

Agenda Item Transmittal

Meeting Date: July 13, 2009

Agenda Item Number (Assigned by City Clerk): 9f

Agenda Item Wording: Authorize the City Manager to execute a new contract with the Tulare County Office of Education for the lease of the Manuel F. Hernandez Community Center and the Fairview Community Center for the Tulare County First Five Pre-School Program.

Deadline for Action: N/A

Submitting Department: Parks & Recreation

Contact Name and Phone Number: John Bradley, Recreation Supervisor 713-4585

Department Recommendation:

Staff recommends that the City Council authorize the City Manager to execute a new agreement with Tulare County Office of Education for the lease of the Fairview and Manuel F. Hernandez Community centers for the purpose of providing pre-school programs.

Summary/background:

The City of Visalia has had a long partnership with the Tulare County Office of Education (TCOE) for the purpose of providing pre-school programming for families in Visalia. This relationship has consisted in TCOE leasing facility space at the Manuel F. Hernandez and Fairview Community Centers.

The current contract with TCOE started June 22, 2005 and expired June 30, 2009. This new contract will allow the continued facility use from 2009-2014 with an additional 5 year extension provision.

The City currently receives rental revenue from the lease of these two community centers. Under this new agreement, the use of the Fairview Center will generate \$28,125 and the Manuel F. Hernandez Community Center will generate \$15,230 for the leased space during the 2009-10 fiscal year. This lease agreement allows an annual increase based on the "California Consumer Price Index, All Items, All Urban Consumers".

Prior Council/Board Actions:

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.

Approved a five-year agreement with Tulare County Office of Education to lease portions of the Manuel F. Hernandez and Fairview Community Centers on June 22, 2005.

Committee/Commission Review and Actions: none

Alternatives:

Attachments:

Attachment A – Draft Lease Agreement- Fairview Community Center

Attachment B – Draft Lease Agreement- Manuel F. Hernandez Community Center *Attachment C* – Past

Recommended Motion (and Alternative Motions if expected):

Staff recommends that the City Council authorize the City Manager to execute a new agreement with Tulare County Office of Education for the lease of the Fairview and Manuel F. Hernandez Community centers for the purpose of providing pre-school programs.

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:

TULARE COUNTY SUPERINTENDENT OF SCHOOLS
AND
CITY OF VISALIA / MANUEL F. HERNANDEZ COMMUNITY CENTER
LEASE AGREEMENT

1. DATE: This Lease is made and entered into in duplicate original as of the 1st day of July, 2009.
2. PARTIES: By and between CITY OF VISALIA, hereinafter referred to as the LESSOR, and Tulare County Superintendent of Schools for its Child Care Educational Program., hereinafter referred to as the LESSEE.
3. PREMISES: The property subject to this Lease is that building and premises located at 247 West Ferguson, Visalia, California, unfurnished.
4. TERM: The term of this Lease is five (5) years, commencing July 1, 2009, and terminating June 30, 2014.
5. RENTAL: Lessee shall pay to the LESSOR the total annual sum of \$15,230.36 for the LEASE term. Payments will be made quarterly, in advance. Rent to be adjusted annually using the California Consumer Price Index for Urban Consumers as published by the California Department of Public Relations.
6. OPTION TO RENEW: LESSOR & LESSEE shall have the right and option to renew this Lease on all the provisions contained herein, excepting as to rental, for one additional five-year period (extended term) following expiration of the initial lease term, by giving written notice of the exercise of such option(s) (option notice) to LESSOR at least ninety (90) days prior to the expiration of the initial lease term or the expiration of the first option period, as the case may be; provided, however, that in the event that LESSEE is in default on the date of giving such option notice, the option notice shall be totally ineffective, or if LESSEE is in default on the date the extended term(s) are to commence, the extended term(s) shall not commence and this Lease shall expire at the end of the initial lease term or the end of the first extended term, as the case may be. The parties shall have thirty (30) days after LESSOR receives the written option notice in which to agree on monthly rent during each additional term. If the parties agree on monthly rent for the additional term(s) during that period, they shall immediately execute an amendment to this Lease stating the monthly rent. If for any reason the parties are unable to agree on the monthly rent for the additional term(s) within that period, the option notice shall be of no effect and this Lease shall expire at the end of the initial term or end of the extended first term as the case may be. Neither party to this Lease shall have the right to have a court or other third party determine the monthly rent.
7. EARLY TERMINATION: This Lease may be terminated prior to the date specified in

paragraph four of this Lease Agreement under any of the following circumstances. In the event of termination of this Lease as provided herein, the LESSOR and LESSEE shall be under no further obligation or liability to each other by reason of the Agreement, and any prior rental payments will be prorated accordingly. Any rents due to LESSOR will be paid through the effective date of termination of this Agreement.

a. Loss of Funding: It is understood that LESSEE is dependent upon funds from other Governmental and private sources. If a reduction in such funding renders LESSEE unable to maintain its program, LESSEE shall have the right to terminate this Lease by providing LESSOR with ninety (90) days prior written notice. The determination as to whether sufficient funds are available to operate shall be within the sole discretion of LESSEE.

b. Expansion of Program: If an increase in available funding allows LESSEE to expand its Program to such an extent that the premises are no longer adequate to house the Program activities, LESSEE shall have the right to terminate this Lease by providing LESSOR with ninety (90) days prior written notice. The determination as to whether the premises provide adequate space to house the Program shall be within the sole discretion of LESSEE.

c. Mutual Consent: Both parties may terminate this Lease Agreement at any time by written consent.

8. TAXES, INSURANCE AND UTILITY CHARGES: LESSEE will pay promptly, when and as the same shall become due and payable, all rates, tolls and charges for telephone service, that shall be used by said LESSEE on said premises. LESSEE understands and agrees that they will pay, as part of the monthly rental charge, a proportional share of utility and yard service based on total square footage. LESSEE shall pay all taxes levied or assessed upon all personal property and fixtures owned by LESSEE and located in said premises. Insurance for the personal property contents of the leased premises shall be the responsibility of the LESSEE to procure. LESSOR shall be responsible for keeping the building and premises insured for their fair market value during the entire term hereof.

LESSOR will pay all real property taxes and assessments levied upon the premises by whatever governmental entity during the term hereof.

9. WASTE: LESSEE shall not commit any waste or suffer any waste to be committed to the leased premises. At all time during the lease term, LESSEE shall keep and maintain said premises in a good, clean and sanitary condition. LESSEE will not cause, suffer or permit any nuisance to exist on said premises at any time during said term. LESSEE will conform to, comply with and faithfully obey all local ordinances, and all laws of the State of California, and of the United States of America in any way affecting the use or occupation of said premises.

LESSEEs taking possession of the premises on the commencement of the lease term shall constitute LESSEEs acknowledgment that the premises are in good condition. LESSEE shall be responsible for the maintenance of the grounds and parking areas at LESSEEs own expense.

10. IMPROVEMENTS AND ALTERATIONS: LESSEE shall have the right to remodel and make such improvements or alterations to the interior of the leased premises as LESSEE shall desire for the proper and efficient operation of LESSEEs business; provided, however, that no alterations or changes shall be made without the prior written consent of LESSOR; and, provided further, that any and all such improvements and alterations shall be made at the sole cost and expense of LESSEE. All such improvements and alterations shall conform to building codes and zoning regulations now or hereafter legally effective and promulgated by appropriate governmental authority. All such improvements or alterations shall, at the expiration of the term hereof, be and remain in the leased premises and become the property of said LESSOR; provided, however, that LESSEE shall have the right to remove all trade fixtures which LESSEE may own or place in the leased premises during the lease term, provided that LESSEE shall not then be in default in the performance of any of the terms of this Lease, that any such removal shall be effected before the expiration of the lease term, and that all damage caused to the leased premises by such removal shall be repaired by LESSEE on or before the expiration of the term hereof.

11. LIENS: LESSEE will not cause, suffer or permit any lien provided for by the Civil Code of the State of California, relating to liens of mechanics and others upon real property, to attach to or to be impressed upon, or to be filed or recorded against the leased premises or any part thereof, and the LESSOR reserves and has the right to post and maintain on said premises any and all notices of non-responsibility that LESSOR may deem necessary or proper to protect LESSORs title in and to said premises against any such liens.

12. REPAIRS: LESSEE shall keep and maintain said premises in as good order, condition and repair as reasonable use and wear thereof will permit. LESSOR will be responsible for major maintenance and repairs, including, but not limited to, replacement of roofs, exterior walls, floors, foundations, electrical fixtures, heating and cooling systems and plumbing systems. All such work shall be done so far as practical in such a manner and time as to avoid interference with the LESSEES'S use of the leased property. Major repairs, which are the responsibility of the LESSOR, shall be made only after at least 24 hours notice to LESSEE. LESSOR represents that when LESSEE takes possession of the premises, all plumbing and electrical will be in good working condition. AT the end of the term, or on the sooner termination of this Lease, LESSEE shall quit and surrender said premises to LESSOR in as good order, condition and repair as reasonable use and wear thereof will permit, damage by the elements excepted.

13. INSPECTION: LESSOR, or LESSORs agents, shall have the right of ingress and egress from the leased premises at all reasonable times during the lease term for the purpose of inspecting the same. LESSEE must comply with State of California required regular playground inspections. LESSEE must maintain daily health and safety checklist inspections leading to monthly summaries, assuring that all equipment is safe and secure. The LESSEE must document all repairs in a playground inspection report available upon request by the LESSOR. The LESSOR must also have annual inspections by Certified Playground Safety Inspectors.

14. DESTRUCTION OF BUILDING: In the event the leased premises shall be totally destroyed by fire, or other casualty, this Lease and the term hereof shall immediately terminate,

and in the event any portion of said premises, less than the whole thereof, shall be destroyed or rendered unfit for use by fire, or other casualty, or from any cause other than the acts of the LESSEE, or LESSEEs agents, servants or employees, then and in that event, the portion thereof so destroyed, or rendered unfit for use shall be promptly replaced or repaired by the LESSOR, and during the time required for the replacement or repair of the portion of said building so destroyed or rendered unfit for use, as aforesaid, said LESSEE shall be entitled to a reduction based on usable space in the rents payable pursuant to the terms hereof, which said reduction in rents shall be proportionate to the extent that said premises shall be rendered unfit for use, as aforesaid; provided, however, that in the event the replacement or repair of the portion of the premises the event the replacement or repair of the portion of the premises so destroyed or rendered unfit for use, as aforesaid, shall require the expenditure of more than one-half (2) of the then fair market value of said premises, LESSOR shall have the right, at LESSORs option, to cancel this Lease, and in the event said LESSOR shall so elect to cancel this Lease, and in the event said LESSOR shall so elect to cancel this Lease, LESSOR shall be under no obligation to replace or repair the portion of the premises so destroyed or rendered unfit for use, as aforesaid, and said LESSEE shall thereupon remove from said premises, and LESSOR shall be entitled to retain all rents theretofore paid to LESSOR by said LESSEE, and said LESSEE shall be entitled to the return of any then prepaid rental hereunder; provided, however, that in no event shall said LESSEE be entitled to any damages for any loss occasioned by injury to or destruction of said leased premises.

15. INDEMNIFICATION: LESSOR shall not be liable in any manner for any loss, damage or injury to the person or property of said LESSEE, or LESSEEs agents or employees, or to persons invited or permitted by said LESSEE to come upon or about the leased premises, or to any other person, by reason of anything done, permitted to be done or suffered, or omitted to be done by said LESSEE, or LESSEEs agents or employees. LESSEE agrees to indemnify and save harmless LESSOR from any and all such liability, damage, cost and expense, to protect LESSOR against any claim therefore, to defend LESSOR against any such claim that may be made, or any action that may be brought against said LESSOR, and to pay all costs, attorneys fees and expenses of such protection and defense. LESSEE agrees to maintain a policy of premises liability insurance in a company acceptable to LESSOR covering both LESSEE and LESSOR, as an additional insured, in an amount of not less than \$1,000,000.00 for each person and \$500,000.00 property damage during the term of this Lease. LESSOR represents that it is not aware of any pre-existing environmental problems as to the leased premises, and will indemnify and hold harmless LESSEE from any such pre-existing environmental problems if found. Landlord agrees to promptly notify Tenant of any communication received from any governmental entity concerning hazardous substances or the violation of environmental laws that relate to the premises.

16. USE OF PREMISES: LESSEE will use the leased premises for the purpose of carrying out the needs of the program, and for no other business or purpose whatsoever without the written consent of LESSOR. Leased space is defined as storage closet, use of kitchen during operating hours and Classroom/outdoor play area. LESSOR shall not use areas outside of leased premises for own purposes. LESSOR has the rights to utilize the kitchen for LESSOR sponsored events. While the kitchen is used for said events, the space will be supervised by LESSOR

representative to assure security of LESSEE equipment.

17. ASSIGNMENT AND SUBLEASE: LESSEE shall not assign this Lease or any interest herein, or let or sublet the leased premises or any part thereof, without first obtaining the written consent of the LESSOR to do so. A consent to one assignment or subletting shall not be deemed to be consent to any subsequent assignment or subletting hereunder. LESSOR agrees not to unreasonably withhold such consent.

18. DEFAULT: In the event of any breach of this Lease by LESSEE, then LESSOR, besides other rights or remedies it may have, shall have the immediate right of re-entry and may remove all persons and property from the premises, subject to ten (10) days prior written notice to LESSEE. If LESSOR elects to terminate the LESSEEs rights because of a breach of the Lease, or if LESSOR elects to terminate LESSEEs right to possession due to LESSEEs abandonment of the premises before the end of the term, then in either such case, LESSOR may recover from LESSEE all damages suffered by LESSOR as the result of LESSEEs failure to perform LESSEEs obligations hereunder, including but not limited to, the worth at the time of award by a court of law of the amount by which the unpaid rent for the balance of the lease term after the time of award exceeds the amount of such rental loss that the LESSEE proves could be reasonably avoided.

As provided in California Civil Code ' 1951.4, in the event that LESSEE breaches this Lease and abandons the property, this Lease will continue in effect for so long as LESSOR does not terminate the LESSEEs right of possession; and the LESSOR may enforce all of LESSORs rights and remedies under this Lease, including the right to recover the rent as it becomes due under this Lease. For the purposes of this paragraph, the following do not constitute a termination of LESSEEs right to possession:

- a. Acts of maintenance or preservation or efforts to re-let the property; and
- b. The appointment of a receiver upon initiative of LESSOR to protect LESSORs interest under this Lease.

19. ATTORNEYS FEES: In the event that it shall become necessary for either party to institute legal proceedings of any kind or character in order to compel performance of any of the covenants or conditions herein contained, the prevailing party shall have and recover all reasonable attorneys fees incurred in connection with such legal proceedings.

20. SIGNS: LESSEE shall comply with all local sign ordinances.

21. HOLDING OVER: Any holding over of said premises after default made by said LESSEE shall be deemed an unlawful detainer by LESSEE, and any holding over after the term hereof (or extended term(s) if exercised) shall be deemed to be tenancy from month to month.

22. BANKRUPTCY: Either (a) the appointment of a receiver to take possession of all or substantially all of the assets of the LESSEE, or (b) a general assignment by LESSEE for the benefit of creditors, or (c) any action taken or suffered by LESSEE under any insolvency or bankruptcy act shall, at the option of the LESSOR, constitute a breach of the Lease by the

LESSEE

23. CONDEMNATION: If any part of the premises shall be taken or condemned for a public or quasi-public use, and a part thereof remains which is susceptible for occupation hereunder, this Lease shall, as to the part so taken, terminate as of the date title shall vest in the condemnor, and the rent payable hereunder shall be adjusted so that the LESSEE shall be required to pay for the remainder of the term only such portion of such rent as to the value of the part remaining after the condemnation bears to the value of the entire premises at the date of condemnation. If all of the leased premises, or such part thereof be taken or condemned so that there does not remain a portion susceptible for occupation hereunder, this Lease shall thereupon terminate. If a part or all of the leased premises be taken or condemned, all compensation awarded upon such condemnation or taking shall go to the LESSOR and the LESSEE shall have no claim thereto, and the LESSEE hereby irrevocably assigns and transfers to the LESSOR any right to compensation or damages to which the LESSEE may become entitled during the term hereof by reason of the condemnation of all, or a part of the leased premises.

24. QUIET POSSESSION: LESSOR shall place LESSEE in the peaceful and undisturbed possession of the leased premises at the commencement of the term hereof, and LESSEE performing and observing all of the conditions and covenants on LESSEEs part to be performed, LESSOR shall secure to LESSEE the quiet and peaceful possession of the leased premises during the term hereof against all persons claiming the same.

25. TIME OF ESSENCE: Time is of the essence of each and every covenant herein contained.

26. WAIVER OF BREACH: In the event LESSOR shall waive one or more breaches of any of the terms of this Lease, LESSOR shall not thereafter be precluded from preventing any further breaches of any of said terms, nor from enforcing a strict performance of each and all of said terms thereafter to be paid, kept or performed. Each and all of the rights and remedies herein given to LESSOR are cumulative and the election of LESSOR to proceed under any one or any number of such remedies shall in no manner abrogate LESSORs right to maintain or enforce any or all of the remaining rights or remedies herein given to LESSOR.

27. BINDS SUCCESSORS: This Lease and the provisions hereof shall inure to the benefit of and shall be binding upon the heirs, executors, administrators and assigns of the respective parties hereto.

28. MODIFICATION: This Lease is not subject to modification except in writing.

29. DELINQUENT RENTAL: Any sum accruing to LESSOR under the terms of this Lease which shall not be paid to LESSOR when due shall bear interest at the rate of ten percent (10%) per annum until paid in full.

30. NOTICES: All notices, demands and requests from LESSEE to LESSOR shall be given to LESSOR at 345 N. Jacob Street, Visalia, California 93291, or personally served. All notices, demands and requests from LESSOR to LESSEE shall be given to LESSEE at Post

Office Box 5091, Visalia, California 93278-5091 or personally served.

31. ENTIRE AGREEMENT: This Lease contains the entire agreement of the parties with respect to the matters covered by this Lease, and no other agreement, statement, or promise made by any party, whether to any employee, officer, or agent of any party, which is not contained in this Lease shall be binding or valid.

32. VALIDITY: If any term or provision of this Lease is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain in force and effect and shall in no way be affected, impaired or invalid.

33. AUTHORITY: If either party is a corporation, trust or general or limited partnership, all individuals executing the Lease on behalf of that entity represent that they are authorized to execute and deliver this Lease on behalf of that entity.

34. SIGNATURES: IN WITNESS WHEREOF, the parties have executed this Lease the day and year first hereinbefore written.

Date: _____

City of Visalia

By _____

LESSOR

Title _____

LESSOR

Date: _____

Tulare County Superintendent of Schools

By _____

Title _____

LESSEE

TULARE COUNTY SUPERINTENDENT OF SCHOOLS
AND
CITY OF VISALIA / FAIRVIEW VILLAGE DAYCARE
LEASE AGREEMENT

1. DATE: This Lease is made and entered into in duplicate original as of the 1st day of July, 2009.
2. PARTIES: By and between CITY OF VISALIA, hereinafter referred to as the LESSOR, and Tulare County Superintendent of Schools for its Child Care Educational Program., hereinafter referred to as the LESSEE.
3. PREMISES: The property subject to this Lease is that building and premises located at 2645 N. Conyer, Visalia, California, unfurnished.
4. TERM: The term of this Lease is five (5) years, commencing July 1, 2009, and terminating June 30, 2014.
5. RENTAL: Lessee shall pay to the LESSOR the total annual sum of \$28, 124.64 for the LEASE term. Payments will be made quarterly, in advance. Rent to be adjusted annually using the California Consumer Price Index for Urban Consumers as published by the California Department of Public Relations.
6. OPTION TO RENEW: LESSOR & LESSEE shall have the right and option to renew this Lease on all the provisions contained herein, excepting as to rental, for one additional five-year period extended term following expiration of the initial lease term, by giving written notice of the exercise of such option(s) (option notice) to LESSOR at least ninety (90) days prior to the expiration of the initial lease term or the expiration of the first option period, as the case may be; provided, however, that in the event that LESSEE is in default on the date of giving such option notice, the option notice shall be totally ineffective, or if LESSEE is in default on the date the extended term(s) are to commence, the extended term(s) shall not commence and this Lease shall expire at the end of the initial lease term or the end of the first extended term, as the case may be. The parties shall have thirty (30) days after LESSOR receives the written option notice in which to agree on monthly rent during each additional term. If the parties agree on monthly rent for the additional term(s) during that period, they shall immediately execute an amendment to this Lease stating the monthly rent. If for any reason the parties are unable to agree on the monthly rent for the additional term(s) within that period, the option notice shall be of no effect and this Lease shall expire at the end of the initial term or end of the extended first term as the case may be. Neither party to this Lease shall have the right to have a court or other third party determine the monthly rent.
7. EARLY TERMINATION: This Lease may be terminated prior to the date specified in

paragraph four of this Lease Agreement under any of the following circumstances. In the event of termination of this Lease as provided herein, the LESSOR and LESSEE shall be under no further obligation or liability to each other by reason of the Agreement, and any prior rental payments will be prorated accordingly. Any rents due to LESSOR will be paid through the effective date of termination of this Agreement.

- a. Loss of Funding: It is understood that LESSEE is dependent upon funds from other Governmental and private sources. If a reduction in such funding renders LESSEE unable to maintain its program, LESSEE shall have the right to terminate this Lease by providing LESSOR with ninety (90) days prior written notice. The determination as to whether sufficient funds are available to operate shall be within the sole discretion of LESSEE.
- b. Expansion of Program: If an increase in available funding allows LESSEE to expand its Program to such an extent that the premises are no longer adequate to house the Program activities, LESSEE shall have the right to terminate this Lease by providing LESSOR with ninety (90) days prior written notice. The determination as to whether the premises provide adequate space to house the Program shall be within the sole discretion of LESSEE.
- c. Mutual Consent: Both parties may terminate this lease Agreement at any time by written mutual consent.

8. TAXES, INSURANCE AND UTILITY CHARGES: LESSEE will pay promptly, when and as the same shall become due and payable, all rates, tolls and charges for telephone service, that shall be used by said LESSEE on said premises. LESSEE shall furnish at its own expense custodial care of the leased premises. LESSEE shall pay for all utility services furnished to said premises. LESSEE shall pay all taxes levied or assessed upon all personal property and fixtures owned by LESSEE and located in said premises. Insurance for the personal property contents of the leased premises shall be the responsibility of the LESSEE to procure. LESSOR shall be responsible for keeping the building and premises insured for their fair market value during the entire term hereof

LESSOR will pay all real property taxes and assessments levied upon the premises by whatever governmental entity during the term hereof.

9. WASTE: LESSEE shall not commit any waste or suffer any waste to be committed to the leased premises. At all time during the lease term, LESSEE shall keep and maintain said premises in a good, clean and sanitary condition. LESSEE will not cause, suffer or permit any nuisance to exist on said premises at any time during said term. LESSEE will conform to, comply with and faithfully obey all local ordinances, and all laws of the State of California, and of the United States of America in any way affecting the use or occupation of said premises. LESSEEs taking possession of the premises on the commencement of the lease term shall constitute LESSEEs acknowledgment that the premises are in good condition. LESSEE shall be responsible for the maintenance of the grounds and parking areas at LESSEEs own expense.

10. IMPROVEMENTS AND ALTERATIONS: LESSEE shall have the right to remodel and make such improvements or alterations to the interior of the leased premises as LESSEE shall desire for the proper and efficient operation of LESSEE's business; provided, however, that no alterations or changes shall be made without the prior written consent of LESSOR; and, provided further, that any and all such improvements and alterations shall be made at the sole cost and expense of LESSEE. All such improvements and alterations shall conform to building codes and zoning regulations now or hereafter legally effective and promulgated by appropriate governmental authority. All such improvements or alterations shall, at the expiration of the term hereof, be and remain in the leased premises and become the property of said LESSOR; provided, however, that LESSEE shall have the right to remove all trade fixtures which LESSEE may own or place in the leased premises during the lease term, provided that LESSEE shall not then be in default in the performance of any of the terms of this Lease, that any such removal shall be effected before the expiration of the lease term, and that all damage caused to the leased premises by such removal shall be repaired by LESSEE on or before the expiration of the term hereof.

11. LIENS: LESSEE will not cause, suffer or permit any lien provided for by the Civil Code of the State of California, relating to liens of mechanics and others upon real property, to attach to or to be impressed upon, or to be filed or recorded against the leased premises or any part thereof, and the LESSOR reserves and has the right to post and maintain on said premises any and all notices of non-responsibility that LESSOR may deem necessary or proper to protect LESSOR's title in and to said premises against any such liens.

12. REPAIRS: LESSEE shall keep and maintain said premises in as good order, condition and repair as reasonable use and wear thereof will permit. LESSOR will be responsible for major maintenance and repairs, including, but not limited to, replacement of roofs, exterior walls, floors, fencing, foundations, electrical fixtures, heating and cooling systems, irrigation and plumbing systems. All such work shall be done so far as practical in such a manner and time as to avoid interference with the LESSEE'S use of the leased property. Major repairs, which are the responsibility of the LESSOR, shall be made only after at least 24 hours notice to LESSEE. LESSOR represents that when LESSEE takes possession of the premises, all plumbing and electrical will be in good working condition. AT the end of the term, or on the sooner termination of this Lease, LESSEE shall quit and surrender said premises to LESSOR in as good order, condition and repair as reasonable use and wear thereof will permit, damage by the elements excepted.

13. INSPECTION: LESSOR, or LESSOR's agents, shall have the right of ingress and egress from the leased premises at all reasonable times during the lease term for the purpose of inspecting the same. LESSEE must comply with State of California required regular playground inspections. LESSEE must maintain daily health and safety checklist inspections leading to monthly summaries, assuring that all equipment is safe and secure. The LESSEE must document all repairs in a playground inspection report available upon request by the LESSOR. The LESSOR must also have annual inspections by Certified Playground Safety Inspectors.

The LESSEE is responsible for routine maintenance of irrigation, building, parking lot lights, parking lot & facility grounds. The LESSOR will select plant varieties for parking lot planters. LESSEE has the responsibility to maintain plants, install wood chips and removed excess dirt in parking lot planters.

14. DESTRUCTION OF BUILDING: In the event the leased premises shall be totally destroyed by fire, or other casualty, this Lease and the term hereof shall immediately terminate, and in the event any portion of said premises, less than the whole thereof, shall be destroyed or rendered unfit for use by fire, or other casualty, or from any cause other than the acts of the LESSEE, or LESSEEs agents, servants or employees, then and in that event, the portion thereof so destroyed, or rendered unfit for use shall be promptly replaced or repaired by the LESSOR, and during the time required for the replacement or repair of the portion of said building so destroyed or rendered unfit for use, as aforesaid, said LESSEE shall be entitled to a reduction based on usable space in the rents payable pursuant to the terms hereof, which said reduction in rents shall be proportionate to the extent that said premises shall be rendered unfit for use, as aforesaid; provided, however, that in the event the replacement or repair of the portion of the premises the event the replacement or repair of the portion of the premises so destroyed or rendered unfit for use, as aforesaid, shall require the expenditure of more than one-half (2) of the then fair market value of said premises, LESSOR shall have the right, at LESSORs option, to cancel this Lease, and in the event said LESSOR shall so elect to cancel this Lease, and in the event said LESSOR shall so elect to cancel this Lease, LESSOR shall be under no obligation to replace or repair the portion of the premises so destroyed or rendered unfit for use, as aforesaid, and said LESSEE shall thereupon remove from said premises, and LESSOR shall be entitled to retain all rents theretofore paid to LESSOR by said LESSEE, and said LESSEE shall be entitled to the return of any then prepaid rental hereunder; provided, however, that in no event shall said LESSEE be entitled to any damages for any loss occasioned by injury to or destruction of said leased premises.

15. INDEMNIFICATION: LESSOR shall not be liable in any manner for any loss, damage or injury to the person or property of said LESSEE, or LESSEEs agents or employees, or to persons invited or permitted by said LESSEE to come upon or about the leased premises, or to any other person, by reason of anything done, permitted to be done or suffered, or omitted to be done by said LESSEE, or LESSEEs agents or employees. LESSEE agrees to indemnify and save harmless LESSOR from any and all such liability, damage, cost and expense, to protect LESSOR against any claim therefore, to defend LESSOR against any such claim that may be made, or any action that may be brought against said LESSOR, and to pay all costs, attorneys= fees and expenses of such protection and defense. LESSEE agrees to maintain a policy of premises liability insurance in a company acceptable to LESSOR covering both LESSEE and LESSOR, as an additional insured, in an amount of not less than \$1,000,000.00 for each person and \$500,000.00 property damage during the term of this Lease. LESSOR represents that it is not aware of any pre-existing environmental problems as to the leased premises, and will indemnify and hold harmless LESSEE from any such pre-existing environmental problems if found. Landlord agrees to promptly notify Tenant of any communication received from any

governmental entity concerning hazardous substances or the violation of environmental laws that relate to the premises.

16. USE OF PREMISES: LESSEE will use the leased premises for the purpose of carrying out the needs of the program, and for no other business or purpose whatsoever without the written consent of LESSOR. Leased space is defined as use of the entire facility, playground, grounds, and parking lot.

17. ASSIGNMENT AND SUBLEASE: LESSEE shall not assign this Lease or any interest herein, or let or sublet the leased premises or any part thereof, without first obtaining the written consent of the LESSOR to do so. A consent to one assignment or subletting shall not be deemed to be consent to any subsequent assignment or subletting hereunder. LESSOR agrees not to unreasonably withhold such consent.

18. DEFAULT: In the event of any breach of this Lease by LESSEE, then LESSOR, besides other rights or remedies it may have, shall have the immediate right of re-entry and may remove all persons and property from the premises, subject to ten (10) days prior written notice to LESSEE. If LESSOR elects to terminate the LESSEEs rights because of a breach of the Lease, or if LESSOR elects to terminate LESSEEs right to possession due to LESSEEs abandonment of the premises before the end of the term, then in either such case, LESSOR may recover from LESSEE all damages suffered by LESSOR as the result of LESSEEs failure to perform LESSEEs obligations hereunder, including but not limited to, the worth at the time of award by a court of law of the amount by which the unpaid rent for the balance of the lease term after the time of award exceeds the amount of such rental loss that the LESSEE proves could be reasonably avoided.

As provided in California Civil Code ' 1951.4, in the event that LESSEE breaches this Lease and abandons the property, this Lease will continue in effect for so long as LESSOR does not terminate the LESSEEs right of possession; and the LESSOR may enforce all of LESSORs rights and remedies under this Lease, including the right to recover the rent as it becomes due under this Lease. For the purposes of this paragraph, the following do not constitute a termination of LESSEEs right to possession:

- a. Acts of maintenance or preservation or efforts to re-let the property; and
- b. The appointment of a receiver upon initiative of LESSOR to protect LESSORs interest under this Lease.

19. ATTORNEYS FEES: In the event that it shall become necessary for either party to institute legal proceedings of any kind or character in order to compel performance of any of the covenants or conditions herein contained, the prevailing party shall have and recover all reasonable attorneys= fees incurred in connection with such legal proceedings.

20. SIGNS: LESSEE shall comply with all local sign ordinances.

21. HOLDING OVER: Any holding over of said premises after default made by said LESSEE shall be deemed an unlawful detainer by LESSEE, and any holding over after the term

hereof (or extended term(s) if exercised) shall be deemed to be tenancy from month to month.

22. BANKRUPTCY: Either (a) the appointment of a receiver to take possession of all or substantially all of the assets of the LESSEE, or (b) a general assignment by LESSEE for the benefit of creditors, or (c) any action taken or suffered by LESSEE under any insolvency or bankruptcy act shall, at the option of the LESSOR, constitute a breach of the Lease by the LESSEE.

23. CONDEMNATION: If any part of the premises shall be taken or condemned for a public or quasi-public use, and a part thereof remains which is susceptible for occupation hereunder, this Lease shall, as to the part so taken, terminate as of the date title shall vest in the condemnor, and the rent payable hereunder shall be adjusted so that the LESSEE shall be required to pay for the remainder of the term only such portion of such rent as to the value of the part remaining after the condemnation bears to the value of the entire premises at the date of condemnation. If all of the leased premises, or such part thereof be taken or condemned so that there does not remain a portion susceptible for occupation hereunder, this Lease shall thereupon terminate. If a part or all of the leased premises be taken or condemned, all compensation awarded upon such condemnation or taking shall go to the LESSOR and the LESSEE shall have no claim thereto, and the LESSEE hereby irrevocably assigns and transfers to the LESSOR any right to compensation or damages to which the LESSEE may become entitled during the term hereof by reason of the condemnation of all, or a part of the leased premises.

24. QUIET POSSESSION: LESSOR shall place LESSEE in the peaceful and undisturbed possession of the leased premises at the commencement of the term hereof, and LESSEE performing and observing all of the conditions and covenants on LESSEE=s part to be performed, LESSOR shall secure to LESSEE the quiet and peaceful possession of the leased premises during the term hereof against all persons claiming the same.

25. TIME OF ESSENCE: Time is of the essence of each and every covenant herein contained.

26. WAIVER OF BREACH: In the event LESSOR shall waive one or more breaches of any of the terms of this Lease, LESSOR shall not thereafter be precluded from preventing any further breaches of any of said terms, nor from enforcing a strict performance of each and all of said terms thereafter to be paid, kept or performed. Each and all of the rights and remedies herein given to LESSOR are cumulative and the election of LESSOR to proceed under any one or any number of such remedies shall in no manner abrogate LESSOR=s right to maintain or enforce any or all of the remaining rights or remedies herein given to LESSOR.

27. BINDS SUCCESSORS: This Lease and the provisions hereof shall inure to the benefit of and shall be binding upon the heirs, executors, administrators and assigns of the respective parties hereto.

28. MODIFICATION: This Lease is not subject to modification except in writing.

29. DELINQUENT RENTAL: Any sum accruing to LESSOR under the terms of this Lease which shall not be paid to LESSOR when due shall bear interest at the rate of ten percent (10%) per annum until paid in full.

30. NOTICES: All notices, demands and requests from LESSEE to LESSOR shall be given to LESSOR at PO Box 5078, Visalia, California 93278-5078, or personally served. All notices, demands and requests from LESSOR to LESSEE shall be given to LESSEE at Post Office Box 5091, Visalia, California 93278-5091 or personally served.

31. ENTIRE AGREEMENT: This Lease contains the entire agreement of the parties with respect to the matters covered by this Lease, and no other agreement, statement, or promise made by any party, whether to any employee, officer, or agent of any party, which is not contained in this Lease shall be binding or valid.

32. VALIDITY: If any term or provision of this Lease is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain in force and effect and shall in no way be affected, impaired or invalid.

33. AUTHORITY: If either party is a corporation, trust or general or limited partnership, all individuals executing the Lease on behalf of that entity represent that they are authorized to execute and deliver this Lease on behalf of that entity.

34. SIGNATURES: IN WITNESS WHEREOF, the parties have executed this Lease the day and year first hereinbefore written.

Date: _____

City of Visalia

By _____
LESSOR

Title _____
LESSOR

Date: _____

Tulare County Superintendent of Schools

By _____
LESEE

Title _____
LESSEE

City of Visalia Agenda Item Transmittal

Meeting Date: July 13, 2009

Agenda Item Number (Assigned by City Clerk): 9g

Agenda Item Wording: Appointment of Matthew Owdom to the Historical Preservation Advisory Committee as an alternate member.

Deadline for Action: None

Submitting Department: Housing and Economic Development

Contact Name and Phone Number:

Ricardo Noguera, Director 713-4190
Tim Burns, Neighborhood Preservation Manager 713-4172
Tracy Robertshaw, Code Enforcement Technician 713-4187

Department Recommendation: It is recommended that Matthew Owdom be appointed by the City Council to fill the existing alternate vacancy on the Historical Preservation Advisory Committee effective immediately with the term expiring on December 31, 2010.

Summary/background: Pursuant to Visalia Municipal Code section 17.56.050 the Historical preservation Advisory Committee shall consist of 7 committee members and 2 alternates appointed by City Council to serve without compensation. All members are required to be residents of the City of Visalia throughout the term of service. There is currently 1 alternate member vacancy on the committee.

Committee members are tasked with the review of all proposed zoning actions (zone changes, conditional use permits, special zoning exceptions, planned unit developments and variances) within the historic district. The committee may recommend approval, conditional approval, modification or disapproval of an application based upon the expected impact of the proposed action on the historic or architectural significance of the affected structure(s), neighborhood, or the entire historic district. The committee's recommendation shall be forwarded to the planning commission for its consideration.

It is the duty of the committee to review all applications for planned development permits within the historic district for compliance with Historic preservation District Ordinance. Items subject to review are vehicular access, location and screening of parking, setbacks, location of service use areas, walls and landscaping. The committee may recommend approval, conditional approval,

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 TB
(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.

disapproval or re submittal of the planned development permit application. The committee's recommendation shall be forwarded to the site plan review committee for its consideration.

The committee shall review all applications for the construction or exterior alteration or enlargement of structures within the historic district or for structures located outside the district and listed as "exceptional" or "focus" structures on the local register. The committee shall have the authority to approve, modify or disapprove such applications before a building permit can be issued subject to the provisions of the Historic Preservation District Ordinance.

It is the duty of the committee to review all applications for sign permits within the historic district or for properties located outside the district that are listed as "exceptional" or "focus" on the local register. The committee may recommend approval or denial of the sign permit application based upon the proposed design and/or materials, but not upon the proposed size or location. Sign permits shall only be issued in compliance with the recommendation of the committee.

The committee reviews all applications for the moving or demolition of structures listed on the local register. The committee has the authority to approve, conditionally approve, or disapprove such applications subject to the provisions of the ordinance.

It is the duty of the committee to compile and update the historic survey and inventory and to nominate properties to the local register and the National register of Historic places.

On April 22, 2009 members of the committee reviewed potential member's applications, met the applicants and recommended appointment to the Citizens Advisory Committee.

On June 3, 2009 the Historic Preservation Advisory Committee's recommendation was presented to the Citizens Advisory Committee and approved for Council consideration.

Prior Council/Board Actions: None

Committee/Commission Review and Actions:

Approved by Historical Preservation Advisory Committee for further consideration of the Citizens Advisory Committee on April 22, 2009.

Approved by Citizens Advisory Committee for Council consideration on June 3, 2009.

Alternatives: The positions could remain vacant.

Attachments: Application of Matthew Owdom

Recommended Motion (and Alternative Motions if expected):

I recommend that Council appoint Matthew Owdom to serve as an alternate member of the Historical Preservation Advisory Committee.

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:



CITY OF VISALIA
APPLICATION FOR APPOINTMENT TO
CITY BOARD, COMMITTEE OR COMMISSION

Historic Preservation Committee (Alternate)
Name of Board, Committee or Commission

Name Matthew D. Owdan
 Mailing/Residence Address 627 N. Encina
Visalia, CA. 93291 Residence Phone 476-6954*
 Zip Code 93291 Work Phone 738-5975*
 Email mdo@lamps-law.com Facsimile 738-5644

If you wish to receive the City's free newsletter "Inside City Hall" via email please check either YES or NO
 Resident of Visalia for 6 ^{months} years. Visalia Registered Voter: Yes No

NOTE: Of the contact information provided, please indicate with an asterisk "*" which is the best way to reach you.

TRAINING, EXPERIENCE and/or EDUCATION:

In both my law practice and law school, I have focused on property and land-use law. I currently live in Visalia's historic district, and I am very interested in historic preservation law and revitalization of downtown and inner-city areas. Growing up, my father practiced historical preservation law, and has instilled an appreciation for historic building in me.

SCHOOL	MAJOR	GRADUATION DATE & DEGREE
McGeorge School of Law UC Davis	Property Law Focus Political Science	Juris Doctorate - 2003 B.A. - 2005

Additional Pertinent Skills, Experience or Interests: I would be more than happy to offer any legal help to the Historic Preservation Committee or other
 Community activities in which you are involved: Church. Historic Preservation courses on a pro bono basis.
 Current or prior service on a City Board, Committee or Commission: None.

Employment Information:

Present Occupation: Attorney
Name of Firm: Law Offices of Michael T. Loupe
Address: 188 W. Leuter Ave. Vernalia, CA.
Phone: (559) 738-5975

Rules of law and ethics prohibit members from participating in and voting on matters in which they have a direct or indirect conflict of interest including a financial interest. Are you aware of any potential conflicts of interest which may develop from your occupation or financial holdings in relation to your responsibilities as a member of the Board, Committee or Commission to which you seek appointment? (If yes, please explain in detail any potential conflicts) YES _____ NO ✓
(If you should have any questions about this matter or need further information as it relates to your situation, please advise the City Clerk's Office prior to submitting your application.)

FIRST choice for Board/Committee/Commission appointment: Historic Preservation Committee

Describe any qualifications, experience, and education, as well as any technical or professional background you may have relative to the duties of this position.	What are your goals in serving on this Board/Committee/Commission?
<p>I live in Visalia's Historical District; I have a keen interest in property and land-use law; I am interested in historic preservation and downtown revitalization. I would be more than willing to provide pro bono legal work for any historic preservation cause.</p>	<ul style="list-style-type: none"> - Assist in any way to maintain or enhance Visalia's Historical & Downtown Districts. - Mobilize Historic homeowners to create better neighborhoods in the historic district. - Provide any pro bono legal work that is needed for the committee.

SECOND choice for Board/Committee/Commission appointment: _____

Describe any qualifications, experience, and education, as well as any technical or professional background you may have relative to the duties of this position.	What are your goals in serving on this Board/Committee/Commission?

THIRD choice for Board/Committee/Commission appointment: _____

Describe any qualifications, experience, and education, as well as any technical or professional background you may have relative to the duties of this position.	What are your goals in serving on this Board/Committee/Commission?

PLEASE NOTE THAT THIS APPLICATION BECOMES PUBLIC INFORMATION.

ON OCCASION, BOARD/COMMITTEE/COMMISSION MEMBERS, CITY STAFF, AND/OR THE PUBLIC MAY HAVE NEED TO COMMUNICATE WITH YOU, PLEASE BE SURE TO NOTE ON YOUR APPLICATION THE BEST WAY TO CONTACT YOU (i.e. mailing address, phone number, or email address.)

I hereby certify that the information contained in this application and any accompanying documents is true and correct to the best of my knowledge.



Signature of Applicant

4/2/09

Date

The following information will be used for statistical purposes only. This information is requested on a voluntary basis. If you have questions regarding this request, please contact the City Clerk's Office. Your application *will be* processed whether or not you complete these questions. Thank you for your assistance.

Male Female

Ethnic Category: Check all categories that apply.

White

(The category "White" includes Whites, Anglo-Saxons, Europeans, and person of Indo-European, North Africa or Middle Eastern origin.)

Black

(The category "Black" includes Blacks, Afro-Americans, persons of Jamaican, Trinidadian, and West Indian descent.)

Hispanic

(The category "Hispanic" includes Mexican, Chicanos, Latino, and all persons of Puerto Rican, Cuban Central or South American or Spanish descent.)

American Indian

(The category "American Indian" includes persons who identify themselves, or are known as such, by virtue of tribal associations, including Alaskan Native.)

Asian

(The category "Asian" includes Asian-Americans and persons of Japanese, Chinese, Korean, Filipino descent, Pacific Islanders and Vietnamese.)

You are invited to attach additional pages, enclose a copy of your resume or submit supplemental information which you feel may assist the City Council in its evaluation of your application.

When completed mail/submit original to:

Office of the City Clerk
City of Visalia
425 E. Oak Ave., Ste. 301
Visalia, CA 93291

City of Visalia Agenda Item Transmittal

Meeting Date: July 13th, 2009

Agenda Item Number (Assigned by City Clerk): 9h

Agenda Item Wording: Accept Quitclaim Deeds relinquishing a 30-foot wide Modoc Ditch easement to the City. This easement is located on the south side of Ferguson Avenue (between Mooney Boulevard and Divisadero Street); authorize the City Manager to enter into an agreement and execute any additional documents necessary to affect the quitclaim of the acquired ditch easement back to the underlying landowners in exchange for a quitclaim from the owners to the City of the northernmost 10 feet of their property for landscaping and related street improvements; Authorize staff to offer the owners of two corner properties nominal reimbursements for additional right of way needed to install handicap ramps.

Deadline for Action: None

Submitting Department: Community Development Department/
Engineering Division

Contact Name and Phone Number:

Chris Young, Assistant Community Dev. Director - 713-4392
Adam Ennis, Engineering Services Manager - 713-4323

Department Recommendation: Accept Quitclaim Deeds relinquishing a 30-foot wide Modoc Ditch easement to City located on the south side of Ferguson Avenue between Mooney Boulevard and Divisadero Street; Authorize the City Manager to enter into an agreement and execute any additional documents necessary to affect the quitclaim of the acquired Ditch easement back to the underlying landowners in exchange for a quitclaim from the owners to the City of the northernmost 10 feet of their property for landscaping and related street improvements; Authorize staff to offer the owners of two corner properties nominal reimbursements for additional right of way needed to install handicap ramps.

Summary: Modoc Ditch Company had abandoned the use of its most southerly ditch branch several years ago. A segment of this abandoned ditch, which has an Easement width of thirty feet, is situated directly south of the recently constructed Ferguson Avenue between Divisadero Street and Mooney Blvd running east and west parallel to the center line of Ferguson Avenue. This Easement segment has been "Quit-Claimed" to the City by Modoc Ditch Company.

The City needs to utilize a the northern ten feet of this easement area in order to construct some collector street improvements such as block wall, sidewalk, etc. During a meeting with the property owners, they expressed their support of removing the abandoned ditch facilities and installing the block wall at the northern boundaries of their property. Therefore, City Staff is proposing to the property owners an agreement that will facilitate the land rights transfer

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.): 1

Review:

Dept. Head _____
(Initials & date required)

Finance N/A
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.

process and the construction of the proposed improvements. The City will also offer the owner of the property at the southeast corner of Ferguson Avenue and Mooney Blvd, and the owner of the property at the southwest corner of Ferguson Avenue and Divisadero Street a nominal reimbursement (up to \$1,500) for taking an additional 270 sq.ft and 232 sq.ft. of their properties respectively. The additional right of way is needed to construct handicap ramps at both of the intersections.

Prior Council/Board Actions: None.

Committee/Commission Review and Actions: On March, 2009, Modoc Ditch Company Board has taken an action delivering to the City the ditch company's rights in the abandoned ditch.

Alternatives: None

Attachments: Exhibit #1 – Location Map

City Manager Recommendation:

Recommended Motion (and Alternative Motions if expected): I hereby move to accept Quitclaim Deeds relinquishing a 30-foot wide Modoc Ditch easement to City located on the south side of Ferguson Avenue between Mooney Boulevard and Divisadero Street; Authorize the City Manager to enter into an agreement and execute any additional documents necessary to affect the quitclaim of the acquired Ditch easement back to the underlying landowners in exchange for a quitclaim from the owners to the City of the northernmost 10 feet of their property for landscaping and related street improvements; Authorize staff to offer the owners of two corner properties nominal reimbursements for additional right of way needed to install handicap ramps.

Financial Impact

Funding Source: N/A

Account Number:

Budget Recap:

Total Estimated cost:		New Revenue:	\$
Amount Budgeted:		Lost Revenue:	\$
New funding required:	\$ 0.00	New Personnel:	\$
Council Policy Change:	Yes _____ No <u>X</u>		

Environmental Assessment Status

CEQA Review:

Required? No
Review and Action: Prior: Negative Declaration per Initial Study
Require: None

NEPA Review:

Required? No
Review and Action: Prior: None
Require: None

Tracking Information: *Record Legal documents and agreements upon execution.*

**City of Visalia
Agenda Item Transmittal**

Meeting Date: July 13, 2009

Agenda Item Number (Assigned by City Clerk): 9i

Agenda Item Wording: Authorization for the City Manager to sign Amendment No. 1 to the Memorandum of Understanding by and between the City of Visalia and the Police Managers and Supervisors Association (City of Visalia Bargaining Group A), for the period of July 1, 2009 through June 30, 2010.

Deadline for Action:

Submitting Department: Administrative Services

Contact Name and Phone Number: Janice Avila, Human Resources Manager 713-4417

Department Recommendation: Authorize the City Manager to sign Amendment No. 1 to the Memorandum of Understanding by and between the City of Visalia and the Police Managers and Supervisors Association (City of Visalia Bargaining Group A) effective July 1, 2009 through June 30, 2010.

Summary/background:

In March of 2009, Council directed the City's negotiations team to begin meeting with the various employee bargaining units (Groups B (Police Officers and Agents), Group G (Visalia Fire Association), Group E (Miscellaneous Managers and Supervisors) and Group M (Miscellaneous Employees – Carpenter's Union) to ask them to agree to defer or concede all or part of their July 1, 2009, 4% salary increase called for in their current Memorandum of Understanding. As you know, ultimately none of these bargaining units agreed to give up the 4% salary increase.

Group A (Police Managers and Supervisors Association) was the only bargaining unit that had their Memorandum of Understanding ending on June 30, 2009, which required us to enter into negotiations with them for a new contract. The City's negotiations team and Group A have met and conferred in good faith to discuss their contract given City's economic conditions.

In showing their support and understanding of the fiscal challenges facing the City, Group A has said they will not ask for a salary range adjustment for their represented employees (Police Captains, Police Lieutenants and Police Sergeants) for the coming 2009/2010 Fiscal Year. Given the City's current financial constraints, staff would not have suggested and increase for

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)

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this group. It should be noted, however, Group A classifications received an additional 2% salary adjustment in January 2008 as a result of a me-too clause in their MOU that afforded them the same increase as Group B. In essence, this Group has received 2% over an above any City employee during the period of July 2007 to June 2009.

In concert with not receiving an increase, they have asked that their represented employees not be subject to non-paid furlough days, during this period of time – FY 2009/10.

With the exception of the above items, all other terms and conditions of the existing MOU will remain in effect.

Prior Council/Board Actions:

Committee/Commission Review and Actions:

Alternatives: Attachments:

Recommended Motion (and Alternative Motions if expected:
Authorize the City Manager to sign Amendment No. 1 to the Memorandum of Understanding by and between the City of Visalia and the Police Managers and Supervisors Association (City of Visalia Bargaining Group A) for the period of July 1, 2009 through June 30, 2010.

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:

MEMORANDUM OF UNDERSTANDING

**By and Between the City of Visalia
And the
Police Managers and Supervisors Association
(City of Visalia Employee Bargaining Group A)**

AMENDMENT NO. 1

This AMENDMENT NO. 1 to the Memorandum of Understanding covering the March 31, 2007 through June 30, 2009 period (hereinafter "MOU") by and between the City of Visalia (hereinafter "CITY") and the Police Managers and Supervisors Association (hereinafter "GROUP A"), is entered into this 13th day of July, 2009.

RECITALS

WHEREAS, the parties described above have met and conferred in good faith regarding wages, hours, and other terms and conditions of employment of employees in the GROUP A bargaining unit, have freely exchanged information, opinions and proposals and have reached agreement on the following matters relating to the employment conditions and employer-employee relations of such employees; and

WHEREAS, this AMENDMENT NO. 1 shall amend the terms of the existing MOU only as provided herein, and in no other way modify, change, alter, diminish, or increase the existing terms and/or conditions of the MOU.

NOW THEREFORE, in consideration of the foregoing promises and the mutual covenants herein contained, the CITY and GROUP A agree as follows:

AGREEMENT

ARTICLE 6, Section 1 a-d: Wages and Salaries is repealed in its entirety and the salary ranges for classifications covered under this MOU will remain in effect during the term of this Amendment.

ARTICLE 21: TERM OF CONTRACT is amended to consist exclusively of the following paragraph:

This Memorandum of Understanding was originally for a period of two years commencing on March 31, 2007 and ending on June 30, 2009. As a result of the parties' good-faith negotiations the parties voluntarily agree to extend this Memorandum of Understanding and its terms, as amended, through and including June 30, 2010. The parties agree to

commence negotiations on the successor agreement no less than sixty (60) days prior to the expiration date of this amended Memorandum of Understanding.

The following paragraphs shall be added after Article 21:

ARTICLE 22: BUDGET PRIORITIES

The parties agree that, for the period of this AMENDMENT NO. 1, no GROUP A member shall be subject to non-paid furloughs.

IN WITNESS WHEREOF, the parties hereto have set their hands as of the date stated below.

FOR THE CITY OF VISALIA

FOR THE ASSOCIATION (GROUP A)

By: _____
Steven M. Salomon, City Manager

By: _____
Ed Lynn, President

Dated: _____

Dated: _____

By: _____
Eric Frost, Admin. Services Dir.

By: _____
Glen Newsom

Dated: _____

Dated: _____

City of Visalia Agenda Item Transmittal

Meeting Date: July 13, 2009

Agenda Item Number (Assigned by City Clerk): 9j

Agenda Item Wording: Authorize the Recordation of the Final Map for Pheasant Ridge No. 3B, located on the west side of Roeben Street, approximately ¼ mile south of Riggin Avenue (12 lots) and the Annexation of Pheasant Ridge No. 3B into Landscape and Lighting District No. 05-19, Pheasant Ridge (Resolution Nos. 2009-28 and 2009-29 required).

APN: 077-100-077

Deadline for Action: N/A

Submitting Department: Community Development

Contact Name and Phone Number:

Chris Young, Assistant Community Dev. Director - 713-4392
Jason Huckleberry, Associate Engineer - 713-4259

Department Recommendation and Summary:

Final Map

Staff recommends that City Council approve the recordation of the final map for Pheasant Ridge No. 3B containing 12 lots. All bonds, cash payments, subdivision agreement and final map are in the possession of the City as follows: 1) An executed subdivision agreement; 2) Faithful Performance Bond in the amount of \$85,867.11 and Labor and Material Bond in the amount of \$44,508.56; 3) cash payment of \$75,518.11 distributed to various accounts; and 4) Final Map.

The Faithful Performance Bond covers the cost of constructing the public improvements noted in the subdivision agreement and the Labor and Material Bond covers the salaries and benefits as well as the materials supplied to install the required public improvements. As required by the Subdivision Ordinance, the Faithful Performance Bond covers 100% of the cost of the public improvements. The Labor and Material Bond is valued at 50% of the Faithful Performance Bond. A Maintenance Bond valued at 10% of the cost of the public improvements will be required prior to recording the Notice of Completion. The Maintenance Bond is held for one year after the recording and acts as a warranty for the public improvements installed per the subdivision agreement. The cash payment covers Development Impact Fees such as storm water acquisition, waterways, sewer front foot fees and any outstanding plan check and inspection fees. The plan check and inspection fees are estimated at the beginning of the final

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.): 1

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.

map process and are not confirmed until the subdivision agreement is finalized. Differences are due in cash at the time of City Council approval of the final map.

Landscape & Lighting

Staff recommends that the City Council: adopt Resolution No. 2009-28 Initiating Proceedings for Annexation to Assessment District No. 05-19, Pheasant Ridge; adopt the Engineer's Report as submitted; and adopt Resolution No. 2009-29 confirming the Engineer's Report, ordering the improvements and levying the annual assessments.

The City of Visalia has been allowing the developers of subdivisions to form assessment districts under the Landscape and Lighting Act of 1972, and now under Proposition 218, in lieu of using homeowners associations for the maintenance of common features such as landscaping, irrigation systems, street lights and trees on local streets. The maintenance of these improvements is a special benefit to the development and enhances the land values to the individual property owners in the district.

On November 7, 2005 City Council approved the formation of a Landscape and Lighting District for Pheasant Ridge. This district included the assessor's parcel numbers for all phases of the Pheasant Ridge tentative map. This established at the onset of this development that the landscape and lighting district would be built in phases and the cost for maintenance would be shared equally among all the property owners for all phases of Pheasant Ridge. The purpose behind this was to bring future annexations to the Council without having to get permission from the owners in each developed phase to add additional lots to the district. The City would only need permission from the owners in each developed phase if the annexation of the new phase would cause the per lot assessment to increase. This annexation will reduce the per lot assessment for each lot within the district.

The Landscape and Lighting Act allows for the use of summary proceedings when all the affected property owners have given their written consent. This process waives the requirement for a public hearing since the owners of this development have given their written consent to form this district.

Prior Council/Board Actions: The City has been allowing the use of the Landscape and Lighting Act of 1972 for maintaining common area features that are a special benefit and enhance the subdivision.

Committee/Commission Review and Actions: The tentative subdivision map for Pheasant Ridge subdivision was approved by the Planning Commission on October 25, 2004. The tentative map will expire on October 25, 2009.

Alternatives: N/A

Attachments: Resolution Initiating Proceedings; Clerk's Certification; Resolution Ordering the Improvements; Exhibits "A", "B", "C", "D"

Recommended Motions (and Alternative Motions if expected):

"I move to authorize the recordation of the Final Map for Pheasant Ridge 3B and I move to adopt Resolution No. 2009-28 Initiating Proceedings for Annexation to Assessment District No. 05-19 "Pheasant Ridge" and adopt Resolution No. 2009-29 Ordering the Improvements for Assessment District No. 05-19 "Pheasant Ridge."

Copies of this report have been provided to:

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)*

RESOLUTION NO. 2009-28

RESOLUTION INITIATING PROCEEDINGS
FOR ANNEXATION TO
ASSESSMENT DISTRICT 05-19
Pheasant Ridge
(Pursuant to Landscape and Lighting Act of 1972)

NOW THEREFORE BE IT RESOLVED AS FOLLOWS:

1. The City Council proposes to annex to an assessment district pursuant to the Landscaping & Lighting act of 1972 (Section 22500 and following, Streets & Highways Code) for the purpose of the following improvements:

Maintenance of turf, shrub area, irrigation systems, trees, walls and any other applicable equipment or improvements.
2. The district, including the annexation, shall continue with the designation established with the initial formation, which is "Assessment District No. 05-19, City of Visalia, Tulare County, California" and shall include the land shown on the map designated "Assessment Diagram, Assessment District No. 05-19, City of Visalia, Tulare County, California", which is on file with the City Clerk and is hereby approved and known as "Pheasant Ridge".
3. The City Engineer of the City of Visalia is hereby designated engineer for the purpose of these formation proceedings. The City Council hereby directs the Engineer to prepare and file with the City Clerk a report in accordance with Article 4 of Chapter 1 of the Landscape & Lighting Act of 1972.

PASSED AND ADOPTED:

CLERK'S CERTIFICATION TO COUNTY AUDITOR

ASSESSMENT DISTRICT NO. 05-19
Pheasant Ridge
(Pursuant to Landscaping & Lighting Act of 1972)

TO THE COUNTY AUDITOR OF THE COUNTY OF TULARE:

I hereby certify that the attached document is a true copy of that certain Engineer's Report, including assessments and assessment diagram, for "Assessment District No. 05-19, City of Visalia, Tulare County, California" confirmed by the City Council of the City of Visalia on the 13th day of July, 2009 by its Resolution No. 2009-29

This document is certified, and is filed with you, pursuant to Section 22641 of the Streets and Highways Code.

RESOLUTION NO. 2009-29

RESOLUTION ORDERING IMPROVEMENTS FOR
ASSESSMENT DISTRICT NO. 05-19
Pheasant Ridge
(Pursuant to the Landscape & Lighting Act of 1972)

NOW THEREFORE BE IT RESOLVED AS FOLLOWS:

1. The City Council adopted its Resolution Initiating Proceedings for Assessment District No. 05-19, City of Visalia, Tulare County, California, and directed the preparation and filing of the Engineer's Report on the proposed formation.
2. The Engineer for the proceedings has filed an Engineer's Report with the City Clerk.
3. Owners of all land within the boundaries of the proposed landscape and lighting district have filed their consent to the formation of the proposed district, and to the adoption of the Engineer's Report and the levy of the assessments stated therein.
4. The City Council hereby orders the improvements and the annexation to the assessment district described in the Resolution Initiating Proceedings and in the Engineer's Report.
5. The City Council hereby confirms the diagram and the assessment contained in the Engineer's Report and levies the assessment for the fiscal year 2008-09.
6. The City Council hereby forwards the following attachments to Tulare County Recorder's Office for recordation:
 - a. Clerk's Certification to County Auditor
 - b. Resolution Initiating Proceedings
 - c. Resolution Ordering Improvements
 - d. Engineer's Report:
 - Exhibit A - Assessment Diagram showing all parcels of real property within the Assessment District
 - Exhibit B - Landscape Location Diagram
 - Exhibit C - Tax Roll Assessment
 - Exhibit D - Engineer's Report

PASSED AND ADOPTED

EXHIBIT A

ASSESSMENT DIAGRAM – 05-19 “Pheasant Ridge”

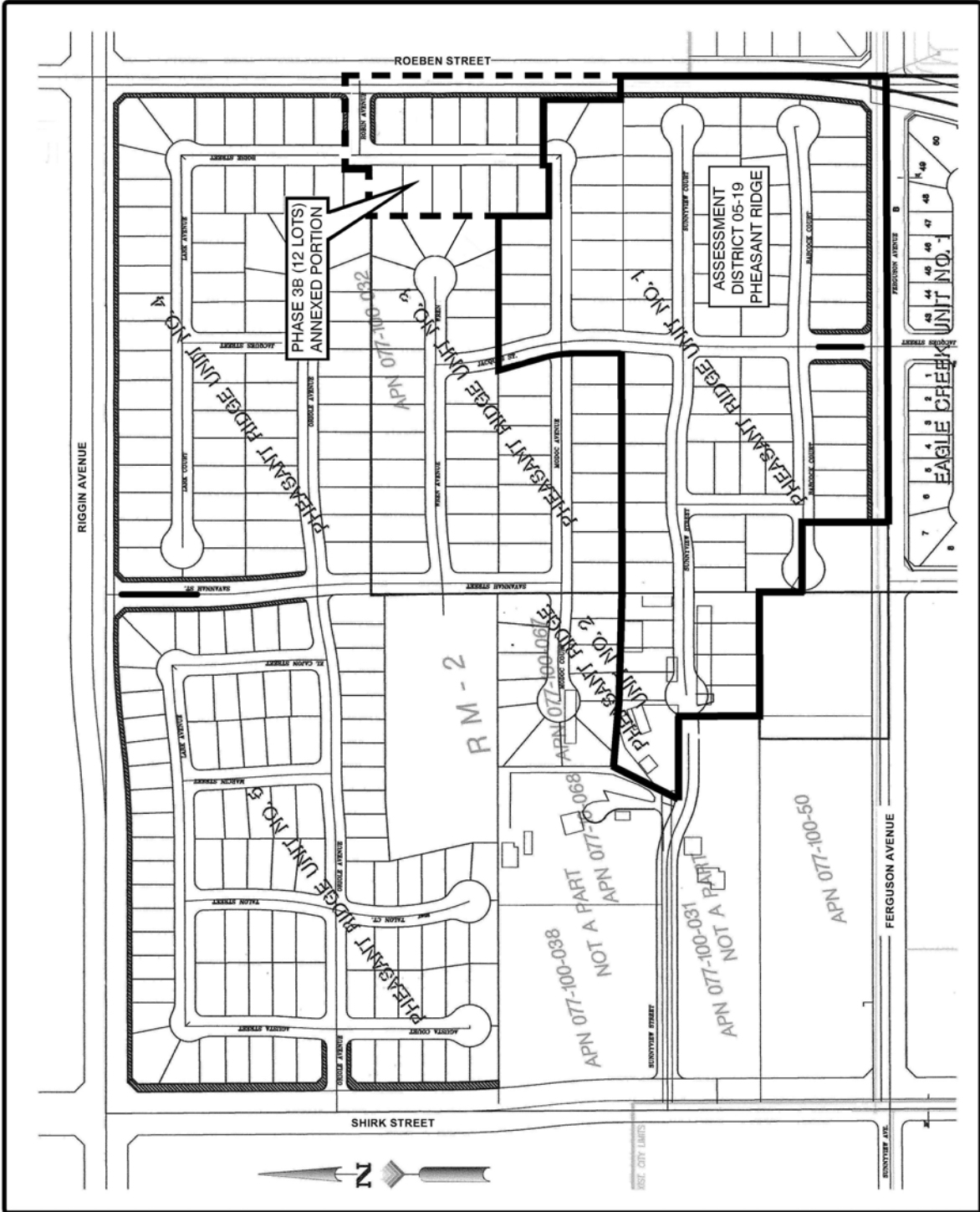


Exhibit "B"

Landscape Location Diagram
Pheasant Ridge

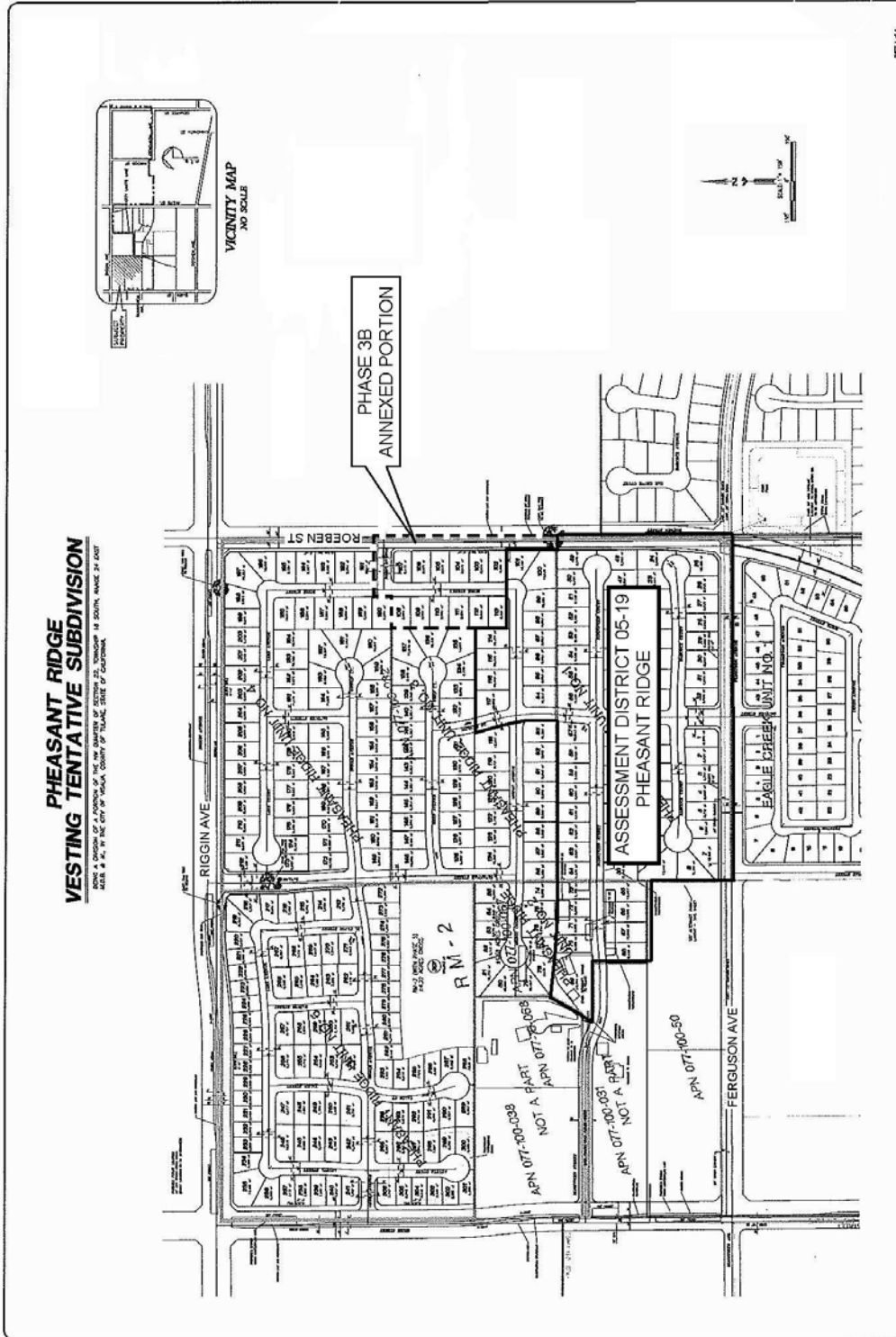


Exhibit "C"

Tax Roll Assessment
Pheasant Ridge
Fiscal Year 2009-10

<u>APN #</u>	<u>Assessment</u>	<u>Owner</u>	<u>Lot #</u>	<u>District</u>
To Be Assigned	\$387.85	McMillin Homes	05-19083	05-19 Pheasant Ridge
To Be Assigned	\$387.85	McMillin Homes	05-19084	05-19 Pheasant Ridge
To Be Assigned	\$387.85	McMillin Homes	05-19085	05-19 Pheasant Ridge
To Be Assigned	\$387.85	McMillin Homes	05-19086	05-19 Pheasant Ridge
To Be Assigned	\$387.85	McMillin Homes	05-19087	05-19 Pheasant Ridge
To Be Assigned	\$387.85	McMillin Homes	05-19088	05-19 Pheasant Ridge
To Be Assigned	\$387.85	McMillin Homes	05-19089	05-19 Pheasant Ridge
To Be Assigned	\$387.85	McMillin Homes	05-19090	05-19 Pheasant Ridge
To Be Assigned	\$387.85	McMillin Homes	05-19091	05-19 Pheasant Ridge
To Be Assigned	\$387.85	McMillin Homes	05-19092	05-19 Pheasant Ridge
To Be Assigned	\$387.85	McMillin Homes	05-19093	05-19 Pheasant Ridge
To Be Assigned	\$387.85	McMillin Homes	05-19094	05-19 Pheasant Ridge

Exhibit "D"

Engineer's Report Landscape & Lighting Assessment District 05-19 Pheasant Ridge Fiscal Year 2009-10

General Description

This Assessment District (05-19, Pheasant Ridge) is located at the northwest corner of Ferguson Avenue and Roeben Street. Exhibit "A" is a map of Assessment District 05-19. This District includes the maintenance of turf areas, shrub areas, irrigation systems, trees, block walls and any other applicable equipment or improvements. The maintenance of irrigation systems and block includes, but is not limited to, maintaining the structural and operational integrity of these features and repairing any acts of vandalism (graffiti, theft or damage) that may occur. The total number lots within the district are 304.

Determination of Benefit

The purpose of landscaping is to provide an aesthetic impression for the area. The lighting is to provide safety and visual impressions for the area. The block wall provides security, aesthetics, and sound suppression. The maintenance of the landscape areas, street lights and block walls is vital for the protection of both economic and humanistic values of the development. In order to preserve the values incorporated within developments, the City Council has determined that landscape areas, street lights and block walls should be included in a maintenance district to ensure satisfactory levels of maintenance.

Method of Apportionment

In order to provide an equitable assessment to all owners within the District, the following method of apportionment has been used. All lots in the District benefit equally, including lots not adjacent to landscape areas, block walls and street lights. The lots not adjacent to landscape areas, block walls and street lights benefit by the uniform maintenance and overall appearance of the District.

Estimated Costs

The estimated costs to maintain the District includes the costs to maintain turf areas, shrub areas, irrigation systems, trees, block walls and any other applicable equipment or improvements.

Exhibit "D"

Engineer's Report
Landscape & Lighting Assessment District 05-19
Pheasant Ridge
Fiscal Year 2009-10

The quantities and estimated costs for all 5 phases of the Pheasant Ridge tentative map are as follows:

<u>Description</u>	<u>Unit</u>	<u>Amount</u>	<u>Cost per unit</u>	<u>Total Cost</u>
Turf Area	Sq. Ft.	59,648	\$0.180	\$10,736.64
Shrub Area	Sq. Ft.	59,648	\$0.180	\$10,736.64
Water	Sq. Ft.	119,296	\$0.050	\$5,964.80
Electricity	Sq. Ft.	119,296	\$0.008	\$954.37
Trees In Landscape Lots	Each	332	\$25.00	\$8,300.00
Trees In Local Street Parkways	Each	422	\$25.00	\$10,550.00
Street Lights	Each	71	\$105.00	\$7,455.00
Chip Seal (15 year cycle)	Sq. Ft.	554,122	\$0.190	\$7,018.88
Crack Seal (8 year cycle)	Sq. Ft.	554,122	\$0.029333	\$2,031.76
Reclamite (6 year cycle)	Sq. Ft.	554,122	\$0.02111	\$1,949.68
Overlays (10 year cycle)	Sq. Ft.	554,122	\$0.650	\$36,017.93
Project Management Costs	Lots	304	\$18.00	\$5,472.00
TOTAL				<hr/> \$107,187.69
10% Reserve Fund				\$10,718.77
GRAND TOTAL				<hr/> <hr/> \$117,906.46
COST PER LOT				\$387.85

Annual Cost Increase

Exhibit "D"

Engineer's Report
Landscape & Lighting Assessment District 05-19
Pheasant Ridge
Fiscal Year 2009-10

This assessment district shall be subject to a maximum annual assessment (A_{\max}) for any given year "n" based on the following formula:

$$A_{\max} \text{ for any given year "n"} = (\$117,906.46) (1.05)^{(n-1)}$$

where "n" equals the age of the assessment district with year one (1) being the year that the assessment district was formed;

The actual annual assessment for any given year will be based on the estimated cost of maintaining the improvements in the district plus any prior years' deficit and less any carryover. In no case shall the annual assessment be greater than maximum annual assessment as calculated by the formula above. The maximum annual increase for any given year shall be limited to 10% as long as the annual assessment does not exceed the maximum annual assessment as calculated by the formula above.

The reserve fund shall be maintained at a level of 10% of the estimated annual cost of maintaining the improvements in the district. If the reserve fund falls below 10%, then an amount will be calculated to restore the reserve fund to a level of 10%. This amount will be recognized as a deficit and applied to next year's annual assessment.

Example 1. The estimated year four cost of maintaining the improvements in the district is \$125,518.04 [a 9% increase over the base year estimated cost of \$117,906.46]. The maximum annual assessment for year four is \$136,491.47 [$A_{\max} = (\$117,906.46) (1.05)^{(4-1)}$]. The assessment will be set at \$128,518.04 because it is less than the maximum annual assessment and less than the 10% maximum annual increase.

Example 2. The estimated year four cost of maintaining the improvements in the district is \$133,234.30 [a 7% increase over the previous year assessment and a 13.0% increase over the base year estimated cost of \$117,906.46]. The reserve fund is determined to be at a level of 8% of the estimated year four cost of maintaining the improvements in the district. An amount of \$2,664.69 will restore the reserve fund to a level of 10%. This amount is recognized as a deficit. The maximum annual assessment for year four is \$136,491.47 [$A_{\max} = (\$117,906.46) (1.05)^{(4-1)}$]. The year four assessment will be set at \$133,234.20 plus the deficit amount of \$2,664.69 which equals \$135,898.99 [a 9% increase over the previous year assessment] because it is less than the maximum annual assessment and less than the 10% maximum annual increase.

Example 3. The estimated year four cost of maintaining the improvements in the district is \$128,518.04 [a 9% increase over the base year assessment of \$117,906.46] and

Exhibit "D"

Engineer's Report
Landscape & Lighting Assessment District 05-19
Pheasant Ridge
Fiscal Year 2009-10

damage occurred to the masonry wall raising the year five expenses to \$143,845.88 [a 22% increase over the previous year assessment]. The year five assessment will be capped at \$141,369.85 (a 10% increase over the previous year) and below the maximum annual assessment of \$143,316.04 [$A_{\max} =$ (5-1) (\$117,906.46) (1.05)]. The difference of \$2,476.03 is recognized as a deficit and will be carried over into future years' assessments until the masonry wall repair expenses are fully paid.

City Engineer Certification

I hereby certify that this report was prepared under my supervision and this report is based on information obtained from the improvement plans of the subject development.

Douglas S. Damko
Sr. Civil Engineer

RCE 59445

Date

**City of Visalia
Agenda Item Transmittal**

Meeting Date: July 13, 2009

Agenda Item Number (Assigned by City Clerk): 9k

Agenda Item Wording: Authorize the City Manager to execute an agreement with the College of Sequoias that provides for the City's participation in the Federal Work Study Program for the 2009/2010 fiscal year.

Deadline for Action: July 13, 2009

Submitting Department: Administrative Services – Human Resources

Contact Name and Phone Number Janice Avila, Human Resources Manager, 713-4417

Department Recommendation and Summary:

Authorize the City Manager to execute an agreement with the College of the Sequoias that provides for the City's participation in the college's Federal Work Study Program. The main objectives of this program are:

- To develop employment and learning opportunities that will improve low-income students' skills and readiness for the transition from school to work.
- To increase the low-income college students' awareness of employment opportunities within public service.
- To provide for ongoing cooperative efforts between the College of the Sequoias and the City by creating opportunities for low-income disadvantaged college students to become involved in Visalia, both as a community and as an organization with diverse employment opportunities.

Summary / background

For the past nine years, the City has had the opportunity to participate in this federally-funded program that provides low-income disadvantaged students an opportunity to work in a part-time job while attending college. Through this program, the City of Visalia and College of the Sequoias have been able to develop a successful partnership that has allowed the City to provide part-time employment and learning opportunities for eligible students.

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.

Because of the success in the past, we are interested in participating in the program again this year. The students who participated in last year's program were assigned to Administration, Parks & Recreation, Housing & Economic Development, Community Development, Engineering and Transit.

The Federal Work Study Program is funded by the fiscal year July 1 through June 30. The students are placed into the part-time "student worker" positions with the City. The student workers are paid as employees of the College of Sequoias (as such, the College of Sequoias assumes all liability for social security, workers compensation, unemployment insurance, and any other mandated employment benefit).

The total number of hours each student may work is determined by the amount of the student's Federal Work Study award. The City will be notified of the total number of work hours available for each student worker. Each student worker will be paid minimum wage. When a student worker's accumulated gross earnings are reached, the student must end his/her participation in the Federal Work Study Program.

As in previous years, the College of the Sequoias will be charging a twenty-five (25%) administration fee for each participant in the program. This administration fee will be based upon the wages earned by each student worker. The college will send a monthly invoice to the City. The administration fee will be divided among the City's departments who have a student worker assigned.

Eligible students will receive a work study award for a value up to \$2,500 for the 2009/2010 fiscal year. This dollar award equates to approximately 312 hours of work at the anticipated minimum wage of \$8.00 per hour. Assuming the student works approximately 15 hours per week, the student will be able to work for approximately 20 weeks. In the example, the administrative cost to the City for the student worker will be \$625.00. It is estimated that approximately six (6) students will be placed through this program which would cost the City an estimated \$3,750 for the year long program. The costs for participating in this program have been included in the FY 2009/2010 budget for hourly employees.

NOTE: The amount of each student's work study award will vary based on the student's financial need. If the student's award is less than the amount shown in the example, then the student will be eligible for fewer hours of work.

All departments are encouraged to consider participation in this work study program. This program requires a commitment from the department to provide a meaningful part-time employment opportunity. The supervisors of these students will be required to provide on-the-job training and be a mentor to the students.

Prior Council/Board Actions: June 16, 2008

Committee/Commission Review and Actions:

Alternatives:

Attachments: College of the Sequoias Work Study Agreement between the College of the Sequoias and the City of Visalia

Recommended Motion (and Alternative Motions if expected):

I move to authorize the City Manager to execute an agreement between the City of Visalia and the College of the Sequoias that provides for the City's participation in the Federal Work Study Program for the 2009/10 fiscal year.

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:

City of Visalia Agenda Item Transmittal

Meeting Date: July 13, 2009

Agenda Item Number (Assigned by City Clerk): 9I

Agenda Item Wording: Approve the recommendation by the Parks and Recreation Commission to establish the name of "Lion's Park" for the new four acre neighborhood park site off of Ferguson Avenue and Babcock Court in northwest Visalia.

Deadline for Action: N/A

Submitting Department: Parks & Recreation

Contact Name and Phone Number: Vincent Elizondo, 713-4367

Department Recommendation:

The Visalia Parks and Recreation Commission unanimously recommends that the City Council establish the name of "Lion's Park" for the new four acre neighborhood park to be developed off of Ferguson Avenue and Babcock Court in northwest Visalia.

Background Information:

By ordinance, the Park and Recreation Commission has the responsibility to recommend park names for consideration by the City Council.

Several planning meetings were held by the Commission to determine the best strategy for naming the new park. At the March 2009 Commission meeting, after lengthy discussion on the topic, the Commission approved a motion 5-0 to direct staff to contact the five Lions service clubs in Visalia and work towards an agreement to name the new park site (previously known as the "Babcock Park site") after the Lions clubs.

City staff met with representatives of the clubs on May 13, 2009, and the various clubs were honored and excited about the opportunity to have a new park named after the Lions clubs of Visalia.

Each club was then directed to go back to their respective clubs and get formal approval to use the Lions Club name on the park. The City requested a letter from each club asking for approval to name the park "Lion's Club Park". A letter from each of the clubs is enclosed with this staff report.

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.): 1

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.

At the Commission meeting of June 16, 2009, after receiving letters from all of the clubs, and hearing positive testimony at the meeting from several Lion's Club members, the Commission voted 5-0 to recommend to the City Council to approve the "Lion's Club" name for the new park.

The City has other parks named after local service clubs, including the Rotary Club and the Soroptimist Club.

The construction documents for this new park are 100% complete and City staff anticipates going out to bid within the next 30 days. City staff projects the City Council will be asked to award a contract for the construction of this new park in August or September 2009.

The projected grand opening of this neighborhood park is late summer 2010. The design work for this park was completed by the HLA Group from Sacramento, CA. The park is fully funded for development using park developer impact fees.

Prior Council/Board Actions:

Committee/Commission Review and Actions: Park and Recreation Commission Meeting of June 16, 2009.

Attachments:

Recommended Motion (and Alternative Motions if expected): Move to approve the recommendation by the Parks & Recreation Commission to establish the name of "Lion's Park" for the new neighborhood park site off of Ferguson Avenue and Babcock Circle in northwest Visalia.

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*)

City of Visalia Agenda Item Transmittal

Meeting Date: July 13, 2009

Agenda Item Number (Assigned by City Clerk): 9m

Agenda Item Wording: Authorization to enter into the first amendment to the Programmatic Agreement (PA) between the City of Visalia and the California State Historic Preservation Office (SHPO) allowing the City to complete environmental review of historic properties for all programs using federal funds from the U.S. Department of Housing and Urban Development (HUD).

Deadline for Action: July 13, 2009

Submitting Department: Housing & Economic Development

Contact Name and Phone Number: Ricardo Noguera, Housing & Economic Development Director (4190); Rhonda Haynes, Housing Specialist (4460)

Department Recommendation: Staff recommends approval of the first amended Programmatic Agreement with the State Historic Preservation Office (SHPO) allowing the City to continue to complete environmental review of historic properties in the City of Visalia for all programs using federal funds from the U.S. Department of Housing and Urban Development (HUD).

Summary/background: On January 24, 1994, the City entered into the first original agreement SHPO and on May 17, 2004, the City of Visalia entered into a new agreement with SHPO, allowing the City to administer a local environmental review process within the City of Visalia for projects that use federal funds. Staff is now entering into a "first amendment" to the 2004 agreement.

Summary of Amendments

The amendments to the PA include goals and objectives such as providing a coordinated, clear and efficient process (step-by-step approach) for implementing the Historic Preservation Act Section 106 requirements. It includes additional narrative as it relates to public participation, outreach and consultation specifically the participation of Indian tribes that attach religious and cultural significance to historic properties; the review process for properties that are fifty (50) years of age or older; and consideration and treatment of archeological resources, along with exceptions, such as ground disturbing activities exclusively within the lot line of a parcel used as a single family residence.

What this Programmatic Agreement Does.

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.): 5_

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.

With the use of U. S. Department of Housing and Urban Development (HUD) funded programs, the PA documents the terms and conditions agreed upon to resolve the potential adverse effects of a Federal agency program. The applicability of the PA is that, certain undertakings will not require further review, such as properties less than 50 years of age, interior rehabilitation and approved activities listed in Appendix "A" of the agreement. It establishes upfront agreed upon areas of potential effects such as rehabilitation projects and associated infrastructure improvements. It provides steps to follow in evaluating, processing, an assessment of effects, identification and reporting of historic properties. If further review is required, the City consults with appropriate state and local officials, Indian tribes, and members of the public and considers their views and concerns about historic preservation issues when making final project decisions.

Under both the old and proposed amended programmatic agreement the City of Visalia can locally complete the environmental review for those projects that involve rehabilitation of historic structures without the extensive review or delays from the SHPO or Undertakings requiring only administrative review by the CITY and not the SHPO or the ACHP listed under Appendix "A" of the PA. The City of Visalia and grant recipients who use federal funds from HUD will benefit from this updated program and it will continue to eliminate the long SHPO review process, which can add a minimum of 30-days to projects.

Also, many of the single family residential rehabilitation projects are on a tight time schedule with financing deadlines that need to be met. This proposed agreement will streamline the timeframe. The proposed PA not only continues to allow the City of Visalia to process rehabilitation of single-family houses, but expands the scope to include public utilities, structures, etc. in a shortened Historic Review time. The PA will be valid for five years.

The City of Visalia is requesting approval to enter into the first amendment to PA with SHPO, as the 2004 agreement has become outdated, and a revised agreement, following current regulation is required by SHPO.

Prior Council/Board Actions: May 17, 2004 approval of new Programmatic Agreement;

Committee/Commission Review and Actions: Historic Preservation Advisory Board recommended approval of the previous agreement on November 19, 2003 and recently June 3, 2009

Alternatives: None recommended

Attachments: First Amendment to the Programmatic Agreement
Resolution No. 2009-30

Recommended Motion (and Alternative Motions if expected):

I move that the City Council adopt the first amended programmatic agreement between the City of Visalia and the State Historic Preservation Office (SHPO) regarding the rehabilitation of historic properties, by resolution 2009-30, and authorize the City Manager to execute the agreement on behalf of the City.

Environmental Assessment Status

CEQA Review: n/a

NEPA Review: Required

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) SHPO Agreement and Resolution No. 2009- to be signed and sent to SHPO*

Copies of this report have been provided to:

FIRST AMENDMENT TO THE
PROGRAMMATIC AGREEMENT (PA)
BETWEEN
THE CITY OF VISALIA AND THE
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER,
REGARDING THE REHABILITATION OF HISTORIC PROPERTIES AFFECTED BY
USE OF REVENUE FROM THE DEPARTMENT OF HOUSING AND URBAN
DEVELOPMENT PART 58 PROGRAMS

WHEREAS, the City of Visalia (City), a “Responsible Entity” under 24 C.F.R. Part 58, proposes to administer and fund a rehabilitation program (Program) in Oz, California with monies from the U.S. Department of Housing and Urban Development (HUD) delegated to the City pursuant to 24 C.F.R. Part 58 or any other pertinent HUD regulations; and

WHEREAS, the City has determined that the implementation of this Program may have an effect on properties included in or eligible for inclusion in the National Register of Historic Places (Historic Properties) and has consulted with the California State Historic Preservation Officer (SHPO) pursuant to Section 800.14(b) of the regulations, 36 C.F.R. Part 800, implementing Section 106 of the National Historic Preservation Act (16 U.S.C. 470f) (Act); and

WHEREAS, the City will conduct outreach and actively seek and request the comments and participation of Indian tribes that attach religious and cultural significance to historic properties that may be affected by Undertakings funded under the terms of this Agreement; and

WHEREAS, pursuant to the Council’s Section 106 Regulations, the City has considered the nature of the Program and its likely effects on historic properties and has taken steps to involve individuals, organizations and entities likely to be effected by the Program; and

WHEREAS, pursuant to the Council’s Section 106 Regulations, the City has arranged for public participation appropriate to the subject matter and scope of the Programmatic Agreement (PA) by providing notice to the public about the Program and including them in the consultation process; and

WHEREAS, the goals and objectives of this PA are to (1) provide a coordinated, clear and efficient process for implementation of Section 106, (2) identify and protect historic resources while facilitating the production of affordable housing and the construction of and rehabilitation of community and public facilities, (3) provide an orderly process for the resolution of conflicts, consideration of feasible alternatives and appropriate mitigation, (5) maintain the confidence of the public in the City and (6) provide for public participation in the local implementation of Section 106; and

NOW, THEREFORE, the City and the California SHPO agree that the Program shall be administered in accordance with the following stipulations to satisfy the City's Section 106 responsibilities for all individual undertakings of the Program.

STIPULATIONS

The City of Visalia will ensure that the following measures are carried out:

I. APPLICABILITY OF THE PROGRAMMATIC AGREEMENT (PA)

- A. The City shall comply with the stipulations set forth in this PA for all undertakings which are limited to the rehabilitation of buildings that (1) are assisted in whole or in part by revenues from the HUD subject to 24 CFR Part 58 and that (2) can result in changes in the character or use of any Historic Properties that are located in an undertaking's Area of Potential Effect (APE), as defined in Stipulation IV, below.
- B. The review process established by this PA shall be completed before the City's final approval of any application for assistance under this Program, before a property is altered by either the City or a property owner, and before the City or a property owner initiates construction or makes an irrevocable commitment to construction that may affect a property that is fifty (50) years of age or older, or that is otherwise eligible for listing in the National Register of Historic Places.
- C. Any undertaking not qualifying for review under the terms of this PA but nevertheless subject to Section 106 of the National Historic Preservation Act (16 U.S.C. 470f) shall be reviewed in accordance with 36 CFR Part 800, even if such undertaking involves a building, structure, site or object that is less than 50 years old.
- D. For purposes of this PA, the Secretary of the Interior's definition for rehabilitation shall be used: "Rehabilitation is defined as the act or process of making possible a compatible use for a property through repair, alterations, and additions while preserving those portions or features which convey its historical, cultural, or architectural values."
- E. This PA does not include new construction, demolition of existing buildings, or development of vacant land.

II. DEFINITIONS

- A. The definitions outlined at 36 CFR 800.16 apply to this PA.

III. UNDERTAKINGS NOT REQUIRING REVIEW BY THE SHPO OR THE ACHP

The following Undertakings do not require review by SHPO and no signatory is required by this PA to determine the National Register of Historic Places (“NRHP”) eligibility of properties affected by these Undertakings.

- A. Undertakings only affecting properties that are less than fifty (50) years old.
- B. Undertakings limited exclusively to interior portions of single-family residential properties where the proposed work will not be visible from the property’s exterior.
- C. Undertakings limited exclusively to the activities listed in Appendix “A” of this PA. Undertakings not so limited shall be reviewed pursuant to this PA. Undertakings involving Historic Properties but nevertheless exempt from review pursuant to Appendix “A” shall be designed to conform to the greatest extent feasible with the California State Historic Building Code, [State of California, Title 24, Building Standards, Part 8 (“SHBC”)] as well as Secretary of the Interior’s Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring & Reconstructing Historic Building, 1995.
- D. Rehabilitation of mobile homes.
- E. The City shall document actions taken pursuant to this Stipulation in the manner prescribed in Stipulation XVI.

IV. AREA OF POTENTIAL EFFECTS

- A. The Area of Potential Effects (APE) for undertakings covered by this PA shall be limited to the legal lot lines of a property when the undertaking consists exclusively of rehabilitating a property’s interior or exterior features.
- B. Improvements to Infrastructure. The APE for installation of infrastructure shall associated with the rehabilitation of a building will be as follows:
 - 1. Water and sewer lines: the APE shall be the trunk of the sewer and water line;
 - 2. Curb Cuts for disability access: the actual curb area under construction shall be the APE;
 - 3. Pavements: the APE shall be the pavement structure and pavement base.

4. In all other infrastructure improvements the APE shall be analogous in purpose, structure and location to the APE of those listed in subsections 1 through 3 above.

- C. If a member of the public objects to the manner or scope in which the APE for an Undertaking has been delineated, the City shall seek to resolve the dispute in accordance with the procedures set forth in Stipulation XIII.

V. IDENTIFICATION AND EVALUATION OF HISTORIC PROPERTIES

- A. The City shall review all existing information on any property within an Undertaking's APE, as required by 36 C.F.R. 800.4, to determine if such properties may be Historic Properties. At a minimum the City shall:
 1. Review the current listing of the National Register of Historic Places (NRHP).
 2. Review lists of Historic Properties maintained by the City and any other information available in the City's records pertaining to any property within an Undertaking's APE .
 3. Review lists of Historic Properties maintained by the appropriate regional center of the California Historical Resources Information System or its successors..
 4. Visit the site and evaluate in accordance with the Section 106 process.
 5. If the property is one to which Indian Tribes attach religious and cultural significance, those Indian tribes will be consulted by the City regarding the Undertaking.
- B. If a property is listed or has already been determined eligible for listing in the NRHP, the City shall proceed in accordance with Stipulation VIII, unless exempted by Stipulation III.
- C. If the City, in consultation with the SHPO, has determined a property to be ineligible for listing in the NRHP within a period of five (5) years prior to the City's approval of an Undertaking covered by this PA and if no other provision of this PA requires the City to take further steps with respect to the Undertaking, the City shall document the actions taken in the manner prescribed by Stipulation XVI and may authorize the Undertaking to proceed without further review.

D. Unless exempt pursuant to Stipulation III or to Sections B and C of this Stipulation, the City shall evaluate all properties that may be affected by an Undertaking using the National Register criteria set forth in 36 CFR Section 60.4. All evaluations shall be documented by the City on a State of California Historic Resources Inventory Form – DPR 523.

1. If a property proposed for rehabilitation is not listed in the NRHP, has not been evaluated for National Register eligibility within the past five (5) years, and is at least 50 years old, the City shall submit the documentation required pursuant to 36 CFR 800.4 including a completed California Historic Resources Inventory Form (DPR 523) to the SHPO for review (included as Attachment “B” to this PA. the City shall seek information, as appropriate, from individuals and organizations likely to have knowledge or concerns with historic properties in the area. The SHPO may request additional information if necessary. The City shall apply the National Register criteria and notify the SHPO of its determination in this submittal.
 - a. If the SHPO concurs with the city that a property is eligible under the criteria, the property shall be considered a Historic Property under this PA. The City shall continue consultation in accordance with the terms of this PA for all such properties.
 - b. If the SHPO concurs with the City that the criteria are not met, the property shall be considered ineligible for inclusion in the NRHP for a period of five (5) years from the date of the SHPO’s review. Such properties need not be reevaluated during this five (5) year period unless a party to this PA notifies the other parties in writing that it has determined that changing perceptions of significance warrants a property reevaluation. Such properties require no further review under this PA.
 - c. If the SHPO disagrees with the City’s determination regarding eligibility, the City shall consult further with the SHPO to reach agreement. If agreement cannot be reached, the City shall obtain a final determination from the Secretary of the Interior pursuant to the applicable National Park Service regulations found at 36 CFR Part 63.
 - d. If the SHPO does not respond to the City’s determination within thirty (30) calendar days following receipt, the City may assume that the SHPO does not object to the determination and shall proceed in accordance with any other applicable requirements of this PA.

VI. ASSESSMENT OF EFFECTS

- A. The City shall ensure that scopes of work, plans and specification for Undertakings that may affect Historic Properties and that are not exempt from review under this PA conform to the recommended approaches in the Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring & Reconstructing Historic Building, 1995 ("Standards") and to the greatest feasible extent, to the SHBC.
1. For properties identified as Historic Properties under Stipulation V and prior to any activities that are not exempt under Stipulation III, the City shall review provide the SHPO appropriate project documents to determine conformance of the Undertaking with the Standards and SHBC, including photographs and a general work description which adequately details the scope of work for each project that may affect a Historic Property that includes work write-ups, working drawings and specifications, as appropriate, and additional documentation necessary to understand the undertaking. The City shall apply the criteria of adverse effect, 36 CFR 800.5, in consultation with the SHPO to any Historic Property that may be affected by a project, and will review the scope of work to determine if the rehabilitation project conforms to the recommended approach contained in the Standards.
 - a. If the City determines that the Undertaking conforms to the Standards and complies with the SHBC the City shall notify the SHPO in writing of a finding of no adverse effect. If the SHPO does not object in writing to this determination within thirty (30) days, the Undertaking shall be considered to have "no adverse effect" on Historic Properties, and may proceed as submitted without further review
 - b. If the City determines that the Undertaking does not conform to the Standards and SHBC, or if the SHPO objects to a finding of "no adverse effect" the Undertaking will be considered to have an "adverse effect" on Historic Properties. The SHPO and the City shall consult and recommend modifications to the scope of work or conditions under which the Undertaking would be found to conform to the Standards.

- c. If the City accepts the recommended modifications, the Undertaking will be considered having “no adverse effect” on the Historic Property, and may proceed as modified without further review. If the modifications recommended are not accepted, then the City shall consult further with the SHPO for a period of time not to exceed thirty (30) days to seek ways to avoid, minimize, or mitigate the adverse effect. If all adverse effects cannot be avoided, the City shall proceed in accordance with 36 CFR 800.6.
- d. The City shall notify the SHPO of any changes to an approved scope of work, other than activities exempt under Stipulation III, and shall provide the SHPO with the opportunity to review and comment on such changes. If the changes do not conform to the Standards, the parties shall consult further to minimize or mitigate the adverse effects in accordance with 36 CFR 800.6(b)(1).
- e. The City shall retain documentation of the rehabilitation as part of its permanent records.

VII. CONSIDERATION AND TREATMENT OF ARCHEOLOGICAL RESOURCES

- A. The City shall consult in writing with the SHPO to determine if a rehabilitation project that includes ground disturbing activities has the potential to affect archeological properties that may be eligible for inclusion in the National Register. The City shall investigate pertinent information available at Southern San Joaquin Valley Information Center, California State University, Bakersfield) and shall consider any further studies recommended by the SHPO to determine if the undertaking has the potential to affect either archeological properties that may be eligible for inclusion in the National Register or properties for which Indian tribes may attach religious and cultural significance.
- B. The following types of ground-disturbing activities have the potential to affect archeological resources:
 - 1. Ground disturbing site preparation, such as grading or excavation.
 - 2. Footing and foundation work occurring more than two feet from any existing footings or foundations, including soils improvement/densification techniques.
 - 3. Installation of underground utilities such as sewer and water lines, storm drains, electrical, gas or leach lines and septic tanks, except

where installation is restricted to areas previously disturbed by installation of these utilities.

4. Installation of underground irrigation or sprinkler systems, except where installation is restricted to areas previously disturbed by such systems.

C. When an Undertaking may include the foregoing types of ground-disturbing activities and the Undertaking does not qualify as an exception under this provision, the City shall request that Southern San Joaquin Valley Information Center, California State University, Bakersfield conduct a records search for the Undertaking's APE.

1. Exceptions

- a. The City is NOT required to request the IC for a records search under the following circumstances:
 - i. When the ground-disturbing activities set forth in Sections B.2, B.3 and B.4 of this stipulation will occur exclusively within the legal lot lines of a parcel used as a single family residence, or
 - ii. When the ground-disturbing activities set forth in the Sections B.2, B.3 and B.4 of this stipulation will be outside the legal lot lines of a single family residence and will be confined to areas previously disturbed by such activities.

D. The City shall promptly furnish the SHPO with a copy of the IC's response and request the comments of the SHPO.

1. If the SHPO recommends that the APE should be surveyed or subject to archival research, the City shall engage a qualified archeologist to conduct the survey of the APE and prepare a written report.
2. If the SHPO recommends that a survey is not necessary and the Undertaking's APE does not contain a known archeological resource, no further consideration of such resources by the City is required. If no other provisions of this PA require the City to take further steps with respect to the Undertaking, the City shall document the actions taken in the manner prescribed by Stipulation XVI and may authorize the Undertaking to proceed without further review.

3. If the Undertaking's APE contains known archeological resources or such resources are identified through a survey, the City shall cause the Undertaking to be redesigned if feasible to avoid said resources and shall notify the SHPO of these actions. If no other provisions of this PA require the City to take further steps with respect to the Undertaking, the City shall document the actions taken in the manner prescribed by Stipulation XVI and may authorize the Undertaking to proceed without further review.
4. If the Undertaking cannot be redesigned to avoid the resources, the City shall develop a plan in consultation with the SHPO to complete the identification, evaluation and, if necessary, mitigation of the property. If the City and the SHPO cannot agree that the potential to affect archeological properties exists or cannot agree on a plan for the consideration of such properties, the City will initiate further consultation in accordance with 36 CFR § 800.6(b)(1).

VIII. EMERGENCY UNDERTAKINGS

- A. This stipulation shall apply only to situations in which a duly authorized local official has determined in accordance with applicable law, that an immediate threat to the public health and safety exists and that such threat must be removed forthwith (Emergency Conditions).
- B. The City shall notify the SHPO and afford the SHPO an opportunity to comment within seven (7) days of notifications. If the City determines that circumstances do not permit seven (7) days for comment, the City shall notify the SHPO and invite comments within the time available. The City shall take into account any comments received in reaching a decision on how to proceed with the emergency undertaking.
- C. Immediate rescue and salvage operations conducted to preserve life or property are exempt from the provisions of Section 106 and this Agreement.

IX. REVIEW OF CHANGES TO APPROVED UNDERTAKINGS

- A. The City shall promptly notify the SHPO upon discovery if:
 1. Previously approved scopes of work, plans or specifications for an Undertaking are changed so that the Undertaking is no longer exempt from review pursuant to Stipulation III.

X. DISCOVERIES AND UNANTICIPATED EFFECTS

- A. The City shall notify the SHPO as soon as possible if it appears that an Undertaking may affect a previously unidentified property that may be eligible for inclusion in the NRHP or affect a known Historic Property in an unanticipated manner. The City may suspend construction of all or part of the Undertaking in the vicinity of the discovery and require that reasonable measures be taken to avoid or minimize harm to the property until the City concludes consultation with the SHPO.
- B. If the newly discovered property has not previously been included in or determined eligible for inclusion in the NRHP, the City may assume that the property is eligible for purposes of this PA. The City shall notify the SHPO at the earliest possible time and consult to develop actions that take the effects of the Undertaking on the property into account. The City shall notify the SHPO of any time constraints, and the City and the SHPO shall mutually agree on the time frames for this consultation. The City shall provide the SHPO with written recommendations that take the effect of the Undertaking into account. If the SHPO does not object to the City's recommendations within the agreed upon time frame, the City shall require the scope of work for the Undertaking to be modified as necessary to implement its recommendations.

XI. PUBLIC INVOLVEMENT

- A. The City shall identify any public interest in the Undertakings subject to this PA by informing the public about Historic Properties when complying with the public participation requirements set forth in 24 CFR Part 58 and in the regulations for any other Program delegated by HUD to the City as may be applicable.
- B. In consultation with the SHPO, the City shall identify any parties entitled to be consulting parties and invite them to participate.
- C. The City shall, except where appropriate to protect confidentiality concerns of affected parties, provide the public with information about an undertaking and its effects on historic properties and seek public comment and input. Members of the public may also provide views on their own initiative for the agency official to consider in decision-making.
- D. At any time during implementation of the measures stipulated in this PA, should a member of the public raise an objection pertaining to delineation of an APE or to treatment of a Historic Property, the City shall notify the SHPO immediately of the objection and then proceed to consider the objection and consult, as needed, with the objecting party and the SHPO, for a period of time not to exceed fifteen (15) calendar days. If the City is unable to resolve the conflict, the City shall forward all documentation relevant to the dispute to the ACHP in accordance with 36 C.F.R. Section

800.2(b)(2). The City, in reaching a final decision regarding the dispute, shall take any ACHP comment provided into account. The City shall also consult with its Certified Local Government (CLG) Coordinator. The City's responsibility to carry out all other actions under this PA that are not the subject of the dispute shall remain unchanged.

XII. TIME PERIODS FOR SHPO REVIEW

Unless otherwise stipulated, the SHPO shall respond within thirty (30) calendar days of receipt to any documentation submitted by the City pursuant to the requirements of this PA. If the SHPO does not respond within this time frame or within the time frames otherwise stipulated by this PA, the City shall proceed in accordance with the specific Stipulation(s) that apply to the SHPO review of the documentation submitted.

XIII. DISPUTE RESOLUTION

- A. Should any signatory object within the time frames specified in this PA to any plans, specifications, documents or actions provided for review pursuant to this PA, the City shall consult with the objecting party to resolve the objection. If the City determines within fifteen (15) calendar days of receipt of any such objection that such objection cannot be resolved, the City shall forward all documentation relevant to the dispute to the ACHP in accordance with 36 C.F.R. 800.2(b)(2).
 1. Within thirty (30) calendar days after receipt of all pertinent documentation, the ACHP will either:
 - a. Provide the City with recommendations or comments that the City shall take into account in reaching a final decision regarding the dispute, or
 - b. Notify the City that it will comment in accordance with 36 CFR Section 800.7(c) and proceed to comment.
 2. If the ACHP fails to provide recommendations or to comment within the specified time period, the City may implement that portion of the Undertaking subject to dispute under this Stipulation in accordance with any documentation as submitted and amended by the City.
 3. Any ACHP comments provided to the City in response to such a request shall be taken into account by the City in accordance with 36 CFR 800.7(c)(4) with reference to the subject of the dispute. Any recommendation or comment provided by the ACHP will be interpreted to pertain only to the subject of the dispute. The

responsibility of the City to carry out all actions under this PA that are not the subject of the dispute shall remain unchanged.

XIV. ANTICIPATORY DEMOLITION

The City agrees that it will not assist any party in avoiding the requirements of this PA or the National Historic Preservation Act, or, having legal power to prevent it, allow a significant adverse effect to a Historic Property to occur. (National Historic Preservation Act of 1966, §110k) The City may, after consultation with the ACHP, determine that circumstances justify granting such assistance despite the adverse effects created or permitted by the party to be assisted.

XV. MONITORING

The SHPO and the ACHP may monitor or review activities carried out pursuant to this PA, and the ACHP shall review any activities if requested. The City shall cooperate with the SHPO and the ACHP in carrying out these monitoring and review activities by making all relevant non-privileged files available for inspection, upon reasonable notice from the SHPO and ACHP.

XVI. DOCUMENTATION, REPORTING AND REVIEW OF ACTIVITIES

- A. The City shall document in writing all actions taken pursuant to this PA, retain this documentation in its projects files, and include such documentation as necessary in the Programmatic Agreement Compliance Report(s) ("PACR") required pursuant to Section B of this Stipulation.
- B. The City shall provide the SHPO and the ACHP with a PACR on June 30 of every year so long as this PA is in effect. The PACR will identify the following by address:
 - 1. Projects exempted from review under Stipulation III;
 - 2. Properties reviewed under this PA that do not meet the NRHP criteria;
 - 3. Properties reviewed under this PA that do meet the NRHP criteria;
 - 4. A summary of the treatment of each property that does meet the NRHP criteria; and
 - 5. A summary of the treatment of any archeological properties identified under this PA.
- C. The City shall make PACR's available for public inspection and comment and invite the public to submit any comments to the ACHP, the SHPO and the City.

- D. The signatories to this PA shall review PACR's and any comments submitted pursuant to Section C of this Stipulation. Based on that review, the signatories will determine whether this PA should be amended in accordance with Stipulations XVII.

XVII. AMENDMENTS

- A. Any party to this PA may request that it be amended whereupon the parties shall consult in accordance with 36 C.F.R. Sections 800.14 to consider such amendments.
- B. Any resulting amendments or addenda shall be developed and executed by the parties in the same manner as the original PA.

XVIII. CITY STAFFING

- A. The City will assign staff to assure that work is carried out as planned, and will maintain records for each project that documents compliance with the terms of this PA, and will retain the services of a qualified archeologist as the need may arise in accordance with Section VII.D of this PA.

XIX. TERMINATION

Any party to this PA may terminate the PA by providing one hundred eighty (180) calendar days notice to the other consulting parties, provided that the consulting parties shall consult during the period before termination to seek agreement on amendments or other actions that would avoid termination. In the event of termination, the City will comply with 36 C.F.R. Section 800 with respect to individual Undertakings covered by this PA.

XX. FAILURE TO COMPLY WITH THE PROGRAMMATIC AGREEMENT

In the event the City cannot carry out the terms of this PA, the City shall not take or sanction any action or make any commitment that would result in an adverse effect to Historic Properties or that would foreclose the ACHP's consideration of modifications or alternatives to the Undertakings, and the City will comply with 36 C.F.R. Section 800 with regard to each individual Undertaking subject to this PA.

EXECUTION AND IMPLEMENTATION of this PA evidences that the City and County of San Francisco has afforded the ACHP a reasonable opportunity to comment on these Programs and that the City has satisfied its Section 106 responsibilities for all individual Undertakings of the Programs covered by this PA.

CITY OF VISALIA

By: _____
(Steven M. Salomon, City Manager)

Date: _____

CALIFORNIA STATE HISTORIC PRESERVATION OFFICER

By: _____
Milford Wayne Donaldson, FAIA
State Historic Preservation Officer

Date: _____

DRAFT

APPENDIX A

The following Undertakings require only administrative review by the CITY and not the SHPO or the ACHP pursuant to Stipulation III of this PA.

1. Demolition and rehabilitation of facilities that are not Historic Properties, except when a proposed addition of such facilities may affect a surrounding or adjacent historic district;
2. Repair, replacement and installation of the following systems provided that such work does not affect the exterior of a property or require new duct installation throughout the interior:
 - a. electrical work;
 - b. plumbing pipes and fixtures, including water heaters;
 - c. heating and air conditioning system improvements;
 - d. fire and smoke detector system installation;
 - e. sprinkler system installation;
 - f. ventilation system installation;
 - g. interior elevator or wheelchair conveying system; and
 - h. bathroom improvements where work is restricted to an existing bathroom.
3. Repair or partial replacement of porches, decks, cornices, exterior siding, doors, thresholds, balustrades, stairs, or other trim when the repair or replacement is done in-kind to closely match existing material and form;
4. Installation of new shelf space or improvement of such, and repair, replacement, and installation of cabinets, countertops, and appliances;
5. Repair or replacement of fencing, gates and freestanding exterior walls when work is done in-kind to match existing materials and form;
6. Repair, replacement or installation of windows and storm windows (exterior, interior, metal or wood) provided these match the shape, size and materials of the historic windows and provided that, for storm windows, the meeting rail coincides with that of the historic window. Color should match trim. If reproduction of damaged elements must be accomplished with new materials then any reproduction or replacement shall be in kind;
7. Installation of new window jambs, jamb liners, and screens;
8. Caulking, weather-stripping, reglazing and repainting of windows;
9. Roof repair or replacement of historic roofing with materials that closely match existing materials and forms. Cement asbestos shingles may be replaced with asphalt-based shingles;

10. Repair, replacement or installation of gutters and down spouts;
11. Repainting and refinishing of exterior or interior surfaces, including but not limited to walls, floors, and ceilings, provided that harmful surface preparation treatments including but not limited to water blasting, sandblasting, and chemical removal are not used and that work is done in-kind to match existing material and form;
12. Repair or replacement of awnings and signs when work is done in-kind to closely match the existing material and form;
13. Installation of insulation, with the exception of area formaldehyde form insulation or any other thermal insulation with a water content into wall cavities, provided that decorative interior plaster or woodwork or exterior siding is not altered by this work item;
14. Installation or replacement of security devices, including dead bolts, door locks, window latches, security grilles, surveillance cameras and door peepholes, and electronic security systems;
15. Installation of grab bars, handrails, guardrails and minor interior and exterior modifications for disabled accessibility;
16. Modifications of and improvements to path of travel for persons with disabilities from, to and within a building, structure, playground, or park.
17. Repair or replacement of interior stairs when work is done in-kind to match existing material and form;
18. Replacement of non-significant flat stock trim
19. Repair or replacement of existing roads, driveways, sidewalks, curbs, curb ramps, speed bumps and gutters provided that work is done in-kin to closely match existing materials and forms and provided that there are only minimal changes in the dimensions and configurations of these features;
20. Repair, replacement and installation of the following, regardless of their location within or adjacent to an historic district:
 - a. Park furniture, including benches, picnic tables, chairs, planter boxes, barbecue pits and trellises.
 - b. Outdoor yard improvements, including play structure, matting, fencing, gates, play ground lighting, drinking fountain, play ground equipments, path of travel and ramps.
 - c. Landscaping, including tree planting, tree pruning, shrub removal, play court resurfacing or sodding, irrigation, murals and painting of game lines for school play yards and grounds.

21. Repair, replacement or installation of water, gas, storm, and sewer lines when the work qualifies as an exemption pursuant to Stipulation XI.B.
22. Acquisition of properties which is limited to the legal transfer of ownership with no physical improvements proposed;
23. Temporary bracing or shoring;
24. Anchoring of masonry walls to floor systems so long as anchors are embedded and concealed from exterior view such as in the HILTI systems;
25. Stabilization of foundations and addition of foundation bolts;
26. Rental and installation of scaffolding;
27. Installation of temporary, reversible barriers such as chain link fences and polyethylene sheeting or tarps;
28. Repair and replacement of any interior or exterior elements when the repair or replacement is done in-kind to closely match existing materials.

DRAFT

RESOLUTION NO. 2009-30

RESOLUTION OF THE COUNCIL OF THE CITY OF VISALIA, COUNTY OF TULARE ADOPTING THE FIRST AMENDMENT TO THE PROGRAMMATIC AGREEMENT BETWEEN THE CITY OF VISALIA AND THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICE REGARDING THE REHABILITATION OF HISTORIC PROPERTIES

WHEREAS, the CITY of Visalia (CITY) proposes to administer and fund a rehabilitation program in the City of Visalia, California, with monies from the U. S. Department of Housing and Urban Development (HUD) under programs for which environmental review responsibilities have been delegated to the CITY by statute and which are subject to regulation under 24 CFR Part 58; and

WHEREAS, the CITY has determined that the implementation of these programs may affect properties included in or eligible for the National Register of Historic Places (Historic Properties) and has consulted with the California State Historic Preservation Officer (SHPO) pursuant 36 CFR §800.14(b) of the regulations implementing Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. 470f; and

WHEREAS, the CITY has notified the Advisory Council on Historic Preservation (Council) of the development of this first amendment Agreement and the Council has elected not to participate in the consultation;

NOW, THEREFORE, BE IT RESOLVED, That the City Council adopts the first amendment programmatic agreement, as follows (see attached)

STATE OF CALIFORNIA)
COUNTY OF TULARE)
CITY OF VISALIA)

I, , City Clerk of the City of Visalia, certify the foregoing is the full and true Resolution No. passed and adopted by the Council of the City of Visalia at a regular meeting held on July 13, 2009.