



## MEMORANDUM

Date: November 12, 2015  
To: Common Council  
From: Pamela A. Captain, City Attorney  
RE: Room Tax *PA*

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**1<sup>st</sup> ITEM: Summary of major terms of the AMENDED AND RESTATED ROOM TAX COMMISSION AND TOURISM ZONE AGREEMENT.**

1. Applies to 10 municipal entities within the Fox Valley, including the City of Menasha.
2. Confirms the Fox Cities Tourism Zone that was identified in the first agreement set up for the Fox Cities Performing Arts Center (PAC).
3. Identifies the purpose to collect additional room taxes to help fund the construction of the Fox Cities Exhibition Center as well as to develop and support amateur sports facilities or other facilities reasonably likely to generate paid overnight stays within the tourism zone.
4. Provides that Fox Cities Room Tax Commission will continue to exist as long as the PAC bonds and Exhibition Center bonds are outstanding. The City of Menasha will have one member representative on the commission (due to annual tax collections <\$300,000). Currently, our tax collection is minimal at approximately \$3,000 per year.
5. All municipalities that are party to this agreement will levy the same percentage of Room Tax.
6. Confirms the appointment of the Fox Cities Convention and Visitors Bureau as the "tourism entity" as defined by statute for purposes of providing staff and assistance.
7. Describes the required use of funds.
8. Anticipates that other municipalities may be added in the future.

**2<sup>nd</sup> ITEM: Summary of major terms of the EXHIBITION CENTER COOPERATION AGREEMENT.**

1. Applies to the same 10 municipal entities that signed onto the Amended and Restated Room Tax Commission and Tourism Zone Agreement.

2. Purpose of agreement is to identify the Exhibition Center Project and describe the nature of the municipalities' participation in it as well as setting uniform room tax rate.
3. Bonds for the Exhibition Center Project will be issued by the Appleton Redevelopment Authority (ARA). Payment on the bonds will come solely from pledged room tax revenues. The debt is specifically described as NOT being a charge against the general credit or taxing powers of the ARA or the municipalities that are parties to the agreement except for the room tax pledge.
4. All necessary documents must be executed and enactments must be made to effectuate the agreement and the issuance of bonds, including a Pledge and Security Agreement.
5. Required room tax rate is 10% as follows:
  - a. 3% for Exhibition Center Bonds.
  - b. 3% for Fox Cities Convention and Visitors Bureau.
  - c. 2% for PAC Bonds until full satisfaction, then monies to be used toward the development and support of amateur sports facilities and/or other facilities reasonably likely to generate paid overnight stays.
  - d. 1% for development and support of amateur sports facilities and/or other facilities reasonably likely to generate paid overnight stays (once PAC bonds are paid, then add that 2% for a total of 3%).
  - e. 1% for the City of Menasha to retain for tourism support and development.
6. City of Appleton will acquire the property necessary for the Exhibition Center, perform site clearance, utility work, any necessary environmental remediation, complete public infrastructure improvements estimated to cost approximately \$3.8 million of which \$2.2 million is attributable to site acquisition and \$1.6 million to infrastructure improvements then expected to transfer ownership to the ARA.
7. City of Appleton to construct the Exhibition Center with total costs not to exceed \$29 million estimate unless prior written consent of Advisory Committee consisting of 16 members including one member from each municipality, including the City of Menasha.
8. City of Appleton will provide administrative support to the ARA.
9. City of Appleton will enter into management agreement with Appleton Holdings, LLC (owner of Paper Valley Hotel) to operate and manage the Exhibition Center.
10. The ARA will issue and sell the bonds necessary for the Exhibition Center Project.

**3<sup>rd</sup> ITEM: ORDINANCE IMPOSING A HOTEL/MOTEL TAX.** This is meant to replace the current ordinance effective 1/1/2016.

SUMMARY OF  
 AMENDED AND RESTATED ROOM TAX COMMISSION AND TOURISM ZONE  
 AGREEMENT

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**Who:** Each municipality will enter into the Room Tax Commission and Tourism Zone Agreement.

**What:** The Commission and Zone Agreement confirms that zone previously created and allows for the Commission to carry out its statutory functions with administrative support by the Fox Cities Convention & Visitors Bureau.

**Where:** The Commission and Zone Agreement applies to all municipalities that join the Cooperation Agreement.

**When:** The Commission and Zone Agreement will be effective when the municipalities approve the Agreement.

**Why:** The Commission and Zone Agreement is required to facilitate the activities anticipated by the Cooperation Agreement and Ordinance.

Allocation of Room Tax	Before the PAC is paid off	After the PAC is paid off
CVB Room Tax	3%	3%
PAC Room Tax	2%	-0-
Exhibition Center Room Tax	3%	3%
Municipality Room Tax	1%	1%
Tourism Facility Room Tax	1%	3%
Total	10%	10%

**AMENDED AND RESTATED  
ROOM TAX COMMISSION AND  
TOURISM ZONE AGREEMENT**

Pursuant to §66.0301, Wis. Stats., the municipalities of the CITY OF APPLETON, WISCONSIN, a Wisconsin municipal corporation and political subdivision ("Appleton"), the CITY OF KAUKAUNA, WISCONSIN, a Wisconsin municipal corporation and political subdivision ("Kaukauna"), the CITY OF NEENAH, WISCONSIN, a Wisconsin municipal corporation and political subdivision ("City of Neenah"), the VILLAGE OF KIMBERLY, WISCONSIN, a Wisconsin municipal corporation and political subdivision ("Kimberly"), the VILLAGE OF LITTLE CHUTE, WISCONSIN, a Wisconsin municipal corporation and political subdivision ("Little Chute"), the TOWN OF GRAND CHUTE, WISCONSIN, a Wisconsin municipal corporation and political subdivision ("Grand Chute"), the TOWN OF NEENAH, WISCONSIN, a Wisconsin municipal corporation and political subdivision ("Town of Neenah"), the TOWN OF MENASHA, WISCONSIN, a Wisconsin municipal corporation and political subdivision ("Town of Menasha"), the CITY OF MENASHA, WISCONSIN, a Wisconsin municipal corporation and political subdivision ("City of Menasha"), and the VILLAGE OF SHERWOOD, WISCONSIN, a Wisconsin municipal corporation and political subdivision ("Sherwood"), collectively, the "Municipalities", and the Fox Cities Area Room Tax Commission, an authority formed pursuant to the powers provided in §66.0615 Wis. Stats. ("Fox Cities Room Tax Commission") enter into this Amended and Restated Room Tax Commission and Tourism Zone Agreement ("Agreement") on this, the \_\_\_ day of \_\_\_\_\_, 2015, for the purposes of coordinating the promotion and development of tourism within the Municipalities.

WHEREAS, the Wisconsin legislature has established statutory guidelines for the collection of a tax on the privilege of furnishing, at retail, rooms or lodging to transients by hotelkeepers, motel operators and other persons furnishing accommodations (collectively, "Operators") which are available to the public ("Room Tax") pursuant to §66.0615 Wis. Stats. ("Room Tax Act"); and

WHEREAS, the Room Tax Act sets forth requirements as to the formation of a Room Tax Commission to coordinate tourism promotion and tourism development for a Zone using Room Tax revenues when two (2) or more municipalities are located in a Zone, as that term is

defined in the Room Tax Act, and the imposition of Room Tax within a Zone by the Municipalities; and

WHEREAS, the Municipalities (excluding the City of Menasha and Sherwood) previously entered into that Room Tax Commission and Tourism Zone Agreement (“Existing Agreement”), to which Little Chute was added as a party following its initial execution, and to which future municipalities may be added, in which the parties acknowledged that the geographic area encompassing the parties is considered to be a single destination as perceived by the traveling public (“Fox Cities Tourism Zone”), which necessitated the formation of a Room Tax Commission to coordinate tourism promotion and tourism development within the Fox Cities Tourism Zone pursuant to the Room Tax Act (“Fox Cities Room Tax Commission”); and

WHEREAS, the Existing Agreement created the Fox Cities Room Tax Commission for the sole purpose of promoting tourism and development within the Fox Cities Tourism Zone by utilizing revenues collected from a Room Tax imposed to pay debt service on bonds (“PAC Bonds”) issued by the Redevelopment Authority of the City of Appleton, Wisconsin in order to finance a portion of the construction of the Fox Cities Performing Arts Center (“PAC Room Tax”); and

WHEREAS, the Existing Agreement directs that the Fox Cities Room Tax Commission will terminate and cease to exist upon payment in full of the PAC Bonds; and

WHEREAS, the Municipalities presently collect Room Taxes over and above the PAC Room Taxes and now desire to impose additional Room Taxes to help fund the construction of the Fox Cities Exhibition Center as well as to development and support amateur sports facilities within the Fox Cities Tourism Zone and/or other facilities which are reasonably likely to generate paid overnight stays at more than one hotel or motel establishment within the Fox Cities Tourism Zone; and

WHEREAS, the Municipalities further desire to enter into this Amended and Restated Room Tax Commission and Tourism Zone Agreement in order to (i) amend the terms of the Existing Agreement; (ii) set forth the Municipalities’ agreements relating to the Exhibition Center; (iii) ensure uniformity in the collection and use of all Room Taxes collected in accordance with the Room Tax Act; (iv) set ongoing procedural requirements for the Fox Cities Room Tax Commission; (v) confirm the operations of the Fox Cities Room Tax Commission are conducted in accordance with recent amendments to the Room Tax Act; and

WHEREAS, the Municipalities deem it to be in best interest of their constituents and the public at large to enter into this Agreement.

NOW THEREFORE, for valuable consideration and mutual benefit, the sufficiency of which is hereby acknowledged, it is agreed by the contracting municipalities as follows:

1. Recitals. The above recitals are incorporated by reference herein and made a part hereof.

2. Restatement of Existing Agreement. The Existing Agreement is hereby amended and restated in its entirety as set forth in this Amended and Restated Room Tax Commission and Tourism Zone Agreement. There shall be no interruption in the administration of PAC Room Taxes or services provided by the Fox Cities Room Tax Commission as set forth under the Existing Agreement.

3. Confirmation of Tourism Zone. The geographic area encompassing the Municipalities is hereby confirmed to be a single destination as perceived by the traveling public, and, therefore, a Tourism Zone, as that term is used in the Room Tax Act. It shall be referred to as the "Fox Cities Tourism Zone".

4. Confirmation of Room Tax Commission. The formation of the "Fox Cities Room Tax Commission", established under the Existing Agreement, is hereby ratified and confirmed. The Fox Cities Room Tax Commission is tasked with coordinating and promoting tourism and tourism development within the Fox Cities Tourism Zone and to do all other things necessary to accomplish its purposes as provided for by the Room Tax Act.

5. Imposition of Room Tax. Pursuant to the Room Tax Act, each Municipality that imposes a Room Tax in the Fox Cities Tourism Zone shall levy the same percentage of Room Tax. If the Municipalities are unable to agree on the percentage of tax to be levied in the Fox Cities Tourism Zone, the Fox Cities Room Tax Commission shall set the percentage. Room Taxes shall be imposed by passage of an ordinance in substantially the same form as that Form Ordinance attached as Exhibit "C" to that Exhibition Center Cooperation Agreement, dated of even date herewith. Pursuant to (1m)(am)(3) of the Room Tax Act, the parties hereto find and agree that (i) each Municipality is located in a county or counties having a population of less than 380,000; (ii) the counties in which the Municipalities are located are not located adjacent to any county with a population of over 380,000; (iii) the Municipalities are working cooperatively together to construct the Exhibition Center.

6. Tourism Entity. The parties hereby appoint the Fox Cities Convention & Visitors Bureau ("CVB") to act as the "tourism entity" as that term is defined in the Room Tax Act, for purposes of providing staff, support services and assistance to the Fox Cities Room Tax Commission in developing and implementing programs to promote the Fox Cities Tourism Zone to visitors, as more fully set forth in an agreement between the Fox Cities Room Tax Commission and the CVB.

7. Collection of Funds. Unless otherwise provided herein, each Municipality shall collect and forward the Room Tax revenues collected to the Fox Cities Room Tax Commission or its designees or assigns, for the funding of the coordination of tourism promotion and tourism development activities for the Fox Cities Tourism Zone.

- a. Notwithstanding the foregoing, the parties acknowledge the existence of that Amended and Restated Pledge and Security Agreement between the parties hereto (excluding the City of Menasha and Sherwood) and the Associated Trust Company dated May 1, 2012 in which PAC Room Tax revenues were directed to be paid by the Municipalities directly to Associated Trust Company for the payment of debt service on the PAC Bonds. PAC Room Taxes shall continue to be sent directly to Associated Trust Company until the PAC Bonds have been paid in full, at which point all future PAC Room Tax revenues shall be paid to the Fox Cities Room Tax Commission.
- b. In addition, the Municipalities are authorized to retain from their respective collections (i) five percent (5%) of the revenues collected from that three percent (3%) Room Tax which was imposed for the support of the Fox Cities Convention & Visitors Bureau, to be used for the promotion of the Fox Cities Tourism Zone as a tourism destination; and (ii) the entire one percent (1%) Room Tax imposed by the Municipalities for general tourism support and development within the Fox Cities Tourism Zone in accordance with the requirements of the Room Tax Act.

8. Use of Funds. All Room Taxes received by the Fox Cities Room Tax Commission shall be utilized for tourism promotion and tourism development within the Fox Cities Tourism Zone, including the support and development of tourism facilities. It is acknowledged by the parties that certain Room Taxes have been reserved for specific tourism purposes and that those reserved Room Taxes shall be used consistent with the following:

- a. The PAC Room Tax revenues shall be utilized in a manner consistent with that Cooperation Agreement dated June 1, 2000, as amended from time to time.

- b. The Exhibition Center Room Tax revenues shall be utilized consistent with the Exhibition Center Cooperation Agreement dated of even date herewith.
- c. Room Taxes imposed for the support of the Fox Cities Convention & Visitors Bureau shall be utilized for those purposes.
- d. Room Taxes permitted to be retained by the Municipalities shall be used for tourism promotion and tourism development within the Fox Cities Tourism Zone.
- e. Room Taxes imposed for the development and support of amateur sports facilities within the Fox Cities Tourism Zone and/or other facilities which are reasonably likely to generate paid overnight stays at more than one hotel or motel establishment within the Fox Cities Tourism Zone shall be utilized for those purposes ("Tourism Facilities Room Tax").

9. Priority of Payment. In the event any Operator or Municipality fails to remit the full amounts owed in any quarterly payment ("Deficient Payment") under this Agreement, the Exhibition Center Cooperation Agreement or the ordinances executed as required thereunder, the parties agree and acknowledge that the Deficient Payment amounts actually received by the Commission shall be applied in the following priority order:

- a. The Deficient Payment amounts received shall first be applied toward the three percent (3%) Room Tax imposed for the support of the Fox Cities Convention & Visitors Bureau;
- b. The Deficient Payment amounts remaining after payment to the Fox Cities Convention & Visitors Bureau as required in subsection (a) above, shall be applied toward the two percent (2%) Room Tax pledged as collateral for payment of the PAC Bonds;
- c. The Deficient Payment amounts remaining after payment toward the PAC Bonds as required in subsection (b) above, shall be applied toward the three percent (3%) Room Tax pledged as collateral for payment of the Exhibition Center Bonds; and
- d. The Deficient Payment amounts remaining after payment toward the Exhibition Center Bonds as required in subsection (c) above, shall be applied toward the one percent (1%) Municipal Room Tax, as defined in the Cooperation Agreement; and
- e. All remaining Deficient Payment amounts shall be applied toward the one percent (1%) Tourism Facilities Room Tax.

10. Fox Cities Room Tax Commission Membership. The membership, including the procedures relating to confirmation of appointment, of the Fox Cities Room Tax Commission shall be consistent with §66.0615(1m)(c), which requires, inter alia:

- a. The Fox Cities Room Tax Commission shall consist of three members from each Municipality in which annual tax collections exceed \$1,000,000, two members from each Municipality in which annual tax collections exceed \$300,000 but are not more than \$1,000,000 and one member from each Municipality in which annual tax collections are \$300,000 or less. Two additional members, who represent the Wisconsin hotel and motel industry, shall be appointed to the Fox Cities Room Tax Commission by the chairperson of the commission, shall serve for a one-year term at the pleasure of the chairperson and may be reappointed. Except as otherwise provided herein, members shall be appointed as specified in Section 10(b), below.
- b. Members of the Fox Cities Room Tax Commission shall be appointed by the principal elected official in the Municipality and shall be confirmed by a majority vote of the members of the Municipality's governing body who are present when the vote is taken. Commissioners shall serve for a one-year term, at the pleasure of the appointing official, and may be reappointed.
- c. The Fox Cities Room Tax Commission shall meet regularly, and, from among its members, it shall elect a chairperson, vice chairperson and secretary.
- d. The Fox Cities Room Tax Commission shall report any delinquencies or inaccurate reporting to the Municipality that is due the tax.

11. Applicability of State Open Meetings Law. The Fox Cities Room Tax Commission shall be subject to the provisions of the Wisconsin Open Meetings and Open Records laws, as amended from time to time. Any contract entered into between the Fox Cities Room Tax Commission and the CVB, shall require that all records and meetings of the CVB, pursuant to or related to the performance of that contract, shall be subject to the Open Meetings of Governmental Bodies law as well as the Public Records and Property law, respectively.

12. Powers and Duties: The Fox Cities Room Tax Commission shall have the following powers, rights and duties, as provided by the Room Tax Act, and as designated by the Municipalities hereto:

- a. To monitor and collect Room Taxes from each Municipality within the Fox Cities Tourism Zone in accordance with the provisions of this Agreement;

- b. To contract with the CVB to obtain staff, support services and assistance in developing and implementing programs to promote the Fox Cities Tourism Zone to visitors;
- c. To report no less than annually to each Municipality from which it receives Room Tax revenue the purposes for which the revenues were spent;
- d. To report any delinquencies or inaccurate reporting to the Municipality that is due the Room Tax;
- e. To prepare forms for use by Operators in reporting and remitting quarterly Room Tax payments, to be based upon that form attached as Exhibit "A" hereto and which may be amended or revised by the Fox Cities Room Tax Commission as deemed appropriate;
- f. To report to the participating municipalities the name of any municipality failing to make proper reports to the room tax commission and to collect from any delinquent municipality those room taxes that such municipality has failed to turn over to the room tax commission;
- g. To make available financial records and meeting minutes of the Fox Cities Room Tax Commission for inspection and copying upon the request of any Municipality; and
- h. To delegate or assign its powers, rights and duties hereunder as it deems necessary or prudent.

13. Additional Municipalities. It is anticipated that from time to time the area that the public perceives to be a single destination may change, and additional municipalities enacting a room tax may recognize that they have become part of the Fox Cities Tourism Zone; therefore, it is anticipated that additional municipalities may join this Agreement and the Room Tax Commission in the future, and the respective membership compositions will be adjusted accordingly.

14. Municipal Action. The Municipalities shall enact such ordinances and/or resolutions as are necessary to satisfy the terms of this Agreement and to effect any provisions of this Agreement, including but not limited to, that Form Ordinance attached as Exhibit "C" to the Exhibition Center Cooperation Agreement dated of even date herewith.

15. Authority. In signing this Agreement, the respective Municipalities represent and warrant that the terms herein have been approved by the legislative body of that Municipality and that appropriate authority rests in the signatories on behalf of the respective Municipalities.

16. Term. The Fox Cities Room Tax Commission created herein, shall continue in existence for as long as the Municipalities continue to impose a Room Tax pursuant to §66.0615 Wis. Stats. and shall not terminate until official action to do so has been taken by the governing bodies of each party hereto. Notwithstanding the foregoing, the Fox Cities Room Tax Commission shall continue in existence as long as either the PAC Bonds or the Exhibition Center Bonds are outstanding.

17. Effective Date. The effective date of this Agreement shall be the date upon which the last listed Municipality so enters.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

**SIGNATURE PAGES TO FOLLOW**

**IN WITNESS WHEREOF**, the parties have executed this Amended and Restated Room Tax Commission and Tourism Zone Agreement as of the date first above written.

**CITY OF APPLETON, WISCONSIN**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: Mayor

Countersigned:

\_\_\_\_\_  
Name: \_\_\_\_\_  
Its: Clerk

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: Attorney

**IN WITNESS WHEREOF**, the parties have executed this Amended and Restated Room Tax Commission and Tourism Zone Agreement as of the date first above written.

**CITY OF KAUKAUNA, WISCONSIN**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: Mayor

Countersigned:

\_\_\_\_\_  
Name: \_\_\_\_\_

Its: Clerk

**IN WITNESS WHEREOF**, the parties have executed this Amended and Restated Room Tax Commission and Tourism Zone Agreement as of the date first above written.

**CITY OF NEENAH, WISCONSIN**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: Mayor

Countersigned:

\_\_\_\_\_  
Name: \_\_\_\_\_

Its: Clerk

**APPROVED AS TO FORM:**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: Attorney

**IN WITNESS WHEREOF**, the parties have executed this Amended and Restated Room Tax Commission and Tourism Zone Agreement as of the date first above written.

**VILLAGE OF KIMBERLY, WISCONSIN**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: Village Board President

Countersigned:

\_\_\_\_\_  
Name: \_\_\_\_\_

Its: Village Clerk

**IN WITNESS WHEREOF**, the parties have executed this Amended and Restated Room Tax Commission and Tourism Zone Agreement as of the date first above written.

**TOWN OF GRAND CHUTE, WISCONSIN**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: Town Board Chairman

Countersigned:

\_\_\_\_\_  
Name: \_\_\_\_\_

Its: Town Clerk

**IN WITNESS WHEREOF**, the parties have executed this Amended and Restated Room Tax Commission and Tourism Zone Agreement as of the date first above written.

**TOWN OF NEENAH, WISCONSIN**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: Town Board, Chairman

Countersigned:

\_\_\_\_\_  
Name: \_\_\_\_\_

Its: Town Clerk

**IN WITNESS WHEREOF**, the parties have executed this Amended and Restated Room Tax Commission and Tourism Zone Agreement as of the date first above written.

**TOWN OF MENASHA, WISCONSIN**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: Town Board Chairman

Countersigned:

\_\_\_\_\_  
Name: \_\_\_\_\_

Its: Town Clerk

**IN WITNESS WHEREOF**, the parties have executed this Amended and Restated Room Tax Commission and Tourism Zone Agreement as of the date first above written.

**CITY OF MENASHA, WISCONSIN**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: President

Countersigned:

\_\_\_\_\_  
Name: \_\_\_\_\_

Its: Clerk/Administrator

**APPROVED AS TO FORM:**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: Attorney

**IN WITNESS WHEREOF**, the parties have executed this Amended and Restated Room Tax Commission and Tourism Zone Agreement as of the date first above written.

**VILLAGE OF LITTLE CHUTE,  
WISCONSIN**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: Village Board President

Countersigned:

\_\_\_\_\_  
Name: \_\_\_\_\_  
Its: Village Clerk

**IN WITNESS WHEREOF**, the parties have executed this Amended and Restated Room Tax Commission and Tourism Zone Agreement as of the date first above written.

**VILLAGE OF SHERWOOD, WISCONSIN**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: President

Countersigned:

\_\_\_\_\_  
Name: \_\_\_\_\_

Its: Administrator

**IN WITNESS WHEREOF**, the parties have executed this Amended and Restated Room Tax Commission and Tourism Zone Agreement as of the date first above written.

**FOX CITIES AREA ROOM TAX  
COMMISSION**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Countersigned:

\_\_\_\_\_  
Name: \_\_\_\_\_

Its: \_\_\_\_\_

**EXHIBIT "A"**  
**Collection Form - Operators**

