

**NON-EXCLUSIVE LICENSE AGREEMENT BETWEEN THE
CITY OF HUNTINGTON BEACH AND
THE HUNTINGTON BEACH CREDIT UNION
FOR ATM SERVICES AT CITY HALL**

THIS NON-EXCLUSIVE LICENSE AGREEMENT (the "Agreement") is made and entered into by and between the CITY OF HUNTINGTON BEACH, a municipal corporation of the State of California ("LICENSOR"), and THE HUNTINGTON BEACH CREDIT UNION ("LICENSEE"), a non-profit 501(c)(14) organization.

WHEREAS, LICENSEE represents and warrants that it is a non-profit 501(c)(14) organization that provides banking and investment services to its members in the City of Huntington Beach; and,

WHEREAS, the LICENSEE currently leases a 1,359 square foot room at City Hall located at 2000 Main Street Room B-272, Huntington Beach, CA 92648 that serves as a financial center for providing low rate financial products and banking services; and,

WHEREAS, LICENSEE desires to provide an automated teller machine "ATM" at City Hall, as an established convenience for their members, including Huntington Beach city employees; and,

WHEREAS, LICENSOR has relied on LICENSEE's above representation and warranties as a basis for entering into this Agreement and on that basis desires to allow such use.

NOW, THEREFORE, in consideration of the promises and agreements herein after made and exchanged, the parties covenant and agree as follows:

1. **PREMISES AND PERMISSION TO USE**

LICENSOR owns the real property known as City Hall located in Huntington Beach, California (hereafter the "Premises). LICENSOR agrees to allow LICENSEE to install an ATM, which shall mean an electric processing device which accepts or dispenses cash in connection with a credit or deposit account, but shall not include any device used solely to facilitate check guarantees or

check authorizations or used in connection with the acceptance or dispensing of cash on a person-to-person basis, such as by a store cashier on the Premises in the area identified in **EXHIBIT A** attached hereto and incorporated by this reference ("Location"). The Location is generally directly outside the entrance to the Huntington Beach Police Department. LICENSOR grants to LICENSEE a non-exclusive license to occupy and operate the ATM within the Premises. The license granted herein is conditioned on LICENSEE operating the ATM discussed herein.

The right and permission of LICENSEE is subordinate to the prior and paramount right of LICENSOR to use the Premises for public purposes to which it is now and may, at the option of LICENSOR, be devoted. LICENSEE undertakes and agrees to use the Premises and to exercise this license at all times in such manner as will not unreasonably interfere with the full use and enjoyment of the Premises by LICENSOR. LICENSEE's exclusive rights hereunder shall automatically be revoked if LICENSEE's ATM is not open for business to the public for more than an aggregate of thirty (30) days in any six (6) calendar month period, for any reason other than the default of LICENSOR under this license.

LICENSEE hereby acknowledges title to the Premises is vested in LICENSOR and agrees never to assail or resist the same, and further agrees that LICENSEE's use and occupancy of the Premises shall be referable solely to the permission herein given. LICENSEE agrees to obtain prior written approval from LICENSOR which may be withheld at the sole discretion of LICENSOR before any alteration or expansion of the Premises.

2. **LICENSEE'S RESPONSIBILITIES**

A. **General Requirements:**

(1) Obtain and maintain any governmental licenses, permits and approvals required to enable LICENSEE to operate the ATM as provided herein on the Premises;

(2) Provide fully qualified staff in accordance with any applicable governmental and/or City requirements;

(3) Provide any equipment, supplies and materials required to operate the ATM;

(4) LICENSEE is aware of and agrees that the City at its sole and absolute discretion may change location of equipment, hours of operation, construction schedule, maintenance, etc.

(5) LICENSEE shall not obstruct, cause or permit any obstruction surrounding the Premises or any part thereof in any manner whatsoever, including that it meets all ADA requirements and standards.

B. Maintenance and Repair Requirements: LICENSEE shall, at its sole cost and expense, maintain its fixtures, equipment (including the ATM), and furnishings as follows:

(1) LICENSEE shall keep and maintain its fixtures, equipment, and furnishings in good order and repair, including all transmission lines used by LICENSEE for computer data and processing and transmission;

(2) Maintenance of the ATM by LICENSEE will include but is not limited to repairing hardware, upgrading the software, replenishing cash, providing armored carrier service, paying for data transmission, marketing and other day-to-day utility costs.

(3) LICENSEE shall pay for telephone, data lines, or related services required for LICENSEE's operations;

C. Operation of the ATM:

LICENSEE shall replenish cash as required by usage of the ATM and shall provide receipt(s) and other forms for operation of the ATM as necessary. LICENSOR shall provide access to the

Location to LICENSEE during normal business hours so that it may carry out its operation, maintenance, and repair responsibilities.

D. Care and Location of ATM:

(1) Any and all graffiti shall be removed by LICENSEE at its own expense from the licensed Location within forty-eight (48) hours of notice thereof.

(2) LICENSEE shall not obstruct, cause or permit any obstruction surrounding the Location or ATM or any parts thereof in any manner whatsoever.

(3) LICENSEE shall comply with all written notice served by LICENSOR with regard to the care and maintenance of the Location.

(4) Any written notice hereunder shall specify the work to be done, the estimated cost thereof, and the period of time deemed to be reasonably necessary for completion of such work. Should LICENSEE fail to comply with LICENSOR's written notice within fifteen (15) days, or within a time deemed reasonably necessary, LICENSEE shall pay over to LICENSOR the estimated cost of such work as set forth in the notice. Upon receipt of such sum, LICENSOR shall then proceed to cause the required work to be performed.

3. LICENSOR'S RESPONSIBILITIES

LICENSOR shall be responsible for providing to LICENSEE the Premises for LICENSEE to provide services set forth herein, including allowing ATM owner/employees or their designees' access to the ATM for repair, maintenance, cash removal and/or any other access requirements.

4. LICENSE FEE

LICENSOR agrees to provide LICENSEE with physical space for the placement of the ATM at no charge; however, LICENSEE is required to pay all utility fees outlined as set forth herein.

5. **TIME OF ESSENCE**

Time shall be the essence of this Agreement and each and all of its terms, covenants or conditions in which performance is a factor.

6. **TERM**

This Agreement shall be effective at 12:01 a.m. on _____, 2023, ("Effective Date") for a five-year term, which shall expire at 11:59 p.m. on _____, 20____, unless extended, or sooner terminated, as provided for herein. Construction, installation and operation of the ATM shall be complete ("Commencement Date") within one-hundred and eighty days of the Effective Date. At the end of the initial term, this Agreement may renew for five additional one-year options unless either party, with or without cause, gives the other party a minimum of thirty (30) days written notice prior to expiration of the lease of its intent not to renew for the additional term.

7. **REVOCATION**

Notwithstanding any provision of this License, LICENSOR shall have the right to revoke this License in whole at its sole and absolute discretion, for any reason, upon ninety (90) days written notice to LICENSEE. In the event of revocation LICENSEE shall be required to remove its ATM as set forth herein.

8. **NON-POSSESSORY INTEREST**

LICENSOR retains full possession of the Premises and any improvements or personal property owned by LICENSOR on the Premises. LICENSEE will not acquire any interest in the Premises, improvements or property, either temporary, permanent, irrevocable, possessory or otherwise, by reason of this Agreement or by the exercise of the permission given herein. LICENSEE shall make no claim to any such interest. Any violation of this provision by LICENSEE will immediately void and terminate this Agreement.

9. **NON-RECORDING**

LICENSEE shall not record this Agreement.

10. **SECURITY**

LICENSEE shall have the right, and LICENSOR shall have no obligation, to provide security for ATM(s). LICENSEE shall have the right to have an unarmed security guard at the ATM(s) at all times and to employ a security service (which service may utilize armed guards) for armored transport deliveries to and from the Location. Except as set forth in the immediately preceding sentence, LICENSEE may not utilize armed security guard services at the ATM. With LICENSOR's prior written consent, which consent shall not be unreasonably withheld or delayed, LICENSEE may install such electronic surveillance equipment, security devices, gates, and other security equipment within the Location as LICENSEE deems reasonably necessary.

11. **INDEMNIFICATION, DEFENSE AND HOLD HARMLESS AGREEMENT**

LICENSEE hereby agrees to protect, defend, indemnify and hold harmless LICENSOR, its officers, elected or appointed officials, employees, agents and volunteers from and against any and all claims, damages, losses, expenses, judgments, demands and defense costs (including, without limitation, costs and fees of litigation of every nature or liability of any kind or nature) arising out of or in connection with LICENSEE's, (or LICENSEE's sublicensees, if any) negligent (or alleged negligent) performance of this Agreement or its failure to comply with any of its obligations contained in this Agreement by LICENSEE, its officers, agents or employees except such loss or damage which was caused by the sole negligence or willful misconduct of LICENSOR. LICENSOR shall be reimbursed by LICENSEE for all costs and attorneys' fees incurred by LICENSOR in enforcing this obligation. LICENSEE will conduct all defense at its sole cost and expense and LICENSOR shall approve selection of LICENSEE's counsel. This indemnity shall apply to all claims

and liability regardless of whether any insurance policies are applicable. The policy limits do not act as limitation upon the amount of indemnification to be provided by LICENSEE.

LICENSEE hereby releases LICENSOR from any claims, loss, or damage that LICENSEE might sustain by reason of a robbery of or theft or attempted theft from the Locations unless perpetrated by an employee or agent of LICENSOR. LICENSOR hereby releases LICENSEE from any claims, loss, or damage that LICENSOR might sustain by reason of a robbery or attempted robbery of or theft or attempted theft from the Locations unless perpetrated by an employee or agent of LICENSEE.

12. **WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY INSURANCE**

LICENSEE acknowledges awareness of Section 3700 *et seq.* of the California Labor Code, which requires every employer to be insured against liability for workers' compensation. LICENSEE covenants that it shall comply with such provisions prior to the commencement of this Agreement. LICENSEE shall obtain and furnish to LICENSOR workers' compensation and employers' liability insurance in amounts not less than the State statutory limits. LICENSEE shall require all its sublicensees and contractors to provide such workers' compensation and employers' liability insurance for all of the sublicensees' and contractors' employees. LICENSEE shall furnish to LICENSOR a certificate of waiver of subrogation under the terms of the workers' compensation and employers' liability insurance and LICENSEE shall similarly require all sublicenses and contractors to waive subrogation.

13. **GENERAL PUBLIC LIABILITY INSURANCE**

In addition to the workers' compensation and employers' liability insurance and LICENSEE's covenant to defend, hold harmless and indemnify LICENSOR, LICENSEE shall obtain and furnish to LICENSOR, a policy of general public liability insurance, including motor vehicle coverage against

any and all claims arising out of or in connection with the Premises. This policy shall indemnify LICENSEE, its officers, employees and agents, while acting within the scope of their duties, against any and all claims arising out of or in connection with the Premises, and shall provide coverage in not less than the following amount: combined single limit bodily injury and property damage, including products/completed operations liability and blanket contractual liability, of One Million Dollars (\$1,000,000.00) per occurrence. If coverage is provided under a form which includes a designated general aggregate limit, the aggregate limit must be no less than One Million Dollars (\$1,000,000.00) for the Premises. This policy shall name LICENSOR, its officers, elected or appointed officials, employees, agents, and volunteers as Additional Insureds, and shall specifically provide that any other insurance coverage which may be applicable to the Agreement shall be deemed excess coverage and that LICENSEE's insurance shall be primary.

Under no circumstances shall said above-mentioned insurance contain a self-insured retention, or a "deductible" or any other similar form of limitation on the required coverage in excess of \$5,000.

14. **CERTIFICATES OF INSURANCE; ADDITIONAL INSURED ENDORSEMENTS**

Prior to commencement of this Agreement, LICENSEE shall furnish to LICENSOR certificates of insurance subject to approval of the City Attorney evidencing the foregoing insurance coverages as required by this Agreement; these certificates shall:

- A. provide the name and policy number of each carrier and policy;
- B. shall state that the policy is currently in force; and
- C. shall promise to provide that such policies shall not be canceled or modified without thirty (30) days' prior written notice of LICENSOR; however ten (10) days' prior written notice in the event of cancellation for nonpayment of premium.

LICENSEE shall maintain the foregoing insurance coverages in force during the entire term of the Agreement or any renewals or extensions thereof or during any holdover period.

The requirement for carrying the foregoing insurance coverages shall not derogate from LICENSEE's defense, hold harmless and indemnification obligations as set forth in this Agreement. LICENSOR or its representatives shall at all times have the right to demand the original or a copy of any or all the policies of insurance. LICENSEE shall pay, in a prompt and timely manner, the premiums on all insurance hereinabove required.

15. **INSURANCE HAZARDS**

LICENSEE shall not commit or permit the commission of any acts on the Premises nor use or permit the use of the Premises in any manner that will increase the existing rates for, or cause the cancellation of any liability, property, or other insurance policy for the Premises or required by this Agreement. LICENSEE shall, at its sole cost and expense, comply with all requirements of any insurance carrier providing any insurance policy for the Premises or required by this Agreement necessary for the continued maintenance of these policies at reasonable rates.

16. **LICENSOR'S OPTION TO CLOSE THE PREMISES**

LICENSOR may close the Premises without liability whatsoever and without advance notice to LICENSEE therefore at any time as LICENSOR in its sole discretion deems necessary for the protection of life, limb or property, or for public health, safety or welfare purposes, or upon reasonable notice to effect any repair, remodeling or rebuilding deemed necessary by LICENSOR in its sole discretion. In addition, upon reasonable notice, LICENSOR may close the Premises at its sole discretion without liability whatsoever if LICENSOR is hosting an event in the area that conflicts with the operation of the ATM. Determination of said conflict shall be at the sole discretion of the Director of Community Services.

17. **PUBLIC NECESSITY**

LICENSOR may, suspend or revoke this Agreement without liability to LICENSEE when public necessity so requires, or suspend operation immediately hereunder temporarily in the event of public emergency, as may be determined by the City Administrator in his or her sole discretion. Such suspension will terminate when the public necessity or emergency no longer exists.

18. **PAYMENT OF UTILITY CHARGES**

LICENSEE shall open its own account with Southern California Edison and shall pay, and hold LICENSOR and the property of LICENSOR, free and harmless from, all charges for electricity services on the Premises during the entire term of this Agreement or any renewals or extensions thereof. In the event separate meters are not utilized, LICENSEE shall pay LICENSOR two-hundred dollars (\$200) a month for electricity usage for the first twelve (12) months. After twelve (12) billing cycles, LICENSOR will review the twelve (12) month total of electricity usage and will either reimburse or request for additional payment, ultimately breaking even. The utility fee shall be payable in arrears on the twentieth (20th) day of each calendar month during the initial Term, or the first business day following the twentieth (20th) day if the twentieth (20th) days falls on the weekend, and any applicable Renewal Term for the prior calendar month. Payment shall be made payable to the City of Huntington Beach, P.O. Box 711, Huntington Beach, CA 92648-0711, or at such other place or places as LICENSOR may from time designate by written notice delivered to LICENSEE, within fifteen (15) days after the end of the calendar month. A late charge equal to ten percent (10%) per month shall be added on the 10th day after any payment hereunder is due, but unpaid. Monitoring of utility usage will be done by Community Development staff in collaboration with the Finance Department, Accounts Payable staff. LICENSEE shall have the right to place utilities on LICENSOR's Property in order to service LICENSEE's Facilities provided the location of such utilities is pre-approved by LICENSOR and the servicing utility provided, which approval shall not

be unreasonably withheld and shall be given within thirty (30) days of a request to locate utilities from LICENSEE. LICENSEE shall be responsible to relocate its utilities or other substructures, at LICENSEE's sole cost and expense, within forty-five (45) days after receiving written notice to do so by LICENSOR. LICENSOR shall only require relocation is necessary to permit LICENSOR's ordinary use of the Property for public purposes. LICENSEE shall comply with all requirements to underground utilities.

19. **PERSONAL PROPERTY TAXES AND BUSINESS LICENSE**

LICENSEE shall timely pay all taxes, assessments, or other charges levied or imposed by any governmental entity on the trade fixtures and other personal property placed by LICENSEE in, on, or about the Premises including, without limiting the generality of the other terms used in this Section, any shelves, counters, partitions, fixtures, machinery and equipment, brought on the Premises by LICENSEE. If required by ordinance, LICENSEE shall maintain a business license from LICENSOR.

20. **PAYMENT OF OBLIGATIONS**

LICENSEE shall promptly pay, at its sole cost and expense, before they become delinquent, any and all bills, debts, liabilities and obligations incurred by LICENSEE in connection with LICENSEE's occupation and use of the Premises and/or operation of the ATM. Upon request, LICENSEE shall promptly furnish to LICENSOR satisfactory evidence establishing such payment.

21. **COMPLIANCE WITH LAWS**

LICENSEE, at its sole cost and expense, shall comply with all statutes, ordinances, regulations and requirements of all governmental entities, including, without limitation, Federal, State, county or municipal, relating to LICENSEE's use and occupancy of the Premises whether such statutes, ordinances, regulations and requirements be now in force or hereinafter enacted. This Agreement is expressly subject to the laws, regulations and policies of LICENSOR. LICENSEE shall deliver to LICENSOR a copy of any notice from any governmental entity received by LICENSEE regarding any

alleged violation of law regarding the Agreement or Premises or from any person allegedly entitled to give notice under any conditions, covenants, or restrictions binding or affecting the Premises. The judgment of any court of competent jurisdiction, or the admission by LICENSEE in a proceeding brought against LICENSEE by any government entity, that LICENSEE has violated any such statute, ordinance, regulation or requirement shall be conclusive as between LICENSOR and LICENSEE and shall be grounds for termination of this Agreement by LICENSOR.

22. **DAMAGE, DESTRUCTION OR NUISANCE**

LICENSEE shall not commit or permit the commission by others of any damage or destruction of, on, or to the Premises. LICENSEE shall not maintain, commit or permit the maintenance or commission of any nuisance as defined in Section 3479 and/or Section 3480 of the *California Civil Code* on the Premises; and LICENSEE shall not use or permit the use of the Premises for any unlawful purpose.

23. **LIENS**

LICENSEE shall not permit any mechanics' or materialmens' or other liens to stand against the Premises by reason of any use or occupancy by LICENSEE, or any person claiming under LICENSEE. If LICENSEE desires to contest or withhold any payment which would lead to the placement of any liens or contest any such liens, then prior to commencing such contest and withholding, LICENSEE shall furnish LICENSOR with a bond to secure the payment of such obligation and obtain LICENSOR's prior written approval of the bond.

24. **NO CONDEMNATION VALUE TO LICENSEE**

If any property described herein or hereinafter added hereto is taken in eminent domain, the entire award shall be paid to LICENSOR. This Agreement shall have no condemnation value to LICENSEE.

25. **CONSTRUCTION/INSTALLATION**

A. **Construction.** LICENSEE shall install its ATM including any modifications needed to appropriately secure the machine. Such modifications or construction of improvements, shall be in a manner consistent with the quality, design and aesthetics of the determined and approved jointly by LICENSEE and LICENSOR, per **Exhibit B**, as it may require for the proper and appropriate operation and identification of its ATM. Improvements may include, but are not necessarily limited to, appropriate electrical power from the nearest appropriate subpanel and telephone line.

B. **Fixture, Equipment and Furnishings.** LICENSEE shall furnish all fixtures, equipment, and furnishings which it deems necessary or desirable for operation and identification of the ATM(s). Fixtures, equipment, and furnishings may include, but are not necessarily limited to, telephone, data, and security cabling and equipment to the Locations.

C. **Site Preparation.** CITY will provide the Location site (including the surrounding area necessary for the construction of the ATM(s)) free and clear of merchandise, trade fixtures, equipment, etc.

26. **SIGNS**

LICENSEE shall not place nor maintain, nor permit any other person to place or maintain, on or in any exterior door, wall, or window of said Location any sign, awning, canopy, marquee, or other advertising without the express written consent and approval of LICENSOR which may be withheld at its sole discretion. Furthermore, LICENSEE shall not place any decoration, lettering, or advertising matter on the glass of any interior or exterior shop window at the Location without the written approval and consent of LICENSOR which may be withheld at its sole discretion. Should LICENSOR consent to any such sign, awning, canopy, marquee, decoration, or advertising matter, LICENSEE shall

maintain it at all times during this License in good appearance and repair. On expiration or sooner revocation or termination of this License, any of the items mentioned in this section not removed from said Location by LICENSEE on such expiration or revocation or termination of this License may, without damage or liability, be destroyed by LICENSOR. This License is expressly contingent upon approval of all signs by both LICENSOR and LICENSEE.

27. **RESTORATION AND SURRENDER OF PREMISES/TITLE TO IMPROVEMENTS**

On expiration or termination of this Agreement, LICENSEE shall, without compensation to LICENSEE, promptly surrender and deliver the Premises to LICENSOR in as good condition as such were at the commencement date of this Agreement, reasonable wear and tear excepted. LICENSEE also shall, without compensation to LICENSEE, surrender all improvements to LICENSOR in good condition and repair, ordinary wear and tear excepted, free and clear of all liens and encumbrances. LICENSEE also shall remove all of its trade fixtures and other personal property (all trade fixtures and/or personal property purchased by the City shall remain the property of the City and shall not be removed). LICENSOR may in its sole discretion accept all or any portion of the Premises, as then improved with improvements and no sum whatsoever shall be paid to LICENSEE or any other person; or LICENSOR may require LICENSEE to remove all or any portion of such improvements, at LICENSEE's own risk and cost and expense; or LICENSOR may itself remove or have removed all or any portion of such improvements, at LICENSEE's own risk and cost and expense. If required by LICENSOR to do so, in removing any such improvements, LICENSEE shall restore the Premises as nearly as possible to the conditions existing prior to their installation or construction. All such removal and restoration shall be to the satisfaction of LICENSOR and shall be completed within thirty (30) days of the expiration or termination of this Agreement, provided,

however, that LICENSEE shall be considered a holdover LICENSEE after expiration or termination of the Agreement until the time LICENSEE completes this removal and restoration work, including, without limitation, the removal of all of its trade fixtures and other personal property left on the Premises. In addition, all of LICENSEE's trade fixtures and other personal property left on the Premises after the expiration of this 30-day period, regardless of cause, shall be deemed abandoned by LICENSEE. In LICENSOR's sole discretion, it may choose to do one or more of the following: (1) take any or all of such trade fixtures and other personal property as LICENSOR's property; (2) store any or all of such trade fixtures and other personal property in a public warehouse or other location at the sole cost, expense and risk of LICENSEE, and for the account and in the name of LICENSEE; or (3) dispose of any or all of such trade fixtures and other personal property at the sole cost, expense and risk of LICENSEE. In addition, LICENSEE's indemnification, hold harmless and defense obligations set forth in this Agreement shall apply to such trade fixtures and/or other personal property, and to LICENSOR's action with respect thereto.

28. PARTIAL DESTRUCTION

Should any of the building at the Location be partially destroyed by any cause not the fault of LICENSEE or any person in or about the Location with the consent, express or implied, of LICENSEE, this License shall continue in full force and effect and LICENSEE, at LICENSEE's own cost and expense, shall promptly commence and diligently continue and complete the work of repairing and restoring the Location to their prior condition providing such work can be accomplished under all applicable governmental laws and regulations within one hundred eighty (180) working days; provided, however, LICENSEE may terminate this License if LICENSEE gives LICENSOR written notice of LICENSEE's intention to do so within sixty (60) days following such a partial destruction.

29. TOTAL DESTRUCTION

Should said Location or buildings on said Location be so far destroyed by any cause not the fault of LICENSEE or any person in or about said Locations with the consent, express or implied, of LICENSEE, that they cannot be repaired or restored to their former condition within one-hundred eighty (180) working days, LICENSEE may, at LICENSEE's option:

A. Continue this License in full force and effect by repairing and restoring, at LICENSEE's own cost and expense, said Locations to their former condition; or

B. Terminate this License by giving LICENSOR written notice of such termination.

30. **DEFAULT BY LICENSEE**

Should LICENSEE default in the performance of any of the terms, conditions, or obligations contained in the Agreement, LICENSOR may, in addition to the remedies specified herein, re-enter and regain possession of the Premises in the manner provided by the laws of the State of California then in effect.

31. **INSOLVENCY OF LICENSEE**

The insolvency of LICENSEE as evidenced by a receiver being appointed to take possession of all or substantially all of the property of LICENSEE, or the making of a general assignment for the benefit of creditors by LICENSEE, or the filing of a petition in bankruptcy shall terminate this Agreement and entitle LICENSOR to re-enter and regain possession of the Premises.

32. **CUMULATIVE REMEDIES**

The remedies given to LICENSOR in this Agreement shall not be exclusive, but shall be cumulative and in addition to all remedies now and hereafter allowed by law or elsewhere provided in this Agreement.

33. **NO ASSIGNMENT OR SUBLEASE**

This Agreement is personal to LICENSEE, and LICENSEE shall not assign, sublease, transfer or sell this Agreement or any privilege hereunder in whole or in part, and any attempt to do so will be void and confer no right on any third party.

34. **WAIVER OF DEFAULT**

The waiver by LICENSOR of any default by LICENSEE of any of the provisions of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent default by LICENSEE either of the same or another provision of this Agreement.

35. **CONSENT**

When LICENSOR's consent/approval is required under this Agreement, its consent/approval for one transaction or event shall not be deemed to be a consent/approval to any subsequent occurrence of the same or any other transaction or event.

36. **FORCE MAJEURE – UNAVOIDABLE DELAYS**

Should the performance of any act required by this Agreement to be performed by either LICENSOR or LICENSEE be prevented or delayed by reason of an act of God, strike, lockout, labor troubles, inability to secure materials, restrictive governmental laws or regulations, or any other cause except financial inability not the fault of the party required to perform the act, the time for performance of the act shall be extended for a period equivalent to the period of delay, and performance of the act during the period of delay shall be excused. Provided, however, that nothing contained in this Section shall excuse the prompt payment of the License Fee or other consideration by LICENSEE as required by this Agreement or the performance of any act rendered difficult solely because of the financial condition of the party, LICENSOR or LICENSEE, required to perform the act.

37. **NOTICE**

Unless specifically providing for verbal or electronic notice, all notices, certificates, or other communications required to be given hereunder shall be in writing and made in the following manner, and shall be sufficiently given and deemed received when (a) personally delivered; or (b) three (3) business days after being sent via United States certified mail – return receipt requested; or (c) one (1) business day after being sent by reputable overnight courier, in each case to the addresses specified below; provided that LICENSOR and LICENSEE, by notice given hereunder, may designate different addresses to which subsequent notices, certificates or other communications will be sent:

LICENSOR:
City of Huntington Beach
Attn: Director of Community Development
2000 Main Street
Huntington Beach, CA 92647

LICENSEE:
The Huntington Beach Credit Union
Attn: Angela Clitherow, President/CEO
2000 Main Street, Room B-272
Huntington Beach, CA 92648

38. **SURVIVAL**

Terms and conditions of this Agreement, which by their sense and context survive the termination or expiration of this Agreement, shall so survive.

39. **WAIVER OF CLAIMS**

LICENSEE hereby waives any claim against LICENSOR, its officers, elected or appointed officials, employees, agents or volunteers for damage or loss caused by any suit or proceeding directly or indirectly attacking the validity of this Agreement, or any part thereof, or caused by any judgment or award in any suit or proceeding declaring this Agreement null, void or voidable, or delaying the Agreement or any part thereof from being carried out.

40. **CONFLICT OF INTEREST**

LICENSEE warrants and covenants that no official or employee of LICENSOR, nor any business entity in which an official or employee of LICENSOR is interested, (1) has been employed or retained by LICENSEE to solicit or aid in the procuring of this Agreement; or (2) shall be employed by LICENSEE in the performance of this Agreement without the immediate written divulgence of such fact to LICENSOR. In the event LICENSOR determines that the employment of any such official, employee or business entity is not compatible with such official's or employee's duties as an official or employee of LICENSOR, LICENSEE, upon request of LICENSOR, shall terminate such employment immediately. For default or violation of this Section, LICENSOR shall have the right both to terminate this Agreement without liability and, in its discretion, recover the full amount of any such compensation paid to such official, employee or business entity. No official or employee of LICENSOR shall have any financial interest in this Agreement in violation of the applicable provisions of the *California Government Code*.

41. **INDEPENDENT CONTRACTOR**

LICENSEE is, and shall be, acting at all times in the performance of this Agreement as an independent contractor herein and not as an employee of LICENSOR. LICENSEE shall secure at its expense, and be responsible for all payment of all taxes, social security, state disability insurance compensation, unemployment compensation and other payroll deductions of LICENSEE and its officers, agents and employees and all business licenses, if any, in connection with the services to be performed hereunder.

42. **SECTION HEADINGS**

The titles, captions, section, paragraph and subject headings, and descriptive phrases at the beginning of the various sections in this Agreement are merely descriptive and are included solely for convenience of reference only and are not representative of matters included or excluded from such

provisions, and do not interpret, define, limit or describe, or construe the intent of the parties or affect the construction or interpretation of any provision of this Agreement.

43. **MODIFICATION**

No waiver or modification of any language in this Agreement shall be valid unless in writing and duly executed by both parties.

44. **INTERPRETATION OF THIS AGREEMENT**

The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any of the parties. If any provision of this Agreement is held by an arbitrator or court of competent jurisdiction to be unenforceable, void, illegal or invalid, such holding shall not invalidate or affect the remaining covenants and provisions of this Agreement. No covenant or provision shall be deemed dependent upon any other unless so expressly provided here. As used in this Agreement, the masculine or neuter gender and singular or plural number shall be deemed to include the other whenever the context so indicates or requires. Nothing contained herein shall be construed so as to require the commission of any act contrary to law, and wherever there is any conflict between any provision contained herein and any present or future statute, law, ordinance or regulation contrary to which the parties have no right to contract, then the latter shall prevail, and the provision of this Agreement which is hereby affected shall be curtailed and limited only to the extent necessary to bring it within the requirements of the law.

45. **GOVERNING LAW**

This Agreement shall be governed and construed in accordance with the laws of the State of California.

46. **ATTORNEY'S FEES**

In the event suit is brought by either party to construe, interpret and/or enforce the terms and/or provisions of this Agreement or to secure the performance hereof, each party shall bear its own

attorney's fees, such that the prevailing party shall not be entitled to recover its attorney's fees from the non-prevailing party.

47. **DUPLICATE ORIGINAL**

The original of this Agreement and one or more copies hereto have been prepared and signed in counterparts as duplicate originals, each of which so executed shall, irrespective of the date of its execution and delivery, be deemed an original. Each duplicate original shall be deemed an original instrument as against any party who signed it.

48. **ENTIRETY**

The parties acknowledge and agree that they are entering into this Agreement freely and voluntarily following extensive arm's length negotiations, and that each has had the opportunity to consult with legal counsel prior to executing this Agreement. The parties also acknowledge and agree that no representations, inducements, promises, agreements or warranties, oral or otherwise have been made by that party, or anyone acting on that party's behalf, which are not embodied in this Agreement, and that that party has not executed this Agreement in reliance on any representation, inducement, promise, agreement, warranty, fact or circumstance not expressly set forth in this Agreement. The Agreement, and the attached exhibits, contain the entire agreement between the parties respecting the subject matter of this Agreement, the Premises, the licensing of the Premises to LICENSEE, or the term created under this Agreement and supersede all prior understandings and agreements, whether oral or in writing between the parties respecting the subject matter hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their authorized officers on _____, 20__.

LICENSEE:

THE HUNTINGTON BEACH CREDIT UNION

By: Angela K. Clitherow
Angela K. Clitherow

print name

ITS: (circle one) Chairman President Vice President

AND

By: Melvin Bowman
Melvin Bowman

print name

ITS: (circle one) Secretary Chief Financial Officer/Asst. Secretary – Treasurer

LICENSOR:

CITY OF HUNTINGTON BEACH, a municipal corporation of the State of California

Mayor

City Clerk

INITIATED AND APPROVED:

Harold Lee Dean
Director of Community Development

REVIEWED AND APPROVED:

City Manager

APPROVED AS TO FORM:

[Signature]
City Attorney WV

EXHIBIT A
Location

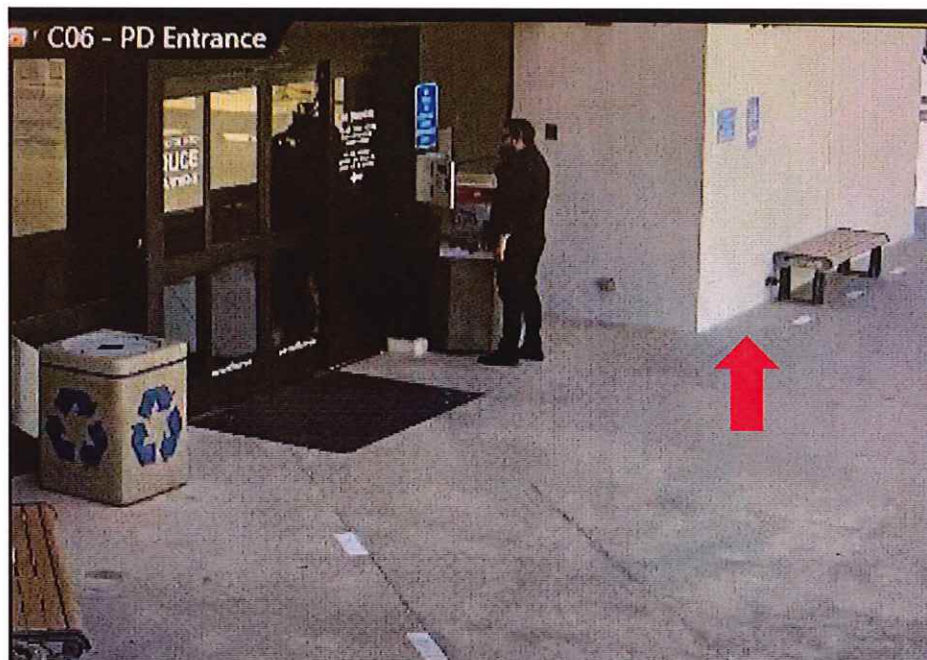
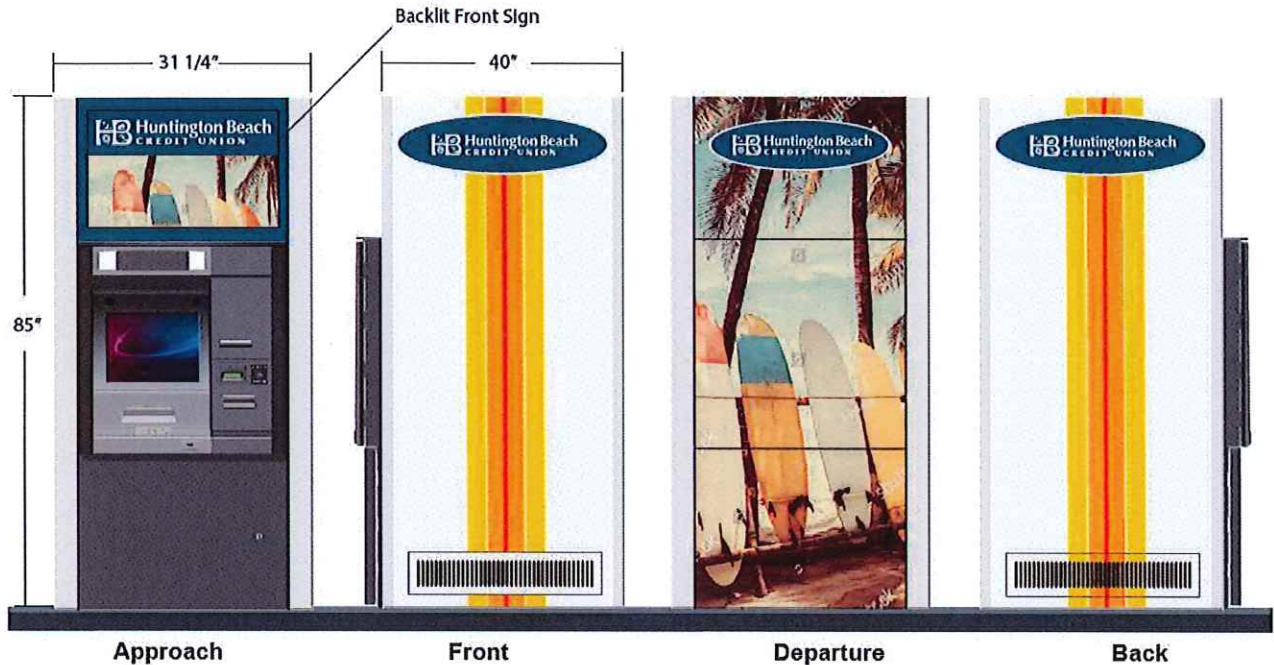


EXHIBIT B

ATM Design



Huntington BeachCity Employees FCU		COMPANION <small>The artwork presented in this document are protected under U.S. and International Patents and Company name and are the sole property of Companion. Any reproduction in whole or in part without written permission is prohibited.</small> US Patent # 6,457,277 B1		<small>Model 3605 Surround Screen with 7705ATM February 01, 2022 C/O EFCU/ 3605-GWW_7705_HBCEFCU_V1</small>	<small>Colors: Print Artwork: Vector Network Decal: NA Graphic panel: NA Note: Rendered By: JBB Approved By:</small>	
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CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
04/05/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER AUTOMATIC DATA PROCESSING INS AGCY 76250717 71 HANOVER ROAD FLORHAM PARK NJ 07932		CONTACT NAME:	
		PHONE (800) 524-7024	FAX
		(A/C, No, Ext):	(A/C, No):
		E-MAIL ADDRESS:	
		INSURER(S) AFFORDING COVERAGE	
		NAIC#	
		INSURER A: Hartford Underwriters Insurance Company	
		30104	
INSURED HUNTINGTON BEACH CREDIT UNION PO BOX E910 HUNTINGTON BEACH CA 92648		INSURER B:	
		INSURER C:	
		INSURER D:	
		INSURER E:	
		INSURER F:	

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	COMMERCIAL GENERAL LIABILITY						EACH OCCURRENCE
	CLAIMS-MADE <input type="checkbox"/> OCCUR <input type="checkbox"/>						DAMAGE TO RENTED PREMISES (Ea occurrence)
							MED EXP (Any one person)
							PERSONAL & ADV INJURY
	GEN L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE
	<input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC						PRODUCTS - COMP/OP AGG
	OTHER:						
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)
	ANY AUTO						BODILY INJURY (Per person)
	ALL OWNED AUTOS						BODILY INJURY (Per accident)
	HIRED AUTOS						PROPERTY DAMAGE (Per accident)
	SCHEDULED AUTOS						
	NON-OWNED AUTOS						
	UMBRELLA LIAB						EACH OCCURRENCE
	EXCESS LIAB						AGGREGATE
	DED <input type="checkbox"/> RETENTION \$ <input type="checkbox"/>						
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						X PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/>
A	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	Y/N <input type="checkbox"/>	N/A	76 WBG AE5UTN	01/01/2023	01/01/2024	E.L. EACH ACCIDENT \$1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE \$1,000,000
							E.L. DISEASE - POLICY LIMIT \$1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Those usual to the Insured's Operations.

CERTIFICATE HOLDER

City of Huntington Beach
2000 MAIN ST
HUNTINGTON BEACH CA 92648

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Susan L. Castaneda

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ACORD 25 (2016/03)

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By: *[Signature]*
MICHAEL E. GATES
CITY ATTORNEY
CITY OF HUNTINGTON BEACH



INSURANCE AND INDEMNIFICATION WAIVER MODIFICATION REQUEST

✓
C.R.

1. Requested: Risk Management
2. Date: February 2, 2023
3. Name of contractor/permittee: Huntington Beach City Employees Credit Union
4. Description of work to be performed: Banking
5. Value and length of contract: 5 year lease
6. Waiver/modification request: General Liability Coverage
7. Reason for request and why it should be granted: Unable to comply with \$1,000,000 coverage requirement
8. Identify the risks to the City in approving this waiver/modification: Low

Uncle P. P.

Department Head Signature

2/13/2023

Date:

APPROVALS

Approvals must be obtained in the order listed on this form. Two approvals are required for a request to be granted. Approval from the City Administrator's Office is only required if Risk Management and the City Attorney's Office disagree.

1. Risk Management

☒ Approved ☐ Denied

[Signature]
Signature

2-2-23
Date

2. City Attorney's Office

☐ Approved ☐ Denied

[Signature]
Signature

2-16-23
Date

3. City Manager's Office

☐ Approved ☐ Denied

Signature

Date

If approved, the completed waiver/modification request is to be submitted to the City Attorney's Office along with the contract for approval. Once the contract has been approved, this form is to be filed with the Risk Management Division of Human Resources

RISK Mgt. FEB14'23 PM 4:45

CUMIS INSURANCE SOCIETY, INC.
CERTIFICATE OF INSURANCE

This is to certify that such insurance policies as indicated below by policy number have been issued on forms in current use by the Society. Hazards covered are indicated by (X). This CERTIFICATE OF INSURANCE neither affirmatively nor negatively amends, extends, or alters the coverage afforded by these policies. The insurance afforded by the policies described herein is subject to all the terms, exclusions and conditions of such policies. Aggregate limits shown may have been reduced by paid claims. This certificate is issued as a matter of information only and confers no rights upon the certificate holder.

Name and Address of Certificate Holder

City of Huntington Beach
2000 Main St
Huntington Beach CA 92648 2702

Type of Insurance	Policy Number	Expiration Date	Limits of Liability
WORKERS' COMPENSATION EMPLOYERS' LIABILITY			Statutory
COMPREHENSIVE GENERAL LIABILITY (X) OCCURRENCE (X) Policy Aggregate Limit	046685	03/26/2024	\$500,000 Each Occurrence \$1,500,000 Policy Aggregate
AUTOMOBILE LIABILITY () Owned Automobiles () Hired Automobiles () Non-Owned Automobiles () Repossessed Automobiles			Combined Single Limit Each Occurrence
EXCESS LIABILITY (X) OCCURRENCE (X) Policy Aggregate Limit	046685	03/26/2024	\$2,000,000 Each Occurrence \$6,000,000 Policy Aggregate
Business Personal Property - Group I	046685	03/26/2024	\$384,760

Should any of the described policies be cancelled before the expiration date noted, the Society will mail 45 days prior written notice of such cancellation to the above named Certificate Holder. The mailing of the notice shall be sufficient proof of notice.

Description and location of operations and/or automobiles and/or property covered:

Premises and operations of Huntington Beach City Employee Credit Union located at 2000 Main St., #B-272, Huntington Beach, CA. Refer to CUPOP 6102 for details.

Business Personal Property is insured at replacement cost. Business Liability and Excess Liability is on a per occurrence basis.

Name and Address of insured:

HUNTINGTON BEACH CREDIT UNION
PO Box 910
Huntington Beach CA 92648 0769

Date: 01/10/2023

By:



AUTHORIZED REPRESENTATIVE

Important Notice

This is your current Certificate of Insurance. This replaces any previously issued Certificate of Insurance that may have been issued to you. The General Liability and Excess Liability coverages may contain both a Per Occurrence and General Aggregate limit. Refer to the Certificate of Insurance for specific coverage, limit and deductible information.

Questions Regarding This Certificate

If you have questions regarding this Certificate, please contact our Customer Response Center at 1-800-637-2676.

**ADDITIONAL INSURED ENDORSEMENT
PREMISES YOU LEASE
PROPERTY AND BUSINESS LIABILITY POLICY**

Various provisions in this Policy restrict Coverage. Read the entire Policy carefully to determine rights, duties and what is and is not covered. The Common Policy Provisions apply to this endorsement. This endorsement modifies the Business Liability Coverage.

Designation of Premises (Part You Lease):

2000 Main St # B-272

Huntington Beach CA 92648 2702

Name of Person or Organization (Additional Insured):

The City of Huntington Beach, its agents, officers, and employees

2000 Main St

Huntington Beach CA 92648 2702

WHO IS AN INSURED

Who Is An Insured

The following is added to the Who Is An Insured provision in the Business Liability Coverage:

The person or organization shown on this endorsement is also an insured, but only with respect to "bodily injury," "property damage," "personal injury" or "advertising injury" arising out of the ownership, maintenance or use of that part of the premises designated on this endorsement, leased to you, and subject to the following Additional Exclusions:

The insurance does not apply:

1. To any "occurrence" which takes place after you cease to be a tenant in said premises; or
2. To structural alterations, new construction or demolition operations performed by or on behalf of the person or organization designated above.

However;

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

**ADDITIONAL INSURED ENDORSEMENT
PREMISES YOU LEASE
PROPERTY AND BUSINESS LIABILITY POLICY
ADDITIONAL CONDITION**

Limit Of Insurance

With respect to the insurance afforded to the additional insured, the following is added to the Limit Of Insurance Additional Condition in the Business Liability Coverage:

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
 2. Available under the applicable Limits Of Insurance shown on the Declarations,
- whichever is less.

This endorsement shall not increase the applicable Limits Of Insurance shown on the Declarations.