



# Visalia City Council Agenda

For the regular meeting of: MONDAY, December 7, 2009

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

Mayor: Bob Link  
Vice Mayor: Amy Shuklian  
Council Member: Warren Gubler  
Council Member: Mike Lane  
Council Member: Steve Nelsen

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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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3:00-4:00  
p.m.

**1. TOUR OF WASTEWATER TREATMENT PLANT - 7579 Avenue 288, Visalia, CA  
WORK SESSION AND ACTION ITEMS (as described)  
4:30 p.m.**

4:30 p.m.

**Public Comment on Work Session and Closed Session Items -**

2. Receive interim financial report. **Receive public comment.**

*The time listed for each work session item is an estimate of the time the Council will address that portion of the agenda. Members of the public should be aware that the estimated times may vary. Any items not completed prior to Closed Session may be continued to the evening session at the discretion of the Council.*

## ITEMS OF INTEREST

### REGULAR SESSION

7:00 p.m.

### PLEDGE OF ALLEGIANCE

INVOCATION - Visalia Rescue Mission Representative

**MOMENT OF SILENCE** - In honor of Alejandro Ruiz, a Visalia native who received the Medal of Honor, the highest award for valor in action, from President Harry Truman. Mr. Ruiz recently passed away, he was 85 years old.

**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.

3. INFORMATION ITEMS - (No action required)

- a) Receive Planning Commission Action Agenda for the meeting of November 23, 2009.

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

4. 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 to file a Notice of Completion for Parcel Map 2006-23, located at the northeast corner of Packwood Avenue and Demaree Street.
- c) Approve a three year utility billing contract with CalWater to bill and collect the City's waste water and solid waste charges.
- d) Authorize the City Manager to execute the Reimbursement Agreement for Tentative Parcel Map No. 2006-05, American Industrial Park West, located east of Camp Drive and south of Goshen Avenue. APN: 073-090-075
- e) Award a construction contract and authorize the City Manager to execute an agreement for RFB No. 09-10-27 for Center Avenue Improvements, Conyer Street to Bridge Street Project No. 8016 in the amount of \$178,084.00, to the low bidder, Lockwood General Engineering Inc.
- f) Request authorization to award the contract for Jefferson Park Sidewalk Improvements located between Myrtle Street and Watson Avenue to Dunn's Sand Inc., and authorize the City Manager to execute a contract for renovations to the Anthony Community Center.
- g) Award the construction contract for the Ben Maddox Way/Highway 198 "overcrossing" to the low bidder (Emmett's Excavation) in the amount of \$4,801,446.98. The project number is 1111-720000-0-0-9242-2004.
- h) Approve a recommendation from the Parks and Recreation Commission to apply for "Proposition 84" Park Bond Act Monies to implement the East Downtown Parks Master Plan.
- i) Accept the Cash and Investment Report for the first quarter ending September 30, 2009 and approve resolution adopting the City of Visalia's annually updated Investment Policy and Delegating authority to invest funds for the City to the Administrative Services Director/Treasurer. **Resolution 2009-59 required.**
- j) Authorize submittal of a collaborative application for State Energy Program grant funds in the amount of \$6,000,000 to establish the Tulare-Kings Counties Comprehensive Residential Building Retrofit Program. **Resolution 2009-60 required.**

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

5. RDA CONSENT CALENDAR

a. Authorization to enter into a new agreement (fifth) between the Community Redevelopment Agency of the City of Visalia and Habitat for Humanity of Tulare County, for use of Redevelopment Agency Low/Mod Housing Set-Aside funds, to provide for a loan up to two hundred fifty thousand dollars (\$250,000) for acquisition and pre-construction costs for affordable housing. **Resolution 2009-05 required.**

b. Authorize a "Land Use Agreement" between the Redevelopment Agency (RDA) and Proteus, Inc. for purposes of permitting a Community Garden on RDA-owned land. **Resolution 2009-06 required.**

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

6. Introduction of Ordinance 2009-08 amending Section 12.52.020 and adding Chapter 9.34 "Aggressive Solicitation" to the Visalia Municipal Code authorizing the Police Department to have enforcement guidelines for specific aggressive behaviors associated with solicitation in public and introduction of amendment to Visalia Municipal Ordinance Section 8.40 to include camping in non-designated areas as a public nuisance. **Ordinance 2009-08 required.**

7. Authorize the submittal of a grant application to the Federal Emergency Management Agency (FEMA) in the amount of approximately \$1,900,000 for Fire Department staffing.

**REPORT ON ACTIONS TAKEN IN CLOSED SESSION**

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

Buyer	Seller	APN Number	Address	Purpose	Closing Date	Project Manager
City of Visalia	Citibank as Trustee for WAMU	APN 098-070-017	401 N. Lovers Ln.	ROW Mill Creek Pkwy	11/17/09	Chris Young

**CLOSED SESSION**

8. Conference with Legal Counsel - Existing Litigation (Subdivision (a) of Section 54956.9) City of Visalia Retirees v. City of Visalia TCSC #09-232173

**Upcoming Council Meetings**

- Monday, December 14, 2009, 4:00 p.m. Work Session; Special Meeting 7:00 p.m., Visalia Convention Center, 303 E. Acequia
- Monday, December 21, 2009, 4:00 p.m. Work Session; Regular Session 7:00 p.m., Council Chambers 707 W. Acequia
- Monday, January 11, 2010, 4:00 p.m. Work Session; Special Meeting 7:00 p.m., Convention Center, 303 E. 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:** December 7, 2009

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

**Agenda Item Wording:** Background information in preparation of the tour of the Visalia Water Conservation Plant.

**Deadline for Action:** None

**Submitting Department:** Public Works

**Contact Name and Phone Number:** Jim Ross, Public Works Manager, 559-713-4466

**Department Recommendation:**  
Informational purposes only. No action required.

**Summary/background:**

The City of Visalia Water Conservation Plant (WCP) operates under a discharge permit issued by the State Water Resources Control Board (SWRCB) and administered by the Regional Water Quality Control Board (RWQCB, or Regional Board) in Fresno.

In September 2006, the WCP was issued its current NPDES permit, which replaced the one in effect since 1995. The discharge permit is designed to protect ground water and surface waters around and downstream of the treatment plant, and more generally, basin-wide. From a regulatory standpoint, any water that contacts the ground has the potential to percolate to groundwater. If that water is contaminated, groundwater could be affected. Effluent limitations in the discharge permit reflect this philosophy.

A key discharge permit condition is the requirement to remove nitrogen compounds from the effluent to prevent contamination of groundwater. The process used to accomplish nitrogen removal is, technically, a simple modification of the activated sludge process currently used at the WCP. However, in reality, the removal of nitrogen compounds will require more than a doubling of the plant's secondary treatment process capacities. As such, the overwhelming majority of the project cost is associated with the "simple task" of nitrogen removal.

The discharge permit also includes a requirement to prepare a Master Plan (MP) for the WCP that, among other things, would outline the steps the plant would undertake to meet the new regulations. The MP, prepared by Carollo Engineers, outlined a plan to meet the permit requirements and also contained recommendations that would contribute to the long-term sustainability of the facility.

**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.

In general terms, the MP recommended project can be classified into three categories:

1. Required elements

- Nitrogen removal would require
  - four additional aeration basins (four existing),
  - two additional blower units (four existing),
  - two additional secondary clarifier (five existing),
- two additional digesters (seven existing),
- a new biosolids dewatering facility,
- 4-mile discharge pipeline to Basin 4,
- modification of existing facilities, and
- various related equipment.

2. Renewable Energy:

- Initially, 600 – 900 kW of fuel cells would be installed, with additional units being installed as the supply of methane gas increases. A total of 1.5 MW of fuel cells are envisioned by the year 2025.
- A one megawatt photovoltaic array was proposed to offset electrical use at the WCP. Such an array would cover approximately 8 acres and would significantly reduce the WCP's energy demand from the electrical grid.

3. Water re-use projects:

- The MP also identified the possibility of a water reuse project to offset potable groundwater use in the vicinity of the WCP, specifically, at Plaza Park, Valley Oak Golf Course, the Visalia airport, and along highways 198 and 99. This project would produce up to 5.0 MGD of tertiary effluent and could be undertaken at any time, or not at all.
- The MP also identified the potential for treated effluent to be pumped and utilized up gradient of the City (northeast), slowing or even reversing overdraft of the City's groundwater supply. The cost to implement such a program, however, was estimated to be upwards of \$200 million and could not be implemented within a timeframe acceptable to the RWQCB to meet permit requirements.

### **Groundwater and reuse**

Parallel to the development of the Master Plan, the City contracted with Fugro West to model the groundwater aquifer beneath the City of Visalia. It was not until both efforts were nearing completion that their inter-relatedness became apparent.

In short, the groundwater model showed that the current groundwater overdraft within Visalia to be approximately 2,500 acre feet per year, representing an historic decline of approximately two feet each year for the past twenty years. It was at this point that eyes began to look to the WCP as a potential asset in the City's groundwater effort.

The WCP currently discharges 14,000 acre feet of treated secondary effluent each year. This effluent is suitable for use on fiber and fodder crops, including cotton, alfalfa, feed corn, etc. Approximately 70% of WCP effluent is discharged to Mill Creek where it flows westward and is utilized by adjacent landowners for agricultural irrigation. The remaining 30% is utilized for irrigation of 250 acres of City-owned land at the northwest corner of Highway and Ave 280 or is

placed in percolation/evaporation ponds. While these activities do reduce regional pumping of groundwater, they have almost no beneficial impact on the City of Visalia.

In a very real sense, the WCP operational strategy has been one of treat and dispose. Given the current water situation in the Region and throughout the State, this type of strategy is not sustainable.

In recognition of this, the City hired Provost and Prichard (P&P) to identify the highest use of the effluent with the greatest benefit to the City. Their recommendation includes:

- Upgrade the WCP to full disinfected tertiary treatment to allow unrestricted reuse now and in the future.
- Irrigation of Plaza Park and Valley Oaks golf course.
- Execute a water exchange agreement with Tulare Irrigation District

The water exchange agreement is a key component of the WCP upgrade project. Tertiary treated effluent from the WCP would be discharged into one of the district's irrigation channels. In exchange, the City would receive a proportional allotment of water upstream of the City to utilize for groundwater recharge.

On September 8, 2009, Council gave conceptual approval to the above recommendations and authorized City staff to begin negotiations on the necessary agreements. Staff was also directed to return to Council to present project design recommendations and cost estimates once the preliminary investigations and pre-design work had been completed. The project is now at that point.

### **Reuse project**

As the Visalia WCP transitions from a disposal plant to a reclamation facility, it is necessary to upgrade the treatment capability of the plant to produce the quality of water desired by potential users, and required by regulatory agencies. This will be a new era for the WCP as it becomes part of the solution to the water resource needs of the community.

After a formal selection process, Parsons was chosen to design the reuse project. Headquartered in Pasadena, CA. Parsons is a large, multi-disciplined engineering firm with offices throughout the world. They have designed numerous recycled water plants throughout the world and concur with the recommendations made by Provost & Prichard.

There are numerous similarities between the project approach presented in the Master Plan and the approach required for a reuse project. For example, both would require removal of nitrogen compounds, both would require identical modifications to the solids handling processes, and both would require an alternate discharge location other than Mill Creek. The reuse project adds the requirement for tertiary filtration and disinfection.

There are two methods of providing the required treatment for reuse.

#### Alternative 1: Conventional Tertiary Treatment:

This alternative expands the current WCP to produce reuse quality water. Essentially, this is the "build more" alternative. As such, many large new structures would be constructed, including four additional aeration basins, three additional clarifiers, new tertiary filtration and additional chlorine basins.

The required modifications to the treatment processes include

- All four trickling filters would be eliminated.

- The number of aeration basins will double (from four to eight).
- Aeration basins would be modified to provide for nitrogen removal.
- Three additional secondary clarifiers (from five to eight).
- The depth of the new clarifiers will be increased from an average of 9.5 feet to 14 feet to reflect current trends in the design of clarifiers.
- Four additional chlorine basins would be required.
- Construction of nine tertiary filtration units to comply with California Department of Health Services standards for unrestricted reuse of wastewater effluent.

Alternative 2: Membrane Biological Reactor (MBR)

The MBR membrane takes the place of the secondary clarifiers and tertiary filters of the conventional treatment plant. By removing the secondary clarifiers from the treatment process, problems involving the settling characteristics of the solids are eliminated. This allows the concentration of mixed liquor (liquid) in the aeration basins to be increased in concentration by as much as three times usual levels. This, in turn, reduces the required tankage volume to less than one-half that of the conventional treatment process.

The required modifications to convert to a MBR facility include

- All four trickling filters would be eliminated.
- Existing aerations would be modified to provide for nitrogen removal.
- A new membrane tank would be constructed following the aeration basins.
- Ultra-fine screens are installed ahead of the MBR system to protect the membranes.
- Secondary clarifiers would be converted to chlorine basins.
- Two additional chlorine basins to provide required detention time.

Because final effluent water quality is critical for the success of any reuse project, it is being recommended that the City pursue the upgrade of the WCP based on the MBR alternative. The MBRs consistently meet and far exceed the requirements for unrestricted reuse water and provides a commodity that is a valuable asset to the City. In addition, MBRs offer several other advantages to the City.

- Ease of operation, including wider operating parameters
- Reliability and automation of process
- Reduced operation and maintenance requirements compared to conventional
- The water quality from the MBR will far exceed required standards, providing exceptional quality water to the customers of the reuse system.
- Minimize construction of new structures.
- Easily expandable and scalable.
- Costs on par with conventional treatment alternative.
- Can be readily phased by staging the purchase and installation of membrane components to match the demand created by increased wastewater flows.

**Prior Council/Board Actions:**

- May 19, 2008: Approval of Master Plan
- March 16, 2009: Authorized effluent reuse study
- April 20, 2009: Approval of multi-year sewer rate increase
- May 18, 2009: Award of Design to Parsons
- September 8, 2009: Conceptual approval of reuse recommendations

- November 16, 2009 Authorization to hire Legal Council to negotiate water agreement

**Committee/Commission Review and Actions:**

**Alternatives:**

**Attachments:**

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

No action necessary

***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:** December 7, 2009

**Agenda Item Number (Assigned by City Clerk):** 2

**Agenda Item Wording:** Financial Update

**Deadline for Action:**

**Submitting Department:** Administrative Services

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

**Department Recommendation:** That the City Council receive the interim financial report and provide direction to staff as appropriate.

**Summary**

Municipal finance has its own unique idiosyncrasy. However, several points are worth remembering as the City Council directs the City's financial affairs.

1. ***The City has a segregated financial structure which operates independently of each other.*** In other words, the City has multiple lines of business which work independent of the other lines of business. This can appear confusing because one part of the City may be expanding while another area needs to contract.
2. ***The General Fund is highly dependent upon taxes which have substantially declined over the past three years.*** Sales and Property tax make up over 2/3 of the General Fund's revenues. Sales tax has declined over \$5 million since 2006/07 and property tax this year will have its first year over year decline since rates were decreased after Proposition 13 in 1978.
3. ***The General Fund's operating expenditures are mostly for personnel costs, Police and Fire being the major expenditure areas.*** Wages, Health Insurance, Pension and Overtime costs make up almost 70% of the General Fund's operating expenditures. 75% of the tax-supported expenditures are for Police and Fire.

**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** EF12/04/09  
(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.

4. ***The City has taken substantial actions over the last three years to rein in General Fund costs.*** The adopted 2009/10 General Fund budget was the second year of a two year budget. It had an \$8.5 million deficit. \$2.8 million of the deficit was solved by ongoing budget savings from 2008/09. The remaining portion of the deficit was solved from Council actions taken in 2009/10. Less than 40% of the budget solutions came from Police and Fire reductions, despite public safety accounting for 75% of the tax-supported expenditures.
5. ***State Take-aways compound the City's fiscal problems and probably will be an area of concern in the future because the State faces multiple year deficits.*** Over the years, the State has taken Visalia and other local agencies resources to solve the State budget. The impact to Visalia is over \$3 million a year.
6. ***In the face of declining revenues, the City faces a number of fiscal cost pressures, further straining fiscal resources.*** This next year, the City's five bargaining groups' MOUs expire, pension costs are projected to increase 25% over the next three years, employee and retiree health costs consume resources and a growing community warrants additional infrastructure and services.
7. ***Despite difficult times, past City Councils have set aside reserves which are helping Visalia better weather the fiscal storm.*** The City has substantial reserves; these reserves have been used to smooth out the 2008/09 and 2009/10 fiscal year. The Council will probably use some of these reserves in 2010/11. Nevertheless, no successful organization can draw upon reserves indefinitely and survive.

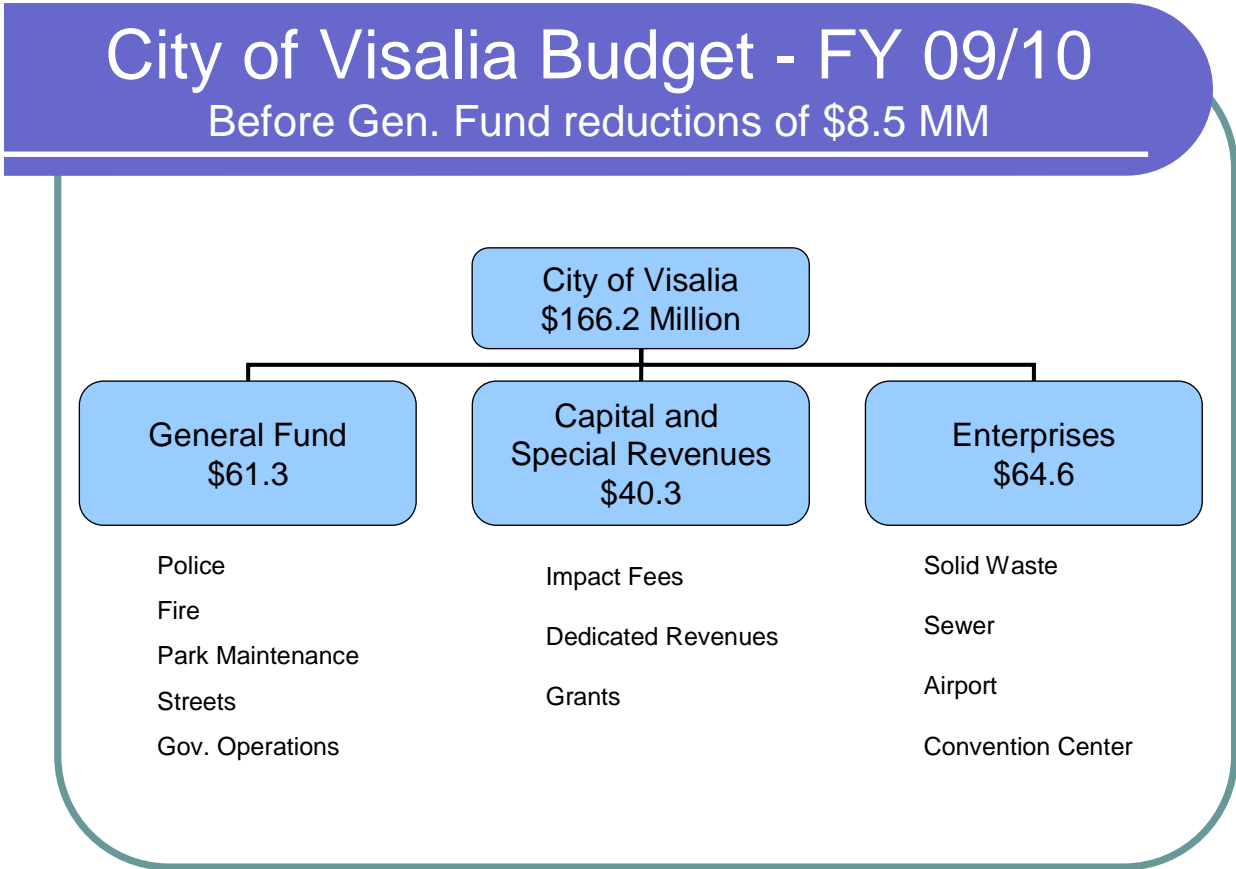
These several points lead management to come to several strategic conclusions, namely:

- To date, service reduction impacts to the public have been minimized.
- Reserves have been used to smooth out the impacts of declining revenues.
- Use of reserves needs to be minimized because the length and severity of the recession is unknown.
- Budget solutions to date have largely spared public safety.
- Future budget reductions will be hard because the less painful solutions have been implemented.

#### **Discussion:**

**Point 1: Funding Structure.** The City's budget can be divided into three categories: General Fund, Special Revenue Funds and City Business-like Funds. The three fund types are further divided into various activities. Collectively, these funds provide the Visalia residents with the services and capital assets as shown on the following page in Chart 1, Visalia's Budget Framework. These three groupings have different characteristics and are managed differently.

Chart 1  
 Visalia's Budget Framework



- **General Fund** – The General Fund is principally supported by non-restricted taxes, available for use at the discretion of the City Council. The General Fund supports the principal operating activities of the City: Police, Fire, Recreation, Park Maintenance, Streets and General Government. The recession has most impacted the General Fund as Sales and Property Taxes have declined over the last several years.
- **Special Revenues Funds (SRF)** - These revenues are restricted for specific uses, whether they are derived from taxes, impact fees or grants. Special revenue funds which are used to build capital assets have had to scale back their building plans as revenues have declined. Operating funds have not been scaled back yet, but may need to be reduced if revenues do not support future expenditures.
- **Enterprises or Business-like Funds** - The City's businesses of Waste Water, Solid Waste, Airport, Transit, Valley Oaks Golf, Convention Center and Building Safety strive to act like business entities, charging fees sufficient to recover costs and replace their capital assets. Airport and Transit receive significant Federal

and State grant revenues which supplement their fee revenues. The Convention Center receives a substantial subsidy from the General Fund to pay for the Convention Center building and subsidy operations by approximately \$3 million a year.

The enterprises have adjusted to the recession in different ways. Transit use has actually increased as riders have found the Transit service a cost effective alternative. The largest enterprises, Solid Waste and Waste Water, have not seen their revenues decline in the recession. Valley Oak Golf has had some decline in revenue, but the Golf Course has been able to handle its revenue losses. Building Safety and Convention Center have taken significant steps to reduce cost as their revenues have declined.

The bottom line is that the City is not a monolithic structure; rather, the City is a bundle of activities unified by the Council directing a multi-line business. This fact sometimes confuses the electorate as they see the City spending money in one place and cutting costs somewhere else due to the City's funding structure.

***Take-away: The City's multiple lines of business require different approaches to managing the various parts of the City.***

**Point 2: General Fund Revenues.** The General Fund's primary revenue sources are sales and property taxes. These two revenue sources make up over 2/3 of the General Fund revenues. For Visalia, Sales Tax has and is the most important revenue source. In fact, Visalia has been very fortunate in developing a vibrant sales tax base that sets the standard for the South San Joaquin Valley. Consider Table I, Per Capita Sales Tax, 2008. The chart shows that for surrounding communities, Visalia exceeds the California average by a substantial amount and is better off than all other local communities on a per capita basis.

Table I  
Per Capita Sales Tax, 2008

Visalia	\$148
Bakersfield	145
Clovis	126
Hanford	124
Fresno	121
California	118
Tulare	111
Dinuba	83
Porterville	80

Source: MuniServices

The sales tax dominance of Visalia has provided more resources than other communities, on a per capita basis. The other communities, however, have found ways to make up the revenue gap by implementing tax or other measures to enhance their revenue base. Visalia has not enacted these measures, at least not to the same extent, to enhance the City's General Fund as shown in Table II, Tax Alternatives of Tulare County Cities.

Table II  
Tax Alternatives of Tulare County Cities

City	Share of 1% Property Tax Rate	Sales Tax Override	Utility Users Tax Rate	Cap on Utility Tax	TOT tax
Dinuba	<b>18.79%</b>	<b>0.75%</b>	<b>7%</b>	\$2500 per utility	10%
Exeter	15.32%	<b>none</b>	5%	\$1200 per year	4%
Farmersville	11.81%	0.50%	<b>none</b>		<b>none</b>
Lindsay	14.79%	0.50%	6%		<b>15%</b>
Porterville	11.80%	0.50%	6%		8%
Tulare	14.09%	0.50%	<b>6%</b>	No cap	10%
Visalia	<b>11.57%</b>	0.25%	<b>none</b>		10%
Woodlake	15.76%	<b>none</b>	6%	\$560 per hookup	<b>none</b>
<b>Low</b>					
<b>High</b>					

Over the long run, the City's sales tax has been surprisingly steady as shown in Chart II, Revenue: Sales Taxes (1982 – 2010). On average, Sales Tax has grown 4% a year and provided a stable revenue base for Visalia's essential services. Recently, however, Sales Tax has taken a dramatic and sustained decline. This decline reduces the General Fund's ability to support basic tax-supported services. Chart III, Sales Tax Revenue, shows how the number one General Fund revenue source has declined \$5 million since its peak in 2006/07.

The Sales Tax decline is unprecedented in our lifetimes. Although the City has had a pause or even a slight dip, Chart II shows that no decline has been for several years and nothing approaches the sustained decline Visalia has experienced.

Chart II

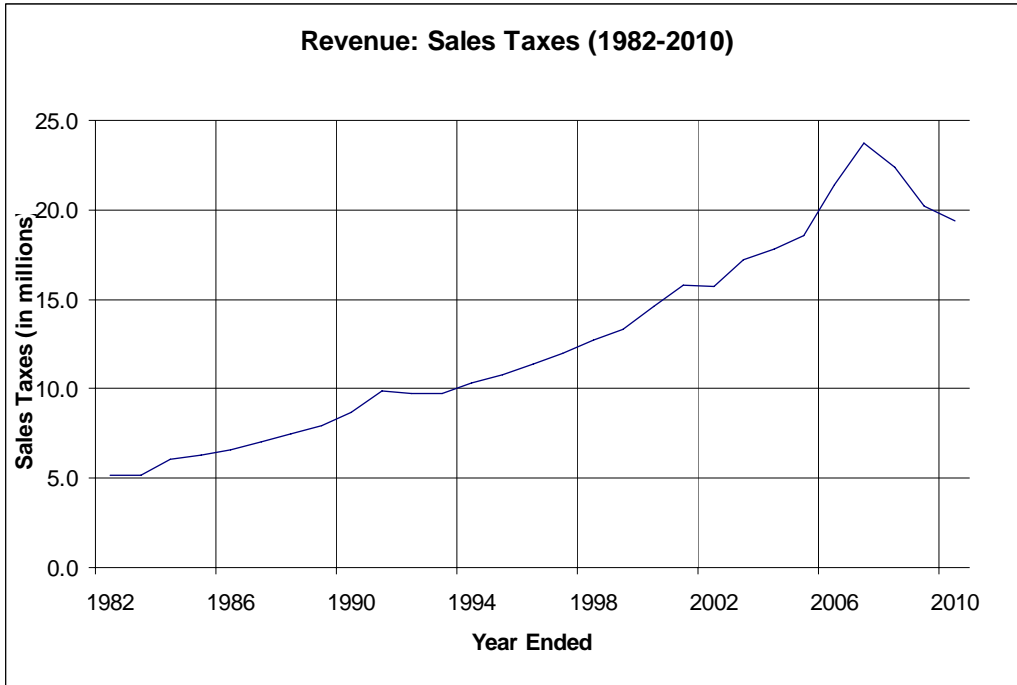
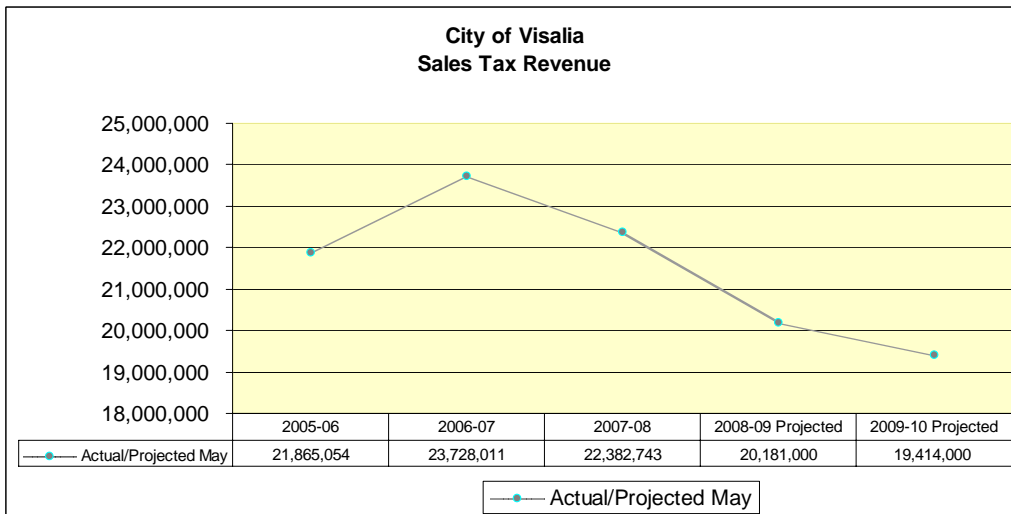


Chart III



Property Tax has been steadier than sales tax but is also in decline this year for the first time since Prop. 13 when rates were reduced. Property tax tends to be steady because increases are capped by Prop 13 assessment caps which state that property valuations for property tax purposes may only rise 2% a year unless the property is sold. This cap tends to understate the rise in property values. The problem this year is that property values rose and declined so quickly that the large decline in properties purchase from 2004-2008 is overwhelming the smaller, 2% a year increase in property values for properties

purchased prior to that period. The result is that Visalia is experiencing a 5% decline in property tax revenues this year, something unprecedented since Prop. 13.

**Take-away: Visalia’s General Fund is highly dependent upon Sales and Property taxes which have declined recently. Further, Visalia’s General Fund revenue base is more narrow than other Tulare County cities.**

**Point 3: General Fund Expenditures.** City Staff ran a report of all expenditure object codes in the General Fund for Fiscal Year 2008/09 and then ranked the object codes by total expenditures. Five of the top nine expenditure codes are for personnel related expenditures, making up almost 70% of the General Fund expenditures. Table III, General Fund Operating Expenditures in Millions, details the results of that analysis.

Table III  
General Fund Operating Expenditures in Millions

General Fund Operating Budget		
Projected Costs for 2009/10		
Full-time Employee Wages	23.9	44.1%
Group Health Insurance	5.6	10.3%
Public Safety PERS	4.0	7.4%
Misc. PERS	2.0	3.7%
Overtime	<u>1.8</u>	3.3%
Personnel Subtotal	37.3	68.8%
All other		
Professional Services	2.4	4.4%
Net Transfer Out	3.1	5.7%
Edison	1.5	2.8%
Other Expenditures	<u>9.9</u>	18.3%
All Other Subtotal	<u>16.9</u>	31.2%
<b>Total</b>	54.2	100.0%

The table underlines the importance of managing General Fund personnel expenditures. If those costs are not managed, the fund will easily get out of balance. Table IV, Expenditures by Department, considers the 2007/08 General Fund budget and shows the net expenditures supported by taxes. Notice that 75% of the tax supported expenditures are for Police and Fire. The Convention Center has been included in the analysis because the Convention Center receives a large General Fund contribution each year.

Table IV  
Expenditures by Department

General Fund Budget				
2007/08				
All Amounts in Millions				
	Budget	Less Fee and Grant Revenue	Tax Supported Budget	Percentage
Administration	4.1	(3.3)	0.8	1.9%
Administrative Services	3.3	(2.9)	0.4	0.9%
Community Development	3.6	(2.7)	0.9	2.1%
Engineering	5.4	(3.3)	2.1	5.0%
Housing and Economic Development	1.0	(0.4)	0.6	1.4%
Police	24.6	(2.8)	21.8	51.4%
Fire	10.9	(0.5)	10.4	24.5%
Public Works	2.9	(2.3)	0.6	1.4%
Park and Rec	5.7	(2.6)	3.1	7.3%
General Fund Expenditures	61.5	(20.8)	40.7	96.0%
Convention Center	5.0	(3.3)	1.7	4.0%
General Fund with Convention Center	66.5	(24.1)	42.4	100%

***Take-away: Personnel related expenditures make up 70% of the General Fund. Police and Fire expenditures make up 75% of the tax supported General Fund expenditures.***

**Point 4: Budget Efforts to date.** Prior to the adoption of the 2008/10 two year budget, the City had begun taking budget saving actions including contacting out more work and hiring personnel in development related activities on a time-limited basis. However, major efforts to reduce costs began in 2008 after the budget was adopted. The primary source of budget savings has come from reducing employee positions. Chart III, City Employees as of 2009, provides a graphic of employees over the last 20 years in four categories: General Fund Public Safety, Measure T, Enterprises and All Other Employees.

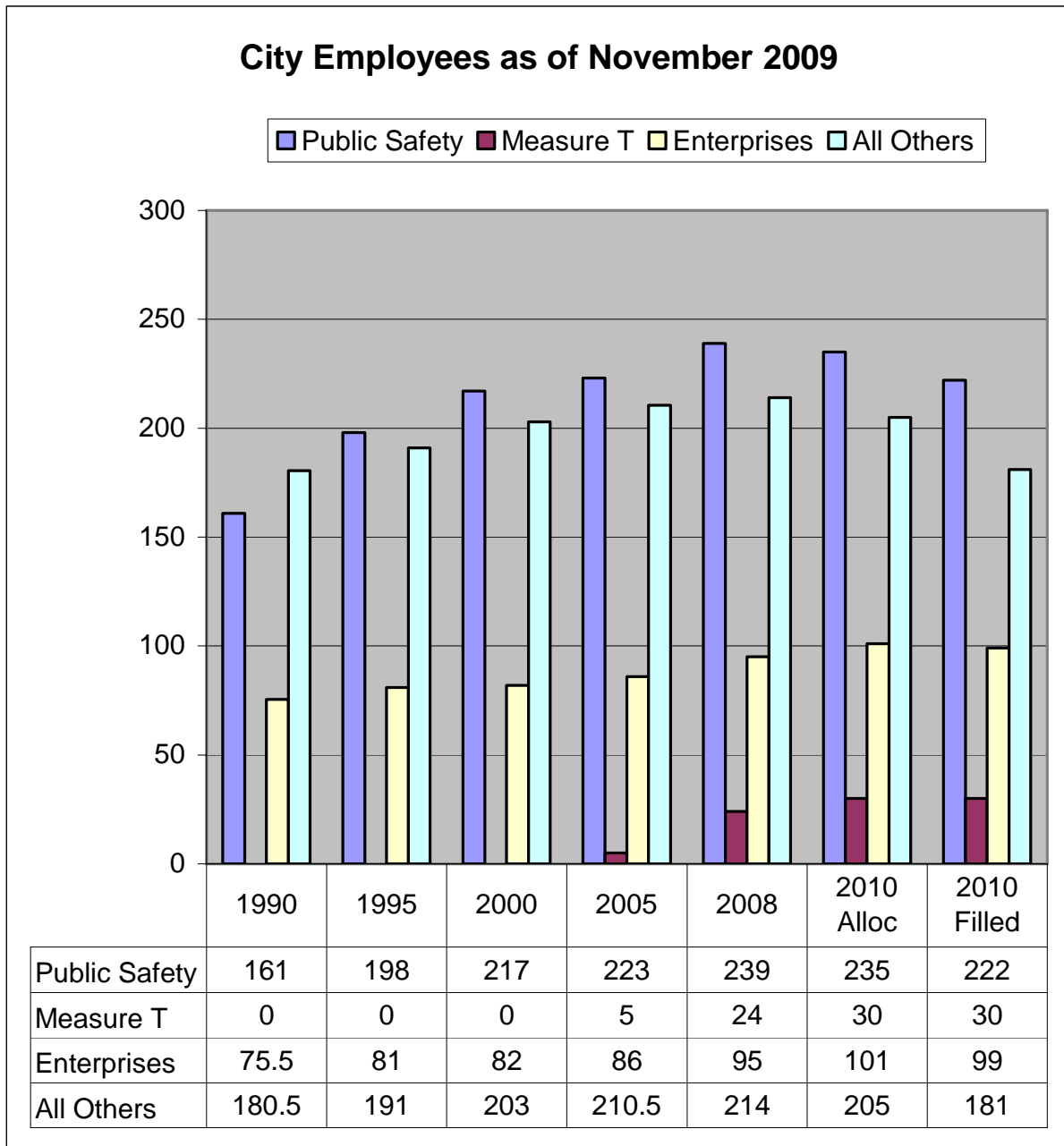
Note that the actual filled all other (non-public safety, non-enterprise) positions as of November, 2009 is 0.5 more than in 1990. Further, several additional positions have been or will come open due to retirements and layoffs which will reduce this number further by the end of the calendar year. In contrast, Public Safety positions in that period of time have grown by 62 positions, not including Measure T employees. Including Measure T employees, Public Safety positions have increased by 92 positions in the last 20 years.

Notice also that the Public Safety bars have not declined until this fiscal year. The peak for non-Public Safety employees was 2006/07. Since then, these positions have declined.



Now consider the difference between the 2010 Allocated Positions and the Filled positions. The difference between these two numbers represents the frozen positions. No Measure T positions are frozen. Two enterprise positions are frozen. 13 Public Safety positions are frozen and 24 Non-public Safety General Fund positions are frozen. The majority of the budget cutting has been away from Public Safety despite the fact Public Safety makes up 75% of the tax-supported General Fund.

More telling still is the number of eliminated positions since the peak employment. Public Safety has eliminated 4 positions. All other positions have been reduced by 9.



Finally, public safety represented 2 out of every 5 City employees 20 years ago. Today, ½ of all City employees are Public Safety Employees.

**Take-away: Most of the long-term savings in the General Fund has come from holding vacant and eliminating non-Public Safety positions.**

**Point 5: State Take-aways.** In the last 20 years, the State of California has had a number of budget crises. With each crisis, the State has looked to find ways to solve their budget shortfalls. Unfortunately for local governments, one of the least painful alternatives for the State is to take local governmental revenues. The impact to Visalia is substantial as shown in Table V, Visalia’s losses due to State Take-Aways.

Table V  
Visalia’s losses due to State Take-Aways  
All Amounts in Millions

State Take-Aways			
Amounts in Millions			
Actions	Affected Funds	Annual Loss	One-time Loss
ERAF - Property Tax Take	GF	3.2	
Property Tax Loan	Gf		2.0 *
Loss of Teeter Payments	GF		2.3
Property Tax Administration Fee	GF	0.5	
Vehicle License Admin. Fees	GF	0.5	
Booking Fees	GF	0.3	
Non-payment of Mandated Cost	GF	0.2	
Gas Tax Deferment	Gas		1.0
Prop 42 Sales Tax	Gas	1.0	
Redevelopment Take-Aways	RDA		2.1 **
Transit Assistance	Transit	1.0	
	Total	6.7	7.4
* Loan is supposed to be paid back in 3 years			
** Current year take-away is unusually large			

The most recent Legislative Analyst State Budget forecast predicts \$20 billion a year deficits for the next 5 years despite some return in revenue growth. These deficits are partly due to the State’s recent practice of borrowing to solve the current year deficit. This becomes a concern for Visalia because the State has demonstrated that during fiscally challenging times, local governments have been called upon to help fill the State’s fiscal gap.

**Take-away: The State will probably take from Visalia more revenues to solve its budget shortfall in the future.**

**Point 6: Cost Drivers.** On the expenditure side, a number of cost pressures complicate the City's ability to balance its budget. As the City prepares next year's budget, the manner in which these cost pressures are handled will greatly influence the budget development. Some of the main drivers are:

- **Employee Compensation.** 44% of the General Fund operating budget is devoted to full-time employee wages. All five bargaining groups have Memorandum of Understanding (MOU) agreements expiring as of June 30, 2010. It is important to note that 4 bargaining groups received a 4% wage increase this past year. Group A, Police Management, received no wage increase as well as the City's confidential employees.
- **Pension Costs.** As of 6/30/07, Visalia had assets of \$192 million with California Public Employees Retirement System (CalPERS). In Fiscal Year 2008/09, CalPERS, like all pension funds, lost money. In CalPERS case, the loss was 23.4%. Translating this into assets lost to Visalia, the City's assets declined in excess of \$45 million. Because the City has a defined benefit plan, the City's contributions will need to be increased to repay the loss over time. Finance estimates that these catch-up payments will increase PERS contributions by 25% or \$1.5 million a year. This increase is delayed a year because of the way PERS does its accounting. The increases are expected to hit the City in 2011/12.
- **Health Care.** The City spends some \$10 million a year on employee and retiree health care. This valuable benefit attracts quality employees but remains an area of concern. The City has been successful recently in moderating health care cost increases, but continued efforts to control these costs are necessary to balance the City's budget.

*Take-away: The City's budget requires management of employee expenses.*

**Point 7: Reserves.** Governments throughout California have been struggling with budgets. Some recent headlines include:

**California hit by budget deficit, no quick solution in sight** China News, 2009-11-22

**Fresno's \$28 Million Budget Problem** Fresno Bee, 11/19/09

**Downtown Clovis Fire Station Closes Due to Budget Cuts,** ABC 30, 7/2/09

**55 cops to get layoff notices**

*35 other workers part of reduction; some sergeants will be demoted* May 1, 2009, Stockton Recorder

Fortunately, Visalia has so far been able to weather the fiscal storm better than others. Much of this is due to past Council's setting aside reserves. Past Council's have set up emergency reserves targeted at 25% of the General Fund. Past Council's have also set up a policy to deposit surplus revenues to the following Council priorities after the emergency reserve is funded:

- 45% Civic Center
- 45% Sports Park
- 5% Recreation Park
- 5% 198 Open Space

Total General Fund reserves as of 6/30/09 were as follows:

- \$18.9 million for designated capital projects
- 13.6 million for emergency reserves
- 1.6 million undesignated

\$34.1 million in General Fund Reserves

A more detailed analysis of reserves is shown as attachment #2. These reserves have declined over the last several years as Capital Projects have been completed, such as the Rawhide Stadium, and reserves have been used to fund operational costs. In fact, the Council authorized staff to access up to \$5.5 million of reserves this year for the following purposes at their July 13, 2009 Council meeting:

Potential Use of Reserves in 2009/10	Amount
Operational Shortfall	\$1,000,000
Potential State Property Tax Loan	\$2,000,000
Potential State Take-aways	\$ 500,000
Stop gap financing if proposed budget Solutions fall short of target	<u>\$2,010,000</u>
Total	\$5,510,000

Because the City has reserves, staff has been able to work on budget solutions which have minimized service disruption to the public while meeting the City's budgetary goals. The use of reserves, however, is not sustainable.

***Take-away: The use of City reserves has allowed the City to smooth out the budget so far; however, use of City reserves for operations is unsustainable.***

## **What does the Future Hold?**

With this proceeding background, Finance has created an abbreviated General Fund model to forecast the direction of the City's budget. The model lists the top revenue and expenditure categories and makes assumptions on the direction of these budget elements. The model is designed to give the Council a preliminary view of the City's upcoming budget and long-term challenges.

Table VI, General Fund Forecast, provides Finance's best assessment of next year's budget and future budgets. The bottom-line is that even with holding the line on all the actions taken to date, the projected 2010/11 General Fund budget is short \$1.5 million. This forecast is based upon several assumptions such as:

- The State does not take more money for local agencies
- No allowance has been made for additional employee compensation
- The revenue forecast does not further deteriorate
- The City is able to maintain the cost savings it has achieved via layoffs and vacancies.

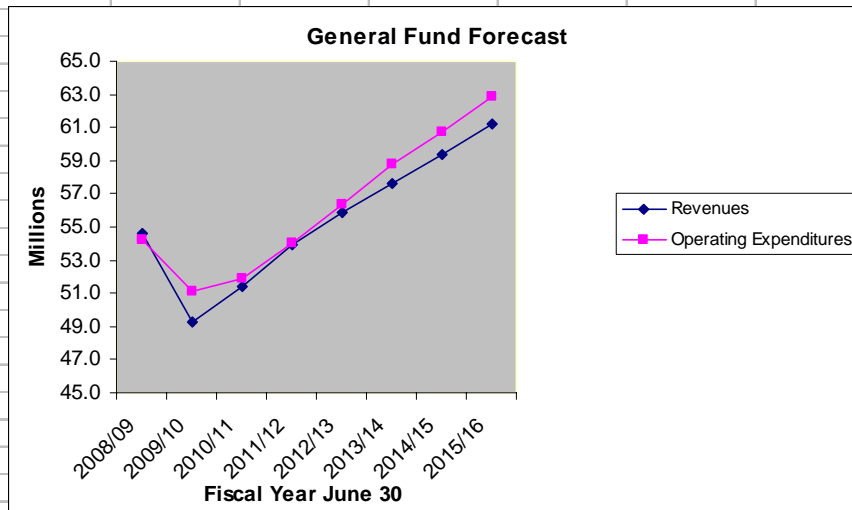
The City will feel pressure to add new positions and increase compensation. To the extent these positions are filled, other budgetary solutions will need to be found.

The strategic guidelines then are to:

- Remember that adding to the budget will increase the projected deficit
- Continue to seek new cost saving measures
- Look for long-term gain; the budget challenge will continue with us into the future.

Finance will periodically update the budget forecast as new information becomes available. Expenditures tend to follow forecast closely. Revenues tend to be more volatile. New information about sales tax is only available quarterly. Property tax information is set with the new tax roll, which is certified each July. And the State budget appears to be an ongoing source of unknowns.

Table IV



	2008/09	2009/10	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16
<b>Revenues</b>								
<b>(All Amounts in Millions)</b>								
Sales Tax	14.8	14.2	14.5	15.0	15.6	16.1	16.7	17.2
Property Tax	9.6	8.5	8.3	8.6	8.9	9.2	9.6	9.9
Property Tax - Triple Flip	5.5	4.3	4.6	4.7	4.9	5.1	5.2	5.4
Property Tax - VLF Swap	9.4	8.9	8.8	9.1	9.4	9.7	10.0	10.4
Allowance for Delinquencies		-1.5	-0.7	-0.3	0.0	0.0	0.0	0.0
Investment Earnings	0.9	0.4	0.9	1.2	1.2	1.2	1.2	1.3
Transient Occupancy Tax	1.9	1.7	1.9	2.1	2.1	2.2	2.2	2.2
Franchise Tax	2.1	2.2	2.2	2.3	2.4	2.4	2.5	2.6
Business License Fees	2.0	2.0	2.0	2.1	2.1	2.1	2.2	2.2
VUSD YSO contract	0.5	0.5	0.4	0.4	0.4	0.4	0.4	0.4
Street Maintenance Fees - City	0.5	0.5	0.5	0.5	0.5	0.6	0.6	0.6
Property Tax - Prior Supplementa	0.6	0.6	0.6	0.6	0.6	0.7	0.7	0.7
Real Property Tax Transfer	0.3	0.3	0.5	0.7	0.7	0.7	0.7	0.7
All Other Revenues	6.5	6.6	6.8	6.9	7.0	7.2	7.3	7.5
<b>Total</b>	<b>54.6</b>	<b>49.3</b>	<b>51.4</b>	<b>54.0</b>	<b>55.9</b>	<b>57.6</b>	<b>59.4</b>	<b>61.2</b>
<b>Expenditures</b>								
Full-time Employee Wages	23.9	23.1	23.1	24.0	25.0	25.9	27.0	28.1
Group Health Insurance	5.6	5.4	5.5	5.8	6.2	6.6	7.0	7.4
Public Safety PERS	4.0	3.7	3.9	4.2	4.6	5.1	5.2	5.3
Misc. PERS	2.0	1.8	1.8	2.1	2.3	2.5	2.6	2.6
Professional Services	2.4	2.4	2.4	2.4	2.5	2.5	2.6	2.6
Net Transfer Out	3.1	3.1	3.1	3.1	3.1	3.1	3.1	3.1
Overtime	1.8	1.6	1.8	1.8	1.9	2.0	2.0	2.1
Edison	1.5	1.6	1.6	1.7	1.8	1.8	1.9	2.0
Other Expenditures	9.9	8.5	8.7	8.8	9.0	9.2	9.4	9.6
<b>Total</b>	<b>54.2</b>	<b>51.1</b>	<b>51.9</b>	<b>54.0</b>	<b>56.4</b>	<b>58.8</b>	<b>60.8</b>	<b>62.8</b>
Available for Capital	0.4	-1.8	-0.5	-0.1	-0.4	-1.2	-1.4	-1.6
Capital Program	-2.0	-0.6	-1.0	-1.0	-1.0	-1.0	-1.0	-1.0
<b>Use of Reserves</b>								
Reserves - Teeter Advance		1.5						
Reserves - General Rservees		1.0						
Projected Surplus/(Deficit)	-1.6	0.1	-1.5	-1.1	-1.4	-2.2	-2.4	-2.6

**Prior Council/Board Actions:**

**Committee/Commission Review and Actions:**

**Alternatives:**

**Attachments:**

**Recommended Motion (and Alternative Motions if expected):** Receive the most recent Budget Update

*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:

# ACTION

## PLANNING COMMISSION AGENDA

CHAIRPERSON:  
Lawrence Segrue



VICE CHAIRPERSON:  
Adam Peck

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

MONDAY NOVEMBER 23, 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 7:02   | 3. CITY PLANNER AGENDA COMMENTS – Item #7 to be continued to December 14, 2009.   |
| 7:02 TO 7:02   | 4. CHANGES TO THE AGENDA – No changes   |
| 7:02 TO 7:02<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.  |
| 7:02 TO 7:36<br><br>Approved as recommended (Peck, Lane) 3-1 Soltesz voted no, Salinas absent<br><br>Open: 7:15<br>Close: 7:19<br><br>Spoke:<br>1. Matt Ainley (4creeks, Inc.) | 6. PUBLIC HEARING– Paul Bernal <ul style="list-style-type: none"> <li>a. Conditional Use Permit No. 2009-037: A request for a Planned Residential Development allowing the use of 50 foot wide lots as a part of the proposed Shannon Ranch 3 Tentative Subdivision Map Revision (Site Plan No. 08-137): A revision of existing tentative subdivision map by Bernard Te Velde, and Centex to subdivide 120.67 acres into 471 lots in the R-1-6 (Single Family Residential) zone. The site is located east of Mooney Boulevard along the Shannon Ranch Parkway alignment. APN: 078-120-12, 13, 19, 18 (Centex), 22</li> <li>b. Shannon Ranch 3 Tentative Subdivision Map Revision: A revision of existing tentative subdivision map by Bernard Te Velde, and Centex to subdivide 120.67 acres into 471 lots in the R-1-6 (Single Family Residential) zone. The site is located east of Mooney Boulevard along the Shannon Ranch Parkway alignment. APN: 078-120-12, 13, 19, 18 (Centex), 22</li> </ul> |



7:36 TO 8:26

## 7. PUBLIC HEARING – Paul Scheibel

Motion to continue to December 14, 2009, was approved (Peck, Lane)  
4-0 Salinas absent

General Plan Amendment No. 2009-03: A request by the City of Visalia to update the General Housing Element, Citywide.

Open: 8:25  
Close: Did not close

8:26 TO 8:36

## 8. DIRECTOR'S REPORT/PLANNING COMMISSION DISCUSSION:

- Planning Services Manager, Paul Scheibel updated the Commissioners that on November 18<sup>th</sup>, the Historical Preservation Advisory Committee voted to issue a demolition permit to the Larson Hotel buildings at Bridge and Main.

The Planning Commission meeting may end no later than 11:00 P.M. Any unfinished business may be continued to a future date and time to be determined by the Commission at this meeting. The Planning Commission routinely visits the project sites listed on the agenda.

For the hearing impaired, if signing is desired, please call (559) 713-4359 twenty-four (24) hours in advance of the scheduled meeting time to request these services. For the visually impaired, if enlarged print or Braille copy is desired, please call (559) 713-4359 for this assistance in advance of the meeting and such services will be provided as soon as possible following the meeting.

**THE NEXT REGULAR MEETING WILL BE HELD ON MONDAY, DECEMBER 14, 2009  
CITY HALL COUNCIL CHAMBERS, 707 WEST ACEQUIA**

8:36 TO 8:36  
Motion to Adjourn (Lane, Soltesz) 4-0 Salinas absent

## City of Visalia Agenda Item Transmittal

**Meeting Date:** December 7, 2009

**Agenda Item Number (Assigned by City Clerk):** 4b

**Agenda Item Wording:** Request authorization to file a Notice of Completion for Parcel Map 2006-23, located at the northeast corner of Packwood Avenue and Demaree Street.

**Deadline for Action:** None

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

**Contact Name and Phone Number:**

Chris Young, Assistant Community Dev. Director- 713-4392  
Norm Goldstrom, Associate Engineer 713-4638

**Department Recommendation:**

City staff recommends that City Council give authorization to file a Notice of Completion for Parcel Map No. 2006-23. All the necessary improvements for Parcel Map No. 2006-23 have been completed and are ready for acceptance by the City of Visalia. The Parcel Map No. 2006-23 was developed by Santa Maria LLC. Santa Maria LLC and has submitted a maintenance bond in the amount of \$15,694.00 (as required by the Subdivision Map Act) to guarantee the improvements against defects for one year. The completed improvements include landscaping which will be maintained by the private development.

**Summary/background:** N/A

**Prior Council/Board Actions:**

Final Map recording was approved at Council meeting of October 29, 2007.

**Committee/Commission Review and Actions:** The tentative Parcel Map 2006-23 was approved by Planning Commission on April 23, 2007.

**Alternatives:** N/A

**Attachments:** Location sketch/vicinity map

**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.): 1 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.

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

I hereby authorize filing a Notice of Completion for Parcel Map 2006-03.

***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:** December 7, 2009

**Agenda Item Number (Assigned by City Clerk):** 4c

**Agenda Item Wording:** Approve a three year utility billing contract with CalWater to bill and collect the City's waste water and solid waste charges.

**Deadline for Action:** January 1, 2010

**Submitting Department:** Public Works and Administrative Services

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

**Department Recommendation:**

That the City Council authorize the City Manager to sign an agreement to extend the City's utility billing agreement with CalWater for an additional three years.

**Summary/background:**

The City of Visalia provides solid waste and sewer services to the residents of Visalia. These services are billed by CalWater as part of their billing process. In addition to approximately 40,000 accounts that receive both the City and CalWater's services, CalWater bills approximately another 1,000 accounts that are solely City accounts.

CalWater then provides collection services and remit their billings to the City. For this service, CalWater then charges Visalia a per billing amount each month. The current amount is approximately \$38,000 a month.

CalWater has conducted an internal analysis of their costs and have asked for a substantial increase, from \$0.94 a billing to \$1.17 a billing for calendar year 2010 and \$1.29 a billing for calendar year 2011 and 2012 plus any company agreed wage increase for their general employees.

Although this increase is substantial, the real test is to consider what alternatives that the City has compared to CalWater. In the past, the City provided its own billing. In the mid-1990s, the City decided that it was more cost effective to contract this service to the private sector. Several

**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.

alternatives were considered including SoCal Gas and SCE. Both of these utilities will not commingle their bill. The City also considered Comcast but found that the billing overlap, the number of shared accounts, was only 50% or so. As a result, CalWater was the best alternative that the City could find.

If instead, the City decided to bring the billing in house, Finance has estimated that the per billing amount with City staff would cost between \$1.40 to \$1.60 a billing depending upon how many additional customer service representatives the City hired. Further, the collection process would become more difficult because CalWater will discontinue water service if an individual fails to pay their bill. The City utilities are required to be provided by local ordinance. As a result, the City has in the past placed unpaid utility bills on the tax rolls. The length of time between when the bill is not paid and when an item is placed on the tax roll is at least one year and sometimes longer.

As a result, the staff believes that despite the increase in cost, CalWater provides a great deal of value for their fee and is the low cost alternative in providing billing services.

**Prior Council/Board Actions:** The original agreement was signed over ten years ago with CalWater.

**Committee/Commission Review and Actions:**

**Alternatives:** The City could perform this service internally, but probably as a higher cost.

**Attachments:** Proposed CalWater contract

**Recommended Motion (and Alternative Motions if expected):** I move that the City Manager be authorized to sign the 3 year billing agreement with CalWater for the City's utility billing.

***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:** December 7, 2009

**Agenda Item Number (Assigned by City Clerk):** 4d

**Agenda Item Wording:** Authorize the City Manager to execute the Reimbursement Agreement for Tentative Parcel Map No. 2006-05, American Industrial Park West, located east of Camp Drive and south of Goshen Avenue. APN: 073-090-075

**Deadline for Action:** N/A

**Submitting Department:** Community Development Department

**Contact Name and Phone Number:**

Chris Young, Assistant Community Dev. Director 713-4392  
Adrian Rubalcaba, Associate Engineer 713-4271

**Department Recommendation:**

Staff recommends that City Council authorize the City Manager to execute the reimbursement agreement for Tentative Parcel Map No. 2006-05, American Industrial Park West.

**Summary:**

Council approved recordation of the final parcel map for Tentative Parcel Map No. 2006-05 on December 4, 2006. The subdivision created 46 parcels in the Light Industrial zone. Supplemental offsite improvements to Camp Drive, a collector street, were required as part of the executed subdivision agreement. This work included curb, gutter, storm drainage improvements, pavement and asphalt overlay, street lights, and curb returns, amounting to \$ 162,415.79 in total construction costs. Improvements were completed in January 2009 and subsequent filing of a Notice of Completion was authorized by City Council on February 17, 2009.

**Background:**

Resolution No. 2008-58 adopted by City Council on December 1, 2008 established new changes to Visalia Municipal Code Chapter 16.44 to revise the Transportation Impact Fee program. Under Resolution No. 2008-58, a development project with a signed subdivision agreement and final parcel map in effect prior to the effective date of said Resolution shall be grandfathered into the prior Transportation Impact Fee program, established by Council Resolution 2004-117. In accordance with Resolution No. 2004-117 adopted by City Council on October 18, 2004, the City will reimburse the Developer for improvements made to Circulation Element Arterial and Collector streets.

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.): 1

Review:

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

Finance N/A  
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

Offsite improvements to the collector street, Camp Drive, were required as part of the subdivision and completed by the Developer. Reimbursement by the City for said improvements will be through cash payment for all amounts spent in connection with the planning, financing, acquisition and development, construction and inspection, engineering, administration, and consulting, and as further stated and conditioned per the reimbursement agreement.

The reimbursement agreement for Tentative Parcel Map No. 2006-05, American Industrial Park West, was reviewed by the Development Reimbursement Review Committee (DRRC) on October 28, 2009. The DRRC is comprised of staff from the Community Development and Finance Departments. The DRRC reviewed the reimbursement agreement to ensure that the costs are reasonable as compared to the City's costs for comparable capital projects and also compared to a unit construction cost schedule focused on the Visalia construction market prepared for the City by an engineering consultant.

**Prior Council/Board Actions:**

Council authorized recordation of the final parcel map for Tentative Parcel Map No. 2006-05, American Industrial Park West, on December 4, 2006.

Council authorized the filing of a Notice of Completion for Tentative Parcel Map No. 2006-05, American Industrial Park West, on February 17, 2009.

**Committee/Commission Review and Actions:**

Tentative Parcel Map No. 2006-05, American Industrial Park West, was approved by Planning Commission on March 13, 2006.

On October 28, 2009 the Developer Reimbursement Review Committee reviewed and recommended for approval the reimbursement for public improvements associated with Tentative Parcel Map No. 2006-05, American Industrial Park West, for Camp Drive Improvements.

**Alternatives:** N/A

**Attachments:** Location Map, Final Map, Reimbursement Agreement

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

"I hereby move to authorize the City Manager to execute the Reimbursement Agreement for Tentative Parcel Map No. 2006-05, subject to City Attorney approval as to form."

**Copies of this report have been provided to:**



***Environmental Assessment Status***

**CEQA Review:**

Required? Yes No

Review and Action: Prior:  
Required:

**NEPA Review:**

Required? Yes No

Review and Action: Prior:  
Required:

**City of Visalia  
Agenda Item Transmittal**

**Meeting Date:** December 7, 2009

**Agenda Item Number (Assigned by City Clerk):** 4e

**Agenda Item Wording:** Award a construction contract and authorize the City Manager to execute an agreement for RFB No. 09-10-27 for the Center Avenue Improvements (Conyer Street to Bridge Street - Project No. 8016) in the amount of \$178,084.00, to the low bidder, Lockwood General Engineering Inc.

**Deadline for Action:** December 30<sup>th</sup>, 2009 (30 days after bid opening)

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

**Contact Name and Phone Number:**

Rebecca Keenan, Civil Engineer – 713-4541  
Chris Young, Assistant Community Dev. Director - 713-4392  
Adam Ennis, Engineering Services Manager - 713-4323

**Department Recommendation:** Award a construction contract and authorize the City Manager to execute an agreement for RFB No. 09-10-27 for the Center Avenue Improvements (Conyer Street to Bridge Street - Project No. 8016) in the amount of \$178,084.00, to the low bidder, Lockwood General Engineering Inc.

**SUMMARY (Center Avenue Improvements Project)**

The Center Avenue Improvement Project consists of installation of new landscape islands on the south side of Center Street, between Conyer Street and Bridge Street. The project also includes the addition of ADA truncated domes at the existing curb ramps at the various intersections within the City's right of way. Work related to the new landscape islands will include the demolition of existing pavement, removal of existing pavement subgrade (aggregate base), installation of new landscape curb, and installation of a new landscape irrigation system. In addition to the new landscape islands, the work will also include the installation of new irrigation laterals to existing tree wells along the south side of Center Avenue. Currently, these trees are hand watered. Providing the new laterals will eliminate the need to hand water these trees in the future.

**BACKGROUND**

This Project is financed by Community Development Block Grant Recover Act (CDBG-R) funds through the Federal Housing and Urban Development Department(HUD), which was allocated through the American Recovery and Reinvestment Act of 2009 (ARRA). Since the project is funded through this federal grant, it is subject to the following requirements: Federal Prevailing Wage requirements of Davis Bacon Act (DBA), the Contract Work Hours and Safety Standards Act (CWHSSA), the Copeland Act (Anti-Kickback Act), the Fair Labor Standards Act (FLSA),

**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.): 1

**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.

and the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended.

The original engineer's estimate for the Center Avenue Improvement Project (Conyer Street to Bridge Street) was \$155,000.00. This original estimate did not include the cost of enhanced traffic control which is now being required for this project (per an addendum issued during the bid process). This "enhanced" traffic control criteria was added to minimize the impacts to businesses in the area. The construction is planned to be completed by April 2010.

**Project Award**

On November 30, 2009, the City of Visalia opened four (4) bids submitted for the Center Avenue Improvements Project, Conyer Street to Bridge Street. The results of the bid opening are as follows:

	Contractor	Address	Bid Amount
1.	Lockwood General Engineering Inc.	10533 W. Goshen Ave., Visalia, CA 93291	<b>\$178,084.00</b>
2.	Dunns Sand Inc.	15602 Ave. 296, Visalia, CA 93292	<b>\$190,830.00</b>
3.	W. Jaxon Baker, Inc	P.O. Box 99248, Redding, CA 96099	<b>\$210,483.00</b>
4.	Lee's Paving Inc.	1212 N. Plaza Drive, Visalia, CA 93291	<b>\$315,239.50</b>

Lockwood General Engineering Inc. was the low bidder. This company has completed projects for the City of Visalia in the past including, the Transit Center to Main Street Pedestrian Corridor (TE Project). This Project was completed satisfactorily. Staff has checked references listed by the Contractor, and has received a positive response from Mr. Randy Groom at the Visalia Unified School District. The Contractor most recently completed a relocatable building project at the Golden West High School for School District. City staff also contacted Mr. David Jacobs at Quad Knopf, and received a positive response from him. While previously employed at the City of Visalia, Mr. Jacobs worked with Lockwood on the new signal installation located at the intersection of Ferguson and Dinuba Streets.

The total estimated cost for the Project, including construction (**based on low bid results**), project management, inspection, staking and testing is:

<b>Center Avenue Improvements Estimate</b>	<b>\$195,000.00</b>
--	---------------------

Currently there are funds in the amount of \$210,373.00 available for the Center Avenue Project. Of this amount, \$193,200 is available for construction and \$17,173.00 is available for internal Administrative costs. As stated above, a total of \$195,000.00 will be needed for the project. Currently, there is sufficient funding available for this project.

**Financial Summary:**

Funds are available from the Community Development Block Grant Recovery Act (CDBG-R), administered through the Federal Housing and Urban Development Department, specifically from the American Recovery and Reinvestment Act of 2009. \$193,200 is available for construction and \$17,173.00 is available for internal Administrative costs.

**Prior Council/Board Actions:**

None

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

**Alternatives:** Do not award contract.

**Attachments:**

- Exhibit # 1 – Location Map,
- Exhibit #2 – McAuliff Bid Opening Spreadsheet
- Exhibit #3 – Contractor Disclosure Statement

**Recommended Motion (and Alternative Motions if expected):** I move to award a construction contract and authorize the City Manager to execute an agreement for the Center Avenue Improvement Project, Conyer Street to Bridge Street to the low bidder, Lockwood General Engineering Inc. in the amount of \$178,084.00 (RFB No. 09-10-27, Project No. 3011-8016)

**Financial Impact:**  
**Center Avenue Improvements Project, Conyer Street to Bridge Street**

**Funding Source:**

Account Number: 3011-8016

**Budget Recap:**

Total Estimated cost: \$195,000	New Revenue:	\$
Amount Budgeted: \$210,373.00	Lost Revenue:	\$
New funding required: \$00.00	New Personnel:	\$
Council Policy Change: Yes ___	No <u>X</u>	

**Environmental Assessment Status**  
**Center Avenue Improvement Project, Conyer Street to Bridge Street**

**CEQA Review:**

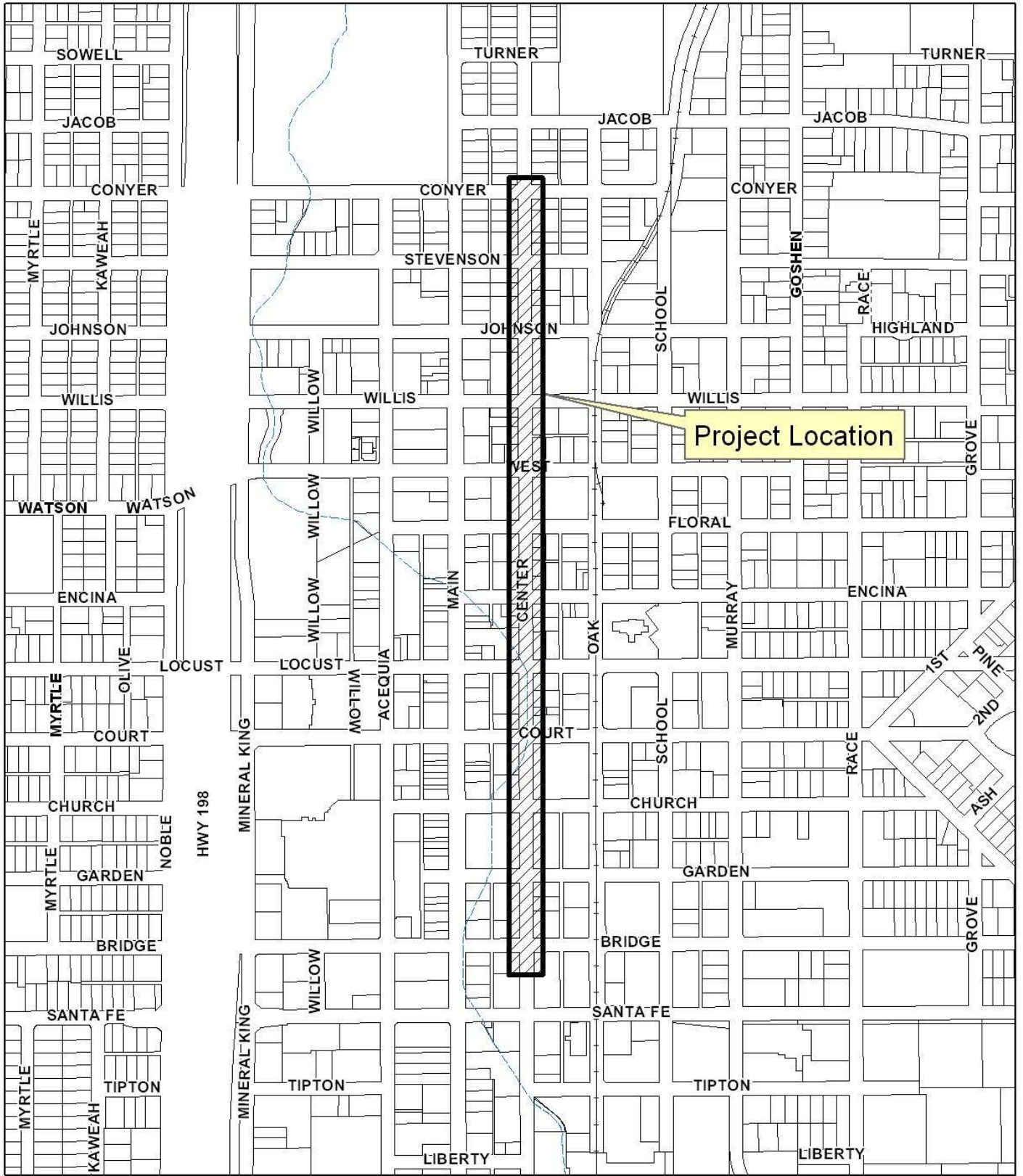
Required?	Yes	X	No	
Review and Action:	Prior:			Categorical Exemption, completed July 16, 2009
	Required:			

**NEPA Review:**

Required?	Yes	X	No	Categorically excluded per 24 CFR 58.35(a)(1)
				Document dated 9-21-09
Review and Action:	Prior:			
	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:



## Center Avenue Improvements Conyer St to Bridge St



**LOW BIDDER**

**BIDDER 2**

**BIDDER 3**

**BIDDER 4**

ITEMS	UNIT	QTY	ENGINEERS ESTIMATE		Lockwood General Engineering Inc.		Dunns Sand Inc.		W. Jaxon Baker		Lee's Paving Inc.		
			UNIT COST	TOTAL	UNIT COST	TOTAL	UNIT COST	TOTAL	UNIT COST	TOTAL	UNIT COST	TOTAL	
<b>Center Avenue Improvements</b>													
1	Mobilization/Demobilization, including final site clean-up	LS	1	\$5,500.00	\$5,500.00	\$13,000.00	\$13,000.00	\$1,500.00	\$1,500.00	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00
2	Prepare, implement and Maintain Plan for Traffic Control System/Construction Area Signs (IMSA or ATSSA Certified)	LS	1	\$5,500.00	\$5,500.00	\$13,500.00	\$13,500.00	\$15,000.00	\$15,000.00	\$38,909.00	\$38,909.00	\$35,000.00	\$35,000.00
3	Clearing and Grubbing including Sawcut and removal of Pavement and Aggregate Base, Disposal Wastes, Demolition, and protection of existing.	LS	1	\$5,500.00	\$5,500.00	\$24,000.00	\$24,000.00	\$20,000.00	\$20,000.00	\$60,000.00	\$60,000.00	\$70,480.00	\$70,480.00
4	Landscape Irrigation System, complete and in place.	LS	1	\$69,300.00	\$69,300.00	\$38,900.00	\$38,900.00	\$45,000.00	\$45,000.00	\$40,858.00	\$40,858.00	\$81,007.50	\$81,007.50
5	Construction of Landscape Curb per City Standard C-7	LF	712	\$11.00	\$7,832.00	\$20.00	\$14,240.00	\$15.00	\$10,680.00	\$15.25	\$10,858.00	\$30.00	\$21,360.00
6	Trench Resurfacing for Landscape Irrigation, complete and in place.	LF	2610	\$16.50	\$43,065.00	\$15.00	\$39,150.00	\$11.00	\$28,710.00	\$7.00	\$18,270.00	\$20.00	\$52,200.00
7	One foot wide, Full Depth Hot Mix Asphalt Paveout for Landscape Curb, complete and in place.	TON	25	\$143.00	\$3,575.00	\$680.00	\$17,000.00	\$200.00	\$5,000.00	\$335.00	\$8,375.00	\$766.00	\$19,150.00
8	Install Clean Sandy Loam Soil and provide Grading within Planters	CY	61	\$6.60	\$402.60	\$54.00	\$3,294.00	\$40.00	\$2,440.00	\$67.00	\$4,087.00	\$247.00	\$15,067.00
9	Detectable Warning Surface per City Standard C-27	EA	41	\$303.00	\$12,423.00	\$300.00	\$12,300.00	\$500.00	\$20,500.00	\$411.00	\$16,851.00	\$700.00	\$28,700.00
10	Signing, Striping, and Pavement Markings, Complete and In Place.	LS	1	\$2,750.00	\$2,750.00	\$2,700.00	\$2,700.00	\$1,000.00	\$1,000.00	\$2,275.00	\$2,275.00	\$2,275.00	\$2,275.00
<b>Total</b>					\$155,847.60		\$178,084.00	**	\$149,830.00		\$210,483.00	**	\$335,239.50

\*\* Error, written amount is: "one hundred and ninety thousand eight hundred and thirty dollars". \$190,830.00

\*\* Error in addition. Written amount is "Three hundred fifteen thousand two hundred thirty nine dollars and fifty cents". \$315,239.50

2012



# CITY OF VISALIA

## Disclosure Contractors and Consultants

**NAMES OF PRINCIPALS, PARTNERS, AND/OR TRUSTEES**

Firm Name LOCKWOOD GENERAL ENGINEERING INC.  
Firm Address 10538 W BOSTON AVE VIS, CA 93291

List the names of all principals, partners, and/or trustees. For corporations provide names of officers, directors and all stockholders owning more than 10% equity interest in corporation:

Tom A. Lockwood PRESIDENT - 100%

12/02/09  
Date

[Signature]  
Signature  
Tom A. Lockwood  
Print Name & Title  
PRESIDENT

Date

Signature  
Print Name & Title



**City of Visalia  
Agenda Item Transmittal**

**Meeting Date:** December 7, 2009

**Agenda Item Number (Assigned by City Clerk):** 4f

**Agenda Item Wording:** Award Jefferson Park Sidewalk Improvements to Dunn's Sand Inc., per specifications of RFB 09-10-29 and authorize the City Manager to execute a contract for renovations to the Anthony Community Center.

**Deadline for Action:** December 7, 2009

**Submitting Department:** Parks and Recreation Department

**Contact Name and Phone Number:**

Jim Bean, Parks and Urban Forestry Manager, 713-4564  
Jeannie Greenwood, Recreation Manager, 713-4042

**Department Recommendation:**

Staff recommends that Dunn's Sand Inc., be awarded the Jefferson Park Sidewalk Improvements per specifications of RFB 09-10-29 and that Council authorize the City Manager to execute a contract for renovations to the Anthony Community Center.

**Project Funding**

These projects are funded by the Community Development Block Grant Recovery Act (CDBG-R) through the Federal Housing and Urban Development Department. (HUD) Specifically, on February 17, 2009 the U.S. Congress passed the American Recovery and Reinvestment Act of 2009, (ARRA) The recovery act allocated Community Development Block Grant (CDBG) funding to the states and local governments to carry out, on an expedited basis, eligible activities under the CDBG Program and therefore is subject to the Federal Prevailing Wage requirements of the Davis Bacon Act. The deadline requirement to award this bid is 12-21-09. Two projects were awarded to the Parks and Recreation Department totaling \$106,326. However, only the Jefferson Park Improvements are being submitted for Council's consideration at this time. The Anthony Community Center Improvement project will be completed in a few phases and contracts will be awarded over the next two to three months.

**Projects**

**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 Jefferson Park Sidewalk Improvement project is for public sidewalk and handicap access. Approximately three hundred and sixty feet of new sidewalk will be installed on the north end of Jefferson Park (700 S. Watson) just south of the large existing Valley Oak trees with a handicap ramp being installed on the southeast corner of Watson and Myrtle. There will also be a new sidewalk installed on the west side of the park along Watson Street, which is approximately four hundred and sixty feet long. The sidewalk was designed with radius at the corners, because there is also another approved CDBG grant that will be used to add a new sidewalk on the south end of the park, which will complete the walking loop around the park.

On October 30th, 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.

<b>Bidders Name</b>	<b>Cost</b>	<b>Place of Business</b>
Dunn's Sand Inc.	\$29,904.80	Visalia, CA
Sierra Range Construction	\$30,301.50	Visalia, CA
R&C Construction	\$32,546.00	Fresno, CA
Mass X, Inc.	\$41,240.00	Fresno, CA
BDS Construction	\$42,622.50	Chowchilla, CA
Garrett Thompson Construction	\$48,782.50	Modesto, CA
Lee's Paving	\$63,857.75	Visalia, CA

Staff has called the references listed and all were very positive with their level of work. Dunn's Sand Inc., was the lowest most qualified bidder at \$29,904.80 for the Jefferson Park Sidewalk Improvement Project, which will be paid at prevailing wage.

The Anthony Community Center renovation project will make improvements to the 50 year old building. This project involves the replacement of the rubber matt flooring in the main room and improvements to the restrooms that will bring them up to ADA compliance. This will require the removal and addition of plumbing and fixtures, expanding and moving doorways and the installation of new partitions. Staff has yet to release an RFB for these activities. Due to the grant time constraints, staff is requesting authorization for the City Manager to enter into contracts to perform the renovation. All contracts will be within the City Managers authority (\$100,000 or less) and will follow the City's Purchasing policies.

**Prior Council Actions:**

Council authorized the Jefferson Park Sidewalk Improvement CDBG-R project on June 1, 2009.

**Attachments:**

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

I recommend that Dunn's Sand Inc., be awarded the Jefferson Park Sidewalk Improvement Project per specifications of RFB -09-10-29.

***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)*

**City of Visalia  
Agenda Item Transmittal**

**Meeting Date:** December 7, 2009

**Agenda Item Number (Assigned by City Clerk):** 4g

**Agenda Item Wording:** Award the construction contract for the Ben Maddox Way/Highway 198 "overcrossing" to the low bidder (Emmett's Excavation) in the amount of \$4,801,446.98. The project number is 1111-720000-0-0-9242-2004.

**Deadline for Action:** December 7, 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 award the construction contract for the Ben Maddox Way/ Highway 198 "overcrossing" to the low bidder (Emmett's Excavation) in the amount of \$4,801,446.98, Project Number 1111-720000-0-0-9242-2004. This project is funded by American Recovery Reinvestment Act (ARRA), SAFETEA-LU (Federal Transportation funding) and a local City match (gas tax).

**Summary/background:** The Highway 198 Overcrossing at Ben Maddox Way will construct a four-lane vehicular "overcrossing" over Highway 198 adjacent to existing five lane bridge at Ben Maddox Way and frontage road intersections/signalization and railroad improvements. This will enable Ben Maddox Way to accept the existing divided four-lane road and conform as planned in the City's Circulation Element. This project will be funded by American Recovery and Reinvestment Act (ARRA), SAFETEA-LU (Federal Transportation funding) and local city match (gas tax 1111).

The project will widen Ben Maddox Way for one block north of Mineral King Avenue and one-half block south of Noble Avenue as well as Noble Avenue from Edison Street to Cain Street to match the width of the proposed five-lane structure. Three existing traffic signals will be upgraded and interconnected to, and synchronized with, the City's downtown signal timing system. Work will be done within the State Highway 198 right-of-way pursuant to Caltrans encroachment permits and a cooperative agreement between Caltrans and the City of Visalia.

**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.

On November 24, 2009 the City of Visalia opened 7 Bids submitted for the Maddox Way/ Highway 198 Overcrossing. The result of the bid opening is as follows:

<b>Contractor</b>	<b>Total</b>
Emmett's Excavation (Clovis)	\$4,801,446.98
Granite Construction (Fresno)	\$4,896,383.00
Agee Construction Corporation (Clovis)	\$5,029,549.82
Lee's Paving (Visalia)	\$5,132,606.39
American Paving Co. (Fresno)	\$5,307,145.14
Shasta Constructors (Redding)	\$5,756,461.15
Teichert Construction (Sacramento)	\$5,953,486.75
<b>Engineer's Estimate</b>	<b>\$7,445,950.93</b>

Emmett's Excavation (located in Clovis, Ca.) is a reputable contractor with experience building transportation related projects/structures. They have worked on projects in the Central Valley for both Fresno County and Caltrans including the Friant Road Expressway (in Fresno County), and the 190 highway reconstruction (Caltrans).

Two of Emmett's subcontractors are from Visalia (AC Electric doing approximately \$376,000 of traffic signalization and related work and KRC Safety Co. Inc., doing approximately \$185,000 of Traffic Control and related work). Eleven of Emmett's subcontractors are located outside of the Central Valley.

The City's construction management firm, Mendoza and Associates, gave Emmett's Construction a positive reference. Mendoza managed a project on which Emmett's was a subcontractor.

**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)

October 19, 2009 Council approved an agreement with Mendoza and Associates for construction management services.

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

**Alternatives:**

Reject all bids and re-releasing the project for bid in a revised scope or form.

**Attachments:** Project location map.

**Recommended Motion (and Alternative Motions if expected):** I move to authorize the City Manager to execute a contract with Emmett's Construction for construction of the Ben Maddox Way/Highway 198 overcrossing.

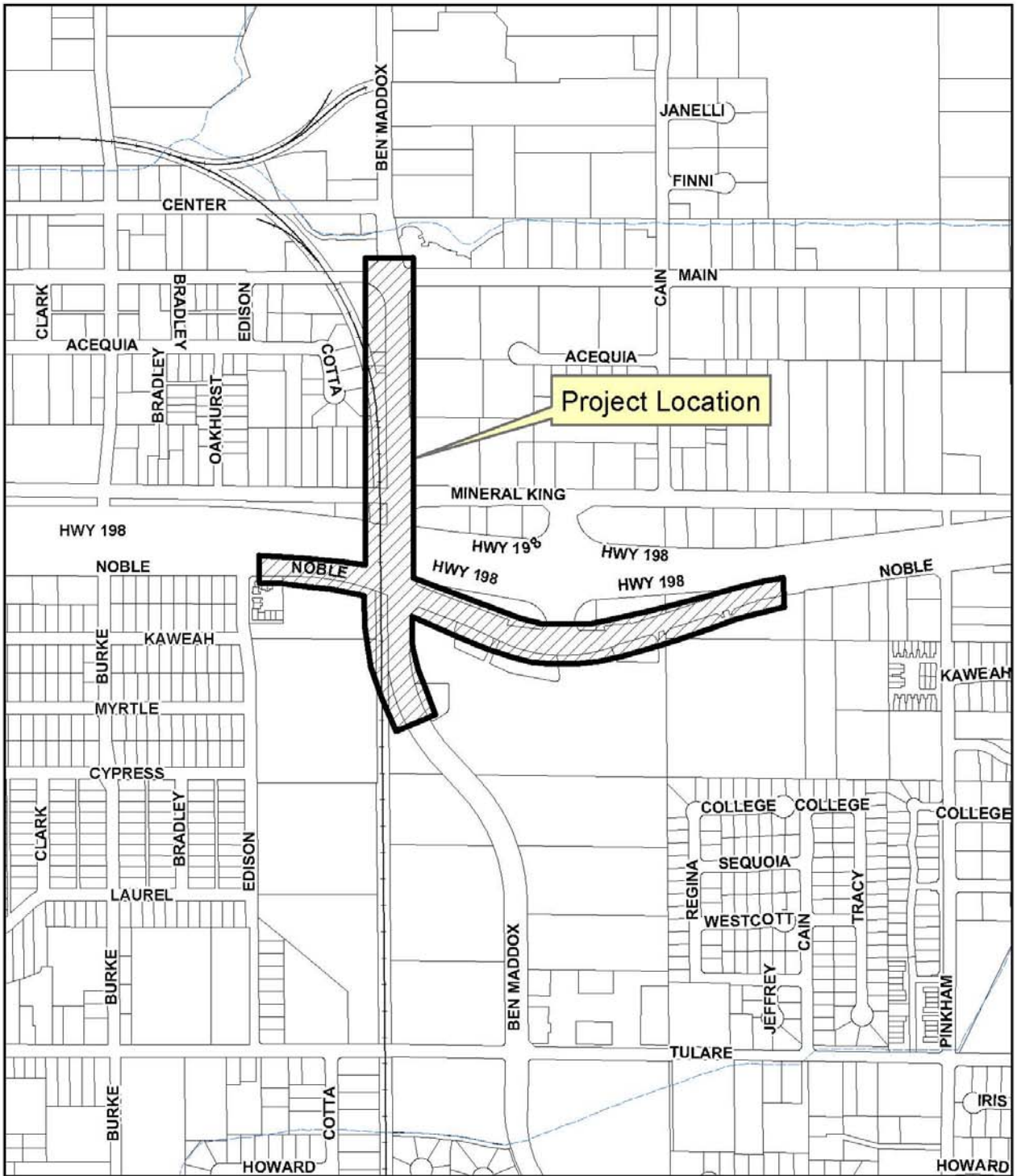
***Environmental Assessment Status***

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

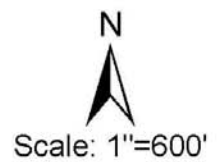
**NEPA Review:** Categorical Exemption /6004, Categorical Exclusion Determination Form 9/17/07.

**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:



## Ben Maddox Way Overcrossing Project



**City of Visalia  
Agenda Item Transmittal**

**Meeting Date:** December 7, 2009

**Agenda Item Number (Assigned by City Clerk): 4h**

**Agenda Item Wording:** Approve Recommendation by the Visalia Parks and Recreation Commission to Apply For "Proposition 84" Park Bond Act Monies to Implement the East Downtown Parks Master Plan

**Deadline for Action:** N/A

**Submitting Department:** Parks & Recreation

**Contact Name and Phone Number:** Vincent Elizondo, Director of Parks & Recreation, 713-4367

**For action by:**

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

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

**Regular Session:**

Consent Calendar  
 Regular Item  
 Public Hearing

Est. Time (Min.): 1

**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.

**Recommendation:**

As recommended by the Visalia Parks and Recreation Commission that the Council direct City staff to prepare a Proposition 84 park grant application to implement the initial phase of the East Downtown Parks Master Plan. City staff will return to the Council before the March 1, 2010 deadline with a Resolution to apply for the grant; define the scope of the project; and the estimated costs for the initial phase of the project.

**Background Information:**

In 2006, Proposition 84 was passed by the voters of California, more commonly known as the **Statewide Park Development and Community Revitalization Program of 2008 and Nature Facilities Grant Program.**

This new competitive grant program was created by Assembly Bill 31 (De Leon) Chapter 623, Statutes of 2008. There will be two rounds awarding \$368 million dollars to critically underserved communities throughout California. The 2009-10 budget act appropriated \$184 million dollars for the first round.

The maximum amount of funding that can be awarded for any one project is \$5 million dollars. There is no required match for a grant award.



The final Application Guide was released in April of 2009 and a deadline date for submitting grant applications was established as March 1, 2010. The deadline date for submitting grant proposals was announced on September 1, 2009, giving interested parties six-months to prepare their applications.

Enclosed in this staff report you will find the following information:

- Call for grant proposals by the State of California dated September 1, 2009.
- Rating criteria outlining scoring breakdown to earn 100 maximum points.
- Summary pages for the East Downtown Parks Master Plan.

City staff is proposing that the City Council direct staff to prepare a grant application for this project and return to the Council with a Resolution to apply for the grant (a grant requirement); define the scope of the project; and the estimated costs for this phase of the project.

Several areas that are critical to a good grant application related to the scoring criteria make this a viable project:

- The project is in an underserved (low income) area.
- The project is a new park creating new open space opportunities.
- There is an adopted master plan that saw significant community outreach and public meetings.
- The adopted master plan has a number of recommended conservation and sustainable features.

After tremendous community outreach, the East Downtown Parks & Infrastructure Master Plan was adopted by the City Council in June 2008. The plan was prepared by EDAW, Inc.

**Attachments:**

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

**CEQA Review:**

**NEPA Review:**

***Environmental Assessment Status***

**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)*

**City of Visalia  
Agenda Item Transmittal**

**Meeting Date:** December 7, 2009

**Agenda Item Number (Assigned by City Clerk):** 4i

**Agenda Item Wording:** Accept the City of Visalia Cash and Investment Report for the first quarter ending September 30, 2009 and approve Resolution Number 2009-59 adopting the City of Visalia's annually updated Investment Policy and delegating authority to invest funds for the City to the Administrative Services Director/Treasurer.

**Deadline for Action:** None

**Submitting Department:** Administration - Finance

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

**Department Recommendation:** Staff recommends that Council take the following actions:

1. Accept the City of Visalia Cash and Investment Report for the quarter ending September 30, 2009.
2. Approve the annually adopted Investment Policy.
3. Delegate authority of the investment program to the Administrative Services Director/Treasurer Eric Frost.

**Introduction**

In the course of the City's business, significant cash assets are accumulated before they are spent on a variety of governmental operations. While this cash is idle, the City invests these funds.

**City Investment Policy**

The City's investments are diversified by the various maturities, call structures, and credit types which are allowed by the City's Investment Policy and California Government Code Section 53600 et seq. It is the policy of the City to invest public funds in a manner which will provide the greatest security with the maximum investment return while meeting the daily cash flow demands of the City and conforming to all state and local statutes governing the investment of public funds. One way the City meets this objective is by investing in the Local Agency Investment Fund (LAIF). LAIF funds are highly liquid to meet the City's daily cash flow

**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.

requirements while maintaining a high degree of safety and a higher rate of return over other suitable liquid investments.

The City continues to maintain its conservative and prudent investment objectives, which in order of priority are safety, liquidity, and yield, while maintaining compliance with federal, state, and local laws and regulations. These investments enable the City to meet its expenditure requirements for the next six months, as required by state law.

Staff proposes no changes in the City’s investment policy and recommends that Council re-adopt the current policy. The City of Visalia Investment Policy is included within this agenda item as Attachment #3.

**Economic Outlook**

The economy may be showing signs of stabilizing as real gross domestic product (GDP) grew at a 3.5% annual rate in the third quarter. It was the first quarter of growth since the second quarter of 2008. However, the main contributors to the growth were a rise in consumption (fueled by cash for clunkers) and a nearly 8% rise in federal government spending. It seems that the economy is dependent on federal deficit spending at the moment. We shall see if the economy can continue to improve as stimulus monies begin to diminish. At its September 2009 meeting the Federal Open Market Committee (FOMC) reiterated its position that economic conditions are likely to warrant exceptionally low levels of the federal funds rate for an extended period of time. The federal funds rate (the interest rate at which banks and other depository institutions lend money to each other) currently is at 0.25%. When the federal funds rate is low, the supply of available money increases which typically contributes to decreased short-term interest rates.

**Portfolio Performance**

The September 30, 2009 investment report had a managed balance of \$117.25 million with a monthly portfolio earnings rate of 1.55%. The earnings rate for 2009-10 (July 09 – September 09) was 1.64%. Key benchmarks and performance statistics for the City’s portfolio are shown in Table 1, Managed Portfolio Performance Statistics.

**Table 1: Managed Portfolio Performance Statistics (dollars in millions)**

Quarter Ending	Portfolio Balance	City Monthly Portfolio Rate	LAIF Balance	LAIF Rate	2 YR Treasury	Weighted Average Maturity (WAM)
June, 2009	\$128.67	2.11%	\$87.00	1.54%	1.11%	0.33 years
September, 2009	\$117.25	1.55%	\$78.31	0.92%	0.94%	0.36 years
<b>Fiscal Year 2009-2010</b>		<b>1.64%</b>		<b>0.99%</b>	<b>1.01%</b>	

The portfolio balance decreased \$11.42 million from June 2009 to September 2009. The reduction of the portfolio historically occurs during this time period. The portfolio will increase when our first property tax payment of the fiscal year is received in December 2009.

As rates have fallen, the city's managed investment portfolio rate has also fallen. Since March of 2009 the fiscal year to date portfolio rate has fallen from 3.18% to 1.64% or 48%. For comparison purposes, since March of 2009, the fiscal year to date LAIF rate has fallen from 2.47% to .99% or 60% and the fiscal year to date 2 year Treasury rate has fallen from 1.42% to 1.01% or 29%.

Treasury yields continue to remain low as investors refuse to purchase longer securities in hopes that patience will translate into better yields down the road. There continues to be no incentive to purchase longer securities as these could be under water in as little as six months.

*LAIF*

As mentioned, the Local Agency Investment Fund (LAIF) is a an investment option for California's local governments and special districts. LAIF is a part of a pooled investment account that has oversight from the State Treasurer, Director of Finance, and State Controller. The City invests a portion of its portfolio in LAIF because it is a liquid investment with a competitive yield.

At the end of September 2009 LAIF had 52% of its investments maturing within six months. Because its average maturity is neither short nor long, its yield should begin to stabilize over the next few months.

**Future Management**

The City manages the portfolio partly by considering the weighted average maturity (WAM) based upon management's expectations for rising, neutral or declining interest rates. Usually, the longer an investment's maturity, the higher the interest rate will be. However, the longer the maturity, the more at risk the portfolio is to market gains or losses due interest rate changes. As a result, the City has a target WAM based upon expected interest rate environments as shown on Table II, Target Weighted Average Maturity (WAM) Based on Interest Rate Expectations.

Table II  
Target Weighted Average Maturity (WAM)  
Based Upon Interest Rate Expectations

Forecasted Interest Rate Environment	Target WAM (Years)
Rising	0.50
Neutral	1.50
Declining	2.50

As previously discussed, rates have fallen. Staff believes that rates will begin to increase in the coming months and have positioned the portfolio to take advantage of future rising rates. When rates are rising, the stated goal for the portfolio WAM is 0.50 years. At the end of September 2009 the portfolio WAM was 0.36 years. Staff will continue to keep the WAM short until it feels that rates will remain steady at which point the WAM will be increased to 1.50.

Another consideration in managing the investment portfolio is what investment alternatives exist if the City wanted to buy 3 or 5 year securities. At 1.10% or 2.01%, respectively, the risk/reward calculation does not justify buying a longer term security at this time. As a result, staff continues to invest only in short-term securities.

**Cash Summary**

The City's cash and investments consist of the following as shown on Table III: Cash Summary at Market Value (in millions) as of 09/30/09.

Table III: Cash Summary at Market Value, 09/30/09

Investment Type	Amount (in millions)
<b>Managed Portfolio</b>	
LAIF	\$78.31
CD's	\$15.48
Agencies	\$11.99
Corporate Note	\$ 9.16
Citizens Sweep Account	\$ 2.31
<b>Total Managed Portfolio</b>	<b>\$117.25</b>
Trustee Cash and Investments	\$11.50
Banks & Depositories	\$.29
<b>Total Cash &amp; Investments</b>	<b>\$129.04</b>

This information is taken from the two report attachments: 1) City of Visalia Investment Position Report as of 09/30/09, attachment #1; and 2) City of Visalia Cash and Investments Summary as of September 30, 2009, attachment #2.

**Attachments:**

- Attachment #1, City of Visalia Investment Position Report
- Attachment #2, City of Visalia Cash and Investment Summary
- Attachment #3, City of Visalia Investment Policy

**Recommended Motion (and Alternative Motions if expected):** Move to accept the City of Visalia Cash and Investment Report for the first quarter ending September 30, 2009 and approve resolution No. 2009-59 adopting the City of Visalia's annually updated Investment Policy and delegating authority to invest funds for the City to the Administrative Services Director/Treasurer Eric Frost.

***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. 2009-59

A RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF VISALIA  
ADOPTING THE CITY INVESTMENT POLICY

**WHEREAS**, the Council of the City of Visalia has adopted the Statement of Investment Policy; and

**WHEREAS**, California Government Code section 53646 requires annual review and adoption of the Investment Policy; and

**WHEREAS**, the authority to manage the City's investment program is derived from the City's Charter; and

**WHEREAS**, California Government Code section 53607 requires the authority to invest the funds of the City to be delegated annually to the Director of Administrative Services/Treasurer,

**NOW, THEREFORE, BE IT RESOLVED** that the Council of the City of Visalia adopt the City of Visalia Statement of Investment Policy and delegate responsibility for the investment program to the Director of Administrative Services/Treasurer.

**PASSED AND ADOPTED:**

STATE OF CALIFORNIA )  
COUNTY OF TULARE ) ss.  
CITY OF VISALIA )



# Attachment #1

City of Visalia  
Investment Position Report

		30-Sep-09								
		Coup. Rate	Yield (YTM)	Maturity Date	Face Value	Purchase Price	General Ledger Balance	Current Market Value	Purchase Date	
<b>Checking Accounts</b>		2.0%								
Citizens Business Bank		1.00%	1.00% *	30-Sep-09	2,308,628	2,308,628	2,308,628	2,308,628	Various	
	Totals		1.00%		2,308,628	2,308,628	2,308,628	2,308,628		
	Average Maturity (Days/Years)		1							
* Note: Interest is based on an average daily balance.										
<b>Agency Notes (1)</b>		10.2%								
Federal Home Loan Banks	3133MGYH3 08-144	5.75%	4.32%	15-Aug-11	3,000,000	3,146,820	3,264,390	3,262,500	13-Nov-07	
Federal Home Loan Banks	3133XGDD3 08-142	5.38%	4.23%	19-Aug-11	3,000,000	3,118,230	3,240,000	3,241,890	13-Nov-07	
Federal Farm Credit Banks	31331XG30 08-143	5.45%	4.42%	21-Jun-12	3,000,000	3,127,320	3,302,820	3,300,000	13-Nov-07	
Federal Home Loan Banks	3133XLX73 08-096	5.00%	4.71%	14-Sep-12	2,000,000	2,025,140	2,173,760	2,183,760	28-Sep-07	
	Totals		4.21%		11,000,000	11,417,510	11,980,970	11,988,150		
	Average Maturity (Days/Years)		806	2.21						
	Average Duration									
<b>CD'S</b>		13.2%								
Bank of The Sierra - CDARS #1	(2) 10-047b	1.05%	1.06%	11-Feb-10	5,000,000	5,000,000	5,000,000	5,000,000	13-Aug-09	
Bank of The Sierra - CDARS #2	(2) 10-083	1.35%	1.36%	09-Sep-10	5,000,000	5,000,000	5,000,000	5,000,000	09-Sep-09	
Visalia Community Bank		2.25%	2.25%	04-Oct-09	240,000	240,000	240,000	240,000	04-Mar-09	
WestAmerica Bank (County Bank)	09-150	3.59%	3.70%	03-Dec-09	240,000	240,000	240,000	240,000	03-Nov-08	
Citizens Business Bank CD	10-035A	1.15%	1.17%	24-Jul-10	5,000,000	5,000,000	5,000,000	5,000,000	24-Jul-09	
	Totals		1.26%		15,480,000	15,480,000	15,480,000	15,480,000		
	Average Maturity (Days/Years)		253	0.69						
<b>Corporates</b>		7.8%								
General Electric Cap Corp	09-278 & 9	3.75%	3.89%	15-Dec-09	5,000,000	4,994,500	5,042,550	5,027,500	06-Mar-09	
Wells Fargo & Co.	09-323	4.63%	4.19%	09-Aug-10	4,000,000	4,022,000	4,102,200	4,131,520	15-Apr-09	
	Totals		3.99%		9,000,000	9,016,500	9,144,750	9,159,020		
	Average Maturity (Days/Years)		180	0.49						
<b>LAIF</b>		66.8%								
State of California Local Agency Investment Fund	(3 accounts)		0.92%	Demand	78,310,229	78,310,229	78,310,229	78,310,229	Various	
					78,310,229	78,310,229	78,310,229	78,310,229		
	Totals		1.55%		116,098,857	116,532,867	117,224,577	117,246,027		
	Average Maturity (Days/Years)		130	0.36						
Change from	31-Aug-09	Rate	-0.12%							
		Days	-4							

(1) Agency Notes are considered to be investments of high quality as they are government sponsored entities (GSE). GSEs carry the implicit backing of the U.S. Government, but they are not direct obligations of the U.S. Government.

(2) CDARS is the Certificate of Deposit Account Registry Service. CDARS is a convenient way to enjoy full FDIC insurance on deposits of up to \$50 million. Under a CDARS account, funds are placed into certificates of deposits (CD's) issued by banks in the CDARS network. This occurs in increments of less than the standard FDIC insurance maximum (currently \$250,000) to ensure that both principal and interest are eligible for full FDIC insurance.

Attachment #2

CITY OF VISALIA CASH & INVESTMENTS SUMMARY  
As of September 30, 2009

<u>INSTITUTION</u>	<u>PURPOSE</u>	<u>BALANCE</u>	<u>TOTAL</u>
<b><u>CASH IN BANKS</u></b>			
BANK OF AMERICA	CONVENTION CENTER	\$ 31,561	
BANK OF AMERICA	GOLF	152,348	
CITIZENS BUSINESS BANK	A/P & PAYROLL	93,126	
PETTY CASH	VARIOUS DEPTS	11,034	
	<i>Total Cash Deposits</i>	<u>11,034</u>	\$ 288,069
<b><u>CASH AND INVESTMENTS WITH FISCAL AGENTS (TRUSTEE)</u></b>			
US BANK	2002 WASTE WATER BONDS	864,015	
	2003 EAST VISALIA REDEVELOPMENT	394,057	
	2005 CERTIFICATE OF PARTICIPATION	2,061,101	
ACCEL (Workers Compenation)	EXCESS LIABILITY DEPOSITS	966,143	
CITIZENS BUSINESS BANK	RDA LOAN - MOONEY DISTRICT	6,125,401	
DELTA DENTAL	DENTAL PREFUNDING	60,700	
EIA HEALTH	HEALTH PREFUNDING	976,052	
KEENAN & ASSOC	WORKERS COMP PREFUNDING	45,080	
VSP	VISION PREFUNDING	11,210	
	<i>Total Trustee Deposits</i>	<u>11,210</u>	11,503,758
<b><u>PORTFOLIO INVESTMENTS (MARKET VALUE)</u></b>			
UNION BANK OF CALIFORNIA INVESTMENTS		21,147,170	
LOCAL AGENCY INVESTMENT FUND		78,310,229	
SWEEP ACCOUNT (CITIZENS)		2,308,628	
CD'S		15,480,000	
	<i>Total Portfolio Investments</i>	<u>15,480,000</u>	117,246,027
<b>TOTAL CASH AND INVESTMENTS</b>			<b><u>\$ 129,037,854</u></b>

# CITY OF VISALIA

## Statement of Investment Policy

### **INTRODUCTION**

The City of Visalia (The City) strives to maintain the level of investment of all funds as near 100% as possible through daily and projected cash flow determinations. Investments are made so maturities match or precede the cash needs of the City. The City will insure that principal invested is protected from loss while maintaining adequate cash availability and maximizing yield on invested funds.

The basic premise underlying the City's investment philosophy is to insure that money is always available when needed. A minimum amount of 6% of the adopted operating budget is maintained in immediately available investments, such as the State Treasurer's Local Agency Investment Fund or other cash equivalents. This may include commercial paper, banker's acceptances, or new repurchase agreements.

The City's portfolio will be limited to an average life of three years or less. When the market warrants purchase of longer maturities to capture a higher rate of return, purchases will be limited to United States Treasury Notes and Bonds, Federal Agencies, Medium Term Notes, and Mortgage Backed Securities.

The City will attempt to ladder the portfolio with staggered maturities so that a portion of the portfolio will mature each year. In addition, the economy and various markets are monitored carefully to assess the probable course of interest rates. In a market with low or increasing interest rates, the City will attempt to invest in securities with shorter maturities. This makes funds available for other investments when the interest rates are higher. When interest rates appear to be near a relative high rate, the City will attempt to purchase investments with medium to long-term maturities to lock in the higher rate of return. When interest rates are falling, the City will invest in securities with longer maturities to hold the higher rate for a longer period of time.

City will also take advantage of any new investment instrument that becomes eligible for municipal investment only after a detailed review of the investment, and its safety, liquidity and yield are completed.

### **1.0 Policy**

It is the policy of the City to invest public funds in a manner which will provide the greatest security with the maximum investment return while meeting the daily cash flow demands of the entity and conforming to all state and local statutes governing the investment of public funds.

### **2.0 Scope**

It is intended that this Investment Policy cover all funds and investment activities under the direct authority of the City organization.

### **3.0 Prudence**

As a charter city, the City operates its pooled cash investments under the prudent investor rule. Investments shall be made with the judgment and care, under the circumstances then prevailing which investors of prudence, discretion, and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the probable safety of their capital as well as the probable income to be derived. This affords the City a broad spectrum of investment opportunities as long as the investment is deemed prudent and is allowable under current legislation of the State of California, the charter of the City, and this investment policy. Investments will be made in a range of instruments to insure diversification of the City's portfolio and liquidity of assets in an emergency situation.

3.1 The standard of prudence to be used by investment officials shall be the “prudent person” standard and shall be applied in the context of managing an overall portfolio. Investment officers acting in accordance with written procedures and the investment policy and exercising due diligence shall be relieved of personal responsibility for an individual security’s credit risk or market price changes, provided deviations from expectations are reported in a timely fashion and appropriate action is taken to control adverse developments. Future State of California legislative actions affecting this investment policy (adding further restrictions to the type and length of investments) shall not apply to those investments held prior to the enactment of said legislation unless specifically identified in the legislative action.

### **4.0 Objective**

The primary objectives, in priority order, of the City of Visalia’s investment activities shall be:

4.1 **Safety:** Safety of principal is the foremost objective of the investment program. Investments of the City shall be undertaken in a manner that seeks to ensure the preservation of capital in the overall portfolio. The objective will be to mitigate credit risk and interest rate risk.

- a. Credit Risk, which is the risk of loss due to the failure of the security issuer or backer, will be minimized by:
  - Limiting investments to the types of securities listed in Section 8.0 of this Investment Policy
  - Pre-qualifying the financial institutions, broker/dealers, intermediaries, and advisers with which the City will do business in accordance with Section 7.0
  - Diversifying the investment portfolio so that the impact of potential losses from any one type of security or from any one individual issuer will be minimized.
- b. Interest Rate Risk, which is the risk that the market value of securities in the portfolio will fall due to changes in market interest rates, by:
  - Structuring the investment portfolio so that securities mature to meet cash requirements for ongoing operations, thereby avoiding the need to sell securities on the open market prior to maturity
  - Investing funds primarily in shorter-term securities, money market mutual funds, or similar investment pools and limiting the average maturity of the portfolio in accordance with this policy as outlined in Section 13.0.

4.2 **Liquidity:** The City’s investment portfolio will remain sufficiently liquid to enable the City to meet all operating requirements which might be reasonably anticipated.

**4.3 Return on Investments:** The City's investment portfolio shall be designed with the objective of attaining a rate of return throughout budgetary and economic cycles, commensurate with the City's investment risk constraints and the cash flow characteristics of the portfolio. Securities shall generally be held until maturity with the following exceptions:

- A security with declining credit may be sold early to minimize loss of principal.
- A security swap would improve the quality, yield, or target duration in the portfolio.
- Liquidity needs of the portfolio require that the security be sold.

### **5.0 Delegation of Authority:**

Authority to manage the City's investment program is derived from the City's Charter. On November 21, 1983 Council delegated responsibility (Resolution 83-96) for the investment program is to the Finance Director (Treasurer), who shall establish written procedures for the operation of the investment program consistent with this investment policy. Procedures should include reference to: safekeeping, repurchase agreements, wire transfer agreements, banking service contracts and collateral/depository agreements. Such procedures shall include explicit delegation of authority to persons responsible for investment transactions. No person may engage in an investment transaction except as provided under the terms of this policy and the procedures established by the Treasurer. The Treasurer shall be responsible for all transactions undertaken and shall establish a system of controls to regulate the activities of subordinate officials. Annually, Council will review and adopt by resolution the updated Investment Policy, in which Council will delegate responsibility for the investment program to the Treasurer.

### **6.0 Ethics and Conflicts of Interest**

Officers and employees involved in the investment process shall refrain from personal business activity that could conflict with proper execution of the investment program, or which could impair their ability to make impartial investment decisions. Employees and investment officials shall disclose to the Treasurer any material interests in financial institutions that conduct business within this jurisdiction, and they shall further disclose any large personal financial/investment positions that could be related to the performance of the City, particularly with regard to the time of purchases and sales.

### **7.0 Authorized Financial Dealers and Institutions:**

The Treasurer will maintain a list of financial institutions authorized to provide investment services. In addition, a list will also be maintained of approved security broker/dealers selected by credit worthiness who are authorized to provide investment services in the State of California. These may include "primary" dealers or regional dealers that qualify under Securities & Exchange Commission Rule 15C3-1 (uniform net capital rule). No public deposit shall be made except in a qualified public depository as established by State laws.

All financial institutions and broker/dealers who desire to become qualified bidders for investment transactions must supply the Treasurer with the following:

- Audited Financial Statements
- Proof of National Association of Security Dealers certification
- Completed broker/dealer questionnaire
- Certification of having read this investment policy
- Compliance with City of Visalia insurance requirements for professional services agreements for general, professional and automotive liability.

An annual review of the financial condition and registrations of qualified bidders will be conducted by the Treasurer. In addition, a current audited financial statement is required to be on file for each financial institution and broker/dealer in which the City conducts investment transactions.

The City shall also be open to contracting investment management services for a portion of the portfolio. That portion shall be limited to longer term investments of two years or longer. Any investment management firm contracted shall meet criteria established by the Treasurer. All investments made under contract will be purchased in the City's name and in accordance with the guidelines established by the City's investment policy.

## **8.0 Authorized and Suitable Investments**

The City is empowered by statute to invest in the following types of securities:

### **A. Securities of the U.S. Government**

Securities of the U.S. Government include U.S. Treasury bills, notes and bonds.

U.S. Treasury Bills - are issued by the U.S. Treasury and are available in maturities out to one year. They are non-interest bearing and sold on a discount basis. The face amount is paid at maturity.

Treasury Notes - are issued by the U.S. Treasury with maturities from two to ten years. They are issued in coupon form and many issues are also available in registered form. Interest is payable at six month intervals until maturity.

Treasury Bonds - are issued by the U.S. Treasury with maturities of ten years to thirty years. The City may purchase the interest and/or principal of a U.S. Treasury Bond. A principal only instrument is commonly called a "stripped" or "zero" coupon. Stripped coupons are sold at a discount basis. The face amount is paid at maturity.

### **B. Securities of U.S. Government Agencies**

The capital of U.S. government agencies was initially financed by the United States Treasury. As the agencies have grown and operated profitably over the years, the Treasury's investment has been replaced in a large measure by private capital. At the present time, obligations of only a few agencies are backed by the full faith and credit of the U.S. Government. The obligations of all the federal agencies described in the following sections are not guaranteed by the U.S. Government with the exception of Government National Mortgage Association, but are considered to be investments of the highest quality.

Federal National Mortgage Association - (Fannie Mae) Is a quasi- public corporation created by an act of Congress to assist the home mortgage market by purchasing mortgages insured by the Federal Housing Administration and the Farmers Home Administration, as well as those guaranteed by the Veterans Administration. FNMA issues Notes and Bonds. Notes are issued with maturities of less than one year with interest paid at maturity. Bonds are issued for 15 and 30 year maturities with interest paid semi-annually. Interest is computed on a 30/360 day basis. There is a strong secondary market in these securities. A secondary market means these instruments are actively traded; they are bought and sold daily.

Government National Mortgage Association - (Ginnie Mae) is a wholly owned corporate instrumentality of the United States within the Department of Housing and Urban Development. A certificate collateralized by FHA/VA residential mortgages represents a share in a pool of FHA or VA mortgages. Ginnie Mae's are registered securities. Principal and interest are paid

monthly and sent directly from the issuer of the pool, usually a mortgage banker, to the City. Original maturities range from 12 to 30 years with a 7 to 12 year assumed average life. (Assumed average life is due to prepayments of mortgages).

Federal Home Loan Banks - provide credit to member lending institutions such as savings and loan associations, cooperative banks, insurance companies and savings banks. The agency offers bonds in the public market with maturities of one year to ten years. These bonds are usually offered on a quarterly basis depending on the current demands of the housing industry. Interest is paid semi-annually on a 30/360 day basis.

Federal Farm Credit Banks - are debt instruments issued to meet the financial needs of farmers and the national agricultural industry. Discount notes are issued monthly with 6 and 9 month maturities. Discount notes pay interest at maturity. Longer term debentures (2-5 years) are also issued. Debentures pay interest semi-annually on a 30/360 day basis. These issues enjoy an established secondary market.

Small Business Administration Loans - (SBA) The Small Business Administration is an independent agency of the United States government which furnishes financial and management assistance to small businesses. The SBA guarantees the principal portion of the loans it approves. The City purchases the guaranteed portion of these loans. Maturity can be for 1 year to 30 years. These loans can be either set at a fixed rate or variable rate which is usually tied to the prime rate. Principal and interest are paid monthly on a 30/360 day basis.

Federal Home Loan Mortgage Corporation - (Freddie Macs) A publicly held government-sponsored enterprise created on July 24, 1970 pursuant to the Federal Home Loan Mortgage Corporation Act, Title III of the Emergency Home Finance Act of 1970, as amended. Freddie Mac's statutory mission is to provide stability in the secondary market for home mortgages, to respond appropriately to the private capital market and to provide ongoing assistance to the secondary market for home mortgages by increasing the liquidity of mortgage investments and improving the distribution of investment capital available for home mortgage financing. Maturity can be for 1 year to 30 years. These loans can be either set at a fixed rate or variable rate.

Other U.S. government securities available to the City for investment purposes include: Student Loan Marketing Association (SLMA or Sallie Mae), Aid for International Development (AID), and debentures of Tennessee Valley Authority (TVA). However, these instruments are not offered on a regular basis and do not offer the same liquidity as the before mentioned instruments.

### **C. Time Deposits and Certificates of Deposit**

Time Deposits are placed with commercial banks, savings association, or state or federal credit unions. A time deposit is a receipt for funds deposited in a financial institution for a specified period of time at a specified rate of interest. Generally, the time is 3 months to 2 years. Denominations can be any agreed upon amount and interest is normally calculated using actual number of days on a 360-day year and paid monthly. Deposits of \$100,000 (commonly referred to as Jumbo C.D.'s) per institution are insured by the Federal Deposit Insurance Corporation (FDIC) and Certificates of Deposit can be supported by either 110% U.S. Government agency notes or 150% mortgages currently held by the bank or savings and loan. An institution must meet the following criteria to be considered by the City:

- The institution must maintain a net worth to asset ratio of at least 3% and a positive earnings record.
- The institution must make available a current FDIC call report or FHLB report. A call report presents the solvency of the institution to the agency with oversight responsibility of that institution.

#### **D. Negotiable Certificates of Deposit**

Negotiable Certificates of Deposit are a form of Certificate of Deposit which have been an important money market instrument since 1961 when commercial banks began issuing them and a secondary market developed to provide liquidity. Since these certificates of deposit can be traded in the secondary market, they are negotiable instruments, hence their name negotiable certificate of deposit. They are supported only by the strength of the institution from which they are purchased. Interest is paid semi-annually computed on a 30/360 day basis. Maturities range from 3 months to 2 years. Negotiable Certificates of Deposit are generally issued in blocks of \$1 million, \$5 million, \$10 million, etc.

The City will restrict its investments in Negotiable Certificates of Deposit to the 100 largest United States banks according to asset size. The profitability of the financial institution as well as its financial stability is also taken into account prior to placing the investment.

#### **E. Banker's Acceptance Notes**

A banker's acceptance (B.A.) is a unique credit instrument used to finance both domestic and international transactions. As a money market instrument, it is an attractive short-term investment. When a bank "accepts" such a time draft, it becomes, in effect, a predated certified check payable to the bearer at some future, specified date. Little risk is involved because the commercial bank assumes primary liability once the draft is accepted. Banker's acceptances are frequently in odd amounts. Maturities normally range from 30 up to 180 days. Banker's acceptances are sold at a discount. This means the face amount is received at maturity. The City will purchase Banker's acceptances from only the 100 largest United States banks according to asset size. The profitability of the financial institution as well as its financial stability is also taken into account prior to placing the investment.

#### **F. Commercial Paper**

Commercial paper is the trade name applied to unsecured promissory notes issued by finance and industrial companies to raise funds on a short term basis. Commercial paper can be purchased on an interest bearing or discount basis. Interest bearing instruments pay interest semi-annually. Discounted instruments pay interest at maturity. The City will invest in commercial paper only if the paper attains the highest ranking or attains the highest letter and number rating as provided for by a nationally recognized statistical-rating organization (NRSRO). Maturities range from 30 to 180 days with interest computed on a 30/360 day basis.

#### **G. Medium Term Notes**

In recent years, this financing mechanism has grown, providing capital to the private sector, and diminishing the Negotiable Certificate of Deposit market. The trend towards medium term notes is related to buyer and seller flexibility and convenience. The notes are issued on any given date and maturing on a negotiated date. They generally range from 2 to 5 years in maturity. This market provides an excellent alternative to Negotiable C.D.'s. The City will only purchase Medium Term Notes with credit ratings of A or better by a nationally recognized rating agency; and with maturities of 5 years or less. Their interest is calculated on a 30/360 day basis like Agency bonds. Interest is paid semi-annually.



#### **H. Local Agency Investment Fund demand deposit**

The Local Agency Investment Fund (LAIF) was established by the State to enable treasurers to place funds in a pool for investment. The LAIF has been particularly beneficial to those jurisdictions with small portfolios. Each agency is limited to an investment of \$40.0 million per account. The City uses this fund for short term liquidity, investment, and yield when rates are declining. Funds are available on demand and interest is paid quarterly. Presently, the City maintains two LAIF accounts.

#### **I. Repurchase Agreement**

Closely associated with the functioning of the Federal funds market is the negotiation of repurchase agreements or repo's. Banks may buy temporarily idle funds from a customer by selling U.S. Government or other securities with the contractual agreement to repurchase the same security on a future date determined by negotiation. For the use of funds, the customer receives an interest payment from the bank; the interest rate reflects both the prevailing demand for Federal funds and the maturity of the repo. Repurchase Agreements are usually executed for \$100,000 or more. The City will require physical delivery of the securities backing the repo to its safekeeping agent. The institution from which the City purchases a repo must transfer on an ongoing basis sufficient securities to compensate for changing market conditions and to insure that the market value of securities is valued at 102 percent or greater of the funds borrowed against those securities. Generally, maturities range from 1 to 90 days with interest paid at maturity, and may not exceed one year. A Master Repurchase Agreement is required.

#### **J. Reverse Repurchase Agreements**

Reverse Repurchase Agreements, on the other hand simply reverses the above process of purchasing repurchase agreements. The City, in effect, sells a particular security to a firm for a stated period of time, not to exceed 92 days. Interest is paid at maturity. The City pays the firm interest on the cash it receives while receiving the interest on original security. The City will in turn purchase a short term security at a higher rate of interest. Reverse repurchase agreements may also be used to alleviate a temporary cash shortage. The City of Visalia will never utilize the reverse repurchase agreement in order to meet its cash needs. Reinvestment of reverse repurchases will be in securities of shorter or equal maturities to a reverse repurchase agreement. Reverse repurchase agreements cannot exceed 20% of the investment portfolio.

#### **K. Money Market Mutual Funds**

Money Market Mutual Funds are shares issued by diversified management companies who invest in the securities and obligations as authorized by subdivisions (a) to (j), inclusive, or subdivisions (m) or (n) of Government Code Section 53630 and comply with the investment restrictions of Article 2 (commencing with Section 53630 of the California Government Code). To be eligible for investment pursuant to this subdivision, these companies shall either: (1) attain the highest ranking or the highest letter and numerical rating provided by not less than two nationally recognized rating services, or (2) have an investment adviser registered with the Securities and Exchange Commission with not less than five year's experience investing in the securities and obligations as authorized by subdivisions (a) to (j), inclusive, or subdivisions (m) or (n) of Government Code section 53630, and with assets under management in excess of five hundred million dollars (\$500,000,000). The purchase price of shares purchased pursuant to this subdivision shall not include any commission that these companies may charge and shall not exceed 20 percent of the investment portfolio.

## **9.0 Other Investment Pools:**

A thorough investigation of investment pools, as authorized by statute, shall be conducted prior to the City's investment. The City uses the Local Agency Investment Fund (LAIF) that was established by the State to enable treasurers to place funds in a pool for investments. Any pool shall provide the following:

- A description of eligible investment securities, and a written statement of investment policy and objectives (i.e. are reserves, retained earnings, etc. utilized by the pool and is the pool eligible for bond proceeds and/or will it accept such proceeds)
- A description of interest calculations and distribution methods, and how gains and losses are treated
- A description of how the securities are safeguarded (including the settlement processes), and how often securities are priced and the program audited
- A description of who may invest in the program
- A description of how deposits and withdrawals will be made, how often they are allowed and any minimum or maximum limitations
- A reporting schedule for receiving statements and portfolio activity
- A fee schedule and method of assessment

## **10.0 Collateralization:**

Collateralization will be required on two types of investments: certificates of deposit and repurchase (and reverse) agreements. Deposits of \$100,000 (commonly referred to as Jumbo C.D.'s) per institution are insured by the FDIC and Certificates of Deposit can be supported by either 110% U.S. Government agency notes or 150% mortgages currently held by the bank or savings and loan.

## **11.0 Safekeeping and Custody:**

Securities purchased with invested funds that are in a negotiable, bearer, registered, or nonregistered format, shall require delivery of all the securities to the City, including those purchased for the City by financial advisors, consultants, or managers using the City's funds, by book entry, physical delivery, or by third party custodial agreement. The transfer of securities to the counterparty bank's customer book entry account may be used for book-entry delivery.

To insure the safety and internal accounting controls necessary to establish a stable and accurate investment system, the City uses an investment confirmation document. This document is prepared by Treasury and approved by accounting personnel. Copies are also distributed to the City accounting department, Treasury investment file, and the institutions with which the order to transfer funds was placed (safekeeping). This transaction control document, or "Confirmation" form, contains information regarding the type of investment; amount invested; interest rate; purchase and maturity dates; and any delivery instructions. This confirmation is matched to the Broker's Confirmation and held in the Treasury's file until the security is sold or matures.

## **12.0 Diversification:**

The City operates its investment pool with many State and self-imposed constraints. It does not buy stocks and it does not speculate. Currently Government Code Section 53600 (et seq) restricts the City portfolio to:

- o 30% in Negotiable Certificates of Deposit
- o 25% in Commercial Paper
- o 20% in Money Market Mutual Funds
- o 40% in Bankers Acceptance Notes
- o 30% in Medium Term Notes
- o 20% in Repurchase Agreements

These restrictions primarily apply to short-term investments and are interpreted to apply at the time of investment. If, as the portfolio mix changes over time, a particular segment exceeds these restrictions the prudent investor rule shall apply.

The City will be selective in purchasing long-term negotiable certificates of deposit and medium term notes, placing such an investment only with a large stable institution.

## **13.0 Maximum Maturities**

To the extent possible, the City will attempt to match its investments with anticipated cash flow requirements. The City will operate a portfolio with an average life of three years or less. This is to insure liquidity and the ability to move with changing markets and interest rates.

No investments shall be made in investments with maturities greater than five (5) years without specific Council approval not less than ninety days prior to the investment. Exception: Mortgage Backed Securities, such as Federal National Mortgage Association (Fannie Mae) and Government National Mortgage Association (Ginnie Mae) which have maturities greater than five (5) years, and not to exceed 30 years may be purchased. While the final maturity on these investments is greater than five (5) years, the return of principal and interest is received on a monthly basis (as mortgages are being paid, refinanced, and pre-paid), therefore minimizing the investment risk. At no point, will investments with maturities greater than five (5) years exceed 20% of the portfolio value.

## **14.0 Internal Control**

The Treasurer shall establish an annual process of independent review by an external auditor. This review will provide internal control by assuring compliance with policies and procedures.

## **15.0 Performance Standards**

The investment portfolio shall be designed with the objective of obtaining a rate of return throughout budgetary and economic cycles, commensurate with the investment risk constraints and the cash flow needs.

15.1 Market Yield (Benchmark): The City's investment strategy is passive. Passive investment portfolio management generally indicates that the Treasurer will purchase an instrument and hold it through maturity, and then reinvest the monies. Although the City's investment strategy is passive, this will not restrict the Treasurer from evaluating when swaps are appropriate or if the sale of an instrument is prudent prior to final maturity. Given this strategy, a series of appropriate benchmarks shall be established against which portfolio performance shall be

compared on a regular basis. The benchmarks shall be reflective of the actual securities being purchased and risks undertaken and the benchmarks shall have a similar weighted average maturity as the portfolio.

### **16.0 Reporting**

Quarterly, the Treasurer will issue a report for Council's review of the City's current investment portfolio, detailing securities purchase and maturity date, face and market value, credit quality, and any reverse activities.

Periodically, the long-term investments will be reviewed in order to determine if it is advantageous to sell those securities and purchase others. The review will consider current market conditions and various spread relationships among security types. Additionally, a statement will be issued indicating the findings of the analysis. The monitoring of the conditions set forth in this policy statement is the responsibility of the Treasurer.

### **17.0 Investment Policy Adoption**

The City's investment policy shall be adopted by resolution. The policy shall be reviewed annually by the City Council and any modifications made thereto must be approved by them.

## Exhibit A

### City of Visalia - Summary of Eligible Investments

Type of Issue	Original Maturities	Interest Payments	U.S. Govt. Guaranteed?
U.S. Treasury Bills	91 day and 182 day Bills auctioned each Monday for settlement on Thursday.	Issued at a discount from par. Paid at maturity.	Yes
	52 week bills auctioned every fourth Thursday for settlement on the following Thursday.	Discount is based on the actual number of days on a 360 day basis. Paid at maturity.	
U.S. Treasury Notes	2 to 10 years.	Paid semi-annual based on the actual days in the month and half-year.	Yes
U.S. Treasury Bonds	10 to 30 years.	Paid semi-annual based on the actual days in the month and half-year.	Yes
Strips or Zeros	10 to 30 years.	Issued at a discount from par. Paid at maturity on a 30/360 day basis.	Yes
FNMA(Federal National Mortgage Association)	Discount notes are issued with maturities less than one year.	Issued at a discount from par. Paid at maturity on a 30/360 day basis.	No
	15 year and 30 year mortgage-backed securities with a 7 and 15 year assumed average life.	Principal and interest paid semi-annually on a 30/360 day basis.	No
GNMA(Gov't National Mortgage Association)	Various maturities from 12 to 30 years with an assumed average life of 7 to 12 years.	Principal and interest paid monthly on a 30/360 day basis.	Yes
FHLB(Fed Home Loan Bank)	Bonds of maturities from 1 to 10 years.	Paid semi-annually on 30/360 day basis.	No

## Exhibit A

### City of Visalia - Summary of Eligible Investments

Type of Issue	Original Maturities	Interest Payments	U.S. Govt. Guaranteed?
FFCB(Fed Farm Credit Bank)	6 and 9 month offered monthly.	Paid at maturity on a 30/360 day basis.	No
	Debentures are issued with 2 to 5 years maturities.	Paid semi-annually on a 30/360 day basis.	No
SBA(Small Bus. Administration)	Loans to Small Businesses. The principal portion of the loan is guaranteed by the SBA. 1 to 30 years.	Principal and interest paid monthly. On a 30/360 day basis. Can be a fixed or variable rate which is usually tied to prime rate.	No
FHLMC(Fed. Home Loan Mortgage Corporation)	30 year final with 12 year assumed average life.	Principal and interest paid monthly on a 30/360 day basis.	No
CD(Certificate of Deposit)	3 months to 5 years.	Paid monthly on a actual/360 day basis.	No
NCD(Negotiable Certificates of Deposit)	3 months to 2 years. Some issues have quarterly floating rates.	Paid semi-annually. Floaters pay quarterly.	No
BA Notes(Banker's Acceptance Notes)	30 to 180 days.	Issued at a discount from par. Paid at maturity.	No
Commercial Paper	Unsecured promissory note issued by finance and industrial companies to raise short term capital. Generally 30 to 180 days.	Can be interest bearing or a discounted note. If interest bearing, paid semi-annually. If discounted, paid at maturity.	No
MTN(Medium Term Notes)	2 to 5 years. Extended maturity commercial paper.	Paid semi-annually on a 30/360 day basis.	No
LAIF(Local Agency Investment Fund) State Pool	Funds are available on demand. Investments are restricted by Gov't. Code, same as the City's.	Paid quarterly.	No

**Exhibit A**

City of Visalia - Summary of Eligible Investments

<b>Type of Issue</b>	<b>Original Maturities</b>	<b>Interest Payments</b>	<b>U.S. Govt. Guaranteed?</b>
Repurchase Agreements	Negotiated. A short term investment transaction with a contractual agreement to repurchase the same securities at a future date. In essence, the City loans the Bank money for a specified time collateralized by marketable securities. Terms are from 1 to 90 days.	Paid at maturity.	No
Reverse Repurchase Agreements	Negotiated. This transaction is the mirror image of the repurchase agreement. Instead of the City loaning the Bank money, the Bank loans the City funds. The City then "repurchases" securities with matched maturities to the end of the contract. Terms are from 1 to 90 days.	Paid at maturity.	No
Money Market Mutual Funds	Funds are available on demand. Shares issued by a diversified management company.	Paid Monthly	No
Other Investment Pools	Funds are available on demand.	Paid quarterly	No

## GLOSSARY

**AGENCIES:** Federal agency securities

**ASKED:** The price at which securities are offered.

**ARBITRAGE:** Transactions by which securities are bought and sold in different markets at the same time for the sake of the profit arising from a yield difference in the two markets.

**BANKERS ACCEPTANCE (BA):** A draft of bill or exchange by a bank or trust company. The accepting institution guarantees payment of the bill, as well as the issuer.

**BID:** The price offered by a buyer of securities. (When you are selling securities, you ask for a bid.) See Offer.

**BROKER:** A broker brings buyers and sellers together for a commission.

**CERTIFICATE OF DEPOSIT (CD):** A time deposit with a specific maturity evidenced by a certificate. Large-denomination CD's are typically negotiable.

**COLLATERAL:** Securities, evidence of deposit or other property which a borrower pledges to secure repayment of a loan. Also refers to securities pledged by a bank to secure deposits of public monies.

**COMPREHENSIVE ANNUAL FINANCIAL REPORT (CAFR):** The official annual report for the City of Visalia. It includes five combined statements for each individual fund and account group prepared in conformity with GAAP. It also includes supporting schedules necessary to demonstrate compliance with finance-related legal and contractual provisions, and a detailed Statistical Section.

**COUPON:** (a) The annual rate of interest a bond's issuer promises to pay the bondholder on the bond's face value. (b) A certificate attached to a bond evidencing interest due on a payment date.

**DEALER:** A dealer, as opposed to a broker, acts as a principal in all transactions, buying and selling for his/her own account.

**DEBENTURE:** A bond secured only by the general credit of the issuer.

**DELIVERY VERSUS PAYMENT (DVP):** There are two methods of delivery of securities: delivery versus payment and delivery versus receipt. Delivery versus payment is delivery of securities with an exchange of money for the securities. Delivery versus receipt is delivery of securities with an exchange of a signed receipt for the securities.

**DERIVATIVES:** (1) Financial instruments whose return profile is linked to, or derived from, the movement of one or more underlying index or security, and may include a leveraging factor, or (2) financial contracts based upon notional amounts whose value is derived from an underlying index or security (interest rates, foreign exchange rates, equities or commodities).

**DISCOUNT:** The difference between the cost price of a security and its maturity when quoted at lower than face value. A security selling below original offering price shortly after sale also is



considered to be at a discount.

**DISCOUNT SECURITIES:** Non-interest bearing money market instruments that are issued at a discount and redeemed at maturity for full face value, e.g. U.S. Treasury Bills.

**DIVERSIFICATION:** Dividing investment funds among a variety of securities offering independent returns.

**FEDERAL CREDIT AGENCIES:** Agencies of the Federal government set up to supply credit to various classes of institutions and individuals, e.g., S&L's, small business firms, students, farmers, farm cooperatives, and exporters.

**FEDERAL DEPOSIT INSURANCE CORPORATION (FDIC):** A federal agency that insures bank deposits, currently up to \$100,000 per deposit.

**FEDERAL FUNDS RATE:** The rate of interest at which Fed funds are traded. This rate is currently pegged by the Federal Reserve through open-market operations.

**FEDERAL HOME LOAN BANKS (FHLB):** Government sponsored wholesale banks (currently 12 regional banks) which lend funds and provide correspondent banking services to member commercial banks, thrift institutions, credit unions and insurance companies. The mission of the FHLB's is to liquefy the housing related assets of its members who must purchase stock in their district Bank.

**FEDERAL NATIONAL MORTGAGE ASSOCIATION (FNMA):** FNMA, like GNMA was chartered under the Federal National Mortgage Association Act in 1938. FNMA is a federal corporation working under the auspices of the Department of Housing and Urban Development (HUD). It is the largest single provider of residential mortgage funds in the United States. Fannie Mae, as the corporation is called, is a private stockholder-owned corporation. The corporation's purchases include a variety of adjustable mortgages and second loans, in addition to fixed-rate mortgages. FNMA's securities are also highly liquid and are widely accepted. FNMA assumes and guarantees that all security holders will receive timely payment of principal interest.

**FEDERAL OPEN MARKET COMMITTEE (FOMC):** Consists of seven members of the Federal Reserve Board and five of the twelve Federal Reserve Bank Presidents. The President of the New York Federal Reserve Bank is a permanent member, while the other Presidents serve on a rotating basis. The Committee periodically meets to set Federal Reserve guidelines regarding purchases and sales of Government Securities in the open market and a means of influencing the volume of bank credit and money.

**FEDERAL RESERVE SYSTEM:** the central bank of the United States created by Congress and consisting of a seven member Board of Governors in Washington, DC, 12 regional banks and about 5,700 commercial banks that are members of the system.

**GENERALLY ACCEPTED ACCOUNTING PRINCIPALS (GAAP):** The standard established by the National Council on Governmental Accounting which establishes the *minimum* requirements for a fair presentation of financial data in external financial reports. GAAP also assures a degree of comparability in financial reporting among different governments.

**GOVERNMENT NATIONAL MORTGAGE ASSOCIATION (GNMA or Ginnie Mae):** Securities

influencing the volume of bank credit guaranteed by GNMA and issued by mortgage bankers, commercial banks, savings and loan associations, and other institutions. Security holder is protected by full faith and credit of the U.S. Government. Ginnie Mae securities are backed by the FHA, VA or FMHM mortgages. The term “passthroughs” is often used to describe Ginnie Mae's.

**LIQUIDITY:** A liquid asset is one that can be converted easily and rapidly into cash without a substantial loss of value. In the money market, a security is said to be liquid if the spread between bid and asked prices is narrow and reasonable size can be done at those quotes.

**LOCAL AGENCY INVESTMENT FUND:** The Local Agency Investment Fund (LAIF) was established by the State to enable treasurers to place funds in a pool for investments. The LAIF has been particularly beneficial to those jurisdictions with small portfolios. Each account is limited to an investment of \$40.0 million.

**MARKET VALUE:** The price at which a security is trading and could presumably be purchased or sold.

**MASTER REPURCHASE AGREEMENT:** A written contract covering all future transactions between the parties to repurchase—reverse repurchase agreements that establishes each party's rights in the transactions. A master agreement will often specify, among other things, the right of the buyer-lender to liquidate the underlying securities in the event of default by the seller-borrower.

**MATURITY:** The date upon which the principal or stated value of an investment becomes due and payable.

**MONEY MARKET:** The market in which short-term debt instruments (bills, commercial paper, bankers' acceptances, etc.) are issued and traded.

**OFFER:** The price asked by a seller of securities. (When you are buying securities, you ask for an offer.) See Asked and Bid.

**OPEN MARKET OPERATIONS:** Purchases and sales of government and certain other securities in the open market by the New York Federal Reserve Bank as directed by the FOMC in order to influence the volume of money and credit in the economy. Purchases inject reserves into the bank system and stimulate growth of money and credit; sales have the opposite effect. Open market operations are the Federal Reserve's most important and most flexible monetary policy tool.

**PORTFOLIO:** Collection of securities held by an investor.

**PRIMARY DEALER:** A group of government securities dealers who submit daily reports of market activity and positions and monthly financial statements to the Federal Reserve Bank of New York and are subject to its informal oversight. Primary dealers include Securities and Exchange Commission (SEC)-registered securities broker-dealers, banks, and a few unregulated firms.

**PRUDENT PERSON RULE:** An investment standard. In some states the law requires that a fiduciary, such as a trustee, may invest money only in a list of securities selected by the custody state--the so-called legal list. In other states the trustee may invest in a security if it is one

which would be bought by a prudent person of discretion and intelligence who is seeking a reasonable income and preservation of capital.

**QUALIFIED PUBLIC DEPOSITORIES:** A financial institution which does not claim exemption from the payment of any sales or compensating use or ad valorem taxes under the laws of this state, which has segregated for the benefit of the commission eligible collateral having a value of not less than its maximum liability and which has been approved by the Public Deposit Protection Commission to hold public deposits.

**RATE OF RETURN:** The yield obtainable on a security based on its purchase price or its current market price. This may be the amortized yield to maturity on a bond the current income return.

**REPURCHASE AGREEMENT (REPO):** A holder of securities sells these securities to an investor with an agreement to repurchase them at a fixed price on a fixed date. The security “buyer” in effect lends the “seller” money for the period of the agreement, and the terms of the agreement are structured to compensate him for this. Dealers use Repos extensively to finance their positions. Exception: When the Fed is said to be doing Repos, it is lending money, increasing bank reserves.

**SAFEKEEPING:** A service to customers rendered by banks for a fee whereby securities and valuables of all types and descriptions are held in the bank’s vaults for protection.

**SECONDARY MARKET:** A market made for the purchase and sale of outstanding issues following the initial distribution.

**SECURITIES & EXCHANGE COMMISSION:** Agency created by Congress to protect investors in securities transactions by administering securities legislation.

**SEC RULE 15C3-1:** See Uniform Net Capital Rule.

**STRUCTURED NOTES:** Notes issued by Government Sponsored Enterprises (FHLB, FNMA, SLMA, etc.) and corporations which have imbedded options (e.g. call features, step-up coupons, floating rate coupons, derivative-based returns) into their debt structure. Their market performance is impacted by the fluctuation of interest rates, the volatility of the imbedded options and shifts in the shape of the yield curve.

**TREASURY BILLS:** A non-interest bearing discount security issued by the U.S. Treasury to finance the national debt. Most bills are issued to mature in three months, six months, and one year.

**TREASURY BONDS:** Long-term coupon-bearing U.S. Treasury securities issued as direct obligations of the U.S. Government and having initial maturities of more than 10 years.

**TREASURY NOTES:** Long-term coupon-bearing U.S. Treasury securities issued as direct obligations of the U.S. Government and having initial maturities from two to 10 years.

**UNIFORM NET CAPITAL RULE:** Securities and Exchange Commission requirement that member firms as well as nonmember broker-dealers in securities maintain a maximum ratio of indebtedness to liquid capital of 15 to 1; also called net capital rule and net capital ratio. Indebtedness covers all money owed to a firm, including margin loans and commitments to

purchase securities, one reason new public issues are spread among members of underwriting syndicates. Liquid capital includes cash and assets easily converted into cash.

**YIELD:** The rate of annual income return on an investment, expressed as a percentage. (a) **INCOME YIELD** is obtained by dividing the current dollar income by the current market price for the security. (b) **NET YIELD** or **YIELD TO MATURITY** is the current income yield minus any premium above par or plus any discount from par in purchase price, with the adjustment spread over the period from the date of purchase to the date of maturity of the bond.

**City of Visalia  
Agenda Item Transmittal**

**Meeting Date:** December 7, 2009

**Agenda Item Number (Assigned by City Clerk): 4j**

**Agenda Item Wording:** Adoption of resolution authorizing submittal of a collaborative application for State Energy Program grant funds in the amount of \$6,000,000 to establish the Tulare-Kings Counties Comprehensive Residential Building Retrofit Program. Resolution 2009-60 required.

**Deadline for Action:** Resolution submission deadline is December 21, 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:** Authorize Resolution 2009-60 for submittal of a collaborative application for State Energy Program grant funds to establish the Tulare-Kings Counties Comprehensive Residential Building Retrofit Program.

**Summary:**

This resolution would authorize the City of Visalia to be the lead agency for a \$6 million grant funded by the American Recovery and Reinvestment Act (ARRA) that would provide residential energy retrofits to single- and multi-family residential units within most of the cities in and the Counties of Tulare and Kings. Most of the work, including the majority of the administrative work, would be contracted out to private companies and local non-profits. The City would be reimbursed for any administrative costs associated with implementation of the program on behalf of the consortium of participating cities and counties. Council approved submitting an application for this grant program at its November 16<sup>th</sup> meeting; this item is to authorize a resolution required by the grant application.

**Background:**

The U.S. Department of Energy (DOE) has provided American Recovery and Reinvestment Act of 2009 (ARRA) funds to the California Energy Commission (CEC) for the State Energy Program (SEP). The CEC has allocated up to \$95 million of its SEP funds to three grant solicitations including the Comprehensive Residential Building Retrofit Program. These are competitively bid solicitations.

**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 12109**  
**(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.

For the Comprehensive Residential Building Retrofit Program, the CEC strongly prefers applications to be comprised of a consortium of regional local governments, and to contract with a single local government agency as the prime contractor. This application will list the City as the prime contractor to the CEC for a consortium of local governments in Tulare and Kings Counties.

Local-government partners will consist of the Valley Innovative Energy Watch (VIEW) Partnership jurisdictions. The VIEW Partnership is a local-government – utility partnership in Tulare and Kings Counties which was established about a year ago. In addition to the City of Visalia, participating jurisdictions are the City of Tulare, City of Porterville, City of Woodlake, City of Lindsay, City of Hanford, Tulare County, and Kings County. The \$6 million grant will be apportioned between the local government partners by population, less administration costs. Visalia's portion will be 30%, approximately \$1.8 million.

Given the CEC's stated preference to contract with a local government and that the City has the largest population and thus the largest share of the grant; it appears that the City of Visalia is in the best position to serve as the lead agency. City staff had been following the development of the program, was most familiar with the program guidelines, and has an existing relationship as a model city with the nonprofit San Joaquin Valley Clean Energy Organization (SJVCEO), which is taking a primary lead in the development of the application. The SJVCEO's mission is to improve the quality of life in the San Joaquin Valley by increasing energy efficiency and use of alternative energy in the Valley. The SJCEO is the program implementer for the VIEW Partnership.

Program administration would be managed by local nonprofit CSET under subcontract to the City of Visalia. CSET was selected because of the short timeframe, its prior demonstrated interest and commitment to a whole-house retrofit program, and interest in and attendance at VIEW Partnership meetings. Technical assistance would be provided by an energy efficiency verification contractor (to be selected), and the SJVCEO. Other implementing partners would include local nonprofit Proteus, and the nonprofit California Building Performance Contractors Association (CBPCA). Funds will be available from the grant to cover any administrative burden incurred by the City.

The program will provide homeowners and occupants of single- and multi-family residential buildings with energy efficiency retrofits to reduce energy demand and energy bills. It will also reduce greenhouse gas emissions, helping the City and consortium partners to comply with AB 32 and SB 375. It is estimated that up to 2,900 residential buildings may receive retrofits over a two-year period. While program details are still being developed, it is envisioned that program eligibility may be based on homes which will receive the greatest energy efficiency benefit and that grant funds will be made available on a sliding scale based on income and availability of alternative funding.

Specifically, the program would include retrofits ranging from weatherization and insulation to the Home Energy Rating System Program (HERS) and Home Performance with Energy Star whole-house approach. The whole-house approach considers the interactive nature of energy features in a home and focuses on the house as a system. It utilizes diagnostic tools and instrumentation to assure high levels of energy efficiency. One or more of the following measures would be installed, based on each home's needs:

- Weatherization – Caulking, shower-head replacement, water heater blankets
- Insulation – Replacement of attic insulation less than R-11 to R-30

- HVAC Services – Refrigerant charge and airflow (RCA) tune-up, duct test and seal (DTS), duct repairs, system repairs
- Building air sealing verified using blowerdoors
- Duct sealing verified using duct blasters
- Efficient duct design and installation verified through airflow measurement tools
- Insulation quality and thermal bypass avoidance verified through infrared cameras
- Proper air conditioner refrigerant charge using gauges
- Depending upon availability of other funding sources, additional measures may include HVAC equipment replacement, window replacement, cool roofs, radiant barriers, water heater replacement, etc.

The program will accomplish this by re-training displaced construction and other workers to implement the residential energy efficiency retrofits. The CBPCA will work with Proteus and CSET to set up the training programs. Proteus, CSET, and local re-trained workers will implement the energy efficiency retrofits.

This grant program will also be integrated into the planned CaliforniaFIRST AB 811 solar and energy efficiency financing program that would enable local homeowners access to low-interest financing that is placed on their tax role for rooftop solar energy system installations and whole-house energy efficiency measures. Other available financing mechanisms would be identified for homeowners to increase the number of residential buildings receiving retrofits and to provide funding to continue the program beyond the two-year grant period. Additionally, Southern California Edison and Southern California Gas Company incentives and rebates will be leveraged to the maximum extent available.

The proposed program will benefit the citizens of Visalia, as well as the citizens of the other consortium jurisdictions in Tulare and Kings Counties, by providing energy efficiency retrofits on residential buildings which will reduce energy demand in the area (including peak-energy demand), reduce greenhouse gas emissions, provide re-training for workers impacted by the economic and building slowdown, and bring Federal ARRA funds to the local area.

**Prior Council/Board Actions:**

November 16, 2009 – Council approved submittal of a collaborative application for ARRA grant funds to establish the VIEW Comprehensive Residential Building Retrofit Program (the program name has changed slightly).

October 19, 2009 – Council authorized declaration of interest in participating in the CaliforniaFIRST solar energy efficiency financing program.

**Committee/Commission Review and Actions:**

**Alternatives:**

Take no action or deny the recommendation. If request is denied, staff will not apply for grant funding.

**Attachments:**

Resolution 2009-60

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

I move to adopt Resolution 2009-60 authorizing submittal of a collaborative application for State Energy Program grant funds in the amount of \$6,000,000 to establish the Tulare-Kings Counties Comprehensive Residential Building Retrofit Program.

***Environmental Assessment Status***

**CEQA Review:**

Staff is presently conducting a review and expects this project will meet the requirements for CEQA categorical exemption.

**NEPA Review:**

Staff is presently conducting a review and expects the project will be exempt.

**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. 2009-60**  
**A RESOLUTION OF THE CITY OF VISALIA**  
**THE COLLABORATIVE APPLICATION FOR GRANT FUNDS FOR THE**  
**TULARE-KINGS COUNTIES COMPREHENSIVE RESIDENTIAL BUILDING RETROFIT**  
**PROGRAM**

WHEREAS, the City of Visalia recognizes that it is in the interest of the regional, state, and national economy to stimulate the economy; create and retain jobs; reduce fossil fuel emissions; and reduce total energy usage and improve energy efficiency within our jurisdiction; and

WHEREAS, State Energy Program funds are available through the California Energy Commission's California Comprehensive Residential Building Retrofit Program for grants to eligible local governments to implement energy retrofits in existing residential buildings; and

WHEREAS, the City of Visalia is eligible for State Energy Program funding under the California Energy Commission's State Energy Program; and

WHEREAS, the City of Visalia is proposing to serve as lead agency for a local-government consortium to implement the comprehensive residential building retrofit program described in Exhibit A in order to qualify for State Energy Program funds from the California Energy Commission; and

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

1. Authorizes the submittal of the application to the California Energy Commission's State Energy Program for funds to execute the proposed project described in Exhibit A.

2. If recommended for funding by the California Energy Commission, authorizes the City of Visalia to accept a grant award up to the amount of this application for \$6,000,000.

3. That the City Manager acting for the City of Visalia is hereby authorized and empowered to execute in the name of the City of Visalia, all necessary contracts and agreements, and amendments hereto, to implement and carry out the purposes specified in the application.

## EXHIBIT A

### **Tulare-Kings Counties Comprehensive Residential Building Retrofit Program**

The City of Visalia will serve as the prime contractor to the California Energy Commission (CEC) for a consortium of local governments in Tulare and Kings Counties. Local-government partners will consist of the Valley Innovative Energy Watch (VIEW) Partnership jurisdictions. The VIEW Partnership is a local-government – utility partnership in Tulare and Kings Counties which was established about a year ago. In addition to the City of Visalia, participating jurisdictions are the City of Tulare, City of Porterville, City of Woodlake, City of Lindsay, City of Hanford, Tulare County, and Kings County. The \$6 million grant will be apportioned between the local government partners by population, less administration costs.

Program administration will be managed by local nonprofit CSET under subcontract to the City of Visalia and technical assistance will be provided by the nonprofit San Joaquin Valley Clean Energy Organization (SJVCEO). Other partners include local nonprofit Proteus, an energy efficiency verification contractor (to be selected), and the California Building Performance Contractors Association (CBPCA). Funds will be available from the grant to cover any administrative burden incurred by the City.

The program will provide a step-by-step process to provide homeowners and occupants of single- and multi-family residential buildings energy efficiency retrofits to reduce energy demand and greenhouse gas emissions, helping partners to comply with AB 32 and SB 375, while significantly reducing homeowners' or renters' energy bills. The program will accomplish this by re-training displaced construction and other workers to implement the residential energy efficiency retrofits. The CBPCA will work with local non-profit organizations Proteus and CSET to set up the training programs. Proteus, CSET, and local re-trained workers will implement the energy efficiency retrofits.

The program will provide two tiers of retrofits for single- and multi-family residential buildings. The program will not include the CEC's First Tier checklist approach, which is currently being implemented in the region by CSET and Proteus and funded by other programs. The proposed program will implement the CEC's Second and Third Tier strategies.

The program envisions that up to 2,900 residential building retrofits may be implemented during the two-year grant program. While program details are still being developed, it is envisioned that program eligibility may be based on homes which will receive the greatest energy efficiency benefit and that grant funds will be made available on a sliding scale based on income and availability of alternative funding.

The program Second Tier retrofit approach will consist of one or more of the following measures:

- Weatherization – Caulking, shower-head replacement, water heater blankets
- Insulation – Replacement of attic insulation less than R-11 to R-30
- HVAC Services – Refrigerant charge and airflow (RCA) tune-up, duct test and seal (DTS), duct repairs, system repairs

The program Third Tier will consist of the Home Energy Rating System Program (HERS) and Home Performance with Energy Star whole-house approach. This approach considers the interactive nature of energy features in a home and focuses on the house as a system. It utilizes

diagnostic tools and instrumentation to assure high levels of energy efficiency. Measures may consist of:

- Building air sealing verified using blowerdoors
- Duct sealing verified using duct blasters
- Efficient duct design and installation verified through airflow measurement tools
- Insulation quality and thermal bypass avoidance verified through infrared cameras
- Proper air conditioner refrigerant charge using gauges
- Depending upon availability of other funding sources, additional measures may include HVAC equipment replacement, window replacement, cool roofs, radiant barriers, water heater replacement, etc.

Additional funding will be leveraged as available including Property Assessed Clean Energy (PACE) loans such as the CaliforniaFIRST AB 811 solar and energy efficiency financing program; State Energy Program loans; and Southern California Edison and Southern California Gas Company incentives and rebates.

**City of Visalia  
Agenda Item Transmittal**

**Meeting Date:** December 7, 2009

**Agenda Item Number (Assigned by City Clerk):** 5a

**Agenda Item Wording:** Authorization to enter into a new agreement (fifth) between the Community Redevelopment Agency of the City of Visalia and Habitat for Humanity of Tulare County, for use of Redevelopment Agency Low/Mod Housing Set-Aside funds, to provide for a loan up to two hundred fifty thousand dollars (\$250,000) for acquisition and rehabilitation costs for affordable housing. **Resolution 2009 -05 required.**

**Deadline for Action:** December 7, 2009

**Submitting Department:** Housing and Economic Development Department

**Contact Name and Phone Number:**

Ricardo Noguera, Housing & Economic Development Director (x 4190); Rhonda Haynes, Housing Specialist (X4460)

**Department Recommendation:** Staff recommends that the Agency Board authorize the Executive Director to enter into a new (fifth) agreement with Habitat for Humanity of Tulare County, for a loan (with conditions) in the amount up to Two hundred fifty thousand dollars (\$250,000) utilizing Redevelopment Agency Low/Mod Housing Set-Aside funds to:

1. Purchase existing foreclosed single-family homes to rehabilitate for very-low income families including title and closing costs; and
2. Utilize for predevelopment (soft costs) of acquired properties, such as necessary engineering, building permit fees, surveys, and architectural drawings.
3. Serve as the loan servicing agency for the repayment of the income qualified family loans.

**Summary:**

Habitat for Humanity has requested in the attached letter (Attachment "A") that the Agency extend a fifth loan to have funds available to purchase a minimum of four (4) foreclosed homes to rehabilitate and make available as affordable housing to very low income families. Previous funding provided to Habitat for Humanity (\$300,000 in September 2008) from the Agency's Low-Mod Set Aside Funds assisted with the purchase of five (5) foreclosed homes and in obtaining a building permit for the construction of the final (fourth) home in the Summers Street development project, as shown in Table II 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.): 5

**Review:**

**Dept. Head** RN 12/1/09  
(Initials & date required)

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

**City Mgr** SMS 12/3/09  
(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 request for additional funding are derived from the 08/09 Mooney Redevelopment Low/Mod Set Aside funds. Previous funding was provided as a loan, however, if the family remained in the home for the 45 year period and abides by the terms of the agreement, the loan is forgiven.

The recent State takeaways from Agency tax increments funding and property value reductions will make future support for Habitat projects under agreements similar to the one proposed here unclear. Due to these circumstances, the State takeaway and reduction of RDA Funding, these funds provided, will be repaid on a monthly basis up to a 30 year term. Habitat, serving as a loan servicing agency will resubmit the repayment of such funds to the City on a monthly basis as well. This allows for the RDA funding to be recycled for future uses. Table I below identifies the changes to the program and funding.

<b>Table I</b>		
<b>Habitat for Humanity- Change in loan terms</b>		
	<b>Previous Agreement</b>	<b>New Agreement</b>
<b><i>Loan w/ Family:</i></b>		
Amount:	Average \$60,000	Average \$60,000
Lien Position of City Loan	Second position	First position
Term	45 years	up to 30 years
Interest Rate:	0%	0%
Repayment	Forgiven if owner occupied for 45 years	Monthly repayment beginning 30 days after close of escrow
Payment amount	none	Calculated on % of Agency funds provided -v - HFH
Loan servicing	City	Habitat shall collect borrower payment, then submit to Agency
<b><i>Loan w Habitat</i></b>		
Amount	\$300,000	\$250,000
Term to use funds:	up to 5 years	Expend within 1 year of execution; Rehabilitate and Resale to qualifying family within 2 years of execution

**Use of RDA Low/Mod Funds.**

The Redevelopment funds would be provided to Habitat as a loan with conditions that they utilize these funds to acquire properties, pay for title fees, closing costs, building permits, architectural and engineering fees and other predevelopment costs for assisted homes to be occupied by families of very low income for a period of forty-five (45) years. A loan repayment schedule will be prepared for each household to make monthly payments back to both Habitat and the Agency for the use of the funds, with no interest rate charged, only principle. Payments made by the borrower shall begin thirty (30) days following the close of escrow to the qualified borrower/household. If the borrower does not comply with the requirements, and Habitat is unable to re-occupy with a qualifying family, the funds must be re-paid in full to the Agency or foreclosure proceedings will be considered. However, the Agency will utilize all available avenues to modify the loan working closely with both the borrower and Habitat to ensure the household remains in the house and the loan is maintained in current standing.

**Loan Terms.**

This agreement is different from previous agreements, in that it is no longer a grant, but a loan. Once the borrower is identified, Habitat for Humanity will work closely with the City Staff to calculate the repayment of the Agency's portion of the loan amount and term. The borrower will be required to make monthly payments on their loan for a period not to exceed thirty (30) years, at zero interest, principle only payments, to Habitat for Humanity which will be acting as loan servicing agency for the loans it makes pursuant to its agreement with the Agency. The Agency has agreed to allow Habitat for Humanity, to work directly with the household in collecting their monthly payments. If the household becomes delinquent with their payments, which they have assumed from Habitat, Habitat will be required to consult with the Agency to identify appropriate remedies. However, Agency shall retain the right to choose, at its sole discretion, whichever remedy is most appropriate based on the facts and circumstances presented at that time.

The \$250,000 Loan Agreement with Habitat will not be a revolving loan fund account meaning additional funds are not automatically available to Habitat annually for additional land acquisitions. With the monthly repayment from the borrowers, Habitat will submit the payment to the Agency, less a loan servicing fee of \$12.00 per month, per borrower. The accumulation of the payments shall be set aside by the Agency for future Redevelopment projects. Habitat may submit a request for additional funds in future years to purchase additional properties for households; however, those funds would need to be made available to Habitat by a new agreement authorized by the Agency Board, and the Agency cannot presently guarantee that additional funds will be made available due to the economic crisis facing the local community and State.

Dwellings purchased by Habitat, subject to this agreement, will be used for the acquisition of foreclosed single-family units to be resold to very low-income households. By providing funds to Habitat for Humanity, the Agency continues its efforts in developing, rehabilitating and preserving affordable housing for low and very-low homebuyers.

When these funds are utilized to purchase properties, the unit must remain available at affordable housing levels and occupied by households of very low income for a period of forty-five (45) years. The Deed of Trust, Note and Resale Restriction Affordability and Assumption Agreement will contain a provision that the loan is to be repaid on a monthly basis until paid in full (not to exceed 30 years). The Resale Restriction Agreement and Assumption Agreement are subject to Habitat's Resale Agreement which includes a right of first refusal to Habitat or Agency upon owner's sale of the property.

If the owner ceases to comply with the covenants contained in the security documents, the funds provided become immediately due and payable to the Agency pursuant to the terms of the security documents unless the obligations contained therein are assumed by a qualified new homebuyer/family.

**Background:**

Habitat for Humanity has requested in the attached letter (Attachment "A") that the Agency extend a fifth loan to Habitat for Humanity to acquire four (4) foreclosed residential properties within the redevelopment districts. Habitat would then rehabilitate and transfer ownership to a very low income qualified household. (see attached letter from Habitat's Executive Director, Betsy Murphy). The Community Redevelopment Agency has been providing the City's HOME Funds (Home Investment Partnership Funds) and Redevelopment Low/Mod Housing Set-Aside Funds to Habitat for Humanity since 1995. Recent transactions since 2003 are shown in Attachment "1".

Habitat for Humanity has a successful track record of providing homeownership opportunities in the City of Visalia to very-low income families through Habitat's construction/ownership

program. Habitat enlists the future owner and community volunteers to construct the homes. Families must be willing to partner with Habitat, contributing 500 hours of “sweat equity” working on their own homes and other Habitat projects.

This agreement allows the funds to be withdrawn from a special loan account in an expedited manner. Approximately fifteen (15) days prior to obtaining funding approval, or as soon as property is identified, Habitat will provide a written request to the City of Visalia Housing and Economic Development Department. The request will include the following:

- Purchase Price
- Property Description: Parcel Number, physical address, zoning, photos, existing uses, if existing dwelling square footage, in addition to the zoning and uses of properties surrounding the subject site.
- At the Agency’s discretion, Habitat may submit local market comparable sales data supporting the purchase price in lieu of providing an appraisal.
- Prior to the closing of escrow of the property, at a minimum, a Phase I environmental clearance must be conducted for pre-development sites. A copy of the results must be provided to the City.

**Agency’s Role in Habitat’s Proposed Acquisition of Properties.**

City Staff will inspect and “authorize” the purchase of the property PRIOR to Habitat placing a bid on the property. If staff determines that the purchase is too high or the property has too many physical challenges, the Agency may opt to deny funding support for the purchase of the property.

Thereafter, thirty (30) days prior to the closing of escrow, or as soon as a purchase agreement is signed, Habitat will provide a second written request to the City of Visalia Housing and Economic Development Department. The request will identify the property, contact information regarding the property, Title Company, copy of appraisal or three local comparables, environmental clearance (Phase I). With these requirements, the Housing and Economic Development Department will make every effort to review the request and make the funds available within fifteen (15) calendar days of receipt of the request, noting that appraisals some times take longer than thirty (30) days to complete. An appraisal may not be necessary if the local market comparables are current and provide an accurate account of the property value.

As previously indicated, Habitat for Humanity, prior to conveying the property, will obtain a promissory note, deed of trust, and insurance. Upon rehabilitating a home, Habitat will transfer the ownership and liens to a qualified family. An affordability, resale restriction and assumption agreement will be recorded, in addition to a Note and Truth In Lending disclosure with repayment terms. These security documents will name the Agency as the secured party, payee, and/or beneficiary. The security documents will contain a provision that the loan is to begin repayment thirty (30) days after the close of escrow. Payments shall be made to the Agency each month based on an approved repayment schedule with a monthly payment less Habitat’s loan servicing fee. During the repayment period, if the owner ceases to comply with the covenants and repayment agreement contained in the security documents, the loan shall become immediately due and payable to the Agency, pursuant to the terms of the security documents, unless the obligations are assumed by a qualified transferee or other remedies as deemed appropriate by the Agency at its sole discretion.

Staff will evaluate Habitat’s request for funding and bring each request forward to the Agency if funding is available.

**Prior Council/Board Actions:** Prior action on December 15, 2003, approval for the use of Redevelopment Low/Mod Housing Set-Aside Funds as a loan account administered by City's Finance Department with a balance of up to one hundred thousand dollars (\$100,000) for a one-year period, to acquire land for the construction of affordable homes.

Prior action on November 1, 2004 for approval for the use of Redevelopment Low/Mod Housing Set-Aside Funds as a loan account administered by City's Finance Department with a balance of up to one hundred thousand dollars (\$100,000) for a one-year period, to acquire land for the construction of affordable homes.

Prior action on March 20, 2006, for approval for the use of Redevelopment Low/Mod Housing Set-Aside funds as a loan account administered by City's Finance Department with a balance of up to one hundred thousand dollars (\$100,000) for a one-year period, to acquire land for the construction of affordable homes.

Prior action on December 6, 2006, for approval for the use of Redevelopment Low/Mod Housing Set-Aside Funds as a loan account with a balance of three-hundred (\$300,000) for the acquisition of the Encina Development, now known as Summers Street Development, to construct affordable home.

Prior action on September 15, 2008, for approval for the use of Redevelopment Low/Mod Housing Set-Aside Funds as a loan account with a balance of three-hundred (\$300,000) for the acquisition of foreclosed single family properties to resell to very-low income qualifying families.

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

**Alternatives:** None recommended

**Attachments:** Attachment "A" - Habitat for Humanity Letter dated October 30, 2009  
Attachment "B"- Draft Loan Agreement  
Attachment "C" – Resolution 2009-05  
Attachment "D" - Recent Transactions Table II

**City Manager Recommendation:**

**Recommended Motion (and Alternative Motions if expected):** I move that the Agency Board authorize the Executive Director to enter into a fifth agreement with Habitat for Humanity of Tulare County, for a loan (with conditions) in the amount up to two- hundred fifty-thousand dollars (\$250,000) utilizing Redevelopment Agency Low/Mod Housing Set-Aside funds to:

- 1) purchase existing single family homes to rehabilitate for very-low income families including title and closing costs; and
- 2) utilize for predevelopment (soft costs) of acquired properties, such as necessary engineering, building permit fees, surveys, and architectural drawings for affordable housing.
- 3) Serve as the loan servicing agency for the repayment of the income qualified family loans.

Resolution 2009 – 05 required.



**Financial Impact**

**Funding Source:**

Account Number: to be provided (mooney rda)

**Budget Recap:**

Total Estimated cost: \$250,000	New Revenue:	\$
Amount Budgeted: \$250,000	Lost Revenue:	\$
New funding required:\$	New Personnel:	\$
Council Policy Change: Yes____	No__X__	

Copies of this report have been provided to:

**Environmental Assessment Status**

**CEQA Review:**

Required? Yes  No

Review and Action: Prior:

Required: for land purchase

**NEPA Review:** NEPA is not required for use of Redevelopment

Required? Yes  No

Review and Action: Prior:

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*)  
*Final Loan Agreement to be signed by all interested parties*

Attachment "A"  
Letter



October 30, 2009

Ricardo Noguera  
City of Visalia  
315 E. Acequia  
Visalia, CA 93291

Re: Request for renewal of funding for Habitat for Humanity

Dear Ricardo,

Habitat for Humanity is most appreciative of the loan fund the City of Visalia provides to help us acquire land and install infrastructure for the houses we build. Since the renewal of this fund in September 2008 for \$300,000, we have purchased 5 foreclosed homes for rehabilitation (3 are in escrow and title for the other 2 has been transferred to the new owners) and we obtained building permits for our new house at 1629 N. Summers St. (this will complete the 4 house build).

At this time, we are requesting that the loan fund be renewed for \$250,000. We will use the money to purchase at least 4 more foreclosed homes, as we are able to provide more homeownership opportunities to very low-income households through our rehabilitation program than through building new homes.

The Board of Directors and staff of Habitat for Humanity of Tulare County applaud the City of Visalia for sharing our vision that every man, woman, and child in Tulare County will have a decent affordable place to live.

Sincerely,

  
Betsy Murphy, Executive Director  
Habitat for Humanity of Tulare County

Attachment "B"-  
Draft Loan Agreement

Draft Loan Agreement to follow

Attachment "1"

<b>Table II</b>			
<b>Habitat for Humanity</b>			
<b>Date to City Council</b>	<b>Amount Authorized</b>	<b>Property Purchased</b>	<b>Project Costs include:</b>
December 15, 2003	\$ 100,000.00	611 North Locust	Acquisition; Environmental Review; Lot clearance, Building Permits; Lot Development & Conditional Use Permit
		221 East Houston	Acquisition; Environmental Review
		1610 North Court	Lot Preparation; Closing Costs
		1614 North Court	Lot Preparation; Closing Costs
		Encina Subdivision (now known as Summers Street)	Architectural (draftsman)services; working drawings and proposed Site Plan
November 1, 2004	\$ 100,000.00	822-A West Harold	Acquisition; Lot split; Environmental Review; Conditional Use Permit; Final Parcel Map
		822-B West Harold	Acquisition; Lot split; Environmental Review; Conditional Use Permit; Final Parcel Map
		221 East Houston	Building Permit; Photovoltaic System; Concrete work
		1029 West Goshen	Escrow- Good Faith Money's
March 20, 2006	\$ 100,000.00	Encina Subdivision (now known as Summers Street)1631 N Encina	Acquisition; Title and Escrow fees (divided into 4 lots)
		822 West Harold	Building Permit
		1029 West Goshen	Escrow final purchase costs; Architect Fees; Recorded Parcel Map
December 6, 2006	\$ 300,000.00	Encina Subdivision (now known as Summers Street)1631 N Encina	See Below; individual building permits
		*1636 North Summers	Building Permit
		*1633 North Summers	Building Permit
		*1627 North Summers	Building Permit
September 15, 2008	\$ 300,000.00	*1629 North Summers	Building Permit
		Acquisition of Foreclosed Properties: *1116 N Jacobs	Acquired foreclosed home to rehabilitate, including recording fees
		*1705 N Court Street	Acquired foreclosed home to rehabilitate, including recording fees
		*2935 N Giddings Street	Acquired foreclosed home to rehabilitate, including recording fees
		*1745 N Liberty Street	Acquired foreclosed home to rehabilitate, including recording fees
		*1535 N Stevenson Street	Acquired foreclosed home to rehabilitate, including recording fees

## **AFFORDABLE HOUSING LOAN AGREEMENT**

THIS AFFORDABLE HOUSING LOAN AGREEMENT (hereinafter "Agreement") is entered into and effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 2009 by and between the COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF VISAIA (the "Agency") and HABITAT FOR HUMANITY OF TULARE COUNTY ("Habitat" or "Borrower").

### **RECITALS**

The following recitals are a substantive part of this Agreement, and are incorporated herein by this reference:

**A.** Habitat desires Agency funding to purchase single family residential foreclosed properties, which shall be rehabilitated and then made available for resale for the purpose of providing homeownership opportunities to very low income persons; and

**B.** There is an ongoing need in the community for affordable housing opportunities; and

**C.** Pursuant to Section 33334.2 of the California Health and Safety Code, the Agency sets aside annually 20% of tax increment revenues ("RDA Low/Mod Funds") allocated to improve and increase the supply of affordable housing within the City of Visalia; and

**D.** The Agency has determined that Habitat has the necessary expertise, skill, and ability to add affordable homes to the community and to carry out the commitments set forth in this Agreement; and

**E.** As opportunities arise for Habitat to acquire properties which meet the requirements of this Agreement, Agency desires to make available to Habitat Agency's RDA Low/Mod Funds, as provided herein, to assist Habitat with the acquisition of properties that will ultimately be developed and committed by Habitat for affordable home ownership opportunities to qualified very low income persons; and

**F.** The purpose of this Agreement is to effectuate the Agency's Redevelopment Plans by providing for affordable housing opportunities within the Agency's redevelopment project areas for the benefit of the City of Visalia ("City").

### **NOW, THEREFORE, IT IS AGREED:**

**1. Agency Loan to Habitat.** Agency shall make available to Habitat a loan account, on the terms and conditions set forth herein, for an amount not to exceed TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000.00) for a period not to exceed one (1) year from the date of the execution of this Agreement (the "Agency Loan Account" or the "Agency Loan"). The Agency Loan

to Habitat shall be an interest free, principal only loan, subject to the terms and conditions as provided further herein.

**2. Use of Loan Funds.** Habitat shall acquire and rehabilitate no less than four (4) single family residential properties which are currently in foreclosure, or have been acquired by lenders through foreclosure, with an acquisition cost of approximately sixty thousand dollars per property (the "Project"). The Agency Loan shall be used only to acquire properties in accord with the requirements of the California Redevelopment Law (the "CRL"; Health and Safety Code §§33000 et seq.), and more specifically in compliance with the requirements Health and Safety Code §33334.2, for the purpose of providing home ownership opportunities to persons or households who at least qualify as very low income households or persons, as defined by Health and Safety Code Section 50105 (hereinafter "Qualified Persons or Households"). Habitat may also use the Agency Loan, at the sole discretion of Agency, for costs associated with the acquisition and rehabilitation of any property funded by the Agency Loan. Such costs shall include, but not be limited to, engineering services, architectural services, infrastructure connections and hookup to off-street utilities, title fees, administrative fees levied by public agencies, or as otherwise determined at the sole discretion of the Agency (hereinafter collectively referred to as "Soft Costs").

**3. Requirements for Request for Distribution of Loan Proceeds.**

When Habitat seeks a distribution from the Agency Loan Account for the purpose of acquiring a property for the Project, including distribution of Soft Costs, Habitat shall submit to Agency a written request which shall include the following information, materials or documents:

- a. A good faith estimate and closing statement.
- b. The proposed purchase price of a Project property.
- c. A property description which includes the Assessor's Parcel Number, physical address, legal description, and existing dwelling square footage.
- d. An appraisal for the proposed property, or, at Agency's sole discretion, local market comparable sales data supporting the proposed purchase price.
- e. The name, address and telephone number of the title company and escrow officer for the proposed acquisition.
- f. Photos of the property, including photos of both the interior and exterior of the dwelling unit and any other improvements located on property.
- g. Within five (5) days of the open of escrow, a title report for the property to be acquired.

- h. At least five (5) days prior to the close of escrow, evidence of the environmental status of the property, which shall include at a minimum, a Phase I Report.
- i. Prior to any request for the payment of any Soft Costs associated with the acquisition of a property, Habitat shall submit a requisition sheet itemizing the specific Soft Costs to be paid, the payees, their addresses, their federal identification numbers, and the amount to be paid to each.
- j. Upon request of Habitat, Agency, at its sole discretion, may waive or defer any of the requirements identified in Subsections 3(a) through 3(i), inclusive.

**4. Processing of Request for Distribution.** All requests for distribution from the Agency Loan Account for a Project property acquisition shall be sent to the City's Housing and Economic Development Department, attention Ricardo Noguera, at least fifteen (15) days prior to the desired date of distribution by the Agency. The Agency shall review the distribution request and supporting information, materials and documents provided by Habitat prior to authorizing a distribution from the Agency Loan Account. Agency's review shall include inspection of the property by Agency or City staff prior to authorizing the distribution request. Agency shall provide, at its earliest possible convenience, to Habitat, written confirmation that Habitat's request for distribution is complete, or if incomplete, Agency shall identify in writing all additional information, materials and documents required to complete the request for distribution.

Once the request for distribution has been confirmed by Agency to be complete, Agency will provide Habitat with its determination on the request for authorization. All authorizations for distributions from the Agency Loan Account shall be confirmed to Habitat, and Habitat may not rely on Agency for funding for any property acquisition pursuant to the Project without first receiving said written confirmation. Agency may, at its sole discretion, deny any distribution request submitted by Habitat, and shall provide said determination to Habitat in writing.

Once Agency once has approved Habitat's request for distribution, Agency shall distribute the funds requested by Habitat directly to the escrow account which has been opened by Habitat for the Project property acquisition, prior to the date set for the close of escrow. For distributions from the Agency Loan Account for Soft Costs, Agency, at its sole discretion, may distribute funds directly to Habitat, or may distribute those funds directly to Habitat's payees.

**5. Security For and Repayment of Agency Loan.** Prior to the close of escrow on any acquisition of a Project property by Habitat utilizing funds from the Agency Loan Account, Habitat shall execute a Note, in a form substantially similar to the "Form of Note" attached hereto as Exhibit "A", which is incorporated herein by this reference. Upon the close of escrow on any acquisition of a Project property, Habitat shall execute and record a Deed of

Trust, in a form substantially similar to the “Form of Deed of Trust” attached hereto as Exhibit “B”, which is incorporated herein by this reference. Should Habitat request disbursement of additional Project Soft Costs after the close of escrow on a Project property, Habitat shall amend the Note and the Deed of Trust required by this Section to reflect the additional funds loaned to Habitat for the Project property.

Habitat shall not be required to make payment on the Agency Loan so long as Habitat is in compliance with the terms and conditions of this Agreement. The Note required by this Section shall contain a provision that repayment on the Agency Loan will commence thirty (30) days after a Project property has been transferred to a Qualified Person or Household. It is anticipated that, as provided for herein, the Qualified Person or Household will have assumed the obligations of Habitat under the Note required by this Section. Prior to the close of escrow for the sale of the Project property to a Qualified Person or Household, Habitat agrees to amend the Note required by this Section to add a loan payment schedule. The loan payment schedule shall require monthly payments to the Agency for a period not to exceed thirty (30) years. Calculation of the monthly payment amount term of the loan may consider the borrower’s income and eligibility in addition to the percentage of the City’s investment versus Habitat’s investment, however Agency retains sole discretion to approve the loan payment schedule submitted by Habitat. Upon full repayment of the Agency Loan by a Qualified Person or Household for a Project property, a substitution of Trustee and Full Reconveyance shall be processed and recorded at the expense of the Qualified Person or Household.

**6. Rehabilitation of Project Properties by Habitat.** After acquisition by Habitat of any Project property with proceeds from the Agency Loan, Habitat shall complete any necessary rehabilitation on the property and shall make the property available for resale to a Qualified Person or Household within two (2) years from the date of execution of this Agreement. Failure by Habitat to make the property available for resale to a Qualified Person or Household within two years from the execution of this Agreement shall be considered a material breach of this Agreement, and Agency’s recourse shall include, but not be limited to the remedies outlined in this Agreement and the Note required by this Agreement. Habitat shall sell a Project property to a Qualified Person or Household within five (5) years of its receipt of Agency loan proceeds for acquisition of a Project property and execution of a Note for same.

**7. Disposition of Project Properties to Qualified Persons or Households.** When Habitat completes the rehabilitation of a Project property and prepares to transfer the ownership of the property to the Qualified Person or Household, Habitat shall submit to Agency a written request, care of the City of Visalia Housing and Economic Development Department, attention Ricardo Noguera, at least fifteen (15) days prior to the open of escrow for the disposition of the property to a Qualified Person or Household. Said written request shall include the following information, materials or documents:

- a. A current title report for the property to be sold.



- b. The name(s) of the Qualified Person or Household, the number of persons that will be residing at the Project property, the anticipated initial occupancy date, the gross income per year of the Qualified Person or Household, as certified by Habitat, and the percentage of the mortgage to be paid by the Qualified Person or Household in relation to the Qualified Person or Household's income.
- c. The name, address and telephone number of the title company and escrow officer handling the disposition of the property from Habitat to the Qualified Person or Household.
- d. The telephone numbers and contact person at Habitat responsible for the Project property disposition.
- e. A proposed loan payment schedule for all Agency Loan funds invested by Habitat in the Project property to be sold to the Qualified Person or Household.
- f. Copies of the Resale Restriction and/or Assumption Agreement documents which must be executed by the Qualified Person or Household, as required by this Agreement, and as provided for herein.
- g. Copies of all documents Habitat intends to use to effectuate the transfer of the Project property and to secure its interest in the Project property, including but not limited to purchase and sale agreement, loan agreements, promissory notes, deeds of trust, legal notices and disclosures.
- h. Provide Truth in Lending Disclosure as to the full payment amount carried over to the eligible borrower which includes the payment structure, principle amount, payment required and start date.
- i. Any other documentation required under CRL or Agency program guidelines.
- j. Agency, at its sole and exclusive discretion, may waive or defer any of the requirements identified in Subsections 3(a) through 3(i), inclusive.

Habitat shall transfer a Project property to a Qualified Person or Household subject to the obligations of Habitat to the Agency contained in the Note and Deed of Trust between Habitat and Agency required by this Agreement to secure the Agency loan to Habitat. Agency agrees to allow Habitat to transfer those obligations to a Qualified Person or Household at the close of escrow on a Project property between Habitat and a Qualified Person or Household. In order to transfer its obligations to a Qualified Person or Household, Habitat shall

ensure that the Qualified Person or Household executes an Assumption Agreement, in a form substantially similar to the “Form of Assumption Agreement” attached hereto as Exhibit “C”, which is incorporated herein by this reference.

Habitat agrees that any Deed of Trust or security instrument required between Habitat and the Qualified Person or Household shall be subordinate to Agency’s Deed of Trust securing Agency’s investment in the Project property. Pursuant to Health and Safety Code Section 33334.14, Agency agrees to subordinate its Deed of Trust in the Project property to any federal and state financing invested in a Project property.

These requirement shall survive the term of this Agreement and shall apply to all proceeds obtained as a result of this Agreement even if used after the expiration of the term hereof. Where it is intended that any security document be recorded against a Project property, Habitat shall cause said document to be recorded in the Tulare County Assessor’s Office.

**8. Resale Restriction.**

Prior to close of escrow on a property between Habitat and a Qualified Person or Household, Habitat shall ensure that the Qualified Person or Household executes a Resale Restriction and Purchase Option, in a form substantially similar to the “Form of Resale restriction and Purchase Option” attached hereto as Exhibit “D”, which is incorporated herein by this reference. Upon repayment of the balance of the Agency Loan on a Project property by the Qualified Person or Household and/or by Habitat, the affordability covenants shall cease.

**9. Reporting Requirements.**

Habitat agrees to provide all documents necessary to Agency in furtherance of assuring that any Qualified Person or Household meets the requirements of the CRL and any other applicable state or local statutes, regulations, ordinances or policies. Agency may from time to time request additional or different information and Habitat shall promptly supply such information if reasonably available to Habitat. Habitat shall maintain and provide to Agency upon request all necessary books and records, including property, personal and financial records in accordance with requirements prescribed by the Agency with respect to all matters covered by this Agreement. Upon request for examination by Agency, Habitat, at any time during normal business hours, shall make available all of its records with respect to all matters covered by this Agreement. Habitat shall permit Agency to audit, examine and make excerpts or transcripts from these records.

**10. Loan Collection Services.**

Habitat shall to provide to Agency loan collection services on Agency’s Notes for Project properties which have been assumed by the Qualified Person or Household pursuant to a disposition of those properties by Habitat to a Qualified Person or Household. Habitat shall be entitled to retain from the payment made by the Qualified Person or Household a loan collection service charge of TWELVE DOLLARS (\$12.00). In addition to the Note assumed by a Qualified Person or Household, Habitat shall

provide the Qualified Person or Household with any documents Habitat or Agency deem necessary to provide the Qualified Person or Household with notice of the monthly total amount due and the date that payment for same is required. Habitat shall forward to Agency within five (5) days of receipt all payments received from Qualified Person or Household, along with a current month reconciliation report which shall include the following:

- a. Qualified Person or Household's account number (established through and coordinated with the City of Visalia's Housing & Economic Development and/or Finance Staff).
- b. Qualified Person or Household's name and address.
- c. Qualified Person or Household's loan payment start date.
- d. Qualified Person or Household's number of loan payments made.
- e. Qualified Person or Household's number of loan payments remaining.
- f. Qualified Person or Household's payment end date (term of the loan).
- g. Qualified Person or Household's principal balance.
- h. The amount of Qualified Person or Household's payment submitted to Habitat.
- i. Display fee for Habitat collection services, then remittance to City.
- j. Qualified Person or Household's Remaining Balance.
- k. Any other information requested by City Staff to conform to Audit.

In the event that any Qualified Person or Household is in default on its obligations under the Note it has assumed pursuant to the disposition of a Project property from Habitat, Habitat shall inform the Agency of the default within five (5) days of the default. Habitat may initiate consultation with Agency within five (5) days of its notice of the Qualified Person or Household's default should Habitat desire to assist the Qualified Person or Household with a proposed plan for remedy of the default. Should Habitat initiate a loan default consultation with Agency on behalf of a Qualified Person or Household, Agency agrees to review Habitat's proposed plan for remedy, and may: (1) accept the plan as proposed by Habitat, (2) modify the plan as proposed by Habitat in its sole and absolute discretion, or (3) reject the proposed plan by Habitat in its sole and absolute discretion and pursue its rights and remedies under the Note

required for the Agency Loan and assumed by the Qualified Person or Household. Agency and Habitat agree to work cooperatively to develop and execute all documents necessary to effectuate an Agency approved default remedy plan contemplated by this Section.

**11. Right to Cancel Loan Collection Services.** In the event of breach of any condition or provision hereof, the Agency shall have the right to terminate Habitat's loan collection services. The Agency shall have the benefit of such work as may have been completed up to that time of such termination and with respect to any part which shall have been delivered to and accepted by the Agency, there shall be an equitable adjustment of compensation. Irrespective of any default hereunder, the Agency may also, at any time at its discretion, terminate Habitat's loan collection services, in whole or in part, by giving Habitat thirty (30) days written notice thereof and in such event, Habitat shall be entitled to receive compensation specified herein for all work completed prior to such thirty (30) days notice of termination or cancellation, delivered or not yet delivered to the Agency. Habitat shall also be entitled to compensation for all subsequent work requested by the Agency and delivered by Habitat, after notice of termination. For any work partially completed at the date of termination, such work will be compensated on a prorated basis. Habitat, at its discretion, may terminate its obligation to provide loan collection services, in whole or in part, by giving the Agency thirty (30) days written notice.

**12. No Additional Funding.** With the exception of the use of the Agency Loan as specified herein, no additional funding shall be provided by the Agency for the rehabilitation, construction, or development of a Project property.

**13. Insurance Requirements.** For each Project where Habitat utilizes the proceeds from the Agency Loan, Habitat shall take out and maintain or shall cause its contractor to take out and maintain throughout the term of this Agreement, a commercial general liability policy in a form and amount acceptable to the Agency which shall protect Habitat and Agency from claims for such damages. Such policy or policies shall be written on an occurrence form. Habitat shall also obtain in a form and amount acceptable to the Agency, builder's all-risk insurance in an amount not less than the full insurable value of the Project improvements on a replacement cost basis and shall furnish or cause to be furnished to the Agency evidence satisfactory to Agency that Habitat and any contractor with whom it has contracted for the performance of work on a Project property or otherwise pursuant to this Agreement carries workers' compensation insurance as required by law. Companies writing the insurance required hereunder shall be licensed to do business in the State of California. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII. Habitat shall furnish a notarized certificate of insurance countersigned by an authorized agent of the insurance carrier on a form reasonably approved by the Agency setting forth the general provisions of the insurance coverage. This countersigned certificate shall name the City, Agency and their respective officers, agents, employees, volunteers and representatives as additionally insured parties under the policy, and the certificate shall be accompanied by a duly executed endorsement evidencing

such additional insured status. The certificate and endorsement by the insurance carrier shall contain a statement of obligation on the part of the carrier to notify City and Agency of any material change, cancellation or termination of the coverage at least thirty (30) days in advance of the effective date of any such material change, cancellation or termination. Coverage provided hereunder by Habitat shall be primary insurance and shall not be contributing with any insurance, self-insurance or joint self-insurance maintained by the Agency, and the policy shall contain such an endorsement. The insurance policy or the endorsement shall contain a waiver of subrogation for the benefit of the Agency. The required certificate shall be furnished by Habitat to Agency within the time provided in the Schedule of Performance.

**14. City and Other Governmental Agency Permits.** Habitat shall secure and maintain, or cause to be secured and maintained, any and all permits or entitlements that may be required by City or any other governmental agency affected by or which has jurisdiction over the Project.

**15. Antidiscrimination During Construction or Rehabilitation.** Habitat, for itself, and its successors and assigns, agrees that in the construction or rehabilitation of the Project, Habitat and its agents shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, marital status, ancestry or national origin.

**16. Compliance With Laws.** Habitat manage all Projects in conformance with all applicable laws; City zoning and development standards; building, plumbing, mechanical and electrical codes; all other provisions of the City's Municipal Code; and all applicable disabled and handicapped access requirements, including the Americans With Disabilities Act, 42 U.S.C. Section 12101, et seq., Government Code Section 4450, et seq., Government Code Section 11135, et seq., and the Unruh Civil Rights Act, Civil Code Section 51, et seq.

**17. Prevailing Wages.** It is anticipated by Agency and Habitat that all Projects funded by this Agreement will be exempt from all applicable prevailing wage law requirements. However, to the extent any of these laws are applicable to a Project, Habitat shall comply with all requirements of the Department of Industrial Relations in accordance with the California Labor Code, and all other applicable federal, state and local laws and regulations pertaining to labor standards and payment of prevailing wages (collectively, "Prevailing Wage Laws"). As applicable, Habitat shall (i) require its contractors and subcontractors to submit certified copies of payroll records to Habitat; (ii) maintain complete copies of such certified payroll records; and (iii) make such records available to Agency and its designees for inspection and copying during regular business hours at the Project property or at another location within the City of Visalia.

Compliance with Prevailing Wage Laws where applicable to a Project shall be the sole responsibility of Habitat. Habitat shall defend, indemnify and hold harmless Agency, City and their officers, employees, volunteers, agents and representatives from and against any and all present and future causes of

action, claims, liabilities, obligations, damages, fines, penalties, judgments, actions or expenses (including attorney fees) (collectively, the "Claims"), arising out of or in any way connected with Habitat's obligation to comply with all governmental requirements, including all Claims that may be made by contractors, subcontractors or other third party claimants pursuant to Labor Code Sections 1726 and 1781, as amended and added by Senate Bill 966. Habitat hereby waives, releases and discharges forever Agency and the City, and its and their employees, officers, volunteers, agents and representatives, from any and all present and future Claims arising out of or in any way connected with Habitat's obligation to comply with all Prevailing Wage Laws in connection with the work of the Improvements.

Habitat is aware of and familiar with the provisions of Section 1542 of the California Civil Code which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

As such relates to this Section 207, Habitat hereby waives and relinquishes all rights and benefits which it may have under Section 1542 of the California Civil Code.

**18. Taxes and Assessments.** Habitat shall pay prior to delinquency all ad valorem real estate taxes and assessments on any Project property, subject to Habitat's right to contest in good faith any such taxes. Habitat shall remove or have removed any levy or attachment made on any Project property or any part thereof, or assure the satisfaction thereof within thirty (30) days following the date of attachment or levy.

**19. Condition of Project Properties.** Habitat shall take all necessary precautions to prevent the release into the environment of any Hazardous Materials (as defined below) that are located in, on or under any Project property. Such precautions shall include compliance with all Governmental Requirements with respect to Hazardous Materials. In addition, Habitat shall install and utilize such equipment and implement and adhere to such procedures as are consistent with the standards prevailing in the industry, to the extent such standards exceed applicable Governmental Requirements, as respects the disclosure, storage, use, removal and disposal of Hazardous Materials. Habitat shall cause each release of Hazardous Materials in, on or under any Project property to be remediated in accordance with all Governmental Requirements.

Habitat agrees to indemnify, defend and hold Agency, City and their officers, employees, volunteers, agents and representatives harmless from and against any and all Claims, resulting from, arising out of, or based upon (i) the presence, release, use, generation, discharge, storage or disposal of any Hazardous Materials on, under, in or about, or the transportation of any such Hazardous Materials to or from, any Project property, or (ii) the violation, or

alleged violation, of any statute, ordinance, order, rule, regulation, permit, judgment or license relating to the use, generation, release, discharge, storage, disposal or transportation of Hazardous Materials on, under, in or about, to or from, any Project property, caused by Habitat or any of Habitat's predecessors in interest. This indemnity shall include any damage, liability, fine, penalty, parallel indemnity, cost or expense arising from or out of any claim, action, suit or proceeding for bodily injury (including sickness, disease or death), tangible or intangible property damage, compensation for lost wages, business income, profits or other economic or consequential loss, damage to the natural resource or the environment, nuisance, contamination, leak, spill, release or other adverse effects on the environment.

"Hazardous Materials" means any substance, material, or waste which is or becomes regulated by any local governmental authority, the State of California, or the United States Government, including, but not limited to, any material or substance which is: (i) defined as a "hazardous waste," "extremely hazardous waste," or "restricted hazardous waste" under Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law); (ii) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act); (iii) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory); (iv) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances); (v) petroleum; (vi) friable asbestos; (vii) polychlorinated biphenyls; (viii) listed under Article 9 or defined as "hazardous" or "extremely hazardous" pursuant to Article 11 of Title 22 of the California Administrative Code, Division 4, Chapter 20; (ix) designated as "hazardous substances" pursuant to Section 311 of the Clean Water Act (33 U.S.C. §1317); (x) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. §6901, et seq. (42 U.S.C. §6903); or (xi) defined as "hazardous substances" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601, et seq., as the foregoing statutes and regulations now exist or may hereafter be amended

**15. Effect of Violation of the Terms and Provisions of this Agreement After Completion of Construction.** Both the Agency and City are deemed to be the beneficiaries of the terms and provisions of this Agreement and of the covenants running with the land, for and in its own right and for the purposes of protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit this Agreement and the covenants running with the land have been provided, without regard to whether the Agency has been, remains or is an owner of any land or interest therein in any Project property or in the Redevelopment Project. Both the City and Agency shall have the right, if the Agreement or covenants are breached, to exercise all rights and remedies, and to maintain any actions or suits at law or in equity or

other proper proceedings to enforce the curing of such breaches to which it or any other beneficiaries of this Agreement and covenants may be entitled. Unless otherwise specifically provided, the covenants contained in this Agreement shall remain in effect until the issuance by the City of a certificate of occupancy for the Unit, except for the following:

**16. Default Remedies.** Subject to the permitted extensions of time as provided herein, failure by any party to perform any action or covenant required by this Agreement within the time periods provided herein following Notice and expiration of any applicable cure period, shall constitute a "Default" under this Agreement. A party claiming a Default shall give written Notice of Default to the defaulting party specifying the Default complained of. Except as otherwise expressly provided in this Agreement, the claimant shall not institute any proceeding against any other party, and no other party shall be in Default if such party within thirty (30) days following receipt of such Notice of Default immediately, with due diligence, commences to cure, correct or remedy such failure or delay and completes such cure, correction or remedy with diligence.

**17. Institution of Legal Actions.** Except as otherwise specifically provided herein, upon the occurrence of a Default, the party or parties claiming a Default shall have the right, in addition to any other rights or remedies, to institute any action at law or in equity to cure, correct, prevent or remedy any Default, or to recover damages for any Default, or to obtain any other remedy consistent with the purpose of this Agreement. Such legal actions must be instituted in the Superior Court of the County of Tulare, State of California, in an appropriate municipal court in that County or in the Federal District Court for the Central District of the State of California. Notwithstanding anything herein to the contrary, Habitat's right to recover damages in the event of a Default by Agency shall be limited to recovery of actual damages and shall exclude consequential damages.

**18. Acceptance of Service of Process.** In the event that any legal action is commenced by Habitat against the Agency, service of process on the Agency shall be made by personal service upon the Executive Director of the Agency or in such other manner as may be provided by law. In the event that any legal action is commenced by the Agency against Habitat, service of process on Habitat shall be made by personal service upon the Superintendent of the Habitat, or in such other manner as may be provided by law.

**19. Rights and Remedies Are Cumulative.** The rights and remedies of the parties are cumulative, and the exercise by any party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party, except as otherwise expressly provided herein or in the limited recourse provisions in the Note.

**20. Inaction Not a Waiver of Default.** Any failures or delays by any party in asserting any of its rights and remedies as to any Default shall not operate as a waiver of any Default or of any such rights or remedies, or deprive either such party of its right to institute and maintain any actions or



proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

**21. Notices, Demands and Communications Between the Parties.**

Any approval, disapproval, demand, document or other notice ("Notice") which any party may desire to give to the other parties under this Agreement must be in writing and may be given by any commercially acceptable means, including, but not limited to, via overnight courier, to the party to whom the Notice is directed at the address of the party as set forth below, or at any other address as that party may later designate by Notice.

To Agency:

Redevelopment Agency of the City of Visalia  
315 E Acequia Ave  
Visalia, CA 93291  
(559) 713-4460

Attention: Executive Director

To Habitat:

Habitat for Humanity of Tulare County  
Post Office Box 848  
Visalia, CA 93279

Attention: Director

Any written notice, demand or communication shall be deemed received immediately if delivered by hand, on the third day from the date it is postmarked if delivered by first-class mail, postage prepaid, upon receipt of verification of transmission if sent via facsimile provided a copy is sent the same day via first-class mail, and on the next business day if sent via nationally recognized overnight courier. Notices sent by a party's attorney on behalf of such party shall be deemed delivered by such party.

**22. Enforced Delay; Extension of Times of Performance.**

Subject to the limitations set forth below, performance by any party hereunder shall not be deemed to be in Default, and all performance and other dates specified in this Agreement shall be extended, where delays or Defaults are due to: war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; governmental restrictions or priority; litigation; unusually severe weather; acts or omissions of the other party; or acts or failures to act of the City or any other public or governmental agency or entity (other than the acts or failures to act of the Agency under this Agreement which shall not excuse performance by the Agency). An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause (but in any event shall not exceed a cumulative total of one hundred twenty (120) days), if Notice by the party claiming such extension is sent to the other party within thirty (30) days of the commencement of the cause. Times of performance under this Agreement may also be extended in writing by the mutual agreement of Agency and Habitat. Habitat expressly agrees that adverse changes in economic conditions, either of

Habitat specifically or the economy generally, changes in market conditions or demand, and/or Habitat's inability to obtain financing or other lack of funding to complete the Unit shall not constitute grounds of enforced delay pursuant to this Section 502. Habitat expressly assumes the risk of such adverse economic or market changes and/or inability to obtain financing, whether or not foreseeable as of the date of this Agreement.

**23. Successors and Assigns.** All of the terms, covenants and conditions of this Agreement shall be binding upon Habitat and its permitted successors and assigns. Whenever the term "Habitat" is used in this Agreement, such term shall include any other permitted successors and assigns as herein provided.

**24. Relationship Between Agency and Habitat.** It is hereby acknowledged that the relationship between Agency and Habitat is not that of a partnership or joint venture and that the Agency and Habitat shall not be deemed or construed for any purpose to be the agent of the other. Accordingly, except as expressly provided herein or in the Attachments hereto, the Agency shall have no rights, powers, duties or obligations with respect to the development, operation, maintenance or management of any Project property. Habitat agrees to indemnify, hold harmless and defend the Agency from any claim made against the Agency arising from a claimed relationship of partnership or joint venture between the Agency and Habitat with respect to the development, operation, maintenance or management of any Project property.

**25. Agency Approvals and Actions.** Whenever a reference is made herein to an action or approval to be undertaken by the Agency, the Executive Director of the Agency or his or her designee is authorized to act on behalf of the Agency unless specifically provided otherwise or the context should require otherwise.

**26. Counterparts.** This Agreement may be signed in multiple counterparts which, when signed by all parties, shall constitute a binding agreement.

**27. Integration.** This Agreement contains the entire understanding between the parties relating to the transaction contemplated by this Agreement. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged in this Agreement and shall be of no further force or effect. Each party is entering this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

**28. Titles and Captions.** Titles and captions are for convenience of reference only and do not define, describe or limit the scope or the intent of this Agreement or of any of its terms. Reference to section numbers are to sections in this Agreement, unless expressly stated otherwise.

**29. Interpretation.** As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to

include the others where and when the context so dictates. The word "including" shall be construed as if followed by the words "without limitation." This Agreement shall be interpreted as though prepared jointly by all parties.

**30. No Waiver.** A waiver by any party of a breach of any of the covenants, conditions or agreements under this Agreement to be performed by another party shall not be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions or conditions of this Agreement.

**31. Modifications.** Any alteration, change or modification of or to this Agreement, in order to become effective, shall be made in writing and in each instance signed on behalf of each party.

**32. Severability.** If any term, provision, condition or covenant of this Agreement or its application to any party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Agreement, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.

**33. Computation of Time.** The time in which any act is to be done under this Agreement is computed by excluding the first day (such as the day escrow opens), and including the last day, unless the last day is a holiday or Saturday or Sunday, and then that day is also excluded. The term "holiday" shall mean all holidays as specified in Sections 6700 and 6701 of the California Government Code. If any act is to be done by a particular time during a day, that time shall be Pacific Time Zone time.

**34. Legal Advice.** Each party represents and warrants to the other the following: they have carefully read this Agreement, and in signing this Agreement, they do so with full knowledge of any right which they may have; they have received independent legal advice from their respective legal counsel as to the matters set forth in this Agreement, or have knowingly chosen not to consult legal counsel as to the matters set forth in this Agreement; and, they have freely signed this Agreement without any reliance upon any agreement, promise, statement or representation by or on behalf of the other party, or their respective agents, employees, or attorneys, except as specifically set forth in this Agreement, and without duress or coercion, whether economic or otherwise.

**35. Cooperation.** Each party agrees to cooperate with the other parties in this transaction and, in that regard, shall execute any and all documents which may be reasonably necessary, helpful, or appropriate to carry out the purposes and intent of this Agreement including, but not limited to, releases or additional agreements.

**36. Conflicts of Interest.** No member, official or employee of the Agency or Habitat shall have any personal interest, direct or indirect, in this

Agreement, nor shall any such member, official or employee participate in any decision relating to the Agreement which affects his personal interests or the interests of any corporation, partnership or association in which he is directly or indirectly interested.

**37. Habitat's Indemnity.** Habitat shall defend (with counsel reasonably acceptable to the Agency), indemnify, assume all responsibility for, and hold the Agency and its officers, employees, volunteers, agents and representatives, harmless from any and all Claims of any kind or nature relating to the subject matter of this Agreement or the implementation hereof and for any damages to property or injuries to persons, including accidental death (including reasonable attorneys fees and costs), which may be caused by any of Habitat's activities under this Agreement, whether such activities or performance thereof be by Habitat or by anyone directly or indirectly employed or contracted with by Habitat and whether such damage shall accrue or be discovered before or after termination of this Agreement. Habitat's indemnity obligations under this Section 618 shall not extend to Claims occasioned by the sole negligence or willful misconduct of Agency or its designated agents or employees.

**38. Nonliability of Officials and Employees of Agency and Habitat.** No member, official or employee of Agency shall be personally liable to Habitat, or any successor in interest, in the event of any Default or breach by Agency or for any amount which may become due to Habitat or its successors, or on any obligations under the terms of this Agreement. No member, official or employee of Habitat shall be personally liable to Agency, or any successor in interest, in the event of any Default or breach by Habitat or for any amount which may become due to Agency or its successors, or on any obligations under the terms of this Agreement. Agency and Habitat each hereby waives and releases any claim it may have against the members, officials or employees of the other with respect to any Default or breach by the other or for any amount which may become due to it or its successors, or on any obligations under the terms of this Agreement. Agency and Habitat each makes such release with full knowledge of Civil Code Section 1542 and hereby waives any and all rights thereunder to the extent of this release, if such Section 1542 is applicable. Section 1542 of the Civil Code provides as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

As such relates to this Section 621, Agency and Habitat each hereby waives and relinquishes all rights and benefits that it may have under Section 1542 of the California Civil Code.

**39. Assignment by Agency.** Agency may assign or transfer any of its rights or obligations under this Agreement with the approval of Habitat, which approval shall not be unreasonably withheld; provided, however, that the Agency may assign or transfer any of its interests hereunder to the City, or any

public or private entity controlled by the City at any time without the consent of Habitat.

**40. Assignment by Habitat.** Habitat shall not transfer or assign this Agreement, the Note, the Deed of Trust, or its interest in any Project property or any portion thereof without prior written approval by the Agency. Approval of any such transfer or assignment shall be at the sole discretion of the Agency. The foregoing prohibition shall not be deemed to prevent the sale of the Unit to a Qualified Person or Household following issuance of a certificate of occupancy by the City, provided any such sale is completed in accordance with the provisions of this Agreement, the Resale Restriction, the Note and the Deed of Trust.

Applicable Law. The laws of the State of California, without regard to conflict of laws principles, shall govern the interpretation and enforcement of this Agreement.

[SIGNATURES ON FOLLOWING PAGE]

**IN WITNESS WHEREOF**, Agency and Habitat have executed this Agreement on the respective dates set forth below.

DRAFT

**AGENCY:**

**COMMUNITY REDEVELOPMENT  
AGENCY OF THE CITY OF VISALIA**

**HABITAT:**

**HABITAT OF HUMANITY OF  
TULARE COUNTY**

**BY:** \_\_\_\_\_  
**Executive Director                      Date**

**BY:** \_\_\_\_\_  
**Authorized Officer                      Date**

**ATTEST:**  
\_\_\_\_\_  
**Date**

**DRAFT**

**Exhibit "A"**

"Form of Agency Note"

Principal Sum: \_\_\_\_\_

\_\_\_\_\_, 20\_\_  
Visalia, California

FOR VALUE RECEIVED, **HABITAT FOR HUMANITY OF TULARE COUNTY**, a California nonprofit public benefit corporation ("Maker" OR "Habitat") promises to pay to **THE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF VISALIA** (the "Agency") the sum of

\_\_\_\_\_ DOLLARS

(\$\_\_\_\_\_.\_\_) ("Agency Loan") plus the Agency's Deferred Contingent Interest as described below, pursuant to the terms and conditions set forth below.

1. AGENCY LOAN. Pursuant to the terms of that certain "Affordable Housing Loan Agreement" between the Agency and Habitat, dated December \_\_, 2009 (the "Loan Agreement"), Habitat is going to acquire foreclosed property for sale to Qualified Persons or Households (the "Project"). Habitat acknowledges that this Note is given in connection with certain financial assistance provided by the Agency (the "Agency Loan") to assist in the acquisition of no less than four (4) Project properties for the development of affordable housing in accordance with the terms and conditions of the Loan Agreement with Agency. **Consequently, this Note is subject to the Agency's right to accelerate all amounts due if the Property is transferred in violation of the Loan Agreement between Agency and Habitat, this Note, or the Resale Restriction and Purchase Option required by the Loan Agreement.** Payments due under this Note shall be in accord with Section 3 below, so long as there is no violation of the Loan Agreement or the Resale Restriction and Purchase Option required by the Loan Agreement. The Project properties are or will be owned by Maker and its assignee and pledged as security for this Note.

2. ASSUMPTION OF NOTE AND DEED OF TRUST. Pursuant to the Loan Agreement, prior to the close of escrow on the sale of a Project property from Maker to a Qualified Person or Household, the rights and obligations of Maker shall be assumed by the Qualified Person or Household (hereinafter also referred to as "Assignee") through the execution of the Assumption Agreement required by the Loan Agreement. Prior to the execution of the Assumption Agreement, Agency and Maker shall amend this Note to attach and incorporate herein, a loan repayment schedule in compliance with the terms and conditions of Section 3 herein and the Loan Agreement, which is mutually acceptable to the Agency, the Maker and the Assignee.

3. REPAYMENT. The Agency loan is a principal only, interest free loan. The principal amount of this Note shall be repaid, as follows:

a. So long as Maker or its Assignee are not in default under this Note, the Deed of Trust, the Resale Restriction and Purchase Option, or the Loan Agreement, the Assignee shall commence repayment on this Note, in

accord with the loan repayment schedule required by Section 2 herein, thirty (30) days from the date Maker and Assignee close escrow on the sale of a Project property, and shall continue making equal monthly payments in accordance with that loan repayment schedule, which shall be for a term not to exceed thirty (30) years.

b. Within two (2) years following execution of the Loan Agreement, a Project property must be made available for sale by Maker to a Qualified Person or Household (as that term is defined by the Loan Agreement) in conformance with the Loan Agreement and Resale Restriction and Purchase Option. Within five years from the execution of this Note by Maker, Maker shall sell the Property to a Qualified Person or Household as required by the Loan Agreement. Upon such sale, this Note may be assumed by the Qualified Person or Household, who shall execute an Assumption Agreement required by the Loan Agreement and Section 2 of this Note. For all subsequent sales by a Qualified Person or Household to another Qualified Person or Household, this Note may be assumed by the subsequent Qualified Person or Household, who shall execute an Assumption Agreement in substantially the form provided in Attachment "B" of the Resale Restriction and Purchase Option recorded against the Property in favor of the Agency.

d. If at any time during the term of this Note the Property is sold to a purchaser who is not a Qualified Person or Household, or an Assignee for any reason ceases to occupy the Property as its principal place of residence, then the Assignee shall pay to Agency (directly from escrow and from the proceeds of such sale if due to a sale to a purchaser who is not a Qualified Person or Household) an amount equal to (a) the entire outstanding principal amount of this Note (which amount will equal the initial principal amount of this Note, less any amounts which have been credited toward the principal amount pursuant to this Note), plus (b) the Agency's Deferred Contingent Interest set forth below.

e. If Maker fails to make a Project property available for sale to a Qualified Person or Household within two (2) years from the execution of the Loan Agreement, or Maker fails to convey a Project property acquired by Maker with Agency Loan proceeds secured by this note to a Qualified Person or Household within five (5) years of the execution of this Note, or if during the forty-five year (45) affordability period, the Property is sold to a purchaser who is not a Qualified Person or Household, or if a Qualified Person or Household for any reason ceases to occupy the Property as its principal place of residence following conveyance by Maker, Agency shall also receive as deferred contingent interest, interest on the outstanding principal amount of the Agency's Loan then due and owing under this Note calculated at the lower of the highest rate then allowed by law or two percent (2%) over the prime interest rate announced by Wells Fargo Bank, N.A. (or any successor financial institution) as of the date of such sale or cessation of occupancy, calculated from the date of this Note until the date of such sale to a non-eligible purchaser or the date Maker ceases to occupy the Property as its principal place of residence ("Agency's Deferred Contingent Interest").

f. Upon repayment of the entire principal amount by Maker or its assignee, the Agency shall execute such documents as may be necessary to



release the lien of this Note and the Deed of Trust, and obligations of Maker under the Resale Restriction and Purchase Option, from the Property.

4. PAYMENT. Any payment required under this Note shall be made payable to the Visalia Redevelopment Agency, and should be submitted to the attention of the City of Visalia Finance Department at 707 W. Acequia Avenue, Visalia, California 93291. The place of payment may be changed from time to time as Agency may from time to time designate in writing. Payments shall be in lawful money of the United States of America.

5. MAINTENANCE OBLIGATIONS. Maker and Assignee hereby covenants and agrees that each shall maintain the Property in a manner consistent with the provisions set forth therefore in the Visalia Municipal Code, the Loan Agreement and the Rental Restriction, and shall keep the entire Property reasonably free from any accumulation of debris or waste materials prior to and after construction.

If, at any time, Maker or the Assignee fails to maintain the Property, and has either failed to commence to cure such condition or to diligently prosecute to completion the condition or the condition is not corrected after expiration of thirty (30) days from the date of written notice from Agency to Maker or Assignee, Agency may perform the necessary corrective maintenance, and Maker or Assignee shall pay such costs as are reasonably incurred for such maintenance. The Agency shall have the right to place a lien on the property should Maker or Assignee not reimburse Agency for such costs within sixty (60) days following Agency's written demand to Maker or Assignee for reimbursement of such costs. Maker, on behalf of itself, its heirs, successors and assigns, hereby grants to Agency and its officers, employees and agents, an irrevocable license to enter upon the Property to perform such maintenance during normal business hours after receipt of written notice from Agency as herein above described and Maker's failure to cure or remedy such failure within thirty (30) days of such notice. Any such entry shall be made only after reasonable notice to Maker, and Agency shall indemnify and hold Maker harmless from any claims or liabilities pertaining to any such entry by Agency.

Failure by Maker to maintain the Property in the condition provided in this Section 4 shall constitute a default under this Note and the related Deed of Trust.

The foregoing covenants shall remain in effect for the Property for a period of forty-five (45) years from the date of the Affordability Agreement.

6. COLLECTION. This Note evidences certain financial assistance which has been provided by the Agency and is secured by a Deed of Trust, with an addendum thereto, recorded against the Property. Maker or Assignee agree to pay all the collection and enforcement costs, expenses and attorneys' fees paid or incurred by the holder of this Note or adjudged by a Court in any litigation or controversy connected with this Note, or security for it, including but not limited to actions for declaratory relief that any such holder is required to prosecute or defend and actions for relief based on rescission, or actions to cancel this Note that any such holder is required to defend.

6. DEFAULT. The occurrence of any of the following shall constitute an event of default under this Note: (i) any default by Maker or Assignee of any covenant under this Note; (ii) any default by Maker or Assignee under the Deed of Trust or any other agreement affecting or securing a loan on a Project property; (iii) Maker transfers a Project property in violation of the Loan Agreement or the Resale Restriction or Purchase Option; (iv) Maker or Assignee fails to pay any taxes or assessments due on the Project property; or (v) Maker's or Assignee's bankruptcy, whether voluntary or involuntary.

Upon the occurrence of an event of default hereunder, or at any time thereafter, at the option of the Agency hereof and without notice, the entire unpaid principal, plus interest, shall become immediately due and payable. This option may be exercised at any time following any such event, and the acceptance of one or more installments thereafter shall not constitute a waiver of Agency's option. Agency's failure to exercise such option shall not constitute a waiver of such option with respect to any subsequent event. Agency's failure in the exercise of any other right or remedy/hereunder or under any agreement which secures the indebtedness or is related thereto shall not affect any right or remedy and no single or partial exercise of any such right or remedy shall preclude any further exercise thereof.

7. WAIVER. Maker and Assignee and any endorsers hereof and all others who may become liable for all or any part of this obligation, severally waive presentment for payment, demand and protest and notice of protest, and of dishonor and nonpayment, of this Note, and expressly consent to any extension of the time of payment hereof or of any installment hereof, to the release of any party liable for this obligation, and any such extension or release may be made without notice to any of said parties and without any way affecting or discharging this liability.

8. ATTORNEY FEES. Maker or Assignee agrees to pay immediately upon demand all costs and expenses of Agency including reasonable attorneys' fees, (i) if after default this Note be placed in the hands of an attorney or attorneys for collection, (ii) if after a default hereunder or under the Deed of Trust, the Agency finds it necessary or desirable to secure the services or advice of one or more attorneys with regard to collection of this Note against Maker or Assignee, any guarantor or any other party liable therefor or to the protection of its rights under this Note or the Deed of Trust, or (iii) if Agency seeks to have the Property abandoned by or reclaimed from any estate in bankruptcy, or attempts to have any stay or injunction prohibiting the enforcement or collection of the Note or prohibiting the enforcement of the Deed of Trust or any other agreement evidencing or securing this Note lifted by any bankruptcy or other court.

9. SUBORDINATION. This Note and the Deed of Trust shall not be subordinate to any mortgage financing for the Project property between Maker and Assignee.

10. INTEGRATION. This Note, the Deed of Trust, and the Resale Restriction and Purchase Option, and all other loan documents relating to this Note, embody the agreement between the Agency and Maker or Assignee for the Agency Loan and its terms and conditions.

11. AMENDMENTS. This Note may not be modified or amended except by an instrument in writing executed by the parties sought to be bound thereby.

12. GOVERNING LAW. This Note shall be governed by and construed in accordance with the laws of the State of California.

Executed by Maker on the date first herein above written.

MAKER:

\_\_\_\_\_  
Elizabeth Murphy, Executive Director

DRAFT

**Exhibit "B"**

The following Addendum to Deed of Trust must be completed and attached to a standard form Deed of Trust from a title company acceptable to the Agency.

**ADDENDUM TO DEED OF TRUST**

**(Agency Loan Note)**

This Addendum to Deed of Trust is part of the Deed of Trust dated \_\_\_\_\_ to which it is attached between \_\_\_\_\_, as Trustor, and the COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF VISALIA, a public body, corporate and politic, as Beneficiary. The following provisions are made a part of the Deed of Trust:

1. This Deed of Trust is made and delivered pursuant to that certain Agreement ("Agreement") entered into between Habitat for Humanity ("Habitat") and Beneficiary (as the Agency), dated as of \_\_\_\_\_, 2009, pursuant to which Agency provided certain financial assistance (the "Agency Loan") to Habitat to assist in the costs of acquisition of the Property identified in the Deed of Trust, to be rented to a qualified low-income persons or families. Pursuant to the Agreement, Trustor has executed and delivered for the benefit of the Agency an Note ("Note") in the principal amount of \_\_\_\_\_ DOLLARS (\$\_\_\_\_,\_\_\_\_.), which is secured hereby.

2. No Discrimination. The Trustor covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, sexual preference, source of income, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, nor shall the Trustor itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the Property.

3. Nondiscrimination Clauses. All deeds, leases or contracts made relative to the Property, the improvements thereon or any part thereof, shall contain or be subject to the nondiscrimination clauses set forth in California Health and Safety Code Section 33436.

4. Default. Notwithstanding any other provisions in this Deed of Trust, the occurrence of any of the following shall constitute an event of default under the Note and this Deed of Trust, and a default may be declared under this Deed of Trust solely upon the occurrence of any of the following: (i) Any failure by Trustor to pay any amount due under the Note within fifteen (15) days of its due date; or (ii) Any sale or transfer to a non-eligible purchaser or non-Qualified Person or Household in violation of the provisions of the Loan Agreement; or (ii) Any other default by Trustor under the terms of the Loan Agreement or Promissory Note provisions.

TRUSTOR:

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

Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DRAFT

**Exhibit "C"**

**"Form of Assumption Agreement"**

**RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:**

Redevelopment Agency of  
the City of Visalia  
315 E Acequia Ave  
Visalia, CA 93291  
(559) 713-4460

Attn: Executive Director

(The recordation of this  
document is not subject to  
recording fees pursuant to  
California Government  
Code Section 27383)

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**FOR RECORDER'S USE ONLY**

**ASSUMPTION AGREEMENT**

[Note; Deed of Trust; Resale Restriction.]

THIS AGREEMENT is made among HABITAT FOR HUMANITY OF TULARE COUNTY ("Seller"), \_\_\_\_\_ ("Buyer") and THE REDEVELOPMENT AGENCY OF THE CITY OF VISALIA, a public body, corporate and politic, ("Agency").

WHEREAS, Seller is presently the owner of the property which is subject to a Deed of Trust and Addendum to Deed of Trust, dated \_\_\_\_\_, 200\_\_ ("Deed of Trust"), executed by Seller as Trustor and recorded on \_\_\_\_\_, 200\_\_, as Instrument No. \_\_\_\_\_, Official Records of the County Recorder of Tulare County, California (the "Property"), which Deed of Trust is security for an Agency Loan Note dated \_\_\_\_\_, 200\_\_, executed by Seller as Maker, payable to the Agency, in the original principal sum of \_\_\_\_\_ DOLLARS (\$\_\_\_\_,\_\_\_\_) (the "Note"); and

WHEREAS, Seller wishes to sell, transfer and convey to the Buyer the Property; and

WHEREAS, the Property is subject to the Resale Restriction Agreement and Right of First Refusal, recorded on \_\_\_\_\_, 20\_\_, as Instrument No. \_\_\_\_\_, Official Records of Tulare County, California (the "Resale

Restriction") to place affordability and resale restrictions and an option to purchase against the Property; and

WHEREAS, the Buyer agrees to assume the obligations represented by the Note, the Deed of Trust and the Resale Restriction.

NOW, THEREFORE, the parties hereto agree as follows:

1. The outstanding principal sum of the Note is \$\_\_\_\_\_.
2. The Seller shall be released from all liability under the Note, Deed of Trust and Addendum to Deed of Trust.
3. THE BUYER HEREBY ASSUMES AND AGREES TO PAY THE OBLIGATION REPRESENTED BY THE NOTE; ACKNOWLEDGES THAT THE PROPERTY DESCRIBED IN THE DEED OF TRUST IS SUBJECT TO THE LIEN OF THE DEED OF TRUST AND AFFORDABILITY AND RESALE RESTRICTIONS DESCRIBED IN THE RESALE RESTRICTION AGREEMENT AND PURCHASE OPTION, AND GIVING THE AGENCY THE RIGHT TO PURCHASE THE PROPERTY UNDER CERTAIN CIRCUMSTANCES. BUYER AGREES TO BE BOUND BY ALL OF THE CONDITIONS AND COVENANTS CONTAINED IN THE NOTE, THE DEED OF TRUST, THE ADDENDUM TO THE DEED OF TRUST AND THE RESALE RESTRICTION AGREEMENT AND PURCHASE OPTION.
4. Buyer has executed the Disclosure Statement attached to the Resale Restriction and understands the implications of signing this Agreement.
5. The Agency hereby consents to the transfer of the Property to the Buyer as an Qualified Person or Household within the meaning of the Resale Restriction.
6. All questions with respect to the interpretation of this Agreement, and the rights and liabilities of the parties hereto, shall be governed by the laws of the State of California.
7. This Agreement shall inure to the benefit of, and shall be binding upon, the assigns, successors in interest, personal representatives, estates, heirs and legatees of each of the parties hereto.
8. This Agreement, the Rental Restriction, the Note, and the Deed of Trust contain the entire understanding of the parties hereto. There are no representations, agreements, arrangements or understandings, oral or written, between and among the parties hereto, relating to the subject matter contained in this Agreement, which are not fully expressed in those documents.

Executed at Visalia, California, on the date(s) set forth below:

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

**AGENCY:**

REDEVELOPMENT AGENCY  
OF THE CITY OF VISALIA

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

Its: Executive Director

**ATTEST:**

By: \_\_\_\_\_  
Agency Secretary

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

**SELLER:**

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

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

**BUYER:**

**-AND-**

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

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

DRAFT



**Exhibit "D"**

**Form of Resale Restriction Agreement and Purchase Option**

RECORDING REQUESTED BY:

WHEN RECORDED MAIL TO:

Visalia Redevelopment Agency  
315 E Acequia Ave  
Visalia, CA 93291  
(559) 713-4460

Attn: Executive Director

(The recordation of this document is not subject to recording fees pursuant to California Government Code Section 27383)

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**FOR RECORDER'S USE ONLY**

**RESALE RESTRICTION AGREEMENT  
AND PURCHASE OPTION**

**LOW INCOME HOUSEHOLDS**

THIS RESALE RESTRICTION AGREEMENT AND PURCHASE OPTION (this "**Agreement**") is entered into as of \_\_\_\_\_, 2009, by and among the Redevelopment Agency of the City of Visalia, a public body, corporate and politic ("**Agency**"), and \_\_\_\_\_ ("**Owner**"), with respect to the following recitals.

**RECITALS**

A. Owner is the owner of that parcel located at [**insert street address**], in the City of Visalia, identified with the Assessor's Parcel Number [**insert APN**], and legally described as [**insert legal description**] ("Site"). The Site has been developed with a single-family dwelling unit ("Unit") for occupancy by a qualified very low-income household ("Qualified Person or Household"), as that term is defined in that certain "Affordable Housing Loan Agreement" dated \_\_\_\_\_, 20\_\_, by and between Habitat for Humanity of Tulare County and the Agency (the "Agency Loan Agreement"). The Site and Unit are collectively referred to herein as the "Property".

B. Pursuant to the Agency loan Agreement, the Agency has provided certain financial assistance (the "Agency Loan") to assist the Habitat in the acquisition and rehabilitation

of the Unit on the Site. The Agency Loan is evidenced by a Note, which is secured by a Deed of Trust to be recorded against the Site.

C. The purpose of this Agreement is to establish resale controls on the Property for a period of forty-five (45) years from the date of this Agreement in order to comply with the conditions of funding of the Agency Loan and to provide for the continued availability of the Property to low-income persons and families.

D. The purpose of this Agreement is also to provide eligibility requirements for subsequent purchasers and to reserve to the Agency an option to purchase the Property under certain circumstances.

E. This Agreement shall run with the land and shall bind Owner and all of Owner's successors in interest as owners of the Property.

### **AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing and the benefits secured by the Habitat, for itself and on behalf of Owner, and the Agency, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. **TERM OF AGREEMENT; RUNS WITH THE LAND.** This Agreement shall remain in full force and effect until the earlier of (a) forty-five (45) years from date of the recordation of this Agreement in the Official Records of Tulare County, California, or (b) the date that the Agency obtains title to the Property as provided in Section 11. The covenants set forth herein shall be covenants running with the land in accordance with California Health and Safety Code Sections 33334.3(f) and 33413(c) (as they may be amended from time to time) and shall inure to the benefit of and be enforceable by the Agency without regard to whether the Agency maintains any interest in the Property and shall be binding upon Habitat, Owner and/or any other party having any right, title or interest in the Property (including any portion thereof). By accepting title, Owner, or any other person who acquires an ownership interest in the Property, agrees (a) that all covenants and restrictions created by this Agreement are necessary in order to preserve the stock of affordable housing for Qualified Persons or Households and are reasonable in light of their purposes, and (b) to abide by each and every covenant and restriction herein.

2. **OWNER CERTIFICATIONS.** Prior to any sale of the Property, the Owner shall be required to certify that (a) the financial and other information previously provided in order to qualify to purchase the Residence is true and correct as of the date of this Agreement; (b) Owner is a Qualified Person or Household (as determined by Agency criteria); and (c) Owner shall occupy the Property as Owner's principal place of residence during the entire time that he/she owns the Property. Upon the written request of the Agency, Owner shall provide the City or the Agency with verification that Owner continues to occupy the Property as his/her principal place of residence.

For purposes of this Section 2, Owner shall be considered as occupying the Property if Owner is living in the Property for at least eleven (11) months out of each calendar year; provided, however, that the Agency may, in its sole and absolute discretion, grant a temporary waiver of this occupancy requirement for good cause.

3. **LEASING OF PROPERTY.** Owner shall not lease the Property without Agency's prior written consent, which Agency may grant or withhold in its sole discretion. Any lease in violation of this Section 3 is prohibited. In the event that Owner fails to comply with the requirements and restrictions of this Section 3, Owner shall be in default of this Agreement pursuant to Section 10.

4. SALE RESTRICTIONS. Any "transfer" of the Property is subject to the terms and conditions of this Agreement. For purposes of this Agreement, "**transfer**" means any sale, assignment or other transfer, whether voluntary or involuntary, of any interest in the Property, including, without limitation, a fee simple interest, a joint tenancy interest, a life estate, a leasehold interest or an interest evidenced by a land contract by which possession of the Property is transferred and Owner retains title. Any transfer that does not satisfy, or otherwise violates, the terms and conditions of this Agreement is prohibited. Transfers by gift, devise or inheritance to an existing spouse, domestic partner, surviving joint tenant, children, or a spouse as part of a dissolution proceeding or in connection with marriage shall not be considered a "transfer" for the purposes of this Agreement.

5. NOTICE OF INTENDED TRANSFER AND SUPPORTING DOCUMENTATION. In the event that Owner intends to transfer the Property, Owner shall promptly notify the Agency of such intent. The notice shall be given in accordance with Section 20 at least ninety (90) days, or shorter time period granted by Agency, prior to the actual date of such transfer. Prior to any proposed sale or other transfer of the Property, Owner shall submit to Agency the information required by Section 9.a.

Owner shall in good faith use best efforts to market the Property for sale to an "**Qualified Person or Household**" (as defined in Section 7). If Owner cannot in good faith and despite its best efforts locate an Qualified Person or Household to purchase the Property within one hundred twenty (120) days after Owner commences to actively market the Property, Owner shall provide written notice to the Agency (the "**Owner's Notice**") and the Agency may, but shall not be obligated to, purchase the Property pursuant to Section 11 herein.

6. TRANSFER BY OWNER. Owner may transfer the Property to a purchaser of its choosing (the "**Proposed Purchaser**") provided that such transfer is to an Qualified Person or Household. **ANY ATTEMPT TO TRANSFER TITLE TO THE PROPERTY OR ANY INTEREST THEREIN IN VIOLATION OF THIS AGREEMENT SHALL BE VOID AND DEEMED TO BE A DEFAULT PURSUANT TO SECTION 10 AND SHALL BE SUBJECT TO AGENCY'S PURCHASE OPTION PURSUANT TO SECTION 11 BELOW.**

7. QUALIFIED PERSON OR HOUSEHOLD. A Proposed Purchaser who satisfies the following requirements shall be a "**Qualified Person or Household**":

- a. The Proposed Purchaser has certified that he or she will occupy the Property as his or her principal residence; and
- b. A person or household who at least qualify as very low income persons or households, as defined by Health and Safety Code Section 50105.
- c. The Proposed Purchaser shall meet all other Agency criteria, including without limitation, credit worthiness; and

8. DETERMINATION OF SALES PRICE. The maximum consideration that Owner shall receive for a transfer (the "**Sales Price**") shall be the lesser of the "**Fair Market Value**" (as defined below) or the "**Increased Base Price**" (as defined below).

a. Increased Base Price. The "**Increased Base Price**" means:

- (i) The Affordable Housing Cost in effect at the time of the proposed sale; (The "**Affordable Housing Cost**" shall be as defined in Health and Safety Code Section 50052.5 or any successor thereto for low-income households, adjusted for family size appropriate for the Property. If the statute is

no longer in effect and no successor statute is enacted, the Agency shall establish the Affordable Housing Cost for purposes of this Agreement.)

(ii) plus, the value (not the cost) of any substantial structural or permanent improvements made to the Property (i.e., those improvements (e.g., fixtures) that cannot be removed from the Property without substantial damage to other parts of the Property). In order to constitute a substantial structural or permanent improvement, the same must have (A) been made or installed by or under the direction of Owner, (B) cost at least One Thousand Dollars (\$1,000), and (C) are supported by receipts satisfactory to Agency. The value of such improvements to be included in the Increased Base Price shall be either the appraised market value (calculated in accordance with Section 8.b.) of such improvements when considered as additions to the Property (i.e., the amount by which such improvements enhance the market value of the Property at the time of the transfer), or the amount agreed upon by Owner and Agency; and

(iii) less, the cost of any work necessary by Agency or purchaser to put the Property into a "sellable condition." Items necessary to put a Property into sellable condition shall be determined by Agency, and may include, without limitation, cleaning, painting and making structural, mechanical, electrical, plumbing and appliance repairs and other types of deferred maintenance.

b. Fair Market Value. The "**Fair Market Value**" of the Property shall be determined by an appraiser who is a MAI member of the American Institute of Real Estate Appraiser, a SRPA member of the Society of Real Estate Appraisers or, in case such professional designations are modified or discontinued, a member of the most nearly equivalent successor designations. The Owner or Proposed Purchaser, as the case may be, shall pay the cost of the appraisal. In the event that Owner has made capital improvements to the Property of the nature described in Section 8.a.ii. that has increased the value of the Property or if damage or deferred maintenance has occurred of the nature described in Section 8.a.iii. while Owner owned the Property, the appraisal shall specifically ascribe a value to these factors and state what the Fair Market Value of the Property would be without such adjustments. Nothing in this Section 8.b. shall preclude Owner and the Agency from establishing the Fair Market Value of the Property by mutual agreement in lieu of an appraisal pursuant to this Section 8.b.

9. ELIGIBLE TRANSFER. A transfer that satisfies the following requirements shall be an "**Eligible Transfer**":

a. Disclosures And Submittals. Owner and/or the Proposed Purchaser, as applicable, shall have provided the following to the Agency:

(i) The name, address and telephone number of the Proposed Purchaser.

(ii) A financial statement of the Proposed Purchaser in a form acceptable to the Agency together with any other supporting documentation requested by the Agency, all of which shall be certified by the Proposed Purchaser as being true, correct and complete in all material respects.

(iii) The purchase and sale agreement and all ancillary documents for the proposed transfer setting forth the terms and conditions thereof including, without limitation, the Sales Price.

(iv) An affidavit executed by Owner and the Proposed Purchaser under penalty of perjury in a form acceptable to the Agency that includes the following:

(1) A statement that the proposed transfer will be consummated in accordance with the terms and conditions of the purchase and sale agreement and the ancillary documents that were submitted to and approved by the Agency (the "**Transfer Documents**").

(2) A statement that neither the Proposed Purchaser nor any other party has paid or will pay Owner, and that Owner has not received and will not receive, any money or other consideration in addition to that which is set forth in the Transfer Documents.

(3) An acknowledgment that the Agency shall have the right to file an action at law or in equity to (A) require that the proposed transfer be terminated and/or that the Transfer Documents be rescinded and/or (B) declare the transfer null and void notwithstanding the fact that the transfer may have closed and become final as between Owner and the Proposed Purchaser, in the event that a transfer is made in violation of the terms of this Agreement or false or misleading statements were made in any documents or certifications submitted to the Agency.

(v) The Proposed Purchaser has acknowledged the continuing force and effect of this Agreement and has agreed to comply with all of its covenants and restrictions.

(vi) The Proposed Purchaser shall execute a Disclosure Statement in a form substantially similar to the form attached hereto as Attachment A, and an Assumption Agreement, in a form substantially similar to the form attached hereto as Attachment B, acknowledging and accepting the obligations and responsibilities for the resale restrictions contained herein (including, without limitation, its income constraints, requirement for owner-occupancy and resale restrictions).

(vii) If the First Loan is being assumed by Proposed Purchaser, the Proposed Purchaser shall be approved by the First Lender.

(viii) Upon the consummation of the transfer, the Agency shall receive a conformed copy of the recorded Grant Deed executed by Owner and naming the Proposed Purchaser as grantee, together with copies of the final Transfer Documents, escrow instructions, the settlement statement and any other document prepared in connection with the transfer that the Agency reasonably requests, and, if applicable, the new promissory note and recorded deed of trust and resale restriction agreement executed by Proposed Purchaser.

b. Determination By The Agency. Agency determines, in its reasonable discretion, that the Proposed Purchaser constitutes an Qualified Person or Household and that the total consideration to be received by Owner in connection with the transfer will not exceed the Sales Price.

#### 10. DEFAULTS AND REMEDIES.

a. Upon a violation by Owner of any provision of this Agreement, the Agency shall give written notice to Owner specifying the nature of the violation. If Owner does not correct the violation to the satisfaction of the Agency, in its sole

discretion, within a reasonable period of time (not to exceed thirty (30) days) after its receipt of such notice, or within such further time as the Agency, in its sole discretion, determines is necessary to correct the violation, the Agency may immediately declare a default under this Agreement and exercise the "**Option**" (as defined below) or any other remedies permitted at law or in equity.

b. The Agency shall notify First Lender if the Agency has declared a default under this Agreement. The notice to First Lender shall indicate that the Agency may exercise its remedies, including without limitation the Option.

c. If Owner makes any misrepresentation in connection with a proposed or consummated transfer that would or does result in a violation of this Agreement, then the Agency may apply to a court of competent jurisdiction for specific performance of this Agreement, for an injunction prohibiting such proposed transfer, for a declaration that a such consummated transfer is void or for such other relief at law or in equity as may be appropriate.

d. In any event, any costs, liabilities or obligations incurred by Owner for the return of any moneys paid or received in violation of this Agreement or for any costs and legal expenses, shall be borne by Owner and Owner shall hold the Agency harmless and reimburse the Agency's expenses, legal fees and costs for any action the Agency takes in good faith in enforcing the terms of this Agreement.

11. PURCHASE OPTION.

a. Purchase Option. Notwithstanding, and in addition to, the remedies provided the Agency in Section 10, Owner hereby grants to the Agency an option to purchase the Property (the "**Option**") effective at any time during the forty-five (45) year term of this Agreement after either Owner's Notice is provided to Agency pursuant to Section 5 herein or the Agency has given Owner and First Lender notice of a default as provided in Section 10.b. hereinabove. Owner grants the Option to the Agency in consideration of the economic and other benefits received by Habitat as a result of the development of the Project in accordance with the City's conditions of approval, Owner's participation in the Program, and Owner's acquisition of the Property. Agency may assign its rights under this Article 11 to another governmental entity, a non-profit organization or an Qualified Person or Household.

b. Exercise Of Option. After the earlier to occur of (i) Agency receipt of Owner's Notice pursuant to Section 5 herein or (ii) Agency declares a default pursuant to Section 10 herein, the Agency shall have sixty (60) days to notify Owner and Lender in writing in accordance with Section 20 of its decision to exercise the Option (the "**Option Notice**"). Not later than ninety (90) days after the Option Notice is given, the Agency shall purchase the Property for the Sales Price. All title insurance premiums, transfer taxes, escrow fees and miscellaneous costs shall be paid according to customary practice in Tulare County. All escrow instructions shall be consistent with the provisions of this Agreement.

c. Failure to Exercise. In the event the Agency or its designee does not exercise the Option as provided in this Section 11, then there shall be a conclusive presumption that the Agency has elected not to exercise the Option, and Owner may sell the Property to any purchaser; provided that the Owner shall repay the Note (including without limitation any outstanding principal plus Agency's Deferred Contingent Interest, as defined in the Note) to reimburse the Agency for certain financial assistance provided by the Agency for the construction and development of the Property.

12. NONLIABILITY OF AGENCY. In no event shall the Agency become liable or obligated to Habitat or Owner by reason of the Option, whether or not exercised by the Agency.

13. RESTRICTIONS ON FORECLOSURE PROCEEDS. If a creditor acquires title to the Property through a deed in lieu of foreclosure, a trustee's deed upon sale or otherwise, Owner shall not be entitled to receive proceeds in connection therewith to the extent that such proceeds otherwise payable to Owner when added to the proceeds paid or credited to the creditor exceed the amount Owner would have received by a sale in accordance with Section 8. Owner shall instruct the holder of such excess proceeds to pay such proceeds to the Agency as repayment for, and in consideration of, the assistance provided to Owner in his or her purchase of the Property.

14. SUCCESSOR AND ASSIGNS. This Agreement shall bind, and the benefit shall inure to, Owner and his or her heirs, legal representatives, executors, successors in interest and assigns, and the Agency and its successors and assigns for the term of this Agreement as provided in Section 1.

15. SUPERIORITY OF AGREEMENT. Owner covenants that Owner has not, and will not, execute any other agreement with provisions contradictory to or in opposition of the provisions of this Agreement, and that, in any event, this Agreement is controlling as to the rights and obligations between Owner and the Agency and their respective successors and assigns.

16. CITY AS THIRD PARTY BENEFICIARY. The City shall be a third party beneficiary of this Agreement.

17. RIGHTS OF BENEFICIARIES UNDER DEEDS OF TRUSTS.

a. This Agreement shall not diminish or affect the rights of any lender under any promissory note or deed of trust executed by Owner in favor of such lender in connection with Owner's purchase of the Property.

b. Notwithstanding any other provisions in this Agreement to the contrary, all of the provisions of this Agreement shall terminate and have no further force and effect upon the occurrence of either of the following events:

- (i) Such lender acquires title upon foreclosure of its deed of trust.
- (ii) Such lender acquires title by a deed in lieu of foreclosure of its deed of trust.

18. INVALID PROVISIONS. If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions contained in this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

19. CONTROLLING LAW. The terms of this Agreement shall be interpreted under the laws of the State of California.

20. NOTICES. All notices required herein shall be sent by certified mail, return receipt requested or express delivery service with a delivery receipt and shall be deemed to be effective as of the date received or the date delivery was refused as indicated on the return receipt as follows:

To Owner: At the address of the Property.

To Agency:     Redevelopment Agency  
                  of the City of Visalia  
                  315 E Acequia Avenue  
                  Visalia, CA 93291  
                  (559) 713-4460  
                  Attn: Executive Director.

The parties may subsequently change addresses by providing written notice of the change in address to the other parties in accordance with this Section 20.

21.     EFFECT OF BANKRUPTCY. Notwithstanding anything herein to the contrary, the Habitat and Owner agree, in consideration for the rights and privileges granted under this Agreement, that if the Habitat or Owner shall file a voluntary petition of bankruptcy, or if proceedings in bankruptcy shall be instituted against the Habitat or Owner, and the Habitat or Owner is thereafter adjudicated as bankrupt pursuant to such proceedings, or, if a court shall take jurisdiction of the Habitat or Owner and the Habitat's or Owner's assets pursuant to proceedings brought under provisions of any Federal Reorganization Act, or if a receiver for the Habitat's or Owner's assets is appointed by a court of competent jurisdiction, or if the Habitat or Owner be divested of the Habitat's or Owner's rights, powers and privileges under this Agreement by other operation of law, then the Agency shall have the right to immediately exercise its Option and/or terminate this Agreement.

22.     PROHIBITION AGAINST DISCRIMINATION. Habitat and Owner and all subsequent owners shall not discriminate against or segregate any person, or group of persons, on account of sex, marital status, age, disability, race, color, religion, creed, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property. Furthermore, Habitat and Owner and all subsequent owners shall not establish or permit any practice of discrimination or segregation with reference to the selection, location, number, use or occupancy, of tenants, lessees, subtenants, sublessees or vendees of the Property.

23.     REFINANCE LIMITATION. Owner by and for itself and each successor owner hereby covenants and agrees that Owner shall not obtain or refinance any mortgage loan on the Property without Agency's prior written consent. Violation of this provision shall be considered a breach of the terms and conditions of this Agreement.

24.     INTERPRETATION OF AGREEMENT. The terms of this Agreement shall be interpreted so as to avoid speculation on the Property and to insure to the extent possible that the Sales Price and mortgage payments remain affordable to low -income persons and households, as the case may be.

25.     EXHIBITS. Any attachments referred to in this Agreement are incorporated in this Agreement by such reference.

**[SIGNATURE PAGE FOLLOWS]**



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

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

OWNER:

\_\_\_\_\_

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

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

AGENCY:

REDEVELOPMENT AGENCY  
OF THE CITY OF VISALIA

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

Executive Director

**[SIGNATURES MUST BE NOTARIZED]**

DRAFT

ATTACHMENT "A"

**FORM OF DISCLOSURE STATEMENT**

THERE ARE RESTRICTIONS ON THE SALE OF THE PROPERTY YOU ARE BUYING. THIS PROPERTY MAY ONLY BE SOLD TO A "QUALIFIED PERSON OR HOUSEHOLD" OR "QUALIFIED PERSON OR HOUSEHOLD" AT AN "AFFORDABLE HOUSING COST."

THIS MEANS THAT YOU **MAY NOT** SELL THE PROPERTY FOR MARKET VALUE TO WHOMEVER YOU LIKE.

THESE RESTRICTIONS WILL BE IN EFFECT FOR A PERIOD OF FORTY-FIVE (45) YEARS FOLLOWING RECORDATION OF THE AFFORDABLE HOUSING COVENANT AND RESTRICTIONS ON SALE ON \_\_\_\_\_, 20\_\_\_\_. IF YOU SELL THE PROPERTY IN VIOLATION OF THE RESTRICTIONS, THE VISALIA REDEVELOPMENT AGENCY HAS THE RIGHT TO PURCHASE THE PROPERTY, AS SET FORTH IN THE AFFORDABLE HOUSING COVENANT AND RESTRICTIONS ON SALE, AND/OR RECEIVE ALL AMOUNTS DUE THE REDEVELOPMENT AGENCY UNDER A PROMISSORY NOTE AND RELATED DEED OF TRUST EXECUTED BY THE OWNER IN FAVOR OF THE REDEVELOPMENT AGENCY EVIDENCING THE FINANCIAL ASSISTANCE PROVIDED BY THE REDEVELOPMENT AGENCY TOWARD THE CONSTRUCTION AND DEVELOPMENT OF THE RESIDENTIAL UNIT ON THE PROPERTY.

TO DETERMINE WHO IS A QUALIFIED PERSON OR HOUSEHOLD OR AN QUALIFIED PERSON OR HOUSEHOLD AND WHAT AN AFFORDABLE HOUSING COST IS, YOU SHOULD CONTACT THE EXECUTIVE DIRECTOR OF THE VISALIA REDEVELOPMENT AGENCY.

YOU SHOULD ALSO READ THE AFFORDABLE HOUSING COVENANT AND RESTRICTIONS ON SALE RECORDED AGAINST THE PROPERTY. YOU MAY OBTAIN A COPY FROM THE VISALIA REDEVELOPMENT AGENCY OR FROM THE ESCROW COMPANY.

I HAVE READ THE FOREGOING AND I UNDERSTAND WHAT IT MEANS.

\_\_\_\_\_  
BUYER

\_\_\_\_\_  
BUYER

\_\_\_\_\_  
DATE

\_\_\_\_\_  
DATE

ATTACHMENT "B"

FORM OF SELLER ASSUMPTION AGREEMENT

**RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:**

Redevelopment Agency of  
the City of Visalia  
315 E Acequia Ave  
Visalia, CA 93291  
(559) 713-4460

Attn: Executive Director

(The recordation of this  
document is not subject to  
recording fees pursuant to  
California Government  
Code Section 27383)

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**FOR RECORDER'S USE ONLY**

**ASSUMPTION AGREEMENT**

[Note; Deed of Trust; Resale Restriction.]

THIS AGREEMENT is made among \_\_\_\_\_  
("Seller"), \_\_\_\_\_ ("Buyer") and THE  
REDEVELOPMENT AGENCY OF THE CITY OF VISALIA, a public body,  
corporate and politic, ("Agency").

WHEREAS, Seller is presently the owner of the property which is subject  
to a Deed of Trust and Addendum to Deed of Trust, dated \_\_\_\_\_,  
200\_\_ ("Deed of Trust"), executed by Seller as Trustor and recorded on \_\_\_\_\_  
\_\_\_\_\_, 200\_\_, as Instrument No. \_\_\_\_\_, Official Records of  
the County Recorder of Tulare County, California (the "Property"), which Deed  
of Trust is security for an Agency Loan Note dated \_\_\_\_\_, 200\_\_,  
executed by Seller as Maker, payable to the Agency, in the original principal  
sum of \_\_\_\_\_ DOLLARS (\$\_\_\_\_,\_\_\_\_) (the "Note"); and

WHEREAS, Seller wishes to sell, transfer and convey to the Buyer the  
Property; and

WHEREAS, the Property is subject to the Resale Restriction Agreement  
and Right of First Refusal, recorded on \_\_\_\_\_, 20\_\_, as Instrument No.  
\_\_\_\_\_, Official Records of Tulare County, California (the "Resale

Restriction") to place affordability and resale restrictions and an option to purchase against the Property; and

WHEREAS, the Buyer agrees to assume the obligations represented by the Note, the Deed of Trust and the Resale Restriction.

NOW, THEREFORE, the parties hereto agree as follows:

1. The outstanding principal sum of the Note is \$\_\_\_\_\_.
2. The Seller shall be released from all liability under the Note, Deed of Trust and Addendum to Deed of Trust.
3. THE BUYER HEREBY ASSUMES AND AGREES TO PAY THE OBLIGATION REPRESENTED BY THE NOTE; ACKNOWLEDGES THAT THE PROPERTY DESCRIBED IN THE DEED OF TRUST IS SUBJECT TO THE LIEN OF THE DEED OF TRUST AND AFFORDABILITY AND RESALE RESTRICTIONS DESCRIBED IN THE RESALE RESTRICTION AGREEMENT AND PURCHASE OPTION, AND GIVING THE AGENCY THE RIGHT TO PURCHASE THE PROPERTY UNDER CERTAIN CIRCUMSTANCES. BUYER AGREES TO BE BOUND BY ALL OF THE CONDITIONS AND COVENANTS CONTAINED IN THE NOTE, THE DEED OF TRUST, THE ADDENDUM TO THE DEED OF TRUST AND THE RESALE RESTRICTION AGREEMENT AND PURCHASE OPTION.
4. Buyer has executed the Disclosure Statement attached to the Resale Restriction and understands the implications of signing this Agreement.
5. The Agency hereby consents to the transfer of the Property to the Buyer as an Qualified Person or Household within the meaning of the Resale Restriction.
6. All questions with respect to the interpretation of this Agreement, and the rights and liabilities of the parties hereto, shall be governed by the laws of the State of California.
7. This Agreement shall inure to the benefit of, and shall be binding upon, the assigns, successors in interest, personal representatives, estates, heirs and legatees of each of the parties hereto.
8. This Agreement, the Rental Restriction, the Note, and the Deed of Trust contain the entire understanding of the parties hereto. There are no representations, agreements, arrangements or understandings, oral or written, between and among the parties hereto, relating to the subject matter contained in this Agreement, which are not fully expressed in those documents.

Executed at Visalia, California, on the date(s) set forth below:

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

**AGENCY:**

REDEVELOPMENT AGENCY  
OF THE CITY OF VISALIA

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

Its: Executive Director

**ATTEST:**

By: \_\_\_\_\_  
Agency Secretary

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

**SELLER:**

\_\_\_\_\_

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

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

**BUYER:**

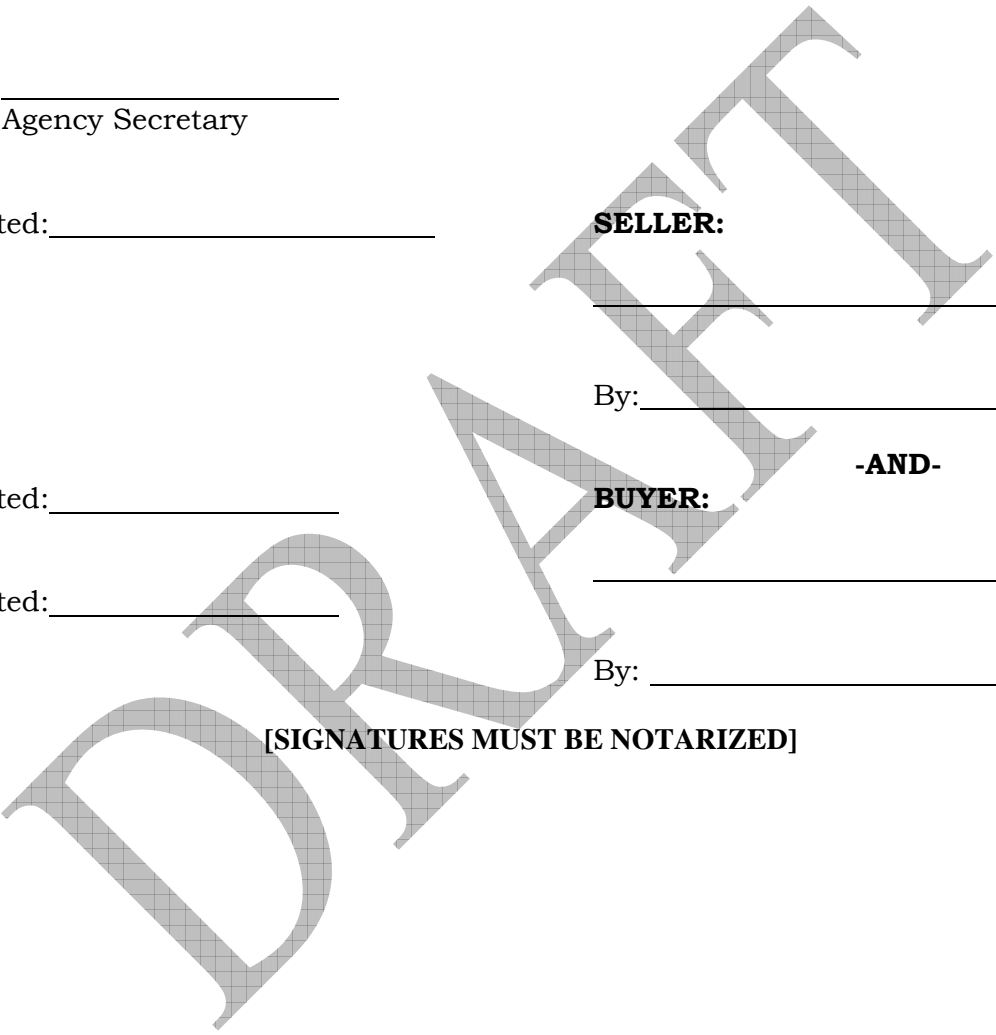
**-AND-**

\_\_\_\_\_

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

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

**[SIGNATURES MUST BE NOTARIZED]**



AGENCY RESOLUTION NO 2009-05

A RESOLUTION OF THE COMMUNITY REDEVELOPMENT  
AGENCY OF THE CITY OF VISALIA TO ENTER INTO A  
LOAN AGREEMENT WITH HABITAT FOR HUMANITY TO  
ACQUIRE FOUR FORECLOSED SINGLE FAMILY  
DWELLINGS WITHIN ONE YEAR FOR RESALE TO  
QUALIFIED FAMILIES

**WHEREAS**, The Community Redevelopment Agency of the City of Visalia (the "Agency") is entering into a new "Loan Agreement" (hereinafter the "Agreement"), with Habitat for Humanity of Tulare County; and

**WHEREAS**, the Agency agrees to provide to Habitat for Humanity up to Two Hundred Fifty Thousand Dollars (\$250,000) in 20% tax increment revenues collected by the Agency pursuant to Section 33334.2 of the California Health and Safety Code, to purchase foreclosed real properties located within the Agency's project areas in the City of Visalia, (the "Properties"); and

**WHEREAS**, Habitat for Humanity has committed to Agency to acquire four (4) foreclosed single-family dwelling units ("Unit") for purchase by December 9, 2010, and rehabilitate and offer for re-sale to qualified low-income households ("Qualified Household") by December 9, 2011, along with a restrictive covenant for the benefit of Agency which will restrict the use of the Properties to affordable housing use for low-income persons for a period of forty-five (45) years; and

**WHEREAS**, the Agency Executive Board was presented with the loan agreement on December 7, 2009, for its consideration.

**NOW, THEREFORE, THE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF VISALIA DOES HEREBY RESOLVE AS FOLLOWS:**

**Section 1.** The Agency hereby finds and determines that acquisition of a foreclosed single family dwelling for a low-income qualified family pursuant to the Loan Agreement will assist in the carrying out the purpose to preserve affordable housing and is consistent with the five-year Implementation Plan adopted by the Agency pursuant to Health and Safety Code Section 33490 (the "Implementation Plan").

**Section 2.** The Agency hereby approves the Loan Agreement in substantially the form on file with the Secretary of the Agency, and thereby affirms the Agency's intention that the Property be used for the development of housing affordable to persons or families of low and moderate income.

**Section 3.** The Executive Director and Secretary of the Agency are hereby authorized and directed to execute the Loan Agreement on behalf of the Agency, subject to any minor conforming, technical or clarifying changes approved by Agency Counsel. The Executive Director and Secretary are hereby further authorized and directed to take such further actions and execute such documents as are necessary to carry out the Agreement on behalf of the Agency, including without limitation the execution of deeds and all other actions and documents necessary in accordance with the Agreement.

I, Steve Salomon, City Manager/City Clerk of the City of Visalia, hereby certify that the foregoing Resolution No. 2009-05 was duly and regularly passed and adopted by the Governing Board of the Redevelopment Agency of the City of Visalia at a meeting thereof held on the 7th day of December 2009, and that the foregoing is a full and correct copy of said resolution.

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

PASSED AND ADOPTED this 7th day of December, 2009 by the following vote:

AYES:

NOES:

ABSENT:

ATTEST:

\_\_\_\_\_  
Chairperson

**ATTEST:**

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

## City of Visalia Agenda Item Transmittal

**Meeting Date:** December 7, 2009

**Agenda Item Number (Assigned by City Clerk):** 5b

**Agenda Item Wording:** Approve Resolution Number 2009-06 authorizing a "Land Use Agreement" between the Redevelopment Agency (RDA) and Proteus, Inc. for the purpose of permitting a Community Garden on RDA-owned land.

**Deadline for Action:** December 7, 2009

**Submitting Department:** Housing & Economic Development

**Contact Name and Phone Number:** Ricardo Noguera, Housing & Economic Development Director (4190)

**Department Recommendation:** Approve Resolution Number 2009-06 authorizing a "Land Use Agreement" between the Redevelopment Agency (RDA) and Proteus, Inc. for the purpose of permitting a temporary Community Garden on RDA-owned land. The agreement will commence once approved by the Agency Board.

**Background:**

Proteus, Inc. in Visalia has organized a group of families from the surrounding Oval Park neighborhood area to establish a community garden. Currently, the gardening is taking place at 222 NW 3<sup>rd</sup>; Parcel 094-053-029 in the Community Campus, a site reserved for the Visalia Unified School District.

While the City recognizes that community gardening can be a valuable recreational activity that can contribute to community development, environmental awareness, and positive social interaction, the Community Campus was not developed for this purpose. Its primary purpose is to offer office space which provide services to the Visalia Community.

Over the past few years, the Redevelopment Agency and the City of Visalia have been acquiring, assembling and clearing land along NW 5<sup>th</sup> Street for the eventual expansion of the Community Campus. The long-range plan is to expand community oriented facilities such as CSET, Proteus, Inc., and Boys Scouts of America to NW 5<sup>th</sup> Street. Until these plans materialize, staff is recommending the Agency to consider a Land Use Agreement with Proteus on two parcels for the properties located at 101 NW 5<sup>th</sup>; Parcel 094-053-023 and 1105 N. Court; APN 094-053-024 to be used as a public community garden administered by Proteus, Inc.

**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** RN  
11/24/09  
(Initials & date required)

**Finance** EF 11/18/09  
**City Atty** KR  
11/18/09  
(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.



As part of the Land Use Agreement, Proteus Inc. agrees to the following conditions:

- Coordinate and oversee responsibility for public use of the garden
- Provide and pay for water service to support the garden
- Remove all debris which may collect on the site on a weekly basis
- Bear full responsibility for liability insurance holding the Agency and City harmless of any potential claims
- Maintain and care for the garden
- Agency will maintain the right to terminate the agreement with a 30-day written notice.

Agency staff has prepared an agreement for a term shorter than one year, terminable at will, which may be extended upon the mutual written consent of the parties. This approach is recommended so that Agency can easily transition its properties to their ultimate intended use once plans for development of the properties come to fruition.

**Prior Council/Board Actions:**

**Committee/Commission Review and Actions:**

**Alternatives:**

**Attachments:**

Land Use Agreement  
Resolution 2009-06  
Aerial of Existing & Proposed New Garden

**Recommended Motion (and Alternative Motions if expected):** Approve Resolution Number 2009-06 authorizing a "Land Use Agreement" between the Redevelopment Agency (RDA) and Proteus, Inc. for the purpose of permitting a Community Garden on RDA-owned land.

***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:

## **LAND USE AGREEMENT**

This Agreement is entered into and effective this \_\_\_ day of \_\_\_\_\_, 2009 by and between the Community Redevelopment Agency of the City of Visalia, organized and existing under the laws of the State of California (“Agency”) and Proteus, Inc., a 501(c)(3) non-profit entity (“Proteus”), hereinafter collectively referred to as the “Parties.”

### **RECITALS**

**WHEREAS**, Agency owns that property commonly identified as 101 NW 5<sup>th</sup> (APN 094-053-023) and 1101 N. Court (APN 094-053-024), collectively referred to as the “Property”, and more fully described in Exhibit “A”, attached hereto and incorporated herein by this reference; and

**WHEREAS**, Proteus has previously organized community gardening efforts to allow residents of the City of Visalia to provide food for themselves and their families, and to reduce blight and negative impacts from vacant or otherwise unused property in the Agency’s project area; and

**WHEREAS**, the Property was acquired by the Agency for future uses consistent with those identified in Agency’s redevelopment plan for the Property, but shall remain vacant for an undetermined period until such uses can be implemented; and

**WHEREAS**, Agency desires to support the community gardening activities organized by Proteus by granting to Proteus a limited land use license which will allow Proteus to organize and oversee responsibility for community gardening activities on the Property,.

**NOW, THEREFORE**, in consideration of the above-referenced facts, the mutual covenants of Agency and Proteus contained in this Agreement, and for other valuable

consideration, the receipt and sufficiency of which are hereby acknowledged, Agency and Proteus agree as follows:

1. Use of Agency Property by Proteus. Commencing on the effective date above, Agency grants to Proteus a license to enter the Property for purpose of organizing and overseeing responsibility for use for community gardening activities. The license is granted subject to all conditions stated herein and will expire on November 1, 2010, unless earlier terminated by Agency, or mutually extended by a written amendment to this Agreement. If Agency determines it is necessary to terminate access to the Property for any reason whatsoever, Agency shall provide written notice to Proteus, and Proteus shall immediately cease all community gardening activities, and within thirty (30) days of receipt of said notice of termination, Proteus shall clean, repair and return the Property to its condition at the time of entry into this Agreement and thereafter relinquish any right of access or use of the Property.

2. Scope of Proteus Activities. The following activities, as conditioned, are allowed to occur on the Property by Proteus:

a. Organize and oversee responsibility for coordinating community gardening activities by any and all public participants on the Property.

b. Community gardening activities shall be limited to the cultivation of fruits, vegetables and ornamental shrubs or flowers (hereinafter "Crops"). Crops shall not include fruit trees. Crops shall not include marijuana plants.

3. Proteus Rights and Responsibilities. Proteus, or its subcontractors and agents, shall:

a. Ensure that there shall be no discrimination against or segregation of, any person, or group of persons on account of race, color, creed, religion, sex, sexual preference, source of income, marital status, national origin, or

ancestry, in the use, occupancy, tenure or enjoyment of the Property, nor shall Proteus or any person claiming rights to the Property under or through Proteus, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of the Property.

b. Provide all necessary materials and resources for the community gardening activities, including water.

c. Should Proteus utilize herbicides, pesticides and fertilizer necessary for the community gardening which are not Hazardous Materials, as identified herein, such uses shall be consistent with any local, state or federal standards prevailing for such materials with respect the disclosure, storage, use, removal and disposal of such materials.

d. Provide any security measures Proteus deems necessary for the community gardening activities. Installation of any structures or fixtures for security purposes shall be at the sole expense of Proteus, and shall require the written consent of the Agency.

4. Indemnification and Release of Liability. As a material part of the consideration for this Agreement, Proteus hereby agrees to indemnify, defend and hold Agency and the Property harmless from and against any and all loss, costs, including attorneys fees, damage, expense, claim or liability including personal injury, loss of life and/or property damage that might or could result from the acts or omissions of Proteus, or its contractors, agents or invitees, in overseeing, organizing or participating in the community gardening activities on the Property.

a. Proteus shall take all necessary precautions to prevent the release into the environment of any Hazardous Materials in conjunction with its community gardening activities, defined below in subsection (b), on, in, or to the Property. Such precautions shall include compliance with all governmental requirements with respect

to Hazardous Materials. Should the community gardening activities result in the release of Hazardous Materials in, on or to the Property, Proteus shall be responsible for remediation of those Hazardous Materials in accordance with all Governmental Requirements. Proteus also agrees to indemnify, defend and hold Agency, City and their officers, employees, volunteers, agents and representatives harmless from and against any and all claims, resulting from, arising out of, or based upon (i) the presence, release, use, generation, discharge, storage or disposal of any Hazardous Materials on, under, in or about, or the transportation of any such Hazardous Materials to or from, the Site, or (ii) the violation, or alleged violation, of any statute, ordinance, order, rule, regulation, permit, judgment or license relating to the use, generation, release, discharge, storage, disposal or transportation of Hazardous Materials on, under, in or about, to or from, the Site, caused by Proteus or any of Proteus's predecessors in interest. This indemnity shall include any damage, liability, fine, penalty, parallel indemnity, cost or expense arising from or out of any claim, action, suit or proceeding for bodily injury (including sickness, disease or death), tangible or intangible property damage, compensation for lost wages, business income, profits or other economic or consequential loss, damage to the natural resource or the environment, nuisance, contamination, leak, spill, release or other adverse effects on the environment.

b. "Hazardous Materials" means any substance, material, or waste which is or becomes regulated by any local governmental authority, the State of California, or the United States Government, including, but not limited to, any material or substance which is: (i) defined as a "hazardous waste," "extremely hazardous waste," or "restricted hazardous waste" under Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law); (ii) defined as a "hazardous

substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act); (iii) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory); (iv) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances); (v) petroleum; (vi) friable asbestos; (vii) polychlorinated biphenyls; (viii) listed under Article 9 or defined as "hazardous" or "extremely hazardous" pursuant to Article 11 of Title 22 of the California Administrative Code, Division 4, Chapter 20; (ix) designated as "hazardous substances" pursuant to Section 311 of the Clean Water Act (33 U.S.C. §1317); (x) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. §6901, et seq. (42 U.S.C. §6903); or (xi) defined as "hazardous substances" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601, et seq., as the foregoing statutes and regulations now exist or may hereafter be amended.

5. Liens. Proteus shall keep the Property free from any and all mechanics or similar liens or charges resulting from the community gardening activities on the Property.

6. Assignment. Proteus shall not encumber, assign or otherwise transfer its rights under or interest in this Agreement. Any unauthorized assignment, occupancy, or use of the Property shall be void and shall constitute a default under the terms of this Agreement. Proteus specifically understands and agrees that Proteus shall have no right to assign its interest in this Agreement, and OWNER shall have no obligation to approve any such assignment, if Proteus attempts an assignment while in default.

7. Default by Proteus. The occurrence of any of the following events by

Proteus and its invitees shall constitute a default by Proteus under the terms of this Agreement:

a. Failure to abate a nuisance on the Property, or to discontinue or prevent any activity by Proteus, or its subcontractors, agents or invitees which creates harm or a risk of harm to persons or property; or

b. Failure to perform any other provision of this Agreement if the failure to perform is not cured within thirty (30) days after written notice has been served upon Proteus by Agency.

c. Should Proteus default in the performance of any of the covenants and conditions contained in this agreement, Agency may, in addition to the remedy specified in the preceding paragraph, reenter and regain possession of the premises in the manner provided by the laws of the State of California then in effect.

8. Insurance. Proteus shall take out and maintain throughout the term of this Agreement, a commercial general liability policy in the amount of One Million Dollars (\$1,000,000.00) combined single limit, or such other policy limit as the Agency may approve at its discretion, including contractual liability, as shall protect Proteus and Agency from claims for such damages. Such policy or policies shall be written on an occurrence form. Proteus shall furnish or cause to be furnished to the Agency evidence satisfactory to Agency that Proteus and any contractor with whom it has contracted for the performance of work on the Property or otherwise pursuant to this Agreement carries workers' compensation insurance as required by law. Companies writing the insurance required hereunder shall be licensed to do business in the State of California. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII. Proteus shall furnish a notarized certificate of insurance countersigned by an authorized agent of the insurance carrier on a form reasonably approved by the Agency setting forth the general provisions of the insurance coverage.



This countersigned certificate shall name the City, Agency and their respective officers, agents, employees, volunteers and representatives as additionally insured parties under the policy, and the certificate shall be accompanied by a duly executed endorsement evidencing such additional insured status. The certificate and endorsement by the insurance carrier shall contain a statement of obligation on the part of the carrier to notify City and Agency of any material change, cancellation or termination of the coverage at least thirty (30) days in advance of the effective date of any such material change, cancellation or termination. Coverage provided hereunder by Proteus shall be primary insurance and shall not be contributing with any insurance, self-insurance or joint self-insurance maintained by the Proteus, and the policy shall contain such an endorsement. The insurance policy or the endorsement shall contain a waiver of subrogation for the benefit of the Agency.

9. Notices. All notices under this Agreement shall be effective upon personal delivery to Agency or Proteus, as the case may be, or three (3) business days after deposit in the United States mail, registered or certified, postage fully prepaid and addressed to the respective parties as follows:

Agency: Executive Director  
Community Redevelopment  
Agency of the City of Visalia  
425 East Oak, Suite 301  
Visalia, California 93291

Proteus: Proteus, Inc.  
Attn: \_\_\_\_\_  
\_\_\_\_\_  
Visalia, California 93291

or such other address as the Parties may from time to time designate in writing. As a matter of convenience, however, communication between Agency and Proteus shall, to the extent feasible, be conducted orally by telephone or in person, which such communications to be confirmed and made effective in writing as set forth above

provided no such oral notice or communication shall be effective unless so confirmed in writing.

10. Entire Agreement. This Agreement and items incorporated herein contain all of the agreements of the Parties hereto with respect to the matters contained herein, and no prior agreement or understanding pertaining to any such matter shall be effective for any purpose. No provisions hereof may be amended or modified in any manner whatsoever except by an agreement in writing signed by duly authorized representatives of each of the Parties hereto.

11. Successors. The terms, covenants and conditions hereof shall be binding upon and shall inure to the benefit of the heirs, executors, administrators and assigns of the respective Parties hereto.

12. Further Action. The Parties agree to perform all further acts, and to execute, acknowledge, and deliver any documents that may be reasonably necessary, appropriate or desirable to carry out the purposes of this Agreement.

13. Waiver. A waiver of any breach of this Agreement by any Party shall not constitute a continuing waiver or a waiver of any subsequent breach of the same or any other provision of this Agreement.

14. Choice of Law - Venue. This Agreement shall be governed by the laws of the State of California and any questions arising hereunder shall be construed or determined according to such law. Venue for the legal action arising from or in connection with this Agreement shall be in Tulare County, California.

15. Construction. This Agreement is the product of negotiation and compromise on the part of each party and the parties agree, notwithstanding Civil Code Section 1654, that in the event of uncertainty the language will not be construed against the party causing the uncertainty to exist.

16. Attorneys Fees, Costs, and Expenses. If any party hereto institutes any arbitration or judicial or administrative action or proceeding to enforce any provision of this Agreement, or alleging any breach of same, or seeking damages or remedies, the losing party(ies) shall pay to the prevailing party(ies) all costs and expenses, including reasonable attorneys fees expended or incurred by the prevailing party(ies) in connection therewith, whether incurred at the trial or appellate level, in an arbitration proceeding or otherwise, and including any of the foregoing incurred in connection with any bankruptcy proceeding relating to the OWNER, assignee, beneficiary or any other person or entity.

COMMUNITY REDEVELOPMENT AGENCY      PROTEUS, INC.  
OF THE CITY OF VISALIA

By: \_\_\_\_\_  
Executive Director                      (Date)

By: \_\_\_\_\_  
CEO    (Date)

**EXHIBIT A**

Legal Descriptions for the Property

**101 NW 5<sup>th</sup> Avenue** (APN 94-053-023), legally described as:

Lot 7 in Block 109 of Aughinbaugh's Addition in the City of Visalia, County of Tulare, STATE of California, as per Map recorded in Book 3, Page 48 of Maps, Tulare County Records.

**1101 N. Court Street** (APN 094-053-024), legally described as:

Those portions of Lots 8 and 9 in Block 109 of Aughinbaugh's Addition to the City of Visalia, County of Tulare, State of California, as per licensed survey recorded in Book 6, Page 95 of licensed survey recorded in Book 6, Page 95 of licensed surveys, in the offices of the County Recorder of Tulare County, described as follows: Beginning at the northwesterly corner of said Lot 8; thence northeasterly along the northerly line of said Lot 8, 131.85 feet to the southerly line of said Northwest Fifth Avenue, 27.09 feet to the west line of Court Street, 82.23 feet to the northeast corner of the land conveyed by O.C. Gilson and wife to C.B. Lynd, by deed dated June 6, 1929, recorded in the office of the County Recorder of Tulare westerly along the northerly line of the land so conveyed to said C.B. Lynd to a point on the westerly line of said Lot 8, which point is 12.7 feet southeasterly from the point of beginning; thence northwesterly along the westerly line of said Lot 8, 12.7 feet to the point of beginning.

RESOLUTION NO. 2009-06  
A RESOLUTION OF THE CITY OF VISALIA

RESOLUTION OF THE COMMUNITY REDEVELOPMENT AGENCY  
OF THE CITY OF VISALIA  
APPROVING AND AUTHORIZING THE EXECUTION OF A  
LAND USE AGREEMENT  
BETWEEN THE AGENCY AND PROTEUS, INC.

**WHEREAS**, Agency owns that property commonly identified as 101 NW 5<sup>th</sup> (APN 094-053-023) and 1101 N. Court (APN 094-053-024), collectively referred to as the “Property”, and more fully described in Exhibit “A”, attached hereto and incorporated herein by this reference; and

**WHEREAS**, Proteus has previously organized community gardening efforts to allow residents of the City of Visalia to provide food for themselves and their families, and to reduce blight and negative impacts from vacant or otherwise unused property in the Agency’s project area; and

**WHEREAS**, the Property was acquired by the Agency for future uses consistent with those identified in Agency’s redevelopment plan for the Property, but shall remain vacant for an undetermined period until such uses can be implemented; and

**WHEREAS**, Agency desires to support the community gardening activities organized by Proteus by granting to Proteus a limited land use license which will allow Proteus to organize and oversee responsibility for community gardening activities on the Property,.

**NOW, THEREFORE**, in consideration of the above-referenced facts, the mutual covenants of Agency and Proteus contained in this Agreement, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Let it be RESOLVED, that the Community Redevelopment Agency and Proteus agree as follows (see attached agreement)

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

**City of Visalia  
Agenda Item Transmittal**

**Meeting Date:** December 7, 2009

**Agenda Item Number (Assigned by City Clerk): 6**

**Agenda Item Wording:** First reading of Ordinance 2009-08 authorizing the Police Department to have enforcement guidelines for specific aggressive behaviors associated with solicitation in public and introduction of amendment to Visalia Municipal Ordinance Section 8.40 to include camping in non-designated areas as a public nuisance.

**Deadline for Action:** None

**Submitting Department:** Police Department and Housing and Economic Development

**Contact Name and Phone Number:** Police Chief Colleen Mestas, 713-4215; Lieutenant Perry Phipps, 713-4103; Agent Mark Lyon, 713-4137; Tracy Robertshaw 713-4187.

**Department Recommendation:** It is recommended that the City Council approve Ordinance 2009-08. The ordinance would allow for proper enforcement measures to correct aggressive solicitation behaviors in public and amend the Nuisance Ordinance to include camping in unapproved locations as a Public Nuisance.

**Summary/background:**

The City has a public safety interest in preventing solicitation behavior that is aggressive in nature. The Police Department has requested that the City Attorney assist in drafting a new Municipal Ordinance to impose reasonable location and behavior limitations on solicitation, in order to protect the safety of the general public against abusive solicitation, prevent disruptions to public functions, to improve access to public places, and to correct intimidating or coercive behaviors while respecting freedom of speech.

Though solicitation is generally regarded as a form of speech and is subject to strict protections by our constitution and the courts, "aggressive solicitation" is characterized by an act or behavior that causes fear, intimidation, or may harass the public, thereby removing it from the strict protections of the Constitution. Solicitation characterized by non-aggressive behaviors and that are complying with the location restrictions will continue to be appropriate and lawful.

The attached ordinance defines and prohibits "aggressive solicitation" in any public place (which as defined in the ordinance includes public property as well as privately owned property that is open to the public). It also defines and prohibits "solicitation" of any kind in certain specified areas, including public transportation vehicles and facilities, public and private parking lots at

**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.

night and areas around financial institutions and ATMs. These areas are all areas in which solicitation in general can be considered aggressive simply because of the setting, regardless of the behavior of the solicitor.

The Police Department is also proposing to strengthen the current Ordinance concerning interference with traffic. Persons occupying a median, whether for solicitation purposes or otherwise, have been shown to interfere with traffic by drawing the attention of passing drivers and creating a visual impairment. This problem is not limited to solicitations, though individuals who loiter in medians generally do so for the purpose of engaging in solicitation. This exposes both passing vehicles and the pedestrian in the median to unnecessary risks and slows down traffic flows. In order to address this issue under current municipal code provisions, police officers have had to show actual interference with traffic, as well as knowledge of such interference on the part of the soliciting party, in order to warrant a citation. The proposed Ordinance simplifies this by prohibiting any occupying of a median except to cross the street or to conduct permitted construction or maintenance within the median.

In addition, Neighborhood Preservation is proposing to enhance the nuisance ordinance to include camping in areas that are not intended for such a use. The purpose of the Nuisance Ordinance is to provide for the abatement of conditions which are offensive or detrimental to property values and community appearance. It is also designed to protect property owners that are maintaining properties in a good and appropriate condition. The change in the ordinance also provides a definition for the term "camping." Camping on vacant lots has continued to increase and is creating blight in neighborhoods. Property owners are also concerned with the health and safety issues that are created because adequate solid waste and sewer facilities are not available on the parcels that are being utilized. The unauthorized or inappropriate use of outdoor cooking equipment, open flame, fires or stoves of any sort typically associated with camping creates the threat of fire, particularly when campsites are located in vacant lots around brush and weeds. Camping adjacent to, within, or below the top of banks of ditches or waterways poses a health and safety risk from potential flooding and proximity to unstable banks that can become slippery when wet. The change to the ordinance would allow camping to be a violation that could be corrected through Code Enforcement efforts.

**Prior Council/Board Actions:**

**Committee/Commission Review and Actions:**

**Alternatives:**

**Attachments:** 1) Ordinance 2009-08

<p><b>Recommended Motion (and Alternative Motions if expected):</b> I move to approve the first reading of Ordinance 2009-08 authorizing approval for enforcement guidelines to prevent aggressive behaviors associated with solicitation in public and adding camping in unapproved areas to the Nuisance Ordinance.</p>
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***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 NUMBER 2009 --08**

**ADDING TO THE VISALIA MUNICIPAL CODE A PROHIBITION  
AGAINST AGGRESSIVE SOLICITATION**

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

**Section 1:** Consistent with its control over municipal affairs and the powers vested in the City of Visalia through the California Constitution, the City of Visalia is authorized to secure and promote the public health, comfort, safety and welfare of its citizenry. Therefore, the City Council of the City of Visalia hereby adopts Chapter 9.34 of Title 9 of the Municipal Code " attached hereto as Attachment "1" and made a part hereof.

**Section 2:** Section 12.52.020, Section 8.40.020 and 8.40.030 of the Visalia Municipal Code is hereby amended to read as follows (*italics denotes the new provisions*):

**12.52.020 Obstruction of movement in public ways.**

A. No person shall occupy any portion of a public way or public place so as to obstruct or interfere with the flow of pedestrian or vehicular traffic thereon, whether such person does so alone or together with one or more persons, or with equipment or personal property of any nature, and whether such person does so by standing, sitting, lying or in any other manner.

*B. No person shall occupy a roadway median for any purpose, whether by standing, sitting, lying or in any other manner, and no person shall walk in a roadway median except as necessary to pass through at a designated crossing location. This section shall not apply to those persons occupying a median while conducting activities related to maintenance, surveying, construction, landscape maintenance, landscape improvements, or responding to an emergency.*

**8.40.020 Definitions**

*"Camping" means the use of either a public park, a private or public street, or a vacant field, or place, none of which are intended for living accommodation purposes, as a temporary or permanent residence. Camping activities may be evidenced by the erecting of tents or any structure providing shelter; (including but not limited to trees, paper, metal, tarps, wood, shrubs, or bushes) sleeping with or without bedding, sleeping bag, blanket, mattress, tent, hammock, or other similar device; making preparations to sleep; storing personal belongings; starting or maintaining a fire; cooking; or preparing meals. Persons utilizing a vehicle as a mobile living unit must abide by Visalia Municipal Code Section 17.32.100.*

**8.40.030 Public Nuisance**

It is hereby declared to be a public nuisance and a violation of this Chapter for an owner or other person in control of said property or premises to keep or maintain property, premises or rights-of-way in such a manner that any of the following conditions exist:

A. Abandoned, dismantled, wrecked, inoperable, unlicensed, and discarded objects, equipment or appliances such as, but not limited to vehicles, boats, water heaters, refrigerators, furniture which is not designed for outdoor use, household fixtures, machinery, equipment, cans or containers standing or stored on property or sidewalks

or streets which can be viewed from a public street or walkway, alley or other public property which items are readily accessible from such places, or which are stored on private property in violation of any other law or ordinance;

B. Discarded putrescibles, garbage, rubbish, refuse, or recycled items which have not been recycled within thirty (30) days of being deposited on the property which are determined by an enforcement officer to constitute a fire hazard or to be detrimental to human life, health or safety;

C. Oil, grease, paint, other petroleum products, hazardous materials, volatile chemicals, pesticides, herbicides, fungicides or waste (solid, liquid or gaseous) which is determined by an enforcement officer to constitute a fire or environmental hazard, or to be detrimental to human life, health or safety;

D. Lumber (excluding lumber for a construction project on the property with a valid permit), salvage materials, including but not limited to auto parts, scrap metals, tires, other materials stored on premises in excess of seventy-two (72) hours and visible from a public street, walkway, alley or other public property;

E. Receptacles for discarded materials and recyclables which are left in the front yard following the day of the regularly scheduled refuse pick-up for the property;

F. Swimming pool, pond, spa, or other body of water, or excavation which is abandoned, unattended, unsanitary, empty, which is not securely fenced, or which is determined by the enforcement officer to be detrimental to life, health or safety;

G. Any premises which detrimentally impacts the surrounding neighborhood because of dilapidation, deterioration or decay or is unsafe for the purpose for which it is being used or is not secured or is improperly secured;

H. Any premise or property in a condition which is in fact a fire hazard or which results or can result in the impairment of the ability of the department of fire and emergency management to respond to and suppress fires;

I. Any condition on a property which meets the following requirements:

1. Is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property so as to interfere with the comfortable enjoyment of life and property; and

2. Affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.

*J. Camping in areas not specifically designated for such use or not specifically authorized by a public agency. Camping on private property shall be permissible only in the rear yard of an existing single family residence in a residential zone for a period not to exceed two consecutive days and there is written permission from the property owner.*

**Section 3: Severability.** If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstances, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not effect the validity or enforceability of the remaining sections, subsections, subdivision, paragraphs, sentences, clauses or phrases of this Ordinance, or its application to any other person or circumstance. The City Council of the City of Visalia hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

**Section 4: Construction.** The City Council intends this Ordinance to supplement, not to duplicate or contradict, applicable state and federal law and this Ordinance shall be construed in light of that intent.

**Section 5: Effective Date.** This Ordinance shall take effect thirty days after its adoption.

**Section 6: Certification.** The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published or posted according to law.

PASSED AND ADOPTED:

\_\_\_\_\_  
, Mayor

ATTEST:

\_\_\_\_\_  
Steven M. Salomon, City Clerk

APPROVED AS TO FORM  
BY CITY ATTORNEY:

\_\_\_\_\_  
Alex M. Peltzer, City Attorney

## VISALIA MUNICIPAL CODE

### Title 9 PUBLIC PEACE, MORALS AND WELFARE

#### Chapter 9.34 **Aggressive Solicitation**

Sections:

- 9.34.010 Purpose
- 9.34.020 Definitions
- 9.34.030 Aggressive Solicitation Prohibited
- 9.34.040 All Solicitation Prohibited at Specified Locations
- 9.34.050 Penalty
- 9.34.060 Severability
- 9.34.070 Non-Exclusivity

**9.34.010 Purpose**

It is the intent of this Chapter to impose reasonable place and manner limitations on solicitation, as defined herein, in order to protect the safety of the general public against abusive solicitation, prevent disruptions to public functions, improve access to public places, and to curb intimidating or coercive behavior, while respecting the constitutional right of free speech.

**9.34.20 Definitions**

The following words or phrases as used in this Chapter shall have the following meanings:

- (a) **“Solicitation”** means any request made in person seeking an immediate donation of money or other item of value. A person shall not be deemed to be in the act of solicitation when he or she passively displays a sign or gives any other indication that he or she is seeking donations without addressing his or her solicitation to any specific person, other than in response to an inquiry by that person.
- (b) **“Donation”** means a gift of money or other item of value and shall also include the purchase of an item for an amount far exceeding its value under circumstances where a reasonable person would understand that the purchase is in substance a gift.
- (c) **“Aggressive solicitation”** means to do one or more of the following while engaging in solicitation or immediately thereafter:

- (1) Approaching or speaking to a person, or following a person before, during, or after soliciting, asking, or begging, if that conduct is intended or is likely to cause a reasonable person to:
    - (a) fear bodily harm to oneself or to another, damage to or loss of property, or
    - (b) otherwise be intimidated into giving money or other thing of value;
  - (2) Blocking or impeding the passage of the person solicited;
  - (3) Following the person solicited by proceeding behind, ahead or alongside of him or her after the person solicited declines to make a donation;
  - (4) Threatening the person solicited with physical harm by word or gesture;
  - (5) Using profane, offensive, or abusive language, which is inherently likely to provoke an immediate violent reaction before, during, or after solicitation;
  - (6) Touching the solicited person without the solicited person's consent; or
- (d) **“Public Place”** shall mean a place to which the public or a substantial group of persons has access, and includes, but is not limited to, any street, highway, sidewalk, parking lot, plaza, transportation facility, school, place of amusement, park, playground, and any doorway, entrance, hallway, lobby, and other portion of any business establishment open to the public.
- (e) **“Person”** means and includes both individual persons and organizations.

#### **9.34.30 Aggressive Solicitation Prohibited**

No person shall engage in Aggressive Solicitation in any public place.

#### **9.34.040 All Solicitation Prohibited at Specified Locations.**

##### **A. Banks and ATMs.**

- (1) No person shall engage in solicitation within 15 feet of any entrance or exit of any bank, savings and loan association, credit union, or check cashing business during its business hours or within 15 feet of any automated teller machine during the time it is available for customers' use.
- (2) Definitions, for the purpose of this section:
  - (a) **“Bank”** means any member bank of the federal Reserve System, and any bank, banking association, trust company, savings bank, or other banking institution organized or operated under the laws of the United States, and any bank the deposits of which are insured by the Federal Deposit Insurance Corporation.
  - (b) **“Savings and Loan Association”** means any federal savings and loan association and any “insured institution” as defined in Section 401 of the National Housing Act, as amended, and any federal credit union as defined in Section 2 of the Federal Credit Union Act.

- (c) **“Credit Union”** means any federal credit union and any state chartered credit union the accounts of which are Insured by the Administrator of the National Credit Union Administration.
- (d) **“Check Cashing Business”** means any person duly licensed as a check seller, bill payer, or prorater pursuant to Division 3 of the California Financial Code, commencing with Section 12000.
- (e) **“Automated Teller Machine”** shall mean any electronic information processing device which accepts or dispenses cash in connection with a credit, deposit, or convenience account.

**B. Motor Vehicles and Parking Lots**

- (1) **Motor Vehicles.** No person shall approach an operator or occupant of a motor vehicle for the purpose of solicitation, while such vehicle is located in any public place.
- (2) **Parking Lots.** No person shall engage in solicitation in any public parking lot or structure any time after dark. **“After dark”** means any time from one-half hour after sunset to one-half hour before sunrise.
- (3) **Exemptions.** Subdivision B shall not apply to any of the following:
  - (a) to solicitations related to business which is being conducted on the subject premises by the owner or lawful tenants;
  - (b) to solicitations related to the lawful towing of a vehicle; or,
  - (c) to solicitations related to emergency repairs requested by the operator or other occupant of a vehicle.

**C. Public Transportation Vehicles and Bus Stops.**

- (1) **Public Transportation Vehicle.** No person shall engage in solicitation while in a public transportation vehicle.
- (2) **Bus Stops.** No person shall engage in solicitation at or within 15 feet of a bus stop.
- (3) Definitions, for the purpose of this section:
  - (a) **“Public Transportation Vehicle”** means any vehicle, including a trailer bus, designed, used, or maintained for carrying 10 or more persons, including the driver; or a passenger vehicle designed for carrying fewer than 10 persons, including the driver, and used to carry passengers for hire.
  - (b) **“Bus Stop”** means any posted or otherwise designated location or area that exists on a public transportation vehicle or bus route where public transportation vehicles or buses stop to discharge and take on passengers.



**9.34.050      Penalty**

A violation of any of the provisions of this Chapter is punishable as a misdemeanor or infraction, at the discretion of the prosecuting entity or agency.

**9.34.060      Severability**

If any provision of this Chapter, or its application to any person or circumstance, is held to be invalid for any reason, the remainder of the Chapter, or the application of its provisions to other persons or circumstances, shall not in any way be affected.

**9.34.070      Non-Exclusivity**

The provisions of this Chapter shall not limit or preclude the enforcement of other applicable laws.

**City of Visalia  
Agenda Item Transmittal**

**Agenda Item Number (Assigned by City Clerk): 7**

**Meeting Date:** December 7, 2009

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

**Agenda Item Wording:** Authorize the submittal of a grant application to the Federal Emergency Management Agency (FEMA) in the amount of approximately \$1,900,000 for Fire Department staffing.

**Deadline for Action:** December 16<sup>th</sup>, 2009

**Submitting Department:** Fire

**Contact Name and Phone Number:**

Danny Wristen @ 713-4056, Mark Nelson @ 713-4218

**Department Recommendation:**

Approval of this grant application, the SAFER Grant Program (see attachment 1), would provide grant funding to hire up to 9 additional firefighters for 2 years. At that time, the funding for those firefighters would be assumed by Measure T in accordance with that plan. A future public hearing and amendment to the Measure T plan is recommended to provide for Measure T expenditures needed for this grant. It is recommended the Council approve this application. However, the deadline is December 16, 2009, and the Council could continue for further discussion at its December 14, 2009 meeting.

**Summary:**

This is an annual grant that is funded by FEMA. The purpose of this grant is to enhance local fire departments' staffing and deployment capabilities, so they may more effectively respond to emergencies wherever they may occur. The deadline for submission is December 16, 2009.

Typically the SAFER Grant requires matching funds on a declining schedule. The timeline is usually on a 5 year program starting out funding at 90% the first year, 80% - 2<sup>nd</sup> year, 70% - 3<sup>rd</sup> year, 60% - 4<sup>th</sup> year and 50% the 5<sup>th</sup> year. In the past, we have not applied for this type of grant due to the matching fund requirements. Additionally, if an agency were awarded this type of grant, they would not be able to reduce (lay off) any personnel in the future. If an agency did reduce staff, they would have to repay all grant money awarded.

**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** MN 12-02-09  
(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 current 2009 SAFER Grant does not require any local matching funds. The performance period for this grant is two years and requires that the City would keep the firefighter positions at a minimum for one additional year after the performance period. The grant also requires that the City will not eliminate any fire department safety positions during the three year period. The Grant will pay for the salary and benefits of the firefighter positions for two full years.

The SAFER Grant will not pay for recruitment costs for the new firefighter positions. The Grant will pay for the employees during their Recruit Academy (10 weeks). The cost to outfit the new firefighter positions would be funded by Measure T, after making an amendment to the Measure T Plan.

The Measure T Expenditure Plan calls for the next round of fire department staffing to take place on July 1, 2012. The SAFER Grant would allow this additional staffing to take place two years earlier, at a minimal cost to the City. The SAFER Grant firefighter positions would become Measure T funded positions in 2012.

An additional expense that would be covered by the Grant is the cost for internal promotions for Engineer and Captain positions. In order to appropriately staff one additional engine company, we would need to promote six Engineers and three Captains. This would provide for our standard three person engine company. (Captain, Engineer and Firefighter-Paramedic) The cost for the internal promotions would be covered by the Measure T Fund.

Until the next fire station is built and new fire engine is purchased in 2012, we would propose to utilize a reserve fire engine for this new engine company (Measure T calls for ordering a new fire engine in 2010 and delivery in 2011). We could house this engine company at one of our existing fire stations or establish a temporary facility within a mile radius of the Tulare / Akers intersection. (It has been determined through our response data that this area experiences less than standard response times) This could be accomplished by leasing an existing building or by leasing a piece of property and using a modular unit or temporary facility. During this time period staff would be examining emergency response models and make a recommendation for a future permanent fire station site.

### **Background:**

The Visalia Fire Department is a full service organization, providing many types of emergency response and preparedness services to our citizens. We currently provide service from 5 strategically located fire stations with five Medic Fire Engines, one Ladder Truck and one on-duty Battalion Chief. Over the last 10 years as the population of Visalia has increased, so has the Fire Department demand for service.

In March of 2004, Visalia voters passed a quarter cent sales tax increase (Measure T) to improve public safety services in our community.

In 2006 (after Measure T passed in 2004) Tulare County Fire Department deciding not to staff a fire engine in the south east section of the City. This decision placed a burden on the city to provide emergency response coverage to this area. The City used 5 relief positions and 4 Measure T funded positions to staff a fire engine in the south east area of the city. Currently, the City is leasing a portion of the Cal Fire compound at the corner of Lovers Lane and Walnut Avenue to house the fire company. This location has served the City of Visalia well; providing 94% of all calls for service under the 5 minute response time standard.

In 2008, because of this unexpected change, the City decided to move the personnel from Fire Station #53 (Airport) to staff the new Fire Station #55 (Shirk and Ferguson)) in the north west area of the City.

The next round of funding for fire personnel will come in FY 12/13; Measure T calls for the hiring of 14 additional personnel. Due to the loss in sales tax, the City may not be able to commit to hiring all 14 personnel and have to reduce the number of employees hired.

The City of Visalia's Fire Department Response Time Standard is to arrive at 90% of our calls for service in 5 minutes or less. Currently, some areas of the City are struggling to meet this standard. One area that poses a major challenge to meet this response standard is in the S/W portion of the City at Akers and Tulare. (Attachment #2) Currently, the Visalia Fire Department does not meet the standard for over 2000 call for service annually; of the 2000 calls, approximately 1200 are medical aids.

In closing, having an additional engine company in service would greatly reduce the depletion of resources on a daily basis. Additionally, if an additional engine company were housed in a temporary facility which was strategically located in an extended response time area; the overall response times for the City of Visalia would be improved from 81% to 94% of all calls meeting the Response Time Standard of 5 minutes or less.

## **Funding**

Depending on when the SAFER Grant is awarded, the funding from Measure T may be delayed until the Grant has completed its funding timeline, thus allowing an increase in the growth of the Measure T funds.

Below is a breakdown of costs associated with the SAFER Grant if we were to hire 9 Firefighters:

Salary and Benefits 9 Firefighter-Paramedics First Year - \$899,664.78 (Grant Funded)  
Salary and Benefits 9 firefighter-Paramedics Second Year - \$972,987.17 (Grant Funded)  
FLSA 9 Firefighter-Paramedics First Year - \$15,931.80 (Grant Funded)  
FLSA 9 Firefighter-Paramedics Second Year - \$17,206.38 (Grant Funded)  
Uniforms and Equipment 9 Firefighter-Paramedics - \$65,007 (Measure T)  
Recruitment Costs - \$5000 (Measure T)  
Promotion of 6 Engineers and 3 Captains - \$34,221.10 - annually (Measure T)  
Additional Operations Cost for 1 Engine Company - \$15,000 (Measure T)

	SAFER Grant	Measure T	Total
9 Firefighter/Paramedics	\$1,905,790.00		\$ 1,905,790.00
Uniforms and Equipment		\$65,000	\$ 65,000.00
Recruitment		\$5,000	\$ 5,000.00
Promotional Costs		\$34,000	\$ 34,000.00
Operations - Engine		\$15,000	\$ 15,000.00
Total	\$ 1,905,790.00	\$119,000.00	\$ 2,024,790.00

It should be noted that Measure T funds could be used to pay for General Fund items listed above. If the decision were made to proceed along this course, a public hearing to amend the Measure T Plan would be required.

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

n/a

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

n/a

### **Alternatives:**

### **Attachments:**

SAFER Grant (attachment 1)  
Response Map (Attachment 2)

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

Authorize the submittal of a grant application to the Federal Emergency Management Agency (FEMA) in the amount of approximately \$1,900,000 for Fire Department staffing.

***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:

Attachment 1

U.S. DEPARTMENT OF HOMELAND SECURITY

**FISCAL YEAR 2009**

**STAFFING FOR ADEQUATE FIRE AND EMERGENCY  
RESPONSE PROGRAM**

**GUIDANCE AND APPLICATION KIT**

**NOVEMBER 2009**



U.S. DEPARTMENT OF HOMELAND SECURITY

**PART I.**  
**FUNDING OPPORTUNITY DESCRIPTION**

The Staffing for Adequate Fire and Emergency Response (SAFER) Grants are managed by the Federal Emergency Management Agency's Assistance to Firefighters Grants (AFG) Program Office. SAFER Grants provide financial assistance to help fire departments increase their cadre of frontline firefighters or to rehire firefighters that have been laid off. The goal is to assist local fire departments with staffing and deployment capabilities so they may respond to emergencies whenever they occur, assuring their communities have adequate protection from fire and fire-related hazards. The SAFER Grants have two activities to support this goal: (1) Hiring of Firefighters and (2) Recruitment and Retention of Volunteer Firefighters.

In Fiscal Year (FY) 2009, Congress appropriated a total of \$210 million to the Department of Homeland Security (DHS) for SAFER Grants. The FY 2009 appropriated funds are available for award until September 30, 2010.

Once awarded, the funds are available for expenditure by the grantee for the full period of grant performance. Each grant's period of performance is discussed in detail on page 10 of this guidance. The authority for SAFER is derived from the Federal Fire Prevention and Control Act of 1974, as amended (15 U.S.C. §2229a et seq.).

**A. Federal Strategy**

The SAFER Grants are an important part of the Administration's larger, coordinated effort to strengthen homeland security preparedness. The National Preparedness Guidelines and their work products are of particular significance. The National Preparedness Guidelines are an all-hazards guide for meeting the Nation's four core preparedness objectives: prevent, protect against, respond to, and recover from terrorist attacks and catastrophic natural disasters.

The National Preparedness Guidelines define a vision for what should be achieved in order to strengthen the security of the nation and provide guidance designed to forge a unified national consensus about what to do and how to work together at all levels of government. First responder participation is integral to the Guidelines' success. DHS expects its first responder partners to be familiar with this national preparedness architecture and to practically incorporate elements of this architecture into their planning, operations, and investments.



## B. Legislative Changes

Cost sharing requirements were waived under Sec. 603 of Title VI of the American Recovery and Reinvestment Act of 2009 (P.L. 111-5) for FY 2009 and FY 2010. In addition, the Secretary has been granted an authority to issue waivers to many of the SAFER requirements that are reflected in the SAFER governing statute for FY 2009 and FY 2010. Under section 605 of the Supplemental Appropriation, 2009 (Public Law 111-32), the Secretary of Homeland Security was provided the authority to waive the requirements of subsection (a)(1)(B), subsection (c)(1), subsection (c)(2), and subsection (c)(4)(A) of section 34 of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2229a) for the FY 2009 SAFER program. The authority to provide waivers was intended to facilitate the hiring of firefighters in order to increase incident scene safety.

The content of these specific subsections, i.e., the specific requirements that may be waived at the discretion of the Secretary, are as follows:

**Subsection (a)(1)(B)(i):** Grants made under this paragraph shall be for 4 years and be used for programs to hire new, additional firefighters.

**Subsection (a)(1)(B)(ii):** Grantees are required to commit to retaining for at least 1 year beyond the termination of their grants those firefighters hired under this paragraph.

**Subsection (c)(1):** Funds made available under this section to fire departments for salaries and benefits to hire new, additional firefighters shall not be used to supplant State or local funds . . . .

**Subsection (c)(2):** No grant shall be awarded pursuant to this section to a municipality or other recipient whose annual budget at the time of the application for fire-related programs and emergency response has been reduced below 80 percent of the average funding level in the 3 years prior to November 24, 2003.

**Subsection (c)(4)(A):** Total funding provided under this section over 4 years for hiring a firefighter may not exceed \$100,000.

## C. DHS Implementation of Waiver Authority

For this year's grant opportunity, DHS will reduce the requirement on the period of performance from four years to two years (subsection (a)(1)(B)(i)); DHS will waive the requirement to commit to retaining firefighters *rehired* under this program (subsection (a)(1)(B)(ii)); eliminate the requirement on the maintenance of expenditure requirement (subsection (c)(2)); and, eliminate the salary limitation (subsection (c)(4)(A)). In addition, all cost-sharing requirements for funds under the FY2009 (and 2010) appropriations were waived under Sec. 603 of Title VI of the American Recovery and Reinvestment Act of 2009 (P.L. 111-5).

The requirement to maintain staffing levels (subsection (c)(1)) will remain in effect and **NOT** be waived. Additionally, grantees that are awarded funding to hire new firefighters will be required to commit to retaining the firefighters for one full year after the period of performance, i.e., DHS will **NOT** waive the requirement to commit to retaining the **newly-hired** firefighters funded by SAFER (subsection (a)(1)(B)(ii)).

#### D. Priority Development Process

The goal of the SAFER Grants is to enhance local fire departments' abilities to comply with staffing, response, and operational standards established by the National Fire Protection Association (NFPA) and the Occupational Safety and Health Administration (OSHA). Specifically, the grants focus on standards included in the deployment and assembly sections of NFPA 1710 and/or NFPA 1720, and the respiratory protection section of OSHA 1910.134 (see [www.nfpa.org/SAFERActGrant](http://www.nfpa.org/SAFERActGrant) for more details).

SAFER intends to improve local fire departments' staffing and deployment capabilities, so they may more effectively respond to emergencies whenever they may occur. It is hoped that as a result of the enhanced or restored staffing, a SAFER grantee's response time should be sufficiently reduced with an appropriate number of trained personnel assembled at the incident scene. Additionally, the enhanced or restored staffing levels should provide improved safety for firefighters by ensuring all frontline/first-due apparatus of SAFER grantees have a minimum of four qualified personnel to meet the NFPA standards referenced above. Ultimately, SAFER grantees should achieve more efficient responses and a safer incident scene; thereby ensuring communities have improved protection from fire and fire-related hazards.

Each year, the AFG Program Office holds a criteria development meeting to recommend funding priorities for SAFER and its other grant opportunities for the coming year. To do this, a panel of fire service professionals representing the nine major fire service organizations is convened. The organizations represented include:

- Congressional Fire Service Institute (CFSI)
- International Association of Arson Investigators (IAAI)
- International Association of Fire Chiefs (IAFC)
- International Association of Firefighters (IAFF)
- International Society of Fire Service Instructors (ISFSI)
- National Association of State Fire Marshals (NASFM)
- National Fire Protection Association (NFPA)
- National Volunteer Fire Council (NVFC)
- North American Fire Training Directors (NAFTD)

The criteria development panel is charged with making recommendations to the Department of Homeland Security and FEMA regarding the creation and/or modification of previously established funding priorities, developing criteria for awarding grants, and proposing any necessary changes for the administration of the SAFER Grants. The recommendations are considered by the Secretary and DHS/FEMA in the development of grant guidance.

SAFER Grants are comprised of two primary activities: (1) Hiring of Firefighters and (2) Recruitment and Retention of Volunteer Firefighters. Additional information regarding these activities is provided below.

#### **E. Funding Priorities for Hiring of Firefighters Grants**

For the FY 2009 SAFER Grant solicitation, FEMA distinguishes between the hiring of new firefighters and the rehiring of laid-off firefighters. Be advised that the FY 2009 SAFER award conditions do **NOT** apply to previous SAFER awards nor will they remain in effect beyond FY 2010.

**Hiring of New Firefighters:** FEMA has set aside no less than 15 percent of the 2009 appropriation for the hiring of new firefighters. These grants are awarded directly to volunteer, combination, and career fire departments to help the departments increase their cadre of frontline firefighters. Grants for the hiring of new firefighters have a two-year period of performance that provides fire departments with funding to pay 100 percent of the salaries and benefits of newly-hired firefighters (exclusive of overtime). Departments awarded grants for hiring new firefighters are required to commit to retaining the SAFER-funded firefighters for one full year after the two-year period of performance. Only firefighters hired after the award date may be funded by a SAFER Grant; firefighters hired prior to the award date are not eligible for SAFER funding. Grantees must maintain their staffing at the level that existed at the time of application. Grantees cannot layoff any firefighters during the two-year period of performance. If a SAFER grantee loses any firefighters for any reason (such as attrition or termination) during the two-year period of performance, they must fill the position(s) or lose funding for the position(s) until the vacancy or vacancies are filled. Failure on the grantee's part to adjust payment requests to reflect vacancies or staffing adjustments would be considered in default and require repayment of the Federal funds received. Extensions to a SAFER Grant's period of performance will not be allowed.

**Rehiring of Laid-Off Firefighters:** These grants are awarded directly to combination and career fire departments to enable them to restore their levels of staffing in order to attain a more effective level of response and a safer incident scene. In order for a position to be eligible for funding under the rehiring initiative, the position must have been the object of a layoff action that was effected between January 1, 2008, and October 31, 2009. Grants for rehiring of firefighters provide fire departments with funding to pay 100 percent of the salaries and benefits (exclusive of overtime) and have a two-year period of performance. There is no requirement for rehiring grantees to retain the SAFER-funded firefighters after the two-year period of performance. Only positions that were the object of a layoff action between January 1, 2008, and October 31, 2009, are eligible. Only firefighters hired **after** the award date may be funded by a SAFER Grant; firefighters hired prior to the award date are not eligible for SAFER funding. Grantees must maintain their staffing at the level that existed at the time of application as well as the SAFER-funded staffing for the two-year period of performance. Grantees cannot layoff any firefighters during the two-year period of performance.

If a SAFER grantee loses any firefighters for any reason (such as attrition or termination) during the two-year period of performance, they must fill the position(s) or lose funding for the position(s) until the vacancy or vacancies are filled. Failure on the grantee's part to adjust payment requests to reflect vacancies or staffing adjustments would be considered in default and require repayment of the Federal funds received. Extensions to a SAFER Grant's period of performance will not be allowed.

Regardless of whether an applicant is seeking to hire new firefighters or to rehire firefighters, the priorities of the two options are the same. Having more firefighters on staff should improve the local fire department's abilities to comply with staffing, response, and operational standards established by NFPA and OSHA. Compliance with these standards results in enhanced safety for the firefighters and more effective response for the community.

**Meeting National Standards:** The highest priority under the Hiring of Firefighters Activity is to provide funding to departments not in compliance, or who have fallen out of compliance, with national standards promulgated by the NFPA and OSHA and adopted by DHS who can be brought into compliance with the standards in the most economical manner.

Applications resulting in the largest percentage increase in compliance with the relevant section of NFPA 1710 and 1720 receive greater consideration than applications resulting in smaller percentage increases in compliance.

- **NFPA 1710** Standard for the Organization and Deployment of Fire Suppression Operations, Emergency Medical Operations, and Special Operations to the Public by Career Fire Department (Section 5.2.4.2 – Initial Full Alarm Assignment Capability). This standard applies primarily to all-career fire departments and combination departments at the combination department's election.
- **NFPA 1720** Standard for the Organization and Deployment of Fire Suppression Operations, Emergency Medical Operations, and Special Operations to the Public by Volunteer Fire Departments (Section 4.3 – Staffing and Deployment). This standard applies primarily to all-volunteer fire departments, but may also apply to combination departments if the combination department does not elect to comply with the NFPA 1710 standard.

**Note:** SAFER Grants focus only on the "Deployment" or "Staffing and Deployment" sections of these two standards (respectively). The NFPA established a special link providing information about these two standards on the NFPA Web site at [www.nfpa.org](http://www.nfpa.org). For more information on the standards, contact NFPA at 1-800-344-3555, or e-mail questions to [stds\\_admin@nfpa.org](mailto:stds_admin@nfpa.org).

The specific OSHA Respiratory Protection standards to be addressed under SAFER are:

- **1910.134(g)(4)** Procedures for interior structural firefighting, which provide for employer assurances, most notably the two-in two-out rule.
- **1910.134(g)(4)(i)** This standard requires at least two employees enter the IDLH (immediate danger to life and health) atmosphere and remain in visual or voice contact with one another at all times.
- **1910.134(g)(4)(ii)** This standard requires at least two employees to be located outside the IDLH atmosphere.

**Hiring Priorities:** The Secretary, with guidance from the criteria development group, identified several different situations that affect firefighter staffing that could qualify for funding under this year's SAFER guidelines.

In 2009 SAFER Grants, the highest consideration will be given to those departments that have the largest staffing shortages impeding an effective response as defined by NFPA 1710 and 1720. For the purposes of the 2009 grant cycle, we consider a firefighting position that was lost to attrition and not subsequently refilled as a result of the economy to be the equivalent of a laid-off firefighter and eligible under a rehire request.

In order to preserve the original intent of the SAFER Grants, which was to increase the number of firefighters in departments in order to create safer and more effective response, applications seeking to hire new firefighters will receive a high consideration. DHS will reserve no less than 15 percent of the available funding to make awards for new firefighting positions.

**Hiring New Firefighters:** As stated above, applications seeking to hire new firefighters will receive a high consideration. Applicants will receive additional consideration if they can indicate in the application that they have formal policies in place governing their hiring and personnel practices and that these are available for review upon request. Also, volunteer and mostly volunteer departments seeking funding to hire new firefighters will receive additional consideration if the new positions will serve multiple roles such as chief officer, training officer, fire marshal, fire inspector, health/safety officer, or fire prevention/public education officer providing that the new firefighters' primary assignment remains that of an operational firefighter.

**Training Requirements:** As a condition of this grant, applicants **must provide assurance** their SAFER-funded firefighters (newly-hired or rehired firefighters) will be certified at the Firefighter I level within the first 12 months of employment **AND** be trained to Firefighter II level or equivalent before the end of the two-year period of performance. Applicants who fail to certify their SAFER-funded firefighters will achieve these training requirements are not considered for award. Grantees may be required to submit documentation of training and certification fulfillment within the stated deadlines. Grantees who fail to comply with these requirements may be required to return all, or a portion of, Federal funds disbursed under the grant and may be disqualified from

participation in future AFG and SAFER award cycles. The relevant NFPA standard for this training requirement is:

- **NFPA 1001 Standard for Firefighter Professional Qualifications (Firefighter-I and Firefighter-II).** This standard identifies the minimum job performance requirements for career and volunteer firefighters whose duties are primarily structural-firefighting in nature. This standard specifies the minimum job performance requirements for firefighters. It is not the intent of the standard to restrict any jurisdiction from exceeding these requirements.

Applicants who will train their SAFER-funded firefighters to have EMS certification to the minimum level established by the local agency having jurisdiction within 24 months receive higher consideration.

**Call Volume and Population Served:** Department call volume and population served are both factored into the initial evaluation. Departments responding to a high number of incidents and protecting larger numbers of people receive higher consideration than departments responding to fewer incidents or protecting smaller jurisdictions.

**Firefighter Health Measures:** Because the health and wellbeing of firefighters is of paramount importance, applicants who indicate their newly recruited firefighters will undergo an entry-level physical and receive immunizations receive higher consideration than applicants who do not specify these benefits will be provided. In order to qualify for consideration for this concern, the physicals must be consistent with those required under NFPA 1582.

**Meeting the Four-Firefighter Standard:** DHS recommends, based on guidance from the criteria development panel, that for the purposes of the SAFER Grants, a safe and efficient initial attack requires a minimum of four firefighters. Therefore, applicants who come into compliance with the minimum four firefighter standard for the first arriving engine (or vehicle capable of initiating suppression activities), by requesting the fewest number of additional personnel, receive higher consideration than applicants requesting a higher number of additional personnel.

**Other Priorities:** Fire departments having formal automatic and/or mutual aid agreements and applicants whose requests are based on a staffing needs assessment also receive higher consideration.

#### **F. Funding Priorities for Recruitment and Retention of Volunteer Firefighters Grants**

The purpose of these grants is to assist fire departments with the recruitment and retention of volunteer firefighters. The primary focus of this activity is the recruitment and retention of volunteer firefighters who are involved with, or trained in, the operations of firefighting and emergency response. The grants are intended to create a net increase in the number of trained, certified, and competent firefighters capable of safely

responding to emergencies likely to occur within the grantee's geographic response area.

**Meeting Staffing Standards:** The highest priority under this SAFER activity is to assist departments experiencing a high rate of turnover and whose staffing levels that are significantly below the ideal staffing level required to comply with NFPA standards 1710 or 1720 (for more details, see page 4 of this document for details or contact NFPA directly at 1-800-344-3555, or e-mail questions to [stds\\_admin@nfpa.org](mailto:stds_admin@nfpa.org)) and OSHA Respiratory Protection standards 1910.134(g)(4) (see page 4 of this document for details). Departments with the lowest retention rates and the highest attrition rates are given a high priority for funding.

**Volunteer Membership:** DHS concurs with the recommendation of the criteria development panel that departments or organizations with the highest percentage of volunteers or large numbers of volunteers benefit most from the recruitment and retention of volunteer firefighters. Therefore, applicants whose membership is comprised of mostly volunteer members, or with a significant number of volunteer firefighters, receive higher consideration.

**Recruitment/Retention Plan:** It is critical to have a plan for recruitment and/or retention activities. Accordingly, applications requesting funding for recruitment and/or retention programs based on formal plans receive higher consideration. Applicants should summarize the recruitment and retention plan in their narrative. A designated project coordinator and a marketing plan are necessary for successful implementation of any recruitment and/or retention program. Therefore, requests from departments that already have a coordinator and a marketing plan or that are requesting funding for a coordinator's position and a marketing plan receive higher consideration. In accordance with the recommendations of the criteria development panel, applications with recruitment and/or retention plans including accident and/or injury insurance and lost wages for members also receive a higher competitive ranking.

**Continuity:** Applicants receive higher consideration if their recruitment and retention activities are designed to continue beyond the grant's period of performance and not rely on future Federal dollars to sustain.

**Call Volume and Population Served:** Department call volume and population served are both factored into the initial evaluation. Departments responding to a high number of incidents and protecting larger numbers of people receive higher consideration than departments responding to fewer incidents or protecting a smaller jurisdiction.

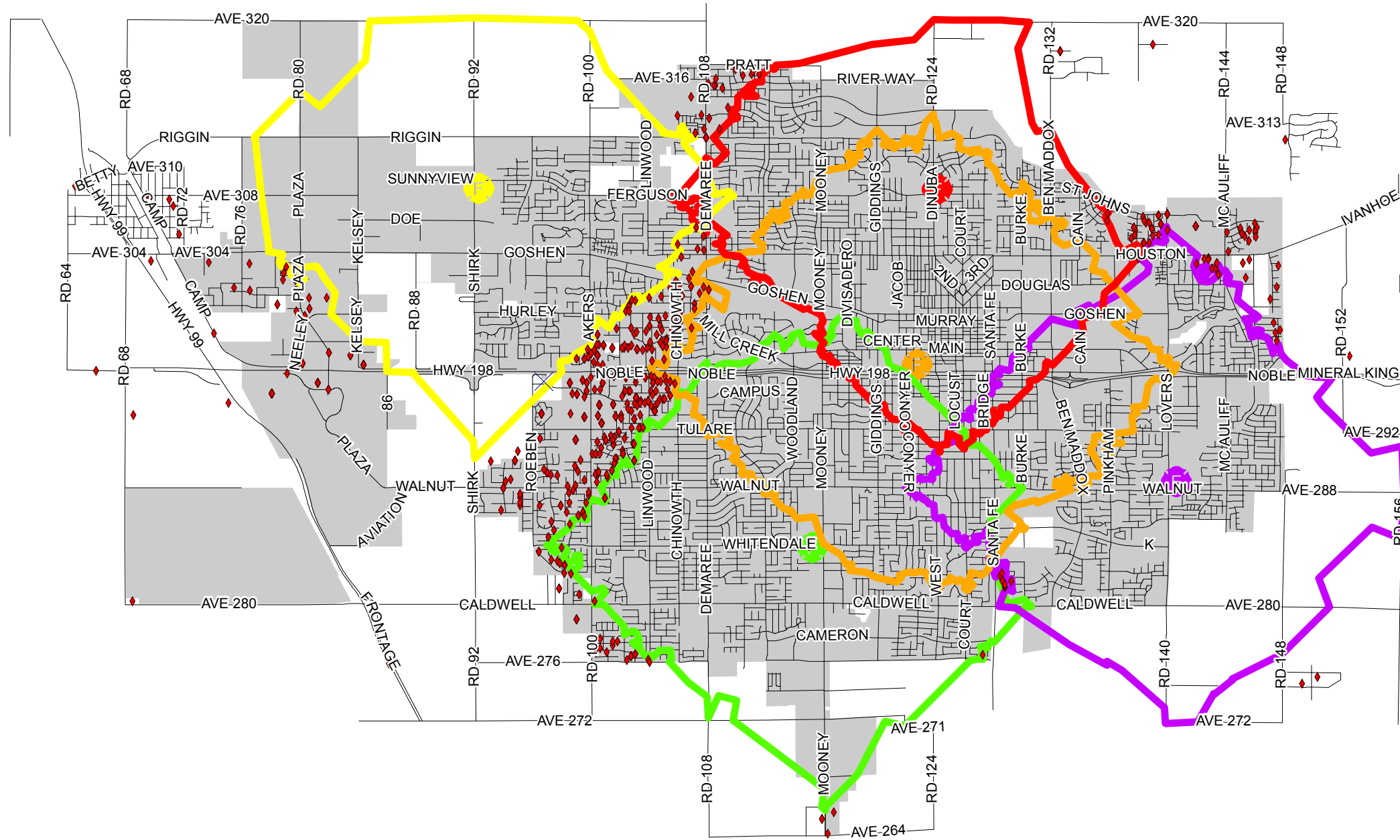
**Firefighter Health Measures:** DHS recommends that, because the health and wellbeing of firefighters is of paramount importance, applicants who indicate their newly recruited firefighters will undergo an entry-level physical and receive immunizations receive higher consideration than applicants who do not specify these benefits will be provided. In order to qualify for consideration for this concern, the physicals must be consistent with those required under NFPA 1582.

**Training Requirements:** Applicants who indicate newly recruited firefighters will meet the minimum fire and EMS certification requirements prescribed by the locality or State within 24 months of appointment to the department receive additional consideration.

**Regional Requests:** Requests for recruitment and/or retention activities having a regional impact (i.e., an impact beyond the immediate boundaries of the applicant's first-due area) will receive a higher competitive advantage than applications benefitting only one applicant. An applicant may apply for both regional initiatives and internal needs on one application. Please note: The Hiring of Firefighters Activity is not eligible as a regional project—only Recruitment and Retention of Volunteer Firefighter Activities qualify as regional projects.



# 5 Minute Response Time - (4 min. @ 35 mph)



- ◆ Incidents 11/01/08 to 10/31/09
- Response Area - 4 Min. @ 35 MPH**
- ▭ Station 51
- ▭ Station 52
- ▭ Station 54
- ▭ Station 55
- ▭ Station 56
- Fire Stations**
- ⊕ Station 51
- ⊕ Station 52
- ⊕ Station 54
- ⊕ Station 55
- ⊕ Station 56

Current Response Areas Cover  
Approximately 86.3% of All Calls

