PORTERVILLE REDEVELOPMENT AGENCY

PUBLIC HEARING

SUBJECT: LEASE AGREEMENT FOR PROPERTY LOCATED AT 287 N. HOCKETT STREET

SOURCE: COMMUNITY DEVELOPMENT - REDEVELOPMENT

COMMENT: On February 2, 2001, the Porterville Redevelopment Agency purchased the property located at 287 N. Hockett Street as a site for a future parking lot. To date, funding has not been available for the construction of a parking lot at this location and the building has been utilized for temporary storage by the Parks and Leisure Services Department.

The Adult Literacy Program is currently operating out of the Porterville Library. As the Literacy Program continues to grow in number of volunteers and participants, a need to relocate the program into larger quarters has become evident. In addition, Staff recently met with Robert Perez, Principal of the Porterville Unified School District Adult School, regarding formation of a partnership for literacy. Staff will be preparing an agreement to form a partnership for literacy between the City and the Porterville Unified School District to be presented to City Council at a future meeting. This new partnership will also increase the need for additional space.

The Parks and Leisure Services Department has expressed a desire to lease the building located at 287 N. Hockett Street for the Adult Literacy Program for a period not to exceed four (4) years. The cost for the lease of the building would be $0.25 per square foot, based on an appraisal report conducted for a similar downtown building.

At the July 16, 2002 City Council meeting, Council approved the use of the building located at 287 N. Hockett Street as the Porterville Adult Literacy Center. The monthly lease amount would be $589.00 per month based on the building size of 2,354 square feet. The monthly lease amount will be increased by 3%, rounded up to the nearest dollar, on every anniversary date following the first full year of the term of the lease. As a condition of the lease, the Adult Literacy Program would be responsible for cost of utilities, supplies, and services.

ITEM NO. PRA-2
RECOMMENDATION: That the Porterville Redevelopment Agency:

1) Approve a month-to-month lease agreement with the Parks and Leisure Services Department to house the Adult Literacy Program at 287 N. Hockett Street, for a period not to exceed four (4) years, at a rate of $589.00 per month, to be adjusted annually as outlined in the lease agreement, and;

2) Authorize the Parks and Leisure Services Director to sign the lease agreement on behalf of the Parks and Leisure Services Department, and;

3) Authorize the Redevelopment Agency Chairman to sign the lease agreement on behalf of the Agency.

ATTACHMENT: 1) July 16, 2002 City Council Agenda Item
2) Lease Agreement
SUBJECT: STOUT BUILDING AND NELSON TRUST PROPERTY

SOURCE: Department of Parks and Leisure Services

COMMENT: The Stout building located at 287 No. Hockett Street, was purchased by the City as a site for a redevelopment area future parking lot. The building was purchased February 2, 2001, and since then has been used by Parks and Leisure Services and the Library for storage. Recently, the Library staff has expressed interest in utilizing the facility as a center for the Adult Literacy Program. Library Programs such as the computer training for seniors, increased programming for children and teens, and grant programs such as the Adult Literacy Program and the English Language Literacy Intensive Program have increased the space problems. Staff has rearranged and moved library collections on several occasions in order to accommodate the need for more public areas. The Adult Literacy Program is grant funded by the State of California and could terminate in two to four years depending on State Funding, so if the program occupied the building it would be a temporary use.

The City had an appraisal done to determine the estimated cost for rental of the building. The study indicated that a cost of .25¢ per square foot per month would be median price for rental of the building. The building is 2,354 square feet on a 7,150 square foot lot. The Adult Literacy Program would pay the City $589.00 per month for use of the building plus costs for utilities, supplies and services. Redevelopment Law requires that a Public Hearing be held on use of redevelopment property, thus, staff proposes that a Public Hearing be held at the next Redevelopment Agency meeting on using the building as the Porterville Adult Literacy Center.

The building has been inspected by the Building Division and the Fire Department and was found acceptable for public occupancy.

The Nelson Trust property, formerly known as the Tall Man Isuzu and Subaru Agency at 296 No. Main Street, and purchased by the City, has numerous options and alternatives for short term and long term use. Because so many options are available, it would be advantageous to seek further input from the community regarding use of the property.

It’s recommended that a Nelson Trust Property Task Force be appointed by the City Council consisting of one member each from the Downtown Main Street Board, Parks and Leisure Services Commission, Community Development Block Grant Advisory Committee, Library Board of Trustees, and the Redevelopment Advisory Committee. Their job would be to review alternatives and proposals submitted by the community and staff regarding the best use of the property. The task force would report their findings to the City Council with recommendations.
RECOMMENDATION: That the City Council:

1. Approve the use of the Stout building as the Adult Literacy Center and authorize a Public Hearing, before the Porterville Redevelopment Agency, on August 6, 2002, for the use of the Stout building at 287 N. Hockett Street as the Porterville Adult Literacy Center; and

2. That a Nelson Property Task Force be appointed with one member each from the Main Street Porterville Board, Parks and Leisure Services Commission, Library Board of Trustees, Community Development Block Grant Committee and the Porterville Redevelopment Agency Advisory Committee, by the chairperson of each board, to determine the best uses for the site at 296 No. Main Street.
AGREEMENT FOR LEASE OF PREMISES

THIS AGREEMENT, is entered into as of this ______day of August, 2002 by and between the PORTERVILLE REDEVELOPMENT AGENCY, hereinafter referred to as "Lessor", and the CITY OF PORTERVILLE, a municipal corporation, hereinafter referred to as "Lessee", with respect to the following:

WHEREAS, Lessor owns the real property located at 287 North Hockett Street in the City of Porterville, County of Tulare, California and more particularly described in Exhibit A, attached hereto; and

WHEREAS, Lessee desires to cause the property to be leased for Adult Literacy Program; and

WHEREAS, Lessor is willing to enter into a lease with Lessee under the terms and conditions set forth below.

ACCORDINGLY, IT IS AGREED:

PART 1.
LEASE, TERM, OPTION TO EXTEND, HOLOVER, ASSIGNMENT, SUBLETTING

1.1 Lease.
Lessee will lease the Premises located at 287 North Hockett Street, in the City of Porterville, County of Tulare, California, from Lessor on the terms and conditions set forth below.

1.2 Lessee's Possession Date and Term.
Lessee will be entitled to exclusive possession of the Premises on the date to be mutually agreed upon by Lessee and Lessor. If Lessee takes possession of the Premises on other than on the first day of a calendar month, the initial term will consist of the unexpired portion of the calendar month in which Lessee holds possession of the Premises plus 1 full year from the first day of the calendar month immediately following. The anniversary date will be the first day of the first full month of the term.

1.3 Lessee's Option to Extend Term.
Provided Lessee is not then in default of this Lease, Lessee may extend this Lease on a year-to-year term from the expiration date of the initial term by serving a Notice of Election to Extend on Lessor at least 30 calendar days before the expiration of the initial term. The year-to-year term will be subject to the same terms and conditions as the initial term, including the annual percentage rent increase as stated in Section 2.1.3 of this agreement, until the tenancy is terminated in a manner provided by law.

1.4 Holdover without Consent.
If Lessee holds over beyond the expiration of the initial term of this Lease without the written consent of Lessor, the holding over will be deemed a month-to-month tenancy including the annual percentage rent increase, until the tenancy is terminated in a manner provided by law.

1.5 Assignment and Subletting.
Lessee may not assign this Agreement, or sublet any portion thereof, without the prior written consent of Lessor, which consent will not be unreasonably withheld, however, Lessee may assign or sublet all or any part of the Premises to any other governmental or not-for-profit agency for the purpose of providing public services without Lessor's consent.
2. RENT

2.1 Amount.
Lessee will pay the following rent to Lessor for the exclusive use and occupancy of the Premises.

2.1.1 Daily Rent.
On the first day of the first full month following occupancy, the sum of $20.00 per day for any unexpired portion of the calendar month in which the building is occupied.

2.1.2 Monthly Rent.
On the first day of the first full month of occupancy, and on the first day of each month thereafter, the sum of $589.00 per month, in advance.

2.1.3 Annual Adjustment.
The monthly rent will be increased by 3%, rounded up to the nearest dollar, on every anniversary date following the first full year of the term, including any holdover period.

2.1.4 Place of Payment.
Lessee will pay all rent at the City of Porterville Finance Department, located at 291 North Main Street, Porterville, California 93257.

3. USE OF PREMISES.

3.1 Public Services.
Lessee and Lessee's subtenants will use the Premises only for the provision of public services, unless Lessee first obtains Lessor's written consent for other uses. Lessee will use the Premises in compliance with all laws, ordinances, and other governmental regulations now in force or which may hereafter be in force relating thereto, including, but not limited to all building, safety and public health requirements and regulations.

3.2 Prohibited Uses.
Lessee will not commit or permit the commission of any acts on the Property that:

1. Increase Lessor's existing rates for, or causes the cancellation of, any fire, casualty, liability, or other policy of Lessor insuring the Premises or its contents; or

2. Violate or conflict with any law, statute, ordinance, or governmental rule or regulation, whether now in force or hereafter enacted, applicable to the Premises; or

3. Constitute waste on the Premises, or the maintenance of a nuisance as defined by the laws of California.

4. MAINTENANCE, REPAIR AND UPKEEP.

4.1 Lessee's Responsibilities.
Lessee will be responsible for all maintenance, repair and upkeep of the Premises including all building interiors and exteriors, all exterior structures and attached equipment and fixtures, including fire extinguishers, whether furnished or constructed by Lessor or by Lessee, all pest control, and all parking areas and grounds. Lessee will be responsible for complying with all codes or laws requiring alterations, maintenance or restoration of the Premises during the term of the lease, at no cost to Lessor, including codes requiring fire extinguishers or other fire suppression equipment. If Lessee is required by any code or regulation to construct any alteration as a result of Lessee's, or any subtenant's particular and specific use of the Premises, or if Lessee is required to repair any deterioration or damage to the Premises caused by Lessee's clients, invitees, or subtenants, or by Lessee's lack of ordinary care, Lessee will either directly pay, or will reimburse Lessor for, the reasonable cost thereof.
Lessee will be responsible providing all custodial service and supplies for the Premises. On the expiration or termination of this Lease, Lessee will deliver the Premises to Lessor in as good condition and repair as existed upon possession of Premises, reasonable wear and tear and damage by the elements excepted.

5. UTILITIES.

5.1 Lessee's Responsibilities.
Lessee shall be responsible for and will pay for all utilities and services furnished to the Premises, including gas, electricity, telephone, water, trash collection, and all related connection charges.

6. LESSEE'S ALTERATIONS.

6.1 Alterations Permitted.
Lessee, may make such alterations, additions or improvements to the interior of the building on the Premises as Lessee deems necessary in order to conduct Lessee's business on the Premises, including the addition, rerouting or expansion of electrical circuits, telephone and data lines. Lessee may install such signs, awnings, canopies, marquees or other advertising of Lessee's or any subtenant's services on any exterior wall, door or window on the building, provided that such changes must not weaken or cause structural damage to the building or reduce the value of the Premises or result in a lien upon the Premises. All signs, awnings, canopies, or marquee’s displayed on any exterior wall, door or window on the building shall comply with the Porterville Redevelopment Agency guidelines for Project Area #1. Lessor will be notified in writing before any alterations, additions or improvements are undertaken by Lessee. All such alterations, additions or improvements will be at Lessee's sole expense.

6.2 Permits.
Lessee will obtain all governmental permits required for such changes, and such changes must comply with all applicable laws and regulations. All changes must comply with the Porterville Redevelopment Agency’s guidelines.

6.3 Lessor's Inspection.
Lessor may, at Lessor's own expense, inspect any of Lessee's work carried out under the terms of this paragraph 6, and may consult with any contractor, subcontractor or architect, as to any aspect of such work.

6.4 Ownership and Removal.
All alterations, additions, improvements, signs, awnings, canopies, marquee's or other advertising provided by Lessee or subtenant and not removed by Lessee within 30 days of the expiration or other termination of the lease will become the property of Lessor, unless Lessor instructs Lessee in writing to remove the same at Lessee's sole expense. Lessee will promptly repair any damage to the Premises caused by any such removal, at no cost to Lessor.

7. INSURANCE.

7.1 Fire Insurance.
Upon delivery of the premises, Lessor will procure and maintain a policy or policies of fire and extended coverage insurance insuring against damage to or destruction of the Premises from any cause during the entire term of the lease, and any renewal or holdover period, subject to approval by Lessee. Lessor will provide Lessee with a certificate or certificates of coverage showing the policy or policies are issued by insurers admitted to conduct business in the State of California.

7.2 Liability Insurance.
For the duration of this Agreement, including any renewal or holdover period, Lessor will maintain commercial general liability insurance coverage on the Premises with combined single limit coverage of at least $1,000,000 per occurrence, issued by a company with a Best's rating of at least A-V, admitted to transact business in California. The policy must contain, or be endorsed to contain, the following:
7.2.1 Porterville Redevelopment Agency
The Porterville Redevelopment Agency, its officers, employees, agents and subtenants must be covered as additional insured as respects liability arising out of activities performed by or on behalf of Lessor; and premises owned, occupied or used by Lessor. The coverage must contain no special limitations on the scope of protection afforded to Lessee, its officers, employees or agents.

7.2.2 Primary.
Lessor's insurance coverage must be primary insurance as respects Lessee, its officers, employees, agents or subtenants. Any insurance or self-insurance maintained by Lessee, its officers, employees, agents or subtenants will be excess of Lessor's insurance and will not contribute to it.

7.2.3 Notice to Lessee.
The policy must not be suspended, voided, canceled or reduced in coverage or in limits, except after 30 days prior written notice has been given to Lessee.

7.3 Proof of Insurance.
Throughout Lessee's occupancy of the Premises Lessor will provide Lessee with a certificate or certificates acceptable to Lessee showing compliance with the provisions required above, and on written request of Lessee, will provide Lessee with a true and complete copy of any policy or policies required above.

7.4 Lessee's Self Insurance.
Lessor acknowledges that Lessee is self-insured through a joint powers authority and is not obligated to procure or maintain contract insurance coverage of any kind with respect to this Agreement.

8. DESTRUCTION OF PREMISES.

8.1 Repair.
If the Premises are damaged or destroyed from any cause whatsoever before the end of the initial term, Lessor will proceed with due diligence to repair or reconstruct the Premises to a condition substantially equivalent to their condition immediately before the damage or destruction. If such damage or destruction occurs during the last year of the initial term, Lessor will not be obligated to repair or reconstruct the Premises unless Lessee exercises its right to extend the term in accordance with paragraph 1.3, above.

8.2 Rent Adjustment.
Lessor will compensate Lessee for any period of time during which Lessee was unable to use the Premises by a pro-rata rent reduction based on square footage or other appropriate criteria during the period of non-use.

9. INDEMNITY.

9.1 Lessor's Indemnity.
Lessor will hold harmless, defend and indemnify Lessee from and against any liability, claims, actions, costs, damages or losses and expenses (including, without limitation, reasonable attorneys' fees and expenses) for injury, including death, to any person or damage to any property resulting from Lessor's acts or omissions with respect to the Premises. Lessor's obligation will continue beyond the expiration or termination of this Agreement as to any act or omission which occurred before expiration or termination.

9.2 Lessee's Indemnity.
Lessee will hold harmless, defend and indemnify Lessor from and against any liability, claims, actions, costs, damages, losses and expenses (including, without limitation, reasonable attorney's fees and expenses) for injury, including death, to any person, damage to any property, or enforcement actions under California Prevailing Wage laws or any other applicable statute or ordinance, resulting from Lessee's acts or omissions with respect to the Premises. Lessee's obligation will continue beyond the expiration or termination of this Agreement as to any act or omission which occurred before expiration or termination.
10. CONDEMNATION.

10.1 Lessee's Right to Terminate.
In the event of a total or partial taking of the Premises by an entity other than Lessee, exercising the right of eminent domain, which taking renders the majority of the Premises useless for the uses permitted under this Lease, Lessee will have the option of terminating this Lease.

10.2 Reduction of Rent.
If only a portion of the Premises is taken, and Lessee does not terminate this Lease as provided in paragraph 10.1, above, Lessor will reduce the rent thereafter payable by a pro-rata reduction based on square footage or other appropriate criteria.

11. TERMINATION FOR CAUSE.

11.1 Cause.
Either party may terminate this Agreement for cause without prejudice to any other right or remedy to which the terminating party may be entitled at law or under this Agreement. Cause for the purpose of this Agreement exists if a party:

   (a) is adjudged a bankrupt, or
   (b) becomes insolvent or has a receiver appointed, or
   (c) makes a general assignment for the benefit of creditors, or
   (d) suffers any judgment which remains unsatisfied for 30 days, and which would substantively impair the ability of the judgment debtor to perform under this Agreement, or
   (e) materially breaches this Agreement.

11.2 Notice to Defaulting Party.
For any of the above occurrences except item (e), termination may be effected upon written notice by the terminating party specifying the date of the termination. Upon a material breach, the Agreement may be terminated only after the failure of the defaulting party to remedy the breach to the satisfaction of the non-defaulting party within 5 calendar days of delivery of a written notice specifying the nature of the breach. If the breach is not remedied within that 5-day period, the non-defaulting party may terminate this Agreement by delivering a further written notice specifying the date of termination. If the nature of the breach is such that it cannot be cured within the 5-day period, the defaulting party may deliver a written proposal to the non-defaulting party within that period which sets forth a specific means to resolve the default. If the non-defaulting party consents to that proposal in writing, which consent will not be unreasonably withheld, the defaulting party will immediately embark on its plan to cure. If the default is not cured within the time agreed, the non-defaulting party may terminate after delivering a written notice specifying the date of termination.

11.3 Delivery of Notices.
Notices given under paragraph 11.2 will be deemed delivered as provided in paragraph 12.17 below.

11.4 Obligations Surviving Termination.
Termination of this Agreement will not terminate any obligations to indemnify, to maintain and make available any records pertaining to the Agreement, to cooperate with any audit, to be subject to offset, or to make any reports of pre-termination contract activities.

11.5 Unlawful Detainer.
The notices provided for in paragraph 12.2 are in addition to any required statutory notices for unlawful detainer proceedings under Code of Civil Procedure section 1161 et seq.
12. MISCELLANEOUS.

12.1 Quiet Enjoyment.
Upon the payment of the rent and Reimbursables and the performance of all the terms, covenants and conditions by Lessee to be performed as herein provided, Lessee will be allowed to peaceably and quietly hold and enjoy the Premises during the term of this lease, or any extended term thereof.

12.2 Surrender.
Lessee will peaceably surrender possession of the Premises upon the expiration or other termination of this lease, and will return the Premises to Lessor in as good a condition as when received, reasonable wear and tear and damage from the elements excepted, except for so much of said Premises as may be injured or destroyed by fire, earthquake or other casualty not the fault of Lessee.

12.3 Amendment.
This Agreement may be modified, amended or terminated at any time by mutual consent in writing of the parties hereto.

12.4 Entire Agreement Represented.
This Agreement represents the entire understanding between Lessor and Lessee as to its subject matter and no prior oral or written understanding shall be of any force or effect. No part of this Agreement may be modified, waived or repealed without the written consent of both parties.

12.5. Headings.
Section headings are provided for organizational purposes only and do not in any manner affect the scope, meaning or intent of the provisions under the headings.

12.6 Interpretation.
This Agreement reflects the contributions of both parties and accordingly the provisions of Civil Code section 1654 shall not apply to address and interpret any uncertainty.

12.7 No Third Party Beneficiaries.
Unless specifically set forth, the parties to this Agreement do not intend to provide any third party' with any benefit or enforceable legal or equitable fight or remedy.

12.8 Governing Law.
This Agreement will be interpreted and governed under the laws of the State of California without reference to California conflicts of law principles. Any litigation arising out of this Agreement will be brought in Tulare County California. Lessor waives the removal provisions of California code of Civil Procedure Section 394.

12.9 Waivers.
The failure of either party to insist on strict compliance with any provision of this Agreement will not be considered a waiver of any fight to do so, whether for that breach or any subsequent breach. The acceptance by either party of either performance or payment will not be considered to be a waiver of any preceding breach of the Agreement by the other party.

12.10 Exhibits and Recitals.
All Exhibits to this Agreement are fully incorporated into and are integral parts of this Agreement.

12.11 Conflict with Laws or Regulations; Severability.
This Agreement is subject to all applicable laws and regulations. If any provision of this Agreement is found by any court or other legal authority, or is agreed by the parties, to be in conflict with any code or regulation governing its subject, the conflicting provision will be considered null and void. If the effect of nullifying any conflicting provision is such that a material benefit of the Agreement to either party is lost, the Agreement may be terminated at the option of the affected party. In all other cases the remainder of the Agreement will
continue in full force and effect. If either party, exercising its sole discretion, elects to defend this agreement against a third party suit alleging any invalidity in this Agreement, they must do so at their own expense.

12.12 Further Assurances.
Each party will execute any additional documents and will perform any further acts which may be reasonably required to effect the purposes of this Agreement. Lessee will, on request by Lessor, execute appropriate estoppel certificates and attornments in favor of any trust deed holders or encumbrancers.

12.13 Assurances of Non-discrimination.
Lessor will not discriminate in employment or the performance of the Work or in the provision of services called for under this Agreement on the basis of any characteristic or condition upon which discrimination is prohibited by state or federal law or regulation.

12.14 Lessor's Right to Enter to Inspect and Post.
Lessee will permit Lessor and its agents to enter upon the Premises at all reasonable times for the purpose of posting notices of non-responsibility for alterations or additions made by Lessee, or for the purpose of inspecting the Premises, and, within six (6) months prior to the expiration of the term of this Lease, or any extension thereof, will permit Lessor to enter for the purpose of placing ordinary for sale or for lease signs.

12.15 Brokers.
All negotiations relative to this Agreement have been carried out directly by representatives of Lessor and Lessee without the participation of brokers and each party represents to the other that there are no unpaid broker's fees in connection with this Agreement.

12.16 Encumbrance of Premises.
Lessor may encumber the Premises so long as Lessee's quiet enjoyment of the Premises is not disturbed thereby.

12.17 Notices.
All notices required to be given under this Agreement must be delivered to the addresses set forth below, unless otherwise instructed in writing, and will be deemed delivered on the following dates:

12.17.1 Notice to Lessor.
When delivered to Lessor in person, or when mailed by certified mail, postage prepaid, to Porterville Redevelopment Agency at 291 North Main Street, P.O. Box 432, Porterville, California 93257.

12.17.2 Notice to Lessee.
When delivered to Lessee in person, or when mailed by certified mail, postage prepaid, to Porterville Redevelopment Agency at 291 North Main Street, P.O. Box 432, Porterville, California 93257.

12.18 Reduction of Leased area or Termination of Lease on Reduction in Funding.
Lessor acknowledges that Lessee will be either directly, or indirectly through its subtenants, dependent upon certain Federal and/or State funding to pay the rent provided for in this Agreement. If such funding is discontinued or reduced, Lessee may exercise its sole discretion to reduce the amount of space occupied by Lessee or terminate the Lease by giving Lessor 30 calendar days notice of the reduction or termination. Lessee will also promptly notify Lessor of any serious proposal to reduce State or federal funding for any offices occupying space in the Premises to the extent that such proposals come to Lessee's attention prior to adoption of a State or federal budget. If the amount of space occupied is reduced, Lessor will reduce the rent thereafter payable by a pro-rata reduction based on square footage or other appropriate criteria. If Lessee's notice reduces the amount of space occupied by Lessee by more than 50%, Lessor may elect to terminate this Lease by delivering to Lessee a written notice of such election within 10 calendar days of delivery of Lessee's notice. If Lessor elects to terminate, this Lease will terminate 30 calendar days after delivery of Lessee's notice of reduction.
12.19 Successors and Assigns.
This Agreement is binding on and will inure to the benefit of the successors and assigns of the parties, but nothing in this section shall be construed as consent by Lessor to any sublease or assignment by Lessee if such consent is otherwise required by the terms of this Agreement.

12.20 Duplicate Originals.
This Agreement will be executed in duplicate originals.

12.21 Time of the Essence.
Time is of the essence of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

PORTERVILLE REDEVELOPMENT AGENCY

Date:________________________

By:______________________________

Gordon T. Woods, Chairman
LESSOR

ATTEST:

By:______________________________

John Longley, Executive Secretary

CITY OF PORTERVILLE
PARKS & LEISURE SERVICES DEPARTMENT

Date:________________________

By:______________________________

Gil Meachum, Parks & Leisure Services Director
LESSEE

Approved as to form:

By:______________________________

Julia Lew, City Attorney