Call to Order
Roll Call: Council

ORAL COMMUNICATIONS
This is the opportunity to address the Council on any matter scheduled for Closed Session.

CLOSED SESSION:
A. Closed Session Pursuant to:

7:00 P.M. RECONVENE OPEN SESSION
REPORT ON ANY COUNCIL ACTION TAKEN IN CLOSED SESSION

Pledge of Allegiance led by Council Member Pedro Martinez
Invocation

ORAL COMMUNICATIONS
This is the opportunity to address the Council on any matter of interest, whether on the agenda or not.

CONSENT CALENDAR
1. Award of Contract – Kenneth D. Schmidt and Associates, Groundwater Consultants
   Re: Considering award of contract in an amount not to exceed $40,000 with groundwater expert Kevin Schmidt for the purpose of performing a “water balance” report and additional water related services.

2. Acceptance & Authorization to Sign Release and Compromise Agreement – Carl’s Jr. /National Sign & Marketing Corporation
   Re: Considering approval of a “Release and Compromise Agreement” for removal of a monument sign located at the southwest corner of Jaye Street and Vandalia Avenue within the Riverwalk Marketplace shopping center.

3. Consideration of a Resolution in Support of Litigation over Unconstitutional Diversion of Local Share of Motor Fuel (Gas) Tax Monies
   Re: Considering adoption of a resolution authorizing the City Attorney to cooperate with the League of California Cities and other agencies in litigation challenging the constitutionality of any seizure by the State of City street maintenance funds.
4. **Authorization to Award an Alternative Agreement**  
   Re: Considering award of an Alternative Agreement with Rick Perigo Roadsiding for reclamation area management.

**SCHEDULED MATTERS**

5. **Consideration of Initiating Survey Concerning the Formation of a Mosquito Abatement District in Southeastern Tulare County**  
   Re: Discussion and consideration of participation in a survey to determine public interest in the establishment of a Mosquito Abatement District in Southeastern Tulare County.

**ORAL COMMUNICATIONS**

**ADJOURNMENT** - to the meeting of July 7, 2009.

In compliance with the Americans with Disabilities Act and the California Ralph M. Brown Act, if you need special assistance to participate in this meeting, or to be able to access this agenda and documents in the agenda packet, please contact the Chief Deputy City Clerk at (559) 782-7442. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting and/or provision of an appropriate alternative format of the agenda and documents in the agenda packet.
SUBJECT: AWARD OF CONTRACT – KENNETH D. SCHMIDT AND ASSOCIATES, GROUNDWATER CONSULTANTS

SOURCE: Public Works Department - Engineering Division

COMMENT: Public Works seeks Council authorization to engage the services of a groundwater expert for the purpose of performing a "water balance" report. The water balance report will include an evaluation of the impact to the groundwater caused by City pumpage.

The City’s Water Management Plan “estimates” that there may be an overdraft on the groundwater. Because of the possibility of overdraft, preparing a comprehensive Environmental Impact Report related to water availability becomes problematic. The City must determine if an overdraft situation exists, the amount of overdraft, and must provide remedies addressing this issue.

Dr. Schmidt has provided water study services to the City on numerous occasions and is a recognized expert in the field of groundwater hydrology. Dr. Schmidt’s fee to perform the required services is $23,790. Public Works believes that additional services may be required once Dr. Schmidt communicates with the hydrologist representing a large business interested in locating to Porterville.

Public Works respectfully requests that a not to exceed $40,000 contract be authorized with Dr. Ken Schmidt to cover additional water related services that may arise. A standard City Service Agreement and Dr. Schmidt’s proposal are attached for Council’s review and approval. The Service Agreement makes it clear that the basic services outlined in Dr. Schmidt’s proposal shall not exceed $23,790. The balance ($16,210) shall cover the cost for additional, clearly defined services, if needed.

Consulting service funds are available as defined by the recently adopted 2009/10 fiscal year budget. Developer Fees is the funding source for these professional services.

RECOMMENDATION: That the City Council:

1. Approve a "not to exceed" $40,000 contract with Dr. Kenneth Schmidt;

2. Authorize the Mayor to sign the Service Agreement; and

Dir. [Signature] Appropriated/Funded [Signature] CM [Signature]  Item No._
3. Authorize the Public Works Director to approve additional water related studies provided said additional studies are clear, well defined and do not exceed the full limit of the contract.

ATTACHMENTS: Consultant Proposal
                Service Agreement

P:\pub\work\Engineering\Council Items\Award of Contract - Kenneth D Schmidt and Associates, Groundwater Consultants - 2009-06-23.doc
June 17, 2009

Mr. Baldo Rodriguez  
Director of Public Works  
City of Porterville  
291 North Main Street  
Porterville, CA 93257

Re: City Hydrogeologic Evaluation

Dear Baldo:

Pursuant to our meeting on November 25, 2008 in Porterville and further discussions, following is the scope of work for a groundwater evaluation focusing on the drawdown due to City pumpage, long-term water-level trends, groundwater overdraft, and groundwater availability as of 2030. As you are aware, the City has a number of flo-path wells, and there are at least two aquifers beneath the City. Subsurface geologic conditions and depths of measured wells are important in evaluating water levels. Thus the part of the evaluation would focus on subsurface geologic conditions. Because of schedule needs of the City, the initial part of the evaluation would focus on the groundwater availability as of 2030.

**Proposed Scope of Work**

We would review drillers logs, electric logs, and geologic logs for test holes and wells in and near the City. We would then prepare about four subsurface geologic cross sections. The major water producing strata and confining beds would be shown, along with perforated intervals of wells and historical shallow and deep water levels. We would access the California Department of Water Resources website to obtain water-level measurements from their database in and near Porterville. We would also obtain City water-level measurements. We would prepare several water-level elevation contour maps, if possible for both shallow and deep strata. The
direction of groundwater flow would be shown. These would represent a wet period, dry period, and a normal period. We would prepare water-level hydrographs for wells in and near Porterville, and separate these two into groups 1) shallow unconfined, and 2) deep confined. We would evaluate the present surface water deliveries, sewage effluent amount, and consumptive use in the plan area. Based on information to be provided by the City, we would evaluate the consumptive use and sewage effluent amount under full development, and recommend the amount of surface water needed for use or recharge to balance the groundwater budget.

We would evaluate historical City pumpage and Tule River streamflow and plot annual values on the hydrographs. We would first prepare a draft technical report on the 2030 evaluation and meet with the City on review comments. We would then finalize this report, and then finalize it. Lastly, a technical report on the full evaluation would be prepared. I would also meet with the City on this report, and then finalize it.

**Estimated Costs**

Professional fees would be as follows:

K. D. Schmidt, Principal 45.0 hours @ $230 per hour  
$10,350

J. Angell, Senior Hydrologist 70.0 hours @ $130 per hour  
$9,100

C. Lassotovitch, Hydrologist 6.0 hours @ $120 per hour  
$720

O. Sartono, Geologist 18.0 hours @ $80 per hour  
$1,440

Total professional fees would be $21,610. Expenses would be as follows:

Mileage Bakersfield-Porterville  
(360 miles @ 0.50)  
$180

Copies, phone calls, and maps  
100

Delivery and FAX charges  
100

Drafting services (20.0 hours @ $45/hr)  
900

Secretarial services (16.0 hours @ $45/hr)  
720

Bluelines  
80

Report preparation  
100

Subtotal:  
$2,180

Total professional fees and expenses would be $23,790.
Please call me if you have any questions.

Sincerely Yours,

[Signature]
Kenneth D. Schmidt
SERVICE AGREEMENT

DATE:       June 23, 2009

PARTIES:   City of Porterville, a California municipal corporation, hereinafter referred to as "CITY"; and Kenneth D. Schmidt and Associates, hereinafter referred to as "CONSULTANT".

RECITALS: CITY has undertaken a project on which it is seeking assistance from CONSULTANT. Said project which will hereinafter be referred to as "project" is described as follows:

   Project Name: City-Wide Hydrogeologic Evaluation

   Description of Project: Groundwater evaluation focusing on the drawdown due to City pumpage, long-term water-level trends, groundwater overdraft, and groundwater availability as of 2030.

AGREEMENTS:

   IN CONSIDERATION OF MUTUAL COVENANTS AND AGREEMENTS
   HEREINAFTER set forth the parties hereto do contract and agree as follows:

SECTION 1. CONTRACT SERVICES: CONSULTANT hereby agrees to provide the following services and materials, in a timely manner as described:

COMMPONENT ONE:

Tasks: Review drillers logs, electric logs, and geologic logs for test holes and wells in and near the City. Prepare approximately four subsurface geologic cross sections. The major water producing strata and confining beds would be shown, along with perforated intervals of wells and historical shallow and deep water levels. Access the California Department of Water Resources website to obtain water-level measurements from their database in and near Porterville. Obtain City water-level measurements. Prepare several water-level elevation contour maps, if possible for both shallow and deep strata, including direction of groundwater flow, representing a
wet period, dry period, and a normal period. Prepare water-level hydrographs for wells in and near Porterville, and separate these two into groups 1) shallow unconfined, and 2) deep confined. Evaluate the present surface water deliveries, sewage effluent amount, and consumptive use in the plan area. Evaluate the consumptive use and sewage effluent amount under full development, and recommend the amount of surface water needed for use or recharge to balance the groundwater budget.

Evaluate historical City pumpage and Tule River streamflow and plot annual values on the hydrographs. Prepare a draft technical report on the 2030 evaluation and meet with the City on review comments. Finalize report. Prepare a technical report on the full evaluation. Meet with the City on the final report.

COMPONENT TWO:

Additional work that may be needed and will be defined prior to the start of any new work"

SECTION 2. PAYMENT: In consideration for said services and materials, CITY shall pay CONSULTANT on a time and materials basis for COMPONENT ONE, not to exceed Twenty Three Thousand, Seven Hundred and Ninety Dollars, ($23,790).

In consideration for said services and materials, CITY shall pay CONSULTANT on a time and materials basis for COMPONENT TWO, as defined by the Public Works Director, not to exceed Sixteen Thousand, Two Hundred and Ten dollars ($16,210).

TIME OF PAYMENT: Progress payment requests shall be submitted by the 25\textsuperscript{th} of each month. CONSULTANT should receive payment within 30 days of the date the bill is received.

SECTION 3. COMPLETION DATE: The services to be performed by
CONSULTANT will be commenced upon execution of this agreement and all "work directives" shall be completed by August 31, 2009.

The parties agree that time is of the essence under this contract. Inasmuch as it would be difficult to ascertain the actual amount of damages sustained by delay in performance of said contract, the amount of $100 per calendar day shall be deducted from the contract price for liquidated damages for each calendar day beyond the completion date listed above. Said deduction will not be made if CONSULTANT submits proof in writing that delay in completion was due to a cause beyond its control.

SECTION 4. FAMILIARITY WITH PROJECT: CONSULTANT certifies and agrees that it is fully familiar with all of the details of the project required to perform its services. CONSULTANT agrees it will not rely upon any opinions and representations of CITY unless CITY is the only available source of said information.

SECTION 5. INDEPENDENT CONTRACTOR: It is expressly understood that CONSULTANT is entering into this contract and will provide all services and materials required hereunder as an independent contractor and not as an employee of CITY. CONSULTANT specifically warrants that it will have in full force and effect, valid insurance covering:

(i) Full liability under worker's compensation laws of the State of California; and
(ii) Bodily injury and property damage insurance in the amount not less than One Million Dollars ($1,000,000) per occurrence; and

(iii) Errors and Omissions insurance of One Million Dollars ($1,000,000) minimum per occurrence, if deductible for Errors and Omissions insurance is Fifty Thousand Dollars ($50,000) or more, the City may require a Surety Bond for the deductible; and

(iv) Automotive liability in the amount not less than One Million Dollars ($1,000,000) per occurrence; fully protecting CITY, its elected and appointed officers, employees, agents and assigns, against all claims arising from the negligence of CONSULTANT and any injuries to third parties, including employees of CITY and CONSULTANT. CONSULTANT agrees to indemnify, defend (at CITY'S election), and hold harmless the CITY against any claims, actions or demands against CITY, and against any damages, liabilities for personal injury or death or for loss or damage to property, or any of them arising out of negligence of CONSULTANT or any of its employees or agents.

SECTION 6. WORKMANSHIP AND MATERIALS: Every part of the work herein described shall be executed in a professional manner with
competent, experienced personnel. Finished or unfinished material prepared under the agreement, prepared by CONSULTANT, shall become property of CITY. CONSULTANT hereby warrants that any materials prepared under this agreement shall be fit for the intended use contemplated by the parties.

SECTION 7. ASSIGNMENT OF CONTRACT: It is acknowledged by the parties that CITY has entered into this contract with the express understanding that CONSULTANT will perform all work. CONSULTANT shall not, without the written consent of CITY, assign, transfer or sublet any portion or part of this work, nor assign any payments to others.

SECTION 8. AFFIRMATIVE ACTION. CONSULTANT will not discriminate against any employee, or applicant for employment because of race, color, religion, gender, marital status, or national origin.

SECTION 9. CONFLICT OF INTEREST CODE: CONSULTANT agrees to comply with the regulations of CITY'S "Conflict of Interest Code". Said code is in accordance with the requirements of the Political Reform Act of 1974.

CONSULTANT covenants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of service required hereunder. The term "conflict" shall include, as a minimum, the definition of a "conflict of interest" under the California Fair Political Practices Act and the City of
Porterville Conflict of Interest Code, as that term is applied to consultants.

SECTION 10. TERMINATION: Either party for just cause may terminate this contract by giving seven (7) days written notice to the other party. Upon termination by CITY, CITY shall be relieved of any obligation to pay for work not completed including profit and overhead. CONSULTANT may be entitled to just and equitable compensation for satisfactory work completed, except CITY can withhold damages incurred as a result of the termination.

SECTION 11. ENTIRE CONTRACT: It is understood and agreed that this Service Agreement represents the entire Agreement between the parties. Should it be necessary to institute legal proceedings to enforce any and all of the covenants and conditions of this Agreement, the prevailing party shall be entitled to recover attorneys' fees and costs.

SECTION 12. DISPUTES; VENUE: If either party initiates an action to enforce the terms hereof or declare rights hereunder, the parties agree that the venue thereof shall be the County of Tulare, State of California. CONSULTANT hereby waives any rights it might have to remove any such action pursuant to California Code of Civil Procedure Section 394.

IN WITNESS WHEREOF, the parties have executed this Service Agreement on the date and year first above written.

CITY OF PORTERVILLE                      CONSULTANT
Service Agreement
Page 7 of 7

By ____________________________  By ____________________________
Cameron Hamilton, Mayor

Date ____________________________  Date ____________________________

BSR:vs

P:\subworks\Engineering\Project Files\Baldo Rodriguez\Service Agreement Kenneth D. Schmidt.doc
CITY COUNCIL AGENDA: JUNE 23, 2009

CONSENT CALENDAR

SUBJECT: ACCEPTANCE & AUTHORIZATION TO SIGN RELEASE AND COMPROMISE AGREEMENT – CARL’S JR/NATIONAL SIGN & MARKETING CORPORATION

SOURCE: COMMUNITY DEVELOPMENT DEPARTMENT

COMMENT: At the February 3, 2009 City Council meeting the City Council authorized staff to prepare a “Release and Compromise Agreement” for removal of a monument sign that was inadvertently permitted for the Carl’s Jr. Restaurant located at the southwest corner of Jaye Street and Vandalia Avenue within the Riverwalk Marketplace shopping center.

Staff recommends that the attached “Release and Compromise Agreement” be approved by the City Council and that the Mayor, representing the City of Porterville, be authorized to sign the agreement.

The City Attorney has reviewed and signed the attached agreement but due to delays, the date for completion of the work called for in the agreement needs to be updated to July 15, 2009.

RECOMMENDATION: That City Council approve the “Release and Compromise Agreement” and authorize the Mayor to sign all necessary documents.

ATTACHMENTS: 1) Release and Compromise Agreement
RElease and Compromise Agreement

This Agreement is made and entered into this 4th day of June, 2009, by and between the City of Porterville, hereinafter referred to as "City" and National Sign & Marketing Corporation, a California corporation, hereinafter referred to as "Contractor", as follows:

WHEREAS, each party desires to reach a full and final settlement of all claims that might arise out of or in any way relate to the installation of a monument sign, currently not in conformance with the City's signage program, but overlooked at the time of submittal of plans, for the Carl's Jr. restaurant for the Riverwalk Marketplace project;

In consideration of the mutual promises and release set forth herein, the parties agree as follows:

1. **Release.** Each party hereby releases and forever discharges the other, its officers, employees, agents, accountants, attorneys and all other acting for, under or in concert with such party, past or present, of and from any and all claims, demands, actions, causes of action, allegations, damages, liabilities, losses, costs or expenses, including attorney's fees of any kind or nature whatsoever, past or present, ascertained or unascertained, whether or not known, suspected or claimed, or which might have been alleged in regard to the installation of said monument sign.

2. **Consideration.** As consideration for this Mutual Release and Compromise Agreement, the parties agree as follows:
   a) The amount of $9,350.00 (nine thousand, three hundred and fifty dollars) shall be paid by City and received by Contractor on or before June 15, 2009, as the full costs for removal of said monument sign.
   b) Contractor shall, upon receipt of said payment, remove the monument sign and repair surrounding soil and landscape within twenty-one (21) calendar days.
   c) City agrees that upon payment of these amounts, city permit number SGN-11-08-0349 shall be in full compliance with the City's sign program.

3. **No Admission.** This Agreement is the compromise of all possible disputed claims and fully and finally settles all possible claims between the parties regarding the installation of said monument sign.

4. **Successors.** This Agreement shall inure to the benefit of each party hereto, their predecessors, successors, subsidiaries, affiliates, representatives, assigns, agents, officers, directors, employees and personal representatives, past, present and future.

5. **Effectuation.** The parties will execute any and all documents and do all other things as may be necessary to carry out the terms of this Agreement.

6. **Legal Representation.** The parties represent and acknowledge that each of them has had the opportunity to be represented by legal counsel with respect to this Agreement and that each party has had the opportunity to be fully advised with respect to all rights which are affected by this Agreement. The parties shall bear their own attorney's fees.
7. MODIFICATION. This Agreement contains the entire agreement between the parties and may not be altered, amended, or modified in any respect, except by a writing duly executed by the party to be charged. All prior agreements, understandings, oral agreements, and writings are expressly superseded hereby and are of no further force or effect.

8. CONSTRUCTION. Headings are used herein for convenience only and shall have no force or effect in the interpretation or construction of this Agreement. As used in this Agreement, the singular shall include the plural, the masculine, the feminine, and neuter genders.

9. ATTORNEY'S FEES. In the event suit is brought to enforce or interpret any part of this Agreement, the prevailing party shall be entitled to recover as an element of his costs of suit reasonable attorney's fees and costs of suit, including expert witness fees. The "prevailing party" shall be the party who is entitled to recover his costs of suit, whether or not the suit proceeds to final judgment.

10. EFFECTIVE DATE. This Agreement shall become effective immediately upon execution.

11. VENUE. Any proceeding brought to enforce this agreement shall be brought in Tulare County, California.

DATED: ___________ CITY OR PORTERVILLE

BY: ________________________________
Mayor Cameron Hamilton

APPROVED AS TO FORM:

______________________________
Julia M. Lew, City Attorney

DATED: 6-4-09 National Sign & Marketing Corporation

BY: ________________________________

APPROVED AS TO FORM:

______________________________
Attorney for
SUBJECT: CONSIDERATION OF RESOLUTION IN SUPPORT OF LITIGATION OVER UNCONSTITUTIONAL DIVERSION OF LOCAL SHARE OF MOTOR FUEL (GAS) TAX MONIES

SOURCE: City Manager

COMMENT: The League of California Cities has requested that the Council's of each of the California cities consider adopting the attached draft resolution, authorizing the City Attorney to cooperate with the League of California Cities and other agencies in litigation challenging the constitutionality of any seizure by the State of City street maintenance funds. The City Attorney has expressed support of the League's request.

In his proposed 2009-10 Fiscal Year budget, the Governor has proposed the seizure of almost $1 billion in city and county shares of revenues in the Highway Users Tax Account (HUTA) from the motor fuel tax (or gas tax) to fund past and future highway bond debt service payments out of the State's General Fund. It is the strong belief by attorneys for the League of California Cities that the proposed tax shift is unconstitutional, a fact supported by voters in both 1974 and 1998 that allows the State only to take loans of such funds on a limited basis.

The City of Porterville's projected revenue loss under the Governor's proposal would be $840,000 in the 2009-10 Fiscal Year, and approximately $635,000 in the 2010-11 Fiscal Year (75%). Obviously, such proposed transfer of funds would have dramatic affects on the City's street maintenance programs for the next several years.

RECOMMENDATION: That the City Council adopt the attached Resolution, authorizing the City Attorney to cooperate with the League of California Cities in litigation of the State.

ATTACHMENT: Draft Resolution
League of California Cities Correspondence
RESOLUTION NO. ___-2009

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE
AUTHORIZING THE CITY ATTORNEY TO COOPERATE WITH THE LEAGUE OF
CALIFORNIA CITIES, OTHER CITIES AND COUNTIES IN LITIGATION
CHALLENGING THE CONSTITUTIONALITY OF ANY SEIZURE BY STATE
GOVERNMENT OF THE CITY’S STREET MAINTENANCE FUNDS

WHEREAS, the current economic crisis has placed cities under incredible financial
pressure and caused them to make painful budget cuts, including layoffs and furloughs of city
workers, decreasing maintenance and operations of public facilities, and reductions in direct
services to keep spending in line with declining revenues; and

WHEREAS, since the early 1990s the state government of California has seized over
$10 billion of city property tax revenues statewide, now amounting to over $900 million each
year, to fund the state budget even after deducting public safety program payments to cities by
the state; and

WHEREAS, in his proposed FY 2009-10 budget the Governor has proposed transferring
$1 billion of local gas taxes and weight fees to the state general fund to balance the state budget,
and over $700 million in local gas taxes permanently in future years, immediately jeopardizing
the ability of the City to maintain the City’s streets, bridges, traffic signals, streetlights,
sidewalks and related traffic safety facilities for the use of the motoring public; and

WHEREAS, the loss of almost all of the City’s gas tax funds will seriously compromise
the City’s ability to perform critical traffic safety related street maintenance, including, but not
limited to, drastically curtailing patching, resurfacing, street lighting/traffic signal maintenance,
payment of electricity costs for street lights and signals, bridge maintenance and repair, sidewalk
and curb ramp maintenance and repair, and more; and

WHEREAS, some cities report to the League of California Cities that they will be forced
to eliminate part or all of their street maintenance operations while others will be forced to cut
back in other areas (including public safety staffing levels) to use city general funds for basic
street repair and maintenance. Furthermore, cities expect that liability damage awards will mount
as basic maintenance is ignored and traffic accidents, injuries and deaths increase; and

WHEREAS, in both Proposition 5 in 1974 and Proposition 2 in 1998 the voters of our
state overwhelmingly imposed restriction on the state’s ability to do what the Governor has
proposed, and any effort to permanently divert the local share of the gas tax would violate the
state constitution and the will of the voters; and

WHEREAS, cities and counties maintain 81% of the state road network while the state
directly maintains just 8%; and
WHEREAS, ongoing street maintenance is a significant public safety concern. A city’s failure to maintain its street pavement (potholes filling, sealing, overlays, etc.), traffic signals, signs, and street lights has a direct correlation to traffic accidents, injuries and deaths; and

WHEREAS, according to a recent statewide needs assessment\(^1\) on a scale of zero (failed) to 100 (excellent), the statewide average pavement condition index (PCI) is 68, or “at risk.” Local streets and roads will fall to “poor” condition (Score of 48) by 2033 based on existing funding levels available to cities and counties.

NOW, THEREFORE, BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY OF PORTERVILLE hereby directs the City Attorney to take all necessary steps to cooperate with the League of California Cities, other cities and counties in supporting litigation against the state of California if the legislature enacts and the governor signs into law legislation that unconstitutionally diverts the City’s share of funding from the Highway Users Tax Account (HUTA), also known as the “gas tax,” to fund the state general fund; and

RESOLVED FURTHER, that the city manager or clerk shall send this resolution with an accompanying letter from the mayor to the Governor and each legislator, informing them in the clearest of terms of the City’s adamant resolve to oppose any effort to frustrate the will of the electorate as expressed in Proposition 5 (1974) and Proposition 8 (1998) concerning the proper use and allocation of the gas tax; and

RESOLVED FURTHER, that a copy of this Resolution shall be sent by the city manager or clerk to the League of California Cities, the local chamber of commerce, and other community groups whose members are affected by this proposal to create unsafe conditions on the streets of our City for pedestrians, bicyclists and motorists.

ADOPTED this 23\(^{rd}\) day of June, 2009.

ATTEST:

John Lollis, City Clerk

By: Luisa Herrera, Deputy City Clerk

\(^1\) California Statewide Local Streets and Roads Needs Assessment, Nichols Consulting Engineers, Chtd. (2008), sponsored by the League of California Cities, California State Association of Counties and County Engineers Association of California.
TO: City Officials
FROM: Chris McKenzie, Executive Director
RE: Sample Resolution RE: Litigation Over Unconstitutional Diversion of Local Share of Motor Fuel (Gas) Tax
DATE: Friday, June 12, 2009

Background. In his final revised May Revision, the Governor proposed the seizure of almost $1 billion in city and county shares of revenues in the Highway Users Tax Account (HUTA) from the motor fuel tax (or gallonage gas tax) to fund past and future highway bond debt service payments out of the general fund. Yesterday the Joint Budget Conference Committee endorsed this recommendation on a party line vote. It is clear to attorneys employed and retained by the League that this recommendation, if enacted into law, would be unconstitutional. In fact, in both 1974 and 1998 voters enacted limitations on the power of the legislature to seize and use HUTA gas tax funds, allowing only loans to the general fund on a limited basis. The attached legal opinion from the Sacramento law firm of Nielsen, Merksamer, Parrinello, Mueller & Naylor, LLP, sets forth the legal analysis and conclusion that the Governor’s proposal would violate Article XIX of the California Constitution.

Resolution. The League has developed the attached sample resolution for cities that wish to direct their city attorney to cooperate with the League, other cities and counties in planning litigation challenging the constitutionality of the proposed theft of city and county funds. It does not commit the city to filing litigation, but it directs the city attorney to cooperate and work with the League and other local governments to advance the litigation. If litigation proves necessary in the next month or so, we anticipate there will be some lead cities and counties, along with the League. It may eventually prove desirable to have every interested city named in the litigation. As a result, asking your city attorney to get engaged and cooperate in the planning of this possible next step is appropriate and to send the message you will not take this lying down.

Your City’s Gas Tax Loss. For your city’s projected 2009-10 motor vehicle fuel tax revenue loss see http://www.californiacityfinance.com/HUTAprojFY10.pdf The total amount of loss for each city is in the far right column. Under the Governor’s proposal, approved by the Budget Conference committee, your city would lose this entire amount. In the next year, the loss would be about 75% of this amount.

Where to Send Copies. The draft resolution directs the city clerk to send copies to your legislators, the Governor, the League, and various community groups that care about traffic safety in your city. We would appreciate you faxing copies to both your League Regional Public Affairs Manager and the League’s Sacramento Office (Fax 916-658-8240).

Questions. If you have any questions or need any information please contact your League Regional Public Affairs Manager. City attorneys should contact Patrick Whitnell, League General Counsel, at pwhitnell@cacities.org.
COUNCIL AGENDA: JUNE 23, 2009

SUBJECT: AUTHORIZATION TO AWARD AN ALTERNATIVE AGREEMENT

SOURCE: Public Works Department - Engineering Division

COMMENT: At the June 16, 2009, City Council meeting, City Council accepted Rick Perigo Roadsiding’s proposal to lease 693.94 acres in the City’s reclamation area.

Issues related to escrow and outright purchase of 169 acres out of the 693.94 acres are under discussion with the current property owner, and we expect the discussions to continue into the immediate future.

Consistent with Council’s instructions, Public Works has negotiated an Alternative Agreement with Rick Perigo Roadsiding for the reclamation area management. Rick Perigo Roadsiding has demonstrated the farming experience to properly manage the reclamation area.

This Alternative Agreement with Rick Perigo Roadsiding will be with the understanding that the Lease Agreement between and City of Porterville and Rick Perigo Roadsiding becomes effective when issues related to the City’s purchase of and/or sublease of the 169 acres are resolved between the current property owner and the City of Porterville.

RECOMMENDATION: That the City Council:

1. Award the Alternative Agreement with Rick Perigo Roadsiding, and

2. Authorize the Mayor to sign the Alternative Agreement.

ATTACHMENT: Alternative Agreement for Reclamation Area

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ALTERNATIVE

RECLAMATION AREA MANAGEMENT AGREEMENT

THIS ALTERNATIVE RECLAMATION AREA MANAGEMENT AGREEMENT entered into on DATE: _____________ by and between the CITY OF PORTERVILLE, a charter law city, ("City") and NAME ____________________________, individual, ("Manager").

Recitals

A. The City owns and leases parcels of real Property located in Tulare County, more particularly described as Parcels 1 through 8 in Exhibit A. The City would like to spread bio-solids and reclaimed water (Wastewater Effluent) for further land treatment and beneficial irrigation use. All revenue derived, either directly or indirectly, from the irrigated Property with regard to the farming and spreading operations, shall belong to the City.

B. Manager is experienced in the husbandry and care of the type of agricultural operations conducted, or intended to be initiated, on the Property.

C. The Property has been and/or will be operated for the farming of alfalfa, wheat, Sudan, and oat hay with the use of reclaimed water for irrigation use. The property may be operated for the farming of other crops as appropriate pursuant to the purpose of and all other terms of this Agreement, upon written consent by the City.

D. The City wishes to continue and/or commence operation of the Property for the purpose described above and wishes to contract Manager for this purpose.
E. Manager is willing to operate the Property as described above.

CITY AND MANAGER MUTUALLY AGREE AS FOLLOWS:

Appointment and Independent Contractor Status

1. The City hereby appoints Manager and Manager hereby accepts appointment as Manager for the development and care of the Property as described above. This Agreement shall terminate upon resolution of the lease purchase of the 169 acres. The City and Manager acknowledge and agree that this Agreement establishes and constitutes only a Management Agreement between the parties, that the parties are not joint ventures or partners, and that Manager shall not be deemed to be an employee of City. Manager shall at all times be an independent contractor.

Description of Required Management Services

2. Manager shall perform no less than the following duties:

(a) The management of all farming operations, including the purchase and/or rental of all necessary equipment, supplies, and services subject to the conditions in this Agreement. Such management includes daily farming decisions; the care and maintenance of the Property, including crop insect control work; plant nutrition measures; pruning and training; proper irrigation; the frequent weeding of the plots, as well as the non-crop areas, to keep the areas free of noxious and unsightly weeds; and rodent abatement on all of the property;

(b) Irrigation of the property using the reclaimed wastewater effluent as described above; management and maintenance of the irrigation system to include repairs to laterals, risers and valves where the value of each repair is less than $350 for labor and
materials; and all labor for the operation of the system, irrigation of the property, and to maintain the irrigation system in good working order;

(c) Maintenance of all roads on the property;

(d) Collection and compilation of data with the assistance of the City for all reports necessary pursuant to the State of California Regional Water Quality Control Board waste reclamation requirements for tracking effluent and bio-solids usage;

(e) Collection and compilation of data, with the assistance of the City, for all reports necessary for enrollment of the City in the United States Department of Agriculture farming program;

(f) Preparation of annual farming budget, using agreed upon computer software program, which will include a listing of all expenses required to operate all irrigated areas of the properties:

(g) Operation and maintenance of the percolation ponds located on the property, which shall be maintained by a separate budget;

(h) Application of bio-solids to be done as a part of five year bio-solids utilization and cropping plan, and associated records for applying bio-solids;

(i) Use of agricultural wells will be required to deliver water to the fields having had bio-solids spread upon them in the first cropping year after application;

(j) Prepare, with the assistance of the City, all compliance documentation for submission to the Central Valley Regional Water Quality Control Board (CVRWQCB) for all reclamation activities (per WRR) and the application of bio-solids, the CA General Order;
(k) Operation and management of the property in compliance with federal, state, and local regulations including, but not limited to, waste discharge requirements and plans concerning management of the reclamation area and San Joaquin Air Pollution Control District Rule 8 (agricultural sources);

(l) Development of a land management program, including a 5 year schedule for crop rotation, for all property subject to this Agreement, to monitor nutrient needs of the crops; protection of the soil; and effective use of the reclaimed water pursuant to all State requirements;

(m) Specify items for purchase of all necessary planting materials, subject to the conditions set forth in this Agreement;

(n) The positioning of crops so as to obtain the maximum percentage planted;

(o) The harvesting and marketing of all crops and produce;

(p) The Manager will respond to problems as required in an immediate and effective manner to resolve all irrigation issues to eliminate fugitive water within 2 hours of notification of water leaving the reclamation area or for identified negative impacts upon the Tea Pot Dome landfill and adjacent lands properties, roads or other such occurrences as demanded by the City;

(q) The maintenance of accurate written records of all activities relating to the care and maintenance of the property, certifying that water is used as required in WRR;

(r) The securing and maintaining of liability insurance (including insurance for all vehicles used with regard to farm management operations) naming the City as an additional insured with a minimum coverage of $2,000,000 for personal injury or death for each person or for damage to property and $2,000,000 for personal injury or death of two or more persons in each accident or event;
(s) The maintenance and use of a separate account for all funds utilized in the farm management operation, and

(t) Provide all reasonable protection of harvested crops from weather, vandalism or theft.

3. Both parties mutually agree to abide by the lawful orders and regulations of those governmental agencies having jurisdiction over the disposition of the effluent and bio-solids and the Porterville Municipal Airport.

**Standard of Care**

4. Manager agrees to operate the Property in order to maximize discharge of effluent according to all applicable regulations and the City's discharge requirements. The City reserves the right to select crops in order to maximize the discharge of effluent, without regard to the Manager's financial interests. Consistent with these requirements, Manager also agrees to operate the Property in a manner consistent with good husbandry and the best farming practices as applied to similar agricultural property located in the surrounding geographical location. The City will offer the Manager written notice to repair any discovered failure to comply with any provision of this agreement and the Manager must comply within 30 days of the date of such notification. Failure of the Manager to comply with the conditions of the WRR, bio-solids, and best management practices for agricultural after notification of the failure will be grounds for termination of this agreement.

**Budget and Financial Records**
5. As discussed above, Manager shall prepare an annual budget (the "Budget"), based on the fiscal year beginning July 1, which shall contain the Manager's good faith, estimates of all expenses and all revenues and Manager's estimated monthly cash flow. Manager shall submit the Budget to City by March 1 of each year. Each item of custom farm work shall be a line item in the Budget. The Budget may be modified or amended after discussions between the Manager and the City. The City will use the Budget to develop the Preliminary City Budget. Manager shall meet with the City Manager or appropriate staff as required to review and monitor the progress of the budget.

6. Manager shall keep and maintain separate, accurate records of revenues and expenses for the Property. Manager and City shall prepare an annual profit and loss statement for the fiscal year that summarizes the expenses incurred during that year and compares the expenditures with the Budget previously submitted. Manager shall submit the annual report and statement to City no later than forty five (45) days after the end of the fiscal year. The Manager is to provide an inventory of all materials on hand as noted in paragraph #11 of this agreement as an attachment to the annual report.

Compensation

7. For Manager's services described in Paragraph 2 of this Agreement, City shall pay Manager the following sums per month:

(a) Monthly base fee (which shall consist of the Irrigation, Management, and Percolation Pond fee in Table #1 attached) for fiscal year, will be adjusted by the scheduled per acre value noted in Table #1 attached. Custom farm activities (defined
as all work done to cultivate, harvest, and sell crops) and maintain non-crop areas by activity will be compensated based upon a per acre charge as noted in "Table #1".

For Example:

If 632 acres are in irrigation and 52 acres of Percolation Pond:

Irrigation fee/acre = $6.00/acre x 632 acres = $3,792
Management fee/acre = $3.75/acre x 632 acres = $2,370

Perc Pond Management = $3.75/acre x 52 acres = $195

Total Irrigation, Management, & Perc Pond Fee = $6,357/Mo.

Work will be paid per the following:

1) An estimate for the task must be submitted and authorized by the City prior to commencement of the work,

2) Submitted work must have been included in the City approved budget for the current fiscal year,

3) Satisfactory completion of the work, and

4) An invoice must be submitted to the City for payment.

(b) For percolation pond operation and maintenance, the Manager will be compensated separately based on charges listed in "Table #1", which includes, a Management fee per acre and other maintenance tasks as needed.

(c) Commission—5% commission on the gross income on all revenue and income generated from the farming operation upon verification of weight tickets and/or Broker’s report, and subject to the cap set forth below. Such commission shall be paid semi-annually on December 1 and June 30, each year.
(d) Providing all relevant, certified as accurate records for the uses of all irrigation
waters and bio-solids applied each year in accordance with the WRR and CVRWQCCB
General Order the use of bio-solids.

8. The monthly base fee includes all costs of the Manager for all farm
management activities, general supervision, and all labor, fuel, twine purchases,
maintenance of the Managers equipment and all equipment used for irrigation and road
maintenance. All labor and equipment for rodent abatement are included in the
Management fee. Weed abatement adjacent to all planted fields is to be billed at the
rate noted in “Table #1”. All of Manager’s responsibilities concerning compliance with
all laws, regulations and orders (including but not limited to Water Reclamation
Requirements) and ten (10) hours per week concerning the collection/compilation of
data and assistance with reports necessary pursuant to waste reclamation
requirements; collection and compilation of data for and assistance with all reports
necessary with regard to federal farming programs; and all other work unless
specifically excepted in this Agreement or separately approved by the City as a custom
item. Cash overhead costs are included with the Management fee and include, but are
not limited to, office expenses, Manager’s possessory interest in property taxes,
insurance, repairs to existing infrastructure including, but not limited to, irrigation lines,
and replacement of equipment currently owned by Manager. Non-cash overhead is
also a part of the Management fee and includes, but is not limited to, shop buildings,
hay barns, storage buildings, fuel tanks and pumps, and shop tools and equipment.
The City shall be responsible for any property tax assessed to its possessory interest in
the property.
9. Custom farm work must have been approved in estimate form and submitted for all cultivation of irrigated crops and harvest work done in accordance with this agreement and at the rate(s) specified in “Table #1” for payment.

10. For cost containment purposes, equipment costs for such work will be calculated into a dollars/acre rate schedule approved by the City. Manager is required to obtain written authorization from the City prior to commencing all cultivation or harvesting farm work. This Agreement does not in any way preclude the City from purchasing equipment for Manager’s use in his operations on the property.

11. The City shall be responsible for the cost of supplies not specifically covered under Paragraph 8. For cost containment purposes, all supplies and services concerning custom farm work or other services not included within the per acre fee shall be purchased through the City’s purchasing system pursuant to City purchasing procedures. Manager, however, retains the discretion over the appropriate supplies and services needed for the operation and maintenance of the property under this Agreement. Manager will compare price quotes for material from active vendors to obtain the best pricing, where practical. The Manager is to provide, as part of the annual report, an accurate inventory of all materials on hand as of June 30 each year. The list of material will be provided as an attachment to the annual report.

12. In the event that additional irrigated property is added to this Agreement, Manager will be compensated at the dollar/acre values noted in Table #1.

13. Compensation (excluding commissions) shall be paid monthly. All invoices from the Manager shall be billed monthly to the City in accordance with the accounts payable schedule provided to the Manager. The City will pay all pre-approved invoices
within thirty days of their receipt. Commissions shall be paid on a semi-annual basis on December 1 and June 30 of each year.

14. City is entitled to offset amounts owed to Manager concerning amounts owed to City for rents, leases, licenses, fees or other payments with regard to any and all other agreements to which the City and the Manager are parties.

**Termination for Default**

15. In addition to the termination provisions stated in Paragraph No. 1, in the event either party violates any of the terms or conditions of this Agreement or fails, in the opinion of the other party, to satisfactorily perform its duties under this Agreement, the aggrieved party may deliver an Allegation of Default to the violating party. The Allegation of Default shall be delivered in the manner described below. After delivery of the Allegation of Default, the violating party shall have 30 days within which to cure, or initiate curing in good faith, the alleged default or to otherwise respond to the Allegation of Default. If the violating party does cure the alleged default within the required time period, this Agreement may continue in effect as though no default had occurred. In the event that: 1) the violating party fails to cure the alleged default within the required time period and fails to otherwise respond to the Allegation of Default within the required time period, or 2) The violating party, within the required time period, alleges in writing that it has not in fact committed an act of default, then the aggrieved party may deliver a Demand for Mediation to the violating party. Within 10 days after delivery of a Demand for Mediation, the parties shall endeavor, in good faith, to agree on a qualified agricultural expert to serve as Mediator. If the parties are unable within that time period to agree on a qualified expert to mediate the dispute, either party may request the head
of the County Agricultural Department of Tulare County to designate a qualified expert to act as mediator. In the event the parties are unable to come to an Agreement pursuant to Mediation, the parties may pursue any and all other remedies available in accordance with the law.

16. If Manager is adjudicated bankrupt, or shall make an assignment for the benefit of creditors, or file a voluntary petition under any law having for its purpose the adjudication of Manager as bankrupt, or the extension of time of payment, composition, adjustment, modification, settlement or satisfaction of the liabilities of Manager under such bankruptcy proceeding or with regard to any such assignment described, notwithstanding anything to the contrary elsewhere in this Agreement, the City shall have the immediate right to terminate this Agreement.

17. In the event this Agreement is terminated, Manager shall be entitled to the compensation described in this Agreement, for work actually performed under the Agreement, prorated through the date of termination.

Maintenance and Inspection of Records

18. Manager is required to maintain accurate records concerning all aspects of the farm management operation under this Agreement including, but not limited to, records concerning all employees’ time and wages, and records concerning supplies and equipment. City is entitled to inspect all records at anytime, provided that such inspection is conducted during regular business hours.

Assignment
19. Manager may not assign this Agreement without the prior written consent and approval of City, and consent may be withheld for any reason. Any unauthorized assignment shall be void.

**Notices**

20. Except as otherwise expressly provided by law, any and all notices or other communications required or permitted by this Agreement or by law to be served on or given to either party by the other party shall be in writing and shall be deemed duly served and given when personally delivered to the party to whom they are directed; or in lieu of personal service, when deposited in the United State mail first-class postage prepaid, addressed to the City at 291 North Main Street, Porterville, California 93257 or to Manager at 10835 Road 176, Terra Bella, CA 93270. Either party may change its address for the purpose of this paragraph by giving written notice of the change to the other party in the manner provided in this paragraph.

**Workers’ Compensation Insurance**

21. Manager shall be responsible for obtaining workers’ compensation insurance or ensuring that all employees have workers’ compensation coverage, as required by law, concerning all work performed in accordance with this Agreement. Proof of coverage is to be provided annually as an attachment to Manager’s annual report.

**Merger and Construction, and Termination of Leases**

22. This Agreement sets forth the entire understanding and agreement of the parties and may be modified only by an agreement in writing executed by the parties. All negotiations between the parties are merged into this Agreement. This Agreement does not extinguish any and all prior Lease Agreements entered into by the parties concerning property leased by Manager from the City; any and all amounts currently
due and owed under any and all prior Agreements and Leases shall be paid as prescribed by such prior Agreements and Leases. This Agreement shall not be construed against the drafting party but shall be construed as if drafted by both parties. The paragraph headings used are for convenience only and do not form a part of this Agreement.

**Indemnification**

23. The City shall and does hereby agree to save, indemnify and hold harmless Manager from all manner of claims, suits, demands, actions or causes of actions of all persons arising from or in any way connected with the City’s actions concerning the Property or the improvements thereon, or activities engaged on or carried on or conducted upon the premises by the City, together with costs and attorney fees.

24. Manager shall and does hereby agree to save, indemnify and hold harmless the City from all manner of claims, suits, demands, actions or causes of actions of all persons arising from or in any way connected with Manager’s actions and activities on the Property or the improvements thereon, or carried on or conducted upon the premises by Manager, together with costs and attorney fees.

**Binding on Heirs and Assigns**

25. This Agreement shall bind and inure to the benefit of the heirs, executors, administrators and permitted assigns of Manager and the successors and assigns of the City and time shall be the essence thereof. The parties hereto hereby agree that permitted assigns shall be restricted to heirs and family members and no other assignment of any interest in this Agreement shall be valid or operative unless the City
shall formally approve the assignee and such assignee executes an agreement with the City on the same terms and conditions as the assigned Agreement.

**Attorneys Fees**

26. If any legal action is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provisions of the Agreement, the prevailing party shall be entitled to recover reasonable attorney fees and other costs incurred in that action, in addition to any other relief which it may be entitled.

**Severability**

27. In the event any portion of this Agreement shall be declared by any court of competent jurisdiction to be invalid, illegal or unenforceable, such portion shall be deemed severed from this Agreement; and the remaining parts hereof shall remain in full force and effect, as fully as though such invalid, illegal or unenforceable portion had never been a part of this Agreement.

**Venue**

28. Venue for any action filed concerning this Agreement shall be in Tulare County, California.

**Waiver**

29. No waiver of any provision of this Agreement shall be deemed to be a waiver of any other provision hereof or of any subsequent breach of the same or any other provision. Any consent to or approval of any act requiring consent or approval shall not be deemed to render unnecessary the obtaining of consent to or approval of any subsequent act, whether or not similar to the act so consented to or approved.
Executed on ______________, at Porterville, California.

CITY OF PORTERVILLE

[City signature line(s)]

Cameron J. Hamilton, Mayor

John Lollis, City Clerk

Julia M. Lew, City Attorney
### MANAGEMENT COSTS

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Legal description as supplied in Tulare County 'Parcels.dbf' database dated 12/4/08

Monday, March 30, 2009  

Page 1 of 2
CONSIDERATION OF INITIATING SURVEY CONCERNING THE FORMATION OF A MOSQUITO ABATEMENT DISTRICT IN SOUTHEASTERN TULARE COUNTY

SOURCE: City Manager

COMMENT: It was the direction of the City Council to schedule a Council study session, to consider the initiation of a property owner survey concerning the formation of a mosquito abatement district in Southeastern Tulare County. Some members of Council have expressed sentiments on this issue that the consideration of forming an abatement district should be directly submitted to a ballot vote, without conducting a survey to gauge constituent sentiment. However, the initiation of a survey has again been introduced due to some potential merits of doing so.

The greatest single benefit of initiating a property owner survey would be for the purposes of defining the geographical sub-regions within the greater Southeastern Tulare County region that may be favorable of annexation into or forming of an abatement district, thus increasing the potential for implementation in a specific geographical area, i.e. Northern District (Frazier Valley and Lindsay) or Southern District (Porterville, Terra Bella, Ducor). In conducting a single ballot measure involving the entire Southeastern Tulare County region, one geographical area could prevent another geographical area from implementing an abatement program, whereas a survey could define regions of support or non-support and prompt targeted ballot measures.

Another benefit of initiating a survey is that it is comparatively less costly than conducting a ballot vote, thus providing a less costly means of determining regional support of an abatement district, particularly if a region is not in support of the district. However, it does provide additional expense for those regions that would be supportive. The estimated expense of conducting a property owner survey in the Southeastern Tulare County region is $27,500, whereas the estimated expense of a ballot measure is approximately $100,000. The expenses of both a survey and ballot measure are reimbursable to participating agencies, but only if the annexation or formation of the abatement district is successful and there is a formal agreement with the prevailing entity specifying such reimbursement.

C/M Item No. 5
No official funding formula or proposal for either initiating a property owner survey or ballot measure has been constituted, however, discussions by the LAFCO Study Committee have involved a funding formula based on number of parcels served, which with Porterville constituting 13,824 of the 28,945 total parcels in the affected Southeastern Tulare County region, the City’s potential cost-sharing in a survey would be approximately $13,000, estimated to be on the order of 50-55% of the cost of the survey.

There is currently no allocated funding source on the part of the City in initiating the survey, which if funding were committed would require an identification of source and corresponding budget adjustment.

RECOMMENDATION: That the City Council consider the initiation and potential funding for a property owner survey of the Southeastern Tulare County region, to determine regional interest in an abatement district.

ATTACHMENT: None