

AGREEMENT FOR WATER SERVICE

This Agreement for water service is entered into on _____, 2007, by and between the City of Sacramento, a charter municipal corporation ("City") and I.B.E. W. Local Union No.340 and Building Trades Association (Collectively referred to as "Owner").

Recitals

- A. The City of Sacramento operates a water supply system that delivers water for municipal and industrial use to customers located within and outside of the City.
- B. Owner is the owner in fee of real property (the "Owner's Property") located east of El Centro Road and west of Highway 80 on the north side of West El Camino Avenue, in Sacramento County, California, and identified by Assessor's Parcel Numbers 225-0220-075 and 225-0220-103. A location map including Owner's Property is attached hereto as **Exhibit A**.
- C. El Centro Road contains a 12 inch City water main (the "City Main") that was constructed in 2003 pursuant to the terms of an Agreement for Water Service (the "49er Agreement") entered into on October 15, 2002, between the City and the owners of the Sacramento 49er Travel Plaza, which is located east of El Centro Road south of Owner's Property. The cost to construct the City Main was shared by the City and the owners of the Sacramento 49er Travel Plaza.
- D. The 49er Agreement recognized that construction of the City Main would benefit other properties located east of El Centro Road, between San Juan Road and West El Camino Avenue, if those properties obtained City water service from the City Main in the future. Those properties, including the Owner's Property, were identified in the 49er Agreement as the "Main Extension Service Area."
- E. On May 11, 2004, the Sacramento City Council adopted Resolution No. 2004-357, establishing a "Main Extension Fee" required to be paid by owners of property in the Main Extension Service Area when and if they requested a connection to City water service from the City Main, to recover their fair share of the cost to design and construct the City Main. The fair share fee amounts were based on the size of the parcel receiving City water service from the City Main. The City Main connection fee established for Owner's Property is \$15662.00 (the "Owner's Main Connection Fee"). This is the adjusted fee based on the annual change in the ENR Construction Cost Index. Of this \$15662.00 fee, Parcel 225-0220-075 share is \$7851.00 and Parcel 225-0220-103 share is \$7811.00.
- F. Owner has available on Owner's Property, and currently is using, an alternative source of water supply consisting of pumped groundwater (referred to hereafter as

"Owner's Alternate Supply"). However, Owner desires to receive City water service to Owner's Property from the City Main instead of continuing to use the Owner's Alternate Supply. Owner has submitted to City an application for a permit for water service outside of the City, a copy of which is attached hereto as **Exhibit B**.

- G. Owner's Property is located outside the current City limits and City Sphere of Influence, but in an area that may be proposed for addition to the City Sphere of Influence and annexation to the City in the near future, and is located within the authorized place of use to which the City may deliver water under the City's American River water right permits.
- H. Because Owner's Property is located outside the current City limits, Owner understands and acknowledges that the City has no obligation to provide water service to Owner's Property, but the City may elect to provide water service to Owner's Property, if approved by the Sacramento City Council, pursuant to Section 13.04.390 of the Sacramento City Code.
- I. Because the Owner's Property is included in the Main Extension Service Area established when the 49er Agreement was approved by the City Council in 2002, and this area may be annexed into the City in the near future, City is willing to provide commercial water service from the City's water supply system to Owner's Property prior to such annexation occurring, provided that, among other requirements, Owner pays Owner's Main Connection Fee and also agrees to support future annexation, subject to the condition that such water service may be terminated by City if Owner's Property is not annexed to the City within a specified period of time, as provided herein.

NOW, THEREFORE, in consideration of the mutual obligations set forth herein, City and Owner agree as follows:

1. **Recitals Incorporated.** The above Recitals are incorporated by this reference as if fully set forth at this place.
2. **Water Service to Owner's Property.**
 - a. Upon Owner's payment to City of the Owner's Main Connection fee, the City shall provide commercial water service from the City's water supply system to Owner's Property, subject to the provisions of this Agreement and all applicable provisions of the Sacramento City Charter and City Code (including without limitation Sacramento City Code Chapter 13.04), and subject to the same terms, conditions, requirements, rates, fees and charges as other customers receiving similar City water service outside of the City limits, except as provided otherwise in this Agreement.
 - b. If the Owner's Property is not annexed into the City within Two (2) years after

the effective date of this Agreement (hereafter referred to as the "Annexation Period"), City may terminate City water service to Owner's Property at any time thereafter upon providing Owner a written notice of termination not less than ninety (90) days prior to the date that water service is terminated. Notwithstanding the foregoing, City may extend the initial Annexation Period for an additional period of up to One (1) year by providing written notice of such extension to Owner prior to expiration of the initial Annexation Period. If the Owner's Property is not annexed into the City within such extended Annexation Period, if any, City may terminate City water service to Owner's Property at any time thereafter upon providing Owner a written notice of termination not less than ninety (90) days prior to the date that water service is terminated. The City's right to terminate water service under this subsection b., is in addition to any rights City may have to discontinue water service under applicable provisions of the Sacramento City Code, including without limitation, Sacramento City Code Chapter 13.04, Article V.

- c. If City water service to Owner's Property is terminated or discontinued as provided hereunder, Owner agrees for itself, its constituents, successors and assigns that: (1) Owner hereby consents in advance to such termination of water service; (2) Owner hereby acknowledges that the written notice provided under subsection b., above, is complete and adequate notice, and Owner waives the provisions of any statute, ordinance or regulation establishing different or additional provisions for providing notice prior to a termination of water service; (3) Owner shall be solely responsible for providing any and all necessary water service to Owner's Property (including but not limited to such water as may be required for fire protection purposes by any law, ordinance, regulation or other governmental requirement) by using Owner's Alternate Supply and/or developing, installing or otherwise obtaining water from other sources to serve the water supply needs of Owner's Property, in compliance with all applicable laws, ordinances, regulations or other governmental requirements; (4) The City, its officers and employees shall have no responsibility or liability for any claims, damages, costs or other liabilities arising directly or indirectly from the termination of water service as provided in subsection b., above, and Owner hereby waives and releases any and all such claims, damages, costs or other liabilities; and (5) Owner shall defend, indemnify and hold harmless City, its officers and employees against and from any and all claims, damages, costs or other liabilities arising directly or indirectly from the termination of water service as provided in subsection b., above, provided that the foregoing defense, indemnity and hold harmless obligations shall not apply to (a) any claims or actions for personal injury or property damage caused by a City officer or employee while shutting off or otherwise disconnecting water service to Owner's Property, or (b) workers compensation claims of a City officer or employee.

- d. City's agreement to provide commercial water service to Owner's Property as set forth herein also is contingent upon Owner's compliance with the provisions of this Agreement, and Owner agrees for itself, its constituents, successors and assigns, that City may terminate such water service without notice and without any liability whatsoever: (i) If Owner, its constituents, successors or assigns contest or breach any provision of this Agreement or contest any waiver or consent provided pursuant to this Agreement; or (ii) If any provision of this Agreement is set aside or held to be unenforceable by a court of law. The foregoing rights and remedies are cumulative and in addition to any other rights or legal or equitable remedies that City might otherwise have.
- e. If Owner's Property is annexed to the City, water service to Owner's Property shall be subject to all applicable provisions of the Sacramento City Charter and City Code (including without limitation Sacramento City Code Chapter 13.04), and subject to the same terms, conditions, requirements, rates, fees and charges as other customers receiving similar City water service inside the City limits, except as provided otherwise in this Agreement.

3. Consent to Future Annexation.

- a. In addition to the specific provisions set forth below, which specific provisions are not intended to be a limitation on the generality of this subsection, Owner agrees for itself, its constituents, successors and assigns, that Owner will unconditionally support any future annexation of Owner's Property to the City.
- b. Owner understands and agrees that an important component of this Agreement is Owner's advance consent to annexation of the Owner's Property to the City, if proposed in the future, in the form of an agreement not to contest or protest such annexation. Accordingly, Owner agrees for itself, its constituents, successors and assigns that it fully, finally and forever grants advance consent to, and waives and relinquishes any right it may have to protest or contest, any proposal for, or approval or implementation of, annexation of any area including the Owner's Property to the City.
- c. Without limiting the generality of the foregoing, Owner, for itself, its constituents, successors and assigns, specifically waives: (i) any provisions of the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Government Code sections 56000 et seq.), together with any associated provisions of the Sacramento Local Agency Formation Commission policies, standards and procedures, requiring Owner's consent to and/or allowing Owner to protest annexation of any area including the Owner's Property to the City; (ii) the provisions of any other statute designed to provide a protest or contest procedure in connection with annexation; and

(iii) the provisions of any procedure in the Sacramento City Code designed to provide a protest or contest procedure in connection with annexation.

d. It is Owner's intention to request annexation of Owner's Property to the City within the Annexation Period. Owner, for itself, its constituents, successors and assigns, further agrees to: (i) affirmatively petition, if requested, for annexation of the Owner's Property to the City; and (ii) execute immediately upon presentation any document which is required or convenient for annexation of the Owner's Property to the City.

4. **Environmental Review/Development Approvals.** City water service shall not be provided to serve any expansion of the currently existing uses of Owner's Property unless and until such expansion has been approved in compliance with all applicable environmental laws and regulations, including without limitation the California Environmental Quality Act, and Owner has obtained and complied with the terms and conditions of all other development approvals required for such expansion.
5. **Term.** This Agreement shall become effective on the date that this Agreement is signed by the City Manager and City Clerk (referred to herein as the "effective date"), and shall remain in effect as long as any of its provisions remain capable of performance, unless sooner terminated by written agreement of the parties.
6. **No Representation Regarding Annexation.** City makes no representation that Owner's Property will be annexed to the City, and no liability or obligation whatsoever shall be incurred by City by reason of any failure of such annexation to occur.
7. **Covenants Run with Owner's Land; Binding on Successors.** The parties agree that all of Owner's waivers and advance consents, and other agreements contained herein are covenants that run with the Owner's Property, in accordance with Section 1468 of the Civil Code, and the burdens hereof shall be binding upon all Owner's successors-in-interest. This Agreement shall be binding on and shall inure to the benefit of the parties, and their respective officials, employees, agents, successors, transferees and assigns, provided that this Agreement shall not be assigned by Owner without the written consent of the City, and any attempted assignment without such consent shall be void. City may record this Agreement in the Official Records of the County of Sacramento, California.
8. **Owner's Representations Regarding Ownership; Authority.** Owner certifies that it owns full legal title to the Owner's Property. Each individual executing this Agreement on behalf of a corporation or partnership represents and warrants to City that he or she has been authorized to do so by the entity on whose behalf he or she executes this Agreement and that said entity will thereby be obligated to perform the

terms of this Agreement.

9. **Owner Not Agent of City.** Neither Owner nor any of Owner's agents, contractors or subcontractors are or shall be considered to be agents of City in connection with the performance of any of Owner's obligations under this Agreement. Nothing in this Agreement shall be construed to create a joint venture, partnership or other relationship between Owner and City, other than City acting in its regulatory capacity with respect to the provision of City water service from the City's public water system.
10. **Attorney's Fees.** If the services of any attorney are required by either party to secure the performance of this Agreement, or otherwise upon the breach or the default of either party, or if any judicial remedy or arbitration is necessary to enforce or interpret any provision of this Agreement, the prevailing party shall be entitled to reasonable attorney fees (for staff attorneys and/or outside counsel), costs, and other expenses, in addition to any other relief to which such party may be entitled.
11. **Governing Law.** This Agreement and the legal relations between the parties shall be governed by and construed in accordance with the laws of the State of California. The place where this Agreement is to be performed and its situs or forum will at all times be in the County of Sacramento.
12. **Waiver.** The waiver by any party to this Agreement of a breach of any provision of this Agreement shall not be deemed a continuing waiver or a waiver of any subsequent breach of that or any other provision of the Agreement.
13. **Notices.** All notices authorized or required by this Agreement may be delivered personally, or sent in the United States mail, postage prepaid, and addressed to the respective parties as follows:

To City: Director of Utilities
City of Sacramento
Department of Utilities
1395 35th Avenue
Sacramento, CA 95822

To Owner: Parcel 225-0220-103
Building Trades Association
2840 El Centro Road, Suite 114
Sacramento, CA 95833
Attention: Karlene Maffei

Parcel 225-0220-075
I.B.E.W Local Union No. 340
2840 El Centro Road, Suite 115
Sacramento, CA95833
Attention: A.C.Steelman

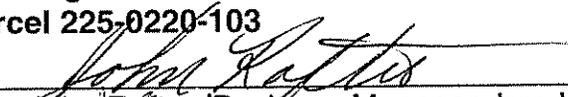
All notices will be deemed served on the day that they are personally served, or deposited, postage prepaid, in the United States mail. A party may change the above designations by providing notice thereof to the other party.

14. **No Third-Party Beneficiary.** This Agreement is not intended to, and will not be interpreted as conferring, any benefit or right whatsoever upon any person or entity that is not a party hereto.
15. **Interpretation of Agreement.** The headings of the sections and paragraphs in this Agreement are inserted for convenience only, do not constitute part of this Agreement and will not be used in its construction. This Agreement is the result of the joint efforts and negotiations of both parties, and both parties agree that this Agreement will be interpreted as though each of the parties participated equally in the drafting and composition of this Agreement and each and every part hereof.
16. **Voluntary Agreement.** Owner agrees and specifically represents to City that it is fully aware of all of its legal rights relative to the agreements, waivers, and advance consent set forth above, having had the opportunity to be advised by its own independent attorneys. Having such knowledge and understanding of its rights, Owner has nevertheless voluntarily entered into this Agreement. Owner understands and acknowledges that the City is relying on the Owner's representations contained in this Agreement in entering into this Agreement.
17. **Entire Agreement.** This Agreement constitutes the entire agreement and understanding between City and Owner concerning the subject matter contained herein. Any amendment to this Agreement shall be in a writing signed by both parties.

Building Trades Association

Parcel 225-0220-103

By:



John Rafter, Business Manager, Iron Workers Local Union No. 118

By:



Dennis Caravari, Business Manager, Sheet Metal Workers Local Union No. 162

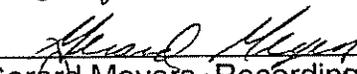
By:



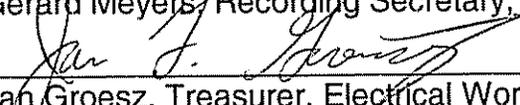
A.C. Steelman, Business Manager, Electrical Workers, Local Union No. 340

By: 

Greg Larkins, President, Electrical Workers, Local Union No. 340

By: 

Gerard Meyers, Recording Secretary, Electrical Workers, Local Union No. 340

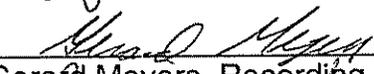
By: 

Jan Groesz, Treasurer, Electrical Workers, Local Union No. 340

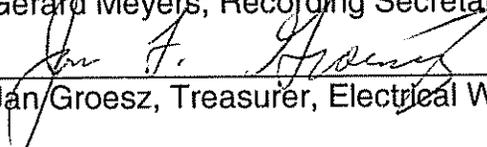
**I. B.E.W. Local Union. 340
Parcel 225-0220-075**

By: 

Greg Larkins, President, Electrical Workers, Local Union No. 340

By: 

Gerard Meyers, Recording Secretary, Electrical Workers, Local Union No. 340

By: 

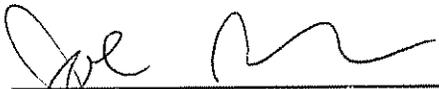
Jan Groesz, Treasurer, Electrical Workers, Local Union No. 340

CITY OF SACRAMENTO

By: _____

Title: _____

Approved as to Form:



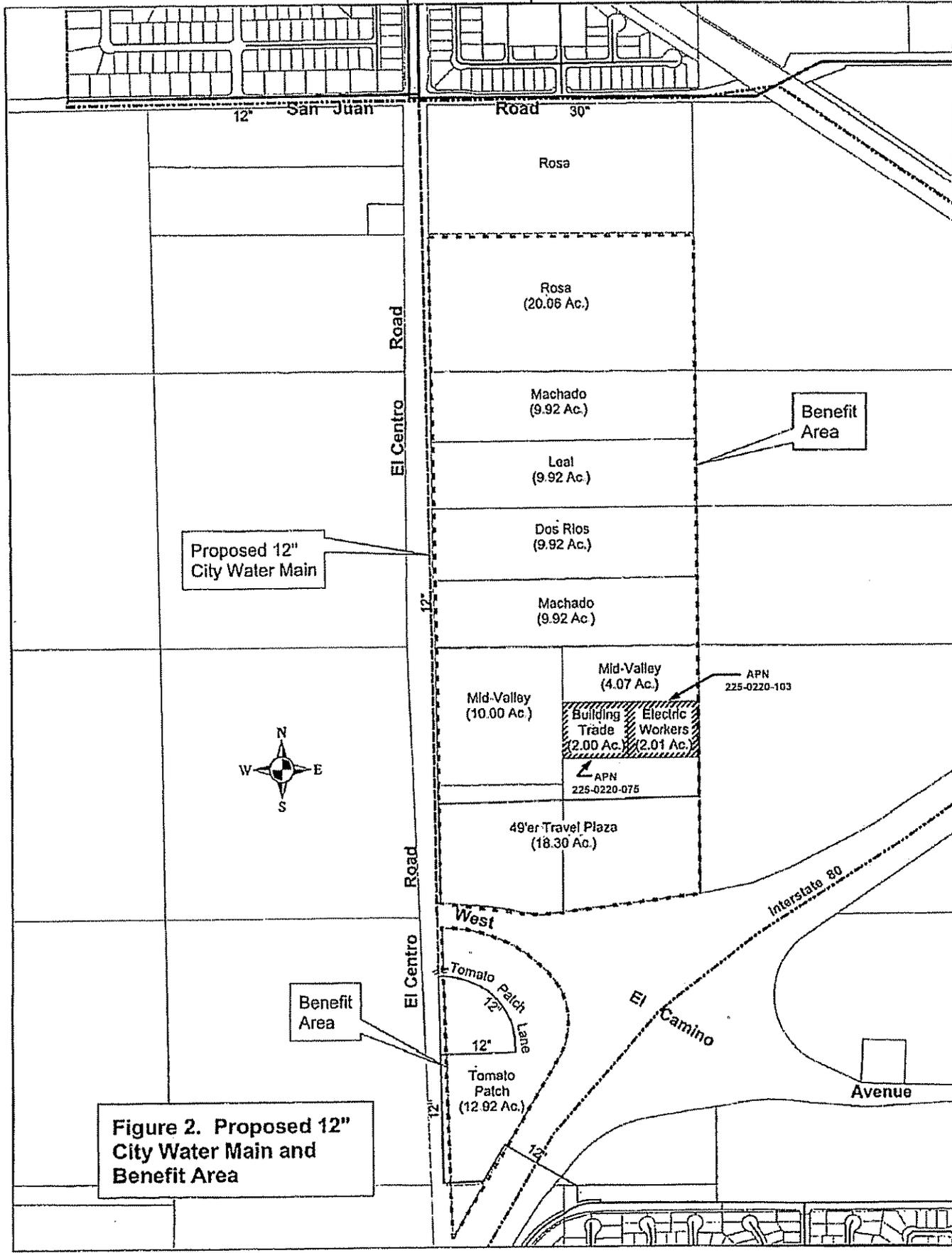
City Attorney

Attest:

City Clerk

Attach Notary Certifications

Exhibit A



Proposed 12" City Water Main

Benefit Area

Benefit Area

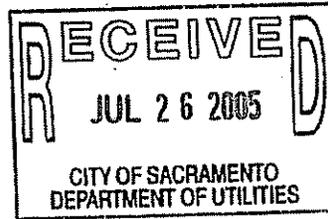
Figure 2. Proposed 12" City Water Main and Benefit Area

Exhibit B

JTS ENGINEERING
CONSULTANTS, INC.

1808 J STREET
SACRAMENTO, CA 95814-3010
(916) 441-6708 FAX (916) 441-5336
E-MAIL: JTSENGINER@AOL.COM

"ENGINEERING FOR PUBLIC WORKS & INDUSTRY"



July 22, 2005

Job No: 2003-061

Dr. Dave Schamber
City of Sacramento
Dept. of Utilities
1395 35th Avenue
Sacramento, CA 95822
Tel: (916) 8008-1423
Fax: (916) 808-1497

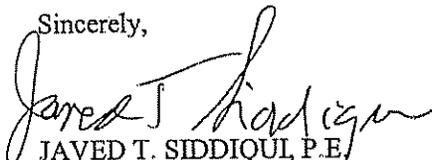
**Re: Request for water service and fire protection service for 2840 El Centro Road, Sacramento, CA – PM102-20 (A & B)
APN: 225-0220-075 & 103**

Dear Dave:

In reference to your email dated July 12, 2005, see attached copy, the client has authorized to proceed with the water and fire protection services to the property. I am providing herewith a check in the amount of \$3,000.00 as initial fee for staff costs. Please proceed with the necessary paperwork to provide these services.

If you have any questions or comments, please feel free to give me a call. Thank you.

Sincerely,


JAVED T. SIDDIQUI, P.E.
E-mail: javed.siddiqui@jtsengineering.com
JTS ENGINEERING CONSULTANTS, INC.

JTS/fob

Enc.

Cc:

A.C. Stillman
Local I.B.E.W.
2840 El Centro Road, #115
Sacramento, CA 95833
Tel: (916) 927-4239
Fax: (916) 927-1074