City of FRESNO **REPORT TO THE CITYCOUNCIL**

AGENDA ITEM NO.	9:30am A
COUNCIL MEETING	3/17/09
APPROVED BY	
DEPARTMENT DIRECTOR	
CITY MANAGER	

March 17, 2009

FROM: CRAIG SCHARTON, Director
Downtown and Community Revitalization

BY: ELLIOTT BALCH, Downtown Revitalization Manager
Downtown and Community Revitalization

SUBJECT: APPROVE AMENDMENT NO. ONE TO DOWNTOWN FRESNO PROPERTY AND BUSINESS IMPROVEMENT DISTRICT (PBID) GRANT FUNDING AGREEMENT TO INCREASE CITY FUNDING ASSISTANCE BY $56,139 TO A TOTAL OF $96,139, OF WHICH THE CURRENTLY UNEXPENDED AMOUNT OF $84,309 SHALL BE A NO-INTEREST, NO MATCH LOAN REPAYABLE FROM PBID ASSESSMENTS, TO FINANCE CONSULTING SERVICES AND OTHER COSTS INCURRED IN THE FORMATION OF THE DOWNTOWN PROPERTY AND BUSINESS IMPROVEMENT DISTRICT, AND AUTHORIZE THE EXECUTION OF DOCUMENTS.

KEY RESULT AREA

Economic Development

Presented to City Council
Date 3/17/09
Disposition Approved

RECOMMENDATION

Staff recommends that the City Council approve the modification of the existing Grant Funding Agreement to fund the next steps in the formation of a Downtown Fresno Property and Business Improvement District (PBID) with an additional $56,139. These City monies will fund consulting services and other costs incurred in the formation of the PBID. Under staff's proposal, all future City funds committed will be repaid from available PBID funds if the assessment is approved by property owners.

EXECUTIVE SUMMARY

Property and Business Improvement Districts (PBIDs) are a proven, successful tool for downtown revitalization in other cities. Since 2007, the effort to form a PBID in Downtown Fresno has received City support in the form of a $40,000 contingency reserve fund available to match donations by the private sector. However, the available City and private funds are not sufficient to complete the process of PBID formation.

The Department requests Council approval to increase the total maximum City funding to $96,139, a level sufficient to fund the completion of the PBID formation process. Under the Department's proposal, all future City funds committed will be repaid from available PBID funds if the PBID is adopted by property owners.

The proposed arrangement will add needed clarity to the funding for the PBID process, as well as a straightforward policy direction from the City on support for a vote on the PBID by Downtown property owners.

Staff's research indicates that a complete funding/repayment arrangement, as is proposed, has been the overwhelmingly predominant mode of public support for PBID formation in other cities.

Under state law the forward progress of PBID formation will be subject to Council action at three milestones in the petition and notice/protest ballot process. At each milestone staff will return to Council with both an update on the use of the budgeted funds, and a request for the necessary action.

BACKGROUND

About PBIDs

The Property and Business Improvement District (PBID) has become a common tool for downtown revitalization throughout the U.S. and in California cities both large and small. Through a PBID, property owners pool their resources, talents, and energy to address the unique needs of a defined area. PBID revenues generated through special assessments on property are expended in accordance with an adopted business plan, pursuant to contract with an existing or newly formed nonprofit PBID management entity representing the assessed property owners.

The state is rife with examples of successful downtowns where a PBID has played a major role in revitalization. Approximately 80 PBIDs exist in California, most of them in downtown areas. PBIDs are found in all of the state's largest urban areas, including the downtowns of comparably sized cities such as Sacramento, San Jose, Stockton, and Long Beach. PBIDs have also been an important component of revitalization in downtowns as nearby as Visalia. Exhibit D provides reference data on PBID formation in several other California cities. Across North America, similar districts exist in over 1,000 places.

PBIDs provide two fundamental benefits to the downtowns they serve. The more tangible of these is the services and improvements the districts are able to provide. PBIDs can be used for services ranging from economic development to greater cleanliness to enhanced safety, or for physical improvements such as signage or façade improvement. The scope of services provided in any PBID is a function of the assessment level supported by the property owners, and the business plan the owners adopt to guide the use of funds.

The less tangible, but equally important, benefit of a PBID is the effect of uniting property owners in a common purpose. In virtually every successfully revitalized downtown in America, some organization has emerged to exercise strong leadership, advocacy, and management of the downtown revitalization effort, with the capacity to marshal the area's private sector resources in an effective, coherent way. In many instances this role is naturally filled by the PBID management organization.

A PBID for Downtown Fresno

The functions of a Property and Business Improvement District (PBID) are an ideal match for the needs of Downtown Fresno at this early stage of revitalization. Fresno's existing downtown business-based Business Improvement District (or BID, a district formed through older state legislation that allows for a surcharge on business licenses), assesses ground-floor retail merchants along the Fulton Mall and in the Central Business District area, and generates only up to approximately $38,000 per year (less in recent years). Property owners are not a party to this assessment and have no designated place on the board of the Downtown Association of Fresno, the organization that receives and manages the business-based BID revenues.

Because the Downtown Association's assessed membership is so limited, both geographically and by type of user, the existing business-based BID does not effectively perform the vital role of uniting business and

property owners in a common purpose. While many property owners are engaged in individual efforts to make Downtown Fresno successful, there is no obvious structure for these owners to pool their resources, talents, and energy to deliver the services and improvements that will collectively improve their property values over time.

Insufficient BID revenues preclude the Downtown Association from undertaking the range of projects, services, and policy advocacy needed to support the long-term revitalization of the area. The lack of resources has led to a downward spiral of low stakeholder expectations of the organization, lower membership interest, and more limited and volatile revenue to support ongoing capacity needs. The flaws in this financing and governance structure stymie the best efforts of the committed, talented individuals involved.

Taking into account these and other liabilities, along with Downtown Fresno's many strengths and opportunities, a panel of experts from the International Downtown Association provided a set of recommendations for Fresno in June 2008. The panel recommended a set of "visible" accomplishments in the short term — many of which are now underway — leading to formation of a PBID to keep downtown management and advocacy moving forward over time.

City of Fresno support

On June 19, 2007, the City Council directed staff to set aside $40,000 in contingency to support the study and formation of a Property and Business Improvement District (PBID) in Downtown Fresno. These funds were set aside to be available on a matching basis. On February 26, 2008, the Council approved a resolution authorizing the expenditure of $15,000 from this reserve to fund the International Downtown Association (IDA) panel which came and provided the recommendations described above for Fresno in June 2008. A nonprofit organization, One by One Leadership, acted as the fiscal agent for the City and matching private donors to engage the IDA's services. Payments for the IDA and related expenses have totaled $23,339 — $11,509 from private donors, and $11,830 in matching City funds.

As a result, of the original $40,000 in City funds set aside, $28,170 remains unspent. In addition there remains $15,691 in unspent private funds committed to support PBID formation.

In November 2008 the Downtown Fresno Partnership, an unincorporated group formed to champion the PBID formation process, executed a consulting agreement with Progressive Urban Management Associates (PUMA), for estimated fees and expenses of $69,900. Because of the limited capacity of One by One Leadership, the Fresno Revitalization Corporation became the Downtown Fresno Partnership's fiscal agent and co-signed this agreement. On February 10, 2009, the Council also approved a change in the fiscal agent for the City's PBID Grant Funding Agreement from One by One Leadership to the Fresno Revitalization Corporation.

Because of the complexity of the financing, including the matching funds requirement and the change in fiscal agent, the consultants from PUMA and their subcontractors have worked unpaid to date, despite having already incurred costs in excess of $35,000. Since these charges still need to be paid, they are included below in the future costs of PBID formation.

Proposed funding arrangement

On March 3, 2009, staff recommended that the Council approve a simpler funding arrangement wherein the remaining costs for PBID formation, less the private funds available, would be funded wholly by the City, with no matching requirement. Under staff's proposed arrangement, all City funds expended would be repaid to the City upon successful formation of the PBID and from available PBID funds. According to staff's research, such

a funding/repayment arrangement has been a common way for cities to support PBID formation efforts around the state. Staff has not found another example of a city that required private funds to match the city's contributions to the PBID process, as in the former arrangement.

The Council continued the March 3 item to today, with direction to staff to return with further details about accountability during the PBID formation process. Constituent outreach and accountability are discussed in the ensuing sections.

The funds requested under staff's proposed arrangement (corresponding to Exhibit A, the amended Grant Funding Agreement) are as follows:

Estimated remaining expenses to complete Downtown PBID		$100,000
Less remaining available City funding from PBID reserve	–	28,170
Less available funding from private donations	–	15,691
Additional City funding needed	=	**$ 56,139**

The total maximum future City outlay consists of the $28,170 in previously authorized City funds, plus the $56,139 in funds requested today, for a total potential future City outlay of $84,309. Aside from the additional funding needed, staff's request involves a change in policy from a matching-funds arrangement to an unmatched, but repayable, funding arrangement.

	Current arrangement	Proposed arrangement
Provides sufficient funding to complete PBID formation	No	Yes
Maximum future City outlay	$28,170	$84,309
Funds repayable to City upon adoption of PBID	$0	$84,309
Funds repayable to City if PBID formation fails	$0	$0
Fiscal agent	Fresno Revitalization Corporation	Fresno Revitalization Corporation
Minimum future private contributions to PBID formation	$15,691	$15,691

Following the March 3, 2009, Council hearing, the PUMA consultants provided City staff and the Downtown Fresno Partnership with a revised detail of costs (Exhibit C). The revision increases the estimated costs from $69,900 to $85,000. The increase of $15,100 reflects:

(a) Additional work by the consultant team's engineer to develop an adequate property owner database, including data about publicly owned properties, to support a sufficiently thorough constituent outreach effort and a complete district financing plan. The prior contract total did not account for unexpected difficulties in finding the necessary data.

(b) Additional work by the consultants, and travel to Fresno, to make every effort possible to communicate with the greatest number of property owners during the process of calibrating the business plan to maximize voter support. To date, the consultant team and PBID advocates have had direct conversations with more than 75 downtown stakeholders and have received survey input from an additional 90. The increased funding allows the team to continue to build on these efforts to reach out to as many stakeholders as possible.

Despite the increase in consultant costs, staff has worked with the Downtown Fresno Partnership to ensure that the total estimated amount required to complete the PBID formation process remains at or under $100,000, and the amount requested from the Council today remains unchanged from the March 3 item.

Constituent outreach

Consistent with the overarching philosophy of the Downtown and Community Revitalization Department, the formation of a Downtown Fresno Property and Business Improvement District (PBID) will continue to be a community-led process. To date numerous Downtown property owners have both pledged their support of the proposal for a PBID, and contributed funds to support the ongoing district formation process. Several of these constituents testified in support of the PBID process at the March 3, 2009, Council hearing on staff's proposed City funding arrangement.

If the Council approves today's funding request, the next step in the PBID formation process will be a several-month period of more intensive outreach to property owners. These conversations will be driven by the private supporters of the PBID, not City staff, and will be of a decidedly two-way nature. Property owners contacted will have the opportunity to express what level of assessment — and what corresponding level of deliverable services and improvements — they would support. The business plan for the district will be calibrated during these conversations to reflect the levels of assessment corresponding to the levels of special benefit conferred that maximize constituent support for PBID formation. Generally the law requires that property, public (excluding federal) and private, be included within the PBID and assessed in proportion to any special benefit conferred. The PBID may include zones or areas reflecting these different rates of assessment. The boundaries of the district, including the areas within the district of greater or lesser assessments and deliverables, remain malleable until the final business plan is issued.

During the next four to five weeks, the Downtown Fresno Partnership will be continuing work with the consultant team's engineer to develop a complete Downtown property owner database. Additions to the database during this period will inform further constituent outreach, calculation of anticipated assessments on private and public properties, and the eventual district budget for deliverable services and improvements. The City and Redevelopment Agency will then also have access to this database, which will have incredible value as the Department continues to work on other revitalization efforts including specific land use plans, code enforcement, and festivals.

Accountability and milestones

Assembly Bill 3754 (Chapter 897, Statutes of 1994), the Property and Business Improvement District Law of 1994, set forth procedures for the formation of a Property and Business Improvement District (PBID) in California. This procedure was refined by Proposition 218, a constitutional amendment adopted by California voters in 1996 relating to elections for taxes, fees, and assessments.

The PBID formation process includes at least three "milestones" where staff will be returning to Council to solicit further action.

First, at the end of the upcoming period of intense constituent contact, a final business plan will be issued that reflects the property owner input received. The Council will need to decide whether the City, as a property owner to be assessed, will sign onto the petition supporting formation of the PBID to implement in the business plan. Council approval of this plan will coincide with the start of petition-gathering among the various private and public property owners.

Second, if and when the petition receives support from more than 50% of the property owners, weighted by assessment liability, the City Clerk will accept the petition, and the Council will need to adopt a resolution ordering the Clerk to set a notice/protest public hearing and conduct a ballot process under Proposition 218.

Third, the Council will be presented the ballot results and, absent a majority protest, will be asked to adopt a resolution forming the Downtown Fresno PBID and then contract with the nonprofit owner's organization to manage the PBID.

Although the funds requested are sufficient to support the entire PBID formation process, funds will only be expended as needed. Exhibit B provides an overview of how and when funds will be needed during the process. At each phase, the Department will approve additional expenditures based on (1) successful completion of past steps, and (2) an indication, based on the best available information, that the next step has a high likelihood of success.

The Department looks forward to the Council reports at each of the above milestones to provide updates on the use of funds, along with the requested policy actions. Staff is committed to keeping the Council and the community well informed during the entire remaining PBID formation process.

FISCAL IMPACT

Funds are available in the Municipal Restoration Zone Fund in Downtown and Community Revitalization Department's FY2009 budget. It is noted for Council's information that if the PBID is not formed there is no mechanism to collect on the loan.

MIW/JVM/CGP/DHC/ems

Attachments:

Exhibit A – Proposed Amendment No. One to Grant Funding Agreement
Exhibit B – Remaining PBID formation process and funding
Exhibit C – Consultant cost detail
Exhibit D – Chart of PBIDs in other cities

CITY OF FRESNO
City Clerk's Office (Original)

3/17/09
9:30 a.m. -A

AMENDMENT NO. ONE TO GRANT FUNDING AGREEMENT

Between

FRESNO REVITALIZATION CORPORATION,
a California non-profit public benefit corporation

And

CITY OF FRESNO, a California municipal corporation

Regarding

DOWNTOWN PROPERTY BASED IMPROVEMENT DISTRICT ("PBID")
AND RELATED DELIVERABLES

This Amendment No. One to Grant Funding Agreement Regarding Downtown PBID and Related Deliverables ("Amendment") effective as of March 17, 2009 upon its complete execution is entered between FRESNO REVITALIZATION CORPORATION, a California non-profit public benefit corporation ("FRC"), and the CITY OF FRESNO, a California municipal corporation ("City").

Recitals

A. City and FRC are parties to a certain March 4, 2008 Grant Funding Agreement Regarding Downtown PBID Consultant Deliverables as assigned, assumed and amended ("Agreement"), incorporated herein by this reference; and

B. It is in the public interest to modify the Agreement in certain regards, upon the terms and conditions herein; and

C. On March 17, 2009, the Fresno City Council considered and approved this Amendment No. One.

AMENDMENT

NOW THEREFORE, in consideration of the above recitals, which recitals are contractual in nature, the mutual promises herein contained, and for other good and valuable consideration hereby acknowledged, the parties agree to the following:

1. The Revised Project Consultant Deliverables, Performance and Payment Schedule including progress payment benchmarks attached as Exhibit A hereto and incorporated herein shall control and take precedence. The FRC, as fiscal agent under the Agreement shall be paid in arrears at the times and in the amounts provided in Exhibit A.

2. City shall provide additional funding of $56,139, for a total City funding of $96,264, of which the amount of $84,309 shall be a no-interest, no-match loan repayable in the event of formation by the entity acting as the PBID owner's association, solely from lawfully available PBID funds and consistent with the PBID's management plan, and substantially consistent with the template assumable Promissory Note to be given by said entity in favor of the City attached as Exhibit B hereto and incorporated herein.

3. In the event of any conflict between the body of this Amendment No. One and any Exhibit or Attachment hereto, the terms and conditions of the body of this Amendment No. One shall control and take precedence over the Exhibit or Attachment.

4. All capitalized terms used in this Amendment No. One, unless otherwise defined herein, shall have the meanings assigned to such terms in the Agreement.

5. The City Manager / designee thereof shall be authorized to sign all documents / instruments necessary in pursuit hereof.

6. Except as expressly modified and amended hereby, the Agreement shall remain in full force and effect. From and after the effective date of this Amendment No. One, references in the Agreement to "this Agreement" shall mean the Agreement as hereby amended.

FRESNO REVITALIZATION CORPORATION
a California nonprofit corporation

By: Bryn Forhan

Name: Bryn Forhan
Title: President
Address:
Ph. No.
Date: 4-8-09

CITY OF FRESNO
a California municipal corporation

By: Andrew T Souza

Name: Andrew T. Souza
Title: City Manager

Date: 3/20, 2009

APPROVED AS TO FORM:
James Sanchez
City Attorney

By: R
Robert R. Coyle, Senior Deputy

Date: 3-18, 2009

ATTEST:
Rebecca E. Klisch
City Clerk

By: [signature]
Deputy

Date: April 9, 2009

Attachments:

Exhibit A - Revised Project Consultant Deliverables, Performance and Payment Schedule
Exhibit B - Template Assumable Promissory Note

RRC:sn [48476sn/rrc] 3/18/09

EXHIBIT A

Revised Project Consultant Deliverables, Performance and Payment Schedule

Step 1: PBID Feasibility and Draft Plan Proforma Cost	**Estimated Completion Date Not To Exceed**	
1.1 Travel and Market Reconnaissance	30 days from notice to proceed	$4000
1.2 Database Development	(same)	$7680
1.3 Base Level of Services	(same)	$2280
Step 2: Plan Review & Refinement		
2.1 Travel and Downtown Stakeholder Outreach	150 days from notice to proceed	$13680
2.2 Direct Mail/email Survey	(same)	$2780
2.3 Draft PBID Management Plan	(same)	$10600
2.4 Plan Review Workshops	(same)	$10240
2.4 Stakeholder Consensus	(same)	$ 3840
Step 3: Petition & Ballot		
3.1 Travel, Admin, Engineering & Final Plan	180 days from notice to proceed	$ 7560
3.2 Database Verification/Refinement	(same)	$2000
3.3 Campaign Training	(same)	$2000
3.4 PBID Newsletter	(same)	$3780
3.5 Draft Petition/City Review	(same)	$2000
3.6 Campaign Assistance	(same)	$3060
3.7 218 Ballots	(same)	$2500
3.8 City Council Approval (attendance)	(same)	(hourly rates)
Miscellaneous/Ancillary		
1.0 Meals/Mailings		$1283
2.0 Food, Rooms, Materials		$3000
3.0 Project Management/Support Staff		$8500
4.0 Print/Mail Materials		$2217
TOTAL		$100000

All payment on 30 days of invoice in arrears for work completed/accepted and substantiated costs incurred, per above.

EXHIBIT B

Promissory Note

DO NOT DESTROY THIS NOTE: When paid, this note must be surrendered to Borrower for Cancellation.

Loan Amount: $84,309 Date: _____, 2009

Fresno, California

For value received, the undersigned entity acting as the PBID owner's association, _____, a California [_____] ("Borrower"), promises to pay to the order of the City of Fresno, a California municipal corporation, ("Lender"), the sum of Eighty Four Thousand Three Hundred Nine Dollars ($84,309), to the extent that such funds are loaned, without interest, and in accordance with the Grant Funding Agreement Regarding Downtown PBID and Related Deliverables, dated March 4rd, 2008, as assigned and amended, between the Fresno Revitalization Corporation as fiscal agent thereunder and Lender, (collectively "Agreement"), with all principal due and payable on or before [____, 20__] ("Maturity Date"), on which date the unpaid balance of principal thereon shall be due and payable, along with attorney's fees and costs of collection, and without relief from valuation and appraisement laws.

This assumable Note is payable by Borrower, solely from lawfully available PBID funds and consistent with the PBID's management plan, and in the amounts/at the times provided therein, and said payments continue each successive year until the Maturity Date, upon which all principal shall be due and payable. Any failure to make a payment required hereunder within ten (10) days after such payments are due shall constitute a default under the Agreement and this Note. It shall not be a default hereunder if no payment was made because of insufficient lawfully available PBID funds in any particular year, provided that any such shortfall(s) shall be added to succeeding loan payment(s) as/when due. Additionally any failure to timely submit to Lender PBID financial statements within one hundred eighty (180) days after Lender's reasonable request shall constitute a default under the Agreement and this Note.

All capitalized terms used in this Note, unless otherwise defined, will have the respective meanings specified in the Agreement.

Time is of the essence. It will be a default under this Note if Borrower defaults under the Agreement, or this Note and such default continues beyond a 30 days notice and cure period. In the event of a default by Borrower with respect to any sum payable under this Note and the failure to cure such default within 30 days, the Borrower shall pay a late charge equal to the lesser of 2% of any outstanding payment or the maximum amount allowed by law. All payments collected shall be applied first to payment of any costs, fees or other charges due under this Note and then to principal balance. On the occurrence of an uncured default then, at the option of Lender, this Note or any notes or other instruments that may be taken in renewal or extension of

all or any part of the indebtedness will immediately become due without any further presentment, demand, protest, or notice of any kind.

The indebtedness evidenced by this Note may, at the option of the Borrower, be prepaid in whole or in part without penalty. Lender will apply all the prepayments first to the payment of any costs, fees, late charges, or other charges due under this Note and then to the principal balance.

All Loan payments are payable in lawful money of the United States of America at any place that Lender or the legal holders of this Note may, from time to time, in writing designate.

Borrower agrees to pay all costs including, without limitation, reasonable attorney fees, incurred by the holder of this Note in the successful enforcement of payment, whether or not suit is filed, and including, without limitation, all costs, reasonable attorney fees, and expenses incurred by the holder of this Note in connection with any bankruptcy, reorganization, arrangement, or other similar proceedings involving the Borrower that in any way affects the exercise by the holder of this Note of its rights and remedies under this Note. All costs incurred by the holder of this Note in any action undertaken to obtain relief from the stay of bankruptcy statutes are specifically included in those costs and expenses to be paid by Borrower.

Any notice, demand, or request relating to any matter set forth herein shall be in writing and shall be given as provided in the Agreement.

No delay or omission of Lender in exercising any right or power arising in connection with any default will be construed as a waiver or as acquiescence, nor will any single or partial exercise preclude any further exercise. Lender may waive any of the conditions in this Note and no waiver will be deemed to be a waiver of Lender's rights under this Note, but rather will be deemed to have been made in pursuance of this Note and not in modification. No waiver of any default will be construed to be a waiver of or acquiescence in or consent to any preceding or subsequent default.

Lender may transfer this Note and the transferee will then become vested with all the powers and rights given to Lender; and Lender will then be forever relieved from any liability or responsibility in the matter.

If any one or more of the provisions in this Note is held to be invalid, illegal, or unenforceable in any respect by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions will not in any way be affected or impaired. This Note will be binding on and inure to the benefit of Borrower, Lender, and their respective successors and assigns.

Borrower and Lender agree that this Note will be deemed to have been made under and will be governed by the laws of California in all respects, including matters of construction, validity, and performance, and that none of its terms or provisions may be waived, altered, modified, or amended except as Lender and Borrower may consent to in a writing duly signed by Borrower or Lender or its authorized agents.

This Note shall be nonrecourse to Borrower and all its constituent members. The sole recourse of the Lender under the Note shall be legally available PBID funds, consistent with the PBID's management plan, and Lender shall have no right to seek or recover any deficiency amount from Borrower or any partner of Borrower.

Without waiver or limitation, the Fresno Revitalization Corporation is not bound or obligated under this Note absent any express written consent/agreement of the Fresno Revitalization Corporation to act as PBID owner's association.

[COMPLETE THE FOLLOWING IN THE EVENT OF BOND FINANCING]

The indebtedness evidenced by this Note is and shall be subordinate in right of payment to the prior payment in full of all amounts then due and payable (including, but not limited to, all amounts due and payable by virtue of any default or acceleration or upon maturity) with respect to the indebtedness evidenced by [___], dated as of _____, in the original principal amount of $_____, executed by the Borrower and payable to _____ ("Issuer"), as assigned to _____ ("Trustee"), to the extent and in the manner provided in that certain [___] Agreement, dated as of _____, among the Lender, the Trustee and the Borrower (the "Subordination Agreement"). The rights and remedies of the payee and each subsequent holder of this Note shall be deemed, by virtue of such holder's acquisition of this Note, to have agreed to perform and observe all of the terms, covenants and conditions to be performed or observed by the "Junior Lender" under the Subordination Agreement.

In witness whereof, Borrower has caused this Promissory Note to be executed as of the date and year first above written.

BORROWER

[_____]

a California [___]

By: _____

Name _____

Title: _____

Date: _____