

**CITY COUNCIL AGENDA  
CITY HALL, 291 N. MAIN STREET  
PORTERVILLE, CALIFORNIA  
APRIL 2, 2013, 5:30 P.M.**

Call to Order  
Roll Call

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

**JOINT CITY COUNCIL / SUCCESSOR AGENCY TO THE  
PORTERVILLE REDEVELOPMENT AGENCY AGENDA  
291 N. MAIN STREET, PORTERVILLE, CA**

Roll Call: Agency Members/Chairman

**ORAL COMMUNICATIONS**

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

**JOINT CITY COUNCIL/AGENCY CLOSED SESSION:**

- A. Closed Session Pursuant to:
- 1-** Government Code Section 54956.9(d)(1) – Conference with Legal Counsel – Existing Litigation: County of Tulare v. All Persons Interested in the Matter of the Addition of the 2010 Amendment to Redevelopment Plan for the Redevelopment Project Area No. 1, as Adopted by Ordinance 1765 on June 15, 2010, by the City of Porterville, et al., Tulare County Superior Court Case No. 249877.

During Closed Session, the Joint Council/Successor Agency Meeting shall adjourn to a Meeting of the Porterville City Council.

**CITY COUNCIL CLOSED SESSION:**

- B. Closed Session Pursuant to:
- 1-** Government Code Section 54956.9(d)(1) – Conference with Legal Counsel – Existing Litigation: City of Porterville v. County of Tulare et al., Tulare County Superior Court No. 249043.
  - 2-** Government Code Section 54956.9(d)(1) – Conference with Legal Counsel – Existing Litigation: City of Dinuba et al. v. County of Tulare et al., Tulare County Superior Court Case No. 11-243161.
  - 3-** Government Code Section 54956.8 – Conference with Real Property Negotiators/Property: APN: 302-110-076. Agency Negotiator: John Lollis. Negotiating Parties: City of Porterville and the United States Department of Agriculture – Forest Service. Under Negotiation: Terms and Price.
  - 4-** Government Code Section 54957.6 – Conference with Labor Negotiator. Agency Negotiator: John Lollis. Employee Organization: All Unrepresented Management Employees.
  - 5-** Government Code Section 54956.95 – Liability Claims: Claimant: Central Valley Mortgage Service and its insurer Federal Insurance Company. Agency claimed against: City of Porterville.
  - 6 -** Government Code Section 54956.9(d)(2) – Conference with Legal Counsel – Anticipated Litigation – Significant Exposure to Litigation: Three cases concerning facts not yet known to potential plaintiffs.

**6:30 P.M. RECONVENE OPEN SESSION**

## **REPORT ON ANY COUNCIL ACTION TAKEN IN CLOSED SESSION**

Pledge of Allegiance Led by Vice Mayor Pete V. McCracken  
Invocation

### **PROCLAMATIONS**

Muscular Dystrophy Association's "Fill the Boot"  
Child Abuse Awareness Prevention Month

### **PRESENTATIONS**

Employee of the Month – Michael Brodbeck  
Outstanding Business Presentation

### **AB 1234 REPORTS**

This is the time for all AB 1234 reports required pursuant to Government Code § 53232.3.

1. Council of Cities – March 27, 2013
2. Consolidated Waste Management Authority (CWMA) – March 21, 2013
3. Tulare County Economic Development Corporation - March 27, 2013

### **REPORTS**

This is the time for all committee/commission/board reports; subcommittee reports; and staff informational items.

- I. City Commission and Committee Meetings:
  1. Arts Commission
  2. Youth Commission

### **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. Minutes of February 12, 2013**
- 2. Pre-Selection of Raw Sewage Pumps (RSP) & Variable Frequency Drives (VFD)**  
Re: Considering acceptance of the Pre-Selection Matrix as presented by Carollo Engineers; authorization to execute Pre-Procurement documents; authorization to pay 10% of the contract amount; and direction to bring back an item requesting authorization to advertise for bids to install four influent pumps and companion VFDs at the Wastewater Treatment Plant.
- 3. Award of Contract – 2013/2014 Fiscal Year Micro-Surfacing Project**  
Re: Considering awarding contract in the amount of \$560,000.00 to Intermountain Slurry Seal, Inc. of Reno, Nevada, for the project consisting of the installation of a durable thin asphalt overlay on several streets within the City.

- 4. Intent to Vacate Easements for Temporary Turn Around and Temporary Drainage Reservoir Related to the Development of Summit Heritage Villas Subdivision (Nicholson & Smee)**  
Re: Considering approval of a Resolution of Intent to Vacate Easements for easements generally located west of Mathew Street and south of Olive Avenue along Clare Avenue and the future Lombardi Street alignment; and the scheduling of a public hearing on May 7, 2013.
- 5. Approval of Fourth Amendment to the Joint Powers Agreement between the City of Porterville and Tulare County Health and Human Services Agency**  
Re: Considering approval of the Fourth Amendment to a Joint Powers Agreement for the continuation of a Household Hazardous Waste Collection Facility in Porterville.
- 6. Request to Accept NRA Foundation Grant Award**  
Re: Considering authorization to accept NRA Foundation Grant funding in the amount of \$19,000 for improvement to the City's Firearms Training Facility.
- 7. Sale of Surplus Vehicles to Porterville College**  
Re: Considering approval of the sale of a 2005 Ford Crown Victoria sedan, and a 2006 Ford Crown Victoria sedan to Porterville College for the sum of \$1.00 each.
- 8. Approval for Community Civic Event – Boy Scouts of America – Scouting Recruitment Fair – April 13, 2013**  
Re: Considering approval of an event to take place on Saturday, April 13, 2013, from 9:00 a.m. to 2:00 p.m. at Veterans Park.
- 9. Approval for Community Civic Event – Rollin' Relics Car Club – Rollin' Relics Car Show – May 4, 2013**  
Re: Considering approval of an event to take place on Saturday, May 4, 2013, from 7:00 a.m. to 4:00 p.m., in the northern section of Veterans Park.
- 10. Approval for Community Civic Event – Comision Honorifica Mexicana-Americana, Inc. - Cinco de Mayo Parade and Fiesta – May 4, 2013**  
Re: Considering approval of an event to take place on Saturday, May 4, 2013, from 7:00 a.m. to 5:00 p.m. on Main Street.
- 11. Council Member Requested Agenda Item – Request for the City Council to Consider Identifying Areas in the City for Potential Pocket Parks to Recommend to the Parks & Leisure Services Commission for Review**  
Re: Considering authorization to schedule on the April 16<sup>th</sup> Agenda the consideration of potential pocket park locations for recommendation to the Parks and Leisure Services Commission
- 12. Council Member Requested Agenda Item – Request for the City Council to Consider an Analysis of Porterville Municipal Library Users to Develop or Plan for Literacy Services in Under-Served Areas of the Community**  
Re: Considering authorization to schedule on the April 16<sup>th</sup> Agenda the consideration of an analysis of Porterville Library users to develop or plan for literacy services in underserved areas.
- 13. Review of Local Emergency Status**  
Re: Reviewing the City's status of local emergency pursuant to Article 14, Section 8630 of the California Emergency Services Act.

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

**SCHEDULED MATTERS**

**14. Annual Adjustment of Fees by Application of the ENR Cost Index**

Re: Consideration of the implementation of the ENR Cost Index auto escalator for fiscal year 2013/2014 relative to development impact fees.

Adjourn to a Joint Meeting of the Porterville City Council, the Porterville Public Improvement Corporation, and the Porterville Public Financing Authority.

**AGENDA FOR A JOINT MEETING OF THE PORTERVILLE CITY COUNCIL,  
THE PORTERVILLE PUBLIC IMPROVEMENT CORPORATION, AND  
THE PORTERVILLE PUBLIC FINANCING AUTHORITY  
291 N. MAIN STREET, PORTERVILLE, CA 93257**

Roll Call: Porterville Public Improvement Corporation Directors/President  
Porterville Public Financing Authority Members/Chairperson

**WRITTEN COMMUNICATIONS**

**ORAL COMMUNICATIONS**

**JOINT SCHEDULED MATTER**

**PIC/PFA01. Refinancing 2005 Certificates of Participation (COP)**

Re: Consideration of the refunding of the 2005 COP through a direct lending structure with Rabobank.

Adjourn to a meeting of the Porterville City Council.

**ORAL COMMUNICATIONS**

**OTHER MATTERS**

**CLOSED SESSION**

Any Closed Session Items not completed prior to 6:30 p.m. will be considered at this time.

**ADJOURNMENT** - to the meeting of April 16, 2013.

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](http://www.ci.porterville.ca.us).

**ADJOURNED CITY COUNCIL MINUTES  
CITY HALL, 291 N. MAIN STREET  
PORTERVILLE, CALIFORNIA  
FEBRUARY 12, 2013, 5:00 P.M.**

Called to Order at 5:00 p.m.

Roll Call: Council Member Ward, Council Member Shelton, Council Member Hamilton, Vice Mayor McCracken, Mayor Gurrola

The Council adjourned to a Joint Meeting of the Porterville City Council and Successor Agency to the Porterville Redevelopment Agency.

**JOINT CITY COUNCIL / SUCCESSOR AGENCY TO THE  
PORTERVILLE REDEVELOPMENT AGENCY MINUTES  
291 N. MAIN STREET, PORTERVILLE, CA**

Roll Call: Agency Member Ward, Agency Member Shelton, Agency Member Hamilton, Vice Chair McCracken, Chair Gurrola

**ORAL COMMUNICATIONS**

None

**JOINT CITY COUNCIL/AGENCY CLOSED SESSION:**

- A. Closed Session Pursuant to:  
**1-** Government Code Section 54956.9(a) – Conference with Legal Counsel – Existing Litigation: County of Tulare v. All Persons Interested in the Matter of the Addition of the 2010 Amendment to Redevelopment Plan for the Redevelopment Project Area No. 1, as Adopted by Ordinance 1765 on June 15, 2010, by the City of Porterville, et al., Tulare County Superior Court Case No. 249877.

During Closed Session, the Joint Council/Successor Agency Meeting shall adjourn to a Meeting of the Porterville City Council.

**CITY COUNCIL CLOSED SESSION:**

- B. Closed Session Pursuant to:  
**1-** Government Code Section 54956.9(a) – Conference with Legal Counsel – Existing Litigation: City of Porterville v. County of Tulare et al., Tulare County Superior Court No. 249043.

**6:12 P.M. RECONVENE OPEN SESSION**

**REPORT ON ANY COUNCIL ACTION TAKEN IN CLOSED SESSION**

It was reported that there was no reportable action taken.

Pledge of Allegiance Led by Mayor Gurrola  
Invocation – the Mayor participated.

**ORAL COMMUNICATIONS**

- Ellen Nichols, Porterville, promoted a concert to take place on February 19, 2013, at 7:00 p.m., at the Congregational Church on 4<sup>th</sup> and Mill.

## **SCHEDULED MATTER**

### **1. Consideration of Tulare County Association of Governments (TCAG) “Measure R” Expenditure Plan Proposed Amendment No. 3**

City Manager Lollis introduced the item as a public outreach meeting to discuss and seek public input regarding TCAG’s consideration and preparation of the third amendment to the Measure R Expenditure Plan. He added that presentations would be given by Mr. Ted Smalley, TCAG Director, and City staff.

Mr. Smalley’s Measure R Potential Expenditure Plan Amendment Three presentation provided information on the following: a Measure R summary; the Local Program; the Transit/Bike/Environmental Program; the Regional Program; and the Expenditure Plan Amendment. He reviewed the schedule for Amendment Three consideration, and provided a summary of agency requests.

Following his presentation he addressed questions regarding TCAG composition and voting requirements to pass an amendment.

City Engineer Mike Reed gave a brief presentation which covered the distribution of Measure R tax revenues, and the City’s Regional Transportation Amendment and Transit/Bike/Environmental Amendment proposals.

Following the presentations Mr. Smalley and City staff addressed questions regarding: the west side rail right-of-way; the proposed projects; the 190 Corridor; funding for LED crosswalks; bike lanes; and the publicizing of community outreach efforts.

Public comments were then accepted.

- Armando Silva, 33 S. Corona, President of Southern Sierra Cyclists, spoke of the importance of safe conditions for children riding bikes to school; and encouraged use of Share the Road signage.
- Christie Noble, 167 Carmelita, stated that her 17-year old son was afraid to ride his bike in town, and requested the installation of more bike lanes.
- Scott Noble, 167 Carmelita, would like to see an increase in bike lanes, specifically along Plano Street and Henderson Avenue.
- Ellen Nichols, Porterville, indicated that as a frequent pedestrian she was concerned with a lack of safe walkways; and spoke of the difference between recreational and transportation bike ways.

## **ORAL COMMUNICATIONS**

None

## **OTHER MATTERS**

- Council Member Hamilton spoke of the passing of Porterville resident Mike Severo, and requested that condolences be sent to his family.
- Mayor Gurrola thanked Mr. Smalley for coming to give his presentation.

**ADJOURNMENT**

The Council adjourned at 7:24 p.m., to the meeting of February 19, 2013, at 5:30 p.m.

SEAL

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Luisa M. Herrera, Deputy City Clerk

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Virginia R. Gurrola, Mayor

SUBJECT: PRE-SELECTION OF RAW SEWAGE PUMPS (RSP) & VARIABLE FREQUENCY DRIVES (VFD)

SOURCE: Public Works Department - Engineering Division

COMMENT: On February 5, 2013, the City Council authorized the selection of Carollo Engineers to design and prepare construction documents to replace four influent sewage pumps located at the "front end" of the wastewater treatment plant. Carollo Engineer's first task, as described in the February 5<sup>th</sup> staff report, was to prepare a pump and variable frequency drive (VFD) matrix comparing and contrasting the pieces of equipment offered by the different manufacturers.

Carollo Engineers has completed this task and recommends that the City pre-purchase the Flygt NT3301 Immersible Pump and the General Electric VFD. The Flygt pumps and the GE VFD are the least expensive of the pumps and VFD analyzed. Carollo Engineers has prepared a set of pre-procurement documents. The pre-procurement documents are extensive and therefore not included in staff's report. The complete documents are in the La Barca Room for Council's review.

The pre-procurement documents set the terms on the final purchase price for the pumps (\$261,000) and VFD (\$76,000), establishes general design & seismic criteria, shop drawing submittal procedures, testing and training protocols and informs the manufacturer of guaranty and performance bond requirements. Article 3, Section 00520-2 of the pre-procurement documents establishes the percentage of the contract amount that must be paid to initiate and complete the preparation of shop drawings for the influent pumps and VFDs. The shop drawings preparation fee is 10% of the contract amount or approximately \$34,000. The City's purchase order will reflect the full contract amount; however, the remaining 90% of the contract amount will be assigned to the general contractor per Article 6, Section 00520-4, "Assignment of Procurement Contract."

California Public Contract Law allows for the City to pre-select a specific brand or type of equipment and allows for the equipment to be incorporated into the specifications and bid requirements.

In order to expedite the manufacturing of the pumps and VFD, which can take up to ten weeks once shop drawings have been approved, staff requests that 10% of the cost be borne by the City up-front to initiate the preparation of shop drawings sooner than later. The pump and VFD equipment, and 90% of the cost, will be incorporated into the specifications and the general contract bid out by the City.

DIR ~~667~~ Appropriated/Funded MB CM J

Item No. 2



It is staff's recommendation that the City Council authorize the Public Works Director to contact the pre-selected manufacturers and execute the pre-procurement documents on behalf of the City. Once the pump and VFD pre-procurement documents have been executed, Carollo Engineers will finalize equipment installation plans that incorporate the pre-selected equipment.

RECOMMENDATION: That the City Council:

1. Accept the Pre-Selection Matrix as presented by Carollo Engineers;
2. Authorize the Public Works Director to execute the Pre-Procurement documents;.
3. Authorize payment in the amount of 10% of the contract amount to initiate and complete pump and VFD shop drawings; and
4. Direct the Public Works Director to bring back an item requesting authorization to advertize for bids to install four influent pumps and companion VFDs at the Wastewater Treatment Plant.

ATTACHMENT: Pump & VFD Matrix  
February 5, 2013 Agenda Item

## PROJECT MEMORANDUM

**Project Name:** IPS Equipment Replacement Project      **Date:** 03/26/2013  
**Client:** City of Porterville      **Project Number:** 9181A.10  
**Prepared By:** Richard L. Gutierrez, P.E.  
**Reviewed By:** Scott E. Parker, P.E., Penny Carlo, P.E.  
**Subject:** Pump Evaluation Analysis  
**Distribution:** Baldo Rodriguez, Robert Alvarez, Bryan Styles

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### 1.0 INTRODUCTION

The purpose of this memorandum is to provide an evaluation and recommendation of acceptable pump equipment alternatives for replacing the City's existing raw sewage influent pumps at the Wastewater Treatment Facility's (WWTF) Influent Pump Station (IPS). The criteria used in this evaluation consisted of the following parameters: space and configuration constraints, reliability, pump efficiency, capital cost, and manufacturing lead-time.

#### 1.1 Background

The existing IPS was originally constructed in 1976. The pump station currently consists of four (4) Fairbanks Morse 70 Hp line shaft pumps, which were installed in 1994. The pumps have a rated design capacity of 3,250 gallons per minute (gpm) at 52 feet of total dynamic head (TDH). Most of the facility is located below grade with the motors located just above grade at approximately 434-foot elevation. A minimum of three pumps are required to be in service to meet the WWTF's firm capacity requirements. The IPS typically operates with two pumps in service under most flow conditions with a third pump sometimes required when influent flow to the plant spikes in the afternoon during the wet weather season.

The project scope is to replace the four existing influent line shaft pumps with new pumps. Existing variable frequency drives (VFD's) will also be replaced as part of this project. The design will require reconfiguration and replacement of the inlet and outlet piping and valves to accommodate the layout of the new pumps since their configuration is significantly different from the existing pump equipment.

The electrical design shall include electrical power supply, starters, new VFD's, and new motor control centers (MCC's) associated with the pumps. The electrical design will involve changes to the system to meet current code requirements.

#### 1.2 Pump Selection Alternatives

The City has indicated that they would like to replace the existing line-shaft pumps with immersible type pumps. Immersible pumps have several advantages over the line-shaft style of pumps. They eliminate the complexity and cost of long, extended shafts, which require regular

## PROJECT MEMORANDUM

lubrication of the intermediate bearings. The immersible pumps will also make the installation "flood-proof."

Two types of immersible pumps were evaluated for this project: Screw Centrifugal and Submersible Vertical Dry Pit pumps. Pumps from the following three manufacturers were evaluated for this application: Wemco Hidrostal, Xylem/Flygt (Flygt), and ABS. Of these three manufacturers, only Wemco and Flygt have pumps that are suitable for this application. We do not recommend the ABS pump for this application because it is not available with a Contra-bloc impeller in this size. The channel impeller they can provide with their pump selection is not recommended for a raw sewage application since rags can easily clog this type of impeller. Additionally, the impeller is only available in stainless steel, which is a softer metal and less resistant to grit than high-chrome, which we typically specify for this type of application. A summary and comparison of various parameters for each pump selection is provided in Table 1.1.

Pump Model	Wemco Hidrostal 8"B5414L	Flygt 12"x10" NT3301	ABS XFP 250M-CH2
Base Cost per Pump	\$62,000	\$53,000	\$57,000
Base Cost for Four Pumps	\$248,000	\$212,000	\$228,000
Sales Tax (8.5% of Base Cost)	\$21,000	\$18,000	\$19,000
Freight, Start-up, and Training	\$25,000	\$25,000	\$25,000
Procurement Bonding and Insurance	\$7,000	\$6,000	\$6,500
<b>Total Cost for Pump Procurement</b>	<b>\$301,000</b>	<b>\$261,000</b>	<b>\$278,500</b>
Lead Time	20-22 weeks	9-10 weeks	12-16 weeks
Motor Size, Hp	75	70	70
Pump Speed, rpm	1,185	1,185	1,190
Efficiency @ Rated Design Point	79%	79%	74%
NPSHr @ Design Condition, ft	16	17.9	11.8
Minimum Flow, gpm	700	800	900

PROJECT MEMORANDUM

Table 1.1 - Pump Alternative Comparison			
Pump Model	Wemco Hidrostral 8"B5414L	Flygt 12"x10" NT3301	ABS XFP 250M-CH2
Impeller Type	Helical Screw-Type	N-Type	Channel, 2 vane
Impeller Material	High Chrome Impeller/ High Chrome Suction Liner	High-Chrome	329 SST Impeller w/Hardened Wet End
Impeller Max Sphere Size Passing	5.125"	3.19"	3.5"
Capable of Passing Stringy/Fibrous Materials	Yes	Yes	No
Standard Warranty	5-year prorated on motor. 1-year on pump wet end	5-year prorated on pump and motor	5-year prorated on pump and motor

**1.2.1 IPS Hydraulic Analysis**

A hydraulic analysis of the existing pump station was performed to confirm the sizing for the new equipment. The existing pumps, which were installed in 1994, increased the firm capacity of the pump station to 14 mgd (3,250 gallons per minute (gpm) per pump with one pump out of service). Figure 1 shows the system curves for low and high wet-well conditions at the IPS along with the pump curves from the three manufacturers. All three manufacturers have pump selections that can meet the design flow and head conditions.

The existing suction piping was not modified during the 1994 project due to the complexity of retrofitting the suction piping, which is cast into the existing concrete wall of the wet-well. The suction velocities through the 10-inch diameter suction piping at the rated design condition are therefore higher than what is typically used in the design of this type of facility, approximately 13.3 feet per second (fps). This results in higher suction losses, which in turn reduces the NPSHa to the pump, and increases power consumption and costs. However, the costs, complexity, and construction risk required to increase the size of the piping would be significant. We reviewed these hydraulic conditions with both Flygt and Wemco. Both manufacturers were comfortable providing equipment that will operate under these conditions due to the following criteria being met:

- The worst-case condition NPSHa is 29 feet. Therefore, the NPSHa/NPSHr margin is greater than 1.5 and the NPSHa is greater than the NPSHr + 10 feet.
- The suction velocity of 13.3 ft/sec results in a dynamic head ( $v^2/2g$ ) of 2.75 feet. The pump operating condition is at 52 feet TDH. The maximum disturbance at the inlet is equal to the dynamic head, which is 5% of the total head. Cavitation issues typically arise when the dynamic head component is greater than 10% of the total head.

## PROJECT MEMORANDUM

- The pump duty condition is close to best efficiency point (BEP) on the pump curve.

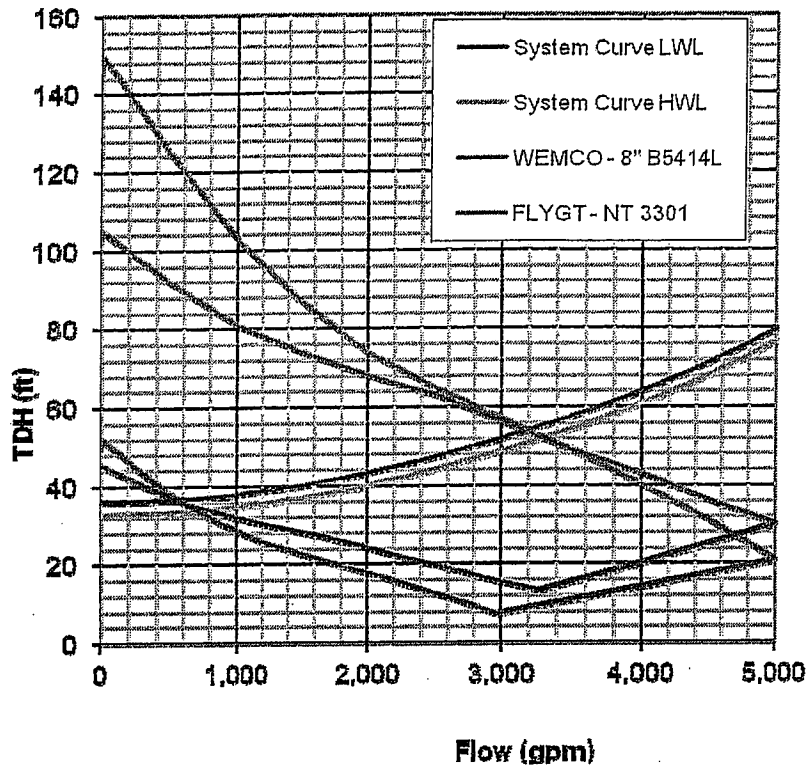


Figure 1 – IPS System Curve and Pump Curves from 3 Manufacturers

### 1.2.2 Configuration Constraints

Both the Wemco and Flygt pump selections can work within the existing pump station configuration constraints with some modifications to the existing discharge piping. The plan is to replace the suction piping and isolation valves up to the existing 10-inch by 16-inch eccentric reducer, which is cast in the concrete wall of the wet-well. Since the existing wall penetration will remain, this will set the elevation of the new suction piping to the pump. The centerline of the suction piping will be approximately 13.5 inches above the floor of the pump station. Both the Wemco and Flygt pumps can be provided with 10-inch diameter suction elbows to accommodate this constraint.

The existing discharge piping for the pumps is also 10-inch diameter, with a 10-inch by 8-inch reducer at the pump discharge. The existing pumps have a tangential discharge, with the discharge above and to the left side of the suction piping. Both of the new pump selections have the discharge located directly above the suction inlet pipe. Therefore, two 45-degree elbows will need to be added to the discharge to accommodate the new pumps. The Wemco pump has an 8-inch discharge. The Flygt pump has a 10-inch discharge.

## PROJECT MEMORANDUM

The available area for getting behind the pumps is also restricted. With the existing pump installation, there is only 23 inches of clearance between the pump and existing staircase. This does not allow much room for getting around Pump Nos. 2 and 3. With the Wemco pump selection, this clearance can be increased to 27 inches. With the Flygt selection, the clearance will be 26 inches. This requires a non-standard base pedestal for the Flygt selection but the manufacturer has confirmed that this can be provided and still meet Carollo's vibration criteria.

Another site constraint involves removal of the pumps for servicing. The existing pumps are removed by using a bar through the lift hooks provided on the underside of the beam located above the pumps. These hooks will not be adequate for removing the new pumps. A new 1.5-ton monorail will need to be installed adjacent to the existing beam above the pumps to facilitate their removal.

### 1.2.3 Reliability

Raw sewage pumping is an extremely harsh service, as the raw wastewater contains stringy, fibrous, abrasive materials. Furthermore, the conditions that the pumps must operate under, from minimum flows up to peak wet weather flows, complicate the requirements of this service. Finally, as the raw sewage pumps are the essential element separating the City from unplanned sanitary sewer overflows (SSO). Therefore, they must provide highly reliable and dependable service.

When evaluating reliability for this service application there are several parameters to consider; potential for stoppages or clogging of pumps, durability of pump materials of fabrication, availability of parts and servicing, and the pump manufacturer's track record based on previous experience in similar applications.

#### 1.2.3.1 *Clogging Potential*

The Wemco Hidrostral pump provides the greatest resistance to clogging from both large solids and stringy/fibrous materials. However, both pump options have proven reliability in both screened and unscreened raw sewage installations. As listed in Table 1.1, the Wemco Hidrostral pump selected for this application can pass up to a 5.125-inch sphere through the impeller compared with 3.19-inch for the Flygt pump. The shape of the Wemco pump curve provides additional benefits when it comes to passing large material and preventing clogging. The curve is much steeper in comparison to the Flygt pump option, with less of a change in capacity as head increases. This large head reserve can help push out blockages when they occur. However, in this application, the IPS is located downstream of the screenings facility which has 0.5-inch Duperon screens. Therefore, large size debris will typically not be a concern for this installation.

For fibrous and stringy materials, both the Wemco and Flygt impellers are capable of handling this type of material. The design of the Flygt N-impeller is designed with a relief groove in the volute, which produces a self-cleaning flow path. The Wemco Hidrostral screw centrifugal impeller design works like a corkscrew to keep material moving through the pump cavity,

## PROJECT MEMORANDUM

minimizing clogging. Both impeller designs have been proven to be effective in minimizing clogging in raw sewage pumping applications.

### **1.2.3.2 *Materials of Construction***

Both the Flygt and Wemco pumps are available with High-Chrome impellers, which provide the best combination of corrosion resistance and durability. The Wemco pumps also include High-Chrome suction bowl liners that can be adjusted as wear occurs to maintain pump performance.

Both options are also available with the following submersible motor protection features:

- Top of motor cable entry that incorporates both sealing and strain relief functions to prevent moisture intrusion
- Tandem mechanical shaft seals to provide double protection against moisture intrusion
- Closed loop circulating cooling system with an air filled motor to enable continuous operation in air under full load conditions.
- Moisture probes and temperature sensors for motor protection
- Explosion proof motors

### **1.2.3.3 *O&M requirements***

There is not a significant difference in O&M requirements between the two pump alternatives. Both pump manufacturers have service centers in the Central Valley. Wemco utilizes Industrial Electric in Modesto as its local service center or the pumps can be shipped to the Wemco facility in Salt Lake City if necessary. Flygt utilizes Shape Inc. in Stockton and also has a Flygt service center in Fairfield, CA.

### **1.2.4 Efficiency**

Both the Wemco and Flygt pump selections are near the BEP for the pumps at the design operating condition. The efficiency for both pump selections is about 79%. The Wemco Hidrostal pump is fitted with external adjusting screws to enable O&M staff to reset the clearance between the pump's impeller and suction liner such that the "as new" efficiencies can be retained over the wear lives of these components. This may provide a slight advantage in terms of power consumption over the life of the pump.

### **1.2.5 Capital Cost and Equipment Lead Time**

As indicated in Table 1.1, the total cost for the Flygt pumps is approximately \$40,000 less than the Wemco Hidrostal.

In terms of lead-time for the equipment, Flygt has confirmed that they can deliver the equipment within 9 to 10 weeks after submittal approval. Wemco can deliver within 20 to 22 weeks after approval.

## PROJECT MEMORANDUM

### 1.3 Pump Recommendations

Carollo has had good experience with both Flygt and Wemco products on numerous projects over the years in similar applications. From a performance and reliability standpoint, both pumps are equally suitable for this application. When cost and lead-time are included in the analysis, the Flygt pump option is the clear winner. For this reason, it is our recommendation that these pumps be prepurchased by the City for this project.

### 1.4 VFD Recommendations

As noted above, the IPS pump VFDs will also be replaced as part of this project. Currently, Pumps Nos. 1 through 3 have VFDs while Pump No. 4 has a constant speed drive. Since Pump No. 4 does not have a VFD, the pump in that position is typically used as a "shelf spare," to swap out with another pump if it goes down. Due to the small size of the existing IPS wet well, when the constant speed pump is operated during normal flow conditions, it will drain down the wet well rapidly and therefore cycle on and off repeatedly. Having all four pumps on VFDs would therefore greatly improve the operation of the IPS and provide true firm capacity without requiring the pumps to be swapped out on a regular basis. It is therefore our recommendation that a fourth VFD for Pump No. 4 be provided.

During our site visit to the facility, we confirmed that there is 122-inches of space available for the VFD cabinets. Therefore, in order to provide the space for four cabinets, the width of the cabinets will need to be limited to 30 inches. Tables 1.2 and 1.3 provide a comparison of the cabinet dimensions, cost, and lead time for VFDs from the four manufacturers Carollo typically specifies.

Manufacturer	Dimensions (inches)		
	H	W	D
General Electric	90	30	20
Eaton/Cutler-Hammer	90	30	21
Schneider/Square D	90	36	25
Allen-Bradley	92	55	25



PROJECT MEMORANDUM

Table 1.3 VFD Alternative Comparison - Cost							
Manufacturer	Base Cost per Unit	Base Cost Total	Freight, Testing & Training	Tax (8.5%)	Bonding and Insurance	Total Equipment Cost	Lead Time (weeks)
General Electric	\$15,800	\$63,000	\$5,000	\$6,000	\$2,000	\$76,000	12-15
Eaton/Cutler-Hammer	\$20,000	\$80,000	\$5,000	\$7,000	\$3,000	\$95,000	15-16
Schneider/Square D	\$30,000	\$120,000	\$5,000	\$11,000	\$4,000	\$140,000	15-16
Allen-Bradley	\$35,000	\$140,000	\$5,000	\$12,000	\$4,000	\$161,000	10-12

As indicated in Table 1.2, both General Electric and Eaton have VFD cabinets that meet the space requirements. However, based on the considerable lead time for this equipment, we recommend prepurchasing of the General Electric VFDs as they are the lowest cost option.

Prepared By:




---

Scott E. Parker, P.E.

SUBJECT: REQUEST FOR IMMEDIATE CONSULTANT SERVICES – WASTE WATER TREATMENT FACILITY RAW SEWAGE PUMPS PROJECT

SOURCE: PUBLIC WORKS DEPARTMENT – FIELD SERVICES DIVISION

COMMENT: Staff respectfully requests Council's authorization to negotiate a "not to exceed" \$60,000 contract for engineering services with Carollo Engineering for the purpose of preparing plans and specifications to remove and replace four (4) Raw Sewage Pumps (RSP) at the Wastewater Treatment Facility. The RSP are located at the front end of the treatment facility. Their sole purpose is to pump approximately five million gallons of daily sewage 27' from a sump up to ground level to begin the influent treatment process.

The four pumps in question are approximately 19 years old and their constant use has brought them close to the end of their useful life. Currently, one of the four pumps is out for repair and it is reasonable to assume that the remaining three pumps will soon begin to experience significant problems.

Obviously time is of the essence. Discussion with pump manufacturers indicates that once a set of plans have been approved, the lead time for pump delivery is approximately 16 to 18 weeks. Staff believes that Carollo Engineers are uniquely qualified to perform the necessary engineering due to the fact that Carollo Engineers designed the original system and were involved in its construction. Carollo Engineers have all of the original construction documents including the complete layout of that portion of the facility that houses the Raw Sewage Pumps.

The existing pumps are driven by a 27' shaft with motors placed directly above at ground level. While this was a proper design twenty years ago, new technology and better pumps allow for the installation of immersible pumps with variable frequency drives (VFD). Immersible pumps coupled with a VFD are significantly more efficient and consume less energy.

In order to minimize design time, staff requests Council's permission to have Carollo Engineers pre-select the pumps, VFD, and other appurtenances. By pre-selecting the equipment, there is the assurance that the new equipment will seamlessly match existing conditions with minimal disruption to the facility.

Dir BGA Appropriated/Funded MB CM J

Item No. 9

Mo # 14-020513

If Council approves staff's request, Carollo Engineer's first task will be to recommend the pump and VFD. A subsequent staff report will be forthcoming identifying the pre-selected equipment with the request that the Council award a contract to the manufacturer of the pre-selected equipment. The funding source is the Wastewater Capital Reserve.

RECOMMENDATION: That the City Council:

- 1 Direct the Public Works Director to negotiate a Design Service Agreement with Carollo Engineers for a "Not to Exceed" \$60,000 fee;
- 2 Authorize the Mayor to execute the Design Service Agreement, if successfully negotiated, for a "Not to Exceed" \$60,000 fee; and
- 3 Direct staff to present a report no later than March 5, 2013, describing the recommended pre-selected equipment for Council's consideration.

COUNCIL AGENDA: APRIL 2, 2013

SUBJECT: AWARD OF CONTRACT – 2013/2014 FISCAL YEAR MICRO-SURFACING PROJECT

SOURCE: Public Works Department - Engineering Division

COMMENT: On March 20, 2013, staff received two (2) bids for the Micro-Surfacing Project. The project is part of the City's Measure "R" Street Maintenance Program, which consists of a durable thin asphalt overlay on several streets within the City. An important project component is the removal and replacement of badly distressed asphalt concrete. New pavement markings will be placed once each street receives the thin asphalt overlay. Indiana Street and Leggett Street will receive a two layer system including a bottom course of asphalt rubber chip seal followed by a top course of micro-surfacing to lock in the aggregate chips commonly known as a cape seal. Streets and project limits are as follows:

- Henderson Avenue – Patsy Street to Westwood Street.
- Indiana Street – Henderson Avenue to Westfield Avenue.
- Leggett Street – Putnam Avenue to Porter Slough.
- Gibbons Avenue – Jaye Street to Indiana Street.

The Engineer's Estimate of Probable Cost for the project was \$769,539. The low bid is \$560,000 or 27.2% lower than the Engineer's Estimate. An additional \$56,000 is required for construction contingency (10%). It is estimated that an additional \$28,000 is required for construction management, quality control and inspection services (5%), equating to a total construction cost of \$644,000.

City Staff will provide construction management/inspection services and the City's on-call consulting firm, Consolidated Testing, with assistance from APART Inc., will provide quality control services (asphalt concrete aggregate sieve analysis, chip rock sieve analysis, sand equivalent testing, oil content confirmation, field confirmation of micro-surfacing mix design, etc.).

The bids are as follows:

	<u>Contractor</u>	<u>Amount</u>
1.	Intermountain Slurry Seal, Inc. Reno, NV	\$560,000.00
2.	VSS International, Inc. West Sacramento, CA	\$590,378.00

Dir AKR Appropriated/Funded MB CM Y  
ARND

Item No. 3

The funding source for this annual project is 2013/2014 Local Measure 'R' Tax Revenue advancement and CalEMA disaster relief as approved by Council on February 19, 2013.

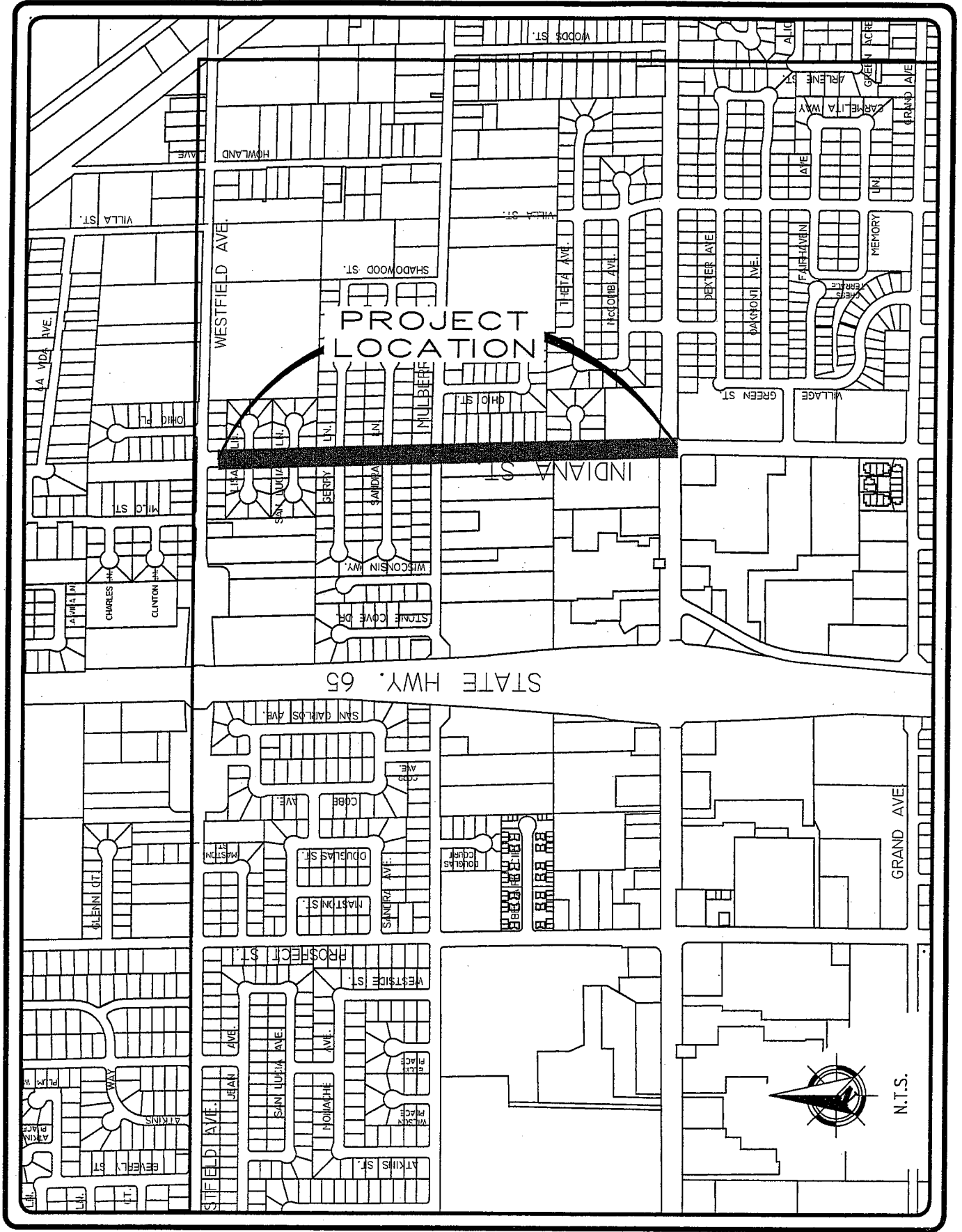
RECOMMENDATION: That City Council:

1. Award the 2013/2014 Fiscal Year Micro-Surfacing Project Base Bid to Intermountain Slurry Seal, Inc. in the amount of \$560,000.00;
2. Authorize progress payments up to 95% of the contract amount; and
3. Authorize a 10% contingency to cover unforeseen construction costs and 5% for construction management, quality control and inspection.

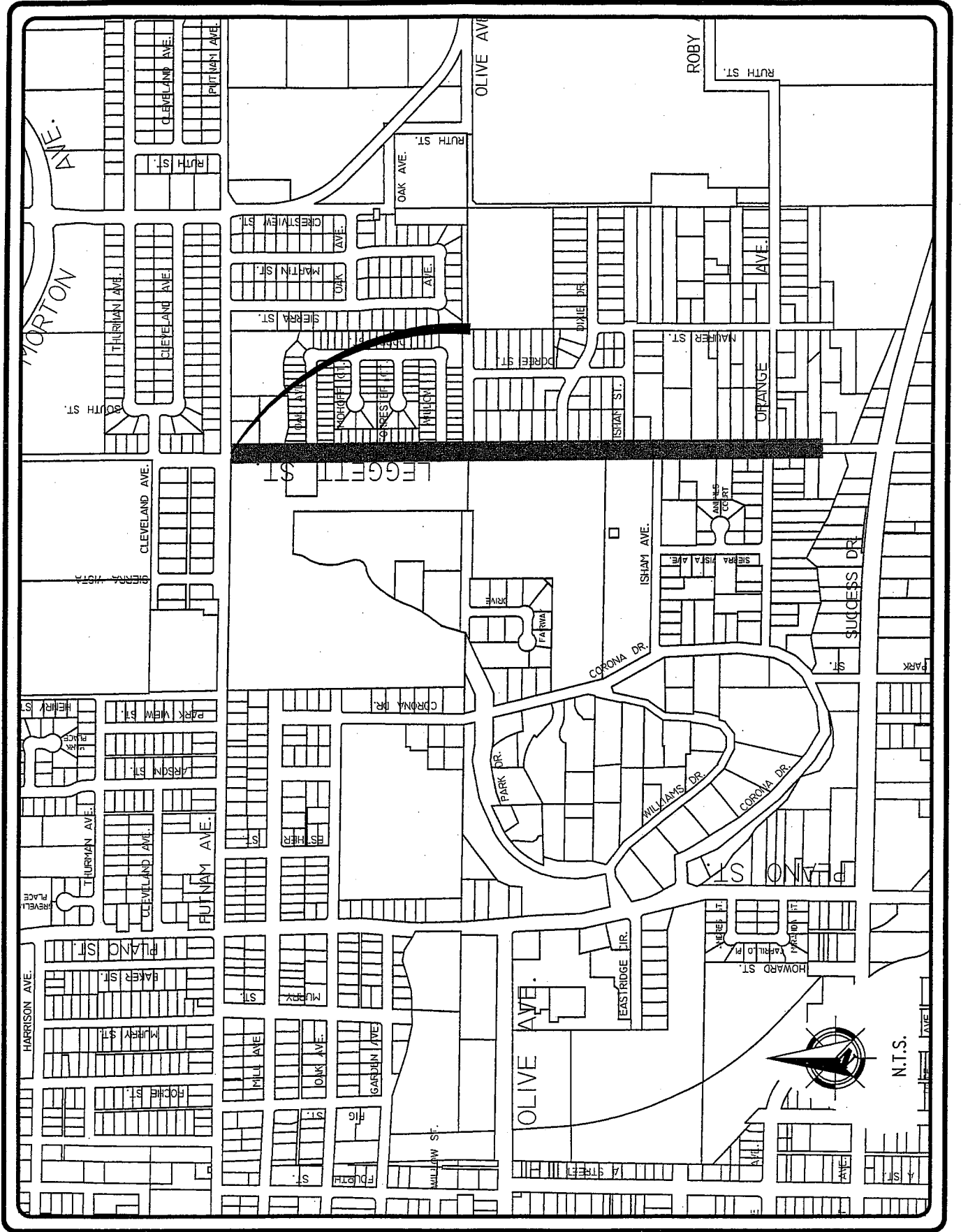
ATTACHMENTS: Locator Maps (Henderson Avenue, Indiana Street, Leggett Street & Gibbons Avenue)



INDIANA ST. MICRO-OVERLAY  
PROJECT LOCATION MAP

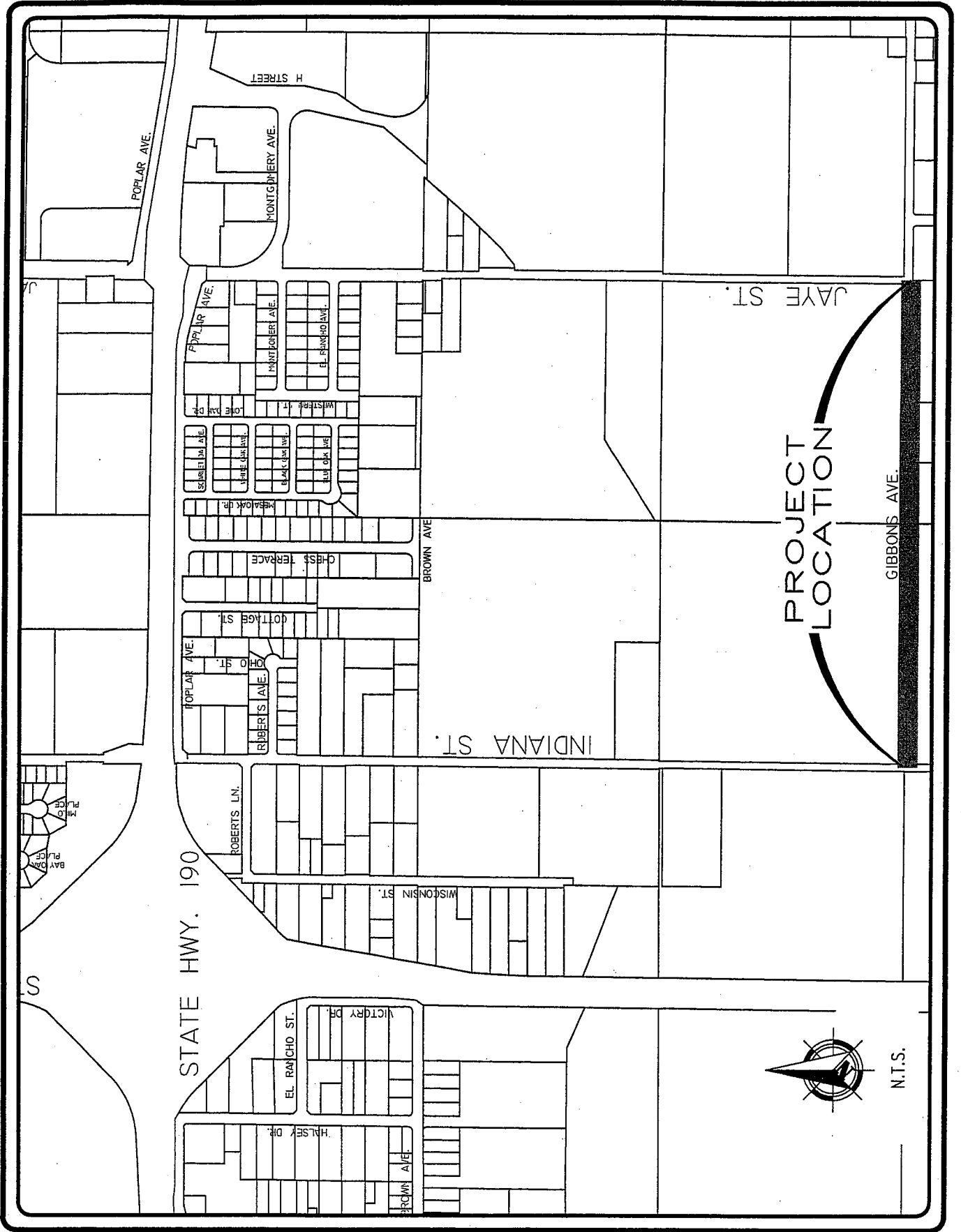


LEGGETT ST. MICRO-OVERLAY  
PROJECT LOCATION MAP





# GIBBONS AVE. MICRO-OVERLAY PROJECT LOCATION MAP



COUNCIL AGENDA: APRIL 2, 2013

SUBJECT: INTENT TO VACATE EASEMENTS FOR TEMPORARY TURN AROUND AND TEMPORARY DRAINAGE RESERVOIR RELATED TO THE DEVELOPMENT OF SUMMIT HERITAGE VILLAS SUBDIVISION (Nicholson & Smee)

SOURCE: Public Works Department - Engineering Division

COMMENT: The City is pursuing easement vacations for a temporary turn around and temporary drainage reservoir. These easements are generally located west of Mathew Street and south of Olive Avenue along Clare Avenue and the future Lombardi Street alignment, respectively. The easements were necessary for the orderly development of the Nazarene Church at the southwest corner of Mathew Street and Olive Avenue. Construction of Clare Avenue during the development of the church property and the dedication of Clare Avenue to the City for public streets and underground utilities ends the need for these easements. With the required enlargement of the temporary drainage reservoir a new easement will be dedicated to the City of Porterville with the processing of the Summit Heritage Villas Subdivision map. The City has authority to vacate these easements under Section 8320, Part 3, Division 9, of the Streets and Highways Code of the State of California.

Staff believes that there are no problems with any reversionary rights since these easements are in favor of the City of Porterville. Abandonment of these easements does not affect other agencies or other utility companies.

RECOMMENDATION: That the City Council:

1. Pass a Resolution of Intent to Vacate Easements dedicated to the City of Porterville by document numbers 2008-0018995 and 2009-0022948 recorded March 14, 2008 and April 17, 2009 respectively in the Office of the Tulare County Recorder; and
2. Set the Council Meeting of May 7, 2013, or as soon thereafter, as the time and place for a public hearing.

ATTACHMENTS: Resolution  
Recorded Documents  
Easement Vacation Legal Descriptions  
Locator Map

P:\PUBWORKS\GENERAL\COUNCIL\INTENT TO VACATE EASEMENTS RELATED TO SUMMIT HERITAGE VILLAS-NICHOLSON & SMEE - 2013-04-02.DOC

Dir BS Appropriated/Funded MP CM J

Item No. 4

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE  
OF INTENTION TO VACATE AND CLOSE TO PUBLIC USE EASEMENTS  
FOR TEMPORARY TURN AROUND AND TEMPORARY DRAINAGE RESERVOIR

SECTION 1: The Council of the City of Porterville, California, pursuant to Division 9, Part 3, Section 8320, of Streets and Highways Code of the State of California, does hereby resolve as follows, to-wit:

That it is the intention of the Council of the City of Porterville to vacate, abandon, and close to public use those certain easements for temporary turn around and temporary drainage reservoir in the City of Porterville, County of Tulare, State of California, and known as easements no longer necessary due to the orderly development of Summit Heritage Villas Subdivision, of which easements are generally located within the northerly portion of said proposed development.

SECTION 2: A map or plan of said public easements intended to be vacated, abandoned and closed to public use is on file in the office of the City Clerk of the City of Porterville, reference to which is hereby made.

SECTION 3: That the public convenience and necessity requires the reservation of easements and rights of way for structures enumerated, if any, in Section 8340 of the California Streets and Highways Code.

SECTION 4: Notice is further given that on Tuesday, the 7<sup>th</sup> day of May, 2013, at 6:30 p.m., or as soon thereafter as the matter can be heard, in the Council Chambers in the City Hall in the City of Porterville, at 291 North Main Street, is hereby fixed for the time and place for hearing any objections to the vacation, abandonment and closing to public use of said easements way.

PASSED, APPROVED AND ADOPTED this 2<sup>nd</sup> day of April, 2013.

---

Virginia R. Gurrola, Mayor

ATTEST:  
John D. Lollis, City Clerk

---

By: Patrice Hildreth, Chief Deputy City Clerk



**RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL THIS  
DEED AND TAX STATEMENTS TO:**

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

*Free  
CONF*

2008-0018995

Recorded | REC FEE 0.00  
Official Records |  
County of | CONFIRMED COPY N 0.00  
Tulare |  
GREGORY B. HARDCASTLE |  
Clerk Recorder |  
LC  
02:01PM 14-Mar-2008 | Page 1 of 4

4  
C

**NO FEE PURSUANT TO GOVERNMENT  
SECTION 27383**

Space above this line for Recorder's Use

**EASEMENT DEED**

Atlas Sheet	Section	Township	Range	Street/Avenue
G 3	33	T21S	R27E	Clare Avenue

PORTERVILLE CHURCH OF THE NAZARENE, GARY M. SMEE and DEBORAH A. SMEE, Trustees of the Gary M. Smee and Deborah A. Smee Living Trust and DARYL C. NICHOLSON and VICTORIA M. NICHOLSON, Trustees of the Daryl C. Nicholson and Victoria M. Nicholson Trust Agreement dated October 1, 1990, GRANT to the CITY OF PORTERVILLE, a Municipal Corporation, an EASEMENT for the use, maintenance, repair and replacement of a temporary turn around, upon, over, across and within that certain real property in the City of Porterville, County of Tulare, State of California, described as follows:

SEE EXHIBIT "A", LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF,  
CONSISTING OF ONE (1) PAGE

Number

Dated this 30 day of January, 2008

Gary M. Smee  
Gary M. Smee, Trustee

Daryl C. Nicholson  
Daryl C. Nicholson, Trustee

Deborah A. Smee  
Deborah A. Smee, Trustee

Victoria M. Nicholson  
Victoria M. Nicholson, Trustee

Porterville Church of the Nazarene

By Mark Pitcher  
Mark Pitcher, President

STATE OF CALIFORNIA }  
County of Tulare } SS

PERSONAL ACKNOWLEDGMENT

On this the 30 day of January, 2008, before me, Bev Schlitz, notary public,  
Name, Title of Officer-E.G., "Jane Doe, Notary Public"

personally appeared Gary M. Smee, Deborah A. Smee, Daryl C. Nicholson, Victoria M. Nicholson, Mark Pitcher  
Name(s) of Signer(s)

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.



(Notary Public's signature in and for said County and State)

Bev Schlitz

(for notary seal or stamp)

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

IN WITNESS WHEREOF, I have hereunto set my hand this 6<sup>th</sup> day of February, 2008

Michael K. Reed  
Michael K. Reed, PLS #7514, City Engineer

Exhibit "A"

That portion of the East half of the Northwest quarter of Section 33, Township 21 South, Range 27 East, Mount Diablo Base and Meridian, in the City of Porterville, County of Tulare, State of California, described as follows:

Commencing at a point in the East line of said Northwest quarter, said point being South 00°32'34" West, 805.39 feet of the Northeast corner of said Northwest quarter;

Thence, North 89°27'26" West, 678.00 feet to the Southwest corner of Parcel B per deed recorded April 21, 2006 as Document No. 2006-0042455 of Official Records and the TRUE POINT OF BEGINNING of the Parcel to be described;

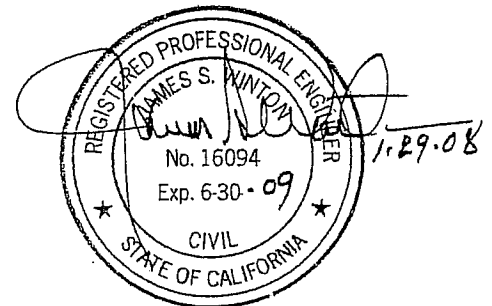
Thence, South 00°32'34" West, 15.00 feet;

Thence, North 89°27'26" West, 79.64 feet;

Thence, North 00°32'34" East, 90.00 feet;

Thence, South 89°27'26" East, 79.64 feet;

Thence, South 00°32'34" West, 75.00 feet to the TRUE POINT OF BEGINNING.



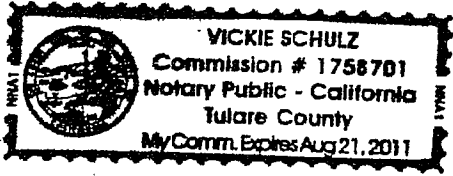
**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California

County of Tulare

On 2-6-08 before me, Vickie Schulz, Notary Public  
Date Here Insert Name and Title of the Officer

personally appeared Michael K. Reed  
Name(s) of Signer(s)



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 Vickie Schulz  
Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

**Description of Attached Document**

Title or Type of Document: Easement Deed

Document Date: 1-30-08 Number of Pages: 3

Signer(s) Other Than Named Above: G. Smee, D. Smee, D. Nicholson, V. Nicholson & M. Ritchie

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

**RIGHT THUMBPRINT OF SIGNER**

Top of thumb here

Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

**RIGHT THUMBPRINT OF SIGNER**

Top of thumb here

Signer Is Representing: \_\_\_\_\_



**RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL THIS  
DEED AND TAX STATEMENTS TO:**

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

*Fee  
copy*

2009-0022948

Recorded REC FEE 0.00  
Official Records  
County of CONFORMED COPY 0.00  
Tulare  
GREGORY B. HARDCASTLE  
Clerk Recorder

*5  
R3*

01:38PM 17-Apr-2009 RS  
Page 1 of 5

NO FEE PURSUANT TO GOVERNMENT  
SECTION 27383

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**EASEMENT DEED**

Atlas Sheet	Section	Township	Range	Street/Avenue
G 3	33	T21S	R27E	Lombardi St

PORTERVILLE CHURCH OF THE NAZARENE, GARY M. SMEE and DEBORAH A. SMEE, Trustees of the Gary M. Sme and Deborah A. Sme Living Trust and DARYL C. NICHOLSON and VICTORIA M. NICHOLSON, Trustees of the Daryl C. Nicholson and Victoria M. Nicholson Trust Agreement dated October 1, 1990, GRANT to the CITY OF PORTERVILLE, a Municipal Corporation, an EASEMENT for the **use, maintenance, repair and replacement of a temporary drainage reservoir**, upon, over, across and within that certain real property in the City of Porterville, County of Tulare, State of California, described as follows:

SEE EXHIBIT "A", LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF,  
CONSISTING OF ONE (1) PAGE



Number

Dated this 20 day of March, 2009

Gary M. Smee  
Gary M. Smee, Trustee

Daryl C. Nicholson  
Daryl C. Nicholson, Trustee

Deborah A. Smee  
Deborah A. Smee, Trustee

Victoria M. Nicholson  
Victoria M. Nicholson, Trustee

Porterville Church of the Nazarene

By Mark Pitcher  
Mark Pitcher, President

STATE OF CALIFORNIA }  
County of TULARE } SS

PERSONAL ACKNOWLEDGMENT

On this the 20th day of MARCH, 2009, before me, BRENDA DONOHUE, NOTARY PUBLIC  
Name, Title of Officer-E.G., "Jane Doe, Notary Public"

personally appeared GARY M. SMEE  
Name(s) of Signer(s)

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.

Brenda Donohue  
(Notary Public's signature in and for said County and State)



(for notary seal or stamp)

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

IN WITNESS WHEREOF, I have hereunto set my hand  
this 24th day of March, 2009

Michael K. Reed  
Michael K. Reed, City Engineer, PLS #7514

State of CALIFORNIA  
County of TULARE

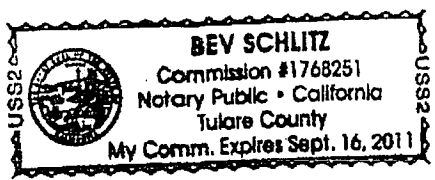
On March 23, 2009 before me,  
BEV SCHLITZ\*\*, Notary Public (here insert name and title of the officer),  
personally appeared VICTORIA M. NICHOLSON AND DARYL C. NICHOLSON AND DEBORAH A. SMEE AND MARK  
PITCHER\*\*,

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 *Bev Schlitz* (Seal)



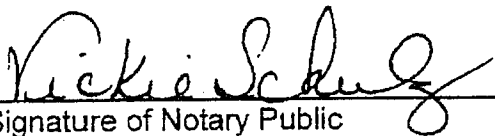
State of California  
County of Tulare ss.

On March 24, 2009, before me, Vickie Schulz, a notary public, personally appeared Michael K. Reed, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

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

WITNESS my hand and official seal.

SEAL

  
\_\_\_\_\_  
Signature of Notary Public

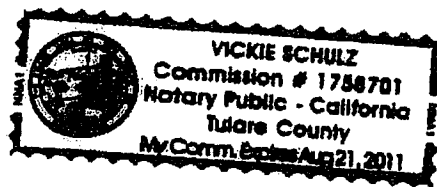


Exhibit "A"

That portion of the East half of the Northwest quarter of Section 33, Township 21 South, Range 27 East, Mount Diablo Base and Meridian in the City of Porterville, County of Tulare, State of California also being a portion of Parcel 2 and of Parcel 3 of Lot Line Adjustment 20-2007 per Resolution No. 559 recorded December 10, 2007 as Document No. 2007-0106407, Tulare County Records, described as follows:

Commencing at the Northeast corner of Lot 43 of Summit Estates, Phase One per map recorded in Book 42, page 48 of Maps in the Office of the County Recorder of said County;

Thence, North  $00^{\circ}32'34''$  East, 11.58 feet;

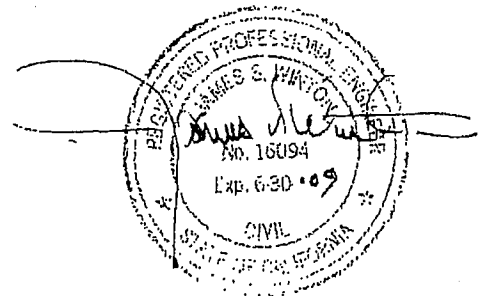
Thence, Northerly along a tangent 880.00 foot radius curve concave to the East, through a central angle of  $13^{\circ}02'29''$ , an arc distance of 200.30 feet to the TRUE POINT OF BEGINNING of the parcel to be described;

Thence, South  $76^{\circ}24'57''$  East, 60.00 feet;

Thence, North  $14^{\circ}48'03''$  East, 125.00 feet;

Thence, North  $76^{\circ}24'57''$  West, 60.00 feet;

Thence, South  $14^{\circ}48'03''$  West, 125.00 feet to the TRUE POINT OF BEGINNING.



## LEGAL DESCRIPTION

### Easement Vacation

#### Parcel 1 - Temporary Turn Around

That portion of the East half of the Northwest quarter of Section 33, Township 21 South, Range 27 East, Mount Diablo Base and Meridian, in the City of Porterville, County of Tulare, State of California, described as follows:

**COMMENCING AT** a point in the East line of said Northwest quarter, said point being South 00°32'34" West, 805.39 feet of the Northeast corner of said Northwest quarter;

**THENCE**, North 89°27'26" West, 678.00 feet, to the Southwest corner of Parcel B per deed recorded April 21, 2006 as Document No. 2006-0042455 of Official Records and the **POINT OF BEGINNING** of the parcel to be described;

**THENCE**, South 00°32'34" West, 15.00 feet;

**THENCE**, North 89°27'26" West, 79.64 feet;

**THENCE**, North 00°32'34" East, 90.00 feet;

**THENCE**, South 89°27'26" East, 79.64 feet;

**THENCE**, South 00°32'34" West, 75.00 feet, to the **POINT OF BEGINNING**.

#### Parcel 2 - Temporary Drainage Reservoir

That portion of the East half of the Northwest quarter of Section 33, Township 21 South, Range 27 East, Mount Diablo Base and Meridian, in the City of Porterville, County of Tulare, State of California also being a portion of Parcel 2 and of Parcel 3 of Lot Line Adjustment 20-2007 per Resolution No. 559 recorded December 10, 2007 as Document No. 2007-0106407, Tulare County Records, described as follows:

**COMMENCING AT** the Northeast corner of Lot 43 of Summit Estates, Phase One per map recorded in Book 42, page 48 of Maps in the Office of the County Recorder of said County;

**THENCE**, North 00°32'34" East, 11.58 feet;

**THENCE**, Northerly along a tangent 880.00 foot radius curve concave to the East, through a central angle of 13°02'29", an arc distance of 200.30 feet to the **POINT OF BEGINNING** of the parcel to be described;

**THENCE**, South  $76^{\circ}24'57''$  East, 60.00 feet;

**THENCE**, North  $14^{\circ}48'03''$  East, 125.00 feet;

**THENCE**, North  $76^{\circ}24'57''$  West, 60.00 feet;

**THENCE**, South  $14^{\circ}48'03''$  West, 125.00 feet, to the **POINT OF BEGINNING**.

**END OF DESCRIPTION**

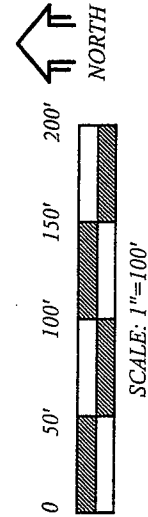
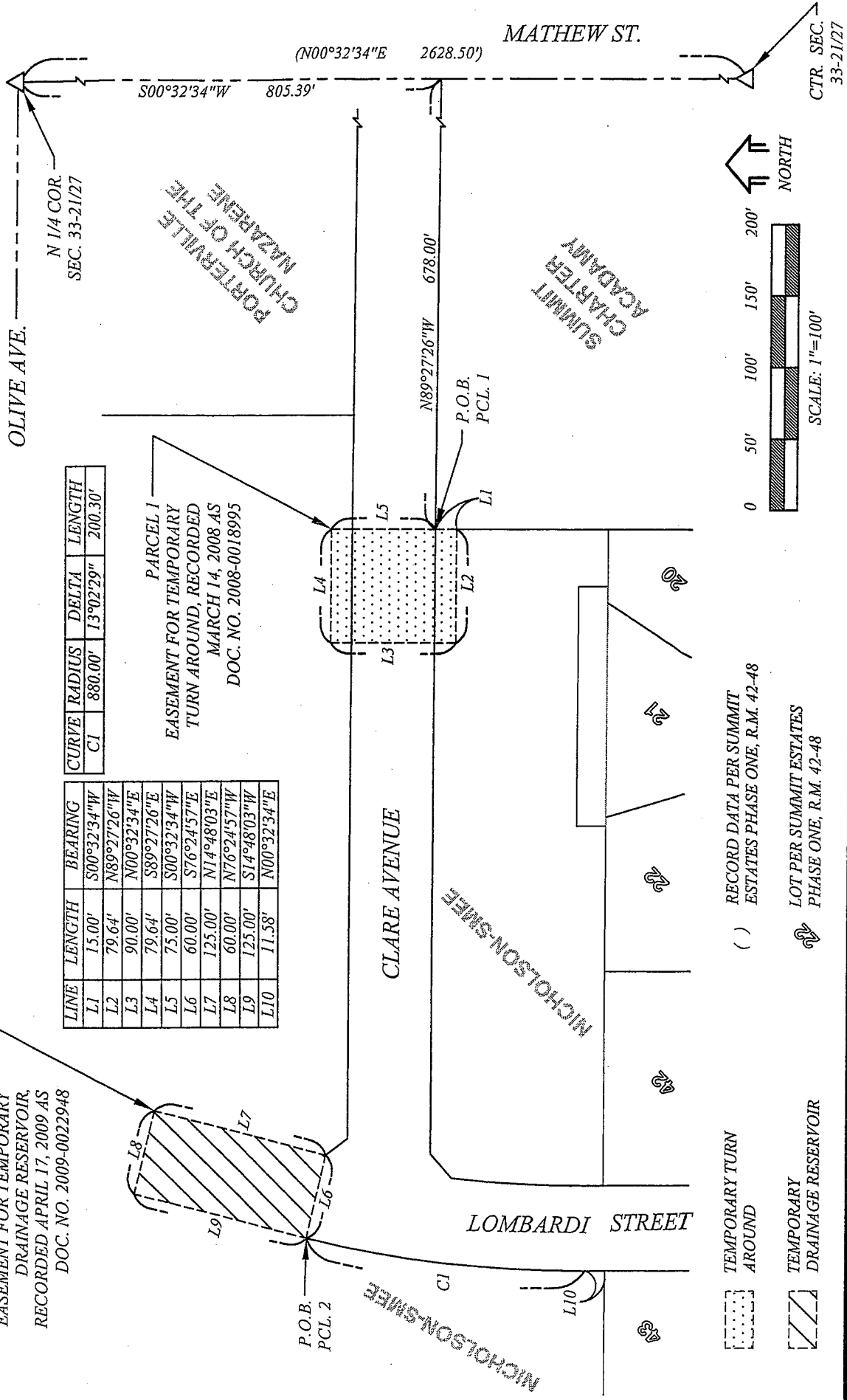
# MAP OF EASEMENT VACATION

PARCEL 2  
EASEMENT FOR TEMPORARY  
DRAINAGE RESERVOIR  
RECORDED APRIL 17, 2009 AS  
DOC. NO. 2009-0022948

LINE	LENGTH	BEARING
L1	15.00'	S00°32'34"W
L2	79.64'	N89°27'26"W
L3	90.00'	N00°32'34"E
L4	79.64'	S89°27'26"E
L5	75.00'	S00°32'34"W
L6	60.00'	S76°24'57"E
L7	125.00'	N14°48'03"E
L8	60.00'	N76°24'57"W
L9	125.00'	S14°48'03"W
L10	71.58'	N00°32'34"E

CURVE	RADIUS	DELTA	LENGTH
CI	880.00'	13°02'29"	200.30'

PARCEL 1  
EASEMENT FOR TEMPORARY  
TURN AROUND, RECORDED  
MARCH 14, 2008 AS  
DOC. NO. 2008-0018995



( ) RECORD DATA PER SUMMIT  
ESTATES PHASE ONE, R.M. 42-48

TEMPORARY TURN AROUND

TEMPORARY DRAINAGE RESERVOIR

LOT PER SUMMIT ESTATES  
PHASE ONE, R.M. 42-48

OWNERS: NICHOLSON TRUST & MELMIKE, LP

APNS: 259-340-008 & 009  
259-350-026

DRAWN BY: FM

CHK'K BY: DB

City of Porterville  
291 N. MAIN ST.  
PORTERVILLE, CA. 93257  
559 782-7462

THAT PORTION OF THE EAST HALF OF THE NORTHWEST QUARTER OF SECTION 33, TOWNSHIP 21 SOUTH, RANGE 27 EAST, MOUNT DIABLO BASE AND MERIDIAN, IN THE CITY OF PORTERVILLE, COUNTY OF TULARE, STATE OF CALIFORNIA.

SUBJECT: APPROVAL OF FOURTH AMENDMENT TO AGREEMENT TO THE JOINT POWERS AGREEMENT BETWEEN THE CITY OF PORTERVILLE AND TULARE COUNTY HEALTH AND HUMAN SERVICES AGENCY

SOURCE: Public Works Department – Field Services Division

COMMENT: The City entered into an agreement with Tulare County Health and Human Services Agency (TCHHSA) on September 29, 2009, to establish a Household Hazardous Waste (HHW) Collection Facility in Porterville. This agreement is for a Recycle-Only HHW Collection Facility that only accepts latex paint, used oil, used oil filters, antifreeze, spent lead-acid batteries, nickel-cadmium, alkaline or carbon-zinc batteries, intact spent fluorescent lamps and intact spent high intensity discharge (HID) lamps. The current agreement is set to expire on June 30, 2013, and TCHHSA would like to renew the agreement for another year.

The City of Porterville will continue to be responsible for providing the site, facility, and staffing for collection and documentation of the Collection Facility. TCHHSA will continue to be responsible for obtaining any necessary permits and provide equipment and collection containers for the operation, transportation and disposal of materials, and signage and flyers. The City's yearly cost is approximately \$2000 and is funded from the Solid Waste Fund.

Staff recommends that City Council authorize the Mayor to sign the Fourth Amendment to the Agreement, with Tulare County Health and Human Services Agency, extending the original agreement for one more year.

RECOMMENDATION: That the City Council approve and authorize the Mayor to sign the Fourth Amendment to Agreement with Tulare County Health and Human Services Agency.

- ATTACHMENTS:
1. Fourth Amendment to Agreement between the City of Porterville and Tulare County Health and Human Services Agency
  2. Original Joint Powers Agreement between the City of Porterville and Tulare County Health and Human Services Agency

Dir AKL Appropriated/Funded MB CM J

Item No. 5





THE PARTIES, having read and considered the above provisions, indicate their agreement by their authorized signatures below.

COUNTY OF TULARE

By \_\_\_\_\_  
Chairman, Board of Supervisors

ATTEST: JEAN M. ROUSSEAU  
County Administrative Officer/Clerk of the Board  
Of Supervisors of the County Of Tulare

By \_\_\_\_\_  
Deputy Clerk

CITY OF PORTERVILLE

Date: \_\_\_\_\_

By \_\_\_\_\_  
Title \_\_\_\_\_

Date: \_\_\_\_\_

By \_\_\_\_\_  
Title \_\_\_\_\_

Corporations Code section 313 requires that contracts with a corporation shall be signed by the (1) chairman of the Board, the president or any vice-president and (2) the secretary, any assistant, the chief financial officer, or any assistant treasurer; unless the contract is also accompanied by a certified copy of the Board of Directors resolution authorizing the execution of the contract.

Approved as to Form  
County Counsel

By \_\_\_\_\_  
Deputy

Dated \_\_\_\_\_



## JOINT POWERS AGREEMENT

**THIS AGREEMENT**, is entered into as of 9/29/09, between the COUNTY OF TULARE, referred to as COUNTY, and the City of Porterville, referred to as CONTRACTOR, with reference to the following:

A. COUNTY wishes to jointly establish and operate a recycle-only household hazardous waste collection facility ("Facility") as defined in California Health and Safety Code Section 25218.1(n) within the City of Porterville; and

B. CONTRACTOR and COUNTY each have the power to establish, operate and maintain such a Facility as recognized by California Health and Safety Code Sections 25201(c) and 25218.8; and

C. CONTRACTOR is willing to enter into this Agreement with COUNTY upon the terms and conditions set forth herein and CONTRACTOR and COUNTY are authorized by Government Code Section 6500 et seq. to enter into this Joint Powers Agreement.

### **ACCORDINGLY, IT IS AGREED:**

1. **TERM:** This Agreement shall become effective as of October 1, 2009 and shall expire at 11:59 PM on June 30, 2010 unless otherwise terminated as provided in this Agreement.
2. **SERVICES TO BE PERFORMED:** See attached **EXHIBIT A**
3. **RESPONSIBILITIES:** The CONTRACTOR and COUNTY enter into this Agreement for exchange of services. CONTRACTOR and COUNTY shall generally be responsible for:  
  
City:
  1. Provide and make available an appropriate site ("Site"), including such buildings as are available, for the Facility at its Corporation Yard located at 555 N. Prospect, Porterville, CA;
  2. Provide staff to oversee the Facility and receive, segregate, containerize and label recyclable household hazardous waste materials from the public during operating hours as established by the City.
  3. CITY shall limit materials to be accepted at the Facility to those recyclable household hazardous waste materials listed in paragraph 1 of subsection (b), Section 25218.8, Article 10.8, Chapter 6.5, Division 20, Health and Safety Code (see subsection c of Exhibit A).

- County:
1. Obtain any necessary permits and Hazardous Waste Generator ID Numbers for the Facility;
  2. Evaluate the suitability of existing buildings made available by CITY at the Site;
  3. Provide such equipment, containers, and labels as may be necessary to operate the Facility;
  4. Provide expertise and advice necessary to operate the Facility;
  5. Transport, or arrange for transport, of recyclable household hazardous waste materials collected at the Facility for proper recycling or disposal.

Responsibilities are more particularly described in Exhibit A.

4. **NO SEPARATE ENTITY:** There will be no separate and distinct public entity created pursuant to this Agreement.
5. **LEAD AGENCY:** COUNTY shall be the lead agency and will be primarily responsible for all activities and obligations set forth herein unless otherwise indicated.
6. **RULES AND REGULATIONS:** COUNTY will, with consultation and approval from CITY, develop all necessary and appropriate policies, rules, and regulations, for the use of, and public access to, the Facility.
7. **COMPLIANCE WITH LAW:** The parties agree to jointly operate and maintain the Facility in accordance with applicable Federal, State, and local laws, regulations and directives, including, without limitation, those provided in Division 20, Chapter 6.5, Article 10.8 of the Health and Safety Code (commencing with Section 25218). With respect to CONTRACTOR'S employees, CONTRACTOR shall comply with all laws and regulations pertaining to wages and hours, state and federal income tax, unemployment insurance, Social Security, disability insurance, workers' compensation insurance, and discrimination in employment.
8. **PAYMENT FOR SERVICES:** The annual funding provided by County under this Agreement is limited to a maximum of \$75,000.
9. **INDEPENDENT CONTRACTOR STATUS:**
  - (a) This Agreement is entered into by both parties with the express understanding that CONTRACTOR will perform all services required under this Agreement as an independent contractor. Nothing in this Agreement shall be construed to constitute the CONTRACTOR or any of its agents, employees or officers as an agent, employee or officer of COUNTY.

(b) CONTRACTOR agrees to advise everyone it assigns or hires to perform any duty under this agreement that they are not employees of COUNTY. Subject to any performance criteria contained in this Agreement, CONTRACTOR shall be solely responsible for determining the means and methods of performing the specified services and COUNTY shall have no right to control or exercise any supervision over CONTRACTOR as to how the services will be performed. As CONTRACTOR is not COUNTY'S employee, CONTRACTOR is responsible for paying all required state and federal taxes. In particular, COUNTY will not:

1. Withhold FICA (Social Security) from CONTRACTOR'S payments.
2. Make state or federal unemployment insurance contributions on CONTRACTOR'S behalf.
3. Withhold state or federal income tax from payments to CONTRACTOR.
4. Make disability insurance contributions on behalf of CONTRACTOR.
5. Obtain unemployment compensation insurance on behalf of CONTRACTOR.

(c) Notwithstanding this independent contractor relationship, COUNTY shall have the right to monitor and evaluate the performance of CONTRACTOR to assure compliance with this Agreement.

10. **GOVERNING LAW:** This Agreement shall be interpreted and governed under the laws of the State of California without reference to California conflicts of law principles. The parties agree that this contract is made in and shall be performed in Tulare County, California.

11. **RECORDS AND AUDIT:** CONTRACTOR shall maintain complete and accurate records with respect to the services rendered and the costs incurred under this Agreement. In addition, CONTRACTOR shall maintain complete and accurate records with respect to any payments to employees or subcontractors. All such records shall be prepared in accordance with generally accepted accounting procedures, shall be clearly identified, and shall be kept readily accessible. Upon request, CONTRACTOR shall make such records available within Tulare County to the Auditor of Tulare County and to his agents and representatives, for the purpose of auditing and/or copying such records for a period of five (5) years from the date of final payment under this Agreement.

12. **CONFLICT OF INTEREST:**

(a) CONTRACTOR agrees to, at all times during the performance of this Agreement, comply with the law of the State of California regarding conflicts of interests

and appearance of conflicts of interests, including, but not limited to Government Code Section 1090 et seq., and the Political Reform Act, Government Code Section 81000 et seq. and regulations promulgated pursuant thereto by the California Fair Political Practices Commission. The statutes, regulations and laws previously referenced include, but are not limited to, prohibitions against any public officer or employee, including CONTRACTOR for this purpose, from making any decision on behalf of COUNTY in which such officer, employee or consultant/contractor has a direct or indirect financial interest. A violation can occur if the public officer, employee or consultant/contractor participates in or influences any COUNTY decision which has the potential to confer any pecuniary benefit on CONTRACTOR or any business firm in which CONTRACTOR has an interest, with certain narrow exceptions.

(b) CONTRACTOR agrees that if any facts come to its attention which raise any questions as to the applicability of conflicts of interests laws, it will immediately inform the COUNTY designated representative and provide all information needed for resolution of this question.

13. **INSURANCE:** Prior to approval of this Agreement by COUNTY, CONTRACTOR shall file with the Clerk of the Board of Supervisors evidence of the required insurance as set forth in **EXHIBIT B** attached.

14. **INDEMNIFICATION:** COUNTY and CONTRACTOR shall hold each other harmless, defend and indemnify their respective agents, officers and employees from and against any liability, claims, actions, costs, damages or losses of any kind, including death or injury to any person and/or damage to property, arising out of the activities of COUNTY or CONTRACTOR or their agents, officers and employees under this Agreement. This indemnification shall be provided by each party to the other party regarding its own activities undertaken pursuant to this Agreement, or as a result of the relationship thereby created, including any claims that may be made against either party by any taxing authority asserting that an employer-employee relationship exists by reason of this Agreement, or any claims made against either party alleging civil rights violations by such party under Government Code section 12920 et seq. (California Fair Employment and Housing Act). This indemnification obligation shall continue beyond the term of this Agreement as to any acts or omissions occurring under this Agreement or any extension of this Agreement.

15. **AUTHORITY TO ACT:** Authority to act under this Agreement on behalf of each party is hereby vested with the City Manager of CITY and the Environmental Health Director of COUNTY, or their designees.

16. **TERMINATION:**

(a) Without Cause: County will have the right to terminate this Agreement without cause by giving thirty (30) days prior written notice of intention to terminate pursuant to this provision, specifying the date of termination. County will pay to the CONTRACTOR the compensation earned for work performed and not previously paid for to the date of termination. County will not pay lost anticipated profits or other economic loss. The payment of such compensation is subject to the restrictions on payment of compensation otherwise provided in this Agreement, and is conditioned upon receipt from CONTRACTOR of any and all plans, specifications and estimates, and other documents prepared by CONTRACTOR in accordance with this Agreement. No sanctions will be imposed.

(b) With Cause: This Agreement may be terminated by either party should the other party:

- (1) be adjudged a bankrupt, or
- (2) become insolvent or have a receiver appointed, or
- (3) make a general assignment for the benefit of creditors, or
- (4) suffer any judgment which remains unsatisfied for 30 days, and which would substantively impair the ability of the judgment debtor to perform under this Agreement, or
- (5) materially breach this Agreement, or
- (6) material misrepresentation, either by CONTRACTOR or anyone acting on CONTRACTOR's behalf, as to any matter related in any way to COUNTY's retention of CONTRACTOR, or
- (7) other misconduct or circumstances which, in the sole discretion of the COUNTY, either impair the ability of CONTRACTOR to competently provide the services under this Agreement, or expose the COUNTY to an unreasonable risk of liability.

County will pay to the CONTRACTOR the compensation earned for work performed and not previously paid for to the date of termination. The payment of such compensation is subject to the restrictions on payment of compensation otherwise provided in this Agreement, and is conditioned upon receipt from CONTRACTOR of any and all plans, specifications and estimates, and other documents prepared by CONTRACTOR by the date of termination in accordance with this Agreement. County will not pay lost anticipated profits or other economic loss, nor will the County pay compensation or make reimbursement to cure a breach arising out of or resulting from such termination. If this Agreement is terminated and the expense of finishing the CONTRACTOR's scope of work exceeds the unpaid balance of the agreement, the CONTRACTOR must pay the difference to the County. Sanctions taken will be possible rejection of future proposals based on specific causes of non performance.

(c) Effects of Termination: Expiration or termination of this Agreement shall

not terminate any obligations to indemnify, to maintain and make available any records pertaining to the Agreement, to cooperate with any audit, to be subject to offset, or to make any reports of pre-termination contract activities. Where CONTRACTOR's services have been terminated by the County, said termination will not affect any rights of the County to recover damages against the CONTRACTOR.

(d) **Suspension of Performance:** Independent of any right to terminate this Agreement, the authorized representative of COUNTY for which CONTRACTOR's services are to be performed, may immediately suspend performance by CONTRACTOR, in whole or in part, in response to health, safety or financial emergency, or a failure or refusal by CONTRACTOR to comply with the provisions of this Agreement, until such time as the cause for suspension is resolved, or a notice of termination becomes effective.

17. **LOSS OF FUNDING:** It is understood and agreed that if the funding is either discontinued or reduced for this project for the COUNTY, that the COUNTY shall have the right to terminate this Agreement. In such event, the affected party shall provide the other party with at least thirty (30) days prior written notice of such termination.

18. **SOFTWARE WARRANTY:** CONTRACTOR warrants that any software furnished hereunder, or any software used by it to perform the services to be provided under this Agreement, will continue processing accurately for the term of this Agreement and any extension thereof and that the use of said software will not cause incorrect scheduling or reporting or other improper operations or results.

19. **FORM DE-542:** CONTRACTOR acknowledges that this Agreement is subject to filing obligations pursuant to Unemployment Insurance Code Section 1088.8. Accordingly, COUNTY has an obligation to file a report with the Employment Development Department, which report will include the CONTRACTOR's full name, social security number, address, the date this contract was executed, the total amount of the contract, the contract's expiration date or whether it is ongoing. CONTRACTOR agrees to cooperate with COUNTY to make such information available and to complete Form DE- 542. Failure to provide the required information may, at COUNTY's option, prevent approval of this Agreement, or be grounds for termination by COUNTY.

20. **NOTICES:**

(a) Except as may be otherwise required by law, any notice to be given shall be written and shall be either personally delivered, sent by facsimile transmission or sent by first class mail, postage prepaid and addressed as follows:



**COUNTY:**

CONTRACT UNIT

TULARE HEALTH & HUMAN SERVICES AGENCY

5957 S. Mooney Boulevard

Visalia, CA 93277

**Phone No.:** 559-737-4686

**Fax No.:** 559-737-4059

**CONTRACTOR:**

CITY OF PORTERVILLE

291 N. Main Street

Porterville, CA 93257-3737

**Phone No.:** (559) 782-7514

**Fax No.:** (559) 782-8937

(b) Notice personally delivered is effective when delivered. Notice sent by facsimile transmission is deemed to be received upon successful transmission. Notice sent by first class mail shall be deemed received on the fifth day after the date of mailing. Either party may change the above address by giving written notice pursuant to this paragraph.

21. **ASSIGNMENT/SUBCONTRACTING:** Unless otherwise provided in this Agreement, COUNTY is relying on the personal skill, expertise, training and experience of CONTRACTOR and CONTRACTOR'S employees and no part of this Agreement may be assigned or subcontracted by CONTRACTOR without the prior written consent of COUNTY.

22. **DISPUTE RESOLUTION:** If a dispute arises out of or relating to this Agreement, or the breach thereof, and if said dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by non-binding mediation before resorting to litigation or some other dispute resolution procedure, unless the parties mutually agree otherwise. The mediator shall be mutually selected by the parties, but in case of disagreement, the mediator shall be selected by lot from among two nominations provided by each party. All costs and fees required by the mediator shall be split equally by the parties, otherwise each party shall bear its own costs of mediation. If mediation fails to resolve the dispute within 30 days, either party may pursue litigation to resolve the dispute.

23. **FURTHER ASSURANCES:** Each party will execute any additional documents and perform any further acts that may be reasonably required to effect the purposes of this Agreement.

24. **CONSTRUCTION:** This Agreement reflects the contributions of all undersigned parties and accordingly the provisions of Civil Code section 1654 shall not apply to address and interpret any alleged uncertainty or ambiguity.

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

26. **NO THIRD-PARTY BENEFICIARIES INTENDED:** Unless specifically set forth, the parties to this Agreement do not intend to provide any other party with any benefit or enforceable legal or equitable right or remedy.

27. **WAIVERS:** The failure of either party to insist on strict compliance with any provision of this Agreement shall not be considered a waiver of any right to do so, whether for that breach or any subsequent breach. The acceptance by either party of either performance or payment shall not be considered to be a waiver of any preceding breach of the Agreement by the other party.

28. **EXHIBITS AND RECITALS:** The recitals and the exhibits to this Agreement are fully incorporated into and are integral parts of this Agreement.

29. **CONFLICT WITH LAWS OR REGULATIONS/SEVERABILITY:** This Agreement is subject to all applicable laws and regulations. If any provision of this Agreement is found by any court or other legal authority, or is agreed by the parties to be, in conflict with any code or regulation governing its subject matter, only the conflicting provision shall be considered null and void. If the effect of nullifying any conflicting provision is such that a material benefit of the Agreement to either party is lost, the Agreement may be terminated at the option of the affected party. In all other cases the remainder of the Agreement shall continue in full force and effect.

30. **ENTIRE AGREEMENT REPRESENTED:** This Agreement represents the entire agreement between CONTRACTOR and COUNTY as to its subject matter and no prior oral or written understanding shall be of any force or effect. No part of this Agreement may be modified without the written consent of both parties.

31. **ASSURANCES OF NON-DISCRIMINATION:** CONTRACTOR shall not discriminate in employment or in the provision of services on the basis of any

characteristic or condition upon which discrimination is prohibited by state or federal law or regulation.

(a) It is recognized that both the Contractor and the County have the responsibility to protect County employees and clients from unlawful activities, including discrimination and sexual harassment in the workplace. Accordingly, Contractor agrees to provide appropriate training to its employees regarding discrimination and sexual harassment issues, and to promptly and appropriately investigate any allegations that any of its employees may have engaged in improper discrimination or harassment activities. The County, in its sole discretion, has the right to require Contractor to replace any employee who provides services of any kind to County pursuant to this Agreement with other employees where County is concerned that its employees or clients may have been or may be the subjects of discrimination or harassment by such employees. The right to require replacement of employees as aforesaid shall not preclude County from terminating this Agreement with or without cause as provided for herein.

### **32. NON-DISCRIMINATION IN STATE AND FEDERALLY ASSISTED PROGRAMS:**

(a) By signing this Agreement CONTRACTOR agrees to comply with Title VI and VII of the Civil Rights Act of 1964 as amended; section 504 of the Rehabilitation Act of 1973 as amended; the Age Discrimination Act of 1975 as amended; the Food Stamp Act of 1977 as amended and the non-discrimination compliance regulations contained in 7 CFR 272.6; Title II of the Americans with Disabilities Act of 1990; The Unruh Act, California Civil Code section 51 et seq., as amended; California Government Code sections 11135-11139.5 as amended; California Government Code section 12940 (c), (h), (i), (j) and (l); California Government Code section 4450; Title 22, California Code of Regulations sections 98000-98413; the Dymally-Altorre Bilingual Services Act (California Government Code sections 7290-7299.8); section 1808 of the Removal of Barriers to Interethnic Adoption Act of 1996; and other applicable federal and state laws, as well as their implementing regulations [including 45 Code of Federal Regulations (CFR) Parts 80, 84 and 91, 7 CFR Part 15, and 29 CFR Part 42], by ensuring that employment practices and the administration of public assistance and social services programs are nondiscriminatory, to the effect that no person shall because of ethnic group identification, age, sex, color, disability, medical condition, national origin, race, ancestry, marital status, religion, religious creed or political belief be excluded from participation in or be denied the benefits of, or be otherwise subject to discrimination under any program or activity receiving federal or state financial assistance; and will immediately take any measures necessary to effectuate this Agreement.

(b) This assurance is given in consideration of and for the purpose of obtaining any and all federal and state assistance; and the CONTRACTOR hereby gives assurance that administrative methods/procedures, which have the effect of subjecting individuals to discrimination, will be prohibited.

(c) CONTRACTOR agrees to compile data, maintain records and submit reports as required, to permit effective enforcement of the aforementioned laws, rules and regulations and permit authorized county, state and federal government personnel, during normal working hours, to review such books and accounts as needed to ascertain compliance. If there are any violations of this assurance, the state shall have the right to invoke fiscal sanctions or other legal remedies in accordance with Welfare and Institutions Code section 10605, or Government Code sections 11135-11139.5, or any other laws, or the issue may be referred to the appropriate federal agency for further compliance action and enforcement of this assurance. This assurance is binding on the CONTRACTOR directly or through contract, license, or other provider services, as long as it receives federal or state assistance.

THE PARTIES, having read and considered the above provisions, indicate their agreement by their authorized signatures below.

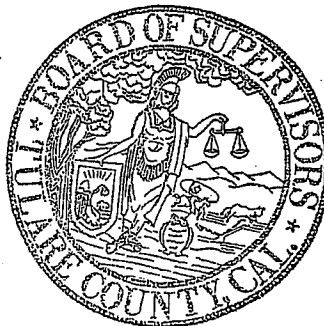
COUNTY OF TULARE

Date: 9/29/09

BY [Signature]  
Chairman, Board of Supervisors

ATTEST: JEAN ROUSSEAU  
County Administrative Officer/Clerk of the Board  
of Supervisors of the County of Tulare

By [Signature]  
Deputy Clerk



CONTRACTOR  
City of Porterville

Date: 9-1-09

By [Signature]  
TITLE Mayor

Date: 9/2/09

By [Signature]  
TITLE City Manager

Corporations Code section 313 requires that contracts with a corporation be signed by both (1) the chairman of the Board of Directors, the president or any vice-president, and (2) the secretary, any assistant secretary, the chief financial officer, or any assistant treasurer, unless the contract is accompanied by a certified copy of the corporation's Board of Directors' resolution authorizing the execution of the contract.

Approved as to Form  
County Counsel:

By *Greenfield*  
Deputy 2009755

Date 9/10/2009

SUBJECT: REQUEST TO ACCEPT NRA FOUNDATION GRANT AWARD

SOURCE: Police Department

COMMENT: In October 2012, the Porterville Police Department submitted a grant proposal/application to the NRA Foundation requesting funding for equipment to improve the City of Porterville Firearms Training Facility. The goal of this grant is to improve the quality of training provided to the law enforcement agencies, civic organizations, and community members who receive training at the facility.

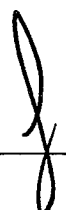
In March 2013, the Porterville Police Department received notification from the NRA Foundation that funding in the amount of \$19,000 has been approved for improvements to the City of Porterville's Firearms Training Facility. The funding would cover costs associated with the purchase and installation of reactive target systems and the addition of a public address system.

RECOMMENDATION: That City Council authorize the acceptance of the NRA Foundation Grant funding in the amount of \$19,000.

ATTACHMENTS: NRA Foundation Grant Proposal and Award Letter

DD 

Appropriated/Funded 

C.M. 

Item No. 6

## Proposal Summary for Online Application

13CCA70

10/23/2012

**Complete notes:** Priority rank on budget: Legal Review, LE Review

### **Organization Information**

Porterville Police Department  
350 N. D Street  
Porterville, CA 93257  
Tel: 559-782-7400  
Fax: 559-784-7010  
<http://www.portervillepolice.com>  
946000398

**State Association?** No  
**501(C)3?** No

### **Contact Information**

Mr. John E. Hall  
310 Eubanks Road  
Trenton, NC 28585  
Tel: 252-448-1445  
Fax: 252-448-1445  
[jhall@ci.porterville.ca.us](mailto:jhall@ci.porterville.ca.us)

### **Proposal Information**

**Project Budget:** \$45,000.00  
**Requested Amount:** \$45,000.00

**Project Title:** Improve Public Access and Improve Range Target Systems

**What is the project that funds are being requested for?** This project will include improvements to the range making it more accessible to the individuals using the facility for training classes. Equipment is also being sought to aid in the training being provided to the various groups and organizations utilizing the range facility.

**What are the goals, objectives and activities involved in this request?**

The goals and objectives are to make the range facility more accessible to the public so that more persons can take advantage of the firearms safety training that is being provided to the community. This project also includes the acquiring of additional training equipment so that the training provided is of the highest quality with an emphasis being placed on realism and safety for all of the involved participants. Firearms training will be provided to law enforcement organizations, police academies, 4H groups, scouting groups, womens safety classes, youth safety classes, and hunter education classes.

**Who will carry out the goals, objectives and activities?**

The Porterville Police Department and its staff will be responsible for carrying out the stated goals, objectives, and activities.

**How will this project benefit the community?**

Various firearm safety classes will be held for members of the public to specifically include lady handgun safety classes, youth firearm education classes, hunter safety classes, etc. These various classes will be held several times a year.

**Will a user fee be charged? If so, what will it be used for?**

A \$10 fee is currently being charged for participants in the firearms safety classes. This fee covers minor incidental expenses with outting on the classes.

**How many people do you anticipate will benefit from this grant?**

300

**Applicant will accept partial funding:** YES

**Club owns the land where improvements are being made:** YES

**Club leases the land where improvements are being made:** NO

### **Recognition and Evaluation**

**If awarded this grant, how will you recognize The NRA Foundation for its support?**

Newspaper article combined with acknowledgment printed on class flyers. This information will also be passed on verbally to all class participants. Class flyers are also posted on Department's website and Facebook page.

**Describe the criteria to be used in determining the success and impact of this project. What do you want to happen as a result of this project? How will you measure the impact?**

We will compare the number of participants at the conclusion of the yearly training cycle with the previous year to see if there is an increased number of participants. Through course evaluation forms we will also look to see if the desired outcome of the training has been met along with suggestions for improvement.

We would like to see the accessibility to the range facility improved and made more suitable for year round events. We would like to see greater access to and use of the range facility by community members and various civic groups. We would also like to see the expansion of various training programs currently in place along with an increasing number of participants.

Through the comparison of our training programs in comparison with other training programs. Inquiries will also be made of the participants and the instructors of these programs. The number of participants will also be compared with the number of participants from the previous year.

**Name of signer:** John Hall

**Title of signer:** Sergeant





The  
**NRA** Foundation  
*Teach Freedom.*

March 12, 2013

Porterville Police Department  
Mr. John Hall  
[REDACTED]  
Porterville, CA 93257

Reference # 13CCA70

Dear Mr. John Hall:

It is with great pleasure that I forward to you the enclosed check for \$19,000.00 for the Improve Public Access and Improve Range Target Systems. Funds are approved for Moving target system, Wireless PA system.

One of the conditions of the grant was that you provide the Foundation a final report at the conclusion of the project/ activities financed from the grant. To facilitate this request we have enclosed a final report form for your convenience. This report will assist us in understanding how your organization utilized the grant. In your summary of the project please address the following:

- How successful were you in reaching the stated goals and objectives in your grant application?
- How did the grant contribute to your success?
- What impact has the project had on its intended audience?
- Please provide us with a detailed summary of expenditures and copies of all receipts accounting for all funds awarded. The grant funds must be used only for items on budget worksheet
- If applicable, how many participated?
- Please include photos, newspaper articles, letters, etc.

Please note that the check is void 90 days from the date of issue. Be sure to deposit the check as soon as possible.

When providing recognition for this grant please note that it is from The NRA Foundation.

Best wishes in the completion of your project.

Sincerely,

Sandy S. Elkin

Director Grants, Administration & Analysis

SUBJECT: SALE OF SURPLUS VEHICLES TO PORTERVILLE COLLEGE

SOURCE: Police Department

COMMENT: Porterville College currently offers a Police Reserve Academy Program for those interested in pursuing a career in law enforcement. The individuals who graduate from the program qualify to apply for reserve police officer positions with our Police Department.

The Police Department recently removed specified police vehicles from our vehicle fleet as part of the scheduled vehicle replacement plan. To enhance the Porterville College Police Reserve Academy, a request has been received from the Program Coordinator, Tim Brown, to acquire two of the surplused police vehicles to incorporate into the instruction program. The vehicles would be utilized to familiarize students with the operation of police vehicles and associated equipment. The Police Department supports the Porterville College Police Reserve Academy Program and believes these vehicles will greatly benefit the effectiveness of the program. To establish a clear transfer of the vehicles and liability, it is recommended that, if approved, each vehicle be sold to Porterville College for the sum of \$1.00. The vehicles best suited for this proposal are as follows:

- 2005 Ford Crown Victoria sedan (Unit 3236),  
107,076 miles, CA/Exp# 1157660, VIN FAFP71W55X124152
- 2006 Ford Crown Victoria sedan (Unit 3255),  
106,620 miles, CA/Exp# 157716, VIN 2FAFP71W26X152525

The Purchasing Agent is authorized to dispose of surplus City property through public auction, trade-in, or negotiated sale. Staff has determined that it is in the best interests of the City to negotiate with other agencies or teaching institutions whenever possible because this allows vehicles to be transferred "as is" without having to strip the patrol vehicles of emergency equipment and perform costly safety inspections. We also save the costs of the auctioneer's commission.

The value of these two vehicles in "as is" condition is approximately \$1,500 each if sold to a law enforcement agency. If these vehicles were sent to auction, they would have to be stripped by the Porterville Maintenance Shop at an approximate cost of \$1,500 each. It is estimated that the auction value of these vehicles is \$2,000 each. After deducting the cost to strip each vehicle, the net amount received for each vehicle is approximately \$500. Using these figures, the value of the transfer to Porterville College would be approximately \$1,000.



Director



Appropriated/Funded



City Manager

Item No.

7

**RECOMMENDATION:** That the City Council approve the sale of the two above-listed surplus vehicles to Porterville College for the sum of \$1.00 each.

**ATTACHMENT:** Letter from Porterville College

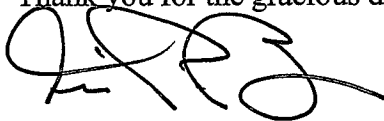
February 12, 2013

To Whom It May Concern,

We have been contacted by the Porterville Police Department expressing an interest in donating old police units to our Police Reserve Program.

This donation will enhance the training in our program especially in the areas of Vehicle Pullovers, Traffic Stops and Vehicle Operations. These vehicles will assist our Cadets with a more realistic and hands on approach to the subject matter.

Thank you for the gracious donation.



Tim Brown  
Porterville College  
Police Reserve Program, Coordinator

COUNCIL AGENDA: APRIL 2, 2013

SUBJECT: APPROVAL FOR COMMUNITY CIVIC EVENT – BOY SCOUTS OF AMERICA – SCOUTING RECRUITMENT FAIR – APRIL 13, 2013

SOURCE: Finance Department

COMMENT: The Boy Scouts of America is requesting approval to hold a recruitment event at Veteran's Park, on Saturday, April 13, 2013 from 9:00 a.m. until 2:00 p.m. There will be several Boy Scout Troops demonstrating the many aspects of scouting. No street or sidewalk closures have been requested.

This request is made under the Community Civic Events Ordinance No. 1326, as amended. The application has been routed according to the ordinance regulations and reviewed by all departments involved. The requirements are listed on the attached copy of the Application, Agreement and Exhibit A.

RECOMMENDATION: That the Council approve the attached Community Civic Event Application and Agreement submitted by the Boy Scouts of America, subject to the stated requirements contained in the Application, Agreement and Exhibit A.

ATTACHMENT: Community Civic Event Application, Agreement, Exhibit A, Exhibit B, and Outside Amplifier Permit.

DD MP Appropriated/Funded MB CM J Item No. 8

# CITY OF PORTERVILLE

## APPLICATION AND AGREEMENT FOR A PERMIT TO HOLD A

COMMUNITY CIVIC EVENT OR OTHER ACTIVITY TO BE HELD ON PUBLIC PROPERTY

Application date: 3/4/13 ~~3/11/13~~ Event date: 4/13/13  
Event time: 9:00 AM - 2:00 PM

Name of Event: Scouting Recruitment Fair

Sponsoring organization: Boy Scouts of America PHONE # 732-3424

Address: 230 NW 3rd Ave. Visalia CA 93291

Authorized representative: Erica Morales PHONE # 732-3424

Address: 230 NW 3rd Ave. Visalia CA 93291

Event chairperson: Tim Suorsa PHONE # 359-3471

Location of event (*location map must be attached*): Veterans Park, Porterville

Type of event: Demonstration of scouting skills and activities

Nonprofit status determination: Bus. Appl. pending

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

Barricades (quantity): 0 Street sweeping Yes  No

Police protection Yes  No  Refuse pickup Yes  No

Other: \_\_\_\_\_

Parks facility application required: Yes  No  Attached

Assembly permit required: Yes  No  Attached

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

Approve Deny

_____	_____	Bus Lic Spvr	_____
_____	_____	Pub Works Dir	_____
_____	_____	Comm Dev Dir	_____
_____	_____	Field Svcs Mgr	_____
_____	_____	Fire Chief	_____
_____	_____	Parks Dir	_____
_____	_____	Police Chief	_____
_____	_____	Deputy City Mgr	_____

# CITY OF PORTERVILLE

## APPLICATION AND AGREEMENT FOR A PERMIT TO HOLD A COMMUNITY CIVIC EVENT OR OTHER ACTIVITY TO BE HELD ON PUBLIC PROPERTY

### *What constitutes a Community Civic Event?*

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

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

City Code requirements:

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

Liability insurance: The sponsoring organization/applicant agrees to provide and keep in force during the term of this permit a policy of liability and property damage insurance against liability for personal injury, including accidental death, as well as liability for property damage which may arise in any way during the term of this permit. The City of Porterville shall be named as additional insured. **When the location of the event is in Downtown Porterville, the Porterville Redevelopment Agency must also be named as additional insured.** The amounts of such insurance and any additional requirements are listed in Exhibit "A." A Certificate of Liability Insurance form sample is enclosed for your convenience. **This original certificate shall be submitted to the Finance Department prior to the City of Porterville Council's approval.**

ER Authorized Representative Initials

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

NA Authorized Representative Initials

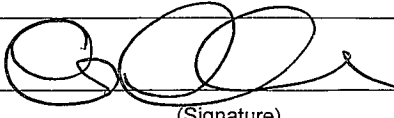
Health permit: Organization/Applicant **will obtain or ensure** that all participants obtain a 'Temporary Food Facilities' permit(s) from the Tulare County Public Health Department, if any food is to be served in connection with this Community Civic Event. To contact the Tulare County Environmental Health Department located at 5957 S. Mooney Blvd., Visalia, CA, 93277, call 559-733-6441, or fax information to 559-733-6932; or visit their website: [www.tularehhsa.org](http://www.tularehhsa.org).

ER Authorized Representative Initials

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

ER Authorized Representative Initials

Agreement: The sponsoring organization/applicant agrees to comply with all provisions of the Community Civic Event Ordinance 15-20(e), as amended, and the terms and conditions set forth by City Council and stated in Exhibit "A." The sponsoring organization/applicant agrees, during the term of this permit, to secure and hold the City free and harmless from all loss, liability, and claims for damages, costs and charges of any kind or character arising out of, relating to, or in any way connected with his/her performance of this permit. Said agreement to hold harmless shall include and extend to any injury to any person or persons, or property of any kind whatsoever and to whomever belonging, including, but not limited to, said organization/applicant, and shall not be liable to the City for any injury to persons or property which may result solely or primarily from the action or non-action of the City or its directors, officers, or employees.

Boy Scouts of America (Name of Organization)	 (Signature)	3/7/13 (Date)
---	---	------------------

## CITY OF PORTERVILLE

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

Name of event: Scouting Recruitment

Sponsoring organization: Boy Scouts of America

Location: Vet's Park Event date: 4/13/13 Event time: 9am-2pm

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

Vendor name	Address/Telephone	Business License required?	Type of Activity

**Municipal Code 15-1: ITINERANT VENDOR OR ITINERANT MERCHANT:** All persons, both principal and agent, who engage in a temporary or transient business in the city, selling or offering to sell goods, wares or merchandise or any other thing of value, with the intention of conducting such business for a period of less than ninety (90) days, and who for the purpose of such business hires, leases or occupies any room, doorway, vacant lot, building or other place, for the exhibition for sale of goods, wares, merchandise or other thing of value. If any such place, occupied or used for such business, is rented or leased for a period of less than ninety (90) days, such fact shall be presumptive evidence that the business carried on therein is a transient business; and any person so engaged shall not be relieved from the provisions of this section or from payment of the license taxes herein provided for such business, by reason of any temporary association with local dealer, trader, merchant or auctioneer.



# CITY OF PORTERVILLE

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

Name of event: Scouting Recruitment

Sponsoring organization: Boy Scouts of America

Event date: 4/13/13 Hours: 9 Am - 2 Pm

**ATTACH MAP MARKING AREAS TO BE CLOSED OR USED:**

Closed				
<u>Street Name</u>	<u>From</u>	<u>To</u>		<u>Activity</u>
	N		A	
<u>Sidewalks</u>	<u>From</u>	<u>To</u>		<u>Activity</u>
<u>Parking lots and spaces</u>	<u>Location</u>			<u>Activity</u>

REQUIREMENTS FOR COMMUNITY CIVIC EVENT

BOY SCOUTS OF AMERICA  
SCOUTING RECRUITMENT FAIR

APRIL 13, 2013

Finance Director:  
*M. Bemis*

Public Works Director: No comment.  
*B. Rodriguez*

Community Development Director:  
*B. Dunlap*

Field Services Manager: No comments.  
*B. Styles*

Fire Chief: Approved.  
*G. Irish*

Parks and Leisure Services Director: Cars may unload and load from the park  
*D. Moore* trail only. Vehicles must park on the street.

Police Captain:  
*D. Haynes*

Administrative Services Director: See Page 2, Exhibit A.  
*P. Hildreth*

## REQUIREMENTS FOR COMMUNITY CIVIC EVENT

Sponsor: Boy Scouts of America  
Event: Scouting Recruitment Fair  
Event Chairperson: Tim Suorsa  
Location: Veteran's Park  
Date of Event: April 13, 2013

RISK MANAGEMENT: Conditions of Approval

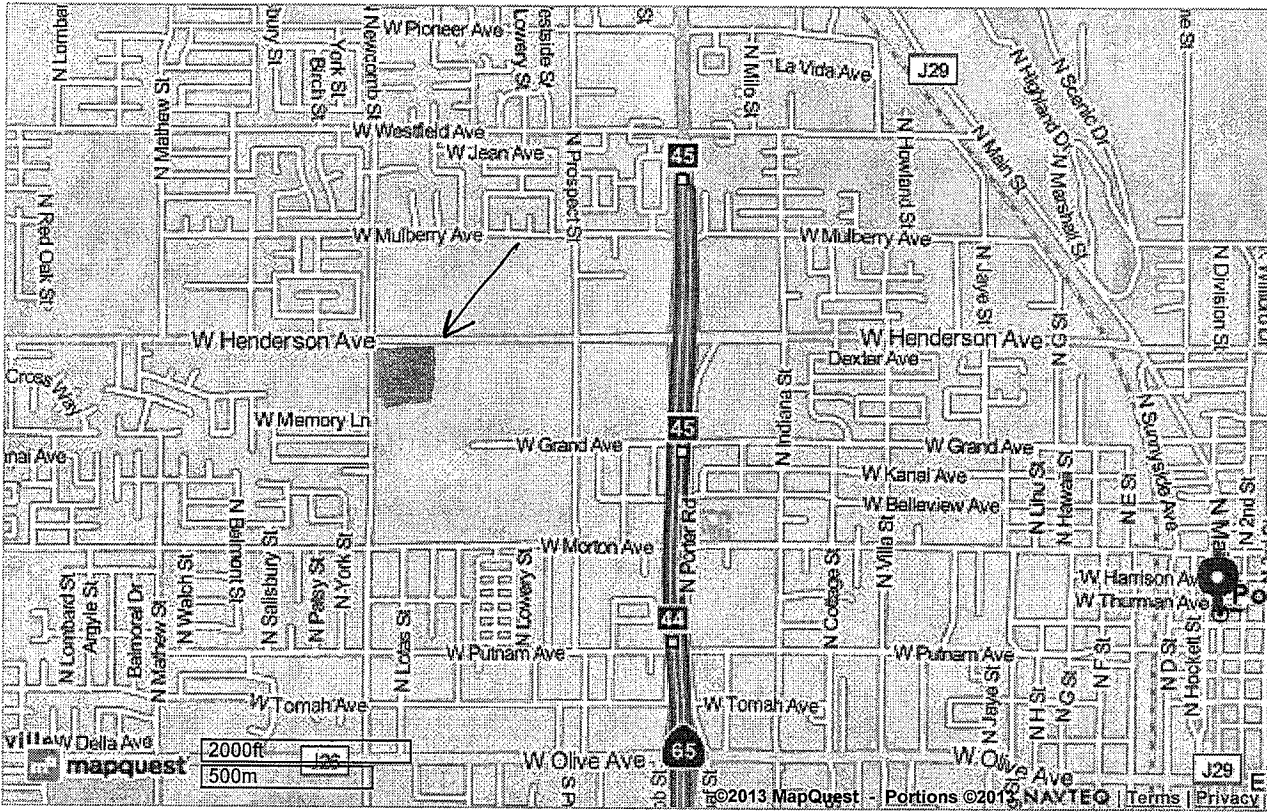
That the Boy Scouts of America provide a Certificate of Commercial General Liability Insurance Coverage evidencing coverage of not less than \$1,000,000 per occurrence, and having the appropriate Endorsement naming the City of Porterville Agency, its Officers, Employees, Agents and Volunteers as Additional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

- A. Said Certificate of Insurance shall be an original (fax and xerographic copies not acceptable), the Certificate shall be signed by an agent authorized to bind insurance coverage with the carrier, and the deductible, if any, shall not be greater than \$1,000.
- B. Said insurance shall be primary to the insurance held by the City of Porterville; be with a company having an A.M. Best Rating of no less than A:VII, and the insurance company must be an "admitted" insurer in the State of California.

Notes



Map of:  
**Porterville, CA**



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CITY OF PORTERVILLE  
OUTSIDE AMPLIFIER PERMIT  
(City Ordinances #18-9 & 18-14)



This application must be submitted ten (10) days prior to the date of the event. A copy of this permit must be at the operating premises of the amplifying equipment for which this registration is issued.

1 Name and home address of the applicant: \_\_\_\_\_  
\_\_\_\_\_

2 Address where amplification equipment is to be used: \_\_\_\_\_

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

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

5 Dates and hours of operation of amplification equipment: \_\_\_\_\_  
\_\_\_\_\_

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

Section 18-9

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

The operation of any such instrument, phonograph, jukebox, machine or device in such manner as to be plainly audible at a distance of one hundred feet (100') from the building, structure, vehicle, or place in which, or on which it is situated or located shall be prima facie evidence of a violation of this section. (Ord. Code § 6311)

Section 18-14

It shall be unlawful for any person to maintain, operate, connect, or suffer or permit to be maintained, operated, or operated, or connected any or sound amplifier in such a manner as to cause any sound to be projected outside of any building or out of doors in any part of the city, except as may be necessary to amplify sound for the proper presentation of moving picture shows, or exhibiting for the convenient hearing of patrons within the building or enclosure in which the show or exhibition is given, without having first procured a permit from the chief of police, which permit shall be granted at the will of the chief of police upon application in writing therefore, but which permit, when granted, shall be revocable by the city council whenever any such loudspeaker or sound amplifier shall be deemed objectionable, and any such permit may be so revoked with or without notice, or with or without a formal hearing, at the option of the council, and in the event of the revocation of any such permit, the same shall not be renewed, except upon application as the first instance. (Ord. Code § 6312)

Penal Code Section 415 (2)

Any of the following persons shall be punished by imprisonment in the county jail for a period of not more than 90 days, a fine of not more than four hundred dollars (\$400), or both such imprisonment and fine: (2) Any person who maliciously and willfully disturbs another person by loud and unreasonable noise.

I hereby certify that I have read and answered all statements on this registration form and that they are true and correct.

\_\_\_\_\_  
*Signature of Applicant*

\_\_\_\_\_  
*Date*

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

\_\_\_\_\_  
*City of Porterville, Chief of Police/Designee*

\_\_\_\_\_  
*Date*



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
03/15/2013

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER  
MHBT Inc.  
8144 Walnut Hill Lane, 16th Floor  
Dallas, TX 75231

CONTACT NAME:  
PHONE (A/C No, Ext): 972-770-1600 PAX (A/C No): 972-770-1899  
E-MAIL ADDRESS:

INSURER(S) AFFORDING COVERAGE NAIC #  
INSURER A: Old Republic Insurance 24147

INSURED Learning for Life  
Sequoia Council LFL #027  
6005 N. Tamera Ave.  
Fresno, CA 93711

INSURER B:  
INSURER C:  
INSURER D:  
INSURER E:  
INSURER F:

**COVERAGES**

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> GENERAL LIABILITY		MWZY 59997	03/01/13	03/01/14	EACH OCCURRENCE \$ 1,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR					DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMPROP AGG \$
	GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJCT <input type="checkbox"/> LOC					\$
	AUTOMOBILE LIABILITY					COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	ANY AUTO ALL OWNED AUTOS HIRED AUTOS					\$
	SCHEDULED AUTOS NON-OWNED AUTOS					\$
	UMBRELLA LIAB EXCESS LIAB					EACH OCCURRENCE \$ AGGREGATE \$
	OCCUR CLAIMS-MADE					\$
	DED RETENTION \$					\$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICE MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below.	Y/N <input type="checkbox"/>	N/A			WC STATUTORY LIMITS OTHER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)**

Certificate holder is named as an additional insured by virtue of a written or oral contract or by the issuance/existence of a permit or certificate of insurance but only with respect to operations by or on behalf of the insured, or to facilities of, or facilities used by the insured and then only for the limits of liability specified in such contract for the event specified herein.

The City of Porterville, it's official's, officer's, employee's, agent's and volunteers are additional insured as respects to general liability insurance. The insurance is primary and our obligations are not affected by any other insurance carried by such additional insured whether primary, excess, contingent or on other basis.

**CERTIFICATE HOLDER**

City of Porterville  
291 North Main Street  
Porterville, California 93257

**CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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SUBJECT: APPROVAL FOR COMMUNITY CIVIC EVENT - ROLLIN' RELICS CAR CLUB - ROLLIN' RELICS CAR SHOW – MAY 4, 2013

SOURCE: Finance Department

COMMENT: Rollin' Relics Car Club is requesting approval to hold a car show on Saturday, May 4, 2013, from 7:00 a.m. to 4:00 p.m., in the northern section of Veterans Park. The Club is asking for the ability to park cars along with vendor booths, on the grassy area between the playground at Newcomb Street and Henderson Avenue.

This request is made under Community Civic Event Ordinance No. 1326, as amended. The application has been routed according to the ordinance regulations and reviewed by all the departments involved. The requirements are listed on the attached copy of the Application, Agreement, Exhibit A and Exhibit B.

RECOMMENDATION: That the Council approve the attached Community Civic Event Application and Agreement submitted by the Rollin' Relics Car Club, subject to the stated requirements contained in the Application, Agreement and Exhibit A and Exhibit B.

ATTACHMENT: Community Civic Event Application and Agreement, Vendor List, Parking Lot Closure, Exhibit A, Exhibit B, Map, Outside Amplifier Permit and Certificate of Liability Insurance.

DD MB Appropriated/Funded MB C.M. J

Item No. 9

# CITY OF PORTERVILLE

291 N. Main Street, Porterville, CA 93257  
559-782-7451 Fax: 784-4569 www.ci.porterville.ca.us



(Incomplete applications can delay permit process)

## APPLICATION AND AGREEMENT FOR A PERMIT TO HOLD A COMMUNITY CIVIC EVENT OR OTHER ACTIVITY TO BE HELD ON PUBLIC PROPERTY

DO YOU HAVE? Event Flyer? <sup>ATTACHED</sup> E-mail address? Website?

Application date: March 11, 2013 Event date: May 4, 2013  
Event time: 7:00 - 4:00 pm

Name of Event: Rollin Relics Car Show

Sponsoring organization: Rollin Relics Phone # 781-0726

Address: 1221 N MAIN #10, P'ville

Authorized representative: Same as above Phone #

Address:

Event chairperson: Don Howard Phone # 781-0726

1221 N MAIN #10 Porterville, CA

Location of event Veterans Park

(Location map must be attached)

Type of event: Car Show, vendors.

Non-profit organization status: \_\_\_\_\_

(IRS Determination)

City services requested (fees associated with these services will be billed separately):

Barricades (quantity): None Street sweeping Yes \_\_\_\_\_ No

Police protection Yes \_\_\_\_\_ No  Refuse pickup Yes  No \_\_\_\_\_

Other: \_\_\_\_\_

Parks facility application required: Yes \_\_\_\_\_ No \_\_\_\_\_ Attached \_\_\_\_\_

Assembly permit required: Yes \_\_\_\_\_ No  Attached \_\_\_\_\_

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

Appr.	Deny		
_____	_____	Bus. Lic. Spvr.	_____
_____	_____	Pub. Works Dir	_____
_____	_____	Comm. Dev. Dir.	_____
_____	_____	Field Svcs. Mgr.	_____
_____	_____	Fire Chief	_____
_____	_____	Parks Dir.	_____
_____	_____	Police Chief	_____
_____	_____	Admin. Svcs. Dir.	_____



# CITY OF PORTERVILLE

## APPLICATION AND AGREEMENT FOR A PERMIT TO HOLD A COMMUNITY CIVIC EVENT OR OTHER ACTIVITY TO BE HELD ON PUBLIC PROPERTY

### What constitutes a Community Civic Event?

A non-profit organization wishes to sponsor an event that is open to the community at large and will utilize public property. Most of the time, Community Civic Events require street or sidewalk closures. This application must be submitted **NO LESS THAN 30 DAYS PRIOR** to the date of the event in order to obtain City Council approval.

**All City Code requirements** are described in ordinance 15-20 (e) 1-23 and as amended in ordinance 1613. For a full description please visit our City of Porterville website at [www.ci.porterville.ca.us/govt/CityClerk/](http://www.ci.porterville.ca.us/govt/CityClerk/), Porterville Municipal Codes. For questions or concerns please call 559-782-7451 or 559-782-7457. Any person who violates the provisions in this code, shall be deemed guilty of either a misdemeanor or an infraction, with penalties of one hundred (\$100) for the first violation.

**Liability insurance:** The sponsoring organization/applicant agrees to provide and keep in force during the term of this permit a policy of liability and property damage insurance against liability for personal injury, including accidental death, as well as liability for property damage which may arise in any way during the term of this permit. **The City of Porterville and Successor Agency to the Porterville Redevelopment Agency shall be named as additional insured.** A Certificate of Liability Insurance and Additional Insured Endorsement sample forms are enclosed for your convenience. **This original certificate and endorsement shall be submitted to the Finance Department prior to the City of Porterville Council's approval.** *The council shall condition the granting of a CCE permit upon the sponsoring entity's filing with the council a policy of public liability insurance in which the city has been named as insured or coinsured with the permittee. The policy of insurance shall insure the city, its officers, and its employees against all claims arising out of, or in connection with, the issuance of the CCE permit or the operation of the permittee or its agents or representatives, pursuant to the permit. The policy of insurance shall provide coverage of no less than one million dollars (\$1,000,000.00) per occurrence of bodily injury and property damage, combined single limit. (Ordinance 15-20(e) 18)*

 Authorized Representative Initials


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

 Authorized Representative Initials

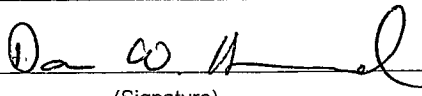
**Health permit:** Organization/Applicant **will obtain or ensure** that all participants obtain a 'Temporary Food Facilities' permit(s) from the Tulare County Public Health Department, if any food is to be served in connection with this Community Civic Event. To contact the Tulare County Environmental Health Department located at 5957 S. Mooney Blvd., Visalia, CA, 93277, call 559-733-6441, or fax information to 559-733-6932; or visit their website: [www.tularehhsa.org](http://www.tularehhsa.org).

 Authorized Representative Initials

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

 Authorized Representative Initials

**Agreement:** The sponsoring organization/applicant agrees to comply with all provisions of the Community Civic Event Ordinance 15-20(e), as amended, and the terms and conditions set forth by City Council and stated in Exhibit 'A.' The sponsoring organization/applicant agrees, during the term of this permit, to secure and hold the City free and harmless from all loss, liability, and claims for damages, costs and charges of any kind or character arising out of, relating to, or in any way connected with his/her performance of this permit. Said agreement to hold harmless shall include and extend to any injury to any person or persons, or property of any kind whatsoever and to whomever belonging, including, but not limited to, said organization/applicant, and shall not be liable to the City for any injury to persons or property which may result solely or primarily from the action or non-action of the City or its directors, officers, or employees.

Rollin Relics Car Club		3/11/13
(Name of Organization)	(Signature)	(Date)

# CITY OF PORTERVILLE

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

Name of event: Car Show

Sponsoring organization: Rollin Relics

Location: Veterans Park Event date: 5/4/13 Event time: 0700-1500

All vendors are required to complete the business license permit form. List all firms, individuals, organizations, etc., that will engage in selling at or participate in the above-named event. **NO PERMIT WILL BE ISSUED WITHOUT THIS INFORMATION.** Vendors with no valid City of Porterville business license are required to pay \$1 per day to the City, with the exceptions of non-profit organizations per \*City of Porterville Municipal Code 15-20(E) Community Civic Events (16). This form should be completed at the time of application, but must be submitted **NO LESS THAN ONE WEEK PRIOR TO THE EVENT.**

<u>Vendor name</u>	<u>Address/Telephone</u>	<u>Business License required?</u>	<u>Type of Activity</u>
<u>Will turn in after show</u>			

**\*Municipal Code 15-20(E) Community Civic Events (16): Business License Fees:** Any individual, company, firm, concessionaire, fair operator, carnival operator, etc., who engages in, conducts, organizes, or promotes business for profit shall pay a business license fee of one dollar (\$1.00) per day per amusement, entertainment, exhibit, ride or per booth, space, stall, stand or other unenclosed location used for the purpose of advertising, promoting, or sale of, or taking orders for, goods or services; except that no individual, company, firm concessionaire, fair operator, carnival operator, etc., who possesses a valid city business license shall be subject to separate licensing pursuant to this subsection E16.  
The nonprofit sponsor shall collect said fee and remit the fee to the city within five (5) working days following the CCE. Said remittance shall be accompanied by a complete list of participants and consecutively numbered receipts written in triplicate, containing the name, address and telephone number of the licensee, and the licensee's California seller's permit number. Said receipts shall be furnished by the city. One copy of the receipt shall be furnished to the licensee, one copy filed with the finance department of the city, and one copy retained by the CCE sponsor for a period of three (3) years for audit purposes.



# CITY OF PORTERVILLE

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

Name of event: Car Show - Rollin Relics

Sponsoring organization: Rollin Relics

Event date: May 4, 2013 Hours: 7:00 - 4:00 pm

**ATTACH MAP MARKING AREAS TO BE CLOSED OR USED:**

**Closed**

<u>Street Name</u>	<u>From</u>	<u>To</u>	<u>Activity</u>
<i>None</i>			
<u>Sidewalks</u>	<u>From</u>	<u>To</u>	<u>Activity</u>
<i>None</i>			
<u>Parking lots and spaces</u>	<u>Location</u>		<u>Activity</u>
	<i>None</i>		

REQUIREMENTS FOR COMMUNITY CIVIC EVENT

ROLLIN' RELICS CAR CLUB

ROLLIN' RELICS CAR SHOW

MAY 4, 2013

Finance Director:

*M. Bemis*

Public Works Director:

*B. Rodriguez*

No comments.

Community Development Director:

*B. Dunlap*

No comments.

Field Services Manager:

*B. Styles*

No comments.

Fire Chief:

*G. Irish*

No comment.

Parks and Leisure Services Director:

*D. Moore*

Be cognizant of sprinkler heads and other appurtenances in the park while driving on the grass. Vehicles should use park trail as much as possible while driving in and out of park.

Police Captain:

*D. Haynes*

Please see Conditions/Requirements in Exhibit B.

Administrative Services Manager:

*P. Hildreth*

See attached Exhibit A, page 2.

## REQUIREMENTS FOR COMMUNITY CIVIC EVENT

Sponsor: Rollin' Relics Car Club  
Event: Rollin' Relics Car Show  
Event Chairman: Don Bader  
Location: Veterans' Park  
Date of Event: May 4, 2013

RISK MANAGEMENT: Conditions of Approval

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

- A. Said Certificate of Insurance shall be an original (fax and xerographic copies not acceptable), the Certificate shall be signed by an agent authorized to bind insurance coverage with the carrier, and the deductible, if any, shall not be greater than \$1,000.
- A. Said insurance shall be primary to the insurance held by the City of Porterville, be with a company having an A.M. Best Rating of no less than A:VII, and the insurance company must be an 'admitted' insurer in the State of California.

## CITY OF PORTERVILLE

### APPLICATION FOR COMMUNITY CIVIC EVENT

**Proposed Event:**

Rolling Relics Car Show, May 4, 2013

**Staff Comments:** Conditions/Requirements by Police Department

- No street closures have been requested or approved. All street closures require City Council approval well in advance of the event.
- No procession has been mentioned, but participants in any procession on city roadways must comply with all traffic laws and rules of the road. Additionally, they shall not impede vehicular or pedestrian traffic or generally interfere with the normal flow of traffic.
- There shall be no sales, possession or consumption of alcoholic beverages in the park during the event.
- Amplified music or sound shall not continue beyond 9:00 p.m..
- Event organizers shall contact Porterville Police Lieutenant Jake Castellow or Lieutenant John Hall well in advance of the event for informational purposes and to identify any additional policing concerns/requirements. Either Lieutenant can be contacted at 559-782-7404.

Dan Haynes / Captain  
Porterville Police Department

PATHS

HENDERSON

Cars Cars Cars

Veterin's Park

Pavilion I  
MOCA STAGE  
First Aid KIT  
PA system  
Cars

Pavilion II  
check in

Newcomb

CITY OF PORTERVILLE  
OUTSIDE AMPLIFIER PERMIT  
(City Ordinances #18-9 & 18-14)



This application must be submitted ten (10) days prior to the date of the event. A copy of this permit must be at the operating premises of the amplifying equipment for which this registration is issued.

- 1 Name and home address of the applicant: Don Baden 555 Brandy Way  
Porterville, CA 93257
- 2 Address where amplification equipment is to be used: Veterans Park - City of Porterville
- 3 Names and addresses of all persons who will use or operate the amplification equipment: Same as above
- 4 Type of event for which amplification equipment will be used: PA System
- 5 Dates and hours of operation of amplification equipment: 9:00 - 3:00pm
- 6 A general description of the sound amplifying equipment to be used: 2 to 3 speakers + PA System

**Section 18-9**

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

The operation of any such instrument, phonograph, jukebox, machine or device in such manner as to be plainly audible at a distance of one hundred feet (100') from the building, structure, vehicle, or place in which, or on which it is situated or located shall be prima facie evidence of a violation of this section. (Ord. Code § 6311)

**Section 18-14**

It shall be unlawful for any person to maintain, operate, connect, or suffer or permit to be maintained, operated, or operated, or connected any or sound amplifier in such a manner as to cause any sound to be projected outside of any building or out of doors in any part of the city, except as may be necessary to amplify sound for the proper presentation of moving picture shows, or exhibiting for the convenient hearing of patrons within the building or enclosure in which the show or or exhibition is given, without having first procured a permit from the chief of police, which permit shall be granted at the will of the chief of police upon application in writing therefore, but which permit, when granted, shall be revocable by the city council whenever any such loudspeaker or sound amplifier shall by the council be deemed objectionable, and any such permit may be so revoked with or without notice, or with or without a formal hearing, at the option of the council, and in the event of the revocation of any such permit, the same shall not be renewed, except upon application as the first instance. (Ord. Code § 6312)

**Penal Code Section 415 (2)**

Any of the following persons shall be punished by imprisonment in the county jail for a period of not more than 90 days, a fine of not more than four hundred dollars (\$400), or both such imprisonment and fine: (2) Any person who maliciously and willfully disturbs another person by loud and unreasonable noise.

I hereby certify that I have read and answered all statements on this registration form and that they are true and correct.

Don Baden  
Signature of Applicant

3/11/13  
Date

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

[Signature]  
City of Porterville, Chief of Police/Designee

3-18-13  
Date





# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

3/15/2013

<b>PRODUCER CERTIFICATE LIABILITY (SIMPLIFIED)</b> <b>Hagerty Insurance Agency, LLC</b> 141 Rivers Edge Dr Traverse City, MI 49684		<b>THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.</b>	
<b>INSURED</b> <b>Rollin' Relics Car Club</b> <b>C/O Donald Bader</b> 555 Brady Way Porterville, CA 93257		<b>INSURERS AFFORDING COVERAGE</b>	<b>NAIC #</b>
		INSURER A: <b>Markel</b>	<b>38970</b>
		INSURER B:	
		INSURER C:	
		INSURER D:	
		INSURER E:	

**COVERAGES**

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	ADD'L INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A		<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	3602SS386871	3/13/2013	3/13/2014	EACH OCCURRENCE	\$1,000,000
		DAMAGE TO RENTED PREMISES (Ea occurrence)				\$100,000	
		<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident)	\$
		<b>GARAGE LIABILITY</b> <input type="checkbox"/> ANY AUTO				BODILY INJURY (Per person)	\$
		<b>EXCESS/UMBRELLA LIABILITY</b> <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE RETENTION \$				BODILY INJURY (Per accident)	\$
		<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/ EXECUTIVE OFFICER/ MEMBER EXCLUDED? <input type="checkbox"/> Y/N (Mandatory in NH) If yes, describe under SPECIAL PROVISIONS below				PROPERTY DAMAGE (Per accident)	\$
		<b>OTHER</b> <b>ADDITIONAL INSURED-STATE OR POLITICAL SUBDIVISIONS-PERMITS</b>	3602SS386871	3/13/2013	3/13/2014	AUTO ONLY - EA ACCIDENT	\$
						OTHER THAN AUTO ONLY: EA ACC	\$
						AGG	\$
						EACH OCCURRENCE	\$
						AGGREGATE	\$
							\$
							\$
						WC STATU-TORY LIMITS	\$
						OTH-ER	\$
						E.L EACH ACCIDENT	\$
						E.L DISEASE - EA EMPLOYEE	\$
						E.L DISEASE - POLICY LIMIT	\$
A		<b>ADDITIONAL INSURED-STATE OR POLITICAL SUBDIVISIONS-PERMITS</b>	3602SS386871	3/13/2013	3/13/2014	FORM CG20120798	

**DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS**

Effective 03/15/2013 Include as additional insured: Certificate Holder (CG2012) but only with respects to the named insured's actions and / or negligence with regards to the Car Show to be held at City of Porterville Local Park on 05/04/2013.

**CERTIFICATE HOLDER****CANCELLATION**

City of Porterville  
 291 North Main Street  
 Porterville, CA 93257

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

## IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

## DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**ADDITIONAL INSURED -  
STATE OR POLITICAL SUBDIVISIONS - PERMITS**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

**SCHEDULE**

**State Or Political Subdivision:**

**City of Porterville**

**291 North Main Street**

**Porterville, CA 93257**

**Is named additional insured in regards to the Car Show to be held at City of Porterville Local Park on 05/04/2013.**

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

**Section II - Who Is An Insured** is amended to include as an insured any state or political subdivision shown in the Schedule, Subject to the following provisions:

1. This insurance applies only with respect to operations performed by you or on your behalf for which the state or political subdivisions has issued a permit.

2. This insurance does not apply to:

- a. "Bodily injury," "property damage" or "personal and advertising injury" arising out of operations performed for the state or municipality; or
- b. "Bodily injury" or "property damage" included within the "products-completed operations hazard".

SUBJECT: APPROVAL FOR COMMUNITY CIVIC EVENT - COMISION HONORIFICA MEXICANA-AMERICANA, INC. - CINCO DE MAYO PARADE AND FIESTA – MAY 4, 2013

SOURCE: Finance Department

COMMENT: The Comision Honorifica Mexicana-Americana, Inc. is requesting approval to hold its annual Cinco de Mayo parade followed by a Fiesta at Centennial Park with entertainment, food and information booths on Saturday, May 4, 2013. The following street closures are requested for the parade and fiesta:

**PARADE ROUTE:**

Main Street from Morton Avenue to Olive Avenue;  
Thurman Avenue, Cleveland Street, Putnam Avenue, Mill Avenue and Oak Avenue, Garden Avenue and Hockett from East and West Alley  
Second Street;  
Garden Avenue from Main Street to Second Street;  
Olive Avenue from Hockett Avenue to Third Street.

**FIESTA USAGE:**

Main Street from Thurman Avenue to Cleveland Avenue.

The application has been submitted under the Community Civic Event Ordinance No. 1326, as amended. It has been routed according to the ordinance regulations and reviewed by all the departments involved. The requirements are listed on the attached copy of the Community Civic Application and Agreement, Exhibit A and Exhibit B.

RECOMMENDATION: That the Council approve the Community Civic Event Application and Agreement from the Comision Honorifica Mexicana-Americana, Inc., subject to the restrictions contained in the Application and Agreement, Exhibit A and Exhibit B.

ATTACHMENT: Community Civic Event Application and Agreement, Street Closure Request, Vendor List, Exhibit A, Map, Outside Amplifier Permit, Exhibit B.

DD MB Appropriated/Funded MB CM J

Item No. 10

# CITY OF PORTERVILLE

291 N. Main Street, Porterville, CA 93257  
559-782-7451 Fax: 784-4569 www.ci.porterville.ca.us



(Incomplete applications can delay permit process)

## APPLICATION AND AGREEMENT FOR A PERMIT TO HOLD A COMMUNITY CIVIC EVENT OR OTHER ACTIVITY TO BE HELD ON PUBLIC PROPERTY

DO YOU HAVE?    Event Flyer?    E-mail address?    Website?  
Application date: 3/19/2013    Event date: 5/4/2013  
Event time: 7am to 5pm  
Name of Event: Cinco de Mayo Parade & Fiesta

Sponsoring organization: Comision Honorifica    Phone # 719-7527  
Address: P.O. Box 2043

Authorized representative: Fred Beltran    Phone #  
Address: 24737 Ave 80 Terra Bella Ca. 93270

Event chairperson: Fred Beltran    Phone #

Location of event Main Street and Centennial Park  
(Location map must be attached)

Type of event: Parade and Family Fiesta

Non-profit organization status: 501c-3  
(IRS Determination)

City services requested (fees associated with these services will be billed separately):  
Barricades (quantity): \_\_\_\_\_ Street sweeping    Yes     No \_\_\_\_\_  
Police protection    Yes     No \_\_\_\_\_ Refuse pickup    Yes     No \_\_\_\_\_  
Other: \_\_\_\_\_

Parks facility application required:    Yes \_\_\_\_\_    No \_\_\_\_\_    Attached \_\_\_\_\_  
Assembly permit required:    Yes \_\_\_\_\_    No \_\_\_\_\_    Attached \_\_\_\_\_

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

<u>Appr.</u>	<u>Deny</u>		
_____	_____	Bus. Lic. Spvr.	_____
_____	_____	Pub. Works Dir	_____
_____	_____	Comm. Dev. Dir.	_____
_____	_____	Field Svcs. Mgr.	_____
_____	_____	Fire Chief	_____
_____	_____	Parks Dir.	_____
_____	_____	Police Chief	_____
_____	_____	Admin. Svcs. Dir.	_____

# CITY OF PORTERVILLE

## APPLICATION AND AGREEMENT FOR A PERMIT TO HOLD A COMMUNITY CIVIC EVENT OR OTHER ACTIVITY TO BE HELD ON PUBLIC PROPERTY

### *What constitutes a Community Civic Event?*

A non-profit organization wishes to sponsor an event that is open to the community at large and will utilize public property. Most of the time, Community Civic Events require street or sidewalk closures. This application must be submitted **NO LESS THAN 30 DAYS PRIOR** to the date of the event in order to obtain City Council approval.

**All City Code requirements** are described in ordinance 15-20 (e) 1-23 and as amended in ordinance 1613. For a full description please visit our City of Porterville website at [www.ci.porterville.ca.us/govt/CityClerk/](http://www.ci.porterville.ca.us/govt/CityClerk/), Porterville Municipal Codes. For questions or concerns please call 559-782-7451 or 559-782-7457. Any person who violates the provisions in this code, shall be deemed guilty of either a misdemeanor or an infraction, with penalties of one hundred (\$100) for the first violation.

**Liability insurance:** The sponsoring organization/applicant agrees to provide and keep in force during the term of this permit a policy of liability and property damage insurance against liability for personal injury, including accidental death, as well as liability for property damage which may arise in any way during the term of this permit. **The City of Porterville and Successor Agency to the Porterville Redevelopment Agency shall be named as additional insured.** A Certificate of Liability Insurance and Additional Insured Endorsement sample forms are enclosed for your convenience. **This original certificate and endorsement shall be submitted to the Finance Department prior to the City of Porterville Council's approval.** *The council shall condition the granting of a CCE permit upon the sponsoring entity's filing with the council a policy of public liability insurance in which the city has been named as insured or coinsured with the permittee. The policy of insurance shall insure the city, its officers, and its employees against all claims arising out of, or in connection with, the issuance of the CCE permit or the operation of the permittee or its agents or representatives, pursuant to the permit. The policy of insurance shall provide coverage of no less than one million dollars (\$1,000,000.00) per occurrence of bodily injury and property damage, combined single limit. (Ordinance 15-20(e) 18)*

FB Authorized Representative Initials

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

FB Authorized Representative Initials

**Health permit:** Organization/Applicant **will obtain or ensure** that all participants obtain a 'Temporary Food Facilities' permit(s) from the Tulare County Public Health Department, if any food is to be served in connection with this Community Civic Event. To contact the Tulare County Environmental Health Department located at 5957 S. Mooney Blvd., Visalia, CA, 93277, call 559-733-6441, or fax information to 559-733-6932; or visit their website: [www.tularehhsa.org](http://www.tularehhsa.org).

FB Authorized Representative Initials

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

FB Authorized Representative Initials

**Agreement:** The sponsoring organization/applicant agrees to comply with all provisions of the Community Civic Event Ordinance 15-20(e), as amended, and the terms and conditions set forth by City Council and stated in Exhibit 'A.' The sponsoring organization/applicant agrees, during the term of this permit, to secure and hold the City free and harmless from all loss, liability, and claims for damages, costs and charges of any kind or character arising out of, relating to, or in any way connected with his/her performance of this permit. Said agreement to hold harmless shall include and extend to any injury to any person or persons, or property of any kind whatsoever and to whomever belonging, including, but not limited to, said organization/applicant, and shall not be liable to the City for any injury to persons or property which may result solely or primarily from the action or non-action of the City or its directors, officers, or employees.

<i>Comision Honorifica Mex. Am.</i>	<i>Fred Beltran</i>	<i>3/19/2013</i>
(Name of Organization)	(Signature)	(Date)

# CITY OF PORTERVILLE

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

Name of event: Cinco de Mayo Parade & Fiesta

Sponsoring organization: Comision Honorifica Mex. Am.

Location: Main St / Centennial Park Event date: 5/4/2013 Event time: 7 am to 5 pm

All vendors are required to complete the business license permit form. List all firms, individuals, organizations, etc., that will engage in selling at or participate in the above-named event. **NO PERMIT WILL BE ISSUED WITHOUT THIS INFORMATION.** Vendors with no valid City of Porterville business license are required to pay \$1 per day to the City, with the exceptions of non-profit organizations per \*City of Porterville Municipal Code 15-20(E) Community Civic Events (16). This form should be completed at the time of application, but must be submitted **NO LESS THAN ONE WEEK PRIOR TO THE EVENT.**

Vendor name	Address/Telephone	Business License required?	Type of Activity
CA/MA Fred Bettran	P.O. Box 2043 Pville 719-7527 contact Grace Munoz Rios 289-9381		Food vendors at Centennial Park

**\*Municipal Code 15-20(E) Community Civic Events (16):** Business License Fees: Any individual, company, firm, concessionaire, fair operator, carnival operator, etc., who engages in, conducts, organizes, or promotes business for profit shall pay a business license fee of one dollar (\$1.00) per day per amusement, entertainment, exhibit, ride or per booth, space, stall, stand or other unenclosed location used for the purpose of advertising, promoting, or sale of, or taking orders for, goods or services; except that no individual, company, firm, concessionaire, fair operator, carnival operator, etc., who possesses a valid city business license shall be subject to separate licensing pursuant to this subsection E16.  
The nonprofit sponsor shall collect said fee and remit the fee to the city within five (5) working days following the CCE. Said remittance shall be accompanied by a complete list of participants and consecutively numbered receipts written in triplicate, containing the name, address and telephone number of the licensee, and the licensee's California seller's permit number. Said receipts shall be furnished by the city. One copy of the receipt shall be furnished to the licensee, one copy filed with the finance department of the city, and one copy retained by the CCE sponsor for a period of three (3) years for audit purposes.

# CITY OF PORTERVILLE

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

Name of event: Cinco de Mayo Parade and Fiesta

Sponsoring organization: Comision Honorifica Mex. Am. Inc.

Event date: May 4 2013 Hours: 7am to 5 pm

**ATTACH MAP MARKING AREAS TO BE CLOSED OR USED:**

Closed

<u>Street Name</u>	<u>From</u>	<u>To</u>	<u>Activity</u>
Main St.	Morton Ave	Olive Ave	Parade
Harrison	east alley	west Alley	"
Thurman	"		"
Cleveland	"		"
Putnam	Hockett	Second	"
Mill	east alley	west alley	"
Oak	"	"	
Main St. to remain closed untill 5 pm for Fiesta			
<u>Sidewalks</u>	<u>From</u>	<u>To</u>	<u>Activity</u>
	Thurman	to Cleveland	
<u>Parking lots and spaces</u>	<u>Location</u>		<u>Activity</u>



REQUIREMENTS FOR COMMUNITY CIVIC EVENT  
COMISION HONORIFICA MEXICANA-AMERICANA, INC.

CINCO DE MAYO FESTIVITIES

MAY 4, 2013

Finance Director:

*M. Bemis*

Public Works Director:

*B. Rodriguez*

Community Development Director:

*B. Dunlap*

Field Services Manager:

*B. Styles*

City staff will provide street closure, trash, recycling containers and street sweeping.

Fire Chief:

*G. Irish*

Director of Parks & Leisure Services:

*D. Moore*

Police Captain:

*D. Haynes*

Please see proposed conditions/requirements on Exhibit B.

Administrative Services Director:

*P. Hildreth*

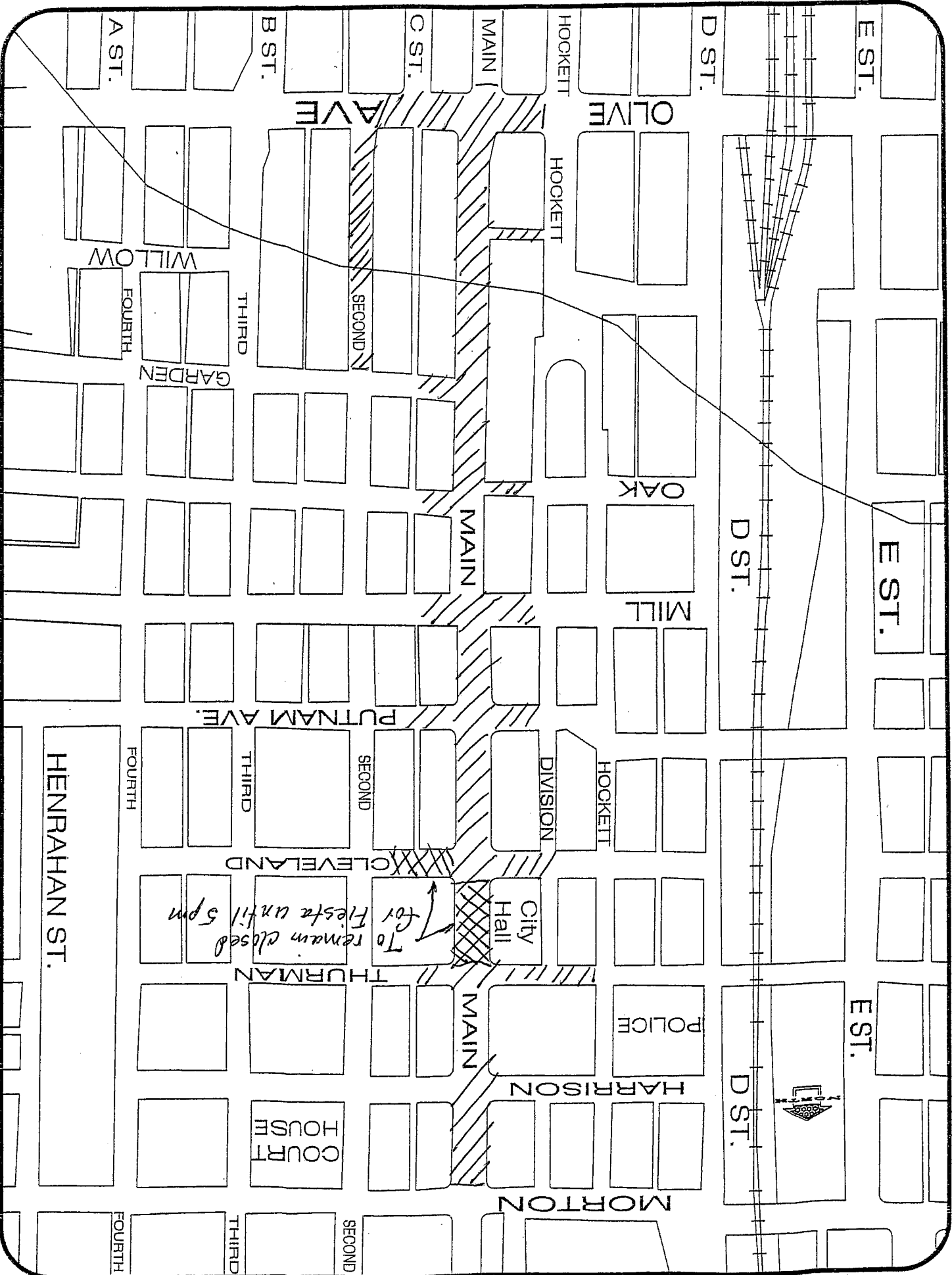
See attached Exhibit A, page 2.

## REQUIREMENTS FOR COMMUNITY CIVIC EVENT

Sponsor: Comision Honorifica Mexicana-Americana, Inc.  
Event: Cinco de Mayo Festivities  
Event Chairman: Fred Beltran  
Location: Parade - Main Street from Morton Avenue to Olive Avenue including the closure of select cross-streets and parallel streets.  
Date of Event: May 4, 2013

### RISK MANAGEMENT: Conditions of Approval

1. The use of sidewalks for any purpose other than to allow for the free-flow of pedestrian traffic is prohibited within a ten (10) ft. radius of all walk-up Automated Teller Machines (ATM), and the minimum clear sidewalk width for pedestrian traffic at all other locations is five (5) feet.
2. That the Comision Honorifica Mexicana-Americana, Inc., provide a Certificate of Commercial General Liability Insurance Coverage evidencing coverage of not less than \$1,000,000 per occurrence, and having the appropriate Endorsement naming the City of Porterville, its Officers, Employees, Agents and Volunteers as 'Additional Insured' against all claims arising from, or in connection with, the Permittee's operation and sponsorship of the aforementioned Community Civic Event.
  - a. Said Certificate of Insurance shall be an original (fax and xerographic copies not acceptable), the Certificate shall be signed by an agent authorized to bind insurance coverage with the carrier, and the deductible, if any, shall not be greater than \$1,000.
  - b. Said insurance shall be primary to the insurance held by the City of Porterville, be with a company having an A.M. Best Rating of no less than A: VII, and the insurance company must be an 'admitted' insurer in the State of California.



CITY OF PORTERVILLE  
OUTSIDE AMPLIFIER PERMIT  
(City Ordinances #18-9 & 18-14)



This application must be submitted ten (10) days prior to the date of the event. A copy of this permit must be at the operating premises of the amplifying equipment for which this registration is issued.

- 1 Name and home address of the applicant: CHMA P.O. Box 2043 Porterville.
- 2 Address where amplification equipment is to be used: along main st during Parade
- 3 Names and addresses of all persons who will use or operate the amplification equipment: Tec Town Productions  
Pete Martinez / Fred Beltran
- 4 Type of event for which amplification equipment will be used: Parade and Fiesta
- 5 Dates and hours of operation of amplification equipment: 5/4/2013 7 am to 5 pm
- 6 A general description of the sound amplifying equipment to be used: P.I. systems for Parade announcer  
and system for outdoor music

Section 18-9

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

The operation of any such instrument, phonograph, jukebox, machine or device in such manner as to be plainly audible at a distance of one hundred feet (100') from the building, structure, vehicle, or place in which, or on which it is situated or located shall be prima facie evidence of a violation of this section. (Ord. Code § 6311)

Section 18-14

It shall be unlawful for any person to maintain, operate, connect, or suffer or permit to be maintained, operated, or operated, or connected any or sound amplifier in such a manner as to cause any sound to be projected outside of any building or out of doors in any part of the city, except as may be necessary to amplify sound for the proper presentation of moving picture shows, or exhibiting for the convenient hearing of patrons within the building or enclosure in which the show or or exhibition is given, without having first procured a permit from the chief of police, which permit shall be granted at the will of the chief of police upon application in writing therefore, but which permit, when granted, shall be revocable by the city council whenever any such loudspeaker or sound amplifier shall by the council be deemed objectionable, and any such permit may be so revoked with or without notice, or with or without a formal hearing, at the option of the council, and in the event of the revocation of any such permit, the same shall not be renewed, except upon application as the first instance. (Ord. Code § 6312)

Penal Code Section 415 (2)

Any of the following persons shall be punished by imprisonment in the county jail for a period of not more than 90 days, a fine of not more than four hundred dollars (\$400), or both such imprisonment and fine: (2) Any person who maliciously and willfully disturbs another person by loud and unreasonable noise.

I hereby certify that I have read and answered all statements on this registration form and that they are true and correct.

Fred Beltran  
Signature of Applicant

3/19/2013  
Date

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

[Signature]  
City of Porterville, Chief of Police/Designee

3-21-13  
Date

**CITY OF PORTERVILLE**  
**Community Civic Event Application**

**CINCO DE MAYO PARADE – MAY 4, 2013**

Proposed Conditions/Requirements:

- City Council approval is required for all street closures.
- Ensure highly visible and adequate barricades/barriers are used to warn motorists of non-access and prevent vehicle access to those designated areas.
- Cinco de Mayo Planning Committee should meet with street vendors to coordinate rules regarding their activities, such as:
  - Staying off the parade route and crossing in front of floats or groups
  - Shall not sell silly string, snap caps or party poppers (pursuant to City Ordinance)
- Food vendors should be situated where they do not block the sidewalk.
- Throwing candy or any substances/objects from vehicles, floats, or any parade entry is prohibited. This results in children scampering to catch or find candy in a crowded environment, and causes others to run out into the street. This practice creates significant and unnecessary risk for parade goers. All registered parade entrants should be informed of this prohibition and efforts taken to cease this practice.
- An Outside Amplifier Permit has been requested and granted. However, event organizers shall not allow music or other amplifications to be played so loud as to unreasonably disturb the peace and good order of the business establishments or neighborhoods in the area.
- At the conclusion of the event, all barricades shall be promptly removed and equipment shall be cleared so as to avoid interfering with vehicular or pedestrian travel.
- Event organizers shall contact Sergeant Rick Carrillo (Porterville Police Department) as soon as possible in order to coordinate parade route postings and necessary police involvement. Officer C. Jordan can be contacted at 559-782-7408/559-782-7400.

Dan Haynes, Captain  
Porterville Police Department  
(559) 782-7565

EXHIBIT B

COUNCIL AGENDA: April 2, 2013

SUBJECT: COUNCIL MEMBER REQUESTED AGENDA ITEM – Request for the City Council to Consider Identifying Areas in the City for Potential Pocket Parks to Recommend to the Parks & Leisure Services Commission for Review

SOURCE: City Manager

COMMENT: City Council Member Ward has requested that the Council consider identifying areas in the city for potential pocket parks to recommend to the Parks & Leisure Services Commission for review.

RECOMMENDATION: Council Member Ward makes the motion that the City Council authorize the scheduling on the April 16<sup>th</sup> Council Agenda the consideration of identifying areas in the city for potential pocket parks to recommend to the Parks & Leisure Services Commission for review.

ATTACHMENT: None

C/M 

Item No. 11

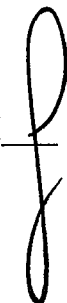
**SUBJECT:** COUNCIL MEMBER REQUESTED AGENDA ITEM – Request for the City Council to Consider an Analysis of Porterville Municipal Library Users to Develop or Plan for Literacy Services in Under-Served Areas of the Community

**SOURCE:** City Manager

**COMMENT:** City Council Member Ward has requested that the Council consider an analysis of Porterville Municipal Library users (where they live) to develop or plan for literacy services in under-served areas of the community.

**RECOMMENDATION:** Council Member Ward makes the motion that the City Council authorize the scheduling on the April 16<sup>th</sup> Council Agenda the consideration of an analysis of Porterville Municipal Library users to develop or plan for literacy services in under-served areas of the community.

**ATTACHMENT:** None

C/M 

Item No. 12

SUBJECT: REVIEW OF LOCAL EMERGENCY STATUS

SOURCE: Administration

COMMENT: In accordance with the City Council's Resolution of Local Emergency adopted on December 21, 2010, and pursuant to Article 14, Section 8630 of the California Emergency Services Act, the Council must review the status of its local emergency at every regularly scheduled meeting and make a determination whether to continue or terminate the local emergency declaration.

Since its last review on March 19, 2013, City staff has continued its coordination with both State and Federal representatives in having made claims for reimbursement for public areas reported as suffering flood damage. An estimated total of \$361,750 in damage repair projects were defined and accepted by both State (CEMA) and Federal (FEMA) emergency agencies, which after final FEMA administrative review, a total of approximately \$270,000 was approved. Although all repair projects were originally to be completed by no later than July 2012, the City received a one (1)-year extension to July 2013.

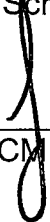
At its meeting on October 16, 2012, the Council awarded a contract in the amount of \$95,391.71 to Greg Bartlett Construction (Porterville), beginning CEMA repairs to Plano Street (south of Thurman Avenue), El Granito Street (near Zalud Park), E. Grand Avenue (at Henrahan Street), and W. Grand Avenue (at Hawaii Street). At its meeting on December 18, 2012, the Council accepted the completion of these identified CEMA repairs, including \$90,295.53 in final construction costs.

At its meeting on February 19, 2013, the Council authorized staff to begin advertising for bids for the CEMA repair of Henderson Avenue between Patsy and Balmoral Streets, with a total estimated probable project cost of \$100,561.

At its meeting on March 5, 2013, the Council awarded a contract in the amount of \$29,997.25, also to Greg Bartlett Construction (Porterville), for CEMA repairs of West Street and related storm drain improvements between Scranton and Tea Pot Dome Avenues.

  
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Dir

  
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Approp./  
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CM

Item No. 13



RECOMMENDATION:

That the Council:

1. Receive the status report and review of the designated local emergency; and
2. Pursuant to the requirements of Article 14, Section 8630 of the California Emergency Services Act, determine that a need exists to continue said local emergency designation.

ATTACHMENT: None

CITY COUNCIL AGENDA: APRIL 2, 2013

SUBJECT: ANNUAL ADJUSTMENT OF FEES BY APPLICATION OF THE ENR COST INDEX

SOURCE: PUBLIC WORKS DEPARTMENT – Engineering Division

COMMENT: On April 17, 2012, City Council per MO # 09-041712, suspended the Engineering News Record (ENR) Cost Index automatic development impact fee increase for fiscal year 2012/2013. On April 19, 2011, City Council, per MO #13-041911, suspended the same for fiscal year 2011/2012. On April 6, 2010, City Council, per MO #20-040610, suspended the same for fiscal year 2010/2011. In addition, the Council received a report (attached) regarding Water, Sewer, Treatment Plant, and Storm Drain Impact Fees on December 21, 2010, that provided a direct correlation of Master Plan improvement costs versus collection of impact fees. The report summarized fees collected, Master Plan improvement costs and Master Plan debt service expenditures from the date of the individually adopted Master Plans to December of 2010.

In light of the current economic climate and the continued sluggish development activity within the community, staff recommends that the City Council consider not implementing the ENR Cost Index auto escalator for fiscal year 2013/2014. However, if the City Council elects to raise development impact fees, a Public Hearing can be set for May 7, 2013. Staff would, in turn, notify the Home Builders Association within the necessary period.

This will be the fourth ENR Cost Index auto escalator suspension should Council approve staff's proposal. The following is a summary of those fiscal year suspensions in percentages:

Fiscal Year	Yearly ENR Cost Index auto escalator per City Municipal Code (%)
2010/2011	1.7
2011/2012	4.0
2012/2013	2.7
2013/2014	2.0

Dir AK12 Appropriated/Funded MB CM J  
*APWD*

Item No. 14

The following table illustrates the number of new building permits issued each fiscal year over the last five (5) years:

Fiscal Year	New Structure Building Permit Issuances
2008/2009	123
2009/2010	91
2010/2011	51
2011/2012	40
2012/2013*	32

\* Partial Year

The new structure permit data presented above provides a clear indication that the building industry has yet to move in a positive direction.

**RECOMMENDATION:** That City Council provide direction.

**ATTACHMENTS:** Summary of Development Impact Fees  
Water Capital Improvement Cost  
Sewer Capital Improvement Cost  
Waste Water Treatment Facility Capital Improvement Cost  
Storm Drain Capital Improvement Cost  
Transportation Improvement Cost

City of Porterville  
 Summary of Development Impact Fee

Master Plan and/or CIP Facilities Category	Water (1)	Sewer (1)	Wastewater Treatment Facility (WWTF) (1)	Storm Drain (1)	Transportation (1) (3)
ENR Adjusted Engineer's Estimate	\$9,181,137.66	\$1,371,541.33	\$6,423,461.00	\$3,819,102.79	\$17,892,018.54
Construction Cost	\$8,502,243.90	\$806,476.07	\$5,744,960.20	\$5,429,146.22	\$21,076,728.19
Pending Master Plan Improvements in 10/11 CIP Budget	\$8,176,935.00	\$617,000.00	\$533,000.00	\$993,000.00	\$5,510,635.00
Fees Collected	\$2,635,050.00	\$1,340,082.00	\$7,485,607.00	\$5,622,200.00	\$5,173,088.00
Difference between Expenditures vs. Appropriations	-\$15,043,118.80	-\$83,394.07	\$1,107,646.80	-\$769,946.22	-\$21,414,074.19
COP Principal Payments (2)	\$3,125,000.00	\$3,335,000.00	\$4,085,000.00	\$0.00	\$4,735,000.00
COP Interest Payments (2)	\$3,861,650.00	\$4,146,350.00	\$6,139,980.00	\$0.00	\$11,160,459.73
Difference between Expenditures vs. Appropriations with COP payments included	-\$22,029,768.80	-\$7,554,744.07	-\$9,117,333.20	-\$769,946.22	-\$37,309,533.92
CIEDB WWTF Loan Principal Debt	\$8,257,500.00		\$5,356,000.00		
CIEDB Water Loan Principal Debt	-\$30,287,268.90		-\$14,473,333.20		
Difference between Expd. vs. Approp. with COP payments & CIEDB Principal Debt Included					

Notes: (1) Water, Sewer and WWTF evaluated from 2001 to 2010. Storm Drain evaluated from 1994 to 2010. Transportation evaluated from 1988 to 2010  
 (2) COP debt service for projects that pre-date the Master Plans. However, the payments associated with Transportation's COP issuances relates to projects under this evaluation (1988 to 2010).  
 (3) Transportation related projects indicates some irregularities in the evaluation methodology and requires a more a thorough review of project finances.



City of Porterville  
Sewer Capital Improvement Cost

Project Name	Contractor	Project Bid Date	Council Acceptance Date	Project ENR Date (1)	Project ENR	2001 MP Pipe Length (ft)	2001 MP Pipe Cost Estimate (\$)	01 MP Estimate of Pipe Constructed to Total Project (\$)	2001 MP ENR	ENR Update of 01 MP Estimate of Pipe Constructed	Actual Length of Pipe Constructed in Total Project (ft)	Cost of Total Project (\$)	Portion of Facility Constructed in Total Project (ft) (ft)	Cost of 01 MP Pipe Constructed in Total Project (\$)	Differential Between Actual Cost & 01 MP Cost (\$)	(%)
Pioneer Ave - ext. Mathew St to Newcomb St (2) (4)	Verdugo Development	7/12/2000	4/4/2000	Jul-00	0238	2840	\$280,000.00	\$275,227.27	6318.2	\$276,445.82	2595	\$46,767.00	2595	\$46,767.00	\$229,678.82	83%
Henderson Ave. Reconstruction	Helopoff & Sons	6/9/2005	7/18/2006	2005	7309	1500	\$160,000.00	\$162,180.00	6318.2	\$163,953.87	4305	\$265,164.76	1620	\$92,340.55	\$91,593.32	50%
Westfield Ave. LS Storage Pipe (Williams Ranch 1) (6)	Ennis Homes	3/12/2005	N/A	2005	7309	0	\$0.00	\$0.00	6318.2	\$0.00	220	\$13,167.00	220	\$13,167.00	-\$13,167.00	0%
Alport Inter-Tie Water & Sewer	Helopoff & Sons	4/27/2000	10/2/2000	2000	6236.1	2100	\$233,772.00	\$245,671.92	6318.2	\$230,808.32	2206	\$110,466.76	2206	\$110,466.76	\$112,348.57	49%
Newcomb St - Hope Dr. to Scriabin Ave. (2)	Helopoff & Sons	4/27/2000	10/2/2000	2000	6236.1	1320	\$121,065.00	\$164,004.18	6318.2	\$120,349.66	1776	\$91,055.25	1776	\$91,055.25	\$69,294.41	49%
Newcomb St - Hope Dr. - South (2)	Helopoff & Sons	11/29/2005	12/4/2007	2006	7690	1320	\$293,865.00	\$611,447.22	6318.2	\$367,692.95	4098	\$555,992.54	2745	\$338,374.06	\$19,318.90	5%
Scriabin Ave - Newcomb St to ext of Crystal St.	Helopoff & Sons	11/29/2005	12/4/2007	2006	7690	1800	\$186,221.00	\$92,345.00	6318.2	\$292,510.70	1046	\$135,912.46	1000	\$135,312.46	\$65,998.24	33%
Scriabin Ave - ext of Crystal St to Hwy 65	Helopoff & Sons	11/29/2005	12/4/2007	2006	7690	1800	\$186,221.00	\$1,254,773.00	6318.2	\$1,371,541.33	1371	\$686,476.07	1000	\$686,476.07	\$685,985.28	41%

Notes: (1) Assumed Project ENR to be City Council Award Date  
 (2) The development of Orchard Ridge subdivision and Castle Woods subdivision generated a Mathew Street alignment instead of what was proposed by the Pioneer Avenue western extension from Newcomb St. Cost of this line will be compared to the Pioneer Avenue Segment.  
 (3) The Newcomb Street Segment was constructed by the Forest Service for the purpose of providing sewer services to the Air Altech Base at the City of Porterville Municipal Airport.  
 (4) Northern portion of this 10" master plan sewer pipe (527' total length) has yet to be formally requested for reimbursement by the developer of Meadow Breeze Phases 2 & 3.  
 (5) Developer has yet to formally request a reimbursement for this Sewer Master Plan Facility.  
 (6) "All" assumed the total pipe constructed met the MP objectives of the pipes shown on the MP even though it may have taken a different route or was not the same length.

City of Porterville  
Waste Water Treatment Facility  
(WWTF) Capital Improvement Cost

Project Name	Contractor	Project Bid Date	Contract Acceptance Date	Project EIR (1)	2001 MP Pipe Length (ft)	2001 MP Pipe of Facility Cost Estimate (\$)	01MP Estimate of Pipe or Facility Constructed in Total Project (\$)	2001 MP EIR	ENR Update of 01 MP Estimate of Pipe or Facility Constructed	Actual Length of Pipe Constructed in Total Project (ft)	Cost of Total Project (\$)	Portion of 01MP Pipe Constructed in Total Project (ft)	Cost of 01MP Pipe or Facility Constructed in Total Project (\$)	Differential Between Actual Cost & 01MP Cost (\$)	(%)
Underlie Pipe Perforation Ponds	Wood Bros	01/02/2002	11/02/2002	N/A	N/A	N/A	N/A	N/A	\$311,031.00	N/A	\$311,031.00	0	\$311,031.00	\$13,968.50	4%
Remaker -1, -10 (see Property Purchase)	N/A			N/A	N/A	N/A	N/A	N/A	\$730,714.00	N/A	\$730,714.00	0	\$730,714.00	\$0.00	0%
Underlie+-1, -10 (see Property Purchase)	N/A			N/A	N/A	N/A	N/A	N/A	\$230,000.00	N/A	\$230,000.00	0	\$230,000.00	\$0.00	0%
Mechanizing Walls	Bradley & Sons	7/22/2002	12/22/2002	N/A	N/A	N/A	N/A	N/A	\$1,382,236.87	N/A	\$1,382,236.87	0	\$1,382,236.87	\$77,875.00	-173%
WWTF Effluent Dewatering System & Precipitation Pond Expansion (2)	N/A			N/A	N/A	N/A	N/A	N/A	\$166,095.40	N/A	\$166,095.40	0	\$166,095.40	\$183,483.33	7%
WWTF Effluent Dewatering System & Precipitation Pond Expansion (2)	N/A			N/A	N/A	N/A	N/A	N/A	\$785,833.77	N/A	\$785,833.77	0	\$785,833.77	\$22,858.77	-4%
WWTF Effluent Dewatering System & Precipitation Pond Expansion (2)	N/A			N/A	N/A	N/A	N/A	N/A	\$942,888.18	10,836	\$942,888.18	10,836	\$942,888.18	\$414,138.58	43%
WWTF Effluent Dewatering System & Precipitation Pond Expansion (2)	N/A			N/A	N/A	N/A	N/A	N/A	\$174,732.50	1,355	\$174,732.50	1,355	\$174,732.50	\$88,585.00	43%
WWTF Effluent Dewatering System & Precipitation Pond Expansion (2)	N/A			N/A	N/A	N/A	N/A	N/A	\$46,000.00	N/A	\$46,000.00	0	\$46,000.00	\$0.00	0%
WWTF Effluent Dewatering System & Precipitation Pond Expansion (2)	N/A			N/A	N/A	N/A	N/A	N/A	\$41,034.00	N/A	\$41,034.00	0	\$41,034.00	\$0.00	0%
WWTF Effluent Dewatering System & Precipitation Pond Expansion (2)	N/A			N/A	N/A	N/A	N/A	N/A	\$5,423,451.23	N/A	\$5,423,451.23	0	\$5,423,451.23	\$879,491.05	11%
WWTF Effluent Dewatering System & Precipitation Pond Expansion (2)	N/A			N/A	N/A	N/A	N/A	N/A	\$0.00	N/A	\$0.00	0	\$0.00	\$0.00	0%

Notes:  
(1) Cost Estimate Refined Project Year - Waste Water Facility Improvements is not a component of the 2001 Sewer Master Plan Capital Improvement Program.  
(2) Waste Water Treatment Facility Projects were funded by California Infrastructure and Economic Bank (CIEEB). Total Loan amount is: \$5,355,000. A small portion of this loan funded maintenance projects within the WWTF.  
(3) Waste Water Treatment Facility was expanded in 2000 and funded by a \$10,000,000 CCP issuance.





City of Fort Worth  
Transportation Improvement Cost  
1988 to 2010

Street	Improvement Segment	Contractor and/or Consultant	Project Bid Date	Project Acceptance Date	Project Start Date	Project End Date	1988 Construction Element Street Improvement Cost Estimate (\$)	1988 Construction Element Street Improvement Constructed In Total Project (\$)	1981 Construction Element EIR	EMR Update of 81 Construction Element of Street Improvement Constructed	Cost of 1988 Street Circulation Element Street Improvement Constructed in Total Project (\$)	Differential Between Actual Cost & EMR Cost (\$)
Main Street (6)	Tule River Bridge Widening	Benco	5/4/2000	4/17/2001	2000	2000	\$300,000.00	\$300,000.00	5995.11	\$514,000.27	\$1,651,414.00	-\$228,904.73
Oliver Avenue (6)	Newcomb Street to Westwood Street	Milch Brown	1/6/2000	8/2/2000	2000	2000	\$1,200,000.00	\$1,200,000.00	5995.11	\$1,260,918.54	\$1,498,142.00	\$120,676.54
S. Main Street (6)	State Route 190 to Yates Avenue	Halprofil & Sons	9/25/1998	5/10/1999	1999	1999	\$600,000.00	\$600,000.00	5995.11	\$600,000.00	\$405,760.00	\$184,232.00
Prosper Street (6)	Morton Avenue to Westfield Avenue	Halprofil & Sons	5/9/2000		2000	2000	\$600,000.00	\$600,000.00	5995.11	\$600,000.00	\$1,654,646.00	-\$1,044,646.00
State Route 65	Scranlon Avenue Intersection Project	Halprofil & Sons			2001	2001	\$125,000.00	\$125,000.00	5995.11	\$193,971.21	\$146,730.00	-\$12,764.79
Traffic Signal No. 4 (6)	G Street and Olive Avenue	Loop Electric	11/6/2000	5/15/2001	2001	2001	\$150,000.00	\$150,000.00	5995.11	\$160,755.46	\$175,043.00	-\$14,277.55
Granite Hills Phase 1 (2) (6)	Morton Avenue - Plano Street to Hillcrest Street	Milch Brown	5/15/2001	4/15/2003								
Granite Hills Phase 1 (2) (6)	Crestlow Street - Thurman Avenue to Morton Avenue	Milch Brown	5/15/2001	4/15/2003								
Granite Hills Phase 1 (2) (6)	Platinum Avenue - Connor Street to Tulea Street	Milch Brown	5/15/2001	4/15/2003								
Granite Hills Phase 2 (2) (6)	Crestlow Street - Platinum Avenue to Olive Avenue & Olive Avenue Crestview Street to Tulea Street	Milch Brown	7/22/2002	1/22/2004	2002	2002	\$4,000,000.00	\$4,000,000.00	5995.11	\$4,427,127.64	\$5,454,104.00	-\$2,021,976.36
Indiana Street (4) (6)	New Porter Slough Crossing	Halprofil & Sons	4/9/2004	5/2/2005	2006	2006	\$1,200,000.00	\$1,200,000.00	5995.11	\$1,565,865.19	\$1,046,237.00	\$516,128.19
Indiana Street (4) (6)	Porter Slough to Olive Avenue	Milch Brown	7/25/2005	2/6/2007	2006	2006	\$1,000,000.00	\$1,000,000.00	5995.11	\$1,180,933.31	\$2,043,815.00	-\$853,521.89
Orange Avenue (6)	Porter Slough to Plano Street	Halprofil & Sons	6/29/2004	3/1/2005	2005	2005	\$1,200,000.00	\$1,200,000.00	5995.11	\$1,487,009.39	\$1,656,610.00	-\$370,406.81
Henderson Avenue (4) (6)	Irvington Ditch Pipeline Project necessary for widening of Henderson Avenue	Halprofil & Sons	6/9/2005	7/19/2006	2007	2007	\$1,450,000.00	\$1,450,000.00	5995.11	\$1,933,065.62	\$1,450,000.00	\$503,466.52
Henderson Avenue (4) (6)	Newcomb Street to Westwood Street - Includes widening of Porter Slough Crossing	Teichert Const.	8/6/2007	6/3/2008	2007	2007	\$850,700.00	\$850,700.00	5995.11	\$930,233.67	\$1,450,700.00	\$599,823.67
Jays Street (5) (6)	State Route 190 Intersection Improvements (Otherwalk Public Improvement Agreement)	Granite Const.	7/24/2007	4/15/2008	2007	2007	\$150,000.00	\$150,000.00	5995.11	\$163,666.34	\$138,481.00	\$15,185.34
Jays Street (5) (6) (7)	State Route 190 to Spanghorne Avenue (Retrofit Public Improvement Agreement)	Quad Knopf	1/11/1999		1999	1999	\$639.2	\$639.2	5995.11	\$76,533.17	\$69,005.00	\$23,928.08
Jays Street (5)	State Route 190 to Spanghorne Avenue (Design)	Roberts Eng.	1/11/1999		1999	1999	\$639.2	\$639.2	5995.11	\$167,765.25	\$360,300.00	-\$423,165.83
Westwood Street (6)	Henderson Avenue to Westfield Avenue (Design)	Robert Eng.	1/11/1999		1999	1999	\$75,000.00	\$75,000.00	5995.11	\$167,765.25	\$265,146.00	-\$85,379.75
Westwood Street (6)	Porter Slough Crossing (Design)	Quad Means	1/11/1999		1999	1999	\$185,000.00	\$185,000.00	5995.11	\$352,169.81	\$104,434.00	-\$172,234.19
Main Street (6)	Henderson Avenue to N. of Westfield Avenue (Design)	Quad Knopf	1/11/1999		1999	1999	\$50,000.00	\$50,000.00	5995.11	\$50,000.00	\$195,192.66	\$9,695.80
Gilbous Avenue (6)	Main Street to Indiana Street (Design)	Nolle Eng.	1/11/1999		1999	1999	\$200,000.00	\$200,000.00	5995.11	\$200,000.00	\$393,699.00	-\$86,356.31
Plano Street (6) (8)	Bridges Widening at Tule River (Design)	A-C Electric	8/17/1999		1999	1999	\$306,000.00	\$306,000.00	5995.11	\$307,332.59	\$393,699.00	-\$18,965.43
Traffic Signal No. 3	Henderson Ave/Westwood St, Pultman Ave/Jays St, Olive Ave/Second St Intersections.	Loop Electric	9/19/2002	5/22/03	2002	2002	\$600,000.00	\$600,000.00	5995.11	\$632,408.57	\$393,699.00	\$18,965.43
Traffic Signal No. 5	Henderson Ave/Westwood St, Pultman Ave/Jays St, Olive Ave/Second St Intersections.	A-C Electric	10/20/05	8/22/05	2005	2005	\$150,000.00	\$150,000.00	5995.11	\$161,776.35	\$151,430.00	\$8,729.35
Traffic Signal No. 7	Plano Street and Villa Street Intersection	Halprofil & Sons	2/23/2005	10/2/2006	2006	2006	\$600,000.00	\$600,000.00	5995.11	\$619,149.04	\$354,790.53	\$47,123.51
Traffic Signal No. 8 (6)	Plano Street and Mulberry Avenue	Halprofil & Sons	9/20/2007	5/6/2008	2007	2007	\$500,000.00	\$500,000.00	5995.11	\$505,004.57	\$223,185.00	\$113,819.57
Traffic Signal No. 9 (10)	Mather Street and Olive Avenue Intersection	Loop Electric	7/24/2008	16/2/09	2008	2008	\$200,000.00	\$200,000.00	5995.11	\$202,567.73	\$212,595.00	\$50,659.73
Traffic Signal No. 10 (10)	Newcomb Street and Westfield Avenue Intersection	A-C Electric	11/15/2007	5/2/2008	2007	2007	\$264,590.00	\$264,590.00	5995.11	\$268,955.21	\$265,550.00	\$59,045.21
Traffic Signal No. 11	Indiana Street and Pultman Avenue Intersection	A-C Electric	11/15/2007	5/2/2008	2007	2007	\$264,590.00	\$264,590.00	5995.11	\$268,955.21	\$265,550.00	\$59,045.21
							\$0.00	\$0.00		\$18,043,765.73	\$21,076,728.19	-\$3,032,961.46
										\$17,892,016.54	\$21,076,728.19	-\$3,184,711.65

Notes:  
 (1) Assumed Project ENR to be City Council Award Date.  
 (2) All Granite Hills Phases are summarized as if they are one large project.  
 (3) Total construction cost includes right of way acquisitions.  
 (4) All phases of the Henderson Avenue Widening Project are summarized as if they are one large project.  
 (5) Amounts reflect City proportional share per City Council Adopted Public Improvement Agreement between the City and the developer of the Riverwalk Market Place Commercial Center.  
 (6) Projects funded by 1998 Certificate of Participation (COP) Bond. Total Bond value = \$20 million  
 (7) Includes Traffic Signals at Olive Avenue, Orange Avenue and Springville Avenue  
 (8) Design expenditures reflect COP proportional share only.  
 (9) Funded by State Routes to School Grant.  
 (10) Approximately 30 percent of these projects were funded by CMAQ Grant

SUBJECT: REFINANCING OF 2005 CERTIFICATES OF PARTICIPATION (COP)

SOURCE: Administration

COMMENT: In June 1998, the City issued \$20 million in Certificates of Participation (COP) for the purposes of financing the widening of bridges and streets. In November 2005, the City refunded the 1998 COP issue to achieve debt service savings, with the preclusion that the new COP issue could not be refunded "tax exempt" any sooner than July 1, 2015. However, the 2005 COP could be refunded with a taxable bond issue.

As has been previously reported to the City Council, staff has been meeting with Mr. John Fitzgerald and Mr. Ben Levine over the past several months, who have assisted the City with past bond issuances and refinances, including last year's refinancing of the 1997 Sewer Bond issue to fund the annexation sewer extension projects. The purpose of these recent meetings have been to evaluate the potential to take advantage of the current favorable financing environment to achieve debt service savings on the 2005 COP issue.

At its meeting on September 18, 2012, the City Council approved proceeding with a recommended financing approach to issue a taxable revenue bond, utilizing a Variable Rate Demand Obligation (VRDO) bond structure. One of the requirements of the VRDO refinance was to secure a bank Letter of Credit (LOC). During the course of meeting with banking institutions to secure the LOC, several banks declined to provide a LOC either because they have been (or potentially will be) "burned" in recent municipal bankruptcies (San Bernardino, Stockton, and Vallejo) or the refinance amount was either too small or beyond their capacity. However, Rabobank indicated significant interest to work with the City, but rather in a direct lending relationship instead of a VRDO financing structure.

Rabobank is one of the highest rated banks internationally, and given their business model emphasis on agriculture, is interested in increasing its presence in the Central Valley, including the South Tulare County/Porterville area. Rabobank completed its preliminary due diligence of the City's finances, and satisfied with its review, offered a Term Sheet for the City's consideration. At its meeting on March 5, 2013, the City Council, serving as the Board of Directors of the Porterville Public Improvement Corporation, approved the Term Sheet as presented. With

Dir. 

Appropriated/Funded 

C/M 

Item No. PFA/PICO1

the City's approval, Rabobank proceeded to its Loan Committee, which formally approved the transaction. In its approval, the Loan Committee did make two modifications to the previous Term Sheet, which included: 1) setting of a rate "floor" of 3.3% should the City carry the transaction through the final 17-year term, equivalent to the fixed-rate in the first 3-year term of the loan; and 2) adjusting the fourth year of the loan to require only a partial principal payment in addition to interest.

Given the final Term Sheet approved by Rabobank, the City would defease the 2005 COP issue with a total loan amount not to exceed \$25 million (estimated at \$21.06 million), and in turn make interest-only payments for three years based upon a fixed 3.3% interest rate, followed by a 17-year term at United States Dollar (USD) 1-month Libor +2.125% with a "floor" of 3.3%. As of March 28, 2013, USD Libor is 0.20370%, and over the past two years has not exceeded 0.3%. If funding were to occur by July 1, 2013, the City is projected to save \$1,468,680 in debt service payments through July 1, 2015, when the City could again evaluate a tax-exempt bond issuance, or save an additional \$590,045 in evaluating the issuance by July 1, 2016. The City could save an additional \$591,390 in evaluating the issuance by July 1, 2017, and \$356,440 (including partial principal payment) by July 1, 2018 (Page 1 of Project summary).

At its meeting on March 5<sup>th</sup>, a Member of the Board of Directors inquired as to what the net savings to the City would be if comparing only the difference in interest rates between the existing COP bond debt and the proposed direct loan, which at the meeting was estimated to be approximately \$150,000 annually. A calculation has been provided that indicates the proposed exact savings being between \$171,634 (7/1/2014) and \$116,390 (7/1/2016) over the fixed-rate three year term (Page 2 of Project summary).

With the Federal Reserve indicating that the federal funds rate will be held near zero through at least mid-year 2015 (currently 0.25%) and likely perhaps through the end of the decade, the City should be in a prime position with the option to switch from the direct loan to either a variable or fixed rate tax exempt bond issue, thus affording the City with the most flexibility over the next several years.

To formally approve and proceed with the refinancing of the 2005 Certificates of Participation in a direct lending structure with Rabobank, draft resolutions and agreements have been prepared for consideration by the City Council, also serving as the Board of Directors for the Porterville Public Improvement Corporation and Porterville Public Financing Authority.

**RECOMMENDATION:** That the City Council, also sitting as the Board of Directors for the Porterville Public Improvement Corporation and Porterville Public Financing Authority, consider and approve the refunding of the 2005 COP through a direct lending structure with Rabobank, and authorize the Mayor and City Manager to sign all draft resolutions, agreements, and documents as may be required.

- ATTACHMENT:**
1. Restructuring of the 2005 Infrastructure Financing Project
  2. Rabobank Term Sheet
  3. City Council Draft Resolution
  4. Porterville Public Improvement Corporation Draft Resolution
  5. Porterville Public Financing Authority Draft Resolution
  6. Lease and Right of Entry Agreement
  7. Lease Agreement
  8. Letter Agreement for Purchase
  9. Escrow Deposit and Trust Agreement
  10. Termination Agreement

# **CITY OF PORTERVILLE**

**Restructuring of the 2005 Infrastructure Financing Project**



**John Fitzgerald**

**Ben Levine**

**April 2, 2013**

**Wulff, Hansen & Co., San Francisco, California**

**CITY OF PORTERVILLE**  
**(Tulare County, California)**  
**RESTRUCTURING OF 2005 INFRASTRUCTURE FINANCING PROJECT**

**PROJECTED TOTAL DEBT SERVICE & SAVINGS ANALYSIS**

Estimated Par Amount of Loan Financed

\$21,060,000

Projected Settlement Date

April 11, 2013

Date	Outstanding Debt Service <sup>(1)</sup>	PROJECTED TOTAL DEBT SERVICE & SAVINGS <sup>(3)</sup>					PV of Debt Service Savings
		Principal Redemption	Interest Payment@ 3.30%	Total Debt Service	Projected Debt Service Savings	Cumulative Savings	
7/1/2013	\$857,047	\$0	\$0	\$0	\$857,047	\$857,047	\$850,848
7/1/2014	1,287,625	0	675,991	675,991	611,634	1,468,680	583,778
7/1/2015	1,285,025	0	694,980	694,980	590,045	2,058,725	544,346
7/1/2016	1,286,370	0	694,980	694,980	591,390	2,650,115	527,860
7/1/2017	1,286,420	235,000	694,980	929,980	356,440	\$3,006,555	304,424
7/1/2018	1,285,135	685,000	681,615	1,366,615	(81,480)	2,925,075	(82,358)
7/1/2019	1,287,475	770,000	658,350	1,428,350	(140,875)	2,784,200	(129,113)
7/1/2020	1,288,175	835,000	632,363	1,467,363	(179,188)	2,605,013	(155,921)
7/1/2021	1,287,750	915,000	604,148	1,519,148	(231,398)	2,373,615	(191,584)
7/1/2022	1,288,250	995,000	573,293	1,568,293	(280,043)	2,093,573	(222,172)
7/1/2023	1,287,250	1,080,000	539,798	1,619,798	(332,548)	1,761,025	(253,362)
7/1/2024	1,289,750	1,165,000	503,415	1,668,415	(378,665)	1,382,360	(277,934)
7/1/2025	1,285,500	1,250,000	464,310	1,714,310	(428,810)	953,550	(303,240)
7/1/2026	1,289,750	1,345,000	422,318	1,767,318	(477,568)	475,983	(325,845)
7/1/2027	1,287,000	1,490,000	376,695	1,866,695	(579,695)	(103,712)	(380,735)
7/1/2028	1,287,500	1,560,000	326,948	1,886,948	(599,448)	(703,160)	(380,894)
7/1/2029	1,286,000	1,635,000	274,890	1,909,890	(623,890)	(1,327,050)	(383,372)
7/1/2030	1,287,500	1,685,000	220,523	1,905,523	(618,023)	(1,945,072)	(367,859)
7/1/2031	1,286,750	1,745,000	164,423	1,909,423	(622,673)	(2,567,745)	(358,826)
7/1/2032	1,288,750	1,805,000	106,343	1,911,343	(622,593)	(3,190,337)	(347,474)
7/1/2033	1,288,250	1,865,000	46,283	1,911,283	(623,033)	(3,813,370)	(336,695)
7/1/2034	1,285,250	0	0	0	1,285,250	(2,528,120)	642,416
7/1/2035	1,289,750	0	0	0	1,289,750	(1,238,370)	623,698
7/1/2036	1,286,250	0	0	0	1,286,250	47,880	601,715
	<b>\$30,464,522</b>	<b>\$21,060,000</b>	<b>\$9,356,641</b>	<b>\$30,416,641</b>	<b>\$47,880</b>		<b>\$181,701</b>

Total Projected Debt Service Savings:

\$47,880

Total Projected Present Value of Savings:

\$181,701

**Projected Gross Debt Service Savings - 2013 to 2017**

**\$3,006,555**

**Projected Present Value of Savings - 2013 to 2017**

**\$2,811,257**

(1) The Outstanding Certificates pay Interest on January 1 & July 1, and redeem Principal on July 1 of each year.

(2) Beginning on April 2, 2016, interest is a variable rate based on the U.S. dollar one month LIBOR plus 2.125%, but in no case lower than 3.30%. The interest and total amounts during the variable rate period are shown assuming the minimum rate of 3.30% and are for illustration purposes only. If LIBOR exceeds 1.175%, the actual amounts will be higher.

(3) The 2013 Bank Loan will pay Interest on April 1 & October 1, and redeem Principal on April 1 of each year, beginning April 1, 2017.

**CITY OF PORTERVILLE**  
**(Tulare County, California)**  
**RESTRUCTURING OF 2005 INFRASTRUCTURE FINANCING PROJECT**

**PROJECTED FIXED RATE DEBT SERVICE TO 2016 @ 3.30%**

Estimated Par Amount of Loan Financed

\$21,060,000

Projected Settlement Date

April 11, 2013

Date	PROJECTED FIXED RATE DEBT SERVICE TO 2016 <sup>(3)</sup>				
	Principal Redemption	Interest <sup>(2)</sup> Payment @ 3.30%	Total Debt Service	Projected Debt Service Savings	PV of Debt Serv. Savings @ 3.30%
7/1/2013	\$0	\$0	\$0	\$857,047	\$850,848
7/1/2014	0	675,991	675,991	611,634	583,778
7/1/2015	0	694,980	694,980	590,045	544,346
7/1/2016	0	694,980	694,980	591,390	527,860
	\$0	\$2,065,951	\$2,065,951	\$2,650,115	\$2,506,833

Date	PROJECTED INTEREST PAYMENTS COMPARISON TO 2016 <sup>(3)</sup>		
	2005 COPs' Interest Payments	2013 Loan's Interest Payments	Projected Interest Savings
7/1/2013	\$432,047	\$0	\$432,047
7/1/2014	847,625	675,991	171,634
7/1/2015	830,025	694,980	135,045
7/1/2016	811,370	694,980	116,390
	\$2,921,067	\$2,065,951	\$855,115

*(3) The 2013 Bank Loan will pay Interest on April 1 & October 1, and redeem Principal on April 1 of each year, beginning April 1, 2017.*

**CITY OF PORTERVILLE**  
**(Tulare County, California)**  
**RESTRUCTURING OF 2005 INFRASTRUCTURE FINANCING PROJECT**

**ESTIMATED SOURCES AND USES OF FUNDS**

**Delivery Date:** April 11, 2013

**Sources of Funds:**

<b>Principal Amount of Loan</b>	<b>\$21,060,000</b>
City's Funds for Debt Service Reserve	400,000
<b>Total Sources of Funds</b>	<b><u>\$21,460,000</u></b>

**Sources of Funds:**

<b>Projected 2005 Escrow Deposit</b>	<b>\$19,858,701</b>
Debt Service Reserve Fund Deposit	1,000,000
Estimated Costs of Issuance	600,485
<b>Total Uses of Funds</b>	<b><u>\$21,459,186</u></b>





Rabobank

The City of Porterville, Calif.  
*Indicative Terms and Conditions as of March 18, 2013*

By accepting this term sheet the City of Porterville (the "City") agrees that (i) it shall use the information contained herein solely for the purpose of evaluating a possible transaction between the City and Rabobank, N.A. (the "Bank") and for no other purpose and (ii) the City and its representatives will keep confidential and not disclose any of such information to any third parties other than its financial advisor and legal counsel, including the fact that the City is considering a possible transaction with the Bank. *The terms and conditions contained in this proposal are not intended to be exhaustive or all-inclusive.*

Borrower: City of Porterville

Bank: Rabobank, N.A.

Purpose: Proceeds will be used to prepay the Certificates of Participation executed and delivered on December 1, 2005 (the "2005 Certificates").

Amount: Up to \$25,000,000, including principal, interest and expenses.

Terms: 3.3% during interest-only period for 3 years followed by 17 year term at USD 1-month Libor +2.125% with a floor of 3.3%.

Nature of Obligation and Repayment: Principal security consists of a covenant to budget and appropriate lease payments (the "Obligation") pursuant to lease-leaseback structure that is identical to the 2005 Certificates.

Principal to be paid annually and Interest to be paid semiannually.

Facility Fee: \$85,000.

Prepayment Penalty: None.

Legal Fees/Expenses of Bank Counsel: \$25,000.

Bank Counsel: Fulbright & Jaworski L.L.P.

Opinion of City's Counsel: The Bank shall receive an opinion of bond counsel to the City acceptable to the Bank, including among other things an opinion that the Obligations have been duly and validly authorized by the City and when issued and delivered will each constitute a legal valid and binding obligation of the City, enforceable in accordance with its terms and that the 2005 Certificates are legally defeased.

Special Covenants: City will provide audited financial statements within 200 days following the end of each fiscal year.



City will provide unaudited (internally prepared) cash based financial statements within 60 days following the end of each calendar quarter.

City will provide budget annually as well as mid-year revisions, if any.

City shall maintain a debt service reserve fund under the lease designated by the city for repayment of the Obligations, equivalent to \$1,000,000 that may be funded in part with proceeds.

The City shall maintain standard insurance coverages pursuant to the lease in connection with the Obligations, including rental interruption insurance.

Credit Approval and Offer Expiration:

**Any offer by the Bank in connection with the proposed transaction will be subject to the Bank's satisfactory completion of its due diligence review of the City and final credit approval by the Bank.**

The Bank anticipates able to provide its final credit decision within 2 weeks of being given the mandate to provide the loan.

Absence of Fiduciary Relationship:

The City acknowledges that the transactions described in this document are arms'-length commercial transactions and that the Bank is acting as principal and in its best interests. The City is relying on its own experts, lawyers and advisors to determine whether the transactions described in this document are in its best interests. The City agrees that the Bank will act under this document as an independent contractor and that nothing in this document, the nature of the Bank's services or in any prior relationship will be deemed to create an advisory, fiduciary or City relationship between the Bank, on the one hand, and the City, on the other hand. In addition, the Bank may employ the services of its affiliates in providing certain services in connection with the transactions described in this document and may exchange with such affiliates information concerning the City that may be the subject of the transactions described in this term sheet.

**Please note that the Bank and its affiliates do not provide tax, accounting or legal advice. The Bank and its advisors are not serving as a municipal advisor to the City.**

Anti-tying Disclosure:

The extension of commercial loans or other products or services to the City by the Bank or any of its subsidiaries will not be conditioned on the City's taking other products or services offered by the Bank or any of its subsidiaries or affiliates. The Bank will not vary the price or other terms of any product or service offered by the Bank or its subsidiaries on the condition that the City purchase another product or service from the Bank or any affiliate. The Bank will not require the City to provide property or services to the Bank or any affiliate as a condition to the



extension of a commercial loan to the City by the Bank or any of its subsidiaries. The Bank will not require the City to refrain from doing business with a competitor of the Bank or any of its affiliates as a condition to receiving a commercial loan from the Bank or any of its subsidiaries.

Bank Contact: Ian Carroll  
Senior Vice President  
Rabobank, N.A.  
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916-878-4655 (office)  
916-494-9770 (cell)  
Ian.Carroll@Rabobank.com

Acknowledged and Consented: By: \_\_\_\_\_  
City Manager  
JOHN LOLLIS

This document has been prepared by the Bank for information purposes only. This document is an indicative summary of the terms and conditions of the transaction described herein and may be amended, superseded or replaced by subsequent summaries. The final terms and conditions of the transaction will be set out in full in the applicable binding transaction document(s).

This document shall not constitute a commitment to participate in the transaction described herein, which shall be subject to the Bank's internal approvals. No transaction or services related thereto is contemplated without the Bank's subsequent formal agreement. The Bank is acting solely as principal and not as advisor or fiduciary. Accordingly you must independently determine, with your own advisors, the appropriateness for you of the transaction before investing or transacting. The Bank accepts no liability whatsoever for any direct, consequential or other losses arising from the use of this document or reliance on the information contained herein.

The Bank does not guarantee the accuracy or completeness of information which is contained in this document and which is stated to have been obtained from or is based upon trade and statistical services or other third party sources. Any data on past performance, modelling or back-testing contained herein is no indication as to future performance. No representation is made as to the reasonableness of the assumptions made within or the accuracy or completeness of any modeling or back-testing. All opinions and estimates are given as of the date hereof and are subject to change. The information in this document is not intended to predict actual results and no assurances are given with respect thereto.

The Bank, its affiliates and the individuals associated therewith may (in various capacities) participate in transactions identical or similar to those described herein.

IRS Circular 230 Disclosure: The Bank and its affiliates do not provide tax advice. Please note that (i) any discussion of US tax matters contained in this communication (including any attachments) cannot be



**Rabobank**

used by you for the purpose of avoiding tax penalties; (ii) this communication was written to support the promotion or marketing of the matters addressed herein; and (iii) you should seek advice based on your particular circumstances from an independent tax advisor.

THIS DOCUMENT DOES NOT DISCLOSE ALL THE RISKS AND OTHER SIGNIFICANT ISSUES RELATED TO THE POTENTIAL TRANSACTION. PRIOR TO TRANSACTING, POTENTIAL PARTICIPANTS SHOULD ENSURE THAT THEY FULLY UNDERSTAND THE TERMS OF THE TRANSACTION AND ANY APPLICABLE RISKS.

**CITY OF PORTERVILLE**

**RESOLUTION NO. \_\_\_\_\_**

**RESOLUTION APPROVING THE FORM AND AUTHORIZING THE EXECUTION OF CERTAIN LEASE FINANCING DOCUMENTS IN CONNECTION WITH THE REFUNDING OF THE CITY'S CERTIFICATES OF PARTICIPATION (2005 INFRASTRUCTURE FINANCING PROJECT) AND AUTHORIZING AND DIRECTING CERTAIN ACTIONS WITH RESPECT THERETO**

RESOLVED, by the City Council (the "Council") of the City of Porterville (the "City"), as follows:

WHEREAS, the City, working together with the Porterville Public Financing Authority (the "Authority"), has heretofore caused the execution and delivery of the \$20,850,000 Certificates of Participation (2005 Infrastructure Financing Project) (the "2005 Certificates") evidencing and representing the fractional undivided interests of the owners thereof in lease payments to be made by the City as the rental for certain property pursuant to a lease agreement with the Authority to finance and refinance various public infrastructure improvements on real property within and without the boundaries of the City, including the refunding of certain outstanding obligations of the City (the "Improvements");

WHEREAS, the 2005 Certificates are currently outstanding in the principal amount of \$17,865,000;

WHEREAS, the City has determined at this time, due to prevailing interest rates in the municipal bond market and for other reasons, to refinance its obligations with respect to the 2005 Certificates;

WHEREAS, it is in the public interest and for the public benefit that the City authorize and direct execution of the Lease Agreement (hereinafter defined) and certain other documents in connection therewith; and

WHEREAS, the documents below specified have been filed with the City and the members of the Council, with the aid of its staff, have reviewed said documents;

NOW, THEREFORE, it is hereby DECLARED and ORDERED, as follows:

*Section 1.* The Council hereby approves the refinancing of the 2005 Certificates.

*Section 2.* The below-enumerated documents be and are hereby approved, and the Mayor, the City Manager or the Finance Director, or any designee thereof, is hereby authorized and directed to execute said documents, with such changes, insertions and omissions as may be approved by such official, the execution thereof to be conclusive evidence of such approval, and the City Clerk is hereby authorized and directed to attest to such official's signature:

(a) a lease and right of entry agreement (the "Right of Entry Agreement"), by and between the City and the Porterville Public Improvement Corporation (the "Corporation"), pursuant to which the City will, to the extent it is fee owner thereof, lease certain property and improvements, to the Corporation, and to the extent it is the owner of a right other than a fee interest, grant to the Corporation a right of entry upon such other properties in the City or otherwise in the State of California (collectively, the "Property"), necessary for the refinancing of the Improvements;

(b) a lease agreement, by and between the Corporation, as lessor, and the City, as lessee (the "Lease Agreement"), pursuant to which the Corporation will lease the Property back to the City, so long as the City realizes a net present value savings as compared to the lease payments with respect to the 2005 Certificates;

(c) an escrow deposit and trust agreement, by and between the City and U.S. Bank National Association, as trustee for the 2005 Certificates and as escrow bank (the "2005 Trustee"), providing for the defeasance of the 2005 Certificates;

(d) a letter agreement for purchase between Rabobank, N.A. ("Rabobank") and the City, whereby Rabobank agrees to acquire the rights of the Corporation to the lease payments to be made by the City under the Lease Agreement and the rights of the Corporation under the Right of Entry Agreement; and

(e) a termination agreement, by and among the City, the Authority and the 2005 Trustee, whereby the City, the Authority and the 2005 Trustee agree to terminate the documents relating to the 2005 Certificates.

*Section 3.* The Mayor, the City Manager, the Finance Director, the City Clerk, and all other appropriate officials of the City, are hereby authorized and directed to execute such other agreements, documents and certificates and to take such other actions as may be necessary to effect the purposes of this resolution and the financing herein authorized.

*Section 4.* This Resolution shall take effect upon its adoption by this Council.

PASSED AND ADOPTED by the City Council of the City of Porterville this 2nd day of April, 2013.

By \_\_\_\_\_  
Virginia R. Gurrola, Mayor

ATTEST:

John D. Lollis, City Clerk

\_\_\_\_\_  
By: Patrice Hildreth, Chief Deputy City Clerk

**PORTERVILLE PUBLIC IMPROVEMENT CORPORATION**

**RESOLUTION NO. \_\_\_\_\_**

**RESOLUTION APPROVING THE FORM AND AUTHORIZING THE EXECUTION OF CERTAIN LEASE FINANCING DOCUMENTS IN CONNECTION WITH THE REFUNDING OF THE CITY OF PORTERVILLE'S CERTIFICATES OF PARTICIPATION (2005 INFRASTRUCTURE FINANCING PROJECT), AND AUTHORIZING AND DIRECTING CERTAIN ACTIONS WITH RESPECT THERETO**

RESOLVED, by the Board of Directors (the "Board") of the Porterville Public Improvement Corporation (the "Corporation"), as follows:

WHEREAS, the City of Porterville (the "City"), working together with the Porterville Public Financing Authority (the "Authority"), has heretofore caused the execution and delivery of the \$20,850,000 Certificates of Participation (2005 Infrastructure Financing Project) (the "2005 Certificates") evidencing and representing the fractional undivided interests of the owners thereof in lease payments to be made by the City as the rental for certain property pursuant to a lease agreement with the Authority to finance and refinance various public infrastructure improvements on real property within and without the boundaries of the City, including the refunding of certain outstanding obligations of the City (the "Improvements");

WHEREAS, the 2005 Certificates are currently outstanding in the principal amount of \$17,865,000;

WHEREAS, the City has determined at this time, due to prevailing interest rates in the municipal bond market and for other reasons, to refinance its obligations with respect to the 2005 Certificates;

WHEREAS, it is in the public interest and for the public benefit that the Corporation authorize and direct execution of certain financing documents in connection therewith; and

WHEREAS, the documents below specified have been filed with the Corporation and the members of the Board, with the aid of its staff, have reviewed said documents;

NOW, THEREFORE, it is hereby ORDERED and DETERMINED, as follows:

*Section 1.* The below-enumerated documents, substantially in the forms on file with the Secretary, be and are hereby approved, and the President, the Executive Director or the Treasurer, or any designee thereof, is hereby authorized and directed to execute said documents, with such changes, insertions and omissions as may be approved by such official, the execution thereof to be conclusive evidence of such approval, and the Secretary is hereby authorized and directed to attest to such official's signature:

(a) a lease and right of entry agreement (the "Right of Entry Agreement"), by and between the City and the Corporation, pursuant to which the City will, to the extent it is fee owner thereof, lease certain property and improvements, to the Corporation, and to the extent it is the owner of a right other than a fee interest, grant to the Corporation a right of entry upon such other properties in the City or otherwise in the State of California (collectively, the "Property"), necessary for the refinancing of the Improvements;

(b) a lease agreement, by and between the Corporation, as lessor, and the City, as lessee (the "Lease Agreement"), pursuant to which the Corporation will lease the Property back to the City; and

(c) an assignment agreement, by and between the Corporation and Rabobank, N.A. (the "Assignee"), pursuant to which the Corporation will assign certain of its rights under the Right of Entry Agreement and the Lease Agreement, including its right to receive lease payments thereunder, to the Assignee.

*Section 2.* The President, the Executive Director, the Treasurer, the Secretary and other officials of the Corporation are hereby authorized and directed to execute such other agreements, documents and certificates and to take such other actions as may be necessary to effect the purposes of this resolution and the lease financing herein authorized.

*Section 3.* This Resolution shall take effect upon its adoption by the Board.

PASSED AND ADOPTED by the Board of Directors of the Porterville Public Improvement Corporation this 2nd day of April, 2013.

PORTERVILLE PUBLIC  
IMPROVEMENT CORPORATION

By \_\_\_\_\_  
Virginia R. Gurrola, President

ATTEST:

\_\_\_\_\_  
John D. Lollis, Secretary



**PORTERVILLE PUBLIC FINANCING AUTHORITY**

**RESOLUTION NO. \_\_\_\_\_**

**RESOLUTION APPROVING THE FORM AND AUTHORIZING THE  
EXECUTION OF A TERMINATION AGREEMENT IN CONNECTION WITH  
THE REFUNDING BY THE CITY OF PORTERVILLE OF ITS  
CERTIFICATES OF PARTICIPATION (2005 INFRASTRUCTURE  
FINANCING PROJECT) AND AUTHORIZING AND DIRECTING CERTAIN  
ACTIONS WITH RESPECT THERETO**

RESOLVED, by the Board of Directors (the "Board") of the Porterville Public Financing Authority (the "Authority"), as follows:

WHEREAS, the City of Porterville (the "City"), working together with the Authority, has heretofore caused the execution and delivery of the \$20,850,000 Certificates of Participation (2005 Infrastructure Financing Project) (the "2005 Certificates") evidencing and representing the fractional undivided interests of the owners thereof in rental payments to be made by the City as the rental for certain property pursuant to a lease agreement with the Authority to finance and refinance various public infrastructure improvements on real property within and without the boundaries of the City, including the refunding of certain outstanding obligations of the City;

WHEREAS, the 2005 Certificates are currently outstanding in the principal amount of \$17,865,000;

WHEREAS, the City has determined at this time, due to prevailing interest rates in the municipal bond market and for other reasons, to refinance its obligations with respect to the 2005 Certificates;

WHEREAS, it is in the public interest and for the public benefit that the Authority authorize and direct execution of termination agreements in connection therewith; and

WHEREAS, the documents below specified have been filed with the Authority and the members of the Board, with the aid of its staff, have reviewed said documents;

NOW, THEREFORE, it is hereby ORDERED and DETERMINED, as follows:

*Section 1.* A termination agreement, by and among the City, U.S. Bank National Association, as trustee for the 2005 Certificates (the "2005 Trustee"), and the Authority, whereby the City, the Authority and the 2005 Trustee agree to terminate the documents relating to the 2005 Certificates, in the form on file with the Secretary, be and is hereby approved, and the Chairman, the Executive Director or the Treasurer, or any designee thereof, is hereby authorized and directed to execute said document, with such changes, insertions and omissions as may be approved by such official, the execution

thereof to be conclusive evidence of such approval, and the Secretary is hereby authorized and directed to attest to such official's signature.

*Section 2.* The Chairman, the Executive Director, the Treasurer, the Secretary and other officials of the Authority are hereby authorized and directed to execute such other agreements, documents and certificates and to take such other actions as may be necessary to effect the purposes of this resolution and the lease financing herein authorized.

*Section 3.* This Resolution shall take effect upon its adoption by the Board.

The foregoing resolution was duly adopted at a meeting of the Board of Directors of the Porterville Public Financing Authority held on the 2nd day of April, 2013.

By: \_\_\_\_\_  
Virginia R. Gurrola, Chairperson

Attest: \_\_\_\_\_  
John D. Lollis, Secretary

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**LEASE AND RIGHT OF ENTRY AGREEMENT**

**Dated as of April 1, 2013**

**by and between the**

**CITY OF PORTERVILLE, as Lessor and Grantor**

**and the**

**PORTERVILLE PUBLIC IMPROVEMENT CORPORATION, as Lessee and Grantee**

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## LEASE AND RIGHT OF ENTRY AGREEMENT

THIS LEASE AND RIGHT OF ENTRY AGREEMENT, dated as of April 1, 2013, by and between the CITY OF PORTERVILLE, a chartered city and municipal corporation organized and existing under and by virtue of its charter and the laws of the State of California (the "City"), as lessor and grantor, and the PORTERVILLE PUBLIC IMPROVEMENT CORPORATION, a nonprofit, public benefit corporation organized and existing under and by virtue of the laws of the State of California (the "Corporation"), as lessee and grantee;

WITNESSETH:

WHEREAS, the Corporation intends to assist the City in the refinancing of various public infrastructure improvements on real property within the boundaries of the City (the "Improvements"), and to lease certain property generally described in Exhibit A hereto to the City pursuant to the provisions of a Lease Agreement, dated as of April 1, 2013 (the "Lease Agreement"), and the City proposes to enter into this Lease and Right of Entry Agreement with the Corporation as a material consideration for the Corporation's agreement to construct the Improvements for, and lease the Property to, the City;

NOW, THEREFORE, IT IS HEREBY MUTUALLY AGREED, as follows:

*Section 1. Lease and Right of Entry.* To the extent it is fee owner thereof, the City hereby leases to the Corporation and the Corporation hereby leases from the City, on the terms and conditions hereinafter set forth, those properties situated in Tulare County, State of California, more particularly described in Exhibit A attached hereto and made a part hereof (the "Property"), and any improvements on the Site. To the extent it is the owner of a right other than a fee interest, the City hereby grants to the Corporation and the Corporation hereby accepts from the City, on the terms and conditions hereinafter set forth, a right of entry upon the Site and upon all properties in the City of Porterville or otherwise in the State of California, necessary for the financing of the Improvements.

*Section 2. Term.* The term of this Lease and Right of Entry Agreement shall commence on the date of execution of this Lease and Right of Entry Agreement and shall end on March 1, 2033, unless such term is extended or sooner terminated as hereinafter provided. If on March 1, 2033, the aggregate amount of Lease Payments (as defined in and) payable under the Lease Agreement, shall not have been paid, or provision shall not have been made for their payment, then the term of this Lease and Right of Entry Agreement shall be extended until such Lease Payments shall be fully paid or provision made for such payment. If prior to March 1, 2043, all Lease Payments shall be fully paid or provision made for such payment, the term of this Lease and Right of Entry Agreement shall end ten (10) days thereafter.

*Section 3. Consideration.* The City acknowledges receipt from the Corporation as and for this agreement the sum of one dollar (\$1.00), on or before the date of delivery of this agreement.

*Section 4. Purpose.* The Corporation shall use this Lease and Right of Entry Agreement solely for the purpose of providing the basis for leasing the Property to the City pursuant to the Lease Agreement and for such purposes as may be incidental thereto; provided, that in the event of default by the City under the Lease Agreement, the Corporation and its assigns may exercise the remedies provided in the Lease Agreement including the right of removal.

*Section 5. City's Rights in Property.* The City covenants that it is the owner in fee of, or is the possessor of an easement or right of entry to, the Property and it will maintain such right or

interest for the term of this Lease and Right of Entry Agreement and, in all cases, has all right to convey a right of entry to the Corporation thereon as is provided herein.

*Section 6. Assignments and Subleases.* Unless the City shall be in default under the Lease Agreement, the Corporation may not assign its rights under this Lease and Right of Entry Agreement except as provided in the Lease Agreement, without the written consent of the City.

*Section 7. Termination.* The Corporation agrees, upon the termination of this Lease and Right of Entry Agreement to surrender its rights hereunder.

*Section 8. Default.* In the event the Corporation shall be in default in the performance of any obligation on its part to be performed under the terms of this Lease and Right of Entry Agreement, which default continues for thirty (30) days following notice and demand for correction thereof to the Corporation, the City may exercise any and all remedies granted by law, except that no merger of this Lease and Right of Entry Agreement and of the Lease Agreement shall be deemed to occur as a result thereof.

*Section 9. Waiver of Personal Liability.* All liabilities under this Lease and Right of Entry Agreement on the part of the City are solely liabilities of the City and the City hereby releases each and every, member, director, officer, employee and agent of the Corporation of and from any personal or individual liability under this Lease and Right of Entry Agreement. No member, director, officer, employee or agent of the Corporation shall at any time or under any circumstances be individually or personally liable under this Lease and Right of Entry Agreement for anything done or omitted to be done by the City hereunder.

*Section 10. Partial Invalidity.* If any one or more of the terms, provisions, covenants or conditions of this Lease and Right of Entry Agreement shall to any extent be declared invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, the finding or order or decree of which becomes final, none of the remaining terms, provisions, covenants and conditions of this Lease and Right of Entry Agreement shall be affected thereby, and each provision of this Lease and Right of Entry Agreement shall be valid and enforceable to the fullest extent permitted by law.

*Section 11. Notices.* All notices, statements, demands, consents, approvals, authorizations, offers, designations, requests or other communications hereunder by either party to the other shall be in writing and shall be sufficiently given and served upon the other party if delivered personally or if mailed by United States registered mail, return receipt requested, postage prepaid, and, if to the City, addressed to the City in care of the City Manager, City of Porterville, 291 North Main Street, Porterville, CA 93257, or if to the Corporation, addressed to the Corporation in care of the Executive Director, the Porterville Public Financing Corporation, 291 North Main Street, Porterville, CA 93257, or to such other addresses as the respective parties may from time to time designate by notice in writing.

*Section 12. Section Headings.* All section headings contained herein are for convenience of reference only and are not intended to define or limit the scope of any provision of this Lease and Right of Entry Agreement.

*Section 13. Execution.* This Lease and Right of Entry Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original but all together shall constitute but one and the same agreement.

IN WITNESS WHEREOF, the City and the Corporation have caused this Lease and Right of Entry Agreement to be executed by their respective officers thereunto duly authorized, all as of the day and year first above written.

CITY OF PORTERVILLE, as Lessor and Grantor

By \_\_\_\_\_  
John D. Lollis  
City Manager

Attest:

\_\_\_\_\_  
Patrice Hildreth  
Chief Deputy City Clerk

PORTERVILLE PUBLIC IMPROVEMENT CORPORATION, as Lessee and Grantee

By \_\_\_\_\_  
John D. Lollis  
Executive Director

Attest:

\_\_\_\_\_  
Patrice Hildreth  
Deputy Secretary

## EXHIBIT A

### PROPERTY DESCRIPTION

Projects	Est. Cost of Existing Curb, Gutter Sidewalk Improvement (1)	Est. Cost of Existing Pavement (2)	Est. Right of Way Cost and Title Type (3)	Total Worth
<b>BRIDGES</b>				
South Plano-Tule River	—	—	—	\$2,500,000
South Main-Tule River	—	—	—	\$2,500,000
South Jaye-Tule River	—	—	—	\$2,500,000
<b>SLOUGH CROSSINGS</b>				
W Henderson-Porter Slough	—	—	—	\$375,000
N. Westwood-Porter Slough	—	—	—	\$375,000
<b>STREETS</b>				
E. Morton	1200'x62.50=\$75,000	6600'x112.50=\$742,500	6600'x7.50=\$49,600	\$887,000
N. Conner-Morton/E. Olive	—	1400'x112.50=\$157,500	2800'x7.50=\$21,000	\$178,600
E. Olive-Putnam/Tulsa	1000'x62.50=\$62,500	7000'x112.50=\$787,500	7000'x7.50=\$52,500	\$902,500
N. Indiana-Olive/Morton	2000'x62.50=\$125,000	2000'x187.50=\$375,000	2000'x7.50=\$15,000	\$515,000
W Henderson-Newcomb/ Westwood	6500'x62.50=\$406,250	5500'x112.50=\$618,750	5500'x7.50=\$41,250	\$1,066,250
N. Main-Henderson/Linda Vista	1000'x62.50=\$62,500	11,000'x112.50=\$1,237,500	5000'x7.50=\$37,500 plus	\$1,412,500
W Olive-Newcomb/Westwood	4000'x62.50=\$250,000	5500'x187.50=\$1,031,250	6000'x12.50=\$75,000 3000'x7.50=\$22,500 plus 2500'x12.50=\$31,250	\$1,335,000
E. Orange-Piano/S. Main	3000'x62.50=\$187,500	3000'x187.50=\$562,500	3000'x12.50=\$37,500	\$787,500
S. Jaye-Olive/Gibbons	4000'x62.50=\$260,000	4000'x187.50=\$750,000 plus 5500'x112.50=\$618,750	5500'x12.50=\$68,750 plus 4000'x7.50=\$30,000	\$1,717,500
S. Newcomb-Olive/Hwy 190	2000'x62.50=\$125,000	3000'x112.50=\$337,500	1500'x12.50=\$18,750 plus 2500'x7.50=\$18,750	\$500,000
Gibbons-S. Main/Indiana	—	5500'x112.50=\$618,750	5500'x7.50=\$41,250	\$680,000
S. Main-Hwy-190/Gibbons	1500'x62.50=\$93,750	4000'x187.50=\$750,000	4000'x12.50=\$50,000	\$893,750
N. Prospect-Morton/Pioneer	6500'x62.50=\$406,250	1500'x187.50=\$281,250 plus 5000'x112.50=\$562,500	1500'x12.50=\$18,750 plus 5000'x7.50=\$37,500	\$1,306,250
E. Date-S. Main/Plano	500'x62.50=\$31,250	2500'x112.50=\$281,250	2500'x7.50=\$18,750	\$331,250
W. Westfield-Hwy. 65/N. Main	3500'x62.50=\$218,750	3500'x112.50=\$393,750	3500'x7.50=\$26,250	\$636,750
N. Newcomb-Mulberry/N. Grand	3500'x62.50=\$218,750	5000'x187.50=\$937,500	5000'x7.50=\$37,500	\$1,193,750
N. Westwood- Henderson/Friant Canal	3000'x31.25=\$83,750	1000'x93.75=\$93,750 plus 3000'x112.50=\$337,500	4000'x7.50=\$30,000	\$555,000
Downtown Parking Lots	4x \$250,000=\$1,000,000			\$1,000,000
S. Indian-Olive/Springville	2000'x62.50=\$125,000	3500'x112.50=\$393,750	1500'x7.50=\$11,250	\$530,000
N. Prospect-Olive/Morton	2500'x62.50=\$156,250	2500'x112.50=\$281,250	2500'x7.50=\$18,750	\$456,250
N. Villa-Olive/Henderson	5000'x62.50=\$312,500	5000'x112.50=\$562,500	4000'x7.50=\$30,000 plus 1000'x12.50=\$12,500	\$917,500
W Henderson-Indiana/N. Main	4500'x62.50=\$281,250	4500'x187.50=\$843,750	4500'x7.50=\$33,750	\$1,158,750
N. Main-Morton/Henderson	3000'x62.50=\$187,500	3000'x187.50=\$582,500	3000'x12.50=\$37,500	\$787,500
W Grand-"E"/Newcomb	8500'x62.50=\$531,250	8500'x112.50=\$956,250	8500'x7.50=\$63,750	\$1,561,250
N. Piano-Henderson/Reid	1500'x62.50=\$93,750	2000'x187.50=\$375,000 plus 4000'x112.50=\$450,000	6000'x7.50=\$45,000	\$963,500
N. Leggett-Success/Henderson	6000'x62.50=\$375,000	7500'x112.50=\$843,750	7500'x7.50=\$58,250	\$1,275,000
Main-Date/Morton	5000'x187.50=\$937,500	5000'x1000=\$5,000,000	5000'x62.50=\$312,500	\$6,250,000
				<u>\$38,000,600</u>

- (1) Average cost for Curb/Gutter/Sidewalk \$31.25 per linear foot (one side), \$62.50 per linear foot (two sides), excluding bridges.
- (2) Average cost for Arterial Pavement Section \$187.50 per linear foot. Average cost for Major Collector Pavement section \$112.50 per linear foot.
- (3) Right of Way value without improvements. Residential-\$6 per square foot. Commercial-\$20 per square foot (includes both sides of street)

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**LEASE AGREEMENT**

**Dated as of April 1, 2013**

**by and between the**

**PORTERVILLE PUBLIC IMPROVEMENT CORPORATION, as Lessor**

**and**

**CITY OF PORTERVILLE, as Lessee**

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EXHIBIT A: DESCRIPTION OF THE PROPERTY  
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## LEASE AGREEMENT

THIS LEASE AGREEMENT (the "Lease Agreement"), is dated as of April 1, 2013, by and between the PORTERVILLE PUBLIC IMPROVEMENT CORPORATION, a nonprofit, public benefit corporation organized and existing under the laws of the State of California, as lessor (the "Corporation"), and CITY OF PORTERVILLE, a chartered city and municipal corporation organized and existing under its charter and the laws of the State of California, as lessee (the "City");

### WITNESSETH:

WHEREAS, pursuant to that certain Lease and Right of Entry Agreement, dated as of December 1, 2005 (the "2005 Lease and Right of Entry Agreement"), the City leased certain property and granted to the Corporation a right of entry upon certain properties in the City of Porterville (the "Property"), all for the purpose of enabling the City to finance various public infrastructure improvements and to refund the then outstanding Certificates of Participation (1998 Infrastructure Financing Project);

WHEREAS, pursuant to that certain Lease Agreement, dated as of December 1, 2005 (the "2005 Lease Agreement"), the Corporation leased the Property back to the City and assigned its right to receive lease payments under the Lease Agreement (the "2005 Lease Payments"), its right to enforce payment of the 2005 Lease Payments and otherwise to enforce its interest and rights under this Lease Agreement in the event of a default thereunder by the City, to U.S. Bank National Association, as trustee (the "Trustee"), pursuant to that certain Assignment Agreement, dated as of December 1, 2005, by and between the Corporation and the Trustee;

WHEREAS, pursuant to that certain Trust Agreement, dated as of December 1, 2005, by and among the City, the Corporation and the Trustee, the Trustee executed and delivered certificates of participation (the "2005 Certificates") in the Lease Payments;

WHEREAS, the City, working together with the Corporation, proposes to provide for the defeasance of the 2005 Certificates;

WHEREAS, pursuant to that certain Lease and Right of Entry Agreement, dated as of April 1, 2013 (the "Lease and Right of Entry Agreement"), the City has leased the Property to the Corporation and proposes, pursuant to this Lease Agreement, to lease the Property back to the City and to assign all of its rights, title and interest in, to and under this Lease Agreement, including its right to receive lease payments under this Lease Agreement (the "Lease Payments"), its right to enforce payment of the Lease Payments and otherwise to enforce its interest and rights under this Lease Agreement in the event of a default hereunder by the City and its rights under the Lease and Right of Entry Agreement, to Rabobank, N.A. (the "Assignee"), pursuant to that certain Assignment Agreement, dated as of April 1, 2013, by and between the Corporation and the Assignee; and;

WHEREAS, the City and the Corporation have agreed to enter into this Lease Agreement providing for Lease Payments with an aggregate principal component in the amount of \$21,060,000 for the purpose of providing for the defeasance of the 2005 Certificates.

NOW, THEREFORE, IT IS HEREBY MUTUALLY AGREED, as follows:

## ARTICLE I

### DEFINITIONS AND EXHIBITS

Section 1.1. Definitions. All terms defined in this Section 1.1 have the meanings herein specified for all purposes of this Lease Agreement.

*"Applicable Environmental Laws"* means and shall include, but shall not be limited to, the Comprehensive Environmental Response, Compensation, and Liability Act, 42 USC Sections 9601 *et seq.*; the Resource Conservation and Recovery Act, 42 USC Sections 6901 *et seq.*; the Federal Water Pollution Control Act, 33 USC Sections 1251 *et seq.*; the Clean Air Act, 42 USC Sections 7401 *et seq.*; the California Hazardous Waste Control Law, California Health & Safety Code Sections 25100 *et seq.*; the Hazardous Substance Account Act, California Health & Safety Code Sections 25300 *et seq.*; the Porter-Cologne Water Quality Control Act, California Water Code Sections 1300 *et seq.*; the Air Resources Act, California Health & Safety Code Sections 3900 *et seq.*; the Safe Drinking Water & Toxic Enforcement Act, California Health & Safety Code Sections 25249.5 *et seq.*; and the regulations under each thereof; and any other local, state, and/or federal laws or regulations, whether currently in existence or hereafter enacted, that govern:

- (a) the existence, cleanup, and/or remedy of contamination on property;
- (b) the protection of the environment from spilled, deposited, or otherwise emplaced contamination;
- (c) the control of hazardous wastes; or
- (d) the use, generation, transport, treatment, removal, or recovery of Hazardous Substances, including building materials.

*"Assignee"* means (a) initially, Rabobank, N.A., as assignee of all rights, title and interests (but none of the obligations) of the Corporation hereunder, and (b) any other entity to whom the rights of the Corporation hereunder are assigned, including subsequent assignees of the Assignee.

*"Assignment Agreement"* means the Assignment Agreement, dated as of April 1, 2013, between the Corporation, as assignor of its rights under the Lease and Right of Entry Agreement and this Lease Agreement, and the Assignee, as assignee, as originally executed or as thereafter amended under any duly authorized and executed amendments thereto.

*"Bond Counsel"* means (a) Quint & Thimmig LLP, or (b) any other attorney or firm of attorneys of nationally recognized expertise with respect to legal matters relating to obligations of public entities.

*"City"* means the City of Porterville, a municipal corporation and chartered city and existing under the laws of the State.

*"City Representative"* means the Mayor, the City Manager or the Finance Director, or the designee of any such official, or any other person authorized by resolution to act on behalf of the City under or with respect to the Lease and Right of Entry Agreement and the Lease Agreement.

*"Closing Date"* means the date of execution and delivery of this Lease Agreement by the parties hereto, being April 11, 2013.

*"Corporation"* means Porterville Public Improvement Corporation, a nonprofit, public benefit corporation, organized and existing under the laws of the State.

*"Corporation"* means the President, the Executive Director or the Treasurer of the Corporation, or the designee of any such official, or any other person authorized by resolution to act on behalf of the Corporation under or with respect to the Lease and Right of Entry Agreement, the Lease Agreement and the Assignment Agreement.

*"Escrow Agreement"* means that certain Escrow Deposit and Trust Agreement, dated as the Closing Date, by and between the City and the Escrow Bank, providing for the defeasance of the 2005 Certificates.

*"Escrow Bank"* means U.S. Bank National Association, as escrow bank under the 2005 Escrow Agreement.

*"Escrow Fund"* means the escrow fund established by the Escrow Bank under the 2005 Escrow Agreement.

*"Event of Default"* means any of the events of default as defined in Section 8.1.

*"Federal Securities"* means any direct general non-callable obligations of the United States of America (including obligations issued or held in book entry form on the books of the Department of the Treasury of the United States of America), or obligations the timely payment of principal of and interest on which are directly guaranteed by the United States of America.

*"Fiscal Year"* means each twelve-month period during the Term of this Lease Agreement commencing on July 1 in any calendar year and ending on June 30 in the next succeeding calendar year, or any other twelve-month period selected by the City as its fiscal year period.

*"Hazardous Substance"* means any substance that shall, at any time, be listed as "hazardous" or "toxic" in any Applicable Environmental Law or that has been or shall be determined at any time by any agency or court to be a hazardous or toxic substance regulated under Applicable Environmental Laws; and also means, without limitation, raw materials, building components, the products of any manufacturing, or other activities on the Facilities, wastes, petroleum, and source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended (42 USC Sections 3011 *et seq.*).

*"Lease"* means this Lease Agreement dated as of April 1, 2013, between the Corporation and the City.

*"Lease Payment Date"* means April 1 and October 1 in each year, commencing October 1, 2013, and continuing to and including the date on which the Lease Payments are paid in full.

*"Lease Payments"* means all payments required to be paid by the City under Section 4.3, including any prepayment thereof under Sections 9.2 or 9.3.

*"Net Proceeds"* means any insurance or eminent domain award (including any proceeds of sale to a governmental entity under threat of the exercise of eminent domain powers), paid with respect to the Property, to the extent remaining after payment therefrom of all expenses incurred in the collection thereof.

*"2005 Certificates"* means the \$20,850,000 Certificates of Participation (2005 Infrastructure Financing Project), evidencing and representing the fractional undivided interests of the owners

thereof in rental payments to be made by the City as the rental for certain property pursuant to a lease agreement with the Corporation to finance and refinance capital projects, currently outstanding in the principal amount of \$17,865,000.

*"2005 Lease Agreement"* means that certain Lease Agreement, dated as of October 1, 2005, by and between the Corporation and the City.

*"Permitted Encumbrances"* means, as of any time: (a) liens for general ad valorem taxes and assessments, if any, not then delinquent, or which the City may permit to remain unpaid under Article VI of this Lease Agreement; (b) the Lease and Right of Entry Agreement, this Lease Agreement and the Assignment Agreement; (c) any right or claim of any mechanic, laborer, materialman, supplier or vendor not filed or perfected in the manner prescribed by law; and (d) any easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions which exist of record and which the City certifies in writing will not materially impair the use of the Property for its intended purposes.

*"Property"* means that certain property more particularly described in Exhibit A to the Lease and Right of Entry Agreement and in Exhibit A to the Lease Agreement.

*"Rental Period"* means each period during the Term of the Lease commencing on and including April 2 in each year and extending to and including the next succeeding April 1. The first Rental Period begins on the Closing Date and ends on April 1, 2014.

*"Lease and Right of Entry Agreement"* means the Lease and Right of Entry Agreement, dated as of April 1, 2013, by and between the City, as lessor, and the Corporation, as lessee, together with any duly authorized and executed amendments thereto.

*"State"* means the State of California.

*"Term of this Lease Agreement"* or *"Term"* means the time during which this Lease Agreement is in effect, as provided in Section 4.2.

#### Section 1.2. Interpretation.

(a) Unless the context otherwise indicates, words expressed in the singular include the plural and vice versa and the use of the neuter, masculine, or feminine gender is for convenience only and include the neuter, masculine or feminine gender, as appropriate.

(b) Headings of articles and sections herein and the table of contents hereof are solely for convenience of reference, do not constitute a part hereof and do not affect the meaning, construction or effect hereof.

(c) All references herein to "Articles," "Sections" and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Lease Agreement; the words "herein," "hereof," "hereby," "hereunder" and other words of similar import refer to this Lease Agreement as a whole and not to any particular Article, Section or subdivision hereof.

Section 1.3. Exhibits. The following exhibits are attached to, and by this reference made a part of, this Lease Agreement:

Exhibit A: The description of the Property.

Exhibit B: The schedule of Lease Payments to be paid by the City hereunder with respect to the Property, showing the Lease Payment Date and amount of each such Lease Payment.

## ARTICLE II

### REPRESENTATIONS, COVENANTS AND WARRANTIES

Section 2.1. Representations, Covenants and Warranties of the City. The City represents, covenants and warrants to the Corporation and the Assignee as follows:

(a) *Due Organization and Existence*. The City is a municipal corporation and chartered city, duly organized and existing under and by virtue of the laws of the State, has full legal right, power and authority under the laws of the State to enter into the Lease and Right of Entry Agreement and this Lease Agreement and to carry out and consummate all transactions on its part contemplated hereby and thereby, and by proper action the City has duly authorized the execution and delivery by the City of the Lease and Right of Entry Agreement and this Lease Agreement.

(b) *Due Execution*. The representative of the City executing the Lease and Right of Entry Agreement and this Lease Agreement has been fully authorized to execute the same by a resolution duly adopted by the City Council of the City.

(c) *Valid, Binding and Enforceable Obligations*. The Lease and Right of Entry Agreement and this Lease Agreement have been duly authorized, executed and delivered by the City and constitute the legal, valid and binding agreements of the City enforceable against the City in accordance with their respective terms.

(d) *No Conflicts*. The execution and delivery of the Lease and Right of Entry Agreement and this Lease Agreement, the consummation of the transactions therein and herein contemplated and the fulfillment of or compliance with the terms and conditions thereof and hereof, do not and will not conflict with or constitute a violation or breach of or default (with due notice or the passage of time or both) under any applicable law or administrative rule or regulation, or any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, lease, contract or other agreement or instrument to which the City is a party or by which it or its properties are otherwise subject or bound, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the City, which conflict, violation, breach, default, lien, charge or encumbrance would have consequences that would materially and adversely affect the consummation of the transactions contemplated by the Lease and Right of Entry Agreement or this Lease Agreement or the financial condition, assets, properties or operations of the City.

(e) *Consents and Approvals*. No consent or approval of any trustee or holder of any indebtedness of the City or of the voters of the City, and no consent, permission, authorization, order or license of, or filing or registration with, any governmental authority is necessary in connection with the execution and delivery of the Lease and Right of Entry Agreement and this Lease Agreement, or the consummation of any transaction therein and herein contemplated, except as have been obtained or made and as are in full force and effect.

(f) *No Litigation*. There is no action, suit, proceeding, inquiry or investigation before or by any court or federal, state, municipal or other governmental authority pending or, to the best knowledge of the City after reasonable investigation, threatened against or affecting the City or the assets, properties or operations of the City which, if determined adversely to the City or its interests, would have a material and adverse effect upon the consummation of the transactions contemplated by or the validity of the Lease and Right of Entry Agreement and this Lease Agreement or upon the financial condition, assets, properties or operations of the City, and the City is not in default with respect to any order or decree of any court or any order, regulation or demand of any federal, state, municipal or other governmental authority, which default might



have consequences that would materially and adversely affect the consummation of the transactions contemplated by this Lease Agreement, or the financial condition, assets, properties or operations of the City.

(g) *Sufficient Funds*. The City reasonably believes that sufficient funds can be obtained to make all Lease Payments and all other amounts required to be paid pursuant to this Lease Agreement.

(h) *No Defaults*. The City has never non-appropriated or defaulted under any of its payment or performance obligations or covenants, either under any financing lease of the same general nature as this Lease Agreement, or under any of its bonds, notes, or other debt obligations.

(i) *Fee Title*. The City is the owner in fee of title to the Property or, if it is not the fee owner, it has the right of entry thereon. No lien or encumbrance on the Property materially impairs the City's use of the Property for the purposes for which it is, or may reasonably be expected to be, held.

(j) *Use of the Property*. During the term of this Lease Agreement, the Property will be used by the City only for the purpose of performing one or more governmental or proprietary functions of the City consistent with the permissible scope of the City's authority.

(k) *Change in Financial Condition*. The City has experienced no material change in its financial condition since June 30, 2012.

(l) *Hazardous Substances*. Except to the extent disclosed to the Assignee, the Property is free of all Hazardous Substances, and the City is in full compliance with all Applicable Environmental Laws.

(m) *Flooding Risk*. The Property is not located in a flood hazard area and has never been subject to material damage from flooding.

(n) *Value of Property*. The insured value of the Property (real property replacement cost) is not less than \$25,000,000.

(o) *Essential to City Operations*. The Property is essential to the City's efficient and economic operations and the lease thereof for use by the City is in the best interest of the City.

Section 2.2. Representations, Covenants and Warranties of The Corporation. The Corporation represents, covenants and warrants to the City and the Assignee as follows:

(a) *Due Organization and Existence*. The Corporation is a nonprofit, public benefit corporation duly organized and existing under the laws of the State, has full legal right, power and authority to enter into the Lease and Right of Entry Agreement, this Lease Agreement and the Assignment Agreement and to carry out and consummate all transactions on its part contemplated hereby and thereby, and by proper action the Corporation has duly authorized the execution and delivery by the Corporation of the Lease and Right of Entry Agreement, this Lease Agreement and the Assignment Agreement.

(b) *Due Execution*. The representative of the Corporation executing the Lease and Right of Entry Agreement, this Lease Agreement and the Assignment Agreement is fully authorized to execute the same under official action taken by the Board of Directors of the Corporation.

(c) *Valid, Binding and Enforceable Obligations.* The Lease and Right of Entry Agreement, this Lease Agreement and the Assignment Agreement have been duly authorized, executed and delivered by the Corporation and constitute the legal, valid and binding agreements of the Corporation, enforceable against the Corporation in accordance with their respective terms.

(d) *No Conflicts.* The execution and delivery of the Lease and Right of Entry Agreement, this Lease Agreement and the Assignment Agreement, the consummation of the transactions herein contemplated and the fulfillment of or compliance with the terms and conditions hereof, do not and will not conflict with or constitute a violation or breach of or default (with due notice or the passage of time or both) under any applicable law or administrative rule or regulation, or any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, lease, contract or other agreement or instrument to which the Corporation is a party or by which it or its properties are otherwise subject or bound, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Corporation, which conflict, violation, breach, default, lien, charge or encumbrance would have consequences that would materially and adversely affect the consummation of the transactions contemplated by the Lease and Right of Entry Agreement, this Lease Agreement and the Assignment Agreement or the financial condition, assets, properties or operations of the Corporation.

(e) *Consents and Approvals.* No consent or approval of any trustee or holder of any indebtedness of the Corporation, and no consent, permission, authorization, order or license of, or filing or registration with, any governmental authority is necessary in connection with the execution and delivery of the Lease and Right of Entry Agreement, this Lease Agreement or the Assignment Agreement, or the consummation of any transaction herein or therein contemplated, except as have been obtained or made and as are in full force and effect.

(f) *No Litigation.* There is no action, suit, proceeding, inquiry or investigation before or by any court or federal, state, municipal or other governmental authority pending or, to the best knowledge of the Corporation after reasonable investigation, threatened against or affecting the Corporation or the assets, properties or operations of the Corporation which, if determined adversely to the Corporation or its interests, would have a material and adverse effect upon the consummation of the transactions contemplated by or the validity of the Lease and Right of Entry Agreement, this Lease Agreement or the Assignment Agreement, or upon the financial condition, assets, properties or operations of the Corporation, and the Corporation is not in default with respect to any order or decree of any court or any order, regulation or demand of any federal, state, municipal or other governmental authority, which default might have consequences that would materially and adversely affect the consummation of the transactions contemplated by the Lease and Right of Entry Agreement, this Lease Agreement or the Assignment Agreement or the financial condition, assets, properties or operations of the Corporation.

### ARTICLE III

#### DEPOSIT OF MONEYS

##### DEPOSIT AND APPLICATION OF FUNDS

Section 3.1. Deposit of and Application of Funds. On the Closing Date, the Assignee shall cause the amount of \$19,859,514.80 to be transferred to the Escrow Bank for deposit in the 2005 Escrow Fund to be applied to the defeasance of the 2005 Certificates. Such amounts shall be derived from amounts paid by the Assignee in consideration for the purchase of the assignment under the Assignment Agreement. In addition, a portion of the amount paid by the Assignee under the Assignment Agreement (net of amounts retained by the Assignee for its fees) (a) in the amount of \$600,000 shall be deposited in the Reserve Fund (hereinafter defined), and (b) in the amount of \$515,485.20 shall be applied by the Assignee to pay financing costs of the transaction. The City will deposit an additional \$400,000.00 in the Reserve Fund, for a total deposit therein of \$1,000,000.00.

Section 3.2. Termination of 2005 Lease Agreement. As a result of the defeasance of the 2005 Certificates, the 2005 Lease Agreement has been discharged and terminated in accordance with its terms. On the Closing Date, the City shall enter into an agreement terminating the 2005 Lease Agreement.

## ARTICLE IV

### AGREEMENT TO LEASE; TERM OF THIS LEASE AGREEMENT; LEASE PAYMENTS

#### Section 4.1. Sublease of Property by the Corporation Back to the City.

(a) The Corporation hereby subleases the Property to the City, and the City hereby subleases the Property from the Corporation, upon the terms and conditions set forth in this Lease Agreement.

(b) The leasing of the Property by the City to the Corporation pursuant to the Lease and Right of Entry Agreement shall not affect or result in a merger of the City's subleasehold estate pursuant to this Lease Agreement and its fee estate as lessor under the Lease and Right of Entry Agreement.

Section 4.2. Term. The Term of this Lease Agreement commences on the date of recordation of this Lease Agreement and ends on April 1, 2033, or the date on which all of the Lease Payments have been paid in full. If on April 1, 2033, the Lease Payments payable hereunder shall have been abated at any time and for any reason and not otherwise paid from rental interruption insurance or other sources, or the City shall have defaulted in its payment of Lease Payments hereunder or any Event of Default has occurred and continues without cure by the City, then the term of this Lease Agreement shall be extended for the actual period of abatement or for so long as the default remains uncured, as necessary to accommodate the final payment of all Lease Payments due hereunder, not to exceed ten (10) years. The provisions of this Section 4.2 are subject to the provisions of Section 6.1 relating to the taking in eminent domain of the Property or any portion thereof.

#### Section 4.3. Lease Payments.

(a) *Obligation to Pay.* Subject to the provisions of Sections 6.1 and 6.3 and the provisions of Article IX, the City agrees to pay to the Corporation, its successors and assigns, the Lease Payments (denominated into components of principal and interest) in the respective amounts specified in Exhibits C attached hereto (including any supplements thereto) and by this reference incorporated herein, to be due and payable in immediately available funds on each of the respective Lease Payment Dates specified in Exhibit C. The Lease Payments payable in any Rental Period with respect to the Property shall be for the use of the Property during such Rental Period.

The interest component of the portion of the Lease Payments for the period beginning on the Closing Date and ending on April 1, 2016, have been calculated based on an interest rate of 3.30% per annum, on an actual days elapsed basis. The interest component of the portion of the Lease Payments for the period beginning on April 2, 2016 and ending on April 1, 2033, will be calculated based on the U.S. dollar one month LIBOR, plus 2.125% per annum, but in no case lower than 3.30% per annum, on an actual days elapsed basis. The City understands that the Assignee will send an invoice to the City in advance of each Lease Payment Date, however, failure to receive an invoice shall not relieve the City of its obligation to make timely Lease Payments.

(b) *Additional Payments.* In addition to the Lease Payments set forth herein, the City agrees to pay as Additional Payments all of the following:

(i) all taxes and assessments of any nature whatsoever, including but not limited to excise taxes, ad valorem taxes, ad valorem and specific lien special assessments and

gross receipts taxes, if any, levied upon the Property or upon any interest of the Corporation therein or in this Lease Agreement; provided, however, the City may, at the City's expense and in its name, in good faith contest any such taxes and assessments and, in the event of such contest, may permit such taxes and assessments to remain unpaid during the period of such contest and appeal therefrom unless the Corporation shall notify the City that, in the opinion of Bond Counsel, by nonpayment of any such items, the interest of the Corporation in the Property will be materially endangered or the Property, or any portion thereof, will be subject to loss or forfeiture, in which event the City shall promptly pay such taxes and assessments or provide the Corporation with full security against any loss which may result from nonpayment, in form satisfactory to the Corporation;

(ii) insurance premiums, if any, on all insurance required under the provisions of Article V hereof;

(iii) any other reasonable fees, costs or expenses incurred by the Corporation in connection with the execution, performance or enforcement of this Lease Agreement or any of the transactions contemplated hereby or related to the Property, including, without limitation, any amounts which may become due; provided, however, the City shall not be responsible for any costs incurred by the Corporation associated with any assignment made by the Assignee; and

(iv) any amounts required to be paid as rebate to the United States pursuant to the Tax Certificate.

Amounts constituting Additional Payments payable hereunder shall be paid by the City directly to the person or persons to whom such amounts shall be payable. The City shall pay all such amounts when due or at such later time as such amounts may be paid without penalty or, in any other case, within 60 days after notice in writing from the Corporation to the City stating the amount of Additional Payments then due and payable and the purpose thereof.

(c) *Effect of Prepayment.* If the City prepays all Lease Payments in full under Sections 9.2 or 9.3, the City's obligations under this Section will thereupon cease and terminate. If the City prepays the Lease Payments in part but not in whole under Section 9.3, the principal components of the remaining Lease Payments will be reduced on a pro rata basis; and the interest component of each remaining Lease Payment will be reduced on a pro rata basis.

(d) *Rate on Overdue Payments.* If the City fails to make any of the payments required in this Section 4.3, the payment in default will continue as an obligation of the City until the amount in default has been fully paid, and the City agrees to pay the same with interest thereon, from the date of default to the date of payment at the rate of 12% per annum or any lesser maximum legal rate.

(e) *Fair Rental Value.* The Lease Payments coming due and payable during each Rental Period constitute the total rental for the Property for such Rental Period, and will be paid by the City in each Rental Period for and in consideration of the right of the use and occupancy of, and the continued quiet use and enjoyment of the Property during each Rental Period. The parties hereto have agreed and determined that the total Lease Payments are not in excess of the fair rental value of the Property. In making this determination, consideration has been given to the estimated fair market value of the Property, the estimated replacement cost of the Property, the uses and purposes which may be served by the Property and the benefits therefrom which will accrue to the City and the general public.

(f) *Source of Payments; Budget and Appropriation.* The Lease Payments are payable from any source of legally available funds of the City, subject to the provisions of Sections 6.1, 6.3 and 9.1. The City covenants to take such action as may be necessary to include all Lease Payments in each of its annual budgets during the Term of this Lease Agreement and to make the necessary annual appropriations for all such Lease Payments. The covenants on the part of the City herein contained constitute duties imposed by law and it is the duty of each and every public official of the City to take such action and do such things as are required by law in the performance of the official duty of such officials to enable the City to carry out and perform the covenants and agreements in this Lease Agreement agreed to be carried out and performed by the City.

(g) *Allocation of Rental Payments.* All Lease Payments received shall be applied first to the interest components of the Lease Payments due hereunder, then to the principal components of the Lease Payments due hereunder, but no such application of any payments that are less than the total rental due and owing shall be deemed a waiver of any default hereunder.

(h) *No Offsets.* Notwithstanding any dispute between the Corporation, or Assignee as the Corporation's assignee, and the City, the City shall make all Lease Payments when due without deduction or offset of any kind and shall not withhold any Lease Payments pending the final resolution of such dispute.

(i) *Assignment Agreement.* The City understands and agrees that all Lease Payments have been assigned by the Corporation to the Assignee under the Assignment Agreement recorded concurrently herewith, and the City hereby assents to such assignment. The Corporation hereby directs the City, and the City hereby agrees, to pay to the Assignee (or to its assignees as directed pursuant to Section 7.4 hereof) all payments payable by the City under this Section 4.3 and all amounts payable by the City under Article IX. Lease Payments shall be paid to the Assignee as follows:

Bank Name:	Rabobank, N.A.
Address:	915 Highland Pointe Drive, Suite 350 Roseville, CA 95678
ABA Routing Number:	122238420
Account #	
Reference:	

Section 4.4. Additional Security. In order to provide additional security to the Assignee, the City has agreed to maintain a debt service reserve fund (the "Reserve Fund") in the total amount of \$1,000,000, to be held by the Assignee, which Reserve Fund may be drawn upon by the Assignee if the City's fails to make any Lease Payment on or prior to a specified Lease Payment Date. The Reserve Fund is hereby pledged by the City for such purposes. If the Assignee is required to draw upon the Reserve Fund to satisfy a failed Lease Payment, the City agrees to replenish the Reserve Fund to its required amount within 90 days of such draw.

Section 4.5. Quiet Enjoyment. Throughout the Term of this Lease Agreement, the Corporation will provide the City with quiet use and enjoyment of the Property and the City will peaceably and quietly have and hold and enjoy the Property, without suit, trouble or hindrance from the Corporation, except as expressly set forth in this Lease Agreement. The Corporation will, at the request of the City and at the City's cost, join in any legal action in which the City asserts its right to such possession and enjoyment to the extent the Corporation may lawfully do so. Notwithstanding the foregoing, the Corporation and the Assignee have the right to inspect the Property as provided in Sections 5.12(c) and 7.2.

Section 4.6. Title. At all times during the Term of this Lease Agreement, the City shall hold title to the Property, including all additions which comprise fixtures, repairs, replacements

or modifications thereto, subject to Permitted Encumbrances and subject to the provisions of Section 7.2.

Upon the termination of this Lease Agreement (other than under Section 8.2(b) hereof), all right, title and interest of the Corporation in and to the Property shall be transferred to and vested in the City. Upon the payment in full of all Lease Payments allocable to the Property, or upon the deposit by the City of security for such Lease Payments as provided in Section 9.1, all right, title and interest of the Corporation in and to the Property shall be transferred to and vested in the City. The Corporation agrees to take any and all steps and execute and record any and all documents reasonably required by the City to consummate any such transfer of title.

## ARTICLE V

### MAINTENANCE; TAXES; INSURANCE; USE LIMITATIONS; AND OTHER MATTERS

Section 5.1. Maintenance, Utilities, Taxes and Assessments. Throughout the Term of the Lease Agreement, as part of the consideration for the rental of the Property, all improvement, repair and maintenance of the Property shall be the responsibility of the City and shall pay for or otherwise arrange for the payment of the cost of the repair and replacement of the Property resulting from ordinary wear and tear or want of care on the part of the City or any assignee or sublessee thereof. In exchange for the Lease Payments herein provided, the Corporation agrees to provide only the Property, as hereinbefore more specifically set forth. The City waives the benefits of subsections 1 and 2 of section 1932 of the California Civil Code, but such waiver shall not limit any of the rights of the City under the terms of this Lease Agreement.

The City shall also pay or cause to be paid all taxes and assessments of any type or nature, if any, charged to the Corporation or the City affecting the Property or the respective interests or estates therein; provided that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the City shall be obligated to pay only such installments as are required to be paid during the Term of the Lease Agreement as and when the same become due.

The City may, at the City's expense and in its name, in good faith contest any such taxes, assessments, utility and other charges and, in the event of any such contest, may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom unless the Corporation shall notify the City that, in the opinion of Independent Counsel, by nonpayment of any such items, the interest of the Corporation in the Property will be materially endangered or the Property or any part thereof will be subject to loss or forfeiture, in which event the City shall promptly pay such taxes, assessments or charges or provide the Corporation with full security against any loss which may result from nonpayment, in form satisfactory to the Corporation.

Section 5.2. Modification of Property. The City shall, at its own expense, have the right to remodel the Property or to make additions, modifications and improvements to the Property. All additions, modifications and improvements to the Property shall thereafter comprise part of the Property and be subject to the provisions of this Lease Agreement. Such additions, modifications and improvements shall not in any way damage the Property, substantially alter its nature, cause the interest component of Lease Payments to be subject to federal income taxes or cause the Property to be used for purposes other than those authorized under the provisions of State and federal law; and the Property, upon completion of any additions, modifications and improvements made thereto pursuant to this Section 5.2, shall be of a value which is not substantially less than the value of the Property immediately prior to the making of such additions, modifications and improvements. The City will not permit any mechanic's or other lien to be established or remain against the Property for labor or materials furnished in connection with any remodeling, additions, modifications, improvements, repairs, renewals or replacements made by the City pursuant to this Section 5.2; provided that if any such lien is established and the City shall first notify the Corporation of the City's intention to do so, the City may in good faith contest any lien filed or established against the Property, and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom and shall provide the Corporation with full security against any loss or forfeiture which might arise from the nonpayment of any such item, in form satisfactory to the Corporation. The Corporation will cooperate fully in any such contest, upon the request and at the expense of the City.



Section 5.3. Public Liability Insurance. The City shall maintain or cause to be maintained throughout the Term of this Lease Agreement a standard comprehensive general insurance policy or policies in protection of the City, the Assignee and their respective members, officers, agents, employees and assigns. Said policy or policies shall provide for indemnification of said parties against direct or contingent loss or liability for damages for bodily and personal injury, death or property damage occasioned by reason of the operation of the Property. Such policy or policies must provide coverage with limits of at least \$1,000,000 per occurrence, \$3,000,000 in the aggregate, for bodily injury and property damage coverage, and excess liability umbrella coverage of at least \$5,000,000, and in all events in form and amount (including any deductibles) satisfactory to the Assignee. Such insurance may be maintained as part of or in conjunction with any other insurance coverage carried by the City (including, with Assignee's prior written consent, a self insurance program), and may be maintained in whole or in part in the form of the participation by the City in a joint powers authority or other program providing pooled insurance. The City will apply the proceeds of such liability insurance toward extinguishment or satisfaction of the liability with respect to which such proceeds have been paid.

Section 5.4. Casualty Insurance. The City will procure and maintain, or cause to be procured and maintained, throughout the Term of this Lease Agreement, casualty insurance against loss or damage to all buildings situated on the Property and owned by the City, in an amount at least equal to the greater of the replacement value of the insured buildings and the aggregate principal amount of the Lease Payments outstanding, with a lender's loss payable endorsement. Such insurance must, as nearly as practicable, cover loss or damage by all "special form" perils. Such insurance shall be subject to a deductible of not to exceed \$250,000. Such insurance may be maintained as part of or in conjunction with any other insurance coverage carried by the City (including, with the Assignee's prior written consent, a self insurance program), and may be maintained in whole or in part in the form of the participation by the City in a joint powers authority or other program providing pooled insurance. The City will apply the Net Proceeds of such insurance as provided in Section 6.2.

Section 5.5. Rental Interruption Insurance. The City shall maintain, or cause to be maintained, throughout the Term of the Lease Agreement rental interruption or use and occupancy insurance to cover loss, total or partial, of the use of any part of the Property constituting structures, if any, during the Term of the Lease Agreement as a result of any of the hazards covered in the insurance required by Section 5.4 hereof, if any, in an amount at least equal to two times maximum annual Lease Payments. The Net Proceeds of such insurance shall be paid to the Trustee and deposited in the Lease Payment Fund and shall be credited towards the payment of the Lease Payments in the order in which such Lease Payments come due and payable. The City may not satisfy the requirements of this Section 5.5 with self-insurance

Section 5.6. Worker's Compensation Insurance. If required by applicable California law, the City shall carry worker's compensation insurance covering all employees on, in, near or about the Property and, upon request, shall furnish to the Corporation certificates evidencing such coverage throughout the Term of this Lease Agreement. Such insurance may be maintained as part of or in conjunction with any other insurance coverage carried by the City (including a self insurance program), and may be maintained in whole or in part in the form of the participation by the City in a joint powers authority or other program providing pooled insurance.

Section 5.7. Insurance Net Proceeds; Form of Policies. All insurance policies (or riders) required by this Article V and provided by third party insurance carriers shall be taken out and maintained with responsible insurance companies organized under the laws of one of the states of the United States and qualified to do business in the State, and shall contain a provision that the insurer shall not cancel or revise coverage thereunder without giving written notice to the insured parties at least ten days before the cancellation or revision becomes effective. Each

insurance policy or rider required by Sections 5.3, 5.4 and 5.5 and provided by third party insurance carriers shall name the City and the Assignee as insured parties and the Assignee as loss payee and shall include a lender's loss payable endorsement for the benefit of the Assignee. In the case of coverage pursuant to Section 5.3, the Assignee shall be added as an additional insured for coverage up to \$1,000,000. Prior to the Closing Date, the City will deposit with the Assignee policies (and riders and endorsements, if applicable) evidencing any such insurance procured by it, or a certificate or certificates of the respective insurers stating that such insurance is in full force and effect. Before the expiration of any such policy (or rider), the City will furnish to the Assignee evidence that the policy has been renewed or replaced by another policy conforming to the provisions of this Article V unless such insurance is no longer obtainable, in which event the City shall notify the Assignee of such fact.

Section 5.8. Advances. If the City shall fail to perform any of its obligations under this Article V, the Corporation may, but shall not be obligated to, take such action as may be necessary to cure such failure, including the advancement of money, and the City shall be obligated to repay all such advances as soon as possible, with interest at a rate equal to the rate then payable with respect to this Lease Agreement from the date of the advance to the date of repayment.

Section 5.9. Installation of District's Personal Property. The City may at any time and from time to time, in its sole discretion and at its own expense, install or permit to be installed other items of equipment or other personal property in or upon the Property. All such items shall remain the sole property of the City, in which the Corporation has no interest, and may be modified or removed by the City at any time. The City must repair and restore any and all damage to the Property resulting from the installation, modification or removal of any such items. Nothing in this Lease Agreement prevents the City from purchasing or leasing items to be installed under this Section under a lease or conditional sale agreement, or subject to a vendor's lien or security agreement, as security for the unpaid portion of the purchase price thereof, provided that no such lien or security interest may attach to any part of the Property.

Section 5.10. Liens. The City shall not, directly or indirectly, create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to the Property, other than the respective rights of the Corporation and the City as provided herein and Permitted Encumbrances. Except as expressly provided in this Article V, the City shall promptly, at its own expense, take such action as may be necessary to duly discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim, for which it is responsible, if the same shall arise at any time. The City shall reimburse the Corporation for any expense incurred by it in order to discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim.

Section 5.11. No Condemnation. The City hereby covenants and agrees, to the extent it may lawfully do so, that so long as this Lease Agreement remains unpaid, the City will not exercise the power of condemnation with respect to the Property. The City further covenants and agrees, to the extent it may lawfully do so, that if for any reason the foregoing covenant is determined to be unenforceable or if the City should fall or refuse to abide by such covenant and condemns the Property, the value of the Property shall not be less than the principal and interest components of the Lease Paymentsase.

Section 5.12. Environmental Covenants.

(a) *Compliance with Laws; No Hazardous Substances*. The City will comply with all Applicable Environmental Laws with respect to the Property and will not use, store, generate, treat, transport, or dispose of any Hazardous Substance thereon or in a manner that would

cause any Hazardous Substance to later flow, migrate, leak, leach, or otherwise come to rest on or in the Property.

(b) *Notification of Assignee.* The City will transmit copies of all notices, orders, or statements received from any governmental entity concerning violations or asserted violations of Applicable Environmental Laws with respect to the Property and any operations conducted thereon or any conditions existing thereon to the Assignee, and the City will notify the Assignee in writing immediately of any release, discharge, spill, or deposit of any Hazardous Substance that has occurred or is occurring that in any way affects or threatens to affect the Property, or the people, structures, or other property thereon, provided that no such notification shall create any liability or obligation on the part of the Assignee.

(c) *Access for Inspection.* The City will permit the Assignee, its agents, or any experts designated by the Assignee to have full access to the Property during reasonable business hours for purposes of such independent investigation of compliance with all Applicable Environmental Laws, provided that the Assignee has no obligation to do so, or any liability for any failure to do so, or any liability should it do so.

Section 5.13. City Consent to Assignment Agreements. Certain of the Corporation's rights under this Lease Agreement, including the right to receive and enforce payment of the Lease Payments, and the Lease and Right of Entry Agreement, are being assigned to the Assignee pursuant to the Assignment Agreement. The City hereby consents to such assignment and to any additional assignment of such rights by the Assignee or its assignees. The City agrees to execute all documents, including notices of assignment and chattel mortgages or financing statements, which may be reasonably requested by the Assignee or its assignees to protect their interests in the Property and in this Lease Agreement.

## ARTICLE VI

### DAMAGE, DESTRUCTION AND EMINENT DOMAIN; USE OF NET PROCEEDS

Section 6.1. Eminent Domain. If all of the Property shall be taken permanently under the power of eminent domain or sold to a government threatening to exercise the power of eminent domain, the Term of this Lease Agreement shall cease as of the day possession shall be so taken. If less than all of the Property shall be taken permanently, or if all of the Property or any part thereof shall be taken temporarily under the power of eminent domain, (1) this Lease Agreement shall continue in full force and effect and shall not be terminated by virtue of such taking and the parties waive the benefit of any law to the contrary, and (2) there shall be a partial abatement of Lease Payments in an amount equal to the application of the Net Proceeds of any eminent domain award to the prepayment of the Lease Payments hereunder, in an amount to be agreed upon by the City and the Corporation and communicated to the Assignee such that the resulting Lease Payments represent fair consideration for the use and occupancy of the remaining usable portion of the Property.

#### Section 6.2. Application of Net Proceeds.

##### (a) *From Insurance Award.*

(i) Any Net Proceeds of insurance against damage to or destruction of any part of the Property collected by the City in the event of any such damage or destruction shall be deposited by the City promptly upon receipt thereof in a special fund designated as the "Insurance and Condemnation Fund."

(ii) Within ninety (90) days following the date of such deposit, the City shall determine and notify the Corporation and the Assignee in writing of its determination either (A) that the replacement, repair, restoration, modification or improvement of the Property is not economically feasible or in the best interest of the City and the Net Proceeds, together with other moneys available therefor, are sufficient to cause the prepayment of the principal components of all unpaid Lease Payments pursuant to Section 9.3 hereof, or (B) that all or a portion of such Net Proceeds are to be applied to the prompt replacement, repair, restoration, modification or improvement of the damaged or destroyed portions of the Property and the fair rental value of the Property following such repair, restoration, replacement, modification or improvement will at least equal the unpaid Lease Payments.

(iii) In the event the City's determination is as set forth in clause (A) of subparagraph (ii) above, such Net Proceeds shall be promptly applied to the prepayment of Lease Payments pursuant to Section 9.3 of this Lease Agreement; *provided, however,* that in the event of damage or destruction of the Property in full, such Net Proceeds may be so applied only if sufficient, together with other moneys available therefor, to cause the prepayment of the principal components of all unpaid Lease Payments pursuant to Section 9.3 of this Lease Agreement and otherwise such Net Proceeds shall be applied to the prompt replacement, repair, restoration, modification or improvement of the Property; *provided further, however,* that in the event of damage or destruction of the Property in part, such Net Proceeds may be applied to the prepayment of Lease Payments only if the resulting Lease Payments following such prepayment from Net Proceeds represent fair consideration for the remaining portions of the Property and otherwise such Net Proceeds shall be applied to the prompt replacement, repair, restoration, modification or improvement of the Property, evidenced by a certificate signed by a City Representative.

(iv) In the event the City's determination is as set forth in clause (B) of subparagraph (ii) above, such Net Proceeds shall be applied to the prompt replacement, repair, restoration, modification or improvement of the damaged or destroyed portions of the Property by the City, and until the Property has been restored to its prior condition, the City shall not place any lien or encumbrance on the Property that is senior to this Lease Agreement without the prior written consent of the Assignee, at its sole discretion.

(b) *From Eminent Domain Award.* If all or any part of the Property shall be taken by eminent domain proceedings (or sold to a government threatening to exercise the power of eminent domain) the Net Proceeds therefrom shall be deposited by the City in the Insurance and Condemnation Fund and shall be applied and disbursed as follows:

(i) If the City has given written notice to the Corporation and the Assignee of its determination that (A) such eminent domain proceedings have not materially affected the operation of the Property or the ability of the City to meet any of its obligations with respect to the Property under this Lease Agreement, and (B) such proceeds are not needed for repair or rehabilitation of the Property, the City shall so certify to the Corporation and the Assignee, and the City shall credit such proceeds towards the prepayment of the Lease Payments pursuant to Section 9.3 of this Lease Agreement.

(ii) If the City has given written notice to the Corporation and the Assignee of its determination that (A) such eminent domain proceedings have not materially affected the operation of the Property or the ability of the City to meet any of its obligations with respect to the Property under this Lease Agreement, and (B) such proceeds are needed for repair, rehabilitation or replacement of the Property, the City shall so certify to the Corporation and the Assignee, and the City shall apply such amounts for such repair or rehabilitation.

(iii) If (A) less than all of the Property shall have been taken in such eminent domain proceedings or sold to a government threatening the use of eminent domain powers, and if the City has given written notice to the Corporation and the Assignee of its determination that such eminent domain proceedings have materially affected the operation of the Property or the ability of the City to meet any of its obligations with respect to the Property under the Lease Agreement or (B) all of the Property shall have been taken in such eminent domain proceedings, then the City shall credit such proceeds towards the prepayment of the Lease Payments pursuant to Section 9.3 of this Lease Agreement.

(iv) In making any determination under this Section 6.2(b), the City may, but shall not be required to, obtain at its expense, the report of an independent engineer or other independent professional consultant, a copy of which shall be filed with the Corporation and the Assignee. Any such determination by the City shall be final.

Section 6.3. Abatement of Lease Payments in the Event of Damage or Destruction. Lease Payments shall be abated during any period in which, by reason of damage or destruction, there is substantial interference with the use and occupancy by the City of the Property or any portion thereof to the extent to be agreed upon by the City, the Corporation and the Assignee. The parties agree that the amounts of the Lease Payments under such circumstances shall not be less than the amounts of the unpaid Lease Payments as are then set forth in Exhibit C, unless such unpaid amounts are determined to be greater than the fair rental value of the portions of the Property not damaged or destroyed, based upon an appropriate method of valuation, in which event the Lease Payments shall be abated such that they represent said fair rental value.

Such abatement shall continue for the period commencing with such damage or destruction and ending with the substantial completion of the work of repair or reconstruction as evidenced by a Certificate of a District Representative to the Corporation and the Assignee. In the event of any such damage or destruction, this Lease Agreement shall continue in full force and effect and the City waives any right to terminate this Lease Agreement by virtue of any such damage and destruction. Notwithstanding the foregoing, there shall be no abatement of Lease Payments under this Section 6.3 to the extent that (a) the proceeds of rental interruption insurance or (b) amounts in the Insurance and Condemnation Fund are available to pay Lease Payments which would otherwise be abated under this Section 6.3, it being hereby declared that such proceeds and amounts constitute special funds for the payment of the Lease Payments.

## ARTICLE VII

### OTHER COVENANTS OF THE CITY

Section 7.1. Disclaimer of Warranties. THE CORPORATION MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR FITNESS FOR THE USE CONTEMPLATED BY THE CITY OF THE PROPERTY OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO THE PROPERTY. IN NO EVENT SHALL THE CORPORATION OR ITS ASSIGNS BE LIABLE FOR INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH OR ARISING OUT OF THE LEASE AND RIGHT OF ENTRY AGREEMENT, THIS LEASE AGREEMENT OR THE TRUST AGREEMENT FOR THE EXISTENCE, FURNISHING, FUNCTIONING OR THE CITY'S USE OF THE PROPERTY.

Section 7.2. Access to the Property; Grant and Conveyance of Right of Entry. The City agrees that the Corporation, and the Corporation's successors or assigns, has the right at all reasonable times, following at least 48 hours written notice provided to the City, to enter upon and to examine and inspect the Property or any part thereof. The City further agrees that the Corporation, and the Corporation's successors or assigns shall have such rights of access to the Property or any component thereof, following at least 48 hours written notice provided to the City, as may be reasonably necessary to cause the proper maintenance of the Property if the City fails to perform its obligations hereunder. Neither the Corporation nor any of its assigns has any obligation to cause such proper maintenance.

The City further grants, conveys and confirms to the Corporation, for the use, benefit and enjoyment of the Corporation, its successors in interest to the Property, including the Assignee, and its sublessees, and their respective employees, invitees, agents, independent contractors, patrons, customers, guests and members of the public visiting the Property, a right of entry which shall be irrevocable for the Term of this Lease Agreement over, across and under the property of the City adjacent to the Property to and from the Property for the purpose of: (a) ingress, egress, passage or access to and from the Property by pedestrian or vehicular traffic; (b) installation, maintenance and replacement of utility wires, cables, conduits and pipes; and (c) other purposes and uses necessary or desirable for access to and from and for operation and maintenance of the Property.

Section 7.3. Release and Indemnification Covenants. The City hereby indemnifies the Corporation, the Assignee and their respective officers, agents, successors and assigns against all claims, losses and damages, including legal fees and expenses, arising out of (a) the use, maintenance, condition or management of, or from any work or thing done on the Property by the City, (b) any breach or default on the part of the City in the performance of any of its obligations under this Lease Agreement, (c) any negligence or willful misconduct of the City or of any of its agents, contractors, servants, employees or licensees with respect to the Property, (d) any intentional misconduct or negligence of any sublessee of the City with respect to the Property, (e) the acquisition, construction, improvement and equipping of the Property, (f) the clean-up of any Hazardous Substances or toxic wastes from the Property, (g) any claim alleging violation of any Applicable Environmental Laws, or the authorization of payment of the costs thereof, or (h) any loss of the federal income tax exemption of the interest portion of Lease Payments and any interest or penalties imposed by the Internal Revenue Service on the Assignee in connection therewith, any such amount with respect to past Lease Payments to be paid to the Assignee in a single lump sum payment upon demand of the Assignee, and any such amount with respect to future Lease Payments to be paid as an increase in the interest portion of Lease Payments such that the after tax yield to the Assignee shall remain the same following the loss of the federal income tax exemption as it was before such loss of tax

exemption. No indemnification is made under this Section 7.3 or elsewhere in this Lease Agreement for willful misconduct or gross negligence under this Lease Agreement by the Corporation, the Assignee, or their respective officers, agents, employees, successors or assigns. The indemnification hereunder shall continue in full force and effect notwithstanding the full payment of all obligations under this Lease Agreement or the termination of the Term of this Lease Agreement for any reason. The City and the Corporation each agree to promptly give notice to each other and the Assignee of any claim or liability hereby indemnified against following learning thereof.

Section 7.4. Assignment Agreement by the Corporation. The Corporation's rights, title and interests under this Lease Agreement, including the right to receive and enforce payment of the Lease Payments to be made by the City hereunder, have been assigned to the Assignee. The City hereby consents to such assignment. Whenever in this Lease Agreement any reference is made to the Corporation and such reference concerns rights which the Corporation has assigned to the Assignee, such reference shall be deemed to refer to the Assignee (including its assignees).

The Assignee may make additional assignments of its rights, title and interests herein, but no such assignment will be effective as against the City unless and until the Assignee has filed with the City written notice thereof. The City shall pay all Lease Payments hereunder to the Assignee, as provided in Section 4.3(h) hereof, or under the written direction of the assignee named in the most recent assignment or notice of assignment filed with the City. During the Term of this Lease Agreement, the City will keep a complete and accurate record of all such notices of assignment.

Section 7.5. Assignment Agreement and Subleasing by the City. This Lease may not be assigned, mortgaged, pledged or transferred by the City. The City may sublease the Property, or any portion thereof, with the prior written consent of the Assignee, at the Assignee's sole discretion, subject to all of the following conditions:

(a) This Lease and the obligation of the City to make Lease Payments hereunder shall remain obligations of the City, and any sublease shall be subject and subordinate to this Lease Agreement.

(b) The City shall, within 30 days after the delivery thereof, furnish or cause to be furnished to the Corporation and the Assignee a true and complete copy of such sublease.

(c) No such sublease by the City may cause the Property to be used for a purpose other than as may be authorized under the provisions of the laws of the State.

(d) The City shall furnish the Corporation and the Assignee with a written opinion of Bond Counsel stating that such sublease does not cause the interest components of the Lease Payments to become includable in gross income for purposes of federal income taxation or to become subject to personal income taxation by the State.

(e) Any such sublease shall be subject and subordinate in all respects to the Lease and Right of Entry Agreement and this Lease Agreement.

Notwithstanding the foregoing, in connection with any sublease entered into for financing purposes, the principal component of the then remaining Lease Payments plus the principal component of the sublease payments shall not exceed the value of the Property.

Section 7.6. Amendment of Lease Agreement. This Lease may be amended with the prior written consent of the Corporation and the Assignee (at the Assignee's sole discretion)



provided such amendment does not, in the Assignee's sole judgment, adversely affect the Assignee.

Section 7.7. Financial Statements; Budgets. Within two hundred (200) days following the end of each Fiscal Year of the City during the Term of this Lease Agreement, the City will provide the Corporation and the Assignee with a copy of its audited financial statements for such Fiscal Year. Such audited financial statements shall include such information as is required by applicable Government Accounting Standards Board pronouncements and applicable State law. At Assignee's request, the City will provide the Assignee with a copy of its annual budget and any interim updates or modifications to such budget.

## ARTICLE VIII

### EVENTS OF DEFAULT AND REMEDIES

Section 8.1. Events of Default Defined. Any one or more of the following events constitutes an Event of Default hereunder:

(a) Failure by the City to pay any Lease Payment or other payment required to be paid hereunder at the time specified herein.

(b) Failure by the City to observe and perform any covenant, condition or agreement on its part to be observed or performed hereunder, other than as referred to in the preceding clause (a) of this Section, for a period of 30 days after written notice specifying such failure and requesting that it be remedied has been given to the City by the Corporation or the Assignee. However, if in the reasonable opinion of the City the failure stated in the notice can be corrected, but not within such 30-day period, the Corporation and the Assignee shall not unreasonably withhold their consent to an extension of such time (for a period not to exceed 60 days) if corrective action is instituted by the City within such 30-day period and diligently pursued until the default is corrected.

(c) The filing by the City of a voluntary petition in bankruptcy, or failure by the City promptly to lift any execution, garnishment or attachment, or adjudication of the City as a bankrupt, or assignment by the City for the benefit of creditors, or the entry by the City into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to the City in any proceedings instituted under the provisions of the Federal Bankruptcy Code, as amended, or under any similar acts which may hereafter be enacted.

(d) Any statement, representation or warranty made by the City in or pursuant to this Lease Agreement or its execution, delivery or performance shall have been false, incorrect, misleading or breached in any material respect on the date when made.

(e) Any default occurs under any other agreement for borrowing money, lease financing of property or otherwise receiving credit under which the City is an obligor, if such default (i) arises under any other agreement for borrowing money, lease financing of property or provision of credit provided by the Assignee or any affiliate of the Assignee, or (ii) arises under any obligation under which there is outstanding, owing or committed an aggregated amount in excess of \$1,000,000.

(f) Any default by the City to observe any covenant, condition or agreement on its part to be observed or performed under the Lease and Right of Entry Agreement.

Section 8.2. Remedies on Default. Whenever any Event of Default has happened and is continuing, the Corporation may exercise any and all remedies available under law or granted under this Lease Agreement; provided, however, that notwithstanding anything herein to the contrary, there shall be no right under any circumstances to accelerate the Lease Payments or otherwise declare any Lease Payments not then in default to be immediately due and payable. Each and every covenant hereof to be kept and performed by the City is expressly made a condition and upon the breach thereof the Corporation may exercise any and all rights granted hereunder; provided, that no termination of this Lease Agreement shall be effected either by operation of law or acts of the parties hereto, except only in the manner herein expressly provided. Upon the occurrence and during the continuance of any Event of Default, the Corporation may exercise any one or more of the following remedies:

(a) *Enforcement of Payments Without Termination.* If the Corporation does not elect to terminate this Lease Agreement in the manner hereinafter provided for in subparagraph (b) hereof, the City agrees to and shall remain liable for the payment of all Lease Payments and the performance of all conditions herein contained and shall reimburse the Corporation for any deficiency arising out of the re-leasing of the Property, or, if the Corporation is unable to re-lease the Property, then for the full amount of all Lease Payments to the end of the Term of this Lease Agreement, but said Lease Payments and/or deficiency shall be payable only at the same time and in the same manner as hereinabove provided for the payment of Lease Payments hereunder, notwithstanding such entry or re-entry by the Corporation or any suit in unlawful detainer, or otherwise, brought by the Corporation for the purpose of effecting such re-entry or obtaining possession of the Property or the exercise of any other remedy by the Corporation. The City hereby irrevocably appoints the Corporation as the agent and attorney-in-fact of the City to enter upon and re-lease the Property upon the occurrence and continuation of an Event of Default and to remove all personal property whatsoever situated upon the Property, to place such property in storage or other suitable place in Contra Costa County for the account of and at the expense of the City, and the City hereby exempts and agrees to save harmless the Corporation from any costs, loss or damage whatsoever arising or occasioned by any such entry upon and re-leasing of the Property and the removal and storage of such property by the Corporation or its duly authorized agents in accordance with the provisions herein contained. The City agrees that the terms of this Lease Agreement constitute full and sufficient notice of the right of the Corporation to re-lease the Property in the event of such re-entry without effecting a surrender of this Lease Agreement, and further agrees that no acts of the Corporation in effecting such re-leasing shall constitute a surrender or termination of this Lease Agreement irrespective of the term for which such re-leasing is made or the terms and conditions of such re-leasing, or otherwise, but that, on the contrary, in the event of such default by the City the right to terminate this Lease Agreement shall vest in the Corporation to be effected in the sole and exclusive manner hereinafter provided for in subparagraph (b) hereof. The City agrees to surrender and quit possession of the Property upon demand of the Corporation for the purpose of enabling the Property to be re-let under this paragraph. Any rental obtained by the Corporation in excess of the sum of Lease Payments plus costs and expenses incurred by the Corporation for its services in re-leasing the Property shall be paid to the City.

(b) *Termination of Lease.* If an Event of Default occurs and is continuing hereunder, the Corporation at its option may terminate this Lease Agreement and re-lease all or any portion of the Property, subject to the Lease and Right of Entry Agreement. If the Corporation terminates this Lease Agreement at its option and in the manner hereinafter provided due to a default by the City (and notwithstanding any re-entry upon the Property by the Corporation in any manner whatsoever or the re-leasing of the Property), the City nevertheless agrees to pay to the Corporation all costs, loss or damages howsoever arising or occurring payable at the same time and in the same manner as is herein provided in the case of payment of Lease Payments and Additional Payments. Any surplus received by the Corporation from such re-leasing shall be applied by the Corporation to Lease Payments due under this Lease Agreement. Neither notice to pay rent or to deliver up possession of the premises given under law nor any proceeding in unlawful detainer taken by the Corporation shall of itself operate to terminate this Lease Agreement, and no termination of this Lease Agreement on account of default by the City shall be or become effective by operation of law, or otherwise, unless and until the Corporation shall have given written notice to the City of the election on the part of the Corporation to terminate this Lease Agreement. The City covenants and agrees that no surrender of the Property, or of the remainder of the Term hereof or any termination of this Lease Agreement shall be valid in any manner or for any purpose whatsoever unless stated or accepted by the Corporation by such written notice.

(c) *Proceedings at Law or In Equity.* If an Event of Default occurs and continues hereunder, the Corporation may take whatever action at law or in equity may appear necessary or

desirable to collect the amounts then due and thereafter to become due hereunder or to enforce any other of its rights hereunder.

(d) *Remedies under the Lease and Right of Entry Agreement.* If an Event of Default occurs and continues hereunder, the Corporation may exercise its rights under the Lease and Right of Entry Agreement.

Section 8.3. No Remedy Exclusive. No remedy herein conferred upon or reserved to the Corporation is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon the occurrence of any Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Corporation to exercise any remedy reserved to it in this Article VIII it shall not be necessary to give any notice, other than such notice as may be required in this Article VIII or by law.

Section 8.4. Agreement to Pay Attorneys' Fees and Expenses. If either party to this Lease Agreement defaults under any of the provisions hereof and the nondefaulting party should employ attorneys (including in-house legal counsel) or incur other expenses for the collection of moneys or the enforcement or performance or observance of any obligation or agreement on the part of the defaulting party herein contained, the defaulting party agrees that it will on demand therefor pay to the nondefaulting party the reasonable fees of such attorneys (including allocable costs and expenses of in-house legal counsel, if any) and such other expenses so incurred by the nondefaulting party.

Section 8.5. No Additional Waiver Implied by One Waiver. If any agreement contained in this Lease Agreement is breached by either party and thereafter waived by the other party, such waiver is limited to the particular breach so waived and will not be deemed to waive any other breach hereunder.

Section 8.6. Assignee to Exercise Rights. Such rights and remedies as are given to the Corporation under this Article VIII have been assigned by the Corporation to the Assignee, to which assignment the City hereby consents. Such rights and remedies shall be exercised solely by the Assignee.

## ARTICLE IX

### PREPAYMENT OF LEASE PAYMENTS

Section 9.1. Security Deposit. Notwithstanding any other provision of this Lease Agreement, the City may on any date secure the payment of the Lease Payments in whole or in part by depositing with a fiduciary reasonably satisfactory to the Assignee, in trust, an amount of cash, which shall be held in a segregated trust or escrow fund under a trust or escrow agreement that is in form and content acceptable to the Assignee, which cash so held is either (a) sufficient to pay such Lease Payments, including the principal and interest components thereof, in accordance with the Lease Payment schedule set forth in Exhibit C, or (b) invested in whole in non-callable Federal Securities maturing not later than the dates such funds will be required to make Lease Payments or any prepayment in an amount which is sufficient, in the opinion of an independent certified public accountant (which opinion must be in form and substance, and with such an accountant, acceptable to the Assignee and addressed and delivered to the Assignee), together with interest to accrue thereon and without reinvestment and together with any cash which is so deposited, to pay such Lease Payments when due under Section 4.3(a) or when due on any optional prepayment date under Section 9.2, as the City instructs at the time of said deposit; *provided, however*, that at or prior to the date on which any such security deposit is established, the City shall deliver to the Assignee an opinion of Bond Counsel (in form and substance acceptable to the Assignee) to the effect that any such security deposit will not adversely affect the excludability of the interest component of Lease Payments from gross income of the owners thereof for federal income tax purposes. In the event of a security deposit under this Section with respect to all unpaid Lease Payments, (i) the Term of this Lease Agreement shall continue, (ii) all obligations of the City under this Lease Agreement, and all security provided by this Lease Agreement for said obligations, shall thereupon cease and terminate, excepting only (A) the obligation of the City to make, or cause to be made, all of the Lease Payments from such security deposit and, to the extent of any deficiency, as rent payable from other legally available funds of the City, and (B) the release and indemnification obligations of the City under subparagraphs (f) and (g) of Section 7.3, and (iii) under Section 4.5, the Corporation's leasehold interest in the Property will vest in the City on the date of said deposit automatically and without further action by the City or the Corporation. The City hereby grants a first priority security interest in and the lien on said security deposit and all proceeds thereof in favor of the Corporation and the Assignee. Said security deposit shall be deemed to be and shall constitute a special fund for the payment of Lease Payments in accordance with the provisions of this Lease Agreement and, notwithstanding anything to the contrary herein, Lease Payments therefrom shall not be subject to abatement under Section 6.3 hereof to the extent payable from the funds held by the fiduciary as described in the first sentence of this Section 9.1.

Section 9.2. Optional Prepayment. The City may prepay the unpaid principal components of the Lease Payments in whole or in part, on any date, by paying a prepayment price equal to the principal components of the Lease Payments to be prepaid, together with accrued interest through such prepayment date, without premium. The City shall give the Assignee notice of its intention to exercise its option not less than 30 days in advance of the date of exercise.

Section 9.3. Mandatory Prepayment From Net Proceeds of Insurance or Eminent Domain. The City shall be obligated to prepay the unpaid principal components of the Lease Payments in whole or in part on any date, from and to the extent of any proceeds of insurance award or condemnation award with respect to the Property to be used for such purpose under Section 6.2. The City and the Corporation hereby agree that such proceeds, to the extent remaining after payment of any delinquent Lease Payments, shall be credited towards the City's obligations under this Section 9.3.

ARTICLE X

MISCELLANEOUS

Section 10.1. Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed to have been received upon actual receipt after deposit in the United States mail in first-class form with postage fully prepaid:

If to the City:	City of Porterville 291 North Main Street Porterville, CA 93257 Attention: City Manager Phone: (209) 782-7466 Fax: (209) 781-6437
If to the Corporation:	Porterville Public Improvement Corporation 291 North Main Street Porterville, CA 93257 Attention: Executive Director Phone: (209) 782-7466 Fax: (209) 781-6437
If to the Assignee:	Rabobank, N.A. 915 Highland Pointe Drive, Suite 350 Roseville, CA 95678 Attention: Mr. Ian Carroll, Senior Vice President Ref: City of Porterville Phone: (916) 878-4655 Fax: (916) 784-1505

Section 10.2. Binding Effect. This Lease inures to the benefit of and is binding upon the Corporation, the City and their respective successors and assigns.

Section 10.3. Severability. If any provision of this Lease Agreement is held invalid or unenforceable by any court of competent jurisdiction, such holding will not invalidate or render unenforceable any other provision hereof.

Section 10.4. Net-net-net Lease. This Lease is a "net-net-net lease" and the City hereby agrees that the Lease Payments are an absolute net return to the Corporation, free and clear of any expenses, charges or set-offs whatsoever.

Section 10.5. Further Assurances and Corrective Instruments. The Corporation and the City agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Property hereby leased or intended so to be or for carrying out the expressed intention of this Lease Agreement.

Section 10.6. Execution in Counterparts. This Lease may be executed in several counterparts, each of which is an original and all of which constitutes one and the same instrument.

Section 10.7. Applicable Law. This Lease is governed by and construed in accordance with the laws of the State.

Section 10.8. Captions. The captions or headings in this Lease Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or Section of this Lease Agreement.

IN WITNESS WHEREOF, the Corporation has caused this Lease Agreement to be executed in its name by its duly authorized officers; and the City has caused this Lease Agreement to be executed in its name by its duly authorized officers, as of the date first above written.

PORTERVILLE PUBLIC IMPROVEMENT CORPORATION, as Lessor

By \_\_\_\_\_  
John D. Lollis  
Executive Director

Attest:

\_\_\_\_\_  
Patrice Hildreth  
Deputy Secretary

CITY OF PORTERVILLE, as Lessee

By \_\_\_\_\_  
John D. Lollis  
City Manager

Attest:

\_\_\_\_\_  
Patrice Hildreth  
Chief Deputy City Clerk



## EXHIBIT A

### DESCRIPTION OF THE PROPERTY

Projects	Est. Cost of Existing Curb, Gutter Sidewalk Improvement (1)	Est. Cost of Existing Pavement (2)	Est. Right of Way Cost and Title Type (3)	Total Worth
<b>BRIDGES</b>				
South Plano-Tule River	—	—	—	\$2,500,000
South Main-Tule River	—	—	—	\$2,500,000
South Jaye-Tule River	—	—	—	\$2,500,000
<b>SLOUGH CROSSINGS</b>				
W Henderson-Porter Slough	—	—	—	\$375,000
N. Westwood-Porter Slough	—	—	—	\$375,000
<b>STREETS</b>				
E. Morton	1200'x62.50=\$75,000	6600'x112.50=\$742,500	6600'x7.50=\$49,600	\$887,000
N. Conner-Morton/E. Olive	—	1400'x112.50=\$157,500	2800'x7.50=\$21,000	\$178,600
E. Olive-Putnam/Tulsa	1000'x62.50=\$62,500	7000'x112.50=\$787,500	7000'x7.50=\$52,500	\$902,500
N. Indiana-Olive/Morton	2000'x62.50=\$125,000	2000'x187.50=\$375,000	2000'x7.50=\$15,000	\$515,000
W Henderson-Newcomb/Westwood	6500'x62.50=\$406,250	5500'x112.50=\$618,750	5500'x7.50=\$41,250	\$1,066,250
N. Main-Henderson/Linda Vista	1000'x62.50=\$62,500	11,000'x112.50=\$1,237,500	5000'x7.50=\$37,500 plus	\$1,412,500
W Olive-Newcomb/Westwood	4000'x62.50=\$250,000	5500'x187.50=\$1,031,250	6000'x12.50=\$75,000 3000'x7.50=\$22,500 plus 2500'x12.50=\$31,250	\$1,335,000
E. Orange-Piano/S. Main	3000'x62.50=\$187,500	3000'x187.50=\$562,500	3000'x12.50=\$37,500	\$787,500
S. Jaye-Olive/Gibbons	4000'x62.50=\$260,000	4000'x187.50=\$750,000 plus 5500'x112.50=\$618,750	5500'x12.50=\$68,750 plus 4000'x7.50=\$30,000	\$1,717,500
S. Newcomb-Olive/Hwy 190	2000'x62.50=\$125,000	3000'x112.50=\$337,500	1500'x12.50=\$18,750 plus 2500'x7.50=\$18,750	\$500,000
Gibbons-S. Main/Indiana	—	5500'x112.50=\$618,750	5500'x7.50=\$41,250	\$680,000
S. Main-Hwy-190/Gibbons	1500'x62.50=\$93,750	4000'x187.50=\$750,000	4000'x12.50=\$50,000	\$893,750
N. Prospect-Morton/Pioneer	6500'x62.50=\$406,250	1500'x187.50=\$281,250 plus 5000'x112.50=\$562,500	1500'x12.50=\$18,750 plus 5000'x7.50=\$37,500	\$1,306,250
E. Date-S. Main/Plano	500'x62.50=\$31,250	2500'x112.50=\$281,250	2500'x7.50=\$18,750	\$331,250
W. Westfield-Hwy. 65/N. Main	3500'x62.50=\$218,750	3500'x112.50=\$393,750	3500'x7.50=\$26,250	\$636,750
N. Newcomb-Mulberry/N. Grand	3500'x62.50=\$218,750	5000'x187.50=\$937,500	5000'x7.50=\$37,500	\$1,193,750
N. Westwood-Henderson/Friant Canal	3000'x31.25=\$83,750	1000'x93.75=\$93,750 plus 3000'x112.50=\$337,500	4000'x7.50=\$30,000	\$555,000
Downtown Parking Lots	4x \$250,000=\$1,000,000			\$1,000,000
S. Indian-Olive/Springville	2000'x62.50=\$125,000	3500'x112.50=\$393,750	1500'x7.50=\$11,250	\$530,000
N. Prospect-Olive/Morton	2500'x62.50=\$156,250	2500'x112.50=\$281,250	2500'x7.50=\$18,750	\$456,250
N. Villa-Olive/Henderson	5000'x62.50=\$312,500	5000'x112.50=\$562,500	4000'x7.50=\$30,000 plus 1000'x12.50=\$12,500	\$917,500
W Henderson-Indiana/N. Main	4500'x62.50=\$281,250	4500'x187.50=\$843,750	4500'x7.50=\$33,750	\$1,158,750
N. Main-Morton/Henderson	3000'x62.50=\$187,500	3000'x187.50=\$582,500	3000'x12.50=\$37,500	\$787,500
W Grand-"E"/Newcomb	8500'x62.50=\$531,250	8500'x112.50=\$956,250	8500'x7.50=\$63,750	\$1,561,250
N. Piano-Henderson/Reid	1500'x62.50=\$93,750	2000'x187.50=\$375,000 plus 4000'x112.50=\$450,000	6000'x7.50=\$45,000	\$963,500
N. Leggett-Success/Henderson	6000'x62.50=\$375,000	7500'x112.50=\$843,750	7500'x7.50=\$58,250	\$1,275,000
Main-Date/Morton	5000'x187.50=\$937,500	5000'x1000=\$5,000,000	5000'x62.50=\$312,500	\$6,250,000
				<u>\$38,000,600</u>

- (1) Average cost for Curb/Gutter/Sidewalk \$31.25 per linear foot (one side), \$62.50 per linear foot (two sides), excluding bridges.
- (2) Average cost for Arterial Pavement Section \$187.50 per linear foot. Average cost for Major Collector Pavement section \$112.50 per linear foot.
- (3) Right of Way value without improvements. Residential-\$6 per square foot. Commercial-\$20 per square foot (includes both sides of street)

## EXHIBIT B

### SCHEDULE OF LEASE PAYMENTS

Lease Payment Date	Principal Component	Interest Component (1)	Total Lease Payment (1)
10/1/13	—	\$328,501.48	\$328,501.48
4/1/14	—	347,490.00	347,490.00
10/1/14	—	347,490.00	347,490.00
4/1/15	—	347,490.00	347,490.00
10/1/15	—	347,490.00	347,490.00
4/1/16	—	347,490.00	347,490.00
10/1/16	—	347,490.00	347,490.00
4/1/17	\$235,000.00	347,490.00	582,490.00
10/1/17	340,000.00	343,612.50	683,612.50
4/1/18	345,000.00	338,002.50	683,002.50
10/1/18	380,000.00	332,310.00	712,310.00
4/1/19	390,000.00	326,040.00	716,040.00
10/1/19	415,000.00	319,605.00	734,605.00
4/1/20	420,000.00	312,757.50	732,757.50
10/1/20	455,000.00	305,827.50	760,827.50
4/1/21	460,000.00	298,320.00	758,320.00
10/1/21	495,000.00	290,730.00	785,730.00
4/1/22	500,000.00	282,562.50	782,562.50
10/1/22	535,000.00	274,312.50	809,312.50
4/1/23	545,000.00	265,485.00	810,485.00
10/1/23	580,000.00	256,492.50	836,492.50
4/1/24	585,000.00	246,922.50	831,922.50
10/1/24	620,000.00	237,270.00	857,270.00
4/1/25	630,000.00	227,040.00	857,040.00
10/1/25	665,000.00	216,645.00	881,645.00
4/1/26	680,000.00	205,672.50	885,672.50
10/1/26	740,000.00	194,452.50	934,452.50
4/1/27	750,000.00	182,242.50	932,242.50
10/1/27	775,000.00	169,867.50	944,867.50
4/1/28	785,000.00	157,080.00	942,080.00
10/1/28	810,000.00	144,127.50	954,127.50
4/1/29	825,000.00	130,762.50	955,762.50
10/1/29	835,000.00	117,150.00	952,150.00
4/1/30	850,000.00	103,372.50	953,372.50
10/1/30	865,000.00	89,347.50	954,347.50
4/1/31	880,000.00	75,075.00	955,075.00
10/1/31	895,000.00	60,555.00	955,555.00
4/1/32	910,000.00	45,787.50	955,787.50
10/1/32	925,000.00	30,772.50	955,772.50
4/1/33	940,000.00	15,510.00	955,510.00

(1) Beginning on April 2, 2016, interest is a variable rate based on the U.S. dollar one month LIBOR plus 2.125%, but in no case lower than 3.30%. The interest and total amounts during the variable rate period are shown assuming the minimum rate of 3.30% and are for illustration purposes only. If LIBOR exceeds 1.175%, the actual amounts will be higher.

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## ASSIGNMENT AGREEMENT

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For Value Received, the PORTERVILLE PUBLIC IMPROVEMENT CORPORATION (the "Corporation") without recourse does hereby sell, assign and transfer to RABOBANK, N.A. (the "Assignee"), and its successors and assigns, (i) all of its rights, title and interest (but none of its obligations) in and to the Lease Agreement, dated as of April 1, 2013, by and between the Corporation, as sublessor, and the City of Porterville (the "City"), as sublessee (said Lease Agreement and any supplements, amendments, annexations, extensions or renewals thereof is referred to hereinafter as the "Lease Agreement"), (ii) all of its rights, title and interest (but none of its obligations) in and to the Lease and Right of Entry Agreement, dated as of April 1, 2013, which has been recorded concurrently herewith, by and between the City, as lessor, and the Corporation, as lessee (the "Lease and Right of Entry Agreement"), and (iii) all moneys, sums and amounts now due or hereinafter to become due under the Lease Agreement. The Lease and Right of Entry Agreement and the Lease Agreement delivered to the Assignee are duly executed duplicate originals that comprise the entire writing, obligation and agreement between the Corporation and the City respecting the leases made thereunder and the lease payments made therefore.

The Corporation represents and warrants as follows:

- (1) it has made no prior sale or assignment of any interest covered hereby;
- (2) that the Lease Agreement and Lease and Right of Entry Agreement are genuine and in all respects are what they purport to be; and
- (3) that Assignee is not liable for and does not assume responsibility for the performance of any of the covenants, agreements, duties or obligations specified in the Lease Agreement to be kept, paid or performed by the Corporation, with exception of such covenants, agreements, duties and obligations (if any) which are expressly made the responsibility of Assignee under the Lease Agreement.

The Corporation further represents and warrants that as of the date of this Assignment Agreement, the Lease Agreement and Lease and Right of Entry Agreement are in full force and effect and the City is not in default of any of the terms set forth therein.

By its acceptance of this Assignment Agreement, the Assignee represents and warrants (i) the price it has paid in consideration for assignment of the Lease Agreement is \$21,060,000; and (ii) that it reasonably expects to hold the Lease Agreement for its own account and does not presently expect to sell, assign, or otherwise transfer the Lease Agreement, subject to the Assignee's right to dispose of or otherwise deal with its property (including the Lease Agreement) as it determines to be in its best interests from time to time.

This Assignment Agreement shall be construed and governed in accordance with the laws of the State of California applicable to contracts made and performed in the State of California. Any provision of this Assignment Agreement found to be prohibited by law shall be ineffective only to the extent of such prohibition, and shall not invalidate the remainder of this Assignment Agreement.

This Assignment Agreement binds and inures to the benefit of the parties and their respective successors and assigns. In the event of litigation between the Corporation and the Assignee arising under this Assignment Agreement, the prevailing party shall be entitled to recover from the other party all costs and expenses, including attorneys' fees which may be those of in-house counsel, incurred by the prevailing party in exercising any of its rights or remedies hereunder or enforcing any of the terms, conditions or provisions of this Assignment Agreement.

This Assignment Agreement shall be construed and governed in accordance with the laws of the State of California. The Corporation and the Assignee irrevocably agree that all actions, proceedings or counterclaims arising out of or relating to this Assignment Agreement will be litigated in the Superior Court of California selected by the Assignee, or the United States District Court for the Eastern District of California. The Corporation and the Assignee each irrevocably consents to service, jurisdiction, and venue of those courts for all such actions, proceedings and counterclaims and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise. Final judgment against the Corporation or the Assignee in any such action, suit or proceeding shall be conclusive and may be enforced in any other jurisdiction by suit on the judgment, a certificate or exemplified copy of which shall be conclusive evidence of the judgment or in any other manner provided by law. The Corporation and the Assignee each irrevocably waives to the fullest extent permitted by applicable law (a) any objection which it may have now or in the future to the laying of the venue of any such action, suit or proceeding in any court referred to in the first sentence above; (b) any claim that any such action, suit or proceeding has been brought in an inconvenient forum; (c) its right of removal of any matter commenced by any other party in the courts of the State of California to any court of the United States of America; (d) to the extent permitted by law, any immunity which it or its assets may have in respect of its obligations under this agreement or the purchase agreement from any suit, execution, attachment (whether provisional or final, in aid of execution, before judgment or otherwise) or other legal process; and (e) any right it may have to require the moving party in any suit, action or proceeding brought in any of the courts referred to above arising out of or in connection with this Assignment Agreement to post security for the costs of the district or to post a bond or to take similar action.

This Assignment Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Dated as of April 1, 2013

PORTERVILLE PUBLIC IMPROVEMENT  
CORPORATION, as Lessor

By \_\_\_\_\_  
John D. Lollis  
Executive Director

Attest:

\_\_\_\_\_  
Patrice Hildreth  
Deputy Secretary

ACCEPTANCE OF ASSIGNMENT:

RABOBANK, N.A., as Assignee

By \_\_\_\_\_  
Ian Carroll  
Senior Vice President

## EXHIBIT A

### DESCRIPTION OF THE PROPERTY

Projects	Est. Cost of Existing Curb, Gutter Sidewalk Improvement (1)	Est. Cost of Existing Pavement (2)	Est. Right of Way Cost and Title Type (3)	Total Worth
<b>BRIDGES</b>				
South Plano-Tule River	—	—	—	\$2,500,000
South Main-Tule River	—	—	—	\$2,500,000
South Jaye-Tule River	—	—	—	\$2,500,000
<b>SLOUGH CROSSINGS</b>				
W Henderson-Porter Slough	—	—	—	\$375,000
N. Westwood-Porter Slough	—	—	—	\$375,000
<b>STREETS</b>				
E. Morton	1200'x62.50=\$75,000	6600'x112.50=\$742,500	6600'x7.50=\$49,600	\$887,000
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Downtown Parking Lots	4x \$250,000=\$1,000,000			\$1,000,000
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				<u>\$38,000,600</u>

- (1) Average cost for Curb/Gutter/Sidewalk \$31.25 per linear foot (one side), \$62.50 per linear foot (two sides), excluding bridges.
- (2) Average cost for Arterial Pavement Section \$187.50 per linear foot. Average cost for Major Collector Pavement section \$112.50 per linear foot.
- (3) Right of Way value without improvements. Residential-\$6 per square foot. Commercial-\$20 per square foot (includes both sides of street)

## LETTER AGREEMENT FOR PURCHASE

April 3, 2013

City of Porterville  
291 North Main Street  
Porterville, California 93257  
Attention: City Manager

Re: \$21,060,000 Lease Agreement, dated as of April 1, 2013, by and between the Porterville Public Improvement Corporation and the City of Porterville, assigned to Rabobank, N.A.

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Ladies and Gentlemen:

The undersigned, Rabobank, N.A. ("Rabobank"), offers, upon the following terms, to acquire (i) the rights, title and interest (but none of the obligations) of the Porterville Public Improvement Corporation (the "Corporation") under the Lease Agreement (hereinafter defined), including its rights to the Lease Payments to be made by the City of Porterville (the "City") under the Lease Agreement dated as of April 1, 2013 (the "Lease Agreement"), by and between the City and the Corporation, by entering into an Assignment Agreement, dated as of April 1, 2013 (the "Assignment Agreement"), with the Corporation, and (ii) the rights, title and interest (but none of the obligations) of the Corporation under the Lease and Right of Entry Agreement, dated as of April 1, 2013 (the "Lease and Right of Entry Agreement"), by and between the City and the Corporation. Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Lease Agreement.

1. *Purchase and Purchase Price; Terms of District's Obligations.* The City agrees to execute and deliver the Lease and Right of Entry Agreement and the Lease Agreement, and Rabobank agrees to purchase the assignment made under the Assignment Agreement at a purchase price of \$21,060,000. The Lease Payments under the Lease Agreement and the interest rate applicable thereto shall be as shown in Exhibit A hereto.

2. *Use of Funds.* The purchase price paid by Rabobank shall be used by the City to (i) prepay the 2005 Lease Agreement and thereby refund and defease the 2005 Certificates, (ii) fund a portion of the Reserve Fund, and (iii) pay the costs related to the preparation, execution and delivery of the Lease Agreement, the Lease and Right of Entry Agreement, the Assignment Agreement and documents related to the refunding and defeasance of the 2005 Certificates.

3. *Disposition of Proceeds.* Upon the Closing Date, as defined below, purchase price paid by Rabobank shall be transferred as follows:

(a) Rabobank shall retain the amount of \$85,000.00 for its origination fee.

(b) Rabobank shall deposit in the Reserve Fund, maintained by Rabobank on behalf of the City, for the benefit of Rabobank, the sum of \$550,000.00.

(c) Rabobank shall transfer, via wire transfer, to U.S. Bank National Association, as trustee for the 2005 Certificates and as escrow bank, the amount of \$19,859,514.80 to be applied

to the prepayment of the 2005 Lease Agreement and the refunding and defeasance of the 2005 Certificates. Wire instructions to be provided prior to the Closing Date.

(d) Rabobank shall transfer, via wire transfer, the following amounts to the following entities, in respect of the payment of the costs of the financing transaction:

(i) to Wulff, Hansen & Co., \$\_\_\_\_\_ (invoice with wire information to be provided prior to the Closing Date);

(ii) to Ravi Chitkara, \$\_\_\_\_\_ (invoice with wire information to be provided prior to the Closing Date);

(iii) to Fullbright & Jaworski, LLP, \$25,000.00 (invoice with wire information to be provided prior to the Closing Date);

(iv) to Quint & Thimmig LLP, \$70,000.00 (invoice with wire information to be provided prior to the Closing Date);

(v) to Grant Thornton LLP, \$\_\_\_\_\_ (invoice with wire information to be provided prior to the Closing Date); and

(vi) to U.S. Bank National Association, \$\_\_\_\_\_ (invoice with wire information to be provided prior to the Closing Date).

(e) Rabobank shall transfer to the City, \$\_\_\_\_\_, to be applied to the City's costs of the transaction, including the payment of the CDIAC fee, and applied to make the first scheduled Lease Payment. Wire instructions to be provided prior to the Closing Date.

4. *Closing.* At 8:00 a.m. California Time, on April 11, 2013, or at such other time or on such earlier or later date as Rabobank and the City mutually agree upon (the "Closing Date"), the City will deliver (or cause to be delivered) the Lease and Right of Entry Agreement and the Lease Agreement executed by the City and the Corporation, and the Assignment Agreement executed by the Corporation and Rabobank, and Rabobank will pay the purchase price for the City's obligations as set forth in Section 1 hereof in federal or other immediately available funds.

5. *Representations and Warranties of the City.* The City represents and warrants to Rabobank that all representations and warranties of the City set forth in the Lease and Right of Entry Agreement and the Lease Agreement are true and correct on the date hereof and are made for the benefit of Rabobank as if set forth herein.

6. *Conditions Precedent to the Closing.* Other conditions precedent to the Closing are:

(a) The delivery by the City of a certified copy of (i) the resolution of the City Council of the City authorizing the execution and delivery by the City of the Lease and Right of Entry Agreement and the Lease Agreement, together with an incumbency certificate of the City, and (ii) the resolution of the Board of Directors of the Corporation authorizing the execution and delivery by the Corporation of the Lease and Right of Entry Agreement, the Lease Agreement and the Assignment Agreement, together with an incumbency certificate of the Corporation;

(b) The delivery by the City and the Corporation of the fully executed Lease and Right of Entry Agreement, Lease Agreement, the Escrow Agreement and Assignment Agreement in form and substance acceptable to Rabobank;



(c) The execution and delivery by the City of an Internal Revenue Service Form 8038-G in a form acceptable to Bond Counsel and Rabobank;

(d) Delivery of a legal opinion addressed to the City and Rabobank, dated the Closing Date, of Quint & Thimmig LLP, as Special Counsel, with respect to (i) the validity and enforceability of the Lease Agreement, the Lease and Right of Entry Agreement, and the Assignment Agreement by and against the City and the Corporation (as applicable), and (ii) the tax-exempt status of the interest component of the Lease Payments, in form and substance acceptable to Rabobank;

(e) Delivery of a legal opinion addressed to the City and Rabobank, dated the Closing Date, of Quint & Thimmig LLP, with respect to the defeasance of the 2005 Certificates;

(f) The delivery of a certificate dated the Closing Date and signed by the City Manager or such other officer of the City as the City Council of the City may approve, to the effect that:

(i) to the best knowledge of the City, there are no actions or proceedings against the City pending or threatened that adversely affect the City's ability to pay the Lease Payments or to perform its obligations under the Lease and Right of Entry Agreement and Lease Agreement;

(ii) the representations and warranties of the City contained in this agreement, the Lease and Right of Entry Agreement and the Lease Agreement are true and correct in all material respects on and as of the Closing Date with the same effect as if made on the Closing Date; and

(iii) the City acknowledges receipt from Rabobank of the purchase price for the City's obligations under the Lease Agreement, including the Lease Payments;

(g) The delivery by Rabobank of an investor letter in form and substance as attached hereto as Exhibit B; and

(h) such other documents as may be reasonably requested by Rabobank.

7. *Events Permitting Rabobank to Terminate.* Rabobank may terminate its obligation to purchase the City's obligations under the Lease Agreement before the Closing Date if any of the following occurs:

(a) any legislative, executive or regulatory action (including the introduction of legislation) or any court decision that, in the judgment of Rabobank, casts sufficient doubt on the legality of or the tax-exempt status of the interest component of obligations such as those represented by the Lease Agreement and the Lease Payments so as to materially impair the marketability or to materially reduce the market price of such obligations;

(b) any action by the Securities and Exchange Commission or a court that would require registration of the Lease Agreement under the Securities Act of 1933, as amended; or

(c) any event occurs or becomes known that has a material adverse effect on the financial condition of the City or on the ability of the City or the Corporation to perform under the Lease and Right of Entry Agreement, the Lease Agreement or the Assignment Agreement.

8. *Governing Law; Jurisdiction and Venue.* This Agreement shall be construed and governed in accordance with the laws of the State of California. The Corporation and the City irrevocably agree that all actions, proceedings or counterclaims arising out of or relating to this

Agreement, the Assignment Agreement, the Lease Agreement, the Lease and Right of Entry Agreement, and any document or certificate delivered in connection therewith or contemplated thereby (collectively, the "Legal Documents") will be litigated in the Superior Court of California selected by the Assignee, or the United States District Court for the Eastern District of California. The Corporation and the City each irrevocably consents to service, jurisdiction, and venue of those courts for all such actions, proceedings and counterclaims and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise. Final judgment against the Corporation or the City in any such action, suit or proceeding shall be conclusive and may be enforced in any other jurisdiction by suit on the judgment, a certificate or exemplified copy of which shall be conclusive evidence of the judgment or in any other manner provided by law. The Corporation and the City each irrevocably waives to the fullest extent permitted by applicable law (a) any objection which it may have now or in the future to the laying of the venue of any such action, suit or proceeding in any court referred to in the first sentence above; (b) any claim that any such action, suit or proceeding has been brought in an inconvenient forum; (c) its right of removal of any matter commenced by any other party in the courts of the State of California to any court of the United States of America; (d) to the extent permitted by law, any immunity which it or its assets may have in respect of its obligations under this agreement or the purchase agreement from any suit, execution, attachment (whether provisional or final, in aid of execution, before judgment or otherwise) or other legal process; and (e) any right it may have to require the moving party in any suit, action or proceeding brought in any of the courts referred to above arising out of or in connection with the Legal Documents to post security for the costs of the district or to post a bond or to take similar action.

9. *Indemnification.* The City shall, to the extent permitted by law, defend, indemnify and hold the Assignee and its officers, directors, employees, partners, agents, attorneys and affiliates (the "Indemnified Persons") harmless against any and all losses of any kind or nature whatsoever that may be imposed on, incurred by, or asserted against any Indemnified Person arising out of, in any way connected with or as a result of any claim, litigation, investigation or proceeding asserted against any Indemnified Person as a result of: (i) the execution or delivery of Legal Documents or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto or thereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby; (ii) the use of the proceeds from the purchase price; (iii) such indemnified person's acts or omissions which result from communications given or purported to be given, by the district or any designated person, which are interrupted, which are misunderstood, or which are in fact from unauthorized persons; (iii) the violation by the Corporation or the City of any applicable law, including any environmental law; (iv) the reliance by the Assignee on each notice purportedly given by or on behalf of the Corporation or the City; (v) any breach by the Corporation or the City of any of its representations, warranties, covenants or agreements hereunder or under the Legal Documents, including any default or event of default; or (viii) any claim, litigation, investigation or proceeding related to any of the foregoing, whether or not any Indemnified Person is a party thereto, or asserted against any Indemnified Person as a result of Assignee being party to this Agreement, or the transactions consummated pursuant to Legal Documents; except that the Corporation and the City shall have no obligation to an Indemnified Person under this Section with respect to losses resulting from the gross negligence or willful misconduct of that Indemnified Person as determined by the final judgment of a court of competent jurisdiction. If and to the extent that any indemnity under this Agreement in favor of Indemnified Person is unenforceable for any reason, the Corporation or the City shall make the maximum contribution to the payment and satisfaction thereof which is permissible under applicable law. All indemnities hereunder in favor of an Indemnified Person shall survive the termination of this Agreement and the final term of the Legal Documents.

10. *Waiver of Trial by Jury.* To the fullest extent permitted by law, the parties hereto (a) covenant and agree not to elect a trial by jury in any action or proceeding for the resolution of

any controversy or claim that arises out of or relates to: (i) this Agreement or the Legal Documents; or (ii) any other agreement relating to this Agreement or the Legal Documents or the security therefor, whether arising in contract, tort or by statute (individually and collectively, a "controversy or claim"); and, (b) to the extent permitted by applicable law, hereby irrevocably waive all right to a trial by jury as to any issue relating hereto in any action, proceeding or counterclaim arising out of or relating to any transaction document to the extent such right exists now or in the future. The provisions of this Section are separately given by each party hereto knowingly and voluntarily; and are a material inducement for the Assignee entering into this Agreement and the Assignment Agreement.

11. *Optically Imaged Reproductions.* The Assignee may make an optically imaged reproduction of this Agreement and the other Legal Documents and, at its election, destroy the original or originals. The Corporation and the City each consent to the destruction of the original or originals and agrees that a copy of the optically imaged reproduction of any of the Legal Documents will be the equivalent of and for all purposes constitute an "original" document. For purposes of this section, "for all purposes" includes use of the optically imaged reproduction (a) to prove the content of the original document at trial, mediation, arbitration or administrative hearing; (b) for any business purpose; (c) for internal or external audits and/or examination by or on behalf of Governmental Authorities; (d) in canceling or transferring any document; and (e) in conjunction with any other transaction evidenced by the original document. "Governmental Authorities" means any nation or government, any state or other political subdivision thereof, any agency, authority, instrumentality, regulatory body, court, administrative tribunal, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

12. *USA Patriot Act Notice.* Federal law requires all financial institutions to obtain, verify and record information that identifies each person who obtains a loan. The Assignee will ask for the Corporation's and/or the City's legal name, address, tax ID number or social security number and other identifying information. The Assignee may also ask for additional information or documentation or take other actions reasonably necessary to verify the identity of the parties, any guarantors or other related persons.

IN WITNESS WHEREOF, the parties hereto have executed and entered into this Letter Agreement for Purchase by their officers thereunto duly authorized as of the day and year first above written.

RABOBANK, N.A., as Purchaser

By \_\_\_\_\_  
Ian Carroll  
Senior Vice President

The foregoing is hereby agreed to and accepted as of the date first above written:

CITY OF PORTERVILLE

By \_\_\_\_\_  
John D. Lollis  
City Manager

PORTERVILLE PUBLIC IMPROVEMENT CORPORATION

By \_\_\_\_\_  
John D. Lollis  
Executive Director

## EXHIBIT A

Lease Payment Date	Principal Component	Interest Component (1)	Total Lease Payment (1)
10/1/13	—	\$328,501.48	\$328,501.48
4/1/14	—	347,490.00	347,490.00
10/1/14	—	347,490.00	347,490.00
4/1/15	—	347,490.00	347,490.00
10/1/15	—	347,490.00	347,490.00
4/1/16	—	347,490.00	347,490.00
10/1/16	—	347,490.00	347,490.00
4/1/17	\$235,000.00	347,490.00	582,490.00
10/1/17	340,000.00	343,612.50	683,612.50
4/1/18	345,000.00	338,002.50	683,002.50
10/1/18	380,000.00	332,310.00	712,310.00
4/1/19	390,000.00	326,040.00	716,040.00
10/1/19	415,000.00	319,605.00	734,605.00
4/1/20	420,000.00	312,757.50	732,757.50
10/1/20	455,000.00	305,827.50	760,827.50
4/1/21	460,000.00	298,320.00	758,320.00
10/1/21	495,000.00	290,730.00	785,730.00
4/1/22	500,000.00	282,562.50	782,562.50
10/1/22	535,000.00	274,312.50	809,312.50
4/1/23	545,000.00	265,485.00	810,485.00
10/1/23	580,000.00	256,492.50	836,492.50
4/1/24	585,000.00	246,922.50	831,922.50
10/1/24	620,000.00	237,270.00	857,270.00
4/1/25	630,000.00	227,040.00	857,040.00
10/1/25	665,000.00	216,645.00	881,645.00
4/1/26	680,000.00	205,672.50	885,672.50
10/1/26	740,000.00	194,452.50	934,452.50
4/1/27	750,000.00	182,242.50	932,242.50
10/1/27	775,000.00	169,867.50	944,867.50
4/1/28	785,000.00	157,080.00	942,080.00
10/1/28	810,000.00	144,127.50	954,127.50
4/1/29	825,000.00	130,762.50	955,762.50
10/1/29	835,000.00	117,150.00	952,150.00
4/1/30	850,000.00	103,372.50	953,372.50
10/1/30	865,000.00	89,347.50	954,347.50
4/1/31	880,000.00	75,075.00	955,075.00
10/1/31	895,000.00	60,555.00	955,555.00
4/1/32	910,000.00	45,787.50	955,787.50
10/1/32	925,000.00	30,772.50	955,772.50
4/1/33	940,000.00	15,510.00	955,510.00

(1) Beginning on April 2, 2016, interest is a variable rate based on the U.S. dollar one month LIBOR plus 2.125%, but in no case lower than 3.30%. The interest and total amounts during the variable rate period are shown assuming the minimum rate of 3.30% and are for illustration purposes only. If LIBOR exceeds 1.175%, the actual amounts will be higher.

The Lease Agreement is prepayable in whole on any date without premium.

## EXHIBIT B

### FORM OF INVESTOR LETTER

City of Porterville  
291 North Main Street  
Porterville, California 93257

Porterville Public Improvement Corporation  
291 North Main Street  
Porterville, California 93257

Re: \$21,060,000 Lease Agreement, dated as of April 1, 2013, by and between the Porterville Public Improvement Corporation and the City of Porterville, assigned to Rabobank, N.A.

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Ladies and Gentlemen:

The undersigned, Rabobank, N.A. ("Rabobank"), has agreed to acquire (i) the rights, title and interest of the Porterville Public Improvement Corporation (the "Corporation") under the Lease Agreement, dated as of April 1, 2013 (the "Lease Agreement"), by and between the City of Porterville (the "City") and the Corporation, including its rights to the lease payments to be made by the City under the Lease Agreement. In connection with such purchase, Rabobank hereby agrees and certifies to the Corporation and the City that:

(a) Rabobank has sufficient knowledge and experience in financial and business matters, including purchase and ownership of municipal and other obligations of a nature similar to the Lease Agreement to be able to evaluate the risks and merits of the investment represented by the purchase of the rights, title and interest of the Corporation under the Lease Agreement.

(b) Rabobank is acquiring the rights, title and interest of the Corporation under the Lease Agreement for its own account and not with a view to, or for sale in connection with, any distribution thereof or any part thereof. Rabobank has not offered to sell, solicited offers to buy, or agreed to sell the rights, title and interest of the Corporation under the Lease Agreement or any part thereof, and Rabobank has no current intention of reselling or otherwise disposing of the rights, title and interest of the Corporation under the Lease Agreement *provided, however*, such representation shall not preclude Rabobank from transferring or selling of the rights, title and interest of the Corporation under the Lease Agreement assigned to Rabobank in accordance with the Lease Agreement. Rabobank is not acting in a broker-dealer capacity in connection with its purchase of the rights, title and interest of the Corporation under the Lease Agreement.

(c) As a sophisticated investor, Rabobank has made its own credit inquiry and analysis with respect to the City and the Lease Agreement and has made an independent credit decision based upon such inquiry and analysis and in reliance on the truth, accuracy, and completeness of the representations and warranties of the City set forth in the Lease Agreement and in the information set forth in any materials submitted to Rabobank by the City. Rabobank acknowledges that it has reviewed information, including financial statements and other financial information, regarding the City and that Rabobank has had the opportunity to ask questions of and receive answers from knowledgeable individuals concerning the City and the Lease Agreement. Rabobank is able and willing to bear the economic risk of the purchase and ownership of the rights, title and interest of the Corporation under the Lease Agreement.

(d) Rabobank understands that the Lease Agreement has not been registered under the United States Securities Act of 1933 or under any state securities laws. Rabobank agrees that it will comply with any applicable state and federal securities laws then in effect with respect to any disposition of the Lease Agreement by it, and further acknowledges that any current exemption from registration of the Lease Agreement does not affect or diminish such requirements.

(e) Rabobank has Corporation to purchase the rights, title and interest of the Corporation under the Lease Agreement and to execute any instruments and documents required to be executed by Rabobank in connection with the purchase of the rights, title and interest of the Corporation under the Lease Agreement. The undersigned is a duly appointed, qualified, and acting officer of Rabobank and is authorized to cause Rabobank to make the representations and warranties contained herein on behalf of Rabobank.

(f) Rabobank has been informed that the Lease Agreement (i) has not been and will not be registered or otherwise qualified for sale under the "Blue Sky" laws and regulations of any jurisdiction, and (ii) will not be listed on any stock or other securities exchange.

(g) Rabobank acknowledges that rights, title and interest of the Corporation under the Lease Agreement are transferable with certain requirements, as described in the Lease Agreement.

(h) Rabobank has been informed that the Lease Agreement is exempt from the requirements of Rule 15c2-12 of the Securities and Exchange Commission and that the City has not undertaken to provide any continuing disclosure with respect to the Lease Agreement.

RABOBANK, N.A.

By \_\_\_\_\_  
Ian Carroll  
Senior Vice President

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**ESCROW DEPOSIT AND TRUST AGREEMENT**

**by and between the**

**CITY OF PORTERVILLE**

**and**

**U.S. BANK NATIONAL ASSOCIATION, as Escrow Agent**

**Dated April 11, 2013**

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Advance refunding the  
City of Porterville  
Certificates of Participation  
(2005 Infrastructure Financing Project)



## ESCROW DEPOSIT AND TRUST AGREEMENT

This Escrow Deposit and Trust Agreement (this "Escrow Deposit and Trust Agreement"), dated April 11, 2013, is by and between the CITY OF PORTERVILLE, a municipal corporation and chartered city organized and existing pursuant to the laws of the State of California (the "City"), and U.S. BANK NATIONAL ASSOCIATION, a national banking association organized and existing under the laws of the United States of America, as escrow agent (the "Escrow Agent").

### WITNESSETH:

WHEREAS, the City has heretofore caused the execution and delivery of its \$20,850,000 Certificates of Participation (2005 Infrastructure Financing Project) (the "2005 Certificates") evidencing and representing the fractional undivided interests of the owners thereof in lease payments (the "2005 Lease Payments") to be made by the City as the rental for certain property pursuant to a lease agreement, dated as of December 1, 2005 (the "2005 Lease Agreement"), with the Porterville Public Financing Authority (the "Authority") to finance and refinance various public infrastructure improvements on real property within and without the boundaries of the City, including the refunding of certain outstanding obligations of the City, currently outstanding in the principal amount of \$17,865,000;

WHEREAS, the 2005 Certificates were executed and delivered pursuant to the terms of a trust agreement, dated as December 1, 2005 (the "2005 Trust Agreement"), by and among the City, the Authority and U.S. Bank National Association, as trustee thereunder (the "2005 Trustee");

WHEREAS, in order to provide for the repayment of the 2005 Certificates, the Corporation leased certain property to the City pursuant to the 2005 Lease Agreement under which the City agreed to make the 2005 Lease Payments in sufficient amounts in each year to pay the full amount of principal and interest with respect to the 2005 Certificates;

WHEREAS, the City has determined that, as a result of favorable financial market conditions and for other reasons, it is in the best interests of the City at this time to refinance the City's obligation to make the 2005 Lease Payments under the 2005 Lease Agreement and, as a result thereof, to provide for the early defeasance of the 2005 Certificates and, to that end, the City proposes to lease certain real property and improvements (the "Property") to the Porterville Public Improvement Corporation (the "Corporation") and to lease-back the Property from the Authority pursuant to that certain Lease Agreement, dated as of April 1, 2012 (the "Lease Agreement");

WHEREAS, the City proposes to make the deposit of moneys and to appoint the Escrow Bank for the purpose of applying said deposit to provide for the payment and prepayment of the 2005 Lease Payments in accordance with the instructions provided by this Escrow Deposit and Trust Agreement and of applying said 2005 Lease Payments to the payment and redemption of the 2005 Certificates in accordance with the 2005 Trust Agreement and the Escrow Bank desires to accept said appointment;

WHEREAS, to obtain moneys to make such deposit, the Authority proposes to assign and transfer certain of its rights under the Lease Agreement to Rabobank, N.A. (the "Assignee"), pursuant to that certain Assignment Agreement, dated as of April 1, 2013, by

and between the Corporation and the Assignee (the "Assignment Agreement"), whereby the Assignee will make a payment of \$21,060,000 to or to the order of the City;

WHEREAS, the City wishes to make such a deposit with the Escrow Bank and to enter into this Escrow Deposit and Trust Agreement for the purpose of providing the terms and conditions for the deposit and application of amounts so deposited; and

WHEREAS, the Escrow Bank has full powers to act with respect to the irrevocable escrow and trust created herein and to perform the duties and obligations to be undertaken pursuant to this Escrow Deposit and Trust Agreement.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants herein set forth, the parties hereto do hereby agree as follows:

*Section 1. Discharge of 2005 Certificates.* The City hereby irrevocably elects to pay and discharge all indebtedness payable by the City under the 2005 Trust Agreement and the 2005 Lease Agreement.

*Section 2. Appointment of Escrow Bank.* The City hereby appoints the Escrow Bank as escrow bank for all purposes of this Escrow Deposit and Trust Agreement and in accordance with the terms and provisions of this Escrow Deposit and Trust Agreement, and the Escrow Bank hereby accepts such appointment.

*Section 3. Establishment of Escrow Fund.* There is hereby created by the City with, and to be held by, the Escrow Bank, as security for the payment of the 2005 Lease Payments as hereinafter set forth, an irrevocable escrow to be maintained in trust by the Escrow Bank on behalf of the City and for the benefit of the owners of the 2005 Certificates, said escrow to be designated the "Escrow Fund." All moneys deposited in the Escrow Fund shall be held as a special fund for the payment of the principal and interest with respect to the 2005 Certificates in accordance with the provisions of the 2005 Trust Agreement. If at any time the Escrow Bank shall receive actual knowledge that the moneys in the Escrow Fund will not be sufficient to make any payment required by Section 3 hereof, the Escrow Bank shall notify the City of such fact and the City shall immediately cure such deficiency. The Escrow Bank shall have no liability for such deficiency.

*Section 4. Deposit into Escrow Fund.*

(a) The City shall cause to be transferred to the Escrow Bank for deposit into the Escrow Fund the amount of \$19,859,514.80 in immediately available funds, derived from amounts paid by the Assignee pursuant to the Assignment Agreement.

(b) The Escrow Agent shall invest \$\_\_\_\_\_ of the moneys deposited into the Escrow Fund pursuant to the preceding paragraph in the U.S. Treasury Securities—State and Local Government Series set forth in Exhibit A attached hereto and by this reference incorporated herein (the "Escrowed Federal Securities") and shall hold the remaining \$\_\_\_\_\_ in cash, uninvested. The Escrowed Federal Securities shall be deposited with and held by the Escrow Agent in the Escrow Fund solely for the uses and purposes set forth herein.

(c) The Escrow Agent may rely upon the conclusion of Grant Thornton LLP, as contained in its opinion and accompanying schedules (the "Report") dated April 11, 2013, that the Escrowed Federal Securities mature and bear interest payable in such amounts and at such times as, together with cash on deposit in the Escrow Fund, will be sufficient to pay the interest on the principal and interest due with respect to the 2005 Certificates to and including

July 1, 2015, and to redeem the outstanding 2005 Certificates in full on July 1, 2015 at 100% of the principal amount thereof, without premium.

(d) The Escrow Agent shall not be liable or responsible for any loss resulting from its full compliance with the provisions of this Escrow Deposit and Trust Agreement.

(e) Any money left on deposit in the Escrow Fund after payment in full of the 2005 Certificates, and the payment of all amounts due to the Escrow Agent hereunder, shall be paid to the City.

Section 3. Instructions as to Application of Deposit. The moneys deposited in the Escrow Fund pursuant to Section 2 shall be applied by the Escrow Agent for the sole purpose of paying the principal and interest due with respect to the 2005 Certificates to and including July 1, 2015, and to redeem the outstanding 2005 Certificates in full on July 1, 2015 at 100% of the principal amount thereof, without premium, as set forth in Exhibit B attached hereto and by this reference incorporated herein.

The Escrow Agent, in its capacity as 2005 Trustee, is hereby requested, and the Escrow Agent, as 2005 Trustee, hereby agrees to give notice of the defeasance of the 2005 Certificates in the form of defeasance notice attached hereto as Exhibit C.

The Escrow Agent, in its capacity as 2005 Trustee is hereby requested, and the Escrow Agent, as 2005 Trustee, hereby agrees to give timely notice for redemption of the 2005 Certificates on the July 1, 2015, at least thirty (30) days prior to such date in accordance with the applicable provisions of the 2005 Trust Agreement and the form of redemption notice attached hereto as Exhibit D.

Section 4. Investment of Any Remaining Moneys. The Escrow Agent shall invest and reinvest the proceeds received from any of the Escrowed Federal Securities, and the cash originally deposited into the Escrow Fund, for a period ending not later than the next succeeding interest payment date relating to the 2005 Certificates, in Federal Securities pursuant to written directions of the City; *provided, however*, that (a) such written directions of the City shall be accompanied by (i) a certification of an independent certified public accountant or firm of certified public accountants of favorable national reputation experienced in the refunding of obligations of political subdivisions that the Federal Securities then to be so deposited in the Escrow Fund, together with the Federal Securities then on deposit in the Escrow Fund, together with the interest to be derived therefrom, shall be in an amount at all times at least sufficient to make the payments specified in Section 3 hereof, and (ii) an opinion of nationally recognized bond counsel ("Bond Counsel") that investment in accordance with such directions will not affect, for Federal income tax purposes, the exclusion from gross income of interest due with respect to the 2005 Certificates, and (b) if the City directs such investment or reinvestment to be made in United States Treasury Securities—State and Local Government Series, the City shall, at its cost, cause to be prepared all necessary subscription forms therefor in sufficient time to enable the Escrow Agent to acquire such securities. In the event that the City shall fail to file any such written directions with the Escrow Agent concerning the reinvestment of any such proceeds, such proceeds shall be held uninvested by the Escrow Agent. Any interest income resulting from investment or reinvestment of moneys pursuant to this Section 4 and not required for the purposes set forth in Section 3, as indicated by such verification, shall, promptly upon the receipt of such interest income by the Escrow Agent, be paid to the City.

Section 5. Substitution or Withdrawal of Federal Securities. The City may, at any time, direct the Escrow Agent in writing to substitute Federal Securities for any or all of the

Escrowed Federal Securities then deposited in the Escrow Fund, or to withdraw and transfer to the City any portion of the Federal Securities then deposited in the Escrow Fund, provided that any such direction and substitution or withdrawal shall be simultaneous and shall be accompanied by (a) a certification of an independent certified public accountant or firm of certified public accountants of favorable national reputation experienced in the refunding of obligations of political subdivisions that the Federal Securities then to be so deposited in the Escrow Fund together with interest to be derived therefrom, or in the case of withdrawal, the Federal Securities to be remaining in the Escrow Fund following such withdrawal together with the interest to be derived therefrom, shall be in an amount at all times at least sufficient to make the payments specified in Section 3 hereof; and (b) an opinion of Bond Counsel that the substitution or withdrawal will not affect, for Federal income tax purposes, the exclusion from gross income of interest on the 2005 Certificates. In the event that, following any such substitution of Federal Securities pursuant to this Section 5, there is an amount of moneys or Federal Securities in excess of an amount sufficient to make the payments required by Section 3 hereof, as indicated by such verification, such excess shall be paid to the City.

*Section 6. Escrow Agent.*

(a) The Escrow Agent shall look solely to the City for compensation for its duties under this Escrow Deposit and Trust Agreement and shall have no right whatsoever against the Escrow Fund for fees, compensation, costs or expenses. The City shall also reimburse the Escrow Agent for out-of-pocket costs such as cost of giving notice of redemption of the 2005 Certificates, legal fees and other costs and expenses relating hereto, but under no circumstances shall amounts deposited in the Escrow Fund be deemed to be available for said purposes.

(b) The City agrees to indemnify the Escrow Agent, its agents and its officers, directors and employees for, and hold the Escrow Agent, its agents and its officers, directors and employees harmless from and against, liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind (including without limitation, reasonable fees and disbursements of counsel or accountants for the Escrow Agent) which may be imposed on, incurred by, or asserted against the Escrow Agent or such other party at any time by reason of, or in connection with, the performance of its duties as Escrow Agent hereunder, unless due to the negligence or willful misconduct of any indemnified party. Such indemnity shall survive the termination or discharge of this Escrow Deposit and Trust Agreement and the earlier removal or resignation of the Escrow Agent.

(c) The Escrow Agent shall not have any liability hereunder except to the extent of its own negligence or willful misconduct. The Escrow Agent shall have no duty or responsibility under this Escrow Deposit and Trust Agreement in the case of any default by the City in the performance of the covenants or agreements contained in the 2005 Trust Agreement.

(d) The Escrow Agent may consult with counsel of its own choice (which may be counsel for the City) and the opinion of such counsel shall be full and complete authorization to take or suffer in good faith any action hereunder in accordance with such opinion of counsel.

(e) The Escrow Agent shall not be responsible for any of the recitals or representations contained herein, or in the 2005 Trust Agreement.

(f) The Escrow Agent may engage or be interested in any financial or other transaction with the City.

(g) The Escrow Agent shall not be liable for the accuracy of any calculations provided as to the sufficiency of the moneys deposited with it to pay the principal or interest with respect to the 2005 Certificates.

(h) The Escrow Agent shall not be liable for any action or omission of the City under this Escrow Deposit and Trust Agreement, under the 2005 Trust Agreement.

(i) Whenever in the administration of this Escrow Deposit and Trust Agreement, the Escrow Agent shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of negligence or willful misconduct on the part of the Escrow Agent, be deemed to be conclusively proved and established by a certificate of the City and shall, in the absence of negligence or willful misconduct on the part of the Escrow Agent, be full warrant to the Escrow Agent for any action taken or suffered by it under the provisions of this Escrow Deposit and Trust Agreement upon the faith thereof.

(j) The Escrow Agent may conclusively rely, as to the truth and accuracy of the statements and correctness of the opinions and the calculations provided to it in connection with this Escrow Deposit and Trust Agreement, and shall be protected in acting, or refraining from acting, upon any written notice, instruction, request, certificate, document or opinion furnished to the Escrow Agent in accordance with this Escrow Deposit and Trust Agreement and reasonably believed by the Escrow Agent to have been signed or presented by the proper party, and it need not investigate any fact or matter stated in such notice, instruction, request, certificate or opinion.

(k) The Escrow Agent may at any time resign by giving written notice to the City of such resignation. The City shall promptly appoint a successor Escrow Agent by the resignation date. Resignation of the Escrow Agent will be effective only upon acceptance of appointment by a successor Escrow Agent. If the City does not appoint a successor, the Escrow Agent may petition any court of competent jurisdiction for the appointment of a successor Escrow Agent, which court may thereupon, after such notice, if any, as it may deem proper and prescribe and as may be required by law, appoint a successor Escrow Agent. After receiving a notice or resignation of an Escrow Agent, the City may appoint a temporary Escrow Agent until the City appoints a successor Escrow Agent. Any such temporary Escrow Agent so appointed by the City shall immediately and without further act be superseded by the successor Escrow Agent so appointed.

(l) The Escrow Agent shall perform such duties and only such duties as are specifically set forth in this Escrow Deposit and Trust Agreement, and no implied actions, covenants or obligations shall be read into this Escrow Deposit and Trust Agreement against the Escrow Agent.

(m) None of the provisions of this Escrow Deposit and Trust Agreement shall require the Escrow Agent to expend or risk its own funds or otherwise to incur any liability, financial or otherwise, in the performance of any of its duties hereunder. The Escrow Agent may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents, attorneys, custodians or nominees appointed with due care, and shall not be responsible for any willful misconduct or negligence on the part of any agent, attorney, custodian or nominee so appointed. Anything in this Escrow Deposit and Trust Agreement to the contrary notwithstanding, in no event shall the Escrow Agent be liable for special, indirect, punitive or consequential loss or damage of any kind whatsoever (including but not limited to lost profits), even if the Escrow Agent has been advised of the likelihood of such loss or damage and regardless of the form of action.

(n) Any company into which the Escrow Agent may be merged or converted or with which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it shall be a party or any company to which the Escrow Agent may sell or transfer all or substantially all of its corporate trust business, provided such company shall be eligible under this Escrow Deposit and Trust Agreement, shall be the successor to such Escrow Agent without the execution or filing of any paper or any further act, notwithstanding anything herein to the contrary.

(o) The Escrow Agent shall not be liable to the parties hereto or deemed in breach or default hereunder if and to the extent its performance hereunder is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the Escrow Agent and could not have been avoided by exercising due care. Force majeure shall include acts of God, terrorism, war, riots, strikes, fire, floods, earthquakes, epidemics or other similar occurrences.

(p) The Escrow Agent agrees to accept and act upon instructions or directions pursuant to this Escrow Deposit and Trust Agreement sent by unsecured e-mail, facsimile transmission or other similar unsecured electronic methods, provided, however, that, the Escrow Agent shall have received an incumbency certificate listing persons designated to give such instructions or directions and containing specimen signatures of such designated persons, which such incumbency certificate shall be amended and replaced whenever a person is to be added or deleted from the listing. If the City elects to give the Escrow Agent e-mail or facsimile instructions (or instructions by a similar electronic method) and the Escrow Agent in its discretion elects to act upon such instructions, the Escrow Agent's understanding of such instructions shall be deemed controlling. The Escrow Agent shall not be liable for any losses, costs or expenses arising directly or indirectly from the Escrow Agent's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. The City agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Escrow Agent, including without limitation the risk of the Escrow Agent acting on unauthorized instructions, and the risk of interception and misuse by third parties.

*Section 7. No Rights to Others.* Nothing in this Escrow Deposit and Trust Agreement expressed or implied is intended or shall be construed to give to any person other than the City, the Escrow Agent and the owners of the 2005 Certificates any legal or equitable right, remedy or claim under or in respect to this Escrow Deposit and Trust Agreement or any covenants, conditions or provisions herein contained; and all such covenants, conditions and provisions are and shall be held to be for the sole and exclusive benefit of the City, the Escrow Agent and the owners of the 2005 Certificates.

*Section 8. Notices.* All notices, requests, demands and other communications under this Escrow Deposit and Trust Agreement by any person shall be in writing (unless otherwise specified herein) and shall be sufficiently given on the date of service if served personally upon the person to whom notice is to be given or on receipt if sent by telex or other telecommunication facility or courier or if mailed by registered or certified mail, postage prepaid, and properly addressed as follows:

(a) if to the City, to City of Porterville, 291 North Main Street, Porterville, CA 93257,  
and

(b) if to the Escrow Agent, to U.S. Bank National Association, 633 West Fifth Street, 24th Floor, Los Angeles, CA 90071 Attention: Global Corporate Trust Services.

*Section 9. Amendment.* This Escrow Deposit and Trust Agreement may be modified or amended at any time by a supplemental agreement which shall become effective when the written consents of the owners of one hundred percent (100%) in aggregate principal amount of the 2005 Certificates then outstanding shall have been filed with the Escrow Agent. This Escrow Deposit and Trust Agreement may be modified or amended at any time by a supplemental agreement, without the consent of any such owners, but only (1) to add to the covenants and agreements of any party, other covenants to be observed, or to surrender any right or power herein or therein reserved to the County, (2) to cure, correct or supplement any ambiguous or defective provision contained herein, and (3) in regard to questions arising hereunder or thereunder, as the parties hereto or thereto may deem necessary or desirable and which, in the opinion of counsel, shall not materially adversely affect the interests of the owners of the 2005 Certificates , and that such amendment will not cause interest on the 2005 Certificates to become subject to federal income taxation.

*Section 10. Governing Law.* This Escrow Deposit and Trust Agreement shall be construed and governed in accordance with the laws of the State of California.

*Section 11. Severability.* In case any one or more of the provisions contained in this Escrow Deposit and Trust Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Escrow Deposit and Trust Agreement, but this Escrow Deposit and Trust Agreement shall be construed as if such invalid or illegal or unenforceable provisions had never been contained herein.

*Section 12. Counterparts.* This Escrow Deposit and Trust Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and such counterparts, or as many of them as the City and the Escrow Agent shall preserve undestroyed, shall together constitute but one and the same instrument.

*Section 13. Business Days.* Whenever any act is required by this Escrow Deposit and Trust Agreement to be done on a specified day or date, and such day or date shall be a day other than a business day for the Escrow Agent, then such act may be done on the next succeeding business day.

IN WITNESS WHEREOF the parties hereto have caused this Escrow Deposit and Trust Agreement to be executed in their respective names by their respective duly authorized officers, all as of the day and year first above written.

CITY OF PORTERVILLE

By \_\_\_\_\_  
John D. Lollis  
City Manager

U.S. BANK NATIONAL ASSOCIATION,  
as Escrow Agent

By \_\_\_\_\_  
Ilse Vlach  
Assistant Vice President



EXHIBIT A

SCHEDULE OF ESCROWED FEDERAL SECURITIES

<u>Type</u>	<u>Maturity</u>	<u>Principal</u>	<u>Rate</u>	<u>Yield</u>	<u>Price</u>	<u>Cost</u>	<u>Accrued</u>	<u>Total</u>
SLGS	07/01/13							
SLGS	01/01/14							
SLGS	07/01/14							
SLGS	01/01/15							
SLGS	07/01/15							
						_____	_____	_____
						_____	_____	_____

**EXHIBIT B**

**PAYMENT AND REDEMPTION SCHEDULE**

<u>Date</u>	<u>Maturing Principal</u>	<u>Called Principal</u>	<u>Interest</u>	<u>Redemption Premium</u>	<u>Total Payment</u>
07/01/13	\$425,000	—	\$432,046.88	—	\$ 857,046.88
01/01/14	—	—	423,812.50	—	423,812.50
07/01/14	440,000	—	423,812.50	—	863,812.50
01/01/15	—	—	415,012.50	—	415,012.50
07/01/15	455,000	\$16,545,000	415,012.50	—	17,415,012.50

## EXHIBIT C

### NOTICE OF DEFEASANCE City of Porterville Certificates of Participation (2005 Infrastructure Financing Project)

<u>Maturity Date</u>	<u>Amount Defeased</u>	<u>Interest Rate</u>	<u>CUSIP Number</u>
7/1/2013	\$ 425,000	3.875%	736369 HT9
7/1/2014	440,000	4.000	736369 HU6
7/1/2015	455,000	4.100	736369 HV4
7/1/2016	475,000	4.200	736369 HW2
7/1/2017	495,000	4.300	736369 HX0
7/1/2018	515,000	4.400	736369 HY8
7/1/2019	540,000	4.500	736369 HZ5
7/1/2020	565,000	4.500	736369 JA8
7/1/2030	7,420,000	5.000	736369 JC4
7/1/2036	6,535,000	5.000	736369 JD2

NOTICE IS HEREBY GIVEN, on behalf of the City of Porterville (the "City") with respect to the City of Porterville Certificates of Participation (2005 Infrastructure Financing Project) described above (the "Certificates"), that pursuant to the terms of the trust agreement under which the Certificates were executed and delivered (the "Trust Agreement"), the lien of the Certificates has been discharged through the irrevocable deposit of cash and U.S. Treasury Securities in an escrow fund (the "Escrow Fund"). The Escrow Fund has been established and is being maintained pursuant to an escrow deposit and trust agreement, dated April 11, 2013, by and between the City and U.S. Bank National Association, as escrow agent. As a result of such deposit, the Certificates are deemed to have been paid and defeased in accordance with the Trust Agreement. The pledge of funds provided for under the Trust Agreement and all other obligations of the City to the owners of the defeased Certificates shall hereafter be limited to the application of moneys in the Escrow Fund for the payment of the principal and interest with respect to the Certificates as the same become due and payable as described below.

Amounts deposited in the Escrow Fund are calculated to be sufficient to provide for the payment of principal and interest with respect to the Certificates to and including July 1, 2015, and to redeem the outstanding Certificates on July 1, 2015 (the "Redemption Date"), at a redemption price equal to 100% of the principal amount of the Certificates, without premium. From and after the Redemption Date, interest with respect to the Certificates shall cease to accrue and be payable.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2013

U.S. BANK NATIONAL ASSOCIATION, as  
Trustee for the Certificates and as Escrow Agent

## EXHIBIT D

### FORM OF REDEMPTION NOTICE

#### NOTICE OF REDEMPTION OF

**City of Porterville  
Certificates of Participation  
(2005 Infrastructure Financing Project)**

<u>Maturity Date</u>	<u>Amount Called</u>	<u>Redemption Price (1)</u>	<u>Interest Rate</u>	<u>CUSIP Number</u>
7/1/2016	\$ 475,000	\$ 475,000	4.200%	736369 HW2
7/1/2017	495,000	495,000	4.300	736369 HX0
7/1/2018	515,000	515,000	4.400	736369 HY8
7/1/2019	540,000	540,000	4.500	736369 HZ5
7/1/2020	565,000	565,000	4.500	736369 JA8
7/1/2030	7,420,000	7,420,000	5.000	736369 JC4
7/1/2036	6,535,000	6,535,000	5.000	736369 JD2

(1) Accrued interest to be added.

NOTICE is hereby given that the City of Porterville (the "City") has called for redemption on July 1, 2015 (the "Redemption Date"), the outstanding City of Porterville Certificates of Participation (2005 Infrastructure Financing Project) described above (the "Certificates"), at a price equal to 100% of the principal amount thereof, plus accrued interest to the date fixed for redemption, without premium (the "Redemption Price").

On the Redemption Date, the Redemption Price will become due and payable upon each Certificate and interest with respect thereto shall cease to accrue from and after the Redemption Date.

Payment of principal will be made upon presentation on and after July 1, 2015, at the following addresses:

If by Mail: (Registered Certificates)  
U.S. Bank National Association  
Global Corporate Trust Services  
P.O. Box 64111  
St. Paul, MN 55154-0111

If by Hand or Overnight Mail:  
U.S. Bank National Association  
Global Corporate Trust Services  
60 Livingston Avenue  
1<sup>st</sup> Floor Bond Drop Window  
St. Paul, MN 55107

Owners of Certificates presenting their certificates in person for the same day payment must surrender their certificate by 1:00 p.m. on the prepayment date and a check will be available for pickup after 2:00 p.m. Checks not picked up by 4:30 p.m. will be mailed to the owner by first class mail.

Interest with respect to the principal amount designated to be redeemed shall cease to accrue on and after the Redemption Date.

If payment of the Redemption Price is to be made to the registered owner of the Certificate you are not required to endorse the Certificate to collect the Redemption Price.

Under the Economic Growth and Tax Relief Reconciliation Act of 2006 (the "Act") 28% will be withheld if tax identification number is not properly certified. The Form W-9 may be obtained from the Internal Revenue Service.

Neither the City nor the Trustee shall be held responsible for the selection or use of the CUSIP number, nor is any representation made as to its correctness as shown in the Redemption Notice. It is included solely for convenience of the Holders.

Dated: \_\_\_\_\_, 2015

U.S. BANK NATIONAL ASSOCIATION,  
as Trustee

AFTER RECORDATION RETURN TO:

Quint & Thimmig LLP  
575 Market Street, Suite 3600  
San Francisco, CA 94105-2874  
Attention: Brian D. Quint, Esq.

THIS TRANSACTION IS EXEMPT FROM CALIFORNIA DOCUMENTARY TRANSFER TAX PURSUANT TO SECTION 11929 OF THE CALIFORNIA REVENUE AND TAXATION CODE. THIS DOCUMENT IS EXEMPT FROM RECORDING FEES PURSUANT TO SECTION 27383 OF THE CALIFORNIA GOVERNMENT CODE.

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## TERMINATION AGREEMENT

Dated as of April 1, 2013

by and among the

CITY OF PORTERVILLE

the

PORTERVILLE PUBLIC FINANCING AUTHORITY

and

U.S. BANK NATIONAL ASSOCIATION, as Trustee

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Relating to the  
\$3,000,000  
Certificates of Participation  
(2005 Infrastructure Financing Project)  
Evidencing and Representing the Fractional Undivided Interests of the  
Owners Thereof in Rental Payments to be Made by the  
CITY OF PORTERVILLE  
As the Rental for certain Property Pursuant to a Lease Agreement  
with the Porterville Public Financing Authority

## TERMINATION AGREEMENT

This TERMINATION AGREEMENT is dated as of April 1, 2013, and is by and among the CITY OF PORTERVILLE (the "City"), the PORTERVILLE PUBLIC FINANCING AUTHORITY (the "Authority"), and U.S. BANK NATIONAL ASSOCIATION, as trustee (the "2005 Trustee").

### WITNESSETH:

WHEREAS, the City and the Authority have heretofore entered into a Lease and Right of Entry Agreement, dated as of February 1, 2005 (the "2005 Lease and Right of Entry Agreement"), and a Lease Agreement, dated as of February 1, 2005 (the "2005 Lease Agreement"), pursuant to which the Authority and the City entered into a transaction for the lease financing of certain facilities, including the site thereof (the "2005 Property"), and the City agreed to make certain lease payments (the "2005 Lease Payments") to the Authority;

WHEREAS, the 2005 Lease Agreement provides that in the event that the City deposits, or causes the deposit on its behalf of moneys for the prepayment of the 2005 Lease Payments, then all of the obligations of the City under the 2005 Lease Agreement and all of the security provided by the City for such obligations, excepting only the obligation of the City to make the 2005 Lease Payments from said deposit, shall cease and terminate, and unencumbered title to the Property shall be vested in the City without further action by the City or the Authority;

WHEREAS, pursuant to an Assignment Agreement, dated as of February 1, 2005 (the "2005 Assignment Agreement"), by and between the Authority and the 2005 Trustee, the Authority assigned to the 2005 Trustee, among other things, its rights to receive 2005 Lease Payments from the City under the 2005 Lease Agreement and the right to exercise such rights and remedies conferred on the Authority under the 2005 Lease Agreement to enforce payment of the 2005 Lease Payments;

WHEREAS, pursuant to a Trust Agreement, dated as of February 1, 2005, by and among the City, the Authority and the 2005 Trustee, the 2005 Trustee agreed, among other matters, to execute and deliver certificates of participation (the "2005 Certificates") representing the fractional undivided interests of the owners thereof to receive 2005 Lease Payments made by the City;

WHEREAS, the City has determined that, as a result of favorable financial market conditions and for other reasons, it is in the best interests of the City at this time to refinance the City's obligation to make the 2005 Lease Payments under the 2005 Lease Agreement and, as a result thereof, to provide for the early redemption of the 2005 Certificates and, to that end, the City proposes to lease certain real property and the improvements thereon (the "2012 Property") to the Porterville Public Improvement Corporation (the "Corporation") and to lease back the 2012 Property from the Authority pursuant to that certain Lease Agreement, dated as of April 1, 2013 (the "2012 Lease Agreement"), a memorandum of which has been recorded concurrently herewith;

WHEREAS, to obtain moneys to make such deposit, the Authority proposes to assign and transfer certain of its rights under the 2012 Lease Agreement to Rabobank, N.A. (the "Assignee"), pursuant to that certain Assignment Agreement, dated as of April 1, 2013, by and between the Corporation and the Assignee, and recorded concurrently herewith (the "2012 Assignment Agreement"), whereby the Assignee is to make a payment of \$21,060,000 to or to the order of the City;

WHEREAS, upon deposit of a portion of such amounts for prepayment of the 2005 Lease Payments, the 2005 Lease Agreement and the agreements related thereto need not be maintained (except as otherwise provided below), and the parties hereto now desire to provide for the termination of such documents as provided herein.

NOW, THEREFORE, in consideration of the foregoing and for other consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereto do hereby agree:

*Section 1. Termination.*

(a) By virtue of the deposit of amounts for prepayment of the 2005 Lease Payments, all obligations of the City under the 2005 Lease Agreement shall cease and terminate, excepting only the obligation of the City to make, or cause to be made, all payments from such deposit and title to the 2005 Property shall vest in the City on the date of said deposit automatically and without further action by the City or the Authority. Said deposit and interest earnings thereon shall be deemed to be and shall constitute a special fund for the prepayment of the 2005 Lease Payments.

(b) In accordance with the foregoing, the 2005 Lease and Right of Entry Agreement, 2005 Lease Agreement and the 2005 Assignment Agreement are hereby terminated and are of no further force or effect.

(c) That from and after the date hereof, none of the parties shall have any further rights or obligations thereunder.

*Section 2. Execution in Counterparts.* This Termination Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.



IN WITNESS WHEREOF, the parties hereto have duly executed this Termination Agreement.

CITY OF PORTERVILLE

By \_\_\_\_\_  
John D. Lollis  
City Manager

Attest:

\_\_\_\_\_  
Patrice Hildreth  
Chief Deputy City Clerk

PORTERVILLE PUBLIC IMPROVEMENT CORPORATION

By \_\_\_\_\_  
John D. Lollis  
Executive Director

Attest:

\_\_\_\_\_  
Patrice Hildreth  
Deputy Secretary

U.S. BANK NATIONAL ASSOCIATION,  
as 2005 Trustee

By \_\_\_\_\_  
Ilse, Vlach  
Vice President

**EXHIBIT A**

**PROPERTY DESCRIPTION**

<u>Projects</u>	<u>Est. Cost of Existing Curb, Gutter Sidewalk Improvement (1)</u>	<u>Est. Cost of Existing Pavement (2)</u>	<u>Est. Right of Way Cost and Title Type (3)</u>	<u>Total Worth</u>
<b>BRIDGES</b>				
South Plano-Tule River	—	—	—	\$2,500,000
South Main-Tule River	—	—	—	\$2,500,000
South Jaye-Tule River	—	—	—	\$2,500,000
<b>SLOUGH CROSSINGS</b>				
W Henderson-Porter Slough	—	—	—	\$375,000
N. Westwood-Porter Slough	—	—	—	\$375,000
<b>STREETS</b>				
E. Morton	1200'x62.50=\$75,000	6600'x112.50=\$742,500	6600'x7.50=\$49,600	\$887,000
N. Conner-Morton/E. Olive	—	1400'x112.50=\$157,500	2800'x7.50=\$21,000	\$178,600
E. Olive-Putnam/Tulsa	1000'x62.50=\$62,500	7000'x112.50=\$787,500	7000'x7.50=\$52,500	\$902,500
N. Indiana-Olive/Morton	2000'x62.50=\$125,000	2000'x187.50=\$375,000	2000'x7.50=\$15,000	\$515,000
W Henderson-Newcomb/ Westwood	6500'x62.50=\$406,250	5500'x112.50=\$618,750	5500'x7.50=\$41,250	\$1,066,250
N. Main-Henderson/Linda Vista	1000'x62.50=\$62,500	11,000'x112.50=\$1,237,500	5000'x7.50=\$37,500 plus 6000'x12.50=\$75,000	\$1,412,500
W Olive-Newcomb/Westwood	4000'x62.50=\$250,000	5500'x187.50=\$1,031,250	3000'x7.50=\$22,500 plus 2500'x12.50=\$31,250	\$1,335,000
E. Orange-Piano/S. Main	3000'x62.50=\$187,500	3000'x187.50=\$562,500	3000'x12.50=\$37,500	\$787,500
S. Jaye-Olive/Gibbons	4000'x62.50=\$260,000	4000'x187.50=\$750,000 plus 5500'x112.50=\$618,750	5500'x12.50=\$68,750 plus 4000'x7.50=\$30,000	\$1,717,500
S. Newcomb-Olive/Hwy 190	2000'x62.50=\$125,000	3000'x112.50=\$337,500	1500'x12.50=\$18,750 plus 2500'x7.50=\$18,750	\$500,000
Gibbons-S. Main/Indiana	—	5500'x112.50=\$618,750	5500'x7.50=\$41,250	\$680,000
S. Main-Hwy-190/Gibbons	1500'x62.50=\$93,750	4000'x187.50=\$750,000	4000'x12.50=\$50,000	\$893,750
N. Prospect-Morton/Pioneer	6500'x62.50=\$406,250	1500'x187.50=\$281,250 plus 5000'x112.50=\$562,500	1500'x12.50=\$18,750 plus 5000'x7.50=\$37,500	\$1,306,250
E. Date-S. Main/Plano	500'x62.50=\$31,250	2500'x112.50=\$281,250	2500'x7.50=\$18,750	\$331,250
W. Westfield-Hwy. 65/N. Main	3500'x62.50=\$218,750	3500'x112.50=\$393,750	3500'x7.50=\$26,250	\$636,750
N. Newcomb-Mulberry/N. Grand	3500'x62.50=\$218,750	5000'x187.50=\$937,500	5000'x7.50=\$37,500	\$1,193,750
N. Westwood- Henderson/Friant Canal	3000'x31.25=\$83,750	1000'x93.75=\$93,750 plus 3000'x112.50=\$337,500	4000'x7.50=\$30,000	\$555,000
Downtown Parking Lots	4x \$250,000=\$1,000,000			\$1,000,000
S. Indian-Olive/Springville	2000'x62.50=\$125,000	3500'x112.50=\$393,750	1500'x7.50=\$11,250	\$530,000
N. Prospect-Olive/Morton	2500'x62.50=\$156,250	2500'x112.50=\$281,250	2500'x7.50=\$18,750	\$456,250
N. Villa-Olive/Henderson	5000'x62.50=\$312,500	5000'x112.50=\$562,500	4000'x7.50=\$30,000 plus 1000'x12.50=\$12,500	\$917,500
W Henderson-Indiana/N. Main	4500'x62.50=\$281,250	4500'x187.50=\$843,750	4500'x7.50=\$33,750	\$1,158,750
N. Main-Morton/Henderson	3000'x62.50=\$187,500	3000'x187.50=\$582,500	3000'x12.50=\$37,500	\$787,500
W Grand-"E"/Newcomb	8500'x62.50=\$531,250	8500'x112.50=\$956,250	8500'x7.50=\$63,750	\$1,561,250
N. Piano-Henderson/Reid	1500'x62.50=\$93,750	2000'x187.50=\$375,000 plus 4000'x112.50=\$450,000	6000'x7.50=\$45,000	\$963,500
N. Leggett-Success/Henderson	6000'x62.50=\$375,000	7500'x112.50=\$843,750	7500'x7.50=\$58,250	\$1,275,000
Main-Date/Morton	5000'x187.50=\$937,500	5000'x1000=\$5,000,000	5000'x62.50=\$312,500	<u>\$6,250,000</u>
				<u>\$38,000,600</u>

- (1) Average cost for Curb/Gutter/Sidewalk \$31.25 per linear foot (one side), \$62.50 per linear foot (two sides), excluding bridges.
- (2) Average cost for Arterial Pavement Section \$187.50 per linear foot. Average cost for Major Collector Pavement section \$112.50 per linear foot.
- (3) Right of Way value without improvements. Residential-\$6 per square foot. Commercial-\$20 per square foot (includes both sides of street)