

# Visalia City Council Agenda

For the regular adjourned meeting of: Monday, October 15 2007 to  
Monday, October 29, 2007

Location: City Hall Council Chambers

Mayor: Jesus J. Gamboa  
Vice Mayor: Greg Kirkpatrick  
Council Member: Greg Collins  
Council Member: Donald K. Landers  
Council Member: Bob Link

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All items listed under the Consent Calendar are considered to be routine and will be enacted by one motion. If anyone desires discussion on any item on the Consent Calendar, please contact the City Clerk who will then request that Council make the item part of the regular agenda.

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## **REGULAR SESSION**

**4:00 p.m.**

**This regular meeting was adjourned from Monday, October 15, 2007 to Monday, October 29, 2007 at 4:00 p.m., for the following item:**

1. Second Reading of Ordinance 2007-14 Rescinding Ordinance No. 2006-13, and Authorizing the City Manager to Execute a nine (9) year, with a six (6) year renewal option, Lease of Recreation Park Stadium, for professional baseball, with Top of the Third, Inc.

### **Upcoming Council Meetings**

- Monday, October 29, 2007, Work Session 4:10/Regular Session 7:00 p.m. – City Council Chambers 707 W. Acequia
- Monday, November 19, 2007; Work Session 4:00/Regular Session 7:00 p.m. – City Council Chambers 707 W. Acequia
- Monday, December 3, 2007, Work Session 4:00/Regular Session 7:00 p.m. – City Council Chambers 707 W. Acequia
- Monday, December 19, 2007, Work Session 4:00/Regular Session 7:00 p.m. – City Council Chambers 707 W. Acequia

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# City of Visalia Agenda Item Transmittal

**Meeting Date:** October 29, 2007

**Agenda Item Number (Assigned by City Clerk):** 1

**Agenda Item Wording:** Introduction of Ordinance No. 2007- 14, Rescinding Ordinance No. 2006-13 and Authorizing the City Manager to Execute a Nine (9) Year, With a Six (6) Year Renewal Option, Lease of Recreation Park Stadium, for Professional Baseball, With Top of the Third, Inc.

**Deadline for Action:**

October 29, 2007

**Submitting Department:**

Administration

**Contact Name and Phone Number:** Carol L. Cairns, Assistant City Manager 713-4324

**Department Recommendation:** The appointed subcommittee, consisting of Vice Mayor Greg Kirkpatrick, Councilmember Greg Collins and Assistant City Manager, Carol Cairns, recommends that the City Council adopt Ordinance No. 2007-14, rescinding the current lease and authorizing the City Manager to enter into a new nine (9) year lease agreement with a six (6) year option between the City of Visalia and TOP OF THE THIRD, INC., to provide professional baseball at Recreation Park Stadium. The lease is attached to the proposed Ordinance.

**Summary: Summary/background:**

On April 13, 2007, City Council approved the increased scope of work at Recreation Park Stadium due to infrastructure cost, rightfield upgrades, and demolition and reconstruction of the grandstand berm. Based upon the increased scope and project cost (approximately \$11.6 M), City Council also directed the project to be a City project subject to public bid and no longer a private project with TOP of the THIRD, Inc.

At the August 20, 2007, Council Meeting, Vice Mayor Kirkpatrick and Councilman Greg Collins were appointed by Mayor Gamboa to work with Assistant City Manager, Carol Cairns and Oaks owner, Tom Seidler to review the lease and refine the revenue projections. Several meetings took place to review various revenue options. At the September 24, 2007 closed session, Council directed the subcommittee to review options with Mr. Seidler adhering to the original Revenue Option 2, which was calculated on the City receiving a \$1.00 surcharge on general admission tickets and a \$2.00 surcharge on premium tickets and a percentage of the club's annual gross revenue.

**For action by:**

City Council  
 Redev. Agency Bd.  
 Cap. Impr. Corp.  
 VPFA

**For placement on which agenda:**

Work Session  
 Closed Session

**Regular Session:**

Consent Calendar  
 Regular Item  
 Public Hearing

Est. Time (Min.): \_\_\_\_\_

**Review:**

**Dept. Head** \_\_\_\_\_  
(Initials & date required)

**Finance** \_\_\_\_\_  
**City Atty** \_\_\_\_\_  
(Initials & date required or N/A)

**City Mgr** \_\_\_\_\_  
(Initials Required)

If report is being re-routed after revisions leave date of initials if no significant change has affected Finance or City Attorney Review.

The subcommittee met on September 27, 2007, at 4:30pm to discuss the revenue options and all members, (including owner Tom Seidler), agreed to recommend to the full council that the City receive the following gross revenues:

- \$0- \$1,000,000 ticket surcharge in lieu of revenue sharing
- \$1,000,000-\$1,500,000 5%
- \$1,500,000-\$2,000,000 7.5%
- \$2,000,000-above 10%

(The thresholds will be adjusted annually by CPI.)

The surcharge on tickets would remain at \$.50 on berm tickets, \$1.00 on regular tickets and \$2.00 on premium tickets throughout the term of the lease.

At Council direction on October 1, 2007, staff and the City Attorney have prepared the draft lease incorporating the above revenue option with TOP of the THIRD, Inc. as follows:

- a. Ticket Surcharge: Lessee (TOP o the THIRD, Inc.) shall charge and collect a surcharge on each ticket sold for events for which Lessee sells tickets at the Premises of \$.50 per Berm Ticket, \$1.00 per Regular Priced Ticket and \$2.00 per premium Ticket (tickets entitling the holder to use box seats, sky boxes, Hot Corner Lounge and VIP Lounge). The surcharge shall be paid on tickets actually sold and shall not be paid on tickets "comped" or "traded" which shall be limited to no more than 15% of total tickets issued.
- b. Percentage Rental: In addition to the ticket surcharge, Lessee shall pay the Lessor (City) a Percentage Rental pursuant to the following terms.
  - i. Formula:
    - Percentage shall equal the sum of (1) Five 5% of the amount of Annual Gross Receipts that exceeds \$1,000,000 and is less than \$1,500,000.
    - 7.5% of the amount of Annual Gross Receipts that exceeds \$1,500,000 and is less than \$2,000,000 and
    - 10% of the amount of Annual Gross Receipts that exceeds \$2,000,000.

(The thresholds will be adjusted annually by CPI.)

- ii. The total amount of "Gross Receipts," is defined a the total amount of all monies or credits paid to or received by Lessee during the period of January and 1 and December 31 of each year (a "Revenue Year"). The following list provides an example and not as limitations, are all considered sources of Gross Receipts:
  - Tickets sales
  - Concessions receipts (food and beverage, including alcoholic beverages)
  - Advertising revenue
  - Naming rights revenue
  - Revenue from ancillary activities (i.e. batting cages, pitching booths)
  - Rental or fees for special events during the months theclub leases the stadium
  - Gross Receipts shall not include tradeouts (defined as items received by Lessee in lieu of cash as consideration for goods or services provided by Lessee).

When the rightfield renovation and the grandstand replacement are fully completed and utilized, the stadium will have a seating capacity of approximately 3,100. Revenue projections are based on a conservative estimate of 70% occupancy. Therefore, any attendance above the estimate will substantially increase the revenues.

***Over the 20 year loan period the City is projected to receive approximately \$6,145,093 or \$307,255 average per year.***

This revenue sharing allows the club to stabilize its operational costs as well as sharing revenues with the City to pay debt service on the improvements.

***Other Major Agreement Points Between the CITY of VISALIA and TOP OF THE THIRD are:***

**TOP of the THIRD, Inc:**

- Will provide a Class A California League Professional Baseball Team in Visalia for 9 years with a 6 year option.
- Will provide annual maintenance and repair services to the facility of \$10,000 annually.
- Will provide grounds and maintenance staff year round.
- Will provide staff year round for special events.
- Will market special events for the stadium.
- Will utilize Hospitality Suite year round.

**CITY OF VISALIA:**

- Requires the Lessee to provide a California League Class A professional baseball equivalent or higher during the term of the lease.
- The City will require the Lessee to prepare annually a Field Maintenance and Repair Program for the coming year, which shall include at a minimum the salary for a year round grounds supervisor and other costs of field maintenance and repair, including but not limited to equipment repair and maintenance and supplies and chemical products necessary for the maintenance of the playing field surface. Lessee will provide Lessor a job description for the grounds supervisor and a list of projected costs of field repairs and maintenance, equipment repair and maintenance and field product on January 1 of each year of the lease. Lessor shall pay for up to \$40,000 (as adjusted annually cumulative increase in the Consumer Price Index-All Cities Average) of the Field Maintenance and Repair Program. Lessor will pay Lessor's obligations under this paragraph in four equal quarterly payments to Lessee on January 1, April 1, July 1, and October 1 of each year of the lease. The City previously contracted with a private vendor to provide the field maintenance and repair. The Lessee anticipates saving the City approximately \$5,000 annually by providing the maintenance internally as opposed to contracting out. Any annual amount not expended may be utilized by the Lessee toward the club's utility cost as approved by Lessor (City).
- The City currently provides major maintenance and repairs of the stadium facilities and grounds. In order to allow the Lessee to schedule repairs and maintenance in a more timely fashion and without having to schedule work through the City Building Division the City will provide the Lessee with the authority to authorize repairs and maintenance up to \$20,000 annually in 2007-09 and up to \$30,000 in 2010-2016 (or after major warranties have elapsed). Lessee will provide the City with a list of the need for such repairs annually. The City will continue to be responsible for major maintenance and repair

above this level. Any annual amount not expended may be utilized by the Lessee toward the club's utility cost as approved by Lessor (City).

- The City will pay electric billing for the baseball season at a maximum \$34,590 annually plus a CPI increase. (The original amount approved in the 2003 Lease with TOP of the THIRD, Inc. was \$30,000 with an annual CPI cumulative adjustment. The new base is \$34,590 for 2008.)The Lessee will be responsible for any electric billing in excess of the annual amount paid by the Lessor (City).

#### **Joint Agreements Between the City of Visalia and TOP of the THIRD, Inc.**

- The City of Visalia shall maintain control of the stadium during the off season (October-March 14), with the exception of the club office, conference room, storage area and team store which the Lessee has exclusive use of and expenses for, year round.
- The Lessor and Lessee will work cooperatively to schedule other special events in the stadium. A recommended plan will be submitted to the City Council by April 2008.

The owners are confident that attendance will continue to increase at Recreation Stadium as the stadium is renovated and upgraded. This is seen in many stadiums throughout the country as indicated by the attached chart. As the existing stadiums are new or significantly renovated the attendance is boosted by some 92%.

Minor League Baseball's popularity continues to be on the rise throughout the country. Attendance is consistently high in new or improved stadiums. It is a very affordable family entertainment that is hard to duplicate. It is a quality of life asset that also creates jobs, improves the surrounding area, provides opportunities for youth and brings the community together.

#### **Prior Council/Board Actions:**

Council approval of current lease August 2006

#### **Committee/Commission Review and Actions:**

#### **Alternatives:**

#### **Attachments:**

Proposed Ordinance

City Lease with TOP of the THIRD, Inc.

**Recommended Motion (and Alternative Motions if expected):** I move the City Council adopt Ordinance 2007-14 rescinding Ordinance No. 2006-13 and authorizing the City Manager to enter into a nine (9) year lease agreement with a six (6) year renewal option, with TOP of the THIRD, Inc. for lease of property located at 300 North Giddings, Visalia, California for the use of professional baseball and other City authorized events.

***Environmental Assessment Status***

**CEQA Review:**

**NEPA Review:**

**Tracking Information:** *(Staff must list/include appropriate review, assessment, appointment and contract dates and other information that needs to be followed up on at a future date)*

Copies of this report have been provided to:

**Ordinance No. 2007-14**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF VISALIA REPEALING ORDINANCE NO. 2006-13 AND AUTHORIZING THE CITY MANAGER TO EXECUTE AN AMENDED LEASE AGREEMENT BETWEEN THE CITY OF VISALIA AND TOP OF THE THIRD, INC. FOR THE LEASE OF PROPERTY LOCATED AT 300 N. GIDDINGS, VISALIA, CALIFORNIA**

**WHEREAS**, the city of Visalia owns certain real property commonly referred to as the Recreation Park Stadium, generally located at the southeast corner of Giddings St. and Murray Avenue (portion of APNs 093-245-001, 093-233-001) ; and

**WHEREAS**, the Visalia City Council enacted Ordinance No. 2006-13 on August 28, 2006, authorizing the City Manager to execute a lease with Top of the Third, Inc. for said property for the purpose of providing professional baseball at Recreation Park Stadium; and

**WHEREAS**, the lease was executed and it is now desirable to amend the terms of said lease; and

**WHEREAS**, the city of Visalia and Top of the Third, Inc. desire to enter into a lease agreement for said Demised Premises for a period of nine (9) years with a six (6) year option; and

**WHEREAS**, said Demised Premises is more particularly described and shown on Exhibit A, attached hereto; and

**WHEREAS**, pursuant to the Charter of the city of Visalia, the City Council may, by ordinance, authorize the lease of property for a period of greater than five (5) years; and

**WHEREAS**, the City Council introduced this ordinance authorizing the City Manager to enter into the subject amended lease at the July 18, 2007 meeting of the City Council.

**BE IT ORDAINED BY THE COUNCIL OF THE CITY OF VISALIA:**

1. **SECTION 1.** The City Manager of the City of Visalia be, and is hereby authorized to execute on behalf of the city of Visalia, that certain Lease Agreement by and between the city of Visalia and Top of the Third, Inc., in the form as provided attached hereto, and further authorized the City Manager to make any non-substantive administrative changes to the lease that may be necessary or appropriate.
2. **SECTION 2.** The City Council of the city of Visalia finds the lease and projects referenced therein to be Categorically Exempt from the provisions of the California Environmental Quality Act (CEQA) per Section 15332 (infill project) of the Guidelines for Implementation of the California Environmental Quality Act.
3. **SECTION 3.** City of Visalia Ordinance No. 2006-13 is hereby repealed.
4. **SECTION 4.** This ordinance shall go into effect thirty (30) days after its passage.

## VISALIA OAKS BALLFIELD LEASE BOUNDARY

See attached exhibit drawing

1. BOUNDARY BEGINS AT SOUTHWEST CORNER OF BASEBALL PARK ENTRANCE APPROXIMATELY 95.66 FEET SOUTH OF THE OAK STREET CENTERLINE AT THE EAST RIGHT-OF-WAY LINE OF GIDDINGS STREET; THENCE NORTH ALONG EAST RIGHT-OF-WAY LINE OF GIDDINGS STREET APPROXIMATELY 522.96 FEET TO NORTHWEST CORNER OF BASEBALL PARK; THENCE EAST FOLLOWING THE BOUNDARY BETWEEN THE BASEBALL PARK AND THE NORTH PARKING LOT TO THE WEST WALL OF THE TEAM CLUBHOUSE; THENCE NORTH ALONG THE WEST WALL OF THE TEAM CLUBHOUSE TO THE NORTH WALL OF THE TEAM CLUBHOUSE; THENCE EAST ALONG THE NORTH WALL OF THE TEAM CLUBHOUSE TO THE EAST WALL OF THE TEAM CLUBHOUSE; THENCE SOUTH ALONG THE EAST WALL OF THE TEAM CLUBHOUSE TO THE NORTHWEST CORNER OF THE EAST BULLPEN; THENCE EAST ALONG THE NORTH SIDE OF THE EAST BULLPEN TO THE EAST SIDE OF THE EAST BULLPEN; THENCE SOUTH ALONG THE EAST SIDE OF THE EAST BULLPEN TO THE SOUTH SIDE OF THE BULLPEN; THENCE WEST ALONG THE SOUTH SIDE OF THE EAST BULLPEN TO THE BASEBALL PARK OUTFIELD FENCE; THENCE FOLLOWING THE OUTFIELD FENCE SOUTHWEST ALONG A CURVE CONCAVE TO THE SOUTHEAST TO THE EAST SIDE OF THE BASEBALL PARK TOT LOT; THENCE SOUTH ALONG THE EAST SIDE OF THE TOT LOT TO THE SOUTH EDGE OF THE TOT LOT; THENCE WEST ALONG SOUTH LINE OF TOT LOT TO WEST SIDE OF TOT LOT; THENCE NORTH ALONG WEST BOUNDARY OF TOT LOT TO THE SOUTH SIDE OF THE SOUTH CONCOURSE AT THE SOUTHERN BERM; THENCE WEST ALONG THE SOUTH SIDE OF THE SOUTH CONCOURSE AT THE SOUTHERN BERM TO THE BASEBALL PARK ENTRANCE AND POINT OF BEGINNING.

2. LEASED OFFICE SPACE TO BE BUILT ON WEST (GIDDINGS STREET) SIDE OF BALL PARK.