Call to Order
Roll Call

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

CLOSED SESSION:
A. Closed Session Pursuant to:
   3- Government Code Section 54956.9(a) - Conference with Legal Counsel - Existing Litigation: Josten v. City of Porterville.
   4- Government Code Section 54956.9(a) – Conference with Legal Counsel – Existing Litigation: City of Porterville v. Aceves et al., Tulare County Superior Court Case No. 07-225028.
   5- Government Code Section 54956.9(b) – Conference with Legal Counsel – Anticipated Litigation – One Case.
   6- Government Code Section 54956.9(c) - Conference with Legal Counsel -Anticipated Litigation – One Case.
   8- Government Code Section 54957 - Public Employee Performance Evaluation - Title: City Manager.

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

Pledge of Allegiance Led by Council Member Pedro Martinez
Invocation

PRESENTATIONS
   Employee of the Month – Josie Castaneda
   City Manager’s Featured Projects
   Outstanding Business Presentation – Chamber of Commerce
   Edison’s “State of the Utility System”

ORAL COMMUNICATIONS
This is the opportunity to address the Council on any matter of interest, whether on the agenda or not. Please address all items not scheduled for public hearing at this time.
CONSENT CALENDAR

All Consent Calendar Items are considered routine and will be enacted in one motion. There will be no separate discussion of these matters unless a request is made, in which event the item will be removed from the Consent Calendar.

1. **Approval of City Council Minutes of December 26, 2007.**

2. **Request to File Late Claim – El Futuro Credit Union (Contents Portion of Claim)**
   Re: Considering denial of an application to present late claim, related to the personal property portion of the claim only, associated with a sewer back-up on April 16, 2007 at 182 N. Main St.

3. **Award Contract – Portable Combustion/Emissions Analyzer**
   Re: Awarding contract to Don Wolf & Associates, Inc. of Chatsworth in the amount of $8,844.03 for equipment at the City’s Wastewater Treatment Facility.

4. **Award Contract – One-Ton Cab & Chassis Truck**
   Re: Awarding contract to Downtown Ford of Sacramento in the amount of $19,611.32 for a new one-ton cab and chassis truck for the Wastewater Treatment Facility.

5. **Award Contracts – Pickup Trucks**
   Re: Awarding contracts to Downtown Ford for four new one-half ton short bed pickup trucks in the amount of $56,712.83, and one new 4x4 pickup truck in the amount of $17,802.42, for use in various City departments.

6. **Award of Contract – Olive Avenue and Holcomb Street Bus Turnout**
   Re: Awarding contract to V & G Builders, Inc. of Fresno in the amount of $29,985.00.

7. **Acceptance of Project – Enginator & Air/Fuel Ratio Controller**
   Re: Accepting project as complete, consisting of the installation of air/fuel ratio controllers for three engines and a gas fired generator at the City’s Wastewater Treatment Facility.

8. **Acceptance of Project – Remodel of Fire Station #1 Restroom**
   Re: Accepting the project as complete, authorizing the filing of the Notice of Completion, authorizing the immediate release of the 10% retention, provided contractor Gary Interrante Construction transmits certified stipulations from each subcontractor, and authorizing the release of the 10% retention 35 days after recordation in the event the stipulations are not provided.

9. **Lease Agreement – Wireless Tower at Fire Station #2**
   Re: Approving Land Lease Agreement with Verizon Wireless, for a renewable term of five years at $1,800 per month, for a wireless communications tower on a portion of vacant land at Fire Station No. 2 on Newcomb Street.

10. **New Airport Lease – FBO Lot No. 11**
    Re: Approving Lease Agreement with R & B Resources, Inc. for FBO Lot No. 11 at the Porterville Municipal Airport for a term of 20 years, with a ten year option to renew.
11. **Ratification of Expenditure – Relocation of Electrical Panel at Sewer Lift Station #15**
Re: Ratifying the expenditure of approximately $2,700 to Blair Electric for the balance of work on project necessitated by Caltran’s planned widening of portions of Highway 190.

12. **Approval of Agreement for Design Services – Airport Runway Guidance System**
Re: Approving the Agreement with Tartaglia Engineering for the design of the Airport’s Runway Vertical/Visual Guidance System, for a total non-to-exceed cost of $135,254.

13. **Consideration of Ratifying Airport Capital Plan for 2009 through 2013**
Re: Ratifying the January 15, 2008 submission to the FAA of the Fiscal Year 2009-2013 Airport Capital Improvement Plan.

14. **Approval of Service Agreement Between City of Porterville and Wildlands, Inc. For Construction of the City’s Headgate Mitigation Site**
Re: Accepting .7 acres of land at, and approving the Service Agreement for the Construction of, the City’s Headgate Mitigation Site generally located between Highway 190 and the Tule River, south of the Alta Vista Street alignment.

15. **Riverwalk Marketplace Sign Program**
Re: Considering the proposed signage program for the Riverwalk Marketplace at the intersection of Highway 190 and Jaye Street.

16. **Murry Park Pond Water Quality**
Re: Receiving report and considering options for language for signage to be installed near the pond.

17. **Review and Approve ‘Wall of Fame’ Nominations**
Re: Considering the nomination of Edward B. “Ted” Cornell for the Wall of Fame at the Heritage Community Center.

18. **Approval to Sign Disclosure Regarding Real Estate Agency Relationships for Fair Grounds Property**
Re: Authorizing the execution of Disclosures with Melson Realty, Inc./Vickie Hildreth associated with representing the City in the potential sale of the Fair Grounds property to the State of California for the development of a new Courthouse facility.

19. **Approval for Community Civic Event – Porterville Breakfast Rotary Cancer Run, May 3, 2008**
Re: Approving annual event to be held from 5:00 a.m to 11:00 a.m. starting at Tulsa Street and Putnam Avenue, subject to the stated requirements and restrictions set out in the Application documents.

20. **Approval of Council Members’ Travel to Washington D.C.**
Re: Considering approval of out-of-state travel by Mayor Pro Tem Felipe Martinez and Council Member Hernandez to meet with U.S. legislators and officials to address transportation issues impacting Tulare County.

*A Council Meeting Recess Will Occur at 8:30 p.m., or as Close to That Time as Possible*
PUBLIC HEARINGS
   Re: Considering approval of CUP to allow for the modification of an existing floor plan to accommodate a multi-purpose room at the Seafood Café located at 1091 West Olive Avenue.

SCHEDULED MATTERS
22. City Wide Street Light Policy Implementation
   Re: Receiving status report and considering proposed phased technical report to include a comprehensive inventory of City’s street lights by area on a monthly basis.

23. City Policy Governing the Placement of Memorials and Monuments on Public Property
   Re: Considering proposed resolution setting forth a policy governing the placement of memorials and monuments in City parks.

24. Consideration of Setting Priority Projects
   Re: Review and consideration of identifying the approximate top ten priority projects for the City in 2008.

25. Consideration of State Legislative Issues
   Re: Considering and identifying the City’s legislative priorities for 2008.

26. Consideration of Employment Agreement Modification with City Manager
   Re: Considering potential modifications to the City Manager’s employment agreement.

Adjourned to a Joint Meeting of the City Council and Porterville Redevelopment Agency.

JOINT CITY COUNCIL/REDEVELOPMENT AGENCY AGENDA
December 18, 2007

Roll Call: Agency Members/Chairperson

WRITTEN COMMUNICATIONS
ORAL COMMUNICATIONS

SCHEDULED MATTER
PRA-1. Authorization for Redevelopment Project Area Amendment & Master Plan
   Re: Considering Redevelopment Project Area expansion and approval of Master Plan as a project; and approving a loan in an amount not to exceed $200,000 from the Porterville Civic Development Foundation for said project.

Adjourn the Joint City Council/Redevelopment Agency meeting to a meeting of the Porterville City Council.

ORAL COMMUNICATIONS
OTHER MATTERS
CLOSED SESSION

Any Closed Session Items not completed prior to 7:00 p.m. will be considered at this time.

ADJOURNMENT - to the meeting of February 4, 2008 at 6:00 p.m.

*It shall be the policy of the City Council to complete meetings, including closed sessions, by 11:00 p.m. unless, upon consensus, Council elects to continue past the adjournment hour.*

In compliance with the Americans with Disabilities Act and the California Ralph M. Brown Act, if you need special assistance to participate in this meeting, or to be able to access this agenda and documents in the agenda packet, please contact the Deputy City Clerk at (559) 782-7464. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting and/or provision of an appropriate alternative format of the agenda and documents in the agenda packet.
1. Neighborhood Policing Team
2. Wastewater Treatment Facility Generator and Air/Fuel Ratio Controllers
3. Fire Station No. 1 Restroom Remodel
4. YES Program Certification Pay
Call to Order at 6:00 p.m.
Roll Call: Council Member McCracken, Council Member Pedro Martinez, Mayor Pro Tem Felipe Martinez, Council Member Hernandez, Mayor Hamilton

Pledge of Allegiance led by Council Member Pete V. McCracken
Invocation – a moment of silence was observed.

ORAL COMMUNICATIONS
None

CLOSED SESSION:
A. Closed Session Pursuant to:

RECONVENE OPEN SESSION
REPORT ON ANY ACTION TAKEN IN CLOSED SESSION
   The Council reconvened Open Session at 7:09 p.m. It was reported that no action took place during Closed Session.

ADJOURNMENT
   The Council adjourned at 7:10 p.m. to the Council Meeting of January 12, 2007 at 9:00 a.m. in the Community Room, 2nd Floor of the Porterville Library, 41 W. Thurman Avenue.

Patrice Hildreth, Acting Chief Deputy City Clerk

SEAL

Cameron Hamilton, Mayor
SUBJECT: REQUEST TO FILE LATE CLAIM – EL FUTURO CREDIT UNION (CONTENTS PORTION OF CLAIM)

SOURCE: Administration

COMMENT: El Futuro Credit Union has filed a claim against the City in an amount of $40,329.59 for damages to its building, and some contents therein, allegedly sustained when claimant’s basement became flooded with sewage as a result of a blockage in the City’s main sewer line. $5,850.65 of the total $40,329.59 pertains to damages to the contents of the building, while the remaining balance of $34,478.94 relates to the building.

The building portion of the claim was deemed to have been filed timely; however, the contents portion of the claim was deemed to be late under California Government Codes, and was returned as such on November 19, 2007. On December 3, 2007, Claimant filed an Application for Leave to Present a Late Claim, a copy of which is attached for Council’s reference.

RECOMMENDATION: Staff recommends that the Council deny said Application for Leave to Present a Late Claim related to the contents portion of the claim, and direct the City Clerk to give the Claimant proper notification.

ATTACHMENTS: Letter of Request
Government Code Sections 911.4 – 912.2; and 946.6
November 30, 2007

Patrice Hildreth
Acting Chief Deputy City Clerk
City of Porterville
291 N. Main Street
Porterville, California 93257

Re: El Futuro Credit Union sewage backup claim, AIMS Claim No. FR91143

Dear Ms. Hildreth,

As per your recommendation and the requirements of Government Code §911.4, El Futuro Credit Union is submitting this written application for leave to present this claim. Attached is the proposed claim that we filed with the City on November 1, 2007.

On or about April 16, 2007, the El Futuro Credit Union building sustained damages due to a sewer backup on Mill Street. That day, a City representative reviewed the site and determined that the damages were caused as a result of a backup of a City’s sewer line. On November 1, 2007, the credit union filed a claim with the City seeking reimbursement for the damages and clean-up for the event that occurred on or about April 16, 2007. On November 19, 2007, you informed the credit union that your office would not take any action on the claim because the claim was made over six months after the accrual of the action.

The sewer back-up caused considerable damage to the credit union’s basement and personal property. And repairs to the damages were completed in late October. Without delay, we filed the claim for damages less than a week after the completion of repairs. Although the sewer backup and resulting damages occurred in April, repairs were not completed until recently because, although we searched diligently, we could not find a contractor who was willing or able to complete the cleanup. Not until the City supplied us with a list of contractors was the credit union able to secure contractors that would deep clean the affected areas, remove the mold, and replace the irreparable fixtures and items in the building. As you may note, the latest receipts included with the proposed claim are dated as recently as October 27, 2007, which is a date occurring after the six-month limit prescribed by Government Code §911.2.

As noted in our proposed claim, the credit union lost volumes of irreplaceable and critical financial records. Although reparable, the cost to sanitize and restore such records exceeded $100,000. The credit union deemed the cost to be excessive. Out of compromise and reasonability, it decided not to pursue these particular repairs or present the claim to the City.
This letter serves as an application for leave to present a late claim. The reason for the not filing the claim within the six-month statute of limitations as set forth in Government Code §911.2 is detailed below.

Inadvertnce/excusible neglect: The credit union was not aware of the six-month statute of limitations. From the day that the sewer line backed up and damaged the credit union building and throughout the entire process, the credit union was in contact and also worked with the City on multiple occasions. The City was not only aware of the damages and acknowledged fault, but it also did not mention to the credit union that it was fast approaching the six-month statute of limitations. Furthermore, the repairs were made over several months and in piecemeal fashion. Therefore, the credit union was unable to assess the full amount of the damages until all repairs were made, which did not occur until late-October. The credit union was unable to submit a proper claim to the City until the completion of the repairs.

It is also the credit union’s position that the City would be estopped from denying the claim as it knew of the issue, the City told the credit union to clean and repair the damage, for which they would be reimbursed. The City was aware that the credit union was damage, as well as the source of the damage (see Foster v. McFadden (1973) 30 Cal. App. 3d 943). Additionally, it was also aware that for months, the credit union was unable to secure contractors to repair the damage site.

This letter is offered to the City to assist the City in making a determination as well as a request for leave to file the claim. I would be happy to discuss this matter further or answer any questions.

Thank you for your professionalism in this matter.

Sincerely,

Arturo Flores
CFO

GFG/ahc

cc: Raul Pickett, CEO
    Gregory Gillett, Vice President

Enclosure: Claim for Reimbursement
California Government Code

911.4. (a) When a claim that is required by Section 911.2 to be presented not later than six months after the accrual of the cause of action is not presented within that time, a written application may be made to the public entity for leave to present that claim. (b) The application shall be presented to the public entity as provided in Article 2 (commencing with Section 915) within a reasonable time not to exceed one year after the accrual of the cause of action and shall state the reason for the delay in presenting the claim. The proposed claim shall be attached to the application. (c) In computing the one-year period under subdivision (b), the following shall apply: (1) The time during which the person who sustained the alleged injury, damage, or loss as a minor shall be counted, but the time during which he or she is mentally incapacitated and does not have a guardian or conservator of his or her person shall not be counted. (2) The time shall not be counted during which the person is detained or adjudged to be a dependent child of the juvenile court under the Arnold-Kennick Juvenile Court Law (Chapter 2 (commencing with Section 200) of Part 1 of Division 2 of the Welfare and Institutions Code), if both of the following conditions exist: (A) The person is in the custody and control of an agency of the public entity to which a claim is to be presented. (B) The public entity or its agency having custody and control of the minor is required by statute or other law to make a report of injury, abuse, or neglect to either the juvenile court or the minor’s attorney, and that entity or its agency fails to make this report within the time required by the statute or other enactment, with this time period to commence on the date on which the public entity or its agency becomes aware of the injury, neglect, or abuse. In circumstances where the public entity or its agency makes a late report, the claim period shall be tolled for the period of the delay caused by the failure to make a timely report. (3) The time shall not be counted during which a minor is adjudged to be a dependent child of the juvenile court under the Arnold-Kennick Juvenile Court Law (Chapter 2 (commencing with Section 200) of Part 1 of Division 2 of the Welfare and Institutions Code), if the minor is without a guardian ad litem or conservator for purposes of filing civil actions.

911.6. (a) The board shall grant or deny the application within 45 days after it is presented to the board. The claimant and the board may extend the period within which the board is required to act on the application by written agreement made before the expiration of the period. (b) The board shall grant the application where one or more of the following is applicable: (1) The failure to present the claim was through mistake, inadvertence, surprise or excusable neglect and the public entity was not prejudiced in its defense of the claim by the failure to present the claim within the time specified in Section 911.2. (2) The person who sustained the alleged injury, damage or loss was a minor during all of the time specified in Section 911.2 for the presentation of the claim. (3) The person who sustained the alleged injury, damage or loss was physically or mentally incapacitated during all of the time specified in Section 911.2 for the presentation of the claim and by reason of such disability failed to present a claim during such time. (4) The person who sustained the alleged injury, damage or loss died before the expiration of the time specified in Section 911.2 for the presentation of the claim. (c) If the board fails or refuses to act on an application within the time prescribed by this section, the application shall be deemed to have been denied on the 45th day or, if the period within which the board is required to act is extended by agreement pursuant to this section, the last day of the period specified in the agreement.
911.8. (a) Written notice of the board’s action upon the application shall be given in the manner prescribed by Section 915.4. (b) If the application is denied, the notice shall include a warning in substantially the following form: "WARNING "If you wish to file a court action on this matter, you must first petition the appropriate court for an order relieving you from the provisions of Government Code Section 945.4 (claims presentation requirement). See Government Code Section 946.6. Such petition must be filed with the court within six (6) months from the date your application for leave to present a late claim was denied. "You may seek the advice of an attorney of your choice in connection with this matter. If you desire to consult an attorney, you should do so immediately."

912.2. If an application for leave to present a claim is granted by the board pursuant to Section 911.6, the claim shall be deemed to have been presented to the board upon the day that leave to present the claim is granted.

946.6. (a) If an application for leave to present a claim is denied or deemed to be denied pursuant to Section 911.6, a petition may be made to the court for an order relieving the petitioner from Section 945.4. The proper court for filing the petition is a superior court that would be a proper court for the trial of an action on the cause of action to which the claim relates. If the petition is filed in a court which is not a proper court for the determination of the matter, the court, on motion of any party, shall transfer the proceeding to a proper court. If an action on the cause of action to which the claim relates would be a limited civil case, a proceeding pursuant to this section is a limited civil case. (b) The petition shall show each of the following: (1) That application was made to the board under Section 911.4 and was denied or deemed denied. (2) The reason for failure to present the claim within the time limit specified in Section 911.2. (3) The information required by Section 910. The petition shall be filed within six months after the application to the board is denied or deemed to be denied pursuant to Section 911.6. (c) The court shall relieve the petitioner from the requirements of Section 945.4 if the court finds that the application to the board under Section 911.4 was made within a reasonable time not to exceed that specified in subdivision (b) of Section 911.4 and was denied or deemed denied pursuant to Section 911.6 and that one or more of the following is applicable: (1) The failure to present the claim was through mistake, inadvertence, surprise, or excusable neglect unless the public entity establishes that it would be prejudiced in the defense of the claim if the court relieves the petitioner from the requirements of Section 945.4. (2) The person who sustained the alleged injury, damage or loss was a minor during all of the time specified in Section 911.2 for the presentation of the claim. (3) The person who sustained the alleged injury, damage or loss was physically or mentally incapacitated during all of the time specified in Section 911.2 for the presentation of the claim and by reason of that disability failed to present a claim during that time. (4) The person who sustained the alleged injury, damage or loss died before the expiration of the time specified in Section 911.2 for the presentation of the claim. (d) A copy of the petition and a written notice of the time and place of hearing shall be served before the hearing as prescribed by subdivision (b) of Section 1005 of the Code of Civil Procedure on (1) the clerk or secretary or board of the local public entity, if the respondent is a local public entity, or (2) the
Attorney General, if the respondent is the state. If the petition involves a claim arising out of alleged actions or inactions of the Department of Transportation, service of the petition and notice of the hearing shall be made on the Attorney General or the Director of Transportation. Service on the Attorney General may be accomplished at any of the Attorney General’s offices in Los Angeles, Sacramento, San Diego, or San Francisco. Service on the Director of Transportation may be accomplished only at the Department of Transportation’s headquarters office in Sacramento. If the petition involves a claim arising out of alleged actions or inactions of a judicial branch entity, service of the petition and notice of the hearing shall be made in accordance with the following: (1) If the petition involves a claim arising out of alleged actions or inactions of a superior court or a judge, court executive officer, or trial court employee, as defined in Section 811.9, of the court, service shall be made on the court executive officer. (2) If the petition involves a claim arising out of alleged actions or inactions of a court of appeals or a judge thereof, service shall be made on the Clerk/Administrator of the court of appeals. (3) If the petition involves a claim arising out of alleged actions or inactions of the Supreme Court or a judge thereof, service shall be made on the Clerk of the Supreme Court. (4) If the petition involves a claim arising out of alleged actions or inactions of the Judicial Council or the Administrative Office of the Courts, service shall be made on the secretariat of the Judicial Council. (e) The court shall make an independent determination upon the petition. The determination shall be made upon the basis of the petition, any affidavits in support of or in opposition to the petition, and any additional evidence received at the hearing on the petition. (f) If the court makes an order relieving the petitioner from Section 945.4, suit on the cause of action to which the claim relates shall be filed with the court within 30 days thereafter.
SUBJECT: AWARD CONTRACT – PORTABLE COMBUSTION/EMISSIONS ANALYZER

SOURCE: Administrative Services/Purchasing

COMMENT: Staff solicited bids for a new portable combustion/emissions analyzer for the Wastewater Treatment Facility. In response to solicitation, one (1) bid was received for this highly specialized piece of equipment. The bid is as follows:

Bidder                   Amount
Don Wolf & Assoc., Inc.   $8,844.03
Chatsworth, CA

Staff has reviewed the bid and finds it to be responsive to the specifications. The equipment will be used to manually adjust carburetion to meet stringent emissions standards imposed by the Air Pollution Control District. Funds for the purchase of the equipment have been appropriated in the Wastewater Treatment Facility’s Capital Reserve Fund.

RECOMMENDATION: That Council award the contract for a new portable combustion/emissions analyzer to Don Wolf & Associates, Inc., of Chatsworth, CA, in the amount of $8,844.03 Further, that Council authorize payment upon satisfactory delivery of the equipment.
COUNCIL AGENDA: JANUARY 15, 2008

SUBJECT: AWARD CONTRACT – ONE-TON CAB & CHASSIS TRUCK

SOURCE: Administrative Services/Purchasing

COMMENT: Staff solicited bids for a new one-ton, dual rear wheel cab & chassis truck for the Wastewater Treatment Facility. In response to solicitation, six (6) bids were received, all of which are responsive to the specifications. They are as follows:

<table>
<thead>
<tr>
<th>Bidder</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Downtown Ford</td>
<td>$19,611.32</td>
</tr>
<tr>
<td>Sacramento, CA</td>
<td></td>
</tr>
<tr>
<td>Hansel Ford</td>
<td>$19,911.20</td>
</tr>
<tr>
<td>Santa Rosa, CA</td>
<td></td>
</tr>
<tr>
<td>Broadway Ford</td>
<td>$20,177.04</td>
</tr>
<tr>
<td>Oakland, CA</td>
<td></td>
</tr>
<tr>
<td>Jim Burke Ford</td>
<td>$20,451.51</td>
</tr>
<tr>
<td>Bakersfield, CA</td>
<td></td>
</tr>
<tr>
<td>Three-Way Chevrolet</td>
<td>$21,966.36</td>
</tr>
<tr>
<td>Bakersfield, CA</td>
<td></td>
</tr>
<tr>
<td>Motor City GMC</td>
<td>$22,447.00</td>
</tr>
<tr>
<td>Bakersfield, CA</td>
<td></td>
</tr>
</tbody>
</table>

Staff has reviewed the bids and finds the low bidder to be responsive to the specifications. Funds for the purchase of the vehicles have been appropriated in the Wastewater Treatment Facility’s Equipment Replacement Fund.

RECOMMENDATION: That Council award the contract for a new one-ton cab & chassis truck to Downtown Ford of Sacramento, CA, in the amount of $19,611.32 Further, that Council authorize payment upon satisfactory delivery of the equipment.

COUNCIL AGENDA: JANUARY 15, 2008

SUBJECT: AWARD CONTRACTS – PICKUP TRUCKS

SOURCE: Administrative Services/Purchasing

COMMENT: Staff solicited bids for four (4) new one-half ton short bed pickup trucks and one (1) new one-half ton short bed 4x4 pickup truck scheduled for replacement this fiscal year for various City departments. In response to solicitation, the following eight (8) bids were received, all of which were responsive to the specifications:

<table>
<thead>
<tr>
<th>Bidder – One-Half Ton Pickups</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Downtown Ford, Sacramento, CA</td>
<td>$56,712.83</td>
</tr>
<tr>
<td>Broadway Ford, Oakland, CA</td>
<td>$58,438.33</td>
</tr>
<tr>
<td>Jim Burke Ford, Bakersfield, CA</td>
<td>$58,547.10</td>
</tr>
<tr>
<td>Clevenger Ford, Porterville, CA</td>
<td>$58,964.56</td>
</tr>
<tr>
<td>Hansel Ford, Santa Rosa, CA</td>
<td>$59,906.52</td>
</tr>
<tr>
<td>Motor City GMC, Bakersfield, CA</td>
<td>$69,230.25</td>
</tr>
<tr>
<td>Three-Way Chevrolet, Bakersfield, CA</td>
<td>$71,392.57</td>
</tr>
<tr>
<td>Bill Wright Toyota, Bakersfield, CA</td>
<td>$106,426.01</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Bidder – One-Half Ton 4x4 Pickup</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Downtown Ford, Sacramento, CA</td>
<td>$17,802.42</td>
</tr>
<tr>
<td>Broadway Ford, Oakland, CA</td>
<td>$18,217.56</td>
</tr>
<tr>
<td>Jim Burke Ford, Bakersfield, CA</td>
<td>$18,249.73</td>
</tr>
<tr>
<td>Clevenger Ford, Porterville, CA</td>
<td>$18,354.53</td>
</tr>
<tr>
<td>Hansel Ford, Santa Rosa, CA</td>
<td>$18,572.70</td>
</tr>
<tr>
<td>Three-Way Chevrolet, Bakersfield, CA</td>
<td>$19,922.55</td>
</tr>
<tr>
<td>Motor City GMC, Bakersfield, CA</td>
<td>$20,540.99</td>
</tr>
<tr>
<td>Bill Wright Toyota, Bakersfield, CA</td>
<td>$28,567.99</td>
</tr>
</tbody>
</table>

Staff has reviewed the bids and finds the low bidders to be responsive to the specifications. Funds for the purchase of the vehicles have been appropriated in the various department’s Equipment Replacement Funds.
RECOMMENDATION: That Council award the contracts for four (4) new one-half ton pickup trucks in the amount of $56,712.83 and one (1) new 4x4 pickup truck in the amount of $17,802.42 to Downtown Ford of Sacramento, CA. Further, that Council authorize payment upon satisfactory delivery of the equipment.
SUBJECT: AWARD OF CONTRACT – OLIVE AVENUE AND HOLCOMB STREET BUS TURNOUT

SOURCE: Public Works Department - Engineering Division

COMMENT: On January 10, 2008 staff received eleven (11) bids for the Olive Avenue and Holcomb Street Bus Turnout. The City of Porterville is interested in making improvements to Route 3 (East Porterville) bus stops. The Route 3, East Olive Avenue and Holcomb Street bus stop experiences the highest use. Said bus stop is just west of Granite Hills High School adjacent to property owned by Porterville Unified School District. The bus turnout project includes removal of existing concrete improvements and installation of new concrete improvements allowing for a bus to completely pull out of the travel way to access the bus stop location. A concrete pad with two (2) bus shelters, provided by the City and installed by the contractor, will be adjacent to the back of new sidewalk. All improvements will be constructed within City right of way.

The Engineer’s estimate of probable cost for the project is $34,408. The low bid is 12.85% below the Engineer’s estimate. An additional $2,985.00 is required for construction contingency (10%), $1,492.50 for staff time (5%) and $1,492.00 for construction engineering (5%), for a total project cost of $34,462.50. Funding for this project is from FTA grant and LTF, and was approved in the 2007/2008 Annual Budget for bus turnouts.

The bids are as follows:

<table>
<thead>
<tr>
<th>Contractor</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. V &amp; G Builders Inc. Fresno, CA</td>
<td>$29,985.00</td>
</tr>
<tr>
<td>2. Halopoff &amp; Sons, Inc. Porterville, CA</td>
<td>$32,539.75</td>
</tr>
<tr>
<td>3. Granite Construction Fresno, CA</td>
<td>$35,214.00</td>
</tr>
<tr>
<td>4. Yarbs Enterprise Fresno, CA</td>
<td>$37,139.00</td>
</tr>
<tr>
<td>5. R &amp; C Construction Fresno, CA</td>
<td>$37,421.00</td>
</tr>
<tr>
<td>6. Mark Hoffman General Engineering Tulare, CA</td>
<td>$40,138.17</td>
</tr>
</tbody>
</table>

Appropriated/Funded Item No. 11
7. Lockwood General Engineering  $42,050.00  
Visalia, CA

8. Central Valley Asphalt  $43,030.00  
Lindsay, CA

9. Serna Construction  $48,228.65  
Fresno, CA

10. American Paving Company  $55,969.60  
Fresno, CA

11. Mass X Inc.  $73,500.00  
Fresno, CA

Staff has found the low bid acceptable.

RECOMMENDATION:  That City Council:

1. Award the Olive Avenue & Holcomb Street Bus Turnout project to V & G Builder’s Inc. in the amount of $29,985.00;

2. Authorize progress payments up to 90% of the contract amount; and

3. Authorize a 10% contingency to cover unforeseen construction costs.

ATTACHMENT: Locator Map
SUBJECT: ACCEPTANCE OF PROJECT - ENGINATOR & AIR/FUEL RATIO CONTROLLER

SOURCE: Public Works Department – Field Services Division

COMMENT: Valley Power Systems Inc. has provided both air/fuel ratio controllers for three existing natural and digester gas fired engines that supply large volumes of air to the wastewater treatment plants' process, and a 150 kw stand-by natural gas fired engine generator. Valley Power has now satisfactorily completed all work and provided the startup services provided for in the agreement.

Although this project is not a “Cease & Desist Order” project, it is included in the CIEDB sewer loan.

City Council authorized expenditures for the parts in March 2006 by negotiating for:

1. Engine generator, with an estimated cost of $250,000.00,
2. Air fuel ratio controllers for three engines at $65,000.00, and
3. Replacement engine blower at $385,000.00.

The total authorized by Council was not to exceed $700,000.00.

During the negotiations for the equipment, the engine manufacture refused to warranty emissions compliance with the San Joaquin Valley Air Resources Control District's more restrictive standards for newly acquired internal combustion engines. The replacement engine blower then was dropped from the total project as a result of the more restrictive emissions standards.

The final installed price for each is as follows:

1. Engine generator $282,742.16
2. Air fuel ratio controllers $ 68,399.79
3. Replacement Engine Blower 0-
   TOTAL COST $351,141.95

Valley Power has requested that the City accept the project as complete. Staff has reviewed the work and found it acceptable.

RECOMMENDATION: That City Council accept the project as complete.
SUBJECT: ACCEPTANCE OF PROJECT – REMODEL OF FIRE STATION #1 BATHROOM

SOURCE: Public Works Department - Engineering Division

COMMENT: Gary Interrante Construction of Exeter has completed the remodeling of Fire Station #1’s bathroom per plans and specifications. The project consisted of the total demolition of the existing “common” bathroom and open shower facility and the remodeling of the facility to accommodate three separate restrooms and shower facilities.

City Council authorized an expenditure of $83,193. Final construction cost is $77,593. Gary Interrante Construction requests that the City accept the project as complete and is requesting that Council approve release of the retention immediately following acceptance of the project.

The normal process as stated in the contract is for the City to retain 10% of the final contract amount for 35-days after recordation of the notice of completion. Gary Interrante Construction missed the deadline to complete all punch list items by just a few days and therefore staff did not place the acceptance item on the December 18, 2007 Council agenda. The first Tuesday in January fell on January 1st and therefore there was no Council meeting.

The extended period between Council meetings coupled with the normal 35-day retention period has created a financial hardship thus initiating Gary Interrante Construction’s request for immediate release of retention funds. Public Works contacted the listed suppliers and subcontractors and found that with the exception of minor retentions, all suppliers and subcontractors have been paid by the general contractor.

The City Attorney, City Manager and Public Works Director have discussed this matter in significant detail and conclude that releasing retained funds ($7,759) will not be a problem provided the general contractor, Gary Interrante Construction, provides certified letters from each supplier and subcontractor indicating that they do not object to the immediate release of retained funds and waive their right to object or otherwise contest the City’s release of retention funds as stipulated in the contract. Further, the general contractor must provide a separate letter certifying that every supplier/subcontractor was given a copy and signed the “immediate release of retention” letter.

Dir Approved/Funded CM Item No. 8
RECOMMENDATION: That City Council:

1. Accept the project as complete;

2. Authorize the filing of the Notice of Completion;

3. Authorize the immediate release of the 10% retention provided Gary Interrante Construction transmits certified letters to the City by noon on January 15, 2008 from each supplier/subcontractor stipulating agreement to the immediate release of retained funds and that Gary Interrante Construction provide to the City by noon on January 15, 2008 a letter certifying that every supplier and subcontractor was given a copy and signed the “immediate release of retention” letter; or

4. Authorize the release of the 10% retention thirty-five (35) days after recordation if Gary Interrante Construction fails to provide the necessary documents in the timeline identified above and provided no stop notices have been filed.

ATTACHMENT: Locator Map

P:\pubwork\Engineering\Council Items\Acceptance of Fire Station Restroom Remodel Project.doc
SUBJECT: LEASE AGREEMENT – WIRELESS TOWER AT FIRE STATION #2

SOURCE: ADMINISTRATIVE SERVICES/PURCHASING DIVISION

COMMENT: On October 4, 2004, Council authorized Staff to negotiate with Verizon Wireless for the construction of a wireless communications tower on a portion of vacant land at Fire Station #2. Subsequently, and during negotiations, Council declared a moratorium on further construction of communications tower in the City pending the development of a formal ordinance regulating future towers. On June 20, 2006, Council adopted such an ordinance and negotiations resumed with Ridge Communications, Inc., on behalf of Verizon Wireless.

Staff has concluded negotiations with Verizon, and the Council approved a Conditional Use Permit and site plan at its meeting on December 4, 2007. In order to begin construction of the tower, the attached Land Lease Agreement requires approval by the Council and signature by the Mayor. Terms provide for a five-year, renewable lease and payment of $1,800 per month, which amount Verizon intends to pay annually.

RECOMMENDATION:

That City Council:

1. Approve the Land Lease Agreement between the City of Porterville and Verizon Wireless; and
2. Authorize the Mayor to sign all necessary documents.

ATTACHMENTS: Locator Map
Land Lease Agreement

D.D. Appropriated/Funded C.M. Item No. 9
LAND LEASE AGREEMENT

This Agreement, made this ____ day of ____________, 20__, between City of Porterville, a municipal corporation, with its principal offices located at 291 North Main Street, Porterville, California 93257, Social Security #/Tax ID# ________________, hereinafter designated LESSOR and Fresno MSA Limited Partnership d/b/a Verizon Wireless, with its principal office located at One Verizon Way, Mail Stop 4AW100, Basking Ridge, New Jersey 07920, hereinafter designated LESSEE. The LESSOR and LESSEE are at times collectively referred to hereinafter as the “Parties” or individually as the “Party”.

1. PREMISES. LESSOR hereby leases to LESSEE a portion of that certain parcel of property (the entirety of LESSOR’s property is referred to hereinafter as the Property), located at 500 Newcomb Street, Porterville, Tulare County, California, and being described as a 30’ by 90’ parcel containing 2,700 square feet (the “Land Space”), together with the non exclusive right (the “Rights of Way”) for ingress and egress, seven (7) days a week twenty four (24) hours a day, on foot or motor vehicle, including trucks over or along a fifteen (15) foot wide right of way extending from the nearest public right of way, Newcomb Street, to the Land Space, and for the installation and maintenance of utility wires, poles, cables, conduits, and pipes over, under, or along one or more rights of way from the Land Space, said Land Space and Rights of Way (hereinafter collectively referred to as the “Premises”) being substantially as described herein in Exhibit “A” attached hereto and made a part hereof. The Property is also shown on the Tax Map of Tulare County as Assessor’s Parcel Numbers 251-010-001 and 251-020-001.

In the event any public utility is unable to use the Rights of Way, the LESSOR hereby agrees to grant an additional right of way either to the LESSEE or to the public utility at no cost to the LESSEE.

2. SURVEY. LESSOR also hereby grants to LESSEE the right to survey the Property and the Premises, and said survey shall then become Exhibit “B” which shall be attached hereto and made a part hereof, and shall control in the event of boundary and access discrepancies between it and Exhibit “A”. Cost for such work shall be borne by the LESSEE.

3. TERM. This Agreement shall be effective as of the date of execution by both Parties, provided, however, the initial term shall be for five (5) years and shall commence on the Commencement Date (as hereinafter defined) at which time rental payments shall commence and be due at a total annual rental of Twenty-One Thousand Six Hundred Dollars ($21,600.00) to be paid in equal monthly installments on the first day of the month, in advance, to LESSOR or to such other person, firm or place as LESSOR may, from time to time, designate in writing at least thirty (30) days in advance of any rental payment date by notice given in accordance with Paragraph 23 below. Upon agreement of the Parties, LESSEE may pay rent by electronic funds transfer and in such event, LESSOR agrees to provide to LESSEE bank routing information for such purpose upon request of LESSEE. The Agreement shall commence based upon the date LESSEE commences installation of the equipment on the Premises. In the event the date LESSEE commences installation of the equipment on the Premises falls between the 1st and 15th of the month, the Agreement shall commence on the 1st of that month and if the date installation commences falls between the 16th and 31st of the month, then the Agreement shall commence on the 1st day of the following month (whichever is applicable, the “Commencement Date”).
LESSOR and LESSEE agree that they shall acknowledge in writing the Commencement Date. LESSOR and LESSEE acknowledge and agree that initial rental payment(s) shall not actually be sent by LESSEE until thirty (30) days after a written acknowledgement confirming the Commencement Date. By way of illustration of the preceding sentence, if the Commencement Date is January 1 and the written acknowledgement confirming the Commencement Date is dated January 14, LESSEE shall send to the LESSOR the rental payments for January 1 and February 1 by February 13.

4. EXTENSIONS. This Agreement shall automatically be extended for four (4) additional five (5) year terms unless LESSEE terminates it at the end of the then current term by giving LESSOR written notice of the intent to terminate at least six (6) months prior to the end of the then current term.

5. Extension Rentals. The annual rental for the first (1st) five (5) year extension term shall be increased to Twenty-Three Thousand Seven Hundred and Sixty Dollars ($23,760.00); the annual rental for the second (2nd) five (5) year extension term shall be increased to Twenty-Six Thousand One Hundred and Thirty-Six Dollars ($26,136.00); the annual rental for the third (3rd) five (5) year extension term shall be increased to Twenty-Eight Thousand Seven Hundred and Forty-Nine and 60/100 Dollars ($28,749.60); and the annual rental for the fourth (4th) five (5) year extension term shall be increased to Thirty-One Thousand Six Hundred Twenty-Four and 56/100 Dollars ($31,624.56).

6. Additional Extensions. If at the end of the fourth (4th) five (5) year extension term this Agreement has not been terminated by either Party by giving to the other written notice of an intention to terminate it at least three (3) months prior to the end of such term, this Agreement shall continue in force upon the same covenants, terms and conditions for subsequent, unlimited terms of five (5) years thereafter, until terminated by either Party by giving to the other written notice of its intention to so terminate at least three (3) months prior to the end of such term. Annual rental for each such additional five (5) year term shall be equal to one hundred fifteen percent (115%) of the annual rental payable with respect to the immediately preceding five (5) year term. The initial term and all extensions shall be collectively referred to herein as the “Term”.

7. Use; Governmental Approvals. LESSEE shall use the Premises for the purpose of constructing, maintaining, repairing and operating a communications facility and uses incidental thereto. A security fence consisting of chain link construction or similar but comparable construction may be placed around the perimeter of the Premises at the discretion of LESSEE (not including the access easement). All improvements, equipment, antennas and conduits shall be at LESSEE’s expense and their installation shall be at the discretion and option of LESSEE. LESSEE shall have the right to replace, repair, add or otherwise modify its utilities, equipment, antennas and/or conduits or any portion thereof and the frequencies over which the equipment operates, whether the equipment, antennas, conduits or frequencies are specified or not on any exhibit attached hereto, during the Term. It is understood and agreed that LESSEE’s ability to use the Premises is contingent upon its obtaining after the execution date of this Agreement all of the certificates, permits and other approvals (collectively the “Governmental Approvals”) that may be required by any Federal, State or Local authorities as well as satisfactory soil boring tests which will permit LESSEE use of the Premises as set forth above.
LESSOR shall cooperate with LESSEE in its effort to obtain such approvals and shall take no action which would adversely affect the status of the Property with respect to the proposed use thereof by LESSEE. In the event that (i) any of such applications for such Governmental Approvals should be finally rejected; (ii) any Governmental Approval issued to LESSEE is canceled, expires, lapses, or is otherwise withdrawn or terminated by governmental authority; (iii) LESSEE determines that such Governmental Approvals may not be obtained in a timely manner; (iv) LESSEE determines that any soil boring tests are unsatisfactory; (v) LESSEE determines that the Premises is no longer technically compatible for its use, or (vi) LESSEE, in its sole discretion, determines that it will be unable to use the Premises for its intended purposes, LESSEE shall have the right to terminate this Agreement. Notice of LESSEE’s exercise of its right to terminate shall be given to LESSOR in writing by certified mail, return receipt requested, and shall be effective upon the mailing of such notice by LESSEE, or upon such later date as designated by LESSEE. All rentals paid to said termination date shall be retained by LESSOR. Upon such termination, this Agreement shall be of no further force or effect except to the extent of the representations, warranties and indemnities made by each Party to the other hereunder. Otherwise, the LESSEE shall have no further obligations for the payment of rent to LESSOR.

8. **INDEMNIFICATION.** Subject to Paragraph 9 below, each Party shall indemnify and hold the other harmless against any claim of liability or loss from personal injury or property damage resulting from or arising out of the negligence or willful misconduct of the indemnifying Party, its employees, contractors or agents, except to the extent such claims or damages may be due to or caused by the negligence or willful misconduct of the other Party, or its employees, contractors or agents.

9. **INSURANCE.**

(a) The Parties hereby waive and release any and all rights of action for negligence against the other which may hereafter arise on account of damage to the Premises or to the Property, resulting from any fire, or other casualty of the kind covered by standard fire insurance policies with extended coverage, regardless of whether or not, or in what amounts, such insurance is now or hereafter carried by the Parties, or either of them. These waivers and releases shall apply between the Parties and they shall also apply to any claims under or through either Party as a result of any asserted right of subrogation. All such policies of insurance obtained by either Party concerning the Premises or the Property shall waive the insurer’s right of subrogation against the other Party.

(b) LESSOR and LESSEE each agree that at its own cost and expense, each will maintain commercial general liability insurance with limits not less than $1,000,000 for injury to or death of one or more persons in any one occurrence and $500,000 for damage or destruction to property in any one occurrence. LESSOR and LESSEE each agree that it will include the other Party as an additional insured.

10. **LIMITATION OF LIABILITY.** Except for indemnification pursuant to paragraphs 8 and 28, neither Party shall be liable to the other, or any of their respective agents, representatives, employees for any lost revenue, lost profits, loss of technology, rights or services, incidental, punitive, indirect, special or consequential damages, loss of data, or
interruption or loss of use of service, even if advised of the possibility of such damages, whether under theory of contract, tort (including negligence), strict liability or otherwise.

11. ANNUAL TERMINATION. Notwithstanding anything to the contrary contained herein, provided LESSEE is not in default hereunder beyond applicable notice and cure periods, LESSEE shall have the right to terminate this Agreement upon the annual anniversary of the Commencement Date provided that three (3) months prior notice is given to LESSOR.

12. INTERFERENCE. LESSEE agrees to install equipment of the type and frequency which will not cause harmful interference which is measurable in accordance with then existing industry standards to any equipment of LESSOR or other lessees of the Property which existed on the Property prior to the date this Agreement is executed by the Parties. In the event any after-installed LESSEE’s equipment causes such interference, and after LESSOR has notified LESSEE in writing of such interference, LESSEE will take all commercially reasonable steps necessary to correct and eliminate the interference, including but not limited to, at LESSEE’s option, powering down such equipment and later powering up such equipment for intermittent testing. In no event will LESSOR be entitled to terminate this Agreement or relocate the equipment as long as LESSEE is making a good faith effort to remedy the interference issue. LESSOR agrees that LESSOR and/or any other tenants of the Property who currently have or in the future take possession of the Property will be permitted to install only such equipment that is of the type and frequency which will not cause harmful interference which is measurable in accordance with then existing industry standards to the then existing equipment of LESSEE. The Parties acknowledge that there will not be an adequate remedy at law for noncompliance with the provisions of this Paragraph and therefore, either Party shall have the right to equitable remedies, such as, without limitation, injunctive relief and specific performance.

13. REMOVAL AT END OF TERM. LESSEE shall, upon expiration of the Term, or within ninety (90) days after any earlier termination of the Agreement, remove its building(s), antenna structure(s) (except footings), equipment, conduits, fixtures and all personal property and restore the Premises to its original condition, reasonable wear and tear and casualty damage excepted. LESSOR agrees and acknowledges that all of the equipment, conduits, fixtures and personal property of LESSEE shall remain the personal property of LESSEE and LESSEE shall have the right to remove the same at any time during the Term, whether or not said items are considered fixtures and attachments to real property under applicable Laws (as defined in Paragraph 32 below). If such time for removal causes LESSEE to remain on the Premises after termination of this Agreement, LESSEE shall pay rent at the then existing monthly rate or on the existing monthly pro-rata basis if based upon a longer payment term, until such time as the removal of the building, antenna structure, fixtures and all personal property are completed.

14. HOLDOVER. LESSEE has no right to retain possession of the Premises or any part thereof beyond the expiration of that removal period set forth in Paragraph 13 herein, unless the Parties are negotiating a new lease or lease extension in good faith. In the event that the Parties are not in the process of negotiating a new lease or lease extension in good faith, LESSEE holds over in violation of Paragraph 13 and this Paragraph 14, then the rent then in effect payable from and after the time of the expiration or earlier removal period set forth in Paragraph 13 shall be increased to one hundred and ten percent (110%) of the rent applicable during the month immediately preceding such expiration or earlier termination.
15. **RIGHT OF FIRST REFUSAL.** If LESSOR elects, during the Term (i) to sell or otherwise transfer all or any portion of the Property, whether separately or as part of a larger parcel of which the Property is a part, or (ii) grant to a third party by easement or other legal instruments an interest in and to that portion of the Property occupied by LESSEE, or a larger portion thereof, for the purpose of operating and maintaining communications facilities or the management thereof, with or without an assignment of this Agreement to such third party, LESSEE shall have the right of first refusal to meet any bona fide offer of sale or transfer on the same terms and conditions of such offer. If LESSEE fails to meet such bona fide offer within thirty (30) days after written notice thereof from LESSOR, LESSOR may sell or grant the easement or interest in the Property or portion thereof to such third person in accordance with the terms and conditions of such third party offer. For purposes of this Paragraph, any transfer, bequest or devise of LESSOR’s interest in the Property as a result of the death of LESSOR, whether by will or intestate succession, shall not be considered a sale of the Property for which LESSEE has any right of first refusal.

16. **RIGHTS UPON SALE.** Should LESSOR, at any time during the Term decide (i) to sell or transfer all or any part of the Property to a purchaser other than LESSEE, or (ii) to grant to a third party by easement or other legal instrument an interest in and to that portion of the Property occupied by LESSEE, or a larger portion thereof, for the purpose of operating and maintaining communications facilities or the management thereof, such sale or grant of an easement or interest therein shall be under and subject to this Agreement and any such purchaser or transferee shall recognize LESSEE’s rights hereunder under the terms of this Agreement. To the extent that LESSOR grants to a third party by easement or other legal instrument an interest in and to that portion of the Property occupied by LESSEE for the purpose of operating and maintaining communications facilities or the management thereof and in conjunction therewith, assigns this Agreement to said third party, LESSOR shall not be released from its obligations to LESSEE under this Agreement, and LESSEE shall have the right to look to LESSOR and the third party for the full performance of this Agreement.

17. **QUIET ENJOYMENT.** LESSOR covenants that LESSEE, on paying the rent and performing the covenants herein, shall peaceably and quietly have, hold and enjoy the Premises.

18. **TITLE.** LESSOR represents and warrants to LESSEE as of the execution date of this Agreement, and covenants during the Term that LESSOR is seized of good and sufficient title and interest to the Property and has full authority to enter into and execute this Agreement. LESSOR further covenants during the Term that there are no liens, judgments or impediments of title on the Property, or affecting LESSOR’s title to the same and that there are no covenants, easements or restrictions which prevent or adversely affect the use or occupancy of the Premises by LESSEE as set forth above.

19. **INTEGRATION.** It is agreed and understood that this Agreement contains all agreements, promises and understandings between LESSOR and LESSEE and that no verbal or oral agreements, promises or understandings shall be binding upon either LESSOR or LESSEE in any dispute, controversy or proceeding at law, and any addition, variation or modification to this Agreement shall be void and ineffective unless made in writing signed by the Parties or in a written acknowledgment in the case provided in Paragraph 3. In the event any provision of the Agreement is found to be invalid or unenforceable, such finding shall not affect the validity and
enforceability of the remaining provisions of this Agreement. The failure of either Party to insist upon strict performance of any of the terms or conditions of this Agreement or to exercise any of its rights under the Agreement shall not waive such rights and such Party shall have the right to enforce such rights at any time and take such action as may be lawful and authorized under this Agreement, in law or in equity.

20. **GOVERNING LAW.** This Agreement and the performance thereof shall be governed, interpreted, construed and regulated by the Laws of the State in which the Property is located.

21. **ASSIGNMENT.** This Agreement may be sold, assigned or transferred by the LESSEE without any approval or consent of the LESSOR to the LESSEE’s principal, affiliates, subsidiaries of its principal or to any entity which acquires all or substantially all of LESSEE’s assets in the market defined by the Federal Communications Commission in which the Property is located by reason of a merger, acquisition or other business reorganization. As to other parties, this Agreement may not be sold, assigned or transferred without the written consent of the LESSOR, which such consent will not be unreasonably withheld, delayed or conditioned. No change of stock ownership, partnership interest or control of LESSEE or transfer upon partnership or corporate dissolution of LESSEE shall constitute an assignment hereunder. LESSEE may sublet the Premises within its sole discretion, upon notice to LESSOR. Any sublease that is entered into by LESSEE shall be subject to the provisions of this Agreement and shall be binding upon the successors, assigns, heirs and legal representatives of the respective Parties hereto. LESSOR hereby acknowledges that LESSEE contemplates entering into a sublease agreement with T-Mobile.

22. **NOTICES.** All notices hereunder must be in writing and shall be deemed validly given if sent by certified mail, return receipt requested or by commercial courier, provided the courier’s regular business is delivery service and provided further that it guarantees delivery to the addressee by the end of the next business day following the courier’s receipt from the sender, addressed as follows (or any other address that the Party to be notified may have designated to the sender by like notice):

**LESSOR:**
City of Porterville
291 North Main Street
Porterville, California 93257

**LESSEE:**
Fresno MSA Limited Partnership
d/b/a Verizon Wireless
180 Washington Valley Road
Bedminster, NJ 07921
Attention: Network Real Estate

Notice shall be effective upon actual receipt or refusal as shown on the receipt obtained pursuant to the foregoing.

23. **SUCCESSORS.** This Agreement shall extend to and bind the heirs, personal representative, successors and assigns of the Parties hereto.
24. **SUBORDINATION AND NON-DISTURBANCE.** LESSOR shall obtain not later than fifteen (15) days following the execution of this Agreement, a Non Disturbance Agreement, as defined below, from its existing mortgage(s), ground lessors and master lessors, if any, of the Property. At LESSOR’s option, this Agreement shall be subordinate to any future master lease, ground lease, mortgage, deed of trust or other security interest (a “Mortgage”) by LESSOR which from time to time may encumber all or part of the Property or right-of-way; provided, however, as a condition precedent to LESSEE being required to subordinate its interest in this Agreement to any future Mortgage covering the Property, LESSOR shall obtain for LESSEE’s benefit a non disturbance and attornment agreement for LESSEE’s benefit in the form reasonably satisfactory to LESSEE, and containing the terms described below (the “Non Disturbance Agreement”), and shall recognize LESSEE’s right to remain in occupancy of and have access to the Premises as long as LESSEE is not in default of this Agreement beyond applicable notice and cure periods. The Non Disturbance Agreement shall include the encumbering party’s (“Lender’s”) agreement that, if Lender or its successor in interest or any purchaser of Lender’s or its successor’s interest (a “Purchaser”) acquires an ownership interest in the Property, Lender or such successor in interest or Purchaser will (i) honor all of the terms of the Agreement, (ii) fulfill LESSOR’s obligations under the Agreement, and (iii) promptly cure all of the then existing LESSOR defaults under the Agreement. Such Non Disturbance Agreement must be binding on all of Lender’s participants in the subject loan (if any) and on all successors and assigns of Lender and/or its participants and on all Purchasers. In return for such Non Disturbance Agreement, LESSOR will execute an agreement for Lender’s benefit in which LESSEE (i) confirms that the Agreement is subordinate to the Mortgage or other real property interest in favor of Lender, (ii) agrees to attorn to Lender if Lender becomes the owner of the Property, (iii) agrees to give Lender copies of whatever notices of default LESSEE must give LESSOR, (iv) agrees to accept a cure by Lender of any of LESSOR’s defaults, provided such cure is completed within the deadline applicable to LESSOR, (v) agrees to not pay rent more than one month, or one year in the event the rent is paid annually, in advance and (vi) agrees that no material modification or material amendment of the Agreement will be binding on Lender unless it has been consented to in writing by Lender. LESSOR and LESSEE agree that, for the purposes of this Paragraph 24, nonmaterial amendments or modifications shall include, but shall not be limited to, the following: (i) any extension of the term of the Agreement, (ii) any addition to, alteration, modification, or replacement of LESSEE’s equipment, (iii) any relocation of LESSEE’s equipment, (iv) any increase in the rent, and (v) any decrease in the rent, provided however, that such an amendment shall become material should the decrease in rent result in rent lower than the amount then prescribed by the unamended Agreement. In the event LESSOR defaults in the payment and/or other performance of any mortgage or other real property interest encumbering the Property, LESSEE, may, at its sole option and without obligation, cure or correct LESSOR’s default and upon doing so, LESSEE shall be subrogated to and all rights, titles, liens and equities of the holders of such mortgage or other real property interest and LESSEE shall be entitled to deduct and setoff against all rents that may otherwise become due under this Agreement the sums paid by LESSEE to cure or correct such defaults.

25. **RECORDING.** LESSOR agrees to execute a Memorandum of this Agreement which LESSEE may record with the appropriate recording officer. The date set forth in the Memorandum of Lease is for recording purposes only and bears no reference to commencement of either the Term or rent payments.
26. **DEFAULT.**

(a) In the event there is a breach by LESSEE with respect to any of the provisions of this Agreement or its obligations under it, including the payment of rent, LESSOR shall give LESSEE written notice of such breach. After receipt of such written notice, LESSEE shall have fifteen (15) days in which to cure any monetary breach and thirty (30) days in which to cure any non-monetary breach, provided LESSEE shall have such extended period as may be required beyond the thirty (30) days if the nature of the cure is such that it reasonably requires more than thirty (30) days and LESSEE commences the cure within the thirty (30) day period and thereafter continuously and diligently pursues the cure to completion. LESSOR may not maintain any action or effect any remedies for default against LESSEE unless and until LESSEE has failed to cure the breach within the time periods provided in this Paragraph.

(b) In the event there is a breach by LESSOR with respect to any of the provisions of this Agreement or its obligations under it, LESSEE shall give LESSOR written notice of such breach. After receipt of such written notice, LESSOR shall have thirty (30) days in which to cure any such breach, provided LESSOR shall have such extended period as may be required beyond the thirty (30) days if the nature of the cure is such that it reasonably requires more than thirty (30) days and LESSOR commences the cure within the thirty (30) day period and thereafter continuously and diligently pursues the cure to completion. LESSEE may not maintain any action or effect any remedies for default against LESSOR unless and until LESSOR has failed to cure the breach within the time periods provided in this Paragraph. Notwithstanding the foregoing to the contrary, it shall be a default under this Agreement if LESSOR fails, within five (5) days after receipt of written notice of such breach, to perform an obligation required to be performed by LESSOR if the failure to perform such an obligation interferes with LESSEE’s ability to conduct its business on the Property; provided, however, that if the nature of LESSOR’s obligation is such that more than five (5) days after such notice is reasonably required for its performance, then it shall not be a default under this Agreement if performance is commenced within such five (5) day period and thereafter diligently pursued to completion.

27. **REMEDIES.** Upon a default, the non-defaulting Party may at its option (but without obligation to do so), perform the defaulting Party’s duty or obligation on the defaulting Party’s behalf, including but not limited to the obtaining of reasonably required insurance policies. The costs and expenses of any such performance by the non-defaulting Party shall be due and payable by the defaulting Party upon invoice therefor. In the event of a default by either Party with respect to a material provision of this Agreement, without limiting the non-defaulting Party in the exercise of any right or remedy which the non-defaulting Party may have by reason of such default, the non-defaulting Party may terminate the Agreement and/or pursue any remedy now or hereafter available to the non-defaulting Party under the Laws or judicial decisions of the state in which the Premises are located; provided, however, LESSOR shall use reasonable efforts to mitigate its damages in connection with a default by LESSEE. If LESSEE so performs any of LESSOR’s obligations hereunder, the full amount of the reasonable and actual cost and expense incurred by LESSEE shall immediately be owing by LESSOR to LESSEE, and LESSOR shall pay to LESSEE upon demand the full undisputed amount thereof with interest thereon from the date of payment at the greater of (i) ten percent (10%) per annum, or (ii) the highest rate permitted by applicable Laws. Notwithstanding the foregoing, if LESSOR does not pay
LESSEE the full undisputed amount within thirty (30) days of its receipt of an invoice setting forth the amount due from LESSOR, LESSEE may offset the full undisputed amount, including all accrued interest, due against all fees due and owing to LESSOR until the full undisputed amount, including all accrued interest, is fully reimbursed to LESSEE.

28. **ENVIRONMENTAL.**

(a) LESSOR will be responsible for all obligations of compliance with any and all environmental and industrial hygiene laws, including any regulations, guidelines, standards, or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene conditions or concerns as may now or at any time hereafter be in effect, that are or were in any way related to activity now conducted in, on, or in any way related to the Property, unless such conditions or concerns are caused by the specific activities of LESSEE in the Premises.

(b) LESSOR shall hold LESSEE harmless and indemnify LESSEE from and assume all duties, responsibility and liability at LESSOR’s sole cost and expense, for all duties, responsibilities, and liability (for payment of penalties, sanctions, forfeitures, losses, costs, or damages) and for responding to any action, notice, claim, order, summons, citation, directive, litigation, investigation or proceeding which is in any way related to: a) failure to comply with any environmental or industrial hygiene law, including without limitation any regulations, guidelines, standards, or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene concerns or conditions as may now or at any time hereafter be in effect, unless such non-compliance results from conditions caused by LESSEE; and b) any environmental or industrial hygiene conditions arising out of or in any way related to the condition of the Property or activities conducted thereon, unless such environmental conditions are caused by LESSEE.

29. **CASUALTY.** In the event of damage by fire or other casualty to the Premises that cannot reasonably be expected to be repaired within forty-five (45) days following same or, if the Property is damaged by fire or other casualty so that such damage may reasonably be expected to disrupt LESSEE's operations at the Premises for more than forty-five (45) days, then LESSOR may, at any time following such fire or other casualty, provided LESSOR has not completed the restoration required to permit LESSEE to resume its operation at the Premises, terminate this Agreement upon fifteen (15) days prior written notice to LESSOR. Any such notice of termination shall cause this Agreement to expire with the same force and effect as though the date set forth in such notice were the date originally set as the expiration date of this Agreement and the Parties shall make an appropriate adjustment, as of such termination date, with respect to payments due to the other under this Agreement. Notwithstanding the foregoing, the rent shall abate during the period of repair following such fire or other casualty in proportion to the degree to which LESSEE's use of the Premises is impaired.

30. **CONDEMNATION.** In the event of any condemnation of all or any portion of the Property, this Agreement shall terminate as to the part so taken as of the date the condemning authority takes title or possession, whichever occurs first. If as a result of a partial condemnation of the Premises or Property, LESSEE, in LESSEE’s sole discretion, is unable to use the Premises for the purposes intended hereunder, or if such condemnation may reasonably be expected to
disrupt LESSEE’s operations at the Premises for more than forty-five (45) days, LESSEE may, at LESSEE’s option, to be exercised in writing within fifteen (15) days after LESSOR shall have given LESSEE written notice of such taking (or in the absence of such notice, within fifteen (15) days after the condemning authority shall have taken possession) terminate this Agreement as of the date the condemning authority takes such possession. LESSEE may on its own behalf make a claim in any condemnation proceeding involving the Premises for losses related to the equipment, conduits, fixtures, its relocation costs and its damages and losses (but not for the loss of its leasehold interest). Any such notice of termination shall cause this Agreement to expire with the same force and effect as though the date set forth in such notice were the date originally set as the expiration date of this Agreement and the Parties shall make an appropriate adjustment as of such termination date with respect to payments due to the other under this Agreement. If LESSEE does not terminate this Agreement in accordance with the foregoing, this Agreement shall remain in full force and effect as to the portion of the Premises remaining, except that the rent shall be reduced in the same proportion as the rentable area of the Premises taken bears to the total rentable area of the Premises. In the event that this Agreement is not terminated by reason of such condemnation, LESSOR shall promptly repair any damage to the Premises caused by such condemning authority.

31. **SUBMISSION OF AGREEMENT/PARTIAL INVALIDITY/AUTHORITY.** The submission of this Agreement for examination does not constitute an offer to lease the Premises and this Agreement becomes effective only upon the full execution of this Agreement by the Parties. If any provision herein is invalid, it shall be considered deleted from this Agreement and shall not invalidate the remaining provisions of this Agreement. Each of the Parties hereto warrants to the other that the person or persons executing this Agreement on behalf of such Party has the full right, power and authority to enter into and execute this Agreement on such Party’s behalf and that no consent from any other person or entity is necessary as a condition precedent to the legal effect of this Agreement.

32. **APPLICABLE LAWS.** During the Term, LESSOR shall maintain the Property in compliance with all applicable laws, rules, regulations, ordinances, directives, covenants, easements, zoning and land use regulations, and restrictions of record, permits, building codes, and the requirements of any applicable fire insurance underwriter or rating bureau, now in effect or which may hereafter come into effect (including, without limitation, the Americans with Disabilities Act and laws regulating hazardous substances) (collectively “Laws”). LESSOR shall, in respect to the condition of the Premises and at LESSEE’s sole cost and expense, comply with (a) all Laws relating solely to LESSEE’s specific and unique nature of use of the Premises (other than general office use); and (b) all building codes requiring modifications to the Premises due to the improvements being made by LESSEE in the Premises.

33. **SURVIVAL.** The provisions of the Agreement relating to indemnification from one Party to the other Party shall survive any termination or expiration of this Agreement. Additionally, any provisions of this Agreement which require performance subsequent to the termination or expiration of this Agreement shall also survive such termination or expiration.

34. **CAPTIONS.** The captions contained in this Agreement are inserted for convenience only and are not intended to be part of the Agreement. They shall not affect or be utilized in the construction or interpretation of the Agreement.
IN WITNESS WHEREOF, the Parties hereto have set their hands and affixed their respective seals the day and year first above written.

LESSOR:

City of Porterville, a municipal corporation

By:__________________________
Name:________________________
Title:_________________________
Date:_________________________

LESSEE:

Fresno MSA Limited Partnership
d/b/a Verizon Wireless
By Cellco Partnership, Its General Partner

By:__________________________
Name: Keith A. Surratt
Title: West Area Vice President - Network
Date:_________________________
Exhibit “A”
(Sketch of Premises within Property Attached)
Exhibit "B"
(Survey)
MEMORANDUM OF LAND LEASE AGREEMENT

THIS MEMORANDUM OF LAND LEASE AGREEMENT is made this _____ day of ____________, 20__, between City of Porterville, a municipal corporation, with its principal offices located at 291 North Main Street, Porterville, California 93257, hereinafter referred to as “LESSOR”, and Fresno MSA Limited Partnership d/b/a Verizon Wireless, with its principal office located at One Verizon Way, Mail Stop 4AW100, Basking Ridge, New Jersey 07920, hereinafter referred to as “LESSEE”. LESSOR and LESSEE are at times collectively referred to hereinafter as the “Parties” or individually as the “Party”.

1. LESSOR and LESSEE entered into a Land Lease Agreement (the “Agreement”) on ______________, 2000 for an initial term of five (5) years, commencing on the Commencement Date. The Agreement shall automatically be extended for four (4) additional five (5) year terms unless the LESSEE terminates it at the end of the then current term by giving the LESSOR written notice of the intent to terminate at least six (6) months prior to the end of the then current term. If at the end of the fourth (4th) five (5) year extension term the Agreement has not been terminated by either Party by giving to the other written notice of an intention to terminate it at least three (3) months prior to the end of such term, this Agreement shall continue in force upon the same covenants, terms and conditions for five (5) year terms thereafter until terminated by either Party by giving to the other written notice of its intention to so terminate at least three (3) months prior to the end of such term.

2. LESSOR hereby leases to LESSEE a portion of that certain parcel of property (the entirety of LESSOR’s property is referred to hereinafter as the “Property”), located at 500 Newcomb Street, Porterville, Tulare County, California, and being described as a 30’ x 90’ foot parcel containing 2,700 square feet (“Land Space”), as shown on the Tax Map of the County of Tulare as a portion of Assessor’s Parcel Numbers 251-010-001 and 251-020-001, together with the non exclusive right for ingress and egress, seven (7) days a week twenty four (24) hours a day, on foot or motor vehicle, including trucks over or along a fifteen (15) foot wide right-of-way extending from the nearest public right-of-way, Newcomb Street, to the demised premises, and for the installation and maintenance of utility wires, poles, cables, conduits, and pipes over, under, or along one or more rights-of way from the Land Space. The demised premises and right-of-way are hereinafter collectively referred to as the “Premises.” The Premises are described in Exhibit A attached hereto and made a part hereof, and as shown on the plat of survey attached hereto and incorporated herein as Exhibit B. In the event any public utility is

West Porterville

West Porterville
unable to use the aforementioned rights-of-way, LESSOR has agreed to grant an additional right-of-way either to the LESSEE or to the public utility at no cost to the LESSEE.

3. The Commencement Date of the Agreement, of which this is a Memorandum, is based upon the date LESSEE commences installation of the equipment on the Premises. In the event the date LESSEE commences installation of the equipment on the Premises falls between the 1st and 15th of the month, the Agreement shall commence on the 1st of that month and if the date installation commences falls between the 16th and 31st of the month, then the Agreement shall commence on the 1st day of the following month.

4. LESSEE has the right of first refusal to purchase the Premises during the initial term and all renewal terms of the Agreement.

5. The terms, covenants and provisions of the Agreement, the terms of which are hereby incorporated by reference into this Memorandum, shall extend to and be binding upon the respective executors, administrators, heirs, successors and assigns of LESSOR and LESSEE.

IN WITNESS WHEREOF, hereunto and to a duplicate hereof, LESSOR and LESSEE have caused this Memorandum to be duly executed on the date first written hereinafore.

**LESSOR:**

City of Porterville  
a municipal corporation

By:__________________________
Name:________________________
Title:________________________
Date:________________________

**LESSEE:**

Fresno MSA Limited Partnership  
d/b/a Verizon Wireless
By Celleco Partnership, Its General Partner

By:__________________________
Name: Keith A. Surratt
Title: West Area Vice President, Network
Date:________________________
EXHIBIT “A”

[WRITTEN METES AND BOUNDS OF THE PREMISES AND INGRESS/EGRESS AND UTILITY EASEMENT]

PROPOSED VERIZON WIRELESS DEMISED PREMISE DESCRIPTION:

ALL THAT PORTION OF THE LESSOR’S PROPERTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A BRASS CAP MONUMENT STAMPED R.C.E. 12616 IN MONUMENT WELL AT THE WEST QUARTER CORNER OF SECTION 27, TOWNSHIP 21 SOUTH, RANGE 27 EAST, M.D.B.&M., IN THE CITY OF PORTERVILLE, COUNTY OF TULARE, STATE OF CALIFORNIA AS SHOWN ON RECORD OF SURVEY, FILED IN BOOK 18 PAGE 47 OF LICENSED SURVEY;

THENCE ON AND ALONG THE WEST SECTION LINE OF SAID SECTION 27 N 00°05'01" W, A DISTANCE OF 485.64 FEET;

THENCE LEAVING SAID WEST SECTION LINE N 89°54'59" E, A DISTANCE OF 260.00 FEET TO THE TRUE POINT OF BEGINNING;

THENCE N 44°54'44" E, A DISTANCE OF 30.00 FEET;

THENCE S 45°05'16" E, A DISTANCE OF 6.00 FEET TO POINT "A";

THENCE CONTINUING S 45°05'16" E, A DISTANCE OF 84.00 FEET

THENCE S 44°54'44" W, A DISTANCE OF 30.00 FEET;

THENCE N 45°05'16" W, A DISTANCE OF 90.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 2,700 SQUARE FEET, MORE OR LESS.

TOGETHER WITH A 15.00 FOOT WIDE ACCESS EASEMENT, THE CENTERLINE OF WHICH IS DESCRIBED AS FOLLOWS:

BEGINNING AT THE ABOVE DESCRIBED POINT "A";

THENCE N 44°54'44" E, A DISTANCE OF 7.50 FEET;

THENCE S 45°05'16" E, A DISTANCE OF 85.50 FEET;

THENCE N 89°53'03" E, A DISTANCE OF 172.54 FEET;

THENCE N 00°06'57" W, A DISTANCE OF 292.95 FEET;

THENCE N 89°36'07" W, A DISTANCE OF 221.58 FEET;

THENCE N 24°09'23" W, A DISTANCE OF 109.00 FEET;

THENCE N 89°39'29" W, A DISTANCE OF 177.95 FEET TO THE EASTERNLY RIGHT OF WAY OF NEWCOMB STREET AND THE TERMINUS OF THIS DESCRIPTION.

TOGETHER WITH EASEMENT OF VARYING WIDTHS FOR UTILITIES PURPOSES.
EXHIBIT B

[BOUNDARY SURVEY OF THE PREMISES AND INGRESS/EGRESS AND UTILITY EASEMENT]

(Attached)
State of _______________ __________)

County of _______________ __________)

On __________ before me, ______________________, Notary Public, personally appeared ______________________, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature __________ __________ (Seal)
CORPORATE ACKNOWLEDGMENT

STATE OF ARIZONA
COUNTY OF MARICOPA

On this ___ day of _____________, 20___, before me, the undersigned, a Notary Public in and for the State of Arizona, duly commissioned and sworn, personally appeared Keith A. Surratt to me known to be an authorized representative of Fresno MSA Limited Partnership d/b/a Verizon Wireless, that executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of Fresno MSA Limited Partnership d/b/a Verizon Wireless, for the uses and purposes therein mentioned, and on oath stated that he/she is authorized to execute the said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

__________________________________________
Print or Type Name: 
Notary Public in and for the State of AZ, residing at 

__________________________________________
My appointment expires: 

West Porterville
862947
SUBJECT: NEW AIRPORT LEASE – FBO LOT #11

SOURCE: ADMINISTRATIVE SERVICES/PURCHASING DIVISION

COMMENT: Mr. Eric Merritt, owner of L. B. Partnership (M & W Flying Service), is the current lease holder of Lot 11 at the Porterville Municipal Airport. M & W Flying Service is a Fixed Base Operator. The lease expired on September 30, 2006, and reverted to month-to-month tenancy. Staff has been advised by Mr. Merritt that he has sold his hangar and would like to relinquish the property. We have received a written request from the new owners of the hangar, Russell & Bonnie Davis, owners of R & B Resources, Inc., to enter into a new lease with the City. Terms are twenty (20) years with a ten (10) year option to renew, which is the City's standard lease term for FBO leases.

Letters from Merritt Farms and R & B Resources, Inc., are attached, together with a Bill of Sale and draft Lease Agreement for Council’s consideration.

RECOMMENDATION: That the Council approve the Lease Agreement between the City of Porterville and R & B Resources, Inc., for FBO Lot 11 at the Porterville Municipal Airport.

ATTACHMENT: Locator Map
Letters from Merritt Farms and R & B Resources, Inc.
Bill of Sale
Draft Lease Agreement

D.D. [☑] Appropriated/Funded ☐ C.M. [☑] Item No. 10
1/7/08

City of Porterville
291 North Main St.
Porterville, CA 93257

This letter is to notify the City Council that L. B. Partnership has sold their hanger and relinquished the hold on the property on lot 11.

If you have any questions, please call one of the above Porterville numbers.

Thank you,

Sarah Reid
December 6, 2007

CITY OF PORTERVILLE

ATT: Airport Manager

Gentlemen:

We are requesting a lease for Lot 11 at the Porterville Airport. We would appreciate if this matter could be considered at your next meeting.

Please contact us at 559-781-4394 or 307-260-6034 (Russ’ cell phone) if you require additional information for this request.

Yours truly,

Bonnie M. Davis
R. & B. Resources
Bill of Sale

BE IT KNOWN, for good consideration, and in payment of the sum of Sixteen thousand dollars ($16,000.00) the receipt and sufficiency of which is acknowledged, the undersigned Richard or Eric Meritt of _______________________

(Seller) hereby sells and transfers to Russell Davis of _______________________

(Buyer) and the Buyer's successors and assigns forever, the following described chattels and personal property 

metal hanger building on City of Porterville's lot 11 at the Porterville Municipal airport

The Seller warrants to Buyer that the Seller holds good and marketable title to said property, full authority to sell and transfer said property and, that said property is sold free of all liens, encumbrances, liabilities and adverse claims of every nature and description whatsoever.

Seller further warrants to Buyer that the Seller will fully defend, protect, indemnify and hold harmless the Buyer and its lawful successors and assigns from any adverse claim made thereto by all persons whomsoever.

Said property is otherwise sold in "as is" condition and where presently located.

Signed this 20th day of November, 2007

Signed in the presence of:

[Signature]
Witness

[Signature]  [Signature]
Seller

11188 Road 192, Porterville, CA 93257
Address of Seller

[Signature]
Buyer

4701 Maxwell Ave, Maricopa, CA 85139
Address of Buyer

Print Name of Witness

Address of Witness
LEASE AGREEMENT

PORTERVILLE MUNICIPAL AIRPORT

THIS LEASE AGREEMENT ("Lease"), executed at Porterville, California the 1st day of January, 2008, by and between the CITY OF PORTERVILLE, a charter city and municipal corporation of the State of California, hereinafter referred to as “City” and R & B RESOURCES, INC., hereinafter referred to as “Lessee.”

WHEREAS, City owns and operates an airport in the City of Porterville, State of California, commonly known and described as “Porterville Municipal Airport”; and

WHEREAS, Lessee desires to lease a portion of said airport to conduct a fixed base operation; and

WHEREAS, it is the desire of City to utilize said airport for the general public by its development and use in providing aeronautical-related facilities and service;

NOW, THEREFORE, IT IS MUTUALLY AGREED as follows:

1. Premises: City, for and in consideration of the covenants, conditions, agreements, and stipulations herein set forth, does hereby demise and lease to Lessee, and Lessee hereby hires from City, those certain premises situated in the City of Porterville, State of California, described as Lot 11 at the Porterville Municipal Airport, more particularly described in Exhibit A being attached hereto and by this reference made a part hereof.

2. Term: The term of this Lease shall commence on January 1, 2008, both parties having executed the same, and shall terminate on December 31, 2028. Provided Lessee is not in default with respect to any of the conditions or covenants of this lease, Lessee shall have an option to request an extension of the terms hereof for an additional period of ten (10) years, by giving written notice thereof to Lessor not less than 120 days prior to the expiration of this agreement. Lessor is not obligated to grant any extension, but said option shall not be unreasonably withheld.

3. Rental and Business Privilege Consideration: Lessee agrees to pay to City in lawful money of the United States without deductions or offset, to the Chief Financial Officer, City of
Porterville, 291 N. Main Street, Porterville, California, 93257, or to such person or persons and at such place or places as may be designated from time to time by City, a rental rate of $.256 per square foot per year. Inasmuch as the lease site (See Exhibit “B” attached) contains approximately 22,500 square feet of land area, said rental rate will be $5,760.00 annually, or $480.00 per month, payable in advance.

Beginning January 1, 2009, and each January 1 thereafter for the term of this Lease, the rate shall be adjusted by a percentage equal to the annual percentage increase or decrease in the Consumer Price Index (CPI). The CPI used shall be a twelve (12) month average of the San Francisco CPI and the Los Angeles CPI as published for October of the prior year. The CPI index will be “All Urban Consumers.”

4. Purpose: This Lease is made for the purpose of conducting commercial activity reasonably associated with the aircraft industry and other activities incidental thereto. Lessee shall not use the premises or any part thereof or permit them to be used for any purpose or purposes other than stated above. The City reserves the right to conduct on-site inspections for the purpose of compliance with Building Code, Fire Code, and Zoning Ordinance. Lessee shall not do or permit any act or thing to be done upon the premises which constitutes a nuisance or which may disturb the quiet enjoyment of City or any tenant of City on adjacent neighboring property.

Lessee further agrees that, within 72 hours from receiving written notice by the City that a nuisance exists, to abate or otherwise cause said nuisance to be cured.

In the event Lessee has not (a) taken corrective action within 72 hours, or (b) filed an appeal with the City Council, City of Porterville, within 72 hours, then City may enter and abate said nuisance at the expense of Lessee without any liability whatsoever to City for monetary loss or anticipated profits of Lessee or others.

Said appeal to the City Council must be made in writing and be received by the City Clerk, 291 N. Main Street, Porterville, California, 93257, within 72 hours after Lessee received notice of said nuisance.
5. **Right of Ingress and Egress:** Lessee shall have the right-of-way to property owned and controlled by City for ingress thereto and egress therefrom for pedestrian, vehicular, and air travel, together with the right to use in common with other Lessee or licensees of City the airplane landing field adjacent to the demised premises. None of these rights are exclusive, but shall be exercised in common with and subject to possible similar rights of other users of said airport. All of the foregoing is subject to such reasonable rules and regulations as the City or its authorized agents may make from time to time. Such rules and regulations, however, shall be reasonable and shall not conflict in any way with similar rules and regulations adopted from time to time by the Federal Aviation Administration or its successor.

6. **Condition of Premises:** Lessee has inspected the demised premises and knows the extent and condition thereof and accepts same in its present condition, subject to and including all defects, latent and/or patent.

7. **Alteration:** Lessee shall make no structural modifications to existing structures or make permanent improvements or additions in or on the demised premises without the written consent of the City Airport Manager first being obtained.

8. **Maintenance:** Lessee agrees to keep the improvements in a good state of repair by periodic maintenance and painting as the same are required and to keep the grounds of Lessee in a good state of maintenance and repair. During the term of this Lease, the City Airport Manager shall have the right to notify Lessee in writing wherein Lessee has failed to maintain said structure and improvements in a good state of repair. Lessee shall make such corrections in the time and manner prescribed by said Airport Manager, or in the event Lessee disagrees, Lessee shall have the right to appeal within fifteen (15) days from date of notice from said Airport Manager to the City Council concerning the request for maintenance made to Lessee by said Airport Manager; it being understood and agreed that the decision of the City Council shall be final.

9. **Utilities:** Lessee agrees to pay during the term of the Lease, or any holding over, any and all utilities utilized by it to said demised premises. The term “utilities” as used herein shall include, but is not limited to, telephone, electrical, water, sewer, gas, janitorial, heating, cooling, and trash and refuse disposal service.
10. **Utility Extension or Modification:** Lessee shall pay any and all expenses that may be incurred in obtaining the extension of public utility services to the demised premises from existing utility facilities or any modifications of same.

11. **Taxes and Assessments:** Lessee understands that the Lease of the premises creates a possessory interest subject to taxation by the County of Tulare. Lessee agrees to pay all taxes and/or assessments levied by any governmental agency upon any interest acquired by Lessee under the terms of this Lease.

12. **Compliance with Law:** Lessee shall, at its expense, promptly comply with any and all laws, ordinances, rules, regulations, requirements, and orders whatever, present or future, of the national, state, county or city government which may in any way apply to the use, maintenance or occupation of, or operations on the premises.

13. **Liens and Encumbrances:** Lessee shall keep the premises and all structures and improvements situated thereon free from any liens or encumbrances arising out of any work performed, material furnished, or obligations incurred by Lessee, or from any other cause.

14. **Negation of Partnership:** City shall not become or be deemed a partner or joint venturer with Lessee or associate in any relationship with Lessee’s operations thereon. City reserves all rights in and with respect to the premises, not inconsistent with Lessee’s use of the premises as in this Lease provided, including (without limiting the generality of the foregoing) the right of City to enter upon the premises for the purpose of installing, using, maintaining, renewing, and replacing such underground oil, gas, water, sewer, and other pipelines, and such underground or aboveground telephone, telegraph, and electric power conduits or lines as City may deem desirable in connection with the development or use of any other property in the neighborhood of the premises. City shall compensate Lessee for any and all damage to Lessee’s improvement and personal property caused by the exercise of the rights reserved in this paragraph.

15. **Indemnification:** Lessee agrees to indemnify, defend (upon request by the City) and save harmless the City, its agents, officers, and employees, and each of them, from any and all losses, costs, expenses, claims, liabilities, action, or damages, including liability for injuries to person or persons, or damage to property of third persons arising out of or in any way connected with (a) the
conducting or operation of Lessee’s business on the demised premises during the term of the Lease or any holding over, or (b) the construction or the removal of any facilities or improvements on the demised premises during the term of this Lease or any holding over.

16. **Liability Insurance**: Lessee, in order to protect the City, its agents, officers, and employees against all claims and liability for death, injury, loss, and damage as a result of Lessee’s (a) use and operations on the demised premises or in connection therewith, or (b) construction or removal of any improvements on the demised premises or in connection therewith, shall name the City as additional insured on Lessee’s aircraft insurance policy or policies in the amount of not less than ONE MILLION DOLLARS ($1,000,000). Coverage shall include General Liability combined Bodily Injury and Property Damage, Single Limits and Aggregate, with a reliable insurance carrier authorized to do such public liability and property damage insurance business in the State of California. Said insurance shall not be subject to cancellation or coverage reduction without thirty (30) days prior written notice to City. Within (10) days from the date of this Lease, Lessee shall file with the City Clerk, City of Porterville, a duly certified Certificate of Insurance evidencing that the herein above mentioned public liability and property damage provisions have been complied with, and setting forth that City, its agents, officers, and employees are named as additional insured. In the event that Lessee shall fail to take out and keep in effect such policy or to furnish evidence thereof to City, City may, at City’s option, procure the same, pay the premium thereof and collect same with the next payment of rental due from Lessee or immediately terminate this Lease. The limits of insurance coverage set forth herein may be reviewed by City each January and may be adjusted at such reviews in order to protect the interests of the City.

17. **Nondiscrimination**: Lessee for itself, its heirs, personal representatives, successors in interest and assigns as part of the consideration hereof does hereby covenant and agree that (1) no person on the grounds of race, color, sex or national origin shall be excluded from participation, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities; (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, sex, or national origin shall be excluded from participation in, denied the benefits of or otherwise be subjected to discrimination; (3) that Lessee
shall use the premises in compliance with other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations and/or services on a fair, equal and not unjustly discriminatory basis to all users thereof and it shall charge a fair, reasonable and not unjustly discriminatory price for each unit or service; provided that Lessee may be allowed to make reasonable and nondiscriminatory discounts, rebates, or similar type of price reductions to volume purchasers.

In the event of breach of any of the above nondiscriminatory covenants, City shall have the right to terminate this Lease and to re-enter and repossess the demised premises and the facilities thereon and hold the same as if the Lease had never been made or issued.

Lessee agrees that it shall insert the above nondiscrimination provisions in any sublease or other agreement by which Lessee grants a right or privilege to any person, firm, or corporation to render accommodations and/or services to the public on the premises herein leased.

18. **Improvement of Land Area:** City reserves the right to further develop or improve the landing area of the airport as it sees fit regardless of the desires or views of Lessee and without interference or hindrance.

19. **Maintenance of Landing Area:** City reserves the right to maintain and keep in repair the landing area of the airport and all publicly-owned facilities of the airport, together with the right to direct and control all activities of the Lessee in this regard; providing further, City shall keep and maintain in a safe and operable condition the taxiways, runways (including the lighting thereof) and roadways on the airport during such hours and to such extent as City may determine is reasonably required for the operation of the airport.

20. **Lease Subordinate to Agreements with the United States Government:** This Lease shall be subordinate to the provisions and requirements of any existing or future agreement between the City and the United States relative to the development, operation or maintenance of the airport.
21. **Non-Exclusive Right:** It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308 (a) of the Federal Aviation Act of 1958. (49 U.S.C. 1349).

22. **Rights of United States Government:** This Lease and all the provisions hereof shall be subject to whatever right the United States Government now has or in the future may have or acquire, affecting the control, operation, regulation, or taking over of said airport.

23. **Notices:** All notices herein provided to be given, or which may be given, by either party to the other shall be deemed to have been fully given when made in writing and deposited with the United States Postal Service, Registered or Certified, postage prepaid and addressed as follows:

   To the Lessee: R & B Resources, Inc.
                   Russell Davis, Owner
                   P. O. Box 631
                   Marbleton, WY 83113

   To the City:   Airport Manager
                   City of Porterville
                   291 N. Main Street
                   Porterville, CA 93257

The address to which the notices shall be or may be mailed, as aforesaid, to either party shall or may be changed by written notice given by such party to the other, as hereinbefore provided, but nothing herein contained shall preclude the giving of any such notice by personal service.

24. **Authorized Agent of the City:** The Airport Manager of the City of Porterville is the duly authorized agent of the City for purposes of this Lease; and as to any obligations assumed herein by Lessee, they shall be performed to the satisfaction of said Airport Manager.

25. **Assignment and Subletting:** This Lease shall be binding upon and shall inure to the benefit of the heirs, administrators, executors, successors, and assigns of the respective parties hereto. Lessee shall not, and Lessee herewith agrees that it will not, sublet the premises, or any part thereof or assign, transfer, mortgage, or otherwise convey the premises or its rights and interest hereunder without the prior written consent of the City. In the event the Lessee shall sublet, assign, transfer,
mortgage, or otherwise convey the premises or its rights and interest hereunder, or any part thereof, or attempt to do so in violation to the foregoing provision, then in addition to any and all other rights and remedies available to it, the City may, at its option by written notice to Lessee, either declare such sublease, assignment, transfer, mortgage or other conveyance void or terminate this Lease and all rights and interest of Lessee and all other persons hereunder. Any consent by City to any sublease, assignment, transfer, mortgage, or conveyance shall not be deemed or construed as a transfer, mortgage, or conveyance. This clause shall not be construed to limit right or remedy which City may become entitled to by reason of the action(s) or failure(s) to act of Lessee.

26. **Hypothecation:** Lessee may, with the consent of the City, give, assign, transfer, mortgage, hypothecate, grant control of, or encumber Lessee’s interest under this Lease and the leasehold estate so created to a bonafide lender on the security of the leasehold estate. Any such bonafide lender shall have the right at any time during the term of the loan and while this Lease is in full force and effect:

(a) To do any act or thing required of Lessee in order to prevent a forfeiture of Lessee’s rights hereunder, and all such acts or things so done shall be as effective to prevent a forfeiture of Lessee’s rights hereunder by Lessee.

(b) To succeed to the interest of Lessee hereunder and thereafter at such lender’s option to convey, assign or sublease the interest or title to said leasehold estate to another person acceptable to City, subject to all the terms, conditions, and covenants of this Lease. Two (2) copies of any and all security devices or instruments shall be filed with City’s Airport Manager prior to the effective date thereof, and Lessee shall give Airport Manager prior written notice of any changes or amendments thereto.

Any bona fide lender shall have the right, if so permitted by the terms and conditions of the concerned instrument of hypothecation between lender and Lessee, to remove any or all of Lessee’s improvements under said hypothecation from the demised premises, subject only to the restriction that in the event of such removal, the demised premises herein above described be restored by Lessee to a condition satisfactory to the City’s Airport Manager, and that said removal be done in a manner and at a time satisfactory with said Airport Manager.
27. **Breach by Lessee:** In the event of the breach by Lessee of any term, condition, or agreement herein contained, and the failure to cure such breach within thirty (30) days after written notice has been given to Lessee by City, this Lease and all privileges herein granted shall be terminated and be of no other force or effect, and Lessee shall immediately surrender possession of the premises hereby granted, and in the event City has to resort to legal action to enforce any provision hereof, or to obtain restitution hereunder, the Lessee shall pay all costs and expenses, including attorney’s fees of such action. Providing further, that in the event Lessee breaches this Lease and abandons the demised premises before the end of the term, or if Lessee’s right to possession is terminated by City because of a breach of this Lease, City shall have the right to recover from Lessee, as provided in State of California Civil Code Section 1951.2. Damages City may recover shall include the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss for the same period that the Lessee proves could be reasonably avoided. This clause shall not be construed to limit any right or remedy which City may become entitled to by reason of the action(s) or failure(s) to act of Lessee.

28. **Waiver of Breach:** The waiver by City of any breach by Lessee of any provision contained herein shall not be deemed to be a waiver of such provision, or a waiver of any breach of any other provision contained herein.

29. **Bankruptcy:** In the event the (a) Lessee shall file a voluntary petition in bankruptcy proceeding; (b) any voluntary or involuntary proceeding for the reorganization of Lessee shall be instituted by anyone other than the City under any of the provisions of the bankruptcy laws of the United States; or (c) a receiver or judicial trustee or custodian shall be appointed for Lessee, or any alien or any writ of attachment, garnishment, execution, or distraint shall be levied upon any of Lessee’s rights or interest under this Lease; or (d) there shall be any other assignment of any of Lessee’s rights or interest under this Lease by operation of law, then in addition to any and all other rights and remedies available to it, City may, at its option by written notice to Lessee, terminate this Lease and all rights and interest of Lessee and all other persons under this Lease. The term “Lessee,” as used in this paragraph, includes any individual, partnership, or corporation who is a Lessee hereunder, even though several individuals, partnerships, or corporations are such, and includes each
partner of any partnership who is a Lessee hereunder. Any consent by City to any sublease, assignment, transfer, mortgage, or conveyance shall not be deemed or construed as a consent to any other different or subsequent sublease, assignment, transfer, mortgage, or conveyance.

30. **Quiet Possession:** Notwithstanding any other provision in this Lease, City covenants that Lessee, on paying the rent and performing the covenants herein contained, shall and may peaceably and quietly have and enjoy the demised premises for the term hereof.

31. **Surrender of Premises:** On the last day of said term, or extension thereof, or sooner termination of the Lease, Lessee will peaceably and quietly leave, surrender, and yield up to the City the demised premises in as good condition and repair as at the commencement of Lessee’s occupancy, reasonable use and wear thereof, and damage by earthquake, public calamity, by the elements, by acts of God, or by fire or other circumstances over which Lessee has no control, excepted.

32. **Removal of Improvement at Termination:** Upon the termination of this Lease, or any holding over, for any reason other than Lessee’s failure to perform its obligations under the terms and conditions of this Lease, Lessee shall have the right at Lessee’s sole cost and expense, to remove all improvements and/or furniture, furnishings, equipment, and fixtures of whatsoever kind or nature placed of the demised premises by Lessee or its contractors so long as they could be removed without damage or disfigurement to the demised premises. Full restoration of the demised premises as it existed prior to the construction of said improvements or the installation of said furniture, furnishings, equipment, and fixtures shall be made by Lessee. If after the termination of this Lease Lessee has not removed said improvements, furniture, furnishings, equipment, and fixtures, the City shall have the option to claim the ownership thereof or to remove same and restore the demised premises as set forth above at the expense of Lessee. Said expense shall also include consideration for the additional time Lessee or its improvements occupy the premises beyond the termination date and disallow the City’s total utilization of the premises pursuant to its ownership of the property.

In the event of a termination by City of this Lease because of Lessee’s failure to faithfully perform the terms and conditions of this Lease, the City may accept cash or other satisfactory security for the amount of its costs, expense, loss and damage accruing from Lessee’s failure to perform and thereupon the Lessee shall have the right to remove the said improvements.
33. **Incorporation of Prior Agreements and Amendments:** This Lease contains all agreements of the parties with respect to any matter mentioned herein. No prior agreement or understanding pertaining to any such matter shall be effective. This Lease may be modified in writing only, signed by the parties in interest at the time of modification.

34. **Severability:** The invalidity of any provision of this Lease as determined by a Court of competent jurisdiction shall in no way affect the validity of any other provision hereof.

35. **Construed Pursuant to California Law:** The parties hereto agree that the provisions of this Lease will be construed pursuant to the laws of the State of California.

36. **Venue:** If either Lessee or City initiates an action to enforce the terms hereof or declare rights hereunder, including actions on any bonds and/or surety agreements, the parties agree that the venue thereof shall be the County of Tulare, State of California. Lessee hereby waives any rights he might have to remove any such action pursuant to California Code of Civil Procedure Section 394.

37. **Covenants and Conditions:** Each provision of this Lease performable by Lessee shall be deemed both a covenant and a condition.

38. **Captions:** The use of Paragraph headings in this Lease is solely for convenience, and they shall be wholly disregarded in the construction of this Lease.

39. **Time of Essence:** Time is hereby expressly declared to be the essence of this Lease and of each and every provision thereof, and each such provision is hereby made and declared to be a material, necessary, and essential part of this Lease.

IN WITNESS WHEREOF, the parties hereto have executed this Lease on the day and year first herein above written.
LEESOR: CITY OF PORTERVILLE

By: ________________________________

Cameron Hamilton, Mayor

LESSEE: R & B RESOURCES, INC.

By: ________________________________

ATTEST:

By: ________________________________

John Longley, City Clerk

APPROVED AS TO FORM:

By: ________________________________

Julia Lew, City Attorney
Lot 11, Porterville Municipal Airport Master Plan, described as follows:
Beginning at a point 591.40 feet east of the southwest corner of the northeast quarter of Section 9, T22S, R27E, M.D.B. & M., thence south 44°55'30" east a distance of 719.5 feet; thence north 45°04'30" east 425 feet to the northeast corner of said Lot 11 and the TRUE POINT OF BEGINNING, thence south 44°55'30" east a distance of 150 feet, plus or minus; thence north 45°04'30" east 150 feet, plus or minus; thence north 44°55'30" west 150 feet, plus or minus; thence south 45°04'30" west a distance of 150 feet, plus or minus, to the TRUE POINT OF BEGINNING.
SUBJECT: RATIFICATION OF EXPENDITURE – RELOCATION OF ELECTRICAL PANEL AT SEWER LIFT STATION #15

SOURCE: Public Works Department - Engineering Division

COMMENT: The purpose of this staff report is to request that City Council ratify an expenditure of approximately $2,700 to cover the balance of Blair Electric's Relocation of Electrical Service Panel for Lift Station #15 contract.

In 2007, Caltrans informed the City that they (Caltrans) would be widening portions of State Route 190 in the Porterville area. The City was placed on notice to relocate an electrical panel that provides power to the City's largest lift station. Lift Station #15 is located immediately south of the Tule River along the northerly extension of Newcomb Street.

Caltrans indicated that they would need the electrical panel relocated by February 1, 2008. With this date in mind, Engineering requested informal bids believing that the cost would be below the $5,000 threshold. Regrettably, the lowest bid came in at $7,650 prompting Engineering to re-advertise the project and adhere to formal advertisement/sealed bid procedures.

On December 26, 2007, Edison informed Engineering that they would be relocating their power poles on or about the 1st week in January 2008. The timeline provided by Edison compelled the Public Works Director to move quickly and secure the services of an electrical contractor. The City Manager was immediately notified of the situation and authorized the expenditure of $5,000 to begin the relocation effort.

The electrical contractor selected for the relocation project was Blair Electric who had provided the lowest bid ($7,650) under the informal bid selection process. As indicated above, staff is requesting that the City Council ratify and approve the expenditure of approximately $2,700 to cover the balance of Blair Electric's contract.

Funding for this project is from developer fees that contribute to master plan facilities.

RECOMMENDATION: That City Council:

1. Ratify and approve the expenditure of approximately $2,700 to cover the balance of the existing contract with Blair Electric.

ATTACHMENT: Locator Map

Dir. Appropriated/Funded CM Item No. 11
SUBJECT: APPROVAL OF AGREEMENT FOR DESIGN SERVICES – AIRPORT RUNWAY GUIDANCE SYSTEM

SOURCE: ADMINISTRATION

COMMENT: The Federal Aviation Administration has allocated $150,000 under the Fiscal Year 2007 Airport Improvement Program for the design of a runway vertical/visual guidance system at Porterville’s Municipal Airport. Tartaglia Engineering is the City’s “Engineer of Record” for its airport improvement projects, and Staff has submitted a proposed Engineering Services Agreement for FAA review and approval. The proposed Agreement was approved by the FAA on December 17, 2007, with a total not-to-exceed cost of $135,254, and is submitted herewith for Council’s consideration.

RECOMMENDATION: That the Council approve the Engineering Services Agreement between the City of Porterville and Tartaglia Engineering for design of the Airport’s Runway Vertical/Visual Guidance System; and further, that Council authorize the Mayor to execute the Engineering Services Agreement.

ATTACHMENTS: Approval Letter from the FAA Engineering Services Agreement
December 17, 2007

Mr. John Longley
City of Porterville
City Manager
291 North Main Street
Porterville, California 93257

Dear Mr. Longley:

Airport: Porterville, CA;
AIP Project 3-06-0190-07;
Engineering Services Agreement Approval

The Engineering Services Agreement between City of Porterville and Tartaglia Engineering for the above project is hereby approved.

Please send us a copy of the executed agreement and a completed Sponsor Certification for Selection of Consultants.

Sincerely,

Peter Hong
Project Manager, Safety and Standards Section
AGREEMENT
PORTERVILLE MUNICIPAL AIRPORT IMPROVEMENTS
FAA AIP PROJECT NO. 3-06-0190-07

THIS AGREEMENT, entered into this ___ day of ________________, 2007, by and between the City of Porterville, hereinafter referred to as the “City,” and Tartaglia Engineering, hereinafter referred to as the “Engineer.”

WITNESSETH

WHEREAS, the City is authorized and empowered to employ engineering consultants and specialists in the performance of its duties and functions; and

WHEREAS, the City has the desire to secure certain technical and professional services to assist in the preparation and completion of the items of work described as “Scope of Work” in Exhibit “A,” and hereinafter referred to as the “Project” and

WHEREAS, the Engineer represents it is qualified and willing to provide such services pursuant to terms and conditions of this Agreement:

NOW, THEREFORE, BE IT AGREED, by and between the City and the Engineer as follows:

I. SERVICES TO BE PERFORMED BY THE ENGINEER

   A. Authorized Scope of Work

      The Engineer agrees to perform all work necessary to complete in a manner satisfactory to the City those tasks described in Exhibit “A,” attached hereto and incorporated herein by this reference as if set forth in full.

   B. Additional Services

      Incidental work related to the Project and not provided for in Exhibit “A” may be needed during the performance of this Agreement. The Engineer agrees to provide any and all additional services as authorized by the City, at the rates identified in attached Exhibit “B,” Fee Schedule.

      No additional services shall be rendered by the Engineer under this Agreement unless the Engineer, prior to performance of said services, advised the City of the additional work in writing and said services shall first be authorized in writing by the City. The return to the Engineer of a signed copy of said change order shall constitute approval by the City for the performance of such additional services.

AGREEMENT: Page 1 of 5
II. **TIME SCHEDULE**

Phase One as described in Exhibit “A” shall commence immediately upon execution of this Agreement.

Phase Two services as described in Exhibit “A” shall not commence until such time as the City shall determine that the Project shall proceed to said Phase and shall so notify the Engineer in writing.

III. **COMPENSATION**

A. **TOTAL COMPENSATION**

For services performed pursuant to this Agreement, the City agrees to pay and the Engineer agrees to accept, as payment in full, a total not-to-exceed sum of One Hundred, Thirty Five Thousand, Two Hundred Fifty Four Dollars ($135,254.00). The compensation for the project is further identified in Exhibit “C” attached hereto.

B. **PAYMENT OF MONTHLY COMPENSATION**

The Engineer shall be reimbursed monthly no later than twenty (20) days following submission of a written, verified billing to the City. Said billing shall include the percentage of each task completed to date and since the date of the preceding billing, if any.

IV. **STANDARD PRACTICES**

The Engineer shall ascertain the standard practices of the Federal Aviation Administration (FAA) and the City and any other affected agencies and shall utilize the said practices throughout this project.

V. **TERMINATION**

This contract may be terminated by the City at any time by written notice to the Engineer. However, the City shall be obligated to compensate the Engineer for all work that has been accomplished until receipt of such written notice. The Engineer shall be required to deliver copies of all finished and unfinished documents prepared for the project as requested by the City.
VI. OWNERSHIP OF DOCUMENTS

It is agreed and understood that all original documents; such as, tracings, plans, specifications, maps, basic survey notes and sketches, charts, computations, and other data prepared or obtained under the terms of this Agreement, are Instruments of Service, and as such, shall remain the property of the Engineer, whether the work for the same shall be executed or not. The City shall be entitled to copies of such documents upon payment of the cost of reproduction.

The Engineer agrees to provide one set of reproducible “as-built” drawings and one set of blueline prints to the City for its use. The Engineer also agrees to provide necessary copies of the engineering documents to FAA. Should additional copies be required, the City agrees to pay for same at the cost of reproduction.

The Engineer agrees that all records and documents as required herein will be retained and made available upon request to representatives of the City, the FAA and the Comptroller General of the United States for a minimum period of three years following completion of this Agreement or receipt of final payment, whichever is later.

VII. SUBCONTRACTING

Thoma Electric, San Luis Obispo, California, shall provide electrical engineering design services for this project, as a subconsultant to the Engineer. Should geotechnical and/or materials testing services be required on the project, it is understood that Central Valley Testing shall act as a subcontractor to the Engineer to perform geotechnical engineering and testing services. Other than Thoma Electric and Central Valley Testing, the Engineer shall not subcontract or otherwise assign any portion of the work to be performed under this Agreement without prior written approval of the City.

VIII. SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon and shall inure to the benefit of any successors to or assigns of the parties. The Engineer shall not assign, delegate or transfer the rights and duties under this Agreement or any part thereof, without the prior written consent of the City.

IX. INDEPENDENT CONTRACTOR

In the performance of the services herein provided for, the Engineer shall be, and is, an independent contractor and is not an agent or employee of the City. The Engineer has and shall retain the right to exercise full control and supervision of all persons assisting the
Engineer in the performance of said services hereunder. The Engineer shall be solely responsible for all matters relating to the payment of its employees, including compliance with social security and income tax withholding and all other regulations governing such matters.

X. **DISPUTE**

Any dispute not resolvable by informal arbitration between the parties to this Agreement shall be adjudicated in a Court of Law under the laws of the State of California.

XI. **INSURANCE REQUIREMENTS**

With respect to performance of work under this Agreement, the Engineer shall maintain insurance as described below:

1. Workers’ compensation insurance with statutory limits, and employer’s liability insurance with limits of not less than One Million Dollars ($1,000,000) per accident.

2. Commercial general liability insurance with a combined single limit of not less than One Million Dollars ($1,000,000) per occurrence. Such insurance shall:
   a. Name the City, its appointed and elected officials, officers, employees and agents as additional insureds;
   b. Be primary with respect to any insurance or self-insurance programs maintained by the City.

3. Commercial automobile liability insurance with a combined single limit of not less than One Million Dollars ($1,000,000) per occurrence.

4. Professional liability insurance (errors and omissions) with not less than One Million Dollars ($1,000,000) in coverage.

XII. **COVENANT AGAINST CONTINGENT FEES**

The Engineer hereby certifies, as expressed by the Certification of the Engineer attached hereto and marked Exhibit “D,” that it retains no person to solicit work on a contingent fee basis and that only full-time, permanent employees of Tartaglia Engineering solicit work for the firm.
XIII. FEDERAL AVIATION ADMINISTRATION (FAA)
ENGINEERING CONSULTANT CONTRACTUAL REQUIREMENTS

Federal Aviation Administration Engineering Consultant Contractual Requirements, hereinafter referred to as "FAA Requirements," set forth requirements relative to Federally-assisted programs of the Department of Transportation.

The FAA Requirements are attached to this Agreement as Exhibit "E" and are incorporated by this reference and made a part of this Agreement.

XIV. EXTENT OF AGREEMENT

This Agreement, together with Exhibits "A," "B," "C," "D," "E," and "F," constitute the entire Agreement between the City and the Engineer and supersedes all prior written or oral understandings. This Agreement and said attachments may be amended, supplemented, modified or canceled only by a duly written instrument.

IN WITNESS WHEREOF, this Agreement is executed on the day and year first above written.

CITY OF PORTERVILLE

______________________________
Mayor

TARTAGLIA ENGINEERING

______________________________
John A. Smith
Principal

ATTEST:

______________________________
City Clerk

AGREEMENT: Page 5 of 5
EXHIBIT "A"

SCOPE OF THE WORK

The work in this Agreement is included in Airport Improvement Program Project AIP 3-06-0190-07, which is being undertaken and accomplished by the City of Porterville in accordance with the terms and conditions of a Grant Agreement between the City of Porterville and the United States. The United States is not a party to this engineering services agreement and no reference in this agreement to the FAA or any representative thereof, or to the United States, by the agreement, makes the United States a party to this agreement.

The scope of work shall include engineering services for the City of Porterville's Airport Improvement Project shall include the construction of the following improvements:

1. Installation of pole-mounted area lighting for the main transient tie-down apron.

2. Installation of secondary lighted wind cones, one each at each end of Runway 12-30. Wind cones to be powered off the runway lighting circuit.

3. Upgrades to the taxiway lighting circuit including replacement of all taxiway edge lights with new, energy efficient LED fixtures.

4. Replacement of the Runway End Identifier Lights (REIL’s) serving Runway 30, including replacement of the conductor from the panel to the REIL’s.

5. Installation of an emergency generator for all airfield lighting.

6. Reconstruction of the segmented circle and replacement of the primary lighted wind cone.

The estimated total construction budget of the identified project is approximately $550,000.00

CONSULTANT'S SERVICES

The services to be performed and provided by the Consultant for the City under this Agreement for AIP-07 is as follows.

PHASE ONE - DESIGN

The services to be performed and provided by the Consultant for the City under Phase One of this Agreement shall include:

A. All field topographic survey necessary for the design of all proposed airfield improvements.
B. All field investigation, research into existing facilities, and related engineering services necessary for design of the project, including review of existing electrical components and facilities, and a review of the existing service panels and proposed power sources.

C. All services required to prepare working drawings, specifications and contract documents upon which proposals for the construction of the work may be based.

D. Prepare Engineer's Report, including an estimate of construction costs to comply with FAA requirements.

E. All technical services required for the preparation of advertisement and bid forms, interpretation of bid documents and preparation of addenda as required.

F. Attend the bid opening and assist in the review of bid proposals and awarding construction contract as required.

G. Prepare Quality Control Construction Management Plan to comply with FAA requirements.

H. Duplication of plans and specifications for bidding and for construction. Publication of the Notice Inviting Sealed Bids in accordance with FAA requirements.

**PHASE TWO - CONSTRUCTION ENGINEERING & CONTRACT ADMINISTRATION**

The services to be performed and provided by the Consultant for the City under Phase Two of this Agreement shall include:

A. All field staking necessary for the construction of the improvements. Such staking shall be in accordance with common industry practice.

B. All materials testing (compaction of subgrade and aggregate base, concrete slumps and cylinders, ) necessary to monitor compliance with plans and specifications.

C. Inspect the work and notify the City of any failure to comply with the plans and specifications.

D. Attend and chair the preconstruction conference.

E. Administer the contract and general review of the progress of the work.

F. Check all shop drawings and submittals.

G. Review and recommend to the City relative to approval of periodic requests for payments to the Contractor.
H. Prepare any change orders, should same be required.

I. Attend the final inspection.

J. Prepare the Final Engineer's Report.

K. Prepare the "Drawings of Record" and furnish the City with one set of reproducible drawings.
EXHIBIT "B"

TARTAGLIA ENGINEERING
Civil Engineers

7360 El Camino Real, Suite E § PO Box 1930
Atascadero, California 93423
Fax (805) 466-5471
Phone (805) 466-5660

SCHEDULE OF FEES FOR PROFESSIONAL SERVICES

<table>
<thead>
<tr>
<th>Position</th>
<th>Hourly Rate</th>
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</thead>
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<tr>
<td>Professional Engineer</td>
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</tr>
<tr>
<td>Licensed Land Surveyor</td>
<td>$95.00</td>
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<tr>
<td>Civil Engineer</td>
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<tr>
<td>Project Manager</td>
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<tr>
<td>Engineer Technician</td>
<td>$75.00</td>
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<td>Draftsman</td>
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<td>Inspector:</td>
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<td>Day, Straight Time</td>
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<td>Day, Overtime</td>
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<td>$95.00</td>
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<td>(Minimum night shift = 4 hours)</td>
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<td>$42.00</td>
</tr>
<tr>
<td>Survey Party:</td>
<td></td>
</tr>
<tr>
<td>One Man (with robotic)</td>
<td>$145.00</td>
</tr>
<tr>
<td>Two Man</td>
<td>$175.00</td>
</tr>
<tr>
<td>Three Man</td>
<td>$210.00</td>
</tr>
</tbody>
</table>

Mileage shall be at the rate of $0.50 per mile.
Per diem expenses at the rate of $100.00 per man-day.
Miscellaneous expenses at cost.
EXHIBIT "B"

THOMA ELECTRIC

SCHEDULE OF FEES FOR PROFESSIONAL SERVICES
(Rates effective January 1, 2007 through December 31, 2007)

Professional Electrical Engineer ........................................... $142.00 per hour
Electrical Engineer / Designer ............................................. $120.00 per hour
Electrical Design Assistant .................................................. $85.00 per hour
Electrical Cost Estimator .................................................... $90.00 per hour
Field Technician / Electrician ............................................... $90.00 per hour
Computer Aided Design / Drafter .......................................... $80.00 per hour
Secretarial ........................................................................... $65.00 per hour

Direct expenses shall be reimbursed as follows:
Air fare ............................................................................... Cost + 15%
Lodging .............................................................................. Cost + 15%
Mileage ............................................................................... $0.50 per mile
Reproduction ....................................................................... Cost + 15%
Mailing / Shipping .............................................................. Cost + 15%

Terms:
Billing for the work will be submitted on a progressive monthly cycle and will be due net 30 days.
If special billing arrangements or cut off dates are to be enforced, we must be notified in writing of
those dates, prior to commencement of the work. Delinquent payments will be assessed at 1-1/2%
per month finance charge beyond the 30-day period. Additional work that is not specifically
included or described in the fee proposal will be performed at the hourly rates identified herein.
EXHIBIT "B"

CENTRAL VALLEY TESTING

A six page Fee Schedule for Central Valley Testing follows
FEE SCHEDULE

"2007"

Listed herein are typical prices for engineering, geology and testing services most frequently performed by CENTRAL VALLEY TESTING, INC. Prices for other services not listed will be given upon request, as well as special quotations for programs involving volume work or hazardous materials.

Sampling and testing are conducted in accordance with the latest applicable or designated specifications of the American Society for Testing and Materials, AASHTO, CALTRANS, SSPWC, UPC, military standards, or other pertinent agencies.

OUR PHYSICAL AND MAILING ADDRESS IS AS FOLLOWS:

Visalia Laboratory:

Physical: 824 East Douglas Avenue
Visalia, California 93292
Mailing: P.O. Box 2669
Visalia, California 93279
Phone No. (559) 732-3039
Fax No. (559) 732-8141

The following prices are a general estimate based on a standard project or item. A written quotation will be given for volume or item of tests requested. A minimum of four-hours will be charged per trip to jobsite.

BASIS OF TIME

Straight Time: Monday through Friday
Overtime: Saturday, Sunday and Holidays

MATERIAL TESTING

OBSERVATION AND TESTING SERVICES

Concrete Batch Plant  High Strength Bolts  Asphalt Placement
Concrete Placement  Masonry  Reinforcing Steel Placement
Asphalt Plant  Welding (visual)  Gunite
### Soil Engineering

#### Soil Density

<table>
<thead>
<tr>
<th>Roofing</th>
<th>STANDARD CHARGES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Geotechnical Technician</td>
<td>$50.00 / hour</td>
</tr>
<tr>
<td>Senior Technician (Includes Certified Inspectors)</td>
<td>$55.00 / hour</td>
</tr>
<tr>
<td>- Prevailing Wage Rate</td>
<td>$75.00 / hour</td>
</tr>
<tr>
<td>Staff Engineer or Geologist</td>
<td>$75.00 / hour</td>
</tr>
</tbody>
</table>

### FIELD EQUIPMENT RATES

| Drilling Rig including operator (3 hour minimum) | $145.00 / hour |
| Drilling Rig Mobilization (including mileage and authorized standby) | $85.00 / hour |
| Bulldozing and/or grubbing to facilitate site accessibility | Cost plus 20% |
| Drilling with casing | Cost plus 20% |

### SOIL ENGINEERING

<table>
<thead>
<tr>
<th>Task</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sieve Analysis, with 200 wash</td>
<td>$110.00</td>
</tr>
<tr>
<td>Sieve Analysis, without wash</td>
<td>$55.00</td>
</tr>
<tr>
<td>Short Hydrometer Analysis (without specific gravity)</td>
<td>$110.00</td>
</tr>
<tr>
<td>Long Hydrometer Analysis (without specific gravity)</td>
<td>$145.00</td>
</tr>
<tr>
<td>Specific Gravity (Sand and Gravel)</td>
<td>$55.00</td>
</tr>
<tr>
<td>Specific Gravity (Clay and Silt)</td>
<td>$80.00</td>
</tr>
<tr>
<td>Moisture Content and/or Unit Weight</td>
<td>$25.00</td>
</tr>
</tbody>
</table>

### ATTERBERG LIMITS

<table>
<thead>
<tr>
<th>Test</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>a) Liquid Limit</td>
<td>$105.00</td>
</tr>
<tr>
<td>b) Plastic Limit</td>
<td>$63.00</td>
</tr>
<tr>
<td>c) Plasticity Index</td>
<td>$123.00</td>
</tr>
<tr>
<td>d) Shrinkage Limit</td>
<td>$100.00</td>
</tr>
<tr>
<td>e) Shrinkage Factors</td>
<td>$100.00</td>
</tr>
<tr>
<td>Sand Equivalent (average of 3)</td>
<td>$95.00</td>
</tr>
</tbody>
</table>
(Single point) .............................................. $75.00

Expansion Index (UBC Standard 29-2) ....................... $135.00

**ATTERBERG LIMITS**

- Swell Test (FHA or County) ................................ $110.00
- Direct Shear (quick), 3 points ................................ $175.00
- Direct Shear (consolidated), per point ....................... $110.00
- Consolidation, 4 points ...................................... on request
- C.B.R. .................................................................. on request
- Cement Treated Base (compacting, curing and testing) each field specimen $95.00
- Cement Treated Base (stability, lab mixing) including 3 specimens .... $235.00
- R-Value, California State Highway .......................... $210.00
- R-Value, California State Highway, cement, lime or other additives .. on request

**COMPACtion CURVES**

a) Standard (ASTM D 1557, Method A or ASTM D 698) .......... $125.00
b) ASTM D 1557, Method B, C or D ............................. $125.00
c) California Impact (State 216) .................................. $125.00
d) Check Point, Method B, C or D ............................... $60.00
Permeability Tests; each ................................ $350.00

**CONCRETE AND MASONARY AGGREGATE**

- Sieve Analysis, per primary size .............................. $110.00
- Wash Analysis .................................................. $65.00
- Sieve Analysis (without wash, 3/4 inch maximum) .......... $65.00
- Specific Gravity, bulk SSD (including absorption) .......... $63.00
- Absorption, Sand and Gravel ................................ $40.00
- Injurious Organic Matter ...................................... $40.00
- Weight per cubic foot ....................................... $60.00
- Los Angeles Rattler Test ..................................... $145.00

- Sulphate or Magnesium Soundness, per 5 cycle test (set up charge $50.00)
  - Coarse Aggregate ........................................ $225.00
  - Fine Aggregate ......................................... $210.00

- Durability (per size fraction) ................................ $115.00
- Mortar Making Properties of Sand ............................ on request
- Sand Equivalent (average of 3) ............................... $90.00
- Potential Reactivity Test (chemical method) ................. on request
- Potential Reactivity Test (mortar bar method) ............... on request
- Cleanness Value ............................................. $90.00
Crushed Particles, per sieve size ......................... $45.00
Friable Particles, per sieve size ......................... $45.00
Light Weight Pieces, per sieve fraction ............... $100.00

CONCRETE AND MASONARY AGGREGATE (CONT.)

Scratch Hardness, per sieve fraction ................... $67.00
Soft Particle, per sieve fraction ....................... $67.00

CONCRETE

Aggregate Tests for mix determination of concrete
does not include acceptance tests) .................. $130.00 / sample
Concrete Mix Design or Review ......................... $110.00
Compression Tests, or Hold Samples 6" x 12" concrete cylinder ................ $18.00
Compression Tests, or Hold Samples 6" x 12" concrete cylinder
cast by others) ......................................... $18.00
Compression Tests, Gunite ................................ $18.00
Density Tests on concrete cylinders .................. $35.00
Splitting Tensile Test, 6" x 6" concrete beam .......... $55.00
Splitting Tensile Test, 6" x 12" cylinder ............... $33.00
Flexural Strength or Hold Samples 6" x 6" concrete beam ............... $57.00
Compression Test on cored concrete specimen ........... $20.00
End Preparation or Cores, if required (diamond sawing) ...... $15.00 / cut
Complete Concrete Design including laboratory trial batches and
specimens on separate water-cement ratios ............ on request
Accelerated Cure for Beams or Cylinders ................. on request

MASONRY

Compression, Mortar Cylinders ......................... $18.00
Compression Test, Grout Prisms ......................... $20.00
Compression Test, Masonry Unit up to 8" width ........... $60.00
Compression Test, Masonry Unit greater than 8" ........... $70.00
Absorption Test, Masonry Unit (each) ................... on request
Moisture Content, (ASTM C 427) (Set-up charge $150.00 each) ...... $65.00
Linear Shrinkage, Masonry Unit (each) .................. $90.00
Compression Strength, Brick (each) ..................... $40.00
Modulus of Rupture, Brick (each) ....................... $55.00
Absorption Tests, Brick, 5 hour boil with coefficient (each) .... $85.00
Shear Test on Masonry Core ............................ $95.00
Tensile Test on Masonry Block ........................................ $120.00
Diamond Sawing of block (if required) .............................. $ 30.00 / cut
Complete Block Testing per ASTM 90
(Compression, absorption, dimension) each size and type .......... on request

REINFORCING AND STRUCTURAL STEEL

GENERAL TESTING

Rebar-Tensile and Bend as a set, up to #6 ............................ $ 55.00
Structural - Tensile and Bend as a set, up to 3/4" cross-sectional area
(does not include machining charge) .................................. $ 65.00
Rebar-Tensile and Bend as a set, greater than #6 ................... $ 75.00
Structural-Tensile and Bend as a set, greater than 3/4" cross-sectional area
(does not include machining charge) .................................. $ 75.00
Bend Test (rebar) ......................................................... $ 40.00
Bend Test (structural) .................................................... $ 40.00
Flattening Test ............................................................. $ 40.00
Rockwell or Brinell Hardness .......................................... on request
Deformation, Reinforcing Steel ......................................... $ 55.00
Machine Charges ......................................................... $ 55.00

EQUIPMENT USE CHARGES

Testing Machine Time (operator and equipment) ...................... $ 75.00 / hour
Skidmore Wilhelm Bolt Tension Calibrator .......................... $ 235.00 / day
Torque Wrench ............................................................ $ 35.00 / day
Torque Wrench with multiplier ........................................ $ 35.00 / day
Dye Penetrant Test ...................................................... $ 75.00 / day

WELDER QUALIFICATION TESTS

Prices for welder qualification examinations are based on certification procedure and are available
upon request.

DIAMOND CORING

Charges for coring consist of two parts. One is for the wear on the diamond bit known as the ABit Charge®. The other is for coring machine and operator time.

Bit Charges:

<table>
<thead>
<tr>
<th>Diameter of Core</th>
<th>Bit Charge</th>
</tr>
</thead>
<tbody>
<tr>
<td>2&quot;</td>
<td>$2.00 / inch</td>
</tr>
<tr>
<td>4&quot;</td>
<td>$3.00 / inch</td>
</tr>
<tr>
<td>6&quot;</td>
<td>$4.00 / inch</td>
</tr>
<tr>
<td>8&quot;</td>
<td>$5.00 / inch</td>
</tr>
</tbody>
</table>

NOTE: Minimum bit charge of 6" length per job per day.

Machine and operator (accessible flat work only) ........................ $75.00 / hour
Machine and two operators ....................................................... $85.00 / hour
Generator - minimum per day ................................................... $40.00 / day
EXHIBIT "C"

COMPENSATION

City agrees to compensate the Consultant for work accomplished under this Agreement for AIP-07 on the following basis:

PHASE ONE

Payment for services under Phase One shall be in two parts as follows:

1. For services set forth in Exhibit "A," Phase One, Paragraph A, City agrees to pay Consultant a lump sum amount of $8,860.00.

2. For services set forth in Exhibit "A," Phase One, Paragraphs B, C, D, E, F, and G, City agrees to pay Consultant a lump sum amount of $62,894.00.

3. For services set forth in Exhibit "A", Phase One, Paragraph H, City agrees to pay Consultant on a Time and Materials basis, not to exceed $8,000.00.

PHASE TWO

Payment for services under Phase Two shall be in two parts as follows:

1. For services set forth in Exhibit "A," Phase Two, Paragraphs A, B, and C, City agrees to pay Consultant on an hourly basis and/or unit prices. The total fee for Phase Two, Paragraphs A, B, and C, shall not exceed $41,570.00.

2. For services set forth in Exhibit "A," Phase Two, Paragraphs D, E, F, G, H, I, J, and K, City agrees to pay Consultant a lump sum amount of $13,930.00, which shall be due in equal monthly payments during the period of construction. Said lump sum amount assumes substantial Contractor material compliance with the specifications. In the event of significant Contractor material non-compliance, wherein written protest is submitted by the Contractor and/or potential litigation is anticipated because of such non-compliance, the Consultant shall notify the City in writing that additional efforts may be required by the Consultant to protect the interests of the City. The City shall have the option to authorize such work as "additional services" under paragraph I.B. of this Agreement.

Hourly rates where indicated are in accordance with the Fee Schedules included in Exhibit “B” of the agreement.
EXHIBIT "D"

AIRPORT IMPROVEMENT PROGRAM PROJECT NO. 3-06-0190-07

STATE OF CALIFORNIA

CERTIFICATION OF ENGINEER

I hereby certify that I am the Owner and duly authorized representative of the firm Tartaglia Engineering, Civil Engineers, whose address is 7360 El Camino Real, Suite E, Atascadero, CA, and that neither I, nor the above firm I here represent, has:

A. Employed or retained for a commission, percentage, brokerage, contingent fee or other consideration, any firm or person (other than a bona fide employee working solely for me or the above consultant) to solicit or secure this contract;

B. Agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out the contract; or

C. Paid or agreed to pay to any firm, organization, or person (other than a bona fide employee working solely for me or the above consultant) any fee, contribution, donation or consideration of any kind for, or in connection with, procuring or carrying out the contract, except as here expressly stated (if any):

I acknowledge that this certificate is to be furnished to the Federal Aviation Administration of the United States Department of Transportation, in connection with this contract involving participation of Airport Improvement Program (AIP) funds, and is subject to applicable State and Federal laws, both criminal and civil.

11/5/07
Date

[Signature]
Owner
EXHIBIT "E"

FAA CONSULTANT CONTRACTUAL REQUIREMENTS

TITLE VI ASSURANCES

During the performance of this contract, the Consultant, for itself, its assignees and successors in interest (hereinafter referred to as the "Contractor") agree as follows:

1. Compliance with Regulations. The contractor shall comply with the regulations relative to nondiscrimination in Federally assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this contract.

2. Nondiscrimination. The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

3. Solicitations for Subcontracts, Including Procurement of Materials and Equipment. In all solicitations, either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and Regulations relative to nondiscrimination on the grounds of race, color or national origin.

4. Information and Reports. The contractor shall provide all information and reports required by Regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration (FAA) to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the sponsor or the FAA, as appropriate, and shall set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance. In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the sponsor shall impose such contract sanctions as it or the FAA may determine to be appropriate, including but not limited to:

a. withholding of payments to the contractor under the contract until the contractor complies, and/or
b. cancellation, termination or suspension of the contract, in whole or in part.

6. Incorporation of Provisions. The contractor shall include the provisions of Paragraphs 1 through 5 in every subcontract, including procurement of materials and leases of equipment, unless exempt by Regulations or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the sponsor or the FAA may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the sponsor to enter into such litigation to protect the interests of the sponsor and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

DISADVANTAGED BUSINESS ENTERPRISE (DBE) ASSURANCES

1. Policy. It is the policy of the Department of Transportation (DOT) that disadvantaged business enterprises, as defined in 49 CFR Part 26, shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this Agreement. Consequently, the DBE requirements of 49 CFR Part 26 apply to this Agreement.

2. DBE Obligation. The contractor agrees to ensure that disadvantaged business enterprises, as defined in 49 CFR Part 26, have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this Agreement. In this regard, all contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform contracts. Contractors shall not discriminate on the basis of race, color, national origin or sex in the award and performance of DOT-assisted contracts.
EXHIBIT "F"

AIP PROJECT NO. 3-06-0190-07
AIRFIELD ELECTRICAL UPGRADES, APRON AREA LIGHTING

ENGINEERING AGREEMENT COST BASIS

**PHASE ONE - DESIGN**

A. **FIELD SURVEYING**
   1. 2-Man Survey Crew 32 hrs. @ $175.00 $ 5,600
   2. Mileage 320 mi. @ $ 0.50 160
   3. P.E. 12 hrs. @ $105.00 1,260
   4. Draftsman 16 hrs. @ $65.00 1,040
   5. Per Diem 4 days @ $200.00 800
   **A. TOTAL (Lump Sum)** $ 8,860

B& C. **PLANS & SPECIFICATIONS**
   1. Coordination, Meetings & Site Visits
      P.E. 20 hrs. @ $105.00 $ 2,100
   2. Electrical Engineering - Thoma Electric
      Plans and technical specifications $ 28,500
   3. Project Plan Sheets - Tartaglia Engineering
      a. Cover sheet - 1 sheet
         P.E. 4 hrs. @ $105.00 $ 420
         Draftsman 12 hrs. @ $65.00 780
         **Subtotal $ 1,200**
      b. Project layout sheet - 1 sheet
         P.E. 6 hrs. @ $105.00 $ 630
         Draftsman 16 hrs. @ $65.00 1,040
         **Subtotal $ 1,670**
      c. Apron lighting plan - 3 sheets
         P.E. 12 hrs. @ $105.00 $ 1,260
         Eng. Tech. 12 hrs. @ $75.00 900
         Draftsman 24 hrs. @ $65.00 1,560
         **Subtotal $ 3,720**
      d. REIL Site Plan - 1 sheet
         P.E. 12 hrs. @ $105.00 $ 1,260
         Draftsman 30 hrs. @ $65.00 1,950
         **Subtotal $ 3,210**
      e. Wind Cone & Segmented Circle Site Plans - 2 sheets
         P.E. 12 hrs. @ $105.00 $ 1,260
         Eng. Tech. 12 hrs. @ $75.00 900
         Draftsman 30 hrs. @ $65.00 1,950
         **Subtotal $ 4,110**

EXHIBIT F: Page 1 of 4
f. Taxiway Lighting Circuit Upgrade Plans - 4 sheets
   P.E.  12 hrs.  @ $105.00  $ 1,260
   Eng. Tech.  8 hrs.  @ $75.00  600
   Draftsman  32 hrs.  @ $65.00  2,080
   Subtotal $ 3,940

g. Electrical Details and Supplemental Area Plans - 3 sheets
   P.E.  4 hrs.  @ $105.00  $  420
   Eng. Tech.  8 hrs.  @ $75.00  600
   Draftsman  16 hrs.  @ $65.00  1,040
   Subtotal $ 2,060

Total Plan Sheets - Tartaglia (14)  $19,910

4. Specifications and Contract Documents
   P.E.  40 hrs.  @ $105.00  $ 4,200
   Clerical  20 hrs.  @ $42.00  840
   Total Specifications  $ 5,040

   B. & C. TOTAL (Lump Sum)  $ 55,550

D. ENGINEER'S COST ESTIMATE & REPORT

1. Quantity calculations
   P.E.  8 hrs.  @ $105.00  $  840
   Draftsman  6 hrs.  @ $65.00  390
   Subtotal $ 1,230

2. Cost estimate & preliminary engineer's report
   P.E.  16 hrs.  @ $105.00  $ 1,680
   Clerical  4 hrs.  @ $42.00  168
   Subtotal $ 1,848

   D. TOTAL (Lump Sum)  $ 3,078

E. & F. BIDDING PROCESS
   P.E.  24 hrs.  @ $105.00  $ 2,520
   Milage  284 miles  @ $0.50  142
   Draftsman  4 hrs.  @ $65.00  260
   Clerical  8 hrs.  @ $42.00  336

   E. & F. TOTAL (Lump Sum)  $ 3,258

G. QUALITY CONTROL CONSTRUCTION MANAGEMENT PLAN
   P.E.  8 hrs.  @ $105.00  $  840
   Clerical  4 hrs.  @ $42.00  168

   G. TOTAL (Lump Sum)  $ 1,008

A - G TOTAL (Lump Sum)  $71,754

H. DOCUMENT DUPLICATION, PUBLISHING OF NOTICE INVITING BIDS
   Time and Materials, not to exceed:  $ 8,000

   H. TOTAL (HNTF)  $ 8,000

EXHIBIT F: Page 2 of 4
### PHASE TWO - CONSTRUCTION ENGINEERING AND CONTRACT ADMINISTRATION

#### A. CONSTRUCTION SURVEYING/FIELD STAKING

<table>
<thead>
<tr>
<th>Description</th>
<th>Hours</th>
<th>Rate</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>2-Man Crew</td>
<td>40</td>
<td>$175.00</td>
<td>$7,000</td>
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<tr>
<td>Milage</td>
<td>860</td>
<td>$0.50</td>
<td>430</td>
</tr>
<tr>
<td>Per Diem</td>
<td>3</td>
<td>$200.00</td>
<td>600</td>
</tr>
<tr>
<td>P.E. (Prep &amp; Calcs.)</td>
<td>8</td>
<td>$105.00</td>
<td>840</td>
</tr>
</tbody>
</table>

**A. TOTAL (HNTE)** $8,870

#### B. TESTING

<table>
<thead>
<tr>
<th>Description</th>
<th>Hours</th>
<th>Rate</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Compaction Testing (subgrade, aggregate base, concrete)</td>
<td></td>
<td></td>
<td>5,000</td>
</tr>
</tbody>
</table>

**B. TOTAL (HNTE)** $5,000

#### C. INSPECTION (assumes 30 working days - 6 weeks)

<table>
<thead>
<tr>
<th>Description</th>
<th>Hours</th>
<th>Rate</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Resident Insp. (S.T.)</td>
<td>240</td>
<td>$92.00</td>
<td>$22,080</td>
</tr>
<tr>
<td>Resident Insp. (O.T.)</td>
<td>15</td>
<td>$108.00</td>
<td>1,620</td>
</tr>
<tr>
<td>Per Diem</td>
<td>30</td>
<td>$100.00</td>
<td>3,000</td>
</tr>
<tr>
<td>Mileage</td>
<td>2000</td>
<td>$0.50</td>
<td>1,000</td>
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</table>

**C. TOTAL (HNTE)** $27,700

**TOTAL "A", "B", & "C" (Hourly, Not to Exceed):** $41,570

#### D. PRECONSTRUCTION CONFERENCE

<table>
<thead>
<tr>
<th>Description</th>
<th>Hours</th>
<th>Rate</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>P.E.</td>
<td>8</td>
<td>$105.00</td>
<td>840</td>
</tr>
<tr>
<td>Mileage</td>
<td>284</td>
<td>$0.50</td>
<td>142</td>
</tr>
<tr>
<td>Inspector</td>
<td>6</td>
<td>$92.00</td>
<td>552</td>
</tr>
</tbody>
</table>

**D. TOTAL (Lump Sum)** $1,534

#### E-H CONTRACT ADMINISTRATION

(Submittal review, test results review, coordination with FAA, periodic progress meetings, preparation of pay estimates and change orders, etc.)

<table>
<thead>
<tr>
<th>Description</th>
<th>Hours</th>
<th>Rate</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>P.E.</td>
<td>48</td>
<td>$105.00</td>
<td>5,040</td>
</tr>
<tr>
<td>Clerical</td>
<td>16</td>
<td>$42.00</td>
<td>674</td>
</tr>
<tr>
<td>Thoma Electric</td>
<td></td>
<td></td>
<td>2,400</td>
</tr>
</tbody>
</table>

**E-H. TOTAL (Lump Sum)** $8,114

#### I. FINAL INSPECTION

<table>
<thead>
<tr>
<th>Description</th>
<th>Hours</th>
<th>Rate</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>P.E.</td>
<td>8</td>
<td>$105.00</td>
<td>840</td>
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<tr>
<td>Mileage</td>
<td>284</td>
<td>$0.50</td>
<td>142</td>
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<tr>
<td>Inspector</td>
<td>6</td>
<td>$92.00</td>
<td>552</td>
</tr>
</tbody>
</table>

**I. TOTAL (Lump Sum)** $1,534

#### J. FINAL ENGINEER’S REPORT

<table>
<thead>
<tr>
<th>Description</th>
<th>Hours</th>
<th>Rate</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>P.E.</td>
<td>8</td>
<td>$105.00</td>
<td>840</td>
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<tr>
<td>Clerical</td>
<td>4</td>
<td>$42.00</td>
<td>168</td>
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</table>

**J. TOTAL (Lump Sum)** $1,088

#### K. AS-BUILT DRAWINGS

<table>
<thead>
<tr>
<th>Description</th>
<th>Hours</th>
<th>Rate</th>
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</thead>
<tbody>
<tr>
<td>P.E.</td>
<td>4</td>
<td>$105.00</td>
<td>420</td>
</tr>
<tr>
<td>Draftsman</td>
<td>16</td>
<td>$65.00</td>
<td>1,040</td>
</tr>
<tr>
<td>Reprod. Mylar</td>
<td>14</td>
<td>$20.00</td>
<td>280</td>
</tr>
</tbody>
</table>

**K. TOTAL (Lump Sum)** $1,740

**TOTAL "D" thru "K" (Lump Sum):** $13,930

---

EXHIBIT F: Page 3 of 4
# AGREEMENT COST SUMMARY

Project No. AIP 3-06-0190-07

## PHASE ONE - DESIGN

<table>
<thead>
<tr>
<th>Description</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Field surveying</td>
<td>$8,860</td>
</tr>
<tr>
<td>B &amp; C. Plans &amp; specifications</td>
<td>$55,550</td>
</tr>
<tr>
<td>D. Engineer's cost est. &amp; report</td>
<td>$3,078</td>
</tr>
<tr>
<td>E. &amp; F. Bidding process</td>
<td>$3,258</td>
</tr>
<tr>
<td>G. Quality control construction plan</td>
<td>$1,008</td>
</tr>
<tr>
<td>&quot;A.&quot; - &quot;G.&quot; Total</td>
<td>$71,754 (LS)</td>
</tr>
<tr>
<td>H. Document duplication, publish notice</td>
<td>$8,000</td>
</tr>
<tr>
<td>&quot;H.&quot; Total</td>
<td>$8,000 (HNTE)</td>
</tr>
</tbody>
</table>

## PHASE TWO - CONSTRUCTION ENGINEERING AND CONTRACT ADMINISTRATION

<table>
<thead>
<tr>
<th>Description</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Field staking</td>
<td>$8,870</td>
</tr>
<tr>
<td>B. Testing</td>
<td>$5,000</td>
</tr>
<tr>
<td>C. Inspection</td>
<td>$27,700</td>
</tr>
<tr>
<td>&quot;A.&quot; - &quot;C.&quot; Total</td>
<td>$41,570 (HNTE)</td>
</tr>
<tr>
<td>D. - K. Contract administration &amp; close out</td>
<td>$13,930</td>
</tr>
<tr>
<td>&quot;D&quot; - &quot;K.&quot; Total</td>
<td>$13,930 (LS)</td>
</tr>
</tbody>
</table>

**MAXIMUM AGREEMENT AMOUNT**

$135,254

"LS" indicates Lump Sum
"HNTE" indicates Hourly Not To Exceed
CONSIDERATION OF RATIFYING AIRPORT CAPITAL PLAN FOR 2009 THROUGH 2013

CITY MANAGER

By January 15, 2008, the City will submit an Airport Capital Plan regarding improvements which are to occur. This is in final preparation with our consultant, Tartaglia Engineers. On December 13, 2007, Jim McDonald, John Longley, and John Smith, from Tartaglia Engineers, met with FAA representative Peter Hong in Burlingame to address the capital projects. Advice was given by the FAA representative regarding the preparation of the final document.

Section 1. For the coming year, the focus is on the design of electrical system improvements at the Airport. In subsequent years, the following projects are listed under FAA programs:

- Overlay of runway
- Move to LED lighting for taxiways and other runway and taxiway lighting improvements
- Install ramp lighting
- Install emergency generator
- Reconstruct runway 7-25 as a commercial taxiway
- Extend runway 30-12 up to 7,500 feet

These projects would take us through 2013 with the FAA program and probably beyond. There will be many regulatory challenges involved, including replacing the LED lighting (which is a new technology), obtaining approval for the emergency generator based upon specific safety issues, and obtaining approval for a displaced threshold to support the runway extension when the FAA defines it is not a standard practice. In addition to these regulatory challenges, the City will need to raise monies to match Federal funds for the projects.

Section 2. From Airport capital monies derived from land sales, the City has undertaken Airport capital improvement projects including:
• Purchase hangars from Dr. Craeger (should be completed Jan/Feb 2008)
• Develop a new hangar complex (the City is pursuing design)
• Develop business office and operations office (the City is pursuing design)
• Develop pilot lounge (to be implemented when the business office moves)

Section 3. Another critical area from a security and safety perspective is to improve surveillance on the airport by installing a remote camera system. The system could provide data to an internet URL which would be visible from police, fire, and administration. The cost would be approximately $30,000. The City may desire to pursue homeland security money for this project.

RECOMMENDATION: Ratify the submission to the FAA of the Fiscal Year 2009 – 2013 Airport Capital Improvement Plan (ACIP) based on the projects outlined in Section 1, above.
SUBJECT: APPROVAL OF SERVICE AGREEMENT BETWEEN CITY OF PORTERVILLE AND WILDLANDS INC., FOR CONSTRUCTION OF THE CITY'S HEADGATE MITIGATION SITE

SOURCE: COMMUNITY DEVELOPMENT DEPARTMENT

COMMENT: Negotiations have been completed with Wildlands Inc., for the construction of the Headgate Mitigation Site which includes Project Start-Up, Coordinate Solar Pump Installation, and Site Construction of the full 7.7 acres of property and Coordinate Project Handoff to the City and Sequoia Riverlands Trust (SRT).

During the November 6, 2007 City Council meeting Council approved the donation of Wildlands 0.7 acres of property adjacent to the City’s mitigation site. Wildlands Inc. will be deeding the property over to the City at no fee to the City.

Attached for Council’s review is a copy of the Service Agreement with Wildlands Inc. in the amount of $137,729.79 for construction, which should be completed in February 2008, and monitoring/reporting of the mitigation site through December 2008. Before the end of Wildlands Inc. service agreement, staff will send out Request for Proposals for monitoring/reporting for the balance of the establishment period (nine (9+) years). After completion of construction, maintenance of the site is proposed to be conducted by SRT. A Service Agreement with SRT for maintenance will be presented at a future City Council meeting for approval.

Funding for the project is as follows:

<table>
<thead>
<tr>
<th></th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Certificates of Participation</td>
<td>$173,310</td>
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<tr>
<td>Annual Budget Appropriation ($20,000 per year)</td>
<td>$40,000</td>
</tr>
<tr>
<td>Fiscal Year 2004/2005 and 2005/2006</td>
<td>$40,000</td>
</tr>
<tr>
<td>Balance of Impact Sciences Cancelled Contract*</td>
<td>$16,477</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$229,787</strong></td>
</tr>
</tbody>
</table>

*Authorization to cancel the contract with Impact Sciences for construction of the mitigation site and transfer it directly to Wildlands, Inc. was approved during the November 6, 2007 City Council meeting.
RECOMMENDATION: That the City Council:

1. Approve the Grant Deed to the City of Porterville for the 0.7 acres from Wildlands Inc.;
2. Authorize staff to record all documents with the County Recorder;
3. Approve the Service Agreement with Wildlands Inc. for the construction of the City’s Headgate Mitigation Site in the amount of $137,729.79;
4. Authorize the Mayor to sign all appropriate documents as necessary to create the Mitigation Site; and
5. Authorize a 10% contingency to cover unforeseen construction costs.

Attachments: 1. Resolution
2. Service Agreement
3. Locator Map
4. Grant Deed
5. Planting Plan which also Indicates Parcel to be Deeded to City
RESOLUTION NO. __________

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE ACCEPTING A GRANT DEED IN FEE FOR REAL PROPERTY FROM WILDLANDS, INC.

BE IT RESOLVED by the City Council of the City of Porterville, that the City of Porterville hereby accepts a Grant Deed in fee from Wildlands, Inc., for real property, in the City of Porterville, County of Tulare, State of California, to-wit:

See Exhibit "A" attached hereto and made a part thereof.

BE IT FURTHER RESOLVED that the purchase price of $0 is hereby approved with the City, authorize Mayor to sign all necessary documents, and said deed to be recorded in the office of the Tulare County Recorder. The foregoing has been accepted by the City Council for the City of Porterville.

_____________________________
Cameron Hamilton, Mayor

ATTEST:

John Longley, City Clerk

By: Patrice Hildreth, Acting Chief Deputy City Clerk
SERVICE AGREEMENT

DATE: December 24, 2007

PARTIES: City of Porterville, a California municipal corporation, hereinafter referred to as "CITY"; and Wildlands, Inc., hereinafter referred to as "CONSULTANT".

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

Project Name: Construction of the City of Porterville’s Headgate Mitigation Site

Description of Project: Construction of the Headgate Mitigation Site which includes Project Start-Up, Coordinate Solar Pump Installation, Site Construction of the full 7.7 acres of property and Coordinate Project Handoff with the City of Porterville and Sequoia Riverlands Trust.

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

SECTION 1. CONTRACT SERVICES: CONSULTANT hereby agrees to provide the following services and materials, in a timely manner as described in Exhibit “A”, Wildlands Scope of Work, in connection with the above-described project.

SECTION 2. PAYMENT: In consideration for said services and materials, CITY shall pay CONSULTANT on a fixed rate of One Hundred and Thirty Seven Thousand Seven Hundred Twenty Nine dollars and Seventy Nine cents, $137,729.79 as described in Exhibit “A”.

TIME OF PAYMENT: Progress payment requests shall be submitted by the 25th of each month. CONSULTANT should receive payment within 30 days of the date the bill is received.
SECTION 3. COMPLETION DATE: The services to be performed by
CONSULTANT will begin January 21, 2008 and end on December 31, 2008.
Changes to the start and completion date shall require approval from the City of
Porterville.

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

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

(i) Full liability under worker's compensation laws of the State of
California; and

(ii) Bodily injury and property damage insurance in the amount not
less than Five Hundred Thousand Dollars ($500,000) per
occurrence; and

(iii) Errors and Omissions insurance of Five Hundred Thousand Dollars
($500,000) minimum per occurrence, if deductible for Errors and
Omissions insurance is Fifty Thousand Dollars ($50,000) or more,
the City may require a Surety Bond for the deductible; and
(iv) Automotive liability in the amount not less than Five Hundred Thousand Dollars ($500,000) per occurrence;

fully protecting CITY, its elected and appointed officers, employees, agents and assigns, against all claims arising from the negligence of CONSULTANT and any injuries to third parties, including employees of CITY and CONSULTANT. CONSULTANT agrees to indemnify, defend (at CITY’S election), and hold harmless the CITY against any claims, actions or demands against CITY, and against any damages, liabilities for personal injury or death or for loss or damage to property, or any of them arising out of negligence of CONSULTANT or any of its employees or agents.

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

SECTION 7. ASSIGNMENT OF CONTRACT: It is acknowledged by the parties that CITY has entered into this contract with the express understanding that all work will be performed by CONSULTANT. CONSULTANT shall not, without the written consent of CITY, assign, transfer or sublet any portion or part of this work, nor assign any payments to others.
SECTION 8. AFFIRMATIVE ACTION. CONSULTANT will not discriminate against any employee, or applicant for employment because of race, color, religion, gender, marital status, or national origin.

SECTION 9. CONFLICT OF INTEREST CODE: CONSULTANT agrees to comply with the regulations of CITY'S "Conflict of Interest Code". Said code is in accordance with the requirements of the Political Reform Act of 1974. CONSULTANT covenants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of service required hereunder. The term "conflict" shall include, as a minimum, the definition of a "conflict of interest" under the California Fair Political Practices Act and the City of Porterville Conflict of Interest Code, as that term is applied to consultants.

SECTION 10. TERMINATION: This contract may be terminated by either party by giving a thirty (30) day written notice to the other party except that City may cancel contract upon five (5) days written notice in the event of nonperformance by contractor. Upon termination by CITY, CITY shall be relieved of any obligation to pay for work not completed including profit and overhead. CONSULTANT may be entitled to just and equitable compensation for satisfactory work completed, except CITY can withhold damages incurred as a result of the termination.

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

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

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

CITY OF PORTERVILLE

By________________________
Cameron Hamilton, Mayor

CONSULTANT

By________________________
Wildlands, Inc.

Date________________________

Date 1-8-2008
Exhibit A

Wildlands Scope of Work- City of Porterville

Construction of Headgate Mitigation Site

Task 1. Conduct Project Start-Up

Wildlands will conduct a project start-up meeting with the City of Porterville (City) and Sequoia Riverlands Trust (SRT) prior to any construction activities. The intent of this meeting will be to finalize the scope of work and project schedule; construction techniques, performance standards and monitoring guidelines; and to address any other concerns or questions regarding the project.

Task Cost: N/A
Task Start: 01/21/2008
Task End: 01/21/2008

Task 2. Coordinate Solar Pump Installation

Wildlands will coordinate the purchase and supervise the installation of the solar pump. Installation specifics, pump design and other requirements will be coordinated prior to construction.

Task Cost: $43,381.79
Task Start: 01/21/2008
Task End: 02/29/2008

Task 3. Site Construction

Wildlands will conduct the site preparation, irrigation installation and plant installation for the 7.7 acre Headgate Mitigation Site. This will be done according to the previously completed Headgate Mitigation Site Planting Plan, include all applicable plant and irrigation supplies and will be done under the supervision of a Wildlands Landscape Architect or Restoration Ecologist.

Task Cost: $79,500.00
Task Start: 01/21/2008
Task End: 02/29/2008
Task 4.  Coordinate Project Handoff

Upon completion of Task 3, Wildlands will coordinate a "Project Handoff" meeting with the City and SRT. The intent of this meeting will be to recap the construction of the project; familiarize the City and SRT staff with the requirements for ongoing maintenance and monitoring; and to address any other concerns or questions regarding the project.

Task Cost: N/A
Task Start: 02/29/2008
Task End: 02/29/2008

Task 5.  Monthly Survival Monitoring and Annual Report

Upon completion of Tasks 3 and 4, Wildlands will perform monthly monitoring visits to the Headgate Mitigation Site to assess amount and cause of plant mortality. Wildlands will also monitor the survival, condition and size of each of the plantings, once at the end of the growing season. Wildlands will compile a monitoring report (3 copies) to be submitted to the United States Fish and Wildlife Service by December 31st, 2008.

Task Cost: $14,848.00
Task Start: 03/01/2008
Task End: 12/31/2008

Task 6.  Plant Warranty

Some level of plant mortality is expected in any planting operation. The City is required by the Draft HCP to maintain at least 60% survival of all plantings. Should the site be determined to have fallen below the 60% threshold following the end of season survival monitoring period, Wildlands will replace all plants determined by Wildlands, the City and SRT to have died due to construction related activities (i.e. not due to maintenance activities, force majeure, etc.), until December 31st, 2008 and not to exceed $1,000.00 of plant material.

Task Cost: N/A
Task Start: 01/21/2008
Task End: 12/31/2008
GRANT DEED

FOR VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, WILDLANDS, INC., a Delaware corporation ("Grantor"), hereby grants to the City of Porterville, a California municipal corporation ("Grantee"), the real property located in Tulare County, State of California, described on Exhibit A attached hereto and made a part hereof (the "Property"), AS-IS and subject to all exceptions to the title thereto, whether of record or not of record.

Grantee, on behalf of itself and its successors and assigns, waives its right to recover from, and forever releases and discharges, Grantor, Grantor’s shareholders, parents and subsidiaries, Grantor’s affiliates, Grantor’s agents and the partners, trustees, shareholders, managers, directors, members, officers, employees and agents and representatives of any of them, and their respective heirs, successors, personal representatives and assigns (collectively, the "Grantor Related Parties"), from any and all demands, claims, legal or administrative proceedings, losses, liabilities, damages, penalties, fines, liens, judgments, costs or expenses whatsoever (including, without limitation, court costs and attorneys’ fees and disbursements), whether direct or indirect, known or unknown, foreseen or unforeseen, that may arise on account of or in any way be connected with, the conveyance of the Property including, without limitation, (i) the physical condition of the Property including, without limitation, all structural and seismic elements, all mechanical, electrical, plumbing, sewage, heating, ventilating, air conditioning and other systems, the environmental condition of the Property and the presence of hazardous materials, on, under or about the Property, or (ii) any law or regulation, including without limitation, any federal, state or local law (including common law), statute, code, ordinance, rule, regulation or other requirement applicable to the Property, or the past or present ownership thereof or operations thereon ("Law"), including, without limitation, any applicable Law relating to the pollution or protection of the environment, natural resources, hazardous materials or public or employee health and safety, and the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Sections 6901, et seq.), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901, et seq.), the Clean Water Act (33 U.S.C. Section 1251, et seq.), the Safe Drinking Water Act (14 U.S.C. Section 1401, et seq.), the Hazardous Materials Transportation Act (49 U.S.C. Section 1801, et seq.), the Toxic

Grantee expressly waives the benefits of Section 1542 of the California Civil Code, which provides as follows: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY Affected HIS SETTLEMENT WITH THE DEBTOR." BUYER ACKNOWLEDGES AND AGREES THAT IT HAS BEEN REPRESENTED BY LEGAL COUNSEL OF ITS CHOICE IN CONNECTION WITH THIS DEED, AND THAT SUCH COUNSEL HAS EXPLAINED TO GRANTEE THE PROVISIONS OF THIS SECTION 1542 OF THE CALIFORNIA CIVIL CODE BY SIGNING BELOW. GRANTEE CONFIRMS IT HAS AGREED TO THE PROVISIONS OF THIS DEED.

By: ____________________________
Name: __________________________
Its: ____________________________

IN WITNESS WHEREOF, the Grantor has duly executed this deed as of the ______ day of ____________, 2008.

Grantor:
WILDLANDS, INC.
a Delaware corporation

By: ____________________________
Name: __________________________
Title: ____________________________
"THIS IS TO CERTIFY, That pursuant to the authority conferred by City of Porterville, Ordinance No. 1590, adopted February 20, 2001, the undersigned, on behalf of the public and City Council of the City of Porterville consents to the acceptance for public purposes the real property described in the within deed and consents to the recordation thereof.

IN WITNESS WHEREOF, I have hereunto set my hand this ______ day of __________________, 2008.

____________________________________
Michael K. Reed, PLS #7514, City Engineer
Exhibit A

LEGAL DESCRIPTION

Real property in the unincorporated area of the County of TULARE, State of CALIFORNIA, described as follows:


BEGINNING AT A POINT ON THE SOUTH LINE OF SAID SECTION 32, SAID POINT BEING 1869.8 FEET WEST OF THE SOUTHEAST CORNER OF SAID SECTION; THENCE NORTHWESTERLY WITH AN ANGLE OF 21° 14', 200.75 FEET; THENCE SOUTHWESTERLY TO A POINT ON SAID SOUTH LINE OF SECTION 32; 315.35 FEET; WEST OF THE POINT OF BEGINNING; THENCE EAST, ALONG THE SOUTH LINE OF SAID SECTION, TO THE POINT OF BEGINNING.

APN: 263-140-006
THE CITY OF PORTERVILLE
PROPERTY TO BE DEED TO
HEADGATE VELB MITIGATION SITE
RIVERWALK MARKETPLACE SIGN PROGRAM
FOR CITY COUNCIL MEETING OF January 15, 2008
Northwest Corner of Hwy 190 and Jaye Street

APPLICANT: Ennis Commercial Properties, LLC
643 N. Westwood Ave.
Porterville, CA 93257

PROJECT DESCRIPTION: A Comprehensive Sign Program for the Riverwalk Marketplace, in accordance with adopted Conditional Use Permit Requirements and City Zoning Standards.

SIZE OF PROPERTY: 80 acres

GENERAL PLAN CLASSIFICATION: General Commercial

ZONING CLASSIFICATION: P-D/C-2 (General Commercial with a Planned Development Overlay)

STAFF RECOMMENDATION: Approval of Proposed Sign Program

PROJECT DESCRIPTION/ANALYSIS:

The proposed sign program has been prepared by the applicant to create design standards for future business sign construction at the project site. The sign program is intended to be an implementation tool to ensure that all proposed signage, both initially and in the future, conforms to the established conditions of approval for the shopping center, the zoning ordinance, is architecturally incorporated into the development and is well located.

The attached program contains eight (8) 10 foot-high monument signs located throughout the shopping center, with multiple tenant spaces on each sign. There is one 34 foot-tall center identification sign proposed at the corner of Jaye Street and Vandalia Avenue. Also, there is one 40 foot-tall center identification sign at the southwest corner of the site, intended to serve tenants from both Riverwalk Phase 1 and Phase 2 (in the event Phase 2 is someday approved). It should be clearly noted that this reference to Phase 2, and the reference to Walmart contained in the sign program, in no way constitutes any type of approval for Phase 2 (or Walmart). The reference to Phase 2 (and Walmart) in this staff report and proposed
plan is merely to accommodate co-location of signage, should Phase 2 (or Walmart) be approved.

Each sign has been designed with a Spanish/Mediterranean architectural style, which includes tile roofs, stucco exteriors and stone veneer bases. Landscaping is proposed at the base of each monument sign. This design is consistent with the shopping center’s proposed buildings.

The sign plan also includes design regulations for wall mounted signs on the proposed buildings to ensure that all signage be done in a scale that will both be effective in advertising businesses and keep the signs in proper scale with the size of the buildings.

The size, appearance, and location of each sign have been considered in order to achieve the best possible scale, and ensure the effectiveness of advertising efforts. In general, the sign program is more restrictive in maximum sign numbers, size, and height than the zoning ordinance, with the exception of the center identification signs. This is done in order to meet the needs of the property owner in dealing with tenants, and to ensure the proper scale of the signage going in.

The following table contains a comparison of the proposed sign program with the Zoning Ordinance:

<table>
<thead>
<tr>
<th>Development Standard</th>
<th>Proposed Sign Plan</th>
<th>Zoning Ordinance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of Monument Signs</td>
<td>10</td>
<td>17</td>
</tr>
<tr>
<td>Max. Monument Sign Height</td>
<td>10’</td>
<td>30’</td>
</tr>
<tr>
<td>Max. Monument Sign Area</td>
<td>Conditioned to match Zoning</td>
<td>Included in total area</td>
</tr>
<tr>
<td></td>
<td>Ordinance Req.</td>
<td></td>
</tr>
<tr>
<td>Number of Center Identification Signs</td>
<td>2</td>
<td>2 (One per street frontage)</td>
</tr>
<tr>
<td>Max. Center Identification Sign Height</td>
<td>40’, 34’</td>
<td>35’</td>
</tr>
<tr>
<td>Max. Center Identification Sign Area</td>
<td>30 sq. ft. per 100’ of frontage or</td>
<td>231 sq. ft. and 164 sq. ft.</td>
</tr>
<tr>
<td></td>
<td>320 sq. ft. each.</td>
<td></td>
</tr>
<tr>
<td>Number of Wall Mounted Signs</td>
<td>Conditioned to match Zoning</td>
<td>4 per business face</td>
</tr>
<tr>
<td></td>
<td>Ordinance Req.</td>
<td></td>
</tr>
<tr>
<td>Max. Wall Mounted Sign Height</td>
<td>Conditioned to match Zoning</td>
<td>Not to extend above roofline</td>
</tr>
<tr>
<td></td>
<td>Ordinance Req.</td>
<td>of building.</td>
</tr>
<tr>
<td>Max. Wall Mounted Sign Area</td>
<td>Conditioned to match Zoning</td>
<td>15% of total business face</td>
</tr>
<tr>
<td></td>
<td>Ordinance Req.</td>
<td>area not to exceed 40 sq. ft.</td>
</tr>
</tbody>
</table>

The proposed sign program includes references that it be required to meet city zoning standards for sign size, and placement and that a sign permit is required prior to approval of any sign on the property.

The 40 foot-high center identification sign does exceed the standard height maximum contained within the Zoning Ordinance by five feet. However, staff recommends approval of this height based upon the following reasons:

1. The adjacent highway is large in scale (width etc.), thus minimizing the impact of a
large sign.

2. Vehicles tend to travel at high speeds on the adjacent highway, and thus may benefit from a taller sign than would otherwise be allowed.

3. There is a grade separated intersection along the highway to the west that may obscure signage to some degree for vehicles approaching the center from the west.

4. The shopping center taken as a whole is large in scale and the proposed sign does not appear to dwarf smaller buildings or appear out of scale.

5. The proposed sign is not adjacent to residential or other sensitive uses and is not expected to cause neighborhood compatibility issues.

STAFF RECOMMENDATION:

Staff recommends that the City Council, by resolution, approve the attached Sign Program.

ATTACHMENTS:

1. Riverwalk Marketplace Draft Sign Program
2. Draft Resolution

[Signature]
Project Planner

[Date: 11/27/07]
Riverwalk Marketplace

Draft Sign Program  (In for final review with the City of Porterville)
November 7, 2007

Table of Contents

ATTACHMENT
ITEM NO. 1
Sign Program Overview

The proposed sign program for the Riverwalk Marketplace project consists of the following:

- Sign type and location through the Shopping Center (See Exhibit A)
  - Eight (8) 10’ – 0” Multi Tenant Monument Signs Double Sided
  - One (1) 34’ – 0” Multi Tenant Monument Sign Double Sided
  - One (1) 40’ – 0” Multi Tenant Pylon Sign Double Sided
  - One 1(10) 10’ – 0” Single Tenant Monument Sign Double Sided

- Eight (8) 10’ – 0” Multi-Tenant Monument Sign Specs (See Exhibit B)

- One (1) 34’ – 0” Multi-Tenant Monument Sign Specs (See Exhibit C)

- One (1) 40’- 0” Multi-Tenant Pylon Sign Specs (See Exhibit D)

- Building Mounted Sign Criteria (See Exhibit E)

- Lowe’s Prototypical Signage (See Exhibit F)

Sign Placement

Position of sign panels for any given tenant will be based on the amount of square footage that is leased by each tenant and at the discretion of the Landlord. Tenants with the largest square footage nearest their applicable sign (and with the approval of the Landlord) will have the higher placement of their panel on the sign.

Other than the noted signs above, no other signs will be allowed on the projects unless approved by the City of Porterville and the Landlord.
10' – 0" Monument Sign Specs

Exhibit B – Eight (8) 10' – 0" Multi-Tenant Monument Signs will be located throughout the Shopping Center. Tenants with the largest square footage nearest their applicable sign (and with the approval of the Landlord) will have the higher placement of their panel on the sign.

**DIAGRAM 10' MULTI-TENANT MONUMENT ELEVATION**

- Tile roof to match building
- Us Tile El Camino Blend
- Wood fascia PT-4
- Fabricated Aluminum painted
  - PT-5 with applied first surface vinyl or digitally printed logo graphic.
- Fabricated Aluminum tenant cabinet with flat 125° Alum.
  - Individual tenant faces painted alternate colors, PT-6 and PT-2 applied first surface vinyl copy.
- Fabricated Aluminum accent painted PT-4, Satin finish.
- Masonry base, by others
  - Eldorado Stone Veneer
  - Veneto Field-Ledge, flush
  - Grout finish
- **Exterior light fixture to be determined.**

**Paint Color Specifications**

- Matthews Acrylic Polyurethane to Match ICI colors listed:
  - PT-1: Mississippi Moon #10YY 55/469 A0625
  - PT-2: Eternal Reign #10YY 75/084 A0660
  - PT-3: Deeper Tan #10YY 85/163 A0663
  - PT-4: Burlap Gold #10YY 23/261 A4763
  - PT-5: Light Topaz #10YY 58/226 A0647
  - PT-6: Milk & Honey #10YY 69/130 A0653
  - PT-7: Desert Valley #10YY 52/207 A0767
  - PT-8: Mayan Neutral #10YY 63/362 A0654
  - PT-9: Sable Sands #10YY 38/225 A0749
34' – 0" Pylon Sign Specs

Exhibit C – Interim Signage (Until Wal-Mart opens for business) This version of the 34 Ft Pylon sign will be in place until Wal-Mart Opens for Business. The Pylon sign will be reserved primarily for the Anchor and Jr Anchor Tenants. However, until Wal-Mart opens for business, some none Anchor or Jr. Anchor tenants may be granted the approval at the sole discretion of the Landlord to be placed on the Pylon. Lowe’s font size must be at least 25% larger than that of any other Tenant on the Pylon.

D/F Pylon P2-a ELEVATION

SEE DRAWING P2-b FOR END VIEW AND COLOR SPECIFICATIONS.
Exhibit C – Final Signage (Once Wal-Mart opens for business) – This version of the 34 Ft Pylon sign will be in place once Wal-Mart Opens for Business. The Pylon sign will be reserved for the Anchor and Jr Anchor Tenants only. Lowe's and Wal-Mart's font size must be at least 25% larger than that of any other Tenant on the Pylon.
40' – 0" Pylon Sign Specs

Exhibit D Interim Signage (Until Wal-Mart opens for business) – This version of the 40 Ft Pylon sign will be in place until Wal-Mart Opens for Business. The Pylon sign will be reserved primarily for the Anchor and Jr Anchor Tenants. However, until Wal-Mart opens for business, some none Anchor or Jr. Anchor tenants may be granted the approval at the sole discretion of the Landlord to be placed on the Pylon. Lowe's font size must be at least 25% larger than that of any other Tenant on the Pylon.
PAINT COLOR SPECIFICATIONS
Matthews Acrylic Polyurethane to Match ICI colors listed:

PT - 1  Mississippi Moon #10YY 50/469 A0625
PT - 2  Eternal Beige #10YY 75/064 A0660
PT - 3  Dapper Tan #10YY 65/163 A0663
PT - 4  Burlap Gold #10YY 23/261 A763
PT - 5  Light Topaz #10YY 58/295 A0647
PT - 6  Milk & Honey #10YY 69/130 A0653
PT - 7  Desert Valley #10YY 52/207 A0767
PT - 8  Mayan Neutral #10YY 63/162 A0654
PT - 9  Sable Sands #10YY 38/225 A0740
Exhibit D Final Signage (Once Wal-Mart opens for business) — This version of the 40 Ft Pylon sign will be in place once Wal-Mart Opens for Business. The Pylon sign will be reserved for the Anchor and Jr Anchor Tenants only. Lowe’s and Wal-Mart’s font size must be at least 25% larger than that of any other Tenant on the Pylon.
Building Mounted and Other Sign Criteria

Exhibit E

APPROVALS
1. Sign layouts must be approved by the Landlord and the City of Porterville, prior to fabrication. Both the tenant's and landlord's signature will need to be present on all sign permit applications.
2. Permits must be obtained from City of Porterville by the sign manufacturer/installer prior to installation. Fabrication prior to City approval is a risk.
3. The Landlord reserves the right to remove a tenant sign at the tenant's expense if these specifications are not followed.

SIZE
1. Signs shall not exceed the maximum lengths allowed by jurisdictional codes. Or as defined by landlord, whichever is more restrictive.
2. The height of individual letters shall be no smaller than 12 inches.
3. The depth of individual letters shall be no less than 5 inches and no greater than 12”.
4. No sign shall exceed 80% of tenant's storefront lease area.
5a. Retail buildings housing multiple tenants – Each tenant may have a total aggregate sign area based on the formula of two (2) square feet per lineal foot of leased storefront which houses the Main Entrance into tenant space. This allowance may be divided into signs on multiple walls occupied by the tenant. Those backing up to Springville Avenue may have no signage on the north elevation facing residentially zoned area except for non-illuminated door-mounted store identification plaque of 6"x18" or smaller.
5b. Freestanding Single tenant buildings – Each tenant may have a total aggregate sign area based on the formula of three (3) square feet per lineal foot of leased storefront which houses the Main Entrance into tenant space. This allowance may be divided into signs on multiple walls occupied by the tenant. Those backing up to Springville Avenue may have no signage on the north elevation facing residentially zoned area except for non-illuminated door-mounted store identification plaque of 6"x18" or smaller.

TYPE
1. Sign cabinets or raceways are not permitted (cabinets for registered logos excepted).
2. Signs must be individual, surface mounted channel letters on front fascia of the facade, with remote transformers mounted behind facade.
3. Channel letters shall have painted black returns with black trim cap, white faces, and white neon.
4. All letters and symbols must be illuminated, and have a minimum of two rows of neon.
5. Only one line of copy will be permitted unless otherwise approved by Landlord.
6. Letters to be powered by 30ma transformers. PK housings used through wall with all wiring concealed in Liquidlite Greenfield.
7. All hardware must be "rust proof".
8. Signs must be properly permitted with the City of Porterville.
9. All signs and components must be UL approved and labeled.
10. Tenant may choose their own typestyle. Final approval will be at Landlord's discretion.

PLACEMENT
1. All signs must be centered in lease space relative to architectural features.
2. All signs must be placed upon vertical facade and may not protrude above the facade.
3. No signage permitted above lower edge of the roofline.
INSTALLATION
1. All openings made in the fascia must be caulked and sealed by the installer.
2. All seams in the exposed portion of the sign must be caulked and sealed.
3. All tenant signs will be serviced from the individual tenant electric panels. All signs will be illuminated at times controlled by the tenant's photocell.

OTHER TENANT CRITERIA
1. All Tenants are required to purchase and install their own signs and pay all costs for installation and any electrical service connections (to the Tenant's individually metered service) as required. The storefront and/or blade signage must be installed on or before Tenant opens for business in Tenant space.

2. After first acquiring Owner/Landlord approvals, all Tenants shall be responsible for applying for and acquiring all permits prior to installation.

3. All Tenants shall be responsible for removal of its signs upon termination of lease. Damaged or otherwise altered building elements shall be returned to the original condition and all penetrations appurtenant to the Tenant's sign installation shall be repaired by the Tenant to the satisfaction of the Landlord/Owner within 30 days. If a sign is damaged by a natural event, such as wind, an engineer certified letter is required. This requirement applies to both ground and fascia signs.

4. No tenant shall erect, install, paint or affix any signs, posters, cards/banners or other advertising medium to upon or above the exterior of the premises of the building, nor on the interior or exterior of the premises of the building, nor on the interior or exterior of the glass surface of the windows and doors, except as stated herein. Tenant shall be held liable and shall bear all costs for removal and/or correction of sign installation and damage to building by signs that do not conform to the Comprehensive Sign Plan or those signs required to be removed by termination of lease. The Landlord/Owner reserves the right to have all non-conforming, non-permitted, non-approved signs by Landlord/Owner removed regardless of state of erection, by Landlords/Owner's means at sole expense of the tenant.

5. Sign fabrication and installation shall comply with any applicable Building Codes, and the National Electrical Code, and all internal and external wiring, lighting, and other electrical devices shall bear the U.L. symbol. It is the Tenant's responsibility to verify that its sign and installation are in accordance with these requirements and have the Jurisdiction's approval.

6. Tenant is responsible for maintaining its sign in a good state of repair including prompt replacement of burned out lighting or damaged components. Tenant has 24 hours to initiate repairs and 48 hours to make repairs after being notified in writing by Landlord/Owner.

7. All sign fabrication work shall be of excellent quality. All logo images and type styles shall be accurately reproduced. Lettering that approximates type styles shall not be accepted. The Tenant reserves the right to reject any fabrication work deemed to be below standard.

8. Signs must be made of durable rust-inhibited materials that are appropriate and complementary to the building.

9. All formed metal, such as letter forms, shall be fabricated using full-weld construction.
10. All ferrous and non-ferrous metals shall be separated with non-conductive gaskets to prevent electrolysis. In addition to gaskets, stainless steel fasteners shall be used to secure ferrous to non-ferrous metals.

11. Threaded rod or anchor bolts shall be used to mount sign letters which are spaced out from background panel. Angle clips attached to letter sides will not be permitted.

12. Paint colors and finishes must be reviewed and approved by the Tenant. Color coating shall exactly match the color(s) specified on the approved plans.

13. Finished surfaces of metal shall be free from oil-canning and warping. All sign finishes shall be free of dust, orange peel, drips, and runs and shall have a uniform surface conforming to the highest standards of the industry.

14. Reverse channel letters shall be pinned 2” off building fascia. Signs shall have a clear polycarbonate backing and p.k. housings shall be mounted flush to surface of building.

15. All hardware and neon tube supports inside open channel letters shall be painted to match interior letter color. Neon tubing shall be sufficient to make letters read “solid” and shall be installed so that top surface of neon is flush with front edges of open channel. Exposed tubing is prohibited.

16. All lighting must match the exact specifications of the approved working drawings. Surface brightness of all illuminated materials shall be consistent in all letters and components of the sign. Light leaks will not be permitted.

17. All conduit, raceways, crossovers, wiring, ballast boxes, transformers and other equipment necessary for sign connection shall be concealed.

18. All penetrations into building wall, where required, shall be sealed and waterproofed. Color and finish must match existing wall.

19. Signs painted directly on a wall will not be permitted.

20. There shall be no signs that are rotating, revolving, flashing, flickering, moving or audible.

21. No sign shall project above or below the allowable sign area

22. No signs will be allowed that constitute a Traffic Hazard: Any building sign which simulates or imitates in size, color, lettering, design of any traffic sign or signal, or which makes use of the words “STOP”, “LOOK”, “DANGER” or any words or phrases, symbols or characters in such a manner as to interfere with, mislead or confuse traffic.

23. Signs in close proximity to Utility Lines are prohibited, as prescribed by the laws of the jurisdiction.

24. Advertising or promotional signs on parked vehicles are prohibited. This includes signs on or affixed to trucks, automobiles, trailers or other vehicles which advertise, which are not related to the vehicle’s lawful activity. This provision does not apply to service and delivery vehicles of Tenants when engaged in regular business activities (i.e. trucks making deliveries to businesses with the Center).
25. Billboard or Off-Premise business signs are prohibited. No sign shall be permitted which directs attention to any business, profession, service entertainment, product or activity located on any premises other than the premises where the sign is located. Billboards are defined as follows:
A board, panel, or tablet used for the display of posters, printed or painted advertising matter, either illuminated or non-illuminated, that directs attention to goods, merchandise, entertainment, or services offered elsewhere than the premises where the sign is located.

26. Tenants with outdoor seating or dining will be allowed to have umbrellas with the tenant logo affixed to them, subject to Landlord/Owner approval of size, color, quantity and placement.

27. The use of a permanent promotional signs is prohibited, including, but not limited to, sales, specials, discounts, etc. signs.

28. The temporary use of sale signs is limited to a thirty (30) day period and is restricted to signs affixed to the interior of windows which do not occupy more than twenty percent (20%) of the window area. These signs are also permitted a total of not more than ninety (90) days per calendar year. This sign will not require approval by the Planning Department.

29. Temporary signs, not greater than thirty-two (32) square feet, may be permitted (i.e. for announcing openings and re-openings after remodels) subject to Landlord/Owner approval. These signs are limited to thirty (30) days per calendar year.

30. The Landlord/Owner reserves the right to hire an independent electrical engineer at the Tenant's sole expense to inspect the installation of all Tenants' signage and to require Tenant to have any discrepancies and/or code violations corrected at the Tenant's expense.

31. No illuminated exposed tubing is permitted on the exterior of the building, including signs, or in the interior of the storefront to highlight the glazing system.

32. General Notice signs, at the City of Porterville’s request, may be placed throughout the Shopping Center prohibiting activities inappropriate for the Shopping Center. As an example, display of vehicles for sale will be prohibited and vehicles will be towed at owner's expense.
Lowe's Proposed Signage for Porterville

Exhibit F
RESOLUTION NO.______

A RESOLUTION OF THE PORTERVILLE CITY COUNCIL APPROVING A COMPREHENSIVE SIGN PROGRAM FOR THE RIVERWALK MARKETPLACE, PHASE 1, A 40± ACRE COMMERCIAL CENTER WITHIN THE VIEJO ROBLES PLANNED DEVELOPMENT, GENERALLY LOCATED AT THE NORTHWEST CORNER OF JAYE STREET AND STATE ROUTE 190

WHEREAS: The Porterville City Council, at its regularly scheduled meeting of January 15, 2008, conducted a public hearing to consider the approval of a comprehensive sign program for the Riverwalk Marketplace Commercial Center generally located at the northwest corner of Jaye Street and State Route 190; and

WHEREAS: On August 1, 2006 the City Council adopted Resolution 101-2006 which incorporated findings of fact and a statement of overriding certifying the Final EIR for the Riverwalk Marketplace Shopping Center; and

WHEREAS: On August 1, 2006 the City Council continued Conditional Use Permit 4-2006 to August 15, 2006 to allow for the submittal of additional information by the applicant; and

WHEREAS: On August 15, 2006 the City Council continued Conditional Use Permit 4-2006 to August 17, 2006 to allow for the submittal of additional information by the applicant; and

WHEREAS: On August 17, 2007 the City Council directed staff to bring the proposed sign program back to the City Council for approval; and

WHEREAS: The City Council received testimony from all interested parties relative to said Comprehensive Sign Program; and

WHEREAS: The City Council made the following findings:

1. That the proposed project is consistent with the General Plan, zoning and land use for the site. The General Plan designates the site as General Commercial as supported by the P-D (Planned Development) Zoning. The proposed adoption of a specific plan within the Viejo Robles Planned Development, the proposed indoor sale of building materials in a C-2 Zone, and the proposed on-sale of alcohol in a restaurant with a separate bar area is allowed subject to the approval of a Conditional Use Permit.

3. With the exception of adjustments in the sign program to account for the unique features of the center, including regional orientation, orientation to State Route 190, divided site (Vandalia Avenue bisects site), scale of development, and surrounding uses the development complies with pertinent codes and regulations. The planned development designation allows for the City to address uniqueness of the particular development.

ATTACHMENT
ITEM NO. 2
NOW, THEREFORE, BE IT RESOLVED: That the City Council of the City of Porterville does hereby approve the Comprehensive Sign Program, attached hereto and incorporated by reference, subject to the following conditions:

1. A comprehensive sign program has been developed and is attached as Attachment 1. Signage and advertising structures in the shopping center shall conform to the approved sign program. The Community Development Director may approve minor revisions to the sign program as it pertains to specific building architecture.

2. Signs require a separate permit.

3. No sign shall be permitted that does not pertain directly to an approved business, service, or activity conducted on the premises, or within the development (if a detached sign) except as may be provided for in Section 2011 and Section 2012 of the City of Porterville Zoning Ordinance or unless exempted by Section 2006 of the City of Porterville Zoning Ordinance.

4. The Developer/Applicant shall submit evidence of coordination with the Caltrans Traffic Operations Office of Signs, Markings, and Permits to obtain appropriate permissions for signs greater than thirty (30) feet within five hundred (500) feet of the State right of way.

5. Signs shall be posted within the parking areas prohibiting the display of vehicles for sale.

6. No outdoor advertising of alcoholic beverages is allowed.

7. The developer/applicant shall comply with all mitigation measures adopted as a component of the certification of the Final Environmental Impact Report for this project. Prior to the issuance of building permits, the developer/applicant shall submit a signed document committing to comply with the adopted mitigation measures. Where appropriate, consulting specialists must submit letters confirming the adequacy of the proposed plans to meet the mitigation measures as defined.

_____________________________
Cameron Hamilton, Mayor

ATTEST:

John Longley, City Clerk

By: ____________________________
Patrice Hildreth, Acting Chief Deputy City Clerk
SUBJECT: MURRY PARK POND WATER QUALITY

SOURCE: PARKS AND LEISURE SERVICES DEPARTMENT

COMMENT: The City Council requested information on the water quality for the pond at Murry Park. A water sample was obtained and analyzed. Since a standard of water quality doesn't exist specifically for pond water the laboratory utilized drinking water standards as the basis for comparison of quality. While the results indicate that the water quality is good for sustaining fish life, the level of bacteria content within the water far exceeds acceptable drinking water levels. The pond is the habitat of many water fowl and excrement from this wildlife is the most likely major contributing bacteria source.

The Parks and Leisure Services Commission has reviewed the water quality test results and has approved the placement of signs. Previous signs have been more advisory that bathing or swimming was not permitted. Staff had suggested that a message such as, 'pond water unsafe, contains bacteria' could be posted. The Commission wanted to be more informative with the signs without being overly alarming. They have requested signs indicating that the pond water does not meet drinking water safety regulations.

Staff offers the following discussion in the event that the Council wishes to explore going beyond the placement of signs.

Aeration is a very good treatment process to deplete bacteria should reduction of the bacteria levels be desired. The test results indicate a fair level of dissolved oxygen, but the level is not high enough to fully deplete the continuous supply of water fowl contributions. Very little mechanical aeration is currently provided in the subject pond, so the dissolved oxygen levels are largely a factor of the ratio of large surface area to water volume. Removal of the large quantity of water fowl would also likely result in significant reduction of bacteria levels, while the elimination of food source for the water fowl would diminish both fowl population and bacteria concentrations.

The Murry Park Master Plan envisions a three pronged approach to improving the water quality in the subject pond. The first step would be the reduction in water fowl habitat to discourage and reduce the water fowl population. It is envisioned that this would result in an improvement project to expand the pond surface area, thus accomplishing some enhancement in natural aeration. The third step would be the installation of modern mechanical air dispersion equipment. The cost for the pond improvements is generally estimated in the range of $600,000 to $750,000.

Signed: Director

Appropriated/Funded

City Manager

ITEM NO.: 16
RECOMMENDATION: Consider the water quality information along with the Parks & Leisure Services Commission authorized sign wording, and provide to staff any further necessary direction.

ATTACHMENTS: Water Quality Report
Sign wording examples
MEMORANDUM

DATE: 11/29/07

TO: Bryan Styles

FROM: Michael Cotton

SUBJECT: Water Sample from Murry Park

On November 26, 2007 a water sample was collected from the east side of the Murry Park pond and analyzed for Total and Fecal Coliforms as well as turbidity, pH, EC, & DO. The sample was relatively clear and water was flowing through the pond at a slow trickle. There were a lot of ducks on the pond at the time of the sample.

The drinking water standards are listed for reference only. The high total Coliform count is typical of surface water and is what one would expect from a slow flowing pond with a lot of water fowl using the pond. The high dissolved oxygen content indicates a healthy environment for fish.

Sample results:

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City of Porterville Laboratory

Analysis Results

To: Richard Mulvihill
City of Porterville
555 North Prospect Ave.
Porterville CA, 93257

Project: Murry Park Pond Water

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Sample Date: 11/28/2007
Report Date: 11/29/2007
Analyst: MC
Sampler: J. VILLARD

ELAP Certificate # 1653
City of Porterville Laboratory, 291 N. Main St., Porterville, CA 93258 Phone (559) 782 7510
Pond water does not meet drinking water safety regulations.

El agua de estanque no satisface con las reglas del requisito de agua para tomar.

EXAMPLE HISTORICAL MURRY PARK POND SIGNAGE

No Bathing or Swimming. No bañarse ó nadir

EXAMPLE STAFF SUGGESTED HAZARD INFORMATION SIGN WORDING

CAUTION: Pond water unsafe, contains bacteria.
PRECAUCIÓN: El agua del estanque contiene bacteria.
SUBJECT: REVIEW AND APPROVE ‘WALL OF FAME’ NOMINATIONS

SOURCE: PARKS AND LEISURE SERVICES DEPARTMENT

COMMENT: Annually, at the first regular meeting in January, the City Council is to receive and review nominations for 'Wall of Fame' honorees. The 'Wall of Fame' is along the southerly wall of the main hallway within the Heritage Community Center, the home of the Porterville City Youth Center. Nominations are submitted by members of the City Council and identify a sponsor that is to be responsible for providing the photograph, picture frame and name plate for placement on the wall. The nominations that the City Council approves retain the designation and display honor for a period of 5 years.

This year the only nomination submitted to staff is for honoring Edward B. “Ted” Cornell. The nomination accompanies this report.

RECOMMENDATION: Review the 'Wall of Fame' nomination and approve the designation of Edward B. “Ted” Cornell.

ATTACHMENTS: Nomination
HERITAGE COMMUNITY CENTER "WALL OF FAME"
NOMINATION/PLACEMENT REQUEST

Based on a history of service to the Community and in recognition of significant efforts on behalf of the residents of Porterville, I/we request the Porterville City Council posthumously honor the person listed below with inclusion on the City's Wall of Fame located at the Heritage Community Center.

All nominations will be considered and Wall of Fame placements made in accordance with the Placement Procedure stated on the reverse.

Name of Nominee: EDWARD B. "TED" CORNELL

Description of Nominee's Community Involvement/Service Activities:

Captain in the U.S. Army and awarded a Bronze Star for service at the Battle of the Bulge. A local elected official, serving on various water boards, the Kern Community College District Board of Trustees, and Porterville Union High School District Board of Trustees. Also a member of the Board of Directors for Finance & Thrift.
Graduate of Porterville High School. MBA from Stanford and a Paul Harris Fellow in Rotary Club. Past Chamber of Commerce President.

Sponsor's Name(s): Laurie Pugh

Telephone: 784-4804

Address: PO Box 11

City/State/Zip: Porterville, CA 93258-0011

Relationship to Nominee: Step-daughter

Nomination Submitted by:

[Signature]

Mayor/City Council Member Signature

Date

Jan 10 08 10:55a Laurie Pugh 5557646267 p.2
HERITAGE COMMUNITY CENTER “WALL OF FAME”
PLACEMENT PROCEDURE

The “Wall of Fame” is a portion of the hallway wall within the Porterville Heritage Center, located at 256 E. Orange Avenue. Those who are honored on the “Wall of Fame” are posthumously recognized for their significant efforts and service to the Porterville community. The City Council will determine the appropriateness of each nomination for placement on the “Wall of Fame”. Recognition shall consist of a framed five by seven inch portrait and bronze engraved name plate of common and similar style to the “Mayor’s Wall of Honor” within City Hall.

Only the Mayor and members of the City Council may submit nominations for this honor. The nomination shall be in writing to the City Clerk stating the type and duration of services the nominated individual provided to the Porterville community prior to their passing. A nomination shall identify a sponsoring contact person willing to assume responsibility for supplying the framed portrait and nameplate, and who shall be responsible for all cost of such. All nominations will be retained by the City Clerk and placed on the agenda for consideration by the City Council at their first regular meeting held in each calendar year.

The City Council shall make the sole determination regarding the worthiness of the nominated individual’s service to the heritage of the community in regards to the honor of being included for placement on the “Wall of Fame”. The honor of recognition on the “Wall of Fame” shall be for a period of five (5) years, at which time the portrait will be returned to the sponsoring contact person. The City Council may at its discretion, consider at any time the removal of the honor and return of the portrait to the sponsor.
CITY COUNCIL AGENDA  

January 15, 2008

SUBJECT: Approval to Sign Disclosure Regarding Real Estate Agency Relationships for Fair Grounds Property

SOURCE: City Manager

The City’s representative for the potential sale of the Fair Grounds property to the State of California for the development of a new Court facility has provided the City with a document regarding disclosure in the real estate relationship.

The disclosure is based on the relationship where the real estate broker serves as both a buyer and seller agent. The disclosure recognizes that the city is aware of this relationship and defines fiduciary duty of utmost care, integrity, honesty and loyalty in dealings with either the seller and the buyer. The disclosure specifically states that in representing both the seller and buyer, the agent may not, without the express permission of the respective party, disclose to the other party that the seller will accept a price less than the listing price or that the buyer will pay a price greater than the price offered.

The City Attorney is reviewing the document and will provide specific information to the Council if she finds any area requires reform or clarification.

RECOMMENDATION: Authorize and direct the Mayor and City Clerk to sign the Disclosure Regarding Real Estate Agency Relationships with Melson Realty, Inc by Vickie Hildreth.
DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIPS
(As required by the Civil Code)
(C.A.R. Form AD, Revised 4/06)

When you enter into a discussion with a real estate agent regarding a real estate transaction, you should from the outset understand what type of agency relationship or representation you wish to have with the agent in the transaction.

SELLER’S AGENT
A Seller’s agent under a listing agreement with the Seller acts as the agent for the Seller only. A Seller’s agent or a subagent of that agent has the following affirmative obligations:

To the Seller:

A Fiduciary duty of utmost care, integrity, honesty and loyalty in dealings with the Seller.

To the Buyer and the Seller:

(a) Diligent exercise of reasonable skill and care in performance of the agent’s duties.
(b) A duty of honest and fair dealing and good faith.
(c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties.

An agent is not obligated to reveal to either party any confidential information obtained from the other party that does not involve the affirmative duties set forth above.

BUYER’S AGENT
A selling agent can, with a Buyer’s consent, agree to act as agent for the Buyer only. In these situations, the agent is not the Seller’s agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Seller. An agent acting only for a Buyer has the following affirmative obligations:

To the Buyer:

A fiduciary duty of utmost care, integrity, honesty and loyalty in dealings with the Buyer.

To the Buyer and the Seller:

(a) Diligent exercise of reasonable skill and care in performance of the agent’s duties.
(b) A duty of honest and fair dealing and good faith.
(c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties.

An agent is not obligated to reveal to either party any confidential information obtained from the other party that does not involve the affirmative duties set forth above.

AGENT REPRESENTING BOTH SELLER AND BUYER
A real estate agent, either acting directly or through one or more associate licensees, can legally be the agent of both the Seller and the Buyer in a transaction, but only with the knowledge and consent of both the Seller and the Buyer.

In a dual agency situation, the agent has the following affirmative obligations to both the Seller and the Buyer:

(a) A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either the Seller or the Buyer.
(b) Other duties to the Seller and the Buyer as stated above in their respective sections.

In representing both Seller and Buyer, the agent may not, without the express permission of the respective party, disclose to the other party that the Seller will accept a price less than the listing price or that the Buyer will pay a price greater than the price offered.

The above duties of the agent in a real estate transaction do not relieve a Seller or Buyer from the responsibility to protect his or her own interests. You should carefully read all agreements to assure that they adequately express your understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional.

Throughout your real property transaction you may receive more than one disclosure form, depending upon the number of agents assisting in the transaction. The law requires each agent with whom you have more than a casual relationship to present you with this disclosure form. You should read its contents each time it is presented to you, considering the relationship between you and the real estate agent in your specific transaction.

This disclosure form includes the provisions of Sections 2079.13 to 2079.24, inclusive, of the Civil Code set forth on page 2. Read it carefully.

I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS DISCLOSURE AND THE PORTIONS OF THE CIVIL CODE PRINTED ON THE BACK (OR A SEPARATE PAGE).

☐ BUYER ☒ SELLER Date ___________________________ Time ________ AM  PM

☐ BUYER ☒ SELLER Date ___________________________ Time ________ AM  PM

Agent ___________________________ DRE Lic. # ___________________________

By ___________________________ DRE Lic. # 00920910 Date December 26, 2007

Vickie Hildreth, Broker/Assoc.

THIS FORM SHALL BE PROVIDED AND ACKNOWLEDGED AS FOLLOWS (Civil Code §2079.14):

• When the listing brokerage company also represents Buyer, the Listing Agent shall have one AD form signed by Seller and one signed by Buyer.

• When Buyer and Seller are represented by different brokerage companies, the Listing Agent shall have one AD form signed by Seller and the Buyer’s Agent shall have one AD form signed by Buyer and one AD form signed by Seller.

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REAL ESTATE BUSINESS SERVICES, INC.
575 South Valley Avenue, Los Angeles, California 90020

Reviewed by ___________ Date ___________
CIVIL CODE SECTIONS 2079.13 THROUGH 2079.24 (2079.16 APPEARS ON THE FRONT)

2079.13 As used in Sections 2079.14 to 2079.24, inclusive, the following terms have the following meanings:
(a) "Agent" means a person acting under provisions of title 9 (commencing with Section 2295) in a real property transaction, and includes a person who is licensed as a broker under Division 4 of Business and Professions Code, and under whose license a listing is executed or an offer to purchase is obtained. (b) "Associate licensee" means a person who is licensed as a real estate broker or salesperson under Chapter 3 (commencing with Section 10130) of Part 1 of Division 4 of the Business and Professions Code and who is either licensed under a broker or has entered into a written contract with a broker to act as the broker's agent in connection with acts requiring a real estate license and to perform under the supervision of the broker. In the capacity of such agent, the responsibility for his or her associate licensees who perform as agents of the agent. When an associate licensee owes a duty to any principal, or to any buyer or seller who is not a principal, in a real property transaction, that duty is equivalent to the duty owed to that party by the broker for whom the associate licensee functions. (c) "Buyer" means a transferee in a real property transaction, and includes a person who executes an offer to purchase real property from a seller through an agent, or who has executed a contract with a seller for the sale of real property without the use of an agent.

2079.14 Agent shall provide the seller and buyer in a real property transaction with a copy of the disclosure form specified in Section 761 in a real property transaction, and includes a listing or an offer to purchase. (a) "Sell," "sale," or "sold" refers to a transaction for the transfer of real property from the seller to the buyer, and includes exchanges of real property between the seller and buyer, transactions for the creation of a real property sales contract within the meaning of Section 2985, and transactions for the creation of a leasehold exceeding one year's duration. (m) "Selling agent" means the transferor in a real property transaction, and includes an owner who lists real property with an agent, whether or not a transfer results, or who receives an offer to purchase real property from which he or she is the owner from an agent on behalf of another. "Selling agent" includes both a vendor and a lessor. (n) "Selling agent" means a listing agent who acts alone, or an agent who acts in cooperation with a listing agent, and who sells or finds and obtains a buyer for the real property, or an agent who locates property for a buyer or who finds a buyer for a property for which no listing exists and presents an offer to purchase to the seller. (o) "Subagent" means an agent to whom an agent delegates agency powers as provided in Article 5 (commencing with Section 2349) of Chapter 1 of Title 9. However, "subagent" does not include an associate licensee who is acting under the supervision of an agent in a real property transaction.

2079.15 In any circumstance in which the seller or buyer refuses to sign an acknowledgement of receipt pursuant to Section 2079.14, the agent, or an associate licensee acting for an agent, shall set forth, sign, and date a written declaration of the facts of the refusal.

2079.17 (a) As soon as practicable, the selling agent shall disclose to the buyer and seller whether the selling agent is acting in the real property transaction exclusively as the buyer's agent, exclusively as the seller's agent, or as a dual agent representing both the buyer and the seller. This relationship shall be confirmed in the contract to purchase and sell real property or in a separate writing executed or acknowledged by the seller, the buyer, and the selling agent prior to or coincident with execution of that contract by the buyer and the seller, respectively. (b) As soon as practicable, the listing agent shall disclose to the seller whether the listing agent is acting in the real property transaction exclusively as the seller's agent, or as a dual agent representing both the buyer and seller. This relationship shall be confirmed in the contract to purchase and sell real property or in a separate writing executed or acknowledged by the seller and the listing agent prior to or coincident with the execution of that contract by the seller.

2079.18 No selling agent in a real property transaction may act as an agent for the buyer only, when the selling agent is also acting as the listing agent in the transaction.

2079.19 The payment of compensation or the obligation to pay compensation to an agent by the seller or buyer is not necessarily determinative of a particular agency relationship between an agent and the seller or buyer. A listing agent and a selling agent may agree to share any compensation or commission paid, or any right to any compensation or commission for which an obligation arises as the result of a real estate transaction, and the terms of any such agreement shall not necessarily be determinative of a particular relationship.

2079.20 Nothing in this article prevents an agent from selecting, as a condition of the agent's employment, a specific form of agency relationship not specifically prohibited by this article if the requirements of Section 2079.14 and Section 2079.17 are complied with.

2079.21 A dual agent shall not disclose to the buyer that the seller is willing to sell the property at a price less than the listing price, without the express written consent of the seller. A dual agent shall not disclose to the seller that the buyer is willing to pay a price greater than the offering price, without the express written consent of the buyer. This section does not alter in any way the duty or responsibility of a dual agent to any principal with respect to confidential information other than price.

2079.22 Nothing in this article precludes a listing agent from also being a selling agent, and the combination of these functions in one agent does not, of itself, make that agent a dual agent.

2079.23 A contract between the principal and agent may be modified or altered to change the agency relationship at any time before the performance of the act which is the object of the agency with the written consent of the parties to the agency relationship.

2079.24 Nothing in this article shall be construed to either diminish the duty of disclosure owed buyers and sellers by agents and their associate licensees, subagents, and employees or to relieve agents and their associate licensees, subagents, and employees from liability for their conduct in connection with acts governed by this article or for any breach of a fiduciary duty or a duty of disclosure.

Reviewed by
Date

DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIPS (AD PAGE 2 OF 2)

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REO HOME OPPORTUNITY
A real estate broker, whether a corporation, partnership or sole proprietorship, ("Broker") may represent more than one buyer or seller provided the Broker has made a disclosure and the principals have given their consent. This multiple representation can occur through an individual licensed as a broker or through different associate licensees acting for the Broker. The associates licensees may be working out of the same or different office locations.

Broker (individually or through its associate licensees) may be working with many prospective buyers at the same time. These prospective buyers may have an interest in, and make offers on, the same properties. Some of these properties may be listed with Broker and some may not. Broker will not limit or restrict any particular buyer from making an offer on any particular property whether or not Broker represents other buyers interested in the same property.

Broker (individually or through its associate licensees) may have listings on many properties at the same time. As a result, Broker will attempt to find buyers for each of those listed properties. Some listed properties may appeal to the same prospective buyers. Some properties may attract more prospective buyers than others. Some of these prospective buyers may be represented by Broker and some may not. Broker will market all listed properties to all prospective buyers whether or not Broker has another or other listed properties that may appeal to the same prospective buyers.

Buyer and Seller understand that Broker may represent more than one buyer or seller and even both buyer and seller on the same transaction.

If Seller is represented by Broker, Seller acknowledges that Broker may represent prospective buyers of Seller’s property and consents to Broker acting as a dual agent for both Seller and Buyer in that transaction.

If Buyer is represented by Broker, Buyer acknowledges that Broker may represent sellers of property that Buyer is interested in acquiring and consents to Broker acting as a dual agent for both Buyer and Seller with regard to that property.

In the event of dual agency, Seller and Buyer agree that: (a) Broker, without the prior written consent of the Buyer, will not disclose to Seller that the Buyer is willing to pay a price greater than the offered price; (b) Broker, without the prior written consent of the Seller, will not disclose to the Buyer that Seller is willing to sell property at a price less than the listing price; and (c) other than as set forth in (a) and (b) above, a Dual Agent is obligated to disclose known facts materially affecting the value or desirability of the property to both parties.

NON CONFIDENTIALITY OF OFFERS: Buyer is advised that Seller or Listing Agent may disclose the existence, terms, or conditions of Buyer’s offer unless all parties and their agent have signed a written confidentiality agreement. Whether any such information is actually disclosed depends on many factors, such as current market conditions, the prevailing practice in the real estate community, the Listing Agent’s marketing strategy and the instructions of the Seller.

Seller and/or Buyer acknowledges reading and understanding this Disclosure and Consent for Representation of More than One Buyer or Seller and agree to the dual agency possibility disclosed.

[X] Seller □ Buyer ____________________________ Date ____________________________

[X] Seller □ Buyer ____________________________ Date ____________________________

Real Estate Broker (Firm) Melson Realty, Inc. ____________________________ Date December 26, 2007

By ____________________________________________________________________________________________

Vickie Hildreth, Broker/Assoc.

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DA 11/06 (PAGE 1 OF 1)

REPRESENTATION OF MORE THAN ONE BUYER OR SELLER (DA PAGE 1 OF 1)

Agent: Vickie Hildreth Phone: (559) 359 - 0416 Fax: (559) 761 - 0490 Prepared using WINforms® software

SOURCE: Administrative Services - Finance Division

COMMENT: Porterville Breakfast Rotary is requesting approval to hold a 5K Cancer Run on Saturday, May 3, 2008, from 5:00 a.m. to 11 a.m. The 5K run will start at Tulsa Street and Putnam Avenue, head south to Olive Avenue, turn west on Olive Avenue, turn north on Crestview Street, then east on Morton Avenue, turn south on Conner Street, and turn east on Putnam to finish at Tulsa Street. No street closures are requested. This application is submitted in accordance with the Community Civic Events Ordinance No. 1326, as amended.

The application has been routed according to the ordinance regulations and reviewed by all of the departments involved. All requirements are listed on the attached Exhibit "A." The application, Exhibit "A," the agreement, request for street usage, and a map showing the streets to be used are attached.

RECOMMENDATION: That Council approve the Community Civic Event Application and Agreement from Porterville Breakfast Rotary, subject to the Restrictions and Requirements contained in application, agreement and exhibit "A" of the Community Civic Event application form.

ATTACHMENT: Community civic event application and agreement, vendor list, request for street, sidewalk and parking lot closure/usage, map, exhibit A, outside amplifier permit.

D.D. Appropriated/Funded C.M. Item No. 19
CITY OF PORTERVILLE
APPLICATION AND AGREEMENT FOR A PERMIT TO HOLD A
COMMUNITY CIVIC EVENT OR OTHER ACTIVITY TO BE HELD ON PUBLIC PROPERTY

Application date: 12-05-2007  Event date: May 3, 2008
Event time: __________________________

Name of Event: Porterville Breakfast Rotary Cancer Run

Sponsoring organization: Porterville Breakfast Rotary PHONE # 781-6617
Address: 122 E. Morton, Porterville, CA 93257

Authorized representative: Jackie Witzel PHONE # 781-4050
Address: 934 W. Scranton, Porterville, CA 93257

Event chairperson: Marty Lalanne PHONE # 781-6617

Location of event (location map must be attached):
Granite Hills High School

Type of event: 5K Run/Walk


City services requested (an (fees associated with these services will be billed separately) N/A

Barricades (quantity): ________  Street sweeping Yes ______ No ______
Police protection Yes ______ No ______  Refuse pickup Yes ______ No ______
Other: ___________________________

Parks facility application required: Yes ______ No ______  Attached _____
Assembly permit required: Yes ______ No ______  Attached _____

STAFF COMMENTS (list special requirements or conditions for event):

Approve    Deny
________    ______ Bus Lic Spvr
________    ______ Pub Works Dir
________    ______ Comm Dev Dir
________    ______ Field Svcs Mgr
________    ______ Fire Chief
________    ______ Parks Dir
________    ______ Police Chief
________    ______ Deputy City Mgr

1 of 4
CITY OF PORTERVILLE
APPLICATION AND AGREEMENT FOR A PERMIT TO HOLD A COMMUNITY CIVIC EVENT OR OTHER ACTIVITY TO BE HELD ON PUBLIC PROPERTY

What constitutes a Community Civic Event?
A non-profit organization wishes to sponsor an event that is open to the community at large and will utilize public property. Most of the time, Community Civic Events require street or sidewalk closures.

Authorization: This permit must be submitted NO LESS THAN 30 days PRIOR to the date of the event in order to obtain City Council approval.

City Code requirements:
- At least 48" must remain clear on sidewalks for pedestrian traffic.
- Do not block any entrance to or exit from buildings.
- Area must be accessible to emergency and safety personnel and vehicles.
- Electrical cords must be approved and installation checked by the Fire Department.

Liability insurance: The sponsoring organization/applicant agrees to provide and keep in force during the term of this permit a policy of liability and property damage insurance against liability for personal injury, including accidental death, as well as liability for property damage which may arise in any way during the term of this permit. The City of Porterville shall be named as additional insured. The amounts of such insurance and any additional requirements are listed in Exhibit "A." This original certificate shall be submitted prior to the event.

Alcohol liability insurance: Organization/Applicant will obtain an alcohol permit if any alcoholic beverages are to be served. The insurance policy shall be endorsed to include full liquor liability in an amount not less than one million dollars ($1,000,000) per occurrence. The City of Porterville shall be named as additional insured against all claims arising out of or in connection with the issuance of this permit or the operation of the permittee, his/her agents or representatives pursuant the permit. Claims-made policies are not acceptable.

Health permit: Organization/Applicant will obtain or ensure that all participants obtain a health permit(s) from the County of Tulare Department of Health if any food is to be served in connection with this Community Civic Event. To contact the Tulare County Environmental Health Department call 559.788.1199, or fax information to, 559.788.1313.

First aid station: Organization/Applicant will establish a first aid station, with clearly posted signs, to provide basic emergency care, such as ice/hot packs, bandages, and compresses.

Agreement: The sponsoring organization/applicant agrees to comply with all provisions of the Community Civic Event Ordinance 1326, as amended, and the terms and conditions set forth by City Council and stated in Exhibit "A." The sponsoring organization/applicant agrees, during the term of this permit, to secure and hold the City free and harmless from all loss, liability, and claims for damages, costs and charges of any kind or character arising out of, relating to, or in any way connected with his/her performance of this permit. Said agreement to hold harmless shall include and extend to any injury to any person or persons, or property of any kind whatsoever and to whomever belonging, including, but not limited to, said organization/applicant, and shall not be liable to the City for any injury to persons or property which may result solely or primarily from the action or non-action of the City or its directors, officers, or employees.

Porterville Breakfast Rotary Club [Signature] 11-30-2007
(Name of organization) (Signature) (Date)
CITY OF PORTERVILLE

VENDOR/PARTICIPANT LIST IN CONNECTION WITH THE APPLICATION AND AGREEMENT FOR A PERMIT TO HOLD A COMMUNITY CIVIC EVENT OR OTHER ACTIVITY TO BE HELD ON PUBLIC PROPERTY

Name of event: Porterville Breakfast Rotary 5K Run/Walk

Sponsoring organization: Porterville Breakfast Rotary

Location: Granite Hills High School

Event date: May 3, 2008

Event time: ____________________________

All vendors are required to complete the business license permit form. List all firms, individuals, organizations, etc., that will engage in selling at or participate in the above-named event. NO PERMIT WILL BE ISSUED WITHOUT THIS INFORMATION. Vendors with no valid City of Porterville business license are required to pay $1 per day to the City, with the exceptions of non-profit organizations. This form should be completed at the time of application, but must be submitted NO LESS THAN ONE week prior to the event.

<table>
<thead>
<tr>
<th>Vendor name</th>
<th>Address/Telephone</th>
<th>Business License required</th>
<th>Type of Activity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Porterville Breakfast Rotary</td>
<td>122 E. Morton, Porterville 781-6617</td>
<td></td>
<td>Running event</td>
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3 of 4
CITY OF PORTERVILLE

REQUEST FOR STREET CLOSURES AND PUBLIC PROPERTY USAGE IN CONNECTION WITH THE APPLICATION AND AGREEMENT FOR A PERMIT TO HOLD A COMMUNITY CIVIC EVENT OR OTHER ACTIVITY TO BE HELD ON PUBLIC PROPERTY

Name of event: Porterville Breakfast Rotary 5K Run

Sponsoring organization: Porterville Breakfast Rotary

Event date: May 3, 2008

Hours: 5 a.m. - 11 a.m.

ATTACH MAP MARKING AREAS TO BE CLOSED OR USED:

<table>
<thead>
<tr>
<th>Street Name</th>
<th>From</th>
<th>To</th>
<th>Activity</th>
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</thead>
<tbody>
<tr>
<td>Putnam Ave.</td>
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<td></td>
<td>5K Run</td>
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<td>Olive Ave.</td>
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<tr>
<td>Crestview Ave.</td>
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<td>Morton Ave.</td>
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<tr>
<td>Conner St.</td>
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</table>

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<tr>
<th>Sidewalks</th>
<th>From</th>
<th>To</th>
<th>Activity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Putnam Ave.</td>
<td></td>
<td></td>
<td>5K Run</td>
</tr>
<tr>
<td>Olive Ave.</td>
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<td>Morton Ave.</td>
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<td>Conner St.</td>
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<tr>
<th>Parking lots and spaces Location</th>
<th>Activity</th>
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<tbody>
<tr>
<td>Granite Hills High School</td>
<td>Participant Parking</td>
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REQUIREMENTS FOR COMMUNITY CIVIC EVENT
PORTERVILLE BREAKFAST ROTARY
CANCER RUN
MAY 3, 2008

Business License Supervisor:
  S. Perkins  No requirements.

Public Works Director:
  B. Rodriguez  Provide general clean-up after event.
  Provide traffic handlers along route.

Community Development Director:
  B. Dunlap  No comments.

Field Services Manager:
  B. Styles  No comments.

Chief of Fire Operations:
  M. G. Garcia  No comments.

Parks and Leisure Services Director:
  J. Perrine  No comments.

Police Chief:
  C. McMillan  Contact Sgt. Blankenship for traffic assistance.

Interim Deputy City Manager:
  J. D. Lollis  See attached "Exhibit A", page 2.
REQUIREMENTS FOR COMMUNITY CIVIC EVENT

Sponsor: Porterville Breakfast Rotary
Event: 5 K Cancer Run
Event Chairman: Marty Lalanne
Location: Granite Hills High School
Date of Event: May 3 2008
Time of Event: 5:00 a.m. to 11:00 a.m.

RISK MANAGEMENT: Conditions of Approval

That the Porterville Breakfast Rotary provide a Certificate of Commercial General Liability Insurance Coverage evidencing coverage of not less than $1,000,000 per occurrence, and having the appropriate Endorsement naming the City of Porterville, its Officers, Employees, Agents and Volunteers as "Additional Insured" against all claims arising from, or in connection with, the Permittee's operation and sponsorship of the aforementioned Community Civic Event.

a. Said Certificate of Insurance shall be an original (fax and xerographic copies not acceptable), the Certificate shall be signed by an agent authorized to bind insurance coverage with the carrier, and the deductible, if any, shall not be greater than $1,000.

b. Said insurance shall be primary to the insurance held by the City of Porterville, be with a company having an A.M. Best Rating of no less than A:VII, and the insurance company must be an "admitted" insurer in the State of California.

Approval of the Community Civic Events Permit by the Porterville City Council pertains only to authorized activities conducted at designated locations within the incorporated area of the City of Porterville, and such approval shall not be construed or interpreted to authorize sponsor utilization of public right-of-ways outside of the jurisdiction of the City of Porterville.
This application must be submitted 10 days prior to the date of the event. A copy of this permit must be at the operating premises of the amplifying equipment for which this registration is issued.

1. Name and home address of the applicant:

   Marty Lalanne                        Phone # 781-6617

   1345 N. Lotas Way, Porterville, CA 93257

2. Address where amplification equipment is to be used:

   Granite Hills High School            Phone # 359-9815

3. Names and addresses of all persons who will use or operate the amplification equipment:

   John Lollis

4. Type of event for which amplification equipment will be used:

   5K Run/Walk

5. Dates and hours of operation of amplification equipment:

   May 3, 2008  6 a.m. - 11 a.m.

6. A general description of the sound amplifying equipment to be used:

   Announcement of run - 8 a.m. - 11 a.m.
I hereby certify that all statements and answers on this registration form are true and correct.

Applicant

Date

Chief of Police

Date

Section 18-14 City Ordinance Outside Amplifiers; permit required.
It shall be unlawful for any person to maintain, operate, connect, or suffer or permit to be maintained, operated, or connected any loud-speaker or sound amplifier in such a manner as to cause any sound to be projected outside of any building or out of doors in any part of the city, without having first procured a permit from the Chief of Police.

Section 18-9 City Ordinance, Radios, record players, etc.
It shall be unlawful for any person within the city to use or operate or cause to be operated or to play any radio, phonograph, juke box, record player, loudspeaker musical instrument, mechanical device, machine, apparatus, or instrument for intensification or amplification of the human voice or any sound or noise in a manner so loud as to be calculated to disturb the peace and good order of the neighborhood or sleep of ordinary persons in nearby residences or so loud as to unreasonably disturb and interfere with the peace and comfort of the occupants of nearby residences.

California Penal Code Section 415
Any person who maliciously and willfully disturbs another person by loud and unreasonable noise, is guilty of a misdemeanor.

THIS OUTSIDE AMPLIFIER PERMIT HAS BEEN APPROVED. HOWEVER, WE URGE YOU TO REMAIN CONSIDERATE OF THE GENERAL PEACE AND ORDER OF THE NEIGHBORS IN THE AREA. FAILURE TO ABIDE BY THESE REGULATIONS CAN RESULT IN REVOCATION OF THE PERMIT.

cc: ____________________________

______________________________

______________________________

3/27/01
**ACORD Certificate of Liability Insurance**

**Producer**
LOCKTON COMPANIES, LLC
525 W. Monroe, Suite 600
CHICAGO IL 60606
(312) 686-5600

**Insured**
All Active US Rotary Clubs & Districts
Attn: Risk Management Department
1500 Sherman Ave.
 Evanston IL 60201-3698

**Insurers Affording Coverage**

| Insurer A: | American Home Assurance Company |
| Insurer B: | Illinois National Insurance Company |
| Insurer C: | |
| Insurer D: | |
| Insurer E: | |

**Coverages**

The policies of insurance listed below have been issued to the insured named above for the policy period indicated. Notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions and conditions of such policies, aggregate limits shown may have been reduced by paid claims.

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**Garage Liability**

| Any Auto | NOT APPLICABLE |
| | |

**Excess Liability**

| Occur | NOT APPLICABLE |
| | |

**Workers' Compensation and Employers' Liability**

| Not Applicable |
| |

**Other**

**Description of Operations/Location/Type/Exclusions Added by Endorsement/Special Provisions**

The certificate holder is included as Additional Insured where required by a written contract or permit subject to the terms and conditions of the General Liability policy, but only to the extent bodily injury or property damage is caused in whole or in part by the acts or omissions of the insured.

**Certificate Holder**

City of Porterville
Attn: Anita Gustason
PO Box 432
Porterville, CA 93258

**Re: Event on 5/3/08**

**Cancellation**

Should any of the above described policies be cancelled before the expiration date thereof, the issuing insurer will endeavor to give 30 days written notice to the certificate holder named to the left, but failure to do so shall impose no obligation or liability of any kind upon the issuing insurer, its agents or representatives.
December 5, 2007

City of Porterville
291 N. Main St.
Porterville, CA 93257
Attention: Anita Gustuson

RE: Porterville Breakfast Rotary
5K Cancer Run/Walk
Application and Agreement for Permit

Dear Ms. Gustuson:

Enclosed herewith please find the completed and signed application and agreement for a permit to hold a community civic event or other activity on public property together with a copy of the certificate of liability insurance.

The event is scheduled for Saturday, May 3, 2008 at Granite Hills High School. The date has been tentatively scheduled with Granite Hills and an application for use of school facilities will be submitted to the Porterville Unified School District upon receipt of the original certificate of liability insurance.

Please review the application and notify me if you should require anything further to secure the permit.

Thank you for your kind attention to this matter.

Sincerely,

Marty Lalanne
Member - Porterville Breakfast Rotary
SUBJECT: APPROVAL OF COUNCIL MEMBERS’ TRAVEL TO WASHINGTON D.C.

SOURCE: ADMINISTRATION

COMMENT: On an annual basis, the Tulare County Association of Governments (TCAG) travels to Washington D.C. to meet with U.S. legislators and officials to address transportation issues impacting Tulare County. During its yearly trips to Washington, TCAG endeavors to lobby on behalf of Tulare County with one united voice, and as such, representatives from TCAG member agencies are encouraged to participate. It is proposed that Mayor Pro Tem Felipe Martinez and Council Member Eddie Hernandez be selected to travel to Washington D.C., along with Public Works Director Baldo Rodriguez. The trip is scheduled for February 4-8, 2008.

TCAG will fund lodging and airfare for one elected official, which brings the estimated cost for the Council Members’ travel to approximately $2,100. Funds are available in the City Council budget to cover these expenses.

RECOMMENDATION: That consistent with Council practice, Council confirm out-of-state travel for Mayor Pro Tem Felipe Martinez, Council Member Eddie Hernandez, and Public Works Director Baldo Rodriguez on February 4-8, 2008.

Item No. 20

APPLICANT: Luis Farias
901 Helen Way
Bakersfield, CA 93307

PROPERTY: Seafood Café/El Reventon
1091 W. Olive Ave
Porterville, CA 93257

EXECUTIVE SUMMARY:

On December 4, 2007 the City Council of the City of Porterville opened the Public Hearing for Conditional Use Permit 5-2007 Modification #1 for a modification to the existing floor plan located at 1091 W. Olive Ave. At the Public meeting several comments from the public were taken and concerns were raised regarding noise, traffic, and safety impacts on the surrounding neighborhoods.

As a result of the comments, the City Council continued the public hearing to the January 15, 2008 City Council meeting and directed staff to meet with the applicant and the public to address the concerns. Staff held meetings, conducted a field investigation, reviewed police reports, and consulted with a local acoustical consultant regarding noise levels.

As a result of these meetings and further review of Conditional Use Permit 5-2007, the proposed conditions of approval for the proposed modification to CUP 5-2007 include a clarification to the previous block condition and assist in addressing the current noise and safety concerns of the City Council and public. Staff surmised from the meetings that the music levels did not appear to be at a level that would substantially affect the surrounding neighbors; however, bass reverberation or low level frequencies appeared to be the issue but the City does not have any standards that allow staff to regulate level of output.

PROJECT DESCRIPTION:

The project is located on a 4.2± acre parcel within the City limits. There are two adjacent parcels, one to the south situated in the county and a flag parcel to the west also in the county. The parcels in the county are not part of the current project but are also owned by the applicant.

GENERAL PLAN AND LAND USE DESIGNATION:

The site is designated for Heavy Commercial uses and is Zoned C-3 (Heavy Commercial).
SURROUNDING AREA ZONING AND LAND USE:

NORTH: City C-3 Existing Business
SOUTH: County – Low Density Residential
EAST: City C-3/County – Along Olive Avenue frontage there is an existing floor covering business within the City limits. Behind the adjacent businesses also to the east are residential uses that continue to the south along the east property line of the Seafood Café. These residential uses are County.
WEST: City C-3/County – Along Olive Avenue frontage there is an existing businesses within the City Limits. Behind the adjacent businesses along the west property line there are residential uses that continue to the south along the property line of the Seafood Café. These residential uses are in the County.

STAFF ANALYSIS:

At the public meeting held on December 4, 2008, several comments from the public were taken and concerns were raised regarding noise, traffic and safety impacts on the surrounding neighborhoods. The City Council reviewed the request to modify the conditional use permit and took into consideration the public testimony. As a result of the comments, City Council extended the public hearing to the January 15, 2008, City Council meeting and directed staff to meet with applicant and the public to address the concerns. On December 7, 2007, Staff notified the property owners of a public meeting that would be held at the Seafood Café to discuss the conditional use permit and the concerns that were brought up. The notice was sent to the property owners within a 300 foot radius and those that requested to be notified of the meeting.

On the morning of December 12, 2007, Staff met on site with the property owner to discuss the conditional use permit issues and evaluate the property and the sound system in an effort to resolve the concerns. During the visit, the property owner turned on the sound system to a near maximum 103dbA level. Staff observed the sound levels from both the inside and outside of the building. Understandably, the sound from the inside reached extreme decibel levels, but from the outside of the building the decibel level of music coming from the building never exceeded 63dbA until standing at the front of the building entrance with the doors open. Sound Olive Avenue, the neighboring carwash, and State Route 65 could be heard from all points on the property. Staff surmised from the morning visit that the noise levels did not appear to be at a level that would substantially affect the surrounding neighbors; however; bass reverberation or low level frequencies do not have any standards that allow staff to regulate levels of output.

On the evening of December 12, 2007, Staff returned to the restaurant/club and met with the owners, surrounding neighbors, and anyone from the public that wished to discuss their concerns. Most had the same concern, and expressed that the noise was not the issue as much as the bass reverberation, or thumping that was felt in their homes. There was also concern for the increase in traffic in the surrounding neighborhood since the time of opening. One women claimed to have nearly been involved in a traffic accident because of someone failing to come to a complete stop and rushing through the intersection at Roby Avenue and Maston Street. A few thought that the business was good for the area and that it was the bass reverberation that was the problem.

A police report showed that from the date of first opening there have been six (6) incidents of excessive noise. Of those, four(4) were in October between the 6th and the 27th, and the last two (2) were on December 2nd and 6th, 2007 (just before and after the 12-04-07 Council Meeting.)
On December 15, 2007 Staff and the City Manager visited the restaurant/club during business hours arriving at the club approximately 11:45pm. Noise levels were monitored and recorded. Staff stood within 30 feet of the building taking noise reading and recording levels no higher than 60dbA while averaging 56.8dbA. Staff also drove around the surrounding neighborhood along Cobb Street, Roby Avenue, and Maston Street. At the six (6) points monitored, traffic from State Route 65 and the nearby carwash exceeded the sound coming from the restaurant/club. The live music had a very faint sound that could be heard, primarily the tuba (bass) that was being played.

Staff contact Brown Buntin Associates, a local acoustical consultant from Visalia used on several area projects for sound studies. Staff asked about mitigation measures for bass reverberation as identified by the investigation and public meeting. The consultant stated that there is no industry standard or regulation for low-frequency sounds and that block walls do not mitigate the problem and can be cost prohibitive. There is specialized equipment called “Active Noise Control” available that can be set up to cancel certain frequencies but the technology is not very good, not flexible outside of the building and is very expensive. Additionally, the noise canceling equipment would go against the intent of the establishment. The most effective mitigation Brown-Buntin Associates suggested was to roll-off the low-frequencies (bass) and add additional sound proofing on and in the building itself. Obviously, the original intent of the building was not for use as a night-club, otherwise the construction would have been designed to reduce noise from escaping the building.

It is Staff's opinion that the noise levels from the restaurant/club do not pose a significant impact on the adjacent properties. The surrounding noise levels from the surrounding traffic and carwash at Maston Street and Olive Avenue are suspect in neighborhood noise issues as well. There is no standard for low-level (bass reverberation) frequencies that staff can use to regulate the bass (thumping) that comes from the establishment.

As a result of these meetings and further review of conditional use permit 5-2007, the proposed conditions of approval for the proposed modification to CUP 5-2007 include a clarification to the previous block condition and assist in addressing the current noise and safety concerns of the City Council and public. Mitigation measures included in the modified conditions of approval include requiring private security to regulate traffic and stereos in the parking lot, requiring all exit doors and openings to be insulated for sound and remain closed during business hours; phase two future construction requires additional sound insulation to existing walls, doors, and others openings of the restaurant; and lastly, the club's surround sound must be engineered to reduce noise levels.

Staff recommends that City Council consider also requiring the business owner to contract with a licensed professional acoustical consultant, approved by the Community Development Director, to come up with interim and long term mitigation to address the bass reverberation issue. A condition in the modified conditions of approval has been included. If it is the collective desire of the City Council, the condition may remain; if not; then it can be omitted.

It has been expressed by at least one Council member to possibly require serving of meals during all business hours. A condition in the modified conditions of approval has been included. If it is the collective desire of the City Council, the condition may remain; if not; then it can be omitted.

The required six (6) foot block wall along the property line separating the commercial uses from the residential uses presents a unique circumstance. The owner has constructed a block wall along the length of the property that is currently improved. The rear of the property extends an additional 376 feet that is not improved and separated by steel rods and a chain. Additionally, an adjacent county parcel to the south and a flag parcel to the west with access to Maston Street, are also under common ownership. Staff has reviewed these areas and from a fire and safety perspective would request that a block wall not be constructed due to restricted accessibility, visibility, and the potential for unlawful activity to occur. It is Staff's opinion that although technically the code does not allow phasing of
required block walls, the construction of the block would be better suited as development occurs beyond the current improved area and that measures to mitigate sound can be employed prior to full build out.

HISTORY:

On June 5, 2007, the City of Porterville City Council by Resolution 44-2007 approved Conditional Use Permit 5-2007 which allowed for the expansion of an existing restaurant (Seafood Café), with a separate bar to be utilized as a nightclub after the restaurant hours (phase one). The second phase of the project proposed a banquet facility/dancehall in the area previously utilized for bowling. As a part of the second phase the building will undergo an exterior remodel. The restaurant currently operates and serves beer, wine and distilled spirits under an on-sale license in conjunction with the serving of meals. The approved hours of operation are as follows:

- Monday through Thursday - 10:00 a.m. to 2:00 a.m.
- Friday and Saturday - 10:00 a.m. to 2:00 a.m.
- Sunday - 10:00 a.m. to 8:00 p.m.

COMMENT:

The applicant is now requesting approval of a modification to the existing floor plan which would close off a portion of the restaurant area to be utilized as a multi-purpose room. The proposed room, approximately 274± square feet, is located next to the entrance to the restaurant. Depending on the type of use and proposed square feet of the room, the California Building Code 2001 allows for a maximum occupancy of 11-24 people.

The applicant has indicated that the multi-purpose room may be used for a future card room. Approval of that use would be suspect to Chapter 15 of the Municipal Code and Regulations of the Bureau of Gambling Control Commission and is not associated with the approval of this modification.

Additionally, the applicant had requested additional hours of operation for the restaurant, bar area and nightclub for Sundays. Since the last City Council meeting, due to the noise, traffic, and safety concerns, the owner has submitted a letter requesting the hours of operation be considered at a later date in an effort to focus on the concerns that were raised at the December 4, 2007 meeting.

STAFF RECOMMENDATION: That the City Council:

1. Approve the inclusion of conditions #11 and #13.
2. Approve Conditional Use Permit Modification #1, subject to the revised conditions of approval.

ATTACHMENTS:

1. Locator map
2. Application
3. City Council Resolution 44-2007
4. Originally approved plans for Conditional Use Permit 5-2007
5. Notice of Exemption
6. Draft Resolution to include Exhibit "A"
7. Letter from property owner amending original request

Jose B. Ortiz ___________________________ January 10, 2008 __________
Project Planner Date
CITY OF PORTERVILLE

APPLICATION FOR CONDITIONAL USE PERMIT

NOTE: The basic purpose of the Conditional Use Permit Article 29 of The City Zoning Ordinance is to assure that the design and subsequent operation of a conditional use will be reviewed in order to carry out the purposes of the Ordinance and to protect the public health, safety and welfare, due to the unique and special characteristics of such uses.

PROJECT NAME: The Seafood Cafe and El Reventon nightclub
Amend Existing Conditional Use Permit # 5-2007

NAME, MAILING ADDRESS AND TELEPHONE NUMBER OF PROPERTY OWNER(S):
El Reventon LLC (Luis Farias, Graciela Farias, Salvador Farias)
1091 West Olive Ave Porterville CA 93257

NAME, MAILING ADDRESS AND TELEPHONE NUMBER OF APPLICANT /CONTACT PERSON:
Luis Farias (818) 625-6067
901 Helen Way Bakersfield CA 93307

PROJECT ADDRESS AND NEAREST CROSS STREETS:
1091 West Olive Ave Porterville CA 93257
To the west south maston to the east cobb

The applicant requests a Conditional Use Permit to use the above described property for the following purposes:
Patron dancing, restaurant, live entertainment
nightclub and cardroom.

Date of most recent sale of property: November 11, 2005

If applicant is the lessee, give date property was leased: __________

List below the original deed restrictions pertaining to the type of improvements permitted

Date said restrictions expire: __________

(Please attach a copy of original printed restrictions in answer to this question. Properly underline those features controlling the type and class of uses permitted.)

ATTACHMENT
ITEM NO. 2
A Plot Plan and 300’ radius property owners map, and corresponding mailing list are attached and made a part of this application. (See detailed instructions on Page 4 of this form).

1. State how the proposed use will not be materially detrimental to the public welfare or pose injury to property or improvements in such vicinity and zone in which the use is proposed.

   There will be no hazardous materials used in this project and enough security officers to cover all areas.

2. Principal requirements of intended use (Please answer the following statements as completely as possible).

   (a) Total number of people that the building can accommodate at one time, or grounds if the use is not conducted in the building at one time (Occupancy Capacity).

      295

   (b) Total number of employees that will work on the property.

      Between 15 - 25 phase 1 and 25 - 35 for phase 2 and 3.

   (c) Total number of off-street parking spaces provided or planned.

      There will be about 200 for final phase. Now there are around 100.

   (d) Maximum height of buildings or structures.

      Existing height of 18 feet.

   (e) If the application is not intended to be for a permanent conditional use, state the length of time for which it is requested.

      Not available.
We, the undersigned OWNERS of ADJACENT PROPERTY as shown upon the map attached to the application, hereby certify that we have read the foregoing petition and agree that the fact stated correctly and completely present the conditions surrounding the property involved in the application, and believe the application SHOULD BE GRANTED. (Add additional sheets where necessary. These signatures are desirable but not required).

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OWNER'S DECLARATION

STATE OF CALIFORNIA ) ) ss

COUNTY OF TULARE )

I, Luis Farias, being duly sworn, declare and say that I am the owner of part (or all) of the property involved and that this application has been prepared in compliance with the requirements of the Porterville City Council as printed herein and that the foregoing information thoroughly and completely, to the best of my ability, presents the argument in behalf of the application except as to the matters stated to be on my information and belief.

I declare under penalty of perjury that the foregoing is true and correct, executed at Porterville, CA this 01 day of November, 2007.

Telephone (812) 625-6067 Signed

Mailing Address 901 Helen way Bakersfield, CA 93307

This is to certify that the foregoing application has been inspected by me and found to be complete and acceptable for filing with the Porterville City Council.

Received_________________________ Date

Receipt No.__________

By___________________________
RESOLUTION NO. 44-2007

A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF PORTERVILLE CONTAINING FINDINGS AND CONDITIONS IN
SUPPORT OF APPROVAL OF CONDITIONAL USE PERMIT 5-2007 TO
ALLOW THE EXPANSION OF AN EXISTING RESTAURANT WITH LIVE
ENTERTAINMENT AND BANQUET FACILITY/DANCEHALL WITH
SEPARATE BAR AREAS INTO A PREVIOUSLY UTILIZED BOWLING AREA
(FORMERLY OLIVE BOWL) TO BE LOCATED AT 1091 W. OLIVE AVENUE

WHEREAS: The City Council of the City of Porterville at its regularly scheduled meeting
of June 5, 2007, conducted a public hearing to consider Conditional Use Permit 5-2007, The applicants
are requesting approval of a Conditional Use Permit to allow the expansion of an existing restaurant
with a separate bar to be utilized as a restaurant/nightclub with live entertainment (phase one). Phase
two consists of a banquet facility/dancehall with separate bar areas to occupy the area previously utilized
for bowling (phase two). The project is located at 1091 W. Olive Avenue (formerly the Olive Bowl)
in a C-3 Zone.

WHEREAS: The City Council received testimony from all interested parties relative to
said Conditional Use Permit; and

WHEREAS: The City Council made the following findings:

1. That pursuant to Section 15323, Class 23, - (Normal Operations of Facilities for Public
Gatherings) of the California Environmental Quality Act Guidelines, the Conditional
Use Permit to allow the sale of beer, wine and distilled spirits under an on-sale license
in conjunction with an existing restaurant is Categorically Exempt.

2. That Section 2100 B-2 of the Porterville Zoning Ordinance requires approval of a
Conditional Use Permit for new establishments proposing to sell alcoholic beverages
under an on-sale license in conjunction with the serving of meals.

3. That the proposed project is consistent with the General Plan.

The General Plan designates the site as General Commercial as supported by the  C-3
(Heavy Commercial) Zoning and allows for the proposed use.

4. That the design and operation of the proposed project are consistent with the General
Plan.

The proposed use is allowed in the C-3 Zone subject to the approval of a Conditional
Use Permit.

ATTACHMENT
ITEM NO. 3
5. That the proposed location of the project and the conditions under which it will be operated or maintained will not be detrimental to the public health, safety, welfare, or materially injurious to properties or improvements in the vicinity.

Conditions of approval are included to ensure adequate development standards are met.

6. That the standards of population density, site area, dimensions, site coverage, yard spaces, height of structures, distance between structures, off-street parking facilities, and landscaped areas will produce an environment of stable and desirable character consistent with the objectives of the Zoning Ordinance.

7. That the proposed sale of alcoholic beverages (beer, wine and distilled spirits) under an on-sale license in conjunction with a restaurant with a separate bar area is allowed in the C-3 Zone subject to the approval of a Conditional Use Permit.

NOW, THEREFORE, BE IT RESOLVED: That the City Council of the City of Porterville does hereby approve Conditional Use Permit 5-2007 subject to the following conditions:

1. Parking lot lighting shall be provided with an average of one foot-candle across the surface of the parking lot.

2. Parking ¾ seats and 1/50 sq. ft. of dance floor. 165 spaces required.

3. Provide vehicle barrier between developed and undeveloped portions of site to the satisfaction of the City Engineer and Zoning Administrator.

4. A masonry block wall is required around the entire site separating non-residential from the residential zoned property.

5. Hours of Operation:
   - Monday through Thursday - 10:00 a.m. to 2:00 a.m.
   - Friday and Saturday - 10:00 a.m. to 2:00 a.m.
   - Sunday - 10:00 a.m. to 8:00 p.m.


7. The developer/applicant shall pay all applicable fees according to the Municipal Code and State law. The developer/applicant is hereby notified that you have the right to pay fees,
dedications, reservations or other exactions, under protest, pursuant to Government Code Section 66020(a). You have 90 days from the date fees are paid to file a written protest.

8. The developer/applicant shall follow Appendix Chapter 33 of the California Building Code including provision of a grading and drainage plan signed by a licensed civil engineer or architect. The developer/applicant shall comply with City Retaining Wall Standards (adopted by City Council January 3, 1989) at lot lines where such standards are applicable. The grading plan shall include the rehabilitation of the existing parking lot and the parking lot expansion necessary to meet parking requirements.

9. The developer/applicant shall have a registered Civil Engineer or Land Surveyor prepare and submit a Lot Line Adjustment that will reconfigure property lines to meet the requirements of all applicable codes. The following information is required at the time of submittal:
   a. Three copies of a Map and Legal Descriptions.
   b. Adequate title information (deed, etc.) to verify current ownership and the method of creation of the effected parcels.
   c. The Lot Line Adjustment shall be approved prior to the issuance of a building permit.

10. The developer/applicant shall construct and/or repair street, curb, gutter, sidewalk, etc. along the full frontage of the parcel except where they exist and are in good condition in the opinion of the City Engineer (Ord. No. 1306). Sidewalk along Olive Avenue shall be 9.5 feet in width.

11. The developer/applicant shall construct drainage facilities as required to serve the property (Ord. No. 1306). Staff is requesting that the parking lot be designed to convey water to the City drainage system without crossing driveways.

12. Easements shall be in place that allow for mutual ingress, egress and maintenance of the parking lot.

13. Easement shall be in place that allow for mutual use of sewer and water, if applicable.

14. The developer/applicant shall move existing utility structures (For example, poles, splice boxes, vaults, etc.) to a position that provides a minimum of four feet (4') of clear space in the sidewalk area and a minimum of two feet (2') of clear space from the curb face to the structure, unless they are below grade (Title 24 OSA).

15. The developer/applicant shall design and improve the parking lot in conformance with Section 2206 and 2211 (Exhibit A) of the Zoning Ordinance.

16. The developer/applicant shall, under City inspection, remove all existing abandoned and unnecessary items, to the satisfaction of the City Engineer, before the issuance of a
certificate of occupancy (For example, foundations, septic tanks, irrigation pipes, etc.).

17. The developer/applicant shall abandon existing wells, if any, after first getting an abandonment permit from the County Department of Environmental Health, and providing the City Engineer with proof of compliance with County regulations before performing any grading or issuance of the building permit, whichever comes first. Complying with the City's “backflow” prevention ordinance (Resolution No. 9615) is an acceptable alternative to the abandonment requirement.

18. The developer/applicant shall assure compliance with applicable San Joaquin Valley Unified Air Pollution Control District Rules (e.g., Numbers 8010, 8020 and 8030), regarding fugitive dust, as well as Section 7-8, Project Site Maintenance of the Standard Specifications. The developer/applicant shall provide a street sweeper as necessary to comply.

19. The developer/applicant shall comply with Ordinance No. 1636 regarding Waste Water Discharge requirements and shall complete and submit the following:

20. Wastewater Discharge Permit Application, Part “A”;

21. If monitoring is required, based on the responses to questions in Part “A” of the Wastewater Discharge Permit, then the developer/applicant shall complete and submit the remainder of the application along with the Permit Fee, and provide monitoring facilities to allow inspection, sampling, and flow measurement of the flows in the sewer and drainage system.

22. The developer/applicant shall construct the pipe connecting to on-site fire hydrants to City water main standards and shall provide easements for maintenance to the on-site water mains.

23. The developer/applicant is hereby notified that the installation of an additional water meter, servicing the irrigation system would be beneficial for monitoring actual water usage. The City will monitor actual water usage for one year and will bill the owner the impact fees based on the actual water usage.

24. The developer/applicant shall comply with the City standard for “backflow” prevention pursuant to Resolution No. 9615.

25. The developer/applicant shall install a refuse container enclosure according to City standards. **Enclosure location to be approved by City prior to issuance of building permit. Enclosure should be oriented for direct stab pick up.** The developer/applicant shall also sign a waiver of liability for refuse truck damage to the parking lot if the refuse container location requires refuse trucks to travel on the parking lot.

26. A minimum five (5) foot wide screen-planting strip shall be provided and permanently maintained adjacent to any property line separating a parking area from a public street.
27. A minimum of 5% of parking lot and driveway areas are to be landscaped with live plant materials. The parking lot and driveway areas are to be shaded with trees planted on the property at a minimum ratio of one tree per 8 parking spaces distributed throughout the paved area. Parking lot tree wells are recommended to be a minimum of twenty (20) square-feet in size.

28. The owner/applicant shall install 2 tree wells within the sidewalk area between the driveways along Olive Avenue, and provide and maintain city-approved street trees. The selection of planting locations, and performance of canopy maintenance for street trees shall be conducted in manners to minimize vehicular sight safety conflicts.

29. The owner/applicant is to install trees, approved as City Street Trees, along all public roadway frontages of the property. The number of trees to be planted including those in sidewalk tree wells shall be equivalent to a minimum of one tree per 35 feet of roadway frontage. The trees are to be a minimum of #15 size specimens incorporated into the designated landscape areas. Root barriers are required for all trees planted within ten feet of public sidewalks. The selection of planting locations, and performance of canopy maintenance for the trees shall be conducted to minimize vehicular sight safety conflicts.

30. The owner/applicant shall provide an automatic irrigation system for all landscape planting, including trees and right of way planting. All landscaping shall be installed prior to occupancy and be permanently maintained by the owner/applicant in a healthy and vigorous growing condition, and cleanly appearance. Concrete mow strips shall be installed at the base of all fencing adjoining or crossing tufted-landscaping.

31. The project must comply with latest applicable codes.

32. The proposed restaurant/night club is considered an A-2.1 occupancy. Upon submittal of a permit the following will be required:

33. Submit three (3) complete sets of plans, signed by a licensed Architect or Engineer, to include two (2) sets of energy calculations and structural calculations.

34. Compliance with access laws (both State and Federal) is required.

35. School Development fees and all other City fees are due at the time of building permit issuance.

36. The developer/applicant shall pay all applicable fees according to the Municipal Code and State Law.

37. Building is required to be fully protected by a fire sprinkler system as per Building and Fire codes.
38. Food handling businesses require review and approval from the Tulare County Health Department prior to issue of said building permit. Your proposal also requires a grease interceptor for restaurants.

39. Plan check fees are required at the time of building permit submittal.

40. Seismic review and upgrades as per Building codes will be required.

41. Signs require a separate permit.

42. Based on the occupancy classification, a fire alarm and an automatic sprinkler system may be required.

43. When a sprinkler system is required all valves controlling the water supply for automatic sprinkler systems and water-flow switches on all sprinkler systems shall be electrically monitored where the number of sprinklers are:

   a. Twenty or more in Group I Divisions 1.1 and 1.2 occupancies.

   b. One hundred or more in all other occupancies.

44. Submit two (2) complete sets of sprinkler and fire alarm plans to the Fire Department for review prior to installation.

45. For automatic sprinkler systems, underground plans must be submitted and approved prior to submittal of the above ground plans. A hydrant will be required within 50 feet of the Fire Department connection.

46. When any portion of the building to be protected is in excess of 150 feet from a water supply on a public street, there shall be installed on-site fire hydrants capable of supplying the required fire flow.

47. Depending on the location of the existing fire hydrant(s), additional fire hydrants may be required. All hydrants must be in place and accepted by the Fire Department prior to any combustibles being brought onto the site.

48. The City will test and maintain all fire hydrants in the City whether on private property or not. An "easement" is required from the owner.

49. Fire hydrant spacing shall be as follows:

   a. In Commercial development, one hydrant shall be installed at 300-foot intervals.

50. Access roads shall be provided for every facility, building or portion of a building, when any portion of the facility or portion of an exterior wall is located more than 150 feet from a fire apparatus access as measured by an approved route around the exterior of the building.
51. Project must meet minimum fire flow requirements per the table in Appendix III-A & III-B of the California Fire Code.

52. Areas identified as "Fire Lanes" must be identified as such by red painted curbs and identified per requirements set forth in the California Vehicle Code Section 22500.1.

53. A Knox box will be required. An application may be obtained from the Fire Department.

54. Additional requirements for compliance with the Uniform Fire code may be added at the time of building permit review when more information regarding the building type and use are provided.

55. Comply with plans and colors and mats

56. Provide security as identified:

   a. Phase One of the project, the applicant is allowed a max capacity of 295± patrons, and plans on employing 10± people for the restaurant and nightclub with an additional 7-10 for security

   b. Phase Two of the project, it is anticipated that there will be 20 employees directly related to providing restaurant/banquet service and 15-20 security employees for special functions.

Cameron Hamilton, Mayor

ATTEST:

John Longley, City Clerk

By Georgia Hawley, Chief Deputy City Clerk
I, JOHN LONGLEY, the duly appointed City Clerk of the City of Porterville do hereby certify and declare that the foregoing is a full, true and correct copy of a resolution duly and regularly passed and adopted by the Council of the City of Porterville at a regular meeting of the Porterville City Council regularly called and held on the 5th day of June, 2007.

THAT said resolution was duly passed adopted by the following vote:

COUNCIL: AYES: P. Martinez, F. Martinez, Hernandez
COUNCIL: NOES: None
COUNCIL: ABSTAIN: None
COUNCIL: ABSENT: McCracken, Hamilton

JOHN LONGLEY, City Clerk

by Georgia Hawley, Chief Deputy
NOTICE OF EXEMPTION

TO: Office of Planning and Research
    1400 Tenth Street, Room 121
    Sacramento, CA 95814

FROM: City of Porterville
      291 N. Main Street
      Porterville, California 93258

Tulare County Clerk
County Civic Center
Visalia, CA 93291

Luis Farias
1091 West Olive Avenue
Porterville, CA 93257

Conditional Use Permit 5-2007 Modification No. 1
Project Title

1091 West Olive Avenue.
Project Location (Specific)

City of Porterville                   Tulare County
Project Location (City)               Project Location (County)

Conditional Use Permit 5-2007 Modification No. 1 to all for the modification to the existing floor plan to enclose
approximately 274± square feet of an existing restaurant into a multi-purpose room.

Description of Nature, Purpose, and Beneficiaries of Project

City of Porterville
Name of Public Agency Approving Project

Luis Farias, 1091 W. Olive Avenue, Porterville CA 93257
Person or Agency Carrying Out Project

Exempt Status: (Check One)

- Ministerial (Section 15073)
- Declared Emergency (Section 15071 (a)
- Emergency Project (Section 15071 (b) and (c)
- Categorical Exemption. State type and section number: 15301 Class 1

Existing Facilities
Reasons why project is exempt

Bradley D. Dunlap, AICP, Community Development Director

Contact Person

If Filed by Applicant:

1. Attached certified document of exemption finding.
2. Has a Notice of Exemption been filed by the public agency approving the project?
   Yes:_______    No:_______

Date Received for filing:__________

Signature

City Planner______________
Title_____________________

U/NoticeExemptCUP5-2007MOD#1
RESOLUTION NO.__________

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE CONTAINING FINDINGS AND CONDITIONS IN SUPPORT OF APPROVAL OF CONDITIONAL USE PERMIT 5-2007 MODIFICATION NO.1 TO ALLOW FOR A MODIFICATION TO THE EXISTING FLOOR PLAN FOR THE SITE LOCATED AT 1091 W. OLIVE AVENUE

WHEREAS: On June 5, 2007 the Porterville City Council by Resolution 44-2007 approved Conditional Use Permit 5-2007 which allowed for the expansion of an existing restaurant (Seafood Café), with a separate bar to be utilized as a nightclub after the restaurant hours (phase one). The second phase of the project proposed a banquet facility/dancehall in the area previously utilized for bowling. As part of the second phase the building will undergo an exterior remodel. The restaurant currently operates and serves beer, wine and distilled spirits under an on-sale license in conjunction with the serving of meals; and

WHEREAS: The City Council of the City of Porterville at its regularly scheduled meeting of December 4, 2007, conducted a public hearing to consider a request to allow for a modification to the existing floor plan which proposes to close off a portion of the restaurant area to be utilized as a multi-purpose room and to extend the hours of operation on Sundays; and

WHEREAS: Due to concerns raised by residents at the December 4, 2007 Public Hearing, City Council continued the matter to January 15, 2008 and directed staff to investigate, research, and report on the public concerns; and

WHEREAS: The proposed multi-purpose room, approximately 274± square feet will be located next to the entrance to the restaurant. Depending on the type of use and considering the footage of the room, the California Building Code 2001 allows for a maximum occupancy of 11 to 24 people; and

WHEREAS: As follow-up to the City Council meeting, public meetings with the property owner and surrounding property owners were held on December 12, 2007; and

WHEREAS: The applicant has indicated that the multi-purpose room may be used for a future card room. Approval of that use would be subject to Chapter 15 of the Municipal Code and Regulations of the Bureau of Gambling Control Commission and is not associated with the approval of this modification; and

WHEREAS: The City Council received testimony from all interested parties relative to said Conditional Use Permit; and

WHEREAS: The City Council made the following findings:

1. The project is Categorically Exempt pursuant to Section 15301, Class 1 of the CEQA Guidelines - (Existing Facilities).

   In brief, this section allows for minor alterations of existing facilities as long as it involves negligible or no expansion of an existing use. The interior remodel would allow for the enclosure of 274± square foot are to be utilized as an assembly room, and therefore is not expanding the existing square footage of the building.

2. That the proposed project is consistent with the General Plan.

   The General Plan designates the site as General Commercial as supported by the C-3 (Heavy
Commercial) Zoning. Due to the specific zoning, C-1 and C-2 uses are allowed in this zone. Uses such as serving of alcoholic beverages in conjunction with food, nightclubs and live entertainment are uses allowed pursuant to the conditions specified in Article 8 (Central Commercial Zone) and Article Nine (Heavy Commercial Zone) of the Porterville Zoning Ordinance.

3. That the design and operation of the proposed project are consistent with the General Plan.

The proposed use is allowed in the C-3 Zone and has an existing Conditional Use Permit 5-2007 approved by City Council Resolution 44-2007 on June 5, 2007.

4. That the proposed location of the project and the conditions under which it will be operated or maintained will not be detrimental to the public health, safety, welfare, or materially injurious to properties or improvements in the vicinity.

Conditions of approval addressed in City Council Resolution 44-2007 and additional conditions relevant to the proposed modification are included to ensure adequate development standards were met.

5. That the standards of population density, site area, dimensions, site coverage, yard spaces, height of structures, distance between structures, off-street parking facilities, and landscaped areas will produce an environment of stable and desirable character consistent with the objectives of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED: That the City Council of the City of Porterville does hereby approve Conditional Use Permit 5-2007 Modification No. 1 subject to the following conditions:

1. All conditions outlined in City Council Resolution No. 44-2007 will remain in full force and effect except as modified herein.

2. Hours of Operation shall be as follows:
   Monday through Thursday - 10:00 a.m. to 2:00 a.m.
   Friday and Saturday - 10:00 a.m. to 2:00 a.m.
   Sunday - 10:00 a.m. to 8:00 p.m.

3. A six (6) foot block wall is required along the property line separating the residential uses from the commercial uses. Due to the unusual circumstances of the common ownership of the parcel to the south and flag parcel to the west (both parcels are in the county) phasing of the block will be allowed to the extent that the block wall must be constructed along any portion of the development that is improved. Any area not improved must be separated from the improved by a temporary barrier.

4. The adjacent parcel to the south and the flag parcel to the west, under contiguous ownership, will require chain link fencing be constructed with slats to screen from public view as the parcels are improved unless annexation occurs. The block wall will then be required.

5. The revised/modified conditional use permit does not include “card tables.” Gaming tables require a completely separate approval through the Police Chief.

6. Car stereos in the parking lot must be monitored and regulated by the Club's security keeping noise levels to a minimum.

7. Cruising in the parking lot must be monitored and regulated by the Club's security to keep the
parking lot traffic conflicts and noise levels at a minimum.

8. All exit doors from the building must be insulated for sound and closed during business hours.

9. As a sound mitigation measure, during construction of phase two, the existing walls, doors, and other openings of the restaurant must be additionally insulated to assist in minimizing sound.

10. The Club’s surround sound system must be engineered to reduce noise levels, particularly bass reverberation.

11. The kitchen must remain open for all meals served during normal hours of the club operation.

12. The subject modification will be developed in accordance with the interior plan labeled Exhibit “A”.

13. The applicant must contract with a professional licensed acoustical consultant, approved by the Community Development Director, to come up with interim and long term mitigation to address the bass reverberation.

__________________________
Cameron Hamilton, Mayor

ATTEST:

John Longley, City Clerk

By _______________________

Patrice Hildreth, Acting Chief Deputy City Clerk
December 5, 2007

John Longley
City of Porterville
291 N. Main Street
Porterville, Ca 93257

Dear John Longley:

I am writing regarding my request to amend the Conditional Use Permit for the Seafood Café located at 1091 W. Olive in the City of Porterville.

At the City’s Council Meeting on December 4, 2007 it was requested to work out noise issues, while there seemed to be no concern with regard to the addition to the multi-purpose room.

With that said and due to deadlines with regard to the need of the multi-purpose room use, which is needed by December 31, 2007, I would like to formally request that my extension of hours be separated from the multi-use room use, and seek that approval at the next available Council Meeting.

In the meantime I will make all efforts to address the noise issues, which have nothing to do with the proposal for a multi-use room.

Sincerely,

[Signature]

Luis Farias
Seafood Café
SUBJECT: CITY WIDE STREET LIGHT POLICY IMPLEMENTATION

SOURCE: Public Works Department - Engineering Division

COMMENT: On August 21, 2007, Public Works informed City Council that a technical report supporting the "City Wide Street Light Policy" would be presented on October 16, 2007 for Council's review and comment. Regrettably, the timeline provided for completion of the technical report (October 16, 2007) could not be met due to staffing constraints and prior project commitments.

The technical report offered by Public Works is a substantial piece of work and can only be completed in piece-meal fashion. The proposed "Study Area Limits" are shown in the attached "City Wide Street Light Study Area" plan. The technical report will provide an analysis and comment on the following points:

1. Inventory on an "area by area" basis of all street lights and their location relative to nearby street addresses.
2. Plan showing existing and proposed street lights with spacing noted.
3. Plan showing type of existing street light (i.e., wood pole or Marblelite pole), and will distinguish between underground and overhead electrical.
4. Engineer's Estimate of Probable Cost.

Public Works respectfully asks that Council accept in "memo" format the technical report on a "one area per month" basis with the first report due no later than February 29, 2008.

RECOMMENDATION: That the City Council:

1. Accept the staff report presented herein; and
2. Direct the Public Works Director to provide an analysis with pertinent comments in a manner consistent with this staff report to support the "City Wide Street Light Policy".

ATTACHMENT: City Wide Street Light Study Area

Item No. 22
TITLE: CITY POLICY GOVERNING PLACEMENT OF MEMORIALS AND MONUMENTS IN CITY PARKS

SOURCE: CITY ATTORNEY

COMMENT: Attached is a proposed policy governing placement of memorials and monuments in City parks. The proposed policy endeavors to memorialize and clarify the City’s prior practices, and set forth an explicit procedure and clear criteria.

The proposed Resolution requires that any monument or memorial to be placed in a City park first be approved by the City Council. It requires that a complete application be made to the City on a prescribed form. In order for a monument or memorial to be considered, it must meet certain criteria. The item must be designed, constructed, and made of suitable material in order to remain permanently affixed at its location in light of weather conditions. Additionally it must not create a safety hazard or interfere with the use of the property. The item must not be obscene, defamatory, or communicate fighting words; however the City Council shall not otherwise prohibit placement due to the content of the memorial or monument or the viewpoint expressed by the item. The applicant shall be responsible for all costs related to the item’s installation and maintenance. The City Council is specifically authorized to consider the proposed location of the memorial or monument and to evaluate its aesthetics, as well as the effect the proposed placement will have on the remaining open space, any safety issues, and other visual or practical effects. There is also a minimum distance requirement of 25 feet between any proposed monuments and existing monuments. Finally, the policy explicitly provides that the City Council’s approval of a particular monument or memorial does not constitute the City’s endorsement or agreement of any message conveyed by it. The Policy provides for review and recommendations by the Parks and Leisure Services Commission within 30 days of receipt of a complete application, and a determination by the City Council within 30 days thereafter.

RECOMMENDATION: That the City Council consider and adopt the proposed Resolution adopting a policy government placement of memorials and monuments in City parks.

ATTACHMENTS: Resolution No. ____, A Policy of the City Council of Porterville Governing Placement of Memorials and Monuments in City Parks.

Item No. 23
RESOLUTION NO. ______

A POLICY OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE GOVERNING
PLACEMENT OF MEMORIALS AND MONUMENTS IN CITY PARKS

WHEREAS, the City has a long and unbroken history of the display of monuments and
memorials in the City’s parks that reflect the history and heritage of our community, state, or
country;

WHEREAS, there is a limited amount of property within the City parks suitable for
memorials and monuments;

WHEREAS, there are aesthetic issues surrounding the placement of permanent objects in
the City’s public parks and other public areas;

WHEREAS, permanent structures such as monuments and memorials decrease the
available open space and the visual perception of open space; and

WHEREAS, the City wishes to insure that placement of permanent objects on public
property does not create a safety hazard or interfere with the intended use of the property.

Therefore, the City of Porterville adopts the following policy regarding placement of
monuments and memorials in City parks as follows:

I. Process for Placement of Monuments and Memorials in City Parks

a. Prior to any monuments or memorials being placed in City parks, they must
   first be approved by the City Council;

b. Application for placement or offers of donation shall be made in writing to the
   City Council;

c. A written application, in a form to be developed by appropriate city staff, shall
   contain the name, address, and phone number of the applicant; a detailed
   description of the proposed memorial or monument, including its dimensions,
   along with any available photographs, drawings, artist’s renderings, etc.; and a
   detailed description of the desired location for placement;

d. An incomplete application shall not be considered;

e. Using the factors listed below, upon receiving a complete application, the
   application shall first be considered by the City’s Parks and Leisure Services
   Commission for consideration and any recommendations by the Commission
consistent with the provisions of this Policy. The Commission shall conduct its review and make any recommendations for the City Council’s consideration within 30 days of receipt of a complete application.

f. The City Council shall review the application along with any recommendations from the Parks and Leisure Services Commission, and make a final determination in its normal course of business, within 30 days after the review by the Commission, as to whether the item shall be accepted and where the item shall be placed.

II. Criteria for Placement

A monument or memorial must meet the following criteria before being accepted for placement on property within the City parks:

a. The item must be adequately designed, fabricated of suitable material (such as but not limited to copper, steel, stone or granite), and erected with properly designed foundations and mounting connections to remain permanently affixed in a location and withstand changing weather conditions.

b. The item must not create any safety hazards or interfere with the intended use of the public property;

c. No aspect of the item is obscene, defamatory, or communicates fighting words, as defined by law.

d. In no event shall the City refuse to allow the placement of a monument or memorial because of the content or viewpoint the item expresses;

e. The applicant shall be responsible for all costs related to the item’s installation and maintenance.

III. Additional Considerations for Placement Location

a. If the item meets the above-listed criteria, then the Council shall consider the proposed location of the item and evaluate the aesthetics of the proposed placement, the effect the proposed placement will have on the remaining open space on the public property, any safety issues, and any other visual or practical effects of locating the item on the proposed site;
b. Items shall not be placed within 25 feet of existing monuments or memorials.

IV. Additional Provisions

a. Approval of a monument or memorial for placement on public property does not constitute the City’s endorsement or agreement with any message communicated by the monument;

b. This Resolution shall take effect immediately and shall affect only the parks and other public property within the City of Porterville.

___________________________
Cameron Hamilton, Mayor

ATTEST:

John Longley, City Clerk

___________________________
By: Patrice Hildreth, Acting Chief Deputy
SUBJECT: Consideration of Setting Priority Projects

SOURCE: City Manager

On December 8, 2007, the Council met in a study session to consider priority projects. The Council accepted public comment and then “voted” by defining for each member, their most important project and a series of important projects. Department directors defined key inter-departmental projects and also projects where continuity was most important.

From this, an analysis has been developed defining projects with the most points compiled. This listing is attached and contains projects accumulating 13 points, such as the new library and the South Jaye Street/Gibbons project to 9 projects which accumulated 1 point.

In all 42 projects appear on the list. The goal of a priority project list is to focus attention on about 10 projects. Other activities will be pursued, but each month specific reports will be presented on the priority projects. When staffing or resource priority becomes a consideration, the priority project will “move to the head of the line.” More projects can be defined as priority projects beyond 10, but as they are added, the focus is diminished and the project management program will be less effective at furthering priorities.

Each year the decision is made. Many projects are fully achieved in a year, but others are accomplished over multiple years. Though significant progress was made on last year’s list, the Porterville Hotel and the Courthouse projects will involve significant effort throughout the coming year. Therefore, if these projects are to continue to receive great attention, they should be advanced to the 2008 list.

Based upon the 2007 list and the “voting” for 2008, the following list is presented. Departments with significant involvement are listed after the project label.
1. Courthouse, Fairgrounds and related projects (CD, PW, PLS)
2. Porterville Hotel Project (CD)
3. New Library Project (PLS)
4. South Jaye Street/Gibbons Project (CD, PW)
5. Comprehensive Zoning Code Update Project (CD)
6. Remove Cease and Desist Order Project (PW)
7. New Fire Station Project (FD)
8. Technology Assessment Project (ADM)
9. Indiana Street Low Water Crossing Project (PW, CD)
10. The Courthouse Commons Master Plan Project (CD, PW,)
11. Effluent Pipel ine and Land Leveling of Sewer Property (PW)
12. Jay Street Widening 190 to Springville Project (PW)

Responsibility for priority projects are tabulated below:

Administration = 1
Community Development = 6
Fire Department = 1
Police Department = 0
Park & Leisure Services = 2
Public Works = 7

Though Parks and Leisure Services has a very significant undertaking with the planning for the new Porterville Library, the bulk of the effort will fall upon the Community Development and Public Works Departments. The Council may wish to consider this workload distribution in their determination. The general span of control rule is that each individual can supervise 3 to 7 individuals with 5 being the optimum. Likely there is a corollary to this regarding priority project supervision. The City Managers estimate is that the optimum number of projects for each department would be about 3.

Therefore, the Council may wish to consider defining a Police project as a priority and considering the impact of a very large project specification for Community Development and Public Works.

**RECOMMENDATION:** Review the list of priority projects and specify a list of approximately 10 projects among various City departments for the coming year.
<table>
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<th>Priority Project Number</th>
<th>Department</th>
<th>Project</th>
<th>BLUE Department Head Committed Priority Points: 3</th>
<th>YELLOW Department Head Other Department Priority Points: 2</th>
<th>GREEN Council Member Overall Priority Points: 5</th>
<th>RED Council Member Dept Priority Points: 1</th>
<th>TOTAL</th>
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City of Porterville To-Do List

1. Airport Water Inter-Tie
2. General Plan Update
3. Jaye Street Widening
4. Effluent Pipeline
5. Police Officer Recruitment
6. Porterville Hotel
7. Meet & Confer Budget Analysis
8. Courthouse
9. Gangs
10. Skate Park
SUBJECT: Consideration of State Legislative Issues

SOURCE: City Manager

In the past the City has been requested to define specific Legislative proposals, but such a request was not received this year. In any case, it is recommended that the Council review last year’s Legislative program and provide any modifications for the coming Fiscal Year.

Last year, efforts were made through our legislators, our legislative representative and a potential legislative representative to define a program for funding to develop lighted playing fields. Because the allocation of Proposition 84 monies was not resolved, we were not successful in this area.

Attached is the listing from last year for Legislative priority. Our most notable success was with the South County Courthouse project. The City’s involvement was material in obtaining in legislation, more than $4 million to purchase property, complete an environmental document and perform other initial work.

To proceed with the construction of the facility, an additional appropriation will be required. The formal request in this regard will be made by the Administrative Office of the Courts. Whether the appropriation is sought in 2008 or 2009 is a matter for their determination. This is an area we should consult with them to define their legislative strategy.

The primary focus for the coming budgetary cycle will be the State Budget. It is reported we are back to a $14 to $20 billion deficit and programs will be under close scrutiny. Everything will be in play including State subventions and State facilities. We need to be as proactive as possible regarding the Budget using our
representative and working very closely with the League of Cities.

We should continue to work on Proposition 84 funding to define if monies can be made available for a new sports facility. We have worked on a partnership with Porterville College and the Porterville Unified School District and every effort should be undertaken to define funding for the project.

**RECOMMENDATION:** Define the Legislative priorities for 2008 as

1. Courthouse development funding;

2. Being proactive with the State Budget and its impact on the City of Porterville;

3. Proposition (or other funding) for the development of a new Sports facility.

4. Legislation permitting JPA between the City and Tribe. At the last meeting of the Council, support was provided for a joint exercise of powers bill through Assemblyman Maze that would allow the Tribe and City and the Tribe and the County to enter into a governmental relationship.
The following legislative proposals have been formulated by the Porterville City Council to address important needs within the community.

1. **Ralph Brown Act: Council Organization:** The City Council needs to meet periodically to consider internal organizational matters. The Ralph Brown Act now requires that this be done in open session. It is the conclusion of the City Council that there should be a specific authorization in the Ralph Brown Act that would allow City Councils to meet at least two times per year in closed session to discuss internal organization. Actions would not be able to be taken at the closed session, but it would provide an opportunity for Council members to air perspectives on how the City Council organization is operating.

2. **Enterprise Zone:** On several occasions in the past we have expressed our concern about the enterprise zone designation. This year, Porterville’s designation expired in October. We are now completing an environmental review for the designation. We respectfully request that through legislation, Porterville be re-designated for the enterprise zone.

3. **Highway 65 and Highway 190:** Porterville’s highest priority year-in-and-year-out has been assistance with funding to complete Highway 65 to four lanes between Porterville and Bakersfield, or Highway 190 to four lanes between Porterville and Tipton. This is so important and there is always little progress with the project. Assistance is critical to expedite these projects.

4. **South County Courthouse:** We request support for appropriations for the South County Courthouse project in Porterville.

5. **State Bond Act Projects:** In the November 2006 election, the electorate passed several bond issues. Assistance in having monies earmarked for the following projects is requested:

   A. **Proposition 1C-Housing and Emergency Shelter Trust Fund Act of 2006:** An earmark of $7,000,000 is requested to support the replacement of water and sewer facilities in Porterville neighborhoods east of Main Street. This area has great potential for infill housing construction, however to achieve this objective new infrastructure must be installed.
B. Proposition 1D-Kindergarten – University Public Education Facilities Bond Act of 2006: An earmark of $12,000,000 is requested to support the remodeling of current schools sites for the development of a Health Careers Institute. The institute would provide educational opportunities for nurses and other health care professionals to meet critical health care needs in the region and throughout California. It is anticipated that this project would potentially be a partnership involving Porterville College, Porterville Schools, Sierra View District Hospital, the City of Porterville and State agencies.

C. Proposition 84-Water Quality, Safety and Supply, Flood Control, Natural Resource Protection, Park Improvements, Bonds, Initiative Statute: An earmark of $10,000,000 is requested to support the development of a field-sports facility near Porterville College. This project is anticipated to be a partnership involving Porterville College, Porterville Schools, the City of Porterville and potentially the County of Tulare.

The City of Porterville deeply appreciates this opportunity to comment on, and advise of our legislative priorities for the coming session.
Memorandum

TO: John Longley
FROM: Michael J. Arnold, Legislative Advocate
Kristian E. Foy, Legal Counsel
DATE: January 7, 2008
SUBJECT: State Legislative Outlook for 2008 – Could be a bumpy ride!

2008 Legislative Session Starts Today

The 2008 session of the California State Legislature is actually the second half of the 2007-2008 biennial legislative session. We will be faced with many challenging public policy issues during this important legislative session. The biggest challenge this year will likely be the State budget. See below for details.

Two-Year Bills

All legislation which was introduced during 2007 must be passed by the house of origin prior to January 31, 2008 to stay alive for further consideration during 2008. Most of the proposals in this category will be killed, dropped or amended during the month of January. The amended bills are of greatest concern since bills can take on an entirely different form as a result of amendments. When committee hearings are occurring as quickly as they do during the month of January, there is always the possibility that bills will be amended at the last minute to create difficulties. A very busy January is expected.

Legislative Deadlines – New Ideas Must Be In By January 25

The introduction deadline for 2008 legislative proposals is February 22, 2008. However, the rules of the Legislature require that any requests for new legislative proposals be submitted to the Legislative Counsel’s Office for drafting on or before January 25, 2008. Thus, the real deadline for new legislation is January 25. Other deadlines also apply throughout the year. There are deadlines by which time a bill must pass the policy committee, the fiscal committee and the floor in the house of origin; and additional deadlines for passing the same hurdles in the second house.

State of the State Address

1/7/2008
The Governor will be issuing his State of the State address on Tuesday January 8. Instead of the normal 5:00 pm time it has been rescheduled to 3:30 pm, so that it will not interfere with coverage of the New Hampshire presidential primary vote.

**Governor’s Budget**

The State Constitution requires the Governor to release his version of the budget on Thursday, January 10. The deficit is growing by the day. We have learned that it is now expected to be $14.5 billion - - up from the $14 billion number estimated just weeks ago.

**Governor to Declare “Fiscal Emergency”**

Proposition 52, a balanced budget initiative passed by the voters in March 2004, grants the Governor the power to declare a “fiscal emergency” if he determines that the State faces substantial revenue shortfalls or expenditure increases. Upon such a declaration, the Governor is required to call a special session of the Legislature and propose legislation to address the fiscal emergency. According to Prop 58, if the Legislature fails to approve and send legislation to the Governor to address the fiscal emergency within 45 days, it would be prohibited from acting on any other bills or adjourning in joint recess until such legislation is passed.

The Governor has indicated that he will issue proclamations declaring a fiscal emergency and calling a special session of the Legislature to address it on Thursday, January 10, 2008. The proclamations will be issued concurrently with the release of the Governor’s proposed 2008-09 state budget. Emergency legislation, drafted by the Department of Finance to address the current year shortfall, will be introduced immediately upon the opening of the special session.

**Political Considerations a Large Factor During 2008**

As we develop our strategy for the 2008 Legislative Session, it is important to realize that political considerations will weigh heavily on the minds of the members of the Legislature during 2008. This year is an election year for the Legislature.

As we develop and implement a strategy to achieve our public policy goals during 2008, it will be exceedingly important for us to recognize the opportunities and pitfalls created by the Legislature’s preoccupation with political gamesmanship. In this era of term limits, several sitting legislators are running against one another and this situation can create weird legislative outcomes. For example, assembly member X may not want assembly member Y to get credit for successful legislation even if they are in the same party - - because they are running against each other in the primary.

**Term Limits Initiative in February**

The key to political gamesmanship is the term limits initiative that is on the February ballot - - Proposition 93. Everything is basically on hold until we find out if the current leadership will be able to stay in place. If Proposition 93 is defeated at the polls, look for a change in the leadership of the Senate and the Assembly soon thereafter!

**More than 3,000 New Proposals Expected**

If the Legislature maintains normal bill introduction levels, we will see as many as 3,000 new bills, resolutions and constitutional amendments proposed for 2008.

We will continue to review all bills and all amendments as they are introduced in Sacramento. Our internal legislative review process has been refined over the years and will be utilized again to ensure that we have thoughtful and supportable positions on legislation in which we have an interest.

**2008 To Be a Busy Year**
Even though elections issues may divert attention away from some important public policy areas, the 2008 Legislature will be forced to deal with many issues of vital importance. We will be active participants in the process on your behalf.
SUBJECT: Consideration of Employment Agreement Modification with City Manager

SOURCE: City Manager

The Council is currently in the process of evaluating City Manager performance. There has been a tradition of revising provisions in the City Manager’s employment agreement concurrent with the evaluation.

At the meeting, potential modifications in the agreement will be specified and considered. Areas for consideration are the term of the agreement, potential modifications to compensation consistent with the adjustment provisions in the current agreement, and the definition of duties and responsibilities in the course of the agreement.

RECOMMENDATION: Consider potential modifications to the employment agreement for approval.
AGENDA: JANUARY 15, 2008

JOINT MEETING OF THE
CITY OF PORTERVILLE CITY COUNCIL
AND
PORTERVILLE REDEVELOPMENT AGENCY

SUBJECT: AUTHORIZATION FOR REDEVELOPMENT PROJECT AREA AMENDMENT AND MASTER PLAN

SOURCE: COMMUNITY DEVELOPMENT DEPARTMENT

COMMENT: The Porterville Redevelopment Agency is aggressively working to create development opportunities within Project Area No. 1, with an emphasis in the downtown area to foster the growth of a pedestrian friendly, vibrant area and to increase the benefits of redevelopment in the community by expanding Project Area No. 1. The project will consist of the following components:

**Redevelopment Project Area Amendment** – The proposed Amendment will increase the boundaries of the Porterville Redevelopment Project Area #1 to include areas throughout the City that have blighting conditions that could potentially be assisted through the Redevelopment Agency. By expanding the boundaries, the Agency will have increased tax increment revenue and be better positioned for additional bond financing that will provide an infusion of financial resources to carry out new projects for the betterment of our community. During the Amendment process, the conceptual expansion area (shown on Attachment 1) will be studied to determine if the properties meet the criteria for inclusion within a Redevelopment Area or if other properties should be incorporated. Also, during the Amendment Process, other areas throughout the community may be analyzed for potential inclusion in the expansion area. The Amendment process will include public meetings to keep property owners/residents informed of the process and how being in a Redevelopment Project Area will affect their property.

**Master Plan** – The prospective boundaries of the Master Plan area are Plano Street on the east, E Street on the west, Morton Avenue on the north, and Vine Avenue on the south. While the Master Plan concept was developed with the vision of the new County Court facility to be located at the Porterville Fairgrounds, the project itself will provide for planned growth, connectivity, and parking to accommodate not only the County facility, but the ancillary businesses that staff anticipates will desire to locate in and around the downtown area. The Master Plan will lay the foundation for a new vision to revitalize the downtown area – the heart of Porterville.

**Tax Increment Analysis** – The Project will include a Tax Increment Analysis that will project new tax increment revenues generated through the expansion of the Redevelopment Area boundaries, a projection of new and/or increased pass-through calculations, and an audit to ensure proper receipt of increment after the new Project Area begins receiving increment.
The cost for the proposed Redevelopment Area Amendment and Master Plan is estimated to be $300,000.

During the August 21, 2007 Council meeting, Council approved the reallocation of $100,000 budgeted for the preparation of the Enterprise Zone application for the amendment to expand the boundaries of the Redevelopment Project Area #1 and preparation of a Master Plan for the downtown area.

The Porterville Civic Development Foundation (Foundation) has given preliminary approval for a loan to the Porterville Redevelopment Agency in an amount not to exceed $200,000. The loan will not bear interest and will become due and payable in full in 2011. The loan will be repaid with tax increment and/or proceeds from the sale of the Agency-owned Fourth Street property. The term for repayment of the loan may be extended upon mutual consent by both the Foundation and the Agency. Upon approval of the project by the Council and the Agency, the Foundation will execute a loan agreement with the terms and conditions as outlined above.

In the adopted Porterville Redevelopment Agency 2007-2008 Budget, the approved work program includes the Project Area Amendment and Master Plan Area projects.

RECOMMENDATION: That the City Council:

1. Approve the Redevelopment Area Amendment and Master Plan as a project; and
2. Authorize staff to distribute the Request for Proposals for a consultant to assist with the project; and
3. Authorize the Mayor to sign all documents.

That the Porterville Redevelopment Agency:

1. Approve the draft resolution for the loan agreement with the Porterville Civic Development Foundation for a loan not to exceed $200,000 for the Redevelopment Area Amendment and Master Plan project;
2. Authorize staff to distribute the Request for Proposals for a consultant to assist with the project, and
3. Authorize the Chairman to sign all documents.

ATTACHMENTS: 1) Proposed Redevelopment Area Amendment Boundaries Map
2) Proposed Master Plan Area Boundaries Map
3) Draft Resolution
4) Letter from Porterville Civic Development Foundation
RESOLUTION NO. _______ - 2008

A RESOLUTION OF THE PORTERVILLE REDEVELOPMENT AGENCY
FOR ACCEPTANCE OF A LOAN FROM THE PORTERVILLE CIVIC
DEVELOPMENT FOUNDATION

WHEREAS, the Porterville Redevelopment Agency (the “Agency”) and the City of Porterville (the “City”) recognize the need to provide for the revitalization of the downtown area; and

WHEREAS, the Agency approved the work program included in the 2007-2008 Budget which calls out the amendment of the boundaries of Project Area No. 1 (Amendment) and a Master Plan for improvements in and around the downtown area; and

WHEREAS, the City has approved a portion of the funding for the preparation of the Project Area Amendment and Master Plan; and

WHEREAS, the Porterville Civic Development Foundation has offered a loan for the unfunded portion for the preparation of the Project Area Amendment and Master Plan; and

WHEREAS, the expenditure of Agency funds for the Amendment and Master Plan is of benefit to Project Area #1 and the surrounding area; and

WHEREAS, the Agency has no other reasonable means of financing the cost of the Amendment and Master Plan;

WHEREAS, the Amendment and Master Plan is in furtherance of the purpose of redevelopment and will assist in the elimination of blighting conditions within the amended boundaries of Project Area No. 1;

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

1. The Agency finds and determines that the funding for the preparation of an amendment of the boundaries of Project Area No. 1 and a Master Plan for improvements in and around the downtown area is necessary to effectuate the purposes of the redevelopment plan.

2. The Agency acknowledges that the City of Porterville has appropriated a portion of the funding for the Amendment and Master Plan and that there is no other reasonable means of financing the cost of the unfunded portion of the Amendment and the portion of the Master Plan within Project Area No. 1.

3. The Agency finds and determines that the Amendment and Master Plan will further the purpose of redevelopment and will assist in the elimination of blighting conditions with the amended boundaries of Project Area No. 1.
4. The Agency hereby agrees to accept the terms of the Loan Agreement as presented by the Porterville Civic Development Foundation, for the reimbursement of costs for the Project Area Amendment and a portion of the Master Plan.

5. The Agency authorizes the Chairman to execute in the name of the Porterville Redevelopment Agency all documents as related to the Amendment to the boundaries of Project Area No. 1 and the preparation of a Master Plan.

ADOPTED this 15th day of January 2008.

________________________
Cameron Hamilton, Chairman

ATTEST:

________________________
John Longley, Secretary
December 12, 2007

Dear Director,

Because time is of the essence, and in furtherance of the mission of the Foundation, the Executive Committee is requesting your approval of a motion to give the Executive Committee the authority to enter into a loan agreement with the City of Porterville Redevelopment Agency as described in the attached December 6, 2007 minutes. Your approval will be assumed, unless you contact, in writing, the secretary, Lynda Scearcey, at the above address prior to Friday, December 21, 2007. The documents will be drafted by our attorney, Robert Krase.

If you would like more information, please do not hesitate to contact either Art Cardell, Dick Hatfield, Wayne Harris or Lynda Scearcey prior to December 21st.

There have been three meetings of the Committee with the City of Porterville staff regarding this commitment. I have attached a copy of the minutes of the last meeting. The discussion at that meeting seems to incorporate all of the prior discussions.

Warm regards and Happy Holidays,

Lynda Scearcey, CPA
Secretary/Treasurer
The City of Porterville Redevelopment Agency is requesting a loan/grant of $200,000 from the PCDF to assist in the Redevelopment Area Amendment and Master Plan project (the “Project”). The City of Porterville is contributing $100,000 to the $300,000 project that will generate the RDA Amendment, Master Plan, EIR and Tax Increment Audit.

Mr. Dunlap and Ms. Wammack answered questions from the Directors. The Master Plan Area has been identified as the potential site for a new County court facility. In anticipation of the improvements in and around the area, the Agency wishes to pursue a Master Plan for the uniform development within the Project Area. While the Master Plan concept was developed with the vision of the new County Court facility to be located at the Porterville Fairgrounds, the project itself will provide for planned growth, connectivity, and parking to accommodate not only the County facility, but the ancillary businesses that are projected.

The Project will include a Tax Increment Analysis that will project new tax increment revenues generated through the expansion of the Redevelopment Area boundaries.

There is property on 4th Street that is available to be sold. The City of Porterville Department of Public Works in order to build a Water Surface Treatment Facility may be a candidate at some time in the future. This property, valued at $155,000, could be used secure the loan.

After Mr. Dunlap and Ms. Womack left, the following discussion ensued. There was consensus that the purpose of the PCDF was to facilitate the process of development. The RDA’s request for a grant/loan would not serve that purpose.

The favored position was to treat the entire $200,000 commitment as a non-interest bearing loan, to be repaid on or before May 1, 2011. The project is to be completed by November 1, 2009, otherwise the amounts advanced will be immediately due and payable. The draw downs shall be honored monthly as billings are presented. The loan is to be secured by the property on 4th Street.

Respectfully submitted,

Lynda Scearcy, Secretary/Treasurer