

CITY COUNCIL
ATLANTA, GEORGIA

**A RESOLUTION
BY FINANCE/ EXECUTIVE COMMITTEE**

01- R -0115

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN APPROPRIATE CONTRACTUAL AGREEMENT WITH POWERTEL, INC. FOR THE IMPLEMENTATION OF PHASE I OF THE FEDERAL COMMUNICATIONS COMMISSION'S WIRELESS ENHANCED 911 ("E911") OBLIGATION FOR PUBLIC SAFETY ANSWERING POINTS IN THE CITY OF ATLANTA; AND FOR OTHER PURPOSES.

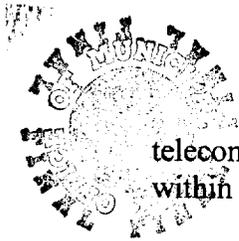
WHEREAS, the Georgia General Assembly declared that the benefits of "911" service should be widely available, regardless of whether a "911" call is placed from a traditional landline telephone or from a wireless telephone and it is also in the public interest that uses of wireless telephones should bear some of the cost of providing this service, as users of landline telephones currently do; and

WHEREAS, the Georgia General Assembly brought wireless telephone service within the scope of Section 46-5-121 of O.C.G.A. and established a means by which local public safety agencies may provide enhanced "911" service to wireless telephone users; and

WHEREAS, "wireless service" means "commercial mobile service" as defined under Section 332(D) of the Federal Telecommunications Act of 1996 (47 U.S.C. Section 157 et seq.), and regulations of the Federal Communications Commission, and includes real-time, two way interconnected voice service which is provided over networks which utilize intelligent switching capability and offer seamless handoff to customers; and

WHEREAS, "wireless enhanced "911" charge" means a contribution to the local government for the cost to the local government of implementing or upgrading, and maintaining, an emergency "911" system which is capable of receiving and utilizing automatic number identification, the location of the base station or cell site which receives the "911" call, and the location of the wireless telecommunications connection as it relates to "911" calls made from a wireless telecommunications connection. Nonrecurring and recurring installation, maintenance, service, and network charges of a wireless service supplies to provide the aforementioned information and other cost which may be paid with money from the Emergency Telephone System Fund pursuant to Section 46-5-134 subsection (e), of the O.C.G.A.; and

WHEREAS, O.C.G.A. Section 46-5-133 authorizes any local government which prior to 1988 operated or contracted for the operation of an enhanced emergency telephone number "911" system which is capable of providing or provides enhanced "911" service to persons or entities with a wireless telecommunications, connection, excluding a military base, is authorized to adopt a resolution to impose a monthly wireless enhanced "911" charges upon each wireless



telecommunications connection subscribed to by telephone subscribers whose billing address is within the jurisdiction of the local government; and

WHEREAS, Section 46-5-134(a)(2)(a) provides that wireless enhanced "911" charges may not exceed the monthly "911" charge imposed upon subscribers of exchange access facility for land lines and in no event, shall such wireless enhanced "911" charge exceed \$1.00 per month per wireless telecommunications connection provided to the telephone subscriber; and

WHEREAS, each service provider that collects "911" or wireless enhanced "911" charges on behalf of a local government is entitled to retain as an administrative fee an amount equal to 3% of the gross "911" or wireless enhanced "911" charge receipts to be remitted to the local government; and

WHEREAS, before July 1, 2002, 30¢ of the monthly wireless enhanced "911" charge imposed shall be deposited in a separate restricted reserve account of the Emergency Telephone System Fund; and

WHEREAS, the City and the Carrier acknowledge that there is a need to mutually support one another to achieve these goals, including supplying each other with necessary technical and other information, and to the extent allowed by law, protecting such information from disclosure to persons who are not necessary to the provision of such service, and providing each other with information and personnel as may be necessary for all aspects of the project; and

WHEREAS, it is in the best interest of the City and the Carrier to enter into an E911 Service Agreement for the public safety answering point in the Atlanta City limits.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA, as follows:

Section 1: That the Mayor be and is hereby authorized to execute appropriate contractual agreements with Powertel, Inc. to implement Phase I of the Federal Communication Commission's Wireless Enhanced 911 ("E911") obligation for public safety answering points in the City of Atlanta.

Section 2: That such agreement shall be for an initial term of one (1) year commencing on the date of the agreement; with an option to renew on behalf of the City for an addition one (1) year term.

Section 3: That the Carrier shall be entitled to retain as an administrative fee 3% of gross monthly E911 wireless charge receipts collected from subscribers on behalf of the City. For the provisioning of E911 Phase I service in the City of Atlanta, the Carrier shall be entitled to a monthly remittance from the City in an amount equal to Carrier's total number of subscribers in the City's jurisdiction multiplied by zero dollars and twelve cents (\$0.12) per subscriber.

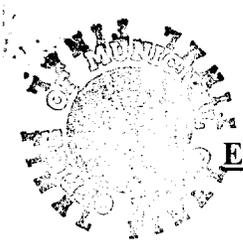


Section 4: That an appropriate contractual agreement shall be prepared for execution by the Mayor, to be approved by the City Attorney as to form.

Section 5: That such contractual agreement shall not become binding on the City, and the City shall not incur any liability upon the same until such agreement has been approved as to form by the City Attorney, executed by the Mayor, sealed by the Municipal Clerk and delivered to the contracting party.

Section 6: That a restricted reserve account be and is hereby established in Trust Fund 3P02 442107/5***** G11K01109999 wherein \$0.30 will be deposited and used for E911 enhancements; and the remaining \$0.67 (\$1.00 less \$0.03 fee less \$0.30 restricted reserve) is to be deposited in the Emergency E911 Fund 1B03 442106/5***** T31K01109999 to pay for costs associated with E911 and the Carrier's monthly recurring costs (charge to a/c 529033 – "Wireless Monthly Recurring Costs.")

OMC-Amendment Incorporated by tcp 2/16/01



**E-911 SERVICE AGREEMENT BETWEEN THE CITY OF ATLANTA AND
POWERTEL, INC.**

This Agreement, is dated this _____ day of November, 2000, by and between the **CITY OF ATLANTA**, a municipal corporation in the State of Georgia, and **POWERTEL, INC.**, a corporation organized under the laws of the State of Delaware, and authorized to transact business in the State of Georgia, for the implementation of Phase I of the Federal Communications Commission's ("FCC's") wireless Enhanced 911 ("E911") obligation.

RECITALS

WHEREAS, the Georgia General Assembly declared that the benefits of "911" service should be widely available, regardless of whether a "911" call is placed from a traditional landline telephone or from a wireless telephone and it is also in the public interest that uses of wireless telephones should bear some of the cost of providing this service, as users of landline telephones currently do; and

WHEREAS, the Georgia General Assembly brought wireless telephone service within the scope of Section 46-5-121 of O.C.G.A. and established a means by which local public safety agencies may provide enhanced "911" service to wireless telephone users; and

WHEREAS, "wireless service" means "commercial mobile service" as defined under Section 332(D) of the Federal Telecommunications Act of 1996 (47 U.S.C. Section 157 et seq.), and regulations of the Federal Communications Commission, and includes real-time, two-way interconnected voice service which is provided over networks which utilize intelligent switching capability and offer seamless handoff to customers; and



WHEREAS, “wireless enhanced “911” charge” means a contribution to the local government for the cost to the local government of implementing or upgrading, and maintaining, an emergency “911” system which is capable of receiving and utilizing automatic number identification, the location of the base station or cell site which receives the “911” call, and the location of the wireless telecommunications connection as it relates to “911” calls made from a wireless telecommunications connection. Nonrecurring and recurring installation, maintenance, service, and network charges of a wireless service supplies to provide the aforementioned information and other cost which may be paid with money from the Emergency Telephone System Fund pursuant to Section 46-5-134 subsection (e), of the O.C.G.A.; and

WHEREAS, O.C.G.A. Section 46-5-133 authorizes any local government which prior to 1988 operated or contracted for the operation of an enhanced emergency telephone number “911” system which is capable of providing or provides enhanced “911” service to persons or entities with a wireless telecommunications, connection, excluding a military base, is authorized to adopt a resolution to impose a monthly wireless enhanced “911” charge upon each wireless telecommunications connection subscribed to by telephone subscribers whose billing address is within the jurisdiction of the local government;

WHEREAS, Section 46-5-134(a)(2)(a) provides that wireless enhanced “911” charges may not exceed the monthly “911” charge imposed upon subscribers of exchange access facility for land lines and in no event, shall such wireless enhanced “911” charge exceed \$1.00 per month per wireless telecommunications connection provided to the telephone subscriber; and



WHEREAS, each service supplier that collects “911” or wireless enhanced “911” charges on behalf of a local government is entitled to retain as an administrative fee an amount equal to 3% of the gross “911” or wireless enhanced “911” charge receipts to be remitted to the local government; and

WHEREAS, before July 1, 2002, 30¢ of the monthly wireless enhanced “911” charge imposed shall be deposited in a separate restricted reserve account of the Emergency Telephone System Fund; and

WHEREAS, PSAP Entity and Carrier acknowledge that there is a need to mutually support one another to achieve these goals, including supplying each other with necessary technical and other information, and to the extent allowed by law, protecting such information from disclosure to persons who are not necessary to the provision of such service, and providing each other with information and personnel as may be necessary for all aspects of the project.

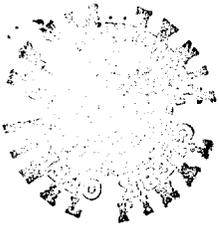
WHEREAS, by Resolution adopted by the Atlanta City Council on or about _____, 2000, the Mayor is authorized to execute this E911 Service Agreement with POWERTEL, INC.

ARTICLE I

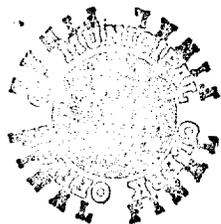
DEFINITIONS

Capitalized terms shall be defined as set forth below or as otherwise defined in this Agreement.

1. 911 Call. A call made by Carrier’s Wireless End User by dialing “911” (and, as necessary, pressing the “Send” or analogous transmitting button) on a Wireless Handset.



2. 911 Provider/LEC.
The current operator of the Selective Router/E911 Tandem that provides the interface to the PSAP for wireline 911 service.
3. Automatic Location Identification (ALI) Database.
A computer database used to update the Call Back Number information of wireless end users and the Cell Site/Sector Information.
4. Call Back Number.
The MIN or MDN, whichever is applicable, of a Wireless End User who has made a 911 Call, which usually can be used by the PSAP to call back the Wireless End User if a 911 Call is disconnected.
5. Carrier.
POWERTEL, INC., the contracting Party identified in the caption of this Agreement.
6. Carrier's subscribers.
Wireless telephone customers who subscribe to the service of Carrier within PSAP Entity Jurisdiction Area.
7. Carrier's Wireless System.
Those mobile switching facilities, cell sites, and other facilities that are used by Carrier to provide service in a Metropolitan Statistical Area, Rural Service Area, Major Trading Area or Basic Trading Area (or portion thereof) as described in 47 C.F.R. § 22.909 and § 24.202, respectively, of the rules and regulations of the FCC.
8. Cell Sector.



An area, geographically defined by Carrier (according to Carrier's own radio frequency coverage data), and consisting of a certain portion or all of the total coverage area of a Cell Site.

9. Cell Site.

Carrier's radio frequency base station that receives calls of Wireless End Users.

10. Cell Site/Sector Information.

Information that indicates (to the receiver of the information) the Cell Site location receiving a 911 Call made by a Wireless End User, and which may also include additional information regarding a Cell Sector.

11. Cell Sector Identifier.

The unique numerical designation given to a particular Cell Sector that identifies that Cell Sector.

12. Cellular Service.

Cellular Radiotelephone Service, cellular Service or its equivalent, as described in Part 22 of Title 47 of the rules and regulations of the FCC, subpart H, as amended from time to time.

13. End User.

Any person or entity receiving service on Carrier's Wireless system.

14. FCC.

The Federal Communications Commission.

15. Host ALI Provider.

The agency or entity in charge of the ALI Database.



16. Host ALI Records.
- Templates from the ALI Database that identify the Cell Site location and the Call Back Number of the Carrier's Wireless End User making a 911 Call.
17. Mobile directory Number (MDN).
- A 10-digit dialable directory number used to call a Wireless Handset.
18. Mobile Identification Number (MIN).
- A 10-digit number assigned to and stored in a Wireless Handset.
19. Party or Parties.
- As described in this Agreement, unless otherwise indicated, the term "Party" shall refer to Carrier and PSAP Entity, individually. The term "Parties" shall refer to Carrier and PSAP Entity collectively.
20. Phase I E911 Service.
- The service specifically defined in this Agreement that Carrier shall provide to PSAP Entity pursuant to the terms and conditions of this Agreement.
21. Phase I E911 Service Area(s).
- Those geographic portions of a PSAP Entity's Jurisdiction Area in which Carrier provides service. Collectively, all such geographic portions of all of the PSAP Jurisdiction Areas subject to this Agreement shall be referred to herein as the "Phase I E911 Service Areas."
22. PSAP Entity (City of Atlanta).
- The City of Atlanta, organized under the laws of the State of Georgia, as the legal entity authorized to enter into this Agreement for the provision of Phase



I E911 Service on behalf of itself and the public safety answering point identified in this Agreement.

23. PSAP(s) Jurisdiction Area.

The geographic coverage area in which PSAP Entity provides emergency 911 service, as such area is described in maps and information to be provided by PSAP Entity.

24. Public Safety Answering Point (PSAP).

A 24-hour communications facility established as an answering location for 911 calls originating within the City of Atlanta, Fulton County, Georgia service area.

25. “Vendor”.

The main vendor with whom Carrier has entered into an agreement for the provision of a Phase I E911 Service solution, and who will provide some of the services necessary for Carrier to successfully deploy Phase I E911 Service.

ARTICLE II

TERMS AND CONDITIONS

1. **Service.** Subject to the terms and conditions hereof (the “Agreement”), Carrier, either directly or through the assistance of a third Party vendor (“Vendor”), will provide PSAP Entity information identifying the calling Party’s mobile telephone number and

...serving cell site ("Phase I Service") for E911 calls placed on Carrier's network from locations identified as within the PSAP Jurisdiction Area. It is the responsibility of PSAP Entity to translate the information provided into the format necessary for their use. PSAP Entity shall furnish Carrier (and any applicable Vendor), at PSAP Entity's expense, all technical data and information relating to PSAP Entity's provision of 911 service as determined by Carrier (or applicable Vendor) to be necessary for the performance of this Agreement. Carrier and/or applicable Vendor shall provide PSAP Entity with applicable service descriptions to enable PSAP Entity to clearly understand the technical requirements, recommendations, escalation procedures and other implications of Phase I Service. PSAP Entity and Carrier (or applicable Vendor) shall cooperate in the development of a service implementation plan which will at a minimum establish target dates for actions necessary for installation and activation of Phase I Service. Carrier and/or applicable Vendor shall determine which technology to employ in order to provide Phase I Service.

A. **Responsibilities of the Parties.**

In addition to any and all other obligations of the Parties set forth in this Agreement, the responsibilities of the Parties shall be as generally described in this Article, and with respect to the routing of 911 Calls.

(1) **Responsibilities of Carrier.**

It shall be Carrier's responsibility, in cooperation with PSAP Entity and necessary third Parties (including, but not limited to, Vendor, 911 Provider/LEC, Host ALI Provider, other public safety answering points, SCP software developers and hardware providers, and other suppliers and



manufacturers), to cooperate fully and work in good faith to successfully implement and provide Phase I E911 Service to PSAP Entity within the Phase I E911 Service Areas. This shall include the following:

- Participating in network design
- Causing its network elements to be installed and functioning efficiently and properly at all times;
- Operating, maintaining and provisioning these network elements;
- Facilitating the development of a non-binding implementation plan which will establish target dates for actions necessary for installation and activation of Phase I E911 Service;
- Acquiring necessary software and equipment;
- Helping to form routing decisions;
- Making good faith calculation of the number of Carrier's Subscribers on a regular basis;
- Entering into necessary interconnection agreements for interconnecting the MSC to Selective Router/E911 Tandems and for interconnecting the SCP to the ALI Database;
- Supervising and maintaining this Agreement and any amendments hereto; and
- Working with Vendor to establish internal performance measures, including, but not limited to, metrics for call volumes, call set-up times, error resolutions and other critical measurements.



- Informing third Party vendors, such a Computer Aided Dispatch (CAD) providers, of data to be delivered with 911 Calls for coordination with PSAP premise-based systems;
- Augmenting the trunks, if necessary, between a Selective Router/E911 Tandem and any PSAP;
- Informing Vendor and Carrier of any PSAP system changes that may affect Phase I E911 Service;
- Cooperating to ensure that necessary changes, modifications and/or updates are made with respect to the ALI Database for successful receipt of Host ALI Records;
- Training 911 Operators to understand the data that they will receive about 911 Calls in connection with Phase I E911 Service;
- Supporting all testing/verification activities to be undertaken by Carrier or Vendor in relation to this Agreement, including, but not limited to, cooperating with all testing/verification activities that require 911 Operator feedback on call delivery and ALI display verification, participating in any testing/verification activities that require PSAPs to call back the tester's Wireless Handset (for both roamers and in-market calls), providing an acceptable number of testing/verification time slots for completion of all Carrier testing/verification activities, and assisting Carrier to secure cooperation from neighboring public safety answering points for any necessary testing/verification or emergency purposes;



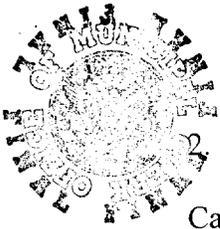
- Participating in state and regional information and educational seminars as the Parties deem appropriate; and
- Cooperating in the creation of a trouble reporting mechanism and associated trouble resolution process.

(3) Responsibilities of Third Parties.

The Parties acknowledge that successful and timely provision of Phase I E911 Service is highly dependent on the timely performance of actions by and cooperation of many third Parties, including, but not limited to, actions that must be completed by Vendor, the 911 Provider/LEC, and the Host ALI, SCP software developers and hardware providers, and various other suppliers and manufacturers.

B. Implementation of Service.

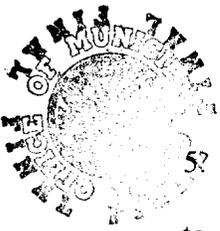
The Parties agree to work together in good faith for the timely implementation and Activation of Phase I E911 Service in each Phase I E911 Service Area and to promptly remedy any discovered errors, failures or inaccuracies which materially affect the delivery of Phase I E911 Service throughout the term of this Agreement. Carrier and/or Vendor intend to initiate certain verification procedures (the "Verification Procedures") in an attempt to confirm that Phase I E911 Service is implemented in accordance with the terms and conditions of this Agreement and any internal standards Carrier may have or develop. PSAP Entity agrees to cooperate fully with Carrier and Vendor for the successful completion of all such Verification Procedures undertaken by Carrier and/or Vendor.



Compensation. As compensation for services provided under this Agreement, Carrier shall be entitled to retain as an administrative fee 3% of the gross monthly 911 or wireless enhanced 911 charge receipts to be remitted by Carrier to PSAP Entity. For the provisioning of E911 Phase I Service, the Carrier shall be entitled to the monthly remittance from the City of Atlanta an amount equal to Carrier's total number of subscribers in the PSAP Jurisdiction Area multiplied by zero dollars and twelve cents (\$0.12) per subscriber. In addition, for one-time network upgrade that the carrier must make to provision E911 Phase I Service for the City of Atlanta, the Carrier shall be entitled to an amount equal to Carrier's total number in the PSAP Jurisdiction Area multiplied by zero dollars and eighteen cents (\$0.18) per subscriber.

3. **Customer Billing.** PSAP Entity acknowledges that Carrier can only bill and remit for Phase I Service on a full county basis. Subject to the foregoing, Carrier will bill its mobile phone users whose billing addresses are in PSAP's Jurisdiction Area the amount required by Section 46-5-134 of the Official Code of Georgia and local ordinance, and will also remit applicable amounts collected from its mobile phone users (less applicable administrative fees in Section 2 above) to PSAP Entity.

4. **Term/Termination.** The initial term of this Agreement shall be for a period of one (1) year commencing on the date agreed to and accepted by PSAP Entity as evidenced on the front of this Agreement. This Agreement will automatically renew thereafter for a one (1) year term unless either Party provides the other with sixty (60) days advance written notice of termination prior to the end of the then-current term. This Agreement may be terminated at any time by Carrier upon sixty (60) days written notice if PSAP Entity fails to pay Carrier or its designated Vendor amounts due hereunder.



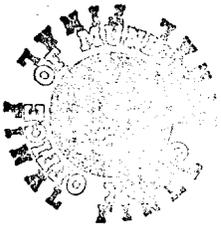
Confidentiality. To the extent permitted by applicable law, PSAP Entity agrees to treat any information provided by Carrier (including, without limitation, customer numbers, Carrier network configuration cell site information and any information provided orally by Carrier) with strict confidentiality and to use it only in fulfillment of PSAP Entity's duty to provide E911 response service. In the event PSAP Entity is served with an Open Records Act Request or subpoena requesting any proprietary information ("Information") provided to PSAP Entity by Carrier, PSAP Entity shall immediately notify Carrier of such request/subpoena and cooperate with Carrier, at Carrier's expense, in order to protect such information from disclosure to the extent permitted by law. The Parties wish to preserve the confidentiality of any Information disclosed to the other in connection with any transaction or agreement into which the Parties may enter.

- a. As a condition to receiving the Information which either Party or any of its employees, representatives or agents (the "Disclosing Party") may furnish to the other (the "Receiving Party") or to which the Receiving Party is afforded access, directly or indirectly, the Receiving Party covenants to hold and treat the information in strictest confidence, to the extent permitted by law, and shall not, without the prior written consent of the Disclosing Party, use/or disclose the Information or any part thereof except as necessary for the purpose of evaluating a possible transaction between the Parties.
- b. As used herein, the term Information shall mean, to the extent permitted by applicable law, all technical, proprietary, sales and financial data and information, whether written or oral, including but not limited to financial



papers and statements, customer lists, research and development activities, vendors, computer hardware and software, products, drawings, trade secrets and information regarding operating procedures, pricing methods, marketing strategies, customer relations, future plans and other information deemed proprietary or confidential by the Disclosing Party, which has been expressly communicated and physically delivered to the Receiving Party by the Disclosing Party. Information disclosed to the Receiving Party by the Disclosing Party hereunder shall be deemed to be Confidential and Proprietary Information.

- c. The term Information does not include information which:
- (1) has been or becomes published or is now, or in the future, in the public domain through (i) no fault of the Parties; (ii) by other than unauthorized disclosure by Receiving Party; or (iii) disclosure to third Parties by the Disclosing Party without similar restriction;
 - (2) prior to disclosure hereunder, is property within the legitimate possession of the Receiving Party;
 - (3) subsequent to disclosure hereunder, is lawfully received from a third Party having rights therein without restriction of third Party's or the Receiving Party's rights to disseminate the information and without notice of any restriction against its further disclosure;
 - (4) is independently developed by the Receiving Party through persons who have not had, either directly or indirectly access to or knowledge of such Information which can be verified by independent evidence;



- (5) is disclosed with the written approval of the Disclosing Party;
 - (6) is obligated to be produced under order of a court of competent jurisdiction or a valid administrative or congressional subpoena; or
 - (7) is or becomes publicly available free of any obligation to keep it confidential.
- d. To the extent permitted by law, Information shall not, without the prior written consent of the Disclosing Party, be disclosed to any person or entity other than employees or agents of Receiving Party who need to know the Information and in those instances only to the extent justifiable by that need.
- e. In further consideration of the disclosure to be made by the Disclosing Party, Receiving Party agrees to promptly redeliver to the Disclosing Party upon request and without relieving Receiving Party of any obligation of confidentiality all written material containing or reflecting any Information (including all copies, extracts or other reproductions) and further agrees that the Disclosing Party shall have no liability to Receiving Party resulting from use of the Information.
- f. Nothing in this Agreement shall impose any obligation upon either Party to consummate a transaction, to enter into any discussion or negotiations with respect thereto, or to take any other action not expressly agreed to herein.



- g. If Receiving Party is requested to disclose any Information, it will promptly notify Disclosing Party to permit Disclosing Party to seek a protective order or take other appropriate action. Receiving Party will also cooperate in Disclosing Party's efforts to obtain a protective order or other responsible assurance that confidential treatment will be afforded the Information to the extent permitted by applicable law. If, in the absence of a protective order, Receiving Party, in the written opinion of its counsel addressed to Disclosing Party, is compelled as a matter of law to disclose the Information, it may disclose to the Party compelling the disclosure only the part of the Information as is required by law to be disclosed (in which case, prior to such disclosure, Receiving Party will advise and consult with Disclosing Party and its counsel as to such disclosure and the nature and wording of such disclosure) and Receiving Party will use its best efforts to obtain confidential treatment therefor.
- h. Disclosing Party makes no representation or warranty as to the accuracy or completeness of the Information and Receiving Party agrees that Disclosing Party and its employees and agents shall have no liability to Receiving Party resulting from any use of the Information.

6. **Indemnification.** In addition to its agreement to obtain and maintain the insurance as set forth hereinabove, Carrier agrees to indemnify and hold harmless the PSAP Entity's officers, agents and employees, from and against any and all losses, expenses, demands, causes of action or claims which arise out of any negligent act or omission of Carrier, or any of its officers, agents or employees, and any and all losses,

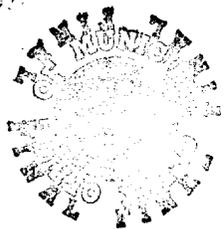


expenses, demands, causes of action or claims which result from any condition created or maintained by Carrier, its subcontractors, its Vendor, or any of their officers, employees or agents, which condition was not specified to be created or maintained by this Agreement. Carrier further agrees that its agreement to indemnify and hold harmless the PSAP Entity, its officers, agents and employees shall not be limited to the limits or the terms of the liability insurance required under this Agreement.

7. **Consequential Damages.**

Neither Party shall be liable to the other for any special, indirect, incidental or consequential damages resulting from any breach of this Agreement.

8. **Dispute Resolution.** Any dispute between the Parties shall be resolved by negotiation between duly authorized, designated representatives of each Party. If, within thirty (30) calendar days following written notice of any dispute by one Party to the other, the Parties have not resolved it, the Parties may escalate the dispute to an officer or equivalent of each Party for resolution. Any dispute that remains unresolved more than thirty (30) calendar days after escalation as referenced above, may be resolved by non-binding mediation or arbitration in accordance with the rules of the American Arbitration Association (AAA). The costs of mediation or arbitration, including the fees and expenses of the mediator or arbitrator (the "Neutral"), shall be shared equally by the Parties. Each Party shall bear the cost of preparing and presenting its case. The Parties agree that the Neutral shall have no power or authority to make awards or issue orders, except as expressly permitted by this Agreement, and in no event shall the Neutral have the authority to make any award that provides for punitive or exemplary damages.



The Parties further agree that any mediation or arbitration shall occur in Atlanta, Georgia and that the laws of the State of Georgia shall apply.

9. Insurance.

During the entire term of this Agreement and any extension or renewal of this Agreement, Carrier shall procure and maintain all of the insurance required in Exhibit "A" which is attached hereto and made a part of this Agreement. In the event of any changed circumstances following the commencement of this Agreement that result in a measurable increased risk of loss or damage in excess of amounts provided for in Exhibit "A" to this Agreement, PSAP Entity, after consulting with Carrier, may alter the minimum limitation of the liability insurance policy or policies required in Exhibit "A" as required to cover such potentially increased loss or damage exposure.

- 10. Books and Records.** Throughout the term of this Agreement and any renewal or extension of this Agreement, Carrier shall maintain in the City of Atlanta, and make available to PSAP Entity within a reasonable time of the PSAP Entity's request therefor, complete and accurate books of account and records of the business, ownership and operations of Carrier with respect to the implementation and provision of E911 service, including without limitation, books of account and records adequate to enable Carrier to demonstrate that at all times throughout the term of this Agreement, that it is, and has been, in compliance with each term and condition of this Agreement. Each document pertaining to financial matters that may be the subject of an audit by PSAP Entity shall be retained by Carrier for a minimum of four (4) years following the date on which such document was

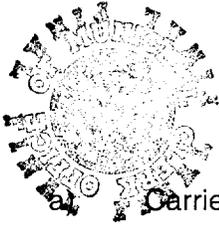


created. Should PSAP Entity reasonably determine that the records are not being maintained in a manner that enables Carrier to demonstrate at all times throughout the term of the Agreement that it is, or has been in compliance with each term and condition of the Agreement, Carrier shall, unless otherwise prohibited by applicable law or commercial impracticability, alter the manner in which the books and records are maintained so that Carrier comes into compliance with this paragraph.

11. **Right of Inspection and Audit.** PSAP Entity and its designated representatives shall have the right to inspect, examine and audit, during normal business hours and upon reasonable advance notice to Carrier, such required notice not to exceed one hundred twenty (120) days subject to extensions requested by Carrier upon reasonable grounds, all documents, records and other information of Carrier, its Vendor, and the implementation of E911 service in the PSAP Jurisdiction Area. Upon request by PSAP Entity, all such documents, records and other information shall be made available within the City of Atlanta in order to facilitate the inspection, examination or audit. Further, during normal business hours and upon reasonable notice to Carrier, PSAP Entity and its designated representatives may inspect and examine any other aspect of Carrier's system as necessary to confirm compliance by Carrier with the terms and conditions of this Agreement.

12. **Equal Employment Opportunity Requirements.**

During the performance of this Agreement, Carrier agrees to comply with all provisions of Part 2, Chapter 2, Article X, Division 11, including Section 2-1414 of the Code of Ordinances, City of Atlanta (PSAP Entity), and do warrant the following:



a) Carrier shall not discriminate against any employee, or applicant for employment, because of **race, color, creed, religion, sex, domestic relationship status, sexual orientation, national origin, gender identity, age, disability, political affiliation or racial profiling**. As used herein, the words "shall not discriminate" shall mean and include without limitation the following:

Recruited, whether by advertising or other means; compensate, whether in the form of rates of pay, or other forms of compensation; selected for training, including apprenticeship; promoted; upgraded; demoted; downgraded; transferred; laid off; and terminated.

Carrier agrees to and shall post in conspicuous places, available to employees and applicants for employment, notice to be provided by the Compliance Officer setting forth the provisions of the non-discrimination clause.

- b) Carrier shall in all solicitation or advertisement for employees, placed by or on behalf of Carrier, state that all qualified applicants will receive consideration for the employment without regard to race, creed, religion, color, sex, national origin, marital status, physical handicap or sexual orientation.
- c) Carrier shall send to each labor union or representative of workers with which Carrier has a collective bargaining agreement or other contract or understanding a notice advising the labor union or workers' representative of the Carrier's commitments under the Equal Employment Opportunity Program for the PSAP Entity and under this Ordinance, and shall post



copies of the notice in conspicuous places available to employees and applicants for employment. Carrier shall register all workers in the skilled trades who are below the journeyman level with the Bureau of Apprenticeship and Training.

- d) Carrier shall furnish all information and reports required by the Contract Compliance Officer pursuant to this Ordinance and shall permit access to the books, records, and accounts during the normal business hours of Carrier by the contracting agency and the Contract Compliance Officer for the purpose of investigation so as to ascertain compliance with the program.
- e) Carrier shall take such action with respect to any subcontractor as the PSAP Entity may direct as a means of enforcing the provisions of paragraphs (a) through (h) herein, including penalties and sanctions for non-compliance; provided, however, that in the event the Carrier becomes involved in or is threatened with litigation as a result of such direction by the PSAP Entity, the PSAP Entity will enter into such litigation as is necessary to protect the interest of the PSAP Entity and to effectuate the Equal Employment Opportunity Program of the PSAP Entity. In the case of contracts receiving Federal assistance, the Carrier or the PSAP Entity may request the United States to enter into such litigation to protect the interests of the United States.
- f) Carrier and its subcontractors, if any, shall file compliance reports at reasonable times and intervals with the PSAP Entity in the form and to the



extent prescribed by the Contract Compliance Officer of the PSAP Entity. Compliance reports filed at such times directed shall contain information as to employment practices, policies, programs and statistics of the Contractor and his subcontractors.

- g) Carrier shall include the provisions of paragraphs (a) through (h) of this Equal Employment Opportunity Clause in every subcontract or purchase order so that such provisions will be binding upon each subcontractor or vendor.
- h) A finding, as hereinafter provided, that a refusal by Carrier or subcontractor to comply with any portion of this program, as herein provided and described, may subject the offending party to any or all of the following penalties:
 - (1) Withholding from Carrier in violation all future payments under the involved public contract until it is determined that Contractor or subcontractor is in compliance with the provisions of the contract;
 - (2) Refusal of all future bids for any public contract with the PSAP Entity or any of its departments or division until such time as the Carrier or subcontractor demonstrates that there has been established and there shall be carried out all of the provisions of the program as provided in this article;
 - (3) Cancellation of the public contract;



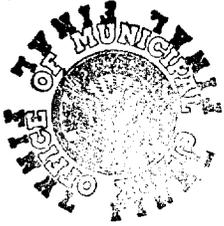
- (4) In a case in which there is substantial or material violation, or the threat of substantial or material violation, of the compliance procedure therein set forth or as may be provided for by the contract, appropriate proceeding may be brought to enforce those provisions, including the enjoining, within applicable laws, of contractors, subcontractors, or other organizations, individuals or groups who prevent or seek to prevent directly or indirectly compliance with the policy as herein provided.



Miscellaneous.

- a. **Waiver.** The failure of either Party at any time to insist on the strict observance of any of the provisions of this Agreement, or to exercise any rights in respect thereto, or to exercise any election herein provided, shall not be construed as a waiver of such provision, right or election or in any way affect the validity of this Agreement. The exercise by either Party of any of its rights of election hereto shall not preclude or prejudice such Party from exercising any other right it might have under this Agreement. No waiver under this Agreement shall be valid unless it is given in writing and it is signed by the designated, authorized representative of the Party giving such waiver.
- b. **Notices.** Except as otherwise provided, all notices that either Party may give to the other pursuant to this Agreement shall be in writing and sent by registered or certified mail, postage prepaid, return receipt requested or overnight courier service, postage prepaid, to the Parties at the addresses provided for notification below and shall be effective three (3) days after being sent as herein provided. These names and addresses may be changed by giving written notice as specified above to the other Party.

Any notice which may be permitted or required under this Agreement shall be in writing and shall be deemed to have been duly given as of the date and the time the same are deposited in the mail, with postage prepaid, to be mailed by registered or certified United States mail, return receipt requested, and addressed to the PSAP Entity as follows:



and to Carrier as follows:

In addition to the foregoing, for problems or issues that may arise with respect to Phase I E911 Service, PSAP Entity shall make available to Carrier and Vendor one "PSAP Daily Contact" for general matters and one "PSAP Billing Contact" for billing matters, as well as one "PSAP Emergency Contact" to serve as a single point of contact available to Carrier to serve as a single point of contact available to Carrier and Vendor on a 24x7x365 basis. As of the effective date of this Agreement, the PSAP Daily Contact is as follows:

The PSAP Billing Contact is as follows:

The PSAP Emergency Contact is as follows:



For problems or issues that may arise with respect to Phase I E911 Service, Carrier shall make available to PSAP Entity an analyst to serve as “Carrier’s Daily Contact” and Carrier shall cause Vendor to make available “Vendor’s Daily Contact” during business hours (approximately 8:00 a.m. to 5:00 p.m.). Carrier shall also cause Vendor to make available on a 24x7x365 basis “Vendor’s Emergency Contact” for urgent problems affecting data and network integrity or service delivery. As of the effective date of this Agreement, “Carrier’s Daily Contact” is as follows:

Vendor’s Daily Contact is as follows:

Vendor’s Emergency Contact is as follows:



c. Assignment. This Agreement shall be binding on the Parties and their successors and assigns. Neither Party may assign this Agreement, by operation of law or otherwise, without the prior written consent of the other Party; provided, however, Carrier may assign this Agreement to its parent company, or any subsidiaries or affiliates, the surviving entity in a merger or consolidation or to a purchaser of substantially all of the assets of the business to which this Agreement relates with PSAP Entity's consent.

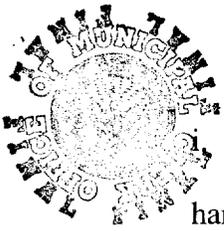
d. Order of Precedence. In the event of a conflict between the body of this Agreement and any exhibit, the provisions shall be read to the extent possible as if they were reconcilable, otherwise the terms of this Agreement shall control.

e. Headings. Headings are for reference only and should not and are not to be used to construe the intent of this Agreement or any part thereof, nor to modify, amplify, or aid in the interpretation or construction of any of the provisions thereof.

f. Survival. If any provision of this Agreement shall be declared unlawful or unenforceable as a matter of law, then that provision shall be deemed void and of no effect and the remainder of the Agreement shall survive such event.

g. Integration. This Agreement and any exhibits incorporated by reference set forth the entire understanding between the Parties with regard to the subject matter hereof and supersede any prior discussion or representations between them with respect thereto. All amendments to this Agreement shall be agreed to in writing and signed by both Parties.

h. Independent Contractor. Carrier's relationship to PSAP Entity in the performance of this Agreement shall be that of an independent contractor.



Year 2000 Warranty. Carrier represents and warrants that all equipment, hardware and software used by it in providing any services under this Agreement before, during and after the turn of the century will not experience abnormal ending/or produce invalid or incorrect results. In the event of any recognition, calculation, or indication of century problems related to the Year 2000, Carrier warrants that will make all code adjustments necessary at no cost to the PSAP Entity in order to ensure Year 2000 Compliance.

Carrier warrants that each hardware, software, and firmware product delivered in connection with any equipment under this Agreement shall be able to accurately process date/time data (including, but not limited to, calculating, comparing, and sequencing) form into, and between the twentieth and twenty-first centuries, and the years 1999 and 2000 and leap year calculations to the extent that other information technology, used in combination with the information technology being acquired, properly exchanges date/time data with it. If the Agreement requires that specific listed products must perform as a system in accordance with the foregoing warranty, then that warranty shall apply to those listed products as a system.

For the purpose of this Agreement, Year 2000 Compliance means the capability of a system, component or product to perform its intended function or functions without interruption, malfunction or performance degradation, including without limitation, the loss, corruption or generation of inaccurate data, as a result of internal date/time computations relating to the transition from the year 1999 to the years 2000 and beyond, and including computations relation to the occurrence of leap years. Specifically, information, equipment and other resources of Carrier in providing any services under



this Agreement will be Year 2000 compliant if they meet the following criteria and/or perform as described:

- (1) Data structure (databases, datafiles, etc. provide four digit date century recognition. For example: "1996" provides "data century recognition", while "96" does not.
- (2) Stored data contain date century recognition, including (but not limited to) data stored in databases and hardware/device internal system dates.
- (3) Calculations and program logic accommodate both same-century and multi-century formulas and data values. Calculations and logic include (but are not limited to) sort algorithms, calendar generations, event recognition, and all processing actions that use or produce data values.
- (4) Interfaces (to and from other systems or Persons) prevent noncompliant dates and data from entering or exiting any system.
- (5) User interfaces (i.e., screens, reports, etc.) accurately display four-digit years.

Notwithstanding any provision contained in this Agreement, the remedies available to PSAP Entity under this Year 2000 Compliance warranty shall include but shall not be limited to the repair or replacement of any listed product whose noncompliance is discovered and made known to Carrier in writing within ninety (90) days after acceptance. These remedies are in addition to other remedies available to PSAP Entity under applicable law. Nothing in this warranty shall be construed to limit any rights or remedies PSAP Entity may otherwise have under this Agreement with respect to defects other than Year 2000 performance.



j. **Severability.** If any clause or provision of this Agreement is illegal, invalid or unenforceable under present or future laws effective during the term of this Agreement then in that event, it is the intention of the Parties hereto that the remainder of this Agreement shall not be affected thereby, and it is also the intention of the Parties to this Agreement that in lieu of each clause or provision of this Agreement that is illegal, invalid or unenforceable, there be added as a part of this Agreement a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

k. **Gender.** Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held plural, unless the context otherwise requires.

l. **Exhibits and Attachments.** All exhibits, attachments, riders and addenda referred to in this Agreement are incorporated into this Agreement and made a part hereof for all intents and purposes.

m. **No Joint Venture.** PSAP Entity and Carrier are not and shall not be deemed to be, for any purpose, partners or joint venturers with each other.

n. **Time of the Essence.** Time is of the essence with regard to each provision of this Agreement.

o. **Evidence of Authority.** Carrier shall deliver to PSAP Entity such legal documentation as PSAP Entity may request to evidence the authority of those signing this Agreement to bind Carrier.

p. **Interpretation and Governing Law.** The language of this Agreement shall be construed according to its fair meaning, and not strictly for or against either PSAP Entity



Carrier and this Agreement shall be construed and performed according to the laws of the State of Georgia.

q. **Force Majeure Delays.** Neither the PSAP Entity nor the Carrier shall be deemed to be in breach of this Agreement by reason of failure to perform any of its obligations, hereunder if, while, and to the extent that such failure is due to strikes, boycotts, labor disputes, embargoes, shortages of materials, acts of God, acts of the public enemy, acts of superior governmental authority, weather conditions, floods, riots, rebellion, sabotage or any other circumstances for which it is not responsible and which are not within its control.

r. **Compliance with Law.** Carrier is in compliance with all laws, ordinances, decrees and governmental rules and regulations applicable to the provision of 911 wireless service and has obtained all government licenses, permits and authorizations necessary for the provision of service under this Agreement. Carrier shall comply with: (i) all applicable laws, rules, regulations, orders, writs, decrees and judgments (including, but not limited to, those of the FCC and any other federal, state agency or authority of competent jurisdiction); and (ii) all valid local laws and all valid rules, regulations, orders, or other directives of the City issued pursuant to this Agreement. Carrier shall have the sole responsibility for obtaining permits, licenses and other forms of approval or authorization necessary to install, operate and maintain its system and provide the services described in this Agreement.

s. **Reservation of Rights.** PSAP Entity reserves the right to adopt or issue, to the extent permitted by applicable law, such rules, regulations, orders or other directives governing the implementation of E911 service as it shall find necessary and appropriate



in the exercise of its police power or in furtherance of the purposes of this Agreement.

Carrier agrees to comply with all such rules, regulations, orders or directives. No rule, regulation, order or other directive issued pursuant to this paragraph shall constitute an amendment to this Agreement.

t. **Reservation of Powers, Privileges and Immunities.** Notwithstanding anything contained in this Agreement, PSAP Entity expressly reserves, and does not waive, all rights, powers, privileges, immunities, and defenses, including without limitation sovereign immunity, which accrue to PSAP Entity under applicable law.

u. **Successors and Assigns.** Each and all of the conditions and covenants of this Agreement shall extend to and bind and inure to the benefit of PSAP Entity and Carrier, and the legal representatives, successors and assigns of either or both of them.

IN WITNESS WHEREOF, the PSAP Entity and the Carrier have set their hands and seals, and have caused this Agreement to be executed by the duly authorized officials, identified below as of the day and year first above written.



ATTEST:

POWERTEL, INC.

("CARRIER")

Corporate Secretary
(Seal)

Gowton Achaibar
Authorized Signatory
Title: Vice-President, Network Engineering

ATTEST:

CITY OF ATLANTA ("PSAP ENTITY")

Municipal Clerk (Seal)

Mayor

APPROVED AS TO FORM:

APPROVED:

City Attorney

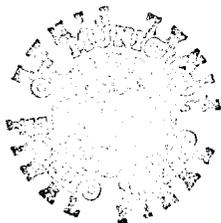
Chief Financial Officer

RECOMMENDED:

APPROVED:

Chief of Police

Director, Bureau of Purchasing



RCS# 2577
2/05/01
2:28 PM

Atlanta City Council

Regular Session

CONSENT

Pages: 1-14

ADOPT

YEAS: 14
NAYS: 0
ABSTENTIONS: 0
NOT VOTING: 1
EXCUSED: 0
ABSENT 1

SEE ATTACHED LISTING OF
ITEMS ADOPTED/ADVERSED
ON CONSENT AGENDA

Y McCarty	B Dorsey	Y Moore	Y Thomas
Y Starnes	Y Woolard	Y Martin	Y Emmons
Y Bond	Y Morris	Y Maddox	Y Alexander
Y Winslow	Y Muller	Y Boazman	NV Pitts

ITEM (S) REMOVED FROM
CONSENT AGENDA
00-O-2069
01-O-0083
01-R-0074
01-R-0092
01-R-0093

CONSENT

ITEMS ADOPTED ON CONSENT
AGENDA

ITEMS ADVERSED
ON CONSENT AGENDA

1. 00-O-1856
2. 01-O-0091
3. 01-O-0094
4. 01-O-0065
5. 01-O-0090
6. 01-O-0097
7. 01-O-0109
8. 00-R-2105
9. 01-R-0078
10. 01-R-0153
11. 01-R-0102
12. 00-R-0729
13. 01-R-0071
14. 01-R-0077
15. 01-R-0114
16. 01-R-0115
17. 01-R-0116
18. 01-R-0117
19. 01-R-0118
20. 01-R-0145
21. 01-R-0149
22. 01-R-0073
23. 01-R-0101
24. 01-R-0147
25. 01-R-0119
26. 01-R-0120
27. 01-R-0122
28. 01-R-0123
29. 01-R-0124
30. 01-R-0125
31. 01-R-0126
32. 01-R-0127
33. 01-R-0128
34. 01-R-0129
35. 01-R-0130
36. 01-R-0146

37. 01-R-0131
 38. 01-R-0132
 39. 01-R-0133
 40. 01-R-0134
 41. 01-R-0135
 42. 01-R-0136
 43. 01-R-0137
 44. 01-R-0138
 45. 01-R-0139
 46. 01-R-0140
 47. 01-R-0141
 48. 01-R-0142
 49. 01-R-0143
 50. 01-R-0144
-

TRANSMITTAL FORM FOR LEGISLATION
(For Review & Distribution To Executive Management)

To Mayor's Office: Greg Priddy

Commissioner Signature: _____

Director Signature: _____

Originating Department:	Contact (name):
Committee(s) of Purview:	Committee Deadline:
Committee Meeting Dates(s):	City Council Meeting Date:

CAPTION:

A RESOLUTION
BY FINANCE/EXECUTIVE COMMITTEE

A RESOLUTION AUTHORIZING THE MAYOR
TO EXECUTE AN APPROPRIATE
CONTRACTUAL AGREEMENT WITH
POWERTEL, INC. FOR THE
IMPLEMENTATION OF PHASE I OF THE
FEDERAL COMMUNICATIONS
COMMISSION'S WIRELESS ENHANCED 911
("E911") OBLIGATION FOR PUBLIC SAFETY
ANSWERING POINTS IN THE CITY OF
ATLANTA; AND FOR OTHER PURPOSES.

BACKGROUND/PURPOSE/DISCUSSION:

O.C.G.A Section 46-5-133 Authorizes local governments with enhanced "911" services to impose a monthly wireless enhanced 911 fee of \$1.00 per month. Thirty cents of the fee collected shall be placed in a separate restricted reserve account (3P02 442107/5yr G11K01109999) for Phase II Development.

FINANCIAL IMPACT (if any):

This will generate an estimated \$459,000 per year (\$162,000 in the Restricted Reserve Account and \$297,000 for 911 use).

Mayor's Staff Only

Received by Mayor's Office: 1/2/01 (date) Reviewed by: [Signature] (initials) _____ (date)

Submitted to Council: _____ (date)

Action by Committee: Approved Adversed Held Amended

01- R -0115

(Do Not Write Above This Line)

A RESOLUTION BY FINANCE/EXECUTIVE COMMITTEE

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN APPROPRIATE CONTRACTUAL AGREEMENT WITH POWERTEL, INC. FOR THE IMPLEMENTATION OF PHASE I OF THE FEDERAL COMMUNICATIONS COMMISSION'S WIRELESS ENHANCED 911 ("E911") OBLIGATION FOR PUBLIC SAFETY ANSWERING POINTS IN THE CITY OF ATLANTA; AND FOR OTHER PURPOSES.

ADOPTED BY

FEB 05 2001

COUNCIL

AS AMENDED

- CONSENT REFER
REGULAR REPORT REFER
ADVERTISE & REFER
1st ADOPT 2nd READ & REFER
PERSONAL PAPER REFER

Date Referred

Referred To:

Date Referred

Referred To:

Date Referred

Referred To:

First Reading

Committee
Date
Chair
Referred to

Committee: Fin Exec
Date: 1-31-01
Chair: [Signature]
Action: Fav, Adv, Hold (see rev. side)
Other: as amended
Members: [Signatures]
Refer To: [Signature]

Committee
Date
Chair
Action: Fav, Adv, Hold (see rev. side)
Other:
Members
Refer To

FINAL COUNCIL ACTION
2nd
1st & 2nd
3rd
Consent
V Vote
RC Vote

CERTIFIED

CERTIFIED
FEB 05 2001
ATLANTA CITY COUNCIL PRESIDENT
[Signature]

CERTIFIED
FEB 13 2001
[Signature]

MAYOR'S ACTION
FEB 13 2001
[Signature]