

Council Meeting of
March 25, 2008

Honorable Mayor and Members
of the City Council
City Hall
Torrance, California

Members of the Council:

SUBJECT: Finance – Approve first extension of the Utility Billing Service Agreement

RECOMMENDATION

Recommendation of the Finance Director that Your Honorable body approve the first (of three) two-year renewal options (indexed to CPI) with American States Utility Services Inc. (AWR), now known as Golden State Water Company, to provide utility billing services to the City of Torrance.

Funding

Funding is available in the Finance Department's operating budget.

BACKGROUND

On March 8, 2005 Your Honorable Body authorized staff to enter into an agreement for a term of three years, with three additional two-year renewal options, with American States Utility Services Inc. (AWR) to provide utility billing services. The original agreement of three years expires on March 8, 2008. The agreement has three two-year options, and staff is recommending that the first two-year option be approved by Your Honorable Body.

On May 16, 2004, Request for Proposals (RFP) were mailed and advertised for utility billing services. Proposals were sent to Southern California Edison, Southern California Gas, California Water Company, and American States Utilities Services Inc. All of the aforementioned companies were companies that participated in the RFP process in 1999, and on June 17, 2004, the City Clerk's office received only one proposal, which came from the current company AWR. Since June of 2004 both staff and representatives from AWR reached and implemented a mutually satisfactory agreement, which Your Honorable Body approved.

American States Utility Services Inc. has continued to provide excellent service to the citizens of Torrance, such as customer enhanced on-line payment methodologies, twenty-four (24) hour customer service, seven days a week, and on-line services for

payment, account balance and history inquires. Therefore, it is for these reasons staff is recommending that Your Honorable Body approve the first two-year option with American States Utility Services Inc. to provide utility billing services to the City of Torrance.

Respectfully submitted,

Eric Tsao
Finance Director

By: 
Kenneth Flewellyn
Assistant Finance Director

CONCUR:



Eric Tsao
Finance Director



LeRoy J. Jackson
City Manager

Attachment: Amendment to the Contract

NOTICE OF ACCEPTANCE OF RIGHT TO EXTEND AGREEMENT

This NOTICE OF ACCEPTANCE OF RIGHT TO EXTEND AGREEMENT between CITY OF TORRANCE, a Municipal corporation ("CITY") and AMERICAN STATES UTILITY SERVICE, INC., a California Corporation ("COMPANY") is made with reference to the following Facts:

- A. On March 8, 2005, CITY and COMPANY entered into an agreement ("AGREEMENT") to provide water, refuse and sewer billing services for the CITY.
- B. The AGREEMENT was for a three year term expiring March 7, 2008, with options to extend for three additional two-year terms.
- C. CITY is satisfied with the services provided by COMPANY and deserves to exercise the first of its three options to extend.

EXERCISE OF OPTION

Pursuant to paragraph 3 of the AGREEMENT, CITY does hereby exercise the first of its three two year options to extend the AGREEMENT. Unless further extended by CITY in accordance with paragraph 3 of the AGREEMENT, the AGREEMENT shall remain in effect until March 7, 2010.

ACCEPTANCE AND WAIVER OF

ANY DEFECT

By execution of this NOTICE OF RIGHT TO EXTEND AGREEMENT Company acknowledges and accepts the CITY'S exercise of its right to extend

AGREEMENT and waives any defects in CITY'S exercise of its right to extend the AGREEMENT.

CITY OF TORRANCE,
a Municipal corporation

AMERICAN STATES UTILITY
SERVICES, INC. a California corporation

Frank Scotto
Mayor

By: _____
McClellan Harris III
Senior Vice President

ATTEST:

By: _____
Sue Herbers
City Clerk

APPROVED AS TO FORM:

JOHN L. FELLOWS III
City Attorney

By: _____

1 **UTILITY BILLING AGREEMENT**

2 This UTILITY BILLING AGREEMENT ("Agreement") is made and entered into as of
 3 MARCH 8, 2005 (the "Effective Date"), by and between the CITY OF
 4 TORRANCE, a municipal corporation, herein after referred to as "City" and American States
 5 Utility Services, Inc., a California corporation, herein after referred to as "the Company." The
 6 Company is a wholly-owned subsidiary of American States Water Company, a California
 7 corporation ("AWR").

8 **RECITALS:**

9 A. City is a municipal corporation that provides water and sewer services to
 10 residential, commercial, and industrial users within the City. It also provides residential refuse
 11 services.

12 B. AWR, directly or indirectly through the Company and its other subsidiaries,
 13 currently operates forty-one water systems serving over 260,000 connections in the City of
 14 Fountain Hills and portions of Scottsdale in Arizona and ten counties and seventy-five cities in
 15 California, and operates and maintains water and wastewater systems and provides billing
 16 services for various municipalities, the U.S. Government and private entities.

17 C. The Company administers all billing services contracts for AWR and its
 18 subsidiaries.

19 **AGREEMENT:**

20 1. **RESPONSIBILITIES OF THE COMPANY**

21 A. The Company Facilities.

22 (1) San Dimas Corporate Offices. The Company currently maintains its
 23 corporate offices in San Dimas, California. From its corporate offices, the
 24 Company will provide all necessary computer software and
 25 communication necessary for City to submit meter reading data
 26 electronically or manually to the Company. If City changes the method of
 27 submitting meter reading data from that in effect on the Effective Date,
 28 including changing to automated meter reading equipment, City shall
 29 reimburse Company for all actual costs, including reasonable overhead
 30 expenses, incurred by Company in connection with making changes in its
 31 systems to enable the Company to receive such data in addition to the
 32 compensation set forth in Paragraph 4.

33 (2) Regional Customer Service Center. The San Dimas location also serves as
 34 a regional customer service center (the "Regional Customer Service
 35 Center"). The Regional Customer Service Center is a full service
 36 Customer service center that will operate seven days a week including all
 37 holidays, twenty-four hours a day, throughout the term of this Agreement.

C 2 0 0 5 - 0 4 2

38 If the Company moves its Regional Customer Service Center in San
 39 Dimas, the Company will at its own expense provide bill inserts advising
 40 Customers of the change in location.

41 (3) Torrance Customer Service Office. In addition to the Regional Customer
 42 Service Center, the Company will maintain an office located within the
 43 service boundaries of the Torrance Municipal Water Department, in the
 44 City of Torrance ("Torrance Customer Service Office"). This office is
 45 currently located at 18234-36 Prairie Ave, Torrance, CA 90504.

46 (a) The Torrance Customer Service Office must remain operational for
 47 the duration of this contract.

48 (b) The Torrance Customer Service Office will operate as a full
 49 service Customer Service office between 7:30 a.m. and 5:30 p.m.,
 50 Monday through Friday, (excluding mutually recognized
 51 Holidays).

52 (c) Exterior signs must clearly designate the facility as the Company's
 53 Torrance Customer Service Office. The facility's hours of
 54 operation and a 24-hour toll-free customer service telephone
 55 number must also be displayed.

56 (d) A drop box for utility payments must be provided in front of the
 57 Torrance Customer Service Office.

58 (e) The Torrance Customer Service Office must be handicap-
 59 accessible and comply with all requirements of the Americans with
 60 Disabilities Act.

61 (f) The Torrance Customer Service Office must be staffed at a level to
 62 meet Customer demands. The Torrance Customer Service Office
 63 will at all times be staffed with a minimum of 2 full time
 64 employees.

65 (g) If the Company wishes to change the location of the Torrance
 66 Customer Service Office to another location within the City of
 67 Torrance, the Company must give City a minimum of thirty (30)
 68 days' prior written notice of the proposed change in location and
 69 consult with City so as to mutually agree upon a new location prior
 70 to implementing the change in location. At its sole expense, the
 71 Company must provide bill inserts advising the Customers of the
 72 change in location.

73 B. Customer Billing. Based on the submission of the meter reading data, the
 74 Company will provide the following billing services for City to Customers of City
 75 in the service area ("Customers"):

- 76 (1) Prepare bi-monthly bills for water, refuse and sewer services to residential
77 Customers, in the name of City.
- 78 (2) Prepare monthly bills for water, refuse and sewer service to commercial
79 and industrial Customers, in the name of City.
- 80 (3) Prepare bi-monthly refuse only bills to residential Customers, in the name
81 of City.
- 82 (4) Break down the charges into components.
- 83 (5) Individually forward the bills, via pre-paid first class U.S. mail, to each
84 Customer.
- 85 (6) Include, at City's option, bill inserts. The number of bill inserts per billing
86 cycle will be limited to the capacity of the Company's equipment. Bill
87 inserts to be included with the Customer bill will be dropped off at the
88 Torrance Customer Service Office by City. Any bills that have a total
89 weight exceeding one (1) ounce must have prior written approval from the
90 City before mailing. The City will have two (2) business days after
91 notification by Company that the bills will exceed one (1) ounce to
92 determine if the postage will be paid, or billing should continue without
93 inclusion of inserts, provided that such two (2) business day period does
94 not interfere with the ability of Company to meet the billing schedule
95 established by City.
- 96 (7) Development and printing of City bill inserts will be at the sole expense of
97 the City. Bill inserts will conform to the Company's standards with
98 respect to dimension, fold and paper texture/thickness. City will have the
99 authority to review and approve all inserts that the Company would like to
100 include in the billing envelope. In addition, City will have the authority to
101 designate the priority of the inserts.
- 102 C. Customer Service. The Company will:
- 103 (1) Provide courteous Customer service in a timely and complete nature, at
104 the Regional Customer Service Center and the Torrance Customer Service
105 Office.
- 106 (2) Provide a Regional Customer Service Center and Torrance Customer
107 Service Office capable of receiving and answering Customer inquiries
108 about Customer accounts.
- 109 (3) Provide Customers with twenty-four hour access to a live Customer
110 service representative through a toll free telephone line, at the Regional
111 Customer Service Center. The toll free number will be printed on the
112 Customer bill.

- 113 (4) Receive and answer Customer inquiries in a timely and complete nature.
- 114 (5) Prepare service orders to be forwarded to City's operations personnel.
- 115 (6) Maintain on-going Customer notes for each Customer account and provide
116 City's Engineering and Finance Departments the ability to read and post
117 additional notes on the account.
- 118 (7) The Company will note all bill adjustments on the Customer account. All
119 adjustments to Customer accounts will be made pursuant to City policy
120 (City reserves the right to modify its policy from time to time.)
- 121 (8) Comply with the following Customer service performance standards:
- 122 (a) A live representative will answer 70% of all incoming calls within
123 sixty (60) seconds or less.
- 124 (b) A live representative will answer the majority of the remaining
125 calls in a timely manner.
- 126 (c) The percentage of Customers who hang up prior to having their
127 call answered will be no more than 7% of all incoming calls. This
128 is also known as an "abandon rate". Customer service
129 performance standards as shown in subparagraph 1.C.(8(a) and
130 1.C.(8(b) above will be calculated monthly and penalties, if any,
131 will be applied in accordance with terms as outlined in this
132 subparagraph 1.C.
- 133 (d) The Company will make every effort possible to answer the City
134 of Torrance telephone calls with an intent to meet or exceed the
135 Company's internal Regional Customer Service Center goal of
136 answering 80% of its calls within forty (40) seconds or less and
137 maintaining an abandon rate of 5% or less.
- 138 (e) In the event the Company enters into a contract with another entity
139 resulting in higher performance standards than this agreement then
140 the City's performance standard will be adjusted upward to the
141 level of the other entity.
- 142 (9) To the extent permitted by applicable law, record all Customer service
143 calls and maintain recordings for a period of two years. If requested by
144 the City, recordings of specific Customer calls will be provided to City
145 within one (1) Regional Customer Service Center business day (except
146 Saturday, Sunday and legal holidays), provided the City's request is
147 accompanied by the Customer name and service address or account
148 number. The Company will respond within 72 hours to any request that
149 does not have the above information.

- 150 (10) Provide City with Customer service business cards, which contains the
 151 Company's toll free telephone number, Torrance Customer Service Office
 152 and Torrance Payment Station location and hours, at the Company's
 153 expense.
- 154 D. Reports. The Company will provide the City with the following reports and
 155 access to information:
- 156 (1) A rolling three-year history of Customer account information, including
 157 Customer notes, dollar amounts and water consumption in increments of
 158 hundred cubic feet. This information will be accessible to City on-line.
 159 The Company will provide 3 additional years (a total of 6 years) of the
 160 same type of information off-line. The off-line information will be made
 161 available to the City within 48 hours upon request. The Company will not
 162 be responsible for supplying Customer account information that was not
 163 provided by the prior vendor(s) during the conversion process.
- 164 (2) A standardized monthly report of the fiscal and operating reports will be
 165 provided on disc to City no later than fifteen calendar days following the
 166 end of the billing cycle. Special reports that are already formatted will be
 167 provided to City within 48 hours of a request by City.
- 168 (3) Customized reports as requested by City will be provided at no additional
 169 cost, so long as such requests do not exceed fifty (50) reports per annum.
- 170 (4) Any request for hard copy reports will be provided to City at the
 171 Company's expense, subject to provisions set forth in subparagraph
 172 1.D.(3) above.
- 173 (5) The Company will allow City or its designated representative the
 174 opportunity to audit all records relating to City accounts within two of the
 175 Company's working days' notice during normal business hours. Cash
 176 receipt verification procedures will be conducted using generally accepted
 177 accounting principles.
- 178 (6) All information acquired by the Company relating to City accounts,
 179 including the Customer list, may not be sold or given to any third party
 180 without City's consent. This will not include the subsidiary companies of
 181 the Company.
- 182 E. Cash Processing. The Company will receive and process all Customer payments
 183 in the following manner:
- 184 (1) The Company will wire transfer to the City's bank account by the close of
 185 each business day (5:30 p.m.) the total receipts collected from that day
 186 plus any residual amounts collected subsequent to the previous day's
 187 transfer. For the purpose of defining a wire transfer day, a day will mean
 188 7:30 a.m. through 3:00 p.m.

- 189 (2) The Company will provide a cash receipt report specifying the payments
 190 received and deposited in the City's bank as provided above. This report
 191 will be provided on a weekly basis detailing each day's transfers and the
 192 impacted residential and/or commercial account.
- 193 (3) The Company, to the extent permitted by law, will be responsible for
 194 collecting on delinquent accounts. The Company will strictly adhere to
 195 the City's collection policy so as to ensure the uncollectible rate is
 196 maintained. In no case should the uncollectible rate exceed six-tenths of
 197 one percent of the total monthly receivables. If the uncollectible rate does
 198 exceed six-tenths of one percent then the Company will absorb the
 199 difference. The City agrees to promptly hang forty-eight hour shut-off
 200 notices for delinquent accounts in accordance with City practices, to
 201 disconnect promptly all Customers who fail to pay their account after a
 202 forty-eight hour shut-off notice is hung and promptly report the shut-off
 203 meter reading to the Torrance Customer Service Office.

204 F. Coordination with City. The Company agrees to cooperate with the City and use
 205 all reasonable efforts pursuant to the terms of this Agreement to facilitate the
 206 provisions of this utility billing service agreement by the Company hereunder:

- 207 (1) The Manager of Operations will be designated as the Company's
 208 representative authorized to act in its behalf with respect to the work
 209 specified in this Agreement and make all decisions in connection with the
 210 administration of this Agreement. The Company's designated
 211 representative must be readily accessible.
- 212 (2) The Company will provide Customer service software training on the
 213 Company's Customer Information System to City employees on an as
 214 needed basis. The training will include information retrieval, data entry
 215 and report writing.
- 216 (3) The Company will provide access to on-line daily Customer history notes,
 217 Customer contact logs, Customer complaint information and service
 218 orders to City.

219 G. Meter Reading Data File. The Company will be responsible for creating a meter
 220 reading data file and performing the following functions:

- 221 (1) Creation and maintenance of the meter route data.
- 222 (2) Transfers of the meter route data in a timely fashion so that the City's
 223 meter reading schedule will not be adversely affected.

224 H. Emergency Services. The Company will provide City with a copy of its disaster
 225 preparedness plan as it relates to billing and Customer service data by March 7,
 226 2005 for both the Regional Customer Service Center and the Torrance Customer
 227 Service Office.

228 I. Additional Services. The Company will spool the forty-eight hour shut-off
229 notifications to print as specified by City policy, at the designated City printer.

230 2. RESPONSIBILITIES OF CITY

231 A. Customer Billing. All meter readings will be conducted by City, its employees,
232 agents or independent contractors and submitted to the Company in a timely
233 manner for the processing of water bills. City will be responsible for providing
234 the following information to the Company:

235 (1) Electronic or manual meter reading data. If the information is provided
236 electronically to the Company and it is lost after confirmation of receipt by
237 the Company's Regional Customer Service Center, the Company will be
238 responsible for the cost of rereading the meter routes.

239 (2) Bill Inserts. If City desires to have any inserts included in the Customer
240 bill, City will provide the Company with the inserts two days prior to the
241 development of the Customer bill. The City will notify the Company's
242 Regional Customer Service Center as far in advance as possible of the
243 intent to include a bill insert.

244 B. Coordination with the Company. City agrees to cooperate with the Company and
245 use all reasonable efforts pursuant to the terms of this Agreement to facilitate the
246 provisions of this utility billing service agreement by the Company hereunder:

247 (1) The Assistant Finance Director is designated as the City's representative
248 authorized to act in its behalf with respect to the work specified in this
249 Agreement and make all decisions in connection with the administration
250 of this Agreement. City's designated representative must be readily
251 accessible to the Company. City may change the designated City
252 representative at any time and the Company will be notified immediately
253 of any such change. Any change in the City's designated representative
254 must be at an Assistant Finance Director level or higher in the City's
255 organization structure.

256 (2) The City's current meter reading schedule may be modified by City upon
257 three months written notice to the Company.

258 3. TERM

259 Unless earlier terminated in accordance with Section 6 below, this Agreement will
260 continue in full force and effect for three years from the Effective Date. In addition, City
261 will have the sole option, to extend the Agreement for three additional two-year terms.
262 City must give the Company notice of its intention to exercise its options to extend the
263 term not less than 180 days prior to the termination date, or, if an extension has been
264 exercised, 180 days prior to the extended termination date. If City does not elect to
265 exercise its option to extend the term or at the end of any extended term, the Company
266 will not receive any severance costs.

267 4. COMPENSATION

268 A. Monthly Fee. Commencing on March 7, 2005, City will pay the Company the
 269 following monthly fee for Service:

From	To	Monthly Fee (Labor)	Monthly Fee (all other Cost)	Estimated CPUC Pass- Through	Total Monthly Fee
March 7, 2005	June 30, 2006	\$8,512	\$14,569	\$2,564	\$25,645
July 1, 2006	June 30, 2007	\$8,897	\$15,230	\$2,681	\$26,808
July 1, 2007	June 30, 2008	\$9,547	\$16,341	\$2,876	\$28,764

270
 271 B. California Public Utilities Commission Pass-Through. In addition to the monthly
 272 fee set forth in subparagraph 4.A., the City agrees to pay the Company an
 273 allocated share of the amount of revenue required ("the pass through") to be
 274 allocated to the customers of Southern California Water Company, a California
 275 corporation ("SCW"), by the California Public Utilities Commission ("CPUC") as
 276 compensation for providing Customer Services to the City. The amount of this
 277 pass-through on the Effective Date is 10.0% of total compensation paid to the
 278 Company or any of its unregulated subsidiaries for providing utility billing
 279 services. The CPUC Pass-Through shall be adjusted as follows:

280 (1) Should the CPUC make a determination that the pass through amount
 281 should be different than 10% or the CPUC pass-through determined on a
 282 different basis, then the CPUC Pass-Through shall be adjusted on the
 283 effective date of such determination to an allocated share of the amount
 284 determined by the CPUC to be the amount of compensation to be provided
 285 by the Company to SCW in connection with the Company's provision of
 286 the Customer Services on the effective date of such change, taking into
 287 account the total compensation received by the Company hereunder for
 288 providing such Customer Services, the number of Customers in the City's
 289 customer service area and the number of customers receiving such
 290 services from the Company or any of its unregulated subsidiaries outside
 291 of the City's Customer service area. The Company shall provide City
 292 with written notice of any such change and a copy of the CPUC approved
 293 Pass-Through methodology.

294 (2) The CPUC Pass-Through shall also be adjusted on each anniversary date
 295 of this Agreement by taking into account the total compensation received
 296 by the Company hereunder for providing the Customer Services during the
 297 prior contract year, the average number of Customers in the City's service
 298 area during the prior contract year and the average number of customers
 299 receiving Customer Services of this type from the Company or any of its
 300 unregulated subsidiaries during the prior calendar year. The Company
 301 shall provide City with a copy of this calculation at least thirty (30) days
 302 prior to each anniversary date of this Agreement.

- 303 C. Postage. In addition to the monthly fee set forth in subparagraph 4.A., the City
 304 agrees to pay all postage cost relating to billing its Customers. The Company will
 305 send the City a monthly detailed billing displaying actual billing cost (calculated
 306 at the Company's Carrier Route Sorting Rate) for City of Torrance residents.
- 307 D. Inflation Factor. Commencing July 1, 2008, the monthly fee shall be adjusted for
 308 inflation. The inflation factor shall be determined annually on each anniversary
 309 date commencing July 1, 2008, (i) with respect to the labor component, on the
 310 basis of the Consumer Price Index ("CPI-W"), Urban Wage Earners and Clerical
 311 Workers for Los Angeles, Riverside, Orange County published by the U.S.
 312 Bureau of Labor Statistics, Department of Labor ("BLS"), 1982-1984 =100 for
 313 May, and (ii) with respect to the remaining components, the Producers Price
 314 Index, all commodities ("PPI") prepared by the BLS for May. For the first year in
 315 which an adjustment is made, each component will be adjusted in a percentage
 316 amount equal to the change in the CPI-W or PPI index, as the case may be,
 317 between May 2006 and May 2008. For the remaining years, each component
 318 will be adjusted in a percentage amount equal to the difference between the CPI-
 319 W or the PPI index, as the case may be, of the previous year and May of the
 320 current year. If the CPI-W or the PPI index, as the case may be, is not expressed
 321 in relation to the same base period as in effect on the Effective Date or if a
 322 material change is made in the method of establishing the index, an appropriate
 323 statistical adjustment or conversion will be made. If either index is discontinued,
 324 the parties will mutually select another index published by the United States
 325 government or by a reputable publisher of financial and economic statistics.

326 5. EVENTS OF DEFAULT

- 327 A. Cure Period. Unless caused by, or due to the inaction of, the other party or
 328 excused or justified by Force Majeure (as defined in Section 9), the failure of a
 329 party to perform in a timely manner in any material respect any obligation to be
 330 performed by it hereunder will constitute an Event of Default if such failure
 331 cannot be cured or if such failure can be cured, it remains uncured for ten (10)
 332 days after notice from the non-defaulting party to the defaulting party to cure such
 333 failure (or within such longer period of time as is necessary to remedy such failure
 334 so long as the defaulting party immediately initiates and diligently pursues
 335 appropriate measures to remedy such failure); provided that the ten (10) day
 336 notice period with opportunity to cure will not be required if the party failing to
 337 perform has committed the same or similar breach within a twelve (12) month
 338 period immediately preceding the event of default.
- 339 B. Event of Default by Company. Each of the following will also constitute an Event
 340 of Default by the Company provided that Paragraphs 5.B.(5), (6), (7), (8), (10 and
 341 (11) will be subject to the cure provisions of Paragraph 5.A. above:
- 342 (1) Fraud or Deceit. If the Company practices, or attempts to practice, any
 343 fraud or deceit upon City or any Customers of City.

- 344 (2) Insolvency or Bankruptcy. If the Company becomes insolvent, unable, or
 345 unwilling to pay its debts, or upon listing of an order for relief in favor of
 346 the Company in a bankruptcy proceeding.
- 347 (3) Failure to Maintain Coverage. If the Company fails to provide or maintain
 348 in full force and effect all insurance required under this Agreement.
- 349 (4) Violation of Regulation. If the Company violates any order or filings of
 350 any regulatory body having jurisdiction over the Company relative to this
 351 Agreement, provided that the Company may contest any such orders or
 352 filings by appropriate proceedings conducted in good faith, in which case
 353 no breach of this Agreement will be deemed to have occurred while the
 354 contest proceedings are occurring.
- 355 (5) Failure to Perform. If the Company ceases to provide billing, Customer
 356 service, processing services, or any other service provided under this
 357 agreement as required under this Agreement in any material respect for a
 358 period of two consecutive days or more, for any reason within the control
 359 of the Company.
- 360 (6) Failure to Transfer Payments. If the Company fails to transfer Customer
 361 payments to City as required under this Agreement.
- 362 (7) Failure to Provide Reports. If the Company fails to provide City with
 363 information, reports, and, or records in a timely manner as provided for in
 364 this Agreement in any material respect.
- 365 (8) Acts or Omissions. Any other act or omission by the Company that
 366 violates the terms, conditions, or requirements of this Agreement, the
 367 California Public Utilities Code, as it may be amended from time to time,
 368 or any law, statute, ordinance, order, directive, rule, or regulation and
 369 which is not corrected or remedied within the time set in the written notice
 370 of the violation.
- 371 (9) False or Misleading Statements. Any representation or disclosure made to
 372 City by the Company in connection with or as an inducement to entering
 373 into this Agreement, or any future amendment to this Agreement, which
 374 proves to be false or misleading in any material respect as of the time such
 375 representation or disclosure is made, whether or not such representation or
 376 disclosure appears as part of this Agreement.
- 377 (10) Attachment. There is a seizure of, attachment of, or levy on, the operating
 378 equipment of the Company, including without limits its equipment, office
 379 facilities, or any part of the Company's operation.
- 380 (11) Failure to Provide Assurance of Performance. If the Company fails to
 381 provide reasonable assurances of performance as required under Section 8.

- 382 C. Event of Default by City. Each of the following will also constitute an Event of
 383 Default by City, provided that Paragraphs 5.C.(5) and 5.C.(6) will be subject to
 384 the cure provisions of subparagraph 5.A.:
- 385 (1) Fraud or Deceit. If City practices, or attempts to practice, any fraud or
 386 deceit upon the Company or any Customers of City.
- 387 (2) Insolvency or Bankruptcy. If City becomes insolvent, unable, or
 388 unwilling to pay its debts, or upon listing of an order for relief in favor of
 389 City in a bankruptcy proceeding.
- 390 (3) False or Misleading Statements. Any representation or disclosure made to
 391 the Company or any of its affiliates in connection with or as an
 392 inducement to entering into this Agreement, or any future amendment to
 393 this Agreement, which proves to be false or misleading in any material
 394 respect as of the time such representation or disclosure is made, whether
 395 or not such representation or disclosure appears as part of this Agreement.
- 396 (4) Attachment. There is a seizure of, attachment of, or levy on, the operating
 397 equipment of City, including without limits its equipment, office facilities,
 398 or any part of City's operation which are necessary to the performance by
 399 City of its obligations hereunder.
- 400 (5) Failure to Pay. If City fails to pay Company within 30 days after receipt
 401 of a bill for all amounts due Company pursuant to Section 4.
- 402 (6) Failure to Perform. If City fails to perform any other obligation of City
 403 hereunder in any material respect. Can we replace 5 with 6? Pick one or
 404 the other.

405 6. **TERMINATION OF AGREEMENT**

406 A. Termination by City for Convenience.

- 407 (1) City may, at any time, terminate the Agreement for City's convenience
 408 and without cause.
- 409 (2) Upon receipt of written notice from City of such termination for City's
 410 convenience, the Company will:
- 411 (a) cease operations as directed by City in the notice; and
- 412 (b) take actions necessary, or that City may reasonably direct, for
 413 continuity of services.
- 414 (3) In case of such termination for City's convenience, the Company will be
 415 entitled to receive payment for work executed, any additional costs
 416 incurred in connection with performing the work hereunder and any costs

417 incurred by reason of such termination, along with reasonable overhead
 418 and profit on the work not executed and state and federal income taxes
 419 payable with respect thereto.

420 B. Right of the Company to Terminate Upon Default of City.

421 (1) Upon a default by City, the Company will have the right to terminate this
 422 Agreement upon 60 days notice to City without the need for any suit or
 423 legal action as provided below. In case of such termination, the Company
 424 will be entitled to receive payment for work executed, any additional costs
 425 incurred in connection with performing the work hereunder; and costs
 426 incurred by reason of such termination, along with reasonable overhead
 427 and profit on the work not executed and state and federal income taxes
 428 payable with respect thereto.

429 (2) The Company's right to terminate this Agreement is not exclusive and the
 430 Company's termination of this Agreement will not constitute an election
 431 of remedies. Instead it will be in addition to any and all other legal and
 432 equitable rights and remedies that the Company may have.

433 (3) By the virtue of the nature of this Agreement and the impact on the
 434 reputation of the Company and its affiliates in the community if the
 435 Company is unable to provide continuous and proper service as provided
 436 in this Agreement, in any material respects, as a result of default by City,
 437 the remedy of damages for a breach by City is inadequate and the
 438 Company will be entitled to injunctive relief.

439 C. Right of City to Terminate Upon Default of The Company.

440 (1) Upon a default by the Company, City will have the right to terminate this
 441 Agreement without the need for any suit or legal action as provided below.
 442 This right of termination is in addition to any other rights of City upon a
 443 failure of the Company to perform its obligations under this Agreement.

444 (2) City's right to terminate this Agreement is not exclusive, and City's
 445 termination of this Agreement will not constitute an election of remedies.
 446 Instead, it will be in addition to any and all other legal and equitable rights
 447 and remedies that City may have.

448 (3) By virtue of the nature of this Agreement, the urgency of timely
 449 continuous and proper service, the time required to effect alternative
 450 service, and the rights granted by City to the Company, the remedy of
 451 damages for a breach by the Company, in any material respects, is
 452 inadequate and City will be entitled to injunctive relief.

453 (4) City may determine the occurrence of events giving rise to a default
 454 through the observation of its own employees or representatives or
 455 investigation of Customer complaints. The City will use due diligence in

456 determining whether this Agreement should be terminated because of the
 457 default of Company. In making a determination that this Agreement
 458 should be terminated because of a default by Company, staff of the City
 459 will give written notice to the Company of its intention to do so. The
 460 notice will include a complete description of the incident(s)/non-
 461 performance in reasonable detail. The Company may review, and the City
 462 will promptly provide (Company may make copies at its own expense of)
 463 all information in the possession of City relating to the incident(s)/non-
 464 performance prior to authorizing the termination of this Agreement. The
 465 Company may, within ten days after receiving the notice request a hearing
 466 with the City's Water Hearing Board. The Company may present
 467 evidences in writing and through testimony of its employees (before the
 468 City's Water Hearing Board) and others relevant to the incident(s)/non-
 469 performance. City staff will provide Company with a written explanation
 470 of its determination prior to authorizing termination of this Agreement. In
 471 the event that the Company believes that, notwithstanding City's
 472 termination of this Agreement for default by Company, the Company is
 473 not in default hereunder or the City has otherwise improperly exercised its
 474 termination rights, Company will be entitled to exercise all legal and
 475 equitable rights and remedies which it may have.

476 (5) In case of termination of this Agreement by City, the Company will be
 477 entitled to receive payment for work executed, provided City may offset
 478 any damages incurred by City as a result of Company's default.

479 D. Return of Data. Upon termination of the Agreement, the Company will provide
 480 City all of the City Customer account data on disc, including, but not limited to,
 481 account history, Customer notes, billing activity, and consumption, at no cost to
 482 City. The Company may not keep a copy of the Customer account data returned
 483 to City unless required to do so under applicable law.

484 7. LIQUIDATED DAMAGES

485 A. General. City finds, and the Company agrees, that as of the time of the execution
 486 of this Agreement, it is impractical, if not impossible, to reasonably ascertain the
 487 extent of damages that will be incurred by City as a result of a breach by
 488 Company of certain specific obligations under this Agreement. The factors
 489 relating to the impracticability of ascertaining damages include, but are not
 490 limited to, the facts that:

491 (1) Substantial damage results to members of the public who are denied
 492 services or denied quality or reliable service.

493 (2) A breach of this Agreement may cause inconvenience, anxiety, frustration,
 494 and deprivation of the benefits of the Agreement to individual members of
 495 the general public for whose benefit this Agreement exists, in subjective

496 ways and in varying degrees of intensity that are incapable of
497 measurement in precise monetary terms.

- 498 (3) The termination of this Agreement and other remedies are, at best, a
499 means of future correction and not remedies that make the public whole
500 for past breaches.

501 B. Service Performance Standards; Liquidated Damages for Failure to Meet
502 Standards. The parties further acknowledge that consistent, reliable utility billing
503 and Customer service is of utmost importance to City and that City has considered
504 and relied on the Company's representations as to its quality of service and
505 commitment in awarding this Agreement to it. The parties further recognize that
506 some quantified standards of performance are necessary and appropriate to ensure
507 consistent and reliable service and performance. The parties further recognize
508 that if the Company fails to achieve the performance standards, or fails to submit
509 required documents in a timely manner, City and its residents will suffer damages
510 and that it is and will be impractical and extremely difficult to ascertain and
511 determine the exact amount of damages that City will suffer. Therefore, without
512 prejudice to City's right to treat such breaches as an Event of Default under
513 Section 5, the parties agree that the following liquidated damage amounts
514 represent a reasonable estimate of the amount of such damages for such specific
515 breaches, considering all of the circumstances existing on the date of this
516 Agreement, including the relationship of the sums to the range of the harm to City
517 that reasonably could be anticipated and the anticipation that proof of actual
518 damages would be costly or impractical. In placing their initials at the places
519 provided, each party specifically confirms the accuracy of the statements made
520 above and the fact that each party has had an ample opportunity to consult with
521 legal counsel and obtain an explanation of the liquidated damage provisions at the
522 time the Agreement was made.

523 SCW _____ CITY _____

524 Unless due to City's failure to comply with its obligations hereunder or Force
525 Majeure, the Company agrees to pay (as liquidated damages and not as a penalty)
526 the amounts set forth below:

527 (1) Customer Service.

- 528 (a) For each failure to comply with the Customer performance
529 standards set forth in subparagraph 1.C.(8)(a) and (c): \$15 per
530 incident will be assessed. The calculation of the amount due to
531 City will be performed after an account is established to record the
532 accumulative balance of each month's activity. Failure to comply
533 with the standards will be based upon a monthly calculation.

- 534 (i) Any month wherein the standard of handling 70% of the
535 answered calls within 60 seconds exceeds the 70%

- 536 acceptance level, a credit will be banked, on a per call
 537 basis, for every call that is above the standard (\$15 x each
 538 call in excess of 70% standard). Any month wherein the
 539 standard of handling 70% of the answered calls within 60
 540 seconds is below the 70% acceptance level, a debit will be
 541 banked, on a per call basis (\$15 x each call is below 70%
 542 standard), for each call that is below the standard. At the
 543 end of each agreement year, a tally will be made of all
 544 credits and debits.
- 545 (ii) Any month wherein the standard of maintaining the call
 546 handling abandoned rate at 7% or less is below the 7%
 547 standard, a credit will be banked, on a per call basis, for
 548 every call that is below the standard (\$15 x each call below
 549 7% standard). Any month wherein the standard of
 550 maintaining the call handling abandoned rate at 7% or less
 551 is above the 7% standard, a debit will be banked, on a per
 552 call basis, for every call that is above the standard (\$15 x
 553 each call above 7% standard). At the end of each
 554 agreement year, a tally will be made of all credits and
 555 debits.
- 556 At the end of each contract year, the tallies for each standard as detailed in
 557 subparagraph 7.B.(1)(i) and (ii) above, will be computed and maintained
 558 separately. Should the balance of such credits and debits reflect a negative
 559 balance then the Company will pay the City the amount of the negative
 560 balance. Should the account reflect a positive balance, no amount will be
 561 due to the City. At the start of each contract year, the accounts referred to
 562 above in subparagraph 7.B.(1)(i) and (ii) will be cleared and new tallies
 563 will begin for the new agreement year.
- 564 (2) Reports. For each failure to comply with the provisions of subparagraph
 565 1.D.(2), the daily liquidated damage amount will be: \$100
- 566 (3) Cash Processing. If the Company fails to wire transfer amounts collected
 567 in conformance with the provisions of subparagraph 1.E. above, for each
 568 day thereafter: 8% annually on such amounts.
- 569 (4) Meter Route Data Information. If the Company fails to transmit meter
 570 route data information in compliance with city policy, for each full hour
 571 thereafter: \$50 (for a maximum of \$750 per day).
- 572 C. Determination. City may determine the occurrence of events giving rise to
 573 liquidated damages through the observation of its own employees or
 574 representatives or investigation of Customer complaints. The City will use due
 575 diligence in determining if liquidated damages should be assessed. In assessing
 576 liquidated damages, staff of the City will give the Company written notice of its

577 to intention to do so. The notice will include a complete description of the
 578 incident(s)/non-performance in reasonable detail. The Company may review, and
 579 the City will promptly provide (Company may make copies at its own expense of)
 580 all information in the possession of City relating to the incident(s)/non-
 581 performance. The Company may, within, ten days after receiving the notice
 582 request a hearing with the City's Water Hearing Officer. The Company may
 583 present evidence in writing and through testimony of its employees (before the
 584 City's Water Hearing Officer) and others relevant to the incident(s)/non-
 585 performance. City staff will provide Company with a written explanation of its
 586 determination on each incident/non-performance prior to authorizing the
 587 assessment of liquidated damages.

588 D. Payment. City may assess liquidated damages for each calendar day or event, as
 589 appropriate, that the Company is determined to be liable in accordance with this
 590 Agreement. The Company will pay any liquidated damages assessed by City
 591 within ten days after they are assessed or if challenged by the Company, after a
 592 final decision has been made. If they are not paid within the ten-day period, City
 593 may order the termination of the Agreement. In the event that the Company
 594 believes that, notwithstanding City's assessment of liquidated damages, liquidated
 595 damages have been improperly assessed by City, Company will be entitled to
 596 exercise all legal and equitable rights and remedies which it may have.

597 E. Maximum Amount of Liquidated Damages. In no event will Company be
 598 obligated to pay City more than \$41,667 in liquidated damages during any
 599 agreement year.

600 F. Failure to Pay. If City fails to pay Company all amounts payable by City to
 601 Company within thirty days after receipt of a bill therefore, the amount so due
 602 shall accrue interest of 8% annually on such amounts.

603 8. ASSURANCE OF PERFORMANCE

604 A. City Demand. City may, at its option and in addition to all other remedies it may
 605 have, demand from the Company reasonable assurances of timely and proper
 606 performance of this Agreement, in such form and substance as City may
 607 reasonably require. If the Company fails or refuses to provide satisfactory
 608 assurances of timely and proper performance in the form and by the dates
 609 required by City to enable the Company to provide the utility billing services
 610 hereunder, that failure or refusal will be an Event of Default.

611 B. Company Demand. The Company may, at its option and in addition to all other
 612 remedies it may have, demand from City reasonable assurances of timely and
 613 proper performance of this Agreement, in such form and substance as the
 614 Company may reasonably require. If City fails or refuses to provide satisfactory
 615 assurances of timely and proper performance in the form and by the dates
 616 required by the Company that failure or refusal will be an Event of Default.

617 9. **FORCE MAJEURE**

618 If either party fails to perform its obligations because of strikes, lockouts, labor disputes,
 619 embargoes, acts of God, inability to obtain labor or materials or reasonable substitutes for
 620 labor or materials, governmental restrictions, governmental regulations, governmental
 621 control, judicial orders, enemy or hostile governmental action, civil commotion, fire or
 622 other casualty, failure of utilities or telecommunication or electronic communication
 623 facilities owned by other third parties or other causes beyond the reasonable control of
 624 the party obligated to perform then that party will be excused from whatever performance
 625 is affected by the Force Majeure event to the extent so affected; provided that (i) the non-
 626 performing party promptly after the occurrence of the Force Majeure event (or becoming
 627 aware of the adverse impact of any Force Majeure event), gives the other party notice
 628 describing the particulars of the occurrence, (ii) the suspension of performance is of no
 629 greater scope and of no longer duration than is required by the Force Majeure event, (iii)
 630 the non-performing party uses its best efforts to remedy its inability to perform, and (iv)
 631 when the non-performing party is able to resume performance of its obligations
 632 hereunder, that party gives the other party written notice of such resumption.

633 10. **INDEPENDENT CONTRACTOR**

634 The Company is, and at all times will remain as to City, a wholly independent contractor.
 635 Neither City nor any of its agents will have control over the conduct of the Company or
 636 any of the Company's employees, except as otherwise set forth in this Agreement. The
 637 Company may not, at any time or in any manner, represent that it or any of its agents or
 638 employees are in any manner agents or employees of City.

639 11. **BUSINESS LICENSE**

640 The Company must have a City business license prior to the start of work under this
 641 Agreement.

642 12. **FAMILIARITY WITH SERVICES**

643 By executing this Agreement, the Company warrants that it (a) has thoroughly
 644 investigated and considered the scope of services to be performed, (b) has carefully
 645 considered how the services should be performed, and (c) fully understands the facilities,
 646 difficulties and restrictions attending performance of the services under this Agreement.

647 13. **INDEMNIFICATION**

648 A. Lack of City Responsibility. Neither City nor any of its agents, officials, or
 649 employees will be answerable or accountable to the Company or any of its
 650 affiliates in any manner, for any loss or damage for injury or damage to any
 651 person or persons, whether employees of the Company or its affiliates or the
 652 public, or for damage to adjoining or other property from any cause whatsoever
 653 arising out of the performance of the utility billing services by the Company
 654 hereunder, except to the extent otherwise provided herein or to the extent any
 655 such losses or damages are attributable exclusively to the actions and/or failures

656 to act of the City, its agents, officials, employees, and/or contractors, other than
657 the Company.

- 658 B. Indemnification by Company. The Company will, to the extent provided herein,
659 indemnify and hold harmless City and its agents, officials and employees against
660 and from any and all actions, claims, damages to persons or property, penalties,
661 obligations or liabilities arising out of the breach by the Company of its
662 obligations hereunder, and the Company will defend any such actions, claims,
663 damages, penalties, obligations or liabilities and will pay all judgments, awards,
664 costs, expenses and attorneys' and experts' fees in connection therewith.
- 665 C. Indemnification by City. City will, to the extent provided herein, indemnify and
666 hold harmless the Company and its agents, officers, directors and employees
667 against and from any and all actions, claims, damages to persons or property,
668 penalties, obligations or liabilities arising out of the breach by City of its
669 obligations hereunder. The Company will not be responsible or liable for the
670 accuracy or completeness of the Customer account information and history
671 provided by Systems and Computer Technology, Inc., the accuracy of the meter
672 reading information provided by City to the Company or any matter or event
673 occurring or arising out of events occurring prior to the effective date.
- 674 D. No Relief for Insurers. The provisions of this Section 13 will not be construed so
675 as to relieve any insurer of its obligations to pay any insurance claims in
676 accordance with the provisions of any valid insurance policy.
- 677 E. City Responsibility. City will be solely responsible for dealing with all contractors
678 and subcontractors utilized by it.

679 14. INSURANCE

- 680 A. Insurance. The Company must maintain at its sole expense the following
681 insurance:
- 682 (1) Automobile Liability, including owned, non-owned and hired vehicles,
683 with at least the following limits of liability:
- 684 (a) Primary Bodily Injury with limits of at least \$500,000 per person,
685 \$1,000,000 per occurrence; and
- 686 (b) Primary Property Damage of at least \$1,000,000 per occurrence; or
- 687 (c) Combined single limits of \$1,000,000 per occurrence.
- 688 (2) General Liability including coverage for premises, products and
689 completed operations, independent contractors/vendors, personal injury
690 and contractual obligations with combined single limits of coverage of at
691 least \$500,000 per occurrence.

- 692 (3) Workers' Compensation with limits as required by the State of California
693 and Employers Liability with limits of at least \$1,000,000.
- 694 B. Insurance Primary. The insurance provided by the Company will be primary.
- 695 C. Additional Insured. City, and each member thereof, members of boards and
696 commissions, every officer, agent, official, employee and volunteer must be
697 named as additional insured under the automobile and general liability policies
698 but only as respects liability arising out of the performance of services by the
699 Company hereunder.
- 700 D. Certificates of Insurance. The Company must provide certificates of insurance
701 and/or a letter verifying self insurance coverage to the City Clerk of the City of
702 Torrance before the commencement of work.
- 703 E. Notice of Termination. Each insurance policy required by this Section 14 must
704 contain a provision that no termination, cancellation or change of coverage can be
705 made without thirty days notice to City.

706 15. SUFFICIENCY OF INSURERS AND SURETIES

707 Insurance or bonds required by this Agreement will be satisfactory only if authorized to
708 transact business in California by the California Commissioner of Insurance, rated "B+"
709 or better in the most recent edition of Best's Key Rating Guide, and only if they are of a
710 financial category Class VII or better.

711 16. CONFLICT OF INTEREST

- 712 A. No Financial Interest. No officer or employee of the City may have any financial
713 interest, direct or indirect, in this Agreement, nor may any officer or employee
714 participate in any decision relating to the Agreement that effects the officer or
715 employee's financial interest or the financial interest of any corporation,
716 partnership or association in which the officer or employee is, directly or
717 indirectly interested, in violation of any law, rule or regulation.
- 718 B. No Gratuities. No person may offer, give, or agree to give any officer or
719 employee or former officer or employee, nor may any officer or employee solicit,
720 demand, accept, or agree to accept from another person, a gratuity or an offer of
721 employment in connection with any decision, approval, disapproval,
722 recommendation, preparation or any part of a program requirement or a purchase
723 request, influencing the content of any specification or procurement standard,
724 rendering of advice, investigation, auditing, or in any other advisory capacity in
725 any way pertaining to any program requirement, contract or subcontract, or to any
726 solicitation or proposal.

727 17. NOTICE

728 A. Procedure for Giving Notices. All notices, requests, demands, or other
729 communications under this Agreement will be in writing. Notice will be
730 sufficiently given for all purposes as follows:

731 (1) Personal delivery. When personally delivered to the recipient: notice is
732 effective on delivery.

733 (2) First Class mail. When mailed first class to the last address of the
734 recipient known to the party giving notice: notice is effective three mail
735 delivery days after deposit in an United States Postal Service office or
736 mailbox.

737 (3) Certified mail. When mailed certified mail, return receipt requested:
738 notice is effective on receipt, if delivery is confirmed by a return receipt.

739 (4) Overnight delivery. When delivered by an overnight delivery service,
740 charges prepaid or charged to the sender's account: notice is effective on
741 delivery, if delivery is confirmed by the delivery service.

742 (5) Facsimile transmission. When sent by fax to the last fax number of the
743 recipient known to the party giving notice: notice is effective on receipt.
744 Any notice given by fax will be deemed received on the next business day
745 if it is received after 5:00 p.m. (recipient's time) or on a non-business day.

746 (6) Address. Addresses for purpose of giving notice are as follows:

747 the Company: American States Utility Services, Inc.
748 535 Anton Blvd., Suite 150
749 Costa Mesa, California 92626
750 Attention: G. R. Hodges, Manager of Operations
751 Fax: 714-689-1199

752 City: City Clerk
753 City of Torrance
754 3031 Torrance Boulevard
755 Torrance, CA 90509-2970
756 Fax: (310) 618-2931

757 B. Effective Delivery. Any correctly addressed notice that is refused, unclaimed, or
758 undeliverable because of an act or omission of the party to be notified, will be
759 deemed effective as of the first date the notice was refused, unclaimed or deemed
760 undeliverable by the postal authorities, messenger or overnight delivery service.

761 C. Change in Notice Address. Either party may change its address or fax number by
762 giving the other party notice of the change in any manner permitted by this
763 Agreement.

764 18. **PROHIBITION AGAINST ASSIGNMENT AND SUBCONTRACTING**

765 This Agreement is binding on the heirs, successors, and assigns of the parties. The
 766 Agreement may not be assigned or subcontracted by either City or the Company without
 767 the prior written consent of the other provided that the Company may assign its rights and
 768 obligations hereunder to an affiliate upon 30 days' notice to City and provided further
 769 that Company may subcontract with a wholly owned subsidiary to provide all or a portion
 770 of its obligations hereunder.

771 19. **INTEGRATION; AMENDMENT**

772 This Agreement represents the entire understanding of City and the Company as to those
 773 matters contained in it. No prior oral or written understanding will be of any force or
 774 effect with respect to the terms of this Agreement. The Agreement may not be modified
 775 or altered except in writing signed by both parties.

776 20. **INTERPRETATION**

777 The terms of this Agreement should be construed in accordance with the meaning of the
 778 language used and should not be construed for or against either party by reason of the
 779 authorship of this Agreement or any other rule of construction that might otherwise
 780 apply.

781 21. **SEVERABILITY**

782 If any part of this Agreement is found to be in conflict with applicable laws, that part will
 783 be inoperative, null and void insofar as it is in conflict with any applicable laws, but the
 784 remainder of the Agreement will remain in full force and effect provided that the
 785 essential terms of this Agreement for both parties remain valid, binding and enforceable.

786 22. **TIME OF ESSENCE**

787 Time is of the essence in the performance of this Agreement.

788 23. **GOVERNING LAW; JURISDICTION**

789 This Agreement will be administered and interpreted under the laws of the State of
 790 California. Jurisdiction of any litigation arising from the Agreement will be in Los
 791 Angeles County, California.

792 24. **COMPLIANCE WITH STATUTES AND REGULATIONS**

793 The Company will be knowledgeable of and will comply with all applicable federal,
 794 state, county and city statutes, rules, regulations and ordinances. In the event that there
 795 are any changes to City statutes, rules, regulations or ordinances after the date hereof
 796 which affect the ability of Company to perform its obligations hereunder or the cost and
 797 expense thereof in any material respect, the parties will negotiate in good faith to modify
 798 this Agreement so as to effect the original intent of the parties as closely as possible in an

799 acceptable manner in order that the transactions contemplated hereby are consummated
 800 and the cost and expense thereof are as originally contemplated to the greatest extent
 801 possible. If the parties are unable to reach agreement on mutually acceptable revisions,
 802 Company will have the right to terminate this Agreement upon 60 days notice to City. In
 803 the case of such termination, the Company will be entitled to receive payment for work
 804 executed, any additional costs incurred in connection with providing the work hereunder
 805 and costs incurred by reason of such termination, along with reasonable overhead and
 806 profit on the work not executed and state and federal income taxes with respect thereto.

807 **25. WAIVER OF BREACH**

808 No delay or omission in the exercise of any right or remedy by a non-defaulting party on
 809 any default will impair the right or remedy or be construed as a waiver. A party's
 810 consent or approval of any act by the other party requiring the first party's consent or
 811 approval will not be deemed to waive or render unnecessary that party's consent to or
 812 approval of any subsequent act. Any waiver by either party of any default must be in
 813 writing and will not be a waiver of any other default concerning the same or any other
 814 provision of this Agreement.

815 **26. RESOLUTION OF DISPUTES**

816 A. Attorneys' Fees. In any dispute, litigation, arbitration, or other proceeding by
 817 which one party either seeks to enforce its rights under this Agreement (whether
 818 in contract, tort or both) or seeks a declaration of any rights or obligations under
 819 this Agreement, the prevailing party will be awarded reasonable attorney's fees,
 820 together with any costs and expenses, to resolve the dispute and to enforce any
 821 judgment.

822 B. Performance of Obligations. Each party will continue to perform its obligations
 823 hereunder pending resolution of any dispute. The parties agree to cooperate and
 824 use all reasonable efforts pursuant to the terms of this Agreement to facilitate the
 825 provision of the utility billing services by the Company hereunder.

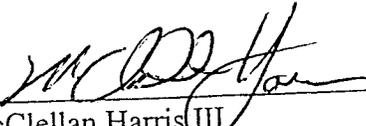
826 **27. AUTHORITY TO EXECUTE**

827 The person(s) executing this Agreement on behalf of each of the parties warrant that (i)
 828 such party is duly organized and existing; (ii) they are duly authorized to execute this
 829 Agreement on behalf of each party; (iii) by so executing this Agreement, such party is
 830 formally bound to the provisions of this Agreement; and (iv) such party entering into this
 831 Agreement does not violate any provision of any other Agreement to which it is bound.

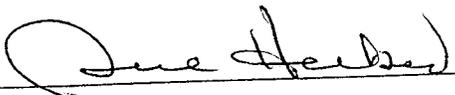
CITY OF TORRANCE, municipal corporation

AMERICAN STATES UTILITY SERVICES, INC., a California corporation

By: 
Dan Walker
Mayor

By: 
McClellan Harris III
Senior Vice President

ATTEST:

By: 
Sue Herbers
City Clerk

APPROVED AS TO FORM:

JOHN L. FELLOWS III
City Attorney

By: 
Heather K. Whitham,
Deputy City Attorney

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