



RESOLUTION NO. 2009-109

A RESOLUTION OF THE COUNCIL OF THE CITY OF FRESNO ADOPTING THE 79th AMENDMENT TO THE ANNUAL APPROPRIATION RESOLUTION NO. 2008-162 APPROPRIATING \$320,600 FOR MAINTENANCE OF LANDSCAPING AND FEATURES ASSOCIATED WITH THE COPPER RIVER RANCH SUBDIVISION

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FRESNO:

THAT PART III of the Annual Appropriation Resolution No. 2008-162 be and is hereby amended as follows:

	<u>Increase/(Decrease)</u>
TO: PUBLIC WORKS DEPARTMENT	
Community Facility Dist No 12	\$ 320,600

THAT account titles and numbers requiring adjustment by this Resolution are as follows:

Community Facility Dist No 12

Revenues:

Account: 34809 Property Assessment	\$ <u>320,600</u>
Fund: 30518	
Org Unit: 189901	

Total Revenues	\$ <u>320,600</u>
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Appropriations:

Account: 51101 Permanent Salaries	\$ 2,100
53302 Prof Svcs/Consulting - Outside	2,700
54241 Landscaping & Grounds Maint	313,700
59117 Overhead	<u>2,100</u>

Fund: **30518**
 Org Unit: **189901**
 Project ID: **PW00447**
 KRA: **0401001000**

Total Appropriations	\$ <u>320,600</u>
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THAT the purpose is to appropriate \$320,600 for maintenance of landscaping and features associated with the Copper River Ranch subdivision.

Adopted 5/14/09
 Approved 5/20/09
 Effective 5/20/09



CLERK'S CERTIFICATION

STATE OF CALIFORNIA }
COUNTY OF FRESNO } ss.
CITY OF FRESNO }

I, REBECCA E. KLISCH, City Clerk of the City of Fresno, certify that the foregoing Resolution was adopted by the Council of the City of Fresno, California, at a regular meeting thereof, held on the 14th Day of May, 2009

AYES: Borgeas, Brand, Dages, Perea, Westerlund, Xiong, Sterling
NOES: None
ABSENT: None
ABSTAIN: None

Mayor Approval: May 20, 2009
Mayor Approval/No Return: N/A, 2009
Mayor Veto: N/A, 2009
Council Override Veto: N/A, 2009


REBECCA E. KLISCH
City Clerk



**CFD #12 FACILITIES MAINTENANCE AGREEMENT
(Copper River Ranch)**

THIS CFD #12 FACILITIES MAINTENANCE AGREEMENT ("Agreement") is made this 18th day of July, 2006, by and among the City of Fresno ("City"), City of Fresno Community Facilities District No. 12 ("District"), and Copper River Maintenance, LLC, a California limited liability company ("Maintenance Company").

RECITALS

As a condition of approval of Vesting Tentative Tract Map 5205, Copper River Ranch, LLC, and Copper River Development Company, Inc. (jointly, "Subdividers"), are required to either form a homeowner's association or petition the City to annex the real property shown in Exhibit A to this Agreement to the District to maintain the following items: (a) landscaping, (b) project trails, (c) roundabouts, (d) decorative paving, (e) project entry features, (f) vista point, (g) connections to regional trails, (h) sidewalks, (i) project signage, (j) street lighting, (k) street signs, and (l) median islands (collectively, "Maintenance Services"). The term "Maintenance Services" as used herein includes reasonable and anticipated capital replacements. Also, the parties acknowledge that the landscaping includes numerous palm trees which are not on the City's approved list of trees and which present somewhat unique and possibly expensive, maintenance requirements. The Maintenance Services include, without limitation, the care and maintenance of all of the palm trees approved by the City.

At Subdividers' request, the City has approved formation of the District in order to finance performance of the Maintenance Services. The District is required to perform the Maintenance Services on or about property within/annexed to the District from time to time ("District Property") at such time as the District improvements and facilities have been installed, approved and accepted, in whole or in part, as applicable, by the City.

Subdividers have requested that the Maintenance Services otherwise required to be performed by the District be performed by or the under the direction and control Maintenance Company and Maintenance Company is willing to perform or cause performance of all of the Maintenance Services on the terms set forth in this Agreement.

The City, based upon the record on formation of the District, which is incorporated herein by reference, finds and determines that the legislative purposes underlying the City of Fresno Special Tax Financing Law¹ and the best interests of the District and residents residing in the District are uniquely and best served by having the Maintenance Services performed by/under Maintenance Company on the terms set forth in this Agreement.

AGREEMENTS

1. Initial Deposit in Reserve Fund. As a condition to this Agreement, Subdividers shall be required to deposit the sum of Two Hundred Thousand Dollars (\$200,000.00) in the Reserve Fund concurrently with the acceptance of the first improvements by the District.

¹ Ord. 2004-103.



2. Services. Maintenance Company agrees, at its sole cost and expense, to perform all required Maintenance Services related to District Property in accordance with sound maintenance practices and standards reasonably acceptable to the District as determined by the City based on the funds available to perform the maintenance. The level of Maintenance Services shall be a function of the funds paid to Maintenance Company to perform the Maintenance Services as described in Section 3 below. Without limiting the generality of its obligations, Maintenance Company shall be required to pay the normal charges for any City utilities used in connection with the performance of the Maintenance Services, including, but not limited to, water and green waste disposal (as required).

3. Compensation to Maintenance Company. In consideration of Maintenance Company performing the services described in Section 2 above, the District shall pay Maintenance Company periodically, on each February 28 (for collections through the immediately preceding December 31) and June 30 (for collections through the immediately preceding April 30) of each calendar year, commencing on the first such date following the actual commencement of the collection of assessments by or for the District, an aggregate amount equal to lesser of: (a) the remainder of all assessments (Special Tax), including delinquent assessments, actually collected by or for the District since the preceding collection cut off date as set forth above after subtracting: (i) the ISF Amount payable to the City (defined below), (ii) the Administrative Amount payable to the District (defined below) attributable to the included assessments, and (iii) the annual Reserve Fund payment (defined below) sufficient to meet the Reserve Fund Requirement (unless and until the Reserve Fund is fully funded), or (b) the charges for the Maintenance Services provided by Maintenance Company in accordance with the Annual Maintenance Budget described in Section 5 below.

For purposes of this Agreement: (a) the term "ISF Amount" means an "internal service fee" payable to the City and determined by the City, (b) the term "Administrative Amount" payable to the District means up to \$15 per EDU (as defined below), and (c) the "annual Reserve Fund payment" means the amount required to fund 100% of the Reserve Fund Requirement (unless and until the Reserve Fund is fully funded). The Administrative Amount payable to District is to pay eligible Administrative Expenses including administrative (contract management) and incidental expenses of the District. "EDU" (Equivalent Dwelling Unit) means a single family dwelling unit of Residential Property and include single family homes, condominiums, town homes, duplex, tri-plex and four-plex units, and individual apartment units in a multi-family building. For purposes of determining the Administrative Amount in connection with the levy of the Special Tax for each Fiscal Year pursuant to Section 4 below, the term EDU shall include dwelling units already built on Taxable Property in the District, as well as dwelling units planned on such Taxable Property, but not yet built. For Non-Residential Property in the District, the EDU equivalent shall be 9.3 EDUs per acre.

The portion of the assessments to be paid to the Maintenance Company shall be prorated based on the period of time during which the Maintenance Company actually provides the Maintenance Services pursuant to the terms of this Agreement (e.g. Maintenance Company shall not be entitled receive the indicated percentage of District assessments allocable to a Fiscal Year or portion thereof after termination of this Agreement).

If for any reason the amount of the assessments collected by the District for a Fiscal Year exceeds the sum of the payments due to Maintenance Company, the ISF Amount, the



Administrative Account and the Reserve Fund payment for that Fiscal Year, the entirety of any such excess shall be added to the Reserve Fund.

The parties recognize and acknowledge that based on the manner in which the assessments are to be collected by the District; under the compensation arrangement provided for above, Maintenance Company will generally be compensated substantially in arrears for Maintenance Services performed. Pending receipt of the periodic payments, it shall be the sole responsibility of Maintenance Company to pay from its own funds all charges related to the Maintenance Services pending receipt of the payments due from the District. Also, it is anticipated that Maintenance Company may experience negative cash flow attributable to the performance of the Maintenance Services until such time as a substantial portion of the property in the project is actually developed. However, Maintenance Company acknowledges that except as expressly contemplated by Section 7 below, no additional funds will be paid by either the District or the City to Maintenance Company for the performance of the Maintenance Services.

Nothing in the Agreement binds or obligates City's borrowing capacity, taxing authority and/or general fund.

4. Assessment and Collection. City and District, variously through the County of Fresno Tax Collector, covenant and agree to levy and collect assessments consistent with controlling law, the District formation documents, the Annual Maintenance Budget referenced in Section 5 below, and payment of the ISF Amount, the Administrative Amount and the annual Reserve Fund payment. Without limiting the generality of the foregoing provisions and to the maximum extent allowable by law and the District formation documents, District agrees to inspect and accept (or cause the City to inspect and accept) landscaping and other improvements required to be maintained by the District incrementally as the same are completed by Subdividers such that assessments related to such completed improvements shall commence promptly to provide a source of funds to Maintenance Company to pay for the Maintenance Services related to such completed improvements. However, District is not required to inspect and accept landscaping and improvements "piecemeal" and landscaping or improvements proposed for acceptance shall be in reasonable increments.

5. Annual Maintenance Budget. Within 30 days prior to the commencement of each Fiscal Year of the District, (i.e. each March 1st) during the term of this Agreement (commencing with the first Fiscal Year for which Special Tax assessments will be made), Maintenance Company shall provide the District with a line item budget for the performance of the Maintenance Services for that Fiscal Year (the "Annual Maintenance Budget") which may include reasonable reserves for capital replacements anticipated to be required during the term of this Agreement and supervision. As described in Section 3 above, if Maintenance Company's actual expenses exceed the payments which it is entitled to receive, Maintenance Company shall be solely responsible for any shortfall.

6. Reserve Account. The "Rate and Method of Apportionment" for the District ("RMA") requires that the District establish a Reserve Fund for the purposes described in the RMA. All deposits in the Reserve Fund shall be invested by the District in an interest bearing account. So long as Maintenance Company shall perform this Agreement, District and City agree that they shall not withdraw any funds from the Reserve Fund and that all interest earned on the funded portion of the Reserve Fund shall be added to the Reserve Fund and not used for any other purpose. If for any reason other than the negligence or misuse of funds by the District or the failure to collect delinquent assessments, the Reserve



Fund is not fully funded as of the Fiscal Year in which this Agreement terminates, then Maintenance Company agrees to pay to District, for deposit in the Reserve Fund, any unfunded portion of the required balance of the Reserve Fund for such Fiscal Year as of the date of termination.

7. Catastrophes and Other Unexpected Capital Replacements. If any of the improvements required to be maintained by Maintenance Company are damaged or destroyed due to unusual circumstances which, in the exercise of due care, could not reasonably be anticipated by Maintenance Company, then in addition to the regularly scheduled payments to Maintenance Company contemplated by Section 2 above and in the absence of available insurance coverage, District shall either (a) repair or replace such damage or destruction to the extent funds are reasonably available in the Reserve Fund to do so, or (b) reasonably consider a request for additional payments to the Maintenance Company from the Reserve Fund which, if approved by District, shall be used solely by Maintenance Company to repair or replace such damage or destruction. Any such extraordinary payments, however, shall not relieve Maintenance Company of its obligation to make the payments to the Reserve Fund required by Section 6 above.

8. Prevailing Wage. Except as provided below, Maintenance Company agrees to pay, and to cause any subcontractor engaged by Maintenance Company to pay, not less than the applicable "prevailing wage" (as determined by the Director of the Department of Industrial Relations in accordance with the standards set forth in the California Labor Code) to all workers engaged in the performance of the Maintenance Services pursuant to this Agreement. The City's annual resolution setting out per diem wage rates is available from the City's Construction Management Division. In the event that Maintenance Company contracts with a qualified 501(c)(3) tax exempt charitable organization to provide the Maintenance Services the prevailing wage requirement shall not apply to such charitable organization to the extent such exclusion is consistent with applicable ordinances of the City in effect at the time. Ordinances in effect as of the date of this Agreement exclude such charitable organizations from the requirement to pay prevailing wage.

9. Release and Indemnity. Maintenance Company hereby releases and, to the extent not covered by applicable insurance, agrees to defend, indemnify and save the District and the City harmless from and against any and all injuries to and deaths of persons, and all claims, demands, costs, loss, damage and liability, howsoever same may be caused, resulting directly or indirectly from the performance of any and all Maintenance Services pursuant to this Agreement, and also from all injuries to and deaths of persons, and all claims, demands, costs, loss damage and liability, howsoever same may be caused, either directly or indirectly made or suffered by the Maintenance Company or its agents, employees and subcontractors, while engaged in the performance of the Maintenance Services.

10. Insurance. Maintenance Company shall maintain (and shall require any subcontractor's engaged by Maintenance Company to maintain) the insurance coverage described below, with the City and District named as additional insureds (where applicable), in the following indicated amounts:

a. General Liability: \$1,000,000 per occurrence for bodily injury, personal injury, and property damage. If commercial general liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.



- b. Automobile Liability: \$ 1,000,000 per accident for bodily injury and property damage.
- c. Employer's Liability: \$1,000,000 per accident for bodily injury or disease.
- d. Workers' Compensation: As required under the California Labor Code.

11. Term. This Agreement shall be for a term commencing as of the date hereof (the "Initial Term") and continuing until March 31, 2036, provided, however, that if neither party notifies the other in writing of its election to allow this Agreement to terminate as of the initial termination date or any subsequent termination date at least one year in advance of such termination date, this Agreement shall automatically renew for successive 5-year periods. This Agreement may be terminated at any time by either party in the event of the other party's material breach of this Agreement which is not cured within 30 days written notice of such material breach. This Agreement shall also be terminated effective with the cessation of assessments if the taxpayers in the District, by referendum, elect to terminate the Special Tax.

12. Public Contact Number. At all times during the term of this Agreement Maintenance Company shall maintain, and provide to homeowners and other persons and entities owning property in the District, a telephone number for the purpose of receiving and acting upon complaints and/or inquiries from such persons arising from or related to the Maintenance Services.

13. Miscellaneous. The provisions of this Agreement shall be deemed independent and severable and the invalidity or partial invalidity or unenforceability of any one provision or portion thereof shall not affect the validity or enforceability of any other provision hereof. Whenever the context so requires, any gender includes the other gender, the singular includes the plural, and the plural includes the singular. Except as may be expressly provided in this Agreement, nothing in this Agreement shall be construed to limit the parties' rights and obligations at law and in equity. Subdividers and their affiliates are intended third party beneficiaries of this Agreement.

14. Definitions. Capitalized terms not otherwise defined in this Agreement shall have the meaning ascribed to those terms in the RMA.

15. Relationship of the Parties: Independent Contractor. In pursuit hereof the Maintenance Company is acting solely as an independent contractor. Neither Maintenance Company nor any of its officers, agents or employees shall be deemed an officer, agent, employee, joint venturer, partner or associate of City or District for any purpose. Neither City nor the District shall have any right to control or supervise or direct the manner or method by which Maintenance Company shall perform its work and functions. However, City and District shall retain the right to administer this Agreement so as to verify that Maintenance Company is performing its obligations in accordance with the terms and conditions thereof.

16. Limitation on Assignment. This Agreement is personal to Maintenance Company and there shall be no assignment by Maintenance Company of its rights or obligations under this Agreement without the prior written approval of City and the District. Any attempted assignment by Maintenance Company, its successors or assigns, shall be null



and void unless approved in writing by City and the District.

17. Compliance with Law. Maintenance Company shall at all times comply with all applicable laws of the United States, the State of California and City, and with all applicable regulations promulgated by federal, state, regional, or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the term of this Agreement.

18. Legal Fees. If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses.

19. Exhibits and Other Documents and Agreements. In the event of any conflict between the District formation documents and this Agreement, the District formation documents shall control and take precedence over this Agreement. In the event of any conflict between the body of this Agreement and any Exhibit or Attachment hereto, the terms and conditions of the body of this Agreement shall control and take precedence over the terms and conditions expressed within the Exhibit or Attachment. Furthermore, any terms or conditions contained within any Exhibit or Attachment hereto which purport to modify the allocation of risk between the parties, provided for within the body of this Agreement, are null and void.

WITNESS the due execution hereof the date aforesaid.

<p>CITY OF FRESNO a municipal corporation</p> <p>By: <u>[Signature]</u> David Hooley Director Public Works Department</p> <p>By: <u>[Signature]</u> Michael T. Kim Assistant Director Public Works Department</p>	<p>COPPER RIVER MAINTENANCE, LLC, a California limited liability company</p> <p>By: Granville Homes, Inc., a California corporation, its Manager</p> <p>By: <u>[Signature]</u> Jeffrey T. Roberts V.P. Granville Homes, Inc.</p>
<p>CITY OF FRESNO COMMUNITY FACILITIES DISTRICT #12</p> <p>By: <u>[Signature]</u> JON R. RUIZ, INTERIM DIRECTOR</p> <p>APPROVED AS TO FORM: PUBLIC WORKS</p> <p>James C. Sanchez City Attorney</p> <p>By: <u>[Signature]</u> Deputy</p>	



<p>ATTEST REBECCA E. KLISCH City Clerk</p> <p>By: <u>Sherril K. Badertocher 8/16/06</u> Deputy</p>	
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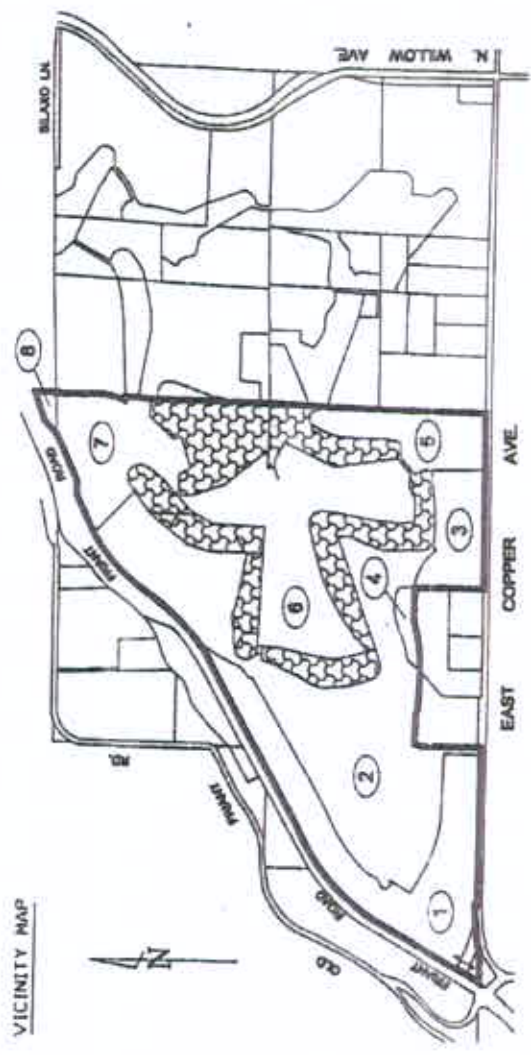
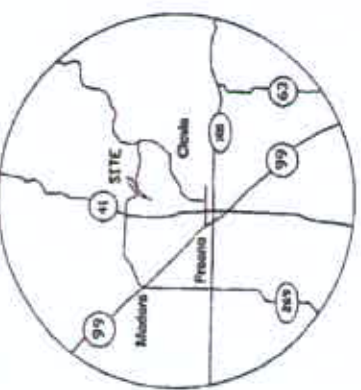
Exhibit A

REAL PROPERTY DESCRIPTION



**MAP OF PROPOSED BOUNDARIES OF
COMMUNITY FACILITIES DISTRICT NO. 12 (COPPER RIVER RANCH)**

CITY OF FRESNO
COUNTY OF FRESNO
STATE OF CALIFORNIA



SHEET 1 OF 1

FILED IN THE OFFICE OF THE CITY CLERK OF THE CITY OF FRESNO THIS _____ DAY OF _____ 20__.

A PERSON WHOSE NAME THE BOARD HAS DETERMINED TO BE ELIGIBLE TO BE A MEMBER OF THE BOARD OF COMMUNITY FACILITIES DISTRICT NO. 12 (COPPER RIVER RANCH) CITY OF FRESNO, COUNTY OF FRESNO, STATE OF CALIFORNIA, HAS APPROVED THE BOARD ON THIS _____ DAY OF _____ 20__, BY THE SIGNATURE:

CITY CLERK
CITY OF FRESNO

FILED THIS _____ DAY OF _____ 20__, AT THE OFFICE OF THE CITY CLERK OF THE CITY OF FRESNO, COUNTY OF FRESNO, STATE OF CALIFORNIA, IN THE OFFICE OF THE COUNTY REGISTRAR IN THE COUNTY OF FRESNO, STATE OF CALIFORNIA.

COUNTY REGISTRAR
COUNTY OF FRESNO
STATE OF CALIFORNIA

THE LINES AND CORNERS OF EACH LOT ON THESE MAPS AND THE DISTRICT BOUNDARIES SHOWN ON THESE MAPS ARE APPROVED FOR THE RECORD COUNTY RECORDERS HAVE FOR THESE MAPS AND LOTS.

THE FRESNO COUNTY ASSESSORS HAVE BEEN ADVISED FOR ALL LOTS AND CORNERS THE LOTS AND CORNERS OF EACH LOT ON THESE MAPS.

- LEGEND**
- CITY BOUNDARY
 - ① MAP REFERENCE NUMBER
 - ▨ NOT A PART

Map Reference Number	Assessor Parcel Number
1	578 072 04
2	578 072 05
3	578 072 07
4	578 072 13
5	578 072 15
6	578 072 17
7	578 072 20
8	578 072 26





CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Fresno } ss.

On July 17, 2006, before me, Cristina G. Lopez, Notary Public

personally appeared Jeffrey T. Roberts

personally known to me

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



WITNESS my hand and official seal.

Place Notary Seal Above

Cristina G. Lopez, Signature of Notary Public

OPTIONAL

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

Description of Attached Document

Title or Type of Document:

Document Date: Number of Pages:

Signer(s) Other Than Named Above:

Capacity(ies) Claimed by Signer(s)

Signer's Name:

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



Signer is Representing:

Signer's Name:

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



Signer is Representing:

May 14, 2009

Council Adoption: 5/14/09

Mayor Approval:

Mayor Veto:

Override Request:

TO: MAYOR ASHLEY SWEARENGIN

RECEIVED

FROM: REBECCA E. KLISCH, CMC
City Clerk

REK 2009 MAY 21 AM 8:21

CITY CLERK. FRESNO CA



SUBJECT: TRANSMITTAL OF COUNCIL ACTION FOR APPROVAL OR VETO

At the Council meeting of 5/14/09, Council adopted the attached Resolution No. 2009-109 entitled **79th amndmnt to AAR appro \$320,600, maintenance of landscaping/features assoc w/Copper River Ranch Subdivision, Item No. 1F**, by the following vote:

Ayes	:	Borgeas, Brand, Dages, Perea, Westerlund, Xiong, Sterling
Noes	:	None
Absent	:	None
Abstain	:	None

Please indicate either your formal approval or veto by completing the following sections and executing and dating your action. Please file the completed memo with the Clerk's office on or before May 25, 2009. In computing the ten day period required by Charter, the first day has been excluded and the tenth day has been included unless the 10th day is a Saturday, Sunday, or holiday, in which case it has also been excluded. Failure to file this memo with the Clerk's office within the required time limit shall constitute approval of the ordinance, resolution or action, and it shall take effect without the Mayor's signed approval.

Thank you.

APPROVED:

VETOED for the following reasons: (Written objections are required by Charter; attach additional sheets if necessary.)

Ashley Swearengin, Mayor

Date: 5-20-09

COUNCIL OVERRIDE ACTION:

Date: _____

Ayes	:	
Noes	:	
Absent	:	
Abstain	:	