed and understand the Investment Policy of the City dated December 2, 2008. Our firm certifies that it has implemented reasonable procedures and controls in an effort to preclude investment transactions conducted between the City and the organization that are not authorized by the Investment Policy. Responsibility is limited to the extent that analysis of the makeup of the entire portfolio requires an interpretation of subjective investment standards. Our representatives agree to exercise due diligence in informing the City of foreseeable risks associated with financial transactions conducted with the firm.

All sales personnel involved with this account have been informed of the City's objectives and risk constraints and will be advised of any changes made to the Policy once we are advised by the City.

Qualified Representative(s) of the Firm

Signed: _____

Name: _____

Title: _____

Date: _____

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WORKER'S COMPENSATION INSURANCE CERTIFICATION

Project No. _____

WORKERS' COMPENSATION DECLARATION

I hereby affirm under penalty of perjury one of the following declarations:

(ONE OF THE BOXES BELOW MUST BE CHECKED)



I have and will maintain a certificate of consent from the California Labor Commission to self-insure for workers' compensation, as provided for by Section 3700 of the Labor Code, for the performance of the work to be performed under this contract.



I have and will maintain workers' compensation insurance, as required by Section 3700 of the Labor Code, for the performance of the work to be performed under this contract. My workers' compensation insurance carrier and policy number are:

Carrier: Travelers Insurance Company

Policy Number: UB2C080260



I certify that, in the performance of the work under this Agreement, I shall not employ any person in any manner so as to become subject to the workers' compensation laws of California, and I hereby agree to indemnify, defend, and hold harmless the City of San Clemente and all of its officials, employees, and agents from and against any and all claims, liabilities, and losses relating to personal injury or death, economic losses, and property damage arising out of my failure to provide such worker's compensation insurance. I further agree that, if I should become subject to the workers' compensation provisions of Section 3700 of the Labor Code, I shall forthwith comply with those provisions.

WARNING: FAILURE TO SECURE WORKERS' COMPENSATION COVERAGE IS UNLAWFUL, AND SHALL SUBJECT AN EMPLOYER TO CRIMINAL PENALTIES AND CIVIL FINES UP TO ONE HUNDRED THOUSAND DOLLARS (\$100,000), IN ADDITION TO THE COST OF COMPENSATION, DAMAGES AS PROVIDED FOR IN SECTION 3706 OF THE LABOR CODE, INTEREST, AND ATTORNEY'S FEES.

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Dated: _____, 20____

Contracting Firm

By: _____

Title

Address
