

# Visalia City Council Agenda

For the regular meeting of: MONDAY, October 19, 2009

Location: City Hall Council Chambers, 707 W. Acequia, Visalia CA 93291

Mayor: Jesus J. Gamboa  
Vice Mayor: Bob Link  
Council Member: Greg Collins  
Council Member: Donald K. Landers  
Council Member: Amy Shuklian

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All items listed under the Consent Calendar are considered to be routine and will be enacted by one motion. If anyone desires discussion on any item on the Consent Calendar, please contact the City Clerk who will then request that Council make the item part of the regular agenda.


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## **WORK SESSION AND ACTION ITEMS (as described)**

**4:00 p.m.**

4:00 p.m.

### **Public Comment on Work Session and Closed Session Items –**

1. Authorization to release a Request for Proposals (RFP) to hire a design consultant for a new Anin  Control Facility (ACF) to replace the existing ACF located at the Visalia Airport.  
*Continued from 10/5/09*  
**Receive public comment.**

## **ITEMS OF INTEREST**

*Note: If the Council completes the Work Session agenda before the time listed for Item 2 they will begin their Closed Session deliberations and return to Open Session at 5:15 p.m. for Item 2.*

5:15 p.m.

### **2. RECOGNITION OF COUNCIL MEMBER DON LANDERS**

*Break for Refreshments*

## **CLOSED SESSION**

**6:00 p.m. (Or, immediately following Work Session)**

3. Conference with Legal Counsel – Existing Litigation (Subdivision (a) of Section 54956.9)  
City of Visalia Retirees v. City of Visalia TCSC #09-232173
4. Conference with Legal Counsel – Anticipated Litigation  
Significant exposure to litigation pursuant to subdivision (b) of Section 54956.9:  
Three potential cases

5. Conference With Real Property Negotiators (G.C.§54956.8)  
Property: APN #'s 078-110-006 and 078-110-021 (14 acres on east Riverway and Highway 63)  
Under Negotiations: Price, terms and conditions of purchase  
Negotiating Parties for City: Steve Salomon, Vince Elizondo, Paul Shepard  
Negotiating Parties for Seller: Tom and Linda Stasio and Valerie Derouin
6. Conference with Labor Negotiators (G.C. Section 54957.6)  
Agency designated representatives: Steve Salomon, Eric Frost, Janice Avila  
Employee Organization: All groups
7. Conference With Real Property Negotiators (G.C.§54956.8)  
Property: East side of McAuliff Street at Mill Creek Parkway/Race Street (Portion of APN 103-320-11)  
Under Negotiation: Purchase and sale agreement  
Negotiating Parties for City: Steve Salomon, Mike Olmos, Chris Tavarez  
Negotiating Parties for Seller: Phil Mirwald, Mike Markarian & Steve Johnson with California Water Service Co.

## **REGULAR SESSION**

**7:00 p.m.**

### **PLEDGE OF ALLEGIANCE**

**INVOCATION** – Pastor Jason Neese, Grace Community Church

### **SPECIAL PRESENTATIONS/RECOGNITION**

**CITIZENS REQUESTS** - This is the time for members of the public to comment on any matter within the jurisdiction of the Visalia City Council. This is also the public's opportunity to request that a Consent Calendar item be removed from that section and made a regular agenda item for discussion purposes. Comments related to Regular or Public Hearing Items listed on this agenda will be heard at the time the item is discussed or at the time the Public Hearing is opened for comment. The Council Members ask that you keep your comments brief and positive. Creative criticism, presented with appropriate courtesy, is welcome. The Council cannot legally discuss or take official action on citizen request items that are introduced tonight. In fairness to all who wish to speak tonight, each speaker from the public will be allowed three minutes (speaker timing lights mounted on the lectern will notify you with a flashing red light when your time has expired). Please begin your comments by stating and spelling your name and providing your street name and city.

8. INFORMATION ITEMS – (No action required)
  - a) Receive Planning Commission Action Agenda for the meeting of October 12, 2009.

### **CHANGES TO THE AGENDA/ITEMS TO BE PULLED FOR DISCUSSION**

9. CONSENT CALENDAR - Consent Calendar items are considered routine and will be enacted by a single vote of the Council with no discussion. For a Consent Calendar item to be discussed, or voted upon individually, it must be removed at the request of the Council.
  - a) Authorization to read ordinances by title only.

- b) Authorization for City Manager to approve minor right-of-way purchases \$25,000 and under from a willing seller and approve the Minor Right-of-Way Acquisition Policy.
- c) Authorization to participate in the Proposition 1A Securitization Program and adopt a Proposition 1A Sale Resolution and Purchase and Sale Agreement to fully repay the City for its Proposition 1A property tax loss which will be repaid by the State of California.  
**Resolution 2009-48 required.**
- d) Authorization to declare interest in participating in the CaliforniaFIRST solar and energy efficiency financing program
- e) Accept a petition by 60% of the property owners requesting an assessment district be formed to pay for underground electrical utilities at Orchard Walk, appoint professionals to form the district; and adopt a notice of intention to reimburse the cost of construction improvement and authorize the formation of the district. **Resolution 2009-49 and 2009-50 required.**
- f) Award Contract for Mowing and Aerification of City Parks to Paul Cardoza of Perfect Care Landscape Maintenance per specifications of RFB 08-09-57.
- g) Award of Landscape maintenance contract to Eric Briner and Son Inc., per specifications of RFB 08-09-51 to maintain Landscaping and Lighting Districts C, D, and E.
- h) Authorization to enter into a professional services agreement with Mendoza & Associates for construction management and resident engineer services for the construction of the Ben Maddox Way Highway 198 Overcrossing. Project Number 3011-00000-720000-0-9242.
- i) Authorization to submit a grant application for the 2009 Local Energy Assurance Planning (LEAP) Initiative in the amount of \$200,000 from U.S. Department of Energy to fund the development of energy assurance plan.
- j) Authorization to implement a Wellness Program for participants in the health program in 2010.
- k) Authorization to reduce the hourly Code Enforcement fee that is charged to property owners from \$174.45 to \$128.38. **Resolution 2009-53 required.**
- l) Authorization to enter into a sole-source contract with George Teebay for the purpose of preparing an Airport Security Program (ASP) as required by Transportation Security Administration Regulations, and for the Air Service Sub-committee to work with any interested air service provider that may be qualified to serve Visalia as a result of the completed ASP.

*Convene jointly as the Redevelopment Agency and the Visalia City Council*

10. RDA Consent Calendar

- a) Authorize a loan to the Central Redevelopment Agency in advance of the end of the debt issuance period. **Resolutions RDA 2009-04 and COV 2009-54 required.**

*Adjourn as the Redevelopment Agency and the Visalia City Council and remain seated as the Visalia City Council.*

11. Consider adoption of an urgency interim ordinance imposing a moratorium on medical marijuana dispensaries and collective or cooperative cultivation and distribution enterprises. **Ordinance 2009-07 required. (Requires 4/5<sup>th</sup>s vote to adopt)**
12. **PUBLIC HEARING** –Appeal of the Planning Commission’s denial of Variance No. 2009-10 by Ad Art Sign Company and Visalia Properties to erect a 35-foot high/72 square foot double face freestanding sign for the Orchard Supply Hardware store located in the C-R (Regional Retail Commercial) Zone. The site is located at 2230 West Walnut Avenue. (APN: 095-134-045 & 046). **Resolution No. 2009-51 required.**
13. **PUBLIC HEARING** - to approve the recommended expenditure of the State of California 2009 Citizens Option for Public Safety (COPS) funds of \$100,000; accept and appropriate a grant award for \$150,000 from the Office of Homeland Security; and appropriate asset forfeiture funds in the amount of \$62,000 to fund the purchase of a Bearcat Armored Rescue Vehicle. **Resolution 2009-52 required.**

**REPORT ON ACTIONS TAKEN IN CLOSED SESSION**

<b>Lessor</b>	<b>Lessee</b>	<b>APN Number</b>	<b>Address</b>	<b>Purpose</b>	<b>Approval Date</b>	<b>Project Manager</b>
Visalia Unified School District	City of Visalia	APN: 118-02-0033	NE corner of Road 68 and Caldwell Avenue (Packwood School)	City will seek tenants for sub-lease	10/5/09	Michael Olmos

**REPORT OF CLOSED SESSION MATTERS FINALIZED BETWEEN COUNCIL MEETINGS**

<b>Buyer</b>	<b>Seller</b>	<b>APN Number</b>	<b>Address</b>	<b>Purpose</b>	<b>Closing Date</b>	<b>Project Manager</b>
City of Visalia	GALANTE, Freddie Jr. & Anthony	1,882 sq ft portion of APN 100-030-015	Portion of 1375 E Mineral King (S/W corner Mineral King & Ben Maddox Way)	Hwy 198/Ben Maddox project	10/13/09	Manuel Molina

**Upcoming Council Meetings**

- Monday, November 16, 2009, 4:00 p.m. Work Session; Regular Meeting 7:00 p.m., Council Chambers 707 W. Acequia
- Monday, November 23, 2009, (tentative) 5:30 p.m. Special Meeting, Council Chambers 707 W. Acequia
- Monday, December 7, 2009, 4:00 p.m. Work Session; Regular Meeting 7:00 p.m., Council Chambers 707 W. Acequia

*Note: Meeting dates/times are subject to change, check posted agenda for correct details.*

*In compliance with the American Disabilities Act, if you need special assistance to participate in meetings call (559) 713-4512 48-hours in advance of the meeting. For Hearing-Impaired - Call (559) 713-4900 (TDD) 48-hours in advance of the scheduled meeting time to request signing services.*

*Any written materials relating to an item on this agenda submitted to the Council after distribution of the agenda packet are available for public inspection in the Office of the City Clerk, 425 E. Oak Street, Visalia, CA 93291, during normal business hours.*

# City of Visalia Agenda Item Transmittal

**Meeting Date:** October 19, 2009

**Agenda Item Number (Assigned by City Clerk):** 1

**Agenda Item Wording:** Authorization to release a Request for Proposals (RFP) to hire a design consultant for a new Animal Control Facility (ACF) to be located at the Visalia Airport.

**Deadline for Action:** None.

**Submitting Department:** Community Development and Administration Departments

**Contact Name and Phone Number:**

Paul Scheibel, AICP, Planning Services Manager, 713-4369  
Mario Cifuentez, Airport Manager/Animal Control Contract Administrator, 713-4480  
Adam Ennis, P.E, Engineering Services Manager, 713-4323  
Rebecca Keenan, P.E., Civil Engineer, 713-4541  
Melody Murch, Finance, 713-4379

**Recommendation:**

City Staff recommends that Council authorize staff to issue a Request For Proposals (RFP) from qualified parties to design a new ACF to replace the existing ACF and begin the selection and contract negotiation process. A Draft of the RFP is attached as Exhibit "A".

**Background:**

**New Animal Control Facility-** On December 4, 2008, the City Council approved the selection of the current ACF location, at the Visalia Airport, as the location of the new ACF. This determination was made based on the recommendations of the Subcommittee, which analyzed the potential for relatively low site improvement costs, it's "public awareness" as the site of the current SPCA/City ACF location, avoidance of land use conflicts, and high visibility from Hwy 99.

Between December 2008 and April 2009, staff, in conjunction with the Valley Oak Society for the Prevention of Cruelty to Animals (VOSPCA), conducted extensive research and analysis on contemporary shelter designs and functions. A new concept of a "campus" approach to designing and operating a facility was endorsed by both the City ACF Subcommittee in April 2009, and subsequently by the VOSPCA Board. The new Campus will be constructed on airport property immediately North of the existing facility.

The campus approach separates the City's legally mandated animal control functions pursuant to state Health and Safety Code from those of the animal adoption and education outreach programs of the VOSPCA.

**For action by:**

City Council  
 Redev. Agency Bd.  
 Cap. Impr. Corp.  
 VPFA

**For placement on which agenda:**

Work Session  
 Closed Session

**Regular Session:**

Consent Calendar  
 Regular Item  
 Public Hearing

Est. Time (Min.) 10 min.

**Review:**

**Dept. Head** \_\_\_\_\_  
(Initials & date required)

**Finance** \_\_\_\_\_  
**City Atty** \_\_\_\_\_  
(Initials & date required or N/A)

**City Mgr** \_\_\_\_\_  
(Initials Required)

If report is being re-routed after revisions leave date of initials if no significant change has affected Finance or City Attorney Review.

This concept is being used with noted success in a number of locations with similar circumstances as those of Visalia. Under the campus approach, the City ACF will function primarily as a lost and stray animal facility. As such, it would be a relatively austere building that facilitates animal control officer functions, spay/neutering of animals before release to owners, administrative services such as licensing, and kenneling for lost animals and strays. It is anticipated that the construction of the site and the City building will precede construction of the VOSPCA building.

The VOSPCA building, which will be constructed with private funds to be raised by the Non-profit, will most likely be constructed at a later date and will focus on owner-surrenders, adoption, voluntary spay/neutering, education, advocacy and outreach, and VOSPCA organizational activities not directly related to its service contract with the City. VOSPCA-exclusive operations would continue to occur at the existing (old) ACF until such time as they secure their own funding to construct their new facility alongside the new City facility. There would initially be some degree of shared facilities such as food preparation kitchen, and vet/surgery room; and use of the best kennels for adoptions. There could also potentially be some duplication of facilities such as employee break rooms, adoption kennels, food preparation, and vet/surgery rooms. However, the flexibility accorded by this design was determined to far outweigh the relatively modest costs resulting from duplication of some functions.

As a result of analyzing the two respective organization's priorities, functions, and funding streams, the campus-style approach was recommended to the Subcommittee as the preferred layout for the new facility. On April 23, 2009, the Subcommittee selected the campus approach as the preferred site design alternative. The Subcommittee also affirmed the focus of designing an efficient, attractive, state of the art facility that will markedly improve the environment for animals under the City's charge and ACF staff and volunteers, as well as attractiveness to the public.

This item was continued from the October 5, 2009 meeting and the report has been amended so that the focus is solely on the release of the RFP. The project currently has \$521,880 set aside in the CIP fund. The design is going to cost less than is allocated in the fund and the remaining funds will be put towards the construction costs. Consequently, any recommendations for transfers of funding from other sources have been omitted from this report.

As the City moves forward with the project and looks at future funding, it is imperative to any future fund raising that the project be designed and ready to break ground. This RFP will allow for the eventual selection of a consultant to design the City's facility. Once the project is designed, the City will be able to determine a cost estimate for the facility and provide Council with a funding plan to construct the facility. Any remaining funds, after the design phase is completed, will be retained in the CIP account to help reduce the amount needed for the construction phase.

**Next Steps:** Following are the next steps to be taken once the City Council authorizes the RFP to move forward. Once authorization is given to proceed with the release of the RFP, staff projects returning to City Council in approximately three months to award the contract.

- **Finalization and Distribution of the RFP.** The RFP will be finalized as to the dates of circulation and timelines, as well as for inclusion of any additional information directed by the City Council. The finalized RFP will then be made available to any interested firms as well as distributed to individual firms who have requested such noticing, and in trade publications for this type of development.

- **RFP distribution and interviews.** Potential consultants will have 45 days to respond to the RFP – actual dates are to be determined. Upon closing of the proposal period, a selection committee, composed of staff, Council members and VOSPCA representatives, will establish a short list of consultants and conduct interviews of the top candidates and establish an order of preference.
- **Negotiate Consultant Fee.** City staff will negotiate the best terms and fee with the Subcommittee's first choice candidate.
- **City Council meeting to award contract.** City staff will return to the City Council with the Subcommittee's recommendation and the negotiated terms and fee. The City Council will be asked to allow the City Manager to enter into a contract with the consultant for a specified amount.

**Committee/Commission Review and Actions:**

The subcommittee has reviewed the RFP and recommends that Council authorize the release of the RFP.

**Attachments:**

- Exhibit "1" – Draft Request for Proposals
- Exhibit "2" – Conceptual Campus Layout

**Recommended Motion:**

I move to Authorize City Staff to release a RFP for the purpose of hiring a design consultant for a new Animal Control Facility (ACF).

***Environmental Assessment Status***

**CEQA Review:** *No CEQA review is needed for the City Council to authorize the release of a Request for Qualifications.*

**NEPA Review:** *NA*

Copies of this report have been provided to:

- Subcommittee
- VOSPCA Board of Directors

# ACTION

## PLANNING COMMISSION AGENDA

CHAIRPERSON:  
Lawrence Segrue



VICE CHAIRPERSON:  
Adam Peck

COMMISSIONERS PRESENT: Lawrence Segrue, Terese Lane, Adam Peck, Roland Soltesz

MONDAY OCTOBER 12, 2009; 7:00 P.M., CITY HALL WEST, 707 WEST ACEQUIA, VISALIA CA

- |   |  |
|---|--|
| 7:00 TO 7:00  | 1. THE PLEDGE OF ALLEGIANCE  |
| 7:00 TO 7:01<br>No one spoke  | 2. CITIZEN'S REQUESTS - The Commission requests that a 5-minute time limit be observed for requests. Please note that issues raised under Citizen's Requests are informational only and the Commission will not take action at this time.  |
| 7:01 TO 7:01  | 3. CITY PLANNER AGENDA COMMENTS – No comments  |
| 7:00 TO 7:01  | 4. CHANGES TO THE AGENDA – No changes  |
| 7:01 TO 7:01<br>No Consent Calendar items   | 5. CONSENT CALENDAR - All items under the consent calendar are to be considered routine and will be enacted by one motion. For any discussion of an item on the consent calendar, it will be removed at the request of the Commission and made a part of the regular agenda.   |
| 7:01 TO 7:07<br><br>Approved as recommended (Salinas & Soltesz) 5-0<br><br>Open: 7:05<br>Close: 7:05<br><br>Spoke:<br>1. Fred Scott                                   | 6. PUBLIC HEARING– Paul Bernal<br><br>Conditional Use Permit No. 2009-38: a request by Visalia Development Holdings LLC, to allow tenant improvements for an 8,365 sq. ft. gymnasium / fitness center in the Country Club Plaza Shopping Center. The site is zoned C-N (Community Commercial) and is located at 1208 North Demaree Street. (APN: N/A)  |
| 7:07 TO 9:30<br><br>GPA & COZ Denied (Lane, Soltesz) 5-0<br><br>Open: 7:44<br>Close: 8:50<br><br>BREAK 8:50-9:00<br><br>Spoke:<br>1. Monique Miron<br>2. George Hearn | 7. PUBLIC HEARING – Brandon Smith<br><br>a. General Plan Amendment No. 2009-01 is a request by Monique Miron to amend the General Plan Land Use Map from Residential Low Density to Professional / Administrative Office for five parcels totaling 37,203 square feet. The project location is on the south side of Noble Avenue between Martin Street and Giddings Street. (APNs: 096-054-001, 002, 003, 004, 005)<br><br>b. Change of Zone No. 2009-02 is a request by Monique Miron to change the designation on the Zoning Map from R-1-6 (Single-family Residential, 6,000 square feet minimum lot size) to O-C (Office Conversion) for five parcels totaling 37,203 square feet. The project location is on the south side of Noble Avenue |





**City of Visalia  
Agenda Item Transmittal**

**Meeting Date:** October 19, 2009

**Agenda Item Number (Assigned by City Clerk):** 9b

**Agenda Item Wording:** Request that Council authorize the City Manager to approve minor right-of-way purchases \$25,000 and under from a willing seller and that Council approve the Minor Right-of-Way Acquisition Policy.

**Deadline for Action:** None

**Submitting Department:** Community Development Department/  
Engineering Division

**Contact Name and Phone Number:**

Adam Ennis, Engineering Services Manager – 713-4323  
Chris Young, Assistant Community Dev. Director – 713-4392

**Department Recommendation:** City staff recommends that Council authorize the City Manager to approve minor right-of-way purchases \$25,000 and under from a willing seller.

**Background/Summary:** During the course of either the design or construction of City projects, the need occasionally arises to acquire relatively small pieces of right-of-way to accommodate a project. The usual process involves getting an appraisal, preparing a staff report for a closed session item to get approval from City Council to make an offer, and negotiating with the property owner. The process can be relatively time consuming, expensive and can add a substantial amount of time to a project schedule. Many times the property owners are willing sellers and the process time and expense could be substantially reduced. Quite often, the cost of acquiring small right-of-way pieces (through the current process) is more expensive than the actual cost of the right-of-way being purchased. This seems to be an unnecessary added expense especially when there is a willing seller.

Staff is proposing an alternate procedure/policy (see Minor Right-of-way Acquisition Policy – Exhibit “A”) for minor right-of-way purchases where there is a willing seller. Staff could use the current city-wide appraisal (based upon property zoning) to determine an offer amount for a piece of right-of-way. If the property owner is agreeable, staff can prepare the necessary documents and get the transaction processed with approval from the City Manager. The City-wide appraisal is updated annually and would provide a reasonable property value, especially for small right-of-way pieces. This process could avoid the time and expense of obtaining an individual appraisal, which often can take up to three months and can cost about \$5,000. Also, it would reduce staff time and expense for preparing staff reports. This process would only be used for minor right-of-way acquisitions, of \$25,000 and under, where there is a willing seller.

**For action by:**

City Council  
 Redev. Agency Bd.  
 Cap. Impr. Corp.  
 VPFA

**For placement on which agenda:**

Work Session  
 Closed Session

**Regular Session:**

Consent Calendar  
 Regular Item  
 Public Hearing

Est. Time (Min.): 20

**Review:**

**Dept. Head** \_\_\_\_\_  
(Initials & date required)

**Finance** \_\_\_\_\_  
**City Atty** \_\_\_\_\_  
(Initials & date required or N/A)

**City Mgr** \_\_\_\_\_  
(Initials Required)

If report is being re-routed after revisions leave date of initials if no significant change has affected Finance or City Attorney Review.

The right-of-way acquisitions could include fee title acquisitions, easements, “right-of-entries” and small damages reimbursement. Typically, easements are appraised at a percentage of the purchase value based upon the extent of the easement. A reasonable evaluation and approach would be employed to determine value based on past experience. All other right-of-way acquisitions, and those with particular funding restrictions which dictate the “formal” process to be used, would continue to go through the currently established process.

California law normally requires property to be appraised prior to negotiations. However, Government Code Section 7267.1 allows public entities to prescribe a procedure to waive the appraisal in cases involving the acquisition by sale or donation of property with a low fair market value. This proposal by staff would allow the City to save costs while still complying with legal requirements.

**Attachments:** Exhibit “A” – Minor Right-of-Way Acquisition Policy

**Prior Council/Board Actions:** None

**Committee/Commission Review and Actions:** None

**Alternatives:** None Recommended

**Attachments:** None

**Recommended Motion (and Alternative Motions if expected):**

I move to authorize the City Manager to approve minor right-of-way purchases \$25,000 and under from a willing seller and motion that Council approve the Minor Right-of-Way Acquisition Policy.

***Environmental Assessment Status***

**CEQA Review:** Individual project specific environmental documents will be prepared for each project for which right-of-way is being obtained.

**NEPA Review:**

## MINOR RIGHT-OF-WAY ACQUISITION POLICY

Adopted by Visalia City Council on October 19, 2009

California law normally requires public entities to appraise property prior to negotiations. However, Government Code Section 7267.1 allows public entities to prescribe a procedure to waive the appraisal in cases involving the acquisition by sale or donation of property with a low fair market value. This policy describes when the City of Visalia may waive obtaining an individualized property appraisal prior to negotiations.

*Definition:* During the course of either the design or construction of City projects, the need occasionally arises to acquire relatively small pieces of right-of-way to accommodate a project. Staff can use the current city-wide appraisal (based upon property zoning) to determine an offer amount for a piece of right-of-way. If the property owner is agreeable, staff can prepare the necessary documents and get the transaction processed with approval from the City Manager. This process only applies to minor right-of-way acquisitions, of \$25,000 and under, where there is a willing seller. The right-of-way acquisitions can include fee title acquisitions, easements, "right-of-entries" and small damages reimbursement. A reasonable evaluation and approach shall be employed to determine value based on past experience. All other right-of-way acquisitions, and those with particular funding restrictions which dictate the "formal" process to be used, shall go through the standard right-of-way acquisition process and shall not use this policy.

*Value:* \$25,000 and under.

*Type of transaction:* Fee title, easement or right-of-entry and may or may not include small damages reimbursement with a willing seller only.

### Implementation Process for Minor Right-of-Way Acquisitions

- Staff to prepare a complete legal description and exhibit map for the right-of-way needed to be acquired for the project.
- Staff to determine value of property from annually updated City-wide appraisal based on current property zoning. Small damage values will be determined based on past experience and reasonable values for damages.
- Provide proposed offer to City Manager for signed approval to make offer.
- Upon City Manager approval of offer, make offer to property owner.
- If property owner is willing to accept offer, prepare grant deed and process transaction.
- If property owner is unwilling to accept offer, proceed with standard right-of-way acquisition procedure.

### Exhibit "A"

## City of Visalia Agenda Item Transmittal

**Meeting Date:** October 19, 2009

**Agenda Item Number (Assigned by City Clerk):** 9c

**Agenda Item Wording:** A resolution approving the form of and authorizing the execution and delivery of a purchase and sale agreement and related documents with respect to the sale of the seller's Proposition 1A receivable from the State; and directing and authorizing certain other actions in connection therewith.

**Deadline for Action:** November 6, 2009

**Submitting Department:** Administration - Finance

**Contact Name and Phone Number:** Eric Frost 713-4474,  
Jason Montgomery 713-4425

**Department Recommendation:** Staff recommends that Council participate in the Proposition 1A Securitization Program, and adopt the proposed Proposition 1A Sale Resolution and Purchase and Sale Agreement to fully repay the City for its Proposition 1A property tax loss which then will be repaid by the State of California with no obligation to the City. Staff also recommends that Council direct Staff to implement the Resolution and Agreement once all documents have been finalized, reviewed and approved by Staff.

### Background

**Proposition 1A Suspension:** Proposition 1A was passed by California voters in 2004 to ensure local property tax and sales tax revenues remain with local government thereby safeguarding funding for public safety, health, libraries, parks, and other local services. Provisions can only be suspended if the Governor declares a fiscal necessity and two-thirds of the Legislature concur.

The emergency suspension of Proposition 1A was passed by the Legislature and signed by the Governor as ABX4 14 and ABX4 15 as part of the 2009-10 budget package on July 28, 2009. Under the provision, the State will borrow 8% of the amount of property tax revenue apportioned to cities, counties and special districts. This amounts to approximately \$2 million for the City of Visalia. The State will be required to repay those obligations plus interest by June 30, 2013. The interest rate has been set at 2%.

The legislature is currently reviewing a clean-up bill, SB67 which would provide for a few critical changes to the enacted legislation, including but not limited to providing for: financing to occur in November; county auditor certification of amount of Prop 1A receivable; tax-exempt structure; California Communities as the only issuer; more flexibility on bond structure (interest payments,

### **For action by:**

City Council  
 Redev. Agency Bd.  
 Cap. Impr. Corp.  
 VPFA

### **For placement on which agenda:**

Work Session  
 Closed Session

### **Regular Session:**

Consent Calendar  
 Regular Item  
 Public Hearing

Est. Time (Min.): 5

### **Review:**

**Dept. Head** \_\_\_\_\_  
(Initials & date required)

**Finance** \_\_\_\_\_  
**City Atty** \_\_\_\_\_  
(Initials & date required  
or N/A)

**City Mgr** \_\_\_\_\_  
(Initials Required)

If report is being re-routed after revisions leave date of initials if no significant change has affected Finance or City Attorney Review.

state payment date and redemption features); sales among local agencies; and revision to the hardship mechanism.

**Proposition 1A Securitization Program:** Authorized under ABX4 14 and ABX4 15, the Proposition 1A Securitization Program was instituted by California Communities (a joint powers authority created to provide financing options for local governments) to enable Local Agencies to sell their respective Proposition 1A Receivables. Currently, SB67 is being considered to clarify specific aspects of ABX4 14 and ABX4 15. Under the Securitization Program, California Communities will simultaneously purchase the Proposition 1A Receivables, issue bonds ("Prop 1A Bonds") and provide each local agency with the cash proceeds in two equal installments, on January 15, 2010 and May 3, 2010 (to coincide with the dates that the State will be shifting property tax from local agencies). The purchase price paid to the local agencies will equal **100%** of the amount of the property tax reduction. All transaction costs of issuance and interest will be paid by the State of California. ***Participating local agencies will have no obligation on the bonds and no credit exposure to the State.***

If the City of Visalia sells its Proposition 1A Receivable under the Proposition 1A Securitization Program, California Communities will pledge the City of Visalia's Proposition 1A Receivable to secure the repayment of a corresponding amount of the Prop 1A Bonds. The City of Visalia's sale of its Proposition 1A Receivable will be irrevocable. The City would not be able to seek to have the receivable returned in the event that California Communities failed to perform. In the event that non performance occurs, the recourse for the City would be two:

- 1) As part of the Prop 1A Bond Sale, there will be a trust indenture entered into between California Communities and the Trustee. This trust indenture instructs the Trustee to hold the proceeds of the bond sale in a separate account for payment to the City. The indenture also instructs the Trustee to release funds to the City on specific dates, tentatively set for January 15, 2010 and May 3, 2010. The indenture has not been finalized.
- 2) A contract action against California Communities and/or the Trustee. The City would need to sue California Communities and/or the Trustee to perform according to the contract and trust indenture.

Bondholders will have no recourse to the City of Visalia. Rather, the only pledge will be the State of California's promise to pay.

**Proposition 1A Program Sponsor:** California Statewide Communities Development Authority ("California Communities") is a joint powers authority sponsored by the California State Association of Counties and the League of California Cities. The member agencies of California Communities include approximately 230 cities and 54 counties throughout California.

**Benefits of Participation in the Proposition 1A Securitization Program:**

The benefits to the City of Visalia of participation in the Proposition 1A Securitization Program include:

- **Immediate cash relief** – the sale of the City of Visalia's Proposition 1A Receivable will provide the City of Visalia with 100% of its Proposition 1A Receivable in two equal installments, on January 15, 2010 and May 3, 2010.
- **Mitigates impact of 8% property tax withholding in January and May** – Per ABX4 14 and ABX4 15 and the proposed clean-up legislation SB 67, the State will withhold 8% of property tax receivables due to Cities, Counties, and Special Districts under Proposition

1A. The financing outlines bond proceeds to be distributed to coincide with the dates that the State will be shifting property tax from local agencies.

- All costs of financing borne by the State of California. The City of Visalia will not have to pay any interest cost or costs of issuance in connection with its participation.
- No obligation on Bonds. The City of Visalia has no obligation with respect to the payment of the bonds, nor any reporting, disclosure or other compliance obligations associated with the bonds.

### **Proceeds of the Sale of the City of Visalia's Proposition 1A Receivable:**

Upon delivery of the Proposition 1A Bonds, California Communities will make available to the City of Visalia its fixed purchase price, which will equal 100% of the local agency's Proposition 1A Receivable. These funds may be used for any lawful purpose of the City of Visalia and are not restricted by the program.

### **Proposed Proposition 1A Receivables Sale Resolution:**

The proposed Proposition 1A Receivables Sale Resolution:

- (1) Authorizes the sale of the City of Visalia's Proposition 1A Receivable to California Communities for 100% of its receivable;
- (2) Approves the form, and directs the execution and delivery, of the Purchase and Sale Agreement with California Communities and related documents;
- (3) Authorizes and directs any Authorized Officer to send, or to cause to be sent, an irrevocable written instruction required by statute to the State Controller notifying the State of the sale of the Proposition 1A Receivable and instructing the disbursement of the Proposition 1A Receivable to the Proposition 1A Bond Trustee;
- (4) Appoints certain City of Visalia officers and officials as Authorized Officers for purposes of signing documents; and
- (5) Authorizes miscellaneous related actions and makes certain ratifications, findings and determinations required by law.

### **Proposed Purchase and Sale Agreement**

The proposed Purchase and Sale Agreement:

- (1) Provides for the sale of the Proposition 1A Receivable to California Communities;
- (2) Contains representations and warranties of the City of Visalia to assure California Communities that the Proposition 1A Receivable has not been previously sold, is not encumbered, that no litigation or other actions is pending or threatened to disrupt the transaction and that this is an arm's length "true sale" of the Proposition 1A Receivable.
- (3) Provides mechanics for payment of the Purchase Price
- (4) Contains other miscellaneous provisions.

**Proposed Purchase and Sale Agreement Exhibits:**

The proposed Proposition 1A Purchase and Sale Agreement Exhibits:

- (B1) Opinion of Counsel: This is an opinion of the counsel to the local agency covering basic approval of the documents, litigation, and enforceability of the document against the Seller. It will be dated as of the Pricing date of the bonds (currently expected to be November 10, 2009).
- (B2) Bringdown Opinion: This simply "brings down" the opinions to the closing date (currently expected to be November 19, 2009).
- (C1) Certificate of the Clerk of the Local Agency: A certificate of the Clerk confirming that the resolution was duly adopted and is in full force and effect.
- (C2) Seller Certificate: A certification of the Seller dated as of the Pricing Date confirming that the representations and warranties of the Seller are true as of the Pricing Date, confirming authority to sign, confirming due approval of the resolution and providing payment instructions.
- (C3) Bill of Sale and Bringdown Certificate: Certificate that brings the certifications of C2 down to the Closing Date and confirms the sale of the Proposition 1A Receivable as of the Closing Date.
- (D) Irrevocable Instructions to the Controller: Required in order to let the State Controller know that the Proposition 1A Receivable has been sold and directing the State to make payment of the receivable to the Trustee on behalf of the Purchaser.
- (E) Escrow Instruction Letter: Instructs Transaction Counsel (Orrick) to hold all documents in escrow until closing, and if closing does not occur by December 31, 2009 for any reason, to destroy all documents.

**Alternatives:** Do not participate in the Proposition 1A Securitization Program and allow the State to borrow 8% of the amount of property tax revenue apportioned to the City of Visalia. This amount will be paid back to the City of Visalia by June 30, 2013 with interest paid at 2%.

**Attachments:**

Attachment #1, Proposition 1A Sale Resolution  
Attachment #2, Purchase and Sale Agreement

**Recommended Motion (and Alternative Motions if expected):** 1) Move to participate in the Proposition 1A Securitization Program, and adopt the proposed Proposition 1A Sale Resolution and Purchase and Sale Agreement. 2) Direct Staff to implement the Resolution and Agreement once all documents are finalized, reviewed and approved by Staff.



***Environmental Assessment Status***

**CEQA Review:**

**NEPA Review:**

**Tracking Information:** *(Staff must list/include appropriate review, assessment, appointment and contract dates and other information that needs to be followed up on at a future date)*

Copies of this report have been provided to:

RESOLUTION NO. \_\_\_\_\_

**CITY COUNCIL  
OF THE  
CITY OF VISALIA**

A RESOLUTION APPROVING THE FORM OF AND AUTHORIZING THE EXECUTION AND DELIVERY OF A PURCHASE AND SALE AGREEMENT AND RELATED DOCUMENTS WITH RESPECT TO THE SALE OF THE SELLER'S PROPOSITION 1A RECEIVABLE FROM THE STATE; AND DIRECTING AND AUTHORIZING CERTAIN OTHER ACTIONS IN CONNECTION THEREWITH

WHEREAS, pursuant to Section 25.5 of Article XIII of the California Constitution and Chapter 14XXXX of the California Statutes of 2009 (Assembly Bill No. 15), as amended (the "Act"), certain local agencies within the State of California (the "State") are entitled to receive certain payments to be made by the State on or before June 30, 2013, as reimbursement for reductions in the percentage of the total amount of ad valorem property tax revenues allocated to such local agencies during the State's 2009-10 fiscal year (the "Reimbursement Payments"), which reductions have been authorized pursuant to Sections 100.05 and 100.06 of the California Revenue and Taxation Code;

WHEREAS, the City of Visalia, a local agency within the meaning of Section 6585(f) of the California Government Code (the "Seller"), is entitled to and has determined to sell all right, title and interest of the Seller in and to its "Proposition 1A receivable", as defined in Section 6585(g) of the California Government Code (the "Proposition 1A Receivable"), namely, the right to payment of moneys due or to become due to the Seller pursuant to Section 25.5(a)(1)(B)(iii) of Article XIII of the California Constitution and Section 100.06 of the California Revenue and Taxation Code, in order to obtain money to fund public capital improvements or working capital;

WHEREAS, the Seller is authorized to sell or otherwise dispose of its property as the interests of its residents require;

WHEREAS, the California Statewide Communities Development Authority, a joint exercise of powers authority organized and existing under the laws of the State (the "Purchaser"), has been authorized pursuant to Section 6588(x) of the California Government Code to purchase the Proposition 1A Receivable;

WHEREAS, the Purchaser desires to purchase the Proposition 1A Receivable and the Seller desires to sell the Proposition 1A Receivable pursuant to a purchase and sale agreement by and between the Seller and the Purchaser in the form presented to this City Council (the "Sale Agreement") for the purposes set forth herein;

WHEREAS, in order to finance the purchase price of the Proposition 1A Receivable from the Seller and the purchase price of other Proposition 1A Receivables from other local agencies, the Purchaser will issue its bonds (the "Bonds") pursuant to Section 6590 of the California Government Code and an Indenture (the "Indenture"), by and between the Purchaser and Wells Fargo Bank, National Association, as trustee (the "Trustee"), which Bonds will be payable solely from the proceeds of the Seller's Proposition 1A Receivable and other Proposition 1A

Receivables sold to the Purchaser by local agencies in connection with the issuance of the Bonds;

WHEREAS, the Seller acknowledges that (i) any transfer of its Proposition 1A Receivable to the Purchaser pursuant to the Sale Agreement shall be treated as an absolute sale and transfer of the property so transferred and not as a pledge or grant of a security interest by City of Visalia to secure a borrowing, (ii) any such sale of its Proposition 1A Receivable to the Purchaser shall automatically be perfected without the need for physical delivery, recordation, filing or further act, (iii) the provisions of Division 9 (commencing with Section 9101) of the California Commercial Code and Sections 954.5 to 955.1 of the California Civil Code, inclusive, shall not apply to the sale of its Proposition 1A Receivable, and (iv) after such transfer, the Seller shall have no right, title, or interest in or to the Proposition 1A Receivable sold to the Purchaser and the Proposition 1A Receivable will thereafter be owned, received, held and disbursed only by the Purchaser or a trustee or agent appointed by the Purchaser;

WHEREAS, the Seller acknowledges that the Purchaser will grant a security interest in the Proposition 1A Receivable to the Trustee and any credit enhancer to secure payment of the Bonds;

WHEREAS, a portion of the proceeds of the Bonds will be used by the Purchaser to, among other things, pay the purchase price of the Proposition 1A Receivable;

WHEREAS, the Seller will use the proceeds received from the sale of the Proposition 1A Receivable for any lawful purpose as permitted under the applicable laws of the State;

NOW THEREFORE, the City Council of the City of Visalia hereby resolves as follows:

Section 1. All of the recitals set forth above are true and correct, and this City Council hereby so finds and determines.

Section 2. The Seller hereby authorizes the sale of the Proposition 1A Receivable to the Purchaser for a price equal to the amount certified as the Initial Amount (as defined in the Sale Agreement) by the County auditor pursuant to the Act. The form of Sale Agreement presented to the City Council is hereby approved. An Authorized Officer (as set forth in Appendix A of this Resolution, attached hereto and by this reference incorporated herein) is hereby authorized and directed to execute and deliver the Sale Agreement on behalf of the Seller, which shall be in the form presented at this meeting.

Section 3. Any Authorized Officer is hereby authorized and directed to send, or to cause to be sent, an irrevocable written instruction to the State Controller (the "Irrevocable Written Instruction") notifying the State of the sale of the Proposition 1A Receivable and instructing the disbursement pursuant to Section 6588.6(c) of California Government Code of the Proposition 1A Receivable to the Trustee, on behalf of the Purchaser, which Irrevocable Written Instruction shall be in the form presented at this meeting.

Section 4. The Authorized Officers and such other Seller officers, as appropriate, are hereby authorized and directed, jointly and severally, to do any and all things and to execute and deliver any and all documents, including but not limited to, if required, appropriate escrow

instructions relating to the delivery into escrow of executed documents prior to the closing of the Bonds, and such other documents mentioned in the Sale Agreement or the Indenture, which any of them may deem necessary or desirable in order to implement the Sale Agreement and otherwise to carry out, give effect to and comply with the terms and intent of this Resolution; and all such actions heretofore taken by such officers are hereby ratified, confirmed and approved.

Section 5. All consents, approvals, notices, orders, requests and other actions permitted or required by any of the documents authorized by this Resolution, whether before or after the sale of the Proposition 1A Receivable or the issuance of the Bonds, including without limitation any of the foregoing that may be necessary or desirable in connection with any default under or amendment of such documents, may be given or taken by an Authorized Officer without further authorization by this City Council, and each Authorized Officer is hereby authorized and directed to give any such consent, approval, notice, order or request, to execute any necessary or appropriate documents or amendments, and to take any such action that such Authorized Officer may deem necessary or desirable to further the purposes of this Resolution.

Section 6. The City Council acknowledges that, upon execution and delivery of the Sale Agreement, the Seller is contractually obligated to sell the Proposition 1A Receivable to the Purchaser pursuant to the Sale Agreement and the Seller shall not have any option to revoke its approval of the Sale Agreement or to determine not to perform its obligations thereunder.

Section 7. This Resolution shall take effect from and after its adoption and approval.

PASSED AND ADOPTED by the City Council of the City of Visalia, State of California, this \_\_\_\_\_ day of \_\_\_\_\_, 2009, by the following vote:

AYES:

NOES:

ABSENT:

\_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
City Clerk

Approved as to form :

SELLER'S COUNSEL

By \_\_\_\_\_

Dated: \_\_\_\_\_

**APPENDIX A**

**CITY OF VISALIA**

**Authorized Officers:** Eric Frost, Administrative Services Director

Renee Nagel, Finance Manager

any designee of any of them, as appointed in a written certificate of such Authorized Officer delivered to the Trustee.

CITY OF VISALIA, CALIFORNIA,  
as Seller

and

CALIFORNIA STATEWIDE COMMUNITIES  
DEVELOPMENT AUTHORITY,  
as Purchaser

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PURCHASE AND SALE AGREEMENT

Dated as of November 1, 2009

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## PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT, dated as of November 1, 2009 (this "Agreement"), is entered into by and between:

(1) CITY OF VISALIA, a local agency of the State of California within the meaning of Section 6585(f) of the California Government Code (the "Seller"); and

(2) CALIFORNIA STATEWIDE COMMUNITIES DEVELOPMENT AUTHORITY, a joint exercise of powers authority organized and existing under the laws of the State of California (the "Purchaser").

### RECITALS

A. Pursuant to Section 25.5 of Article XIII of the California Constitution and Section 100.06 of the California Revenue and Taxation Code, local agencies within the meaning of Section 6585(f) of the California Government Code are entitled to receive certain payments to be made by the State of California (the "State") on or before June 30, 2013, as reimbursement for reductions in the percentage of the total amount of ad valorem property tax revenues allocated to such local agencies during the State's 2009-10 fiscal year, which reductions have been authorized pursuant to Sections 100.05 and 100.06 of the California Revenue and Taxation Code.

B. The Seller is the owner of the Proposition 1A Receivable (as defined below) and is entitled to and has determined to sell all right, title and interest in and to the Proposition 1A receivable, namely, the right to payment of moneys due or to become due to the Seller pursuant to Section 25.5(a)(1)(B)(iii) of Article XIII of the California Constitution and Section 100.06 of the California Revenue and Taxation Code, in order to obtain money to fund any lawful purpose as permitted under the applicable laws of the State.

C. The Seller is authorized to sell or otherwise dispose of its property as the interests of its residents require.

D. The Purchaser, a joint exercise of powers authority organized and existing under the laws of the State, has been authorized pursuant to Section 6588(x) of the California Government Code to purchase the Proposition 1A Receivable.

E. The Seller is willing to sell, and the Purchaser is willing to purchase, the Proposition 1A Receivable upon the terms specified in this Agreement.

F. Pursuant to its Proposition 1A Receivable Financing Program (the "Program"), the Purchaser will issue its bonds (the "Bonds") pursuant to an Indenture (the "Indenture"), between the Purchaser and Wells Fargo Bank, National Association, as trustee (the "Trustee"), and will use a portion of the proceeds thereof to purchase the Proposition 1A Receivable from the Seller.

G. The Purchaser will grant a security interest in such Proposition 1A Receivable to the Trustee and each Credit Enhancer to secure the Bonds.

## AGREEMENT

NOW, THEREFORE, in consideration of the above Recitals and the mutual covenants herein contained, the parties hereto hereby agree as follows:

### 1. Definitions and Interpretation.

(a) For all purposes of this Agreement, except as otherwise expressly provided herein or unless the context otherwise requires, capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in Exhibit A attached hereto and which is incorporated by reference herein.

(b) The words “hereof,” “herein,” “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement; section and exhibits references contained in this Agreement are references to sections and exhibits in or to this Agreement unless otherwise specified; and the term “including” shall mean “including without limitation.”

(c) Any agreement, instrument or statute defined or referred to herein or in any instrument or certificate delivered in connection herewith means such agreement, instrument or statute as from time to time may be amended, modified or supplemented and includes (in the case of agreements or instruments) references to all attachments and exhibits thereto and instruments incorporated therein; and any references to a Person are also to its permitted successors and assigns.

### 2. Agreement to Sell and Purchase; Conditions Precedent.

(a) The Seller agrees to sell, and the Purchaser agrees to purchase, on the Closing Date, for an amount equal to the Purchase Price, all right, title and interest of the Seller in and to the “Proposition 1A receivable” as defined in Section 6585(g) of the California Government Code (the “Proposition 1A Receivable”), namely, the right to payment of moneys due or to become due to the Seller pursuant to Section 25.5(a)(1)(B)(iii) of Article XIII of the California Constitution and Section 100.06 of the California Revenue and Taxation Code. The Purchase Price shall be paid by the Purchaser to the Seller in two equal cash installment payments, without interest (each, an “Installment Payment” and, collectively, the “Installment Payments”), on January 15, 2010, and May 3, 2010 (each a “Payment Date” and, collectively, the “Payment Dates”). The Purchaser shall pay the Purchase Price by wire transfer pursuant to wire instructions provided by the Seller to the Trustee by e-mail to john.deleray@wellsfargo.com or by facsimile to 213-614-3355, Attention: John Deleray. If wire instructions are not provided to the Trustee (or if such wire instructions are invalid) payment will be made by check mailed to the Seller’s Principal Place of Business.

(b) The performance by the Purchaser of its obligations hereunder shall be conditioned upon:

- (i) Transaction Counsel receiving on or before the date the Bonds are sold (the “Pricing Date”), to be held in escrow until the Closing Date and then delivered to the Purchaser on the Closing Date, the following documents

duly executed by the Seller or its counsel, as applicable: (1) an opinion of counsel to the Seller dated the Pricing Date in substantially the form attached hereto as Exhibit B1, (2) certificates dated the Pricing Date in substantially the forms attached hereto as Exhibit C1 and Exhibit C2, (3) irrevocable instructions to the Controller dated as of the Closing Date in substantially the form attached hereto as Exhibit D, (4) this Agreement, (5) a certified copy of the resolution of the Seller's City Council approving this Agreement, the transactions contemplated hereby and the documents attached hereto as exhibits, and (6) an escrow instruction letter in substantially the form attached hereto as Exhibit E;

- (ii) Transaction Counsel receiving on or before the Pricing Date, (1) a bringdown opinion of counsel to the Seller dated as of the Closing Date in substantially the form attached hereto as Exhibit B2, and (2) a bill of sale and bringdown certificate of the Seller (the "Bill of Sale") in substantially the form attached hereto as Exhibit C3; provided that the Purchaser may waive, in its sole discretion, the requirements of Section 2(b)(ii)(1);
- (iii) the Purchaser issuing Bonds in an amount which will be sufficient to pay the Purchase Price; and
- (iv) the receipt by the Purchaser of a certification of the County Auditor confirming the Initial Amount of the Proposition 1A Receivable pursuant to the Act.

(c) The performance by the Seller of its obligations hereunder shall be conditioned solely upon the Purchaser's issuance of the Bonds its execution and delivery of this Agreement, pursuant to which it is legally obligated to pay the Installment Payments to the Seller on the Payment Dates as set forth in this Agreement, and no other act or omission on the part of the Purchaser or any other party shall excuse the Seller from performing its obligations hereunder. Seller specifically disclaims any right to rescind this Agreement, or to assert that title to the Proposition 1A Receivable has not passed to the Purchaser, should Purchaser fail to make Installment Payments in the requisite amounts on the Payment Dates.

3. Purchase Price, Conveyance of Proposition 1A Receivable and Payment of Purchase Price.

(a) Upon pricing of the Bonds by the Purchaser, the Purchaser will inform the Seller that it will pay the Purchase Price in Installment Payments on the Payment Dates.

(b) In consideration of the Purchaser's agreement to pay and deliver to the Seller the Installment Payments on the Payment Dates, the Seller agrees to (i) transfer, grant, bargain, sell, assign, convey, set over and deliver to the Purchaser, absolutely and not as collateral security, without recourse except as expressly provided herein, and the Purchaser agrees to purchase, accept and receive, the Proposition 1A Receivable, and (ii) assign to the Purchaser, to the extent permitted by law, all present or future rights, if any, of the Seller to enforce or cause the enforcement of payment of the Proposition 1A Receivable pursuant to the Act and other

applicable law. Such transfer, grant, bargain, sale, assignment, conveyance, set over and delivery is hereby expressly stated to be a sale and, pursuant to Section 6588.6(b) of the California Government Code, shall be treated as an absolute sale and transfer of the Proposition 1A Receivable, and not as a grant of a security interest by the Seller to secure a borrowing. This is the statement referred to in Sections 6588.6(b) and (c) of the California Government Code.

4. Representations and Warranties of the Purchaser. The Purchaser represents and warrants to the Seller, as of the date hereof, as follows:

(a) The Purchaser is duly organized, validly existing and in good standing under the laws of the State of California.

(b) The Purchaser has full power and authority to enter into this Agreement and to perform its obligations hereunder and has duly authorized such purchase and assignment of the Proposition 1A Receivable by the Purchaser by all necessary action.

(c) Neither the execution and delivery by the Purchaser of this Agreement, nor the performance by the Purchaser of its obligations hereunder, shall conflict with or result in a breach or default under any of its organizational documents, any law, rule, regulation, judgment, order or decree to which it is subject or any agreement or instrument to which it is a party.

(d) To the best of the knowledge of the Purchaser, no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body, is pending or threatened in any way against the Purchaser affecting the existence of the Purchaser or the titles of its commissioners or officers, or seeking to restrain or to enjoin the purchase of the Proposition 1A Receivable or to direct the application of the proceeds of the purchase thereof, or in any way contesting or affecting the validity or enforceability of any of the Transaction Documents or any other applicable agreements or any action of the Purchaser contemplated by any of said documents, or in any way contesting the powers of the Purchaser or its authority with respect to the Transaction Documents to which it is a party or any other applicable agreement, or any action on the part of the Purchaser contemplated by the Transaction Documents, or in any way seeking to enjoin or restrain the Purchaser from purchasing the Proposition 1A Receivable or which if determined adversely to the Purchaser would have an adverse effect upon the Purchaser's ability to purchase the Proposition 1A Receivable, nor to the knowledge of the Purchaser is there any basis therefor.

(e) This Agreement, and its execution, delivery and performance hereof have been duly authorized by it, and this Agreement has been duly executed and delivered by it and constitutes its valid and binding obligation enforceable against it in accordance with the terms hereof, subject to the effect of bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance and other similar laws relating to or affecting creditors' rights generally or the application of equitable principles in any proceeding, whether at law or in equity.

(f) The Purchaser is a separate legal entity, acting solely through its authorized representatives, from the Seller, maintaining separate records, books of account, assets, bank accounts and funds, which are not and have not been commingled with those of the Seller.

(g) All approvals, consents, authorizations, elections and orders of or filings or registrations with any governmental authority, board, agency or commission having jurisdiction which would constitute a condition precedent to, or the absence of which would adversely affect, the purchase by the Purchaser of the Proposition 1A Receivable or the performance by the Purchaser of its obligations under the Transaction Documents to which it is a party and any other applicable agreements, have been obtained and are in full force and effect.

(h) Insofar as it would materially adversely affect the Purchaser's ability to enter into, carry out and perform its obligations under any or all of the Transaction Documents to which it is a party, or consummate the transactions contemplated by the same, the Purchaser is not in breach of or default under any applicable constitutional provision, law or administrative regulation of the State of California or the United States or any applicable judgment or decree or any loan agreement, indenture, bond, note, resolution, agreement or other instrument to which it is a party or to which it or any of its property or assets is otherwise subject, and, to the best of the knowledge of the Purchaser, no event has occurred and is continuing which with the passage of time or the giving of notice, or both, would constitute a default or an event of default under any such instrument, and the execution and delivery by the Purchaser of the Transaction Documents to which it is a party, and compliance by the Purchaser with the provisions thereof, under the circumstances contemplated thereby, do not and will not conflict with or constitute on the part of the Purchaser a breach of or default under any agreement or other instrument to which the Purchaser is a party or by which it is bound or any existing law, regulation, court order or consent decree to which the Purchaser is subject.

5. Representations and Warranties of the Seller. The Seller hereby represents and warrants to the Purchaser, as of the date hereof, as follows:

(a) The Seller is a local agency within the meaning of Section 6585(f) of the California Government Code, with full power and authority to execute and deliver this Agreement and to carry out its terms.

(b) The Seller has full power, authority and legal right to sell and assign the Proposition 1A Receivable to the Purchaser and has duly authorized such sale and assignment to the Purchaser by all necessary action; and the execution, delivery and performance by the Seller of this Agreement has been duly authorized by the Seller by all necessary action.

(c) This Agreement has been, and as of the Closing Date the Bill of Sale will have been, duly executed and delivered by the Seller and, assuming the due authorization, execution and delivery of this Agreement by the Purchaser, each of this Agreement and the Bill of Sale constitutes a legal, valid and binding obligation of the Seller enforceable in accordance with its terms, subject to the effect of bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance and other similar laws relating to or affecting creditors' rights generally or the application of equitable principles in any proceeding, whether at law or in equity.

(d) All approvals, consents, authorizations, elections and orders of or filings or registrations with any governmental authority, board, agency or commission having jurisdiction which would constitute a condition precedent to, or the absence of which would adversely affect, the sale by the Seller of the Proposition 1A Receivable or the performance by the Seller of its

obligations under the Resolution and the Transaction Documents to which it is a party and any other applicable agreements, have been obtained and are in full force and effect.

(e) Insofar as it would materially adversely affect the Seller's ability to enter into, carry out and perform its obligations under any or all of the Transaction Documents to which it is a party, or consummate the transactions contemplated by the same, the Seller is not in breach of or default under any applicable constitutional provision, law or administrative regulation of the State of California or the United States or any applicable judgment or decree or any loan agreement, indenture, bond, note, resolution, agreement or other instrument to which it is a party or to which it or any of its property or assets is otherwise subject, and, to the best of the knowledge of the Seller, no event has occurred and is continuing which with the passage of time or the giving of notice, or both, would constitute a default or an event of default under any such instrument, and the adoption of the Resolution and the execution and delivery by the Seller of the Transaction Documents to which it is a party, and compliance by the Seller with the provisions thereof, under the circumstances contemplated thereby, do not and will not conflict with or constitute on the part of the Seller a breach of or default under any agreement or other instrument to which the Seller is a party or by which it is bound or any existing law, regulation, court order or consent decree to which the Seller is subject.

(f) To the best of the knowledge of the Seller, no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body, is pending or threatened in any way against the Seller affecting the existence of the Seller or the titles of its City Council members or officers to their respective offices, or seeking to restrain or to enjoin the sale of the Proposition 1A Receivable or to direct the application of the proceeds of the sale thereof, or in any way contesting or affecting the validity or enforceability of any of the Transaction Documents or any other applicable agreements or any action of the Seller contemplated by any of said documents, or in any way contesting the powers of the Seller or its authority with respect to the Resolution or the Transaction Documents to which it is a party or any other applicable agreement, or any action on the part of the Seller contemplated by the Transaction Documents, or in any way seeking to enjoin or restrain the Seller from selling the Proposition 1A Receivable or which if determined adversely to the Seller would have an adverse effect upon the Seller's ability to sell the Proposition 1A Receivable, nor to the knowledge of the Seller is there any basis therefor.

(g) Prior to the sale of the Proposition 1A Receivable to the Purchaser, the Seller was the sole owner of the Proposition 1A Receivable, and has such right, title and interest to the Proposition 1A Receivable as provided in the Act. From and after the conveyance of the Proposition 1A Receivable by the Seller to Purchaser on the Closing Date, the Seller shall have no right, title or interest in or to the Proposition 1A Receivable. Except as provided in this Agreement, the Seller has not sold, transferred, assigned, set over or otherwise conveyed any right, title or interest of any kind whatsoever in all or any portion of the Proposition 1A Receivable, nor has the Seller created, or to the best knowledge of the Seller permitted the creation of, any lien, pledge, security interest or any other encumbrance (a "Lien") thereon. Prior to the sale of the Proposition 1A Receivable to the Purchaser, the Seller held title to the Proposition 1A Receivable free and clear of any Liens. As of the Closing Date, this Agreement, together with the Bill of Sale, constitutes a valid and absolute sale to the Buyer of all of the Seller's right, title and interest in and to the Proposition 1A Receivable.

(h) The Seller acts solely through its authorized officers or agents.

(i) The Seller maintains records and books of account separate from those of the Purchaser.

(j) The Seller maintains its respective assets separately from the assets of the Purchaser (including through the maintenance of separate bank accounts); the Seller's funds and assets, and records relating thereto, have not been and are not commingled with those of the Purchaser.

(k) The Seller's principal place of business and chief executive office is located at 425 E. Oak Ave., Visalia, CA 93291.

(l) The aggregate amount of the Installment Payments is reasonably equivalent value for the Proposition 1A Receivable. The Seller acknowledges that the amount payable to or on behalf of the Purchaser by the State with respect to the Proposition 1A Receivable will be in excess of the Purchase Price and the Initial Amount of the Proposition 1A Receivable and confirms that it has no claim to any such excess amount whatsoever.

(m) The Seller does not act as an agent of the Purchaser in any capacity, but instead presents itself to the public as an entity separate from the Purchaser.

(n) The Seller has not guaranteed and shall not guarantee the obligations of the Purchaser, nor shall it hold itself out or permit itself to be held out as having agreed to pay or as being liable for the debts of the Purchaser; and the Seller has not received nor shall the Seller accept any credit or financing from any Person who is relying upon the availability of the assets of the Purchaser in extending such credit or financing. The Seller has not purchased and shall not purchase any of the Bonds or any interest therein.

(o) All transactions between or among the Seller, on the one hand, and the Purchaser on the other hand (including, without limitation, transactions governed by contracts for services and facilities, such as payroll, purchasing, accounting, legal and personnel services and office space), whether existing on the date hereof or entered into after the date hereof, shall be on terms and conditions (including, without limitation, terms relating to amounts to be paid thereunder) which are believed by each such party thereto to be both fair and reasonable and comparable to those available on an arms-length basis from Persons who are not affiliates.

(p) The Seller has not, under the provisions of Section 100.06(b) of the California Revenue and Taxation Code, received a reduction for hardship or otherwise, nor has it requested, made arrangements for, or completed a reallocation or exchange with any other local agency, of the total amount of the ad valorem property tax revenue reduction allocated to the Seller pursuant to Section 100.06(a) of the California Revenue and Taxation Code.

## 6. Covenants of the Seller.

(a) The Seller shall not take any action or omit to take any action which adversely affects the interests of the Purchaser in the Proposition 1A Receivable and in the proceeds thereof. The Seller shall not take any action or omit to take any action that shall adversely affect

the ability of the Purchaser, and any assignee of the Purchaser, to receive payments of the Proposition 1A Receivable.

(b) The Seller shall not take any action or omit to take any action that would impair the validity or effectiveness of the Act, nor, without the prior written consent of the Purchaser or its assignees, agree to any amendment, modification, termination, waiver or surrender of, the terms of the Act, or waive timely performance or observance under the Act. Nothing in this agreement shall impose a duty on the Seller to seek to enforce the Act or to seek enforcement thereof by others, or to prevent others from modifying, terminating, discharging or impairing the validity or effectiveness of the Act.

(c) Upon request of the Purchaser or its assignee, (i) the Seller shall execute and deliver such further instruments and do such further acts (including being named as a plaintiff in an appropriate proceeding) as may be reasonably necessary or proper to carry out more effectively the purposes and intent of this Agreement and the Act, and (ii) the Seller shall take all actions necessary to preserve, maintain and protect the title of the Purchaser to the Proposition 1A Receivable.

(d) On or before the Closing Date, the Seller shall send (or cause to be sent) an irrevocable instruction to the Controller pursuant to Section 6588.6(c) of California Government Code to cause the Controller to disburse all payments of the Proposition 1A Receivable to the Trustee, together with notice of the sale of the Proposition 1A Receivable to the Purchaser and the assignment of all or a portion of such assets by the Purchaser to the Trustee. Such notice and instructions shall be in the form of Exhibit D hereto. The Seller shall not take any action to revoke or which would have the effect of revoking, in whole or in part, such instructions to the Controller. Upon sending such irrevocable instruction, the Seller shall have relinquished and waived any control over the Proposition 1A Receivable, any authority to collect the Proposition 1A Receivable, and any power to revoke or amend the instructions to the Controller contemplated by this paragraph. Except as provided in Section 2(c) of this Agreement, the Seller shall not rescind, amend or modify the instruction described in the first sentence of this paragraph. The Seller shall cooperate with the Purchaser or its assignee in giving instructions to the Controller if the Purchaser or its assignee transfers the Proposition 1A Receivable. In the event that the Seller receives any proceeds of the Proposition 1A Receivable, the Seller shall hold the same in trust for the benefit of the Purchaser and the Trustee and each Credit Enhancer, as assignees of the Purchaser, and shall promptly remit the same to the Trustee.

(e) The Seller hereby covenants and agrees that it will not at any time institute against the Purchaser, or join in instituting against the Purchaser, any bankruptcy, reorganization, arrangement, insolvency, liquidation, or similar proceeding under any United States or state bankruptcy or similar law.

(f) The financial statements and books and records of the Seller prepared after the Closing Date shall reflect the separate existence of the Purchaser and the sale to the Purchaser of the Proposition 1A Receivable.

(g) The Seller shall treat the sale of the Proposition 1A Receivable as a sale for regulatory and accounting purposes.



(h) From and after the date of this Agreement, the Seller shall not sell, transfer, assign, set over or otherwise convey any right, title or interest of any kind whatsoever in all or any portion of the Proposition 1A Receivable, nor shall the Seller create, or to the knowledge of the Seller permit the creation of, any Lien thereon.

7. The Purchaser's Acknowledgment. The Purchaser acknowledges that the Proposition 1A Receivable is not a debt or liability of the Seller, and that the Proposition 1A Receivable is payable solely by the State from the funds of the State provided therefor. Consequently, neither the taxing power of the Seller, nor the full faith and credit thereof is pledged to the payment of the Proposition 1A Receivable. No representation is made by the Seller concerning the obligation or ability of the State to make any payment of the Proposition 1A Receivable pursuant to Section 100.06 of the Revenue and Taxation Code and Section 25.5 of Article XIII of the California Constitution, nor is any representation made with respect to the ability of the State to enact any change in the law applicable to the Transaction Documents (including without limitation Section 100.06 of the Revenue and Taxation Code or Section 6588.6 of the Government Code). The Purchaser acknowledges that the Seller has no obligation with respect to any offering document or disclosure related to the Bonds.

8. Notices of Breach.

(a) Upon discovery by the Seller or the Purchaser that the Seller or Purchaser has breached any of its covenants or that any of the representations or warranties of the Seller or the Purchaser are materially false or misleading, in a manner that materially and adversely affects the value of the Proposition 1A Receivable or the Purchase Price thereof, the discovering party shall give prompt written notice thereof to the other party and to the Trustee, as assignee of the Purchaser, who shall, pursuant to the Indenture, promptly thereafter notify each Credit Enhancer and the Rating Agencies.

(b) The Seller shall not be liable to the Purchaser, the Trustee, the holders of the Bonds, or any Credit Enhancer for any loss, cost or expense resulting from the failure of the Trustee, any Credit Enhancer or the Purchaser to promptly notify the Seller upon the discovery by an authorized officer of the Trustee, any Credit Enhancer or the Purchaser of a breach of any covenant or any materially false or misleading representation or warranty contained herein.

9. Liability of Seller; Indemnification. The Seller shall be liable in accordance herewith only to the extent of the obligations specifically undertaken by the Seller under this Agreement. The Seller shall indemnify, defend and hold harmless the Purchaser, the Trustee and each Credit Enhancer, as assignees of the Purchaser, and their respective officers, directors, employees and agents from and against any and all costs, expenses, losses, claims, damages and liabilities to the extent that such cost, expense, loss, claim, damage or liability arose out of, or was imposed upon any such Person by the Seller's breach of any of its covenants contained herein or any materially false or misleading representation or warranty of the Seller contained herein. Notwithstanding anything to the contrary herein, the Seller shall have no liability for the payment of the principal of or interest on the Bonds issued by the Purchaser.

10. Limitation on Liability.

(a) The Seller and any officer or employee or agent of the Seller may rely in good faith on the advice of counsel or on any document of any kind, prima facie properly executed and submitted by any Person respecting any matters arising hereunder. The Seller shall not be under any obligation to appear in, prosecute or defend any legal action regarding the Act that is unrelated to its specific obligations under this Agreement.

(b) No officer or employee of the Seller shall have any liability for the representations, warranties, covenants, agreements or other obligations of the Seller hereunder or in any of the certificates, notices or agreements delivered pursuant hereto, as to all of which recourse shall be had solely to the assets of the Seller.

11. The Seller's Acknowledgment. The Seller hereby agrees and acknowledges that the Purchaser intends to assign and grant a security interest in all or a portion of (a) its rights hereunder and (b) the Proposition 1A Receivable, to the Trustee and each Credit Enhancer pursuant to the Indenture. The Seller further agrees and acknowledges that the Trustee, the holders of the Bonds, and each Credit Enhancer have relied and shall continue to rely upon each of the foregoing representations, warranties and covenants, and further agrees that such Persons are entitled so to rely thereon. Each of the above representations, warranties and covenants shall survive any assignment and grant of a security interest in all or a portion of this Agreement or the Proposition 1A Receivable to the Trustee and each Credit Enhancer and shall continue in full force and effect, notwithstanding any subsequent termination of this Agreement and the other Transaction Documents. The above representations, warranties and covenants shall inure to the benefit of the Trustee and each Credit Enhancer.

12. Notices. All demands upon or, notices and communications to, the Seller, the Purchaser, the Trustee or the Rating Agencies under this Agreement shall be in writing, personally delivered or mailed by certified mail, return receipt requested, to such party at the appropriate notice address, and shall be deemed to have been duly given upon receipt.

13. Amendments. This Agreement may be amended by the Seller and the Purchaser, with (a) the consent of the Trustee, (b) the consent of each Credit Enhancer, and (c) a Rating Agency Confirmation, but without the consent of any of the holders of the Bonds, for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Agreement.

Promptly after the execution of any such amendment, the Purchaser shall furnish written notification of the substance of such amendment to the Trustee and to the Rating Agencies.

14. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Seller, the Purchaser and their respective successors and permitted assigns. The Seller may not assign or transfer any of its rights or obligations under this Agreement without the prior written consent of the Purchaser. Except as specified herein, the Purchaser may not assign or transfer any of its rights or obligations under this Agreement without the prior written consent of the Seller.

15. Third Party Rights. The Trustee and each Credit Enhancer are express and intended third party beneficiaries under this Agreement. Nothing expressed in or to be implied from this Agreement is intended to give, or shall be construed to give, any Person, other than the parties hereto, the Trustee, and each Credit Enhancer, and their permitted successors and assigns hereunder, any benefit or legal or equitable right, remedy or claim under or by virtue of this Agreement or under or by virtue of any provision herein.

16. Partial Invalidity. If at any time any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of this Agreement nor the legality, validity or enforceability of such provision under the law of any other jurisdiction shall in any way be affected or impaired thereby.

17. Counterparts. This Agreement may be executed in any number of identical counterparts, any set of which signed by all the parties hereto shall be deemed to constitute a complete, executed original for all purposes.

18. Entire Agreement. This Agreement sets forth the entire understanding and agreement of the parties with respect to the subject matter hereof and supersedes any and all oral or written agreements or understandings between the parties as to the subject matter hereof.

19. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the Seller and the Purchaser have caused this Agreement to be duly executed as of the date first written above.

CITY OF VISALIA, as Seller

By: \_\_\_\_\_  
Authorized Officer

CALIFORNIA STATEWIDE COMMUNITIES  
DEVELOPMENT AUTHORITY, as Purchaser

By: \_\_\_\_\_  
Authorized Signatory

**EXHIBIT A  
DEFINITIONS**

For all purposes of this Agreement, except as otherwise expressly provided herein or unless the context otherwise requires, capitalized terms not otherwise defined herein shall have the meanings set forth below.

“Act” means Chapter 14XXXX of the California Statutes of 2009 (Assembly Bill No. 15), as amended.

“Bill of Sale” has the meaning given to that term in Section 2(b)(ii) hereof.

“Closing Date” means the date on which the Bonds are issued. The Closing Date is expected to be November 19, 2009, but the Purchaser may change the Closing Date by providing e-mail notification to [efrost@ci.visalia.ca.us](mailto:efrost@ci.visalia.ca.us) not later than one day prior to the Closing Date.

“Controller” means the Controller of the State.

“County Auditor” means the auditor or auditor-controller of the county within which the Seller is located.

“Credit Enhancer” means any municipal bond insurance company, bank or other financial institution or organization which is performing in all material respects its obligations under any Credit Support Instrument for some or all of the Bonds.

“Credit Support Instrument” means a policy of insurance, a letter of credit, a stand-by purchase agreement, a revolving credit agreement or other credit arrangement pursuant to which a Credit Enhancer provides credit or liquidity support with respect to the payment of interest, principal or purchase price of the Bonds.

“Initial Amount” means, with respect to the Proposition 1A Receivable, the amount of property tax revenue reallocated away from the Seller pursuant to the provisions of Section 100.06 of the Revenue and Taxation Code, as certified by the County Auditor pursuant to the Act.

“Installment Payments” have the meaning set forth in Section 2(a).

“Payment Dates” have the meaning set forth in Section 2(a).

“Pricing Date” means the date on which the Bonds are sold. The Pricing Date is expected to be November 10, 2009, but the Purchaser may change the Pricing Date by providing e-mail notification to [efrost@ci.visalia.ca.us](mailto:efrost@ci.visalia.ca.us) not later than one day prior to the Pricing Date.

“Principal Place of Business” means, with respect to the Seller, the location of the Seller’s principal place of business and chief executive office located at 425 E. Oak Ave., Visalia, CA 93291.

“Proposition 1A Receivable” has the meaning set forth in Section 2(a).

“Purchase Price” means an amount equal to the Initial Amount.

“Rating Agency” means any nationally recognized rating agency then providing or maintaining a rating on the Bonds at the request of the Purchaser.

“Rating Agency Confirmation” means written confirmation from each Rating Agency that any proposed action will not, in and of itself, cause the Rating Agency to lower, suspend or withdraw the rating then assigned by such Rating Agency to any Bonds.

“Resolution” means the resolution adopted by the City Council approving the sale of the Proposition 1A Receivable.

“State” means the State of California.

“Transaction Counsel” means Orrick, Herrington & Sutcliffe LLP.

“Transaction Documents” mean this Agreement, the Bill of Sale, the Indenture, the Bonds and the Irrevocable Instructions For Disbursement of Proposition 1A Receivable of City of Visalia, dated as of the Closing Date.

**OPINION OF COUNSEL  
to  
CITY OF VISALIA**

Dated: Pricing Date

California Statewide Communities Development Authority  
Sacramento, California

Wells Fargo Bank, National Association  
Los Angeles, California

Re: Sale of Proposition 1A Receivable

Ladies & Gentlemen:

[I have/This Office has] acted as counsel for the City of Visalia (the "Seller") in connection with the adoption of that certain resolution (the "Resolution") of the City Council of the Seller (the "Governing Body") pursuant to which the Seller authorized the sale to the California Statewide Communities Development Authority (the "Purchaser") of the Seller's "Proposition 1A Receivable", as defined in and pursuant to the Purchase and Sale Agreement dated as of November 1, 2009 (the "Sale Agreement") between the Seller and the Purchaser. In connection with these transactions, the Seller has issued certain Irrevocable Instructions For Disbursement of the Seller's Proposition 1A Receivable to the Controller of the State of California (the "Disbursement Instructions") and a Bill of Sale and Bringdown Certificate of the Seller (the "Bill of Sale" and, collectively with the Sale Agreement and the Disbursement Instructions, the "Seller Documents").

Unless the context otherwise requires, capitalized terms used but not otherwise defined herein shall have the meanings given to such terms in the Sale Agreement. [I/We] have examined and are familiar with the Seller Documents and with those documents relating to the existence, organization, and operation of the Seller, the adoption of the Resolution, and the execution of the Seller Documents, and have satisfied ourselves as to such other matters as [I/we] deem necessary in order to render the following opinions. As to paragraphs numbered 3 and 4 below, [I/we] have relied as to factual matters on the representations and warranties of the Seller contained in the Sale Agreement.

Based upon the foregoing, and subject to the limitations and qualifications set forth herein, [I/we] are of the opinion that:

1. The Seller is a local agency, within the meaning of Section 6585(f) of the California Government Code. The Governing Body is the governing body of the Seller.

2. The Resolution was duly adopted at a meeting of the Governing Body, which was called and held pursuant to law and with all public notice required by law, and at which a quorum was present and acting throughout, and the Resolution is in full force and effect and has not been modified, amended or rescinded since the date of its adoption.

3. To the best of [my/our] knowledge, no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body, is pending or threatened in any way against the Seller (i) affecting the existence of the Seller or the titles of its Governing Body members or officers to their respective offices; (ii) seeking to restrain or to enjoin the sale of the Proposition 1A Receivable or to direct the application of the proceeds of the sale thereof, or materially adversely affecting the sale of the Proposition 1A Receivable; (iii) in any way contesting or affecting the validity or enforceability of the Resolution, Seller Documents or any other applicable agreements or any action of the Seller contemplated by any of said documents; or (iv) in any way contesting the powers of the Seller or its authority with respect to the Resolution or the Seller Documents or any other applicable agreement, or any action on the part of the Seller contemplated by any of said documents.

4. To the best of [my/our] knowledge, prior to the sale of the Proposition 1A Receivable to the Purchaser, the Seller had not sold, transferred, assigned, set over or otherwise conveyed any right, title or interest of any kind whatsoever in all or any portion of the Seller's Proposition 1A Receivable, nor had the Seller created, or permitted the creation of, any Lien thereon.

5. The Seller has duly authorized and executed the Seller Documents and, assuming the due authorization execution and delivery of the Sale Agreement by the Purchaser, each Seller Document will be legal, valid and binding against the Seller and enforceable against the Seller in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium or laws relating to or affecting creditors' rights, and the application of equitable principles and the exercise of judicial discretion in appropriate areas.

No opinion is expressed concerning the obligation or ability of the State of California to make any payment of the Proposition 1A Receivable pursuant to Section 100.06 of the Revenue and Taxation Code and Section 25.5 of Article XIII of the California Constitution, nor is any opinion expressed with respect to the ability of the State to enact any change in the law applicable to the Seller Documents (including, without limitation, Section 100.06 of the Revenue and Taxation Code or Section 6588.6 of the Government Code). Furthermore, [I/we] express no opinion as to the value of the Proposition 1A Receivable or as to any legal or equitable remedies that may be available to any person should the Proposition 1A Receivable have little or no value. No opinion is expressed with respect to the sale of Bonds by the Purchaser.



The legal opinion set forth herein is intended for the information solely of the addressees hereof and for the purposes contemplated by the Sale Agreement. The addressees may not rely on it in connection with any transactions other than those described herein, and it is not to be relied upon by any other person or entity, or for any other purpose, or quoted as a whole or in part, or otherwise referred to, in any document, or to be filed with any governmental or administrative agency other than the Purchaser or with any other person or entity for any purpose without [my/our] prior written consent. In addition to the addressees hereof, each Credit Enhancer and the underwriters of the Bonds may rely upon this legal opinion as if it were addressed to them. [I/We] do not undertake to advise you of matters that may come to [my/our] attention subsequent to the date hereof that may affect the opinions expressed herein.

Very truly yours,

By: \_\_\_\_\_  
Seller's Counsel

**OPINION OF COUNSEL  
to  
CITY OF VISALIA**

Dated: Closing Date

California Statewide Communities Development Authority  
Sacramento, California

Wells Fargo Bank, National Association  
Los Angeles, California

Re: Sale of Proposition 1A Receivable (Bringdown Opinion)

Ladies & Gentlemen:

Pursuant to that certain Purchase and Sale Agreement dated as of November 1, 2009 (the "Sale Agreement") between the City of Visalia (the "Seller") and the California Statewide Communities Development Authority (the "Purchaser"), this Office delivered an opinion (the "Opinion") dated the Pricing Date as counsel for the Seller in connection with the sale of the Seller's Proposition 1A Receivable (as defined in the Sale Agreement), the execution of documents related thereto and certain other related matters.

Capitalized terms used but not defined herein shall have the meanings given to such terms in the Sale Agreement.

I confirm that you may continue to rely upon the Opinion as if it were dated as of the date hereof. Each Credit Enhancer and the underwriters of the Bonds may rely upon this legal opinion as if it were addressed to them. This letter is delivered to you pursuant to Section 2(b)(ii)(1) of the Sale Agreement.

Very truly yours,

By: \_\_\_\_\_  
Seller's Counsel

**EXHIBIT C1  
CLERK'S CERTIFICATE**

**CERTIFICATE OF THE  
CITY CLERK OF  
CITY OF VISALIA, CALIFORNIA**

Dated: Pricing Date

The undersigned City Clerk of the City of Visalia (the "Seller"), a local agency of the State of California within the meaning of Section 6585(f) of the California Government Code, does hereby certify that the foregoing is a full, true and correct copy of Resolution No. \_\_\_\_\_ duly adopted at a regular meeting of the City Council of said Seller duly and legally held at the regular meeting place thereof on the \_\_\_\_\_ day of \_\_\_\_\_, 2009, of which meeting all of the members of said City Council had due notice and at which a quorum was present and acting throughout, and that at said meeting said resolution was adopted by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

I do hereby further certify that I have carefully compared the same with the original minutes of said meeting on file and of record in my office and that said resolution is a full, true and correct copy of the original resolution adopted at said meeting and entered in said minutes and that said resolution has not been amended, modified or rescinded since the date of its adoption and the same is now in full force and effect.

I do hereby further certify that an agenda of said meeting was posted at least 72 hours before said meeting at a location in the City of Visalia, California freely accessible to members of the public, and a brief general description of said resolution appeared on said agenda.

Capitalized terms used but not defined herein shall have the meanings given to such terms in the Purchase and Sale Agreement, dated as of November 1, 2009, between the Seller and the California Statewide Communities Development Authority.

WITNESS by my hand as of the Pricing Date.

By: \_\_\_\_\_  
City Clerk of the City of Visalia,  
California

**EXHIBIT C2  
SELLER CERTIFICATE**

**SELLER CERTIFICATE**

Dated: Pricing Date

We, the undersigned officers of the City of Visalia (the "Seller"), a local agency of the State of California within the meaning of Section 6585(f) of the California Government Code, holding the respective offices herein below set opposite our signatures, do hereby certify that on the date hereof the following documents (the "Seller Transaction Documents") were officially executed and delivered by the Authorized Officer or Officers whose names appear on the executed copies thereof, to wit:

Document

1. Purchase and Sale Agreement, dated as of November 1, 2009 (the "Sale Agreement"), between the Seller and the California Statewide Communities Development Authority (the "Purchaser").
2. Irrevocable Instructions For Disbursement of Seller's Proposition 1A Receivable to the Controller of the State of California, dated the Closing Date.
3. Bill of Sale, dated the Closing Date.

Capitalized terms used herein and not defined herein shall have the meaning given such terms in the Sale Agreement.

We further certify as follows:

1. At the time of signing the Seller Transaction Documents and the other documents and opinions related thereto, we held said offices, respectively, and we now hold the same.
2. The representations and warranties of the Seller contained in the Seller Transaction Documents are true and correct as of the date hereof in all material respects.
3. The City Council duly adopted its resolution (the "Resolution") approving the sale of the Seller's Proposition 1A Receivable at a meeting of the City Council which was duly called and held pursuant to law with all public notice required by law and at which a quorum was present and acting when the Resolution was adopted, and such Resolution is in full force and effect and has not been amended, modified, supplemented or rescinded.

Name, Official Title \_\_\_\_\_

Signature

Eric Frost, Administrative Services Director

\_\_\_\_\_

Renee Nagel, Finance Manager

\_\_\_\_\_

I HEREBY CERTIFY that the signatures of the officers named above are genuine.

Dated: Pricing Date

By: \_\_\_\_\_  
City Clerk of the City of Visalia,  
California

**EXHIBIT C3**  
**BILL OF SALE AND BRINGDOWN CERTIFICATE**

BILL OF SALE AND BRINGDOWN CERTIFICATE

Pursuant to terms and conditions of the Purchase and Sale Agreement (the "Sale Agreement"), dated as of November 1, 2009, between the undersigned (the "Seller") and the California Statewide Communities Development Authority (the "Purchaser"), and in consideration of the obligation of the Purchaser to pay and deliver to the Seller the Purchase Price (as defined in the Sale Agreement), in two equal installment payments to be made on January 15, 2010, and May 3, 2010 (collectively, the "Payment Dates"), the Seller does hereby (a) transfer, grant, bargain, sell, assign, convey, set over and deliver to the Purchaser, absolutely and not as collateral security, without recourse except as expressly provided in the Sale Agreement, the Proposition 1A Receivable as defined in the Sale Agreement (the "Proposition 1A Receivable"), and (b) assign to the Purchaser, to the extent permitted by law (as to which no representation is made), all present or future rights, if any, of the Seller to enforce or cause the enforcement of payment of the Proposition 1A Receivable pursuant to the Act and other applicable law. Such transfer, grant, bargain, sale, assignment, conveyance, set over and delivery is hereby expressly stated to be a sale and, pursuant to Section 6588.6(b) of the California Government Code, shall be treated as an absolute sale and transfer of the Proposition 1A Receivable, and not as a grant of a security interest by the Seller to secure a borrowing. Seller specifically disclaims any right to rescind the Agreement, or to assert that title to the Proposition 1A Receivable has not passed to the Purchaser, should Purchaser fail to make the installment payments in the requisite amounts on the Payment Dates.

The Seller hereby certifies that the representations and warranties of the Seller set forth in the Certificate of the City Clerk dated the Pricing Date, the Seller Certificate dated the Pricing Date and in the Transaction Documents to which the Seller is a party are true and correct in all material respects as of the date hereof (except for such representations and warranties made as of a specified date, which are true and correct as of such date). Capitalized terms used but not defined herein shall have the meanings given to such terms in the Sale Agreement.

Dated: Closing Date

CITY OF VISALIA

By: \_\_\_\_\_  
Authorized Officer

**EXHIBIT D**

**IRREVOCABLE INSTRUCTIONS TO CONTROLLER**

IRREVOCABLE INSTRUCTIONS FOR DISBURSEMENT  
OF PROPOSITION 1A RECEIVABLE OF  
CITY OF VISALIA

Dated: Closing Date

Office of the Controller  
State of California  
P.O. Box 942850  
Sacramento, California 94250-5872

Re: Notice of Sale of Proposition 1A Receivable by the City of Visalia and  
Wiring Instructions Information Form

---

Dear Sir or Madam:

Pursuant to Section 6588.6(c) of the California Government Code, City of Visalia (the "Seller") hereby notifies you of the sale by Seller, effective as of the date of these instructions written above, of all right, title and interest of the Seller in and to the "Proposition 1A Receivable" as defined in Section 6585(g) of the California Government Code (the "Proposition 1A Receivable"), namely, the right to payment of moneys due or to become due to the Seller pursuant to Section 25.5(a)(1)(B)(iii) of Article XIII of the California Constitution and Section 100.06 of the California Revenue and Taxation Code.

By resolution, the Seller's City Council authorized the sale of the Proposition 1A Receivable to the California Statewide Communities Development Authority (the "Purchaser") pursuant to a Purchase and Sale Agreement, dated as of November 1, 2009 (the "Purchase and Sale Agreement") and a Bill of Sale, dated the Closing Date (as defined in the Purchase and Sale Agreement). The Proposition 1A Receivable has been pledged and assigned by the Purchaser pursuant to an Indenture, dated as of November 1, 2009 (the "Indenture") between the Purchaser and Wells Fargo Bank, National Association, as Trustee (the "Trustee").

The Seller hereby irrevocably requests and directs that, commencing as of the date of these instructions written above, all payments of the Proposition 1A Receivable (and documentation related thereto) be made directly to Wells Fargo Bank, National Association, as Trustee, in accordance with the wire instructions and bank routing information set forth below.

*Please note that the sale of the Proposition 1A Receivable by the Seller is irrevocable and that: (i) the Seller has no power to revoke or amend these instructions at any time; (ii) the Purchaser shall have the power to revoke or amend these instructions only if there are no notes of the Purchaser outstanding under the Indenture and the Indenture has been discharged; and (iii) so long as the Indenture has not been discharged, these instructions cannot be revoked or amended by the Purchaser without the consent of the Trustee. Should*

*the Purchaser, however, deliver a written notice to the Office of the Controller stating that: (a) the Seller failed to meet the requirements set forth in the Purchase and Sale Agreement; (b) the Purchaser has not waived such requirements; and (c) the Purchaser has not purchased the Proposition 1A Receivable as a result of the circumstances described in (a) and (b) above, then these instructions shall be automatically rescinded and the Seller shall again be entitled to receive all payment of moneys due or to become due to the Seller pursuant to Section 25.5(a)(1)(B)(iii) of Article XIII of the California Constitution and Section 100.06 of the California Revenue and Taxation Code.*

Bank Name: Wells Fargo Bank, N.A.  
Bank ABA Routing #: 121000248  
Bank Account #: 0001038377  
Bank Account Name: Corporate Trust Clearing  
Further Credit To: CSCDA Proposition 1A Bonds  
Bank Address: 707 Wilshire Blvd., 17th Floor  
MAC E2818-176  
Los Angeles, CA 90017  
Bank Telephone #: (213) 614-3353  
Bank Contact Person: Robert Schneider

Please do not hesitate to call the undersigned if you have any questions regarding this transaction. Thank you for your assistance in this matter.

Very truly yours,

CITY OF VISALIA

By: \_\_\_\_\_  
Authorized Officer



**EXHIBIT E**  
**ESCROW INSTRUCTION LETTER**

ESCROW INSTRUCTION LETTER

\_\_\_\_\_, 2009

California Statewide Communities Development Authority  
1100 K Street  
Sacramento, CA 95814

Re: Proposition 1A Receivable Financing

Dear Sir or Madam:

The City of Visalia (the "Seller") hereby notifies you of its agreement to participate in the California Statewide Communities Development Authority Proposition 1A Receivable Financing. By adoption of a resolution (the "Resolution") authorizing the sale of its Proposition 1A Receivable, the Seller's City Council has agreed to sell to the California Statewide Communities Development Authority (the "Purchaser"), for a purchase price that meets the conditions set forth in the Resolution, all of its right, title and interest in the Proposition 1A Receivable.

Enclosed herewith are the following documents which have been duly approved and executed by the Seller and which are to be held in escrow by Orrick, Herrington & Sutcliffe LLP, as transaction counsel ("Transaction Counsel"), as instructed below:

1. certified copy of the Resolution, together with a certificate of the City Clerk, dated the Pricing Date;
2. the Seller Certificate, dated the Pricing Date;
3. the Opinion of Seller's Counsel, dated the Pricing Date;
4. the Opinion of Seller's Counsel (bringdown opinion), dated the Closing Date;
5. the Purchase and Sale Agreement, dated as of November 1, 2009;
6. the Bill of Sale and Bringdown Certificate, dated the Closing Date; and
7. the Irrevocable Instructions to Controller, dated the Closing Date.

The foregoing documents are to be held in escrow by Transaction Counsel and shall be delivered on the Closing Date (as defined in the Purchase and Sale Agreement), provided that such Closing Date occurs on or before December 31, 2009.

Should (i) the Closing Date not occur on or before December 31, 2009, or (ii) Transaction Counsel receive prior to the Closing Date written notification from Seller or Seller's Counsel stating, respectively and in good faith, that the representations made in the Seller's Certificate are not true and accurate, or the opinions set forth in the Opinion of Seller's Counsel are not valid, in each case as of the Closing Date and provided that the Purchaser may, in its sole discretion, choose to waive receipt of such representations or opinions, then this agreement shall terminate and Transaction Counsel shall destroy all of the enclosed documents.

Very truly yours,

**CITY OF VISALIA**

By: \_\_\_\_\_  
Authorized Officer

Enclosures

cc: Orrick, Herrington & Sutcliffe LLP

**City of Visalia  
Agenda Item Transmittal**

**Meeting Date:** October 19, 2009

**Agenda Item Number (Assigned by City Clerk):** 9d

**Agenda Item Wording:** Authorization to declare interest in participating in the CaliforniaFIRST solar and energy efficiency financing program.

**Deadline for Action:** October 19, 2009

**Submitting Department:** Administration

**Contact Name and Phone Number:**

Kim Loeb, Natural Resource Conservation Manager 713-4530  
Leslie Caviglia, Deputy City Manager 713-4317

**Department Recommendation:** It is recommended that the Council authorize staff to declare interest in participating in the CaliforniaFIRST solar and energy efficiency financing program. At this point, no funding is required. Should the City choose to proceed, it could cost between \$15,000 and \$55,000, depending upon whether the County of Tulare participates. Staff believes this could be funded through grant funds or the City's new Conservation Fund without use of the General Fund. Staff anticipates the Conservation Fund will begin accruing funds in 2010 through utility rebates/incentives and energy efficiency savings.

The City must express interest in the program this month in order to be considered for the pilot program. Staff will continue to conduct research and will return to Council with more information on costs and the process before any final commitments are made.

**Summary/background:**

Assembly Bill 811 (AB 811) enables local governments to create property tax finance districts to issue low-cost 20-year loans to install solar and energy efficiency projects to eligible residential and commercial property owners. Property owners repay the loan as a line item on their property tax bill.

The loans are financed through the issuance of taxable municipal bonds. There is no upfront cost to the property owner other than an application fee. Incremental property tax payments are low and fixed for 20 years, and are offset by energy savings and reduced utility bills.

**CaliforniaFIRST Program.** To provide cities and counties with a turnkey program to implement AB 811 financing that would provide a long term, risk free option for local governments, limit

**For action by:**

City Council  
 Redev. Agency Bd.  
 Cap. Impr. Corp.  
 VPFA

**For placement on which agenda:**

Work Session  
 Closed Session

**Regular Session:**

Consent Calendar  
 Regular Item  
 Public Hearing

Est. Time (Min.): \_\_\_\_\_

**Review:**

**Dept. Head** LBC 10909  
(Initials & date required)

**Finance** \_\_\_\_\_  
**City Atty** \_\_\_\_\_  
(Initials & date required  
or N/A)

**City Mgr** \_\_\_\_\_  
(Initials Required)

If report is being re-routed after revisions leave date of initials if no significant change has affected Finance or City Attorney Review.

staff time, implementation costs, and local agency upfront costs, the California Statewide Communities Development Authority (CSCDA or “California Communities”) has created a state-wide program called CaliforniaFIRST.

California Communities is a joint powers authority sponsored by the California State Association of Counties and the League of California Cities and established in 1988. The City of Visalia, almost all incorporated cities in Tulare County, and all California counties are members of California Communities. Programs the City of Visalia has financed through California Communities include 1998 and 1999 Tax and Revenue Anticipation Notes and the 2005 Vehicle License Fee Program.

California Communities has selected Renewable Funding and Royal Bank of Canada Capital Markets as CaliforniaFIRST partners through a competitive process. California Communities will implement the AB 811 program, completing the validation process, providing tax administration, and issuing the bonds. Renewable Funding will serve as the administrator of the CaliforniaFIRST program enrolling municipalities, qualifying projects, processing property owner applications, and providing marketing and customer service. Royal Bank of Canada Capital Markets will serve as the bond underwriter for the program.

The CaliforniaFIRST program would provide the City of Visalia with a turnkey operation for providing AB 811 financing for solar and energy efficiency projects with little setup cost. It is anticipated that issuing the bonds on a statewide basis will provide a better rating and lower interest rate.

The program would provide residential and non-residential properties with financing up to 10% of the assessed and/or market value. Residential and small commercial (up to four units) would be capped at \$75,000. The property equity ratio must be 80% lien to value for private debt.

Residential, commercial, industrial, large multifamily, community facilities, and non-profit properties are all eligible for financing through this program. Solar and energy efficiency projects financed through the CaliforniaFIRST program would be eligible for all applicable rebates and tax credits.

**Process for Property Owner.** Property owners would visit a website (set up by CaliforniaFIRST for each county) to learn about the program and find approved contractors and improvements.

Property owners would apply to the program online through a dedicated website and pay an application fee anticipated to be approximately \$250 to \$300. The CaliforniaFIRST team would review the property title, screen for unpaid taxes or other property-based debt, apply loan-to-value metrics, and evaluate the project using established underwriting criteria.

If approved, the property owner would receive a reservation for funding and have a lien placed on their property. The property owner would have six to nine months to install their solar system or energy efficiency project and return to the website to request payment. After signing forms and providing required documentation, a check would be issued to the property owner or contractor.

### **Benefits of the Program.**

Benefits of the program to property owners include:

- Provides low-cost long-term financing for solar and energy efficiency improvements that can be transferred with the property.

- Only property owners who choose to participate in the program will have assessments imposed on their property.
- The property owner can choose to pay off the special assessments at any time.

Benefits to the City of Visalia include:

- As in conventional financing, the City of Visalia is not obligated to prepay the bonds issued by California Communities or pay the assessments levied on participating projects.
- California Communities will handle all assessment administration, bond issuance and bond administration functions.
- The City of Visalia can provide financing of renewable energy and energy efficiency improvements to property owners through CaliforniaFIRST, helping the community to reduce its energy and greenhouse gas footprint, with little risk or commitment of staff time.

**CaliforniaFIRST Pilot Program.** At this time, California Communities is seeking cities and counties to participate in the CaliforniaFIRST pilot program. Participating in the pilot program provides municipalities with earlier funding for their property owners and the ability to help shape the program. California Communities prefers that the county and at least one incorporated city participate in the pilot program.

The pilot program timeline anticipates participating cities and counties would pass a resolution to join CaliforniaFIRST by December 4, 2009. The validation period would take between 60 and 120 days. The pilot program launch goal is April 20, 2010.

**CaliforniaFIRST Setup Fees.** If Tulare County participates in the program with the City of Visalia, program setup fees are estimated by California Communities to be \$15,000 for the City. If Tulare County does not participate and the City of Visalia was to participate on its own, setup fees are estimated by California Communities to be between \$35,000 and \$55,000. Tulare County has expressed interest in the program, but it is not known at this time if or when the County would participate.

Staff believes that grant funds may be available to pay the set-up fees. If not, staff believes the set-up fees could be funded by the Conservation Fund (established by Council in April) without use of the General Fund. The Conservation Fund is funded through rebates/incentives received from utilities for any retrofits, and, in the first three years, half of the savings realized annually from the energy efficiency measures made from the Energy Block Grant funding. Staff anticipates receiving Energy Block Grant funding soon and that the Conservation Fund will start accruing funds in 2010.

**Prior Council/Board Actions:**

**Committee/Commission Review and Actions:**

**Alternatives:**

Alternatives include:

1. Wait until after completion of the pilot program to join the CaliforniaFIRST program. CaliforniaFIRST anticipates that the earliest non-pilot program cities and counties could join the program would be late June 2010, with set up taking 60 to 120 days.

2. Create a City of Visalia AB 811 finance program including bond issuance and program administration.

**Attachments:**

CaliforniaFIRST AB 811 Financing Program for Renewable Energy and Energy Efficiency, Program Update, October 5, 2009

**Recommended Motion (and Alternative Motions if expected):**

I move to authorize declaration of interest in participating in the CaliforniaFIRST solar and energy efficiency financing program.

***Environmental Assessment Status***

**CEQA Review:**

**NEPA Review:**

**Tracking Information:** *(Staff must list/include appropriate review, assessment, appointment and contract dates and other information that needs to be followed up on at a future date)*

Copies of this report have been provided to:

**City of Visalia  
Agenda Item Transmittal**

**Meeting Date:** October 19, 2009

**Agenda Item Number (Assigned by City Clerk):** 9e

**Agenda Item Wording:** Actions necessary to create an assessment district for the acquisition of necessary underground utilities at Orchard Walk.

**Deadline for Action:**

**Submitting Department:** Engineering and Finance

**Contact Name and Phone Number:** Eric Frost, x4474

**Department Recommendation:** That the City Council take the following steps necessary to form an assessment district for Orchard Walk shopping center by:

- 1) Accepting a petition by 60% of the property owners requesting an assessment district be formed to pay for underground electrical utilities;
- 2) The appointment of several professionals to form the district, namely:
  - a) Assessment engineer to determine the spread of costs and scope of the project;
  - b) Bond/Disclosure Counsel to assist the City in conducting the necessary hearings and disclosures in order to form the assessment district;
  - c) Bond underwriter to sell the assessment bonds.
- 3) Adopting a notice of intention to reimburse the cost of construction improvement incurred in development of the underground utilities, authorizing the formation of the district to proceed ahead.

**Summary/background:**

Donahue/Schriber has developed the Orchard Walk East on Highway 61, south of the Sports Park. In the process of developing that shopping center, the City asked that electrical utilities be placed underground. In the process of negotiations, City staff agreed to bring forward to Council a request to form an assessment district. Specifically, the items to put in an assessment district are the following:

**For action by:**

- City Council
- Redev. Agency Bd.
- Cap. Impr. Corp.
- VPFA

**For placement on which agenda:**

- Work Session
- Closed Session

**Regular Session:**

- Consent Calendar
- Regular Item
- Public Hearing

Est. Time (Min.): \_\_\_\_\_

**Review:**

**Dept. Head** \_\_\_\_\_  
**(Initials & date required)**

**Finance** \_\_\_\_\_  
**City Atty** \_\_\_\_\_  
**(Initials & date required or N/A)**

**City Mgr** \_\_\_\_\_  
**(Initials Required)**

If report is being re-routed after revisions leave date of initials if no significant change has affected Finance or City Attorney Review.

1-1/2 inch to 5 inch electrical conduit, 2-3 inch cable conduit, vault, pads, traffic signal at Shannon Street, tie to riser pole, Riggins Avenue bore, Dinuba bore, concrete replacement and casement, paving and asphalt, traffic control and trenching, together with the reimbursement for the SCE street light fee, SCE overhead transfer fee, SCE relocate facilities fee, AT&T pole relocation fee and Comcast transfer fee.

The developers have filed a petition with the City Clerk requesting the formation of a district. An Attached map shows the affected parcels and will be bounded by the roads of Conyer, Riggins, Court and Shannon. See Attachment #2.

The assessment district's properties are owned by two parties: Donahue Schriber Realty Group and the Target Corporation. Donahue Schriber has submitted the petition and Target Corporation has agreed to the assessment via an agreement with Donahue Schriber.

The actions to be taken now, if approved by Council are to:

1. Accept the Deputy City Clerk's certificate that at least 60 percent of the property owners have petitioned that an assessment district be formed:
2. Authorize the hiring of several professionals to complete the assessment district process, namely:
  - o Appointing an attorney familiar with assessment districts. Staff recommends appointing Robert B. Haight from Scotts Valley. Mr. Haight conducted the Royal Oak assessment district process and is familiar with such proceedings. Locally, staff is unaware of a firm that regularly conducts such processes. The maximum fee his contract will allow is \$30,000, \$17,500 for acting as bond counsel and \$12,500 to act as disclosure counsel if the debt goes to a public offering.
  - o Appoint an assessment district engineer. Staff recommends accepting Mr. Haight's recommendation of using the Scothorn Consulting Group from Scott's Valley, a firm which has been used in the past by Mr. Haight. This engineer will prepare the assessment record necessary for the assessment spread. The fee for their services is \$8,000.
  - o Appoint Stinson Underwriters as the group to sell the assessment district bonds. The bonds are expected to be about \$600,000. The fee for such underwriting is usually negotiated as a percentage of the debt issue. The maximum underwriter's fee has been placed at 3% of the debt issue. The fee in this case is expected to be \$18,000. As an alternative, Finance is working with Mr. Haight to determine if a private placement of the debt offering can occur. If this is possible, the debt offering will not be burdened with an underwriting fee and the disclosure counsel fee (\$12,500). If a private placement can be accomplished, the fees could be reduced up to \$30,500. The problem is that a qualified investor must be identified for the alternative transaction to be accomplished and to date, no private investor has been identified.
3. Adopt a notice of intention to reimburse the cost of construction for improvements incurred during development of the Orchard Walk East Shopping Center.



The developer has provided a deposit for the services involved and the City has designed this process so that all the costs will be born by the assessment district. Because these improvements have been completed, the assessment debt would be purchase the assets from the developer and donate them to the required utility, reimbursing the developer for his construction cost. The advantage for conducting this process is that the developer is able to pay for these improvements over time and the City was able to have the developer underground utilities as part of the development process of Orchard Walk East.

It has taken some time to bring this request to Council because of change of staffing with the developer and time conflicts with City Staff. In any case, the developer has reaffirmed that they wish to pursue this assessment district and City staff agreed to present this to Council.

**Prior Council/Board Actions:**

**Committee/Commission Review and Actions:**

**Alternatives:** Decline to create an assessment district  
Direct staff to find alternative consultants than the ones recommended

**Attachments:** #1 Donahue/Schriber Petition requesting that the City form an assessment District  
#2 Proposed Assessment District Boundary Map  
#3 Letter agreement for Robert Haight, Bond Attorney  
#4 Scothorn Consulting Services, Assessment Engineer agreement

<b>Recommended Motion (and Alternative Motions if expected):</b>	
1) Accept a petition by 60% of the property owners requesting an assessment district be formed to pay for underground electrical utilities;	
2) Appoint several professionals to form the district, namely:	
	a) Assessment engineer to determine the spread of costs and scope of the project;
	b) Bond/Disclosure Counsel to assist the City in conducting the necessary hearings and disclosures in order to form the assessment district;
	c) Bond underwriter to sell the assessment bonds.
3) Adopt a notice of intention to reimburse the cost of construction improvement incurred in development of the underground utilities, authorizing the formation of the district to proceed ahead.	

***Environmental Assessment Status***

**CEQA Review:**

**NEPA Review:**

**Tracking Information:** *(Staff must list/include appropriate review, assessment, appointment and contract dates and other information that needs to be followed up on at a future date)*

Copies of this report have been provided to:

RESOLUTION NO. 2009-49

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF VISALIA  
OF INTENTION TO REIMBURSE THE COST TO CONSTRUCT IMPROVEMENTS AND DETERMINING  
TO PROCEED

ORCHARD WALK EAST AND WEST UNDERGROUND UTILITIES ASSESSMENT DISTRICT

RESOLVED, by the City Council of the City of Visalia, Tulare County, California (the "City"), that in its opinion the public interest and convenience require and that it is the intention of said Board to order the reimbursement of the cost of certain public improvements as set forth in Exhibit "A", attached hereto and incorporated herein by reference.

1. Whenever any public way is herein referred to as running between two public ways, or from or to any public way, the intersection of the public ways referred to are included to the extent that work shall be shown on the schematic plans herein referred to.

2. Said streets and highways are more particularly shown on the records in the Office of the County Recorder of Tulare County, California, and are shown upon the schematic plans herein referred to and to be filed with the City Clerk.

3. All of said work and improvements have been constructed at the places and in the particular locations, of the forms, sizes, dimensions and materials, and at the lines, grades and elevations as shown and delineated upon the schematic plans, profiles, and specifications.

4. There is to be excepted from the work herein described any of such work already done to line and grade and marked "excepted" or shown "not to be done" on said schematic plans.

5. Notice is hereby given of the fact that in many cases said work and improvements has brought the finished work to a grade different from that formerly existing, and to that extent work will be done to said changed grades.

6. Said City Council does hereby intend to adopt and establish, as the official grades for said work, the grades and elevations shown upon said schematic plans. All such grades and elevations shall be in feet and decimals thereof, with reference to the datum plane of the County of Tulare

7. The description of the reimbursement of the cost of certain public improvements and the termini of the work contained in this Resolution are general in nature. All items of work do not necessarily extend for the full length of the description thereof. The schematic plans and profiles of the work, and maps and descriptions, to be contained in the Engineer's Report, shall be controlling as to the correct and detailed description thereof.

8. Said City Council further declares that all public streets and highways within said Assessment District in use in the performance of a public function as such shall be omitted from the assessment hereafter to be made to cover the costs and expenses of said reimbursement of the cost of certain public improvements.

9. Notice is hereby given that serial and/or term bonds to represent unpaid assessments, and to bear interest at a rate not to exceed a maximum of twelve percent (12%) per annum, payable

semiannually, shall be issued pursuant to Division 10 of the California Streets and Highways Code, the Improvement Bond Act of 1915 (the "Act"), and that the applicable provisions of Part 11.1 of the said Act, providing an alternative procedure for the advance payment of assessments and the calling of bonds, may apply. The last installment of such bonds shall mature not to exceed fifteen (15) years from the second day of September next succeeding twelve (12) months from their date.

10. Said City Council finds and declares that a special reserve fund as provided in Part 16 of said Act may be required, the amount thereof to be fixed and determined upon the sale of the bonds.

11. Said City Council hereby covenants with the holders of said assessment bonds to be issued herein that it will, within one hundred fifty (150) days following the due date of any delinquent installment of assessments securing the bonds to be issued, commence and thereafter diligently prosecute to completion a foreclosure action regarding such delinquent installment of assessment against parcels with delinquent assessments in excess of \$3,000 by the October 1 following the close of each Fiscal Year in which assessments were due and will commence judicial foreclosure proceedings against all parcels with delinquent assessments by the October 1 following the close of each Fiscal Year in which it receives assessments in an amount which is less than 95% of the total assessment levied, and diligently pursue to completion such foreclosures.

12. Based upon receipt by the City Clerk of land owner petition requesting initiation of proceedings, which petition was signed by owners of not less than 60% of the area proposed to be assessed and waiving Division 4 of the Streets and Highways Code, and except as herein otherwise provided for the issuance of bonds, all of said acquisitions and improvement shall be done pursuant to the provisions of the Municipal Improvement Act of 1913, being Division 12 of the California Streets and Highway Code.

13. Said reimbursement of said improvements are hereby referred to the Assessment Engineer, being a competent person employed by the City Council for that purpose and said Assessment Engineer is hereby directed to make and file, or cause to be filed, with the City Clerk a report in writing, presenting the following:

- (a) Maps and descriptions of the lands and easements to be acquired, if any;
- (b) Schematic plans and specifications of the underground utility improvements heretofore constructed and installed. The schematic plans and specifications need not be detailed and are sufficient if they show or describe the general nature, location, and extent of the improvements;
- (c) A general description of works or appliances already installed and any other property necessary or convenient for the operation of the improvements, if the work, appliance, or property is to be acquired as part of the improvements;
- (d) An estimate of the cost of the improvements and of the cost of lands, rights-of-way, easements, and incidental expenses in connection with the improvements, including any costs of registering bonds;
- (e) A diagram showing, as they existed at the time of adoption of this Resolution, the exterior boundaries of the Assessment District and the lines and dimensions of each parcel of land within the Assessment District. Each subdivision, including each separate condominium interest as defined in

Section 783 of the California Civil Code, shall be given a separate number upon the diagram. The diagram may refer to the County Assessor's maps for a detailed description of the lines and dimensions of any parcels, in which case those maps shall govern for all details concerning the lines and dimensions of the parcels;

- (f) A proposed assessment of the total amount of the cost and expenses of the proposed improvements upon each subdivision of real property in the Assessment District in proportion to the estimated benefits to be received by those subdivisions, respectively, from the improvements. The assessment shall refer to the subdivisions by their respective numbers as assigned pursuant to paragraph (e) above; and
- (g) A proposed maximum annual assessment upon each of the several subdivisions of land in the Assessment District to pay costs incurred by the City and not otherwise reimbursed which result from the administration and collection of assessments or from the administration or registration of any associated bonds and reserve or other related funds.

14. When any portion or percentage of the costs and expenses of the improvements is to be paid from sources other than assessments, the amount of such portion or percentage shall first be deducted from the total estimated cost and expenses of the improvements, and the assessment upon property proposed in the report shall include only the remainder of the estimated costs and expenses.

15. If any excess shall be realized from the assessment it shall be used, in such amounts as the City Council may determine, in accordance with the provisions of law for one or more of the following purposes:

- (a) Transfer to the general fund of the City, provided that the amount of any such transfer shall not exceed the lesser of \$1,000 or 5% of the total amount expended from the improvement fund;
- (b) As a credit upon the assessment and any supplemental assessment in accordance with the provisions of Section 10427.1 of the California Streets and Highways Code;
- (c) For the maintenance of the improvements or a specified part thereof; or
- (d) To call bonds, thereby reducing outstanding assessments and subsequent assessment installments. In the event that the City Council determines to use all or some portion of the surplus to call bonds prior to maturity, the finance director shall do each of the following:
  - (i) Cause the special reserve fund, if any, to be reduced as necessary pursuant to Section 8887 to assure that the bonds will not become subject to federal income taxation.
  - (ii) Cause any assessment previously paid in cash to receive a credit in cash pursuant to subdivision (b) of Section 10427.1 for the proportionate

share of the surplus as determined pursuant to subdivision (a) of Section 10427.1.

- (iii) Cause the preparation of new auditor's records to reflect the adjusted principal amount of the remaining assessment. All subsequent assessment installments shall be based upon the adjusted principal amount of the assessment as reflected in the revised auditor's record.

16. Notice is further given that the City will not obligate itself to advance available funds from the City general fund or any other fund of the City to cure any deficiency which may occur in the bond redemption fund, provided, however, that it shall not preclude itself from so advancing such funds if, in its sole discretion, it so determines.

17. It is further determined pursuant to California Streets and Highways Code Section 8571.5 that the bonds may be refunded in the manner provided by Divisions 10, 11, and 11.5 of the California Streets and Highways Code if the said City Council determines that it is within the public interest or necessity to do so. The interest rate of such bonds shall not exceed the maximum rate provided by law, and the last installment of such bonds shall mature not to exceed fifteen (15) years from the second day of September next succeeding twelve (12) months from their date; and any adjustment of assessments resulting from the refunding will be done on a pro rata basis.

18. NOTICE IS HEREBY GIVEN that, in the opinion of this City Council, the areas contained within said proposed Assessment District are the properties which will be benefited by the improvements and the issuance of bonds, and that the public interest and convenience require, and that for purposes of satisfying paragraph 14(g) of this resolution it is the intention of this City Council that a maximum annual assessment of not to exceed two percent (2%) of the annual installment of principal and interest on the bonds issued will be added to each annual installment of the unpaid assessments to pay costs incurred by the City and not otherwise reimbursed, which result from the registration or administration of the bonds issued, the collection or payment of the amounts due on the bonds issued, or from the registration or administration of any associated bonds and reserve or other related funds.

PASSED AND ADOPTED by the City Council of the City of Visalia, Tulare County, State of California, this \_\_\_ day of \_\_\_\_\_ 2009 by the following vote:

AYES: BOARD MEMBERS

NOES: BOARD MEMBERS

ABSENT: BOARD MEMBERS

ABSTAIN: BOARD MEMBERS

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

I, the undersigned City Clerk, do hereby certify that the foregoing Resolution was duly and regularly adopted by the City Council of the City of Visalia, California, at a regular meeting thereof held on the \_\_\_ day of \_\_\_\_\_ 2009, is a true and correct copy. The original of which is on file in my office.

\_\_\_\_\_  
City Clerk

**EXHIBIT "A"**

**DESCRIPTION OF WORK  
ORCHARD WALK EAST AND WEST UNDERGROUND UTILITIES ASSESSMENT DISTRICT**

Reimbursement for the cost of underground utilities within the area known as Orchard Walk East and West in connection with the construction and installation of the following improvements:

A. The installation of the electrical system (SCE and cable) consisting of the following:

- (i) 1-1/2 inch to 5 inch electrical conduit, 2-3 inch cable conduit, vault, pads, traffic signal at Shannon Street, tie to riser pole, Riggins Avenue bore, Dinuba bore, concrete replacement and casement, paving and asphalt, traffic control and trenching, together with the reimbursement for the SCE street light fee, SCE overhead transfer fee, SCE relocate facilities fee, AT&T pole relocation fee and Comcast transfer fee.



RESOLUTION NO. 2009-50  
A RESOLUTION OF THE CITY OF VISALIA  
APPOINTING ASSESSMENT ENGINEER, BOND/DISCLOSURE COUNSEL AND MUNICIPAL BOND  
UNDERWRITER

ORCHARD WALK EAST AND WEST UNDERGROUND UTILITIES ASSESSMENT DISTRICT

WHEREAS, the City Council of the City of Visalia, Tulare County, California, has determined to undertake proceedings pursuant to appropriate assessment and assessment bond acts for the reimbursement of the cost of construction of public improvements in the Orchard Walk East and West Underground Utilities Assessment District; and

WHEREAS, the public interest and general welfare will be served by appointing and employing engineers, bond/disclosure counsel, and municipal bond underwriter for the preparation and conduct of said proceedings.

NOW, THEREFOR BE IT RESOLVED as follows:

1. That Gene Scothorn of Scothorn Consulting Services, Scotts Valley, California, be, and is hereby appointed as Assessment Engineer and employed to do and perform all engineering work necessary in and for said proceedings, including the preparation of an Engineer's Report consisting of schematic plans, profiles and specifications, a listing of all costs of the improvements constructed, a diagram and assessment, and maps and descriptions of lands and easements to be acquired, if any, and that his services to be performed and his compensation be, and it is hereby established pursuant to an Agreement for Assessment Engineering Services on file with the City Clerk.

2. That the law firm of Robert M. Haight, Attorney at Law, Scotts Valley, California, be, and he is hereby appointed as Bond/Disclosure Counsel and employed to do and perform all legal services required in the conduct of said proceedings, and that his compensation be, and it is hereby established pursuant to that certain letter proposal dated as of May 1, 2009, on file with the City Clerk.

3. That Stinson Securities, LLC, San Francisco, California, be, and they are hereby, appointed as municipal bond underwriter for these proceedings and shall be paid for their services pursuant to a Bond Purchase Agreement to be approved by the City Manager or Finance Director of the City.

PASSED AND ADOPTED by the City Council of the City of Visalia, Tulare County, State of California, this \_\_\_\_ day of \_\_\_\_\_ 2009, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

\_\_\_\_\_  
Mayor

ATTEST: \_\_\_\_\_  
City Clerk

I, the undersigned City Clerk, do hereby certify that the foregoing Resolution was duly and regularly adopted by the City Council of the City of Visalia, California, at a regular meeting thereof held on the \_\_\_ day of \_\_\_\_\_ 2009, is a true and correct copy. The original of which is on file in my office.

\_\_\_\_\_  
City Clerk

*Law Office of*  
**ROBERT M. HAIGHT**  
**ATTORNEY AT LAW**  

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**Municipal Bond Counsel**

May 1, 2009

City Council  
City of Visalia  
707 W. Acequia  
Visalia, California 93291

**Re: Orchard Walk East and West Underground Utilities Assessment District**

Honorable City Council:

I propose to serve as the City of Visalia (the "City") bond/disclosure counsel ("Counsel") for the above-captioned project.

THE SCOPE OF SERVICES shall include:

1. Consult with the City in order to provide a coordinated financial, engineering and legal program for the project.
2. Attend meetings of the City Council or other bodies relating to the proceedings including, at City's request, all informal property owner meetings to explain the proposed project and such other meetings of the City when called upon by the City.
3. Prepare all petitions, certificates, resolutions, orders, notices, affidavits and election documents necessary in the conduct of said proceedings and such other reports, documents and correspondence of a legal nature as may be necessary.
4. In consultation with the City's Assessment Engineer, examine the construction schematic plans to determine that the improvements were constructed in public streets, roads, alleys or easements, and if not, determine which properties or easements need be acquired by the City.
5. In consultation with the Assessment Engineer and staff, determine whether the lands to be assessed for the improvements are private or public.
6. During the course of any project, advise Assessment Engineer or staff by telephone, correspondence or conference as to legal questions involving the City and related to said proceedings.
7. Provide a legal opinion, unqualifiedly approving the tax exemptions of interest on the bonds to be issued by the City.

For the services set forth above, fees due Counsel upon completion thereof shall be the sum of \$17,500, plus expenses not to exceed three thousand dollars (\$3,000). If proceedings are terminated for any reason at any time prior to the levy of said assessments and issuance of bonds, then the developer's deposit in the sum of \$12,500 shall constitute payment in full.

City Council  
City of Visalia  
May 1, 2009

Fee Agreement  
Page 2

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For services as Disclosure Counsel, we agree to prepare a Preliminary Official Statement, Official Statement, and Continuing Disclosure Agreement in accordance with Rule 15c2-12 of the Securities Act of 1933 and provide a Rule 10b(5) opinion as required by the Securities Exchange Act of 1934 as to the truth and accuracy of the required disclosure. The fee for service shall be the sum of \$12,500. Fees shall be paid only if assessments are levied and bonds issued and not otherwise. If proceedings are terminated for any reason at any time prior to the levy of said assessments and issuance of bonds, then the fee shall not be due or payable.

The following services are not included in the fee or expenses:

1. Services in representing the City in litigation concerning the legality of any project or proceeding;

The adoption by the City Council of the Resolution Appointing Assessment Engineer, Bond/Disclosure Counsel and Municipal Bond Underwriter shall constitute acceptance of this letter agreement.

Very truly yours,



ROBERT M. HAIGHT

ACCEPTED:

CITY OF VISALIA

\_\_\_\_\_  
City Manager

ATTEST:

\_\_\_\_\_  
City Clerk

**City of Visalia  
Agenda Item Transmittal**

**Meeting Date:** October 19, 2009

**Agenda Item Number (Assigned by City Clerk):** 9f

**Agenda Item Wording:** Award Contract for Mowing and Aerification of City Parks to Paul Cardoza of Perfect Care Landscape Maintenance per specifications of RFB 08-09-57.

**Deadline for Action:** October 19, 2009

**Submitting Department:** Parks and Recreation Department, Park and Urban Forestry Division

**Contact Name and Phone Number:**

Jeff Fultz, Parks Supervisor, 713-4426

Jim Bean, Parks and Urban Forestry Supervisor, 713-4564

**Department Recommendation:**

Staff recommends that Paul Cardoza, Perfect Care Landscape Maintenance of Visalia, be awarded the mowing and aeration contract for City Parks, for mowing of 7,944,770 sq. ft. for \$172,946.76 per year and aeration of, 2,003,760 sq. ft. for \$65,901.92 per year.

**Background:**

For the last five years, the mowing and aerification of city parks has been maintained by Perfect Care Landscape Maintenance. The contract for Perfect Care Landscape expired July 18, 2009. Per the Cities Purchasing Policy, all contracts must be re-bid after the fifth year.

On August 26<sup>th</sup> and September 1<sup>st</sup>, 2009, bids were solicited by advertising in the Visalia Times Delta and by mailing bid notices to contractors. In addition, the bid was also posted on Bid-Net and approximately 45 letters were sent out to various companies from Fresno to Bakersfield and in between

Four contractors submitted bids as shown below.

**For action by:**

City Council  
 Redev. Agency Bd.  
 Cap. Impr. Corp.  
 VPFA

**For placement on which agenda:**

Work Session  
 Closed Session

**Regular Session:**

Consent Calendar  
 Regular Item  
 Public Hearing

Est. Time (Min.): \_\_\_\_\_

**Review:**

**Dept. Head** \_\_\_\_\_  
(Initials & date required)

**Finance** \_\_\_\_\_  
**City Atty** \_\_\_\_\_  
(Initials & date required or N/A)

**City Mgr** \_\_\_\_\_  
(Initials Required)

If report is being re-routed after revisions leave date of initials if no significant change has affected Finance or City Attorney Review.

<b>Bidders Name</b>	<b>Mowing and Aeration</b>
Perfect Care Landscape Maintenance	\$ 238,848.68
EMTS Inc	\$ 267,485.40
Sunset Landscape Inc	\$ 289,791.73
All Commercial Landscape	\$ 333,476.62

City staff has called the references provided by Perfect Care Landscape Maintenance. All references were very positive with their level of work. In addition, Paul Cardoza is currently the mowing contractor and is maintaining Landscape and Lighting District contracts for the City of Visalia.

Since July 18<sup>th</sup>, 2004, Perfect Care Landscape Maintenance has maintained the City of Visalia's park turf. For the past five years, he has always done an excellent job. The majority of our City parks are mowed on a bi-weekly basis. A few of our more active sports parks, like the Plaza Park softball fields, Whitendale Park, and the Visalia Riverway Sports Park are mowed on a weekly basis during the active growing season.

Perfect Care Landscape Maintenance has been very easy to work with and has shown a high level of responsiveness to the needs of the parks, community, and city staff. All of his references show a high level of professionalism. He also has the personnel and equipment to maintain these areas with a very high level of quality.

The contractual agreement is for a one-year period, but can be extended by the City for a period not-to-exceed five years providing satisfactory performance is provided by Perfect Care Landscape Maintenance. The services for this contract are budgeted in the General Fund (0011)

Last years annual price per square feet was .016 and the new price is .013 (for bi-weekly mowing only). This is a \$17,092.56 annual savings. The price for those parks that are mowed on a weekly basis remains the same at 0.44 cents per square foot.

**Recommended Motion (and Alternative Motions if expected):**

Staff recommends that Paul Cardoza, Perfect Care Landscape Maintenance, be awarded the mowing and aeration contract for parks in the amount of \$238,848.68 per year per specifications of RFB -08-09-57.

***Environmental Assessment Status***

**CEQA Review:**

**NEPA Review:**

**Tracking Information:** *(Staff must list/include appropriate review, assessment, appointment and contract dates and other information that needs to be followed up on at a future date)*

Copies of this report have been provided to:

**City of Visalia  
Agenda Item Transmittal**

**Meeting Date:** October 19<sup>th</sup>, 2009

**Agenda Item Number (Assigned by City Clerk):** 9g

**Agenda Item Wording** Award Landscape Maintenance Contract to Eric Briner, Briner and Son Inc., per specifications of RFB 08-09-51 to Maintain Landscaping & Lighting Districts C, D, and E.

**Deadline for Action:** October 19<sup>th</sup>, 2009

**Submitting Department:** Parks and Recreation Department,  
Parks & Urban Forestry Division

**Contact Name and Phone Number:**  
David Pendergraft, Parks & Urban Forestry Supervisor, 713-4295

**Department Recommendation:**

Staff recommends that Briner and Son Inc. of Clovis, CA. be awarded three maintenance contracts for Landscaping and Lighting Districts C, 511,407 sq. ft. at \$56,616.87 per year, District D, which has 904,945 sq. ft. at \$101,297.15 per year and E, 349,083 sq. ft. at \$39,090.72 .per year.

**Background:**

For the last five years, the landscape and lighting districts for areas C and E have been maintained by Sacramento Weed and Growth Regulators. The contract for Sacramento Weed and Growth Regulators expires November 1st, 2009. District D has been maintained by Perfect Care Landscape Maintenance of Visalia, which also expires November 1<sup>st</sup>, 2009. Per the Cities Purchasing Policy, all contracts will be re-bid after the fifth year.

On July 30th, 2009 and August 4<sup>th</sup>, 2009 bids were solicited by advertising in the Visalia Times Delta and by mailing bid notices to contractors. In addition, the bid was also posted on Bid-Net and approximately 150 letters were sent out to various companies from Fresno to Bakersfield and in between.

Due to the large square footage, the work was split in to three options: Districts C, D and E. Six contractors submitted bids as shown below.

**For action by:**  
 City Council  
 Redev. Agency Bd.  
 Cap. Impr. Corp.  
 VPFA

**For placement on which agenda:**  
 Work Session  
 Closed Session

**Regular Session:**  
 Consent Calendar  
 Regular Item  
 Public Hearing

Est. Time (Min.): \_\_\_\_\_

**Review:**  
**Dept. Head** \_\_\_\_\_  
(Initials & date required)

**Finance** \_\_\_\_\_  
**City Atty** \_\_\_\_\_  
(Initials & date required or N/A)

**City Mgr** \_\_\_\_\_  
(Initials Required)

If report is being re-routed after revisions leave date of initials if no significant change has affected Finance or City Attorney Review.



Bidders Name	District C	District D	District E
<b>Briner and Sons (Fresno)</b>	<b>\$ 56,616.87 / yr</b>	<b>\$101,297.15 / yr</b>	<b>\$ 39,090.74 / yr</b>
Primow Landscape (Visalia)	\$ 71,596.80	\$144,791.16 / yr.	\$ 52,362.48 / yr.
Perfect Care (Tulare)	\$ 77,735.88	\$134,840.28 / yr.	\$ 54,109.20 / yr.
EMTS Inc. (Clovis)	\$ 89,700.00	\$158,478.72 / yr.	\$ 69,192.00 / yr.
Able Industries (Visalia)	\$ No bid	\$ No bid	\$ 565,514.88 / yr.
Clean Cut Landscape (Clovis)	\$ No Bid	\$ No bid	\$ 72,145.32 / yr.

Staff has contacted the references listed for Briner and Son Inc. and all were very positive with their level of work. Briner and Son Inc. was the lowest most qualified bidder at \$56,616.87 / year for district C, 511,407 sq. ft., an 11 acre contract. Briner and Son Inc. was also the low bidder on district D at \$101,297.15 / year, 904,945 sq. ft., a 20.77 acre contract. Briner and Son Inc. was also low bid on district E at \$39,090.74/ year, 349,083 sq. ft., at 8.01 acres. Staff has requested a list of equipment and personnel and are satisfied he has the equipment and man power to maintain three different contracts at a total of 40.52 acres.

Annual price increase adjustments at time of renewal of contract are based on the Consumer Price Index. Cost for future additions to the project area (if necessary) will be calculated by multiplying the Contractor's Unit Price by the square footage of area being added to contract.

The contractual agreement is for a one-year period, but can be extended by the City for a period not-to-exceed five years providing satisfactory performance is provided by Briner and Son. The services for this contract are budgeted in the Landscape and Lighting Fund (1513) and will not need a budget amendment.

All maintenance costs for each district are paid for by the homeowners in the district. If the contract is awarded to Briner & Sons, the L & L District would save \$82,459 annually and \$412,297 over a five year contract term compared to the current costs. If the contract is awarded to the second lowest bidder, the L & L Districts would save \$53,503 over a five year period.

**Recommended Motion (and Alternative Motions if expected):**

City staff recommends that Eric Briner, Briner and Sons Inc. be awarded the maintenance contracts for District C in the amount of \$56,616.87 per year; and district D in the amount of \$101,297.15 per year; and District E in the amount of \$39,090.74 per year per specifications of RFB -08-09-51.

***Environmental Assessment Status***

**CEQA Review:**

**NEPA Review:**

**Tracking Information:** *(Staff must list/include appropriate review, assessment, appointment and contract dates and other information that needs to be followed up on at a future date)*

Copies of this report have been provided to:

**City of Visalia  
Agenda Item Transmittal**

**Meeting Date:** October 19, 2009

**Agenda Item Number (Assigned by City Clerk):** 9h

**Agenda Item Wording:** Request that Council authorize the City Manager to enter into a professional services agreement with Mendoza & Associates for construction management and resident engineer services for the construction of the Ben Maddox Way/ Highway 198 Overcrossing. Project Number 3011-00000-720000-0-9242.

**Deadline for Action:** October 19, 2009

**Submitting Department:** Community Development Department/  
Engineering Division

**Contact Name and Phone Number:**

Manuel Molina , Associate Engineer - 713-4491,  
Adam Ennis, Engineering Services Manager - 713-4323,  
Chris Young, Assistant Community Dev. Director - 713-4392

**Department Recommendation:** Staff recommends that the Visalia City Council authorize the City Manager to enter into a professional services agreement with Mendoza & Associates for construction management and resident engineer services for the construction of the Ben Maddox Way Highway 198 Overcrossing project. The fee for the services will be \$ 819,300. The project is scheduled to be released to bid September 29, 2009. Construction cost is estimated to be \$10,000,000. Construction is expected to begin in January, 2010.

**Summary/background:** The City of Visalia has entered into a cooperative agreement with the State Department of Transportation (Caltrans) for the construction of the Ben Maddox Way/ Highway 198 Overcrossing. The City has agreed to fund the construction and complete the bridge project according to Caltrans specifications and with Caltrans oversight. The cooperative agreement requires the City to provide a field site representative, (who is a California licensed Civil Engineer), to perform the functions of the resident engineer. The cooperative agreement directs the City to provide qualified support staff to assist the Resident Engineer in, but not limited to, construction surveys, soils and foundation tests, measurement and computation of quantities, testing of construction materials, checking shop drawings, preparation of estimates and reports, preparation of "As-Built" drawings, and other inspection and staff services necessary to assure the construction is being performed in accordance with the plans and specifications.

**For action by:**

City Council  
 Redev. Agency Bd.  
 Cap. Impr. Corp.  
 VPFA

**For placement on which agenda:**

Work Session  
 Closed Session

**Regular Session:**

Consent Calendar  
 Regular Item  
 Public Hearing

Est. Time (Min.): \_\_\_\_\_

**Review:**

**Dept. Head** \_\_\_\_\_  
(Initials & date required)

**Finance** \_\_\_\_\_  
**City Atty** \_\_\_\_\_  
(Initials & date required  
or N/A)

**City Mgr** \_\_\_\_\_  
(Initials Required)

If report is being re-routed after revisions leave date of initials if no significant change has affected Finance or City Attorney Review.

Since 2005, the City has constructed several large projects including the Santa Fe Bridge Overcrossing, Acequia Parking Structure, the Sports Park, Recreation Park Stadium Right Field and the Transit Maintenance Facility, Construction management firms were hired by the City to review plans and specifications, provide constructability reviews, conduct the bid process, and provide contract administration, coordination, planning, and contractor oversight. Construction managers also reviewed, tracked, and processed construction schedules, requests for information, submittals, potential change orders, and potential claims. The project management firms were able to commit their staff as needed to fully provide these specialized services. On the previous projects the construction management firms have provided a much needed service and have been instrumental in the successful completion of the projects.

This bridge project in the state highway right-of-way has many special needs and requirements. Challenges include demolition, state highway closures and California Highway Patrol coordination. Throughout the project the construction manager will have to deal with highway lane closures and full highway closures with detours all of which require full time inspection night and day. Construction of the concrete drilled pile footings, erection of the bridge false work, ordering and handling of pre-cast concrete girders are all strictly regulated by Caltrans. Caltrans has specific and detailed requirements for inspection, testing, traffic control, and record keeping. Caltrans construction projects often combine the responsibilities of the resident engineer and construction manager, with one firm hired to provide both services. By combining the resident engineer and construction manager in one firm, the coordination and record keeping are less redundant and more uniform and consistent. Because of the need for qualified personnel and the specialized structural requirements of State Highway bridge construction, city staff believes that the combined construction management and resident engineer firm is the best and most cost effective method of managing the construction of the Ben Maddox Way /Highway 198 Overcrossing.

On August 12, 2009 the City Purchasing Department issued a Request for Proposals (RFP) for the Construction Management (CM) & Resident Engineer (RE) Services for the Ben Maddox Way Highway 198 Overcrossing. The four firms listed below submitted proposals and were evaluated by a review committee. As outlined by the Federal Highway Administration to conform to funding requirements the top three firms were selected for interviews. The proposals and the interviews were rated by a committee of City and Caltrans staff. The review committee included David Neumann, PE, Area Construction Manager - Caltrans, Rick Salinas, PE, Area Construction Manager – Caltrans, Rebecca Keenan, PE, Civil Engineer – COV, Doug Damko, PE, Senior Civil Engineer –COV and Manuel Molina, Project Manager – COV. Mendoza & Associates was chosen due to their qualifications, past performance on similar projects they have managed, and their familiarity with Caltrans District 6 personnel and procedures. Also, due to the numerous and detailed requirements set forth by the American Recovery and Reinvestment Act funding, it will be critical to have highly experienced construction managers on this project. The selection of Mendoza & Associates as the CM & RE firm for Council consideration was unanimously supported by the joint City/Caltrans technical review committee.

Subsequent to the review and rating of the proposals, the sealed fee proposals were opened. The proposed fees from the three firms responding to the RFP were within eight and four percent (8% and 4%) of each other and Mendoza & Associates was the lowest. The cost proposals for all firms are in order of review committee ranking as follows:

Mendoza & Associates (Fresno, CA.)	\$ 819,300.00
URS (San Francisco, CA.)	\$ 919,572.79
Tetra Tech (Pasadena, CA.)	\$ 970,079.00
Provost & Pritchard (Visalia, CA.)	\$ 883,124.00

City staff has contacted Caltrans District 6 project managers, Fresno County Transportation Authority staff, and consulting engineering firms to determine the range of fees expected for Construction Management and Resident Engineer services that meet Caltrans requirements for similar state highway facilities. The expected fees for these services are between ten percent (10%) and fifteen percent (15%) of the construction cost depending on the size and complexity of the project. The fee of \$ 819,300, the firm selected by the review committee, is 11% of the estimated construction cost.

**Prior Council/Board Actions:**

1999/2000 City budget authorized Capital Improvement Project 3001-00000-720000-0-9236

July 21, 2003 Council adopted a Mitigated Negative Declaration (Resolution #2003-84)

July 14, 2008 Council authorized City Manager to approve Cooperative Agreement (06-1361)

January 29, 2008 Council approved appraisals of 10 properties.

December 15, 2008 Council approved appraisals Resolution of Necessity (Resolution 2008-60)

**Committee/Commission Review and Actions:**

**Alternatives:**

- 1.) Use City staff to manage the construction, hiring additional specialized personnel as needed.
- 2.) Re-distribute the Request for Proposals with a revised scope.

**Attachments:** Project location map.

**Recommended Motion (and Alternative Motions if expected):** I move to authorize the City Manager to enter into a professional services agreement with Mendoza & Associates for Construction Management and Resident Engineer Services for the construction of the Ben Maddox Way Highway 198 Overcrossing.

***Environmental Assessment Status***

**CEQA Review:** Mitigated Negative Declaration, adopted by City Council on July 21, 2003 by Resolution 2003-84

**NEPA Review:** Categorical Exemption /6004, Categorical Exclusion Determination Form 9/17/07.

**Tracking Information:** *(Staff must list/include appropriate review, assessment, appointment and contract dates and other information that needs to be followed up on at a future date)*

Copies of this report have been provided to:

**City of Visalia  
Agenda Item Transmittal**

**Meeting Date:** October 19, 2009

**Agenda Item Number (Assigned by City Clerk):** 9i

**Agenda Item Wording:** Authorization for staff to submit a grant application for the 2009 Local Energy Assurance Planning (LEAP) Initiative in the amount of \$200,000 from U.S. Department of Energy to fund the development of energy assurance plan.

**Deadline for Action:** October 22, 2009

**Submitting Department:** Administration

**Contact Name and Phone Number:**

Leslie Caviglia, 713-4317; Kim Loeb, 713-4530, Nancy Loliva , 713.4535, Danny Wristen, 713.4056 and Chief Mark Nelson, 713-4218.

**Department Recommendation:**

It is recommended that Council authorize staff to submit an application for the Local Energy Assurance Planning (LEAP) Initiative in the amount of \$200,000 from U.S. Department of Energy to fund the development of an energy assurance plan. The LEAP grant is a part of the American Recovery and Reinvestment Act of 2009 (ARRA).

**Summary/background:** This ARRA program is providing the first funding for local governments to development energy assurance plans. While many state's have already developed plans for dealing with long and short term energy outages, (although California is still in the process of updating their plan), there has been no effort to have local governments develop plans for operating in an emergency without traditional forms of energy.

Given that there could be many emergencies where power is out, and the whole power grid could be affected, planning a more broad based approach would be very beneficial. The goal would be to develop a plan for implementing alternative energy sources that would not be grid or fossil fuel dependent. Examples could include solar power or other alternative fuel sources for key facilities such as the Emergency Command Center, the Transit Center (cooling and heating center), a dispatch facility, fueling facilities, the hospital, senior care facilities and other places where power outages could have devastating effects, or where the City may need to establish assistance centers. Another example could be the acquisition of a large, mobile generator that could be used to power a variety of sources.

**For action by:**

City Council  
 Redev. Agency Bd.  
 Cap. Impr. Corp.  
 VPFA

**For placement on which agenda:**

Work Session  
 Closed Session

**Regular Session:**

Consent Calendar  
 Regular Item  
 Public Hearing

Est. Time (Min.): \_\_\_\_\_

**Review:**

**Dept. Head** LBC101309  
(Initials & date required)

**Finance** \_\_\_\_\_  
**City Atty** \_\_\_\_\_  
(Initials & date required or N/A)

**City Mgr** \_\_\_\_\_  
(Initials Required)

If report is being re-routed after revisions leave date of initials if no significant change has affected Finance or City Attorney Review.

Many of these efforts would also assist the city with reducing on-going energy costs, and reducing greenhouse gas emissions. It is staff's belief that by being part of the model plan development will put the City in a key position for obtaining grants to implement the plan.

Funds from the grant will be used to develop an Energy Assurance Plan to integrate into the City's Emergency Operations Plan and act as a guide to assist with future projects to reduce our dependence upon normal energy supplies. The grant allows for a two-year project, for up to a total of \$300,000. There are several reasons that plan development may take up to the full two years to develop including the fact that there is no current local government plan in place that can be replicated, development of the plan will involve coordination with several state agencies including the California Energy Commission and the California Emergency Management Agency, and, there will be interaction and cooperation between the 50 local government agencies that are expected to be funded in this process, especially those geographically similar regions.

If the full \$200,000 being requested by the City is granted, funding from the grant will be used to fund up to a one-year contract employee or consultant to assist with the development of the plan. In addition, the grant would partially fund the salaries of the Natural Resources Conservation Manager and the Emergency Preparedness Coordinator (Fire Battalion Chief) over a two-year period for plan development and implementation. The grant will also fund meetings and travel associated with the development and implementation of the plan.

The San Joaquin Valley Clean Energy Organization, for which the City of Visalia is a model city, is very supportive of this effort and would work with the City to provide alternative energy technical assistance during the plan development, and would work with the City to share the information throughout the Valley upon completion of the Plan.

It should be noted that the City of Visalia has a current, up-to-date, Emergency Operations Plan (EOP) that was adopted in December 2008. The Plan addresses the planned response to extraordinary emergency situations associated with natural disasters, technological incidents, and national security emergencies in or affecting the City of Visalia. However, like most other cities and the 2006 California Energy Commission's Energy Emergency Response Plan, it currently does not include an energy assurance component as an integral part of the overall plan, although it does provide an all-risk approach to emergency management.

### **Funding**

Funding for this grant is provided by the American Recovery and Reinvestment Act of 2009 (ARRA), in cooperation with the U.S. Department of Energy. There is no local match required for this grant. In addition, the grant will not fund any equipment, only planning activities.

### **Prior Council/Board Actions:**

n/a

### **Committee/Commission Review and Actions:**

n/a

### **Alternatives:**

To not submit the Local Energy Assurance Planning grant application.

### **Attachments:**



**Recommended Motion (and Alternative Motions if expected):**

I move to authorize staff to submit the grant application for the Local Energy Assurance Grant.

***Environmental Assessment Status***

**CEQA Review:**

**NEPA Review:**

**Tracking Information:** *(Staff must list/include appropriate review, assessment, appointment and contract dates and other information that needs to be followed up on at a future date)*

Copies of this report have been provided to:

**City of Visalia  
Agenda Item Transmittal**

**Meeting Date:** October 19, 2009

**Agenda Item Number (Assigned by City Clerk):** 9j

**Agenda Item Wording:** Authorize staff to implement a Wellness Program for participants in the health program in 2010

**Deadline for Action:**

**Submitting Department:** Administrative Services – Risk Management

**Contact Name and Phone Number:** Eric Frost x4474,  
Charlotte Dunn x 4335

**Department Recommendation:** That Council appropriate \$14,000 from the City's Health Fund to offer a voluntary Wellness Program to participants over 18 years of age that participate in the City of Visalia health plan.

The program will be funded by the interest earned on funds in our health program, up to \$14,000 for calendar year 2010. Follow-up health coaching options would be available and funded directly by participants. This program is completely separate and different from disability avoidance programs currently offered to the Police and Fire personnel.

**Background:** According to the new American Heart Association policy statement "workplace wellness programs are an effective way to reduce major risk factors for heart disease, such as smoking, obesity, high blood pressure and diabetes". During 2008 the city's health plan paid \$459,000 for medications to address cardiovascular and diabetes treatment. These health conditions can be improved if detected early and managed by change in lifestyle.

Our nation, state and city are dealing with economic decline, obesity in children and adults, employee stress issues, and increased health and workers compensation costs. One strategy in dealing with these problems is to invest in our most valuable asset...our employees.

Currently, in order to promote health and wellness, we encourage employees to attend the annual Benefit Fair, take advantage of flu immunization and preventative care offerings under the health plan, participate in a citywide weight loss contests and utilize lunchtime drop-in programs for fitness and exercise.

**For action by:**

City Council  
 Redev. Agency Bd.  
 Cap. Impr. Corp.  
 VPFA

**For placement on which agenda:**

Work Session  
 Closed Session

**Regular Session:**

Consent Calendar  
 Regular Item  
 Public Hearing

Est. Time (Min.): \_\_\_\_\_

**Review:**

**Dept. Head** \_\_\_\_\_  
(Initials & date required)

**Finance** \_\_\_\_\_  
**City Atty** \_\_\_\_\_  
(Initials & date required or N/A)

**City Mgr** \_\_\_\_\_  
(Initials Required)

If report is being re-routed after revisions leave date of initials if no significant change has affected Finance or City Attorney Review.

The City's Employee Health Benefits Committee (EHBC) recommends that the City offer an early detection screening with the option for lifestyle counseling if the covered health plan participant so desires.

### **Wellness Program through the Weight & Health Clinic**

The Weight & Health Clinic assists local employers in establishing health and wellness programs and tailors them to meet organizational needs. The offerings may include on-site screenings, wellness coaching, weight loss challenges, and on-site walking programs. Tests included in the original on-site screening includes:

- Total cholesterol
- Fasting or non-fasting glucose
- Blood Pressure
- Weight
- Body Mass Index

After the screening, and with the permission of the participant, the results are forwarded to their treating physician to assist them in collectively working towards improving their health. In addition, the employer receives an aggregate report that summarizes the overall health of the participants and identifies the areas that could benefit from wellness education to obtain a healthier and happier workforce. The individual results are confidential between the participant and the Clinic and not included in the aggregate report.

### **Who can participate and how is it funded?**

Identifying the health risk is the first and most important step of improving our health. Many people fear the unknown, worry about the confidentiality of their personal health information, or just don't believe they have any serious health conditions.

Bringing health awareness to employees on the job is the first step, but to be effective, wellness programs need to reach dependents to encourage a healthy family lifestyle. Any qualified participant that desires to pursue the wellness coaching would be responsible for those costs but would benefit from a reduced rate by participating in the city program.

Our health plan has accumulated savings over time in our health pool. These funds earned \$20,000 in interest earnings last year and we expect the program being proposed can be fully funded for \$14,000.

It is recommended that this program be extended to all participants in the health plan over the age of 18. If we target for 325 medical screenings at \$36 per person, the screening cost would be \$11,700. Staff is asking for authority of \$14,000 to fund this program in 2010 for the screening, resources to promote the program and follow-up educational programs.

Although it is difficult to measure the success of these programs, the average return of investment is 3 to 1. Awareness is the first step in changing our lifestyle and improving our health. A return of 1 to 1 would still be considered a success if it reduced or prevented the major risk factors for heart disease or other serious health conditions. A healthy employee is a happier employee, and a happy employee increases productivity and reduces health care and workers compensation costs. During 2008, the health plan paid \$459,000 in prescription costs for treatment of cholesterol, blood pressure and diabetes treatment for 752 patients (a single

patient could have multiple diagnosis') participating in our health plan which is evidence of the potential for awareness and improvement of health.

**Implementation**

The Weight and Health Clinic made a presentation to the EHBC on October 6<sup>th</sup>. The proposal was provided to all members of the Employee Health Benefit Committee. The program has the support of Group A, Group B, Group E, Group M and Management. The only group that was not supportive of the proposed program is Group G – Firefighters, as they indicated they already have access to the Disability Avoidance Program. It is important to note the proposed program focuses more on potential health risk than the DAP program and would benefit dependents as well as employees.

With 5 of the 6 employee groups supporting the program, staff is seeking authorization to proceed with implementation of the 2010 Wellness Program, expense of funds from the fund up to \$14,000 and introduction of the plan at the Benefits Fair on November 4<sup>th</sup>.

**Attachments:** #1, Example of an individual's health report

<p><b>Recommended Motion (and Alternative Motions if expected):</b></p> <p>That Council appropriate \$14,000 from the City's Health Fund to offer a voluntary Wellness Program to participants over 18 years of age that are in the City of Visalia health plan.</p>
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<p style="text-align: center;"><b><i>Environmental Assessment Status</i></b></p> <p><b>CEQA Review:</b></p> <p><b>NEPA Review:</b></p>
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**Tracking Information:** *(Staff must list/include appropriate review, assessment, appointment and contract dates and other information that needs to be followed up on at a future date)*

Copies of this report have been provided to:

**City of Visalia  
Agenda Item Transmittal**

**Meeting Date:** October 19, 2009

**Agenda Item Number (Assigned by City Clerk):** 9k

**Agenda Item Wording:** Authorization to reduce the hourly Code Enforcement fee that is charged to property owners from \$174.45 to \$128.38.

**Deadline for Action:** N/A

**Submitting Division:** Housing and Economic Development

**Contact Name and Phone Number:**

Ricardo Noguera, HEDD Director, 713-4190  
Tracy Robertshaw, Code Enforcement Officer, 713-4187

**Division Recommendation:** Staff recommends that the City Council authorize a reduction in the hourly rate of \$174.45 that is currently charged to property owners to the new rate of \$128.38.

**Summary/background:** In 2001, a fee study was conducted for the Building Division. The fee study set an hourly rate of \$111.57 for Code Compliance Inspections. Over the course of the next eight (8) years the fees were adjusted according to the Building Industry and the Consumer Price Index (CPI) and special rate adjustments in order to balance the Building Safety Fund's budget. A history of fees is presented at the end of the report.

Code enforcement inspections were previously conducted by the Building Safety Division. However, the City has reorganized the Building Safety Division and code enforcement duties are now administered by the Housing and Economic Development Department Director. The City charges a cost recovery fee to recover the expenses incurred by the City in operating its code enforcement program from persons or entities that violate the applicable standards. The inspectors in the Housing and Economic Development Department worked in the Building Safety Division prior to the reorganization and the fee charged by the Building Safety Division was carried over with the reorganization.

Since code enforcement duties are now being handled by a smaller Department that has also undergone recent personnel changes, Finance and Housing and Economic Development Department staff completed a new fee study. The proposed lower fee reflects the lower costs of the smaller Department.

Because the prior fee study was specific to the Building Safety Division, Finance evaluated the Neighborhood Preservation Division to determine the costs for the building inspectors now

**For action by:**

City Council  
 Redev. Agency Bd.  
 Cap. Impr. Corp.  
 VPFA

**For placement on which agenda:**

Work Session  
 Closed Session

**Regular Session:**

Consent Calendar  
 Regular Item  
 Public Hearing

Est. Time (Min.): \_\_\_\_\_

**Review:**

**Dept. Head** \_\_\_\_\_  
(Initials & date required)

**Finance** \_\_\_\_\_  
**City Atty** \_\_\_\_\_  
(Initials & date required or N/A)

**City Mgr** \_\_\_\_\_  
(Initials Required)

If report is being re-routed after revisions leave date of initials if no significant change has affected Finance or City Attorney Review.

solely conducting code enforcement inspections. In the process of comparing cost structures, staff determined that the cost recovery fee should be adjusted to reflect the costs of the Neighborhood Preservation Division.

The new rate is based on field inspection time for inspectors that are assigned to the Neighborhood Preservation Division. Table, 1, Code Enforcement Hourly Rate Based upon Field Inspections, shows a proposed hourly rate of \$128.38. Also, in the past, enforcement charges were billed to the nearest hour. In the future, staff recommends that the new rate be used by billing in 15 minute increments for field inspections. If approved, the new rate should become effective on November 2, 2009.

**TABLE 1**  
Code Enforcement Hourly Rate based upon Field Inspections

<b>Based on Dep't Budget &amp; Actual Staffing</b>	
5,226.21	Available Hours
186,650.00	Operations Expenses
284,080.01	Original Salaries & Benefits Budget
200,229.65	Additions to S&B Post Budget
<b>670,959.66</b>	<b>Total Costs</b>
<b>128.38</b>	<b>Hourly Rate</b>

**Prior Council/Board Actions:** The City Council has previously approved rate increases based on the increases in Building Inspection fees:

**FEE HISTORY**

<u>HOURLY FEE</u>	<u>DATE</u>	<u>RESOLUTION</u>
\$111.57	10/30/00	2000-68
\$103.98	05/05/01	2001-16
\$ 77.99	01/21/04	N/A-Reduction
\$115.43	02/02/06	2006-92
\$158.14	06/02/07	2007-34
\$168.89	07/01/08	2008-32
\$174.45	07/09/09	2008-32

**Committee/Commission Review and Actions:** NONE

**Alternatives:** The hourly rate remains the same and continues to coincide with the Building Division rates.

**Attachments:** Fee Study

**Recommended Motion (and Alternative Motions if expected):** Motion to reduce the current hourly rate that Code Enforcement charges property owners from \$174.45 to \$128.38.

***Environmental Assessment Status***

**CEQA Review: N/A**

**NEPA Review: N/A**

**Tracking Information:** *(Staff must list/include appropriate review, assessment, appointment and contract dates and other information that needs to be followed up on at a future date)*

Copies of this report have been provided to:



Fee	Visalia	Fresno	Palmdale	Bakersfield	Lancaster	Sacramento
<b>Code Violation Appeal Fee</b>						
SFD Residential		\$ 35.00				
Mail family dwelling		\$ 55.00				
Commercial		\$ 75.00				
<b>Code Citation Penalties</b>						
1st citation		\$ 200.00				
2nd citation		\$ 300.00				
3rd citation		\$ 800.00				
Collection Agency Recovery Fee		25%				
Late Payment Charge		\$1.00 minimum				
Lien Release Fee		\$ 25.00				
Hotel/Motel Inspection Fee		\$ 100.00				
1 hour minimum		\$ 100.00				
Family day care annual inspection		\$ 100.00				
<b>Housing Code</b>						
1 hour minimum		\$ 100.00				
1 hour minimum		\$ 100.00				
1 hour minimum		\$ 100.00				
Code compliance inspection		\$ 218.00				
1 hour minimum		\$ 100.00				
Mobilehome Rent Review		\$ 200.00				
		\$ 18.00				
Notice and Order		\$ 447.00				\$ 800.00
Notice and Order to Repair (1-2 units)						\$ 1,400.00
Notice and Order to Repair (3rd unit)						\$ 1,400.00
Notice and Order to Repair (Each unit over 3rd)						\$ 38.00
Notice and Order Appeal Processing Fee						\$ 400.00
Termination of Declarations Fined						\$ 100.00
Tenant Relocation per unit						\$ 500.00
Housing Permit Processing Fee						\$ 150.00
Vacant Building Monthly Monitoring Fee						\$ 150.00
Vacant Building Enforcement Response Fee						\$ 150.00
Administrative Fee for all Housing Abateements						20%
Rental Housing Inspection Fee						\$ 28.00 per unit
Rental Housing Inspection Reschedule Fee						\$ 0.85
Rental Housing Inspection Reinspection Fee						\$ 1.50
Rental Housing Inspection Late Fee						20% of amount due
Audio File Duplication						\$ 25.00
Non Certified Document Copies						25¢ 1st page, 10¢ after first
Public Nuisance Enforcement		\$ 100.00				
Shipping Cart Contaminant Plan Review Fee		\$ 50.00				
Sign Storage Fee						
0-4 square foot sign		\$ 5.00		\$ 10.00		
4-16 square foot sign		\$ 20.00		\$ 50.00		
Over 16 square foot sign		\$ 50.00		\$ 55.00 per day		
				\$ 200.00		
				\$ 100.00		
Solid Waste Recyclers Certification Process		\$ 1,000.00				
Tire Disposal Service						
Automobile/light pickup truck		\$ 1.00				
Large truck tires		\$ 5.00				
Tractor tires		\$ 8.00				
Vacant Building Plan - Review Fee		\$ 100.00				
Wood Abatement Enforcement Penalty		100% + \$500.00				
Zoning Code Enforcement		\$ 100.00				
Inspections		\$	\$ 75.00			
			\$ 125.00			
			\$ 150.00			
			\$ 200.00			
Abatement of Vehicles			\$ 350.00			\$ 500.00
Substandard Property Declaration			\$ 150.00		\$ 31.00	
Termination of Substandard Property Declaration			\$ 350.00		\$ 47.00	\$ 100.00
Summary Abatement Action			\$ 350.00			
Filing of Criminal Complaint			\$ 250.00			
Computer Research to Identify Property Ownership			\$ 45.00			
Investigate Case Photographs			\$	\$ 2.00 per photo		
Small Claims Filing			\$	\$ 250.00		
Abatement of Food Carts			\$	\$ 200.00		
Emergency Draining of Pools			\$	\$ 1,000.00		
Removal of Encroachments			\$	\$ 200.00 or actual costs		
Registration Fee for Vacant Properties			\$	\$ 100.00		
Graffiti Removal		\$428.00 minimum; \$4.08 per minute after 1st hour				\$ 373.00
Written Interpretation of Poisons			\$	\$ 75.00 per hour		
Public Hearing Fee			\$	\$ 475.00		
7 Day Notice to Abate Municipal Code Violation						
If done timely				\$		
Admin fee to cover reinspection costs				\$	165.00	
Second Notice to Abate Public Nuisance				\$	195.00	
Notice and Order for Abatement						
Admin fee - contract abatement costs				\$	300.00	20%
Abatement warrant costs				\$	535.00	
Taxi/Tow Truck Business Permit						
New application				\$	140.00	
Renewal application				\$	140.00	
Taxi/Tow Truck Driver Permit						
New application				\$	109.00	
Renewal application				\$	109.00	
Pawn Shop/2nd Hand Dealer Permit						
New application				\$	188.00	
Renewal application				\$	109.00	
Massage Business Permit						
New application				\$	125.00	
Renewal application				\$	129.00	
Massage Technician Permit						
New application				\$	125.00	
Renewal application				\$	125.00	
Massage Business & Technician Location Change				\$	16.00	
Tobacco Retailer Permit				\$	73.00	
Group Home Inspection & Business License						
New application				\$	270.00	
Renewal application				\$	197.00	
Pedicle/Golfcart Permit				\$	16.00	
Bingo Permit						
New application				\$	119.00	
Renewal application				\$	82.00	
Impounded Sign Processing						\$37.00 per sign
Code Enforcement Reinspection						\$37.00 per hour
Abatement Lien Processing						Full costs for all personnel involved
Abatement warrant Processing						Full costs for all personnel involved
LAN-Cap Rental Housing Business License Processing						
New license				\$	82.00	
Renewal license				\$	28.00	
LAN-Cap Rental Housing Inspection Fee						
First unit				\$	97.00	
Each additional unit				\$	24.00	
LAN-Cap Rental Housing Business License Change				\$	16.00	
Notice and Order Appeal Processing Fee						\$ 405.00
Entertainment Permit Application Fee - 1 Day Event						\$ 702.00
Entertainment Permit Application Fee - New (2 yr permit)						\$ 1,428.00
Entertainment Permit Application Fee - Renewal 2 yr						\$ 743.00
Tobacco Retailer License Application Fee						\$ 370.00
Tobacco Retailer License Renewal Application Fee						\$ 370.00
Taxicab Permit Appeal Fee						\$ 400.00
Pedicab Appeal Fee						\$ 175.00

NEIGHBORHOOD PRESERVATION DIVISION LABOR AND OVERHEAD RATE

TITLE	Group	NAME	Employee Number	DIVISION	Hrly Sal & Benefits	Hrs Available	Labor Rate	Budgeted Expenses	09/10 Labor & Overhead Rate
Housing & Economic Development Director		Ricardo Noguera		18461	33.52	-			
Code Enforcement Officer		Tracy Robertshaw		18461	58.85	767.92	159.41	30.38	189.80
Combined Building Inspector		Doug Elliot		18461	55.58	1,015.94	113.79	22.97	136.76
Code Enforcement Technician		Vacant		18461	46.82	1,144.12	84.75	20.39	105.14
Plan Checker		Steve Rocha		18461	51.37	1,138.19	93.80	20.48	114.28
Building Inspector		Frank Rocha		18461	46.67	1,159.04	83.75	20.13	103.88
Vehicle Abatement Officer		Tom Contreras		18461	-	-	-	-	-
Senior Administrative Assistant		Julie Pereira		18461	-	-	-	-	-
<b>SUB TOTAL</b>					<b>292.61</b>	<b>5,226.21</b>	<b>635.50</b>	<b>114.35</b>	<b>648.85</b>

Table 2 - Summary

Based on Dept Budget & Actual Staffing
5,226.21 Available Hours
186,650.00 Operations Expenses
284,080.01 Original Salaries & Benefits Budget
200,229.65 Additions to S&B Post Budget
<b>670,959.66 Total Costs</b>
<b>128.38 Hourly Rate</b>

Average of all hourly rates 81.23

10/15/2009



**Neighborhood Preservation Division Budget Expense Rate**

	Employee Services	Materials & Services	Allocated Costs	Dept Reimbursement	Total Budgeted	Hourly Hrs Avail	FTE Hrs Avail	Hrs Available	Rate
18461		49,850	136,800		186,650		5,226.21	5,226.21	35.71

Employee	Salary	PERS	W/C	Insurance	LTD	MediCare	Survivor	Total
		0.15106	0.0046 0.0204 0.0524	15.875	0.0052	0.0145	0.011538	
<b>Budgeted</b>								
Tracy Robertshaw	47,574.22	6,764.34	1,384.00	16,020.00	207.00	689.83	17.00	72,656.39
Doug Elliot	66,854.42	9,505.70	1,383.00	16,020.00	206.00	969.39	16.00	94,954.51
Tim Burns	85,451.37	12,149.96	1,383.00	16,020.00	207.00	1,240.78	17.00	116,469.11
								<b>ORIGINAL BUDGET</b>
								<b>284,080.01</b>
<b>Additions</b>								
Ricardo Noguera	27,976.80	4,226.18	570.73	3,048.00	145.48	405.66	0.30	36,373.15
Sleve Rocha	60,732.36	9,174.23	279.37	15,240.00	315.81	880.62	0.30	86,622.69
Frank Rocha	50,683.08	7,656.19	2,655.79	15,240.00	263.55	734.90	0.30	77,233.82
Tom Contreras	-	-	-	-	-	-	-	-
Julie Pereira	-	-	-	-	-	-	-	-
								<b>ADDITIONS</b>
								<b>200,229.65</b>
<b>NEW BUDGET TOTAL</b>								<b>484,309.66</b>

NEIGHBORHOOD PRESERVATION  
08-10 FULLTIME WAGES AND BENEFITS

TITLE	Group	WIC Code	NAME	DIV	RANGE	Hrly Rate	COLA	Employer Pers	Workers Comp	Group Ins	Long Term Disability	Medi-care	Employee Pers	Survivor	Total Hry Wages & Benefits																															
Housing & Economic Development Director	0		Ricardo Noguera			13.45	0.54	2.03	0.27	15.88	0.07	0.20	1.08	0.01153846	33.52																															
Code Enforcement Officer			Tracy Robertshaw			34.90	1.40	5.27	0.71	15.88	0.18	0.51	-	0.01153846	58.85																															
Combined Building Inspector			Doug Elliot			32.24	1.29	4.87	0.66	15.88	0.17	0.47	-	0.01153846	55.68																															
Code Enforcement Specialist			Vacant			25.28	1.01	3.82	0.12	15.88	0.13	0.37	-	0.01153846	46.62																															
Plan Checker			Slewa Rocha			29.20	1.17	4.41	0.13	15.88	0.15	0.42	-	0.01153846	51.37																															
Building Inspector			Frank Rocha			24.37	0.97	3.68	1.28	15.88	0.13	0.35	-	0.01153846	46.67																															
Vehicle Abatement Officer			Tom Contreras			-	-	-	-	-	-	-	-	-	0																															
Senior Administrative Assistant			Julie Pereira			-	-	-	-	-	-	-	-	-	0																															
<b>SUB TOTAL</b>																																														
<table border="0" style="width:100%; border:none;"> <tr> <td style="width:10%;"></td> <td style="width:10%;"></td> <td style="width:10%;"></td> <td style="width:10%;"></td> <td style="width:10%;"></td> <td style="width:10%;"></td> <td style="width:10%;"></td> <td style="width:10%;"></td> <td style="width:10%;"></td> <td style="width:10%;"></td> <td style="width:10%;"></td> <td style="width:10%;"></td> <td style="width:10%;"></td> <td style="width:10%;"></td> <td style="width:10%;"></td> <td style="width:10%;"></td> </tr> <tr> <td></td> <td></td> <td></td> <td style="text-align:right">\$ 159.44</td> <td></td> <td></td> <td></td> <td style="text-align:right">\$ 6.38</td> <td style="text-align:right">\$ 24.08</td> <td style="text-align:right">\$ -3.17</td> <td style="text-align:right">\$ 95.25</td> <td style="text-align:right">\$ 0.83</td> <td style="text-align:right">\$ 2.31</td> <td style="text-align:right">\$ 1.08</td> <td style="text-align:right">\$ 0.07</td> <td style="text-align:right">\$ 292.61</td> </tr> </table>																																		\$ 159.44				\$ 6.38	\$ 24.08	\$ -3.17	\$ 95.25	\$ 0.83	\$ 2.31	\$ 1.08	\$ 0.07	\$ 292.61
			\$ 159.44				\$ 6.38	\$ 24.08	\$ -3.17	\$ 95.25	\$ 0.83	\$ 2.31	\$ 1.08	\$ 0.07	\$ 292.61																															

**NEIGHBORHOOD PRESERVATION  
FULLTIME EMPLOYEES HOURS**

TITLE	Group	NAME	DIVISION	Annual Hrs	Vacation Accrual	Vacation	Sick Leave	Holidays	Admin	Breaks	Meetings/ Trainings	Non Billable Calls	Prep Hours	Hrs Available
Housing & Economic Development Director		Ricardo Noguera	18461	2,080	3.08	-	30	88	56	130	140	8	780	767.92
Code Enforcement Officer		Tracy Robertshaw	18461	2,080	4.31	112	66	88	0	130	140	8	520	1,015.94
Combined Building Inspector		Doug Elliot	18461	2,080	3.38	86	30	88	0	130	72	8	520	1,144.12
Code Enforcement Specialist		Steve Rocha	18461	2,080	4.31	112	11	88	0	130	72	8	520	1,139.19
Building Inspector		Frank Rocha	18461	2,080	3.08	80	23	88	0	130	72	8	520	1,159.04
Vehicle Abatement Officer		Tom Contreras	18461						0					
Senior Administrative Assistant		Julie Pereira	18461						0					
<b>SUB TOTAL</b>				10,400.00	18.16	472.16	159.63	440	56	650	496	40	2860	5226.21

**NEIGHBORHOOD PRESERVATION  
FULLTIME EMPLOYEES HOURS  
AVERAGE SICK LEAVE CALCULATION**

NAME	DIVISION	7/1/08		Total 1 YR		6/30/09		Total Sick	
		Balance	Accrued	Later	Balance	Balance	Hrs Used	Days	
Housing & Economic Development Director	18461		95.94	95.94	40.73	55.21	30.00	6.90	
Code Enforcement Officer	18461	-	95.94	95.94	65.94	30.00	30.00	3.75	
Doug Elliot	18461	343.52	95.94	439.46	373.46	66.00	66.00	8.25	
Tracy Robertshaw	18461	107.60	95.94	203.54	173.54	30.00	30.00	3.75	
Steve Rocha	18461	51.97	95.94	147.91	137.16	10.75	10.75	1.34	
Frank Rocha	18461	-	95.94	95.94	73.06	22.88	22.88	2.86	
Vehicle Abatement Officer	18461		95.94	95.94	21.92	74.02	74.02	9.25	
Julie Pereira	18461	14.84	95.94	110.78	7.38	103.40	103.40	12.93	
						<b>392.26</b>		<b>49.03</b>	



Neighborhood Preservation Division  
Hourly Employee Budget 2009/10

TITLE	09/10 Rate
Housing & Economic Development Director	0.00
Code Enforcement Officer	189.80
Combined Building Inspector	136.76
Code Enforcement Specialist	105.14

Object	Account Title	2010 Budget	2010 Actuals	2010 Budget Available	2009 Actuals	Average Per Month	2009 Budget	2009 Actual	Variance to Budget
511010	SAL & WAGES-REGULAR	190,600.00	15,853.13	184,026.87	15,271.09	15,271.09	184,026.87	190,281.05	(6,254.18)
511200	SAL & WAGES-HOURLY				1,874.84				1,874.84
512010	F B-EMPLOYER PERS MISC	28,400.00	1,375.87	27,044.33	15,981.12	1,415.01	0.00	17,873.00	(17,873.00)
512020	F B-WORKERS COMP MISC	4,150.00	201.01	3,888.99	3,809.77	317.48	0.00	1,874.94	(1,074.94)
512030	F B-GROUP INSURANCE	40,000.00	3,016.90	44,542.10	46,305.85	3,858.82	36,800.00	16,940.12	9,039.88
512040	F B-LONG TERM DISABILITY	500.00	47.32	572.64	664.38	55.36	4,100.00	3,800.27	(345.22)
512050	F B-STATE UNEMPLOYMENT	2,300.00	323.88	2,676.12	4,168.99	347.41	0.00	46,305.85	(46,305.85)
512090	F B-DEFERD COMP TM				359.46				359.46
512170	F B-SURVIVOR BENEFIT	90.00	3.72	45.28	50.22	4.19	0.00	604.26	(604.26)
	Mandy Knoles - Pension				-	-			4,166.00
	CSET Mem				-	-		3,098.70	(3,098.70)
520100	NEW EMPLOYEE EXPENSES				165.00				165.00
520200	RECRUITMENT COSTS	1,000.00		1,000.00	-	-	1,000.00	359.46	(640.54)
520300	EDUCATION ASSISTANCE	1,000.00		1,000.00	-	-	1,000.00	50.22	(949.78)
520400	CLOTHING & PRGAL EXPNS	1,000.00		1,000.00	561.97	46.83	0.00	160.00	(401.97)
521000	MEMBERSHIP-EMPLOYEE	1,000.00		1,000.00	491.43	41.54	1,000.00	0.00	(1,000.00)
521500	TRAVEL ALLOWANCE	500.00		500.00	250.00	20.83	0.00	1,000.00	(500.00)
524000	SAFETY SUPPLIES	1,000.00		1,000.00	342.23	28.52	1,000.00	561.87	(438.87)
525000	FOOD/DRINK/SMOKEY SUPP	500.00		500.00	378.41	31.53	1,000.00	488.43	(518.43)
527000	RECOGNITION	1,000.00		1,000.00	50.84	4.24	0.00	250.00	(249.16)
528000	BUSINESS MEETINGS	1,000.00		1,000.00	1,724.52	143.71	1,000.00	1,724.52	(724.52)
529100	CONFERENCES/SEMINARS	3,500.00		3,500.00	2,428.58	202.38	3,500.00	3,438.58	(61.42)
529200	TRAINING	4,000.00		4,000.00	947.44	78.95	1,000.00	50.84	(1,449.16)
529300	ORGANIZATIONAL DEVELOPE	100.00		100.00	-	-	1,000.00	1,724.52	(1,624.52)
529400	EMPLOYEE CERTIFICATION	5,000.00		5,000.00	75.00	6.25	3,000.00	3,438.58	(438.58)
530100	OFFICE SUPPLIES	2,000.00		2,000.00	1,687.15	140.60	4,800.00	947.44	(2,812.56)
531000	PAPER/FORMS SUPPLIES	2,000.00		2,000.00	2,188.17	182.35	100.00	0.00	1,000.00
531500	ENVELOPE SUPPLIES	1,000.00		1,000.00	-	-	1,000.00	0.00	(1,000.00)
532000	POSTAGE	2,500.00	60.84	2,500.00	3,904.40	325.37	5,000.00	75.00	(4,925.00)
534000	PUBLICATIONS/SUBSCRIPTI	3,500.00		3,500.00	2,428.58	202.38	2,000.00	1,687.15	(312.85)
540100	SPEC. DEPT/MNTL SUPPLY	1,000.00		1,000.00	1,009.80	84.15	2,000.00	2,169.17	(169.17)
541000	BLDG SUP & MAINT-CONTRAC	100.00		100.00	2,285.51	190.46	1,000.00	0.00	1,285.51
542000	EQUIP SUP & MAINTENANCE	3,000.00		3,000.00	198.84	16.57	3,000.00	1,629.80	(1,370.20)
543000	SMALL TOOLS	100.00		100.00	889.05	74.09	1,000.00	2,295.51	(1,295.51)
545000	SUBSTANDARD HSD SUPPLIES	500.00		500.00	791.79	65.98	100.00	0.00	400.00
546000	COMMUNITY RELATIONS	100.00		100.00	44.00	3.67	3,000.00	2,023.67	(976.33)
550100	RENTS & LEASES	7,000.00		7,000.00	60.00	5.00	100.00	689.05	(629.05)
550200	PROF & SPECIAD SERV	100.00		100.00	2,189.38	182.45	0.00	791.70	(1,397.68)
550300	CONTRACTS-LANDSCP MAINT	100.00		100.00	-	-	100.00	44.00	(44.00)
550400	CONTRACTS-MAIL SERVICE	100.00		100.00	-	-	100.00	60.20	(40.20)
550500	ADVERTISING	500.00		500.00	-	-	7,000.00	2,189.38	(4,810.62)
550600	Duplicating Services	1,000.00		1,000.00	3,380.45	281.70	100.00	0.00	2,280.45
550700	Safety Program	400.00		400.00	188.80	15.73	100.00	0.00	100.00
550800	CREDIT CARD GAS PURCHAS	400.00		400.00	145.18	12.10	100.00	0.00	100.00
550900	CNG FUEL	200.00		200.00	23.85	1.99	0.00	0.00	200.00
551000	TELEPHONE	200.00		200.00	348.67	29.06	100.00	0.00	100.00
551100	TELEPHONE WIRELESS COM	3,000.00		3,000.00	1,688.86	140.74	0.00	0.00	1,688.86
551200	TELEPHONE CELLULAR	3,000.00		3,000.00	3,060.76	255.06	0.00	0.00	3,060.76
570000	COMMISSION FEE				181.89				181.89
571000	PROP TAX-ADMIN FEE				199.89				199.89
710010	EQUIPMENT				6,827.16				6,827.16
910110	ALLOC-PW-FLEET LABOR				4,776.59				4,776.59
910120	ALLOC-PW-FLEET SUBLET				8,822.34				8,822.34
910130	ALLOC-PW-FLEET PARTS				3,488.29				3,488.29
910140	ALLOC-PW-FLEET FUEL				3,920.14				3,920.14
910150	ALLOC-GO-INFO SERVICES	19,830.00		19,830.00	1,638.00	136.50	19,830.00	1,638.00	(18,192.00)
910160	ALLOC-LEGAL FEES-OUT OF	1,400.00		1,400.00	7,192.00	599.33	100.00	7,192.00	(7,092.00)
910170	ALLOC-PW-BLDG OTHER	100,000.00		100,000.00	100,000.00	8,333.33	100,000.00	100,000.00	(0.00)
910180	ALLOC-ADM-ADMIN SERV	6,150.00		6,150.00	6,150.00	512.50	100,000.00	100,000.00	(93,850.00)
910190	ALLOC-LEASE - G - H E				488,888.22				488,888.22
	TOTAL	470,230.00	21,347.91	449,387.48	488,888.22	37,873.10			(40,000.00)
	Solutions & Benefits Budget Expenses	294,000.00							
	Operations Support Expenses	49,850.00							
	Allocations Budget Expenses	126,380.00							
	Total Budget	570,230.00							

FUND	DEPT	OBJECT	ACCOUNT TITLE	2009 BUDGET ANNUAL
11	18461	511010	SAL & WAGES-REGULAR	188,420.00
11	18461	511020	SAL & WAGES-HOURLY	0.00
11	18461	511290	SAL & WAGES-VAC/SICK/CM	0.00
11	18461	512010	F B-EMPLOYER PERS-MISC	26,920.00
11	18461	512020	F B-WORKER'S COMP MISC	4,150.00
11	18461	512030	F B-GROUP INSURANCE	46,840.00
11	18461	512040	F B-LONG TERM DISABILITY	590.00
11	18461	512050	F B-STATE UNEMPLOYMENT I	0.00
11	18461	512060	F B-F I C A	2,740.00
11	18461	512090	F B-DEFIRD COMP TM	0.00
11	18461	512170	F B-SURVIVOR BENEFIT	50.00
11	18461	520100	NEW EMPLOYEE EXPENSES	0.00
11	18461	520200	RECRUITMENT COSTS	1,000.00
11	18461	520300	EDUCATION ASSISTANCE	1,300.00
11	18461	520400	CLOTHING & PRSNL EXPENS	1,500.00
11	18461	521100	MEMBERSHIP-EMPLOYEE	1,000.00
11	18461	521500	MILEAGE ALLOWANCE	250.00
11	18461	524800	SAFETY SUPPLIES	1,000.00
11	18461	525200	FOOD/DRINKS/BAKERY SUPP	600.00
11	18461	527500	RECOGNITION	1,500.00
11	18461	528000	BUSINESS MEETINGS	1,000.00
11	18461	528100	CONFERENCES/SEMINARS	3,500.00
11	18461	528200	TRAINING	4,000.00
11	18461	528300	ORGANIZATIONAL DEVELOPE	100.00
11	18461	529000	EMPLOYEE CERTIFICATION	5,000.00
11	18461	530100	OFFICE SUPPLIES	2,000.00
11	18461	531000	PAPER/FORMS SUPPLIES	2,000.00
11	18461	531100	ENVELOPE SUPPLIES	1,000.00
11	18461	532000	POSTAGE	2,500.00
11	18461	534000	PUBLICATIONS/SUBSCRIPTI	3,500.00
11	18461	540100	SPEC'L DEPRTMNTL SUPPLY	1,000.00
11	18461	541900	BLDG SUP & MAINT-CONTRAC	100.00
11	18461	542000	EQUIP SUP & MAINTENANCE	3,000.00
11	18461	543100	SMALL TOOLS	100.00
11	18461	545501	SUBSTANDRD HSG SUPPLIES	0.00
11	18461	545700	COMMUNITY RELATIONS	500.00
11	18461	550100	RENTS & LEASES	100.00
11	18461	551000	PROF & SPECIZED SERVICE	7,000.00
11	18461	552300	CONTRACTS-LANDSCP MAINT	100.00
11	18461	553400	CONTRACTS-MAIL SERVICE	100.00
11	18461	556000	ADVERTISING	500.00
11	18461	558400	DUPLICATING SERVICES	1,000.00
11	18461	559100	SAFETY PROGRAM	0.00
11	18461	560700	CREDIT CARD GAS PURCHAS	400.00
11	18461	560900	CNG FUEL	0.00
11	18461	562150	TELEPHONE	200.00
11	18461	562152	TELEPHONE WIRELESS COM	0.00
11	18461	562157	TELEPHONE-CELLULAR	3,000.00
11	18461	570900	COMMISSION FEE	0.00
11	18461	572100	PROP TAX-ADMIN FEE	0.00
11	18461	710010	EQUIPMENT	0.00

11	18461	931711	ALLOC-P/W-FLEET LABOR	0.00
11	18461	931712	ALLOC-P/W-FLEET SUBLET	0.00
11	18461	931720	ALLOC-P/W-FLEET PARTS	0.00
11	18461	931730	ALLOC-P/W-FLEET FUEL	0.00
11	18461	941410	ALLOC-G/G-INFO SERVICES	19,630.00
11	18461	971050	ALLOC-LEGAL FEES-OUT OF	100.00
11	18461	973230	ALLOC-P/W-BLDGS OTHER	1,400.00
11	18461	981100	ALLOC-C/D-ADMIN SERV	109,520.00
11	18461	984910	ALLOC-LEASE - C H E	6,150.00
				456,360.00

REP YR. BUD RVS ANNUAL	REP YR. ACTAULS PERIOD	2009 YTD ACTUALS
0.00	198,281.05	198,281.05
0.00	17,973.00	<b>17,973.00</b>
0.00	1,674.94	<b>1,674.94</b>
0.00	16,980.12	16,980.12
0.00	3,809.77	3,809.77
0.00	46,305.85	46,305.85
0.00	604.28	604.28
0.00	4,165.00	<b>4,165.00</b>
0.00	3,098.70	3,098.70
0.00	359.46	<b>359.46</b>
0.00	50.22	50.22
0.00	165.00	<b>165.00</b>
0.00	0.00	0.00
0.00	0.00	0.00
0.00	561.97	561.97
0.00	498.43	<b>498.43</b>
0.00	0.00	0.00
0.00	342.23	342.23
0.00	578.41	578.41
0.00	50.84	50.84
0.00	1,724.52	1,724.52
0.00	3,438.58	3,438.58
0.00	947.44	947.44
0.00	0.00	0.00
0.00	75.00	75.00
0.00	1,687.15	1,687.15
0.00	2,169.17	2,169.17
0.00	0.00	0.00
0.00	3,904.40	3,904.40
0.00	1,609.80	1,609.80
0.00	2,285.51	2,285.51
0.00	0.00	0.00
0.00	2,023.67	2,023.67
0.00	889.05	889.05
0.00	781.70	<b>781.70</b>
0.00	44.00	44.00
0.00	60.00	60.00
0.00	2,189.38	2,189.38
0.00	0.00	0.00
0.00	0.00	0.00
0.00	0.00	0.00
0.00	3,380.45	3,380.45
0.00	180.00	<b>180.00</b>
0.00	145.18	145.18
0.00	23.55	<b>23.55</b>
0.00	345.87	345.87
0.00	1,558.06	<b>1,558.06</b>
0.00	3,560.76	3,560.76
0.00	185.00	<b>185.00</b>
0.00	100.00	<b>100.00</b>
0.00	(6,827.16)	<b>(6,827.16)</b>

0.00	4,770.50	<b>4,770.50</b>
0.00	8,022.34	<b>8,022.34</b>
0.00	5,468.39	<b>5,468.39</b>
0.00	3,920.14	<b>3,920.14</b>
0.00	19,632.00	19,632.00
0.00	7,192.50	7,192.50
0.00	0.00	0.00
0.00	109,524.00	109,524.00
0.00	6,156.00	6,156.00
		486,666.22
		444,146.3
		42,519.92

<u>2009 BUD VAR. ANNUAL</u>	<u>2009 PCT VAR. ANNUAL</u>
(9,861.05)	(5.23)
(17,973.00)	0.00
(1,674.94)	0.00
9,939.88	36.92
340.23	8.20
534.15	1.14
(14.28)	(2.42)
(4,165.00)	0.00
(358.70)	(13.09)
(359.46)	0.00
(0.22)	(0.44)
(165.00)	0.00
1,000.00	100.00
1,300.00	100.00
938.03	62.54
501.57	50.16
250.00	100.00
657.77	65.78
21.59	3.60
1,449.16	96.61
(724.52)	(72.45)
61.42	1.75
3,052.56	76.31
100.00	100.00
4,925.00	98.50
312.85	15.64
(169.17)	(8.46)
1,000.00	100.00
(1,404.40)	(56.18)
1,890.20	54.01
(1,285.51)	(128.55)
100.00	100.00
976.33	32.54
(789.05)	(789.05)
(781.70)	0.00
456.00	91.20
40.00	40.00
4,810.62	68.72
100.00	100.00
100.00	100.00
500.00	100.00
(2,380.45)	(238.05)
(180.00)	0.00
254.82	63.71
(23.55)	0.00
(145.87)	(72.94)
(1,558.06)	0.00
(560.76)	(18.69)
(185.00)	0.00
(100.00)	0.00
6,827.16	0.00

(4,770.50)	0.00
(8,022.34)	0.00
(5,468.39)	0.00
(3,920.14)	0.00
(2.00)	(0.01)
(7,092.50)	(7,092.50)
1,400.00	100.00
(4.00)	0.00
(6.00)	(0.10)
(30,306.22)	



**RESOLUTION NO. 2009-53**

**A RESOLUTION OF THE VISALIA CITY COUNCIL OF THE CITY OF VISALIA ADOPTING THE HOURLY RATE FOR CODE ENFORCEMENT FOR COST RECOVERY.**

**WHEREAS:** the City of Visalia, is a municipal corporation and charter law city organized and existing pursuant to the laws of the State of California; and

**WHEREAS,** Visalia Municipal Code (“VMC”) Section 15.44.040 and 8.40.010 requires the abatement of all premises declared to be a public nuisances or substandard buildings; and

**WHEREAS,** VMC Section 15.44.040 (B) declares the abatement of public nuisances and the costs associated with such abatement may be placed as a lien on the property; and

**WHEREAS,** VMC Section 15.44.040 (B) declares the costs of abatement may include administrative costs for overseeing the abatement, inspection fees, and other costs directly or indirectly associated with the cost of abatement of the conditions of the public nuisance; and

**WHEREAS,** VMC 8.40.060(B) provides for the reimbursement of inspection costs; and

**WHEREAS,** VMC 8.40.070(A)(3) provides that when an enforcement officer determines that a condition constituting a public nuisance exists, then the enforcement officer may require or provide for the abatement thereof and may make the costs of such abatement a lien on the real property; and

**WHEREAS,** code enforcement duties were previously handled by the Building Safety Division which billed cost recovery time at the same hourly rate that building inspector used to bill other development project work; and

**WHEREAS,** code enforcement inspection and abatement duties have been shifted to the Neighborhood Preservation Division under the Housing and Economic Development Department of the City of Visalia; and

**WHEREAS,** the Administrative Services Director has reviewed and analyzed the costs to the City to maintain and operate the Neighborhood Preservation Division to determine the cost associated with code enforcement inspections; and

**WHEREAS,** the City Council desires to revise the billing rate for code enforcement inspections;

**NOW, THEREFORE, BE IT RESOLVED**, by the City Council of the City of Visalia:

1. That the per hour cost recovery rate to be charged by the Neighborhood Preservation Division is set at \$ 128.38 per inspection hour.

2. That the Neighborhood Preservation Division is hereby directed to charge this hourly rate for the time spent conducting inspections of properties that are determined to be in violation of Uniform Codes, California statutes, California regulations, or the Visalia Municipal Code. Office time spent in preparing notices or other types of correspondence related to abating a code violation shall not be charged. All other costs of abatement, such as the cost of securing buildings, clean-up of the premises by City, or other separately invoiced expenses related to abatement shall also continue to be accounted for and charged according to existing municipal ordinances and as allowed by law.

3. Inspection time shall include the initial inspection needed to confirm the complaint and the time necessary to conduct follow-up inspections to confirm compliance by the responsible party.

4. The inspection costs may be appealed in the same manner as the underlying violation. If the responsible party is held not to be liable for the underlying violation, then the hourly rate for inspections may not be charged.

5. The fee adjustment shall be effective November 2, 2009.

I, Steve Salomon, City Manager/City Clerk of the City of Visalia, hereby certify that the foregoing Resolution No. \_\_\_\_\_ was duly and regularly passed and adopted by the City Council of the City of Visalia at a meeting thereof held on October \_\_, 2009, and that the foregoing is a full and correct copy of said resolution.

\_\_\_\_\_  
City Manager/City Clerk

**PASSED AND ADOPTED** this day of October \_\_\_\_, 2009, by the following vote:

**AYES:**  
**NOES:**  
**ABSENT:**  
**ABSTAIN:**

\_\_\_\_\_  
Jesus Gamboa, Mayor

**ATTEST:**

\_\_\_\_\_  
Steve Salomon, City Manager/City Clerk

## City of Visalia Agenda Item Transmittal

**Meeting Date:** October 19, 2009

**Agenda Item Number (Assigned by City Clerk):** 9I

**Agenda Item Wording:** Authorization for the City Manager to enter into a sole-source contract with George Teebay for the purpose of preparing an Airport Security Program as required by Transportation Security Administration Regulations, and for the Air Service Sub-committee to work with any interested air service provider that may be qualified to serve Visalia as a result of the completed ASP.

**Deadline for Action:**

**Submitting Department:** Airport - Administration

**Contact Name and Phone Number:** Mario Cifuentez, II  
713-4480

**Department Recommendations:**

City staff recommends that Council:

Authorize the City Manager to execute a sole-source contract with George Teebay, for an amount not to exceed \$20,000, for the preparation of an Airport Security Program (ASP) for the Visalia Municipal Airport; and for the Air Service Sub-committee to work with any interested air service provider that may be qualified to serve Visalia as a result of the completed ASP.

**Summary/Background**

The Visalia Municipal Airport currently operates as a Category IV Airport under the rules and regulations established by the Transportation Security Administration (TSA). A Category IV airport is classified as an airport that has a Supporting Airport Security Program (ASP). Recent Security Directives issued by the TSA indicate that at some point in the future, all commercial service airports may have to upgrade from a supporting program to a Full Program. The full program will include programs for improved access control, air carrier security and tenant security programs.

Staff proposes to Sole Source the development of the Airport Security Program to Mr. George Teebay, Aviation Security Consultant, based out of Oakland, CA. Mr. Teebay worked for the FAA Civil Aviation Security division for 26 years, serving as the FAA Federal Security for the San Francisco International Airport for the last 7 years of his career. He has written numerous

**For action by:**

City Council  
 Redev. Agency Bd.  
 Cap. Impr. Corp.  
 VPFA

**For placement on which agenda:**

Work Session  
 Closed Session

**Regular Session:**

Consent Calendar  
 Regular Item  
 Public Hearing

Est. Time (Min.): 20

**Review:**

**Dept. Head** \_\_\_\_\_  
(Initials & date required)

**Finance** \_\_\_\_\_  
**City Atty** \_\_\_\_\_  
(Initials & date required or N/A)

**City Mgr** \_\_\_\_\_  
(Initials Required)

If report is being re-routed after revisions leave date of initials if no significant change has affected Finance or City Attorney Review.

ASP's and has most recently written a full program for the Mammoth Airport, which is similar in operations to the Visalia Airport and falls under the jurisdiction of the same Federal Security Director as Visalia. His experience in the industry and specifically with writing ASP's for similar California airports make him uniquely qualified for this contract. Staff is not aware of any local consultants who have the qualifications to provide a similar service.

At the September TCAG meeting, the TCAG Board approved Resolution No. 09-068, which appropriated \$20,000 in regional transportation funding to cover the cost of development and implementation of the Security Program.

With the development of the ASP may come additional opportunities for the City's Air Service Sub-Committee to reach out to or field proposals from potential air service providers. As the airline industry continues to adjust to the current economic situation, there may be additional opportunities to approach and work with potential air service providers. As such opportunities arise, staff will work with the Council's representatives on the air service sub-committee to assess, consider and conduct preliminary negotiations with any interested air service providers.

On April 4, 2006, Council authorized the formation of the Air Service Sub-committee for the purpose of negotiating with air carriers. The Council representatives to the Air Service Sub-Committee were appointed by the Mayor and consist of Council members Link and Landers with Mayor Gamboa as an alternate. In addition, the City Manager, Deputy City Manager and the Airport Manager serve on this committee . From time to time, airport staff has the opportunity to approach air carriers that may have an interest in serving markets like Visalia. Having a seated Air Service Subcommittee allows the City to take advantage of the opportunities by meeting and negotiating basic terms and conditions with carriers without having the delays of being bound to the Council meeting calendar. As negotiations progress and before any final agreements are reached, the proposals are brought to the full Council for consideration.

**Prior Council/Board Actions:**

April 4, 2006 - Council authorized the formal recognition of the Air Service Sub-Committee.

**Committee/Commission Review and Actions:**

**Alternatives:**

**Attachments:**

- Proposed Scope of Services from George G. Teebay, Aviation Security Consultant
- TCAG Resolution No. 09-068 amending the Regional Transportation Plan, thereby appropriating \$20,000 in funding for a new Airport Security Program.

**Recommended Motion (and Alternative Motions if expected):**

***Environmental Assessment Status***

**CEQA Review:**

**NEPA Review:**

**Tracking Information:** *(Staff must list/include appropriate review, assessment, appointment and contract dates and other information that needs to be followed up on at a future date)*

Copies of this report have been provided to:

## City of Visalia Agenda Item Transmittal

**Meeting Date:** October 19, 2009

**Agenda Item Number (Assigned by City Clerk):** 10a

**Agenda Item Wording:** Loan to the Central Redevelopment Project Area in advance of the end of the debt issuance period.

**Deadline for Action:** November 15, 2009

**Submitting Department:** Redevelopment and Finance

**Contact Name and Phone Number:**

Eric Frost, x4474  
Ruth Peña, x4327

**Department Recommendation:** That the City Council authorizes a loan to the Redevelopment Agency of \$3.6 million for future projects of the Agency as the Central Redevelopment project area approaches the end of its debt issuance period.

**Summary/background:**

Redevelopment is financed from debt proceeds. The debt then is repaid from tax increment generated through the project area. Project areas have a fixed date when the last debt for that project area is to be issued. In the case of the Central Redevelopment Project Area, the end of the debt issuance period is Nov. 15, 2009.

Finance has researched and contacted a number of banks in an effort to obtain loan financing. The best alternative is a 20 year loan at 6.5% a year with interest resetting every 5 years.

There are several problems with this financing scenario. First, the project area can repay debt for at least 30 years. Because the project area has a current 20 year loan which will consume a substantial portion of the tax increment until the loan is repaid, not much tax increment is available for a new loan. However, if Finance had been able to refinance the existing loan and refinance the a new loan over 30 years, Finance estimates that \$7.2 million in new loan proceeds could have been serviced by the Central Redevelopment Project Area as shown in Graphic Summary I, Potential Debt Capacity of the Central Redevelopment Project Area.

**For action by:**

City Council  
 Redev. Agency Bd.  
 Cap. Impr. Corp.  
 VPFA

**For placement on which agenda:**

Work Session  
 Closed Session

**Regular Session:**

Consent Calendar  
 Regular Item  
 Public Hearing

Est. Time (Min.): \_\_\_\_\_

**Review:**

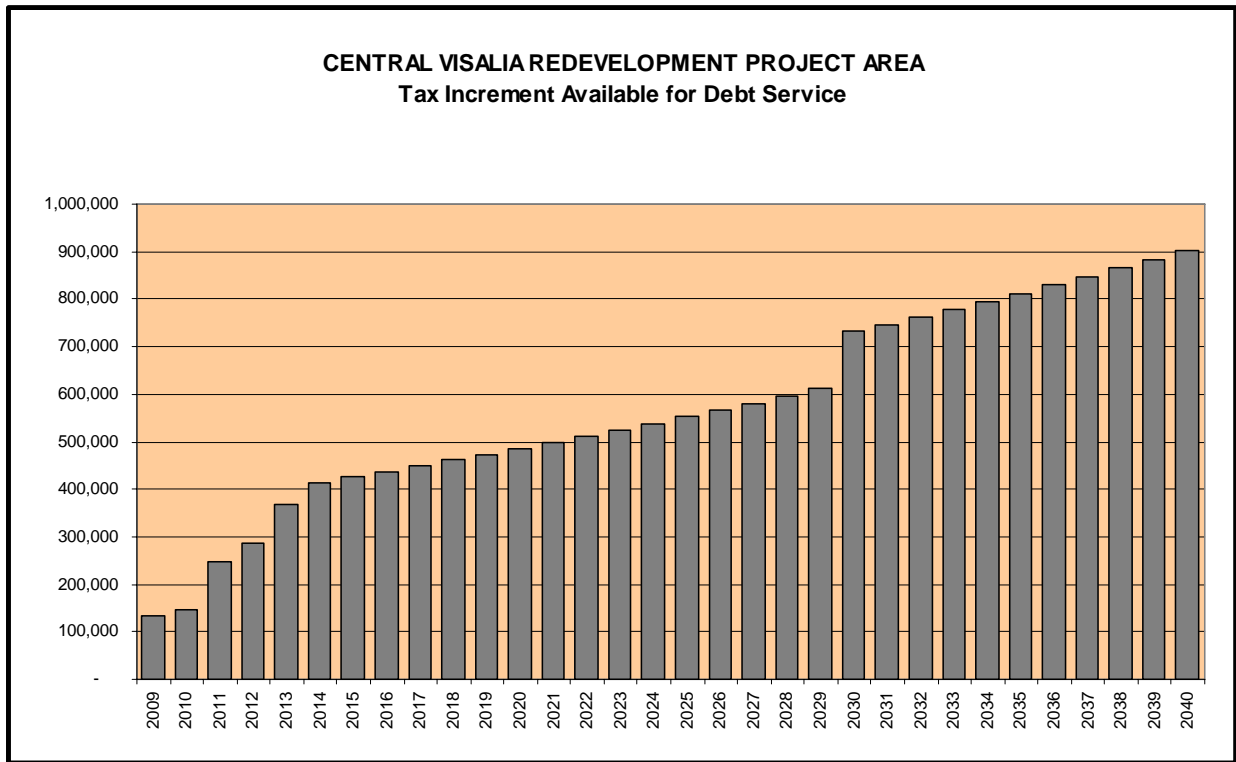
**Dept. Head** \_\_\_\_\_  
(Initials & date required)

**Finance** \_\_\_\_\_  
**City Atty** \_\_\_\_\_  
(Initials & date required or N/A)

**City Mgr** \_\_\_\_\_  
(Initials Required)

If report is being re-routed after revisions leave date of initials if no significant change has affected Finance or City Attorney Review.

Graphic Summary I  
Potential Debt Capacity of the Central Redevelopment Project Area



Graphic Statistics

Total tax increment:	\$18,268,114
Net present value (NPV):	\$ 7,197,255
Recommend @ ½ NPV:	\$ 3,598,628

Several options exist for the Redevelopment Agency:

1. The Agency could determine not to issue any debt. This option, however, leaves potential redevelopment resources unused and no ability to take on new projects or incur new debt.
2. The Agency could pursue a loan from the General Fund. The concern here is the State continues to take Redevelopment monies from cities. If enough money is taken from redevelopment, General Fund loans could become General Fund contributions to Redevelopment and the City would never be repaid its loan. In order to minimize the risk of this approach, Finance recommends borrowing only ½ of the potential loan amount in order to protect the City's General Fund.
3. Laws modifying California Redevelopment Law now allow agencies to remove their debt issuance period requirement in exchange for an increase of the housing set-aside monies to 30% of the tax increment from 20% of the tax increment (as with Senate Bill 211 Hard Amendments).

Staff recommends an option approach to this problem. In the end, staff believes that removing the debt issuance period will be the best alternative. To confirm that approach, staff has employed an expert to determine if that approach will best meet the Agency's needs. This

analysis, however, will not be completed before that last Council meeting before the sunset of the City's debt issuance period.

As a result, staff recommends that the City's General Fund advance a loan to the Central Redevelopment Agency in the Amount of \$3.6 million. If it turns out that the removal of the debt issuance period is advantageous to the Agency, Redevelopment Staff will bring the necessary resolutions to Council to remove the Agency's debt issuance period, allowing the City's loan to be repaid by a future financing which hopefully will be on better terms. If on the other hand, and staff believes this is unlikely, the analysis shows that removing the debt issuance period is not advantageous to the Agency, the Agency will have issued debt within the time limits proscribed by law.

**Prior Council/Board Actions:**

**Committee/Commission Review and Actions:**

**Alternatives:**

**Attachments:** Promissory Note, Loan Agreement and RDA Resolution

<b>Recommended Motion (and Alternative Motions if expected):</b>
Authorize a loan advance to the Central Redevelopment Agency in the Amount of \$3.6 million to be repaid from future tax increment.

<b><i>Environmental Assessment Status</i></b>
<b>CEQA Review: N/A</b>
<b>NEPA Review: N/A</b>



**Tracking Information:** (*Staff must list/include appropriate review, assessment, appointment and contract dates and other information that needs to be followed up on at a future date*)

Copies of this report have been provided to:

**RESOLUTION RDA NO. 2009-04**

This document last revised: 10/16/09 1:53:00 PM

File location and name: H:\(1) AGENDAS for Council - DO NOT REMOVE\2009\101909\Item 10a RDA Loan from Gen Fund.doc

Page 4

**CITY RESOLUTION NO. 2009-54**

**A JOINT RESOLUTION OF THE CITY OF VISALIA AND THE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF VISALIA AUTHORIZING A LOAN FROM THE CITY OF VISALIA TO THE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF VISALIA FOR PAYMENT OF PROJECT EXPENSES FOR THE CENTRAL VISALIA REDEVELOPMENT PROJECT**

**WHEREAS**, the Community Redevelopment Agency of the City of Visalia (“Agency”) has been unable to secure a loan with commercial lenders at favorable interest rates, and the deadline for issuance of debt for the Agency’s Central Visalia Redevelopment Project is November 15, 2009; and

**WHEREAS**, the Agency has requested, and City of Visalia (“City”) has agreed, to loan funds from its General Fund reserve to the Agency for purposes of sustaining redevelopment activities within the Agency’s Central Visalia Redevelopment Project, prior to the end of the Central Visalia Redevelopment Project’s debt issuance period; and

**WHEREAS**, it is anticipated that the Agency’s Central Visalia Redevelopment Project will generate enough tax increment funds over the remaining authorization period to repay City’s loan; and

**WHEREAS**, Agency also intends to analyze, and if feasible, seek to remove the debt issuance period for the Central Visalia Redevelopment Project should a future opportunity for more favorable financing from commercial lenders become available, allowing Agency to pay back this loan sooner; and

**WHEREAS**, the City and the Agency agree to memorialize this loan by the Loan Agreement and Promissory Note (“loan Documents”) in a form substantially similar to those attached hereto as Exhibit “A”; and

**WHEREAS**, by the staff report accompanying this Resolution, the Agency Board and City Council have been provided with additional information upon which to findings and the actions set forth in this Resolution are based.

**NOW, THEREFORE, BE IT RESOLVED** BY THE GOVERNING BOARD OF THE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF VISALIA AS FOLLOWS:

**SECTION 1.** The Agency hereby request that the City of Visalia loan Three Million Six Hundred Thousand Dollars (\$3,600,000) to the Community Redevelopment Agency of the City of Visalia for use in the Central Visalia Redevelopment Project pursuant to the terms and conditions contained in the Loan Agreement and Note attached hereto as Exhibit “A.”

**SECTION 2.** The Agency hereby finds that use of the funds authorized in Section 1, or a portion thereof, shall be for the benefit the Central Visalia Redevelopment Project. The benefits to the Central Project Area include the

elimination of blighted and abandoned properties, and the conversion of blighted properties to affordable housing uses.

I, Steve Salomon, City Manager/City Clerk of the City of Visalia, hereby certify that the foregoing Resolution No. \_\_\_\_\_ was duly and regularly passed and adopted by the Governing Board of the Redevelopment Agency of the City of Visalia and the City Council of the City of Visalia at a meeting thereof held on the 19th day of October 2009, and that the foregoing is a full and correct copy of said resolution.

\_\_\_\_\_  
City Manager/City Clerk

**PASSED AND ADOPTED** this 19<sup>th</sup> day of October, 2009, by the following vote:

**AYES:**

**NOES:**

**ABSENT:**

**ABSTAIN:**

\_\_\_\_\_  
Agency Chairperson

**ATTEST:**

\_\_\_\_\_  
Clerk of the Agency

**Exhibit "A"**

**LOAN AGREEMENT BETWEEN CITY AND AGENCY  
FOR THE CENTRAL VISALIA REDEVELOPMENT PROJECT**

This Loan Agreement (hereinafter "Agreement") by and between the Community Redevelopment Agency of the City of Visalia ("Agency") and the City of Visalia ("City") is entered into on this 1st day of November, 2009.

**RECITALS**

**WHEREAS**, the City is a charter law city organized under provisions of California law; and

**WHEREAS**, the Agency is organized pursuant to provisions of California law and is authorized to undertake activities related to redevelopment within its defined project area boundaries within the City to remediate blight in the ; and

**WHEREAS**, the Agency has been unable to secure a loan with commercial lenders at favorable interest rates, and the deadline for issuance of debt for the Agency's Central Project Area is November 15, 2009; and

**WHEREAS**, the City agrees to loan funds from its General Fund reserve to the Agency for purposes of sustaining redevelopment activities for the Agency's Central Visalia Redevelopment Project, prior to the end of the Central Visalia Redevelopment Project's debt issuance period; and

**WHEREAS**, it is anticipated that the Agency's Central Visalia Redevelopment Project Area will generate enough tax increment funds over the remaining authorization period to repay City's loan; and

**WHEREAS**, Agency also intends to analyze, and if feasible, seek to remove the debt issuance period for the Central Visalia Redevelopment Project should a future opportunity for more favorable financing from commercial lenders become available, allowing Agency to pay back this loan.

**NOW THEREFORE, BE IT RESOLVED** that the City and Agency enter into this Agreement based upon the following terms and conditions:

1. The above recitals shall be incorporated as fully set forth herein.
2. City agrees to loan to Agency THREE MILLION SIX HUNDRED THOUSAND DOLLARS AND NO CENTS (\$3,600,000) for use in the Agency's Central Visalia Redevelopment Project (the "Central Project Loan"). Interest on this principal amount shall accrue from the date of this Agreement until paid in full unless, otherwise suspended or forgiven by City. Interest shall be calculated on the basis of a 360-day year consisting of twelve 30-day months. Agency agrees to execute a Promissory Note to evidence Agency's indebtedness to the City.
3. Agency shall make payment on the Central Project Loan from tax increment proceeds as tax increment funds are acquired by the City. Agency is currently authorized to collect tax increment from the Central Visalia Redevelopment Project until November 10, 2040. Annual payments, when made, shall be applied first to accrued interest to date of payment computed upon the outstanding unpaid balance, and the remainder applied to principal. Agency's obligation to make annual payment to the City pursuant to this Agreement from its tax increment proceeds from the Central Visalia Redevelopment Project shall be subordinate to all bonds or other indebtedness secured by tax increment revenues and which are issued and outstanding as of the effective date of this Agreement. Should Agency, after making payment in any given year on all preexisting bonds or other indebtedness secured by tax increment revenues and which are issued and outstanding as of the effective date of this Agreement, not have any excess tax increment available to make an annual payment pursuant to this Agreement, interest shall continue to accrue on the outstanding balance. The City Manager is authorized, on behalf of the City, to execute such confirmations or writings as may be necessary or convenient for the Agency concerning evidence of subordination.
4. The Agency will analyze the feasibility of removing the debt issuance period for the Central Project Area, and if doing so provides the most financially feasible conditions, the Agency shall take the appropriate steps to extend the Central Project debt issuance period.
5. The Central Project Area Loan may be prepaid, in whole or in part, at any time without consent of City and without penalty. To pay in whole, all outstanding principal and interest must be paid as of the date of payment. Any partial prepayment shall be applied as

provided above, shall not postpone the due date of any subsequent installments or change the amount of such installments, unless the City and Agency otherwise agree in writing.

6. City will cooperate with the Agency in every way to facilitate its efforts to remove the existing debt issuance period for the Agency's Central Project Area and refinance existing indebtedness at lower interest rates if feasible.

Executed on this 1st day of November 2009, at Visalia, California.

City of Visalia

The Community Redevelopment Agency of the City  
of Visalia

By: \_\_\_\_\_  
Steven M. Salomon  
City Manager

By: \_\_\_\_\_  
Executive Director

ATTEST:

ATTEST:

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

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

Approved as to Form

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
Risk Management

**Promissory Note**

(City Loan to Agency for Central Visalia Project Area)

**BORROWER:** The Community Redevelopment Agency  
of the City of Visalia  
315 E. Acequia  
Visalia, California 93291

**HOLDER:** The City of Visalia  
425 East Oak Street, Suite 301  
Visalia, CA 93291

**DATE:** November 1, 2009

**PRINCIPAL AMOUNT:** \$3,600,000.00

For value received, the undersigned, The Community Redevelopment Agency of the City of Visalia (the "Borrower," which term includes any successors or assigns), a public entity organized and existing under the Redevelopment Law of the State of California, promises to pay to the order of the CITY OF VISALIA (the "Holder," which term includes any successors or assigns), 425 East Oak Street, Suite 301, Visalia, California 93291, or at such other place as the holder hereof may from time to time designate in writing, the principal amount of THREE MILLION SIX HUNDRED THOUSAND DOLLARS AND NO CENTS {\$3,600,000) together with simple interest on the unpaid principal balance computed based on the most recently calculated average annual interest rate received on City's idle cash investment pool plus one percent. This Note is the obligation of Borrower, constitutes an indebtedness of Borrower, and is binding on it and its successors and assigns.

A. Principal, Interest, and Repayment:

Interest on the principal amount of this Note shall accrue from the date of this Note until paid in full unless otherwise suspended or forgiven by Holder. Interest shall be calculated on the basis of a 360-day year consisting of twelve 30-day months.

The principal amount stems from an obligation created between the Borrower and Holder by a Loan Agreement between the parties entered November 1, 2009 and shall be repaid according to the terms thereof which are incorporated herein by reference.

B. Acceleration Upon Sale of Property Purchased with Loan Proceeds:

At the option of the Holder of this Note, upon the sale by Borrower of any real property obtained with loan proceeds secured by this Note and any related Deed of Trust, to the extent of such sales proceeds this Note will be accelerated and such amount shall be immediately due and payable to Holder, with notice and demand.

Payments, when made, shall be applied first to accrued interest to date of payment computed upon the outstanding unpaid balance, and the remainder applied to principal.

C. Acceleration Upon Default:

At the option of the Holder of this Note, the payment of all principal and interest due in accordance with the terms of this Note will be accelerated and such principal shall be immediately due and payable, with notice and demand, upon occurrence of any of the following events of default, provided the same shall remain uncured for a period of fifteen (15) days following written notice to Borrower: a) failure to pay any installment of principal and interest when due; b) dissolution or termination of existence of Borrower.

D. Attorney's Fees:

In the event it should become necessary for Holder to employ counsel to collect this obligation or to protect or foreclose the security given in connection herewith, the undersigned agrees to pay upon demand reasonable attorneys' fees for services of such counsel, whether or not suit is brought, plus costs incurred in connection therewith.

E. Prepayment:

This Note may be prepaid, in whole or in part, at any time without consent and without penalty. To pay in whole, all outstanding principal and interest must be paid as of the date of payment. Any partial prepayment shall be applied as provided above, shall not postpone the due date of any subsequent installments or change the amount of such installments, unless the note holder shall otherwise agree in writing.

F. Waivers:

No delay or omission on the part of the Holder hereof in exercising any right hereunder shall operate as a waiver of such right or a remedy on any future occasion.

G. Governing Law:

The terms and provisions of this Note are intended to be and shall be governed, interpreted and construed pursuant to the laws of the State of California and venue for any legal action relating to the interpretation or enforcement of the provisions of this Note or the obligations arising hereunder shall be proper in the Superior Court for the County of Tulare, State of California.

H. Conflict with Law:

This document last revised: 10/16/09 1:53:00 PM

File location and name: H:\(1) AGENDAS for Council - DO NOT REMOVE\2009\101909\Item 10a RDA Loan from Gen Fund.doc



If any interest rate, late charge, penalty, fee or cost provided for herein shall exceed that which is allowed pursuant to any applicable statute or law, said amount shall be deemed by the parties hereto to be modified so as to conform to and equal the maximum amount allowed by said statute or law. If any provisions hereof are in conflict with any applicable statute or law and are determined to be not valid or enforceable, then each such provision shall be deemed null and void, but to the extent of such conflict only and without invalidity or affecting the remaining provisions hereof.

I. Notice:

Any notice to be given to the Holder of this Note shall be given by first class United States mail at the address set forth in the first paragraph above or such further address as shall be directed in writing to makers. Any notice to be given to any undersigned or Borrower shall be given at the address(es) set forth below or such further address as shall be directed in writing to holder hereof.

I. Amendment:

Any amendment of this Note shall be in writing and executed by each party hereto.

The Community Redevelopment  
Agency of the City of Visalia  
315 E. Acequia  
Visalia, California 93291

By: \_\_\_\_\_  
Executive Director

ATTEST:

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

**City of Visalia  
Agenda Item Transmittal**

**Meeting Date:** October 19, 2009

**Agenda Item Number (Assigned by City Clerk):** 11

**Agenda Item Wording:** Consider adoption of an urgency ordinance (attached hereto as Attachment 1) imposing a moratorium on medical marijuana dispensaries and collective or cooperative cultivation and distribution enterprises.

**Deadline for Action:** None

**Submitting Department:** Community Development

**Contact Name and Phone Number:**

Michael Olmos, 713-4332  
Alex Peltzer, 627-1000

**Department Recommendation :**

The Community Development Department and the City Attorney are recommending the Council consider adoption of an urgency ordinance (attached hereto as Attachment 1) imposing a moratorium on medical marijuana dispensaries and collective or cooperative cultivation and distribution enterprises. The purpose of the moratorium is to provide the Community Development Department and the City Attorney with time to analyze recent and currently pending court decisions that relate to the definition of primary caregiver, collective and cooperative cultivation, and other such terms, which are central to a determination of whether such enterprises are operating legally or illegally under current state law, and determine appropriate revisions to the City's Medical Marijuana Business Ordinance.

**Summary/Background:**

The voters of the State of California in 1996 approved proposition 215 (codified as California Health and Safety Code section 11362.5, et seq. and entitled "The Compassionate Use Act of 1996" or "CUA"). In 2004, the State Legislature enacted SB 420 (also known as the Medical Marijuana Program or "MMP") to clarify the scope of the Compassionate Use Act of 1996 and to allow cities and other government bodies to adopt and enforce rules and regulations consistent with SB 420. Together, the CUA and the MMP establish limited defenses to various criminal laws relating to possession, cultivation, transportation and personal use of marijuana where such use has been recommended by a physician for medical purposes. The laws also allow for collective or

**For action by:**

City Council  
 Redev. Agency Bd.  
 Cap. Impr. Corp.  
 VPFA

**For placement on which agenda:**

Work Session  
 Closed Session

**Regular Session:**

Consent Calendar  
 Regular Item  
 Public Hearing

Est. Time (Min.): 30

**Review:**

**Dept. Head** \_\_\_\_\_  
(Initials & date required)

**Finance** \_\_\_\_\_  
**City Atty** \_\_\_\_\_  
(Initials & date required or N/A)

**City Mgr** \_\_\_\_\_  
(Initials Required)

If report is being re-routed after revisions leave date of initials if no significant change has affected Finance or City Attorney Review.

cooperative cultivation of medical marijuana. Neither the CUA nor the MMP “legalized” marijuana in general.

The Visalia City Council adopted in 2006 an ordinance establishing a permit process for “Medical Marijuana Businesses” as that term is defined in the ordinance, and also establishing zoning rules for such enterprises. The Council adopted this ordinance (the Medical Marijuana Business Ordinance, or “MMBO”) in response to the request of individuals to obtain a business license and occupancy permit to operate a commercial storefront for the purpose of distributing medical marijuana in purported conformance with the state’s CUA and MMP.

Other cities and counties throughout the state have struggled with the question of how to best regulate medical marijuana use, particularly collective or cooperative marijuana cultivation and distribution. Central to this struggle is the interest of cities to prevent the establishment of marijuana cultivation and distribution operations that appear to be well outside the protections of the CUA and MMP, i.e. as part of illicit trade in marijuana both under state as well as federal laws. Various cities have come to various conclusions regarding this question, ranging from no regulation whatsoever, to effective bans of all collective distribution or cultivation of marijuana even for medical purposes.

#### **City’s Local land use regulation interest:**

A city or other local entity has various valid interests in establishing local rules and regulations pertaining to medical marijuana. Among these interests are:

- A city has an interest in ensuring that land uses that are permitted by our local ordinances, including businesses, are not violating state law.
- State Attorney General has agreed that the state and its subdivisions have an interest in ensuring that marijuana grown for medical purposes remains secure and does not find its way to non-patients or illicit markets.
- State Attorney General has also stated that there is a legitimate interest in establishing rules and regulations for the purpose of helping law enforcement agencies perform their duties effectively and in accordance with California law.
- A city has an interest in helping ensure that qualified patients under the CUA are not subject to prosecution because they have participated in illegal dispensary activities.

A local land use and business regulation can address these interests by establishing reasonable time, place and manner regulations and land use rules, and by establishing rules and regulations that are designed to ensure that a medical marijuana establishment (that is, any activity that goes beyond mere direct personal cultivation, possession or use) is conducted in a manner consistent with state law.

#### **Evolution of State Law on Pertinent terms:**

Since the Visalia MMBO was adopted, significant new authority has developed on this topic. In general, recent court cases and the Attorney General Medical Marijuana Guidelines (last updated in August of 2008 – see Attachment 2) have together helped refine the statutory requirements for serving as a “primary caregiver” and for operations of medical marijuana “cooperatives” or “collectives”, which are legal to operate in California. The cases and the AG Guidelines also discuss various types of so-called “dispensaries,”

many of which appear to be operating outside of the authorizations provided by state medical marijuana laws.

In particular, courts have concluded that because “dispensaries” as such are not specifically provided for in state medical marijuana law, the operators of a dispensary could be subject to prosecution as an illegal drug trafficking operation unless the dispensary operation adheres to the strict definitional requirements of “primary caregiver,” “qualified patient” or “collective or cooperative” contained in state law.

One case has held that the operators of a commercial storefront dispensary, very similar to those that have sought to be established in Visalia, are subject to criminal prosecution under the state’s drug laws because it can neither meet the definition of primary caregiver nor satisfy the requirements to be considered a “collective or cooperative” operation. This case and others, as well as the AG Guidelines, have had the effect of establishing certain guidelines to be applied. Among them:

Primary Caregiver:

- “Primary caregivers” are allowed to supply medicinal marijuana to qualified patients who are not able to cultivate it for themselves.
- “Primary caregiver” is defined by state law as “the individual designated by the person exempted under this section who has consistently assumed responsibility for the housing, health, or safety of that person (Health and Safety Code § 11362.5(e).)
- A person must consistently provide caregiving, independent of any assistance in taking medical marijuana, at or before the time that person assumed responsibility for assisting with medical marijuana. A person does not qualify as a primary caregiver merely by having a patient designate that person as such or by the provision of medical marijuana itself.
- As an example, the AG Guidelines conclude that dispensaries that merely require patients to complete a form summarily designating the business owner as their primary caregiver – and then offering marijuana in exchange for cash “donations” – are likely unlawful.

Collectives or Cooperatives:

- General: The AG’s office has concluded that a properly organized and operated collective or cooperative that dispenses medical marijuana through a storefront may be lawful under California law, but that dispensaries that do not substantially comply with state law requirements for collectives and cooperatives are likely operating outside the protections of state law, and that the individuals operating such entities may be subject to arrest and criminal prosecution under California law.
- Collectives and cooperatives may not acquire marijuana from outside the cooperative.
- The Ag Guidelines state that any group that collectively or cooperatively cultivates and distributes medical marijuana for medical purposes shall be organized and operated in a manner that ensures the security of the crop, and safeguards against diversion for non-medical purposes.

- The AG Guidelines suggest that in order to qualify as a cooperative or collective, storefront dispensaries must take steps to ensure the operation is not for profit, and has acquired all business licenses and permits, and made arrangements to collect and pay applicable sales taxes.
- The AG Guidelines also indicate that when a qualified patients or primary caregivers seek to join or create a cooperative or collective, they should follow certain application guidelines which ensure that the persons' status has been verified.
- The cooperative or collective should take steps to ensure that its members do not distribute marijuana to non-members and agree to use the marijuana only for medical purposes, that the members only acquire, possess and distribute lawfully cultivated marijuana, and ensure that adequate security is provided to ensure a safe environment for the members and to avoid negative impacts to neighbors.

### **City's MMBO**

The City's MMBO does not limit medical marijuana business to those which meet the standards identified in the aforementioned court decisions and AG Guidelines for primary caregivers or collectives and cooperatives. The cases and Guidelines which established these distinctions had not been decided at the time the City adopted the MMBO. The recent court decisions suggest a trend towards a narrow reading of state law insofar as the degree to which municipalities must accommodate medical marijuana usage, and an attempt to limit same to truly medically needy individuals.

Examples of areas in which the MMBO does not fully incorporate recent legal concepts include:

- The MMBO refers to "dispensaries" as allowed uses, but the cases have been clear that dispensaries are not per se addressed in CUA or MMP and are not therefore clearly legal or illegal. Removal of this term should be considered.
- The MMBO defines a Medical Marijuana Business as any distribution to or by a primary caregiver, a qualified patient or a collective or cooperative, implying that it would be permissible for an enterprise to acquire marijuana from third parties for distribution to patients or customers. However, the above-noted state law has narrowed the definition of legal collective or cooperative operations. For example, cases have clarified that a dispensary is subject to criminal prosecution for illegal drug trafficking under state law and does not enjoy a defense under the CUA or MMP unless the dispensary is acting as a primary caregiver or is a collective or cooperative consisting of primary caregivers or qualified patients, and all marijuana is obtained only from cooperative members.
- The MMBO requires applicants to disclose the source of the marijuana but does not require verification that all marijuana distributed by the enterprise will be generated within the collective or cooperative, as is required under the State's AG Guidelines.
- In general, the MMBO does not require, in connection with an MMB application, the submission of information that would assure compliance with the primary caregiver or collective and cooperative requirements discussed above.

The result of these inconsistencies is that the City is likely to be in the position of having to approve or deny an application for an MMB pursuant to the MMBO without having sufficient information to confirm whether or not the proposed MMB will operate within the requirements of state law as discussed above. This will lead to confusion among applicants, difficulties for law enforcement in investigating enterprises that operate outside the above-noted parameters, and may potentially expose persons operating MMBs pursuant to the City's current MMBO to criminal prosecution.

### **Proposed Moratorium**

For the reasons provided above, staff and the City Attorney's office are recommending the Council consider the attached Urgency Interim Ordinance. Section 65858 of the California Government Code provides that the legislative body of a city may enact an urgency interim ordinance prohibiting uses that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the legislative body or planning department is considering or studying or intends to study within a reasonable time. As noted above, staff intends to further analyze recent case law, state administrative rules and regulations, and pending court cases (including a current case in Fresno that is testing the ability of a city to outright ban marijuana dispensaries). Following such analysis, staff and the City Attorney's office intend to recommend changes to the MMBO, including the zoning provisions contained in that ordinance. Unless a moratorium on new MMBs is established, the City is in a position of having to consider approval or denial of MMBs under rules that are not consistent with state law. If an MMB is established in a manner inconsistent with state law, it would pose a "current and immediate threat to the public health safety and welfare" as required of an urgency ordinance under Government Code section 65858.

Accordingly, the requirements of Section 65858 can be met, and the moratorium may be adopted on a 4/5ths vote of the Council. If adopted, the moratorium would be effective immediately and could be maintained for 45 days, unless extended pursuant to the requirements of the Government Code.

If an urgency ordinance is enacted by Council for the initial 45 day period, Council may subsequently extend the ordinance for an additional 10 months and 15 days and may further extend the ordinance for an additional year (two years total). Each extension would require a noticed public hearing prior to Council action, and consideration of mandatory findings pursuant to State law. Any extension of an urgency ordinance would also require a 4/5s Council vote.

### **Prior Council/Board Actions:**

**Committee/Commission Review and Actions:** None

**Alternatives:** None Recommended.

**Attachments:** 1. Proposed Urgency Ordinance  
2. Attorney General Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use (August 2008)

**Recommended Motion (and Alternative Motions if expected):**

**Move to adopt an urgency ordinance (attached hereto as Attachment 1) imposing a 45-day moratorium on medical marijuana dispensaries and collective or cooperative cultivation and distribution enterprises.**

**Note: 4/5 VOTE REQUIRED**

***Environmental Assessment Status***

**CEQA Review:**

**NEPA Review:**

**Tracking Information:** *(Staff must list/include appropriate review, assessment, appointment and contract dates and other information that needs to be followed up on at a future date)*

Copies of this report have been provided to:

**ORDINANCE NO. 2009-\_\_\_\_\_**

**AN INTERIM ORDINANCE OF THE CITY COUNCIL  
OF THE CITY OF VISALIA ESTABLISHING MORATORIUM ON THE ESTABLISHMENT OF ANY  
NEW MEDICAL MARIJUANA BUSINESSES**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF VISALIA:**

**SECTION 1 – Preamble and Findings.**

- A. The voters of the State of California in 1996 approved proposition 215 (codified as California Health and Safety Code section 11362.5, et seq. and entitled “The Compassionate Use Act of 1996”).
- B. In 2004, the State Legislature enacted SB 420 to clarify the scope of the Compassionate Use Act of 1996 and to allow cities and other government bodies to adopt and enforce rules and regulations consistent with SB 420.
- C. The City of Visalia, by and through its City Council has adopted a Medical Marijuana Business Ordinance, consisting of Chapter 5.66 of Title 5 (Business Regulations) creating regulations regarding the operation of “Medical Marijuana Dispensaries” and other forms of “Medical Marijuana Businesses” within the City of Visalia, Chapter 8.64 of Title 8 (Health and Safety) creating regulations regarding the “Public Use and Consumption of Medical Marijuana,” and Chapter 17.64 of Title 17 (Zoning) restricting the location of Medical Marijuana Businesses.
- D. Since adoption of the Medical Marijuana Business Ordinance, the courts of the State of California and the United States, and the California Attorney General, have had occasion to consider, establish and refine, the appropriate definitions of terms that are contained in the Compassionate Use Act and SB 420, and that are used in the Visalia Medical Marijuana Business Ordinance. In particular, such authorities have resulted in changes, refinements and additions to the definitions of “primary caregiver”, “collective” and “cooperative” activities of “qualified patients”, and other similar terms.
- E. The City has reviewed these authorities and determined that definitions contained in the Visalia Medical Marijuana Business Ordinance may not be fully consistent with the above-noted later enacted authorities. The City has further determined that current applicants for a Medical Marijuana Business Ordinance may be able to establish conformance with the Medical Marijuana Business Ordinance but will not be in conformance with the above-stated state laws in that the activity does not constitute an action that is consistent with, and therefore protected by, the Compassionate Use Act or SB 420. Because of this, City staff has recommended that the City Council consider immediate changes to the Medical Marijuana Business Ordinance to ensure that no Medical Marijuana Business is allowed to be established in the City of Visalia unless it can be confirmed that it is consistent with state law.
- F. Section 65858 of the California Government Code provides that the legislative body of a city may enact an urgency interim ordinance prohibiting uses that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the legislative body or planning department is considering or studying or intends to study within a reasonable time.



- G. The specific changes to the Medical Marijuana Business Ordinance that the Council will consider have not yet been formulated. Adoption of changes to a City ordinance normally require at least two public readings, and can only be made effective 30 days after adoption.
- H. If the normal procedures for considering and adopting changes to the Medical Marijuana Business Ordinance are followed, it is likely that two pending applications for a Medical Marijuana Business Permit, and any other application that may be submitted in the near future, will have to be considered and may be approved before the contemplated changes can be made effective. In such event, it is likely that businesses or other entities conducting medical marijuana dispensing or cultivating activities will be approved pursuant to the current ordinance even though they are likely to be subject to prosecution for violating state law in that they are neither primary caregivers or collective or cooperative associations of qualified patients.
- I. Numerous cities in the State of California have adopted ordinances prohibiting medical marijuana dispensaries. As a significant number of cities including cities in central California have prohibited or heavily regulated medical marijuana dispensaries there is a substantially increased likelihood that such establishments will seek to locate in the City of Visalia, particularly if the City of Visalia ordinance on this subject is more expansive than what would be allowed under state laws.
- J. The health, safety and welfare of the people of the City of Visalia are threatened by businesses or other establishments that violate state law, particularly in relation to the cultivation and distribution of a substance that is illegal pursuant to federal laws. The health, safety and welfare of the people of the City of Visalia are further threatened by uses that are allowed to be established that are inconsistent with later established laws.
- K. To address the apparent conflict in laws as well as the community and statewide concerns regarding the establishment of medical marijuana dispensaries it is necessary for the City of Visalia to study the recent changes, additions or refinements to the definitions of "primary caregiver", "collective" and "cooperative" activities of "qualified patients", and other similar terms, and to determine appropriate changes to the Visalia Medical Marijuana Business Ordinance.
- L. Based on the foregoing the City Council finds that issuing permits business licenses or other applicable entitlements providing for the establishment and or operation of medical marijuana business, including dispensaries or collective or cooperative cultivation of marijuana, prior to the completion of the City of Visalia's study of the recent definitional changes, refinements or additions, and the resulting changes to Visalia ordinances that should be considered poses a current and immediate threat to the public health safety and welfare and that therefore a temporary moratorium on the issuance of such permits, licenses and entitlements is necessary.
- M. In order to address the above-identified threat, the City Council enacts the following interim ordinance in accordance with Section 65858 of the California Government Code and in accordance with the pertinent provisions of the City's Charter.

## **SECTION 2 - Moratorium.**

- A. Notwithstanding any current provision of the Visalia Municipal Code (“VMC”) to the contrary, during the effective dates of this interim ordinance there shall not be established within the City of Visalia any Medical Marijuana Business as that term is defined in VMC section 5.66.020. The establishment of a Medical Marijuana Business in violation of this provision shall be a misdemeanor and is hereby deemed to constitute a public nuisance.
- B. During the effective dates of this interim ordinance, no use permit, variance, building permit, business license or other applicable entitlement may be issued for the establishment or operation of a Medical Marijuana Business as that term is defined in VMC section 5.66.020.

**SECTION 3 – Council Direction to Staff**

The City Council hereby directs the Planning Division and the City Attorney to consider and study possible changes to the Visalia Medical Marijuana Ordinance, including possible changes to the zoning provisions of the Visalia Municipal Code, to bring such ordinance into conformance with recent authority relating to the definition of “primary caregiver,” “qualified patient” and “collective” or “cooperative” of “qualified patients” as those terms are used in the Compassionate Use Act and SB 420.

**SECTION 4 – Effective Date and Duration**

This ordinance shall go into effect immediately upon adoption by four fifths of the City Council, and shall remain in effect for 45 days thereafter, unless extended by vote of the City Council following notice as specified in Government Code section 65858.

**PASSED AND ADOPTED:**



**GUIDELINES FOR THE SECURITY AND NON-DIVERSION  
OF MARIJUANA GROWN FOR MEDICAL USE**  
**August 2008**

In 1996, California voters approved an initiative that exempted certain patients and their primary caregivers from criminal liability under state law for the possession and cultivation of marijuana. In 2003, the Legislature enacted additional legislation relating to medical marijuana. One of those statutes requires the Attorney General to adopt “guidelines to ensure the security and nondiversion of marijuana grown for medical use.” (Health & Saf. Code, § 11362.81(d).<sup>1</sup>) To fulfill this mandate, this Office is issuing the following guidelines to (1) ensure that marijuana grown for medical purposes remains secure and does not find its way to non-patients or illicit markets, (2) help law enforcement agencies perform their duties effectively and in accordance with California law, and (3) help patients and primary caregivers understand how they may cultivate, transport, possess, and use medical marijuana under California law.

**I. SUMMARY OF APPLICABLE LAW**

**A. California Penal Provisions Relating to Marijuana.**

The possession, sale, cultivation, or transportation of marijuana is ordinarily a crime under California law. (See, e.g., § 11357 [possession of marijuana is a misdemeanor]; § 11358 [cultivation of marijuana is a felony]; Veh. Code, § 23222 [possession of less than 1 oz. of marijuana while driving is a misdemeanor]; § 11359 [possession with intent to sell any amount of marijuana is a felony]; § 11360 [transporting, selling, or giving away marijuana in California is a felony; under 28.5 grams is a misdemeanor]; § 11361 [selling or distributing marijuana to minors, or using a minor to transport, sell, or give away marijuana, is a felony].)

**B. Proposition 215 - The Compassionate Use Act of 1996.**

On November 5, 1996, California voters passed Proposition 215, which decriminalized the cultivation and use of marijuana by seriously ill individuals upon a physician’s recommendation. (§ 11362.5.) Proposition 215 was enacted to “ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is

deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana," and to "ensure that patients and their primary caregivers who obtain and use marijuana for

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<sup>1</sup>Unless otherwise noted, all statutory references are to the Health & Safety Code.

medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction." (§ 1 1362.5(b)(1)(A)-(B).)

The Act further states that "Section 11357, relating to the possession of marijuana, and Section 11358, relating to the cultivation of marijuana, shall not apply to a patient, or to a patient's primary caregiver, who possesses or cultivates marijuana for the personal medical purposes of the patient upon the written or verbal recommendation or approval of a physician." (§ 11362.5(d).) Courts have found an implied defense to the transportation of medical marijuana when the "quantity transported and the method, timing and distance of the transportation are reasonably related to the patient's current medical needs." (*People v. Trippet* (1997) 56 Cal.App.4th 1532, 1551.)

### **C. Senate Bill 420 - The Medical Marijuana Program Act.**

On January 1, 2004, Senate Bill 420, the Medical Marijuana Program Act (MMP), became law. (§§ 11362.7-11362.83.) The MMP, among other things, requires the California Department of Public Health (DPH) to establish and maintain a program for the voluntary registration of qualified medical marijuana patients and their primary caregivers through a statewide identification card system. Medical marijuana identification cards are intended to help law enforcement officers identify and verify that cardholders are able to cultivate, possess, and transport certain amounts of marijuana without being subject to arrest under specific conditions. (§§ 11362.71(e), 11362.78.)

It is mandatory that all counties participate in the identification card program by (a) providing applications upon request to individuals seeking to join the identification card program; (b) processing completed applications; (c) maintaining certain records; (d) following state implementation protocols; and (e) issuing DPH identification cards to approved applicants and designated primary caregivers. (§ 11362.71(b).)

Participation by patients and primary caregivers in the identification card program is voluntary. However, because identification cards offer the holder protection from arrest, are issued only after verification of the cardholder's status as a qualified patient or primary caregiver, and are immediately verifiable online or via telephone, they represent one of the best ways to ensure the security and non-diversion of marijuana grown for medical use.

In addition to establishing the identification card program, the MMP also defines certain terms, sets possession guidelines for cardholders, and recognizes a qualified right to collective and cooperative cultivation of medical marijuana. (§§ 11362.7, 11362.77, 11362.775.)

#### **D. Taxability of Medical Marijuana Transactions.**

In February 2007, the California State Board of Equalization (BOE) issued a Special Notice confirming its policy of taxing medical marijuana transactions, as well as its requirement that businesses engaging in such transactions hold a Seller's Permit. (<http://www.boe.ca.gov/news/pdf/medseller2007.pdf>.) According to the Notice, having a Seller's Permit does not allow individuals to make unlawful sales, but instead merely provides a way to remit any sales and use taxes due. BOE further clarified its policy in a June 2007 Special Notice that addressed several frequently asked questions concerning taxation of medical marijuana transactions. (<http://www.boe.ca.gov/news/pdf/173.pdf>.)

#### **E. Medical Board of California.**

The Medical Board of California licenses, investigates, and disciplines California physicians. (Bus. & Prof. Code, § 2000, et seq.) Although state law prohibits punishing a physician simply for recommending marijuana for treatment of a serious medical condition (§ 11362.5(c)), the Medical Board can and does take disciplinary action against physicians who fail to comply with accepted medical standards when recommending marijuana. In a May 13, 2004 press release, the Medical Board clarified that these accepted standards are the same ones that a reasonable and prudent physician would follow when recommending or approving any medication. They include the following:

1. Taking a history and conducting a good faith examination of the patient;
2. Developing a treatment plan with objectives;
3. Providing informed consent, including discussion of side effects;
4. Periodically reviewing the treatment's efficacy;
5. Consultations, as necessary; and
6. Keeping proper records supporting the decision to recommend the use of medical marijuana.

([http://www.mbc.ca.gov/board/media/releases\\_2004\\_05-13\\_marijuana.html](http://www.mbc.ca.gov/board/media/releases_2004_05-13_marijuana.html).)

Complaints about physicians should be addressed to the Medical Board (1-800-633-2322 or [www.mbc.ca.gov](http://www.mbc.ca.gov)), which investigates and prosecutes alleged licensing violations in conjunction with the Attorney General's Office.

#### **F. The Federal Controlled Substances Act.**

Adopted in 1970, the Controlled Substances Act (CSA) established a federal regulatory system designed to combat recreational drug abuse by making it unlawful to manufacture, distribute, dispense, or possess any controlled substance. (21 U.S.C. § 801, et seq.; *Gonzales v. Oregon* (2006) 546 U.S. 243,

271-273.) The CSA reflects the federal government's view that marijuana is a drug with "no currently accepted medical use." (21 U.S.C. § 812(b)(1).) Accordingly, the manufacture, distribution, or possession of marijuana is a federal criminal offense. (*Id.* at § § 841 (a)( 1), 844(a).)

The incongruity between federal and state law has given rise to understandable confusion, but no legal conflict exists merely because state law and federal law treat marijuana differently. Indeed, California's medical marijuana laws have been challenged unsuccessfully in court on the ground that they are preempted by the CSA. (*County of San Diego v. San Diego NORML* (July 31, 2008) --- Cal.Rptr.3d ---, 2008 WL 2930117.) Congress has provided that states are free to regulate in the area of controlled substances, including marijuana, provided that state law does not positively conflict with the CSA. (21 U.S.C. § 903.) Neither Proposition 215, nor the MMP, conflict with the CSA because, in adopting these laws, California did not "legalize" medical marijuana, but instead exercised the state's reserved powers to not punish certain marijuana offenses under state law when a physician has recommended its use to treat a serious medical condition. (See *City of Garden Grove v. Superior Court (Kha)* (2007) 157 Cal.App.4th 355, 371-373, 381-382.)

In light of California's decision to remove the use and cultivation of physician-recommended marijuana from the scope of the state's drug laws, this Office recommends that state and local law enforcement officers not arrest individuals or seize marijuana under federal law when the officer determines from the facts available that the cultivation, possession, or transportation is permitted under California's medical marijuana laws.

## II. DEFINITIONS

**A. Physician's Recommendation:** Physicians may not prescribe marijuana because the federal Food and Drug Administration regulates prescription drugs and, under the CSA, marijuana is a Schedule I drug, meaning that it has no recognized medical use. Physicians may, however, lawfully issue a verbal or written recommendation under California law indicating that marijuana would be a beneficial treatment for a serious medical condition. (§ 11362.5(d); *Conant v. Walters* (9th Cir. 2002) 309 F.3d 629, 632.)

**B. Primary Caregiver:** A primary caregiver is a person who is designated by a qualified patient and "has consistently assumed responsibility for the housing, health, or safety" of the patient. (§ 11362.5(e).) California courts have emphasized the consistency element of the patient-caregiver relationship. Although a "primary caregiver who consistently grows and supplies . . . medicinal marijuana for a section 11362.5 patient is serving a health need of the patient," someone who merely maintains a source of marijuana does not automatically become the party "who has consistently assumed responsibility for the housing, health, or safety" of that purchaser. (*People ex rel. Lungren v. Peron* (1997) 59 Cal.App.4th

1383, 1390, 1400.) A person may serve as primary caregiver to “more than one” patient, provided that the patients and caregiver all reside in the same city or county. (§ 1 1362.7(d)(2).) Primary caregivers also may receive certain compensation for their services. (§ 11362.765(c) [“A primary caregiver who receives compensation for actual expenses, including reasonable compensation incurred for services provided . . . to enable [a patient] to use marijuana under this article, or for payment for out-of-pocket expenses incurred in providing those services, or both, . . . shall not, on the sole basis of that fact, be subject to prosecution” for possessing or transporting marijuana].)

**C. Qualified Patient:** A qualified patient is a person whose physician has recommended the use of marijuana to treat a serious illness, including cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief. (§ 1 1362.5(b)(1)(A).)

**D. Recommending Physician:** A recommending physician is a person who (1) possesses a license in good standing to practice medicine in California; (2) has taken responsibility for some aspect of the medical care, treatment, diagnosis, counseling, or referral of a patient; and (3) has complied with accepted medical standards (as described by the Medical Board of California in its May 13, 2004 press release) that a reasonable and prudent physician would follow when recommending or approving medical marijuana for the treatment of his or her patient.

### III. GUIDELINES REGARDING INDIVIDUAL QUALIFIED PATIENTS AND PRIMARY CAREGIVERS

#### A. State Law Compliance Guidelines.

**1. Physician Recommendation:** Patients must have a written or verbal recommendation for medical marijuana from a licensed physician. (§ 11362.5(d).)

**2. State of California Medical Marijuana Identification Card:** Under the MMP, qualified patients and their primary caregivers may voluntarily apply for a card issued by DPH identifying them as a person who is authorized to use, possess, or transport marijuana grown for medical purposes. To help law enforcement officers verify the cardholder’s identity, each card bears a unique identification number, and a verification database is available online ([www.calmmp.ca.gov](http://www.calmmp.ca.gov)). In addition, the cards contain the name of the county health department that approved the application, a 24-hour verification telephone number, and an expiration date. (§§ 11362.71(a); 1 1362.735(a)(3)-(4); 11362.745.)

**3. Proof of Qualified Patient Status:** Although verbal recommendations are technically permitted under Proposition 215,

patients should obtain and carry written proof of their physician recommendations to help them avoid arrest. A state identification card is the best form of proof, because it is easily verifiable and provides immunity from arrest if certain conditions are met (see section III.B.4, below). The next best forms of proof are a city- or county-issued patient identification card, or a written recommendation from a physician.

#### 4. **Possession Guidelines:**

a) **MMP:**<sup>2</sup> Qualified patients and primary caregivers who possess a state-issued identification card may possess 8 oz. of dried marijuana, and may maintain no more than 6 mature or 12 immature plants per qualified patient. (§ 11362.77(a).) But, if “a qualified patient or primary caregiver has a doctor’s recommendation that this quantity does not meet the qualified patient’s medical needs, the qualified patient or primary caregiver may possess an amount of marijuana consistent with the patient’s needs.” (§ 11362.77(b).) Only the dried mature processed flowers or buds of the female cannabis plant should be considered when determining allowable quantities of medical marijuana for purposes of the MMP. (§ 11362.77(d).)

b) **Local Possession Guidelines:** Counties and cities may adopt regulations that allow qualified patients or primary caregivers to possess

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<sup>2</sup> On May 22, 2008, California’s Second District Court of Appeal severed Health & Safety Code § 11362.77 from the MMP on the ground that the statute’s possession guidelines were an unconstitutional amendment of Proposition 215, which does not quantify the marijuana a patient may possess. (See *People v. Kelly* (2008) 163 Cal.App.4th 124, 77 Cal.Rptr.3d 390.) The Third District Court of Appeal recently reached a similar conclusion in *People v. Phomphakdy* (July 31, 2008) --- Cal.Rptr.3d ---, 2008 WL 2931369. The California Supreme Court has granted review in *Kelly* and the Attorney General intends to seek review in *Phomphakdy*. medical marijuana in amounts that exceed the MMP’s possession guidelines. (§ 11362.77(c).)

c) **Proposition 215:** Qualified patients claiming protection under Proposition 215 may possess an amount of marijuana that is “reasonably related to [their] current medical needs.” (*People v. Trippet* (1997) 56 Cal.App.4th 1532, 1549.)

#### B. **Enforcement Guidelines.**

1. **Location of Use:** Medical marijuana may not be smoked (a) where smoking is prohibited by law, (b) at or within 1000 feet of a school,



recreation center, or youth center (unless the medical use occurs within a residence), (c) on a school bus, or (d) in a moving motor vehicle or boat. (§ 11362.79.)

**2. Use of Medical Marijuana in the Workplace or at Correctional Facilities:** The medical use of marijuana need not be accommodated in the workplace, during work hours, or at any jail, correctional facility, or other penal institution. (§ 11362.785(a); *Ross v. Raging Wire Telecomms., Inc.* (2008) 42 Cal.4th 920, 933 [under the Fair Employment and Housing Act, an employer may terminate an employee who tests positive for marijuana use].)

**3. Criminal Defendants, Probationers, and Parolees:** Criminal defendants and probationers may request court approval to use medical marijuana while they are released on bail or probation. The court's decision and reasoning must be stated on the record and in the minutes of the court. Likewise, parolees who are eligible to use medical marijuana may request that they be allowed to continue such use during the period of parole. The written conditions of parole must reflect whether the request was granted or denied. (§ 11362.795.)

**4. State of California Medical Marijuana Identification Cardholders:** When a person invokes the protections of Proposition 215 or the MMP and he or she possesses a state medical marijuana identification card, officers should:

- a) Review the identification card and verify its validity either by calling the telephone number printed on the card, or by accessing DPH's card verification website (<http://www.calmmp.ca.gov>); and
- b) If the card is valid and not being used fraudulently, there are no other indicia of illegal activity (weapons, illicit drugs, or excessive amounts of cash), and the person is within the state or local possession guidelines, the individual should be released and the marijuana should not be seized. Under the MMP, "no person or designated primary caregiver in possession of a valid state medical marijuana identification card shall be subject to arrest for possession, transportation, delivery, or cultivation of medical marijuana." (§ 11362.71(e).) Further, a "state or local law enforcement agency or officer shall not refuse to accept an identification card issued by the department unless the state or local law enforcement agency or officer

has reasonable cause to believe that the information contained in the card is false or fraudulent, or the card is being used fraudulently.” (§ 11362.78.)

5. **Non-Cardholders:** When a person claims protection under Proposition 215 or the MMP and only has a locally-issued (i.e., non-state) patient identification card, or a written (or verbal) recommendation from a licensed physician, officers should use their sound professional judgment to assess the validity of the person’s medical-use claim:

a) Officers need not abandon their search or investigation. The standard search and seizure rules apply to the enforcement of marijuana-related violations. Reasonable suspicion is required for detention, while probable cause is required for search, seizure, and arrest.

b) Officers should review any written documentation for validity. It may contain the physician’s name, telephone number, address, and license number.

c) If the officer reasonably believes that the medical-use claim is valid based upon the totality of the circumstances (including the quantity of marijuana, packaging for sale, the presence of weapons, illicit drugs, or large amounts of cash), and the person is within the state or local possession guidelines or has an amount consistent with their current medical needs, the person should be released and the marijuana should not be seized.

d) Alternatively, if the officer has probable cause to doubt the validity of a person’s medical marijuana claim based upon the facts and circumstances, the person may be arrested and the marijuana may be seized. It will then be up to the person to establish his or her medical marijuana defense in court.

e) Officers are not obligated to accept a person’s claim of having a verbal physician’s recommendation that cannot be readily verified with the physician at the time of detention.

6. **Exceeding Possession Guidelines:** If a person has what appears to be valid medical marijuana documentation, but exceeds the applicable possession guidelines identified above, all marijuana may be seized.

7. **Return of Seized Medical Marijuana:** If a person whose marijuana is seized by law enforcement successfully establishes a medical marijuana defense in court, or the case is not prosecuted, he or she may file a motion for return of the marijuana. If a court grants the motion and orders the return of marijuana seized incident to an arrest, the individual or entity subject to the order must return the property. State law enforcement officers who handle controlled substances in the course of their official duties are immune from liability under the CSA. (21 U.S.C. § 885(d).) Once the marijuana is returned, federal authorities are free to exercise jurisdiction over it. (21 U.S.C. §§ 812(c)(10), 844(a); *City of Garden Grove v. Superior Court (Kha)* (2007) 157 Cal.App.4th 355, 369, 386, 391.)

#### **IV. GUIDELINES REGARDING COLLECTIVES AND COOPERATIVES**

Under California law, medical marijuana patients and primary caregivers may “associate within the State of California in order collectively or cooperatively to cultivate marijuana for medical purposes.” (§ 11362.775.) The following guidelines are meant to apply to qualified patients and primary caregivers who come together to collectively or cooperatively cultivate physician-recommended marijuana.

**A. Business Forms:** Any group that is collectively or cooperatively cultivating and distributing marijuana for medical purposes should be organized and operated in a manner that ensures the security of the crop and safeguards against diversion for non-medical purposes. The following are guidelines to help cooperatives and collectives operate within the law, and to help law enforcement determine whether they are doing so.

**1. Statutory Cooperatives:** A cooperative must file articles of incorporation with the state and conduct its business for the mutual benefit of its members. (Corp. Code, § 12201, 12300.) No business may call itself a “cooperative” (or “coop”) unless it is properly organized and registered as such a corporation under the Corporations or Food and Agricultural Code. (*Id.* at § 12311(b).) Cooperative corporations are “democratically controlled and are not organized to make a profit for themselves, as such, or for their members, as such, but primarily for their members as patrons.” (*Id.* at § 12201.) The earnings and savings of the business must be used for the general welfare of its members or equitably distributed to members in the form of cash, property, credits, or services. (*Ibid.*) Cooperatives must follow strict rules on organization, articles, elections, and distribution of earnings, and must report individual transactions from individual members each year. (See *id.* at § 12200, et seq.) Agricultural cooperatives are likewise nonprofit corporate entities “since they are not organized to make profit for themselves, as such, or for their members, as such, but only for their members as producers.” (Food & Agric. Code, § 54033.) Agricultural cooperatives share many characteristics with consumer cooperatives. (See, e.g., *id.* at § 54002, et seq.) Cooperatives should not purchase marijuana from, or sell to, non-members; instead, they should only provide a means for facilitating or coordinating transactions between members.

**2. Collectives:** California law does not define collectives, but the dictionary defines them as “a business, farm, etc., jointly owned and operated by the members of a group.” (*Random House Unabridged Dictionary*; Random House, Inc. © 2006.) Applying this definition, a collective should be an organization that merely facilitates the collaborative efforts of patient and caregiver members – including the allocation of costs and revenues. As such, a collective is not a statutory entity, but as a practical matter it might have to organize as some form of business to carry out its activities. The collective should not purchase marijuana from, or sell to, non-members; instead, it should only provide a means for facilitating or coordinating transactions between members.

**B. Guidelines for the Lawful Operation of a Cooperative or Collective:**

Collectives and cooperatives should be organized with sufficient structure to ensure security, non-diversion of marijuana to illicit markets, and compliance with all state and local laws. The following are some suggested guidelines and practices for operating collective growing operations to help ensure lawful operation.

**1. Non-Profit Operation:** Nothing in Proposition 215 or the MMP authorizes collectives, cooperatives, or individuals to profit from the sale or distribution of marijuana. (See, e.g., § 11362.765(a) [“nothing in this section shall authorize . . . any individual or group to cultivate or distribute marijuana for profit”]).

**2. Business Licenses, Sales Tax, and Seller’s Permits:** The State Board of Equalization has determined that medical marijuana transactions are subject to sales tax, regardless of whether the individual or group makes a profit, and those engaging in transactions involving medical marijuana must obtain a Seller’s Permit. Some cities and counties also require dispensing collectives and cooperatives to obtain business licenses.

**3. Membership Application and Verification:** When a patient or primary caregiver wishes to join a collective or cooperative, the group can help prevent the diversion of marijuana for non-medical use by having potential members complete a written membership application. The following application guidelines should be followed to help ensure that marijuana grown for medical use is not diverted to illicit markets:

- a) Verify the individual’s status as a qualified patient or primary caregiver. Unless he or she has a valid state medical marijuana identification card, this should involve personal contact with the recommending physician (or his or her agent), verification of the physician’s identity, as well as his or her state licensing status. Verification of primary caregiver status should include contact with the qualified patient, as well as validation of the patient’s recommendation. Copies should be made of the physician’s recommendation or identification card, if any;
- b) Have the individual agree not to distribute marijuana to non-members;
- c) Have the individual agree not to use the marijuana for other than medical purposes;
- d) Maintain membership records on-site or have them reasonably available;
- e) Track when members’ medical marijuana recommendation and/or identification cards expire; and
- f) Enforce conditions of membership by excluding members whose identification card or physician recommendation are invalid or have

expired, or who are caught diverting marijuana for non-medical use.

**4. Collectives Should Acquire, Possess, and Distribute Only Lawfully**

**Cultivated Marijuana:** Collectives and cooperatives should acquire marijuana only from their constituent members, because only marijuana grown by a qualified patient or his or her primary caregiver may lawfully be transported by, or distributed to, other members of a collective or cooperative. (§§ 11362.765, 11362.775.) The collective or cooperative may then allocate it to other members of the group. Nothing allows marijuana to be purchased from outside the collective or cooperative for distribution to its members. Instead, the cycle should be a closed-circuit of marijuana cultivation and consumption with no purchases or sales to or from non-members. To help prevent diversion of medical marijuana to nonmedical markets, collectives and cooperatives should document each member's contribution of labor, resources, or money to the enterprise. They also should track and record the source of their marijuana.

**5. Distribution and Sales to Non-Members are Prohibited:** State law allows primary caregivers to be reimbursed for certain services (including marijuana cultivation), but nothing allows individuals or groups to sell or distribute marijuana to non-members. Accordingly, a collective or cooperative may not distribute medical marijuana to any person who is not a member in good standing of the organization. A dispensing collective or cooperative may credit its members for marijuana they provide to the collective, which it may then allocate to other members. (§ 11362.765(c).) Members also may reimburse the collective or cooperative for marijuana that has been allocated to them. Any monetary reimbursement that members provide to the collective or cooperative should only be an amount necessary to cover overhead costs and operating expenses.

**6. Permissible Reimbursements and Allocations:** Marijuana grown at a collective or cooperative for medical purposes may be:

- a) Provided free to qualified patients and primary caregivers who are members of the collective or cooperative;
- b) Provided in exchange for services rendered to the entity;
- c) Allocated based on fees that are reasonably calculated to cover overhead costs and operating expenses; or
- d) Any combination of the above.

**7. Possession and Cultivation Guidelines:** If a person is acting as primary caregiver to more than one patient under section 11362.7(d)(2), he or she may aggregate the possession and cultivation limits for each patient. For example, applying the MMP's basic possession guidelines, if a caregiver is responsible for three patients, he or she may possess up to 24 oz. of marijuana (8 oz. per patient) and may grow 18 mature or 36 immature plants. Similarly, collectives and cooperatives may cultivate and transport marijuana in aggregate amounts tied to its membership numbers. Any patient or primary caregiver exceeding individual possession guidelines should have supporting records readily available when:

- a) Operating a location for cultivation;
- b) Transporting the group's medical marijuana; and

c) Operating a location for distribution to members of the collective or cooperative.

8. **Security:** Collectives and cooperatives should provide adequate security to ensure that patients are safe and that the surrounding homes or businesses are not negatively impacted by nuisance activity such as loitering or crime. Further, to maintain security, prevent fraud, and deter robberies, collectives and cooperatives should keep accurate records and follow accepted cash handling practices, including regular bank runs and cash drops, and maintain a general ledger of cash transactions.

C. **Enforcement Guidelines:** Depending upon the facts and circumstances, deviations from the guidelines outlined above, or other indicia that marijuana is not for medical use, may give rise to probable cause for arrest and seizure. The following are additional guidelines to help identify medical marijuana collectives and cooperatives that are operating outside of state law.

1. **Storefront Dispensaries:** Although medical marijuana “dispensaries” have been operating in California for years, dispensaries, as such, are not recognized under the law. As noted above, the only recognized group entities are cooperatives and collectives. (§ 11362.775.) It is the opinion of this Office that a properly organized and operated collective or cooperative that dispenses medical marijuana through a storefront may be lawful under California law, but that dispensaries that do not substantially comply with the guidelines set forth in sections IV(A) and (B), above, are likely operating outside the protections of Proposition 215 and the MMP, and that the individuals operating such entities may be subject to arrest and criminal prosecution under California law. For example, dispensaries that merely require patients to complete a form summarily designating the business owner as their primary caregiver – and then offering marijuana in exchange for cash “donations” – are likely unlawful. (*Peron, supra*, 59 Cal.App.4th at p. 1400 [cannabis club owner was not the primary caregiver to thousands of patients where he did not consistently assume responsibility for their housing, health, or safety].)

2. **Indicia of Unlawful Operation:** When investigating collectives or cooperatives, law enforcement officers should be alert for signs of mass production or illegal sales, including (a) excessive amounts of marijuana, (b) excessive amounts of cash, (c) failure to follow local and state laws applicable to similar businesses, such as maintenance of any required licenses and payment of any required taxes, including sales taxes, (d) weapons, (e) illicit drugs, (f) purchases from, or sales or distribution to, non-members, or (g) distribution outside of California.

# City of Visalia Agenda Item Transmittal

**Meeting Date:** October 19, 2009

**Agenda Item Number (Assigned by City Clerk):** 12

**Agenda Item Wording:**

Public hearing for:

- Appeal of the Planning Commission's denial of Variance No. 2009-10 Ad Art Sign Company and Visalia Properties:** A request by Ad Art Sign Company to erect a 35-foot high/72 square foot double face freestanding sign for the Orchard Supply Hardware store located in the C-R (Regional Retail Commercial) Zone. The site is located at 2230 West Walnut Avenue. (APN: 095-134-045 & 046). **Resolution No. 2009-51 required.**

**Deadline for Action:** October 19, 2009. Per Visalia Municipal Code Section 17.02.045.B, an appeal before the City Council must be heard within 30 days of the appeal filing date. This appeal was filed on September 24, 2009, requiring the appeal to be heard by October 19, 2009.

**Submitting Department:** Community Development - Planning

**Contact Name and Phone Number:**

Fred Brusuelas, AICP, Asst. Comm. Dev. Dir. /City Planner,  
(559) 713-4364  
Paul Bernal, Associate Planner (559) 713-4025

**Department Recommendation:** It is recommended that the City Council adopt the resolution upholding the denial by the Planning Commission on September 14, 2009, and deny the appeal. This recommendation is based on the conclusion that the Planning Commission's denial was made in conformance with the Visalia Municipal Code, and consistent with previous Planning Commission actions on similar projects.

**Background on Variance No. 2009-10:** The variance is a request by Ad Art Sign Company to erect a 35-foot high/72 square foot double face freestanding sign for the Orchard Supply Hardware (OSH) site. The location and dimensions of the pole sign are depicted on Exhibits "A" and "B". The Planning Commission staff report is included as Exhibit 2.

This request is an outgrowth of ongoing negotiation to purchase additional right-of-way from the Orchard Supply Hardware property to facilitate widening of the Walnut Avenue approach to Mooney Boulevard. The existing Orchard Supply Hardware sign is located in the area needed for right-of-way. As part of the right-of-way negotiations, the City's representatives offered to re-locate the existing, code compliant monument sign approximately five (5) feet north of its existing location. The property owner, Visalia Properties, has not accepted the offer to re-locate the existing monument sign, arguing that the relocation will make the sign less visible from Mooney Boulevard. The property owner is therefore requesting a much taller and larger pole sign to be placed at the new sign location.

**Planning Commission Action:** The Planning Commission held a public hearing on September 14, 2009, and denied Variance No. 2009-10 by a 4-1 vote (Commissioner Soltesz voting no).

**For action by:**

City Council  
 Redev. Agency Bd.  
 Cap. Impr. Corp.  
 VPFA

**For placement on which agenda:**

Work Session  
 Closed Session

**Regular Session:**

Consent Calendar  
 Regular Item  
 Public Hearing

Est. Time (Min.):30mins

**Review:**

**Dept. Head** \_\_\_\_\_  
(Initials & date required)

**Finance** \_\_\_\_\_  
**City Atty** \_\_\_\_\_  
(Initials & date required or N/A)

**City Mgr** \_\_\_\_\_  
(Initials Required)

If report is being re-routed after revisions leave date of initials if no significant change has affected Finance or City Attorney Review.

The applicant provided five findings for the variance (see Exhibit "2") which discuss the resulting street widening project impacting the visibility of the Orchard Supply Hardware store. The applicant contends the street widening project along Walnut Avenue will result in the loss of the existing monument sign thus necessitating the request to install a 35 foot tall/72 square foot pole sign.

During the public hearing, three persons spoke on the item. David Esajan Ad Art Sign Company, Patrick Walsh, attorney for property owner and Craig Vanryn, Orchard Supply Hardware store manager, spoke in favor of approving the Variance.

The staff report analyzed the applicant's five findings for their sign variance request and could not support their findings.

The Planning Commission is required to make five findings before a variance can be granted. The five findings are listed below:

1. *That strict or literal interpretation and enforcement of the Zoning Ordinance would result in practical difficulty or unnecessary hardship inconsistent with the objectives of the Zoning Ordinance.*
2. *That there are exceptional or extraordinary circumstances or conditions applicable to the property involved or to the intended use of the property, which do not apply to other properties classified in the same zone.*
3. *That strict or literal interpretation and enforcement of the ordinance would deprive the applicant of privileges enjoyed by the owners of other properties classified in the same zone.*
4. *That the granting of the variance would not constitute a grant of special privilege inconsistent with the limitations on other properties in the same zone.*
5. *That the granting of the variance will be detrimental to the public health, safety, or welfare, or materially injurious to properties or improvements in the vicinity.*

The Planning Commission considered all of the testimony and concluded that the five findings could not be made to support the Variance request, and thus adopted the findings in Resolution No. 2009-58 denying Variance No. 2009-10.

**Appeal:** On September 24, 2009, staff received the appeal. The reasons for the appeal are stated by the Appellant as follows (see Exhibit "1" for the appeal statement):

- |  |
|--|
| <ol style="list-style-type: none"><li>1. Relocation of existing Orchard Supply Hardware freestanding sign will result in loss of sign visibility from Mooney Boulevard creating a hardship on the business.</li><li>2. The proposed Orchard Supply Hardware sign would not constitute a special privilege because there are other existing pole signs within close proximity to the Orchard Supply Hardware site.</li><li>3. Planning Commission failed to address Variance Finding No. 5.</li></ol> |
|--|

***Issue 1 Relocation of existing Orchard Supply Hardware freestanding sign will result in loss of sign visibility from Mooney Boulevard creating a hardship on the business:***

The appellant contends the relocation of the existing Orchard Supply Hardware sign from its current location due to the Walnut Avenue street widening project will result in the loss of sign visibility from Mooney Boulevard thereby creating a hardship on the Orchard Supply Hardware store.

**Planning Commission Determination:**

The Planning Commission considered this issue. The Commission noted that the Orchard Supply Hardware site has no frontage along Mooney Boulevard and therefore sign visibility



along Mooney Boulevard never existed. During the public hearing, staff provided the Commission with a diagram depicting right-of-way acquisition for the Mooney Boulevard/Walnut Avenue intersection (see Exhibit "3").

The Commission concluded the relocation of the existing Orchard Supply Hardware sign approximately five feet to the north from its current location, in conjunction with the dedication of right-of-way along Walnut Avenue from the adjacent In-&-Out restaurant, would not obstruct visibility of the sign from the Mooney Boulevard/Walnut Avenue intersection.

The Commission is also stated that several business have been affected by the street widening project without submitting sign variance application request to erect signs that exceed Design District "A" standards.

***Issue 2 Proposed Orchard Supply Hardware sign would not constitute a special privilege because there are other existing pole signs within close proximity to the Orchard Supply Hardware site:***

The appellant contends the granting of the variance would not constitute a special privilege because this sign variance request would do no more than permit a new pole sign in an area that already has several existing pole signs.

**Planning Commission Determination:**

During the Planning Commission hearing, the Commission requested further discussion regarding the existing non-conforming sign used by First Union Bank located on the southwest corner of Mooney Boulevard and Walnut Avenue. Staff addressed the Commission's request and stated that the First Union Bank pole sign, as well as several other pole signs along the Mooney Boulevard corridor are non-conforming signs which were legally erected prior to the update of the sign ordinance. Non-conforming signs which were legally erected prior to the effective date of the Sign Ordinance can remain subject to the provision of Chapter 17.48.040 (see Exhibit "4") of the Visalia Zoning Ordinance.

The Commission concluded that the granting of the variance would constitute a special privilege inconsistent with the sign ordinance. Several businesses have been required to relocate their signs due to the street widening without requesting a sign variance to allow for additional sign height and/or sign area. In addition, the Commission concluded that supporting the proposed Orchard Supply Hardware sign would not be in conformance with the City's ordinance to remove pole signs from commercial corridors once a pole sign loses its non-conforming status.

***Issue 3 Planning Commission failed to address Variance Finding No. 5:***

The appellant contends the Commission failed to address Variance Finding No. 5 due to staff's distorted interpretation of the Sign Ordinance.

**Planning Commission Determination:**

The Planning Commission concluded denying the variance would be detrimental to the public health, safety, or welfare, or materially injurious to properties or improvements in the vicinity as stated in the adopted Finding No. 5 of Resolution No. 2009-58. During the public hearing, several of the Commissioners stated that the sign ordinance was established to provide a high quality visual environment within the City. Pole signs were eliminated to reduce the clutter of unnecessary signage, remove signs as the dominant feature of the skyline in commercial areas, and to prevent the signs of one establishment from blocking visibility of signs on adjacent lots. This is evident with the City's current sign ordinance which establishes sign standards that add to the enhancement and attractiveness of the City's appearance. Rather, the Commission concluded approving the variance would result in adding signage to the City that has been identified as unsightly and unattractive which can be detrimental to the public health and welfare.

**Prior Council/Board Actions:** None

**Committee/Commission Review and Actions:** The Planning Commission held a public hearing on September 14, 2009, denying Variance No. 2009-10 on a 4-1 vote (Commissioner Soltesz voting no).

**Design District “A” Sign Standards:** Each commercial site within Design District “A” is permitted one freestanding sign, not exceeding 10 feet in height and not exceeding an area of 35 square feet of sign copy area per face. Freestanding signs shall be mounted on a base, the width of which is not less than 50 percent of the width of the widest part of the sign. In addition, freestanding signs may be located within the required setback areas as long as all parts of the freestanding sign are located more than five (5) feet from the front property line and public or private right-of-way line.

Exhibit “5” attached herein is the approved sign permit elevation for the existing Orchard Supply Hardware store. The sign meets the Design District “A” standards for sign height, area and mounted base as previously mentioned.

**Mooney Boulevard Street Widening/Existing Non-Conforming Pole Signs:** The Mooney Boulevard street widening project, in addition to the street widening along major intersections that bisect the Mooney Boulevard corridor has necessitated the dedication of property by individual property owners. In certain cases, the street widening has resulted in the relocation of signs. However, property and business owners whose property rights have been affected by street widening have been or will be compensated through the eminent domain process.

To, through the eminent domain process, all existing monument and/or non-conforming signs affected by the street widening project were allowed to be retained, by the property owners and businesses, but have been required to be relocate outside the public right-of-way, and have been or will be relocated in areas that do not impede pedestrian and vehicular access. Staff believes the subject of this variance action is not different from the other property owners and businesses that have been similarly affected by the street and intersection improvements.

City staff surveyed the South Mooney Boulevard corridor for pole signs in 1976 and then again in 1988. During the 1976 survey, 109 pole signs existed while the 1988 survey identified 60 pole signs. On October 5, 2009, staff surveyed the South Mooney Boulevard corridor from Meadow Street to Visalia Parkway to determine the number of existing non-conforming pole signs. All properties located along the Mooney Boulevard corridor between the defined survey area are zoned C-R and are within Design District “A”. The survey concluded that 20 non-conforming pole signs exist today along this corridor.

The City has approved sign variances for sign height and sign area along the Mooney Boulevard corridor. Examples of sign variances approved include the 13-foot tall/46 sq. ft. wide multi-tenant monument sign for the Sequoia Mall, the marquee sign which was used to display movie times for the former Sequoia Discount Cinema and the Visalia Mall monument sign which does not advertise businesses within the mall.

### **Prohibition on Filing New Variance Application**

Per Zoning Code Section 17.48.110.M, following the denial of a variance or exception application or the revocation of a variance or exception, no application for the same or substantially the same site shall be filed within one year of the date of denial of the variance or exception application or revocation of the variance or exception.

**Alternatives:** The City Council may:

1. Approve the variance as requested by the applicant. The City Council would then amend the resolution with the necessary findings for approval. Staff would return with amended resolution to the City Council for adoption.

2. Deny the appeal and uphold the Planning Commission's denial of the variance request, but waive the one-year waiting period for filing a revised variance request. The reason for this alternative would be to give the applicant, its tenant and city staff the opportunity to further discuss alternative variance approaches. For example, city staff has suggested that they could support a variance that does not involve a new pole sign, but rather provides for a modest 20% expansion of the existing monument style sign. For example an increase in sign height (10 feet to 12-13 feet) and area (35 sq. ft. to 42-45 sq. ft.) would provide added visibility but not violate the central prohibition against pole signs the City has attempted to enforce in the Mooney corridor. If the Council were to proceed with such alternative, the motion would be to "Deny the Appeal, uphold the Planning Commission's denial of the subject variance request but with a waiver of the one year waiting period for a new variance." In making such motion, the Council could also provide direction as to the acceptable parameters of an alternative variance, and could specify whether on refiling, the variance request could be finally determined at the Planning Commission level (unless appealed) or would need to be brought back to the Council regardless of whether an appeal is filed.

**Attachments:**

- Resolution denying the appeal and upholding the denial of Variance No. 2009-10
- Exhibit "1" – Appeal of Planning Commission Action dated September 24, 2009
- Exhibit "2" – Planning Commission Staff report dated September 14, 2009
- Exhibit "3" – Mooney Boulevard/Walnut Avenue intersection right-of-way
- Exhibit "4" – Chapter 17.48 (Sign Ordinance)
- Exhibit "5" – Approved Orchard Supply Hardware sign and photograph
- Exhibit "A" – Proposed site plan location of pole sign
- Exhibit "B" – Proposed Elevation of Orchard Supply Hardware Sign
- Unsigned Resolution No. 2009-58 denying Variance No. 2009-10
- General Plan Map
- Zoning Map
- Aerial Photo
- Location Sketch

**Recommended Motion:** I move to deny the appeal and uphold the Planning Commission's denial of Variance No. 2009-10; or,

**Alternative Motion:** I move to uphold the appeal and approve Variance No. 2009-10 as requested by the applicant and direct staff to prepare necessary findings for the variance approval.

**Alternative Motion:** I move to deny the appeal and uphold the Planning Commission's denial of the variance request, but waive the one-year waiting period for filing a revised variance request.

***Environmental Assessment Status***

**CEQA Review:** No action needs to be taken on an environmental document subject to Section 15270 of the California Environmental Quality Act. However, if the City Council approves the variance as requested by the applicant, staff will prepare an environmental document.

**NEPA Review:** None Required

**Tracking Information:** *(Staff must list/include appropriate review, assessment, appointment and contract dates and other information that needs to be followed up on at a future date)*

Copies of this report have been provided to:

Planning Commission  
Appellant

RESOLUTION NO. 2009-51

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF VISALIA DENYING THE APPEAL AND UPHOLDING THE PLANNING COMMISSION'S DENIAL OF VARIANCE NO. 2009-10, A REQUEST BY AD ART SIGN COMPANY TO ERECT A 35-FOOT HIGH/72 SQUARE FOOT DOUBLE FACE FREESTANDING SIGN FOR THE ORCHARD SUPPLY HARDWARE STORE LOCATED IN THE C-R (REGIONAL RETAIL COMMERCIAL) ZONE. THE SITE IS LOCATED AT 2230 WEST WALNUT AVENUE.  
(APN: 095-134-045 & 046)

**WHEREAS**, Variance No. 2009-10, A request by Ad Art Sign Company to erect a 35-foot high/72 square foot double face freestanding sign for the Orchard Supply Hardware store located in the C-R (Regional Retail Commercial) Zone. The site is located at 2230 West Walnut Avenue, City of Visalia, County of Tulare (APN: 095-134-045 & 046); and

**WHEREAS**, the Planning Commission of the City of Visalia, after duly published notice did hold a public hearing before said Commission on September 14, 2009; and

**WHEREAS**, the Planning Commission of the City of Visalia, after conducting a public hearing, denied Variance No. 2009-10; and

**WHEREAS**, an appeal of the Planning Commission's denial of Variance No. 2009-10 pertaining to error or abuse of discretion by the Planning Commission in its action and pertaining to the Commission's actions not being supported by evidence in the record was received on September 24, 2009; and

**WHEREAS**, the City Council of the City of Visalia, after ten (10) days published notice held a public hearing before said Council on October 19, 2009; and

**WHEREAS**, the City Council finds the denial of Variance No. 209-10 was made in accordance with Chapter 17.48 (Signs) of the City of Visalia, based on the evidence contained in the staff report and testimony presented at the public hearing.

**WHEREAS**, if Variance No. 2009-10 is denied, no action needs to be taken on an environmental document subject to Section 15270 of the California Environmental Quality Act.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Visalia makes the following specific findings based on the evidence presented:

1. That the strict or literal interpretation and enforcement of the Zoning Ordinance would not result in practical difficulty or unnecessary hardship inconsistent with the objectives of the Zoning Ordinance.

The sign variance request can not be supported because the proposed pole sign does not conform to the standards as identified in the sign ordinance. The sign ordinance, and more particularly Design District "A", permits businesses one 10 foot high double face freestanding sign with 35 square feet of sign face area. In addition, Design District "A" allows freestanding monument signs to be located within the required landscape setback area as long as all parts of the freestanding sign are located five (5) feet from property line.

The appellant contends the street and intersection widening along Mooney Boulevard and Walnut Avenue results in the loss of sign visibility from Mooney Boulevard. However, the City would permit the existing monument sign to be retained but the sign would be required to be relocated out of the public right-of-way. The City has allowed both conforming and non-conforming signs affected by the street widening project to be retained and not removed. The Orchard Supply Hardware site would be given the same sign considerations as given to other sites affected by the street widening project. There have been no variance

requests for pole signs and/or monument signs in excess of Design District "A" standards which have been affected by the street widening.

2. That there are no exceptional or extraordinary circumstances or conditions applicable to the property involved or to the intended use of the property, which do not apply to the other properties classified in the same zone.

The subject property (i.e., Orchard Supply Hardware) and surrounding commercial properties are classified in the same zone (C-R) and are classified with the same sign standards of Design District "A". Each of the surrounding commercial properties is permitted one 10 foot high double face freestanding sign with 35 square feet of sign face area. In addition, commercial properties affected by the street widening project have been permitted to retain their signage subject to the relocation of the sign outside of the public right-of-way.

3. That the strict or literal interpretation and enforcement of the ordinance would not deprive the applicant of privileges enjoyed by the owners of the other properties classified in the same zone.

There have been no sign variances approved requesting 35-foot high/72 square foot double face freestanding pole signs. The only pole sign in the immediate area exceeding the current Design District "A" sign standard is the pole sign used by Union Bank located at the southwest corner of Mooney Boulevard and Walnut Avenue. Currently there are approximately 17 signs along the Mooney Boulevard corridor that can be classified as poles signs; however, these pole sign are non-conforming (i.e., established prior to the update of the sign ordinance) and are subject to Section 17.48.040 of the Zoning Ordinance.

4. That the granting of the variance would constitute a grant of special privilege inconsistent with the limitations on other properties in the same zone.

The variance as proposed would constitute a special privilege inconsistent with the sign ordinance. There has been no sign variance request by other business/property owners for pole signs and/or monument signs in excess of Design District "A" standards which have been affected by the street widening project. There is one non-conforming pole sign in the immediate area and 16 other pole signs located along the Mooney Boulevard corridor that are used to advertise businesses. However, all of these signs are non-conforming and are subject to the provision of Section 17.48.040 of the Zoning Ordinance.

5. That the granting of the variance would be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity.

The approval of this variance would be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity. The City adopted the current sign ordinance to provide a high quality visual environment for the City's citizens. The purpose of the sign ordinance is to maintain and enhance the attractiveness and orderliness of the City's appearance, with a particular emphasis towards the streetscape. Adopting the standards as set forth in the sign ordinance, the City determined that well designed signs create a positive contribution to the streetscape rather than having pole signs that dominate the skyline and tended to block visibility of signs on adjacent lots.

**BE IT FURTHER RESOLVED** that the City Council hereby denies Variance No. 2009-10 on the real property here in above described in accordance with the terms of this resolution under the provisions of Section 17.48.110 of the Ordinance Code of the City of Visalia.

**City of Visalia**  
**Agenda Item Transmittal**

**Meeting Date:** October 19, 2009

**Agenda Item Number (Assigned by City Clerk):** 13

**Agenda Item Wording:** Approve the purchase of a Bearcat Armored Rescue Vehicle to be funded from three sources:

- 1) State of California 2009 Citizens Option for Public Safety (COPS) Program funds of \$100,000. This requires a public hearing to approve the recommended expenditure and appropriate the money. Adopt Resolution 2009-52 regarding the grant to be executed.
- 2) Accept and appropriate a grant award for \$150,000.00 from the Office of Homeland Security, Homeland Security Grant Program.
- 3) Appropriate asset forfeiture funds in the amount of \$62,000

**Deadline for Action:** October 31, 2009

**Submitting Department:** Police

**Contact Name and Phone Number:** Chief Colleen Mestas, ext. 4215 or Lieutenant Jason Salazar, ext. 4102

**Department Recommendation:** Council is recommended to approve the purchase of a Bearcat Armored Rescue Vehicle. Three sources will be used to fund the purchase and require the following action:

- 1) State of California 2009 Citizens Option for Public Safety (COPS) Program funds of \$100,000. This requires a public hearing to approve the recommended expenditure and appropriate the money. Adopt Resolution 2009-52 regarding the grant to be executed.
- 2) Accept and appropriate a grant award for \$150,000.00 from the Office of Homeland Security, Homeland Security Grant Program.
- 3) Appropriate asset forfeiture funds in the amount of \$62,000.

**Summary/background:** AB 3229 creates the Citizens Option for Public Safety Program (COPS). The bill allocates money to cities and counties for law enforcement and public safety purposes. The city was awarded Supplemental Law Enforcement Services Fund (SLESF) funds in the amount of \$100,000 for the year 2009. These funds will be deposited in and expensed from Fund 6311, Citizens Option for Public Safety (COPS). Meetings have been held with Department Staff to develop and finalize the recommendation for expenditure.

**For action by:**

- City Council
- Redev. Agency Bd.
- Cap. Impr. Corp.
- VPFA

**For placement on which agenda:**

- Work Session
- Closed Session

**Regular Session:**

- Consent Calendar
- Regular Item
- Public Hearing

Est. Time (Min.): 10

**Review:**

**Dept. Head** \_\_\_\_\_  
(Initials & date required)

**Finance** \_\_\_\_\_  
**City Atty** N/A  
(Initials & date required or N/A)

**City Mgr** \_\_\_\_\_  
(Initials Required)

If report is being re-routed after revisions leave date of initials if no significant change has affected Finance or City Attorney Review.

The Office of Homeland Security, Homeland Security Grant Program has awarded the city \$150,000 for the purchase of a Bearcat Armored Rescue Vehicle.

The remainder of the \$312,000 total cost, \$62,000, will come from asset forfeiture funds. One hundred twenty-five thousand dollars was appropriated from asset forfeiture in the current two-year CIP budget for the purchase of a surveillance van. The request for the surveillance van is cancelled in favor of purchasing a Bearcat Armored Rescue Vehicle. This vehicle had also been a CIP Project for the Police Department in 2013/2014 which would also be removed. The annual operating cost for the vehicle is anticipated being approximately \$2,500 per year.

### **Project Description:**

The Visalia Police Department is recommending the aforementioned funds be utilized for the purchase of a Lenco BearCat Armored Rescue Vehicle. This vehicle is specifically designed to provide complete ballistic protection from small arms weaponry up to .50 caliber and is NIJ Class IV rated armor. The vehicle is equipped with a diesel engine, four-wheel drive transmission, and is designed for the purpose of deploying tactical teams, tactical team options and conducting rescue operations in a critical incident environment. The recommendation for the purchase of this vehicle is based upon the need to replace the Department's current armored vehicle and an identified need for such a vehicle as a lacking resource to law enforcement agencies in Tulare County.

The Department currently utilizes a retired 1976 Model Air Force Peace Keeper vehicle that was obtained through military surplus in 2000. This vehicle has been utilized to provide limited ballistic protection from small arms weaponry during SWAT deployments over the course of the last nine years. The ballistic technology of the current armored vehicle is limited as a result of the vehicle's age and over the course of the last several years has experienced a number of mechanical problems affecting its reliability, which can be expected from a 33-year old vehicle. These mechanical issues have resulted in the vehicle breaking down during tactical deployments within the City of Visalia and in response to a Mutual Aid request in Kings County ultimately preventing the Department's ability to utilize the vehicle in those situations. The proposed Lenco BearCat vehicle would provide the team with a reliable tactical deployment vehicle providing complete ballistic protection that enhances the safety of officers and citizens during critical incidents requiring a law enforcement tactical response for years to come.

The purchase of the BearCat vehicle was proposed to the Office of Emergency Services Homeland Security Grant Program as an identified need and lacking resource within the Tulare County region and as noted in the Summary/Background portion of this report, was partially funded through said program. Although other Tulare County law enforcement agencies employ "armored" vehicles for their SWAT teams, they are vehicles not designed for tactical operations and with the same limited ballistic protection as the Visalia Police Department PeaceKeeper vehicle. Homeland Security concerns over the last several years have focused on the ability for first responders to safely respond to critical incidents in all hazards environments to include Haz-Mat, CBRNE (Chemical, Biological, Radiation, Nuclear and Explosive), active shooter/ violent assaults, and in response to pandemic health threats. The BearCat Armored Rescue Vehicle is utilized not only for the purpose of protection and deployment of law enforcement tactical responders but is also a valuable asset utilized for the deployment or rescue of Fire or EMS personnel in a critical incident and deployment or rescue of Explosives Ordinance Personnel by providing blast protection and safe transport into an ongoing critical incident. The proposal made to the Office of Emergency Services Homeland Security Grant Program met State and Federal guidelines for Approved Equipment Lists and identified Investment Justifications as identified in the Department of Homeland Security strategies.

Homeland Security projects are encouraged to include a regional approach or application to best contribute to homeland security concerns. The proposed vehicle is a resource that currently does not exist



in Tulare County that would enhance the safety and tactical response of all local law enforcement tactical teams, but also enhances public safety by enhancing the ability of local law enforcement to address these kinds of situations. This vehicle would be owned and operated by the City of Visalia but made available to assist all Tulare County communities if needed. A memorandum of understanding will be established regarding the use of the vehicle with respective agencies prior to its utilization to address such issues as training with the vehicle, tactical deployment of the rescue vehicle, appropriate tactical options utilizing the rescue vehicle and agency responsibility for damage incurred to said vehicle or its components during training exercises or in a tactical operation.

In recent years, there has been a national trend reflecting an increase in violent assaults against law enforcement personnel and the use of high-powered weaponry during such assaults. Gang violence within the City of Visalia has been a public safety concern for a number of years. Gang enforcement efforts and investigations into these crimes has revealed that on several occasions high-powered weaponry were utilized during the commission of these gang-related crimes and assault weapons have been seized by officers during these investigations via search warrants, traffic stops and other police contacts. In a recent SWAT deployment in the City of Visalia, SWAT officers were tasked with addressing a subject actively shooting from a second story apartment window with a shotgun presenting a very dangerous situation in their attempt to peacefully resolve that incident. The Lenco BearCat vehicle has been utilized in tactical deployments by agencies throughout the nation as both a means to deploy tactical options (chemical agents, breaching of structures, armored protection, etc) and as a means to perform rescues of downed officers and citizens by affording ballistic protection during such rescues and/or evacuations. These incidents have occurred in areas such as Washington County, Maryland; Pittsburgh, PA; Oakland, CA; Los Angeles, CA.; LaCrosse County, WI and others.

The proposed vehicle is also equipped with specialized equipment that will enhance the Department's ability to safely deploy officers into an active critical incident. The vehicle is equipped with a thermal imaging camera, a technology not currently possessed by the Department, and provides for officers to scan a threat environment from a safe location prior to deploying into that location. The vehicle is equipped with ballistic skip shields, which attach to the running board of the truck and prevent gunfire from providing a threat from underneath the vehicle and enhance officer/ citizen safety during approaches or rescues. Additionally, the vehicle is equipped with a radiation and explosive gas detection system that can alert officers to the presence of such materials during a deployment.

**Prior Council/Board Actions:** N/A

**Committee/Commission Review and Actions:** N/A

**Alternatives:** Refuse the designated grant money.

**Attachments:** Resolution of the City Council authorizing the Police Department to use 2009 Citizens Option for Public Safety (COPS) Program funds as recommended.

**Recommended Motion (and Alternative Motions if expected):**

I move to approve the purchase of a BearCat Armored Rescue Vehicle and fund the purchase by taking the following actions:

- 1) Approve recommended expenditures of 2009 Citizens Option for Public Safety (COPS) Program funds, that \$100,000 be appropriated in recognition of the grant, and to adopt Resolution 2009-52 regarding the grant to be executed.
- 2) Accept and appropriate a grant award for \$150,000.00 from the Office of Homeland Security, Homeland Security Grant Program.
- 3) Appropriate asset forfeiture funds in the amount of \$62,000.

***Environmental Assessment Status***

**CEQA Review:**

**NEPA Review:**

**Tracking Information:** *(Staff must list/include appropriate review, assessment, appointment and contract dates and other information that needs to be followed up on at a future date)*

Copies of this report have been provided to:

RESOLUTION NO. 2009-52

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF VISALIA  
AUTHORIZING THE POLICE DEPARTMENT  
TO USE STATE COPS GRANT MONIES AS RESOLVED BELOW

WHEREAS, the City of Visalia has been granted State funds through the Citizen Option for Public Safety Program (COPS); and

WHEREAS, the monies are expected to be expended for the enhancement of services by the Police Department to the betterment of the community;

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Visalia:

1. That the City Council of the City of Visalia held a public hearing to receive input from the public concerning the expenditure of the aforesaid funds; and
2. That the City of Visalia is committed to see that these funds are properly expended.

PASSED AND ADOPTED: 10/19/2009

STEVEN M. SALOMON, CITY CLERK

STATE OF CALIFORNIA)  
COUNTY OF TULARE ) ss.  
CITY OF VISALIA )

I, Steven M. Salomon, City Clerk of the City of Visalia, certify the foregoing is the full and true Resolution 2009- passed and adopted by the Council of the City of Visalia at a regular meeting held on April 20, 2009.

Dated: October , 2009

STEVEN M. SALOMON, CITY CLERK