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UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW MEXICO  
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In re:

FURR'S SUPERMARKETS, INC.,

Case No. 11-01-10779-SA  
Chapter 11

Debtor.

**DEBTOR'S MOTION TO EMPLOY TOWERS PERRIN AS PENSION PLAN  
CONSULTANTS FOR THE DEBTOR**

The Debtor Furr's Supermarkets, Inc. (the "Debtor"), pursuant to 11 U.S.C. § 327(e), requests that the Court approve its employment of Towers Perrin ("Towers Perrin") to represent the Debtor in all pension plan consultant matters as Debtor may request and Towers Perrin may agree to perform. In support of this Motion (the "Motion"), the Debtor states:

1. On February 8, 2001 (the "Petition Date"), the Debtor commenced this bankruptcy case by filing a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. Pursuant to Bankruptcy Code §§1107(a) and 1108, the Debtor has retained possession of its assets, as Debtor in Possession, and is continuing to operate its business.

2. The Debtor wishes to employ Towers Perrin as pension plan consultants for the Debtor, in all matters in which Debtor requires pension plan consulting work. Towers Perrin is qualified to represent the Debtor as debtor in possession in this case. Towers Perrin has represented in its disclosure filed pursuant to Bankruptcy Rules 2014 and 2016 (the "Towers Perrin Disclosure") that, except for its representation of clients in matters wholly unrelated to Furr's or this bankruptcy case, to Towers Perrin's knowledge it does not have any interests that are materially adverse to Furr's.

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3. In general, the professional services Towers Perrin may render on behalf of the Debtor include (but are not limited to) rendering advice to the Debtor about the Debtor's pension plan and how to administer and terminate the plan appropriately in connection with the wind-down of the Debtor's business. A copy of Towers Perrin's engagement letter with the Debtor, dated August 8, 2001 ("Engagement Letter"), is attached hereto as Exhibit A and incorporated herein by reference. Moreover, Towers Perrin seeks a determination that the rates it proposes to charge are reasonable and appropriate and meet with this Court's approval for all purposes of Towers Perrin's proposed representation of Furrs. The proposed rates are:

For Administrative Services: \$125-\$200 per hour;

For Consulting Services: \$200-450 per hour;

For Actuarial Services: \$300-\$500 per hour.

4. To the best of the Debtor's knowledge, information, and belief, employment of Towers Perrin would be in the best interest of the estate, and Towers Perrin has no interest that is, for the matters that are subject of Towers Perrin's employment, adverse to the Debtor, its creditors, or any other party in interest or their respective attorneys, other than any interests set forth in the Towers Perrin Disclosure.

5. The fees, costs, and gross receipts tax that Towers Perrin will charge Debtor are set forth in the Engagement Letter.

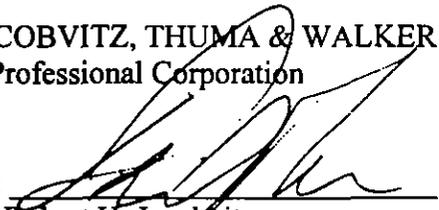
6. Towers Perrin requests that the Debtor be authorized to make interim payments to Towers Perrin on a monthly basis upon receipt of Towers Perrin's billing statements and prior to the Court's determination of the allowability of Towers Perrin's compensation under the same

terms as set forth in the Motion for Order Authorizing Payment of Interim Compensation and Reimbursement of Expenses of Debtor's Professionals.

7. Towers Perrin's employment is in the best interest of the estate and should be made effective as of the date hereof.

WHEREFORE the Debtor requests approval of the Court to employ Towers Perrin as its counsel pursuant to 11 U.S.C. § 327(e) under the terms of the Engagement Letter and this Motion, effective as of the date hereof; and to make interim payments to Towers Perrin prior to allowance of compensation, as described above.

JACOBVITZ, THUMA & WALKER  
A Professional Corporation

By: 

Robert H. Jacobvitz  
David T. Thuma  
500 Marquette N.W., Suite 650  
Albuquerque, New Mexico 87102  
(505) 766-9272  
(505) 766-9287 (fax)

Attorneys for the Debtor-in-Possession

This certifies that a copy of the foregoing was served by first class mailed on:

United States Trustee  
P.O. Box 608  
Albuquerque, NM 87103

this 10th day of October, 2001.

\_\_\_\_\_  
David T. Thuma

# Towers Perrin

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August 8, 2001

Ms. Cathy Davis  
Furr's Supermarkets, Inc.  
4411 The 25 Way N.E., Suite 100  
Albuquerque, New Mexico 87109

## FURR'S SUPERMARKETS, INC. PENSION PLAN

Dear Cathy:

It was a pleasure to meet with you, and to discuss the process for terminating the Pension Plan. We are pleased to submit this proposal for your consideration and approval.

### BACKGROUND

- Furr's Supermarkets, Inc. has recently filed for bankruptcy and has tentatively decided to freeze the benefit accruals in the Pension Plan as of September 30, 2001. The next step is to terminate the Plan.
- At our meeting with you on July 27, we discussed the complex plan termination process.
  - We presented the current assets and estimated liabilities based on data as of January 1, 2000. The liability amounts were projected on two bases: (1) an annuity purchase and (2) full lump sum distributions, with projected payout in early 2002. Assuming current data is not significantly different than that used in these determinations, there will be sufficient assets to terminate the Plan on either basis.
  - We also presented Pension Benefit Guaranty Corporation (PBGC) and Internal Revenue Service (IRS) regulatory requirements and schedules for the termination process. We discussed how you, your ERISA attorney, and Towers Perrin could work together to accomplish the necessary tasks. We have assumed a plan termination date of September 30, 2001 to illustrate the process.

### PROCESS

- Attached to this proposal as Exhibit I is a copy of the Termination Schedule for a Standard Plan Termination that we used for discussion purposes at the July 24

**EXHIBIT**  
A

***Towers Perrin*** \_\_\_\_\_

meeting. This Schedule includes the steps necessary to terminate a qualified pension plan in accordance with PBGC and IRS regulations.

It is our understanding that the investment manager for the pension trust fund has been informed of the decision to terminate the plan and has begun taking the steps necessary to liquidate and/or hedge the assets from future losses. Therefore, we have not shown this step on the Termination Schedule.

- Since we do not yet have a decision as to the desired Termination Date, the Target Dates have not been changed since the meeting. At such time as a Termination Date is chosen, we will revise the Target Dates to reflect the regulatory requirements, your desired notice to employees, and payment dates.
- This Exhibit I will also be revised as decisions are made regarding which parties will be responsible for each task. As we discussed, certain tasks typically performed by the plan sponsor's staff could be performed by Towers Perrin in the event there is insufficient staff remaining after the Furr's Supermarkets corporate offices are closed. These tasks would include mailing of notices, collection of completed election forms, providing data to the trustee, and answering participant questions.
- Data has not yet been provided for the January 1, 2001 actuarial valuation or for the plan termination. Also, as we discussed during the meeting, data must be absolutely clean for the plan termination. Certain data with regard to transfer employees has not historically been included and is not currently available electronically. If any data collection is added to the project, particularly if it is from hard copy files, this could significantly increase fees. To help make the data collection process as efficient as possible, we will prepare an Excel worksheet with a list of the fields we will need for each participant and request that Furr's populate those fields with the necessary data.
- With respect to the annuity placement process, we maintain a very disciplined approach which is appropriately sensitive to the needs of plan sponsors concerning the "safest available annuity" guidelines released by the Department of Labor. In this connection, our process typically encompasses the following:
  - Prepare a "draft" of the bid specification package (RFP) which will be submitted to the insurance companies. A "draft" version of these specifications will be forwarded to you for final review and approval.
  - Prepare documentation outlining the process and outcome associated with the initial candidate screening process.

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- Mail the final annuity specifications and individual annuitant data to the *designated group of insurance companies*.
- Follow-up with the insurance companies to develop their interest in quoting competitively for this termination annuity.
- Respond to any questions the *insurance companies* have concerning the annuity features and participant data included in the specifications.
- Coordinate any additional bid mailings that may be necessary (i.e., participant date changes, etc.).
- Review written proposals that will be sent to Towers Perrin prior to the final bid to determine whether they fully comply with the bid specifications, and work with the carriers to gain compliance, if necessary.
- Receive the quotes, and summarize and document the financials for the decisions-making group.
- Discuss the results with you and recommend the next immediate steps.
- If appropriate, coordinate a rebid with a small group of finalist companies. This may occur on that same day or within a day or so following receipt of initial bids.
- Notify the insurer of the decision when the annuity carrier is selected, and assist with coordinating the relevant paperwork, wire transfer instruction, Commitment Letter, etc., necessary to document the transaction. This step is often completed within a one hour period since the annuity quotes are only good for a short period of time.
- Document the annuity transaction, as appropriate, for your permanent records.
- The Department of Labor ("DOL") has established guidelines in Information Bulletin 95-1 pertaining to the purchase of annuity contracts from insurance companies. If desired, Towers Perrin is willing to assist you with compliance in this area. We would serve in the capacity of a qualified, independent expert as required by the DOL guidelines. We will identify the company(s) that, in our opinion, would meet this DOL standard, although the final selection of a particular carrier will be made by the Plan fiduciaries.

*Towers Perrin*

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## **STAFFING**

- Chris Hutzler will perform all actuarial functions and sign actuarial certification for the PBGC.
- Davida Lambert will function as the project manager, will supervise her staff in the preparation of all notices and government filings, and all aspects of quality control and communication.
- Bernie Hughes will prepare the bid specifications, submit to insurance carriers, and analyze bids received from the carriers.
- Resumes of the above consultants are included as Exhibit II.

## **TIME AND EXPENSES CHARGES**

Our charges will consist of the following:

- Hourly time charges for personnel performing services at our hourly rates in effect at the time;
- Data processing and intellectual capital charges, as applicable;
- An indirect expense fee equal to six and one-half percent (6½%) of our hourly time charges, to offset non-itemized expenses related to our performance of the Services, such as copying, telephone and facsimile services;
- Reimbursement, at cost, of direct expenses reasonably incurred by us in connection with the performance of our services, such as mailing costs, travel and other vendor expenses; and
- The amount of any tax or similar assessments levied or based upon our charges or the provision of the Services.
- Fee estimates associated with each step of the plan termination process were included in the Schedule. These fees are estimated based on time and expenses normally incurred in similar projects. However, all invoices for work performed by Towers Perrin would be based on actual hours worked and expenses incurred.

*Towers Perrin*

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- Our annuity placement process is performed on a time and expense basis, and typically falls within a range of \$30,000 - \$35,000. Our additional fees for assisting you with your compliance with the DOL safest annuity standard include a flat charge equal to 10 basis points of the estimated annuity premium. As an example, for a \$10 million annuity transaction, we estimate total fees in the range of \$40,000-\$45,000.

It is important to note that Towers Perrin does not accept commissions or any other form of payment from any insurer. This enables us to remain totally objective when rendering our advice. Further, there are no undisclosed service or other fees associated with our providing the proposed service. Commissions and other service fees paid by the insurance company, when applicable, entail a dollar for dollar addition to the annuity price.

Total Charges – Our estimate of hourly time charges for the work described above is between \$250,000 and \$350,000, depending on our level of involvement. If at any point in this assignment we conclude that actual charges will significantly exceed our estimate, we will discuss the situation with you.

Invoicing and Payment – Once we receive your approval to begin the project, we will bill you for and require payment of \$100,000 within 15 days. At the end of each month during which we perform these services, we will bill you for all charges accrued for the month. Payment of all billed amounts is due within 30 days after the date of our invoice. Any amount outstanding 30 days after payment is due will be subject to a late charge of 1% per month (or the maximum allowed by law, if less). The \$100,000 advance payment will be credited to the final invoices.

Out-of-Scope Services – If you would like us to perform the services differently than contemplated at the outset, or to perform additional consulting services which are not contained within the Scope of Work, please advise us. Also, if we believe certain services are out of the defined scope, we will promptly notify you.

#### **CONSULTING SERVICES TERMS AND CONDITIONS**

- So that we can perform our services in a timely manner we will need you to provide us with information and access to your personnel as we request it. While we will review your information for reasonableness, we cannot take responsibility for its accuracy or completeness. If the information is inaccurate or incomplete and we therefore need to expend additional time in performing our services we will treat this additional effort as beyond the agreed scope of work and will advise you of any additional charges.

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- The services we perform, together with the work product we deliver are provided for your internal use, solely for the intended purpose. Further, the work product may contain certain restrictions on external distribution. You will own the copies of the work product delivered to you and have the right to use, reproduce and adapt it for internal purposes within your organization, once your obligations under this letter have been met. Of course, you will retain ownership of any information specific to your employees or business operations contained in our work product.

We will retain intellectual property rights in our work product (including derivative works of it), and may use it for any purpose.

- You may direct us to stop our work at any time. We may also terminate this agreement by providing at least fifteen (15) days written notice to you. On termination by either of us you agree to pay us for charges accrued up to the date of termination. This agreement will automatically terminate in twelve (12) months from date of its execution unless the parties agree to extend its term by executing a new agreement at that time. The "use of work product/ownership" and "limitation of liability" provisions will survive any termination of this agreement.
- Towers Perrin's liability in connection with these services will be limited to direct losses you suffer as a result of our negligence, misconduct or breach of this agreement, but only up to the total amount of fees paid to us for the services provided under this agreement.
- Towers Perrin and you agree that we will work in good faith to resolve any disputes that may arise. If we cannot resolve a dispute the matter will be submitted to non-binding mediation before either party pursues other remedies.
- This document sets forth the entire agreement between you and Towers Perrin concerning this assignment. Any amendment of it must be in writing and signed by both parties. Neither of us will be responsible for any delay or failure in the performance of its duties caused by forces or events beyond reasonable control. Neither of us may assign any rights related to this agreement without the other's consent.

# *Towers Perrin*

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Thank you for providing Towers Perrin with the opportunity to present this proposal. If you have any questions, need additional information or wish to discuss anything in further detail at this stage, please call me.

We look forward to your approval so we can commence work on this assignment. Please indicate your acceptance of this proposal by:

- Having a representative of Furr's Supermarkets sign and date
- Having the Bankruptcy Judge sign and date, and
- Returning the signed copy to me.

**Towers Perrin**



Chris Hutzler

**Furr's Supermarkets, Inc.**

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

Date: \_\_\_\_\_

**Bankruptcy Court Official**

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

Date: \_\_\_\_\_

cc: Ms. Catherine Cole — Towers Perrin/Denver  
Ms. Davida Lambert — Towers Perrin/San Antonio  
Mr. Bernard R. Hughes — Towers Perrin/Philadelphia

Enclosures

**Furr's Supermarkets, Inc. Pension Plan  
Termination Schedule**

*For discussion purposes*

**Standard Plan Termination  
September 30, 2001**

<b>Action</b>	<b>Party Responsible</b>	<b>Towers Perrin Fee Estimate</b>	<b>Target Date</b>
1. Calculate estimated termination liabilities	Towers Perrin		July 24, 2001
2. Meeting to initiate termination processing	Towers Perrin/Furr's/Attorney		July 24, 2001
3. Draft amendment and resolutions to freeze accruals and terminate plan (September 30, 2001)	Attorney		July 27, 2001
4. Draft 204(h) (notice to participants that benefit accruals will cease and plan will be terminated September 30)	Attorney/Towers Perrin	\$1,000	July 27, 2001
5. Draft Notice of Intent to Terminate (NOIT) – content specified by PBGC	Attorney/Towers Perrin	\$1,000	July 27, 2001
6. Execute Plan Amendment to freeze accruals	Furr's		On or before July 31, 2001  (Amendment must be executed at least 15 days prior to freeze date)

Action	Party Responsible	Towers Perrin Fee Estimate	Target Date
7. Distribute 204(h) Notice to participants	Furr's		<p><b>August 1, 2001</b></p> <p>(Must provide 204(h) Notice after amendment executed and at least 15 days prior to effective date)</p>
8. Distribute Notice of Intent to Terminate	Furr's		<p><b>August 1, 2001</b></p>
— Any notices returned recorded and submitted to locator service	Towers Perrin	\$3,000	(Must be provided 60-90 days prior to plan termination date)
9. Collect data and resolve data issues; include	Towers Perrin	\$30,000	<b>August 31, 2001</b>
— List of participants who terminated with less than 100% vesting for last 5 years			
— Last known address if Towers Perrin is to do mailings			
10. Draft Notice to Interested Parties regarding IRS filing of termination	Attorney/Towers Perrin	\$1,000	<b>September 21, 2001</b>

Action	Party Responsible	Towers Perrin Fee Estimate	Target Date
11. Plan Termination Date			<p><b>September 30, 2001</b></p> <p>(Termination date must be no earlier than 60 nor later than 90 days after issuance of Notice of Intent to Terminate.)</p>
12. Draft Notice of Plan Benefits including election of payment form (for legal counsel review)	Towers Perrin	\$15,000	<b>November 9, 2001</b>
13. Review and approve Notice of Plan Benefits	Attorney/Furr's		<b>November 16, 2001</b>
14. Coordinate with Trustee for information/format needed to make lump sum distributions	Furr's/Towers Perrin	\$2,000	<b>November 16, 2001</b>
— Set up worksheet/database to payment information			
15. Calculate individual termination benefits	Towers Perrin	\$60,000	<b>December 5, 2001</b>
16. Distribute Notice to Interested Parties	Furr's [Towers Perrin]	[\$5,000]	<b>December 5, 2001</b>
17. Prepare bid specifications for annuity purchases and submit to attorney for approval	Towers Perrin/Attorney	\$45,000*	<b>December 7, 2001</b>

Action	Party Responsible	Towers Perrin Fee Estimate	Target Date
18. Provide "Safest Annuity Letter"	Towers Perrin	10 basis points of annuity purchase price [\$10,000-\$20,000]	December 7, 2001
19. Prepare individual Notices of Plan Benefits including benefit amounts, optional forms and election forms	Towers Perrin	\$75,000	December 7, 2001
20. Draft Forms 5310, 6088 and 8717	Attorney/Towers Perrin	\$6,000	December 10, 2001
21. Mail Notices of Plan Benefits including list of Insurance carriers	Furr's [Towers Perrin]	[\$10,000]	December 14, 2001
22. File Forms 5310, 6088 and 8717 with appropriate fee with IRS (filing fee = \$700)	Furr's		December 19, 2001
23. Prepare and file PBGC Form 500 and Schedule EA-S	Towers Perrin/Attorney	\$8,000	December 21, 2001
24. Liquidate assets	Furr's/Trustee		(No later than 120 days after proposed termination date)
25. Submit bid specifications to insurance carriers	Towers Perrin	*[included above]	December 31, 2001 January 15, 2002

Action	Party Responsible	Towers Perrin Fee Estimate	Target Date
26. Require return of executed election forms. Review and check forms for completion and spousal waivers. Allow time to request corrected forms for spousal waivers.	Furr's [Towers Perrin]	[\$40,000]	<p><b>January 31, 2002</b> (Participants must have information 30 days before waiver of spousal benefits is signed)</p>
27. Analyze bids from insurance carriers	Towers Perrin/Attorney	* [included above]	<b>February 8, 2002</b>
28. Expiration of 60 days after filing PBGC Form 500 and Schedule EA-S. Required waiting period by PBGC to confirm sufficiency.	PBGC		<b>February 21, 2002</b>
29. Provide lump sum payout information to trustee	Furr's [Towers Perrin]	[\$3,000]	<b>February 21, 2002</b>
30. Distribute lump sum payments to Participants	Trustee		<p><b>February 28, 2002</b> (Proposed distribution date must be not earlier than 61 nor later than 240 days following the date Form 500 was filed with PBGC)</p>
31. Select insurance carrier and wire transfer premium	Furr's		<b>February 28, 2002</b>

Action	Party Responsible	Towers Perrin Fee Estimate	Target Date
32. Mail retirees annuity applications	Furr's [Towers Perrin]	[\$3,000]	March 15, 2002
33. Review and return retiree annuity applications to insurance carrier	Furr's [Towers Perrin]	[\$6,000]	May 1, 2002
34. Draft Notice of annuity contract	Towers Perrin	\$1,000	May 1, 2002
35. Mail Notice of annuity contract	Furr's [Towers Perrin]	[\$5,000]	May 1, 2002
36. First retiree annuities paid from Insurance carrier	Furr's (Towers Perrin assist)	* [included above]	June 1, 2002
37. Finalize annuity purchase*	Furr's (Towers Perrin assist)	* [included above]	June 1, 2002
38. Prepare and file PBGC Form 501 and Schedule MP (if necessary)	Towers Perrin/Attorney	\$2,000 plus \$500 per missing participant	(Within 30 days of final distribution of assets)
39. Receipt of Favorable Determination Letter	IRS		7

Action	Party Responsible	Towers Perrin Fee Estimate	Target Date
40. Prepare and distribute 1099-R's	Trustee		No later than January 31st following year of payment
41. Prepare and file Final 5500	?		After all assets are distributed ;
42. Respond to any IRS or PBGC post-termination audit	Towers Perrin	\$5,000	

\* Insurance carrier may not finalize contract for several months.