CITY COUNCIL AGENDA
PORTERVILLE, CALIFORNIA
DECEMBER 1, 2009, 6:00 P.M.

Call to Order
Roll Call

ORAL COMMUNICATIONS
This is the opportunity to address the City Council on any matter scheduled for Closed Session. Unless additional time is authorized by the Council, all commentary shall be limited to three minutes.

CLOSED SESSION:
A. Closed Session Pursuant to:
   3. Government Code Section 54956.9(a) – Conference with Legal Counsel – Two Cases: Steve Schnars v. City of Porterville, Workers Compensation Appeals Board Case No. ANA 0410500 and ANA 0410552; and Steve Schnars v. City of Porterville, Tulare County Superior Court, Visalia Div., Case No. 09-233408.
   4. Government Code Section 54956.9(b) – Conference with Legal Counsel – Anticipated Litigation – One Case.
   5. Government Code Section 54956.9(c) – Conference with Legal Counsel – Anticipated Litigation – Two Cases.

7:00 P.M. RECONVENE OPEN SESSION
REPORT ON ANY COUNCIL AND/OR REDEVELOPMENT AGENCY ACTION TAKEN IN CLOSED SESSION

Pledge of Allegiance Led by Council Member Pedro R. Martinez
Invocation

PROCLAMATIONS
   Porterville High School Varsity Football

PRESENTATIONS
   Employee of the Month – David Behrens
   Community Covenant Signing
   Miss Porterville & Her Court

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. Unless additional time is authorized by the Council, all commentary shall be limited to three minutes.
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. City Council Minutes of October 6, 2009, and November 17, 2009

2. Award of Contract – CNG Facility Maintenance Contractor
   Re: Considering approval of a $15,900 one-year contract with Exterran of Bakersfield for professional maintenance services required to properly maintain the recently construction CNG facility at the Corporation Yard.

3. Award of Contract – Reclamation Road 216 Pipeline and Weir Project
   Re: Awarding contract in an amount of $124,732.54 to Sierra Construction and Excavation Inc. of Bakersfield for the project consisting of the removal and installation of irrigation pipeline, and the installation of a weir/check structure on Road 216, approximately ¼ miles north of Tea Pot Dome Avenue.

4. Acceptance of Project – Fairway Tract Emergency Water Project
   Re: Accepting project as complete from 99 Pipeline, Inc., and authorizing the filing of the Notice of Completion for the project consisting of approximately 250 feet of 8” water main and related work for the purpose of providing emergency water, on a very limited basis, to the Fairway Tract, a 64 lot subdivision located along Leggett Street between Isham and Olive Avenues.

5. Acceptance of Project – Micro Surfacing Project
   Re: Accepting project as complete from Valley Slurry Seal, and authorizing the filing of the Notice of Completion for the project consisting of the removal and replacement of badly distressed asphalt concrete, the sealing of significant cracks, the installation of a durable thin asphalt overlay, and new pavement markings on several streets within the City.

6. Authorization of a Loan Agreement with Henderson Prospect Partners
   Re: Considering approval of the proposed Loan Agreement with Henderson Prospect Partners for the purpose of acquiring the former Mervyn’s building for reuse by Kohl’s Department Store, Inc.

7. Request by Federico Ramos for a Modification of Conditions to Install A Septic Tank at 917 S. Wisconsin Street
   Re: Consideration of a request to modify the Council’s conditions of approval for the installation of a septic tank at 917 S. Wisconsin Street.

8. Authorize a Letter of Commitment for a State Energy Program Residential Building Retrofit Regional Grant Proposal
   Re: Authorizing a non-binding letter of commitment to the California Energy Commission for a grant application for comprehensive residential building retrofit solicitation.

9. Appointment to Library Board of Trustees
   Re: Considering the appointment of an individual to fill a vacancy on the Library Board of Trustees due to the resignation of a newly seated member.
10. **Scheduling of Adjourned City Council Meeting for Annual Goal Setting to Establish 2010 Priorities**  
Re: Approving the scheduling on an adjourned meeting for annual goal setting to establish priorities to take place on Tuesday, December 8, 2009, at 6:30 p.m.

**A Council Meeting Recess Will Occur at 8:30 p.m., or as Close to That Time as Possible**

**PUBLIC HEARINGS**

11. **General Plan Amendment 1-2009, Zone Change (Pre-Zoning) 1-2009 and Annexation 472**  
Re: Considering approval of resolutions and an ordinance relative to the annexation of the convenience market at 943 W. Westfield Avenue.

12. **Lighting Maintenance District Proposed Consolidation**  
Re: Adoption of a resolution approving the Engineer’s Report, diagram, and assessment method for the proposed Lighting Maintenance District Consolidation, pending ballot tabulation results of affirmative approval.

13. **Proposal for an Amendment to the Freeholders Charter of the City of Porterville Concerning Leases of City Property**  
Re: Considering approval of the Resolution Ordering Submission of a Proposition of an Amendment to the Freeholders Charter of Porterville Concerning Leases of City Property to the Qualified Voters of the City at a Special Election to be Held for that Purpose, Requesting Consolidation with a General Municipal Election Scheduled on June 8, 2010, and Authorizing the Filing of an Impartial Analysis and Written Arguments.

**SCHEDULED MATTERS**

14. **Quarterly Budget Review and Interim Financial Status Reports**  
Re: Receipt of financial status reports and a brief review of the City’s budget, particularly the General fund, based on the first three months of the fiscal year.

15. **Environmental Review of the Fairground Relocation Project**  
Re: Considering adoption of a resolution approving a Mitigated Negative Declaration for the Fairground Relocation Project.

16. **Early Literacy Program**  
Re: Considering the approval of a new early literacy program to commence in January of 2010, as recommended by the Library Board of Trustees.

17. **Disclosure of Groundwater Report**  
Re: Considering acceptance of a groundwater study by Dr. Kenneth D. Schmidt which focuses on determining the existing, and predicting future groundwater conditions within the Urban Development Boundary.

18. **Consideration of City Charter Amendment Regarding the Selection Process for Appointments to City Boards, Commissions, and Committees**  
Re: Consideration of a process to be uniformly utilized for the appointment of members to City Boards, Commissions, and Committees, and the means to codify such a process.
19. **Review Skate Park Policies**  
   Re: Consideration of skate park policies relative to issues of vandalism.

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

**PORTERVILLE REDEVELOPMENT AGENCY AGENDA**

Roll Call: Agency Members/Chairman

**WRITTEN COMMUNICATIONS**

**ORAL COMMUNICATIONS**

**REDEVELOPMENT AGENCY PUBLIC HEARING**

PRA-1. **Request to Continue the Public Hearing for the 2010-2014 Implementation Plan for the Porterville Redevelopment Project No. 1**  
Re: Consideration of a request to continue a public hearing for the 2010-2014 Implementation Plan to allow additional time for staff and the Agency’s consultant to make added changes to complete the Implementation Plan.

Adjourn the Porterville 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 December 15, 2009 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 Office of 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.

Materials related to an item on this Agenda submitted to the City Council after distribution of the Agenda packet are available for public inspection during normal business hours at the Office of City Clerk, 291 North Main Street, Porterville, CA 93257, and on the City’s website at www.ci.porterville.ca.us.
CITY COUNCIL MINUTES
PORTERVILLE, CALIFORNIA
OCTOBER 6, 2009, 6:00 P.M.

Call to Order at 6:00 p.m.
Roll Call: Council Member Hamilton, Council Member Pedro Martinez, Vice Mayor Ward, Mayor McCracken
Absent: Council Member Felipe Martinez

ORAL COMMUNICATIONS
None

CLOSED SESSION:
A. Closed Session Pursuant to:
6- Government Code Section 54956.9(b) – Conference with Legal Counsel – Anticipated Litigation – One Case.
7- Government Code Section 54956.9(c) – Conference with Legal Counsel – Anticipated Litigation – Three Cases.

7:00 P.M. RECONVENE OPEN SESSION

REPORT ON ANY CITY COUNCIL ACTION TAKEN IN CLOSED SESSION
City Attorney Lew reported that no action had been taken.

Pledge of Allegiance Led by Council Member Council Member Hamilton
Invocation – one individual participated.
PROCLAMATIONS
Extended Opportunity Programs and Services (EOPS)

PRESENTATIONS
Employee of the Month – Chris McGuire
Outstanding Business – Citizens Business Bank
Eagle Mountain Air Show

ORAL COMMUNICATIONS
• Gil Jaramillo, Satellite Manager for SBDC, spoke of the services provided by the organization; thanked the City and Development Associate Linda Wammack specifically, and the Chamber of Commerce and Donnette Carter for their assistance with the program; and congratulated Mr. McDonald of Citizens Business Bank for his business’ award that evening.
• Juliana Lawless, 1707 N. Prospect, voiced concern as to Item 9, and inquired as to the City’s plans for water service, sewer laterals, and parking.

CONSENT CALENDAR
Items 5, 9, 12, 13 and 19 were removed for further discussion.


Documentation: M.O. 01-100609
Disposition: Approved

2. BUDGET ADJUSTMENT FOR THE 2009-10 FISCAL YEAR

Recommendation: That the Council approve the proposed budget adjustments, and authorize staff to modify revenue and expenditure estimates as described on the proposed schedule.

Documentation: M.O. 02-100609
Disposition: Approved

3. CLAIM – KENNETH BALDERAMA

Recommendation: After consideration and investigation, staff recommends that the Council reject said claim; refer the matter to the City’s insurance adjustor; and direct the City Clerk to give the Claimant proper notification.

Documentation: M.O. 03-100609
Disposition: Approved
4. NEGOTIATED PURCHASE – SEWER LIFT STATION #9 EQUIPMENT

Recommendation: That City Council authorize the purchase of equipment from Smith & Loveless, Inc. in the amount of $28,000.

Documentation: M.O. 04-100609
Disposition: Approved

5a. MICRO-SURFACING PROJECT – FAILURE TO EXECUTE CONTRACT

Recommendation: That the City Council:
1. Reject the bid received from Bond Blacktop, Inc.;
2. Authorize the Public Works Director to formally notify Bond Blacktop, Inc. of the Council’s decision to reject their bid;
3. Award the Micro-Surfacing Project to Valley Slurry Seal in the amount of $460,517.90;
4. Authorize progress payments up to 90% of the contract amount; and
5. Authorize a 10% contingency to cover unforeseen construction costs.

Documentation: M.O. 05-100609
Disposition: Approved

6. ACCEPTANCE OF PROJECT - HENDERSON AVENUE REHABILITATION PROJECT (JAYE STREET TO SJVRR)

Recommendation: That City Council:
1. Accept the project as complete;
2. Authorize the filing of the Notice of Completion; and
3. Authorize the release of the 10% retention thirty-five (35) days after recordation, provided no stop notices have been filed.

Documentation: M.O. 06-100609
Disposition: Approved

7. ACCEPTANCE OF IMPROVEMENTS - RANCH VICTORIA, PHASE ONE (THOMAS MCNAMARA & JANICE MCNAMARA)

Recommendation: That the City Council:
1. Accept the public improvements of Ranch Victoria, Phase One Subdivision for maintenance;
2. Authorize the filing of the Notice of Completion; and
3. Release the payment guarantee thirty-five (35) days after recordation, provided no liens have been filed.

Documentation: M.O. 07-100609
8. INTENT TO VACATE A PORTION OF OAK AVENUE, RUTH STREET, OLIVE AVENUE AND PUBLIC UTILITY EASEMENT (PORTERVILLE PUBLIC CEMETERY DISTRICT)

Recommendation: That the City Council:
1. Pass a resolution of intent to vacate a portion of Oak Avenue, Ruth Street, Olive Avenue and public utility easement between Crestview Street and Olivecrest Avenue; and
2. Set the Council meeting of November 3, 2009, as the time and place for a public hearing.

Documentation: Resolution 85-2009
Disposition: Approved

10. AMENDED AGREEMENT WITH SIERRA MANAGEMENT

Recommendation: That the City Council:
1. Review the Amended Agreement between the City of Porterville and Sierra Management, and approve the same; and
2. Authorize the Mayor and City Clerk to execute the Amended Agreement to implement the necessary changes to the public transportation agreement with Sierra Management.

Documentation: M.O. 08-100609
Disposition: Approved

11. CONSOLIDATED WASTE MANAGEMENT AUTHORITY MEMBERSHIP AGREEMENT PAYMENT

Recommendation: That City Council authorize payment to CWMA for the City’s membership contribution in the amount of $52,071.

Documentation: M.O. 09-100609
Disposition: Approved

14. RESCIND RESOLUTION 2-2009 AND ADOPT A REVISED RESOLUTION ESTABLISHING A REPAYMENT SCHEDULE FROM THE FARMING OPERATION TO THE GENERAL FUND FOR COSTS INCURRED IN THE REPLACEMENT OF THE PORTERVILLE MUNICIPAL AIRPORT KIT FOX PRESERVE

Recommendation: That the City Council:
1. Rescind Resolution 2-2009; and
2. Approve the revised resolution as presented.
15. RESOLUTION FOR FUNDING FROM THE CALIFORNIA RELEAF AMERICAN RECOVERY AND REINVESTMENT ACT GRANT PROGRAM

Recommendation: Adopt the Resolution for funding from the California RELEAF American Recovery and Reinvestment Act Grant Program.

Documentation: Resolution 88-2009
Disposition: Approved

16. RENEWAL OF PERSONNEL EXAMINING SERVICES AGREEMENT BETWEEN THE CITY OF PORTERVILLE AND COOPERATIVE PERSONNEL SERVICES

Recommendation: That the Council approve the proposed draft resolution authorizing renewal of the Test Security Agreement with Cooperative Personnel Services, and authorize the City Manager or his designee to sign on behalf of the City.

Documentation: Resolution 89-2009
Disposition: Approved

17. APPOINTMENT TO THE UNIFORM HOUSING & CALIFORNIA BUILDING CODE APPEALS BOARD

Recommendation: That the City Council:
1. Accept and approve the candidates identified in the staff report as the City of Porterville’s Uniform Housing and California Building Code Appeals Board; and
2. Appoint the members identified in this report to a 5-year term with the start of term beginning October 12, 2009.

Documentation: M.O. 10-100609
Disposition: Approved

18. APPROVAL FOR COMMUNITY CIVIC EVENT – CENTRAL CALIFORNIA FAMILY CRISIS CENTER’S ANNUAL CANDLESLIGHT VIGIL FOR DOMESTIC VIOLENCE – OCTOBER 15, 2009

Recommendation: That the Council approves the Community Civic Event Application and Agreement submitted by the Central California Family Crisis Center, subject to the stated requirements contained in the Application, Agreement and Exhibit “A”.
AYES: Hamilton, Ward, McCracken
NOES: None
ABSTAIN: P. Martinez
ABSENT: F. Martinez

Documentation: M.O. 11-100609
Disposition: Approved

20. APPROVAL FOR COMMUNITY CIVIC EVENT – VETERANS' HOMECOMING COMMITTEE – VETERANS' DAY PARADE – NOVEMBER 11, 2009

Recommendation: That the Council approve the Community Civic Event Application and Agreement submitted by the Veteran’s Homecoming Committee, subject to the stated requirements contained in Exhibit “A”.

Documentation: M.O. 12-100609
Disposition: Approved


Recommendation: That the City Council approve the City of Porterville Parks & Leisure Services annual Veteran’s Day Run subject to the restrictions and requirements contained in the application.

Documentation: M.O. 13-100609
Disposition: Approved

COUNCIL ACTION: MOVED by Council Member Hamilton, SECONDED by Vice Mayor Ward that the City Council approve Item Nos. 1 – 4, 5a – 8, 10, 11, 14 – 18, 20 and 21.

AYES: Hamilton, P. Martinez, Ward, McCracken
NOES: None
ABSTAIN: None
ABSENT: F. Martinez

5. AUTHORIZATION TO NEGOTIATE A CONTRACT – ARCHITECTURAL & ENGINEERING SERVICES FOR THE CITY OF PORTERVILLE ANIMAL SHELTER AND DOG PARK PROJECT

Recommendation: That the City Council:
1. Authorize the Mayor to execute the Consultant Service Agreement with Taylor-Teeter Partnership at an agreed fee of $100,000 for the services described herein; and
2. Authorize progress payments up to 100% of the fee amount and authorize a 10% contingency to cover unforeseen design efforts.

City Manager John Lollis introduced the item, and the staff report was waived at the Council’s request.

Vice Mayor Ward inquired about the utilization of staff resources, and the City Manager confirmed that staff had not been utilized the consultant’s fee would have been higher.

**COUNCIL ACTION:** MOVED by Vice Mayor Ward, SECONDED by Council Member Hamilton that the City Council authorize the Mayor to execute the Consultant Service Agreement with Taylor-Teeter Partnership at an agreed fee of $100,000 for the services described herein; and authorize progress payments up to 100% of the fee amount and authorize a 10% contingency to cover unforeseen design efforts.

**AYES:** Hamilton, P. Martinez, Ward, McCracken  
**NOES:** None  
**ABSTAIN:** None  
**ABSENT:** F. Martinez

Disposition: Approved

9. **PROGRAM SUPPLEMENT TO THE LOCAL AGENCY-STATE MASTER AGREEMENT – PROSPECT STREET RECONSTRUCTION AND CONCRETE IMPROVEMENTS PROJECT**

Recommendation: That the City Council:
1. Approve the subject program supplement by passing a resolution authorizing the Mayor to sign the subject program supplement; and
2. Direct staff to return the signed program supplement to CalTrans.

City Manager Lollis introduced the item, and the staff report was waived at the Council’s request. The City Manager noted that a petition had been received from the community expressing concerns about the striping plan for the area, which was not particular to what the Council would be considering.

At the request of Council Member Pedro Martinez, City Manager Lollis and Public Works Director Rodriguez commented on community concerns regarding parking and water services. Director Rodriguez then requested that the proposed resolution be amended to remove “fire hydrant assemblies, water services, sewer laterals”.

**COUNCIL ACTION:** Resolution 90-2009 MOVED by Council Member Hamilton, SECONDED by Council Member Pedro Martinez that the City Council approve the subject program supplement by passing a resolution authorizing the Mayor to sign the subject program supplement, as amended to remove “fire hydrant
assemblies, water services, sewer laterals” from the resolution; and direct
staff to return the signed program supplement to CalTrans.

AYES: Hamilton, P. Martinez, Ward, McCracken
NOES: None
ABSTAIN: None
ABSENT: F. Martinez

Disposition: Approved

12. APPROVAL OF LEASE AGREEMENT WITH CITY OF LINDSAY FOR
LINDSAY ANIMAL SHELTER

Recommendation: That the City Council authorize and direct the Mayor to execute the Lease
Agreement with the City of Lindsay.

City Manager Lollis introduced the item, and the staff report was waived at the Council’s
request.

Council Member Hamilton commended staff for their efforts in securing the facility for use.

COUNCIL ACTION: MOVED by Council Member Hamilton, SECONDED by Vice Mayor
M.O. 15-100609 Ward that the City Council authorize and direct the Mayor to execute the
Lease Agreement with the City of Lindsay.

AYES: Hamilton, P. Martinez, Ward, McCracken
NOES: None
ABSTAIN: None
ABSENT: F. Martinez

Disposition: Approved

13. VISALIA’S HAZ MAT PROGRAM

Recommendation: For information only.

City Manager Lollis introduced the item and presented the staff report. He explained that the
report provided a synopsis of where things stood at the moment, and that the County would be
exploring options for a long-term solution.

Fire Chief Garcia addressed Council questions regarding the advantages and disadvantages of
utilizing services from a Haz Mat Program outside of Tulare County. Council Member Pedro
Martinez expressed concern with the response time.

Disposition: No action required.

Recommendation: That the City Council approve the Community Civic Event Application and Agreement from the Mariachi Academy Foundation and the Time Marches On Committee, subject to the Restrictions and Requirements contained in the Application, Agreement and Exhibit “A” of the Community Civic Event Application.

City Manager Lollis introduced the item and presented the staff report, during which he indicated that there had been a request for City co-sponsorship. Council Member Pedro Martinez noted a potential conflict of interest and exited the Chambers. Mayor McCracken stated that he had not been approached for services relative to the event.

City Manager Lollis stated that the request was made for electrical power, gazebo lighting, tables from the Parks & Leisure Services Department, and two police officers. A discussion ensued regarding the availability of City resources requested, and consideration of future co-sponsorship. Vice Mayor Ward expressed concern with the City supporting fundraising events and activities.

City Manager added that a request was made, following the preparation of the agenda to amend the street closure to include Thurman Avenue, between Division Street and Second Street.

COUNCIL ACTION: MOVED by Council Member Hamilton, SECONDED by Vice Mayor Ward that the City Council approve the Community Civic Event Application and Agreement from the Mariachi Academy Foundation and the Time Marches On Committee, subject to the Restrictions and Requirements contained in the Application, Agreement and Exhibit “A” of the Community Civic Event Application; and approval of the request for co-sponsorship based on the availability of City resources, with the exception of the request for guards.

AYES: Hamilton, Ward
NOES: McCracken
ABSTAIN: P. Martinez
ABSENT: F. Martinez

Disposition: Approved

The Council took a ten minutes recess.

PUBLIC HEARINGS
22. PRECISE ALIGNMENT OF MATHEW STREET BETWEEN CASTLE AVENUE AND NORTH GRAND AVENUE

Recommendation: That the City Council adopt a precise alignment for Matthew Street between
Castle Avenue and North Grand Avenue.

City Manager Lollis introduced the item, and City Engineer/Deputy Public Work Director Mike Reed presented the staff report.

The public hearing opened at 8:23 p.m.

- Larry Norris, 1967 W. North Grand, owner of parcel 1, voiced concerns regarding the proposed alignment.

- Cherry Maculhaney, 1989 W. North Grand, owner of 5-acre parcel, spoke against the proposed alignment.

- Melanie Baker, 1973 W. North Grand, spoke against the proposed alignment.

The hearing was closed to the public.

At the Mayor's request, staff explained the purpose of the alignment and what would have to occur prior to a road being built. Council directed staff to meet with property owners to resolve concerns.

**COUNCIL ACTION:**
M.O. 17-100609

MOVED by Council Member Hamilton, SECONDED by Council Member Pedro Martinez that the City Council continue the public hearing to the November 17th, 2009 City Council meeting, and direct staff to meet with the property owners to resolve their issues.

AYES: Hamilton, P. Martinez, Ward, McCracken
NOES: None
ABSTAIN: None
ABSENT: F. Martinez

Disposition: The Public Hearing was continued; and staff direction given.

**SCHEDULED MATTERS**
23. LIGHTING MAINTENANCE DISTRICTS CONSOLIDATION

Recommendation: That the City Council:

1. Authorize Staff to take steps to form a new lighting-only district, which essentially will consolidate the 26 lighting districts as proposed and proceed with the preparation for protest/election efforts;
2. Set a Public Hearing for December 1, 2009; and
3. Adopt a resolution ordering the proceedings for the formation of Landscape Maintenance District No. 46 and ordering the preparation of the Engineer's Report.

City Manager Lollis introduced the item, and Administrative Aide Vangie Ramirez presented
the staff report.

Staff answered Council questions regarding assessment increases and the costs associated with an in-house election.

City Attorney Lew addressed Council Member Pedro Martinez’s concerns regarding the addition of lighting and improvements within certain areas of the district. She advised that it was possible to create separate districts or different zones of benefit within the same district if necessary.

**COUNCIL ACTION:** Resolution 91-2009

MOVED by Council Member Pedro Martinez, SECONDED by Council Member Hamilton that the City Council authorize staff to take steps to form a new lighting-only district, which essentially will consolidate the 26 lighting districts as proposed and proceed with the preparation for protest/election efforts; set a Public Hearing for December 1, 2009; and adopt a resolution ordering the proceedings for the formation of Landscape Maintenance District No. 46 and ordering the preparation of the Engineer’s Report.

AYES: Hamilton, P. Martinez, Ward, McCracken
NOES: None
ABSTAIN: None
ABSENT: F. Martinez

Disposition: Approved

24. COUNCIL MEMBER REQUESTED AGENDA ITEM – COMMERCIAL TRUCK PARKING RE-VISITED

Recommendation: None.

City Manager Lollis introduced the item and presented the staff report.

Council Member Hamilton made a motion to ban all truck parking in city limits until locations can be identified by staff. City Attorney Lew advised that the action proposed be noticed on a future agenda to allow for public notice and comment. Vice Mayor Ward expressed an interest in forming a committee to review the issue.

**COUNCIL ACTION:** M.O. 08-100609

MOVED by Vice Mayor Ward, SECONDED by Council Member Pedro Martinez to approve the appointment of Council Member Felipe Martinez and Vice Mayor Ward to a committee to review the issue and bring back a report and recommendations to the Council at the Nov. 17th meeting.

AYES: Hamilton, P. Martinez, Ward, McCracken
NOES: None
ABSTAIN: None
ABSENT: F. Martinez
ORAL COMMUNICATIONS
   None

OTHER MATTERS
   • Council Member Hamilton 1) provided an AB1234 report on his recent travel to the League of California Cities (LLOC) Annual Conference in San Jose, noting his attendance at sessions pertaining to Employee Relations, Gang Violence, and the General Plan process; and voicing his disappointment in the overall content of the Conference; and 2) spoke of the 100 Year Anniversary of the Zion Lutheran Church.
   • Council Member Pedro Martinez provided his AB1234 report on his recent travel to the LLOC Annual Conference, and spoke of his attendance at sessions on Libraries and Youth Commissions. He then spoke of his visits to San Jose handicapped-friendly parks, advising he would share his video footage of same with the Council.
   • Vice Mayor Ward provided his AB1234 report on his attendance at the LLOC Annual Conference, noting the Library session, and agreeing with Council Member Hamilton on his lack of enthusiasm over the content of the Conference.
   • City Manager Lollis spoke of the recent Employee Golf Challenge held at the Municipal Golf Course and Employee Picnic held at Murry Park on September 19th; and advised that the Prop 84 grant was moving forward.
   • Community Development Director Dunlap spoke of the City's recent receipt of the San Joaquin Valley Blueprint Award of Achievement for its work on the General Plan, and presented the award to the City Council.

ADJOURNMENT
   The Council adjourned at 9:20 p.m. to the meeting of October 13, 2009 at 6:00 p.m.

Luisa Herrera, Deputy City Clerk

SEAL

Pete V. McCracken, Mayor
CITY COUNCIL AGENDA
PORTERVILLE, CALIFORNIA
NOVEMBER 17, 2009, 5:30 P.M.

Called to Order at 5:30 p.m.
Roll Call: Council Member Hamilton (arrived at 5:40 p.m.), Council Member Felipe Martinez, Vice Mayor Ward, Mayor McCracken
Absent: Council Member Pedro Martinez

ORAL COMMUNICATIONS
None

CLOSED SESSION:
A. Closed Session Pursuant to:


10. Government Code Section 54956.9(a) – Conference with Legal Counsel – Two Cases: Steve Schnars v. City of Porterville, Workers Compensation Appeals Board Case No. ANA 0410500 and ANA 0410552; and Steve Schnars v. City of Porterville, Tulare County Superior Court, Visalia Div., Case No. 09-233408.

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11- Government Code Section 54956.9(b) – Conference with Legal Counsel – Anticipated Litigation – One Case.
12- Government Code Section 54956.9(c) – Conference with Legal Counsel – Anticipated Litigation – Two Cases.

7:00 P.M. RECONVENE OPEN SESSION
REPORT ON ANY COUNCIL AND/OR REDEVELOPMENT AGENCY ACTION TAKEN IN CLOSED SESSION

The following action was reported by City Attorney Julia Lew:


The Council approved the acquisition of the 13.31 acre parcel located at the southeast corner of Jaye Street and Montgomery Avenue (APN 269-050-035) for the purchase price of $511,500; approved the budget allocation and adjustment to account for the expenditure; and authorized the Mayor to sign all necessary documentation.

COUNCIL ACTION:

AYES: Hamilton, F. Martinez, McCracken
NOES:
ABSTAIN: None
ABSENT: P. Martinez

Documentation: Resolution 99-2009
Disposition: Approved.

Pledge of Allegiance Led by Vice Mayor Brian Ward
Invocation – one individual participated.

PROCLAMATIONS
Mildred Layfield – 101st Birthday

ORAL COMMUNICATIONS

• An anonymous individual voiced concern with the three minute time limit imposed on members of the public for commentary; questioned on what basis a decision would be made by the Council to extend a speaker’s time; and cautioned that the policy would have a chilling effect on public participation. After the Mayor, without objection, extended the individual’s time for one additional minute, a further extension was requested. Due to objections from Council Member Hamilton and Council Member Felipe Martinez, the individual’s second request for an extension of time was denied.

• Dick Eckhoff, business address at 197 N. Main Street, requested that his commentary on page 2 of the Minutes of November 3, 2009 be corrected to reflect that he was not opposed to the Council establishing a policy for Board and Commission appointments. Mr. Eckhoff then suggested that the Council could consider limiting public commentary at the beginning of the meeting to only those items on the agenda, and allowing
commentary on any item of interest during only the last Oral Communications.

- Robert Roman, on behalf of the Time Marches On Committee, thanked the City for its support of the committee’s events, and presented the Council with a Certificate of Appreciation and an artist’s rendering of Centennial Park.

CONSENT CALENDAR

1. CITY COUNCIL MINUTES OF NOVEMBER 3, 2009

Recommendation: That the City Council approve the City Council Minutes of November 3, 2009.

Documentation: M.O. 01-111709
Disposition: Approved.

2. CLAIM – ROBIN AND KEVIN VOGT

Recommendation: That the City Council, after consideration and investigation, accept said claim and authorize payment in the amount of $6,837.78.

Documentation: M.O. 02-111709
Disposition: Approved.

3. TRANSIT CLAIM – ROY ATCHISON

Recommendation: After consideration and investigation, that the Council reject said claim; refer the matter to the City’s insurance adjustor; and direct the City Clerk to give the Claimant proper notification.

Documentation: M.O. 03-111709
Disposition: Approved.

4. AUTHORIZATION TO ADVERTISE FOR BIDS – MAINTENANCE GARAGE NATURAL GAS DETECTION PROJECT

Recommendation: That the City Council:
1. Approve staff’s recommended Plans and Project Manual; and
2. Authorize staff to advertise for bids on the project.

Documentation: M.O. 04-111709
Disposition: Approved.

5. AUTHORIZATION TO ADVERTISE FOR BIDS – MORTON AVENUE BUS TURNOUTS

Recommendation: That the City Council:
1. Approve staff’s recommended Plans and Project Manual; and
2. Authorize staff to advertise for bids on the project.
6. SANITARY SEWER MANAGEMENT PLAN (SSMP) WORK PLAN, GOALS AND ORGANIZATION

Recommendation: That the City Council approve the proposed resolution which adopts the City of Porterville SSMP Work Plan, Goals and Organization.

Documentation: Resolution 100-2009
Disposition: Approved.

7. ANNUAL CONCRETE PROGRAM WITH C-SET PARTICIPATION

Recommendation: That the City Council:
1. Authorize and direct the City Manager to assign or make available $50,000 from the “Risk Management” fund for the purpose of funding the 2009/2010 “Annual Concrete Construction Program”;
2. Direct the Finance Director to prepare a budget adjustment to the 2009/2010 City Budget in the amount of $50,000 to fund the “Annual Concrete Construction Program”;
3. Approve and authorize the City to enter into an “Annual Concrete Construction Program” with C-SET;
4. Direct the Public Works Director to hire, or cause to be hired, a concrete supervisor with the requisite concrete skills, to act as “program” supervisor at a pay not to exceed $34,800 per year;
5. Authorize the Public Works Director to purchase concrete material and concrete tools not to exceed $10,200 in FY 2009/2010;
6. Authorize the use of the City’s jackhammer by C-SET staff for the day-in, day-out use as would be expected in the course of concrete construction work; and
7. Authorize the use of a City dump truck with City operator as needed to dispose of concrete waste with the stipulation that reimbursable costs shall be limited to $5,000 in FY 2009/2010.

Documentation: M.O. 06-111709
Disposition: Approved.

8. UPDATE – TRUCK PARKING COMMITTEE MEETING

Recommendation: Informational Report only.

Documentation: M.O. 07-111709
Disposition: Report Received.
9. TITLE VI PROGRAM UPDATE

Recommendation: That the City Council:
1. Approve the Title VI Update for 2009; and
2. Authorize staff to file the 2009 Title VI Update with the Federal Transit Administration and request recertification of the program in accordance with FTA Circular 4702.1A "Title VI and Title VI Dependent Guidelines for Federal Transit Administration Recipients, dated May 13, 2007 and subsequent updates.

Documentation: M.O. 08-111709
Disposition: Approved.

10. SAFE AND SANE FIREWORKS

Recommendation: Informational Report only.

Documentation: M.O. 09-111709
Disposition: Approved.

11. CANCELLATION OF FIRST MEETING IN JANUARY 2010

Recommendation: That the City Council cancel the January 5, 2010 Council Meeting.

Documentation: M.O. 10-111709
Disposition: Approved.

12. REQUEST FOR STREET CLOSURE – MYERS’ FIFTEENTH ANNUAL CHRISTMAS TREE MEMORIAL SERVICE

Recommendation: That the City Council approve the closure of “E” Street, between Putnam and Cleveland, on December 8, 2009, from 5:00 p.m. to 9:00 p.m. subject to the specified conditions.

Documentation: M.O. 11-111709
Disposition: Approved.

COUNCIL ACTION: MOVED by Council Member Hamilton, SECONDED by Vice Mayor Ward that the Council approve Item Nos. 1 through 12.

AYES: Hamilton, F. Martinez, Ward, McCracken
NOES: None
ABSTAIN: None
ABSENT: P. Martinez
PUBLIC HEARINGS

13. PRECISE ALIGNMENT OF MATHEW STREET BETWEEN CASTLE AVENUE AND NORTH GRAND AVENUE

Recommendation: That the City Council:
1. Open the public hearing and receive public comment; and
2. Adopt a precise alignment for Mathew Street between Castle Avenue and North Grand Avenue.

City Manager John Lollis presented the item, and Deputy Public Works Director/City Engineer Mike Reed presented the staff report, which included the following options:

Option 1: Do nothing. Allow potential development within the vicinity of the Mathew Street alignment without regard to the City’s Circulation Element. If this option is selected, staff strongly recommends that the City Council amend the General Plan and Circulation Element to reflect the termination of Mathew Street at its current location (Castle Avenue).

Option 2: Passively pursue the alignment plan. Assume that the County of Tulare will communicate with City staff and will mark or otherwise enforce set-back requirements along the Mathew Street alignment. The risk exists that the County may unknowingly allow encroachments within the set-back limits and the City may have to purchase buildings or other physical improvements when and if Mathew Street is ever extended.

Option 3: Accept and approve the Mathew Street Precise Alignment Plan as presented. Direct the City Engineer to forward said alignment plan to the County of Tulare with the formal request that all future development in the vicinity of the Mathew Street alignment adhere to the “Precise Alignment Plan.”

The public hearing opened at 7:29 p.m. and closed at 7:30 p.m. when nobody came forward.

A discussion ensued as to whether filing the precise alignment was necessary in that the County was to contact the City regarding any development within the City’s UDB regardless of whether a precise alignment was on file with them. Staff advised that this was supposed to occur, yet cautioned that the County could unknowingly issue building permits that conflict with the proposed alignment without first contacting the City. Staff relayed the concerns of property owners that development would be spurred once the street alignment was on paper.

COUNCIL ACTION: MOVED by Council Member Felipe Martinez, SECONDED by Mayor McCracken that the Council approve Option 3.

M.O. 12-111709

AYES: P. Martinez, McCracken
NOES: Hamilton, Ward
ABSTAIN: None
ABSENT: P. Martinez
Disposition: Denied.

SCHEDULED MATTERS
14. CITY-FUNDED SUPPLEMENTAL INSURANCE COVERAGE FOR HISTORICAL PARADES

Recommendation: That the City Council:
1. Accept the quote submitted by Burlington Insurance Company in the amount of $2,234.82; and
2. Consider authorizing the Risk Manager to purchase said policy for supplemental insurance coverage for the three historical parades (Cinco de Mayo, Veterans Day, Children’s Christmas) for calendar year 2010.

City Manager John Lollis presented the item, and Administrative Services Manager Patrice Hildreth presented the staff report.

At the Council’s request, staff provided information on the two additional quotes, and confirmed that the proposed coverage would supplement the $1,000,000 liability already provided by the parade organizers.

COUNCIL ACTION: MOVED by Council Member Hamilton, SECONDED by Vice Mayor Ward that the Council Accept the quote submitted by Burlington Insurance Company in the amount of $2,234.82; and authorize the Risk Manager to purchase said policy for supplemental insurance coverage for the three historical parades (Cinco de Mayo, Veterans Day, Children’s Christmas) for calendar year 2010.

AYES: Hamilton, F. Martinez, Ward, McCracken
NOES: None
ABSTAIN: None
ABSENT: P. Martinez

Disposition: Approved.

15. AUTHORIZATION TO APPLY FOR A CALIFORNIA INFRASTRUCTURE AND ECONOMIC DEVELOPMENT BANK WATER LOAN - ROCKY HILL 550,000 GALLON RESERVOIR

Recommendation: That the City Council:
1. Affirm its decision to proceed with the construction of the Rocky Hill 550,000 Gallon Reservoir Project;
2. Direct the Public Works Director to prepare and present a “Request Letter” to the California Infrastructure & Economic Development Bank (CIEDB) asking that the CIEDB augment the City’s current water loan by $1.5 million; and
3. Direct the Public Works Director to request in the letter that the CIEDB approve the $1.5 million augmentation no later than January 2010.

City Manager John Lollis presented the item, and Public Works Director Baldo Rodriguez presented the staff report, during which time he amended staff’s recommendation to also request that the Council authorize the Public Works Director to present a second letter to the CIEDB if the percentage rate rises at or above 3.84% and ask that the $1.5 million be augmented to the City’s existing loan.

COUNCIL ACTION: MOVED by Council Member Felipe Martinez, SECONDED by Vice Mayor Ward that the Council affirm its decision to proceed with the construction of the Rocky Hill 550,000 Gallon Reservoir Project; direct the Public Works Director to prepare and present a “Request Letter” to the California Infrastructure & Economic Development Bank (CIEDB) asking that the CIEDB augment the City’s current water loan by $1.5 million; direct the Public Works Director to request in the letter that the CIEDB approve the $1.5 million augmentation no later than January 2010; and direct the Public Works Director to present a second letter to the CIEDB if the percentage rate rises at or above 3.84% and ask that the $1.5 million be augmented to the City’s existing loan.

AYES: Hamilton, F. Martinez, Ward, McCracken
NOES: None
ABSTAIN: None
ABSENT: P. Martinez

Disposition: Approved.

16. PROPOSAL FOR AN AMENDMENT TO THE FREEHOLDERS CHARTER OF THE CITY OF PORTERVILLE CONCERNING LONG TERM LEASES

Recommendation: That the City Council:
1. Provide direction concerning a proposed amendment to Section 68 of the Charter; and
2. Set a public hearing for the December 1, 2009 City Council Meeting concerning the proposed amendment.

City Manager John Lollis presented the item, and City Attorney Julia Lew presented the staff report.

A brief discussion ensued as to options for consideration, during which time Ms. Lew clarified that the Council could still include the 90 day termination clause for shorter term leases. It was further clarified that the Council could contact Ms. Lew with any proposed language for the amendment as the draft would be returning to the Council for consideration.

COUNCIL ACTION: MOVED by Council Member Felipe Martinez, SECONDED by Vice Mayor Ward that the Council direct the City Attorney to prepare a draft a proposed
M.O. 15-111709 amendment to the City Charter to allow for long term leases, and set a public hearing for December 1, 2009 concerning the proposed amendment.

AYES: Hamilton, F. Martinez, Ward, McCracken
NOES: None
ABSTAIN: None
ABSENT: P. Martinez

Disposition: Approved; Direction given to staff.

17. CONSIDERATION OF CHARTER AMENDMENT REGARDING THE SELECTION PROCESS FOR APPOINTMENTS TO CITY BOARDS, COMMISSIONS, AND COMMITTEES

Recommendation: That the City Council consider defining a process for the appointment of members to City Boards, Commissions, and Committees, as well as the means to codify such a process.

City Manager John Lollis presented the item and the staff report.

In light of Council Member Pedro Martinez’s absence, the Council suggested that the item be continued to the next meeting.

COUNCIL ACTION: MOVED by Council Member Felipe Martinez, SECONDED by Council Member Hamilton that the Council continue the item until the meeting of December 1, 2009.

AYES: Hamilton, F. Martinez, Ward, McCracken
NOES: None
ABSTAIN: None
ABSENT: P. Martinez

Disposition: Continued to December 1, 2009.

18. CONSIDERATION OF CITY COUNCIL ANNUAL GOAL SETTING TO ESTABLISH 2010 PRIORITIES

Recommendation: That the City Council provide direction in the method toward setting of goals and priorities, to be employed in a goal setting session to be scheduled in December.

City Manager John Lollis presented the item and the staff report.

After a brief discussion, staff was directed to maintain the status quo for the setting of City Council priorities.

Disposition: Direction given to staff.
Adjourned at 8:21 p.m. to a meeting of the Porterville Public Financing Authority.

PORTERVILLE PUBLIC FINANCING AUTHORITY AGENDA
November 17, 2009

Roll Call: Director Cameron Hamilton, Director Felipe Martinez, Vice-Chairman Brian Ward, Chairman Pete V. McCracken
Absent: Director Pedro R. Martinez

WRITTEN COMMUNICATION
None

ORAL COMMUNICATIONS
None

PUBLIC FINANCING AUTHORITY SCHEDULED MATTER
PFA-1. ANNUAL MEETING OF THE PORTERVILLE PUBLIC FINANCING AUTHORITY

Recommendation: That the City Council, sitting as the Porterville Public Financing Authority, hold a public meeting in accordance with the Authority’s By-laws; accept public comment; and approve the 2009 Status Report for the Redevelopment Bond Issue No. 1 and refinance of Tax Allocation Bond Projects.

City Manager John Lollis presented the item, and Project Manager Susan Duke presented the staff report.

COUNCIL ACTION: MOVED by Director Hamilton, SECONDED by Vice Chairman Ward that the Porterville Public Financing Authority approve the 2009 Status Report for the Redevelopment Bond Issue No. 1 and refinance of Tax Allocation Bond Projects

M.O. PFA 01-111709

AYES: Hamilton, F. Martinez, Ward, McCracken
NOES: None
ABSTAIN: None
ABSENT: P. Martinez

Disposition: Approved.

The Porterville Public Financing Authority Meeting adjourned at 8:24 p.m. to a meeting of the Porterville City Council.

ORAL COMMUNICATIONS
- An anonymous individual voiced concern with Mr. Eckhoff’s suggested policy for receiving oral communications, noting that Mr. Roman would have had to wait until the
end of the meeting to make his presentation to the Council that evening.

OTHER MATTERS

- Council Member Hamilton 1) spoke of the upcoming 101st birthday celebration for Mildred Layfield to take place at the Church of Latter Day Saints on Newcomb on November 20th; and 2) Commended Council Member Ward on his kilt-clad appearance in the Veterans Day Parade.

- Council Member Felipe Martinez 1) reported on his recent travel on November 9th to Friant Dam for the Water Bond Bill Signing with the Governor and the Latino Water Coalition, noting the importance of the bill; 2) reported on his November 12th tour of Railex in Delano with the Rail Advisory Committee, and spoke of the impressive efficiency of the operation; and 3) lauded the Veterans Day Parade.

- Council Member Brian Ward 1) suggested that Chief McMillan would be a good candidate for the local Scottish Heritage Society; 2) lauded the Veterans Day Parade, spoke of the British tradition of wearing red poppies in honor of fallen soldiers, and of his interest in starting that same tradition in Porterville; and 3) thanked the Police Department for keeping everyone safe.

- City Manager John Lollis 1) spoke of the upcoming meeting with residents of Beverly Street to discuss the water situation; and 2) advised of the status of the Fire Chiefs’ Association meetings and spoke of the delay in resolving the issue with the County regarding the sale of fireworks.

- Fire Chief Mario Garcia informed the Council of his Department’s award of the “Perpetual Win” at the County-wide 8th Annual Battle of the Badges Blood Drive, and acknowledged Fire Engineer Dan Holloway for his hard work.

- Council Member Felipe Martinez requested a proclamation to recognize the Forest Service firefighters based out of Porterville.

ADJOURNMENT

The Council adjourned at 8:35 p.m. to the meeting of December 1, 2009 at 6:00 p.m.

Patrice Hildreth, Chief Deputy City Clerk

SEAL

Pete V. McCracken, Mayor
SUBJECT: AWARD OF CONTRACT – CNG FACILITY MAINTENANCE CONTRACTOR

SOURCE: Public Works Department - Engineering Division

COMMENT: On October 14, 2009 staff received two (2) bids for a CNG Facility Maintenance Contractor. Staff requested bids for professional maintenance services required to properly maintain the recently constructed CNG facility at the Corporation Yard. Services follow regularly scheduled maintenance as required by equipment operation and maintenance manuals. The maintenance service contract is for a period of one (1) year and consists of twelve (12) monthly visits. The contract may be extended for up to four (4) additional years, at the City’s option, and upon mutually agreeable terms. The contract also allows for emergency call out and repairs on a 24-hour a day 7-days a week basis.

The service agreement, including the scope of services, is attached for Council’s review.

Field Services Equipment Maintenance is the funding source for this project.

The bids are as follows:

<table>
<thead>
<tr>
<th>Contractor</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Extarran</td>
<td>$1,325.00 per month</td>
</tr>
<tr>
<td>Bakersfield, CA</td>
<td></td>
</tr>
<tr>
<td>2. Allsup Corporation</td>
<td>$1,400.00 per month</td>
</tr>
<tr>
<td>Upland, CA</td>
<td></td>
</tr>
</tbody>
</table>

RECOMMENDATION: That the City Council:

1. Approve a $15,900 one-year contract with Extarran for CNG Facility Maintenance; and

2. Authorize the Mayor to sign the Service Agreement.

ATTACHMENT: Service Agreement
MASTER SERVICES AGREEMENT

This Master Services Agreement (this "Agreement") is made and entered into this 18th day of November, 2009, by and between, City of Porterville ("Company"), organized and existing under the laws of the state of California whose address is 291 N. Main Street, Porterville, CA 93257, and Exterran Energy Solutions, L.P. ("Contractor"), a limited partnership organized and existing under the laws of the state of Delaware, whose address is 16666 Northchase Dr., Houston, Texas 77060. Company and Contractor are hereafter sometimes referred to individually as a "Party" and collectively as the "Parties".

Company is engaged in certain business activities, including the use of reciprocating and/or rotating equipment for natural gas compression, process, power generation or similar application.

Company desires to employ Contractor from time to time to provide aftermarket services and/or the sale of parts, materials, supplies or other products offered by Contractor, as more specifically set forth in the applicable order for work ("Work"). Notwithstanding anything in this Agreement to the contrary, this Agreement does not apply to or otherwise impact the Parties' agreement with respect to (i) Contractor's provision of contract compression services (which includes the provision of compression services utilizing Contractor's own compressor units and equipment and Contractor's services related thereto) to Company, if any, which shall be exclusively governed by separately negotiated terms and conditions and, if none, by Contractor's then current form of Master Compression Services Agreement or (ii) Contractor's fabrication and sale of new, complete compressor packages to Company, which shall be exclusively governed by separately negotiated terms and conditions and if none, Contractor's then current Terms and Conditions of Sale.

Contractor is interested in performing Work for Company in accordance with this Agreement and in the scope of its usual aftermarket services business. Contractor has responded to and agrees to provide the services specified in the Company's Invitation to Bid/Scope of Work, attached hereto and incorporation herein as Exhibit A ("Work Performed").

NOW, THEREFORE, IN CONSIDERATION of the mutual promises, conditions, terms and agreements contained in this Agreement, the sufficiency of which is hereby acknowledged, the Parties mutually agree as set forth below:

1. TERM OF THIS AGREEMENT.

A. This Agreement shall become effective upon execution by both Parties. Orders for Work issued pursuant to this Agreement shall become effective and binding upon Contractor upon the earlier to occur of (i) Contractor's express written acceptance or (ii) Contractor's provision of Work to Company.

B. This Agreement and any associated orders for Work shall remain in full force and effect until terminated by either Party by giving the other Party thirty (30) days written notice of termination. In the event of termination of this Agreement or any associated order for Work:

(i) neither Party shall be relieved of its respective obligations and liabilities arising from or incident to Work performed prior to the date of such termination or being performed under an order for Work not so terminated by the Parties. Notwithstanding the foregoing, in no event shall Contractor be obligated to
continue Work when it has reason to suspect that Company is unwilling or unable to pay;

(ii) in addition to any amounts recoverable pursuant to Paragraph 2(D), Company shall pay all monies due for that part of Work performed prior to such termination, plus reasonable costs actually incurred or committed to by Contractor (such as costs which are not cancelable or recoverable or for specially engineered or manufactured equipment) and demobilization costs, if applicable. Company shall pay all such amounts within thirty (30) days of its receipt of Contractor’s invoice without abatement, reduction or set-off of any nature, including, without limitation, any abatement, reduction or set off thereof arising out of any present or future claim Company may have against Contractor;

(iii) all rights and obligations thereunder shall terminate, and neither Party shall have any further obligation or liability to the other Party thereunder, except for liabilities that accrue or are incurred prior to or upon termination and any other rights, obligations, or liabilities that expressly or logically survive termination of the Agreement, including without limitation those with respect to payment, taxes, insurance, indemnification, waiver of consequential damages, warranty, limitations of liability and confidentiality.

2. PAYMENT FOR SERVICES.

A. The consideration to be paid by Company to Contractor for Work performed shall be in accordance with Contractor’s published price list in effect at the time and in the specific location where the Work is requested, or as otherwise mutually agreed between the Parties in writing.

B. Contractor shall submit an invoice(s) to Company covering charges for Work performed, and unless alternate payment terms are specified or approved in writing by Contractor’s credit department, Company shall pay each such invoice within thirty (30) days of its receipt by Company.

C. In the event Company disputes any invoice in whole or in part, Company shall notify Contractor of the dispute as soon as practicable but in no event later than thirty (30) days from receipt of such invoice and shall pay the undisputed portion in accordance with Paragraph 2(B) above without abatement, reduction or set off of any nature, including, without limitation, any abatement, reduction or set off thereof arising out of any present or future claim Company may have against Contractor. Company and Contractor shall promptly endeavor to settle and adjust any disputed amount forthwith.

D. Any cancellation by Company of an order for products after such order has been accepted by Contractor shall be subject to a restocking charge of twenty-five percent (25%), plus any packing, transportation or other costs actually incurred. Additionally, products specially built or manufactured to Company specifications, or orders for substantial quantities manufactured specially for Company, may only be canceled subject to payment of a cancellation fee by Company. Any return of products to Contractor shall be subject to Contractor’s approval and to such products being in the same condition as when they originally left Contractor’s facility for shipment to Company.

E. Invoices remaining unpaid after thirty (30) days shall accrue interest at a rate equal to the lesser of 1% per month, compounded monthly, or the maximum rate permitted by applicable law on the unpaid balance from the invoice date until paid. In the event
invoices are given to an attorney, collection agency, or other collector for collection, or if suit is brought for collection, or if it is collected through probate, bankruptcy, or other judicial proceeding, then Company shall pay to Contractor costs of collection, including reasonable attorney's or collector's fees and court costs, in addition to other amounts due.

F. If Company's internal procedures require that a purchase order be issued as a prerequisite to payment of any amounts due to Contractor, it shall timely issue such purchase order to Contractor. Company agrees that the absence of a purchase order, other ordering document or administrative procedure may not be raised as a defense to avoid or impair the performance of any of Company's obligations hereunder, including, without limitation, payment of amounts owed to Contractor.

3. TAXES.

Company shall pay to Contractor, in addition to the prices provided for herein, any foreign or domestic duty, sales or use tax, manufacturer's tax, occupation tax, excise tax, value-added tax, gross receipts, custom, inspection or testing fee, or any other fee, tax or charge ("Tax") that Contractor may be required by any municipal (including, without limitation, special taxing authority), state, federal or foreign government law, rule, regulation or order to collect or pay with respect to the sale, transportation, storage, delivery, installation or use of the Work provided hereunder. Contractor shall indemnify Company against any liability and expense in excess of the amount of Tax due that is incurred by Company by reason of Contractor's failure to properly remit said Tax to the proper government agency. In the event that Contractor recovers a refund of, or credit for, any Taxes paid to Contractor by Company with respect to the Work provided hereunder or of any Taxes measured by the price of such Work or the gross receipts from such sale, then Contractor agrees to refund to Company the full amount of such refund or credit. Further, Company shall be under no obligation to share with, or refund to, Contractor any duty drawback recovered by Company as a result of the export of the goods purchased hereunder. Notwithstanding the above, Contractor shall not collect, and Company shall not pay, any such Tax for which Company furnishes to Contractor a properly completed exemption certificate or a direct payment permit certificate or for which Contractor may claim an available exemption from Tax, such as exemption for export. Company shall be responsible for any Tax, penalty, and interest if such exemption certificate or direct payment permit certificate is later held by any proper authority to be invalid. Further, Contractor shall not collect and Company shall not pay any Tax based on or measured by the net income or net worth of Contractor, or any employment related Tax.

4. CONTRACTOR'S WARRANTY.

A. Subject to the limitations provided in this Agreement, for a period of ninety (90) days from the date of completion of services or delivery of parts, materials and/or products, Contractor warrants that the services, parts, materials and/or products to be provided pursuant to the provisions of this Agreement shall conform to the specifications set forth in the relevant order for Work, and if not so specified, such services shall be performed in a good and workmanlike manner and the parts, materials and/or products shall be free from defects in material and workmanship. In the event that Contractor's services, parts, materials and/or products fail to comply with the applicable foregoing standard, then as Company's sole remedy for such non-conformance, Contractor, in its sole but reasonable discretion (i) in the case of services, shall re-perform such non-conforming services, or (ii) in the case of parts, materials and/or products, shall repair or replace such non-conforming parts, materials, and/or products with the type originally furnished or if no longer reasonably available, a reasonable substitute. In the event that Contractor cannot satisfy (i) and/or (ii) as applicable, Contractor shall refund the fees paid with respect to
the non-conforming services, parts, materials and/or products (but only to the extent (i) and/or (ii), as applicable, is brought to Contractor’s attention in writing by Company prior to the expiration of the warranty period set forth herein). This warranty shall not apply to normal wear and tear. Contractor’s obligation under this warranty shall not include any transportation charges, cost of installation, cost of obtaining access to the non-conforming item, duty, taxes or charges whatsoever.

B. Notwithstanding anything contained in this Agreement to the contrary, Contractor makes no warranties or representations of any kind, whether expressed, implied or statutory, and disclaims any responsibility for any parts, materials, or products sold hereunder which are not manufactured by Contractor. To the fullest extent permitted by law and by the manufacturers, Contractor shall assign to Company any assignable manufacturer’s warranty given to Contractor by the manufacturer(s) of said parts, materials and/or products but Contractor does not guarantee those warranties or in any way represent or warrant that any such manufacturer’s warranties are enforceable or effective to remedy any defect in those parts, materials or products. Claims under any manufacturer’s warranty shall be made by Company in accordance with the manufacturer’s requirements. Contractor agrees to use all reasonable efforts and to cooperate with Company in processing any such claims.

C. The warranties contained herein do not apply (i) to repairs or replacements required because of accident, misuse, neglect or failure to maintain in accordance with manufacturer specifications, (ii) to any portion of the Work modified by or on behalf of Company, (iii) where manufacturer serial numbers or warranty decals have been removed or altered, (iv) where Contractor performed as directed by Company, its agents or representatives and the warranty matter arises as a result of Contractor’s compliance with those directions, (v) where Company fails to follow the recommended operating and maintenance procedures of the original equipment manufacturer, (vi) where Company fails to maintain a industry-standard safety shutdown/alarm system or (vii) where Contractor is not invited to participate in start-up procedures after installation of the Work.

D. EXCEPT FOR THE EXPRESS WARRANTIES STATED HEREIN, CONTRACTOR DISCLAIMS ALL WARRANTIES ON THE WORK FURNISHED HEREUNDER, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ANY WARRANTY AGAINST REDHIBITORY DEFECTS OR VICES. COMPANY ACKNOWLEDGES AND ACCEPTS THE EXPRESS WARRANTIES AS ITS SOLE REMEDY WITH RESPECT TO THE WORK. IF ANY WARRANTIES ARE IMPLIED BY APPLICABLE LAW WITH RESPECT TO THE WORK AND CANNOT BE CONTRACTUALLY EXCLUDED, THE PARTIES AGREE THAT CONTRACTOR’S LIABILITY FOR A BREACH OF SUCH IMPLIED WARRANTY SHALL BE LIMITED TO, IN CONTRACTOR’S SOLE BUT REASONABLE DISCRETION, (i) IN THE CASE OF SERVICES, THE REPERFORMANCE OF SUCH SERVICES, OR (ii) IN THE CASE OF PARTS, MATERIALS AND/OR PRODUCTS, THE REPAIR OR REPLACEMENT OF SUCH PARTS, MATERIALS AND/OR PRODUCTS WITH THE TYPE ORIGINALLY FURNISHED OR, IF NO LONGER REASONABLY AVAILABLE, A REASONABLE SUBSTITUTE, OR (iii) A REFUND OF THE FEES PAID WITH RESPECT TO THE SUBJECT SERVICES, PARTS, MATERIALS AND/OR PRODUCTS, WHICH SHALL BE PAID WITHIN THIRTY (30) DAYS OF CONTRACTOR’S RECEIPT FROM COMPANY OF THE
5. LIABILITIES, RELEASES AND INDEMNIFICATION.

A. For the purpose of this Agreement, the following definitions shall apply:

(i) "Contractor Group" shall mean: (a) Contractor, its parent, subsidiaries and affiliated or related companies, (b) its and their co-owners, partners, joint operators, joint venturers, if any, and their respective parents, subsidiaries and affiliated or related companies, and (c) the officers, directors, employees, and consultants of all of the foregoing.

(ii) "Company Group" shall mean: (a) Company, its parent, subsidiaries and affiliated or related companies, (b) its and their working interest owners, co-lessees, co-owners, partners, joint operators, customers, joint venturers, if any, and their respective parents, subsidiaries and affiliated or related companies, and (c) the officers, directors, employees, and consultants of all of the foregoing.

(iii) "Claims" shall mean all claims, demands, causes of action, liabilities, damages, judgments, fines, penalties, awards, losses, costs, expenses (including, without limitation, attorneys' fees and costs of litigation) of any kind or character arising out of, or related to, the performance of or subject matter of this Agreement.

B. Contractor shall release, indemnify, defend and hold Company Group harmless from and against any and all Claims brought by, through or derived from any member of Contractor Group or Contractor Group's subcontractors or their employees with respect to loss, destruction or damage of the property of Contractor Group or Contractor Group's subcontractors or their employees, or personal or bodily injury, sickness, disease or death, loss of services and/or wages, or loss of consortium or society of any member of Contractor Group or Contractor Group's subcontractors or their employees.

C. Company shall release, indemnify, defend and hold Contractor Group harmless from and against any and all Claims brought by, through or derived from any member of Company Group or Company Group's other contractors and subcontractors or their respective employees with respect to loss, destruction or damage of the property of Company Group or Company Group's other contractors and subcontractors or their respective employees or personal or bodily injury, sickness, disease or death, loss of services and/or wages, or loss of consortium or society of any member of Company Group or Company Group's other contractors and subcontractors or their respective employees.

D. Each Party covenants and agrees to support the mutual indemnity obligations contained in Paragraphs 5(B) and 5(C) above, by carrying insurance (or qualified self-insurance) of the types and in the amounts not less than those specified in Article 8 of this Agreement, for the benefit of the other Party.

E. Notwithstanding anything contained in this Agreement to the contrary, and to the maximum extent permitted under law, Company shall release, indemnify, defend and hold Contractor Group harmless from and against any and all Claims resulting from: (i) pollution or contamination of any kind (other than surface spillage of fuels
or chemicals emanating from Contractor's Equipment to the extent attributable to the negligence of Contractor Group) including, without limitation, the cost of control, removal and clean-up; and/or (ii) any hazardous substance, hazardous material, oil and constituents thereof, or hazardous waste regulated by any federal, state or local law or regulation.

F. EXCEPT TO THE EXTENT STATED TO THE CONTRARY HEREIN, AND TO THE FULLEST EXTENT PERMITTED BY LAW, THE ASSUMPTIONS AND EXCLUSIONS OF LIABILITY, RELEASES AND INDEMNITIES SET FORTH IN THIS ARTICLE 5 SHALL APPLY TO ANY CLAIM(S) WITHOUT REGARD TO THE CAUSE(S) THEREOF INCLUDING, WITHOUT LIMITATION, PRE-EXISTING CONDITIONS, WHETHER SUCH CONDITIONS BE PATENT OR LATENT, THE UNSEAWORTHINESS OF ANY VESSEL OR VESSELS, IMPERFECTION OF MATERIAL, DEFECT OR FAILURE OF EQUIPMENT, BREACH OF REPRESENTATION OR WARRANTY (EXPRESS OR IMPLIED), ULTRAHAZARDOUS ACTIVITY, STRICT LIABILITY, TORT, BREACH OF CONTRACT, BREACH OF STATUTORY DUTY, BREACH OF ANY SAFETY REQUIREMENT OR REGULATION, OR THE NEGLIGENCE OF ANY PERSON OR PARTY, INCLUDING, WITHOUT LIMITATION, THE INDEMNIFIED PARTY OR PARTIES AND THEIR RESPECTIVE GROUPS, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT AND/OR CONCURRENT, ACTIVE OR PASSIVE, OR ANY OTHER THEORY OF LEGAL LIABILITY.

G. WITH RESPECT TO THIS ARTICLE 5, BOTH PARTIES AGREE THAT THIS LANGUAGE COMPLIES WITH THE REQUIREMENT, KNOWN AS THE EXPRESS NEGLIGENCE RULE, TO EXPRESSLY STATE IN A CONSPICUOUS MANNER TO AFFORD FAIR AND ADEQUATE NOTICE THAT PROVISIONS REQUIRING ONE PARTY (THE INDEMNITOR) TO BE RESPONSIBLE FOR THE NEGLIGENCE, STRICT LIABILITY, OR OTHER FAULT OF ANOTHER PARTY (THE INDEMNITEE).

6. WAIVER OF CONSEQUENTIAL DAMAGES.

NOTWITHSTANDING ANYTHING CONTAINED IN THIS AGREEMENT TO THE CONTRARY, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR, AND EACH PARTY HEREBY RELEASES THE OTHER PARTY FROM, ANY INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES OR LOSSES INCLUDING, WITHOUT LIMITATION, DAMAGES OR LOSSES FOR LOST PRODUCTION, LOST REVENUE, LOST PRODUCT, LOST PROFITS, LOST BUSINESS OR BUSINESS INTERRUPTIONS, WITHOUT REGARD TO THE CAUSE(S) THEREOF INCLUDING, WITHOUT LIMITATION, PRE-EXISTING CONDITIONS, WHETHER SUCH CONDITIONS BE PATENT OR LATENT, BREACH OF REPRESENTATION OR WARRANTY (EXPRESS OR IMPLIED), ULTRAHAZARDOUS ACTIVITY, STRICT LIABILITY, TORT, BREACH OF CONTRACT, BREACH OF STATUTORY DUTY, BREACH OF ANY SAFETY REQUIREMENT OR REGULATION, OR THE NEGLIGENCE OF ANY PERSON OR PARTY, INCLUDING, WITHOUT LIMITATION, THE INDEMNIFIED PARTY OR PARTIES AND THEIR GROUPS, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT AND/OR CONCURRENT, ACTIVE OR PASSIVE, OR ANY OTHER THEORY OF LEGAL LIABILITY. THE PARTIES FURTHER AGREE THAT THE FORGOING RELEASE OF LIABILITY SHALL ALSO EXTEND TO EACH PARTY'S PARENT, SUBSIDIARY, AFFILIATED AND RELATED COMPANIES AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS.
7. LIMITATION OF LIABILITY.

THE REMEDIES OF COMPANY SET FORTH HEREIN ARE EXCLUSIVE, AND THE TOTAL LIABILITY OF CONTRACTOR AND THE MANUFACTurers OF WORK WITH RESPECT TO THIS AGREEMENT AND WORK FURNISHED HEREUNDER, AND IN CONNECTION WITH THE PERFORMANCE OR BREACH THEREOF, AND FROM THE MANUFACTURE, SALE, DELIVERY, INSTALLATION, REPAIR, REPLACEMENT OR TECHNICAL DIRECTION OR SERVICES COVERED BY OR FURNISHED UNDER THIS AGREEMENT, WHETHER BASED ON CONTRACT, WARRANTY, TORT, NEGLIGENCE, INDEMNITY (OTHER THAN AS PROVIDED IN ARTICLE 5 OF THIS AGREEMENT), STRICT LIABILITY, PRODUCTS LIABILITY OR OTHERWISE, SHALL NOT EXCEED THE PURCHASE PRICE OF THE WORK UPON WHICH SUCH LIABILITY IS BASED.

8. INSURANCE.

A. At any and all times during the term of this Agreement, unless otherwise prohibited by law, each Party shall, at its sole expense, equally carry with solvent and reputable insurance carriers, insurance of the types and in the minimum amounts set forth below, subject to policy terms, conditions and exclusions. Any and all deductibles in the insurance policies described below shall be assumed by, for the account of and at the sole risk of the Party carrying such insurance.

(i) **Commercial General Liability Insurance**, including, without limitation, contractual liability and products liability coverage, insuring the indemnity provisions set forth in this Agreement and subject to standard terms and conditions, affording minimum protection of not less than U.S. $1,000,000 per occurrence combined single limit bodily injury, personal injury, sickness or death and loss of or damage to property.

(ii) **Workers' Compensation Insurance** including, without limitation, statutory and occupational disease coverage required under applicable law, which may include the United States Longshoremen & Harborworkers Act, the Federal Employers Liability Act, the Jones Act and the Outer Continental Shelf Lands Act.

(iii) **Employers' Liability Insurance** affording minimum protection of not less than U.S. $1,000,000 per occurrence of accident for bodily injury by accident, U.S. $1,000,000 per occurrence of employee bodily injury by disease, and U.S. $1,000,000 policy annual aggregate covering any employee of the named insured.

(iv) **Automobile Liability Insurance** covering owned, non-owned or hired vehicles affording minimum protection of not less than U.S. $1,000,000 per occurrence combined single limit bodily injury or death and loss of or damage to property.

(v) **Excess Liability Insurance** over that required in Paragraphs (A)(1), (A)(3) and (A)(4) above with minimum limits of U.S. $4,000,000 and specifically including contractual liability.

B. To the extent of the defense, indemnity and release obligations expressly assumed by the named insured Party hereunder, each such Party agrees that its insurance policies shall: (i) be primary to the other Party's insurance; (ii) name the other Party and its Group (as defined
in Article 5) as additional insureds (except Workers’ Compensation), as applicable; and (iii) be endorsed to waive subrogation against the other Party and its Group.

C. Each Party shall furnish Certificates of Insurance to the other Party evidencing the insurance required herein.

D. The types and amounts of insurance required herein shall in no way limit either Party's indemnity obligations as stated elsewhere in this Agreement.

9. INDEPENDENT CONTRACTOR.

It is expressly understood that Contractor is an independent contractor and that neither Contractor nor anyone employed by Contractor shall be deemed for any purpose under this Agreement to be an employee, agent, partner, servant or representative of Company.

10. FORCE MAJEURE.

If either Party is rendered unable, wholly or in material part, by reason of Force Majeure to carry out any of its obligations hereunder, other than the obligations to release, defend, indemnify and pay money (including Contractor's standby rate, if applicable), then upon such Party giving notice and particulars in writing to the other Party within a reasonable time after the occurrence of the cause relied upon, such obligations shall be suspended. "Force Majeure" shall include acts of God, laws and regulations, strikes, lightning, fire, flood, washout, storm, breakage or accident to equipment or machinery, and any other causes that are not reasonably within the control of the Party so affected. If a Force Majeure event exceeds thirty (30) days, then either Party may, upon five (5) days written notice to the other Party, cancel the Work under the applicable order for Work, subject to payment of termination fees as set forth in Paragraph 1(B) or if the Parties agree to resume the Work, then Contractor shall have the right to renegotiate its prices to suit the then current economic and business conditions.

11. SEVERABILITY.

If any term or provision of this Agreement, or the application thereof to any person or circumstance, shall at any time or to any extent be invalid, illegal or unenforceable in any respect as written, Company and Contractor intend for any court or arbitrator construing this Agreement to modify or limit such provision temporarily, spatially or otherwise so as to render it valid and enforceable to the fullest extent allowed by law. Any such provision that is not susceptible of such reformation shall be ignored so as to not affect any other term or provision hereof, and the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid, illegal or unenforceable, shall not be affected thereby and each term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

12. NOTICE.

All written notice requirements ("Written Notice") under this Agreement shall be addressed as follows and shall be deemed effectively given and received when: (i) if by overnight courier, one (1) Business Day (as defined herein) after the date deposited with a recognized carrier of overnight mail, with all freight or other charges prepaid, or (ii) if mailed, three (iii) Business Days after the date when sent by registered or certified mail, return receipt requested, postage prepaid.
Either Party may change its address by giving Written Notice to the other Party. "Business Day" shall mean any day but Saturday, Sunday or federal holiday, in which such event the period runs until the end of the next Business Day.

13. ASSIGNMENT.

Neither Party shall assign all or any part of its rights or obligations under this Agreement without prior written consent from the other Party. However, each Party shall have the right to freely assign this Agreement to an affiliate or subsidiary without obtaining the other Party’s written consent; provided, however, such Party shall remain liable for any obligations arising or accruing prior to the date of such assignment.

14. GOVERNING LAW.

A. THE PARTIES TO THIS AGREEMENT AGREE THAT THE VALIDITY, CONSTRUCTION, ENFORCEMENT, AND INTERPRETATION OF THIS AGREEMENT SHALL BE GOVERNED AND CONTROLLED BY THE SUBSTANTIVE LAWS OF THE STATE OF CALIFORNIA, EXCLUDING ANY CONFLICTS LAWS OR CHOICE OF LAW PRINCIPLES. THE PARTIES AGREE TO THE EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS LOCATED IN TULARE COUNTY, CALIFORNIA. CONTRACTOR HEREBY WAIVES ANY RIGHTS IT MAY HAVE TO REMOVE SUCH ACTION PURSUANT TO CALIFORNIA CIVIL CODE OF PROCEDURES SECTION 394.

B. CONFLICT OF INTEREST CODE: CONTRACTOR 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.

C. ATTORNEY'S FEES: 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 attorney's fees and costs.

15. CHANGE IN LAW.

This Agreement is based on Laws existing at the time of its execution. Any changes, including, without limitation, changes in governmental enforcement practices, revisions or new Laws that have the effect of increasing Contractor's burden, including, without limitation, cost, time-consumption and risk exposure, shall entitle Contractor to fair and equitable modifications to this Agreement, which modifications the Parties agree to work toward in good faith and in a timely fashion. For purposes of this Article 15, "Laws" means all applicable federal, provincial, state, territorial and municipal laws, statutes, by-laws, regulations, rules, orders, ordinances, directives, permits and licenses, including, without limitation, those pertaining to environment, health and safety.
16. HEALTH, SAFETY AND ENVIRONMENTAL.

A. Company shall provide clean, de-energized, properly isolated and if applicable, decontaminated equipment for the performance of the Work. Company is responsible for charges related to Contractor's standby time (in accordance with the pricing detailed in the written order for Work or, if not so detailed, in accordance with Contractor's published price list in effect at the time and in the specific location where the Work is requested) while Contractor waits for equipment to be properly prepared. Company shall provide Contractor with information regarding current hazards and specific procedures that may affect Contractor employees while on-site prior to Contractor conducting Work activities.

B. In the event Company requires Contractor to complete specific and/or unique safety training other than regulatory or Contractor's standard training requirements, Company shall be responsible for all charges related thereto.

C. Contractor shall have the right to stop any Work due to unsafe conditions and practices by Company or third parties. Company shall be responsible for charges related to such work stoppage.

D. Contractor shall not be responsible for disposal of waste resulting from the Work, whether hazardous or otherwise; however, Contractor shall place waste in receptacles provided by Company for the purpose of disposal of any such waste. If Company fails to timely provide such receptacles, Contractor shall have the right, but not the obligation, in Contractor's sole but reasonable discretion, to (i) stop any Work until such receptacles are supplied, (ii) supply an alternative receptacle and/or (iii) dispose of the waste, all at Company's risk and expense.

E. Contractor shall be responsible for the case management of its own employees. Contractor is solely responsible for determinations regarding OSHA recordability.

17. MISCELLANEOUS.

A. This Agreement contains all of the terms and conditions as agreed between the Parties and supersedes any and all previous oral or written agreements between the Parties with respect to the Work.

B. Neither execution of this Agreement, nor anything contained herein, shall (i) obligate Company to order Work from Contractor nor (ii) obligate Contractor to accept Work from Company.

C. This Agreement shall not be modified or supplemented unless the proposed modification or supplementation states an express intent to modify or supplement this Agreement and such modification or supplementation is signed by duly authorized representatives of Company and Contractor.

D. It is specifically understood that all Work shall be performed subject to all the terms and conditions of this Agreement, and as provided in the Company's Invitation to Bid/Scope of Work (Exhibit A), and, in the event that any additional or conflicting terms and conditions are set forth in Contractor's or Company's purchase orders, field work orders, work tickets, invoices, statements, or any other type of memoranda or other documents used by either Party, whether oral or written, such additional or conflicting terms and conditions are not made part of this Agreement and shall not apply with respect to the
Work. Each order for Work shall together with this Agreement, form an individual contract and the terms of such order for Work shall only be applicable with respect to describing (i) the scope of Work applicable to a particular item of Work and (ii) pricing, and shall not otherwise expand upon or modify the terms of this Agreement, including, without limitation, the warranties, indemnification or limitations of liability provisions contained herein. In the event there are conflicting terms between the language in the Master Agreement, and Exhibit A, the terms of the Master Agreement shall apply.

E. “Contractor” and “Company” as used in this Agreement shall include the heirs, executors, administrators, successors and/or permitted assigns of such Parties. Except as otherwise provided elsewhere in this Agreement, nothing in this Agreement may be read or construed to entitle any person other than the Parties to assert any Claim under this Agreement. If more than one Company entity executes this Agreement, or if a subsidiary or affiliate of Company is a party to an order for Work issued pursuant to this Agreement, each such Company, subsidiary or affiliate shall be jointly and severally liable for their obligations under this Agreement.

F. Title and risk of loss or damage to any parts, materials and/or products sold under this Agreement shall pass to Company upon oral, electronic or other written tender of delivery F.O.B. manufacturer’s/supplier’s facility (for parts, materials and/or products not in Contractor’s inventory) or Ex Works Contractor’s relevant facility (for parts, materials and/or products in Contractor’s inventory) (INCOTERMS 2000) unless otherwise mutually agreed to in the applicable written order for Work. Any delivery dates quoted are approximate and shall depend on prompt receipt by Contractor of all information necessary to proceed with the parts, materials and/or products immediately and without interruption. If the Parties agree in writing to require Contractor’s delivery to Company’s premises or jobsite, the price quoted and delivery is conditional upon free ingress and egress to the location and upon the location being readily accessible. Contractor reserves the right to make delivery in installments, and a delay with respect to any installment shall not affect any other installations. Any delivery of parts, materials and/or products that is delayed by causes within Company’s control or due to Company’s inability to accept delivery may be placed in storage by Contractor at Company’s risk, and Company shall be responsible for all freight, storage, insurance, and other expenses incurred thereby. Company’s receipt of parts, materials and/or products from carrier shall constitute a waiver of any claim for damage or shortage of parts, materials and/or products.

G. This Agreement may be executed in counterparts (and by the Parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page of this Agreement by telecopy shall be effective as delivery of a manually executed counterpart of this Agreement.
IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written and warrant, individually, that they have the full right, power and authority to enter into this Agreement on behalf of the respective Parties.

"Company"

CITY OF PORTERVILLE

By: 

Title: 

"Contractor"

EXTERAN ENERGY SOLUTIONS, L.P.

By: Kevin Bourbonnais

Title: Regional Vice President

North America West Region
"EXHIBIT A" WORK PERFORMED

I. CONTRACTOR agrees to perform the work as outlined in the COMPANY'S Invitation to Bid - CNG Equipment Maintenance Services Compressed Natural Gas (CNG) Fueling Facility for a period of one (1) year at a monthly rate of $1,325.00 (One thousand three hundred twenty five dollars per month). City of Porterville to provide all materials/parts associated with services contained herein and provide necessary disposal receptacles for used Oil and Oil Filters.

II. Service Intervals and Scope of Work:

A. Requirements: Monthly Maintenance
1. Upon arrival at facility, check in with Shop Superintendent.
2. Review maintenance log, provided by Shop Superintendent.
3. Observe CNG skids and dispensers in operation and note any unusual behavior or sounds.
4. Check drive-belt tension on each cooler fan drive and adjust if necessary.
5. Check suction-particulate filters.
6. Check coalescing filters at discharge.
7. Perform detailed visual inspection for cracks and leaks at all tube fittings, joints, unions and dispenser hoses.
8. Maintain a written log of at least the following information: Gas dryer dewpoint, compressor motor load voltage, various compressor data including discharge pressure for all stages, suction operating temperature at all stages, discharge operating temperature at all stages, discharge temperatures, compressor oil pressure (operating minus suction equals effective psi), captive receiver pressure (standby minus operating equals pressure rise), compressor oil temperature (temp. into cooler, temp. out of cooler, temp. compressor crankcase), compressor switch settings: (1) Hardwire Shut-downs (high discharge pressure, high suction pressure, low suction pressure, high discharge temperature); (2) PLC Shut-downs (high suction pressure, low suction pressure, high discharge temperature); and, (3) PLC Controls (compressor start pressure, compressor stop pressure).
9. Drain blowdown receivers at each skid and note quantity of oil recovered.
10. Check dewpoint at gas dryer and initiate regeneration procedure if necessary. MUST coordinate regeneration with Shop Superintendent prior to initiation. Includes taking compressors off line until regen is completed (dryer to be placed back in service and compressors re-activated by Shop Supervisor).
11. Address issues identified on maintenance log and initial for completion.
12. Complete service log for each compressor, making applicable recommendations/comments.
13. Before leaving the facility, check out and leave all paperwork with the Shop Superintendent.

B. Requirements: Third Month of Maintenance Service Contract
1. Upon arrival at facility, check in with Shop Superintendent.
2. Review maintenance log, provided by Shop Superintendent.
3. Inspect the breakaway fittings at the dispenser. Inspect and lubricate quick disconnects.
4. Check the set points of all pressure and temperature switches.
5. Check the operation of all pressure and temperature switches.
6. Check cooler fan drive belt tension.
7. Tighten compressor skid bolts.
8. Check 480-volt terminals in the MCC.
9. Inspect inlet filters.
10. Tighten valve drive mechanism screws (bolts holding the brackets on the actuated valves.
11. Check vehicle priority valve set pressure.
12. Check operation of buttons and ESD valves by initiating a manual ESD.
13. Check operation of pneumatic actuators.
14. Drain all three CNG-storage vessels until no liquid remains and note approximate quantity of oil drained.
15. Address issues identified on maintenance log and initial for completion.
16. Complete service log for each compressor, making applicable recommendations/comments.
17. Before leaving the facility, check out and leave all paperwork with the Shop Superintendent.

C. Requirements: Sixth Month of Maintenance Service Contract
1. Upon arrival at facility, check in with Shop Superintendent.
2. Review maintenance log, provided by Shop Superintendent.
3. Test all shutdown switches and systems.
4. Test all dispenser hoses for electrical continuity and inspect time-fill "breakaway" assemblies.
5. Tighten compressor skid bolts.
6. Tighten valve drive mechanism screws.
7. Verify temperature-compensated vehicle fill pressure.
8. Check operation of pneumatic actuators.
9. Steam clean/power wash compressor area, removing oil residue, if necessary. (City verifies there are no environmental issues with this process.
10. Drain all three CNG-storage vessels until no liquid remains and note approximate quantity of oil drained.
11. If gas dryer has not been regenerated in prior two months, initiate regeneration of dryer, regardless of dewpoint reading. MUST coordinate regeneration with Shop Superintendent prior to initiation. Includes taking compressors off line until regeneration is completed (dryer to be placed back in service and compressors reactivated be Shop Superintendent).
12. Check all dispenser hoses and nozzles for cracks and wear.
13. Address issues identified on maintenance log and initial for completion.
14. Complete service log for each compressor, making applicable recommendations/comments.
15. Before leaving the facility, check out and leave all paperwork with the Shop Superintendent.

D. Requirements: Ninth Month of Maintenance Service Contract
1. Upon arrival at facility, check in with Shop Superintendent.
2. Review maintenance log, provided by Shop Superintendent.
3. Check safety valves at compressor stations and dryer (refers to the actuated ball valve in the gas inlet. Perform visual inspection of valve condition or instrument air leaks and verify that valves close completely during an emergency shut down.
4. Check condition and tension of V-belts (Angi confirmed that the heat exchanger fans are directly connected to the motor shaft. The CNG skids have no drive belts to inspect).
5. Grease drive motors.
6. Replace suction filter elements.
7. Replace inter-stage and discharge separator elements.

Exterran AMS MSA Form as of 06-20-08
8. Drain all three CNG-storage vessels until no liquid remains and note approximate quantity of oil drained.
9. Address issues identified on maintenance log and initial for completion.
10. Complete service log for each compressor, making applicable recommendations/comments.
11. Before leaving the facility, check out and leave all paperwork with the Shop Superintendent.

E. Requirements: Twelfth Month of Maintenance Service Contract
1. Upon arrival at facility, check in with Shop Superintendent.
2. Review maintenance log, provided by Shop Superintendent.
3. Drain and replace CNG compressor oil and filters.
4. Drain and replace air compressor oil and filter.
5. Check piston-ring wear. (Comply with Ariel Technical Manual to include measuring the end gap of the ring while the ring is inserted into the cylinder with the piston removed, replace rings when the end gap has increased three times the new dimension. Ring gap should be measured at increments of 4,000 run hours).
6. Clean oil reservoir and oil strainer.
7. Check suction and discharge filters.
9. Check compressor valves and replace as necessary.
10. Check and replace gas dryer filter elements.
11. Install calibrated gas dryer moisture probes.
12. Replace instrument air dryer filter elements.
13. Calibrate methane detectors in CNG skids with 50% LFL test gas and adjust 0% LFL setting.
14. Steam clean/power wash compressor area, removing oil residue, if necessary.
15. Drain all three CNG-storage vessels until no liquid remains and note approximate quantity of oil drained.
16. If gas dryer has not been regenerated in prior two months, initiate regeneration of dryer, regardless of dewpoint reading. MUST coordinate regeneration with Shop Superintendent prior to initiation. Includes taking compressors off line until regeneration is completed (dryer to be placed back in service and compressors reactivated be Shop Superintendent).
17. Perform continuity-to-ground test for all fast-and time-fill dispenser hoses, including recording resistance measurements for all hoses by sequence or ID#.
18. Address issues identified on maintenance log and initial for completion.
19. Complete service log for each compressor, making applicable recommendations/comments.
20. Before leaving the facility, check out and leave all paperwork with the Shop Superintendent.

III. REPAIRS AND EMERGENCY CALL OUTS
1. Maintenance personnel will respond by telephone to all service calls on a 24-hour 7-day a week basis within 15 minutes.
2. On-site response time will be within 4 hours of the request in emergency situations, unless notified by a City representative. The City will be given the appropriate contacts for this service. Failure to respond within the 4 hours of the request will cause a deduction of $100.00 for every hour or part of an hour that the contractor is non-responsive.
3. Contractor will defer all non-emergency service calls to normal business hours, provided such delays would not result in an unsafe condition or the inability to fuel buses. Contractor will then provide service at the beginning of the next
business day. Contractor will use its best commercial efforts to provide service at the site, if necessary, within four (4) hours of notice.

4. The Contractor will provide an all-weather placard for posting at the station indicating a telephone number providing 24 hour access by telephone to contact Contractor to obtain assistance as may be required.

5. Contractor shall check in and check out with the Shop Superintendent or his designee at the facility for each such site visit.

6. Contractor shall obtain a separate purchase order from the City of Porterville for any work performed under this article III.
SUBJECT: AWARD OF CONTRACT – RECLAMATION ROAD 216 PIPELINE AND WEIR PROJECT

SOURCE: Public Works Department - Engineering Division

COMMENT: On November 19, 2009, staff received four (4) bids for the Reclamation Road 216 Pipeline and Weir Project. The project is located on Road 216 approximately 1/4 mile north of Tea Pot Dome Avenue in the City of Porterville. The project consists of removing and installing irrigation pipeline, and installing a weir/check structure.

The Engineer's estimate of probable cost for the entire project is $213,317.50. The low bid is 41.5% below the Engineer's estimate. An additional $12,473.25 is required for construction contingency (10%), an additional $10,000 is required for construction management and quality control, and inspection. The total estimated cost for the project is $147,205.75.

An appropriation from Wastewater Treatment Facility Capital Reserve funds will become necessary to cover costs associated with the project based on City Council Closed Session action on July 21, 2009. Staff requests that an adjustment to the 2009/2010 budget be prepared to cover this new project.

The bids are as follows:

<table>
<thead>
<tr>
<th>Contractor</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Sierra Construction and Excavation Inc. Bakersfield, CA</td>
<td>$124,732.50</td>
</tr>
<tr>
<td>2. 99 Pipeline Inc. Lindsay, CA</td>
<td>$130,176.00</td>
</tr>
<tr>
<td>3. GM Engineering Inc. Bakersfield, CA</td>
<td>$155,680.00</td>
</tr>
<tr>
<td>4. Bates Construction Porterville, CA</td>
<td>$176,210.00</td>
</tr>
</tbody>
</table>

Staff has found the low bid acceptable.

Appropriated/Funded
RECOMMENDATION: That City Council:

1. Award the Reclamation Road 216 Pipeline and Weir to Sierra Construction and Excavation Inc. in the amount of $124,732.50;

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

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

4. Direct the Finance Director to appropriate $147,205.75 from Wastewater Treatment Facility Capital Reserve funds.

ATTACHMENT: Locator Map
COUNCIL AGENDA: DECEMBER 1, 2009

SUBJECT: ACCEPTANCE OF PROJECT – FAIRWAY TRACT EMERGENCY WATER PROJECT

SOURCE: Public Works Department - Engineering Division

COMMENT: 99 Pipeline, Inc. has completed construction of the Fairway Tract Emergency Water project per plans and specifications. The project consisted of approximately 250 feet of 8" water main and related work. The purpose of the project is to provide emergency water, on a very limited basis, to the Fairway Tract, a 64 lot subdivision located along Leggett Street between Isham Avenue and Olive Avenue. Permanent connection to the Fairway Tract Subdivision will occur when the tract's water system is replaced and individual meters installed.

City Council authorized expenditure of $20,241.10. Final construction cost is $19,001.00. Water Reserve Fund was the funding source for this project, as approved by the 2009/2010 Annual Budget.

99 Pipeline, Inc. requests that the City accept the project as complete. Staff reviewed the work and found it acceptable.

RECOMMENDATION: That City Council:

1. Accept the project as complete;

2. Authorize the filing of the Notice of Completion; and

3. Authorize the release of the 10% retention thirty-five (35) days after recordation, provided no stop notices have been filed.

ATTACHMENT: Locator Map

P:\public\works\Engineering\Council Items\Acceptance of Project - Fairway Tract Emergency Water Project - 2009-12-01.doc

Appropriated/Funded CM

Item No. 4
SUBJECT: ACCEPTANCE OF PROJECT – MICRO SURFACING PROJECT

SOURCE: Public Works Department - Engineering Division

COMMENT: Valley Slurry Seal has completed construction of the Micro Surfacing project per plans and specifications. The project is part of the City’s street maintenance program and consisted of a durable thin asphalt overlay on several streets within the City. Another important project component was the removal and replacement of badly distressed asphalt concrete, along with the sealing of significant cracks. New pavement markings were placed once each street received the thin asphalt overlay. Streets and project limits were as follows:

- Westwood Street – Olive Avenue to Henderson Avenue
- Newcomb Street – Morton Avenue to Henderson Avenue
- Prospect Street – Morton Avenue to Henderson Avenue
- Olive Avenue – Conner Street to Tulsa Avenue (Private Rd.)
- Orange Avenue – Main Street to Plano Street

City Council authorized expenditure of $506,569.69. Final construction cost is $459,742.90. “Local” Measure ‘R’ tax revenue was the funding source for the project, as approved in the 2009/2010 budget.

Valley Slurry Seal requests that the City accept the project as complete. Staff reviewed the work and found it acceptable.

RECOMMENDATION: That City Council:

1. Accept the project as complete;
2. Authorize the filing of the Notice of Completion; and
3. Authorize the release of the 10% retention thirty-five (35) days after recordation, provided no stop notices have been filed.

ATTACHMENT: Locator Map

P:\pubworks\Engineering\Council Jan\Acceptance of Project - Micro Surfacing Project - 2009-12-01.doc
CITY COUNCIL AGENDA: DECEMBER 1, 2009

SUBJECT: AUTHORIZATION OF A LOAN AGREEMENT WITH HENDERSON PROSPECT PARTNERS

SOURCE: COMMUNITY DEVELOPMENT DEPARTMENT

COMMENT: The City has been concerned over the reuse of the former Mervyn's building, which has been vacant since January 2009. In addition, the City has been concerned over a lack of community access to a major department store locally. This project marries a solution to both concerns. Staff has been in discussions with Prospect Henderson Partners, the owner of the remainder of the shopping center, to acquire the site for reuse by Kohl's Department Store, Inc. A loan agreement has been negotiated with Prospect Henderson Partners, with the loan being secured by a Promissory Note and Deed of Trust.

RECOMMENDATION: That the City Council:

1) Approve the Loan Agreement with Prospect-Henderson Partners, L.P., subject to legal counsel approval as to form; and
2) Authorize the Mayor to sign all necessary documents.

ATTACHMENT: Loan Agreement
CITY OF PORTERVILLE

LOAN AGREEMENT BETWEEN THE CITY OF PORTERVILLE
AND PROSPECT-HENDERSON PARTNERS, L.P.

THIS LOAN AGREEMENT (hereinafter “Agreement”) is entered into as of this ___ day of December 2009 by and between the CITY OF PORTERVILLE, a municipal corporation (the “City”), and PROSPECT-HENDERSON PARTNERS, L.P., a California Limited Partnership (“Borrower”).

RECITALS

A. The Borrower desires to acquire approximately 6.5 acres of commercial property for the purposes of revitalizing the 76,367 square foot building left vacant by the closing of the Mervyns Store. Borrower has secured a separate lease agreement with Kohl’s Department Stores, Inc. for the operation of a Kohl’s store at the site. The site is located in the City of Porterville, County of Tulare, State of California, and a diagram/legal description is attached hereto as Exhibit A (“Property”).

B. The City desires to assist in the revitalization effort and mitigate the loss of the retail services, by providing financial assistance in the form of a loan to the Borrower.

NOW, THEREFORE, in consideration of the mutual promises, and for other good and valuable consideration, for which the receipt and adequacy is hereby acknowledged, the parties agree that the funds be loaned to Borrower by City subject to the following conditions and limitations:

I. GENERAL TERMS AND CONDITIONS

A. Loan Terms. City shall loan Two Million Seven Hundred Thousand Dollars ($2,700,000.00) to Borrower at a compound interest rate of 1.5% amortized over an initial 70 month term, and at a compound rate of 3% over the second 60 month term (for a total term of 130 months), to assist with costs, fees and services related to the purchase of the property and financing of the Development (the “Loan”). Interest-only payments shall be made monthly, starting in the eleventh month, with the first payment due on November 15, 2010. A Schedule of payments is attached hereto as Exhibit “B.” Repayment of the principal (and any remaining unpaid interest) shall be made in full no later than ___________. There shall be no penalty for partial or full early repayment. This loan shall be secured by the Promissory Note and Deed of Trust attached hereto as Exhibit “C.”

B. Disbursement of Funds. The loan funds shall be disbursed in lump sum as a deposit into escrow as primary financing for the purchase of the Property.
C. **Borrower Conditions.** Borrower agrees to abide by all conditions fully set forth below.

1. This Agreement is contingent upon Borrower securing Kohl’s Department Store as a tenant for the Property, with a commitment for the opening of a fully stocked and operational retail facility for at least one full day.

2. Borrower has requested the financial support of City provided for in this Agreement in order to enable Borrower to lease the Property to the above-referenced tenant. City shall have no relationship whatsoever with the services provided, except the provision of financial support. To the extent, if at all, that any relationship to such services on the part of City may be claimed or found to exist, Borrower shall be an independent contractor only.

3. Borrower shall obtain any and all federal, state, and local permits and licenses required to complete the Development as described in this Agreement. Borrower further agrees to abide by all applicable federal, state, and local codes, regulations, statutes, ordinances, and laws.

4. Borrower shall not allow the Development to be attached in any manner, including any liens or other encumbrances or any mortgages or other security interest without the prior written consent of City and only as provided in this Agreement. Borrower shall be permitted to obtain liens, encumbrances or other security instruments provided 1) the City remains in “first position” with regard to its security interest, and 2) any additional encumbrances/security instruments shall not cause the combined loan to value ratio for the Property to exceed 75%. Valuation for the purposes of this Agreement shall be made based on an appraisal performed within 6 months of the proposed encumbrance by an appraiser mutually agreed upon by both parties. Any funds obtained by Borrower through additional encumbrance(s) shall be utilized only for improvements to the Property as described and shown in Exhibit “A.”

5. Borrower shall not assign or delegate any of its rights, interests or duties under this Agreement without the prior written consent of City. Any such assignment of delegation made without the required consent shall be voidable by City, and may, at the option of City, result in the termination and repayment of all financial support provided herein.

6. Borrower shall maintain or cause its tenant to maintain a comprehensive general liability policy in not less than the amount of $1,000,000 per occurrence and $2,000,000 in the aggregate (both inclusive of umbrella coverage) or such other policy limits as the City may approve at its discretion, including contractual liability, as shall protect Borrower from claims for such damages, and which policy shall be issued by an insurance carrier with an Alfred
M. Best Company, Inc. general policy holder rating of A-VIII. Such policy or policies shall be written on an occurrence form.

7. To the fullest extent permitted by law, Borrower shall protect, defend, indemnify, and save and hold harmless City, its officers, employees and agents from and against any and all liability, damages, demands, claims, suits, liens, and judgments of whatever nature including, but not limited to, claims for contribution or indemnification for injuries to or death of any person or persons, caused by, in connection with, or arising out of any activities undertaken pursuant to this Agreement. Borrower’s obligation to protect, defend, indemnify, and save and hold harmless as set forth in this paragraph shall include any and all attorneys’ fees incurred by City, its officers, employees and agents in the defense of handling of said suits, demands, judgments, liens and claims and all attorneys fees and investigation expenses incurred by City, its officers, employees and agents in enforcing or obtaining compliance with the provisions of the Agreement. Borrower may comply with this requirement by obtaining insurance coverage through its tenant or via and insurance carrier/company rated in accordance with Section I.C.6., above. However, any applicable policy limits shall not serve as a cap or limit concerning the extent of indemnification responsibility or amount of liability under this section.

8. Borrower shall not use any funds or resources which are supplied by City in litigation against any person, natural or otherwise, or in its own defense in any such litigation and also to agree to notify City of any legal action which is filed by or against it.

9. Borrower shall keep and maintain in effect at all times any and all licenses, permits, notices and certifications which may be required by any City ordinance or state or federal statute.

10. Any material breach of this Agreement may, after 30-day notice to Borrower and a failure (within a reasonable amount of time) thereby to cure such material breach, in the discretion of City, result in forfeiture of all funds received by Borrower pursuant to this Agreement, or any part thereof.

D. Special Conditions. The parties acknowledge that Borrower may desire to expand the available retail space on the Property, which will require a Request for Partial Release and Reconveyance from Borrower to the City, and the creation of a separate parcel for additional improvements for a major retail lessee. In the event Borrower makes such a Request for Partial Release and Reconveyance to the City for a parcel map, Borrower agrees to either i) pay the balance owed to the City in full; or ii) pay down the required portion (if any) of the balance owed in order to maintain a maximum combined loan to value ratio of 67.5%, as determined by an appraisal in accordance with Section I.C.4, on the remaining encumbered parcel. In the event this alternative is exercised by Borrower, the City agrees to execute the appropriate (partial or full) Release and Reconveyance. Said additional improvements shall be subject to review and approval of
the City, which shall be undertaken by the City in an expeditious manner and not unduly delayed, prior to amendments to this Agreement. Borrower acknowledges that this section does not provide it with future land use entitlements or other approvals for which it would otherwise be required to make application to the City in accordance with applicable State and local laws, regulations and requirements.

II. MISCELLANEOUS TERMS

A. Modification. This Agreement shall only be modified by a written amendment signed by the parties, or as otherwise set forth in the terms of the Agreement.

B. Attorneys' Fees. If any litigation is commenced between the parties to this Agreement concerning the Agreement or the rights and duties of either in relation to the Agreement, the party prevailing in that litigation shall be entitled, in addition to any other relief that may be granted in the litigation, to its cost for the litigation including expert witness fees and a reasonable sum as and for its attorneys' fees in the litigation, which shall be determined by the court in that litigation or in a separate action brought for that purpose.

C. Entire Agreement. This Agreement (including the Promissory Note and Deed of Trust) contains the entire understanding between the parties relating to the transaction contemplated by this Agreement.

D. Notices. Any approval, disapproval, demand, document or other notice ("Notice") which either party may desire to give to the other party under this Agreement must be in writing and may be given by any commercially acceptable means to the party to whom the Notice is directed at the address of the party as set forth below, or any other address as that party may later designate by Notice.

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

To Borrower: PROSPECT-HENDERSON PARTNERS, L.P.
17671 Irvine Blvd., Suite 204
Tustin, CA 92780
Attention: David H. Paynter

E. Applicable law/Venue. The laws of the State of California shall govern the interpretation and enforcement of this Agreement. Venue for any dispute shall be Tulare County, California.

F. Inaction Not a Waiver of Default. Any failures or delays by either party in asserting any of its rights and remedies as to any Default shall not operate as a waiver of any Default or of any such rights or remedies, or deprive either such party of its right
to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

G. Rights and Remedies Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

H. Successors and Assigns. All of the terms, covenants and conditions of this Agreement shall be binding upon the parties and their successors and assigns.

I. Severability. If any term, provision, condition or covenant of this Agreement or its application to any party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Agreement, or the application of the term, provision, condition or covenant to persons or circumstances other than those to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.

J. Counterparts. This Agreement may be signed in multiple counterparts which, when signed by all parties, shall constitute a binding agreement.
PROSPECT-HENDERSON PARTNERS, L.P.

By: ____________________________
    David H. Paynter, General Partner

APPROVED AS TO FORM:

_____________________________
Robert K. Hillison, Esq.

City of Porterville

By: ____________________________
    Pete V. McCracken, Mayor

APPROVED AS TO FORM:

By: ____________________________
    Julia Lew, City Attorney
LEGAL DESCRIPTION

EXHIBIT "A"

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF TULARE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL 1:

That portion of the Northwest quarter of Section 27, Township 21 South, Range 27 East, Mount Diablo Base and Meridian, in the City of Porterville, County of Tulare, State of California, according to the official plat thereof, more particularly described as Parcel No. 5 of Parcel Map No. 3874 as per Map recorded in Book 39, Page 77 of Parcel Maps, Tulare County Records.

PARCEL 2:

All rights, easements, privileges of use, right of way, covenants, conditions, and restrictions, created and granted as an appurtenance to the property described in Parcel 1 in and by that certain document entitled Grant of Reciprocal Easements, Declaration of Covenants Running With The Land, and Development Agreement, entered into by and between Mervyn's, a California Corporation, and Henderson-Prospect Partners L.P., a California Limited Partnership, recorded March 12, 1991, as File No. 14834 of Official Records, Tulare County Records, and as amended and restated by document recorded October 29, 1991, as Document No. 74399 of Official Records.

APN: 251-350-012
EXHIBIT C

PROMISSORY NOTE
SECURED BY DEED OF TRUST

$2,700,000

___________________, 20__

THIS PROMISSORY NOTE (this "Note") is made as of ____________, 20__, by
PROSPECT-HENDERSON PARTNERS, L.P., a California limited partnership ("Borrower"),
having an address at 17671 Irvine Boulevard, Suite 204, Tustin, CA 92680, to and in favor of
CITY OF PORTERVILLE, a municipal corporation, its successors and assigns ("Lender"),
having an address at 291 North Main Street, Porterville, CA 93257.

FOR VALUE RECEIVED, Borrower, unconditionally promises to pay to the order of
Lender, without any counterclaim, setoff or deduction whatsoever, on the Maturity Date (as
hereinafter defined), at the office of Lender, or at such other place as Lender may designate to
Borrower in writing from time to time, the principal sum of TWO MILLION SEVEN
HUNDRED THOUSAND DOLLARS ($2,700,000), together with interest on so much thereof as
is from time to time outstanding and unpaid, from the date of the advance of the principal
evidenced hereby, payable in lawful money of the United States of America, which shall at the
time of payment be legal tender in payment of all debts and dues, public and private, as set forth
in Section 1.01 of this Note.

ARTICLE I

TERMS AND CONDITIONS

1.01 Payment of Principal and Interest. Interest shall be computed hereunder based
on a 365-day year and paid for the actual number of days elapsed for any whole or partial month
in which interest is being calculated. Such principal and interest shall be payable at a compound
interest rate of one and one-half percent (1.5%) amortized over an initial 70-month term and at a
compound rate of three percent (3%) over the second 60-month term (for a total term of 130
months). Interest-only payments shall be made monthly, starting in the eleventh month, with the
first payment due on November 15, 2010. A schedule of payments is attached hereto as Exhibit
"A." Repayment of the principal (and any remaining unpaid interest) shall be made in full no
later than ____________, at which time the entire outstanding principal balance hereof, together
with all accrued but unpaid interest thereon, shall be due and payable in full. Each such
installment shall be applied first to the payment of accrued interest and then to reduction of
principal.

1.02 Prepayment. This Note may be prepaid at any time without penalty.

1.03 Security. The indebtedness evidenced by this Note and the obligations created
hereby are secured by, among other things, (a) that certain Deed of Trust, Assignment of Rents,
Security Agreement and Fixture Filing (the "Security Instrument"), dated of even date herewith,
made by Borrower in favor of Lender, encumbering certain property located in Tulare County,
California, together with any and all renewals, modifications, amendments, restatements, consolidations, substitutions, replacements, and extensions and modifications thereof, are herein referred to collectively as the “Loan Documents.” The whole of the principal sum of this Note, together with all interest accrued and unpaid thereon and all other sums due under the Loan Documents is herein referred to as the “Debt.” All of the terms and provisions of the Loan Documents are incorporated herein by reference. Some of the Loan Documents are to be filed for record on or about the date hereof in the appropriate public records.

1.04 Default.

(a) It is hereby expressly agreed that should any default occur in the payment of principal or interest as stipulated above and such payment is not made when due, or should any other default occur under any of the Loan Documents which is not cured within any applicable grace or cure period therein, including without limitation, any sale, transfer, conveyance or other violation of the terms of the Security Instrument, then a default shall exist hereunder, and in such event the indebtedness evidenced hereby, including all sums advanced or accrued hereunder or under any other Loan Document, and all unpaid interest accrued thereon, shall, at the option of Lender and without notice to Borrower, at once become due and payable and may be collected forthwith, whether or not there has been a prior demand for payment and regardless of the stipulated date of maturity.

(b) The remedies of Lender in this Note or in the other Loan Documents, or at law or in equity, shall be cumulative and concurrent, and may be pursued singly, successively or together in Lender’s discretion. Time is of the essence with respect to all matters concerning or relating to this Note. Borrower agrees to pay on demand all expenses and costs of enforcement, administration and collection incurred or paid, including but not limited to reasonable attorney fees and disbursements of Lender.

1.05 Exculpation. Notwithstanding anything in the Loan Documents to the contrary, but subject to the qualifications set forth below, Lender agrees that (i) Borrower shall be liable upon the indebtedness evidenced hereby and for the other obligations arising under the Loan Documents to the full extent (but only to the extent) of the security therefor, the same being all properties (whether real or personal), rights, estates and interests now or at any time hereafter securing the payment of this Note and/or the other obligations of Borrower under the Loan Documents (collectively, the "Security Property"), (ii) if default occurs in the timely and proper payment of all or any part of such indebtedness evidenced hereby or in the timely and proper performance of the other obligations of Borrower under the Loan Documents, any judicial proceedings brought by Lender against Borrower shall be limited to the preservation, enforcement and foreclosure, or any thereof, of the liens, security titles, estates, assignments, rights and security interests now or at any time hereafter securing the payment of this Note and/or the other obligations of Borrower under the Loan Documents, and confirmation of any sale under power of sale, and no attachment, execution or other writ of process shall be sought, issued or levied upon any assets, properties or funds of Borrower or its general or limited partners other than the Security Property except with respect to the liability described below in this section, and (iii) in the event of a foreclosure of such liens, security titles, estates, assignments, rights or security interests securing the payment of this Note and/or the other obligations of Borrower
under the Loan Documents, whether by judicial proceedings or exercise of power of sale, no judgment for any deficiency upon the indebtedness evidenced hereby shall be sought or obtained by Lender against Borrower.

1.06 **Cost Reimbursement.** If this Note is not paid when due, or if an event of default occurs, Borrower agrees to pay all costs and expenses (including attorneys' fees) incurred by Lender as a result thereof, including, without limitation, all costs and expenses (including attorneys' fees) incurred in (i) any proceeding for collection of the debt evidenced hereby, (ii) any foreclosure or exercise of the power of sale under the Security Instrument, (iii) protecting or sustaining the lien of the Security Instrument, or (iv) any litigation or Controversy arising from or connected with this Note or the Security Instrument, including any action to protect or enhance Lender's rights in the event 'Borrower becomes subject to a proceeding under applicable bankruptcy law (including filing, or responding to, as appropriate, a motion to obtain relief from the automatic stay under applicable bankruptcy law, to obtain adequate protection and to use cash collateral). The attorneys' fees and other costs which Lender shall be entitled to recover from Borrower shall include all those incurred by Lender.

**ARTICLE II**

**GENERAL CONDITIONS**

2.01 **No Waiver; Amendment.** No failure to accelerate the debt evidenced hereby by reason of default hereunder, acceptance of a partial or past due payment, or indulgences granted from time to time shall be construed (i) as a novation of this Note or as a reinstatement of the indebtedness evidenced hereby or as a waiver of such right of acceleration or of the right of Lender thereafter to insist upon strict compliance with the terms of this Note, or (ii) to prevent the exercise of such right of acceleration or any other right granted hereunder or by any applicable laws; and Borrower hereby expressly waives the benefit of any statute or rule of law or equity now provided, or which may hereafter be provided, which would produce a result contrary to or in conflict with the foregoing. No extension of the time for the payment of this Note or any installment due hereunder, made by agreement with any person now or hereafter liable for the payment of this Note shall operate to release, discharge, modify, change or affect the original liability of Borrower under this Note, either in whole or in part unless Lender agrees otherwise in writing. This Note may not be changed orally, but only by a definitive written agreement signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

2.02 **Waivers.** Presentment for payment, demand, protest and notice of demand, protest and nonpayment and all other notices are hereby waived by Borrower. Borrower hereby further waives and renounces, to the fullest extent permitted by law, all rights to the benefits of any statute of limitations and any moratorium, reinstatement, marshalling, forbearance, valuation, stay, extension, redemption, appraisement, exemption and homestead now or hereafter provided by the Constitution and laws of the United States of America and of each state thereof, both as to itself and in and to all of its property, real and personal, against the enforcement and collection of the obligations evidenced by this Note or the other Loan Documents.
2.03 **Use of Funds.** Borrower hereby warrants, represents and covenants that no funds disbursed hereunder shall be used for purposes not related to the Security Property.

2.04 **Unconditional Payment.** Borrower is and shall be obligated to pay principal, interest and any and all other amounts which become payable hereunder or under the other Loan Documents absolutely and unconditionally and without any abatement, postponement, diminution or deduction and without any reduction for counterclaim or setoff.

2.05 **Further Assurances.** Borrower shall execute and acknowledge (or cause to be executed and acknowledged) and deliver to Lender all documents, and take all actions, reasonably required by Lender from time to time to confirm the rights created under this Note and the other Loan Documents, to protect and further the validity, priority and enforceability of this Note and the other Loan Documents, to subject to the Loan Documents any property of Borrower intended by the terms of any one or more of the Loan Documents to be encumbered by the Loan Documents, or otherwise carry out the purposes of the Loan Documents and the transactions contemplated thereunder; provided, however, that no such further actions, assurances and confirmations shall increase, modify or change Borrower's obligations under this Note or under the other Loan Documents.

2.06 **Submission to Jurisdiction.** BORROWER, TO THE FULL EXTENT PERMITTED BY LAW, HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, (A) SUBMITS TO PERSONAL JURISDICTION IN THE STATE OF CALIFORNIA OVER ANY SUIT, ACTION OR PROCEEDING BY ANY PERSON ARISING FROM OR RELATING TO THIS NOTE, (B) AGREES THAT ANY SUCH ACTION, SUIT OR PROCEEDING MAY BE BROUGHT IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION SITTING IN EITHER THE CITY OR THE COUNTY WHERE THE PROPERTY IS LOCATED, (C) SUBMITS TO THE JURISDICTION OF SUCH COURTS, AND (D) TO THE FULLEST EXTENT PERMITTED BY LAW, AGREES THAT BORROWER WILL NOT BRING ANY ACTION, SUIT OR PROCEEDING IN ANY OTHER FORUM AND BORrower FURTHER consents AND AGREES TO SERVICE OF ANY SUMMONS, COMPLAINT OR OTHER LEGAL PROCESS IN ANY SUCH SUIT, ACTION OR PROCEEDING BY REGISTERED OR CERTIFIED U.S. MAIL, POSTAGE PREPAID, TO BORROWER AT THE ADDRESS FOR NOTICES DESCRIBED ON THE FIRST PAGE HEREOF, AND consents AND AGREES THAT SUCH SERVICE SHALL CONSTITUTE IN EVERY RESPECT VALID AND EFFECTIVE SERVICE (BUT NOTHING HEREIN SHALL AFFECT THE VALIDITY OR EFFECTIVENESS OF PROCESS SERVED IN ANY OTHER MANNER PERMITTED BY LAW).

2.07 **Miscellaneous.** This Note shall be interpreted, construed and enforced according to the laws of the State of California and the applicable laws of the United States of America. The terms and provisions hereof shall be binding upon and inure to the benefit of Borrower and Lender and their respective heirs, executors, legal representatives, successors, successors-in-title and assigns, whether by voluntary action of the parties or by operation of law. As used herein, the terms “Borrower” and “Lender” shall be deemed to include their respective successors, successors-in-title and assigns, whether by voluntary action of the parties or by operation of law.
All personal pronouns used herein, whether used in the masculine, feminine or neuter gender, shall include all other genders; the singular shall include the plural and vice versa. Titles of articles and sections are for convenience only and in no way define, limit, amplify or describe the scope or intent of any provisions hereof. Capitalized terms used in this Note and not otherwise defined herein shall have the meaning ascribed to them in the Security Instrument or in the other Loan Documents. Time is of the essence with respect to all provisions of this Note, the Security Instrument and the other Loan Documents. This Note and the other Loan Documents contain the entire agreements between the parties hereto relating to the subject matter hereof and thereof and all prior agreements relative hereto and thereto which are not contained herein or therein are terminated.

IN WITNESS WHEREOF, Borrower, intending to be legally bound hereby, has duly executed this Note as of the day and year first written above.

PROSPECT-HENDERSON PARTNERS, L.P.,
a California limited partnership

By:
David H. Paynter
General Partner
DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING

THIS DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this "Deed of Trust") is made as of the ______ day of ______, 20____, by PROSPECT-HENDERSON PARTNERS, L.P., a California limited partnership ("Trustor"), having an address at 17671 Irvine Boulevard, Suite 204, Tustin, CA 92680, in favor of CHICAGO TITLE COMPANY, as Trustee ("Trustee"), whose address is 1750 West Walnut, Visalia, CA 93277, for the benefit of CITY OF PORTERVILLE, a municipal corporation ("Beneficiary"), whose address is 291 North Main Street, Porterville, CA 93257.

WITNESSETH:

FOR VALUABLE CONSIDERATION, INCLUDING THE INDEBTEDNESS HEREIN RECITED AND THE TRUST HEREIN CREATED, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, TRUSTOR HEREBY IRREVOCABLY GRANTS, BARGAINS, SELLS, CONVEYS, TRANSFERS, PLEDGES, SETS OVER AND ASSIGNS, AND GRANTS A SECURITY INTEREST, TO AND IN FAVOR OF TRUSTEE FOR THE BENEFIT OF BENEFICIARY, ITS SUCCESSORS AND ASSIGNS, WITH POWER OF SALE, in all of Trustor's estate, right, title and interest in, to and under any and all of the following described property, whether now owned or hereafter acquired (collectively, the "Property"):

(A) All that certain real property situated in the County of Tulare, State of California, more particularly described on Exhibit A attached hereto and incorporated herein by this reference (the "Real Estate"), together with all of the easements, rights, privileges, franchises, tenements, hereditaments and appurtenances now or hereafter thereunto belonging or in any way appertaining and all of the estate, right, title, interest, claim and demand whatsoever of Trustor therein or thereto, either at law or in equity, in possession or in expectancy, now or hereafter acquired;

(B) All structures, buildings and improvements of every kind and description now or at any time hereafter located or placed on the Real Estate (the "Improvements");

(C) All easements, rights-of-way, streets, ways, alleys, passages, sewer rights, and other emblems now or hereafter located on the Real Estate or under or above the same or any part or parcel thereof, and all estates, rights, titles, interests, tenements, hereditaments and appurtenances, reversions and remainders whatsoever, in any way belonging, relating or appertaining to the Property or any part thereof, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Trustor;

(D) All furniture, furnishings, fixtures, goods, equipment, inventory or personal property owned by Trustor and now or hereafter located on, attached to or used in or about the Improvements, including, but not limited to, all machines, engines, boilers, dynamos, elevators, stokers, tanks, cabinets, awnings, screens, shades, blinds, carpets, draperies, lawn mowers, and all appliances, plumbing, heating, air conditioning, lighting, ventilating, refrigerating, disposal and incinerating equipment, and all fixtures and appurtenances thereto, and such other goods and chattels and personal property owned by Trustor as are now or hereafter used or furnished in operating the Improvements, or the activities conducted therein,
and all building materials and equipment hereafter situated on or about the Real Estate or Improvements, and all warranties and guaranties relating thereto, and all additions thereto and substitutions and replacements therefor (exclusive of any of the foregoing owned or leased by tenants of space in the Improvements);

(E) All water, water courses, ditches, wells, reservoirs and drains and all water, ditch, well, reservoir and drainage rights and powers which are appurtenant to, located on, under or above or used in connection with the Real Estate or the Improvements, or any part thereof, together (i) with all utilities, utility lines, utility commitments, utility capacity, in connection with same, (ii) reimbursements or other rights pertaining to utility or utility services provided to the Real Estate and/or Improvements and (iii) the present or future use or availability of waste water capacity, or other utility facilities to the extent same pertain to or benefit the Real Estate and/or Improvements, including, without limitation, all reservations of or commitments or letters covering any such use in the future, whether now existing or hereafter created or acquired;

(F) All minerals, crops, timber, trees, shrubs, flowers and landscaping features now or hereafter located on, under or above the Real Estate;

(G) All leases, licenses, tenancies, concessions and occupancy agreements of the Real Estate or the Improvements now or hereafter entered into and all rents, royalties, issues, profits, revenue, income, accounts receivable and other benefits (collectively, the "Rents" or "Rents and Profits") of the Real Estate, the Improvements, or the fixtures or equipment, now or hereafter arising from the use or enjoyment of all or any portion thereof or from any lease, license, tenancy, concession, occupancy agreement or other agreement pertaining thereto or arising from any of the Contracts (as hereinafter defined) or any of the General Intangibles (as hereinafter defined) and all cash or securities (the "Security Deposits") that secure performance by the tenants, lessees or licensees, as applicable, of their obligations under any such leases, licenses, concessions or occupancy agreements, or which may be available to Trustor or its designee to effect repairs or maintenance, whether said cash or securities are to be held until the expiration of the terms of said leases, licenses, concessions or occupancy agreements or applied to one or more of the installments of rent coming due prior to the expiration of said terms, subject to, however, the provisions contained in this Deed of Trust;

(H) All contracts and agreements now or hereafter entered into covering any part of the Real Estate or the Improvements (collectively, the "Contracts") and all revenue, income and other benefits thereof, including, without limitation, management agreements, service contracts, maintenance contracts, equipment leases, personal property leases and any contracts or documents relating to construction on any part of the Real Estate or the Improvements (including plans, specifications, studies, drawings, surveys, tests, operating and other reports, bonds and governmental approvals) or to the management or operation of any part of the Real Estate or the Improvements;

(I) All water taps, sewer taps, certificates of occupancy, permits, special permits, uses, licenses, franchises, certificates, consents, approvals and other rights and privileges now or hereafter obtained in connection with the Real Estate or the Improvements and all present and future warranties and guaranties relating to the Improvements or to any equipment, fixtures, furniture, furnishings, personal property or components of any of the foregoing now or hereafter located or installed on the Real Estate or the Improvements;

(J) All building materials, supplies and equipment now or hereafter placed on the Real Estate or in the Improvements and all architectural renderings, models, drawings, plans, specifications, studies and data now or hereafter relating to the Real Estate or the Improvements;

(K) All right, title and interest of Trustor in any insurance policies or binders now or hereafter relating to the Property (whether or not such insurance was requested or required by Beneficiary) including any unearned premiums thereon;

(L) All proceeds, products, substitutions and accessions (including claims and demands therefor) of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims, including, without limitation, proceeds of insurance (whether or not such insurance was requested or required by Beneficiary) and condemnation awards; and
FOR THE PURPOSE OF SECURING:

(1) The debt evidenced by and interest and all other sums owed pursuant to that certain Promissory Note (such Promissory Note; together with any and all renewals, modifications, amendments, restatements, consolidations, substitutions, replacements, and extensions thereof, is hereinafter referred to as the "Note") of even date with this Deed of Trust, and having a maturity date of , made by Trustor and payable to the order of Beneficiary in the original principal amount of TWO MILLION SIX HUNDRED THOUSAND DOLLARS ($2,600,000) (the "Loan" or the "Loan Amount").

(2) The full and prompt payment and performance of all of the provisions, agreements, covenants and obligations herein contained and contained in any other agreements, documents or instruments now or hereafter evidencing, securing or otherwise relating to the indebtedness evidenced by the Note (the Note, this Deed of Trust) and such other agreements, documents and instruments, together with any and all renewals, modifications, amendments, restatements, consolidations, substitutions, replacements, and extensions and modifications thereof, are hereinafter collectively referred to as the "Loan Documents") and the payment of all other sums therein covenanted to be paid.

(3) Any and all future or additional advances (whether or not obligatory) made by Beneficiary to protect or preserve the Property, or the lien or security interest created hereby on the Property, or for taxes, assessments or insurance premiums as hereinafter provided or for performance of any of Trustor's obligations hereunder or under the other Loan Documents or for any other purpose provided herein or in the other Loan Documents (whether or not the original Trustor remains the owner of the Property at the time of such advances), together with interest thereon; and

(4) Any and all other indebtedness now owing or which may hereafter be owing by Trustor to Beneficiary, however and whenever incurred or evidenced, whether express or implied, direct or indirect, absolute or contingent, or due or to become due, and all renewals, modifications, amendments, restatements, consolidations, substitutions, replacements and extensions thereof. (All of the sums referred to in Paragraphs (1) through (4) above are herein sometimes referred to as the "secured indebtedness" or the "indebtedness secured hereby").

TO HAVE AND TO HOLD the Property unto Trustee, its successors and assigns forever, and Trustor does hereby bind itself, its successors and assigns, to DEFEND the title to the Property unto Trustee against every person whomsoever lawfully claiming or to claim the same or any part thereof for the purposes and uses herein set forth;

PROVIDED, HOWEVER, that if the principal and interest and all other sums due or to become due under the Note shall have been paid at the time and in the manner stipulated therein and all other sums payable hereunder and all other indebtedness secured hereby shall have been paid, then, upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed of Trust and the Note to Trustee for cancellation and retention and upon payment by Trustor of Trustee's fees, Trustee shall reconvey to Trustor, or the person or persons legally entitled thereto, without warranty, any portion of the Property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in any reconveyance may be described as "the person or persons legally entitled thereto."

ARTICLE I

COVENANTS OF TRUSTOR

For the purpose of further securing the indebtedness secured hereby and for the protection of the security of this Deed of Trust, for so long as the indebtedness secured hereby or any part thereof remains unpaid, Trustor represents, covenants and agrees as follows:

Section 1.1. Warranties of Trustor. Trustor, for itself and its successors and assigns, does hereby represent, warrant and covenant to and with Beneficiary, its successors and assigns, that:
(a) **Organization and Existence.** Trustor is duly organized and validly existing as a limited partnership in good standing under the laws of California and in all other jurisdictions in which Trustor is transacting business.

(b) **Authorization.** Trustor has the power and authority to execute, deliver and perform the obligations imposed on it under the Loan Documents and to consummate the transactions contemplated by the Loan Documents and has taken all necessary actions in furtherance thereof including, without limitation, that those partners, shareholders or members of Trustor whose approval or consent is required by the terms of Trustor's organizational documents have duly approved or consented to the transactions contemplated by the Loan Documents and have authorized execution and delivery thereof by the respective signatories. To the best of Trustor's knowledge, no other consent by any local, state or federal agency is required in connection with the execution and delivery of the Loan Documents.

(c) **Valid Execution and Delivery.** All of the Loan Documents requiring execution by Trustor have been duly and validly executed and delivered by Trustor.

(d) **Enforceability.** All of the Loan Documents constitute valid, legal and binding obligations of Trustor and are fully enforceable against Trustor in accordance with their terms, subject only to bankruptcy laws and general principles of equity.

(e) **No Defenses.** The Note, this Deed of Trust and the other Loan Documents are not subject to any right of rescission, set-off, counterclaim or defense, nor would the operation of any of the terms of the Note, this Deed of Trust or any of the other Loan Documents, or the exercise of any right thereunder, render this Deed of Trust unenforceable, in whole or in part, or subject to any right of rescission, set-off, counterclaim or defense, including the defense of usury.

(f) **Defense of Usury.** Trustor knows of no facts that would support a claim of usury to defeat or avoid its obligation to repay the principal of, interest on, and other sums or amounts due and payable under, the Loan Documents.

(g) **No Conflict/Violation of Law.** The execution, delivery and performance of the Loan Documents by the Trustor will not cause or constitute a default under or conflict with the organizational documents of Trustor, any indemnitor or any general partner, shareholder or managing member of Trustor or any indemnitor. The execution, delivery and performance of the obligations imposed on Trustor under the Loan Documents will not cause Trustor to be in default, including after due notice or lapse of time or both, under the provisions of any agreement, judgment or order to which Trustor is a party or by which Trustor is bound.

(h) **No Litigation.** There are no pending actions, suits or proceedings, arbitrations or governmental investigations against the Property, Trustor or any guarantor of Trustor an adverse outcome of which would materially affect (i) the Trustor's performance under the Note, the Deed of Trust or the other Loan Documents, (ii) the Property or (iii) the ability of the Property to continue to generate income, or continue in operation, in a manner consistent with current operations.

(i) **Title.** The Trustor has fee simple title to the Property, subject only to those matters expressly listed as exceptions to title or subordinate matters in the title insurance policy accepted by Beneficiary in connection with this Deed of Trust, excepting therefrom all preprinted and/or standard exceptions (the "Permitted Exceptions"). The possession of the Property has been peaceful and undisturbed and title thereto has not been disputed or questioned to the best of Trustor's actual knowledge. Trustor has full power and lawful authority to grant, bargain, sell, convey, assign, transfer and mortgage its interest in the Property in the manner and form hereby done or intended. Trustor will preserve its interest in and title to the Property and will forever warrant and defend the same to Beneficiary against any and all claims whatsoever and will defend the validity and priority of the lien and security interest created herein against the claims of all persons and parties whomsoever, subject to the Permitted Exceptions. The foregoing warranty of title shall survive the foreclosure of this Deed of Trust and shall inure to the benefit of and be enforceable by Beneficiary in the event Beneficiary acquires title to the Property pursuant to any foreclosure.
(j) **Permitted Exceptions.** The Permitted Exceptions do not and will not materially and adversely affect (1) the ability of the Trustor to pay in full the principal and interest on the Note in a timely manner or (2) the use of the Property for the use currently being made thereof, the operation of the Property as currently being operated or the value of the Property.

(k) **First Lien.** Upon the execution by the Trustor and the recording of this Deed of Trust, and upon the execution and filing of UCC-1 financing statements or amendments thereto, the Beneficiary will have a valid first lien on the Property and a valid security interest in all personal property encumbered hereby, subject to no liens, charges or encumbrances other than the Permitted Exceptions.

(l) **Contingent Liabilities.** The Trustor has no known material contingent liabilities.

(m) **No Other Obligations.** The Trustor has no material financial obligation under any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which the Trustor is a party or by which the Trustor or the Property is otherwise bound, other than obligations incurred in the ordinary course of the operation of the Property and other than obligations under this Deed of Trust, the Note and the other Loan Documents.

(n) **Fraudulent Conveyance.** The Trustor (1) has not entered into the Loan or any Loan Document with the actual intent to hinder, delay, or defraud any creditor and (2) received reasonably equivalent value in exchange for its obligations under the Loan Documents. The Trustor does not intend to, and does not believe that it will, incur debts and liabilities (including, without limitation, contingent liabilities and other commitments) beyond its ability to pay such debts as they mature (taking into account the timing and amounts to be payable on or in respect of obligations of the Trustor).

(o) **Access/Utilities.** The Property has adequate rights of access to public ways and is served by adequate water, sewer, electric, gas, telephone, cable (where appropriate), sanitary sewer and storm drain facilities. All public utilities necessary to the continued use and enjoyment of the Property as presently used and enjoyed are located in the public right-of-way abutting the Property, and all such utilities are connected so as to serve the Property without passing over other property. All roads, and access to such roads, necessary for the full utilization of the Property for its current purpose have been completed and dedicated to public use and accepted by all governmental authorities or are the subject of access easements for the benefit of the Property without any further condition or cost to Trustor or Tenants.

(p) **Taxes Paid.** Trustor has filed all federal, state, county and municipal tax returns required to have been filed by Trustor or with respect to the Property, and has paid all taxes which have become due pursuant to such returns or to any notice of assessment relating to the Property, and Trustor has no knowledge of any basis for additional assessment with respect to such taxes. Further, the Property is free from delinquent water charges, sewer rents, taxes and assessments.

(q) **Special Assessments.** Except as disclosed in the title insurance policy, there are no pending or, to the knowledge of the Trustor, proposed special or other assessments for public improvements or otherwise affecting the Property, nor, to the knowledge of the Trustor, are there any contemplated improvements to the Property that may result in such special or other assessments.

(r) **Flood Zone.** The Property is not located in a flood hazard area as defined by the Federal Insurance Administration.

(s) **Seismic Exposure.** The Real Estate are not located in Zone 3 or Zone 4 of the "Seismic Zone Map of the U.S."

(t) **Condition of Improvements.** The Property has not been damaged by fire, water, wind or other cause of loss or any previous damage to the Property has been fully restored. The Improvements are structurally sound, in good repair. All major building systems located within the Improvements, including, without limitation, the heating and air conditioning systems and the electrical and plumbing systems, are in good working order and condition.
(u) **No Insolvency or Judgment.** Neither Trustor, any general partner or member of Trustor, any guarantor of the Loan is currently (a) the subject of or a party to any completed or pending bankruptcy, reorganization or insolvency proceeding; or (b) the subject of any unsatisfied judgment of record or docketed in any court of the state in which the Property is located or in any other court located in the United States. The proposed Loan will not render the Trustor nor any general partner or member of Trustor insolvent. As used in this Certificate, the term "insolvent" means that the sum total of all of an entity's liabilities (whether secured or unsecured, contingent or fixed, or liquidated or unliquidated) is in excess of the value of all such entity's non-exempt assets, i.e., all of the assets of the entity that are available to satisfy claims of creditors.

(v) **No Condemnation.** No part of any property subject to the Deed of Trust has been taken in condemnation or other like proceeding to an extent which would impair the value of the Property, the Deed of Trust or the Loan or the usefulness of such property for the purposes contemplated by the loan application relating to the Loan (the "Loan Application"), nor is any proceeding pending, threatened or known to be contemplated for the partial or total condemnation or taking of the Property.

(w) **No Labor or Materialmen Claims.** All parties furnishing labor and materials have been paid in full and, except for such liens or claims insured against by the policy of title insurance to be issued in connection with the Loan, there are no mechanics', laborers' or materialmen's liens or claims outstanding for work, labor or materials affecting the Property, whether prior to, equal with or subordinate to the lien of the Deed of Trust.

(x) **No Purchase Options.** No tenant, person, party, firm, corporation or other entity has an option to purchase the Property, any portion thereof or any interest therein.

(y) **Leases.** The Property is not subject to any leases, subleases, licenses, concessions or other agreements related to the leasing or renting of the Property or any portion thereof, except as Trustor has previously notified Beneficiary. No person has any possessory interest in the Property or right to occupy the same, except pursuant to the Leases. As of the date hereof, (i) the Trustor is the owner and holder of the landlord's interest under the Leases; (ii) there are no prior assignments of all or any portion of the Leases or any portion of the Rents and Profits which are presently outstanding and have priority over the assignment of leases and rents contained herein in Section 1.11 given by Trustor to Beneficiary; (iii) all Rents due and payable under each Lease have been paid in full and no said Rents have been paid more than one (1) month in advance of the due dates thereof and (iv) there are no offsets or defenses to the payment of any portion of the Rents. The representations set forth in this Paragraph (ee) are in addition to those set forth in Section 1.12 of this Deed of Trust.

(z) **Boundary Lines.** All of the Improvements which were included in determining the appraised value of the Property lie wholly within the boundaries and building restriction lines of the Property, and no improvements on adjoining properties encroach upon the Property, and no easements or other encumbrances upon the Real Estate encroach upon any of the Improvements, so as to affect the value or marketability of the Property except those which are insured against by title insurance.

(aa) **Survey.** The survey of the Property delivered to Beneficiary in connection with this Deed of Trust, has been performed by a duly licensed surveyor or registered professional engineer in the jurisdiction in which the Property is situated, is certified to the Beneficiary, its successors and assigns, and the title insurance company, and is in accordance with the most current minimum standards for title surveys as determined by the American Land Title Association, with the signature and seal of a licensed engineer or surveyor affixed thereto, and does not fail to reflect any material matter affecting the Property or the title thereto.

(bb) **Use of Rents and Profits.** All Rents and Profits generated by or derived from the Property shall first be utilized solely for current expenses directly attributable to the ownership and operation of the Property, including, without limitation, current expenses relating to Trustor's liabilities and obligations with respect to this Deed of Trust and the other Loan Documents, and none of the Rents and Profits generated by or derived from the Property shall be
diverted by Trustor and utilized for any other purposes unless all such current expenses attributable to the ownership and operation of the Property have been fully paid and satisfied. Any license agreements which generate income with respect to the Property, including cable licenses or similar arrangements, are not prepaid and the benefits thereof have been assigned for the benefit of Beneficiary.

(cc) **No Broker.** No financial advisors, brokers, underwriters, placement agents, agents or finders have been dealt with by the Trustor in connection with the Loan, except for any broker whose full commission was paid out of the proceeds of the Loan and is set forth in the written instructions from Trustor to Beneficiary regarding disbursement of the proceeds of the Loan.

(dd) **Work.** All work to be performed by Trustor under any Lease has been substantially performed, all contributions to be made by Trustor to the Tenant have been made and all other conditions precedent to the Tenant's obligations thereunder have been satisfied.

(ee) **Security Agreements.** There are no security agreements or financing statements affecting any of the Property other than (i) as disclosed in writing by Trustor to Beneficiary prior to the date hereof and (ii) the security agreements and financing statements created in favor of Beneficiary.

(ff) **Homestead.** The Property forms no part of any property owned, used or claimed by Trustor as a residence or business homestead and is not exempt from forced sale under the laws of the State in which the Real Estate is located. Trustor hereby disclaims and renounces each and every claim to all or any portion of the Property as a homestead.

(gg) **Contracts.** Trustor will comply with all of its obligations under all Contracts which are material to the operation of the Property in accordance with Trustor's current practice, and with all material obligations under all other Contracts.

Section 1.2. **Defense of Title.** If, while this Deed of Trust is in force, the title to the Property or the interest of Beneficiary therein shall be the subject, directly or indirectly, of any action at law or in equity, or be attacked directly or indirectly, or endangered, clouded or adversely affected in any manner, Trustor, at Trustor's expense, shall take all necessary and proper steps for the defense of said title or interest, including the employment of counsel reasonably approved by Beneficiary, the prosecution or defense of litigation, and the compromise or discharge of claims made against said title or interest. Notwithstanding the foregoing, in the event that Beneficiary reasonably determines that Trustor is not adequately performing its obligations under this Section, Beneficiary may, without limiting or waiving any other rights or remedies of Beneficiary hereunder, take such steps with respect thereto as Beneficiary shall deem necessary or proper; and any and all costs and expenses incurred by Beneficiary in connection therewith, together with interest thereon from the date incurred by Beneficiary until actually paid by Trustor, shall be immediately paid by Trustor on demand and shall be secured by this Deed of Trust and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note.

Section 1.3. **Performance of Obligations.** Trustor shall pay when due the principal of and the interest on the indebtedness secured hereby including all charges, fees and other sums required to be paid by Trustor as provided in the Loan Documents, and shall observe, perform and discharge all obligations, and conditions, and comply with all prohibitions, covenants and agreements to be observed, performed or discharged by Trustor set forth in the Loan Documents in accordance with their terms. In the event that Beneficiary determines that Trustor is not adequately performing any of its obligations under this Deed of Trust or under any of the other Loan Documents, Beneficiary may, without limiting or waiving any other rights or remedies of Beneficiary hereunder, take such steps with respect thereto as Beneficiary shall deem necessary or proper, and any and all costs and expenses reasonably incurred by Beneficiary in connection therewith, together with interest thereon from the date incurred by Beneficiary until actually paid by Trustor, shall be immediately paid by Trustor on demand and shall be secured by this Deed of Trust and by all of the other Loan Documents securing all or any part of the indebtedness.
evidenced by the Note.

Section 1.4. **Insurance.** Trustor shall, at Trustor's expense, maintain in force and effect on the Property at all times while this Deed of Trust continues in effect the following insurance:

(a) Insurance against loss or damage to the Property by fire, windstorm, tornado and hail and against loss and damage by such other, further and additional risks as may be now or hereafter embraced by an "all-risk" form of insurance policy. The amount of such insurance shall be not less than one hundred percent (100%) of the full replacement (insurable) cost of the Improvements, furniture, furnishings, fixtures, equipment and other items (whether personality or fixtures) included in the Property and owned by Trustor from time to time, without reduction for depreciation. The determination of the replacement cost amount shall be adjusted annually to comply with the requirements of the insurer issuing such coverage or, at Beneficiary's election, by reference to such indices, appraisals or information as Beneficiary determines in its reasonable discretion. Full replacement cost, as used herein, means, with respect to the Improvements, the cost of replacing the Improvements without regard to deduction for depreciation, exclusive of the cost of excavations, foundations and footings below the lowest basement floor, and means, with respect to such furniture, furnishings, fixtures, equipment and other items, the cost of replacing the same, in each case, with inflation guard coverage to reflect the effect of inflation, or annual valuation. Each policy or policies shall contain a replacement cost endorsement and either an agreed amount endorsement (to avoid the operation of any co-insurance provisions) or a waiver of any co-insurance provisions, all subject to Beneficiary's approval.

(b) Comprehensive Commercial General Liability Insurance for personal injury, bodily injury, death and property damage liability in amounts not less than $1,000,000.00 per occurrence and $2,000,000.00 in the aggregate (both inclusive of umbrella coverage). During any construction on the Property, each contractor having a contract for construction in an amount equal to or greater than $100,000 shall also provide the insurance required in this Subsection (b), except that the minimum required coverages shall be $1,000,000 per occurrence and $2,000,000 in the aggregate (both inclusive of umbrella coverage). Beneficiary hereby retains the right to periodically review the amount of said liability insurance being maintained by Trustor and to require an increase in the amount of said liability insurance should Beneficiary deem an increase to be reasonably prudent under then existing circumstances.

(c) If the Property or any part thereof is identified by the Secretary of Housing and Urban Development as being situated in an area now or subsequently designated as having special flood hazards (including, without limitation, those areas designated as Zone A or Zone V), flood insurance in an amount equal to the lesser of: (i) the minimum amount required, under the terms of coverage, to compensate for any damage or loss on a replacement basis (or the unpaid balance of the indebtedness secured hereby if replacement cost coverage is not available for the type of building insured); or (ii) the maximum insurance available under the appropriate National Flood Insurance Administration program.

(d) During the period of any construction on the Property or renovation or alteration of the Improvements, a so-called "Builder's All-Risk Completed Value" or "Course of Construction" insurance policy in non-reporting form for any Improvements under construction, renovation or alteration in an amount approved by Beneficiary and Worker's Compensation Insurance covering all persons engaged in such construction, renovation or alteration.
(e) Loss of rents or loss of business income insurance in amounts sufficient to compensate Trustor for all Rents and Profits during a period of not less than twelve (12) months in which the Property may be damaged or destroyed. The amount of coverage shall be adjusted annually to reflect the Rents and Profits or income payable during the succeeding twelve (12) month period.

(f) Such other insurance on the Property or on any replacements or substitutions thereof or additions thereto as may from time to time be required by Beneficiary against other insurable hazards or casualties which at the time are commonly insured against in the case of property similarly situated including, without limitation, Sinkhole, Mine Subsidence, Earthquake and Environmental insurance, due regard being given to the height and type of buildings, their construction, location, use and occupancy.

All such insurance shall (i) be with insurers authorized to do business in the state within which the Property is located and who have and maintain a rating of at least "A" (or its equivalent) from Standard & Poors or any other nationally recognized statistical agency selected by Beneficiary, or at Beneficiary's election, a Best Rating of A-VIII or better (ii) contain the complete address of the Property (or a complete legal description), (iii) be for terms of at least one year, (iv) contain deductibles which do not exceed $10,000.00 or, with respect to the policy described in clause (d) above $3,000, and (v) be subject to the approval of Beneficiary as to insurance companies, amounts, content, forms of policies, method by which premiums are paid and expiration dates. The all risk insurance and loss or rents or business income insurance policies required under subsections (a) and (f) above, respectively, shall be required to cover perils of terrorism and acts of terrorism.

Trustor shall as of the date hereof deliver to Beneficiary evidence that said insurance policies have been paid current as of the date hereof and copies of such insurance policies and certificates of insurance signed by an authorized agent of the applicable insurance companies evidencing such insurance satisfactory to Beneficiary. Trustor shall renew all such insurance and deliver to Beneficiary certificates evidencing such renewals at least thirty (30) days before any such insurance shall expire. Without limiting the required endorsements to the insurance policies, Trustor further agrees that all such policies shall include a standard, non-contributory, mortgagee clause naming:

(x) as an additional insured under all liability insurance policies, (y) as the first mortgagee on all property insurance policies and (z) as the loss payee on all loss of rents or loss of business income insurance policies. Trustor further agrees that all such insurance policies: (1) shall provide for at least thirty (30) days' prior written notice to Beneficiary prior to any cancellation or termination thereof and prior to any modification thereof which affects the interest of Beneficiary; (2) shall contain an endorsement or agreement by the insurer that any loss shall be payable to Beneficiary in accordance with the terms of such policy notwithstanding any act or negligence of Trustor which might otherwise result in forfeiture of such insurance; (3) shall waive all rights of subrogation against Beneficiary; and (4) in the event that the Real Estate or the Improvements constitutes a legal non-conforming use under applicable building, zoning or land use laws or ordinances, shall include an ordinance or law coverage endorsement which will contain Coverage A: "Loss Due to Operation of Law" (with a minimum liability limit equal to Replacement Cost With Agreed Value Endorsement), Coverage B: "Demolition Cost" and Coverage C: "Increased Cost of Construction" coverages. Beneficiary agrees that such insurance policies may be in the form of a blanket policy provided that, in the event that any such coverage
is provided in the form of a blanket policy, Trustor hereby acknowledges and agrees that failure to pay any portion of the premium therefor which is not allocable to the Property or by any other action not relating to the Property which would otherwise permit the issuer thereof to cancel the coverage thereof, would require the Property to be insured by a separate, single-property policy. The blanket policy must properly identify and fully protect the Property as if a separate policy were issued for 100% of Replacement Cost at the time of loss and otherwise meet all of Beneficiary's applicable insurance requirements set forth in this Section 1.4. The delivery to Beneficiary of the insurance policies or the certificates of insurance as provided above shall constitute an assignment of all proceeds payable under such insurance policies relating to the Property by Trustor to Beneficiary as further security for the indebtedness secured hereby. In the event of foreclosure of this Deed of Trust, or other transfer of title to the Property in extinguishment in whole or in part of the secured indebtedness, all right, title and interest of Trustor in and to all proceeds payable under such policies then in force concerning the Property shall thereupon vest in the purchaser at such foreclosure, or in Beneficiary or other transferee in the event of such other transfer of title. Approval of any insurance by Beneficiary shall not be a representation of the solvency of any insurer or the sufficiency of any amount of insurance. In the event Trustor fails to provide, maintain, keep in force or deliver and furnish to Beneficiary the policies of insurance required by this Deed of Trust or evidence of their renewal as required herein, Beneficiary may, but shall not be obligated to, procure such insurance and Trustor shall pay all amounts advanced by Beneficiary therefore, together with interest thereon from and after the date advanced by Beneficiary until actually repaid by Trustor, promptly upon demand by Beneficiary. Any amounts so advanced by Beneficiary, together with interest thereon, shall be secured by this Deed of Trust and by all of the other Loan Documents securing all or any part of the indebtedness secured hereby. Beneficiary shall not be responsible for nor incur any liability for the insolvency of the insurer or other failure of the insurer to perform, even though Beneficiary has caused the insurance to be placed with the insurer after failure of Trustor to furnish such insurance. Trustor shall not obtain insurance for the Property in addition to that required by Beneficiary without the prior written consent of Beneficiary, which consent will not be unreasonably withheld provided that (i) Beneficiary is a named insured on such insurance, (ii) Beneficiary receives complete copies of all policies evidencing such insurance, and (iii) such insurance and the related insurer comply with all of the applicable requirements set forth herein.

Provided, however, notwithstanding any other provision hereof, if the Property is in possession of a person pursuant to a written lease ("Lessee") and the Lessee obtains and maintains policies of insurance from insurers who meet the criteria set forth in this Section 1.4, insuring risks provided in this Section 1.4, with coverage and benefits as set forth herein, and Trustor provides Beneficiary evidence of such insurance, Trustor shall be deemed to satisfy its obligations under this Deed of Trust with respect to insurance. Any insurance provided by the Lessee shall be primary, and any insurance provided by Trustor shall be contributory.

Section 1.5. Payment of Taxes. Trustor shall pay or cause to be paid all taxes and assessments which are or may become a lien on the Property or which are assessed against or imposed upon the Property. Notwithstanding the foregoing, Trustor may in good faith, by appropriate proceedings and upon notice to Beneficiary, contest the validity, applicability or amount of any asserted tax or assessment so long as (a) such contest is diligently pursued, (b) Beneficiary determines, in its subjective opinion, that such contest suspends the obligation to pay the tax or assessment and that nonpayment of such tax or assessment will not result in the sale, loss, forfeiture or diminution of the Property or any part thereof or any interest of Beneficiary therein, and (c) prior to the earlier of the commencement of such contest or the delinquency date of the asserted tax or assessment, Trustor deposits in the Impound Account (as hereinafter defined) an amount determined by Beneficiary to be adequate to cover the payment of such tax or assessment and a reasonable additional sum to cover possible interest, costs and penalties; provided, however, that Trustor shall promptly cause to be paid any amount adjudged
by a court of competent jurisdiction to be due, with all interest, costs and penalties thereon, promptly after such judgment becomes final; and provided further that in any event each such contest shall be concluded and the taxes, assessments, interest, costs and penalties shall be paid prior to the date any writ or order is issued under which the Property may be sold, lost or forfeited.

Section 1.6. Casualty and Condemnation. Trustor shall give Beneficiary prompt written notice of the occurrence of any casualty affecting, or the institution of any proceedings for eminent domain or for the condemnation of, the Property or any portion thereof (collectively, an "Insured Event"). All insurance proceeds on the Property, and all causes of action, claims, compensation, awards and recoveries for any damage, condemnation or taking of all or any part of the Property or for any damage or injury to it for any loss or diminution in value of the Property, are hereby assigned to and shall be paid to Beneficiary. Beneficiary may participate in any suits or proceedings relating to any such proceeds, causes of action, claims, compensation, awards or recoveries and Beneficiary is hereby authorized, in its own name or in Trustor's name, to adjust any loss covered by insurance or any condemnation claim or cause of action, and to settle or compromise any claim or cause of action in connection therewith, and Trustor shall from time to time deliver to Beneficiary any instruments required to permit such participation.

Any reduction in the indebtedness secured hereby resulting from Beneficiary's application of any sums received by it hereunder shall take effect only when Beneficiary actually receives such sums and elects to apply such sums to the indebtedness secured hereby and, in any event, the unpaid portion of the indebtedness secured hereby shall remain in full force and effect and Trustor shall not be excused in the payment thereof. Partial payments received by Beneficiary, as described in the preceding sentence, shall be applied as set forth in the Note. If Trustor undertakes to restore or repair the Property after the occurrence of a casualty or partial taking of the Property, Trustor shall promptly and diligently, at Trustor's sole cost and expense and regardless of whether the insurance proceeds or condemnation award, as appropriate, shall be sufficient for the purpose, restore, repair, replace and rebuild the Property as nearly as possible to its value, condition and character immediately prior to such casualty or partial taking in accordance with the foregoing provisions. Trustor agrees to execute and deliver from time to time such further instruments as may be requested by Beneficiary to confirm the foregoing assignment to Beneficiary of any award, damage, insurance proceeds, payment or other compensation.

Section 1.7. Mechanics' Liens. Trustor shall pay when due all claims and demands of mechanics, materialmen, laborers and others for any work performed or materials delivered for the Real Estate or the Improvements; provided, however, that Trustor shall have the right to contest in good faith any such claim or demand, so long as it does so diligently, by appropriate proceedings and without prejudice to Beneficiary and provided that neither the Property nor any interest therein would be in any danger of sale, loss or forfeiture as a result of such proceeding or contest. In the event Trustor shall contest any such claim or demand, Trustor shall promptly notify Beneficiary of such contest and thereafter shall, upon Beneficiary's request, promptly provide a bond, cash deposit or other security satisfactory to Beneficiary to protect Beneficiary's interest and security should the contest be unsuccessful. If Trustor shall fail to immediately discharge or provide security against any such claim or demand as aforesaid, Beneficiary may do so and any and all expenses incurred by Beneficiary, together with interest thereon at the Default Interest Rate from the date incurred by Beneficiary until actually paid by Trustor, shall be immediately paid by Trustor on demand and shall be secured by this Deed of Trust and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note.

Section 1.8. Assignment of Leases and Rents. As additional and collateral security for the payment of the indebtedness secured hereby and cumulative of any and all rights and remedies herein provided for, Trustor hereby absolutely and presently assigns to Beneficiary all existing and future Leases, and all existing and future Rents and Profits. Trustor hereby grants to Beneficiary the sole, exclusive and immediate right, without taking possession of the Property, to
demand, collect (by suit or otherwise), receive and give valid and sufficient receipts for any and all of said Rents and Profits, for which purpose Trustor does hereby irrevocably make, constitute and appoint Beneficiary its attorney-in-fact with full power to appoint substitutes or a trustee to accomplish such purpose (which power of attorney shall be irrevocable so long as any indebtedness secured hereby is outstanding, shall be deemed to be coupled with an interest, shall survive the voluntary or involuntary dissolution of Trustor and shall not be affected by any disability or incapacity suffered by Trustor subsequent to the date hereof). Beneficiary shall be without liability for any loss which may arise from a failure or inability to collect Rents and Profits, proceeds or other payments. However, until the occurrence of an Event of Default under this Deed of Trust, Trustor shall have a license to collect and receive the Rents and Profits when due and prepayments thereof for not more than one month prior to due date thereof. Upon the occurrence of an Event of Default, Trustor's license shall automatically terminate without notice to Trustor and Beneficiary may thereafter, without taking possession of the Property, collect the Rents and Profits itself or by an agent or receiver. From and after the termination of such license, Trustor shall be the agent of Beneficiary in collection of the Rents and Profits and all of the Rents and Profits so collected by Trustor shall be held in trust by Trustor for the sole and exclusive benefit of Beneficiary and Trustor shall, within one (1) business day after receipt of any Rents and Profits, pay the same to Beneficiary to be applied by Beneficiary as hereinafter set forth. Neither the demand for or collection of Rents and Profits by Beneficiary, nor the exercise of Beneficiary's rights as assignee of the Leases, shall constitute any assumption by Beneficiary of any obligations under any Lease or other agreement relating thereto. Beneficiary is obligated to account only for such Rents and Profits as are actually collected or received by Beneficiary. Trustor irrevocably agrees and consents that the respective payors of the Rents and Profits shall, upon demand and notice from Beneficiary of an Event of Default hereunder, pay said Rents and Profits to Beneficiary without liability to determine the actual existence of any Event of Default claimed by Beneficiary. Trustor hereby waives any right, claim or demand which Trustor may now or hereafter have against any such payor by reason of such payment of Rents and Profits to Beneficiary, and any such payment shall discharge such payor's obligation to make such payment to Trustor. All Rents and Profits collected or received by Beneficiary shall be applied against all expenses of collection, including, without limitation, attorneys' fees, against costs of operation and management of the Property and against the indebtedness secured hereby, in whatever order or priority as to any of the items so mentioned as Beneficiary directs in its sole subjective discretion and without regard to the adequacy of its security. Neither the exercise by Beneficiary of any rights under this Section nor the application of any Rents and Profits to the secured indebtedness shall cure or be deemed a waiver of any Default or Event of Default hereunder. The assignment of Leases and of Rents and Profits hereinabove granted shall continue in full force and effect during any period of foreclosure or redemption with respect to the Property.

Section 1.9. Leases and Licenses.

(a) Lease Requirements. Each Lease executed after the date hereof affecting any of the Real Estate or the Improvements must provide that (i) such Lease is subject and subordinate to this Deed of Trust, and (ii) the Tenant will attorn to, and recognize as its landlord, lessor or licensor, any person succeeding to the interest of Trustor in such Lease upon any foreclosure of this Deed of Trust or deed in lieu of foreclosure. Each such Lease shall also provide that, upon request of said successor-in-interest, the Tenant shall execute and deliver an instrument or instruments confirming its attornment as provided for in this Section. No Lease shall contain any option or right of first refusal to purchase all or any portion of the Property. No Lease shall contain any right to terminate the term thereof (except in the event of the destruction of all or substantially all of the Property).

(b) Covenants Regarding Leases. Trustor shall at all times promptly and faithfully perform, or cause to be performed, all of the covenants, conditions and agreements contained in all Leases, now or hereafter existing, on the part of the landlord, lessor or licensor thereunder to be kept and performed. Trustor shall promptly send copies to Beneficiary and any servicer of all notices of default which Trustor shall send or receive under any Lease. Trustor, at
no cost or expense to Beneficiary, shall enforce, short of termination, the performance and observance of each and every condition and covenant of each of the other parties under each Lease. Trustor shall furnish to Beneficiary, within ten (10) days after a request by Beneficiary to do so, and, in any event by January 1 of each year, a current rent roll certified by Trustor as being true and correct containing the names of all Tenants, the terms of their respective Leases, the spaces occupied and the rentals or fees payable thereunder and the amount of each tenant's security deposit. Upon the request of Beneficiary, Trustor shall deliver to Beneficiary (i) a copy of each Lease; and (ii) an estoppel certificate from the tenant under each Lease (provided that Beneficiary shall not be required to deliver such certificates more frequently than twice in any calendar year).

(c) Security Deposits. Any security deposits of tenants, whether held in cash or in any other form, may be commingled with any other funds of Trustor or any other person and, if cash, shall be deposited by Trustor at such commercial or savings bank or banks, or otherwise held in compliance with applicable law. Any bond or other instrument which Trustor is permitted to hold in lieu of cash security deposits under any applicable legal requirements shall be maintained in full force and effect in the full amount of such deposits unless replaced by cash deposits as hereinabove described and shall, in all respects, comply with any applicable legal requirements. Upon an Event of Default under this Deed of Trust, Trustor shall, immediately upon Beneficiary's request (if permitted by applicable law), deliver to Beneficiary the security deposits (and any interest previously earned thereon and not disbursed to the person(s) lawfully entitled to receive same) with respect to all or any portion of the Property, to be held by Beneficiary subject to the terms of the Leases.

(d) Rights of Beneficiary Upon Default. Upon an Event of Default, whether before or after the whole principal sum secured hereby is declared to be immediately due or whether before or after the institution of legal proceedings to foreclose this Deed of Trust, forthwith, upon demand of Beneficiary, Trustor shall surrender to Beneficiary and Beneficiary shall be entitled to take actual possession of the Property or any part thereof personally, or by its agent or attorneys. In such event, Beneficiary shall have, and Trustor hereby gives and grants to Beneficiary, the right, power and authority to make and enter into Leases for such rents and for such periods of occupancy and upon conditions and provisions as Beneficiary may deem desirable in its sole discretion, and Trustor expressly acknowledges and agrees that the term of such Lease may extend beyond the date of any foreclosure sale at the Property; it being the intention of Trustor that in such event Beneficiary shall be deemed to be and shall be the attorney-in-fact of Trustor for the purpose of making and entering into Leases for the rents and upon the terms, conditions and provisions deemed desirable to Beneficiary in its sole discretion and with like effect as if such Leases had been made by Trustor as the owner in fee simple of the Property free and clear of any conditions or limitations established by this Deed of Trust. The power and authority hereby given and granted by Trustor to Beneficiary shall be deemed to be coupled with an interest, shall not be revocable by Trustor so long as any indebtedness secured hereby is outstanding, shall survive the voluntary or involuntary dissolution of Trustor and shall not be affected by any disability or incapacity suffered by Trustor subsequent to the date hereof.

In connection with any action taken by Beneficiary pursuant to this Section, Beneficiary shall not be liable for any loss sustained by Trustor resulting from any failure to let the Property, or any part thereof, or from any other act or omission of Beneficiary in managing the Property, nor shall Beneficiary be obligated to perform or discharge any obligation, duty or liability under any Lease or under or by reason of this instrument or the exercise of rights or remedies hereunder. Trustor shall, and does hereby, indemnify Beneficiary for, and hold Beneficiary harmless from, any and all claims, actions, demands, liabilities, loss or damage which may or might be incurred by Beneficiary under any such Lease or under this Deed of Trust or by the exercise of rights or remedies hereunder and from any and all claims and demands whatsoever which may be asserted against Beneficiary by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in any such Lease other than those finally determined to have resulted solely from the gross negligence or willful misconduct of
Beneficiary. Should Beneficiary incur any such liability, the amount thereof, including, without limitation, costs, expenses and attorneys' fees, together with interest thereon at the Default Interest Rate from the date incurred by Beneficiary until actually paid by Trustor, shall be immediately due and payable to Beneficiary by Trustor on demand and shall be secured hereby and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note. Nothing in this Section shall impose on Beneficiary any duty, obligation or responsibility for the control, care, management or repair of the Property, or for the carrying out of any of the terms and conditions of any such Lease, nor shall it operate to make Beneficiary responsible or liable for any waste committed on the Property by the tenants or by any other parties or for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property. Trustor hereby assents to, ratifies and confirms any and all actions of Beneficiary with respect to the Property taken under this Section. The foregoing rights are in addition to all other rights and remedies granted to Beneficiary pursuant to this Deed of Trust.

Section 1.10. **Alienation and Further Encumbrances.**

(a) Trustor acknowledges that Beneficiary has relied upon the principals of Trustor and their experience in owning and operating properties similar to the Property in connection with the closing of the loan evidenced by the Note. Accordingly, except as specifically allowed hereinbelow in this Section and notwithstanding anything to the contrary contained in Section 4.6 hereof, in the event that the Property or any part thereof or interest therein shall be sold, conveyed, disposed of, alienated, hypothecated, leased (except to Tenants under Leases which are approved, or deemed approved, in accordance with the provisions of Section 1.12 hereof), assigned, pledged, mortgaged, further encumbered or otherwise transferred or Trustor shall be divested of its title to the Property or any interest therein, in any manner or way, whether voluntarily or involuntarily, without the prior written consent of Beneficiary being first obtained, which consent may be withheld in Beneficiary's sole discretion, then, the same shall constitute an Event of Default hereunder and Beneficiary shall have the right, at its option, to declare any or all of the indebtedness secured hereby, irrespective of the maturity date specified in the Note, immediately due and payable and to otherwise exercise any of its other rights and remedies contained in Article III hereof. For the purposes of this Section 1.13: (i) in the event either Trustor or any of its general partners or managing members is a corporation or trust, the sale, conveyance, transfer or disposition of more than 10% of the issued and outstanding capital stock of Trustor or any of its general partners or managing members or of the beneficial interest of such trust (or the issuance of new shares of capital stock in Trustor or any of its general partners or managing members so that immediately after such issuance the total capital stock then issued and outstanding is more than 110% of the total immediately prior to such issuance) shall be deemed to be a transfer of an interest in the Property, and (ii) in the event Trustor or any general partner or managing member of Trustor is a limited or general partnership, a joint venture or a limited liability company, a change in the ownership interests in any general partner, any joint venturer or any member, either voluntarily, involuntarily or otherwise, or the sale, conveyance, transfer, disposition, alienation, hypothecation or encumbering of all or any portion of the interest of any such general partner, joint venturer or member in Trustor or such general partner (whether in the form of a beneficial or partnership interest or in the form of a power of direction, control or management, or otherwise), shall be deemed to be a transfer of an interest in the Property. Notwithstanding the foregoing, however, (1) up to but not in excess of 49% of the aggregate limited partnership and/or non-managing member interests in Trustor or in any general partner or managing member of Trustor shall be freely transferable without the consent of Beneficiary, provided that no such transfer shall result in a change in management control of the Trustor and no such transfer shall result in the dissolution or termination of the Trustor, and (2) any involuntary transfer caused by the death of Trustor or any general partner, shareholder, joint venturer, or beneficial owner of a trust shall not be a default under this Deed of Trust so long as Trustor is reconstituted, if required, following such death and so long as those persons responsible for the management of Trustor and the Property remain unchanged as a result
of such death or any replacement management is approved by Beneficiary and (3) gifts for estate planning purposes of any individual's interests in Trustor or in any of Trustor's general partners, managing members or joint venturers to the spouse or any lineal descendant of such individual, or to a trust for the benefit of any one or more of such individual, spouse or lineal descendant, shall not be an Event of Default under this Deed of Trust so long as Trustor is reconstituted, if required, following such gift and so long as those persons responsible for the management of the Property and Trustor remain unchanged following such gift or any replacement management is approved by Beneficiary.

(b) Notwithstanding the foregoing provisions of this Section, after the first anniversary of the first Payment Date under the Note, Beneficiary shall consent to a sale, conveyance or transfer of the Property in its entirety (hereinafter, a "Sale") to any person or entity provided that each of the following terms and conditions are satisfied:

(1) No default is then continuing hereunder or under any of the other Loan Documents;

(2) Trustor gives Beneficiary written notice of the terms of such prospective Sale not less than sixty (60) days before the date on which such Sale is scheduled to close and, concurrently therewith, gives Beneficiary all reasonable information concerning the proposed transferee of the Property (hereinafter, a "Buyer") as Beneficiary would require in evaluating an initial extension of credit to a borrower. Beneficiary shall have the right, in its reasonable discretion, to approve or disapprove the proposed Buyer. In determining whether to give or withhold its approval of the proposed Buyer, Beneficiary shall consider, among other things, the Buyer's experience and track record in owning and operating facilities similar to the Property, the Buyer's entity structure, the Buyer's financial strength, the Buyer's general business standing and the Buyer's relationships and experience with contractors, vendors, tenants, lenders and other business entities;

(3) The Buyer assumes and agrees to pay the indebtedness secured hereby and to perform the covenants of Trustor under the Loan Documents, and, prior to or concurrently with the closing of such Sale, the Buyer executes, without any cost or expense to Beneficiary, such documents and agreements as Beneficiary shall reasonably require to evidence and effectuate said assumption and delivers such legal opinions as Beneficiary may require;

(4) Buyer executes, without any cost or expense to Beneficiary, new financing statements or financing statement amendments and any additional documents reasonably requested by Beneficiary;

(5) Trustor delivers to Beneficiary, without any cost or expense to Beneficiary, such endorsements to Beneficiary's Title Insurance Policy, hazard insurance endorsements or certificates and other similar materials as Beneficiary may deem necessary at the time of the Sale, all in form and substance satisfactory to Beneficiary, including, without limitation, an endorsement or endorsements to Beneficiary's Title Insurance Policy insuring the lien of this Deed of Trust, extending the effective date of such policy to the date of execution and delivery (or, if later, of recording) of the assumption agreement referenced above with no additional exceptions added to such policy and insuring that fee simple title to the Property is vested in the Buyer;

(6) The Buyer shall furnish, if the Buyer is a corporation, partnership or other entity, all documents evidencing the Buyer's capacity and good standing, and the qualification of the signers to execute the assumption of the indebtedness secured hereby, which papers shall include, but not in any way be limited to, certified copies of all documents relating to the organization and formation of the Buyer and of the entities, if any, which are partners of the Buyer. The Buyer and such constituent partners, members or shareholders of Buyer (as the case may be), as Beneficiary may require, shall be single-purpose, single-asset "bankruptcy remote" entities, whose formation documents shall be approved by counsel to Beneficiary. Unanimous consent of the board of directors shall be required for, among other things, any merger, consolidation, dissolution, bankruptcy or insolvency of any such constituent partner, member or shareholder of Buyer (as the case may be), or of the Buyer;
Section 1.11. **Payment of Utilities, Assessments, Charges, Etc.** Trustor shall pay when due all utility charges which are incurred by Trustor or which may become a charge or lien against any portion of the Property for gas, electricity, water and sewer services furnished to the Real Estate and/or the Improvements and all other assessments or charges of a similar nature, or assessments payable pursuant to any restrictive covenants, whether public or private, affecting the Real Estate and/or the Improvements or any portion thereof, whether or not such assessments or charges are or may become liens thereon.

Section 1.12. **Access Privileges and Inspections.** Beneficiary and the agents, representatives and employees of Beneficiary shall, subject to the rights of tenants, have full and free access to the Real Estate and the Improvements and any other location where books and records concerning the Property are kept at all reasonable times for the purposes of inspecting the Property and of examining, copying and making extracts from the books and records of Trustor relating to the Property. Trustor shall lend assistance to all such agents, representatives and employees of Beneficiary.

Section 1.13. **Waste; Alteration of the Property.** Trustor shall not commit, suffer or permit any waste on the Property nor take any actions that might invalidate any insurance carried on the Property. Trustor shall maintain the Property in good condition and repair. No part of the Improvements may be removed, demolished or materially altered, without the prior written consent of Beneficiary. Without the prior written consent of Beneficiary, Trustor shall not commence construction of any improvements on the Real Estate other than improvements required for the maintenance or repair of the Property and tenant improvements required under leases approved by Beneficiary.

Section 1.14. **Further Documentation.** Trustor shall, on the request of Beneficiary in its reasonable discretion and at the expense of Trustor, promptly correct any defect, error or omission which may be discovered in the contents of this Deed of Trust or in any of the other Loan Documents and promptly execute, acknowledge, deliver and record or file such further instruments and do such further acts as may be necessary, desirable or proper to carry out more effectively the purposes of this Deed of Trust and the other Loan Documents or as may be deemed advisable by Beneficiary to protect, continue or preserve the liens and security interests hereunder including, without limitation, security instruments, financing statements and continuation statements.

Section 1.15. **Advances to Protect Property.** Without limiting or waiving any other rights and remedies of Beneficiary hereunder, if Beneficiary determines that Trustor is not adequately performing or has failed to perform any of its obligations, covenants or agreements contained in this Deed of Trust or in any of the other Loan Documents and such inadequacy or failure is not cured within any applicable grace or cure period, or if any action or proceeding of any kind (including, but not limited to, any bankruptcy, insolvency, arrangement, reorganization or other debtor relief proceeding) is commenced which might affect Beneficiary's interest in the Property or Beneficiary's right to enforce its security, then Beneficiary may, at its option, with or without notice to Trustor, make any appearances, disburse or advance any sums and take any actions as may be necessary or desirable to protect or enforce the security of this Deed of Trust or to remedy the failure of Trustor to perform its covenants and agreements (without, however, waiving any default of Trustor). Trustor agrees to pay on demand all expenses of Beneficiary reasonably incurred with respect to the foregoing (including, but not limited to, fees and disbursements of counsel), together with interest thereon at the Default Interest Rate from and after the date on which Beneficiary incurs such expenses until reimbursement thereof by Trustor. Any such expenses so incurred by Beneficiary, together with interest thereon as provided above, shall be additional indebtedness of Trustor secured by this Deed of Trust and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note. The necessity for any such actions and of the amounts to be paid shall be determined by Beneficiary in its sole and absolute discretion. Beneficiary is hereby empowered to enter and to authorize others to enter upon the Property or any part thereof for the purpose of performing or observing any such defaulted term, covenant or condition without thereby becoming liable to Trustor or
any person in possession holding under Trustor. Trustor hereby acknowledges and agrees that the remedies set forth in this Section 1.20(b) shall be exercisable by Beneficiary, and any and all payments made or costs or expenses incurred by Beneficiary in connection therewith shall be secured hereby and shall be, without demand, immediately repaid by Trustor with interest thereon, notwithstanding the fact that such remedies were exercised and such payments made and costs incurred by Beneficiary after the filing by Trustor of a voluntary case or the filing against Trustor of an involuntary case pursuant to or within the meaning of the Bankruptcy Reform Act of 1978, as amended (the "Act"), Title 11 U.S.C., or after any similar action pursuant to any other debtor relief law (whether statutory, common law, case law or otherwise) of any jurisdiction whatsoever, now or hereafter in effect, which may be or become applicable to Trustor, Beneficiary, any guarantor or indemnitor, the secured indebtedness or any of the Loan Documents. This indemnity shall survive payment in full of the indebtedness secured hereby. This Section 1.20(b) shall not be construed to require Beneficiary to incur any expenses, make any appearances or take any actions.

Section 1.16. Security Interest. This Deed of Trust is also intended to encumber and create a security interest in, and Trustor hereby grants to Beneficiary a security interest in, all fixtures, chattels, accounts, equipment, inventory, contract rights, and other personal property included within the Property that are owned by Trustor, all renewals, replacements of any of the aforementioned items, or articles in substitution therefor or in addition thereto or the proceeds thereof (said property is hereinafter referred to collectively as the "Collateral"), whether or not the same shall be attached to the Real Estate or the Improvements in any manner. It is hereby agreed that to the extent permitted by law, all of the foregoing property is to be deemed and held to be a part of and affixed to the Real Estate and the Improvements. The foregoing security interest shall also cover Trustor’s leasehold interest in any of the foregoing property which is leased by Trustor. Notwithstanding the foregoing, all of the foregoing property shall be owned by Trustor and no leasing or installment sales or other financing or title retention agreement in connection therewith shall be permitted without the prior written approval of Beneficiary. Trustor shall promptly replace all of the Collateral subject to the lien or security interest of this Deed of Trust when worn out or obsolete with Collateral comparable to the worn out or obsolete Collateral when new and will not, without the prior written consent of Beneficiary, remove from the Real Estate or the Improvements any of the Collateral subject to the lien or security interest of this Deed of Trust except such as is replaced by an article of equal suitability and value as above provided, owned by Trustor free and clear of any lien or security interest except that created by this Deed of Trust and the other Loan Documents and except as otherwise expressly permitted by the terms of this Deed of Trust. All of the Collateral shall be kept at the location of the Real Estate except as otherwise required by the terms of the Loan Documents. Trustor shall not use any of the Collateral in violation of any applicable statute, ordinance or insurance policy.

Section 1.17. Security Agreement. This Deed of Trust constitutes both a real property mortgage and a "security agreement" between Trustor and Beneficiary with respect to the Collateral in which Beneficiary is granted a security interest hereunder, and, cumulative of all other rights and remedies of Beneficiary hereunder, Beneficiary shall have all of the rights and remedies of a secured party under any applicable Uniform Commercial Code. Trustor hereby agrees to execute and deliver on demand such security agreements, financing statements, continuation statements or other instruments as Beneficiary may request or require in order to impose, perfect or continue the perfection of the lien or security interest created hereby. Trustor agrees to furnish Beneficiary with notice of any permitted change in the name, identity, corporate structure, residence, or principal place of business or mailing address of Trustor within ten (10) days of the effective date of any such change. Expenses of retaking, holding, preparing for sale, selling or the like (including, without limitation, Beneficiary's reasonable attorneys' fees and legal expenses), together with interest thereon from the date incurred by Beneficiary until actually paid by Trustor, shall be paid by Trustor on demand and shall be secured by this Deed of Trust and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note. If notice is required by law, Beneficiary shall give Trustor at least ten (10) days' prior
written notice of the time and place of any public sale of such property or of the time of or after which any private sale or any other intended disposition thereof is to be made, and if such notice is sent to Trustor, as the same is provided for the mailing of notices herein, it is hereby deemed that such notice shall be and is reasonable notice to Trustor. No such notice is necessary for any such property which is perishable, threatens to decline speedily in value or is of a type customarily sold on a recognized market. Any sale made pursuant to the provisions of this Section 1.22 shall be deemed to have been a public sale conducted in a commercially reasonable manner if held contemporaneously with the foreclosure sale as provided in Section 3.1(e) hereof upon giving the same notice with respect to the sale of the Property hereunder as is required under said Section 3.1(e). Furthermore, to the extent permitted by law, in conjunction with, in addition to or in substitution for the rights and remedies available to Beneficiary pursuant to any applicable Uniform Commercial Code:

(a) In the event of a foreclosure sale, the Property may, at the option of Beneficiary, be sold as a whole;
(b) It shall not be necessary that Beneficiary take possession of the aforementioned Collateral, or any part thereof, prior to the time that any sale pursuant to the provisions of this Section 1.22 is conducted and it shall not be necessary that said Collateral, or any part thereof, be present at the location of such sale; and
(c) Beneficiary may appoint or delegate any one or more persons as agent to perform any act or acts necessary or incident to any sale held by Beneficiary, including the sending of notices and the conduct of the sale, but in the name and on behalf of Beneficiary.

The name and address of Trustor (as Debtor under any applicable Uniform Commercial Code) are:

In addition, a carbon, photographic or other reproduction of this Deed of Trust and/or any financing statement relating hereto shall be sufficient for filing and/or recording as a financing statement. The filing of any other financing statement relating to any personal property rights or interests described herein shall not be construed to diminish any right or priority hereunder. Trustor agrees to execute and deliver to Beneficiary any financing statements, as well as extensions, renewals and amendments thereof, and reproductions of this Deed of Trust in such form as Beneficiary may require to perfect a security interest with respect to said items. Trustor shall pay all costs of filing such financing statements and any extensions, renewals, amendments and releases thereof, and shall pay all reasonable costs and expenses of any record searches for financing statements Beneficiary may reasonably require. At the option of the Beneficiary, if an Event of Default occurs and the Beneficiary directs the Trustee to institute a sale of the real estate secured by this Deed of Trust, the collateral may be sold by the Trustee together with and in the same sale as the real estate. All of the collateral shall be kept at the location of the Property except as otherwise required by the terms of the Loan Documents.

Section 1.18. Easements and Rights-of-Way. Trustor shall not grant any easement or right-of-way with respect to all or any portion of the Real Estate or the Improvements without the prior written consent of Beneficiary. The purchaser at any foreclosure sale hereunder may, at its discretion, disaffirm any easement or right-of-way granted in violation of any of the provisions of this Deed of Trust and may take immediate possession of the Property free from, and despite the terms of, such grant of easement or right-of-way. If Beneficiary consents to the grant of an easement or right-of-way, Beneficiary agrees to grant such consent without charge to Trustor other than reasonable expenses, including, without limitation, reasonable attorneys’ fees, incurred by Beneficiary in the review of Trustor’s request and, if applicable, in the preparation of
documents relating to the subordination of this Deed of Trust to such easement or right-of-way.

Section 1.19. Compliance with Laws.

(a) Trustor shall at all times comply with all statutes, ordinances, regulations and other governmental or quasi-governmental requirements and private covenants now or hereafter relating to the ownership, construction, use or operation of the Property, including, but not limited to, those concerning employment and compensation of persons engaged in operation and maintenance of the Property and any environmental or ecological requirements, even if such compliance shall require structural changes to the Property; provided, however, that Trustor may, upon providing Beneficiary with security satisfactory to Beneficiary, proceed diligently and in good faith to contest the validity or applicability of any such statute, ordinance, regulation or requirement so long as during such contest the Property shall not be subject to any lien, charge, fine or other liability and shall not be in danger of being forfeited, lost or closed. Trustor shall not use or occupy, or allow the use or occupancy of, the Property in any manner which violates any lease of or any other agreement applicable to the Property or any applicable law, rule, regulation or order or which constitutes a public or private nuisance or which makes void, voidable or cancelable, or increases the premium of, any insurance then in force with respect thereto.

(b) Trustor agrees that the Property shall at all times comply to the extent applicable with the requirements of the Americans with Disabilities Act of 1990, the Fair Housing Amendments Act of 1988 and all other state and local laws and ordinances related to handicapped access and all rules, regulations, and orders issued pursuant thereto including, without limitation, the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities. Trustor agrees to give prompt notice to Beneficiary of the receipt by Trustor of any complaints related to violations of any Access Laws and of the commencement of any proceedings or investigations which relate to compliance with applicable Access Laws.

Section 1.20. Additional Taxes. In the event of the enactment after this date of any law of the state where the Property is located or of any other governmental entity deducting from the value of the Property for the purpose of taxation any lien or security interest thereon, or imposing upon Beneficiary the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Trustor, or changing in any way the laws relating to the taxation of mortgages or security agreements or debts secured by mortgages or security agreements or the interest of the mortgagee or secured party in the property covered thereby, or the manner of collection of such taxes, so as to adversely affect this Deed of Trust or the indebtedness secured hereby or Beneficiary, then, and in any such event, Trustor, upon demand by Beneficiary, shall pay such taxes, assessments, charges or liens, or reimburse Beneficiary therefor; provided, however, that if in the opinion of counsel for Beneficiary (a) it might be unlawful to require Trustor to make such payment, or (b) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then and in either such event, Beneficiary may elect, by notice in writing given to Trustor, to declare all of the indebtedness secured hereby to be and become due and payable in full, thirty (30) days from the giving of such notice.

Section 1.21. SUBMISSION TO JURISDICTION.

TRUSTOR, TO THE FULL EXTENT PERMITTED BY LAW, HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, (i) SUBMITS TO PERSONAL JURISDICTION IN THE STATE OF CALIFORNIA OVER ANY SUIT, ACTION OR PROCEEDING BY ANY PERSON ARISING FROM OR RELATING TO THE NOTE, THIS DEED OF TRUST OR ANY OTHER OF THE LOAN DOCUMENTS, (ii) AGREES THAT ANY SUCH ACTION, SUIT OR PROCEEDING MAY BE BROUGHT IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION SITTING IN TULARE COUNTY, CALIFORNIA, (iii) SUBMITS TO THE JURISDICTION OF SUCH COURTS, AND, (iv) TO THE FULLEST EXTENT PERMITTED BY LAW, AGREES THAT IT WILL NOT BRING ANY ACTION, SUIT OR PROCEEDING IN ANY OTHER FORUM (BUT NOTHING HEREIN SHALL

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AFFECT THE RIGHT OF BENEFICIARY TO BRING ANY ACTION, SUIT OR PROCEEDING IN ANY OTHER FORUM). TRUSTOR FURTHER CONSENTS AND AGREES TO SERVICE OF ANY SUMMONS, COMPLAINT OR OTHER LEGAL PROCESS IN ANY SUCH SUIT, ACTION OR PROCEEDING BY REGISTERED OR CERTIFIED U.S. MAIL, POSTAGE PREPAID, TO TRUSTOR AT THE ADDRESS FOR NOTICES DESCRIBED HEREIN, AND CONSENTS AND AGREES THAT SUCH SERVICE SHALL CONSTITUTE IN EVERY RESPECT VALID AND EFFECTIVE SERVICE (BUT NOTHING HEREIN SHALL AFFECT THE VALIDITY OR EFFECTIVENESS OF PROCESS SERVED IN ANY OTHER MANNER PERMITTED BY LAW).

Section 1.22. Management. The management of the Property shall be by either: (a) Trustor or an entity affiliated with Trustor approved by Beneficiary for so long as Trustor or said affiliated entity is managing the Property in a first class manner; or (b) a professional property management company approved by Beneficiary. Such management by an affiliated entity or a professional property management company shall be pursuant to a written agreement approved by Beneficiary. In no event shall any manager be removed or replaced or the terms of any management agreement modified or amended without the prior written consent of Beneficiary. In the event of default hereunder or under any management contract then in effect, which default is not cured within any applicable grace or cure period, Beneficiary shall have the right to terminate, or to direct Trustor to terminate, such management contract upon thirty (30) days' notice and to retain, or to direct Trustor to retain, a new management agent approved by Beneficiary. All Rents and Profits generated by or derived from the Property shall first be utilized solely for current expenses directly attributable to the ownership and operation of the Property, including, without limitation, current expenses relating to Trustor's liabilities and obligations with respect to this Deed of Trust and the other Loan Documents, and none of the Rents and Profits generated by or derived from the Property shall be diverted by Trustor and utilized for any other purposes unless all such current expenses attributable to the ownership and operation of the Property have been fully paid and satisfied. For purposes of this Section 1.29, the debt service coverage ratio shall mean the ratio or net operating income from the Property to required debt service payments under the Note; and net operating income shall, for this purpose, be determined in the same manner as utilized for the underwriting of the Loan at origination.

Section 1.23. Hazardous Materials and Environmental Concerns.

(a) Trustor hereby represents to Beneficiary that, as of the date hereof: (i) the Property is not, and to the best of Trustor's actual knowledge, information and belief, without inquiry or investigation, has not been in direct or indirect violation of any local, state or federal law, rule or regulation pertaining to environmental regulation, contamination, remediation or human health and safety (including the regulation or remediation of Hazardous Substances as defined below) (collectively, "Environmental Laws"), all as amended; (ii) no hazardous, toxic or harmful substances, wastes, materials, pollutants or contaminants (including, without limitation, asbestos, polychlorinated biphenyls, petroleum products, radon, lead-based paint, flammable explosives, radioactive materials, infectious substances or raw materials which may include hazardous constituents) or any other substances or materials which are included under or regulated by Environmental Laws (collectively, "Hazardous Substances") are located on or have been handled, manufactured, generated, stored, processed, transported to or from, or disposed of on or Released or discharged from the Property (including underground contamination) except for those substances used by Trustor in the ordinary course of its business and in compliance with all Environmental Laws; (iii) the Property is not subject to any private or governmental lien or judicial, administrative or other notice or action relating to Hazardous Substances or noncompliance with Environmental Laws, nor is Trustor aware of any basis for such lien, notice or action; (iv) there are no underground storage tanks or other underground storage receptacles (whether active or abandoned) for Hazardous Substances on the Property; (v) Trustor has received no notice of, and to the best of Trustor's knowledge and belief, after due inquiry and investigation, there does not exist any, investigation, action, proceeding or claim by any agency, authority or unit of government or by any third party which could result in any liability, penalty,
sanction or judgment under any Environmental Laws with respect to any condition, use or operation of the Property, nor does Trustor know of any basis for such investigation, action, proceeding or claim; (vi) Trustor has received no notice that, and to the best of Trustor’s knowledge and belief after due inquiry and investigation, there has been no claim by any party that, any use, operation or condition of the Property has caused any nuisance, trespass or any other liability or adverse condition on any other property, nor does Trustor know of any basis for such notice or claim; and (vii) there are no present environmental conditions or events or, to the best of Trustor's knowledge, after due inquiry and investigation, past environmental conditions or events on or near the Property that could be reasonably anticipated to materially adversely affect the value of the Property.

(b) Trustor shall keep or cause the Property to be kept free from Hazardous Substances (except those substances used by Trustor in the ordinary course of its business and in compliance with all Environmental Laws) and in compliance with all Environmental Laws, shall not install or use any underground storage tanks, shall expressly prohibit the use, generation, handling, storage, production, processing and disposal of Hazardous Substances by all tenants, (except those substances used by tenants in the ordinary course of their activities and in compliance with all Environmental Laws), invitees and trespassers, and, without limiting the generality of the foregoing, during the term of this Deed of Trust, shall not install in the Improvements or permit to be installed in the Improvements asbestos or any substance containing asbestos.

(c) Trustor shall promptly notify Beneficiary if Trustor shall become aware of (i) any Hazardous Substances at, on, under, affecting or threatening to affect the Property (except those substances used by Trustor or tenants in the ordinary course of their business or activities, respectively, and in compliance with all Environmental Laws), (ii) any lien, action or notice affecting or threatening to affect the Property or Trustor resulting from any violation or alleged violation of Environmental Law, (iii) any investigation, inquiry or proceeding concerning Trustor on the Property pursuant to any Environmental Law or otherwise relating to Hazardous Substances, or (iv) any occurrence, condition or state of facts which would render any representation or warranty in this Section incorrect in any respect if made at the time of such discovery. Further, immediately upon receipt of the same, Trustor shall deliver to Beneficiary copies of any and all orders, notices, permits, applications, reports, and other communications, documents and instruments pertaining to the actual, alleged or potential non-compliance with any Environmental Laws in connection with the Property or presence or existence of any Hazardous Substances at, on, about, under, within, near or in connection with the Property (except those substances used in the ordinary course of its business and in compliance with all Environmental Laws). Trustor shall, promptly and when and as required, at Trustor's sole cost and expense, take all actions as shall be necessary or advisable for compliance with the terms of this Section 1.30 or for the remediation of any and all portions of the Property or other affected property, including, without limitation, all investigative, monitoring, removal, containment, remedial and response actions in accordance with all applicable Environmental Laws (and in all events in a manner satisfactory to Beneficiary), and shall further pay or cause to be paid, at no expense to Beneficiary, all remediation, response, administrative and enforcement costs of applicable governmental agencies which may be asserted against the Property. In the event Trustor fails to do so (i) Beneficiary may, but shall not be obligated to, undertake remediation at the Property or other affected property necessary to bring the Property into conformance with the terms of Environmental Laws, and (ii) Trustor hereby grants to Beneficiary and its agents and employees access to the Property and a license to do all things Beneficiary shall deem necessary to bring the Property into conformance with Environmental Laws. Any and all costs and expenses reasonably incurred by Beneficiary in connection therewith, together with interest thereon at the Default Interest Rate from the date incurred by Beneficiary until actually paid by Trustor, shall be immediately paid by Trustor on demand and shall be secured by this Deed of Trust and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note. Trustor covenants and agrees, at Trustor's sole cost and expense, to
indemnify, defend (at trial and appellate levels, and with attorneys, consultants and experts acceptable to Beneficiary), and hold Beneficiary harmless from and against any and all liens, damages, losses, liabilities, obligations, settlement payments, penalties, assessments, citations, directives, claims, litigation, demands, defenses, judgments, suits, proceedings, costs, disbursements or expenses of any kind or of any nature whatsoever (including, without limitation, reasonable attorneys', consultants' and experts' fees and disbursements actually incurred in investigating, defending, settling or prosecuting any claim, litigation or proceeding) which may at any time be imposed upon, incurred by or asserted or awarded against Beneficiary or the Property, and arising directly or indirectly from or out of: (i) the presence, Release or threat of Release of any Hazardous Substances on, in, under, affecting or threatening to affect all or any portion of the Property or any surrounding areas, regardless of whether or not caused by or within the control of Trustor; (ii) the violation of any Environmental Laws relating to, affecting or threatening to affect the Property, whether or not caused by or within the control of Trustor; (iii) the failure by Trustor to comply fully with the terms and conditions of this Section 1.30; (iv) the breach of any representation or warranty contained in this Section 1.30; or (v) the enforcement of this Section 1.30, including, without limitation, the cost of assessment, containment and/or removal of any and all Hazardous Substances on and/or from all or any portion of the Property or any surrounding areas, the cost of any actions taken in response to the presence, Release or threat of Release of any Hazardous Substances on, in, under or affecting any portion of the Property or any surrounding areas to prevent or minimize such release or threat of release so that it does not migrate or otherwise cause or threaten danger to present or future public health, safety, welfare or the environment, and costs incurred to comply with the Environmental Laws in connection with all or any portion of the Property or any surrounding areas. The indemnity set forth in this Section 1.30(c) shall also include any diminution in the value of the security afforded by the Property or any future reduction in the sales price of the Property by reason of any matter set forth in this Section 1.30(c). Beneficiary's rights under this Section shall survive payment in full of the indebtedness secured hereby and shall be in addition to all other rights of Beneficiary under this Deed of Trust, the Note and the other Loan Documents.

(d) Without limiting the foregoing, Beneficiary and its authorized representatives may, during normal business hours and at its own expense, inspect the Property and Trustor's records related thereto for the purpose of determining compliance with Environmental Laws and the terms and conditions of this Section 1.30.

(e) As used herein, the term "Release" shall include, without limitation, any intentional or unintentional placing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, disposing, discarding or abandoning of any Hazardous Substance, other than in the normal course of business or activities or its tenants, and in compliance with all Environmental Laws.

Section 1.24. **Indemnification; Subrogation.**

(a) Trustor shall indemnify, defend and hold Beneficiary harmless against: (i) any and all claims for brokerage, leasing, finder's or similar fees which may be made relating to the Property or the secured indebtedness, (ii) any and all liability, obligations, losses, damages, penalties, claims, actions, suits, liens, charges, encumbrances, costs and expenses (including Beneficiary's attorneys' fees, together with appellate counsel fees, if any) of whatever kind or nature which may be asserted against, imposed on or incurred by Beneficiary under any lease or occupancy agreement for any loss arising from a failure or inability to collect Rents and Profits or in connection with the secured indebtedness, this Deed of Trust, the Property, or any part thereof, or the exercise by Beneficiary of any rights or remedies granted to it under this Deed of Trust, and any default under this Deed of Trust, (iii) any liens (whether judgments, mechanics', materialman's or otherwise), charges and encumbrances filed against the Property, and (iv) any claims and demands for damages or injury, including claims for property damage, personal injury or wrongful death, arising out of or in connection with any accident or fire or other casualty on
the Real Estate or the Improvements or any nuisance or trespass made or suffered thereon, including, in any case, attorney's fees, costs and expenses as aforesaid, whether at pretrial, trial or appellate level for any civil, criminal or administrative proceedings. Should Beneficiary incur any liability under this Deed of Trust or any of the other Loan Documents, the amount thereof, including, without limitation, costs, expenses and reasonable attorneys' fees, together with interest thereon from the date incurred by Beneficiary until actually paid by Trustor, shall be immediately due and payable to Beneficiary by Trustor on demand and shall be secured hereby and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note. However, nothing herein shall be construed to obligate Trustor to indemnify, defend and hold harmless Beneficiary from and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs and expenses enacted against, imposed on or incurred by Beneficiary by reason of Beneficiary's acts or omissions. This indemnity shall survive payment in full of the indebtedness secured hereby.

(b) A waiver of subrogation shall be obtained by Trustor from its insurance carrier and, consequently, Trustor waives any and all right to claim or recover against Beneficiary, its officers, employees, agents and representatives, for loss of or damage to Trustor, the Property, Trustor's property or the property of others under Trustor's control from any cause insured against or required to be insured against by the provisions of this Deed of Trust.

Section 1.25. Litigation. Trustor will give prompt written notice to Beneficiary of any litigation or governmental proceedings pending or threatened (in writing) against Trustor.

ARTICLE II

EVENTS OF DEFAULT

Section 2.1. Events of Default. The indebtedness secured hereby shall become immediately due and payable at the option of Beneficiary upon the happening of any one or more of the following events of default (each, an "Event of Default"): 

(a) Trustor fails to make any payment under the Note when due.
(b) Trustor fails to punctually perform any covenant, agreement, obligation, term or condition hereof which requires payment of any money to Beneficiary (except those regarding payments to be made under the Note).
(c) Trustor fails to provide insurance as required by Section 1.4 hereof or fails to perform any covenant, agreement obligation, term or condition set forth in Section 1.16 or Section 1.30 hereof.
(d) Trustor fails to perform any other covenant, agreement, obligation, term or condition set forth herein other than those otherwise described in this Section 2.1 and, to the extent such failure or default is susceptible of being cured, the continuance of such failure or default for thirty (30) days after written notice thereof from Beneficiary to Trustor; provided, however, that if such default is susceptible of cure but such cure cannot be accomplished with reasonable diligence within said period of time, and if Trustor commences to cure such default promptly after receipt of notice thereof from Beneficiary, and thereafter prosecute the curing of such default with reasonable diligence, such period of time shall be extended for such period of time as may be necessary to cure such default with reasonable diligence, but not to exceed an additional sixty (60) days.
(e) Any representation or warranty made herein, in or in connection with any application or commitment relating to the loan evidenced by the Note, or in any of the other Loan Documents to Beneficiary by Trustor, by any principal or general partner in Trustor or by any indemnitor or guarantor under any indemnity or guaranty executed in connection with the loan secured hereby is determined by Beneficiary to have been false or misleading in any material respect at the time made.
(f) There shall be a sale, conveyance, disposition, alienation, hypothecation, leasing, assignment, pledge, mortgage, granting of a security interest in or other transfer or further encumbrancing of the Property, Trustor or its owners, or any portion thereof or any
interest therein, in violation of Section 1.13 hereof.

(g) A default occurs under any of the other Loan Documents which has not been cured within any applicable grace or cure period therein provided.

(h) Trustor, any principal, general partner or managing member (as applicable) in Trustor or any indemnitor or guarantor under any indemnity or guaranty executed in connection with the loan secured hereby becomes insolvent, or shall make a transfer in fraud of creditors, or shall make an assignment for the benefit of creditors, shall file a petition in bankruptcy, shall voluntarily be adjudicated insolvent or bankrupt or shall admit in writing the inability to pay debts as they mature, shall petition or apply to any tribunal for or shall consent to or shall not contest the appointment of a receiver, trustee, custodian or similar officer for Trustor, for any such principal, general partner or managing member (as applicable) of Trustor or for any such indemnitor or guarantor or for a substantial part of the assets of Trustor, of any such principal or general partner of Trustor or of any such indemnitor or guarantor, or shall commence any case, proceeding or other action under any bankruptcy, reorganization, arrangement, readjustment or debt, dissolution or liquidation law or statute of any jurisdiction, whether now or hereafter in effect.

(i) A petition ("Petition") is filed or any case, proceeding or other action is commenced against Trustor, against any principal, general partner or managing member of Trustor or against any indemnitor or guarantor under any indemnity or guaranty executed in connection with the loan secured hereby seeking to have an order for relief entered against it as debtor or seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of it or its debts or other relief under any law relating to bankruptcy, insolvency, arrangement, reorganization, receivership or other debtor relief under any law or statute of any jurisdiction, whether now or hereafter in effect, or a court of competent jurisdiction enters an order for relief against Trustor, against any principal or general partner of Trustor or against any indemnitor or guarantor under any indemnity or guaranty executed in connection with the loan secured hereby, as debtor, or an order, judgment or decree is entered appointing, with or without the consent of Trustor, of any such principal or general partner of Trustor or of any such indemnitor or guarantor, a receiver, trustee, custodian or similar officer for Trustor, for any such principal or general partner of Trustor or for any such indemnitor or guarantor, or for any substantial part of any of the properties of Trustor, of any such principal, general partner or managing member of Trustor or of any such indemnitor or guarantor, and if any such event shall occur, such petition, case, proceeding, action, order, judgment or decree shall not be dismissed within sixty (60) days after being commenced.

(j) Trustor solicits or aids the solicitation of the filing of any Petition against Trustor including, without limitation: (i) providing information regarding the identity of creditors or the nature of creditors' claims to any third party unless compelled to do so by order of a court of competent jurisdiction or by regulation promulgated by a governmental agency, or (ii) paying the legal fees or expenses of any creditor or interest holder in Trustor with respect to any matter whatsoever.

(k) The Property or any part thereof shall be taken on execution or other process of law in any action against Trustor.

(l) Trustor abandons all or a portion of the Property.

(m) The holder of any lien or security interest on the Property (without implying the consent of Beneficiary to the existence or creation of any such lien or security interest), whether superior or subordinate to this Deed of Trust or any of the other Loan Documents, declares a default and such default is not cured within any applicable grace or cure period set forth in the applicable document or such holder institutes foreclosure or other proceedings for the enforcement of its remedies thereunder.

(n) The Property, or any part thereof, is subjected to actual or threatened waste or to removal, demolition or material alteration so that the value of the Property is materially diminished thereby and Beneficiary determines (in its subjective determination) that it is not adequately protected from any loss, damage or risk associated therewith.
(o) Any dissolution, termination, partial or complete liquidation, merger or consolidation of Trustor, any of its principals, members, or general partners.

ARTICLE III
REMEDIES

Section 3.1 Remedies Available. If there shall occur a default under this Deed of Trust, and such default has not been cured within any applicable grace or cure period, then this Deed of Trust is subject to foreclosure as provided by law and Beneficiary may, at its option and by or through a trustee, nominee, assignee or otherwise, to the fullest extent permitted by law, exercise any or all of the following rights, remedies and recourses, either successively or concurrently.

(a) Acceleration. Accelerate the maturity date of the Note and declare any or all of the indebtedness secured hereby to be immediately due and payable without any presentment, demand, protest, notice or action of any kind whatever (each of which is hereby expressly waived by Trustor), whereupon the same shall become immediately due and payable. Upon any such acceleration, payment of such accelerated amount shall constitute a prepayment of the principal balance of the Note and any applicable prepayment fee provided for in the Note shall then be immediately due and payable.

(b) Entry on the Property. Without in any way curing or waiving any default of Trustor, either in person, by agent or by court-appointed receiver, with or without bringing any action or proceeding, or by a receiver appointed by a court and without regard to the adequacy of its security, enter upon and take possession of the Property, or any part thereof, in its own name, without force or with such force as is permitted by law and without notice or process or with such notice or process as is required by law unless such notice and process is waivable, in which case Trustor hereby waives such notice and process, and do any and all acts and perform any and all work which may be desirable or necessary in Beneficiary's judgment to complete any unfinished construction on the Real Estate, to preserve and/or enhance the value, marketability or rentability of the Property, to increase the income therefrom, to manage and operate the Property or to protect the security hereof and all sums expended by Beneficiary therefor, together with interest thereon at the Default Interest Rate (as defined in the Note), shall be immediately due and payable to Beneficiary by Trustor on demand and shall be secured hereby and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note.

(c) Collect Rents and Profits. With or without taking possession of the Property, sue for or otherwise collect the Rents and Profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness secured hereby, all in such order as Beneficiary in its discretion may determine.

(d) Appointment of Receiver. Upon, or at any time prior or after, initiating the exercise of any power of sale, instituting any judicial foreclosure or instituting any other foreclosure of the lien and security interests provided for herein or any other legal proceedings hereunder, make application, ex-parte, to a court of competent jurisdiction for appointment of a receiver for all or any part of the Property, as a matter of strict right and without notice to Trustor and without regard to the adequacy of the Property for the repayment of the indebtedness secured hereby or the solvency of Trustor or any person or persons liable for the payment of the indebtedness secured hereby, and Trustor does hereby irrevocably consent to such appointment, waives any and all notices of and defenses to such appointment and agrees not to oppose any application therefor by Beneficiary, but nothing herein is to be construed to deprive Beneficiary of any other right, remedy or privilege Beneficiary may now have under the law to have a receiver appointed, provided, however, that the appointment of such receiver, trustee or other appointee by virtue of any court order, statute or regulation shall not impair or in any manner prejudice the rights of Beneficiary to receive payment of the Rents and Profits pursuant to other terms and provisions of this Deed of Trust or the Assignment. Any such receiver shall have all of the usual powers and duties of receivers in similar cases, including, without limitation, the
full power to hold, develop, rent, lease, manage, maintain, operate and otherwise use or permit
the use of the Property upon such terms and conditions as said receiver may deem to be prudent
and reasonable under the circumstances as more fully set forth in Section 3.3 below. Such
receivership shall, at the option of Beneficiary, continue until full payment of all of the
indebtedness secured hereby or until title to the Property shall have passed by foreclosure sale
under this Deed of Trust or deed in lieu of foreclosure.

(e) Foreclosure. Immediately commence an action to foreclose this Deed of Trust or
to specifically enforce its provisions or any of the indebtedness secured hereby, pursuant to the
statutes in such case made and provided, and sell the Property or cause the Property to be sold in
accordance with the requirements and procedures provided by said statutes in a single parcel or
in several parcels at the option of Beneficiary.

1. Should Beneficiary have elected to accelerate the indebtedness
secured hereby, Beneficiary may initiate foreclosure of the Property by requesting the
Trustee to effectuate a non-judicial foreclosure sale.

2. Should Beneficiary have not elected to accelerate the indebtedness
secured hereby, Beneficiary may nonetheless proceed with foreclosure in satisfaction of
such default, either through the courts or by directing the Trustee to proceed as if under a
full foreclosure, conducting sale as hereinbefore provided, but without declaring the
entire indebtedness secured by this Deed of Trust due, and provided that if said sale is
made because of such default, such sale may be made subject to the unmatured part of the
secured indebtedness. Such sale, if so made, shall not in any manner affect the
unmatured part of the debt secured by this Deed of Trust, but as to such unmatured part,
this Deed of Trust shall remain in full force as though no sale had been made. Several
sales may be made without exhausting the right of sale with respect to any unmatured part
of the secured indebtedness, it being the purpose and intent hereof to provide for a
foreclosure and the sale of the Property for any matured portion of said secured
indebtedness without exhausting the power of foreclosure.

3. In the event foreclosure proceedings are instituted by Beneficiary,
all expenses incident to such proceedings, including, but not limited to, attorneys' fees
and costs, shall be paid by Trustor and secured by this Deed of Trust and by all of the
other Loan Documents securing all or any part of the indebtedness evidenced by the Note.
The secured indebtedness and all other obligations secured by this Deed of Trust,
including, without limitation, interest at the Default Interest Rate (as defined in the Note),
any prepayment charge, fee or premium required to be paid under the Note in order to
prepay principal (to the extent permitted by applicable law), reasonable attorneys' fees
and any other amounts due and unpaid to Beneficiary under the Loan Documents, may be
bid by Beneficiary in the event of a foreclosure sale hereunder.

(f) Judicial Remedies. Proceed by suit or suits, at law or in equity, instituted
by Beneficiary, or Trustee, upon written request of Beneficiary, to enforce the payment of the
indebtedness secured hereby or the other obligations of Trustor hereunder or pursuant to the Loan
Documents, to foreclose the liens and security interests of this Deed of Trust as against all or any
part of the Property, and to have all or any part of the Property sold under the judgment or decree
of a court of competent jurisdiction. In the event of a judicial sale pursuant to a foreclosure
decree, it is understood and agreed that Beneficiary or its assigns may become the purchaser of
the Property. This remedy shall be cumulative of any other non-judicial remedies available to the
Beneficiary with respect to the Loan Documents. Proceeding with the request or receiving a
judgment for legal relief shall not be or be deemed to be an election of remedies or bar any
available non-judicial remedy of the Beneficiary.

(g) Other. Exercise any other right or remedy available hereunder, under any of the
other Loan Documents or at law or in equity.

Section 3.2 Application of Proceeds. To the fullest extent permitted by law, the
proceeds of any sale under this Deed of Trust shall be applied to the extent funds are so available
to the following items in such order as Beneficiary in its discretion may determine:
(a) To payment of the costs, expenses and fees of taking possession of the Property, and of holding, operating, maintaining, using, leasing, repairing, improving, marketing and selling the same and of otherwise enforcing Beneficiary's right and remedies hereunder and under the other Loan Documents, including, but not limited to, receivers' fees, court costs, attorneys', accountants', appraisers', managers' and other professional fees, title charges and transfer taxes.

(b) To payment of all sums expended by Beneficiary under the terms of any of the Loan Documents and not yet repaid, together with interest on such sums at the Default Interest Rate.

(c) To payment of the secured indebtedness and all other obligations secured by this Deed of Trust, including, without limitation, interest at the Default Interest Rate and, to the extent permitted by applicable law, any prepayment fee, charge or premium required to be paid under the Note in order to prepay principal, in any order that Beneficiary chooses in its sole discretion.

(d) The remainder, if any, of such funds shall be disbursed to Trustor or to the person or persons legally entitled thereto.

Section 3.3 Right and Authority of Receiver or Beneficiary in the Event of Default; Power of Attorney. Upon the occurrence of a default hereunder, which default is not cured within any applicable grace or cure period, and entry upon the Property pursuant to Section 3.1(b) hereof or appointment of a receiver pursuant to Section 3.1(d) hereof, and under such terms and conditions as may be prudent and reasonable under the circumstances in Beneficiary's or the receiver's sole discretion, all at Trustor's expense, Beneficiary or said receiver, or such other persons or entities as they shall hire, direct or engage, as the case may be, may do or permit one or more of the following, successively or concurrently: (a) enter upon and take possession and control of any and all of the Property; (b) take and maintain possession of all documents, books, records, papers and accounts relating to the Property; (c) exclude Trustor and its agents, servants and employees wholly from the Property; (d) manage and operate the Property; (e) preserve and maintain the Property; (f) make repairs and alterations to the Property; (g) complete any construction or repair of the Improvements, with such changes, additions or modifications of the plans and specifications or intended disposition and use of the Improvements as Beneficiary may in its sole discretion deem appropriate or desirable to place the Property in such condition as will, in Beneficiary's sole discretion, make it or any part thereof readily marketable or rentable; (h) conduct a marketing or leasing program with respect to the Property, or employ a marketing or leasing agent or agents so directed; (i) employ such contractors, subcontractors, materialmen, architects, engineers, consultants, managers, brokers, marketing agents, or other employees, agents, independent contractors or professionals, as Beneficiary may in its sole discretion deem appropriate or desirable; (j) collect and receive the Rents and Profits from the Property; (m) eject tenants or repossess personal property, as provided by law, for breaches of the conditions of their leases or other agreements; (n) sue for unpaid Rents and Profits, payments, income or proceeds in the name of Trustor or Beneficiary; (o) maintain actions in foreclosure entry and detention, ejectment for possession and actions in distress for rent; (p) compromise or give acquittance for Rents and Profits, payments, income or proceeds that may become due; (q) delegate or assign any and all rights and powers given to Beneficiary by this Deed of Trust; and (r) do any acts which Beneficiary in its sole discretion deems appropriate or desirable to protect the security hereof and use such measures, legal or equitable, as Beneficiary may in its sole discretion deem appropriate or desirable to implement and effectuate the provisions of this Deed of Trust. This Deed of Trust shall constitute a direction to and full authority to any lessee, or other third party who has heretofore dealt or contracted or may hereafter deal or contract with
Truster or Beneficiary, at the request of Beneficiary, to pay all amounts owing under any lease, contract, concession, license or other agreement to Beneficiary without proof of the default relied upon. Any such lessee or third party is hereby irrevocably authorized to rely upon and comply with (and shall be fully protected by Truster in so doing) any request, notice or demand by Beneficiary for the payment to Beneficiary of any Rents and Profits or other sums which may be or thereafter become due under its lease, contract, concession, license or other agreement, or for the performance of any undertakings under any such lease, contract, concession, license or other agreement, and shall have no right or duty to inquire whether any default under this Deed of Trust or under any of the other Loan Documents has actually occurred or is then existing. Any money advanced by Beneficiary in connection with any action taken under this Section 3.3, together with interest thereon from the date of making such advancement by Beneficiary until actually paid by Truster, shall be a demand obligation owing by Truster to Beneficiary and shall be secured by this Deed of Trust and by every other instrument securing the secured indebtedness.

Section 3.4 Occupancy After Foreclosure. In the event there is a foreclosure sale hereunder and at the time of such sale, Truster or Truster's representatives, successors or assigns, or any other persons claiming any interest in the Property by, through or under Truster (except tenants of space in the Improvements subject to leases entered into prior to the date hereof), are occupying or using the Property, or any part thereof, then, to the extent not prohibited by applicable law, each and all shall, at the option of Beneficiary or the purchaser at such sale, as the case may be, immediately become the tenant of the purchaser at such sale, which tenancy shall be a tenancy from day-to-day, terminable at the will of either landlord or tenant, at a reasonable rental per day based upon the value of the Property occupied or used, such rental to be due daily to the purchaser. Further, to the extent permitted by applicable law, in the event the tenant fails to surrender possession of the Property upon the termination of such tenancy, the purchaser shall be entitled to institute and maintain an action for unlawful detainer of the Property in the appropriate court of the county in which the Real Estate is located.

Section 3.5 Notice to Account Debtors. Beneficiary may, at any time after a default hereunder, which default is not cured within any applicable grace or cure period, notify the account debtors and obligors of any accounts, chattel paper, negotiable instruments or other evidences of indebtedness to Trustor included in the Property to pay Beneficiary directly. Trustor shall at any time or from time to time upon the request of Beneficiary provide to Beneficiary a current list of all such account debtors and obligors and their addresses.

Section 3.6 Cumulative Remedies. All remedies contained in this Deed of Trust are cumulative and Beneficiary shall also have all other remedies provided at law and in equity or in any other Loan Documents. Such remedies may be pursued separately, successively or concurrently at the sole subjective direction of Beneficiary and may be exercised in any order and as often as occasion therefor shall arise. No act of Beneficiary shall be construed as an election to proceed under any particular provisions of this Deed of Trust to the exclusion of any other provision of this Deed of Trust or as an election of remedies to the exclusion of any other remedy which may then or thereafter be available to Beneficiary. No delay or failure by Beneficiary to exercise any right or remedy under this Deed of Trust shall be construed to be a waiver of that right or remedy or of any default hereunder. Beneficiary may exercise any one or more of its rights and remedies at its option without regard to the adequacy of its security.

Section 3.7 Payment of Expenses. Trustor shall pay on demand all of Beneficiary's expenses reasonably incurred in any efforts to enforce any terms of this Deed of Trust, whether or not any lawsuit is filed and whether or not foreclosure is commenced but not completed, including, but not limited to, reasonable legal fees and disbursements, foreclosure costs and title charges, together with interest thereon from and after the date incurred by Beneficiary until actually paid by Trustor, and the same shall be secured by this Deed of Trust and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note.
ARTICLE IV
CONCERNING THE TRUSTEE

Section 4.1  No Required Action. Trustee shall not be required to take any action toward the execution and enforcement of the trust hereby created or to institute, appear in, or defend any action, suit, or other proceeding in connection therewith where, in his opinion, such action would be likely to involve him in expense or liability, unless requested so to do by a written instrument signed by Beneficiary and, if Trustee so requests, unless Trustee is tendered security and indemnity satisfactory to Trustee against any and all cost, expense, and liability arising therefrom. Trustee shall not be responsible for the execution, acknowledgment, or validity of the Loan Documents, or for the proper authorization thereof, or for the sufficiency of the lien and security interest purported to be created hereby, and Trustee makes no representation in respect thereof or in respect of the rights, remedies, and recourses of Beneficiary.

Section 4.2  Certain Rights. With the approval of Beneficiary, Trustee shall have the right to take any and all of the following actions: (i) to select, employ, and consult with counsel (who may be, but need not be, counsel for Beneficiary) upon any matters arising hereunder, including the preparation, execution, and interpretation of the Loan Documents, and shall be fully protected in relying as to legal matters on the advice of counsel, (ii) to execute any of the trusts and powers hereof and to perform any duty hereunder either directly or through his agents or attorneys, (iii) to select and employ, in and about the execution of his duties hereunder, suitable accountants, engineers and other experts, agents and attorneys-in-fact, either corporate or individual, not regularly in the employ of Trustee (and Trustee shall not be answerable for any act, default, negligence, or misconduct of any such accountant, engineer or other expert, agent or attorney-in-fact, if selected with reasonable care, or for any error of judgment or act done by Trustee in good faith, or be otherwise responsible or accountable under any circumstances whatsoever, except for Trustee's gross negligence or bad faith), and (iv) any and all other lawful action that Beneficiary may instruct Trustee to take to protect or enforce Beneficiary's rights hereunder. Trustee shall not be personally liable in case of entry by Trustee, or anyone entering by virtue of the powers herein granted to Trustee, upon the Property for debts contracted for or liability or damages incurred in the management or operation of the Property. Trustee shall have the right to rely on any instrument, document, or signature authorizing or supporting any action taken or proposed to be taken by Trustee hereunder, believed by Trustee in good faith to be genuine. Trustee shall be entitled to reimbursement for expenses incurred by Trustee in the performance of Trustee's duties hereunder and to reasonable compensation for such of Trustee's services hereunder as shall be rendered. Trustor will, from time to time, pay the compensation due to Trustee hereunder and reimburse Trustee for, and save Trustee harmless against, any and all liability and expenses which may be incurred by Trustee in the performance of Trustee's duties.

Section 4.3  Retention of Money. All moneys received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by applicable law), and Trustee shall be under no liability for interest on any moneys received by Trustee hereunder.

Section 4.4  Successor Trustees. Trustee may resign by the giving of notice of such resignation in writing or verbally to Beneficiary. If Trustee shall die, resign, or become disqualified from acting in the execution of this trust, or if, for any reason, Beneficiary shall prefer to appoint a substitute trustee or multiple substitute trustees, or successive substitute trustees or successive multiple substitute trustees, to act instead of the aforesaid Trustee, Beneficiary shall have full power to appoint a substitute trustee (or, if preferred, multiple substitute trustees) in succession who shall succeed (and if multiple substitute trustees are appointed, each of such multiple substitute trustees shall succeed) to all the estates, rights, powers, and duties of the aforesaid Trustee. Such appointment may be executed by any authorized agent of Beneficiary, and if such Beneficiary be a corporation and such appointment be executed in its behalf by any officer of such corporation, such appointment shall be
conclusively presumed to be executed with authority and shall be valid and sufficient without proof of any action by the board of directors or any superior officer of the corporation. Trustor hereby ratifies and confirms any and all acts which the aforesaid Trustee, or his successor or successors in this trust, shall do lawfully by virtue hereof. If multiple substitute Trustees are appointed, each of such multiple substitute Trustees shall be empowered and authorized to act alone without the necessity of the joinder of the other multiple substitute trustees, whenever any action or undertaking of such substitute trustees is requested or required under or pursuant to this Deed of Trust or applicable law.

Section 4.5 Perfection of Appointment. Should any deed, conveyance, or instrument of any nature be required from Trustor by any Trustee or substitute Trustee to more fully and certainly vest in and confirm to the Trustee or substitute Trustee such estates, rights, powers, and duties, then, upon request by the Trustee or substitute Trustee, any and all such deeds, conveyances and instruments shall be made, executed, acknowledged, and delivered and shall be caused to be recorded and/or filed by Trustor.

Section 4.6 Succession Instruments. Any substitute Trustee appointed pursuant to any of the provisions hereof shall, without any further act, deed, or conveyance, become vested with all the estates, properties, rights, powers, and trusts of its or his predecessor in the rights hereunder with like effect as if originally named as Trustee herein; but nevertheless, upon the written request of Beneficiary or of the substitute Trustee, the Trustee ceasing to act shall execute and deliver any instrument transferring to such substitute Trustee, upon the trusts herein expressed, all the estates, properties, rights, powers, and trusts of the Trustee so ceasing to act, and shall duly assign, transfer and deliver any of the property and moneys held by such Trustee to the substitute Trustee so appointed in the Trustee's place.

Section 4.7 No Representation by Trustee. By accepting or approving anything required to be observed, performed, or fulfilled or to be given to Trustee (on its own behalf or on behalf of Beneficiary) pursuant to the Loan Documents, including, without limitation, any officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal, or insurance policy, neither Trustee nor Beneficiary shall be deemed to have warranted, consented to, or affirmed the sufficiency, legality, effectiveness, or legal effect of the same, or of any term, provision, or condition thereof, and such acceptance or approval thereof shall not be or constitute any warranty or affirmation with respect thereto by Trustee, either on its own behalf or on behalf of Beneficiary.

ARTICLE V

MISCELLANEOUS TERMS AND CONDITIONS

Section 5.1 Time of Essence. Time is of the essence with respect to all provisions of this Deed of Trust.

Section 5.2 Release of Deed of Trust. If and when Trustor has paid all of the secured indebtedness as the same becomes due and payable, or there is a Deedance regarding the lien of this Deed of Trust in accordance with, and in satisfaction of, the provisions of Section 1.35 of this Deed of Trust, then, and in such event only, all rights under this Deed of Trust shall terminate except for those provisions hereof which by their terms survive, and the Property shall become wholly clear of the liens, security interests, conveyances and assignments evidenced hereby, which shall be released by Beneficiary in due form at Trustor's cost. Trustor shall be responsible for the recordation of such release and payment of any recordation costs associated therewith.

Section 5.3 Certain Rights of Beneficiary. Without affecting Trustor's liability for the payment of any of the indebtedness secured hereby, Beneficiary may from time to time: (a) release any person liable for the payment of the indebtedness secured hereby; (b) extend or modify the terms of payment of the indebtedness secured hereby; (c) accept additional real or personal property of any kind as security or alter, substitute or release any property securing the indebtedness secured hereby; (d) recover any part of the Property; (e) consent in writing to the
making of any subdivision map or plat thereof; (f) join in granting any easement therein; or (g) join in any extension agreement of this Deed of Trust or any agreement subordinating the lien hereof.

Section 5.4 Notices. All notices, demands, requests or other communications to be sent by one party to the other hereunder or required by law shall be in writing and shall be deemed to have been validly given or served by delivery of the same in person to the intended addressee, or by depositing the same with Federal Express or another reputable private courier service for next business day delivery, or by depositing the same in the United States mail, postage prepaid, registered or certified mail, return receipt requested, in any event addressed to the intended addressee at its address set forth on the first page of this Deed of Trust or at such other address as may be designated by such party as herein provided. All notices, demands and requests shall be effective upon such personal delivery, or one (1) business day after being deposited with the private courier service, or two (2) business days after being deposited in the United States mail as required above. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given as herein required shall be deemed to be receipt of the notice, demand or request sent. By giving to the other party hereto at least fifteen (15) days' prior written notice thereof in accordance with the provisions hereof, the parties hereto shall have the right from time to time to change their respective addresses and each shall have the right to specify as its address any other address within the United States of America.

Section 5.5 Successors and Assigns. The terms, provisions, indemnities, covenants and conditions hereof shall be binding upon Trustor and the successors and assigns of Trustor, including all successors in interest in and to all or any part of the Property, and shall inure to the benefit of Beneficiary, and its successors and assigns and shall constitute covenants running with the land. If Trustor consists of more than one person or entity, each will be jointly and severally liable to perform the obligations of Trustor.

Section 5.6 Severability. A determination that any provision of this Deed of Trust is unenforceable or invalid shall not affect the enforceability or validity of any other provision.

Section 5.7 General Interpretative Principles. Within this Deed of Trust, words of any gender shall be held and construed to include any other gender, and words in the singular shall be held and construed to include the plural, and vice versa, unless the context otherwise requires.

Section 5.8 Waiver; Discontinuance of Proceedings. Beneficiary may waive any single default by Trustor hereunder without waiving any other prior or subsequent default, and may remedy any default by Trustor hereunder without waiving the default remedied. Neither the failure or delay by Beneficiary in exercising, any right, power or remedy upon any default by Trustor hereunder shall be construed as a waiver of such default or as a waiver of the right to exercise any such right, power or remedy at a later date. No single or partial exercise by Beneficiary of any right, power or remedy hereunder shall exhaust the same or shall preclude any other or further exercise thereof, and every such right, power or remedy hereunder may be exercised at any time and from time to time. No modification or waiver of any provision hereof nor consent to any departure by Trustor therefrom shall in any event be effective unless the same shall be in writing and signed by Beneficiary, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose given. No notice to nor demand on Trustor in any case shall of itself entitle Trustor to any other or further notice or demand in similar or other circumstances. Acceptance by Beneficiary of any payment in an amount less than the amount then due on any of the secured indebtedness shall be deemed an acceptance on account only and shall not in any way affect the existence of a default hereunder.

Section 5.9 Section Headings. The headings of the sections and paragraphs of this Deed of Trust are for convenience of reference only, are not to be considered a part hereof and shall not limit or otherwise affect any of the terms hereof.

Section 5.10 Governing Law. This Deed of Trust will be governed by and construed in accordance with the laws of the State in which the Property is located, provided that to the
extent that any of such laws may now or hereafter be preempted by Federal law, in which case such Federal law shall so govern and be controlling.

Section 5.11 **Counting of Days.** The term "days" when used herein shall mean calendar days. If any time period ends on a Saturday, Sunday or holiday officially recognized by the state within which the Real Estate is located, the period shall be deemed to end on the next succeeding business day. The term "business day" or "Business Day" when used herein shall mean a weekday, Monday through Friday, except a legal holiday or a day on which banking institutions in New York, New York are authorized by law to be closed.

Section 5.12 **Application of the Proceeds of the Note.** To the extent that proceeds of the Note are used to pay indebtedness secured by any outstanding lien, security interest, charge or prior encumbrance against the Property, such proceeds have been advanced by Beneficiary at Trustor's request and Beneficiary shall be subrogated to any and all rights, security interests and liens owned by any owner or holder of such outstanding liens, security interests, charges or encumbrances, irrespective of whether said liens, security interests, charges or encumbrances are released.

Section 5.13 **Unsecured Portion of Indebtedness.** If any part of the secured indebtedness cannot be lawfully secured by this Deed of Trust or if any part of the Property cannot be lawfully subject to the lien and security interest hereof to the full extent of such indebtedness, then all payments made shall be applied on said indebtedness first in discharge of that portion thereof which is unsecured by this Deed of Trust.

Section 5.14 **Cross Default.** A default hereunder which has not been cured within any applicable grace or cure period shall be a default under each of the other Loan Documents.

Section 5.15 **Construction of this Document.** This document may be construed as a mortgage, security deed, deed of trust, chattel mortgage, conveyance, assignment, security agreement, pledge, financing statement, hypothecation or contract, or any one or more of the foregoing, in order to fully effectuate the liens and security interests created hereby and the purposes and agreements herein set forth.

Section 5.16 **No Merger.** It is the desire and intention of the parties hereto that this Deed of Trust and the lien hereof do not merge in fee simple title to the Property.

Section 5.17 **Beneficiary May File Proofs of Claim.** In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceedings affecting Trustor or the principals or general partners in Trustor, or their respective creditors or property, Beneficiary, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have the claims of Beneficiary allowed in such proceedings for the entire secured indebtedness at the date of the institution of such proceedings and for any additional amount which may become due and payable by Trustor hereunder after such date.

Section 5.18 **After-Acquired Property.** All property acquired by Trustor after the date of this Deed of Trust which by the terms of this Deed of Trust shall be subject to the lien and the security interest created hereby, shall immediately upon the acquisition thereof by Trustor and without further mortgage, conveyance or assignment become subject to the lien and security interest created by this Deed of Trust.

Section 5.19 **No Representation.** By accepting delivery of any item required to be observed, performed or fulfilled to be given to Beneficiary pursuant to the Loan Documents, including, but not limited to, any officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal or insurance policy, Beneficiary shall not be deemed to have warranted, consented to, or affirmed the sufficiency, legality, effectiveness or legal effect of the same, or of any term, provision or condition thereof, and such acceptance of delivery thereof shall not be or constitute any warranty, consent or affirmation with respect thereto by Beneficiary.

Section 5.20 **Personal Liability.** Notwithstanding anything to the contrary contained in this Deed of Trust, the liability of Trustor and its general partners for the indebtedness secured hereby and for the performance of the other agreements, covenants and obligations contained
herein and in the Loan Documents shall be limited as set forth in Section 1.05 of the Note; provided, however, that nothing herein shall be deemed to be a waiver of any right which Beneficiary may have under Sections 506(a), 506(b), 1111(b) or any other provisions of the U.S. Bankruptcy Code to file a claim for the full amount of the indebtedness secured hereby or to require that all collateral shall continue to secure all indebtedness owing to Beneficiary in accordance with the Note, this Deed of Trust and the other Loan Documents.

Section 5.21 **Recording and Filing.** Trustor will cause the Loan Documents and all amendments and supplements thereto and substitutions therefor to be recorded, filed, re-recorded and re-filed in such manner and in such places as Beneficiary shall reasonably request, and will pay on demand all such recording, filing, re-recording and re-filing taxes, fees and other charges.

Section 5.22 **Entire Agreement and Modifications.** This Deed of Trust and the other Loan Documents contain the entire agreements between the parties and supersede any prior agreements (oral or written), and may not be amended, revised, waived, discharged, released or terminated orally but only by a written instrument or instruments executed by the party against which enforcement of the amendment, revision, waiver, discharge, release or termination is asserted.

Section 5.23 **Further Stipulations.** The additional covenants, agreements and provisions set forth in Exhibit B attached hereto, if any, shall be a part of this Deed of Trust and shall, in the event of any conflict between such further stipulations and any of the other provisions of this Deed of Trust, be deemed to control.

Section 5.24 **Relationship of the Parties.** The relationship between Trustor and Beneficiary is that of a borrower and a lender only and neither of those parties is, nor shall it hold itself out to be, the agent, employee, joint venturer or partner of the other party.

Section 5.25 **Fixture Filing.** This Deed of Trust shall be effective from the date of its recording as a financing statement filed as a fixture filing with respect to all goods constituting part of the Property which are or are to become fixtures.

IN WITNESS WHEREOF, Trustor, intending to be legally bound hereby, has duly executed this Deed of Trust on _________________, 20__ to be effective as of _________________, 20__.

PROSPECT-HENDERSON PARTNERS, L.P.,
a California limited partnership

By: ____________________________

David H. Paynter
General Partner
State of California  

County of __________

On __________________, before me, __________________, Notary Public, personally appeared DAVID H. PAYNTER, who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

__________________________________________

Signature

(Seal)
EXHIBIT A
LEGAL DESCRIPTION
SUBJECT: REQUEST BY FEDERICO RAMOS FOR A MODIFICATION OF CONDITIONS TO INSTALL A SEPTIC TANK AT 917 S. WISCONSIN STREET

SOURCE: Public Works Department - Engineering Division

COMMENT: On March 17, 2009, the City Council approved Mr. Federico Ramos' request to install a septic tank at 917 South Wisconsin Street. The City Council approved the request based on the fact that Mr. Ramos' property exceeded 5 acres and the nearest sewer main was located approximately 1,100' away. The Council set conditions of approval which included that Mr. Ramos would build a single family residence.

Subsequent to Council's action, Mr. Ramos submitted plans for a 2,300 square foot single family residence. It was Mr. Ramos' intent to have his younger brother and family move in with him to help pay the new mortgage plus the payment on the 5 acres.

Unfortunately, Mr. Ramos was unable to secure funding for the 2,300 sf home and withdrew his building application. Mr. Ramos has secured funding that will allow him to purchase a 1,100 sf modular home and a 900 sf modular home for his brother. Placing two residential units on R-1 zoned property is allowed with restrictive conditions in place. Mr. Ramos is aware of the restrictions, i.e., the 2nd unit must be less than 1200 sf, be of similar design, and the owner must live on the property. There are other conditions but the stated conditions are the significant conditions.

Mr. Ramos respectfully asks that the Council modify its approval to read as follows:

1. Direct the Public works Director to issue a "septic tank installation" waiver exclusively to Mr. Federico Ramos for the placement of two modular homes at 917 South Wisconsin Street;

2. Direct Mr. Ramos, his heirs or subsequent owners of the property at 917 South Wisconsin Street, to sign an agreement stating their intention to extend and connect to City sewer when said sewer is within 200' of 917 South Wisconsin Street; and
3. Authorize the Public Works Director to evaluate future requests for septic tank installations on a case by case basis and determine if circumstances are such that installation of a septic tank is fair, reasonable and cost effective.

RECOMMENDATION: That the City Council:

1. Authorize Mr. Federico Ramos to install or have installed two modular homes at 917 S. Wisconsin Street;

2. Direct the Public Works Director to issue a “septic tank installation” waiver exclusively to Mr. Ramos for the purpose of placing two modular homes at 917 South Wisconsin Street;

3. Direct that Mr. Ramos, his heirs or subsequent owners of the property at 917 South Wisconsin Street, sign an agreement stating their intention to extend and connect to City sewer when said sewer is within 200’ of 917 South Wisconsin Street;

4. Direct that Mr. Ramos execute a binding “Restrictive Covenant” agreement prior to the issuance of a building permit; and

5. Authorize the Public Works Director to evaluate future requests for septic tank installations on a case by case basis and determine if circumstances are such that installation of a septic tank is fair, reasonable and cost effective.
COUNCIL AGENDA: DECEMBER 1, 2009

SUBJECT: AUTHORIZE A LETTER OF COMMITMENT FOR A STATE ENERGY PROGRAM RESIDENTIAL BUILDING RETROFIT REGIONAL GRANT PROPOSAL

SOURCE: PARKS AND LEISURE SERVICES DEPARTMENT

COMMENT: The City of Visalia is taking the lead in submitting a grant proposal to the California Energy Commission (CEC) under the State Energy Program for comprehensive residential building retrofit solicitation. This solicitation is strongly in favor of regional approaches with a consortium of jurisdictions. The attached memorandum from Visalia City staff person Kim Loeb provides more overview information on the matter.

In summary, if Porterville participates in the program it can expect to:
- Create jobs and stimulate economic development
- Benefit residents whose homes are retrofitted by lowering their energy costs
- Set the stage for long-term sustainability through AB 811 financing
- Help demonstrate compliance with AB 32/SB 375 requirements to reduce greenhouse gas emissions

All the specific details aren’t known yet, but a non-binding letter of commitment must be included within a grant application to be submitted on or before December 21, 2009. By the time that the CEC would consider making an award to Visalia we will have been able to confirm all program details, including budgets and jurisdictional obligations. The goal is for little to no cost to the local jurisdictions and we will have an opportunity to evaluate the program and decide by January 18, 2010 if a resolution to join the consortium is indeed appropriate.

RECOMMENDATION: Authorize the City Manager to provide a non-binding letter of commitment for this grant application.

ATTACHMENTS: Letter of Commitment
Summary of SEP Residential Retrofit Grant Application

Director N/A Appropriated/Funded  City Manager  ITEM NO.: 8
December 2, 2009

Mr. Steve Saloman
City Manager
City of Visalia
425 E. Oak, Suite 301
Visalia, CA 93291

Dear Steve:

We applaud the City of Visalia for taking the lead in submitting an application to the California Energy Commission (CEC) for a grant under the California Comprehensive Residential Building Retrofit Program. If the CEC selects Visalia’s proposal for funding, it will create jobs and stimulate the economy throughout Kings and Tulare Counties, a region with some of the highest unemployment rates in the State.

It’s our understanding that as part of the application process, the City of Visalia must assemble a consortium of local governments, utilities, community colleges, national and state affordable housing programs, and private and public energy and building contracting experts. This consortium will develop a comprehensive program to implement energy retrofits in existing residential buildings. In addition to providing much needed jobs and economic stimulus, the program will help jurisdictions in Kings and Tulare Counties effectively contribute to California’s ambitious energy savings and greenhouse gas emission (GHG) reduction goals. The consortium will also coordinate with and leverage affordable housing and neighborhood stabilization programs to bring the advantages of energy efficient housing to the underserved, economically disadvantaged populations in our two-county region.

The City of Porterville is committed to participating in the consortium the City of Visalia has assembled. The City of Porterville will adopt a resolution by January 18, 2010, confirming our commitment to participate and authorizing the City of Visalia to serve as the lead/prime bidder in applying for, and receiving funding on the City’s behalf. The resolution will designate an authorized representative to execute all necessary agreements to implement and carry out the program. The city will also name one or more individuals to serve as the consortium’s primary point of contact and coordinate the consortium’s activities within the city.

Sincerely,

John D. Lollis
City Manager
Memorandum

Date: November 12, 2009
To: VIEW Partners
From: Kim Loeb, City of Visalia, 713-4530
Re: Summary of VIEW Partnership SEP Residential Retrofit Grant Application

The U.S. Department of Energy (DOE) has allocated American Recovery and Reinvestment Act of 2009 (ARRA) grant funds to the California Energy Commission (CEC) for the State Energy Program (SEP). One of CEC’s SEP programs is the California Comprehensive Residential Building Retrofit Program. This is a competitive grant. From the RFP:

The purpose of the California Comprehensive Residential Building Retrofit Program is to create jobs and stimulate the economy through a comprehensive program to implement energy retrofits in existing residential buildings. The Program will work with regional groups of local governments, utilities, community colleges, national and state energy and affordable housing programs, and private and public energy and building contracting experts to deliver a tiered approach to put Californians back to work. The Program will focus on deploying re-trained construction workers and contractors and youth entering the job market to improve the energy efficiency and comfort of California’s existing housing, creating in the process a sustainable energy workforce. In addition to pursuing energy retrofits in market-rate housing, the Program will coordinate with and leverage affordable housing and neighborhood stabilization programs to bring the advantages of energy efficient housing to under-served, economically disadvantaged populations.

The California Comprehensive Residential Building Retrofit Program is intended to effectively contribute to California’s ambitious energy savings and greenhouse gas emission (GHG) reduction goals established in the Energy Action Plan, the California Public Utilities Commission’s (CPUC) Strategic Plan and the California Air Resources Board’s (ARB) AB 32 Scoping Plan.

The CEC prefers that it contract with a local government agency as the prime contractor for a regional local-government consortium. The City of Visalia will serve as the prime contractor for the Valley Innovative Energy Watch (VIEW) local-government partnership with Southern California Edison (Southern California Gas will join January 1, 2010). Other local-government VIEW partners are City of Tulare, City of Porterville, City of Woodlake, City of Farmersville, Tulare County, City of Hanford, and Kings County. The program would also include CSET and Proteus. Other partners include the San Joaquin Valley Clean Energy Organization (which oversees the VIEW Partnership) Enalasys, an energy efficiency implementation contractor, and the California Building Performance Contractor Association (CBPCA).

The purpose of the proposed program will be two-fold. The program will provide a step-by-step process to provide homeowners and occupants of single- and multi-family residential buildings energy efficiency retrofits to reduce energy demand and greenhouse gas emissions while significantly reducing homeowners’ or renters’ energy bills. The program will accomplish this by re-training workers and youth to implement the residential energy efficiency retrofits. Enalasys, the energy efficiency contractor, and CBPCA, the contractor’s association, will work with local non-profit organizations CSET and Proteus to set up the training programs. CSET, Proteus, and local re-trained contractors will implement the energy efficiency retrofits.

The program will be integrated into the CaliforniaFIRST AB 811 solar and energy efficiency financing program. This would provide additional funding to homeowners to complete whole-house retrofits.
including installation of rooftop solar energy systems. The City of Visalia intends to enroll in the second pilot phase of the CaliforniaFIRST program in May/June 2010. Partner jurisdictions are encouraged to do the same.

Analysis will conduct most of the program administrative functions under contract to the City of Visalia including the reporting required by the CEC. Funds will be available from the grant to cover any administrative burden incurred by the City. The amount to be requested from the CEC will be $6 or $7 million.

For our application to be successful, we must show leveraging of additional funds. These funds can be utility rebates and incentives, AB 811 financing, Energy Efficiency and Conservation Block Grant (EECBG) and other funds from jurisdictions, training grants that CSET and Proteus may be entitled to, and any other funding which may be identified.

The proposed program will benefit the citizens of the VIEW Partnership jurisdictions in Tulare and Kings Counties by providing energy efficiency retrofits on residential buildings which will reduce energy demand in the area (including peak-energy demand), reduce greenhouse gas emissions, provide re-training for local contractors and youth impacted by the economic and building slowdown, and bring Federal ARRA funds to the area.

Jurisdictions interested in participating in this program need to provide a letter of intent for submittal with the grant application. The grant application deadline is December 21, 2009. Following announcement of the grant award on February 11, 2010, participating jurisdictions will need a resolution from their Council or Board and will enter into a memorandum of understanding with the City of Visalia for program administration.
COUNCIL AGENDA: DECEMBER 1, 2009

SUBJECT: APPOINTMENT TO LIBRARY BOARD OF TRUSTEES

SOURCE: PARKS AND LEISURE SERVICES DEPARTMENT

COMMENT: City Council reappointed one Library Board of Trustee and appointed two new members at the October 20, 2009 meeting.

Mr. Robert Levine, one of the newly seated members has resigned effective immediately and is in the process of departing the area.

It has been the Council's practice to consider those that had recently requested appointment in order to fill vacancies created soon after other appointments were made. Staff has contacted Mr. Joseph Carter, the only other individual to recently indicate an interest in serving on the Library Board. Mr. Carter has confirmed that he remains interested in serving on the Library Board of Trustees.

RECOMMENDATION: That the City Council appoints Mr. Carter to the three – year term that is currently vacant.

ATTACHMENTS: Letter of resignation from Mr. Levine
Mr. Carter's request for appointment application

Director

Appropriated/Funded

City Manager

ITEM NO.: 9
Dear Mr. Perrine:

Due to circumstances beyond my control (i.e. the unexpected termination of my position at the Tule River Tribal Council last Friday, November 20th 2009), I am moving out of the Porterville area and back to Los Angeles.

Therefore, I am hereby resigning my position as Library Trustee of the City of Porterville.

Thank you for the opportunity to serve, however brief it was.

I am sorry for any inconvenience this may cause.

Sincerely,

Robert Levine

Bob Levine
bobycat1439@yahoo.com
(661) 993-2512 Cell

11/24/2009
CITY OF PORTERVILLE
REQUEST FOR APPOINTMENT

Please complete all blanks.

Name: JOSEPH CARTER
(Please Print)

Appointment to: Parks & Leisure Services Commission or Library Board

(Name of Board, Commission, or Committee)
Reappointment; or If NEW, please provide:
Street Address: 998 N. Roberta Way, Porterville, CA 93257
Mailing Address: same as above
Name of Business: Wal-Mart Distribution Center-Transportation
☐Own ☐Operate
Business Address: 1300 S. F Street, Porterville, CA 93257
Telephone: Home 791-0225
Work 350-2334(cell)
FAX N/A

E-mail: jcarter1964@gmail.com

City of Porterville resident:
☑Yes ☐No

Registered Voter:
☑Yes ☐No
Qualifications: I moved to Porterville 12 years ago and have been active in a variety of community events, the Chamber, and the Police Department Volunteer Program. Community stewardship is very important to me and I seek the opportunity to step-up my involvement by becoming part of the City's Parks & Leisure Services Commission. I am certain that my previous community participation, professional development, and desire to serve Porterville make me a qualified candidate for Council's consideration. Specific to this Commission, I have an interest in the activities that the City offers youth for the productive use of their time; the parks that attract both residents and visitors; and, the activities available to adults and seniors.

[ ] Resume attached

[ ] Letter of request attached

Submitted By: [Signature] Date: 10-14-09
Received by:
Forwarded to: City Clerk Date:
City Council Date:
City Manager Date:
Applicable Dept. Date:
Tentative Council Mng Date:
998 N. Roberta Way  
Porterville, CA 93257  
September 14, 2009

Pete McCracken, Mayor  
City of Porterville  
291 N. Main Street  
Porterville, CA 93257

Dear Mayor McCracken:

It has come to my attention that the City of Porterville has openings for community-minded individuals interested in serving on the Parks & Leisure Services Commission and the Library Board. As one who regularly volunteers with community-wide activities, I would like to express my keen interest in further serving Porterville by appointment to one of these entities.

Porterville is fortunate to have a very active Parks & Leisure Services Department, offering our citizens many opportunities to engage in special events such as Kid’s Day, the Easter egg hunt, senior dances, after school programs, and more. Additionally, we have beautiful parks which provide the perfect venues for family gatherings; skateboarding, or just a leisurely walk. I would welcome the opportunity to be a part of the team which maintains and enhances these offerings.

Our library is an important entity in Porterville. From books to computers, storytelling to genealogical research, audio books to literacy programs, it offers something for everyone. I am an avid reader and also enjoy utilizing the library for borrowing audio books for my travels. Currently, I know that our community is considering a possible build of a new library which could offer enhanced services. I proudly supported Measure H which contributed funds toward our library and literacy, and I would be very interested in becoming involved with the maintenance and potential growth of the library.

Since you know where your need lies, and I am interested in serving in either capacity, I will leave it to the wisdom of our City Council to consider my interest and most appropriate placement. Thank you for your consideration. I hope to have the opportunity to bring my resources and community stewardship to the City of Porterville.

Sincerely,

Joseph C. Carter  
(559) 350-2334
Joseph C. Carter  
998 North Roberta Way, Porterville, CA 93257  
(559) 791-0225 Home or (559) 350-2334 Cell  

Wal-Mart Stores, Inc. — Private Fleet, Porterville, CA  
1999 to Present

Driver
- Lead Ambassador overseeing 15 driver Ambassadors with the responsibility of establishing good neighbor relationships and problem resolution with management teams at 63 stores in California. Also, assisted with three store grand openings and the coordination of various store of the month recognition events.
- Member of the Transportation Safety Committee.
- Member of the Driver Hiring Committee performing such duties as application review, applicant interviews, and reference checking.
- Coordinated truck delivery route arrival/departure to ensure city code compliance at the new Rosemead Supercenter.
- Served on the Realignment and Set Run Committee which evaluated transit time allocation and daily needs in order to meet store requirements, and recommend a set run schedule.
- Acted as a Mentor Driver which involved the on-the-road training of a driver to provide education on Wal-Mart culture, paperwork processing, and operations.
- Represented local drivers while participating in a Regional Grassroots Meeting and Regional Operations Center Grassroots Meeting
- Transported retail goods from Distribution Centers to stores and from backhaul vendors to Distribution Centers, achieving a 100%, on-time performance record.
- Drove over 1,000,000 miles with Wal-Mart without a ticket or an accident.
- Drove truck in 48 states and Canada and also worked as a cross country driver trainer.
- Completed a special Wal-Mart Media & Presentation Training Program.

Additional Competencies
- Demonstrated ability to communicate effectively with others and exhibit diplomacy.
- Motivated, conscientious, committed, organized, and professional.

Community Stewardship
- Active involvement in the Porterville Iris Festival, Chamber Auction, Annual Awards Banquet, and other special events coordinated by the Porterville Chamber of Commerce and Leadership Porterville organizations.
- Participant in the Porterville Police Department Volunteer Program.
Military Service 1984 to 1987

- United States Marine Corps, Radio Operator: Served in the 2nd Recon Battalion and the 129th Artillery Unit - Received an Honorable Discharge.
- Served as a team leader during training maneuvers leading a seven-man team through jungle, desert, and water exercises.
- Successfully completed special operations training courses.

Education & Training

- NATMI — Completed the Safety Management Training Program (2007) included accident investigation, OSHA, cost reduction, hiring/retaining drivers, etc.
- Employer Advisory Council — Effective Supervisory Skills Training Sessions
- Fresno City College, CA — Courses completed in Criminology and Liberal Studies
SUBJECT:  SCHEDULING OF ADJOURNED CITY COUNCIL MEETING FOR ANNUAL GOAL SETTING TO ESTABLISH 2010 PRIORITIES

SOURCE:  City Manager

COMMENT:  During the month of December, the City Council has traditionally met in an adjourned meeting to review the Council's prior calendar year goals and priorities, and to establish goals and priorities for the coming new year. As was Council's direction from its November 17th meeting, the approach for the goal setting will be project driven (as it has been the past several years), with the Council identifying specific projects for particular attention and focus. For the month of December, it is recommended to schedule this year's adjourned meeting for the second Tuesday, December 8, 2009. It has been requested by at least one member of the Council not to begin the meeting earlier than 6:30 PM.

RECOMMENDATION:  That the City Council schedule an adjourned meeting for annual goal setting to establish priorities for Tuesday, December 8, 2009, beginning at 6:30 PM.

ATTACHMENT:  None
PUBLIC HEARING


SOURCE: COMMUNITY DEVELOPMENT DEPARTMENT - PLANNING DIVISION

HISTORY: On February 23, 2009 Mr. Al Saleh received a letter from the Tulare County Health Services Department informing him that his application for a public water system permit at 943 W. Westfield Avenue in Porterville was denied. According to Ms. Tricia Wathen, Professional Engineer for the Department of Public Health, State of California, the well serving the facility was high in nitrates, arsenic, and toluene and could not be used to prepare food, coffee, or dispense any soft drinks at his newly established convenience market at 943 W. Westfield Avenue in Porterville. Due to the proximity of the City of Porterville water system, the Tulare County Health and Human Service Agency directed Mr. Saleh to contact the City of Porterville to possibly provide potable water to his facility. On February 25, 2009, City Staff received a written request from Mr. Saleh requesting Council permission to be allowed to connect his new market at 943 W. Westfield Avenue to City water. Due to the water issues, on March 3, 2009, Mr. Saleh received Council approval to connect to City water subject to the following conditions and directions:

1) That staff prepare all annexation and water connection fees on behalf of Mr. Saleh; and

2) To accept payment of annexation and water connection fees from Mr. Saleh prior to connection of water services; and

3) That staff proceed expeditiously to annex Mr. Saleh's property located at 943 W. Westfield; and

4) That Public Works install a commercial water service to 943 W. Westfield and record that the water service shall remain in place whether the annexation is approved or disapproved; and

5) That the applicant signs a “consent to annex” form prior to processing the application in the event the annexation is not successful.

APPROPRIATED/FUNDED \[\] CM ITEM NO. \[\]
During the process of reviewing the annexation, Mr. Saleh decided that applying for a General Plan Amendment and Zone Change (pre-zoning) would be in his best interest for future expansion of his new market at 943 W. Westfield Avenue. The need to properly designate the land stems from Section 110.A.4 of the Zoning Ordinance, which states that any land that is annexed into the City of Porterville would automatically be zoned Single Family Residential (R-1). Mr. Saleh’s establishment is located in the County Neighborhood Commercial area and would have deemed his property a legal non-conforming use.

On September 9, 2009, Mr. Al Saleh’s Annexation Application, Zone Change Application and General Plan Amendment Application were found by Staff to be complete.

COMMENTS: The subject site is located on the southeast corner of Westfield Avenue and State Route 65. The annexation is a request to incorporate a County Island into the City of Porterville, consisting of 10.9± acres of developed land. The site is developed with an existing convenience market, self service gas pumps and batting cages, five single-family residential dwellings on four parcels, and a City of Porterville owned drainage basin.

The existing convenience market is located on a 3.45± acre site known as Al’s Market. The existing market is developed and is connected to City water authorized by City Council on March 3, 2009. The parcel east of the convenience market is a City-owned 2.26± acre drainage basin and the remaining four parcels (5.19± acres) east of the drainage basin consist of five (5) single-family residential dwellings with curb, gutter, and sidewalk across the frontage of the parcel abutting Westfield Avenue.

General Plan Amendment No. 1-2009 is a request to change the General Plan Land Use Designation from Public/Institutional to Neighborhood Commercial on the 3.45± acre site located on the southeast corner of State Route 65 and Westfield Avenue known as Al’s Market.

Zone Change No. 1-2009 (pre-zoning) proposes to change the existing zoning from County C-1 (Neighborhood Commercial) to City C-1 (Neighborhood Commercial) for the existing convenience market, self-service gas pumps and batting cages on the 3.45± acre site that is generally located on the southeast corner of State Route 65 and Westfield Avenue.

The surrounding land uses of the subject site consist of Medium Density Residential and Low Density Residential uses. The 3.45± acre site would be an ideal location for establishing a Neighborhood Commercial land use designation that will continue the existing use. General Plan Land Use Guiding Policy LU-G-1 promotes a sustainable, balanced land use pattern that responds to existing needs and future needs of the City. Economic Development Guiding Policy ED-G-1 promotes recruiting targeted community-serving retail, neighborhood-serving commercial and basic industrial activities that meet the needs of city residents. Pre-zoning the
3.45± acre site would implement the policies of the City of Porterville’s General Plan.

ENVIRONMENTAL: On October 28, 2009, the Environmental Coordinator made a preliminary determination that a Negative Declaration would be appropriate for the proposed project. The Initial Study has been transmitted to the interested agencies, groups and individuals for a twenty (20) day review period from October 28, 2009 to November 17, 2009. At the end of that period, no agencies responded.

RECOMMENDATION: That the City Council:

1. Adopt the draft resolution approving a Negative Declaration for General Plan Amendment 1-2009, Zone Change 1-2009 and Annexation 472;

2. Adopt the draft resolution approving General Plan Amendment 1-2009;

3. Approve the proposed Zone Change (pre-zoning) 1-2009 and give first reading to the draft ordinance;

4. Waive further readings of the draft ordinance approving Zone Change (pre-zoning) 1-2009;

5. Adopt a resolution authorizing initiation of preliminary proceedings and filing of the necessary application with LAFCo.

ATTACHMENT:

1. Completed Staff Report
GENERAL PLAN AMENDMENT 1-2009, ZONE CHANGE 1-2009 AND ANNEXATION 472
FOR CITY COUNCIL MEETING OF DECEMBER 1, 2009

APPLICANT: Al A. Saleh
943 W. Westfield Avenue
Porterville, CA 93257

APPLICANT AGENT: James Winton & Associates
150 W. Morton Avenue
Porterville, CA 93257

PROJECT DESCRIPTION: The applicant is requesting approval of a General Plan Amendment 1-2009, Zone Change 1-2009 and Annexation 472 for that site located on the southeast corner of State Route 65 and Westfield Avenue.

SIZE OF PROPERTY: ± 10.9 acres

EXISTING GENERAL PLAN CLASSIFICATION: Public/Institutional and Low Density Residential

PROPOSED GENERAL PLAN CLASSIFICATION: Neighborhood Commercial and Low Density Residential

EXISTING ZONING CLASSIFICATION: County C-1 (Neighborhood Commercial), County R-2 (Two Family Residential Zone) and County R-1-217 (Single-Family Residential).

PROPOSED ZONING CLASSIFICATION: City C-1 (Neighborhood Commercial) and City R-1 (Single Family Residential).

SURROUNDING ZONING LAND USE:

North: City R-1 – Church and Westfield Avenue
West: City R-1 – Single-Family Residential subdivision and State Route 65
South: City R-1 – Single-Family Residential subdivision and Mulberry Avenue
East: City R-1 – Single-Family Residential subdivision and Indiana Street

ENVIRONMENTAL REVIEW:
Based on the aforementioned, the pre-zoning of the 3.45± acres from County C-1 to City C-1 meets the Zoning Ordinance requirements. The remaining portion of the proposed annexation will be automatically zoned City R-1 (Single-Family Residential) pursuant to section 110 A-4 of the Porterville Zoning Ordinance.

ALTERNATIVES TO THE PROJECT AND THEIR EFFECTS

1. No Project. Denial of the proposed General Plan Amendment would not allow the Zone Change (pre-zoning) of that 3.45± acres site located on the southeast corner of State Route 65 and Westfield Avenue. This action would result in the site being automatically zoned City R-1 per Section 110 A-4 of the Porterville Zoning Ordinance upon annexation and remain designated as Public/Institution in the General Plan land use.

2. Approve the Project. Approval of the General Plan Amendment, Zone Change (pre-zoning) and Annexation as proposed, would allow for future development of the site in conformance with the General Plan and proposed zone.

RECOMMENDATION: That the City Council:

1. Adopt the draft resolution approving the Negative Declaration prepared for General Plan Amendment 1-2009, Zone Change 1-2009 and Annexation 472;

2. Adopt a resolution authorizing initiation of preliminary proceedings and filing of the necessary application with LAFCo;

3. Adopt the draft resolution approving General Plan Amendment 1-2009;

4. Approve the proposed Zone Change and give first reading to the draft ordinance;

5. Waive further readings of the draft ordinance approving Zone Change (pre-zoning) 1-2009.
COUNCIL AGENDA: MARCH 3, 2009

SUBJECT: REQUEST AUTHORIZATION TO CONNECT TO CITY WATER AT 943 W. WESTFIELD

SOURCE: Public Works Department - Engineering Division

COMMENT: Staff received a request from Mr. Al Saleh asking that he be allowed to connect his new market at 943 W. Westfield to City water. The market, formerly known as Trucker's Market, is in the County but contiguous to City limits. Mr. Saleh is a City businessman who also owns the Shop & Save Market located at 1206 W. Westfield.

The well serving 943 W. Westfield is high in nitrates, arsenic and toluene and cannot be used to serve his new market. The County Health & Human Services directed Mr. Saleh to connect to City water. City staff informed Mr. Saleh that City water is not available to commercial properties located in the County and must be annexed to the City to receive water service.

Mr. Saleh respectfully asks that the City Council authorize his connection to City water while the annexation process follows its normal course. To show good faith, Mr. Saleh is ready and willing to pay all annexation and water connection fees while LAFCO considers his annexation request. Staff recommends that the applicant submit application and pay all fees related to processing the annexation application prior to connection.

RECOMMENDATION: That the City Council:

1) Direct staff to prepare all annexation and water connection fees on behalf of Mr. Saleh; and

2) Accept payment of annexation and water connection fees from Mr. Saleh prior to connection of water service; and

3) Direct staff to move expeditiously to annex Mr. Saleh's property located at 943 W. Westfield; and

4) Direct the Public Works Director to install a commercial water service to 943 W. Westfield and record that the water service shall remain in place whether the annexation is approved or disapproved; and

Dir Appropriated/Funded CM Item No. 20
February 23, 2009

Mr. Ali Saleh
943 W, Westfield Ave
Porterville, CA 93257

RE: Af's Mini Mart (formerly USA Truckers Mini Mart)

Dear Mr. Saleh,

Based on current information, your application for a public water system permit is denied. After consultation with Ms. Tricia Wathen, Professional Engineer, Department of Public Health - State of California, it has been decided that you may not use this well as a source of potable water for your facility. This well was inactivated July 20, 2006.

MCL violations for Nitrates (40mg/L, MCL of 45mg/L) and Arsenic (10ppb, MCL of 10ppb) Toluene (3.96ppb, MCL of .5ppb) are present at this well.

Also due to the proximity of the water system presently serving the City of Porterville (300 meters approximately) and a letter from this office dated May 20, 2009 informing you of your responsibility to obtain permits for water, are the basis for this determination.

Please contact the City of Porterville, to provide potable water to your facility.

This office has no objection, after final inspection of your gasoline storage tanks and store facility to open for business to sell gasoline, and prepackaged food. You may not prepare any food, coffee, or dispense any soft drink. Water used at this facility may only be used for cleaning, toilets, and non-potable use. Violation of these requirements will void your Food Facility Health Department Permit to Operate.

If you have any questions regarding this decision, you may contact me at 559-733-8441 ext. 2810 or by email at chemans@tularehhsa.org.

Sincerely,

[Signature]

Charles Hemans, REHS III
Water Program Specialist
County of Tulare Environmental Health Services

CH:cbh

CC Mr. Larry Dwoskin, Director, Environmental Health Services
Ms. Tricia Wathen, P.E. Department of Public Health, Fresno Office

5957 South Mooney Boulevard - Visalia, California 93277-9394 - (559) 737-4660
February 25, 2009

Honorable Mayor Hamilton
Respected Council

My name is Al Saleh and I recently purchased the business formerly known as the Truckers Market located at 943 W. Westfield. I have spent a considerable amount of money upgrading and modernizing the store with the hope of opening for business in the very near future. I also own the Shop & Save Market in the City located at 1206 Westfield.

The County Health Department informed me that my well water is high in nitrates, contains toluene and arsenic. Obviously, this well cannot be used to serve my store. The Health Department tells me that I must connect to City water. The property in question is a county island and is contiguous to City limits.

I met with the Porterville City Manager and the Public Works Director and informed them that I am ready and willing to annex to the City so that I can connect to City water. To show good faith, I am prepared to pay all annexation and water connection fees immediately while LAFCO considers my request for annexation.

Sincerely,

Al Saleh
Owner
AYES: McCracken, F. Martinez, P. Martinez, Hamilton
NOES: Ward
ABSTAIN: None
ABSENT: None

Disposition: Approved

The Council recessed for ten minutes at 9:30 p.m.

SCHEDULED MATTERS

19. APPROVAL OF ECONOMIC DEVELOPMENT PROGRAM – SHOP LOCAL CAMPAIGN

Recommendation: That the City Council:
   1. Approve the “Shop Porterville First” campaign; and
   2. Authorize the use of salary savings realized through reimbursement by the Economic Development Administration grant for the project; and
   3. Authorize waiver of the Transit portion of bus advertisement rental revenue and advertising related to the Shop Porterville First Campaign.

The City Manager introduced the item, and the staff report was waived at the Council’s request.

COUNCIL ACTION: MOVED by Council Member Pedro Martinez, SECONDED by Council Member Felipe Martinez that the City Council approve the “Shop Porterville First” campaign; authorize the use of salary savings realized through reimbursement by the Economic Development Administration grant for the project; and authorize waiver of the Transit portion of bus advertisement rental revenue and advertising related to the Shop Porterville First Campaign. The motion carried unanimously.

Disposition: Approved

20. REQUEST AUTHORIZATION TO CONNECT TO CITY WATER AT 943 W. WESTFIELD

Recommendation: That the City Council:
   1. Direct staff to prepare all annexation and water connection fees on behalf of Mr. Saleh;
   2. Accept payment of annexation and water connection fees from Mr. Saleh prior to connection of water service;
   3. Direct staff to move expeditiously to annex Mr. Saleh’s property located at 943 W. Westfield;
   4. Direct the Public Works Director to install a commercial water
APPLICATION FOR PROPERTY ANNEXATION

NOTE: The basic purpose of the Annexation approval process as outlined in the City of Porterville Annexation Policy is to assure that the incorporation of real property into the city is performed in compliance with the California Government Code more specifically the Cortese-Knox-Hertzberg Local Government Reorganization Act, to ensure that future growth will be logically planned and serviced to protect the public health, safety, and welfare.

Permit Number ___________________ Resolution Number ___________________

CHECK ALL BEING APPLIED FOR:
☐ Infill of a County Island
☐ Full Annexation
☐ Annexation Creating a County Island
☐ Sphere of Influence Amendment
☐ Pre-zoning
☐ General Plan Amendment

Project Name: AL MUNI MART

Name of Applicant/Agent: AL A SALES

Address of Applicant/Agent: 943 WESTFIELD PORTERVILLE

Name of Property Owner: AL A SALES

Address of Owner: 943 WESTFIELD

Project Location (address, cross street): HY 65

Assessors Parcel Number(s): 246200029

The applicant requests an annexation to use the above-described property for the following purposes: CREEATION WATER

Date of most recent sale of property: JULY 07

List below the original deed restrictions pertaining to the type of permit requested. (Provide Copy)

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
CONSENT TO ANNEXATION

The undersigned property owners, their heirs, successors and assignees hereby consent to the annexation of their property to the City of Porterville as provided in the Cortese-Knox Local Government Reorganization Act of 1985 and the Codes and Statutes of the States of California. The owners hereby affirm that all successive owners shall be notified in writing of the consent, and no successive owner shall have recourse against the City resulting from this annexation consent.

The owner acknowledges by signature that the City of Porterville has granted privileges and/or services in order to secure this consent and that this document will be duly recorded with the County Recorder.

A.P.N. of Property to be Annexed

246 - 200 - 029

Address

943 W. Westfield
Porterville, CA

Name (Type or Print)

Ali A. Saleh

Signature

Date 2-29-09
APPLICATION FOR CHANGE OF ZONE

NO. 1-2009

(City)

CURRENT ZONING OF PARCEL(S): O.A. (city)

PROPOSED ZONING OF PARCEL(S): COMMERCIAL C-1 - city

NAME, MAILING ADDRESS AND TELEPHONE NUMBER OF PROPERTY OWNER(S):

A&A SALKH 559-333-0486
943 WESTFIELD PORTERVILLE CA 93257

NAME, MAILING ADDRESS AND TELEPHONE NUMBER OF APPLICANT / CONTACT PERSON:

PROJECT ADDRESS AND NEAREST CROSS STREETS:

Hay 65

1. Does public necessity require the proposed change? Is there a real need in the community for more of the types of uses permitted by the zone requested than can be accommodated in the areas already zoned for such uses? (Fulfil explain your answer, considering the surrounding property as well as the property proposed to be reclassified)

2. Is the subject property more suitable for the purposes permitted in the proposed zone than for the purposes permitted in the present zone? (Answer completely, give all reasons for your answer)

3. Would the uses permitted by the proposed zone be detrimental in any way to surrounding property? (Explain reasons supporting your answer)

4. What were the original deed restrictions, if any, concerning the type and class of uses permitted on the property involved? Give the expiration date of these restrictions. (Please attach a copy of these restrictions and properly underscore the portions that are relevant.)

ATTACHMENT

ITEM NO. 5
TO THE PORTERVILLE CITY COUNCIL:

We, the owners of real property set opposite our respective names, hereby petition to have Ordinance No. 707 amended by reclassifying from Zone (a) to Zone (c-1), the property described hereon and shown in colored cross-hatching on the attached map which, together with the Property Owner’s List, also attached hereto, are made a part of this petition.

OWNER’S DECLARATION

STATE OF CALIFORNIA  
COUNTY OF TULARE  

I, ALvin A. Sato, 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 this 8 day of May, 2009.

Telephone (559) 782-5761 Signed

Mailing Address 943 Westfield Porterville CA

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 7-8-09

Date

Receipt No.

By

Mayor of the City of Porterville
PUBLIC HEARING


SOURCE: COMMUNITY DEVELOPMENT DEPARTMENT - PLANNING DIVISION

HISTORY: On February 23, 2009 Mr. Al Saleh received a letter from the Tulare County Health Services Department informing him that his application for a public water system permit at 943 W. Westfield Avenue in Porterville was denied. According to Ms. Tricia Wathen, Professional Engineer for the Department of Public Health, State of California, the well serving the facility was high in nitrates, arsenic, and toluene and could not be used to prepare food, coffee, or dispense any soft drinks at his newly established convenience market at 943 W. Westfield Avenue in Porterville. Due to the proximity of the City of Porterville water system, the Tulare County Health and Human Service Agency directed Mr. Saleh to contact the City of Porterville to possibly provide potable water to his facility. On February 25, 2009, City Staff received a written request from Mr. Saleh requesting Council permission to be allowed to connect his new market at 943 W. Westfield Avenue to City water. Due to the water issues, on March 3, 2009, Mr. Saleh received Council approval to connect to City water subject to the following conditions and directions:

1) That staff prepare all annexation and water connection fees on behalf of Mr. Saleh; and

2) To accept payment of annexation and water connection fees from Mr. Saleh prior to connection of water services; and

3) That staff proceed expeditiously to annex Mr. Saleh’s property located at 943 W. Westfield; and

4) That Public Works install a commercial water service to 943 W. Westfield and record that the water service shall remain in place whether the annexation is approved or disapproved; and

5) That the applicant signs a “consent to annex” form prior to processing the application in the event the annexation is not successful.

APPROPRIATED/FUNDED ✗ CM ITEM NO. 11
During the process of reviewing the annexation, Mr. Saleh decided that applying for a General Plan Amendment and Zone Change (pre-zoning) would be in his best interest for future expansion of his new market at 943 W. Westfield Avenue. The need to properly designate the land stems from Section 110.A.4 of the Zoning Ordinance, which states that any land that is annexed into the City of Porterville would automatically be zoned Single Family Residential (R-1). Mr. Saleh’s establishment is located in the County Neighborhood Commercial area and would have deemed his property a legal non-conforming use.

On September 9, 2009, Mr. Al Saleh’s Annexation Application, Zone Change Application and General Plan Amendment Application were found by Staff to be complete.

COMMENTS: The subject site is located on the southeast corner of Westfield Avenue and State Route 65. The annexation is a request to incorporate a County Island into the City of Porterville, consisting of 10.9± acres of developed land. The site is developed with an existing convenience market, self-service gas pumps and batting cages, five single-family residential dwellings on four parcels, and a City of Porterville owned drainage basin.

The existing convenience market is located on a 3.45± acre site known as Al’s Market. The existing market is developed and is connected to City water authorized by City Council on March 3, 2009. The parcel east of the convenience market is a City-owned 2.26± acre drainage basin and the remaining four parcels (5.19± acres) east of the drainage basin consist of five (5) single-family residential dwellings with curb, gutter, and sidewalk across the frontage of the parcel abutting Westfield Avenue.

General Plan Amendment No. 1-2009 is a request to change the General Plan Land Use Designation from Public/Institutional to Neighborhood Commercial on the 3.45± acre site located on the southeast corner of State Route 65 and Westfield Avenue know as Al’s Market.

Zone Change No. 1-2009 (pre-zoning) proposes to change the existing zoning from County C-1 (Neighborhood Commercial) to City C-1 (Neighborhood Commercial) for the existing convenience market, self-service gas pumps and batting cages on the 3.45± acre site that is generally located on the southeast corner of State Route 65 and Westfield Avenue.

The surrounding land uses of the subject site consist of Medium Density Residential and Low Density Residential uses. The 3.45± acre site would be an ideal location for establishing a Neighborhood Commercial land use designation that will continue the existing use. General Plan Land Use Guiding Policy LU-G-1 promotes a sustainable, balanced land use pattern that responds to existing needs and future needs of the City. Economic Development Guiding Policy ED-G-1 promotes recruiting targeted community-serving retail, neighborhood-serving commercial and basic industrial activities that meet the needs of city residents. Pre-zoning the
3.45± acre site would implement the policies of the City of Porterville's General Plan.

ENVIRONMENTAL: On October 28, 2009, the Environmental Coordinator made a preliminary determination that a Negative Declaration would be appropriate for the proposed project. The Initial Study has been transmitted to the interested agencies, groups and individuals for a twenty (20) day review period from October 28, 2009 to November 17, 2009. At the end of that period, no agencies responded.

RECOMMENDATION: That the City Council:

1. Adopt the draft resolution approving a Negative Declaration for General Plan Amendment 1-2009, Zone Change 1-2009 and Annexation 472;

2. Adopt the draft resolution approving General Plan Amendment 1-2009;

3. Approve the proposed Zone Change (pre-zoning) 1-2009 and give first reading to the draft ordinance;

4. Waive further readings of the draft ordinance approving Zone Change (pre-zoning) 1-2009;

5. Adopt a resolution authorizing initiation of preliminary proceedings and filing of the necessary application with LAFCo.

ATTACHMENT:

1. Completed Staff Report
GENERAL PLAN AMENDMENT 1-2009, ZONE CHANGE 1-2009 AND ANNEXATION 472
FOR CITY COUNCIL MEETING OF DECEMBER 1, 2009

APPLICANT: Al A. Saleh
943 W. Westfield Avenue
Porterville, CA 93257

APPLICANT AGENT: James Winton & Associates
150 W. Morton Avenue
Porterville, CA 93257

PROJECT DESCRIPTION: The applicant is requesting approval of a General Plan Amendment 1-2009, Zone Change 1-2009 and Annexation 472 for that site located on the southeast corner of State Route 65 and Westfield Avenue.

SIZE OF PROPERTY: ± 10.9 acres

EXISTING GENERAL PLAN CLASSIFICATION: Public/Institutional and Low Density Residential

PROPOSED GENERAL PLAN CLASSIFICATION: Neighborhood Commercial and Low Density Residential

EXISTING ZONING CLASSIFICATION: County C-1 (Neighborhood Commercial), County R-2 (Two Family Residential Zone) and County R-1-217 (Single-Family Residential).

PROPOSED ZONING CLASSIFICATION: City C-1 (Neighborhood Commercial) and City R-1 (Single Family Residential).

SURROUNDING ZONING LAND USE:

North: City R-1 – Church and Westfield Avenue
West: City R-1 – Single-Family Residential subdivision and State Route 65
South: City R-1 – Single-Family Residential subdivision and Mulberry Avenue
East: City R-1 – Single-Family Residential subdivision and Indiana Street

ENVIRONMENTAL REVIEW:
Based on the aforementioned, the pre-zoning of the 3.45± acres from County C-1 to City C-1 meets the Zoning Ordinance requirements. The remaining portion of the proposed annexation will be automatically zoned City R-1 (Single-Family Residential) pursuant to section 110 A-4 of the Porterville Zoning Ordinance.

ALTERNATIVES TO THE PROJECT AND THEIR EFFECTS

1. No Project. Denial of the proposed General Plan Amendment would not allow the Zone Change (pre-zoning) of that 3.45± acres site located on the southeast corner of State Route 65 and Westfield Avenue. This action would result in the site being automatically zoned City R-1 per Section 110 A-4 of the Porterville Zoning Ordinance upon annexation and remain designated as Public/Institution in the General Plan land use.

2. Approve the Project. Approval of the General Plan Amendment, Zone Change (pre-zoning) and Annexation as proposed, would allow for future development of the site in conformance with the General Plan and proposed zone.

RECOMMENDATION: That the City Council:

1. Adopt the draft resolution approving the Negative Declaration prepared for General Plan Amendment 1-2009, Zone Chance 1-2009 and Annexation 472;

2. Adopt a resolution authorizing initiation of preliminary proceedings and filing of the necessary application with LAFCo;

3. Adopt the draft resolution approving General Plan Amendment 1-2009;

4. Approve the proposed Zone Change and give first reading to the draft ordinance;

5. Waive further readings of the draft ordinance approving Zone Change (pre-zoning) 1-2009.
COUNCIL AGENDA: MARCH 3, 2009

SUBJECT: REQUEST AUTHORIZATION TO CONNECT TO CITY WATER AT 943 W. WESTFIELD

SOURCE: Public Works Department - Engineering Division

COMMENT: Staff received a request from Mr. Al Saleh asking that he be allowed to connect his new market at 943 W. Westfield to City water. The market, formerly known as Trucker's Market, is in the County but contiguous to City limits. Mr. Saleh is a City businessman who also owns the Shop & Save Market located at 1206 W. Westfield.

The well serving 943 W. Westfield is high in nitrates, arsenic and toluene and cannot be used to serve his new market. The County Health & Human Services directed Mr. Saleh to connect to City water. City staff informed Mr. Saleh that City water is not available to commercial properties located in the County and must be annexed to the City to receive water service.

Mr. Saleh respectfully asks that the City Council authorize his connection to City water while the annexation process follows its normal course. To show good faith, Mr. Saleh is ready and willing to pay all annexation and water connection fees while LAFCO considers his annexation request. Staff recommends that the applicant submit application and pay all fees related to processing the annexation application prior to connection.

RECOMMENDATION: That the City Council:

1) Direct staff to prepare all annexation and water connection fees on behalf of Mr. Saleh; and

2) Accept payment of annexation and water connection fees from Mr. Saleh prior to connection of water service; and

3) Direct staff to move expeditiously to annex Mr. Saleh's property located at 943 W. Westfield; and

4) Direct the Public Works Director to install a commercial water service to 943 W. Westfield and record that the water service shall remain in place whether the annexation is approved or disapproved; and

Dir Appropriated/Funded CM

Item No. 20

ATTACHMENT ITEM NO. 1
February 23, 2009

Mr. Ali Saleh
943 W. Westfield Ave
Porterville, CA 93257

RE: At's Mini Mart (formerly USA Truckers Mini Mart)

Dear Mr. Saleh,

Based on current information, your application for a public water system permit is denied. After consultation with Ms. Tricia Wathen, Profession Engineer, Department of Public Health, State of California, it has been decided that you may not use this well as a source of potable water for your facility. This well was inactivated July 20, 2006.

MCL violations for Nitrate (40mg/L, MCL of 45mg/L) and Arsenic (10ppb, MCL of 10ppb) Toluene (3.96ppb, MCL of .5ppb) are present at this well.

Also due to the proximity of the water system presently serving the City of Porterville (300 meters approximately) and a letter from this office dated May 20, 2008 informing you of your responsibility to obtain permits for water, are the basis for this determination.

Please contact the City of Porterville, to provide potable water to your facility.

This office has no objection, after final inspection of your gasoline storage tanks and store facility to open for business to sell gasoline, and prepackaged food. You may not prepare any food, coffee, or dispense any soft drink. Water used at this facility may only be used for cleaning, toilets, and non-potable uses. Violation of these requirements will void your Food Facility Health Department Permit to Operate.

If you have any questions regarding this decision, you may contact me at 559-733-8441 ext. 2810 or by email at chemans@tularehhsa.org.

Sincerely,

Charles Hemans
REHS III
Water Program Specialist
County of Tulare Environmental Health Services

CC: Mr. Larry Dwoskin, Director, Environmental Health Services
Ms. Tricia Wathen, P.E. Department of Public Health, Fresno Office

5957 South Mooney Boulevard - Visalia, California 93277-9394 - (559) 737-4660
February 25, 2009

Honorable Mayor Hamilton  
Respected Council

My name is Al Saleh and I recently purchased the business formerly known as the Truckers Market located at 943 W. Westfield. I have spent a considerable amount of money upgrading and modernizing the store with the hope of opening for business in the very near future. I also own the Shop & Save Market in the City located at 1206 Westfield

The County Health Department informed me that my well water is high in nitrates, contains toluene and arsenic. Obviously, this well cannot be used to serve my store. The Health Department tells me that I must connect to City water. The property in question is a county island and is contiguous to City limits.

I met with the Porterville City Manager and the Public Works Director and informed them that I am ready and willing to annex to the City so that I can connect to City water. To show good faith, I am prepared to pay all annexation and water connection fees immediately while LAFCO considers my request for annexation.

Sincerely,

Al Saleh  
Owner
AYES: McCracken, F. Martinez, P. Martinez, Hamilton
NOES: Ward
ABSTAIN: None
ABSENT: None

Disposition: Approved

The Council recessed for ten minutes at 9:30 p.m.

SCHEDULED MATTERS

19. APPROVAL OF ECONOMIC DEVELOPMENT PROGRAM – SHOP LOCAL CAMPAIGN

Recommendation: That the City Council:
1. Approve the “Shop Porterville First” campaign; and
2. Authorize the use of salary savings realized through reimbursement by the Economic Development Administration grant for the project; and
3. Authorize waiver of the Transit portion of bus advertisement rental revenue and advertising related to the Shop Porterville First Campaign.

The City Manager introduced the item, and the staff report was waived at the Council’s request.

COUNCIL ACTION: MOVED by Council Member Pedro Martinez, SECONDED by Council Member Felipe Martinez that the City Council approve the “Shop Porterville First” campaign; authorize the use of salary savings realized through reimbursement by the Economic Development Administration grant for the project; and authorize waiver of the Transit portion of bus advertisement rental revenue and advertising related to the Shop Porterville First Campaign. The motion carried unanimously.

Disposition: Approved

20. REQUEST AUTHORIZATION TO CONNECT TO CITY WATER AT 943 W. WESTFIELD

Recommendation: That the City Council:
1. Direct staff to prepare all annexation and water connection fees on behalf of Mr. Saleh;
2. Accept payment of annexation and water connection fees from Mr. Saleh prior to connection of water service;
3. Direct staff to move expeditiously to annex Mr. Saleh’s property located at 943 W. Westfield;
4. Direct the Public Works Director to install a commercial water
APPLICATION FOR PROPERTY ANNEXATION

NOTE: The basic purpose of the Annexation approval process as outlined in the City of Porterville Annexation Policy is to assure that the incorporation of real property into the city is performed in compliance with the California Government Code more specifically the Cortese-Knox-Hertzberg Local Government Reorganization Act, to ensure that future growth will be logically planned and serviced to protect the public health, safety, and welfare.

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<tr>
<th>Permit Number</th>
<th>Resolution Number</th>
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CHECK ALL BEING APPLIED FOR:
- ☑ Infill of a County Island
- ☐ Full Annexation
- ☐ Annexation Creating a County Island
- ☐ Sphere of Influence Amendment
- ☐ Pre-zoning
- ☐ General Plan Amendment

Project Name: AL MINI MART

Name of Applicant /Agent: AL A SALEM  Telephone: ________________________________

Address of Applicant /Agent: 943 WESTFIELD PORTERVILLE

Name of Property Owner: AL A. SALEM  Telephone: ________________________________

Address of Owner: 943 WESTFIELD

Project Location (address, cross street): HY 65

Assessors Parcel Number(s): 246200029

The applicant requests an annexation to use the above-described property for the following purposes: ENCROACH WATER

Date of most recent sale of property: JULY 07

List below the original deed restrictions pertaining to the type of permit requested. (Provide Copy)

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.)
CONSENT TO ANNEXATION

The undersigned property owners, their heirs, successors and assignees hereby consent to the annexation of their property to the City of Porterville as provided in the Cortese-Knox Local Government Reorganization Act of 1985 and the Codes and Statues of the States of California. The owners hereby affirm that all successive owners shall be notified in writing of the consent, and no successive owner shall have recourse against the City resulting from this annexation consent.

The owner acknowledges by signature that the City of Porterville has granted privileges and/or services in order to secure this consent and that this document will be duly recorded with the County Recorder.

A.P.N. of Property to be Annexed
246-200-029

Address
943 W. Westfield
Porterville, CA

Name (Type or Print)
Al A. Saleh

Signature

Date 2-28-09

ATTACHMENT
ITEM NO. 3
CITY OF PORTERVILLE

APPLICATION FOR CHANGE OF ZONE
NO. 1-2009

(See Page 4 of this form for information on preparing and filing this application)

CURRENT ZONING OF PARCEL(S): O.A. (city)  

PROPOSED ZONING OF PARCEL(S): COMMERCIAL C-1 CITY  

NAME, MAILING ADDRESS AND TELEPHONE NUMBER OF PROPERTY OWNER(S):

ALEGRE SAEZ  (559) 383-0486  
948 WESTFIELD PORTERVILLE CA 93257

NAME, MAILING ADDRESS AND TELEPHONE NUMBER OF APPLICANT/CONTACT PERSON:

PROJECT ADDRESS AND NEAREST CROSS STREETS:

HAY ST

---

1. Does public necessity require the proposed change? Is there a real need in the community for more of the types of uses permitted by the zone requested than can be accommodated in the areas already zoned for such uses? (Fully explain your answer, considering the surrounding property as well as the property proposed to be reclassified)

2. Is the subject property more suitable for the purposes permitted in the proposed zone than for the purposes permitted in the present zone? (Answer completely; give all reasons for your answer)

3. Would the uses permitted by the proposed zone be detrimental in any way to surrounding property? (Explain reasons supporting your answer)

4. What were the original deed restrictions, if any, concerning the type and class of uses permitted on the property involved? Give the expiration date of these restrictions. (Please attach a copy of these restrictions and properly underscore the portions that are relevant.)

ATTACHMENT 
ITEM NO. 5
TO THE PORTERVILLE CITY COUNCIL:

We, the owners of real property set opposite our respective names, hereby petition to have Ordinance No. 707 amended by reclassifying from Zone \( E_A \) to Zone \( C-1 \), the property described hereon and shown in colored cross-hatching on the attached map which, together with the Property Owner's List, also attached hereto, are made a part of this petition.

OWNER'S DECLARATION

STATE OF CALIFORNIA  ) ss
COUNTY OF TULARE  )

I, \( \text{Ali A. Saleh} \), 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 \( \text{Porterville} \), this \( \text{day of June, 2009} \), and signed:

\( \text{Signed} \)

Telephone (559) 782-5761
Mailing Address \( \text{943 Westfield, Porterville, CA} \)

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 \( 7-8-09 \)  

Date

Receipt No. 

By 

Mayor of the City of Porterville
Legend

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<tr>
<th>Symbol</th>
<th>Description</th>
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<tbody>
<tr>
<td>□</td>
<td>County Island/ Annexation 472</td>
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<tr>
<td>□</td>
<td>Convenience Market Subject Site Zoned County- C-1</td>
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<td>Public/Insitutional- OA</td>
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<td>■■■■■■</td>
<td>Low Density Residential/ R-1</td>
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<td>Medium Density Residential/ R-2</td>
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General Plan Amendment 1-2009
Zone Change 1-2009
City of Porterville

Environmental Checklist Form

1. Project title: Annexation No. 472 (County Island), General Plan Amendment 1-2009 and Zone Change 1-2009

2. Lead agency name and address: City of Porterville
   291 North Main Street
   Porterville, CA 93257

3. Contact person and phone number: Benjamin Kimball (559) 782-7460

4. Project location: Located at the Southeast corner of Westfield Avenue and State Route 65.

5. Latitude, Longitude: 36° 5'11.47"N, 119° 2'19.59"W

6. Project sponsor's name and address: Al A. Saleh
   943 W. Westfield Avenue
   Porterville, CA 93257

7. Existing General plan designation: Public/Institutional and Low Density Residential
   Proposed General plan designation: Neighborhood Commercial and Low Density Residential

8. Zoning: EXISTING: County C-1 (Neighborhood Commercial), County R-2 (Two Family Residential Zone) and County R-1-217 (Single Family Residential).
   PROPOSED: City C-1 (Neighborhood Commercial) and City R-1 (Single Family Residential).

9. Description of project:

Annexation No: 472, proposes the inclusion into the City of Porterville, a County Island consisting of 10.9± acres of developed land to include an existing convenience market with self service gas pumps and batting cages, five single family residential dwellings on four parcels, and a City of Porterville owned drainage basin. The existing convenience market is located on a 3.45± acre site known as Al’s Market. The existing market is developed and is connected to city water authorized by City Council on March 3, 2009,
ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED:

The environmental factors checked below would be potentially affected by this project, involving at least one impact that is a Potentially Significant Impact as indicated by the checklist on the following pages.

☐ Aesthetics  ☐ Agriculture Resources  ☐ Air Quality

☐ Biological Resources  ☐ Cultural Resources  ☐ Geology/Soils

☐ Hazards & Hazardous Materials  ☐ Hydrology/Water Quality

☐ Land Use/Planning  ☐ Mineral Resources  ☐ Noise

☐ Population/Housing  ☐ Public Services  ☐ Recreation

☐ Transportation/Traffic  ☐ Utilities/Service Systems

☐ Mandatory Findings of Significance

DETERMINATION: (To be completed by the Lead Agency)

On the basis of this initial evaluation:

☒ I find that the proposed project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared.

☐ I find that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because revisions in the project have been made by or agreed to by the project proponent. A MITIGATED NEGATIVE DECLARATION will be prepared.

☐ I find that the proposed project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.

☐ I find that the proposed project MAY have a “potentially significant impact” or “potentially significant unless mitigated” impact on the environment, but at least one effect 1) has been adequately analyzed in an earlier document pursuant to applicable legal standards, and 2) has been addressed by mitigation measures based on the earlier analysis as described on attached sheets. An ENVIRONMENTAL IMPACT REPORT is required, but it must analyze only the effects that remain to be addressed.
EVALUATION OF ENVIRONMENTAL IMPACTS:

1) A brief explanation is required for all answers except "No Impact" answers that are adequately supported by the information sources a lead agency cites in the parentheses following each question. A "No Impact" answer is adequately supported if the referenced information sources show that the impact simply does not apply to projects like the one involved (e.g., the project falls outside a fault rupture zone). A "No Impact" answer should be explained where it is based on project-specific factors as well as general standards (e.g., the project will not expose sensitive receptors to pollutants, based on a project-specific screening analysis).

2) All answers must take account of the whole action involved, including off-site as well as on-site, cumulative as well as project-level, indirect as well as direct, and construction as well as operational impacts.

3) Once the lead agency has determined that a particular physical impact may occur, then the checklist answers must indicate whether the impact is potentially significant, less than significant with mitigation, or less than significant. "Potentially Significant Impact" is appropriate if there is substantial evidence that an effect may be significant. If there are one or more "Potentially Significant Impact" entries when the determination is made, an EIR is required.

4) "Negative Declaration: Less Than Significant With Mitigation Incorporated" applies where the incorporation of mitigation measures has reduced an effect from "Potentially Significant Impact" to a "Less Than Significant Impact." The lead agency must describe the mitigation measures, and briefly explain how they reduce the effect to a less than significant level (mitigation measures from Section XVII, "Earlier Analyses," may be cross-referenced).

5) Earlier analyses may be used where, pursuant to the tiering, program EIR, or other CEQA process, an effect has been adequately analyzed in an earlier EIR or negative declaration. Section 15063(c)(3)(D). In this case, a brief discussion should identify the following:

   a) Earlier Analysis Used. Identify and state where they are available for review.
   b) Impacts Adequately Addressed. Identify which effects from the above checklist were within the scope of and adequately analyzed in an earlier document pursuant to applicable legal standards, and state whether such effects were addressed by mitigation measures based on the earlier analysis.
   c) Mitigation Measures. For effects that are "Less than Significant with Mitigation Measures Incorporated," describe the mitigation measures, which were incorporated or refined from the earlier document and the extent to which they address site-specific conditions for the project.

6) Lead agencies are encouraged to incorporate into the checklist references to information sources for potential impacts (e.g., general plans, zoning ordinances). Reference to a previously prepared or outside document should, where appropriate, include a reference to the page or pages where the statement is substantiated.

7) Supporting Information Sources: A source list should be attached, and other sources used or individuals contacted should be cited in the discussion.

8) This is only a suggested form, and lead agencies are free to use different formats; however, lead agencies should normally address the questions from this checklist that are relevant to a project's environmental effects in whatever format is selected.

9) The explanation of each issue should identify:
   a) The significance criteria or threshold, if any, used to evaluate each question;
   b) The mitigation measure identified, if any, to reduce the impact to less than significance
I. **AESTHETICS**

Would the project:

<table>
<thead>
<tr>
<th></th>
<th>Potentially Significant Impact</th>
<th>Less than Significant Impact</th>
<th>Less than Significant Impact</th>
<th>No Impact</th>
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</thead>
<tbody>
<tr>
<td>a) Have a substantial adverse effect on a scenic vista?</td>
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<td>☐</td>
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<tr>
<td>b) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?</td>
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<tr>
<td>c) Substantially degrade the existing visual character or quality of the site and its surroundings?</td>
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<tr>
<td>d) Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?</td>
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<td>☐</td>
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</table>

**Responses:**

a), b), c), d): **No Impact**. The project area is located on the San Joaquin Valley floor within the City of Porterville, in south central Tulare County. The project as it is already developed would not degrade the visual quality of the site and is already a part of the regional view shed. No additional development is currently proposed. The project site is over two miles away from of the eligible State scenic highway of SR 190. Sources: 1, 25, 30 & 37
III. AIR QUALITY  
Would the project:

a) Conflict with or obstruct implementation of the applicable air quality plan?  

b) Violate any air quality standard or contribute substantially to an existing or projected air quality violation?  

c) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions which exceed quantitative thresholds for ozone precursors)?

d) Expose sensitive receptors to substantial pollutant concentrations?

e) Create objectionable odors affecting a substantial number of people?

f) Substantially alter air movement, moisture, or temperature, or cause any substantial change in climate?

Response:

a), b), c), d): No Impact. The project area lies within the San Joaquin Valley Air Basin, which is managed by the San Joaquin Valley Air Pollution Control District (SJVAPCD). National Ambient Air Quality Standards (NAAQS) and California Ambient Air Quality Standards (CAAQS) have been established for the following criteria pollutants: carbon monoxide (CO), ozone (O₃), sulfur dioxide (SO₂), nitrogen dioxide (NO₂), particulate matter (PM₁₀ and PM₂.₅), and lead (Pb). The CAAQS also set standards for sulfates, hydrogen sulfide, and visibility.

Areas are classified under the Federal Clean Air Act as either “attainment” or “non-attainment” areas for each criteria pollutant based on whether the NAAQS have been achieved or not. Attainment relative to the State standards is determined by the California Air Resources Board (CARB). The San Joaquin Valley is designated as a State and Federal non attainment area for O₃, PM₁₀, and PM₂.₅, and a State and Federal attainment area for CO, SO₂, NO₂, and Pb (SJVAPCD, 2008).

The project as proposed would not conflict with any applicable air quality plans, nor would it create a cumulatively considerable net increase in criteria pollutants or expose sensitive receptors to substantial concentrations of pollutants. Operation of the project would not change following annexation, general plan amendment and zone change of the developed sites. No additional development is proposed. The proposed land uses were evaluated in the Porterville 2030 General Plan (2008).

e): No Impact. The project would not generate any new source of odors. Sources: 1, 5, 23 & 24
IV. BIOLOGICAL RESOURCES
Would the project:

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<tr>
<th>Potential Impact</th>
<th>Less than Significant</th>
<th>Mitigation</th>
<th>Less than Significant</th>
<th>No Impact</th>
</tr>
</thead>
</table>

a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service? [No Impact]

b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Game or US Fish and Wildlife Service? [No Impact]

c) Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means? [No Impact]

d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites? [No Impact]

e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance? [No Impact]

f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan? [No Impact]

Response:

a), b), c), d), e), f): No Impact. An onsite inspection was conducted by City Staff on 03/04/09, which identified no sensitive species and no sensitive habitat located on the sites. The subject site has no known sensitive biological resources. No development is currently proposed on the site. Approval of the project would not result in a conflict with local ordinances, policies, or habitat conservation plans. Sources: 5, 15, 12, 30
VI. GEOLOGY AND SOILS

Would the project:

a) Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:
   i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42.
   ii) Strong seismic ground shaking?
   iii) Seismic-related ground failure, including liquefaction?
   iv) Landslides?

b) Result in substantial soil erosion or the loss of topsoil?

c) Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?

d) Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (2007), creating substantial risks to life or property?

e) Have soils incapable of adequately supporting the use of septic tanks or alternative waste water disposal systems where sewers are not available for the disposal of waste water?

Response:

a), b), c), d), e): No Impact. According to the California Geological Survey, there are no established or recognized earthquake fault zones in Tulare County. The project is not at risk, nor will it create a risk of fault rupture, seismic ground shaking, seismic related ground failure, liquefaction, or landslides. The project area is located on stable, medium to coarse textured soils with a high infiltration rate, which are not subject to landslide, lateral spreading, subsidence, liquefaction, collapse or expansion. No septic tanks or alternate wastewater disposal will be constructed as part of the project. Sources: 5, 7, 29 & 30
c): Less Than Significant Impact. The Monte Vista Elementary school is approximately one-quarter mile east of the existing convenience store and gasoline refueling station. Compliance with the provisions of the HMBP and with Tulare County EHS requirements would ensure that any impacts would be less than significant.

d), e), f), g), h): No Impact. The project site is not listed as a hazardous materials site pursuant to Government Code Section 65962.5 and is not included on a list compiled by the Department of Toxic Substances Control. The project is not within the vicinity of an airport or an airstrip. The project will not result in any change or interference with an adopted emergency response plan or evacuation plan. Mandatory conformance with the Porterville Zoning Ordinance and the Porterville weed abatement program will ensure that the project will not expose people or structures to a significant risk of loss due to wildfire. Sources: 1, 7, & 12.
b): **No impact.** The proposed project is consistent with the planned use of that area, and water usage has been planned for in the General Plan. Existing infrastructure and supply is sufficient to serve future development of the project site. Sources: 1, 5, 33 & 35

c), d), e): **No Impact.** Impervious surfaces would not result in a negative impact as there is currently no proposed development. The installation of the curbs, gutters and drop inlets to allow water to be channeled into the existing storm drain line would prevent any future drainage problems. Sources: 1, 5, 21, & 33.

g), h), i), j): **No Impact.** No development is currently proposed at the site. However, existing lot coverage could allow future expansion to the residential lots and additional commercial structures. The *FEMA Flood Insurance Rate Map 065066 1633 E June 16, 2009* indicates the site is in Flood Zone X, which are area of 0.2% annual flood; areas of 1% annual chance flood with average depths of less than 1 square mile; and areas protected by levees from 1% annual chance flood. Future development of the sites with commercial uses would not impede flood flows, nor would it expose people or structures to a significant risk due to flooding. The project area is not within an area subject to inundation by seiche, tsunamis, or mudflows. Sources: 1, 5, 26
X. MINERAL RESOURCES
Would the project:

a) Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?

b) Result in the loss of availability of a locally-important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan?

Response:

a), b): No Impact. There are no known mineral resources on the proposed project area. Sources: 1 and 5
XII. POPULATION AND HOUSING

Would the project:

a) Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?

b) Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere?

c) Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere?

Response:

a), b), c): No Impact. Project site is developed with existing single family residential dwellings, a drainage basin and a convenience market. No housing or people would be displaced by the annexation, general plan amendment and zone change. No future development is associated with the proposal of the project. Source 1, 25 & 30
XIV. RECREATION

a) Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?

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b) Does the project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment?

Response:

a), b): No Impact. The project, as it is already developed and no additional development is proposed. The project would not result in increased usage of recreational facilities, nor would it create a need for new recreational facilities. Source: 5 & 8
### XVI. UTILITIES AND SERVICE SYSTEMS

Would the project:

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<th>Less than Significant Impact</th>
<th>No Impact</th>
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a) Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board?

b) Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?

c) Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?

d) Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed?

e) Result in a determination by the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?

f) Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs?

g) Comply with federal, state, and local statutes and regulations related to solid waste?

**Response:**

a), b), c), d), e): No Impact. The project will not create an additional need for water usage, treatment, or drainage as the sites are already developed and no additional development is currently proposed. The project will not increase the amount of storm water runoff as the project area is currently paved. Sources: 17, 20, 21, & 28
RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE CONTAINING FINDINGS IN SUPPORT OF APPROVAL OF A NEGATIVE DECLARATION OF ENVIRONMENTAL IMPACT FOR GENERAL PLAN AMENDMENT 1-2009, ZONE CHANGE (PRE-ZONING) 1-2009 AND ANNEXATION 472 FOR THAT 10.9± ACRE SITE LOCATED ON THE SOUTHEAST CORNER OF STATE ROUTE 65 AND WESTFIELD AVENUE

WHEREAS: The City Council of the City of Porterville at its regularly scheduled meeting of March 3, 2009, gave Al A. Saleh authorization to connect to City water at 943 W. Westfield Avenue with the condition of filing an annexation application for the site; and

WHEREAS: The Applicant has submitted applications for a General Plan Amendment 1-2009 and Zone Change 1-2009 (pre-zoning), as well as an annexation application; and

WHEREAS: The City Council of the City of Porterville at its regularly scheduled meeting of December 1, 2009, conducted a public hearing to consider General Plan Amendment 1-2009, Zone Change 1-2009 (pre-zoning) and Annexation 472 for that site located on the southeast corner of State Route 65 and Westfield Avenue; and

WHEREAS: The site consists of 10.9± acres of developed land to include an existing convenience market with self service gas pumps and batting cages, five single family residential dwellings on four parcels, and a City of Porterville owned drainage basin. The existing convenience market is located on a 3.45± acre site known as Al’s Market. The parcel east of the convenience market is a City owned 2.26± acre drainage basin. The remaining four parcels (5.19± acres), east of the drainage basin, consist of five (5) single family residential dwellings; and

WHEREAS: General Plan Amendment 1-2009, is a proposal to change the General Plan Land Use Designation from Public/Institutional to Neighborhood Commercial on that 3.45± acre site located on the southeast corner of State Route 65 and Westfield Avenue know as Al’s Market at 943 W. Westfield Avenue; and

WHEREAS: Zone Change 1-2009 (pre-zoning of APN# 246-200-029) is a proposal to change the existing County C-1 Zoning (Neighborhood Commercial) to the City C-1 (Neighborhood Commercial) Zone on that 3.45± acre site upon approval of General Plan Amendment 1-2009; and

WHEREAS: The pre-zoning is required so as not to annex the property as Single-Family Residential (R-1) pursuant to Section 110:A.4. of the City of Porterville Zoning Ordinance; and

WHEREAS: Annexation 472 is a proposal to incorporate 10.9± acres of land into the City Limits of Porterville. In accordance with the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, the City Council may authorize filing of the

ATTACHMENT
ITEM NO. 9
RESOLUTION NO.__________

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE CONTAINING FINDINGS IS SUPPORT OF APPROVAL OF GENERAL PLAN AMENDMENT 1-2009 FOR THAT 3.45± ACRE SITE LOCATED ON THE SOUTHEAST CORNER OF STATE ROUTE 65 AND WESTFIELD AVENUE GENERALLY KNOWN AS AL’S MARKET AT 943 W. WESTFIELD AVENUE.

WHEREAS: The City Council of the City of Porterville at its regularly scheduled meeting of December 1, 2009, conducted a public hearing to consider General Plan Amendment 1-2009, Zone Change 1-2009 (pre-zoning) and Annexation 472 for that site located on the southeast corner of State Route 65 and Westfield Avenue; and

WHEREAS: Annexation 472 is a proposal to incorporate 10.9± acres of land into the City Limits of Porterville. In accordance with the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, the City Council may authorize filing of the necessary application and proposal for presenting Annexation No. 472 to the Local Agency Formation Commission (LAFCo) for its review and approval; and

WHEREAS: The City Council of the City of Porterville at its regularly scheduled meeting of December 1, 2009, opened the public hearing to consider General Plan Amendment 1-2009 and Zone Change 1-2009 (pre-zoning) for that 3.45± acre site located on the southeast corner of State Route 65 and Westfield Avenue; and

WHEREAS: General Plan Amendment 1-2009, is a proposal to change the Land Use Element of the General Plan from Public/Institutional to Neighborhood Commercial on that 3.45± acre site located on the southeast corner of State Route 65 and Westfield Avenue know as Al’s Market; and

WHEREAS: In conjunction with General Plan Amendment 1-2009, Zone Change 1-2009 (pre-zoning) is a proposal to change the existing County C-1 Zoning (Neighborhood Commercial) to the City C-1 (Neighborhood Commercial) Zone on that 3.45± acre site upon approval of General Plan Amendment 1-2009; and

WHEREAS: The City Council received testimony from all interested parties relative to the General Plan Amendment; and

WHEREAS: The City Council made the following findings:

1. That the proposed General Plan Amendment is consistent with General Plan Land Use Guiding Policy (LU-G-1) and Economic Development Guiding Policy (ED-G-1).
PUBLIC/INSTITUTIONAL TO
NEIGHBORHOOD COMMERCIAL
APN# 246-200-029

PROJECT LOCATION

EXHIBIT "A"
ORDINANCE NO.______

AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF PORTERVILLE APPROVING ZONE CHANGE 1-2009 BEING A PRE-
ZONING FROM COUNTY C-1 (NEIGHBORHOOD COMMERCIAL) TO
CITY C-1 (NEIGHBORHOOD COMMERCIAL) FOR THAT 3.45± ACRE SITE
LOCATED AT THE SOUTHEAST CORNER OF STATE ROUTE 65 AND
WESTFIELD AVENUE.

WHEREAS: The City Council of the City of Porterville at its regularly scheduled
meeting of December 1, 2009, conducted a public hearing to consider General Plan
Amendment 1-2009, Zone Change 1-2009 (pre-zoning) and Annexation 472 for that site
located on the southeast corner of State Route 65 and Westfield Avenue; and

WHEREAS: Zone Change 1-2009 (pre-zoning) is a proposal to change the
existing County C-1 Zoning (Neighborhood Commercial) to City C-1 (Neighborhood
Commercial) Zone for that 3.45± acre site located on the southeast corner of State Route
65 and Westfield Avenue; and

WHEREAS: The City Council of the City of Porterville at its regularly scheduled
meeting of December 1, 2009, opened the public hearing to consider General Plan
Amendment 1-2009 and Zone Change 1-2009 (pre-zoning) for that 3.45± acre site
located on the southeast corner of State Route 65 and Westfield Avenue; and

WHEREAS: In order to facilitate pre-zoning the property, a General Plan
Amendment is required to re-designate the site from Public/Institutional to Neighborhood
Commercial. General Plan Amendment 1-2009 is a proposal to change the Land Use
Element of the General Plan from Public/Institutional to Neighborhood Commercial on
that 3.45± acre site located on the southeast corner of State Route 65 and Westfield
Avenue know as Al's Market located at 943 W. Westfield Avenue; and

WHEREAS: Zone Change 1-2009 (pre-zoning) is contingent upon the passage of
General Plan Amendment 1-2009; and

WHEREAS: The City Council of the City of Porterville, after proceedings duly
had and taken, and due and legal notice having been given, as prescribed by Ordinance
1198 of the City of Porterville, and the laws of the State of California, has determined
that the public interest would best be served by approval of the proposed pre-zoning from
County C-1 (Neighborhood Commercial) to City C-1 (Neighborhood Commercial) for
that 3.45± acre site located on the southeast corner of State Route 65 and Westfield
Avenue; and
Peter V. McCracken, Mayor

ATTEST:
John Lollis, City Clerk

By
  Patrice Hildreth, Chief Deputy City Clerk

ATTACHMENTS: Exhibit A "Zone Change Map"
ZONE CHANGE NO. 1-2009

Westfield Avenue

APN 246-200-029

PROPOSED ZONE CHANGE
CITY OA TO CITY C-1
APN# 246-200-029

Project Location

Exhibit "A"
RESOLUTION NO.__________

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE, COUNTY OF TULARE, STATE OF CALIFORNIA MAKING APPLICATION FOR CHANGE OF ORGANIZATION OF TERRITORY KNOWN AS ANNEXATION NO. 472

WHEREAS, the California State Legislature finds and declares that it is the policy of the State to encourage orderly growth and development which is essential to the social, fiscal, and economic well-being of the State, and recognizes that the logical formation and determination of City boundaries is an important factor in promoting the orderly development of urban areas; and

WHEREAS, the legislature recognizes that population density and intensive residential, commercial, and industrial development necessitate spectrum and high level of community services and controls. The legislature also recognizes that when areas become urbanized to the extent that they need the full range of community services, priorities must be established regarding the type and levels of such services that the residents of an urban community need and desire; that community service priorities be established by weighing the total community service needs against total financial resources available for securing community services; and that such community service priorities must reflect local circumstances, conditions, and limited financial resources. The legislature finds and declares that a single government agency, rather than several limited purpose agencies, is better able to assess and be accountable for community service needs and financial resources and, therefore, is the best mechanism for establishing community service priorities; and

WHEREAS, the City Council of the City of Porterville desires to initiate proceedings for a change of organization of the hereinafter described territory (Exhibit "A").

WHEREAS: The City Council of the City of Porterville at its regularly scheduled meeting of March 3, 2009, gave A. A. Saleh authorization to connect to City water at 943 W. Westfield Avenue with the condition of filling an annexation application for the site; and

WHEREAS: The City Council of the City of Porterville at its regularly scheduled meeting of December 1, 2009, conducted a public hearing to consider General Plan Amendment 1-2009, Zone Change 1-2009 (pre-zoning) and Annexation 472 for that site located on the southeast corner of State Route 65 and Westfield Avenue; and

WHEREAS: The site consists of 10.9± acres of developed land to include an existing convenience market with self service gas pumps and batting cages, five single family residential dwellings on four parcels, and a City of Porterville owned drainage...
H. In conjunction with General Plan Amendment 1-2009, Zone Change 1-2009 (pre-zoning) is a proposal to change the zone form the existing County C-1 Zoning (Neighborhood Commercial) to City C-1 (Neighborhood Commercial) Zone on that 3.45± acre site upon approval of General Plan Amendment 1-2009.

I. That the annexation is contingent upon approval of General Plan Amendment 1-2009 and Zone Change 1-2009 (pre-zoning).

J. It is hereby requested that proceedings be taken for the change of organization proposed herein.

2. The City Clerk (or other official) of the City of Porterville is hereby authorized and directed to file a certified copy of this resolution with the Executive Officer of the Local Agency Formation Commission of the County of Tulare, State of California.

________________________
Peter V. McCracken, Mayor

ATTEST:
John Lollis, City Clerk

By ________________
Patrice Hildreth, Chief Deputy City Clerk

ATTACHMENTS: Exhibit A “Legal Description”
Annexation No. ____

That portion of the Northeast quarter of the Southeast quarter of Section 22, Township 21 South, Range 27 East, Mount Diablo Base and Meridian, County of Tulare, State of California, described as follows:

Beginning at an angle point in the existing City Limits of the City of Porterville, said point being in the South line of Westfield Avenue, a distance of 328.5 feet West of the East line of the Southeast quarter of said Section 22, said point also being the Northwest corner of Mulberry Meadow Estates, Unit No. 4 per map recorded in Book 29, page 46 of Maps in the Office of the County Recorder of said County;

(C1) Thence, South, 602.0 feet along said existing City Limits to the Southwest corner of said Mulberry Meadow Estates, Unit No. 4, said Southwest corner being a point in the South line of the North half of Lot 157 of Pioneer Land Company’s First Subdivision, per map recorded in Book 3, page 34 of Maps in the Office of the County Recorder of said County;

(C2) Thence, West, 801.6 feet along said existing City Limits and along the South line of the North half of Lots 157 and 158 of said Pioneer Land Company’s First Subdivision, to a point in the East line of State Highway 65;

(C3) Thence, North, 554.8 feet along said existing City Limits and along the East line of State Highway 65 to an angle point in said existing City Limits;

(C4) Thence, departing the East line of Highway 65, Northeasterly, 50.9 feet along said existing City Limits to an angle point in said existing City Limits;

(C5) Thence, East, 509.8 feet along said existing City Limits to a point in the South line of Westfield Avenue;

(C6) Thence, East, 251.9 feet along said existing City Limits and along the South line of Westfield Avenue to the point of beginning.

Containing 10.9 acres more or less

EXHIBIT A
COUNCIL AGENDA: DECEMBER 1, 2009

PUBLIC HEARING

SUBJECT: LIGHTING MAINTENANCE DISTRICT PROPOSED CONSOLIDATION

SOURCE: PARKS AND LEISURE SERVICES DEPARTMENT

COMMENT: Costs of street lighting and administration of Landscape and Lighting Maintenance Districts (LMDs) have increased. Therefore, consolidation of 26 LMDs that provide lighting only and setting a new assessment has been identified as the most cost effective manner to ensure the continued provision of street lighting at appropriate levels within the affected neighborhoods.

At the City Council meeting on October 6, 2009, Council authorized Staff to proceed with the special election efforts for the proposed consolidation of the 26 Lighting Maintenance Districts listed below and assessment revisions in compliance with Proposition 218 regulations. In addition, Council ordered the preparation of the Engineer’s Report and set the public hearing for December 1, 2009.

<table>
<thead>
<tr>
<th>Beverly Glenn</th>
<th>Northpointe Phases 1 &amp; 2</th>
<th>River View Phases 3 &amp; 4</th>
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<tr>
<td>Castle Woods Phase 1</td>
<td>Ohio North</td>
<td>Sunrise Villa Phases 1-3</td>
</tr>
<tr>
<td>Meadow Breeze Phases 1 &amp; 2</td>
<td>Orchard Ridge Phase 3 - 6 &amp; 9</td>
<td>West View Place</td>
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<tr>
<td>Meadowood Phase 3</td>
<td>Quail Park Phase 2</td>
<td>Williams Ranch Phase 4</td>
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<tr>
<td>New Expressions Phases 1 &amp; 4</td>
<td>Ranch Victoria, Phase 1</td>
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<tr>
<td>New Horizons Phases 1 &amp; 2</td>
<td>River Springs Phases 2 &amp; 3</td>
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Ballots were prepared and mailed to the property owners in the proposed districts on October 15, 2009. Along with the ballots, the mailings included a fact sheet regarding Landscape and Lighting Maintenance Districts, a description of the ballot proposal and assessment calculation, notice of the public hearing, ballot instructions and a return envelope.

To further inform the voters, public workshops were held on Thursday, October 29, 2009 and Monday, November 16, 2009, both at 7:00 p.m. A presentation regarding Lighting Maintenance Districts with details regarding the ballot proposition was given and staff was on hand to give voters an opportunity to ask questions. The presentation was translated into Spanish and the translator was present at both workshops to serve as a liaison ensuring that Spanish speaking property owners were informed and all questions were fully answered. In addition to the workshops, staff answered questions that were received via phone during normal business hours.

Director   Appropriated/Funded   City Manager

ITEM NO.: 12
For their convenience, property owners were given the option to submit the completed and signed ballots via mail using the return envelope provided. Alternatively, if preferred, ballots may have been delivered in person to the City Clerk’s Office or can be submitted at this public hearing. At the close of the public hearing, last call will be announced for ballot submissions and ballot tabulation will commence. Ballots shall be weighted according to the proportional financial obligation and the proposed districts will be consolidated with a revised assessment of $18.42 per subdivision lot for the 2010-2011 Fiscal Year if the ballots submitted in favor exceed the ballots submitted in opposition. If the ballot proposition is not approved, the 26 Lighting Maintenance Districts will remain separate, the assessment will not be revised as proposed and staff will return to Council with options for further direction.

RECOMMENDATION: That the City Council:

- Open the public hearing to hear public comment on the proposed consolidation of Lighting Maintenance Districts and revised assessment;

- Announce the last call for ballot submission, receive written ballots from affected property owners, and close the public hearing;

- Authorize the City Clerk’s Office to commence tabulation of the ballots;

- Adopt the resolution approving the Engineer’s Report, diagram, and assessment method, pending ballot tabulation results of affirmative approval.

ATTACHMENTS:

- Resolution ordering formation of Landscape & Lighting Maintenance District No. 46 and approving Engineer’s Report and assessment method

- Engineer’s Report for Landscape & Lighting Maintenance District No. 46

- Diagram for Landscape & Lighting Maintenance District No. 46
RESOLUTION NO. – 2009

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE
ORDERING FORMATION OF LANDSCAPE AND LIGHTING
MAINTENANCE DISTRICT NO. 46,
APPROVING ENGINEER’S REPORT FOR SAID DISTRICT, AND
APPROVING THE METHOD AND LEVY OF ASSESSMENTS

WHEREAS, the City Council of the City of Porterville did on the 6th day of October 2009, adopt Resolution No. 91 – 2009 declaring its intention to order formation of Landscape and Lighting Maintenance District No. 46; and

WHEREAS, the public hearing on District No. 46 has been set for December 1, 2009, subject to the Landscape and Lighting Act of 1972; and

WHEREAS, a duly noticed public hearing has been held to receive objections to the formation of said Districts, or the levy of assessments.

NOW THEREFORE, BE IT RESOLVED, by the City Council of the City of Porterville as follows:

(1) The public interest, convenience and necessity require the formation of Landscape and Lighting Maintenance District No. 46, and that District shall hereby be formed.

(2) The Engineer’s Report and diagram for the district is hereby approved, and the work as set forth therein is to be done.

(3) That the method of assessment and the levy of assessments as indicated within each of said Engineer’s Reports are hereby approved.

APPROVED AND ADOPTED THIS 1st DAY OF DECEMBER 2009.

__________________________________________
Pete V. McCracken, Mayor

ATTEST:
John D. Lollis, City Clerk

By: _________________________________________
Patrice Hildreth, Chief Deputy City Clerk
CITY OF PORTERVILLE

LANDSCAPE AND LIGHTING

DISTRICT FORMATION
DISTRICT NUMBER 46

CONSOLIDATION OF LIGHTING ONLY DISTRICTS
Previously District 1, Annexations 6, 7, 11, 15, 16, 19 and Districts 3, 9, 10, 11, 14, 17, 18, 20, 23, 26, 28, 29, 32, 33, 34, 35, 37, 38, 39, and 41

October 12, 2009
SECTION 1. Authority for Report

This report is prepared by order of the City Council of the City of Porterville Resolution No. 91-2009. The report is in compliance with the requirement of Article 4, Chapter 1, Division 15 of the Streets and Highways Code, State of California (Landscape and Lighting Act of 1972).

SECTION 2. General Description

The City Council has elected to include lighting at the subdivisions listed below into the Landscape and Lighting Maintenance District No. 46. The City Council has determined that the areas to be lighted will have an effect upon all parcels within the proposed boundaries of the District.

Subdivisions:

Northpointe Subdivision, presently Annexation Number 6, includes subdivision lighting located south of Westfield Avenue and east of Mathew Street

Quail Park Phase II Subdivision, presently Annexation No. 7, includes subdivision lighting located on Lime Street

New Horizons Phase One Subdivision, presently Annexation No. 11, and the remainder parcel includes subdivision lighting located along Springville Ave. and Indiana Street

Northpointe Phase II Subdivision, presently Annexation No. 15, includes subdivision lighting located on Mathew Street

New Horizons Phase II, presently Annexation No. 16, includes subdivision lighting located on the corner of Indiana Street and Springville Avenue

Castle Woods Phase I Subdivision, presently Annexation No. 19, includes subdivision lighting located along Castle Avenue and Newcomb Street

New Expressions Phase I Subdivision, presently District No. 3, includes subdivision lighting located along Indiana Street between Springville Avenue and Cleo Avenue

Orchard Ridge Phase 3, presently District No. 9, includes subdivision lighting located on Mathew Street between Nancy Avenue, Cheryll Avenue and Belmont Street

Orchard Ridge Phase 4, presently District No. 10, includes subdivision lighting located on LaVida Court and Carmelo Street
Orchard Ridge Phase 5, presently District No. 11, includes subdivision lighting located on Mathew Street between LaVida Avenue, Michael Street and Julieanne Avenue.

River Springs, Phase Two Subdivision, presently District No. 14, includes subdivision lighting located on River Avenue, Beverly Street, Date Avenue and River Springs Drive.

Orchard Ridge Phase 6 Subdivision, presently District No. 17, includes subdivision lighting located north of Westfield Avenue between Michael Street and Lombardi Street on Julieann Avenue and Michael Street.

Ohio North Subdivision, presently District No. 18, includes subdivision lighting located on Ohio Way Street.

West View Place Subdivision, presently District No. 20, includes subdivision lighting located on Median Avenue.

Riverview Estates Phase Three Subdivision, presently District No. 23, includes subdivision lighting located on Roby Avenue, Belmont Street, Orange Avenue and Parkwest Street.

Orchard Ridge, Phase Nine Subdivision, presently District No. 26, includes subdivision lighting located on Belmont Street, Pamela, Santa Maria and Pioneer Avenues.

Meadowood, Phase Three Subdivision, presently District No. 28, includes subdivision lighting located on Westfield Avenue, Cheryll Avenue, Salisbury Street, Julieann Avenue and Pioneer Avenue.

River Springs, Phase 3 Subdivision, District No. 29, includes subdivision lighting located on Date Avenue, River Springs Drive and Atkins Court.

Sunrise Villa, Phase 1, 2 and 3 Subdivision, presently District No. 32, includes subdivision lighting located along Mulberry Avenue east of Cottage Street. Phases 2 and 3 were annexed on June 16, 2009.

New Expressions, Phase 4 Subdivision, presently District No. 33, includes subdivision lighting located on Indiana Street between Springville Avenue and the Tule River.

Meadow Breeze, Phase 2 Subdivision, presently District No. 34, includes subdivision lighting located on Castle Avenue and Mathew Street.

Meadow Breeze, Phase 1 Subdivision, presently District No. 35, includes subdivision lighting located on Pioneer Avenue and Salisbury Street.

Riverview Estates, Phase 4 Subdivision, presently District No. 37, includes subdivision lighting located south of Olive Avenue, and east of Mathew Street, including Union Lane and Parkwest Street.

Ranch Victoria, Phase One Subdivision, presently District No. 38, includes subdivision lighting located on the north side of Putnam Avenue and east of Mathew Street.

Williams Ranch Phase 4 Subdivision, presently District No. 39, includes subdivision lighting located on Theta Avenue, Bel-Aire Court, Terry Court, Silver Maple Street and Red Oak Street.

Beverly Glenn Subdivision, presently District No. 41, includes subdivision lighting located between Lotus and Beverly Streets, including Date Avenue.

SECTION 3. Plans and Specifications
The plans and specifications for the lighting were prepared by the developer and are in conformance with the requirements of the City of Porterville. All lights to be maintained will be shown on the subdivision maps as roadway rights-of-way, or easements to be granted to the City of Porterville. The total street lights to be maintained are 272 (223 - 5800 lumen, 45 – 9500 lumen and 3 – 16000 lumen).

SECTION 4. Improvements

Lighting improvements were made by the developer of the subdivisions listed.

SECTION 5. Estimated Costs

The construction cost was be borne by the developer and will not be assessed. The subdivision maps have been filed and recorded and the improvements have been constructed. It is the intent that District 46 will replace the present assessment districts noted in the description. Assessments during the 2010-11 Fiscal Year are as follows.

**Estimated Assessment 2010-2011**

**Electricity / Lighting**

- 223 fixtures, 5,800 lumens @ $41.66 per year $9,290.18
- 45 fixtures 9,500 lumens @ $50.02 per year $2,250.90
- 3 fixtures, 16,000 lumens @ $65.47 per year $196.41

**Project Management Costs**

- 1166 Lots @ $150 plus $4.50 per lot $5,397.00
  - Sub Total (1) 2010-2011 $17,134.49

**Incidental Expenses**

- 15% Reserve Fund $2,570.17
Sub Total (2) 2010-2011  $19,704.66

9% Overhead  $ 1,773.42

Total 2010-2011 Initial Assessment  $21,478.08

*Lighting costs are based on 40% benefit of total cost because lights are spaced closer together resulting in 40% more lights than the city standard outside the maintenance district.

After the 2010-2011 fiscal year, the assessments shall be increased with the cost of service. The increased cost of services shall be the lesser of the actual prior year’s cost or the prior year’s estimated cost adjusted according to the annualized Consumer Price Index rate. The Consumer Price Index is based on the San Francisco Model, and any increase for the year 2011-2012 will refer back to the prior year’s CPI. In the event that the costs of services provided do not increase to exceed the full amount of CPI from one year, such excess CPI percentage shall be carried over from year to year and may be utilized to increase the amount of assessment in future years.

SECTION 6: By approving District 46 as a consolidation of the previous districts indicated in Section 2, all fund balances and deficits in the districts indicated in Section 2 will be transferred to District 46.

SECTION 7. Assessment Diagram
A copy of the proposed assessment diagram entitled “Landscape and Lighting Maintenance District No. 46” is attached to this report and by reference is made part thereof. The assessment diagram consists of a map of the City indicating the locations of all subdivisions in District No. 46 with supplemental detail maps of each subdivision.

SECTION 8. Assessment

The initial cost of constructing improvements has been borne by the developer. The improvement areas are established for the benefit of all properties within the proposed Landscape and Lighting Maintenance District No. 46. The establishment and maintenance of the improvements have been a vital part of the development of each subdivision. The City Council of Porterville has determined that to ensure satisfactory levels of maintenance of street lighting at each of the subdivisions, they should become Landscape and Lighting Maintenance District No. 46, replacing each of the present districts identified in the description. The lighting includes 271 (223 - 5800 lumen, 45 – 9500 lumen and 3 – 16000 lumen) streetlights.

Landscape and Lighting Maintenance District No. 46 will consist of an area comprising approximately 246.29 acres. A total of 1166 lots are proposed to be included in District 46. The improvements will consist of those improvements described in Section 3 of this report. The maintenance of the improvements is vital for the protection of safety, economic and humanistic values. The City Council has determined that, for the preservation of values incorporated within this development, all lots will receive equal benefit from the street lighting.

The determination of benefits takes into consideration the following facts:

1. The purpose of the improvements is to provide a favorable aesthetic appearance to the area.
2. Properly maintained lighting benefits all properties in the development.
3. The lots not adjacent to lighting facility improvements benefit for the maintenance equally to those lots adjacent to the improvements.
Estimated 2010-2011 Assessment

Assessment (A) = \( \frac{\text{Cost (C)}}{\text{Number of Lots (L)}} \)

\[
A = \frac{\$21,478.08}{1166} = 18.42 \text{ per lot for 1166 lots}
\]

Total Assessment for 2010-2011 = $21,477.72
Total developed lot count is 1166 lots.

SECTION 8. Order of Events


2. City Council adopts Resolution of Preliminary Approval of Engineer’s Report.

3. City Council adopts Resolution of Intention to Order the Formation of Landscape and Lighting Maintenance District No. 46 and determines the district.

4. City Council adopts Resolution Ordering the Formation of Landscape and Lighting Maintenance District No. 46, including the transfer of all fund balances and deficits.

5. Every year between April and June the Engineer of Work files a report with the City Council.

6. Every year between April and June, the City Council conducts a public hearing and approves, or modifies the individual assessments.

[Signature]
Douglas Wilson
Engineer of the Work

10-12-09
PORTION OF LANDSCAPE & LIGHTING MAINTENANCE DISTRICT NO. 46
[ORIGINAL DISTRICT NO. 1 ANNEXATION NO. 6 (1 of 2)]

CITY OF PORTERVILLE

IN THE CITY OF PORTERVILLE, COUNTY OF TULARE, STATE OF CALIFORNIA.

SCALE 1" = 150'

GROSS AREA = 20.34 AC.
PORTION OF LANDSCAPE & LIGHTING MAINTENANCE DISTRICT NO. 46  
[ORIGINAL DISTRICT NO. 1 ANNEXATION NO. 7]

CITY OF PORTERVILLE

BEING A PORTION OF THE NE ¼ OF THE SE ¼ OF SECTION 23, T.21S., R.27E., M.D.B.&M.,  
IN THE CITY OF PORTERVILLE, COUNTY OF TULARE, STATE OF CALIFORNIA.

SCALE: 1" = 100'

QUAIL PARK ESTATES  
PHASE 2  
AREA = 3.40 AC.

LIME STREET

E/4 COR
S/N: #1-79-77
PORTION OF LANDSCAPE & LIGHTING MAINTENANCE DISTRICT NO. 46
[ORIGINAL DISTRICT NO. 1 ANNEXATION NO. 11 (1 of 2)]

CITY OF PORTERVILLE

BEING A PORTION OF THE SW 1/4 OF SECTION 35, T.21S., R.27E., M.D.B.&M.,
IN THE CITY OF PORTERVILLE, COUNTY OF TULARE, STATE OF CALIFORNIA.

SCALE: 1" = 200'

REMAINDER
5.65 AC.

NEW HORIZONS
PHASE ONE
10.19 AC.

INDIANA STREET

S P R I N G V I L L E A V E N U E

S W C O R.
SEC 35-21/27

T U L E R I V E R
PORTION OF LANDSCAPE & LIGHTING MAINTENANCE DISTRICT NO. 46
[ORIGINAL DISTRICT NO. 1 ANNEXATION NO. 15 (1 of 2)]

CITY OF PORTERVILLE

BEING THE NORTH ½ OF THE SOUTH ½ OF THE NW ¼ OF THE SE ¼ OF SECTION 21,
T.21S., R.27E., M.D.B.&M., IN THE CITY OF PORTERVILLE, COUNTY OF TULARE, STATE OF CALIFORNIA.
MAINTENANCE ITEMS

1. Street Lighting
PORTION OF LANDSCAPE & LIGHTING MAINTENANCE DISTRICT NO. 46
[ORIGINAL DISTRICT NO. 1 ANNEXATION NO. 19]

CITY OF PORTERVILLE

BEING A PORTION OF THE NORTHEAST ¼ OF SECTION 21, T.21S., R.27E., M.D.B.&M.,
IN THE CITY OF PORTERVILLE, COUNTY OF TULARE, STATE OF CALIFORNIA.

SCALE 1" = 120'
PORTION OF LANDSCAPE & LIGHTING MAINTENANCE DISTRICT NO. 46
[ORIGINAL DISTRICT NO. 3]

CITY OF PORTERVILLE

BEING WITHIN THE EAST ¼ OF THE EAST ¼ OF SECTION 34-21/27, T.21S., R.27E., M.D.B.&M.,
IN THE CITY OF PORTERVILLE, COUNTY OF TULARE, STATE OF CALIFORNIA.

LEGEND

* STREET LIGHTS (10 ea.)
* FIRE HYDRANT

LOCATION MAP

SCALE: 1" = 100'
PORTION OF LANDSCAPE & LIGHTING MAINTENANCE DISTRICT NO. 46
[ORIGINAL DISTRICT NO. 9 (1 of 2)]

CITY OF PORTERVILLE

BEING WITHIN THE NORTH ½ OF SECTION 21, T.21S., R.27E., M.D.B.&M.,
IN THE CITY OF PORTERVILLE, COUNTY OF TULARE, STATE OF CALIFORNIA.
AREA = 11.15 ACRES

LOCATION MAP
NOT TO SCALE

LEGEND
☉ STREET LIGHTS (10 ea.)

SCALE: 1" = 100'

ONE OF TWO SHEETS
PORTION OF LANDSCAPE & LIGHTING MAINTENANCE DISTRICT NO. 46
[ORIGINAL DISTRICT NO. 10]

CITY OF PORTERVILLE

BEING A PORTION OF THE SOUTHEAST ¼ OF THE NORTHWEST ¼ OF SECTION 21,
T.21S., R.27E., M.D.B.&M., IN THE CITY OF PORTERVILLE, COUNTY OF TULARE, STATE OF CALIFORNIA.

AREA = 5.53 ACRES

LOCATION MAP

LEGEND

• STREET LIGHTS (4 ea.)

SCALE: 1" = 100'

NORTH
PORTION OF LANDSCAPE & LIGHTING MAINTENANCE DISTRICT NO. 46
[ORIGINAL DISTRICT NO. 11 (1 of 2)]

CITY OF PORTERVILLE

BEING WITHIN THE NORTH ¼ OF SECTION 21, T.21S., R.27E., M.D.B.&M.,
IN THE CITY OF PORTERVILLE, COUNTY OF TULARE, STATE OF CALIFORNIA.
AREA = 15.48 ACRES

LEGEND

⊙ STREET LIGHTS (14 ea.)
○ FIRE HYDRANT

LOCATION MAP
NO SCALE

SCALE: 1" = 100'

ONE OF TWO SHEETS
PORTION OF LANDSCAPE & LIGHTING MAINTENANCE DISTRICT NO. 46
[ORIGINAL DISTRICT NO. 11 (2 of 2)]

CITY OF PORTERVILLE

MATCH

LINE

SEE

SHEET ONE

SCALE: 1" = 100'

NORTH

LA VIDA AVENUE

BELMONT ST

TWO OF TWO SHEETS
PORTION OF LANDSCAPE & LIGHTING MAINTENANCE DISTRICT NO. 46
[ORIGINAL DISTRICT NO. 14]

CITY OF PORTERVILLE

BEING A PORTION OF PARCEL 2 OF LOT LINE ADJUSTMENT 3-97 RERECORDED SEPTEMBER 17, 1997,
AS DOCUMENT NO. 97-064932 O.R. SITUATED IN THE SOUTHWEST ¼ OF SECTION 34,
T.21S., R.27E., M.D.B.&M., IN THE CITY OF PORTERVILLE, COUNTY OF TULARE, STATE OF CALIFORNIA.

LEGEND

© STREET LIGHTS (11 ea.)
ө FIRE HYDRANT
긋 LANDSCAPE AREA: (NONE)
6 FT MASONRY WALL: (NONE)

SCALE: 1" = 200'

LOCATION MAP

NOT TO SCALE
PORTION OF LANDSCAPE & LIGHTING MAINTENANCE DISTRICT NO. 46
[ORIGINAL DISTRICT NO. 17]

CITY OF PORTERVILLE

THAT PORTION OF THE NORTH HALF OF SECTION 21, TOWNSHIP 21 SOUTH, RANGE 27 EAST, MOUNT DIABLO BASE AND MERIDIAN, IN THE CITY OF PORTERVILLE, COUNTY OF TULARE, STATE OF CALIFORNIA

LEGEND

○ STREET LIGHTS (7 ea.)
○ FIRE HYDRANT

SCALE: 1" = 200'

LOCATION MAP NOT TO SCALE
PORTION OF LANDSCAPE & LIGHTING MAINTENANCE DISTRICT NO. 46
[ORIGINAL DISTRICT NO. 18]

CITY OF PORTERVILLE

BEING A PORTION OF LOT 178 OF PIONEER LAND COMPANY'S FIRST SUBDIVISION PER MAP RECORDED IN BOOK 3, PAGE 34, OF MAPS, IN THE CITY OF PORTERVILLE, COUNTY OF TULARE, STATE OF CALIFORNIA

LEGEND

☀  STREET LIGHTS (2 ea.)
○  FH  FIRE HYDRANT

SCALE: 1" = 100'

LOCATION MAP
PORTION OF LANDSCAPE & LIGHTING MAINTENANCE DISTRICT NO. 46
[ORIGINAL DISTRICT NO. 20]

CITY OF PORTERVILLE

BEING A PORTION OF LOT 182 OF PIONEER LAND COMPANY'S FIRST SUBDIVISION RM 3/34 IN THE CITY OF PORTERVILLE, COUNTY OF TULARE, STATE OF CALIFORNIA, AND OF THE EAST 10 FEET OF PROSPECT STREET, ABANDONED, ADJOINING SAID LOT 182 ON THE WEST.

LEGEND

- STREET LIGHTS (4 ea.)
- FIRE HYDRANT (1)

SCALE: 1" = 100'

LOCATION MAP
NOT TO SCALE
PORTION OF LANDSCAPE & LIGHTING MAINTENANCE DISTRICT NO. 46
[ORIGINAL DISTRICT NO. 23]

CITY OF PORTERVILLE

BEING A SUBDIVISION OF THE REMAINDER OF PARCEL MAP NO. 4265 PER MAP RECORDED IN BOOK 43, PAGE 69 OF PARCEL MAPS, SITUATED WITHIN THE NORTHEAST ¼ SECTION 33, T.21S, R.27E., M.D.B. & M., IN THE CITY OF PORTERVILLE, COUNTY OF TULARE, STATE OF CALIFORNIA.

LEGEND

- STREET LIGHTS (11 ea.)
- FIRE HYDRANT

SCALE: 1" = 200'

LOCATION MAP
NOT TO SCALE
PORTION OF LANDSCAPE & LIGHTING MAINTENANCE DISTRICT NO. 46
[ORIGINAL DISTRICT NO. 26]

CITY OF PORTERVILLE

BEING A SUBDIVISION OF THE REMAINDER OF ORCHARD RIDGE, PHASE EIGHT PER MAP RECORDED IN BOOK 39, PAGE 76 OF MAPS, TULARE COUNTY RECORDS, LOCATED WITHIN NORTHEAST ¼ OF SECTION 21, T.21S, R.27E., M.D.B.&M., IN THE CITY OF PORTERVILLE, COUNTY OF TULARE, STATE OF CALIFORNIA.

LEGEND

⊙ STREET LIGHTS (10 ea.)
☆ FIRE HYDRANT

SCALE: 1" = 200'

LOCATION MAP NO SCALE
PORTION OF LANDSCAPE & LIGHTING MAINTENANCE DISTRICT NO. 46
[ORIGINAL DISTRICT NO. 28]

CITY OF PORTERVILLE


LEGEND

Street Lights (23 ea.)
FIRE HYDRANT

SCALE: 1" = 200'

LOCATION MAP  NO SCALE
PORTION OF LANDSCAPE & LIGHTING MAINTENANCE DISTRICT NO. 46
[ORIGINAL DISTRICT NO. 29]

CITY OF PORTERVILLE

BEING A PORTION OF PARCEL 2 OF LOT LINE ADJUSTMENT 3-97 RERECORDED SEPTEMBER 17, 1997,
AS DOCUMENT NO. 97-064932 D.R. SITUATED IN THE SOUTHWEST ¼ OF SECTION 34, T.21S, R.27E.,
M.D.B.&M., IN THE CITY OF PORTERVILLE, COUNTY OF TULARE, STATE OF CALIFORNIA

LEGEND
STREET LIGHTS (9 ea.)
FIRE HYDRANT

LOCATION MAP
NOT TO SCALE
PORTION OF LANDSCAPE & LIGHTING MAINTENANCE DISTRICT NO. 46 [ORIGINAL DISTRICT NO. 32]

CITY OF PORTERVILLE

THAT PORTION OF THE SOUTH ½ OF THE SOUTHWEST ¼ OF SECTION 23, TOWNSHIP 21 SOUTH, RANGE 27 EAST, MOUNT DIABLO BASE AND MERIDIAN, IN THE CITY OF PORTERVILLE, COUNTY OF TULARE, STATE OF CALIFORNIA

LEGEND

STREET LIGHTS (2 ea.)

MULBERRY AVENUE

COTTAGE STREET

BEL AIRE AVE

LOCATION MAP NOT TO SCALE

SCALE: 1" = 80'

0'  40'  80'

1  2  3  4  5  6  7  8

136.51
136.17
136.17
136.17
136.05
128.11
124.16
124.15
124.08

60.50
60.50
60.50
60.50
60.50
60.50
60.50
60.50
60.41

60.50
60.50
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60.50
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60.50
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60.50

PORTION OF LANDSCAPE & LIGHTING MAINTENANCE DISTRICT NO. 46  
[ORIGINAL DISTRICT NO. 32 ANNEXATION NO. 1]  
CITY OF PORTERVILLE

BEING SUNRISE VILLA, PHASE 2 AND 3 IN THE CITY OF PORTERVILLE, COUNTY OF TULARE  
STATE OF CALIFORNIA, PER MAP RECORDED IN BOOK ___ PAGE ___ OF MAPS, TCR. LOCATED  
WITHIN THE SOUTH ½ OF THE SOUTHWEST ¼ OF SECTION 23, T.21S., R.27E., M.D.B.&M.
PORTION OF LANDSCAPE & LIGHTING MAINTENANCE DISTRICT NO. 46
[ORIGINAL DISTRICT NO. 33]

CITY OF PORTERVILLE

THAT PORTION OF THE REMAINDER OF NEW EXPRESSIONS, PHASE THREE IN THE CITY OF PORTERVILLE, COUNTY OF TULARE, STATE OF CALIFORNIA PER MAP RECORDED IN BOOK 40, PAGE 35 OF MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY

LEGEND

- STREET LIGHTS (13 ea.)
- FIRE HYDRANT
- MASONRY WALL (230 LF.)
PORTION OF LANDSCAPE & LIGHTING MAINTENANCE DISTRICT NO. 46
[ORIGINAL DISTRICT NO. 34]

CITY OF PORTERVILLE


LEGEND

- STREET LIGHTS (19 ea.)
- FIRE HYDRANT

SCALE: 1" = 200'

Meadow Breeze
Phase Two
PORTION OF LANDSCAPE & LIGHTING MAINTENANCE DISTRICT NO. 46
[ORIGINAL DISTRICT NO. 35]

CITY OF PORTERVILLE

BEING A SUBDIVISION OF THE REMAINDER OF CASTLEWOODS PHASE TWO, RM 38-74, AND A PORTION OF
AND SITUATED IN THE NORTH ½ OF THE NORTHEAST ¼ OF SECTION 21, T.21S., R.27E.,M.D.B.&M.,
IN THE CITY OF PORTERVILLE, COUNTY OF TULARE, STATE OF CALIFORNIA.

LEGEND

☆ STREET LIGHTS (9 ea.)
★ FIRE HYDRANT

SCALE: 1" = 200'
PORTION OF LANDSCAPE & LIGHTING MAINTENANCE DISTRICT NO. 46
[ORIGINAL DISTRICT NO. 38]

CITY OF PORTERVILLE

A PORTION OF THE SOUTHEAST QUARTER OF SECTION 218, TOWNSHIP 21 SOUTH, RANGE 27 EAST, MOUNT DIABLO BASE AND MERIDIAN, IN THE CITY OF PORTERVILLE, COUNTY OF TULARE, STATE OF CALIFORNIA.
PORTION OF LANDSCAPE & LIGHTING MAINTENANCE DISTRICT NO. 46
[ORIGINAL DISTRICT NO. 39]
CITY OF PORTERVILLE

BEING A PORTION OF THE WEST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 21,
T.21S., R.27E., M.D.B.&M., IN THE CITY OF PORTERVILLE, COUNTY OF TULARE, STATE OF CALIFORNIA.
PORTION OF LANDSCAPE & LIGHTING MAINTENANCE DISTRICT NO. 46
[ORIGINAL DISTRICT NO. 41]

CITY OF PORTERVILLE

BEING A PORTION OF THE NORTHWEST ¼ OF THE SOUTHWEST ¼ OF SECTION 34,
T.21S., R.27E., M.D.B.&M., IN THE CITY OF PORTERVILLE, COUNTY OF TULARE, STATE OF CALIFORNIA.

LEGEND

Street Lights (3 ea.)

Fire Hydrant

SCALE: 1" = 100'

SUBJECT SITE

YUHE RIVER
CITY COUNCIL AGENDA: December 1, 2009

PUBLIC HEARING

TITLE: PROPOSAL FOR AN AMENDMENT TO THE FREEHOLDERS CHARTER OF THE CITY OF PORTERVILLE, CONCERNING LEASES OF CITY PROPERTY

SOURCE: CITY ATTORNEY

COMMENT: As directed at the November 17, 2009, City Council Meeting, a public hearing has been set to consider an amendment to Section 68 of the Porterville City Charter related to leases of City property.

At the November 17 meeting, the Council directed that the proposed amendment to Section 68 contain similar provisions to those applicable to “general law” cities. Attached is a draft of the proposed amended section. The draft contains similar substantive requirements to the general law requirements including 1) An initial, unrestricted term limit of 55 years, 2) an allowance for leases for up to 99 years on condition that the lease provides for periodic review in light of market conditions, and the lease is established by ordinance after holding a public hearing with notice.

This draft eliminates the requirement that all leases contain a clause that allows the city council to terminate the lease at its pleasure and repossess the premises with three month’s notice, and upon payment of market value of the improvements made by the lessee (as determined by a board of appraisers – one picked by the council, one picked by the lessee). The new draft also extends the allowed term limits; the current overall limit for long-term leases (notwithstanding the three month termination clause) is 50 years.

The draft section also eliminates the explicit requirements for payment of fair market value for the lease/tenant-owned improvements. However, as we discussed, in the event the City were to terminate a long term lease by condemning the leasehold interest, compensation of the fair market value of the improvements is required by operation of State law.

The City’s Municipal Election is June 8, 2010. At least 120 days prior to the Election (approximately February 8, 2010), the City should submit a Resolution Ordering the Election and provide specifications concerning the ballot measure to the County Elections Official. The City Attorney will also prepare an Impartial Analysis of the ballot measure for filing. Arguments for and against the measure must be filed by approximately March 2, 2010. Rebuttal arguments are due by approximately March 12, 2010.

Item No. 13
RECOMMENDATION: That the City Council:

1) Hold the public hearing concerning the proposed Charter Amendment and consider public testimony; and
2) Consider approval of the Resolution Ordering Submission of a Proposition of an Amendment to the Freeholders Charter of Porterville Concerning Leases of City Property to the Qualified Voters of the City at a Special Election to be Held for that Purpose, Requesting Consolidation with a General Municipal Election Scheduled on June 8, 2010, and Authorizing the Filing of an Impartial Analysis and Written Arguments.

ATTACHMENT: Porterville Municipal Charter, Section 68
Proposed Amended Charter Section 68
Resolution No. ________-2009
Porterville City Charter

Sec. 68. Leases Of City Property.

In every lease of city property the basic amount of rental shall be fixed by the council.

All indentures of lease shall provide that the council may terminate the same at its pleasure and repossess the premises therein described upon three months' notice thereof and upon paying to the lessee the market value of any improvements made or put upon said premises by the lessee. The market value of such improvements shall be determined by a board of appraisers consisting of one appraiser appointed by the council, and a lessee appraiser appointed by the lessee.

In the event of their failure to agree upon the market value of the improvements within thirty days from and after their appointment, said two appraisers may appoint a third appraiser as a member of said board, and the determination of the majority of said board of appraisers, as to the market value of the improvements, shall be final and conclusive and binding on all concerned. Should the two appraisers appointed by the council and the lessee respectively, fail for forty days from and after their appointment to agree upon the market value of the improvements or to appoint a third appraiser, then upon the petition in writing of either party to any such lease, a judge of the superior court of Tulare County is hereby empowered to appoint the third appraiser upon such board; provided, however, that the council shall not terminate any such lease or repossess any such premises except for a public use and purpose; provided, further, that no lease of city property shall be made for a maximum term of more than fifty years. (4-2-1963; 4-6-1971)

Amendment note — The second paragraph of § 68 was amended April 6, 1971, by substituting "maximum term" in lieu of "term" in the last proviso clause.
Proposed Charter Language – Section 68

Section 68. Leases of City Property

The City may lease property owned or held or controlled by it, or any of its departments, for a term not to exceed 55 years. Furthermore, the City may lease property owned or held or controlled by it, or any of its departments for a term exceeding 55 years but not exceeding a term of 99 years, if all of the following conditions are met: a) The lease is subject to periodic review, established in the lease provisions, taking into consideration current market conditions; b) the lease shall be authorized by ordinance adopted by the City Council, and shall be therefore subject to referendum in the manner prescribed by law or local regulation; and c) the City Council shall hold a public hearing prior to adoption of said ordinance, in accordance with Government Code Section 6066, said notice shall be published in one or more newspapers of general circulation within the City, and notice shall be mailed to any person requesting special notice, to any present tenant of the property, and to all owners of land adjoining the property.
RESOLUTION NO. __________ - 2009

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE ORDERING SUBMISSION OF A PROPOSITION OF AN AMENDMENT TO THE FREEHOLDERS CHARTER OF SAID CITY OF PORTERVILLE RELATED TO LEASES OF CITY PROPERTY, TO THE QUALIFIED VOTERS OF THE CITY AT A SPECIAL ELECTION TO BE HELD FOR THAT PURPOSE, REQUESTING CONSOLIDATION WITH A GENERAL MUNICIPAL ELECTION SCHEDULED ON JUNE 8, 2010 AND AUTHORIZING THE FILING OF AN IMPARTIAL ANALYSIS AND WRITTEN ARGUMENTS

WHEREAS, pursuant to Elections Code Sections 9255 et seq., the City of Porterville may make amendments to its City Charter; and

WHEREAS, the City Council of the City of Porterville on its own motion, desires to propose to the electors of the City of Porterville an amendment to the Charter of the City of Porterville, which shall amend Section 68, concerning leases of City property;

NOW, THEREFORE, BE IT RESOLVED, AS FOLLOWS:

A. Section 68 of the Charter of the City of Porterville is hereby proposed to be amended to read as follows:

Sec. 68 Leases of City Property.
The City may lease property owned or held or controlled by it, or any of its departments, for a term not to exceed 55 years. Furthermore, the City may lease property owned or held or controlled by it, or any of its departments for a term exceeding 55 years but not exceeding a term of 99 years, if all of the following conditions are met: a) The lease is subject to periodic review, established in the lease provisions, taking into consideration current market conditions; b) the lease shall be authorized by ordinance adopted by the City Council, and shall be therefore subject
to referendum in the manner prescribed by law or local regulation; and c) the City Council shall hold a public hearing prior to adoption of said ordinance, in accordance with Government Code Section 6066, said notice shall be published in one or more newspapers of general circulation within the City, and notice shall be mailed to any person requesting special notice, to any present tenant of the property, and to all owners of land adjoining the property.

B. A special municipal election is hereby authorized, whereby the citizens of Porterville may approve or disapprove the proposed charter amendment, to be held on June 8, 2010, to be consolidated with the general municipal election scheduled to be held that same day.

C. On the ballot to be used at the special municipal election, insofar as the same pertains to the proposed amendments to the Freeholders Charter of the City of Porterville, in addition to any matters required by law, there shall be printed substantially the following:

1. Measure ____ to amend Section 68 of the Freeholders Charter of the City of Porterville, eliminating the requirement that all leases contain a clause allowing the City Council to terminate the lease with 3 months notice, extending the allowed term of lease from 50 to 55 years, and allowing leases for up to 99 years if the lease provides for periodic review in light of market conditions, and the lease is established by ordinance after a noticed public hearing, and is therefore subject to referendum.

D. The City Clerk of the City of Porterville is hereby authorized and instructed to publish said proposed amendment, to the Charter of the City of Porterville, in the Porterville Recorder, a newspaper of general circulation, as required by the provisions
of California Elections Code Section 12114 and California Government Code Section 6066, and as required pursuant to the City's regulations.

E. The polls for an election shall be open on the day of said election in accordance with the California Elections Code.

F. The special municipal election hereby called for June 8, 2010, shall be and is hereby ordered consolidated with the general municipal election to be held within the City on said date, and within the territory affected by the consolidation. The election shall be held and conducted, election officers appointed, voting precincts designated, ballots printed, polls opened and closed, ballots counted, and returned, returns canvassed, results declared, and all other proceedings incidental to and connected with the election shall be regulated and done in accordance with the provisions of law regulating the election as specified herein. The Board of Supervisors of Tulare County, and the Tulare County Registrar of Voters, are hereby requested to order the consolidation of the special municipal election hereby called with the general election to be held within the City on said date, and within the territory affected by the consolidation, and the Board and the Registrar of Voters are hereby authorized to canvass the returns of said special municipal election, and said municipal election shall be held in all respects as if there were only one election and the form of ballot shall be as provided for the general election. The County shall certify results of the canvass of the returns of said special municipal election to the City Council which shall thereafter declare the results thereof. The measure submitted by the Resolution shall be designated on each ballot by a letter printed on the left margin of the square containing the description of the measure as provided by the California Elections Code.
G.  All persons qualified to vote at special municipal elections in the City upon the date of the election herein provided shall be qualified to vote upon the proposition submitted at said special election.

H.  Ballots for the election shall be provided in the form and in the number provided by law. On said ballots, in addition to any other printed matter which may be required by law, two voting squares shall be set off to the right of the proposition submitted at the election, one having the word “YES” printed before it, and the other having the word “NO” printed before it.

I.  Each voter to vote for the proposition and for the Charter Amendment shall stamp or write a cross, or indicate by hole punch, or other means, in the blank space opposite the word “YES” on the ballot to the right of the proposition, and each voter to vote against the proposition and against the Charter Amendment shall stamp or write a cross, or indicate by hole punch, or other means, in the blank space opposite the word “NO” on the ballot to the right of the proposition.

J.  The Clerk is hereby authorized and directed to publish the resolution or any required notice as required by law and to transmit, for receipt no later than the applicable deadline, a certified copy of this resolution to the Tulare County Clerk, Elections Division, and to any other appropriate office of Tulare County.

K.  The City Attorney is hereby authorized and directed to prepare an impartial analysis of the proposition specified in this resolution showing the effect and operation of the measure. The analysis is to be submitted by the City Attorney to the Tulare Registrar of Voters, or other appropriate official for printing as required by law. The analysis shall not exceed 500 words in length.
L. The City Council hereby authorizes the filing of a ballot argument in favor of the proposition to be submitted to the voters at the special election. Said written argument for the proposition shall not exceed 300 words in length. If any person submits an argument against said proposition, the City Council authorizes the submittal of a rebuttal argument not exceeding 250 words. The argument and rebuttal shall otherwise conform to and comply with all applicable provisions of the California Elections Code. The deadline for submittal of the arguments, in favor or in opposition, shall be as required by the Tulare County Registrar of Voters, or other appropriate County official.

PASSED, ADOPTED AND APPROVED this ___ day of ___________, 2009.

__________________________________
Pete McCracken, Mayor

ATTEST:

John Lollis, City Clerk

__________________________________
By: Patrice Hildreth, Chief Deputy City Clerk
COUNCIL AGENDA: DECEMBER 1, 2009

SUBJECT: QUARTERLY BUDGET REVIEW AND INTERIM FINANCIAL STATUS REPORTS

SOURCE: Finance Department

COMMENT: The City Charter requires financial status reports to be provided to City Council members on a monthly basis. Council Minute Order #13-041602 and #10-011607 established the requirement and parameters for the preparation and presentation of interim financial status reports.

In accordance with Council Minute Order #13-041602 and #10-011607, the interim financial status reports for the 1st fiscal quarter ended September 30, 2009, are submitted.

As requested by Council in the June 16, 2009 meeting, staff is also presenting a brief review of the City's budget, particularly the General Fund, based on the first three months of the fiscal year.

At the end of October, the Tulare County Auditor-Controller/Treasurer-Tax Collector released the property tax revenue estimates for FY09/10. For the City of Porterville, that amount is $6,497,489 which is $753,710 or 10% less than FY08/09 taxes and $823,459 less than what we had anticipated for the current year.

As it is statewide, sales in Porterville continued to decline due to elevated unemployment, consumer uncertainty and housing problems. For the first quarter of this fiscal year, sales tax revenue is down by 13% compared to the same period from the prior year. If the trend continues, we could experience a shortfall of about $900,000 in sales taxes.

In addition, construction permits, interest income, motor vehicle in-lieu tax, and some service charges are lower than prior year's amounts.

In order to offset the expected shortfall in revenues for the current year, the departments' could be held to a budget of 95% of their original appropriations. This would be a savings of about $1,000,000. This could be attained by several ways like freezing/chilling vacant positions, reducing travel, meeting, training, and other expenses.

D.D. 7MB Appropriated/Funded 7MB C.M.  

Item No. 14
To help further reduce the loss in the General Fund, it could be proposed to suspend one half of the annual contribution to the Equipment Replacement Fund for an additional savings of about $450,000.

In the Measure H Fund, district sales tax is down by 11% from prior year. For the year, it could be a shortfall of about $500,000 which could be covered by fund balance from the previous years, according to Council adopted budgets for Fire, Police and Literacy.

In the enterprise operating funds excluding the Zalud and Transit Funds, revenues for the first quarter of the fiscal year range from 22.9% of the original estimates in the Golf Course Fund to 28% in the Sewer Fund. Expenditures are between 20.7% of the original appropriations in the Airport Fund and 25.8% in the Golf Course Fund. Except for the Golf Course Fund, the enterprise operating funds are showing net profits for the period.

RECOMMENDATION: That the City Council accept the interim financial status reports as presented and provide direction to staff as determined.

ATTACHMENTS: Interim financial reports
### CITY OF PORTERVILLE

**REVENUE STATUS REPORT - GENERAL FUND**

**FOR THE THREE MONTHS ENDED SEPTEMBER 30, 2009 AND SEPTEMBER 30, 2008**

<table>
<thead>
<tr>
<th></th>
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<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>PROPERTY TAXES</td>
<td>$7,320,948</td>
<td>$7,275,000</td>
<td>$</td>
<td>$659,102</td>
<td>17.81%</td>
<td></td>
</tr>
<tr>
<td>OTHER TAXES:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>SALES AND USE TAX</td>
<td>3,803,845</td>
<td>574,602</td>
<td>15.11%</td>
<td>3,700,000</td>
<td>761,536</td>
<td>20.31%</td>
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<tr>
<td>UTILITY USERS TAX</td>
<td>3,854,381</td>
<td>758,237</td>
<td>19.67%</td>
<td>3,750,000</td>
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<td></td>
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<tr>
<td>TRANSIENT OCCUPANCY TAX</td>
<td>325,000</td>
<td>100,000</td>
<td>16.14%</td>
<td>1,551,137</td>
<td>250,291</td>
<td>16.14%</td>
</tr>
<tr>
<td>PROPERTY TRANSFER TAX</td>
<td>86,000</td>
<td></td>
<td></td>
<td>350,000</td>
<td></td>
<td></td>
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<tr>
<td>FRANCHISE TAX</td>
<td>1,551,137</td>
<td>250,291</td>
<td>16.14%</td>
<td>1,551,137</td>
<td>250,291</td>
<td>16.14%</td>
</tr>
<tr>
<td>SALES TAX - PUBLIC SAFETY</td>
<td>150,000</td>
<td></td>
<td></td>
<td>150,000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>LICENSES AND PERMITS</td>
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<td></td>
<td></td>
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<tr>
<td>BUSINESS LICENSES</td>
<td>418,650</td>
<td>185,573</td>
<td>44.33%</td>
<td>423,150</td>
<td>199,111</td>
<td>47.05%</td>
</tr>
<tr>
<td>CONSTRUCTION PERMITS</td>
<td>490,000</td>
<td>116,305</td>
<td>23.74%</td>
<td>480,000</td>
<td>154,920</td>
<td>32.28%</td>
</tr>
<tr>
<td>REVENUE FROM AGENCIES-TAXES:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>MOTOR VEHICLE IN-LIEU TAX</td>
<td>480,000</td>
<td>29,511</td>
<td>6.15%</td>
<td>250,000</td>
<td>60,910</td>
<td>24.36%</td>
</tr>
<tr>
<td>OTHER TAXES</td>
<td>32,000</td>
<td></td>
<td></td>
<td>30,000</td>
<td></td>
<td></td>
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<tr>
<td>REVENUE FROM AGENCIES-GRANTS</td>
<td>132,179</td>
<td>14,975</td>
<td>11.33%</td>
<td>698,052</td>
<td>30,321</td>
<td>4.34%</td>
</tr>
<tr>
<td>USE OF MONEY AND PROPERTY</td>
<td>171,601</td>
<td>54,534</td>
<td>31.78%</td>
<td>300,001</td>
<td>59,771</td>
<td>19.92%</td>
</tr>
<tr>
<td>FINES AND FORFEITURES</td>
<td>60,000</td>
<td>967</td>
<td>1.43%</td>
<td>55,000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>CHARGES FOR SERVICES</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>PLANNING AND ENGINEERING</td>
<td>137,500</td>
<td>26,532</td>
<td>19.30%</td>
<td>160,100</td>
<td>44,489</td>
<td>27.79%</td>
</tr>
<tr>
<td>POLICE</td>
<td>232,000</td>
<td>41,547</td>
<td>17.91%</td>
<td>221,200</td>
<td>35,909</td>
<td>16.23%</td>
</tr>
<tr>
<td>FIRE</td>
<td>19,000</td>
<td>6,345</td>
<td>33.40%</td>
<td>24,200</td>
<td>13,248</td>
<td>54.74%</td>
</tr>
<tr>
<td>LIBRARY</td>
<td>35,000</td>
<td>9,288</td>
<td>26.54%</td>
<td>33,000</td>
<td>10,588</td>
<td>32.09%</td>
</tr>
<tr>
<td>RECREATIONAL</td>
<td>1,329,000</td>
<td>375,604</td>
<td>28.26%</td>
<td>1,285,500</td>
<td>334,854</td>
<td>26.05%</td>
</tr>
<tr>
<td>INTERDEPARTMENTAL</td>
<td>1,587,170</td>
<td>435,530</td>
<td>27.44%</td>
<td>1,750,000</td>
<td>499,644</td>
<td>28.55%</td>
</tr>
<tr>
<td>OTHER</td>
<td>500</td>
<td>2,000</td>
<td></td>
<td>500</td>
<td></td>
<td>25.00%</td>
</tr>
<tr>
<td>OTHER REVENUES</td>
<td>81,000</td>
<td>19,647</td>
<td>24.26%</td>
<td>144,365</td>
<td>29,552</td>
<td>20.47%</td>
</tr>
<tr>
<td>SUBTOTALS</td>
<td>$22,304,911</td>
<td>$2,899,506</td>
<td>13.00%</td>
<td>$22,732,705</td>
<td>$3,144,745</td>
<td>13.83%</td>
</tr>
<tr>
<td>DEBT SERVICE TRANSFERS</td>
<td>669,894</td>
<td>167,474</td>
<td>25.00%</td>
<td>727,500</td>
<td>181,875</td>
<td>25.00%</td>
</tr>
<tr>
<td>TOTALS</td>
<td>$22,974,805</td>
<td>$3,066,980</td>
<td>13.35%</td>
<td>$23,460,205</td>
<td>$3,326,620</td>
<td>14.18%</td>
</tr>
</tbody>
</table>
CITY OF PORTERVILLE

REVENUE STATUS REPORT - ALL OTHER FUNDS
FOR THE THREE MONTHS ENDED
SEPTEMBER 30, 2009 AND SEPTEMBER 30, 2008

<table>
<thead>
<tr>
<th>REVENUE SOURCE</th>
<th>2009-2010 ESTIMATED REVENUE</th>
<th>2009-2010 YEAR-TO-DATE REVENUE</th>
<th>% OF ESTIMATE</th>
<th>2008-2009 ESTIMATED REVENUE</th>
<th>2008-2009 YEAR-TO-DATE REVENUE</th>
<th>% OF ESTIMATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>MEASURE H SALES TAX</td>
<td>$2,850,000</td>
<td>$458,903</td>
<td>16.1%</td>
<td>$2,850,000</td>
<td>$517,264</td>
<td>18.1%</td>
</tr>
<tr>
<td>REDEVELOPMENT AGENCY</td>
<td>1,193,009</td>
<td>18,317</td>
<td>1.5%</td>
<td>1,119,090</td>
<td>6,720</td>
<td>0.6%</td>
</tr>
<tr>
<td>SPECIAL GAS TAX</td>
<td>1,881,700</td>
<td>165,998</td>
<td>8.8%</td>
<td>3,284,700</td>
<td>144,393</td>
<td>4.4%</td>
</tr>
<tr>
<td>LOCAL TRANSPORTATION FUNDS (LTF)</td>
<td>6,420,000</td>
<td>183,785</td>
<td>2.9%</td>
<td>6,556,181</td>
<td>401,732</td>
<td>6.1%</td>
</tr>
<tr>
<td>TRAFFIC SAFETY FUND</td>
<td>160,200</td>
<td>75</td>
<td>0.0%</td>
<td>125,100</td>
<td>49</td>
<td>0.0%</td>
</tr>
<tr>
<td>ZALUD ESTATE</td>
<td>7,500</td>
<td>3,551</td>
<td>47.3%</td>
<td>6,000</td>
<td>628</td>
<td>10.5%</td>
</tr>
<tr>
<td>COMMUNITY DEVELOPMENT BLOCK GRANT</td>
<td>2,415,416</td>
<td>63,388</td>
<td>2.6%</td>
<td>1,982,102</td>
<td>161,252</td>
<td>8.1%</td>
</tr>
<tr>
<td>TRANSIT</td>
<td>4,446,554</td>
<td>627,599</td>
<td>14.1%</td>
<td>3,435,759</td>
<td>378,997</td>
<td>11.0%</td>
</tr>
<tr>
<td>SPECIAL SAFETY GRANTS</td>
<td>239,550</td>
<td>9,468</td>
<td>4.0%</td>
<td>102,000</td>
<td>91</td>
<td>0.1%</td>
</tr>
<tr>
<td>SEWER OPERATING</td>
<td>6,420,304</td>
<td>1,794,714</td>
<td>28.0%</td>
<td>6,796,950</td>
<td>1,698,387</td>
<td>25.0%</td>
</tr>
<tr>
<td>REFUSE REMOVAL</td>
<td>5,449,450</td>
<td>1,271,682</td>
<td>23.3%</td>
<td>5,510,251</td>
<td>1,271,802</td>
<td>23.1%</td>
</tr>
<tr>
<td>AIRPORT OPERATIONS</td>
<td>1,334,050</td>
<td>322,105</td>
<td>24.1%</td>
<td>1,700,350</td>
<td>945,233</td>
<td>55.6%</td>
</tr>
<tr>
<td>GOLF COURSE</td>
<td>310,398</td>
<td>71,016</td>
<td>22.9%</td>
<td>306,999</td>
<td>88,416</td>
<td>29.1%</td>
</tr>
<tr>
<td>WATER OPERATING</td>
<td>5,056,385</td>
<td>1,565,575</td>
<td>31.0%</td>
<td>4,963,610</td>
<td>1,697,464</td>
<td>34.2%</td>
</tr>
<tr>
<td>RISK MANAGEMENT</td>
<td>4,038,915</td>
<td>1,076,525</td>
<td>26.7%</td>
<td>3,816,500</td>
<td>1,112,534</td>
<td>29.2%</td>
</tr>
<tr>
<td>EQUIPMENT MAINTENANCE</td>
<td>2,300,320</td>
<td>542,617</td>
<td>23.6%</td>
<td>2,359,785</td>
<td>706,103</td>
<td>29.9%</td>
</tr>
<tr>
<td>LANDSCAPE MAINTENANCE DISTRICT</td>
<td>216,000</td>
<td>261</td>
<td>0.1%</td>
<td>238,199</td>
<td></td>
<td></td>
</tr>
<tr>
<td>WATER REPLACEMENT</td>
<td>493,744</td>
<td>68,869</td>
<td>14.0%</td>
<td>583,162</td>
<td>116,504</td>
<td>20.0%</td>
</tr>
<tr>
<td>SOLID WASTE RESERVE</td>
<td>572,742</td>
<td>147,358</td>
<td>25.7%</td>
<td>540,000</td>
<td>129,562</td>
<td>24.0%</td>
</tr>
<tr>
<td>SEWER REVOLVING</td>
<td>272,860</td>
<td>39,392</td>
<td>14.4%</td>
<td>325,000</td>
<td>57,990</td>
<td>17.8%</td>
</tr>
<tr>
<td>TRANSPORTATION DEVELOPMENT</td>
<td>210,000</td>
<td>88,431</td>
<td>42.1%</td>
<td>625,000</td>
<td>166,028</td>
<td>26.6%</td>
</tr>
<tr>
<td>PARK DEVELOPMENT</td>
<td>50,000</td>
<td>21,096</td>
<td>42.2%</td>
<td>81,000</td>
<td>15,606</td>
<td>19.3%</td>
</tr>
<tr>
<td>TREATMENT PLANT RESERVE</td>
<td>672,880</td>
<td>217,333</td>
<td>32.3%</td>
<td>882,000</td>
<td>235,219</td>
<td>26.7%</td>
</tr>
<tr>
<td>STORM DRAIN DEVELOPMENT</td>
<td>160,000</td>
<td>25,543</td>
<td>16.0%</td>
<td>440,000</td>
<td>100,751</td>
<td>22.9%</td>
</tr>
<tr>
<td>BUILDING CONSTRUCTION</td>
<td>50,000</td>
<td>9,442</td>
<td>18.9%</td>
<td>50,000</td>
<td>4,885</td>
<td>9.8%</td>
</tr>
</tbody>
</table>

**TOTALS**                                            | **$47,221,757**               | **$8,793,144**                  | **18.6%**    | **$48,679,738**               | **$9,958,610**                  | **20.5%**    |
## CITY OF PORTERVILLE

### EXPENDITURE STATUS REPORT - GENERAL FUND

#### FOR THE THREE MONTHS ENDED

**SEPTEMBER 30, 2009 AND SEPTEMBER 30, 2008**

<table>
<thead>
<tr>
<th>Department</th>
<th>2009-2010 AMENDED APPROP</th>
<th>2009-2010 YEAR-TO-DATE EXPEND</th>
<th>% OF APPROP</th>
<th>2008-2009 AMENDED APPROP</th>
<th>2008-2009 YEAR-TO-DATE EXPEND</th>
<th>% OF APPROP</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>LEGISLATIVE:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>CITY COUNCIL</td>
<td>186,474 $</td>
<td>35,515</td>
<td>19.0%</td>
<td>203,885 $</td>
<td>19,741</td>
<td>9.7%</td>
</tr>
<tr>
<td>COMMUNITY PROMOTION</td>
<td>196,258</td>
<td>76,061</td>
<td>38.8%</td>
<td>232,240</td>
<td>104,495</td>
<td>45.0%</td>
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<tr>
<td><strong>ADMINISTRATIVE &amp; LEGAL:</strong></td>
<td></td>
<td></td>
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<td></td>
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<td></td>
</tr>
<tr>
<td>CITY MANAGER</td>
<td>244,441</td>
<td>60,116</td>
<td>24.6%</td>
<td>285,461</td>
<td>63,904</td>
<td>22.4%</td>
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<tr>
<td>CITY CLERK</td>
<td>184,876</td>
<td>33,203</td>
<td>18.0%</td>
<td>222,806</td>
<td>39,838</td>
<td>17.9%</td>
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<tr>
<td>HUMAN RESOURCES</td>
<td>219,847</td>
<td>32,915</td>
<td>15.0%</td>
<td>232,345</td>
<td>40,250</td>
<td>17.3%</td>
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<tr>
<td>CITY ATTORNEY</td>
<td>165,000</td>
<td>32,597</td>
<td>19.8%</td>
<td>180,000</td>
<td>28,510</td>
<td>15.8%</td>
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<tr>
<td><strong>FINANCE:</strong></td>
<td></td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>FINANCE &amp; ACCOUNTING</td>
<td>731,216</td>
<td>170,917</td>
<td>23.4%</td>
<td>716,189</td>
<td>147,189</td>
<td>20.6%</td>
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<tr>
<td>INFORMATION SERVICES</td>
<td>367,730</td>
<td>99,334</td>
<td>27.0%</td>
<td>372,978</td>
<td>95,501</td>
<td>25.6%</td>
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<tr>
<td>ADMINISTRATIVE SERVICES</td>
<td>413,666</td>
<td>89,464</td>
<td>21.6%</td>
<td>413,666</td>
<td>107,786</td>
<td>26.1%</td>
</tr>
<tr>
<td>POLICE PROTECTION</td>
<td>7,923,828</td>
<td>1,962,870</td>
<td>24.8%</td>
<td>7,531,699</td>
<td>1,829,911</td>
<td>24.3%</td>
</tr>
<tr>
<td>FIRE PROTECTION</td>
<td>3,660,695</td>
<td>931,462</td>
<td>25.4%</td>
<td>3,662,801</td>
<td>879,155</td>
<td>24.4%</td>
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<tr>
<td><strong>COMMUNITY DEVELOPMENT:</strong></td>
<td></td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>PLANNING &amp; ZONING</td>
<td>516,040</td>
<td>130,454</td>
<td>25.3%</td>
<td>510,060</td>
<td>124,178</td>
<td>24.3%</td>
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<td>ECONOMIC DEVELOPMENT</td>
<td>285,606</td>
<td>68,993</td>
<td>24.2%</td>
<td>252,649</td>
<td>34,116</td>
<td>13.5%</td>
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<td><strong>PUBLIC WORKS:</strong></td>
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</tr>
<tr>
<td>ENGINEERING &amp; BUILDING</td>
<td>960,221</td>
<td>205,396</td>
<td>21.4%</td>
<td>921,702</td>
<td>185,042</td>
<td>20.1%</td>
</tr>
<tr>
<td>STREET MAINTENANCE</td>
<td>403,375</td>
<td>96,266</td>
<td>23.9%</td>
<td>386,003</td>
<td>97,109</td>
<td>25.0%</td>
</tr>
<tr>
<td>SIGNALS, SIGNING &amp; STRIPING</td>
<td>355,180</td>
<td>61,726</td>
<td>17.4%</td>
<td>339,714</td>
<td>60,970</td>
<td>17.9%</td>
</tr>
<tr>
<td>STREET LIGHTING</td>
<td>404,328</td>
<td>80,795</td>
<td>20.0%</td>
<td>450,550</td>
<td>73,548</td>
<td>16.3%</td>
</tr>
<tr>
<td>STORM DRAINS</td>
<td>90,017</td>
<td>14,801</td>
<td>16.4%</td>
<td>102,400</td>
<td>21,724</td>
<td>21.2%</td>
</tr>
<tr>
<td>PARKING LOTS</td>
<td>47,154</td>
<td>8,213</td>
<td>17.4%</td>
<td>47,142</td>
<td>6,973</td>
<td>14.8%</td>
</tr>
<tr>
<td><strong>PARKS &amp; LEISURE:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>PARK MAINTENANCE &amp; OPERATION</td>
<td>1,731,398</td>
<td>407,815</td>
<td>23.6%</td>
<td>1,838,098</td>
<td>421,090</td>
<td>22.9%</td>
</tr>
<tr>
<td>STREET TREES &amp; PARKWAYS</td>
<td>251,805</td>
<td>50,516</td>
<td>20.1%</td>
<td>256,006</td>
<td>38,390</td>
<td>15.0%</td>
</tr>
<tr>
<td>COMMUNITY CENTERS</td>
<td>241,023</td>
<td>59,943</td>
<td>24.9%</td>
<td>244,851</td>
<td>58,860</td>
<td>24.0%</td>
</tr>
<tr>
<td>LEISURE SERVICES</td>
<td>236,696</td>
<td>48,827</td>
<td>20.6%</td>
<td>229,575</td>
<td>66,780</td>
<td>29.1%</td>
</tr>
<tr>
<td>LEISURE SERVICES - SPECIAL PROG</td>
<td>1,235,260</td>
<td>253,869</td>
<td>20.6%</td>
<td>1,175,720</td>
<td>219,059</td>
<td>18.6%</td>
</tr>
<tr>
<td>SWIMMING POOL</td>
<td>161,643</td>
<td>83,359</td>
<td>51.6%</td>
<td>158,583</td>
<td>73,518</td>
<td>46.4%</td>
</tr>
<tr>
<td>LIBRARY OPERATIONS</td>
<td>634,159</td>
<td>149,053</td>
<td>23.5%</td>
<td>615,425</td>
<td>183,896</td>
<td>29.9%</td>
</tr>
<tr>
<td>SPECIAL PROJECTS</td>
<td>46,487</td>
<td>7,615</td>
<td>16.4%</td>
<td>50,165</td>
<td>8,183</td>
<td>16.3%</td>
</tr>
<tr>
<td><strong>SUB TOTALS</strong></td>
<td>$ 21,894,323</td>
<td>$ 5,252,092</td>
<td>24.0%</td>
<td>$ 21,574,713</td>
<td>$ 5,029,719</td>
<td>23.3%</td>
</tr>
<tr>
<td><strong>DEBT SERVICE</strong></td>
<td>1,827,584</td>
<td>456,896</td>
<td>25.0%</td>
<td>1,823,504</td>
<td>455,876</td>
<td>25.0%</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td>$ 23,721,907</td>
<td>$ 5,708,988</td>
<td>24.1%</td>
<td>$ 23,388,217</td>
<td>$ 5,485,595</td>
<td>23.4%</td>
</tr>
</tbody>
</table>
# CITY OF PORTERVILLE

## EXPENDITURE STATUS REPORT - ALL OTHER FUNDS
FOR THE THREE MONTHS ENDED
SEPTEMBER 30, 2009 AND SEPTEMBER 30, 2008

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>AMENDED</td>
<td>YEAR-TO-DATE</td>
<td>APPROP</td>
<td>AMENDED</td>
<td>YEAR-TO-DATE</td>
<td>APPROP</td>
</tr>
<tr>
<td>MEASURE H SALES TAX</td>
<td>$2,562,566</td>
<td>$580,368</td>
<td>22.6%</td>
<td>$2,679,949</td>
<td>$616,856</td>
<td>23.0%</td>
</tr>
<tr>
<td>REDEVELOPMENT AGENCY</td>
<td>1,356,049</td>
<td>42,223</td>
<td>3.1%</td>
<td>1,056,076</td>
<td>36,880</td>
<td>3.5%</td>
</tr>
<tr>
<td>ZALUD ESTATE</td>
<td>26,208</td>
<td>5,552</td>
<td>21.2%</td>
<td>31,292</td>
<td>6,982</td>
<td>22.3%</td>
</tr>
<tr>
<td>COMMUNITY DEVELOPMENT BLOCK GRANT</td>
<td>481,973</td>
<td>33,964</td>
<td>7.0%</td>
<td>482,841</td>
<td>32,783</td>
<td>6.8%</td>
</tr>
<tr>
<td>TRANSIT</td>
<td>4,052,037</td>
<td>418,649</td>
<td>10.3%</td>
<td>2,846,572</td>
<td>476,158</td>
<td>16.7%</td>
</tr>
<tr>
<td>SPECIAL SAFETY GRANTS</td>
<td>420,821</td>
<td>103,082</td>
<td>24.5%</td>
<td>166,003</td>
<td>1,359</td>
<td>0.8%</td>
</tr>
<tr>
<td>SEWER OPERATING</td>
<td>5,277,667</td>
<td>1,181,766</td>
<td>22.4%</td>
<td>5,924,539</td>
<td>1,284,235</td>
<td>21.7%</td>
</tr>
<tr>
<td>REFUSE REMOVAL</td>
<td>5,428,038</td>
<td>1,177,958</td>
<td>21.7%</td>
<td>5,409,828</td>
<td>1,276,783</td>
<td>23.6%</td>
</tr>
<tr>
<td>AIRPORT</td>
<td>1,330,358</td>
<td>275,818</td>
<td>20.7%</td>
<td>1,694,933</td>
<td>671,089</td>
<td>39.6%</td>
</tr>
<tr>
<td>GOLF COURSE</td>
<td>385,355</td>
<td>99,580</td>
<td>25.8%</td>
<td>375,999</td>
<td>86,166</td>
<td>22.9%</td>
</tr>
<tr>
<td>WATER OPERATING</td>
<td>4,711,578</td>
<td>1,006,914</td>
<td>21.4%</td>
<td>4,436,156</td>
<td>1,021,806</td>
<td>23.0%</td>
</tr>
<tr>
<td>RISK MANAGEMENT</td>
<td>4,416,813</td>
<td>1,321,547</td>
<td>29.9%</td>
<td>3,681,150</td>
<td>1,414,515</td>
<td>38.4%</td>
</tr>
<tr>
<td>EQUIPMENT MAINTENANCE</td>
<td>2,281,434</td>
<td>496,529</td>
<td>21.8%</td>
<td>2,316,949</td>
<td>566,562</td>
<td>24.5%</td>
</tr>
<tr>
<td>LANDSCAPE MAINTENANCE DISTRICT</td>
<td>215,764</td>
<td>49,270</td>
<td>22.8%</td>
<td>216,020</td>
<td>37,682</td>
<td>17.4%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th><strong>TOTALS</strong></th>
<th></th>
<th></th>
<th><strong>TOTALS</strong></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$32,946,661</td>
<td>$6,793,218</td>
<td>20.6%</td>
<td>$31,318,307</td>
<td>$7,529,857</td>
<td>24.0%</td>
</tr>
</tbody>
</table>
CITY OF PORTERVILLE
INTERIM PERFORMANCE REPORT - MEASURE H
For the Three Months Ended September 30, 2009 and September 30, 2008

<table>
<thead>
<tr>
<th></th>
<th>FY 2009-10</th>
<th>FY 2008-09</th>
</tr>
</thead>
<tbody>
<tr>
<td>REVENUES</td>
<td>$ 458,903</td>
<td>$ 517,264</td>
</tr>
<tr>
<td>EXPENDITURES</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Police Department</td>
<td>290,375</td>
<td>277,745</td>
</tr>
<tr>
<td>Fire Department</td>
<td>208,433</td>
<td>253,738</td>
</tr>
<tr>
<td>Library &amp; Literacy</td>
<td>81,560</td>
<td>85,374</td>
</tr>
<tr>
<td>Capital Projects</td>
<td>28,813</td>
<td>0</td>
</tr>
<tr>
<td>TOTAL EXPENDITURES</td>
<td>609,181</td>
<td>616,856</td>
</tr>
<tr>
<td>REVENUE OVER/(UNDER) EXPENDITURES</td>
<td>$ (150,278)</td>
<td>$ (99,592)</td>
</tr>
</tbody>
</table>
## CITY OF PORTERVILLE
### INTERIM PERFORMANCE REPORT - ENTERPRISE FUNDS
For the Three Months Ended September 30, 2009 and September 30, 2008

<table>
<thead>
<tr>
<th>FUND</th>
<th>REVENUES</th>
<th>EXPENSES</th>
<th><strong>9/30/2009</strong></th>
<th><strong>9/30/2008</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Zalud Estate</td>
<td>$3,551</td>
<td>$(5,552)</td>
<td>$(2,001)</td>
<td>$(6,354)</td>
</tr>
<tr>
<td>Sewer Operating</td>
<td>$1,794,714</td>
<td>$(1,181,766)</td>
<td>612,948</td>
<td>263,533</td>
</tr>
<tr>
<td>Solid Waste</td>
<td>$1,271,682</td>
<td>$(1,177,958)</td>
<td>93,723</td>
<td>$(4,981)</td>
</tr>
<tr>
<td>Airport</td>
<td>$322,105</td>
<td>$(275,818)</td>
<td>46,288</td>
<td>274,144</td>
</tr>
<tr>
<td>Golf</td>
<td>$71,016</td>
<td>$(99,580)</td>
<td>$(28,564)</td>
<td>3,250</td>
</tr>
<tr>
<td>Water Operating</td>
<td>$1,565,575</td>
<td>$(1,006,914)</td>
<td>558,661</td>
<td>675,659</td>
</tr>
</tbody>
</table>

**NOTE:** The Transit Fund is not included as it does not contain any retained earnings
PUBLIC HEARING

SUBJECT: ENVIRONMENTAL REVIEW OF THE FAIRGROUND RELOCATION PROJECT

SOURCE: COMMUNITY DEVELOPMENT DEPARTMENT - PLANNING DIVISION

COMMENT: The City of Porterville planning staff has completed the preparation of an Initial Study and Mitigated Negative Declaration for the Porterville Fairground Relocation Project. The project consists of relocating the existing fairgrounds facility to a vacant 25± acre site (approximately 15 acres exclusively for the fairgrounds and 10 acres for a mutual use with the City). The proposed project would include the following structures:

- 20,000± square feet (s.f.) multi-purpose building including administrative offices, and kitchen facilities
- 65,000± s.f. open livestock barn
- 7,500± s.f. open horticultural barn
- 7,500± s.f. rabbit barn, restrooms, and offices
- food booths
- restrooms
- beer garden
- outdoor vending and entertainment areas

Additionally, the project would consist of the street widening and associated infrastructure upgrades along Tea Pot Dome Avenue consistent with the Circulation Element of the General Plan and the Water and Sewer Master Plans.

The Initial Study prepared for the project identified several environmental factors which could be affected by the project, but determined that each of the factors could be mitigated to a less than significant level.

Notice of the proposed project has been sent to interested agencies and otherwise distributed as required by law. At the time of this report, no comments have been received.

During the course of the review period, City Staff determined that additional information regarding Public Services, Fire Protection should be provided.

ENVIRONMENTAL: On November 4, 2009, the Environmental Coordinator made a preliminary determination that a Mitigated Negative Declaration would be appropriate based on the Initial Study. The Initial Study and proposed Mitigation Measures have been transmitted to interested agencies, groups and individuals for review and comment. The review period ran for twenty (20) days from November 9 to November 30, 2009. As of this date, no comments have been received.

RECOMMENDATION: That the City Council adopt the draft resolution approving a Mitigated Negative Declaration for the Fairground Relocation Project.

ATTACHMENT: Complete Staff Report

ITEM NO. 15
ENVIRONMENTAL REVIEW OF THE PORTERVILLE FAIRGROUND RELOCATION PROJECT
CITY COUNCIL MEETING OF DECEMBER 01, 2009

OWNER/APPLICANT: City of Porterville
291 N. Main
Porterville, CA 93257

PROJECT DESCRIPTION: An Initial Study and Mitigated Negative Declaration for the Porterville Fairground Relocation Project.

SIZE OF PROPERTY: 25± acres

GENERAL PLAN CLASSIFICATION: Public/Institutional

ZONING CLASSIFICATION: OA (Open Area Zone); A-S (Airport Safety Zone); A-D (Airport Development Zone)

SURROUNDING ZONING AND LAND USE:
There is a mix of land uses surrounding the project area, as follows:
North: Industrial/M-1. West Street Industrial Park, including a transfer station for Southern California Edison, currently under construction.
South: Tulare County – Agricultural 20 acre minimum/AE-20. A rural, single-family residence and various farming and orchard uses.
East: Open Area/O-A. Fallow 12 acre parcel with the Porterville Municipal Airport beyond.

LEGAL NOTICES:

<table>
<thead>
<tr>
<th>Date Environmental Document Distributed</th>
<th>Date Notice Published in Porterville Recorder</th>
<th>Date Notice Mailed to Property Owners within 300 feet of property</th>
</tr>
</thead>
<tbody>
<tr>
<td>November 9, 2009</td>
<td>January 9, 2009</td>
<td>January 6, 2009</td>
</tr>
</tbody>
</table>
ENVIRONMENTAL SETTING:

On November 4, 2009, the Environmental Coordinator made a preliminary determination that a Mitigated Negative Declaration would be appropriate based on the Initial Study. The Initial Study and proposed Mitigation Measures have been transmitted to interested agencies, groups and individuals for review and comment. The review period ran for twenty (20) days from November 9 to November 30, 2009. Potentially significant impacts identified were biological resources, cultural resources, and noise impacts due to construction. Implementation of mitigation measures would reduce potential impacts to less than significant.

As of this date, no comments have been received. However, during the course of the review period, City Staff determined that additional information regarding Public Services, Fire Protection should be provided. Response to comments and additional information is as follows:

City of Porterville: During the review period for this document, City Staff noticed that response time during events needed to be addressed and was of concern. To mitigate this impact to an acceptable response time, an Emergency Medical Services team will be scheduled to be on standby at the fairground’s key events such as the Fair, Sierra Winter Classic, Orange Blossom Klassic and other like events. Also, a staffed Fire truck will be onsite, or equivalent measures, during large events such as the Fair throughout the life of the project or until such time as adequate fire safety facilities are constructed to provide reduced response time to the project site.

Response: These mitigation measures will be added to the Mitigation Monitoring and Reporting Program.

PROJECT DESCRIPTION/ANALYSIS:

The project is located in south central Tulare County, within the City of Porterville, west of the Porterville Municipal Airport, on the north side of Tea Pot Dome Avenue, 1340± feet east of West Street; within Section 8, Township 22 South, Range 27 East, M.D.B.&M, Porterville USGS 7.5 minute quadrangle. The project site is the southwestern 25 acres of a 123± acre parcel (APN 302-110-075).

The project consists of relocating the existing fairgrounds facility to a vacant 25± acre site (approximately 15 acres exclusively for the fairgrounds and 10 acres for a mutual use with the City). The proposed project would include the following structures:

- 20,000± square feet (s.f.) multi-purpose building including administrative offices, and kitchen facilities
- 65,000± s.f. open livestock barn
- 7,500± s.f. open horticultural barn
- 7,500± s.f. rabbit barn, restrooms, and offices
- food booths
- restrooms
- beer garden
- outdoor vending and entertainment areas

Additionally, the project would consist of the street widening and associated infrastructure upgrades along Tea Pot Dome Avenue, consistent with the Circulation Element of the General Plan and the Water and Sewer Master Plan.
Pursuant to Section 1301 A-7 (Open Area Zone) of the Porterville Zoning Ordinance, public buildings are a permitted use. In addition, Section 1301 A-11 allows temporary amusement exhibits/rides and animal exhibits/rides. The project site is located within the Airport Safety and Airport Development Zones; however, according to the Porterville Municipal Airport Master Plan Report the project site is within Zone E which would require deed notice for any residential development indicating proximity to airport and possibility of overflights.

RECOMMENDATION: That the City Council adopt the draft resolution approving a Mitigated Negative Declaration for the Fairground Relocation Project.

ATTACHMENTS:

1. Environmental Initial Study
2. Locator Map
3. Mitigation Monitoring and Reporting Program
4. Draft Resolution

Jenni Byers ___________________________ December 1, 2009
Project Planner Date
CITY OF PORTERVILLE

ENVIRONMENTAL CHECKLIST

1. **Project title:** Fairground Relocation Project

2. **Lead agency:** City of Porterville
   291 N. Main Street
   Porterville, CA 93257

3. **Contact person:** Benjamin A. Kimball
   City Planner
   (559) 782-7460

4. **Project location:** The project is located in south central Tulare County, within the City of Porterville, west of the Porterville Municipal Airport, on the north side of Tea Pot Dome Avenue, east of West Street; within Section 8, Township 22 South, Range 27 East, M.D.B.&M, Porterville USGS 7.5 minute quadrangle. The project site is the southwestern 25 acres of a 123± acre parcel (APN 302-110-075).

5. **Latitude, Longitude:** 36.023, -119.075

6. **General plan designation:** Public/Institutional

7. **Zoning:** Open Area Zone

8. **Description of project:** The project proposes to relocate the City’s existing fairgrounds facility to a vacant 25± acre site (approximately 15 acres exclusively for the fairgrounds and 10 acres for a mutual use with the City). The proposed project would include the following structures: a 20,000± square feet (s.f.) multi-purpose building including administrative offices, and kitchen facilities; a 65,000 s.f. open livestock barn; a 7,500± s.f. open horticultural barn; a 7,500± s.f. rabbit barn, restrooms, and offices; as well as food booths, restrooms, a beer garden, and outdoor vending and entertainment areas. Additionally, the project proposes street widening and associated infrastructure upgrades along Tea Pot Dome Avenue consistent with the Circulation Element of the General Plan and the Water and Sewer Master Plans.

   The existing fairgrounds annually hosts three main events: Sierra Winter Classic, Orange Blossom Klassic and the Porterville Fair, in addition to a variety of community events and exhibitions. Other phases could include an addition to the livestock barn, a multipurpose building and a horticulture building built over the next decade. The remaining 10 acres would be developed by the City of Porterville for some form of training facility, not yet defined. Any environmental impacts resulting from the construction of additional buildings and uses of the fairgrounds and City facility would be evaluated once plans and uses are defined.

   The project will require approval from the Federal Aviation Administration as well as the Tulare County Airport Land Use Commission.

   A conditional use permit will be required for an alcohol permit from the California Alcoholic Beverage Control.
9. **Surrounding land uses and setting:** There is a mix of land uses surrounding the project area, as follows:
   - North: West Street Industrial Park, including a transfer station for Southern California Edison, currently under construction
   - South: A rural, single-family residence and various farming and orchard uses.
   - East: Fallow 12 acre parcel with the Porterville Airport beyond
   - West: Citrus orchard

10. **Other public agencies whose approval is required:**
    - Federal Aviation Administration
    - California Department of Alcoholic Beverage Control
    - Tulare County Airport Land Use Commission
ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED:
The environmental factors checked below would be potentially affected by this project:

☐ Aesthetics    ☐ Agriculture Resources    ☐ Air Quality
☒ Biological Resources    ☒ Cultural Resources    ☐ Geology/Soils
☐ Hazards & Hazardous Materials    ☐ Hydrology/Water Quality    ☐ Land Use/Planning
☐ Mineral Resources    ☐ Noise    ☐ Population/Housing
☐ Public Services    ☐ Recreation    ☐ Transportation/Traffic
☐ Utilities / Service Systems    ☐ Mandatory Findings of Significance

DETERMINATION: (To be completed by the Lead Agency)
On the basis of this initial evaluation:

☐ I find that the proposed project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared.

☒ I find that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because revisions in the project have been made by or agreed to by the project proponent. A MITIGATED NEGATIVE DECLARATION will be prepared.

☐ I find that the proposed project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.

☐ I find that the proposed project MAY have a “potentially significant impact” or “potentially significant unless mitigated” impact on the environment, but at least one effect 1) has been adequately analyzed in an earlier document pursuant to applicable legal standards, and 2) has been addressed by mitigation measures based on the earlier analysis as described on attached sheets. An ENVIRONMENTAL IMPACT REPORT is required, but it must analyze only the effects that remain to be addressed.

☐ I find that although the proposed project could have a significant effect on the environment, because all potentially significant effects (a) have been analyzed adequately in an earlier EIR or NEGATIVE DECLARATION pursuant to applicable standards, and (b) have been avoided or mitigated pursuant to that earlier EIR or NEGATIVE DECLARATION, including revisions or mitigation measures that are imposed upon the proposed project, nothing further is required.

Signature

November 4, 2009
Date

Bradley D. Dunlap, AICP
City of Porterville
Printed name
For
I. AESTHETICS
Would the project:

<table>
<thead>
<tr>
<th></th>
<th>Potentially Significant Impact</th>
<th>With Mitigation Incorporation</th>
<th>Less than Significant Impact</th>
<th>No Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>a) Have a substantial adverse effect on a scenic vista?</td>
<td>☐</td>
<td>☐</td>
<td>☒</td>
<td>☐</td>
</tr>
<tr>
<td>b) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☒</td>
</tr>
<tr>
<td>c) Substantially degrade the existing visual character or quality of the site and its surroundings?</td>
<td>☐</td>
<td>☐</td>
<td>☒</td>
<td>☐</td>
</tr>
<tr>
<td>d) Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?</td>
<td>☐</td>
<td>☐</td>
<td>☒</td>
<td>☐</td>
</tr>
</tbody>
</table>

**Responses:**

**a) Less Than Significant Impact.** The project area is located on the San Joaquin Valley floor south of the City of Porterville, in south central Tulare County. From the project site there are three distinct views. To the immediate north is the partially occupied West Street Industrial Park, the view to the south and west are orchards and to the east is fallow land with the Porterville Municipal Airport beyond. While the project would modify the existing character with the addition of the fairground buildings, it would not degrade the visual quality of the site and would stay within the regional view shed. Temporary construction activities would be visible from roadside; however, would not affect a scenic vista. The impact would be less than significant.

**b) No Impact.** The scenic highway program protects and enhances California’s natural scenic beauty by allowing county and city governments to apply to the California Department of Transportation (Caltrans) to establish a scenic corridor protection program. Two state routes are located near the project site; State Route 65 (SR 65) is approximately 1.5 miles east of the project site and State Route 190 (SR 190) is approximately two miles north of the project site. According to Caltrans, SR 190, east of SR 65 is an eligible State scenic highway. The project site is not within two miles of the eligible State scenic highway portion of SR 190. There are no natural rock outcroppings or other scenic resources on the site. The land is fallow and disked for weed abatement. There would be no impact.

**c) Less Than Significant Impact.** The lands surrounding the project site are mixed industrial, agriculture and airport. Implementation of the project would not change the visual character or quality of the site or its surroundings. The impact would be less than significant.

**d) Less Than Significant Impact.** The development of the project would include the addition of lighting elements that would produce a small amount of nighttime glare. The creation of new glare from lighting would be a potential impact; however, the Porterville 2030 General Plan (2008) evaluated this impact and policy LU-I-25 establishes buffering requirements and performance standards intended to minimize harmful effects of excessive light and glare, and policy PSCF-I-8 requires that the City’s recreational...
facilities use energy-efficient lighting design with limited glare and spillover. The City's Municipal Code, Section 2206, requires parking lot light standards to minimize light and glare and be directed away from residential areas. The Tulare County Junior Livestock and Fair, Inc. host the annual one week fair event which includes a carnival; however, these lights are temporary and are removed completely at conclusion of the fair. Compliance with the City's Municipal Code and General Plan policies would ensure that less than significant light and glare impacts would occur.
II. AGRICULTURE RESOURCES
Would the project:

a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?

<table>
<thead>
<tr>
<th>Potentially Significant Impact</th>
<th>Less than Significant Impact</th>
<th>Mitigation Incorporation</th>
</tr>
</thead>
</table>

b) Conflict with existing zoning for agricultural use, or a Williamson Act contract?

<table>
<thead>
<tr>
<th>Potentially Significant Impact</th>
<th>Less than Significant Impact</th>
<th>Mitigation Incorporation</th>
</tr>
</thead>
</table>

c) Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use?

<table>
<thead>
<tr>
<th>Potentially Significant Impact</th>
<th>Less than Significant Impact</th>
<th>Mitigation Incorporation</th>
</tr>
</thead>
</table>

Responses:

a) Less Than Significant Impact. According to the soil survey of the Tulare County, Western Part the project site contains one soil type, Exeter loam, 0 to 2% slope (114) which is considered Farmland of Statewide Importance (USDA, 1993); however, the project site was formerly a San Joaquin kit fox preserve that was established as a mitigation measure for the Porterville Municipal Airport Master Plan (1990). The U.S. Fish and Wildlife (FWS) agreed the site was ineffective, as observed in a biological survey in 2005 and 2006. The 1990 Biological Opinion was amended to include the City purchasing 26 conservation credits in a FWS-approved Conservation Bank (Attachment A). The City purchased 21.69 credits at the Allensworth Conservation Bank and 4.31 credits at the Kreyenhagen Hills Conservation Bank in April of 2008. The fairground site is a location planned for development in the Porterville 2030 General Plan and any loss of farmland resulting from the implementation of that plan has been evaluated in the General Plan Environmental Impact Report (2008), wherein appropriate findings were made relative to potential impacts. The impact would be less than significant.

b) No Impact. The City recently updated its General Plan and currently has an interim zoning ordinance. The site has been determined to be consistent with the Public/Institutional land use designation in the Open Area Zone by the Zoning Administrator, which includes public buildings as a permitted use.

The main purposes of the Williamson Act are to preserve agricultural land and to encourage open space preservation and efficient urban growth. The parcel is not in a Williamson Act contract. The project does not conflict with the zoning designation as an agricultural use nor does is conflict with the Williamson Act. There are no impacts.

c) Less Than Significant Impact. The site is adjacent to the Municipal Airport to the east and an industrial park to the north and is contiguous to development. The City of Porterville in its General Plan recognizes that the dominant land use surrounding the city is agricultural. As discussed in Impact II-a, the fairground site has been evaluated for the loss of farmland in the Porterville 2030 General Plan. The individual impact of the proposed project is less than significant.
### III. AIR QUALITY

**Would the project:**

|                      | Less than Significant | Potentially Significant | With Mitigation | Less than Significant | Incorporation | Significant Impact
<table>
<thead>
<tr>
<th></th>
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<th></th>
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<th></th>
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<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>a) Conflict with or obstruct implementation of the applicable air quality plan?</td>
<td>☐</td>
<td>☐</td>
<td>☑</td>
<td>☐</td>
<td></td>
<td>☐</td>
</tr>
<tr>
<td>b) Violate any air quality standard or contribute substantially to an existing or projected air quality violation?</td>
<td>☐</td>
<td>☐</td>
<td>☑</td>
<td>☐</td>
<td></td>
<td>☐</td>
</tr>
<tr>
<td>c) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions which exceed quantitative thresholds for ozone precursors)?</td>
<td>☐</td>
<td>☐</td>
<td>☑</td>
<td>☐</td>
<td></td>
<td>☐</td>
</tr>
<tr>
<td>d) Expose sensitive receptors to substantial pollutant concentrations?</td>
<td>☐</td>
<td>☐</td>
<td>☑</td>
<td>☐</td>
<td></td>
<td>☐</td>
</tr>
<tr>
<td>e) Create objectionable odors affecting a substantial number of people?</td>
<td>☐</td>
<td>☐</td>
<td>☑</td>
<td>☐</td>
<td></td>
<td>☐</td>
</tr>
<tr>
<td>f) Substantially alter air movement, moisture, or temperature, or cause any substantial change in climate?</td>
<td>☐</td>
<td>☐</td>
<td>☑</td>
<td>☐</td>
<td></td>
<td>☐</td>
</tr>
</tbody>
</table>

**Response:**

**a) Less Than Significant Impact.** The project lies within the San Joaquín Valley Air Basin, which is managed by the San Joaquin Valley Air Pollution Control District (SJVAPCD). National Ambient Air Quality Standards (NAAQS) and California Ambient Air Quality Standards (CAAAQS) have been established for the following criteria pollutants: carbon monoxide (CO), ozone (O₃), sulfur dioxide (SO₂), nitrogen dioxide (NO₂), particulate matter (PM₁₀ and PM₂.₅), and lead (Pb). The CAAQS also set standards for sulfates, hydrogen sulfide, and visibility.

Areas are classified under the Federal Clean Air Act as either “attainment” or “non-attainment” areas for each criteria pollutant based on whether the NAAQS have been achieved or not. Attainment...
relative to the State standards is determined by the California Air Resources Board (CARB). The San Joaquin Valley is designated as a State and Federal non-attainment area for O₃, PM₁₀, and PM₂.₅, and a State and Federal attainment area for CO, SO₂, NO₂, and Pb (SJVAPCD, 2008).

The project would not conflict with or obstruct the implementation of the air quality management plan. Operation of the project would not change following implementation of the project and no land uses are proposed that are different than those anticipated for the property in long range planning. Standards set by the SJVAPCD, CARB, and Federal agencies relating to the project would be required and incorporated at applicable design and approval stages. Specific air quality impacts related to criteria pollutants are discussed below. Impacts relating to obstructing implementation of air quality plans would be less than significant for the proposed project.

b) Less Than Significant Impact. The San Joaquin Valley is designated as a Federal and State non-attainment area for O₃ and PM₁₀, and PM₂.₅. The SJVAPCD, the regional agency that regulates air permitting, maintains an extensive air quality monitoring network to measure criteria pollution concentrations throughout the San Joaquin Valley air basin.

Fairgrounds are not identified by the Institute of Transportation Engineers; therefore, historical data and employee information were used to determine average daily trips. The annual fair in the past several years has averaged approximately 40,000 visitors to the one week event. The operational use of the fair and other events would therefore generate approximately 60 average daily trips; however, since the project is a relocation of the existing fairgrounds the impacts to air quality would result mainly from the construction of the new facility.

The Urban Emissions software (URBEMIS) was used to estimate construction emissions for the project. The modeling results are provided below in Table 1 and the output files can be seen in Attachment A.

<table>
<thead>
<tr>
<th>Proposed Project Operation and Construction Emissions</th>
</tr>
</thead>
<tbody>
<tr>
<td>ROG (tons/year)</td>
</tr>
<tr>
<td>-----------------</td>
</tr>
<tr>
<td>Total Project Emissions</td>
</tr>
<tr>
<td>Threshold of Significance</td>
</tr>
</tbody>
</table>

Source: URBEMIS 9.2.4

* Complying with SJVAPCD’s Regulation VII reduces any project impact to less than significant.

As demonstrated in Table 1, construction emissions resulting from this project would create a less than significant impact.

c) Less Than Significant Impact. As discussed above, the project would result in increases in criteria pollutants during construction; however, during construction, air quality impacts would be less than SJVAPCD thresholds for non-attainment pollutants and operation of the project would not result in impacts to air quality standards for criteria pollutants. Accordingly, net increases of non-attainment criteria pollutants would not be significant for the proposed project.

d) Less Than Significant Impact. Section 3 of the Guide for Assessing and Mitigating Air Quality Impacts defines a sensitive receptor as a location where human populations, especially children, seniors, and sick persons are present and where there is a reasonable expectation of human exposure to pollutants. Sensitive receptors normally refer to land uses with heightened sensitivity to localized, rather than regional pollutants. There are 12 single family residences within one mile of the project site; however,
concentrations of pollutants would not be great enough to be a hazard to any sensitive receptors. The impact would be less than significant.

e) Less Than Significant Impact. During construction, odors may be generated from the exhaust of the diesel-powered equipment. However, the odors will be temporary in nature and are not expected to significantly affect a substantial number of people. Once the proposed project is constructed, no new significant sources of odors will be generated. Therefore, the overall impacts from odors would be less than significant.

f) Less Than Significant Impact. While climate change has been a concern since at least 1988, as evidenced by the establishment of the United Nations and World Meteorological Organization’s Intergovernmental Panel on Climate Change (IPCC), the efforts devoted to greenhouse gas (GHG) emissions reduction and climate change research and policy have increased dramatically in recent years. In 2002, with the passage of Assembly Bill 1493 (AB 1493), California launched an innovative and pro-active approach to dealing with GHG emissions and climate change at the state level. AB 1493 requires the Air Resources Board (ARB) to develop and implement regulations to reduce automobile and light truck GHG emissions; these regulations will apply to automobiles and light trucks beginning with the 2009 model year.

On June 1, 2005, Governor Arnold Schwarzenegger signed Executive Order S-3-05. The goal of this Executive Order is to reduce California’s GHG emissions to: 1) 2000 levels by 2010, 2) 1990 levels by the year 2020, and 3) 80% below the 1990 levels by the year 2050. In 2006, this goal was further reinforced with the passage of Assembly Bill 32 (AB 32), the Global Warming Solutions Act of 2006. AB 32 sets the same overall GHG emissions reduction goals while further mandating that ARB create a plan, which includes market mechanisms, and implement rules to achieve “real, quantifiable, cost-effective reductions of greenhouse gases.” Executive Order S-20-06 further directs state agencies to begin implementing AB 32, including the recommendations made by the state’s Climate Action Team.

Climate change and GHG reduction is also a concern at the federal level; however, at this time, no legislation or regulations have been enacted specifically addressing GHG emissions reductions and climate change.

Temporary project construction emissions will be minimal, as demonstrated above. The project, as it is a relocation of an existing use, would not significantly contribute to the emission of GHGs. The impact is less than significant.
IV. BIOLOGICAL RESOURCES

Would the project:

<table>
<thead>
<tr>
<th></th>
<th>Less than Significant Impact</th>
<th>Potentially Significant Impact</th>
<th>Mitigation Incorporation</th>
<th>Less than Significant Impact</th>
<th>No Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?</td>
<td>✗</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>✗</td>
<td>☐</td>
</tr>
<tr>
<td>c) Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>✗</td>
<td>☐</td>
</tr>
<tr>
<td>d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>✗</td>
<td>☐</td>
</tr>
<tr>
<td>e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>✗</td>
</tr>
<tr>
<td>f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>✗</td>
</tr>
</tbody>
</table>
**Response:**

**a) Less Than Significant Impact.** The project site is located within the United States Geological Survey (USGS) Porterville 7.5-minute topographic quadrangles. Based on a review of information from the California Department of Fish and Game Natural Diversity Database (CNDDB) RareFind2 data (2009, September) for this quadrangle, and the quadrangles immediately surrounding the project site (Cairns Corner, Fountain Spring, Frazier Spring, Lindsay, Success Dam, Woodville, Sausalito School, and Ducor) there are 12 species of plants with federal and state-listed status, and/or California Native Plant Society (CNPS) Listed status, 16 species of wildlife that are federally or state-listed or have other special status, and two sensitive terrestrial natural communities or habitat types that are reported from historical information for the nine quadrangles as shown in Table 2 below.

<table>
<thead>
<tr>
<th>Scientific Name</th>
<th>Common Name</th>
<th>Special Status</th>
<th>CNPS</th>
<th>Habitat</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>Atriplex erecticaulis</em></td>
<td>Earlilart orache</td>
<td>List 1B.2</td>
<td></td>
<td></td>
</tr>
<tr>
<td><em>Atriplex montanica</em></td>
<td>Lhasa saltbush</td>
<td>List 1B.1</td>
<td></td>
<td></td>
</tr>
<tr>
<td><em>Atriplex persistens</em></td>
<td>Vernal pool smallscale</td>
<td>List 1B.2</td>
<td></td>
<td></td>
</tr>
<tr>
<td><em>Atriplex subtilis</em></td>
<td>Subtle orache</td>
<td>List 1B.2</td>
<td></td>
<td></td>
</tr>
<tr>
<td><em>Caulanthus californicus</em></td>
<td>California jewel-flower</td>
<td>FE, SE</td>
<td>List 1B.1</td>
<td></td>
</tr>
<tr>
<td><em>Clethra springvilleensis</em></td>
<td>Springville clarkia</td>
<td>FE, SE</td>
<td>List 1B.2</td>
<td></td>
</tr>
<tr>
<td><em>Delphinium recurvatum</em></td>
<td>Recurved larkspur</td>
<td>List 1B.2</td>
<td></td>
<td></td>
</tr>
<tr>
<td><em>Eryngium spinosepalaum</em></td>
<td>Spiny-sepaled button celery</td>
<td>FT, SE</td>
<td>List 1B.2</td>
<td></td>
</tr>
<tr>
<td><em>Fritillaria striata</em></td>
<td>Striped adobe-lily</td>
<td>ST</td>
<td>List 1B.1</td>
<td></td>
</tr>
<tr>
<td><em>Mimulus pinutus</em></td>
<td>Calico monkeyflower</td>
<td>List 1B.2</td>
<td></td>
<td></td>
</tr>
<tr>
<td><em>Pseudobahia peirsonii</em></td>
<td>San Joaquin adobe sunburst</td>
<td>FT, SE</td>
<td>List 1B.1</td>
<td></td>
</tr>
<tr>
<td><em>Sidalcea keckeri</em></td>
<td>Keck’s checkerbloom</td>
<td>FE</td>
<td>List 1B.2</td>
<td></td>
</tr>
</tbody>
</table>

**Wildlife Species**

<table>
<thead>
<tr>
<th>Scientific Name</th>
<th>Common Name</th>
<th>Special Status</th>
<th>CNPS</th>
<th>Habitat</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>Antrozous pallidus</em></td>
<td>Pallid bat</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><em>Branchinecta lynchii</em></td>
<td>Vernal pool fairy shrimp</td>
<td>FT</td>
<td></td>
<td></td>
</tr>
<tr>
<td><em>Batoe swainsoni</em></td>
<td>Swainson’s hawk</td>
<td>ST</td>
<td></td>
<td></td>
</tr>
<tr>
<td><em>Desmocerus californicus dimorphus</em></td>
<td>Valley elderberry longhorn beetle</td>
<td>FT</td>
<td></td>
<td></td>
</tr>
<tr>
<td><em>Dipodomys mirabilis mirabilis</em></td>
<td>Tipon kangaroo rat</td>
<td>FE, FE</td>
<td></td>
<td></td>
</tr>
<tr>
<td><em>Eumops perotis californicus</em></td>
<td>Western mastiff bat</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><em>Gymnogyps californianus</em></td>
<td>California condor</td>
<td>FE, SE</td>
<td></td>
<td></td>
</tr>
<tr>
<td><em>Lairus cinereus</em></td>
<td>Hoary bat</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><em>Lyta hoppingi</em></td>
<td>Hopping’s blister beetle</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><em>Lyta molesta</em></td>
<td>Molestan blister beetle</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><em>Lyta morrisoni</em></td>
<td>Morrison’s blister beetle</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><em>Perognathus inornatus</em></td>
<td>San Joaquin pocket mouse</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><em>Rana boylii</em></td>
<td>Foothill yellow-legged frog</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><em>Spea hammondii</em></td>
<td>Western spadefoot</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><em>Taxidea taxus</em></td>
<td>American badger</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><em>Vulpes macroots mutica</em></td>
<td>San Joaquin kit fox</td>
<td>FE, ST</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
**Sensitive Vegetation Communities**

<table>
<thead>
<tr>
<th>Northern Claypan Vernal Woodland</th>
<th>Alluvial Woodland</th>
</tr>
</thead>
<tbody>
<tr>
<td>Northern Claypan Vernal Pool</td>
<td></td>
</tr>
</tbody>
</table>

**Sources:**
CNDDB (2008), and CNPS (2007)

**List 1B:** Plants considered by the CNPS to be rare, threatened, or endangered in California and elsewhere.

**List 2:** Plants considered by the CNPS to be rare, threatened, or endangered in California but more common elsewhere.

The project site was formerly a San Joaquin kit fox preserve that was established as a mitigation measure for the Porterville Municipal Airport Master Plan (1990). The U.S. Fish and Wildlife (FWS) agreed the site was ineffective, as observed in a biological survey in 2005 and 2006. The 1990 Biological Opinion was amended to include the City purchasing 26 conservation credits in a FWS-approved Conservation Bank (Attachment B). The City purchased 21.69 credits at the Allensworth Conservation Bank and 4.31 credits at the Kreyenhagen Hills Conservation Bank in April of 2008. The land is currently fallow, as documented on a site visit from City staff on 9/10/09. The site has been disked for weed abatement, occasionally used for dry farming, and would not impact any federally or state-listed critical habitat or species. Foraging opportunities are limited because of the high degree of disturbance; however, in the past there was the potential for kit fox to occur on the project site. The developer shall follow the Standardized Recommendations for Protection of the San Joaquin Kit Fox Prior to or During Ground Disturbance (USFWS, 1999). The measures that are listed below have been excerpted from these guidelines.

**Mitigation Measure:**

1. A pre-construction survey shall be conducted no less than 14 days and no more than 30 days prior to the beginning of ground disturbance and/or construction activities on the project sites, or prior to any project activity likely to impact the San Joaquin kit fox. The surveyor shall thoroughly check the project sites for kit fox dens and, if found, exclusion zones shall be placed in accordance with USFWS Recommendations at the following radii:

   | Potential den | 2. 50 feet |
---|---------------|-----------|
| 3. Known den | 4. 100 feet |
| 5. Natal/pupping den (occupied and unoccupied) | 6. Contact Service |
| 7. Atypical den | 8. 50 feet |

2. If dens must be removed, they must be appropriately monitored and excavated by a trained wildlife biologist. Replacement dens would be required. Destruction of natal dens and other “known” kit fox dens must not occur until authorized by USFWS.

3. Project-related vehicles shall observe a 20-mph speed limit in all project areas, except on county roads and State and Federal highways; this is particularly important at night when kit foxes are most active. To the extent possible, nighttime construction should be avoided. Off-road traffic outside of designated project areas should be prohibited.

4. To prevent inadvertent entrapment of kit foxes or other animals during project construction, all excavated, steep-walled holes or trenches more than 2 feet deep shall be covered at the close of each working day by plywood or similar materials, or provided with one or more escape ramps.
constructed of earth fill or wooden planks. Before such holes or trenches are filled, they should be thoroughly inspected for trapped animals. If at any time a trapped or injured kit fox is discovered, the procedures under numbers 9 and 10 of this section must be followed.

5. Kit foxes are attracted to den-like structures such as pipes and therefore may enter stored pipe, becoming trapped or injured. All construction pipes, culverts, or similar structures with a diameter of 4-inches or greater that are stored at a construction site for one or more overnight periods shall be thoroughly inspected for kit foxes before the pipe is subsequently buried, capped, or otherwise used or moved in any way. If a kit fox is discovered inside a pipe that section of pipe shall not be moved until the USFWS has been consulted. If necessary, and under the direct supervision of the biologist, the pipe may be moved once to remove it from the path of construction activity, until the fox has escaped.

6. All food-related trash items such as wrappers, cans, bottles, and food scraps shall be disposed of in closed containers and removed at least once a week from a construction or project site.

7. No firearms shall be allowed on the project site.

8. To prevent harassment, mortality of kit foxes or destruction of dens by dogs or cats, no pets shall be permitted on project sites.

9. A representative shall be appointed by the project proponent who would be the contact source for any employee or contractor who might inadvertently kill or injure a kit fox or who finds a dead, injured or entrapped individual. The representative’s name and telephone number shall be provided to the USFWS.

10. In the case of trapped animals, escape ramps or structures shall be installed immediately to allow the animal(s) to escape, or the USFWS shall be contacted for advice.

11. Any contractor, employee(s), or military or agency personnel who inadvertently kills or injures a San Joaquin kit fox shall immediately report the incident to their representative. This representative shall contact the CDFG immediately in the case of a dead, injured or entrapped kit fox. The CDFG contact for immediate assistance is State Dispatch at (916) 445-0045. The CDFG contact would contact the local warden or biologist.

12. The Sacramento Fish and Wildlife Office and CDFG shall be notified in writing within three working days of the accidental death or injury to a San Joaquin kit fox during project related activities. Notification must include the date, time, and location of the incident or of the finding of a dead or injured animal and any other pertinent information. The USFWS contact is the Chief of the Division of Endangered Species, 2800 Cottage Way, Suite W2605, Sacramento, CA 95825-1846, (916) 414-6620. The CDFG contact is Mr. Ron Schlorff at 1416 9th Street, Sacramento, CA 95814, (916) 654-4262.

b, c, d) Less Than Significant Impact. According to the National Wetlands Inventory Maps, no wetlands or riparian communities exist on or near the project sites. The project site does not have standing water, does not provide sustainable foraging opportunities, nor are there trees to provide nesting habitat. The site would not affect species protected under the Migratory Bird Act. As the site has had a high degree of disturbance for several years, the project would not affect other biotic communities.

e) No Impact. The City of Porterville does not have an adopted biological preservation or tree preservation ordinance. There would be no impact.

f) No Impact. The City of Porterville does not have an adopted habitat conservation plan. There would be no impact.
## V. CULTURAL RESOURCES

Would the project:

<table>
<thead>
<tr>
<th>Less than Significant Impact</th>
<th>Mitigation Incorporation</th>
<th>Less than Significant Impact</th>
<th>No Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>Potentially Significant Impact</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

a) Cause a substantial adverse change in the significance of a historical resource as defined in §15064.5?

- [ ]
- [x]
- [ ]
- [ ]

b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to §15064.5?

- [ ]
- [ ]
- [x]
- [ ]

c) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?

- [ ]
- [ ]
- [x]
- [ ]

d) Disturb any human remains, including those interred outside of formal cemeteries?

- [ ]
- [ ]
- [ ]
- [x]

### Response:

**a) Less Than Significant Impact with Mitigation Incorporation.** A cultural resources records search was conducted at the Southern San Joaquin Valley Historical Resources Information Center at California State University, Bakersfield on November 21, 2006 (Attachment C) for the Southern California Edison (SCE) Company Service Center, located immediately north of the project site. The results of the records search showed that there were no recorded cultural resources within a one-half mile of the SCE project site, which would include the project site as well. Although no historical or archaeological sites have been recorded within the project area, the project area has not been surveyed and as such, the possibility remains that historical or archaeological resources do exist on the site. This would be a potential significant impact; however, the implementation of the following mitigation measure would reduce potential impacts to historical and archaeological resources to less than significant.

### Mitigation Measure:

If in the course of project construction or operation, any archaeological or historical resources are uncovered, discovered, or otherwise detected or observed, activities within fifty (50) feet of the find shall be ceased. A qualified archaeologist shall be contacted and advise the City of the site's significance. If the findings are deemed significant by the City of Porterville Planning Department, appropriate mitigation measures shall be required prior to any resumption of work in the affected area of the project.

**b) Less Than Significant Impact.** Any impacts to archaeological resources have been analyzed in Impact V-a and impacts would be less than significant.

c) Less Than Significant Impact. No known paleontological resources exist within the project area. There are no geologic features in the project area. The majority of project construction would occur on flat areas and would not include large amounts of sediment. In addition, grading activities would be
minimal and consistent with that of commercial building development such as the installation of footings and the construction of internal vehicular and pedestrian circulation. Construction of the proposed project would not be expected to disturb any paleontological resources or alter any geologic features not previously disturbed; however, the possibility that such resources would occur on the project site does exist and as discussed in Impact V-a, conditions of approval would include requirements if a discovery is made.

d) No Impact. No formal cemeteries or other places of human internment are known to exist at the site. In the event human remains are encountered during construction activities, all work within the vicinity of the remains would halt in accordance with Health and Safety Code §7050.5, Public Resources Code §5097.98, and Section 15064.5 of the CEQA Guidelines. As such, potential impacts to human remains and paleontological resources would not occur as a result of the project.
VI. GEOLOGY AND SOILS

Would the project:

<table>
<thead>
<tr>
<th>Potentially Significant Impact</th>
<th>With Mitigation Incorporation</th>
<th>Less than Significant Impact</th>
<th>No Impact</th>
</tr>
</thead>
</table>

a) Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:
   i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault?
   ii) Strong seismic ground shaking?
   iii) Seismic-related ground failure, including liquefaction?
   iv) Landslides?

b) Result in substantial soil erosion or the loss of topsoil?

c) Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?

d) Be located on expansive soil, as defined in Table 18-1-B of the most recently adopted Uniform Building Code creating substantial risks to life or property?

e) Have soils incapable of adequately supporting the use of septic tanks or alternative waste water disposal systems where sewers are not available for the disposal of waste water?

Response:

a-i) **Less Than Significant Impact.** No substantial faults are known to occupy Tulare County according to the Alquist-Priolo Earthquake Fault Zoning Maps from the State of California Department of Conservation, thus the project would have a less than significant impact with regards to the dangers associated with geologic instability.
a-ii) Less Than Significant Impact. Ground-shaking intensity is measured on the Modified Mercalli Scale, which ranges from I (not felt) to XII (widespread devastation) experienced by people, structures, and earth materials. The degree of shaking an earthquake will have on the project site and associated structures depends on a number of factors such as the location of the fault, distance to the epicenter, size of the earthquake, the geology of the area, and the quality of building construction. According to the United States Geological Survey California-Nevada Active Fault Maps, the closest active faults are located within 50 miles of the project site (USGS, 2008). The Modified Mercalli Rating for the Porterville area, as determined by the California Division of Mines and Geology, is estimated between VII (ranging from considerable damage in poorly designed or constructed buildings to negligible damage in buildings of good design and construction) and VIII (ranging from great damage in poorly designed or constructed buildings to slight damage in specially designed structures) (Porterville EIR, 2008). The impact would be less than significant.

a-iii) Less Than Significant Impact. According to the soil survey of the Tulare County, Western Part the project site contains one soil type, Exeter loam, 0 to 2% slope (114) which is not considered to be expansive or subsidence-prone (USDA, 1993). No oil or gas production exists at the project site. Furthermore, soil conditions on the site are not prone to soil instability due to their low shrink-swell behavior. The impact would be less than significant.

a-iv) No Impact. Areas that are susceptible to landsliding include steep slopes underlain by weak bedrock. Due to the site’s flat terrain, the project site is not in an area prone to landslides. Based on review of topographic maps, the terrain of the project site and surrounding areas is generally flat and there are no unusual geographical features. There would be no impact.

b) Less Than Significant Impact. The project will involve site preparation and excavation prior to construction. These activities may temporarily expose soils to erosion potential. Construction activities are expected to occur for a limited time, approximately 12 months. Implementation of adopted management practices and compliance with the provisions of the National Pollutant Discharge Elimination System (NPDES) permit would ensure that these impacts remain less than significant.

c) Less Than Significant Impact. Substantial grade change would not occur in the topography to the point where the project would expose people or structures to potential substantial adverse effects on- or off-site, such as landslides, lateral spreading, subsidence, liquefaction or collapse. The impact would be less than significant.

d) Less Than Significant Impact. Any impacts due to expansive soils have been analyzed in Impact VI-a-iii. The impact would be less than significant.

e) No Impact. The City of Porterville owns, maintains, and operates the City’s sanitary sewer system, which includes the collection system and the wastewater treatment plant. The proposed fairground would be developed in compliance with the City’s Water Master Plan (2001) and the Sewer System Master Plan (2001). Both the Water Master Plan and the Sewer System Master Plan projected a 15-year build out; therefore, no septic tanks or alternative waste water disposal systems would be proposed as a part of the facility. There would be no impact.
**VII. HAZARDS/HAZARDOUS MATERIALS**

Would the project:

<table>
<thead>
<tr>
<th>Item</th>
<th>Potentially Significant Impact</th>
<th>With Mitigation Incorporation</th>
<th>Less than Significant Impact</th>
<th>No Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>a) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?</td>
<td>❌</td>
<td>❌</td>
<td>✓</td>
<td>❌</td>
</tr>
<tr>
<td>b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?</td>
<td>❌</td>
<td>❌</td>
<td>❌</td>
<td>✓</td>
</tr>
<tr>
<td>c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?</td>
<td>❌</td>
<td>❌</td>
<td>✓</td>
<td>❌</td>
</tr>
<tr>
<td>d) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?</td>
<td>❌</td>
<td>❌</td>
<td>❌</td>
<td>✓</td>
</tr>
<tr>
<td>e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area?</td>
<td>❌</td>
<td>❌</td>
<td>✓</td>
<td>❌</td>
</tr>
<tr>
<td>f) For a project within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area?</td>
<td>❌</td>
<td>❌</td>
<td>❌</td>
<td>✓</td>
</tr>
<tr>
<td>g) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?</td>
<td>❌</td>
<td>❌</td>
<td>❌</td>
<td>✓</td>
</tr>
<tr>
<td>h) Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?</td>
<td>❌</td>
<td>❌</td>
<td>❌</td>
<td>✓</td>
</tr>
</tbody>
</table>
Response:

a) Less Than Significant Impact. The project proposes the construction of a new fairground facility that will not require the routine transport, use, emission, or disposal of hazardous materials in construction or operations activities. The use of hazardous materials will be limited to propane for cooking, cleaning products, building machinery chemicals, and pesticides and herbicides that will be infrequently applied to landscaped areas. The impact would be less than significant.

b) No Impact. Any impacts regarding hazardous materials have been discussed in Impact VII-a. There is no impact.

c) Less Than Significant Impact. There are no schools located within one-quarter mile of the project site. The nearest school, Hope Elementary School, is located approximately 2.0 miles east of the project site. The project involves the construction of a fairground, which would use propane for the food booths. The use of propane would not create a significant hazard to the schools in any way. There is no impact.

d) No Impact. The project site is not listed as a hazardous materials site pursuant to Government Code Section 65962.5 and is not included on a list compiled by the California Department of Toxic Substances Control or U.S. Environmental Protection Agency. There is no impact.

e) Less Than Significant Impact. The project site is located west of the Porterville Municipal Airport within the Airport Development and Airport Safety Zone. Temporary amusement exhibits rides and animal exhibits are allowed within these zones. During the one week fair event carnival rides will be a part of the events; however, none of the rides are higher than 100 feet which is well within the airport height restriction. According to the City of Porterville General Plan, the airport is used mainly for State and federal fire suppression activities, passengers, and commercial goods. Airplane fuel and hydraulic liquids would be the only hazardous materials transported out of the airport as they are used for operation of the aircraft. The project would also require approval from the Tulare County Airport Land Use Commission. The project would not result in the construction of habitable structures thus would not endanger the public. There would be a less than significant impact.

f) No Impact. The project site is not in the vicinity of a private airstrip. Any impacts regarding public airports were discussed in Impact VII-e.

g) No Impact. The project does not cross any publicly accessed routes, and would not interfere with implementation of an emergency response plan or evacuation. The main access points to the project site would be Tea Pot Dome Avenue, West Street, Newcomb Street and Scranton Avenue. These access roads are not part of the City’s Emergency Preparedness Plan.

h) No Impact. The project would not expose people or structures to a significant risk involving wildland fires as the surrounding lands are intensive agricultural production to the west and south, airport to the east and industrial lands to the north and are not considered wildlands. The project site is currently fallow and routinely maintained for weed control. There would be no impact.
VIII. HYDROLOGY AND WATER QUALITY
Would the project:

<table>
<thead>
<tr>
<th></th>
<th>Potentially Significant Impact</th>
<th>Less than Significant Impact</th>
<th>No Impact</th>
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<tbody>
<tr>
<td>a)</td>
<td>x</td>
<td>x</td>
<td>x</td>
</tr>
<tr>
<td>b)</td>
<td>x</td>
<td>x</td>
<td>x</td>
</tr>
<tr>
<td>c)</td>
<td>x</td>
<td>x</td>
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<td>d)</td>
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<td>e)</td>
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<td>f)</td>
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<td>g)</td>
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<td>h)</td>
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<td>i)</td>
<td>x</td>
<td>x</td>
<td>x</td>
</tr>
<tr>
<td>j)</td>
<td>x</td>
<td>x</td>
<td>x</td>
</tr>
</tbody>
</table>

- a) Violate any water quality standards or waste discharge requirements?
- b) Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)?
- c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion or siltation on- or off-site?
- d) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or off-site?
- e) Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff?
- f) Otherwise substantially degrade water quality?
- g) Place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map?
- h) Place within a 100-year flood hazard area structures which would impede or redirect flood flows?
- i) Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam?
- j) Inundation by seiche, tsunami, or mudflow?
**Response:**

a) **Less Than Significant Impact.** The project will require on site stormwater retention, and such facility designs will be required to comply with City of Porterville Development Standards, as well as be required to comply with National Pollution Discharge Elimination System requirements and as such will not be allowed to violate any water quality standards. The impact would be less than significant.

b) **Less Than Significant Impact.** The project is within the boundaries of the City’s Water System Master Plan. Development of the site was anticipated and adequate water supplies have been identified. The impact would be less than significant.

c) **Less Than Significant Impact.** The existing slope of the land is slight; however, drainage patterns would change as a result of project build out. A stormwater retention basin would be constructed in accordance with City of Porterville Development Standards to accommodate run-off generated from the construction of the fairgrounds facility and hardscape consistent with such development. Temporary construction activities would be monitored through compliance with the National Pollutant Discharge Elimination System General Permit No. CAS000002 for Discharges of Storm Water Associated with Construction Activity (Waste Discharge Requirements, Order No. 99-08-DWQ). Before construction begins, a Notice of Intent to comply with the Order must be submitted to the State Water Resources Control Board and a Storm Water Pollution Prevention Plan must be prepared. The project would have a less than significant impact.

d) **Less Than Significant Impact.** Any impacts regarding the alteration of drainage patterns to increase runoff water that would potentially induce flooding have been discussed in the impact analysis for Impact VIII-c.

e) **Less Than Significant Impact.** Any impacts regarding the creation or contribution to runoff water that would potentially exceed the capacity of existing stormwater drainage systems have been discussed in the impact analysis for Impact VIII-c.

f) **Less Than Significant Impact.** Any impacts to water quality have been discussed in the impact analysis for Impact VIII-a.

**g) No Impact.** According to the Federal Emergency Management Agency (FEMA) National Flood Insurance Program (NFIP) Flood Insurance Rate Map (FIRM) for Community Number 06107C dated June 16, 2009, Panel No. 1640E, the project site is not located within a 100-year flood plain. In addition, the project does not propose housing. There would be no impact with regards to flood related events.

h) **No Impact.** Any impacts regarding the placement of structures in a 100-year flood hazard area that would impede or redirect flood flows have been discussed in the analysis of Impact VIII-g. There would be no impact.

i) **Less Than Significant Impact.** According to Tulare County Geographic Information Systems data, the project area is within the 1/2 hour to 1-hour inundation area of Success Dam. In the event of its failure, most of Porterville would be flooded in less than an hour. The United States Army Corps of Engineers is proposing to reconstruct and widen the dam to bring it up to federal safety standards with construction beginning in 2009 (Porterville, 2008). Regardless of construction, if such an event were to occur, the City’s Emergency Preparedness Plan outlines evacuation routes. The impact would be less than significant.
j) **No Impact.** Due to the lack of a significant water body near the project site, there would be no potential for seiche or tsunami to occur. There would be no impact.
IX. LAND USE AND PLANNING

Would the project:

<table>
<thead>
<tr>
<th>Less than Significant Mitigation Incorporation</th>
<th>Less than Significant Impact</th>
<th>No Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>Potentially Significant Impact</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

a) Physically divide an established community?

- [ ]

b) Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the General Plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?

- [ ]

<table>
<thead>
<tr>
<th>Less than Significant Impact</th>
<th>No Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>Potentially Significant Impact</td>
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<p>| | |</p>
<table>
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<th></th>
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</thead>
</table>

| Conflict with any applicable habitat conservation plan or natural community conservation plan?

- [ ]

Response:

a) **No Impact.** The project site is located within the city limits of Porterville and, therefore the project will not physically divide any communities.

b) **No Impact.** The City recently updated its General Plan (2008) and currently has an interim zoning ordinance. The site has been determined to be consistent with the Public/Institutional designation by the Zoning Administrator and would not conflict with the zoning classification of Open Area.

c) **No Impact.** There are no adopted habitat conservation plans or natural community conservation plans in the area of the project; therefore, there is no impact.
X. MINERAL RESOURCES
Would the project:

<table>
<thead>
<tr>
<th>Less than</th>
<th>Significant</th>
</tr>
</thead>
<tbody>
<tr>
<td>Potentially</td>
<td>With</td>
</tr>
<tr>
<td>Impact</td>
<td>Mitigation</td>
</tr>
<tr>
<td>Incorporation</td>
<td>Impact</td>
</tr>
<tr>
<td>Impact</td>
<td>No</td>
</tr>
</tbody>
</table>

a) Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?

   □   □   □   □   X

b) Result in the loss of availability of a locally important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan?

   □   □   □   □   X

Response:

a) No Impact. According to the Porterville 2030 General Plan “The most economically significant mineral resources in Tulare County are sand, gravel, and crushed stone, used as sources for aggregate (road materials and other construction).” The General Plan identified three mineral resource zones; however, the proposed fairgrounds location is outside of those zones and no known mineral resources have been found. The project would not result in the loss of an available known mineral resource. There is no impact.

b) No Impact. Any impacts to mineral resources identified on a localized plan have been discussed in impact X-a. There is no impact.
**XL. NOISE**

Would the project result in:

| a) Exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies? |
|---|---|---|---|---|
| Potentially Significant Impact | Less than Significant With Mitigation Incorporation | Less than Significant Impact | No Impact |
| ☐ | × | ☐ | ☐ |

| b) Exposure of persons to or generation of excessive groundborne vibration or groundborne noise levels? |
|---|---|---|---|---|
| ☐ | ☐ | ☐ | ☐ |

| c) A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project? |
|---|---|---|---|---|
| ☐ | ☐ | × | ☐ |

| d) A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project? |
|---|---|---|---|---|
| ☐ | ☐ | × | ☐ |

| e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels? |
|---|---|---|---|---|
| ☐ | ☐ | × | ☐ |

| f) For a project within the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels? |
|---|---|---|---|---|
| ☐ | ☐ | ☐ | × |

**Response:**

**a) Less Than Significant With Mitigation Incorporation.** The temporary noise and vibration associated with the construction of the proposed buildings and roadway infrastructure improvements would depend on the equipment used and the distance from the source to the receptor. No permanent noise and vibration would be generated.

Typical construction equipment would include scrapers, backhoes, and miscellaneous equipment (i.e. pneumatic tools, generators and portable air compressors). Typical noise levels generated by this type of construction equipment at various distances from the noise source are listed below:
Table 3
Typical Construction Equipment Noise Levels

<table>
<thead>
<tr>
<th>Construction Equipment Noise Source</th>
<th>dBA at 50 ft</th>
<th>dBA at 100 ft</th>
<th>dBA at 1.0 mile</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pneumatic tools</td>
<td>85</td>
<td>73</td>
<td>45</td>
</tr>
<tr>
<td>Truck (e.g. dump, water)</td>
<td>88</td>
<td>82</td>
<td>48</td>
</tr>
<tr>
<td>Concrete mixer (truck)</td>
<td>75</td>
<td>77</td>
<td>47</td>
</tr>
<tr>
<td>Scraper</td>
<td>88</td>
<td>82</td>
<td>48</td>
</tr>
<tr>
<td>Bulldozer</td>
<td>87</td>
<td>81</td>
<td>47</td>
</tr>
<tr>
<td>Backhoe</td>
<td>85</td>
<td>79</td>
<td>45</td>
</tr>
<tr>
<td>Generator</td>
<td>75</td>
<td>77</td>
<td>47</td>
</tr>
<tr>
<td>Portable air compressor</td>
<td>81</td>
<td>75</td>
<td>41</td>
</tr>
</tbody>
</table>

Noise levels generated by the equipment would range from 76 to 88 dBA at a distance of 50 feet from the noise source; at 100 feet, the noise levels would range from 70 to 82 dBA. Noise from construction activities would exceed the City of Porterville Noise Ordinance noise standards of 65 dBA at the exterior of nearby residences, approximately 250 feet away from the project site. The impact would be potentially significant; however, the implementation of the following mitigation measure would reduce potential noise impacts to less than significant.

Mitigation Measure:
Noise producing equipment used during construction shall be restricted to the hours of 7:00 a.m. to 7:00 p.m., Monday through Friday, and 8:00 a.m. to 6:00 p.m. on Saturday. Construction outside of these hours shall require written approval by the Chief Building Official. In addition, noise-reducing mufflers or other sound absorbing material shall be retro-fitted to gas and diesel-powered equipment, when applicable.

b) Less Than Significant Impact. Common sources of groundborne vibration are trains, buses on rough roads, and construction activities such as blasting, pile-driving and operating heavy earth-moving equipment. The effects of ground-borne vibration include feelable movement of large building floors, rattling of windows, shaking of items on shelves or hanging on walls, and rumbling sounds. In extreme cases, the vibration can cause damage to buildings. The project involves the construction of building structures and roadway infrastructure and would use heavy earth moving equipment temporarily. Operation of the proposed project would not introduce excessive groundborne vibration and any construction impacts would be minimal and temporary in nature. There would be a less than significant impact.

c, d) Less Than Significant Impact. Any impacts regarding the increase of ambient noise levels have been discussed in the analysis of Impact XI-a. Implementation of the mitigation measure in the analysis of Impact XI-a would reduce ambient noise level impacts to less than significant.

e) Less Than Significant Impact. The project site is located within the Airport Zone; however, it is outside the noise impact zone (55 CNEL) identified by the airport plan. An avigation easement will be prepared to grant rights to the airport for the free and unobstructed flight of aircraft. The impact would be less than significant.

f) No Impact. The project site is not within the vicinity of a private airstrip. There would be no impact.
XII. POPULATION AND HOUSING
Would the project:

<table>
<thead>
<tr>
<th></th>
<th>Potentially</th>
<th>Significantly</th>
<th>Mitigation</th>
<th>Incorporation</th>
<th>Less than</th>
<th>Significant Impact</th>
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<td>a) Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?</td>
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<td>b) Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere?</td>
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<td>c) Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere?</td>
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Response:

a) No Impact. The project proposes the relocation of the fairgrounds via the construction of various facilities. As the project involves the relocation of the fairgrounds and the same positions as its current employees, the construction of the project would not induce population growth. There is no impact.

b) No Impact. No housing or people would be displaced by the project. There is no impact.

c) No Impact. Any impacts regarding the displacement of people have been discussed in Impact XII-b. There is no impact.
XIII. PUBLIC SERVICES

a) Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:

- Fire protection?
- Police protection?
- Schools?
- Parks?
- Other Public facilities?

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Response:

a) **No Impact.** The project would not rely on the addition or alteration of any public services. The subject site is within City limits and receives needed services from existing agencies and departments. The fair hires off-duty police officers to assist during the annual fair event; however, the project will not cause an increase in demand on public services beyond what is planned in the Porterville 2030 General Plan. There would be no impact.
XIV. RECREATION

a) Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?

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b) Does the project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment?

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Response:

a) Less Than Significant Impact. The project at buildout would utilize a portion of the parking lot at the City of Porterville Sports Complex, located ½ mile north of the project site, one week out of the year. The anticipated parking needs during the annual event exceeds what would be necessary for day to day operation. Through a mutual agreement between the City and the fairgrounds, access to the parking would be available and no events would be planned for the Sports Complex during the one week event. The project would have a less than significant impact on the Sports Complex or other recreational facility.

b) Less Than Significant Impact. The project includes the relocation of the fairgrounds, which could constitute recreational facilities. As discussed throughout this document the construction of the fairgrounds will have a less than significant effect on the environment.
**XV. TRANSPORTATION/TRAFFIC**

**Would the project:**

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**Response:**

**a) Less Than Significant Impact.** The project would consist of relocation of the fairgrounds which would include the construction of a 20,000± square feet (s.f.) multi-purpose building including administrative offices, and kitchen facilities; a 65,000± s.f. open livestock barn; a 7,500± s.f. open horticultural barn, a 7,500± s.f. rabbit barn, restrooms, and offices; as well as food booths, restrooms, a beer garden, and outdoor vending and entertainment areas. Additionally, the project proposes street widening and associated infrastructure upgrades along Tea Pot Dome Avenue consistent with the Circulation Element of the General Plan and the Water and Sewer Master Plan. The project site has direct
vehicular access from Tea Pot Dome Avenue, a planned minor arterial, as well as access points through West Street, Newcomb Street and Scranton Avenue. Based on historical data and employee counts, the operational phases of the project would generate approximately 60 average daily trips. Sixty trips on Tea Pot Dome Avenue would represent a minimal increase in traffic counts well within the available capacity. However, it should be noted that there are several access points and there will be intermittent peaks during the one week annual fair, the two-day annual Sierra Winter Classic and the two-day annual Orange Blossom Klassic. Although the intermittent events would create an increase in traffic counts they would be temporary and the many access points would help alleviate congestion on any one route. The impact is less than significant.

b) Less Than Significant Impact. Any impacts to the level of service of the road that the project accesses has been discussed in Impact XV-a. There would be a less than significant impact.

c) Less Than Significant Impact. The project as a fairground would not significantly increase usage of the Porterville Municipal Airport and would not measurably diminish the operational capacity of the Airport. The site has direct vehicular access from Tea Pot Dome Avenue, a planned minor arterial, as well as access points through West Street, Newcomb Street and Scranton Avenue and as discussed in Impact XV-a would not increase traffic levels beyond planned for in the Circulation Element of the General Plan.

d) Less Than Significant Impact. The project would not include any design features that would result in an increased hazard at the site. There would be a less than significant impact.

e) Less Than Significant Impact. The project would include the construction of a private internal fire lane circulation system in accordance with the City design standards. Emergency access to the project site would be improved as a result of additional circulation. There would be a less than significant impact.

f) Less Than Significant Impact. Additional parking capacity would be incorporated into the site plans of the project in accordance with City Standards and would be augmented by existing parking at the City’s Sports Complex located north of the project site. The impact would be less than significant.

g) No Impact. There are no adopted alternative transportation policies, plans, or programs in the project area. There is no impact.
XVI. UTILITIES AND SERVICE SYSTEMS

Would the project:

a) Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board?  

b) Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?  

c) Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?  

d) Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed?  

e) Result in a determination by the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the project’s projected demand in addition to the provider’s existing commitments?  

f) Be served by a landfill with sufficient permitted capacity to accommodate the project’s solid waste disposal needs?  

g) Comply with federal, state, and local statutes and regulations related to solid waste?  

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<th>Less than Significant Impact</th>
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Response:

a, c) Less Than Significant Impact. The project consists of relocation of the fairgrounds which would include the construction of a 20,000± square feet (s.f.) multi-purpose building including administrative offices, and kitchen facilities; a 65,000± s.f. open livestock barn; a 7,500± s.f. open horticultural barn, a
7,500± s.f. rabbit barn, restrooms, and offices; as well as food booths, restrooms, a beer garden, and outdoor vending and entertainment areas. Additionally, the project proposes street widening and associated infrastructure upgrades along Tea Pot Dome Avenue consistent with the Circulation Element of the General Plan and the Water and Sewer Master Plans. Development of the site was anticipated in the General Plan (GP) and the existing waste water treatment plant has the capacity to service the project. The impact would be less than significant.

b, d, e) Less Than Significant Impact. According to the GP, the City has historically obtained water from 34 active groundwater wells. However, groundwater levels have declined moderately over the last 20 years, according to Department of Water Resources hydrographs as cited in the GP. However, the City may rehabilitate some wells to their previous performance levels, since encrustation of the wells may have caused the decline. In addition, the City has purchased water rights for about 900 acre-feet on an annual basis from the Pioneer Ditch Company and the Porter Slough Ditch company. Historically, most of this water has not been used by the City.

Porterville expects to update its Water System Master Plan in 2008-2009, with the goals of reducing groundwater pumping to match the aquifer safe yield by 202, and purchasing surface water and implementing water conservation programs to meet the remaining demand for water. In addition, the GP provides policies to ensure that water supply facilities are constructed in proportion to urban development through 2030. Since the project does not include new housing and the project’s very minor increase in employment will not induce significant population growth, it is expected that the proposed project will not require additional water supply needs beyond what has already been anticipated in the GP and City’s Water System Master Plan. There would be a less than significant impact.

f, g) Less Than Significant Impact. Porterville’s Public Works Department collects commercial, residential, and industrial refuse in the City. According to the GP, the Tulare County Consolidated Waste Management Authority provides disposal services. Solid waste is currently disposed of at the Tea Pot Dome Landfill, a County-operated Class III landfill. As of 2004, the landfill was at 84.7 percent capacity with an anticipated closure date of 2012. When the landfill reaches capacity, the County anticipates diverting waste through a transfer facility to either the Woodville or Visalia Landfills. The Woodville Landfill is also a County-operated Class III landfill located approximately 15 miles northwest of the city limits. As of 2006, the landfill was at 41.5 percent capacity with an anticipated closure date of 2026. The Visalia Landfill, which was recently expanded, is also a County-operated Class III landfill located approximately 35 miles northwest of the city limits. As of 2006, this landfill was a 13.3 percent capacity with an anticipated closure date of 2024. The GP states that the County expects the estimated closure dates to be worst-case scenarios in the event that waste diversion goals are not met. Therefore, the landfill capacities are expected to be sufficient through the planning horizon of 2030. Given the availability of the Woodville and Visalia landfills, the impact would be less than significant as the local landfills have enough capacity to receive solid waste from the proposed project. Transportation and disposal of solid waste would be in accordance with all applicable Federal, State and local regulations.
**XVII. MANDATORY FINDINGS OF SIGNIFICANCE**

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a) Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?

b) Does the project have impacts that are individually limited, but cumulatively considerable? (“Cumulatively considerable” means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)?

c) Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?

**Response:**

a) **Less Than Significant Impact.** The analysis conducted in this Initial Study/Mitigated Negative Declaration results in a determination that the project would have a less than significant effect on the local environment with the incorporation of mitigation measures. The project consists of relocation of the fairgrounds which would include the construction of a 20,000± square feet (s.f.) multi-purpose building including administrative offices, and kitchen facilities; a 65,000 s.f. open livestock barn; a 7,500± s.f. open horticultural barn; a 7,500± s.f. rabbit barn, restrooms, and offices; as well as food booths, restrooms, a beer garden, and outdoor vending and entertainment areas. Additionally, the project proposes street widening and associated infrastructure upgrades along Tea Pot Dome Avenue consistent with the Circulation Element of the General Plan and the Water and Sewer Master Plans.

As described above, the potential for impacts to biological resources from the construction of the project, and continued operation would be less than significant with the incorporation of mitigation measures. Accordingly, the project would involve less than significant impacts through the degradation of the quality of the environment, the reduction in the habitat or population of fish or wildlife, including endangered plants or animals, the elimination of a plant or animal community or example of a major period of California History or prehistory.
b) Less Than Significant Impact. As discussed in the impact analysis of Impact XVII-a, the project would result in less than significant impacts to biological resources. Compliance with applicable codes, ordinances laws and other required regulations would further reduce the magnitude of any impacts associated with construction and operation activities to a less than significant level. Cumulative impacts would be less than significant for the project.

c) Less Than Significant Impact. The project would not in any other way result in environmental effects causing adverse effects to humans. No potential "significant impacts" were identified that would not be reduced to a level less than significant by application and enforcement of State and/or County ordinances and/or standard conditions of approval. Cumulative impacts generated by the project would be less than significant.
REFERENCES


California Air Pollution Control Officers Association. CEQA and Climate Change, January 2008


City of Porterville, Emergency Operations Plan, 2004

City of Porterville, Final Environmental Impact Report, Porterville 2030 General Plan, March 04, 2008

City of Porterville, Porterville 2030 General Plan, March 04, 2008

City of Porterville, Sewer System Master Plan, February 2001

City of Porterville, Water System Master Plan, February 2001

City of Porterville, Noise Ordinance, September 2009


U.S. Fish and Wildlife Service. Standardized Recommendations for Protection of the San Joaquin Kit Fox Prior To or During Ground Disturbance. June, 1999
Summary Report for Annual Emissions (Tons/Year)

File Name: C:\Documents and Settings\byers\Application Data\Urbemis\Version9a\Projects\Porterville Fairgrounds.urb924

Project Name: Porterville Fair

Project Location: San Joaquin Valley APCD

On-Road Vehicle Emissions Based on: Version : Emfac2007 V2.3 Nov 1 2006

Off-Road Vehicle Emissions Based on: OFFROAD2007

### CONSTRUCTION EMISSION ESTIMATES

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### AREA SOURCE EMISSION ESTIMATES

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### OPERATIONAL (VEHICLE) EMISSION ESTIMATES

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SUM OF AREA SOURCE AND OPERATIONAL EMISSION ESTIMATES

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<td>0.38</td>
<td>0.29</td>
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Both Area and Operational Mitigation must be turned on to get a combined mitigated total.
Attachment B
Amendment to the 1990 Airport Master Plan
Biological Opinion
Ms. Robin K. Hunt  
Airports District Office Manager  
San Francisco Airports District Office  
831 Mitten Road, Room 210  
Burlingame, California 94010

Subject: Amendment to the Biological Opinion for the City of Porterville Municipal Airport Master Plan (Service File Number 1-1-90-F-2), Tulare County, California

Dear Ms. Hunt:

The U. S. Fish and Wildlife Service (Service) is writing to implement a requested change to the biological opinion (Service File Number 1-1-90-F-2) issued for the City of Porterville Municipal Airport Master Plan Project on February 14, 1990. The Service analyzed the project’s effects to the endangered San Joaquin kit fox (Vulpes macrotis mutica), in the biological opinion. On May 22, 2007, Brad Dunlap of the City of Porterville, met with Susan Jones of the Service to discuss changing the San Joaquin kit fox compensation from an 26 acre on-site reserve as originally outlined in the 1990 biological opinion to purchase of 26 credits in a conservation bank. This response is in accordance with section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.) (Act).

The Service agrees with this change in location for the conservation acres because the area around the airport has become developed and the on-site reserve and corridor are no longer connected to other kit fox habitat. Therefore, the February 14, 1990, biological opinion is now amended as follows:

From  
Page 2: The Project Description Conservation Measure 1-4:

1) Provide a movement corridor on either side of a drainage ditch located parallel to, and roughly equidistant between, Scranton and Teapot Dome Avenues. The minimum width of this corridor would be 100 feet. The corridor would be planted to provide some vegetative cover for traveling kit foxes.

TAKE PRIDE IN AMERICA
2) Provide artificial cover sites (e.g. dens or pipes for the San Joaquin kit fox, if appropriate.

3) Provide kit fox sized holes in the chain-link fence that separates industrial designed areas from agricultural areas.

4) Provide a fallow area of approximately 20 acres east of the new orange grove, in the southwest corner of the project area. This fallow area would provide a southerly corridor for the San Joaquin kit fox.

To:

The City will compensate for direct effects to 26 acres of San Joaquin kit fox habitat (20 acres of fallow farmland plus 6 acres of movement corridor by the purchase of 26 credits at a Service-approved Conservation Bank that services the action area.

From

Page 4-5: Incidental Take Statement Terms and Conditions 1a–1c:

a) A 20-acre area east of the orange grove shall be left fallow. Surface disturbance including grading and plowing shall be prohibited within this area. This area is shown on Figure 1. The final configuration of this area shall be subject to the approval of the Service.

b) A corridor shall be established along the drainage ditch that is parallel to and roughly equidistant between Scranton and Teapot Dome Avenues. This corridor shall be at least 100 feet wide.

c) Semi-circular holes that are 6-8 inches in diameter shall be cut at ground level in the chain link fence that separates the agricultural and industrial area. The holes should be cut at 50 to 100 yard intervals.

To:

The City will compensate for direct effects to 26 acres of San Joaquin kit fox habitat (20 acres of fallow farmland plus 6 acres of movement corridor by the purchase of 26 credits at a Service-approved Conservation Bank that services the action area.

All other portions of the February 14, 1990, biological opinion remain the same. This concludes reinitiation of formal consultation for the City of Porterville Municipal Airport Master Plan project outlined in your request. As provided in 50 CFR 402.16, reinitiation of formal consultation is required where discretionary Federal agency involvement or control over the action has been maintained (or is authorized by law) and if: (1) the amount or extent of
incidental take is exceeded; (2) new information reveals effects of the agency action that may affect listed species or critical habitat in a manner or to an extent not considered in this opinion; (3) the agency action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in this opinion; or (4) a new species is listed or critical habitat designated that may be affected by the action. In instances where the amount or extent of incidental take is exceeded, any operations causing such take must cease pending reinitiation.

If you have any questions regarding this amendment to the biological opinion on the proposed project, please contact Shelley Buranek or Susan Jones, of my staff at (916) 414-6630.

Sincerely,

Peter A. Cross
Deputy Assistant Field Supervisor

cc: Justin Sloan, California Department of Fish and Game, Fresno, California
    Brad Porter, City of Porterville, California
Attachment C
Cultural Records Search
ARCHAEOLOGICAL SURVEY OF 48.5 ACRES OF LAND FOR THE PROPOSED SOUTHERN CALIFORNIA EDISON COMPANY SERVICE CENTER, PORTERVILLE, TULARE COUNTY, CALIFORNIA.

Prepared by:
Hubert Switalski
and
Tim Kelly
AMEC Earth and Environmental, Inc.
5518 Sierra Caves Avenue
Bakersfield, CA 93313

AMEC CWA 2007-16

Prepared for:
Southern California Edison Company
Biological and Archaeological Resources
2244 Walnut Grove Ave.
Rosemead, CA 91770

May 2007
1.0 Executive Summary

On April 27, 2007, AMEC Earth and Environmental, Inc. (AMEC) conducted a Phase I archaeological investigation on behalf of Southern California Edison Company (SCE) for the proposed construction of SCE Service Center to be located three miles southwest of the City of Porterville, Tulare County, California. The purpose of this archaeological study was to document cultural resources located within the Area of Potential Effect (APE) that may be affected by the proposed project. The investigation was conducted in compliance with the California Environmental Quality Act (CEQA), as amended (Public Resources Code §21000 et seq.), and pursuant to the Guidelines for Implementation of the California Environmental Quality Act (California Code of Regulations, Title 14 §15000 et seq.).

The entire Project Area is comprised of 83.5 acres, 35 of which were previously inventoried for cultural resources (see Switalski and Kelly 2006). The present study included a records search conducted on April 26, 2007 at the Southern San Joaquin Valley Archaeological Information Center (SSJVAIC) at California State University, Bakersfield, as well as an intensive pedestrian survey of the remaining 48.5 acres, where the service center with associated facilities will be constructed. No cultural resources were identified during the course of the investigation and no further archaeological studies are recommended at this time.
2.0 Introduction

At the request of the SCE in Rosemead, California, AMBC conducted a cultural resource inventory of 48.5 acres of land for the proposed SCE service center to be located in the community of Porterville, Tulare County, California (Fig. 1). SCE proposes to construct a service center including visitor parking, employee parking, administrative buildings, truck canopy, and a garage within the 83.5 acre subject property. A portion of the property, approximately 35 acres, was previously inventoried for the presence of cultural resources (see Switalski and Kelly 2006), with negative results. SCE requested that the remaining 48.5 acres to be inventoried for cultural resources as well.

2.1 Purpose and Regulatory Framework

The proposed construction of a new service center is subject to compliance with the CEQA requirements regarding cultural resources on lands proposed for development. CEQA (Public Resources Code Section 21000 etc.) requires that before approving most discretionary projects, the Lead Agency must identify and examine any significant adverse environmental effects that may result from activities associated with such projects (Public Resources Code Sections 21083.2 and 21084.1). The CEQA guidelines have been adopted by the state in order to guide public agencies. Sections 21083.2 and 21084.1 assure that potential effects on archaeological resources are considered as part of the environmental analysis of a given project. Section 21083.2 explicitly requires that the initial study examine whether the project may have a significant effect on “unique archaeological resources.” Under these requirements, a cultural resources inventory was conducted in order to determine potential impacts of the proposed project on resources that may be eligible for nomination to State and National Registers of Historic Places.

The purpose of this study was to identify archaeological and historic resources within the project APE and to assess the project effects on historic properties in compliance with CEQA. The study was conducted on behalf of SCE by AMBC to provide information on cultural resources identified within the APE and to make National Register of Historic Places (NRHP) eligibility recommendations and findings of effect. The APE for this study is defined as 48.5 acres of the 83.5-acre property, selected for the proposed SCE service center.

3.0 Project Location

The project area for the proposed service center is located approximately 3 miles southwest of the city of Porterville, between Road 224 and West Rd. (Road 220), west of the Porterville Airport in western Tulare County. The subject property encompasses 48.5 acres and it is located in the N 1/4 of the SE 1/4 of Section 8, and E 1/4 of the SE 1/4 of Section 8, Township 22 South, Range 27 East, Mount Diablo Base Meridian (MDBM), as shown on the Porterville, CA (1969) USGS 7.5-minute series topographic quadrangle (Fig. 2).
Figure 2. Project vicinity map.
4.0 Project Description

SCE proposes to construct a new service center in the city of Porterville, Tulare County, California. The proposed service center will be developed on an 83-acre parcel and will include an access road, visitors' parking, employee parking, administrative buildings, truck canopy, and a garage. It is anticipated that ground disturbing activities associated with the service center construction will include trenching for underground utilities such as water, gas and telephone conduit. Additionally, land leveling for the proposed construction of the administrative building and the parking lot is anticipated as well.

5.0 Location and Environmental Background

The study area is located on a flat plain in the southern San Joaquin Valley a few miles west of the foothills of the Sierra Nevada Mountains, and approximately 30 miles east of the Tulare Lake Basin. The topography is characteristic of a valley floor with flat, expansive land intersected by intermittent drainages and rivers. Elevation of the project area is 420 ft.

The climate is Mediterranean, characterized by semiarid winters and hot, dry summers. Annual precipitation rarely exceeds seven inches, with roughly 70% of that precipitation falling between December and April (Sutton 1997:4). A Tule fog; a dense fog which forms as result of moist air being trapped in the valley by a high pressure system, is common in the winter and frequently lasts for several weeks (Felton 1965:103).

Prior to the emergence of modern agricultural practices in the region, the San Joaquin Valley was a landscape dominated by networks of interconnecting watercourses, lakes, and sloughs (e.g. Sutton 1997:3). Until the late nineteenth century, the valley was home to a variety of grassland and freshwater communities typical of a more mesic environment (Twisselmann 1967). Tulare Lake, part of the larger Tulare Lake Basin, was a large freshwater lake formed by the consolidation of alluvial fan dams generated by the Kings River to the east and Los Gatos Creek to the west (Atwater et al 1986:97; see also Fenenga 1994:108). At its maximum, the lake covered some 760 square miles and boasted a diverse biotic community and a large population of various Yokuts tribes (Preston 1981; West et al 1991; Fenenga 1994). Many of the plants that make up these biotic communities were important to the prehistoric inhabitants of the region, including grassroot root, grass seed, clover, mustard greens, and salt grass as well as fruits such as wild grapes, blackberries and manzanita berries (Latta 1976; Powers 1976; Osborne 1992:57). Tule was abundant and used for food and manufacturing material (Osborne 1992:57). Many of these resources still exist, but their distribution and abundance have changed and for the most part diminished in the past century.

An extensive variety of animals was also represented in the valley, although many species are either extinct locally, or have experienced a drastic decline in population subsequent to Euro-American contact. Currently extant mammal species associated with the San Joaquin Valley faunal community include among others: coyotes, foxes, badgers, California jackrabbits, cottontail rabbits, ground squirrels, wood rats, pocket gophers, and mice (Osborne 1992:52).
variety of birds and waterfowl also reside in the valley, albeit in reduced numbers, including
teals, mallards, wood ducks, Canadian geese, American coots, grebes, hawks, and a variety of
passerine (perching) birds (Cogswell 1977). Fish species included Sacramento blackfish,
Sacramento sucker, hitch, trout, perch, chub, and salmon among many others (Moyle 1976).
Invertebrates were also abundant in the valley including freshwater mussels and clams, insects
(e.g. grasshoppers, caterpillars, bees), reptiles (snakes and lizards), and amphibians such as frogs
and toads. Fossil remains of mammoth, giant ground sloth, large and small horses, camel, dire
wolf, Pleistocene lion and Bison are known in the region (Fenenga 1991:13).

6.0 Cultural Setting

It is believed that Native American groups have occupied the lake country of the San Joaquin
Valley for at least the last 12,000 years. Although few sites of that age have been identified thus
far, the most notable of these is the Witt site on the western shore of Tulare Lake (Fenenga
1993). Many of the earliest sites have been significantly damaged by agricultural practices in the
past century (Sutton, personal communication 2006). Below is a general characterization of the
Holocene prehistory of the San Joaquin Valley, utilizing the taxonomic system first proposed by

6.1 Cultural Chronology of the Southern San Joaquin Valley

Archaeological evidence from the Early Horizon (8,000 to 4,000 B.P.) suggests that people were
generally nomadic with their subsistence being based on large game hunting and fishing.
Common artifacts found at sites from this period include hand-molded baked clay net weights,
Olivella and Haliotis shell beads and heavy stemmed projectile points.

The Middle Horizon (4,000 to 1,500 B.P.) is characterized by a more diversified subsistence,
with some evidence of an increasing emphasis on seed processing, along with hunting, fowling,
and fishing. Artifacts from this period include Haliotis shell ornaments in varied geometric
shapes, Olivella and Haliotis beads, distinctive spindle-shaped charmstones, cobble mortars,
chisel-ended pestles, and large, heavy projectile points. Bone tools were extensively utilized for
tools, such as for awls, fish spear tips, saws, and pressure flakers (used in the manufacture of
flaked-stone implements such as projectile points).

In the Later Horizon (1,500 B.P. to Historic Contact), evidence suggests that subsistence
strategies were increasingly focused on the processing of plant foods, with less emphasis on
hunting, fowling, and fishing. Artifacts include Olivella beads, Haliotis ornaments, stone beads
and cylinders, clamshell disk beads, tubular smoking pipes of stone, arrow-shaft straighteners,
small side-notched projectile points, flat-bottomed mortars, and carefully crafted cylindrical
pestles.

6.2 Ethnography

The project area is located in the southern San Joaquin Valley. According to ethnographic data
the project area is located in the core territorial boundary of the Southern Valley Yokuts (Fig. 3).
The Yokuts have been the subject of considerable study by numerous researchers, including Kroeber (1925), Gifford and Schneck (1926, 1929), Gayton (1948), Powers (1976), Latta (1977), and Wallace (1978). The following discussion draws primarily from these sources.

6.2.1 Southern Valley Yokuts

The Yokuts have been separated into three geographical divisions: Northern Valley, Southern Valley, and Foothill. There were at least 40 Yokuts tribes. Each tribe has a distinctive name, dialect, and territory. Their tribes could be organized into single, large village settlements or consist of smaller settlements grouped together. Each group was self-governed and some groups numbered as many as 350 people. Every village had a captain and a central chief (these titles were hereditary). The captain reported to the chief.
The easy availability of resources, such as fish, waterfowl, shellfish, roots, and seeds, enabled the Yokuts to occupy permanent villages most of the year. They practiced a subsistence strategy that emphasized fishing, fowling, and the collection of shellfish, roots, and seeds. Fish provided their primary food resource and were generally caught by netting. Agriculture seems not to have been practiced by the Yokuts, possibly due to the abundance of game animals and plant resources (Beals 1974:45).

6.3 History

In 1772, European contact with the Southern Valley Yokuts was first recorded when a detachment of Spanish soldiers under the command of Pedro Fages ventured through the Tejon Pass into the San Joaquin Valley. No further contact is indicated until Father Garces, a Franciscan friar, arrived in 1776. With the annexation of California by the United States, the San Joaquin Valley was overrun with settlers, and native lands passed into Euro-American hands.

The Spanish presence in the region played a part in the dispersal of native populations from the foothills and depopulation of entire villages (Cook 1955:55-56). Indigenous population in the region was severely reduced by European diseases introduced by the Spanish explorers. This process of disposition proved relatively easy as the settlers, sometimes forcibly, removed Indian families and communities (Wallace 1978:649). The few surviving Southern Valley Yokuts were sent to the Tejon reservation established at the base of the Tehachapi Mountains, or to the Fresno reservation near Madera. These reservations failed to prosper, and in 1859, the Native Americans who remained on them were moved to the Tule River reservation.

The California gold rush created a deluge of miners and prospectors into the region. Wagon trails and gold seekers passed through the region, but some found the land rich and remained to establish farms. The first store, in what is now Porterville, was setup in 1856 to sell goods to miners and the Indians, who lived along the rivers. In 1860, Royal Porter Putnam, bought 40 acres of land and built a two-story store and a hotel on the highest point of his property (City of Porterville 2006). In 1902 the town was incorporated and the population reached over 20,000 by 1920.

7.0 Methodology

Archaeological investigations conducted during the current study consisted of a records search conducted at the Southern San Joaquin Valley Archaeological Information Center (SSJVAIC) at California State University, Bakersfield (CSUB), as well as an intensive pedestrian survey of the 48.5 acre APE.

7.1 Records Search

A cultural resources records search of the project area was conducted at the Southern San Joaquin Valley Archaeological Center (SSJVAIC), at California State University, Bakersfield. The records search for the 34-acre parcel was performed by Adele Baldwin, Assistant Coordinator at the SSJVAIC. Secondary records search for the remaining 48.5 acres addressed in

Southern California Edison
Archaeological Survey of 48.5 Acres of Land for the Proposed Southern California Edison Service Center,
Porterville, Tulare County, California.
May 2007
this study was performed by Hubert Switalski of AMEC on April 26, 2007. The results of the records search indicated that one negative cultural resource study (Alcock 1993) was conducted within a small portion of the study area. Three negative surveys (Hatoff et al. 1995; Gardner 2003; Switalski and Kelly 2006) have been conducted immediately adjacent to the study area and one negative survey (Meachum 2002) had been conducted within a ½-mile radius of the study area (Table 1). There were no previously recorded cultural resources within the Project Area or within a ½-mile radius of the Project Area.

<table>
<thead>
<tr>
<th>Author</th>
<th>Year</th>
<th>Results</th>
<th>Sites within Project Area</th>
<th>Sites within ½ Mile of Project Area</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alcock, G.</td>
<td>1993</td>
<td>Negative</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Hatoff et al.</td>
<td>1995</td>
<td>Negative</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Gardner, J.</td>
<td>2003</td>
<td>Negative</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Meachum, G.</td>
<td>2002</td>
<td>Negative</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Switalski, H. and T. Kelly</td>
<td>2006</td>
<td>Negative</td>
<td>-</td>
<td>-</td>
</tr>
</tbody>
</table>

As part of the archival research at the SSJVAIC, the following sources were consulted: California Archaeological Inventory Records, the National Register of Historic Places (NRHP), the National Register of Eligible Properties, the California Inventory of Historic Resources, the California Historic Landmark Registry, California Points of Historical Interest, Inventory of Historic Structures, and Historical Landmarks for Kern County. Additionally, the Porterville, CA (1969) USGS 7.5-minute series topographic quadrangle was inspected for presence of cultural resources, previously conducted archaeological studies, and post-1969 topographic features.

7.2 Field Survey

A field survey of the subject property was conducted by Hubert Switalski of AMEC on April 26, 2007. The study area consists of 48.5 acres and it is situated between orange groves to the south and a partially developed parcel to the north. Transects were walked in 10 meter intervals in E-W direction. The extent of the survey area was captured with a handheld Garmin eTrex Vista GPS unit, with less than 5 meter horizontal accuracy, using Universal Transverse Mercator, North American Datum of 1927, Zone 11, as the spatial reference. Photographs of the project area were taken in order to document any disturbances and the conditions of the project area during the survey.

8.0 Survey Results

The archaeological survey of the 48.5-acre subject property was conducted in an open and flat environment. The project area appeared relatively undeveloped; however, irrigation ditches were observed around and within the Project Area. Ground visibility was poor with dense knee-
high grasses and flowers obscuring 90% of the ground. The only exception was the southern portion of the Project Area, near the proposed access road, which was devoid of any vegetation as it has been recently plowed and disced.

Survey transects were spaced approximately 10-meters apart; however, in some cases were narrower to allow for examination of less densely vegetated areas and to ensure that all surface exposed cultural resources within the Project area were identified. Particular attention was paid to regularly spaced furrows running from east to west through these fields on approximately eight meter spacing as these were often less densely vegetated. An irrigation system comprised of linear east to west and north to south running ditches was also examined. These narrow ditches, roughly 2 meters wide, were identified following the Project Area boundary, as well as bisecting the Project Area into two equal parcels (Figure 4). The intent to examine the irrigation system more closely was assess the potential age of the irrigation ditches and to identify, if any, cultural deposits that may have been disturbed during the initial trenching. A close examination of the Porterville, CA (1969) USGS 7.5’ series topographic quadrangle revealed that that the system was most likely constructed after 1969 as none of the ditches were observed on topographic map. It also suggested that the Project Area had been heavily altered in the last 35 years. There were no cultural resources identified during the survey.

Figure 4. Project area overview, view southwest. An overgrown irrigation ditch is located on the right side of the road. Photo taken from the northeast corner of the Project Area (AMEC Acc. No. IMG_1568).
9.0 Recommendations

No cultural resources were identified during the course of the field survey, and no additional archaeological studies are recommended at this time. However, there is always a possibility that buried archaeological deposits could be found during construction and earth disturbing activities. In the event that cultural resources are encountered during construction activities, all work must stop and a qualified archaeologist should be contacted immediately. Further, if human remains are encountered during construction, State Health and Safety Code Section 7050.5 requires that no further work shall continue at the location of the find until the County Coroner has made all the necessary findings as to the origin and distribution of such remains pursuant to Public Code Resources Code Section 5097.98.
9.0 Bibliography

Alcock, G. 1993. An Archaeological Assessment of 40 Acres West of Porterville Airport, Tulare County, for the Tule River Indian Reservation. Report on file at the Southern San Joaquin Valley Archaeological Information Center, California State University, Bakersfield.


Gardner, J. 2003. *A Cultural Resources Assessment of 700 Acres for Proposed Property Annexation for a Wastewater Treatment Plant in the City of Porterville, Tulare County, California.* Report on file at the Southern San Joaquin Valley Archaeological Information Center, California State University, Bakersfield.


Meachum, G. 2002. *National Recreation Trails Program, Grant No. RTM-02-002-City of Porterville Training Facility, Porterville, Tulare County, California.* Letter on file at the Southern San Joaquin Valley Archaeological Information Center, California State University, Bakersfield.


APPENDIX A – SURVEY COVERAGE

Southern California Edison
Archaeological Survey of 48.5 Acres of Land for the Proposed Southern California Edison Service Center,
Porterville, Tulare County, California.
May 2007
Survey Coverage

0 0.25 0.5
Miles

0 0.4
Kilometers

USGS 7.5' Topographic Quadrangle:
Porterville, CA (1999)
Universal Transverse Mercator
North American Datum 1927, Zone 11
Scale 1:24,000

Southern California Edison
Archaeological Survey of 48.5 Acres of Land for the Proposed Southern California Edison Service Center,
Porterville, Tulare County, California
May 2007

APPENDIX A
MITIGATION MONITORING AND REPORTING PROGRAM

Public Resources Code § 21081.6 requires that, along with the adoption of the findings specified in a CEQA document approval, the lead agency must also adopt a “reporting/monitoring program to ensure compliance during project implementation.” The mitigation monitoring program has been prepared for the proposed project. This program was developed subsequent to final action by the City of Porterville City Council. Implementation of the Fairground Relocation Project will be subject to the mitigation measures and monitoring program outlined in Table 1.

PROJECT DESCRIPTION

The project consists of relocating the existing fairgrounds facility to a vacant 25± site (approximately 15 acres exclusively for the fairgrounds and 10 acres for a mutual use with the City).

<table>
<thead>
<tr>
<th>Table 1- Mitigation Monitoring Program</th>
</tr>
</thead>
<tbody>
<tr>
<td>Affected Resources</td>
</tr>
<tr>
<td>Biology – San Joaquin kit fox.</td>
</tr>
<tr>
<td>Cultural Resources</td>
</tr>
</tbody>
</table>

City of Porterville
Fairground Relocation Project
Noise Producing Equipment

Noise producing equipment used during construction and operations shall be restricted to the hours of 7:00 a.m. to 7:00 p.m., Monday through Friday, and 8:00 a.m. to 6:00 p.m. on Saturday. Construction or operation outside of these hours shall require written approval by the City’s Chief Building Official.

Construction Contractor

To be the responsibility of the City of Porterville Building Division.

Completed during construction activities.

Public Services - Fire Protection

An Emergency Medical Services team will be scheduled to be on standby at the fairground’s key events such as the Fair, Sierra Winter Classic, Orange Blossom Klassic and other like events. Also, a staffed Fire truck will be on site, or equivalent measures, during large events such as the Fair.

Event Organizer

To be the responsibility of the City of Porterville Fire Department.

Throughout the life of the project or until such time as adequate fire safety facilities are constructed to provide reduced response time to project site.

City of Porterville
Fairground Relocation Project
RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE
CONTAINING FINDINGS IN SUPPORT OF APPROVAL OF A MITIGATED NEGATIVE
DECLARATION FOR THE FAIRGROUND RELOCATION PROEJCT

WHEREAS: On November 9, 2009, the City of Porterville circulated an Initial Study and Notice of Intent to Adopt a Mitigated Negative Declaration for the Fairground Relocation Project; and

WHEREAS: No comments were received from agencies or the public prior to the close of the public comment period; and

WHEREAS: During the comment period, additional information from the Porterville Fire Department regarding the need for additional Public Services, Fire Protection during events were received and considered; and

WHEREAS: The City Council of the City of Porterville, at its regularly scheduled meeting of December 1, 2009, considered the potential environmental impact of the proposed Fairground Relocation Project; and

WHEREAS: The City Council made the following findings in its review of the environmental circumstances for this project:

1. That a Mitigated Negative Declaration was prepared in accordance with the California Environmental Quality Act.

2. That the subject project will not create adverse environmental impacts. The approved Mitigated Negative Declaration was evaluated in light of the prepared initial study. It was determined that potential impacts associated with the proposed project could be mitigated to a less than significant level through the implementation of the attached Mitigation Monitoring and Monitoring Program.

3. That the City Council is the decision-making body for the project.

4. That the Mitigated Negative Declaration prepared for the Fairground Relocation Project was transmitted to interested agencies, groups, and individuals for review and comment. The review period ran for twenty (20) days from November 9, 2009 to November 30, 2009.

5. During the course of the review period, City Staff determined that additional information regarding Public Services, Fire Protection should be provided. Fire Staff noticed the omission of response time during events. An Emergency Medical Services team will be scheduled to be on standby at the fairground’s key events such as the Fair, Sierra Winter Classic, Orange Blossom Klassic and other like events. Also, a staffed fire truck will be onsite, or equivalent measures, during large events such as the Fair throughout the life of the project or until such time as adequate fire safety facilities are constructed to provide reduced response time to the project site.

ATTACHMENT
ITEM NO. 4
6. That the mitigation measures contained in the Negative Declaration were incorporated into a Mitigation Monitoring and Reporting Program attached hereto as Exhibit A.

NOW THEREFORE, BE IT RESOLVED: That the City Council of the City of Porterville does hereby approve the Negative Declaration prepared for the Fairground Relocation Project.

____________________________
Pete V. McCracken, Mayor

ATTEST:

John Lollis, City Clerk

By ______________________________
Patrice Hildreth, Chief Deputy City Clerk
Exhibit "A"

MITIGATION MONITORING AND REPORTING PROGRAM

Public Resources Code § 21081.6 requires that, along with the adoption of the findings specified in a CEQA document approval, the lead agency must also adopt a “reporting/monitoring program to ensure compliance during project implementation.” The mitigation monitoring program has been prepared for the proposed project. This program was developed subsequent to final action by the City of Porterville City Council. Implementation of the Fairground Relocation Project will be subject to the mitigation measures and monitoring program outlined in Table 1.

PROJECT DESCRIPTION

The project consists of relocating the existing fairgrounds facility to a vacant 25± site (approximately 15 acres exclusively for the fairgrounds and 10 acres for a mutual use with the City).

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</thead>
<tbody>
<tr>
<td>Affected Resources</td>
</tr>
<tr>
<td>Biology – San Joaquin kit fox</td>
</tr>
<tr>
<td>Cultural Resources-Historical Resources</td>
</tr>
</tbody>
</table>

City of Porterville
Fairground Relocation Project
Noise-Construction Noise

Noise producing equipment used during construction and operations shall be restricted to the hours of 7:00 a.m. to 7:00 p.m., Monday through Friday, and 8:00 a.m. to 6:00 p.m. on Saturday. Construction or operation outside of these hours shall require written approval by the City’s Chief Building Official.

To be the responsibility of the City of Porterville Building Division.

Construction contractor. Completed during construction activities.

Public Services – Fire protection

An Emergency Medical Services team will be scheduled to be on standby at the fairground’s key events such as the Fair, Sierra Winter Classic, Orange Blossom Klassic and other like events. Also, a staffed Fire truck will be onsite, or equivalent measures, during large events such as the Fair.

To be the responsibility of the City of Porterville Fire Department.

Event Organizer. Throughout the life of the project or until such time as adequate fire safety facilities are constructed to provide reduced response time to project site.

City of Porterville Fairground Relocation Project
SUBJECT: EARLY LITERACY PROGRAM

SOURCE: PARKS AND LEISURE SERVICES DEPARTMENT

COMMENT: The Library Board of Trustees have thoroughly discussed the idea to implement an early literacy program for 2010. Preliminary discussion took place at the September Library Board meeting to outline new pre-K literacy services and outreach opportunities. Library Board Member Sharon Patterson and staff provided a draft program design to the Library Board at their October meeting for discussion. At the October meeting the Library Board recommended staff develop additional program components for early literacy. Staff presented the proposed early literacy program components to the Library Board at their November meeting. The Library Board accepted the staff report as submitted and recommends the proposal of Early Literacy Program to City Council for consideration.

Traditionally early literacy efforts have centered on a weekly pre-K story hour that includes stories, songs, rhymes, and crafts. Staff is often invited to visit local childcare centers to read stories aloud to pre-K children and to share information about library services.

Current budget year efforts have allowed the installation of six early literacy workstations for pre-K through sixth grade. The workstations are located at the Main branch and Margaret J. Slattery Children’s Library. The workstations have numerous educational programs in English and Spanish. A Spanish Story time program was established at the Margaret J. Slattery Library in September 2009. The story time includes stories, songs, and rhymes.

The purpose of creating early literacy services would expand the overall literacy efforts provided by the Porterville Library. The 2009 Library Facility Planning Committee efforts outline five primary service roles the Porterville Library will serve in the future. One of the five identified is “early literacy: create young readers, children from birth to age five will have programs and services designed to ensure they will enter school ready to learn to read, write, and listen.”

In an effort to build upon the early literacy service role staff has outlined for implementation the following early literacy program components.

1. Create parent and newborn outreach program with Sierra View District Hospital as a partner. The program outreach would involve coordination of resources that include a program brochure with one redeemable coupon for every newborn to receive a soft cover book for newborns and infants through 12 months.

Director  Appropriated/Funded  City Manager  ITEM NO.: 16
2. Implementation of a Lapsit Program at the Main branch that provides an opportunity for parents and children ages 0-2yrs to participate in a weekly activity with stories, songs with movement, and interactive time with other parents.

3. Develop a resource pamphlet for parents providing them an overview of materials and information they can access to meet their informational needs. Staff would coordinate distribution of resource pamphlets to local pediatrician offices.

To support this early literacy program staff developed the following goals.

Goal 1 - To implement Early Literacy Services in 2010 that builds a resource center parents can utilize as they themselves grow and develop along with their children.

Goal 2 - To sustain an Early Literacy Service Program for Pre-K through outreach and programming.

Goal 3 - To provide a library environment that creates young readers through early literacy development.

Staff identified the following annual cost estimates for the proposed early literacy program components.

**Parent & Newborn Outreach Program:**

<table>
<thead>
<tr>
<th>Item</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Staff</td>
<td>$600</td>
</tr>
<tr>
<td>Supplies &amp; Materials</td>
<td>10,000</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>$10,600</strong></td>
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</table>

**Lapsit Program:**

<table>
<thead>
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<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Staff</td>
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</tr>
<tr>
<td>Supplies &amp; Materials</td>
<td>1,000</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>$2,500</strong></td>
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</tbody>
</table>

**Resource Pamphlet:**

<table>
<thead>
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<tbody>
<tr>
<td>Staff</td>
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</tr>
<tr>
<td>Supplies &amp; Materials (off-site requirements)</td>
<td>150</td>
</tr>
<tr>
<td>Printing Cost (per 3,000 copies)</td>
<td>4,500</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>$5,400</strong></td>
</tr>
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</table>

The estimated annual increased program cost is approximately $18,500. After review of current budget savings from existing programs and services staff suggests funds to support the Early Literacy Program for the balance of the current year come from budgeted Measure H funds. In addition, staff will advocate for opportunities to gain community sponsors who wish to get involved with new literacy efforts.

**RECOMMENDATION:** That Council receives the recommendation of the Library Board of Trustees and approves the new early literacy program components commencing in January 2010.

**ATTACHMENTS:** Memorandum from Library Board of Trustees to City Council
MEMORANDUM

TO: Mayor McCracken
Vice Mayor Ward
Council Member F. Martinez
Council Member P. Martinez
Council Member Hamilton

FROM: Ellen Nichols, Library Board of Trustees, Chairperson  

DATE: November 18, 2009

SUBJECT: Early Literacy Program

The Library Board of Trustees has evaluated and thoroughly discussed library based pre-K early literacy activities. At the Library Board meeting on November 12, 2009, action was taken to forward to Council this recommendation for staff to implement new early literacy efforts.

Public Libraries in general provide a variety of literacy services to all members within a community. The purpose of partnering early literacy services and outreach with other community agencies would enhance the overall literacy efforts of our Porterville City Library.

The Library Board of Trustees strongly advocate continuing development of new outreach and other service program opportunities that support all literacy efforts provided by our City Library.

The Library Board of Trustees would like to thank Council for your time and consideration.
COUNCIL AGENDA: DECEMBER 1, 2009

SUBJECT: DISCLOSURE OF GROUNDWATER REPORT

SOURCE: Public Works Department - Engineering Division

COMMENT: City consultant, Dr. Kenneth D. Schmidt, prepared a groundwater study for the City of Porterville. City Council approved the preparation of this report during the June 23, 2009 meeting. The report is limited to the underground water supply within the City’s Urban Area Boundary (UAB). The Urban Development Boundary (UDB) is a boundary that falls within the UAB and is mentioned throughout the report as the anticipated 2030 growth boundary. Determining the existing and predicting future groundwater conditions within the UDB is the main focus of the study. A copy of this report is not attached to staff’s report due to the size of the document; however, a copy has been produced for the Council and is available in the Manager’s Office.

Dr. Schmidt utilized data from several resources that support the findings of his report, which include among others, the City of Porterville, local irrigation districts, California Department of Water Resources, and the U.S. Bureau of Reclamation.

Historical accounting of all the City wells and other wells of record within the UAB and UDB assisted in the conclusions of the existing groundwater supply. Dr. Schmidt reports that the City is currently overdrafting the groundwater supply by about 1,200 acre-feet per year. This overdraft can be offset by the percolation of surface water, commonly known as groundwater recharging. Obviously, groundwater recharging will need to increase as the City’s water demand increases. The City continues to purchase surface water for the purpose of groundwater recharging, which may not always be enough to offset the stated overdraft. However, under our current existing water purchase agreements, the City was able to purchase and recharge 1,271 acre feet in 2008/2009. Attached for the Council’s reference are executed Memorandums of Understanding between the City and the local irrigation districts that defines the purchase of surface water for groundwater recharging purposes.

Dr. Schmidt’s analysis confirms staff’s belief that the Tule River and Porter Slough are major groundwater recharging corridors through the City of Porterville and Tulare County. Staff has records indicating higher water levels within our municipal water wells when surface water is released from Success Reservoir into these two waterways. Projected impacts of...
land development within the City’s UDB are discussed in the report. Dr Schmidt projects the City will need to acquire between 6,000 and 8,000 acre feet of surface water by the year 2030 for groundwater recharging purposes.

Much discussion with the local irrigation districts are needed in order to meet the 2030 year groundwater recharging goal of 6,000 acre feet to 8,000 acre feet. Staff has little information at this point in the availability of surface water over the next 20 years or the cost associated with purchasing a yearly allotment. These two items will be the focus of upcoming communication with the irrigation districts should Council agree meetings are warranted.

Dr. Schmidt’s report as presented contains significant data and details that substantiate his finding that are not discussed in this staff report. However, staff has presented the essential items requiring Council’s attention.

RECOMMENDATION: That the City Council:

1. Accept Dr. Kenneth D. Schmidt’s report as written;

2. Authorize the Public Works Director and his designees to meet with the local irrigation companies to discuss the findings of the report; and

3. Authorize the Public Works Director to report back with a plan to obtain surface water on a yearly and long term basis to recharge the groundwater and a budget accounting to implement such a plan.

ATTACHMENT: Memorandums of Understanding

P:\pubworks\Engineering\Council Items\Disclosure of Groundwater Report - 2009-12-1.doc
AGREEMENT

THIS AGREEMENT, made and entered into as of the 14th day of February, 2003, between LOWER TULE RIVER IRRIGATION DISTRICT, hereinafter referred to as “Lower Tule” and PORTERVILLE IRRIGATION DISTRICT, hereinafter referred to as “Porterville”,

WITNESSETH:

The parties enter into this Agreement in light of the following facts:

A. Porterville is an irrigation district organized pursuant to Division 11 of the California Water Code and encompasses an area of approximately 17,000 acres. It is located within Tulare County. It is bisected by the Friant-Kern Canal of the Central Valley Project with approximately one-third (1/3rd) of its acreage lying easterly of the canal.

B. Lower Tule is an irrigation district organized pursuant to Division 11 of the California Water Code and encompasses an area of approximately 103,000 acres adjoining Porterville on its western boundaries and thence extending westward a number of miles. It is located within Tulare County.

C. Both districts overlay a common body of underground water supplied by the Tule River and streams branching therefrom and from other common sources such as canals, sinking basins and return flow from irrigation. This general area is commonly referred to as the “Tule River Delta”.

D. The functions of the respective districts include conserving water from every source, obtaining supplemental water through contracts with the United States for water from the Central Valley Project, delivering available supplemental water to landowners, and replenishing and maintaining the underground water supply of the lands within their boundaries.

E. Certain exchanges of water can be made between the parties in such a way as to benefit both districts.
F. Although Porterville is generally unable to meet the total annual water supply demands of its landowners, and cannot therefore be considered to have an excess water supply, the seasonal nature of the water supply means there are points in time at which more water is available to landowners than can reasonably be used at that time. In such events, Porterville's practice has been to spread the unused water for sinking into the underground aquifer. Once in the underground aquifer, the water is available for pumping by any of several individuals and entities, including Lower Tule. Porterville desires to avoid the extra cost associated with spreading and sinking the water eventually used by Lower Tule by entering into this Agreement directly with Lower Tule to implement mutually beneficial efficiency and water balancing measures.

G. Lower Tule generally has demand for surface water that is greater than the quantity of water provided by the various surface supplies that are available to it.

H. The respective districts, through their Boards of Directors, consider that the provisions of the following Agreement are in the best interests of their respective landowners, in furtherance of their mutual and individual interests, and in furtherance of Section 100 of the California Water Code.

NOW, THEREFORE, in consideration of the terms, covenants and conditions herein contained, and cooperatively for the benefit and purposes of each party hereto, the parties agree as follows:

I. TERM
The initial term of this Agreement shall commence immediately upon the signing of this contract by both of the parties hereto and shall continue until December 31, 2012. Thereafter, the Agreement shall continue in force for succeeding five year periods unless one party hereto notifies the other of its intention not to renew. Notification shall be in writing and shall be delivered to the other party in accordance with Section V(a) herein at least six months prior to the end of the then current period.

II. TRANSFER FROM PORTERVILLE TO LOWER TULE
Porterville shall transfer and sell water to Lower Tule subject to the following provisions.
a. Forecast Does Not Exceed 100%: During any year that the May forecast of the April – July Tule River runoff made by the Department of Water Resources (DWR) does not exceed 100% of the long-term average (65,000 acre-feet, DWR Bulletin 120), Porterville shall make available to Lower Tule all of its Tule River water in excess of Porterville’s in-district irrigation needs in that calendar year. However, nothing in this paragraph shall be construed to prohibit Porterville from using such Tule River flood flows as may occur, and to which Porterville may have a right, for the purpose of groundwater recharge.

b. Forecast Meets or Exceeds 100%: During any year that the May forecast of the April – July Tule River runoff made by the DWR meets or exceeds 100% of the long-term average, Porterville shall have the option of retaining 2,600 acre-feet of its headgate entitlement for the purpose of groundwater recharge. Entitlement water available to Porterville that is in excess of the sum its irrigation needs and the above mentioned 2,600 acre-feet for groundwater recharge shall be made available to Lower Tule. Nothing in this paragraph shall prohibit Porterville from using such Tule River flood flows as may occur, and to which Porterville may have a right, for the purpose of groundwater recharge, in addition to the 2,600 acre-feet of entitlement water described above.

c. Declaration of Excess and Groundwater Reservation: By May 31st of each year, Porterville shall inform Lower Tule of the amount of water to be made available pursuant to Paragraphs (a) or (b), above, and the amount of water to be reserved by Porterville for groundwater recharge pursuant to Paragraph (b).

d. Required Purchase: In each year during the term of this Agreement, Lower Tule shall purchase from Porterville all water made available by Porterville pursuant to Paragraphs (a) or (b), above. However, in no case shall Lower Tule be required to purchase from Porterville more than 35,000 acre-feet in any calendar year. Nothing in this section shall require Lower Tule to purchase from Porterville Tule River water that is being released under flood control operations required by the Corps of Engineers.
e. **Discretionary Purchase:** Additional quantities of water may be made available by Porterville under this Agreement subsequent to the notification date set forth in Paragraph (c). However, Lower Tule shall be under no obligation to accept such water.

f. **Purchase Price:** During the first year of the initial term of this Agreement, Lower Tule shall pay to Porterville twenty dollars per acre-foot for Tule River water made available hereunder. During subsequent years, the price per acre-foot paid by Lower Tule for Tule River water received under this Agreement shall be determined by adjusting the previous year’s price by a percentage equal to the change over the prior year in the Consumer Price Index all U.S. cities average, as determined by the Department of Labor. The Department of Labor’s published October reports of CPI data shall be used for determination of each annual adjustment. However, in no year shall the purchase price be greater than the total per acre-foot cost of Lower Tule’s Class 2 water for that year. The total cost of Class 2 water shall be defined as the sum of the rates and charges applied on a per acre-foot basis (currently the water rate, the Friant surcharge and the restoration payment.) Payment shall be made by Lower Tule to Porterville within the calendar month following the declaration by Porterville of the quantity of water available for transfer.

g. **Transfer Administration:** Following Porterville’s declaration of excess or later notification of additional available quantities of water, Lower Tule shall notify Porterville of its requirements. Thereafter, Porterville shall arrange and document the transfer request in accord with the rules and procedures acceptable to the Tule River Association. Lower Tule agrees to work cooperatively with Porterville to complete this process.

III. **DEFAULT/REMEDIERS**

a. **Default:** Failure of either Porterville or Lower Tule to comply with the provisions outlined in Article II (a)-(f) above shall be considered a material breach of this Agreement.
b. **Remedy:** The remedy for any such breach shall be termination of the Agreement. This remedy shall become effective only after continued failure to observe the terms of the Agreement following a ten calendar day written cure demand from the non-breaching party. Such demand shall be deemed served upon compliance with the Notice provision contained in Section V(a) herein. In the event of such termination, either party may file an action to interpret and enforce the terms of this Agreement and seek all remedies available in law or equity. Alternatively, following the aforementioned cure notice and prior to termination, the parties may mutually agree to arbitrate the issue. In such event, each party shall pay one-half of the arbitrator’s fee and the arbitrator’s decision shall be binding. The arbitrator shall determine the prevailing party in such issue and order the non-prevailing party to pay the prevailing party’s reasonable attorney’s fees and costs incurred in attempted resolution and arbitration of the issue.

IV. **TERMINATION**

This Agreement may be terminated at any time upon mutual written agreement of the parties.

V. **MISCELLANEOUS PROVISIONS**

a. **Notice:** Any writing intended to give notice to the parties pursuant to this Agreement shall be addressed as follows and shall be deemed served when forwarded by both first class mail, postage pre-paid and via facsimile to:

Lower Tule River Irrigation District  
Post Office Box 4388  
Porterville, CA 93258-4388  
Attn: District Manager  
Facsimile No: 559-686-0151

Porterville Irrigation District  
Post Office Box 1248  
Porterville, CA 93258-1248  
Attn: District Manager  
Facsimile No: 559-784-6733

The addresses and facsimile numbers noted above may be modified by giving notice to the other party in the fashion outlined herein.

b. **Assignment:** This Agreement shall not be assigned by either party. Any attempted assignment shall be considered a breach of this Agreement and a voidable action which shall result in termination of this Agreement.
c. **Integration:** This Agreement represents the entire understanding of the parties. No prior oral or written agreement or understanding shall be of any force or effect with respect to those matters covered herein.

d. **Modification:** This Agreement may not be modified or altered except as mutually agreed and evidenced by a writing signed by both parties.

e. **Construction:** This Agreement is the product of negotiation and compromise on the part of each party and the parties agree, notwithstanding Civil Code Section 1654, that in the event of uncertainty the language will not be construed against the party causing the uncertainty to exist.

f. **Governing Law/Venue:** This Agreement shall be administered and interpreted under the laws of the State of California. Any action brought to interpret or enforce this Agreement shall be brought in Tulare County, California.

g. **Attorney's Fees:** In the event of any legal action or proceeding between the parties relating to this Agreement, the prevailing party, as determined by the Court, shall be entitled to reasonable attorney's fees and other reasonable costs incurred in connection therewith and in pursuing collection, appeals and other relief to which that party may be entitled.

h. **Headings:** Section headings are provided for organizational purposes only and do not in any manner affect the scope or intent of the provisions thereunder.
IN WITNESS WHEREOF, the parties have caused their duly authorized officers to sign this Agreement pursuant to resolutions of their respective Boards of Directors authorizing the same.

LOWER TULE RIVER IRRIGATION DISTRICT
by ______________________________
President
by ______________________________
Secretary

PORTERVILLE IRRIGATION DISTRICT
by ______________________________
President
by ______________________________
Secretary
AGREEMENT

THIS AGREEMENT, made and entered into as of the 14th day of February, 2003, between PIXLEY IRRIGATION DISTRICT, hereinafter referred to as “Pixley” and PORTERVILLE IRRIGATION DISTRICT, hereinafter referred to as “Porterville”, WITNESSETH:

The parties enter into this Agreement in light of the following facts:

A. Porterville is an irrigation district organized pursuant to Division 11 of the California Water Code and it encompasses an area of approximately 17,000 acres. It is located within Tulare County. It is bisected by the Friant-Kern Canal of the Central Valley Project with approximately two-thirds (2/3rd) of its acreage lying westerly of the canal.

B. Pixley is an irrigation district organized pursuant to Division 11 of the California Water Code and it encompasses an area of approximately 69,600 acres. It is located within Tulare County, approximately two miles to the southwest of Porterville.

C. Both districts overlay a common body of underground water that is fed naturally by subsurface flow from the Sierra foothills and percolation of surface water in stream channels such as the Tule River and Deer Creek. Groundwater is also recharged from other common sources such as canals, sinking basins and return flow from irrigation. The groundwater elevation gradient in the area is such that subsurface flow of groundwater is toward Pixley from Porterville.

D. The functions of the respective districts include conserving water from every source, obtaining supplemental water through contracts with the United States for water through the Central Valley Project, delivering available supplemental water to landowners, and replenishing and maintaining the underground water supply of the lands within their boundaries.
E. Certain exchanges of water can be made between the parties in such a way as to benefit both districts.

F. Although Porterville is generally unable to meet the total annual water supply demands of its landowners, and cannot therefore be considered to have an excess water supply, the seasonal nature of the water supply means there are points in time at which more water is available to landowners than can reasonably be used at that time. In such events, Porterville’s practice has been to spread the unused water for sinking into the underground aquifer. Once in the underground aquifer, the water is available for pumping by any of several individuals and entities, including Pixley. Porterville desires to avoid the extra cost associated with spreading and sinking the water eventually used by Pixley by entering into this Agreement directly with Pixley to implement mutually beneficial efficiency and water balancing measures.

G. Pixley generally has demand for surface water that is greater than the quantity of water provided by the various surface supplies that are available to it.

H. The respective districts, through their Boards of Directors, consider that the provisions of the following Agreement are in the best interests of their respective landowners, in furtherance of their mutual and individual interests, and in furtherance of Section 100 of the California Water Code.

NOW, THEREFORE, in consideration of the terms, covenants and conditions herein contained, and cooperatively for the benefit and purposes of each party hereto, the parties agree as follows:

I. **TERM**
The initial term of this Agreement shall commence March 1, 2003 and shall continue until February 29, 2008. Thereafter, the Agreement shall continue in force for succeeding five year periods unless one party hereto notifies the other of its intention not to renew. Notification shall be in writing and shall be delivered to the other party in accordance with Section V(a) herein at least six months prior to the end of the then current period.

II. **TRANSFER FROM PORTERVILLE TO PIXLEY**
Porterville shall transfer and sell water to Pixley subject to the following provisions.
a. **USBR Declaration of Uncontrolled Season:** During any year that the United States Bureau of Reclamation (USBR) declares an uncontrolled season, and makes such water available to members of the Friant Division of the Central Valley Project, Pixley shall purchase at least one-half of the total uncontrolled water it intends to use directly from Porterville, as opposed to directly from USBR or other Friant Division members; except that Pixley may, but shall not be required to, purchase more than 7,500 acre-feet of such water through Porterville.

b. **Forecast Does Not Exceed 100%:** During any year that the May forecast of the April – July San Joaquin River runoff made by the Department of Water Resources (DWR) does not exceed 100% of the long-term average (1,262,000 acre-feet, DWR Bulletin 120), Porterville shall make available to Pixley all Friant Division supply available to Porterville under its long-term contract with the United States that is in excess of Porterville’s in-district irrigation needs in that calendar year.

c. **Forecast Meets or Exceeds 100%:** During any year that the May forecast of the April – July San Joaquin River runoff made by the DWR meets or exceeds 100% of the long-term average, Porterville shall have the option of retaining for the purpose of groundwater recharge 10% of that portion of its Friant Division supply which Porterville has determined to be in excess of its in-district irrigation needs in that calendar year. Friant Division supply available to Porterville under its long-term contract with the United States that is in excess of the sum of its irrigation needs and the quantity reserved for groundwater recharge pursuant to the provisions of this paragraph shall be made available to Pixley.

d. **Declaration of Excess and Groundwater Reservation:** By May 31st of each year, or within 10 working days of the date upon which the Bureau declares Millerton Reservoir to be under control and makes a declaration of the available supply, whichever comes later, Porterville shall inform Pixley of the amount of water to be made available pursuant to Paragraphs (b) or (c), above,
and the amount of water to be reserved by Porterville for groundwater recharge pursuant to Paragraph (c) above.

e. **Required Purchase**: In each year during the term of this Agreement, Pixley shall purchase from Porterville all water made available by Porterville subject to the provisions of Paragraphs (a), (b) (c) and (d), above, subject to the limitations contained in each referenced subdivision.

f. **Discretionary Purchase**: Additional quantities of water may be made available by Porterville to Pixley under this Agreement subsequent to the notification date set forth in Paragraph (d) above. However, Pixley shall be under no obligation to accept such water.

g. **Purchase Price First Year**: During the first year of the initial term of this Agreement, Pixley shall pay to Porterville thirty-five dollars per acre-foot plus an adjustment that shall be determined by subtracting Porterville’s WY2002 Class 1 rate, as declared by the Bureau in January of 2002, from its WY2003 Class 1 rate, as declared by the Bureau in January of 2003.

h. **Purchase Price Subsequent Years**: During subsequent years, the rate per acre-foot for purchase of water during any year shall be the previous year’s rate plus an adjustment that shall be determined by subtracting Porterville’s Class 1 rate for that year, as declared by the Bureau in January, from its Class 1 rate for the prior year, as declared by the Bureau in January that year.

i. **Payment Date**: Payment shall be made to Porterville by Pixley within the calendar month following the declaration by Porterville of the quantity of water available.

j. **Standby Charge**: In addition to the purchase price outlined in (g) and (h) above, Pixley shall pay to Porterville, by the first of March of each year, a standby charge of $75,000.

k. **Right to Sell Water Declined by Pixley**: Nothing in this Agreement shall be construed as to prohibit Porterville from selling to other parties Friant Division supplies not accepted by Pixley under Paragraph (f) above.

l. **Return to Pixley if Initial Term Not Extended**: In the event that Porterville declines to extend this Agreement past the initial term as described in Section
I. Pixley shall not be liable for total charges for water received during the initial term that exceed seventy dollars per acre-foot multiplied by the number of acre-feet received from Porterville under the provisions of this Agreement and during the initial term. Any amount paid that is determined to be in excess of said amount shall be returned to Pixley by Porterville within sixty days of the close of the initial term.

m. Transfer Administration: Following USBR's declaration of an uncontrolled season, or Porterville's declaration of excess or later notification of additional available quantities of water, Pixley shall notify Porterville of its requirements. Thereafter, Porterville shall arrange and document the transfer request in accord with the rules and procedures acceptable to USBR. Pixley agrees to work cooperatively with Porterville to complete this process.

III. NRDC v. Rodgers

Should the terms of a settlement or judgment in NRDC v. Rodgers affect either party in such a way as to cause that party to be unable to satisfactorily perform any particular covenant or Agreement herein agreed to be performed by that party, then the non-performance of that covenant or Agreement by such party shall not constitute a breach of this Agreement, but shall constitute such failure of consideration as shall entitle the other party to terminate this Agreement at its option.

IV. BUREAU OF RECLAMATION

Should either party hereto receive written notice or demand from the United States Bureau of Reclamation that the performance of a particular covenant or Agreement herein agreed to be performed by that party, would constitute a violation of its water service contract or the rules or regulations of the United States Bureau of Reclamation, then the non-performance of that covenant or Agreement by such party shall not constitute a breach of this Agreement, but shall constitute such failure of consideration as shall entitle the other party to terminate this Agreement at its option.

V. DEFAULT/REMEDIES

a. Default: Failure of either Porterville or Pixley to comply with the provisions outlined in Article II (a)-(m) above, except due to circumstances outlined in
Sections III and IV herein, shall be considered a material breach of this Agreement.

b. **Remedy:** The remedy for any such breach shall be termination of this Agreement. This remedy shall become effective only after continued failure to observe the terms of the Agreement following a ten calendar day written cure demand from the non-breaching party. Such demand shall be deemed served upon compliance with the Notice provision contained in Section V(a) herein. In the event of such termination, either party may file an action to interpret and enforce the terms of this Agreement and seek all remedies available in law or equity. Alternatively, following the aforementioned cure notice and prior to termination, the parties may mutually agree to arbitrate the issue. In such event, each party shall pay one-half of the arbitrator’s fee and the arbitrator’s decision shall be binding. The arbitrator shall determine the prevailing party in such issue and order the non-prevailing party to pay the prevailing party’s reasonable attorney’s fees and costs incurred in attempted resolution and arbitration of the issue.

VI. **TERMINATION**

This Agreement may be terminated at any time upon mutual written agreement of the parties.

VII. **MISCELLANEOUS PROVISIONS**

a. **Notice:** Any writing intended to give notice to the parties pursuant to this Agreement shall be addressed as follows and shall be deemed served when forwarded by both first class mail, postage pre-paid and via facsimile to:

<table>
<thead>
<tr>
<th>Pixley Irrigation District</th>
<th>Porterville Irrigation District</th>
</tr>
</thead>
<tbody>
<tr>
<td>Post Office Box 477</td>
<td>Post Office Box 1248</td>
</tr>
<tr>
<td>Pixley, CA 93256-0477</td>
<td>Porterville, CA 93258-1248</td>
</tr>
<tr>
<td>Attn: District Manager</td>
<td>Attn: District Manager</td>
</tr>
<tr>
<td>Facsimile No: 559-757-0210</td>
<td>Facsimile No:559-784-6733</td>
</tr>
</tbody>
</table>

The addresses and facsimile numbers noted above may be modified by giving notice to the other party in the fashion outlined herein.
b. **Assignment**: This Agreement shall not be assigned by either party. Any attempted assignment shall be considered a breach of this Agreement and a voidable action which shall result in termination of this Agreement.

c. **Integration**: This Agreement represents the entire understanding of the parties. No prior oral or written agreement or understanding shall be of any force or effect with respect to those matters covered herein.

d. **Modification**: This Agreement may not be modified or altered except as mutually agreed and evidenced by a writing signed by both parties.

e. **Construction**: This Agreement is the product of negotiation and compromise on the part of each party and the parties agree, notwithstanding Civil Code Section 1654, that in the event of uncertainty the language will not be construed against the party causing the uncertainty to exist.

f. **Governing Law/Venue**: This Agreement shall be administered and interpreted under the laws of the State of California. Any action brought to interpret or enforce this Agreement shall be brought in Tulare County, California.

g. **Attorney’s Fees**: In the event of any legal action or proceeding between the parties relating to this Agreement, the prevailing party, as determined by the Court, shall be entitled to reasonable attorney’s fees and other reasonable costs incurred in connection therewith and in pursuing collection, appeals and other relief to which that party may be entitled.

h. **Headings**: Section headings are provided for organizational purposes only and do not in any manner affect the scope or intent of the provisions thereunder.
IN WITNESS WHEREOF, the parties have caused their duly authorized officers to sign this Agreement pursuant to resolutions of their respective Boards of Directors authorizing the same.

PIXLEY IRRIGATION DISTRICT
by
President
Secretary

PORTERVILLE IRRIGATION DISTRICT
by
President
Secretary
AMENDMENT TO 2003 WATER TRANSFER AND SALE AGREEMENT

THIS AMENDMENT TO 2003 WATER TRANSFER AND SALE AGREEMENT (hereinafter “Amendment”) between PIXLEY IRRIGATION DISTRICT, hereinafter referred to as “Pixley” and PORTERVILLE IRRIGATION DISTRICT, hereinafter referred to as “Porterville”, is entered into this ___ day of MARCH, 2008.

RECITALS

WHEREAS, Pixley and Porterville previously executed into an Agreement on February 20, 2003 (hereinafter the “Agreement”) to set forth the terms and conditions under which Porterville would transfer and sell water to Pixley; and

WHEREAS, the Agreement commenced its initial five year term on March 1, 2003, with said five year term set to conclude on February 29, 2008; and

WHEREAS, neither Pixley nor Porterville has provided the other with written notification of non-renewal in accord with the terms of the Agreement, and therefore the Agreement is set to renew for another five year term commencing on March 1, 2008; and

WHEREAS, Pixley and Porterville desire to amend certain terms and conditions contained in the Agreement prior to its renewal on March 1, 2008; and

WHEREAS, the revisions to the terms and conditions of the Agreement, set forth below in this Amendment, shall become effective upon the renewal of the Agreement on March 1, 2008.
NOW, THEREFORE, in consideration of the terms, covenants and conditions herein contained, and cooperatively for the benefit and purposes of each party hereto, Pixley and Porterville agree as follows:

1. The foregoing recitals shall be incorporated in this Amendment.

2. The "Term" of the Agreement, as set forth in Section 1 therein, shall be amended as follows: the initial renewal term shall commence on March 1, 2008, and shall continue for a three-year period concluding on February 28, 2011. Thereafter, the Agreement shall automatically renew annually, unless either party hereto notifies the other in writing of its intention not to renew prior to January 1st of the then current annual period.

3. The "Purchase Price First Year" provisions in Section II(g) of the Agreement are amended as follows: during the first year of the renewal of this Amendment, which shall be WY 2008, Pixley shall pay to Porterville forty-five dollars per acre-foot.

4. The "Purchase Price Subsequent Years" provisions of Section II(h) of the Agreement are amended as follows: during subsequent years, starting with WY 2009, the rate per acre-foot for purchase of water during any year shall be the previous years rate, plus an adjustment that shall be determined by subtracting the sum of Porterville's Class 1 rate, CVPIA Restoration Charge, and Friant Surcharge for that year, as described by the Bureau in January, from its Class 1 rate, CVPIA Restoration Charge, and Friant Surcharge for the prior year, as declared by the Bureau in January of that year.

5. The "Standby Charge" provisions in Section II(j) of the Agreement are amended as follows: on March 1, 2008, for the first year of the renewal term authorized
April 2, 2008

Mr. Dan Vink, General Manager
Pixley Irrigation District
357 East Olive Avenue
Tipton, CA 93272

Re: Amendment to 2003 Water Transfer and Sale Agreement

Dear Mr. Vink,

As we have discussed, there appears to be an error in our recently approved Amendment to 2003 Water Transfer and Sale Agreement. We have determined that Paragraph 4 can be read in a way that the price Pixley pays to Porterville does not escalate, but in fact decreases. As you know this was not our agreement. The term is intended to be an escalation factor so that the cost more accurately tracks the cost increases due to the USBR Rate Setting Policy.

I would propose that we agree that the proper way for Paragraph 4 to be written is as follows:

4. The “Purchase Price Subsequent Years” provisions of Section II(h) of the Agreement are amended as follows: during subsequent years, starting with WY 2009, the rate per acre-foot for purchase of water during any year shall be the previous years rate, plus an adjustment that shall be determined by subtracting from the sum of Porterville’s Class 1 rate, CVPIA Restoration Charge, and Friant Surcharge for that year, as described by the Bureau in January, its Class 1 rate, CVPIA Restoration Charge, and Friant Surcharge for the prior year, as described by the Bureau in January of that year.

I have changed the placement of the word “from” and removed the double comma after the word year in the last line. If this change is acceptable to you please sign below and return a copy to me. Thanks for your time resolving this matter.

Sincerely,

Sean P. Geivet
General Manager

This change is acceptable and deemed approved,

Dan Vink, Pixley Irrigation District

P.O. Box 1248, Porterville CA 93258
Phone: (559) 784-0716 Fax: (559) 784-6733
COUNCIL AGENDA:   FEBRUARY 17, 1998

SUBJECT:       AMENDED AGREEMENT BETWEEN PIONEER WATER COMPANY AND CITY TO USE COMPANY CONDUITS FOR STORM WATER DISCHARGE

SOURCE:       Community Development & Services Department

COMMENT:      On April 6, 1982, the City Council established an agreement between Pioneer Water Company and the City to allow the City to discharge storm water runoff into the company's existing pipelines and ditches, which is assumed by the City's Storm Drain Master Plan.

The original agreement has been revised by eliminating Item #9, the provision which allows either party to terminate the agreement by giving (90) days written notice. The revised agreement ensures the City's continued use of the pipelines and ditches and secures any infrastructural improvements to the facilities funded by the City, in accordance with the City's Storm Drain Master Plan.

The Pioneer Water Board has agreed to the above mentioned change and has signed the attached agreement.

RECOMMENDATION: That the City Council approve the amended agreement between Pioneer Water Company and the City, and authorize the Mayor to sign said agreement.

ITEM NO.   11
AGREEMENT

THIS AGREEMENT made and entered into by and between the City of Porterville, a Municipal Corporation of the State of California, hereinafter referred to as "CITY", and the Pioneer Water Company, a California Corporation, organized as a Mutual Ditch Company, hereinafter referred to as "COMPANY".

WHEREAS, the City desires to utilize certain of COMPANY'S ditches and pipelines as drainage facilities to take storm and other drainage water (other than sanitary drainage) from various parts of the CITY in accordance with the CITY'S Storm Drain Master Plan;

WHEREAS, the COMPANY is the owner and operator of that certain ditch and pipeline known as Pioneer Ditch;

NOW, THEREFORE, it is agreed between the parties as follows:

(1) COMPANY agrees to permit CITY to utilize certain portions of Pioneer Ditch, as set forth in Exhibit "A", for discharge and conveyance of storm drainage water of CITY.

(2) CITY agrees to submit proposals, plans and specifications for other future discharge facilities of CITY for storm water drainage not set forth in Exhibit "A" to COMPANY for its approval. COMPANY shall have the right to accept or reject proposals, plans and specifications of CITY facilities as deemed necessary for the protection of COMPANY, Pioneer Ditch system and other property. COMPANY shall be under no obligation to receive waters into its system which, in the opinion of COMPANY, may cause damage to Pioneer Ditch or to third parties.

(3) CITY agrees to provide storage, retention and percolation basins of sufficient volume adjacent to Pioneer Ditch for the purpose of retaining such storm drainage water not used for irrigation purposes nor discharged into natural channels that CITY conveys through Pioneer Ditch. CITY also agrees to abide by such operational criteria as COMPANY may, from time to time, establish. COMPANY shall be under no obligation to receive water into its system at such time as it would interfere with or impede the COMPANY'S utilization of its system or any portion thereof.
(4) CITY agrees to relinquish all right to any water discharged into Pioneer Ditch and into said storage, retention and percolation basins. CITY further agrees COMPANY may utilize such water by direct flow, or by pumping from storage basins, as desired by COMPANY without further obligation to CITY.

(5) CITY agrees to grant COMPANY the right of use of all storage, retention and percolation basins constructed adjacent to Pioneer Ditch, together with and the right of access to COMPANY-owned facilities wherever said facilities are adjacent to CITY-owned property, and reasonable access can be gained therefrom without damage to CITY property.

(6) CITY agrees to provide all maintenance, repair and cleaning of Pioneer Ditch facilities used by CITY as deemed necessary by COMPANY. CITY further agrees to provide inspection and where necessary such maintenance, repair and cleaning, not less frequently than once annually, immediately prior to the use of Pioneer Ditch for irrigation water conveyance. CITY agrees to take appropriate actions to assure minimum silt and trash accumulation, and other contamination of Pioneer Ditch, including, where necessary, the construction of settling and surging ponds, trash screens and related structures and facilities.

(7) CITY and COMPANY agree to cooperate during times of flooding or other similar emergencies to prevent, or reduce, insofar as possible, such flooding conditions as might be alleviated by Pioneer Ditch, but COMPANY assumes no direct responsibility to CITY or any third party for any damages that might result from flood conditions or COMPANY’S cooperation with CITY, it being understood that Pioneer Ditch system was designed and intended for irrigation use involving controlled flows. CITY agrees to save, defend and hold COMPANY harmless from any claims, demands or actions that might be asserted against COMPANY by reason of acts or omissions relative to the handling or conveyance of waters on behalf of CITY.

(8) CITY agrees that in consideration for the use of the Pioneer Ditch system for conveyance of storm drainage water and flood flows as herein described, to pay to COMPANY an annual fee of $1.00, to be paid on or before January 1 of each year.

(9) If either party should bring suit to enforce the terms of this Agreement, the prevailing party shall be entitled to recover reasonable attorney’s fees and expert witness expenses in addition to Court costs.
This Agreement entered into at Porterville, California, this 17th day of February, 1998

CITY OF PORTERVILLE
A Municipal Corporation

By
Judith Ann Gibbons, Mayor

PIONEER WATER COMPANY
A California Corporation

By
Albert L. Berra

ATTEST:

C. G. Huffer, City Clerk
COUNCIL AGENDA: December 1, 2009

SUBJECT: Consideration of City Charter Amendment Regarding the Selection Process for Appointments to City Boards, Commissions, and Committees

SOURCE: City Manager

COMMENT: This Agenda item, originally scheduled for the November 17th Council meeting, has been scheduled for this meeting at the request of the Council to allow Councilman Pedro “Pete” Martinez to participate.

At its meeting on November 3, 2009, Mayor McCracken had requested that the Council consider defining a process that would be uniformly utilized in the appointment of members to City Boards, Commissions, and Committees, and proposed a public ballot method as the appointment process. As part of the Council discussion of defining an appointment process, the method for codifying a selected process was deliberated, including setting the selection process by Resolution, Ordinance, or Charter Amendment. In further considering the defining of a process for appointment and method of codification, the Council asked that Councilman Pedro “Pete” Martinez coordinate with Mayor McCracken.

In evaluating whether a City Charter amendment would be the best means of codification, Councilman Martinez requested that the City survey cities in the local area as to whether those city charters included language as to the process for appointment. Of the twelve (12) local area cities surveyed (Delano, Dinuba, Exeter, Farmersville, Hanford, Kingsburg, Lemoore, Lindsay, Reedley, Tulare, Visalia, and Woodlake), only the City of Lindsay has defined an appointment process in its charter. For Boards/Commissions/Committees established by Ordinance, the City of Lindsay charter defines that the Mayor nominates individuals for consideration and is approved by the Council. For Boards/Commissions/Committees established by Resolution, the Council presents nominees for the Mayor’s appointment.

RECOMMENDATION: That the City Council consider defining a process for the appointment of members to City Boards, Commissions, and Committees, as well as the means to codify such a process.

ATTACHMENT: City of Lindsay, Charter Section 7.04

C.M. Item No. 18
Section 7.04 Boards, Commissions and Committees.

A. How Created. The City Council by ordinance or resolution may create, modify, combine and abolish such boards, commissions and committees as it shall determine.

B. Appointments. Boards, commissions and committees established by ordinance shall consist of members nominated by the Mayor and approved by the Council. Boards, commissions and committees established by resolution shall be appointed by the Mayor from nominees presented to him/her by the Council.

C. Powers and Duties. The ordinance shall prescribe their powers and duties, determine the number and qualifications of the members, their method of selection, term of office and removal, and fix their compensation, if any.

D. Limitation. All boards, commissions and committees only shall be advisory to the City Council, and may not exercise any administrative or management powers.
SUBJECT: REVIEW SKATE PARK POLICIES

SOURCE: PARKS AND LEISURE SERVICES DEPARTMENT

COMMENT: The skate park has been open for more than three years. Previous Council provided direction that when acts of vandalism occurred there was to be a reduction in the availability for use of the facility. Although a specific record isn’t maintained it is staff’s recollection that closures occurred several times in the initial year. No vandalism activity has been experienced during 2008 or the first half of 2009. Recent vandalism has resulted in two closures - one of two week duration and a second for a one month period. The matter is presented to the current City Council for consideration.

RECOMMENDATION: That the Council provide any needed clarification or change in direction to staff on skate park vandalism issues.

ATTACHMENTS: None
REDEVELOPMENT AGENCY AGENDA: DECEMBER 1, 2009

PUBLIC HEARING
PORTERVILLE REDEVELOPMENT AGENCY

SUBJECT: REQUEST TO CONTINUE THE PUBLIC HEARING FOR THE 2010-2014 IMPLEMENTATION PLAN FOR THE PORTERVILLE REDEVELOPMENT PROJECT NO. 1

SOURCE: COMMUNITY DEVELOPMENT DEPARTMENT - REDEVELOPMENT

COMMENT: A Public Hearing for the 2010-2014 Implementation Plan for the Porterville Redevelopment Project No. 1 was scheduled for public comment on December 1, 2009. However, staff and the Agency’s consultant need additional time to make added changes to complete the Implementation Plan.

Staff is requesting continuation of the Public Hearing to the January 19, 2010 Porterville Redevelopment Agency Meeting.

RECOMMENDATION: That the Redevelopment Agency:
1. Open the Public Hearing for comments; and
2. Continue the Public Hearing to January 19, 2010