

Regular Meeting Agenda

Visalia City Council



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

Monday, December 6, 2010

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

Work Session 4:30 p.m.; Closed Session 6:00 p.m. (or immediately following Work Session)
Regular Session 7:00 p.m.

4:30 p.m.

INTRODUCTION OF NEW EMPLOYEES

Bernardo Villegas, Police Officer; Michael Bischel, Police Officer; Thomas Higgins, Police Officer;
Leah Hidingier, Police Officer; Michael Morgantini, Reserve Police Officer

WORK SESSION AND ACTION ITEMS (as described)

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

4:35 p.m.

1. First reading of **Ordinance 2010-16** for Zoning Text Amendment No. 2010-10B: A request by the City of Visalia to amend Title 17 of the Visalia Municipal Code (Zoning Ordinance) to add certain permitted and conditionally-allowed uses (including supermarkets 30,000 sq. ft. or smaller, car washes, and convenience stores) in the Regional Retail Commercial (C-R) zone (*continued from 11/15/2010*). **Receive public comment.**

Adjourn as the joint Visalia City Council and Redevelopment Agency Board and remain seated as the Visalia City Council

5:15 p.m.

2. First reading of **Ordinance 2010-19** revising Chapter 8.24, Fireworks, of the Visalia Municipal Code, amending the ordinance to allow for streamlining of the fireworks permit process (*continued from 11/15/2010*). **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

- Update on High Speed Rail – Mayor Link (*oral update - no written materials*)

6:00 p.m. CLOSED SESSION (immediately following Work Session)

3. Conference with Real Property Negotiators (GC 54956.8)
Properties: Cal Water Easement on a portion of APN #'s 103-020-021 and 103-020-059
Negotiating Parties: Steve Salomon, Chris Young, Alex Peltzer, Phil Mirwald
Under negotiation: Terms and Conditions
4. Conference with Legal Counsel – Existing Litigation. (Subdivision (a) of G.C. §54956.9)
Name of Case: Church Mutual Insurance Co. vs. City of Visalia TCSC #09-235713
5. Conference with Legal Counsel – Anticipated Litigation - Significant exposure to litigation pursuant to subdivision (b) of Section 54956.9: 1 potential case
6. Public Employee Performance Evaluation (GC 54957)
Title: City Manager

7:00 p.m. CALL TO ORDER REGULAR SESSION

PLEDGE OF ALLEGIANCE

INVOCATION – Danny Little, Visalia Rescue Mission Executive Director

SPECIAL PRESENTATIONS/RECOGNITION

- Resolution of Commendation for Ed Juarez in recognition of his retirement after 45 years of dedicated service to the City of Visalia Engineering Division.

PUBLIC COMMENTS - *This is the time for citizens to comment on subject matters that are not on the agenda that are within the jurisdiction of the Visalia City Council.*

This is also the time for citizens to comment on items listed on the Consent Calendar or to request an item from the Consent Calendar be pulled for discussion purposes. Comments related to Regular or Public Hearing Items that are listed on this agenda will be heard at the time that item is discussed or at the time the Public Hearing is opened for comment.

In fairness to all who wish to speak tonight, each speaker from the public will be allowed three minutes (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.

7. **CONSENT CALENDAR** - *Consent Calendar items are considered routine and will be enacted in one motion. There will be no separate discussion of these matters unless a request is made and then the item will be removed from the Consent Calendar to be discussed and voted upon by a separate motion.*

- a) Authorization to read ordinances by title only.
- b) Authorize staff to purchase approximately 520 copies of Microsoft Office and Office Pro 2010 through CompuCom for \$147,510 or better if Microsoft offers better year-end pricing.
- c) Authorize purchase of approximately 495 personal computers through the standardized PC replacement process and award the purchase to Dell piggybacking the Western States Contracting Alliance (WSCA) competitively bid agreement for \$575,000 or better if Dell offers better year-end pricing.

- d) Authorization to award and amend various RFPs associated with equipment pre-selection for the Water Conservation Plant upgrade project.
- e) Replacement of a representative from the Environmental Committee to the General Plan Update Review Committee.
- f) Review and approval of Visalia Water Management Committee 2011 Annual Plan.
- g) Second reading and adoption of **Ordinance No. 2010-10** authorizing the lease of approximately 233 acres of land on 11 parcels at the Visalia Municipal Airport to Eric Shuklian for continued use for agricultural purposes. (*Ordinance 2010-10 required*)
- h) Second reading and adoption of **Ordinance No. 2010-11** authorizing the lease of facilities at the Visalia Municipal Airport to D. Lancy Allyn for an Aircraft Storage Hangar. (*Ordinance 2010-11 required*)
- i) Notification of A DUI Grant application to the Sobriety Checkpoint Program, UC Berkeley – Traffic Safety Center, through the Governor’s Office of Traffic Safety (OTS), and authorization for the City Manager to execute the grant agreement.
- j) Authorization to file a Notice of Completion for Ashley Grove No. 12, a subdivision containing 28 multi -family lots (118 units) with one common area, located on the southwest corner of Mooney Blvd. and Riggin Avenue.
- k) Accept the City of Visalia Cash and Investment Report for the first quarter ending September 30, 2010.
- l) Authorization to express interest in providing short-term financing to the Measure R authority of up to \$10 million, repayable in 3 years or until sufficient debt is accumulated to justify a bond financing, whichever is shorter.
- m) Authorize the City Manager to execute a contract amendment with Mark Thomas & Company, Inc. to perform work to consider three additional alternatives for the improvement of the interchange at Lovers Lane and State Route 198 - Contract Amendment Cost: \$61, 582.
- n) Authorization to appropriate an additional \$112,000 for the Recreation Park Playground Project, approximately \$69,000 will come from Park Impact Fees and \$43,000 will come from General Fund reserves; and approve a change order for \$118,376 for additional project work.
- o) First Reading of Ordinance No. 2010-20 to adopt the 2010 California Fire Code, 2010 California Administrative Code, 2010 California Referenced Standard Code, 2010 California Building Code, 2010 California Plumbing Code, 2010 California Mechanical Code, 2010 California Electric Code, 2010 California Historical Building Code, 2010 California Existing Building Code, 2010 California Residential Code, 2010 California Green Building Standards Code, and 2010 California Energy Code. *Ordinance 2010-20 required.*

REGULAR ITEMS AND PUBLIC HEARINGS - *Comments related to Regular Items and Public Hearing Items are limited to three minutes per speaker, for a maximum of 30 minutes per item, unless otherwise extended by the Mayor.*

8. **PUBLIC HEARING** - for property located on the east side of Dinuba Boulevard between Shannon Parkway and the St. John’s River. (APN: 079-071-001, 016, 018, 020, 023, 024 [portion], 028; 079-080-045, 049, 052 through 057)
 - a) Certification of Negative Declaration No. 2010-82. (**Resolution 2010-79 required**)
 - b) Initiation of Proceedings for Annexation No. 2005-07 (River Island): A request by R&L Investment Group, LLC, to annex parcels and right-of-way totaling approximately 137 acres into the City limits of Visalia. (**Resolution 2010-80 required**)
 - c) Authorize the City Manager to sign and enter into a pre-annexation agreement.
 - d) Detachment of property from County Service Area No. 1.

9. Request by the Tulare County Association of Governments (TCAG) to execute an amended Joint Powers Agreement for Tulare County and the eight Cities in the County to modify the powers of the TCAG. **Resolution 2010-82 required.**

10. **PUBLIC HEARING** - to approve the recommended expenditure of and appropriate the State of California FY 2010/2011 Citizens Option for Public Safety (COPS) Program funds of \$100,000. **Resolution 2010-81 required.**

CLOSED SESSION REPORT

Buyer	Seller	APN Number	Address	Purpose	Closing Date	Project Manager
City of Visalia	P & B Pence, LLC	094-283-001	300 E. Oak Ave.	Affordable housing, and transit related activities	11/15/2010	Ricardo Noguera

Upcoming Council Meetings

- Monday, December 20, 4:00 p.m. Work Session, 7:00 p.m. Regular Session - City Hall Council Chambers 707 W. Acequia
- Tuesday, January 18, 2011, 4:00 p.m. Work Session, 7:00 p.m. Regular Session - City Hall Council Chambers 707 W. Acequia
- Monday, January 31, 2011, 6:00 p.m. Town Hall Meeting, Crestwood School, 3001 W. Whitendale Ave.

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.

The City’s newsletter, Inside City Hall, is published after all regular City Council meetings. To self-subscribe, go to http://www.ci.visalia.ca.us/about/inside_city_hall_newsletter.asp. For more information, contact Community Relations Manager Nancy Loliva at nloliva@ci.visalia.ca.us.

Resolution of Commendation

Edward Juarez

WHEREAS, Edward Juarez, "Ed with the City", is retiring after forty-five years of dedicated service to the City of Visalia; and

WHEREAS, Ed Juarez began his career with the City of Visalia in 1966 in the Engineering Department; and has remained in the Engineering Department for his entire career holding a variety of positions working up to Senior Public Works Inspector; and

WHEREAS, Ed serves as the longest ever full-time City employee; and

WHEREAS, through Ed's early years of service he was integral in surveying the Valley Oaks Golf Course and numerous street drainage studies leading to the installation of curb and gutter and storm drain systems throughout the City; and

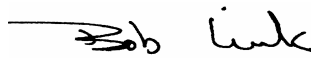
WHEREAS, during Ed's years of service he was active and successfully graduated from the City's Award-winning Employee Development Program and "SOAR" Supervisor Training Program; and

WHEREAS, Ed was a key member of the public works inspection staff within the Engineering Department who worked diligently and effectively on the inspection of high profile capital improvement projects, commercial developments and subdivisions that were built during one of the largest growth phases in the city's history. More recently Ed oversaw the construction inspection of the Convention Center, north side sanitary sewer trunk line, Sports Park, and Orchard Walk Shopping Center; and

WHEREAS, Ed is highly regarded by his peers and the local construction community for his ability to clearly communicate on construction matters; and

NOW, THEREFORE BE IT RESOLVED that the City Council of the City of Visalia, Department Heads, and City Employees do hereby commend and recognize Edward Juarez for his years of dedicated service to City of Visalia and for exemplifying the *VERY BEST* we have to offer.

Dated: December 6, 2010


Bob Link, Mayor


Amy Shuklian, Vice-Mayor


E. Warren Gubler, Councilmember


Michael Lane, Councilmember


Steven A. Nelsen, Councilmember

**City of Visalia
Agenda Item Transmittal**

Meeting Date: December 6, 2010

Agenda Item Number (Assigned by City Clerk): 1

Agenda Item Wording: Mooney Blvd. Corridor Zoning Study Amendments consisting of:

Zoning Text Amendment No. 2010-10B: A request by the City of Visalia to amend Title 17 of the Visalia Municipal Code (Zoning Ordinance) to add certain permitted and conditionally-allowed uses (including supermarkets 30,000 sq. ft. or smaller, car washes, and convenience stores) in the Regional Retail Commercial (C-R) zone. **(Ordinance 2010-16 required)**

The project pertains to certain properties in the City of Visalia located along or within approximately ¼ mile of both sides of Mooney Boulevard between Noble Avenue and Visalia Parkway, and the south side of Caldwell Avenue between Sallee Street and Packwood Creek.

Deadline for Action: None

Submitting Department: Community Development Department/
Economic Development Department

Contact Name and Phone Number:

Chris Young, Community Development Director, 713-4392
Ricardo Noguera, Housing and Economic Dev. Director, 713-4190
Paul Scheibel, AICP, Planning Services Manager, 713-4369
Brandon Smith, AICP, Senior Planner, 713-4636

For action by:

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

For placement on which agenda:

Work Session
 Closed Session

Regular Session:

Consent Calendar
 Regular Item
 Public Hearing

Est. Time (Min.):_30_

Review:

Dept. Head _____
(Initials & date required)

Finance _____
City Atty _____
(Initials & date required
or N/A)

City Mgr _____
(Initials Required)

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

Introduction: At the Council Meeting on November 15, 2010, some Councilmembers questioned the desirability of adding several suggested uses to the list of allowed, or conditionally allowed, uses in the C-R zone and requested that these be brought back to Council for further discussion. The specific uses mentioned were convenience stores, gas stations, car washes and grocery stores. These uses are described further in the "summary section" below. The purpose of this discussion is to finalize the list of uses to be added to the C-R Zone.

These suggested changes (pertaining to convenience stores, gas stations, car washes and grocery stores) along with a number of other changes recommended by the Mooney Corridor Study (all within the C-R Zone) are shown on pages 4 and 5 of this report. The specific changes to the Zoning Matrix are shown along with brief explanatory comments on each change (to the right of the matrix). Changes are shown using ~~strikeout~~ for deletions, and **bold underline** for additions. Only those portions proposed for amendment are shown here. The entire Zoning Matrix is shown in the draft Resolution for ZTA 2010-10B.

Recommendations: Staff recommends that the City Council do the following:

1. Review the analysis and discuss those portions of the Mooney Corridor Zoning Study Amendments that pertain to the proposed expanded list of uses that would be newly allowed along the Mooney Corridor by Zoning Text Amendment 2010-B; and
2. Retain those newly-allowed uses in the associated Zoning Use Matrix (Attachment to Ordinance 2010-16) that the City Council desires to see included in the overall Mooney Corridor Zoning Study Amendments; and upon conclusion of the discussion,
3. Introduce for the first reading Ordinance 2010-16, pertaining to Zoning Text Amendment No. 2010-10B, for the addition of newly allowed uses in the Mooney Corridor.

Summary: This part of the Mooney Corridor implementation codes pertains to the proposed expansion of allowed uses within the Corridor. Specifically, it refers to those changes depicted in the Zoning Matrix to implement the expanded uses called for in the Mooney Corridor Study. The environmental document and all other components of the Mooney Corridor General Plan and Zoning Amendments were approved on November 15th.

The City Council may chose to retain or reject any of the uses that are proposed to be newly allowed as recommended in Zoning Text Amendment 2010-10B, which Council considered on November 15, 2010, and continued to December 6, 2010.

The version of the Zoning Use Matrix attached to Ordinance 2010-16 will include the existing uses already allowed along the Mooney Corridor, and those uses that are to be newly allowed. Any of the uses currently shown as proposed to be added, but which the City Council rejects for addition, will be removed from the Zoning Use Matrix in an amended version of the Ordinance for its second and final reading.

Convenience Stores

Convenience Stores are currently not allowed in the C-R zone, although there are some existing as grandfathered uses, both as stand-alone stores and along with gas stations. Recently the Planning Commission approved a conditional use permit to allow expansion to a non-conforming convenience store located with an on-site gas station. The Planning Commission agreed with the business owner's argument that gas stations need a convenience store component to compete in the market.

Gas Stations

Gas stations are currently allowed in the C-R zone as a conditional use, although gas stations with an on-site convenience store or major auto repair services are not allowed. Some existing stations on Mooney Blvd. do include these uses and have been grandfathered in. Staff included gas stations with an on-site convenience store or major auto repair services in the list to be added as a conditional use in order to take the non-conforming status off such stations and to allow the City to consider new "full service" stations through the CUP process.

Car Washes

Car washes are currently not allowed in the C-R zone, although there are two existing as a grandfathered use, and one that was granted a CUP because its use was allowed in an overriding specific plan. Staff included car washes in the list to be added because it appears that the full-service car washes can be an additional way to draw customers to Mooney Blvd.

Grocery Stores

Grocery stores are currently not allowed in the C-R zone. There are currently no full service grocery stores in the zone, although Grocery Outlet provides a variation of a full grocery service

store. Staff proposed the addition of included grocery stores under 30,000 square feet in the C-R zone as a compromise that would still prohibit the traditional full-size grocery store, but would allow smaller more unique grocery stores.

It should be noted that if the City Council removes one or more of the newly listed uses, doing so will still preserve the overall intent of the Mooney Corridor effort- that of increasing customer traffic and reducing building vacancies along the Corridor.

Background: On October 25, 2010, the Planning Commission held a public hearing on a package of amendments that had been proposed for the purpose of encouraging businesses to locate on Mooney Blvd. The Commission voted 4-0-1 (Soltesz absent) to recommend approval of all amendments (including ZTA 2010-10B) except for ZTA 2010-10A related to new definitions that would be placed into the Zoning Ordinance. The Commission then voted 3-1-1 (Salinas against, Soltesz absent) to recommend denial of ZTA 2010-10A.

The City Council held a public hearing on November 15, 2010, on the proposed amendments. After the public hearing was closed the Council voted 5-0 to certify Negative Declaration No. 2010-73, and to approve all of GPA 2010-08, all of COZ 2010-09, ZTA 2010-10C, and ZTA 2010-10D. The Council voted 5-0 to deny ZTA 2010-10A, and voted 4-1 (Lane against) to continue ZTA 2010-10B to December 6, 2010.

ABOVE ARE RECOMMENDED CHANGES TO ZONING MATRIX

		COMMERCIAL								OFFICE				INDUSTRIAL		COMMENT
		C-C	C-N	C-SO	C-CM	C-R	C-DT	C-H	C-S	OG	PA	B-R-P	OC	I-L	I-H	
19	Auto Oil/Lube Shops		C	P	P	C	C		P							Moves from Not Allowed to Conditional in C-R zone
20	Auto Repairs, Major-Overhauling, Rebuilding, Painting					C	C		P							Moves from Not Allowed to Conditional in C-R zone
24	Car Washing															
25	- self service		C	C	C	C	C	C	P							Moves from Not Allowed to Conditional in C-R zone
26	- automated		C	C	C	C	C	C	P				C			Moves from Not Allowed to Conditional in C-R zone
33	Tire Sales & Service (excluding major repairs)															
34	- stand alone					P			P							Moves from Not Allowed to Permitted in C-R zone
35	- located within the primary permitted use on the site			P	P	P		P	P							
123	HOTELS AND MOTELS			C		C	C	P			C					Moves from Not Allowed to Conditional in C-R zone
129	LAUNDRY/DRY CLEANERS															
130	Dry Cleaners (cleaning plant)	P	P	P	P	P	P		P			P				
131	Dry Cleaners (cleaning plant including carpet/rug cleaning and dyeing)			P					P				P			
135	Self service	P	P	P	P	P	P	P								Moves from Not Allowed to Permitted in C-R zone
222	MEDICAL FACILITIES/SERVICES (for medical/dental offices see OFFICE)															
226	Clinics (medical group, urgent care/walk-ins, dental, counseling, rehabilitation)		C	C		C	C				C			C	C	Moves from Not Allowed to Conditional in C-R zone
227	Dialysis Centers			P		C	C		C	P	C			C		Moves from Not Allowed to Conditional in C-R zone
240	OFFICES															
251	Counseling/psychologist															
252	- individuals			P		C	P			P		P				Moves from Not Allowed to Conditional in C-R zone
253	- groups			P		C	C			P						Moves from Not Allowed to Conditional in C-R zone
273	PUBLIC COMMUNITY SERVICES															
275	Fire Stations			C	C	C	P	C	C	P	C		P	P	P	Moves from Conditional to Permitted in C-R zone
276	Police Stations & Substations		C	P	P	P	P	P	P		P	P		P	P	
277	Post Offices						C				P					
278	Public Buildings, Offices & Grounds	C	C	C	C	P	P	P			C	C				Moves from Not Allowed to Permitted in C-R zone
288	RECREATION FACILITIES															
295	Dance & Music Studios	C	P	P		C	P		C							Moves from Not Allowed to Conditional in C-R zone
296	Martial Arts	C	P	P		C	P		C							Moves from Not Allowed to Conditional in C-R zone
297	Golf Courses & Driving Ranges							C								
298	Miniature Golf Courses			C		C		C								Moves from Not Allowed to Conditional in C-R zone
299	Ice & Roller Skating Rinks			C	C	C		C								Moves from Not Allowed to Conditional in C-R zone
300	Pool Halls/Billiard Parlors		C	C	C	C	C									
320	RETAIL															
321	General Merchandise															
322	- less/equal to 4,000 sq. ft.	P						P				C				No change. Shown for reference only.
323	- greater than 4,000 sq. ft.	C														No change. Shown for reference only.
324	- less/equal to 6,000 sq. ft.		P													No change. Shown for reference only.
325	- greater than 6,000 sq. ft.		C													No change. Shown for reference only.
326	- less/equal to 40,000 sq. ft.			P				P								No change. Shown for reference only.
327	- greater than 40,000 sq. ft.			C				C								No change. Shown for reference only.
328	- less/equal to 60,000 sq. ft.				P	P										No change. Shown for reference only.
329	- greater than 60,000 sq. ft.				C	P										No change. Shown for reference only.
344	Drugstore/Pharmacy															
345	- including general retail merchandise		P	P	P	P	P									Moves from Not Allowed to Permitted in C-R zone
346	- not including general retail merchandise		P	P	P	P	P		C	P	P					Moves from Not Allowed to Permitted in C-R zone
347	- not including general retail merchandise, up to 1,500 sq. ft.	P	P		P	P		P		P						Moves from Not Allowed to Permitted in C-R zone
348	- with general retail merchandise, with restrictions: *parcel must be corner property at arterial/arterial or arterial/collector intersections. Parcel size not to exceed 60,000 sq. ft. Building size not to exceed 14,000 sq. ft.										C					

ABOVE ARE RECOMMENDED CHANGES TO ZONING MATRIX (C-R ZONE)

		COMMERCIAL							OFFICE				INDUSTRIAL				
		C-C	C-N	C-SO	C-CM	C-R	C-DT	C-H	C-S	OG	PA	B-R-P	OC	I-L		I-H	
351	Food Stores																
352	- convenience store - 7000 sq. ft. or less	C	C	C	C	C	C	C	C			C		C	C	Moves from Not Allowed to Conditional in C-R zone	
353	- liquor store within 300 feet of residential/public use			C	C		C										
354	- liquor store not within 300 feet of residential/public use	C	C	P	P		C										
355	- specialty food stores, i.e. bakery, delicatessen, butcher shop, meat market, health food, gourmet/imported food, etc.	P	P	P	P	P	P			C		C				Removes example. Specialty food stores will now be included in the definitions section, so examples are not needed.	
356	- supermarkets/grocery stores 30,000 sq.ft. or smaller	C	P	P	P	P	P									Modifies wording to distinguish between stores less than 30,000 sq.ft and those more than 30,000 sq.ft. Makes supermarkets less than 30,000 sq.ft. Permitted in the C-R zone.	
357	- supermarkets/grocery stores over 30,000 sq.ft.	C	P	P	P		P									Allowed or conditional is same zones as supermarkets less than 30,000 sq.ft. except that would be Not Allowed in C-R zone.	
362	Furniture & Furnishings																
363	- new			P	P	P	P		P								
364	- secondhand *up to 10,000 square feet		P	P	P	P	P		P							Moves from Not Allowed to Permitted in C-R zone	
382	SCHOOLS, PUBLIC AND PRIVATE (see also Quasi-Public and Residential Zones)																
387	Colleges/Universities (academic)					C					C					Moves from Not Allowed to Conditional in C-R zone	
388	Business, Trade, Vocational, or other Specialized Schools			C		C	C		C	C	C		C			Moves from Not Allowed to Conditional in C-R zone	
390	SERVICE, COMMERCIAL																
409	Pet Grooming	P	P	P	P	P	P		P							Moves from Not Allowed to Permitted in C-R zone	
422	SERVICE STATIONS																
	Gasoline Service Stations															Removes line to clarify use list.	
423	Fuel dispensing only - not including major auto repair services of any kind (Ord. 2382)	C	C	C	C	C	C	P	P		C		P			Clarifies wording of use list.	
424	Also including convenience store (see RETAIL Food Stores - convenience store with service station)															Clarifies wording of use list.	
425	Also including major auto repair services			C	C	C		C	P					C		Moves from Not Allowed to Conditional in C-R zone.	
	fuel dispensing	C	C	C	C	C	C	P	P				P			This line will be eliminated to clarify use list.	
426	Also including dispensing of diesel fuel and/or light servicing of trucks							C	P				C			Removes reference to diesel fuel. Most service stations now sell diesel fuel from same pump as gasoline.	
448	VETERINARY SERVICES																
449	Animal Care Clinic (no boarding)		P	P	P	C			P	P				P		Moves from Not Allowed to Conditional in C-R zone	
450	Hospitals/Clinics (located 500 ft. from a residential zone including short term boarding of animals)		C	C	C				C	C				P			
461	OTHER																
464	Businesses which Initially Employ more than 750 Employees					C	C			C	C	C		C	C	Moves from Not Allowed to Conditional in C-R zone	

Environmental Findings: An Initial Study was prepared for the project consistent with the California Environmental Quality Act (CEQA). The Initial Study disclosed that environmental impacts are determined to be not significant. The City Council certified Negative Declaration No. 2010-73 on November 15, 2010.

Prior Council/Board Actions: On February 16, 2010, the City Council authorized the preparation of a Mooney Boulevard Corridor Zoning Study that would identify zoning amendments that could provide an immediate benefit to existing and new uses along the Mooney Corridor. The City Council reviewed the Mooney Boulevard Corridor Zoning Study on August 16, 2010, and initiated the proposals that are set forth in this agenda item. After holding a public hearing, ZTA 2010-10B was continued by the City Council to December 6, 2010.

Committee/Commission Review and Actions: On October 25, 2010, the Planning Commission held a public hearing on the full package of amendments. The Commission voted 4-0-1 (Soltesz absent) to recommend approval of all amendments except for ZTA 2010-10A related to new definitions that would be placed into the Zoning Ordinance. The Commission then voted 3-1-1 (Salinas against, Soltesz absent) to recommend denial of ZTA 2010-10A.

Alternatives: None

Attachments:

- o Ordinance No. 2010-16 with full Zoning Matrix
- o Correspondence received since November 15, 2010

Recommended Motion (and Alternative Motions if expected):

I move to:

Approve Zoning Text Amendment No. 2010-10B by adoption of the first reading of Ordinance Nos. 2010-16, (as amended by the comments of the Council.)

Environmental Assessment Status

CEQA Review: An Initial Study and Negative Declaration have been prepared for use with this project, consistent with the California Environmental Quality Act (CEQA). Negative Declaration No. 2010-73 was certified by the City Council on November 15, 2010. No further environmental review is needed.

NEPA Review: None

Copies of this report have been provided to:

Planning Commission
Don Wright, Mooney Blvd. Business Association
Lisa Salazar, Visalia Chamber of Commerce
Glenn Morris, Visalia Chamber of Commerce
Raymond Macareno, Hispanic Chamber of Commerce
Harvey May
Cathy Reilly

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)*

If approved, the Ordinance will be brought back to the Council for approval of the second reading on December 20, 2010, along with the Ordinances approved on November 15, 2010. Ordinance changes will be effective 30 days after approval of the second reading.

ORDINANCE NO. 2010-16

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF VISALIA
APPROVING ZONING TEXT AMENDMENT NO. 2010-10B, A REQUEST BY THE CITY OF
VISALIA TO AMEND PORTIONS OF SECTION 17.18.050 OF THE VISALIA MUNICIPAL CODE
(ZONING ORDINANCE) TO REVISE THE LIST OF ALLOWED AND CONDITIONAL USES IN
THE REGIONAL RETAIL COMMERCIAL (C-R) ZONE

WHEREAS, a Zoning Ordinance Text Amendment request was filed by the City of Visalia, to revise the list of allowed and conditional uses in the Regional Retail Commercial (C-R) zones in the Visalia Zoning Ordinance, the specific text being identified in Exhibit A herein; and

WHEREAS, the City Council of the City of Visalia finds as follows:

1. That no significant environmental impacts would result from this project, that no mitigation measures would be required, and that the City Council certified Negative Declaration No. 2010-73 by Resolution No. 2010-73 on November 15, 2010.
2. The City of Visalia considered the Zoning Text Amendment in accordance with Section 17.44.090 of the Zoning Ordinance of the City of Visalia based on evidence contained in the staff reports and testimony presented at the public hearing.
3. That the proposed Zoning Text Amendment is consistent with the goals, objectives and policies of the General Plan, and is not detrimental to the public health, safety, or welfare, or materially injurious to properties or improvements in the vicinity.
4. That the proposed amendment is consistent with the objectives, purpose and intent of Zoning Ordinance Section 17.02.020 by fostering a workable relationship among land uses, promoting the stability of existing land uses which conform to the district in which they occur, and ensuring that public and private lands ultimately are used for purposes which are appropriate and most beneficial for the city;
5. That the amendment will expand the number of uses allowed in the Regional Retail Commercial (C-R) Zone while retaining the zone's focus of including uses that are primarily a regional commercial draw.

WHEREAS, the City Council of the City of Visalia, after ten (10) days published notice, held a public hearing before said Council on November 15, 2010, and

WHEREAS, after the public hearing was closed, the City Council of the City of Visalia continued the Zoning Text Amendment No. 2010-10B to December 6, 2010.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF VISALIA:

SECTION 1: On October 25, 2010, the Planning Commission recommended that the City Council of the City of Visalia approve Zoning Text Amendment No. 2010-10B.

SECTION 2 - List of uses as permit (P), conditional (C), and temporary conditional (T): Section 17.18.050 of the Visalia Municipal Code, pertaining to the list of permitted, conditional, and temporary conditional uses, shall be amended to read as follows (bold underline indicate new provisions; strikethrough indicates deleted provisions):

The following matrix represents all the permitted and conditional uses in the commercial, office, and industrial zone districts.

SECTION 3: This ordinance shall become effective 30 days after passage hereof.

REPLACE THIS PAGE WITH THE 14-PAGE ZONING MATRIX (Excel file)

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		COMMERCIAL							OFFICE				INDUSTRIAL		
		C-C	C-N	C-SO	C-CM	C-R	C-DT	C-H	C-S	OG	PA	B-R-P	OC	I-L	I-H
1	A														
2	AGRICULTURAL-FARMING (see also Agricultural and Rural Residential Zones)														
3	Beekeeping														
4	Farmers' Market					T	T								
5	Grain Elevators/Silos														C
6	Greenhouses (commercial growers)												P	P	
7	Horse stables/Ranch (3 or more horses)														
8	Limited Raising of Small Animals, Livestock, and fowl on a Domestic Noncommercial Scale (2 cows, 4 sheep, goats, no pigs)* *not permitted 1/2 acre and less														
9	Raising of Livestock and Fowl, except Stockyards (commercial)														
10	Raising of Field, Truck or Orchard Crop & Horticultural Specialties												P		
11	Riding Academies/Stables														
12	Roadside Stands Selling Produce Grown on Site														
13	ANIMAL SHELTERS/HUMANE SOCIETIES													C	C
14	AUDITORIUMS (see THEATERS)														
15	AUTOMOTIVE (for gas stations see SERVICE STATIONS)														
16	Auto Leasing/Renting			C			C		P						
17	Auto Dismantling/Wrecking														C
18	Auto Machine Shops								P					P	
19	Auto Oil/Lube Shops		C	P	P	C	C		P						
20	Auto Repairs, Major-Overhauling, Rebuilding, Painting					C	C		P						
21	Automotive Supplies, Parts & Accessories		C	P	P	P	P		P						
22	Automotive Upholsterers								P						
23	Boat Sales/Service								P						
24	Car Washing														
25	- self service		C	C	C	C	C	C	P						
26	- automated		C	C	C	C	C	C	P					C	
27	Car Sales - New & Used														
28	- excluding major service/repairs						C		P						
29	- including major service/repairs						C		P						
30	Motorcycles, Sales and Service								P						
31	RV/Boat Storage Yards								P					P	
32	Recreational Vehicles Sales and Service								P					P	

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		COMMERCIAL							OFFICE				INDUSTRIAL		
		C-C	C-N	C-SO	C-CM	C-R	C-DT	C-H	C-S	OG	PA	B-R-P	OC	I-L	I-H
66	COMMUNICATIONS														
67	Communication Equipment Building	C	C	C	P		C		P		C	C		P	P
68	Radio and TV Broadcasting Studios														
69	- with antenna off-site			P		P	P		P			C		P	P
70	- with antenna on-site			C					C					P	P
71	D														
72	DAYCARE, LICENSED														
73	Adult														
74	- six or few adults	P	P	P	P	P	P		P	P	P	P	P	P	P
75	- 7 to 12 adults	P	P	P	P	P	P		P	P	P	P	P	P	P
76	- 13 or more adults	C	C	C	C	C	C		C	C	C	C	C	C	C
77	Children														
78	- eight or fewer children	P	P	P	P	P	P		P	P	P	P	P	P	P
79	- 9 to 14 children	P	P	P	P	P	P		P	P	P	P	P	P	P
80	- 15 or more children	C	C	C	C	C	C		C	C	C	C	C	C	C
81	In Conjunction with Primary Use	P	P	P	P	P	P	P	P	P	P	P		P	P
82	E														
83	EATING & DRINKING ESTABLISHMENTS														
84	Bars/Taverns														
85	- within 300 feet of any residence/public use		C	C	C	C									
86	- not within 300 feet of any residence/public use		C	C	C	P									
87	- microbreweries/restaurant: brewing, limited bottling or packaging. Consumption on premises or distribution locally in kegs (not for resale)		C	C	C	P	C		C						
88	Cafeterias		P	P	P	P	P	P	P		C	P		C	C
89	Pizza/Sandwich Shops														
90	- serving wine/beer	C	P	P	P	P	P	P		C	C	P			
91	- no alcohol	P	P	P	P	P	P	P	P	C	C	P		C	C
92	Fast Food without Drive-Thru		P	P	P	P	P	P	P		C	P			
93	Fast Food without Drive-Thru Subject to Section 17.32.161													C	
94	Fast Food with Drive-Thru		C	C	C	C		C	C		C	C			
95	Fast Food with Drive-Thru Subject to Section 17.32.161													C	
96	Ice Cream Shop	P	P	P	P	P	P	P		C	C	P			
97	Night Clubs/Discotheques					C	C								
98	Sit-Down Restaurant/Cafe														
99	- with or without full bar using less than 25% of public area	C	P	P	P	P	P	P	P	C	C	P	C	C	C
100	- full bar using greater than 25% of public area		C	C	C	C	C	P		C	C	C			
101	Speciality food store					C									
102	ENCLOSED SOLID WASTE TRANSFER STATIONS								C					C	P
103	F														
104	FLORIST	P	P	P	P	P	P						C		

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		COMMERCIAL							OFFICE				INDUSTRIAL		
		C-C	C-N	C-SO	C-CM	C-R	C-DT	C-H	C-S	OG	PA	B-R-P	OC	I-L	I-H
105	FORTUNETELLING/ PALM READER (see Municipal Code)			P											
106	FUEL STORAGE														
107	Propane/Butane				P			P						P	P
108	Propane/Butane (maximum 2000 gallons)					P			P						
109	Propane/Butane within 50 feet of Residential				C									C	C
110	Propane/Butane within 50 feet of Residential (maximum 2000 gallons)					C				C					
111	Above Ground Tanks - Installation of above ground tanks within 100 feet of a residential use or residential zoned property to dispense Class I, II, and III-A liquids <i>complying with the special</i>	C	C	C	C	C	C	C	C				C	C	C
112	Above Ground Tanks - installation of above ground tanks more than 100 feet from a residential use or residential zoned property to dispense Class I, II, and III-A liquids <i>complying with the special</i>	C	P	P	P	P	P	P	P				P	P	P
113	Pump & Underground Storage Tank														
114	- 500 gallons or less							P						P	P
115	- more than 500 gallons							C						P	P
116	Petroleum & Petroleum Products Storage													C	C
117	Public Fuel Dispensing (see SERVICE STATIONS)														
118	FUNERAL HOME/MORTUARY			C				C		C		C			
119	G														
120	GALLERIES-ART/PHOTOGRAPHY/CRAFTS		P	P	P	P	P	C	P			C			
121	H														
122	HOME BUSINESSES (see Chapter 17.32, Section 17.32.030)	P	P	P	P	P	P	P	P	P	P	P	P	P	P
123	HOTELS AND MOTELS			C		C	C	P					C		
124	I														
125	J														
126	K														
127	KENNELS (located 500 feet or more from a residential zone)									C				C	
128	L														
129	LAUNDRY/DRY CLEANERS														
130	Dry Cleaners (cleaning plant)	P	P	P	P	P	P		P				P		
131	Dry Cleaners (cleaning plant including carpet/rug cleaning and dyeing)			P					P					P	
132	Pick-up Point	P	P	P	P	P	P		P	P			P		
133	Diaper Supply Service			P					P					P	
134	Linen & Uniform Supply			P					P					P	
135	Self service	P	P	P	P	P	P	P	P						

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		C-C	C-N	C-SO	C-CM	C-R	C-DT	C-H	C-S	OG	PA	B-R-P	OC	I-L	I-H
136	M														
137	MANUFACTURING/ ASSEMBLING														
138	Building & Construction Trade														
139	- building materials yards (storage & distribution)								P					P	P
140	- cabinetmaker/carpenter shops								P					P	P
141	- concrete & readymix manufacture & distribution													C	C
142	- contractors equipment storage yards								P					P	P
143	- drilling/dredging/ditching service								P						P
144	- lumberyard (see also RETAIL)								P					P	
145	- sheet metal shop								P					P	
146	Chemical Products (manufacturing, compounding, packaging, bottling)														
147	- agricultural chemicals (insecticides, fertilizer, herbicides)													P	P
148	- blending/compounding perfumes, cosmetics, etc.													P	P
149	- industrial chemicals (acids, alkalis, chlorine)													P	P
150	- ink manufacture														P
151	- laboratories (i.e., organic/inorganic)											C		P	P
152	- paint, dye & glue manufacturers													C	P
153	- pharmaceuticals											C		P	P
154	- manufacture of raw plastic materials, colorants, liquids, powders, resins													C	P
155	- soap detergent & other cleaning preparations													C	P
156	Food & Beverage - Preparation & Bottling/Packing & Distribution														
157	- animal & marine fats & oils (refining & rendering)														C
158	- beer & ale distributors								P					P	P
159	- breweries and wineries														C
160	- commercial bakeries								C					P	P
161	- dairy products processing & packaging													C	C
162	- fruit & vegetable brokers & shippers													P	P
163	- grain, feed & flour mills														C
164	- ice manufacturers & storage								P					P	P
165	- meat & poultry product processing including slaughtering														C
166	- meat and food locker, butchering, packaging								P					P	P

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		C-C	C-N	C-SO	C-CM	C-R	C-DT	C-H	C-S	OG	PA	B-R-P	OC	I-L	I-H
222	MEDICAL FACILITIES/SERVICES (for medical/dental offices see OFFICE)														
223	Hospitals, Acute Care (general medical/surgical)						C				C				
224	Ambulance Services/Medical Transport			C	C		C	C	C		C	C			
225	Convalescent Hospitals/Nursing Homes						C				C				
226	Clinics (medical group, urgent care/walk-ins, dental, counseling, rehabilitation)		C	C		<u>C</u>	C				C			C	C
227	Dialysis Centers			P		<u>C</u>	C		C	P	C			C	
228	Hospices										C				
229	Laboratories (medical testing & diagnostic)			P			C				C	P			
230	Medical Equipment/supplies (oxygen, prosthetics, walkers, etc.)			P	P	P	P		P		P				
231	Opticians - Dispensing		C			P	P				P				
232	Psychiatric Hospitals including										C				
233	Treatment of Substance Abuse														
234	Residential Alcohol/Substance										C				
235	Abuse Treatment Facility														
236	Rehabilitation Hospitals						C				C				
237	MUSEUMS (special interest/historical-public/private)					C	C				C				
238	N														
239	O														
240	OFFICES														
241	General Business and Professional (i.e., data processing services, employment agencies, insurance agencies, etc.)														
242	- less than 2,000 sq. ft.	P	P	P	P		P	P	P	P	P	P	P		
243	- more than 2,000 sq. ft.	C	C	P			P	C	C	P	P	P	P		
244	- less than 6,000 sq. ft.					P									
245	- more than 6,000 sq. ft.					C									
246	- up to 25% of total leased area for center	P	P					P		P	P	P	P		
247	- more than 25% of total leased area for center	C	C					C		P	P	P	P		
248	Medical (i.e., Physical therapists, physicians/surgeons, psychologists, dentists/ orthodontists, optometrists, etc.)	C	C	P	C	C	P	C		P	P		C		
249	Chiropractors	C	C	P	C	C	P	C		C	P		C		
250	Offices on the same site with a commercial/service establishment			P	P		P		P		P			P	P
251	Counseling/psychologist														
252	- individuals			P		<u>C</u>	P				P		P		

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		C-C	C-N	C-SO	C-CM	C-R	C-DT	C-H	C-S	OG	PA	B-R-P	OC	I-L	I-H
253	- groups			P		C					P				
254	Office Associated with Industrial Uses							P				P		P	P
255	Temporary Trailers (construction)	T	T	T	T	T	T	T	T	T	T	T	T	T	T
256	P														
257	PARCEL DELIVERY SERVICES/PARCEL DISTRIBUTION (UPS, Federal Express, etc.)			P				P	C			C		P	P
258	PARKING FACILITIES - FOR OFF-SITE USES			P	P	C	C	C	P	C	C	C		C	C
259	PARK & RIDE	C	C				C	C				C		P	P
260	PHOTOCOPY SERVICES/DESKTOP PUBLISHING														
261	With Printing Press			C	C	P	C			C	P			P	
262	Without Printing Press	P	P	P	P	P	P			P	P	P	P	P	
263	PHOTOGRAPHY/PHOTO SERVICES														
264	Photography Studio	C	P	P	P	P	P	C	C	C	C		C		
265	Photography Labs/Blue Printing/Microfilming (developing, printing - no retail on site)			P			C		P	C	C	P		P	
266	Photography labs (developing, printing - no retail on site)			P			C		P			P		P	
267	Photography Labs with Retail on Site		P	P	P	P	P	P	P						
268	Retail - Drop-off/Pick-up	P	P	P	P	P	P	P							
269	PLANNED CONVENIENCE CENTERS														
270	PLANNED UNIT DEVELOPMENTS (Subject to Chapter 17.26)	C	C	C	C	C	C	C	C	C	C	C	C	C	C
271	PRIVATE CLUBS AND LODGES			C		C*	C				C				
272	PRIVATE POSTAL SERVICE (Mail Boxes, Mailing Service) (see also PARCEL DELIVERY SERVICES)	C	P				P	P				P		P	
273	PUBLIC COMMUNITY SERVICES														
274	Community & Recreation Centers		C	C			C								
275	Fire Stations			C	C	C P	C	C	C		P	C		P	P
276	Police Stations & Substations		C	P	P	P	P	P	P		P	P		P	P
277	Post Offices						C				P				
278	Public Buildings, Offices & Grounds	C	C	C	C	P	P	P			C	C			
279	Public Golf Courses/Driving Ranges							C							
280	Public Libraries	C	C	C			P				C	C			
281	Public Parks/Playgrounds			C			P	C							
282	Post Office Substations	C	C	P	P	P	P	P		P	P	P		P	

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		C-C	C-N	C-SO	C-CM	C-R	C-DT	C-H	C-S	OG	PA	B-R-P	OC	I-L	I-H
320	RETAIL														
321	General Merchandise														
322	- less/equal to 4,000 sq. ft.	P						P				C			
323	- greater than 4,000 sq. ft.	C													
324	- less/equal to 6,000 sq. ft.		P												
325	- greater than 6,000 sq. ft.		C												
326	- less/equal to 40,000 sq. ft.			P				P							
327	- greater than 40,000 sq. ft.			C				C							
328	- less/equal to 60,000 sq. ft.				P	P									
329	- greater than 60,000 sq. ft.				C	P									
330	Building/Landscape Materials														
331	- lumberyards (see MANUFACTURING/ ASSEMBLING)														
332	- fencing stores/yards								P					P	
333	- floor & wall coverings		C	P		P	P		P						
334	Garden Centers/Nurseries														
335	- located within primary use		P	P	P				P						
336	- stand alone		C	C	C				P					P	
337	Glass Stores (windows, etc. for auto, residential, commercial)			P	P				P						
338	Hardware Stores including lumberyards								P						
339	Hardware Stores					P									
340	Hardware Stores less than 10,000 square feet	C	P	P	P		P		P						
341	Paint Stores			P	P	P			P						
342	Home Improvement			P	C	P			P						
343	Department Stores/Discount Stores (greater than 40,000 sq. ft.)			P	C	P	C								
344	Drugstore/Pharmacy														
345	- including general retail merchandise		P	P	P	P	P								
346	- not including general retail merchandise		P	P	P	P	P			C	P	P			
347	- not including general retail merchandise, up to 1,500 sq. ft.	P	P		P	P		P			P				
348	- with general retail merchandise, with restrictions: *parcel must be corner property at arterial/arterial or arterial/collector intersections. Parcel size not to exceed 60,000 sq. ft. Building size not to exceed 14,000 sq. ft.										C				
349	Farm Equipment Sales								P					P	
350	Feed Stores			C					P						

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		C-C	C-N	C-SO	C-CM	C-R	C-DT	C-H	C-S	OG	PA	B-R-P	OC	I-L	I-H
351	Food Stores														
352	- convenience store - 7000 sq. ft. or less	C	C	C	C	<u>C</u>	C	C	C			C		C	C
353	- liquor store within 300 feet of residential/public use			C	C		C								
354	- liquor store not within 300 feet of residential/public use	C	C	P	P		C								
355	- specialty food stores, i.e. bakery, delicatessen, butcher shop, meat market, health food, gourmet/imported food, etc.	P	P	P	P	P	P			C		C			
356	- supermarkets/grocery stores 30,000 sq.ft. or smaller	C	P	P	P	<u>P</u>	P								
357	- supermarkets/grocery stores over 30,000 sq.ft.	<u>C</u>	<u>P</u>	<u>P</u>	<u>P</u>		<u>P</u>								
358	Wine Tasting			C	C	C	C	C							
359	Appliances														
360	- small	P	P	P	P	P	P								
361	- large			P	P	P	C								
362	Furniture & Furnishings														
363	- new			P	P	P	P		P						
364	- secondhand *up to 10,000 square feet		P	P	P	<u>P</u>	P		P						
365	Gun Shops														
366	- within primary use		P	P	P	P	P								
367	- stand alone			P	C	P	P								
368	Magazine/Newspaper Sales (Freestanding Booth/Stand/Kiosk)														
369	- indoor	P	P	P	P	P	P	P	P	P	P	P			
370	- outdoor	C	C	C	C	C	C	C	C	C	C	C			
371	Outlet Stores														
372	- bakery			P											
373	- apparel			P	P	P									
374	- furnishings			P	P										
375	Pawnshops			P			C								
376	Pet Stores		P	P	P	P	P								
377	Pool/Spa Supplies/Equipment			P	P	P	P		P						
378	Secondhand Store/Thrift Shops														
379	- up to 2,000 square feet			P	P	P	P								
380	- greater than 2,000 square feet			P	C	P	C								
381	S														
382	SCHOOLS, PUBLIC AND PRIVATE (see also Quasi-Public and Residential Zones)														
383	Preschool/After-School Care			C	C		C			C	C	C	C		
384	Elementary Schools, K-6 or K-8														
385	Middle Schools														
386	High Schools														
387	Colleges/Universities (academic)					<u>C</u>						C			
388	Business, Trade, Vocational, or other Specialized Schools			C		<u>C</u>	C		C		C	C		C	
389	After Hours Academic Education Facilities (After 6:00 p.m.)			C	C	C	C			P	P	P			

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		C-C	C-N	C-SO	C-CM	C-R	C-DT	C-H	C-S	OG	PA	B-R-P	OC	I-L	I-H
390	SERVICE, COMMERCIAL														
391	Air Conditioning Shops							P						P	
392	Appliance, Electrical Equipment, Tools (disassemble & repair)														
393	- small	C	P	P			P	P							
394	- large			P			C	P						P	
395	Check-Cashing Service		C	P	C		C								
396	Chemical Stripping/Powder Coating							P						P	P
397	Chrome & Anodizing Shops							P						P	P
398	Courier Services			P			P	P	C		P				
399	Equipment Rental														
400	- construction			C				P						P	
401	- domestic			P	P		P	P							
402	Exterminators/Fumigators							P						P	
403	Gunsmith Shops, including incidental retail			P			C	P						P	
404	Heavy Machinery and Equipment (welding, cutting, grinding, casting, etc.)							P						P	P
405	Janitorial Service							P							
406	Lawn Maintenance & Tree Trimming							P						P	
407	Locksmiths	P	P	P	P	P	P	P							
408	Other Household & Maintenance Services							P						C	
409	Pet Grooming	P	P	P	P	P	P	P							
410	Printing Service (see also PHOTOCOPY SERVICES)		C		P		C								
411	Repair Shops							P						P	
412	Sharpening Service														
413	- tools, knives, saw blades, lawn mowers, etc.							P						P	
414	- small tools not including	C	P	P			P	P						P	
415	Sheltered Workshops	C	C	C				P			C			P	
416	Shoe Repair Shops	P	P	P	P	P	P	P							
417	Sign Painting & Fabrication							P						P	
418	Taxidermists			P			C	P						P	
419	Tailor, Dressmaking, & Alterations	P	P	P	P	P	P	P							
420	Upholstering Shops (furniture only)			P				P						P	
421	- Showroom with minimum 35% of gross receipts to be retail sales						C								
422	SERVICE STATIONS														
	Gasoline Service Stations														
423	Fuel dispensing only - not including major auto repair services of any kind (Ord. 2382)	C	C	C	C	C	C	P	P			C		P	
424	Also including major auto repair services			C	C	C		C	P					C	
	— fuel dispensing	C	C		C		C	P	P					P	

EXHIBIT A
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		COMMERCIAL								OFFICE				INDUSTRIAL	
		C-C	C-N	C-SO	C-CM	C-R	C-DT	C-H	C-S	OG	PA	B-R-P	OC	I-L	I-H
425	Also including dispensing of diesel fuel and/or light servicing of trucks							C	P					C	

EXHIBIT A
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		COMMERCIAL							OFFICE				INDUSTRIAL		
		C-C	C-N	C-SO	C-CM	C-R	C-DT	C-H	C-S	OG	PA	B-R-P	OC	I-L	I-H
463	Businesses which Initially Employ more than 750 Employees					C	C			C	C	C		C	C

City of Visalia Agenda Item Transmittal

Meeting Date: December 6, 2010

Agenda Item Number (Assigned by City Clerk): 2

Agenda Item Wording: First reading of Ordinance 2010-19 revising Chapter 8.24, Fireworks, of the Visalia Municipal Code, and amending Chapter 8.24, Fireworks, of the Visalia Municipal Code which updates the ordinance and allows for the streamlining of the fireworks permit process, improves safety and increases the population ratio.

Deadline for Action: N/A

Submitting Department: Fire Department

Contact Name and Phone Number:
Charlie Norman, Battalion Chief, 713-4265

Recommendation: That the City Council accepts this information and adopts the amendments to Ordinance Chapter 8.24, Fireworks, of the Visalia Municipal Code.

Summary: An ordinance amendment would provide for a seamless transition of the fireworks permitting process. The amendments would require the fireworks vendors to process the majority of application requirements and submit them to the Fire Department. Currently, Fire Department Staff processes all of the applications. Also, this amendment would increase the population/booth ratio from 3,500 to 5,000 to help moderate the increase in new fireworks booths. It should be noted, this will not decrease the number of current permitted booths. Additionally, ensure proper storage locations (eliminating storage in residential areas) and types of containers used for fireworks. It would also require nonprofit groups to develop a security plan to ensure the safe storage for the fireworks within city limits.

In order to receive input for the proposed ordinance, fire department staff held 3 separate workshops/meetings with two of the fireworks vendors and representatives from the various non-profit groups which sell fireworks in the city limits. The meetings outlined the proposed changes that specifically addressed the application process, location, storage and security of fireworks. In addition, the revised ordinance would assist in helping the groups maintain an acceptable level of profits which end up supporting various causes in our community. During this time we have received input from the non-profit groups who voiced concerns about the costs associated with the new provisions of the ordinance. Staff made modifications to the ordinance and addressed the concerns of the non-profit groups.

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.: 15

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.

Background/Discussion: Each spring Fire Department Staff spends a large commitment of staff time assisting local fireworks booth applicants in the process of mandated permit paperwork. Any errors or omissions committed by the applicant during the process are checked for accuracy by Fire Department Staff. This process is extremely time consuming for both City Staff as well as the applicant.

With the proposed amendments; the fireworks vendors would be responsible for processing all paperwork prior to final submission to the City of Visalia. This would provide a more efficient operation for both staff and the applicant.

Fire department staff met with various fire service agencies throughout the valley and local fireworks vendors to obtain information on the elements of the proposed ordinance changes. After review; it appears a majority of departments will utilize this process.

Fire department staff has received feedback from the vendors and non-profits of fireworks booths, complaining of the past increase in fireworks booths. There has been an increase in additional booths due to the increase in population in our City. This has resulted in the decrease in profits for non-profit organizations. Staff is recommending increasing the population ratio from 1 booth per 3,500 to 1 booth per 5,000. We currently have 32 booths in the City of Visalia. Staff recommends holding the number of booths to 32 and adding an additional booth for every increase of 5,000 above the current 125,000 population base.

In order to receive input to the proposed ordinance, fire department staff held a workshop on November 10, 2010 with two of the fireworks vendors and representatives from the various non-profit groups which sell fireworks in the city limits. The meeting outlined the proposed changes that specifically addressed the application process, location, storage and security of fireworks. Since the November 10, 2010 meeting we have received more input from the non-profit groups who voiced concerns about the costs associated with the new provisions of the ordinance.

Fire staff reviewed and revised the ordinance; clarifying the points of concern. Minor amendments were made to the document to be more user friendly, reducing potential costs while maintaining safety within our community.

On November 23, 2010, the Fire Chief met with several non-profit representatives to review the amendments for the proposed ordinance. The feedback was positive and supported by the non profit groups in attendance. It was decided to hold another workshop, on November 30, 2010, with all of the non-profit groups and vendors regarding the amendments to the proposed fireworks ordinance.

On November 30, 2010, the Fire Chief met with vendors and non-profit groups to discuss the new amendments to the proposed ordinance. There was good dialog and staff had the opportunity to clear up any misunderstandings that had been perceived. The groups and staff reached a consensus to move forward with the new ordinance.

The main changes to the ordinance focus on the safety element which addresses proper storage locations (eliminating storage in residential areas) and types of containers used for fireworks. In addition, it requires nonprofit groups to develop a security plan to ensure the safe storage for the fireworks within city limits.

Prior Council/Board Actions:

At the November 15, 2010 City Council Meeting, the City Council continued this item to the December 6, 2010 City Council Meeting to allow staff more time to work with vendors and nonprofit groups on the ordinance and make changes as needed.

Committee/Commission Review and Actions:

Alternatives:

Attachments:

Attachment "A"- Current Ordinance with proposed revisions

Recommended Motion (and Alternative Motions if expected): Accept the information from staff regarding the amendments to the current fireworks ordinance and adopt ordinance 8.24 for first reading.

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)*

ORDINANCE NUMBER 2010 -19

**REVISING VISALIA MUNICIPAL CODE
CHAPTER 8.24 - FIREWORKS**

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 revises Chapter 8.24 of Title 8 of the Municipal Code. The revised version of this Chapter is attached hereto as Attachment “1” and made a part hereof.

Section 2: 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 3: 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 4: Effective Date. This Ordinance shall take effect thirty days after its adoption.

Section 5: 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:

Chapter 8.24

FIREWORKS

Sections:

- 8.24.010 Definitions.
- 8.24.020 Permits.
- 8.24.030 Applicants for pyrotechnic public display permits.
- 8.24.035 Applicants for permit to sell safe and sane fireworks.
- 8.24.040 Permits for pyrotechnic displays.
- 8.24.050 Permits for retailers of safe and sane fireworks.
- 8.24.060 Regulations.
- 8.24.070 Fireworks stand construction.
- 8.24.075 *Storage of safe and sane fireworks*
- 8.24.080 Revocation of permit.
- 8.24.090 Appeal.

8.24.010 Definitions.

Whenever used in this chapter, unless a different meaning clearly appears from the context, the words set out in this section shall have the following meanings:

“Active List” means the current list of eligible organizations that qualify for the opportunity to obtain a permit to sell safe and sane fireworks with in the city.

“Dangerous fireworks” means any fireworks specified as such in the State Fireworks Law, currently the California Health and Safety Code Sections 12500 et seq. and such other fireworks as may be determined to be dangerous by the State Fire Marshal.

“Eligible organization” means any local nonprofit organization whose principal place of business is located in the city of Visalia and which is exempt from federal income tax pursuant to the provisions of Internal Revenue Code Section 501(C) (3), (4), (6), (7), (8), (10), or (19).

Organizations authorized to sell safe and sane fireworks prior to the effective date of this ordinance, must have their principal place of business located within the boundaries of the Visalia Unified School District.

“Person” means any individual, partnership, corporation, organization or association of any nature whatsoever.

“Safe and sane fireworks” means ~~and includes~~ any fireworks ~~not designated as~~ *which do not come within the definition of “dangerous fireworks,” except that, in any case, only end fuses may be used.* (Health and Safety Code Section 12529)

“Stand” means any building, booth, counter, or other structure of a temporary nature used in the sale or offering for sale of fireworks pursuant to a permit duly issued. (~~Ord. 9921 § 2 (part), 1999~~)

“Vendors” means any agency that sells safe and sane fireworks to retailers (Eligible organization). All vendors shall comply with all sections of the city’s municipal codes, Title 19, California Fire Code, and all other State Fire Marshals regulations.

“Waiting List” means a list of organizations waiting, as to be placed on the Active List.

8.24.020 Permits.

The fire prevention ~~bureau~~ *division* of the fire department may, upon due application, issue a permit to an eligible organization for the following:

- A. Pyrotechnic display or displays of fireworks in the public parks or other suitable open place;
- B. Retailers of safe and sane fireworks.

1. It is unlawful for any person to sell or offer for sale or expose for sale within the city any fireworks in violation of this chapter or without having a valid permit there for in accordance with the provisions of this chapter.

2. Permits to sell safe and sane fireworks shall be issued by the fire department, upon applications there for, only to nonprofit eligible organizations and only after those organizations have met all the applicable requirements set forth in this chapter.

3. Any eligible organization desiring to sell safe and sane fireworks in the city shall make application to be placed on the ~~priority~~ *waiting* list at the fire department. Priority will be given new applications filed with the Chief of the fire department accompanied by a twenty-five dollar (\$25.00) deposit to be returned when approval is given, and on the basis of date filed, which shall be recorded on the ~~priority~~ *waiting* list. *The waiting list will be kept at the City of Visalia Fire Administration Office for the review upon request by organizations located within the City of Visalia.*

4. The application for placement on the ~~priority~~ *waiting* list shall be signed by a bona fide officer of the eligible organization, wherein the officer, on behalf of the organization and its agents, agrees to abide by state law and administrative regulations and all the stipulations of this code, if permission to operate a fireworks stand be granted to the organization. (~~Ord. 9921 § 2 (part), 1999~~)

8.24.030 Applicants for pyrotechnic public display permits.

The applicants for such permits shall comply with and be governed by the provisions set forth in Title 19, California Administrative Code, Sub-Chapter 6, Article 6. (~~Ord. 9921 § 2 (part), 1999~~)

8.24.035 Applicants for permit to sell safe and sane fireworks.

Applicants for permits to sell safe and sane fireworks must be an eligible organization as defined in Section 8.24.010.

A. There shall not be more than one retail stand for each permittee. *No organization shall submit more than one application. Submittal or more than one application shall be grounds for denial of all applications.*

B. New applicants for retailer permits will be accepted and approval will be granted only when an established organization now eligible to engage in the business discontinues their operation, or the population ratio of one stand per ~~three thousand five hundred (3,500)~~ *five thousand (5,000)* population allows the addition of one or more stands. *There are currently 29 non-profit groups selling fireworks in the City of Visalia. An additional booth shall be added for every increase of 5,000 over the current population of 125,000. Refer to Appendix C.*

C. Priority will be given to new organizations on the ~~priority waiting~~ list who have filed with the chief of the fire department accompanied by a twenty-five-dollar (\$25.00) deposit to be returned when approval is given, and on the basis of date filed, as recorded on the ~~priority waiting~~ list. ~~(Ord. 9921 § 2 (part), 1999)~~

8.24.040 Permits for pyrotechnic displays.

The applicants for such permits shall comply with and be governed by the provisions set forth in Title 19, California Administrative Code, Sub-Chapter 6, Article 6. ~~(Ord. 9921 § 2 (part), 1999)~~

8.24.050 Permits for retailers of safe and sane fireworks.

All applications for permit to sell at retail safe and sane fireworks shall comply with and be governed by the provisions set forth in Title 19, California Administrative Code, Sub-Chapter 6, Article 5, and in addition shall be governed by the following.

A. Applications for permits to sell safe and sane fireworks by eligible organizations shall be made on forms to be furnished by the *Fire Chief* or his/her designee, shall be signed under penalty of perjury by the applicant and shall require the following information and documents:

1. The application for permit shall contain the name, address and telephone number of the nonprofit organization for which application is made; evidence of tax exempt status pursuant to provisions of the Internal Revenue Code cited in Section 8.24.010 (definition of eligible organization); and the name and address of its officers. The application shall also contain the location of the proposed fireworks sales, and the method and location of fireworks storage. The application shall be signed by a bona fide officer of the eligible organization, wherein the officer, on behalf of the organization and its agents, agrees to abide by state law and administrative regulations and all the stipulations of this code.

~~2. A plot/site plan, showing the location of the temporary fireworks stand, utilities, location of permanent and temporary structures, curb cuts and/or driveways and identifying the nearest available sanitary facilities, and fire hydrants.~~

2. *A dimensioned site plan (not to scale) containing all of the following;*

- * *Drawing that indicates all areas within one hundred feet (100') of the proposed fireworks stand.*
- * *Drawing that indicates all areas within one hundred feet (100') of the proposed and storage container cited in Section 8.24.075. Storage containers shall be at least thirty feet (30') from any building or structure. For alternative storage locations see section 8.24.075 (H) & (I).*
- * *Drawing that indicates all adjacent buildings, property lines; ignitable materials, grass or vegetation is not within thirty feet (30') of the fireworks stand.*
- * *Drawing that indicates any gasoline pump or distribution point is at least one hundred feet (100') from the fireworks stand.*
- * *Drawing that indicates the fireworks stand location is at least ten feet (10') from any public roadway, or public sidewalk.*
- * *Drawing that shows all utilities, curb cuts and/or driveways and identifying the nearest fire hydrants.*
- * *Drawings shall show all tarps or canopies, without prior approval tarps or canopies will not be permitted.*
- * *Satellite drawings with dimensional overlay are an acceptable alternative to traditional drawings.*

3. A written authorization from the owner of the location or person in lawful possession thereof, if other than the applicant, for the locating of the business upon his or her property. *Written authorization must be notarized within the same year of the application.*

4. Prior to issuance of a permit, the eligible organization shall submit a certificate of insurance for general liability in an amount no less than one million dollars (\$1,000,000.00) combined bodily injury and property damage for each occurrence. This insurance shall name the city of Visalia, its officers, agents, elected officials, employees and volunteers as additional insured's. This insurance shall be primary with respect to any insurance or self-insurance programs maintained by the city. The certificate must specify the time, location, and dated to be covered by the policy. The applicant shall save, hold harmless and indemnify the city, its officers, agents, elected officials, employees and volunteers from all claims, demands, damages, judgments, costs or expenses that may at any time arise from or is any way related to any work performed by the applicant. The certificate must be provided to the fire department no later than May 1st of the subject year or such other time as the *Fire Chief* may allow.

5. A fifty-dollar (\$50.00) fee must be deposited with the city. Upon approval of the permit, the fee will become a clean-up surety to be forfeited to the city in the event the permittee fails to remove said stand, equipment and rubbish from the premises upon which the stand is located before twelve noon on July 15th of the year for which said permit is granted, to be retained by the city until such time the permit is either revoked by the city or the applicant discontinues their operation.

6. A copy of the organization's State Fire Marshal's license to sell safe and sane fireworks shall be included with the application.

7. Approval from the public works department of the city that operation of the fireworks stand at the proposed location will not present any substantial hazard to vehicular or pedestrian traffic.

~~8.—Completed applications shall be returned to the fire department no later than five p.m. May 1st of each year. Any eligible organization making an application for permit to sell safe and sane fireworks which organization fails to return the completed application prior to May 1st, shall not be issued a permit to sell safe and sane fireworks.~~

B. During the application process there will be important timelines set to insure that the applications for permit to sell safe and sane fireworks are completed and accurate before issuing. The firework vendors are responsible for submitting all application to the city, and insuring that the organizations that they represent are prepared for the process. The timelines and process for submitting an application for a permit to sell safe and sane fireworks is as follows;

1. Within the first week of January the fire department will send a letter of congratulations to the organizations that were awarded the opportunity to participate in the application process to sell safe and sane fireworks within the city in accordance with Section 8.24.050.

2. The organizations that received the congratulations letter from the fire department shall contact a state approved fireworks vendor to start the application process.

3. Completed applications shall be returned to the fire department by appointment only, no later than last full week in April of each year. All appointments must be made in advance by the firework vender of the organizations choosing.

4. Changes and or corrections to the applications must be submitted by appointment only, for an additional operational permit fee, on the fourth (4th) Thursday in the month of May. No documents or applications will be accepted after 5:00 pm. If there is any incorrect or missing documentation after this date and time the permit will be denied.

5. Unforeseen changes after the fourth (4th) Thursday in the month of May must be evaluated by the Fire Chief. The evaluation is to determine if the situation classifies as unforeseen defined in section 8.24.010, and also to determine if the city has an adequate amount of time to process the application. If changes to the permit are granted, the organization will be required to pay an additional operational permit fee.

6. A representative from each non-profit organization shall attend a firework safety meeting that has been approved by the Visalia Fire Department. The firework safety meeting shall have all safety material approved and attendance must be verified by the Visalia Fire Department.

BC. When all the application requirements have been completed, and the fireworks stand location has been approved, the fire department shall authorize erection of a fireworks stand and shall authorize the city finance department to collect the permit fee from the qualified organization by completing Part 1 of the permit form. Each qualified organization shall pay *for a current operational permit pursuant to the California Fire Code.* ~~to the director of finance the sum of forty five dollars (\$45.00) for the permit.~~ The permit shall be for only one stand per eligible organization. Upon receipt of payment, finance department and the applicant shall complete Part 2 of the permit and forward it to the fire department for delivery as stated below.

ED. Permits will be effective and Part 3 completed only when delivered by the fire department to the organization after fire departments, or its representative's, final inspection of the stand shows compliance with all requirements of this chapter. Permits may be issued with conditions to ensure that the business will be operated in a safe and legal manner, will not disturb the peace and quiet of the neighborhood and will not constitute an undue burden on city resources. The permit shall then be posted in a conspicuous place within the stand during the hours the stand is in operation.

DE. If any organization which, in the previous year, obtained and held a fireworks permit fails to apply promptly or does not successfully complete the application process by May 1st *the organization will be removed from the fire permit active list and must reapply to go on the waiting list.* ~~or if additional permits are authorized pursuant to Section 8.24.020, The next existing eligible organization at the top of the waiting list kept by the fire department shall be notified and given the opportunity to apply for a firework permit the following year. and shall have thirty (30) days to meet all of the requirements set forth herein. (Ord. 9921 § 2 (part), 1999)~~

8.24.060 Regulations.

A. Those fireworks which are classified as “dangerous fireworks” under Section 12505 of the California Health and Safety Code are prohibited, except that such fireworks as are defined and classified as “safe and sane fireworks” in Section 12529 of the California Health and Safety Code may be displayed, sold and used pursuant to the provisions of this chapter and not otherwise.

B. No permit holder shall shout, make any outcry, blow a horn, ring a bell or use any other sound device including any loudspeaker, radio or amplifying system where sound of sufficient volume is emitted or produced there from capable of being plainly heard upon the streets, alleys, parks or other public places.

C. Any permit issued pursuant to this chapter shall be nontransferable, and shall be valid only as to the applicant and location provided on the application for such permit, or as set forth in Section 8.24.020. *If an organization on the active list splits into two individual groups, the group that retained the 501 (c)(3)-(19) Non-profit Federal Tax ID number on record that matches the previously approved permit will be eligible to retain their fireworks permit. The group that does not retain the 501 (c)(3)-(19) shall apply to be placed on the fire departments waiting list. In the instance where neither group retained the 501 (c)(3)-(19) Non-profit Federal Tax ID number then neither group will be eligible for the firework permit and both organizations must apply to be placed on the waiting list.*

D. Except as expressly permitted by and in accordance with the provisions of this code, the sale, offer to sell, advertising or display of merchandise on any street or sidewalk in the city is prohibited.

E. All retail sales of safe and sane fireworks shall be permitted only from a temporary fireworks stand and the sale from any other building or structure is prohibited.

F. No fireworks stand shall be located within one hundred feet of any gasoline storage or gasoline pump or any garage or within forty (40) feet of any other building, or within six hundred (600) feet of any other fireworks stand.

G. No stand shall be placed closer than twenty (20) feet to a side or rear property line nor closer than forty (40) feet to any other building or structure *or closer than ten feet (10') from any public roadway, public sidewalk*, unless waived by the building and fire authorities.

H. Fireworks stands will be allowed only on property in the city which has commercial or industrial zoning. Public safety, ingress, egress, and adequate parking will be additional factors considered by the fire department before approving any site for fireworks sales.

~~I. All temporary stands for the display and sale of fireworks shall obtain an electrical permit from the city building department.~~

I. A twenty foot (20') area surrounding the fireworks stand and fireworks storage container must be kept clear of empty boxes, trash and debris.

J. If a toilet is not immediately available during all open or sale hours of the fireworks stand, then an approved chemical one must be provided.

K. Each stand shall be provided with not less than two 2-A 10 BC-type fire extinguishers, underwriter approved, in good working order, *with an up-to-date inspection tag indicating that the fire extinguisher has been serviced within the past year* and easily accessible for use in case of fire.

L. No person shall light, or cause or permit to be lighted, any fireworks or any other article or material within any such stand, or within fifty (50) feet thereof.

M. No smoking shall be allowed in any stand or within fifty (50) feet thereof. "No Smoking" signs shall be prominently displayed.

N. All weeds and combustible material shall be cleared from the location of the stand, including a distance of at least twenty (20) feet surrounding the stand.

O. There shall be at least one adult in attendance during the open or sale hours of the fireworks stand. No minor under the age of eighteen (18) shall be permitted in a stand.

P. All permits must be posted in a conspicuous place.

Q. Fireworks shall be sold only between the hours of nine a.m. and eleven p.m. daily from ~~July 1st~~ *June 29th* through July 4th.

R. Permittee shall strictly comply with all provisions of the State Fireworks Law (Sections 12500 et seq. of the Health and Safety Code).

~~S. The fireworks stand shall be removed from the temporary location by twelve noon on July 15th, and all accompanying litter shall be cleared from said location on or before said time.~~

S. Generators and all other fuel fired equipment may not be operated within twenty feet (20') of a firework stand. All electrical wiring shall comply with Section 8.24.070 (D).

T. Night security personnel accommodations shall not be closer than twenty-five (25) feet from the fireworks stand.

U. No fireworks shall be placed in any fireworks stand until a permit for such stand has been issued by the city. *Permits are not valid until an inspection of the stand has been conducted and permit has been sign by fire personal.*

V. Any person who receives a notice to correct any violation of these regulations or any other condition of the permit, and who fails to correct such violation within the time prescribed in the notice, may be assessed a fee not exceeding the city's cost of re-inspection in accordance with Section 8.24.050(B) of this code.

W. There shall be allowed one fireworks stand for every ~~three thousand five hundred (3,500)~~ *five thousand (5,000)* population in the city. City population shall be based on annual population figures provided to the state of California by the city as of January 1st of each year.

X. Each application shall contain a description of the site desired. Applicant must obtain permission of the owner. ~~(Ord. 9921 § 2 (part), 1999)~~

Y. Vehicles may not be parked within ten feet (10') of a fireworks stand. Provide cones or blockage to indicate a "NO PARKING" area within ten feet (10') of the fireworks stand;

Z. Fireworks signs, each application shall contain a description of all desired signage. All signage must be approved during application process.

8.24.070 Fireworks stand construction.

All retail sales of safe and sane fireworks shall be permitted only from within a temporary fireworks stand, and the sale from any other building or structure is prohibited.

A. Fireworks stands need not comply with the provisions of the building code of the city except that the building official, or his/her designee, shall have authority to require that stands be constructed in a manner which will reasonably insure the safety of attendants and patrons.

B. Each stand ~~in excess of twenty four (24) feet in length~~ must have at least two exits. ~~Each stand in excess of forty (40) feet in length must have at least three exits. The maximum fireworks stand length shall be no longer than thirty two feet (32'), and the floor area shall not exceed three hundred twenty square feet (320).~~

C. The front of all fireworks stands shall be completely enclosed from the counter to the roof with hardware wire cloth. ~~, the openings of which shall not exceed one fourth inch in size, except for the~~ Openings to permit delivery of merchandise to prospective customers, ~~which openings~~ shall not be larger than twelve (12) inches by eighteen (18) inches.

D. All electrical wiring, including that from the power source, shall be installed to the satisfaction of the building inspector. Electrical connections shall be at least twelve (12) feet above ground when subject to foot traffic and sixteen (16) feet when subject to automobile traffic. ~~(Ord. 9921 § 2 (part), 1999)~~

E. All tarps or canopies shall be shown on site plan drawing for approval. Without prior approval tarps or canopies will not be permitted.

F. The fireworks stand shall be removed from the temporary location by twelve noon on July 15th, and all accompanying litter shall be cleared from said location on or before said time.

8.24.075 Storage of safe and sane fireworks.

All organizations applying for a permit to sell safe and sane fireworks shall submit drawing indicating the location of the firework storage, the container in which the fireworks will be stored within, and must comply with the following.

A. No person or persons shall store safe and sane fireworks within the city without going through the permit process detailed in this chapter 8.24. Additionally, the non-profit organization will release the City of Visalia from liability by signing a hold harmless agreement. See appendix "B".

B. Storage of fireworks in residential neighborhoods is prohibited.

C. All storage of safe and sane fireworks shall be located at the approved retail sales location. For alternative storage locations see 8.24.075 (H) (I).

D. All fireworks being stored at a retail location must be stored in ~~an inter-modal~~ a metal container (~~metal cargo style containers~~) approved by the Fire Chief or designee only, at a distance of no less than thirty feet (30') from the fireworks stand and all other buildings or structures. See appendix "A". For alternative storage containers see 8.24.075 (H) (I).

E. ~~Security shall be provided for all storage of fireworks located within the city. Night security personnel accommodations shall not be closer than twenty five (25) feet from the fireworks stand and or storage containers.~~ Non-profit organizations are responsible for providing their own security plan for all storage of fireworks located within the city limits.

F. An Orange placard shall be located on all visible sides of storage unit. The Orange placard must be a minimum of 8" x 8" inches in size.

G. Storage of Fireworks in trucks or vans will be permitted during hours of sale only. The truck or van carrying or storing the fireworks shall be removed from the sales area and all fireworks must be placed in the pre-approved storage container located in its pre-approved location.

H. The fire code official is authorized to approve an alternative storage method where the Fire Chief finds that the proposed method is satisfactory and complies with the intent of the provisions of this chapter, and that the method offered is at least the equivalent of that prescribed in this chapter in its effectiveness to provide safety to the citizens of the city and the emergency personnel that may respond if there was a fire.

I. All alternative storage methods must be submitted in writing and approved by the Fire Chief prior to the fireworks application deadline cited in Section 8.24.050 (B) (3).

8.24.080 Revocation of permit.

Any violation of this chapter or other city ordinances, or the terms and conditions of the permit, or state law or administrative regulations, or safety rules of the fire department shall be grounds for immediate revocation of the permit. All officers, agents, and employees of the eligible organization shall be responsible for compliance with all provisions of this chapter. (~~Ord. 9921 § 2 (part), 1999~~)

8.24.090 Appeal.

A. Should any applicant be dissatisfied with the decision of the *Fire Chief* or his/her designee not to grant a permit or to revoke a permit, then said applicant may, no later than ten days after notice of such decision is deposited in the United States mail addressed to the applicant or permittee at the address provided on the application, make written objection to the *City Manager* setting forth the grounds for dissatisfaction, whereupon the *City Manager* shall hear said objections at a scheduled meeting no later than three weeks following the filing of the objection with the *City Clerk*. The applicant shall be given written notice no less than three days prior to said hearing. The *City Manager* may, upon said hearing, sustain, suspend or overrule the decision of the *Fire Chief* or his/her designee, which decision shall be final and conclusive.

B. Pending the hearing before the *City Manager*, the decision of the *Fire Chief* or his/her designee shall remain in full force and effect and any reversal thereof by the *City Manager* shall not be retroactive but shall take effect as of the date of the *City Manager's* decision. (~~Ord. 9921 § 2 (part), 1999~~)

APPENDIX "A"

STAND LOCATION AND STORAGE OF "SAFE AND SANE"
FIREWORKS FIREWORKS STAND
LOCATION: _____

Indicate the location where the fireworks will be stored when NOT in the fireworks stand.

Check one	<p>On Site in Approved Storage Container: The following are approved containers: C-Train, roll-off bin or similar container. Metal cargo trailers detached from tow vehicle and secured from movement may be allowed after inspection by the Fire Chief or designee. Storage of Safe and Sane Fireworks are not allowed in residential areas.</p> <p>(Storage must be a minimum of thirty (30) feet from the fireworks stand).</p>
	<p>Other (Indicate Address Below): List the type of storage container or facility the fireworks will be secured in and the location where they will be stored. If a U-Haul type trailer or other type container is used to store fireworks and is removed from the fireworks stand location, provide the location in which the container will be located below. This information will be provided to the first in fire station.</p> <p>Storage Location:</p>

Failure to provide approved storage will be grounds to revoke the approval to sell "Safe and Sane" fireworks.

APPENDIX "B"

INDEMNIFICATION AND HOLD HARMLESS AGREEMENT

In consideration for the issuance of a permit for the sale and/or display of safe and sane fireworks (hereinafter referred to as "Permit") and to the furthest extent allowed by law, Applicant does hereby agree to indemnify, hold harmless and defend the City of Visalia (hereinafter referred to as "City") and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death, and property damage) incurred by City, Applicant or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of the City issuing the Permit or Applicant's use of the Permit. Applicant's obligations under the preceding sentence shall apply regardless of whether City or any of its officers, officials, employees, agents or authorized volunteers are negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused solely by the gross negligence, or caused by the willful misconduct, of City or any of its officers, officials, employees, agents or authorized volunteers.

Throughout the life of this Agreement, Applicant shall pay for and maintain in full force and effect all insurance as required in the fireworks ordinance, which is incorporated into and part of this Agreement, or as may be authorized or required in writing by City's Risk Manager or his/her designee at any time and in his/her sole discretion.

Applicant shall conduct all defenses at his/her/its sole cost. The fact that insurance is obtained by Applicant shall not be deemed to release or diminish the liability of Applicant, including, without limitation, liability assumed under this Agreement. The duty to indemnify shall apply to all claims regardless of whether any insurance policies are applicable. The duty to defend hereunder is wholly independent of and separate from the duty to indemnify and such duty to defend exists regardless of any ultimate liability of Applicant. The policy limits do not act as a limitation upon the amount of defense and/or indemnification to be provided by Applicant. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Applicant, its officials, officers, employees, agents, volunteers or invitees.

Applicant shall furnish City with copies of the actual insurance policies upon the request of City's Risk Manager or his/her designee and this requirement shall survive the expiration or termination of this Permit.

- City shall be reimbursed for all costs and attorney's fees incurred by City in enforcing this Agreement.
- This Indemnification and Hold Harmless Agreement shall survive the expiration or termination of this Permit.

The undersigned acknowledges that he/she (i) has read and fully understands the content of this Indemnification and Hold Harmless Agreement; (ii) is aware that this is a contract between the City and Applicant; (iii) has had the opportunity to consult with his/her attorney, in his/her discretion; (iv) is fully aware of the legal consequences of signing this document; and (v) is the Applicant or his/her/its authorized signatory.

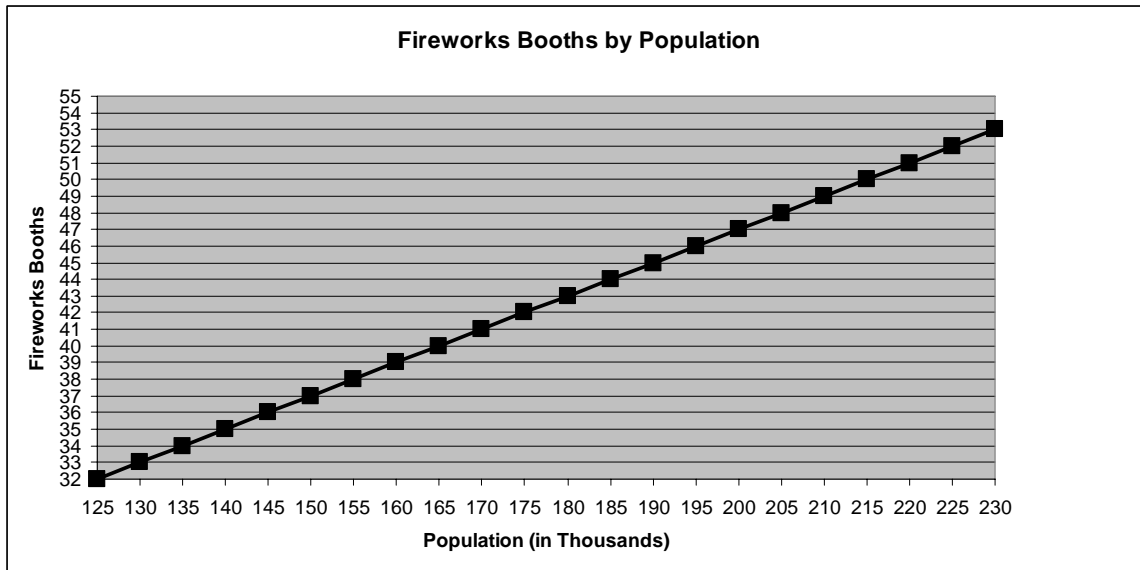
Signed, sealed and delivered this _____ day of _____.

_____ (signature)

_____ (print name)

_____ (name of organization)

Appendix C



Population	Booths
125,000	32
130,000	33
135,000	34
140,000	35
145,000	36
150,000	37
155,000	38
160,000	39
165,000	40
170,000	41
175,000	42
180,000	43
185,000	44
190,000	45
195,000	46
200,000	47
205,000	48
210,000	49
215,000	50
220,000	51
225,000	52
230,000	53

City of Visalia Agenda Item Transmittal

Meeting Date: December 6, 2010

Agenda Item Number (Assigned by City Clerk): 7b

Agenda Item Wording: Authorize staff to purchase approximately 520 copies of Microsoft Office and Office Pro 2010 through CompuCom for \$147,510 or better if Microsoft offers better year-end pricing.

Deadline for Action: December 6, 2010

Submitting Department: Administrative Services, Information Services

Contact Name and Phone Number: Michael Allen x4515

Department Recommendation

Authorize staff to purchase approximately 520 copies of Microsoft Office and Office Pro 2010 through CompuCom for \$147,510 or better if Microsoft offers better year-end pricing. CompuCom is the City's Microsoft software vendor for our Enterprise Agreement (EA) and Select Agreement (SA), as previously awarded under competitive bid in 2006 for a five-year period.

Summary/Background

Information Services (IS) manages the citywide replacement of technology equipment. Desktop personal computers (PCs) are currently on a four-year replacement cycle (the existing PCs will be about four-and-a-half years old). This replacement cycle allows for current equipment and standardized software on all city computers, helping to simplify various support issues. As part of the 2009/10 budget, CIP item 5111-720000-0-0-9799 set aside up to \$787,519 from the replacement fund for new PCs and Microsoft software licensing. About \$575,000 has been designated from this CIP item to replace the physical hardware; Council approval on that item is also sought on this agenda.

While the City has about 650 total PC-type devices, not all PCs run nor need the Microsoft Office suite. For example, very few Police and Fire mobile units currently run the Office suite. The City currently has about 520 copies of Microsoft Office that need to be replaced under the Select Agreement mentioned above. While the physical hardware has been on a four-plus year cycle for replacement, staff has managed to stretch the software standard closer to eight years. Most PCs are currently running Microsoft Office XP – which came out in 2002. A handful of PCs are running Office 2003, but all are in need of upgrading to the current version of Office 2010. Quite a few instances of file incompatibility have come up in recent years as most

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.): 2

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.

agencies and vendors that the City does business with have moved to more current versions of Office.

The future of office automation software is a bit murkier; this replacement cycle may well be the last time the City completely upgrades Microsoft Office. Software on a pay-as-you-go, or subscription basis, is becoming more attractively priced. And, "free" or less expensive alternatives to Microsoft Office are becoming more compatible with the Office standard. Staff has reviewed a number of alternatives and believes that the future will involve some mix of these products. However, right now the simplest and most effective way to ensure compatibility, relieve staff technical support issues, and provide ease-of-use is to replace the desktop standard with Microsoft Office 2010 as proposed here.

As part of the office automation software replacement, staff will organize and hire a trainer to conduct in-house training for the new software. Office 2010, and the new Windows 7 operating system to some degree, is very different from the Office XP (2002) that most folks are used to seeing. Therefore, Information Services will be setting up these training classes to ease the transition to Office 2010.

Department Recommendation:

Authorize staff to purchase approximately 520 copies of Microsoft Office and Office Pro 2010 through CompuCom for \$147,510 or better if Microsoft offers better year-end pricing. This purchase from CompuCom will be under the existing Microsoft Select Agreement.

Funding for this program/project is CIP 5111-720000-0-0-9799 (approved for 2009/10). This is the technology replacement fund.

Prior Council/Board Actions:

CIP project 5111-720000-0-0-9799 was approved for 2009/10 for \$787,519.

Committee/Commission Review and Actions:

Alternatives:

Attachments: None

Recommended Motion (and Alternative Motions if expected):

I move to authorize staff to purchase approximately 520 copies of Microsoft Office and Office Pro 2010 through CompuCom for \$147,510 or better if Microsoft offers better year-end pricing.

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 6, 2010

Agenda Item Number (Assigned by City Clerk): 7c

Agenda Item Wording: Authorize staff to purchase approximately 495 personal computers (PCs) through the standardized PC replacement process and award the purchase to Dell piggybacking the Western States Contracting Alliance (WSCA) competitively bid agreement for \$575,000 or better if Dell offers better year-end pricing.

Deadline for Action: December 6, 2010

Submitting Department: Administrative Services, Information Services

Contact Name and Phone Number: Michael Allen x4515

Department Recommendation

Authorize staff to purchase approximately 495 personal computers (PCs) through the standardized PC replacement process and award the purchase to Dell piggybacking the Western States Contracting Alliance (WSCA) competitively bid agreement for \$575,000. If Dell happens to offer better year-end pricing, staff seeks council approval to accept lower pricing.

Summary/Background

Information Services (IS) manages the citywide replacement of technology equipment. Personal computers (PCs) are currently on a four-year replacement cycle (the existing PCs will be about four-and-a-half years old). This replacement cycle allows for current equipment and standardized software on all city computers, helping to simplify various support issues. As part of the 2009/10 budget, CIP item 5111-720000-0-0-9799 set aside up to \$787,519 from the replacement fund for new PCs and Microsoft software licensing. The Microsoft software purchase is also included as a separate item for Council to approve.

Police and Fire mobile computers, or MDTs, are *NOT* included in this replacement cycle. These MDT devices, about 100 of them, were just replaced and are on a different replacement cycle.

Approximately 495 PCs have been identified as replacement candidates. A handful of these are close to five to six years old, with the majority being about four-and-a-half years old. As expected, we are starting to see some significant equipment failures. The LCD flat panel monitors currently being used – those purchased with the last replacement cycle – will *NOT* be replaced, but re-used. The failure rate on the existing monitors is quite low, and with the lack of

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.): 2

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.

moving parts, there is really no reason to wholesale replace these at this time. These 495 PCs will be replaced over a period of six to eight weeks this winter. A recent computer inventory shows about 359 desktops, 70 workstations, and 66 laptops are due to be replaced. A final inventory is currently being conducted. Based on current WSCA pricing, the total cost for hardware in this project should be less than \$575,000.

A number of the old PCs will be re-used through computer labs at the City's recreation facilities, Senior Center, and PAL programs. Disposal of existing equipment will be handled through the Tulare County Purchasing co-op store and potentially an auction service currently used by City Purchasing. All equipment hard disks will be "wiped-clean" before sale or re-use.

Justification for Dell Computer Purchase

All of the existing City desktop hardware is from Dell Computer and has been through the previous two replacement cycles. This standardized equipment has held up well and warranty services have been good. Information Services would like to continue this good working relationship while purchasing from a top-tier PC supplier in Dell. Several existing contracts exist with Dell that may be utilized – CMAS and WSCA, for example. For all of these reasons, staff recommends awarding the purchase to Dell and piggybacking these previously bid competitive processes. Staff also believes that end-of-the-calendar-year pricing for 2010 will actually be better than this figure. If year-end pricing is better than the WSCA contract, staff will award at the lower price.

Department Recommendation:

Authorize staff to purchase approximately 495 personal computers (PCs) through the standardized PC replacement process and award the purchase to Dell on a WSCA competitively bid agreement or better if Dell offers better year-end pricing.

Funding for this program/project is CIP 5111-720000-0-0-9799 (approved for 2009/10). This is the technology replacement fund.

Prior Council/Board Actions:

At the prior PC replacement projects (2002 and 2006), Dell PCs were purchased off of the WSCA pricing. Funding is through 5111 Information Technology replacement fund.

CIP project 5111-720000-0-0-9799 was approved for 2009/10 for \$787,519.

Committee/Commission Review and Actions:

Alternatives:

Attachments: None

Recommended Motion (and Alternative Motions if expected):

I move to authorize staff to purchase PCs through Dell Computer piggybacking the WSCA competitive process for the 2010 PC Replacement program or better if Dell offers special year-end pricing.

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 6, 2010

Agenda Item Number (Assigned by City Clerk): 7d

Agenda Item Wording: Authorization to award and amend various RFPs associated with equipment pre-selection for the Water Conservation Plant upgrade project.

Deadline for Action: none

Submitting Department: Public Works

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

Department Recommendation:

Staff recommends that Council award the following RFP associated with equipment pre-selection for the Water Conservation Plant upgrade project:

- RFP No. 10-11-07, Sludge Dewatering Equipment Pre-Selection, to FKC Co. Ltd. of Port Angeles, Washington, in the amount of \$794,610.

Staff further recommends that Council amend a previously awarded RFP, as follows:

- RFP 09-10-53, Membrane Bioreactor (MBR) equipment to Zenon of Ontario, Canada in the amount of \$12,597,912 instead of the previously approved amount of \$12,412,912.

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 permit, which replaced the one in effect since 1995. The new permit imposed several new restrictions on plant discharges. In order to comply with these new limitations, a major plant upgrade project is required.

After a lengthy selection process, the engineering firm of Parsons was selected to design the plant upgrades. In December 2009, Parsons recommended to Council that the upgrade project utilize Membrane Bioreactor (MBR) technology to produce a high quality effluent that will be

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 _____
(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.

unrestricted in its use. Council agreed with the recommendation and work has been ongoing toward that end. On July 30, Parsons submitted plans and specifications representing 50% design.

In order to facilitate the design work, Council also authorized staff to “pre-select” various major components of the project through a competitive bid process. The pre-selection process is similar to the normal RFP (Request For Proposal) process in that the City Purchasing department issues an approved RFP and ensures that all proposers meet certain eligibility requirements (insurance, worker’s compensation, etc.). Once the RFP period closes, all submissions are evaluated, and the successful proposer is awarded the bid at the RFP price.

However, unlike a normal RFP, the equipment is not purchased by the City, but will be purchased by the General Contractor at the price set in the RFP. Prices are guaranteed valid through November 30, 2011. The price of the pre-selected equipment will be included in the price quote submitted by the General Contractor.

To date, Council has awarded three of six major project components (MBR membranes, aeration blowers, and aeration diffusers). Staff is now seeking Council authorization to award a fourth RFP and to modify the award for the MBR membranes. The final two components are currently being advertised (sludge disintegration system and ultra-violet disinfection equipment) and will be presented to Council at a future meeting.

1. Sludge Dewatering Equipment Pre-Selection (RFP No. 10-11-07)

As part of the wastewater treatment process, solids are removed from the waste stream and pumped to anaerobic digesters for stabilization. After approximately 20 days of treatment, the solids are removed from the digesters at about 3% solids, placed in earthen drying beds, and allowed to dry to more than 85% solids content over the course of several months. They are then stockpiled and removed for beneficial reuse.

Because earthen drying beds are no longer allowed by the Regional Board, the City evaluated the most cost effective method of solids handling. Options included:

- Developing new, asphalt lined drying beds and continue current practices:
This would have required the development of more than 20 acres of asphalt lined drying beds. Not only would this have been a costly option, it would have also been environmentally irresponsible.
- Dewatering the treated solids to 25% solids content and removing from site:
Solids disposal costs are calculated on a per wet-ton basis. At 25% solids content, only 25% of each dollar spent is actually spent on the disposal of “solids”. The other 75% is for water disposal. At a disposal cost of \$45 per-ton, this option was not economically reasonable.
- Dewatering solids to 25% solids content, with further drying in lined drying beds:
This option is a blending of the other two options. Treated solids would be dewatered to 25% solids content. They would then be placed on asphalt lined drying beds for further drying to 85% solids content and then removed from the site. This approach limits the asphalt area to about 4 acres and maintains the current disposal costs.

RFP 10-11-07, Sludge Dewatering Equipment Pre-Selection, was issued in order to identify both the type of dewatering press to be used as well as the manufacturer. The RFP closed on September 3, 2010. Three proposals were received.

In addition to capital costs, the lifecycle cost of the equipment was evaluated. Lifecycle costs include scheduled maintenance, power consumption, structural requirements, and extended maintenance contract costs. The results of this evaluation are given below.

<u>Proposer</u>	<u>Capital Cost</u>	<u>Lifecycle cost</u>
FKC Co. Ltd.	\$794,610	\$1, 202, 060
Huber Technology, Inc.	\$891,596	\$1,433,134
PWTech	\$1,232,478	\$2,001,849

The FKC screw press is a proven technology that has been in operation for many years. There are several California installations, including Petaluma (5 mgd), Sausalito (5 mgd), Fairfield (10 mgd) and Monterey (23 mgd).

During a tour of the Monterey site, City staff noted that the dewatering equipment was installed outside, with stainless steel shrouds protecting the equipment. Staff from the facility reported that the FKC screw press operates reliably with minimal attention (less than 15 minutes per day) from the operations and maintenance staff. Based on the design and reliability, construction of a large building to house the screw presses has been eliminated from the Visalia WCP upgrade project.

FKC's main manufacturing facility is located in Japan. Component parts and control systems are manufactured in Washington State. FKC has been manufacturing equipment for the water and wastewater industry for over 50 years. Staff has no reservations in recommending the FKC screw press.

2. Membrane Bioreactor (MBR) Equipment (RFP No. 09-10-53)

The MBR equipment is the heart of the MBR system. The membranes are the physical barrier between dirty and clean water.

Four proposals were received:

<u>Proposer</u>	<u>Capital Cost</u>	<u>Lifecycle Cost Rank</u>
Zenon (GE)	\$12,412,912	1
Siemens	\$15,692,730	2
Koch:	\$13,657,700	3
Envirquip)	\$16,842,000	4

At the August 16, 2010 Council meeting, Zenon, a subsidiary of General Electric (GE), was awarded the MBR contract in the amount of \$12,412,912.

Subsequent to the Council award, a discrepancy in the RFP was discovered that affects the system sizing calculations. In simplified terms, the RFP intent was that the "flux rate" through the MBR filters would include any "relax" periods. This is not consistent with the industry-accepted definition of "flux rate", in which the "relax" periods are excluded. As a result, the system proposed by Zenon contains approximately 6% fewer membrane modules than required to meet flux rate design specifications.

There are two possible solutions to this discrepancy.

- Authorize the purchase of additional modules
Zenon's RFP bid schedule listed the cost of additional membrane modules at \$1719. In order to meet design specifications, 216 additional membrane modules are needed at a total cost of \$371,304. However, through negotiation, Zenon has agreed to reduce that cost by 50% to \$185,000.
- Accept the system as proposed
Zenon is willing to guarantee that the system as proposed will meet all design specifications (excluding flux rate) up to the project design flow. Zenon is willing to demonstrate this with a "stress test" upon installation.

Staff is recommending that Council authorize the purchase of the additional membrane modules. This will ensure the long term operational reliability of the system and allow for the operational flexibility originally intended.

It should be noted that even with the additional capital and lifecycle costs associated with the purchase of the additional modules, Zenon remains the lowest capital and lifecycle cost proposer.

It should also be mentioned that the City has been contacted by one of the unsuccessful proposers in reference to the discrepancy in Zenon's bid. They have asked that Zenon's bid be disqualified, and the next highest ranked proposer be awarded. The Purchasing Department has determined that negotiations with Zenon regarding this issue and modifications to their proposal are acceptable actions and consistent with the City Purchasing Policy.

Recommendation:

Staff recommends that Council award the following RFP associated with equipment pre-selection for the Water Conservation Plant upgrade project:

- RFP No. 10-11-07, Sludge Dewatering Equipment Pre-Selection, to FKC Co. Ltd. of Port Angeles, Washington, in the amount of \$794,610.

Staff further recommends that Council amend a previously awarded RFP, as follows:

- RFP 09-10-53, Membrane Bioreactor (MBR) equipment to Zenon of Ontario, Canada in the amount of \$12,597,912 instead of the previously approved amount of \$12,412,912.

Prior Council/Board Actions:

August 16, 2010: Award of RFP 09-10-53, Membrane Bioreactor (MBR) equipment, to Zenon of Ontario, Canada in the amount of \$12,412,912.

Committee/Commission Review and Actions:

Alternatives:

Attachments:

Recommended Motion (and Alternative Motions if expected):

Move to authorize award of RFP No. 10-11-07, Sludge Dewatering Equipment Pre-Selection, to FKC Co. Ltd. of Port Angeles, Washington, in the amount of \$794,610.

Further move to amend the award of RFP 09-10-53, Membrane Bioreactor (MBR) equipment to Zenon of Ontario, Canada in the amount of \$12,597,912 instead of the previously approved amount of \$12,412,912.

Environmental Assessment Status

CEQA Review: N/A

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 6, 2010

Agenda Item Number (Assigned by City Clerk): 7e

Agenda Item Wording: Replacement of a representative from the Environmental Committee to the General Plan Update Review Committee (GPURC).

Deadline for Action: None

Submitting Department: Community Development Department/
Planning Division

Contact Name and Phone Number:

Brandon Smith, AICP, Senior Planner	713-4636
Paul Scheibel, AICP, Planning Services Manager	713-4369
Chris Young, Community Dev. Director	713-4392

Department Recommendation: It is recommended that the Visalia City Council affirm Environmental Committee member Tyson Carroll to serve on the General Plan Update Review Committee (GPURC).

Summary: The Environmental Committee lost its representative to the GPURC when Dean Mann recently relocated outside of Visalia. During the Environmental Committee meeting held on November 10, 2010, Tyson Carroll was selected to fulfill the role of GPURC representative. Tyson Carroll is a project manager with the Visalia-based Urban Tree Foundation, a LEED Accredited Professional, and a Visalia resident for three years.

On November 3, 2008, the City Council authorized the formation of a GPURC, and expanded the Committee's composition to include representation from several key stakeholders. There are currently 24 persons on the Committee representing 22 community-based groups (see attached Exhibit "A" for roster) including the City's Environmental Committee. The GPURC held its first meeting on March 25, 2009, and has met approximately once a month since then. It has recently overseen the completion of Phase I (Background studies) of the General Plan Update process and will embark on Phase II (comparison of various Plan Alternatives) in upcoming months.

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 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.

Committee/Commission Review and Actions: N/A

Alternatives: None

Attachments: Exhibit "A" – General Plan Update Review Committee Roster

Recommended Motion (and Alternative Motions if expected):

I move to authorize Tyson Carroll to serve on the General Plan Update Review Committee, representing the Environmental Committee.

Environmental Assessment Status

CEQA Review: NA

NEPA Review: NA

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:

GPURC Members

Exhibit "A"

General Plan Update Review Committee Committee Roster – December 2010

<u>AUTHORIZED GROUP</u>	<u>DESIGNATED REPRESENTATIVE</u>
Visalia City Council	Bob Link
Visalia City Council	Michael Lane
Citizens Advisory Committee	Dirk Holkeboer
College of the Sequoias	Eric Mittlestead
Downtown Visalians	Michael Kreps
Environmental Committee	Dean Mann Tyson Carroll
Hispanic Chamber of Commerce	Raymond Macareno
Historic Preservation Advisory Committee	Jay Hohlbauch (Steven Cullen, alt.)
Kaweah Delta Hospital	Dena Cochran
Kaweah Delta Hospital Board of Directors	Carl Anderson (Jody Graves, alt.)
Mooney Boulevard Merchant's Organization	Don Wright
North Visalia Neighborhood Advisory Committee	Bill Huott (Rob Cox, alt.)
Parks & Recreation Commission	Carla Calhoun
Planning Commission	Larry Segrue
Planning Commission	Vincent Salinas
Tulare / Kings Home Builders Association	Mike Knopf
Tulare County Affordable Housing	Ken Kugler
Tulare County Association of Realtors	Brad Maaske
Tulare County Farm Bureau	Brian Blain
Visalia Chamber of Commerce	Josh McDonnell
Visalia Community Forum	Darlene Mata
Visalia Economic Development Council	Jim Robinson
Visalia Unified School District	Clarise Dilbeck (Nathan Deforest, alt.)
Waterways and Trails Committee	Bob Brown (Ben Filiponi, alt.)

City of Visalia Agenda Item Transmittal

Meeting Date: December 6, 2010

Agenda Item Number (Assigned by City Clerk): 7f

Agenda Item Wording:

Review and approval of Visalia Water Management Committee, 2011 Annual Plan.

Deadline for Action: None

Submitting Department: Public Works and Natural Resource Conservation

Contact Name and Phone Number:

Andrew Benelli, Public Works Director, 713-4340
Kim Loeb, Natural Resource Conservation Manager, 713-4530

Summary:

The City of Visalia and the Kaweah Delta Water Conservation District (KDWCD) have an agreement to improve groundwater recharge in the Visalia area. The agreement was created in 2001 as part of negotiations with the Tulare Irrigation District (TID) for an alternative to a canal-lining project they proposed. Pursuant to the agreement, the City makes deposits to a groundwater recharge fund. A two-member Visalia Water Management Committee consisting of a City Council Member and a KDWCD Board member manage these funds. Staff recommends that the City Council approve the Visalia Water Management Committee's 2011 Annual Plan.

Background:

In December, 2001 the City of Visalia entered into an agreement with Kaweah Delta Water Conservation District (KDWCD) that formed a partnership to improve groundwater recharge in the Kaweah Basin. Prior to this Agreement, Tulare Irrigation District (TID) had been considering lining their Main Intake Canal with concrete to prevent seepage losses. The City opposed the canal lining because it would have reduced groundwater recharge and increased the overdraft in the region. TID ultimately agreed not to line their canal provided the City participate in a program to recharge groundwater. TID is not a party to this Agreement. However, they have a companion agreement with KDWCD where they agree not to line their canal and commit to a partnership with KDWCD to recharge groundwater in the region.

The Agreement requires that the City makes payments to KDWCD for a groundwater recharge fund. The amount was initially \$100,000 per year but the rate has been adjusted by the

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 _____
Date _____

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.

Consumers Price Index to about \$122,000 per year. The Agreement stipulates that a Management Committee be formed to plan and approve “acquisition and delivery of water for the primary benefit of the residents of the City.” The Management Committee is comprised of one member from each of the governing boards and other staff and technical representatives of the City and the District. Councilmember Steve Nelsen is the City’s representative on the Committee. The Visalia Water Management Funds were used in 2010 to purchase 5,058 acre-feet of surface water for ground water recharge. The amount spent was \$136,502. Some funds were also spent to connect existing storm water basins to canals so that they could be used for recharge. KDWCD is preparing a report of all of the activities completed by the Water Management Committee in 2010. The report will be released in January, 2011.

Some of the 2011 Action Items in the Plan were started in 2010 or 2009. The 2011 Plan states that work on these projects will continue. Two projects are underway; the design and construction of two check-structures in Packwood Creek, and the construction of inlet structures to fill the Blain Basins with water from Packwood Creek. The Blain Basins are on the north side of SR 198 near Road 148.

The KDWCD Board of Directors is scheduled to review the draft plan during their regular meeting of December 1, 2010.

Prior Council/Board Actions:

Committee/Commission Review and Actions: None

Alternatives: The Council could recommend changes to the Annual Plan. Major changes would have to be approved by the KDWCD Board.

Attachments: Visalia Water Management Committee, 2011 Annual Plan

Recommended Motion (and Alternative Motions if expected):

Move to approve the Visalia Water Management Committee, 2011 Annual Plan without changes.

Environmental Assessment Status

CEQA Review: None

NEPA Review: None required.

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

None.

City of Visalia Agenda Item Transmittal

Meeting Date: December 6 2010

Agenda Item Number (Assigned by City Clerk): 7g

Agenda Item Wording: Second Reading and Adoption of Ordinance No. 2010-10 authorizing the lease of approximately 233 acres of land on 11 parcels at the Visalia Municipal Airport to Eric Shuklian, at annual lease amount of \$25,182 for continued use for agricultural purposes. **(Ordinance 2010-10 required)**

Deadline for Action: None.

Submitting Department: Administration - Airport

Contact Name and Phone Number:
Mario Cifuentez, Airport Manager, 713-4480

Executive Summary:

City Staff recommends that Council authorize the City Manager to execute this lease agreement with Eric Shuklian. Mr. Shuklian has farmed the acreage for the past 13 years. He has greatly improved the land during his tenure, has well maintained the wells and pumps, has learned and complied with the Federal Aviation Administration (FAA) and the Transportation Security Administration (TSA) rules and regulations, and has turned unproductive land into farmable ground. Given the time and investment he has made in the property, and the difficulty of training a new farmer and their staff on the FAA and TSA requirements, staff is recommending that a new lease be entered into with Mr. Shuklian. The term of this agreement will be for five (5) years, with a five (5) year option. The lease rate will be \$25,182 per year, (approximately \$108/acre) adjusted annually based on the Consumer Price Index.

Background:

The Visalia Municipal Airport has approximately 233 acres, almost entirely located within the Airport Security Perimeter, which has typically been leased for agricultural purposes. Leasing this land for farming generates revenue for the airport. More importantly, leasing of the property for farming eliminates the need for the airport to expend funds for mowing or weed control of the property.

Mr. Shuklian began farming the property in 1997 after the previous tenant declared bankruptcy and abandoned the property. At that time, the City issued an RFP and Mr. Shuklian was the only grower to respond, despite the bid being advertised in the Times-Delta and specific outreach being made to 25 growers.

For action by:

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

For placement on which agenda:

- Work Session
- Closed Session

Regular Session:

- Consent Calendar
- Regular Item
- Public Hearing

Est. Time (Min.) 10 min.

Review:

Dept. Head _____
(Initials & date required)

Finance _____
City Atty _____
(Initials & date required or N/A)

City Mgr _____
(Initials Required)

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

When renewing leases, the Airport has established a practice of renegotiating new agreements with existing tenants, unless the tenant is not in compliance with the terms of the Agreement or another party has already expressed an interest in leasing the property and/or improvements. Council has affirmed this practice over the years with several tenants at the airport. Mr. Shuklian has farmed the acreage for the past 13 years and has been a valued tenant who is able to comply with the Federal regulations involved in farming in a secure area, which warranted renegotiating a new agreement. Consequently, an RFP was not issued prior to renegotiating this agreement.

Federal Requirements:

Mr. Shuklian is knowledgeable of the operational and security requirements involved with farming on a commercial service airport. He trains all of his employees and contractors on the procedures necessary to maintain compliance with FAA and TSA regulations. The federal regulations limit the mobility of personnel and equipment inside the fence. Personnel and equipment must remain at least 75 feet away from all taxiways and navigational aids, which means that often times, the personnel must go outside of the perimeter fencing and enter at another gate to access an adjacent parcel. Any subcontractors providing farm labor must be supervised by Mr. Shuklian or his employees at all times. Any gates used to access the airfield must be closed at all times when not moving equipment in or out. Often times, this means an operator must remain by the gate until several pieces of equipment have entered and then secure the gate before continuing on to a specific area inside the airport.

New Rent Basis:

The new rent of \$25,182 will provide \$7,582.00 in additional annual revenue for the Airport Enterprise Fund. At a per acre rate of approximately \$108, the rate for the airport property is only slightly less than the \$116 per acre that the City receives for the former Blain property located on the east side of Visalia. The former Blain property is comprised of adjacent parcels that are easy to farm, while the airport farmland is neither ideal, nor even typical farmland. The total acreage is comprised of eleven (11) different sections that are not contiguous to one another, which makes the acreage difficult to cultivate, irrigate and harvest. Prior to the current grower's tenancy, the acreage had become overgrown with weeds and in response to an RFP issued to secure a tenant, several farming operations labeled the property as "barely farmable". The acreage comes with significant covenants and restrictions due to FAA regulations. The new rate was determined based on historical information, published land values for similar type ground, consultation with the University of California Extension Farm Advisor, current and expected activities on the airport, along with the requirements of the Federal Aviation Administration.

Often times this type of ag land rent is based on production and price. It is harder to assess a lease value for this land in that manner because of the complicating factors including quality of the land, size and number of the parcels, which are not continuous, and the FAA and TSA regulations that must be adhered to. Several of the sections of land are split by airport lighting arrays, taxiways, and FAA buildings and/or equipment structures, making irrigation difficult. Because of possible wildlife attractants, the operator is limited to the types of crops that can be grown lateral to the runway and adjacent to the runway safety areas. Currently, the 2 crops that can be grown are cotton and alfalfa. While prime ag land might generate \$125 to \$200/acre, depending on the production year, it is difficult to use those figures to set the lease rate for limited use ag land on the airport because of all of the previously mentioned factors.

This lease is for 5 calendar years, with an option for one successive term of 5 years. The first annual rent payment is due upon commencement of the lease, with each subsequent payment being due on or before each anniversary of the lease. The lessee is responsible for all utility charges, routine maintenance of the pumps that serve the 3 airport wells, fuel and/or utility costs for the pumps and up to \$1000 annually for repairs of the pumps. The wells are used solely for the irrigation of crops at the airport and Mr. Shuklian has continuously maintained the pumps in very good working order over the life of the previous lease.

Prior Council/Board Actions:

Committee/Commission Review and Actions:

Alternatives: Not authorizing the City Manager to execute the agreement would lead to the loss of revenue for the airport fund and increased maintenance costs for controlling weeds and grasses.

Attachments: Airport Ground Lease Agreement, Ordinance Authorizing the lease

Recommended Motion:

Move Second Reading and Adoption of Ordinance No. 2010-10 authorizing the lease of 233 acres of property on 11 parcels at the Visalia Municipal Airport to Eric Shuklian for agricultural purposes.

Environmental Assessment Status

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

NEPA Review: *NA*

Copies of this report have been provided to:

ORDINANCE NO. 2010-10

**AN ORDINANCE OF THE CITY COUNCIL OF
THE CITY OF VISALIA**

**AUTHORIZING THE LEASE OF APPROXIMATELY 233 ACRES AT THE
VISALIA MUNICIPAL AIRPORT
TO ERIC SHUKLIAN FOR AGRICULTURAL PURPOSES**

WHEREAS, the City of Visalia owns certain property generally located southeast of the intersections of highways 99 and 198, commonly referred to as the Visalia Municipal Airport, and,

WHEREAS, the City of Visalia desires to lease approximately 233 acres of the property to Eric Shuklian, a sole proprietorship, for agricultural purposes, and,

WHEREAS, said lease for agricultural purposes is of benefit to the Visalia Municipal Airport based on the revenue generation and maintenance of airport property, and,

WHEREAS, Eric Shuklian has farmed the property for the past 13 years and has been a model tenant, respective of the airport operational guidelines.

Be it ordained by the Council of the City of Visalia,

Section 1. The City Manager of the City of Visalia be, and is hereby authorized to execute on behalf of the City of Visalia, that certain Airport Ground Lease Agreement by and between the City of Visalia as Lessor and Eric Shuklian, a sole proprietorship, as Lessee.

Section 2. This ordinance shall go into effect thirty (30) days after its passage.

AIRPORT GROUND LEASE AGREEMENT

This Ground Lease Agreement made and entered into this _____ day of _____, 2010 by and between the City of Visalia, Municipal Corporation of the State of California, hereinafter referred to as "LESSOR" and Eric Shuklian, hereinafter referred to as "LESSEE".

For and in consideration of the payment of rent, taxes, and other charges and of performance of the covenants and conditions hereinafter set forth, LESSOR hereby Leases to LESSEE the real property located at the Visalia Municipal Airport and situated in the City of Visalia, County of Tulare, State of California, more particularly described as set forth in Exhibit "A" attached hereto and made a part hereof.

1. DEMISED PREMISES

A. Definition - Except as expressly provided to the contrary in this Lease, reference to "Demised Premises" is to the described land plus any described appurtenances, including any improvements (including LESSEE's improvements), now or hereafter located on the Demised Premises, without regard to whether ownership of the improvements is in the LESSOR or in the LESSEE.

B. Description - The Demised Premises consists of several parcels of unimproved property, more particularly located as designated on Exhibit "A" attached hereto and made a part hereof and, containing approximately 233 acres, plus any improvement subsequently made thereto or thereon, whether made by LESSOR or LESSEE.

2. TERM

A. The term of this Ground Lease Agreement shall be for a period of five (5) years commencing on the 1st day of December, 2010 and ending on the 30th day of November, 2015, unless sooner terminated as provided for herein.

B. In addition, LESSEE shall have the right, but not the obligation, to extend the original term of this Lease by one (1) additional period of five (5) year each, provided LESSEE shall not be in default of any term of condition contained herein at the time of exercising said options. LESSEE shall provide LESSOR with written notification of LESSEE's intent to exercise each option period within sixty (60) days of the end of the then current term. Provided LESSOR determines LESSEE is not in default of any term or condition, LESSEE and LESSOR shall execute an amendment to this Lease amending and extending the Lease term for the appropriate amount of time. All other terms and conditions, unless otherwise agreed to shall remain in full force and effect.

3. LEASE RENT

A. INITIAL MINIMUM RENT - LESSEE shall pay without abatement, deduction or affect, a net minimum annual rent of Twenty Five Thousand One Hundred and Eighty-Two Dollars (\$25,182.00), all due and payable in annual payments beginning on the 1st day of December, 2010 and continuing thereafter throughout the entire term of this agreement.

B. RENT ADJUSTMENTS. The minimum annual rent shall be adjusted each and every year, beginning on the first anniversary date of the Lease term, to reflect the percentage change in the Consumer Price Index. For purposes of this agreement, the Consumer Price Index shall be the California Consumer Price Index (all urban consumers, all items) as released by the California Division of Labor Statistics and Research. Said adjustment shall be calculated as follows: The minimum annual rent in effect immediately prior to the anniversary date in question shall be multiplied by one plus the percentage increase in the Consumer Price Index for the last month released prior to such anniversary, as compared to the same month one year prior, the result of such calculation constituting the new minimum annual rent. In no event shall the minimum annual rent be decreased.

The Consumer Price Index as used herein is based on the 1982-84=100 index. Should the Division of Labor Statistics and Research change the 1982-84=100 index, the above referenced formula shall be converted to reflect said change.

C. In the event LESSEE is delinquent in remitting the rent by the tenth (10th) day following the anniversary date of the Lease term, then the rent not paid when due shall bear interest at the rate of eighteen percent (18%) per annum from the date due until paid.

4. TAXES AND ASSESSMENTS; "PUBLIC CHARGES"

A. Obligation of LESSEE - From and after the date of execution of this Ground Lease Agreement, LESSEE shall pay or cause to be paid all real estate taxes, assessments, and other governmental charges, general and special, ordinary and extraordinary, of any kind and nature whatsoever applicable to LESSEE's possessory interest in the leased Premises, (in accordance with California Revenue and Taxation Code Section 107.6) as created and established by this Ground Lease Agreement, and the building improvements thereon, including but not limited to assessments for public improvements or benefits which shall for any period subsequent to the execution of this Ground Lease Agreement and during the term hereof be assessed, levied or imposed upon or become due and payable and a lien upon said possessory interest and building and improvements thereon (specifically accepting therefrom any and all surface rights, if any, held or used by others who may have or claim any of the same, LESSEE assuming no liability whatsoever for the taxes, general and special assessments or other charges levied or assessed thereon), all of which taxes, assessments, levies and other governmental charges to be paid by LESSEE are referred to in this Ground Lease Agreement as "public charges"; provided however that if by law any such public charges are payable or may at the option of the taxpayer be paid in installments (whether or not

interest shall accrue on the unpaid balance of such public charge), LESSEE may make such payments in installments as the same respectively become due and before any fine, penalty, or cost may be added thereto for the nonpayment of any such installment; and provided further that any public charges relating to a fiscal period of the taxing authority expiring after the termination of expiration of this Ground Lease Agreement, any part of which fiscal period is included within the time prior to termination of expiration of this Ground Lease Agreement, all such public charges shall be paid, assessed, levied or posed upon or become due and payable by apportioned between the parties.

B. Time of Payment - All payments to be made by LESSEE pursuant to the provisions hereof shall be made before any fine, penalty, interest or cost may be added thereto for the non-payment thereof; and the LESSEE shall furnish LESSOR within sixty (60) calendar days after the dates when the same are payable as herein provided with official receipts or other evidence satisfactory to LESSOR that such public charges or excise on rents or other tax or assessments in lieu thereof as aforesaid has to the extent of the aforesaid, been paid.

C. Contest - LESSEE may contest the legal validity or amount of any public charges for which LESSEE is responsible under this Ground Lease Agreement and may institute such proceedings as LESSEE considers necessary. If LESSEE contests any such public charges, LESSEE may withhold or defer payment or pay under protest but shall protect LESSOR and the Premises from any lien by adequate surety bond or other appropriate security.

D. Exclusions - LESSEE's obligation to pay public charges levied or charged against said possessory estate or buildings or improvements or against specified personal property, shall not include the following whatever they may be called: business income or profit taxes levied or assessed against LESSOR by federal, state or other governmental agencies; estate, succession, inheritance, or transfer tax of LESSOR; or

corporation, franchise, or profit taxes imposed on any owner of the fee title of the Premises.

E. Evidence of Payment - The certificate, advise, or bill of the appropriate official designated by law to make or issue the same to receive payment of any such public charge shall be prima facie evidence that such public charge is due and unpaid at the time of the making or issuance of such certificate, advise, or bill; and the written receipt of such official shall be prima facie evidence that the public charge therein described has been paid. LESSEE shall authorize and instruct the assessing authority to forward to LESSEE all bills covering such paid public charge.

5. USE OF PREMISES

LESSEE shall use said Premises for the purpose of growing agricultural crops and related activities and for no other purpose without the prior written consent of LESSOR. All crops grown on the subject premises must have prior approval of the Airport Manager to assure conformance with FAA guidelines. LESSEE shall be responsible, at all times, for the activities and conduct of their employees to assure conformance with FAA guidelines, non-interference of airport operations and non-interference with the adjacent farming operations. No animals of any kind may be brought onto the Premises. LESSEE shall conform to all Airport rules and regulations. LESSOR does not warrant or guarantee that the Premises are fit for LESSEE's use hereunder.

6. BUSINESS LICENSE

LESSEE shall obtain, if necessary, a business license as paid by all persons and/or entities in similar circumstances.

7. RESERVATION OF MINERAL RIGHTS TO LESSOR

All oil, gas, and mineral rights are expressly reserved from this Ground Lease Agreement.

8. ACCESS RIGHTS

A. LESSOR reserves the right to enter upon any portion of the leased Premises at any time during the Ground Lease Agreement term to inspect the same and to exercise any function that might arise concerning the operation of the Visalia Municipal Airport (Airport) and/or City of Visalia. LESSEE shall provide the Airport Manager with a key(s) to any lock that LESSEE places on any gate(s) restricting access to the Premises. ALL GATES PROVIDING ACCESS TO VISALIA MUNICIPAL AIRPORT ARE TO BE KEPT LOCKED FOR AIRPORT SECURITY PURPOSES. IF GATES ARE FOUND TO BE UNLOCKED AND FINES IMPOSED BY THE FEDERAL AVIATION ADMINISTRATION, THESE FINES WILL BE PASSED THROUGH TO THE LESSEE.

B. LESSEE, LESSEE's employees, agent and subcontractors shall have access to the Premises without notice to LESSOR twenty-four (24) hours a day, seven (7) days a week, at no charge.

9. UTILITIES

LESSEE shall be responsible for all utility charges. Any easement necessary for such power or other utilities will be at a location acceptable to LESSOR and the servicing utility company.

10. PUMPS

LESSEE shall be responsible for the continued routine maintenance, fuel, and/or utility costs, and up to \$1,000 in repairs for each and every Lease year during the entire lease term, of the three (3) irrigation pumps as shown on Exhibit B. LESSEE is satisfied that at the commencement of this Lease Agreement, the irrigation well and pump provides an adequate supply of water for the leased Premises. In the event that ground water levels lower to a point that bores need lowering or the wells need to be drilled deeper, the LESSOR shall be

responsible for all costs incurred. LESSOR shall also be responsible for all major repairs and/or replacement of LESSOR's pump.

11. WITHDRAWAL

LESSEE agrees that at any time LESSOR determines usage of the leased Premises or any portion thereof is required for parks, airport, street or other public purpose, LESSOR shall have the right to terminate or withdraw a portion thereof without payment for damage or loss, provided LESSEE is notified in writing 12 months prior to the termination or withdrawal. LESSOR shall also have the right to terminate this Ground Lease Agreement or withdraw any portion thereof with less than 12 months notice provided LESSOR shall reimburse LESSEE for crop loss as follows:

- A.** AVERAGE harvestable crop per acres as per the Tulare County Agricultural Advisor, multiplied by the affected number of acres.
- B.** TIMES - Acreage current price per unit of crop, multiplied by number of units.
- C.** EQUALS - Total estimated gross income, less average harvesting expenses.

EXAMPLE: Two bales per acre at 500 lbs per bale = 1,000 lbs X acres affected (1.5 acres) = 1,500 lbs X price per lb (\$.60) = \$900 LESS harvesting costs (\$100 per acre X 1.5 acres affected) = \$750

12. ASSIGNMENT AND SUBLETTING

The LESSEE may not assign or otherwise transfer this Ground Lease Agreement or sublet any portion of said Premises without the prior written consent of LESSOR.

13. MODIFICATIONS

It is further agreed by and between the parties hereto that any alterations, modifications, or additions on the leasehold Premises by LESSEE can only be instituted by first obtaining the written approval of LESSOR of the plans, locations and specifications of said change. LESSEE agrees to provide LESSOR one set of "as built" plans for said changes within 60 days of

completion. No leasehold encumbrance or deed of trust shall be permitted as a result of LESSEE's actions on the leasehold Premises.

14. SIGNS

LESSEE further agrees that it will not paint or erect any signs on the Premises unless such signs are first approved in writing by the LESSOR. Any signs located on the Premises shall be in compliance with the City of Visalia's sign and zoning ordinances as the same shall be in effect from time to time.

15. APPEARANCE

LESSEE shall maintain their facilities to the reasonable satisfaction of the LESSOR and in such a manner that said facilities will be neat and well kept in appearance and a credit to the airport. LESSEE understands and agrees that LESSEE shall keep all fences and areas within two (2) feet of the same, free and clear of all weeds, trash and rubbish.

16. LESSOR'S MAINTENANCE

LESSOR shall have no obligation for any maintenance of the Demised Premises.

17. LESSEE'S MAINTENANCE

LESSEE shall maintain all irrigation facilities, including the maintenance and repair of pipelines, risers, gates, etc., in such a manner as to confine water within the boundaries of the fields. LESSEE shall be responsible for the shredding and tilling of cotton stalks and other agricultural stubble during the term of the Ground Lease Agreement including those stalks and stubble from the final crop of the last year of said Ground Lease Agreement, and in accordance with applicable State and County of Tulare statutes, ordinances and regulations. LESSEE agrees that no burning of stubble or any other matter shall take place during said Ground Lease Agreement term.

18. CONDEMNATION

LESSOR shall also have the right to terminate this Lease as of the date of condemnation of the Property.

If the Premises are taken under any right of condemnation, LESSEE shall not be entitled to any and all awards of payment made in the condemnation proceedings in respect to any damage to LESSEE's leasehold interests in the Premises and the improvements thereon.

19. REGULATIONS AND SPECIAL CONDITIONS

LESSEE shall not conduct, or allow to be conducted upon the Premises, any dangerous or hazardous activities, or any activities considered to be a nuisance to the airport or its tenants and neighbors, and LESSEE agrees to abide by all applicable F.A.A. and U.S. Government rules and regulations, including, but not limited to the following:

A. The LESSEE for himself, his heirs, personal representatives, successors in interest and assigns, as a part of the considerations hereof, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained, or otherwise operated on the premises described herein for a purpose for which a Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the LESSEE shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted programs of the Department of Transportation and as said regulations may be amended.

B. The LESSEE for himself, his personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that:

(1) No person on the grounds of race, color, sex, age or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subject to discrimination in the use of said facilities; and

(2) That in the construction of any improvements on, over or under such land and the furnishing of services hereon, no person on the grounds of race, color, sex, age or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subject to discrimination; and

(3) That the LESSEE shall use the demised Premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted programs of the Department of Transportation, as said Regulations may be amended.

C. It is understood and agreed that nothing contained herein shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308 of the Federal Aviation Act of 1958.

D. LESSEE agrees to furnish service on a fair, equal and not unjustly discriminatory basis to all users thereof, and to charge fair, reasonable and not unjustly discriminatory prices for each unit or service, provided, that LESSEE may make reasonable and nondiscriminatory discount, rebates, or other similar types of price reductions to volume purchasers.

E. The LESSOR reserves the right (but shall not be obligated to LESSEE) to maintain and keep in repair the landing area of the airport and all publicly owned facilities of the airport, together with the right to direct and control all activities of the LESSEE in this regard.

F. The LESSOR reserves the right to further develop or improve the landing area and all publicly owned air navigation facilities of the airport as it sees fit, regardless of the desires or views of the LESSEE, and without interference or hindrance.

G. The LESSOR reserves the right to take any action it considers necessary to protect aerial approaches of the airport against obstruction, together with the right to prevent LESSEE from erecting, or permitting to be erected, any building or other

structure on the airport which in the opinion of the LESSOR would limit the usefulness of the airport or constitute a hazard to aircraft.

H. During the time of war or national emergency the LESSOR shall have the right to enter into an agreement with the United States Government for military or naval use of part or all of the landing area, the publicly owned air navigation facilities and/or other areas or facilities of the airport. If any such agreement is executed, the provisions of this Lease, insofar as they are inconsistent with the provisions of the agreement with the Government, shall be suspended.

I. It is understood and agreed that the rights granted by this Lease will not be exercised in such a way as to interfere with or adversely affect the use, operation, maintenance or development of the airport.

J. There is hereby reserved to the LESSOR, its successors and assigns, for the use and benefit of the public, a free and unrestricted right of flight for passage of aircraft in the airspace above the surface of the Premises herein conveyed, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft, now known or hereafter used for navigation of or flight in the air, using said airspace or landing at, taking off from, or operating on or about the airport.

K. The Lease shall become subordinate to provisions of any existing or future agreement between the LESSOR and the United States of America, or any agency thereof relative to the operation, development, or maintenance of the airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the airport.

L. LESSEE agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations in the event future construction of a building is planned for the leased Premises, or in the event of any planned modification or alteration of any present or future building or structure situated on the leased

Premises. Any future construction, modification, or alteration shall be in compliance with the Airport Master Plan and will be subject to airport approval.

M. The LESSEE by accepting this expressly agrees for itself, its successors, and assigns that it will not erect nor permit the erection of any structure or object, nor permit the growth of any tree on the land leased hereunder above the limits specified in Part 77 of the Federal Aviation Regulations. In the event the aforesaid covenants are breached, LESSOR reserves the right to enter upon the land leased hereunder and to remove the offending structure or object or cut the offending tree, all of which shall be at the expense of the LESSEE.

20. UNITED STATES GOVERNMENT

This Ground Lease Agreement and all the provisions hereof shall be subject to whatever right the United States government now has or in the future may have or acquire affecting the control, operation, regulation and taking over of said airport or the exclusive or non-exclusive use of the airport by the United States or by any other action by said government which would substantially frustrate the purposes of this Ground Lease Agreement. In the event of any such action by the United States government either party may elect to be relieved of any obligation under the Ground Lease Agreement.

21. CURRENT AND FUTURE AIRPORT REGULATIONS

This Ground Lease Agreement and all rights conferred thereby shall at all times be subject to current and future regulations governing any and all activities at the Visalia Municipal Airport to the same extent that such current and future regulations govern the activities of all persons using the facilities of the Visalia Municipal Airport and occupying structures thereon.

22. MARKING AND LIGHTING REQUIREMENTS

LESSEE shall be responsible for compliance with all marking and lighting requirements of the Federal Aviation Administration ("FAA") and the FCC, including, but not limited to those

requirements for marking and lighting of vehicles and equipment. Should LESSOR be cited because the Premises is not in compliance and, should the LESSEE fail to cure the conditions of noncompliance, LESSOR may either terminate this Ground Lease Agreement or proceed to cure the conditions of noncompliance at LESSEE'S expense, which amounts may be added to the Rent.

23. INSURANCE - LIABILITY

Throughout the term, at LESSEE's sole cost and expense, LESSEE shall keep or cause to be kept in force, for the mutual benefit of LESSOR and LESSEE, comprehensive broad form general public liability insurance against claims and liability for personal injury, death, or property damage arising from the use, occupancy, disuse, or condition of the Premises, improvements, or adjoining areas or ways, providing protection for bodily injury or death to any one person, at least \$1,000,000 for any one accident or occurrence, and at least \$1,000,000 for property damage. Also throughout the Ground Lease Agreement terms, at LESSEE's sole cost and expense, LESSEE shall keep or cause to be kept in force, workers' compensation insurance with statutory limits and employer's liability insurance with limits of not less than \$1,000,000 per accident.

24. INSURANCE - GENERAL REQUIREMENTS

All insurance required by express provision of this Ground Lease Agreement shall be carried only in responsible insurance companies licensed to do business in the State of California. All such policies shall be nonassessable and shall contain language, to the extent obtainable, to the effect that (1) any loss shall be payable notwithstanding any act or negligence of LESSOR that might otherwise result in a forfeiture of the insurance, (2) the insurer waives the right of subrogation against LESSOR and against LESSOR's agents and representatives and the LESSOR waives the right of subrogation against LESSEE and against LESSEE's agents and representatives, (3) the policies are primary and noncontributing with any insurance that

may be carried by LESSOR, and (4) they cannot be canceled or materially changed except after 30 calendar days written notice by the insurer to LESSOR or LESSOR's designated representative. (5) LESSOR shall be named an additional insured. LESSEE shall furnish LESSOR with binders representing all insurance required by this Ground Lease Agreement. At the expiration of the term, LESSOR shall reimburse LESSEE prorate for all prepaid premiums on insurance required to be maintained by LESSEE, and LESSEE shall assign all LESSEE's right, title and interest in that insurance to LESSOR. LESSEE may effect for its own account any insurance not required under this Ground Lease Agreement. LESSEE may provide by blanket insurance covering the Premises and any other location or locations any insurance required or permitted under this Ground Lease Agreement provided it is acceptable to all mortgages. LESSEE shall deliver to LESSOR, in the manner required for notices, copies or certificates of all insurance policies required by this Ground Lease Agreement, together with evidence satisfactory to LESSOR of payment required for procurement and maintenance of the policy, within the following limits:

- A.** For insurance required at the commencement of this Ground Lease Agreement, within 30 calendar days after the execution of this Ground Lease Agreement;
- B.** For insurance becoming required at a later date, at least 15 calendar days before the requirement takes effect, or as soon thereafter as the requirement, if new, takes effect.
- C.** For any renewal or replacement of a policy already in existence, at least 30 calendar days before expiration or other termination of the existing policy.
- D.** If LESSEE fails or refuses to procure or to maintain insurance as required by this Ground Lease Agreement or fails or refuses to furnish LESSOR with required proof that the insurance has been procured and is in force and paid for, LESSOR shall have the right at LESSOR's election and on 5 day notice, to procure and maintain such insurance. The premiums paid by LESSOR shall be treated as added rent due from LESSEE with interest at the rate of 18 percent per year, to be paid on the first day of the month

following the date on which the premiums, stating the amounts paid and the names of the insurer or insurers, and interest shall run from the date of the notice.

25. INDEMNIFICATION

LESSEE hereby agrees to and shall protect, indemnify, and hold harmless the LESSOR and all officers, agents, representatives, and employees thereof from any and all liability, claims, or damages of whatsoever kind or character, including attorneys' fees and costs of all types incurred in defense of any of the said parties from said claims or liability, because of or arising out of, directly or indirectly, the acts or omissions of the LESSEE, LESSEE's independent contractors, employees, representatives, agents and invitees, and the passive or active negligent acts or omissions of the LESSOR or its officers, agents, representatives, and employees while acting within the scope of their duties regarding work to be performed pursuant to this Ground Lease Agreement. Said indemnification and hold harmless provisions shall be in full force and effect regardless of whether or not there shall be insurance policies covering and applicable to such damages, claims, or liability. This agreement shall be binding upon the LESSEE whether or not there are any allegations of fault, negligence, or liability of the indemnities hereunder.

LESSOR hereby agrees to and shall protect, indemnify, and hold harmless the LESSEE and all officers, agents, representatives, and employees thereof from any and all liability, claims, or damages of whatsoever kind or character, including attorneys' fees and costs of all types incurred in defense of any of the said parties from said claims or liability, because of or arising out of, directly or indirectly, the acts or omissions of the LESSOR, LESSOR's independent contractors, employees, representatives, agents and invitees, and the passive or active negligent acts or omissions of the LESSEE or its officers, agents, representatives, and employees while acting within the scope of their duties regarding work to be performed pursuant to this Ground Lease Agreement. Said indemnification and hold harmless provisions shall be in full force and effect regardless of whether or not there shall be insurance policies covering and

applicable to such damages, claims, or liability. This agreement shall be binding upon the LESSOR whether or not there are any allegations of fault, negligence, or liability of the indemnities hereunder.

26. DEFINITION OF DEFAULT BY LESSEE

Each of the following events shall be a default by LESSEE and a breach of this Ground Lease Agreement

A. Abandonment or surrender of the Premises or of the leasehold estate, or failure or refusal to pay when due any installment of rent or any other sum required by this Ground Lease Agreement to be paid by LESSEE, including but not limited to the Public Charges set forth herein, or to perform as required or conditioned by any other covenant or condition of this Ground Lease Agreement.

B. The subjection of any right or interest of LESSEE to attachment, execution, or other levy, or to seizure under legal process, if not released within 10 calendar days provided that the foreclosure of any mortgage permitted by provisions of this Ground Lease Agreement relating to purchase or construction improvements shall be construed as a default within the meaning of this paragraph.

C. The appointment of a receiver to take possession of the Premises, or improvements, or of LESSEE's interest in the Leasehold estate, or of LESSEE's operation on the Premises for any reason, including but not limited to, assignment for benefit of creditors or voluntary or involuntary bankruptcy proceedings, but not including receivership (1) pursuant to administration of the estate or any deceased or incompetent LESSEE, or (2) instituted by LESSOR, the event of default being not the appointment of a receiver at LESSOR's instance, but the event justifying the receivership, if any.

D. An assignment by LESSEE for the benefit of creditors or the filing of a voluntary or involuntary petition by or against LESSEE under any law for the purpose for adjudication of LESSEE's liabilities; or for reorganization, dissolution, or arrangement on

account of or to prevent bankruptcy or insolvency; unless the assignment or proceeding, and all consequent orders, adjudication, custody and supervision are dismissed, vacated, or otherwise permanently stayed or terminated within 30 calendar days after the assignment, filing or other initial event.

E. Failure to maintain said Premises as required pursuant to the terms of the Ground Lease Agreement.

F. Failure to provide insurance binders/certificates pursuant to paragraphs 23 and 24.

27. NOTICE OF DEFAULT

As a precondition to pursuing any remedy for an alleged default other than a failure to provide adequate insurance as described in paragraphs 23 and 24, by LESSEE, LESSOR shall, before pursuing any remedy, give written notice of default to LESSEE and to all qualifying subtenants whose names and addresses were previously given to LESSOR in a notice or notices from LESSEE. A qualifying subtenant is a subtenant in possession under an existing sublease which is proper under this Ground Lease Agreement. If the alleged default is nonpayment of rent, taxes, or other sums to be paid by LESSEE as provided in the paragraph on rent, or elsewhere in this Ground Lease Agreement directed to be paid as rent, LESSEE shall have 10 calendar days after notice is given to cure the default. For the cure of any other default, LESSEE shall act promptly and diligently after the notice to commence to cure the default and shall have 10 calendar days after notice is given to complete the cure plus any additional period that LESSOR agrees is reasonably required for the curing of the default. After expiration of the applicable time for curing a particular default, or before the expiration of that time in the event of emergency, LESSOR may at LESSOR's election, but is not obligated to, make any payment required of LESSEE under this Ground Lease Agreement or perform or comply with any covenant or condition imposed on LESSEE under this Ground Lease Agreement and the amount so paid, plus the reasonable cost of any such performance or

compliance, plus interest on such sum at the rate of 12% per year from the date of payment, performance, or compliance (herein called "Act"), shall be deemed to be additional rent payable by LESSEE within 30 calendar days following the giving of notice of the Act. No such Act shall constitute a waiver of default or of any remedy for default or render LESSOR liable for any loss or damage resulting from any such Act.

28. REMEDIES IN THE EVENT OF DEFAULT

If any default by LESSEE shall continue uncured, following notice of default as required by this Ground Lease Agreement, for the period applicable to the default under the applicable provision of this Ground Lease Agreement, LESSOR has the following remedies in addition to all other rights and remedies provided by law or equity, to which LESSOR may resort cumulatively or in the alternative.

LESSOR may at LESSOR's election terminate this Ground Lease Agreement by giving LESSEE written Notice of Termination. On the giving of the Notice, all of LESSEE's right in the Premises and in all improvements shall terminate in the time frame set forth in the Notice of Termination. Promptly after notice of termination, LESSEE shall surrender and vacate the Premises and all improvements in broom-clean condition, and LESSOR may reenter and take possession of the Premises and all remaining improvements and eject all parties in possession or eject some and not others or eject none; provided that no subtenant qualifying under nondisturbance provisions of this Ground Lease Agreement shall be ejected.

Termination under this paragraph shall not relieve LESSEE from the payment of any sum then due to LESSOR or from any claim for damages previously accrued or then accruing against LESSEE. LESSOR may at LESSOR's election reenter the Premises, and, without terminating this Ground Lease Agreement, at any time and from time to time relet the Premises and improvements or any part of parts of them for the account and in the name of the LESSEE or otherwise. Any reletting may be for the remainder of the term or for a longer or shorter period. LESSOR may execute any leases made under this provision either in LESSOR's name

or in LESSEE's name and shall be entitled to all rents from the use, operation, or occupancy of the Premises or improvements or both. LESSEE shall nevertheless pay to LESSOR on the due dates specified in this Ground Lease Agreement the equivalent of all sums required of LESSEE under this Ground Lease Agreement, plus LESSOR's expenses, less the avails of any reletting or attornment. No act by or on behalf of LESSOR under this provision shall constitute a termination of this Ground Lease Agreement unless LESSOR gives LESSEE notice of termination.

LESSOR may at LESSOR's election use LESSEE's personal property and trade fixtures or any of such property and fixtures without compensation and without liability for use or damage, or store them for the account and at the cost of LESSEE.

LESSOR shall be entitled to LESSOR's election to each installment of rent or to any combination of installments for any period before termination, plus interest at the rate of 18 percent per year from the due date of each installment. Avails of reletting or attorned subrents shall be applied, when received, as follows: (1) to LESSOR to the extent that the avails for the prior covered do not exceed the amounts due and charged to LESSEE for the same period, and (2) the balance to LESSEE. LESSOR shall make reasonable efforts to mitigate LESSEE's liability under this provision. LESSOR shall be entitled to LESSOR's election to damages in the following sums: (1) all amounts that would have fallen due as rent between the time of termination of this Ground Lease Agreement and the time of the claim, judgment, or other award, less the avails of all relettings and attornments and less all amounts by which LESSOR shall reasonably have mitigated those rental losses, plus interest on the balance at the rate of 12 percent per year, and (2) the "worth" at the time of the claim, judgment, or other award, of the amount by which the unpaid rent for the balance of the term exceeds the then fair rental value of the Premises minus any amounts of rental loss which LESSEE proves could be reasonably avoided. "Worth", as used in this provision, is computed by discounting the total at the discount rate of the Federal Reserve Bank of San Francisco at the time of the Claim, Judgment, or award, plus one percent interest.

29. WAIVER OF DEFAULT

No waiver of default shall constitute a waiver of any other breach or default, whether of the same or any other covenant or condition . No waiver, benefit, privilege, or service voluntarily given or performed by either party shall give the other any contractual right by custom, estoppel, or otherwise. The subsequent acceptance of rent pursuant to this Ground Lease Agreement shall not constitute a waiver of any preceding default by LESSEE other than default in the payment of the particular rental payment.

30. NOTICES

As used in this Ground Lease Agreement, notice includes but is not limited to the communications of notice, request, demand, approval, statement, report, acceptance, consent, waiver, and appointment. No notice of the exercise of any option or election is required unless the provision giving the election or option expressly requires notice. Unless the provision of this Ground Lease Agreement on rent direct otherwise, rent shall be sent in the manner provides for giving notice.

A. Writing. All Notices must be in writing, provided that no writing other than the check or other instruments representing the rent payment itself need accompany the payment of rent.

B. Delivery. Notice is considered given either (a) when delivered in person to the recipient named as below, or (b) on the date shown on the return receipt after deposit in the United States mail in a sealed envelope or container, either registered or certified mail, return receipt requested, postage and postal charges prepaid, addressed by name and address to the party or persons intended as follows:

Notice to LESSOR: City of Visalia
City Clerk
707 E. Acequia

Visalia, CA 93291

Copy to: City of Visalia
Airport Manager
9501 Airport Drive
Visalia, CA 93277

Notice to LESSEE: Eric Shuklian
10222 1st Ave.
Hanford, CA 93230

C. Change of recipient or address - Either party may, by notice given at any time or from time to time, require subsequent notices to be given to another individual person, whether a party or an officer or representative, or to a different address, or both. Notices given before actual receipt or notice of change shall not be invalidated by the change.

D. Recipient named - Each recipient named must be an individual person. If more than one recipient is named, delivery of notice to any one such recipient is sufficient. If none of the recipient named in the latest designation of recipient is available for delivery in person, and if the notice addressed by mail to each recipient named in the latest designation of recipient is returned to the sender undelivered, notice shall be sufficient if sent by mail as above to the party as named in this Ground Lease Agreement, unless the name or identity of the party has changed as permitted in this Ground Lease Agreement and proper notice of the change has been given, in which event the notice shall be sufficient if sent by mail as above to the party named in the latest designating party, and the notice is considered given when the first attempt to give notice was properly made.

31. SURRENDER ON TERMINATION

At the expiration or earlier termination of the term, LESSEE shall surrender to LESSOR the possession of the Premises. Surrender or removal of improvements, fixtures, trade fixtures, and improvements shall be as directed in provisions of this Ground Lease Agreement on

ownership of improvements at termination. LESSEE shall leave the surrendered Premises properly disced, leveled, and cleared of debris and weeds and any other property in good condition except as provided to the contrary in provisions of this Ground Lease Agreement on maintenance and repair of improvements. All property that LESSEE is required to surrender shall become LESSOR's property at the termination of the Ground Lease Agreement. All property that LESSEE is not required to surrender but that LESSEE does abandon shall, at LESSOR's election, become LESSOR's property at termination. If LESSEE fails to surrender the Premises at the expiration or sooner termination of this Ground Lease Agreement, LESSEE shall defend and indemnify LESSOR for all liability and expense resulting from the delay or failure to surrender, including, without limitation, claims made by any succeeding tenant founded on or resulting from LESSEE's failure to surrender.

32. HOLDING OVER

This Ground Lease Agreement shall terminate without further notice at expiration of the term. Any holding over by LESSEE after expiration shall not constitute a renewal or extension or give LESSEE any rights in or to the Premises, except that LESSEE's tenancy shall thereafter be on a month-to-month term with rent being payable on the first day of each month, rental payment being one twelfth (1/12) of the amount of annual rent.

33. MISCELLANEOUS

A. This Ground Lease Agreement contains the entire agreement between the parties. No promise, representation, warranty, or covenant not included in this Ground Lease Agreement has been or is relied on by either party. Each party has relied on his own examination of this Ground Lease Agreement, counsel of his own advisors and the warranties, representations, and covenants in the Ground Lease Agreement itself. The failure or refusal of either party to inspect the Premises or improvements, to read the Ground Lease Agreement or other documents, or to obtain legal or other advice relevant

to this transaction constitutes a waiver of any objection, contention, or claim that might have been based on such reading, inspection or advice.

B. If any provision of this Ground Lease Agreement is invalid or unenforceable with respect to any party, the remainder of this Lease or the application of such provision to persons other than those as to whom it is held invalid or unenforceable, shall not be affected and each provision to this Ground Lease Agreement shall be valid and enforceable to the fullest extent permitted by law.

C. This Ground Lease Agreement shall be binding on and inure to the benefit of the successors, transferees in title, and permitted assignees of the respective parties.

D. This Ground Lease Agreement shall be governed by the laws of the State of California.

E. In any case where the approval or consent of one party hereto is required, requested or otherwise to be given under this Ground Lease Agreement, such party shall not unreasonably delay or withhold its approval or consent.

F. All Riders and Exhibits annexed hereto form material parts of this Ground Lease Agreement.

G. Time of the Essence: Time is of the essence in the performance of each provision of this Ground Lease Agreement.

H. Implementation Clause: To carry into full force and effect each and every agreement, condition, covenant and terms contained in this Ground Lease Agreement, each party agrees that he and she will execute and deliver any and all documents, assignments, releases, receipts and other documents reasonably required by the other without undue delay or expense.

I. Cooperation: LESSOR and LESSEE agree to provide any further documentation and to cooperate in any way necessary to carry out the basic intent of the Ground Lease Agreement.

J. Venue: The parties agree that the contract is to be performed in Tulare County, and any action arising out of the contract will be venued in Tulare County. The parties agree to submit themselves to the jurisdiction of the court in any action relating to this Ground Lease Agreement or the enforcement or interpretation hereof. LESSEE expressly waives any right to remove any action from Tulare County which he might have pursuant to Section 394 of the Code of Civil Procedure.

K. Effective Date: This Ground Lease Agreement shall be and become effective as of the date its execution as set forth above.

L. Waiver: No waiver of any breach of any term, condition or provision of this Ground Lease Agreement shall constitute a waiver of any other breach of any other term, condition or provision. No consent of one party to any departures by the other shall be effective unless such waiver shall be in writing and shall be signed by the non-waiving party or a duly authorized agent thereof and the same shall be effective only for a period, on the conditions and for the specific instances and purposes specified in such writing. No notice to or demand to the non-waiving party in any case shall entitle the non-waiving party to any other for further notice or demand in similar or other circumstances.

M. Attorney's Fees: If either party brings any action or proceeding to enforce, protect, or establish any right or remedy, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs. Non-judicial, alternative dispute resolution is not an action or proceeding for the purpose of this provision.

N. Binding on Successors: Subject to the provisions of this Ground Lease Agreement on assignment and subletting, each and all of the covenants and conditions of this Ground Lease Agreement shall be binding on and shall inure to the benefit of the heirs, successors, executors, administrators, assigns, and personal representatives of the respective parties.

O. The terms of the Agreement are the product of negotiation between the parties and the parties agree, notwithstanding Civil Code Section 1654, that in the event of uncertainty the language of the Agreement will not be construed against the party causing the uncertainty to exist.

P. Execution in Counterparts: This Ground Lease Agreement may be executed in counterparts, each of which shall be deemed an original, but all which taken together shall constitute but one and the same instrument.

Q. Title or Captions: Titles or captions contained in this Ground Lease Agreement are inserted only as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of the Lease or the intent of any provision hereof.

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

Eric Shuklian, LESSEE

Dated: _____, 2010 by: _____
Eric Shuklian

CITY OF VISALIA, LESSOR

Dated: _____, 2010 by: _____
Steven M. Salomon, City Manager

APPROVED AS TO FORM:

Dated: _____, 2010 by: _____
Alex Peltzer, City Attorney

Dated: _____, 2010 by: _____
Eric Frost, Risk Management

City of Visalia Agenda Item Transmittal

Meeting Date: December 6, 2010

Agenda Item Number (Assigned by City Clerk): 7h

Agenda Item Wording: Second Reading and Adoption of Ordinance No. 2010-11 authorizing the lease of facilities at the Visalia Municipal Airport to D. Lancy Allyn for an Aircraft Storage Hangar. **(Ordinance 2010-11 required)**

Deadline for Action: None.

Submitting Department: Administration - Airport

Contact Name and Phone Number:

Mario Cifuentez, Airport Manager, 713-4480

Recommendation:

City Staff recommends that Council authorize the City Manager to execute this lease agreement with D. Lancy Allyn. Dr. Allyn has been a tenant in this facility for the past 29 years. The term of this agreement will be for five (5) years. The lease rate will be \$766.50 per month, adjusted annually based on the Consumer Price Index.

Background:

Earlier this year, the ground lease for the facility at the airport known as the Allyn Hangar expired and the tenant has been occupying the facility on a month to month basis as a new lease was negotiated. In accordance with the provisions of the FAA grant assurances, airport staff has negotiated a new lease agreement with Dr. Allyn that contains a fair market rental value of \$766.50 per month for the facility, with annual lease rate adjustments. The new lease rate will provide over \$1,100 in new annual revenue to the airport enterprise fund and brings the rent up to the same fair market value as paid for other similar facilities at the airport.

This lease agreement covers the ground and all improvements including the hangar and storage space as well as the ramp area. The previous lease agreement with Dr. Allyn was outdated and contained an annual lease rate below that rate that other tenants are paying for similar facilities. FAA grant assurances require that all tenants pay fair market rates for property and facilities on the airport. Since the last lease was negotiated, the Airport has implemented a policy of reviewing all lease rates at the time of expiration. If lease rates are below what other tenants are paying for comparable facilities, the airport compares the facilities and services provided and sets the lease rate accordingly to establish a fair market rate on a per square foot basis and insure that all tenants are paying like rates for like facilities. Dr. Allyn has leased the facility since 1981 and desires to continue to lease the facility for the storage of his Lear 28 aircraft. He has agreed to the rent adjustment and all other covenants in the lease.

For action by:

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

For placement on which agenda:

- Work Session
- Closed Session

Regular Session:

- Consent Calendar
- Regular Item
- Public Hearing

Est. Time (Min.) 10 min.

Review:

Dept. Head _____
(Initials & date required)

Finance _____
City Atty _____
(Initials & date required or N/A)

City Mgr _____
(Initials Required)

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

Prior Council/Board Actions: Council has previously approved the original ground lease and subsequent facility lease with Dr. Allyn.

Committee/Commission Review and Actions:

Attachments: Airport Ground Lease Agreement, Ordinance Authorizing the lease

Recommended Motion:

Move Second Reading and Adoption of Ordinance No. 2010-11 authorizing the lease of .4 acres of property and improvements at the Visalia Municipal Airport to D. Lancy Allyn.

Environmental Assessment Status

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

NEPA Review: *NA*

Copies of this report have been provided to:

ORDINANCE NO. 2010-11

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF VISALIA

AUTHORIZING THE CITY MANAGER TO EXECUTE A LEASE AGREEMENT BETWEEN THE CITY OF VISALIA AND D. LANCY ALLYN FOR THE LEASE OF PROPERTY AT THE VISALIA MUNICIPAL AIRPORT

WHEREAS, the City of Visalia owns and operates certain real property commonly referred to as the Visalia Municipal Airport; and

WHEREAS, the City of Visalia desires to lease said property to a tenant for the purpose of operating an aircraft storage facility at the Visalia Municipal Airport; and

WHEREAS, D. Lancy Allyn is a longtime tenant of the Visalia Municipal Airport and desires to continue to remain a tenant; and

WHEREAS, the City of Visalia and D. Lancy Allyn desire to enter into a lease agreement for said Demised Premises; and

WHEREAS, the said Demised Premises is more particularly shown on Exhibit A attached hereto and described as .4 acres of airport property.

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

Section 1. The City Manager of the City of Visalia be, and is hereby authorized to execute on behalf of the City of Visalia, that certain Lease Agreement by and between the City of Visalia as Lessor and D. Lancy Allyn, as Lessee,

Section 2. This ordinance shall go into effect thirty (30) days after its passage.

AIRPORT LEASE AGREEMENT

This Lease Agreement made and entered into this ____ day of _____, 2010, by and between the City of Visalia, a Municipal Corporation of the State of California, hereinafter referred to as "LESSOR" and D. Lancy Allyn, hereinafter referred to as "LESSEE".

For and in consideration of the payment of rent, taxes, and other charges and of performance of the covenants and conditions hereinafter set forth, LESSOR hereby Leases to LESSEE the real property located at the Visalia Municipal Airport and situated in the City of Visalia, County of Tulare, State of California, more particularly and legally described as set forth in Paragraph 1.B. below.

1. DEMISED PREMISES

A. Definition - Except as expressly provided to the contrary in this Lease, reference to "Demised Premises" is to the described land plus any described appurtenances, including any improvements, now or hereafter located on the Demised Premises, without regard to whether ownership of the improvements is in the LESSOR or in the LESSEE.

B. Description - The real property situated in the City of Visalia, County of Tulare, State of California which is described as follows:

All that portion of Section 32, Township 18 South, Range 24 East, Mount Diablo Base and Meridian, in the City of Visalia, County of Tulare, State of California, described as follows:

Beginning at the Southeast corner of said Section 32, thence North 0° 20' 36" West along the East line of said Section 32 1088.31 feet; thence North 45° 14' 48" West, 3392.74 feet; thence North 44° 39' 36" East, 303.22 feet; To the true point of beginning; thence continuing North 44° 39' 36" East, 232.63 feet; thence South 28° 56' 39" East, 112.29 feet; thence South 61° 09' 00" West, 186.55 feet; thence North 67° 16' 42" West, 59.04 feet to the true point of beginning.

2. TERM

A. The term of this Lease shall be for a period of five (5) years commencing on the 1st day of December 2010 and ending on the 30th day of November, 2015, unless sooner terminated as provided for herein.

3. LEASE RENT

A. INITIAL MINIMUM RENT - LESSEE shall pay without abatement, deduction or affect, a net minimum annual rent of Nine Thousand One Hundred Ninety-eight dollars (\$9,198.00), all due and payable in equal monthly installments of Seven Hundred Sixty-Six Dollars and fifty cents (\$766.50) beginning on the 1st day of December, 2010 and continuing thereafter throughout the entire term of this agreement.

B. RENT ADJUSTMENTS. The minimum annual rent shall be adjusted each and every year, beginning on the first anniversary date of the Lease term, to reflect the percentage change in the Consumer Price Index. For purposes of this agreement, the Consumer Price Index shall be the California Consumer Price Index (all urban consumers, all items) as released by the California Division of Labor Statistics and Research. Said adjustment shall be calculated as follows: The minimum annual rent in effect immediately prior to the anniversary date in question shall be multiplied by one plus the percentage increase in the Consumer Price Index for the last month released prior to such anniversary, as compared to the same month one year prior, the result of such calculation constituting the new minimum annual rent, payable in 12 monthly equal installments as provided in subdivision A. hereof. In no event shall the minimum annual rent be decreased.

The Consumer Price Index as used herein is based on the 1982-84=100 index. Should the Division of Labor Statistics and Research change the 1982-84=100 index, the above referenced formula shall be converted to reflect said change.

C. In the event LESSEE is delinquent in remitting the rent by the tenth (10th) day of each and every month throughout the entire Lease term, then the rent not paid when due shall bear interest at the rate of eighteen percent (18%) per annum from the date due until paid.

4. TAXES AND ASSESSMENTS: “PUBLIC CHARGES”

A. Obligations of LESSEE: From and after the date of execution of this Lease, LESSEE shall pay or cause to be paid all real estate taxes, assessments, and other governmental charges, general and special, ordinary and extraordinary, of any kind and nature whatsoever applicable to the possessory interest of LESSEE in the Demised Premises, as created and established by this Lease, and the building improvements thereon, including but not limited to assessments for public improvements or benefits which shall for any period subsequent to the execution of this Lease and during the term hereof be assessed, levied or imposed upon or become due and payable and a lien upon said possessory interest and building and improvements thereon (specifically excepting therefrom any and all subsurface rights, if any, held or used by others who may have or claim any of the same, LESSEE assuming no liability whatsoever for the taxes, general and special assessments or other charges levied or assessed thereon), all of which taxes, assessments, levies and other governmental charges to be paid by LESSEE are referred to in this Lease as “public charges”; provided however, that if by law any such public charges are payable or may at the option of the taxpayer be paid in installments (whether or not interest shall accrue on the unpaid balance of such public charge), LESSEE may make such payments in installments as the same respectively become due and before any fine, penalty, or cost may be added thereto for the non-payment of any such installment; and provided further that any public charge relating to a fiscal period of the taxing authority expiring after the termination or expiration of this Lease, any part of which fiscal period is included within the time prior to termination or

expiration of this Lease, shall (whether or not during the period prior to termination or expiration of this Lease such public charge shall be paid, assessed, levied or posed upon or become due and payable) be apportioned between the parties.

B. Time of Payment: All payments to be made by LESSEE pursuant to the provisions hereof shall be made before any fine, penalty, interest or cost may be added thereto for the non-payment thereof; and the LESSEE shall furnish LESSOR within sixty (60) days after the dates when the same are payable, as herein provided, with official receipts or other evidence satisfactory to LESSOR that such public charges or excise on rents or other tax or assessments in lieu thereof as aforesaid has, to the extent of the aforesaid, been paid.

C. Contest: LESSEE may contest the legal validity or amount of any public charges for which LESSEE is responsible under this Lease and may institute such proceedings as LESSEE considers necessary. If LESSEE contests any such public charges, LESSEE may withhold or defer payment or pay under protest but shall protect LESSOR and the Demised Premises from any lien by adequate surety bond or other appropriate security.

LESSOR appoints LESSEE as LESSOR's attorney in fact for the purposes of making all payments to any taxing authorities and for the purpose of contesting any such public charge.

D. Exclusions: LESSEE's obligation to pay public charges levied or charged against said possessory estate or buildings or improvements or against specified personal property, shall not include the following whatever they may be called: business income or profit taxes levied or assessed against LESSOR by federal, state or other governmental agencies; estate, succession, inheritance, or transfer taxes of LESSOR; or corporation, franchise, or profit taxes imposed on any owner of the fee title of the Demised Premises.

E. Evidence of Payment: The certificate, advise or bill of the appropriate official designated by law to make or issue the same and to receive payment of any such public charge shall be prima-facie evidence that such public charge is due and unpaid at the time of the making or issuance of such certificate, advise, or bill; and the written receipt of such official shall be prima-facie evidence that the public charge therein described has been paid. LESSOR shall authorize and instruct the assessing authority to forward to LESSEE all bills covering such said public charge.

5. USE OF DEMISED PREMISES

A. Defined - LESSEE shall have the right and obligation to use said premises for the purpose of aircraft storage and aircraft maintenance. Aircraft stored in the hangar will be registered with the Airport Manager. LESSEE shall not have the right or obligation to use the Demised Premises for any other purpose whatsoever, nor shall LESSEE provide any other service without express written consent of the LESSOR.

B. Use Obligation - LESSEE shall actively and continuously use and operate the Demised Premises for the limited and particular exclusive use as expressly provided for above, except for failure to so use caused by reason of wars, strikes, riots, civil commotion, acts of public enemies, and acts of God. Said activities and continuous use and operation enhances the value of the Visalia Municipal Airport, provides needed public service, provides additional employment, taxes, and other benefits to the general economy. LESSEE, however shall not and is expressly prohibited from using the Demised Premises for any other purpose or use whatsoever whether it is purported to be in addition to or in lieu of the particular exclusive use set forth above.

C. In addition, LESSEE shall have the right to sublease a portion, not to exceed 50%, of the demised premises provided that any sublease shall require the prior written consent of the LESSOR. LESSOR further agrees to not arbitrarily withhold said consent. Any request for the payment of additional consideration to the LESSOR as a

condition to granting consent to a sublease shall be considered arbitrary. Further, the consent of the LESSOR shall not be required as to any sublease to any entity in which the principals of the LESSEE own at least 50% of such entity.

6. ENTRY BY LANDLORD - LESSOR and its authorized representatives, employees, contractors or subcontractors shall have the right to enter the premises at any time in case of an emergency, and otherwise upon 72 hours written notice, to inspect the same, to assure compliance with the terms and conditions of this Rental Agreement, to assure compliance with Visalia Municipal Airport Rules and Regulations, to perform LESSOR's required maintenance and repairs, perform fire safety and code compliance inspections, and perform pest control. Written notice will be provided by the Landlord excepting emergency situations. LESSEE further hereby waives any claim for inconvenience to or interference with LESSEE's use of the premises including any loss of occupancy or quiet enjoyment. LESSEE agrees to furnish the LESSOR with a duplicate key or the combination to enter the premises for the purposes listed above.

7. UTILITIES - LESSEE shall be responsible for all utility charges and costs associated with the use of said utilities.

8. BUSINESS LICENSE - LESSEE shall obtain a business license as paid by all people in similar circumstances, within the City of Visalia.

9. RESERVATION OF MINERAL RIGHTS TO LESSOR - All oil, gas, and mineral rights are expressly reserved from this Lease.

10. ASSIGNMENT - The LESSEE shall not assign or transfer the whole or any part of this Lease or any interest herein, nor the whole or any part of the Demised Premises, nor contract

for the management or operation of the whole or any part of the Demised Premises, nor permit the occupancy of any part thereof by any other person, nor permit transfer of the Lease or possession of the Demised Premises by merger, consolidation or dissolution, nor permit sale of a controlling interest in the voting stock in said corporation. Nothing herein contained shall be construed to prevent the occupancy of said Demised Premises by any employee or business invitee of LESSEE.

11. LESSEE'S ACCESS - LESSEE shall have, subject to modification in the sole discretion of LESSOR, unrestricted right of access to all taxiways, runways and public facilities of the airport and LESSOR shall maintain taxiways sufficient for the use of aircraft to the boundary of the Demised Premises and vehicle access to Demised Premises. (This is subject to change depending on where on the airport the Demised Premises is located.)

12. REPAIRS AND MAINTENANCE -

A. Throughout the Lease term, LESSEE shall, at LESSEE's sole cost and expense maintain the Demised Premises with the exception of major structural repair and maintenance as set forth below, and all improvements now existing and hereafter erected thereupon in good condition and repair, ordinary wear and tear excepted and in accordance with all applicable rules, laws, ordinance, orders and regulations of federal, state, county, municipal, and other governmental agencies and bodies having or claiming jurisdiction and all their respective departments, bureaus, and officials. LESSEE shall promptly and diligently repair, restore, and replace as required to maintain or comply as above, or to remedy all damage to or destruction of all or any part of the improvements.

B. Throughout the Lease term, LESSOR shall, at LESSOR's sole cost and expense, maintain the major structural portion of the premises, including the exterior of the building, hangar doors, utilities up to the building, paving and fencing. It shall be LESSOR's sole responsibility to determine whether a maintenance or repair is "major structural" and the

responsibility of LESSOR, or, normal maintenance and repair and the responsibility of LESSEE as set forth above.

13. OWNERSHIP OF IMPROVEMENTS - Throughout the term of this Lease, all improvements identified above, shall be owned by LESSOR. LESSEE shall not remove any improvements from the Demised Premises nor waste, destroy, or modify any improvements on the Demised Premises, except as permitted by this Lease. The parties covenant for themselves and all persons claiming under them that the improvements are personal property.

14. APPEARANCE - LESSEE shall maintain the Demised Premises to the reasonable satisfaction of the LESSOR, and in such a manner that said Premises will be neat and well kept in appearance and a credit to the airport.

15. WARRANTIES - GUARANTEES - COVENANTS - LESSOR makes no warranty, guarantee, covenant, including but not limited to covenants of title and quiet enjoyment, or averment of any nature whatsoever concerning the condition of the Demised Premises, including the physical condition thereof, or any condition which may affect the Demised Premises, and it is agreed that LESSOR will not be responsible for any loss, damage or cost which may be incurred by LESSEE by reason of any such condition or conditions.

16. INSURANCE - BUSINESS INTERRUPTION AND EXTRA EXPENSE COVERAGE - Throughout the term of this Lease, at LESSEE's sole cost and expense, LESSEE shall keep or cause to be kept in force, for the mutual benefit of LESSOR and LESSEE, a policy of insurance against "Business Interruption and Extra Expense" from loss or damage resulting from hazards to owned or non-owned property which prevents normal operations from continuing. Such coverage shall be on an Actual Loss Sustained basis, in an amount equal to at least one (1) years expected operating profit before taxes (calculated according to generally accepted

accounting principles consistently applied) plus expenses, including LESSEE's financial obligation to LESSOR, that necessarily continue notwithstanding the business interruption. The insurance shall also provide Extended Period of Indemnity provisions for payment of loss until normal operations resume.

17. INSURANCE - FIRE - Throughout the term of this Lease, at LESSEE's sole cost and expense, LESSEE shall keep or cause to be kept insured for the mutual benefit of the LESSOR, the LESSEE and the holder of any security interest therein, all improvements to the Demised Premises erected thereupon by the LESSEE, against loss or damage by fire and such other risks as are now or hereafter included in extending coverage endorsements in common use for commercial structures, including vandalism or malicious mischief. The amount of the insurance shall be sufficient to prevent either LESSOR or LESSEE from becoming a coinsurer under the provisions of the policies, but in no event shall the amount be less than the "Full Actual Replacement Value". Full Actual Replacement value, as used herein, means the cost of repairing, replacing, or reinstating, including demolishing, any item or property with materials of like kind and quality in compliance with any law or ordinance regulating repair or construction at the time of loss, without deduction for physical, accounting, or any other depreciation. LESSOR shall not carry any insurance the effect of which, would be to reduce the protection or payment to LESSEE under any insurance that this Lease obligates LESSEE to carry. If any dispute, whether the amount of insurance complies with the above, cannot be resolved by agreement, LESSOR may, not more often than once every 24 months, request the carrier of the insurance then in force to determine the full insurable value as defined in this provision, and the resulting determination shall be conclusive between the parties for the purpose of this paragraph. LESSEE may include the holder of any mortgage on the leasehold or on the fee or both as a loss payee; on the LESSOR's notice of demand LESSEE shall include the holder of any mortgage on the fee as a loss payee to the extent of that mortgage interest. LESSOR shall, at LESSEE's cost and expense, cooperate fully with LESSEE to obtain the largest possible

recovery, and all policies of fire extended coverage insurance required by LESSOR shall provide that the proceeds shall be paid to LESSEE as follows:

- A. The proceeds shall be deemed to be held in trust by the recipient to the uses and purposes prescribed by this Lease.
- B. Payments of the proceeds for repair, restoration, or reconstruction of improvements shall be made monthly on LESSOR's certificates until the work is completed and accepted.
- C. Any insurance proceeds remaining after complying with the provisions of this Lease relating to maintenance, repair, and reconstruction of improvements shall be the LESSEE's sole property.

18. INSURANCE - LIABILITY - Throughout the term of this Lease, at LESSEE's sole cost and expense, LESSEE shall keep or cause to be kept in force, for the mutual benefit of LESSOR and LESSEE, comprehensive broad form general liability insurance against any and all claims and liability for personal injury, death, or property damage arising out of the use, occupancy, disuse or condition of the Demised Premises, personal property thereon, improvements or adjoining areas of ways, providing combined single limit of at least One Million Dollars (\$1,000,000.00), for any one accident or occurrence, for bodily injury or death to one or more persons, and at least Five Hundred Thousand Dollars (\$500,000.00) for Property damage.

19. INSURANCE - WORKERS COMPENSATION - LESSEE shall maintain Worker's Compensation insurance with statutory limits, and employer's liability insurance with limits of not less than One Million Dollars (\$1,000,000.00) per accident or occurrence.

20. INSURANCE - GENERAL REQUIREMENTS - All insurance required by express provisions of this Lease shall be carried only in responsible insurance companies licensed to do

business in the State of California. All such policies shall be nonassessable and shall contain language, to the extent obtainable, to the effect that:

A. Any loss shall be payable notwithstanding any act or negligence of LESSOR that might otherwise result in a forfeiture of the insurance.

B. The insurer waives the right of subrogation against LESSOR and against LESSOR's agents and representatives.

C. The policies are primary and noncontributing with any insurance that may be carried by LESSOR.

D. The policies cannot be canceled or materially changed except after 30 written days notice by the insurer to LESSOR or LESSOR's designated representative.

E. LESSEE shall furnish LESSOR with copies of all such policies promptly on receipt of them, or with certificates evidencing the insurance. Before commencement of the Lease, LESSEE shall furnish LESSOR with binders representing all insurance requirements by this Lease. LESSEE may effect for its own account any insurance not required under this Lease. LESSEE may provide by blanket insurance covering the Demised Premises and any other location or locations any insurance required or permitted under this Lease provided it is acceptable to all mortgagees. LESSEE shall deliver to LESSOR, in the manner required for notices, copies of certificates of all insurance policies required by this Lease, together with evidence satisfactory to LESSOR of payment required for procurement and maintenance of the policy, within the following time limits:

1. For insurance required at the commencement of this Lease, within 30 days after execution of this Lease;

2. For insurance becoming required at a later date, at least 15 days before the requirements takes effect, or as soon thereafter as the requirement, if new, takes effect;

3. For any renewal or replacement of a policy already in existence, at least 30 days before expiration or other termination of the existing policy.

F. LESSOR, and LESSOR's elected and appointed officials, agents, representatives, and employees are to be named as additional insureds under the policy(ies).

If LESSEE fails or refuses to procure or to maintain insurance as required by this Lease or fails to furnish LESSOR with required proof that the insurance has been procured and is in force and paid for, LESSOR shall have the right, at LESSOR's election and on five (5) days notice to LESSEE, to procure and maintain such insurance. The premiums paid by LESSOR shall be treated as added rent due from LESSEE with interest at the rate of 18% per year, to be paid on the first day of the month following the date on which the premiums were paid. LESSOR shall give prompt notice of the payment of such premiums, stating the amounts paid and the names of the insurer or insurers, and interest shall run from the date of the notice.

21. INDEMNIFICATION - LESSEE agrees to and shall defend and indemnify LESSOR and LESSOR's elected and appointed officials, agents, representatives and employees against all claims, liability, loss and expense caused or incurred by reason of injury to person or property, or both, including without limitation, injury to the person or property of LESSEE, its agents, officers and employees, arising out of the condition of the Demised Premises or any operations thereof conducted thereupon or therefrom caused by any act or omission or commission by LESSEE, its agents, officers, employees, or invitees, or any other cause whatsoever, or caused by LESSOR, its agents, officers, employees, or invitees, or any other cause whatsoever, specifically to include the sole active negligence of LESSOR, its agents or employees.

22. DEFINITION OF DEFAULT BY LESSEE - Each of the following events shall be a default by LESSEE and a material breach of this Lease.

- A.** Abandonment or surrender of the Demised Premises or of the leasehold estate, or failure or refusal to pay when due any installment of rent or any other sum required by this Lease to be paid by LESSEE, or to perform as required or conditioned by any other covenant or condition of this Lease.
- B.** The subjection of any right or interest of LESSEE to attachment, execution, or other levy, or to seizure under legal process, if not released within 10 days provided that the foreclosure of any mortgage permitted by provisions of this Lease relating to purchase or construction of improvements shall not be construed as a default within the meaning of this paragraph.
- C.** The encumbrance of the Leases, leasehold estate and improvements thereon without the express written consent of LESSOR.
- D.** The appointment of a receiver to take possession of the Demised Premises, or improvements or of LESSEE's interest in the leasehold estate, or of LESSEE's operation on the Demised Premises for any reason, including but not limited to, assignment for benefit of creditors or voluntary or involuntary bankruptcy proceedings, but not including receivership (1) pursuant to administration of the estate of any deceased or incompetent LESSEE, or (2) instituted by LESSOR, the event of default being not the appointment of a receiver at LESSOR's insistence, but the event justifying the receivership, if any.
- E.** An assignment by LESSEE for the benefit of creditors or the filing of a voluntary or involuntary petition by or against LESSEE under any law for the purpose of adjudication of LESSEE's liabilities; or for reorganization, dissolution, or arrangement on account of or to prevent bankruptcy or insolvency; unless the assignment or proceeding, and all consequent orders, adjudications, custodies, and supervisions are dismissed, vacated, or otherwise permanently stayed or terminated within 30 days after the assignment, filing or other initial event.
- F.** Failure to maintain said Demised Premises as required pursuant to the terms of this Lease.

23. NOTICE OF DEFAULT - As a precondition to pursuing any remedy for an alleged default by LESSEE, LESSOR shall, before pursuing any remedy, give notice of default to LESSEE and to all qualifying subtenants whose names and addresses were previously given to LESSOR in a notice or notices from LESSEE. A qualifying subtenant is a subtenant in possession under an existing sublease which is proper under this Lease.

If the alleged default is nonpayment of rent, taxes, or other sums to be paid by LESSEE as provided in the paragraph on rent, or elsewhere in this Lease directed to be paid as rent, LESSEE shall have 10 days after notice is given to cure the default. For the cure of any other default, LESSEE shall promptly and diligently after the notice commence to cure the default and shall have 10 days after notice is given to complete the cure plus any additional period that is reasonably required for the curing of the default. After expiration of the applicable time for curing a particular default, or before the expiration of that time in the event of emergency, LESSOR may at LESSOR's election, but is not obligated to, make any payment required of LESSEE under this Lease or perform or comply with any covenant or condition imposed on LESSEE under this Lease and the amount so paid plus the reasonable cost of any such performance or compliance, plus interest on such sum at the rate of 10% per year from the date of payment, performance, or compliance (herein called "Act"), shall be deemed to be additional rent payable by LESSEE with the next succeeding installment of rent. No such Act shall constitute a waiver of default or of any remedy for default or render LESSOR liable for any loss or damage resulting from any such Act.

24. REMEDIES IN THE EVENT OF DEFAULT - If any default by LESSEE shall continue uncured, following notice of default as required by this Lease, for the period applicable to the default under the applicable provision of this Lease, LESSOR has the following remedies in addition to all other rights and remedies provided by law or equity, to which LESSOR may resort cumulatively or in the alternative:

A. LESSOR may, at LESSOR's election, terminate this Lease by giving LESSEE notice of termination. On the giving of the notice, all LESSEE's right in the Demised Premises and in all improvements shall terminate. Promptly after notice of termination, LESSEE shall surrender and vacate the Demised Premises and all improvements in broom-clean condition, and LESSOR may re-enter and take possession of the Demised Premises and all remaining improvements and eject all parties in possession or eject some and not others or eject none; provided that no subtenant qualifying under nondisturbance provisions of this Lease shall be ejected. Termination under this paragraph shall not relieve LESSEE from the payment of any sum then due to LESSOR or from any claim for damages previously accrued or then accruing against LESSEE.

B. LESSOR may, at LESSOR's election, re-enter the Demised Premises, and, without terminating this Lease, at any time and from time to time relet the Demised Premises and improvements or any part or parts of them for the account and in the name of the LESSEE or otherwise. LESSOR shall apply all rents from reletting as in the provision on assignment of subrents. Any reletting may be for the remainder of the term or for a longer or shorter period. LESSOR may execute any Leases made under this provision either in LESSOR's name or in LESSEE's name and shall be entitled to all rents from the use, operation, or occupancy of the Demised Premises or improvements or both. LESSEE shall nevertheless pay to LESSOR on the due dates specified in this Lease the equivalent of all sums required of LESSEE under this Lease, plus LESSOR's expenses, less the avails of any reletting or attornment. No act by or on behalf of LESSOR under this provision shall constitute a termination of this Lease unless LESSOR gives LESSEE notice of termination.

C. LESSOR may, at LESSOR's election, use LESSEE's personal property and trade fixtures or any of such property and fixtures without compensation and without liability for use or damage, or store them for the account and at the cost of LESSEE.

D. LESSOR shall be entitled, at LESSOR's election, to each installment of rent or to any combination of installments for any period before termination, plus interest at the rate of 10 percent per year from the due date of each installment. Avails of reletting or attorned subrents shall be applied, when received, as follows: (1) to LESSOR to the extent that the avails for the period covered do not exceed the amount due and charged to LESSEE for the same period, and (2) the balance to LESSEE. LESSOR shall make reasonable efforts to mitigate LESSEE's liability under this provision. LESSOR shall be entitled at LESSOR's election to damages in the following sums: (1) all amounts that would have fallen due as rent between the time of termination of this Lease and the time of the claim, judgment, or other award, less the avails of all relettings and attornments and less all amounts by which LESSOR shall reasonably have mitigated those rental losses, plus interest on the balance at the rate of 10 percent per year, and (2) the "worth" at the time of the claim, judgment, or other award, of the amount by which the unpaid rent for the balance of the term exceeds the then fair rental value of the Demised Premises, or the higher/lower of the fair rental value unencumbered by the Lease and improvements. "Worth", as used in this provision, is computed by discounting the total at the discount rate of the Federal Reserve Bank of San Francisco at the time of the claim, judgment, or award, plus one percent. LESSOR shall not be considered to be in default under this Lease unless (1) LESSEE has given notice specifying the default and (2) LESSOR has failed for 10 days to cure the default, if it is curable, or to institute and diligently pursue reasonable corrective or ameliorative acts for noncurable defaults. LESSEE waives the protections of Civil Code Sections 1932 and 1933.

25. WAIVER OF DEFAULT - No waiver of any default shall constitute a waiver of any other breach or default, whether of the same or any other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by either party shall give the other any contractual right by custom, estoppel, or otherwise. The subsequent acceptance of rent

pursuant to this Lease shall not constitute a waiver of any preceding default by LESSEE other than that default in the payment of the particular rental payment.

26. LEASE ENCUMBRANCE - LESSEE understands and agrees that it cannot encumber the Lease, leasehold estate and the improvements thereon by a deed of trust, mortgage or other security instrument to assure payment of any promissory note of LESSEE without the prior express written consent of the LESSOR in each instance, which consent shall be at the sole and exclusive discretion of the LESSOR. If any deed of trust, mortgage or other security instrument that encumbers the Lease, leasehold estate and the improvements thereon is entered into by LESSEE without LESSOR's prior express written consent, LESSOR shall have the right to declare this Lease in default.

27. EMINENT DOMAIN - If the whole or a substantial part of the Demised Premises hereby leased shall be taken by any public authority under the power of eminent domain, the term of this Lease shall cease as to the part taken, from the day the possession of that part shall be taken for any public purpose, and the rent shall be paid up to that day, and from that day LESSEE shall have the right either to cancel this Lease and declare the same null and void or to continue in possession of the remainder of the same under the terms herein provided, except that the rent shall be reduced in proportion to the amount of the Demised Premises taken. All damages awarded for such taking shall belong to and be the property of the LESSOR whether such damages shall be awarded as compensation for diminution in value to the leasehold or to the fee of the Demised Premises herein leased, LESSEE's only remedies being the election of cancellation or reduction in rent; provided, however, that LESSOR shall not be entitled to any award made for the taking of any installation or improvements on the Demised Premises belonging to LESSEE.

28. QUITCLAIM OF LESSEE'S INTEREST UPON TERMINATION - Upon termination of this Lease for any reason, including but not limited to termination because of default by LESSEE, LESSOR may request and, if requested, LESSEE shall execute, acknowledge and deliver to LESSOR within thirty (30) days after receipt of written demand thereof, a good and sufficient deed whereby all right, title and interest of LESSEE in the Demised Premises is quitclaimed to LESSOR. Should LESSEE fail or refuse to deliver the required deed to LESSOR, LESSOR may prepare and record notice reciting the failure of LESSEE to execute, acknowledge and deliver such deed and said notice shall be conclusive evidence of the termination of the Lease and of all rights of LESSEE or those claiming under LESSEE in and to the Demised Premises.

29. ATTORNEYS' FEES - If either party brings any action or proceeding to enforce, protect, or establish any right or remedy, the prevailing party shall be entitled to recover reasonable attorneys' fees. Arbitration is not an action or proceeding for the purpose of this provision.

30. NOTICES - As used in this Lease, "notice" includes, but is not limited to, the communication of notice, request, demand, approval, statement, report, acceptance, consent, waiver, and appointment. No notice of the exercise of any option or election is required unless the provision giving the election or option expressly requires notice. Unless the provision of this Lease on rent direct otherwise, rent shall be sent in the manner provided for giving notice.

A. Writing. All Notices must be in writing, provided that no writing other than the check or other instruments representing the rent payment itself need accompany the payment of rent.

B. Delivery. Notice is considered given either (a) when delivered in person to the recipient named as below, or (b) on the date shown on the return receipt after deposit in the United States mail in a sealed envelope or container, either registered or certified

mail, return receipt requested, postage and postal charges prepaid, addressed by name and address to the party or persons intended as follows:

Notice to LESSOR: City of Visalia
City Clerk
707 W. Acequia
Visalia, CA 93291

Copy to: City of Visalia
Airport Manager
9501 Airport Drive
Visalia, CA 93277

Notice to LESSEE: D. Lancy Allyn
470 Greenfield Ste. 35
Hanford, CA 93230

C. Change of recipient or address. Either party may, by notice given at any time or from time to time, require subsequent notices to be given to another individual person, whether a party or an officer or representative, or to a different address, or both. Notices given before actual receipt of notice of change shall not be invalidated by the change.

D. Recipient named. Each recipient named must be an individual person. If more than one recipient is named, delivery of notice to any one such recipient is sufficient. If none of the recipients named in the latest designation of recipient is available for delivery in person, and if the notice addressed by mail to each recipient named in the latest designation of recipient is returned to the sender undelivered, notice shall be

sufficient if sent by mail as above to the party as named in this Lease, unless the name or identity of the party has changed as permitted in this Lease and proper notice of the change has been given, in which event the notice shall be sufficient if sent by mail as above to the party named in the latest designating party, and the notice is considered given when the first attempt to give notice was properly made.

31. REGULATIONS - LESSEE shall not conduct, or allow to be conducted upon the Demised Premises, any dangerous or hazardous activities, or any activities considered to be a nuisance to the airport or its tenants and neighbors, and LESSEE agrees to abide by all applicable F.A.A. and U.S. Government rules and regulations, including, but not limited to the following:

A. The LESSEE for himself, his heirs, personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained, or otherwise operated on the Demised Premises for a purpose for which a Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the LESSEE shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted programs of the Department of Transportation and as said Regulations may be amended.

B. The LESSEE for himself, his personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that:

1. No person on the grounds of race, color, sex, age or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subject to discrimination in the use of said facilities; and

2. That in the construction of any improvements on, over or under such land and the furnishing or services thereon, no person on the grounds of race, color, sex, age or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subject to discrimination; and

3. That the LESSEE shall use the Demised Premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted programs of the Department of Transportation, and as said Regulations may be amended.

C. It is understood and agreed that nothing contained herein shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308 of the Federal Aviation Act of 1958.

D. LESSEE agrees to furnish service on a fair, equal and not unjustly discriminatory basis to all users thereof, and to charge fair, reasonable and not unjustly discriminatory prices for each unit or service, provided, that LESSEE may make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.

E. The LESSOR reserves the right (but shall not be obligated to LESSEE) to maintain and keep in repair the landing area of the airport and all publicly owned facilities of the airport, together with the right to direct and control all activities of the LESSEE in this regard.

F. The LESSOR reserves the right to further develop or improve the landing area and all publicly owned air navigation facilities of the airport as it sees fit, regardless of the desires or views of the LESSEE, and without interference or hindrance.

G. The LESSOR reserves the right to take any action it considers necessary to protect aerial approaches of the airport against obstructions, together with the right to prevent LESSEE from erecting, or permitting to be erected, any building or other

structure on the airport which in the opinion of the LESSOR would limit the usefulness of the airport or constitute a hazard to aircraft.

H. During the time of war or national emergency the LESSOR shall have the right to enter into an agreement with the United States Government for military or naval use of part or all of the landing area, the publicly owned air navigation facilities and/or other areas or facilities of the airport. If any such agreement is executed, the provisions of this Lease, insofar as they are inconsistent with the provisions of the agreement with the Government, shall be suspended.

I. It is understood and agreed that the rights granted by this Lease will not be exercised in such a way as to interfere with or adversely affect the use, operation, maintenance or development of the airport.

J. There is hereby reserved to the LESSOR, its successors and assigns, for the use and benefit of the public, a free and unrestricted right of flight for passage of aircraft in the airspace above the surface of the Demised Premises herein conveyed, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft, now known or hereafter used for navigation of or flight in the air, using said airspace or landing at, taking off from, or operating on or about the airport.

K. The Lease shall become subordinate to provisions of any existing or future agreement between the LESSOR and the United States of America, or any agency thereof relative to the operation, development, or maintenance of the airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the airport.

32. CURRENT AND FUTURE AIRPORT REGULATIONS - This Lease and all rights conferred thereby shall at all times be subject to current and future regulations governing any and all activities at the Visalia Municipal Airport to the same extent that such current and future

regulations govern the activities of all persons using the facilities of the Visalia Municipal Airport and occupying structures thereon.

33. MODIFICATIONS - It is understood and agreed by and between the parties hereto that any alterations, modifications, or additions to the structural improvements, including landscaping and the paint colors, on the leasehold Demised Premises by the LESSEE can only be instituted by first obtaining written approval of the LESSOR of the plans, locations and specifications of said structural changes. Alterations, modifications, or additions to the interiors of the improvements shall not be considered structural, provided LESSEE agrees to provide LESSOR one set of "as built" plans for said changes within 60 days of completion.

34. SIGNS - LESSEE agrees that no signs will be painted or erected on the subject Demised Premises unless such signage is first approved in writing by LESSOR and is also approved by the City of Visalia in its governmental capacity. All signage painted or erected on the subject Demised Premises or off-site signage for the benefit or use of LESSEE, shall be in compliance with the City of Visalia ordinance related to signs, zoning and building regulations.

35. AFFECT OF ILLEGALITY - The invalidity or illegality of any provision shall not affect the remainder of the Lease.

36. RELOCATION - LESSOR shall have the right upon six (6) months notice to relocate LESSEE to another location, on airport property. LESSOR shall be responsible for the cost of moving fixed equipment including hangar to the new location. LESSEE agrees that LESSOR will pay no penalties, relocation allowances, damages, or other fees except as stipulated. LESSOR agrees that the rental fees will remain as stated in this contract, should a relocation become necessary, for the balance of the term.

37. TERMINATION RIGHTS - The LESSEE shall have the right to terminate this LEASE in the event the LESSOR exercises the right of paragraph 35. LESSEE shall have the right to terminate this Lease any time during the sixty (60) day period following receipt of notice of relocation.

38. SURRENDER ON TERMINATION - At the expiration or earlier termination of the term, LESSEE shall surrender to LESSOR the possession of the Demised Premises. Surrender or removal of improvements, fixtures, and trade fixtures shall be as directed in above provisions of this Lease on ownership of improvements at termination. LESSEE shall leave the surrendered Demised Premises and any other property in good and broom-clean condition except as provided to the contrary in provisions of this Lease on maintenance and repair of improvements. All property that LESSEE is required to surrender shall become LESSOR's property at the termination of the Lease. All property that LESSEE is not required to surrender but that LESSEE does abandon shall, at LESSOR's election, become LESSOR's property at termination. If LESSEE fails to surrender the Demised Premises at the expiration or sooner termination of this Lease, LESSEE shall defend and indemnify LESSOR from all liability and expense resulting from the delay or failure to surrender, including, without limitation, claims made by any succeeding tenant founded on or resulting from LESSEE's failure to surrender.

39. HOLDOVER - This Lease shall terminate without further notice at expiration of the Lease term. Any holding over by LESSEE after either expiration or termination shall not constitute a renewal or extension, or give LESSEE any rights in and to the Demised Premises, unless as provided in paragraph 2B above. If LESSEE, with LESSOR's consent, remains in possession of the Demised Premises after expiration or termination of the term or after the date in any notice given by LESSOR to LESSEE terminating this Lease, such possession by LESSEE shall be deemed to be a month-to-month tenancy terminable on thirty (30) days' notice given at any time by either party. During any such month-to-month tenancy, LESSEE shall

continue to pay all rent required by this Lease. All other provisions of this Lease, except those pertaining to term, shall apply to the month-to-month tenancy.

40. TIME IS OF THE ESSENCE - Time is of the essence of each and all of the terms and provisions of this Lease and this Lease shall inure to the benefit of and be binding upon the parties hereto and any successors of LESSEE as fully and to the same extent as though specifically mentioned in each instance, and all covenants, stipulations and agreements in this Lease shall extend to and bind any successors, assigns and sublessees of LESSEE.

41. ACCEPTANCE OF DEMISED PREMISES - By signing this Lease, LESSEE represents and warrants that LESSEE has independently inspected the Demised Premises and made all tests, investigations and observations necessary to satisfy itself of the condition of the Demised Premises. LESSEE agrees it is relying solely on such independent inspection, tests, investigations and observations in making this Lease. LESSEE further acknowledges that the Demised Premises are in the condition called for by this Lease, and that LESSEE does not hold LESSOR responsible for any defects in the Demised Premises.

42. ENTIRE AGREEMENT - This Lease contains the entire agreement between the parties. No promise, representation, warranty, or covenant not included in this Lease has been or is relied on by either party. Each party has relied on his own examination of this Lease, counsel of his own advisors and the warranties, representations, and covenants if any, in the Lease itself. The failure or refusal of either party to inspect the Demised Premises or improvements, to read the Lease or other documents, or to obtain legal or other advice relevant to this transaction constitutes a waiver of any objection, contention, or claim that might have been based on such reading, inspection or advise.

43. ABSTRACT OF LEASE - This is the final paragraph and abstract of the Lease dated _____, 2010, by and between the City of Visalia, LESSOR and D. Lancy Allyn, LESSEE, concerning the Demised Premises described in Paragraph 1.B. herein.

For good and adequate consideration, LESSOR leases the Demised Premises to LESSEE, and LESSEE hires from LESSOR, for the term and on the provisions contained in the Lease including, without limitation, provisions prohibiting assignment, subleasing, and encumbering said Lease without the express written consent of LESSOR in each instance, all as more specifically set forth in this abstract by this reference.

The term is five (5) years, beginning on the 1st day of December, 2010 and ending on the 30th day of November, 2015.

This abstract is not a complete summary of the Lease. Provisions in the abstract shall not be used in interpreting the Lease provisions. In the event of conflict between the abstract and other parts of the Lease, the parts contained within the Lease shall control. Execution hereof constitutes execution of the Lease itself.

44. VENUE

This contract is to be construed by the laws of the State of California with venue only in Tulare County, or the United States District Court for the Eastern District of California.

D. Lancy Allyn, LESSEE

Dated: _____, 2010 by: _____
D. Lancy Allyn

CITY OF VISALIA, LESSOR

Dated: _____, 2010 by: _____
Steven M. Salomon, City Manager

APPROVED AS TO FORM:

Dated: _____, 2010

by: _____
Alex Peltzer, City Attorney

Dated: _____, 2010

by: _____
Eric Frost, Risk Management

**City of Visalia
Agenda Item Transmittal**

Meeting Date: December 6, 2010

Agenda Item Number (Assigned by City Clerk): 7i

Agenda Item Wording: Notification of a DUI grant application to the Sobriety Checkpoint Program, UC Berkeley – Traffic Safety Center, through the Governor’s Office of Traffic Safety (OTS) and authorization for the City Manager to execute the grant agreement.

Deadline for Action: December 6, 2010

Submitting Department: Police

Contact Name and Phone Number: Police Chief Mestas, ext 4215, or Sgt. Brian Winter, ext 4232

Department Recommendation: It is recommended that the Council authorize the City Manager to execute an agreement with the Sobriety Checkpoint Program, UC Berkeley - Traffic Safety Center, through the Governor’s Office of Traffic Safety (OTS).

Summary/background: The grant application was modified and we received notification of the changes on 11-2-2010.

The DUI enforcement mini-grant will allow the Visalia Police Department to conduct 4 additional DUI checkpoints. This provides all overtime salaries for all officers and personnel involved in the activities.

The DUI enforcement mini-grant will provide up to \$17,738.08 with no matching funds required by the City of Visalia. The funding period for this grant is October 1, 2010 through September 30, 2011.

Prior Council/Board Actions: N/A

Committee/Commission Review and Actions:

Alternatives: Refuse grant funding.

Attachments: None

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 _____

Finance _____

City Atty N/A
(Initials & date required or N/A)

City Mgr _____

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 move that the Council authorize the City Manager to execute the grant agreement with the Sobriety Checkpoint Program, UC Berkeley – Traffic Safety Center, through the Governor’s Office of Traffic Safety (OTS).

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 06, 2010

Agenda Item Number (Assigned by City Clerk): 7j

Agenda Item Wording: Request authorization to file a Notice of Completion for Ashley Grove No. 12, a subdivision containing 28 multi-family lots (118 units) with one common area, located on the southwest corner of Mooney Boulevard and Riggan Avenue.

Deadline for Action: None

Submitting Department: Community Development Department/
Engineering Division

Contact Name and Phone Number:

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

Department Recommendation: Staff recommends that Council grant authorization to file a Notice of Completion for the Ashley Grove No.12.

Summary/Background: All of the required improvements for this subdivision have been completed and are ready for acceptance by the City Engineer. The subdivision was developed by Porterville SM, LLC and VIC-NIC IV, LLC. They have submitted a warranty bond in the amount of \$ 65,955.88 (as required by the Subdivision Map Act) to guarantee the work, labor and materials furnished for the construction of the public improvements for a period of one (1) year. The completed improvements include landscaping which will be maintained by the City through Landscape and Lighting District No. L0517.

Prior Council/Board Actions: The Final Map recording and Landscape and Lighting District formation were approved by Council at the meeting on March 06, 2007.

Committee/Commission Review and Actions: The tentative subdivision map for Ashley Grove No.12 was approved by Planning Commission on February 27, 2006.

Alternatives: N/A

Attachments: Developer Disclosure Form and 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.): 1Min.

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 move to authorize the filing of a Notice of Completion for Ashley Grove No.12.

Environmental Assessment Status

CEQA Review: Environmental finding completed for tentative subdivision map.

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 6, 2010

Agenda Item Number (Assigned by City Clerk): 7k

Agenda Item Wording: Accept the City of Visalia Cash and Investment Report for the first quarter ending September 30, 2010.

Deadline for Action: None

Submitting Department: Administration - Finance

Contact Name and Phone Number: Eric Frost 713-4474,
Liz Ybarra 713-4598

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, 2010.

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 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.

Economic Outlook

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.

The pace of recovery in output and employment continues to be slow with the national unemployment rate at 9.6% and 14.6% for Tulare County as of September 30, 2010. Household spending remains constrained by high unemployment, modest income growth, lower housing wealth, and tight credit. It is widely anticipated that the pace of economic recovery is likely to remain weak. The federal funds rate (the interest rate at which banks and other depository institutions lend money to each other) currently is at 0.25%.

However, in an effort to promote a stronger pace of economic recovery and to help ensure that inflation is at a consistent level, the Federal Open Market Committee, (FOMC) announced on November 3, 2010 that it will expand its holdings of securities. The Federal Reserve will embark on another round of Quantitative easing, (QE). It intends to purchase \$600 billion of long term securities by the end of second quarter 2011. The intention of this policy is to keep interest rates low, hopefully stimulating economic growth while also providing a supportive environment for corporate and consumer credit. Only time will tell if these actions will make a difference in 2011.

Portfolio Performance

The September 30, 2010 investment report had a managed balance of \$122.75 million with a monthly portfolio earnings rate of 0.86%. Staff anticipated the 1.9% decrease in the portfolio balance due to increase capital expenditures and pending tax revenues scheduled for December 2010. The reduction of the portfolio historically occurs during this time period, but will adjust as soon as the tax payment is received. The increase in WAM from .14 years to .27 years was also assumed because we took advantage of other short term investments which were transferred from LAIF. The earnings rate for FY10/11 (July 10 – Sept 10) was .91 %. 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, 2010	\$125.08	0.99%	\$61.73	0.56%	0.60%	0.14 years
September 2010	\$122.75	0.86%	\$52.8	0.52%	0.42%	0.27 years
Fiscal Year 2010/2011		.91%		0.51%	0.48%	

As tumultuous market conditions continue and global economic crisis grows, investors continue to purchase U.S. Treasuries sending yields down to historic lows. The yield on the two year treasury continued to fall from .60% yield at the end of June 2010 to .42% ending September 30, 2010. Short term treasury yields 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 because a rise in interest rates would quickly depreciate the bond’s value.

LAIF

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 is

overseen by 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 30, 2010 LAIF had 54% of its investments maturing within six 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 2010 the portfolio WAM was 0.27 years.

Investment Plan For The Next Quarter

The City Visalia's investment policy permits investment maturities up to 5 years without specific Council authority. However, in the current interest rate environment, the risk of principal loss due to rising interest rates makes longer term purchases not worth the potential interest rate pick up.

The City has been purchasing 1-2 year securities around 1%. A five year treasury is yielding 1.5%. A 1% rise in interest rates would decrease the value of a 5 year note by over 4% or \$40,000 on a \$1M investment. Staff believes a 1% increase in 5 year rates is very likely in the next year. ***Because the market value of an investment declines when interest rates rise, staff will not be investing beyond 1-2 years because staff believes interest rates will rise in the future. Long term, staff believes rates in the 5 year sector should be around 4+%.***

The investment policy also allows a wide range of fixed income investment options. However, because staff has been focusing on short-term investments, the best alternatives have been bank certificates of deposits. Recently, California short-term notes have also offered competitive yields. ***As a result, staff expects to continue to invest in bank CDs and California short term debt over the next quarter.***

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 9/30/2010.

Table III: Cash Summary at Market Value, 9/30/2010

Investment Type	Amount (in millions)
Managed Portfolio	
LAIF	\$52.83
CD's	\$25.24
Agencies	\$5.42
Corporate Note	\$5.29
Public Investment Money Market	\$20.05
Citizens Sweep Account	\$13.92
Total Managed Portfolio	\$122.75
Trustee Cash and Investments	\$11.55
Banks & Depositories	\$.34
Total Cash & Investments	\$134.65

This information is taken from the two report attachments: 1) City of Visalia Investment Position Report as of 9/30/2010, attachment #1; and 2) City of Visalia Cash and Investments Summary as of September 30, 2010, attachment #2.

Attachments:

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

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, 2010.

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:

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Attachment #1

City of Visalia Investment Position Report 30-Sep-10		Coup. Rate	Yield (YTM)	Maturity Date	Face Value	Purchase Price	General Ledger Balance	Current Market Value	Purchase Date	
Checking Accounts		11.3%								
Citizens Business Bank		0.80%	0.80% *	30-Sep-10	13,913,703	13,913,703	13,913,703	13,913,703	Various	
Totals			0.80%		13,913,703	13,913,703	13,913,703	13,913,703		
Average Maturity (Days/Years)			1							
* Note: Interest is based on an average daily balance.										
Agency Notes		4.4%								
FFCB	31331XG30	08-143	5.45%	4.42%	21-Jun-12	3,000,000	3,127,320	3,275,640	3,252,180	13-Nov-07
FHLB	3133XLX73	08-096	5.00%	4.71%	14-Sep-12	2,000,000	2,025,140	2,176,260	2,168,760	28-Sep-07
Totals			4.30%			5,000,000	5,152,460	5,451,900	5,420,940	
Average Maturity (Days/Years)			629		1.72					
Average Duration										
CD'S		20.6%								
CDARS - Bank of The Sierra	11-049d	0.83%	0.83%	11-Aug-11	5,000,000	5,000,000	5,000,000	5,000,000	11-Aug-10	
CDARS - Bank of The Sierra	11-076c	0.78%	0.78%	08-Sep-11	5,000,000	5,000,000	5,000,000	5,000,000	09-Sep-10	
CDARS - Citizens Business Bank	10-337c	0.70%	0.70%	04-Nov-10	5,000,000	5,000,000	5,000,000	5,000,000	06-May-10	
CDARS - Citizens Business Bank	10-227a	1.10%	1.11%	20-Jan-11	5,000,000	5,000,000	5,000,000	5,000,000	21-Jan-10	
Visalia Community Bank		1.30%	1.31%	08-Oct-10	240,000	240,000	240,000	240,000	08-Oct-09	
Citizens Business Bank CD	11-032c	0.85%	0.85%	24-Jul-11	5,000,000	5,000,000	5,000,000	5,000,000	24-Jul-10	
Totals			0.86%		25,240,000	25,240,000	25,240,000	25,240,000		
Average Maturity (Days/Years)			219		0.60					
Corporates		4.3%								
General Electric Cap. Corp	11-020	5.00%	1.50%	10-Apr-12	5,000,000	5,293,200	5,293,200	5,291,350	26-Jul-10	
Totals			1.51%		5,000,000	5,293,200	5,293,200	5,291,350		
Average Maturity (Days/Years)			559		1.53					
Public Investment Money Market		16.3%								
Rabobank, N.A.		0.68%	0.68%	30-Sep-10	20,054,105	20,054,105	20,054,105	20,054,105	Various	
Totals			0.68%		20,054,105	20,054,105	20,054,105	20,054,105		
Average Maturity (Days/Years)			1							
LAIF		43.0%								
LAIF - CITY		0.52%		Demand	5,249,594	5,249,594	5,249,594	5,249,594	Various	
LAIF - VPFA		0.52%		Demand	39,913,332	39,913,332	39,913,332	39,913,332	Various	
LAIF - RDA		0.52%		Demand	7,667,599	7,667,599	7,667,599	7,667,599	Various	
					52,830,525	52,830,525	52,830,525	52,830,525		
Totals			0.86%		122,038,333	122,483,993	122,783,433	122,750,623		
Average Maturity (Days/Years)			98		0.27					
Change from	31-Aug-10	Rate	-0.02%							
		Days	4							

Attachment #2

CITY OF VISALIA CASH & INVESTMENTS SUMMARY As of September 30, 2010

<u>INSTITUTION</u>	<u>PURPOSE</u>	<u>BALANCE</u>	<u>TOTAL</u>
<u>CASH IN BANKS</u>			
BANK OF AMERICA	CONVENTION CENTER - working cash for operations	\$ 51,247	
BANK OF AMERICA	GOLF - working cash for operations	196,087	
CITIZENS BUSINESS BANK	A/P & PAYROLL	85,624	
PETTY CASH	VARIOUS DEPTS	10,934	
	<i>Total Cash Deposits</i>	10,934	\$ 343,892
<u>CASH AND INVESTMENTS WITH FISCAL AGENTS (TRUSTEE)</u>			
US BANK	2002 WASTE WATER BONDS	864,013	
	2003 EAST VISALIA REDEVELOPMENT	394,057	
	2005 CERTIFICATE OF PARTICIPATION	2,061,100	
UNION BANK	Section 108 WWTP	100,123	
ACCEL (Workers Compenation)	EXCESS LIABILITY DEPOSITS	966,143	
CITIZENS BUSINESS BANK	RDA LOAN - MOONEY DISTRICT	6,093,598	
DELTA DENTAL	DENTAL PREFUNDING	60,700	
EIA HEALTH	HEALTH PREFUNDING	962,052	
KEENAN & ASSOC	WORKERS COMP PREFUNDING	45,080	
VSP	VISION PREFUNDING	11,210	
	<i>Total Trustee Deposits</i>	11,210	11,558,075
<u>PORTFOLIO INVESTMENTS (MARKET VALUE)</u>			
UNION BANK OF CALIFORNIA INVESTMENTS		10,712,290	
LOCAL AGENCY INVESTMENT FUND		52,830,525	
PUBLIC INVESTMENT MONEY MARKET (RABOBANK)		20,054,105	
SWEEP ACCOUNT (CITIZENS)		13,913,703	
CD'S		25,240,000	
	<i>Total Portfolio Investments</i>	122,750,623	
TOTAL CASH AND INVESTMENTS			\$ 134,652,590

City of Visalia Agenda Item Transmittal

Meeting Date: December 6, 2010

Agenda Item Number (Assigned by City Clerk): 71

Agenda Item Wording: Authorization to express interest in providing short-term financing to the Measure R authority of up to \$10 million, repayable in 3 year or until sufficient debt is accumulated to justify a bond financing, which ever is shorter.

Deadline for Action:

Submitting Department: Finance

Contact Name and Phone Number: Eric Frost, Administrative Services Director, 713-4474

Department Recommendation: Authorization to express interest in providing short-term financing to the Measure R authority of up to \$10 million, at 150 basis points above the Local Agency Investment Fund rate, repayable in 3 year or until sufficient debt is accumulated to justify a bond financing, which ever is shorter.

Summary/background: The citizens of Tulare County passed a ½ cent ballot measure for roads and other transportation projects in 2006. This measure provides direct funding to local agencies as well as funding for major County projects.

The agency has been working on a number of projects, striving to accelerate, when possible, the construction of these projects. The agency will incur the project's costs before it receives the sales tax revenue. As a result, the agency will need to finance a number of these projects.

The agency has determined that it is more efficient to accumulate a certain amount of debt before issuing bonds because debt issues have certain fixed costs regardless of issuance size. To reduce costs, the agency is striving to accumulate some \$50 million in debt. To do this, however, the agency needs bridge financing before it issues the larger debt offering.

Tulare County has lent the agency \$20 million at 50 basis points above their earnings rate. (100 basis points equals 1%. The current county earnings rate is 2.7%)

A large portion of the portfolio is invested in the State of California's Local Agency Investment Fund which is yielding 0.45%. Staff proposes that the City offer to lend up to 10% of the portfolio or \$10 million, which ever is less, to the agency under the following terms:

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.

Amount: Up to \$10 million

Term: 3 years or bond issue, which ever is shorter

Rate: 150 basis points above the quarterly Local Agency Investment Fund rate, reset annually. No prepayment penalty.

Security: Pledge of sales tax revenues

Staff recommends offering this loan because:

- 1) The City will be promoting the acceleration of Measure R road projects, many of which are in Visalia.
- 2) The interest rate is significantly better than what the City is currently being offered in other investments. For example, a three year treasury is trading at a yield of 0.8%.
- 3) The amount recommended by staff is less than 10% of the portfolio.

If the Council approves this item, the loan documents would need to be developed and returned to Council for approval.

Prior Council/Board Actions:

Committee/Commission Review and Actions:

Alternatives: Decline to offer any loan amounts to Measure R
Revise the terms of the offer.

Attachments:

Recommended Motion (and Alternative Motions if expected): Move that the City express interest in offering short term financing to the Measure R authority in an amount not to exceed \$10 million.

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 6, 2010

Agenda Item Number: 7m

Agenda Item Wording: Request authorization for the City Manager to execute a contract amendment with Mark Thomas & Company, Inc. to perform work to consider three additional alternatives for the improvement of the interchange at Lovers Lane and State Route 198. Contract amendment cost: \$61, 582.00

Deadline for Action: None

Submitting Department: Community Development Department/
Engineering Division

Contact Name and Phone Number:

Chris Young, Community Development Director 713-4392
Adam Ennis, Engineering Services Manager 713-4323

Department Recommendation: The Community Development Department recommends that City Council authorize the City Manager to execute a contract amendment with Mark Thomas & Company, Inc. to perform work to consider three additional alternatives for the improvement of the interchange at Lovers Lane and State Route 198 (Project No. 3011-9958), at the cost of \$61,582.00. All funding for this project is through Measure R Regional.

Summary: Mark Thomas & Company Inc, the engineering consultant preparing the Project Study Report (PSR) for the Lovers Lane/SR198 improvements, has completed various traffic analysis and developed several geometric alternatives. Caltrans has internally reviewed these items, and recommends that the City consider a more global analysis of the SR 198 section, between Ben Maddox Way and the future Road 148.

Some of the future improvements that Caltrans has recommended for review include the addition of north/south crossings over the freeway; the creation of a frontage road couplet system, similar to the one in place west of Ben Maddox Way; and possibly converting the Lovers Lane/SR 198 interchange to a diamond style interchange. City staff will return to City Council during a work session to present the results and recommend a direction for the next phase of work.

City staff concurs with Caltrans that this important task should be completed now, prior to narrowing down the alternatives for final consideration. This additional analysis will help to provide interchange improvements at Lover's Lane/SR 198 that will coordinate with other long term improvements developed through this additional analysis to serve the community well for years to come.

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 CY 11/20/10
(Initials & date required)

Finance MM 11/23/10
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 anticipated schedule for the Project is as follows:

- Additional analysis of the 198 corridor: 4 months from Notice to Proceed.
- Project Study Report (PSR): complete early 2012
- Project Report (PR): complete mid 2013
- Design: complete early 2015
- Construction: complete 2017

Background: On May 10, 2007, the City of Visalia hired Mark Thomas & Company to prepare the Project Study Report (PSR) for improvements to the Lovers Lane Interchange at State Highway 198. The Lovers Lane Interchange currently operates at low levels of service (LOS), and modifications are needed to address current and forecasted traffic volumes. The selection of the final interchange layout will be made from the alternatives presented in the PSR. Once the PSR is approved by the City and Caltrans, work can commence on the Project Report (PR) which develops the preferred alternative; followed by the final environmental documents, right of way acquisition, engineering design, and construction of interchange modifications.

To date the consultant has completed the initial site assessment, utility mapping, survey work for preliminary environmental analysis, traffic analysis and has developed alternative layouts for the interchange. The initial traffic analysis found that the previously approved 2035 forecasted volumes cannot be reasonably accommodated at the upgraded Lovers Lane Interchange, without the inclusion of the future Road 148 interchange. The City requested and Cal Trans allowed the Road 148/SR 198 interchange be added into the analysis for the Lovers Lane Interchange, since it is planned and budgeted in Phase 2 of Measure R Regional Funding.

The Consultant has completed the additional traffic analysis, which includes the Road 148 Interchange. The new projected traffic volumes, analysis, and geometrics were presented to Caltrans via a Technical Memorandum submitted in July 2010. The Technical Memorandum documented the improvement alternatives considered for the SR 198/Lovers Lane Interchange, and provided recommendations for further in depth analysis or rejection.

Caltrans reviewed the Technical Memorandum and has recommended that the City of Visalia consider an additional global analysis of the traffic impacting the SR 198 corridor between Ben Maddox Way and the future Road 148 interchange. The additional global analysis will review possible future improvements such as adding north/south crossings over the freeway; creating a couplet system between Ben Maddox Way and Road 148; and converting the existing Lovers Lane Interchange from a hook ramp configuration to a diamond configuration. A diamond interchange is the most efficient, safe, and expandable interchange alternative. It is important to review these different scenarios concurrently to develop a coordinated solution for the area.

Through discussions with Caltrans, it is understood that any long term solutions developed through the additional global analysis will not impede the improvements to the Lovers Lane Interchange. Instead, the long term improvements will be phased and incorporated into the City's long term planning and budgeting process. It is estimated that any recommended global improvements that result from this analysis will be constructed by the year 2035, so as to provide the acceptable LOS for the entire corridor.

The Consultant has provided a proposed fee of \$61,582.00 for the additional work and will be completed within approximately 4 months of the Notice to Proceed from the City of Visalia.

The additional work will include:

- Additional Coordination Meetings

- Development of Concept Level Geometric Drawings
- Preliminary Cost Estimates
- Additional Traffic Analysis and Evaluation of Existing Traffic Conditions
- Coordination with TCAG for modeling of the three alternatives
- Forecast of Future Traffic Volumes
- Evaluation of Future Traffic Conditions
- Draft Traffic Forecasting and Operations Report
- Final Traffic Forecasting and Operations Report

Prior Council/Board Actions:

- May 7, 2007: City Council authorized the City Manager to execute an agreement with Mark Thomas & Co. to prepare the Project Study Report.
- September 21, 2009: City Council authorized the City Manager to execute a contract amendment to perform additional work related to the future Road 148/SR 198 Interchange.

Committee/Commission Review and Actions: None

Alternatives: None Recommended

Attachments: Attachment No. 1: Lovers Lane Interchange Vicinity Map

Recommended Motion (and Alternative Motions if expected):
 I move to authorize the City Manager to execute a contract amendment with Mark Thomas & Company, Inc. to perform work to consider three additional alternatives for the improvement of the existing interchange at Lovers Lane and State Route 198 at the estimated cost of \$61,582 (Project No. 3011-9958) and advance \$62,000 of the 2011/12 budget appropriation for this project to 2010/11.

Financial Impact

Funding Source:
 Account Number: 3011-00000-720000-0-9958

Budget Recap:

Total Estimated Cost: \$383,876.00	New Revenue:	\$
Amount Budgeted: \$575,107.00	Lost Revenue:	\$
New funding required: \$000,000	New Personnel:	\$
Council Policy Change: Yes ___	No <u>X</u>	

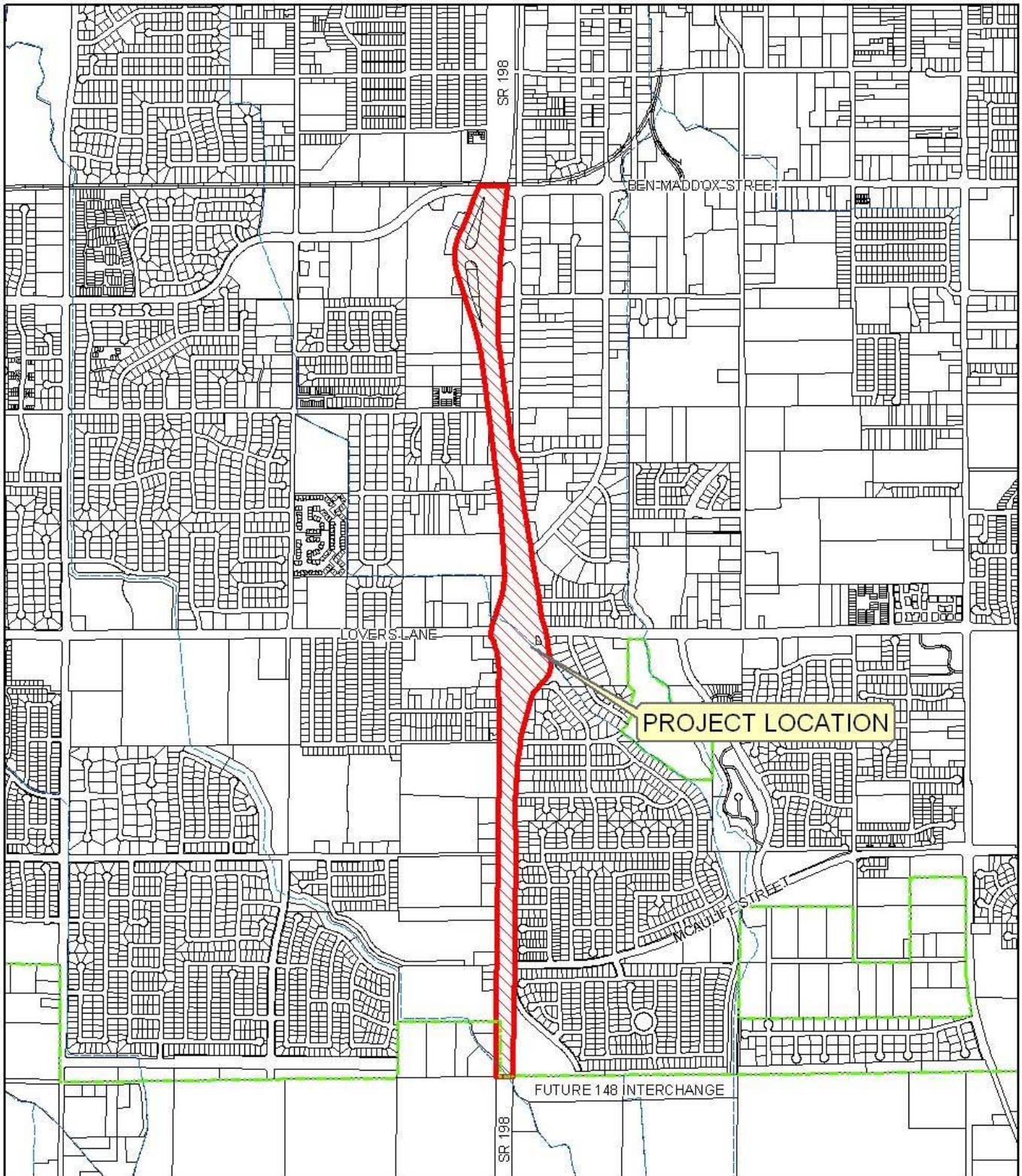
Environmental Assessment Status

CEQA Review:
 Required? Yes No
 Review and Action: Prior: Work can commence after the PSR is approved.
 Required:

NEPA Review:
 Required? Yes No Work can commence after the PSR is approved.
 Review and Action: Prior:
 Required:

Copies of this report have been provided to:

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)



Lovers Lane Interchange Vicinity Map



**City of Visalia
Agenda Item Transmittal**

Meeting Date: December 6, 2010

Agenda Item Number (Assigned by City Clerk): 7n

Agenda Item Wording: Authorization to appropriate an additional \$112,000 for the Recreation Park Playground Project. Approximately \$69,000 will come from Park Impact Fees (Fund 1211) and \$43,000 will come from General Fund reserves; and approve a change order for \$118,376 for additional project work.

Deadline for Action: December 6, 2010

Submitting Department: Parks & Recreation

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

Department Recommendation: Authorization to appropriate an additional \$112,000 for the Recreation Park Universal Playground Project (Account 3011-0-72-0-8021). Approximately \$69,000 will come from Park Impact Fees (Fund 1211) and \$43,000 will come from General Fund reserves.

Also, approve a recommendation to approve a Change Order in the amount of \$118,376 for DL Construction to complete additional work related to the project.

Summary: Authorization to appropriate an additional \$112,000 for the Recreation Park Universal Playground Project. The project currently has a budget shortfall due to the unforeseen impacts of the old municipal pool buried beneath a portion of the proposed new playground equipment.

If the appropriation recommendation is approved, funding for the project will be \$251,000 from a State Park grant; \$43,000 from the General Fund; and \$294,000 from Park Impact Fees.

This means approximately 50% of the total project funding will come from Park Impact Fees and 50% will come from other sources (State grant and the general fund). Historically, projects that utilize Park Impact fees, that have a community wide benefit, have shared in the cost of the project between new development and other funding sources.

Project Background:

This document last revised: 12/2/10 4:31:00 PM
File location and name: H:\(1) AGENDAS for Council - DO NOT REMOVE\2010\12-6-2010\Item 7n recpark playground.doc

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 original project consisted of removing the existing and outdated 30 year old playground equipment and replacing it with a modern universally accessible playground system. Additional security lights and electrical improvements were also part of this project.

The funds for the project were approved as part of the City's 2008-10 CIP plan. A total of \$476,000 has been appropriated for this project with \$251,000 coming from a RZH State Park Bond Act (Proposition 40) and \$225,000 coming from Park Developer Impact Fees (Fund 1211).

On April 19, 2010, the City Council awarded a construction contract to DL Construction of Fresno for \$330,000 (plus \$11,800 for two additional alternative additives) for the Recreation Park Universal Playground project

Other expenses for this project include the original design work for the new park playground equipment by RHAA Consulting for \$43,415. A few other minor expenses include project manager and building permit fees.

Project Complications:

The project became problematic when the old City pool that was buried beneath a portion of the old playground equipment interfered with the planned footings for many of the proposed new playground pieces.

The project was delayed while City and project engineers tried to determine the best course of action. The project architect RHAA used the sub-consulting firms of Kleinfelder, Gateway, and Lane Engineers to devise a new plan for new footings and a new storm drain system to address the problems associated with the new playground equipment in the old pool area.

RHAA also recommended removing some of the original planned pieces of equipment and using some different pieces of equipment that would ultimately benefit the project.

Additional Project Expenses:

The additional design and new scope of work has created some additional project expenses. The additional project expenses compensate the general contractor for the unexpected project delay (per contract); pay for services for the additional engineering work; and pay for the new scope of work to be performed by the general contractor. Those additional expenses are outlined below:

RHAA Re-Design (9.21.10)	\$ 23,450
<ul style="list-style-type: none">• Kleinfelder (Goe Tech) \$ 9,000• Gateway (Storm Drain) \$ 4,700• Lane Engineering \$ 1,750• RHAA \$ 8,000	
Project Delay Compensation For The General Contractor	\$ 13,831
<ul style="list-style-type: none">• Delay period: 7.29.10 to 11.23.10• 118 calendar days x \$117.21 per day	
DL Construction Bid For Re-Design Work (11.17.10)	\$ 118,376
Gateway Add'l survey For New Storm Drain work	<u>\$ 2,000</u>

Total Projected Costs For Additional Project Work

\$ 157,657

Additional Scope of Work For DL Construction:

The additional scope of work for DL Construction totals \$118,376 as outlined above. This additional work is detailed below and will be subject to the approval from the City's Change Order Committee:

- Re-Mobilization (\$ 7,500)
- Demolition, excavate, hauling, grading, & new fabric (\$29,403)
- New Storm Drain System (\$31,160)
- Add'l Playground Equipment (\$37,942)
- 15% Profit & Overhead Per Contract (\$15,901)
- 1.5% Bond Per Contract (\$1,590)

The Change Order Committee has a policy that change orders that exceed 10% of the total project cost must be approved by the City Council. Since this large \$118,376 cost clearly exceeds the 10% rule, this proposed change order requires the approval of the City Council.

Current Project Status

The general contractor DL Construction was given a Notice To Proceed on November 25, 2010, so the project is currently underway again.

Prior City Council Action: Project construction award on April 19, 2010.

Recommended Motion (and Alternative Motions if expected):

That the City Council approve the following:

Authorization to appropriate an additional \$112,000 for the Recreation Park Universal Playground Project (Account 3011-0-72-0-8021). Approximately \$69,000 will come from Park Impact Fees (Fund 1211) and \$43,000 will come from General Fund reserves.

Also approve a recommendation to approve a Change Order in the amount of \$118,376 for DL Construction to complete additional work related to the project.

Environmental Assessment Status

CEQA Review: Required? **Yes** **No**
Review and Action Prior: **Required:**

NEPA Review: Required? **Yes** **No**
Review and Action Prior: **Required:**

Financial Impact

Funding Source

Account No. 1211-720000-0-9743
Development Impact Fees: \$950,000

Budget Recap

Total Estimated Cost	\$780,000	New Revenue dollars
Amount Budgeted	\$950,000	Lost Revenue dollars
New Funding Required	\$0	New Personal dollars
Council Policy Change	Yes ___	No <u>X</u>

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 6, 2010

Agenda Item Number: 7o

Agenda Item Wording: First Reading of Ordinance No. 2010-20 to adopt the 2010 California Fire Code, 2010 California Administrative Code, 2010 California Referenced Standard Code, 2010 California Building Code, 2010 California Plumbing Code, 2010 California Mechanical Code, 2010 California Electric Code, 2010 California Historical Building Code, 2010 California Existing Building Code, 2010 California Residential Code, 2010 California Green Building Standards Code, and 2010 California Energy Code. These are State mandated changes to the Codes. Set public hearing for consideration of adoption of the Ordinance on December 20, 2010.

Deadline for Action: January 1, 2010

Submitting Departments: Community Development Department/Building Safety Division, Fire Department and Construction Review Committee.

Contact Name and Phone Number:

Dennis Lehman, Building Official, 713-4495
Mark Nelson, Fire Chief, 713-4218

Introduction: This is the first reading of an ordinance adopting the upcoming State mandated changes to the California Codes that are listed above. These State Code changes are effective January 1, 2011. As previously noted during a Work Session of the City Council on October 4, 2010, the Residential Fire Sprinkler Provision contained within the new Residential Code, will require that all new one and two-family homes be protected with fire sprinklers (State mandated). Local amendments to the new Residential Code that are recommended by the City's Fire Chief are not included in this proposed ordinance but may be considered at a later date. The Fire Chief and the Building Official will work closely with the Home Builder's Association and the development community to draft and implement new policies which may void the necessity for a local code amendment.

Staff is recommending that Council approve the first reading of this Ordinance on December 6, 2010. A public hearing on the ordinance is scheduled for December 20, 2010 and adoption of the ordinance will be requested at that time.

Staff Recommendation: Approve the first reading of Ordinance No. 2010-20 to adopt updates to the 2010 California Fire Code, 2010 California Administrative Code, 2010 California Referenced Standard code, 2010 California Building Code, 2010 California Plumbing Code, 2010 California Mechanical Code, 2010 California Electric Code, 2010 California Historical

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.): 3

Review:

Dept. Head _____
(Initials & date required)

Finance _____
City Atty JK _____
(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.

Building Code, 2010 California Existing Building Code, 2010 California Residential Code, 2010 California Green Building Standards Code, and 2010 California Energy Code, including Appendices as determined by the Building Official and Fire Chief.

1. **Summary:** On January 1, 2011, the 2010 California Building Standards, Title 24 Codes become effective. The 2010 Building Standards contain two new mandatory code volumes; the Residential Code (one and two-family) and the California Green Code (first in the country). Local amendments to the 2010 Building Codes are permitted at the discretion of the City Council. There are no proposed local amendments at this time, the Building Division and the Fire Department will continue to work with local developers concerning any proposed changes to the Building Codes and which can be presented to City Council at a later date.

The major changes for this code cycle are the introduction of the California Residential Code and the California Green Building Standards Code. The Residential Code provides the requirements for automatic sprinkler systems in new single family dwellings. A significant requirement of the Green Building code is efficient water usage in residential units. New to the Building Code are the provisions for Live/Work units and Open Malls. Live/Work units are dwelling units or sleeping units in which a significant portion of the space includes a non-residential use that is operated by the tenant. An Open Mall is an unroofed common pedestrian way serving a number of tenants in a building that doesn't exceed three stories in height. Another change of the Building Code is the requirements for Group M (Mercantile) occupancies that are used for the display and sale of upholstered furniture will be provided with an automatic sprinkler system. A notable change in the California Electrical Code is the requirement for tamper resistant receptacles in single family dwellings. The Mechanical Code has been amended to require all HVAC systems to be designed by a professional in that field.

Background: On July 1, 2010, the State of California, Building Standards Commission published the 2010 California Fire Code (CFC), 2010 California Administrative Code, 2010 California Referenced Standard code, 2010 California Building Code (CBC), 2010 California Plumbing Code (CPC), 2010 California Mechanical Code (CMC), 2010 California Electric Code (CEC), 2010 California Historical Building Code, 2010 California Existing Building Code, 2010 California Residential Code (CRC), 2010 California Green Building Standards Code (CALGreen), and 2010 California Energy Code. Local jurisdictions are required by state law to implement these State of California mandated codes along with local amendments by January 1, 2010.

The Building Safety Division, in order to address more specifically some code requirements, recommends adoption of some Appendices found in each code. The following Appendices have been identified to be adopted during this code cycle: 2010 California Building Code appendix B: Board of Appeal, C: Group U - Agricultural Buildings, F: Rodentproofing, H: Signs, I: Patio Covers, and J: Grading. 2010 California Residential Code appendix H: Patio Covers. 2010 California Mechanical Code appendix B: Procedures to be followed to Place Gas Equipment into operation, C: Installation and testing of oil (liquid) fuel-fired equipment, D: Unit Conversion Table. 2010 California Plumbing Code appendix A: Recommended Rules of Sizing the Water Supply system, B: Explanatory Notes on Combination Waste & Vent systems, D: Drainage Systems, I: Installation Standards, and K: Private Sewage Systems. 2010 California Green Building Standards Code appendix A4: Residential Voluntary Measures, A5: Nonresidential Voluntary Measures.

The Fire Chief recommends amendments to the California Building Code Section 903.2.18 and the California Residential Code Sections R313.2 and R313.3.1.1 Exception #4, and the adoption of the following Appendix in the California Fire Code: Appendix Chapter 4: Special

Detailed Requirements Base On Use and Occupancy, B: Fire-Flow Requirements for Buildings, BB: Fire-Flow Requirements for Buildings, C: Fire Hydrant Locations and Distribution, CC: Fire Hydrant Locations and Distribution, D: Fire Apparatus Access Roads, E: Hazard Categories, F: Hazard Ranking, G: Cryogenic Fluids-Weight and Volume Equivalents, H: Hazardous Materials Management Plans and Hazardous Materials Inventory Statements, and I: Fire Protection Systems-Noncompliant Conditions.

The Code adoption process is to repeal the present ordinance chapters and replace them with the current code required by the state with local amendments recommended by City staff and Construction Review Committee.

The California Building Standards Commission approved these codes through its routine code approval process. Two additional codes have been introduced during this code cycle. These codes are the 2010 California Residential Code (2010 CRC), modeled after the 2009 International Residential Code, and the new introduction of the 2010 California Green Building Standards Code, (2010 CalGreen Code). The 2010 California Residential Code is strictly for the construction of One-and Two- family dwellings and townhouses, along with miscellaneous structures classified as "U" occupancies and an accessory to the dwelling. The 2010 California Green Building Standards Code provides mandatory features regulating energy efficiency, water efficiency and conservation, material conservation and resource efficiency, environmental quality and more. These new codes are mandated by the State of California for incorporation into city ordinances. Many of the previously adopted codes have undergone major revision and contain many changes to include new building materials and to meet changing conditions in the construction industry. The California Building Code Volumes 1 and 2 are based on the 2009 version of the International Building Code and retain much of the same building design and construction requirements relating to fire and life safety and structural safety. These two volumes also contain additional "California Amendments" with specific disabled accessibility regulations, requirements for group home facilities and include general construction building standards of state adopting agencies such as the State Fire Marshal, Housing and Community development and OSHPD.

The Visalia Construction Review Committee has reviewed the proposed codes for application in the City of Visalia and has found no special circumstances that would prevent its administration.

The Committee also agreed that the following appendices should be adopted: California Building Code Appendix, B Board of Appeals, C Group U-Agricultural Buildings, F Rodentproofing, H Signs, I Patio Covers and J Grading, California Plumbing Code, Appendix A Sizing water supply system, B Explanatory notes on Combination Waste & Vent systems, D Drainage Systems, I Installation Standards, K Private Sewage Systems, California Mechanical Code, Appendix B Procedures to be followed to Place Gas Equipment into operation, C Installation and testing of Oil (liquid) fuel-fired equipment, D Unit Conversion Tables, California Residential Code Appendix H Patio Covers, California Green Building Standards Code, Appendix A4 Residential Voluntary Measures and A5 Nonresidential Voluntary Measures.

2010 Fee schedules contained in any of the adopted codes are deleted and replaced by a fee schedule prepared by the Chief Building Official. The current existing building permit fees will remain the same and will have no increase at this time. The existing building permit fee schedules were prepared by the Chief Building Official and presented to and adopted separately by the City Council as resolution number 2007-34 dated June 2, 2007. A fee for inspections and plan reviews of the new residential fire sprinkler system requirement is being developed for future consideration by City Council.

With the introduction of the two new codes, Building Safety has participated in numerous training sections bringing staff up to speed on these new requirements. Some notable changes are the requirement of fire sprinkler systems in all new residential buildings and the introduction of mandatory green building standards in residential and commercial structures. With the adoption of the California Residential Code, which includes the requirement for residential fire sprinklers in one-and two-family dwellings.

It is the recommendation of the Construction Review Committee, the Fire Department and the Division of Building Safety that these codes be adopted.

Pursuant to California Government Code Section 50022.3 the Fire Department and the Division of Building Safety are requesting a public hearing on the proposed modifications to be set for the next council meeting.

Prior Council/Board Actions: On October 4, 2010 the Fire Department and Division of Building Safety reviewed the 2011 code changes and the proposed modifications by the Fire Department.

Committee/Commission Review and Actions: Construction Review Committee recommended Council Approval.

Alternatives: Take no action – State building code would become effective without local amendments and adoption of appendices January 1, 2011 by operation of law.

Attachments: Ordinance No. 2010-20

Recommended Motion (and Alternative Motions if expected): Accept the first reading of Ordinance No. 2010-20 repealing existing and adopting updated Building and Construction Ordinance Chapter 15.04 through Chapter 15.76 and repealing existing and adopting updated Fire Ordinance Chapter 8.20.010 as submitted and setting a public hearing at the next City Council meeting.

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:

**ORDINANCE NO. 2010-20
AN ORDINANCE OF THE CITY OF VISALIA
TO REPEAL AND ADOPT IN THEIR ENTIRETY
CHAPTERS 15.04 THROUGH 15.76
OF THE VISALIA MUNICIPAL CODE,
BUILDINGS AND CONSTRUCTION ORDINANCE,
AND TO REPEAL AND ADOPT SECTION 8.20.010
OF THE VISALIA MUNICIPAL CODE,
FIRE CODE ORDINANCE.**

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 and its Charter, the City of Visalia is authorized to secure and promote the public health, comfort, safety and welfare of its citizenry. The City Council of the City of Visalia finds that the revisions to Chapters 15.04, 15.06, 15.08, 15.12, 15.16, 15.20, 15.24, 15.28, 15.32, and 15.36 of the Visalia Municipal Code as set forth below are necessary to promote the public health, safety and welfare of the citizens of the City of Visalia. The existing Chapters 15.04, 15.06, 15.08, 15.12, 15.16, 15.20, 15.24, 15.28, 15.32, and 15.36 are hereby repealed and replaced as follows: .

Chapter 15.04

CALIFORNIA ADMINISTRATIVE CODE

Sections:

15.04.010 Adoption of the 2010 California Administrative Code.

A. That certain administrative code, in book form known and designated as the 2010 California Administrative Code, California Code Regulations Title 24 Part 1, Published by International Code Council, is adopted as the technical Administrative Code of the city, to all intents and purposes and to the same effect as if each and every section, paragraph, subparagraph, word, phrase or clause contained therein were fully set forth herein, except for those deletions, modifications, and amendments set forth below. If any section, subsection, sentence, clause or phrase of this chapter is, for any reason, held to be unconstitutional, such decision shall not affect the validity of the remaining portions of the chapter.

1. Any person who shall violate any of the provisions of the code adopted or fail to comply therewith, or who shall violate or fail to comply with any order made thereunder, or who shall build in violation of any detailed statement of specifications or plans submitted and approved thereunder or any certificate or permit issued thereunder, and from which no appeal has been taken or who shall fail to comply with such order as affirmed or modified by the city attorney based on a recommendation of the building official or by a court of competent jurisdiction, within the time fixed herein, shall severally for each and every such violation and non compliance respectively be guilty of a misdemeanor, or infraction as determined by the city attorney.

2. Such violation shall be subject to penalties in accordance with Section [1.12.010](#).

15.06.010 Adoption of the 2010 California Referenced Standards Code.

A. That certain referenced code, in book form known and designated as the 2010 California Referenced Standards Code, is adopted as the technical Referenced Standards Code of the city, to all intents and purposes and to the same effect as if each and every section, paragraph, subparagraph, word, phrase or clause contained therein were fully set forth herein, except for those deletions, modifications, and amendments set forth below. If any section, subsection, sentence, clause or phrase of this chapter is, for any reason, held to be unconstitutional, such decision shall not affect the validity of the remaining portions of the chapter.

1. Any person who shall violate any of the provisions of the code adopted or fail to comply therewith, or who shall violate or fail to comply with any order made thereunder, or who shall build in violation of any detailed statement of specifications or plans submitted and approved thereunder or any certificate or permit issued thereunder, and from which no appeal has been taken or who shall fail to comply with such order as affirmed or modified by the city attorney based on a recommendation of the building official or by a court of competent jurisdiction, within the time fixed herein, shall severally for each and every such violation and non compliance respectively be guilty of a misdemeanor, or infraction as determined by the city attorney.

2. Such violation shall be subject to penalties in accordance with Section [1.12.010](#)

15.08.010 Adoption of the 2010 California Building Code.

A. That certain building code, in book form known and designated as the 2010 California Building Code, Title 24, Part 2, Volumes 1 and 2, and published by The International Code Council, is adopted as the Building Code of the city, to all intents and purposes and to the same effect as if each and every section, paragraph, subparagraph, word, phrase or clause contained therein were fully set forth herein, except for those deletions, modifications, and amendments set forth below. If any section, subsection, sentence, clause or phrase of this chapter is, for any reason, held to be unconstitutional, such decision shall not affect the validity of the remaining portions of the chapter.

B. Appeals Board section 1.8.8 in the California Building Code shall be amended to read as follows:

Section 1.8.8 – Appeals Board

“1.8.8.1 General. Every city, county or city and county shall establish a local appeals board. “The local appeals board shall consist of persons appointed by the chief appointing authority.” The local appeals board shall be comprised of a least five voting members that shall serve at the pleasure of the city, county or city and county. Appointees shall not be employees of the jurisdiction and shall be qualified and specifically knowledgeable in the California Building Standards Codes and applicable local ordinances.”

1.8.8.2 Definitions. The following terms shall for the purpose of this section have the meaning shown.

Local Appeals Board. The board or agency of a city, county or city and county which is authorized by the governing body of the city, county or city and county to hear appeals regarding the building requirements of the city, county or city and county. Further, the appeals board shall hear appeals regarding the requirements of the city, county or city and county relating to the use, maintenance and change of occupancy of buildings and structures, including requirements governing alteration, additions, repair, demolition and moving. In any area in which there is no such board or agency, “Local appeals board” means the governing body of the city, county or city and county having jurisdiction over the area.

1.8.8.3 Appeals. Except as otherwise provided in law, any person, firm or corporation adversely affected by a decision, order or determination by a city, county or city and county relating to the application of building standards published in the California Building Standards Code, or any other applicable rule or regulation adopted by the Department of Housing and Community Development, or any lawfully enacted ordinance by a city, county or city and county, may appeal the issue for resolution to the local appeals board.

The local appeals board shall hear appeals relating to new building construction and existing buildings.

C. Included specifically are 2010 California Building Code Appendices B (Board of Appeals), C (Group U – Agricultural Buildings), F (Rodentproofing), H (Signs), I (Patio Covers) and J (Grading).

D. Reference is made to three copies of the 2010 California Building Code, one copy filed in the office of the city clerk and two copies filed in the office of Building Safety Division of the city, which are now filed for full particulars of said Building Code.

(The city no longer needs to adopt these next two codes, 15.12 and 15.16, the Uniform Housing Code and the Uniform Code of the Abatement of Dangerous Buildings. These Chapters are being repealed and not being replaced. These provisions can be found in the California Health and Safety Code.)

15.12.010 ~~Adoption of Uniform Housing Code.~~

~~—A.— That certain housing code, in book form known and designated as the Uniform Housing Code, 1997 Edition, as prepared and published by the International Conference of Building Officials, is adopted as the Housing Code of the city, to all intents and purposes and to the same effect as if each and every section, paragraph, subparagraph, word, phrase or clause contained therein were fully set forth herein. If any section, subsection, sentence, clause or phrase of this chapter is, for any reason, held to be unconstitutional, such decision shall not affect the validity of the remaining portions of the chapter.~~

~~—B.— Chapter 2 (Enforcement) of said Uniform Housing Code is deleted.~~

~~—C.— Reference is made to three copies of the Uniform Housing Code, 1997 Edition, one copy filed in the office of the city clerk and two copies filed in the office of building safety division of the city, which are now so filed for full particulars of said Housing Code.~~

15.16.010 Adoption of the Uniform Code for the Abatement of Dangerous Buildings.

~~A. That certain abatement of dangerous buildings code, in book form known and designated as the Uniform Code for the Abatement of Dangerous Buildings, 1997 Edition, prepared and published by the International Conference of Building Officials, is adopted as the Code for the Abatement of Dangerous Buildings of the city, to all intents and purposes and to the same effect as if each and every section, and purposes and to the same effect as if each and every section, paragraph, subparagraph, word, phrase or clause contained therein were fully set forth herein. If any section, subsection, sentence, clause or phrase of this chapter is, for any reason, held to be unconstitutional, such decision shall not affect the validity of the remaining portions of the chapter.~~

~~B. Chapter 2 (Enforcement) of said Uniform Code for the Abatement of Dangerous Buildings is deleted.~~

~~C. Reference is made to three copies of the Uniform Code for the Abatement of Dangerous Buildings, 1997 Edition, one copy filed in the office of the city clerk and two copies filed in the office of Building Safety Division of the city, which are now so filed for full particulars of said Code for the Abatement of Dangerous Buildings.~~

15.20.010 Adoption of the 2010 California Plumbing Code.

A. That certain plumbing code, in book form known and designated as the 2010 California Plumbing Code, Title 24, Part 5 as Published by the International Association of Plumbing and Mechanical Officials prepared and published by the International Association of Plumbing and Mechanical Officials, based on the 2009 Uniform Plumbing Code adopted as the plumbing code of the city, to all intents and purposes and to the same effect as if each and every section, paragraph, subparagraph, word, phrase or clause contained therein were fully set forth herein, except for those deletions, modifications, and amendments set forth below. If any section, subsection, sentence, clause or phrase of this chapter is, for any reason, held to be unconstitutional, such decision shall not affect the validity of the remaining portions of the chapter.

B. Appeals Board section 1.8.8 shall be deleted. Refer to 2010 California Building Code Section 1.8.8 as amended.

C. Included specifically are 2010 California Plumbing Code Appendix A (Recommended Rules for Sizing the Water Supply system), B (Explanatory Notes on Combination Waste & Vent Systems), D (Drainage Systems), I (Installation Standards), and K (Private Sewage Systems).

D. Section 808.0 of said California Code is amended to read as follows:

Section 808.0, Cooling Water. Discharge of cooling water into the sanitary sewer system is prohibited. Refer to Section [13.08.500](#) of City of Visalia Municipal Code (Prohibition on Unpolluted Water).

E. Reference is made to three copies of the 2010 California Plumbing Code, one copy filed in the office of the city clerk and two copies filed in the office of building safety division of the city, which are now so filed for full particulars of said Plumbing Code.

15.24.010 Adoption of 2010 California Mechanical Code.

A. That certain mechanical code, in book form known and designated as the 2010 California Mechanical Code, Title 24, part 4 as Published by the International Association of Plumbing and Mechanical Officials, based on the 2009 Uniform Mechanical, adopted as the mechanical code of the city, to all intents and purposes and to the same effect as if each and every section, paragraph, subparagraph, word, phrase or clause contained therein were fully set forth herein, including the appendices, except for those deletions, modifications, and amendments set forth below. If any section, subsection, sentence, clause or phrase of this chapter is, for any reason, held to be unconstitutional, such decision shall not affect the validity of the remaining portions of the chapter.

B. Appeals Board section 1.8.8 shall be deleted. Refer to 2010 California Building Code Section 1.8.8 as amended.

C. Included specifically are 2010 California Mechanical Code Appendix B (Procedures to be followed to Place Gas Equipment into operation), C (Installation and testing of oil (liquid) fuel-fired equipment), and D (Unit Conversion Tables).

D. Reference is made to three copies of the 2010 California Mechanical Code, one copy filed in the office of the city clerk and two copies filed in the office of building safety division of the city, which are now so filed for full particulars of said Mechanical Code.

15.28.010 Adoption of the 2010 California Electrical Code.

A. That certain electrical code, in book form known and designated as the 2010 California Electrical Code, Title 24, Part 3, Published by BNI Productions, Inc. based on the 2008 National electrical code, copyright National Fire Production Association, is adopted as the Electric Code of the city, to all intents and purposes and to the same effect as if each and every section, paragraph, subparagraph, word, phrase, or clause contained therein were fully set forth herein. If any section, subsection, sentence, clause, or phrase of this chapter is, for any reason, held to be unconstitutional, such decision shall not affect the validity of the remaining portions of the chapter.

B. Appeals Board section 89.108.8 shall be deleted. Refer to 2010 California Building Code Section 1.8.8 as amended.

C. Reference is made to three copies of the 2010 California Electrical Code, one copy filed in the office of the city clerk and two copies filed in the office of building safety division of the city, which are now so filed for full particulars of said electrical code.

(The city no longer needs to adopt this code, 15.32, the Uniform Swimming Pool, Spa, and Hot Tub Code. This Chapter is being repealed and not being replaced. These provisions are now found in the 2010 California Building Code and 2010 Residential Code.)

15.32.010 Adoption of the Uniform Swimming Pool, Spa and Hot Tub Code.

~~A. That certain swimming pool code in book form known and designated as the Uniform Swimming Pool, Spa and Hot Tub Code, 2006 Edition, as prepared and published by the International Association of Plumbing and Mechanical Officials is adopted as the Swimming Pool, Spa and Hot Tub Code of the city, to all intents and purposes and to the same effect as if each and every section, paragraph, word, phrase or clause contained therein were fully set forth herein, except for those deletions set out below. If any section, subsection, sentence, clause or phrase of this chapter is for any reason, held to be unconstitutional, such decision shall not affect the validity of the remaining portions of the chapter.~~

~~B. Chapter 1 (Administration) of said Uniform Code is amended to delete Table 1, Fees.~~

~~C. Reference is made to three copies of the Uniform Swimming Pool Code, 2006 Edition, one copy filed in the office of the city clerk and two copies filed in the office of building safety division of the city, which are now so filed for full particulars of said Swimming Pool, Spa and Hot Tub Code~~

15.36.010 Adoption of the 2010 California Historical Building Code.

A. That certain building conservation code, in book form known and designated as the 2010 California Historical Building Code, California code and Regulations Title 24, part 8 as prepared and published by the International Code Council, is adopted as the Historical Building Code of the city, to all intents and purposes and to the same effect as if each and every section, paragraph, subparagraph, word, phrase or clause contained therein were fully set forth herein. If any section, subsection, sentence, clause or phrase of this chapter is, for any reason, held to be unconstitutional, such decision shall not affect the validity of the remaining portions of the chapter.

B. Reference is made to three copies of the 2010 California Historical Building Code, one copy filed in the office of the city clerk and two copies filed in the office of building safety division of the city, which are now so filed for full particulars of said 2010 California Historical Building Code.

SECTION 2: In addition to those changes described above, the City is hereby adding the following Chapters to the Visalia Municipal Code. Chapter 15.64 – Adoption of the 2010 California Residential Code; Chapter 15.68 – Adoption of the 2010 California Green Building Standards; Chapter 15.72 – Adoption of the 2010 California Energy Code; and Chapter 15.76 – Adoption of 2010 California Existing Buildings Code.

15.64.010 Adoption of the 2010 California Residential Code

A. That certain residential buildings code in book form known and designated as the 2010 California Residential Code, as prepared and published by the International Code Council is adopted as the Residential Code of the city, to all intents and purposes and to the same effect as if each and every section, paragraph, word, phrase or clause contained therein were fully set forth herein, except for those deletions, modifications, and amendments set forth below. If any

section, subsection, sentence, clause or phrase of this chapter is for any reason, held to be unconstitutional, such decision shall not affect the validity of the remaining portions of the chapter.

B. Appeals Board section 1.8.7 shall be deleted. Refer to 2010 California Building Code Section 1.8.8 as amended.

C. Included specifically are the 2010 California Residential Code Appendix H (Patio Covers).

D. Reference is made to three copies of the 2010 California Residential Code, one copy filed in the office of the city clerk and two copies filed in the office of building safety division of the city, which are now so filed for full particulars of said 2010 California Residential Code.

15.68.10 Adoption of the 2010 California Green Building Standards Code.

A. That certain green standards building code in book form known and designated as the 2010 California Green Building Standards Code, as prepared and published by the International Code Council is adopted as the Green Building Standards Code of the city, to all intents and purposes and to the same effect as if each and every section, paragraph, word, phrase or clause contained therein were fully set forth herein, except for those deletions, modifications, and amendments set forth below. If any section, subsection, sentence, clause or phrase of this chapter is for any reason, held to be unconstitutional, such decision shall not affect the validity of the remaining portions of the chapter.

B. Included specifically are the 2010 California Green Building Standards Code Appendix A4 (Residential Voluntary Measures), and A5 (Nonresidential Voluntary Measures) including Tiers 1 & 2 which will remain voluntary measures.

C. Reference is made to three copies of the 2010 California Green Building Standards Code, one copy filed in the office of the city clerk and two copies filed in the office of building safety division of the city, which are now so filed for full particulars of said 2010 California Green Building Standards Code.

15.72.010 Adoption of the 2010 California Energy Code

A. That certain energy standards code in book form known and designated as the 2010 California Energy Code, as prepared and published by the International Code Council is adopted as the Energy Code of the city, to all intents and purposes and to the same effect as if each and every section, paragraph, word, phrase or clause contained therein were fully set forth herein, except for those deletions, modifications, and amendments set forth below. If any section, subsection, sentence, clause or phrase of this chapter is for any reason, held to be unconstitutional, such decision shall not affect the validity of the remaining portions of the chapter.

B. Reference is made to three copies of the 2010 California Energy Code one copy filed in the office of the city clerk and two copies filed in the office of building safety division of the city, which are now so filed for full particulars of said 2010 California Energy Code.

15.76.010 Adoption of the 2010 California Existing Buildings Code

A. That certain existing buildings code in book form known and designated as the 2010 California Existing Buildings Code, as prepared and published by the International Code Council is adopted as the Existing Buildings Code of the city, to all intents and purposes and to the same effect as if each and every section, paragraph, word, phrase or clause contained therein were fully set forth herein, except for those deletions, modifications, and amendments set forth below. If any section, subsection, sentence, clause or phrase of this chapter is for any reason, held to be unconstitutional, such decision shall not affect the validity of the remaining portions of the chapter.

B. Reference is made to three copies of the 2010 California Existing Buildings Code, one copy filed in the office of the city clerk and two copies filed in the office of building safety division of the city, which are now so filed for full particulars of said 2010 California Existing Buildings Code.

SECTION 3: Consistent with its control over municipal affairs and the powers vested in the City of Visalia through the California Constitution and its Charter, the City of Visalia is authorized to secure and promote the public health, comfort, safety and welfare of its citizenry. The City Council of the City of Visalia hereby repeals existing Section 8.20.010 of the Visalia Municipal Code and replaces it with the following section adopting the 2010 California Fire Code. .

Chapter 8.20

UNIFORM FIRE CODE

Sections:

8.20.010 Adoption of the 2010 California Fire Code.

A. There is adopted for the purpose of prescribing regulations governing conditions hazardous to life and property from fire, hazardous materials or explosion, that certain code known as the 2010 California Fire Code, California Code of Regulations Title 24, Part 9, Based on 2009 International Fire Code, including Appendix Chapter 4 (Special Occupancy), Appendix B (Fire Flow Requirements), Appendix BB (Fire Flow Requirements), Appendix C (Fire Hydrant Locations and Distribution), Appendix CC (Fire Hydrant Locations and Distribution), Appendix D (Fire Apparatus Access Roads), Appendix E (Hazard Occupancy), Appendix F (Hazard Ranking), Appendix G (Cryogenic Fluids-Weight and Volume Equivalents), Appendix H (Hazardous Material Management Plans and Hazardous Material Inventory Statements), Appendix I (Fire Protection Systems-Noncompliant Conditions) thereof and the whole thereof adopted and incorporated as fully as if set out at length herein, the provisions thereof shall be controlling within the limits of the city, save and except such portions as are hereinafter deleted, modified, or amended, of which code not less than one copy has been and is now filed in the office of the city clerk and one copies are filed in the office of the city fire department and one in the office of the Building Division. If any section, subsection, sentence, clause or phrase of this chapter is, for any reason, held to be unconstitutional, such decision shall not affect the validity of the remaining portions of the chapter in accordance with Ordinance Section 1.01.080.

B. Penalty provisions contained in California Fire Code Section 111.2.1.3, (Citations) are deleted, and the following penalty provisions are adopted: Persons operating or maintaining an occupancy, premises or vehicle subject to this code who allow a hazard to exist or fail to take immediate action to abate a hazard on such occupancy, premises or vehicle when ordered or notified to do so by the chief shall be subject to the penalty provisions of Ordinance Section 1.12.010.

C. The remainder of appendices in the California Fire Code are to be applied, when applicable, as policies determined by the Chief Building Official and the Fire Chief.

SECTION 4: 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 5: 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 6: Effective Date. This Ordinance, with the exception of Section 2, shall take effect thirty days after its adoption; Section 2 of this ordinance shall take effect sixty days its adoption.

SECTION 7: 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:

Bob Link, Mayor

ATTEST:

Steven M. Salomon, City Clerk

APPROVED AS TO FORM
BY CITY ATTORNEY:

City Attorney

**City of Visalia
Agenda Item Transmittal**

Meeting Date: December 6, 2010

Agenda Item Number (Assigned by City Clerk): 8

Agenda Item Wording:

a) Certification of Negative Declaration No. 2010-82. (Resolution 2010-79 required)

b) Initiation of Proceedings for Annexation No. 2005-07 (River Island): A request by R&L Investment Group, LLC, to annex parcels and right-of-way totaling approximately 137 acres into the City limits of Visalia. **(Resolution 2010-80 required)**

c) Authorization for City Manager to sign and enter into a Pre-Annexation Agreement.

d) Detachment of property from County Service Area No. 1.

The property is located on the east side of Dinuba Boulevard between Shannon Parkway and the St. John's River. (APN: 079-071-001, 016, 018, 020, 023, 024 [portion], 028; 079-080-045, 049, 052 through 057)

Deadline for Action: None

Submitting Department: Community Development – Planning

Contact Name and Phone Number:

Chris Young, Community Development Director 713-4392
Brandon Smith, AICP, Senior Planner 713-4636

Recommendation: The Planning Commission and staff recommend that the City Council authorize filing an Annexation application by:

1. Adopting Negative Declaration No. 2010-82.
2. Initiating proceedings on Annexation No. 2005-07 with the Tulare County Local Agency Formation Commission (LAFCO).
3. Authorize the City Manager to enter into a Pre-Annexation Agreement between the City of Visalia and property owner R.J. Hill, subject to the terms discussed herein.
4. Authorize detachment of the annexing property from County Service Area No. 1, in accordance with State and County requirements.

If approved by Council, staff will file the Annexation Application with LAFCO.

Summary: This is the formal environmental review and authorization to proceed with annexation of the 137-acre site (R. J. Hill, primary property owner) on the east side of Dinuba Boulevard between Shannon Parkway and the Saint Johns River. The annexation would

For action by:

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

For placement on which agenda:

Work Session
 Closed Session

Regular Session:

Consent Calendar
 Regular Item
 Public Hearing

Est. Time (Min.):_10_

Review:

Dept. Head _____
(Initials & date required)

Finance _____
City Atty _____
(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.

proceed with a Low Density Residential land use designation, as was decided by the City Council at a Work Session on October 4, 2010. Upon annexation, the land would be zoned Single-family Residential, 6,000 sq. ft. minimum lot size (R-1-6). There are no formal development plans for the site at this time, though the applicant has prepared conceptual plan for development shown in Exhibit "E".

Site Description: The 137-acre site is bound on the south by Shannon Parkway, on the west by North Dinuba Boulevard and the Riverway Sports Park, and on the north and east by the St. Johns River. To the east side of the site is the former Santa Fe Railroad alignment now owned by the City of Visalia. The City also owns additional land on the east side which comprises a portion of the St. Johns River riparian setback. Santa Fe Street would continue north along its current alignment along the railroad right-of-way, but only as a local street serving the future residential development in this area. The site contains mostly fallow land and tree orchards. There are two existing residences fronting Dinuba Boulevard, across from the Sports Park's main access.

Relation to City General Plan and Zoning: The entire site is located within the current 129,000 Population Urban Development Boundary and the LAFCO Sphere of Influence. The current City limit line is located on the south and west boundaries of the site. The territory proposed for annexation has General Plan Land Use Designations of Low Density Residential and Conservation (which encompasses and extends 100 feet beyond the banks of the Saint Johns River). The designations have been in place since the 1991 General Plan Land Use Element Update. Upon annexation, the site would become zoned R-1-6, and the Conservation areas would become Quasi-Public.

Relation to County Zoning: The property has a Tulare County zoning designation of AE-20 and a General Plan Land Use Designation of Low Density Residential. (A resolution approved by the County in 1992 allowed the County's General Plan designations to be consistent with the City's General Plan designations for properties inside the UDB.) The County zoning designation permits only one residence per lot, and thus could not support the residential density allowed under the City's land use designation.

Discussion:

Williamson Act. Two areas within the annexation territory – a 20-acre portion owned by Rich Rodriguez and a 54-acre portion owned by R.J. Hill – contain separate Williamson Act Agricultural Preserves and Land Conservation Contracts.

The 20-acre portion located on the south end of the site contains a valid protest by the City of Visalia, meaning it will be eliminated upon annexation. The property is within Williamson Act Agricultural Preserve No. 647 and is under Land Conservation Contract No. 4060, both established in 1970. Under provisions of State Law effective at the time, the City of Visalia protested the formation of this preserve and contract with the City's (blanket) Resolution No. 686 in a letter dated July 29, 1970. The location of the preserve was within one mile of the City limits at the time of protest. Therefore, the City is able to not succeed to the contract upon annexation. If LAFCO agrees that the contract was successfully protested, the contract and preserve will be eliminated upon annexation and the property owner will not be required to apply for cancellation of the contract.

The 54-acre portion located on the north end of the site was not protested, and will therefore be subject to the City's adopted rules governing the administration of Agriculture Preserves in the

City of Visalia. The property is within Williamson Act Agricultural Preserve No. 3595 and is under Land Conservation Contract No. 10353, both established in 1976. Records show that the City Council in 1976 made no protest on the Contract since it was located outside of the Urban Improvement Boundary. Recently, a Notice of Full Nonrenewal was filed with the Contract which effect starting in 2009. Thus, the Contract will automatically dissolve in 2018, unless the property owner formally requests cancellation and a premature cancellation of the Contract is successfully executed. Until either of these actions occur, the Contract will be subject to the City's adopted policy (Resolution No. 2001-03, passed 2/5/01) governing the administration of Agriculture Preserves inside the City.

As part of the annexation agreement requirement, staff will be requiring that the applicant enter into an indemnification agreement to hold the City harmless against any actions which could be brought regarding the Williamson Act contracts.

Pre-Annexation Agreement. If the Council takes the recommended action of initiating the annexation, staff would be lodging an application for annexation to the Tulare County LAFCO. Before staff will file the application with LAFCO, the property owner will be required to sign a Pre-Annexation Agreement which will memorialize the following conditions applicable to the annexation:

- Indemnification to the City and County to defend these agencies harmless from any possible action brought on by the State Department of Conservation regarding the site's protested Williamson Act designation;
- Payment of all associated impact fees at the time that a final subdivision map is recorded or as building permits are issued in association with a project;
- Compliance with the policies and fees contained within the Groundwater Mitigation Ordinance, wherein the property owner agrees to convey vested water rights and/or pay in-lieu fees at the time that a final parcel map or subdivision map covering the property is issued;
- Payment of the General Plan Maintenance Fees upon approval of the annexation by Tulare County LAFCO. Staff has determined that approximately \$30,940 in fees would be associated with the River Island Annexation, based on an estimated 91 acres of developable land in the annexation area assessed at a rate of \$340 per developable acre.

Consistency with Annexation Policies. On October 20, 2008, the City Council accepted several annexation policies touching upon themes of master-planning, higher residential densities, and facilitation of orderly growth. The policies have not yet been formally adopted and integrated into the General Plan. The following points explain the draft policies' bearing on the proposed annexation:

- Draft Policy 2 states that "all annexations shall be contiguous to existing developed areas in the City, adjacent to services and infrastructure, and facilitate orderly growth." The proposed annexation is bound by City limits and City services on two sides. It would represent a logical expansion to the City limits being that it squares off the City limits in conjunction with the 98,700 and 129,000 Urban Development Boundary along the St. Johns River – the former boundary in effect since 1991.

- Draft Policy 3 states that private party annexation requests excepting County islands and industrial lands be accompanied by a specific or master plan. The applicant has submitted a master plan for the annexation territory which proposes low density residential uses in conformance with the underlying General Plan land use designation. The master plan also includes a conceptual subdivision layout for the two subsidiary property owners who have consented to annexation but have not stated a desire to develop their properties in the foreseeable future.
- Draft Policy 4 states that “residential annexations shall be developed at the midrange or higher densities specified in Land Use Policies “. Whereas the density range for Low Density Residential development is specified in Land Use Element Policy 4.1.18 as 2 to 7 dwelling units per net acre, development in the master plan accompanied by the annexation is proposed at approximately 7 dwelling units per net acre.

Environmental Findings: When initiating an annexation, the Council is required to make an environmental finding, in accordance with the California Environmental Quality Act (CEQA). Staff is recommending that the Council certify Negative Declaration No. 2010-085, which was prepared for the annexation. Negative Declaration No. 2010-082 is attached.

Prior Council/Board Actions: During a work session held on October 4, 2010, the City Council authorized staff to proceed processing the River Island annexation with the current land use designations, and made a finding that a Conservation land use designation in the center of the site is inaccurately located and should be reverted to Low Density Residential. The motion was approved on a 3-2 vote, with Mayor Link and Vice Mayor Shuklian voting no.

Committee/Commission Review and Actions: On November 22, 2010, the Planning Commission found that the annexation is consistent with the General Plan.

Alternatives: None.

Attachments:

- Ownership Disclosure Form
- Resolutions
- Exhibit “A” – Location Map of Annexation Site
- Exhibit “B” – Draft Pre-Annexation Agreement
- Exhibit “C” – City letter & Resolution No. 686 protesting establishment of Preserve
- Exhibit “D” – Negative Declaration No. 2010-082
- Exhibit “E” – River Island Conceptual Layout
- **Aerial Photo (Colored map)**
- **General Plan Land Use Map (Colored map)**

Recommended Motion (and Alternative Motions if expected):

I move to

- a) adopt Resolution No. 2010-79 certifying Negative Declaration No. 2010-082,
- b) adopt Resolution No. 2010-80 initiating Annexation No. 2005-07 and authorizing the detachment of property from County Service Area No. 1, and
- c) authorize the City Manager to enter into a Pre-Annexation Agreement between the City of Visalia and the property owners, subject to the terms discussed herein.

Environmental Assessment Status

CEQA Review: An Initial Study and Negative Declaration have been prepared for use with this project, consistent with the California Environmental Quality Act (CEQA). It must be certified prior to the initiation of the annexation.

NEPA Review: None

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)*

Certified copies of the resolution must be prepared to accompany LAFCO application.

RESOLUTION NO. 2010- 79

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF VISALIA,
ADOPTING NEGATIVE DECLARATION NO. 2010-082, WHICH EVALUATES
ENVIRONMENTAL IMPACTS FOR ANNEXATION NO. 2005-07 (RIVER ISLAND)

WHEREAS, Annexation No. 2005-07 (River Island) is a request by R & L Investment Group, LLC to annex 137 acres into the City limits of (hereinafter "Project"). The property is located on the east side of Dinuba Boulevard (State Route 63) between Shannon Parkway and the St. John's River in the County of Tulare. (APN: 079-071-001, 016, 018, 020, 023, 024 [portion], 028; 079-080-045, 049, 052 through 057); and

WHEREAS, the City Council of the City of Visalia, after twenty (20) days published notice, held a public hearing before said Council on December 6, 2010 for the Project; and

WHEREAS, an Initial Study was prepared which disclosed that no significant environmental impacts would result from this Project, and that no mitigation measures would be required for the Project; and

WHEREAS, on the basis of this Initial Study, a Negative Declaration has been prepared for the Project pursuant to the California Environmental Quality Act of 1970 (CEQA), as amended; and

WHEREAS, the Initial Study and Negative Declaration for the Project were prepared and noticed for review and comment; and

WHEREAS, any comments received during the advertised comment period were reviewed and considered in accordance with provisions of CEQA; and

WHEREAS, the City Council of the City of Visalia considered the Initial Study and Negative Declaration and found that the Initial Study and Negative Declaration contain and reflect the independent judgment of the City of Visalia.

NOW, THEREFORE, BE IT RESOLVED that a Negative Declaration was prepared consistent with the California Environmental Quality Act (CEQA) and the City of Visalia Environmental Guidelines.

BE IT FURTHER RESOLVED that the City Council of the City of Visalia hereby finds, on the basis of the whole record before it, that there is no substantial evidence that the project will have a significant effect on the environment and hereby adopts Negative Declaration No. 2010-082 which evaluates environmental impacts for Annexation No. 2005-07 (River Island). The documents and other material which constitute the record of the proceedings upon which the decisions based are located at the office of the City Planner, 315 E. Acequia Avenue, Visalia, California, 93291.

RESOLUTION NO. 2010-80

A RESOLUTION OF APPLICATION BY THE CITY OF VISALIA REQUESTING THE TULARE COUNTY LOCAL AGENCY FORMATION COMMISSION TO TAKE PROCEEDINGS FOR ANNEXATION NO. 2005-07 (RIVER ISLAND) AND DETACHMENT OF PROPERTY FROM COUNTY SERVICE AREA NO. 1, PERTAINING TO LAND GENERALLY LOCATED ON THE EAST SIDE OF DINUBA BOULEVARD (STATE ROUTE 63) BETWEEN SHANNON PARKWAY AND THE ST. JOHN'S RIVER IN THE COUNTY OF TULARE.

WHEREAS, the City Council of the City of Visalia desires to initiate proceedings for annexation to said city of territory illustrated on the location map attached herein as Exhibit "A"; and

WHEREAS, the Council of the City of Visalia desires to annex said territory to the City of Visalia for the following reasons: The annexation will contribute to and facilitate orderly growth and development of both the City and the territory proposed to be annexed; will facilitate and contribute to the proper and orderly layout, design and construction of streets, gutters, sanitary and storm sewers and drainage facilities, both within the City and within the territory proposed to be annexed; and will provide and facilitate proper overall planning and zoning of lands and subdivision of lands in said City and said territory in a manner most conducive of the welfare of said City and said territory; and

WHEREAS, this proposal is made pursuant to the Cortese-Knox-Hertzburg Local Government Reorganization Act of 2000, commencing with Section 56000 of the Government Code of the State of California; and

WHEREAS, the territory proposed to be annexed is uninhabited; and

WHEREAS, the Visalia Planning Commission reviewed this proposal on November 22, 2010, and found it to be consistent with the General Plan; and

WHEREAS, the City Council hereby makes the following findings with regard to the project:

1. The annexation is consistent with the policies and intent of the General Plan.
2. An Initial Study was prepared for this project, consistent with CEQA, which disclosed that environmental impacts are determined to be not significant, and Negative Declaration No. 2010-022 was adopted by the Council pursuant to Resolution No. 2010-79.
3. Portions of the territory are currently within an Agricultural Preserve and Land Conservation Contract.
4. There is evidence in the public record to show that a successful protest by the City of Visalia applies to California Land Conservation Act ("Williamson Act") Contract No. 4060, covering the southern 20 acres of the site and located within Williamson Act Preserve No. 647.

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

1. The potential environmental effects of the proposed annexation have been reviewed and the Environmental Coordinator of the City of Visalia has determined that the proposal falls within the scope of issues and impacts addressed in Negative Declaration No. 2010-082, and that no mitigation measures are required.
2. Application is hereby made to the Executive Officer of the Local Agency Formation Commission, County of Tulare, State of California, for an annexation of territory illustrated in the map attached as Exhibit "A".
3. Proceedings shall be taken for this annexation proposal pursuant to Title 5, Division 3, Part 3 of the California Government Code and other relevant provisions of the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000.
4. In conjunction with the proceedings being taken for this annexation proposal, application is also hereby being made to the Executive Officer of the Local Agency Formation Commission, County of Tulare, State of California, for detachment from County Service Area No. 1.
5. The Council hereby requests waiver of the conducting authority proceedings in accordance with Government Code Section 56663(c).
6. The Council hereby exercises its option to uphold the protest associated with Williamson Act Preserve No. 647 and not succeed to the southern 20 acres associated with Williamson Act Preserve No. 647 / Contract No. 4060 encumbering the site.
7. Upon annexation, the territory shall be zoned Single-family Residential, 6,000 square foot minimum (R-1-6) and Quasi-Public (QP), consistent with the pre-zoning designated by the General Plan Land Use Map, although ongoing agricultural use of the property shall be permitted as a legal non-conforming use, in accordance with the Visalia Municipal Code. To the extent any portion of the site, upon annexation, remains subject to a Williamson Act contract, use of such portion in a manner incompatible with said contract shall be prohibited until such time as said contract expires, terminates, or is cancelled in accordance with the Williamson Act.
8. The City Clerk of the City of Visalia is authorized and directed to file a certified copy of this resolution with the Executive Officer of Tulare County LAFCO.
9. The applicant(s) shall enter into a Pre-Annexation Agreement with the City which memorializes the required fees, policies, and other conditions applicable to the annexation. The Pre-Annexation Agreement is attached herein as Exhibit "B". The agreement is subject approval as to form by the City Attorney and subject clerical and form modifications as approved by the City Manager.



CITY OF VISALIA Ownership Disclosure

EACH PARTNERSHIP, CORPORATION, OR LLC MUST FILL OUT A SEPARATE DISCLOSURE STATEMENT. INCOMPLETE DISCLOSURE STATEMENTS COULD RESULT IN A PROJECT CONTINUANCE OR DELAY.

SITE:

Address or APN(s) 079-080-045, 049, 052, 053 + 055 079-071-016 + 001
Short Title or Name of proposed project REVER ISLAND
Summary description of the proposed project ANNEXATION OF RESIDENTIAL LAND INTO THE CITY OF VISALIA

PROPERTY OWNER(S):

If more than two owners, please provide information and signature(s) on a separate sheet.

Name (print) RML Investment Group, LLC Name (print) _____
Mailing Address 10900 W. SHAW # 208 FRENCH CANYON 93704 Mailing Address _____
Phone 559.276.2424 Phone _____

Statement: I/We declare under penalty of perjury that I am/we are the legal owner(s) of the property involved in this application. I/We authorize the person named in this application as the Project Main Contact to act as my/our representative with City Staff regarding the processing of this application.

6-24-10
Date

[Signature]
Property Owner Signature
managing Partner (owner)
Print Name & Title

Date

Property Owner Signature

Print Name & Title

OTHER INVOLVED PARTIES:

Fill in all that apply.
It is planned that the property will be sold to _____
(Write "none" if property owner(s) do not plan to sell property.)

Developer/Builder _____
Mailing Address _____
Phone _____ Fax _____



CITY OF VISALIA Ownership Disclosure

EACH PARTNERSHIP, CORPORATION, OR LLC MUST FILL OUT A SEPARATE DISCLOSURE STATEMENT. INCOMPLETE DISCLOSURE STATEMENTS COULD RESULT IN A PROJECT CONTINUANCE OR DELAY.

SITE:

Address or APN(s) 079-071-020 (COLEGIO DE LA TIERRA PROPERTY)
Short Title or Name of proposed project RESER ISLAND
Summary description of the proposed project ANNEXATIONS OF RESIDENTIAL LAND INTO THE CITY OF VISALIA

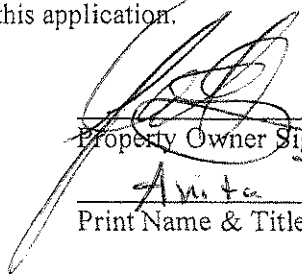
PROPERTY OWNER(S):

If more than two owners, please provide information and signature(s) on a separate sheet.

Name (print) Anita Bivian Name (print) _____
Mailing Address 4120 E. Iris Ave Visalia Mailing Address _____
Phone 559-967-3310 ^{CA 93292} Phone _____

Statement: I/We declare under penalty of perjury that I am/we are the legal owner(s) of the property involved in this application. I/We authorize the person named in this application as the Project Main Contact to act as my/our representative with City Staff regarding the processing of this application.

6-23-10
Date


Property Owner Signature
Anita Bivian CEO
Print Name & Title

Date

Property Owner Signature

Print Name & Title

OTHER INVOLVED PARTIES:

Fill in all that apply.

It is planned that the property will be sold to _____
(Write "none" if property owner(s) do not plan to sell property.)

Developer/Builder _____

Mailing Address _____

Phone _____ Fax _____



CITY OF VISALIA Ownership Disclosure

EACH PARTNERSHIP, CORPORATION, OR LLC MUST FILL OUT A SEPARATE DISCLOSURE STATEMENT. INCOMPLETE DISCLOSURE STATEMENTS COULD RESULT IN A PROJECT CONTINUANCE OR DELAY.

SITE:

Address or APN(s) 079-071-018 (BIANCO PROPERTY)
Short Title or Name of proposed project RIVER ISLAND
Summary description of the proposed project ANNEXATION OF RESIDENTIAL LAND INTO THE CITY OF VISALIA


PROPERTY OWNER(S):

If more than two owners, please provide information and signature(s) on a separate sheet.

Name (print) Rich Rodriguez, Trustee Name (print) _____
Mailing Address 1737 E. Banwell, Fresno, CA Mailing Address _____
Phone (559) 434-5554 Phone _____

Statement: I/We declare under penalty of perjury that I am/we are the legal owner(s) of the property involved in this application. I/We authorize the person named in this application as the Project Main Contact to act as my/our representative with City Staff regarding the processing of this application.

June 28, 2010
Date


Property Owner Signature
Rich Rodriguez, Trustee of the
Print Name & Title Mary M. Bianco Trust

Date

Property Owner Signature

Print Name & Title

OTHER INVOLVED PARTIES:

Fill in all that apply.

It is planned that the property will be sold to _____
(Write "none" if property owner(s) do not plan to sell property.)

Developer/Builder _____
Mailing Address _____
Phone _____ Fax _____

Annexation No. 2005-07 (Hill / River Island)

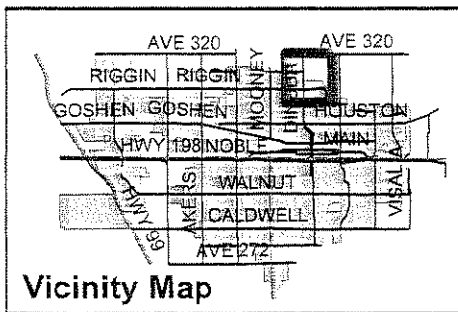
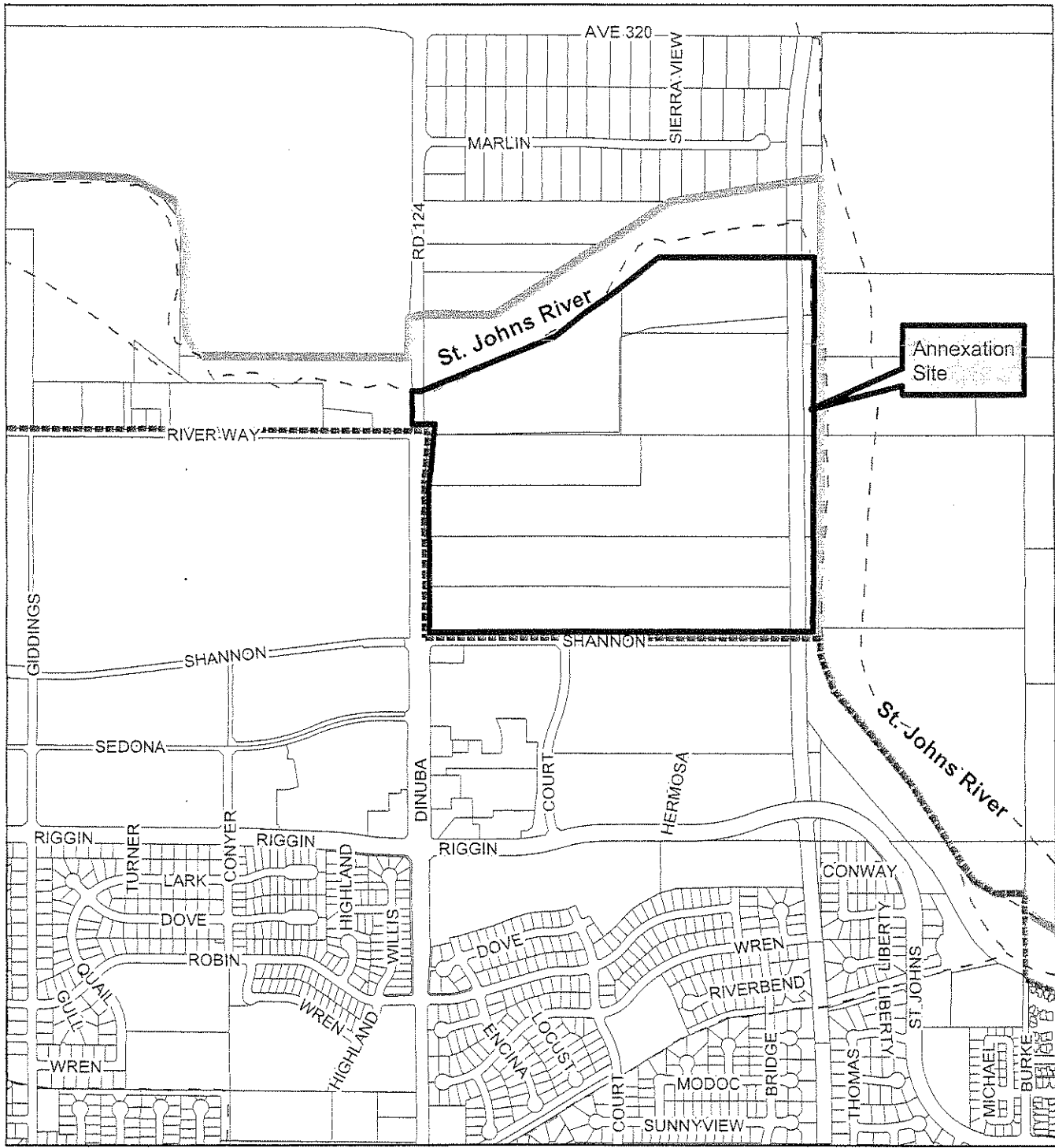
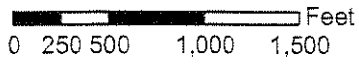


EXHIBIT "A" Location Map



- WATERWAYS
- ==== CITY LIMITS
- ▬ 129,000 Pop. UDB
- ▭ PARCELS

RECORDING REQUESTED BY
AND MAIL RESPONSE TO:

City of Visalia
Planning Division
315 East Acequia Avenue
Visalia, CA 93291

Pre-Annexation Agreement

This Pre-Annexation Agreement (“Agreement”) is made and entered into this ___ day of _____, 2010, by and among the City of Visalia, a charter law city (“City”) and R&L Investment Group, LLC, Colegio de la Tierra, and Rich Rodriguez, Trustee (hereinafter “Owner”). City and Owner are sometimes each individually referred to herein as a “party” and collectively as the “parties.”

RECITALS

WHEREAS, Owner is the record owner of the property, currently located in the unincorporated area of the County of Tulare, legally described in Exhibit A and depicted in Exhibit B, attached hereto (hereinafter referred to as the “Property”); and

WHEREAS, the Property is adjacent to and contiguous to the existing corporate boundary of the City, but is not situated within the limits of any municipality; and

WHEREAS, Owner desires to have the Property annexed to the City and to have the Property zoned as Single-family Residential, 6,000 square foot minimum size (R-1-6), as set forth in Chapter 17.12, where the designation would permit the Property to be used for residential uses and associated improvements (the “Project”). The Project includes all required City-issued discretionary land use approvals necessary for Owner’s use of the Project in accordance with the contemplated Rezoning (defined below); and

WHEREAS, the Property consists of approximately 137 acres, and zero (0) registered voters reside thereon; and

WHEREAS, proper applications have been filed with the City for a Resolution of Application to the Tulare County Local Agency Formation Commission (“LAFCO”) to initiate proceedings as may be required for the City’s annexation of the Property; and

WHEREAS, the City has, on December 6, 2010, adopted a Resolution of Application (City Resolution No. 2010-____) (the “Resolution”) requesting LAFCO to initiate proceedings to annex the Property to the City; and

WHEREAS, on June 21, 2004, the City Council of City adopted a General Plan Maintenance Fee effective June 21, 2004; and

WHEREAS, in certain annexation proceedings, California Land Conservation Act (hereinafter, the “Williamson Act”) issues may arise which may require indemnification of the LAFCO, the County of Tulare, and City and may therefore be required of Owner herein; and

Exhibit “B”

WHEREAS, in 1969, City perfected its option protest to the Williamson Act contract currently burdening the Property's southernmost 20 acres (Land Conservation Act Contract No. 4060) and, whereas, City will exercise such option upon its annexation of the Property; and

WHEREAS, the Resolution requires entry into this Agreement prior to the City submitting an application to LAFCO to commence the proposed annexation; and

WHEREAS, Owner acknowledges that, during the term of this Agreement, the Property will be subject to all ordinances, resolutions, and other regulations of the City, as they may be amended from time to time, provided the Property has first been finally annexed to the City, as well as state and federal statutes and regulations, as they may be amended, unless otherwise provided for in this Agreement or agreed to in writing by the parties; and

WHEREAS, the City is authorized by its police powers to protect the health, safety and welfare of the community, and is entering into this Agreement and executing such authority for said purpose; and

WHEREAS, unless otherwise set forth herein, nothing contained in this Agreement shall constitute a waiver of the City's legislative, governmental, or police powers to promote and protect the health, safety and welfare of the City and its inhabitants, nor shall this Agreement prohibit the enactment or increase by City of any tax, fee, or charge.

NOW, THEREFORE, in consideration of the above Recitals and the following Covenants, it is agreed by and between the parties as follows:

I. AGREEMENT IN GENERAL

- A. Parties. The parties to this Agreement are the City and Owner.
- B. Incorporation of Recitals. The parties confirm and incorporate the foregoing Recitals into this Agreement.
- C. Purpose/Limits of Agreement. A specific purpose of this Agreement is to set forth specific terms and conditions of annexation of the Property to City.

**II. TERMS AND CONDITIONS OF ANNEXATION;
PURPOSE OF AGREEMENT**

Generally, each party to this Agreement is benefited and burdened by detachment from the County and annexation to the City. Owner will obtain a variety of services from City (including but not limited to potable water, sewer and storm water drainage and treatment, police, and fire services), and City will obtain additional tax revenues. City has adopted ordinances, regulations, and policies concerning design, improvement, construction, development and use of property within the City. Unless otherwise set

forth herein, nothing contained in this Agreement shall constitute a waiver of City's legislative, governmental, or police powers to promote and protect the health, safety, and welfare of City and its inhabitants, nor shall this Agreement prohibit the enactment or increase by City of any tax or fee. One purpose of this Agreement is to spell out additional conditions to which Owner will be subject following annexation and prior to development within the City due to the burden placed on City by Owner's desired annexation:

- A. Water Acquisition Policy: Although City's current water service provider, California Water Service, continues to issue will-serve letters, City's Council is aware of the steadily decreasing level of water in the City's underground water aquifers and has determined that increasing development is contributing to this serious problem. Therefore, City's Council has studied the issue and investigated possible solutions in order that it may continue to assure citizens that there will be water available to serve the community's needs. City's Council is actively engaged in water replenishment activities with the Kaweah Delta Water Conservation District and it has adopted a policy, as set forth in Chapter 16.54 of the Visalia Municipal Code, which requires annexation applicants to convey title to water rights to City upon annexation and/or to pay a fee to City (pursuant to an adopted fee schedule) so that City may acquire water for groundwater replenishment and storage in order to serve new development that comes with annexation, including development of the Property (the "Water Acquisition Policy"). Therefore, Owner agrees that, at the time that LAFCO issues a Certificate of Completion finalizing the annexation (and upon the running of all applicable statutes of limitation related thereto), Owner will comply with the Water Acquisition Policy by entering into an agreement with City to either (i) convey to City those water rights vested in the Property, if any, (ii) agree to pay City a fee in lieu thereof, (iii) agree to some combination of an in lieu fee payment and water right conveyance, or (iv) to comply by any other method allowed by the Water Acquisition Policy, provided that such agreement includes a condition precedent requiring City's water supplier to agree to serve the Property with potable water in amount sufficient to meet Owner's reasonably anticipated total water demand for the Property, as determined by a valid water supply assessment prepared pursuant to California Water Code § 10910 *et seq.* No post-annexation permit or entitlement approvals concerning the Property will be issued by City unless and until Owner complies with the Water Acquisition Policy in a manner consistent with this subsection II(A). Owner agrees that it shall identify all water rights which, to the best of Owner's knowledge, have been used by Owner or its agents in connection with the Property, regardless of whether they are considered "vested" in the Property, and shall comply with the Water Acquisition Policy by entering into an agreement with City to convey such rights, if any, to City. City shall cooperate with Owner in valuing such water rights for the purposes of determining the amount of offset to be applied against the in lieu fee as required pursuant of the Water Acquisition Policy. Owner further agrees that City shall have first right of refusal in acquiring upon mutually acceptable terms any water rights that Owner owns that may be in addition to those required

to meet Owner's obligations under the Water Acquisition Policy. City agrees that water rights need not be conveyed and in lieu fees shall not be made payable until City's issuance of one or more building permits covering the Property and, in the event Owner applies to City for its approval of multiple building permits, City agrees such water rights conveyance or fee payment obligation shall be allocated on a pro rata basis to each phase of development covered by each building permit, with conveyance of water rights or payment to be made on a per site plan basis upon City's issuance of each building permit covering the Property.

- B. General Plan Maintenance Fee: On June 21, 2004, the City adopted (by Resolution 2004-63, as corrected) a General Plan Maintenance Fee. Owner agrees that, at the time LAFCO issues a Certificate of Completion finalizing the annexation (and upon the running of all applicable statutes of limitation related thereto), Owner will enter into an agreement with City to pay the General Plan Maintenance Fee in an amount equal to \$340.00 per acre and no post-annexation permit or entitlement approvals concerning the Property will be issued unless and until said agreement is executed. City agrees that such fee shall not be made payable until City's issuance of one or more building permits covering the Property and, in the event Owner applies to City for its approval of multiple building permits, City agrees such fee payment obligation shall be allocated on a pro rata basis to each phase of development covered by each building permit, with payment to be made on a per site plan basis upon City's issuance of each building permit covering the Property. Owner's satisfaction of its obligations under this Section II(B) will satisfy any and all of Owner's obligations related to and arising under the General Plan Maintenance Fee.
- C. Williamson Act: Williamson Act Indemnification: Occasionally property to be annexed is burdened with Williamson Act contract(s). In such event, the following apply:
- i.) From 1969 to 1971, City protested the creation of agricultural preserves and resulting Williamson Act contracts for land that was within one mile of the City's boundary at the time said contracts were executed. City's form of protest has been, on prior occasions, declared invalid as a "blanket" protest by the California Department of Conservation. City has disagreed with the Department of Conservation in certain situations and in order to allow the annexation to obtain approval by LAFCO without City succeeding to the Williamson Act contract, City has agreed to indemnify LAFCO regarding its finding of a valid protest based on substantial evidence supplied by City. The following language is included in LAFCO's resolutions for situations described above: "The certificate of completion shall not be recorded until the City of Visalia has entered into an Indemnification Agreement to defend and hold LAFCO and the County of Tulare harmless from any action brought by the California State Department of Conservation to void LAFCO action validating

the protest and resulting reduction in size or termination of Williamson Act Contract No. 4060". If Owner's property is affected by this contracts, Owner agrees it will indemnify City to the full extent City is required to indemnify LAFCO and the County, as if the terms of said indemnification agreement were incorporated herein by reference.

- ii.) On other occasions, property to be annexed is burdened with Williamson Act contract(s) which the City will succeed to and administer if the annexation is completed. In some events, the Owner desires to cancel said contract(s). Specific statutory findings must be made in order to cancel said contract. In the event of a request for cancellation of contracts which burden land subject to this Agreement, Owner agrees to indemnify, hold harmless, and defend (with counsel of City's choosing), the City, its officers, elected officials, employees, and agents, from and against any and all claims, actions, matters, and liability arising from its decision with respect to such cancellation request regardless of the date the cancellation request is made or initiated.

D. Agricultural Mitigation Program: The Owner hereby acknowledges that the City may adopt a comprehensive agricultural conversion development fee at some time in the future after annexation of the Property. The Owner hereby agrees that, in the event that the City adopts an ordinance imposing an agricultural conversion development fee, in accordance with applicable legal requirements, prior to issuance of a vesting project approval for development of any portion of the Property, Owner will be subject to the requirements of such citywide program to the extent required by law, and notwithstanding the non-existence of such a fee at the time of annexation, and provided that such a fee is also applicable to other similarly situated properties within, or to be annexed to, the City.

E. Prezoning. City agrees to promptly process and, after City completes and adopts its environmental review, consider Owner's application to prezone the Property, as required by the Cortese-Knox-Hertzberg Act's prezoning requirements. The Single-Family Residential (R-1-6) zoning designation is the adopted prezoning for the Property, in accordance with Visalia Municipal Code Chapter 17.12 and Section 17.06.050(A), which section states that all territory which is annexed into the City shall be classified to the zone as indicated on the Visalia General Plan land use map, as adopted by the City (the "Prezoning"). The Single-family Residential zoning designation permits dwelling units and other land uses, as specified by the City of Visalia Municipal Code. The Single-family Residential zoning designation also permits the continuing operation of agricultural land uses presently on the Property as a legally-existing "nonconforming use," as further defined and regulated by Chapter 17.40 of the Visalia Municipal Code. The parties acknowledge that, if the Property is annexed to the City, a portion of such Property may be subject to one or more Williamson Act contracts. The Parties agree, and the prezoning shall specify, that, upon annexation, such contracted

Property shall only be used in a manner that is compatible with the relevant Williamson Act contract(s) until such time as such contract(s) expire, terminate, or are cancelled in accordance with the Williamson Act. The Parties further agree, and the rezoning shall specify, that all urban uses permitted by the Single-family Residential zoning designation shall automatically be permitted on those portions of the Property subject to a Williamson Act contract upon the expiration, termination, or cancellation of such contract. Upon execution of this Agreement, City shall use its best efforts to (i) promptly complete its environmental review of the Project and consider its adoption thereof, and (ii) complete its preparation of the proposed rezoning contemplated by this subsection II(E) and consider its approval thereof. If City approves the rezoning contemplated by this subsection II(E), the terms and conditions of such rezoning shall be included in City's application to LAFCO for the annexation of the Property to City, which application shall promptly be submitted to LAFCO by City.

- F. Plan For Providing Services. The parties agree to cooperate in, and to take such actions as may be necessary to ensure, the diligent preparation of a Plan For Providing Services to the Property, to be submitted to LAFCO along with City's annexation application, in accordance with Cortese-Knox-Hertzberg Act requirements.
- G. SB 221 Compliance. To the extent required by law, any tentative map prepared for the Project shall comply with the provisions of Government Code § 66473.7.
- H. Development Impact Fees: The Owner shall pay all applicable development impact fees for any subsequent development on the Property at the time that building permits are issued, or prior to issuance of final occupancy, if applicable, or at the time that a final map is recorded, at the discretion of the Community Development Director, or as may be required by ordinance. A list and amount of development impact fees can be located in the City's current version of the Development Fee Schedule.

III. PROPERTY ZONING

Owner acknowledges and agrees that this Agreement shall not limit City's authority to exercise the full range of its legislative and police powers with respect to development and use of the Property in a manner consistent with this Agreement. Notwithstanding such authority, and provided Owner complies with the requirements of this Agreement, City agrees that the Property shall continue to be designated under the Visalia General Plan land use map for Low Density Residential land uses, and zoned Single-Family Residential (R-1-6), as set forth in Chapter 17.12 of the Visalia Municipal Code, during the term of this Agreement, unless otherwise consented to in writing by Owner. The ongoing agricultural use of the Property shall be permitted as a legal nonconforming use for the term of this Agreement in a manner consistent with Chapter 17.40 of the Visalia Municipal Code. Except as expressly set forth herein, neither this paragraph nor any

portion of this Agreement shall be construed to protect the Property against changes in City policies, rules, regulations or conditions of development, including but not limited to permitted uses within the indicated zone or development impact fees, which would otherwise be applicable to the Property.

IV. TERM

The term of this Agreement shall become effective when fully executed by the parties hereto (the "Effective Date") and continue for a period of twenty (20) years. This Agreement shall automatically terminate if either (a) the annexation proceedings are terminated for any reason; or (b) the completion of the annexation (recording of a Certificate of Completion) does not occur on or before two (2) years from the Effective Date, which two (2) year period shall be extended in the event of an "Excusable Delay," as such events are contemplated by subsection VII(O) of this Agreement. Notwithstanding the forgoing, Owner or its successors shall have the right, upon ten (10) day's prior written notice to City, to terminate this Agreement prior to LAFCO's issuance of a Certificate of Completion of the annexation (and the running of all applicable statutes of limitations related thereto) if it determines in its sole discretion that it is in its best interest to do so, and, in such event, City agrees to withdraw the Resolution then pending before LAFCO.

V. DEFAULT, REMEDIES AND ENFORCEMENT

In the event of breach or default of any term, condition, covenant or obligation of this Agreement by either party, the other party may exercise any rights available at law or in equity, including an action for specific performance, damages, or other injunctive relief, and all such remedies shall be cumulative. This Agreement shall be enforceable, unless lawfully terminated or cancelled, by any party to the Agreement or any party's successor in interest, notwithstanding any subsequent changes in any applicable law adopted by the City which alters or amends the laws, ordinances, resolutions, rules or policies frozen by this Agreement.

VI. INDEMNIFICATION

Owner agrees to indemnify and hold harmless City and the City's officers, employees, agents, and contractors, from and against all claims, demands, or damages including reasonable attorney's fees and court costs, which arise out of this Agreement or its operation, or with any other annexation action or other action reasonably determined necessary by the City in order to effectuate the annexation of Owner's property, or which are in any manner connected with the City's enforcement of this Agreement.

VII. MISCELLANEOUS

- A. Binding Effect/Covenants to Run With Land. The Parties hereto agree to be bound by this Agreement. This Agreement shall be binding upon and shall inure to the benefit of the heirs, transferees, successors and assigns of the parties hereto.

The terms and conditions stated herein shall constitute covenants running with the land.

- B. Assignment. Neither party shall assign, delegate or transfer their rights and duties in this Agreement without the written consent of the other party (which consent shall not be unreasonably withheld).
- C. Authorized Signatory. The individuals executing this Agreement, by their signature hereto, declare that they are authorized to, and have the legal power, right and actual authority to bind the party to the terms and conditions of this Agreement.
- D. Notices. All notices under this Agreement shall be effective upon personal delivery to City, or Owner, as the case may be, three (3) days after deposit in the United States Mail, postage fully prepaid, addressed to the respective parties as follows:

To the City: City Manager
 City of Visalia
 425 East Oak Ave., Suite 301
 Visalia, CA 93291

With Copy to: Alex Peltzer
 City Attorney
 Dooley, Herr & Peltzer
 100 Willow Plaza, Suite 300
 Visalia, CA 93291

To Owner: R&L Investment Group, LLC
 c/o Randy Hill
 680 W. Shaw Avenue, Suite 208
 Fresno, CA 93704

 Colegio de la Tierra
 c/o Anita Bivian, C.E.O.
 4120 E. Iris Avenue
 Visalia, CA 93292

 Rich Rodriguez, Trustee of the Mary M. Bianco Trust
 1737 E. Banwell Lane
 Fresno, CA 93730

Or such other address as the parties may from time to time designate by giving notice as required hereunder.

- E. Entire Agreement. This Agreement represents the entire agreement between the City and Owner as to its subject matter and no prior oral or written understanding shall be of any force or affect. The parties intend this paragraph to be a conclusive recital of fact pursuant to Section 622 of the California Evidence Code. This Agreement is intended to be a final expression of the agreement of the parties and is an integrated agreement within the meaning of Section 1856 of the California Code of Civil Procedure. This Agreement was jointly drafted by the parties.
- F. Amendment. No part of this Agreement may be modified without the written consent of both parties. This Agreement may be amended from time to time, in whole or in part, by mutual written consent of the parties hereto or their successors in interest. City's city manager may execute any such amendment on City's behalf, although the city manager retains the discretion to refer such matters to the City Council.
- G. Headings. Section headings are provided for organizational purposes only and do not in any manner affect the scope, meaning, or intent of the provisions under the heading.
- H. No Third Party Beneficiaries Intended. Except as provided herein, the parties of this Agreement do not intend to provide any other party with any benefit or enforceable legal or equitable right or remedy.
- I. Conflict With Laws or Regulations/Severability. This Agreement is subject to all applicable laws and regulations. If any provision(s) of this Agreement is found by any court or other legal authority, or is agreed by the parties, to be in conflict with any code or regulation governing this subject, the conflicting provision(s) shall be considered null and void. If the effect of nullifying any conflicting provision is such that a material benefit of the Agreement to either party is lost, the Agreement may be terminated at the option of the effected party. In all other cases, the remainder of the Agreement shall continue in full force and effect.
- J. 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.
- K. 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. This Agreement was executed in Tulare County, California, and venue for any legal action arising from or in connection with this Agreement or the Property shall be in Tulare County, California.
- L. Attorneys Fees. In the event either party commences any action or legal proceedings for the enforcement of this Agreement, the prevailing party, as determined by the court, shall be entitled to recovery of its reasonable fees and

costs, including reasonable attorneys fees, court costs incurred in the action brought thereon.

- M. No Agency, Joint Venture or Partnership. It is understood that this Agreement is a contract that has been negotiated and voluntarily entered into by City and Owner and that Owner is not an agent of City. City and Owner hereby renounce the existence of any form of joint venture or partnership between them, and agree that nothing contained herein or in any document executed in connection therewith shall be construed as making City and Owner joint venturers or partners.
- N. Excusable Delays; Extension of Time of Performance. In the event of delays due to strikes, inability to obtain materials, civil commotion, fire, war, terrorism, lockouts, third-party litigation or other legal challenges regarding the annexation, riots, floods, earthquakes, epidemic, quarantine, freight embargoes, failure of contractors to perform, or other circumstances beyond the reasonable control of the parties and which cause substantially interferes with the ability of either party to perform its obligations under this Agreement, then the time for performance of any such obligation shall be extended for such period of time as the cause of such delay shall exist but in any event not longer than for such period of time.
- O. Further Assurances. The parties will execute and deliver, upon demand by the other party, such further documents, instruments and conveyances, and shall take such further actions as such other party may request from time to time to document the transactions set forth herein.

P. Recordation of Agreement; Counterparts. This Agreement, or an abstract of its material terms and conditions shall be recorded by either party in the Official Records of the Tulare County Recorder. This Agreement may be executed in counterparts and, when all counterparts are combined, shall constitute a single agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date set forth next to their signature.

CITY

Date: _____

By: _____
Steve Salomon, City Manager

Attest:

Date: _____

By: _____
Donjia Huffmon, City Clerk

Approved as to Form:

Date: _____

By: _____
Alex Peltzer, City Attorney

OWNER

Date: _____

By: _____
Randy J. Hill

Date: _____

By: _____
Liselle T. Hill

Date: _____

By: _____
Anita Bivian

Date: _____

By: _____
Rich Rodriguez

STATE OF CALIFORNIA

)

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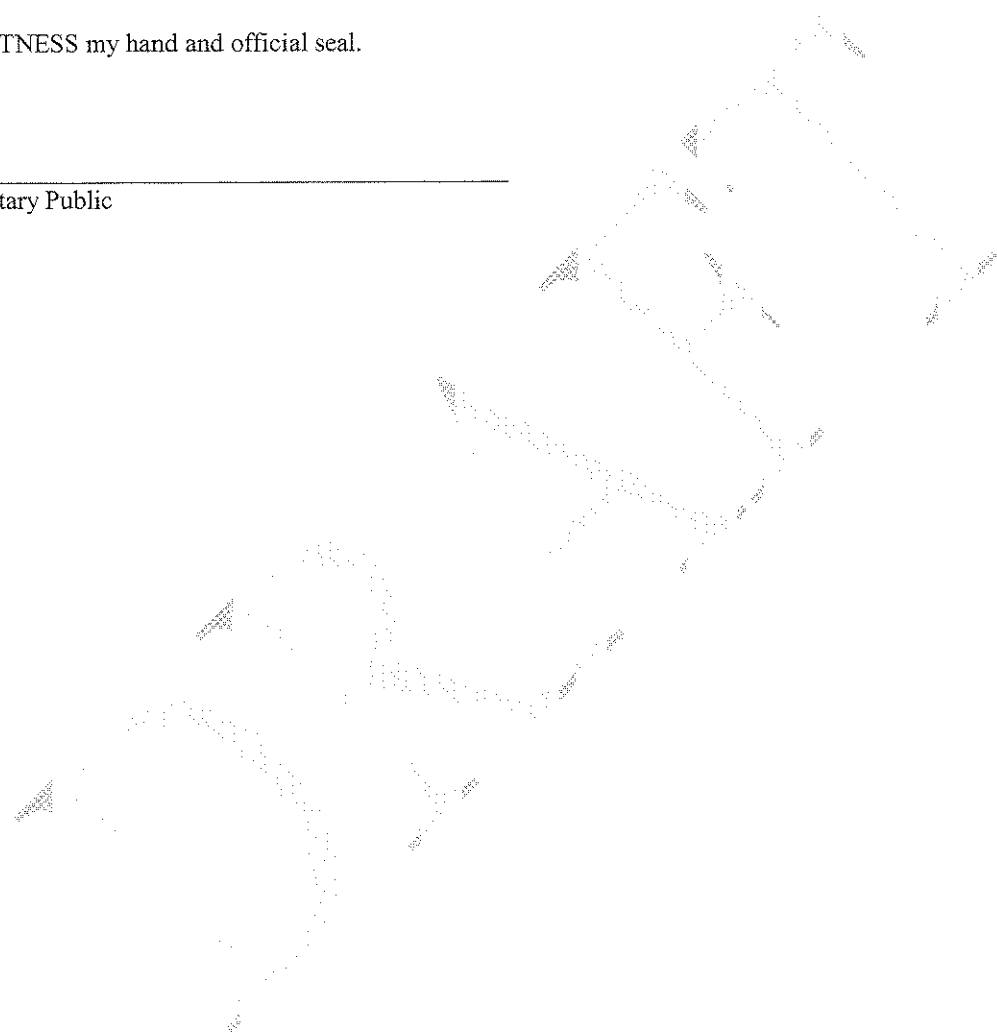
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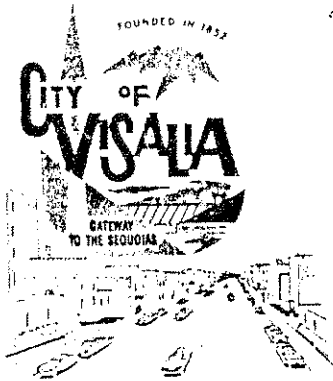
COUNTY OF TULARE

On _____, 2007 before me, _____, Notary Public, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public





October 16, 1969

Tulare County Planning Commission
County Civic Center
Visalia, California 93277

Re: Agricultural Preserve No. 69-258
C. J. Shannon and Sons

Gentlemen:

The City of Visalia hereby protests the creation of Agricultural Preserve 69-258 on property owned by C. J. Shannon & Sons.

Enclosed is a copy of Resolution No. 686, which officially states the position of the City.

Sincerely,

Roger A. Wilson
Roger A. Wilson
Assistant Planning Director

dh
encl.

EXHIBIT C

RESOLUTION NO. 686

WHEREAS, the City Council of the City of Visalia have been advised that the County of Tulare will from time to time enter into agreements with agricultural land owners pursuant to the Williamson Act which will in effect allow said land owners to retain the character of their land as an agricultural preserve; and

WHEREAS, the Williamson Act provides that any land within one mile of the incorporated limits of any city which is to be zoned pursuant to the Williamson Act, requires the city be notified should said land be within one mile of the city limits of said city, and;

WHEREAS, the City Council have been further advised that the City, in order to protect its interest in any land being zoned pursuant to the Williamson Act, must file with the Board of Supervisors of the County a resolution protesting the execution of a contract which includes land within one mile of the exterior boundaries of the City.

NOW, THEREFORE BE IT RESOLVED that the City Council of the City of Visalia hereby instructs the City Clerk to file a resolution with the County protesting the execution of any contracts which include land within one mile of the exterior boundaries of the City, pursuant to the Williamson Act as specifically set forth in Section 51243.5 of the Government Code of the State of California.

Passed and adopted January 6, 1969.

CITY OF VISALIA
315 E. ACEQUIA AVENUE
VISALIA, CA 93291

Clerk Recorder
NOV 10 2010
Received

**NOTICE OF A PROPOSED
NEGATIVE DECLARATION**

Project Title: Annexation No. 2005-07 (Hill)

Project Description: Annexation No. 2005-07 (Hill) is a request by R&L Investment Group, LLC, to annex parcels and right-of-way totaling approximately 137 acres into the City limits of Visalia. The purpose of the annexation is to facilitate future low density residential development on the property, and to facilitate the acquisition and improvement of riparian areas along the south bank of the Saint Johns River. The project includes the actions of annexation of the parcels and right-of-way into the Visalia City limits, the entering into a Pre-Annexation Agreement between the City and the Property Owner, and the detachment of property from County Service Area No. 1.

The property is located on the east side of Dinuba Boulevard between Shannon Parkway and the St. John's River, adjacent to the City of Visalia, and inside the County of Tulare. (APN: 079-071-001, 016, 018, 020, 023, 024 [portion], 028; 079-080-045, 049, 052 through 057)

Contact Person: Brandon Smith, AICP, Senior Planner. Phone: (559) 713-4636.

Time and Place of Public Hearing: A public hearing for the proposed project will be held before the City Council on Monday, December 6th, 2010 at 7:00 p.m. in the City Hall Council Chambers located at 707 W. Acequia, Visalia, CA.

Pursuant to City Ordinance No. 2388, the Environmental Coordinator of the City of Visalia has reviewed the proposed project described herein and has found that it will not result in any significant effect upon the environment because of the reasons listed below:

Reasons for Negative Declaration: Initial Study No. 2010-82 has not identified any significant, adverse environmental impacts that may occur because of the project. Copies of the initial study and other documents relating to the subject project may be examined by interested parties at the Planning Division in City Hall East, at 315 E. Acequia Ave., Visalia, CA.

Comments on this proposed Negative Declaration will be accepted until November 30, 2010.

Date: November 10, 2010

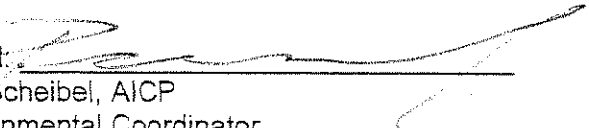
Signed: 
Paul Scheibel, AICP
Environmental Coordinator
City of Visalia

EXHIBIT D

NEGATIVE DECLARATION

DESCRIPTION OF PROJECT: Annexation No. 2005-07 (Hill)

Proposal: Annexation No. 2005-07 (Hill) is a request by R&L Investment Group, LLC, to annex parcels and right-of-way totaling approximately 137 acres into the City limits of Visalia. The purpose of the annexation is to facilitate future low density residential development on the property, and to facilitate the acquisition and improvement of riparian areas along the south bank of the Saint Johns River. The project includes the actions of annexation of the parcels and right-of-way into the Visalia City limits, the entering into a Pre-Annexation Agreement between the City and the Property Owner, and the detachment of property from County Service Area No. 1.

Location: The property is located on the east side of Dinuba Boulevard between Shannon Parkway and the St. John's River, adjacent to the City of Visalia, and inside the County of Tulare. (APN: 079-071-001, 016, 018, 020, 023, 024 [portion], 028; 079-080-045, 049, 052 through 057)

Project Facts: Refer to Initial Study for project facts, plans and policies, discussion of environmental effects and mitigation measures, and determination of significant effect.

Attachments:

Initial Study	(X)
Environmental Checklist	(X)
Maps	(X)
Mitigation Measures	()
Letters	()

DECLARATION OF NO SIGNIFICANT EFFECT:

This project will not have a significant effect on the environment for the following reasons:

- (a) The project does not have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal, or eliminate important examples of the major periods of California history or prehistory.
- (b) The project does not have the potential to achieve short-term environmental goals to the disadvantage of long-term environmental goals.
- (c) The project does not have environmental effects which are individually limited but cumulatively considerable. Cumulatively considerable means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.
- (d) The environmental effects of the project will not cause substantial adverse effects on human beings, either directly or indirectly.

This Negative Declaration has been prepared by the City of Visalia Planning Division in accordance with the California Environmental Quality Act of 1970, as amended. A copy may be obtained from the City of Visalia Planning Division Staff during normal business hours.

APPROVED
Paul Scheibel, AICP
Environmental Coordinator

By: 

Date Approved: November 10, 2010

Review Period: 20 days

INITIAL STUDY

I. GENERAL

A. Description of the Project: Annexation No. 2005-07 (Hill) is a request by R&L Investment Group, LLC, to annex parcels and right-of-way totaling approximately 137 acres into the City limits of Visalia. The purpose of the annexation is to facilitate future low density residential development on the property, and to facilitate the acquisition and improvement of riparian areas along the south bank of the Saint Johns River. The project includes the actions of annexation of the parcels and right-of-way into the Visalia City limits, the entering into a Pre-Annexation Agreement between the City and the Property Owner, and the detachment of property from County Service Area No. 1.

The property is located on the east side of Dinuba Boulevard between Shannon Parkway and the St. John's River, adjacent to the City of Visalia, and inside the County of Tulare. (APN: 079-071-001, 016, 018, 020, 023, 024 [portion], 028; 079-080-045, 049, 052 through 057)

B. Identification of the Environmental Setting: The site predominately contains land that is either fallow or maintained as orchards. There are two inhabited residences and an inhabited mobile home on the west side of the site facing Dinuba Boulevard. Derelict buildings and structures are also located on the west side of the site facing Dinuba Boulevard. The existing City limits are located on the south and west sides of the site. Dinuba Boulevard (designated as State Route 63 and identified as Road 124 in the County) runs adjacent to the west side of the site in a north/south direction. At this location it transitions from a two to four lane road. The road is designated by the City's Circulation Element as an arterial street, and functions as a regional route carrying traffic between Visalia and communities to the north. Shannon Parkway is partially constructed on the south side of the site. The road is designated by the City's Circulation Element as a collector street, and will eventually connect Dinuba Boulevard with the future Santa Fe Street. Saint Johns River runs adjacent to the north and east sides of the site. It is designated by the City's Conservation and Open Space Element as a community waterway.

The surrounding zoning and land uses are as follows:

- North: County AE-20 (Agriculture Exclusive) – St. Johns River, contractor's yard, single-family residences
- South: C-CM (Community Commercial), R-1-6 (Single-family Residential, 6,000 sq. ft. minimum site area) – Shannon Parkway, community shopping center consisting of Target & retail stores, vacant land with pending subdivision map
- East: County AE-20 (Agriculture Exclusive) – St. Johns River, agriculture / row crops
- West: QP (Quasi-Public) – Dinuba Blvd., Riverway Community Sports Park

C. Plans and Policies: The Land Use Element (LUE) designates the site as Low Density Residential and Conservation. The site is currently located in the County, though upon annexation will have a zoning designation of R-1-6 (Single-Family Residential, 6,000 sq. ft. minimum lot size) and QP (Quasi-Public). City of Visalia Zoning Ordinance, Section 17.12.010, states that the purpose and intent of the R-1 single-family residential zone is to provide living area within the city where development is limited to low density concentrations of one-family dwellings. City of Visalia Zoning Ordinance, Section 17.52.010, states that the purpose and intent of the quasi-public zone is to provide a zone which is intended to allow for the location of institutional, academic, community service, governmental, and nonprofit uses. The proposed project is consistent with the Land Use Element of the General Plan and the Zoning Ordinance.

The Conservation, Open Space, Recreation and Parks Element designates the Saint Johns River as a community waterway at this location and mandates a 100-foot riparian habitat development setback from both sides of the discernable top of bank.

II. ENVIRONMENTAL IMPACTS

No Significant environmental impacts have been identified for this project which have not been adequately analyzed in previous environmental documents. Farmland conversion was identified as a significant cumulative impact in the 1991 Visalia Land Use Element Update Final EIR. Agricultural impacts continue to be reduced in severity through the City's growth phasing policies in Section 6.2 of the Land Use Element. The City of Visalia Land Use Element and Zoning Ordinance contain additional land use mitigation measures that are designed to reduce/eliminate impacts to a level of non-significance.

III. MITIGATION MEASURES

None. The City of Visalia Zoning Ordinance contains guidelines, criteria, and requirements for the mitigation of potential impacts related to light/glare, visibility screening, noise, and traffic/parking to eliminate and/or reduce potential impacts to a level of non-significance.

City Council Resolution 91-105 adopted and certified the Visalia Land Use Element Update EIR and contained mitigation measures to eliminate or substantially lessen the impacts of growth in the community. Those mitigation measures are included herein by reference. In addition, the Visalia Zoning Ordinance contains guidelines, criteria, and requirements for the mitigation of potential impacts related to light/glare, visibility screening, noise, and traffic/parking to eliminate and/or reduce potential impacts to a level of non-significance. The City's impact fee programs for public safety, public services, groundwater preservation, stormwater management, and others, adequately mitigate public service and infrastructure impacts of the proposed project.

IV. PROJECT COMPATIBILITY WITH EXISTING ZONES AND PLANS

The project is compatible with the General Plan and Zoning Ordinance as the project relates to surrounding properties.

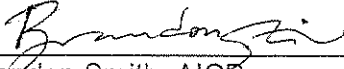
V. SUPPORTING DOCUMENTATION

The following documents are hereby incorporated into this Negative Declaration and Initial Study by reference:

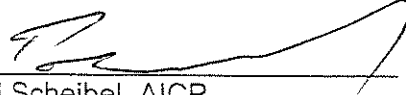
- City of Visalia General Plan Land Use Element. City of Visalia. September 1991, revised June 1996.
- City of Visalia General Plan Land Use Element Final Environmental Impact Report (SCH EIR No. 90020160). City of Visalia, September 3, 1991.
- Visalia City Council Resolution 91-105 (Certifying the EIR for the City of Visalia General Plan Land Use Element Update), passed and adopted September 3, 1991.
- City of Visalia General Plan Circulation Element. City of Visalia. April 2001.
- City of Visalia General Plan Circulation Element Final Environmental Impact Report (SCH EIR No. 95032056). VRPA Technologies, February 26, 2001.
- Visalia City Council Resolution 2001-19 (Certifying the EIR for the City of Visalia General Plan Circulation Element Update), passed and adopted April 2, 2001.
- City of Visalia General Plan Conservation, Open Space, Recreation & Parks Element. City of Visalia. June 1989.
- Visalia Municipal Code, Title 17 (Zoning Ordinance)
- California Environmental Quality Act Guidelines
- Municipal Service Reviews, Group 1 Cities and Special Districts Final Report. Omni Means Ltd., January 2006.

- Visalia City Council Resolution 2001-03 (Amending Rules Governing the Administration of Agriculture Preserves in the City of Visalia), passed and adopted February 5, 2001.
- City of Visalia Storm Water Master Plan. Boyle Engineering Corporation, September 1994.
- City of Visalia Sanitary Sewer Master Plan. City of Visalia, 1994.

VI. NAME OF PERSON WHO PREPARED INITIAL STUDY



Brandon Smith, AICP
Senior Planner



Paul Scheibel, AICP
Environmental Coordinator

**INITIAL STUDY
 ENVIRONMENTAL CHECKLIST**

Name of Proposal	Annexation No. 2005-07 (Hill)		
NAME OF PROPONENT:	R&L Investment Group, LLC	NAME OF AGENT:	Lane Engineers, Inc.
Address of Proponent:	680 W. Shaw Avenue, Suite 208	Address of Agent:	P.O. Box 1059
	Fresno, CA 93704		Tulare, CA 93275
Telephone Number:	(559) 276-2424	Telephone Number:	(559) 688-5263
Date of Review	November 10, 2010	Lead Agency:	City of Visalia

The following checklist is used to determine if the proposed project could potentially have a significant effect on the environment. Explanations and information regarding each question follow the checklist.

- 1 = No Impact 2 = Less Than Significant Impact
 3 = Less Than Significant impact with Mitigation Incorporated 4 = Potentially Significant Impact

I. AESTHETICS

Would the project:

- 1 a) Have a substantial adverse effect on a scenic vista?
- 1 b) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?
- 2 c) Substantially degrade the existing visual character or quality of the site and its surroundings?
- 2 d) Create a new source of substantial light or glare that would adversely affect day or nighttime views in the area?

- 2 f) Result in substantial contribution to greenhouse gas (GHG) production?

II. AGRICULTURAL RESOURCES

Would the project:

- 2 a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance, as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency to non-agricultural use?
- 2 b) Conflict with existing zoning for agricultural use, or a Williamson Act contract?
- 2 c) Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland to nonagricultural use?

IV. BIOLOGICAL RESOURCES

Would the project:

- 2 a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?
- 2 b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?
- 1 c) Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?
- 2 d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?
- 2 e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?
- 1 f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?

III. AIR QUALITY

Would the project:

- 1 a) Conflict with or obstruct implementation of the applicable air quality plan?
- 1 b) Violate any air quality standard or contribute substantially to an existing or projected air quality violation?
- 2 c) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under applicable federal or state ambient air quality standard (including releasing emissions which exceed quantitative thresholds for ozone precursors)?
- 1 d) Expose sensitive receptors to substantial pollutant concentrations?
- 1 e) Create objectionable odors affecting a substantial number of people?

V. CULTURAL RESOURCES

Would the project:

- 1 a) Cause a substantial adverse change in the significance of a historical resource as defined in Public Resources Code Section 15064.5?

- 1 b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to Public Resources Code Section 15064.5?
- 1 c) Directly or indirectly destroy a unique paleontological resource or site, or unique geologic feature?
- 1 d) Disturb any human remains, including those interred outside of formal cemeteries?

VI. GEOLOGY AND SOILS

Would the project:

- a) Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:
 - 1 i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault?
 - 1 ii) Strong seismic ground shaking?
 - 1 iii) Seismic-related ground failure, including liquefaction?
 - 1 iv) Landslides?
- 1 b) Result in substantial soil erosion or loss of topsoil?
- 1 c) Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction, or collapse?
- 1 d) Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial risks to life or property?

VII. HAZARDS AND HAZARDOUS MATERIALS

Would the project:

- 1 a) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?
- 1 b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?
- 1 c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?
- 1 d) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?
- 1 e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area?
- 1 f) For a project within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area?
- 1 g) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?
- 1 h) Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?

VIII. HYDROLOGY AND WATER QUALITY

Would the project:

- 2 a) Violate any water quality standards of waste discharge requirements?
- 1 b) Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)?
- 2 c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion or siltation on- or off-site?
- 2 d) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or off-site?
- 2 e) Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff?
- 1 f) Otherwise substantially degrade water quality?
- 2 g) Place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map?
- 2 h) Place within a 100-year flood hazard area structures which would impede or redirect flood flows?
- 1 i) Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam?
- 1 j) Inundation by seiche, tsunami, or mudflow?

IX. LAND USE AND PLANNING

Would the project:

- 1 a) Physically divide an established community?
- 1 b) Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?
- 1 c) Conflict with any applicable habitat conservation plan or natural community conservation plan?

X. MINERAL RESOURCES

Would the project:

- 1 a) Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?
- 1 b) Result in the loss of availability of a locally-important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan?

XI. NOISE

Would the project:

- 2 a) Cause exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?

- 1 b) Cause exposure of persons to or generation of excessive groundborne vibration or groundborne noise levels?
- 2 c) Cause a substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project?
- 1 d) Cause a substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project?
- 1 e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?
- 1 f) For a project within the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels?

XII. POPULATION AND HOUSING

Would the project:

- 2 a) Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?
- 2 b) Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere?
- 2 c) Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere?

XIII. PUBLIC SERVICES

Would the project:

- 1 a) Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:
 - 1 i) Fire protection?
 - 1 ii) Police protection?
 - 1 iii) Schools?
 - 1 iv) Parks?
 - 1 v) Other public facilities?

XIV. RECREATION

Would the project:

- 1 a) Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?
- 1 b) Does the project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment?

XV. TRANSPORTATION / TRAFFIC

Would the project:

- 2 a) Cause an increase in traffic which is substantial in relation to the existing traffic load and capacity of the street system (i.e., result in a substantial increase in either the number of vehicle trips, the volume to capacity ratio on roads, or congestion at intersections)?

- 1 b) Exceed, either individually or cumulatively, a level of service standard established by the county congestion management agency for designated roads or highways?
- 1 c) Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks?
- 1 d) Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?
- 1 e) Result in inadequate emergency access?
- 1 f) Result in inadequate parking capacity?

XVI. UTILITIES AND SERVICE SYSTEMS

Would the project:

- 1 a) Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board?
- 2 b) Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?
- 2 c) Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?
- 2 d) Have sufficient water supplies available to service the project from existing entitlements and resources, or are new or expanded entitlements needed?
- 1 e) Result in a determination by the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?
- 1 f) Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs?
- 1 g) Comply with federal, state, and local statutes and regulations related to solid waste?

XVII. MANDATORY FINDINGS OF SIGNIFICANCE

Would the project:

- 2 a) Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?
- 2 b) Does the project have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)?
- 2 c) Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?
- 2 d) Does the project have the potential to achieve short-term environmental goals to the disadvantage of long-term environmental goals?

DISCUSSION OF ENVIRONMENTAL EVALUATION

I. AESTHETICS

- a. The Sierra Nevada mountain range is a scenic vista that can be seen from Visalia on clear days. This project will not adversely affect the view of this vista.
- b. There is no state scenic highway in the vicinity of the project. The Saint Johns River may be considered a scenic resource; however the change in jurisdiction for the river will not have an effect on the visual character of this resource.
- c. The City has development standards related to landscaping and other amenities that will ensure that the visual character of the area is not degraded upon any future development. The proposed project in itself will not change the visual character or quality of the site.
- d. The project will facilitate for the future development of residential land. New sources of light would be created upon the site's future development that is typical of urban development. The City's existing development standards require that light be directed and/or shielded so it does not fall upon adjacent properties upon the site's future development.

II. AGRICULTURAL RESOURCES

- a. This project will take approximately 100 acres of prime agricultural land out of agricultural use, and will allow the site to develop with low density residential land uses in accordance with the existing General Plan land use designation on the site.

The Environmental Impact Report (EIR) for the General Plan Land Use Element Update concluded that the loss of prime agricultural land (estimated at 13,000 acres) resulting from the City's urban expansion to the Urban Growth Boundary (UGB) over a 30-year time frame would be a significant unavoidable impact. The EIR addressed various mitigation measures to be used to help mitigate this impact; however this mitigation would not completely reduce the impact to a level that is less than significant. Therefore, a Statement of Overriding Conditions was prepared in association with the General Plan EIR to account for this loss.

A principal purpose of the City's General Plan regulatory scheme described above is to minimize the impact on prime agricultural land resulting from the City's urban expansion. The General Plan policies were intended, and have been successful, to maintain the productivity of prime agricultural land surrounding the City by controlling urban expansion in a manner which has the least impact on prime agricultural lands. This is accomplished by dictating contiguous, compact, and phased urban growth, limiting urban expansion to areas immediately adjacent to existing urban development, and allowing such expansion only when the need for the development is demonstrated according to identified criteria. While urban expansion which will inevitably take place does result in the loss of prime agricultural lands as development proceeds

incrementally outward, the City through its General Plan has "minimized" the overall impact on prime agricultural lands by confining urban development to only those contiguous lands necessary to meet the City's needs and which are likely already impacted as farmland to some degree by their adjacency to existing urban development. This prevents premature conversion and "leapfrog" development of outlying prime agricultural lands.

Overall, the project will involve converting prime farmland to non-agricultural land use; however the impact will be less than significant.

- b. The project will not conflict with an existing zoning for agricultural use on the site. The City General Plan designates the site for Low Density Residential land uses and Conservation along the Saint Johns River corridor. In addition, the site contains a zoning designation of R-1-6 (Single-Family Residential) and QP (Quasi Public).

Also, the project as carried out will not conflict with an existing Williamson Act contract.

A 20-acre portion of the project site is within Agricultural Preserve No. 647, and under Land Conservation (Williamson Act) Contract No. 4060. Under provisions of State Law effective at the time, the City of Visalia protested the formation of this agricultural preserve and contract. The contract was within one mile of the city limits at the time it was executed. Accordingly, upon annexation, the City will not succeed to this contract.

A separate 54-acre portion of the project site is within Agricultural Preserve No. 3595, and under Land Conservation (Williamson Act) Contract No. 10353. At the time the contract was established, the City of Visalia did not protest the formation of the agricultural preserve and contract. A Notice of Full Nonrenewal was subsequently filed on the contract and took effect starting in 2009. Thus, the Contract will dissolve in 2018. During the time which the Contract is in effect inside the City, it will be subject to the adopted rules governing the administration of Agriculture Preserves in the City of Visalia.

While Assembly Bill 2370, enacted January 1, 2003, prohibits the annexation of land under the Williamson Act, exceptions can be made in accordance with one or more findings contained in California Government Code Section 56856.5. Staff believes that the following findings can be met:

1) *The city or county that would administer the contract after annexation has adopted policies and feasible implementation measures applicable to the subject territory ensuring the continuation of agricultural use and other uses allowable under the contract on a long-term basis.*

Goal No. 6.3 in the City's Land Use Element contains objectives and implementing policies which strive to protect agricultural land in agricultural preserves.

2) *The change of organization or reorganization encourages and provides planned, well-ordered, and efficient urban development patterns that include appropriate consideration of the preservation of open-space lands within those urban development patterns.*

Annexation of the parcel containing the agricultural preserve would be consistent with and further the City's established urban development boundaries, which facilitate orderly and efficient growth and land use planning within the Visalia Urban Area Boundary. Currently, the parcel is adjacent to the City limits to the west and south. The proposed annexation would extend the City limits further to the north and east.

Overall, the project will not have a significant impact on the property containing a Williamson Act contract.

- c. The City General Plan designates the site for non-agricultural development. Development pressure and the City's land use and/or zoning regulations indicate that these lands surrounding the property will be used for urban development. It is the General Plan and its policies of managed growth out from the historical center of the community, and not this project, that increase the development potential of adjacent lands and the removal of other lands with the current UDB and adjacent to the project site from agricultural use. If existing agricultural preserves inside the current Urban Development Boundary continue to remain, the resulting land use pattern would become one of mostly urban development with pockets of agricultural land among and within the urbanized area. The traditionally intensive farming practices in Tulare County are not suitable to co-exist as pockets within urban development. Other typical land use conflicts between urban and agricultural uses would also occur. This land use pattern would also be in conflict with Visalia General Plan policies to grow in a compact fashion and to avoid allowing development to leap-frog over parcels of land.

III. AIR QUALITY

- a. The project in itself does not disrupt implementation of the San Joaquin Valley Air Pollution Control District's (SJVAPCD) air quality plan. Subsequent project development may be subject to the SJVAPCD Indirect Source Review (Rule 9510) procedures that became effective on March 1, 2006. If so, the applicant is required to obtain permits demonstrating compliance with Rule 9510, or payment of mitigation fees to SJVAPCD.
- b. The project will not violate an air quality standard or contribute substantially to an existing or projected air quality violation. Subsequent project development may be subject to the SJVAPCD Indirect Source Review (Rule 9510) procedures that became effective on March 1, 2006. If so, the applicant is required to adhere to requirements administered by the SJVAPCD to reduce emissions to a level of compliance consistent with the District's regulations.
- c. The San Joaquin Valley is a region that is already at non-attainment for air quality. This site was evaluated in the EIR for the City of Visalia Land Use Element Update for

conversion into urban development. The City adopted urban development boundaries as mitigation measures for air quality. Any subsequent projects will be mandated to adhere to requirements administered by the SJVAPCD to reduce emissions to a level of compliance consistent with the District's regulations.

- d. The project does not propose any land uses or will not directly allow any known land uses that generate substantial pollutant concentrations.
- e. The project does not propose any land uses or will not directly allow any known land uses that generate objectionable odors.
- f. The proposed project is an annexation into the City limits. There are no specific development projects being proposed in conjunction with the annexation; thus the amount of Greenhouse Gas emissions that would be produced with future development on the site cannot be determined at this time. Nevertheless, it should not be overlooked that the project will facilitate for the future development of this site for residential uses in accordance with the City's Zoning Ordinance, which will result in the production of an uncertain amount of Greenhouse Gases. The future development of this site is subject to compliance with all required federal, regional, and local requirements as they pertain to Greenhouse Gas emissions, as well as appropriate environmental analysis in accordance with the California Environmental Quality Act (CEQA) which includes evaluation of Greenhouse Gas impacts.

IV. BIOLOGICAL RESOURCES

- a. The site has no known species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service. City-wide biological resources were evaluated in the EIR for the City of Visalia Land Use Element Update for conversion to urban use.
- b. The project area is adjacent to a portion of the Saint Johns River, a riparian habitat area. The City adopted a Conservation, Open Space, Parks, and Recreation Element of the General Plan that contains standards that preserve and enhance the Saint Johns River corridor.
- c. The project is not located within or adjacent to federally protected wetlands as defined by Section 404 of the Clean Water Act.
- d. The project will facilitate the future development of residential uses; however this would not act as a barrier to animal movement since there are no known species in the vicinity of the project site. This site was evaluated in the General Plan EIR for the City of Visalia Land Use Element Update for conversion to urban use.
- e. The City has a municipal ordinance in place to protect oak trees. Any oak trees on the site will be under the jurisdiction of this ordinance.
- f. There are no local or regional habitat conservation plans for the area.

V. CULTURAL RESOURCES

- a. There are no known historical resources located within the project area. If some potentially historical or cultural resource is unearthed during development all work should cease until a qualified professional archaeologist can evaluate the finding and make necessary mitigation recommendations.
- b. There are no known archaeological resources located within the project area. If some archaeological resource is unearthed during development all work should cease until a qualified professional archaeologist can evaluate the finding and make necessary mitigation recommendations.
- c. There are no known unique paleontological resources or geologic features located within the project area.
- d. There are no known human remains buried in the project vicinity. If human remains are unearthed during development all work should cease until the proper authorities are notified and a qualified professional archaeologist can evaluate the finding and make any necessary mitigation recommendations.

VI. GEOLOGY AND SOILS

- a.
 - i. The State Geologist has not issued an Alquist-Priolo Earthquake Fault Map for Tulare County. The project area is not located on or near any known earthquake fault lines. Therefore, the project will not expose people or structures to potential substantial adverse impacts involving earthquakes.
 - ii. Although there are no known active earthquake faults in or near the subject site could be subject to ground shaking from regional faults. Based upon the seismologic and geologic conditions, this type of event is highly unlikely.
 - iii. There is no known seismic activity that would result in ground failure, including liquefaction.
 - iv. The project site is relatively level with little topographic variation. There is no risk of exposing people or structures to potential substantial adverse affects from landslides.
- b. The future development of this site will require movement of topsoil. A grading and drainage plan must be submitted to the City of Visalia for review and approval prior to any construction of the project.
- c. The project area is relatively flat and the underlying soil is not known to be unstable. Soils in the Visalia area have few limitations with regard to development. Due to low clay content and limited topographic relief, soils in the Visalia area generally have low expansion characteristics.
- d. Due to low clay content, soils in the Visalia area have an expansion index of 0-20, which is defined as very low potential expansion.

VII. HAZARDS AND HAZARDOUS MATERIALS

- a. The project will not create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials.
- b. There is no reasonably foreseeable condition or incident involving the project that could result in release of hazardous materials into the environment.
- c. There is no reasonably foreseeable condition or incident involving the project that could affect existing or proposed school sites or areas within one-quarter mile of school sites.
- d. The project area does not include any sites listed as hazardous materials sites pursuant to Government Code Section 65692.5.
- e. The project area is not within the boundaries of an adopted or proposed airport land use plan.
- f. The project area is not within the vicinity of any private airstrip.
- g. The project will not interfere with the implementation of any adopted emergency response plan or evacuation plan.
- h. There are no wildlands within or near the project area.

VIII. HYDROLOGY AND WATER QUALITY

- a. The project will not violate any water quality standards. For any future development, development standards are already in place to require that stormwater drainage be held on-site with a drainage basin or to connect to the City stormwater drainage system.
- b. The project will not substantially deplete groundwater supplies in the project vicinity.
- c. The project will not result in substantial erosion on- or off-site. Any future development of the site may have the potential to discharge fall-out or debris. Shielding (silt fencing) may be required to prevent fall-out or debris from entering the ditch during construction activities.
- d. The project will not alter the existing drainage pattern of the site or area nor will it alter the course of any stream or river. Any future development on the subject property may increase impervious surfaces and as a result alter drainage patterns and contribute to increased runoff that may be substantially polluted. However, the City of Visalia requires that any new development mitigate drainage impacts through connection to the City stormwater drainage system or retention in an on-site ponding basin. The City verifies, prior to development, that the stormwater drainage system has adequate capacity to handle projected flows generated by each development. Any future development will also be subject to requirements of the RWQCB regarding short-term and long-term water quality impacts.
- e. Development standards are in place to require stormwater to drain into the City stormwater drainage system or be retained in an on-site ponding basin. Subsequent

improvements will be consistent with the adopted City Storm Drain Master Plan.

- f. There are no reasonably foreseeable reasons why the project would result in the degradation of water quality.
- g. An approximately 10-acre portion of the project area is located within Zone AE which is defined as a 100-year flood hazard area where average depths are determined. Entitlement conditions and building code conditions for future development on the site will establish city regulations for flood hazard mitigation.
- h. An approximately 10-acre portion of the project area is located within Zone AE which is defined as a 100-year flood hazard area where average depths are determined.
- i. The project would not expose people or structures to risks from failure of levee or dam.
- j. Seiche and tsunami impacts do not occur in the Visalia area. The site is relatively flat, so there will be no impacts related to mudflow.

IX. LAND USE AND PLANNING

- a. The project will not physically divide an established community.
- b. The site is within the current Urban Development Boundaries of the City of Visalia. The City of Visalia designates the area for urban development. This site was evaluated in the EIR for the City of Visalia Land Use Element Update for conversion to urban use. The City adopted urban development boundaries as mitigation measures for conversion to urban development.
- c. The project does not conflict with any applicable conservation plan.

X. MINERAL RESOURCES

- a. No mineral areas of regional or statewide importance exist within the Visalia area.
- b. There are no mineral resource recovery sites delineated in the Visalia area.

XI. NOISE

- a. The project will facilitate for the future development of residential uses. Such development will result in noise generation typical of urban development. There will be noise generated by traffic along designated arterial and collector streets. The City's standards for setbacks and/or construction of walls along major streets will reduce noise levels to a level that is less than significant.
- b. The project will not result in ground-borne vibration or ground-borne noise levels.
- c. The future development of the property to residential use will cause noise levels to increase beyond current levels. These levels will be typical of noise levels associated with urban development and anticipated in the General Plan EIR, and therefore are considered less than significant.
- d. There will not be any construction associated with the project; however any subsequent development of the site will be required to comply with the City's Noise

Ordinances for standards and guidelines pertaining to the use of construction equipment.

- e. The project area is not within the boundaries of an adopted or proposed airport land use plan.
- f. There is no private airstrip near the project area.

XII. POPULATION AND HOUSING

- a. Development of the site will result in increased housing in the area. This site was evaluated in the EIR for the City of Visalia Land Use Element Update for conversion to urban use.
- b. Future development of the site may displace three existing rural residences. This is not considered significant given that the designated land use would allow for substantially more housing and would add to the overall housing stock for the area.
- c. Future development of the site may displace approximately nine people, given an average of approximately three persons per dwelling unit. This is not considered significant given that the designated land use would allow for substantially more housing and would add to the overall housing stock and population for the area.

XIII. PUBLIC SERVICES

- a.
 - i. Current fire protection facilities can adequately serve the site without a need for alteration. Any future development will have to meet all state and local codes for providing adequate fire flows, fire sprinklers, emergency vehicle access and other fire prevention requirements. The City of Visalia charges development impact fees to off-set the cost of providing additional fire protection facilities and equipment brought about by new development.
 - ii. Current police protection facilities can adequately serve the site without a need for alteration.
 - iii. Current school facilities can adequately serve the site without a need for alteration. The Visalia Unified School District has established a fee schedule to collect impact fees for new development. These fees are collected to mitigate any impact new development has on schools located within the project's vicinity, per Government Code Section 65995 and 65995.5.
 - iv. The project does not include any residential units that will create a need for additional park facilities. Current park and recreation facilities can adequately serve the site without a need for alteration.
 - v. Other public facilities can adequately serve the site without a need for alteration.

XIV. RECREATION

- a. The proposed project will not increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated.

- b. The proposed project does not include recreational facilities or require the construction or expansion of recreational facilities within the area that might have an adverse physical effect on the environment.

XV. TRANSPORTATION AND TRAFFIC

- a. Future development of the site for low density residential use will result in increased traffic in the area. This site was evaluated in the EIR for the City of Visalia Land Use Element Update for this land use.
- b. The site is projected for urban development by the City and County General Plans. The project is not proposed to exceed what has already been planned for in this area.
- c. The project will not result in nor require a need to change air traffic patterns.
- d. Upon future development of the site, roads will be designed and constructed to City standards so that there will be no increased hazards.
- e. Upon future development of the site, roads will be constructed to City standards that will provide adequate emergency access.
- f. The project will be required to meet the City's parking requirements for future development in accordance with the City's adopted Zoning Ordinance.

XVI. UTILITIES AND SERVICE SYSTEMS

- a. The site is projected for urban development by the City General Plan. The project is not proposed to exceed what has already been planned for in this area.
- b. The project in itself will not result in the construction of new water or wastewater treatment facilities. Any future development would be subject to a groundwater impact fee, sewer connection fees and sewer facility fees which would be used to purchase water rights and fund necessary improvements needed to accommodate development. The City shall determine if new sanitary sewer facilities will be needed, at the time of development, in accordance with the Sewer System Master Plan.
- c. The project in itself will not result in the construction of new storm water facilities. The City has an adopted Storm Drain Master Plan which will provide for the proposed project. Any future improvements to the site will be made in accordance with the adopted Plan, which will not result in any significant effects. The City shall determine if new

storm drain facilities will be needed, at the time of development, in accordance with the Storm Drain Master Plan.

- d. The project is contained within California Water Service Company's territory for its local Urban Water Management Plan, and the water demand quantities are in conformance with that plan. Consequently, it has determined that there are sufficient short and long-term water supplies to support the site, and that services can be extended to the site.
- e. The City has determined that there is adequate capacity existing to serve the site's projected wastewater treatment demands at the City wastewater treatment plant.
- f. Current solid waste disposal facilities can adequately serve the site without a need for alteration.
- g. The project should be able to meet the applicable regulations for solid waste.


XVII. MANDATORY FINDINGS OF SIGNIFICANCE

- a. This site was evaluated in the EIR for the City of Visalia Land Use Element Update for conversion to urban use. The City adopted mitigation measures for conversion to urban development. Where effects were still determined to be significant a statement of overriding considerations was made.
- b. This site was evaluated in the EIR for the City of Visalia Land Use Element Update for conversion to urban use. The City adopted mitigation measures for conversion to urban development. Where effects were still determined to be significant a statement of overriding considerations was made.
- c. This site was evaluated in the EIR for the City of Visalia Land Use Element Update for conversion to urban use. The City adopted mitigation measures for conversion to urban development. Where effects were still determined to be significant a statement of overriding considerations was made.
- d. This site was evaluated in the EIR for the City of Visalia Land Use Element Update for conversion to urban use. The City adopted mitigation measures for conversion to urban development. Where effects were still determined to be significant a statement of overriding considerations was made.

DETERMINATION OF REQUIRED ENVIRONMENTAL DOCUMENT

On the basis of this initial evaluation:

- I find that the proposed project **COULD NOT** have a significant effect on the environment. **A NEGATIVE DECLARATION WILL BE PREPARED.**
- I find that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because the mitigation measures described on the attached sheet have been added to the project. **A MITIGATED NEGATIVE DECLARATION WILL BE PREPARED.**
- I find the proposed project **MAY** have a significant effect on the environment, and an **ENVIRONMENTAL IMPACT REPORT** is required
- I find that as a result of the proposed project no new effects could occur, or new mitigation measures would be required that have not been addressed within the scope of the Program Environmental Impact Report (SCH No. 90020160). The Environmental Impact Report prepared for the City of Visalia Land Use Element (Amendment No. 90-04) was certified by Resolution NO. 91-105 adopted on September 3, 1991. **THE PROGRAM ENVIRONMENTAL IMPACT REPORT WILL BE UTILIZED.**

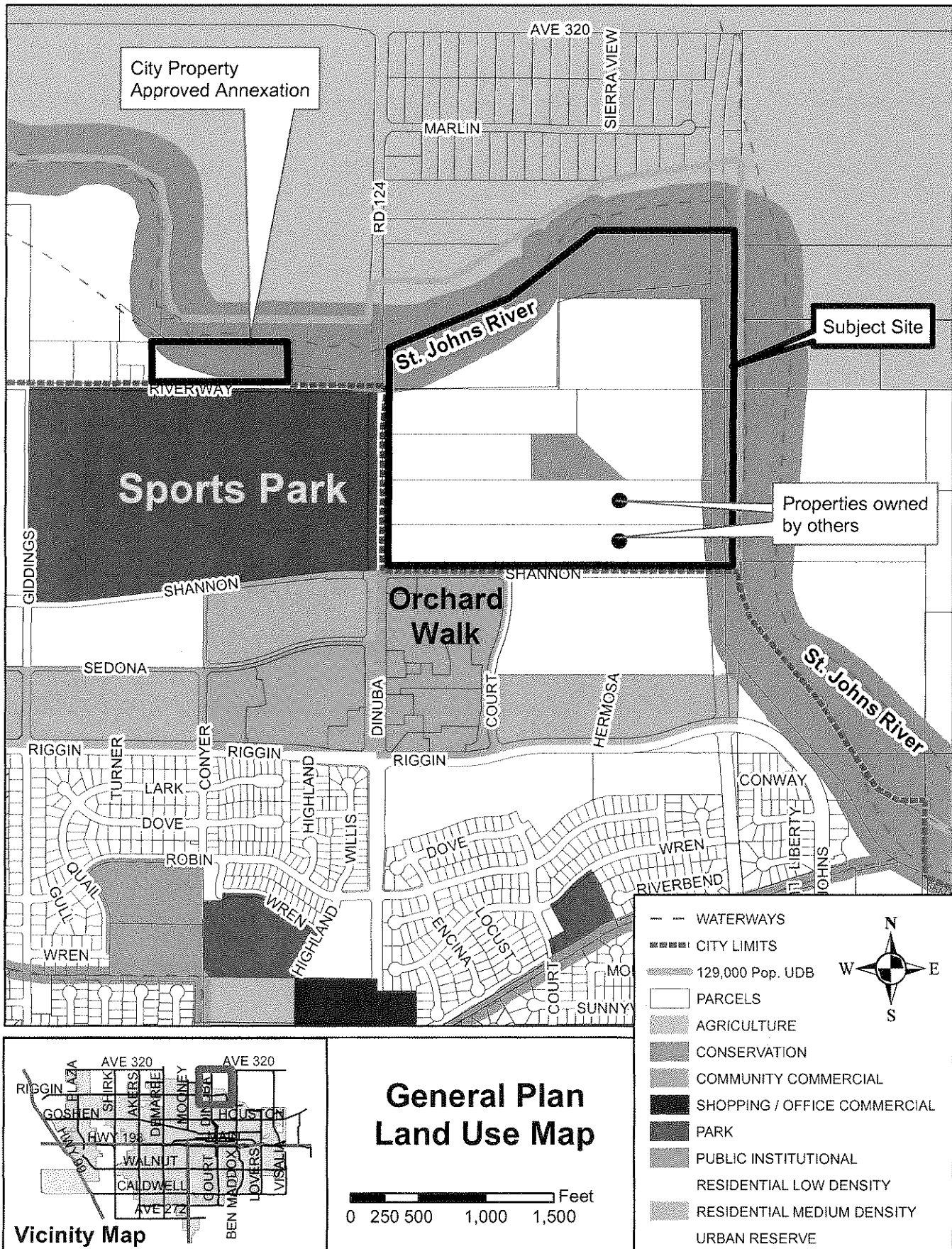


City of Visalia

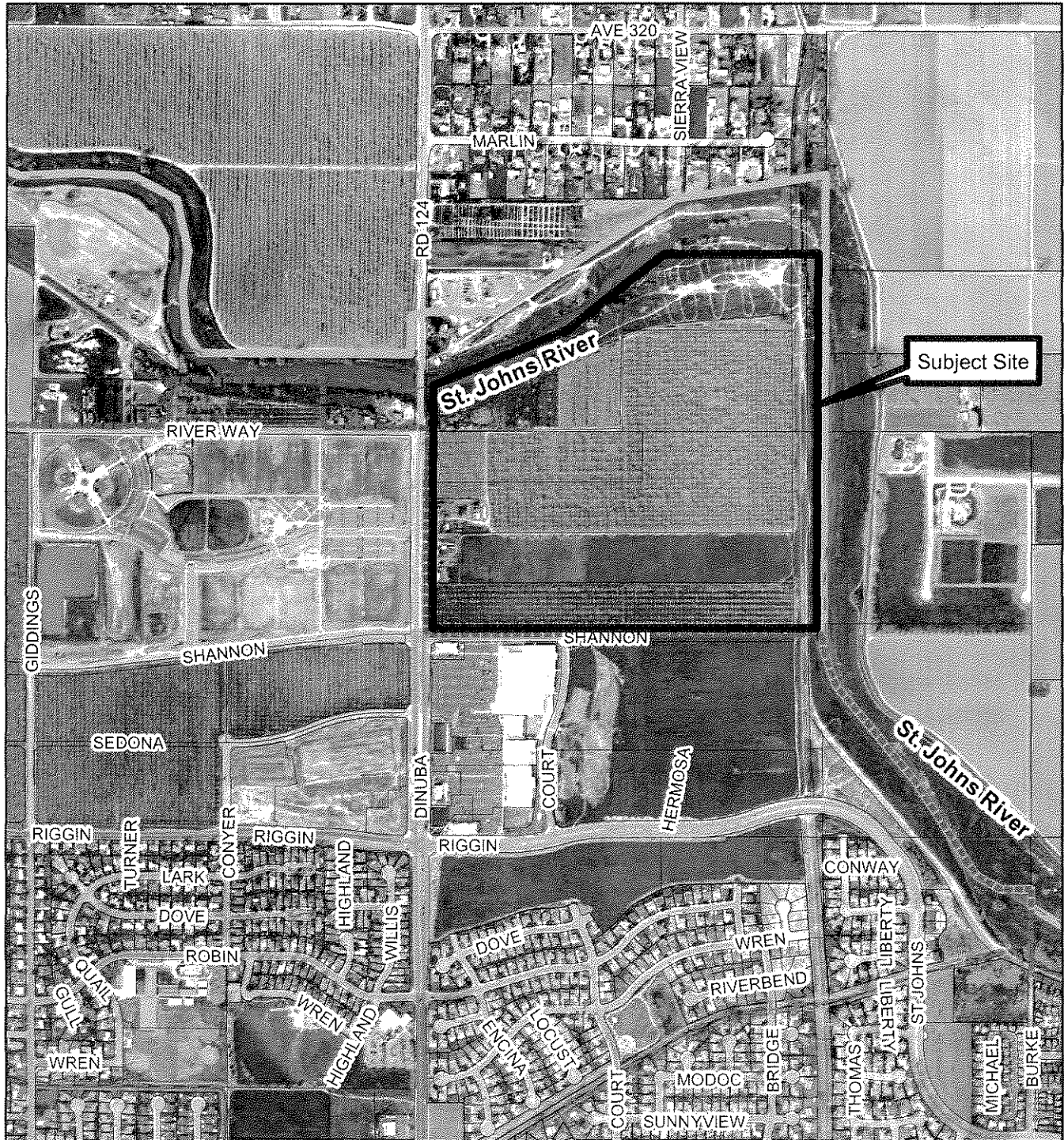
November 10, 2010

Date

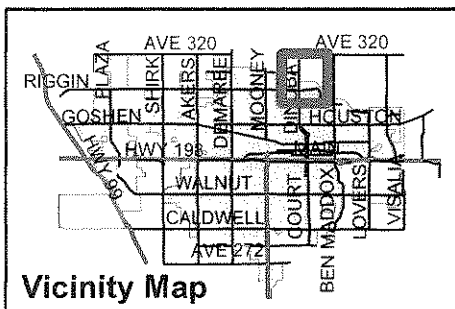
Initiation of Annexation No. 2005-07



Initiation of Annexation No. 2005-07

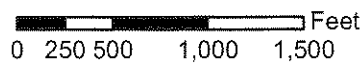


Subject Site



Aerial Photo

Photo Taken March 2010



- WATERWAYS
- ==== CITY LIMITS
- 129,000 Pop. UDB
- PARCELS

City of Visalia
Agenda Item Transmittal

Meeting Date: December 6, 2010

Agenda Item Number (Assigned by City Clerk): 9

Agenda Item Wording: Request by the Tulare County Association of Governments (TCAG) to execute an amended Joint Powers Agreement for Tulare County and the eight Cities in the County to modify the powers of the TCAG.

Resolution No. 2010-82 needed.

Deadline for Action: November 15, 2010

Submitting Department: Administration

Contact Name and Phone Number:
Mike Olmos, Assistant City Manager, 713-4332

Department Recommendation

Staff recommends that the City Council consider adoption of Resolution No. 2010-82 approving the amended Joint Powers Agreement for the Tulare County Association of Governments.

Background

The Tulare County Association of Governments was established in May, 1971 by the eight Cities in Tulare County and the County government to serve as a regional transportation planning agency and conduit for transportation, air quality and other regional funding opportunities. The powers of TCAG are established through a joint powers agreement (JPA) executed by the eight Cities and the County. Following the inception of TCAG, the JPA was amended in June 1975 and February 1976.

Since 1976 only one amendment has been implemented and was approved by Council in June 2010 for changes to allow for staff services for the Local Agency Formation Commission (LAFCO) and adding 'operation of van pool services' into its list of authorized powers.

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 ap 11/24/10
(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.

TCAG has submitted another proposed JPA amendment to the Cities and County. The JPA amendment is intended to update TCAG's powers for anticipated operations or activities regarding real property and entering into joint powers agreements.

Discussion

The purpose of this amendment to the JPA is to give TCAG the ability to make real property transactions and enter into joint power agreements:

Real Property Acquisition: The amended JPA will allow TCAG to make real property transactions and sets approval standards "for TCAG to acquire, maintain, and dispose of real property or an interest in real property". This amendment provides the authority for TCAG to consider action on real property transactions in the future subject to approval from the TCAG Board. If the amendment is implemented, in the future, TCAG's Board may acquire or dispose of real property with at least 10 affirmative votes on the TCAG Board provided that the 10 votes include approval by board members representing a majority of the cities representing a majority of the incorporated population AND a majority of the Board of Supervisors. The TCAG Board consists of 16 voting members (eight cities with one vote each, five County Supervisors with one vote each, and three at-large members with one vote each). There is no inclusion in this amendment for the power of Eminent Domain to acquire property. If the property is located within a city, that city must confirm the real property transaction. While not stated in the JPA amendment, Ted Smalley, Executive Director of TCAG, has informed City Staff that city confirmation would require a majority vote of the affected City Council. Staff is concerned that a legal interpretation of "confirm" would not require a vote.

Visalia Council and staff have expressed concerns in the past regarding the proposed new power to acquire and dispose of real property. While much of the impetus for this proposal stems from the East County Freight Rail project, it is difficult for City staff to conceive of future projects that would benefit more from TCAG acquiring property rather than acquisition by the affected City or the County. TCAG believes there may be future situations where it may be advantageous for TCAG to acquire property, but in recognition of concerns expressed by Visalia and others, TCAG has included the more stringent voting requirements.

Joint Power Agreements: Gives authority for TCAG to enter into joint powers agreements pursuant to the applicable section of the State Joint Exercise of Powers Act, Chapter 5. This will enable TCAG to enter into joint power agreements with other agencies for projects authorized by the Board in the future. Authorization for individual joint power agreements will be subject to similar stringent approval requirements as real property acquisition. TCAG's board must have at least 10 votes and would also be subject to approval by a majority of the cities representing a majority of the population AND a majority of the Board of Supervisors.

The voting controls placed in both of these proposed powers is intended to provide adequate oversight for any projects under these activities.

As of the date of this report the County Board of Supervisors had voted to approve the amendment on a four to one (4 to 1) vote and other local agencies have yet to vote on it.

Effect of Recommended Action

TCAG must receive approval from **all** nine entities (eight Cities and County) to enable this amendment to the Joint Powers Agreement to go into effect. If any of the nine entities will not approve the amended agreement, the amended agreement will not go into effect, and TCAG will continue to operate under the current joint powers agreement as last updated in July 2010 that does not include the power to enter into joint power agreements and make real property transactions.

Prior Council/Board Actions:

On April 19, 2010 Council considered a previous draft JPA amendment including the above two proposed additional powers for TCAG of concern to the City. Council did not approve the previous amended JPA with these two additional powers. Following the April 19 meeting TCAG removed the two items of concern from the amended JPA.

June 21, 2010 Council approved of an amendment to the JPA that included two key provisions previously mentioned for LAFCO staff services and operation of van pool services.

Committee/Commission Review and Actions: Reviewed by Council of Cities, October 2010

Alternatives: To not approve JPA amendment

Attachments:

1. Resolution No. 2010-82
2. Proposed amended Tulare County Association of Governments Joint Powers Agreement (Exhibit to Resolution)

Recommended Motion (and Alternative Motions if expected):

1) Move to adopt Resolution No. 2010-82 approving the amended TCAG joint powers agreement.

OR

2) Move to not adopt Resolution No. 2010-82 and vote against amendment of TCAG joint powers agreement.

Environmental Assessment Status

CEQA Review: NA

NEPA Review: NA

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: NA

CITY OF VISALIA
RESOLUTION NO. 2010-82

RESOLUTION APPROVING THE AMENDED JOINT POWERS AGREEMENT FOR
THE TULARE COUNTY ASSOCIATION OF GOVERNMENTS

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF VISALIA AS
FOLLOWS:

The City Council hereby approves and authorizes the Mayor to execute the amended
Joint Powers Agreement attached as Exhibit A to this resolution.

PASSED AND ADOPTED

1 AMENDMENT ONE TO THE
2 TULARE COUNTY ASSOCIATION OF GOVERNMENTS
3 JOINT POWERS AGREEMENT
4

5 THIS AGREEMENT, dated for convenience as of this ____ day of _____, 2010, by
6 and between the COUNTY OF TULARE, hereinafter referred to as the “County,” and the CITIES
7 OF DINUBA, EXETER, FARMERSVILLE, LINDSAY, PORTERVILLE, TULARE, VISALIA,
8 and WOODLAKE, or so many of said Cities as have executed this Agreement, hereinafter
9 collectively referred to as the “Cities”;

10
11 WITNESSETH:

12 WHEREAS, the Tulare County Association of Governments, hereinafter referred to as the
13 “Association,” will be a separate entity from the County; and

14 WHEREAS, as of the 4th day of May, 1971, the County and the Cities executed an
15 Agreement (Tulare County Agreement No. 6460) which established the Association, and set forth
16 the powers and duties of the Association; and

17 WHEREAS, the Joint Powers Agreement may be amended from time to time; and

18 WHEREAS, the Association desires to amend said Agreement to give the Association the
19 ability to make real property transactions; and

20 WHEREAS, the Association desires to amend said Agreement to enable the Association to
21 enter into Joint Powers Agreements, hereby amend said Agreement;

22
23 NOW, THEREFORE, BE IT AGREED as follows:

24
25 Paragraph (2) of said Agreement is hereby amended by adding thereto subparagraph (q) and
26 (r) to read as follows:

27 q) In order for TCAG to acquire, maintain, and dispose of real property or an interest in real
28 property, **the TCAG board must approve the acquisition, maintenance and/or**

disposal by a vote of at least 10 Board members. TCAG’s approval must be confirmed without changes or conditions by a majority of the cities representing a majority of the incorporated population AND the majority of the Board of Supervisors. In addition, if the property is located within a city, that city must confirm the acquisition, maintenance and/or disposal. The TCAG ability to purchase property does not include the power of Eminent Domain.

r) In order for TCAG to enter into joint powers agreements pursuant to the Joint Exercise of Powers Act, Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code, **the TCAG Board must approve entering into the JPA by a vote of at least 10 Board members. TCAG’s approval must be confirmed without changes or conditions by a majority of the cities representing a majority of the incorporated population AND the majority of the Board of Supervisors.**

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written pursuant to resolutions of the governing bodies of the respective parties, duly adopted, authorizing such execution.

ATTEST: Jean M. Rousseau
County Administrative Officer
Clerk, Board of Supervisors

COUNTY OF TULARE

By _____
Deputy

By _____
Chairman, Board of Supervisors

ATTEST:

CITY OF DINUBA

By _____
City Clerk

By _____
Mayor

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ATTEST:

CITY OF EXETER

By _____

By _____

City Clerk

Mayor

ATTEST:

CITY OF FARMERSVILLE

By _____

By _____

City Clerk

Mayor

ATTEST:

CITY OF LINDSAY

By _____

By _____

City Clerk

Mayor

ATTEST:

CITY OF PORTERVILLE

By _____

By _____

City Clerk

Mayor

ATTEST:

CITY OF TULARE

By _____

By _____

City Clerk

Mayor

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ATTEST:

CITY OF VISALIA

By _____

By _____

City Clerk

Mayor

ATTEST:

CITY OF WOODLAKE

By _____

By _____

City Clerk

Mayor

City of Visalia
Agenda Item Transmittal

Meeting Date: December 6, 2010

Agenda Item Number (Assigned by City Clerk): 10

Agenda Item Wording: Public Hearing to approve the recommended expenditure of and appropriate the State of California FY 2010/2011 Citizens Option for Public Safety (COPS) Program funds of \$100,000. Adopt Resolution 2010-81 regarding the grant to be executed.

Deadline for Action: N/A

Submitting Department: Police

Contact Name and Phone Number: Chief Colleen Mestas, ext. 4215 or Chuck Hindenburg, ext. 4250

Department Recommendation: Council is recommended to approve and appropriate the proposed expenditure plan for the FY 2010/2011 Citizens Option for Public Safety (COPS) Program funds (\$100,000) to be used to:

- Continue funding one (1) Police Records Specialist position to the Records Bureau - \$58,461
- Fund two (2) hourly Communications Call-Takers - \$30,500
- Records Work Station Enhancement - \$7,339
- Wood-lined, locking, steel drawers for bomb truck - \$2,500
- One (1) satellite phone for Emergency Operations Center vehicle - \$1,200

and adopt Resolution 2010-81 regarding the grant to be executed.

Summary/background: AB 3229 creates the Citizens Option for Public Safety Program (COPS). The bill allocates money to cities and counties for law enforcement and public safety purposes. The city was awarded Supplemental Law Enforcement Services Fund (SLESF) funds in the amount of \$100,000 for the FY 2010/2011. These funds will be deposited in and expensed from Fund 6311, Citizens Option for Public Safety (COPS). Meetings have been held with Department Staff to develop and finalize the recommendation for expenditure.

The City Council is responsible for appropriating SLESF funds. This money may only be spent on “front Line law enforcement services” and may not be used to supplant existing law enforcement services. “Front line law enforcement services” is not specifically defined, but it includes “anti-gang” and “community crime prevention programs.”

For action by:

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

For placement on which agenda:

- Work Session
 Closed Session

Regular Session:

- Consent Calendar
 Regular Item
 Public Hearing

Est. Time (Min.): 10

Review:

Dept. Head _____
(Initials & date required)

Finance _____
City Atty N/A
(Initials & date required or N/A)

City Mgr _____
(Initials Required)

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

Continue Funding One Police Records Specialist Position, Records Bureau

One new Police Records Specialist position was added using funds from the 2007 State COPS grant. Subsequent COPS grants that have continued funding this position terminated at the end of Fiscal Year 2009/2010. Since State COPS funding is granted annually, this position was included in the FY 2010/2011 budget as a grant-funded position with the anticipation that the money would be appropriated once the grant was announced. At the expiration of the COPS 2010 funding, the Police Records Specialist position may be absorbed into the General Fund budget through attrition of existing authorized positions, added to the allocated strength through the appropriate new position request process, or further extended with future grant funding. Salary and benefits will be approximately \$58,461 for 2010/2011.

Fund Two (2) Hourly Communications Call-Taker Positions

The department uses hourly call-takers to receive and dispatch animal control calls, as well as provide coverage for sick leave/vacation, and work special details. A loss of these positions would create an additional burden on personnel in the dispatch center as well as impact the public. Two call-taker positions in the Communications Unit are currently funded with JAG Grant money that will end this year. The cost for these two positions is approximately \$30,500.

Records Work Station Enhancement

Currently there are ten work stations in the Records Unit at Headquarters to house thirteen employees. The work stations are out of date, not ergonomically correct, and are to be replaced this year. Due to budget considerations, the replacement equipment funded in the 2010/2011 budget, though an improvement, does not entirely meet the needs of the unit. This grant money, \$7,339, will provide an additional work station and additional storage.

Wood-lined, Locking, Steel Drawers for Bomb Truck

Inherent to the mission of the bomb squad is the ability to render safe explosive devices by a variety of means. One method is to counter-charge the device with explosives to destroy it, therefore, a limited amount of explosives must be carried on the bomb truck. With the addition of the explosive breaching capability of the unit, together with the recent merger with the Tulare County S.O. Bomb Squad, the capacity of the existing storage on the truck is inadequate. To address this, locking steel drawers that are wood-lined to comply with ATF requirements, are requested. The cost to have these manufactured is \$2,500.

Satellite Phone for Emergency Operations Center Vehicle

This phone will replace the existing, outdated satellite phone in the EOC vehicle with a state of the art device. As well as providing significantly improved performance, the new phone costs less per minute to operate than the existing phone. The cost of the new phone is \$1,200.

Prior Council/Board Actions: N/A

Committee/Commission Review and Actions: N/A

Alternatives: Refuse the designated grant money.

Attachments: Resolution of the City Council authorizing the Police Department to use State COPS grant monies as recommended.

Recommended Motion (and Alternative Motions if expected):

I move to approve the recommended expenditures of FY 2010/2011 Citizens Option for Public Safety (COPS) Program funds, that \$100,00 be appropriated in recognition of the grant, and to adopt Resolution 2010-81 regarding the grant to be executed.

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. 2010- 81

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF VISALIA
AUTHORIZING THE POLICE DEPARTMENT
TO USE STATE COPS GRANT MONIES AS RESOLVED BELOW

WHEREAS, the City of Visalia has been granted State funds through the Citizen Option for Public Safety Program (COPS); and

WHEREAS, the monies are expected to be expended for the enhancement of services by the Police Department to the betterment of the community;

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

1. That the City Council of the City of Visalia held a public hearing to receive input from the public concerning the expenditure of the aforesaid funds; and
2. That the City of Visalia is committed to see that these funds are properly expended.

PASSED AND ADOPTED:

STEVEN M. SALOMON, CITY CLERK

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

I, Steven M. Salomon, City Clerk of the City of Visalia, certify the foregoing is the full and true Resolution 2010- passed and adopted by the Council of the City of Visalia at a regular meeting held on December 6, 2010.

Dated: December , 2010

STEVEN M. SALOMON, CITY CLERK