

ITEM 8.B.

MOORPARK CITY COUNCIL AGENDA REPORT

TO: Honorable City Council

FROM: Jennifer Mellon, Senior Management Analyst

DATE: December 11, 2009 (CC Meeting of January 6, 2010)

SUBJECT: Consider Resolution for Participation in the CaliforniaFIRST Program of the California Statewide Communities Development Authority

SUMMARY

The City Council is being asked to adopt the attached Resolution to authorize the City's participation in the CaliforniaFIRST program of the Statewide Communities Development Authority (California Communities) to provide financing to residential, commercial, and industrial property owners for renewable energy, energy efficiency, and water efficiency projects.

State law allows local governments to form assessment districts to provide property owners with an economically feasible means to install renewable energy, energy efficiency, and water efficiency improvements on their lot or parcel allowing the property owners to pay the cost of these projects over time. California Communities has developed a statewide pilot program allowing Counties, and those Cities within them, a possibility to participate by offering financing on qualifying improvement projects within their jurisdictional boundaries.

BACKGROUND

California Communities is a joint powers authority co-sponsored by the League of California Cities and the California State Association of Counties which formed to give local government access to low-cost financing for projects providing a public benefit. The member agencies of California Communities include all 58 counties and more than 400 other local agencies throughout California, including the City of Moorpark. On November 18, 2009, the City Council authorized the City Manager to send a letter of commitment to be included with the County of Ventura's application for Municipal Financing Program (CaliforniaFIRST).

CaliforniaFIRST is a pilot program being instituted by California Communities to allow owners of property in participating cities and counties to finance renewable energy,

energy efficiency and water efficiency improvements on their property. If a property owner chooses to participate, the improvements will be financed by the issuance of bonds by California Communities which would then levy contractual assessments on the owner's property which would repay the loan. California Communities has selected Renewable Funding LLC and RBC Capital Markets to provide administration and financing for the program.

The contractual assessment proceedings will be undertaken by California Communities pursuant to Chapter 29 of Division 7 of the Streets & Highways Code, which was amended in 2008 by Assembly Bill 811 and further amended in 2009 by Assembly Bill 474, to allow the financing of renewable energy, energy efficiency and water efficiency improvements on private property. Pursuant to Chapter 29, assessments may be levied to finance renewable energy, energy efficiency and water efficiency improvements only with the free and willing consent of the owner of each lot or parcel on which an assessment is levied at the time the assessment is levied, and property owners evidence their consent to the assessments by executing a contract with California Communities.

The Counties joining the CaliforniaFIRST during this pilot phase will be a part of a California Energy Commission (CEC) State Energy Program (SEP) grant application to fund program start-up costs including legal services, financial advisor costs, contract administration, as well as local marketing costs and program administration. The grant, if awarded will be funded with American Recovery and Reinvestment Act (ARRA) stimulus funds. The County of Sacramento is the lead agency in submitting the grant application on behalf of 14 counties and their jurisdictional Cities who opt to participate. If the grant is not awarded, local agencies will have the option of paying their share of the start-up costs or opting out of the program. The City of Moorpark share of cost would be \$12,500 and staff would return to Council with a recommendation regarding participation if the grant application is not successful.

Locally, the County of Ventura will be program liaison between participating cities and the state. The County will be responsible for compliance, coordination, reporting, and local funding administration. The County intends to contract with the Ventura County Regional Energy Alliance (VCREA) for program marketing and outreach efforts.

DISCUSSION

The County of Ventura, under direction of the Board of Supervisors, has taken the lead to monitor the possible concerns surrounding the establishment of municipal financing programs authorized by AB 811 and other legislative actions, and has recommended an option for a local program such as that offered by CaliforniaFIRST. The County has assessed the interest among the ten Ventura County Cities and all cities have provided non-binding letters of commitment supporting the grant application. Governing body authorization to join the program is required by January 18, 2010.

It is anticipated the CEC will announce SEP application awards by mid-February 2010, after which CaliforniaFIRST will initiate assessment district establishment in participating jurisdictions. Judicial validation is expected to take a minimum of three months, with the program's launch in Ventura County anticipated in summer 2010.

The CaliforniaFIRST financing program offers several benefits to property owners including:

- An alternate financing option. In today's economic environment, there may not be attractive private enterprise alternatives for property owners to finance renewable energy/energy efficiency/water efficiency improvements;
- Voluntary participation. Loans are entered into voluntarily and the assessment obligation will transfer with the property upon sale;
- The opportunity for property owners to minimize upfront costs and benefit from longer repayment periods than with conventional financing;
- Flexibility for the property owner to choose to pay off the assessments at any time, subject to applicable prepayment penalties; and
- Access to bond funding. By virtue of regional aggregation provided by the CaliforniaFIRST Program, small residential and commercial projects can have access to the municipal bond market, which may produce a lower borrowing cost.

The CaliforniaFIRST Program offers the City of Moorpark a means to advance sustainability measures within the community cost-effectively and with nominal staff time. California Communities will handle all assessment administration, bond issuance, and bond administration functions. Furthermore, as in conventional assessment financing, the City is not obligated to repay the bonds issued by California Communities or to pay the assessment levied on the participating properties.

The proposed resolution (Attachment 1) authorizes California Communities to accept applications from owners of property within our jurisdiction for municipal financing of renewable energy, energy efficiency and water efficiency improvements through the CaliforniaFIRST Program. It also authorizes California Communities to conduct assessment proceedings and levy assessments against the property of participating owners. California Communities will undertake a judicial validation proceeding as part of its initiation of the CaliforniaFIRST Program.

The resolution also authorizes payment of a \$12,500 set-up fee to cover legal, procedural, and technology costs associated with the CaliforniaFIRST Program. As

previously stated, it is intended that this cost would be covered by a California Energy Commission grant; however, should the grant not be awarded, staff will return to Council with a recommendation on the City's participation in the program.

As previously stated, any jurisdiction can withdraw from the CaliforniaFIRST Program at any time by passing a resolution rescinding the authorization. Staff has also attached as Exhibit A, the "Form of Resolution of Intention to be adopted by California Communities". This is for information purposes only and does not require action by this City Council.

Staff recommends adoption of the Resolution authorizing the City's participation in the CaliforniaFIRST Program of the California Statewide Communities Development Authority (California Communities) to provide financing to residential, commercial, and industrial property owners for renewable energy, energy efficiency, and water efficiency projects.

FISCAL IMPACT

At this time there is no foreseen fiscal impact. If, in the unlikely event that a grant is not awarded to cover the cost of fees associated with the CaliforniaFIRST Program and the County wishes to pursue participation in the program, staff will return to Council with a recommendation whether to incur fiscal impact of \$12,500 or opt out of the program.

STAFF RECOMMENDATION

- 1) Open the public hearing, accept public testimony, and close the public hearing.
- 2) Adopt Resolution No. 2010-_____.

Attachment: Resolution

ATTACHMENT

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MOORPARK, CALIFORNIA, AUTHORIZING THE CITY OF MOORPARK TO JOIN THE CALIFORNIAFIRST PROGRAM; AUTHORIZING THE CALIFORNIA STATEWIDE COMMUNITIES DEVELOPMENT AUTHORITY TO ACCEPT APPLICATIONS FROM PROPERTY OWNERS, CONDUCT CONTRACTUAL ASSESSMENT PROCEEDINGS AND LEVY CONTRACTUAL ASSESSMENTS WITHIN THE TERRITORY OF THE CITY OF MOORPARK; AND AUTHORIZING RELATED ACTIONS

WHEREAS, the California Statewide Communities Development Authority ("California Communities") is a joint exercise of powers authority the members of which include numerous cities and counties in the State of California, including the City of Moorpark; and the County of Ventura and Cities of Fillmore, Camarillo, Oxnard, Ojai, Port Hueneme, San Buenaventura, Santa Paula, Simi Valley, and Thousand Oaks; and

WHEREAS, California Communities has established the CaliforniaFIRST program (the "CaliforniaFIRST Program") to allow the financing of certain renewable energy, energy efficiency and water efficiency improvements (the "Improvements") through the levy of contractual assessments pursuant to Chapter 29 Division 7 of the Streets & Highways Code ("Chapter 29") and the issuance of improvements bonds (the "Bonds") under the Improvement Bond Act of 1915 (Streets and Highways Code Sections 8500 and following) (the "1915 Act") upon the security of the unpaid contractual assessments; and

WHEREAS, Chapter 29 provides that assessments may be levied under its provisions only with the free and willing consent of the owner of each lot or parcel on which an assessment is levied at the time the assessment is levied; and

WHEREAS, the City desires to allow the owners of property within its jurisdiction ("Participating Property Owners") to participate in the CaliforniaFIRST Program and to allow California Communities to conduct assessment proceedings under Chapter 29 and to issue Bonds under the 1915 Act to finance the Improvements; and

WHEREAS, California Communities will conduct assessment proceedings under Chapter 29 and issue Bonds under the 1915 Act to finance Improvements; and

WHEREAS, there has been presented to this meeting a proposed form of Resolution of Intention to be adopted by California Communities in connection with such assessment proceedings (the "ROI"), a copy of which is attached hereto as Exhibit A, and the territory within which assessments may be levied for the CaliforniaFIRST Program shall include all of the territory within the City's official boundaries of record (the "Proposed Boundaries"); and

WHEREAS, the City will not be responsible for the conduct of any assessment proceedings; the levy or collection of assessments or any required remedial action in the case of delinquencies in such assessment payments; or the issuance, sale of administration of the Bonds or any other bonds issued in connection with the CaliforniaFIRST Program; and

WHEREAS, pursuant to Government Code Section 6586.5, a notice of public hearing has been published once at least five days prior to the date hereof in a newspaper of general circulation in the City and a public hearing as been duly conducted by this City Council concerning the significant public benefits of the CaliforniaFIRST Program and the financing of the Improvements.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF MOORPARK DOES HEREBY RESOLVE:

SECTION 1. On the date hereof, the City Council held a public hearing and the City Council hereby finds and declares that the issuance of bonds by California Communities in connection with the CaliforniaFIRST Program will provide significant public benefits, including without limitation, savings in effective interest rate, bond preparation, bond underwriting and bond issuance costs and reductions in effective user charges levied by water and electricity providers within the boundaries of the City.

SECTION 2. In connection with the CaliforniaFIRST Program, the City hereby consents to the conduct of special assessment proceedings by California Communities pursuant to Chapter 29 on any property within the Proposed Boundaries and the issuance of Bonds under the 1915 Act; provided, that

(1) Such proceedings are conducted pursuant to one or more Resolutions of Intention in substantially the form of the ROI;

(2) The Participating Property Owners, who shall be the legal owners of such property, execute a contract pursuant to Chapter 29 and comply with other applicable provisions of California law in order to accomplish the valid levy of assessments;

(3) The City will not be responsible for the conduct of any assessment proceedings; the levy or collection of assessments or any required remedial action in the cause of delinquencies in such assessment payments; or the issuance, sale of administration of the Bonds or any other bonds issued in connection with the CaliforniaFIRST Program; and

(4) The issuance of Bonds will occur following receipt of a final judgment in a validation action filed by California Communities pursuant to Code of Civil Procedure Section 860 that the Bonds are legal obligations of California Communities.

SECTION 3. Pursuant to the requirements of Chapter 29, California Communities has prepared and will update from time to time the "Program Report" for

the CaliforniaFIRST Program (the "Program Report"), and California Communities will undertake assessment proceedings and the financing of Improvements as set forth in the Program Report.

SECTION 4. The appropriate officials and staff of the City are hereby authorized and directed to make applications of the CaliforniaFIRST Program available to all property owners who wish to finance Improvements; provided, that California Communities shall be responsible for providing such applications and related materials at its own expense. The following staff person, together with any other staff persons, chosen by the County Executive Officer from time to time, is hereby designated as the contact person for California Communities in connection with the CaliforniaFIRST Program: Deputy Executive Officer or designee.

SECTION 5. The appropriate officials and staff of the City are hereby authorized and directed to execute and deliver such closing certificates, requisitions, agreements and related documents as are reasonably required by California Communities in accordance with the Program report to implement the CaliforniaFIRST Program for Participating Property Owners.

SECTION 6. The appropriate officials and staff of the City are hereby authorized and directed to pay California Communities a fee in an amount not to exceed \$12,500, which California Communities will use to pay for the costs of implementing the CaliforniaFIRST Program in the City, including the payment of legal costs incurred in connection with judicial validation of the CaliforniaFIRST Program.

SECTION 7. The City Council hereby finds that adoption of this Resolution is not a "project" under California Environmental Quality Act, because the Resolution does not involve any commitment to a specific project which may result in a potentially significant physical impact on the environment, as contemplated by Title 14, California Code of Regulations, Section 15378(b)(4).

SECTION 8. This Resolution shall take effect immediately upon its adoption. The City Clerk is hereby authorized and directed to transmit a certified copy of this resolution to the Secretary of California Communities.

PASSED AND ADOPTED this 6th day of January, 2010

Janice S. Parvin, Mayor

ATTEST:

Maureen Benson, Assistant City Clerk

Attachment: Exhibit A

EXHIBIT A

**RESOLUTION DECLARING INTENTION TO FINANCE INSTALLATION OF
DISTRIBUTED GENERATION RENEWABLE ENERGY SOURCES, ENERGY
EFFICIENCY AND WATER EFFICIENCY IMPROVEMENTS**

COUNTY OF _____

WHEREAS, the California Statewide Communities Development Authority ("California Communities") is authorized under the authority granted California Communities pursuant to Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California in accordance with Chapter 29 of Part 3 of Division 7 of the Streets & Highways Code of the State of California ("Chapter 29") to authorize assessments to finance the installation of distributed generation renewable energy sources, energy efficiency and water efficiency improvements that are permanently fixed to real property ("Authorized Improvements"); and

WHEREAS, Chapter 29 authorizes California Communities to enter into contractual assessments to finance the installation of Authorized Improvements in the County of ____ (the "County"); and

WHEREAS, California Communities wishes to declare its intention to establish a CaliforniaFIRST program (the "CaliforniaFIRST Program") in the County, pursuant to which California Communities, subject to certain conditions set forth below, would enter into contractual assessments to finance the installation of Authorized Improvements in the County;

NOW, THEREFORE, BE IT RESOLVED by the California Statewide Communities Development Authority, as follows:

Section 1. Findings. California Communities hereby finds and declares the following:

- (a) The above recitals are true and correct.
- (b) Energy conservation efforts, including the promotion of energy-related Authorized Improvements to residential, commercial, industrial, or other real property, are necessary to address the issue of global climate change and the reduction of greenhouse gas emissions in the County.
- (c) Water conservation efforts, including the promotion of water-related Authorized Improvements to residential, commercial, industrial, or other real property, are necessary to address the issue of chronic water shortages in California.
- (d) The upfront cost of making residential, commercial, industrial, or other real property more energy and water efficient, along with the fact that most commercial loans for that purpose are due on the sale of the property, prevents many property owners from installing Authorized Improvements.
- (e) A public purpose will be served by establishing a contractual assessment program, to be known as the CaliforniaFIRST Program, pursuant to which California

Communities will finance the installation of Authorized Improvements to residential, commercial, industrial, or other real property in the County.

Section 2. Determination of Public Interest. California Communities hereby determines that (a) it would be convenient, advantageous, and in the public interest to designate an area, which shall encompass the entire geographic territory within the boundaries of the County, within which California Communities and property owners within the County may enter into contractual assessments to finance the installation of Authorized Improvements pursuant to Chapter 29 and (b) it is in the public interest for California Communities to finance the installation of Authorized Improvements in the County pursuant to Chapter 29.

Section 3. Identification of Authorized Improvements. California Communities hereby declares that it proposes to make contractual assessment financing available to property owners to finance installation of Authorized Improvements, including but not limited to those improvements detailed in the Report described in Section 8 below, as that Report may be amended from time to time.

Section 4. Identification of Boundaries. Contractual assessments may be entered into by property owners located within the entire geographic territory of the County; provided, however, that California Communities shall not enter into contractual assessments to finance the installation of Authorized Improvements with the owner of any property in the County unless requested to do so first by the County if the property is located in unincorporated territory or a city if the property is located in incorporated territory and after such city or the County, as applicable, has held a public hearing pursuant to Section 6586.5 of the Government Code of the State of California. The form of resolution pursuant to which cities may request California Communities to enter into contractual assessments to finance the installation of Authorized Improvements is attached as Exhibit A.

Section 5. Proposed Financing Arrangements. Under Chapter 29, California Communities may issue bonds pursuant to Chapter 29 that are payable by contractual assessments and California Communities may advance its own funds to finance work to be repaid through contractual assessments, and may from time to time sell bonds to reimburse itself for such advances. Division 10 (commencing with Section 8500) of the Streets & Highways Code of the State (the "Improvement Bond Act of 1915") shall apply to any bonds issued pursuant to Chapter 29, insofar as the Improvement Bond Act of 1915 is not in conflict with Chapter 29.

California Communities shall determine the creditworthiness of a property owner to participate in the financing of Authorized Improvements based on the criteria developed by the Program Manager in consultation with the CaliforniaFIRST Program financing team and on file with the Secretary.

In connection with bonds issued under the Improvement Bond Act of 1915 that are payable from contractual assessments, serial and/or term improvement bonds shall be issued in such series and shall mature in such principal amounts and at such times (not to exceed 20 years from the second day of September next following their date) and at such rate or rates of interest (not to exceed the maximum rate permitted by applicable law) as shall be determined by California Communities at the time of the issuance and sale of the bonds. The provisions of Part 11.1 of the Improvement Bond Act of 1915 shall apply to the calling of the bonds. It is the intention of California Communities to create a special reserve fund for the bonds under Part 16 of the Improvement Bond Act of 1915. California Communities will not advance

available surplus funds from its treasury to cure any deficiency in the redemption fund to be created with respect to the bonds; provided, however, that this determination shall not prevent California Communities from, in its sole discretion, so advancing funds. The bonds may be refunded under Division 11.5 of the California Streets and Highways Code or other applicable laws permitting refunding of the bonds, upon the conditions specified by and at the determination of California Communities.

California Communities hereby authorizes the Program Manager, upon consultation with bond counsel and the CaliforniaFIRST Program underwriter, to provide for the issuance of bonds payable from contractual assessments.

In connection with the issuance of bonds payable from contractual assessments, California Communities expects to obligate itself, through a covenant with the owners of the bonds, to exercise its foreclosure rights with respect to delinquent contractual assessment installments under specified circumstances.

Section 6. Public Hearing. Pursuant to the Act, California Communities hereby orders that a public hearing be held before this Commission, at _____, on _____, _____, 2010 at _____ a.m., for the purposes of allowing interested persons to object to or inquire about the proposed program or any of its particulars. The public hearing may be continued from time to time as determined by the Commission for a time not exceeding a total of 180 days.

At the time of the hearing, the Report described in Section 8 below shall be summarized and the Commission shall afford all persons who are present an opportunity to comment upon, object to, or present evidence with regard to the proposed contractual assessment program, the extent of the area proposed to be included within the program, the terms and conditions of the draft Contract described in Section 8 below, or the proposed financing provisions. Following the public hearing, California Communities may adopt a resolution confirming the Report (the "Resolution Confirming Report") or may direct the Report's modification in any respect, or may abandon the proceedings.

The Commission hereby orders the Secretary to publish a notice of public hearing once a week for two successive weeks. Two publications in a newspaper published once a week or more often, with at least five days intervening between the respective publication dates not counting such publication dates, are sufficient. The period of notice will commence upon the first day of publication and terminate at the end of the fourteenth day. The first publication shall occur not later than 20 days before the date of the public hearing.

Section 7. Notice to Water and Electric Providers. Pursuant to Section 5898.24 of the Streets & Highways Code, the Commission hereby orders the Secretary to provide written notice of the proposed contractual assessment program within the County to all water and electric providers within the boundaries of the County not less than 60 days prior to adoption of the Resolution Confirming Report.

Section 8. Report. The Commission hereby directs the Program Manager for the CaliforniaFIRST Program to prepare and file with the Commission a report (the "Report") at or before the time of the public hearing described in Section 6 above containing all of the following:

- (a) A map showing the boundaries of the territory within which contractual assessments are proposed to be offered, as set forth in Section 4 above.

(b) A draft contract (the "Contract") specifying the terms and conditions that would be agreed to by California Communities and a property owner within the County. The Contract may allow property owners to purchase directly the related equipment and materials for the installation of the Authorized Improvements and to contract directly for the installation of such Authorized Improvements.

(c) A statement of California Communities' policies concerning contractual assessments including all of the following:

(1) Identification of types of Authorized Improvements that may be financed through the use of contractual assessments.

(2) Identification of California Communities official authorized to enter into contractual assessments on behalf of California Communities.

(3) A maximum aggregate dollar amount of contractual assessments in the County.

(4) A method for setting requests from property owners for financing through contractual assessments in priority order in the event that requests appear likely to exceed the authorization amount.

(d) A plan for raising a capital amount required to pay for work performed pursuant to contractual assessments. The plan may include amounts to be advanced by California Communities through funds available to it from any source. The plan may include the sale of a bond or bonds or other financing relationship pursuant to Section 5898.28 of Chapter 29. The plan shall include a statement of or method for determining the interest rate and time period during which contracting property owners would pay any assessment. The plan shall provide for any reserve fund or funds. The plan shall provide for the apportionment of all or any portion of the costs incidental to financing, administration, and collection of the contractual assessment program among the consenting property owners and California Communities.

(e) A report on the results of the consultations with the County Auditor-Controller described in Section 10 below concerning the additional fees, if any, that will be charged to California Communities for incorporating the proposed contractual assessments into the assessments of the general taxes of the County on real property, and a plan for financing the payment of those fees.

Section 9. Nature of Assessments. Assessments levied pursuant to Chapter 29, and the interest and any penalties thereon, will constitute a lien against the lots and parcels of land on which they are made, until they are paid. Unless otherwise directed by California Communities, the assessments shall be collected in the same manner and at the same time as the general taxes of the County on real property are payable, and subject to the same penalties and remedies and lien priorities in the event of delinquency and default.

Section 10. Consultations with County Auditor-Controller. California Communities hereby directs the Program Manager to enter into consultations with the County Auditor-Controller in order to reach agreement on what additional fees, if any, will be charged to California Communities for incorporating the proposed contractual assessments into the assessments of the general taxes of the County on real property.

Section 11. Preparation of Current Roll of Assessment. Pursuant to Section 5898.24(c), California Communities hereby designates the Program Manager (or his/her designee) as the responsible official for annually preparing the current roll of assessment obligations by assessor's parcel number on property subject to a voluntary contractual assessment.

Section 12. Procedures for Responding to Inquiries. The Program Manager shall establish procedures to promptly respond to inquiries concerning current and future estimated liability for a voluntary contractual assessment.

Section 13. Professionals Appointed. California Communities hereby appoints Jones Hall, A Professional Law Corporation, San Francisco, California, as bond counsel to California Communities in connection with the CaliforniaFIRST Program. The Commission hereby authorizes and directs an Authorized Signatory of California Communities (as determined from time to time by the Commission by separate resolution) to enter into appropriate agreements with such firm for its services to California Communities in connection with the matters addressed in this Resolution.

Section 14. Set-Up Fees. The County and various cities within the County have advanced fees to California Communities to pay for certain costs of establishing the CaliforniaFIRST Program, some or all of which represent State Energy Program (SEP) funds. The Program Manager is hereby authorized and directed to return to the County and cities, as applicable, any fees paid to California Communities by the County and cities, as applicable, that do not represent SEP funds and that California Communities does not use to pay for the costs of establishing the CaliforniaFIRST Program.

Section 15. Effective Date. This resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED by the California Statewide Communities Development Authority this _____, 2010.

I, the undersigned, the duly appointed, and qualified member of the Commission of the California Statewide Communities Development Authority, DO HEREBY CERTIFY that the foregoing resolution was duly adopted by the Commission of said Authority at a duly called meeting of the Commission of said Authority held in accordance with law on _____, 2010.

By: _____
Member