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STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
TAXICAB AUTHORITY

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Members
ROBERT FORBUSS
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BEFORE THE STATE OF NEVADA TAXICAB AUTHORITY
BOARD MEETING AND PUBLIC HEARING MINUTES

April 6, 2010

The Board Meeting and Public Hearing of the State of Nevada Taxicab Authority was held on Tuesday, April 6, 2010. This is a continuation from the March 23, 2010 Board Meeting regarding the Frias Application for Credit/Debit Card Transactions. The meeting was held at the Taxicab Authority, 1785 E. Sahara Avenue, Suite 200, Las Vegas, Nevada 89104. The Board Meeting began at 9:30 A.M.

Present were: Chairman Stacie Truesdell Michaels, Vice Chairman Susan Carrasco O'Brien, Member Robert Forbuss, Member John G. Marushok and Member Joshua C. Miller. Others present: were Administrator Gordon L. Walker, Legal Counsel, Deputy Attorney General Scott R. Davis and Legal Secretary/ Recording Secretary, Barbara A. Webb.

2. Compliance with Open Meeting Law.

Administrator Walker stated that we are in compliance with the Open Meeting Law.

3. Public Comment

No one signed up for public comment.

***4. Discussion and Possible Direction to Staff regarding Industry-wide Practices Related to Credit/Debit card Transactions with Passengers.**

The Chair explained why this put on the Agenda. There were some concerns with Frias' application and issues that the Board felt coincided with the application at the last meeting and were outside of the bounds of what was on the agenda. This was added to give them the discretion to talk about credit card transactions generally, therefore, Agenda Items 4 and 5 will be discussed together so the Board can discuss the whole process not just Frias' specific application.

***5. Continuation and Possible Decision regarding the Matter of the Application of Ace Cab, Inc., Union Cab Co., A NLV Cab Co. Vegas-Western Cab Co., Inc. and Virgin Valley Cab Co., Inc. for Approval of Charge for Credit Card and Debit Card Transactions in Taxicabs and Setting of Maximum Allowable Such Charge.**

Neal Tomlinson, attorney for Frias, and John Hickman, COO for Frias. Mr. Tomlinson stated he'd like to just go over issues raised at the last meeting regarding the Board's authority. He said he requests that the Board not be lead astray by diversionary rulemaking arguments. He stated that some would like you to believe that you do not have the authority to regulate fees tied to rates, charges or taxicab service. He said that the Board does have that authority per 2 enabling statutes and an enabling code provision. First – NRS 706.8819(1) "the TA shall conduct hearings to make final decisions in the following manner"; (8) "applications to adjust, alter or change the rates, charges or fares for taxicab service" – that's the first enabling statute. The second enabling statute – NRS706.8824(6)(b) – "the TA shall review the rates,

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charges or fares of the certificate holders in this jurisdiction". The third enabling provision is NAC 706.471 – Rates, charges and fares – "only the Authority may set, adjust, alter or change the rates, charges or fares for service by a taxicab". Section 2 – "a hearing concerning rates, charges or fares may be initiated by the Authority or upon application of any certificate holder". He said that's the situation at hand with Frias requesting to accept credit/debit card transactions which they feel would be a benefit to their customers. The application was filed pursuant to NAC 706.471; Section 3 – "except upon a showing that the public interest requires otherwise, the rates, charges or fares of all holders of certificates of the county will be uniform". He stated that's the part of the application where they asked that the fees be uniform throughout the industry. They just want to know if they can charge the same fee and request that it be uniform. These statutes give the Board the authority to regulate the fees.

Mr. Tomlinson stated that although the fee is not on the meter and has never been included as part of the meter's fare, it's clearly charged as part of the taxicab service. He feels that it is directly tied to the rates, charges and fees that are on the meter. When a passenger pays a fare from the meter or the credit/debit card meter, it's paid to the taxicab company and the Board regulates the companies. However the passenger pays for the service of the cab, it happens inside that cab and that's what the Board regulates. The law says it's part of rates, charges and fares and that's what the customer believes. This is not ad hoc rulemaking. The Board has specific rules that enable them to regulate and to set a uniform rate for all companies.

Mr. Tomlinson summarized the application again. He said Mr. Hickman testified to Exhibit 1. He said that he had filed a Supplemental Memorandum of Points and Authorities in Support of the Application of Ace Cab, Inc., Union Cab Co., A NLV Cab Co. Vegas-Western Cab Co., Inc. and Virgin Valley Cab Co., Inc. for Approval of Charge for Credit Card and Debit Card Transactions in Taxicabs and Setting of Maximum Allowable Such Charge on Monday, April 5th, 2010, per the request of the Board at the March 23rd Board Meeting, for approval of transaction charges. He stated that 7 companies are already charging the fee for credit/debit card transactions. Exhibit 2 of the Supplement shows samples of fees that are being charged for other services and other entities. He noted also that the IRS also charges through their vendors a fee all of which are in excess of the \$3.00 charge for the credit/debit card transaction in the cabs. There are also fees for services in local governments for copies or other services they may extend to the public. See Exhibit 4. They believe it's in the public interest for certificated cab companies in the Board's jurisdiction to allow the fares to be paid by credit/debit cards. There is a demand for this as shown at the last meeting wherein cabs with the credit/debit card convenience were pulled out of a cab line for the customer's convenience, therefore, the companies that are offering this have a competitive edge, which is why the application was filed by Frias. They believe it's a reasonable fee and they want to make it level playing field to be able to have the credit/debit card convenience. All they want is for Frias to be able to accept payment for taxicab fares through debit or credit cards and be allowed to charge the \$3.00 fee which they show is a reasonable number. Also, if Frias receives any of this fee, it would be reported to the Authority on their Annual Report as revenue. They just want the approval of the Board to do what other companies already are doing. He or John Hickman will answer any questions the Board may have.

Chair Michaels asked if the Board had any questions. Vice Chair O'Brien asked about Exhibit 1, the breakdown of the Cost Type 3 – Financial Fees and Charges. Mr. Hickman stated that he contacted merchants' service providers, i.e., Merchants Bank, Bank of the West, Wells Fargo who all had various rate structures some variable, some fixed, depending on the type of debit or credit cards, etc. There is a range of rates which is provided in Exhibit 1, but no decision has been made as to what would work for Frias. The Vice Chair asked if those were the fees that the merchant charges the companies and Mr. Hickman said it is. She asked about "b" – he said the industry provided him information with regard to the percentage of total transactions that are uncollectible and many companies quoted a fee of \$20 for an uncollectible transaction. That would be paid by Frias as someone has to pay it. That number



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represents the total number of transactions compared to the uncollectible transactions. She questioned “c” – he said that they were consistent that each of the merchants charged \$10 per transaction.

Member Miller questioned what Mr. Tomlinson said regarding the information would come through on the annual report as revenue, but in the original application you requested the receipts for these fees remain exempt from the report.

Mr. Tomlinson explained – Frias has not decided whether they would use a vendor. As it is now, the vendors collect the convenience fee which is not regulated by the Board so they don't have to report that. If the certificate holder was collecting a part or all of the fee, that would need to be reported on the annual report.

Member Miller asked Mr. Tomlinson that if any revenue was received from the vendor, whether a rebate or whatever, would that be reported? Mr. Tomlinson said yes that any monies received by the certificate holders would have to be reported. Member Miller said his concern is that some certificate holders have stated that the rider is not notified of the fee until at the end of the ride. He asked Mr. Tomlinson to expand on that and what Frias' plans are as to when the rider would be made aware of the charge. Their exhibits show other entities that charge a fee, the users are notified before the transaction. Mr. Tomlinson commented that on their units it would display when the customer got into the cab stating that there is a \$3.00 transaction fee and there would be an “opt-in” by the customer when they pay so they are notified twice. Member Miller asked if that is notification before the ride begins or when they swipe their card and Mr. Tomlinson said before the ride begins. Chair Michaels asked if there is anything in the statutes or regulations that requires notification on the outside of the cab and he said he didn't think so. If the Board decided they wanted an outside notice on the cab, they would do it. So far, he has heard no complaints about not being notified of the fee. She asked regarding the reporting, would the reporting of revenue show up on the annual report in a generic classification along with other forms of income or as a separate credit card revenue. Mr. Tomlinson stated that each company's report is different. After speaking with the Administrator and staff they said as long as it is reported as revenue whether as advertising or sundry income or miscellaneous – it would be reported. The Chair asked if there was a current requirement that they have to report it as credit card transaction fee or processing fee. He said he doesn't think there's anything in the statutes that require that just that if there is any revenue it has to be reported. With regard to Exhibit 1 - Cost Type 1 – are all of those capital expenses for the equipment, the Chair asked. Mr. Hickman said yes. She asked if at the time cameras were put into the cabs, was the cost charged back at that time. Mr. Tomlinson stated the reason there was a rulemaking on the cameras is because there is no enabling statute. The Chair said that's not what her concern is, her concern is did the cab companies have permission to charge back to the consumer to reimburse themselves for the cost of the capital investment in the camera equipment. Mr. Tomlinson stated that there was never any mandate for the camera and the industry voluntarily installed the cameras and he believes they absorbed the cost.

Member Marushok reiterated what Member Miller has said about the notification when a customer gets in the cab. He knows the fee will be on the screen, but he's not sure if that's enough because as soon as one gets in the cab, it takes off and basically the passenger doesn't have a choice if they don't have cash. He doesn't think that's enough of notification. He feels that notification on the outside of the cab should be considered. Mr. Tomlinson doesn't agree because he doesn't feel they will read the outside of the cab. If the Board requires that it be put on the outside of the cab, they will do that. The Chair said that all fees are outside and feels that that should also be there. She wants complete disclosure before the fact. Mr. Tomlinson said there is not problem to do that and attach that to their certificate. The Chair said that's fine, but they cannot do that with the other companies. Mr. Tomlinson feels that issue goes away from the application, what they want is their application approved with the \$3.00 transaction fee. The Chair commented that because there are no complaints on file regarding the fee doesn't mean



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the Board doesn't get complaints or comments about it. Mr. Tomlinson said that's why they want it displayed twice in their cabs. Member Miller stated that is why the agenda item was added because time is of the essence with the approval of the application. He said if the application is approved today, in the very near future regulations or rules on the other aspects, i.e., reporting on annual report and displaying it on the outside of the cab, should be addressed.

Vice Chair asked if it would be a \$3.00 fee across the board no matter how high the charge is and Mr. Hickman said yes. Member Miller asked how many rides Frias had in February. Mr. Hickman said 600,000. Member Forbuss asked if Mr. Hickman figures that about 25% of passengers use credit/debit cards a month and he said yes that was the estimate he received. A lot of discussion regarding fees, tips, a positive feeling from drivers who were questioned by Member Forbuss about the credit/debit card system and how they feel they could have more rides because the transaction is quicker than a cash transaction and how their tips would be better.

DAG Davis informed the Chair that the intervenors have the right to cross examine the witness. The Chair granted the intervenors intervenor status except for TaxiPass who had been denied intervenor status.

Intervenors were Frias Holding Company, Desert Cab Company, Western Cab Company, Yellow/Checker/Star Cab Companies, Whittlesea Blue/Henderson Taxi, A Cab, LLC, United Steelworkers Union, ITPE Union and Lucky Cab Company.

The following intervenors had no questions –

George Balaban, owner of Desert Cab, Cathie Olendorff, attorney for YCS, Mark Trafton, attorney for Whittlesea Blue/Henderson Taxi, Stephanie Edelman of USW and Ruthie Jones of ITPEU, Jason Awad, owner of Lucky Cab.

John Moran, attorney for Western Cab, said Western Cab is a cash only company at this time, but if credit/debit cards is the way of the future, they may change. He said they support the Board, staff and the DAG with regard to the regulatory aspect and feel that the Board does have the right to regulate this area. He feels that notification before entry into the cab is needed especially because his cabs are cash only and the passenger may not have cash. He also feels that the reporting of these transactions is very important and agrees with the Board with regard to getting statistical information from the industry. Other than that, he has no opposition to Frias' application and feels a decision should be made today.

The Chair asked staff for their comments. Kelly Kuzik will answer questions from the Board – Member Forbuss asked him to explain his stats that were presented to the Board from a study he had done from areas that are currently using the credit/debit card system. He said he sent emails to IATR and its members asking them if they pass on the fees and who owns the equipment. The results are what he gave to the Board. These are available at the Taxicab Authority. Member Miller asked if TaxiPass is used in any of the jurisdictions that were listed on his study and he said yes. According to the study, a lot of the jurisdictions do not charge a transaction fee and Mr. Miller questioned Mr. Kuzik about that. Mr. Kuzik stated that they all have a different system of covering the cost. Member Forbuss ask him how. New York raised their rates in 2004 and 2007, but the 2004 rate increase was specifically for the installation of credit cards which affected everyone, cash customer or credit card customer. The Chair commented that New York mandated the equipment be in all cabs which is why the rate increased to cover the cost for the companies for the equipment. Mr. Kuzik said some jurisdictions were mandated but they did not increase their rates and did not allow the operators to pass on the fee to the customer.



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The Chair asked the intervenors to come forward –

George Balaban, Desert Cab, defers comment at this time, but anticipates supporting Whittlesea's position.

Western Cab, John Moran, nothing to add at this time.

Mark Trafton and Brent Bell, Whittlesea – Mr. Trafton commented that the Board has 3 options today – Option 1 - the Board does not want to regulate how the passenger pays; Option 2 – the Board decides if they want to regulate this and makes a decision today on how to regulate it; and Option 3 – do we, the Board, go through the Administrative Procedures Act of Nevada and a workshop with discussions and questions and get information and make it an intelligent analysis which is the best way to regulate this. He stated that with all the questions the Board had for Neal Tomlinson, that the only way to make a decision is to have a workshop. Another decision that needs to be made, he said, was how to notify the passenger – put a decal on the outside of the door stating there is a credit card use fee of \$3.00. Whittlesea feels the best way to make these decisions is through a workshop. He said he knows it not fair for Frias not to be able to do what they are doing but feels more discussion is needed. The Chair asked him if the \$3.00 fee they charge goes to TaxiPass and Mr. Trafton said yes. Mr. Trafton said that Whittlesea's position is to have a workshop.

Mr. Bell commented about the earlier discussion on the percentage of people that use credit cards. He said that 100% of his cabs have the credit/debit card machines and the usage is 12% to 14%. He said that the equipment is very expensive, the GPS monthly fees are very expensive also. He feels what is most expensive is the safety and security of the transaction. He said that Whittlesea would not be able to have the machines if it wasn't for the \$3.00 fee.

Mr. Balaban said he had nothing to add, but supports Whittlesea's position.

Cathie Olendorff and Bill Shranko, YCS – Ms. Olendorff stated that they should be able to get credit cards in the future, she feels the \$3.00 fee is substantial as the companies who have the system have been using that fee for the past 3 years. YCS agrees with positions of both Frias and Whittlesea.

Bill Shranko commented that he does not have a problem with the Board taking a position. He feels it should not be prolonged. He and Ms. Olendorff agree that the issue may be too much regulation. She feels as long as everyone is on the same page with regard to the passengers, the owners and the drivers, then rulemaking may not be the way to go forward. They would not support that decision.

Jay Nady, owner of A Cab, LLC, stated that A Cab has had TaxiPass longer than anyone because of a prior association with them. He said that 20% of his passengers use the credit cards and that could be higher on the weekends. He has had no complaints regarding the \$3.00 fee. He also said that the \$3.00 fee is for the first \$50.00. He employs one full time person to handle the billing and payments. He commented about the more rides when swiping a card, he does not see an increase in the number of rides. He feels if there is any profit from this that there should be a line item on the annual report to indicate this.

Member Marushok questioned Mr. Nady regarding the \$3.00 fee for \$50.00, what happens after that. Mr. Nady said it's a \$3.00 fee for every \$50.00.



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Stephanie Edelman, USW commented that they are totally in favor of the Board regulating the fee because it should be consistent with everyone. She is a driver for Frias and said her rides would increase with the credit card machine because the cabs that have them are being pulled out of line and she is sitting there waiting for a cash ride. She commented with regard to Kelly's study stating that in other markets, a lot of the cabs are owner operated. She asked if the \$3.00 fee is the set fee and it is regulated by the Board, for a set period of time, then would it be part of the annual review. If the Board regulates the fee they have to regulate the increases that may come about. She stated that Frias wants to take credit cards and take them fairly and safely and that is their position.

Ruthie Jones, ITPEU says she feels if the Board is going to regulate the fees that the drivers should share in the profits from the credit card transaction at the same rate they get from the meter. She feels that the drivers should not be penalized if the credit card is bad and they should not be allowed to have any contact with the credit card. She quoted NRS 706.8819 (1) "The Taxicab Authority shall conduct hearings and make final decisions in the following matters: Applications to adjust, alter or change the rate charge or fare for taxi service". She feels if the Board approves this application, they will be acting in accordance with that statute. She said she feels it would be fair to post the fee on the outside of the cab to protect the drivers, too.

Jason Awad and Desiree Dante, Lucky Cab – He feels there are two issues – 1) whether or not the Board has the authority to regulate and he feels that the Board does have the authority. With all the work the TA will have installing these machines and not to have the authority is not right. He feels it is mandatory that the Board regulate the fees to protect the public. 2) the cost – is \$3.00 reasonable and necessary. He doesn't understand the issue – other companies already are using credit card machines, so why not approve Frias to do the same. He has spoken to many companies and the Administrator and everyone, except Nellis, agrees that Frias should be approved. He feels a workshop is totally unnecessary. To delay Frias would not be of the best interest to the riding public. He feels as long as Frias agrees and complies with the rules and regulations regarding the \$3.00 fee as all the companies are presently doing, it's an easy process to approve their application. If in the future issues arise, then have a workshop. Should the Board question whether the \$3.00 fee is appropriate then that should be discussed in a workshop once more information is received regarding that fee. Across the country however they get their fee, the public is paying for it. He said the TaxiPass credit card machines have a GPS system which is expensive and his company would not have one if they did not have the credit card machines. He feels this is very important for driver safety and gives better service to the public. Another issue is displaying the decal on the outside of the cab stating there's a \$3.00 fee which he feels is the right thing to do. He said with regard to the accounting end of it, they have more than one person handling that. He agreed with Ruthie Jones with regard to protecting the driver from a fraudulent card.

Desiree Dante commented that with regard to gratuities, she said her drivers have commented that their tips have gone up since they had the credit card machines installed. It may not have given them more rides but it's given them more tips.

Member Miller asked when the gratuity was put in the transaction and Ms. Dante said there's a separate line before the \$3.00 fee.

Mr. Awad said that he heard talk that it might be put on the meter and he feels that would not be fair for everyone to have to pay for the service if they are not using it and you would be asking the public to subsidize the cost. The Chair commented that when the gas surcharge was implemented, everyone, even if they used propane, got that surcharge and Mr. Awad agreed stating that it's applied to all customers and with only a small percentage of people using credit cards, it wouldn't be fair to those who use cash.



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Mr. Tomlinson said Mr. Awad narrowed it down to what they are doing by stating the application is a very narrow application and he said it was because all Frias wants to do is level the playing field. They are asking for two things – 1) the Board to allow Frias for credit/debit cards usage and 2) to allow them to impose a uniform \$3.00 fee for the convenience of the riding public. He stated that other companies are already doing it and that their drivers are being left behind because they cannot offer the credit card convenience to them. He said if the Board wants to place conditions on their certificate that's fine and they would comply, but if the Board wanted to create some regulations, then it would have to go to a workshop. The Chair asked him if they put restrictions on Frias' application would it have to go across the Board to all companies and he said no.

The Vice Chair asked if it would be across the board if others are charging \$3.00 for every \$50.00. He said it would \$3.00 and that's it. The Chair asked him if that meant if TaxiPass wants to charge that they can and he said they have no control over what TaxiPass charges. They are asking for a uniform flat fee of \$3.00 per transaction.

The Chair asked Mr. Tomlinson did they file the application so they could put in the system themselves and he said they have not made that decision as yet. They will talk to TaxiPass and possibly other third party vendors and then make their decision. They just want to have their application approved with the flat \$3.00 transaction fee. The Chair said she doesn't want to deny his application just postpone it for 3 months until they can get the regulations in place. Mr. Tomlinson commented that it would not be far to postpone the application because they had put their application in for the January Board Meeting and it is now April and they would like the application to be approved.

Jason Awad, Lucky Cab, stated that he would like to see the application approved today and then if regulations change, everyone can come back and make necessary adjustments. He also commented that he did not have a problem with the decal on the doors of his cabs.

The Chair commented that because there were so many issues brought forward to the Board and because in 2004 it was never presented to the Board for approval, she is not comfortable approving it at this time without a workshop.

Mr. Tomlinson said he feels there are two tracks the Board could consider - a workshop and the rule making procedure, but meanwhile he feels the application should be approved.

Member Forbuss stated that it would not be fair to Frias if the application wasn't approved because most of the other companies are equipped to use credit/debit cards in their cabs.

Bill Shranko commented that after listening to everything that's been said, he and YCS attorney feel they would like to be co-applicants.

Mr. Awad stated that when a contract is signed with a third party vendor, there are stipulations, one of which is to comply with all rules and regulations of the Taxicab Authority otherwise the contract is null and void. If the Board feels that \$3.00 is the fee to be charged, then it should be across the Board. He commented that it will take some time for Frias to install the credit card machines and at that time there should be a workshop to discuss the regulations and the fee charged, but meanwhile their application should be approved.

The Chair asked if any other intervenor would like to speak and Jay Nady, who's company charges the \$3.00 fee but passengers are charged \$3.00 for every \$50.00 after the initial \$3.00 and he asked if they would have to get permission to do that and he will if that's what the Board wants them to do.



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Member Miller feels that the concerns they have can be dealt with in regulation, but he doesn't feel it has to be done now because with the 5 years of history showing that there has never been any credit card fraud and the system has been operating smoothly, he does not want to delay a decision any longer. He would like to see the signage used on all the cabs.

Mr. Forbuss agrees to go ahead and move the application ahead, contingent on a workshop. He feels that some boundaries and some clarification are needed. He wants the signage on the cabs with that motion. The Chair asked if he wanted any restrictions put on the application and he said not until regulatory process through a workshop is imposed. The DAG said the motion would be to approve the \$3.00 fee and then any other obligations will be dealt with through the regulatory process. Mr. Forbuss said just add the signage on the vehicles. Member Miller questioned him regarding the contingency that he is approving Frias' application as well as the co-applicant.

The following is the Board's motion -

Motion: Approve Frias' application with the \$3.00 fee as well as co-applicant YCS
By: Member Forbuss
Second: Member Miller
Vote: 4:1 in favor of the motion – Chair Michaels opposed

Member Miller asked if a motion had to be made for the other companies to put the signage on their cabs and the DAG said no because you can't require them to do it. He said if the companies want permission to put the signage on their cabs they would have to contact the Administrator. Mr. Walker stated that his authority extends to approving items that are already in the regulations and this is not. Therefore, he would like the Chair to ask the companies to do it voluntarily and then he would come up with some authority and get it to the companies. She then reiterated that it would be voluntary for the companies to put the signage on their cabs regarding the \$3.00 fee effective May 1st, 2010.

Mr. Awad came forward and said he would do it and thought the other companies that were present should do the same. The Chair then directed the Administrator to prepare a workshop on regulation of credit card transactions within the industry so that it can be put into regulation. Mr. Walker said he would try for the middle of May to schedule the workshop. The Chair said that vendors would be allowed to appear and comment accordingly.

6. Adjournment.

The Chair moved to adjourn.

The following is the Board's motion -

Motion: Move to adjourn
By: Chair Michaels
Second: Member Forbuss
Vote: Unanimously in favor of the motion

Meeting was adjourned at 11:30 A.M.



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Respectfully submitted by:

Barbara A. Webb, Recording Secretary Date

Approved by:

Stacie Truesdell Michaels, Chairman Date

Gordon L. Walker, Administrator Date

