RESOLUTION APPROVING THE REAPPOINTMENT OF ALLAN RAMSAY TO THE MODESTO CITY-COUNTY AIRPORT ADVISORY COMMITTEE

WHEREAS, the City of Modesto operates the Modesto City-County Airport (Airport) for the benefit of all businesses, industries, visitors and residents in the City of Modesto, Stanislaus County and surrounding areas, and

WHEREAS, the Modesto City Council and the Stanislaus Board of Supervisors seek to ensure that the Airport is maintained and developed in such a manner that it will continue to be a high quality aviation facility for its users and a good neighbor in the community, recognizing that both the users and community may change as the surrounding area continues to grow and develop, and

WHEREAS, Section 1102 of the Charter of the City of Modesto authorizes the City Council to appoint members to various Boards and Commissions.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the reappointment of Allan Ramsay to fill the position on the Modesto City-County Airport Advisory Committee, representing an airport general aviation small aircraft owner.

BE IT FURTHER RESOLVED that the Council of the City of Modesto approve the reappointment of Allan Ramsay to fill the position of a general aviation small aircraft owner, to the Airport Advisory Committee for a term of two (2) years,
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 7th day of July, 2015, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Madrigal, was upon roll call carried and the resolution adopted by the following vote:

AYES Councilmembers: Cogdill, Gunderson, Kenoyer, Lopez, Madrigal, Zoslocki, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST:

STEFANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: ADAM U. LINDGREN, City Attorney
RESOLUTION ACCEPTING THE AUDIT ENGAGEMENT LETTER IMPLEMENTING THE ANNUAL AUDIT PROCEDURES FOR THE FISCAL YEAR 2014-2015 IN ACCORDANCE TO THE TERMS OF THE AGREEMENT FOR PROFESSIONAL SERVICES WITH MACIAS GINI O'CONNELL LLP

WHEREAS, on February 24, 2015, the Council approved the proposal and contract for the auditing services for Macias Gini O'Connell LLP (Resolution No. 2015-59) for a three year agreement with two (2) one-year extension options at the sole discretion of the City, for an estimated cost of $205,008 and over five (5) years of $1,025,040, and

WHEREAS, as part of an independent audit firm’s auditing requirements, an annual engagement letter is prepared providing a detailed description of the services to be performed during that audit year and which fall under the basic requirements and scope of the terms of the original contact, and

WHEREAS, the services include the audit objectives for the audit management responsibilities and the audit procedures that will be conducted as part of their internal control and compliance testing,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby accepts the audit engagement letter implementing the annual audit procedures for the Fiscal Year 2014-2015 in accordance to the terms of the agreement for professional services with Macias Gini O’Connell LLP.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 7th day of July, 2015, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Madrigal, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Cogdill, Gunderson, Kenoyer, Lopez, Madrigal, Zoslocki, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

(Seal)

ATTEST: 

STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: ADAM U. LINDGREN, City Attorney
A RESOLUTION ADOPTING THE REVISED ANNUAL INVESTMENT POLICY

WHEREAS, staff has identified the need to update the City’s Annual Investment Policy in order to continue to effectively invest funds in accordance with the principles of sound treasury management and applicable laws, and

WHEREAS, the City desires adopting the Annual Investment Policy and the changes made in this revision, and

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto, that it hereby adopts the Annual Investment Policy, for consideration by this City Council,

BE IT FURTHER RESOLVED that City staff is hereby authorized and directed to proceed with any and all actions deemed necessary or advisable, following the adopted policy guidelines pursuant to this Resolution, in connection with the future investments of funds, for future consideration by this City Council.
The foregoing resolution was introduced at a regular meeting of the Council of
the City of Modesto held on the 7th day of July, 2015, by Councilmember Lopez, who
moved its adoption, which motion being duly seconded by Councilmember Madrigal,
was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Cogdill, Gunderson, Kenoyer, Lopez, Madrigal,
Zoslocki, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: [Signature]

(SEAL)

APPROVED AS TO FORM:

By: [Signature]

ADAM U. LINDGREN, City Attorney
PURPOSE
The purpose of this document is to identify various policies and procedures that enhance opportunities for a prudent and systematic investment policy and to organize and formalize investment-related activities.

SCOPE
The Investment Policy applies to all funds and investment activities of the City except the investment of bond proceeds, which are governed by the appropriate bond documents, and any pension or other post-employment benefit funds held in a trust.

BACKGROUND
Under Section 2-3.401 of the Municipal Code, it is the function of the Finance Department to deposit and invest funds in accordance with sound treasury management. As a charter city, Modesto operates its pooled idle cash investment under the “prudent investor” rule which states that:

“When investing, reinvesting, purchasing, acquiring, exchanging, selling, or managing public funds, a trustee shall act with the care, skill, prudence, and diligence under the circumstances then prevailing, including, but not limited to, the general economic conditions and the anticipated needs of the agency, that a prudent person acting in a like capacity and familiarity with those matters would use in the conduct of funds of a like character and with like aims, to safeguard the principal and maintain the liquidity needs of the agency.”

The City is also governed by Sections 53600 et seq. of the California Government Code. This affords the City a broad spectrum of investment opportunities, so long as the investment is deemed prudent and allowable under current legislation of the State of California and the charter of the City of Modesto.

On an annual basis, the Finance Director/Treasurer will render to the City Council the statement of investment policy. The report will be considered, with any changes, by the City Council at a public meeting.

ETHICS AND CONFLICTS OF INTEREST
Officers and employees involved in the investment process will refrain from personal business activities that could conflict with proper execution of the investment program, or which could impair their ability to make impartial decisions.
INVESTMENT REPORT

The Finance Director/Treasurer shall provide the City Council with a monthly report of investment transactions. In addition, the Finance Director/Treasurer shall render a quarterly report to the City Council, City Manager and the internal auditor within 30 days following the end of the quarter. The report shall contain the following:

1. The type of investment, issuer, purchase date, date of maturity, credit rating, overall portfolio yield based on cost, total par and dollar amount invested on all securities, investments and monies.

2. The weighted average maturity of the portfolio.

3. A description of any funds, investments or programs that are under management of contracted parties, including lending programs. Funds and investments held by contracted parties shall be reported at market value and the source of valuation shall be reported.

4. The market value as of the date of the report, and the source of the valuation.

5. A statement of compliance with the investment policy or manner in which the portfolio is not in compliance.

6. A statement denoting the City’s ability to meet its expenditure requirements for the next six months or provide an explanation as to why sufficient money shall, or may, not be available.

INVESTMENT CRITERIA

Public funds are invested in the following manner in order of priority:

1. **Safety of Principal**
   The duty of the Finance Director/Treasurer is to protect, preserve and maintain cash and investments on behalf of the citizens of the community. To guard against loss of principal, only prudent and safe investments will be considered.

2. **Liquidity**
   The receipt of revenues and maturities of investments should be scheduled so that adequate cash will be available to meet disbursements. An adequate portion of the portfolio should be maintained in liquid short-term instruments which can be readily converted to cash if necessary.

3. **Return on Investment**
   The investment portfolio of the City shall be designed with the objective of attaining a market rate of return on its investments consistent with the constraints imposed by its safety objective and cash flow considerations. Return becomes a consideration only after the basic requirements of safety and liquidity have been met.
SAFEKEEPING AND CUSTODY
All security transactions entered into by the City shall be conducted on a delivery-versus payment basis. Securities will be held by third party custodian designated by the Finance Director/Treasurer and evidenced by safekeeping receipts.

The only exception to the foregoing are Local Agency Investment Pools, Certificates of Deposit, and money market funds since the purchased securities are not deliverable. In all cases, purchased securities shall be held in the City's name.

AUTHORIZED FINANCIAL DEALERS AND INSTITUTIONS
The Finance Director/Treasurer will maintain a list of financial dealers and institutions qualified and authorized to transact business with the City.

The purchase by the City of any investment other than those purchased directly from the issuer, will be purchased either from an institution licensed by the State as a broker-dealer, as defined in Section 25004 of the Corporations Code, which is a member of the Financial Industry Regulatory Authority (FINRA), or a member of a federally regulated securities exchange, a national or state chartered bank, a federal or state association (as defined by Section 5102 of the Financial Code), or a brokerage firm designated as a Primary Government Dealer by the Federal Reserve Bank.

The Finance Director/Treasurer will investigate all institutions that wish to do business with the City, to determine if they are adequately capitalized, make markets in securities appropriate for the City's needs, and agree to abide by the conditions set forth in the City's Investment Policy and any other guidelines that may be provided. This will be done annually by having the financial institutions:

1. Provide written notification that they have read, and will abide by, the City's Investment Policy.

2. Submit their most recent audited Financial Statement within 120 days of the institution's fiscal year end.

If the City has an investment advisor, the investment advisor may use its own list of authorized broker/dealers to conduct transactions on behalf of the City.

Purchase and sale of securities will be made on the basis of competitive bids and offers with a minimum of three quotes being obtained.

PERFORMANCE STANDARDS
The investment portfolio shall be designed with the objective of obtaining a rate of return throughout budgetary and economic cycles, commensurate with the investment risk constraints and the cash flow needs. The City will measure the portfolio's performance against a market benchmark that is commensurate with the City's investment risk constraints and the cash flow characteristics of the portfolio.
AUTHORIZED INVESTMENTS
Credit criteria and maximum percentages listed in this section refer to the credit of the issuing organization at the time the security is purchased. The City may from time to time be invested in a security whose rating is downgraded subsequent to the date of purchase. In the event a rating drops below the minimum allowed rating category for that given investment type, the investment advisor shall notify the Finance Director and/or Designee and recommend a plan of action. The City will limit investments in any one non-government issuer, except investment pools, to no more than 5% regardless of security type. Commencing with Section 53600 of Article 1, Chapter 4 of the Government Code of the State of California, surplus money may be invested in the following:

A. City of Modesto bonds. Bonds issued by the City.

B. U.S. Treasury securities. United States Treasury notes, bonds, bills or certificates of indebtedness or those for which the faith and credit of the United States are pledged for the principal and interest.

C. State of California securities. Registered State of California warrants, treasury notes or bonds, provided that the securities are rated at least A by a nationally recognized statistical rating agency.

D. California municipal securities. Bonds, notes, warrants or other evidence of indebtedness of any local agency within California provided that the securities are rated at least A by a nationally recognized statistical rating agency.

E. Other 49 State municipal securities. Registered treasury notes or bonds of any of the other 49 states in addition to California, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by a state, or by a department, board, agency, or authority of any of these states.

F. Federal Agency securities. Federal agency or United States government-sponsored enterprise obligations, participations, or other instruments, including those issued by or fully guaranteed as to principal and interest by federal agencies or United States government-sponsored enterprises.

G. Bankers' Acceptances. Bankers' Acceptances issued by domestic or foreign banks, which are eligible for purchase by the Federal Reserve System, the short-term paper of which is rated in the highest category by a nationally recognized statistical rating agency.

Purchases of Bankers' Acceptances may not exceed 180 days maturity or 40 percent of the City's surplus money.

H. Commercial Paper. Commercial paper of "prime" quality of the highest ranking or of the highest letter and number rating as provided for by a nationally recognized statistical-
rating organization. The entity that issues the commercial paper shall meet all of the following conditions in either paragraph (1) or paragraph (2):

(1) The entity meets the following criteria: (a) is organized and operating within the United States as a general corporation. (b) Has total assets in excess of $500 million. (c) Has debt other than commercial paper, if any, that is rated "A" or higher by a nationally recognized statistical-rating organization (NRSRO).

(2) The entity meets the following criteria: (a) is organized within the United States as a special purpose corporation, trust, or limited liability company. (b) Has program wide credit enhancements including, but not limited to, over collateralization, letters of credit, or surety bond. (c) Has commercial paper that is rated "A-I" or higher, or the equivalent, by an NRSRO.

Investments in commercial paper are limited to a maximum of 25 percent of the portfolio. Purchases shall not exceed 10 percent of the outstanding paper of the issuing corporation. The maximum investment maturity is restricted to 270 days.

I. Certificates of Deposit. FDIC insured or fully collateralized time certificates of deposit in financial institutions located in California. Eligible investments are restricted to those issuing institutions that have been in business at least five years. The maximum term for deposits shall be one year. Investments in certificates of deposit are further limited to 20 percent of surplus funds. All time deposits must be collateralized in accordance with California Government Code section 53561. The City, at its discretion, may waive the collateralization requirements for any portion of the deposit that is covered by federal insurance.

J. Negotiable Certificates of Deposit. Negotiable certificates of deposit issued by a nationally- or state-chartered bank or a state or federal savings and loan association or by a federally-licensed or state-licensed branch of a foreign bank; provided that the senior debt obligations of the issuing institution are rated "A" or better by Moody’s or Standard & Poor’s. Investments in negotiable certificates of deposit are limited to 30 percent of the portfolio.

K. Repurchase Agreements. Repurchase Agreements used solely as short-term investments not to exceed 90 days.

The following collateral restrictions will be observed: Only U.S. Treasury securities or Federal Agency securities as described in 1 and 2 will be acceptable collateral. All securities underlying Repurchase Agreements must be delivered to the City's custodian bank versus payment or be handled under a tri-party repurchase agreement. The total of all collateral for each Repurchase Agreement must equal or exceed, on the basis of market value plus accrued interest, 102 percent of the total dollar value of the money invested by the City for the term of the investment. For any Repurchase Agreement with a term of more than one day, the value of the underlying securities must be reviewed on a regular basis.
Market value must be calculated each time there is a substitution of collateral.

The City or its trustee shall have a perfected first security interest under the Uniform Commercial Code in all securities subject to Repurchase Agreement.

The City may enter into Repurchase Agreements with (1) primary dealers in U.S. Government securities who are eligible to transact business with, and who report to, the Federal Reserve Bank of New York, and (2) California and non-California banking institutions having assets in excess of $1 billion and in the highest short-term rating category as provided by Moody's Investors Service, Inc. or Standard & Poor's Corporation.

The City will have specific written agreements with each firm with which it enters into Repurchase Agreements.

L. Reverse Repurchase Agreements. The City may invest in reverse repurchase agreements only with "primary dealers" with which the City has entered into a master repurchase agreement contract. The City may invest in reverse repurchase agreements with the following conditions: The City may only use reverse repurchase agreements to (1) cover a temporary cash shortage, or (2) augment earnings. Reverse repurchase agreements may not be used to leverage the portfolio.

In addition, if a reverse repurchase agreement is authorized, it may be utilized only if the security to be sold on reverse repurchase agreement has been owned and fully paid for by the City for a minimum of 30 days prior to the sale; the total of all reverse repurchase agreements on investments owned by the City does not exceed 20 percent of the portfolio; and the agreement does not exceed a term of 92 days, unless the agreement includes a written codicil guaranteeing a minimum earning or spread for the entire period between the sale of the security using a reverse repurchase agreement and the final maturity date of the same security. The proceeds of the reverse repurchase agreement may not be invested in securities whose maturity exceeds the term of the Reverse Repurchase Agreement.

and depository institution debt securities with a maximum remaining maturity of five years or less, issued by corporations organized and operating within the United States or by depository institutions licensed by the U.S. or any state and operating within the U.S. Medium-term notes shall be rated in a rating category "A" or its equivalent or better by a nationally recognized rating service. Purchase of medium-term corporate notes may not exceed 30 percent of the City's investment portfolio.

M. Medium-term corporate notes. Medium-term corporate notes defined as all corporate and depository institution debt securities with a maximum remaining maturity of five years or less, issued by corporations organized and operating within the United States or by depository institutions licensed by the U.S. or any state and operating within the U.S. Medium-term notes shall be rated in a rating category "A" or its equivalent or better by a nationally recognized rating service. Purchase of medium-term corporate notes may not exceed 30 percent of the City's investment portfolio.
N. Money market funds. Shares of beneficial interest issued by diversified management companies that are money market funds registered with the Securities and Exchange Commission under the Investment Company Act of 1940 (money market funds).

O. State of California Local Agency Investment Fund (LAIF).

P. Mortgage and asset-backed securities. Any mortgage pass-through security, collateralized mortgage obligation, mortgage-backed or other pay-through bond, equipment lease-backed certificate, consumer receivable-backed bond that has been issued by a Federal Agency and has a maximum of five years maturity. Purchases of mortgage and asset-backed securities should not exceed 20 percent of the City’s investment portfolio.

Q. California Asset Management Program (CAMP).

R. Supranationals. United States dollar denominated senior unsecured unsubordinated obligations issued or unconditionally guaranteed by the International Bank for Reconstruction and Development (IBRD), International Finance Corporation (IFC), or Inter-American Development Bank (IADB), with a maximum remaining maturity of five years or less, and eligible for purchase and sale within the United States. Investments under this subdivision shall be rated "AA", its equivalent, or better by at least one NRSRO.

**MAXIMUM MATURITY**
Investment maturities shall be based on a review of cash flow forecasts. Maturities will be scheduled so as to permit the City to meet all projected obligations.

Maximum maturity of an authorized investment is limited to five years.

Proceeds of sales or funds set aside for the repayment of any notes (e.g., Tax and Revenue Anticipation Notes) shall not be invested for a term that exceeds the term of the notes.

**INELIGIBLE INVESTMENTS**
Any security type or structure not specifically approved by this policy is hereby specifically prohibited. Security types which are thereby prohibited include, but are not limited to:

Investment in inverse floaters, range notes, or interest only strips that are derived from a pool of mortgages is prohibited.

**RESTRICTIONS SET BY THE FINANCE DIRECTOR/TREASURER**

A. Prior approval of the Finance Director/Treasurer is required for the following transactions, unless the City utilizes the services of an investment advisor registered with the Securities and Exchange Commission in a fiduciary relationship as outlined in this policy.
Sale of securities
Swaps and trades
Purchase of collateralized mortgage obligations (CMO)
Purchase of mortgage-backed obligations
Purchase of corporate notes
Purchase transaction in excess of $3 million

B. The following investments are not deemed appropriate for the City and will not be utilized:

Futures and options
Small Business Administration notes

AUTHORIZED INVESTMENT PERSONNEL
Pursuant to the Government Code, the City Council delegates the authority to invest or to reinvest funds, or to sell or exchange securities so purchased, to the Finance Director/Treasurer for a one-year period. The Finance Director/Treasurer is charged with the responsibility for carrying out the policies of the City Council and shall assume full responsibility for investment transactions until the delegation of authority is revoked or expires.

Idle cash management and investment transactions are the responsibility of the Finance Department, which is under the control of the Finance Director/Treasurer. The Finance Director/Treasurer may designate an individual(s) ["Designee"] to be responsible for the daily management of the City’s portfolio of treasury investments. The Designee may also be directed to monitor and forecast the City’s cash flows, and prepare periodic investment reports that are submitted to the City Council. The Accounting Division of the Finance Department monitors all treasury transactions and prepares accounting records of all investment transactions as to type of investment, amount, yield, and maturity. No other person has authority to make investment transactions without the written authority of the Finance Director/Treasurer. Pursuant to Government Code chapter 53600, all persons investing monies are trustees and therefore fiduciaries subject to the prudent investor standard. Financial market security transactions will be executed by delivery versus payment and the securities will be held by a third party custodian.

Subject to required procurement procedures, the City may engage the support services of outside professionals in regard to its financial program, so long as it can be demonstrated or anticipated that these services produce a net financial advantage or necessary financial protection of the City’s resources.

POLICY REVIEW
The investment policy shall be adopted by resolution of the City Council on, at minimum, an annual basis. This investment policy shall be reviewed at least annually to ensure its consistency with the overall objectives of preservation of principal, liquidity and yield, and its relevance to current law and financial and economic trends. Any amendments to the policy shall be forwarded to City Council for approval.
This policy and the internal controls related to the investment of City funds will be reviewed by the City’s independent external auditors as part of their annual audit of the City’s financial statements.
APPENDIX A - GLOSSARY

Bankers Acceptances (BAs)
Bankers Acceptance is a time bill of exchange drawn on and accepted by a commercial bank to finance the exchange of goods. When a bank “accepts” such a bill, the time draft becomes, in effect, a predated certified check payable to the bearer at some future specified date. Little risk is involved for the investor because the commercial bank assumes primary liability once the draft is accepted.

California Asset Management Program (CAMP)
CAMP is a Joint Powers Authority (“JPA”) designed to assist public agencies with their investment needs through the use of the Cash Reserve Portfolio (“Pool”), which is rated “AAAm” by Standard & Poor’s, its highest rating category. The Pool seeks to attain a high level of current income consistent with the preservation of principal.

Certificates of Deposit (CDS)
A certificate of deposit is issued against funds deposited in a commercial bank for a definite period of time and earning a specified rate of return. They are issued in two forms, negotiable and non-negotiable:

A negotiable certificate of deposit may be sold by one holder to another prior to maturity. This is possible because the issuing bank agrees to pay the amount of the deposit, plus earned interest, to the Bearer of the certificate at maturity.

A non-negotiable certificate of deposit is collateralized and is not a money market instrument since it cannot be traded in the secondary market. It is issued on a fixed maturity basis and often pays a higher interest rate than is permissible on other savings or time deposit accounts.

Collateralized Mortgage Obligation (CMO)
A CMO is a pool of mortgages sold as a single investment with interest paid monthly, quarterly, or semi-annually. Mortgage securities pay a higher rate than U.S. Treasury securities due to risk of prepayment and default.

Commercial Paper (CP)
This is a short-term promissory note issued by a corporation to raise working capital. The interest rates tend to be higher than other investments of similar liquidity.

Derivatives
A financial instrument with a value derived from the value of one or more underlying assets or indexes of asset values. The term “derivative products” refers to instruments or features such as collateralized mortgage obligations (CMOs), interest-only (IOs) and principal-only (POs), forwards, futures, currency and interest rate swaps, options, floaters/inverse floaters, and caps/floors/collars.
Federal Agency Securities
Certain agencies created by Congress and sponsored by the federal government issue debt that is considered to be of prime quality and have a very high standing in the bond market. The major federal agencies are described as follows:

Federal National Mortgage Association (FNMA, “Fannie Mae”) provides funds to the mortgage market primarily by purchasing loans from local lenders.

Federal Home Loan Mortgage Corporation (FHLMC, “Freddie Mac”) purchases conventional mortgages and sells mortgage-backed securities.

Student Loan Marketing Association (SLMA, “Sallie Mae”) facilitates that flow of private capital into various federally-guaranteed student loan programs maintained through banks, S&Ls, educational institutions and other participating lenders.

Federal Farm Credit System (FFCB) sells securities to provide mortgage loans and short-term and intermediate-term credit to farmers, ranchers, and agricultural cooperatives.

Federal Home Loan Bank (FHLB) acts as a credit reserve system for the thrift industry to stabilize the flow of funds to member savings and loan and savings banks.

Futures
Exchange traded contracts specifying a future date of delivery or receipt of a specific product (physical commodity or financial instrument). Futures are used by business as a hedge against unfavorable price changes, and by speculators who hope to profit from such changes.

Local Agency Investment Fund (LAIF)
State of California LAIF is designed to provide a convenient and safe means of investing temporarily idle monies by the State Treasurer. LAJF provides high liquidity and generally pays higher yields than can be realized by individual local agencies (for similar maturities) due to economies of scale.

Medium-Term Notes
Issued by corporations (in the form of secured or unsecured debt) for the purpose of raising working capital and purchasing capital assets.

Options
A right to buy (call) or sell (put) a fixed amount of a given stock at a specified price within a limited period of time. The purchaser hopes that the stock’s price will go up (if he bought a call) or down (if he bought a put) by an amount sufficient to provide a profit when he sells the option. If the price is static or moves in the opposite direction, the price paid for the option is lost entirely.

Repurchase Agreement
As authorized in Government Code Section 5360i (1), these investment vehicles are (generally short-term) agreements between the local agency and seller for the purchase of Government securities to be resold at a specific date and for a specific amount.
Reverse Repurchase Agreement
This transaction is the opposite of a repurchase agreement. The dealer buys securities with a contractual agreement to sell them back at a prearranged date. The local agency pays the dealer interest for the use of the funds. The money “borrowed” on a “reverse repo” can be reinvested in higher yielding instruments.

Supranational entities
Entities formed by two or more central governments with the purpose of promoting economic development for the member countries. Supranational institutions finance their activities by issuing debt, such as supranational bonds. Examples of supranational institutions include the European Investment Bank and the World Bank. Similarly to the government bonds, the bonds issued by these institutions are considered direct obligations of the issuing nations and have a high credit rating.

U.S. Treasury Securities
The highest quality, most liquid debt investments available in the fixed income market-place, unconditionally backed by the “full faith and credit” of the U.S. Government. Treasury bills are short-term instruments (maturity of three months to one year); Treasury notes and bonds are currently issued with maturities of two to ten years.
MODESTO CITY COUNCIL
RESOLUTION NO. 2015-231

A RESOLUTION ADOPTING THE REVISED DEBT MANAGEMENT POLICY

WHEREAS, pursuant to the City of Modesto Debt Management Policy, the City of Modesto is required to periodically review and update its Debt Management Policy to address changes to the primary objectives related to the City’s debt and financing related activities, and

WHEREAS, staff has identified the need to update the City’s Debt Management Policy in order to continue to maintain cost-effective access to capital markets through prudent yet flexible policies; moderate debt principal and debt service payments through effective planning and project cash management; and achieve the highest practical credit ratings, and

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto, that it hereby adopts the revised Debt Management Policy, for consideration by this City Council,

BE IT FURTHER RESOLVED that City staff is hereby authorized and directed to proceed with any and all actions deemed necessary or advisable, following the adopted policy guidelines pursuant to this Resolution, in connection with the future issuances of the City Debt, for future consideration by this City Council.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 7th day of July, 2015, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Madrigal, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Cogdill, Gunderson, Kenoyer, Lopez, Madrigal, Zoslocki, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: [Signature]

STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: [Signature]

ADAM U. LINDGREN, City Attorney
I. INTRODUCTION
The purpose of this Policy is to organize and formalize debt issuance-related policies and procedures for the City of Modesto (the City) and to establish a systematic debt policy (Debt Policy). The debt policies and practices of the City are, in every case, subject to and limited by applicable provisions of state and federal law and to prudent debt management principles.

II. DEBT POLICY OBJECTIVE
The primary objectives of the City’s debt and financing related activities are to maintain cost-effective access to the capital markets and other financing venues through prudent yet flexible policies:

- Moderate debt principal and debt service payments through effective planning and project cash management; and
- Achieve the highest practical credit ratings.

III. SCOPE AND DELEGATION OF CITY
This Debt Policy shall govern, except as otherwise covered by the City of Modesto Investment Policy and the City of Modesto Swap policies (copies of which are attached hereto), the issuance and management of all debt funded through the capital markets and private placements, including the selection and management of related financial and advisory services and products, and the investment of bond proceeds.

This Policy shall be reviewed and updated periodically as required. Any changes to the policy are subject to approval by the City Council at a legally noticed and conducted public meeting. Overall policy direction of this Debt Policy shall be provided by the City Council. Responsibility for implementation of the Debt Policy, and day-to-day responsibility for structuring, implementing, and managing the City’s debt and finance program, shall lie with the Director of Finance. The City Council’s adoption of the City Annual Budget does not, in and of itself, constitute authorization for debt issuance for any reason. This Debt Policy requires that the City Council specifically authorize each debt financing. Each financing shall be presented to the City Council.
While adherence to this Policy is required in applicable circumstances, the City recognizes that changes in the capital markets, agency programs and other unforeseen circumstances may from time to time produce situations that are not covered by the Policy and will require modifications or exceptions to achieve policy goals. In these cases, management flexibility is appropriate, provided specific authorization from the City Council is obtained.

IV. ETHICS AND CONFLICTS OF INTEREST

Officers and employees of the City involved in the debt management program will not engage in any personal business activities that could conflict with proper and lawful execution of the debt management program, or which could impair their ability to make impartial decisions.

V. CAPITAL IMPROVEMENT PROGRAM INTEGRATION

The City's multi-year Capital Improvement Program (CIP), which identifies the projects and the appropriate funding mechanisms to pay for them, shall be used in combination with the CIP Financial and Budget Policies and this Debt Policy to ensure the proper allocation and financing of eligible projects. The CIP and its related policies set priorities and strategies for allocating and tracking funding, while the Debt Policy provides policy direction and limitations for proposed financings. Debt issuance for capital projects shall not be recommended for City Council approval unless such issuance has been incorporated into the Capital Improvement Program.

VI. STANDARDS FOR USE OF DEBT FINANCING

The City's debt management program will promote debt issuance only in those cases where public policy, equity and economic efficiency favor debt over cash (pay-as-you-go) financing. Long-term debt financing shall not be used to fund operating costs.

A. Credit Quality

Credit quality is an overriding consideration. All City debt management activities for new debt issuances will be conducted in a manner conducive to receiving the highest credit ratings possible consistent with the City's debt management objectives, and to maintaining or improving the current credit ratings assigned to the City's outstanding debt by the major credit rating agencies.

B. Term of Financing

Debt can be used to provide funding for long-term capital projects. The debt repayment period should relate to the expected useful life for the facilities or equipment being financed, and should, as a general matter, be concurrent with the stream of benefits from these facilities. When the City finances capital projects by issuing bonds, the debt repayment period generally should not exceed 120% of the useful life of the project being financed. Inherent in its long-term debt policies, the City recognizes that future taxpayers will benefit from the capital investment and that it is appropriate that they pay a share of the asset cost.
C. Debt Financing Mechanism
The City will evaluate the use of all financial alternatives available including, but not limited to, long-term debt, short-term debt, commercial paper, tax revenue and grant anticipation notes, private placement and inter-fund borrowing. The City will utilize the most cost advantageous financing alternative available while limiting the City’s risk exposure.

D. Ongoing Debt Administration and Internal Controls
The City shall maintain all debt-related records. At a minimum, this repository will include all official statements, bid documents, ordinances, indentures, trustee reports, etc. for all City debt. To the extent that official transcripts incorporate these documents, possession of a transcript will suffice (transcripts may be hard copy, stored on CD-ROM or other forms of electronic record). The City will collect all available documentation for outstanding debt and will develop a standard procedure for archiving transcripts for any new debt. The City will establish internal controls to ensure compliance with the Debt Policy, all debt covenants and any applicable requirements of the State and Federal Government Codes.

E. Rebate Policy and System
The City will accurately account for all interest earnings in debt-related funds. These records will be designed to ensure that the City is in compliance with all debt covenants, and with State and Federal laws. The City will maximize the interest earnings on all funds within the investment parameters set forth in each respective indenture, and as permitted by the City Investment Policy. The City will develop a system of reporting interest earnings that relates to and comply with Internal Revenue Code rebate, yield limits and arbitrage.

VII. FINANCING- DEBT

A. Purpose of Debt
When the City determines that the use of debt is appropriate, the following criteria will be utilized to evaluate the type of debt to be issued:

1. NEW MONEY FINANCING
New money issues are financings that generate funding for capital projects, equipment or enterprise software systems. Eligible capital projects for allocation of City funds include the acquisition, construction or major rehabilitation of capital assets.

2. REFUNDING FINANCING
Refunding bonds are issued to retire all or a portion of an outstanding bond issue. Refunding issuances can be used to achieve present-value savings on debt service or to restructure the payment schedule, type of debt instrument used, or covenants of existing debt. The City must analyze the refunding issue on a present-value basis to identify economic effects before approval.
B. Type of Debt

When the City determines that the use of debt is appropriate, the following criteria will be utilized to evaluate the type of debt to be issued:

1. LONG-TERM DEBT

The City may issue long-term debt (e.g. revenue bonds or variable rate bonds) when equipment, project, or software costs cannot be financed from current revenues. The proceeds derived from long-term borrowing will not be used to finance current operations or normal/current maintenance. Long-term debt will be structured such that the obligations generally do not exceed 120% of the expected average useful life of the asset being financed or the sunset date of any current, pledged revenues.

- **Current Coupon Bonds** are bonds that pay interest periodically and principal at maturity. They may be used for both new money and refunding transactions. Bond features may be adjusted to accommodate the market conditions at the time of sale, including changing dollar amounts for principal maturities, offering discount and premium bond pricing, modifying call provisions, utilizing bond insurance, and determining how to fund the debt service reserve fund.

- **Zero Coupon and Capital Appreciation Bonds** pay interest only when principal matures. Interest continues to accrue on the unpaid interest, therefore representing a more expensive funding option. In the case of zero-coupon bonds, principal and interest, at one coupon rate, is repaid at maturity. In the case of Capital Appreciation Bonds, the value of the bond accretes until maturity.

- **Taxable Debt, including Build America Bonds (BABs)** are bonds sold whose interest payments are not tax-exempt for federal tax purpose to bondholders, but are deemed taxable. The federal government pays a subsidy to the issuer of BABs. The City will consider the issuance of taxable debt when it is necessary for federal tax reasons or if these bonds would lower the overall cost of the financing.

2. SHORT-TERM DEBT

Short-term borrowing may be utilized for the temporary funding of operational cash flow deficits or anticipated revenues, where anticipated revenues are defined as an assured revenue source with the anticipated amount based on conservative estimates. The City will determine and utilize the least costly method for short-term borrowing. The City may issue short-term debt when there is a defined repayment source or amortization of principal, subject to the following policies:

- **Commercial Paper Notes** may be issued as an alternative to fixed rate debt, particularly when the timing of funding requirements is uncertain. The City may maintain an ongoing commercial paper program to ensure flexibility and immediate access to capital funding when needed. The retirement of commercial paper is most commonly a result of the issuance of long-term bonds but they may also be retired with available cash.
• *Grant Anticipation Notes (GANs)* are short-term notes that are repaid with the proceeds of State or Federal grants of any type. The City shall generally issue GANs only when there is no other viable source of funding for the project.

• *Bond Anticipation Notes (BANs)* are short-term notes issued prior to the issuance of long-term debt. It is anticipated that BANs will be retired, or taken-out, with long term debt or commercial paper. BANs will be issued only when there is no better alternative to reduce the overall cost of a financing program.

• *Tax and Revenue Anticipation Notes (TRANs)* shall be issued only if the sizing of the issue fully conforms to Federal IRS requirements and limitations.

• *Lines of Credit* shall be considered as an alternative to other short-term borrowing options. The lines of credit shall be structured to limit concerns as to Internal Revenue Code compliance.

• *Other Short-term debt may also be considered and utilized when appropriate such as a Direct Purchase Loan from a bank or Floating Rate Notes.*

3. **VARIABLE RATE DEBT**

To maintain a predictable debt service burden, the City may give preference to debt that carries a fixed interest rate. An alternative to the use of fixed rate debt is floating or variable rate debt. It may be appropriate to issue short-term or long-term variable rate debt to diversify the City’s debt portfolio, reduce interest costs, provide interim funding for capital projects and improve the match of assets to liabilities. Variable rate debt typically has a lower cost of borrowing than fixed rate financing and shorter maturities in the range of 7 to 35 days. Under no circumstances will the City issue variable rate debt solely for the purpose of earning arbitrage. The City, however, may consider variable rate debt in certain instances.

A) **Variable Rate Debt Capacity.** The City will maintain a conservative level of outstanding variable rate debt in consideration of general rating agency guidelines recommending a maximum of a 20-30% variable rate exposure, in addition to maintaining adequate safeguards against risk and managing the variable revenue stream both as described below:

(1) *Adequate Safeguards Against Risk.* Financing structure and budgetary safeguards are in place to prevent adverse impacts from interest rate shifts; such structures could include, but are not limited to, interest rate swaps, interest rate caps and the matching of assets and liabilities.

(2) *Variable Revenue Stream.* The revenue stream for repayment is variable, and is anticipated to move in the same direction as market-generated variable interest rates, or the dedication of revenues allows capacity for variability.
(3) As a Component to Synthetic Fixed Rate Debt. Variable rate bonds may be used in conjunction with a financial strategy, which results in synthetic fixed rate debt. Prior to using synthetic fixed rate debt, the City shall certify that the interest rate cost is at least 10 basis points lower than traditional fixed rate debt.

4. FINANCIAL DERIVATIVE PRODUCTS

Financial Derivative Products will be considered appropriate in the issuance or management of debt only in instances where it has been demonstrated that the derivative product will either provide a hedge that reduces the risk of fluctuations in expense or revenue, or alternatively where the derivative product will reduce total project cost.

VIII. TERMS AND CONDITIONS OF BONDS

The City shall establish all terms and conditions relating to the issuance of bonds, and will control, manage, and invest all bond proceeds. Unless otherwise authorized by the City, the following shall serve as bond requirements.

A. Term
All capital improvements financed through the issuance of debt will be financed for a period generally not to exceed 120% of the expected average useful life of the assets being financed, and in no event should exceed the lesser of thirty (30) years or the period of time until the sunset of a revenue source.

B. Capitalized Interest
The nature of the City’s revenue stream is such that funds are generally continuously available and the use of capitalized interest should not normally be necessary. However, certain types of financings may require the use of capitalized interest from the issuance date until the City has constructive use/benefit of the financed project. Unless otherwise required, the City will avoid the use of capitalized interest to obviate unnecessarily increasing the bond size. Interest shall not be funded (capitalized) beyond three (3) years or a shorter period whether based upon project needs or if further restricted by statute. The City may require that capitalized interest on the initial series of bonds be funded from the proceeds of the bonds. Interest earnings may, at the City’s discretion, be applied to extend the term of capitalized interest but in no event beyond 3 years, or less, if restricted by state law.

C. Lien Levels
Senior and Junior Liens for each revenue source will be utilized in a manner that will maximize the most critical constraint, typically either cost or capacity, thus allowing for the most beneficial use of the revenue source securing the bond.
D. Maximum Annual Debt Service (MADS)  
Concerning revenue bonds, the MADS for any given year must not exceed a level at which the City’s net revenues are less than one and a quarter times (1.25x) the total debt service within any year unless allowed by existing bond covenants.

E. Additional Bonds Test  
Any new debt issuance must not cause the City’s debt service to exceed the level at which the net revenues are less than one and a quarter times (1.25x) the maximum annual principal, interest and debt service for the aggregate outstanding senior lien bonds including the debt service for the new issuance unless allowed by existing bond covenants.

F. Debt Service Structure  
Debt issuance shall be planned to achieve relatively rapid repayment of debt while still matching debt service to the useful life of facilities. The City will amortize its debt within each lien to achieve overall level debt service or may utilize more accelerated repayment schedules after giving consideration to bonding capacity constraints. The City shall avoid the use of bullet or balloon maturities except in those instances where these maturities achieve one of the City’s stated goals, such as minimizing annual debt service or leveling annual existing debt service, among others.

G. Call Provisions  
In general, the City’s securities will include a call feature, which is no later than ten (10) years from the date of delivery of the bonds. The City will avoid the sale of non-callable bonds absent careful evaluation by the City with respect to the value of the call option. If the City were to issue BABs, or other taxable bonds, the City will carefully consider the financial impacts of a 10 year call, a make-whole call, or non-callable debt.

H. Original Issue Discount  
An original issue discount will be permitted only if the City determines that such discount results in a lower true interest cost on the bonds and that the use of an original issue discount will not materially reduce the value of the bonds’ call provisions and adversely affect the project identified by the bond documents.

I. Deep Discount Bonds  
Deep discount bonds may provide a lower cost of borrowing in certain markets. The City will carefully consider their value and effect on any future refinancing as a result of the lower-than-market coupon.

J. Derivative Products  
The City will consider the use of derivative products only in instances where it has been demonstrated that the derivative product will either provide a hedge that reduces risk of fluctuations in expense or revenue, or alternatively, where the derivative product will reduce the total project cost. If interest rate swaps are considered, the City shall develop and maintain Swap Policies (see attached swap policies) governing the use of these derivative products. For derivatives other than interest rate swaps, the City will undertake an analysis of early termination costs and other conditional terms given certain financing and marketing.
assumptions. Such analysis will document the risks and benefits associated with the use of a particular derivative product. Derivative products will only be utilized with prior approval from the City Council.

K. Multiple Series

In instances where multiple series of bonds are to be issued, the City shall make a final determination as to which allocations are of the highest priority. Projects chosen for priority financing, based on funding availability and proposed timing, will generally be subject to the earliest or most senior lien of the bond series.

IX. CREDIT ENHANCEMENTS

The City will consider the use of credit enhancement on a case-by-case basis, evaluating the economic benefit versus cost for each case. Only when a clearly demonstrable savings can be shown shall enhancement be considered. The City will consider each of the following enhancements as alternatives by evaluating the cost and benefit of such enhancement.

A. Bond Insurance

The City may purchase bond insurance when such purchase is deemed prudent and advantageous. The predominant determination shall be based on such insurance being less costly than the present value of the difference in the interest on insured bonds versus uninsured bonds.

B. Debt Service Reserves

When required, a reserve fund equal to the lesser of 10% of the original principal amount of the bonds, maximum annual debt service or 125% of average annual debt service, and if permitted, 10% of par value of bonds outstanding, (the "Reserve Requirement") shall be funded from the proceeds of each series of bonds, subject to federal tax regulations and in accordance with the requirements of credit enhancement providers and/or rating agencies.

The City may purchase reserve equivalents (i.e., the use of a reserve fund surety) when such purchase is deemed prudent and advantageous. Such equivalents shall be evaluated in comparison to cash funding of reserves on a net present value basis, the creditworthiness of the surety provider and market acceptance.

C. Letters of Credit

The City may enter into a letter-of-credit agreement when such an agreement is deemed prudent and advantageous. Only those financial institutions with long-term ratings greater than or equal to that of the City, and minimum short-term ratings of VMIG 1, A-1, F1, by Moody’s Investor Services, Standard & Poor’s and Fitch, respectively, may participate in City letter of credit agreements unless there are no other practicable options for the City. The City may also consider a Direct Purchase loan by a financial institution if the terms and conditions are similar to a traditional letter of credit. Fixed or Floating Rate Notes are another alternative to Variable Rate Demand Bonds with a letter-of-credit.
X. REFINANCING OUTSTANDING DEBT
The City shall have the responsibility to analyze outstanding bond issues for refunding opportunities that may be presented by underwriting and/or financial advisory firms. The City will consider the following issues when analyzing possible refunding opportunities:

A. Debt Service Savings
The City has established a minimum savings threshold goal of 3% of the refunded bond debt service compared to the refunding bonds debt service unless there are other compelling reasons for defeasance. The present value savings will be net of all costs related to the refinancing. The decision to take savings on an upfront or deferred basis must be explicitly approved by the City Council.

B. Restructuring
The City will refund debt when in its best interest to do so. Refunding’s will include restructuring to meet unanticipated revenue expectations, terminate swaps, achieve cost savings, mitigate irregular debt service payments, release reserve funds or remove unduly restrictive bond covenants.

C. Term of Refunding Issues
The City will refund bonds within the term of the originally issued debt. However, the City may consider maturity extension, when necessary to achieve a desired outcome, provided that such extension is legally permissible. The City may also consider shortening the term of the originally issued debt to realize greater savings. The remaining useful life of the financed facility and the concept of inter-generational equity should guide this decision.

D. Escrow Structuring
The City shall utilize the least costly securities available in structuring refunding escrows. The City will examine the viability of an economic versus legal defeasance on a net present value basis. A certificate from a third party agent, who is not a broker-dealer, is required stating that the securities were procured through an arms-length, competitive bid process (in the case of open market securities), that such securities were more cost effective than State and Local Government Obligations (SLGS), and that the price paid for the securities was reasonable within Federal guidelines. Under no circumstances shall an underwriter, agent or financial advisor sell escrow securities to the City from its own account.

E. Arbitrage
The City shall take all necessary steps to optimize refunding escrows and to avoid negative arbitrage. Any resulting positive arbitrage, on funds other than advance refunding escrows (which are not allowed to generate positive arbitrage earnings), will be rebated as necessary according to Federal guidelines.

XI. METHODS OF ISSUANCE
The City will determine, on a case-by-case basis, whether to sell its bonds competitively or through negotiation.
A. Competitive Sale

In a competitive sale, the City's bonds shall be awarded to the bidder providing the lowest true interest cost as long as the bid adheres to the requirements set forth in the official notice of sale. Conditions under which a competitive sale would be preferred are as follows:

- Bond prices are stable and/or demand is strong.
- Market timing and interest rate sensitivity are not critical to the pricing. There are no complex explanations required during marketing regarding issuer’s projects, media coverage, political structure, political support, and funding or credit quality.
- The bond type and structure are conventional.
- Bond insurance is included or pre-qualified (available).
- Manageable transaction size.
- The City (or a City enterprise) has strong credit ratings.
- The City (or a City enterprise) is well known to investors.

B. Negotiated Sale

The City recognizes that some securities are best sold through negotiation. Conditions under which a negotiated sale would be preferred are as follows:

- Interest rates are volatile.
- Demand is weak or supply of competing bonds is high.
- Market timing is important, such as for refunding’s.
- Issuer has lower or weakening credit rating.
- Issuer is not well known to investors.
- Sale and marketing of the bonds will require complex explanations about the issuer’s projects, media coverage, political structure, political support, funding, or credit quality.
- The bond type and/or structural features are non-standard, such as for a forward delivery bond sale, issuance of variable rate bonds, or where there is the use of derivative products.
- Bond insurance is not available or not offered.
- Early structuring, investor outreach and other market participation by underwriters are desired.
- The par amount for the transaction is significantly larger than normal.
- Demand for the bonds by retail investors is expected to be high.
- Participation from DBE firms is required.

C. Private Placement

From time to time the City may elect to privately place its debt. Such placement shall be considered if this method is demonstrated to result in a cost savings to the City relative to other methods of debt issuance.

D. Issuance Method Analysis

The City shall evaluate each method of issuance on a net present value basis, using the City's investment rate as the appropriate measure of the discount rate.
E. Feasibility Analysis

Issuance of revenue bonds will be accompanied by a finding that demonstrates the projected revenue stream’s ability to meet future debt service payments.

XII. MARKET RELATIONSHIPS

A. Rating Agencies and Investors

The Director of Finance shall be responsible for maintaining the City’s relationships with Moody’s Investors Service, Standard & Poor’s, Fitch and any other major rating agency. The City may, from time-to-time, choose to deal with only one or two of these agencies as circumstances dictate. In addition to general communication, the Director of Finance shall meet with credit analysts prior to each competitive or negotiated sale and/or offer conference calls with agency analysts in connection with the planned sale as needed.

B. Continuing Disclosure

The City shall remain in compliance with Rule 15c2-12 by filing its annual financial statements and other financial and operating data for the benefit of its bondholders within 240 days of the close of the fiscal year. The inability to make timely filings must be disclosed and is a negative reflection. While there is reliance on timely audit and preparation of the City’s annual report, the Director of Finance will ensure that the City’s timely filing with the Municipal Securities Rulemaking Board.

C. Rebate Reporting

The use of bond proceeds and their investments must be monitored to ensure compliance with arbitrage restrictions. The City will cause arbitrage rebate calculations to be completed, or cause to be completed by an experienced firm the City has retained for this purpose related to any bond issues, with any positive rebate paid every five years and as otherwise required by applicable provisions of the Internal Revenue Code and regulations. Therefore, the Director of Finance shall ensure that proceeds and investments are tracked in a manner that facilitates accurate, complete calculation, and timely rebates, if necessary.

B.D. Other Jurisdictions/Conduit Financing

- From time to time, the City may issue bonds on behalf of other public entities. While the City will make every effort to facilitate the desires of these entities, the Director of Finance will ensure that the highest quality financings are done and that the City insulated from all risks.

- City may issue bonds through another issuing entity such as a joint powers authority (JPA). The City may issue debt in this manner if it would result in the least costly method to issue debt (e.g. reduced costs of issuance). The City will evaluate the timing of such issuance.

F.E. Fees

When appropriate, the City will charge an administrative fee equal to direct costs to reimburse its administrative costs incurred in debt issuance and ongoing reporting costs.
XIII. CONSULTANTS

Periodically, the City shall create an approved pool of qualified financing team members such as financial advisors and underwriters.

A. Selection of Financing Team Members

The Director of Finance will make recommendations to the City Manager for all financing team members, with the City Council providing final approval.

B. Financial Advisor

The City shall utilize a financial advisor to assist in its debt issuance and debt administration processes as prudent. Selection of the City’s financial advisor(s) shall be based on, but not limited to, the following criteria.

- Prior knowledge and experience with the City.
- Experience in providing consulting services to complex issuers.
- Knowledge and experience in structuring and analyzing complex issues.
- Experience and reputation of assigned personnel.
- Fees and expenses.

Financial advisory services provided to the City shall include, but shall not be limited to the following.

- Evaluation of risks and opportunities associated with debt issuance.
- Monitoring marketing opportunities.
- Evaluation of proposals submitted to the City by investment banking firms.
- Structuring and pricing.
- Preparation of request for proposals for other financial services such as trustee and paying agent services, printing, credit facilities, remarketing agent services, etc.
- Advice, assistance and preparation for presentations with rating agencies, credit providers and investors.
- Assisting in preparation of official statements and other financing documents.

The City also expects that its financial advisor will provide the City with objective advice and analysis, maintain the confidentiality of City financial plans, and be free from any conflicts of interest.

C. Bond Counsel

City debt will include a written opinion by legal counsel affirming that the City is authorized to issue the proposed debt, that the City has met all constitutional and statutory requirements necessary for issuance, and a determination of the proposed debt’s federal income tax status. The approving opinion and other documents relating to the issuance of debt will be prepared by counsel with extensive experience in public finance and tax issues. The counsel will be selected by the City Attorney and subject to Council approval.

The services of bond counsel may include, but are not limited to:

- Rendering a legal opinion with respect to authorization and valid issuance of debt obligations including whether the interest paid on the debt is tax exempt under federal
and State of California law;
• Preparing all necessary legal documents in connection with authorization, sale, issuance and delivery of bonds and other obligations;
• Unless this task is assigned to disclosure counsel, as selected by the City separately from bond counsel, assisting in the preparation of the preliminary and final official statements and commercial paper memorandum;
• Participating in discussions with potential investors, insurers and credit rating agencies, if requested; and
• Providing continuing advice, as requested, on the proper use and administration of bond proceeds under applicable laws and the indenture, particularly arbitrage tracking and rebate requirements.

XIV. UNDERWRITER SELECTION

A. Senior Manager Selection
The City shall have the right to select a senior manager for a proposed negotiated sale. The criteria shall include but not be limited to the following:
• The firm’s ability and experience in managing similar and/or complex transactions.
• Demonstrated ability to structure debt issues efficiently and effectively.
• Prior knowledge and experience with the City.
• The firm’s willingness to risk capital and demonstration of such.
• The firm’s ability to reach a wide network of investors.
• The firm’s ability to sell bonds at the lowest market interest rates.
• Quality and experience of personnel assigned to the City’s engagement.
• Financing and marketing plans presented.

B. Co-Manager Selection
Co-managers will be selected on the same basis as the senior manager. In addition to their qualifications, co-managers appointed to specific transactions will be a function of transaction size and the necessity to ensure maximum distribution of the City’s bonds.

C. Selling Groups
The City may establish selling groups in certain transactions. To the extent that selling groups are used, the City may make appointments to selling groups from within the pool of underwriters or from outside the pool, as the transaction dictates.

D. Underwriter’s Counsel
In any negotiated sale of City debt in which legal counsel is required to represent the underwriter, the lead underwriter will make the appointment subject to the City’s approval.

E. Underwriter’s Discount
• The City will evaluate the proposed underwriter’s discount against comparable issues in the market. If there are multiple underwriters in the transaction, the City will determine the allocation of fees with respect to the takedown and management fee (if
The determination of the size and allocation of the management fee will be based upon participation in the structuring phase of the transaction.

- Generally, the City will not pay for risk in its underwriter's discount.
- All fees and allocation of the management fee will be determined prior to the sale date; a cap on management fee, expenses and underwriter's counsel will be established and communicated to all parties by the City. The senior manager shall submit an itemized list of expenses charged to members of the underwriting group. Any additional expenses must be substantiated.

**F. Evaluation of Financing Team Performance**
The City will evaluate each bond sale after its completion to assess the following: costs of issuance including underwriters' compensation, pricing of the bonds in terms of the overall interest cost and on a maturity-by-maturity basis, and the distribution of bonds and sales credits. Following each sale, the Financial Advisor shall provide a post-sale evaluation on the results of the sale to the City Council.

**G. Syndicate Policies**
For each negotiated transaction, the Director of Finance will prepare syndicate policies that will describe the designation policies governing the upcoming sale. The Director of Finance shall ensure receipt of each member's acknowledgement of the syndicate policies for the upcoming sale prior to the sale date.

**H. Designation Policies**
To encourage the pre-marketing efforts of each member of the underwriting team, orders for the City's bonds will be net designated, unless otherwise expressly stated. The City shall require the senior manager to:
- Equitably allocate bonds to other managers and the selling group.
- Comply with MSRB regulations governing the priority of orders and allocations.
- Within 10 working days after the sale date, submit to the Director of Finance a detail of orders, allocations and other relevant information pertaining to the City's sale.

**I. Disclosure by Financing Team Members**
All financing team members will be required to provide full and complete disclosure, relative to agreements with other financing team members and outside parties. The extent of disclosure may vary depending on the nature of the transaction. However, in general terms, no agreements shall be permitted which could compromise the firm's ability to provide independent advice which is solely in the City's best interests or which could reasonably be perceived as a conflict of interest.
XV. POST-ISSUANCE COMPLIANCE

A. General
In conjunction with the issuance of a tax-advantaged obligation, bond counsel issues an opinion that is in part based on the reasonable expectation that the issuer will comply with federal tax law requirements to preserve the tax-advantaged status of the obligation. The issuer agrees to comply with these requirements through representations it makes in the tax compliance certificate. The purpose of this Post-Issuance Compliance Policy is to establish policies and procedures in connection with the issuance of the Bonds, so as to (a) maximize the likelihood that the City satisfies all applicable post-issuance requirements of federal income tax law needed to preserve the tax-exempt status of bonds, (b) ensure that the City will take any appropriate remedial actions on a timely basis if a future event occurs that could affect the tax-exempt status of bonds, and (c) maximize the likelihood that the City complies with applicable federal securities laws, including any contractual obligations arising thereunder. The City reserves the right to use its discretion as necessary and appropriate to make exceptions or request additional provisions as circumstances warrant. The City also reserves the right to change these policies and procedures from time to time.

Issuers and borrowers are also required to disclose, on a periodic basis, financial information and certain other information that may impact their ability to service their debt. This ongoing reporting requirement is known as continuing disclosure. The requirements of continuing disclosures are set forth in Securities and Exchange Commission (“SEC”) Rule 15c2-12. The issuer makes representations in its official statements and other bond documents regarding its intent to comply with the requirements of Rule 15c2-12.

B. Designation of Post-Issuance Compliance Officer
The Director of Finance, or his or her designee, shall be the Post-Issuance Compliance Officer (the "Compliance Officer") for the City’s bonds (the “Bonds”). The Compliance Officer, if City staff, may designate such other personnel as may be necessary to assist in determining continuing compliance with all relevant law and regulations applicable to the continued favorable tax treatment of such indebtedness, and to comply with the record-keeping responsibilities outlined herein. At such time as the initial Compliance Officer is replaced or a new Compliance Officer is designated the departing Compliance Officer will ensure that such successor is fully briefed as to the status of the City’s outstanding tax-exempt indebtedness and the location of records relating to such indebtedness, and that such successor receives training and consultation(s) with bond counsel as to his or her duties as Compliance Officer under this policy.

C. External Advisors
The City shall consult with bond counsel and other legal counsel and advisors, as needed, so long as any of bonds remain outstanding, to identify requirements and to establish procedures necessary or appropriate so that interest on the Bonds will continue to be excludable from gross income for federal income tax purposes. Those requirements and procedures shall include future compliance with applicable private activity bond tests, arbitrage rebate requirements and all other applicable post-issuance requirements of federal tax law throughout (and in some cases, beyond) the term of bonds. The Compliance Officer shall conduct periodic reviews, at least annually, or more often as may be necessary, to determine that the City remains in compliance with all laws and regulations, including, without limitation, the matters set forth herein. The Compliance Officer annual review shall include matters that relate to the tax-exempt status of the
Bonds, continuing compliance with covenants that relate to the tax-exempt status of the Bonds, and any new matters or public finance developments that relate to the tax-exempt status of the Bonds or continuing compliance with such requirements. The City may consult with bond counsel in conducting its review and may engage expert advisors (each a “Rebate Analyst”) to assist in the calculation of arbitrage rebate payable in respect of the investment of Bond proceeds in the manner more fully set forth in the Tax Certificate.

D. Uses and Investments of Funds and Accounts

a) Various funds and accounts are established as security for the Bonds. The Compliance Officer shall prepare regular, periodic statements regarding the investments and transactions involving Bond Proceeds, which shall comprise part of the records required to be kept.

b) If any Debt Service Fund ever contains any balance after the principal payment of the Bonds is made each year, except for a reasonable carryover amount which is less than the greater of the earnings on the Debt Service Fund for the immediately preceding year ending on such principal payment date (a “Bond Year”), or 1/12 of the principal and interest payments on the Bonds for the immediately preceding Bond Year, then the Compliance Officer will contact bond counsel to ensure that such facts will not cause the Bonds to become arbitrage bonds, to formulate a plan to remediate such condition, if necessary, and to determine an allowable use for such excess moneys and/or to determine if any yield restrictions apply.

c) If any Construction Fund ever is invested at a yield higher than the yield of the Bonds or if moneys in the Construction Fund are not fully expended by three years after the original delivery date of the Bonds, then the Compliance Officer will contact bond counsel to ensure that such facts will not cause the Bonds to become arbitrage bonds, to formulate a plan for the investment and application of the remaining unexpended Bond Proceeds, which plan may include the redemption or defeasance of Bonds, and/or to determine if any yield restrictions apply.

d) If any Debt Service Reserve Fund is ever funded (i) in an amount more or less than the required balance but declining in future years as detailed in the Tax Certificate), or (ii) is invested at a yield that is higher than the yield of the Bonds, then the Compliance Officer will contact bond counsel to ensure that such facts will not cause the Bonds to become arbitrage bonds, to formulate a plan to remediate such condition and/or to determine if any yield restrictions apply. Generally, if the Debt Service Reserve Fund ever contains a higher balance than required (either through the accrual of interest, investment gains, maturity of securities, or reduction in the Reserve Requirement) then the excess moneys should be dealt with as directed by the documents and approved by Bond Counsel.

E. Rebate Reporting

The use of bond proceeds and their investments must be monitored to ensure compliance with arbitrage restrictions. The City will cause arbitrage rebate calculations to be completed, or cause to be completed by an experienced firm the City has retained for this purpose related to any bond issues, with any positive rebate paid every five years and as otherwise required by applicable provisions of the Internal Revenue Code and regulations. Therefore, the Director of Finance shall ensure that proceeds and investments are tracked in a manner that facilitates accurate, complete calculation, and timely rebates, if necessary.
F. Continuing Disclosure (if applicable)

a) Appointment. Unless otherwise provided in any Continuing Disclosure Agreement executed in connection with the Bonds pursuant to SEC Rule 15c2-12 (the "Continuing Disclosure Agreement"), the Compliance Officer shall also be the Dissemination Agent under such Continuing Disclosure Agreement. The Compliance Officer shall be responsible for and take all reasonable steps to ensure compliance with said Continuing Disclosure Agreement and shall monitor the operations of the Issuer for occurrence of any listed event (as set forth therein). Should the Compliance Officer no longer serve as Dissemination Agent, the City shall select an internal or external Dissemination Agent.

b) Responsibilities. The Dissemination Agent is responsible for the following (the "Disclosure Policies")

i. Serving as a "point person" for personnel to communicate issues or information that should be or may need to be included in any Continuing Disclosure Agreement;

ii. Monitoring compliance by the City with these Disclosure Policies, including timely dissemination of the annual report and event filings as described below;

iii. Recommending changes to these Disclosure Policies to the City as necessary or appropriate;

iv. Following up with others to make sure that assigned tasks have been completed on a timely basis and making sure that the continuing disclosure annual report is filed on a timely basis;

v. Maintaining records documenting the City's compliance with these Disclosure Policies and the Continuing Disclosure Agreement.

Filing Requirements. The City is required to file an annual report with the MSRB's Electronic Municipal Market Access ("EMMA") system each year. Such annual reports are required to include certain updated financial and operating information and audited financial statements. The Dissemination Agent will establish a calendar reminder of the City's continuing disclosure obligations on July 1 each year. The City is also required to file notices of certain events with the MSRB's Electronic Municipal Market Access system. Upon the identification of the occurrence of a material event, the Dissemination Agent shall, in consultation with Bond Counsel, prepare, or caused to be prepared, a draft of the necessary notice and shall notify such parties of the date by which such notice is to be filed. If it is not clear if the occurrence of an event constitutes an event the requires notification, then the Dissemination Agent shall consult with Bond Counsel to determine whether the City is required to file a notice concerning such event.

c) Continuing Disclosure

The City shall remain in compliance with Rule 15c2-12 by filing its annual financial statements and other financial and operating data for the benefit of its bondholders within the required time frame stated in each Continuing Disclosure. The inability to make timely filings must be disclosed and is a negative reflection. While there is reliance on timely audit and preparation of the City's annual report, the Director of Finance will ensure that the City's timely filing with the Municipal Securities Rulemaking Board.
GLOSSARY

Arbitrage- The difference between the interest paid on the tax-exempt securities and the interest earned by investing the security proceeds in higher-yielding taxable securities. IRS regulations govern arbitrage on the proceeds from issuance of municipal securities.

Balloon Maturity- A later maturity within an issue of bonds that contains a disproportionately large percentage of the principal amount of the original issue.

Bond Allocation Policies- Outline as to how an investor’s order is filled when a maturity in an underwriting syndicate is oversubscribed. The senior managing underwriter and issuer decide how the bonds will be allocated among the syndicate. There are three primary classifications of orders, which form the designation policy. The highest priority is given to Net Designated orders; the next priority is given to Group Net orders and Member orders are given the lowest priority (unless the Member orders are retail orders in which case it would be given the highest priority).

Bullet Maturity- Maturity for which there are no sinking fund payments prior to the stated maturity date.

Call Provisions- The terms of the bond contract giving the issuer the right to redeem all or a portion of an outstanding issue of bonds prior to their stated dates of maturity at a specific price, usually at or above par.

Capitalized Interest- A portion of the proceeds of an issue that is set aside to pay interest on the securities for a specific period of time. Interest is commonly capitalized for the construction period of the project.

Commercial Paper- Very short-term, unsecured promissory notes issued in either registered or bearer form, and usually backed by a line of credit with a bank.

Competitive Sale- A sale of securities by an issuer in which underwriters or syndicates of underwriters submit sealed bids to purchase the securities in contrast to a negotiated sale.

Continuing Disclosure- The principle that accurate and complete information material to the transaction which potential investors would be likely to consider material in making investment decisions with respect to the securities be made available on an ongoing basis.

Credit Enhancement- Credit support purchased by the issuer to raise the credit rating of the issue. The most common credit enhancements consist of bond insurance, direct or standby letters of credit, and lines of credit.

Debt Service Reserve Fund- The fund in which moneys are placed which may be used to pay debt service if pledged revenues are insufficient to satisfy the debt service requirements.
**Deep Discount Bonds** - Bonds that are priced for sale at a substantial discount from their face or par value.

**Derivatives** - A financial product whose value is derived from some underlying asset value.

**Designation Policies** - Concerning a negotiated sale of bonds, the rules regarding how the takedown (sales commission) is allocated among the underwriters for each order put in for the bonds.

**Direct Purchase Loan** - A source of financing where the loan is purchased by a financial institution instead of being offered to the general public for purchase. The loan can bear interest at a fixed rate or on a variable rate tied to market index (i.e. LIBOR or SIFMA). This form of financing does not require a remarketing agent to set the variable rate. As such, a Direct Purchase Loan can be used to replace traditional forms of variable-rate debt.

**Escrow** - A fund established to hold moneys pledged and to be used to pay debt service on an outstanding issue.

**Expenses** - Compensates senior managers for out-of-pocket expenses including: underwriters counsel, DTC charges, travel, syndicate expenses, dealer fees, overtime expenses, communication expenses, computer time and postage.

**Floating Rate Notes (FRNs)** - A note with a variable interest rate sold either in the public market or directly to financial institutions. The adjustments to the interest rate are typically tied to a certain index like LIBOR or SIFMA and are made periodically. The rate would continue to reset in the same manner through maturity. The LIBOR-based floating rate note market typically does not require bank support and as a result, offers issuers an alternative to traditional floating rate debt.

**Grant Anticipation Notes (GANs)** - Short term notes issued by the government unit, usually for capital projects, which are paid from the proceeds of State or Federal grants of any type.

**Letters of Credit** - A bank credit facility wherein the bank agrees to lend a specified amount of funds for a limited term.

**Management Fee** - The fixed percentage of the gross underwriter’s spread which is usually only paid to the managing underwriter for the structuring phase of a transaction.

**Members** - Underwriters in a syndicate other than the senior underwriter.

**Moody’s Median.** Key financial, debt, economic and tax base statistics with median values for each statistic presented. Moody’s uses audits for both rated and unrated agencies to ensure that the medians presented are representative of all agencies.

**Negotiated Sale** - A method of sale in which the issuer chooses one underwriter to negotiate terms pursuant to which such underwriter will purchase and market the bonds.
**Original Issue Discount**- The amount by which the original par amount of an issue exceeds its public offering price at the time it is originally offered to an investor.

**Pay-As-You-Go**- An issuer elects to finance a project with existing cash flow as opposed to issuing debt obligations.

**Present Value**- The current value of a future cash flow.

**Private Placement**- The original placement of an issue with one or more investors or financial institutions as opposed to being publicly offered or sold.

**Rebate**- A requirement imposed by the Tax Reform Act of 1986 whereby the issuer of the bonds must pay the IRS an amount equal to its profit earned from investment of bond proceeds at a yield above the bond yield calculated pursuant to the IRS code together with all income earned on the accumulated profit pending payment.

**Tax and Revenue Anticipation Notes (TRANs)**- Short-term notes issued by a government unit, usually for capital projects, which are paid from the proceeds of sales tax or other revenue sources.

**Selling Groups**- The group of securities dealers who participate in an offering not as underwriters but rather as those who receive securities less the selling concession from the managing underwriter for distribution at the public offering price.

**Syndicate Policies**- The contractual obligations placed on the underwriting group relating to distribution, price limitations and market transactions.

**Underwriter**- A dealer that purchases new issues of municipal securities from the Issuer and resells them to investors.

**Underwriter’s Discount**- The difference between the price at which the Underwriter buys bonds from the Issuer and the price at which they are reoffered to investors.

**Variable Rate Debt**- An interest rate on a security, which changes at intervals according to an index or a formula or other standard of measurement as, stated in the bond contract.
1. City of Modesto Philosophy Regarding Use of Interest Rate Swaps
   A. Introduction

Interest rate exchange agreements or interest rate swaps ("Swaps") and related financial instruments and derivatives are appropriate interest rate management tools. Properly used, Swaps can increase the City of Modesto’s (the “City”) financial flexibility and provide opportunities for interest rate savings.

Swaps are appropriate to use when they achieve a specific financial objective consistent with the City’s overall Swap and Debt Management policies. Swaps may be used, for example, to lock-in a current market fixed rate or create additional variable rate exposure. Swaps may be used to produce interest rate savings or alter the pattern of debt service payments. Swaps may be used to cap, limit or hedge variable rate payments. Options granting the right to commence or cancel an underlying Swap is permitted to the extent the Swap itself is otherwise consistent with this policy.

The authorized Swaps contemplated in this policy are intended to reduce the amount or duration of interest rate risk, or produce a lower cost of borrowing when used in combination with the issuance of bonds.

B. Rationales for Utilizing Interest Rate Swaps

The use of Swaps and related financial instruments should balance the City’s primary objectives of reducing the cost of capital, minimizing the City’s exposure to interest rate volatility, and gaining flexibility in structuring and managing its debt portfolio over time with the risks associated with these tools and instruments. Examples of how the City’s debt management objectives can be achieved through the use of Swaps and other financial instruments are described below:

- Reduce borrowing costs at the time of issuance
  Create synthetic fixed rate debt through a floating-to-fixed Swap.

- Actively manage interest rate risk
  Lock-in current market rates through (forward starting) floating-to-fixed Swap.
• Balance financial risk  
   *Purchase of an interest rate cap.*  

• Achieve appropriate asset/liability match  
   *Create variable rate exposure through fixed-to-floating Swap.*

Under no circumstances will Swaps be used for speculative purposes, e.g., to realize trading gains.

### 2. Authority for Entering Into Swap Agreements

The purpose of this policy is to integrate the use of Swaps into the City’s overall debt management practice, and other funds of the City where particular debt strategies, both long-term and short-term, factor into these decisions. Swaps will not be used for speculation. The City Manager, in conjunction with the Director of Finance, shall be responsible for determining if and when it is in the City’s overall best financial interests to enter into a Swap or related financial instruments covered by this policy.

The City shall comply with all applicable laws. The City must receive an opinion acceptable to the financial market from a nationally recognized law firm that the swap contract is a legal, valid, and binding obligation of the City and that entering into such a contract complies with applicable provisions of the City Charter and State statutes.

### 3. Permitted Instruments

The City may utilize financial instruments that (i) lower its interest expense, (ii) manage its financial risk or (iii) improve its financial condition.

The City shall not use financial instruments that (i) create substantial leverage or financial risk, (ii) lack adequate liquidity to terminate at market, (iii) provide insufficient price transparency to allow reasonable valuation on an ongoing basis, or (iv) are primarily speculative in nature.

The use of swaps and other hedging products should produce a result not otherwise available in the cash market (i.e., lack of advance refunding/non-callable debt), or provide a higher level of net savings compared to conventional financing methods.

### A. Permitted Financial Instruments

The City may expressly utilize the following financial instruments, after identifying the financial objective(s) to be realized and assessing the attendant risks:

- Interest Rate Swaps including, but not limited to:  
  - Fixed-to-Floating  
  - Floating-to Fixed  
  - Forward Starting Interest Rate Exchange Agreements
Current or forward starting floating-to-fixed rate swaps, designed to reduce a fixed interest rate below that which would otherwise be available through the use of traditional fixed rate debt.

Fixed-to-floating rate swaps, designed to create additional variable interest rate exposure

- **Rate Locks**
  Cash-settled forward contracts based on indices such as the MMDTM "AAA" scale.

- **Interest Rate Caps, Floors or Collars**
  Financial contracts that limit exposure to interest rate volatility.

- **Options on Variable Rate Indices**
  Indices could include the Securities Industry and Financial Markets Association ("SIFMA") Index, London Interbank Offered Rate ("LIBOR"), etc.

- **Options on Swaps ("Swaptions")**
  Methods used to control the commencement or cancellation of interest rate swaps.

- **Basis Swaps**
  Floating-to-floating rate swaps using different variable-rate indices, such as a swap from the SIFMA Index to a percentage of LIBOR.

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1. MMDTM is a trademark of Municipal Market Data, a Thompson Financial company.
2. The SIFMA Index is an index of more than 500 high-grade, tax-exempt, weekly reset VRDO issues.
3. LIBOR is the benchmark short-term loan rate in the corporate (taxable) market.
4. Swap Risk Analysis

The City shall require for each proposed financing an evaluation of all financial products with respect to the unique risks that they bear. A specific determination must be made that the proposed or expected benefits exceed the identified risks by an adequate margin over those available in the traditional cash market. At a minimum, the City shall perform an evaluation of the risks and what steps have been taken to mitigate any risks. The City shall retain a financial/swap advisor to assist in assessing these risks. Questions that may arise include the following:

- **Market or Interest Rate Risk**
  Does the transaction hedge (i.e., decrease or eliminate) or increase interest rate volatility?

- **Tax Risk**
  How is the transaction or its benefits affected by a future change in federal income tax policy?

- **Termination Risk**
  Under what circumstances might the transaction be terminated? At what value?

- **Risk of Uncommitted Funding (Put Risk)**
  Does the transaction create additional financing dependent upon third party participation (such as requiring a letter of credit, grant or other anticipation funding, etc.)?

- **Rollover Risk**
  Is the term of the Swap shorter than the term of the underlying hedged debt or financial instrument? Does the City anticipate entering into another Swap when the first Swap terminates?

- **Legal Risk**
  Is the transaction expressly legally authorized?

- **Counterparty Risk**
  What is the creditworthiness of the counterparty?

- **Rating Agency Risk**
  Is the proposed transaction consistent with the City’s current ratings and ratings objectives?

- **Basis Risk**
  Is it anticipated that the projected Swap payments the City will receive closely match the debt service payments it will make?

- **Subsequent Business Conditions**
  Does the transaction or its benefits depend upon the continuation, or realization, of specific industry business conditions (e.g., unusual demand for state-specific variable rate debt)?
• Operational Risk

Does the City have adequate systems, policies, and practices in place to monitor and manage the transaction over its term?

5. Swap Procurement and Execution

A. Procurement

The City will not have a fixed policy with respect to the procurement of Swaps and other financial instruments authorized by this policy. On a product-by-product basis, the City will have the authority to negotiate or competitively bid the procurement of financial instruments that have customized or specific attributes designed on its behalf. The Director of Finance will be responsible for determining the method of procurement for Swaps and related financial instruments. An independent financial/swap advisor shall be retained to assist the Director of Finance in evaluating the proposed pricing of Swaps or related financial instruments.

B. Swap Execution

The Director of Finance may recommend the use of financial derivative products if they:

1. Provide a specific benefit not otherwise available;
2. Produce greater expected interest rate savings than cash market alternatives;
3. Do not create substantial leverage or financial risk;
4. Result in an improved capital structure or better asset/liability match; and
5. Reasonably pass the Swap Risk Evaluation required by Section 4 of this policy.

C. Credit Rating Designations

For purposes of this Swap Policy, references to credit ratings will be based on those ratings issued by Moody’s Investors Service, and/or Standard & Poor’s Corporation, and/or Fitch Ratings. The credit ratings will reflect the designations assigned by each of these rating agencies utilized for comparable credit and will be listed for each rating agency utilized in the order shown in the preceding sentence.

6. Swap Documentation

The City will use standard International Swap and Derivatives Association, Inc. (“ISDA”) Master Agreement, including the Counterparty Schedule to the Master Agreement and a Credit Support Annex (utilizing such versions thereof as the Director of Finance shall determine), as supplemented and amended in accordance with the recommendations of the City’s financial/swap advisor and legal counsel. Each Swap entered into by the City shall include payment, term, security, collateral, default, remedy, termination and other terms, conditions and provisions as the Director of Finance may deem necessary or desirable.
A. Terms and Notional Amount of Swap Agreement

The City shall determine the appropriate term for Swaps on a case-by-case basis. The slope of the swap curve, the marginal change in swap rates from time to time along the swap curve, and the impact that the term of the Swap will have on the City's overall financial (e.g., interest rate, market value, counterparty, etc.) exposure shall be considered in determining the appropriate term of any Swap agreement. In connection with the issuance or carrying of bonds, the term of the Swap agreement between the City and qualified swap counterparty shall not extend beyond the final maturity date of existing City debt, or in the case of a refunding transaction, beyond the final maturity of the refunding bonds. At no time shall the total net notional amount of all Swaps, excluding any offsetting Swaps exceed the total amount of outstanding applicable bonds. Variable rate debt exposure created through the use of Swaps will be consistent with the limitations set forth in the City’s adopted Debt Management Policy. Terms and conditions of any Swap shall be negotiated by the Director of Finance in the best interests of the City subject to the applicable legal provisions and this policy. The Swap agreements entered into between the City and each counterparty shall include payment, term, security collateral, default, remedy, termination, and other terms, conditions and provisions as the Director of Finance, in consultation with City legal counsel and its swap advisor, deems necessary or desirable.

Subject to the provisions contained herein, the City’s swap documentation and terms should include the following:

- The City will be able to terminate the swap without cause subject to market termination costs.
- The swap counterparty will only be able to terminate the swap if the City’s credit ratings fall below a certain pre-determined threshold and/or the City’s failure to perform, as required by the swap contract.
- Governing law for Swaps will be New York, but should reflect California authorization provisions.
- The specified indebtedness related to credit events in the Master Agreement should be narrowly drafted and refer only to specific debt of the issuing fund.
- Eligible collateral should be limited to Treasuries, Federal Agencies and any other securities which, in the City’s sole discretion, shall be deemed reasonable and creditworthy.
- Collateral thresholds should be set on a sliding scale reflective of credit ratings.
- Termination value should be set by “market quotation” methodology.
- Whenever possible use a credit support annex to document swap termination value collateralization procedures. Ratings downgrade triggers.
7. Policy on Swap Counterparties

The City shall only do business with highly rated counterparties, and will structure swap agreements to protect itself from credit deterioration. All Swap transactions shall contain provisions granting the City the right to optionally terminate a swap agreement at-market at any time over the term of the agreement.

A. Qualified Swap Counterparties

The City should not have an immutable credit standard. However the City shall attempt to do business with highly rated counterparties the long-term ratings of which at the date of execution are at least “Aa” or “AA” by one or more Nationally Recognized Statistical Ratings Organizations (NRSRO) and no less than “A2” or “A” by one or more NRSRO. For lower rated counterparties, the City should seek credit enhancement in the form of:

1. Contingent swap counterparty providing support;
2. Collateral;
3. Ratings downgrade triggers; and,
4. Minimum rating threshold of “Baa3/BBB-/BBB-, “below which provisions will allow an assignment or trigger an additional termination event, with the counterparty as the affected party (i.e., the counterparty would pay market based transaction costs).

In addition, the counterparty must have a demonstrated record of successfully executing swap transactions as well as creating and implementing innovative ideas in the swap market. The City shall be authorized to enter into interest rate swap transactions only with qualified swap counterparties.

8. Limitations on Counterparty Exposure

A. Guidelines

In order to diversify the City’s counterparty credit risk, and to limit the City’s credit exposure to any one counterparty, limits will be established for each counterparty based upon both the credit rating of the counterparty as well as the relative level of risk associated with each existing and proposed swap transaction. The guidelines shown in the following table provide general termination exposure guidelines with respect to whether the City should enter into an additional transaction with an existing counterparty. The City may make exceptions to the guidelines at any time to the extent that the execution of a swap achieves one or more of the goals outlined in these guidelines or provides other benefits to the City. In general, the maximum net termination exposure to any single counterparty should be set so that it does not exceed a prudent level as measured against the gross revenues, available assets or other financial resources of the City.

For example, if the City has two Swaps with one counterparty, and if the first Swap’s market value positive $10 million and the second Swap’s market value is negative $20 million, then the City’s total net exposure to the counterparty is negative $10 million.
Such guidelines will also not mandate or otherwise force automatic termination by the City or the counterparty. Maximum net termination exposure is not intended to impose retroactively any terms and conditions on existing transactions. Such provisions will only act as guidelines in making a determination as to whether or not a proposed transaction should be executed given certain levels of existing and projected net termination exposure to a specific counterparty. Collateral posting guidelines are described in the collateral section below. The calculation of net termination exposure per counterparty will take into consideration multiple transactions, some of which may offset the overall exposure to the City.

Under this approach, the City will set limits on individual counterparty exposure based on existing as well as new or proposed transactions. The sum of the current market value and the projected exposure shall constitute the maximum net termination exposure. For outstanding transactions, current exposure will be based on the market value as of a recently completed swap valuation report provided by the City's swap advisor. Projected exposure shall be calculated based on the swap's potential termination value taking into account possible adverse changes in interest rates as implied by historical or projected measures of potential rate changes applied over the remaining term of the swap. For purposes of this calculation, the City shall include all existing and projected transactions of an individual counterparty and all transactions will be analyzed in aggregate such that the maximum exposure will be additive.

The exposure thresholds, which will be reviewed periodically by the City to ensure that they remain appropriate, will also be tied to long-term credit ratings of the counterparties and whether or not collateral has been posted as shown in the table below. If a counterparty has more than one rating, the lowest rating will govern for purposes of the calculating the level of exposure. If contingent swap counterparty or swap insurance is used to provide financial support for the primary counterparty, the rating of the support entity shall be used. A summary table is provided below:

<table>
<thead>
<tr>
<th>Credit Ratings</th>
<th>Maximum Collateralized Net Termination Value</th>
<th>Maximum Uncollateralized Net Termination Value</th>
<th>Maximum Net Termination Exposure</th>
</tr>
</thead>
<tbody>
<tr>
<td>AAA</td>
<td>N/A</td>
<td>$30.0 million</td>
<td>N/A</td>
</tr>
<tr>
<td>AA Category</td>
<td>$30.0 million</td>
<td>$20.0 million</td>
<td>$30.0 million</td>
</tr>
<tr>
<td>A Category</td>
<td>$20.0 million</td>
<td>$10.0 million</td>
<td>$20.0 million</td>
</tr>
<tr>
<td>Below A Category</td>
<td>$10.0 million</td>
<td>$5.0 million</td>
<td>$15.0 million</td>
</tr>
</tbody>
</table>

If the exposure limit is exceeded by counterparty, the City shall conduct a review of the exposure limit per counterparty. The City, in consultation with its bond counsel and swap advisor, shall explore remedial strategies to mitigate this exposure.
9. Benefit Expectation

Financial transactions, using Swaps or other derivative products, intended to produce the effect of a synthetic advance refunding, must generate at least 25% greater savings than the benefit threshold then in effect for fixed-rate bonds as determined by the City’s Director of Finance. (see Debt Management Policy Section 10A).

*The higher savings target reflects the greater complexity and higher risk of derivative financial instruments.*

In calculating the prospective savings against the target for implementing a fixed-to-variable swap, the cost of remarketing, in addition to the cost of credit and liquidity fees must be added to the variable rate representing the ten-year average of comparable variable rate securities.


All swap transactions shall contain provisions granting the City the right to optionally terminate a swap agreement at market at any time over the term of the agreement, but shall NOT grant this right to the counterparty. In general, exercising the right to terminate an agreement produces a benefit to the City, either through the receipt of a payment from a termination, or if the termination payment is made by the City, in conjunction with a conversion to a more beneficial (desirable) City debt obligation, as determined by the City.

11. Collateral

As part of any swap agreement, the City shall require collateralization or other credit enhancements to secure any or all swap payment obligations. As appropriate, the City, in consultation with its bond counsel and swap advisor, may require collateral or other credit enhancements to be posted by each swap counterparty under the following circumstances:

- Each counterparty to the City may be required to post collateral if the highest credit rating of the counterparty or parent falls below the “Aa/AA” category. Additional collateral for further decreases in credit ratings of each counterparty shall be posted by each counterparty in accordance with the provisions contained in the collateral support agreement to each counterparty with the City.
- Collateral shall be deposited with a third party trustee, or as mutually agreed upon between the City and the counterparty.
- A list of acceptable securities that may be posted as collateral and the valuation of such collateral will be determined and mutually agreed upon during negotiation of the swap agreement with each swap counterparty.
- The market value of the collateral shall be determined on at least a weekly basis.
- The City shall determine the reasonable threshold limits for the initial deposit and for increments of collateral posting thereafter.
• The City shall determine on a case-by-case basis whether other forms of credit enhancement, such as swap insurance, are more beneficial in lieu of the posting of additional collateral.
• An evaluation of the performance of the swap relative to the rate on the bonds.
• A computation of the effective cost of borrowing inclusive of all fees and costs associated with the underlying financing.

12. Conformance with Dodd-Frank

It is the intent of the City to conform this policy to the requirements relating to legislation and regulations for over-the-counter derivatives transactions under Title VII of the Wall Street Transparency and Accountability Act of 2010, as supplemented and amended from time to time (herein collectively referred to as “Dodd-Frank”). Pursuant to such intent, it is the policy of the City that: (i) each swap advisor engaged or to be engaged by the City will function as the designated qualified investment representative of the City, sometimes referred to as the “Designated QIR”; (ii) each swap advisor agrees to meet and meets the requirements specified in Commodity Futures Trading Commission Regulation 23.450(b)(1) or any successor regulation thereto (herein referred to as the “Representative Regulation”); (iii) each swap advisor provide a written certification to the City to the effect that such swap advisor agrees to meet and meets the requirements specified in the Representative Regulation; (iv) the City monitor the performance of each swap advisor consistent with the requirements specified in the Representative Regulation; (v) the City exercise independent judgment in consultation with its swap advisor in evaluating all recommendations, if any, presented by any counterparty with respect to transactions authorized pursuant to this Debt Policy; and (vi) the City rely on the advice of its swap advisor with respect to transactions authorized pursuant to this Debt Policy and not rely on recommendations, if any, presented by any counterparty with respect to transactions authorized pursuant to this Debt Policy.

13. Monitoring and Reporting

At least once per year normally as part of the City Financial Annual Report (CAFR), or as requested by the City Council, the Director of Finance shall prepare a information describing the various Swaps and financial arrangements entered into by the City pursuant to this policy that are in effect as of the date of the report’s publication. The report shall include the following information:

1. A summary of key terms of the agreements, including notional amounts, interest rates, maturity and method of procurement.

2. The mark-to-market value of each agreement.

3. The full name, description, and credit ratings of each counterparty or the applicable guarantor.

4. The amounts that were required to be paid and received and any amounts that were actually paid and received.
5. A listing of any credit enhancement, liquidity facility, or reserves and an accounting of all costs and expenses associated with the credit enhancement, liquidity facility, or reserves.

6. The aggregate mark-to-market value and potential termination value for each swap by counterparty.

7. A discussion of other risks associated with each transaction.

At the end of each fiscal year, the Director of Finance shall provide to the City Council all information required for financial reporting under GASB as well as any other reporting or disclosure requirements. The City shall adhere to California Government Code Section 5922 and applicable Government Accounting Standards Board (GASB) guidelines for reporting and disclosure guidelines for derivative products.
WHEREAS, a financial analysis has been completed and it has been determined that a budget adjustment is required to the Annual and Capital Improvement Budgets of the City of Modesto for Fiscal Year 2014-2015,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves amending the Fiscal Year 2014-2015 Annual Operating and Capital Improvement budgets as shown in Exhibit A, which is attached hereto and incorporated by reference herein.

BE IT FURTHER RESOLVED that the Director of Finance, or her designee, is hereby authorized to take the necessary steps to implement the provisions of this resolution.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 7th day of July, 2015, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Madrigal, was upon roll call carried and the resolution adopted by the following votes:

AYES: Councilmembers: Cogdill, Gunderson, Kenoyer, Lopez, Madrigal, Zoslocki, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: [Signature]

SEAL

APPROVED AS TO FORM:

By: [Signature]

ADAM U. LINDGREN, City Attorney
EXHIBIT A

FISCAL YEAR 2014-15

PARKS, RECREATION AND NEIGHBORHOODS
On March 24, 2015 the Council of the City of Modesto, by Resolution #2015-97 approved $250,000 of General Fund balance Carryover to be used for Capital Improvement Project #100888, Miracle League. A budget adjustment is necessary to transfer $250,000 from the General Fund Reserves to Capital Improvement Project #100888, Miracle League, in Fund 1380, and establish the project expense budget.

PUBLIC WORKS
In Fiscal Year 2010-11 the Compost, Solid Waste and Green Waste Funds were combined in one fund. In Fiscal Year 2013-14 these funds were again separated; however, the reserve balances for each of the funds were not. A budget adjustment is necessary to transfer $545,090 from the Green Waste Fund, 4892, to the Compost Fund, 4890; and, $828,012 from the Compost Fund, 4890, to the Solid Waste Fund, 4891, to restore the reserves within each fund.

A budget adjustment is necessary to transfer $750,000 from the Solid Waste Fund, 4891, as follows; $450,000 to the Green Waste Fund, 4892, and $300,000 to the Compost Fund, 4890, to ensure an adequate reserve level is maintained in each fund.

UTILITIES
A budget adjustment is necessary to transfer $110,000 from Transit Reserves to Capital Improvement Project #100749, Transit Building Restroom Remodel, in Fund 4540 for discretionary expense associated with the addition of an additional restroom.
RESOLUTION AUTHORIZING THE AWARD OF BID FOR THE FURNISHING OF A LIGHTING UPGRADE FOR THE BUS FACILITY PARKING LOT FOR THE PUBLIC WORKS DEPARTMENT, TRANSIT DIVISION TO DV ELECTRIC CO., SAN JOSE, CA, AND AUTHORIZING THE PURCHASING MANAGER, OR HIS DESIGNEE, TO ISSUE A PURCHASE ORDER FOR AN ESTIMATED TOTAL COST OF $60,965

WHEREAS, the City Manager authorized the Purchasing Manager to issue formal Request for Bids (RFB) for the furnishing of a lighting upgrade for the bus facility parking lot, and

WHEREAS, the Purchasing Division issued RFB No. 1415-32 Lighting Upgrade for Bus Facility Parking Lot on the City’s website under the commodity code for parking lot lighting services, to sixty-three (63) prospective bidders, ten (10) of which were local companies, and

WHEREAS, thirty-six (36) companies chose to download the RFB document, and

WHEREAS, bids were formally opened in the City Clerk’s Office. Six (6) companies chose to respond, three of which were local companies, and

WHEREAS, all six (6) companies provided responsive and responsible bids, and

WHEREAS, Modesto Municipal Code 8-3.206 Support of Local Vendors is not applicable as FTA funding is used for this project, and

WHEREAS, based on providing the lowest responsive and responsible bid, City staff recommends the award of bid for the furnishing of a lighting upgrade for the bus facility parking lot for the Public Works Department, Transit Division to DV Electric Co., San Jose, CA, for an estimated total cost of $60,965, and

WHEREAS, Modesto Municipal Code Section 8-3.203 generally requires all
purchases, which meet or exceed $50,000 for material, equipment or contractual services to be formally bid. The award of bid for the furnishing of a lighting upgrade for the bus facility parking lot for the Public Works Department, Transit Division to DV Electric Co., San Jose, CA, conforms to Modesto Municipal Code 8-3.203, and

WHEREAS, funds are budgeted in Fiscal Year 2015-16 in Appropriation Unit:

4510-59999-55010.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby authorizes the award of bid for the furnishing of lighting upgrade for the bus facility parking lot for the Public Works Department, Transit Division to DV Electric Co., San Jose, CA.

BE IT FURTHER RESOLVED that the Purchasing Manager, or his designee, is hereby authorized to issue a purchase order for an estimated total cost of $60,965.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 7th day of July, 2015, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Madrigal, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Cogdill, Gunderson, Kenoyer, Lopez, Madrigal, Zoslocki, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: STEPHANIE LOPEZ, City Clerk

APPROVED AS TO FORM:

By: ADAM U. LINDGREN, City Attorney
RESOLUTION AUTHORIZING THE SOLE SOURCE PROCUREMENT AND IMPLEMENTATION OF SITSTAT BY PSOMAS IN THE AMOUNT OF $28,000 AND THE LICENSE/ANNUAL SERVICE FEE IN THE AMOUNT OF $21,500 FOR AN ESTIMATED TOTAL COST OF $49,500

WHEREAS, the initial cost of the software program and implementation is $49,500. Annual cost after that will consist of the annual service charge of $12,500 and user charges of approximately $9,000 for a total annual cost of $21,500, and

WHEREAS, Modesto Fire will own the license for this product in Stanislaus County, and

WHEREAS, many agencies have expressed interest in purchasing rights to the product through Modesto Fire. It is anticipated that a large portion of the startup and ongoing maintenance fees could be recovered through agreements with other agencies, and

WHEREAS, with the implementation of resource sharing and drop boundaries, it is critical to have a program that can efficiently and accurately track and provide real-time data related to resource availability and location, SitStat by Psomas is a one of kind program that can provide this, and

WHEREAS, Psomas is the sole developer, distributor and supporting agency of SitStat. There are no other comparable programs/vendors on the market that could be looked at, and

WHEREAS, the Modesto Fire Department Staff, in cooperation with its regional partners, is recommending the purchase and implementation of this resource tracking and accountability software program, and
WHEREAS, the program will integrate with the existing computer aided dispatch (CAD) system and provide situational awareness to incident commanders and first responders via phone, tablet, and desktop access. The program will allow for resource tracking, personnel accountability, detailed site plans, hydrant information and locations, resulting in increased efficiencies and safer emergency scenes, and

WHEREAS, Modesto Municipal Code (MMC) Section 8-3.203 generally requires all purchases that meet or exceed $50,000 for material, equipment or contractual services to be formally bid. However, there are exceptions to the rule set forth in the MMC Section 8-3.204(b), which states that the purchasing agencies’ requirements can be met solely by a single article or process; the sole source procurement of SitStat by Psomas conforms to this MMC section, and

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby authorizes the sole source procurement and implementation of SitStat by Psomas in the amount of $28,000 and the license/annual service fee in the amount of $21,500 for an estimated total cost of $49,500.

BE IT FURTHER RESOLVED, that the Purchasing Manager is authorized to issue a purchase order for an estimated total cost of $49,500.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 7th day of July, 2015, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Madrigal, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Cogdill, Gunderson, Kenoyer, Lopez, Madrigal, Zoslocki, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: 

STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: ADAM U. LINDGREN, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2015-235

RESOLUTION APPROVING A USE AGREEMENT BETWEEN THE CITY OF MODESTO AND CONGREGATIONS BUILDING COMMUNITY (CBC) TO PROVIDE PROGRAMMING AT THE NEIGHBORHOOD CENTER AT MARSHALL PARK (NCAMP)

WHEREAS, the City of Modesto (CITY) recognizes the importance of neighborhood programming, and

WHEREAS, CITY recognizes that Congregations Building Community (ORGANIZATION) has a long history of providing neighborhood and family programming, and

WHEREAS, CITY has space available at Neighborhood Center at Marshall Park (NCAMP), and

WHEREAS, ORGANIZATION has received a two-year grant through the Stanislaus Community Foundation to provide programming, and

WHEREAS, ORGANIZATION will be creating a custom program to run its programming based on the space and times available at the NCAMP.

IN LIGHT OF THE FOREGOING, CITY and ORGANIZATION desire to enter into a written Agreement in order to obtain the mutual benefits recited above.

WHEREAS, Organization will agree to comply with the following:

1. ORGANIZATION will provide CITY a detailed calendar of activities in accordance with the agreement.

2. ORGANIZATION agrees not to sublet the facility to any other agency.

3. ORGANIZATION agrees not to permanently modify the facility.

4. ORGANIZATION agrees not to use the facility for any other purpose stated in the agreement without getting written permission from the Parks, Recreation and Neighborhood Manager.
BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute the Use Agreement.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 7th day of July, 2015, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Madrigal, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Cogdill, Gunderson, Kenoyer, Lopez, Madrigal, Zoslocki, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: 

(SEAL)

APPROVED AS TO FORM:

By: ADAM U. LINDGREN, City Attorney
RESOLUTION APPROVING AN AMENDMENT TO AGREEMENT WITH BARTKIEWICZ, KRONICK & SHANAHAN, P.C. (BKS) TO PROVIDE ADDITIONAL LEGAL SERVICES FOR TERTIARY EFFLUENT WATER RIGHTS ANALYSIS IN AN AMOUNT NOT TO EXCEED $47,925 FOR THE IDENTIFIED SCOPE OF SERVICES, PLUS $5,021 FOR ADDITIONAL SERVICES (IF NEEDED), FOR A MAXIMUM TOTAL AMOUNT OF $52,946, AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE AMENDMENT TO AGREEMENT

WHEREAS, the North Valley Regional Recycled Water Program (NVRRWP) provides a regional solution to part of California’s water crisis by making tertiary-treated recycled water available to the drought-impacted west side of several California counties (Stanislaus, San Joaquin, and Merced Counties) for farmland irrigation, and

WHEREAS, on April 27, 2010, City Council, by Resolution No. 2010-153, approved a Memorandum of Understanding (MOU) between the partners to fund the necessary studies associated with the NVRRWP, and

WHEREAS, currently, the Phase 3 feasibility study of the preferred project alternative is nearing completion, which includes the proposed project environmental documentation, stakeholder outreach, permitting and financial applications, and

WHEREAS, in a parallel effort, Bartkiewicz, Kronick & Shanahan, P.C. (BKS) is currently assisting the City with a Tertiary Water Rights Analysis, which includes preparing, filing and supporting the City’s Wastewater Change Petition, with the State Water Resources Control Board (SWRCB), and

WHEREAS, this will allow the City to relocate its current wastewater discharge from the San Joaquin River (SJR) to the Delta Mendota Canal (DMC), and

WHEREAS, this effort will result in establishing the City’s water rights to its recycled water, and
WHEREAS, the Petition was filed with the SWRCB on February 10, 2015, and two letters of protest were received by the close of the comment period on March 12, 2015, and

WHEREAS, in addition to assisting the City prepare responses to the two protests, BKS has also provided support in reviewing and providing responses to public comments on the draft environmental reports, which are closely related to issues in the petition’s protests, and

WHEREAS, these ongoing, and upcoming, efforts exceed the amount in the current agreement, and as a result, City staff is requesting an amendment to provide continuing legal services for this phase of the NVRRWP,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves an Amendment to Agreement with Bartkiewicz, Kronick & Shanahan, P.C. to provide additional legal services for Tertiary Effluent Water Rights Analysis in an amount not to exceed $47,925 for the identified scope of services, plus $5,021 for additional services (if needed), for a maximum total amount of $52,946.

BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute the Amendment to Agreement.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 7th day of July, 2015, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Madrigal, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Cogdill, Gunderson, Kenoyer, Lopez, Madrigal, Zoslocki, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: [Signature]

STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: [Signature]

ADAM U. LINDGREN, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2015-237

RESOLUTION APPROVING AN EXEMPTION FOR THE MODESTO CITY SCHOOLS SPORTS AND RECREATION FIELDS FROM STAGE II DROUGHT CONTINGENCY PLAN REQUIREMENTS IN THE INTEREST AND CONCERN OF PROVIDING FOR THE HEALTH AND SAFETY OF THE USERS

WHEREAS, California is in currently entering the fourth consecutive year of drought conditions and most of the state, including the watershed that provides the City of Modesto’s water supply, is experiencing exception drought conditions, and

WHEREAS, on May 1, 2015 the Modesto City Council approved changes to the Drought Contingency Plan and implemented Stage II water conservation requirements, and

WHEREAS, the Stage II requirements limit watering of turf to twice weekly before 9:00 a.m. and after 7:00 p.m., and

WHEREAS, on May 26, 2015 the Modesto City Council approved exemptions to the Stage II requirements for community sports and recreation fields owned by the City, and

WHEREAS, Modesto City Schools (MCS) has requested similar exemptions for its sports and recreation fields, and

WHEREAS, based on the water conservation practices that MCS has already implemented, staff recommended the following exemptions be granted to MCS:

1) For Modesto Metro Conference sports fields, including those reserved by the public, apply sufficient irrigation water as necessary to maintain a safe turf playing surface. Allow large comprehensive high schools to irrigate on half schedules; on half on Tuesday and Saturday and the other half on Wednesday and Sundays. Install “compliance” signs as per City guidance.
2) To pressure wash bleachers, walkways, eating areas, restrooms, and concession stands as necessary to maintain healthy and safe facilities.

3) To apply sufficient irrigation as necessary to establish germination of resurfaced sports fields. Only one field at a time will be refurbished. Install "compliance" signs as per City guidance.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves an exemption for the Modesto City Schools sports and recreation fields from Stage II Drought Contingency Plan requirements in the interest and concern of providing for the health and safety of the users.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 7th day of July, 2015, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Gunderson, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Cogdill, Gunderson, Kenoyer, Lopez, Madrigal, Zoslocki, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: ADAM U. LINDEGREN, City Attorney
RESOLUTION APPROVING AN AGREEMENT WITH PEARSON PROPERTIES d/b/a BERKSHIRE HATHAWAY HOME SERVICES FOR ON-CALL REAL ESTATE BROKER SERVICES FOR VARIOUS CITY PARCELS FOR ONE YEAR, WITH TWO ONE-YEAR EXTENSION OPTIONS, AT THE SOLE DISCRETION OF THE CITY, IN AN AMOUNT NOT TO EXCEED $100,000 PER YEAR, AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE AGREEMENT, AND UP TO TWO ONE-YEAR EXTENSION OPTIONS

WHEREAS, the Utilities Department (Utilities) occasionally receives requests to market and sell certain surplus City parcels, and

WHEREAS, in order to facilitate the requests, Utilities has determined the best method to market the properties is through the use of professional real estate brokers, and

WHEREAS, real estate firms have the resources to widely list the surplus properties, by using numerous listing and advertising services for maximum exposure to the general public, and

WHEREAS, on December 10, 2014, in compliance with Administrative Directive 3.1, Selection Procedures for Professional Consultants Who Provide Architectural and Engineering Services for Capital Projects, a Request for Qualifications and Proposals was initiated to perform on-call real estate broker services, and

WHEREAS, the Request for Qualifications was sent to seven (7) real estate broker firms, and we received responses from two (2) firms who provided Qualification Statements and Proposals, and

WHEREAS, both consulting firms, consisting of Berkshire Hathaway Home Services (Berkshire Hathaway) and Rand Commercial Properties, were chosen as the
most qualified since they are licensed by the state and have several years experience in marketing and selling Modesto area properties, and

WHEREAS, the two firms are deemed qualified to provide the requested on-call real estate broker services in a timely, efficient, and cost effective manner, and

WHEREAS, Berkshire Hathaway and its company predecessors of Modesto, has over 45 years of local real estate experience and has previously worked with the City of Modesto successfully selling and leasing various properties, and

WHEREAS, Berkshire Hathaway will charge the City a six percent (6%) commission rate, and

WHEREAS, Berkshire Hathaway has a proven track record of successfully bringing together sellers and buyers, and has previously represented the City in selling City property, and

WHEREAS, no new budget allocation will be sought because the project specific task orders under the agreement will be paid from existing Capital Improvement Program projects (CIPs), and

WHEREAS, Berkshire Hathaway will submit a written scope of services outlining the specific work, schedule, and cost estimate associated with each task order, and

WHEREAS, Berkshire Hathaway will perform no service until Capital Improvement Services management has approved the proposed specific task order and a written Notice to Proceed (NTP) is prepared and sent to Berkshire Hathaway prior to commencement of services, and
WHEREAS, at time of closing, Berkshire Hathaway shall be paid commission out of proceeds from the sale of the subject property by the title company, and

WHEREAS, revenues from the proceeds from property sales will be returned to each specific CIP project that originally funded the project, or determined on a case by case basis, and

WHEREAS, City staff recommends an On-call Appraisal and Consultant Services Agreement with Berkshire Hathaway be approved,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves an Agreement with Pearson Properties dba Berkshire Hathaway Home Services for On-call real Estate Broker Consultant Services for various City parcels for one year, with two one-year extension options at the sole discretion of the City in an amount not to exceed $100,000 per year. Total cost for three years is not to exceed $300,000.

BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute said Agreement with Pearson Properties dba Berkshire Hathaway Home Services, and up to two one-year extension options.
The foregoing resolution was introduced at a regular meeting of the Council of
the City of Modesto held on the 7th day of July, 2015, by Councilmember Lopez, who
moved its adoption, which motion being duly seconded by Councilmember Madrigal,
was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Cogdill, Gunderson, Kenoyer, Lopez, Madrigal,
Zoslocki, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: ADAM U. LINDGREN, City Attorney
A RESOLUTION OF THE CITY OF MODESTO CERTIFYING AN ENVIRONMENTAL IMPACT REPORT AND ADOPTING ENVIRONMENTAL FINDINGS AND A MITIGATION MONITORING AND REPORTING PROGRAM UNDER CEQA FOR THE NORTH VALLEY REGIONAL RECYCLED WATER PROGRAM AND APPROVING NVRRWP COMPONENTS

RECITALS - WHEREAS, the North Valley Regional Recycled Water Program (NVRRWP) is the planned construction of a water supply project that would deliver up to 59,000 acre feet per year (AFY) of recycled water produced by the cities of Modesto and Turlock via pipeline to the Delta-Mendota Canal (DMC), a feature of the Central Valley Project owned by U.S. Bureau of Reclamation (Reclamation). Recycled water will be conveyed from Modesto and Turlock through pipelines from their wastewater treatment facilities, crossing under the San Joaquin River, ending at the DMC. Water in the DMC would then be conveyed directly to Del Puerto Water District (DPWD) turnouts and thus to its customers. Recycled water also may be provided to Central Valley Project Improvement Act (CVPIA) designated Refuges located south of the Delta to deliver a portion of their supplemental water needs. The entire NVRRWP analyzed in the EIR/EIS may include either a pipeline from the City of Turlock conveying recycled water directly to the DMC, or a pipeline conveying recycled water to the City of Modesto’s Jennings Water Quality Control Facility (Jennings Plant). Decisions regarding either of these potential pipelines and any associated facilities for conveying recycled water from the City of Turlock will be made by the City of Turlock in the future. At this time, the City of Turlock has not decided whether to proceed with its components of the NVRRWP. The portion of the NVRRWP that would be implemented by the City of Modesto (“City
Project") would include improvements to an existing pump station at the Jennings Plant and a pipeline that would convey recycled water from the Jennings Plant under the San Joaquin River to the DMC. The City Project includes a new point of discharge to the DMC. The NVRRWP is located partially within the Jennings Wastewater Treatment Plant, which is within the City limits, and partially in unincorporated Stanislaus County. The DMC is under the jurisdiction of Reclamation.

WHEREAS, the NVRRWP is subject to federal, as well as City, County of Stanislaus, and state environmental review requirements, because the City hopes to obtain federal funds from Reclamation, and the project requires a Reclamation approval action. An Environmental Impact Report/Environmental Impact Statement (EIR/EIS) was prepared for the Project for purposes of compliance with the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA). The City is the project proponent and the lead agency under CEQA and Reclamation is the lead agency under the National Environmental Policy Act (NEPA). Cooperating agencies under NEPA include the U.S. Fish and Wildlife Service, which has federal Endangered Species Act (ESA) jurisdiction over terrestrial wildlife and freshwater fish and the National Oceanic and Atmospheric Administration National Marine Fisheries Service, which has ESA jurisdiction over anadromous fish. In addition, the City of Turlock and DPWD are partnering with the City of Modesto in developing the NVRRWP, and are thus responsible agencies under CEQA. The Project may require environmental approvals from the City, the County of Stanislaus, the California Department of Transportation (Caltrans), the State Historic Preservation Office, the California Department of Fish and Wildlife, the State Water Resources Control Board and Regional
Water Quality Control Board, Central Valley Region, California State Land Commission, Central Valley Flood Protection Board, San Joaquin Valley Air Pollution Control District, Natural Resource Conservation Service, the U.S. Army Corps of Engineers (USACE), the U.S. Fish and Wildlife Service, and the National Oceanic and Atmospheric Administration National Marine Fisheries Service; and

WHEREAS, the EIR/EIS analyzed three potential Project alternatives: (1) the Combined Alignment Alternative; (2) the Separate Alignment Alternative; and (3) the Patterson Irrigation District Conveyance Alternative; and

WHEREAS, the NVRRWP components that are approved by this resolution are included in both the Combined Alignment Alternative and the Separate Alignment Alternative. If the City of Turlock decides to proceed with its elements of the NVRRWP, then those elements may be elements of the Combined Alignment Alternative or elements of the Separate Alignment Alternative; and

WHEREAS, the environmental review of the NVRRWP commenced with the release of the Notice of Preparation on April 22, 2014 to public agencies and interested parties for consultation on the scope of the EIR/EIS; and

WHEREAS, the City and Reclamation prepared a Draft EIR/EIS dated January, 2015, which reflected the independent judgment of the City and Reclamation as to the potential environmental effects of the Project. The Draft EIR/EIS was circulated for a 60-day public review period between January 8, 2015 and March 11, 2015. The City and Reclamation held a joint public meeting regarding the Draft EIR/EIS for the NVRRWP on February 11, 2015. The meeting was conducted in an open house format to allow attendees to arrive at any time, talk to team members, review display boards and
environmental documentation. Attendees could comment either verbally or by submittal of comment cards, but no comments were submitted at the meeting; and

WHEREAS, public and agency comments were received and staff has prepared written responses to all public comments received during the public comment period in a Final EIR. The Final EIR also contains clarifications and minor revisions to information presented in the Draft EIR/EIS. No new information was received during the comment period or included in the Final EIR that would require recirculation of the Draft EIR under CEQA Guidelines section 15088.5. The Draft EIR/EIS text has been revised to include these minor revisions and the revised text is included in the Final EIR. The Draft EIR/EIS and Final EIR Response to Comments document are collectively referred to herein as the “Final EIR”; and

WHEREAS, a staff report prepared for the City Council, dated July 7, 2015 and incorporated herein by reference, described and analyzed the Project, the Draft EIR/EIS, the Final EIR, and staff’s conclusions regarding the public comments and responses; and

WHEREAS, on July 7, 2015, the City Council considered the Final EIR and Project approvals at a public meeting at which the public had an opportunity to comment; and

WHEREAS, the Final EIR identified potentially significant impacts that will be reduced to a less than significant level with specified mitigation measures. Approval of the Project therefore requires adoption of environmental findings and a Mitigation Monitoring and Reporting Program under CEQA; and
WHEREAS, the Final EIR did not identify significant and unavoidable environmental impacts of the Project, approval of the Project therefore does not require the adoption of a Statement of Overriding Considerations; and

WHEREAS, the Final EIR, and the City Council July 7, 2015 staff report, regarding the Project and the Final EIR, including the analysis of the public comments, reflect the City’s independent judgment and analysis; and

WHEREAS, the location and custodian of the Draft EIR/EIS and Final EIR and other documents that constitute the record of proceedings for the Project is the City of Modesto Utilities Department, 1010 Tenth Street, 4th Floor Modesto, CA 95354. The Draft EIR/EIS and Final EIR and documents relating to the Project are available for review in the City Utilities Department and on the website for the Project located at: http://www.nvr-recycledwater.org/documents.asp; and

WHEREAS, the City Council desires to approve the following NVRRWP components: (1) the NVRRWP transmission facilities, including the new pumping plant upgrades and all necessary transmission pipelines to transmit and deliver recycled water from the Jennings Plant to the DMC; (2) the addition of a new authorized point of discharge of the City’s recycled water to the DMC; (3) the additions of 43,259 acres in the DPWD and 124,897 acres in the wildlife refuges, as listed in the City’s wastewater change petition, as the authorized place of use for the City’s recycled water; and (4) the addition of supplemental CVPIA refuge water supplies to the authorized purposes of use for the City’s recycled water. The City of Turlock will separately consider approvals of its components of the NVRRWP; and
WHEREAS, the NVRRWP does not include or authorize any changes in the use of wastewater at, or the operations of, the Modesto Ranch. As stated in the Final EIR, the City is “committed to continuing irrigation of the Ranch lands as a means of maintaining cost-effective treatment of the cannery wastewater flows.” (See, Final EIR, Response to Comments 8-5, p. 8.8-6.) Any changes in the City’s use of wastewater at, or the operations of, the Modesto Ranch will require additional and separate actions by the City in compliance with all applicable legal requirements, including any applicable requirements under CEQA.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto does as follows:

1. The foregoing recitals are true and correct and made a part of this resolution.

2. The City Council has reviewed and considered the Draft EIR/EIS and Final EIR (collectively, “Final EIR”), as well as the public comments and staff’s analysis of the comments and changes to the Draft EIR/EIS in the Final EIR.

3. Based on its review of Project record as a whole, the City Council makes and adopts the following findings relating to the CEQA review for the Project prior to approving the Project:

   A. The City Council certifies the Final EIR and finds it has been completed in compliance with CEQA and the CEQA Guidelines.

   B. The City Council has independently reviewed and considered the information contained in Final EIR, including the written comments received during the Draft EIR/EIS review period and the oral and written comments received at the City Council meeting, prior to making its decision on the proposed Project.

   C. The Final EIR reflects the City Council’s independent judgment and analysis on the potential environmental impacts of the proposed Project. The Final EIR provides information to the decisionmakers and the public on the environmental consequences of the proposed Project.
D. The Final EIR adequately describes the proposed Project, its significant environmental impacts, mitigation measures, and a reasonable range of alternatives to the proposed Project.

4. The City Council hereby adopts all findings required under CEQA regarding environmental impacts of the Project and mitigation measures, and adopts a Mitigation Monitoring and Reporting Program as set forth in the CEQA Findings of Fact attached hereto as Exhibit A (which includes Attachments 1 and 2) and incorporated herein by reference, all in compliance with the requirements of CEQA.

5. The Council hereby approves the following Project components: (1) the NVRRWP transmission facilities, including the new pumping plant upgrades, all necessary transmission pipelines to transmit and deliver the City’s recycled water from the Jennings Plant to the DMC; (2) the City of Modesto’s change in authorized point of discharge to add discharges of the City’s recycled water to the DMC; (3) the additions of 43,259 acres in the DPWD and 124,897 acres in the wildlife refuges, as listed in the City’s wastewater change petition, as the authorized place of use for the City’s recycled water; and (4) the addition of supplemental CVPIA refuge water supplies to the authorized purposes of use for the City’s recycled water.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 7th day of July, 2015, by Councilmember Kenoyer, who moved its adoption, which motion being duly seconded by Councilmember Madrigal, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Cogdill, Gunderson, Kenoyer, Lopez, Madrigal, Zosłocki, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: ADAM U. LINDGREN, City Attorney
EXHIBIT A

CEQA FINDINGS OF FACT

OF THE CITY COUNCIL OF
THE CITY MODESTO

for the

NORTH VALLEY REGIONAL RECYCLED WATER
PROGRAM

JULY 7, 2015
The City of Modesto (City), as lead agency under the California Environmental Quality Act (CEQA), and the U.S. Department of the Interior, Bureau of Reclamation (Reclamation) as lead agency under the National Environmental Policy Act (NEPA), prepared a joint Draft Environmental Impact Report/Environmental Impact Statement (DEIR/EIS) for the North Valley Regional Recycled Water Program (NVRRWP or Project). The Draft EIR/EIS is a joint document intended to comply with both CEQA and NEPA. (See California Code of Regulations (CCR), Title 14, Division 6, Chapter 3 (State CEQA Guidelines), Section 15222 (“Preparation of Joint Documents”); and Code of Federal Regulations (CFR), Title 40, Sections 1502.25, 1506.2, and 1506.4 (authority for combining federal and state environmental documents). The City of Modesto has considered comments received on the Draft EIR/EIS and has prepared a Final EIR, which addresses those comments. While the Draft EIR/EIS was prepared by the City of Modesto and the Bureau of Reclamation as a joint document, the Final EIR has been prepared as a separate CEQA document, which will be considered for certification by the City of Modesto. Reclamation will separately circulate a Final EIS for 30 days before issuing a Record of Decision for the NVRRWP. In its entirety, the Final EIR consists of the June 19, 2015 Final EIR (“Final EIR”, or “FEIR”) (EA/UP&P No. 2014-02; State Clearinghouse No. 2014042068), which includes Volume I containing the entire text of the Draft EIR/EIS that was published on January 8, 2015, plus Volume II including the comments that were received during the public review period and responses to those comments showing minor revisions and clarifications based on comments received.

As described in the Final EIR, the Project is the planned construction of a water supply project that would deliver up to 59,000 acre feet per year (AFY) of recycled water produced by the cities of Modesto and Turlock via pipeline to the Delta-Mendota Canal (DMC), a feature of the Central Valley Project owned by Reclamation. Instead of discharging into the San Joaquin River, recycled water will be conveyed from Modesto and Turlock through pipelines from their wastewater treatment facilities, crossing under the San Joaquin River, ending at the DMC. Water in the DMC would then be conveyed directly to Del Puerto Water District (DPWD) turnouts and thus to its customers. This project also proposes to provide water to Central Valley Project Improvement Act (CVPIA) designated refuges located south of the Delta to deliver a portion of their supplemental water needs. The proposed pipeline alignment is divided into two segments. One segment, which is under the jurisdiction of the City of Turlock, will convey recycled water from the City of Turlock through a pipeline beginning at the end of the existing Harding Drain Bypass Pipeline north to the City of Modesto’s Jennings Water Quality Control Facility (Jennings Plant), where it would be combined with recycled water from Modesto. The second pipeline segment, which is the portion of the project that is under the jurisdiction of the City of Modesto, would extend from the Jennings Plant crossing under the San Joaquin River to convey water to the DMC. The proposed Project is located partially within the Jennings Wastewater Treatment Plant, which is within the City limits, and partially in unincorporated Stanislaus County. The DMC is under the jurisdiction of Reclamation.

These findings have been prepared in accordance with CEQA (Pub. Resources Code, § 21000 et seq.) and its implementing guidelines (“CEQA Guidelines”) (Cal. Code Regs., tit. 14, § 15000 et seq.).
II. PROJECT DESCRIPTION

A. LOCATION

The NVRRWP includes pipelines in existing streets from the City of Turlock Harding Drain Bypass Pipeline to the Jennings Plant; this pipeline is under the jurisdiction of the City of Turlock. Facilities under the jurisdiction of the City of Modesto begin at the Jennings Plant, where an existing pump station would be modified. From the Jennings Plant Pump Station a pipeline would be constructed under the San Joaquin River using some form of trenchless technology. The pipeline would continue on existing streets to a discharge structure on the DMC. The Project site is located partially within the City (the Jennings Plant is within Modesto City limits) and partially in unincorporated Stanislaus County as illustrated in Figures 2-2 and 2-5 of the DEIR (pages 2-4 and 2-11). The City of Modesto is considering approval of the following NVRRWP components: (1) the NVRRWP transmission facilities, including the new pumping plant upgrades and all necessary transmission pipelines to transmit and deliver recycled water from the Jennings Plant to the DMC; (2) the addition of a new authorized point of discharge of the City’s recycled water to the DMC; (3) the additions of 43,259 acres in the DPWD and 124,897 acres in the wildlife refuges, as listed in the City’s wastewater change petition, as the authorized place of use for the City’s recycled water; and (4) the addition of supplemental CVPIA refuge water supplies to the authorized purposes of use for the City’s recycled water.

B. OVERVIEW

The City of Modesto has worked cooperatively with the City of Turlock and DPWD (Partner Agencies) to develop the NVRRWP. The Partner Agencies worked together to define shared objectives and develop feasible alternatives to provide a supply of recycled water to DPWD. Their efforts culminated in the preparation of a Feasibility Study for the NVRRWP, which was completed in December 2013. The Feasibility Study documents the process for development of alternatives and includes an economic and financial analysis.

The EIR/EIS analyzed considered three potential Project alternatives: (1) the Combined Alignment Alternative; (2) the Separate Alignment Alternative; and (3) the PID Conveyance Alternative. The NVRRWP components being considered for approval by the City are included in both the Combined Alignment Alternative and the Separate Alignment Alternative. If the City of Turlock decides to proceed with its elements of the NVRRWP, then those elements may be elements of the Combined Alignment Alternative or elements of the Separate Alignment Alternative. The Combined Alignment Alternative consists of two reaches totaling 69,800 linear feet, extending from the western end of the City of Turlock’s Harding Drain Bypass Pipeline to the DMC. The south-north reach from the Harding Drain Bypass Pipeline would be 42 inches in diameter and would extend from the western end of the Harding Drain Bypass Pipeline near the existing standpipe structure on South Carpenter Road, then parallel South Carpenter Road north to West Main Street, then turn west on West Main Street to Jennings Road. At Jennings Road, the pipeline would then turn north for about 1.8 miles. From Jennings Road, the pipeline would then extend west along existing dirt roads through agricultural fields owned
by Modesto and terminate at the existing Jennings Plant outfall pump station near the southeastern end of the Jennings Plant. Combined flows from the pumping facility at the Jennings Plant, which would be modified to meet capacity needs, would then travel in a 54-inch pipeline, cross under the San Joaquin River, and extend west to the DMC along Lemon Avenue, through farmland, and along Zacharias Road. The proposed pipeline would cross a total of five irrigation canals along the Lemon Avenue alignment, all of which are operated by the PID.

The project applicants are the City of Modesto, City of Turlock and Del Puerto Water District.

C. PROJECT OBJECTIVES

As set forth in the DEIR/EIS (page 1-12), the overall objective of the proposed project is to maximize beneficial use of a sustainable, alternative water supply within the region, which would address reductions in water supplies from the CVP and reduce the reliance on groundwater use. Specifically, the objectives of the project are as follows:

- Establish an alternative, reliable, long-term water supply of up to 59,000 acre feet per year (AFY) of recycled water for DPWD and refuges;
- Maximize beneficial use of recycled water by DPWD customers and refuges;
- Maximize Project Partners’ control of operations and delivery of water to DPWD and refuges, while recognizing the need for coordination with Reclamation and the San Luis & Delta-Mendota Water Authority;
- Establish a long-term water right(s) to allow for the beneficial use of recycled water;
- Maximize use of existing facilities for treatment / delivery of recycled water;
- Provide supplemental annual water supplies annually to SOD refuges to meet CVPIA Sections 3406(b)(3) and 3406(d)(2) requirements;
- Avoid or minimize, through incorporation of design constraints and management practices, impacts to environmental resources such as surface water, groundwater supplies, land subsidence, groundwater quality and biological resources including sensitive species; and
- Deliver agricultural water to DPWD at a cost that supports regional economic sustainability.

The proposed project is needed to offset the significant reduction in CVP water allocations to DPWD associated with Delta pumping restrictions, drought conditions, and climate change. In addition, the proposed project is needed to offset anticipated effects (e.g., overdraft, subsidence, water quality issues) from increased groundwater pumping that have occurred and would likely continue to occur with the absence of an alternative water supply.

Based on its own review of the Final EIR and other information and testimony received in connection with the Project, the City Council finds these objectives to be acceptable and important from a public policy standpoint. In choosing to approve the Project, the City seeks to further these objectives, and accords them weight in considering the feasibility of the alternatives set forth in the EIR (See Sierra Club v. County of Napa (2004) 121 Cal.App.4th 1490, 1507-1508).
D. DISCRETIONARY APPROVALS

Project approval requires the City, as CEQA lead agency, Reclamation as NEPA lead agency, as well as certain "responsible agencies," to take discrete planning and regulatory actions to approve the overall Project. In accordance with CEQA, the City will certify that the Project complies with CEQA, adopt findings for all significant impacts identified, certify that the findings have been considered prior to project approval, and adopt a Mitigation Monitoring and Reporting Program. The City then will file a Notice of Determination with the State Clearinghouse that will identify whether the project will have significant impacts, if mitigation measures were included as conditions of project approval, that findings were made, and if a Statement of Overriding Considerations was adopted. Reclamation will use this document to support a Record of Decision to document Reclamation's decisions regarding the potential federal actions for the project. Described below are the other permits, reviews, and approvals that would be required for project construction:
<table>
<thead>
<tr>
<th>Agency</th>
<th>Type of Approval</th>
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<tr>
<td><strong>FEDERAL</strong></td>
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<tr>
<td>Reclamation</td>
<td>Warren Act Contract</td>
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<tr>
<td>Reclamation</td>
<td>Possible funding through Public Law 102-575, Title XVI</td>
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<tr>
<td>Reclamation</td>
<td>Land Use Authorization for Construction of Facilities within DMC right-of-way (ROW)</td>
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<tr>
<td>Reclamation</td>
<td>Purchase contract for supplemental supplies for Refuge Water Supply Program under CVPIA Section 3406(d)(2)</td>
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<tr>
<td>U.S. Army Corps of Engineers</td>
<td>Clean Water Act, Section 404 Permit for any fill of wetlands or waters of the US</td>
</tr>
<tr>
<td>U.S. Army Corps of Engineers</td>
<td>Section 10 Permit for pipeline crossing under San Joaquin River, which is a navigable waterway</td>
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<tr>
<td>U.S. Fish and Wildlife &amp; National Oceanic and Atmospheric Administration (NOAA) National Marine Fisheries Service</td>
<td>Section 7 Consultation/Biological Opinions</td>
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<tr>
<td>Natural Resource Conservation Service</td>
<td>Farmland Conversion Assessment</td>
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<td><strong>STATE</strong></td>
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<tr>
<td>State Water Resources Control Board</td>
<td>Wastewater Change Petition (Petition for Change)</td>
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<tr>
<td>California Department of Fish and Wildlife (CDFW)</td>
<td>Streambed Alteration Agreement for pipeline crossings of streams</td>
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<td>CDFW</td>
<td>Incidental Take Permit for California Endangered Species Act (CESA)</td>
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<tr>
<td>CalOSHA</td>
<td>Construction Permit / Tunnel Classification</td>
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<tr>
<td>CA Office of Historic Preservation</td>
<td>Section 106 Consultation</td>
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<tr>
<td>CA State Lands Commission</td>
<td>Lease Agreement</td>
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<tr>
<td>Caltrans</td>
<td>Encroachment Permit</td>
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<td>Central Valley Regional Water Quality Control Board (CVRWQCB)</td>
<td>Clean Water Act, Section 401 Water Quality Certification</td>
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<td>CVRWQCB</td>
<td>Notice of Intent for coverage under Statewide Construction Stormwater Permit (Section 402 Clean Water Act)</td>
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<td>CVRWQCB</td>
<td>Notice of Intent for coverage under Low-Threat Discharge Order for Dewatering during Construction and for Pipeline Discharges for Testing and Startup</td>
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<tr>
<td>CVRWQCB</td>
<td>NPDES Permit for Discharge to the DMC</td>
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<tr>
<td>Central Valley Flood Protection Board</td>
<td>Possible encroachment permit</td>
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<tr>
<td><strong>LOCAL</strong></td>
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<tr>
<td>San Joaquin Valley Air Pollution Control District</td>
<td>Authority to Construct / Permit to Operate</td>
</tr>
<tr>
<td>Stanislaus County</td>
<td>Encroachment permit, grading permit, building permit, and tree removal permit</td>
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<tr>
<td>Stanislaus County</td>
<td>Williamson Act cancellation (if needed)</td>
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<tr>
<td>Genesee &amp; Wyoming Railroad</td>
<td>Utility Occupancy License for crossing of CFNR</td>
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<td>DEIR/EIS p. 1-14</td>
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III.

ENVIRONMENTAL REVIEW PROCESS

A Notice of Preparation (NOP) for the NVRRWP was mailed on April 22, 2014, to elected officials, government and other resource agencies, and all individuals and department entities that may have a concern or interest in the Project. Copies of the NOP were made available to the public at Modesto City Hall, and on the City’s website. Additionally, the City held an open house to allow interested members of the public to learn more about the project, have questions answered by City staff, and provide input on the project. The public meeting was held on May 13, 2014, at the Modesto City Hall at 1010 Tenth Street, Modesto, CA, with approximately 20 members of the public participating. In June 2014, the City prepared a Scoping Report that summarized public noticing, communication, and scoping efforts completed for the project up to that date. The Scoping Report is included in the EIR/EIS, and provides a full summary of the public meeting and the comments received in Appendix A of the Draft EIR/EIS. Additional public outreach and communication efforts completed after May 2014 are discussed below under the heading “Public Participation.” The City and Reclamation have coordinated with several public agencies that may have an interest in the project as part of the project development process. Numerous agencies and organizations were provided notification of the NOP, and provided comments on the scope of the project and its associated environmental documentation. These communications and comments are summarized in the Scoping Report prepared for the project. The main City coordination or communications with agencies is described below.

U.S. Army Corps of Engineers
Reclamation invited the U.S. Army Corps of Engineers (USACE) to be a cooperating agency for preparation of the EIS. USACE declined to be a cooperating agency, but indicated that based on review of the project description it appeared that the project can be authorized under Nationwide Permit number 12, Utility Lines (email from Kathleen Dadey, Chief, California South Branch, Regulatory Division, USACE Sacramento District to Ben Lawrence of Reclamation). A draft wetland delineation report was sent to the USACE on April 29, 2015, for verification. USACE has not completed verification as of May 21, 2015. The City will request coverage under Nationwide Permit 12 for any construction-period fill of wetlands or waters of the U.S.

U.S. Fish and Wildlife Service
Reclamation invited the U.S. Fish and Wildlife Service (USFWS) to be a cooperating agency for preparation of the EIS. USFWS agreed to work with Reclamation as a cooperating agency and both agencies signed a Memorandum of Understanding defining their relationship in the EIS preparation process. As a cooperating agency, USFWS staff have participated in regular environmental team conference calls. Reclamation will submit a Biological Assessment to USFWS and will seek their concurrence regarding the potential for the NVRRWP to affect listed species.

National Oceanic and Atmospheric Administration National Marine Fisheries Service
Reclamation invited the National Oceanic and Atmospheric Administration National Marine Fisheries Service (NMFS) to be a cooperating agency for preparation of the EIS. NMFS agreed to work with Reclamation as a cooperating agency and both agencies signed a Memorandum of Understanding defining their relationship in the EIS preparation process. As a cooperating agency, NMFS staff have participated in regular environmental team conference calls.
Reclamation will submit a Biological Assessment to NMFS and will seek their concurrence regarding the potential for the NVRRWP to affect listed species.

California Department of Fish and Wildlife
Future consultation with California Department of Fish and Wildlife (CDFW) will be required to obtain a 1602 Streambed Alteration Agreement to authorize construction of the pipeline crossing under the San Joaquin River. The project includes avoidance and mitigation measures designed to direct impacts to state-listed species. However, if necessary Modesto would apply for a California Fish and Game Code Section 2081 Take Permit.

State Historic Preservation Office
Reclamation will conduct Section 106 consultation with the State Historic Preservation Office (SHPO) under the National Historic Preservation Act. The DMC has been determined to be eligible for the National Register. The discharge facility for the NVRRWP would be adjacent to, but outside of the Canal, and is not expected to affect the integrity of the DMC. The design of the discharge structure is intended to allow construction to be completed without any modifications to the canal, but if there are any effects on the canal during construction the structure would be restored to its existing condition. Reclamation will seek concurrence from SHPO that the proposed project would not result in any adverse impacts on historic resources.

Public Participation
In addition to the formal scoping meeting additional public outreach efforts have been made to provide information to area residents and to allow interested stakeholders to provide input on and raise issues and concerns about the project. Presentation have been made to the Farm Bureau and Almond Board of California and notices were sent to 200 landowners/customers in the Del Puerto Water District.

The City and Reclamation released the Draft EIR/EIS on January 8, 2015 for public review and comment. The comment period closed on March 11, 2015. This period satisfied the requirement for a minimum 45-day and maximum 60-day public review period as set forth in Section 15105 of the CEQA Guidelines. Consistent with Section 15202 of the CEQA Guidelines, the City conducted a meeting to receive public input on the DEIR/EIS at Modesto City Hall on February 11, 2015, at which time agencies and the public were given the opportunity to provide comments on the DEIR/EIS.

The Project’s Final EIR was made available to the public and commenting agencies on June 19, 2015. Notice of the availability of the Final EIR was mailed to elected officials, government and other resource agencies, and all individuals and department entities that may have a concern or interest in the project, and copies of the Final EIR were made available on the City’s website and at City Hall as well as office of the City of Turlock, Del Puerto Water District and Reclamation Fresno office. On July 7, 2015, the City Council considered certification of the Final EIR and approval of the Project at their regular City Council meeting. The City Council considered certification of the Final EIR and adoption of CEQA Findings, and a Mitigation Monitoring and Reporting Program at that hearing.

The DEIR/EIS included an evaluation of 22 environmental issue areas and a discussion of significant impacts under CEQA, together with other NEPA- and CEQA-mandated issues as well
(e.g., cumulative impacts, growth-inducing impacts). The 22 environmental issue areas are as follows:

- Aesthetics
- Agriculture and Forestry Resources
- Air Quality
- Biological Resources
- Cultural Resources
- Energy Resources
- Environmental Justice
- Geology and Soils
- Greenhouse Gas Emissions
- Hazards and Hazardous Materials
- Hydrology and Water Quality
- Indian Trust Assets
- Land Use and Planning
- Noise
- Population and Housing
- Public Services and Utilities
- Recreation
- Socioeconomics
- Transportation and Traffic

(DEIR/EIS, pp. 3.1-1 to 3.19-15)

The DEIR/EIS evaluated the significance of impacts under CEQA within the following 17 environmental areas:

- Aesthetics
- Agriculture and Forestry Resources
- Air Quality
- Biological Resources
- Cultural Resources
- Energy Resources
- Geology and Soils
- Greenhouse Gas Emissions
- Hazards and Hazardous Materials
- Hydrology and Water Quality
- Land Use and Planning
- Noise
- Population and Housing
- Public Services and Utilities
- Recreation
- Transportation and Traffic
- Cumulative Impacts

(DEIR/EIS, pp. 3.1-1 to 3.19-15)
IV.

RECORD OF PROCEEDINGS

In accordance with Public Resources Code section 21167.6, subdivision (e), the record of proceedings for the City’s decision on the Project includes the following documents:

- The NOP and all other public notices issued by the City in conjunction with the Project;
- All comments submitted by agencies or members of the public during the comment period on the NOP;
- The DEIR/EIS for the Project (January 2015) and all appendices;
- All comments submitted by agencies or members of the public during the comment period on the DEIR/EIS;
- The Final EIR for the Project, including comments received on the DEIR/EIS, the responses to those comments, clarifications and minor corrections to information presented in the Draft EIR/EIS, and appendices;
- Documents cited or referenced in the DEIR/EIS and Final EIR;
- The MMRP for the Project;
- All findings and resolutions adopted by the City Council in connection with the Project and all documents cited or referred to therein;
- All reports, studies, memoranda, maps, staff reports, or other planning documents relating to the Project prepared by the City, consultants to the City, or responsible or trustee agencies with respect to the City’s compliance with the requirements of CEQA and with respect to the Project;
- All documents submitted to the City by other public agencies or members of the public in connection with the Project, up through the close of the City Council public hearing on July 7, 2015;
- Any minutes and/or verbatim transcripts of all information sessions, public meetings, and public hearings held by the City in connection with the Project;
- Any documentary or other evidence submitted to the City at such information sessions, public meetings, and public hearings;
- The City of Modesto General Plan and all environmental documents prepared in connection with the adoption of the General Plan;
• All environmental documents prepared under CEQA and NEPA referred to in the Draft EIR/EIS and Final EIR, including, but not limited to:
  City of Modesto Phase 2 Improvements – Jennings Road Secondary Wastewater Treatment Plant Initial Study/Mitigated Negative Declaration Report (State Clearinghouse # 2010092062).
  City of Turlock Harding Drain Bypass Project Environmental Impact Report. (State Clearinghouse # 2003062002).

• The City of Modesto Zoning Code and all other City Code provisions cited in materials prepared by or submitted to the City;

• All County or other public agency planning or other documents cited in materials prepared by or submitted to the City;

• Any and all resolutions and ordinances adopted by the City regarding the Project, and all staff reports, analyses, and summaries related to the adoption of those resolutions and ordinances;

• Matters of common knowledge to the City, including but not limited to federal, state, and local laws and regulations;

• Any documents expressly cited in these findings, in addition to those cited above; and

• Any other materials required for the record of proceedings by Public Resources Code section 21167.6, subdivision (e).

The documents constituting the record of proceedings are available for review by responsible agencies and interested members of the public during normal business hours at the City of Modesto Utilities Department, 1010 Tenth Street, 4th Floor, Modesto, CA 95354. The custodian of these documents is William Wong, City of Modesto Utilities Department.

V. FINDINGS REQUIRED UNDER CEQA

Public Resources Code section 21002 provides that “public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects[.]” The same statute provides that the procedures required by CEQA “are intended to assist public agencies in systematically identifying both the significant effects of proposed projects and the feasible alternatives or feasible mitigation measures which will avoid or substantially lessen such significant effects.” Section 21002 goes on to provide that “in the event [that] specific economic, social, or other conditions make infeasible such project alternatives or such mitigation measures, individual projects may be approved in spite of one or more significant effects thereof.”
The mandate and principles announced in Public Resources Code section 21002 are implemented, in part, through the requirement that agencies must adopt findings before approving projects for which EIRs are required. For each significant environmental effect identified in an EIR for a project, the approving agency must issue a written finding reaching one or more of three permissible conclusions. The first such finding is that changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR. The second finding is that such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding, and that such changes have been adopted by, or can and should be adopted by, such other agency. The third potential finding is that specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the final EIR and, therefore, the identified impact is significant and unavoidable (CEQA Guidelines, § 15091).

As explained elsewhere in these findings, “feasible” means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, legal, and technological factors (CEQA Guidelines § 15364). The concept of “feasibility” also encompasses the question of whether a particular alternative or mitigation measure promotes the underlying goals and objectives of a project (Sierra Club v. County of Napa (2004) 121 Cal.App.4th 1490, 1506-1509 (court upholds CEQA findings rejecting alternatives in reliance on applicant’s project objectives); see also California Native Plant Society v. City of Santa Cruz (2009) 177 Cal.App.4th 957, 1001 (CNPS) (“an alternative ‘may be found infeasible on the ground it is inconsistent with the project objectives as long as the finding is supported by substantial evidence in the record’”) (quoting Kostka & Zischke, Practice Under the Cal. Environmental Quality Act [Cont.Ed.Bar 2d ed. 2009] (Kostka), § 17.309, p. 825); In re Bay-Delta Programmatic Environmental Impact Report Coordinated Proceedings (2008) 43 Cal.4th 1143, 1165, 1166 (Bay-Delta) (“[i]n the CALFED program, feasibility is strongly linked to achievement of each of the primary program objectives;” “a lead agency may structure its EIR alternative analysis around a reasonable definition of underlying purpose and need not study alternatives that cannot achieve that basic goal”). Moreover, “‘feasibility’ under CEQA encompasses ‘desirability’ to the extent that desirability is based on a reasonable balancing of the relevant economic, environmental, social, legal, and technological factors.” (City of Del Mar v. City of San Diego (1982) 133 Cal.App.3d 410, 417 (City of Del Mar); see also CNPS, supra, 177 Cal.App.4th at p. 1001 (after weighing “‘economic, environmental, social, and technological factors,’ ... ‘an agency may conclude that a mitigation measure or alternative is impractical or undesirable from a policy standpoint and reject it as infeasible on that ground’”) (quoting Kostka, supra, § 17.29, p. 824).

For purposes of these findings (including the findings in Attachment 1 attached hereto), the term “avoid” refers to the effectiveness of one or more mitigation measures to reduce an otherwise significant effect to a less than significant level. In contrast, the term “substantially lessen” refers to the effectiveness of such measure or measures to substantially reduce the severity of a significant effect, but not to reduce that effect to a less than significant level.

As explained above, CEQA requires that the lead agency adopt feasible mitigation measures or, in some instances, feasible alternatives to substantially lessen or avoid significant environmental
impacts that would otherwise occur. With respect to a project for which significant impacts are not avoided, a public agency, after adopting proper findings, may nevertheless approve the project if the agency first adopts a statement of overriding considerations setting forth the specific reasons for the agency findings that the Project’s benefits outweigh its unavoidable adverse environmental effects. The Final EIR found that there were no significant unavoidable adverse environmental effects.

VI.

MITIGATION MONITORING AND REPORTING PROGRAM

A Mitigation Monitoring and Reporting Program has been prepared for the Project, and is being approved by the City Council by the same Resolution that adopts these findings. The City will use the Mitigation Monitoring and Reporting Program to track compliance with Project mitigation measures. The Mitigation Monitoring and Reporting Program will remain available for public review during the compliance period. The Mitigation Monitoring and Reporting Program is attached hereto as Attachment 2.

VII.

SIGNIFICANT IMPACTS AND MITIGATION MEASURES

The Final EIR identified a number of significant and potentially significant environmental effects (or impacts) that the Project will cause or contribute to. All of these significant effects can be fully avoided through the adoption of feasible mitigation measures.

A. Impacts and Mitigation Measures (see Attachment 1)

The City Council’s findings with respect to the Project’s significant effects and mitigation measures are set forth in the attachment to these findings (Attachment 1). The findings set forth in Attachment 1 are hereby incorporated by reference and included as an attachment to this document.

Attachment 1 does not attempt to describe the full analysis of each environmental impact contained in the Final EIR. Instead, the attachment provides a summary description of each impact, describes the applicable mitigation measures identified in the Final EIR and adopted by the City, and states the findings on the significance of each impact after imposition of the adopted mitigation measures. A full explanation of these environmental findings and conclusions can be found in the Final EIR, and these findings hereby incorporate by reference the discussion and analysis in those documents supporting the Final EIR’s determinations regarding mitigation measures and the Project’s impacts and mitigation measures designed to address those impacts.

In making these findings, the City ratifies, adopts, and incorporates into these findings the analysis and explanation in the Final EIR, and ratifies, adopts, and incorporates in these findings the determinations and conclusions of the Final EIR relating to environmental impacts and mitigation measures, except to the extent any such determinations and conclusions are specifically and expressly modified by these findings.
The City has adopted all of the mitigation measures identified in Attachment 1. Some of the measures identified are also within the jurisdiction and control of other agencies. To the extent any of the mitigation measures are within the jurisdiction of other agencies, the City finds those agencies can and should implement those measures within their jurisdiction and control.

B. Findings Regarding Additional Mitigation Measures Proposed by Comments

In comments on the DEIR/EIS, commenters suggested additional mitigation measures and/or modifications to the measures recommended in the DEIR/EIS. As indicated in the Final EIR, the City modified the following proposed measures in response to such comments:

- Mitigation Measure AIR-1. The mitigation has been revised to incorporate additional suggested measures such as limitations on idling. Use of newer tier engines and vehicles will be implemented to the extent feasible, but would not be required because requirements for specific engine tiers and newer trucks would be significantly ahead of CARB implementation schedules. Therefore, the mitigation measure leaves these as measures that the contractor will be encouraged to implement to the extent feasible. There is no change to the significance conclusion and the implementation of voluntary emission offset agreement will ensure that NOx emissions are fully mitigated consistent with general conformity requirements.

- Mitigation Measure BIO-1d. The mitigation has been revised to specify that the frac-out plan be provided to the California State Land Commission.

- Mitigation Measure BIO-12. The revised measure specifies that no-disturbance buffers for nesting raptors would be established by a qualified biologist, with consultation with the California Department of Fish and Wildlife, as appropriate.

- Mitigation Measure CUL-2. The revised measure requires that if human remains are discovered and determined to be Native American, the Native American Heritage Commission shall be notified by phone within 24 hours of the discovery.

For other new mitigation measures or changes to existing mitigations proposed in comments submitted on the DEIR/EIS or comments submitted elsewhere in the record, which are described below, the City carefully considered the proposed mitigations, and finds the proposed mitigations infeasible, not necessary to avoid identified significant impacts of the Project, or otherwise rejected the suggested mitigation for the reasons set forth in the Final EIR or elsewhere in the record, which are incorporated herein by this reference.

In considering specific recommendations on mitigation measures from commenters, the City is guided by CEQA’s legal standard to substantially lessen or avoid significant environmental effects to the extent feasible. The City recognizes, moreover, that comments frequently offer suggestions regarding how a commenter believes that a particular mitigation measure can be modified, or perhaps changed significantly, in order to more effectively, in the commenter’s opinion, reduce the severity of environmental effects. However, the mitigation measures included in the Final EIR represent the professional judgment and long experience of the City’s
expert staff and environmental consultants. The City therefore believes that these recommended mitigations should not be modified unless necessary to comply with CEQA legal standards, and the City has discretion to make policy decisions presented by mitigations. Thus, in considering commenters’ suggested changes or additions to the mitigation measures, the City, in determining whether to accept such suggestions, either in whole or in part, has considered the following factors, among others: (i) whether the suggestion relates to a significant and unavoidable environmental effect of the Project, or instead relates to an effect that can already be mitigated to less-than-significant levels by proposed mitigation measures in the Final EIR; (ii) whether the proposed language represents a clear improvement, from an environmental standpoint, over the draft language that a commenter seeks to replace; (iii) whether the proposed language is sufficiently clear as to be easily understood by those who will implement the mitigation as finally adopted; (iv) whether the language might be too inflexible to allow for pragmatic implementation; (v) whether the suggested mitigations are “feasible” as defined under CEQA, including being able to be accomplished in a successful manner in a reasonable period of time taking into account economic, environmental, technical, legal, social or other factors; and (vi) whether the proposed language is consistent with the Project’s objectives.

As is evident from the specific responses given to specific suggested mitigations set forth in the Final EIR, City staff and consultants spent a significant amount of time carefully considering and weighing proposed mitigation language. For suggested mitigation not incorporated or adopted by the City, the City finds the measure either not necessary to reduce a significant impact to less than significant, or infeasible.

Comments on the Draft EIR/EIS proposed mitigation measures to address the export of wastewater from lands overlying the Turlock subbasin. As explained in the responses presented in the Final EIR, when the NVRRWP is operating, wastewater that is currently discharged to the San Joaquin River, which flows out to the ocean through the Delta, instead will have additional treatment and then be conveyed to the Del Puerto Water District and South of Delta wildlife refuges. Implementation of the NVRRWP would result in some minimal reductions in groundwater recharge to the western portion of the Turlock groundwater subbasin because of slight reductions in flows in the San Joaquin River. However, these reductions are not expected to have any significant effects on groundwater conditions in this subbasin, both because the change will only be a very small percentage of the total subbasin average annual inflow and because the change will occur in a portion of the subbasin where groundwater levels already are high. As a result, mitigation would not be required.

C. Findings Regarding Absence of Significant New Information Requiring Recirculation of Draft EIR

CEQA Guidelines Section 15088.5 requires a lead agency to recirculate an EIR for further review and comment when significant new information is added to the EIR after public notice is given of the availability of the Draft EIR but before certification of the Final EIR. New information added to an EIR is not “significant” unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect that the project proponent declines to implement. The CEQA Guidelines provide the following examples of significant new information under this standard:
• A new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented.
• A substantial increase in the severity of an environmental impact would result unless mitigation is adopted that reduces the impact to a level of insignificance.
• A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the environmental impacts of the project, but the project’s proponents decline to adopt it.
• The Draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded. (Mountain Lion Coalition v. Fish and Game Com. (1989) 214 Cal.App.3d 1043).

Recirculation is not required where the new information added to the EIR merely clarifies or amplifies or makes insignificant modifications in an adequate EIR. The above standard is “not intend[ed] to promote endless rounds of revision and recirculation of EIRs.” (Laurel Heights Improvement Assn. v. Regents of the University of California (1993) 6 Cal. 4th 1112, 1132).

“Recirculation was intended to be an exception, rather than the general rule.” (Ibid.)

The Final EIR incorporates information developed after the Draft EIR/EIS was completed, and contains additions, clarifications, modifications, and other changes. As noted in Section VIII.B, comments on the Draft EIR/EIS either expressly or impliedly sought changes to proposed mitigation measures identified in the Draft EIR/EIS, as well as additional mitigation measures. As explained in the Final EIR (Chapter 8, Responses to Comments), some of the suggestions were found to be appropriate and feasible and were adopted in the Final EIR and included in the MMRP (see Section VIII.B, above). Where changes have been made to mitigation measures and other information in the Draft EIR/EIS, these changes do not change any conclusions on the significance of impacts presented in the Draft EIR/EIS and do not meet any of the standards for recirculation under CEQA Guidelines section 15088.5.

Notably, CEQA case law emphasizes that “[t]he CEQA reporting process is not designed to freeze the ultimate proposal in the precise mold of the initial project; indeed, new and unforeseen insights may emerge during investigation, evoking revision of the original proposal.” (Kings County Farm Bureau v. City of Hanford (1990) 221 Cal.App.3d 692, 736-737; see also River Valley Preservation Project v. Metropolitan Transit Development Bd. (1995) 37 Cal.App.4th 154, 168, fn. 11.) “CEQA compels an interactive process of assessment of environmental impacts and responsive project modification which must be genuine. It must be open to the public, premised upon a full and meaningful disclosure of the scope, purposes, and effect of a consistently described project, with flexibility to respond to unforeseen insights that emerge from the process.” [Citation.] In short, a project must be open for public discussion and subject to agency modification during the CEQA process.” (Concerned Citizens of Costa Mesa, Inc. v. 33rd Dist. Agricultural Assn. (1986) 42 Cal.3d 929, 936).

The Final EIR also includes minor edits made in response to various comments on the Draft EIR/EIS (See Final EIR, Chapter 8). These revisions were made for accuracy and did not change any conclusions of the Draft EIR/EIS regarding the Project’s impacts. The revisions only constituted minor revisions or augmentations to information in the Draft EIR/EIS that did not change any of the determinations regarding the significance of Project impacts.
Thus, none of these changes involves "significant new information" triggering recirculation because neither the additional information nor changes to the mitigation measure resulted in any new significant environmental effects, any substantial increase in the severity of any previously identified significant effects, or otherwise trigger recirculation under CEQA standards. Instead, the modifications were either environmentally beneficial or environmentally neutral, and thus represent the kind of changes that commonly occur as the environmental review process works towards its conclusion.

D. Findings on Alternatives

As shown in Attachment 1, all potentially significant impacts of the Project have been reduced to less than significant by the adoption of mitigation measures. Therefore the Project does not result in any significant and unavoidable impacts on a project or cumulative level. Since adoption of mitigation will reduce all significant impacts to less than significant, the City is not required under CEQA to make findings on the feasibility of project alternatives. (Laurel Hills Homeowners Assn. v. City Council (1978) 83 Cal.App.3d 515.)
ATTACHMENT 1

SUMMARY OF IMPACTS, MITIGATION MEASURES, AND CEQA FINDINGS OF FACT

The term “Final EIR” in this Document refers collectively to the Draft EIR/EIS and the Final EIR Response to Comments volume.

3.1 AESTHETICS

Impact AES-2: The NVRRWP could result in new sources of substantial light and glare. This would be considered a potentially significant impact.

Mitigation Measures

AES-2 Nighttime Construction Lighting: Nighttime construction lighting, if required, shall be shielded and oriented downward to minimize effects on any nearby receptors. Lighting shall be directed toward active construction areas only, and shall have the minimum brightness necessary to ensure worker safety.

Finding: Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect identified in the Final EIR. The project has been revised to require implementation of Mitigation Measure AES-2, which will ensure that any nighttime construction activities would use lighting that would not affect nearby residents and would mitigate the impact to less than significant after mitigation.

Rationale: Mitigation Measure AES-2 shields lights and directs them away from any nearby receptors, thus reducing the impact of lighting to less than significant.

3.2 AGRICULTURE AND FORESTRY RESOURCES

Impact AG-1: The NVRRWP could convert farmland to non-agricultural use by removing topsoil. This is a potentially significant impact.

Mitigation Measures

AG-1 Stockpile Soil: Topsoil removed during project construction shall be stockpiled for later reuse. Soil shall be stored in a clear area of the construction site where it would not have the potential to affect agricultural or biological resources. Stockpiled soil shall be covered with a tarp at all times to prevent generation of fugitive dust. Following pipeline insertion, soil shall be backfilled into the trench and restored to an appropriate level of compaction.
Finding: Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect identified in the Final EIR. The project has been revised to require implementation of Mitigation AG-1, which will serve to reduce these potential impacts to less than significant after mitigation.

Rationale: Mitigation Measure AG-1 would ensure that removal of topsoil would not impair long-term productivity of agricultural land along the pipeline alignment. Restoration of topsoil would land productivity is preserved, thus reducing the impact to less than significant.

3.3 AIR QUALITY

Impact AIR-1: Construction activities would generate emissions of criteria NOx that could exceed significance thresholds established by the San Joaquin Valley Air Pollution Control District, this would be considered a potentially significant impact.

Mitigation Measures

AIR-1 Reduce NOx Emissions: NOx emissions associated with construction activities shall be reduced to 10 tons per year through on-site equipment and hauling vehicle Mitigation Measure to the extent feasible. All vehicles and equipment used during construction shall be maintained and properly tuned in accordance with the manufacturer’s specifications to perform at US EPA certification levels and to perform at verified standards applicable to retrofit technologies. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation. Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure CCR Title 13 Section 2485). Emissions reduction methods may be chosen from any combination of the following measures:

- Minimize the use and trips of construction equipment and trucks by consolidating trips and loads to the extent feasible
- Minimize unnecessary idling by shutting off equipment and trucks when not in use to the extent feasible and comply with CARB idling regulations.
- Conduct periodic unscheduled inspections to ensure equipment is maintained properly and in accordance with manufacturer’s recommendations and excessive idling is not occurring.
- Prepare inventory of all equipment prior to construction consistent with SJVAPCD Indirect Source Review Rule.
- Develop a construction traffic and parking management plan that minimizes traffic interference and maintains traffic flow.

The contractor will be encouraged to implement the following measures to the extent feasible before implementation of off-site Mitigation Measure and
identify why the measures are infeasible if not implemented in particular due to economic infeasibility:

• Use alternative fueled vehicles.
• Use newer tier engines such as US EPA Tier 4 exhaust emissions standards for heavy-duty nonroad compression ignition engines.
• Use of newer on-highway vehicles that meet the US EPA exhaust emissions standards for model year 2010 and newer heavy-duty on-highway compression ignition engines
• Use phased material hauling trips
• Use after-market pollution control devices to reduce emissions
• Lengthen the construction schedule to reduce the annual intensity of construction activities

If all feasible on-site measures have been implemented and annual emissions are anticipated to still be above 10 tons per year for NOx, then the project proponent shall enter into a Voluntary Emissions Reduction Agreement (VERA) with SJVAPCD. The VERA would provide pound-for-pound mitigation of air emissions increases down to a net zero emissions per year as required under general conformity through a process that develops, funds, and implements emission reduction projects. SJVAPCD would serve as role of administrator of the emissions reduction projects and verifier of the successful mitigation effort.

Finding: Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect identified in the Final EIR. The project has been revised to require implementation of Mitigation Measures AIR-1, which will serve to reduce potential construction-related air quality impacts to less than significant after mitigation.

Rationale: Mitigation Measure AIR-1 requires a variety of emissions reduction measures and specifies that if all feasible on-site measures have been implemented and emissions still exceed 10 tons per year contributions to emissions reduction projects would be required, thus reducing the impact to less than significant.

3.4 BIOLOGICAL RESOURCES

Effects on special-status plants

Impact BIO-1: Construction could adversely affect special-status plants that have the potential to grow in the project area. This would be a potentially significant impact.

Mitigation Measures

BIO-1a Avoid or Minimize Impacts to Special-Status Plant Species: To the extent feasible, project-related activities shall avoid habitats with the potential to support special-status plants, including alkali flats, alkali scrub, alkali pools,
and freshwater wetlands. To the extent feasible, the proposed project shall minimize potential impacts to special-status plants by utilizing trenchless construction techniques within habitats with the potential to support special-status plants.

BIO-1b Perform Focused Surveys for Special-Status Plant Species in Suitable Habitats: Within one year prior to commencement of construction activities, a qualified botanist shall perform surveys for special-status plant species within potentially suitable habitat in the vicinity of open-cut construction areas (Survey areas are shown in Attachment A to the MMRP). Floristic surveys shall be performed according to the Protocols for Surveying and Evaluating Impacts to Specials Status Native Plant Populations and Natural Communities (CDFG 2009 or current version). Floristic surveys shall include the use of a reference population, as reasonably feasible, to increase the likelihood of detection, and shall be performed during the appropriate bloom period(s) for each species. If special-status plants are detected within a 100-foot radius or within the microwatershed of an open-cut construction area (including pits that would be used for trenchless construction), Mitigation Measure BIO-1c shall be implemented.

BIO-1c Monitor or Compensate for Impacts to Special-Status Plant Species: The locations of special-status plants within the microwatershed or within 100 feet of construction areas shall be marked and the size of the population shall be recorded. Locations of special-status plant populations shall be clearly identified in the field by staking, flagging, or fencing. The plants shall be monitored throughout the duration of construction to determine if the project has resulted in adverse effects (direct or indirect), as determined by a qualified botanist.

If the botanist determines that special-status plants may have been adversely affected, then the Partner Agencies shall implement measures to compensate for the impact. Compensation measures may include transplanting perennial species, seed collection and dispersal for annual species, and other conservation strategies that shall restore and protect the viability of the local population. If minimization measures are implemented, monitoring of plant populations shall be conducted annually for 5 years to assess the mitigation's effectiveness. The performance standard for the mitigation shall be no net reduction in the size or viability of the local population.

BIO-1d Develop and Implement a Frac-out Contingency Plan for Trenchless Construction: Prior to constructing a crossing(s) of the San Joaquin River, a Frac-out Prevention and Contingency Plan shall be developed and submitted by the City of Modesto to the California State Lands Commission for review. At minimum, the plan shall prescribe the measures to ensure protection of aquatic resources, special-status plants and wildlife, including:

- Procedures to minimize the potential for a frac-out associated with horizontal directional drilling;
• Procedures for timely detection of frac-outs;
• Procedures for timely response and remediation in the event a frac-out; and
• Monitoring of drilling and frac-out response activities by a qualified biologist.

Findings: Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect identified in the Final EIR. The project has been revised to require implementation of Mitigation Measures BIO-1a, BIO-1b, BIO-1c and BIO-1d, and therefore this impact would be considered less than significant after mitigation.

Rationale: The project has been revised to require implementation of Mitigation Measures BIO-1a through BIO-1d, which will ensure sensitive habitats are avoided to the extent feasible. Where habitat avoidance is not possible, special status plants would be identified and protected, and if any plants are adversely affected, conservation strategies will be employed to protect the viability of the local plant population. A frac-out prevention plan would be implemented to ensure that plants in riparian zones are protected. Therefore, with the implementation of these measures, the impact will be less than significant.

Effects on vernal pool branchiopods

Impact BIO-2: Construction of the project could adversely affect vernal pool branchiopods that have the potential to occur in the alkali pool and swale habitat on the south side of West Main Avenue. This would be a potentially significant impact.

Mitigation Measures

BIO-2a Avoid Impacts to Vernal Pool Branchiopods and their Habitat: To the extent feasible, the project-related activities shall avoid impacts to habitat with the potential to support Conservancy fairy shrimp, longhorn fairy shrimp, vernal pool fairy shrimp, and vernal pool tadpole shrimp, including alkali pools and swales. Avoidance shall be defined as no direct or indirect effects to suitable habitat. This shall be accomplished by avoiding construction within the microwatershed of suitable habitat for vernal pool branchiopods.

BIO-2b Minimize and Compensate for Impacts to Vernal Pool Fairy Shrimp and Their Habitat: If direct or indirect impacts to habitat with the potential to support vernal pool branchiopods cannot be avoided then the following measures shall be implemented:
• Implement a storm water pollution prevention plan (SWPPP) to reduce the potential for sediments and contaminants to enter pools or depressions where vernal pool branchiopods may occur;
• After construction, restore surface topography and drainage to pre-construction conditions; and
• Provide off-site compensation for permanent, temporary, and indirect impacts at ratios determined through consultation with USFWS. The performance standard shall be no net loss in acreage or habitat quality for vernal pool branchiopods, as determined through consultation with USFWS.

Finding: Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect identified in the Final EIR. The project has been revised to require implementation of Mitigation Measures BIO-2a and BIO-2b, and, as a result, this impact would be considered less than significant after mitigation.

Rationale: The project has been revised to require implementation of Mitigation Measures BIO-2a and BIO-2b, which will ensure that habitat potentially containing vernal pool branchiopods is avoided and that indirect impacts are minimized by implementing measures to avoid sediments and contaminants from entering habitats adjacent to construction areas. Preservation of habitat will be ensured by providing compensation if any habitats are directly or indirectly affected during construction. Therefore, with the implementation of these measures, the impact will be less than significant.

Impact BIO-3: Construction could affect elderberry bushes that provide habitat for valley elderberry longhorn beetle (VELB). This would be a potentially significant impact.

Mitigation Measures

Effects on valley elderberry longhorn beetle

BIO-1d Develop and Implement a Frac-out Contingency Plan for Trenchless Construction: Prior to constructing a crossing(s) of the San Joaquin River, a Frac-out Prevention and Contingency Plan shall be developed and submitted by the City of Modesto to the California State Lands Commission for review. At minimum, the plan shall prescribe the measures to ensure protection of aquatic resources, special-status plants and wildlife, including:

- Procedures to minimize the potential for a frac-out associated with horizontal directional drilling;
- Procedures for timely detection of frac-outs;
- Procedures for timely response and remediation in the event a frac-out; and
- Monitoring of drilling and frac-out response activities by a qualified biologist.

BIO-3a Avoid Impacts to Valley Elderberry Longhorn Beetle: To the extent feasible, the project shall adhere to avoidance measures outlined in USFWS' Conservation Guidelines for Valley Elderberry Longhorn Beetle (USFWS 1999). This shall include the following avoidance measures:
• No less than 120 days prior to commencing construction, the locations of elderberry plants within 200 feet of open-cut construction areas shall be identified;
• Fence and flag all areas to be avoided during construction activities including all established elderberry shrubs within 200 feet of open-cut construction that will not be impacted by construction activities;
• No open-cut construction within 100 feet of the dripline of elderberry plants containing stems measuring 1.0 inch or greater in diameter at ground level;
• Construction personnel shall participate in a Contractor Environmental Awareness Training (CEAT). The CEAT shall communicate the need to avoid damaging the elderberry plants and the possible penalties for not complying with these requirements. The CEAT will instruct work crews about the status of the beetle and the need to protect its elderberry host plant;
• Erect signs every 50 feet along the edge of the avoidance area with the following information: "This area is habitat of the valley elderberry longhorn beetle, a threatened species, and must not be disturbed. This species is protected by the Endangered Species Act of 1973, as amended. Violators are subject to prosecution, fines, and imprisonment." The signs will be maintained for the duration of construction; and
• No insecticides, herbicides, fertilizers, or other chemicals that might harm the beetle or its host plant would be used within 100 feet of any elderberry plant.

**Minimize or Compensate for Impacts to Valley Elderberry Longhorn Beetle:** If elderberry plants occur within 100 feet of open-cut construction, their locations shall be reported to the USFWS. In areas where encroachment on the 100-foot buffer has been approved by USFWS, a minimum setback of at least 20 feet from the dripline of each elderberry plant shall be provided, as feasible. For any encroachment into the 100-foot buffer or removal of elderberry plants, the Partner Agencies shall implement measures to compensate for impacts to VELB. Compensation measures shall be consistent with USFWS' Conservation Guidelines for Valley Elderberry Longhorn Beetle (USFWS 1999). This shall include establishment of a project-specific VELB Conservation Area or purchase of credits at a USFWS-approved mitigation bank. If the Partner Agencies establish a project-specific Conservation Area, the population of VELBs, the general condition of the Conservation Area, and the condition of the elderberry and associated native plantings in the Conservation Area shall be monitored over a period of ten (10) years. Monitoring and reporting shall be conducted in accordance with the Conservation Guidelines for VELB (USFWS 1999). A minimum survival rate of at least 60 percent of the elderberry plants and 60 percent of the associated native plants shall be maintained throughout the monitoring period.
Finding: Changes or alterations have been required in, or incorporated into, the project which
avoid or substantially lessen the significant environmental effect identified in the Final EIR. The
project has been revised to require implementation of Mitigation Measures BIO-1d, BIO-3a and
BIO-3b, and, as a result, this impact would be considered less than significant after mitigation.

Rationale: The project has been revised to require implementation of Mitigation Measures BIO
1d, BIO-3a and BIO-3b, which will ensure that effects on elderberry bushes are avoided and that
indirect impacts are minimized by establishing buffers areas for bushes adjacent to construction
areas. Preservation of habitat will be ensured by providing compensation if any bushes are
directly or indirectly affected during construction. Therefore, with the implementation of these
measures, the impact will be less than significant.

Effects of construction on special-status fish

Impact BIO-4: The project would cross the San Joaquin River using trenchless construction
techniques. Fish could be affected by pile driving adjacent to the San Joaquin
River, or by a frac-out during construction. This would be considered a
potentially significant impact.

Mitigation Measures

BIO-4a

Minimize Pile Driving-related Impacts to Special Status Fish: If impact
pile driving activities occur adjacent to the San Joaquin River between
October 1 and May 31, the Project Proponents shall adhere to the following
restrictions on the number of allowable strikes for a 24 hour period:

<table>
<thead>
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<th>Distance from San Joaquin River (Meters)</th>
<th>Distance from San Joaquin River (Feet)</th>
<th>Maximum Number of Strikes per 24 hours</th>
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<tr>
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<td>1902</td>
</tr>
<tr>
<td>&gt;450</td>
<td>&gt;1476</td>
<td>no limit</td>
</tr>
</tbody>
</table>

BIO-1d

Develop and Implement a Frac-out Contingency Plan for Trenchless
Construction: Prior to constructing a crossing(s) of the San Joaquin River, a
Frac-out Prevention and Contingency Plan shall be developed and submitted
by the City of Modesto to the California State Lands Commission for review.
At minimum, the plan shall prescribe the measures to ensure protection of
aquatic resources, special-status plants and wildlife, including:
- Procedures to minimize the potential for a frac-out associated with horizontal directional drilling;
- Procedures for timely detection of frac-outs;
- Procedures for timely response and remediation in the event a frac-out; and
- Monitoring of drilling and frac-out response activities by a qualified biologist.

**Findings:** Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect identified in the Final EIR. The project has been revised to require implementation of Mitigation Measures BIO-4a and BIO-1d, and, as a result, this impact would be considered **less than significant** after mitigation.

**Rationale:** The project has been revised to require implementation of Mitigation Measures BIO-4a and BIO-1d, which would minimize effects of construction. Effects on fish would be minimized by limiting pile driving adjacent to the river to acceptable levels. A frac-out prevention plan would be implemented to ensure that fish are protected from an uncontrolled release of drilling fluids. Therefore, with the implementation of these measures, the impact will be **less than significant**.

**Effects on giant garter snake (GGS)**

**Impact BIO-6:** Giant garter snakes could be affected by construction in upland habitat adjacent to small drainages that would be crossed by pipelines. This would be considered a **potentially significant impact**.

**Mitigation Measures**

**BIO-6  Avoid and Minimize Impacts to Giant Garter Snake:** The following measures shall be implemented to avoid or minimize impacts to GGS:
- Trenchless construction techniques shall be used to construct the pipeline crossing in potential aquatic habitat for GGS (applicable to Alternatives 1 and 2 only);
- Construction personnel shall participate in a Contractor Environmental Awareness Training (CEAT). Under this program, workers shall be informed about GGS and habitat, the species life history, conservation goals, identification of the snake, and procedures to follow in the event of a possible sighting;
- Within 24-hours prior to commencement of construction activities, the site shall be inspected by a qualified biologist who is approved by the USFWS. The biologist shall provide the Service with a field report form documenting the monitoring efforts within 24-hours of commencement of construction activities. A qualified biologist shall be on-site during all construction activity within 200 feet of potential habitat for GGS (Survey areas are shown in Attachment A to the MMRP). If a snake is encountered during construction activities, the
biologist shall have the authority to stop construction activities until appropriate corrective measures have been completed or it is determined that the snake would not be harmed;

- Erosion control materials including silt curtains, silt fencing, and erosion control wattles shall be regularly inspected for entanglement or entrapment of the snake. No erosion control devices containing plastic netting (including photo- or biodegradable plastic netting) shall be used;
- Stockpiling of construction materials, portable equipment, vehicles, and supplies shall be restricted to the designated construction staging areas which shall be greater than 200 feet from GGS aquatic habitat;
- Clearing of wetland vegetation, if any, shall be confined to the minimal area necessary to construct the pipeline or intake; and
- After completion of construction activities, any temporary fill and construction debris shall be removed. Disturbed areas shall be restored to pre-project conditions. Restoration work shall include replanting native emergent vegetation, where appropriate.

Findings: Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect identified in the Final EIR. The project has been revised to require implementation of Mitigation Measure BIO-6, and as a result, this impact would be considered less than significant after mitigation.

Rationale: Implementation of Mitigation Measure BIO-6 will ensure construction avoids suitable habitat for giant garter snake (GGS) to the extent feasible. Where disturbance is unavoidable, this measure would ensure that pre-construction surveys and on-site monitoring is implemented to insure protection of GGS, and habitats would be restored after construction. Therefore, with the implementation of these measures, the impact will be less than significant.

Impacts to western pond turtle

Impact BIO-8: The project has the potential to affect habitat for western pond turtle in areas where pipelines cross aquatic habitat. This would be considered a potentially significant impact.

Mitigation Measures

BIO-8 Avoid and Minimize Impacts to Western Pond Turtle: The following measures shall be implemented to avoid or minimize impacts to western pond turtle:

- To the extent feasible, trenchless construction techniques shall be used where pipelines cross potential aquatic habitat for western pond turtle;
- Construction personnel shall participate in a Contractor Environmental Awareness Training (CEAT). Under this program, workers shall be informed about western pond turtle and their habitat, conservation
goals, identification, and procedures to follow in the event of a possible sighting; and

- Pre-construction surveys for western pond turtle shall be conducted by a qualified biologist 14 days before and 24 hours before the start of construction activities where suitable habitat exists (Survey are shown in Attachment A to the MMRP). If western pond turtle or their nests are observed during pre-construction surveys, the following measures shall be implemented:
  - A qualified biologist shall be on site to monitor construction in suitable habitat. If a western pond turtle is present within 50 feet of a construction area, no vegetation clearing or ground disturbing activities shall be conducted until the turtle leaves the area on its own volition.
  - If western pond turtle nests are identified in the work area during pre-construction surveys, a 100-foot no-disturbance buffer shall be established between the nest and any areas of potential disturbance. Buffers shall be clearly marked with temporary fencing. Construction shall not be allowed to commence in the exclusion area until hatchlings have emerged from the nest, or the nest is deemed inactive by a qualified biologist.

Findings: Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect identified in the Final EIR. The project has been revised to require implementation of Mitigation Measure BIO-8, and, as a result, this impact would be considered less than significant after mitigation.

Rationale: Implementation of Mitigation Measure BIO-8 will ensure construction avoids suitable habitat for western pond turtle to the extent feasible. Where disturbance is unavoidable, this measure would ensure that pre-construction surveys and on-site monitoring are implemented to insure protection of western pond turtle. Any nesting pond turtles would be protected through use of no-disturbance buffers. Therefore, with the implementation of these measures, the impact will be less than significant.

Impacts to burrowing owls

Impact BIO-9: The project has the potential to affect burrowing owls during construction. This would be considered a potentially significant impact.

Mitigation Measures

BIO-9  Avoid, Minimize, or Compensate for Impacts to Burrowing Owl: Prior to initiating ground-disturbing activities, surveys for burrowing owls shall be conducted in accordance with protocols established in the Staff Report on Burrowing Owl Mitigation (CDFG 2012 or current version). If ground-disturbing activities are delayed or suspended for more than 30 days after the pre-construction survey, the site shall be resurveyed. If burrowing owls are
detected, disturbance to burrows shall be avoided during the nesting season (February 1 through August 31). Buffers shall be established around occupied burrows in accordance with guidance provided in the Staff Report on Burrowing Owl Mitigation, and at the discretion of a qualified wildlife biologist. Buffers around occupied burrows shall be a minimum of 656 feet (200 meters) during the breeding season, and 160 feet (100 meters) during the non-breeding season. Buffer distances shall be subject to the approval of CDFW.

If occupied burrows cannot be avoided, passive owl relocation techniques may be implemented outside of the nesting season (February 1 through August 31). Owls would be excluded from burrows within 160 feet of construction by installing one-way doors in burrow entrances. The work area shall be monitored daily for 1 week to confirm owl departure from burrows prior to any ground-disturbing activities. Where possible burrows shall be excavated using hand tools and refilled to prevent reoccupation. Sections of flexible plastic pipe shall be inserted into the tunnels during excavation to maintain an escape route for any animals inside the burrow.

If occupied burrows are relocated, the Partners Agencies shall enhance or create burrows in adjacent habitat at a 1:1 ratio (burrows destroyed to burrows enhanced or created) one week prior to implementation of passive relocation techniques. If burrowing owl habitat enhancement or creation takes place, the Partners Agencies shall develop and implement a monitoring and management plan to assess the effectiveness of the mitigation. The plan shall be subject to the approval of CDFW.

Findings: Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect identified in the Final EIR. The project has been revised to require implementation of Mitigation Measure BIO-9, and, as a result, this impact would be considered less than significant after mitigation.

Rationale: Implementation of Mitigation Measure BIO-9 will ensure construction avoids burrowing owls to the extent feasible. Where disturbance is unavoidable, this measure would ensure that pre-construction surveys and on-site monitoring is implemented to insure protection of burrowing owls. Any nesting owls would be protected through use of no-disturbance buffers, or, if necessary, passive relocation techniques combined with creating or enhancement of burrows in adjacent areas. Therefore, with the implementation of these measures, the impact will be less than significant.

Impacts to tricolored blackbird

Impact BIO-10: The project has the potential to affect tricolored blackbirds during construction. This would be considered a potentially significant impact.
Mitigation Measures

BIO-10 Avoid and Minimize Impacts to Tricolored Blackbird Nesting Colonies:
The following measures shall be implemented to avoid or minimize impacts to tricolored blackbird:

- To the extent feasible, trenchless construction techniques shall be used in areas that support emergent vegetation;
- During the breeding season (February 1 through August 31), pre-construction surveys for tricolored blackbird shall be conducted in suitable nesting habitat by a qualified biologist no more than 15 days prior to scheduled work. Suitable nesting habitat includes any of the following: (a) dense vegetation near open water; (b) emergent marsh vegetation, especially cattails and bulrush; (c) thickets of willow, blackberry, wild rose, or thistles; or (d) silage and other grain fields such as sorghum; and
- If tricolored blackbird breeding is detected, a 500 foot no-disturbance buffer shall be established around the breeding site. The buffer shall be maintained until a qualified biologist has determined that young have fledged and are no longer reliant upon the nest or parental care for survival.

Findings: Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect identified in the Final EIR. The project has been revised to require implementation of Mitigation Measure BIO-10, and, as a result, this impact would be considered less than significant after mitigation.

Rationale: Implementation of Mitigation Measure BIO-10 will ensure construction avoids habitat for tricolored blackbird to the extent feasible. Where disturbance is unavoidable, this measure would ensure that pre-construction surveys and on-site monitoring are implemented to insure protection of tricolored blackbird. Any nesting tricolored blackbird would be protected through use of no-disturbance buffers. Therefore, with the implementation of these measures, the impact will be less than significant.

Impacts to nesting raptors

Impact BIO-12: The project has the potential to affect nesting raptors during construction. This would be considered a potentially significant impact.

Mitigation Measures

BIO-12 Avoid, Minimize, or Compensate for Impacts to Raptors including Special-status species:

- If ground and vegetation disturbing activities occur between February 1 and September 15, a nesting raptor survey, with a focus on Swainson’s hawk and white-tailed kite, shall be conducted in accordance with Recommended Timing and Methodology for
Swainson’s Hawk Nesting Survey’s in California’s Central Valley (Swainson’s Hawk Technical Advisory Committee 2000, or current CDFW guidance). Surveys shall cover a minimum of a 0.5-mile radius around potentially suitable nesting habitat for Swainson’s hawk and white-tailed kite (Survey areas are shown in Attachment A to the MMRP). Agricultural lands within 1,000 feet of open-cut construction areas shall be surveyed for northern harrier nests.

- If nesting raptors are detected, a no-disturbance buffer shall be established around the nest. Buffers shall be established by a qualified biologist, with consultation with the California Department of Fish and Wildlife, as appropriate. No construction activities shall be initiated within the buffer until fledglings are fully mobile and no longer reliant upon the nest or parental care for survival. Construction must either be started before nests are established, or if nesting birds are already present, construction within the buffer zone would have to be delayed until nesting is done for the season.

- If an active Swainson’s hawk or white-tailed kite nest is located within a 0.5-mile radius of an active work area, a biologist shall be on site daily to monitor the nest. The biologist shall monitor for behavioral changes that would suggest the birds are stressed by construction activity or the nest may be abandoned. Such behaviors may include excessive vocalization, a startled response coincident with a loud noise or changes in the viewshed, or prolonged absence from the nest by adults. If the biologists determines that nest success may be adversely impacted by construction, then construction shall be discontinued within 0.5 mile of the nest.

- Trees that would need to be removed for construction would be surveyed to determine if they are suitable for raptor nesting.

- If potential raptor nesting trees are to be removed during construction activities, removal shall take place outside of Swainson’s hawk nesting season. Suitable nest trees for raptors shall be replaced at a ratio of 3:1 with appropriate species [e.g., valley oak (Quercus lobata), coast live oak (Q. agrifolia),, Fremont cottonwood (Populus fremontii)]. The trees shall be planted within 5 miles of the removal location, in areas appropriate for raptor nesting, and on land owned or managed by one of the Partner Agencies. If replacement planting is implemented, monitoring shall be conducted annually for 5 years to assess the mitigation’s effectiveness. The performance standard for the mitigation shall be 65% survival of all replacement plantings.

Findings: Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect identified in the Final EIR. The project has been revised to require implementation of Mitigation Measure BIO-12, and, as a result, this impact would be considered less than significant after mitigation.
Rationale: Implementation of Mitigation Measure BIO-12 will ensure that pre-construction surveys and on-site monitoring are implemented to insure protection of nesting raptors. Any nesting raptors will be protected through use of appropriate no-disturbance buffers and the project would include compensation for any impacts to nesting habitat. Therefore, with the implementation of these measures, the impact will be less than significant.

Impacts to special-status passerine species and other birds protected under the MBTA

Impact BIO-13: The project has the potential to other nesting birds during construction, including special status passerines including Least Bell’s vireo (LBV) and other birds that are protected under the Migratory Bird Treaty Act. This would be considered a potentially significant impact.

Mitigation Measures

BIO-13 Avoid and Minimize Impacts to Special-status passerine species and other Bird Protected under the MBTA:

- If ground and vegetation disturbing activities occur between February 1 and September 15, a survey for nesting birds shall be conducted within a 500-ft radius of the construction area. If nests are detected, buffers around nests shall be established. No-disturbance buffers around special-status passerine nests shall be 500 feet and 250 feet for non-listed birds protected under the MBTA and Fish and Game Code sections 3503 and 3513, unless a qualified CDFW biologist determines that smaller buffers shall be sufficient to minimize impacts to nesting birds. Factors to be considered for determining buffer size shall include: the presence of natural buffers provided by vegetation or topography; nest height; locations of foraging territory; and baseline levels of noise and human activity. Buffers shall be maintained until a qualified biologist has determined that young have fledged and are no longer reliant upon the nest or parental care for survival.
- Prior to commencing a crossing(s) of the San Joaquin River the Project Partners shall conduct surveys for LBV in accordance with USFWS’ Least Bell’s Vireo Survey Guidelines (USFWS 2011a). If LBV are detected during the surveys, the Project Partners shall consult with the USFWS to determine appropriate avoidance measures. The performance standard for avoidance shall be no potential impacts to an established LBV nest. This shall be accomplished by establishing a no-disturbance buffer around the active nest. The no-disturbance buffer shall be a minimum of 500 feet, but may be larger depending on site specific conditions and consultation with USFWS.

Findings: Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect identified in the Final EIR. The project has been revised to require implementation of Mitigation Measure BIO-13, and, as a result, this impact would be considered less than significant after mitigation.
**Rationale:** Implementation of Mitigation Measure BIO-13 will ensure that pre-construction surveys and on-site monitoring are implemented to insure protection of nesting birds. Any nesting birds will be protected through use of appropriate no-disturbance buffers. Therefore, with the implementation of these measures, the impact will be less than significant.

**Impacts to San Joaquin kit fox**

**Impact BIO-14:** Although San Joaquin kit fox are unlikely to occur in the project area, there presence cannot be ruled out, so the project has the potential to affect San Joaquin kit fox during construction. This would be considered a potentially significant impact.

**Mitigation Measures**

**BIO-14a  **  **Avoid and Minimize Impacts to San Joaquin kit fox:**

* Project-related activities will avoid affecting the alkali scrub/flat habitat in the action area. Avoidance is defined as no direct or indirect effects to habitat.
* A qualified biologist will conduct preconstruction surveys no less than 14 days and no more than 30 days before the commencement of activities to identify potential dens more than 5 inches in diameter within 200 feet of ground disturbing activities. The Project Partners will implement USFWS’ (2011b) Standardized Recommendations for Protection of San Joaquin Kit Fox Prior to or During Ground Disturbance. The Project Partners will notify USFWS in writing of the results of the preconstruction survey within 30 days after these activities are completed.
* If potential dens are located within the proposed work area and cannot be avoided during construction activities, a USFWS-approved biologist will determine if the dens are occupied. If occupied dens are present within the proposed work, their disturbance will be avoided. Exclusion zones will be implemented following the most current USFWS procedures (currently USFWS 2011b). The Project Partners will notify USFWS immediately if a natal or pupping den is found in the survey area, and will present the results of pre-activity den searches within 5 days after these activities are completed and before the start of construction activities in the area.

**Findings:** Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect identified in the Final EIR. The project has been revised to require implementation of Mitigation Measure BIO-14, and, as a result, this impact would be considered less than significant after mitigation.

**Rationale:** Implementation of Mitigation Measure BIO-14 will ensure that kit fox habitat is avoided to the extent feasible and will ensure that pre-construction surveys and on-site monitoring are implemented to insure protection of kit fox dens. Any dens will be protected
through use of appropriate no-disturbance buffers. Therefore, with the implementation of these measures, the impact will be less than significant.

Impacts to riparian habitat and other sensitive natural communities

Impact BIO-15: Construction would minimize impacts through use of trenchless construction, but riparian areas and other sensitive natural communities could be affected by sedimentation or alteration of drainage patterns. This would be considered a potentially significant impact.

Mitigation Measures

BIO-1d Develop and Implement a Frac-out Contingency Plan for Trenchless Construction: Prior to constructing a crossing(s) of the San Joaquin River, a Frac-out Prevention and Contingency Plan shall be developed and submitted by the City of Modesto to the California State Lands Commission for review. At minimum, the plan shall prescribe the measures to ensure protection of aquatic resources, special-status plants and wildlife, including:

- Procedures to minimize the potential for a frac-out associated with horizontal directional drilling;
- Procedures for timely detection of frac-outs;
- Procedures for timely response and remediation in the event a frac-out; and
- Monitoring of drilling and frac-out response activities by a qualified biologist.

BIO-16a Avoid and Minimize Impacts to Federally Protected Wetlands: To the extent feasible, project-related activities shall avoid federally protected wetlands. To the extent feasible, the proposed project shall minimize potential impacts to federally protected wetlands by utilizing trenchless construction techniques. A SWPPP shall be implemented to reduce the potential for sediments and contaminants to enter wetlands and waters. After construction, surface topography and drainage shall be restored to pre-construction conditions. Where appropriate, revegetation shall be implemented with site-adapted native species.

BIO-16b Obtain Regulatory Permits for Work Activities Taking Place in Wetlands and Waters of the United States and the State: Work within areas defined as waters of the U.S. that includes placement of fill will require a CWA Section 404 permit and Section 401 Water Quality Certification. All work proposed in jurisdictional waters of the U.S. shall be authorized under these permits, and the work shall comply with the general and regional conditions of the permits. In areas where disturbance to jurisdictional waters or wetlands occurs, the Partner Agencies shall implement mitigation consistent with the terms of a CWA Nationwide Permit and/or the Final Rule on Compensatory Mitigation for Losses of Aquatic Resources (73 C.F.R. 19594). Compensatory
mitigation may include creation, re-establishment, or enhancement of wetlands in the Project Area or at an off-site location. Compensatory mitigation may also include purchase of credits at an approved mitigation bank or contribution to an approved in-lieu fee program.

**Findings:** Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect identified in the Final EIR. The project has been revised to require implementation of Mitigation Measures BIO-1d, BIO-16a and BIO-16b, and, as a result, this impact would be considered less than significant after mitigation.

**Rationale:** Implementation of Mitigation Measures BIO-1d, BIO-16a and BIO-16b will ensure that riparian habitats and other sensitive natural communities are avoided to the extent feasible and will ensure that sensitive areas are protected from runoff from construction areas. Restoration of any affected areas, combined with compensatory mitigation, if needed, would ensure that there is no loss of sensitive habitat. Therefore, with the implementation of these measures, the impact will be less than significant.

**Impacts to federally protected wetlands**

**Impact BIO-16:** Construction would minimize impacts through use of trenchless construction, but some jurisdictional areas may be crossed by pipelines and could be affected by sedimentation or alteration of drainage patterns. This would be considered a potentially significant impact.

**Mitigation Measures**

**BIO-1d**  
**Develop and Implement a Frac-out Contingency Plan for Trenchless Construction:** Prior to constructing a crossing(s) of the San Joaquin River, a Frac-out Prevention and Contingency Plan shall be developed and submitted by the City of Modesto to the California State Lands Commission for review. At minimum, the plan shall prescribe the measures to ensure protection of aquatic resources, special-status plants and wildlife, including:

- Procedures to minimize the potential for a frac-out associated with horizontal directional drilling;
- Procedures for timely detection of frac-outs;
- Procedures for timely response and remediation in the event a frac-out; and
- Monitoring of drilling and frac-out response activities by a qualified biologist.

**BIO-16a**  
**Avoid and Minimize Impacts to Federally Protected Wetlands:** To the extent feasible, project-related activities shall avoid federally protected wetlands. To the extent feasible, the proposed project shall minimize potential impacts to federally protected wetlands by utilizing trenchless construction techniques. A SWPPP shall be implemented to reduce the potential for sediments and contaminants to enter wetlands and waters. After construction,
surface topography and drainage shall be restored to pre-construction conditions. Where appropriate, revegetation shall be implemented with site-adapted native species.

BIO-16b

**Obtain Regulatory Permits for Work Activities Taking Place in Wetlands and Waters of the United States and the State:** Work within areas defined as waters of the U.S. that includes placement of fill will require a CWA Section 404 permit and Section 401 Water Quality Certification. All work proposed in jurisdictional waters of the U.S. shall be authorized under these permits, and the work shall comply with the general and regional conditions of the permits. In areas where disturbance to jurisdictional waters or wetlands occurs, the Partner Agencies shall implement mitigation consistent with the terms of a CWA Nationwide Permit and/or the Final Rule on Compensatory Mitigation for Losses of Aquatic Resources (73 C.F.R. 19594). Compensatory mitigation may include creation, re-establishment, or enhancement of wetlands in the Project Area or at an off-site location. Compensatory mitigation may also include purchase of credits at an approved mitigation bank or contribution to an approved in-lieu fee program.

**Findings:** Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect identified in the Final EIR. The project has been revised to require implementation of Mitigation Measures BIO-1d, BIO-16a and BIO-16b, and, as a result, this impact would be considered **less than significant** after mitigation.

**Rationale:** Implementation of Mitigation Measures BIO-1d, BIO-16a and BIO-16b will ensure that federally protected wetlands are avoided to the extent feasible and will ensure that sensitive areas are protected from runoff from construction areas. Restoration of any affected areas, combined with compensatory mitigation, if needed, would ensure that there is no loss of wetlands. Therefore, with the implementation of these measures, the impact will be **less than significant**.

**Impacts to movement of fish and wildlife and use of breeding areas**

**Impact BIO-17:** Construction would minimize impacts through use of trenchless construction, but some wildlife breeding occurs in agricultural lands, natural drainages and other wetlands, and trees that provide nesting habitat could be affected during construction. This would be considered a **potentially significant impact.**

**Mitigation Measures**

BIO-6 **Avoid and Minimize Impacts to Giant Garter Snake:** The following measures shall be implemented to avoid or minimize impacts to GGS:

- Trenchless construction techniques shall be used to construct the pipeline crossing in potential aquatic habitat for GGS (applicable to Alternatives 1 and 2 only);
• Construction personnel shall participate in a Contractor Environmental Awareness Training (CEAT). Under this program, workers shall be informed about GGS and habitat, the species life history, conservation goals, identification of the snake, and procedures to follow in the event of a possible sighting;

• Within 24-hours prior to commencement of construction activities, the site shall be inspected by a qualified biologist who is approved by the USFWS. The biologist shall provide the Service with a field report form documenting the monitoring efforts within 24-hours of commencement of construction activities. A qualified biologist shall be on-site during all construction activity within 200 feet of potential habitat for GGS (Survey areas are shown in Attachment A to the MMRP). If a snake is encountered during construction activities, the biologist shall have the authority to stop construction activities until appropriate corrective measures have been completed or it is determined that the snake would not be harmed;

• Erosion control materials including silt curtains, silt fencing, and erosion control wattles shall be regularly inspected for entanglement or entrapment of the snake. No erosion control devices containing plastic netting (including photo- or biodegradable plastic netting) shall be used;

• Stockpiling of construction materials, portable equipment, vehicles, and supplies shall be restricted to the designated construction staging areas which shall be greater than 200 feet from GGS aquatic habitat;

• Clearing of wetland vegetation, if any, shall be confined to the minimal area necessary to construct the pipeline or intake; and

• After completion of construction activities, any temporary fill and construction debris shall be removed. Disturbed areas shall be restored to pre-project conditions. Restoration work shall include replanting native emergent vegetation, where appropriate.

BIO-8

Avoid and Minimize Impacts to Western Pond Turtle: The following measures shall be implemented to avoid or minimize impacts to western pond turtle:

• To the extent feasible, trenchless construction techniques shall be used where pipelines cross potential aquatic habitat for western pond turtle;

• Construction personnel shall participate in a Contractor Environmental Awareness Training (CEAT). Under this program, workers shall be informed about western pond turtle and their habitat, conservation goals, identification, and procedures to follow in the event of a possible sighting; and

• Pre-construction surveys for western pond turtle shall be conducted by a qualified biologist 14 days before and 24 hours before the start of construction activities where suitable habitat exists (Survey are shown in Attachment A to the MMRP). If western pond turtle or their nests
are observed during pre-construction surveys, the following measures shall be implemented:

- A qualified biologist shall be on site to monitor construction in suitable habitat. If a western pond turtle is present within 50 feet of a construction area, no vegetation clearing or ground disturbing activities shall be conducted until the turtle leaves the area on its own volition.
- If western pond turtle nests are identified in the work area during pre-construction surveys, a 100-foot no-disturbance buffer shall be established between the nest and any areas of potential disturbance. Buffers shall be clearly marked with temporary fencing. Construction shall not be allowed to commence in the exclusion area until hatchlings have emerged from the nest, or the nest is deemed inactive by a qualified biologist.

**Avoid, Minimize, or Compensate for Impacts to Burrowing Owl:** Prior to initiating ground-disturbing activities, surveys for burrowing owls shall be conducted in accordance with protocols established in the Staff Report on Burrowing Owl Mitigation (CDFG 2012 or current version). If ground-disturbing activities are delayed or suspended for more than 30 days after the pre-construction survey, the site shall be resurveyed. If burrowing owls are detected, disturbance to burrows shall be avoided during the nesting season (February 1 through August 31). Buffers shall be established around occupied burrows in accordance with guidance provided in the Staff Report on Burrowing Owl Mitigation, and at the discretion of a qualified wildlife biologist. Buffers around occupied burrows shall be a minimum of 656 feet (200 meters) during the breeding season, and 160 feet (100 meters) during the non-breeding season. Buffer distances shall be subject to the approval of CDFW.

If occupied burrows cannot be avoided, passive owl relocation techniques may be implemented outside of the nesting season (February 1 through August 31). Owls would be excluded from burrows within 160 feet of construction by installing one-way doors in burrow entrances. The work area shall be monitored daily for 1 week to confirm owl departure from burrows prior to any ground-disturbing activities. Where possible burrows shall be excavated using hand tools and refilled to prevent reoccupation. Sections of flexible plastic pipe shall be inserted into the tunnels during excavation to maintain an escape route for any animals inside the burrow.

If occupied burrows are relocated, the Partners Agencies shall enhance or create burrows in adjacent habitat at a 1:1 ratio (burrows destroyed to burrows enhanced or created) one week prior to implementation of passive relocation techniques. If burrowing owl habitat enhancement or creation takes place, the Partners Agencies shall develop and implement a monitoring and management plan to assess the effectiveness of the mitigation. The plan shall be subject to the approval of CDFW.
Avoid and Minimize Impacts to Tricolored Blackbird Nesting Colonies:
The following measures shall be implemented to avoid or minimize impacts to tricolored blackbird:

- To the extent feasible, trenchless construction techniques shall be used in areas that support emergent vegetation;
- During the breeding season (February 1 through August 31), pre-construction surveys for tricolored blackbird shall be conducted in suitable nesting habitat by a qualified biologist no more than 15 days prior to scheduled work. Suitable nesting habitat includes any of the following: (a) dense vegetation near open water; (b) emergent marsh vegetation, especially cattails and bulrush; (c) thickets of willow, blackberry, wild rose, or thistles; or (d) silage and other grain fields such as sorghum; and
- If tricolored blackbird breeding is detected, a 500 foot no-disturbance buffer shall be established around the breeding site. The buffer shall be maintained until a qualified biologist has determined that young have fledged and are no longer reliant upon the nest or parental care for survival.

Avoid, Minimize, or Compensate for Impacts to Raptors including Special-status species:

- If ground and vegetation disturbing activities occur between February 1 and September 15, a nesting raptor survey, with a focus on Swainson’s hawk and white-tailed kite, shall be conducted in accordance with Recommended Timing and Methodology for Swainson’s Hawk Nesting Survey’s in California’s Central Valley (Swainson’s Hawk Technical Advisory Committee 2000, or current CDFW guidance). Surveys shall cover a minimum of a 0.5-mile radius around potentially suitable nesting habitat for Swainson’s hawk and white-tailed kite (Survey areas are shown in Attachment A to the MMRP). Agricultural lands within 1,000 feet of open-cut construction areas shall be surveyed for northern harrier nests.
- If nesting raptors are detected, a no-disturbance buffer shall be established around the nest. Buffers shall be established by a qualified biologist, with consultation with the California Department of Fish and Wildlife, as appropriate. No construction activities shall be initiated within the buffer until fledglings are fully mobile and no longer reliant upon the nest or parental care for survival. Construction must either be started before nests are established, or if nesting birds are already present, construction within the buffer zone would have to be delayed until nesting is done for the season.
- If an active Swainson’s hawk or white-tailed kite nest is located within a 0.5-mile radius of an active work area, a biologist shall be on site daily to monitor the nest. The biologist shall monitor for behavioral changes that would suggest the birds are stressed by construction
activity or the nest may be abandoned. Such behaviors may include excessive vocalization, a startled response coincident with a loud noise or changes in the viewshed, or prolonged absence from the nest by adults. If the biologists determines that nest success may be adversely impacted by construction, then construction shall be discontinued within 0.5 mile of the nest.

- Trees that would need to be removed for construction would be surveyed to determine if they are suitable for raptor nesting.
- If potential raptor nesting trees are to be removed during construction activities, removal shall take place outside of Swainson’s hawk nesting season. Suitable nest trees for raptors shall be replaced at a ratio of 3:1 with appropriate species [e.g., valley oak (Quercus lobata), coast live oak (Q. agrifolia), Fremont cottonwood (Populus fremontii)]. The trees shall be planted within 5 miles of the removal location, in areas appropriate for raptor nesting, and on land owned or managed by one of the Partner Agencies. If replacement planting is implemented, monitoring shall be conducted annually for 5 years to assess the mitigation’s effectiveness. The performance standard for the mitigation shall be 65% survival of all replacement plantings.

**BIO-13**

**Avoid and Minimize Impacts to Special-status passerine species and other Bird Protected under the MBTA:**

- If ground and vegetation disturbing activities occur between February 1 and September 15, a survey for nesting birds shall be conducted within a 500-ft radius of the construction area. If nests are detected, buffers around nests shall be established. No-disturbance buffers around special-status passerine nests shall be 500 feet and 250 feet for non-listed birds protected under the MBTA and Fish and Game Code sections 3503 and 3513, unless a qualified CDFW biologist determines that smaller buffers shall be sufficient to minimize impacts to nesting birds. Factors to be considered for determining buffer size shall include: the presence of natural buffers provided by vegetation or topography; nest height; locations of foraging territory; and baseline levels of noise and human activity. Buffers shall be maintained until a qualified biologist has determined that young have fledged and are no longer reliant upon the nest or parental care for survival.

- Prior to commencing a crossing(s) of the San Joaquin River the Project Partners shall conduct surveys for LBV in accordance with USFWS’ Least Bell’s Vireo Survey Guidelines (USFWS 2011a). If LBV are detected during the surveys, the Project Partners shall consult with the USFWS to determine appropriate avoidance measures. The performance standard for avoidance shall be no potential impacts to an established LBV nest. This shall be accomplished by establishing a no-disturbance buffer around the active nest. The no-disturbance buffer shall be a minimum of 500 feet, but may be larger depending on site specific conditions and consultation with USFWS.
Install Temporary Trench Plates Over Open Trenches: During construction of the pipeline, temporary trench plates will be installed over open trenches at the end of each work day.

Findings: Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect identified in the Final EIR. The project has been revised to require implementation of Mitigation Measures BIO-6, BIO-8, BIO-9, BIO-10, BIO-12, BIO-13, and, TR-2 as a result, this impact would be considered less than significant after mitigation.

Rationale: Implementation of Mitigation Measures BIO-6, BIO-8, BIO-9, BIO-10, BIO-12, BIO-13, and, TR-2 will ensure that preconstruction surveys are conducted and buffer zones implemented as needed to ensure that breeding areas are not disrupted, trenches are covered so that effects on wildlife movement are minimized, and trees are replanted as needed. Therefore, with the implementation of these measures, the impact will be less than significant.

Conflict with local ordinances or policies protecting biological resources

Impact BIO-18: Construction would minimize impacts through use of trenchless construction and avoidance of sensitive habitat, but sensitive resources could be affected by sedimentation or alteration of drainage patterns. This would be considered a potentially significant impact.

Mitigation Measures

BIO-1d Develop and Implement a Frac-out Contingency Plan for Trenchless Construction: Prior to constructing a crossing(s) of the San Joaquin River, a Frac-out Prevention and Contingency Plan shall be developed and submitted by the City of Modesto to the California State Lands Commission for review. At minimum, the plan shall prescribe the measures to ensure protection of aquatic resources, special-status plants and wildlife, including:

- Procedures to minimize the potential for a frac-out associated with horizontal directional drilling;
- Procedures for timely detection of frac-outs;
- Procedures for timely response and remediation in the event a frac-out; and
- Monitoring of drilling and frac-out response activities by a qualified biologist.

BIO-2a Avoid Impacts to Vernal Pool Branchiopods and their Habitat: To the extent feasible, the project-related activities shall avoid impacts to habitat with the potential to support Conservancy fairy shrimp, longhorn fairy shrimp, vernal pool fairy shrimp, and vernal pool tadpole shrimp, including alkali pools and swales. Avoidance shall be defined as no direct or indirect effects to
suitable habitat. This shall be accomplished by avoiding construction within the microwatershed of suitable habitat for vernal pool branchiopods.

**BIO-16a** 

**Avoid and Minimize Impacts to Federally Protected Wetlands:** To the extent feasible, project-related activities shall avoid federally protected wetlands. To the extent feasible, the proposed project shall minimize potential impacts to federally protected wetlands by utilizing trenchless construction techniques. A SWPPP shall be implemented to reduce the potential for sediments and contaminants to enter wetlands and waters. After construction, surface topography and drainage shall be restored to pre-construction conditions. Where appropriate, revegetation shall be implemented with site-adapted native species.

**Findings:** Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect identified in the Final EIR. The project has been revised to require implementation of Mitigation Measures BIO-1d, BIO-2a and BIO-16a, and, as a result, this impact would be considered less than significant after mitigation.

**Rationale:** Implementation of Mitigation Measures BIO-1d, BIO-2a and BIO-16a will ensure that federally protected wetlands, including vernal pools, are avoided to the extent feasible and will ensure that sensitive areas are protected from runoff from construction areas. Restoration of any affected areas, combined with compensatory mitigation, if needed, would ensure that there is no loss of sensitive habitats. Therefore, with the implementation of these measures, the impact will be less than significant.

**Cumulative impacts to fish and their habitat in the San Joaquin River**

**Impact BIO-CUM-2:** The reduction in flows due to the NVRRWP would be minimal, but because the San Joaquin River has already been modified and degraded the small incremental contribution to an already cumulatively substantial impact is considered a potentially significant impact.

**Mitigation Measures**

**BIOCUM-1** 

**Assistance with Salmonid Recover Plan Actions:** The NVRRWP Project Partners would work with Reclamation and with resource agencies, including NMFS, USFWS, and CDFW to assist in implementation the following recovery actions from the Recovery Plan for Central Valley Chinook Salmon and Steelhead.

- Implement projects that improve wastewater treatment in the San Joaquin River watershed. The NVRRWP as designed would reduce the input of nutrients and salinity to the San Joaquin River, and as such the proposed project already addresses this recovery action.
• Develop and implement a spawning gravel augmentation plan in the San Joaquin River. The NVRRWP Project Partners would make a cash contribution to an existing restoration program or organization working to augment spawning gravels. The funding could assist in programs being implemented as part of Reclamation's San Joaquin River Restoration Program, the USFWS Anadromous Fish Restoration Program, or other relevant restoration program.

Findings: Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect identified in the Final EIR. The project has been revised to require implementation of Mitigation Measure BIOCUM-1 and, as a result, this impact would be considered less than significant after mitigation.

Rationale: Implementation of Mitigation Measure BIOCUM-1 will address existing degraded conditions on the San Joaquin River by reducing the input of nutrients and salinity to the river, and contributing to improvements of spawning gravels on the river. Therefore, with the implementation of these measures, the impact will be less than significant.

3.5 CULTURAL RESOURCES

Impact CUL-1: No archeological resources as defined under CEQA have been identified in the project area, and, there is no evidence suggesting a significant potential for human remains to be buried in the project area. However, excavation activities associated with project construction could disturb previously unidentified archaeological resources during project construction. This would be considered a potentially significant impact.

Mitigation Measures

CUL-1a Discovery of previously unknown archaeological resources during construction: The following measures shall be implemented in the event of unexpected discovery of archaeological resources:

• The project proponent shall note on any construction plans that require ground disturbing excavation that there is a potential for exposing buried cultural resources.

• The Partner Agencies shall retain a Professional Archaeologist to provide a pre-construction briefing to supervisory personnel of any excavation contractor to alert them to the possibility of exposing significant prehistoric archaeological resources within the study area. The briefing shall discuss any archaeological objects that could be exposed, the need to stop excavation at the discovery, and the procedures to follow regarding discovery protection and notification of the project proponent and archaeological team.

• The project proponent shall retain a Professional Archaeologist on an "on-call" basis during ground disturbing construction for the project to review, identify and evaluate cultural resources that may be
inadvertently exposed during construction. The archaeologist shall review and evaluate any discoveries to determine if they are historical resource(s) and/or unique archaeological resources under CEQA.

- If cultural resources are encountered during the project, construction personnel shall avoid altering these materials and their context until a Professional Archaeologist has evaluated the situation. Project personnel shall not collect or retain cultural resources. Prehistoric resources include, but are not limited to, chert or obsidian flakes, projectile points, mortars, and pestles; and dark, friable soil containing shell and bone, dietary debris, heat-affected rock, or human burials. Historical resources include stone or adobe foundations or walls, structures and remains with square nails, and refuse deposits, often in old wells and privies.

- If the Professional Archaeologist determines that any cultural resources exposed during construction constitute a historical resource and/or unique archaeological resource, he/she shall notify the Partner Agencies and other appropriate parties of the evaluation and recommended measures to mitigate effects to a less-than significant impact. Mitigation measures may include avoidance, preservation in-place, recordation, additional archaeological testing and data recovery, among other options. Treatment of any significant cultural resources shall be undertaken with the approval of the U.S. Bureau of Reclamation and other lead agencies.

- Any identified cultural resources shall be recorded on forms DPR 422 (archaeological sites) and/or DPR 523 (historic properties) or similar forms by a Professional Archaeologist.

**CUL-1b**

**Discovery of human burials during construction:** The treatment of human remains and of associated or unassociated funerary objects discovered during any soil-disturbing activity within the project shall comply with applicable State laws. This shall include immediate notification of the Stanislaus County Coroner (Stanislaus County Sheriff's Office).

In the event of the coroner's determination that the human remains are Native American, notification of the Native American Heritage Commission (NAHC) is required. The NAHC shall be notified by phone within 24 hours of the discovery and shall be afforded the opportunity to appoint a Most Likely Descendant (MLD) (PRC Section 5097.98). The archaeological consultant, project sponsor, and MLD shall make all reasonable efforts to develop an agreement for the treatment, with appropriate dignity, of human remains and associated or unassociated funerary objects (CEQA Guidelines Section 15064.5(d)). The agreement should take into consideration the appropriate excavation, removal, recordation, analysis, custodianship, curation, and final disposition of the human remains and associated or unassociated funerary objects. California Public Resources Code allows 48 hours to reach agreement on these matters. If the MLD and the other parties do not agree on the reburial method, the project will follow PRC Section 5097.98(b) which states that "the landowner or his or her authorized representative shall reinter
the human remains and items associated with Native American burials with appropriate dignity on the property in a location not subject to further subsurface disturbance."

**Findings:** Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect identified in the Final EIR. The project has been revised to require implementation of Mitigation Measures CUL-1a and CUL-1b, which will reduce the potential for harm to cultural resources to less than significant after mitigation.

**Rationale:** Mitigation measures CUL-1a and CUL-1b will ensure that resources discovered during construction are addressed and mitigated to avoid accidental damage, in compliance with CEQA requirements. Therefore, with the implementation of these measures, the impact will be less than significant.

**Impact CUL-2:** The project has been designed to avoid disturbance of known historical resources in the project area. However, excavation activities associated with project construction could disturb previously unidentified historical resources during project construction. This would be considered a potentially significant impact.

**Mitigation Measures**

**CUL-1a**

**Discovery of previously unknown archaeological resources during construction:** The following measures shall be implemented in the event of unexpected discovery of archaeological resources:

- The project proponent shall note on any construction plans that require ground disturbing excavation that there is a potential for exposing buried cultural resources.
- The Partner Agencies shall retain a Professional Archaeologist to provide a pre-construction briefing to supervisory personnel of any excavation contractor to alert them to the possibility of exposing significant prehistoric archaeological resources within the study area. The briefing shall discuss any archaeological objects that could be exposed, the need to stop excavation at the discovery, and the procedures to follow regarding discovery protection and notification of the project proponent and archaeological team.
- The project proponent shall retain a Professional Archaeologist on an "on-call" basis during ground disturbing construction for the project to review, identify and evaluate cultural resources that may be inadvertently exposed during construction. The archaeologist shall review and evaluate any discoveries to determine if they are historical resource(s) and/or unique archaeological resources under CEQA.
- If cultural resources are encountered during the project, construction personnel shall avoid altering these materials and their context until a Professional Archaeologist has evaluated the situation. Project
personnel shall not collect or retain cultural resources. Prehistoric resources include, but are not limited to, chert or obsidian flakes, projectile points, mortars, and pestles; and dark, friable soil containing shell and bone, dietary debris, heat-affected rock, or human burials. Historical resources include stone or adobe foundations or walls, structures and remains with square nails, and refuse deposits, often in old wells and privies.

- If the Professional Archaeologist determines that any cultural resources exposed during construction constitute a historical resource and/or unique archaeological resource, he/she shall notify the Partner Agencies and other appropriate parties of the evaluation and recommended measures to mitigate effects to a less-than significant impact. Mitigation measures may include avoidance, preservation in-place, recordation, additional archaeological testing and data recovery, among other options. Treatment of any significant cultural resources shall be undertaken with the approval of the U.S. Bureau of Reclamation and other lead agencies.

- Any identified cultural resources shall be recorded on forms DPR 422 (archaeological sites) and/or DPR 523 (historic properties) or similar forms by a Professional Archaeologist.

**Findings:** Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect identified in the Final EIR. The project has been revised to require implementation of Mitigation Measure CUL-1a, which will reduce the potential for harm to cultural resources to **less than significant** after mitigation.

**Rationale:** Mitigation measure CUL-1a will ensure that historic resources discovered during construction are addressed and mitigated to avoid accidental damage, in compliance with CEQA requirements. Therefore, with the implementation of these measures, the impact will be **less than significant**.

**Impact CUL-3:** There is no evidence suggesting a significant potential for fossils to occur in the project area. However, excavation activities associated with project construction could disturb previously unidentified paleontological resources during project construction. This would be considered a **potentially significant impact**.

**Mitigation Measures**

**CUL-3**  
**Discovery of paleontological resources during construction:** If paleontological resources are discovered during earthmoving activities, the construction crew would immediately cease work near the find. In accordance with Society of Vertebrate Paleontology guidelines (Society of Vertebrate Paleontology 2010), a qualified paleontologist would assess the nature and importance of the find and recommend appropriate salvage, treatment, and future monitoring and mitigation.
**Findings:** Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect identified in the Final EIR. The project has been revised to require implementation of Mitigation Measure CUL-3, which will reduce the potential for harm to paleontological resources to **less than significant** after mitigation.

**Rationale:** Mitigation measure CUL-3 will ensure that paleontological resources discovered during construction are addressed and mitigated to avoid accidental damage, in compliance with CEQA requirements. Therefore, with the implementation of these measures, the impact will be **less than significant.**

### 3.6 ENERGY RESOURCES

**Impact ENE-I:** Construction of the project requires use of fuels and excessive idling and other inefficient site operations could result in inefficient use of energy. This would be considered a **potentially significant impact.**

**Mitigation Measures**

**AIR-1**

**Reduce NOx Emissions:** NOx emissions associated with construction activities shall be reduced to 10 tons per year through on-site equipment and hauling vehicle Mitigation Measure to the extent feasible. All vehicles and equipment used during construction shall be maintained and properly tuned in accordance with the manufacturer’s specifications to perform at US EPA certification levels and to perform at verified standards applicable to retrofit technologies. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation. Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure CCR Title 13 Section 2485). Emissions reduction methods may be chosen from any combination of the following measures:

- Minimize the use and trips of construction equipment and trucks by consolidating trips and loads to the extent feasible
- Minimize unnecessary idling by shutting off equipment and trucks when not in use to the extent feasible and comply with CARB idling regulations.
- Conduct periodic unscheduled inspections to ensure equipment is maintained properly and in accordance with manufacturer’s recommendations and excessive idling is not occurring.
- Prepare inventory of all equipment prior to construction consistent with SJVAPCD Indirect Source Review Rule.
- Develop a construction traffic and parking management plan that minimizes traffic interference and maintains traffic flow.

The contractor will be encouraged to implement the following measures to the extent feasible before implementation of off-site Mitigation Measure and
identify why the measures are infeasible if not implemented in particular due to economic infeasibility:

- Use alternative fueled vehicles.
- Use newer tier engines such as US EPA Tier 4 exhaust emissions standards for heavy-duty nonroad compression ignition engines.
- Use of newer on-highway vehicles that meet the US EPA exhaust emissions standards for model year 2010 and newer heavy-duty on-highway compression ignition engines
- Use phased material hauling trips
- Use after-market pollution control devices to reduce emissions
- Lengthen the construction schedule to reduce the annual intensity of construction activities

If all feasible on-site measures have been implemented and annual emissions are anticipated to still be above 10 tons per year for NOx, then the project proponent shall enter into a Voluntary Emissions Reduction Agreement (VERA) with SJVAPCD. The VERA would provide pound-for-pound mitigation of air emissions increases down to a net zero emissions per year as required under general conformity through a process that develops, funds, and implements emission reduction projects. SJVAPCD would serving as role of administrator of the emissions reduction projects and verifier of the successful mitigation effort.

Finding: Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect identified in the Final EIR. The project has been revised to require implementation of Mitigation Measures AIR-I, which will serve to ensure efficient use of fuels thus reducing energy impacts to less than significant after mitigation.

Rationale: Mitigation Measure AIR-1 requires that engines be properly tuned and that restrictions on idling are enforced, thus reducing the impact to less than significant.

3.8 GEOLOGY AND SOILS

Impact GEO-1: The project would be subject to damage from groundshaking and liquefaction. This would be considered a potentially significant impact.

Mitigation Measures

GEO-1 Perform Design-Level Geotechnical Evaluations for Seismic Hazards: During the design phase for the proposed project, perform site-specific, design-level geotechnical evaluations to identify potential secondary ground failure hazards (i.e., seismically-induced settlement) associated with the expected level of seismic ground shaking. A geotechnical memorandum shall be prepared to detail the findings of the evaluations.

The geotechnical analysis will provide recommendations to mitigate those hazards in the final design and, if necessary, during construction. The design-level geotechnical evaluations, based on the site conditions, location, and
professional opinion of the geotechnical engineer, may include subsurface drilling, soil testing, and analysis of site seismic response to determine appropriate feasible measures to be incorporated into the project design. The performance standard to be used in the geotechnical evaluations will be minimization of the hazards associated with liquefaction and seismic groundshaking. The geotechnical engineer will review the seismic design criteria of facilities to ensure that facilities are designed to withstand the highest expected peak acceleration, set forth by the California Building Code for each site, and ensure that secondary ground failures, such as liquefaction, are minimized. Recommendations resulting from findings of the geotechnical study will be incorporated into the design and construction of proposed facilities.

Findings: Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect identified in the Final EIR. The project has been revised to require implementation of Mitigation Measure GEO-1, which will reduce the risks associated with groundshaking and liquefaction to less than significant after mitigation.

Rationale: Mitigation Measure GEO-1 will ensure that facilities are designed to withstand groundshaking and that risk of secondary failures such as liquefaction are minimized. Therefore, with the implementation of these measures, the impact will be less than significant.

Impact GEO-2: The project would be subject to damage from expansive soils. This would be considered a potentially significant impact.

Mitigation Measures

GEO-2 Perform Design-Level Geotechnical Evaluations for Soil Expansion: During the design phase for all components of the project, a design-level geotechnical evaluation to determine the presence and characteristics of potentially compressible and expansive soils, the engineering properties of the foundation material, and the depth and thickness of soil layers will be completed. The results of the investigations will include measures that would reduce soil expansion to a less-than-significant level. Feasible mitigation measures could include removal and replacement of soil, deep foundations, or deep mixing of compressible or expansive soils with stabilizing agents. All mitigation measures included in the geotechnical evaluation will be incorporated into the project design specifications.

Findings: Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect identified in the Final EIR. The project has been revised to require implementation of Mitigation Measure GEO-2, which will reduce the risks associated with expansive soils to less than significant after mitigation.

Rationale: Mitigation Measure GEO-2 will result in replacing expansive soils with non-expansive materials, or having them treated so as to become non-expansive and, if necessary,
other engineering practices for mitigation of expansive soil conditions shall be implemented. Therefore, with the implementation of these measures, the impact will be less than significant.

3.2.10 HAZARDS AND HAZARDOUS MATERIALS

Hazardous materials used during construction

Impact HAZ-1: Construction requires use of hazardous materials including fuel, paints, solvents and glues. Accidental release of hazardous materials would be considered a potentially significant impact.

Mitigation Measures

HAZ-1a Hazardous Materials Management and Spill Prevention Control Plan: Prior to the start of construction, the construction contractor shall be required to prepare a Hazardous Materials Management Spill Prevention and Control Plan that includes a project-specific contingency plan for hazardous materials and waste operations. The Plan shall be applicable to construction activities, and shall establish policies and procedures according to applicable codes and regulations, including but not limited to the California Building and Fire Codes, and federal and California Occupational Safety and Health Administration (OSHA) regulations. Elements of the Plan shall include, but not be limited to, the following:

- A discussion of hazardous materials management, including delineation of hazardous material storage areas, access and egress routes, waterways, emergency assembly areas, and temporary hazardous waste storage areas;
- Notification and documentation of procedures; and
- Spill control and countermeasures, including employee spill prevention/response training.

Findings: Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect identified in the Final EIR. The project has been revised to require implementation of Mitigation Measure HAZ-1a, which will reduce impacts from hazardous materials releases to less than significant after mitigation.

Rationale: Mitigation Measure HAZ-1a will ensure that fuel and other hazardous materials are handled in accordance with regulatory standards to protect public health and safety. In addition, hazardous materials shall only be handled in specified construction staging areas, in accordance with specified requirements, to prevent contamination. With the implementation of Mitigation Measure HAZ-1a, the impact will be less than significant.

Wildland Fire

Impact HAZ-2: The project would require use of spark-producing construction machinery in areas with fire hazard ratings of medium and high, which could create
hazardous fire conditions. This would be considered a potentially significant impact.

**Mitigation Measures**

**HAZ-2 Prevention of Fire Hazards:** During construction of the proposed project, the construction contractor shall require staging areas, welding areas, or areas slated for construction be cleared of dried vegetation or other materials that could ignite. Construction equipment that includes a spark arrestor shall be maintained in good working order. In addition, construction crews shall have a spotter during welding activities to look out for potentially dangerous situations, such as accidental sparks. Other construction equipment shall be kept in good working order and used only within cleared construction zones. During construction of the proposed project, contractors shall require vehicles and crews working at the project site to have access to functional fire extinguishers.

**Finding:** Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect identified in the Final EIR. The project has been revised to require implementation of Mitigation Measure HAZ-2, which will serve to reduce these potential impacts to less than significant after mitigation.

**Rationale:** Mitigation Measure HAZ-2 would ensure implementation of measures to prevent accidental fires. Therefore, with the implementation of this measure, the impact will be less than significant.

**Conflict with Emergency Plans**

**Impact HAZ-3:** The project could conflict with the Stanislaus County’s Multi-Jurisdictional Hazard Mitigation Plan. This impact would be potentially significant.

**Mitigation Measures**

**HAZ-1a Hazardous Materials Management and Spill Prevention Control Plan:** Prior to the start of construction, the construction contractor shall be required to prepare a Hazardous Materials Management Spill Prevention and Control Plan that includes a project-specific contingency plan for hazardous materials and waste operations. The Plan shall be applicable to construction activities, and shall establish policies and procedures according to applicable codes and regulations, including but not limited to the California Building and Fire Codes, and federal and California Occupational Safety and Health Administration (OSHA) regulations. Elements of the Plan shall include, but not be limited to, the following:

- A discussion of hazardous materials management, including delineation of hazardous material storage areas, access and egress routes, waterways, emergency assembly areas, and temporary hazardous waste storage areas;
- Notification and documentation of procedures; and
• Spill control and countermeasures, including employee spill prevention/response training.

HAZ-2  Prevention of Fire Hazards: During construction of the proposed project, the construction contractor shall require staging areas, welding areas, or areas slated for construction be cleared of dried vegetation or other materials that could ignite. Construction equipment that includes a spark arrestor shall be maintained in good working order. In addition, construction crews shall have a spotter during welding activities to look out for potentially dangerous situations, such as accidental sparks. Other construction equipment shall be kept in good working order and used only within cleared construction zones. During construction of the proposed project, contractors shall require vehicles and crews working at the project site to have access to functional fire extinguishers.

Findings: Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect identified in the Final EIR. The project has been revised to require implementation of Mitigation Measures HAZ-1 and HAZ-2, which will substantially reduce impacts to less than significant after mitigation.

Rationale: Mitigation Measures HAZ-1 and HAZ-2 would ensure that the project would not cause hazardous conditions during construction. With the implementation of these measures, the impact will be less than significant.

3.11 HYDROLOGY AND WATER QUALITY

Construction Water Quality Impacts

Impact HYD-1: Construction would include vegetation removal, grading, and excavation activities, which could result in increased sedimentation and erosion and could result in impacts to water quality. This would be considered a potentially significant impact.

Mitigation Measures

HYD-1a  Comply with the Construction General Permit: To minimize the impacts to water quality from construction activities, the proposed project shall implement measures contained in the Construction General Permit including the development of a SWPPP.

HYD-1b  Implement BMPs to Control Erosion and Sediment During Construction: The SWPPP shall specify that all construction activities shall implement multiple BMPs to provide effective erosion and sediment control. These BMPs shall be selected to achieve maximum sediment removal and represent the best available technology that is economically achievable. BMPs to be implemented as part of this mitigation measure shall include, but are not limited to, the following measures:
• Temporary erosion control measures, such as silt fences, staked straw bales/wattles, silt/sediment basins and traps, check dams, geofabric, sandbag dikes, and temporary revegetation or other ground cover, shall be employed for disturbed areas;
• Dirt and debris shall be swept from paved streets in the construction zone on a regular basis, particularly before predicted rainfall events;
• Grass or other vegetative cover will be re-established on unpaved areas of the construction site as soon as possible after disturbance. In paved areas, any removed paving will be replaced as soon as possible; and
• Soil stockpiling sites will be located such that they do not drain directly into the San Joaquin River or irrigation canals.

Multiple BMPs used in combination, properly installed and maintained, can achieve significant sediment removal. BMPs proposed by the project contractor shall be subject to approval by the project proponent, and the project proponent shall require that all parties performing construction under the proposed project incorporate into contract specifications the requirement that the contractor(s) comply with and implement these provisions. The contractor shall also include provisions for monitoring during and after construction activities to verify that these standards are met.

**HYD-1c**

**Comply with the General Order for Dewatering or Other Appropriate NPDES Permit:** To minimize the impacts to water quality from dewatering activities, the proposed project shall implement measures contained in the General Order for Dewatering or other appropriate NPDES permit or Waste Discharge Requirement.

**BIO-1d**

**Develop and Implement a Frac-out Contingency Plan for Trenchless Construction:** Prior to constructing a crossing(s) of the San Joaquin River, a Frac-out Prevention and Contingency Plan shall be developed and submitted by the City of Modesto to the California State Lands Commission for review. At minimum, the plan shall prescribe the measures to ensure protection of aquatic resources, special-status plants and wildlife, including:

- Procedures to minimize the potential for a frac-out associated with horizontal directional drilling;
- Procedures for timely detection of frac-outs;
- Procedures for timely response and remediation in the event a frac-out; and
- Monitoring of drilling and frac-out response activities by a qualified biologist.

**Findings:** Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect identified in the Final EIR. The project has been revised to require implementation of Mitigation Measures BIO-1d, HYD-1a, HYD-1b and HYD-1c, and with the implementation of these measures, the project’s impacts to water quality during construction would be considered **less than significant** after mitigation.
Rationale: Mitigation Measures BIO-1d, HYD-1a, HYD-1b and HYD-1c will insure adherence to all applicable NPDES requirements and other water quality regulations to minimize impacts to water quality and to ensure that no debris or other pollutants from the construction affect water quality of streams and drainages in the project area. Therefore, with the implementation of these measures, the impact will be less than significant.

3.14 NOISE

Construction Noise

Impact NOI-1: During construction of the project, noise levels would temporarily be elevated in association with operation of heavy equipment. This would be considered a potentially significant impact.

Mitigation Measures

NOISE-1 Noise Reduction Measures: To reduce the impact of noise from construction activities the following measures shall be implemented to the extent feasible:

- Construction activities shall be limited to the hours of 7:00 am to 7:00 pm, Monday to Friday.
- Construction staging areas shall be as far as possible from existing residences.
- Construction equipment noise shall be minimized during project construction by muffling and shielding intakes and exhaust on construction equipment per the manufacturers’ specifications and by shrouding or shielding impact tools. All equipment shall have sound-control devices no less effective than those provided by the manufacturer.
- All stationary noise generating construction equipment shall be placed as far away as possible from sensitive receptors on in an orientation minimizing noise impacts (e.g. behind barriers or storage piles).

Findings: Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect identified in the Final EIR. The project has been revised to require implementation of Mitigation Measure NOISE-1, and with the implementation of these measures, the project’s impacts during construction would be considered less than significant after mitigation.

Rationale: Mitigation Measure NOISE-1 will insure that construction noise is minimized to the extent feasible. Because the County Noise Ordinance exempts this type of construction activity and because appropriate measures will be implement to reduce noise levels, with the implementation of this measure, the impact will be less than significant.
3.16 PUBLIC SERVICES AND UTILITIES

Construction Disruption

Impact PUB-4: During construction of the project, there is a potential for disruption of utilities and interruption of associated services. This would be considered a potentially significant impact.

Mitigation Measures

PUB-4 Coordinate Relocation and Interruptions of Service with Utility Providers during Construction: The construction contractor shall be required to verify the nature and location of underground utilities before the start of any construction that would require excavation. The contractor shall be required to notify and coordinate with public and private utility providers at least 48 hours before the commencement of work adjacent to any utility. The contractor shall be required to notify the service provider in advance of service interruptions to allow the service provider sufficient time to notify customers. The contractor shall be required to coordinate timing of interruptions with the service providers to minimize the frequency and duration of interruptions.

Findings: Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect identified in the Final EIR. The project has been revised to require implementation of Mitigation Measure PUB-4, and with the implementation of these measures, the project’s impacts to utilities during construction would be considered less than significant after mitigation.

Rationale: Mitigation Measure PUB-4 will insure that disruption of utilities is minimized to the extent feasible. Because the County Noise Ordinance exempts this type of construction activity and because appropriate measures will be implement to reduce noise levels, with the implementation of this measure, the impact will be less than significant.

3.19 TRANSPORTATION

Construction Disruption

Impact TR-1: During construction of the project, there is a potential temporary road and lane closures causing a degradation in level of service. This would be considered a potentially significant impact.

Impact TR-2: During construction of the project, there is a potential for disruption of alternative modes of transportation including public transit, bicycles and pedestrian uses. This would be considered a potentially significant impact.
Impact TR-3: During construction of the project, there is a potential for interference with emergency access and circulation. This would be considered a potentially significant impact.

Impact TR-4: During construction of the project, there would be additional traffic from truck trips to deliver materials and haul spoil and from worker travel. This would be considered a potentially significant impact.

Mitigation Measures

TR-1 Implement a Construction Management Plan to Minimize Interference with Traffic and Emergency Response Hazards: The Partner Agencies (DPWD, the City of Modesto, and the City of Turlock) or the construction contractor, in consultation with the County, will prepare and implement a Traffic Management Plan (TMP). The Partner Agencies will be responsible for ensuring that the plan is adequately developed and implemented. The Partner Agencies will provide the TMP to the Stanislaus County Department of Public Works and Caltrans. The TMP will include recommended traffic-control and traffic-reduction measures as identified in the Transportation Management Plan Guidelines issued by the Division of Traffic Operations Office of System Management Operations (Caltrans 2009). The Partner Agencies will require all traffic-control or traffic-reduction measures described in the TMP to be implemented. In addition, to the extent feasible, construction-related traffic and any temporary road closures shall be scheduled during non-peak traffic periods.

The measures included in the TMP shall be consistent with any applicable guidelines outlined in the Standard Specifications for Public Works Construction, the U.S. Department of Transportation's Manual on Uniform Traffic Control Devices, and the Work Area Traffic Control Handbook. The plan will include the following items:

- Definition of location and timing of any temporary lane or roadway closures;
- Identification and provision for circumstances requiring the use of temporary traffic control measures, such as flag persons, warning signs, lights, barricades, and cones to provide safe work areas in the vicinity of the project site or along the haul routes, including for narrow roadway segments, and to warn, control, protect, and expedite vehicular, bicycle, and pedestrian traffic and access by emergency responders;
- Implementation of comprehensive traffic control measures, including scheduling of major truck trips and deliveries to avoid peak-hour traffic, placement of detour signs (if required), lane closure procedures (if required), flaggers (if required), placement of cones for drivers, and designated construction access routes and access points;
• Notification to adjacent property owners, transit agencies and public safety personnel regarding when major deliveries, detours, and lane closures will occur;
• Measures to address the potential for construction-related traffic to impede emergency response vehicles and a specific training and information program for construction workers to ensure awareness of emergency procedures for project-related accidents;
• Identification of haul routes for movement of construction vehicles that will minimize impacts on vehicular and pedestrian traffic and circulation and safety, and provision for monitoring surface streets used for haul routes so that any damage and debris attributable to the haul trucks can be identified and corrected by the Partner Agencies in coordination with the construction contractor;
• Consideration of other projects in the vicinity that could also affect the same roadways as the project;
• Development of a process for responding to and tracking complaints pertaining to construction activity, including identification of an onsite complaint manager; and
• Documentation of road pavement conditions for all routes that would be used by construction vehicles both before and after project construction. Roads damaged by construction vehicles will be repaired to the level at which they existed before project construction.

Findings: Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect identified in the Final EIR. The project has been revised to require implementation of Mitigation Measure TR-1, and with the implementation of these measures, the project’s impacts to transportation during construction would be considered less than significant after mitigation.

Rationale: Mitigation Measure TR-1 will insure that disruption of traffic and transportation is minimized to the extent feasible. This measure provides traffic control to manage lane and road closures, addresses alternate modes of travel, maintains emergency access and manages truck traffic during construction, thus reducing the impacts to less than significant.

Construction Access

Impact TR-5: During construction of the project, there is a potential that access to driveways would be impaired. This would be considered a potentially significant impact.

Mitigation Measures

TR-1 Implement a Construction Management Plan to Minimize Interference with Traffic and Emergency Response Hazards: The Partner Agencies (DPWD, the City of Modesto, and the City of Turlock) or the construction contractor, in consultation with the County, will prepare and implement a
Traffic Management Plan (TMP). The Partner Agencies will be responsible for ensuring that the plan is adequately developed and implemented. The Partner Agencies will provide the TMP to the Stanislaus County Department of Public Works and Caltrans. The TMP will include recommended traffic-control and traffic-reduction measures as identified in the Transportation Management Plan Guidelines issued by the Division of Traffic Operations Office of System Management Operations (Caltrans 2009). The Partner Agencies will require all traffic-control or traffic-reduction measures described in the TMP to be implemented. In addition, to the extent feasible, construction-related traffic and any temporary road closures shall be scheduled during non-peak traffic periods.

The measures included in the TMP shall be consistent with any applicable guidelines outlined in the Standard Specifications for Public Works Construction, the U.S. Department of Transportation’s Manual on Uniform Traffic Control Devices, and the Work Area Traffic Control Handbook. The plan will include the following items:

- Definition of location and timing of any temporary lane or roadway closures;
- Identification and provision for circumstances requiring the use of temporary traffic control measures, such as flag persons, warning signs, lights, barricades, and cones to provide safe work areas in the vicinity of the project site or along the haul routes, including for narrow roadway segments, and to warn, control, protect, and expedite vehicular, bicycle, and pedestrian traffic and access by emergency responders;
- Implementation of comprehensive traffic control measures, including scheduling of major truck trips and deliveries to avoid peak-hour traffic, placement of detour signs (if required), lane closure procedures (if required), flaggers (if required), placement of cones for drivers, and designated construction access routes and access points;
- Notification to adjacent property owners, transit agencies and public safety personnel regarding when major deliveries, detours, and lane closures will occur;
- Measures to address the potential for construction-related traffic to impede emergency response vehicles and a specific training and information program for construction workers to ensure awareness of emergency procedures for project-related accidents;
- Identification of haul routes for movement of construction vehicles that will minimize impacts on vehicular and pedestrian traffic and circulation and safety, and provision for monitoring surface streets used for haul routes so that any damage and debris attributable to the haul trucks can be identified and corrected by the Partner Agencies in coordination with the construction contractor;
- Consideration of other projects in the vicinity that could also affect the same roadways as the project;
- Development of a process for responding to and tracking complaints pertaining to construction activity, including identification of an onsite complaint manager; and
- Documentation of road pavement conditions for all routes that would be used by construction vehicles both before and after project construction. Roads damaged by construction vehicles will be repaired to the level at which they existed before project construction.

**TR-2**  
**Install Temporary Trench Plates Over Open Trenches:** During construction of the pipeline, temporary trench plates will be installed over open trenches at the end of each work day.

**Findings:** Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect identified in the Final EIR. The project has been revised to require implementation of Mitigation Measures TR-1 and TR-2, and with the implementation of these measures, the project's impacts to access during construction would be considered less than significant after mitigation.

**Rationale:** Mitigation Measures TR-1 and TR-2 will insure that access to driveways is maintained, reducing the impact to less than significant.
RESOLUTION AUTHORIZING STAFF TO BEGIN THE DESIGN/BUILD REQUEST FOR QUALIFICATIONS/REQUEST FOR PROPOSALS FOR THE NORTH VALLEY REGIONAL RECYCLED WATER PROGRAM

WHEREAS, the North Valley Regional Recycled Water Program (NVRRWP) is the planned construction of a water supply project that would deliver up to 59,000 acre-feet per year of recycled water produced by the cities of Modesto and Turlock via a pipeline to the Delta-Mendota Canal (DMC), and

WHEREAS, Recycled water will be conveyed from Modesto and Turlock through pipelines from their wastewater treatment facilities, crossing under the San Joaquin River, ending at the DMC, and

WHEREAS, The City of Turlock has not decided whether to proceed with its components of the NVRRWP at this time, and

WHEREAS, Water in the DMC would then be conveyed directly to Del Puerto Water District (DPWD) turnouts and thus to its customers, and

WHEREAS, in order to meet the anticipated project schedule of summer 2018, the City will need to pursue a project delivery method that expedites the design and construction process, and

WHEREAS, City staff is considering a Design/Build methodology, in which both the design and construction services are contracted by a single entity, making it responsible for both of these services, and

WHEREAS, Design/Build minimizes the risks for the City and reduces the project delivery schedule, and
WHEREAS, Staff requested authorization to begin the NVRRWP Design/Build RFQ/RFP process,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby authorizes City staff to begin the Design/Build RFQ/RFP Process for the North Valley Regional Recycled Water Program.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 7th day of July, 2015, by Councilmember Kenoyer, who moved its adoption, which motion being duly seconded by Councilmember Madrigal, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Cogdill, Gunderson, Kenoyer, Lopez, Madrigal, Zoslocki, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: 

APPROVED AS TO FORM:

By ADAM U. LINDGREN, City Attorney
RESOLUTION APPointING BALVINO IRIZARRY AND JIM BISHOP to FILL THE VACANCIES ON THE TUOLUMNE RIVER REGIONAL PARK CITIZEN’S ADVISORY COMMITTEE (TRRP CAC)

WHEREAS, Section 1102 of the Charter of the City of Modesto authorizes the City Council to appoint members to various Boards and Commissions, and

WHEREAS, the Tuolumne River Regional Park Citizen’s Advisory Committee (TRRP CAC), part of a JPA, has vacancies for members who reside within Modesto and are registered voters of Stanislaus County, and

WHEREAS, the Appointments Committee met on June 16, 2015, and recommended appointment of Balvino Irizarry and Jim Bishop, to represent Modesto City residents on the TRRP CAC.

NOW, THEREFORE, BE IT HEREBY RESOLVED by the Council of the City of Modesto as follows:

SECTION 1. Balvino Irizarry and Jim Bishop are hereby appointed to the TRRP CAC with a term expiration of January 1, 2017.

SECTION 2. The City Clerk is hereby directed to transmit a copy of this resolution to the appointed members of the Tuolumne River Regional Park Citizen’s Advisory Committee, and the Secretary thereof.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 14\textsuperscript{th} day of July, 2015, by Councilmember Kenoyer, who moved its adoption, which motion being duly seconded by Councilmember Lopez, was upon roll call carried and the resolution adopted by the following vote:

**AYES:** Councilmembers: Cogdill, Gunderson, Kenoyer, Lopez, Zoslocki, Mayor Marsh

**NOES:** Councilmembers: None

**ABSENT:** Councilmembers: Madrigal

\[\text{ATTEST: } \text{Stephanie Lopez, City Clerk}\]

(SEAL)

**APPROVED AS TO FORM:**

By: ADAM U. LINDGREN, City Attorney
RESOLUTION AUTHORIZING THE PURCHASE OF ONE TRUCK WITH ALTEC AT40-G AERIAL BUCKET FOR THE PUBLIC WORKS DEPARTMENT, ELECTRICAL DIVISION, THROUGH THE PUBLIC WORKS DEPARTMENT, FLEET SERVICES DIVISION, PIGGYBACKING FROM A COMPETITIVELY BID CONTRACT WITH THE NATIONAL JOINT POWERS ALLIANCE (NJPA), TO ALTEC INDUSTRIES, BIRMINGHAM, AL, AND AUTHORIZING THE PURCHASING MANAGER OR HIS DESIGNEE TO ISSUE A PURCHASE ORDER FOR A TOTAL ESTIMATED COST OF $147,451

WHEREAS, the City Manager authorized the Purchasing Manager to issue formal Request for Bids (RFB) for new vehicles and heavy equipment, through various competitive processes, with the Purchasing Division coming back to Council for award authorization. The one truck with Altec AT40-G aerial bucket is included in the new vehicles and heavy equipment list authorized by the City Manager, and

WHEREAS, the truck with Altec AT40-G aerial bucket is a replacement for an aerial bucket truck that is at the end of its useful life cycle. The aerial bucket truck has been subjected to a thorough evaluation and has met or exceeded the replacement criteria before being placed on the replacement list, and

WHEREAS, sufficient funds are budgeted in Fiscal Year 2014-15, in account # 5409-53246-57003, and

WHEREAS, the National Joint Powers Alliance (NJPA) went through a competitive bid process for the purchase of heavy construction equipment and issued contract #31014. The most responsive and responsible bidder that met the bid specifications was Altec Industries, Birmingham, AL. Altec Industries is extending the NJPA discount to the City of Modesto, and
WHEREAS, there are no local vendors for this type of equipment. Taking advantage of this process and awarding a contract by "piggybacking" the NJPA contract is an efficient and effective way to purchase one truck with Altec AT40-G aerial bucket, and saves the time and expense for the City to formally solicit RFB’s, and

WHEREAS, Modesto Municipal Code (MMC) Section 8-3.203 generally requires all purchases, which meet or exceed $50,000.00 for material, equipment or contractual services to be formally bid. However, there are exceptions to the rule set forth in the Modesto Municipal Code. One exception, MMC Section 8-3.204(d), is available where the Purchasing Manager, in his or her discretion, determines that a process other than the usual formal bid procedure set forth in MMC Section 8-3.203 will result in procurement for the City at the lowest possible cost commensurate with the desired quality. Acting within his discretion, the Purchasing Manager invoked that exception for this purchase due to the cost savings of staff time and the limited number of competitors. The purchase of one truck with Altec AT40-G aerial bucket piggybacking from a competitively bid contract with NJPA to Altec Industries, Birmingham, AL, will conform to MMC Section 8-3.204(d), and

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby authorizes the award of bid for the purchase of one truck with Altec AT40-G aerial bucket for the Public Works Department, Electrical Division through the Public Works Department, Fleet Services Division, piggybacking from a competitively bid contract with the National Joint Powers Alliance (NJPA), to Altec Industries, Birmingham, AL,
BE IT FURTHER RESOLVED that the Purchasing Manager or his designee to
issue a purchase order for a total estimated cost of $147,451.

The foregoing resolution was introduced at a regular meeting of the Council of
the City of Modesto held on the 14th day of July, 2015, by Councilmember Lopez, who
moved its adoption, which motion being duly seconded by Councilmember Madrigal,
was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Cogdill, Gunderson, Kenoyer, Lopez, Madrigal,
Zoslocki, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: 

SEAL

APPROVED AS TO FORM:

By: 
ADAM U. LINDGREN, City Attorney

STEPEANIE LOPEZ, City Clerk
RESOLUTION APPROVING AN SPECIAL EVENT ENTERTAINMENT PERMIT FOR XCLAMATION FESTIVAL AS OUTLINED BY THE CITY OF MODESTO ORDINANCE NO 3492-C.S. AND AUTHORIZING THE PERMIT ADMINISTRATOR TO EXECUTE THE SPECIAL EVENT ENTERTAINMENT PERMIT AND ALL RELATED DOCUMENTS

WHEREAS, Xclamation Festival will consist of many different types of live outdoor musical stage performances that range from Pop/Alternative, Hip Hop and Classic Rock, and

WHEREAS, the event features vendor booths providing a wide variety of products, services, food and refreshments throughout the event area, and

WHEREAS, the event is open to the public who are 21 years of age and over, and

WHEREAS, the event is controlled by temporary fencing outlining the entire perimeter with security at all entrances and exists, and

WHEREAS, Xclamation Festival has procured Total Protection Group to provide 200 security guards to assist the Modesto Police Department to ensure a safe and successful event, and

WHEREAS, the Modesto Police Department will be working the event as part of an Outside Work Agreement between the event promoters and the Modesto Police Department,

WHEREAS, this item was never presented to the Entertainment Commission due to the number of conflicted committee members.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves an Entertainment Permit for Xclamation Festival as outlined by
the City of Modesto Ordinance No. 3492-C.S. (Title 4, Article 4 of the Modesto Municipal Code).

BE IT FURTHER RESOLVED that the Permit Administrator is hereby authorized to execute the Special Event Entertainment Permit.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 14th day of July, 2015, by Councilmember Madrigal, who moved its adoption, which motion being duly seconded by Councilmember Lopez, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Cogdill, Gunderson, Kenoyer, Lopez, Madrigal, Zoslocki, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: [Signature]

APPROVED AS TO FORM:

By: [Signature]

ADAM U. LINDGREN, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2015-244

A RESOLUTION APPROVING SUBMITTAL OF A REQUEST TO THE CALIFORNIA DEPARTMENT OF TRANSPORTATION (CALTRANS) FOR $87,963 IN FY 2014-15 FUNDS UNDER THE LOW CARBON TRANSIT OPERATIONS PROGRAM (LCTOP) FOR BUS STOP SHELTERS AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE ALL GRANT APPLICATION AND GRANT AGREEMENT DOCUMENTS

WHEREAS, Senate Bill 862 (2014), created the Low Carbon Transit Operations Program (LCTOP) and identified the California Department of Transportation as the administering agency for LCTOP, and

WHEREAS, in Fiscal Year 2014-15 LCTOP appropriated $171,407 to the Stanislaus Council of Governments (StanCOG) for regional distribution to local transit agencies, and

WHEREAS, Stanislaus County transit has requested that the City of Modesto accept a transfer of $85,703 of the regional LCTOP funds that they were allocated but unable to use, and

WHEREAS, Stanislaus County transit has requested that the City of Modesto accept a transfer of $2,260 of the local LCTOP funds that they were allocated but unable to use, and

WHEREAS, StanCOG has concurred with the transfer of regional and local LCTOP funds, and

WHEREAS, Caltrans has concurred with the transfer of regional and local LCTOP funds, and

WHEREAS, the statutes related to state-funded transit projects require Modesto to abide by various regulations, and
WHEREAS, the California Department of Transportation has developed guidelines for the purpose of administering and distributing LCTOP funds to local agencies, and

WHEREAS, the City of Modesto is an eligible project sponsor and may receive state funding from LCTOP.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that Modesto agrees to comply with all conditions and requirements set forth by LCTOP.

BE IT FURTHER RESOLVED that the City Manager is authorized to execute all necessary grant documents with the California Department of Transportation on behalf of the City of Modesto.

BE IT FURTHER RESOLVED that the City Manager is authorized to designate the Director of Public Works to execute all grant application and grant agreement documents.

BE IT FURTHER RESOLVED that the City Manager is authorized to designate the Transit Manager to execute all grant application and grant agreement documents.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 14th day of July, 2015, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Madrigal, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Cogdill, Gunderson, Kenoyer, Lopez, Madrigal, Zoslocki, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: 

SEAL

APPROVED AS TO FORM:

By: ADAM U. LINDGREN, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2015-245

RESOLUTION AMENDING THE FISCAL YEAR 2015-2016 OPERATING BUDGET IN THE AMOUNT OF $87,963 TO FUND THE PURCHASE AND INSTALLATION OF BUS STOP SHELTERS FOR THE MODESTO AREA EXPRESS (MAX) TRANSIT SYSTEM AT LOCATIONS WHERE NONE CURRENTLY EXIST, IF CALTRANS APPROVES THE GRANT

WHEREAS, certain budgetary transactions are necessary in the amount of $87,963 in order to fund the purchase and installation of bus stop shelters for the MAX system, and

WHEREAS, the Fiscal Year 2015-2016 Operating Budget must be amended as shown in Exhibit A, which is incorporated by reference herein.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the amendment of the Fiscal Year 2015-2016 Operating Budget as shown in Exhibit A.

BE IT FURTHER RESOLVED that the Director of Finance, or her designee, is hereby authorized to implement the provisions of this resolution.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 14th day of July, 2015, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Madrigal, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Cogdill, Gunderson, Kenoyer, Lopez, Madrigal, Zoslocki, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: 

STEFANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: ADAM U. LINDGREN, City Attorney
Exhibit A

 Amend the FY 15/16 Operating Budget to fund the purchase and installation of new bus shelters for the MAX system at locations where none currently exist:

1. Increase appropriations in multi-year 100749 (Transit Facility Improvement) in the amount of $87,963.

2. To fund this purchase recognize revenue in the amounts of:
   • $87,963- Low Carbon Transit Operations Program (LCTOP)
MODESTO CITY COUNCIL
RESOLUTION NO. 2015-246

RESOLUTION APPROVING A LEASE AGREEMENT BETWEEN THE CITY OF MODESTO AND DAVID E. KAMRAR AND CAROLE L. KAMRAR FOR LEASE OF THE PROPERTY LOCATED AT 121 ELM STREET, FOR A THREE-YEAR TERM, WITH TWO (2) ONE-YEAR Extension OPTIONS, AT THE SOLE DISCRETION OF THE CITY; AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE AGREEMENT

WHEREAS, the City of Modesto leases a 5,841 square foot commercial building located at 121 Elm Street in Modesto for use by the Building Services and Parking Services Divisions of the Public Works Department, and

WHEREAS, the lease expires on September 30, 2015, and

WHEREAS, staff desires to renew the lease for this property, and

WHEREAS, the lease will be for a three year term, with two one-year extension options commencing Oct 1, 2015, and

WHEREAS, the monthly rent is $1,725, with an annual increase of $.01 per square foot, and

WHEREAS, funds are budgeted in 5800-52110-53070, Rental of Real Property.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the lease agreement between the City of Modesto and David E. Kamrar and Carole L. Kamrar for the property located at 121 Elm Street.

BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute the agreement.
The foregoing resolution was introduced at a regular meeting of the Council of
the City of Modesto held on the 14th day of July, 2015, by Councilmember Lopez, who
moved its adoption, which motion being duly seconded by Councilmember Madrigal,
was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Cogdill, Gunderson, Kenoyer, Lopez, Madrigal,
Zoslocki, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

(SEAL)

APPROVED AS TO FORM:

By: ADAM U. LINDGREN, City Attorney

(ATTEST) STEPHANIE LOPEZ, City Clerk

07/14/2015/FW/D Sims/Item 10

2015-246
RESOLUTION AUTHORIZING SUBMISSION AND ACCEPTANCE OF A REQUEST TO THE CALIFORNIA DEPARTMENT OF TRANSPORTATION (CALTRANS) FOR $345,818 IN FY2014-15 FUNDS UNDER THE PUBLIC TRANSPORTATION MODERNIZATION, IMPROVEMENT AND SERVICE ENHANCEMENT ACCOUNT (PTMISEA) FOR TRANSIT CAPITAL PROJECTS, AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE ALL GRANT APPLICATION AND GRANT AGREEMENT DOCUMENTS

WHEREAS, the Caltrans administered Public Transportation Modernization, Improvement, and Services Enhancement Account (PTMISEA) was a part of the comprehensive transportation bond investment package approved by the voters as Proposition 1B in the November 7, 2006 general election, and

WHEREAS, Senate Bill 88 (SB 88), enabling legislation for PTMISEA, was signed by the Governor and chaptered into law on August 24, 2007, and

WHEREAS, the California State Controller’s office has made available to the City of Modesto $345,818 in GC 8879.55 (a) (3) funds, and

WHEREAS, the City of Modesto has identified purchasing TRIM stripe units to install on existing fareboxes as a priority for Fiscal Year 2014-15 PTMISEA funding.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby authorizes submission and acceptance of a grant from Caltrans for a total of $345,818 in FY 2014-15 under PTMISEA funds for transit capital projects.

BE IT FURTHER RESOLVED that the City Manager, is authorized to execute all necessary grant documents with the Department of Transportation on behalf of the City of Modesto.
BE IT FURTHER RESOLVED that the City Manager may designate the Director of Public Works to execute all grant application and grant agreement documents.

BE IT FURTHER RESOLVED that the City Manager may designate the Transit Manager to execute all grant application and grant agreement documents.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 14th day of July, 2015, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Madrigal, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Cogdill, Gunderson, Kenoyer, Lopez, Madrigal, Zoslocki, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: ADAM U. LINDGREY, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2015-248

RESOLUTION AUTHORIZING ACCEPTANCE OF $2,308,078 IN FY2014-15 REGIONAL GRANT FUNDS FROM THE CALIFORNIA DEPARTMENT OF TRANSPORTATION (CALTRANS) UNDER THE PUBLIC TRANSPORTATION MODERNIZATION, IMPROVEMENT AND SERVICE ENHANCEMENT ACCOUNT (PTMISEA) FOR TRANSIT CAPITAL PROJECTS AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE ALL GRANT APPLICATION AND GRANT AGREEMENT DOCUMENTS

WHEREAS, the Caltrans administered Public Transportation Modernization, Improvement, and Services Enhancement Account (PTMISEA) was a part of the comprehensive transportation bond investment package approved by the voters as Proposition 1B in the November 7, 2006 general election, and

WHEREAS, Senate Bill 88 (SB 88), enabling legislation for PTMISEA, was signed by the Governor and chaptered into law on August 24, 2007, and

WHEREAS, the Stanislaus Council of Governments (StanCOG) is the designated recipient for regional funds under GC 8879.55 (a)(2), and

WHEREAS, the StanCOG Policy Board passed a resolution November 20, 2014, designating $2,308,078 of the Fiscal Year 2014-15 regional PTMISEA funds to the City of Modesto for transit capital projects, and

WHEREAS, the City of Modesto has identified three (3) projects as priorities for Fiscal Year 2014-15 PTMISEA funding, and

WHEREAS, refurbishing 1998, 2001 and 2003 fixed route buses; purchasing GFI TRIM units to install on existing fareboxes; and, purchasing replacement buses are the City of Modesto’s three (3) priority PTMISEA projects.
NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby authorizes acceptance of three (3) grants from Caltrans for a total of $2,308,078 in FY 2014-15 under PTMISEA funds for transit capital projects.

BE IT FURTHER RESOLVED that the City Manager, is authorized to execute all necessary grant documents with the Department of Transportation on behalf of the City of Modesto.

BE IT FURTHER RESOLVED that the City Manager, or his designee, may designate the Director of Public Works to execute all grant application and grant agreement documents.

BE IT FURTHER RESOLVED that the City Manager, or his designee, may designate the Transit Manager to execute all grant application and grant agreement documents.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 14th day of July, 2015, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Madrigal, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Cogdill, Gunderson, Kenoyer, Lopez, Madrigal, Zoslocki, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

(SEAL)

APPROVED AS TO FORM:

By: ADAM U. LINDGREN, City Attorney

ATTEST: STEPHANIE LOPEZ, City Clerk
RESOLUTION APPROVING A TRANSFER OF AUTHORITY FROM CITY ENGINEER TO DIRECTOR OF PUBLIC WORKS, OR HIS DESIGNEE, TO ISSUE CHANGES IN THE CONSTRUCTION CONTRACT VIA WRITTEN CHANGE ORDERS FOR THE STATE ROUTE 99 / PELANDALE AVENUE INTERCHANGE RECONSTRUCTION PROJECT, THE COMBINED VALUE OF THE CHANGE ORDERS NOT TO EXCEED SIX PERCENT (6%) OF THE ORIGINAL CONTRACT PRICE

WHEREAS, on February 25, 2014, City Council approved resolution No. 2014-72 authorizing the City Engineer to issue changes in the construction contract via written change orders for the State Route 99 / Pelandale Avenue Interchange Reconstruction Project, and

WHEREAS, on June 9, 2014, the City Engineer was named Acting Director of Public Works, and

WHEREAS, the position of City Engineer is allocated within the Community & Economic Development Department, and

WHEREAS, prior to the appointment, the City Engineer was the project manager over the State Route 99 / Pelandale Avenue Interchange Reconstruction Project, and

WHEREAS, In January 2015, the Engineering Design Division of the Community & Economic Development Department moved to the Public Works Department as part of a City wide reorganization, and

WHEREAS, with the move, the several CIP projects that originated in the Community & Economic Development Department transferred to the Public Works Department, which included the State Route 99 / Pelandale Avenue Interchange Reconstruction Project, and
WHEREAS, when the City Engineer was named the Acting Public Works Director, the role of project manager of the State Route 99 / Pelandale Avenue Interchange Reconstruction Project transferred from the Community & Economic Development Department to the Public Works Department, and

WHEREAS, due to the scope, size, and inherent nature of this type of construction project and that the Project Manager is now the Director of Public Works.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby authorizes a transfer from City Engineer to Director of Public Works to issue changes in the construction contract via written changes orders for the State Route 99 / Pelandale Avenue Interchange Reconstruction Project, the combined value of the change orders not to exceed six (6%) percent of the original contract with Teichert / MCM, A Joint Venture, Fowler California.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 14th day of July, 2015, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Madrigal, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Cogdill, Gunderson, Kenoyer, Lopez, Madrigal, Zoslocki, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: [Signature]

SEAL

APPROVED AS TO FORM:

By: [Signature]

ADAM U. LINDGREN, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2015-250

RESOLUTION ACCEPTING THE SUTTER TREATMENT FACILITY FEASIBILITY STUDY AND DIRECTING STAFF TO INCORPORATE THE SUTTER TREATMENT FACILITY FEASIBILITY STUDY'S FINDINGS INTO THE DEVELOPMENT OF THE 2016 WASTEWATER MASTER PLAN THAT IS CURRENTLY IN PROGRESS

WHEREAS, on May 6, 2014 City Council, by Resolution No. 2014-166, approved an Agreement with Carollo Engineers, Inc. to conduct the Sutter Treatment Facility Feasibility Study (Feasibility Study) to thoroughly evaluate the advantages and disadvantages of maintaining the Primary Treatment Facilities at the Sutter Avenue site or relocating them to the Jennings Road site, and

WHEREAS, the two main reasons for conducting the Feasibility Study were: 1) The age, condition, and service reliability of many of the existing Sutter Plant Facilities (i.e., clarifiers, anaerobic digesters, and the solids handling facilities); and 2) the fact that significant portions of the Sutter Plant are within the 100-year flood plain of the Tuolumne River and the desire to eliminate any future facility shut-downs due to flooding. A provision in one of the City's discharge permits states that "treatment facilities shall be designed, constructed, operated, and maintained to prevent inundation or washout due to floods with a 100-year return frequency", and

WHEREAS, based on an extensive evaluation of all of the major factors involved in determining the feasibility of such a potential relocation, staff believes it is in the City's best long-term interests to relocate portions of the Primary Treatment Facilities from the Sutter Avenue site to the Jennings Road site, with the key reasons being as follows: 1) Flooding is a great concern, as demonstrated by several major floods of the Sutter Avenue site; one in 1950, another in 1955, and the most recent in 1997, where the...
entire property was inundated and staff had to abandon and shut down the plant for several days; 2) Some of the existing facilities are inefficient and over 60-years old and, as related to reliable service, are in need of replacement, significant rehabilitation, or are located in the floodway/flood plain. Some of these facilities have been repaired numerous times over the years and have become a treatment process liability because of their undependability; 3) The Sutter Avenue site has very little land available for immediate expansion or long-term growth due to residential development to the north, Dryden Golf Course to the east, Tuolumne River to the South, and the Tuolumne River Regional Park to the west; 4) Continuing to provide Primary Treatment and solids handling at the Sutter Avenue site in the current manner may have adverse environmental justice consequences stemming from potential impacts (i.e., odor, noise of daily hauling of solids, etc.) on the adjacent residential neighborhoods to the north of the property; 5) Moving the Primary Treatment Facilities next to Secondary and Tertiary Treatment Facilities at Jennings Road, will increase the efficiency of treatment and disposal processes; along with optimizing coordination efforts for day to day operations and maintenance of the treatment facilities; 6) The estimated capital cost to upgrade the existing Primary Treatment Facilities and provide flood protection to the Sutter Avenue site is $129 million; whereas, the estimated cost to relocate those facilities to the Jennings Road site is $100 million (this does not include the approximate annual $1.3 million in higher operation and maintenance costs to remain at the Sutter Avenue site versus moving to the Jennings Road site), and
WHEREAS, on June 22, 2015, the Finance Committee recommended forwarding this item to City Council for consideration,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it has reviewed and hereby accepts the Sutter Treatment Facility Feasibility Study and directs staff to incorporate the Sutter Treatment Facility Feasibility Study’s findings into the development of the 2016 Wastewater Master Plan that is currently in progress.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 14th day of July, 2015, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Madrigal, was upon roll call carried and the resolution adopted by the following vote:

AYES:  Councilmembers: Cogdill, Gunderson, Kenoyer, Lopez, Madrigal, Zoslocki, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: [Signature]

STEFANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: [Signature]

ADAM U. LINDGREN, City Attorney
RESOLUTION ACCEPTING THE AIRPORT NEIGHBORHOOD SEWER IMPROVEMENTS PHASE 1 PROJECT AS COMPLETE, AND ANNEXING SAID IMPROVEMENTS INTO MODESTO MUNICIPAL SEWER DISTRICT NO. 1

WHEREAS, a report has been filed by the Director of Utilities that the Airport Neighborhood Sewer Improvements Phase 1 Project has been completed dated September 9, 2014, and annexing said improvements into Modesto Municipal Sewer District No. 1,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the Airport Neighborhood Sewer Improvements Phase 1 Project is hereby accepted as complete, and that the County of Stanislaus is authorized to file a Notice of Completion with the Stanislaus County Recorder, and annexing said improvements into Modesto Municipal Sewer District No. 1.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 14th day of July, 2015, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Madrigal, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Cogdill, Gunderson, Kenoyer, Lopez, Madrigal, Zoslocki, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: _____________________________

SEAL

APPROVED AS TO FORM:

By: _________________________________

ADAM U. LINDGREN, City Attorney
RESOLUTION APPROVING A BLANKET WILL SERVE LETTER FOR 48 PARCELS IN THE AIRPORT NEIGHBORHOOD ADJACENT TO THE RECENTLY COMPLETED PHASE 1 SEWER IMPROVEMENTS, ALLOWING CONNECTION TO THE CITY OF MODESTO’S EXISTING SANITARY SEWER SYSTEM, AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO APPROVE THE WILL-SERVE LETTER

WHEREAS, the Airport Neighborhood is an unincorporated, disadvantaged community located on the southeast side of the City of Modesto with 481 parcels that rely on septic systems for treatment of sewage, and

WHEREAS, the Airport Neighborhood’s septic systems are failing and pose a threat to public health and groundwater, and

WHEREAS, the City owns and operates a sanitary sewer system adjacent to the Airport Neighborhood and is prepared to provide sewer services to the Airport Neighborhood, and

WHEREAS, on December 13, 2011, the City Council, by Resolution No. 2011-477, approved a Memorandum of Agreement with the County for City engineering staff to provide sewer design services for the project, and

WHEREAS, the Agreement required that Stanislaus County Public Works Department construct the Airport Neighborhood sewer improvements to City Standards, and

WHEREAS, on August 29, 2012, City staff completed and submitted the plans and specifications to the County, and

WHEREAS, a Measure M Sewer Advisory Vote was approved to allow City sewer extension in the Airport Community, and
WHEREAS, on September 9, 2014, the City Council, by Resolution No. 2014-376, approved a Memorandum of Agreement with the County for City staff to provide engineering design support services during construction of Phase 1 of the Airport Neighborhood Sewer Improvement Project along Kerr Avenue from Oregon Drive to Paige Court and will serve 48 parcels, and

WHEREAS, per the Agreement, the County is to transfer ownership of sewer improvements upon Notice of Completion filed by the County and upon inspection and approval by the City, and

WHEREAS, the Phase 1 sewer improvements have been constructed and are ready to be serviced by the City, and

WHEREAS, residences of the 48 parcels will be allowed to connect to the City’s sewer system, and

WHEREAS, the property owner will be required to pay connection fees and enter into an outside Service Agreement for their property,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the Blanket Will Serve letter for 48 parcels in the Airport Neighborhood adjacent to the recently completed Phase 1 Sewer Improvements and allows connection to the City of Modesto’s existing sanitary sewer system.

BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to approve the Will Serve letter.
The foregoing documents were introduced at a regular meeting of the Council of the City of Modesto held on the 14th day of July, 2015, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Madrigal, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Cogdill, Gunderson, Kenoyer, Lopez, Madrigal, Zoslocki, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: [Signature]

(STEPHANIE LOPEZ, City Clerk)

(SEAL)

APPROVED AS TO FORM:

By: [Signature]

ADAM U. LINDGREN, City Attorney

07/14/2015/Util/JFrance/Item 15

3

2015-252
RESOLUTION APPROVING THE PLANS AND SPECIFICATIONS FOR THE 2014 HUD CURB RAMP AND STORM DRAIN IMPROVEMENTS PROJECT, ACCEPTING THE BID, AND APPROVING A CONTRACT WITH GEORGE REED, INC., OF MODESTO, CALIFORNIA IN THE AMOUNT OF $842,092, AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE CONTRACT

WHEREAS, plans and specifications have been prepared for the 2014 HUD Curb Ramp and Storm Drain Improvements Project, and City staff recommends approval by the City Council, and

WHEREAS, the bids received for the 2014 HUD Curb Ramp and Storm Drain Improvements Project were for the consideration of the Council, and

WHEREAS, the Director of Utilities has recommended that the bid of $842,092 received from George Reed, Inc., of Modesto, California be accepted as the lowest responsible and responsive bid and the contract be awarded to George Reed, Inc.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the plans and specifications for the 2014 HUD Curb Ramp and Storm Drain Improvements Project, accepts the bid of George Reed, Inc., of Modesto, California in the amount of $842,092, and awards Gateway Pacific Contractors, Inc. the contract for the 2014 HUD Curb Ramp and Storm Drain Improvements Project.

BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute the contract.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 14th day of July, 2015, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Madrigal, was upon roll call carried and the resolution adopted by the following vote:

**AYES:** Councilmembers: Cogdill, Gunderson, Kenoyer, Lopez, Madrigal, Zoslocki, Mayor Marsh

**NOES:** Councilmembers: None

**ABSENT:** Councilmembers: None

ATTEST: [Signature]

(SEAL)

APPROVED AS TO FORM:

By: [Signature]

ADAM U. LINDGREN, City Attorney
RESOLUTION AMENDING THE FISCAL YEAR 2015-2016 CAPITAL IMPROVEMENT PROGRAM BUDGET IN THE AMOUNT OF $370,196 TO BE TRANSFERRED INTO THE PROJECT FROM WASTEWATER FUND RESERVES IN ORDER TO FULLY FUND THE CONSTRUCTION, CONTINGENCY, CONSTRUCTION ADMINISTRATION, AND DESIGN SUPPORT DURING CONSTRUCTION FOR THE 2014 HUD CURB RAMP AND STORM DRAIN IMPROVEMENTS PROJECT

WHEREAS, certain budgetary transactions are necessary in the amount of $370,196, in order to fund construction, contingency, construction administration, design support during construction, including engineering/design/administration support by City staff, for the 2014 HUD Curb Ramp and Storm Drain Improvements Project, and

WHEREAS, the Fiscal Year 2015-2016 Capital Improvement Program Budget must be amended as shown in Exhibit A, which is incorporated by reference herein,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the amendment of the Fiscal Year 2015-2016 Capital Improvement Program Budget as shown in Exhibit A.

BE IT FURTHER RESOLVED that the Director of Finance, or her designee, is hereby authorized to implement the provisions of this resolution.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 14th day of July, 2015, by Councilmember Lopez who moved its adoption, which motion being duly seconded by Councilmember Madrigal, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Cogdill, Gunderson, Kenoyer, Lopez, Madrigal, Zoslocki, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: [Signature]

STEFANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: [Signature]

ADAM U. LINDGREN, City Attorney
Exhibit A

Due to bid costs being higher than initially budgeted for construction, construction administration, contingency and engineering/design/administration costs for CIP Account #100777 “E Street SD Cross Connection”, the total project costs need to be increased by $370,196. This would be done by adjusting Construction by $292,180, Construction Administration by $35,062, Contingency-CIP by $29,218, and Engineering/Design/Administration by $13,736.

To fund the above account, $370,196 will be transferred from Wastewater Fund Reserves into CIP Project 10077 for the wastewater cost share of the 2014 HUD Curb Ramp and Storm Drain Improvement Project.
RESOLUTION APPROVING AN EXEMPTION FOR THE HOUSE MODESTO CHURCH SPORTS AND RECREATION FIELD FROM STAGE II DROUGHT CONTINGENCY PLAN REQUIREMENTS IN THE INTEREST AND CONCERN OF PROVIDING FOR THE HEALTH AND SAFETY OF THE USERS

WHEREAS, California is in currently entering the fourth consecutive year of drought conditions and most of the state, including the watershed that provides the City of Modesto’s water supply, is experiencing exception drought conditions, and

WHEREAS, on May 1, 2015 the Modesto City Council approved changes to the Drought Contingency Plan and implemented State II water conservation requirements, and

WHEREAS, the Stage II requirements limit watering of turf to twice weekly before 9:00 a.m. and after 7:00 p.m., and

WHEREAS, on May 26, 2015 the Modesto City Council approved exemptions to the Stage II requirements for community sports and recreation fields owned by the City, and

WHEREAS, The House Modesto Church (The House) has requested a similar exemption for its sports and recreation field, and

WHEREAS, based on the water conservation practices that The House has already implemented, staff recommended the following exemptions be granted to The House:

For The House sport field, apply sufficient irrigation water as necessary to maintain a safe turf playing surface. Allow to irrigate as required to maintain a safe condition. Install “compliance” signs as per City guidance.
NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves an exemption for The House Modesto Church sports and recreation field from Stage II Drought Contingency Plan requirements in the interest and concern of providing for the health and safety of the users.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 14th day of July, 2015, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Madrigal, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Cogdill, Gunderson, Kenoyer, Lopez, Madrigal, Zoslocki, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: [Signature]

STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: [Signature]

ADAM U. LINDGREN, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2015-256

RESOLUTION APPROVING AN AGREEMENT WITH BARTLE WELLS ASSOCIATES FOR THE PREPARATION OF THE WATER RATE AND FEE STUDY IN AN AMOUNT NOT TO EXCEED $109,560 FOR THE IDENTIFIED SCOPE OF SERVICES, PLUS $11,440 FOR ADDITIONAL SERVICES (IF NEEDED), FOR A MAXIMUM TOTAL AMOUNT OF $121,000, AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE AGREEMENT

WHEREAS, the City of Modesto currently provides water service to over 74,000 water service connections in Modesto, Salida, Grayson, Del Rio, Empire, and parts of Ceres and Turlock; and

WHEREAS, the City had previously adopted water rates in 2004 and 2005 respectively; and

WHEREAS, due to the water supply impacts of the 4th year of drought, the City Council, by Resolution 2015-134, implemented a Stage II Drought Contingency Plan on April 28, 2015 in order to comply with the State Emergency Water Conservation Regulations that require a 36% reduction in water use for Modesto in 2015 compared to 2014; and

WHEREAS, a reduction in Water Fund revenues has resulted from conservation efforts because most of the City’s water customers are metered accounts, and the fund has experienced a 6.3% reduction in revenue in March 2015 compared to March 2014; and

WHEREAS, this reduction in revenues is compounded by not implementing an annual Consumer Price Index rate adjustment to the Water Fund; and

WHEREAS, there have also been increases in the City’s water operations costs as a result of increased groundwater pumping due to reductions of surface water, and
conducting state-mandated studies that have put pressure on the City’s Water Fund bond coverage requirements; and

WHEREAS, although the legal requirement for the Debt Service coverage ratio is 1.25, the City has adopted a policy to maintain a 1.50 ratio and actions have been taken to prevent a projected debt coverage ratio of falling below 1.25, which is below the bond covenant requirements; and

WHEREAS, due to the reduction in water sales revenue, anticipated water supply projects, increased operating costs, and system changes, the current water rate structure will not adequately fund operating expenditures, capital improvement and maintenance needs, or issuance of bonds in the future; and

WHEREAS, on May 12, 2015, the City Council, by Resolution 2015-156, approved Staff’s request to negotiate an agreement with Bartle Wells Associates (BWA) to conduct a new water rate and fee study; and

WHEREAS, staff reviewed and concurred with BWA’s proposed scope of work and recommended approval of this agreement; and

WHEREAS, this effort will be conducted in parallel with the ongoing Water Master Plan, which will identify all required water system improvement projects to meet both current and future growth demands and projected regulatory requirements, and will be incorporated in to the water rate and fee study; and

WHEREAS, a new Proposition 218 vote is needed before any additional Water Rate adjustments can be implemented.
NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves an Agreement with Bartle Wells Associates for the preparation of the Water Rate and Fee Study in an amount not to exceed $109,560 for the identified scope of services, plus $11,440 for additional services (if needed), for a maximum total amount of $121,000.

BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute the Agreement.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 14th day of July, 2015, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Madrigal, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Cogdill, Gunderson, Kenoyer, Lopez, Madrigal, Zoslocki, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: ADAM U. LINDGREN, City Attorney
RESOLUTION APPROVING THE PLANS AND SPECIFICATIONS FOR THE COLLECTOR AND ARTERIAL REHABILITATION PROJECT, ACCEPTING THE BID, AND APPROVING A CONTRACT WITH VSS INTERNATIONAL, INC., OF WEST SACRAMENTO, CALIFORNIA IN THE AMOUNT OF $1,489,323.10 AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE CONTRACT

WHEREAS, plans and specifications have been prepared for the Collector and Arterial Rehabilitation Project and City staff recommends approval by the City Council, and

WHEREAS, the bids received for the Collector and Arterial Rehabilitation Project, were opened at 11:00 a.m. on June 16, 2015, and later tabulated by the Director of Community and Economic Development for the consideration of the Council, and

WHEREAS, the Director of Community and Economic Development has recommended that the bid of $1,489,323.10 received from VSS International, Inc. of West Sacramento, California, be accepted as the lowest responsive and responsible bid and the contract be awarded to VSS International, Inc.,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the plans and specifications for the Collector and Arterial Rehabilitation Project, accepts the bid of VSS International, Inc. of West Sacramento, California, in the amount of $1,489,323.10, and awards VSS International, Inc. the contract for the Collector and Arterial Rehabilitation Project.

BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute the contract.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 14th day of July, 2015, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Kenoyer, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Cogdill, Gunderson, Kenoyer, Lopez, Madrigal, Mayor Marsh

NOES: Councilmembers: Zoslocki

ABSENT: Councilmembers: None

ATTEST: ____________________________

STEFANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: ____________________________

ADAM U. LINDGREN, City Attorney
RESOLUTION APPROVING THE PLANS AND SPECIFICATIONS FOR THE DOWNSTREAM WATER SYSTEM IMPROVEMENTS-TIER 1 NORTH TANK 11 AND PUMP STATION PROJECT, ACCEPTING THE BID, AND APPROVING A CONTRACT WITH GATEWAY PACIFIC CONTRACTORS, INC. OF SACRAMENTO, CALIFORNIA IN THE AMOUNT OF $10,448,950, AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE CONTRACT

WHEREAS, plans and specifications have been prepared for the Downstream Water System Improvements-Tier 1 North Tank 11 and Pump Station, and City staff recommends approval by the City Council, and

WHEREAS, the bids received for the Downstream Water System Improvements-Tier 1 North Tank 11 and Pump Station were for the consideration of the Council, and

WHEREAS, the Director of Utilities has recommended that the bid of $10,448,950 received from Gateway Pacific Contractors, Inc. of Sacramento, California be accepted as the lowest responsible and responsive bid and the contract be awarded to Gateway Pacific Contractors, Inc.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the plans and specifications for the Downstream Water System Improvements-Tier1 North Tank 11 and Pump Station, accepts the bid of Gateway Pacific Contractors, Inc. of Sacramento, California in the amount of $10,448,950, and awards Gateway Pacific Contractors, Inc. the contract for the Downstream Water System Improvements-Tier1 North Tank 11 and Pump Station.

BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute the contract.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 14th day of July, 2015, by Councilmember Kenoyer, who moved its adoption, which motion being duly seconded by Councilmember Gunderson, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Cogdill, Gunderson, Kenoyer, Lopez, Madrigal, Zoslocki, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: ADAM U. LINDGREN, City Attorney
RESOLUTION APPROVING AN AGREEMENT WITH CONSOLIDATED CM FOR CONSTRUCTION MANAGEMENT SERVICES FOR THE DOWNSTREAM WATER SYSTEM IMPROVEMENTS-TIER I NORTH TANK 11 AND PUMP STATION PROJECT IN AN AMOUNT NOT TO EXCEED $1,278,853.29 FOR THE IDENTIFIED SCOPE OF SERVICES, PLUS $127,885.00 FOR ADDITIONAL SERVICES (IF NEEDED), FOR A MAXIMUM TOTAL AMOUNT OF $1,406,738.29, AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE AGREEMENT

WHEREAS, this project will construct a 6 million gallons water storage reservoir and an 18 million gallon per day booster pump station to increase service reliability of the City of Modesto’s water system as part of the Tier I Downstream Water System Improvements identified in the 2010 Water System Engineer’s Report, and

WHEREAS, the project is located on 6.3 acres located at the corner of Bangs Avenue and Tully Road, and

WHEREAS, due to the scope and complex nature of this project, staff recommends utilizing a consultant to provide Construction Management Services for the anticipated 16 month construction phase, and

WHEREAS, in accordance with City Administrative Directive 3.1, Selection Procedures for Professional Consultants Who Provide Architectural & Engineering Services for Capital Projects, a Request for Qualifications (RFQ) was issued to both local and non-local firms for Construction Management and Inspection Services for this project, and

WHEREAS, staff received five Statements of Qualifications (SOQs) and issued a Request for Proposal (RFP) to the top four qualified firms, and
WHEREAS, Consolidated CM (CCM) was selected as the most qualified firm for the North Tank 11 and Pump Station project, and

WHEREAS, CCM has experience with this type of tank and pump station project and has successfully provided similar construction management services on a previous City project, and

WHEREAS, CCM will be the main point of contact for all construction activities and reporting during this project, and

WHEREAS, therefore, City staff recommends approving an agreement with CCM for construction management services,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves an Agreement with Consolidated CM for Construction Management Services for the Downstream Water System Improvements-Tier 1 North Tank 11 and Pump Station project in an amount not to exceed $1,278,853.29 for the identified scope of services, plus $127,885.00 for additional services (if needed), for a maximum total amount of $1,406,738.29.

BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute the Agreement.
The foregoing resolution was introduced at a regular meeting of the Council of
the City of Modesto held on the 14th day of July, 2015, by Councilmember Kenoyer, who
moved its adoption, which motion being duly seconded by Councilmember Gunderson,
was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Cogdill, Gunderson, Kenoyer, Lopez, Madrigal,
Zoslocki, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: [Signature]

SEAL

APPROVED AS TO FORM:

By: [Signature]

ADAM U. LINDGREN, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2015-260

RESOLUTION APPROVING AN AGREEMENT WITH WEST YOST ASSOCIATES, INC. FOR DESIGN SUPPORT DURING CONSTRUCTION FOR THE DOWNSTREAM WATER SYSTEM IMPROVEMENTS-TIER 1 NORTH TANK 11 AND PUMP STATION PROJECT IN AN AMOUNT NOT TO EXCEED $233,055 FOR THE IDENTIFIED SCOPE OF SERVICES, PLUS $23,306 FOR ADDITIONAL SERVICES (IF NEEDED), FOR A MAXIMUM TOTAL AMOUNT OF $256,361, AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE AGREEMENT

WHEREAS, this project will construct a 6 million gallons water storage reservoir and an 18 million gallon per day booster pump station to increase service reliability of the City of Modesto’s water system as part of the Tier I Downstream Water System Improvements identified in the 2010 Water System Engineer’s Report, and

WHEREAS, the project is located on 6.3 acres located at the corner of Bangs Avenue and Tully Road, and

WHEREAS, West Yost Associates, Inc. (West Yost) is the design engineering consultant for the Downstream Water System Improvements Tier 1 North Tank 11 and Pump Station project, and

WHEREAS, due to the size and complexity of the project, construction support services from West Yost are required to facilitate construction activities and promote timely and successful completion of the, and

WHEREAS, the scope of services for the Design Support During Construction (DSDC) agreement include: 1) Project Administration; 2) Construction Progress Meetings; 3) Respond to Requests for Information (RFIs); 4) Submittal Reviews; 5) Project Changes / Change Orders; 6) Commissioning and Start Up; and 7) Record Drawings, and
WHEREAS, therefore, City staff recommends approving an agreement with West Yost Associates, Inc. for Design Support During Construction for the Downstream Water System Improvements-Tier 1 North Tank 11 and Pump Station project,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves an Agreement with West Yost Associates, Inc. for Design Support During Construction for the Downstream Water System Improvements-Tier 1 North Tank 11 and Pump Station project in an amount not to exceed $233,055 for the identified scope of services, plus $23,306 for additional services (if needed), for a maximum total amount of $256,361.

BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute the Agreement.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 14th day of July, 2015, by Councilmember Kenoyer, who moved its adoption, which motion being duly seconded by Councilmember Gunderson, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Cogdill, Gunderson, Kenoyer, Lopez, Madrigal, Zoslocki, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: STEPHANIE LOPEZ, City Clerk
(SEAL)

APPROVED AS TO FORM:

By: ADAM U. LINDGREN, City Attorney
RESOLUTION AMENDING THE FISCAL YEAR 2015-2016 CAPITAL IMPROVEMENT PROGRAM BUDGET IN THE AMOUNT OF $431,317 TO BE TRANSFERRED INTO THE PROJECT FROM WATER FUND RESERVES IN ORDER TO FULLY FUND THE CONSTRUCTION, CONTINGENCY, CONSTRUCTION ADMINISTRATION, CITY CONSTRUCTION FORCES, AND DESIGN SUPPORT DURING CONSTRUCTION FOR THE DOWNSTREAM SYSTEM WATER IMPROVEMENTS-TIER 1 NORTH TANK 11 AND PUMP STATION PROJECT

WHEREAS, certain budgetary transactions are necessary in the amount of $431,317, in order to fund construction, contingency, construction administration, City construction forces, design support during construction, including engineering/design/administration support by City staff, for the Downstream Water System Water Improvements-Tier 1 North Tank 11 and Pump Station project, and

WHEREAS, the Fiscal Year 2015-2016 Capital Improvement Program Budget must be amended as shown in Exhibit A, which is incorporated by reference herein,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the amendment of the Fiscal Year 2015-2016 Capital Improvement Program Budget as shown in Exhibit A.

BE IT FURTHER RESOLVED that the Director of Finance, or her designee, is hereby authorized to implement the provisions of this resolution.
The foregoing resolution was introduced at a regular meeting of the Council of
the City of Modesto held on the 14th day of July, 2015, by Councilmember Kenoyer, who
moved its adoption, which motion being duly seconded by Councilmember Gunderson,
was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Cogdill, Gunderson, Kenoyer, Lopez, Madrigal,
Zoslocki, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

(Seal)

APPROVED AS TO FORM:

By: ADAM U. LINDGREN, City Attorney

ATTEST: [Signature]

STÉPHANIE LOPEZ, City Clerk

07/14/2015/Util/TBryan/Item 22
Exhibit A

Due to bid costs being higher than initially budgeted for the project, line item decrease/increases are necessary for CIP Account #100481 “DSI Tier 1 North Tank”, and the total project costs need to be increased by $431,317. This would be done by adjusting Construction by <$518,050>, Construction Administration by $350,820, Contingency-CIP by $175,916, Engineering/Design/Administration by $419,131, and Land Acquisition by $3,500.

To fund the above account, $431,317 will be transferred from Water Fund Reserves into CIP Project 100481 for the Downstream Water System Improvements-Tier 1 North Tank 11 and Pump Station project.
MODESTO CITY COUNCIL
RESOLUTION NO. 2015-262

RESOLUTION APPROVING AN AMENDMENT TO THE CIRCULATION ELEMENT OF THE MODESTO URBAN AREA GENERAL PLAN TO REMOVE THE MINOR COLLECTOR STREET DESIGNATION FROM S. SANTA ROSA AVENUE, AND OREGON DRIVE WEST OF S. SANTA CRUZ AVENUE. (E&J GALLO WINERY)

WHEREAS, on October 14, 2008, the City Council of the City of Modesto certified the Final Master Environmental Impact Report ("Master EIR") (SCH No. 2007072023) for the Modesto Urban Area General Plan, and

WHEREAS, a new General Plan for the City of Modesto entitled "City of Modesto Urban Area General Plan", as recommended by the Modesto City Planning Commission, was adopted by the Council of the City of Modesto by Resolution No. 95-409 on August 15, 1995, and


WHEREAS, on October 14, 2008, the City Council of the City of Modesto certified the Final Master Environmental Impact Report ("Master EIR") (SCH No. 2007072023) for the Modesto Urban Area General Plan that was amended by Modesto City Council Resolution No. 2008-583, and

WHEREAS, Government Code Section 65358 permits the amendment of General Plans by the legislative body, and
WHEREAS, the E&J Gallo Winery has applied for an amendment to the General Plan to remove the Minor Collector Street designation from S. Santa Rosa Avenue, and Oregon Drive west of S. Santa Cruz Avenue from the Circulation Element, and

WHEREAS, the Community & Economic Development Department has analyzed the proposed amendment compared to the adopted General Plan, and

WHEREAS, the City of Modesto prepared an Initial Study (Environmental Assessment C&ED/EA 2015-05) that evaluated the environmental impacts of the project, and based on the Initial Study conclusion that there would not be any significant impacts on the environment, a Negative Declaration has been prepared for the project, and

WHEREAS, on June 1, 2015, the Planning Commission held a duly noticed public hearing in the Tenth Street Place Chambers located at 1010 Tenth Street, Modesto, California, relating to this proposed amendment to the Modesto Urban Area General Plan to remove the Minor Collector Street designation from S. Santa Rosa Avenue, and Oregon Drive west of S. Santa Cruz Avenue from the Circulation Element, and

WHEREAS, after said public hearing, the Planning Commission adopted Resolution No. 2015-15, recommending to the City Council an amendment to the Modesto Urban Area General Plan to remove the Minor Collector Street designation from S. Santa Rosa Avenue, and Oregon Drive west of S. Santa Cruz Avenue from the Circulation Element, and

WHEREAS, said matter was set for a public hearing of the City Council to be held on July 14, 2015, in the Tenth Street Place Chambers located at 1010 Tenth Street, Modesto, California, at which date and time said duly noticed public hearing of the Council was held for the purpose of receiving public comment on the proposed
amendment to the Modesto Urban Area General Plan to remove the Minor Collector Street designation from S. Santa Rosa Avenue, and Oregon Drive west of S. Santa Cruz Avenue from the Circulation Element.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby finds and determines as follows:

1. The proposed amendment to the Circulation Element of the General Plan will reflect the current status of S. Santa Rosa Avenue south of Mono Drive, and Oregon Drive west of S. Santa Cruz Avenue, as these roadway segments have been previously abandoned and are in use as private drives within the E&J Gallo Winery campus.

2. The proposed General Plan Amendment would also reflect that S. Santa Rosa Avenue does not meet the criteria for a minor collector facility, as it primarily serves as a local street and an access street to the E&J Gallo Winery campus.

3. An Initial Study, Environmental Assessment No. EA/C&ED 2015-05, was prepared by the City of Modesto that analyzed the proposed project and determined that, on the basis of the whole record before it there is no substantial evidence that the project will have a significant effect on the environment, and that a Negative Declaration be adopted.

BE IT FURTHER RESOLVED by the Council of the City of Modesto that it hereby adopts the proposed amendment to the Urban Area General Plan as described in Exhibit “A”, attached hereto and incorporated herein by reference.

BE IT FURTHER RESOLVED by the Council of the City of Modesto that the General Plan Amendment action under this resolution does not include the abandonment of any public roads such as South Santa Rosa Avenue. The abandonment, if any, of public roads such as South Santa Rosa Avenue shall be addressed by the City under separate action.

BE IT FURTHER RESOLVED that the project applicant shall indemnify, defend, and hold harmless the City of Modesto, its agents, officers, and employees from any and
all claims, actions, or proceedings against the City of Modesto, its agents, officers, and employees to attack, set aside, void, or annul, any approval by the City of Modesto and its advisory agency, appeal board, or a legislative body concerning a general plan amendment for the Project and related files (File No.GPA-14-003 and ABD-14-002).

The City of Modesto shall promptly notify the applicant of any claim, action, or proceeding and shall cooperate fully in the defense. If the City fails to do so, the applicant shall not thereafter be responsible to defend, indemnify, or hold City harmless.

BE IT FURTHER RESOLVED by the Council of the City of Modesto that the Community and Economic Development Department Director is hereby authorized and directed to forward certified copies of this resolution and said amendment to the Urban Area General Plan to the Board of Supervisors, and file a Notice of Determination within five (5) business days with the Stanislaus County Clerk pursuant to Section 21152 of the Public Resources Code.
The foregoing resolution was introduced at a regular meeting of the Council of
the City of Modesto held on the 14th day of July, 2015, by Councilmember Lopez, who
moved its adoption, which motion being duly seconded by Councilmember Madrigal,
was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Cogdill, Gunderson, Kenoyer, Lopez, Madrigal, Zoslocki, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

(SEAL)

ATTEST: STEPHANIE LOPEZ, City Clerk

APPROVED AS TO FORM:

By: ADAM U. LINDGREN, City Attorney
A RESOLUTION ABANDONING AN 87.5-FOOT SEGMENT OF THE ALLEY LOCATED WITHIN BLOCK 3 OF THE DEL ESTE SUBDIVISION, LOCATED EAST OF S. SANTA ROSA AVENUE, AND RESERVING A PUBLIC UTILITY EASEMENT WITHIN THE SUBJECT ALLEY RIGHT-OF-WAY (E&J GALLO WINERY)

WHEREAS, a verified application by the E & J Gallo Winery requesting the full abandonment of Grand Street east of South Morton Boulevard was received by the City of Modesto on November 4, 2014, a copy of which is attached hereto as Exhibit A, and incorporated herein by reference, and

WHEREAS, California Streets and Highways Code Section 8320 et seq. prescribes the procedures to vacate public right-of-way, and

WHEREAS, a title report was submitted with the vacation request which discloses that fee title of the alley right-of-way is vested in the adjacent property owner, being E & J Gallo Winery, the proponent of the vacation, and

WHEREAS, the proposed vacation has been reviewed by affected City departments and local utility companies, and no objection to the proposed vacation has been received, and

WHEREAS, Government Code Section 65402(a) requires that prior to vacating a public right-of-way, the Planning Commission shall make a determination as to whether the vacation is consistent with the General Plan, and

WHEREAS, a hearing was held by the Planning Commission on June 1, 2015, in the Tenth Street Chambers, located at 1010 Tenth Street, Modesto, California, at which hearing evidence both oral and documentary was received and considered regarding
whether the proposed vacation conforms to the City’s Urban Area General Plan and is appropriate, and

WHEREAS, by Planning Commission Resolution No. 2015-16, the Planning Commission rendered a report finding that the proposed vacation is in conformance with the Modesto Urban Area General Plan and is appropriate, and

WHEREAS, a duly noticed public hearing was held by the Council of the City of Modesto on Tuesday, July 14, 2015, at 5:30 p.m., in the Tenth Street Place Chambers located at 1010 Tenth Street, Modesto, California, and

WHEREAS, notices no more than 300 feet apart were posted along the line of the proposed right-of-way to be vacated for two successive weeks prior to the hearing, and notice was published in the Modesto Bee for two successive weeks prior to the hearing, per California Streets & Highways Code Sections 8323 and 8322, respectively, and,

WHEREAS, all things and acts necessary to be done as required by California Streets and Highways Code Sections 8300 through 8363: Public Streets, Highways and Service Easements Vacation Law, in order to vacate the subject right-of-way have been done and accomplished,

NOW, THEREFORE, BE IT RESOLVED that the Council of the City of Modesto finds and determines as follows:

1. The alley to be abandoned is not necessary to serve present or future traffic needs in the area.
2. The alley vacation will provide for the development of a new parking area for the E&J Gallo Winery.
3. The alley vacation is not inconsistent with the General Plan as there is no policy or requirement for alleys in the General Plan.
4. An Initial Study, Environmental Assessment No. EA/C&ED 2015-05, was prepared by the City of Modesto that analyzed the proposed project and determined that, on the basis of the whole record before it there is no
substantial evidence that the project will have a significant effect on the environment, and that a Negative Declaration be adopted.

BE IT FURTHER RESOLVED that the Council hereby orders and declares the vacation of the alley located within Block 3 of the Del Este Subdivision located east of S. Santa Rosa Avenue as described in Exhibit “A” and depicted in Exhibit “B” attached hereto, and by this reference made a part hereof as though set forth in full herein.

BE IT FURTHER RESOLVED that the Council hereby approves the reservation of a public utility easement within the full 20-foot width of the alley at minimum as described in Exhibit “C” and depicted in Exhibit “D”, attached hereto, and by this reference made a part hereof as though set forth in full herein.

BE IT FURTHER RESOLVED that the project applicant shall indemnify, defend, and hold harmless the City of Modesto, its agents, officers, and employees from any and all claims, actions, or proceedings against the City of Modesto, its agents, officers, and employees to attack, set aside, void, or annul, any approval by the City of Modesto and its advisory agency, appeal board, or a legislative body concerning an alley abandonment (File No. ABD-14-002), and related files. The City of Modesto shall promptly notify the applicant of any claim, action, or proceeding and shall cooperate fully in the defense. If the City fails to do so, the applicant shall not thereafter be responsible to defend, indemnify, or hold City harmless.

BE IT FURTHER RESOLVED that the City Clerk shall hold this resolution until all conditions specified herein have been fully satisfied to the satisfaction of the City Engineer or City’s Community and Economic Director and not less than five (5) working days after said conditions have been fully satisfied, the City Clerk shall cause a certified
copy of this resolution, attested under seal of the City, to be recorded in the Office of the Recorder of the County of Stanislaus.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 14th day of July, 2015, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Madrigal, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Cogdill, Gunderson, Kenoyer, Lopez, Madrigal, Zoslocki, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

(Seal)

APPROVED AS TO FORM:

By: ADAM U. LINDGREN, City Attorney

APPROVED AS TO LEGAL DESCRIPTION

By: Community & Economic Development Department Planning Division

ATTEST: STEPHANIE LOPEZ, City Clerk

07/14/2015/C&ED/KMartin/Item 23
EXHIBIT A

LEGAL DESCRIPTION
FOR RIGHT-OF-WAY (ALLEY) VACATION

All that portion of that certain 20-foot wide alley in Block 3 of the Map of Del Este Subdivision, filed in Volume 8 of Maps, at Page 12, Stanislaus County Records and dedicated to the public thereon, lying north of the existing city limits as shown on the Santa Rosa Addition, City of Modesto Ordinance 69-636, filed July 25, 1969 as Instrument 25295, and south of the westerly extension of the north line of the south half of Lot 2 in Block 3 of said Map of Del Este Subdivision, also being the south 97.50 feet, more or less, of said alley lying within the City of Modesto corporate limits.

Containing 1750 square feet, more or less.
Exhibit "B"
Exhibit "C"

EXHIBIT C

LEGAL DESCRIPTION
FOR PUBLIC UTILITY EASEMENT (PUE) TO BE RESERVED

All that portion of that certain 20-foot wide alley in Block 3 of the Map of Del Este Subdivision, filed in Volume 8 of Maps, at Page 12, Stanislaus County Records and dedicated to the public thereon, lying north of the existing city limits as shown on the Santa Rosa Addition, City of Modesto Ordinance 69-636, filed July 25, 1969 as Instrument 25295, and south of the westerly extension of the north line of the south half of Lot 2 in Block 3 of said Map of Del Este Subdivision, also being the south 87.50 feet, more or less, of said alley lying within the City of Modesto corporate limits.

Containing 1750 square feet, more or less.

[Signature]

18 Jun 15
MODESTO CITY COUNCIL
RESOLUTION NO. 2015-264

A RESOLUTION ADOPTING A NEGATIVE DECLARATION FOR A GENERAL PLAN AMENDMENT TO REMOVE THE MINOR COLLECTOR STREET DESIGNATION OF S. SANTA ROSA AVENUE, AND OREGON DRIVE WEST OF S. SANTA CRUZ AVENUE FROM THE CIRCULATION ELEMENT, AND THE ABANDONMENT OF AN 87.5-FOOT SEGMENT OF THE ALLEY IN BLOCK 3 OF THE DEL ESTE SUBDIVISION, EAST OF S. SANTA ROSA AVENUE. (E&J GALLO WINERY)

WHEREAS, the E&J Gallo Winery has applied for a General Plan Amendment to remove the Minor Collector Street designation from S. Santa Rosa Avenue, and Oregon Drive west of S. Santa Cruz Avenue from the Circulation Element, and

WHEREAS, the applicant has also applied for the abandonment of an 87.5-foot segment of the alley located in Block 3 of the Del Este Subdivision, east of S. Santa Rosa Avenue, and

WHEREAS, Section 15070 of the CEQA Guidelines relating to Initial Study/ Negative Declaration provides for a lead agency to prepare an Initial Study on any proposed project to analyze whether the project may cause any significant effect on the environment, and

WHEREAS, the City of Modesto Department of Community and Economic Development has prepared an Initial Study/ Negative Declaration (EA/C&ED No. 2015-05) as provided for by CEQA, and

WHEREAS, a 20-day public review period for the proposed Initial Study/ Negative Declaration began on March 27, 2015, and ended on April 15, 2015, and

WHEREAS, the City received a public comment on the draft Initial Study/ Negative Declaration that warranted minor amendments to the document, of which did
not affect the Initial Study's conclusion that there would not be any significant impacts on the environment, and

WHEREAS, said matter was considered by the City Council at a duly noticed public hearing which was held on July 14, 2015, at 5:30 p.m., in the Tenth Street Place Chambers located at 1010 Tenth Street, Modesto, California,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the Council has reviewed and considered the Initial Study, Environmental Assessment No. EA/C&ED 2015-05, a copy of which is attached hereto as Exhibit “A”, and incorporated herein by reference, and based on the substantial evidence included in said Initial Study makes the following findings:

1. The Initial Study/Negative Declaration prepared for the proposed project shows there is no substantial evidence, in light of the whole record before the City, that the project may have significant environmental effects;

2. The Initial Study/Negative Declaration reflects the independent judgment of the lead agency;

3. The Initial Study, Environmental Assessment No. EA/C&ED 2015-05, provides the substantial evidence to support findings 1-2, noted above.

BE IT FURTHER RESOLVED by the Council of the City of Modesto that the Community & Economic Development Director is hereby authorized and directed to file a notice of approval or determination within five (5) business days with the Stanislaus County Clerk pursuant to Section 21152 of the Public Resources Code.
The foregoing resolution was adopted at a regular meeting of the Council of the City of Modesto held on the 14th day of July, 2015, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Madrigal, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Cogdill, Gunderson, Kenoyer, Lopez, Madrigal, Zoslocki, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: [Signature]

SEAL

APPROVED AS TO FORM:

By: [Signature]

ADAM U. LINDGREN, City Attorney
EXHIBIT A

Initial Study

EA/C&ED No. 2015-05
Negative Declaration
C&ED/EA No. 2015-05

for ABD-14-002/GPA-14-003
General Plan Amendment to Remove the
"Minor Collector Street" Designation of S. Santa
Rosa Avenue and Oregon Drive from the
Circulation Element
With Concurrent Abandonment of 87.5 feet of
Alley Right-of-Way East of South Santa Rosa Avenue

Prepared for:
City of Modesto
P.O. Box 642
Modesto, CA 95353

Contact: Katharine Martin, Associate Planner
209/577-5465

Prepared by:
City of Modesto
Community & Economic Development Department
209/577-5267

March 16, 2015
CEQA Environmental Checklist

PROJECT DESCRIPTION AND BACKGROUND

Project Title: ABD-14-001/GPA-14-003
General Plan Amendment to Remove the Minor Collector Street Designation of S. Santa Rosa Avenue and Oregon Drive from the Circulation Element, with Concurrent Abandonment of an Alley East of S. Santa Rosa Avenue

Lead agency name and address:
City of Modesto
1010 Tenth Street, Suite 3300
Modesto, CA 95354

Contact person and phone number:
Katharine Martin, Associate Planner
209-577-5465

Project Location:
S. Santa Rosa Avenue, south of Yosemite Boulevard/CA-132; and Oregon Drive, west of S. Santa Cruz Avenue; Modesto, Stanislaus County, CA.

Project applicant's name and address:
E&J Gallo Winery, 600 Yosemite Boulevard, Modesto, CA 95354

General plan description:
Industrial (I), Commercial (C) and Residential (R)

Zoning:
Light Industrial (M-1) and General Commercial (C-2)

Description of project:
Amendment of the Circulation Element of the City of Modesto Urban Area General Plan to remove the designation of Minor Collector Street from S. Santa Rosa Avenue and Oregon Drive. Streets proposed to be removed from the Circulation Element are shown on Map A, below.

Included with this project is a proposal to abandon an 87.5-foot portion of the alley directly east of S. Santa Rosa Avenue, as shown on Map B, below. The alley would be kept in its current configuration to be used as a drive aisle for a new winery-owned parking lot. Existing underground and overhead utilities will be protected by utility easements.

The proposed project is located at an existing winery within the Baseline Developed Area as described in the 2008 Urban Area General Plan. This Negative Declaration references and uses information from the 2008 Urban Area General Plan MEIR (SCH#2007072023).
Surrounding land uses and setting:
The area is industrial in use by the operations facilities, administrative buildings and parking areas of the E&J Gallo Winery. The winery’s parking areas, production facilities and administrative support buildings lie on each side of the streets proposed to be removed from the Circulation Element.

S. Santa Rosa begins at Yosemite Boulevard/CA-132 at a signalized “T” intersection, and terminates at Mono Drive, approximately 950-feet to the south. A 1,600-foot segment of S. Santa Rosa Avenue, south of Mono Drive, was abandoned in 1989, and the roadway ends within the winery’s facility. The segment of Oregon Drive to be removed from the Circulation Element, west of S. Santa Cruz Avenue as shown on the Circulation Element, was also abandoned in 1989, and is used as a private drive to winery operations buildings and parking areas. (See Stanislaus County Assessor’s Map, below)

Commercial uses lie north and west of the alley segment to be abandoned. The area east and south of the alley segment is county unincorporated area zoned for industrial uses, with a winery operations building and properties under winery ownership slated for future parking needs.

Other public agencies whose approval is required (e.g. permits, financial approval, or participation agreements):
None.
Map A

Area of Circulation Element Amendment
Map B

Proposed Alley Abandonment (portion within City incorporated area)
ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED:

The environmental factors checked below would be potentially affected by this project. Please see the checklist beginning on page 3 for additional information.

<table>
<thead>
<tr>
<th>☐ Aesthetics</th>
<th>☐ Agriculture and Forestry</th>
<th>☐ Air Quality</th>
</tr>
</thead>
<tbody>
<tr>
<td>☐ Biological Resources</td>
<td>☐ Cultural Resources</td>
<td>☐ Geology/Soils</td>
</tr>
<tr>
<td>☐ Greenhouse Gas Emissions</td>
<td>☐ Hazards and Hazardous Materials</td>
<td>☐ Hydrology/Water Quality</td>
</tr>
<tr>
<td>x Land Use/Planning</td>
<td>☐ Mineral Resources</td>
<td>☐ Noise</td>
</tr>
<tr>
<td>☐ Population/Housing</td>
<td>☐ Public Services</td>
<td>☐ Recreation</td>
</tr>
<tr>
<td>x Transportation/Traffic</td>
<td>☐ Utilities/Service Systems</td>
<td>☐ Mandatory Findings of Significance</td>
</tr>
</tbody>
</table>

DETERMINATION:

On the basis of this initial evaluation:

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

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

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

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

- ☐ I find that although the proposed project could have a significant effect on the environment, because all potentially significant effects (a) have been analyzed adequately in an earlier EIR or NEGATIVE DECLARATION pursuant to applicable standards, and (b) have been avoided or mitigated pursuant to that earlier EIR or NEGATIVE DECLARATION, including revisions or mitigation measures that are imposed upon the proposed project, nothing further is required.

Signature: ___________________________ Date: ______________

Printed Name: ___________________________
This checklist identifies physical, biological, social and economic factors that might be affected by the proposed project. In many cases, background studies performed in connection with the projects indicate no impacts. A NO IMPACT answer in the last column reflects this determination. Where there is a need for clarifying discussion, the discussion is included either following the applicable section of the checklist or is within the body of the environmental document itself. The words "significant" and "significance" used throughout the following checklist are related to CEQA, not NEPA, impacts. The questions in this form are intended to encourage the thoughtful assessment of impacts and do not represent thresholds of significance.

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

a) The project would have no effect on any scenic vistas, or restrict access to any scenic vistas, as the subject roadways terminate within the winery's facility and do not provide access to parks or vista areas.

b) The project would not damage scenic resources, or degrade the existing visual character or quality of the site.

c) The project would not create a new source of light or glare that would adversely affect day or nighttime views in the area.

Resource


II. AGRICULTURE AND FOREST RESOURCES:

In determining whether impacts to agricultural resources are significant environmental effects, lead agencies may refer to the California Agricultural Land Evaluation and Site Assessment Model (1997) prepared by the California Dept. of Conservation as an optional model to use in assessing impacts on agriculture and farmland. In determining whether impacts to forest resources, including timberland, are significant environmental effects, lead agencies may refer to information compiled by the California Department of Forestry and Fire Protection regarding the state's inventory of forest land, including the Forest and Range Assessment Project and the Forest Legacy Assessment Project; and the forest carbon measurement methodology provided in Forest Protocols adopted by the California Air Resources Board. Would the project:
a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?

b) Conflict with existing zoning for agricultural use, or a Williamson Act contract?

c) Conflict with existing zoning for, or cause rezoning of, forest land (as defined in Public Resources Code section 12220(g)), timberland (as defined by Public Resources Code section 4526), or timberland zoned Timberland Production (as defined by Government Code section 51104(g))?

d) Result in the loss of forest land or conversion of forest land to non-forest use?

e) Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use or conversion of forest land to non-forest use?
Discussion

a) As of data available from the California Department of Conservation in March of 2015, project area is categorized by the FMMP as Urban and Built-up Land, and therefore would not threaten to convert Prime Farmland, Unique Farmland or Farmland of Statewide Importance.

b) The area is not zoned for agricultural use, and no property adjacent to the site carries a Williamson Act contract.

c) The existing zoning of the area is General Commercial and Industrial. No timberland or forest zoning has been applied to the area and therefore would not be affected by the project.

d) The area is urbanized and therefore would not result in the loss or conversion of forest land.

e) The area surrounding the site is urbanized, and the project would not cause changes to the environment that would lead to the loss or conversion of farmland and/or forest land.

Resource

See pages V-4-1 to V-4-13 in the MIER.
III. AIR QUALITY: Where available, the significance criteria established by the applicable air quality management or air pollution control district may be relied upon to make the following determinations. Would the project:

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

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

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

d) Expose sensitive receptors to substantial pollutant concentrations?

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

a) The proposed amendment to the Circulation Element and associated alley abandonment would not conflict with or obstruct implementation of an applicable air quality plan.

b) The project was referred to the San Joaquin Valley Air Pollution District (SJAPC), who indicated no concerns.

c-e) The current use of the subject streets are primarily by winery employee and operations traffic. One street, Oregon Drive, is already abandoned and is used exclusively by winery traffic. The removal of the two streets from the Circulation Element would not result in an increase of pollution, expose sensitive receptors to pollutant concentrations, or create objectionable odors.

Resource

See pages V-2-1 to V-2-29 in the MEIR.

<table>
<thead>
<tr>
<th>IV. BIOLOGICAL RESOURCES: Would the project:</th>
<th>Potentially Significant Impact</th>
<th>Less Than Significant with Mitigation</th>
<th>Less Than Significant Impact</th>
<th>No Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?</td>
<td>☒</td>
<td>☐</td>
<td>☐</td>
<td>☒</td>
</tr>
<tr>
<td>b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Game or US Fish and Wildlife Service?</td>
<td>☒</td>
<td>☐</td>
<td>☐</td>
<td>☒</td>
</tr>
<tr>
<td>c) Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?</td>
<td>☒</td>
<td>☐</td>
<td>☐</td>
<td>☒</td>
</tr>
</tbody>
</table>
d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites? □ □ □ ❌

e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance? □ □ □ ❌

f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan? □ □ □ ❌

Discussion

a) The project site is not a biologically sensitive site as defined by Figures V-7-1 of the MEIR. The California Department of Fish and Game and the U.S. Fish and Wildlife Service were consulted in the production of the MEIR.

b-c) The proposal would not effect on any riparian areas, wetland, marsh, or vernal pool.

d) The proposal would not interfere with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites.

e) The proposal would not conflict with local biological preservation regulations or ordinances.

f) The proposal would not conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan.

Resource

See pages V-7-1 to V-7-31 in the MEIR.

<table>
<thead>
<tr>
<th>Potentially Significant Impact</th>
<th>Less Than Significant With Mitigation</th>
<th>Less Than Significant Impact</th>
<th>No Impact</th>
</tr>
</thead>
</table>

V. CULTURAL RESOURCES: Would the project:

a) Cause a substantial adverse change in the significance of a historical resource as defined in §15064.5? □ □ □ ❌

b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to §15064.5? □ □ □ ❌

c) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature? □ □ □ ❌
d) Disturb any human remains, including those interred outside of formal cemeteries?

Discussion

a) The project is consistent with the historical resource policies in the General Plan.
b) The project is consistent with the archeological resource policies in the General Plan. The project was referred to the Native American Tribes for consultation and no concern was provided.
c) The proposed project would not impact unique paleontological resource or site or unique geologic feature.
d) The proposed project would not disturb and human remains.

Resource

See pages V-8-1 to V-8-25 in the MEIR.

<table>
<thead>
<tr>
<th>VI. GEOLOGY AND SOILS: Would the project:</th>
</tr>
</thead>
<tbody>
<tr>
<td>a) Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:</td>
</tr>
<tr>
<td>i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42?</td>
</tr>
<tr>
<td>ii) Strong seismic ground shaking?</td>
</tr>
<tr>
<td>iii) Seismic-related ground failure, including liquefaction?</td>
</tr>
<tr>
<td>iv) Landslides?</td>
</tr>
<tr>
<td>b) Result in substantial soil erosion or the loss of topsoil?</td>
</tr>
<tr>
<td>c) Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?</td>
</tr>
</tbody>
</table>
d) Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial risks to life or property? ☑

e) Have soils incapable of adequately supporting the use of septic tanks or alternative waste water disposal systems where sewers are not available for the disposal of waste water? ☑

Discussion

a) The proposed amendment to the Circulation Element and associated alley abandonment would not cause adverse effects on the area geology and soils, nor expose people or structures to seismic hazards, ground hazards such as landslides or liquefaction.

b-e) The proposed Circulation Element amendment and associated alley abandonment are proposed to facilitate the future private use of existing roadways. The proposal would not be located on unstable or expansive soils, nor would cause erosion or soil loss. The project does not propose development that would require septic systems or other wastewater disposal systems.

Resource

See pages V-17-1 to V-17-16 in the MEIR

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<tr>
<th>Potentially Significant Impact</th>
<th>Less Than Significant with Mitigation</th>
<th>Less Than Significant Impact</th>
<th>No Impact</th>
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VII. GREENHOUSE GAS EMISSIONS: Would the project:

a) Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment? ☑

b) Conflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases? ☑
Discussion

a) The MEIR addressed potential climate change impacts due to development and other activities associated with the Urban Area General Plan (UAGP). The MEIR determined that build-out of the UAGP would make a cumulatively considerable contribution to global climate change. The UAGP nonetheless authorizes development that will contribute to global climate change by virtue of the production of greenhouse gases. The MEIR states the projected rate of growth of vehicle miles traveled (VMT) will increase the City's contribution to global climate change as the City develops. Development under the UAGP is expected to generate approximately 1,096,226.4 metric tons per year above 2005 emissions. The City Council adopted a Statement of Overriding Considerations in 2008, finding that the benefits of the UAGP outweighed the City's increased contribution to global climate change.

b) The project would not conflict with a plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gasses.

Resource

See pages V-21-1 to V-21-17 in the MEIR

VIII. HAZARDS AND HAZARDOUS MATERIALS:

Would the project:

a) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?

b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?

c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?

d) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area?

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</table>

f) For a project within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area?

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</table>

g) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?

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h) Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?

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</table>

Discussion

a) The proposed amendment to the Circulation Element and associated alley abandonment would not cause a hazard to the public with regards to the transport, use or disposal of hazardous materials.

b) The proposal would not create a hazard to the public through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment.

c) The proposal would not emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school.

d) The two streets are not located on a list of hazardous materials sites.

e-f) The proposal would not result in an aviation safety hazard for people residing or working in the project area.

g) The proposal would not interfere with emergency services. The project was referred to the City of Modesto Police and Fire Departments, who indicated no concerns.

h) No wildland is within the vicinity of the project area.

Resource

See pages V-21-1 to V-21-19 in the MEIR
IX. HYDROLOGY AND WATER QUALITY: Would the project:

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<th></th>
<th>Potentially Significant Impact</th>
<th>Less Than Significant with Mitigation</th>
<th>Less Than Significant Impact</th>
<th>No Impact</th>
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</thead>
<tbody>
<tr>
<td>a)</td>
<td>Violate any water quality standards or waste discharge requirements?</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>b)</td>
<td>Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)?</td>
<td>☐</td>
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<tr>
<td>c)</td>
<td>Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion or siltation on- or off-site?</td>
<td>☐</td>
<td>☐</td>
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<tr>
<td>d)</td>
<td>Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or off-site?</td>
<td>☐</td>
<td>☐</td>
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<tr>
<td>e)</td>
<td>Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff?</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>f)</td>
<td>Otherwise substantially degrade water quality?</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>g)</td>
<td>Place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map?</td>
<td>☐</td>
<td>☐</td>
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</tr>
<tr>
<td>h)</td>
<td>Place within a 100-year flood hazard area structures which would impede or redirect flood flows?</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>i)</td>
<td>Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam?</td>
<td>☐</td>
<td>☐</td>
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</tr>
<tr>
<td>j)</td>
<td>Inundation by seiche, tsunami, or mudflow</td>
<td>☐</td>
<td>☐</td>
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</tr>
</tbody>
</table>
Discussion

a-f) The proposed amendment to the Circulation Element and associated alley abandonment would not violate any water quality standards or waste discharge requirements, deplete groundwater reserves, alter the drainage pattern of the area, nor otherwise degrade water quality.

g) The proposal does not involve development of new housing.

h-j) The proposal would not place structures within a 100-year flood hazard area, place people or structures at significant risk due to flooding by failure of a levee or dam, or expose people or structures to hazards from seiches, tsunamis or mudflow.

Resource

See pages V-9-1 to V-9-13 and V-10-1 to V-10-15 in the MEIR

<table>
<thead>
<tr>
<th>X. LAND USE AND PLANNING: Would the project:</th>
<th>Potentially Significant Impact</th>
<th>Less Than Significant Impact with Mitigation</th>
<th>Less Than Significant Impact</th>
<th>No Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>a) Physically divide an established community?</td>
<td>☐</td>
<td>☐</td>
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<tr>
<td>b) Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?</td>
<td>☐</td>
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<tr>
<td>c) Conflict with any applicable habitat conservation plan or natural community conservation plan?</td>
<td>☐</td>
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</tbody>
</table>
Discussion

a) The proposal to amend the Circulation Element would reduce S. Santa Rosa north of Mono Drive to a local street, and reflect the current status of S. Santa Rosa Avenue south of Mono Drive and Oregon Drive west of S. Santa Cruz Avenue.

b) The project would not conflict with the land use plans, policies and regulations of the City of Modesto designed to mitigate environmental impacts.

c) The project does not conflict with applicable habitat conservation plans or natural community conservation plans.

Resource

See pages V-20-1 to V-20-21 in the MEIR

<table>
<thead>
<tr>
<th>XI. MINERAL RESOURCES: Would the project:</th>
</tr>
</thead>
<tbody>
<tr>
<td>a) Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?</td>
</tr>
<tr>
<td>b) Result in the loss of availability of a locally-important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan?</td>
</tr>
</tbody>
</table>

Discussion

a-b) The proposed amendment to the Circulation Element and associated alley abandonment would not result in the loss of a mineral resource of value to the state or local area. The site is in an urbanized area with no known mineral resources.
XII. NOISE: Would the project result in:

<table>
<thead>
<tr>
<th>a) Exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?</th>
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<td>□ Potentially Significant Impact</td>
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<tr>
<th>b) Exposure of persons to or generation of excessive groundborne vibration or groundborne noise levels?</th>
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<td>□ Potentially Significant Impact</td>
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<tr>
<th>c) A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project?</th>
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<td>□ Potentially Significant Impact</td>
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<tr>
<th>d) A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project?</th>
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<td>□ Potentially Significant Impact</td>
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<tr>
<th>e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?</th>
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<tbody>
<tr>
<td>□ Potentially Significant Impact</td>
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<tr>
<th>f) For a project within the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels?</th>
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<tr>
<td>□ Potentially Significant Impact</td>
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</table>

Discussion

a-d) The proposed amendment to the Circulation Element and associated alley abandonment would not cause excessive exposure to noise, groundborne vibrations, or an increase in ambient noise levels beyond what already exists at the winery facility.

a) The Modesto County Airport would not expose the project site to excessive noise levels.

b) The project is not within the vicinity of a private airstrip.

Resource

See pages V-3-1 to V-3-23 in the MEIR
XIII. POPULATION AND HOUSING: Would the project:

a) Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?

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<tr>
<th>Potentially Significant Impact</th>
<th>Less Than Significant with Mitigation</th>
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b) Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere?

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<th>Potentially Significant Impact</th>
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c) Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere?

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<th>Potentially Significant Impact</th>
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Discussion

a-c) The proposed amendment to the Circulation Element and associated alley abandonment would not induce substantial population growth in the area, or displace substantial numbers of housing or people.

XIV. PUBLIC SERVICES:

a) Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:

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<th>Potentially Significant Impact</th>
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Fire protection?

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Police protection?

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<th>Potentially Significant Impact</th>
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### Discussion

a) The proposed amendment to the Circulation Element and associated alley abandonment would not cause an impact to the response times of police or fire services, impact school services, or impact access to parks. The project was referred to Modesto City Police and Fire Departments, and the Modesto City School District, who indicated no concerns.

### Resource

See pages V-11-1 to V-11-12, V-12-1 to V-12-11, V-13-1 to V-13-8, and V-14-1 to V-14-11 in the MEIR

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### XV. RECREATION:

a) Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?  

b) Does the project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment?

### Discussion

a-b) The proposed amendment to the Circulation Element and associated alley abandonment would not impact recreational facilities.

### Resource

See pages V-11-1 to V-11-12 in the MEIR
**XVI. TRANSPORTATION/TRAFFIC:** Would the project:

a) Conflict with an applicable plan, ordinance or policy establishing measures of effectiveness for the performance of the circulation system, taking into account all modes of transportation including mass transit and non-motorized travel and relevant components of the circulation system, including but not limited to intersections, streets, highways and freeways, pedestrian and bicycle paths, and mass transit?

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b) Conflict with an applicable congestion management program, including, but not limited to level of service standards and travel demand measures, or other standards established by the county congestion management agency for designated roads or highways?

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<th>Potentially Significant Impact</th>
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c) Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks?

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d) Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?

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<th>Potentially Significant Impact</th>
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e) Result in inadequate emergency access?

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f) Conflict with adopted policies, plans or programs regarding public transit, bicycle, or pedestrian facilities, or otherwise decrease the performance or safety of such facilities?

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<th>Potentially Significant Impact</th>
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</table>
Discussion

a) The proposal is to amend the City's General Plan to remove the Minor Collector street designation of two streets from the Circulation Element. Oregon Drive, west of S. Santa Cruz Avenue, and a portion of S. Santa Rose Avenue, south of Mono Drive, were previously abandoned by Stanislaus County and are used exclusively by Gallo winery for employee and operations traffic. The proposed amendment to the Circulation Element would not create a conflict with an applicable plan, ordinance or policy establishing measures of effectiveness for the performance of the circulation system, as the amendment is intended to reflect that S. Santa Rosa Avenue and Oregon Drive are not being utilized as collector streets for the larger neighborhood. Additionally, the proposed alley abandonment is intended to allow for the existing alleyway to be used as a drive aisle for a new winery parking lot.

b) The project would not cause a conflict with a traffic congestion program. The project was referred to the City's Traffic Engineering Division as well as Transportation Engineering and Design, and they indicated no concerns.

c) The project would not result in a change in air traffic patterns.

d) The project would not create a hazard due to a design feature.

e) The Fire Department reviewed the project and did not identify any problems with emergency access.

f) The City's Non-Motorized Transportation Plan (NMTP), adopted in 2007 and incorporated into the UAGP, does not identify the two streets as existing bicycle routes. However, the NMTP recommended S. Santa Rosa Avenue and Oregon Drive for proposed Class III bikeways (on-street routes identified by "Bicycle Route" signs). The purpose of the recommendation was to serve the Gallo Winery campus, but since the southerly half of S. Santa Rosa Avenue and Oregon Drive are already abandoned, public bicycle facilities along those alignments would not be available. Bike lanes recommended by the NMTP for Mono Drive, Tenaya Drive, and S. Santa Cruz Avenue would not be affected by the proposed amendment to the Circulation Element, remaining as options for service to the Gallo campus and nearby parks.

The proposal would not conflict with any adopted policies or plans regarding public transit. The project was referred to the City's Transit Department, who indicated no concerns.
### XVII. UTILITIES AND SERVICE SYSTEMS:

Would the project:

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</thead>
<tbody>
<tr>
<td>a)</td>
<td>Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board?</td>
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<td>☒</td>
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</tr>
<tr>
<td>b)</td>
<td>Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?</td>
<td>☒</td>
<td>☒</td>
<td>☐</td>
</tr>
<tr>
<td>c)</td>
<td>Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?</td>
<td>☒</td>
<td>☒</td>
<td>☐</td>
</tr>
<tr>
<td>d)</td>
<td>Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed?</td>
<td>☒</td>
<td>☒</td>
<td>☐</td>
</tr>
<tr>
<td>e)</td>
<td>Result in a determination by the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?</td>
<td>☒</td>
<td>☒</td>
<td>☐</td>
</tr>
<tr>
<td>f)</td>
<td>Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs?</td>
<td>☒</td>
<td>☒</td>
<td>☐</td>
</tr>
<tr>
<td>g)</td>
<td>Comply with federal, state, and local statutes and regulations related to solid waste?</td>
<td>☒</td>
<td>☒</td>
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</tr>
</tbody>
</table>
Discussion

a-b) The proposed amendment to the Circulation Element and associated alley abandonment would not impact wastewater treatment requirements, or result in need for new water or wastewater facilities.

a) The project would not result in need for new storm water drainage facilities that would cause significant environmental effects.

b) The project would not need expanded water entitlements, or require additional wastewater capacity. The project was referred to the City's Land Development Engineering Division, who indicated no concerns.

c) The project would have no effect on landfill capacity and would comply with statutes related to solid waste.

Resource

See pages V-5-1 to V-5-16, V-6-1 to V-6-12, V-9-1 to V-9-12, and V-15-1 to V-15-10 in the MEIR

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### XVIII. MANDATORY FINDINGS OF SIGNIFICANCE

<table>
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<th>Potentially Significant Impact</th>
<th>Less Than Significant with Mitigation</th>
<th>Less Than Significant Impact</th>
<th>No Impact</th>
</tr>
</thead>
</table>

a) Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, substantially reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?

b) Does the project have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)?

c) Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?
Discussion

a) As discussed in Section IV Biological Resources, the project would not impact any wildlife habitat.
b) The project would not result in any significant cumulative impact beyond those identified in the MEIR.
c) This document identifies that the project would have some environmental impact, but because the proposal is an amendment to the Circulation Element to reflect the current status of portions of S. Santa Rosa Avenue and Oregon Drive which have been abandoned, as well as facilitate the future abandonment of the remainder of S. Santa Rosa Avenue for the private use of an existing winery facility, the impacts are less than significant.
RESOLUTION APPROVING A FIRST AMENDMENT TO THE WORKERS’ COMPENSATION CLAIMS MANAGEMENT AGREEMENT WITH YORK RISK SERVICES TO CONTINUE PROVIDING CLAIMS MANAGEMENT TO THE CITY THROUGH JUNE 30, 2016 AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE SAID FIRST AMENDMENT TO THE WORKERS’ COMPENSATION CLAIMS MANAGEMENT AGREEMENT

WHEREAS, the City of Modesto first entered into an agreement with York Risk Services Group, Inc., to provide workers’ compensation claims management services to the City on June 22, 2010, and

WHEREAS, York Risk Services has established an excellent working relationship with the City of Modesto to deliver excellent service, and

WHEREAS, the current agreement with York Risk Services Group, Inc. is set to expire on September 30, 2015,

WHEREAS, The City wishes to extend the agreement with York Risk Services Group Inc., until June 30, 2016 to allow new management staff ample opportunity to participate in a robust and thorough request for proposal process for ongoing workers’ compensation claims management services, and

WHEREAS, The City has drafted a First Amendment to the Workers’ Compensation Claims Management Agreement

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the First Amendment to the Workers’ Compensation Claims Management Agreement with York Risk Services Group Inc., extending the agreement through June 30, 2016, as provided in Exhibit A attached hereto and incorporated herein, and
BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute said First Amendment to the Workers’ Compensation Claims Management Agreement.

The foregoing resolution was introduced in a regular meeting of the Council of the City of Modesto held on the 5th day of August, 2015, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Madrigal, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Cogdill, Gunderson, Kenoyer, Lopez, Madrigal, Zoslocki, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: ADAM U. LINDGREN, City Attorney
FIRST AMENDMENT TO THE WORKERS COMPENSATION CLAIMS
ADMINISTRATION SERVICES AGREEMENT

(Dated of September 1, 2010)

This First Amendment to that certain Workers Compensation Agreement dated as of September 1, 2010 and all amendments and exhibits collectively (the “Agreement”) by and between CITY OF MODESTO (“CITY”) and YORK RISK SERVICES GROUP, INC (“YORK”);

WITNESSETH

Whereas:

The parties wish to extend the term of their Agreement as reflected below; and

NOW THEREFORE

The parties hereby agree as follows:

1. Section 3 entitled “Term of Contract” shall reflect the following:

“The term of this Agreement shall reflect an extension from September 1, 2015 and shall continue through June 30, 2016.

2. Except as noted above, the Agreement shall remain unchanged.

In witness whereof, the parties have executed this amendment as dated below and with an agreement effective date of September 1, 2015.

CITY OF MODESTO

By: ________________________________

Printed Name: ________________________________

Printed Title: ________________________________

Date: ________________________________

YORK RISK SERVICES GROUP, INC.

By: ________________________________

Printed Name: Jody A. Gray

Printed Title: Senior Vice President

Date: ________________________________
A RESOLUTION AUTHORIZING THE PURCHASING MANAGER TO ISSUE PURCHASE AGREEMENTS FOR MAINTENANCE CONTRACT/SUPPORT AGREEMENTS THROUGHOUT FISCAL YEAR 2015-2016 FOR THE SOLE SOURCE PROCUREMENT OF VARIOUS HARDWARE AND SOFTWARE MAINTENANCE SUPPORT AGREEMENTS FROM HARDWARE AND SOFTWARE MANUFACTURERS FOR THE INFORMATION TECHNOLOGY DEPARTMENT FOR AN ESTIMATED ANNUAL COST NOT TO EXCEED $1,086,384

WHEREAS, the City has an ongoing need to issue purchase maintenance contracts/support agreements for hardware and software assets utilized by the City of Modesto and managed by the Information Technology Department, and

WHEREAS, the expenditures for maintenance contracts/support agreements have been approved by Council through the budget process, and

WHEREAS, staff requests the Purchasing Manager be authorized to issue purchase agreements for maintenance contract/support agreements throughout Fiscal Year 2015-2016 for the sole source procurement of various hardware and software maintenance support agreements from hardware and software manufacturers for an estimated budgeted amount not to exceed $1,086,384,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby authorizes the Purchasing Manager be authorized to issue purchase agreements for maintenance contract/support agreements for the sole source procurement of various hardware and software maintenance support agreements throughout the Fiscal Year 2015-2016.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 5th day of August, 2015, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Madrigal, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Cogdill, Gunderson, Kenoyer, Lopez, Madrigal, Zoslocki, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST:

STEFANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By:

ADAM U. LINDGREN, City Attorney
A RESOLUTION ACCEPTING THE 2016 SELECTIVE TRAFFIC ENFORCEMENT PROGRAM GRANT IN THE AMOUNT OF APPROXIMATELY $298,500 FROM THE OFFICE OF TRAFFIC SAFETY TO INCREASE ENFORCEMENT FOR SPEED, DUI, AND OTHER SPECIAL TRAFFIC ENFORCEMENT OPERATIONS; AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE NECESSARY DOCUMENTS

WHEREAS, the City of Modesto Police Department desires to undertake a certain project designated as the Selective Traffic Enforcement Program (STEP) grant from the Office of Traffic Safety (OTS), and

WHEREAS, the Police Department was awarded a grant in the sum of approximately $298,500 from OTS, and

WHEREAS, acceptance of said $298,500 grant will increase enforcement for speed, DUI, and other special traffic enforcement operations, while also reducing collisions with speed, DUI, and special operations, and

WHEREAS, OTS will pay overtime for officers, training, and equipment to assist in traffic studies and other traffic related enforcement equipment, and

WHEREAS, the term of this grant will be from October 1, 2015, through September 30, 2016,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby accepts the Selective Traffic Enforcement Program Grant in the amount of approximately $298,500 from the Office of Traffic Safety to increase enforcement for speed, DUI, and other special traffic enforcement operations.

BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute the necessary award documents.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 5th day of August, 2015, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Madrigal, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Cogdill, Gunderson, Kenoyer, Lopez, Madrigal, Zoslocki, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: ADAM U. LINDGREN, City Attorney
A RESOLUTION AMENDING THE FISCAL YEAR 2015/2016 OPERATING AND MULTI-YEAR GRANT BUDGET TO REFLECT REVENUE AND EXPENSES IN THE AMOUNT OF APPROXIMATELY $298,500 RELATED TO THE SELECTIVE TRAFFIC ENFORCEMENT PROGRAM GRANT TO INCREASE ENFORCEMENT FOR SPEED, DUI, AND OTHER SPECIAL TRAFFIC ENFORCEMENT OPERATIONS

WHEREAS, the Police Department acquired a grant award in the amount of approximately $298,500 from the Office of Traffic Safety (OTS) to increase enforcement for speed, DUI, and other special traffic enforcement operations, and

WHEREAS, the grant will pay overtime for officers for special enforcement operations, DUI saturation patrols, and other traffic related enforcement supplies, and

WHEREAS, there is no local match required for this grant, and

WHEREAS, the term of this grant will be from October 1, 2015, through September 30, 2016,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the Fiscal Year 2015/2016 Operating and Multi-Year Budget is hereby adjusted as indicated on budget adjustment attached.

BE IT FURTHER RESOLVED that the Director of Finance, or her designee, is hereby authorized to take the necessary steps to implement the provisions of this resolution.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 5th day of August, 2015, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Madrigal, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Cogdill, Gunderson, Kenoyer, Lopez, Madrigal, Zoslocki, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

(Seal)

APPROVED AS TO FORM:

By: ADAM U. LINDGREN, City Attorney
## Exhibit A

Project Name: 2016 OTS Selective Traffic Enforcement Program (STEP)  
Project Fund: 1341 – Grants – Operation Grants Reimbursed  
The Multi-Year 2015/2016 Operating Budget will be amended as follows:

<table>
<thead>
<tr>
<th>Revenues</th>
<th>Increase/(Decrease)</th>
<th>Description</th>
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<tbody>
<tr>
<td>To: MY-1341-19998-42141-100894</td>
<td>$298,500</td>
<td>Intergov-State-Office of Traffic Safety</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Expenses</th>
<th></th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>To: MY-100894 - Appr. A - 51200</td>
<td>$293,397</td>
<td>Services City Forces (Overtime)</td>
</tr>
<tr>
<td>MY-100894 - Appr. C - 53025</td>
<td>$2,753</td>
<td>Training Expense</td>
</tr>
<tr>
<td>MY-100894 - Appr. C - 52300</td>
<td>$1,850</td>
<td>Tools &amp; Field Supplies &lt; $5,000</td>
</tr>
<tr>
<td>MY-100894 - Appr. C - 52015</td>
<td>$500</td>
<td>Printing and Binding</td>
</tr>
</tbody>
</table>

$298,500
RESOLUTION SUPPORTING AND ENDORSING THE CO-SPONSORSHIP OF ST. PAUL’S EPISCOPAL CHURCH AND THE MODESTO POLICE DEPARTMENT FOR “A TRAFFICKED LIFE” COMMUNITY EVENT, SEPTEMBER 17, 2015, AND WAIVING THE MODESTO CENTRE PLAZA FACILITY FEE

WHEREAS, human trafficking is the world's fastest growing criminal enterprise and is an estimated $32 billion-a-year global industry. It is a form of modern day slavery that profits from the exploitation of our most vulnerable populations; and

WHEREAS, in recent years, transnational criminal organizations and affiliated domestic gangs have expanded from drug and firearm trafficking to the trafficking of human beings. From cross-border tunnels for transporting victims to domestic recruiting of vulnerable populations in our local communities, these criminal organizations have set aside traditional rivalries to set up commercial sex rings that profit from the sale of human beings, in particular young women and girls; and

WHEREAS, St. Paul’s Episcopal Church and the Modesto Police Department recognizes the problem of human trafficking as existent in our local community, and

WHEREAS, people of St. Paul’s Episcopal Church are working to heighten awareness of this social illness and the importance of collaboration – among law enforcement, non-profit service providers, the faith based community and the public – in fighting the scourge of human trafficking; and

WHEREAS, it is further resolved, the Modesto City Council supports and endorsing the co-sponsorship of St. Paul’s Episcopal Church and the Modesto Police Department’s community-wide event, “A Trafficked Life” to be held on Thursday,
September 17, 2015 at 7:00 p.m. at the Modesto Centre Plaza to bring awareness and educate our community on human trafficking; and

WHEREAS, the Modesto Centre Plaza will incur a loss of rental revenue of $420, plus labor charges, plus other equipment or AV charges that may be required for the event and the General Fund will also incur approximately $1,200 in labor costs to install and remove custom poles in the Tenth Street Place Plaza, as well as fees associated with permits and the rental of the Modesto Centre Plaza; and

WHEREAS, the total cost of the City’s waiver of Facility Fee for the use of the Modesto Centre Plaza, necessary labor and waiver of necessary permit fees and rental costs will not exceed $5,000.

NOW, THEREFORE BE IT RESOLVED by the Council of the City of Modesto that it hereby supports and endorses the co-sponsorship of St. Paul’s Episcopal Church and the Modesto Police Department for “A Trafficked Life” community event, September 17, 2015. The City Council further agrees to waive the Modesto Centre Plaza facility fee and agrees to provide necessary labor and waiver of necessary permit fees and rental costs in an amount not to exceed $5,000.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 5th day of August, 2015, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Madrigal, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Cogdill, Gunderson, Kenoyer, Lopez, Madrigal, Zoslocki, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

(Seal)

ATTEST: [Signature]

STEPHANIE LOPEZ, City Clerk

APPROVED AS TO FORM:

By: [Signature]

ADAM U. LINDGREN, City Attorney
RESOLUTION APPROVING THE SUBMITTAL OF A GRANT APPLICATION TO THE SAN JOAQUIN VALLEY AIR POLLUTION CONTROL DISTRICT (SJAPCD) REQUESTING $81,943.11 IN PUBLIC BENEFIT GRANTS PROGRAM, NEW ALTERNATIVE FUEL VEHICLE PURCHASE FUNDS FOR THE PURCHASE OF FIVE (5) ELECTRIC CLUB CARS FROM GOLD COUNTRY GOLF AND UTILITY, JAMESTOWN, CA; AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, GALEN L. CARROLL, TO EXECUTE ALL GRANT-RELATED DOCUMENTS AND ENTER INTO AN AGREEMENT TO RECEIVE THE GRANT FUNDS UPON AWARD

WHEREAS, the San Joaquin Valley Air Pollution Control District announced available grant funding for New Alternative Fuel Vehicle purchase, and

WHEREAS, applicants are able to apply for up to $20,000 for each new vehicle with a maximum funding of $100,000 per applicant, per calendar year, and

WHEREAS, the Modesto Police Department is applying for five (5) Electric Club Cars at $16,388.62 each, and

WHEREAS, three Club Cars will be for the Modesto Police Department and two will go to the Fire Department, and

WHEREAS, Modesto Municipal Code (MMC) Section 8-3.203 generally requires all purchases, which meet or exceed $50,000.00 for material, equipment or contractual services to be formally bid. However, there are exceptions to the rule set forth in the Modesto Municipal Code. One exception, MMC Section 8-3.204(d), is available where the Purchasing Manager, in his or her discretion, determines that a process other than the usual formal bid procedure set forth in MMC Section 8-3.203 will result in procurement for the City at the lowest possible cost commensurate with the desired quality, and
WHEREAS, acting within his discretion, the Purchasing Manager invoked that "piggybacking" exception for this purchase due to the cost savings of staff time and the limited number of competitors, and

WHEREAS, the purchase of five (5) electric club cars from Gold Country Golf and Utility, Jamestown, CA, by piggybacking from a competitively bid US Communities contract will conform to both MMD Section 8-3.204(d) and Public Contract Code (PCC) 20118, which authorizes public entities to rely on terms "piggyback" that have been competitively bid, and

WHEREAS, this grant opportunity will give the City of Modesto a chance to help the environment and save money.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the submittal of a grant application to the San Joaquin Valley Air Pollution Control District (SJVAPCD) requesting $81,943.11 in Public Benefit Grants Program, New Alternative Fuel Vehicle Purchase funds for the purchase of five (5) Electric Club Cars from Gold Country Golf and Utility, Jamestown, CA.

BE IT FURTHER RESOLVED that the City Manager, or his designee Galen L. Carroll, is hereby authorized to execute the grant application upon award.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 5th day of August, 2015, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Madrigal, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Cogdill, Gunderson, Kenoyer, Lopez, Madrigal, Zoslocki, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

(Seal)

APPROVED AS TO FORM:

By: ADAM U. LINDGREN, City Attorney

ATTEST: STEPHANIE LOPEZ, City Clerk
RESOLUTION AUTHORIZING STAFF TO APPLY FOR ALL CALRECYCLE
HOUSEHOLD HAZARDOUS WASTE GRANTS, RESCINDING RESOLUTION
NO. 2010-108, AND AUTHORIZING THE CITY MANAGER, OR HIS
DESIGNEE, TO SIGN GRANT APPLICATIONS AND RELATED FORMS,
ACCEPT GRANT AWARDS, AND AMEND THE BUDGET AS AVAILABLE

WHEREAS, Public Resources Code sections 40000 et seq. authorize the
Department of Resources Recycling and Recovery (CalRecycle) to administer various
grant programs (grants) in furtherance of the State of California’s (state) efforts to reduce,
recycle and reuse solid waste generated in the state thereby preserving landfill capacity
and protecting public health and safety and the environment, and

WHEREAS, in furtherance of this authority CalRecycle is required to establish
procedures governing the application, awarding, and management of the grants, and

WHEREAS, CalRecycle grant application procedures require, among other
things, an applicant’s governing body to declare by resolution certain authorizations
related to the administration of CalRecycle grants.

NOW, THEREFORE, BE IT RESOLVED the Council of the City of Modesto
authorizes the submittal of application(s) to CalRecycle for all Household Hazardous
Waste Grants for which the City of Modesto is eligible.

BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby
authorized and empowered to execute in the name of the City of Modesto all grant
documents, including but not limited to, applications, agreements, amendments and
requests for payment, necessary to secure grant funds and implement the approved grant
project.
BE IT FURTHER RESOLVED that these authorizations are effective for five (5) years from the date of adoption of this resolution.

BE IT FURTHER RESOLVED by the Council of the City of Modesto the Resolution No. 2010-108 is hereby rescinded.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 5th day of August, 2015, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Madrigal, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Cogdill, Gunderson, Kenoyer, Lopez, Madrigal, Zoslocki, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

(SEAL)

APPROVED AS TO FORM:

By: ADAM U. LINDGREN, City Attorney

ATTEST:  STEPHANIE LOPEZ, City Clerk
RESOLUTION APPROVING THE REVISED T-HANGAR USE POLICY FOR THE MODESTO CITY-COUNTY AIRPORT

WHEREAS, the Modesto City-County Airport (Airport) owns T-Hangars that are leased to airport tenants who own aircraft, and

WHEREAS, the Airport Advisory Committee prepared an initial T-Hangar Use Policy in 2004, and

WHEREAS, City Council approved the initial T-Hangar Use Policy, by Resolution 2004-540, and

WHEREAS, the Airport Advisory Committee met regularly and determined that revisions to the T-Hangar Use Policy were warranted, and

WHEREAS, the revised draft document was submitted to the City Attorney for editing and approval, and

WHEREAS, the Airport Advisory Committee accepted all edits and unanimously elected to submit the final T-Hangar Use Policy.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the Revised T-Hangar Use Policy.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 5th day of August, 2015, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Madrigal, was upon roll call carried and the resolution adopted by the following vote:

**AYES**
Councilmembers: Cogdill, Gunderson, Kenoyer, Lopez, Madrigal, Mayor Marsh

**NOES:**
Councilmembers: None

**ABSENT:**
Councilmembers: Zoslocki

ATTEST: [Signature]

SEAL

APPROVED AS TO FORM:

By: [Signature]

ADAM U. LINDGREN, City Attorney
T-HANGAR USE POLICY
MODESTO CITY – COUNTY AIRPORT

Scope: This policy covers the procedures required of General Aviation aircraft tenants or prospective tenants in the use of T-Hangars at the Modesto City – County Airport.

Purpose: It is the intent of the City of Modesto to manage the use of T-Hangars at the Modesto City – County Airport in a consistent, reasonable and responsible manner, and in accordance with applicable sections of the Modesto Municipal Code. This Policy is intended to provide the Airport Manager and T-Hangar tenants alike with guidelines that all parties can follow to assure proper leasing and safe use of T-Hangars at the Airport. It is not the intent of this policy to make provisions that are contrary to the Municipal Code or the policies of the Federal Aviation Administration, and in the event that there is a discrepancy or conflict between the policies, the Municipal Code shall govern in instances that are not provided for by FAA policy.

Location: The location of the T-Hangars is on the southwest side of the Airport. Exhibit A, attached as a part of this policy, identifies the T-Hangar rows (existing and future) to which this policy applies.

Policy Statements:

• The leasing of T-Hangars shall be in accordance with the Modesto Municipal Code, MMC 7.3.101, and the Aircraft Hangar Waiting List Policy adopted by the Modesto City Council in January 1990, Resolution 90-49.

• Aircraft owners wishing to lease a T-Hangar at the Modesto City-County Airport shall execute a Lease Agreement in a form provided by the City of Modesto and shall abide at all times by the terms and provisions of the Lease Agreement.

• It is the intent of the City of Modesto that those leasing a T-Hangar at the Airport will use the T-Hangar for aircraft purposes only, except with written consent of the Airport Manager to do otherwise. To that end, the following provisions further define appropriate use of a T-Hangar.

1. Pursuant to the Lease Agreement, flyable aircraft or an aircraft under active refurbishment or assembly must be stored in the T-Hangar. The storage of vehicles, boats, furniture, construction material, machinery, household goods or other possessions in the absence of an airplane is not permitted except as described in Part 2 of this Section.

2. A tenant who is leasing a T-Hangar for the aviation purposes described in Part 1 of this Section may temporarily lease a second T-Hangar to store vehicles and boats in the absence of an airplane as long as the goods being stored in the T-Hangar present no hazard or objectionable characteristics in any way, are not flammable liquids, and are secure in the method of storage. The Airport Manager may at his discretion approve such a lease of a second T-Hangar for such storage provided that:
A. The tenant understands that Aviation use of the hangar has priority and the tenant is prepared to vacate the premises with 30-day notice.

B. The intended objects to be stored in the T-Hangar are acceptable to the Airport Manager and present no hazard, including environmental hazards to other hangars.

C. One T-Hangar of similar size and features is always available for immediate occupancy by an airplane or emergency use.

D. Tenants using T-Hangars for airplane storage have first choice of any available hangars including the leased storage hangars without airplanes.

E. Tenant agrees that the hangar can be inspected at any time with reasonable notice by the appropriate City of Modesto Code Enforcement team to ensure compliance with the Modesto Municipal Code and other State or Federal regulations.

3. Aircraft parts only, i.e., fuselages, wing sections, engines etc. do not qualify as an aircraft unless reasonable and verifiable progress is made to restore the aircraft, or complete a home-built aircraft. Reasonable progress is defined as active and consistent work on assembling the aircraft with the intent of restoring it to full flight status. The tenant shall provide evidence substantiating reasonable progress to the Airport Manager upon request. Extensions of these time provisions may be requested of the Airport Manager, with an explanation for cause. The Airport Manager shall consider the explanation provided and either grant or deny the time extension requested. Restoration or construction of aircraft is subject to annual inspection by the Airport Manager. Failure to meet these conditions will be deemed unacceptable and grounds for the termination of the Lease Agreement.

4. Major overhaul of engines, painting of aircraft, and cleaning with flammable solvents is prohibited inside the T-Hangars pursuant to Modesto Municipal Codes Section 7-3.306.

5. The aircraft in a T-Hangar must be owned in part, fully owned, or leased by the tenant who signed the hangar Lease Agreement. Aircraft 'N' number(s) will be compared with the owner's name(s) and the certificate of insurance to verify proper tenancy. If an aircraft was recently acquired and does not show on the FAA aircraft registration database, the tenant should provide the Airport Manager a copy of the Aircraft Registration Application (FAA Form 8050-1). If the aircraft is leased, the insurance must show the tenant as the policyholder, and the owner as an additional insured. The Airport Manager may approve reasonable requests to store aircraft outside of this policy on a case-by-case basis, provided the ownership and insurance status of the aircraft can be documented.

6. Permission for construction of structures and/or lofts within a T-Hangar requires the prior approval of the Airport Manager. The construction of these kinds of facilities will be done under the auspices of the City's Building Inspection Department, with an associated Building Permit obtained and displayed during construction.
7. T-Hangars will be subject to a triennial inspection by the City of Modesto Fire Marshal and by Airport Maintenance and Operation staff for the purpose of determining compliance with applicable provisions of the Modesto Municipal Code, Fire Code and T-Hangar Lease Agreement. Discrepancies shall be noted and provided to the tenant for correction. In the event of emergency or unforeseen circumstance, City Staff and the Airport Manager may enter a hangar at any time provided the tenant is advised as quickly as possible of the entry, the purpose for the entry, and actions taken once inside the hangar.

8. Installation of additional wiring for lighting and equipment needs is to be done in conformance with all applicable Building and Fire Codes. The use of extension cords is limited to UL listed cords used in compliance with manufacturers’ instructions. Extension cords may not be used in lieu of permanent wiring. Any extension cord that is permitted for use must be unplugged when the hangar is unoccupied. The exception to this section is if the extension cord is being used to power a battery charger, crankcase heater and the like. The extension cord must be plugged into a Circuit Breaker Power Box or plug strip rated with 15 amps “maximum” overcurrent protection.

9. Space heaters of any type are not permitted in the hangars unless they are UL listed for interior use, they are used only when the tenant is present in the hangar, and the heater is always disconnected on exiting the hangar.

10. Unobstructed fire or emergency access to the rear of the hangar must be provided.

11. The storage, use, or handling of flammable/combustible liquids shall be conducted in a limited manner appropriate to FAA approved owner maintenance activity, an aircraft restoration, or home built aircraft project. In all cases, the quantity of such liquids shall be limited as described in 7-3.310 of Title 7-Public Works, Chapter 3 of the Modesto Municipal Code.

12. No objects may be hung from or attached to the structural members of the T-Hangar without the prior approval of the Airport Manager.

13. Trash cans on the Airport shall be used for the disposal of materials appropriate to the ownership, storage, and use of an aircraft. The trash facilities shall not be used for the disposal of other debris or stored items not related to the aircraft’s presence in the hangar and appropriate aviation activity. No use of the City’s Airport dumpster shall be allowed without prior approval from the Airport manager.

- It is the intent of this policy to provide for a safe and clean environment in which aircraft can be housed at the Modesto City – County Airport. If the Airport Manager determines that an unsafe situation is present in the T-Hangar, the tenant shall immediately correct that situation in consultation with the Airport Manager. Failure to comply with the directives will be grounds for terminating the
The tenant may appeal the determination rendered, but only after correcting the situation as directed by the Airport Manager.

**Deviations:**
It is recognized that not every situation, which someone may encounter in the lease of a T-Hangar, can reasonably be covered by this policy. In the case where a tenant wants to deviate from this policy, or perform an activity not covered by this policy, prior approval shall be obtained from the Airport Manager who shall attempt to accommodate the request within policy and common sense, as the situation may dictate.

**Appeals Process:**
In the case where a T-Hangar tenant does not agree with a determination made by the Airport Manager, the tenant and the Airport Manager shall bring the issue to the attention of the Airport Advisory Committee, which shall make all best efforts in finding a solution. Should this effort be unsuccessful, the tenant is entitled to a formal appeal per Title 1, Chapter 4 of the Modesto Municipal Code Section 1-4.01 to 1-4.05.

We truly appreciate your continued cooperation and attention to the items listed above. As a result, your help will provide safe hangar facilities, and support a fair and enjoyable tenant/landlord relationship, which is to everyone’s best interest.

Approved by the Airport Advisory Committee on May 21, 2015
RESOLUTION APPROVING AN AGREEMENT WITH CARDNO ATC FOR ON-CALL ENVIRONMENTAL SITE ASSESSMENT SERVICES FOR ONE YEAR, WITH TWO ONE-YEAR EXTENSION OPTIONS, AT THE SOLE DISCRETION OF THE CITY, IN AN AMOUNT NOT TO EXCEED $45,000 PER YEAR, AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE AGREEMENT, AND UP TO TWO ONE-YEAR EXTENSION OPTIONS

WHEREAS, the Utilities Department (Utilities) may need to purchase property to complete various Capital Improvement Program (CIP) projects, and

WHEREAS, a Phase I Environmental Site Assessment (ESA) needs to be prepared prior to the acquisition of real property, and

WHEREAS, purchase agreements may have time constraints, and projects may have short time lines, and

WHEREAS, on-call agreements will expedite the process, and

WHEREAS, an on-call list was established in 2011, which expired in 2014, and

WHEREAS, in accordance with Administrative Directive 3.1, Selection Procedures for Professional Consultants Who Provide Architectural and Engineering Services for Capital Projects, a request for Qualifications and Proposals was issued April 7, 2015 to eight local environmental consultants to establish a current local on-call list, and

WHEREAS, responses were received from five firms, and

WHEREAS, a selection committee consisting of the City's Utilities staff evaluated the responses and met May 19, 2015 to discuss the evaluations and review ranking, and
WHEREAS, the committee recommended negotiating with the top two firms deemed most responsive and qualified to enter into one-year on-call agreements, not to exceed $45,000 per year, with the possibility of two (2) one-year extension periods, at the sole discretion of the City, and

WHEREAS, no new budget allocation will be sought because the project-specific task orders under the agreement will be paid from existing CIPs, and

WHEREAS, Cardno ATC will submit a written scope of services outlining the specific work, schedule, and cost estimate associated with each task order, and

WHEREAS, Cardno ATC will perform no service until Capital Improvement Services management has approved the proposed specific task order and a written Notice to Proceed (NTP) is prepared and sent to Cardno ATC prior to commencement of services, and

WHEREAS, therefore, City staff recommends approving an Agreement for On-call Environmental Site Assessment Services with Cardno ATC,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves an Agreement with Cardno ATC for On-call Environmental Site Assessment Services for one year, with two one-year extension options at the sole discretion of the City in an amount not to exceed $45,000 per year. Total cost for three years is not to exceed $135,000.

BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute said Agreement with Cardno ATC, and up to two one-year extension options.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 5th day of August, 2015, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Madrigal, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Cogdill, Gunderson, Kenoyer, Lopez, Madrigal, Zoslocki, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

(Seal)

ATTEST: [Signature]

STEPHANIE LOPEZ, City Clerk

APPROVED AS TO FORM:

By: [Signature]

ADAM U. LINDGREN, City Attorney
RESOLUTION APPROVING AN AGREEMENT WITH GROUND ZERO ANALYSIS, INC. FOR ON-CALL ENVIRONMENTAL SITE ASSESSMENT SERVICES FOR ONE YEAR, WITH TWO ONE-YEAR EXTENSION OPTIONS, AT THE SOLE DISCRETION OF THE CITY, IN AN AMOUNT NOT TO EXCEED $45,000 PER YEAR, AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE AGREEMENT, AND UP TO TWO ONE-YEAR EXTENSION OPTIONS

WHEREAS, the Utilities Department (Utilities) may need to purchase property to complete various Capital Improvement Program (CIP) projects, and

WHEREAS, a Phase I Environmental Site Assessment (ESA) needs to be prepared prior to the acquisition of real property, and

WHEREAS, purchase agreements may have time constraints, and projects may have short time lines, and

WHEREAS, on-call agreements will expedite the process, and

WHEREAS, an on-call list was established in 2011, which expired in 2014, and

WHEREAS, in accordance with Administrative Directive 3.1, Selection Procedures for Professional Consultants Who Provide Architectural and Engineering Services for Capital Projects, a request for Qualifications and Proposals was issued April 7, 2015 to eight local environmental consultants to establish a current local on-call list, and

WHEREAS, responses were received from five firms, and

WHEREAS, a selection committee consisting of the City’s Utilities staff evaluated the responses and met May 19, 2015 to discuss the evaluations and review ranking, and
WHEREAS, the committee recommended negotiating with the top two firms deemed most responsive and qualified to enter into one-year on-call agreements, not to exceed $45,000 per year, with the possibility of two (2) one-year extension periods, at the sole discretion of the City, and

WHEREAS, no new budget allocation will be sought because the project-specific task orders under the agreement will be paid from existing CIPs, and

WHEREAS, Ground Zero Analysis, Inc. will submit a written scope of services outlining the specific work, schedule, and cost estimate associated with each task order, and

WHEREAS, Ground Zero Analysis, Inc. will perform no service until Capital Improvement Services management has approved the proposed specific task order and a written Notice to Proceed (NTP) is prepared and sent to Ground Zero Analysis, Inc. prior to commencement of services, and

WHEREAS, therefore, City staff recommends approving an Agreement for On-call Environmental Site Assessment Services with Ground Zero Analysis, Inc.,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves an Agreement with Ground Zero Analysis, Inc. for On-call Environmental Site Assessment Services for one year, with two one-year extension options at the sole discretion of the City in an amount not to exceed $45,000 per year. Total cost for three years is not to exceed $135,000.

BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute said Agreement with Ground Zero Analysis, Inc., and up to two one-year extension options.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 5th day of August, 2015, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Madrigal, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Cogdill, Gunderson, Kenoyer, Lopez, Madrigal, Zoslocki, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: [Signature]

STEFANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: [Signature]

ADAM U. LINDGREN, City Attorney
RESOLUTION AUTHORIZING THE SUBMITTAL OF AN APPLICATION TO THE CALIFORNIA DEPARTMENT OF WATER RESOURCES FOR THE 2015 INTEGRATED REGIONAL WATER MANAGEMENT GRANT IN AN AMOUNT NOT TO EXCEED $6.7 MILLION; AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE ALL GRANT-RELATED DOCUMENTS AND ENTER INTO AN AGREEMENT TO RECEIVE GRANT FUNDS, IF AWARDED, AND AUTHORIZING THE DIRECTOR OF FINANCE TO BE THE SIGNATORY OF GRANT INVOICE FORMS DURING REQUESTS FOR REIMBURSEMENTS

WHEREAS, in May 2015, the California Department of Water Resources (DWR) released the Final 2015 Grant Guidelines and Application Proposal Package for Round 4 of the Proposition 84 Integrated Regional Water Management Plan (IRWMP) Grant Funding Program, and

WHEREAS, this is the final funding cycle for Proposition 84 bond monies for implementation projects, and

WHEREAS, the deadline to submit a grant application is August 7, 2015 with announcement of awards expected in December 2015, and

WHEREAS, the East Stanislaus Integrated Regional Water Management (IRWM) Partnership was formed under an MOU in August 2011 between the Cities of Ceres, Hughson, Turlock, and Modesto, and

WHEREAS, this Partnership also included a Cost-sharing Agreement for developing the IRWM Region and Plan, and

WHEREAS, in September 2011, the state granted regional status to the East Stanislaus IRWM, and
WHEREAS, the East Stanislaus IRWM Plan was completed in December 2013 and in June 2014 the DWR issued a notice of compliance with the IRWM Plan Guidelines through its review process, and

WHEREAS, the East Stanislaus IRWM Region resides in the San Joaquin Funding Area which includes seven other full IRWM Regions and four partial IRWM Regions, making it the most competitive funding region in the state, and

WHEREAS, there is approximately $6.7 million in remaining funds available for this 2015 Grant cycle, and

WHEREAS, the next funding cycle will be sourced by Proposition 1 bond funds, approved by voters in November 2014, with the first expected grant application date in 2017, and

WHEREAS, the City of Modesto has an on-call grant research and writing agreement with RMC Water and Environment (RMC) for development and submittal of grant applications, and

WHEREAS, for this grant application, Modesto will be the lead agency seeking grant funding for two Modesto based projects, and

WHEREAS, the two projects consist of 1) a sewer system cross-connection storm water removal and neighborhood flooding mitigation project; and 2) the North Valley Regional Recycled Water Project (NVRRWP), and

WHEREAS, the City of Turlock is also supporting the NVRRWP, and

WHEREAS, no other regional stakeholders have submitted projects for consideration for this grant application, and
WHEREAS, as the lead agency the City of Modesto would be required to enter into a Grant Agreement with the DWR if the application scores high enough for an award and choses to accept the grant, and

WHEREAS, the City may manage grant administration tasks in-house or may decide to hire a consultant (under a future Council action) for grant administration tasks, which are expected to be fully funded by the grant for the City's two projects,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby authorizes the submittal of an application to the California Department of Water Resources for the 2015 Integrated Regional Water Management Grant in an amount not to exceed $6.7 Million.

BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute all grant-related documents and enter into an agreement to receive grant funds, if awarded, and authorizes the Director of Finance to be the signatory of grant invoice forms during requests for reimbursements.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 5th day of August, 2015, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Madrigal, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Cogdill, Gunderson, Kenoyer, Lopez, Madrigal, Zoslocki, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: [Signature]

(SEAL)

APPROVED AS TO FORM:

By: [Signature]

ADAM U. LINDGREN, City Attorney
RESOLUTION APPROVING THE PLANS AND SPECIFICATIONS FOR THE 2013-2014 SANITARY SEWER COLLECTION REPLACEMENT PROJECT, ACCEPTING THE BID, AND APPROVING A CONTRACT WITH DSS COMPANY DBA KNIFE RIVER CONSTRUCTION, OF STOCKTON, CALIFORNIA IN THE AMOUNT OF $1,578,238, AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE CONTRACT

WHEREAS, plans and specifications have been prepared for the 2013-2014 Sanitary Sewer Collection Replacement project, and City staff recommends approval by the City Council, and

WHEREAS, the bids received for the 2013-2014 Sanitary Sewer Collection Replacement project were for the consideration of the Council, and

WHEREAS, the Director of Utilities has recommended that the bid of $1,578,238 received from DSS Company dba Knife River Construction, of Stockton, California be accepted as the lowest responsible and responsive bid and the contract be awarded to DSS Company dba Knife River Construction.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the plans and specifications for the 2013-2014 Sanitary Sewer Collection Replacement project, accepts the bid of DSS Company dba Knife River Construction, of Stockton, California in the amount of $1,578,238, and awards DSS Company dba Knife River Construction the contract for the 2013-2014 Sanitary Sewer Collection Replacement project.

BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute the contract.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 5th day of August, 2015, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Madrigal, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Cogdill, Gunderson, Kenoyer, Lopez, Madrigal, Zoslocki, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

(ATTEST:)

(SEAL)

APPROVED AS TO FORM:

By: ADAM U. LINDGREN, City Attorney

STEPHANIE LOPEZ, City Clerk
MODESTO CITY COUNCIL
RESOLUTION NO. 2015-277

RESOLUTION AMENDING THE FISCAL YEAR 2015-2016 CAPITAL IMPROVEMENT PROGRAM BUDGET IN THE AMOUNT OF $1,175,500 TO BE TRANSFERRED INTO THE PROJECT FROM WASTEWATER FUND RESERVES IN ORDER TO FULLY FUND THE CONSTRUCTION, CONTINGENCY, CONSTRUCTION ADMINISTRATION, AND DESIGN SUPPORT DURING CONSTRUCTION FOR THE 2013-2014 SANITARY SEWER COLLECTION REPLACEMENT PROJECT

WHEREAS, certain budgetary transactions are necessary in the amount of $1,175,500, in order to fund construction, contingency, construction administration, design support during construction, including engineering/design/administration support by City staff, for the 2013-2014 Sanitary Sewer Collection Replacement project, and

WHEREAS, the Fiscal Year 2015-2016 Capital Improvement Program Budget must be amended as shown in Exhibit A, which is incorporated by reference herein,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the amendment of the Fiscal Year 2015-2016 Capital Improvement Program Budget as shown in Exhibit A.

BE IT FURTHER RESOLVED that the Director of Finance, or her designee, is hereby authorized to implement the provisions of this resolution.
The foregoing resolution was introduced at a regular meeting of the Council of
the City of Modesto held on the 5th day of August, 2015, by Councilmember Lopez, who
moved its adoption, which motion being duly seconded by Councilmember Madrigal,
was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Cogdill, Gunderson, Kenoyer, Lopez, Madrigal,
Zoslocki, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: [Signature]

STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: [Signature]
ADAM U. LINDGREN, City Attorney

08/05/2015/Utill/JFranco/Item 19
Exhibit A

Due to project costs being higher than initially budgeted for the project, line item increases are necessary for CIP Account #100763 "2013-14 Sewer Coll Sys Repl", and the total project costs need to be increased by $1,175,500. This would be done by adjusting Construction Administration by $91,877, Construction by $919,157, Contingency-CIP by $119,592, and Engineering/Design/Administration by $44,874.

To fund the above account, $1,175,500 will be transferred from Wastewater Fund Reserves into CIP Project 100763 for the 2013-2014 Sanitary Sewer Collection Replacement project.
RESOLUTION APPROVING A PROTEST DISMISSAL AGREEMENT WITH TURLOCK IRRIGATION DISTRICT FOR THE CITY OF MODESTO NOTICE OF CHANGE PETITION FILED WITH THE STATE WATER RESOURCE CONTROL BOARD FOR TERTIARY-TREATED WATER, AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE AGREEMENT

WHEREAS, as part of the North Valley Regional Recycled Water Program (NVRRWP), the City of Modesto filed a Notice of Change Petition with the State Water Resources Control Board (SWRCB) to allow discharge of tertiary-treated wastewater to the Delta Mendota Canal for irrigation of crops in the Del Puerto Water District, and

WHEREAS, the SWRCB noticed the public and received comments on the Notice of Change Petition, and

WHEREAS, the SWRCB received two formal protests regarding the proposed change, one from Turlock Irrigation District (TID) and the other from the Westlands Water District, and

WHEREAS, TID’s concern was that the City would cease irrigation of the Jennings Ranch facility with secondary-treated wastewater and require TID to supply irrigation water to the parcels included in its service area, and

WHEREAS, the City will not stop irrigation of the Jennings Ranch because it is the most cost-effective way to treat cannery wastewater and dispose of secondary-treated wastewater, and because it also generates revenue from leasing the land to a farmer for fodder crop production, and

WHEREAS, TID and the City successfully negotiated and reached an agreement that the City will continue with its existing Jennings Ranch irrigation practices subject to any changes required by regulatory permits for irrigation of crops at agronomic rates, and
WHEREAS, this agreement provides that TID will not further protest the Notice of Change Petition, and this agreement advances the NVRRWP.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves a Protest Dismissal Agreement with the Turlock Irrigation District for the City of Modesto Notice of Change Petition filed with the State Water Resources Control Board for tertiary-treated wastewater.

BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute the Agreement, in substantially the form attached hereto as Exhibit A and as approved by the City Attorney.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 5th day of August, 2015, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Madrigal, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Cogdill, Gunderson, Kenoyer, Lopez, Madrigal, Zoslocki, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: [Signature]

STEFANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: [Signature]

ADAM U. LINDGREN, City Attorney
PROTEST DISMISSAL AGREEMENT

The City of Modesto ("City") and Turlock Irrigation District ("TID") agree as follows:

A. On January 16, 2016, City filed a petition for change (No. WW0077) (the "Petition for Change") with the State Water Resources Control Board ("SWRCB") as part of the City's participation in the North Valley Regional Recycled Water Project ("NVRRWP").

B. Among other things, the Petition for Change asks the SWRCB to issue an order: (1) adding a new authorized point of discharge at the Delta Mendota Canal for the City's treated wastewater, and (2) adding the Del Puerto Water District service area and several South of Delta CVPIA refuges as authorized places of use for the City's treated wastewater.

C. On February 10, 2015, the SWRCB issued its public notice of the Petition for Change.

D. On March 12, 2015, TID filed a protest to the Petition for Change.

E. On July 7, 2015, the City certified an environmental impact report for the NVRRWP (SCH #2014042068) (the "NVRRWP EIR") under the California Environmental Quality Act ("CEQA").

NOW, THEREFORE, in consideration of these recitals and the mutual promises in this Agreement, City and TID agree as follows:

1. The preceding recitals are true and correct and are incorporated herein by reference.

2. City and TID jointly request that the SWRCB include the following conditions in the SWRCB's order granting the City's Petition for Change:

A. Until and after the NVRRWP begins operations, the City will continue to use cannery process water with secondary treated City wastewater to irrigate the City's Modesto Ranch Lands, which are being farmed and some of which are within the jurisdictional boundaries of the Turlock Irrigation District. The Modesto Ranch Lands are defined as the numbered "Parcels" on the attached map titled "Parcel Map of Jennings Treatment Plant." The City will continue to apply secondary treated wastewater and cannery process water to the Modesto Ranch Lands in the manner described in Section 8.8.5 of the Final Environmental Impact Report for the North Valley Regional Recycled Water Program dated June 2015 (SCH #2014042068).

B. No groundwater from the Turlock Groundwater Subbasin and no surface water from Turlock Irrigation District may be used to irrigate any Modesto Ranch Lands; provided that this condition does not apply to any such groundwater or
surface water in any cannery process water or wastewater delivered to the City and subsequently used to irrigate any Modesto Ranch Lands.

C. The City will continue to comply with the two preceding conditions if the City sells, conveys, exchanges or otherwise transfers any of the Modesto Ranch Lands. The City will add a legally sufficient covenant running with the land, in a form acceptable to Turlock Irrigation District, to all deeds and other instruments selling, conveying, exchanging or otherwise transferring any portion or all of the City’s Modesto Ranch Lands, which covenant will be binding on all of the City’s successors and assigns.

D. The City will keep a record during each calendar month of: (i) the amounts of cannery process water and treated wastewater delivered to the Modesto Ranch Lands for irrigation and (ii) the location and number of acres of land receiving the water. The City will make this information available to the SWRCB’s Deputy Director for Water Rights and Turlock Irrigation District upon reasonable request. Additionally, the City will compile this information each year into an annual report, which will include a table of the monthly amounts of each type of treated wastewater delivered to the Modesto Ranch Lands for irrigation during the prior calendar year. The City will file each annual report with the Division of Water Rights and provide a copy to Turlock Irrigation District no later than June 30 of the following calendar year.

3. A copy of the map referenced in subsection 2.A above is attached to this Protest Dismissal Agreement as Exhibit A.

4. In consideration of City’s commitments in this Protest Dismissal Agreement, which was approved by the City Council on or before Wednesday, August 5, 2015, and the SWRCB’s making these additions to the order on the City’s Petition for Change, TID dismisses its protest to the Petition for Change, and agrees not to make or further pursue any challenges to the NVRRWP FEIR referenced in Section 2.A above and not to take any other actions to oppose the Petition for Change. If the SWRCB does not make these requested changes, then TID may make or further pursue such challenges.

Dated: ________________

CITY OF MODESTO

[Signature]
James N. Holgersson, City Manager

Dated: ________________

TURLOCK IRRIGATION DISTRICT

[Signature]
Casey Hashimoto, General Manager
Parcel Map of Jennings Treatment Plant

Legend

- Primary Sewer Outfall
- Rivers
- Ponds
- Parcels

Scale: 0.5 1 2 Miles
RESOLUTION AMENDING THE MULTI-YEAR BUDGET FOR CAPITAL GRANTS – CIP PROJECT 100753 TO BE INCREASED BY $352,000 TO COME FROM NSP2 FUNDING, AND AUTHORIZING THE FINANCE DIRECTOR, OR HER DESIGNEE, TO TAKE THE NECESSARY STEPS TO IMPLEMENT THE PROVISIONS OF THIS RESOLUTION

WHEREAS, on January 14, 2010, the City received a $25 million grant award under the American Recovery and Reinvestment Act of 2009 (ARRA) for the Neighborhood Stabilization Program 2 (NSP2), and

WHEREAS, the City of Modesto has been working with Satellite Affordable Housing Associates (SAHA) and American Baptist Homes of the West (ABHOW) to develop the Tower Park Senior Housing apartments project (Project), and

WHEREAS, off-site and frontage improvements for the Tower Park Senior Apartments project are eligible to receive NSP2 funding, and

WHEREAS, on December 11, 2012, by Resolution No. 2012-521, the Council approved an allocation of a minimum of $100,000 in NSP2 funds to the Project, with a not to exceed amount of $250,000 for predevelopment activities, and

WHEREAS, on March 5, 2015 the City received a request from SAHA for an additional $135,000 to mitigate two underground concrete tanks that were discovered while the contractor was preparing the Project site for the foundation and storm water drain, and

WHEREAS, on April 8, 2015, the City received another request from SAHA for additional $217,000 in NSP2 funds for the construction of off-site, frontage improvements, and
WHEREAS, SAHA is requesting the City approve an additional loan in the amount up to $352,000 for further on-site and frontage improvements, and

WHEREAS, a loan modification agreement will be executed for the additional allocation of funds, and

WHEREAS, the terms of the NSP2 loan will remain the same, the principal balance bears no interest, and

WHEREAS, in an event of default the NSP2 loan shall be repaid in full at the default rate of ten percent (10%) simple interest annually, and

WHEREAS, if no event of default exists and the units are rented to income qualified tenants according to the agreement, the NSP2 loan shall be forgiven upon expiration of the 20 year term.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves amending the Multi-year budget for Capital Grants – CIP Project 100753 to be increased by the amount of $352,000 to come from NSP2 funding.

BE IT FURTHER RESOLVED that the Finance Director, or her designee, is hereby authorized to implement the provisions of this resolution.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 5th day of August, 2015, by Councilmember Lopez, who moved its adoption, with motion being duly seconded by Councilmember Madrigal, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Cogdill, Gunderson, Kenoyer, Lopez, Madrigal, Zoslocki, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: ADAM U. LINDGREN, City Attorney
RESOLUTION APPROVING A TECHNICAL AMENDMENT TO THE ACTION PLAN OF THE NEIGHBORHOOD STABILIZATION PROGRAM 2 (NSP2) GRANT AGREEMENT # B-09-LN-CA-0053 FOR AN ADDITIONAL ALLOCATION OF $352,000 IN NSP2 FUNDS FOR THE CONSTRUCTION OF ON-SITE AND OFF-SITE IMPROVEMENTS FOR THE TOWER PARK SENIOR APARTMENTS PROJECT AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE MODIFICATION AGREEMENTS AND RELATED DOCUMENTS, ATTACHED HERETO IN SUBSTANTIALLY THE SAME FORM AS EXHIBIT A, AND AS APPROVED BY THE CITY ATTORNEY

WHEREAS, the City of Modesto has been working with Satellite Affordable Housing Associates (SAHA) and American Baptist Homes of the West (ABHOW) to develop the Tower Park Senior Housing apartments project (Project), and

WHEREAS, the Project, located at 17th and G Streets, will provide 49 one-bedroom apartments plus one two-bedroom manager's unit of restricted affordable housing to seniors 62 years and over, and

WHEREAS, the apartments will be affordable to households earning between 30% and 60% of the area median income, and

WHEREAS, ABHOW will be the property management agent and will work in collaboration with third party agencies to provide supportive resident services to the tenants. Transportation is within walking distance of the Project and senior oriented services are located nearby, and

WHEREAS, the Redevelopment Agency, by Resolution No. 7-2006, approved the purchase of the 17th & G Streets property, and

WHEREAS, on February 22, 2011, by Resolution No. 2011-062, the Council approved a HOME loan for the Project in the amount of $2.7 million, and
WHEREAS, on December 11, 2012, by Resolution No. 2012-521, the Council approved an allocation of a minimum of $100,000 in NSP2 funds to the Project, with a not to exceed amount of $250,000 for predevelopment activities, and

WHEREAS, on June 27, 2013, by Resolution No. 2013-097, the Council approved a Capital Facilities Fees Exemption for the Project resulting in the waiver of $436,250, and

WHEREAS, on December 10, 2013, the City Council by Resolution No. 2013-450, approved a CDBG loan in the amount of $118,000 for the construction of off-site improvements required for the development of the Project, and

WHEREAS, on July 8, 2014, the City Council by Resolution No. 2014-290 approved an additional allocation of HOME Funds in the amount of $725,640, to further assist with construction costs for the Project, and

WHEREAS, on December 3, 2014, the Property was transferred to Tower Park LLP., and

WHEREAS, on March 5, 2015 the City received a request from SAHA for an additional $135,000 to mitigate two underground concrete tanks that were discovered while the contractor was preparing the Project site for the foundation and storm water drain, and

WHEREAS, on April 8, 2015, the City received another request from SAHA for additional funds for the construction of off-site, frontage improvements which would include some sidewalk improvements, and
WHEREAS, because the Project provides apartments for seniors, it is very important to ensure that the Project is ADA compliant and accessible for those individuals with limited mobility, and

WHEREAS, SAHA is requesting the City approve an additional loan in the amount up to $352,000, and

WHEREAS, a loan modification agreement will be executed for the additional allocation of funds, and

WHEREAS, the terms of the NSP2 loan will remain the same, the principal balance bears no interest, and

WHEREAS, in an event of default the NSP2 loan shall be repaid in full at the default rate of ten percent (10%) simple interest annually, and

WHEREAS, if no event of default exists and the units are rented to income qualified tenants according to the agreement, the NSP2 loan shall be forgiven upon expiration of the 20 year term.

WHEREAS, a Technical Amendment to the Action Plan of the Neighborhood Stabilization Program 2 (NSP2) Grant Agreement # B-09-LN-CA-0053 requires a 15-day public review and comment period and a public hearing, and

WHEREAS, this Technical Amendment was made available for public review and comment beginning July 21, 2015, and will close with the City Council public hearing on August 5, 2015, and

WHEREAS, a Public Notice was published in the Modesto Bee on Tuesday, July 21, 2015, and
WHEREAS, the budget for the Project is fixed, based on the financing sources already identified, and

WHEREAS, the additional requests from SAHA were reviewed and approved by the Community Housing and Community Development Committee on March 18, 2015 and July 15, 2015, and

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby authorizes an additional allocation up to $352,000 in NSP2 funds for the construction of on-site and frontage improvements for the Tower Park Senior Apartments project.

BE IT FURTHER RESOLVED by the Council of the City of Modesto that it hereby approves a Technical Amendment to the Action Plan of the Neighborhood Stabilization Program 2 (NSP2) Grant Agreement # B-09-LN-CA-0053.

BE IT FURTHER RESOLVED by the Council of the City of Modesto that it hereby authorizes the City Manager, or his designee, to execute the modification agreement for Tower Park, attached hereto in substantially the same form as Exhibit A, and as approved by the City Attorney.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 5th day of August, 2015, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Madrigal, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Cogdill, Gunderson, Kenoyer, Lopez, Madrigal, Zoslocki, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: [Signature]

STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: [Signature]

ADAM U. LINDGREN, City Attorney
NSP2 MODIFICATION AGREEMENT  
(Tower Park - 701 15th Street)

This NSP2 Modification Agreement ("Agreement") is entered into as of ______________, 2015, by and between the City of Modesto, a municipal corporation ("City") and Satellite Affordable Housing Associates, a California nonprofit public benefit corporation ("SAHA") (as successor to Satellite Housing, Inc.) and American Baptist Homes of the West, a California nonprofit public benefit corporation ("ABHOW") and Tower Park, L.P., a California limited partnership (the "Partnership") collectively designated therein as "Borrower". The City and the Borrower shall collectively be referred to herein as "Parties."

RECITALS

A. The City and Borrower entered into that certain City of Modesto Neighborhood Stabilization Program 2 Loan Agreement, dated as of December 11, 2012, as amended by certain First Amendment to City of Modesto Neighborhood Stabilization Program 2 Loan Agreement dated as of November 24, 2014 (collectively, the "Loan Agreement"). Pursuant to the Loan Agreement, the City made a loan of Neighborhood Stabilization Program ("NSP2") funds to the Borrower in the principal amount of Two Hundred Fifty Thousand Dollars and No Cents ($250,000.00) ("Original Loan"). The Original Loan is evidenced by that certain promissory note, dated as of December 11, 2012, executed by Borrower in favor of the City (the "Note") and secured by that certain Deed of Trust and Assignment of Rents dated as of November 24, 2014 ("Deed of Trust"), and recorded on December 3, 2014, as instrument number DOC-2014-0080138 in the Official Records of the County of Stanislaus ("Official Records"), against the property described in Exhibit A attached hereto ("Property"). The City and Borrower entered into that certain Regulatory Agreement dated November 24, 2014 ("Regulatory Agreement") which was recorded in the Official Records on December 3, 2014 as instrument number DOC-2014-0080137. The City and Borrower also entered into that certain Assignment and Assumption Agreement dated November 24, 2014 ("Agreement") which was recorded in the Official Records on December 3, 2014 as instrument number DOC-2014-0080141. The Loan Agreement, the Note, the Deed of Trust and the Regulatory Agreement collectively shall be referred to herein as "Loan Documents".
B. The City and Borrower entered into the Loan Agreement to assist the development of affordable housing on the Property and to advance the City's goal of expanding the number of residential units affordable to very low, low, moderate, and middle income persons.

C. The City and the Borrower desire to modify the Loan Documents and increase the amount of the Original Loan by $351,723.00 for a total loan amount of Six Hundred One Thousand Seven Hundred Twenty Three Dollars and No Cents ($601,723.00) (the "New Loan").

D. The City and the Borrower desire to modify the Loan Agreement to include references to the requirements governing the use of NSP2 funds.

E. The City and the Borrower desire to modify the Regulatory Agreement to include the affordability requirements governing the use of the New Loan.

NOW THEREFORE, in consideration of the foregoing, of the mutual promises of the parties hereto and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Parties mutually agree as follows:

Section 1. Modification of the Loan Agreement.

(a) Recitals of the Loan Agreement. The Recitals of the Loan Agreement are hereby modified to reflect that the principal amount of the New Loan is Six Hundred One Thousand Seven Hundred Twenty Three Dollars and No Cents ($601,723.00).

(b) Section 3 of the Loan Agreement. The first sentence of Section 3.1 of the Loan Agreement is hereby deleted and replaced in its entirety as follows:

"City shall loan Borrower the principal sum of Six Hundred One Thousand Seven Hundred Twenty Three Dollars and No Cents ($601,723.00) (the "NSP Loan") subject to the terms and conditions set forth in this NSP2 Loan Agreement and the Loan Documents as defined herein."

(c) Section 6 of the Loan Agreement. Section 6.3 of the Loan Agreement is hereby deleted and replaced in its entirety as follows:

"SECTION 6.3. NSP2 REQUIREMENTS

Borrower shall comply with all applicable laws and regulations governing the use of the Loan Funds as set forth in 24 CFR 570 et seq. (the "CDBG Regulations") and Section 2301 of Title III, Division B, of the Housing and Economic Recovery Act of 2008, Title XII, Division A, of the American Recovery and Reinvestment Act of 2009 (the "NSP2 Act"), and implementing regulations, including but not limited to 24 CFR 570 et seq., and applicable guidance, including but not limited to the Notices of Allocations, Application Procedures, Regulatory Waivers Granted to and Alternative Requirements for Emergency Assistance for Development of Abandoned and Foreclosed"
Homes Grantees under HERA and such corrections (including, but not limited to, Docket Nos. FR-5255-N-01, FR-5255-N-02, FR-5321-N-03, FR-5435-N-01, and FR-5447-N-01), as amended (the "NSP2 Regulations"). In the event of any conflict between this NSP2 Loan Agreement and applicable laws and regulations governing the use of the NSP Loan, the applicable laws and regulations govern.

(a) The laws and regulations governing the use of the NSP2 Loan include (but are not limited to) the following:

(i) Environmental and Historic Preservation. 24 C.F.R. Part 58, which prescribes procedures for compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4361), and the additional laws and authorities listed at 24 C.F.R. 58.5.


(iii) Debarred, Suspended or Ineligible Contractors. The prohibition on the use of debarred, suspended, or ineligible contractors set forth in 24 C.F.R. Part 24.

(iv) Civil Rights, Housing and Community Development, and Age Discrimination Acts.

(1) Compliance. BORROWER shall comply with the Fair Housing Act (42 U.S.C. 3601 et seq.) and implementing regulations at 24 C.F.R. Part 100; Title VI of the Civil Rights Act of 1964 as amended; Title VIII of the Civil Rights Act of 1968 as amended; Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974 as amended; Section 504 of the Rehabilitation Act of 1973 (29 USC 794, et seq.); the Age Discrimination Act of 1975 (42 USC 6101, et seq.); Executive Order 11063 as amended by Executive Order 12259 and implementing regulations at 24 C.F.R. Part 107; Executive Order 11246 as amended by Executive Orders 11375, 12086, 11478, 12107; Executive Order 11625 as amended by Executive Order 12007; Executive Order 12432; Executive Order 12138 as amended by Executive Order 12608.

(2) Non-Discrimination. BORROWER shall comply with the non-discrimination in employment and contracting opportunities laws, regulations and executive orders referenced in 24 C.F.R. 570.607, as revised by Executive Order 13279, and the applicable non-discrimination provisions in Section 109 of the Housing and Community Development Act of 1974, and may not discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, national origin, sex, disability, age, marital status, or status with regard to public assistance. BORROWER shall take affirmative action to ensure that all employment practices are free from such discrimination. Such employment practices include but are not limited to the following: hiring, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. BORROWER shall post in
conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

(3) **Land Covenants.** This Agreement is subject to the requirements of Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and 24 C.F.R. 570.601. In regard to the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this NSP2 Loan Agreement, BORROWER shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination as herein defined, in the sale, lease or rental, or in the use or occupancy of such land, or in any improvements erected or to be erected thereon, providing that CITY and the United States are beneficiaries of and entitled to enforce such covenants. BORROWER, in undertaking its obligation to carry out the program assisted hereunder, agrees to take such measures as are necessary to enforce such covenant, and will not itself so discriminate.

(v) **Lead-Based Paint.** The requirement of the Lead-Based Paint Poisoning Prevention Act, as amended (42 U.S.C. 4821 et seq.), the Residential Lead-Based Paint Hazard Reduction Act (42 U.S.C. 4851 et seq.), and implementing regulations at 24 C.F.R. Part 35.

(vi) **Relocation.** The requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601, et seq.), and implementing regulations at 49 C.F.R. Part 24 (as modified by the NSP2 Regulations); 24 C.F.R. 570.606; Section 104(d) of the Housing and Community Development Act of 1974 and implementing regulations at 24 C.F.R. 42 et seq.; and California Government Code Section 7260 et seq. and implementing regulations at 25 California Code of Regulations Sections 6000 et seq., relating to the acquisition and disposition of all real property purchased with NSP2 Funds, and to the permanent or temporary displacement of persons, businesses, nonprofit organizations and farms occurring as a direct result of any predevelopment of real property made with NSP2 Funds, and state and local relocation laws. If, and to the extent that the predevelopment of the Property results in the permanent or temporary displacement of residential tenants, homeowners, or businesses, then BORROWER shall comply with all applicable local, state, and federal statutes and regulations with respect to relocation planning, advisory assistance, and payment of monetary benefits. BORROWER shall prepare and submit a relocation plan to CITY for approval. BORROWER is solely responsible for payment of any relocation benefits to any displaced persons and any other obligations associated with complying with such relocation laws. BORROWER shall indemnify, defend (with counsel reasonably chosen by CITY), and hold harmless CITY, its council members, officers, representatives, agents, assigns and employees against all claims that arise out of relocation obligations to residential tenants, homeowners, or businesses permanently or temporarily displaced by the Property. The requirements in this subsection shall survive repayment of the NSP2 Loan and the reconveyance of the NSP2 Deed of Trust.

(vii) **Discrimination against the Disabled.** The requirements of the Fair Housing Act (42 U.S.C. 3601 et seq.) and implementing regulations at 24 C.F.R. Part 100; Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and federal
regulations issued pursuant thereto, which prohibit discrimination against the disabled in any federally assisted program, the requirements of the Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157) and the applicable requirements of Title II and/or Title III of the Americans with Disabilities Act of 1990 (42 U.S.C. 12131 et seq.), and federal regulations issued pursuant thereto.

(viii) **Clean Air and Water Acts.** The Clean Air Act, as amended, 42 U.S.C. 7401 et seq., the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq., and the regulations of the Environmental Protection Agency with respect thereto, at 40 C.F.R. Part 1500, as amended from time to time.

(ix) **Uniform Administrative Requirements.** If applicable, the requirements of applicable sections of 24 C.F.R. Part 85, as amended from time-to-time, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments" and 24 C.F.R. 570.502 regarding cost and auditing requirements.

(x) **Training Opportunities.** The requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u ("Section 3"), requiring that to the greatest extent feasible opportunities for training and employment be given to lower income residents of the project area and agreements for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in, the areas of the project. BORROWER agrees to include the following language in all subcontracts executed under this NSP2 Loan Agreement:

1. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

2. The parties to this contract agree to comply with HUD's regulations in 24 C.F.R. Part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.

3. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause; and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and
employment positions can see the notice. The notice shall describe the Section 3 preference; shall set forth minimum number and job titles subject to hire; availability of apprenticeship and training positions; the qualifications for each; the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

(4) The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 C.F.R. Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 C.F.R. Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 C.F.R. Part 135.

(5) The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 C.F.R. Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 C.F.R. Part 135.

(6) Noncompliance with HUD's regulations in 24 C.F.R. Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

(7) With respect to work performed in connection with Section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 and section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

(xi) Labor Standards. The labor requirements set forth in 24 C.F.R. Section 570.603; the prevailing wage requirements of the Davis-Bacon Act and implementing rules and regulations (40 U.S.C. 3141-3148); the Copeland "Anti-Kickback" Act (40 U.S.C. 276(c)) which requires that workers be paid at least once a week without any deductions or rebates except permissible deductions; the Contract Work Hours and Safety Standards Act – CWHSSA (40 U.S.C. 3701-3708) which requires that workers receive "overtime" compensation at a rate of 1-1/2 times their regular hourly wage after they have worked forty (40) hours in one (1) week; and Title 29, Code of Federal Regulations, Subtitle A, Parts 1, 3 and 5 are the regulations and
procedures issued by the Secretary of Labor for the administration and enforcement of the Davis-Bacon Act, as amended.

(xii) **Drug Free Workplace.** The requirements of the Drug Free Workplace Act of 1988 (P.L. 100-690) and implementing regulations at 24 C.F.R. Part 24.


(xiv) **Historic Preservation.** The historic preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. Section 470) and the procedures set forth in 36 C.F.R. Part 800. If archeological, cultural, or historic period resources are discovered during construction, all construction work must come to a halt and BORROWER shall immediately notify the County. BORROWER shall not alter or move the discovered material(s) until all appropriate procedures for "post-review discoveries" set forth in Section 106 of the National Historic Preservation Act have taken place, which include, but are not limited to, consultation with the California State Historic Preservation Officer and evaluation of the discovered material(s) by a qualified professional archeologist.

(xv) **Flood Disaster Protection.** The requirements of the Flood Disaster Protection Act of 1973 (P.L. 93-234) (the "Flood Act"). No portion of the assistance provided under this NSP2 Loan Agreement is approved for acquisition or construction purposes as defined under Section 3(a) of the Flood Act, for use in an area identified by HUD as having special flood hazards which is not then in compliance with the requirements for participation in the national flood insurance program pursuant to Section 201(d) of the Flood Act. The use of any assistance provided under this NSP2 Loan Agreement for such acquisition or construction in such identified areas in communities then participating in the National Flood Insurance Program is subject to the mandatory purchase of flood insurance requirements of Section 102(a) of the Flood Act. If the Property is located in an area identified by HUD as having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4001 et seq., the property owner and its successors or assigns must obtain and maintain, during the ownership of the Property, such flood insurance as required with respect to financial assistance for acquisition or construction purposes under Section 102(s) of the Flood Act. Such provisions are required notwithstanding the fact that the construction on the Property is not itself funded with assistance provided under this NSP2 Loan Agreement.

(xvi) **Procurement.**

1. **Compliance.** CITY has the right to require BORROWER to comply with any or all current CITY's NSP2 Policies and Procedures Manual concerning the purchase of equipment and shall maintain an inventory record of all non-expendable personal property (as defined by CITY policy) as may be procured...
with funds provided herein. All property assets (unexpended program income, property, equipment, etc.) shall revert to CITY upon termination of this NSP2 Loan Agreement.

(xvii) Documentation and Record-Keeping.

(1) Records to be Maintained. BORROWER shall maintain all records required by the federal regulations specified in 24 C.F.R. Part 570.506 and the NSP2 Regulations, and satisfactory to CITY staff, and that are pertinent to the activities to be funded under this NSP2 Loan Agreement. Such records include but are not be limited to:

(A) Records providing a full description of each activity undertaken;

(B) Certification executed by BORROWER, demonstrating that each activity undertaken meets one of the National Objectives of the CDBG and NSP2 Program;

(C) Records required to determine the eligibility of activities;

(D) Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG and NSP2 assistance;

(E) Records documenting compliance with the fair housing and equal opportunity components of the CDBG and NSP2 Program;

(F) Records documenting compliance with the changes in use restrictions specified in 24 C.F.R. Part 570.505 (for any properties that are retained).

(G) Records as required by 24 C.F.R. Part 570.502, 24 C.F.R. 84.21-28 and OMB Circular A-110; and

(H) Other records necessary to document compliance with Subpart K of 24 C.F.R. 570 and the NSP2 Regulations.

(2) Insufficient Records. CITY shall notify BORROWER of any records it deems insufficient. BORROWER shall have thirty (30) calendar days after the receipt of such a notice to correct any deficiency in the records specified by CITY in such notice, or if a period longer than thirty (30) days is reasonably necessary to correct the deficiency, then BORROWER shall begin to correct the deficiency within thirty (30) days and correct the deficiency as soon as reasonably possible.

(3) Retention of Records. BORROWER shall retain all financial records, supporting documents, statistical records, and all other records
pertinent to services performed and expenditures incurred under this NSP2 Loan Agreement for a period of five (5) years after the termination of all activities funded under this NSP2 Loan Agreement, or after the resolution of all litigation, claims, federal audits, negotiation or other actions that involve any of the records cited, whichever occurs later. BORROWER shall retain records for non-expendable property acquired with funds under this NSP2 Loan Agreement for five (5) years after final disposition of such property. Records for any displaced person must be kept for five (5) years after he/she has received final payment.

(4) National Objectives. Pursuant to subsection (1)(B) above, BORROWER shall execute and submit to CITY a certification for approval by CITY that the activities carried out with funds provided under this NSP2 Loan Agreement meet the low/moderate/middle income national objective under the NSP2 Program.

(5) Close-Outs. BORROWER's obligation to CITY does not end until all close-out requirements are completed. Close-out period requirements include, but are not limited to: submission of close-out report; making final payments; disposing of property assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and receivable accounts to CITY); and determining the custodianship of records.

(6) Audits and Inspections. CITY shall notify BORROWER of any records it deems insufficient. BORROWER shall have fifteen (15) calendar days after the receipt of such a notice to correct any deficiency in the records specified by CITY in such notice, or if a period longer than fifteen (15) days is reasonably necessary to correct the deficiency, then BORROWER shall begin to correct the deficiency within fifteen (15) days and correct the deficiency as soon as reasonably possible.

(xviii) Hatch Act. BORROWER agrees that no funds provided, nor personnel employed under this NSP2 Loan Agreement, shall be in any way, or to any extent engaged, in the conduct of political activities in violation of 5 U.S.C. 15.

(xix) Conflict of Interest. BORROWER agrees to abide by the provisions of 24 C.F.R. 84.42 and 24 C.F.R. 570.611 with respect to conflicts of interest, which include (but are not limited to) the following:

(1) BORROWER shall maintain a written code or standards of conduct that shall govern the performance of its officers, employees or agents engaged in the award and administration of contracts supported by federal funds.

(2) No employee, officer or agent of BORROWER shall participate in the selection, or in the award, or administration of, a contract supported by federal funds if a conflict of interest, real or apparent, would be involved.

(3) BORROWER covenants that it presently has no financial interest and shall not acquire any financial interest, direct or indirect, which
would conflict in any manner or degree with the performance of services required under this NSP2 Loan Agreement. BORROWER further covenants that in the performance of this NSP2 Loan Agreement no person having such a financial interest shall be employed or retained by BORROWER hereunder.

(4) Except for approved eligible administrative or personnel costs, no person described in this subsection who exercises or has exercised any functions or responsibilities with respect to the activities funded pursuant to this NSP2 Loan Agreement or who is in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from the activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during, or at any time after, such person's tenure. BORROWER shall exercise due diligence to ensure that the prohibition in this subsection is followed. The conflict of interest provisions of this subsection apply to any person who is an employee, agent, consultant, officer, or any immediate family member of such person, or any elected or appointed official of CITY, or any person related within the third (3rd) degree of such person.

(xx) Section 2304 Requirements. BORROWER shall comply with Section 2304 of Title III of Division B of the Housing and Economic Recovery Act of 2008, which states that no NSP2 Funds may be distributed to: (a) an organization that has been indicted for a violation under federal law relating to an election for federal office; or (b) an organization that employs applicable individuals. An "applicable individual" means an individual who has been indicted for a violation under federal law relating to an election for federal office and is: (a) employed by the organization in a permanent or temporary capacity or is contracted or retained by the organization; or (b) acting on behalf of, or with the express or apparent authority of the organization.

(xxi) Recovery of Capital Costs. BORROWER shall not attempt to recover any capital costs of public improvements assisted with CDBG or NSP2 Funds, including Section 108 loan guaranteed funds, by assessing any amount against properties owned and occupied by persons of low and moderate income, including any fee charged or assessment made as a condition of obtaining access to such public improvements. However, if NSP2 Funds are used to pay the proportion of a fee or assessment attributable to the capital costs of public improvements (assisted in part with NSP2 Funds) financed from other revenue sources, an assessment or charge may be made against the Property Parcel with respect to the public improvement financed by a source other than CDBG or NSP2 Funds.

(xxii) Subcontracts.

(1) Approvals. BORROWER may not enter into any subcontracts in an amount greater than Ten Thousand Dollars ($10,000) with any entity or individual in the performance of this NSP2 Loan Agreement without the written consent of CITY prior to the execution of such subcontract.
(2) **Monitoring.** BORROWER shall monitor all subcontracted services on a regular basis to assure contract compliance. BORROWER shall summarize the results of monitoring efforts in written reports that are supported by documented evidence of follow-up actions taken to correct any areas of noncompliance.

(3) **Content.** BORROWER shall cause all of the provisions of this NSP2 Loan Agreement in its entirety to be included in and made a part of any subcontract executed in the performance of this NSP2 Loan Agreement.

(4) **Selection Process.** BORROWER shall undertake to ensure that all subcontracts let in the performance of this NSP2 Loan Agreement are awarded on a fair and open competitive basis in accordance with applicable procurement requirements. BORROWER shall forward executed copies of all subcontracts to CITY along with documentation concerning the selection process.

(xxxii) **Lobbying.** BORROWER hereby certifies that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of CITY, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;

(2) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of CITY, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(3) It will require that the following language be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all sub-contractors shall certify and disclose accordingly:

"This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure."

(4) This certification is a material representation of fact upon which reliance was placed when this NSP2 Loan Agreement was made or entered
Submission of this certification is a prerequisite for making or entering into this NSP2 Loan Agreement imposed by 31 U.S.C. Section 1352. Any person who fails to file the required certification will be subject to a civil penalty of not less than Ten Thousand Dollars ($10,000) and not more than One Hundred Thousand Dollars ($100,000) for such failure.

(xxiv) Religious Organization. BORROWER agrees that funds provided under this NSP2 Loan Agreement will not be utilized for religious activities, to promote religious interests, or for the benefit of a religious organization in accordance with the federal regulations specified in 24 C.F.R. 570.200(j).

(xxv) Buy American. BORROWER shall comply with Section 1605 of the NSP2 Act which offers government-wide guidance at 2 CFR 176, with regards to the Buy American Program and the responsibilities and compliance requirements connected thereto. BORROWER assumes responsibility for the acts of its employees and sub-contractors as they relate to the procurement of building materials in connection to the “Buy American” Program.

(xxvi) HUD Regulations. Any other HUD regulations present or as may be amended, added, or waived in the future pertaining to the NSP2 Loan funds.

Section 2. Modification of the Note. The Note shall be endorsed to reflect the modifications below.

(a) Principal Amount. The Note is hereby modified to reflect that a portion of the principal amount of the New Loan and the Note is Six Hundred One Thousand Seven Hundred Twenty Three Dollars and No Cents ($601,723.00).

Section 3. Modification of the Deed of Trust. The Deed of Trust is hereby modified to reflect that the principal amount of the New Loan and the Note is Six Hundred One Thousand Seven Hundred Twenty Three Dollars and No Cents ($601,723.00). This Agreement shall be recorded to reflect this modification to the Deed of Trust. The Borrower shall pay at its sole expense for any endorsement to the City's title policy insuring the Deed of Trust to reflect such modification and to show the Deed of Trust retains the same lien priority despite such modification.

Section 4. Modification of the Regulatory Agreement. The Recitals of the Regulatory Agreement are hereby modified to reflect that the principal amount of the New Loan is Six Hundred One Thousand Seven Hundred Twenty Three Dollars and No Cents ($601,723.00).

Section 5. Full Force and Effect. Except as amended by this Agreement, the Loan Agreement, the Note, the Deed of Trust and the Regulatory Agreement remain unmodified and in full force and effect.

Section 6. Effective Date. This Agreement and the modifications described in this Agreement shall be effective on the date first set forth above.
Section 7. Successors and Assigns. This Agreement shall be binding on and inure to the benefit of the legal representatives, heirs, successors and assigns of the parties.

Section 8. California Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

Section 9. Counterparts. This Agreement may be signed in counterparts, each of which shall constitute one and the same instrument.

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IN WITNESS WHEREOF, the City of Modesto, a municipal corporation, has authorized the execution of this NSP2 Loan Agreement by its City Manager and attestation by its City Clerk by Resolution No. ______________ adopted by the Council on the _____ day ______________ of, ____________, and BORROWER has caused this NSP2 Loan Agreement to be duly executed.

CITY:

CITY OF MODESTO, a municipal corporation

By: ________________________________
    James N. Holgersson, City Manager

Manager ATTEST:

By: ________________________________
    Stephanie Lopez, City Clerk

(SEAL)

APPROVED AS TO LEGAL FORM
Adam U. Lindgren, City Attorney

By: ________________________________
    Adam U. Lindgren, City Attorney
BORROWER:

SAHA:

Satellite Affordable Housing Associates, a California Nonprofit Public Benefit Corporation

By: ________________________________

Susan Friedland, Executive Director

ABHOW:

American Baptist Homes of the West, a California Nonprofit Public Benefit Corporation

By: ________________________________

David B. Ferguson, President and CEO

By: ________________________________

Ancel Romero, Senior Vice President-Affordable Housing

PARTNERSHIP:

Tower Park L.P., a California Limited Partnership

By: Tower Park LLC, a California Limited Liability Company, its Managing General Partner

By: Satellite AHA Development Inc., a California Nonprofit Public Benefit Corporation, its Managing Member

By: ________________________________

Susan Friedland, its Executive Director

By: Carmel Senior Housing Inc., a California Nonprofit Public Benefit Corporation, its Member

By: ________________________________

S. Louise Rankin, its Secretary
EXHIBIT A

LEGAL DESCRIPTION

(701 15th Street)

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

The portion of Lots 7 through 16 in Block 127 of the City of Modesto as per Map thereof filed December 21, 1942 in Volume 15 of Maps, Stanislaus County Records, described as follows:

BEGINNING at the north corner of said Lot 7, said point being on the southwesterly right of way line 80.00 feet wide 17th Street; thence South 43° 12’ 09” East, 250.05 feet on said right-of-way line to the east corner of aforementioned Lot 16 and the northwesterly right-of-way line of 80 feet wide G Street; thence South 46° 49’ 09” West 139.94 feet on said northwesterly right of way line to the South corner of said Lot 16 and the northeasterly line of the 20 feet wide alley through Block 127; thence North 43° 11’11” West 165.55 feet on said northeasterly alley line; thence leaving said northeasterly alley line, North 43° 11’ 11” West 84.50 feet to the northwesterly line of aforementioned Lot 7; thence North 46° 49’ 13” East 110.84 feet on the northwesterly line of said Lot 7 to the point of beginning.

APN: 106-006-013
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1199

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of

On ______________________, before me, personally appeared ________________________

Date

Here Insert Name and Title of the Officer

Names of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose names are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature

Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unwritten document.

Description of Attached Document

Title or Type of Document: ______________________

Document Date: ______________________

Number of Pages: ___

Signer(s) Other Than Named Above:

Capacity(ies) Claimed by Signer(s)

Signer's Name: ______________________

Corporate Officer – Title(s): ______________________

Partner – Limited / General: ______________________

Individual: ______________________

Attorney in Fact: ______________________

Trustee: ______________________

Guardian or Conservator: ______________________

Other: ______________________

Signer is Representing: ______________________

__________________________________________

Signature of Notary Public

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of 

On , before me, personally appeared


who appeared to me on the basis of satisfactory evidence to be the person(s) whose names are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

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Signature of Notary Public

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Description of Attached Document

Title or Type of Document: 

Number of Pages: 

Document Date: 

Signer(s) Other Than Named Above: 

Capacity(ies) Claimed by Signer(s)

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<th>Signer's Name</th>
<th>Corporate Officer - Title(s)</th>
<th>Partner - Limited/General</th>
<th>Individual</th>
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Signer is Representing: 

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

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State of California

County of ____________________________________________

On ___________________________________ before me,__________________________________________

Date

personally appeared ____________________________________________

Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by him/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature ____________________________________________

Signature of Notary Public:

Place Notary Seal Above

OPTIONAL

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Title or Type of Document: __________________________ Document Date: __________________________

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Capacity(ies) Claimed by Signer(s)

Signer's Name: __________________________

Corporate Officer — Title(s): __________________________

Partner — Limited General

Individual: ______ Attorney in Fact

Trustee: ______ Guardian or Conservator

Other: __________________________

Signer is Representing: __________________________

Signer's Name: __________________________

Corporate Officer — Title(s): __________________________

Partner — Limited General

Individual: ______ Attorney in Fact

Trustee: ______ Guardian or Conservator

Other: __________________________

Signer is Representing: __________________________
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of ____________________________

On ____________________________ before me, personally appeared ____________________________,

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

WITNESS my hand and official seal.

[Signature]

Signature of Notary Public

Place Notary Seal Above

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Signer's Name: ____________________________

Corporate Officer - Title
Partner - Limited or General
Trustee - Guardian or Conservator
Other: ____________________________

Signer is Representing: ____________________________

Signer's Name: ____________________________

Corporate Officer - Title
Partner - Limited or General
Trustee - Guardian or Conservator
Other: ____________________________

Signer is Representing: ____________________________
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

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State of California

County of ________________________

On ________________________, before me, ________________________________________________.

I, ________________________________________________, also known as ________________________, a notary public for the county of _________, State of California, do hereby certify that I, ________________________________________________, personally appeared before me, and that I have no reason to doubt the identity of the person or persons whose names are subscribed to the instrument, and that, to the best of my knowledge and belief, the person, persons, or entity upon whose behalf the person or persons whose names are subscribed to the instrument, executed the instrument.

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

WITNESS my hand and official seal.

Signature ________________________________________________

Signature of Notary Public: ________________________________________________

Place Notary Seal Above

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Signer's Name: ________________________________________________

Corporate Officer – Title: ________________________________________________

Partner – Limited / General: ________________________________________________

Individual: ________________________________________________

Attorney in Fact: ________________________________________________

Trustee: ________________________________________________

Guardian or Conservator: ________________________________________________

Other: ________________________________________________

Signer is Representing: ________________________________________________

Signature of Notary Public: ________________________________________________

104x195
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

I, the undersigned, do hereby acknowledge and verify that the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me, that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature: ____________________________
Signature of Notary Public: ____________________________

Place Notary Seal Above

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Other: ____________________________
Signer is Representing: ____________________________

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Individual: ____________________________
Attorney in Fact: ____________________________
Trustor: ____________________________
Guardian or Conservator: ____________________________
Other: ____________________________
Signer is Representing: ____________________________
City of Modesto Neighborhood Stabilization Program 2
Loan Agreement, dated as of December 11, 2012
CITY OF MODESTO NEIGHBORHOOD STABILIZATION PROGRAM 2
LOAN AGREEMENT

This CITY OF MODESTO NEIGHBORHOOD STABILIZATION PROGRAM 2
(hereinafter referred to as "NSP2 Loan Agreement") is entered into this ___ day of
December 2012 (the "Effective Date"), by and between CITY OF MODESTO, a
municipal corporation of the State of California ("CITY") and SATELLITE HOUSING, INC., a
California nonprofit public benefit corporation ("Satellite") and AMERICAN BAPTIST
HOMES OF THE WEST, a California nonprofit public benefit corporation, ("ABHOW" and
collectively with Satellite referred to herein as "BORROWER")

RECITALS

WHEREAS, CITY has received Neighborhood Stabilization Program 2 ("NSP2") funds
from the United States Department of Housing and Urban Development ("HUD") under Section
2301 of Title III, Division B, of the Housing and Economic Recovery Act of 2008, Title XII,
Division A, of the American Recovery and Reinvestment Act of 2009 (the "NSP2 Act"), and
implementing regulations, including but not limited to 24 CFR 570 et seq., and applicable
guidance, including but not limited to the Notices of Allocations, Application Procedures,
Regulatory Waivers Granted to and Alternative Requirements for Emergency Assistance for
Development of Abandoned and Foreclosed Homes Grantees under HERA and such corrections
(including, but not limited to, Docket Nos. FR-5255-N-01, FR-5255-N-02, FR-5321-N-03, FR-
5435-N-01, and FR-5447-N-01), as amended (the "NSP2 Regulations"); and

WHEREAS, except as otherwise prescribed by the NSP2 Act and NSP2 Regulations, the
statutory and regulatory provisions that govern the Community Development Block Grant
("CDBG") program under Title I of the Housing and Community Development Act of 1974 (42
U.S.C. 5301 et seq.), as amended (including those at 24 C.F.R. part 570 subparts A, C, D, J, K,
and O, as appropriate, apply with equal force to the NSP2 funds (the "CDBG Regulations"").
Together, the NSP2 Act, NSP2 Regulations, and CDBG Regulations are the "NSP2
Requirements;" and

WHEREAS, pursuant to the NSP2 Requirements, CITY is authorized to provide the
NSP2 funds to qualified developers or subrecipients to perform eligible activities under the
NSP2 program in the City of Modesto; and

WHEREAS, BORROWER is a qualified developer for purposes of receipt and use of the
NSP2 Funds; and

WHEREAS, pursuant to said NSP2, CITY is undertaking to fund certain programs,
activities and services to promote affordable special needs rental housing for Very Low Income
Households, as defined below, in the City of Modesto (the "NSP2 Program"); and

WHEREAS, BORROWER desires to perform predevelopment activities on real property
commonly described as 17th and G Streets, Modesto, California 95353 (APN# 106-006-013 in
1669/0212453413
Census Tract 18.00) and more fully described as attached hereto as Exhibit A and made a part hereto (the "Property"); and

WHEREAS, BORROWER intends to construct forty-eight (48) rental housing units on the Property; and

WHEREAS, the Property is an Eligible Property as that term is defined in Section 2.1 herein and as used in the NSP2 Requirements and as defined and used in that certain agreement between CITY and BORROWER titled City of Modesto Neighborhood Stabilization Program 2 Memorandum of Understanding, dated ______________, 2013 (the "MOU") the terms of which are incorporated herein by this reference, a true and correct copy of the MOU is attached herein as Exhibit D; and

WHEREAS, BORROWER intends to predevelop the Property and rent the Property as affordable rental housing to a Qualified Tenant as defined in Section 2.1, pursuant to the MOU and this NSP2 Loan Agreement; and

WHEREAS, CITY desires to loan BORROWER funds to assist in financing the predevelopment of the Property by BORROWER; provided, BORROWER rents the Property to Qualified Tenants; and

WHEREAS, CITY has conditionally agreed to make the loan to BORROWER in an amount not to exceed Two Hundred Fifty Thousand Dollars ($250,000) (the "NSP2 Loan") pursuant to, and with funds provided by the NSP2 Program in accordance with the NSP2 Requirements, and

WHEREAS, BORROWER acknowledges that CITY’s desire to expand the inventory of affordable housing units available for rent to Very Low Income Households in the City of Modesto; and

WHEREAS, BORROWER acknowledges that CITY would not enter into this NSP2 Loan Agreement to loan NSP2 funds to BORROWER but for BORROWER’s covenant and agreement to rent the Property to Qualified Tenants; and

WHEREAS, BORROWER shall execute a promissory note of even date herewith (the "NSP2 Note") consisting of a promissory note evidencing BORROWER’s obligation to repay the NSP2 Loan. BORROWER shall execute a deed of trust of even date with this NSP2 Loan Agreement signed by BORROWER as Trustor in favor of CITY as beneficiary conveying BORROWER’s interest in the Property as security for the NSP2 Loan as evidenced by the NSP2 Note (the "NSP2 Deed of Trust"). The NSP2 Deed of Trust shall be recorded against the Property as security for the NSP2 Note. BORROWER further agrees to execute a City of Modesto Neighborhood Stabilization Program 2 Regulatory Agreement (the "NSP2 Regulatory Agreement") containing covenants, conditions and restrictions regarding the rental and use of the Property. BORROWER agrees to be bound by all terms and conditions of the NSP2 Note, the NSP2 Deed of Trust, and the NSP2 Regulatory Agreement. This NSP2 Loan Agreement, the
NSP2 Note, the NSP2 Deed of Trust, and the NSP2 Regulatory Agreement are collectively referred to herein as the "NSP2 Loan Documents" and/or the "Loan Documents," and

NOW, THEREFORE, CITY and BORROWER agree as follows:

SECTION 1. RECITALS.

The foregoing Recitals are part of this NSP2 Loan Agreement.

SECTION 2. DEFINITIONS AND EXHIBITS.

Section 2.1 Definitions. As used in this NSP2 Loan Agreement and in addition to the definitions set forth in the Recitals, the following terms shall have the respective meanings indicated opposite each of them:

(a) Abandoned Property. Abandoned Property shall mean real property located in the City of Modesto, County of Stanislaus improved with a home or residential structure meeting at least one of the following criteria: (a) a mortgage, tribal leasehold, or tax lien payment is at least ninety (90) days delinquent; (b) a code enforcement inspection has determined that the property is not habitable and the property owner has taken no corrective action within ninety (90) days of notification of the deficiency; or (c) the property is subject to a court ordered receivership or nuisance abatement order related to abandonment pursuant to state or local law or otherwise meets a state definition of abandoned home or residential property.

(b) Affordable Rent. Affordable Rent shall mean the maximum rent paid by an Very Low Income Household to occupy the Property pursuant to 24 CFR 92.252.

(c) Continued Affordability Period. Continued Affordability Period shall mean the period of no less than twenty (20) consecutive years from the date the NSP2 Regulatory Agreement is recorded against the Property.

(d) Eligible Property. Eligible Property shall mean an Abandoned Property, Foreclosed Property, or Vacant Property located in Census Tract 18.00 in the City of Modesto, County of Stanislaus improved with a permanent residential structure that is a single family home, townhouse, condominium unit, or multi-unit rental complex.

(e) Foreclosed Property. Foreclosed Property shall mean residential real property located in the City of Modesto, County of Stanislaus improved with a permanent residential structure that meets at least one (1) of the following criteria: (a) payment under any mortgage, deed of trust or equivalent is delinquent at least sixty (60) days under the Mortgage Bankers of America delinquency calculation and the property owner has received notification of the delinquency; (b) the property owner is ninety (90) days or more delinquent on tax payments; (c) foreclosure proceedings have been initiated or completed under state, local or tribal law; or (d) foreclosure proceedings have been completed and title to the property has been transferred to an intermediary aggregator or servicer that is not a NSP2 grantee, subrecipient, contractor, developer, or end user.
(f) **Predevelopment Costs.** Predevelopment Costs shall mean those "soft costs" paid by BORROWER to third-party providers, including without limitation, architectural design costs, payment of fees to obtain governmental approvals, cost of donated professional services, and other costs approved by CITY.

(g) **Qualified Tenant.** Qualified Tenant shall mean a person or household who (a) has "special needs," including mental health issues, chronic disabilities, HIV/AIDS, prison re-entry candidates, and an "elderly" or "senior citizen" resident of no less than sixty-two (62) years of age; (b) has been income qualified as an Very Low Income Household by BORROWER; (c) occupies or intends to occupy the Property as a primary residence; and (d) intends to pay Affordable Rent to BORROWER for the Property for the Continued Affordability Period.

(h) **Vacant Property.** Vacant Property shall mean improved real property located in the City of Modesto, County of Stanislaus that has been unoccupied for at least ninety (90) days and has no bona fide tenant with rights of occupancy.

(i) **Very Low Income Household.** Very Low Income Household shall mean a person or household whose annual income does not exceed fifty percent (50%) of area median income adjusted for family size based on guidelines published by HUD and used by City of Modesto.

(j) **Term.** Term shall have the meaning set forth in Section 3.2 below.

Section 2.2 **Exhibits.**

The following exhibits are attached to this NSP2 Loan Agreement and incorporated into this NSP2 Loan Agreement by this reference:

- **Exhibit A:** Legal Description of the Property
- **Exhibit B:** Project Budget
- **Exhibit C:** Project Timeline
- **Exhibit D:** City of Modesto Neighborhood Stabilization Program 2 Memorandum of Understanding ("MOU")
- **Exhibit E:** NSP2 National Objectives Certification

SECTION 3. **LOAN PROVISIONS.**

Section 3.1 **NSP2 Loan Amount.**

CITY shall loan BORROWER the principal sum not to exceed Two Hundred Fifty Thousand Dollars ($250,000) (the "NSP2 Loan") subject to the terms and conditions set forth in this NSP2 Loan Agreement, Loan Documents, and MOU as defined herein.
Section 3.2 Term.

The Term of this NSP2 Loan Agreement shall commence on the Effective Date, and expires, unless sooner terminated in accordance with this NSP2 Loan Agreement on the twentieth (20th) anniversary of the Effective Date, subject to any extension agreed to in writing by CITY and BORROWER.

Section 3.3 Interest.

(a) Subject to the provisions of subsection (b) below, the outstanding principal balance of the Loan shall bear no interest.

(b) Upon the occurrence of an Event of Default, the NSP2 Loan will begin to accrue, as of the date of the Event of Default and continue until such time as the NSP2 Loan is repaid in full or the Event of Default is cured, at the default rate of ten percent (10%), simple interest annually.

Section 3.4 Use of NSP2 Loan Funds.

(a) BORROWER shall use the NSP2 Loan for predevelopment of the Property, consistent with the Project Budget, as attached hereto as Exhibit B.

(b) BORROWER shall not use the NSP2 Loan funds for any other purpose without the prior written consent of CITY.

(c) BORROWER shall comply with the MOU in the use of the NSP2 Loan funds.

Section 3.5 Security.

BORROWER shall secure its obligation to repay the NSP2 Loan as evidenced by the NSP2 Note, by executing the NSP2 Deed of Trust, and recording it as a lien against the Property, subject only to the lien of the NSP2 Regulatory Agreement to be recorded against the Property. The CITY agrees to subordinate the liens of the NSP2 Deed of Trust and/or the NSP2 Regulatory Agreement as reasonably necessary for the BORROWER to secure construction and/or permanent financing related to the Property, subject to the CITY’s reasonable prior approval of the document effecting such subordination.

Section 3.6 Conditions Precedent to Disbursement of NSP2 Funds for Predevelopment Activities.

CITY shall have no commitment to BORROWER under this NSP2 Loan Agreement and shall have no obligation to disburse any NSP2 funds for the Predevelopment Costs of the Property unless and until BORROWER complies with and continues to satisfy the following conditions:
(a) The BORROWER has delivered to CITY and CITY has approved a Financing Proposal pursuant to Section 4.2 below, including a component detailing the Predevelopment Costs;

(b) CITY has approved the Project Budget, as attached hereto as Exhibit B or further amendments to the Project Budget, as applicable; and

(c) CITY has approved the Project Timeline, as attached hereto as Exhibit C or further amendments to the Project Timeline, as applicable; and

(d) BORROWER has delivered to CITY a copy of a resolution adopting by BORROWER's Board of Directors authorizing BORROWER's Executive Director, or his designee, to obtain the NSP2 Loan, execute the Loan Documents, and predevelop the Property, and execute any and all related documents on behalf of BORROWER; and

(e) BORROWER has executed and delivered to CITY all documents, instruments, and policies required under the NSP2 Loan Documents; and

(f) CITY has received a written draw request from BORROWER, including certification that the condition set forth in Section 3.6(g) continues to be satisfied, and setting forth the proposed uses of funds consistent with Predevelopment Costs previously approved by CITY, the amount of funds needed, and, where applicable, a copy of the bill or invoice covering the Predevelopment Costs incurred or to be incurred; and

(g) BORROWER has completed, executed and submitted to CITY a Request For Project Draw Down form, in a form acceptable to CITY, indicating BORROWER's request for disbursement of NSP2 Loan funds and setting forth the proposed use, the amount needed, and, where applicable, a copy of the billing or invoice covering the costs to be incurred. BORROWER agrees that no request for NSP2 Loan funds shall be submitted until the NSP2 Loan funds are needed for payment of eligible costs, and that each request shall be limited to the amount needed. BORROWER shall supply CITY other documentation or information as CITY in its discretion deems necessary to substantiate the amount and nature of the eligible cost(s). All disbursements are on a reimbursement basis only. BORROWER is required to have all work, purchases, and services completed prior to submittal of the required invoice form. If there is the need for an advance of NSP2 Loan funds, BORROWER shall submit a copy of any and all bids and cost estimates to CITY. Any and all advance disbursements of the NSP2 Loan funds by CITY shall be determined by CITY, in its sole discretion.

Section 3.7 Repayment.

The NSP2 Loan shall be repaid as follows:

(a) Provided that no Event of Default exists and the Property is rented to a Qualified Tenant in compliance with Section 5 below, CITY shall forgive the NSP2 Loan upon expiration of the Term.
(b) Subject to subsection (a) above, BORROWER shall pay all outstanding principal and accrued interest on the NSP2 Loan, in full, on the earliest to occur of (i) a Transfer, (ii) an Event of Default, and (iii) the expiration of the Term.

(c) BORROWER may prepay the NSP2 Loan at any time without premium or penalty. Regardless of any prepayment or Transfer, BORROWER acknowledges that the provisions of this NSP2 Loan Agreement, including but not limited to the requirement that the Property be rented to a Qualified Tenant, are applicable even if BORROWER has prepaid all or a portion of the NSP2 Loan amount.

Section 3.8 Non-Recourse.

Except as provided below, neither BORROWER, nor any general or limited partner of BORROWER, shall have any direct or indirect personal liability for payment of the principal of, and interest on, the NSP2 Loan or the performance of the covenants of BORROWER under the NSP2 Deed of Trust. Following recordation of the NSP2 Deed of Trust, the sole recourse of CITY with respect to the principal of, and interest on, the NSP2 Note and defaults by Borrower in the performance of its covenants under the NSP2 Deed of Trust shall be to the property described in the NSP2 Deed of Trust; provided, however, that nothing contained in the foregoing limitation of liability shall: (a) limit or impair the enforcement against all such security for the NSP2 Note of all the rights and remedies of CITY thereunder; or (b) be deemed in any way to impair the right of CITY to assert the unpaid principal amount of the NSP2 Note as demand for money within the meaning and intendment of Section 431.70 of the California Code of Civil Procedure or any successor provision thereto. The foregoing limitation of liability is intended to apply only to the obligation for the repayment of the principal of, and payment of interest on the NSP2 Note and the performance of BORROWER's obligations under the NSP2 Deed of Trust, except as hereafter set forth; nothing contained herein is intended to relieve BORROWER of its obligation to indemnify CITY under this NSP2 Loan Agreement, or liability for: (i) fraud or willful misrepresentation; (ii) the failure to pay taxes, assessments or other charges which may create liens on the Property that are payable or applicable prior to any foreclosure under the NSP2 Deed of Trust (to the full extent of such taxes, assessments or other charges); (iii) the fair market value of any personal property or fixtures removed or disposed of by Borrower other than in accordance with the NSP2 Deed of Trust; and (iv) the misappropriation of any proceeds under any insurance policies or awards resulting from condemnation or the exercise of the power of eminent domain or by reason of damage, loss or destruction to any portion of the Property.

SECTION 4. PREDEVELOPMENT ACTIVITIES.

Section 4.1 Predevelopment Activities.

(a) This Article 4 sets forth various predevelopment activities that BORROWER shall seek diligently and in good faith to perform and achieve. Satisfaction of these conditions depends on performance by BORROWER. Only CITY can waive satisfaction of the conditions in this Article 4.
(b) The tasks described below shall be completed no later than the dates set forth in the Project Timeline attached to this NSP2 Loan Agreement as Exhibit C, subject to force majeure pursuant to Section 31 below. At CITY's sole discretion, the Project Timeline may be modified in a writing executed by BORROWER and by CITY Manager, or his designee, on behalf of CITY without formal amendment of this NSP2 Loan Agreement.

(c) Without affecting the validity of the deadline for any particular condition set forth in this Article 4, all conditions set forth in this Article 4 shall be satisfied by not later than the date set forth in the Project Timeline, or else this NSP2 Loan Agreement may be terminated pursuant to Section 8, and CITY shall have the right and remedies set forth in Section 10.

Section 4.2 Financing Proposal.

(a) Within the time set forth in the Project Timeline, BORROWER shall submit to CITY a "Financing Proposal" for the Property. The Financing Proposal shall be BORROWER's then current estimate of costs for financing the construction of the Property. The Financing Proposal shall be based on the Project Budget attached to this NSP2 Loan Agreement as Exhibit B. CITY shall review the Financing Proposal and either approve or disapprove the Financing Proposal within thirty (30) days after receipt. Any disapproval shall state in writing the specific reasons for the disapproval and specify in reasonable detail all of the changes CITY requests be made in order to obtain approval. The BORROWER shall thereafter submit a revised Financing Proposal within thirty (30) days of notification of disapproval. CITY shall either approve or disapprove the submitted revised Financing Proposal within thirty (30) days of the date such revised Financing Proposal is received by CITY, and shall approve the revised Financing Proposal if the requested changes have been made.

(b) If CITY disapproves the revised Financing Proposal, this NSP2 Loan Agreement may be terminated by CITY pursuant to Section 8 below. Only upon CITY approval of the Financing Proposal shall the condition of Section 4.2(a) be deemed met. When, and if, a revised Financing Proposal has been approved, it shall form a part of this NSP2 Loan Agreement.

(c) The BORROWER shall submit any material revisions to an approved Financing Proposal to CITY for its review and approval, which approval shall not be unreasonably withheld. Any proposed revised Financing Proposal shall be considered and approved or disapproved by CITY in the same manner and according to the same timeframe set forth above for the initial Financing Proposal.

Section 4.3 Conceptual Site Plans.

(a) The BORROWER shall cause preparation by a licensed architect of a "Conceptual Site Plan" and proposed elevations for the Property. Within the time set forth in the Project Timeline, BORROWER shall submit such Conceptual Site Plan to CITY for review. The Conceptual Site Plan and the elevations shall describe the basic physical characteristics of the
Property that will serve as a basis for BORROWER’s application for any governmental approvals and for the preparation of the design documents and construction plans.

(b) The City shall review the Conceptual Site Plan and either approve or disapprove the Conceptual Site Plan within thirty (30) days after receipt. Any disapproval shall state in writing the specific reasons for the disapproval and specify in reasonable detail all of the changes CITY requests be made in order to obtain approval. The BORROWER shall thereafter submit a revised Conceptual Site Plan within thirty (30) days of notification of disapproval. The City shall either approve or disapprove the submitted revised Conceptual Site Plan within thirty (30) days of the date such revised Conceptual Site Plan is received by CITY, and shall approve the revised Conceptual Site Plan if the requested changes have been made.

(c) Only upon CITY approval of the Conceptual Site Plan shall the condition of this Section 4.3 be deemed met. If BORROWER fails to deliver such evidence within the time set forth in the Project Timeline the NSP2 Loan Agreement may be terminated by CITY pursuant to Section 8 below.

Section 4.4 Design Property Documents.

(a) The BORROWER shall cause preparation by a licensed architect of Design Property Documents ("Design Property Documents") for the Property. Within the time set forth in the Project Timeline, BORROWER shall submit such Design Property Documents to CITY for review. During the preparation of the Design Property Documents, BORROWER shall communicate and consult informally, and shall hold regular progress meetings, as frequently as necessary to ensure that the formal submittal of any plan or related document to CITY can receive prompt consideration. The Design Property Documents shall be consistent with and in substantial conformity with the Conceptual Site Plan. The Design Property Documents shall consist of drawings, outline specifications and other documents to fix and describe the size, quality, and character of the Property as to architectural and basic structural and mechanical systems. Specifically the Design Property Documents shall indicate estimated structural dimensions, and delineation of site features and elevations, materials and colors, landscaping and other features. Key details shall comply with CITY’s development review requirements.

(b) CITY shall review the Design Property Documents and either approve or disapprove the Design Property Documents within thirty (30) days after receipt. Any disapproval shall state in writing the specific reasons for the disapproval and specify in reasonable detail all of the changes CITY requests be made in order to obtain approval. The BORROWER shall thereafter submit revised Design Property Documents within thirty (30) days of notification of disapproval. CITY shall either approve or disapprove the submitted revised Design Property Documents within thirty (30) days of the date such revised Design Property Documents are received by CITY, and shall approve the revised Design Property Documents if the requested changes have been made.

(c) Only upon CITY approval of Design Property Documents shall the condition of this Section 4.4 be deemed met. If BORROWER fails to deliver such evidence
within the time set forth in the Project Timeline, this NSP2 Loan Agreement may be terminated by CITY pursuant to Section 8 below.

Section 4.5 Periodic Reports.

Upon the request of CITY, but not less often than once a month, BORROWER shall submit progress reports of the predevelopment activities to CITY. CITY and BORROWER shall also meet as frequently as necessary, but no less often than monthly, for regular briefings and progress reports.

Section 4.6 BORROWER Supervision of Predevelopment Activities.

The BORROWER shall be solely responsible for all aspects of BORROWER's conduct in connection with the performance of the predevelopment activities, including (but not limited to) the quality and suitability of the plans and specifications, the supervision of work, and the qualifications, financial condition, and performance of all architects, engineers, contractors, subcontractors, suppliers, and consultants. Any review or inspection undertaken by CITY with reference to the predevelopment activities and the Property is solely for the purpose of determining whether BORROWER is properly discharging its obligations to CITY and should not be relied upon by BORROWER or by any third parties as a warranty or representation by CITY as to the quality of the design or construction of the Property.

SECTION 5. RENTAL OF THE PROPERTY.

Section 5.1 Rental of the Property.

Notwithstanding the provisions in this NSP2 Loan Agreement, BORROWER shall rent the Property to Qualified Tenants as follows:

(a) The Property shall be rented to Qualified Tenants pursuant to the term of a one-year lease, in a form approved by CITY.

(b) BORROWER shall rent no less than twenty-four (24) NSP assisted units located on the Property to Qualified Tenants during the Continued Affordability Period.

(c) The Qualified Tenant shall pay no more than the Affordable Rent to BORROWER during the Continued Affordability Period. The Affordable Rent shall be used by BORROWER to pay maintenance costs and property taxes of the Property. Subject to the rights of senior lenders, any remaining Affordable Rent following payment of the maintenance costs and property taxes of the Property shall be retained by BORROWER.

(d) BORROWER shall be solely responsible for maintenance and repair of the Property in accordance with CITY policies until the expiration of the NSP2 Regulatory Agreement.
(e) BORROWER shall be solely responsible for the payment of property taxes of the Property. In no event shall BORROWER permit a tax or delinquency lien to be secured against the Property.

SECTION 6. LOAN REQUIREMENTS. BORROWER'S OBLIGATIONS AND CONDITIONS

Section 6.1 Compliance with MOU.

BORROWER shall comply with the terms of the MOU and any breach under the MOU, subject to the notice and cure periods set forth in Section 8 below, is a Default under this NSP2 Loan Agreement. The MOU is hereby incorporated into this NSP2 Loan Agreement by this reference.

Section 6.2 Anti-Speculation Requirements.

BORROWER recognizes and acknowledges the importance of developing and maintaining affordable rental housing for Very Low Income Households to the general welfare of the City of Modesto. BORROWER covenants and agrees, for itself and its successors, assigns and transferees that each Eligible Property will be used exclusively for the operation of affordable rental housing for Very Low Income Households in accordance with the NSP2 Regulatory Agreement and not for any form of speculation and landholding. BORROWER understands and agrees that, without the advance written consent of CITY, BORROWER is prohibited from selling, transferring, conveying or assigning an Eligible Property or any interest therein.

Section 6.3 NSP2 Requirements.

BORROWER shall comply with all applicable laws and regulations governing the use of the NSP2 Funds as set forth in the NSP2 Requirements. In the event of any conflict between this NSP2 Loan Agreement, the NSP2 Note, the NSP2 Deed of Trust, or the NSP2 Regulatory Agreement, the NSP2 Requirements shall govern.

(a) The laws and regulations governing the use of the NSP2 Loan include (but are not limited to) the following:

(i) Environmental and Historic Preservation. 24 C.F.R. Part 58, which prescribes procedures for compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4361), and the additional laws and authorities listed at 24 C.F.R. 58.5.


(iii) Debarred, Suspended or Ineligible Contractors. The prohibition on the use of debarred, suspended, or ineligible contractors set forth in 24 C.F.R. Part 24.
(iv) **Civil Rights, Housing and Community Development, and Age Discrimination Acts.**

(1) **Compliance.** BORROWER shall comply with the Fair Housing Act (42 U.S.C. 3601 et seq.) and implementing regulations at 24 C.F.R. Part 100; Title VI of the Civil Rights Act of 1964 as amended; Title VIII of the Civil Rights Act of 1968 as amended; Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974 as amended; Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794, et seq.); the Age Discrimination Act of 1975 (42 U.S.C 6101, et seq.); Executive Order 11063 as amended by Executive Order 12259 and implementing regulations at 24 C.F.R. Part 107; Executive Order 11246 as amended by Executive Orders 11375, 12086, 11478, 12107; Executive Order 11625 as amended by Executive Order 12007; Executive Order 12432; Executive Order 12138 as amended by Executive Order 12608.

(2) **Non-Discrimination.** BORROWER shall comply with the non-discrimination in employment and contracting opportunities laws, regulations and executive orders referenced in 24 C.F.R. 570.607, as revised by Executive Order 13279, and the applicable non-discrimination provisions in Section 109 of the Housing and Community Development Act of 1974, and may not discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, national origin, sex, disability, age, marital status, or status with regard to public assistance. BORROWER shall take affirmative action to ensure that all employment practices are free from such discrimination. Such employment practices include but are not limited to the following: hiring, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. BORROWER shall post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

(3) **Land Covenants.** This Agreement is subject to the requirements of Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and 24 C.F.R. 570.601. In regard to the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this NSP2 Loan Agreement, BORROWER shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination as herein defined, in the sale, lease or rental, or in the use or occupancy of such land, or in any improvements erected or to be erected thereon, providing that CITY and the United States are beneficiaries of and entitled to enforce such covenants. BORROWER, in undertaking its obligation to carry out the program assisted hereunder, agrees to take such measures as are necessary to enforce such covenant, and will not itself so discriminate.

(v) **Lead-Based Paint.** The requirement of the Lead-Based Paint Poisoning Prevention Act, as amended (42 U.S.C. 4821 et seq.), the Residential Lead-Based Paint Hazard Reduction Act (42 U.S.C. 4851 et seq.), and implementing regulations at 24 C.F.R. Part 35.

(vi) **Relocation.** The requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601, et seq.), and implementing regulations at 49 C.F.R. Part 24 (as modified by the NSP2 Requirements); 24
C.F.R. 570.606; Section 104(d) of the Housing and Community Development Act of 1974 and implementing regulations at 24 C.F.R. 42 et seq.; and California Government Code Section 7260 et seq. and implementing regulations at 25 California Code of Regulations Sections 6000 et seq., relating to the acquisition and disposition of all real property purchased with NSP2 Funds, and to the permanent or temporary displacement of persons, businesses, nonprofit organizations and farms occurring as a direct result of any predevelopment of real property made with NSP2 Funds, and state and local relocation laws. If, and to the extent that the predevelopment of the Property results in the permanent or temporary displacement of residential tenants, homeowners, or businesses, then BORROWER shall comply with all applicable local, state, and federal statutes and regulations with respect to relocation planning, advisory assistance, and payment of monetary benefits. BORROWER shall prepare and submit a relocation plan to CITY for approval. BORROWER is solely responsible for payment of any relocation benefits to any displaced persons and any other obligations associated with complying with such relocation laws. BORROWER shall indemnify, defend (with counsel reasonably chosen by CITY), and hold harmless CITY, its council members, officers, representatives, agents, assigns and employees against all claims that arise out of relocation obligations to residential tenants, homeowners, or businesses permanently or temporarily displaced by the Property. The requirements in this subsection shall survive repayment of the NSP2 Loan and the reconveyance of the NSP2 Deed of Trust.

(vii) Discrimination against the Disabled. The requirements of the Fair Housing Act (42 U.S.C. 3601 et seq.) and implementing regulations at 24 C.F.R. Part 100; Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and federal regulations issued pursuant thereto, which prohibit discrimination against the disabled in any federally assisted program, the requirements of the Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157) and the applicable requirements of Title II and/or Title III of the Americans with Disabilities Act of 1990 (42 U.S.C. 12131 et seq.), and federal regulations issued pursuant thereto.

(viii) Clean Air and Water Acts. The Clean Air Act, as amended, 42 U.S.C. 7401 et seq., the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq., and the regulations of the Environmental Protection Agency with respect thereto, at 40 C.F.R. Part 1500, as amended from time to time.

(ix) Uniform Administrative Requirements. If applicable, the requirements of applicable sections of 24 C.F.R. Part 85, as amended from time-to-time, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments" and 24 C.F.R. 570.502 regarding cost and auditing requirements.

(x) Training Opportunities. The requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u ("Section 3"), requiring that to the greatest extent feasible opportunities for training and employment be given to lower income residents of the project area and agreements for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in, the areas of the project. BORROWER agrees to include the following language in all subcontracts executed under this NSP2 Loan Agreement:
(1) The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

(2) The parties to this contract agree to comply with HUD's regulations in 24 C.F.R. Part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.

(3) The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause; and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference; shall set forth minimum number and job titles subject to hire; availability of apprenticeship and training positions; the qualifications for each; the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

(4) The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 C.F.R. Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 C.F.R. Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 C.F.R. Part 135.

(5) The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 C.F.R. Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 C.F.R. Part 135.

(6) Noncompliance with HUD's regulations in 24 C.F.R. Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

(7) With respect to work performed in connection with Section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed.
under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 and section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

(xi) Labor Standards. The labor requirements set forth in 24 C.F.R. Section 570.603; the prevailing wage requirements of the Davis-Bacon Act and implementing rules and regulations (40 U.S.C. 3141-3148); the Copeland "Anti-Kickback" Act (40 U.S.C. 276(c)) which requires that workers be paid at least once a week without any deductions or rebates except permissible deductions; the Contract Work Hours and Safety Standards Act – CWHSSA (40 U.S.C. 3701-3708) which requires that workers receive "overtime" compensation at a rate of 1-1/2 times their regular hourly wage after they have worked forty (40) hours in one (1) week; and Title 29, Code of Federal Regulations, Subtitle A, Parts 1, 3 and 5 are the regulations and procedures issued by the Secretary of Labor for the administration and enforcement of the Davis-Bacon Act, as amended.


(xiv) Historic Preservation. The historic preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. Section 470) and the procedures set forth in 36 C.F.R. Part 800. If archeological, cultural, or historic period resources are discovered during construction, all construction work must come to a halt and BORROWER shall immediately notify the County. BORROWER shall not alter or move the discovered material(s) until all appropriate procedures for "post-review discoveries" set forth in Section 106 of the National Historic Preservation Act have taken place, which include, but are not limited to, consultation with the California State Historic Preservation Officer and evaluation of the discovered material(s) by a qualified professional archeologist.

(xv) Flood Disaster Protection. The requirements of the Flood Disaster Protection Act of 1973 (P.L. 93-234) (the "Flood Act"). No portion of the assistance provided under this NSP2 Loan Agreement is approved for acquisition or construction purposes as defined under Section 3(a) of the Flood Act, for use in an area identified by HUD as having special flood hazards which is not then in compliance with the requirements for participation in the national flood insurance program pursuant to Section 201(d) of the Flood Act. The use of any assistance provided under this NSP2 Loan Agreement for such acquisition or construction in such identified areas in communities then participating in the National Flood Insurance Program is subject to the mandatory purchase of flood insurance requirements of Section 102(a) of the Flood Act. If the Property is located in an area identified by HUD as having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4001 et seq., the property owner and its
successors or assigns must obtain and maintain, during the ownership of the Property, such flood insurance as required with respect to financial assistance for acquisition or construction purposes under Section 102(s) of the Flood Act. Such provisions are required notwithstanding the fact that the construction on the Property is not itself funded with assistance provided under this NSP2 Loan Agreement.

(xvi) Procurement.

(1) Compliance. CITY has the right to require BORROWER to comply with any or all current CITY’s NSP2 Policies and Procedures Manual concerning the purchase of equipment and shall maintain an inventory record of all non-expendable personal property (as defined by CITY policy) as may be procured with funds provided herein. All property assets (unexpended program income, property, equipment, etc.) shall revert to CITY upon termination of this NSP2 Loan Agreement.

(xvii) Documentation and Record-Keeping.

(1) Records to be Maintained. BORROWER shall maintain all records required by the federal regulations specified in 24 C.F.R. Part 570.506 and the NSP2 Requirements, and satisfactory to CITY staff, and that are pertinent to the activities to be funded under this NSP2 Loan Agreement. Such records include but are not be limited to:

(A) Records providing a full description of each activity undertaken;

(B) Certification executed by BORROWER in substantially the same form as attached as Exhibit E, demonstrating that each activity undertaken meets one of the National Objectives of the CDBG and NSP2 Program;

(C) Records required to determine the eligibility of activities;

(D) Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG and NSP2 assistance;

(E) Records documenting compliance with the fair housing and equal opportunity components of the CDBG and NSP2 Program;

(F) Records documenting compliance with the changes in use restrictions specified in 24 C.F.R. Part 570.505 (for any properties that are retained);

(G) Records as required by 24 C.F.R. Part 570.502, 24 C.F.R. 84.21-28 and OMB Circular A-110; and

(H) Other records necessary to document compliance with Subpart K of 24 C.F.R. 570 and the NSP2 Requirements.
(2) **Insufficient Records.** CITY shall notify BORROWER of any records it deems insufficient. BORROWER shall have thirty (30) calendar days after the receipt of such a notice to correct any deficiency in the records specified by CITY in such notice, or if a period longer than thirty (30) days is reasonably necessary to correct the deficiency, then BORROWER shall begin to correct the deficiency within thirty (30) days and correct the deficiency as soon as reasonably possible.

(3) **Retention of Records.** BORROWER shall retain all financial records, supporting documents, statistical records, and all other records pertinent to services performed and expenditures incurred under this NSP2 Loan Agreement for a period of five (5) years after the termination of all activities funded under this NSP2 Loan Agreement, or after the resolution of all litigation, claims, federal audits, negotiation or other actions that involve any of the records cited, whichever occurs later. BORROWER shall retain records for non-expendable property acquired with funds under this NSP2 Loan Agreement for five (5) years after final disposition of such property. Records for any displaced person must be kept for five (5) years after he/she has received final payment.

(4) **National Objectives.** Pursuant to subsection (1)(B) above, BORROWER shall execute and submit to CITY a certification in substantially the same form as attached as Exhibit E for approval by CITY that the activities carried out with funds provided under this NSP2 Loan Agreement meet the low/moderate/middle income national objective under the NSP2 Program.

(5) **Close-Outs.** BORROWER's obligation to CITY does not end until all close-out requirements are completed. Close-out period requirements include, but are not limited to: submission of close-out report; making final payments; disposing of property assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and receivable accounts to CITY); and determining the custodianship of records.

(6) **Audits and Inspections.** CITY shall notify BORROWER of any records it deems insufficient. BORROWER shall have fifteen (15) calendar days after the receipt of such a notice to correct any deficiency in the records specified by CITY in such notice, or if a period longer than fifteen (15) days is reasonably necessary to correct the deficiency, then BORROWER shall begin to correct the deficiency within fifteen (15) days and correct the deficiency as soon as reasonably possible.

(xviii) **Hatch Act.** BORROWER agrees that no funds provided, nor personnel employed under this NSP2 Loan Agreement, shall be in any way, or to any extent engaged, in the conduct of political activities in violation of 5 U.S.C. 15.

(xix) **Conflict of Interest.** BORROWER agrees to abide by the provisions of 24 C.F.R. 84.42 and 24 C.F.R. 570.611 with respect to conflicts of interest, which include (but are not limited to) the following:
(1) BORROWER shall maintain a written code or standards of conduct that shall govern the performance of its officers, employees or agents engaged in the award and administration of contracts supported by federal funds.

(2) No employee, officer or agent of BORROWER shall participate in the selection, or in the award, or administration of, a contract supported by federal funds if a conflict of interest, real or apparent, would be involved.

(3) BORROWER covenants that it presently has no financial interest and shall not acquire any financial interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this NSP2 Loan Agreement. BORROWER further covenants that in the performance of this NSP2 Loan Agreement no person having such a financial interest shall be employed or retained by BORROWER hereunder.

(4) Except for approved eligible administrative or personnel costs, no person described in this subsection who exercises or has exercised any functions or responsibilities with respect to the activities funded pursuant to this NSP2 Loan Agreement or who is in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from the activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during, or at any time after, such person's tenure. BORROWER shall exercise due diligence to ensure that the prohibition in this subsection is followed. The conflict of interest provisions of this subsection apply to any person who is an employee, agent, consultant, officer, or any immediate family member of such person, or any elected or appointed official of CITY, or any person related within the third (3rd) degree of such person.

(xx) Section 2304 Requirements. BORROWER shall comply with Section 2304 of Title III of Division B of the Housing and Economic Recovery Act of 2008, which states that no NSP2 Funds may be distributed to: (a) an organization that has been indicted for a violation under federal law relating to an election for federal office; or (b) an organization that employs applicable individuals. An "applicable individual" means an individual who has been indicted for a violation under federal law relating to an election for federal office and is: (a) employed by the organization in a permanent or temporary capacity or is contracted or retained by the organization; or (b) acting on behalf of, or with the express or apparent authority of the organization.

(xxi) Recovery of Capital Costs. BORROWER shall not attempt to recover any capital costs of public improvements assisted with CDBG or NSP2 Funds, including Section 108 loan guaranteed funds, by assessing any amount against properties owned and occupied by persons of low and moderate income, including any fee charged or assessment made as a condition of obtaining access to such public improvements. However, if NSP2 Funds are used to pay the proportion of a fee or assessment attributable to the capital costs of public improvements (assisted in part with NSP2 Funds) financed from other revenue sources, an assessment or charge may be made against the Property Parcel with respect to the public improvement financed by a source other than CDBG or NSP2 Funds.

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(xxii) Subcontracts.

(1) Approvals. BORROWER may not enter into any subcontracts in an amount greater than Ten Thousand Dollars ($10,000) with any entity or individual in the performance of this NSP2 Loan Agreement without the written consent of CITY prior to the execution of such subcontract.

(2) Monitoring. BORROWER shall monitor all subcontracted services on a regular basis to assure contract compliance. BORROWER shall summarize the results of monitoring efforts in written reports that are supported by documented evidence of follow-up actions taken to correct any areas of noncompliance.

(3) Content. BORROWER shall cause all of the provisions of this NSP2 Loan Agreement in its entirety to be included in and made a part of any subcontract executed in the performance of this NSP2 Loan Agreement.

(4) Selection Process. BORROWER shall undertake to ensure that all subcontracts let in the performance of this NSP2 Loan Agreement are awarded on a fair and open competitive basis in accordance with applicable procurement requirements. BORROWER shall forward executed copies of all subcontracts to CITY along with documentation concerning the selection process.

(xxiii) Lobbying. BORROWER hereby certifies that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of CITY, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;

(2) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of CITY, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(3) It will require that the following language be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all sub-contractors shall certify and disclose accordingly:

"This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by
Section 1352, Title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure."

(4) This certification is a material representation of fact upon which reliance was placed when this NSP2 Loan Agreement was made or entered into. Submission of this certification is a prerequisite for making or entering into this NSP2 Loan Agreement imposed by 31 U.S.C. Section 1352. Any person who fails to file the required certification will be subject to a civil penalty of not less than Ten Thousand Dollars ($10,000) and not more than One Hundred Thousand Dollars ($100,000) for such failure.

(xxiv) Religious Organization. BORROWER agrees that funds provided under this NSP2 Loan Agreement will not be utilized for religious activities, to promote religious interests, or for the benefit of a religious organization in accordance with the federal regulations specified in 24 C.F.R. 570.200(j).

(xxv) Buy American. BORROWER shall comply with Section 1605 of the NSP2 Act which offers government-wide guidance at 2 CFR 176, with regards to the Buy American Program and the responsibilities and compliance requirements connected thereto. BORROWER assumes responsibility for the acts of its employees and sub-contractors as they relate to the procurement of building materials in connection to the “Buy American” Program.

(xxvi) HUD Regulations. Any other HUD regulations present or as may be amended, added, or waived in the future pertaining to the NSP2 Loan funds.

Section 6.4 Progress Reports.

Until such time as BORROWER has sold the Property, BORROWER shall provide CITY with certified quarterly progress reports regarding the status of its acquisition and rental.

Section 6.5 Environmental Indemnity.

As an inducement to CITY to enter into this NSP2 Loan Agreement, BORROWER agrees that from and after the close of escrow for purchase of the Property, BORROWER assumes the risk of and agrees to indemnify and hold CITY harmless, and to defend CITY against and from any and all claims, liabilities, judgments, damages, losses, administrative actions, litigation, response costs, penalties, expenses (including without limitation costs and attorneys' fees), or demands CITY might otherwise incur to any party, including any applicable federal, state or local governmental body which relate to the existence, presence, storage, lease, discharge, emission or disposal of hazardous and toxic materials or otherwise harmful substances of any kind whatsoever on, under or above the property or which come into contact with the property and affect other properties, regardless of when such condition came into existence. This indemnification shall attach and bind BORROWER under BORROWER’s ownership of the Property and shall also serve, as between CITY and BORROWER, to fully insulate CITY from liability and responsibility under any future third party ownership of the Property to the fullest extent under applicable law.
Section 6.6        Inspections, Right of Access.

For purposes of assuring compliance with the Loan Documents, authorized representatives and agents of CITY shall have reasonable right of access to the Property, without charges or fees, to conduct inspection of the use, operation and maintenance of the Property.

Section 6.7        Tenant Displacement, Relocation.

In the event of a temporary displacement of any bona fide tenant occupying the Property, BORROWER shall comply with all applicable local, state and federal statutes and regulations with respect to tenant protection, relocation planning advisory assistance, and payment of monetary benefits. To the extent required by law or local ordinance, BORROWER shall be solely responsible for payment of any relocation benefits to any displaced person or persons and any other obligations associated with compliance with said tenant protection and/or relocation laws.

Section 6.8        Prohibition Against Transfer and Assignment of Agreement

(a) For purposes of this NSP2 Loan Agreement, "Transfer" means any sale, assignment, or transfer, whether voluntary or involuntary, of (i) any rights and/or duties under this NSP2 Loan Agreement, and/or (ii) any interest in the Property, including (but not limited to) a fee simple interest, a joint tenancy interest, a life estate, a partnership interest, a leasehold interest, a security interest, or an interest evidenced by a land contract by which possession of the Property is transferred and BORROWER retains title. The term "Transfer" excludes the lease to a Qualified Tenant of the Property in compliance with the NSP2 Regulatory Agreement, and excludes a transfer of the Property and assignment of the Loan Documents to a nonprofit public benefit corporation affiliated with Satellite and/or ABHOW (including but not limited to Satellite Affordable Housing Associates, a California nonprofit public benefit corporation) or to a limited partnership of which Satellite, ABHOW, or an affiliated nonprofit public benefit corporation or limited liability company is the general partner or the managing general partner.

(b) No Transfer is permitted without the prior written consent of CITY, which CITY may withhold in its sole discretion. The NSP2 Loan will automatically accelerate and become due in full upon any Transfer made without the prior written consent of CITY.

(c) In the absence of specific written agreement by CITY, no Transfer or the approval thereof by CITY, shall be deemed to relieve BORROWER or any other party from any obligations under this NSP2 Loan Agreement.

(d) BORROWER acknowledges and understands in the event of a Transfer, without advance written consent of CITY, any proceeds received in excess of the unpaid balance of the NSP2 Loan is subject to recapture by CITY pursuant to regulations governing NSP2 funds.

Section 6.9        Obligation to Refrain from Discrimination.

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BORROWER covenants and agrees for itself, its successors, its assigns and every successor in interest to the Property or any part thereof, that there shall be no discrimination against or segregation of any person, or group of persons on account of race, color, creed, religion, sex, age, marital status, ancestry, national origin, physical handicap or other arbitrary factor in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property or any part thereof, nor shall BORROWER itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Property or any part thereof. The foregoing covenants shall run with the land and shall remain in effect in perpetuity. The NSP2 Regulatory Agreement shall contain appropriate reference and provision to carry out the purpose of this Section.

Section 6.10 Maintenance of the Property.

(a) BORROWER agrees to maintain the improvements and landscaping on the Property in a clean and orderly condition and in good condition and repair and keep the Property free from any accumulation of debris and waste materials If there arises a condition in contravention of this requirement, and if BORROWER has not cured such condition within thirty (30) days after receiving a CITY notice of such a condition, then in addition to any other rights available to CITY, CITY may perform all acts necessary to cure such condition, and to establish or enforce a lien or other encumbrance against the Property, subject to the provisions provided in subsection (b) below.

(b) Subject to the requirements of senior lenders, and if economically feasible in CITY's judgment after consultation with BORROWER, if any improvement now or in the future on the Property is damaged or destroyed, then BORROWER shall, at its cost and expense, diligently undertake to repair or restore such improvement consistent with the plans and specifications approved by CITY with such changes as have been approved by CITY. Such work or repair is to be commenced no later than the later of one hundred twenty (120) days, or such longer period approved by CITY in writing, after the damage or loss occurs or thirty (30) days following receipt of the insurance proceeds, and is to be complete within one (1) year thereafter. Any insurance proceeds collected for such damage or destruction are to be applied to the cost of such repairs or restoration and, if such insurance proceeds are insufficient for such purpose, then BORROWER shall make up the deficiency. If BORROWER does not promptly make such repairs then any insurance proceeds collected for such damage or destruction are to be promptly delivered by BORROWER to CITY as a special repayment of the Loan, subject to the rights of any senior lenders, if any.

Section 6.11 Record Maintenance and Retentions.

BORROWER shall be accountable to CITY for all funds disbursed to BORROWER pursuant to this Loan Agreement. BORROWER shall maintain records that accurately and fully show the date, amount, purpose and payee of all expenditures incurred in the acquisition of the Property for a period of not fewer than five (5) years after the expiration of the Term.

Section 6.12 Books and Accounts.

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BORROWER shall maintain complete books of accounts and other records for the project and for the use of the Loan Funds; including, but not limited to, records of preliminary notices, lien releases, invoices, receipts and certificates of insurance pertaining to the contractor and each subcontractor; and the same shall be available for inspection and copying by CITY upon reasonable notice to BORROWER.

Section 6.13 Fees and Taxes.

BORROWER is solely responsible for payment of all fees, assessments, taxes, charges, and levies imposed by any public authority or utility company with respect to the Property, and shall pay such charges prior to delinquency. However, BORROWER is not required to pay and discharge any such charge so long as (i) the legality thereof is being contested diligently and in good faith and by appropriate proceedings, and (ii) if requested by CITY, BORROWER deposits with CITY any funds or other forms of assurance that the CITY in good faith from time to time determines appropriate to protect CITY from the consequences of the contest being unsuccessful.

Section 6.14 Notice of Litigation.

BORROWER shall promptly notify CITY in writing of any litigation that has the potential to materially affect BORROWER or the Property and of any claims or disputes that involve a material risk of such litigation.

Section 6.15 Insurance Requirements.

BORROWER shall provide at its own expense and maintain at all times through the term of the NSP2 Note, an all-risk property insurance policy with an insurance company licensed in the State of California insuring the Property in an amount equal to the full replacement value of the structures on the Property. The policy shall name CITY as loss payee and shall contain a statement of obligation on behalf of the insurer to notify CITY of any material change, cancellation or termination of coverage at least thirty (30) days in advance of the effective date of such material change, cancellation or termination. The notices required by the preceding sentence shall be given to the Risk Manager of the City of Modesto by certified mail, return receipt requested. BORROWER shall deliver a copy of the certificate of insurance and loss payee endorsement to the Risk Manager of the City of Modesto within (30) days of the Effective Date, and BORROWER shall annually deliver a copy of the certificate of insurance and a loss payee endorsement, signed by an authorized agent of the insurer setting forth the general provisions of coverage.

In addition, BORROWER shall provide at its own expense and maintain at all times through the term of the Note, the following insurance with insurance companies licensed in the State of California and shall provide written evidence of such insurance to the Risk Manager of the City of Modesto no later than the Effective Date, and annually thereafter within thirty (15) days of the renewal of such policies. The policies or certificates thereof shall provide that thirty (30) days prior to cancellation or material change in the policy, notices of same shall be given to the Risk Manager of the City of Modesto by certified mail, return receipt requested, for all of the following stated insurance policies:
(a) General Liability insurance with a minimum limit of liability per occurrence of $1,000,000.00 for bodily injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. This insurance shall indicate in the certificate of insurance the following coverages and indicate the policy aggregate limit applying to: premises and operation; broad form contractual; independent consultants and subcontractors; products and completed operations as applicable.

(b) Worker's Compensation insurance in compliance with the statutes of the State of California, plus employer's liability with a minimum limit of liability of $1,000,000.00.

(c) Automobile Liability insurance with a minimum limit of liability per occurrence of $1,000,000.00 for bodily injury and property damage. This insurance shall cover any automobile used in the course and scope of BORROWER's business for bodily injury and property damage.

(d) Except for Workers Compensation, each policy of insurance shall name CITY, its agents, officers and employees as an additional insured. BORROWER shall provide CITY with separate endorsements evidencing proof of CITY's additional insured status as to both the general liability and automobile liability insurance policies. In addition, BORROWER shall provide CITY with a Workers Compensation subrogation waiver by way of a separate endorsement. All endorsements referenced above must include the applicable policy number. BORROWER shall deliver all certificates of the existence of insurance, loss payee endorsements and additional insured certificates to the Risk Manager of CITY on or before the Effective Date, and annually thereafter within thirty (30) days of the renewal of such policies, signed by an authorized agent of the insurance carrier setting forth the general provisions of coverage. BORROWER's insurance policies shall include a provision that the coverage is primary as respects to CITY and shall include no special limitations to coverage provided to additional insured; and shall be placed with insurer(s) with acceptable Best's rating of A:VII or with approval of the Risk Manager.

If at any time any of said policies shall be unsatisfactory to CITY, as to form or substance, or if a company issuing such policy shall be unsatisfactory to CITY, the BORROWER shall promptly obtain a new policy, submit the same to the Risk Manager for approval and submit a certificate thereof as hereinabove provided. Upon failure of the BORROWER to furnish, deliver or maintain such insurance and certificates as above provided, this NSP2 Loan Agreement, at the election of CITY, may be forthwith declared suspended or terminated. Failure of the BORROWER to obtain and/or maintain any required insurance shall not relieve the BORROWER from any liability under this NSP2 Loan Agreement, nor shall the insurance requirements be construed to conflict with or otherwise limit the obligations of the BORROWER concerning indemnification. The CITY, its agents, officers, employees and volunteers shall be named as an additional insured on all the insurance policies required herein, except the Workers Compensation. The Workers Compensation insurer shall agree to waive all rights of subrogation against
CITY, its agents, officers, employees and volunteers for losses arising from work performed by BORROWER for CITY or in relation to the project.

For any claims related to the Property or operation of the Property, BORROWER’s insurance coverage shall be primary insurance as respects CITY, its agents, officers, employees and volunteers. Any insurance or self-insurance maintained by CITY, its officers, employees or volunteers shall be excess of the BORROWER’s insurance and shall not contribute with it.

Failure of BORROWER to obtain and/or maintain any required insurance shall not relieve BORROWER from any liability under this NSP2 Loan Agreement nor shall the insurance requirements be construed to conflict with or otherwise limit the obligations of BORROWER relating to indemnification.

SECTION 7. REPRESENTATIONS, WARRANTIES AND CERTIFICATIONS.

BORROWER represents, warrants, and certifies to CITY as follows:

Section 7.1 Organization. Each of ABHOW and Satellite is duly organized, validly existing and in good standing under the laws of the State of California and has the power and authority to own, operate and maintain the Property.

Section 7.2 Authority of BORROWER. BORROWER has full power and authority to execute and deliver this NSP2 Loan Agreement, the Regulatory Agreement all other Loan Documents or instruments executed and delivered, or to be executed and delivered, pursuant to this NSP2 Loan Agreement, and to perform and observe the terms and provisions of all of the above.

Section 7.3 Authority of Persons Executing Documents. The Loan Documents and all documents or instruments executed and delivered, or to be executed and delivered, pursuant to this NSP2 Loan Agreement, have been executed and delivered by persons who are duly authorized to execute and deliver the same for and on behalf of BORROWER. All actions required under BORROWER’s organizational documents and applicable governing law for the authorization, execution, delivery and performance of this NSP2 Loan Agreement, the other Loan Documents and all documents or instruments executed and delivered, or to be executed and delivered, pursuant to this NSP2 Loan Agreement, have been duly taken.

Section 7.4 Valid Binding Agreements. The Loan Documents and all documents or instruments executed and delivered pursuant to or in connection with this NSP2 Loan Agreement constitute or, if not yet executed or delivered, will when so executed and delivered, constitute legal, valid and binding obligations of BORROWER, enforceable against BORROWER in accordance with their respective terms.

Section 7.5 No Breach of Law or Agreement. None of the execution or delivery of the Loan Documents or of any document or instrument executed and delivered, or to be executed or delivered, pursuant to this NSP2 Loan Agreement, or the performance of any provision, condition, covenant or other term hereof or thereof, will conflict with or result in a breach of any
statute, rule or regulation, or any judgment, decree or order of any court, board, commission, or agency whatsoever binding on BORROWER or any provision of the organizational documents of BORROWER, will conflict with or constitute a breach of or a default under any agreement to which BORROWER is a party, or will result in the creation of imposition of any lien upon any assets or property of BORROWER, other than the liens approved by CITY.

Section 7.6 Compliance with Laws: Consents and Approvals. BORROWER will comply with all applicable laws, ordinances, rules and regulations of federal (including, but not limited, to the HUD Housing Quality Standards pursuant to 24 C.F.R. 887.109, Section 504 of the Rehabilitation Act of 1973 as amended and the American with Disabilities Act of 1992), state and local governments and agencies having jurisdiction over either BORROWER or the Property and with all applicable directions, rules and regulations of the fire marshal, health officer, building inspector and other officers of any such government or agency including, but not limited, to the HUD Housing Quality Standards pursuant to 24 C.F.R. 92.251, 24 C.F.R. 887.109 and Section 504 of the Rehabilitation Act of 1973 as amended and the American with Disabilities Act of 1992.

Section 7.7 Permits. All permits, consents, permissions and licenses required by any federal, state or local government or agency to which BORROWER or the Property is subject, which may be necessary in relation to this NSP2 Loan Agreement or the development, construction, operation or ownership of the Property, at, prior, or subsequent to the commencement of construction, have been, or will be, obtained, and none of such consents, permissions and licenses are subject to appeal or to conditions which have not been met.

Section 7.8 Pending Proceedings. BORROWER is not in default under any law or regulation or under any order of any court, board, commission or agency whatsoever, and there are no claims, actions, suits or proceedings pending or, to the knowledge of BORROWER, threatened against or affecting BORROWER or the Property, at law or in equity, before or by any court, board, commission or agency whatsoever which might, if determined adversely to BORROWER, materially affect BORROWER's ability to operate the Property or repay the loan or impair the security to be given to CITY pursuant hereto.

Section 7.9 Hazardous Materials. BORROWER shall perform a due diligence review of the condition of the Property including a review to disclose the possible existence of asbestos, lead, and toxic or hazardous materials prior to the acquisition of the Property.

Section 7.10 Lobbying. No federally-appropriated funds have been paid or will be paid, by or on behalf of the undersigned, for lobbying the Executive or Legislative Branches of the federal government. (Refer to the Government-wide common rule governing the restrictions on lobbying, published as an interim rule on February 26, 1990, (F.R. 6736) and supplemented by a Notice published June 15, 1990 (55F.R.2440). For HUD, this rule is found at 24 C.F.R. Part 87.

Section 7.11 Violations of Law. BORROWER is not presently disbarred, suspended, proposed for debarment, declared ineligible, or involuntarily excluded from covered transactions (see Title 24 C.F.R.24 ) by any federal department or agency; has not within a three (3) year period preceding this NSP2 Loan Agreement, been convicted of or had a civil judgment rendered 26
against it for commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property; is not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission or any of the offenses enumerated in this paragraph; and has not within a three (3) year period preceding this NSP2 Loan Agreement had one or more public transactions (federal, state or local) terminated for cause or default.

Section 7.12 Adequacy of Loan. The amount of the Loan, together with any funds to be provided by BORROWER or to BORROWER from any other source, is adequate to purchase the Property in accordance with this NSP2 Loan Agreement. BORROWER will be responsible for all construction and operational costs greater than the NSP2 Loan.

Section 7.13 Availability of Utilities. All utilities necessary for the operation of the Property are available at or within the boundaries of the Property and all steps necessary to assure that such utility services will be available upon occupancy.

Section 7.14 Title to Property. Upon recordation of the NSP2 Deed of Trust, BORROWER shall have good and marketable title to the Property.

Section 7.15 Conflicts of Interest. No board member, officer or employee of BORROWER shall have any personal interest, direct or indirect, in this NSP2 Loan Agreement or the Property. No board member, officer or employee of BORROWER shall have, receive, accept or derive any pecuniary interest, direct or indirect, from the NSP2 Loan or the acquisition or use of the Property.

Section 7.16 Eligible Property. The Property is an Eligible Property as defined in the MOU and as required by regulations and laws governing receipt and use of NSP2 Loan funds.

SECTION 8. EVENT OF DEFAULT.

The occurrence of any of the following shall constitute an "Event of Default" under this NSP2 Loan Agreement and the NSP2 Loan Documents, following notice to BORROWER by CITY, specifying (a) the applicable event; (b) the action required to cure the default; and (c) a date, which shall not be fewer than thirty (30) days after the date of notice is mailed to BORROWER, by which such action must be taken by BORROWER to cure the default, unless CITY extends the cure period.

(a) Performance of Obligations. BORROWER's default under any of the Loan Documents, or BORROWER's failure to perform its obligations under this NSP2 Loan Agreement within the cure period.

(b) Rental of Property. BORROWER rents the Property to a person who is not a Qualified Tenant.

(c) Transfer. BORROWER sells, transfers, conveys, assigns, encumbers or leases the Property, or any part thereof, without written consent of CITY.
(d) **Insurance.** BORROWER fails to obtain or maintain insurance coverage as required and specified in Section 6.15.

(e) **Liens.** Attachment of an involuntary lien or liens of any kind or character to the Property.

(f) **Representation and Warranties.** Any of BORROWER’s representations, warranties or certifications herein were untrue when made by BORROWER and cease to be true thereafter;

(g) **Voluntary Bankruptcy; Insolvency; Dissolution.** BORROWER’s (i) filing of a petition for relief under any state or federal law regarding bankruptcy, reorganization or other relief to debtors; (ii) filing any pleading in any involuntary proceeding under any state or federal law regarding bankruptcy, reorganization or other relief to debtors which admits the jurisdiction of the court or the petition’s material allegations regarding BORROWER’s insolvency; (iii) making a general assignment for the benefit of creditors; (iv) applying for, or the appointment of, a receiver, trustee, custodian or liquidator of BORROWER, or any of its properties; (v) inability or admission in writing of its inability to pay debts as they are due; or (6) filing by BORROWER of a petition seeking the liquidation or dissolution of BORROWER or the commencement of any other procedures to liquidate or dissolve BORROWER; or

(h) **Involuntary Bankruptcy.** BORROWER’s failure to effect a full dismissal of any involuntary (i) petition under any state or federal law regarding bankruptcy, reorganization or other relief to debtors; (ii) proceeding for the appointment of a receiver, trustee or liquidator for BORROWER or all or a material part of the assets of BORROWER; or (iii) petition or proceeding under other state or federal law regarding bankruptcy, reorganization or other relief to debtors that is filed against BORROWER.

**SECTION 9. NOTICE OF DEFAULT.**

Upon the occurrence of an Event of Default, CITY shall give BORROWER written Notice of Default by specifying:

(a) The nature of the event, deficiency or noncompliance giving rise to the default; and

(b) The action required to cure the default if action to cure is possible; and

(c) A date, which shall be not fewer than thirty (30) calendar days from the date the written notice of default was provided to BORROWER, by which such action to cure must be taken. CITY, in its reasonable discretion, may provide additional time to cure if BORROWER has commenced and is diligently pursuing a cure in good faith.

If BORROWER fails to take corrective action to cure the default within the time specified, CITY may, without further notice, seek any remedies available under this MOU or applicable law.
SECTION 10. **DEFAULT REMEDIES.**

On the happening of an Event of Default under Section 8 of this NSP2 Loan Agreement, and the expiration of the applicable cure period, CITY's obligation to disburse proceeds of the NSP2 Loan shall terminate and CITY shall have the right to either apply all or part of the remaining proceeds of the NSP2 Loan to payment of accrued interest and principal due under any obligations of BORROWER hereunder. On the happening of an Event of Default, and the expiration of the applicable cure period, CITY may, in addition to other rights and remedies permitted by the NSP2 Loan Agreement or applicable law, proceed with any or all of the following remedies in any order or combination CITY may choose in its sole discretion:

(a) Terminate this NSP2 Loan Agreement in which event the entire unpaid principal amount under the NSP2 Note shall immediately become due and payable at the option of CITY; or

(b) Bring an action in equitable relief seeking specific performance by BORROWER of the terms and conditions of this NSP2 Loan Agreement or enjoining, abating, or preventing any violation of said terms and conditions of this MOU or seeking declaratory relief; or

(c) Institute legal action to cure, correct or remedy any default, to recover damages for any default or to obtain any other remedy consistent with the purpose of this NSP2 Loan Agreement; or

(d) Initiate and pursue any private and/or judicial foreclosure action allowed under applicable law and the owner of sale provision in the NSP2 Deed of Trust; or

(e) Pursue any other remedy allowed at law or equity.

Nothing in this Section is intended or shall be construed as precluding CITY from proceeding with a non-judicial foreclosure under the power of sale contained in the NSP2 Deed of Trust in the event of default by BORROWER or its assignee.

SECTION 11. **LEGAL ACTION OR OTHER ACTION TO ENFORCE AGREEMENT OR SEEK REMEDY.**

In the event any party to this NSP2 Loan Agreement institutes a lawsuit or other action to enforce or interpret any part of this NSP2 Loan Agreement or the Loan Documents, or to seek a remedy for any breach of any Loan Document, the prevailing party shall recover, in addition to any other remedies, all costs of suit, including reasonable attorneys' fees (to include the reasonable costs of in-house attorneys) and costs.

SECTION 12. **CONFLICTS OF INTEREST.**

No member, official or employee of CITY shall have any personal interest, direct or indirect, in this NSP2 Loan Agreement, nor shall any such member, official or employee participate in any decision relating to this NSP2 Loan Agreement which affects his or her

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personal interests or the interests of any corporation, partnership or association in which he or she is directly or indirectly interested.

BORROWER warrants that it has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this NSP2 Loan Agreement.

SECTION 13. NOTICES.

All notices pursuant to this NSP2 Loan Agreement shall be in writing and served on the other party (a) by personal delivery or (b) by certified mail, return receipt requested, to the respective addresses as set forth below. Receipt shall be deemed to have occurred on the date shown on a written receipt as the date of delivery or refusal of delivery (or attempted delivery if undeliverable).

CITY:

By Personal Delivery:

City of Modesto
Parks, Recreation & Neighborhoods Department
Attn: Director of Parks, Recreation, & Neighborhoods
1010 Tenth Street, Suite 4400
Modesto, CA 95354

By Mail:

City of Modesto
Parks, Recreation and Neighborhoods Department
P O Box 642
Modesto, CA 95353
Attn: Director of Parks, Recreation, & Neighborhoods

BORROWER:

By Personal Delivery or Mail:

Satellite Housing, Inc.
1540 University Ave.
Berkeley, CA 94703-1422
Attn: Executive Director

American Baptist Homes of the West, Inc.
6120 Stoneridge Mall Road, 3rd Floor
Pleasanton, CA 94588
Attn: Senior Vice President

SECTION 14. INDEMNIFICATION.

BORROWER shall indemnify and hold CITY and its officers, agents, officials, and employees free and harmless against any losses, damages, liability, claims, demands, judgments,
actions, court costs, and legal or other expenses (including attorney's fees) which arise out of or in connection with Borrower’s activities under this NSP2 Loan Agreement or the acquisition, use or operation of the Property. This indemnity obligation shall not extend to any claim arising from the gross negligence or willful misconduct of CITY, its officers, agents, officials and employees. The provisions of this Section shall survive the expiration of the term of this NSP2 Loan Agreement with respect to matters arising prior to the expiration of the term.

SECTION 15. PUBLICITY.

Any publicity generated by BORROWER for the Property funded herein during the term of this NSP2 Loan Agreement and for one year thereafter, shall make reference to the contribution of CITY in making the project possible. The words “City of Modesto, Parks, Recreation and Neighborhoods Department” shall be explicitly stated in any and all pieces of publicity, including, but not limited to, flyers, press releases, and posters.

SECTION 16. SUCCESSORS AND ASSIGNS.

The terms of this NSP2 Loan Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties.

SECTION 17. RELATIONSHIP OF PARTIES.

The relationship of BORROWER and CITY under the Loan Documents, is, and shall at all times remain, solely that of borrower and lender. CITY neither undertakes nor assumes any responsibility or duty to BORROWER or to any third party with respect to the Property, except expressly provided in the Loan Documents. Nothing contained in this NSP2 Loan Agreement shall be interpreted or understood by any of the parties, or by any third person, as creating the relationship of employer and employee, principal and agent, limited or general partnership, or joint venture between CITY and BORROWER or its agents, employees or contractors. Except as CITY may specify in writing, BORROWER shall have no authority to act as an agent of CITY or to bind CITY to any obligation.

SECTION 18. AMENDMENTS.

This NSP2 Loan Agreement, including other Loan Documents, shall not be altered or amended except in writing, signed by the parties. Any amendment or addendum to the Loan Documents shall expressly refer to the Loan Document being amended. BORROWER agrees that any other agreement entered into by BORROWER relating to the performance of this NSP2 Loan Agreement shall be subject to the written approval of CITY.

SECTION 19. NON-LIABILITY OF OFFICIALS, EMPLOYEES AND AGENTS.

(a) No member, official, employee or agent of CITY shall be personally liable to BORROWER in the event of any default or breach by CITY or for any amount that may become due to BORROWER or any obligation under the terms of this NSP2 Loan Agreement.
(b) No member, official, employee or agent of BORROWER shall be personally liable to CITY the event of any default or breach by BORROWER or for any amount that may become due to CITY or any obligation under the terms of this NSP2 Loan Agreement.

SECTION 20. GOVERNING LAW.

The Loan Documents shall be governed by, and construed in accordance with, the laws of the State of California, except to the extent preempted by federal laws.

SECTION 21. VENUE.

Should either party institute suit or arbitration for enforcement or interpretation of any provision contained herein, the venue of such action shall be in Stanislaus County, California.

SECTION 22. SEVERABILITY.

If any provision of the Loan Documents shall be determined by a court of competent jurisdiction to be invalid, illegal, or unenforceable, that portion shall be deemed severed from the Loan Documents and the remaining parts shall remain in full force as though the invalid, illegal or unenforceable portion had never been part of the Loan Documents.

SECTION 23. RIGHTS CUMULATIVE. NO WAIVER.

All CITY’s rights and remedies provided in the Loan Documents, granted by law or otherwise, are cumulative and, except as provided herein, may be exercised by CITY at any time. Any waiver by CITY of any obligation or condition in this NSP2 Loan Agreement must be in writing and shall be limited to its specific terms. No waiver will be implied from any delay or failure by CITY to take action on any breach or default of BORROWER or to pursue any remedy allowed hereunder or applicable law. Any extension of time granted to BORROWER to perform any obligation hereunder shall not operate as a waiver or release from any of its obligations under this NSP2 Loan Agreement. Consent by CITY to any act or omission by BORROWER shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for CITY’s written consent to future waivers.

SECTION 24. TITLE OF PARTS AND SECTIONS.

Any titles of the sections or subsections of this NSP2 Loan Agreement are inserted for convenience of reference only and shall be disregarded in interpreting any part of the Agreement’s provisions.

SECTION 25. LANGUAGE CONSTRUCTION.

The language of each and all paragraphs, terms and/or provisions of this NSP2 Loan Agreement, shall, in all cases and for any and all purposes, and in any way and all circumstances whatsoever, be construed as a whole, according to its fair meaning, and not for or against any party hereto and with no regard whatsoever to the identity or status of any person or persons who drafted all or any portion of this NSP2 Loan Agreement.

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SECTION 26. AUTHORITY OF THE PARTIES.

Each individual executing this NSP2 Loan Agreement on behalf of the respective parties represents and warrants that he/she is duly authorized to execute this NSP2 Loan Agreement on behalf of the respective parties.

SECTION 27. NO THIRD PARTIES BENEFITED.

No person other than CITY and BORROWER and their permitted successors and assigns shall have any right of action under any of the Loan Documents.

SECTION 28. PARTIES BOUND; COVENANTS RUNNING WITH THE LAND; EFFECT AND DURATION OF COVENANTS.

Except as otherwise limited herein, the provisions of this NSP2 Loan Agreement shall be binding upon and inure to the benefit of the parties and their heirs, executors, administrators, legal representatives, successors, transferees, and all assigns.

SECTION 29. NO ENCUMBRANCES.

Save and except the NSP2 Deed of Trust, BORROWER shall not create, permit, file or record against the Property without the prior written consent of CITY any deed of trust lien or other lien, inferior or superior to the lien of the NSP2 Deed of Trust in favor of CITY, other than liens for taxes not yet due and payable.

Any transaction in violation of this Section 29 will cause all indebtedness, irrespective of the maturity dates, at the option of CITY and without demand or notice, to be immediately due and payable to CITY.

SECTION 30. APPROVAL OF CITY COUNCIL.

This NSP2 Loan Agreement shall not be binding until approved by the City Council of the City of Modesto, as evidenced by a resolution adopted by the City Council.

SECTION 31. FORCE MAJEURE.

In addition to specific provisions of this NSP2 Loan Agreement, performance by either Party will not be deemed to be in default where delays or defaults are due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; quarantine restrictions; freight embargoes; lack of transportation; or court order; or any other similar causes (other than lack of funds of BORROWER) beyond the control or without the fault of the Party claiming an extension of time to perform. An extension of time for any cause will be deemed granted if notice by the Party claiming such extension is sent to the other within ten (10) days from the commencement of the cause and such extension of time is not rejected in writing by the other Party within ten (10) days of receipt of the notice. In no event is CITY required to agree to cumulative delays in excess of one hundred eighty (180) days.
SECTION 32.  MULTIPLE ORIGINALS; COUNTERPART.

This NSP2 Loan Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

SECTION 33.  ENTIRE AGREEMENT.

This NSP2 Loan Agreement, and any exhibits attached hereto or documents referred to herein, constitute the sole and entire Agreement of the parties hereto with respect to the matters herein and correctly sets forth the rights, duties, and obligations of each to the other as of the date first written above.

SECTION 34.  TIME.

Time is the essence of each item of the Loan Documents.

[SIGNATURES ON NEXT PAGE]
IN WITNESS WHEREOF, the City of Modesto, a municipal corporation, has authorized the execution of this Agreement by its City Manager and attestation by its City Clerk by Resolution No. 2012-521 adopted by the Council on the 11th day of December, 2012, and BORROWER has caused this Agreement to be duly executed.

CITY OF MODESTO, a municipal corporation

By

GREG NYBOFF
City Manager

SATELLITE HOUSING, INC., a California nonprofit public benefit corporation

By:

Name: Dori Yasu
Title: Acting Executive Director

BORROWER

AMERICAN BAPTIST HOMES OF THE WEST, a California nonprofit public benefit corporation

By:

Name: David S. Grant
Title: SVP & General Counsel

ATTEST:

By

STEPHANIE LOPEZ
City Clerk

(SEAL)

APPROVED AS TO LEGAL FORM:

SUSANA ALCALA WOOD, City Attorney

By:

RICHARD B. EVANS
Senior Deputy City Attorney

APPROVED AS TO RISK MANAGEMENT:

By

MARY AKIN, Risk Manager
EXHIBIT A

Legal Description of Property

All that property situated in the City of Modesto, County of Stanislaus, described as follows:

APN: 106-006-013
EXHIBIT B

Project Budget
<table>
<thead>
<tr>
<th>Sources of Funds</th>
<th>Permanent</th>
<th>During Const.</th>
<th>Rate</th>
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<td>Tax Exempt Construction Loan</td>
<td>6,223,288</td>
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<td>HUD Capital 202 Advance</td>
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<td>Fed Home LSF AHP</td>
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<td>2,457,401</td>
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<td>City of Modesto</td>
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<td>Investor Capital Contributions</td>
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<td>Sponsor Equity/Deferred Developer Fee</td>
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<td>TOTAL SOURCES</td>
<td>13,247,420</td>
<td>11,522,457</td>
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<table>
<thead>
<tr>
<th>Uses of Funds</th>
<th>Total Cost</th>
<th>During Construction</th>
<th>Basis for Credit</th>
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<tr>
<td>LAND COST/ACQUISITION</td>
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<td>Land Cost or Value</td>
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<td>Demolition</td>
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<td>Total Land Cost or Value</td>
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<td>Holding Costs</td>
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<td>Off-Site Improvements*</td>
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<td>Total Acquisition Cost</td>
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<td>NEW CONSTRUCTION</td>
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<td>Site Work</td>
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<td>Structures</td>
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<td>Photovoltaic System</td>
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<td>ARCHITECTURAL FEES</td>
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<td>Survey and Engineering</td>
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<td>CONSTR. INTEREST &amp; FEES</td>
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<td>Const. Loan Interest (Conventional)</td>
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<td>Origination Fee</td>
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<td>Bond Counsel</td>
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<td>Bond Issuer Costs</td>
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<td>Construction Lender Fees</td>
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<td>Taxes</td>
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<td>Builder's Risk Insurance</td>
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<td>Total Permanent Financing Costs</td>
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<td>LEGAL FEES</td>
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<td>Lender Legal Costs Paid by Applicant</td>
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<td>Other - Owner Legal (includes closing and owner entity forma)</td>
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<td>Category</td>
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<td>Capitalized Asset Management Fee per TCAC</td>
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<td>Capitalized Annual Issuer Fee</td>
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<td>Total Reserve Costs</td>
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<td>Total Appraisal Costs</td>
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<td>Total Construction Contingency Costs (10%)</td>
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<td><strong>RESERVES</strong></td>
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<td>Tax Credit Alloc./Monitoring fees</td>
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<td>Local Development Impact Fees</td>
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<td>Permit Processing Fees</td>
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<td>Marketing and Rent-Up</td>
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<td>Furnishings</td>
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<td>HUD Minimum Capital Investment</td>
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<td>Soft Cost Contingency</td>
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<td>Security during construction</td>
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<td>Total Other Costs</td>
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<td><strong>DEVELOPER COSTS</strong></td>
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<td>Developer Overhead/Equity</td>
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<td>Consultant/Processing Agent</td>
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<td>Project Administration</td>
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<td>Total Developer Costs</td>
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<td><strong>TOTAL PROJECT COST</strong></td>
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<td><strong>Syndication Costs</strong></td>
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<td>Legal - Syndication</td>
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<td>Audit</td>
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<td>Consultant - Syndication</td>
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<td><strong>TOTAL PROJECT COSTS INCL. SYNDICATION</strong></td>
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EXHIBIT C

Project Timeline
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<th>Project Milestone</th>
<th>Initiation Date</th>
<th>Completion Date</th>
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<tr>
<td>Site Control/ENA/DDA</td>
<td>Oct-09</td>
<td>Feb-11</td>
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<tr>
<td>Local funding commitment needed</td>
<td>Dec-11</td>
<td>Feb-11</td>
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<tr>
<td>HUD 202 Application submittal</td>
<td>Jan-11</td>
<td>Mar-11</td>
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<tr>
<td>Planning Submittal</td>
<td>Mar-11</td>
<td>Aug-11</td>
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<tr>
<td>HUD 202 Award</td>
<td>Feb-11</td>
<td>Apr-11</td>
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<tr>
<td>AHP Application</td>
<td>Feb-11</td>
<td>Apr-11</td>
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<tr>
<td>AHP Award</td>
<td>Jun-11</td>
<td>Jun-11</td>
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<tr>
<td>Design Development Phase</td>
<td>Sep-11</td>
<td>Dec-11</td>
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<tr>
<td>Construction Documents Phase</td>
<td>Jan-12</td>
<td>May-12</td>
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<td>Tax Credit investor secured</td>
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<td>CDLAC Tax Exempt Bond Application</td>
<td>Mar-12</td>
<td>Apr-12</td>
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<td>Plan check and Bldg Permit application</td>
<td>May-12</td>
<td>Jul-12</td>
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<td>Construction Bids received</td>
<td>Jun-12</td>
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<td>Building Permit Awarded</td>
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<td>HUD Firm Application Submitted</td>
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<td>Tax Credit Application</td>
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<td>HUD Firm Commitment</td>
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<tr>
<td>Construction closing - City and AHP funds disbursed for closing</td>
<td>Dec-12</td>
<td>Dec-12</td>
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<tr>
<td>Start Construction</td>
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<tr>
<td>Construction Completion</td>
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<tr>
<td>HUD Final Closing</td>
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<tr>
<td>Receipt of 8609</td>
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</table>
EXHIBIT D

City of Modesto Neighborhood Stabilization Program 2 Memorandum of Understanding
EXHIBIT E

NSP2 National Objectives Certification
CERTIFICATION OF NATIONAL OBJECTIVE

This Certification demonstrates that each activity undertaken by Satellite Housing and American Baptist Homes meets at least one of the National Objectives of the CDBG/NSP2 Program (listed below). Please note that the National Objectives listed below consist of the objectives that apply specifically to the goals outlined by the City of Modesto's NSP2 Grant. Should the need arise where one of the additional National Objectives not listed below will need to be performed by Satellite Housing and American Baptist Homes, this document along with the referencing MOU will need to be amended.

CHECK ALL THAT APPLY:

<table>
<thead>
<tr>
<th>Eligible Use</th>
<th>Eligible Activity</th>
<th>Specific Activity</th>
<th>National Objective</th>
<th>Meeting the National Objective</th>
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</thead>
<tbody>
<tr>
<td>(D) Acquisition &amp;</td>
<td>Acquisition</td>
<td>Acquire a property and take no further action except to rent or sell it.</td>
<td>LMMH</td>
<td>Rent or sell the residential</td>
</tr>
<tr>
<td>Rehabilitation</td>
<td></td>
<td></td>
<td></td>
<td>property to a family at or</td>
</tr>
<tr>
<td>(E) Acquisition &amp;</td>
<td>Acquisition, Rehabilitation, Homeownership Assistance, Homebuyer Counseling</td>
<td>Acquire &amp; Rehabilitate a property and rent or sell it.</td>
<td>26% Set-Aside</td>
<td>below 120% AMI</td>
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<tr>
<td>Rehabilitation</td>
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<td></td>
<td></td>
<td>Rent or sell the residential</td>
</tr>
<tr>
<td>(E) Redevelopment</td>
<td>Acquisition, New Construction, Homeownership Assistance, Homebuyer Counseling</td>
<td>Acquire vacant land and construct a new structure on it.</td>
<td>LMMH</td>
<td>property to a family at or</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>below 120% AMI</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>25% Set-Aside</td>
<td>Rent or sell the residential</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>property to a family at or</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>below 50% AMI</td>
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<tr>
<td>(E) Redevelopment</td>
<td>New Construction, Homeownership Assistance, Homebuyer Counseling</td>
<td>Reconstruct a new structure on the site of a structure that the grantee demolished</td>
<td>LMMH</td>
<td>Rent or sell the residential</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>property to a family at or</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>below 120% AMI</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>26% Set-Aside</td>
<td>Rent or sell the residential</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>property to a family at or</td>
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<tr>
<td></td>
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<td></td>
<td></td>
<td>below 60% AMI</td>
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</tbody>
</table>

*For additional information on all NSP National Objectives please reference the NSP Policy Alert dated August 18, 2012 or the NSP TA website at https://hudnsphelp.info/

(Developer/Subrecipient)  Date

City of Modesto  Date
First Amendment to City of Modesto Neighborhood Stabilization Program 2
Loan Agreement dated as of November 24, 2014
FIRST AMENDMENT TO CITY OF MODESTO NSP2 LOAN AGREEMENT

This First Amendment to City of Modesto NSP2 Loan Agreement (hereafter "Amendment") is made on November 24, 2014 with reference to the CITY OF MODESTO NEIGHBORHOOD STABILIZATION PROGRAM 2 LOAN AGREEMENT dated as of December 11, 2012 (the "Agreement") between CITY OF MODESTO, a municipal corporation (designated therein and herein as "City") and SATELLITE AFFORDABLE HOUSING ASSOCIATES, a California nonprofit public benefit corporation (as successor to Satellite Housing, Inc.) and AMERICAN BAPTIST HOMES OF THE WEST, a California nonprofit public benefit corporation (collectively designated therein and herein as "Borrower"), both collectively referred to as the "Parties." A true and correct copy of the Agreement is attached hereto as Exhibit "LA-__") and incorporated herein by this reference.

This Amendment is made with reference to the following recitals:

WHEREAS, Section 18, "Amendments" of the Agreement provides that any amendment to the Agreement shall be in writing, signed by the Parties and shall expressly refer to the Agreement, and

WHEREAS, the Borrower anticipates syndicating the low income housing tax credits that will be generated by the Project, which syndication will require assignment of the Loan Documents to a limited partnership, with the Borrower or a non-profit entity controlled by the Borrower as the General Partner; and

WHEREAS, City and Borrower desire to enter into this Amendment to: (1) revise the repayment provisions of the Agreement; (2) provide specified protections for the anticipated investor limited partner of a tax credit partnership, formed to qualify for low income housing tax credit financing; and

NOW, THEREFORE, in consideration of this Amendment and the mutual promises and covenants contained in the Agreement, City and Borrower agree as follows:

1. City and Borrower agree that each of the recitals set forth above is true and correct and shall be part of this Amendment.

2. Section 3.7(a) of the Agreement is hereby amended and restated to read as follows:

"Section 3.7 Repayment.

1
The NSP2 Loan shall be repaid as follows:

(a) All accrued interest, current interest and principal on the NSP2 Note shall be repaid from the “Annual Payment Amount” which is fifty percent (50%) of the “Residual Receipts” (as defined below) for the Project. The Annual Payment Amount shall be used to make payments on the NSP2 Note. Payments, if any, shall be made on an annual basis, beginning on the later to occur of (i) the date one hundred fifty (150) days after the end of the fiscal year first following the date the final occupancy permit is issued for the Project, or (ii) May 1, 2015 and each anniversary thereafter.

“Residual Receipts” shall mean the sum of money computed on a 12 month basis based on the Borrower’s fiscal year as follows:

(1) All rents, revenues, consideration or income (of any form but excluding security deposits) derived by Borrower in connection with or relating to the ownership or operation of the Project, including any excess or additional revenue derived from any refinancing of the Project (i.e., any amount which exceeds the outstanding balance of the original debt being refinanced, plus any refinancing or closing costs relating to such refinancing) but less all of the following: (i) all customary and reasonable costs and expenses in connection with the operation and maintenance of the Project; (ii) a property management fee of not more than 12% of Gross Revenue, as approved by City; (iii) principal and interest paid by Borrower on account of any loan(s) or other obligations approved by City or evidenced by the Note; (iv) amounts (previously approved by City) expended to restore the Project after a casualty loss or condemnation; (v) reasonable and customary cost for accounting and auditing the books and records of the Project; (vi) an administrative or asset management fee charged by a tax credit investment partner (“Investor Asset Management Fee”) not to exceed $7,500; (vii) amounts (previously approved by City) reserved by Borrower as an operating contingency reserve account and a replacement reserve account, an asset management reserve account, a supportive services reserve account, and a replacement reserve account (and deposited in an account approved by City) and other reserves required by any senior lender or tax credit investment partner for the Project; (viii) a partnership management fee charged by the general partner of Borrower not exceed $25,000; (ix) any deferred developer fee payments; (x) and up to 100% of the costs (salary and benefits) of a full-time resource coordinator who will provide social services coordination for the residents of the Project.

(2) Notwithstanding the generality of the foregoing; the depreciation, cost recovery, amortization and similar items which do not involve the expenditure of cash
are not expenses or deductible in computing Residual Receipts.

Borrower shall submit to City annually, within one hundred fifty (150) days after the end of each fiscal year following the date final occupancy permit for the Project is issued, a statement of the basis for calculation of the amount of the payment or nonpayment. An annual "audited financial statement" for the Project, prepared by a certified public accountant approved by City, shall accompany each such statement, together with the annual tax return of Borrower.

All Annual Payment Amounts shall be applied first to accrued interest, next to current interest, and then to outstanding principal balance.

(b) Subject to subsection (a) above, BORROWER shall pay all outstanding principal and accrued interest on the NSP2 Loan, in full, on the earliest to occur of (i) a Transfer, (ii) an Event of Default, and (iii) within fifty-five (55) years of the date Borrower receives from City the final occupancy permit for the Project.

(c) BORROWER may prepay the NSP2 Loan at any time without premium or penalty. Regardless of any prepayment or Transfer, BORROWER acknowledges that the provisions of this NSP2 Loan Agreement, including but not limited to the requirement that the Property be rented to a Qualified Tenant, are applicable even if BORROWER has prepaid all or a portion of the NSP2 Loan amount.

3. Section 6.8, "Prohibition Against Transfer and Assignment of Agreement." is amended to add subsection (e)-(h) to read as follows:

"e. The term "Transfer" excludes the lease to a qualified tenant of the Property in compliance with the NSP2 Regulatory Agreement, and excludes a transfer of the Property and assignment of the Loan Documents to a nonprofit public benefit corporation affiliated with SAHA and/or ABHOW or to a limited partnership of which SAHA, ABHOW, or an affiliated nonprofit public benefit corporation or limited liability company is the general partner or the managing general partner.

f. In the event the Borrower syndicates low income housing tax credits generated by the Project and assigns the Loan Documents to a limited partnership (the "Partnership"), the City hereby approves future Transfers of the limited partner interest in the Partnership provided that: (1) such Transfers do not affect the timing and amount of the limited partner capital contributions provided for in the Partnership agreement approved by the City; (2) in subsequent Transfers, a wholly owned affiliate of the initial limited partner retains a membership or partnership interest and serves as a
managing member or managing general partner of the successor limited partner; and
(3) in subsequent Transfers the initial limited partner remains liable for all unpaid capital
contributions.

g. In the event the Borrower syndicates low income housing tax credits generated
by the Project and assigns the Loan Documents to the Partnership, the City hereby
approves a Transfer of the Property from the Partnership to Borrower or a controlled
non-profit affiliate of Borrower, and an assumption of the Loan Documents by such
transferee at the end of the fifteen (15)-year compliance period as described in Section
42(l)(1) of the Internal Revenue Code of 1986 (26 USC 42 (l)(1)), pursuant to an option
agreement as described in the Partnership’s partnership agreement, provided that the
transferee expressly assumes the obligations of the Partnership under the Loan
Documents, utilizing a form of assignment and assumption agreement to be provided by
the City.

h. In the event the Borrower syndicates low income housing tax credits generated
by the Project and assigns the Loan Documents to the Partnership and in the event the
general partner of the Partnership is removed by the limited partner of Partnership for
cause following default under the Partnership agreement, the City hereby approves the
Transfer of the general partner interest to a 501(c)(3) tax exempt nonprofit corporation
selected by the limited partner and approved by the City, which approval shall not be
withheld unreasonably.”

4. Section 13, “NOTICES.”, of the Agreement is amended to revise the notice to Borrower
and add the following:

*Borrower:

Satellite Affordable Housing Associates
1540 University Ave.
Berkeley, CA 94703-1422
Attn: Executive Director

American Baptist Homes of the West, Inc.
6120 Stoneridge Mall Road, 3rd Floor
Pleasanton, CA 94588
Attn: Senior Vice President

and if to Borrower with copies to:
5. Section 35, "ASSIGNMENT BY BORROWER.", is hereby added to the Agreement to read as follows:

"SECTION 35. ASSIGNMENT BY BORROWER.

If and when the Borrower assigns the NSP2 Loan to a limited partnership to qualify for low income housing tax credit financing, the City agrees to the following provisions for the benefit of the Borrower's investor limited partner (the "Investor Limited Partner"): 

The City will give the Investor Limited Partner a copy of any written notice (at the address provided by the Investor Limited Partner to the City) that the City gives to Borrower under this Agreement and the other Loan Documents;

The City will give the Investor Limited Partner ten (10) days after the Investor Limited Partner's receipt of such notice to cure a non-payment of any sum due under the Loan Documents;

The City will give the Investor Limited Partner thirty (30) days after the Investor Limited Partner's receipt of such notice to cure any other default under this Agreement and other Loan Documents;

If a default is incapable of being cured within thirty days, the City will give the Investor Limited Partner sixty (60) days to cure such default provided the Investor Limited Partner has commenced to cure such default and is diligently proceeding to cure such default through the end of such period;
If the Investor Limited Partner makes any such payment or otherwise cures such default, the City will accept such action as curing such Default as if such payment or cure were made by Borrower;

The City will permit insurance and condemnation proceeds to be used to rebuild the Development provided that: (1) sufficient funds are provided from other sources to effectively rebuild the Affordable Development to a lawful multifamily housing complex, and (2) subject to the rights of any senior lenders, the City shall hold all such proceeds and disburse them based on the progress of construction, subject to such additional reasonable conditions as the City may impose.

6. **Full Force and Effect.** Except as hereinafter amended, the provisions of the Agreement as amended by the Amendment are expressly reaffirmed and remain in full force and effect.

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust as of the day and year first above written.

**BORROWER:**

SAHA:

Satellite Affordable Housing Associates, a California nonprofit public benefit corporation

By: [Signature]

Susan Friedland, Executive Director

ABHOW:

American Baptist Homes of the West, a California nonprofit public benefit corporation

By: [Signature]

David B. Ferguson, President and CEO

By: [Signature]

Ancel Romero, Senior Vice President-Affordable Housing

[City Signature Page Follows]
IN WITNESS WHEREOF, the City of Modesto, a municipal corporation, has authorized the execution of this Agreement in duplicate by its City Manager and attestation by its City Clerk under authority of Resolution No. 2014-444 adopted by the Council of the City of Modesto on the 6th day of November, 2014, and BORROWER has caused this Agreement to be duly executed.

CITY OF MODESTO, a municipal corporation
By: [Signature]
James N. Holgersson, City Manager

ATTEST:
By: [Signature]
Stephanie Lopez, City Clerk
(SEAL)

APPROVED AS TO LEGAL FORM
Adam U. Lindgren, City Attorney
By: [Signature]
Adam U. Lindgren, City Attorney

APPROVED AS TO RISK MANAGEMENT:
By: [Signature]
Name: Beverly Jensen
Risk Manager
Promissory Note, dated as of December 11, 2012
CITY OF MODESTO
NEIGHBORHOOD STABILIZATION PROGRAM 2

PROMISSORY NOTE

(Tower Park Apartments)

$250,000

December 11, 2012
(Date)

FOR VALUE RECEIVED, the undersigned SATELLITE HOUSING, INC., a California nonprofit public benefit corporation ("Satellite") and AMERICAN BAPTIST HOMES OF THE WEST, a California nonprofit public benefit corporation, ("ABHOW" and collectively with Satellite Housing referred to herein as the "Borrower") hereby promises to pay to the order of the CITY OF MODESTO, a municipal corporation (the "Holder"), 1010 Tenth Street, Suite 4400, Modesto, California 95354, Attention: Director of Parks, Recreation and Neighborhoods Department, a principal amount equal to Two Hundred Fifty Thousand Dollars ($250,000), plus interest thereon pursuant to Section 2 below.

1. **Borrower's Obligation.** This promissory note (the "Note") evidences the Borrower's obligation to pay the Holder the principal amount of Two Hundred Fifty Thousand Dollars ($250,000) (the "NSP2 Loan") for the funds loaned to the Borrower by Holder to finance the predevelopment and rehabilitation of the real property commonly described as 17th and G Streets, Modesto, California 95353 (APN# 106-006-013 in Census Tract 18.00) located in the City of Modesto pursuant to the City of Modesto Neighborhood Stabilization Program 2 Loan Agreement between the Borrower and the Holder of even date herewith (the "Loan Agreement"). All capitalized terms not otherwise defined in this Note shall have the meanings set forth in the Loan Agreement.

2. **Interest.**
   
   (a) Subject to the provisions of subsection (b) below, the outstanding principal balance of this Note shall bear no interest.

   (b) Upon the occurrence of an Event of Default, the interest on the principal balance of this Note will begin to accrue, as of the date of the Event of Default and continue until such time as the NSP2 Loan is repaid in full or the Event of Default is cured, at the default rate of ten percent (10%), simple interest annually.

3. **Term and Repayment Requirements.** Payments due under this Note are due in accordance with Section 3.7 of the Loan Agreement.
4. **No Assumption.** This Note shall not be assumable by the successors and assigns of Borrower without the prior written consent of the Holder, except as permitted under Section 6.8(a) of the Loan Agreement.

5. **Security.** This Note is secured by a Deed of Trust with Assignment of Rents, Security Agreement, and Fixture Filing (the "Deed of Trust"), of even date herewith, wherein the Borrower is the Trustor and the Holder is the Beneficiary, covering the Property.

6. **Terms of Payment.**

   (a) All payments due under this Note shall be paid in currency of the United States of America, which at the time of payment is lawful for the payment of public and private debts.

   (b) All payments on this Note shall be paid to Holder at City of Modesto, 1010 Tenth Street, Suite 4400, Modesto, California 95354, Attention: Director of Parks, Recreation and Neighborhoods Department, or to such other place as the Holder of this Note may from time to time designate.

   (c) All payments on this Note shall be without expense to the Holder, and the Borrower agrees to pay all costs and expenses, including re-conveyance fees and reasonable attorney's fees of the Holder, incurred in connection with the payment of this Note and the release of any security hereof.

   (d) Notwithstanding any other provision of this Note, or any instrument securing the obligations of the Borrower under this Note, if, for any reason whatsoever, the payment of any sums by the Borrower pursuant to the terms of this Note would result in the payment of interest which would exceed the amount that the Holder may legally charge under the laws of the State of California, then the amount by which payments exceeds the lawful interest rate shall automatically be deducted from the principal balance owing on this Note, so that in no event shall the Borrower be obligated under the terms of this Note to pay any interest which would exceed the lawful rate.

7. **Default.**

   (a) Any of the following shall constitute an event of default under this Note:

      (i) Any failure to pay, in full, any payment required under this Note on the date such payment is due;

      (ii) Any failure in the performance by the Borrower of any other term, condition, provision or covenant set forth in this Note, subject to the notice and cure period set forth in Section 8 of the Loan Agreement;

      (iii) The occurrence of any event of default under the Loan Agreement, the Deed of Trust, or other instrument securing the obligations of the Borrower under this Note or under any other promissory notes hereafter issued by the Borrower to the Holder pursuant to
the Loan Agreement or the Deed of Trust, subject to notice and cure periods, if any, set forth therein.

(b) Upon the occurrence of such an event of default, the entire unpaid principal balance, together with all interest thereon, and together with all other sums then payable under this Note and the Deed of Trust shall at the option of the Holder become immediately due and payable upon written notice by the Holder to the Borrower without further demand.

(c) The failure to exercise the remedy set forth in Subsection 7(b) above or any other remedy provided by law upon the occurrence of one or more of the foregoing events of default shall not constitute a waiver of the right to exercise any remedy at any subsequent time in respect to the same or any other default. The acceptance by Holder hereof of any payment which is less than the total of all amounts due and payable at the time of such payment shall not constitute a waiver of the right to exercise any of the foregoing remedies or options at that time or at any subsequent time, or nullify any prior exercise of any such remedy or option, without the express consent of the Holder, except as and to the extent otherwise provided by law.

8. Waivers.

(a) The Borrower hereby waives diligence, presentment, protest and demand, and notice of protest, notice of demand, and notice of dishonor of this Note. The Borrower expressly agrees that this Note or any payment hereunder may be extended from time to time, and that the Holder may accept further security or release any security for this Note, all without in any way affecting the liability of the Borrower.

(b) No extension of time for payment of this Note or any installment hereof made by agreement by the Holder with any person now or hereafter liable for payment of this note shall operate to release, discharge, modify, change or affect the original liability of the Borrower under this Note, either in whole or in part.

(c) The obligations of the Borrower under this Note shall be absolute and the Borrower waives any and all rights to offset, deduct or withhold any payments or charges due under this Note for any reason whatsoever.


(a) All notices to the Holder or the Borrower shall be given in the manner and at the addresses set forth in the Loan Agreement, or to such addresses as the Holder and the Borrower may hereinafter designate. Copies of notices to Borrower from Holder shall also be provided by Holder to any limited partner of Borrower who requests such notice in writing and provides the Holder with written notice of its address.

(b) The Borrower promises to pay all costs and expenses, including reasonable attorney's fees, incurred by the Holder in the enforcement of the provision of this Note, regardless of whether suit is filed to seek enforcement.
(c) This Note may not be changed orally, but only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

(d) This Note shall be governed by and construed in accordance with the laws of the State of California.

(e) The times for the performance of any obligations hereunder shall be strictly construed, time being of the essence.

(f) This document, together with the Loan Documents, contains the entire agreement between the parties as to the Loan. It may not be modified except upon written consent of the parties.


This Note is a nonrecourse obligation of the Borrower, as described in Section 3.8 of the Loan Agreement.

BORROWER:

SATELLITE HOUSING, INC., a California nonprofit public benefit corporation

By: ____________________________

Its: Acting Executive Director

AMERICAN BAPTIST HOMES
OF THE WEST, a California nonprofit public benefit corporation

By: ____________________________

Its: Vice General Counsel
Deed of Trust and Assignment of Rents dated as of November 24, 2014
DEED OF TRUST WITH ASSIGNMENT OF RENTS, SECURITY AGREEMENT, AND FIXTURE FILING

(NSP2 Loan—Tower Park)

THIS DEED OF TRUST WITH ASSIGNMENT OF RENTS, SECURITY AGREEMENT, AND FIXTURE FILING ("Deed of Trust") is made as of November 2, 2014, by and among the Satellite Affordable Housing Associates, a California nonprofit public benefit corporation ("SAHA") and American Baptist Homes of the West, a California nonprofit public benefit corporation, ("ABHOW" and collectively with Satellite referred to herein as "Trustor"), Old Republic Title Company ("Trustee"), and the City of Modesto, a municipal corporation of the State of California ("Beneficiary").

FOR GOOD AND VALUABLE CONSIDERATION, including the indebtedness herein recited and the trust herein created, the receipt of which is hereby acknowledged, Trustor hereby irrevocably grants, transfers, conveys and assigns to Trustee, IN TRUST, WITH POWER OF SALE, for the benefit and security of Beneficiary, under and subject to the terms and conditions hereinafter set forth, Trustor's fee interest in the property located in the City of Modesto, Stanislaus County, State of California, that is described in the attached Exhibit A, incorporated herein by this reference (the "Property").

TOGETHER WITH all interest, estates or other claims, both in law and in equity which Trustor now has or may hereafter acquire in the Property and the rents;

TOGETHER WITH all easements, rights-of-way and rights used in connection therewith or as a means of access thereto, including (without limiting the generality of the foregoing) all tenements, hereditaments and appurtenances thereof and thereto;

TOGETHER WITH any and all buildings and improvements of every kind and description now or hereafter erected thereon, and all property of the Trustor now or hereafter affixed to or placed upon the Property,
TOGETHER WITH all building materials and equipment now or hereafter delivered to
said property and intended to be installed therein;

TOGETHER WITH all right, title and interest of Trustor, now owned or hereafter
acquired, in and to any land lying within the right-of-way of any street, open or proposed,
adjacent the Property, and any and all sidewalks, alleys and strips and areas of land adjacent to
or used in connection with the Property;

TOGETHER WITH all estate, interest, right, title, other claim or demand, of every
nature, in and to such property, including the Property, both in law and in equity, including, but
not limited to, all deposits made with or other security given by Trustor to utility companies, the
proceeds from any or all of such property, including the Property, claims or demands with
respect to the proceeds of insurance in effect with respect thereto, which Trustor now has or may
hereafter acquire, any and all awards made for the taking by eminent domain or by any
proceeding or purchase in lieu thereof of the whole or any part of such property, including
without limitation, any awards resulting from a change of grade of streets and awards for
severance damages to the extent Beneficiary has an interest in such awards for taking as
provided in Paragraph 4.1 herein;

TOGETHER WITH all of Trustor's interest in all articles of personal property or fixtures
now or hereafter attached to or used in and about the building or buildings now erected or
hereafter to be erected on the Property which are necessary to the complete and comfortable use
and occupancy of such building or buildings for the purposes for which they were or are to be
erected, including all other goods and chattels and personal property as are ever used or
furnished in operating a building, or the activities conducted therein, similar to the one herein
described and referred to, and all renewals or replacements thereof or articles in substitution
therefor, whether or not the same are, or shall be attached to said building or buildings in any
manner; and

TOGETHER WITH all of Trustor's interest in all building materials, fixtures, equipment,
work in process and other personal property to be incorporated into the Property; all goods,
materials, supplies, fixtures, equipment, machinery, furniture and furnishings, signs and other
personal property now or hereafter appropriated for use on the Property, whether stored on the
Property or elsewhere, and used or to be used in connection with the Property; all rents, issues
and profits, and all inventory, accounts, accounts receivable, contract rights, general intangibles,
chattel paper, instruments, documents, notes drafts, letters of credit, insurance policies, insurance
and condemnation awards and proceeds, trade names, trademarks and service marks arising from
or related to the Property and any business conducted thereon by Trustor; all replacements,
additions, accessions and proceeds; and all books, records and files relating to any of the
foregoing.

All of the foregoing, together with the Property, is herein referred to as the "Security."
To have and to hold the Security together with acquittances to the Trustee, its successors and
assigns forever.

FOR THE PURPOSE OF SECURING:
A. Payment of just indebtednesses of Trustor to Beneficiary as set forth in the Note (defined in Article 1 below) until paid. Said principal and other payments shall be due and payable as provided in the Note. Said Note and all its terms are incorporated herein by reference, and this conveyance shall secure any and all extensions thereof, however evidenced; and

B. Payment of any sums advanced by Beneficiary to protect the Security pursuant to the terms and provisions of this Deed of Trust following a breach of Trustor’s obligation to advance said sums and the expiration of any applicable cure period, with interest thereon as provided herein; and

C. Performance of every obligation, covenant or agreement of Trustor contained herein and in the Loan Documents (defined in Article 1 below).

AND TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR COVENANTS AND AGREES:

ARTICLE 1:
DEFINITIONS

In addition to the terms defined elsewhere in this Deed of Trust, the following terms shall have the following meanings in this Deed of Trust:

Section 1.1 The term "Loan Agreement" means that certain City of Modesto Neighborhood Stabilization Program 2 Loan Agreement between Trustor and Beneficiary dated as of December 11, 2012, as amended by that certain First Amendment to, providing for the Beneficiary to loan to the Trustor Two Hundred Fifty Thousand Dollars ($250,000) for the predevelopment of the Property.

Section 1.2 The term "Loan Documents" means this Deed of Trust, the Loan Agreement, the Note, and the Regulatory Agreement and any other debt, loan or security instruments between Trustor and the Beneficiary relating to the Property.

Section 1.3 The term "Note" means that certain promissory note in the amount of Two Hundred Fifty Thousand Dollars ($250,000) of even date herewith, executed by the Trustor in favor of the Beneficiary, the payment of which is secured by this Deed of Trust. (Copies of the Note are on file with the Beneficiary and terms and provisions of the Note are incorporated herein by reference.)

Section 1.4 The term "Principal" means the aggregate of the amounts required to be paid under the Note.

Section 1.5 The term "Regulatory Agreement" means the City of Modesto Neighborhood Stabilization Program 2 Regulatory Agreement of even date herewith and recorded against the Property concurrently herewith.
the Property including those now due, past due, or to become due by virtue of any lease or other agreement for the occupancy or use of all or any part of the Property, regardless of to whom the rents and revenues of the Property are payable. Trustor hereby authorizes Beneficiary or Beneficiary's agents to collect the aforesaid rents and revenues and hereby directs each tenant of the Property to pay such rents to Beneficiary or Beneficiary's agents; provided, however, that prior to written notice given by Beneficiary to Trustor of the breach by Trustor of any covenant or agreement of Trustor in the Loan Documents, Trustor shall collect and receive all rents and revenues of the Property as trustee for the benefit of Beneficiary and Trustor to apply the rents and revenues so collected to the sums secured by this Deed of Trust with the balance, so long as no such breach has occurred, to the account of Trustor, it being intended by Trustor and Beneficiary that this assignment of rents constitutes an absolute assignment and not an assignment for additional security only. Upon delivery of written notice by Beneficiary to Trustor of the breach by Trustor of any covenant or agreement of Trustor in the Loan Documents, and without the necessity of Beneficiary entering upon and taking and maintaining full control of the Property in person, by agent or by a court-appointed receiver, Beneficiary shall immediately be entitled to possession of all rents and revenues of the Property as specified in this Section 2.3 as the same becomes due and payable, including but not limited to rents then due and unpaid, and all such rents shall immediately upon delivery of such notice be held by Trustor as trustee for the benefit of Beneficiary only; provided, however, that the written notice by Beneficiary to Trustor of the breach by Trustor shall contain a statement that Beneficiary exercises its rights to such rents. Trustor agrees that commencing upon delivery of such written notice of Trustor's breach by Beneficiary to Trustor, each tenant of the Property shall make such rents payable to and pay such rents to Beneficiary or Beneficiary's agents on Beneficiary's written demand to each tenant therefor, delivered to each tenant personally, by mail or by delivering such demand to each rental unit, without any liability on the part of said tenant to inquire further as to the existence of a default by Trustor.

Trustor hereby covenants that Trustor has not executed any prior assignment of said rents, that Trustor has not performed, and will not perform, any acts or has not executed and will not execute, any instrument which would prevent Beneficiary from exercising its rights under this Section 2.3, and that at the time of execution of this Deed of Trust, there has been no anticipation or prepayment of any of the rents of the Property for more than two (2) months prior to the due dates of such rents. Trustor covenants that Trustor will not hereafter collect or accept payment of any rents of the Property more than two (2) months prior to the due dates of such rents. Trustor further covenants that Trustor will execute and deliver to Beneficiary such further assignments of rents and revenues of the Property as Beneficiary may from time to time request.

Upon Trustor's breach of any covenant or agreement of Trustor in the Loan Documents, Beneficiary may in person, by agent or by a court-appointed receiver, regardless of the adequacy of Beneficiary's security, enter upon and take and maintain full control of the Property in order to perform all acts necessary and appropriate for the operation and maintenance thereof including, but not limited to, the execution, cancellation or modification of leases, the collection of all rents and revenues of the Property, the making of repairs to the Property and the execution or termination of contracts providing for the management or maintenance of the Property, all on such terms as are deemed best to protect the security of this Deed of Trust. In the event Beneficiary elects to seek the appointment of a receiver for the Property upon Trustor's breach of any covenant or agreement of Trustor in this Deed of Trust, Trustor hereby expressly consents to
the appointment of such receiver. Beneficiary or the receiver shall be entitled to receive a reasonable fee for so managing the Property.

All rents and revenues collected subsequent to delivery of written notice by Beneficiary to Trustor of the breach by Trustor of any covenant or agreement of Trustor in the Loan Documents shall be applied first to the costs, if any, of taking control of and managing the Property and collecting the rents, including, but not limited to, attorney's fees, receiver's fees, premiums on receiver's bonds, costs of repairs to the Property, premiums on insurance policies, taxes, assessments and other charges on the Property, and the costs of discharging any obligation or liability of Trustor as lessor or landlord of the Property and then to the sums secured by this deed of Trust. Beneficiary or the receiver shall have access to the books and records used in the operation and maintenance of the Property and shall be liable to account only for those rents actually received. Beneficiary shall not be liable to Trustor, anyone claiming under or through Trustor or anyone having an interest in the Property by reason of anything done or left undone by Beneficiary under this Section 2.3.

If the rents of the Property are not sufficient to meet the costs, if any, of taking control of and managing the Property and collecting the rents, any funds expended by Beneficiary for such purposes shall become indebtedness of Trustor to Beneficiary secured by this Deed of Trust pursuant to Section 3.3 hereof. Unless Beneficiary and Trustor agree in writing to other terms of payment, such amounts shall be payable upon notice from Beneficiary to Trustor requesting payment thereof and shall bear interest from the date of disbursement at the rate stated in Section 3.3.

Any entering upon and taking and maintaining of control of the Property by Beneficiary or the receiver and any application of rents as provided herein shall not cure or waive any default hereunder or invalidate any other right or remedy of Beneficiary under applicable law or provided herein. This assignment of rents of the Property shall terminate at such time as this Deed of Trust ceases to secure indebtedness held by Beneficiary.

ARTICLE 3:
TAXES AND INSURANCE; ADVANCES

Section 3.1 Taxes, Other Governmental Charges and Utility Charges.

Trustor shall pay, or cause to be paid, at least fifteen (15) days prior to the date of delinquency, all taxes, assessments, charges and levies imposed by any public authority or utility company which are or may become a lien affecting the Security or any part thereof; provided, however, that Trustor shall not be required to pay and discharge any such tax, assessment, charge or levy so long as (a) the legality thereof shall be promptly and actively contested in good faith and by appropriate proceedings, and (b) Trustor maintains reserves adequate to pay any liabilities contested pursuant to this Section 3.1. With respect to taxes, special assessments or other similar governmental charges, Trustor shall pay such amount in full prior to the attachment of any lien therefor on any part of the Security; provided, however, if such taxes, assessments or charges may be paid in installments, Trustor may pay in such installments. Except as provided in clause (b) of the first sentence of this paragraph, the provisions of this Section 3.1 shall not be construed
to require that Trustor maintain a reserve account, escrow account, impound account or other similar account for the payment of future taxes, assessments, charges and levies.

In the event that Trustor shall fail to pay any of the foregoing items required by this Section to be paid by Trustor, Beneficiary may (but shall be under no obligation to) pay the same, after the Beneficiary has notified the Trustor in writing of such failure to pay and the Trustor fails to fully pay such items within seven (7) business days after receipt of such notice. Any amount so advanced therefor by Beneficiary, together with interest thereon from the date of such advance at the maximum rate permitted by law, shall become an additional obligation of Trustor to the Beneficiary and shall be secured hereby, and Trustor agrees to pay all such amounts.

Section 3.2 Provisions Respecting Insurance.

Trustor agrees to provide insurance conforming in all respects to that required under the Loan Documents during the course of construction and following completion, and at all times until all amounts secured by this Deed of Trust have been paid and all other obligations secured hereunder fulfilled, and this Deed of Trust reconveyed.

All such insurance policies and coverages shall be maintained at Trustor's sole cost and expense. Certificates of insurance for all of the above insurance policies, showing the same to be in full force and effect, shall be delivered to the Beneficiary upon demand therefor at any time prior to the Beneficiary's receipt of the entire Principal and all amounts secured by this Deed of Trust.

The Trustor is aware that California Civil Code Section 2955.5(a) provides as follows: "No lender shall require a borrower, as a condition of receiving or maintaining a loan secured by real property, to provide hazard insurance coverage against risks to the improvements on that real property in an amount exceeding the replacement value of the improvements on the property."

Section 3.3 Advances.

In the event the Trustor shall fail to maintain the full insurance coverage required by this Deed of Trust or shall fail to keep the Security in accordance with the Loan Documents, the Beneficiary, after at least seven (7) days' prior written notice to Trustor, may (but shall be under no obligation to) take out the required policies of insurance and pay the premiums on the same or may make such repairs or replacements as are necessary and provide for payment thereof; and all amounts so advanced therefor by the Beneficiary shall become an additional obligation of the Trustor to the Beneficiary (together with interest as set forth below) and shall be secured hereby, which amounts the Trustor agrees to pay on the demand of the Beneficiary, and if not so paid, shall bear interest from the date of the advance at the lesser of ten percent (10%) per annum or the maximum rate permitted by law.

ARTICLE 4:
DAMAGE, DESTRUCTION OR CONDEMNATION
Section 4.1  **Awards and Damages.**

All judgments, awards of damages, settlements and compensation made in connection with or in lieu of (1) taking of all or any part of or any interest in the Property by or under assertion of the power of eminent domain, (2) any damage to or destruction of the Property or in any part thereof by insured casualty, and (3) any other injury or damage to all or any part of the Property ("Funds") are hereby assigned to and shall be paid to the Beneficiary by a check made payable to the Beneficiary. The Beneficiary is authorized and empowered (but not required) to collect and receive any funds and is authorized to apply them in whole or in part upon any indebtedness or obligation secured hereby, in such order and manner as the Beneficiary shall determine at its sole option. Following an Event of Default, the Beneficiary shall be entitled to settle and adjust all claims under insurance policies provided under this Deed of Trust and may deduct and retain from the proceeds of such insurance the amount of all expenses incurred by it in connection with any such settlement or adjustment. All or any part of the amounts so collected and recovered by the Beneficiary may be released to Trustor upon such conditions as the Beneficiary may impose for its disposition. Application of all or any part of the Funds collected and received by the Beneficiary or the release thereof shall not cure or waive any default under this Deed of Trust. The rights of the Beneficiary under this Section 4.1 are subject to the rights of any senior mortgage lender. The Beneficiary shall release the Funds to Trustor to be used to reconstruct the improvements on the Property provided that Beneficiary reasonably determines that Trustor (when taking into account the Funds) has sufficient funds to rebuild the improvements in substantially the form such improvements existed prior to the casualty or condemnation.

ARTICLE 5:
AGREEMENTS AFFECTING THE PROPERTY; FURTHER ASSURANCES; PAYMENT OF PRINCIPAL AND INTEREST

Section 5.1  **Other Agreements Affecting Property.**

The Trustor shall duly and punctually perform all terms, covenants, conditions and agreements binding upon it under the Loan Documents and any other agreement of any nature whatsoever now or hereafter involving or affecting the Security or any part thereof.

Section 5.2  **Agreement to Pay Attorneys' Fees and Expenses.**

In the event of any Event of Default (as defined below) hereunder, and if the Beneficiary should employ attorneys or incur other expenses for the collection of amounts due or the enforcement of performance or observance of an obligation or agreement on the part of the Trustor in this Deed of Trust, the Trustor agrees that it will, on demand therefor, pay to the Beneficiary the reasonable fees of such attorneys and such other reasonable expenses so incurred by the Beneficiary (including, but not limited to, other professional services fees and costs), and any such amounts paid by the Beneficiary shall be added to the indebtedness secured by the lien of this Deed of Trust, and shall bear interest from the date such expenses are incurred at the lesser of ten percent (10%) per annum or the maximum rate permitted by law.
Section 5.3  Payment of the Principal.

The Trustor shall pay to the Beneficiary the Principal and any other payments as set forth in the Note in the amounts and by the times set out therein.

Section 5.4  Personal Property.

To the maximum extent permitted by law, the personal property subject to this Deed of Trust shall be deemed to be fixtures and part of the real property and this Deed of Trust shall constitute a fixtures filing under the California Commercial Code. As to any personal property not deemed or permitted to be fixtures, this Deed of Trust shall constitute a security agreement under the California Commercial Code. The Trustor hereby grants the Beneficiary a security interest in such items.

Section 5.5  Financing Statement.

The Trustor shall execute and deliver to the Beneficiary such financing statements pursuant to the appropriate statutes, and any other documents or instruments as are required to convey to the Beneficiary a valid perfected security interest in the Security. The Trustor agrees to perform all acts which the Beneficiary may reasonably request so as to enable the Beneficiary to maintain such valid perfected security interest in the Security in order to secure the payment of the Note in accordance with its terms. The Beneficiary is authorized to file a copy of any such financing statement in any jurisdiction(s) as it shall deem appropriate from time to time in order to protect the security interest established pursuant to this instrument. Trustor shall pay all costs of filing such financing statements and any extensions, renewals, amendments, and releases thereof, and shall pay all reasonable costs and expenses of any record searches for financing statements, and releases thereof, as the Beneficiary may reasonably require. Without the prior written consent of the Beneficiary, Trustor shall not create or suffer to be created pursuant to the California Commercial Code any other security interest in the Security, including replacements and additions thereto.

Section 5.6  Operation of the Security.

The Trustor shall operate the Security (and, in case of a transfer of a portion of the Security subject to this Deed of Trust, the transferee shall operate such portion of the Security) in full compliance with the Loan Documents.

Section 5.7  Inspection of the Security.

At any and all reasonable times upon seventy-two (72) hours' notice, the Beneficiary and its duly authorized agents, attorneys, experts, engineers, accountants and representatives, shall have the right, without payment of charges or fees, to inspect the Security.

Section 5.8  Nondiscrimination.
The Trustor herein covenants by and for itself, its heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Security, nor shall the Trustor itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the Security. The foregoing covenants shall run with the land.

Section 5.9 Relocation.
The Trustor shall comply with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. Section 4601, et seq.), and implementing regulations at 49 C.F.R. Part 24; Section 104(d) of the Housing and Community Development Act of 1974 and implementing regulations at 24 C.F.R. Part 42; 24 C.F.R. Section 570.606; and California Government Code Section 7260 et seq. and implementing regulations at 25 California Code of Regulations Section 6000 et seq. The Trustor acknowledges and agrees that the Security is required to be vacant in order to qualify for purchase under the Loan Agreement; however, if and to the extent that acquisition and rehabilitation of the Security results in the permanent or temporary displacement of residential tenants, homeowners, or businesses, then the Trustor shall comply with all applicable local, state, and federal statutes and regulations with respect to relocation planning, advisory assistance, and payment of monetary benefits. The Trustor shall be solely responsible for payment of any relocation benefits to any displaced persons and any other obligations associated with complying with such relocation laws. The Trustor shall indemnify, defend (with counsel reasonably chosen by the Beneficiary), and hold harmless the Beneficiary against all claims which arise out of relocation obligations to residential tenants, homeowners, or businesses permanently or temporarily displaced by the acquisition or rehabilitation of the Security.

ARTICLE 6:
HAZARDOUS WASTE

Trustor shall keep and maintain the Property in compliance with, and shall not cause or permit the Property to be in violation of any federal, state or local laws, ordinances or regulations relating to industrial hygiene or to the environmental conditions on, under or about the Property including, but not limited to, soil and ground water conditions. Trustor shall not use, generate, manufacture, store or dispose of on, under, or about the Property or transport to or from the Property any flammable explosives, radioactive materials, hazardous wastes, toxic substances or related materials, including without limitation, any substances defined as or included in the definition of "hazardous substances," hazardous wastes," "hazardous materials," or "toxic substances" under any applicable federal or state laws or regulations (collectively referred to hereinafter as "Hazardous Materials") except such of the foregoing as are used in construction of projects of the improvements on the Property or as may be customarily kept and used in and about residential property.
Trustor shall immediately advise Beneficiary in writing if at any time it receives written notice of (i) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against Trustor or the Property pursuant to any applicable federal, state or local laws, ordinances, or regulations relating to any Hazardous Materials, ("Hazardous Materials Law"); (ii) all claims made or threatened by any third party against Trustor or the Property relating to damage, contribution, cost recovery compensation, loss or injury resulting from any Hazardous Materials (the matters set forth in clauses (i) and (ii) above are hereinafter referred to as "Hazardous Materials Claims"); and (iii) Trustor's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property that could cause the Property or any part thereof to be classified as "border-zone property" under the provision of California Health and Safety Code, Sections 25220 et seq., or any regulation adopted in accordance therewith, or to be otherwise subject to any restrictions on the ownership, occupancy, transferability or use of the Property under any Hazardous Materials Law.

Beneficiary shall have the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Hazardous Materials Claims and to have its reasonable attorneys' fees in connection therewith paid by Trustor. Trustor shall indemnify and hold harmless Beneficiary and its boardmembers, supervisors, directors, officers, employees, agents, successors and assigns from and against any loss, damage, cost, expense or liability directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, disposal, or presence of Hazardous Materials on, under, or about the Property including without limitation: (a) all foreseeable consequential damages; (b) the costs of any required or necessary repair, cleanup or detoxification of the Property and the preparation and implementation of any closure, remedial or other required plans; and (c) all reasonable costs and expenses incurred by Beneficiary in connection with clauses (a) and (b), including but not limited to reasonable attorneys' fees and consultant's fees.

Without Beneficiary's prior written consent, which shall not be unreasonably withheld, Trustor shall not take any remedial action in response to the presence of any Hazardous Materials on, under or about the Property, nor enter into any settlement agreement, consent decree, or other compromise in respect to any Hazardous Material Claims, which remedial action, settlement, consent decree or compromise might, in Beneficiary's reasonable judgment, impair the value of the Beneficiary's security hereunder; provided, however, that Beneficiary's prior consent shall not be necessary in the event that the presence of Hazardous Materials on, under, or about the Property either poses an immediate threat to the health, safety or welfare of any individual or is of such a nature that an immediate remedial response is necessary and it is not reasonably possible to obtain Beneficiary's consent before taking such action, provided that in such event Trustor shall notify Beneficiary as soon as practicable of any action so taken. Beneficiary agrees not to withhold its consent, where such consent is required hereunder, if either (i) a particular remedial action is ordered by a court of competent jurisdiction, (ii) Trustor will or may be subjected to civil or criminal sanctions or penalties if it fails to take a required action; (iii) Trustor establishes to the reasonable satisfaction of Beneficiary that there is no reasonable alternative to such remedial action which would result in less impairment of Beneficiary's security hereunder; or (iv) the action has been agreed to by Beneficiary.

The Trustor hereby acknowledges and agrees that (i) this Article is intended as the Beneficiary's written request for information (and the Trustor's response) concerning the
environmental condition of the Property as required by California Code of Civil Procedure Section 726.5, and (ii) each representation and warranty in this Deed of Trust or any of the other Loan Documents (together with any indemnity applicable to a breach of any such representation and warranty) with respect to the environmental condition of the property is intended by the Beneficiary and the Trustor to be an "environmental provision" for purposes of California Code of Civil Procedure Section 736.

In the event that any portion of the Property is determined to be "environmentally impaired" (as that term is defined in California Code of Civil Procedure Section 726.5(e)(3)) or to be an "affected parcel" (as that term is defined in California Code of Civil Procedure Section 726.5(e)(1)), then, without otherwise limiting or in any way affecting the Beneficiary's or the Trustee's rights and remedies under this Deed of Trust, the Beneficiary may elect to exercise its rights under California Code of Civil Procedure Section 726.5(a) to (1) waive its lien on such environmentally impaired or affected portion of the Property and (2) exercise (a) the rights and remedies of an unsecured creditor, including reduction of its claim against the Trustor to judgment, and (b) any other rights and remedies permitted by law. For purposes of determining the Beneficiary's right to proceed as an unsecured creditor under California Code of Civil Procedure Section 726.5(a), the Trustor shall be deemed to have willfully permitted or acquiesced in a release or threatened release of hazardous materials, within the meaning of California Code of Civil Procedure Section 726.5(d)(1), if the release or threatened release of hazardous materials was knowingly or negligently caused or contributed to by any lessee, occupant, or user of any portion of the Property and the Trustor knew or should have known of the activity by such lessee, occupant, or user which caused or contributed to the release or threatened release. All costs and expenses, including (but not limited to) attorneys' fees, incurred by the Beneficiary in connection with any action commenced under this paragraph, including any action required by California Code of Civil Procedure Section 726.5(b) to determine the degree to which the Property is environmentally impaired, plus interest thereon at the lesser of ten percent (10%) or the maximum rate permitted by law, until paid, shall be added to the indebtedness secured by this Deed of Trust and shall be due and payable to the Beneficiary upon its demand made at any time following the conclusion of such action.

ARTICLE 7:
EVENTS OF DEFAULT AND REMEDIES

Section 7.1 Events of Default.

The following shall constitute Events of Default: (1) failure to make any payment to be paid by Trustor under the Loan Documents at the time such payment is due; (2) failure to observe or perform any of Trustor's other covenants, agreements or obligations under the Loan Documents, including, without limitation, the provisions concerning discrimination, subject to applicable notice and cure periods, if any, included in the Loan Documents; or (3) failure to make any payment or perform any of Trustor's other covenants, agreements, or obligations under any other debt instruments or regulatory agreement secured by the Property, which default shall not be cured within the times and in the manner provided therein.

Section 7.2 Acceleration of Maturity.
If an Event of Default shall have occurred and is continuing, then at the option of the Beneficiary, the amount of any payment related to the Event of Default and the unpaid Principal of the Note shall immediately become due and payable, upon written notice by the Beneficiary to the Trustor (or automatically where so specified in the Loan Documents), and no omission on the part of the Beneficiary to exercise such option when entitled to do so shall be construed as a waiver of such right.

Section 7.3 The Beneficiary's Right to Enter and Take Possession.

If an Event of Default shall have occurred and be continuing, the Beneficiary may:

(a) Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court, and without regard to the adequacy of its security, enter upon the Security and take possession thereof (or any part thereof) and of any of the Security, in its own name or in the name of Trustee, and do any acts which it deems necessary or desirable to preserve the value or marketability of the Property, or part thereof or interest therein, increase the income therefrom or protect the security thereof. The entering upon and taking possession of the Security shall not cure or waive any Event of Default or Notice of Default (as defined below) hereunder or invalidate any act done in response to such Default or pursuant to such Notice of Default and, notwithstanding the continuance in possession of the Security, Beneficiary shall be entitled to exercise every right provided for in this Deed of Trust, or by law upon occurrence of any Event of Default, including the right to exercise the power of sale;

(b) Commence an action to foreclose this Deed of Trust as a mortgage, appoint a receiver, or specifically enforce any of the covenants hereof;

(c) Deliver to Trustee a written declaration of default and demand for sale, and a written notice of default and election to cause Trustor's interest in the Security to be sold ("Notice of Default and Election to Sell"), which notice Trustee or Beneficiary shall cause to be duly filed for record in the Official Records of Stanislaus County; or

(d) Exercise all other rights and remedies provided herein, in the instruments by which the Trustor acquires title to any Security, or in any other document or agreement now or hereafter evidencing, creating or securing all or any portion of the obligations secured hereby, or provided by law.

Section 7.4 Foreclosure By Power of Sale.

Should the Beneficiary elect to foreclose by exercise of the power of sale herein contained, the Beneficiary shall give notice to the Trustee (the "Notice of Sale") and shall deposit with Trustee this Deed of Trust which is secured hereby (and the deposit of which shall be deemed to constitute evidence that the unpaid Principal amount of the Note is immediately due and payable), and such receipts and evidence of any expenditures made that are additionally secured hereby as Trustee may require.
(a) Upon receipt of such notice from the Beneficiary, Trustee shall cause to be recorded, published and delivered to Trustor such Notice of Default and Election to Sell as then required by law and by this Deed of Trust. Trustee shall, without demand on Trustor, after lapse of such time as may then be required by law and after recordation of such Notice of Default and Election to Sell and after Notice of Sale having been given as required by law, sell the Security, at the time and place of sale fixed by it in said Notice of Sale, whether as a whole or in separate lots or parcels or items as Trustee shall deem expedient and in such order as it may determine, unless specified otherwise by the Trustor according to California Civil Code Section 2924g(b), at public auction to the highest bidder, for cash in lawful money of the United States payable at the time of sale. Trustee shall deliver to such purchaser or purchasers thereof its good and sufficient deed or deeds conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed or any matters of facts shall be conclusive proof of the truthfulness thereof. Any person, including, without limitation, Trustor, Trustee or Beneficiary, may purchase at such sale, and Trustor hereby covenants to warrant and defend the title of such purchaser or purchasers.

(b) After deducting all reasonable costs, fees and expenses of Trustee, including costs of evidence of title in connection with such sale, Trustee shall apply the proceeds of sale to payment of: (i) the unpaid Principal amount of the Note; (ii) all other amounts owed to Beneficiary under the Loan Documents; (iii) all other sums then secured hereby; and (iv) the remainder, if any, to Trustor.

(c) Trustee may postpone sale of all or any portion of the Property by public announcement at such time and place of sale, and from time to time thereafter, and without further notice make such sale at the time fixed by the last postponement, or may, in its discretion, give a new Notice of Sale.

Section 7.5 Receiver.

If an Event of Default shall have occurred and is continuing, Beneficiary, as a matter of right and without further notice to Trustor or anyone claiming under the Security, and without regard to the then value of the Security or the interest of Trustor therein, shall have the right to apply to any court having jurisdiction to appoint a receiver or receivers of the Security (or a part thereof), and Trustor hereby irrevocably consents to such appointment and waives further notice of any application therefor. Any such receiver or receivers shall have all the usual powers and duties of receivers in like or similar cases, and all the powers and duties of Beneficiary in case of entry as provided herein, and shall continue as such and exercise all such powers until the date of confirmation of sale of the Security, unless such receivership is sooner terminated.

Section 7.6 Remedies Cumulative.

No right, power or remedy conferred upon or reserved to the Beneficiary by this Deed of Trust is intended to be exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or now or hereafter existing at law or in equity.

Section 7.7 No Waiver.
(a) No delay or omission of the Beneficiary to exercise any right, power or remedy accruing upon any Event of Default shall exhaust or impair any such right, power or remedy, or shall be construed to be a waiver of any such Event of Default or acquiescence therein; and every right, power and remedy given by this Deed of Trust to the Beneficiary may be exercised from time to time and as often as may be deemed expeditious by the Beneficiary. Beneficiary's express or implied consent to breach, or waiver of, any obligation of the Trustor hereunder shall not be deemed or construed to be a consent to any subsequent breach, or further waiver, of such obligation or of any other obligations of the Trustor hereunder. Failure on the part of the Beneficiary to complain of any act or failure to act or to declare an Event of Default, irrespective of how long such failure continues, shall not constitute a waiver by the Beneficiary of its right hereunder or impair any rights, power or remedies consequent on any Event of Default by the Trustor.

(b) If the Beneficiary (i) grants forbearance or an extension of time for the payment of any sums secured hereby, (ii) takes other or additional security or the payment of any sums secured hereby, (iii) waives or does not exercise any right granted in the Loan Documents, (iv) releases any part of the Security from the lien of this Deed of Trust, or otherwise changes any of the terms, covenants, conditions or agreements in the Loan Documents, (v) consents to the granting of any easement or other right affecting the Security, or (iv) makes or consents to any agreement subordinating the lien hereof, any such act or omission shall not release, discharge, modify, change or affect the original liability under this Deed of Trust, or any other obligation of the Trustor or any subsequent purchaser of the Security or any part thereof, or any maker, co-signer, endorser, surety or guarantor (unless expressly released); nor shall any such act or omission preclude the Beneficiary from exercising any right, power or privilege herein granted or intended to be granted in any Event of Default then made or of any subsequent Event of Default, nor, except as otherwise expressly provided in an instrument or instruments executed by the Beneficiary shall the lien of this Deed of Trust be altered thereby.

Section 7.8 Suits to Protect the Security.

The Beneficiary shall have power to (a) institute and maintain such suits and proceedings as it may deem expedient to prevent any impairment of the Security and the rights of the Beneficiary as may be unlawful or any violation of this Deed of Trust, (b) preserve or protect its interest (as described in this Deed of Trust) in the Security, and (c) restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement for compliance with such enactment, rule or order would impair the Security thereunder or be prejudicial to the interest of the Beneficiary.

Section 7.9 Trustee May File Proofs of Claim.

In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceedings affecting the Trustor, its creditors or its property, the Trustee and/or the Beneficiary, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have the
claims of the Beneficiary allowed in such proceedings and for any additional amount which may become due and payable by the Trustor hereunder after such date.

Section 7.10 Waiver.

The Trustor waives presentment, demand for payment, notice of dishonor, notice of protest and nonpayment, protest, notice of interest on interest and late charges, and diligence in taking any action to collect any sums owing under the Note or in proceedings against the Security, in connection with the delivery, acceptance, performance, default, endorsement or guaranty of this Deed of Trust.

ARTICLE 8: MISCELLANEOUS

Section 8.1 Amendments.

This instrument cannot be waived, changed, discharged or terminated orally, but only by an instrument in writing signed by Beneficiary and Trustor.

Section 8.2 Reconveyance by Trustee.

Upon written request of Beneficiary stating that all sums secured hereby have been paid or forgiven and all performance secured hereby has been satisfactorily completed, and upon surrender of this Deed of Trust to Trustee for cancellation and retention, and upon payment by Trustor of Trustee's reasonable fees, Trustee shall reconvey the Security to Trustor, or to the person or persons legally entitled thereto.

Section 8.3 Notices.

If at any time after the execution of this Deed of Trust it shall become necessary or convenient for one of the parties hereto to serve any notice, demand or communication upon the other party, such notice, demand or communication shall be in writing and shall be served personally, by reputable overnight delivery service (which provides a delivery receipt) or by depositing the same in the registered United States mail, return receipt requested, postage prepaid and (1) if intended for Beneficiary shall be addressed to:
By Personal Delivery:

City of Modesto
Parks, Recreation and Neighborhoods Department
Attn: Director
1010 Tenth Street, Suite 4400
Modesto, CA 95354

By Mail:

City of Modesto
Parks, Recreation and Neighborhoods Department
P O Box 642
Modesto, CA 95353
Attn: Director

and (2) if intended for Trustor shall be addressed to:

By Personal Delivery or Mail:
Satellite Affordable Housing Associates
1540 University Ave.
Berkeley, CA 94703-1422
Attn: Executive Director

American Baptist Homes of the West, Inc.
6120 Stoneridge Mall Road, 3rd Floor
Pleasanton, CA 94588
Attn: Senior Vice President

And if to Trustor with copies to:

Wells Fargo Affordable Housing:

Wells Fargo Affordable Housing
Community Development Corporation
MAC D1053-170
301 South College Street
Charlotte, NC 28288
Attn: Director of Tax Credit Asset Management

and

Sidley Austin LLP
One South Dearborn Street
Chicago, IL 60603
Attention: Philip C. Spahn
Any notice, demand or communication shall be deemed given, received, made or communicated on the date personal delivery is effected or, if mailed in the manner herein specified, on the delivery date or date delivery is refused by the addressee, as shown on the return receipt. Either party may change its address at any time by giving written notice of such change to Beneficiary or Trustor as the case may be, in the manner provided herein, at least ten (10) days prior to the date such change is desired to be effective.

Section 8.4 Successors and Joint Trustors.

Where an obligation is created herein binding upon Trustor, the obligation shall also apply to and bind any transferee or successors in interest. Where the terms of the Deed of Trust have the effect of creating an obligation of the Trustor and a transferee, such obligation shall be deemed to be a joint and several obligation of the Trustor and such transferee. Where more than one entity or person is signing as Trustor, all obligations of Trustor shall be deemed to be a joint and several obligation of each and every entity and person signing as Trustor.

Section 8.5 Captions.

The captions or headings at the beginning of each Section hereof are for the convenience of the parties and are not a part of this Deed of Trust.

Section 8.6 Invalidity of Certain Provisions.

Every provision of this Deed of Trust is intended to be severable. In the event any term or provision hereof is declared to be illegal or invalid for any reason whatsoever by a court or other body of competent jurisdiction, such illegality or invalidity shall not affect the balance of the terms and provisions hereof, which terms and provisions shall remain binding and enforceable. If the lien of this Deed of Trust is invalid or unenforceable as to any part of the debt, or if the lien is invalid or unenforceable as to any part of the Security, the unsecured or partially secured portion of the debt, and all payments made on the debt, whether voluntary or under foreclosure or other enforcement action or procedure, shall be considered to have been first paid or applied to the full payment of that portion of the debt which is not secured or partially secured by the lien of this Deed of Trust.

Section 8.7 Governing Law.

This Deed of Trust shall be governed by and construed in accordance with the laws of the State of California.

Section 8.8 Gender and Number.

In this Deed of Trust the singular shall include the plural and the masculine shall include the feminine and neuter and vice versa, if the context so requires.
Section 8.9  Deed of Trust, Mortgage.

Any reference in this Deed of Trust to a mortgage shall also refer to a deed of trust and any reference to a deed of trust shall also refer to a mortgage.

Section 8.10  Actions.

Trustor agrees to appear in and defend any action or proceeding purporting to affect the Security.

Section 8.11  Substitution of Trustee.

Beneficiary may from time to time substitute a successor or successors to any Trustee named herein or acting hereunder to execute this Trust. Upon such appointment, and without conveyance to the successor trustee, the latter shall be vested with all title, powers, and duties conferred upon any Trustee herein named or acting hereunder. Each such appointment and substitution shall be made by written instrument executed by Beneficiary, containing reference to this Deed of Trust and its place of record, which, when duly recorded in the proper office of the county or counties in which the Property is situated, shall be conclusive proof of proper appointment of the successor trustee.

Section 8.12  Statute of Limitations.

The pleading of any statute of limitations as a defense to any and all obligations secured by this Deed of Trust is hereby waived to the full extent permissible by law.

Section 8.13  Acceptance by Trustee.

Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made public record as provided by law. Except as otherwise provided by law the Trustee is not obligated to notify any party hereto of pending sale under this Deed of Trust or of any action of proceeding in which Trustor, Beneficiary, or Trustee shall be a party unless brought by Trustee.

Section 8.14  Subordination.

This Deed of Trust may be subordinated as provided in Section 3.5 of the Loan Agreement.

Section 8.15  Tax Credit Provisions.

Notwithstanding anything to the contrary contained herein or in any documents secured by this Deed of Trust or contained in any subordination agreement, the Beneficiary acknowledges and agrees that in the event of a foreclosure or deed-in-lieu of foreclosure (collectively, "Foreclosure") with respect to the Property encumbered by this Deed of Trust, the following rule contained in 26 U.S.C. Section 42(h)(6)(E)(ii), as amended, shall apply:
For a period of three (3) years from the date of Foreclosure, with respect to any unit that had been regulated by the Regulatory Agreement with the California Tax Credit Allocation Committee: (1) none of the tenants occupying those units at the time of Foreclosure may be evicted or their tenancy terminated (other than for good cause); (2) nor may any rent be increased except as otherwise permitted under Section 42 of the Internal Revenue Code.

Section 8.16 Original Agreement.

As of the date of this Agreement, the Deed of Trust with Assignment of Rents, Security Agreement, and Fixture Filing executed on December 11, 2012 shall automatically terminate and be of no further force or effect.

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust as of the day and year first above written.

TRUSTOR:

SAHA:

Satellite Affordable Housing Associates, a California nonprofit public benefit corporation

By: Susan Friedland, Executive Director

ABHOW:

American Baptist Homes of the West, a California nonprofit public benefit corporation

By: David B. Ferguson, President and CEO

By: Ancel Romero, Senior Vice President-Affordable Housing

[Note: All Signatures must be notarized]
EXHIBIT A

LEGAL DESCRIPTION

The land is situated in the State of California, Stanislaus County, City of Modesto, and is described as follows:

APN: 106-006-013
EXHIBIT A

The land referred to is situated in the County of Stanislaus, City of Modesto, State of California, and is described as follows:

That portion of Lots 7 through 16 in Block 127 of the City of Modesto as per Map thereof filed December 21, 1942 in Volume 15 of Maps, Stanislaus County Records, described as follows:

BEGINNING at the north corner of said Lot 7, said point being on the southwesterly right of way line of 80.00 feet wide 17th Street; thence South 43° 12' 09" East, 250.05 feet on said right-of-way line to the east corner of aforementioned Lot 16 and the northwesterly right-of-way line of 80.00 feet wide G Street; thence South 46° 49' 09" West 139.94 feet on said northwesterly right of way line to the south corner of said Lot 16 and the northeasterly line of the 20.00 feet wide alley through Block 127; thence North 43° 11' 11" West 165.55 feet on said northeasterly alley line; thence leaving said northeasterly alley line, North 46° 49' 11" East 29.03 feet; thence, parallel with said northeasterly alley line, North 43° 11' 11" West 84.50 feet to the northwesterly line of aforementioned Lot 7; thence North 46° 49' 12" East 110.84 feet on the northwesterly line of said Lot 7 to the point of beginning.

APNS: 106-006-013
Regulatory Agreement dated November 24, 2014
CITY OF MODESTO NEIGHBORHOOD STABILIZATION PROGRAM 2

REGULATORY AGREEMENT

(NSP2 Regulatory Agreement – Tower Park)

This CITY OF MODESTO NEIGHBORHOOD STABILIZATION PROGRAM 2 REGULATORY AGREEMENT (the "NSP2 Regulatory Agreement") is entered into as of November 24, 2014, by and between the CITY OF MODESTO, a municipal corporation of the State of California (the "CITY") and SATELLITE AFFORDABLE HOUSING ASSOCIATES, a California nonprofit public benefit corporation ("SAHA") and AMERICAN BAPTIST HOMES OF THE WEST, a California nonprofit public benefit corporation, ("ABHOW" and collectively with SAHA referred to herein as the "BORROWER") with reference to the following:

RECITALS

A. WHEREAS, CITY and BORROWER are concurrently with the execution
herewith entering into that certain City of Modesto Neighborhood Stabilization Program 2 Loan Agreement of even date herewith (the "NSP2 Loan Agreement") which is incorporated herein by reference.

B. WHEREAS, CITY desires to increase the supply of affordable special needs rental housing for Very Low Income Households in the City of Modesto.

C. WHEREAS, pursuant to the NSP2 Loan Agreement, CITY has made a loan to BORROWER in the sum of Two Hundred Fifty Thousand Dollars ($250,000) (NSP2 Loan”) for the purpose of assisting BORROWER in the predevelopment of certain real property located in the City of Modesto, County of Stanislaus, State of California (the “Property”) as more fully described in Exhibit “A” attached hereto. BORROWER intends to construct forty-nine (49) rental housing units (and one manager’s unit) on the Property.

D. WHEREAS, the Property is being developed by BORROWER for the sole purpose of developing and renting the Property as affordable rental housing to a qualified Very Low Income Household with special needs, also referred to as a Qualified Tenant.

E. WHEREAS, it is the intent of the parties hereto that no less than twenty-four (24) housing units located on the Property remain affordable and available exclusively to a qualified Very Low Income Household for an affordability period of no less than twenty (20) consecutive years from the date this Regulatory Agreement is recorded against the Property. This shall be known as the "Continued Affordability Period."

F. WHEREAS, as a condition of receiving NSP2 Loan, BORROWER must agree to place specified restrictions upon the use and transfer of the Property (24 CFR Sec. 92.252). It is the intent of the parties hereto to evidence BORROWER's compliance with the NSP2
Requirements, as defined in the NSP2 Loan Agreement, and place such restrictions upon the use and transfer of the Property to ensure continued affordability, as required by the NSP2 Requirements.

NOW, THEREFORE, in consideration of the foregoing covenants and other consideration, and in order to induce CITY to enter into the NSP2 Loan with BORROWER, the receipt and sufficiency of which are hereby acknowledged, CITY and BORROWER agree as follows:

1. **Recitals.** The foregoing recitals are part of this NSP2 Regulatory Agreement.

2. **Definitions.** Unless definitions of terms have been expressly set out herein, each term shall have the same definition as set forth in the NSP2 Loan Agreement.

3. **Declarations.** The Property is and shall be subject to the covenants and restrictions hereafter set forth, and shall be binding on and enforceable against BORROWER and any future owner of the Property. The covenants and restrictions herein are established and agreed upon for the purpose of expanding and preserving the availability of affordable special needs rental housing for Very Low Income Households in the City of Modesto.

4. **Continued Use Restrictions and Covenants of the Property.** The following covenants and restrictions on the use and enjoyment of the Property shall be in addition to any other covenants and restrictions affecting the Property, and all such covenants and restrictions are for the benefit and protection of CITY, and shall run with the land and be binding on BORROWER, its successors, assigns, transferees and future owner(s) of the Property and inure to the benefit of and be enforceable by CITY.

BORROWER, on behalf of itself and its successors and assigns, and, hereby covenants 3
and agrees:

(a) BORROWER shall rent no less than twenty-four (24) housing units located on the Property (the "NSP2 Assisted Units") to a Qualified Tenant for the entire Continued Affordability Period in accordance with Section 5 of the NSP2 Loan Agreement, subject to the following additional requirements:

(1) **Occupancy Requirements.** No less twenty-four (24) NSP2 Assisted Units shall be rented to and occupied by households that qualify as a Very Low Income Household and include a "special needs" person, meaning a person with mental health issues, chronic disabilities, HIV/AIDS, a prison re-entry candidate, or an "elderly" or "senior citizen" resident of no less than sixty-two (62) years of age.

(2) **Affordable Rent.** In accordance with subsection 1, the monthly rent paid by the Qualified Tenant to occupy the Property shall not exceed the maximum rent set forth in 24 CFR 92.252.

(i) **Very Low Income Rent.** The rent ("Very Low Income Rent") paid by a Very Low Income Household shall not exceed thirty percent (30%) of fifty percent (50%) of the area median income adjusted for family size based on guidelines published by HUD ("Median Income").

(ii) **Approval of Initial and Subsequent Rents.** Rents for all NSP2 Assisted Units are subject to CITY approval prior to occupancy by Qualified Tenants, and are subject to the NSP2 Requirements

(iii) **Rent Increases.** All rent increases for the NSP2 Assisted Units are subject to CITY approval and are subject to the NSP2 Requirements. Such rent may
not be increased more often than once every twelve (12) months. BORROWER will provide each Qualified Tenant with at least sixty (60) days written notice of any increase in rent applicable to such Qualified Tenant.

(3) **Increased Income of Qualified Tenants.**

(i) **Increased income above Very Low but below Low Income Limit.** Subject to subsection 2(iii) above, in the event that, upon recertification of the income of a Very Low Income Household, the Borrower determines that such household no longer qualifies as a Very Low Income Household, but does qualify as a person or household with an annual income no greater than sixty-five (65%) of Median Income (a "Low Income Household") such household may continue to occupy the NSP2 Assisted Unit and, upon sixty (60) days written notice to the such household, BORROWER may increase the household's rent to the maximum rent published by HUD for a Low Income Household for the applicable bedroom size as set forth in 24 C.F.R. 92.252(a) (also known as "High HOME Rent"). Borrower shall then rent the next available NSP2-Assisted Unit to a Very Low Income Household.

(ii) **Non-Qualifying Household.** If, upon recertification of the income of a Qualified Tenant, BORROWER determines that a former Very Low Income Household has an Adjusted Income exceeding the maximum qualifying income for a Low Income Household, such household shall be permitted to continue occupying the NSP2 Assisted Unit and, upon expiration of the household's lease and upon sixty (60) days written notice, the rent shall be increased to the lesser of one-twelfth (1/12th) of thirty percent (30%) of the actual Adjusted Income of the household, or fair market rent, subject to 24 C.F.R. 92.252(i)(2) regarding low income housing tax credit requirements. When the household vacates the NSP2
Assisted Unit, BORROWER shall rent such NSP2 Assisted Unit to a Very Low Income Household.

(iii) Termination of Occupancy. Upon termination of occupancy of a NSP2 Assisted Unit by a Qualified Tenant, such unit shall be deemed to be continuously occupied by a household of the same income level as the initial income level of the vacating Qualified Tenant, until such unit is reoccupied, at which time the income character of the NSP2 Assisted Unit shall be redetermined to meet the occupancy requirements set forth herein.

(4) Income Certification. BORROWER will obtain, complete and maintain on file, immediately prior to initial occupancy and annually thereafter, income certifications from each Qualified Tenant's household. BORROWER shall make a good faith effort to verify the accuracy of the income provided by the applicant or occupying household, as the case may be, in an income certification. To verify the information, BORROWER shall take two or more of the following steps: (i) obtain a pay stub for the most recent pay period; (ii) obtain an income tax return for the most recent tax year; (iii) conduct a credit agency or similar search; (iv) obtain an income verification form from the applicant's current employer; (v) obtain an income verification form from the Social Security Administration and/or the California Department of Social Services if the applicant receives assistance from either of such agencies; or (vi) if the applicant is unemployed and does not have a tax return, obtain another form of independent verification. Copies of Qualified Tenant income certifications shall be available to CITY upon request.

(5) Qualified Tenant Selection Plan. BORROWER shall not make
material modifications to its tenant selection plan without the prior written approval of CITY, which approval shall not be unreasonably withheld. Such tenant selection plan shall comply with the NSP2 Requirements.

(6) Lease Provisions. In leasing the Property, BORROWER shall use a form of Qualified Tenant lease approved by CITY. The form of Qualified Tenant lease shall also comply with all requirements of this NSP2 Regulatory Agreement and the NSP2 Loan Agreement, and shall, among other matters:

(i) provide for termination of the lease and consent by a Qualified Tenant to immediate eviction for failure: (a) to provide any information required under this NSP2 Regulatory Agreement or reasonably requested by BORROWER to establish or recertify a Qualified Tenant’s qualification, or the qualification of a Qualified Tenant’s household, for occupancy in the Property in accordance with the standards set forth in this NSP2 Regulatory Agreement, or (b) to qualify as a Very Low Income Household, as applicable, as a result of any material misrepresentation made by such Qualified Tenant with respect to the income computation.

(ii) be for an initial term of not less than one (1) year, unless by mutual agreement between a Qualified Tenant and BORROWER, and provide for no increase in the Affordable Rent during such year. After the initial year of tenancy, the lease may be month-to-month by mutual agreement of BORROWER and a Qualified Tenant.

(7) Lease Termination. Any termination of a lease or refusal to renew a lease for the Property shall be in conformance with the NSP2 Requirements, including, but not limited to, 24 C.F.R. 253(c), and the requirements of applicable state law.
(8) **Nondiscrimination.** The Property shall be available for occupancy on a continuous basis to members of the general public who are income eligible. BORROWER shall not give preference to any particular class or group of persons in renting or selling the Property, except as may be required pursuant to this NSP2 Regulatory Agreement. BORROWER herein covenants by and for BORROWER, assigns, and all persons claiming under or through BORROWER, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin, source of income (e.g., SSI), ancestry, or disability, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the Property nor shall BORROWER or any person claiming under or through BORROWER, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees of the Property or in connection with the employment of persons for the construction, operation and management of the Property.

(9) **Section 8 Tenants.** BORROWER will accept as Qualified Tenants, on the same basis as all other prospective Qualified Tenants, persons who are recipients of federal certificates for rent subsidies pursuant to the existing housing program under Section 8 of the United States Housing Act, or its successor. BORROWER shall not apply selection criteria to Section 8 certificate or voucher holders that are more burdensome than criteria applied to all other prospective Qualified Tenants, nor shall BORROWER apply or permit the application of management policies or lease provisions with respect to the Property which have the effect of precluding occupancy of the Property by such prospective Qualified Tenants.
(10) **Records.** BORROWER shall maintain complete, accurate and current records pertaining to the Property, and shall permit any duly authorized representative of CITY to inspect records, including records pertaining to income and household size of Qualified Tenant. All Qualified Tenant lists, applications and waiting lists relating to the Property shall at all times be kept separate and identifiable from any other business of BORROWER and shall be maintained as required by CITY, in a reasonable condition for proper audit and subject to examination during business hours by representatives of CITY. BORROWER shall retain copies of all materials obtained or produced with respect to occupancy of the Property for a period of at least five (5) years.

(11) **Management Responsibilities.** BORROWER is responsible for all management functions with respect to the Property, including without limitation the selection of Qualified Tenants, certification and recertification of household size and income, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. CITY shall have no responsibility over management of the Property. BORROWER shall retain a professional property management company approved by CITY in its reasonable discretion to perform its management duties hereunder. BORROWER may request CITY for written approval to self-manage the Property.

(12) **Management Agent; Periodic Reports.** The Property shall at all times be managed by an experienced management agent reasonably acceptable to CITY, with demonstrated ability to operate residential facilities like the Property in a manner that will provide decent, safe, and sanitary housing (as approved, the “Management Agent”). CITY hereby pre-approves ABHOW as the Management Agent).
(13) **Periodic Performance Review.** CITY reserves the right to conduct an annual (or more frequently, if deemed necessary by CITY) review of the management practices and financial status of the Property. The purpose of each periodic review will be to enable CITY to determine if the Property is being operated and managed in accordance with the NSP2 Requirements and the provisions of this NSP2 Regulatory Agreement. BORROWER shall cooperate with CITY in such reviews.

(14) **Replacement of Management Agent.** If, as a result of a periodic review, CITY determines in its reasonable judgment that the Property is not being operated and managed in accordance with any of the material requirements and standards of this NSP2 Regulatory Agreement, CITY shall deliver notice to BORROWER of its determination that the Property does not satisfy the requirements of this NSP2 Regulatory Agreement, such notice may include a request to cause replacement of the Management Agent, including the reasons therefor. Within fifteen (15) days after receipt by BORROWER of such written notice, CITY staff and BORROWER shall meet in good faith to consider methods for improving the financial and operating status of the Property, including, without limitation, replacement of the Management Agent.

If, after such meeting, CITY staff recommends in writing the replacement of the Management Agent, ABHOW shall be dismissed as the Management Agent, SAHA shall appoint, subject to the CITY's prior written approval, as the Management Agent a person or entity meeting the standards for a management agent set forth in subsection (12) above. Failure to remove the Management Agent in accordance with the provisions of this Section shall constitute default under this NSP2 Regulatory Agreement, and CITY may enforce this provision.
through legal proceedings as specified in Section 9 below.

(f) **On-site Inspection.** CITY shall have the right to perform an on-site inspection of the Property when deemed necessary by CITY, and subject to the rights of a Qualified Tenant, upon delivery of reasonable notice to BORROWER, subject to the requirements of state law. BORROWER agrees to cooperate in and attend such inspection and request Qualified Tenants cooperate with such inspections.

(g) **Annual Report.** BORROWER shall submit to CITY annual reports in a form approved by CITY, no later than one hundred twenty (120) days after the end of BORROWER's fiscal year. The reports shall contain such information as CITY may require, including, but not limited to, the following:

(i) A statement of the fiscal condition of the Property, including a financial statement indicating surpluses or deficits in operating accounts for the period covered, a detailed itemized listing of income and expenses, and the amounts of the Property reserves. The report due after the end of each fiscal year shall contain an audited version of this statement. Such audit shall be prepared in accordance with the requirements of CITY and certified at BORROWER's expense by an independent Certified Public Accountant licensed by the State of California; and

(ii) The substantial physical defects in the Property, if any, including a description of any major repair or maintenance work undertaken in the reporting period; and

(iii) Information concerning the occupancy of the Property.

Upon request of CITY, BORROWER shall furnish, within fifteen (15) days, any other information or completed form requested by CITY.
(h) **Additional Information.** BORROWER shall provide any additional information reasonably requested by CITY. CITY shall have the right to examine and make copies of all books, records or other documents of BORROWER which pertain to the Property.

(i) **Taxes and Assessments.** If applicable, BORROWER shall pay all real and personal property taxes, assessments and charges and all franchise, income, employment, old age benefit, withholding, sales, and other taxes assessed against it, or payable by it, at such times and in such manner as to prevent any penalty from accruing, or any lien or charge from attaching to the Property; provided, however, that BORROWER may contest in good faith, any such taxes, assessments, or charges. In the event BORROWER exercises its right to contest any tax, assessment, or charge against it, BORROWER, on final determination of the proceeding or contest, shall immediately pay or discharge any decision or judgment rendered against it, together with all costs, charges and interest.

(j) **Property Maintenance.** BORROWER agrees, for the entire Term of this NSP2 Regulatory Agreement, to maintain all interior and exterior improvements, including landscaping, on the Property in good condition and repair (and, as to landscaping, in a healthy condition) and in accordance with all applicable laws, rules, ordinances, orders and regulations of all federal, state, county, municipal, and other governmental agencies and bodies having or claiming jurisdiction and all their respective departments, bureaus, and officials, and in accordance with the following maintenance conditions:

CITY places prime importance on quality maintenance to protect its investment and to ensure that all CITY-assisted affordable housing projects are not allowed to deteriorate due to below-average maintenance. Normal wear and tear of the Property will be acceptable to
CITY assuming BORROWER agrees to provide all necessary improvements to assure the Property is maintained in good condition. BORROWER shall make all repairs and replacements necessary to keep the improvements in good condition and repair.

In the event that BORROWER breaches any of the covenants contained in this subsection and such default continues for a period of fifteen business (15) days after written notice from CITY with respect to graffiti, debris, waste material, and general maintenance or thirty (30) days after written notice from CITY with respect to landscaping and building improvements, then CITY, in addition to whatever other remedy it may have at law or in equity, shall have the right to enter upon the Property and perform or cause to be performed all such acts and work necessary to cure the default. Pursuant to such right of entry, CITY shall be permitted (but is not required) to enter upon the Property and perform all acts and work necessary to protect, maintain, and preserve the improvements and landscaped areas on the Property, and to attach a lien on the Property, or to assess the Property, in the amount of the expenditures arising from such acts and work of protection, maintenance, and preservation by CITY and/or costs of such cure, which amount shall be promptly paid by BORROWER to CITY upon demand.

(k) **Asset Management.** BORROWER is responsible for all asset management functions with respect to the Property, including without limitation the oversight of the Management Agent, as applicable, maintaining accurate and current books and records for the Property and promptly paying costs incurred in connection with the Property. CITY shall have no responsibility over asset management of the Property.

5. **Term of Use Restrictions and Covenants.** The covenants and restrictions established in Section 4 of this NSP2 Regulatory Agreement shall, without regard to technical
classification and designation, be binding on BORROWER, its successors and assigns and each
future owner of the Property, for the benefit of and in favor of the CITY, and shall remain in
effect and enforceable until the twentieth (20th) anniversary of the date of recordation of this
NSP2 Regulatory Agreement or reconveyance of this NSP2 Regulatory Agreement by CITY.
This NSP2 Regulatory Agreement shall remain in effect notwithstanding any reconveyance of the
deed of trust securing the NSP2 Loan or the transfer of ownership of the Property, excluding the
lease of the Property to a Qualified Tenant.

6. **Written Notifications.** BORROWER, and any future owner of the Property,
covenants and agrees to include the requirements and restrictions contained in this NSP2
Regulatory Agreement and any document transferring title of the Property to another person, to
the end that such transferee has notice of, and is bound by, such restrictions and covenants, and
to obtain the agreement from any transferee to abide by all the covenants and restrictions of this
NSP2 Regulatory Agreement.

7. **Acceptance and Ratification.** BORROWER and future owners of the Property
shall be subject to and shall comply with the Use Restrictions and Covenants herein. The
acceptance of a deed of conveyance to the Property shall constitute an agreement that the Use
Restrictions and Covenants are accepted and ratified by such future owners, and such Use
Restrictions and Covenants shall run with the land and bind such future owners.

8. **Enforcement of Restrictions and Covenants.** If BORROWER or any future
owner defaults in the performance or observance of any covenant or restriction set forth in this
NSP2 Regulatory Agreement and if such default remains uncured for a period of thirty (30) days
after notice thereof shall have been given by CITY, then CITY acting on its own behalf may
declare an Event of Default to have occurred, and, at its option, may take any one or more of the following steps:

(a) By mandamus, or other suit, action or proceeding at law or in equity,
require BORROWER or any future owner of the Property to perform its obligations and covenants hereunder, including the remedy of specific performance, or to enjoin any act or thing in violation of any covenant or restriction of this NSP2 Regulatory Agreement; or

(b) Subject to the provisions of the NSP2 Loan Agreement, and the NSP2 Note entered into by BORROWER and CITY evidencing BORROWER's indebtedness to CITY for NSP2 Loan, declare a default and accelerate the indebtedness evidenced by the NSP2 Note; or

(c) Take such other action at law or in equity as may appear necessary or desirable to enforce the obligations, covenants and restrictions hereunder, including (i) compelling BORROWER to sell the Property to CITY at a sales price equal to the unpaid balance of amount of NSP2 Loan, or (ii) the commencement of foreclosure proceedings; or

(d) Exercise any other remedy provided under the NSP2 Loan Agreement, subject to Section 35 of the Loan Agreement.

9. **Notices.** All notices pursuant to this NSP2 Regulatory Agreement shall be in writing and served on the other party (a) by personal delivery or (b) by certified mail, return receipt requested, to the respective addresses as set forth below. Receipt shall be deemed to have occurred on the date shown on a written receipt as the date of delivery or refusal of delivery (or attempted delivery if undeliverable).

**CITY:** CITY OF MODESTO
10. **Indemnity.** BORROWER shall indemnify and hold CITY, and their officers, agents, officials, and employees free and harmless against any losses, damages, liability, claims, demands, judgments, actions, court costs, and legal or other expenses (including attorney’s fees) which arise out of or in connection with the Borrower’s activities under this NSP2 Regulatory
Agreement. This indemnity obligation shall not extend to any claim arising solely from the negligence or willful misconduct of CITY, their officers, agents, officials and employees. The provisions of this Section shall survive the expiration of the term of this NSP2 Regulatory Agreement.

11. **Relationship of Parties.** Nothing contained in this NSP2 Regulatory Agreement shall be interpreted or understood by any of the parties, or by any third person, as creating the relationship of employer and employee, principal and agent, limited or general partnership, or joint venture between CITY and BORROWER or its agents, employees or contractors. Except as CITY may specify in writing, BORROWER shall have no authority to act as an agent of CITY or to bind CITY to any obligation.

12. **Superiority of Agreement.** BORROWER covenants that, except in accordance with Section 3.5 of the Loan Agreement, BORROWER has not, and shall not, enter into or execute any other agreement with provisions contrary to the provision of this NSP2 Regulatory Agreement, or contrary to the intent of maintaining the affordability restrictions for the full Continued Affordability Period.

13. **Parties Bound; Covenants Running with the Land.** Except as otherwise limited in Section 4 herein, the provisions of this NSP2 Regulatory Agreement shall be binding upon and inure to the benefit of the parties and their successors, transferees, and assigns. This NSP2 Regulatory Agreement is intended to run with the land and shall bind BORROWER and its successors, assigns, transferees in the Property and future owners of the Property for the entire Continued Affordability Period regardless of any assignment, payment, expiration, extinguishment of any loan or note, any reconveyance of deed of trust, or any conveyance or
transfer of the Property, and the benefits hereof shall inure to the benefit of CITY and its successors and assigns.

14. Interpretation: Affordability. It is the intention of the parties to this NSP2 Regulatory Agreement that affordability be interpreted in view of the express goals of the NSP2 Requirements and specifically including the affordability regulations of Title 24 CFR Part 92. It is the purpose of this NSP2 Regulatory Agreement to limit and restrict the use of the Property in order to maintain the Property’s affordability for the entire Continued Affordability Period.

15. Amendments. This NSP2 Regulatory Agreement, including any exhibits hereto, shall not be amended except in writing, signed by the Parties. Any amendment or addendum hereto shall expressly refer to this NSP2 Regulatory Agreement.

16. No Liability. No member, official, employee or agent of CITY shall be personally liable to BORROWER in the event of any default or breach by CITY or for any amount that may become due to BORROWER or any obligation under the terms of this NSP2 regulatory Agreement. No member, official, employee or agent of BORROWER shall be personally liable to CITY in the event of any default or breach by BORROWER or for any amount that may become due to CITY or any obligation under the terms of this NSP2 Regulatory Agreement.

17. Governing Law. This NSP2 Regulatory Agreement shall be interpreted under and be governed by the laws of the State of California.

18. Venue. Should either party institute suit or arbitration for enforcement or interpretation of any provision contained herein, the venue of such action shall be in Stanislaus County, California.
19. Costs and Attorney Fees. In the event that any legal or administrative action is commenced to interpret or to enforce the terms of this NSP2 Regulatory Agreement, the prevailing party in such action shall be entitled to recover all reasonable attorney's fees and costs incurred in such action.

20. Severability. Every provision of this NSP2 Regulatory Agreement is intended to be severable. If any provision of this NSP2 Regulatory Agreement shall be held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

21. No Waiver. Any waiver by CITY of any obligation or condition in this NSP2 Regulatory Agreement must be in writing. No waiver will be implied from any delay or failure by CITY to take action on any breach or default of BORROWER, its assignee or transferee, or to pursue any remedy allowed under this NSP2 Regulatory Agreement or applicable law. Any extension of time granted to BORROWER, its assignee or transferee, to perform any obligation hereunder shall not operate as a waiver or release from any of its obligations under this NSP2 Regulatory Agreement. Consent by CITY to any act or omission by BORROWER, its assignee or transferee, shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for CITY's written consent to future waivers.

22. Titles. Any titles of the sections or subsections of this NSP2 Regulatory Agreement are inserted for convenience of reference only and shall be disregarded in interpreting any part of the NSP2 Regulatory Agreement's provisions.

23. Interpretation. The language of each and all paragraphs, terms and/or provisions of this NSP2 Regulatory Agreement, shall, in all cases and for any and all purposes, and in any
way and all circumstances whatsoever, be construed as a whole, according to its fair meaning, and not for or against any party hereto and with no regard whatsoever to the identity or status of any person or persons who drafted all or any portion of this agreement.

24. **Discretion Retained by CITY.** CITY's execution of this NSP2 Regulatory Agreement in no way limits the discretion of CITY in the permit and approval process in connection with any improvements by BORROWER.

25. **Recordation.** BORROWER acknowledges and agrees that this NSP2 Regulatory Agreement shall be recorded against the Property in the Office of the Recorder of the County of Stanislaus, and may be subordinated as provided in Section 3.5 of the Loan Agreement.

26. **Authority to Execute.** Each individual executing this NSP2 Regulatory Agreement on behalf of BORROWER represents and warrants that he/she is duly authorized to execute this NSP2 Regulatory Agreement on behalf of BORROWER.

27. **Compliance With NSP2 Requirements.** BORROWER agrees that at all times its acts regarding the property and the use of NSP2 funds shall be in conformity with the NSP2 Requirements. BORROWER acknowledges that it is familiar with such applicable provisions and has been professionally advised to the extent necessary for the purpose of enabling BORROWER to fully comply with such provisions.

28. **Original Agreement.** As of the date of this Agreement, the City of Modesto Neighborhood Stabilization Program 2 Regulatory Agreement dated as of December 11, 2012 shall automatically terminate and be of no further force or effect.

[SIGNATURES ON NEXT PAGE]
IN WITNESS WHEREOF, the City of Modesto, a municipal corporation, has authorized the execution of this Agreement in duplicate by its City Manager and attestation by its City Clerk under authority of Resolution No. 2014-444 adopted by the Council of the City of Modesto on the 4th day of November, 2014, and BORROWER has caused this Agreement to be duly executed.

CITY OF MODESTO, a municipal corporation
By: ____________________________
James N. Hoggersson, City Manager

ATTEST:
By: ____________________________
Stephanie Lopez, City Clerk

(SEAL)

APPROVED AS TO LEGAL FORM
Adam U. Lindgren, City Attorney

By: ____________________________
Adam U. Lindgren, City Attorney

APPROVED AS TO RISK MANAGEMENT:
By: ____________________________
Name: Beverly Jensen

[Additional Signature Page Follows]
ACKNOWLEDGMENT

STATE OF CALIFORNIA )
COUNTY OF Stanislaus ) SS

On November 26, 2014 before me, Carol A. Averell, a Notary Public
personally appeared James N. Holgersson who proved to me on
the basis of satisfactory evidence to be the person whose name is subscribed to the
within instrument and acknowledged to me that he executed the same in his authorized
capacity, and that by his signature on the instrument the person, or the entity upon
behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.
Witness my hand and official seal.

WITNESS my hand and official seal.

Signature [Seal]
BORROWER:

SAHA:

Satellite Affordable Housing Associates, a California nonprofit public benefit corporation

By: [Signature]

Susan Friedland, Executive Director

ABHOW:

American Baptist Homes of the West, a California nonprofit public benefit corporation

By: [Signature]

David B. Ferguson, President and CEO

By: [Signature]

Ancel Romero, Senior Vice President-Affordable Housing
ACKNOWLEDGMENT

State of California
County of Monterey

On November 20, 2014 before me, Susan G. Tolentino, Notary Public
(insert name and title of the officer)

personally appeared David B. Ferguson
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(capities), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature Susan G. Tolentino (Seal)

(SUSAN G. TOLENTINO)
Commission # 1516804
Notary Public - California
San Joaquin County
My Comm. Expires Dec 13, 2014
ACKNOWLEDGMENT

State of California
County of Monterey

On November 20, 2014 before me, Susan G. Tolentino, Notary Public
(insert name and title of the officer)

personally appeared Angel Roman
who proved to me on the basis of satisfactory evidence to be the person(s) whose names are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature

(Signature)

(Signature)

(Signature)
State of California  
County of Alameda  

CALIFORNIA ALL-PURPOSE  
CERTIFICATE OF ACKNOWLEDGMENT  

On 11/19/14 before me, Rosa Yee, Notary Public,  

personally appeared Susan Friedland,  

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that she/they executed the same in [her/their] authorized capacity(ies), and that by her/his/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature _____________________________  
Rosa Yee  
(Seal)

OPTIONAL INFORMATION

Although the information in this section is not required by law, it could prevent fraudulent removal and reattachment of this acknowledgment to an unauthorized document and may prove useful to persons relying on the attached document.

Description of Attached Document

The preceding Certificate of Acknowledgment is attached to a document titled/for the purpose of ________________________________  

containing ______ pages, and dated ________________________________  

The signer(s) capacity or authority is/are as:  

☐ individual(s)  
☐ attorney-in-fact  
☐ corporate officer(s)  
☐ guardian/conservator  
☐ partner - limited/general  
☐ trustee(s)  
☐ other: ________________________________  

representing: ________________________________  

Notary contact: ________________________________  

Method of Signer Identification:  

☑ [ ] form(s) of identification  
☐ credible witness(es)  

Notarial event is detailed in notary journal on:  

Page # ______  
Entry # ______  

Other:  

☐ additional signer(s)  
☐ signer(s) thumbprint(s)

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EXHIBIT A

Legal Description of Property

The land is situated in the State of California, Stanislaus County, City of Modesto, and is described as follows:

APN: 106-006-013
EXHIBIT A

The land referred to is situated in the County of Stanislaus, City of Modesto, State of California, and is described as follows:

That portion of Lots 7 through 16 in Block 127 of the City of Modesto as per Map thereof filed December 21, 1942 in Volume 15 of Maps, Stanislaus County Records, described as follows:

BEGINNING at the north corner of said Lot 7, said point being on the southwesterly right of way line of 80.00 feet wide 17th Street; thence South 43° 12’ 09” East, 250.05 feet on said right-of-way line to the east corner of aforementioned Lot 16 and the northwesterly right-of-way line of 80.00 feet wide G Street; thence South 46° 49’ 09” West 139.94 feet on said northwesterly right of way line to the south corner of said Lot 16 and the northeasterly line of the 20.00 feet wide alley through Block 127; thence North 43° 11’ 11” West 165.55 feet on said northeasterly alley line; thence leaving said northeasterly alley line, North 46° 49’ 11” East 29.03 feet; thence, parallel with said northeasterly alley line, North 43° 11’ 11” West 84.50 feet to the northwesterly line of aforementioned Lot 7; thence North 46° 49’ 12” East 110.84 feet on the northwesterly line of said Lot 7 to the point of beginning.

APNS: 106-006-013
Assignment and Assumption Agreement dated November 24, 2014
ASSIGNMENT AND ASSUMPTION AGREEMENT

(Tower Park NSP2 Loan Documents)

This ASSIGNMENT AND ASSUMPTION AGREEMENT (this "Agreement") is entered into as of November 24, 2014 (the "Effective Date"); by and among the City of Modesto, a municipal corporation (the "City"), Satellite Affordable Housing Associates, a California nonprofit public benefit corporation ("SAHA"), American Baptist Homes of the West, a California nonprofit public benefit corporation ("ABHOW") and Tower Park, L.P., a California limited partnership (the "Partnership"), with reference to the following facts.

RECITALS

A. The City provided a loan of Neighborhood Stabilization Program 2 ("NSP2") funds to SAHA and ABHOW in the amount of Two Hundred Fifty Thousand Dollars ($250,000) (the "NSP2 Loan") to assist in the financial feasibility for the development of a senior housing project (the "Development").

B. The NSP2 Loan is evidenced by that certain City of Modesto NSP2 Loan Agreement dated December 11, 2012, as amended by that certain First Amendment to the City of Modesto NSP2 Loan Agreement dated as of November 24, 2014 (collectively, the "Loan Agreement") and that certain Promissory Note in the amount of Two Hundred Fifty Thousand Dollars ($250,000) dated as of December 11, 2012 (the "NSP2 Note") and secured by that certain Deed of Trust with Assignment of Rents dated as of November 24, 2014 (the "NSP2 Deed of Trust") and also secured by that certain City of Modesto Neighborhood Stabilization Program 2 Regulatory Agreement dated as of November 24, 2014 (the "NSP2 Regulatory Agreement"). The Loan Agreement, the NSP2 Note, the NSP2 Deed of Trust and the NSP2 Regulatory Agreement are referred to in this Agreement collectively as the "NSP2 Loan Documents." 

C. The Partnership intends to develop the Development. SAHA and ABHOW desire to enter into this Agreement to assign the NSP2 Loan Documents and all of SAHA and ABHOW's respective rights, title, and interest in and obligations under the NSP2 Loan Documents to the Partnership, and the Partnership is entering into this Agreement to assume all
of SAHA and ABHOW's rights, title, and interest in and obligations under the NSP2 Loan Documents from SAHA and ABHOW.

D. The City is entering into this Agreement in order to provide consent to the assignment of the NSP2 Loan Documents from SAHA and ABHOW to the Partnership.

E. The City, SAHA, ABHOW and the Partnership are sometimes referred to in this Agreement individually as a "Party" and collectively as the "Parties".

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Recitals, which are incorporated in this Agreement by this reference, the mutual promises of the Parties, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties mutually agree as follows:

1. Assignment by SAHA and ABHOW.

   (a) SAHA assigns to the Partnership all of SAHA's right, title, and interest in and obligations under the NSP2 Loan Documents (the "SAHA Assignment").

   (b) ABHOW assigns to the Partnership all of SAHA's right, title, and interest in and obligations under the NSP2 Loan Documents (the "SAHA Assignment").

2. Acceptance of Assignment by the Partnership.

   (a) As of the Effective Date, the Partnership accepts the Assignment and assumes, agrees, and undertakes to perform all of the obligations, covenants, and agreements of SAHA pursuant to the NSP2 Loan Documents. As of the Effective Date, any reference in the NSP2 Loan Documents to the "Borrower" or the "Owner" is deemed a reference to the Partnership.

   (b) As of the Effective Date, the Partnership accepts the Assignment and assumes, agrees, and undertakes to perform all of the obligations, covenants, and agreements of ABHOW pursuant to the NSP2 Loan Documents. As of the Effective Date, any reference in the NSP2 Loan Documents to the "Borrower" or the "Owner" is deemed a reference to the Partnership.

3. Releases.

   (a) As of the Effective Date, SAHA is released from all obligations imposed under the NSP2 Loan Documents with respect to matters occurring from and after the Effective Date.

   (b) As of the Effective Date, ABHOW is released from all obligations imposed under the NSP2 Loan Documents with respect to matters occurring from and after the Effective Date.
4. Consent of the City. By executing this Agreement, the City consents to the Assignment of the NSP2 Loan Documents from SAHA and ABHOW to the Partnership and the release of SAHA and ABHOW from the NSP2 Loan Documents as of the Effective Date.

5. Representations.

(a) The Partnership represents and warrants that the Partnership is a duly formed, validly existing limited partnership in good standing under the laws of the State of California, and has the power and authority to execute this Agreement and perform the obligations under the NSP2 Loan Documents.

(b) SAHA represents and warrants that it has not previously assigned, pledged, hypothecated or otherwise transferred any of its right, title, or interest in or obligations under the NSP2 Loan Documents.

(c) ABHOW represents and warrants that it has not previously assigned, pledged, hypothecated or otherwise transferred any of its right, title, or interest in or obligations under the NSP2 Loan Documents.

6. Further Approvals. Each Party to this Agreement shall execute and deliver such instruments, documents and other written information and take such other actions as another Party may reasonably require in order to carry out the intent of this Agreement.

7. Full Force and Effect. Except as set forth in this Agreement, the NSP2 Loan Documents remain unmodified and in full force and effect.

8. Successors and Assigns. This Agreement shall be binding on and inure to the benefit of the successors and assigns of the Parties.

9. California Law. This Agreement shall be governed by and interpreted in accordance with the internal laws of the State of California, without regard to conflict of law principles.

10. Invalidity. Any provision of this Agreement which is determined by a court to be invalid or unenforceable shall be deemed severed from this Agreement, and the remaining provisions shall remain in full force and effect as if the invalid or unenforceable provision had not been a part of this Agreement.

11. Headings. The headings used in this Agreement are for convenience only and shall be disregarded in interpreting the substantive provisions of this Agreement.

12. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.
SAHA:
Satellite Affordable Housing Associates, a California nonprofit public benefit corporation
By:  
Susan Friedland, Executive Director

ABHOW:
American Baptist Homes of the West, a California nonprofit public benefit corporation
By:  
David B. Ferguson, President and CEO
By:  
Ancel Romero, Senior Vice President-Affordable Housing

PARTNERSHIP:
Tower Park L.P., a California limited partnership
By:  
Tower Park LLC, a California limited liability company, its managing general partner
By:  
Satellite AHA Development Inc., a California nonprofit public benefit corporation, its managing member
By:  
Susan Friedland, its Executive Director
By:  
Carmel Senior Housing, Inc., a California nonprofit public benefit corporation, its member
By:  
S. Louise Rankin, its Secretary

[CITY SIGNATURE PAGE FOLLOWS]
State of California  
County of Alameda  

CALIFORNIA ALL-PURPOSE  
CERTIFICATE OF ACKNOWLEDGMENT  

On __/__/14 before me, Rosa Yee, Notary Public,  
(personal name and title of the officer)  

personally appeared Susan Friedland  

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

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

WITNESS my hand and official seal.  

Signature  

Rosa Yee  
(Seal)  

OPTIONAL INFORMATION  

Although the information in this section is not required by law, it could prevent fraudulent removal and reattachment of this  
acknowledgment to an unauthorized document and may prove useful to persons relying on the attached document.  

Description of Attached Document  
The preceding Certificate of Acknowledgment is attached to a document  
titled for the purpose of  

containing _______ pages, and dated  

The signer(s) capacity or authority is/are as:  
☐ Individual(s)  
☐ Attorney-in-Fact  
☐ Corporate Officer(s)  
☐ Trustee(s)  
☐ Other:  

representing:  
Name(s) of Person(s) or Entity(ies) Signer is Representing  

Method of Signer Identification  
Proved to me on the basis of satisfactory evidence:  
☐ form(s) of identification  ☐ credible witness(es)  

Notarial event is detailed in notary journal on:  
Page # _______ Entry # _______  

Notary contact:  

☐ Additional Signer(s)  ☐ Signer(s) Thumbprint(s)  

☐ Other:  

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State of California
County of Monterey

On November 29, 2014 before me, Susan G. Tolentino, Notary Public
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature __________________________ (Seal)
ACKNOWLEDGMENT

State of California
County of Monterey

On November 20, 2014 before me, Susan G. Tolentino, Notary Public

(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature

(Signature)

(Susan G. Tolentino)

Notary Public - California
San Joaquin County
My Comm. Expires Dec 13, 2014
ACKNOWLEDGMENT

State of California
County of Monterey

On November 20, 2014 before me, Susan G. Tolentino, Notary Public
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature

SUSAN G. TOLENTINO
Commission # 1916804
Notary Public - California
San Joaquin County
My Comm. Expires Dec 13, 2014
IN WITNESS WHEREOF, the City of Modesto, a municipal corporation, has authorized the execution of this Agreement in duplicate by its City Manager and attestation by its City Clerk under authority of Resolution No. 2014-444 adopted by the Council of the City of Modesto on the 4th day of November, 2014, and BORROWER has caused this Agreement to be duly executed.

CITY OF MODESTO, a municipal corporation

By: /s/ James N. Holgersson, City Manager

ATTEST:

By: /s/ Stephanie Lopez, City Clerk

(SEAL)

APPROVED AS TO LEGAL FORM
Adam U. Lindgren, City Attorney

By: /s/ Adam U. Lindgren, City Attorney

APPROVED AS TO RISK MANAGEMENT:

By: /s/ Beverly Jensen
Name: Beverly Jensen
Risk Manager
ACKNOWLEDGMENT

STATE OF CALIFORNIA

) SS

COUNTY OF Stanislaus

On November 26, 2014 before me, Carol A. Averell, a Notary Public
personally appeared James N. Holgersson who proved to me on
the basis of satisfactory evidence to be the person whose name is subscribed to the
within instrument and acknowledged to me that he executed the same in his authorized
capacity, and that by his signature on the instrument the person, or the entity upon
behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.
Witness my hand and official seal.

WITNESS my hand and official seal.

Signature Carol A. Averell [Seal]

Carol A. Averell
EXHIBIT A

LEGAL DESCRIPTION

The land referred to is situated in the City of Modesto, County of Stanislaus, State of California, and is described as follows:
EXHIBIT A

The land referred to is situated in the County of Stanislaus, City of Modesto, State of California, and is described as follows:

That portion of Lots 7 through 16 in Block 127 of the City of Modesto as per Map thereof filed December 21, 1942 in Volume 15 of Maps, Stanislaus County Records, described as follows:

BEGINNING at the north corner of said Lot 7, said point being on the southwesterly right of way line of 80.00 feet wide 17th Street; thence South 43° 12' 09" East, 250.05 feet on said right-of-way line to the east corner of aforementioned Lot 16 and the northwesterly right-of-way line of 80.00 feet wide G Street; thence South 46° 49' 09" West 139.94 feet on said northwesterly right of way line to the south corner of said Lot 16 and the northeasterly line of the 20.00 feet wide alley through Block 127; thence North 43° 11' 11" West 165.55 feet on said northeasterly alley line; thence leaving said northeasterly alley line, North 46° 49' 12" East 110.84 feet on the northwesterly line of aforementioned Lot 7; thence North 46° 49' 12" East 110.84 feet on the northwesterly line of said Lot 7 to the point of beginning.

APNS: 106-006-013
MODESTO CITY COUNCIL
RESOLUTION NO. 2015-281

RESOLUTION APPROVING THE (1) FIVE-YEAR CONSOLIDATED PLAN (2010-2015) AND FISCAL YEAR 2015-16 ANNUAL ACTION PLAN FOR THE USE OF COMMUNITY DEVELOPMENT BLOCK GRANT, HOME INVESTMENT PARTNERSHIP GRANT, AND EMERGENCY SOLUTIONS GRANT FUNDS AND (2) ANALYSIS OF IMPEDIMENTS TO FAIR HOUSING CHOICE; AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO SIGN THE REQUIRED CERTIFICATIONS AND DOCUMENTS FOR SUBMITTAL TO THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

WHEREAS, the U.S. Department of Housing and Urban Development (HUD) requires entitlement grantees adopt a comprehensive, long-term plan for the use of its HUD funds, and

WHEREAS, the Five-Year Consolidated Plan (CP), also referred to as the Strategic Plan, analyzes the City’s housing and community development needs, with a priority focus on low- and moderate-income individuals, households, and neighborhoods, and describes long-term strategies for meeting those needs, and

WHEREAS, HUD also requires entitlement grantees to adopt an Annual Action Plan (AAP), and

WHEREAS, this document describes the how funds will be used in a particular fiscal year to address the needs and priorities established through the CP, and

WHEREAS, on February 14, 2000, a requirement was imposed that state and local entitlement jurisdictions receiving funding through the CP process should update, where appropriate, its Analysis of Impediments (AI) to reflect the current fair housing situation in the community, and
WHEREAS, the AI reviews a jurisdiction's laws, regulations, and administrative policies, procedures, and practices as well as evaluates how those laws affect the location, availability, and accessibility of housing, and

WHEREAS, notice has been duly given to the community of the proposed CP, AAP and AI, and to provide a 30-day comment period, which began July 3, 2015, and ended on August 5, 2015, and

WHEREAS, the Citizens Housing and Community Development Committee (CH&CDC) considered the proposed CP, AAP and AI at its July 15, 2015 meeting, and recommended forwarding to the Council for approval, and

WHEREAS, a duly noticed public hearing was held by the City Council on August 5, 2015:30 p.m., in the Tenth Street Place Chambers, located at 1010 Tenth Street, and

WHEREAS, any comments received during the 30-day public review period or during the City Council meeting will be incorporated into the final CP, AAP and AI.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby authorizes approval of the (1) five-year consolidated plan (2010-2015) and fiscal year 2015-16 annual action plan for the use of Community Development Block Grant, HOME investment partnership grant, and Emergency Solutions Grant funds and (2) Analysis of Impediments to Fair Housing Choice, and

BE IT FURTHER RESOLVED by the Council of the City of Modesto that it hereby authorizes the City Manager, or his designee, to sign the required certifications and documents for submittal to the U.S. Department of Housing and Urban Development
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 5th day of August, 2015, by Councilmember Madrigal, who moved its adoption, which motion being duly seconded by Councilmember Kenoyer, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Cogdill, Gunderson, Kenoyer, Lopez, Madrigal, Zoslocki, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: [Signature]

STEFANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: [Signature]

ADAM U. LINDGREN, City Attorney
RESOLUTION APPROVING THE RESULTS OF THE ACTUARIAL VALUATION OF THE CITY OF MODESTO OTHER POST-EMPLOYMENT BENEFITS (OPEB) PLAN AS OF JANUARY 1, 2015 CONDUCTED IN ACCORDANCE WITH THE GOVERNMENTAL ACCOUNTING STANDARDS BOARD IN STATEMENT 43 AND 45 (GASB 45)

WHEREAS, the Governmental Accounting Standards Board (GASB) establishes financial accounting and reporting standards for state and local governmental entities, which recognize GASB as the official source of generally accepted accounting principles for state and local government, and

WHEREAS, GASB 45 establishes standards for accounting and financial reporting of “Other Post-Employment Benefits” (OPEBs) and requires every two years each public agency to engage a certified actuary to calculate several actuarial measures estimating the current and future costs and liabilities of an agency’s OPEBs, and

WHEREAS, in City of Modesto, the only OPEB offered is retiree health, dental and vision insurance, and

WHEREAS, the City entered into an agreement with Segal Co to prepare the GASB 45 required compliance report for an OPEB actuarial valuation; and

WHEREAS, on June 15, 2015 Segal provided a final actuarial valuation as of January 1, 2015, which resulted in an unfunded actuarial accrued liability of $31,691,066, a decrease of $46,554,898 from the prior valuation.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto hereby approves the results of the actuarial valuation of OPEB as of January 1, 2015.
The foregoing resolution was introduced at regular meeting of the Council of the City of Modesto held on the 5th day of August, 2015, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Kenoyer, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Cogdill, Gunderson, Kenoyer, Lopez, Madrigal, Zoslocki, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: 

(STEPHANIE LOPEZ, City Clerk)

(SEAL)

APPROVED AS TO FORM:

By: 

ADAM U. LINDGREN, City Attorney