RESOLUTION APPROVING THE APPOINTMENT OF COUNCILMEMBER DAVE COGDILL AND LAURIE A. SMITH, MCMA PRESIDENT, TO THE MODESTO REDEVELOPMENT SUCCESSOR AGENCY OVERSIGHT BOARD AND COUNCILMEMBER DAVE COGDILL TO THE STANISLAUS COUNTY REDEVELOPMENT SUCCESSOR AGENCY OVERSIGHT BOARD

WHEREAS, on January 24, 2012, the City Council, by Resolution No. 2012-41, and in accordance with AB 1X 26 (Health and Safety Code Section 34173) assumed the role of Redevelopment Successor Agency to wind down the affairs of the agency, and

WHEREAS, the Successor Agency’s activities are subject to review and approval by an oversight board, and

WHEREAS, Health and Safety Code Section 34179(a) provides that the oversight board will be comprised of seven appointees from the affected local taxing entities and the community that created the redevelopment agency, and

WHEREAS, Health and Safety Code Section 34179 also provides that in the case of the County redevelopment agency, the largest city by acreage in the jurisdiction of the former redevelopment agency may select one member for the County Oversight Board,

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

SECTION 1. Councilmember Dave Cogdill is hereby appointed to the Modesto Redevelopment Successor Agency Oversight Board as the representative appointed by the Mayor for the city that created the redevelopment agency.

SECTION 2. Laurie A. Smith, MCMA President, is hereby appointed to the Modesto Redevelopment Successor Agency Oversight Board as the representative
appointed by the Mayor from the recognized employee organization representing the
largest number of former redevelopment agency employees employed by the successor
agency at that time.

SECTION 3. Councilmember Dave Cogdill is hereby appointed to the Stanislaus
County Redevelopment Successor Agency Oversight Board as the representative
appointed by the Mayor from the largest city by acreage in the jurisdiction of the former
redevelopment agency.

The foregoing resolution was introduced at a regular meeting of the Council of
the City of Modesto held on the 27th day of March, 2012, by Councilmember Lopez, who
moved its adoption, which motion being duly seconded by Councilmember Burnside, was
upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Burnside, Geer, Gunderson, Lopez, Muratore,
Mayor Marsh

NAYS: Councilmembers: None

ABSENT: Councilmembers: Cogdill

ATTEST: ______________________
STEFANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: ______________________
SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2012-107

A RESOLUTION APPROVING AMENDMENTS TO THE CITY OF MODESTO POLICY AGAINST HARASSMENT AND DISCRIMINATION AND THE COMPLAINT PROCEDURE, AND ADOPTION OF THE CITY’S ANTI-RETALIATION POLICY

WHEREAS, California AB 887, amends the Fair Employment and Housing Act (FEHA) to add gender identity and gender expression to the enumerated characteristics that require equal rights and opportunities under the law and prohibit discrimination, and

WHEREAS, upon the advice of counsel, the City Council has determined that it is in the best interest of the City to adopt the City of Modesto Anti-Retaliation Policy as a stand alone policy prohibiting retaliation in the workplace,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the City of Modesto Policy Against Harassment and Discrimination is hereby amended as set forth in Exhibit “A”, the City of Modesto Complaint Procedure in Violation of Policy Against Harassment and Discrimination is hereby amended as set forth in Exhibit “B”, and the City of Modesto Anti-Retaliation policy is hereby adopted as set forth in Exhibit “C”.

03/22/2012/CA/DPerez/Item 8 2012-107
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 27th day of March, 2012, 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: Burnside, Cogdill, Geer, Gunderson, Lopez, Muratore, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: [Signature]

(STEPHANIE LOPEZ, City Clerk)

(SEAL)

APPROVED AS TO FORM:

By: [Signature]

SUSANA ALCALA WOOD, City Attorney
CITY OF MODESTO
POLICY AGAINST HARASSMENT AND DISCRIMINATION

It is the policy of the City of Modesto that harassment is unacceptable and will not be tolerated. Further, it is the policy of the City of Modesto to treat its citizens, customers and employees with respect and dignity and to strive to provide a working environment free of discrimination and harassment. This policy applies to all employees, officials, agents and volunteers, and all non-employees who have contact with employees during working hours.

Any City employee who has been found, after an investigation, to have harassed another City employee, official, agent, volunteer, consultant or non-employee because of their race, color, ancestry, religion or creed, sex, national origin, marital status, age, physical or mental disability or perceived disability, medical condition, pregnancy-related condition, sexual orientation, gender identity, gender expression, or political affiliation or belief will be subject to disciplinary action up to and including termination.

Definition of Harassment

Harassment based on a person's race, color, ancestry, religion or creed, sex, national origin, marital status, age, mental or physical disability, or perceived disability, medical condition, pregnancy-related condition, sexual orientation, gender identity, gender expression, or political affiliation or belief can constitute a violation of Title VII of the Civil Rights Act, the California Fair Employment Act, and/or the City of Modesto's Equal Opportunity Policy. Harassment based on a person's race, color, ancestry, religion or creed, sex, national origin, marital status, age, mental or physical disability, or perceived disability, medical condition, pregnancy-related condition, sexual orientation, gender identity, gender expression, or political affiliation or belief occurs when:

1. The focus and/or content of the harassing act is race, color, ancestry, religion or creed, sex, national origin, marital status, age, physical or mental disability or perceived disability, medical condition, pregnancy-related condition, sexual orientation, gender identity, gender expression, or political affiliation or belief; and,
2. The harassing act tends to create an intimidating, oppressive, hostile or offensive working environment or tends to otherwise interfere with an individual's emotional well-being or ability to perform work.

Sexual harassment is a form of sex discrimination. It includes an unwelcome or unsolicited sexual advance, a request for sexual favors, and other verbal or physical conduct of a sexual nature, and can constitute a violation of Title VII of the Civil Rights Act, and Fair Employment Housing Act.

Conduct is considered sexual harassment when:

a. Submission is made an express or implied term or condition of employment; or
b. Submission or rejection of the harassing act is used as a basis for employment or business decisions affecting an individual; or
c. Such conduct may have the purpose or effect of interfering with an individual's work performance and/or may create an intimidating, hostile or otherwise offensive work or business environment.

Examples of Harassment

- Written examples include suggestive or obscene letters, notes, jokes, e-mails and invitations.
- Verbal examples include derogatory comments, slurs, jokes, and racial epithets.
- Physical examples include assault, touching, impeding or blocking movements.
- Visual examples include leering, gestures or displays of sexually suggestive objects or pictures, cartoons or posters.

Other examples include, but are not limited to, threats of reprisal, implying or actually withholding support for appointments, promotion or transfer, rejection during probation, punitive actions, changes of assignments, or suggesting that a poor performance report will be prepared if requests for sexual favors are not met.

The harassing act may be focused on an individual who is not physically present at the time, or who was present but did not actually see or hear the acts.

**Retaliation**

It is also a violation of this Policy for an employee to retaliate against the complainant(s), witness(es) or other parties to a complaint of discrimination or harassment. A verified allegation of retaliation will be treated the same as any other violation of this Policy and may result in action taken against the retaliator, even if the original complaint is not determined to have merit.

### Responsibilities

1. Except as set forth below, the City Manager is responsible for enforcement of the City Policy Against Harassment and Discrimination.
2. The City Attorney is responsible for ensuring that all complaints of harassment are investigated thoroughly and promptly, including presentation of recommendations for any necessary action to the City Manager, Department Director, or Supervisor.
3. Every Department Director is responsible for informing all employees of the City Policy Against Harassment and Discrimination and for taking the steps necessary to set a positive example in the prevention of harassment.
4. Every Supervisor is responsible for taking immediate and appropriate corrective action upon the observation of any incident of harassment or upon receipt of an oral or written report of any occurrence of harassment.
5. Every City Employee is responsible for reporting any act of harassment to the immediate Supervisor or Department Director, or the City Attorney.

### Complaint Resolution Procedures

City employees shall report any act of harassment to their immediate Supervisor or Department Director, and to the City Attorney. The City Attorney will investigate and attempt resolution of harassment complaints in accordance with the City’s Complaint Process as outlined in Exhibit B to the City’s Equal Opportunity Plan.
1. **Intent** - Any person who feels that he/she has encountered discrimination and/or harassment is encouraged to come forward and present that information. All complaints are kept confidential to the extent permitted by law. However, it should be noted that when a supervisor or other management employee is made aware of a situation of potential harassment or discrimination, he/she is required to take steps to verify whether or not the discrimination/harassment occurred and to take whatever action is necessary to correct the situation. A prompt and appropriate investigation may require disclosure of the allegations, the person making the allegations and may necessitate the use of other parties to assist in the investigation.

   It is the intent of this procedure to provide an effective means for resolving individual or group problems of a sensitive nature quickly and with a minimum of formal procedural requirements.

2. **Scope** - This procedure should be used for perceived discrimination or harassment based on age (40 and over), ancestry, color, mental or physical disability including HIV and AIDS or perceived disability, marital status, medical condition (cancer and genetic characteristics), pregnancy-related condition, national origin, race, religion or creed, sex, sexual orientation, gender identity, gender expression, or political affiliation or belief.

3. **Limitations** - This procedure for resolving complaints of discrimination and harassment is not intended to supplant or prohibit employees or applicants from filing complaints with the federal Equal Employment Opportunity Commission (EEOC), the state Department of Fair Employment and Housing (DFEH), other appropriate state or federal agencies, or with the courts.

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**PROCEDURE:** The procedure for reporting incidents of discrimination or harassment is meant to be as flexible as possible. It is the goal that complaints be resolved informally, if possible. If informal resolution is not achieved, then a process for formal resolution is provided.

a) Complainants should come forward as soon as possible after an incident of harassment or discrimination. Generally, an issue or concern should be raised no later than 30 days from the date the complainant knew or should have known about the incident.

b) Complainants have the option of contacting their immediate supervisor for assistance or contacting the City Attorney. If an employee goes directly to a supervisor, the supervisor should notify the City Attorney that he/she has received the complaint. This can be done informally and confidentially.

c) Depending on the nature of the complaint, the supervisor may refer the complaint immediately to the City Attorney so that a formal investigation be conducted. Alternatively, the supervisor may conduct an informal investigation or may recommend an alternative means of dispute resolution. If the complainant declines the informal or alternative process, a formal investigation by the City Attorney will be initiated.

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rev. 02/12
d) The City Attorney should begin a confidential investigation of the complaint as soon as possible. A reasonable time line to begin an internal investigation would be two-five (2-5) working days, depending on employees' work schedules.

e) The complainant should be assured that the matter will be kept confidential to the extent possible, but be advised that a full investigation will include advising the alleged discriminator/harasser of the charges and interviewing witnesses. The alleged discriminator/harasser should be cautioned that DFEH, EEOC, the City of Modesto Anti-Retaliation Policy, and this Policy prohibit any retaliation against the complainant, witnesses or other parties to the complaint. A verified allegation of retaliation will be treated as a violation of the City of Modesto Anti-Retaliation Policy, this policy, and the City may take action against the retaliator, even if the original complaint is not determined to have merit.

f) The investigation may include witness interviews, review of documents or materials and discussions with the complainant and the alleged discriminator/harasser. Witnesses shall be directed to maintain confidentiality during the investigation and shall be admonished not to engage in retaliation against either the complainant or alleged discriminator/harasser.

g) The investigation should be completed in a timely manner. If the investigation will require greater than 30 days, the investigator or department shall notify the complainant of the status of the investigation and anticipated completion date.

h) The investigator will prepare a written report including a finding related to each allegation. The complainant and the alleged discriminator/harasser shall be notified of the findings.

i) If the investigator finds that discrimination or harassment has occurred, the department management, in consultation with the City Attorney and the Personnel Director, shall determine what remedial action is appropriate. Remedial action may include but is not limited to coaching the responsible employee, training, a record of discussion, written reprimand, or formal discipline.

j) If the complainant has first taken their complaint to a supervisor and is not satisfied with the supervisor's or department's timeliness or efforts, he/she may then contact the City Attorney and the Personnel Director. He/she should notify the department that this is being done. If the supervisor or department cannot effect conciliation and negotiation within a reasonable amount of time, the complainant should contact the City Attorney. The City Attorney may assist the department in completing the investigation or in identifying an alternate investigator to complete the confidential investigation and come to a resolution.

k) The complainant should be notified that he/she has the right to file a complaint with the federal Equal Employment Opportunity Commission (EEOC) or the state Department of Fair Employment and Housing (DFEH) or other appropriate state or federal agency or the court.
1) Complaints against the City Attorney shall be made to and investigated by the City Manager in a manner consistent with this procedure who shall report his/her findings to the City Council who shall determine the appropriate remedial action.
CITY OF MODESTO
NON-RETAIATION POLICY

PURPOSE

The City of Modesto is committed to providing a workplace conducive to open discussion of the City’s business practices. The purpose of the policy is to reassure City employees that they can raise workplace concerns regarding alleged violations of City policy or local, State or Federal Law without retaliation.

Our commitment to integrity includes a responsibility to foster an environment that allows individuals to report violations without the fear of retaliation or retribution. No one should be discouraged from using any available channel within the organization.

SCOPE OF APPLICATION

This Policy prohibits City officials, officers, employees, or contractors from retaliating against applicants, officers, officials, employees, or contractors because of any of the protected activity as defined below.

POLICY

City employees are expected and encouraged to promptly raise questions and concerns regarding possible violations of City policy or local, State or Federal law with his/her immediate supervisor, Human Resources or the City Attorney’s office. Promptly raising questions and concerns allows the opportunity for such concerns to be addressed quickly and can help prevent problems from occurring or escalating.

Complaints and concerns are accepted in person, by telephone, email and regular mail, and can be anonymous. A complaint form and copy of this Policy can be obtained at the City Attorney’s office at 1010 Tenth Street, Modesto, CA 95353, or on the City’s website at http://www.modestogov.com/hr/policies/. Employees are also free to file a complaint with the appropriate outside agency.

It is the policy of the City to prohibit the taking of any adverse employment action against those who in good faith report or participate in investigations into complaints of alleged violations of City policy or local, State or Federal law in retaliation for that reporting or participation. (Refer to definitions of “protected activity” and “adverse employment action” below.)

No employee of the City shall directly or indirectly use or attempt to use the authority or influence of such employee for the purpose of intimidatng, threatening, coercing, directing or influencing any person with the intent of interfering with that person’s duty to disclose alleged violations of City policy or local, State or Federal law.

Disciplinary action, up to and including termination, will be taken against an employee who is found to have violated this Non-Retaliation Policy, and any contractor who violates this Policy will be subject to appropriate sanctions. However, employees who file reports or provide evidence which they know to be
false or without a reasonable belief in the truth and accuracy of such information will not be protected by this Policy and may be subject to disciplinary action, including termination.

DEFINITIONS

I. **PROTECTED ACTIVITY:** Includes but is not limited to the following:

1. Making or filing an internal complaint with the City regarding alleged violations of City policy, local, State or Federal law.

2. Providing informal notice to the City regarding alleged violations of City policy, local, State or Federal law.

3. Participating in investigations and/or in court/administrative hearings regarding alleged violations of City policy, local, State or Federal law.

4. Filing a complaint with a Federal or State enforcement or administrative agency.

5. Disclosing information to a government or law enforcement agency where an employee has reasonable cause to believe the information discloses a violation of State or Federal statute, or a violation or noncompliance with a State or Federal rule or regulation.

6. Participating in or cooperating with a Federal or State enforcement agency that is conducting an investigation of the City regarding alleged unlawful activity.

7. Reporting conflicts of interest, dishonesty or unethical conduct.

8. Calling an internal or outside governmental agency’s “Whistleblower hotline.”

9. Associating with another employee who is engaged in any of the protected activities enumerated here.

II. **ADVERSE EMPLOYMENT ACTION:** May include, but is not limited to, any of the following:

1. Real or implied threats of intimidation to attempt or prevent an individual from reporting alleged wrongdoing or because of protected activity.

2. Denying promotion to an individual because of protected activity.

3. Taking any form of disciplinary action because of protected activity.

4. Extending a probationary period because of protected activity.

5. Altering work schedules, work assignments or work location because of protected activity.
6. Issuing a poor evaluation because of protected activity.

7. Shunning or avoiding an individual who has engaged in any of the forms of protected activity described above.

This policy does not prohibit adverse action that is taken for legitimate or non-discriminatory reasons, such as: discipline for just cause, or refusing to hire because of inadequate qualifications. As a result, adverse action is only prohibited if it is causally connected to, or taken because of, the alleged protected activity.

**COMPLAINT PROCEDURES**

An applicant, employee, officer, official, or contractor who believes he or she has been retaliated against in violation of this Policy should immediately report the conduct to their supervisor, Human Resources, or the City Attorney's office. Department Directors, Supervisors and Managers who receive complaints regarding alleged retaliation must immediately notify the City Attorney's office at (209) 577-5284.
MODESTO CITY COUNCIL
RESOLUTION NO. 2012-108

A RESOLUTION APPROVING THE EXTENSION OF THE PREQUALIFIED CONSULTANT LIST FOR RIGHT OF WAY ACQUISITION SERVICES FOR VARIOUS CAPITAL IMPROVEMENT PROGRAM PROJECTS FOR A PERIOD OF ONE (1) YEAR

WHEREAS, the City of Modesto has one Property Agent position allocation in the Utility Planning and Projects Department, and

WHEREAS, there are currently a large number of Capital Improvement Projects (CIP) requiring right-of-way acquisition, and

WHEREAS, having a list of pre-qualified consultants for right-of-way acquisition will save time and expense on each project, and

WHEREAS, on December 22, 2009, the Community and Economic Development Department solicited Request for Qualifications for the delivery of Right-of-Way Acquisition services for the City of Modesto to five (5) prospective qualifiers and posted the request on the City’s web site, and

WHEREAS, eleven (11) Statements of Qualifications were received on or before the deadline of January 22, 2010, and

WHEREAS, an evaluation committee composed of staff from Community & Economic Development Department, Parks, Recreation and Neighborhood Department, and Utility Planning and Projects Department evaluated the Statements of Qualifications, and

WHEREAS, the following four (4) companies were selected by the evaluation committee to be on the City’s eligibility list:
and,

WHEREAS, on March 23, 2010, the City Council, by Resolution No. 2010-095, approved a pre-qualified consultant list for ROW acquisition. The prequalified consultant list was approved for two (2) years, with three (3) one (1) year extensions,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the extension of the prequalified consultant list for Right-of-Way acquisition services for various Capital Improvement Program projects for a period of one (1) year.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 27th day of March, 2012, 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: Burnside, Cogdill, Geer, Gunderson, Lopez, Muratore, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By SUSANA ALCALA WOOD, City Attorney
RESOLUTION APPROVING AN AGREEMENT RELATED TO RELOCATION OF ELECTRIC UTILITY POLES IN THE AMOUNT OF $24,575.18 BETWEEN THE CITY OF MODESTO AND MODESTO IRRIGATION DISTRICT FOR THE RELOCATION OF MODESTO IRRIGATION DISTRICT FACILITIES AT THE SOUTHWEST CORNER OF BANGS AVENUE AND PRESCOTT ROAD; AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE AGREEMENT

WHEREAS, the Congestion Mitigation Air Quality (CMAQ) Management CML 5059 (176) – Right Turn Lane Eastbound Bangs Avenue to Southbound Prescott Road Project involves the expansion of Bangs Avenue and Prescott Road to include an eastbound right turn lane at the southwest corner of Bangs Avenue and Prescott Road, and

WHEREAS, the City of Modesto desires Modesto Irrigation District to relocate its facilities prior to the construction of the street improvements, and

WHEREAS, Caltrans determined this project to be a categorical exclusion pursuant to the National Environmental Policy Act (NEPA) and all other applicable federal environmental law, regulations and executive orders, and

WHEREAS, on December 21, 2011, Caltrans approved Categorical Exemption / Categorical Exclusion Document, and

WHEREAS, the project is consistent, and is in conformance with the General Plan Master E.I.R. and no additional California Environmental Quality Act clearance is needed, and

WHEREAS, the City of Modesto requires an Agreement Related to the Relocation of Electric Utility Poles for the relocation of Modesto Irrigation District facilities, and
WHEREAS, the Right Turn Lane Eastbound Bangs Avenue to Southbound Prescott Road Project is eligible for CMAQ funds,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the Agreement Related to the Relocation of Electric Utility Poles between the City of Modesto and Modesto Irrigation District for the relocation of Modesto Irrigation District facilities at the southwest corner of Bangs Avenue and Prescott Road.

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 27th day of March, 2012, 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: Burnside, Cogdill, Geer, Gunderson, Lopez, Muratore, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney
RESOLUTION APPROVING AN AGREEMENT RELATED TO RELOCATION OF ELECTRIC UTILITY POLES WITH MODESTO IRRIGATION DISTRICT IN THE AMOUNT OF $112,000, FOR THE RELOCATION OF MODESTO IRRIGATION DISTRICT FACILITIES LOCATED WITHIN THE LIMITS OF THE STATE ROUTE 99 / PELANDALE AVENUE INTERCHANGE RECONSTRUCTION PROJECT; AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE AGREEMENT

WHEREAS, the State Route 99/Pelandale Interchange improvement project is a Caltrans project to address the traffic congestion problem at Pelandale Avenue and Highway 99 Interchange, and

WHEREAS, an initial study with Mitigated Negative Declaration document (SCH# 2009072012) was approved by California Department of Transportation on September 28, 2009, and

WHEREAS, the relocation of Modesto Irrigation District facilities is required for the construction of the State Route 99/Pelandale Avenue Interchange Reconstruction Project, and

WHEREAS, the City of Modesto requires an Agreement Related to the Relocation of Electric facilities for the relocation of Modesto Irrigation District facilities,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves an Agreement Related to the Relocation of Electric facilities between the City of Modesto and Modesto Irrigation District.

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 27th day of March, 2012, 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: Burnside, Cogdill, Geer, Gunderson, Lopez, Muratore, Mayor Marsh

NOES:Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: 

(SEAL) 

APPROVED AS TO FORM:

By: 

SUSANA ALCALA WOOD, City Attorney
RESOLUTION APPROVING A SECOND AMENDMENT TO AGREEMENT WITH AECOM TECHNICAL SERVICES, INC. (FORMERLY BOYLE ENGINEERING CORPORATION) FOR ADDITIONAL SCOPE OF WORK NOT INCLUDED IN THE ORIGINAL AGREEMENT FOR CONSULTANT SERVICES FOR THE DESIGN OF SYLVAN AVENUE BETWEEN MILLBROOK AVENUE AND CLAUS ROAD, AND THE DESIGN OF LITT ROAD BETWEEN SYLVAN AVENUE TO THE NORTH END OF THE GROGAN PARK SITE IN AN AMOUNT NOT TO EXCEED $27,861 FOR THE IDENTIFIED SCOPE OF SERVICES, PLUS $20,499 FOR ADDITIONAL SERVICES (IF NEEDED), FOR A MAXIMUM TOTAL AMOUNT OF $48,360, AND AUTHORIZING THE DISTRICT ADMINISTRATOR, OR HIS DESIGNEE, TO EXECUTE THE SECOND AMENDMENT TO AGREEMENT

WHEREAS, this project includes roadway improvements on Sylvan Avenue from west of Litt Road to Claus Road and on Litt Road from Sylvan Avenue to the north end of the future Grogan Park site, and

WHEREAS, this project is located on the northern edge of Village One, and

WHEREAS, per the Village One Facilities Master Plan, this section of Sylvan Avenue is to be widened from 2 lanes to 4 lanes and will include curb, gutter, landscaped median, street lighting, storm drainage, and a roundabout at the Litt Road intersection, and

WHEREAS, the sidewalk will be completed along the south side of the road; however a sidewalk will not be constructed along the north side of Sylvan Avenue between Litt Road and Claus Road at this time but would be a required improvement when the properties on the north side of Sylvan Avenue develop, and

WHEREAS, Litt Road north of Sylvan Avenue will be realigned to match up with the existing Litt Road south of Sylvan Avenue, and
WHEREAS, Litt Road will include curb, gutter, sidewalks, parkway strips and a roundabout at the entrance of the Grogan Park site, and

WHEREAS, the roadway improvements will accommodate planned and approved growth in the Village One area, and

WHEREAS, the project will also include construction of approximately 2,150 linear feet of new 12 inch water line in Sylvan Avenue, and approximately 2,040 linear feet of new 12 inch water line in Litt Road, and

WHEREAS, construction of these water lines will provide the necessary infrastructure for full build-out of the area in accordance with the recommendations of the Water System Engineer’s Report, and

WHEREAS, in addition, the project will construct approximately 2,090 linear feet of 21 inch sanitary sewer pipeline in Litt Road, and

WHEREAS, this pipeline is also intended to serve future build-out needs of the area, and is identified as a portion of a project identified in the City’s current Wastewater Master Plan, and

WHEREAS, it is important to construct these pipelines concurrently with the street widening project as it will avoid costly repairs to the pavement improvements that would occur if these pipelines are instead deferred to future construction, and

WHEREAS, on February 27, 2007, by Resolution No. 2007-141, the City Council approved an agreement with Boyle Engineering Corporation for Consultant Services for the Design of Sylvan/Litt Improvement Project, and

WHEREAS, in April 2008, Boyle Engineering Corporation was purchased by AECOM Technical Services, Inc. (AECOM), and
WHEREAS, the Original Agreement totaled $384,376 for the identified scope of services, plus $67,831 additional services (if needed), and

WHEREAS, additional services in the amount of $61,137 were approved on April 15, 2011, and

WHEREAS, additional services included modifications related to MID comments, providing an alternate pavement design and revising legal descriptions and easements, and

WHEREAS, on August 9, 2011, by Resolution No. 2011-325, the City Council approved an amendment to agreement with AECOM in the amount of $30,685 for the identified scope of services, plus $19,048 additional services (if needed), to provide funding for needed plan modifications to accommodate the Grogan Park project, and

WHEREAS, additional services in the amount of $8,417 were approved on January 16, 2012 for plan revisions related to Grogan Park and additional documentation needed for right-of-way (ROW) acquisitions, and

WHEREAS, as discussed above, the current agreement price including an amendment to agreement and adjustments for approved additional services options used totals $484,615, and

WHEREAS, the proposed second amendment to the AECOM agreement including 4% for additional services (if needed), for $48,360 will include services for preparing additional plats and legal descriptions for ROW acquisition, splitting the east end of the project out of the main project in the event that the ROW acquisition is not completed when the project goes out to bid, additional plan revisions, and
WHEREAS, with this second amendment, the total agreement costs will not exceed $532,975, and

WHEREAS, the following list summarizes the changes and additional work by AECOM that is necessary to complete the design beyond what has been approved and budgeted for the project: 1) Prepare right-of-way plats and legal descriptions APN 085-049-014; 2) Coordination/meeting with the District and subconsultants; 3) Revise Plans, Specifications, and Estimate; 4) Additional plan sheets to show transitions; 5) Coordination with the District/MID; and 6) Address design review comments, and update plans/specifications/estimate, and

WHEREAS, City staff does not have the staffing level or subject matter expertise to provide final design services for Sylvan/Lilt Improvement Project, and current workload levels do not provide for timely in-house solutions/responses, and

WHEREAS, City staff recommends approving this second amendment to agreement with AECOM to cover the additional scope of work that is beyond the original final design agreement for final design services for Sylvan/Lilt Improvement Project,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves a Second Amendment to Agreement with AECOM Technical Services, Inc. (formerly Boyle Engineering Corporation) for additional scope of work not included in the Original Agreement for the Design of Sylvan Avenue between Millbrook Avenue and Claus Road, and the Design of Lilt Road from Sylvan Avenue to the north end of the Grogan Park site in an amount not to exceed $27,861 for the identified scope of services, plus $20,499 for additional services (if needed), for a maximum total amount of $48,360.
BE IT FURTHER RESOLVED that the District Administrator, or his designee, is hereby authorized to execute the Second Amendment to Agreement.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 27th day of March, 2012, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Burnside, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Burnside, Geer, Gunderson, Lopez, Muratore, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: Cogdill

ATTEST: STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney
A RESOLUTION DECLARING THE CITY COUNCIL'S INTENTION TO ESTABLISH CITY OF MODESTO COMMUNITY FACILITIES NO. 2012-1 (KIERNAN BUSINESS PARK SOUTH) AND TO AUTHORIZE THE LEVY OF A SPECIAL TAX WITHIN SAID COMMUNITY FACILITIES DISTRICT

WHEREAS, the owners (collectively, the “Owners”) of not less than 10 percent of the area of land depicted on the map of the proposed community facilities district referred to below on file with the City Clerk (the “Property”), has filed a written petition with the City of Modesto (the “City”) to establish the City of Modesto Community Facilities No. 2012-1 (Kiernan Business Park South) (the “Community Facilities District”) pursuant to the Mello-Roos Community Facilities Act of 1982, as amended, commencing with Section 53311 of the Government Code of the State of California (the “Act”) in order to finance (i) the cost of purchasing, constructing, expanding, improving or rehabilitating the facilities listed in Appendix A hereto, and all appurtenances and appurtenant work associated therewith (collectively the “Facilities”) and (ii) the incidental expenses to be incurred in connection with financing the Facilities, including (a) the cost of engineering, planning and designing the Facilities; (b) all costs incurred in connection with financing the Facilities, and (c) all costs associated with the creation of the Community Facilities District, the determination of the amount of special taxes to be levied and costs otherwise incurred in order to carry out the authorized purposes of the Community Facilities District and administering the Community Facilities District (collectively, the “Incidental Expenses”) and to pay the cost of the services listed in Appendix A hereto (the “Services”), and
WHEREAS, the Owners have heretofore submitted to the City an application to form the Community Facilities District pursuant to the City’s Policies & Procedures for the Formation, Annexation, and Administration of Communities Facilities Districts Created Pursuant to the Provisions of the Mello Roos Community Facilities Act of 1982 (the “City’s CFD Policies and Procedures”), and

WHEREAS, the Owners have heretofore submitted deposits required by the City pursuant to Advance Funding Agreements as security for payment of City fees and costs incurred in conducting proceedings to create the Community Facilities District, and

WHEREAS, the petitions submitted by the Owners comply with the requirements of Section 53319 of the Act and the City’s CFD Policies and Procedures, and

WHEREAS, subject to the satisfaction of all applicable requirements of law, it is the intention of this City Council to finance the Facilities and the Incidental Expenses and to pay for the Services through the formation of the Community Facilities District and the levy of a special tax, provided that the levy of the special tax are approved at an election to be held within the boundaries of the Community Facilities District,

NOW, THEREFORE, BE IT RESOLVED that the Council of the City of Modesto hereby finds and determines as follows:

SECTION 1. The above recitals are true and correct.

SECTION 2. The Community Facilities District is proposed to be established under the terms of the Act. It is further proposed that the boundaries of the Community Facilities District, shall be as depicted on the map of the proposed Community Facilities District which is on file with the City Clerk. The City Clerk is hereby directed to sign the original map of the Community Facilities District and record it with all proper
endorsements thereon with the County Recorder of the County of Stanislaus within fifteen days after the adoption of this resolution, all as required by Section 3111 of the Streets and Highways Code of the State of California.

SECTION 3. The name of the proposed Community Facilities District shall be “City of Modesto Community Facilities District No. 2012-1 (Kiernan Business Park South).”

SECTION 4. The Facilities and Services proposed to be provided within the Community Facilities District are each facilities or services, as the case may be, which the City is authorized by law to construct, acquire, own and operate, or to provide. This City Council hereby finds and determines that the descriptions of the Facilities and the Services contained herein is sufficiently informative to allow taxpayers within the proposed Community Facilities District to understand what the funds of the Community Facilities District may be used to pay for. The Incidental Expenses expected to be incurred include the cost of planning and designing the Facilities, the costs of forming the Community Facilities District and levying and collecting a special tax within the Community Facilities District.

SECTION 5. Except where funds are otherwise available, it is the intention of this City Council to levy annually in accordance with the procedures contained in the Act special taxes, secured by recordation of a continuing lien against all non-exempt real property in the Community Facilities District, sufficient to pay for the Facilities, the Incidental Expenses and the Services. The Facilities shall be financed on a direct payment basis. The rate, method of apportionment and manner of collection of the special tax are described in detail in Appendix B attached hereto and incorporated herein.
as though set forth at length (the “Rate and Method”). Appendix B allows each landowner within the Community Facilities District to estimate the maximum amount that may be levied against each parcel.

If special taxes of the Community Facilities District are levied against any parcel used for private residential purposes, (i) such tax shall not be levied or collected to pay for Facilities or Incidental Expenses after the 2061-62 tax year and (ii) under no circumstances will such special tax be increased as a consequence of delinquency or default by the owner of any other parcel or parcels within the Community Facilities District by more than ten percent (10%).

This City Council hereby determines the Rate and Method to be reasonable. The special tax is apportioned to each parcel on the basis of its land use and area pursuant to Section 53325.3 of the Act; and such special tax is not on or based upon the value or ownership of real property. In the event that a portion of the property within the Community Facilities District shall become for any reason exempt, wholly or partially, from the levy of the special tax, this City Council shall, on behalf of the Community Facilities District, cause the levy to be increased, subject to the limitation of the maximum special tax for a parcel as set forth in the Rate and Method, to the extent necessary upon the remaining property within the Community Facilities District which is not delinquent or exempt in order to yield the special tax revenues required for the purposes described in this Section.

SECTION 6. A public hearing (the “Hearing”) on the establishment of the Community Facilities District and the proposed Rate and Method shall be held at 5:30 p.m., or as soon thereafter as practicable, on May 1, 2012, in the Modesto City Council.
Chamber, 1010 Tenth Street, Modesto, California 95353. Should this City Council determine to form the Community Facilities District, a special election will be held to authorize the levy of the special tax in accordance with the procedures contained in Government Code Section 53326. If held, the proposed voting procedure at the election is expected to be a landowner vote with each landowner of record as of the close of the Hearing having one vote for each acre of land or portion thereof owned within the Community Facilities District. Ballots for the special election may be distributed by mail or by personal service.

A special tax shall be levied in the future annexation areas only with the unanimous approval of the owner or owners of each parcel or parcels at the time that parcel or those parcels are annexed, without any requirement for further public hearings or additional proceedings.

SECTION 7. At the time and place set forth above for the Hearing, any interested person, including all persons owning lands or registered to vote within the proposed Community Facilities District, may appear and be heard.

SECTION 8. Each officer of the City who is or will be responsible for providing the Facilities or Services within the proposed Community Facilities District, if it is established, is hereby directed to study the proposed Community Facilities District and, at or before the time of the Hearing, file a report with this City Council containing a brief description of the Facilities or Services, as the case may be, which will in his or her opinion be required to meet adequately the needs of the proposed Community Facilities District and an estimate of the cost of providing those Facilities or Services and an estimate of the fair and reasonable cost of any Incidental Expenses to be incurred.
SECTION 9. The City may accept advances of funds or work-in-kind from any source, including, but not limited to, private persons or private entities, for any authorized purpose, including, but not limited to, paying any cost incurred by the City in creating the Community Facilities District. The City may enter into an agreement with the person or entity advancing the funds or work-in-kind, to repay all or a portion of the funds advanced, or to reimburse the person or entity for the value, or cost, whichever is less, of the work-in-kind, as determined by this City Council, with or without interest.

SECTION 10. The Clerk is hereby directed to publish a notice (the “Notice”) of the Hearing pursuant to Section 6061 of the Government Code in a newspaper of general circulation published in the area of the Community Facilities District. Such publication shall be completed at least seven days prior to the date of the Hearing. The Clerk is further directed to mail a copy of the Notice to each of the landowners and registered voters, if any, within the boundaries of the Community Facilities District at least 15 days prior to the Hearing. The Notice shall contain the text or a summary of this Resolution, the time and place of the Hearing, a statement that the testimony of all interested persons or taxpayers will be heard, a description of the protest rights of the registered voters and landowners in the proposed Community Facilities District and a description of the proposed voting procedure for the election required by the Act.
The foregoing resolution was introduced at a special meeting of the Council of the City of Modesto held on the 27th day of March, 2012, 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: Burnside, Cogdill, Geer, Gunderson, Lopez, Muratore, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: [Signature]

STEFHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: [Signature]

SUSANA ALCALA WOOD, City Attorney
APPENDIX A

LIST OF FACILITIES

Transportation, Landscaping and Lighting System:

Transportation, lighting and landscaping system improvements include, but are not limited to, land acquisition, arterials and collector streets, roundabouts, traffic control devices, gateways, and other traffic related accessories. Landscaping and lighting improvements may include, but are not limited to, land acquisition and the construction of pavement, curb, gutter, sidewalk, irrigation improvements, separated bike paths and landscaping and lighting. Landscaping is included within the street right-of-way, landscape lots and gateways. Transportation, landscaping and lighting system improvements may be on-site or off-site.

Storm Drain System:

Storm drain system improvements include, but are not limited to, land acquisition, storm drainage facilities including pump station, dual-use detention basin and landscaping, fencing, lift stations, discharge mains and outfall structures, force mains, gravity collection storm water lines and other storm drain accessories. Storm drain system improvements may be on-site or off-site. The Storm Drain System Facilities and the Transportation, Landscaping and Lighting System Facilities are collectively referred to as the “Facilities.”

Incidental Expenses:

Facilities include incidental expenses to be incurred, including (a) the cost of engineering, planning and designing the Facilities; (b) all costs incurred in connection with financing the Facilities, and (c) all costs associated with the creation of the Community Facilities District, the issuance of bonds by the Community Facilities District, the establishment and replenishment of bond reserve and special reserve funds, the determination of the amount of special taxes to be levied and costs otherwise incurred in order to carry out the authorized purposes of the Community Facilities District, and administering the Community Facilities District (collectively, the “Incidental Expenses”).

LIST OF SERVICES

Authorized services include, but are not limited to, maintenance, repair and replacement of parkways, landscaped medians, the bike path, well site, storm drainage pump and basin, and related facilities, including but not limited to, concrete curbs and walks, trees, shrubs, vines, ground cover, turf, lights and irrigation systems. The services to be provided include, but are not limited to, litter and debris removal, graffiti abatement, painting repairs to landscape structures, pruning, staking, fertilizing, plant replacement and restoration, fire and weed control, erosion control, mowing of lawns, trimming of vegetation, and maintenance, repair and replacement of lighting systems. Services also include the following: (i) related reserves for capital replacement of vehicles, equipment, plants and materials, asphalt/concrete overlays, structures, and other facilities, or (ii) a sinking fund for services that could not otherwise be funded in a given fiscal year, or (iii) administrative fees of the City related to the Community Facilities District, including costs associated with preparing the annual special tax levy, or (iv) costs associated with legal services, advertising, legal notices, and mailings related to formation or administration of the Community Facilities District (collectively, the “Services”).
APPENDIX B

CITY OF MODESTO
COMMUNITY FACILITIES DISTRICT NO. 2012-1
(KIERNAN BUSINESS PARK SOUTH)

RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAX

Special Taxes applicable to each Assessor’s Parcel in Community Facilities District No. 2012-1 (Kiernan Business Park South) shall be levied and collected according to the tax liability determined by the City Council of the City of Modesto, through the application of the appropriate amount or rate for Taxable Property, as described below. All of the property in CFD No. 2012-1, unless exempted by law or by the provisions of Section G below, shall be taxed for the purposes, to the extent, and in the manner herein provided, including property subsequently annexed to CFD No. 2012-1 unless a separate Rate and Method of Apportionment of Special Tax is adopted for the annexation area.

A. DEFINITIONS

The terms hereinafter set forth have the following meanings:

“Acre” or “Acreage” means the land area of an Assessor’s Parcel as shown on an Assessor’s Parcel Map, or if the land area is not shown on an Assessor’s Parcel Map, the land area shown on the applicable Final Map or other Subdivision Map.

“Administration Component” means the portion of the Maximum One-Time Facilities Special Tax that is for administrative costs incurred by the City throughout the term of the One-Time Facilities Special Tax including, but not limited to, costs associated with the preparation and oversight of reimbursement agreements, accounting, and tracking of credits. For Original Parcels, the Administration Component is shown in Attachment I to this RMA. Beginning in January 2013 and each January thereafter, the Administration Component shall be adjusted annually by the greater of: (i) the percentage increase, if any, in the construction cost index for the San Francisco region for the prior twelve (12) month period as published in the Engineering News Record or other comparable source if the Engineering News Record is discontinued or otherwise not available; or (ii) four percent (4.0%). Each annual adjustment of the Administration Component shall become effective on January 1 of the calendar year for which the annual adjustment was made.

“Administrative Expenses” means any or all of the following: expenses incurred by the City in carrying out its duties with respect to CFD No. 2012-1, including, but not limited to, levying and collecting the Special Taxes; the fees and expenses of legal counsel; charges levied by the County Auditor’s Office, Tax Collector’s Office, and/or Treasurer’s Office; costs related to annexing property into the CFD; costs related to property owner inquiries regarding the Special Taxes; and all other costs and expenses of the City in any way related to the establishment or administration of the CFD.
“Administrator” means the person or firm designated by the City to administer the Special Taxes according to this Rate and Method of Apportionment of Special Tax.

“Annual Maintenance Special Tax” means a special tax levied in any Fiscal Year to pay the Annual Maintenance Special Tax Requirement, as defined below.

“Annual Maintenance Special Tax Requirement” means that amount necessary in any Fiscal Year to: (i) pay for Authorized Services, (ii) pay for Administrative Expenses, and (iii) cure any delinquencies in the payment of Annual Maintenance Special Taxes levied in prior Fiscal Years or (based on delinquencies in the payment of Annual Maintenance Special Taxes which have already taken place) are expected to occur in the current Fiscal Year.

“Assessor’s Parcel” or “Parcel” means a lot or parcel shown on an Assessor’s Parcel Map with an assigned Assessor’s Parcel number.

“Assessor’s Parcel Map” means an official map of the County Assessor designating parcels by Assessor’s Parcel number.

“Authorized Facilities” or “Authorized Facility” means those facilities that are authorized to be funded by CFD No. 2012-1, including land purchases for right-of-way and a storm drainage basin, and any other land that is acquired to construct an Authorized Facility.

“Authorized Services” means those services that are authorized to be funded by CFD No. 2012-1.

“Base Maximum One-Time Facilities Special Tax” means the greatest amount of One-Time Facilities Special Tax that can be levied on an Assessor’s Parcel in any Fiscal Year not including the Administration Component. For Original Parcels, the Base Maximum One-Time Facilities Special Tax is shown in Attachment 1 to this RMA. Beginning in January 2013 and each January thereafter, the Base Maximum One-Time Facilities Special Tax shall be adjusted annually by the greater of: (i) the percentage increase, if any, in the construction cost index for the San Francisco region for the prior twelve (12) month period as published in the Engineering News Record or other comparable source if the Engineering News Record is discontinued or otherwise not available; or (ii) four percent (4.0%). Each annual adjustment of the Base Maximum One-Time Facilities Special Tax shall become effective on January 1 of the calendar year for which the annual adjustment was made.

“Base Year” means the year in which Authorized Facilities dedicated by a Builder/Developer were accepted by the City. The Administrator shall keep track of the Base Year for each Authorized Facility the City accepts.

“Building Permit” means a permit issued by the City’s Building Department for construction, reconstruction, or expansion of a vertical building structure, or for construction of the foundation of such structure.

“Builder/Developer” means a person or entity that is a property owner, builder, or developer of any Parcel or Parcels within CFD No. 2012-1.
"CFD" or "CFD No. 2012-1" means the City of Modesto Community Facilities District No. 2012-1 (Kiernan Business Park South).

"CFD Formation" means the date on which the Resolution of Formation to form CFD No. 2012-1 was adopted by the City Council.

"City" means the City of Modesto.

"City Council" means the City Council of the City of Modesto, acting as the legislative body of CFD No. 2012-1.

"County" means the County of Stanislaus.

"Credit/Reimbursement Amount" means the Authorized Facilities costs that have been paid in advance by a Builder/Developer (including land dedications for which the Builder/Developer will receive credits and/or reimbursements) and have not yet been reimbursed to that Builder/Developer through one of the following: (i) the application of Special Tax Credits (as defined below) or (ii) payments to the Builder/Developer from One-Time Facilities Special Taxes collected from other Builders/Developers in the CFD. The Credit/Reimbursement Amount outstanding at any point in time will be determined pursuant to Section D below.

"Developed Property" means, in any Fiscal Year, all Parcels for which one or more of the following events have occurred: (i) a Building Permit was issued prior to June 30 of the preceding Fiscal Year; or (ii) the City has accepted improvements, infrastructure, or public facilities that were constructed as a condition of development of the Parcel (not including the acceptance of land by the City for public right-of-ways that will be a site for future improvements, infrastructure, or public facilities) and were constructed, or paid to be constructed, by the owner of such Parcel. Notwithstanding the foregoing, the Parcel identified at CFD Formation as APN 078-018-036 shall not be classified as Developed Property until such time as a connection to the City's storm drainage system occurs, and it shall be at the discretion of the City to determine whether or not such a connection has occurred. In addition, a Parcel that had an existing building, or had a Building Permit issued, prior to CFD Formation shall not be classified as Developed Property until such time as a new Building Permit is issued for the Parcel that creates a new vertical structure or structures if such new structures do not simply support or represent an addition to the building that occupied the Parcel or had a Building Permit issued prior to CFD Formation.

"Final Map" means a final map, parcel map, or portion thereof, approved by the City pursuant to the Subdivision Map Act (California Government Code Section 66410 et seq.) that creates lots which do not need to be further subdivided prior to issuance of a Building Permit for a residential or non-residential structure.

"Fiscal Year" means the period starting July 1 and ending on the following June 30.

"Maximum Annual Maintenance Special Tax" means the greatest amount of Annual Maintenance Special Tax that can be levied on an Assessor's Parcel in any Fiscal Year determined in accordance with Section C below.
"Maximum CFD Maintenance Cost" means $80,053 in Fiscal Year 2012-13 dollars, and includes the estimated annual cost of Administrative Expenses. Beginning in January 2013 and each January thereafter, the Maximum CFD Maintenance Cost Tax shall be adjusted annually by the greater of: (i) the percentage increase, if any, in the construction cost index for the San Francisco region for the prior twelve (12) month period as published in the Engineering News Record or other comparable source if the Engineering News Record is discontinued or otherwise not available; or (ii) four percent (4.0%). Each annual adjustment of the Maximum CFD Maintenance Cost shall become effective on July 1 of the calendar year for which the annual adjustment was made.

"Maximum One-Time Facilities Special Tax" means the greatest amount of One-Time Facilities Special Tax that can be levied on an Assessor's Parcel in any Fiscal Year, which is equal to the sum of the Base Maximum One-Time Facilities Special Tax and the Administration Component for the Parcel. For Original Parcels, the Maximum One-Time Facilities Special Tax is shown in Attachment 1 to this RMA. Notwithstanding the foregoing, the City may allow adjustments to the Maximum One-Time Facilities Special Tax assigned in Attachment 1 if all of the following occur: (i) there are changes in the Net Taxable Acreage estimates for Original Parcels, (ii) based on those changes, the City concludes that a redistribution of the Maximum One-Time Facilities Special Tax is appropriate, and (iii) written confirmation is received from the owner of each Parcel that will be affected by the redistribution. Once all these items have occurred, the Administrator shall prepare a new Attachment 1 which shall henceforth be the operative RMA for purposes of calculating the Maximum One-Time Facilities Special Tax. For all other Parcels, the Maximum One-Time Facilities Special Tax is determined in accordance with Section C below.

"Maximum Special Taxes" means, collectively, the Maximum One-Time Facilities Special Tax and Maximum Annual Maintenance Special Tax.

"Net Taxable Acre" or "Net Taxable Acreage" means the total gross Acreage within a Final Map or Parcel less road right-of-ways and property that is identified in the Final Map for use as a park site, school site, or City-owned or CFD-owned storm drainage basin. If a Subdivision Map is recorded which is not a Final Map for some or all Parcels created by a subdivision, the Administrator shall calculate the Net Taxable Acreage of such Parcels by identifying the Acreage of the Parcel and (i) adding a portion of the acreage of any right-of-way that fronts the Parcel determined by drawing lines at right angles to the right-of-way, and (ii) subtracting a portion of the acreage of any right-of-way that fronts the Parcel determined by drawing lines at right angles to the right-of-way. The Net Taxable Acreage of a Parcel or Final Map shall be determined at the sole discretion of the City.

"One-Time Facilities Special Tax" means a special tax levied and collected in full by the City prior to a Building Permit being issued for new construction on Taxable Property.

"Original Parcel" means any of the Assessor’s Parcels that were included in the CFD at the time of CFD Formation, as identified in Attachment 1 to this RMA. A Parcel that was created from the subdivision of an Original Parcel and is being further subdivided shall also be considered an Original Parcel for purposes of determining the Maximum Special Taxes pursuant to Section C.
“Proportionately” means, for Developed Property, that the ratio of the actual Annual Maintenance Special Tax levied in any Fiscal Year to the Maximum Annual Maintenance Special Tax authorized to be levied in that Fiscal Year is equal for all Assessor’s Parcels of Developed Property.

“Public Property” means any property within the boundaries of CFD No. 2012-1 that is owned by the federal government, State of California, County, City, or other public agency.

“RMA” means this Rate and Method of Apportionment of Special Tax.

“Special Tax Credit” means a waiver of the creditable portion of the Base One-Time Facilities Special Tax that would otherwise be due from a Parcel in the CFD if the Builder/Developer of that Parcel did not have an outstanding Credit/Reimbursement Amount.

“Special Taxes” means, collectively, the One-Time Facilities Special Tax and the Annual Maintenance Special Tax.

“Subdivision Map” means a Final Map, large lot subdivision map, tentative map, or other map recorded with the County and/or approved by the City that results in the subdivision of a Parcel or a change in the quantity or type of proposed land uses.

“Taxable Property” means all of the Assessor’s Parcels within the boundaries of CFD No. 2012-1 which are not exempt from the Special Taxes pursuant to law or Section G below.

“Taxable Public Property” means, in any Fiscal Year, all Parcels of Public Property within CFD No. 2012-1 that: (i) based on a tentative map or other Subdivision Map, were expected to be Taxable Property; and (ii) based on this expectation, Maximum Special Taxes were assigned to the Parcels in a prior Fiscal Year. However, if Parcels designated as Public Property based on a tentative map or other Subdivision Map are relocated, the new Public Property will again become exempt. If such relocation occurs, the Acreage previously designated as Public Property will become Taxable Property and the Acreage that becomes Public Property will not be taxed. This trading of Acres of Public Property will be permitted to the extent that there is no net loss in Maximum Special Tax revenues.

“Undeveloped Property” means, in any Fiscal Year, all Parcels of Taxable Property within CFD No. 2012-1 that are not Developed Property.

B. DATA FOR ANNUAL ADMINISTRATION

On or about July 1 of each Fiscal Year, the Administrator shall identify the current Assessor’s Parcel numbers for all Parcels of Taxable Property. The Administrator shall also determine: (i) whether each Assessor’s Parcel of Taxable Property is Developed Property or Undeveloped Property; (ii) the Net Taxable Acreage for each Parcel; and (iii) the Annual Maintenance Special Tax Requirement. In addition, the Administrator shall update Attachment 1 to this RMA pursuant to Section C as Original Parcels are subdivided.
In any Fiscal Year, if it is determined that (i) a Final Map for a portion of property in the CFD was recorded after January 1 of the prior Fiscal Year (or any other date after which the Assessor will not incorporate the newly-created Parcels into the then current tax roll), (ii) because of the date the Final Map was recorded, the Assessor does not yet recognize the new Parcels created by the Final Map, and (iii) one or more of the newly-created Parcels meets the definition of Developed Property, the Administrator shall calculate the Special Taxes for the property affected by recordation of the Final Map by determining the Special Taxes that apply separately to each newly-created Parcel, then applying the sum of the individual Special Taxes to the Parcel that was subdivided by recordation of the Final Map.

C. CALCULATING MAXIMUM SPECIAL TAXES

The Administrator shall use the procedures set forth below to calculate the Maximum Special Taxes for each Parcel in CFD No. 2012-1 in each Fiscal Year, including the Maximum One-Time Facilities Special Tax and the Maximum Annual Maintenance Special Tax.

1. Maximum One-Time Facilities Special Tax

The Maximum One-Time Facilities Special Tax for each Original Parcel in CFD No. 2012-1 at the time of CFD Formation is shown in Attachment 1 to this RMA. Each time a Subdivision Map is approved within the CFD or when Parcels are otherwise subdivided or reconfigured, the Administrator shall reallocate the Maximum One-Time Facilities Special Tax assigned to each Original Parcel to the newly-created Parcel(s) within the Subdivision Map as follows:

**Step 1.** For any given point in time, calculate the Base Maximum One-Time Facilities Tax and the Administration Component applicable to the Original Parcel being subdivided.

**Step 2.** Determine the Net Taxable Acreage of each Parcel created by the approval of the Subdivision Map.

**Step 3.** Sum the Net Taxable Acreage from Step 2 for all newly-created Parcels to determine the total Net Taxable Acreage resulting from the subdivision of the Original Parcel.

**Step 4.** For each newly-created Parcel, divide the Net Taxable Acreage determined in Step 2 by the total Net Taxable Acreage of the Original Parcel determined in Step 3 to calculate a percentage.

**Step 5.** For each newly-created Parcel, multiply the percentage calculated in Step 4 by the amounts calculated in Step 1 to determine the Base Maximum One-Time Facilities Special Tax and Administration Component to be allocated to each newly-created Parcel.
Step 6. For each newly-created Parcel, add the Base Maximum One-Time Facilities Special Tax and the Administration Component calculated in Step 5 to determine the Maximum One-Time Facilities Special Tax. Attachment I of this RMA will be updated by the Administrator each time an Original Parcel is subdivided to show the Base Maximum One-Time Facilities Special Tax, the Administration Component, and the Maximum One-Time Facilities Special Tax for each newly-created Parcel.

Under no circumstances shall the sum of the Maximum One-Time Facilities Special Tax for all Parcels created by the subdivision or reconfiguration of an Original Parcel ever be less than the Maximum One-Time Facilities Special Tax of the Original Parcel.

2. Annual Maintenance Special Tax

Each Fiscal Year, the Maximum Annual Maintenance Special Tax shall be determined for each Parcel of Developed Property using the following methodology:

Step 1. For any Fiscal Year, calculate the total Maximum CFD Maintenance Cost.

Step 2. Determine the Net Taxable Acreage of all Parcels of Developed Property.

Step 3. Divide the Net Taxable Acreage of each Parcel of Developed Property by the total Net Taxable Acreage of all Parcels of Developed Property calculated in Step 2 to obtain a percentage for each Parcel.

Step 4. Multiply the percentage calculated in Step 3 by the Maximum CFD Maintenance Cost in Step 1 to determine the Maximum Annual Maintenance Special Tax for each Parcel of Developed Property for the then-current Fiscal Year.

D. IMPLEMENTATION OF CREDIT/REIMBURSEMENT PROGRAM

Certain Builders/Developers may be required to construct, pay for, or provide Authorized Facilities that are ultimately intended to be funded from One-Time Facilities Special Tax revenues. The City shall implement a Special Tax Credit and reimbursement program, so that Builders/Developers that construct, pay for, or provide Authorized Facilities will receive a credit against their Base Maximum One-Time Facilities Special Tax and/or be reimbursed for Authorized Facilities costs, if revenues are available.
At the request of the landowners at the time this RMA was prepared and CFD No. 2012-1 was formed, all credits and reimbursements to Builders/Developers who construct, pay for, or provide Authorized Facilities shall be based on the actual cost of those Authorized Facilities, with the exception of right-of-way and storm drainage basin land costs, which shall be reimbursed at fair market value at the time of dedication, as determined by the City. Pursuant to this request, if the cost of the Authorized Facility constructed, paid for, or provided is less than the Builder/Developer's Base Maximum One-Time Facilities Special Tax, the Builder/Developer shall receive a Special Tax Credit against their Base Maximum One-Time Facilities Special Tax equal to the actual cost of the Authorized Facility constructed, paid for, or provided, and the remaining Base Maximum One-Time Facilities Special Tax shall be paid by the Builder/Developer in addition to the full Administration Component.

Alternatively, if the cost of the Authorized Facility constructed, paid for, or provided exceeds the Builder's/Developer's Base Maximum One-Time Facilities Special Tax, the Builder/Developer will qualify for a Special Tax Credit and/or a reimbursement from the collection of future One-Time Facilities Special Taxes, as set forth below; the Builder/Developer must still pay the full Administration Component. Notwithstanding the foregoing, there is no guarantee that future One-Time Facilities Special Taxes will be available to reimburse the Builder/Developer. All Credit/Reimbursement Amounts shall be determined by the City based on evidence of costs provided to the City by the Builder/Developer.

The landowners at the time this RMA was prepared and CFD No. 2012-1 was formed also requested that a Builder/Developer not receive any Special Tax Credits if other Builders/Developers have unpaid Credit/Reimbursement Amounts outstanding that have a higher priority for reimbursement. In other words, any outstanding Credit/Reimbursement Amounts for Builders/Developers that have a higher reimbursement priority shall be fully paid prior to Special Tax Credits being applied to a Builder/Developer with a lower reimbursement priority.

The following steps shall be applied to implement the credit/reimbursement program summarized above:

1. On an Ongoing Basis

   a. In January 2013 and each January thereafter, the Administrator shall escalate the Maximum One-Time Facilities Special Tax assigned to each Parcel and the Credit/Reimbursement Amount outstanding for any Builder/Developer by the greater of: (i) the percentage increase, if any, in the construction cost index for the San Francisco region for the prior twelve (12) month period as published in the Engineering News Record or other comparable source if the Engineering News Record is discontinued or otherwise not available; or (ii) four percent (4.0%). Each annual adjustment shall become effective on January 1 of the calendar year for which the annual adjustment was made.

   b. The City shall determine whether One-Time Facilities Special Tax revenues are available to reimburse Builders/Developers that have an outstanding Credit/Reimbursement Amount. If such revenues are available, the City shall pay
reimbursements on a “first-incurred/first-paid” basis, as determined by the Base Year for each Authorized Facility accepted by the City. Once the Builder/Developer with first priority is fully reimbursed, the Builder/Developer with second priority will be able to take Special Tax Credits against their One-Time Facilities Special Tax and, if a Credit/Reimbursement Amount is still outstanding, be paid such outstanding Credit/Reimbursement amount if and when One-Time Facilities Special Tax revenues are available. Such reimbursement shall continue until the earlier of (i) the date on which all outstanding Credit/Reimbursement Amounts are paid, or (ii) the date on which no One-Time Facilities Special Tax revenues are available to pay outstanding Credit/Reimbursement Amounts and no additional One-Time Facilities Special Tax revenues are anticipated to be received by the City. There is no guarantee that all Credit/Reimbursement Amounts will be paid to Builders/Developers.

2. At any time that Authorized Facilities are accepted by the City

The Administrator shall apply the following steps each time Authorized Facilities are dedicated to the City and the City accepts such dedication(s):

**Step 1.** Determine the total cost of Authorized Facilities accepted by the City. This total cost shall be the Credit/Reimbursement Amount applicable to the Builder/Developer that dedicated the Authorized Facilities.

**Step 2.** Identify and record the Base Year for the Authorized Facilities and determine priority for the Builder’s/Developer’s Credit/Reimbursement Amount relative to outstanding Credit/Reimbursement Amounts owed to other Builders/Developers.

**Step 3.** Beginning in the calendar year that commences after the Base Year, the Administrator shall escalate the Credit/Reimbursement Amount determined in Step 1 each year as outlined in Section D.1 above. If a Builder/Developer constructed, paid for, or provided Authorized Facilities with different Base Years, the Credit/Reimbursement Amount shall be escalated taking the different Base Years into account.

3. Prior to issuance of a Building Permit

When a Builder/Developer requests issuance of a Building Permit, the Administrator shall determine if the Builder/Developer has an outstanding Credit/Reimbursement Amount and apply the appropriate subsection below to determine the Credit/Reimbursement Amount and remaining One-Time Facilities Special Taxes (if any) for the Builder/Developer:
a. A Credit/Reimbursement Amount is outstanding for the Builder/Developer requesting issuance of a Building Permit, and the Builder/Developer has first priority with respect to their Credit/Reimbursement Amount.

For any Fiscal Year, the Administrator shall apply the following steps to determine the Maximum One-Time Facilities Special Tax, if any, that is due from the subject Parcel(s):

**Step 1.** Identify the Base Maximum One-Time Facilities Special Tax that would have been paid by the Parcel(s) if no Credit/Reimbursement Amount were outstanding.

**Step 2.** If the Base Maximum One-Time Facilities Special Tax determined in Step 1 is less than the outstanding Credit/Reimbursement Amount for the Builder/Developer, the Administration Component shall be collected and the Builder/Developer shall be given a Special Tax Credit against the Base Maximum One-Time Facilities Special Tax for that Parcel(s). After the Special Tax Credit has been calculated, the Administrator shall subtract the aggregate amount of such Special Tax Credits from the outstanding Credit/Reimbursement Amount for the Builder/Developer, and the Builder/Developer shall qualify for reimbursement of the remaining Credit/Reimbursement Amount to the extent One-Time Facilities Special Tax revenues are available.

If the Base Maximum One-Time Facilities Special Tax is greater than the outstanding Credit/Reimbursement Amount for the Builder/Developer, the Administrator shall subtract the outstanding Credit/Reimbursement Amount from the Base Maximum One-Time Facilities Special Tax to determine the net amount of the Base Maximum One-Time Facilities Special Tax that must be paid by the Builder/Developer. In addition, the Builder/Developer must pay the full Administration Component assigned to the Parcel(s) for which the Building Permit is being issued. The Administrator shall update the CFD records to reflect a zero Credit/Reimbursement Amount for that Builder/Developer.

b. A Credit/Reimbursement Amount is outstanding for the Builder/Developer requesting issuance of a Building Permit, and the Builder/Developer does not have first priority with respect to their Credit/Reimbursement Amount.

For any Fiscal Year, the Administrator shall apply the following steps to determine the Maximum One-Time Facilities Special Tax, if any, that is due from the subject Parcel(s):
**Step 1.** Identify the Base Maximum One-Time Facilities Special Tax that would have been paid by the Parcel(s) if no Credit/Reimbursement Amount were outstanding.

**Step 2.** Identify the aggregate outstanding Credit/Reimbursement Amounts that have a higher priority than the amount due the Builder/Developer requesting issuance of a Building Permit.

**Step 3.** If the Base Maximum One-Time Facilities Special Tax determined in Step 1 is less than the Credit/Reimbursement Amounts that are due other Builders/Developers as determined in Step 2, the Base Maximum One-Time Facilities Special Tax and the Administration Component shall be collected from the Builder/Developer requesting issuance of a Building Permit. The Base One-Time Facilities Special Tax collected shall be used to reimburse Builders/Developers with higher reimbursement priority, and the Administration Component collected shall be retained by the City. The Builder/Developer requesting issuance of a Building Permit shall then qualify for a reimbursement of their entire Credit/Reimbursement Amount and be placed in order of priority behind any remaining Builders/Developers that still have outstanding Credit/Reimbursement Amounts.

If the Base Maximum One-Time Facilities Special Tax determined in Step 1 is greater than the Credit/Reimbursement Amounts that are due all other Builders/Developers as determined in Step 2, the Administration Component and the amount of the aggregate Credit/Reimbursement Amounts that are due other Builder/Developers shall be collected from the Builder/Developer requesting issuance of a Building Permit. The outstanding Credit/Reimbursement Amounts due all other Builder/Developers shall be subtracted from the Base Maximum One-Time Facilities Special Tax to determine the net amount of the Base Maximum One-Time Facilities Special Tax that must be paid by the Builder/Developer. Using this net amount of the Base Maximum One-Time Facilities Special Tax as the starting point, the steps in Section D.3.a shall be applied to determine the remaining One-Time Facilities Special Tax and/or outstanding Credit/Reimbursement amount, if any, applicable to the Builder/Developer requesting issuance of a Building Permit.
c. No Credit/Reimbursement Amount is outstanding for the Builder/Developer requesting issuance of a Building Permit

If no Credit/Reimbursement Amount is outstanding for the Builder/Developer requesting issuance of a Building Permit, then the Maximum One-Time Facilities Special Tax as calculated pursuant to Section C.1 above shall be due and payable to the City.

E. METHOD OF LEVY OF THE SPECIAL TAX

1. One-Time Facilities Special Tax

The Maximum One-Time Facilities Special Tax determined pursuant to Sections C and D above shall be levied on all Taxable Property in CFD No. 2012-1 and shall be collected as set forth in Section F below.

2. Annual Maintenance Special Tax

Each Fiscal Year, the Administrator shall determine the Annual Maintenance Special Tax Requirement for that Fiscal Year. The Annual Maintenance Special Tax shall be levied proportionately on each Parcel of Developed Property within the CFD up to 100% of the Maximum Annual Maintenance Special Tax for each Parcel for such Fiscal Year.

F. COLLECTION OF SPECIAL TAX

The Maximum One-Time Facilities Special Tax shall be collected prior to a Building Permit being issued for new construction on Taxable Property within CFD No. 2012-1, and shall be immediately delinquent if not so paid.

The Annual Maintenance Special Tax for CFD No. 2012-1 shall be collected in the same manner and at the same time as ordinary ad valorem property taxes; provided, however, that the City may directly bill, collect at a different time or in a different manner, and/or collect delinquent Annual Maintenance Special Taxes through foreclosure or other available methods.

The Annual Maintenance Special Tax will continue to be levied and collected unless and until the City determines that the Annual Maintenance Special Tax no longer needs to be levied to pay for Authorized Services and Administrative Expenses.
G. EXEMPTIONS

Notwithstanding any other provision of this Rate and Method of Apportionment of Special Tax, no Special Taxes shall be levied on Public Property, except Taxable Public Property, as defined herein. Special Taxes shall not be levied on Parcels that are owned by a public utility for an unmanned facility or on Parcels that are subject to an easement that precludes any other use on the Parcels. In addition, no Annual Maintenance Special Tax shall be levied on any Parcel of Undeveloped Property.

H. INTERPRETATION OF SPECIAL TAX FORMULA

The City reserves the right to make minor administrative and technical changes to this document that do not materially affect the rate and method of apportioning the Special Taxes. In addition, the interpretation and application of any section of this document shall be left to the City’s discretion. Interpretations may be made by the City by ordinance or resolution for purposes of clarifying any vagueness or ambiguity in this Rate and Method of Apportionment of Special Tax.

I. ENFORCEMENT

All delinquent Annual Maintenance Special Taxes billed off the County tax roll shall be subject to an immediate 10% penalty plus interest charges of 1.5% as of the first day of the month after the delinquency date and on the first day of each month thereafter. Any such delinquent Special Taxes shall, at the City’s discretion, be placed on the next secured property tax roll. The amount placed on the roll shall include the 10% penalty and the interest charges through the following January 1. This shall not prevent the City from simultaneously pursuing the delinquency by an action on a contract of guarantee against a third party who promised to pay the taxes, or from assigning such right of action to the property owner or other appropriate party.
## ATTACHMENT 1

City of Modesto Community Facilities District No. 2012-1  
(Kiernan Business Park South)  
Maximum One-Time Facilities Special Tax  
at CFD Formation

<table>
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<tr>
<th>Assessor's Parcel Number (Original Parcels) /1</th>
<th>Net Taxable Acreage</th>
<th>Base Maximum One-Time Facilities Special Tax /2</th>
<th>Administration Component /2</th>
<th>Maximum One-Time Facilities Special Tax</th>
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<td><strong>$118,341</strong></td>
<td><strong>$11,490,386</strong></td>
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</tbody>
</table>

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1/ At the time of CFD Formation, APN 078-018-021 was anticipated to be subdivided into two separate parcels based on a preliminary parcel map submitted to the City. Attachment 2 to this RMA shows the geographic locations of APN 078-018-021 (1) and APN 078-018-021 (2) based on this preliminary parcel map. The Maximum One-Time Facilities Special Taxes shown above for these two Parcels were calculated based on this preliminary parcel map.

2/ Represents the Base Maximum One-Time Facilities Special Tax and the Administration Component at the time of CFD Formation. Beginning in January 2013 and each January thereafter, the Base Maximum One-Time Facilities Special Tax and the Administration Component shall be adjusted annually by the greater of: (i) the percentage increase, if any, in the construction cost index for the San Francisco region for the prior twelve (12) month period as published in the Engineering News Record or other comparable source if the Engineering News Record is discontinued or otherwise not available; or (ii) four percent (4.0%). Each annual adjustment of the Base Maximum One-Time Facilities Special Tax and the Administration Component shall become effective on January 1 of the calendar year for which the annual adjustment was made.

3/ At the time of CFD Formation, APN 078-018-031 was not included in the CFD. This Parcel may or may not annex to the CFD at a future date, and it will not pay its Maximum One-Time Facilities Special Tax until such time as it annexes to the CFD and a Building Permit is issued for construction on the Parcel.
ATTACHMENT 2

City of Modesto Community Facilities District No. 2012-1
(Kiernan Business Park South)
Identification of Original Parcels
at CFD Formation
RESOLUTION AMENDING THE POSITION ALLOCATION FOR THE PUBLIC WORKS DEPARTMENT AS ADOPTED BY THE CITY COUNCIL AS PART OF THE FY 2011-2012 BUDGET TO ELIMINATE ONE DEPUTY DIRECTOR OF PUBLIC WORKS POSITION, AND ONE SENIOR ADMINISTRATIVE OFFICE ASSISTANT (CONFIDENTIAL) POSITION IN COST CENTER 53010, PUBLIC WORKS TRANSPORTATION, AND ADD ONE EXECUTIVE ASSISTANT POSITION IN COST CENTER 51010, PUBLIC WORKS ADMINISTRATION

WHEREAS, in 2009, the Public Works Department was divided into two departments, and

WHEREAS, the existing position allocation for Executive Assistant was moved to the new Utility Planning and Projects Department, and

WHEREAS, the Public Works Director position was vacant at that time and no Executive Assistant allocation was created, and

WHEREAS, once the Director’s position was filled, temporary arrangements were made for the Senior Administrative Office Assistant (Confidential) in Transportation Administration to provide support to the Director in an out-of-class assignment, and

WHEREAS, this was made possible due to the vacant Deputy Director position in Transportation Services, and

WHEREAS, with the proposed elimination of the Deputy Director position, there is no longer a need for the Senior Administrative Office Assistant (Confidential) to staff that position, and

WHEREAS, the recommendation to allocate an Executive Assistant position to support the Director in Public Works will complete the process of dividing the two departments and allocating the appropriate support staff, and
WHEREAS, the Senior Administrative Office Assistant position is filled and will remain funded through June 30, 2012; therefore, no cost savings will be realized in FY 2011/12, and

WHEREAS, these positions are funded through Cost Distribution agreements to the subordinate divisions and funds that benefit from the services of department administration, and

WHEREAS, adding an Executive Assistant position allocation in Public Works Administration will cost approximately $17,396 in FY 2011/12 and $69,584 beginning FY 2012/13, and

WHEREAS, this position will be funded through Cost Distribution agreements, charging the total to the subordinate divisions that benefit from the services of department administration,

NOW, THEREFORE, BE IT HEREBY RESOLVED by the Council of the City of Modesto that it hereby approves amending the Position Allocation for the Public Works Department as adopted by the City Council as part of the FY 2011-2012 budget to eliminate one Deputy Director of Public Works position, and one Senior Administrative Office Assistant (Confidential) position in Cost Center 53010, Public Works Transportation, and add one Executive Assistant position in Cost Center 51010, Public Works.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 27th day of March, 2012, 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: Burnside, Cogdill, Geer, Gunderson, Lopez, Muratore, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: [Signature]

SEAL

APPROVED AS TO FORM:

By: [Signature]

SUSANA ALCALA WOOD, City Attorney
RESOLUTION AUTHORIZING SUBMISSION OF THE CITY’S FISCAL YEAR 2011-2012 TRANSPORTATION DEVELOPMENT ACT TRANSIT CLAIM – REVISION #1 TO THE STANISLAUS COUNCIL OF GOVERNMENTS IN THE AMOUNT OF $8,268,602

WHEREAS, the greatest portion of the City’s funding for the Transit Service Program is made available under the Transportation Development Act (TDA), which includes Local Transportation Fund (LTF) funds and State Transit Assistance (STA) funds, and

WHEREAS, the Stanislaus Council of Governments (StanCOG) has informed the Finance Department that LTF funds have been apportioned by the State to StanCOG for allocation to public transit agencies pursuant to Articles 4 and 8 of Chapter 4 of the California Public Utilities Code (PUC), and

WHEREAS the City prepared its original TDA claim for Fiscal Year 2011-2012 pursuant to these sections of the California PUC and the City Council adopted it by Resolution 2011-428, and

WHEREAS, StanCOG reduced the original allocation of STA funds to the City by $312,918, and

WHEREAS, StanCOG requested the City to submit a revised claim based on the new STA amount allocated, and

WHEREAS, the City has prepared a revised TDA claim for Fiscal Year 2011-2012 as requested by StanCOG, and

WHEREAS, the City’s Transit TDA Claim for Fiscal Year 2011-2012 is $8,268,602, and
WHEREAS, the total Transit Operating Budget for Fiscal Year 2011-2012 is $14,773,997, and

WHEREAS, Council action authorizing submission of the Claim is required by StanCOG pursuant to Section 99261 of the California PUC before any TDA funding can be released to the City,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves submission of the Fiscal Year 2011-2012 Transportation Development Act Transit Claim – Revision #1 to StanCOG in the amount of $8,268,602.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 27th day of March, 2012, 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: Council members: Burnside, Cogdill, Geer, Gunderson, Lopez, Muratore, Mayor Marsh

NOES: Council members: None

ABSENT: Council members: None

ATTEST: 

STEFANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: 

SUSANA ALCALA WOOD, City Attorney
RESOLUTION APPROVING SUBMITTAL OF THREE GRANT APPLICATIONS TO THE CALIFORNIA DEPARTMENT OF TRANSPORTATION (CALTRANS) REQUESTING $5,838,246 IN FY 2010-11 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, in Fiscal Year 2010-11 a total of $1,499,648,863 was appropriated state-wide to PTMISEA, 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 February 15, 2012, designating $5,198,241 of the Fiscal Year 2011-11 regional PTMISEA funds to the City of Modesto for transit capital projects, and

WHEREAS, the City of Modesto is the designated recipient for $640,005 in Fiscal Year 2010-11 local PTMISEA funds under GC 8879.55 (a)(3) resulting in a total PTMISEA regional and local allocation of $5,838,246 for Fiscal Year 2010-11.

WHEREAS, the City of Modesto has identified three (3) projects as priorities for Fiscal Year 2010-11 PTMISEA funding.
WHEREAS, refurbishing a total of thirty (30) 1998, 2001 and 2003 fixed route buses; purchasing magnetic stripe units to install on existing fareboxes; and, upgrading its existing automatic vehicle location system to improve real-time passenger information 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 submittal of three (3) grant applications to Caltrans requesting $5,838,246 in Fiscal Year 2010-11 PTMISEA funds for transit capital projects.

BE IT FURTHER RESOLVED that the City Manager, is authorized to execute all necessary grant documents with the California Emergency Management Agency 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 27th day of March, 2012, 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: Burnside, Cogdill, Geer, Gunderson, Lopez, Muratore, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

(Seal)

APPROVED AS TO FORM:

By: __________________________

SUSANA ALCALA WOOD, City Attorney

ATTEST: _______________________

STEPHANIE LOPEZ, City Clerk
RESOLUTION APPROVING SUBMITTAL OF TWO GRANT APPLICATIONS TO THE CALIFORNIA EMERGENCY MANAGEMENT AGENCY REQUESTING $438,032 IN FY 2010-11 FUNDS AND $438,032 IN FY 2011-12 FUNDS UNDER THE CALIFORNIA TRANSIT SECURITY GRANT PROGRAM FOR TRANSIT SECURITY PROJECTS AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE ALL GRANT APPLICATION AND GRANT AGREEMENT DOCUMENTS

WHEREAS, the Highway Safety, Traffic Reduction, Air Quality and Port Security Bond Act of 2006 was approved by the voters as Proposition 1B in the November 7, 2006, general election, and

WHEREAS, Senate Bill 88 (SB 88), enabling legislation for the Highway Safety, Traffic Reduction, Air Quality and Port Security Bond Act of 2006, was signed by the Governor and chaptered into law on August 24, 2007, and

WHEREAS, SB 88 created the California Transit Assistance Funds administered by the California Emergency Management Agency, and

WHEREAS, in Fiscal Year 2010-11 a total of $60,000,000 was appropriated to the California Transit Assistance Fund, and

WHEREAS, in Fiscal Year 2011-12 a total of $60,000,000 was appropriated to the California Transit Assistance Fund, and

WHEREAS, the Stanislaus Council of Governments (StanCOG) is the designated recipient for regional funds under GC 8879.58 (a)(2), and

WHEREAS, the StanCOG Policy Board passed a resolution on February 15, 2012, designating $412,426 of the Fiscal Year 2011-11 regional funds for the City of Modesto for transit security projects, and
WHEREAS, the StanCOG Policy Board passed a resolution on February 15, 2012, designating $412,426 of the Fiscal Year 2011-12 regional funds for the City of Modesto for transit security projects, and

WHEREAS, the City of Modesto is the designated recipient for $25,606 in Fiscal Year 2010-11 local funds under GC 8879.58 (a)(3) resulting in a total allocation of $438,032 for Fiscal Year 2010-11.

WHEREAS, the City of Modesto is the designated recipient for $25,606 in Fiscal Year 2011-12 local funds under GC 8879.58 (a)(3) resulting in a total allocation of $438,032 Fiscal Year 2011-12.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby authorizes submittal of two (2) grant applications to the California Emergency Management Agency requesting California Transit Assistance Funds for transit security projects - one (1) application for $438,032 in Fiscal Year 2010-11 funds and one (1) application for $438,032 in Fiscal Year 2011-12 funds.

BE IT FURTHER RESOLVED that the City Manager is authorized to execute all necessary grant documents with the California Emergency Management Agency 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 27th day of March, 2012, 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: Burnside, Cogdill, Geer, Gunderson, Lopez, Muratore, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: [Signature]

(Seal)

APPROVED AS TO FORM:

By: [Signature]

SUSANA ALCALA WOOD, City Attorney
RESOLUTION APPROVING A SECOND AMENDMENT TO AGREEMENT WITH CAROLLO ENGINEERS, INC. (FORMERLY CAROLLO ENGINEERS, P.C.) FOR FINAL DESIGN SERVICES FOR THE PHASE 2 BIOLOGICAL NUTRIENT REMOVAL/TERTIARY TREATMENT FACILITY PROJECT IN THE AMOUNT OF $64,465, FOR A MAXIMUM TOTAL AGREEMENT AMOUNT OF $6,065,486, AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE SECOND AMENDMENT TO AGREEMENT

WHEREAS, in April 2008, the Central Valley Regional Water Quality Control Board (RWQCB) adopted a new National Pollutant Discharge Elimination System (NPDES) permit for the City of Modesto with stricter limits to the City’s treated wastewater discharge into the San Joaquin River, and

WHEREAS, these limits were not in the original draft permit, and were not accounted for in the Wastewater Master Plan (WWMP) that was adopted in March 2007, and

WHEREAS, this new permit required the City to meet these discharge requirements by April 25, 2013, and

WHEREAS, if the City did not comply with these new discharge requirements, it would be subject to Mandatory Minimum Penalties (MMPs) and potential third-party lawsuits, and

WHEREAS, on June 23, 2009, by Resolution No. 2009-271, the City Council approved an agreement with Carollo Engineers, P.C. (Carollo) to prepare the final project design of this project, and

WHEREAS, in order to meet the April 2013 compliance date, the design agreement is based on an expedited design and construction schedule, and final design was originally expected to be completed by March 2010, and
WHEREAS, on September 1, 2009, City staff requested a 33-month compliance extension to its NPDES permit to allow a longer implementation schedule for the Phase 2 Tertiary Project and to reduce the impact on rates, and

WHEREAS, on March 18, 2010, the RWQCB granted the City an extension of the compliance date to February 2016, and

WHEREAS, the compliance extension has allowed the City to reasonably revise its design and construction schedule, and

WHEREAS, on December 14, 2010, by Resolution No. 2010-521, the City Council approved dedicating sewer service charges to payment of any and all CWSRF financing, and

WHEREAS, based on the preliminary design engineer’s cost estimate, the City applied for a $130 million loan for the Phase 2 Project, and

WHEREAS, on October 4th, 2011 the City received an initial Project Finance Agreement (State Revolving Fund Project No. C-06-5175-210, Agreement No. 11-825-550) from the SWRCB, which essentially commits the CWSRF loan to the City, and

WHEREAS, the design of the Phase 2 Project has been completed and City staff began advertising for construction bids on November 8, 2011, and

WHEREAS, on December 6, 2011, by Resolution No. 2011-457, the City Council approved an Amendment to Agreement with Carollo Engineers, Inc. (formerly Carollo Engineers, P.C.) to complete the final design services for Phase 2 Project, and

WHEREAS, the City received 8 bids for the Phase 2 Project, which opened January 27, 2012, and
WHEREAS, the City has recently completed its review of the bid and supporting documentation, and has determined the low bidder followed and met the requirements of the project specifications, and

WHEREAS, as a result, the low bidder has been deemed a responsible bidder and its bid responsive, and

WHEREAS, City staff is currently collecting all required forms and documentation in preparation of a CWSRF Approval of Award (AoA) package for SWRCB review and approval, and

WHEREAS, after receiving the AoA package, the SWRCB can take from 30 days, up to 120 days, to review and submit a final Financing Agreement to the City, and

WHEREAS, this second amendment for $64,465 will include the preparation of a conformed set of plans and specifications, which was not included in the original agreement with Carollo, and

WHEREAS, the conformed set will incorporate all changes in the specifications and drawings made through addenda issued during bidding period, and

WHEREAS, the proposed task was originally to be included with the Engineering Services During Construction (ESDC) contract with Carollo, as Task 1.1., which is expected to be awarded with the Phase 2 Project construction contract in early summer 2012, and

WHEREAS, staff recommends taking advantage of the lengthy SWRCB review period and requesting this additional service to prepare the conformed bid documents prior to the start of the Phase 2 Project’s construction, and
WHEREAS, this task, and its equivalent costs, will be deleted from the upcoming Carollo ESDC agreement, and

WHEREAS, staff is recommending approval of this second amendment to cover the additional scope of work that is beyond the original final design agreement, and

WHEREAS, the following list summarizes the changes and additional work by Carollo that is necessary to complete the design beyond what has been approved and budgeted for the project: 1) Preparation of Conformed Documents for Construction, and

WHEREAS, City staff does not have the staffing level or subject matter expertise to provide final design services for Phase 2 Project, and current workload levels do not provide for timely in-house solutions/responses, and

WHEREAS, City staff recommends approving a second amendment to agreement with Carollo for final design services for Phase 2 Project that is beyond the original final design Agreement,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves a Second Amendment to Agreement with Carollo Engineers, Inc. (formerly Carollo Engineers, P.C.) for final design services for Phase 2 Biological Nutrient Removal/Tertiary Treatment Facility project, in an amount not to exceed $64,465.

BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute the Second Amendment to Agreement.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 27th day of March, 2012, 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: Burnside, Cogdill, Geer, Gunderson, Lopez, Muratore, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney
RESOLUTION APPROVING A FIRST AMENDMENT TO THE MASTER AGREEMENT FOR AUDITING SERVICES BETWEEN THE CITY OF MODESTO AND MOSS-ADAMS, LLP; AND AUTHORIZING THE MAYOR, OR HIS DESIGNEE, TO EXECUTE THE AMENDMENT TO AGREEMENT

WHEREAS, Section 900 of the Modesto City Charter provides that the City Auditor shall be appointed by and serve at the pleasure of the City Council of the City of Modesto, and

WHEREAS, the City Council desires to amend the Master Agreement for auditing services with the firm of Moss-Adams, LLP extending the term of the Agreement from February 1, 2012 to June 30, 2013, and

WHEREAS, the compensation amount needs to be amended to include an additional amount not to exceed $150,000,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves an Amendment to the Master Agreement for auditing services with Moss-Adams, LLP.

BE IT FURTHER RESOLVED that the Mayor, or his designee, is hereby authorized to execute the Amendment to the Master Agreement.

BE IT FURTHER RESOLVED that the City Manager is hereby directed to prepare all necessary budget amendments 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 27th day of March, 2012, 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: Burnside, Cogdill, Gunderson, Lopez, Mayor Marsh

NOES: Councilmembers: Geer, Muratore

ABSENT: Councilmembers: None

ATTEST: 

(SEAL)

APPROVED AS TO FORM:

By: SUSANA AMALTA WOOD, City Attorney
RESOLUTION APPROVING THE UPDATED GUIDELINES TO THE CITY’S
NEIGHBORHOOD STABILIZATION PROGRAM 2 HOMEBUYER’S
PROGRAM

WHEREAS, in January 2010, the Department of Housing and Urban
Development (HUD) awarded the City of Modesto $25 million in Neighborhood
Stabilization Program 2 (NSP2) funds, and

WHEREAS, of the $25 million, $10.5 million was allocated for the acquisition
and rehabilitation of residences, and the City of Modesto set up a Homebuyer’s Program,
and

WHEREAS, in the NSP2 program, 26 foreclosed homes are designated for resale
to qualified buyers with incomes at 50-120% of the area median income (AMI), and

WHEREAS, by regulation, the sales price of the home cannot be higher than the
lower of either 1) the amount of NSP2 funds used to purchase and rehab the home, or 2)
the second appraisal which is done after the rehab is completed, and

WHEREAS, over the course of the last year, HUD revised its NSP program
income policy and issued an updated guidance, indicating that the local jurisdiction
generating program income can be reinvested in an NSP eligible activity, and

WHEREAS, the City of Modesto is updating its NSP2 Homebuyer’s Program
guidelines in an effort to be able to recycle the income from this program, and

WHEREAS, the updated guidelines have been reviewed and approved by the
Citizens’ Housing and Community Development Committee and the Housing
Rehabilitation Loan Committee,
NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves updating the guidelines to the City’s Neighborhood Stabilization Program 2 Homebuyer’s Program.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 27th day of March, 2012, by Councilmember Lopez, who moved its adoption, with motion being duly seconded by Councilmember Gunderson, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Burnside, Cogdill, Geer, Gunderson, Lopez, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: Muratore

ATTEST: ____________
STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: ____________
SUSANA ANGALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2012-120

RESOLUTION APPROVING A MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF MODESTO, THE HOUSING AUTHORITY OF THE COUNTY OF STANISLAUS AND STANISLAUS COUNTY AFFORDABLE HOUSING CORPORATION; AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE MEMORANDUM OF UNDERSTANDING

WHEREAS, on June 24, 2008, City Council, by Resolution No. 2008-364, approved the allocation of $713,162 in HOME funds to Stanislaus County Affordable Housing Corporation (STANCO) for the Meadow Glen apartments project, located at 605 E. Coolidge Avenue, Modesto, and

WHEREAS, the acquisition and development of this property will result in 32 housing units, and

WHEREAS, based on the funding availability and deadlines to complete this project, staff presented a proposal to STANCO to transfer this project to the Housing Authority of the County of Stanislaus (HACS) for the NSP2 Emancipated Foster and Homeless Youth Program (EFY&HYP), and

WHEREAS, STANCO’s Board approved the transfer of this project to the HACS on April 19, 2011,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves a Memorandum of Understanding between the City of Modesto, the Housing Authority of the County of Stanislaus and Stanislaus County Affordable Housing Corporation for the development of the property located at 605 E. Coolidge Avenue, Modesto.

BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute the Memorandum of Understanding.
The foregoing resolution was introduced at a regular meeting of the Council of
the City of Modesto held on the 27th day of March, 2012, by Councilmember Burnside,
who moved its adoption, with motion being duly seconded by Councilmember Cogdill,
was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Burnside, Cogdill, Geer, Gunderson, Lopez,
        Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: Muratore

ATTEST: 

(S Seal)

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney
RESOLUTION APPROVING A HOME LOAN ASSUMPTION FOR THE 605 E. COOLIDGE AVENUE, MODESTO PROJECT TO TRANSFER THE 605 E. COOLIDGE AVENUE PROPERTY AND THE HOME LOAN FROM STANCO TO THE HOUSING AUTHORITY OF THE COUNTY OF STANISLAUS FOR THE CONSTRUCTION OF AFFORDABLE HOUSING UNITS FOR THE NSP2 EMANCIPATED FOSTER AND HOMELESS YOUTH PROGRAM; AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE AGREEMENTS AND RELATED DOCUMENTS

WHEREAS, on June 24, 2008, the City Council, by Resolution No. 2008-364, approved the allocation of HOME funds to STANCO for Meadow Glen apartments in the amount of $713,162, and

WHEREAS, the acquisition and development of 605 E. Coolidge Avenue, Modesto (Meadow Glen apartments) property will result in 32 housing units, and

WHEREAS, a technical amendment was noticed on October 24, 2011, proposing to change the Eligible Use B (purchase and rehabilitate homes and residential properties that have been abandoned or foreclosed upon, in order to sell, rent, or redevelop such homes and properties) and establish Eligible Use E (redevelop demolished or vacant properties as housing) to develop housing for EFY&HYP, and

WHEREAS, the STANCO Board approved the transfer of this project to the HACS on April 19, 2011, and

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves a HOME loan assumption for the 605 E. Coolidge Avenue, Modesto (Meadow Glen apartments) project from STANCO to the HACS for the redevelopment of affordable housing units for the NSP2 EFY&HYP.

BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute the agreements and related documents.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 27th day of March, 2012, by Councilmember Burnside, who moved its adoption, with motion being duly seconded by Councilmember Cogdill, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Burnside, Cogdill, Geer, Gunderson, Lopez, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: Muratore

ATTEST: [Signature]

(SEAL)

APPROVED AS TO FORM:

By: [Signature]

SUSANA ALCALA WOOD, City Attorney
RESOLUTION APPROVING A NEIGHBORHOOD STABILIZATION PROGRAM 2 LOAN TO THE HOUSING AUTHORITY OF THE COUNTY OF STANISLAUS IN THE AMOUNT OF $4.8 MILLION FOR THE CONSTRUCTION OF A 32 UNIT HOUSING PROJECT FOR EMANCIPATED FOSTER YOUTH AND HOMELESS YOUTH PROGRAM, ALSO KNOWN AS MEADOW GLEN APARTMENTS; AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE AGREEMENTS AND RELATED DOCUMENTS

WHEREAS, of the $25 million in NSP2 funding, $6 million has been set-aside to be used for the purchase and rehabilitation of properties to house Emancipated Foster and Homeless Youth (EFY&HYP) ages 18 to 28, and

WHEREAS, 75% of this funding will serve youth at 50% or below the area median income and the remaining funds will target youth at 80% and below, and

WHEREAS, 32 permanent supportive housing units will be developed to house EFY&HY, and

WHEREAS, a technical amendment was noticed on October 24, 2011, proposing to change the eligible use B, acquisition and rehabilitation, and establish eligible use E, redevelop demolished or redevelop vacant properties as housing, to develop housing for EFY&HYP, and

WHEREAS, the STANCO Board approved the transfer of this project to the HACS on April 19, 2011,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves a Neighborhood Stabilization Program 2 loan to the Housing Authority of the County of Stanislaus in the amount of $4.8 million for the construction of a 32 unit housing project for Emancipated Foster Youth and Homeless Youth Program (EFY&HYP), also known as Meadow Glen apartments.
BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute the agreements and related documents.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 27th day of March, 2012, by Councilmember Burnside, who moved its adoption, with motion being duly seconded by Councilmember Cogdill, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Burnside, Cogdill, Geer, Gunderson, Lopez, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: Muratore

ATTEST: 

(SEAL)

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney
RESOLUTION APPROVING AN AGREEMENT WITH HARRIS & ASSOCIATES, INC. FOR CONSTRUCTION MANAGEMENT SERVICES FOR THE CARPENTER ROAD BRIDGE SEISMIC RETROFIT PROJECT IN AN AMOUNT NOT TO EXCEED $1,086,406 FOR THE IDENTIFIED SCOPE OF SERVICES AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE AGREEMENT

WHEREAS, the existing Carpenter Road Bridge was studied, under the direction of the State of California, Department of Transportation (Caltrans), through the Local Agency Seismic Retrofit Program, and

WHEREAS, the study determined that the bridge structure was seismically deficient and in need of retrofit, and

WHEREAS, due to the complexity of this project and amount of staff hours to support construction, a construction management firm is required for management and inspection of this project, and

WHEREAS, staff utilized Administrative Directive 3.1, Selection Procedures for Professional Consultants, and

WHEREAS, staff recommends an agreement with Harris & Associates, as the City does not have the staffing level or subject matter expertise to perform construction management and inspection services for the following: construction administration, processing and tracking of submittals and requests for information, coordination associated with inspections, coordination with City staff, documentation of daily and weekly field activities, and project closeout for the Carpenter Road Bridge Project, and current workload levels do not provide for timely in-house solutions/responses,
NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves an Agreement with Harris & Associates for construction management services for the Carpenter Road Bridge Seismic Retrofit project in an amount not to exceed $1,086,406 for the identified scope of services.

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 27th day of March, 2012, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Geer, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Burnside, Cogdill, Geer, Gunderson, Lopez, Muratore, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney
RESOLUTION APPROVING AN AMENDMENT TO THE SUBSTANTIAL AMENDMENT TO THE CONSOLIDATED PLAN 2008 ACTION PLAN FOR THE COMMUNITY DEVELOPMENT BLOCK GRANT – RECOVERY PLAN TO REALLOCATE FUNDING TO THE AIRPORT NEIGHBORHOOD COMMUNITY CENTER PROJECT IN PREPARATION FOR GRANT CLOSE-OUT; AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE AMENDMENT TO THE SUBSTANTIAL AMENDMENT AND ALL RELATED DOCUMENTS

WHEREAS, the City of Modesto receives several Federal grants from the United States Department of Housing and Urban Development (HUD) and allocates those funds to various eligible activities, and

WHEREAS, the City Council, on June 2, 2009, by Resolution No. 2009-237, approved the Substantial Amendment to the Consolidated Plan 2008 Action Plan for the Community Development Block Grant - Recovery (CDBG-R), and

WHEREAS, the City of Modesto is required to amend its approved plan through a substantial amendment process whenever it makes one of the following decisions: to make a change in its allocation priorities or a change in the method of distribution of funds; to carry out an activity using funds from any program covered by the plan not previously described in the plan; and to change the purpose, scope, location, or beneficiaries of an activity, and

WHEREAS, staff has proposed an amendment to the CDBG-R as set forth in Exhibit A, attached hereto and incorporated herein by reference, and

WHEREAS, notice has been duly given to the community of the proposed amendment to the CDBG-R Plan, and to provide a comment period, which began March 10, 2012 and ends on March 27, 2012, and
WHEREAS, this amendment allocates funding to the existing Airport Neighborhood Community Center Project in preparation for CDBG-R grant close-out, and

WHEREAS, the Citizens' Housing and Community Development Committee (CH&CDC) reviewed staff's proposed amendment of CDBG-R prior to City Council review, and

WHEREAS, a duly noticed public hearing was held by the City Council on March 27, 2012, at 5:30 PM in the Tenth Street Place Chambers, located at 1010 Tenth Street to consider approval of the proposed amendment to the CDBG-R Plan,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves an amendment to the Substantial Amendment to the Consolidated Plan 2008 Action Plan for the Community Development Block Grant - Recovery Plan.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 27th of March, 2012, by Councilmember Lopez, who moved its adoption, with motion being duly seconded by Councilmember Burnside, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Burnside, Geer, Gunderson, Lopez, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: Cogdill, Muratore

ATTEST: 

(SIGNATURE)

STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: 

(SIGNATURE)

SUSANA ALCALA WOOD, City Attorney
CDBG-R Substantial Amendment

Amended CDBG-R Allocations

1. Senior Citizens Center Energy Efficiency Improvement Project ($273,814)
2. Low-Income Owner-Occupant Energy Efficiency Improvement Project ($200,000)
3. Airport Neighborhood Economic Development Project ($94,762)
4. Administration ($13,173)
5. Airport Neighborhood Community Center Project ($50,000)
RESOLUTION AMENDING THE FY 2011/2012 CAPITAL IMPROVEMENT PROGRAM BUDGET IN THE AMOUNT OF $50,000 FOR THE AIRPORT NEIGHBORHOOD COMMUNITY CENTER, CIP #100698 TO APPROPRIATE REALLOCATED CDBG-R REVENUE RECEIVED FOR THIS PROJECT; AND AUTHORIZING THE FINANCE DIRECTOR, OR HER DESIGNEE, TO TAKE THE NECESSARY STEPS TO IMPLEMENT THE PROVISIONS OF THIS RESOLUTION

WHEREAS, the City of Modesto receives several Federal grants from the United States Department of Housing and Urban Development (HUD) and allocates those funds to various eligible activities, and

WHEREAS, the City Council, on June 2, 2009, by Resolution No. 2009-237, approved the Substantial Amendment to the Consolidated Plan 2008 Action Plan for the Community Development Block Grant - Recovery (CDBG-R), and

WHEREAS, the City of Modesto is required to amend its approved plan through a substantial amendment process whenever it makes one of the following decisions: to make a change in its allocation priorities or a change in the method of distribution of funds; to carry out an activity using funds from any program covered by the plan not previously described in the plan; and to change the purpose, scope, location, or beneficiaries of an activity, and

WHEREAS, staff has proposed an amendment to the CDBG-R as set forth in Exhibit A, attached hereto and incorporated herein by reference, and

WHEREAS, notice has been duly given to the community of the proposed amendment to the CDBG-R, and to provide a comment period, which began March 10, 2012, and ends on March 27, 2012, and
WHEREAS, this amendment allocates funding to the existing Airport Neighborhood Community Center Project in preparation for CDBG-R grant close-out, and

WHEREAS, the Citizens’ Housing and Community Development Committee reviewed staff’s proposed amendment of CDBG-R prior to City Council review, and

WHEREAS, a duly noticed public hearing was held by the City Council on March 27, 2012, at 5:30 PM in the Tenth Street Place Chambers, located at 1010 Tenth Street to consider approval of the proposed amendment to CDBG-R,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves amending the FY 2011/2012 Capital Improvement Program budget in the amount of $50,000 to appropriate reallocated revenue to the Airport Neighborhood Community Center, CIP #100698,

BE IT FURTHER RESOLVED that the Finance Director, or her designee, is hereby authorized to take the necessary steps to implement the provisions of this action.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 27\textsuperscript{th} of March, 2012, by Councilmember Lopez, who moved its adoption, with motion being duly seconded by Councilmember Burnside, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Burnside, Geer, Gunderson, Lopez, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: Cogdill, Muratore

ATTEST: 

STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: 

SUSANA ALCALA WOOD, City Attorney
CDBG-R Substantial Amendment

Amended CDBG-R Allocations

1. Senior Citizens Center Energy Efficiency Improvement Project ($273,814)
2. Low-Income Owner-Occupant Energy Efficiency Improvement Project ($200,000)
3. Airport Neighborhood Economic Development Project ($94,762)
4. Administration ($13,173)
5. Airport Neighborhood Community Center Project ($50,000)
RESOLUTION APPROVING SUBMITTAL OF GRANT APPLICATIONS TO THE CALIFORNIA DEPARTMENT OF TRANSPORTATION, DIVISION OF TRANSPORTATION PLANNING, IN THE AMOUNT OF $550,000 FROM THE COMMUNITY-BASED TRANSPORTATION PLANNING GRANT PROGRAM; AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE ALL NECESSARY GRANT DOCUMENTS

WHEREAS, on December 7, 2010, the City Council, by Resolution No. 2010-495, accepted the U.S. HUD-EPA-DOT Smart Valley Places grant, which provides funding for amendments to the Urban Area General Plan land use and circulation elements, and

WHEREAS, additional grant funding is needed in order to prepare planning documents, such as corridor studies, to implement the amended General Plan, and

WHEREAS, the California Department of Transportation (Caltrans) has the authority to award grants of financial assistance for transportation planning projects, and

WHEREAS, grants for Caltrans local assistance funds would impose certain obligations on the City of Modesto, such as invoicing, quarterly reporting, timely completion, and a local match of ten percent (10%) of the grant award, and

WHEREAS, a public meeting was held on March 27, 2012, at 5:30 p.m., in the Tenth Street Place Chambers located, at 1010 Tenth Street, Modesto, California, at which submittal of the grant applications was considered by the Council of the City of Modesto,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves submittal of applications on behalf of the City of Modesto to Caltrans for Community-Based Transportation Planning Grant funds for corridor studies in the amount of $550,000.
BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute and file the quarterly reports and other documents Caltrans requires for awarding a local assistance grant.

BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute all necessary grant documents with Caltrans on behalf of the City of Modesto.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 27th day of March, 2012, by Councilmember Geer, 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: Burnside, Cogdill, Geer, Gunderson, Lopez, Muratore, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2012-127

RESOLUTION ACCEPTING THE FISCAL YEAR 2010-2011 ANNUAL AUDIT REPORTS FOR THE CITY OF MODESTO, ITS COMMUNITY FACILITIES DISTRICTS, AND VARIOUS JOINT POWERS AGENCIES AND GRANT PROGRAMS

WHEREAS, pursuant to Section 1306 of the Charter of the City of Modesto, the City Council shall employ an independent certified public accountant who, at least annually, shall audit the books and records of the City of Modesto, and submit a final audit and report to the City Council as soon as practicable after the end of the fiscal year, and

WHEREAS, the accounting firm of Brown and Armstrong has completed their audit of the City’s financial statements for the fiscal year ended June 30, 2011, and has provided its opinion on these financial statements based on that audit, and

WHEREAS, the independent auditors also audited the financial statements of nine Community Facilities Districts and various Joint Powers Agencies and grant programs, as required by their respective enabling legislations, and for which the City of Modesto serves as the financial administrator,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby accepts the Fiscal Year 2010-2011 annual audit reports for the City of Modesto, its Community Facilities Districts, and various Joint Powers Agencies and grant programs, as listed on Exhibit A, which is incorporated by reference herein.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 27th day of March 2012, by Councilmember Muratore, who moved its adoption, which motion being duly seconded by Councilmember Geer, was upon roll call carried and the resolution adopted by the following votes:

AYES: Councilmembers: Burnside, Cogdill, Geer, Gunderson, Lopez, Muratore, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

(Seal)

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney

ATTEST: STEPHANIE LOPEZ, City Clerk
MODESTO CITY COUNCIL
RESOLUTION NO. 2012-

RESOLUTION ACCEPTING THE FISCAL YEAR 2010-2011
ANNUAL AUDIT REPORTS

EXHIBIT A

City of Modesto:
1. Comprehensive Annual Financial Report
2. Memorandum of Internal Controls and Required Communications
3. Single Audit Report
4. Community Facilities District Number 1998-2 (Carver-Bangs/Pelandale-Snyder)
5. Community Facilities District Number 2002 (Coffee-Claratina)
6. Community Facilities District Number 1998-1 (Enterprise Business Park)
7. Community Facilities District Number 2003-1 (Fairview Village)
8. Community Facilities District Number 2007-2 (Kiernan Business Park West)
9. Community Facilities District Number 1997-1 (North Beyer Park)
10. Community Facilities District Number 2002-1 (Northpointe)
11. Community Facilities District Number 2004-1 (Village One #2)
12. Community Facilities District Number 1996-1 (Village One)

Other Agencies and grant programs:
13. Stanislaus Drug Enforcement Agency (SDEA)
15. Abandoned Vehicle Abatement (AVA)
16. Modesto Redevelopment Agency (RDA)
17. Transportation Development Agency (TDA)
18. Industrial Fire Joint Powers Agency
19. Tuolumne River Regional Park (TRRP)
MODESTO CITY COUNCIL
RESOLUTION NO. 2012-128

A RESOLUTION APPROVING A NEW CAPITAL IMPROVEMENT PROGRAM (CIP) ACCOUNT FOR THE PROJECT TITLED, "VILLAGE ONE CENTRAL BASIN EROSION CONTROL," WITH A TOTAL ESTIMATED PROJECT COST OF $125,000

WHEREAS, the Village One Central Storm Drain Basin was constructed during the summer of 2002 with the removal of 75,000 cubic yards of material, and

WHEREAS, it was expected that native grasses and vegetation would grow on the side slopes to prevent erosion, and

WHEREAS, natural vegetation has not grown on the slopes due to herbicides and preemergents that have been sprayed on the slopes over the last 10 years and the slopes have eroded to the point that a significant maintenance effort is needed, and

WHEREAS, City staff recommends approving a new Capital Improvement Program Account for the project titled “Village One Central Basin Erosion Control”,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves a new Capital Improvement Program Account for the project titled “Village One Central Basin Erosion Control.”
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 3rd day of April, 2012, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Cogdill, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Burnside, Cogdill, Geer, Gunderson, Lopez, Muratore, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: ____________________

Stephanie Lopez, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: ____________________

Susana Alcala Wood, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2012-129

A RESOLUTION AMENDING THE FISCAL YEAR 2011-12 CAPITAL IMPROVEMENT PROGRAM BUDGET FOR THE VILLAGE ONE CENTRAL BASIN CONTROL PROJECT AND APPROPRIATING $125,000 FROM CFD NO. 2004-1 (VILLAGE ONE #2) FUND 3290-14719 TO CIP PROJECT # 100700

WHEREAS, the Village One Central Storm Drain Basin was constructed during the summer of 2002 with the removal of 75,000 cubic yards of material, and

WHEREAS, it was expected that native grasses and vegetation would grow on the side slopes to prevent erosion, and

WHEREAS, natural vegetation had not grown on the slopes due to herbicides and pre-emergents that had been sprayed on the slopes over the last 10 years and the slopes had eroded to the point that a significant maintenance effort was needed, and

WHEREAS, the Council of the City of Modesto approved a new Capital Improvement Program Account for the project titled “Village One Central Basin Erosion Control”, and

WHEREAS, the Fiscal Year 2011-2012 Capital Improvement Program budget must be amended to appropriate $125,000 from CFD No. 2004-1 (Village One #2) Fund 3290-14719 to CIP Project # 100700,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the amendment of the Fiscal Year 2011-2012 Capital Improvement Program budget to appropriate $125,000 from CFD No. 2004-1 (Village One #2) Fund 3290-14719 to CIP Project # 100700.

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 3rd day of April, 2012, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Cogdill, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Burnside, Cogdill, Geer, Gunderson, Lopez, Muratore, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: 

(STEPHANIE LOPEZ, City Clerk)

(SEAL)

APPROVED AS TO FORM:

By: 

SUSANA ALCALA WOOD, City Attorney
A RESOLUTION DECLARING AS SURPLUS FROM MARCH 1, 2012 THROUGH FEBRUARY 28, 2013 THE FOLLOWING ITEMS: LOST, STOLEN, UNCLAIMED AND/OR SEIZED PROPERTY FROM THE POLICE DEPARTMENT, EXCESS PROPERTY ACCUMULATED BY THE CITY AND SURPLUS CITY VEHICLES AND EQUIPMENT AND AUTHORIZING THE PURCHASING DIVISION TO SELL SAME BY SEALED BID, CONSIGNMENT, PUBLIC AUCTION, ONLINE AUCTION, ONLINE, AS SCRAP, OR DONATE TO AN ELIGIBLE NON-PROFIT 501(C)(3) ORGANIZATION

WHEREAS, Section 801 of the City Charter authorizes the City Manager to sell obsolete, unclaimed, or surplus personal property of the City with the approval of the City Council, and

WHEREAS, the City’s surplus items consist of: (1) lost, stolen, unclaimed and/or seized property from the Police Department, (2) excess property accumulated by the City, and (3) surplus City vehicles and equipment, and

WHEREAS, the Purchasing Division will sell surplus property through a land based auctioneer or through auction companies, or directly online, or through sealed bid

WHEREAS, revenues from the sale of surplus Fleet vehicles/equipment are deposited into the Fleet Replacement Fund, 5410-53241, and

WHEREAS, all revenues received from the sale of non-rolling stock are either deposited in the originating fund or in the General Fund,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto as follows:
SECTION 1. The City Council in accordance with Section 801 of the City Charter and Section 2.7.06 of the Modesto Municipal Code hereby declares as surplus from March 1, 2012, through February 28, 2013, the property items set forth above.

SECTION 2. The City Manager, or the Purchasing Manager, acting as the City Manager's designated representative, is hereby authorized and directed to sell same by sealed bid, consignment, public auction, online auction, online or as scrap or to donate to an eligible non-profit 501(c)(3) organization.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 3rd day of April, 2012, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Cogdill, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Burnside, Cogdill, Geer, Gunderson, Lopez, Muratore, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2012-131

RESOLUTION APPROVING AN OFFICIAL MAP FOR THE ARCHWAY COMMONS PROJECT

WHEREAS, The City of Modesto and the Archway Commons developer, EAH, Inc., are in the final stages of pre-development work before construction can begin on an affordable housing project to add 76 units to the City of Modesto’s housing stock and promote economic development in the region, and

WHEREAS, to ensure that the survey markers and the parcel boundaries are accurate and correct, the City of Modesto, in conjunction with EAH, Inc., ordered a survey and then created an “Official Map” for the parcel, and

WHEREAS, according to the California Government Code Section 66499.52(b), an official map can be recorded when, “In a city or county which has adopted the procedure prescribed herein, any surveyor or engineer, under the review of the city engineer or county surveyor, may prepare an official map to be filed for record pursuant to subdivisions (d) and (e) of Section 66499.35”, and

WHEREAS, creating an official map was the most expedient manner to confirm from a field survey the land boundaries, which could affect building set-backs and easements in the construction phase of the project, and

WHEREAS, the map will be prepared in accordance with the map format specifications, and

WHEREAS, the official map includes an engineer’s or surveyor’s certificate stating that the map was prepared pursuant to the provisions of Government Code
Sections 66499.50 – 66499.58, and an approval certificate of the city engineer or county surveyor,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves an official map for the Archway Commons Project.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 3rd day of April, 2012, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Burnside, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Burnside, Cogdill, Geer, Gunderson, Lopez, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: Muratore

ATTEST: [Signature]

SEAL

APPROVED AS TO FORM:

By: [Signature]

SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2012-132

RESOLUTION APPROVING AN AMENDMENT TO THE FISCAL YEAR 2011-2012 CAPITAL IMPROVEMENT PROGRAM BUDGET IN ORDER TO FUND THE TRRP GATEWAY PHASE 1.3 TRAILS PROJECT IN THE AMOUNT OF $550,000; AND AUTHORIZING THE FINANCE DIRECTOR, OR HER DESIGNEE, TO IMPLEMENT THE PROVISIONS OF THIS RESOLUTION

WHEREAS, the City of Modesto received grants from the Habitat Conservation Fund and federal government that total $550,000 to further develop the Gateway Parcel in the Tuolumne River Regional Park (TRRP), and

WHEREAS, on August 8, 2006, the City Council, by Resolution No. 2006-504, approved the development of Phase 1.1 of the Gateway Parcel, and

WHEREAS, on September 4, 2007, the City Council, by Resolution No. 2007-527, approved the development of Phase 1.2 of the Gateway Parcel, and

WHEREAS, the City is now ready to continue the development of the Gateway Parcel by constructing a minor trail system in the Riparian Terraces area, and

WHEREAS, development of the Phase 1.3 Trails will provide direct access to the Tuolumne River for recreation activities, and

WHEREAS, the City of Modesto CIP Task Force has reviewed and approved this project,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves an Amendment to the Fiscal Year 2011-2012 Capital Improvement Program budget in order to fund the TRRP Gateway Phase 1.3 Trails project in the amount of $550,000.

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 3rd day of April, 2012, by Councilmember Lopez, who
moved its adoption, which motion being duly seconded by Councilmember Cogdill, was
upon roll call carried and the resolution adopted by the following vote.

AYES: Councilmembers: Burnside, Cogdill, Geer, Gunderson, Lopez,
                    Muratore, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: SUSANAalcala WOOD, City Attorney

(SEAL)

APPROVED AS TO FORM:

By: SUSANAalcala WOOD, City Attorney
A RESOLUTION APPROVING STANISLAUS COUNTY REGIONAL
APPREHENSION TEAM MEMORANDUM OF UNDERSTANDING FOR
PARTICIPATION IN THE POST RELEASE COMMUNITY SUPERVISION,
ALONG WITH OTHER COUNTY-WIDE LAW ENFORCEMENT AGENCIES,
TO LOCATE NON-COMPLIANT, NON-SERIOUS, NON-VIOLENT
OFFENDERS UPON THEIR RELEASE FROM STATE PRISON; AND
AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE
THE MEMORANDUM OF UNDERSTANDING

WHEREAS, on April 4, 2011, Governor Brown signed Assembly Bill 109 (AB
109), which made essential changes to California’s correction system, and
WHEREAS, AB 109 realigned custodial and community supervision
responsibility for non-serious, non-violent, and non-sex offenders, as well as supervision
of lower level adult parolees returning from state prison sentences to counties, and
WHEREAS, starting October 1, 2011, any offender who was convicted of a non-
serious, non-violent felony, and is not deemed a high risk sex offender will be placed on
local supervision through the Probation Department upon their release from state prison,
and
WHEREAS, when the Post Release Community Supervision offenders fail to
report to their probation officer and their whereabouts are unknown, probation officers
will request bench warrants from the court, and
WHEREAS, this Memorandum of Understanding (MOU) allows law enforcement
agencies in Stanislaus County to combine resources and work cooperatively in locating
noncompliant PRCS offenders in our county, and
WHEREAS, a Community Corrections Partnership Executive Committee will
govern the affairs of the Regional Apprehension Team, and
WHEREAS, this Committee, comprised of the Chief Probation Officer (Chairperson), Stanislaus County Sheriff, Stanislaus County District Attorney, Stanislaus County Public Defender, Modesto Police Department Chief, Presiding Stanislaus County Superior Court Judge and the Director of the Stanislaus County Behavioral Health and Recover Services will meet on an as needed basis to review team operations and will provide direction, guidance and oversight, and

WHEREAS, the Stanislaus County Regional Apprehension Team will be staffed by personnel referred by the participating law enforcement agencies, and

WHEREAS, the Probation Department will take the lead in organizing and coordinating county operations, including notification to the agencies when and where apprehension operations will be taking place, and

WHEREAS, the Probation Department will notify the agencies on how many officers will be needed for each operations, and

WHEREAS, each participating agency agrees to hold harmless all other participating agencies, and

WHEREAS, the Adult Division Director of the Stanislaus County Probation Department will be responsible for implementing a reporting system for tracking apprehension team activity and resource utilization, and

WHEREAS, the reporting system will serve as the basis for quarterly reports to the Community Corrections Partnership Executive Committee, as well as to ensure an accountability of personnel and resources, and

WHEREAS, this MOU will be effective until June 30, 2014;
NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the Stanislaus County Regional Apprehension Team Memorandum of Understanding for participation in the Post Release Community Supervision.

BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute the Memorandum of Understanding.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 3rd day of April, 2012, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Cogdill, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Burnside, Cogdill, Geer, Gunderson, Lopez, Muratore, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: [Signature]

(SEAL)

APPROVED AS TO FORM:

By: [Signature]
SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2012-134

A RESOLUTION APPROVING AN AMENDMENT TO AGREEMENT WITH VBN ARCHITECTS FOR ARCHITECTURAL AND FINAL DESIGN SERVICES FOR THE BUS MAINTENANCE FACILITY PROJECT IN AN AMOUNT NOT TO EXCEED $780,008; AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE AMENDMENT

WHEREAS, on October 13, 2009, by Resolution No. 2009-493, the City Council approved an agreement with VBN Architects to perform Architectural and Final Design Services for the Bus Maintenance Facility in the not to exceed amount of $716,112, and

WHEREAS, on January 23, 2012, City Staff submitted a budget augmentation for additional funding in the amount of $63,896, to a not to exceed total of $780,008,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves an Amendment to Agreement between the City of Modesto and VBN Architects to perform Architectural and Final Design Services for the Bus Maintenance Facility in the not to exceed amount of $780,008.

BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute said Amendment.
The foregoing resolution was introduced at a regular meeting of the Council of
the City of Modesto held on the 3rd day of April, 2012, by Councilmember Lopez, who
moved its adoption, which motion being duly seconded by Councilmember Cogdill, was
upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Cogdill, Geer, Gunderson, Lopez, Muratore,
Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: Burnside

ATTEST: STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney
WHEREAS, Section 11-6.09 of the Modesto Municipal Code authorizes the Council to establish sewer service charges from time to time by resolution, and

WHEREAS, the Council has previously established sewer service charges, and

WHEREAS, Proposition 218 was passed in November of 1996 and became effective with respect to sewer rates on July 1, 1997, and

WHEREAS, on July 24, 2007, the Council held a public hearing pursuant to Proposition 218 with respect to adjustment of sewer rates, and

WHEREAS, notices of a sewer rate adjustment and public hearing were mailed on June 8, 2007 to sewer customers, and

WHEREAS, insufficient protests were made to defeat imposition of the sewer rate adjustments resulting in increases in some cases, and

WHEREAS, on July 24, 2007, the City Council, by Resolution No. 2007-463, established maximum wastewater rates beginning August 1, 2007, and updated each July 1st through the year 2011, and

WHEREAS, the Final Master Environmental Impact Report for the Waste Water Master Plan was completed (State Clearing House No. 2006052076) and adopted by the City Council on March 13, 2007 by Resolution No. 2007-178, and

WHEREAS, on May 25, 2010, the City Council, by Resolution No. 2010-222, rescinded all previous sewer fee resolutions and adopted a new five-year rate plan for
Fiscal Years 2011-2015, and

WHEREAS, the report titled, “2012 Evaluation of Wastewater Rates,” analysis shows that the projected costs and revenues are tracking reasonably close to what was projected in the 2011 report, and

WHEREAS, this report also shows that it would be possible to implement alternative rate plans primarily due to the following factors:

- Relatively stable customer characteristics and discharges
- Operating costs - reduced inflation assumptions for FY 2013 and FY 2014
- Capital program - assumed the same reduced program
- Debt financing - State Revolving Fund (SRF) financing has received preliminary approval, and

WHEREAS, staff has reviewed the Capital Improvement Program (CIP) and operations budgets of the Wastewater Enterprise Fund for both the current and upcoming fiscal years with the goal of minimizing any rate increase proposals for FY 2013 and beyond, and

WHEREAS, in order to maintain an adequate debt coverage ratio and operating reserves, a series of rate increases will be required, and

WHEREAS, these series of rate increases do not exceed the maximum wastewater rates allowed by City Council Resolution No. 2007-463, and

WHEREAS, on February 27, 2012, the Finance Committee recommended that City Council adopt a series of wastewater rate increases, shown as Scenario 3 in the “2012 Evaluation of Wastewater Rates” report,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto as follows:
SECTION 1. DEFINITIONS. Unless the context requires a different meaning, for the purposes of this resolution the definitions set forth in Section 5-6.103 of Chapter 6 of Title 5 of the Modesto Municipal Code entitled "DEFINITIONS" shall apply.

1. Director: The City officer(s) or designee(s) in charge of utilities.

2. Monthly account charge: A monthly fee charged to every sewer account to pay the actual fixed sewer system costs not allocable to sewer flow and strength components.

3. Person. Any individual, partnership, corporation or other legal entity whatsoever applying for or receiving City sewer service.

SECTION 2. SEWER SERVICE CHARGES FOR RESIDENTIAL SERVICE.

Each person receiving residential sewer service shall pay a sewer service charge to the City in accordance with the following rates:

(a) The maximum monthly sewer service charges for dwelling units, mobile homes and mobile home spaces in mobile home parks shall be as follows:

<table>
<thead>
<tr>
<th>Maximum Residential Rates</th>
<th>Year 1</th>
<th>Year 2</th>
<th>Year 3</th>
<th>Year 4</th>
<th>Year 5</th>
</tr>
</thead>
<tbody>
<tr>
<td>Monthly Account Charge ($/Account)</td>
<td>$3.93</td>
<td>$4.17</td>
<td>$4.43</td>
<td>$4.62</td>
<td>$4.68</td>
</tr>
<tr>
<td>Single Family Residential, Mobile Home on a lot</td>
<td>$24.74</td>
<td>$26.47</td>
<td>$28.32</td>
<td>$29.74</td>
<td>$30.16</td>
</tr>
<tr>
<td>Multiple Family (2-4 Dwelling Units), one additional Dwelling Unit or Mobile Home on a lot</td>
<td>$21.23</td>
<td>$22.72</td>
<td>$24.31</td>
<td>$25.52</td>
<td>$25.88</td>
</tr>
<tr>
<td>Apartments (5 or more Dwelling Units), Mobile Home Space in a Mobile Home Park</td>
<td>$16.11</td>
<td>$17.24</td>
<td>$18.45</td>
<td>$19.37</td>
<td>$19.64</td>
</tr>
</tbody>
</table>

SECTION 3. SEWER SERVICE CHARGES FOR COMMERCIAL SERVICE.

Each person receiving commercial sewer service shall pay a maximum sewer service charge to the City in accordance with the following rates:

(a) Commercial users shall be grouped according to Biochemical Oxygen Demand (hereinafter referred to as BOD) and Total Suspended Solids (hereinafter referred to as TSS) strength characteristics and shall pay sewer
service charges based on the quantity of water used, and the waste strength characteristics measured in milligrams per liter (hereinafter referred to as mg/l). The Director shall determine the waste strength characteristics of commercial users and assign them to one of the following commercial users groups:

<table>
<thead>
<tr>
<th>Maximum Commercial Rates</th>
<th>Year 1</th>
<th>Year 2</th>
<th>Year 3</th>
<th>Year 4</th>
<th>Year 5</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1-Jul-12</td>
<td>1-Jul-13</td>
<td>1-Jul-14</td>
<td>1-Jul-15</td>
<td>1-Jul-16</td>
</tr>
<tr>
<td>Monthly Account Charge ($/Account)</td>
<td>$3.93</td>
<td>$4.17</td>
<td>$4.43</td>
<td>$4.62</td>
<td>$4.68</td>
</tr>
<tr>
<td></td>
<td>plus Quantity Charge ($/100 cubic feet)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Group 1-BOD + TSS is 400 mg/l or less</td>
<td>$2.10</td>
<td>$2.24</td>
<td>$2.40</td>
<td>$2.52</td>
<td>$2.56</td>
</tr>
<tr>
<td>Group 2-BOD + TSS is 401 mg/l to 900 mg/l</td>
<td>$2.58</td>
<td>$2.76</td>
<td>$2.95</td>
<td>$3.10</td>
<td>$3.14</td>
</tr>
<tr>
<td>Group 3-BOD + TSS is 901 mg/l to 1,400 mg/l</td>
<td>$3.07</td>
<td>$3.29</td>
<td>$3.52</td>
<td>$3.69</td>
<td>$3.74</td>
</tr>
<tr>
<td>Group 4-BOD + TSS is 1,401 mg/l or more</td>
<td>$3.65</td>
<td>$3.90</td>
<td>$4.18</td>
<td>$4.39</td>
<td>$4.45</td>
</tr>
</tbody>
</table>

(b) Commercial users shall have all water used on the premises metered in order to determine the users' sewer service charges.

(1) Commercial users on a public water system other than the City's shall obtain a metered water service from the water purveyor and shall pay the sewer service charge which would be made were such water from the City's water system.

(2) Commercial users receiving any water from a private source shall allow the City to furnish, install and maintain a water meter with the user paying for the cost of the meter and installation. The user shall pay the sewer service charge which would be made were such water from the City's water system. Authorization shall be granted to City from user to install, read and maintain said meter by user executing an agreement on a form furnished by the Director.

(c) In the case of existing meters which are under the ownership of users, the City will assume responsibility for maintenance of such meters upon:

(1) Receipt of transfer of title from the owner in a form satisfactory to the Director, and

(2) Authorization being granted to City for reading and maintaining the meter as set forth in paragraph (b) above.

(d) Schools, churches, assembly halls and similar facilities shall be considered Group 1.
SECTION 4. SEWER SERVICE CHARGES FOR INDUSTRIAL SERVICE.

Each person receiving industrial sewer service shall pay a maximum sewer service charge to the City in accordance with the following rates:

(a) The monthly sewer service charges for industrial users shall be at the following rate of per million gallons of total flow.

<table>
<thead>
<tr>
<th>Maximum Industrial (Major and Minor) Rates</th>
<th>Year 1</th>
<th>Year 2</th>
<th>Year 3</th>
<th>Year 4</th>
<th>Year 5</th>
</tr>
</thead>
<tbody>
<tr>
<td>Monthly Account Charge ($/Account)</td>
<td>$3.93</td>
<td>$4.17</td>
<td>$4.43</td>
<td>$4.62</td>
<td>$4.68</td>
</tr>
<tr>
<td>plus Quantity Charges (these three components are additive)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Flow Charge ($/Million gallons)</td>
<td>$2,284</td>
<td>$2,443</td>
<td>$2,614</td>
<td>$2,745</td>
<td>$2,783</td>
</tr>
<tr>
<td>BOD Charge ($/1,000 lbs)</td>
<td>$113</td>
<td>$121</td>
<td>$130</td>
<td>$136</td>
<td>$138</td>
</tr>
<tr>
<td>TSS Charge ($/1,000 lbs)</td>
<td>$198</td>
<td>$212</td>
<td>$227</td>
<td>$238</td>
<td>$241</td>
</tr>
</tbody>
</table>

(1) If the Industry has an effluent meter for industrial flow measurement and a sanitary sewage meter, the total flow shall be the sum of the metered flows.

Sanitary Sewage Flow: If Industry has an unmetered connection for disposal of sanitary sewage, the estimated volume may be established by the Director. The estimated volume shall be based on the number and type of plumbing fixture units contributing to the system along with any other flow information available which indicates the total volume of sanitary sewage.

(2) In the absence of an effluent meter, an influent meter shall be used, and total flow shall be based upon the influent meter reading.

(3) The BOD and TSS charges for industrial and sanitary discharges shall be based on the measured or estimated BOD and TSS for each type of flow.

SECTION 5. FLOW ESTIMATES. The Director will estimate flow where he/she determines metered flow measurements are unreliable.

SECTION 6. SEWER SERVICE CHARGES FOR DUMPING OF SEPTIC WASTE AT THE SEWAGE TREATMENT PLANT
**SECTION 7. INFLATOR INDEX AND REASSESSMENT OF COST OF SERVICE.** The cost of service set forth above shall be re-examined not less than every four years by professionals competent in the field. Such professionals shall provide a report to the City updating both the fixed and volume based costs as appropriate and as recommended to the Council by the Director and Director of Finance. Beginning on July 1, 2017 and annually thereafter, the Director of Finance with the concurrence of the Director, shall have the authority to adjust the above rates by an amount not to exceed the not-seasonally-adjusted annual percentage increase in the April Consumer Price Index (CPI) for Urban Wage Earners and Clerical Workers for the San Francisco CMSA that is currently prepared by the Department of Finance.

**SECTION 8. SULFIDE CORROSION CHARGES.** Any wastewater discharge which exceeds 0.5 parts per million of sulfides shall pay a sulfide corrosion charge, an impact fee, determined on a case-by-case basis as follows:

(a) The projected accelerated corrosion of collection system pipes and pump stations will be calculated based on the EPA Pomeroy Model for Sulfide Corrosion (EPA Design Manual, EPA/625/1-85-018, Section 2.5.2.1 - Corrosion Predictive Model).

(b) The sulfide corrosion charge will then be calculated based on the actual pipes and pump stations, up to the Water Quality Control Plant Headworks, impacted by the discharge, and on the current estimates of replacement costs and the time value of money.

(c) Discharges of sulfide above 0.5 ppm shall also not have a pH lower than 7.

(d) The discharger may request that the sulfide charge be recalculated each year, if the amount of sulfide discharged is documented as having changed significantly from the previous year. The discharger may elect to receive
the billing for this service charge on an annual or monthly basis. No prepayment discount will apply.

(e) This service charge is an impact fee based on sulfide crown corrosion of collection system pipes and pumping facilities. It is not intended to compensate the City for increased corrosion or odor generation in the Water Quality Control Plant. It is not intended to liquidate the responsibility of a party whose wastewater discharge escapes from the collection system causing soil or groundwater contamination. Discharge of concentrated sulfides under the provisions of this section constitutes acceptance of these terms.

SECTION 9. SEWAGE TREATMENT FOR OUTSIDE PUBLIC AGENCIES.

Pursuant to agreements approved from time to time by the City Council and the City Attorney (as to form), other public agencies will own and operate, and the City of Modesto will accept and treat sewage collected from, sewer systems external to the City and City’s Sewer District No. 1.

SECTION 10. EFFECTIVE DATE. This resolution shall go into effect and be in full force and operation on and after July 1, 2012.

SECTION 11. RESCINDING PRIOR RESOLUTIONS. All previous sewer fees resolutions are hereby rescinded effective July 1, 2012.

SECTION 12. ANNUAL REVIEW OF ADOPTED RATE INCREASES. The City Council shall conduct a review of each adopted sewer rate increase prior to its implementation. Said review shall be completed by the City Council at least sixty days in advance of the new sewer rate becoming effective. The rates shown in this resolution shall be implemented on the dates shown unless City Council takes action otherwise.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 3rd day of April, 2012, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Burnside, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Burnside, Cogdill, Geer, Gunderson, Lopez, Muratore, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney

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, City of Modesto has proposed repealing Title 10 of the Modesto Municipal Code in its entirety and reenacting a new Title 10 for a comprehensive maintenance update of the Zoning Regulations, and

WHEREAS, pursuant to Section 21157.1 of the Public Resources Code, the City of Modesto’s Community & Economic Development Department prepared an Environmental Assessment Initial Study EA/C&ED 2012-02 ("Initial Study") which analyzed whether the subsequent project may cause any significant effect on the environment that was not examined in the Master EIR and whether the subsequent project was described in the Master EIR as being within the scope of the report, and

WHEREAS, in accordance with CEQA guidelines beginning on March 14, 2012, the City caused to be published a 20-day notice of the City’s intent to make a finding that the subsequent project conforms with the Master EIR, and
WHEREAS, said matter was considered by the City Council at a duly noticed
public hearing which was held on April 3, 2012, 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 prepared for the proposed
repealing Title 10 of the Modesto Municipal Code in its entirety and reenacting a new
Title 10 for a comprehensive maintenance update of the Zoning Regulations, a copy of
which is attached hereto as Exhibit “A”, and incorporated herein by reference, and
based on substantial evidence in the Initial Study makes the following findings:

1. An Initial Study was prepared by the City of Modesto that analyzed
whether the subsequent project may cause any significant effect on the
environment that was not examined in the Master EIR and whether the
subsequent project was described in the Master EIR as being within the
scope of the report.

2. The subsequent project will have no additional significant effect on the
environment, as defined in subdivision (d) of Section 21158 of the Public
Resources Code, that was not identified in the Master EIR.

3. No new or additional mitigation measures or alternatives are required.

4. The subsequent project is within the scope of the project covered by the
Master EIR.

5. All applicable policies, regulations, and mitigation measures identified in
the Master EIR have been applied to the subsequent project or otherwise
made conditions of approval of the subsequent project.

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 introduced at a regular meeting of the Council of the City of Modesto held on the 3rd day of April, 2012, by Councilmember Cogdill, who moved its adoption, which motion being duly seconded by Councilmember Burnside, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Burnside, Cogdill, Geer, Gunderson, Lopez, Muratore, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

(Seal)

ATTEST: [Signature]

STEFANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: [Signature]

SUSANA ALCALA WOOD, City Attorney
EXHIBIT A

Initial Study

EA/C&ED 2012-02
Finding of Conformance to General Plan Master EIR:

Initial Study Environmental Checklist
C&ED No. 2012-02

For the proposed:

Zoning Code Amendment
CODE-10-003
Comprehensive Maintenance Update

Prepared by:
City of Modesto
Community & Economic Development Department
Planning Division

February 6, 2012
City of Modesto
Master EIR Initial Study Environmental Checklist

I. PURPOSE

CEQA allows for the limited environmental review of subsequent projects under the City’s Master Environmental Impact Report (“Master EIR” or “MEIR”). This Initial Study Environmental Checklist (“Initial Study”) is used in determining whether the Zoning Code Amendment, a comprehensive maintenance update, is “within the scope” of the project analyzed in the Modesto Urban Area General Plan Master EIR (SCH# 2007072023) (Public Resources Code section 21157.1). When the Initial Study supports this conclusion, the City will issue a finding of conformance.

A subsequent project is “within the scope” of the Master EIR when:

1. it will have no additional significant effects on the environment that were not addressed as significant effects in the Master EIR; and

2. no new or additional mitigation measures or alternatives are required.

“Additional significant effects” means a project-specific effect that was not addressed as a significant effect in the Master EIR. [Public Resources Code Section 21158(d)]

The determination must be based on substantial evidence in the record. “Substantial evidence” means facts, reasonable assumptions predicated upon facts, or expert opinion based on facts. It does not include speculation or unsubstantiated opinion. (CEQA Guidelines Section 15384)

II. PROJECT DESCRIPTION

A. Title: Zoning Code Amendment, a comprehensive maintenance update

B. Address or Location: City of Modesto. The Zoning Code applies to the entire City of Modesto.

C. Applicant: City of Modesto, 1010 Tenth Street, Modesto, CA 95353

D. City Contact Person: Paul Liu
   Project Manager: Paul Liu
   Department: Community and Economic Development
   Phone Number: 209 577 5267
   E-mail address: pliu@modestogov.com

E. Current General Plan Designation(s): Not Applicable

F. Current Zoning Classification(s): Not Applicable

G. Surrounding Land Uses:
   North: Not Applicable
   South: Not Applicable
   East: Not Applicable
   West: Not Applicable

City of Modesto
General Plan Master EIR

Initial Study EA No. 2012-02
February 6, 2012
H. Project Description, including the project type listed in Section II.C (Anticipated Future Projects) of the Master EIR (Attach additional maps/support materials as needed for complete record):

This is a comprehensive maintenance update that will modernize and reformat the Zoning Code. The proposed code amendment will not result in major changes to land use requirements and development standards. A summary of this effort includes:

1. Review and update of permitted and conditional land uses. Convert land use provisions from a text format to a table format.
2. Review and update of development standards. Convert standards from a text format to a table format.
3. Review and update of administrative and procedural provisions and provide a new authoritative table.

A summary of the changes is provided in the attached table.

I. Other Public Agencies Whose Approval is Required:

None

III. FINDINGS/DETERMINATION (SELECT ONE ON THE BASIS OF THE ANALYSIS IN SECTION IV)

1. **Within the Scope** - The project is within the scope of the Master EIR and no new environmental document or Public Resources Code Section 21081 findings are required. All of the following statements are found to be true:

   A. The subsequent project will have no additional significant effect on the environment, as defined in subdivision (d) of Section 21158 of the Public Resources Code, that was not identified in the Master EIR.

   B. No new or additional mitigation measures or alternatives are required.

   C. The subsequent project is within the scope of the project covered by the Master EIR.

   D. All applicable policies, regulations, and mitigation measures identified in the Master EIR have been applied to the subsequent project or otherwise made conditions of approval of the subsequent project.

2. **Mitigated Negative Declaration Required** - On the basis of the above determinations, the project is not within the scope of the Master EIR. A mitigated negative declaration will be prepared for the project. The following statements are all found to be true:

   A. The subsequent project is within the scope of the project covered by the Master EIR.

   B. All applicable policies, regulations, and mitigation measures identified in the Master EIR have been applied to the subsequent project or otherwise made conditions of approval of the subsequent project.
C. The project will have one or more potential new significant effects on the environment that were not addressed as significant effects in the Master EIR. New or additional mitigation measures are being required of the project that will reduce the effects to a less-than-significant level.

3. **Focused EIR Required** - On the basis of the above determinations, the project is not within the scope of the Master EIR. A Focused EIR will be prepared for the project. All of the following statements are found to be true:

   A. The subsequent project is within the scope of the project covered by the Master EIR.

   B. All applicable policies, regulations, and mitigation measures identified in the Master EIR have been applied to the subsequent project or otherwise made conditions of approval of the subsequent project.

   C. The project will have one or more new significant effects on the environment that were not addressed as significant effects in the Master EIR. New or additional mitigation measures or alternatives are required as a result.

\[\begin{array}{ccc}
\text{Project Manager} & \text{Senior Planner} & 2-27-12 \\
\text{Name} & \text{Title} & \text{Date}
\end{array}\]
4. Within the Scope Analysis of this Document:

The Master EIR allows projects to be found within the scope of the MEIR if certain criteria are met. If the following statements are found to be true for all 21 impact categories included in this Initial Study, then the proposed project is addressed by the MEIR analysis and is within the scope of the MEIR. Any "No" response must be discussed.

<table>
<thead>
<tr>
<th></th>
<th>YES</th>
<th>NO</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1)</td>
<td>The lead agency for subsequent projects shall be the City of Modesto or a responsible agency identified in the Master EIR.</td>
<td>☒</td>
</tr>
<tr>
<td>(2)</td>
<td>City policies which reduce, avoid, or mitigate environmental effects will continue to be in effect and, therefore, would be applied to subsequent projects where appropriate. The policies are described in the list of policies in place and mitigation measures attached to the Initial Study template. Project impacts would be mitigated to a less-than-significant level using MEIR mitigations only.</td>
<td>☐</td>
</tr>
<tr>
<td>(3)</td>
<td>Federal, State, regional, and Stanislaus County regulations do not change in a manner that is less restrictive on development than current law (i.e., would not offer the same level of protection assumed under the Master EIR).</td>
<td>☐</td>
</tr>
<tr>
<td>(4)</td>
<td>No specific information concerning the known or potential presence of significant resources is identified in future reports, or through formal or informal input received from responsible or trustee agencies or other qualified sources.</td>
<td>☒</td>
</tr>
<tr>
<td>(5)</td>
<td>The development will occur within the boundaries of the City's planning area as established in this Urban Area General Plan.</td>
<td>☐</td>
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<tr>
<td>(6)</td>
<td>Development within the project will comply with all appropriate mitigation measures contained and enumerated in the 2008 General Plan Master EIR.</td>
<td>☒</td>
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</tbody>
</table>

Discussion:

(1) The Zoning Code Amendment is not a development project. The City of Modesto will be the lead agency and no other agency has approval authority over development projects in the City that uses the Zoning Code.

(2) No modifications to the Urban Area General Plan are proposed as part of this project. No significant impacts are expected to occur beyond those identified in the Urban Area General Plan Master EIR and all relevant mitigations/policies will be applied.

(3) The proposed project does not include changes to federal, state, regional, or county regulations.

(4) There is no new information regarding the presence of significant resources.

(5) The Zoning Code Amendment is not a development project.

(6) The Zoning Code Amendment is not a development project.
5. Currency of the Master EIR Document

The MEIR should be reviewed on a regular basis to determine its currency, and whether additional analysis/mitigation should be incorporated into the MEIR via a Supplemental or Subsequent EIR (CEQA Section 21157.6). Staff has reviewed Sections 1 through 21 of this document in light of the criteria listed below to determine whether the MEIR is current. The analysis contained within the Master EIR is current as long as the following circumstances have not changed. Any "no" response must be explained.

<table>
<thead>
<tr>
<th>YES</th>
<th>NO</th>
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</thead>
<tbody>
<tr>
<td>(1) Certification of the General Plan Master EIR occurred less than five years prior to the filing of the application for this subsequent project.</td>
<td>☒</td>
</tr>
<tr>
<td>(2) This project is described in the Master EIR and its approval will not affect the adequacy of the Master EIR for any subsequent project because the City can make the following findings:</td>
<td></td>
</tr>
<tr>
<td>(a) No substantial changes have occurred with respect to the circumstances under which the Master EIR was certified.</td>
<td>☒</td>
</tr>
<tr>
<td>(b) No new information, which was not known and could not have been known at the time the Master EIR was certified as complete, has become available.</td>
<td>☒</td>
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<tr>
<td>(c) Policies remain in effect which require site-specific mitigation, and avoidance or other mitigation of impacts as a prerequisite to future development.</td>
<td>☒</td>
</tr>
</tbody>
</table>

Discussion:

(1) The Master EIR was certified in October 2008.
(2 a) No substantial changes to the circumstances have occurred since the Master EIR was certified.
(2 b) No new information has become available that would affect the adequacy of the Master EIR.
(2 c) Mitigations and policies in the Master EIR will be applied to new development as anticipated when the Master EIR was certified.

IV. ENVIRONMENTAL ANALYSIS

This Initial Study, in accordance with Section 21157.1(b) of the Public Resources Code, discloses whether the proposed project may cause any project-specific significant effect on the environment that was not examined in the Final Master EIR (MEIR) for the General Plan and whether new or additional mitigation measures or alternatives may be required as a result. The Initial Study thereby documents whether or not the project is “within the scope” of the Master EIR.

Pursuant to Public Resources Code Section 21157.1, no new environmental document or findings are necessary for projects that are determined to be within the scope of the MEIR. Adoption of the findings specified in Section III.1, above after completion of the Initial Study fulfills the City’s obligation in that situation.

All environmental effects cited reflect 2025 conditions resulting from the Urban Area General Plan, as identified in the Master EIR.

The environmental impact analysis in the Master EIR for the Urban Area General Plan is organized in twenty-one subject areas. The following analysis is based on the impact analyses contained in Chapter V of the Master EIR. For ease of reference, the sections are numbered in the same order as the analyses in Chapter V.

City of Modesto  Initial Study EA No. 2012-02
General Plan Master EIR  February 6, 2012
1. TRAFFIC AND CIRCULATION

a. Significant Effects Identified in the Master EIR

The Master EIR discloses the following residual significant and unavoidable traffic and circulation impacts expected after application of mitigations/policies:

Direct Impacts

Effect: Increased automobile traffic will result in roadway segments (see MEIR on Table 1-7, pages V-1-32 to V-1-34) operating at LOS D, Modesto's significance threshold for automobile traffic, or lower (LOS E or F).

Effect: The substantial increase in traffic relative to the existing load and capacity of the street system will cause, either individually or cumulatively, the violation of automobile service standards established by StanCOG's Congestion Management Plan for designated roads and highways.

Effect: A substantial increase in automobile vehicle miles traveled and automobile vehicle hours of travel and a decrease in average automobile vehicle speed (see MEIR Table 1-6, page V-1-31).

Cumulative Impacts

Effect: Potential for growth inducement or acceleration of development resulting from highway and local road projects.

Effect: Substantial increase in traffic in relation to the existing traffic load and capacity of the street system, including a violation, either individually or cumulatively, of an automobile LOS standard established by the Congestion Management Plan for designated roads and highways.

Effect: Increased demand for capacity-enhancing alterations to existing roads or automobile traffic reduction.

Other impact categories affected by Traffic and Circulation are addressed throughout this Initial Study (see also Section 2, Degradation of Air Quality; Section 3, Generation of Noise; Section 7 Loss of Sensitive Wildlife and Plant Habitat; Section 8, Disturbance of Archaeological/Historic Sites; Section 14 Increased Demand for Fire Services; Section 18, Energy; Section 19, Visual Resources; Section 20, Land Use and Planning, and Section 21, Climate Change).

b. Master EIR and/or New Mitigation Measures Applied to the Project

Traffic and Circulation mitigation measures pertinent to this project are found on MEIR pages V-1-9 through V-1-28. All mitigation measures appropriate to the project, including any new measures, will be incorporated into or made conditions of approval of this project and are listed in Section V, Mitigation Measures Applied to Project.

Discussion:

No mitigations measures from the Master EIR that will be applied to this project. No new or additional mitigation measures or alternatives are required to reduce project impacts to a less-than-significant level.
c. Project-Specific Effects

Section V-1.B of the Master EIR provides analysis of Traffic and Circulation impacts of development of the General Plan, the following is an analysis of whether the proposed project would result in a new, significant, project-specific effect not disclosed in the Master EIR.

**Significance Criteria:** A subsequent development project will have a new significant effect on the environment if it would exceed the following criteria:

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<th>Potentially Significant Impact</th>
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<tbody>
<tr>
<td><strong>1. TRAFFIC AND CIRCULATION</strong></td>
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</table>

1) The proposed project exceeds traffic generation assumptions in the Master EIR for the site by 100 trips or more and City Engineering and Transportation staff has determined that the project would have additional potentially significant project-specific effects that are not avoided or reduced by the Master EIR’s mitigation measures.

2) Exceed, either individually or cumulatively, a level of service standard established by the county congestion management agency for designated roads or highways?

3) The proposed project would cause additional roadway segments in the General Plan area to exceed LOS D and/or cause additional violations of standards in the Congestion Management Plan, and/or cause an increase in automobile vehicle miles or vehicle hours of travel or a decrease in automobile travel speed, as compared to the impacts disclosed in the Master EIR.

4) The proposed project would cause emergency response times to exceed acceptable standards established by the Fire Department, as compared to impacts disclosed in the Master EIR (see Section 14, Increased Demand for Fire Services).

5) The proposed project would result in less parking than required by the Municipal Code or as determined by staff.

6) The proposed project would conflict with adopted policies, plans, or programs that support alternative transportation, including, but not limited to the Regional Transportation Plan, the Sustainable Communities Strategy, the Bicycle Action Plan, and so on.
7) The proposed project would result in an increase in automobile vehicle miles traveled on a per capita basis, in excess of that considered in the Urban Area General Plan MEIR.

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</table>

**Discussion:**

1. The proposed project is a comprehensive maintenance update that will modernize and reformat the Zoning Code. However, the proposed project will not result in major changes to land use requirements and development standards and will have no effect on traffic generation assumptions.

2. The project will have no effect on the level of service standard established by the county congestion management.

3. The project will have no effect on traffic and circulation issues.

4. The project will have no effect on emergency response time.

5. There are some minor changes to the parking requirements proposed with this project. For example, the amendment clarifies parking requirements for certain uses such as banquet halls and outdoor dining where the current code is silent. Residential vehicle parking requirements will be deleted for residential projects with private streets or common driveways. Parking requirements for multiple family projects will be based on number of bedrooms instead of number of units. The project will have a less than significant effect on parking requirements.

6. The project will have no effect on alternative transportation policies.

7. The project will have no effect on automobile vehicle miles traveled.

### 2. DEGRADATION OF AIR QUALITY

#### a. Significant Effects Identified in the Master EIR

The Master EIR discloses the following residual significant and unavoidable air quality impacts expected after application of mitigations/policies:

**Direct Impacts**

**Effect:** Expected automobile traffic will result in increased operational emissions of reactive organic gases (ROG) and oxides of nitrogen (NOₓ) (see MEIR Table 2-8, page V-2-27).

**Effect:** Expected automobile traffic will result in increased emissions of particulate matter 10 microns or less (PM₁₀) and 2.5 microns or less in diameter (PM₂.⁵) (see MEIR Table 2-8, page V-2-27).
Effect: Expected automobile traffic will result in increased carbon monoxide (CO) levels in the project area (see MEIR Table 2-7, page V-2-26, and Table 2-8, page V-2-27).

Cumulative Impacts

The Master EIR indicates the same impacts identified as direct impacts above will contribute to regional impacts on air quality for the criteria pollutants ROG, NO\textsubscript{x}, PM\textsubscript{10}, and PM\textsubscript{2.5}.

b. Master EIR and/or New Mitigation Measures Applied to the Project

Air quality mitigation measure(s) pertinent to the proposed project are found on pages V-2-13 through V-2-24 of the Master EIR. All mitigation measures appropriate to the project will be incorporated into or made conditions of approval of this project and are listed in Section V, Mitigation Measures Applied to Project.

Discussion:

No mitigations measures from the Master EIR that will be applied to this project. No new or additional mitigation measures or alternatives are required to reduce project impacts to a less-than-significant level.

c. Project-Specific Effects

Section V-2.B of the Master EIR is the analysis of air quality impacts resulting from development of the Urban Area General Plan. The following is an analysis of whether the proposed project would result in a new, significant, project-specific effect not analyzed in the Master EIR.

Significance Criteria: Determination of project effects will be based on the following thresholds. The project-specific effects will be less than significant unless:

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<tr>
<td>2. DEGRADATION OF AIR QUALITY</td>
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<tr>
<td>1) The proposed project exceeds the project-level emissions thresholds established for CO, ROG, NO\textsubscript{x}, PM\textsubscript{10}, and PM\textsubscript{2.5} by the San Joaquin Valley Air Pollution Control District (SJVAPCD) and is not consistent with the development assumptions for the project site, as established in the Urban Area General Plan and Master EIR.</td>
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<td>[ ]</td>
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<tr>
<td>2) The proposed project does not incorporate the best management practices established by the SJVAPCD for CO, ROG, NO\textsubscript{x}, PM\textsubscript{10}, and PM\textsubscript{2.5}.</td>
<td>[ ]</td>
<td>[ ]</td>
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<td>[ ]</td>
</tr>
<tr>
<td>3) The proposed project does not comply with the air quality policies in the Modesto Urban Area General Plan.</td>
<td>[ ]</td>
<td>[ ]</td>
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</tr>
</tbody>
</table>
4) The proposed project would expose sensitive receptors to pollutant concentrations in excess of those expected to occur as a result of implementation of the Urban Area General Plan.  

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<th>Impact</th>
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<th>Less Than Significant Impact</th>
<th>No Impact</th>
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</thead>
<tbody>
<tr>
<td>4) The proposed project would expose sensitive receptors to pollutant concentrations in excess of those expected to occur as a result of implementation of the Urban Area General Plan.</td>
<td>☐</td>
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</table>

5) The proposed project would create objectionable odors affecting a substantial number of people.  

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<th>Impact</th>
<th>Potentially Significant Impact</th>
<th>Less Than Significant with Mitigation Incorporated</th>
<th>Less Than Significant Impact</th>
<th>No Impact</th>
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</thead>
<tbody>
<tr>
<td>5) The proposed project would create objectionable odors affecting a substantial number of people.</td>
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<td>☐</td>
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</tr>
</tbody>
</table>

Discussion:

1) The proposed project is a comprehensive maintenance update that will modernize and reformat the Zoning Code. However, the proposed project will not result in major changes to land use requirements and development standards and will have no effect on emissions thresholds.

2) The project will have no effect on best management practices established by the SJVAPCD.

3) The project will have no effect on air quality policies.

4) The project will have no effect on sensitive receptors.

5) The project will not result in the creation of objectionable odors.

3. GENERATION OF NOISE

a. Significant Effects Identified in the Master EIR

The Master EIR discloses the following residual significant and unavoidable noise impacts expected after application of mitigations/policies:

Direct Impacts

Effect: Future automobile traffic noise levels and roadway construction and maintenance activities resulting from development of the Urban Area General Plan will exceed the City’s noise thresholds at various locations, but particularly in areas adjacent to heavily traveled roadways (see MEIR Table 3-3, page V-3-10, and Figure VII-2 and Table 3-6, pages V-3-18 and V-3-19).

Effect: Expected noise from airport operations and airport construction projects may expose up to 468 dwellings and three churches to noise levels of 65 dB CNEL and up to eight dwellings to noise levels of 70 dB CNEL.

Effect: Expose noise-sensitive land uses to noise from the construction of bicycle and transit projects.

Effect: Expose noise-sensitive land uses to noise from freight and passenger rail operations.
Cumulative Impacts

Effect: Traffic from development in the City of Modesto would, when combined with traffic from new development in the County and other cities, contribute to a cumulative increase in roadside noise levels on major roads and highways throughout Stanislaus County.

b. Master EIR and/or New Mitigation Measures Applied to the Project

Noise policies and mitigation measures pertinent to the project being analyzed in this Initial Study are found on pages V-3-11 through V-3-15 of the Master EIR. All mitigation measures appropriate to the project will be incorporated into or made conditions of approval of this project and any new measures are listed in Section V, Mitigation Applied to Project.

Discussion:

No mitigations measures from the Master EIR that will be applied to this project. No new or additional mitigation measures or alternatives are required to reduce project impacts to a less-than-significant level.

c. Project-Specific Effects

Section V-3.B of the MEIR discloses noise impacts resulting from development of the Urban Area General Plan. The following is an analysis of whether the proposed project would result in a new, significant, project-specific effect not analyzed in the Master EIR.

Significance Criteria: Determination of the proposed project's effects are based on the following thresholds. Project-specific effects will be less than significant unless:

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<th>Potentially Significant Impact</th>
<th>Less Than Significant with Mitigation Incorporated</th>
<th>Less Than Significant Impact</th>
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<tbody>
<tr>
<td>3. GENERATION OF NOISE</td>
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<tr>
<td>1) The proposed project will exceed the standards for noise level and hours of operation established by the Modesto noise ordinance.</td>
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</tr>
<tr>
<td>2) The proposed project will not comply with the noise policies of, or otherwise be inconsistent with, the Modesto Urban Area General Plan.</td>
<td>☐</td>
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</tr>
<tr>
<td>3) The proposed project will result in an increase in ambient noise levels in the project vicinity above those disclosed in the Master EIR.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☑</td>
</tr>
<tr>
<td>4) The proposed project will result in a substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels disclosed in the Master EIR implementation of the Urban Area General Plan.</td>
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</tbody>
</table>
Discussion:

(1) The proposed project is a comprehensive maintenance update that will modernize and reformat the Zoning Code. However, the proposed project will not result in major changes to land use requirements and development standards and will have no effect on noise level standards.

(2) The project will have no effect on noise policies.

(3) The project will not result in an increase of ambient noise levels.

(4) The project will not result in a temporary or periodic increase of ambient noise levels.

4. EFFECTS ON AGRICULTURAL LANDS

a. Significant Effects Identified in the Master EIR

The Master EIR discloses the following residual significant and unavoidable impacts on agricultural lands expected after application of mitigations/policies:

Direct Impacts

Effect: Between 1995 and 2025, development of the Urban Area General Plan may convert up to approximately 26,000 acres of farmland in various categories in the Planned Urbanizing Area to urban uses.

Effect: Approximately 1,200 acres of urban development along a 28.5-mile boundary 350 feet wide between urban and agricultural uses could be affected by continued agricultural operations, including noise, dust, and chemical overspray or drift.

Cumulative Impacts

Effect: Growth within Modesto’s planning area would contribute considerably to the loss of agricultural land within Stanislaus County, accounting for the conversion of as much as approximately 26,000 acres of farmland in various categories in the Planned Urbanizing Area from 1995 to 2025.

b. Master EIR and/or New Mitigation Measures Pertinent to the Project

Agricultural land mitigation measures pertinent to the proposed project are found on pages V-4-6 to and V-4-8 of the Master EIR. All mitigation measures appropriate to the project and any new mitigation to be incorporated into or made conditions of approval of this project are listed in Section V, Mitigation Applied to Project.

Discussion:

No mitigations measures from the Master EIR that will be applied to this project. No new or additional mitigation measures or alternatives are required to reduce project impacts to a less-than-significant level.
c. Project-Specific Effects

Section V-4.B of the Master EIR discloses the impacts resulting from the implementation of the Urban Area General Plan on agricultural lands. The following is an analysis of whether the proposed project would result in a new, significant, project-specific effect not previously analyzed in the Master EIR.

Significance Criteria: Determination of project effects will be based on the following thresholds. The project-specific effects will be less than significant unless:

<table>
<thead>
<tr>
<th></th>
<th>Potentially Significant Impact</th>
<th>Less Than Significant with Mitigation Incorporated</th>
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<tr>
<td>4. EFFECTS ON AGRICULTURAL LANDS</td>
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</tr>
<tr>
<td>1) The proposed project is inconsistent with the Urban Area General Plan’s policies relating to agricultural land.</td>
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</tr>
<tr>
<td>2) The proposed project will either directly or indirectly result in the development of land outside the 2008 Urban Area General Plan’s planning area boundary.</td>
<td>❑</td>
<td>❑</td>
<td>❑</td>
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</tr>
<tr>
<td>3) The proposed project will conflict with existing zoning for agricultural use, or there is an existing Williamson Act contract on the project site.</td>
<td>❑</td>
<td>❑</td>
<td>❑</td>
<td>❑</td>
</tr>
<tr>
<td>4) The proposed project will involve other changes in the existing environment not anticipated in the Master EIR which, due to their location or nature, could result in conversion of farmland to non-agricultural use.</td>
<td>❑</td>
<td>❑</td>
<td>❑</td>
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</table>

Discussion:

(1) The proposed project is a comprehensive maintenance update that will modernize and reformat the Zoning Code. However, the proposed project will not result in major changes to land use requirements and development standards and will have no effect on agricultural land policies.

(2) The project will have no effect on development outside the Modesto planning area.

(3) The project will have no effect on land zoned for agricultural use or with Williamson Act contract.

(4) The project will have no effect on the conversion of farmland to non-agricultural use.
5. INCREASED DEMAND FOR LONG-TERM WATER SUPPLIES

a. Significant Effects Identified in the Master EIR

The Master EIR discloses the following residual significant and unavoidable impacts on long-term water supplies expected after application of mitigations/policies:

**Direct Impacts**

Effect: No residual significant direct impacts have been disclosed in the Master EIR.

**Cumulative Impacts**

Effect: Operational yields of the Modesto and Turlock subbasins, both of which underlie the City of Modesto, are unknown, although the City is participating in a study with the United States Geological Survey in order to quantify the operational yields of both subbasins. Groundwater withdrawals from both basins by the City, when combined with other users' withdrawals, may result in overdrafting both subbasins.

Effect: Despite available options, during drought years, significant water shortages are forecast for the San Joaquin River basin, which includes both the Modesto and Turlock subbasins, by 2020. Modesto would make a cumulatively considerable contribution to the cumulative impact on water supply under drought conditions.

b. Master EIR and/or New Mitigation Measures Applied to the Project

Water supply mitigation measures pertinent to the proposed project are found on pages V-S-6 through V-S-12 of the Master EIR. All mitigation measures appropriate to the project to be incorporated into or made conditions of approval of this project are listed in Section V, Mitigation Measures Applied to Project.

Discussion:

No mitigations measures from the Master EIR that will be applied to this project. No new or additional mitigation measures or alternatives are required to reduce project impacts to a less-than-significant level.

c. Project-Specific Effects

Section V-5.B of the Master EIR discloses impacts on long-term water supplies resulting from implementation of the Urban Area General Plan. The following is an analysis of whether the proposed project would result in a new, significant, project-specific effect not disclosed in the Master EIR.
Significance Criteria: Determination of project effects will be based on the following thresholds. The project-specific effects will be less than significant unless:

<table>
<thead>
<tr>
<th>5. INCREASED DEMAND FOR LONG-TERM WATER SUPPLIES</th>
<th>Potentially Significant Impact</th>
<th>Less Than Significant with Mitigation Incorporated</th>
<th>Less Than Significant Impact</th>
<th>No Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>1) The proposed project is inconsistent with water supply policies in the Urban Area General Plan.</td>
<td>☐</td>
<td>☐</td>
<td>☒</td>
<td>☐</td>
</tr>
<tr>
<td>2) Water demand for the proposed project will exceed estimates for similar projects or for development on the project site anticipated in the Urban Area General Plan or sufficient water supplies are not otherwise available to serve the project from existing entitlements and resources.</td>
<td>☐</td>
<td>☐</td>
<td>☒</td>
<td>☐</td>
</tr>
<tr>
<td>3) The proposed project would deplete groundwater supplies to a greater degree than anticipated in the Urban Area General Plan or would interfere with groundwater recharge.</td>
<td>☐</td>
<td>☐</td>
<td>☒</td>
<td>☐</td>
</tr>
</tbody>
</table>

**Discussion:**

(1) The proposed project is a comprehensive maintenance update that will modernize and reformat the Zoning Code. However, the proposed project will not result in major changes to land use requirements and development standards and will have no effect on the water supply.

(2) The project will have no effect on water demand.

(3) The project will have no effect on groundwater supply.

6. INCREASED DEMAND FOR SANITARY SEWER SERVICES

a. Significant Effects Identified in the Master EIR

The Master EIR discloses the following residual significant and unavoidable impacts on sanitary sewer services after application of mitigations/policies:

**Direct Impacts**

**Effect:** Development resulting from implementation of the Urban Area General Plan will require substantial new sewage treatment and disposal capacity, treatment plant improvements, sewer mains and collection lines, and pump stations. The Wastewater Master Plan anticipates the need for these facilities and its EIR evaluates the impact of developing those facilities. Potential impacts include degradation of water quality through erosion and chemical releases; localized flooding; construction noise; exposure of construction workers and the public to hazardous materials; and on the habitat of the elderberry longhorn beetle, burrowing owl, and Swainson’s hawk, as well as certain other regulated habitats. All of these impacts are mitigated to a less-than-significant level.
Additional impacts that are not mitigated to a less-than-significant level include loss of farmland caused by construction of the Phase IA tertiary treatment facility at the Jennings Road Secondary Treatment Facility, an increase in pollutant loads from increased wastewater flows to the San Joaquin River, and an increase in noise and criteria air pollutants due to construction activities, including traffic.

Cumulative Impacts

Effect: No additional cumulative impacts were identified in the Master EIR.

b. Master EIR and/or New Mitigation Measures Applied to the Project

Sewer service mitigation measures pertinent to the proposed project are found on pages V-6-3 through V-6-8 of the Master EIR. All mitigation measures appropriate to the project to be incorporated into or made conditions of approval of this project are listed in Section V, Mitigation Measures Applied to Project.

Discussion:

No mitigations measures from the Master EIR that will be applied to this project. No new or additional mitigation measures or alternatives are required to reduce project impacts to a less-than-significant level.

c. Project-Specific Effects

Section V-6.B of the Master EIR discloses impacts on the Increased Demand for Sanitary Sewer Service resulting from implementation of the Urban Area General Plan. The following is an analysis of whether the proposed project would result in a new, significant, project-specific effect not disclosed in the Master EIR.

Significance Criteria: Determination of project effects will be based on the following thresholds. The project-specific effects will be less than significant unless:

<table>
<thead>
<tr>
<th>Potentially Significant Impact</th>
<th>Less Than Significant with Mitigation Incorporated</th>
<th>Less Than Significant Impact</th>
<th>No Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>6. INCREASED DEMAND FOR SANITARY SEWER SERVICES</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1) The proposed project is inconsistent with wastewater supply policies in the Urban Area General Plan.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>2) The proposed project will generate sewage flows greater than those anticipated in the Urban Area General Plan for the project site.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>3) The proposed project will result in a determination by the wastewater treatment provider which serves or may serve the project that it has inadequate capacity to serve the project’s projected demand in addition to the provider’s existing commitments.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
</tbody>
</table>
Discussion:

(1) The proposed project is a comprehensive maintenance update that will modernize and reformat the Zoning Code. However, the proposed project will not result in major changes to land use requirements and development standards and will have no effect on the wastewater policies.

(2) The project will have no effect on sewage flows.

(3) The project will have no effect on wastewater capacity.

7. LOSS OF SENSITIVE WILDLIFE AND PLANT HABITAT

a. Significant Effects Identified in the Master EIR

The Master EIR discloses the following residual significant and unavoidable impacts on sensitive wildlife and plant habitat expected after application of mitigations/policies:

Direct Impacts

Effect: No residual significant impacts on sensitive wildlife and plant habitat are expected to occur with the application of the policies contained in the Urban Area General Plan.

Cumulative Impacts

Effect: Implementation of the Urban Area General Plan will contribute to the cumulative impact of habitat loss in the San Joaquin Valley. Requiring density development than has occurred in the past or that is expected in the future would minimize the City’s contribution to the cumulative loss of habitat. Nonetheless, this is a significant and unavoidable impact.

b. Master EIR and/or New Mitigation Measures Applied to the Project

Wildlife and plant habitat mitigation measures pertinent to the proposed project are found on pages V-7-17 through V-7-24 of the Master EIR. All mitigation measures appropriate to the project to be incorporated into or made conditions of approval of this project are listed in Section V, Mitigation Measures Applied to Project.

Discussion:

No mitigations measures from the Master EIR that will be applied to this project. No new or additional mitigation measures or alternatives are required to reduce project impacts to a less-than-significant level.

c. Project-Specific Effects

Section V-7.B of the Master EIR discloses impacts on the Loss of Sensitive Wildlife and Plant Habitat resulting from implementation of the Urban Area General Plan. The following is an analysis of whether the proposed project would result in a new, significant, project-specific effect not disclosed in the Master EIR.
Significance Criteria: Determination of project effects will be based on the following thresholds. The project-specific effects will be less than significant unless:

<table>
<thead>
<tr>
<th>7. LOSS OF SENSITIVE WILDLIFE AND PLANT HABITAT</th>
</tr>
</thead>
<tbody>
<tr>
<td>1) The project is inconsistent with the policies pertaining to the loss of sensitive wildlife and plant habitat contained in the Urban Area General Plan.</td>
</tr>
<tr>
<td>2) Consultation with the California Department of Fish and Game or the U.S. Fish and Wildlife Service determines that the project would have a significant effect on a candidate, sensitive, or special status species in excess of the impact disclosed in the Master EIR.</td>
</tr>
<tr>
<td>3) The proposed project would have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act through direct removal, filling, hydrological interruption, or other means, in excess of the impact disclosed in the Master EIR.</td>
</tr>
<tr>
<td>4) The proposed project would substantially 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.</td>
</tr>
<tr>
<td>5) Conflict with local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance.</td>
</tr>
<tr>
<td>6) The proposed project would conflict with provisions of an adopted habitat conservation plan, natural community conservation plan, or other approved local, regional, or state habitat conservation plan.</td>
</tr>
</tbody>
</table>

Discussion: (1) The proposed project is a comprehensive maintenance update that will modernize and reformat the Zoning Code. However, the proposed project will not result in major changes to land use requirements and development standards and will have no effect on wildlife and plant habitat policies.

(2) The project will have no effect on a candidate, sensitive, or special status species in excess of the impact disclosed in the Master EIR.
(3) The project will have no effect on federally protected wetlands.

(4) The project will have no effect on native resident or migratory fish or wildlife species.

(5) The project will have no effect on local policies or ordinances protecting biological resources.

(6) The project will have no effect on local, regional, or state habitat conservation plan.

8. DISTURBANCE OF ARCHAEOLOGICAL/HISTORICAL SITES

a. Significant Effects Identified in the Master EIR

The Master EIR discloses the following residual significant and unavoidable impacts on archaeological/historical sites expected after application of mitigations/policies:

Direct Impacts

Effect: Modification resulting in a substantial adverse change in the significance of a historic resource or the demolition of a listed or eligible historic resource.

Effect: The modification or demolition of a structure more than 50 years in age may be significant.

Effect: Discovery of archaeological resources in areas outside of the riparian corridors, as a result of construction activities.

Effect: Construction in an area of high archaeological sensitivity.

Cumulative Impacts

Effect: No additional cumulative impacts were disclosed in the Master EIR.

b. Master EIR and/or New Mitigation Measures Applied to the Project

Archaeological or historic mitigation measures pertinent to the project being analyzed in this Initial Study are found on page V-8-16 through V-8-20 of the Master EIR. All mitigation measures appropriate to the project to be incorporated into or made conditions of approval of this project are listed in Section V, Mitigation Applied to Project:

Discussion:

No mitigations measures from the Master EIR that will be applied to this project. No new or additional mitigation measures or alternatives are required to reduce project impacts to a less-than-significant level.

c. Project-Specific Effects

Section V-8.B of the MEIR discloses impacts on archaeological/historical resources resulting from implementation of the Urban Area General Plan. The following is an analysis of whether the proposed project would result in a new, significant, project-specific effect not disclosed in the Master EIR.
Significance Criteria: Determination of project effects will be based on the following thresholds. The project-specific effects will be less than significant unless:

<table>
<thead>
<tr>
<th>8. DISTURBANCE OF ARCHAEOLOGICAL/HISTORICAL SITES</th>
</tr>
</thead>
<tbody>
<tr>
<td>1) The proposed project is inconsistent with the archaeological/historical resource policies in the Urban Area General Plan.</td>
</tr>
<tr>
<td>2) The proposed project would demolish a building eligible for listing as a historic resource or remove a landmark from the Modesto inventory.</td>
</tr>
<tr>
<td>3) The proposed project would modify or demolish a structure more than 50 years in age.</td>
</tr>
<tr>
<td>4) The project would adversely affect a cultural resource that is either listed or eligible for listing in the California Register of Historical Resources.</td>
</tr>
<tr>
<td>5) Conflict with local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance.</td>
</tr>
</tbody>
</table>

Discussion:

(1) The proposed project is a comprehensive maintenance update that will modernize and reformat the Zoning Code. However, the proposed project will not result in major changes to land use requirements and development standards and will have no effect on archaeological/historical resource policies.

(2) The project will have no effect on historical buildings or landmarks.

(3) The project will have no effect on structures.

(4) The project will have no effect on cultural resources.

(5) The project will have no effect on biological resources.

9. INCREASED DEMAND FOR STORM DRAINAGE

a. Significant Effects Identified in the Master EIR

The Master EIR discloses the following residual significant and unavoidable impacts on storm drainage expected after application of mitigations/policies:
Direct Impacts

Effect: No residual significant direct impacts were disclosed in the Master EIR.

Cumulative Impacts

Effect: The population of Stanislaus County is projected to increase in a fashion similar to that of Modesto, resulting in additional urban development and associated increases in impervious surface area and associated increases in storm water runoff. Cumulative hydrologic impacts of storm water flows from Modesto urban areas and other areas of the County could occur due to the fixed capacity of MID and TID irrigation canals to convey drainage west to the San Joaquin River. If drainage channels in some areas prove insufficient to handle the increased drainage discharges, existing storm water runoff from urban and agricultural areas during large storm events would have to be interrupted until water levels receded to a point allowing the resumption of discharges to the channel. Ceasing discharges to drainage channels could cause inundation in and around the drainage conveyance pipeline systems, surface drainage channels, detention basins, and other urban areas. This cumulative impact is considered significant and unavoidable.

b. Master EIR and/or New Mitigation Measures Applied to the Project

Storm Drainage mitigation measures pertinent to the project being analyzed in this Initial Study are found on pages V-9-4 through V-9-9. All mitigation measures appropriate to the project to be incorporated into or made conditions of approval of this project are listed in Section V, Mitigation Measures Applied to Project:

Discussion:

No mitigations measures from the Master EIR that will be applied to this project. No new or additional mitigation measures or alternatives are required to reduce project impacts to a less-than-significant level.

c. Project-Specific Effects

Section V-9.B of the MEIR discloses impacts on the demand for storm drainage resulting from development of the Urban Area General Plan. The following is an analysis of whether the proposed project would result in a new, significant, project-specific effect not disclosed in the Master EIR.
Significance Criteria: Determination of project effects will be based on the following thresholds. The project-specific effects will be less than significant unless:

<table>
<thead>
<tr>
<th>9. INCREASED DEMAND FOR STORM DRAINAGE</th>
<th>Potentially Significant Impact</th>
<th>Less Than Significant with Mitigation Incorporated</th>
<th>Less Than Significant Impact</th>
<th>No Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>1) The proposed project is inconsistent with the storm drainage policies in the Urban Area General Plan.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☒</td>
</tr>
<tr>
<td>2) The proposed project would substantially increase the rate or amount of surface runoff in a manner that would result in flooding on- or offsite, as compared to impacts anticipated to result from the Urban Area General Plan or create substantial unanticipated sources of polluted runoff.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☒</td>
</tr>
<tr>
<td>3) The proposed project does not utilize Low Impact Development strategies to reduce runoff from the site and increase infiltration, resulting in no net increase in runoff before and after development.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☒</td>
</tr>
</tbody>
</table>

Discussion:

(1) The proposed project is a comprehensive maintenance update that will modernize and reformat the Zoning Code. However, the proposed project will not result in major changes to land use requirements and development standards and will have no effect on storm drainage policies.

(2) The project will have no effect on surface runoff.

(3) The project will have no effect on Low Impact Development strategies to reduce runoff.

10. FLOODING AND WATER QUALITY

a. Significant Effects Identified in the Master EIR

The Master EIR discloses the following residual significant and unavoidable impacts on flooding and water quality expected after application of mitigations/policies:

Direct Impacts

Effect: No residual significant direct impacts were disclosed in the Master EIR.

Cumulative Impacts

Effect: No residual significant cumulative impacts were disclosed in the Master EIR.
b. Master EIR and/or New Mitigation Measures Applied to the Project

Flooding and Water Quality mitigation measures pertinent to the project being analyzed in this Initial Study are found on pages V-10-6 through V-10-9 of the Master EIR. All mitigation measures appropriate to the project will be incorporated into or made conditions of approval of this project are listed in Section V, Mitigation Applied to Project:

Discussion:

No mitigations measures from the Master EIR that will be applied to this project. No new or additional mitigation measures or alternatives are required to reduce project impacts to a less-than-significant level.

c. Project-Specific Effects

Section V-10.B of the Master EIR provides analysis of Flooding and Water Quality impacts of development of the General Plan, the following is an analysis of whether the proposed project would result in a new, significant, project-specific effect not previously analyzed in the Master EIR.

Significance Criteria: Determination of project effects will be based on the following thresholds. The project-specific effects will be less than significant unless:

<table>
<thead>
<tr>
<th>Threshold</th>
<th>Potentially Significant Impact</th>
<th>Less Than Significant with Mitigation Incorporated</th>
<th>Less Than Significant Impact</th>
<th>No Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>10. FLOODING AND WATER QUALITY</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1) The proposed project is inconsistent with the flooding and water quality policies in the Urban Area General Plan.</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>2) The proposed project does not comply with the regulatory requirements of the federal Clean Water Act or the State Porter-Cologne Act.</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>3) The proposed project would place more housing within a 100-year flood hazard zone than assumed in the Urban Area General Plan.</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>4) The proposed project would place structure within a 100-year flood hazard area so that they would impede or redirect floodwater or would substantially alter the existing on-site drainage pattern or a watercourse, in such a way as to cause flooding on- or offsite.</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>5) The proposed project does not comply with Modesto's Guidance Manual for New Development Storm Water Quality Control Measures.</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>6) The proposed project would violate water quality standards or waste discharge requirements.</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
</tbody>
</table>
Discussion:

(1) The proposed project is a comprehensive maintenance update that will modernize and reformat the Zoning Code. However, the proposed project will not result in major changes to land use requirements and development standards and will have no effect on flooding and water quality policies.

(2) The project will have no effect on federal Clean Water Act or the State Porter-Cologne Act.

(3) The project will not result in more housing within a 100-year flood hazard zone.

(4) The project will have no effect on flooding.

(5) The project will have no effect on Modesto's Guidance Manual for New Development Storm Water Quality Control Measures.

(6) The project will have no effect on water quality standards or waste discharge requirements.

(7) The project will have no effect on existing drainage pattern of the site or area or a watercourse in a manner that would result in substantial erosion or siltation.

(8) The project will have no effect on runoff.

11. INCREASED DEMAND FOR PARKS AND OPEN SPACE

a. Significant Effects Identified in the Master EIR

The Master EIR discloses the following residual significant and unavoidable impacts on parks and open space expected after application of mitigations/policies:

Direct Impacts

Effect: No residual significant direct impacts were disclosed in the Master EIR.
**Cumulative Impacts**

**Effect:** No residual significant cumulative impacts were disclosed in the Master EIR.

**b. Master EIR and/or New Mitigation Measures Applied to the Project**

Parks and open space mitigation measures pertinent to the proposed project are found on pages V-11-3 through V-11-9 of the Master EIR. All mitigation measures appropriate to the project to be incorporated into or made conditions of approval of this project are listed in Section V, Mitigation Applied to Project:

**Discussion:**

No mitigations measures from the Master EIR that will be applied to this project. No new or additional mitigation measures or alternatives are required to reduce project impacts to a less-than-significant level.

**c. Project-Specific Effects**

Section V.11.B of the MEIR discloses impacts of the Urban Area General Plan on parks and open space. The following is an analysis of whether the proposed project would result in a new, significant, project-specific effect not disclosed in the Master EIR.

**Significance Criteria:** Determination of project effects will be based on the following thresholds. Project-specific effects will be less than significant unless:

<table>
<thead>
<tr>
<th>11. INCREASED DEMAND FOR PARKS AND OPEN SPACE</th>
<th>Potentially Significant Impact</th>
<th>Less Than Significant with Mitigation Incorporated</th>
<th>Less Than Significant Impact</th>
<th>No Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>1) The proposed project is inconsistent with the parks and open space policies in the Urban Area General Plan.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☒</td>
</tr>
<tr>
<td>2) The proposed project would eliminate parks or open space.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☒</td>
</tr>
<tr>
<td>3) The proposed project would cause an increase in the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility in question would occur or be accelerated or the proposed project would include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☒</td>
</tr>
</tbody>
</table>
Discussion:

(1) The proposed project is a comprehensive maintenance update that will modernize and reformat the Zoning Code. However, the proposed project will not result in major changes to land use requirements and development standards and will have no effect on parks and open space policies.

(2) The project will have no effect on parks and open space.

(3) The project will have no effect on parks and recreation facilities.

12. INCREASED DEMAND FOR SCHOOLS

a. Significant Effects Identified in the Master EIR

The Master EIR discloses the following residual significant and unavoidable impacts on school facilities expected after application of mitigations/policies:

Direct Impacts

Effect: No residual significant direct impacts were disclosed in the Master EIR. By statute, the impact of new students is considered to be mitigated below a level of significance by payment of school impact fees and the exercise of any or all of the financing options set out in Government Code Section 65997.

Cumulative Impacts

Effect: Similar to direct impacts of implementation of the Urban Area General Plan, no residual significant direct impacts were disclosed in the Master EIR.

b. Master EIR and/or New Mitigation Measures Applied to the Project

Mitigation relies upon the implementation of the policies in place under the Modesto Urban Area General Plan. As long these polices are applied to all subsequent projects, no new mitigation is necessary. Further, payment of school impact fees and compliance with SB 50 is statutorily deemed to be full mitigation of school impacts (Government Code Section 65995).

The following schools mitigation measures on pages V-12-5 through V-12-7 of the Master EIR are pertinent to the proposed project. All mitigation measures appropriate to the project will be incorporated into or made conditions of approval of this project. Those measures are listed in Section V, Mitigation Applied to Project.

Discussion:

No mitigations measures from the Master EIR that will be applied to this project. No new or additional mitigation measures or alternatives are required to reduce project impacts to a less-than-significant level.
c. Project-Specific Effects

Section V-12.B of the Master EIR discloses impacts resulting from implementation of the Urban Area General Plan associated with increased demand for schools. The following is an analysis of whether the proposed project would result in a new, significant, project-specific effect not disclosed in the Master EIR.

Significance Criteria: Determination of project effects will be based on the following thresholds. The project-specific effects will be less than significant unless:

<table>
<thead>
<tr>
<th>Potentially Significant Impact</th>
<th>Less Than Significant with Mitigation Incorporated</th>
<th>Less Than Significant Impact</th>
<th>No Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>12. INCREASED DEMAND FOR SCHOOLS</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1) The proposed project is inconsistent with the policies relating to schools in the Urban Area General Plan.</td>
<td>☑️</td>
<td>☑️</td>
<td>☑️</td>
</tr>
<tr>
<td>2) The proposed project does not comply with SB 50/Proposition 1A funding provisions, or succeeding measures which state that compliance results in less-than-significant impacts on schools.</td>
<td>☑️</td>
<td>☑️</td>
<td>☑️</td>
</tr>
</tbody>
</table>

Discussion:

(1) The proposed project is a comprehensive maintenance update that will modernize and reformat the Zoning Code. However, the proposed project will not result in major changes to land use requirements and development standards and will have no effect on school policies.

(2) The project will have no effect on SB 50/Proposition 1A funding provisions.

13. INCREASED DEMAND FOR POLICE SERVICES

a. Significant Effects Identified in the Master EIR

The Master EIR discloses the following residual significant and unavoidable impacts on police services expected after application of mitigations/policies:

Direct Impacts

Effect: No residual significant direct impacts were disclosed in the Master EIR.

Cumulative Impacts

Effect: No residual significant cumulative impacts were disclosed in the Master EIR.
b. Master EIR and/or New Mitigation Measures Applied to the Project

Police services mitigation measures pertinent to the proposed project are found on pages V-13-2 through V-13-5 of the Master EIR. All mitigation measures appropriate to the project to be incorporated into or made conditions of approval of this project are listed in Section V, Mitigation Measures Applied to Project.

Discussion:

No mitigations measures from the Master EIR that will be applied to this project. No new or additional mitigation measures or alternatives are required to reduce project impacts to a less-than-significant level.

c. Project-Specific Effects

Section V-13.B of the Master EIR discloses impacts on police services resulting from implementation of the Urban Area General Plan. The following is an analysis of whether the proposed project would result in a new, significant, project-specific effect not disclosed in the Master EIR.

Significance Criteria: Determination of project effects will be based on the following thresholds. The project-specific effects will be less than significant unless:

<table>
<thead>
<tr>
<th>13. INCREASED DEMAND FOR POLICE SERVICES</th>
<th>Potentially Significant Impact</th>
<th>Less Than Significant with Mitigation Incorporated</th>
<th>Less Than Significant Impact</th>
<th>No Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>1) The proposed project is inconsistent with policies relating to police services in the Urban Area General Plan.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☒</td>
</tr>
<tr>
<td>2) The proposed project would result in the need for new or significantly altered facilities not considered as part of the Urban Area General Plan or Master EIR which could cause new significant environmental impacts in order to maintain acceptable service ratios, response times, or other performance objectives.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☒</td>
</tr>
</tbody>
</table>

Discussion:

(1) The proposed project is a comprehensive maintenance update that will modernize and reformat the Zoning Code. However, the proposed project will not result in major changes to land use requirements and development standards and will have no effect to police policies.

(2) The project will not result in the need for more police facilities.
14. INCREASED DEMAND FOR FIRE SERVICES

a. Significant Effects Identified in the Master EIR

The Master EIR discloses the following residual significant and unavoidable impacts on fire services expected after application of mitigations/policies:

Direct Impacts

Effect: No residual significant direct impacts were disclosed in the Master EIR.

Cumulative Impacts

Effect: No residual significant cumulative impacts were disclosed in the Master EIR.

b. Master EIR and/or New Mitigation Measures Applied to the Project

Fire Services mitigation measure(s) pertinent to the project being analyzed in this Initial Study are found on pages V-14-4 through V-14-7 of the Master EIR. All mitigation measures appropriate to the project to be incorporated into or made conditions of approval of this project are listed in Section V, Mitigation Measures Applied to Project.

Discussion:

No mitigations measures from the Master EIR that will be applied to this project. No new or additional mitigation measures or alternatives are required to reduce project impacts to a less-than-significant level.

c. Project-Specific Effects

Section V-14.B of the Master EIR discloses impacts on fire services resulting from implementation of the Urban Area General Plan. The following is an analysis of whether the proposed project would result in a new, significant, project-specific effect not disclosed in the Master EIR.

Significance Criteria: Determination of project effects will be based on the following thresholds. The project-specific effects will be less than significant unless:

<table>
<thead>
<tr>
<th>Potentially Significant Impact</th>
<th>Less Than Significant with Mitigation Incorporated</th>
<th>Less Than Significant Impact</th>
<th>No Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>14. INCREASED DEMAND FOR FIRE SERVICES</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1) The proposed project is inconsistent with the fire service policies in the Urban Area General Plan.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>2) The proposed project would result in the need for new or significantly altered facilities not considered as part of the Urban Area General Plan or Master EIR which could cause new significant environmental impacts in order to maintain acceptable service ratios, response times, or other performance objectives.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
</tbody>
</table>
3) The proposed project, based upon substantial evidence, would cause the erosion or elimination of fire protection services in adjoining fire protection districts.

Discussion:

(1) The proposed project is a comprehensive maintenance update that will modernize and reformat the Zoning Code. However, the proposed project will not result in major changes to land use requirements and development standards and will have no effect on fire service policies.

(2) The project will not result in the need for more fire service facilities.

(3) The project will have no effect on fire protection services in adjoining fire protection districts.

15. GENERATION OF SOLID WASTE

a. Significant Effects Identified in the Master EIR

The Master EIR discloses the following residual significant and unavoidable impacts on solid waste expected after application of mitigations/policies:

**Direct Impacts**

**Effect:** No residual significant direct impacts were disclosed in the Master EIR.

**Cumulative Impacts**

**Effect:** No residual significant cumulative impacts were disclosed in the Master EIR.

b. Master EIR and/or New Mitigation Measures Applied to the Project

Solid waste mitigation measures pertinent to the proposed project are found on pages V-15-4 through V-15-7 of the Master EIR. All mitigation measures appropriate to the project to be incorporated into or made conditions of approval of this project are listed in Section V, Mitigation Applied to Project.

**Discussion:**

No mitigations measures from the Master EIR that will be applied to this project. No new or additional mitigation measures or alternatives are required to reduce project impacts to a less-than-significant level.
c. Project-Specific Effects

Section V-15.B of the Master EIR discloses solid waste impacts resulting from implementation of the Urban Area General Plan. The following is an analysis of whether the proposed project would result in a new, significant, project-specific effect not disclosed in the Master EIR.

Significance Criteria: Determination of project effects will be based on the following thresholds. Project-specific effects will be less than significant unless:

<table>
<thead>
<tr>
<th>15. GENERATION OF SOLID WASTE</th>
<th>Potentially Significant Impact</th>
<th>Less Than Significant with Mitigation Incorporated</th>
<th>Less Than Significant Impact</th>
<th>No Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>1) The project is inconsistent with the solid waste policies in the Urban Area General Plan.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>✗</td>
</tr>
<tr>
<td>2) The County is unable to expand its solid waste disposal capacity, as expected, causing all new development to result in cumulative impacts on the County’s disposal capacity.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>✗</td>
</tr>
</tbody>
</table>

Discussion:

(1) The proposed project is a comprehensive maintenance update that will modernize and reformat the Zoning Code. However, the proposed project will not result in major changes to land use requirements and development standards and will have no effect on solid waste policies.

(2) The project will have no effect on the County solid waste facility.

16. GENERATION OF HAZARDOUS MATERIALS

a. Significant Effects Identified in the Master EIR

The Master EIR discloses the following residual significant and unavoidable impacts regarding hazardous materials expected after application of mitigations/policies:

Direct Impacts

Effect: No residual significant direct impacts were disclosed in the Master EIR.

Cumulative Impacts

Effect: No residual significant cumulative impacts were disclosed in the Master EIR.
b. Master EIR and/or New Mitigation Measures Applied to the Project

Hazardous materials mitigation measures pertinent to the proposed project are found on pages V-16-8 through V-16-13 of the Master EIR. All mitigation measures appropriate to the project to be incorporated into or made conditions of approval of this project are listed in Section V, Mitigation Measures Applied to Project.

Discussion:

No mitigations measures from the Master EIR that will be applied to this project. No new or additional mitigation measures or alternatives are required to reduce project impacts to a less-than-significant level.

c. Project-Specific Effects

Section V-16.B of the Master EIR discloses impacts on hazardous materials resulting from implementation of the Urban Area General Plan. The following is an analysis of whether the proposed project would result in a new, significant, project-specific effect not disclosed in the Master EIR.

Significance Criteria: Determination of project effects will be based on the following thresholds. The project-specific effects will be less than significant unless:

<table>
<thead>
<tr>
<th>16. GENERATION OF HAZARDOUS MATERIALS</th>
<th>Potentially Significant Impact</th>
<th>Less Than Significant with Mitigation Incorporated</th>
<th>Less Than Significant Impact</th>
<th>No Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>1) The project is inconsistent with the hazardous materials policies in the Urban Area General Plan.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☒</td>
</tr>
<tr>
<td>2) The proposed project would emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school.</td>
<td>☒</td>
<td>☐</td>
<td>☐</td>
<td>☒</td>
</tr>
<tr>
<td>3) The proposed project would 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 create a significant hazard to the public or the environment.</td>
<td>☒</td>
<td>☐</td>
<td>☐</td>
<td>☒</td>
</tr>
<tr>
<td>4) The proposed project would be constructed on a contaminated site not known to the State of California as of March 2008.</td>
<td>☒</td>
<td>☐</td>
<td>☐</td>
<td>☒</td>
</tr>
</tbody>
</table>
Discussion:

(1) The proposed project is a comprehensive maintenance update that will modernize and reformat the Zoning Code. However, the proposed project will not result in major changes to land use requirements and development standards and will have no effect on hazardous materials policies.

(2) The project will not result in emitting hazardous emissions or handling hazardous materials.

(3) The project will not result in locating projects on hazardous materials sites.

(4) The project will not result in locating projects on contaminated sites.

17. GEOLOGY, SOILS, AND MINERAL RESOURCES

a. Significant Effects Identified in the Master EIR

The Master EIR discloses the following residual significant and unavoidable impacts related to geology, soils, and mineral resources expected after application of mitigations/policies:

Direct Impacts

Effect: No residual significant direct impacts were disclosed in the Master EIR.

Cumulative Impacts

Effect: No residual significant direct impacts were disclosed in the Master EIR.

b. Master EIR and/or New Mitigation Measures Applied to the Project

Geology, soils, and mineral resource mitigation measures pertinent to the proposed project are found on pages V-17-9 and V-17-10 of the Master EIR. All mitigation measures appropriate to the project to be incorporated into or made conditions of approval of the proposed project are listed in Section V, Mitigation Measures Applied to Project.

Discussion:

No mitigations measures from the Master EIR that will be applied to this project. No new or additional mitigation measures or alternatives are required to reduce project impacts to a less-than-significant level.

c. Project-Specific Effects

Section V-17.8 of the Master EIR discloses geology, soils, and mineral resource impacts resulting from implementation of the Urban Area General Plan. The following is an analysis of whether the proposed project would result in a new, significant, project-specific effect not disclosed in the Master EIR.

Significance Criteria: Determination of project effects will be based on the following thresholds. Project-specific effects will be less than significant unless:
17. GEOLOGY, SOILS, AND MINERAL RESOURCES

<table>
<thead>
<tr>
<th>Impact</th>
<th>Potentially Significant Impact</th>
<th>Less Than Significant with Mitigation Incorporated</th>
<th>Less Than Significant Impact</th>
<th>No Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>1) The project is inconsistent with policies relating to geology, soils, and mineral resources contained in the Urban Area General Plan.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☑</td>
</tr>
<tr>
<td>2) The proposed project would expose people or structures to potential substantial adverse effects including the risk of loss, injury, or death involving fault rupture, strong seismic activity; location on an expansive soil; result in the loss of topsoil; location on soils incapable of adequately supporting the use of septic tanks or alternative wastewater disposal systems in areas where sewers are not available for the disposal of wastewater; result in the loss of known mineral resources that would be of value to the region and the state; or 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>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☑</td>
</tr>
</tbody>
</table>

Discussion:

(1) The proposed project is a comprehensive maintenance update that will modernize and reformat the Zoning Code. However, the proposed project will not result in major changes to land use requirements and development standards and will have no effect on geology, soils, and mineral resources policies.

(2) The project will not result in exposing people or structures to seismic activities, location on expansive soils, or loss of mineral resources.

18. ENERGY

a. Significant Effects Identified in the Master EIR

The Master EIR discloses the following residual significant and unavoidable impacts pertaining to energy expected after application of mitigations/policies:

Direct Impacts

Effect: Continued development in the Planned Urbanizing Area would have an impact on available energy supplies. Energy consumption likely would increase substantially by 2025 as a result of implementation of the Urban Area General Plan.
Cumulative Impacts

Effect: Implementation of the Urban Area General Plan will have a cumulatively considerable impact on energy consumption.

b. Master EIR and/or New Mitigation Measures Applied to the Project

The following energy mitigation measures pertinent to the proposed project are found on pages V-18-2 through V-18-8 in the Master EIR. All mitigation measures appropriate to the project will be incorporated into or made conditions of approval of this project. Those measures will be listed in Section V, Mitigation Applied to Project.

Discussion:

No mitigations measures from the Master EIR that will be applied to this project. No new or additional mitigation measures or alternatives are required to reduce project impacts to a less-than-significant level.

c. Project-Specific Effects

Section V-18.B of the Master EIR discloses impacts of implementing the Urban Area General Plan on energy resources. The following is an analysis of whether the proposed project would result in a new, significant, project-specific effect not disclosed in the Master EIR.

Significance Criteria: Determination of project effects will be based on the following thresholds. The project-specific effects will be less than significant unless:

<table>
<thead>
<tr>
<th>18. ENERGY</th>
<th>Potentially Significant Impact</th>
<th>Less Than Significant with Mitigation Incorporated</th>
<th>Less Than Significant Impact</th>
<th>No Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>1) The proposed project is inconsistent with policies relating to energy in the Urban Area General Plan.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☒</td>
</tr>
<tr>
<td>2) The proposed project would result in energy consumption during construction, operation, maintenance, or removal that is more wasteful, inefficient, and unnecessary than assumed in the Urban Area General Plan.</td>
<td>☒</td>
<td>☐</td>
<td>☐</td>
<td>☒</td>
</tr>
</tbody>
</table>

Discussion:

(1) The proposed project is a comprehensive maintenance update that will modernize and reformat the Zoning Code. However, the proposed project will not result in major changes to land use requirements and development standards and will have no effect on energy policies.

(2) The project will not result in wasteful energy consumption during future construction activities.
19. EFFECTS ON VISUAL RESOURCES

a. Significant Effects Identified in the Master EIR

The Master EIR discloses the following residual significant and unavoidable impacts on visual resources expected after application of mitigations/policies:

**Direct Impacts**

**Effect:** New development in the Planned Urbanizing Area will occur in areas that are in agricultural production or are otherwise lightly developed, which could lead to the introduction of light and glare in areas that have little nighttime illumination.

**Cumulative Impacts**

**Effect:** No additional cumulative impacts were disclosed in the Master EIR.

b. Master EIR and/or New Mitigation Measures Applied to the Project

The following visual resources mitigation measures pertinent to the proposed project are found on pages V-19-3 and V-19-4 in the Master EIR. All mitigation measures appropriate to the proposed project will be incorporated into or made conditions of approval of this project. Those measures will be listed in Section V, Mitigation Applied to Project.

**Discussion:**

No mitigations measures from the Master EIR that will be applied to this project. No new or additional mitigation measures or alternatives are required to reduce project impacts to a less-than-significant level.

c. Project-Specific Effects

Section V-18.B of the Master EIR discloses impacts of implementing the Urban Area General Plan on energy resources. The following is an analysis of whether the proposed project would result in a new, significant, project-specific effect not disclosed in the Master EIR.

**Significance Criteria:** Determination of project effects will be based on the following thresholds. The project-specific effects will be less than significant unless:

<table>
<thead>
<tr>
<th>Potential Impact</th>
<th>Less Than Significant with Mitigation Incorporated</th>
<th>Less Than Significant Impact</th>
<th>No Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>19. EFFECTS ON VISUAL RESOURCES</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1) The proposed project is inconsistent with policies relating to visual resources in the Urban Area General Plan.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>2) The proposed project would degrade views from riverside areas and parks to a greater degree than assumed in the Urban Area General Plan.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>Potentially Significant Impact</td>
<td>Less Than Significant with Mitigation Incorporated</td>
<td>Less Than Significant Impact</td>
<td>No Impact</td>
</tr>
<tr>
<td>--------------------------------</td>
<td>-----------------------------------------------</td>
<td>-----------------------------</td>
<td>-----------</td>
</tr>
<tr>
<td>3) The proposed project would degrade views of riverside areas from public roadways and nearby properties to a greater degree than assumed in the Urban Area General Plan.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
</tbody>
</table>

Discussion:

(1) The proposed project is a comprehensive maintenance update that will modernize and reformat the Zoning Code. However, the proposed project will not result in major changes to land use requirements and development standards and will have no effect on visual resources policies. The proposed code amendment will not affect scenic vistas, scenic resources, or light and glare.

(2) The project will have no effect on views from riverside areas and parks.

(3) The project will have no effect on views of riverside areas from public roadways and nearby properties.

20. LAND USE AND PLANNING

a. Significant Effects Identified in the Master EIR

The Master EIR discloses the following residual significant and unavoidable impacts pertaining to land use and planning expected after application of mitigations/policies:

Direct Impacts

Effect: No residual significant direct impacts were disclosed in the Master EIR.

Cumulative Impacts

Effect: No residual significant cumulative impacts were disclosed in the Master EIR.

b. Master EIR and/or New Mitigation Measures Applied to the Project

The following land use and planning mitigation measures pertinent to the proposed project are found on pages V-20-6 through V-20-17 in the Master EIR. All mitigation measures appropriate to the project will be incorporated into or made conditions of approval of this project. Those measures will be listed in Section V, Mitigation Applied to Project.

Discussion:

No mitigations measures from the Master EIR that will be applied to this project. No new or additional mitigation measures or alternatives are required to reduce project impacts to a less-than-significant level.
c. Project-Specific Effects

Section V-20.B of the Master EIR discloses impacts of implementing the Urban Area General Plan on land use and planning. The following is an analysis of whether the proposed project would result in a new, significant, project-specific effect not disclosed in the Master EIR.

Significance Criteria: Determination of project effects will be based on the following thresholds. The project-specific effects will be less than significant unless:

<table>
<thead>
<tr>
<th>Potentially Significant Impact</th>
<th>Less Than Significant with Mitigation Incorporated</th>
<th>Less Than Significant Impact</th>
<th>No Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>20. LAND USE AND PLANNING</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1) The proposed project is inconsistent with land use and planning policies in the Urban Area General Plan.</td>
<td>☐</td>
<td>☐</td>
<td>☒</td>
</tr>
<tr>
<td>2) The proposed project contains elements that would physically divide an established community in a way not assumed in the Urban Area General Plan.</td>
<td>☐</td>
<td>☐</td>
<td>☒</td>
</tr>
<tr>
<td>3) The proposed project conflicts with a land use plan, policy or regulation established for the purpose of avoiding or mitigating an environmental impact by an agency that has jurisdiction over the proposed project.</td>
<td>☐</td>
<td>☐</td>
<td>☒</td>
</tr>
<tr>
<td>4) The proposed project conflicts with an applicable habitat conservation plan or natural community conservation plan.</td>
<td>☐</td>
<td>☐</td>
<td>☒</td>
</tr>
</tbody>
</table>

Discussion:

(1) The proposed project is a comprehensive maintenance update that will modernize and reformat the Zoning Code. However, the proposed project will not result in major changes to land use requirements and development standards and the changes are consistent land use and planning policies.

(2) The project will not result in the physical division of an established community.

(3) The project will have no effect on a land use plan, policy or regulation established for the purpose of avoiding or mitigating an environmental impact.

(4) The project will have no effect on applicable habitat conservation plan or natural community conservation plan.
21. CLIMATE CHANGE

a. Significant Effects Identified in the Master EIR

The Master EIR discloses the following residual significant and unavoidable impacts pertaining to climate change expected after application of mitigations/policies:

Direct Impacts

Effect: Impacts resulting from implementation of the Urban Area General Plan are not substantial enough to result in a significant direct impact on climate change, as disclosed in the Master EIR.

Cumulative Impacts

Effect: Implementation of the Urban Area General Plan will have a cumulatively considerable impact on climate change.

b. Master EIR and/or New Mitigation Measures Applied to the Project

The following climate change mitigation measures pertinent to the proposed project are found on pages V-21-7 through V-21-10 in the Master EIR. All mitigation measures appropriate to the project will be incorporated into or made conditions of approval of this project. Those measures will be listed in Section V, Mitigation Applied to Project.

Discussion:

No mitigations measures from the Master EIR that will be applied to this project. No new or additional mitigation measures or alternatives are required to reduce project impacts to a less-than-significant level.

c. Project-Specific Effects

Section V-18.B of the Master EIR discloses impacts of implementing the Urban Area General Plan on climate change. The following is an analysis of whether the proposed project would result in a new, significant, project-specific effect not disclosed in the Master EIR.

Significance Criteria: Determination of project effects will be based on the following thresholds. The project-specific effects will be less than significant unless:

<table>
<thead>
<tr>
<th>Effect Description</th>
<th>Potentially Significant Impact</th>
<th>Less Than Significant with Mitigation Incorporated</th>
<th>Less Than Significant Impact</th>
<th>No Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>1) The proposed project is inconsistent with policies relating to climate change in the Urban Area General Plan.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☒</td>
</tr>
<tr>
<td>Impact</td>
<td>Potentially Significant Impact</td>
<td>Less Than Significant with Mitigation Incorporated</td>
<td>Less Than Significant Impact</td>
<td>No Impact</td>
</tr>
<tr>
<td>----------------------------------------------------------------------</td>
<td>-------------------------------</td>
<td>-------------------------------------------------</td>
<td>-----------------------------</td>
<td>-----------</td>
</tr>
<tr>
<td>2) The proposed project would result in average automobile trip lengths or CO₂ emissions higher than those assumed in the Master EIR.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>❌</td>
</tr>
<tr>
<td>3) The proposed project would conflict with the Sustainable Communities Strategy or Alternative Planning Strategy that the Air Resources Board has agreed will achieve the goals of AB 32.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>❌</td>
</tr>
</tbody>
</table>

**Discussion:**

(1) The proposed project is a comprehensive maintenance update that will modernize and reformat the Zoning Code. However, the proposed project will not result in major changes to land use requirements and development standards and will have no effect on climate change policies.

(2) The project will have no effect on automobile trip lengths or CO₂ emissions.

(3) The project will have no effect on the Sustainable Communities Strategy or Alternative Planning Strategy.
V. MITIGATION MEASURES APPLIED TO THE PROPOSED PROJECT

If the Initial Study results in the determination that a Finding of Conformance can be adopted for the proposed project Section A below applies. If the Initial Study results in the determination that a Finding of Conformance cannot be adopted and a Mitigated Negative Declaration/EIR must be prepared for the project then Section B, below applies.

A. Master EIR Mitigation Measures Applied to the Project

Pursuant to Public Resources Code Section 21157.1(c), in order for a Finding of Conformance to be made, all appropriate mitigation measures from the Master EIR shall be incorporated into the proposed project. Urban Area General Plan Policies/Master EIR mitigation measures shall be made part of the proposed project prior to approval by means of conditions of project approval or incorporation into the appropriate document or plan.

All applicable and appropriate mitigation measures have been applied to the project (see mitigation measures listed below).

B. New or Additional Mitigation Measures or Alternatives Required

Where the project's effects would exceed the significance criteria for each environmental impact category, a mitigated negative declaration or Focused EIR must be prepared. Staff has reviewed the project against the significance criteria thresholds established in the Master EIR for all impact categories in this Initial Study.

A Mitigated Negative Declaration or Focused EIR shall be prepared for the project. The following additional project-specific mitigation measures listed below are necessary to reduce the identified new significant effect:

Traffic and Circulation:
N/A

Degradation of Air Quality:
N/A

Generation of Noise:
N/A

Effects on Agricultural Lands:
N/A

Increased Demand for Long-Term Water Supplies:
N/A
Increased Demand for Sanitary Sewer Services:
N/A

Loss of Sensitive Wildlife and Plant Habitat:
N/A

Disturbance of Archaeological/Historic Sites:
N/A

Increased Demand for Storm Drainage:
N/A

Flooding and Water Quality:
N/A

Increased Demand for Parks and Open Space:
N/A

Increased Demand for Schools:
N/A

Increased Demand for Police Services:
N/A

Increased Demand for Fire Services:
N/A

Generation of Solid Waste:
N/A

Generation of Hazardous Materials:
N/A

Geology, Soils, and Mineral Resources:
N/A
Energy:
N/A

Effects on Visual Resources:
N/A

Land Use and Planning:
N/A

Climate Change:
N/A
A RESOLUTION ACCEPTING WITH REGRET THE RESIGNATION OF DUKE LEFFLER FROM THE BOARD OF BUILDING APPEALS

WHEREAS, Duke Leffler was appointed a member of the Board of Building Appeals on December 13, 2011, and

WHEREAS, Duke Leffler has tendered his resignation from the Board of Building Appeals, and

NOW, THEREFORE, BE IT RESOLVED that the resignation of Duke Leffler from the Board of Building Appeals be, and hereby is accepted with regret.

BE IT FURTHER RESOLVED that the City Council of the City of Modesto, on its own behalf, and on behalf of the citizens of the City, hereby expresses its sincere appreciation to Duke Leffler for his service to the community.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 24th day of April, 2012, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Cogdill, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Burnside, Cogdill, Geer, Gunderson, Lopez, Muratore, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2012-138

A RESOLUTION INITIATING PROCEEDINGS FOR THE FORMATION OF LANDSCAPE MAINTENANCE ASSESSMENT DISTRICT NO. 2012-1, AND DIRECTING THE PREPARATION AND FILING OF AN ENGINEER’S REPORT

WHEREAS, the City Council of the City of Modesto ("City"), pursuant to the provisions of the Landscaping and Lighting Act of 1972, Division 15, Part 2 of the California Streets and Highways Code ("Act"), desires to initiate proceedings for the formation of a landscape maintenance district to be known and designated as CITY OF MODESTO, LANDSCAPE MAINTENANCE ASSESSMENT DISTRICT NO. 2012-1 ("District"), and to levy and collect annual assessments for the District commencing in fiscal year 2012/2013 to pay for the operation, maintenance, and servicing of landscape improvements, and appurtenant facilities related thereto, and

WHEREAS, pursuant to Chapter 2, Article 2 Section 22605 of the Act, the legislative body (the City Council) upon successful formation of the District, intends to concurrently detach the territory within the District from Landscape Maintenance Assessment District No. 1 and Landscape Maintenance Assessment District No. 2 ("LMAD No. 1 and LMAD No. 2") and to dissolve said districts, and

WHEREAS, pursuant to Chapter 2, Article 1 Section 22585 of the Act, proceedings for the formation of an assessment district shall be initiated by resolution and that resolution shall generally describe the proposed improvements, describe the proposed assessment district and specify a distinctive designation for the district and order the engineer to prepare and file a report in accordance with Article 4 (commencing with Section 22565) of Chapter 1 of the Act, and
WHEREAS, the City has retained Willdan Financial Services ("Willdan") for the purpose of assisting with the formation of the District, the establishment of annual assessments, and to prepare and file a report with the City Clerk concerning the formation of Landscape Maintenance Assessment District No. 2012-1 and the proposed annual levy of assessments in accordance with the Act and the provisions of the California Constitution Article XIIID (the "Constitution"), and

WHEREAS, the residents of LMAD No. 1 and LMAD No. 2 have been informed and will have the opportunity to vote on the proposed new annual assessments (increased assessments) for the proposed District,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the City proposes to form Landscape Maintenance Assessment District No. 2012-1, and to levy and collect annual assessments for the District commencing in fiscal year 2012/2013 to pay for the operation, maintenance, and servicing of local landscape improvements, and appurtenant facilities related thereto.

BE IT FURTHER RESOLVED that the District shall consist of the lots and parcels of land that will receive special benefits from the improvements and services to be provided which are within the residential subdivisions known as Dry Creek Meadows No’s 1-10, Creekwood Meadows and Yosemite Meadows No’s 1-3, which are generally located north of Yosemite Boulevard, east of McClure Road, west of Yosemite Meadows Drive and south of the M.I.D. Lateral No. 2. This territory is currently identified on the Stanislaus County Assessor’s Parcel Maps as all or portions of Book 079 Pages 002 through 024, 027 and 028, and incorporates within the boundaries of the District one thousand two hundred seventy-nine (1,279) single-family residential parcels, one (1)
school site (Bernard L Hughes Elementary School), one (1) park site (Creekwood Park) and one (1) public area/easement parcel.

BE IT FURTHER RESOLVED that the improvements for which the District is formed generally include, but are not limited to, the maintenance, operation and servicing of the local streetscape landscape improvements established in connection with development of the properties within the District, and which shall be maintained for the special benefit of those properties. The maintenance and servicing of the improvements generally include, but are not limited to, the materials, equipment, utilities, labor, and incidental expenses, including administrative expenses, required for annual operation, as well as the performance of periodic repairs and replacement activities as needed to provide for the growth, health, and beauty of trees, landscaping and the proper operation and functioning of related hardscapes, irrigation systems and drainage systems within the public right-of-ways and/or dedicated easements.

BE IT FURTHER RESOLVED that upon successful formation of the District, the City Council proposes the concurrent detachment of the parcels within the District from the existing LMAD No.1 and LMAD No.2 and to dissolve said districts.

BE IT FURTHER RESOLVED that in the event the formation of the District and the proposed assessments are not approved, the assessments for LMAD No. 1 and LMAD No. 2 shall continue to be levied as approved.

BE IT FURTHER RESOLVED that Willdan is designated by this Council as the Engineer of Work for the formation of Landscape Maintenance Assessment District No. 2012-1, and is hereby directed to prepare and file with the City an Engineer’s Report.
concerning the formation of the District and the annual levy of assessments in accordance with the requirements of Chapter 1, Article 4 of the Act.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 24th day of April, 2012, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Burnside, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Burnside, Cogdill, Geer, Gunderson, Lopez, Muratore, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: 

STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: 

SUSANA ALCALA WOOD, City Attorney
RESOLUTION DIRECTING STAFF TO PREPARE AND FILE THE 2012-2013 ANNUAL ENGINEER'S REPORT FOR LANDSCAPE MAINTENANCE ASSESSMENT DISTRICT NO. 1

WHEREAS, Resolution No. 88-935 adopted by the Council of the City of Modesto on December 13, 1988, initiated proceedings for the formation of Landscape Assessment District No. 1 ("LMAD No. 1") for the purpose of administering the maintenance of landscaping in the public right-of-way within the street medians and adjacent to the access control walls in Dry Creek Meadows Subdivisions Nos. 1-6, and

WHEREAS, LMAD No. 1 was formed in accordance with the Landscaping and Lighting Act of 1972 (Streets and Highways Code Sections 22500 through 22679), and

WHEREAS, Section 22622 of the Streets and Highways Code requires the legislative body (the City Council) to adopt a resolution which shall generally describe any proposed new improvements or any substantial changes in existing improvements and direct staff to prepare and to file a report accordingly, and

WHEREAS, the annual assessment for LMAD No. 1 has remained the same since 1996, and

WHEREAS, the City has contracted with Willdan Financial Services, Inc. ("Willdan") to perform a thorough evaluation of both LMAD No.1 and Landscape Maintenance Assessment District No. 2 ("LMAD No. 2"), and

WHEREAS, Willdan recommends that the City pursue consolidation of LMAD No. 1 and LMAD No. 2, and
WHEREAS, a separate City Council agenda item is being processed concurrently to provide staff with the authorization to move forward with the consolidation of the LMAD No. 1 and LMAD No. 2, and

WHEREAS, the residents of LMAD No. 1 and LMAD No. 2 have been informed and will have the opportunity to vote on the consolidation and increase in the annual assessment, and

WHEREAS, in the event the consolidation and increase are defeated, the existing assessment for LMAD No. 1 will be levied and the current maintenance levels will continue, and

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the annual assessment for LMAD No. 1 has remained the same since 1996, and

BE IT FURTHER RESOLVED that the City has contracted with Willdan to perform a thorough evaluation of both LMAD No. 1 and LMAD No. 2, and

BE IT FURTHER RESOLVED that Willdan recommends the City pursue consolidation of LMAD No. 1 and LMAD No. 2, and

BE IT FURTHER RESOLVED that a separate City Council agenda item is being processed concurrently to provide staff with the authorization to move forward with the consolidation of LMAD No. 1 and LMAD No. 2, and

BE IT FURTHER RESOLVED, that the residents of LMAD No. 1 and LMAD No. 2 have been informed and will have the opportunity to vote on the consolidation and increase in the annual assessment, and
BE IT FURTHER RESOLVED, that in the event the consolidation and increase are defeated, the existing assessment for LMAD No. 1 will be levied and the current maintenance levels will continue, and

BE IT FURTHER RESOLVED that the Administrator of Infrastructure Financing Programs is designated by this Council as the Engineer of Work for LMAD No. 1, and is hereby directed to prepare and file an annual report in accordance with the provisions of the Landscaping and Lighting Act of 1972, as amended, (Streets and Highways Code Sections 22500 through 22679).

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 24th day of April, 2012, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Burnside, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Burnside, Cogdill, Geer, Gunderson, Lopez, Muratore, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: [Signature]

STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: [Signature]

SUSANA ALCALA WOOD, City Attorney
RESOLUTION DIRECTING STAFF TO PREPARE AND FILE THE 2012-2013 ANNUAL ENGINEER'S REPORT FOR LANDSCAPE MAINTENANCE ASSESSMENT DISTRICT NO. 2

WHEREAS, Resolution No. 89-460, adopted by the Council of the City of Modesto on April 4, 1989, initiated proceedings for the formation of Landscape Maintenance Assessment District No. 2 ("LMAD No. 2") for the purpose of administering the maintenance of landscaping in the public right-of-way within the street medians and adjacent to the access control walls in Dry Creek Meadows Subdivisions Nos. 7-10, Creekwood Meadows Subdivision, and Yosemite Meadows Subdivisions Units 1 & 2, and

WHEREAS, LMAD No. 2 was formed in accordance with the Landscaping and Lighting Act of 1972 (Streets and Highways Code Sections 22500 through 22679), and

WHEREAS, Section 22622 of the Streets and Highways Code requires the legislative body (the City Council) to adopt a resolution which shall generally describe any proposed new improvements or any substantial changes in existing improvements and direct staff to prepare and to file a report accordingly, and

WHEREAS, the annual assessment for LMAD No. 2 has gradually increased since July 2000, and

WHEREAS, the City has contracted with Willdan Financial Services ("Willdan") to perform a thorough evaluation of both Landscape Maintenance Assessment District No. 1 ("LMAD No. 1") and LMAD No. 2, and

WHEREAS, Willdan recommends that the City pursue consolidation of LMAD No. 1 and LMAD No. 2, and
WHEREAS, a separate City Council agenda item is being processed concurrently to provide staff with the authorization to move forward with the consolidation of LMAD No. 1 and LMAD No. 2, and

WHEREAS, the residents of LMAD No. 1 and LMAD No. 2 have been informed and will have the opportunity to vote on the consolidation and increase in the annual assessment, and

WHEREAS, in the event the consolidation and increase are defeated, the existing assessment for LMAD No. 2 will be levied and the current maintenance levels will continue, and

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the annual assessment for LMAD No. 2 has gradually increased since July 2000, and

BE IT FURTHER RESOLVED that the City has contracted with Willdan to perform a thorough evaluation of both LMAD No. 1 and LMAD No. 2, and

BE IT FURTHER RESOLVED, that Willdan recommends the City pursue consolidation of LMAD No. 1 and LMAD No. 2, and

BE IT FURTHER RESOLVED, that a separate City Council agenda item is being processed concurrently to provide staff with the authorization to move forward with the consolidation of LMAD No. 1 and LMAD No. 2, and

BE IT FURTHER RESOLVED, that the residents of LMAD No. 1 and LMAD No. 2 have been informed and will have the opportunity to vote on the consolidation and increase in the annual assessment, and

BE IT FURTHER RESOLVED, that in the event the consolidation and increase are defeated, the existing assessment for LMAD No. 2 will be levied, and
BE IT FURTHER RESOLVED, that the Administrator of Infrastructure Financing Programs is designated by this City Council as the Engineer of Work for LMAD No. 2, and is hereby directed to prepare and file an annual report in accordance with the provisions of the Landscaping and Lighting Act of 1972, as amended, (Streets and Highways Code Sections 22500 through 22679).

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 24th day of April, 2012, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Burnside, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Burnside, Cogdill, Gill, Gunderson, Lopez, Muratore, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: 

STEFANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: 

SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2012-141

A RESOLUTION WAIVING THE CONSTRUCTION COST INDEX ANNUAL INFLATIONARY ADJUSTMENT FOR THE 2011 CAPITAL FACILITIES FEES PROGRAM FOR FISCAL YEAR 2012-2013

WHEREAS, the City Council of the City of Modesto has adopted Modesto Municipal Code Section 8-1.904 et seq., creating and establishing the authority for imposing and charging capital facilities fees (CFF), and

WHEREAS, the current capital facilities fees are set forth in Resolution No. 2003-309 as amended and restated by Resolution Nos. 2006-055, 2010-272, and 2011-105, and

WHEREAS, the current CFF Policies and Procedures (Policies and Procedures) are set forth in Resolution No. 2008-070, and

WHEREAS, according to Section 3C of the Policies and Procedures the CFF shall be automatically adjusted annually for all land use categories according to the annual change in the San Francisco Bay Area News Record Construction Cost Index through the month of December of the year preceding each inflation adjustment, and

WHEREAS, the construction cost index (CCI) inflation adjustment scheduled for the upcoming fiscal year is 0.9%, and

WHEREAS, the nation, State of California, and City of Modesto have been faced with unprecedented economic circumstances, and

WHEREAS, increasing the fee will not benefit the City of Modesto, and

WHEREAS, staff has recommended the 0.9% CCI be waived this year,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the CFF annual inflationary adjustment for fiscal year 2012-2013 be waived.
BE IT FURTHER RESOLVED that the current 2011 CFF Program rate shall remain in effect through June 30, 2013.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 24th day of April, 2012, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Burnside, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Burnside, Cogdill, Geer, Gunderson, Lopez, Muratore, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2012-142

RESOLUTION APPROVING THE SHACKELFORD LANDSCAPE AND LIGHTING DISTRICT TRANSFER AGREEMENT BETWEEN THE COUNTY OF STANISLAUS AND THE CITY OF MODESTO, AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE AGREEMENT

WHEREAS, on February 22, 2012, the Stanislaus County Local Agency Formation Commission ("LAFCO") approved the annexation of approximately 153 acres of real property, known as the Shackelford Annexation, to the City as delineated in LAFCO Resolution No. 2012-05, and

WHEREAS, following approval of the Shackelford Annexation by LAFCO, the City of Modesto ("CITY") will have jurisdiction and control over the annexed territory, which includes all of the territory of the Shackelford Landscape and Lighting District ("SHACKELFORD LLD"), and

WHEREAS, Section 22612 of the Streets and Highways Code provides that "if all of the territory of the district is included within one city by annexation or incorporation, the legislative body may transfer jurisdiction over the district to the city council of the city by a joint resolution", and

WHEREAS, the County of Stanislaus ("COUNTY") and CITY have mutually agreed upon the terms and conditions under which the transfer is to take place, and

WHEREAS, the CITY and COUNTY desire to execute the Shackelford Landscape and Lighting District Transfer Agreement ("AGREEMENT"),

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the Shackelford Landscape and Lighting District Transfer Agreement is hereby approved.
BE IT FURTHER RESOLVED that the City Manager, or his designee, is 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 24th day of April, 2012, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Burnside, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Burnside, Cogdill, Geer, Gunderson, Lopez, Muratore, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: [Signature]

STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: [Signature]

SUSANA ALCALA WOOD, City Attorney
RESOLUTION APPROVING THE CREATION OF AN OPERATING FUND
AND BUDGET FOR THE SHACKELFORD LANDSCAPE AND LIGHTING
DISTRICT FOR FISCAL YEAR 2011-2012

WHEREAS, on February 22, 2012, the Stanislaus County Local Agency
Formation Commission ("LAFCO") approved the annexation of approximately 153 acres
of real property, known as the Shackelford Annexation, to the City of Modesto ("CITY")
as delineated in LAFCO Resolution No. 2012-05, and

WHEREAS, as a result of the Shackelford Annexation, the CITY will have
jurisdiction and control over all of the annexed territory, and

WHEREAS, the Shackelford Annexation area includes the Shackelford
Landscape and Lighting District ("SHACKELFORD LLD"), and

WHEREAS, on April 24, 2012, the City Council approved a transfer agreement
between the County of Stanislaus ("COUNTY") and CITY, giving full jurisdiction of the
SHACKELFORD LLD to the CITY, and

WHEREAS, upon transfer of the SHACKELFORD LLD to the CITY, the CITY
will assume full responsibility for its administration and maintenance for the remainder of
Fiscal Year 2011-2012 and beyond, and

WHEREAS, upon transfer of the SHACKELFORD LLD to the CITY, the
COUNTY will disburse the remaining fund balances for Fiscal Year 2011-2012, and any
other reserves, to the CITY, and

WHEREAS, an operating fund and budget is needed for Fiscal Year 2011-2012 to
continue paying for the administration and maintenance of the SHACKELFORD LLD,
NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby authorizes the creation of an operating fund and budget for the Shackelford Landscape and Lighting District for Fiscal Year 2011-2012.

BE IT FURTHER RESOLVED by the Council of the City of Modesto 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 24th day of April, 2012, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Burnside, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Burnside, Cogdill, Geer, Gunderson, Lopez, Muratore, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: 

STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: 

SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2012-144

RESOLUTION AMENDING THE FISCAL YEAR 2011-2012 OPERATING BUDGET AND APPROPRIATING $5,100 IN EXPENSE AND REVENUE TO THE NEW SHACKELFORD LANDSCAPE AND LIGHTING DISTRICT FUND FOR THE ADMINISTRATION AND MAINTENANCE OF THE SHACKELFORD LANDSCAPE AND LIGHTING DISTRICT

WHEREAS, on February 22, 2012, the Stanislaus County Local Agency Formation Commission (“LAFCO”) approved the annexation of approximately 153 acres of real property, known as the Shackelford Annexation, to the City of Modesto (“CITY”) as delineated in LAFCO Resolution No. 2012-05, and

WHEREAS, as a result of the Shackelford Annexation, the CITY will have jurisdiction and control over all of the annexed territory, and

WHEREAS, the Shackelford Annexation area includes the Shackelford Landscape and Lighting District (“SHACKELFORD LLD”), and

WHEREAS, on April 24, 2012, the City Council approved a transfer agreement between the County of Stanislaus (“COUNTY”) and CITY giving full jurisdiction of the SHACKELFORD LLD to the CITY, and

WHEREAS, upon transfer of the SHACKELFORD LLD to the CITY, the CITY will assume full responsibility for its administration and maintenance for the remainder of Fiscal Year 2011-2012 and beyond, and

WHEREAS, upon transfer of the SHACKELFORD LLD to the CITY, an operating fund and budget will be created for Fiscal Year 2011-2012 to continue paying for the administration and maintenance of the SHACKELFORD LLD, and
WHEREAS, upon transfer of the SHACKELFORD LLD to the CITY, the COUNTY will disburse the remaining fund balances for Fiscal Year 2011-2012 to the CITY, and

WHEREAS, upon receiving disbursements from the COUNTY, $5,100 will be appropriated to the SHACKELFORD LLD’s expense and revenue budget to pay for continued administration and maintenance for Fiscal Year 2011-2012,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby authorizes amending the Fiscal Year 2011-2012 operating budget to appropriate $5,100 in expense and revenue budget to the new Shackelford Landscape and Lighting District fund.

BE IT FURTHER RESOLVED by the Council of the City of Modesto 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 24th day of April, 2012, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Burnside, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Burnside, Cogdill, Geer, Gunderson, Lopez, Muratore, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: STEPHANIE LOPEZ, City Clerk

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney

04/24/2012/C&ED/TRocha/Item 12 2 2012-144
RESOLUTION DIRECTING STAFF TO PREPARE AND FILE THE 2012-2013 ANNUAL ENGINEER’S REPORT FOR THE SHACKELFORD LANDSCAPE AND LIGHTING DISTRICT

WHEREAS, on June 29, 1999, the County of Stanislaus formed the Shackelford Landscape and Lighting District (“SHACKELFORD LLD”) for the purpose of administering the maintaining seventy-seven (77) 200-watt high-pressure sodium streetlights, and

WHEREAS, the SHACKELFORD LLD was formed in accordance with the Landscaping and Lighting Act of 1972 (Streets and Highways Code Sections 22500 through 22679), and

WHEREAS, the SHACKELFORD LLD is comprised of approximately 153 acres, includes 496 lots with both residential and commercial development, and is bounded by Crows Landing on the west, E. Hatch Road on the south, Union Pacific Railroad on the east, and State Route 99 on the north, and

WHEREAS, on February 22, 2012, the Stanislaus County Local Agency Formation Commission (“LAFCO”) approved the annexation of the Shackelford Area to the City of Modesto, and

WHEREAS, on April 24, 2012, the City Council approved the Shackelford Landscape and Lighting District Transfer Agreement between the County of Stanislaus and the City of Modesto, and

WHEREAS, Section 22622 of the Streets and Highways Code requires the legislative body (the City Council) to adopt a resolution which shall generally describe
any proposed new improvements or any substantial changes in existing improvements and direct staff to prepare and to file a report accordingly,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that there are no proposed new improvements or any substantial changes in existing improvements in SHACKELFORD LLD.

BE IT FURTHER RESOLVED that the Administrator of the Infrastructure Financing Programs is designated by this Council as the “Engineer of Work” for the SHACKELFORD LLD, and is hereby directed to prepare and file an annual report in accordance with the provisions of the Landscaping and Lighting Act of 1972, as amended, (Streets and Highways Code Sections 22500 through 22679).

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 24th day of April, 2012, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Burnside, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Burnside, Cogdill, Geer, Gunderson, Lopez, Muratore, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST:  

SEAL

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney
RESOLUTION APPROVING (I) AN ADMINISTRATIVE ADDENDUM TO SECOND AMENDED AND Restated Disposition and Development Agreement for the Project known as “ARCHWAY COMMONS”; (II) AN AFFORDABLE HOUSING COVENANT; NOTICE OF AFFORDABILITY RESTRICTIONS; A NOTE, Grant Deed and Deed of Trust for the Archway Commons Project, III) THIRD AMENDMENT TO THE HOME LOAN AGREEMENT, AMENDMENT TO PROMISSORY NOTE AND FIRST AMENDED REGULATORY AGREEMENT FOR THE HOUSING PROJECT KNOWN AS “ARCHWAY COMMONS AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO PREPARE AND EXECUTE ALL DOCUMENTS NECESSARY TO CARRY OUT THE OBLIGATIONS OF THE CITY, AND THE CITY AS THE SUCCESSOR HOUSING AGENCY

WHEREAS, the City Council, acting in its capacity as the successor agency to the Redevelopment Agency of the City of Modesto can authorize the City Manager to execute all documents necessary to carry out the obligations of the City, as the Successor Agency, under the Second Amended and Restated DDA between the Redevelopment Agency of the City of Modesto and EAH, Inc., AND

WHEREAS, the City and Developer desire to enter into an Addendum to acknowledge the transfer of the Agency’s obligations under the DDA to the City, and to clarify certain provisions of the DDA in light of the new procedures for disbursement of tax increment revenues to the successor agency to fund the remaining portion of the Agency Loan under the DDA, and,

WHEREAS, the City acknowledges that it currently has $3,697,948.00 available in the Agency’s Low and Moderate Income Housing Fund to pay a portion of the development costs element of the Agency Loan, and

WHEREAS, this amount will be deposited into a construction draw account upon close of escrow for conveyance of the Site to the Developer, and
WHEREAS, the City agrees that the remaining balance of $171,052.00 shall be deposited into the construction draw account by the latter to occur of July 1, 2012, or within ten (10) working days following receipt by the City of tax increment revenues from the Stanislaus County Auditor-Controller to pay the remaining balance of the Agency Loan, as identified in the approved ROPS, and

WHEREAS, the Addendum is not intended to amend or modify the terms of the DDA, but is intended merely to clarify certain provisions contained in the DDA relating to timing for disbursement of a portion of the Agency Loan proceeds, and

WHEREAS, in the event of any inconsistency between the provisions of the DDA and the Addendum, the terms of the Addendum shall control, and

WHEREAS, pursuant to AB 26, the City, as the successor agency to the former Agency, adopted an initial Recognized Obligation Payment Schedule ("ROPS") which included, among other enforceable obligations of the former Agency, the Agency's remaining financial obligations under the DDA, and

WHEREAS, following dissolution of the Agency, property tax increments that would otherwise be allocated to the Agency are paid to the Stanislaus County Auditor-Controller, to be disbursed to the successor agency to make the payments listed in its ROPS,

WHEREAS, the Addendum is not intended to amend or modify the terms of the DDA, but is intended merely to clarify certain provisions contained in the DDA relating to timing for disbursement of a portion of the Agency Loan proceeds. In the event of any inconsistency between the provisions of the DDA and the Addendum, the terms of the Addendum shall control; and
WHEREAS, the City Council, acting in its capacity as the successor agency to the Redevelopment Agency of the City of Modesto ("Successor Agency"), can authorize the City Manager to execute all documents necessary to carry out the obligations of the City, as the Successor Agency, under the Second Amended and Restated Disposition and Development Agreement between the Redevelopment Agency of the City of Modesto and EAH, Inc,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves an Administrative Addendum to the Second Amended and Restated Disposition and Development Agreement for the project known as “Archway Commons.”

BE IT FURTHER RESOLVED by the Council of the City of Modesto that it hereby approves an Affordable Housing Covenant; Notice of Affordability Restrictions; a Note, Grant Deed and Deed of Trust for the Archway Commons project.

BE IT FURTHER RESOLVED by the Council of the City of Modesto that it hereby approves a Third Amendment to the HOME Loan Agreement, Amendment to Promissory Note and First Amended Regulatory Agreement for the housing project known as “Archway Commons,”

BE IT FURTHER RESOLVED by the Council of the City of Modesto that it hereby authorizes the City Manager, or his designee, to execute all documents necessary to carry out the obligations of the City, and the City as the Successor Agency.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 24th day of April, 2012, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Burnside, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Burnside, Cogdill, Geer, Gunderson, Lopez, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: Muratore

ATTEST: [Signature]

STEFHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: [Signature]

SUSANA ALCALA WOOD, City Attorney
RESOLUTION APPROVING AN ASSIGNMENT, ASSUMPTION AND
ESTOPPEL AGREEMENTS, AND AUTHORIZING THE CITY MANAGER OR
HIS DESIGNEE TO PREPARE AND EXECUTE ANY AND ALL RELATED
DOCUMENTS NECESSARY TO IMPLEMENT THE ASSIGNMENT,
ASSUMPTION AND ESTOPPEL OF THE HOME LOAN DOCUMENTS AND
OBLIGATIONS AND THE SUCCESSOR AGENCY TO THE
REDEVELOPMENT AGENCY OF THE CITY OF MODESTO LOAN
DOCUMENTS AND OBLIGATIONS

WHEREAS, on August 11, 2009, the City Council, by Resolution No. 2009-392,
approved a HOME loan in the amount of $1 million of the development of a 150-unit
affordable housing project proposed by EAH, Inc. also referred to as Archway Commons,
and

WHEREAS, since then, the HOME loan has been amended with new timelines
for development and construction activities as the developer worked to secure tax credit
financing, and

WHEREAS, the number of proposed units was reduced from 150 to 76 units, and

WHEREAS, the amendment to the HOME loan agreement will reflect the
reduction of units to 76 affordable rental units, and

WHEREAS on February 22, 2011, by Resolution No. 01-2011 the Agency
approved a Second Amended to the DDA for the proposed development of 76 units. The
number of units was reduced from 102 to increase the final tie-breaker score for the 2011
round of housing tax credits. The Agency and Developer entered into a Second
Amended and restated DDA which the Agency agreed to convey to the Developer certain
property for construction of a multi-family residential complex of affordable rental
housing and related improvements. A portion of these units are to be available at an
affordable rent to persons and families of very-low income levels. The Agency further agreed to provide the Developer with a loan in the amount not to exceed $7,229,866.00.

WHEREAS, on September 28, 2011, the Developer was approved to receive a reservation of 2011 low-income housing tax credits, and

WHEREAS, the success was dependent, in part, on the 20 points received for project readiness, and

WHEREAS as part of the requirements to achieve the 20 readiness points, the applicant must be able to begin construction within 180 days of the Credit Reservation date was awarded by the Tax Credit Allocation Committee (TCAC), and

WHEREAS, the Developer was awarded $835,354 in Federal 9% tax credits, and an allocation of $2,784,513 in State Tax Credits based on investor’s contributions the tax credit equity will result in an equity contribution of $10,791,578, and

WHEREAS, on February 23, 2012, TCAC issued a 180-day deadline letter to meet readiness to proceed requirements, and

WHEREAS, TCAC requires documentation including a limited partnership agreement executed by the general partner and the investor providing the equity.

WHEREAS, EAH, Inc. has formed a limited Partnership known as Archway Commons I, L. P. a California limited partnership (Assignee) and EAH (Assignor) as its General Partner, and

WHEREAS, EAH, Inc is requesting the City approve an assignment to assign and delegate all of its rights titles and related obligations under the loan documents to transfer its interest in the property to assignee, and
WHEREAS, the assignee will assume all of the assignor's duties under the loan documents, and

WHEREAS, under the HOME loan agreement such assignment must be approved in writing by the City of Modesto.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves Assignment, Assumption and Estoppel Agreements, and

BE IT FURTHER RESOLVED by the Council of the City of Modesto that it hereby authorizes the City Manager or his designee to prepare and execute any and all related documents necessary to implement the assignment, assumption and estoppel of the HOME Loan documents and obligations and the Successor Agency to the Redevelopment Agency of the City of Modesto loan documents and obligations.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 24th day of April, 2012, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Burnside, was upon roll call carried and the resolution adopted by the following vote:

AYES:    Councilmembers: Burnside, Cogdill, Geer, Gunderson, Lopez, Muratore, Mayor Marsh

NOES:    Councilmembers: None

ABSENT:  Councilmembers: Muratore

ATTEST:  STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney
RESOLUTION APPROVING A SUBORDINATION AGREEMENT WITH JP MORGAN CHASE BANK AND AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO PREPARE AND EXECUTE ANY AND ALL RELATED DOCUMENTS NECESSARY TO IMPLEMENT THE SUBORDINATION AGREEMENT

WHEREAS, on April 28, 2009, by Resolution No. 10-2009, the Redevelopment Agency (Agency) approved a Purchase Agreement for $3.5 million to acquire three of the four parcels needed for the development of Archway Commons, and

WHEREAS, on April 28, 2009, by Resolution No. 11-2009, the Agency approved an Agreement to Negotiate Exclusive (ANE) and to appoint the Developer as the sole developer receiving Agency funding, and

WHEREAS, the approval of an ANE set the ground work to develop an agreement, and

WHEREAS, on August 11, 2009, by Resolution No. 2, the Agency approved an Amended and Restated Disposition and Development Agreement (DDA), and

WHEREAS, the Amended and Restated DDA outlined that the Agency would provide financial assistance to the Developer, in an amount not to exceed $6,749,000, and of this amount, a predevelopment loan to not exceed the amount of $900,000, a development loan to not exceed the amount $1,869,900 and a property Sell Option or Ground Lease Option in the amount of $3,980,000, and

WHEREAS, the Agency agreed to sell the property to the Developer in the amount of $3,980,000 to be included in the total loan amount of $6,749,000, and

WHEREAS, on February 26, 2010, the Developer became aware of a Tax Credit Regulation that states, "Not more than 125% of the total geographic apportionment of tax
credits may be allocated to any project(s) receiving credits under a given geographic set­
aside”, and

WHEREAS, on March 23, 2010, the Agency approved a two-phased project
consisting of a 102 units in phase one and the remaining 48 units to be completed in
phase two, and

WHEREAS, on June 11, 2010, the Developer notified staff that their Tax Credit
submittal for the March funding cycle was unsuccessful by the narrowest of margins (less
than 2.5% points), and

WHEREAS, the Developer submitted a Tax Credit application for the 2011
second round low- income housing tax credit, and

WHEREAS, on September 28, 2011, the Developer was approved to receive a
reservation of 2011 low-income housing tax credits, and

WHEREAS, the Developer was awarded $835,354 in Federal 9% tax credits and,
an allocation of $2,784,513 in State Tax Credits, and

WHEREAS, based on investors contributions the tax credit equity will result in an
equity contribution of $10,791,578, and

WHEREAS on February 22, 2011, the Agency and Developer entered into a
Second Amended and Restated DDA wherein the Agency agreed to convey to the
Developer certain property for construction of a multi-family residential complex
consisting of approximately 76 units of affordable rental housing and related
improvements, a portion of which units are to be available at an affordable rent to persons
and families of very-low income levels, and
WHEREAS, under the DDA, the Agency further agreed to provide the Developer with a loan in an amount not to exceed $7,229,866.00 consisting of, a pre-construction loan in the amount of $900,000.00 previously funded the Agency, $2,460,866.00 to pay the purchase price for the Site Phase 1, and the remaining balance of $3,869,000.00 to pay certain development and construction costs for the housing project, and

WHEREAS, pursuant to AB 26, the Agency adopted an Enforceable Obligations Payment Schedule which included the obligations under the DDA as an enforceable obligation, as defined in Health and Safety Code Section 34171(d)(1)(E), and

WHEREAS, pursuant to AB 26, on January 24, 2012, the City Council adopted Resolution No. 2012-40, electing to serve as the successor agency to the former Agency, and

WHEREAS, Resolution No. 2012-41, elected to retain the housing assets and functions previously performed by the Agency, and

WHEREAS, as of February 1, 2012, all rights, powers, duties and obligations of the Agency have been transferred to the City of Modesto as the successor agency, and

WHEREAS, unless otherwise specifically stated, all references to Agency in the DDA shall hereafter mean and refer to the City of Modesto, in its capacity as the housing successor agency to the former Redevelopment Agency of the City of Modesto, and

WHEREAS, pursuant to AB 26, the City, as the successor agency to the former Agency, adopted an initial Recognized Obligation Payment Schedule (“ROPS”) which included, among other enforceable obligations of the former Agency, the Agency’s remaining financial obligations under the DDA, and
WHEREAS, following dissolution of the Agency, property tax increments that would otherwise be allocated to the Agency are paid to the Stanislaus County Auditor-Controller, to be disbursed to the successor agency to make the payments listed in its ROPS, and

WHEREAS, the City and Developer desire to enter into an Addendum to acknowledge the transfer of the Agency’s obligations under the DDA to the City, and to clarify certain provisions of the DDA in light of the new procedures for disbursement of tax increment revenues to the successor agency to fund the remaining portion of the Agency Loan under the DDA, and

WHEREAS, the City acknowledges that it currently has $3,697,948.00 available in the Agency’s Low and Moderate Income Housing Fund to pay a portion of the Development Costs element of the Agency Loan, and

WHEREAS, this amount will be deposited into a construction draw account upon close of escrow for conveyance of the Site to the Developer, and

WHEREAS, the City agrees that the remaining balance of $171,052.00 shall be deposited into the construction draw account by the latter to occur on July 1, 2012, or within ten (10) working days following receipt by the City of tax increment revenues from the Stanislaus County Auditor-Controller to pay the remaining balance of the Agency Loan, as identified in the approved ROPS, and

WHEREAS, the Addendum is not intended to amend or modify the terms of the DDA, but is intended merely to clarify certain provisions contained in the DDA relating to timing for disbursement of a portion of the Agency Loan proceeds. In the event of any
inconsistency between the provisions of the DDA and the Addendum, the terms of the Addendum shall control; and

WHEREAS, on August 11, 2009, the City Council, by Resolution No. 2009-392, approved a HOME loan in the amount of $1 million of the development of a 150-unit affordable housing project proposed by EAH, Inc. also referred to as Archway Commons, and

WHEREAS, since then, the HOME loan has been amended with new timelines for development and construction activities as the developer worked to secure tax credit financing, and

WHEREAS, the number of proposed units was reduced from 150 to 76 units, and

WHEREAS, the administrative amendment to the HOME loan agreement will reflect the reduction of units to 76 affordable rental units, and

WHEREAS, the City Council, acting in its capacity as the successor agency to the Redevelopment Agency of the City of Modesto ("Successor Agency"), can authorize the City Manager to execute all documents necessary to carry out the obligations of the City, as the Successor Agency, under the Second Amended and Restated Disposition and Development Agreement between the Redevelopment Agency of the City of Modesto and EAH, Inc,

WHEREAS, JP Morgan Chase Bank is requesting that the City, Archway Commons I L.P and JP Morgan Chase Bank enter into a Subordination Agreement, and

WHEREAS, in order to complete this financing process for this project the financial lending institution requires as a condition to provide the loan to be and remain at all times prior and superior to other loans, and
WHEREAS, the parties involved in these transactions acknowledge that the borrower will be required to enter into a regulatory agreement with the California Tax Credit Allocation Committee (TCAC), and

WHEREAS, if requested to do so, each lender will consent to and subordinate the lien or charge of the recorded items in its favor to the TCAC Regulatory Agreement on condition that the TCAC Regulatory Agreement includes provisions for termination thereof not later than three years after foreclosure (or deed in lieu of foreclosure) with respect to any recorded item which encumbers the Property, and is otherwise reasonably acceptable to each Lender.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto hereby approves a Subordination Agreement

BE IT FURTHER RESOLVED by the Council of the City of Modesto that it hereby authorizes the City Manager, or his designee, to prepare and execute any and all related documents necessary to implement the subordination agreement.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 24th day of April, 2012, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Burnside, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Burnside, Cogdill, Geer, Gunderson, Lopez, Muratore, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: Muratore

ATTEST: [Signature]

STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: [Signature]

SUSANA ALCALA WOOD, City Attorney
RESOLUTION ACCEPTING THE WORK BY ROSS F. CARROLL, INC., FOR THE "CONSTRUCTION OF RIGHT TURN LANES STREET IMPROVEMENTS" PROJECT AS COMPLETE, AUTHORIZING THE CITY CLERK TO FILE A NOTICE OF COMPLETION WITH THE STANISLAUS COUNTY RECORDER UPON RECEIPT OF APPROVED WARRANTY BOND, AND AUTHORIZING PAYMENT OF AMOUNTS TOTALING $731,582

WHEREAS, a report has been filed by the Director of Utility Planning and Projects that the Construction of Right Turn Lanes Street Improvements project has been completed by Ross F. Carroll, Inc., in accordance with the contract agreement dated April 12, 2011,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the Construction of Right Turn Lanes Street Improvements project is hereby accepted as complete from said contractor Ross F. Carroll, Inc., that the City Clerk is authorized to file a Notice of Completion with the Stanislaus County Recorder upon receipt of approved Warranty Bond, and that payment of amounts totaling $731,582 is authorized as provided in the contract.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 24th day of April, 2012, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Burnside, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Burnside, Cogdill, Geer, Gunderson, Lopez, Muratore, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: STEPHANIE LOPEZ, City Clerk

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney
RESOLUTION ACCEPTING THE WORK BY SRP COMPANY FOR THE “COMMUNICATIONS TOWER CONSTRUCTION FOR JENNINGS ROAD WASTEWATER TREATMENT FACILITIES” PROJECT AS COMPLETE, AUTHORIZING THE CITY CLERK TO FILE A NOTICE OF COMPLETION WITH THE STANISLAUS COUNTY RECORDER UPON RECEIPT OF APPROVED WARRANTY BOND, AND AUTHORIZING PAYMENT OF AMOUNTS TOTALING $122,922.43

WHEREAS, a report has been filed by the Director of Utility Planning and Projects that the Communications Tower Construction for Jennings Road Wastewater Treatment Facilities project has been completed by SRP Company in accordance with the contract agreement dated March 22, 2011,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the Communications Tower Construction for Jennings Road Wastewater Treatment Facilities project is hereby accepted as complete from said contractor SRP Company, that the City Clerk is authorized to file a Notice of Completion with the Stanislaus County Recorder upon receipt of approved Warranty Bond, and that payment of amounts totaling $122,922.43 is authorized as provided in the contract.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 24th day of April, 2012, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Burnside, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Burnside, Cogdill, Geer, Gunderson, Lopez, Muratore, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: [Signature]

SEAL

APPROVED AS TO FORM:

By: [Signature]

SUSANA ALCALA WOOD, City Attorney
RESOLUTION NO. 2012-151

A RESOLUTION APPROVING THE INSTALLATION OF TWENTY FIVE (25) HISTORICAL CRUISE ROUTE MARKERS IN DESIGNATED LOCATIONS ALONG THE MODESTO HISTORIC GRAFFITI CRUISE ROUTE

WHEREAS, on March 11, 2011, by Resolution No. 2011-066, the Council of the City of Modesto approved the designation of 10th and 11th Streets, between G and K Streets, and G and K Streets, between 10th and 11th Streets to be the Modesto Historic American Graffiti Cruise Route, and

WHEREAS, the Modesto Historic American Graffiti Cruise Route will be a walking tour that will provide residents and tourists with a history of cruising in Modesto made famous in the George Lucas film, “American Graffiti”, and

WHEREAS, the Modesto Historic American Graffiti Cruise Route will feature twenty five (25) different Historic Cruise Markers which tell the Modesto cruising history story in designated locations along the route, and

WHEREAS, the cost of designing and manufacturing the Historic Cruise Markers will be funded through private donations and sponsorships from local businesses, and

WHEREAS, the Historic Cruise Marker locations received review and approval from Planning and Traffic Operations Divisions staff of the Community and Economic Development Department, and

WHEREAS, Traffic Operations staff will install the Historic Cruise Markers at an approximate cost of $125 per sign, and

WHEREAS, staff has confirmed that no encroachment permit is required for the installation of the markers,
NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the installation of twenty five (25) Historical Cruise Route Markers in designated locations along the Modesto Historic Graffiti Cruise Route.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 24th day of April, 2012, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Geer, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Burnside, Cogdill, Geer, Gunderson, Lopez, Muratore, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: [Signature]

STEFANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: [Signature]

SUSANA ALCALA WOOD, City Attorney
A RESOLUTION AMENDING RESOLUTION NO. 2011-066 TO CORRECT THE ROUTE NAME FROM THE MODESTO HISTORIC AMERICAN GRAFFITI CRUISE ROUTE TO MODESTO HISTORIC GRAFFITI CRUISE ROUTE

WHEREAS, on March 11, 2011, by Resolution 2011-066, the Council of the City of Modesto approved the designation of 10th and 11th Streets, between G and K Streets, and G and K Streets, between 10th and 11th Streets to be the Modesto Historic American Graffiti Cruise Route (Cruise Route), and

WHEREAS, the Cruise Route will be a walking tour that will provide residents and tourists with a history of cruising in Modesto made famous in the George Lucas film, “American Graffiti”, and

WHEREAS, the Cruise Route Committee recommend that “American” should be removed from Cruise Route’s official name,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves amending Resolution No. 2011-066 to correct the route name from Modesto Historic American Graffiti Cruise Route to Modesto Historic Graffiti Cruise Route.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 24th day of April, 2012, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Geer, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Burnside, Cogdill, Geer, Gunderson, Lopez, Muratore, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: [Signature]

(SEAL)

APPROVED AS TO FORM:

By: [Signature]

SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2012-153

RESOLUTION APPROVING THE PLANS AND SPECIFICATIONS FOR THE MARY E. GROGAN COMMUNITY PARK – PHASE I PROJECT, ACCEPTING THE BID, AND APPROVING AN AGREEMENT WITH GOODLAND LANDSCAPE CONSTRUCTION, INC. OF TRACY, CA, IN THE AMOUNT OF $7,915,100.00 FOR THE MARY E. GROGAN COMMUNITY PARK – PHASE I PROJECT, AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE CONTRACT

WHEREAS, plans and specifications have been prepared for the Mary E. Grogan Community Park – Phase I Project and City staff recommends approval by the City Council, and

WHEREAS, the bids received for the Mary E. Grogan Community Park – Phase I Project were opened at 11:00 a.m. on March 20, 2012, and later tabulated by the Director of Parks, Recreation and Neighborhoods for the consideration of the Council, and

WHEREAS, the Director of Parks, Recreation and Neighborhoods has recommended that the bid of $7,915,100.00 received from Goodland Landscape Construction, Inc. for the project be accepted as the lowest responsible bid and the contract be awarded to Goodland Landscape Construction, Inc.,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the plans and specifications for the Mary E. Grogan Community Park – Phase I Project, accepts the bid of Goodland Landscape Construction, Inc. in the amount of $7,915,100.00 for the project and awards Goodland Landscape Construction, Inc. the contract for the Mary E. Grogan Community Park – Phase I 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 24th day of April, 2012, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Burnside, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Burnside, Cogdill, Geer, Gunderson, Lopez, Muratore, Mayor Marsh
NOES: Councilmembers: None
ABSENT: Councilmembers: None

ATTEST: ________________________________

STEFHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: ________________________________

SUSANA ALCALÁ WOOD, City Attorney
RESOLUTION AMENDING THE FISCAL YEAR 2011-2012 CAPITAL IMPROVEMENT PROGRAM BUDGET IN ORDER TO FULLY FUND THE MARY E. GROGAN COMMUNITY PARK – PHASE I PROJECT, AND AUTHORIZING THE FINANCE DIRECTOR, OR HER DESIGNEE, TO IMPLEMENT THE PROVISIONS OF THIS RESOLUTION

WHEREAS, a transfer is necessary in order to allocate additional funding of $1,423,500.00 from the Village One Community Facilities District Fund in order to award this bid, and

WHEREAS, a budget adjustment is necessary in order to adjust the expense and revenue budgets in the Parks CIP Account 100288.PRN.Park Planning and Development (Mary E. Grogan Community Park) to use an additional $1,280,960 from the Parks Capital Facilities Fee Fund Reserves in order to award this bid, and

WHEREAS, the Fiscal Year 2011-2012 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 2011-2012 Capital Improvement Program budget as shown in Exhibit A, which is attached hereto.

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 24th day of April, 2012, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Burnside, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Burnside, Cogdill, Geer, Gunderson, Lopez, Muratore, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST:  

STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By:  

SUSANA ALCALA WOOD, City Attorney
EXHIBIT A

1) An appropriation transfer is necessary from the Village One CFD in the amount of $1,423,500.00 in order to fully fund the Construction of Mary E. Grogan Community Park – Phase I project. The CIP Task Force approved the allocation of the additional funding for this project at their April 3, 2012 meeting.

### Transfers between Fiscal Year Cost Centers (Expense) and Projects (Revenue)

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2) In addition, a budget adjustment is necessary in order to allocate the expense and revenue budgets in the Parks CIP Account 100288, PRN.Park Planning and Development (Mary E. Grogan Community Park).

### Revenues

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3) Additional funding of $1,280,960 from Parks CFF will be used to provide for the additional project expenses.
RESOLUTION APPROVING THE IMPLEMENTATION OF IMPROVEMENTS FOR THE CITY OF MODESTO COST SHARE PROGRAM

WHEREAS, the City of Modesto owns and maintains the sewer collection system, which includes sewer mains; and the property owner owns and is responsible for the maintenance and repair of the sewer lateral that delivers sewage from the residence to the sewer main, and

WHEREAS, the City of Modesto (City) Cost Share Program (CSP) was implemented on September 11, 1990, by Resolution #90-746, to assist property owners when repairing or replacing the private sewer line located within the public right-of-way (ROW), and was intended to offset the cost to the homeowner for the removal and replacement of city-owned street improvements (pavement, curb, sidewalks), and

WHEREAS, the CSP is funded by sewer rates and has a budget of $100,000 annually that goes directly to property owners as reimbursements, and

WHEREAS, cost share reimbursements are limited to up to 50% of the lowest quoted cost for the repair within the City ROW, and

WHEREAS, the property owner is responsible for 50% of the cost of repair within the City ROW and 100% of the repair cost within the private property, and

WHEREAS, the CSP has been in service for 22 years and has successfully assisted many property owners in the repair of lower sewer laterals, and

WHEREAS, some issues have emerged over time that have made the program difficult for the property owner to access, and
WHEREAS, Nolte Associates, Inc. was retained to evaluate the current CSP and to make recommendations to improve the program and its accessibility to the customer, and

WHEREAS, Nolte’s work included an examination of other community programs and consideration of alternative lower lateral repair policies, and

WHEREAS, Nolte Associates, Inc. found that historical participation in the CSP demonstrates that the City does provide a much-needed program to property owners, and

WHEREAS, over the last five years, an average of 40 property owners per year have received approximately $1,800 in assistance from the program; however, it was not uncommon for applicants to experience a lengthy process that has been frustrating and added unnecessary time to the repairs, and

WHEREAS, a review of the concerns and a comparison with similar programs in other communities resulted in the suggested modifications to Modesto’s CSP, and

WHEREAS, the suggested modifications for addressing these issues are summarized below:

- Implement more streamlined operating procedures for administration of the CSP.
- Develop guideline materials that are easy to understand to assist CSP Applicants and Contractors through the process.
- Modify Construction Standards and Municipal Code to be consistent with the intent and administration of the CSP.
- Establish unit prices for typical sewer lateral repair tasks to simplify the CSP and its administration.
- Develop and implement a loan program for the property owner’s 50% share of work in the Public ROW, and

WHEREAS, modification of the existing CSP by streamlining procedures as indicated above will cost approximately $68,000, and
WHEREAS, these streamlining improvements are consistent with the intent of the 1990 CSP policy, and

WHEREAS, an additional $7,550 per year in program administration cost ($4,500 for annual unit price updates and $3,050 for third-party loan program administration) is also needed to fully implement the recommended modifications, and

WHEREAS, the CSP Program currently costs the City of Modesto $134,425 in program administration and reimbursements and the additional annual costs will increase the program costs to $141,975 annually,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the revised House Sewer Line Repair Cost Share Program for the City of Modesto.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 24th day of April, 2012, by Councilmember Burnside, who moved its adoption, which motion being duly seconded by Councilmember Cogdill, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Burnside, Cogdill, Geer, Gunderson, Lopez, Muratore, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: ___________________________

STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: ___________________________

SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL  
RESOLUTION NO. 2012-156  

RESOLUTION AMENDING THE FISCAL YEAR 2011-12 WASTEWATER OPERATING BUDGET IN THE AMOUNT OF $68,000 IN ORDER TO FULLY FUND THE ONE-TIME IMPROVEMENTS TO THE COST SHARE PROGRAM  

WHEREAS, the City of Modesto owns and maintains the sewer collection system, which includes sewer mains; and the property owner owns and is responsible for the maintenance and repair of the sewer lateral that delivers sewage from the residence to the sewer main, and  

WHEREAS, the Cost Share Program (CSP) is funded by sewer rates and has a budget of $100,000 annually that goes directly to property owners as reimbursements, and  

WHEREAS, modification of the existing CSP by streamlining procedures as indicated above will cost approximately $68,000, and these streamlining improvements are consistent with the intent of the 1990 CSP policy,  

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves amending the Fiscal Year 2011-2012 Wastewater Operation Budget in the amount of $68,000 in Sewer Collections Account 4210-54212-53101 as shown in Exhibit A in order to fully fund the one-time improvements to the Cost Share Program.
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 24th day of April, 2012, by Councilmember Burnside, who moved its adoption, which motion being duly seconded by Councilmember Cogdill, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Burnside, Cogdill, Geer, Gunderson, Lopez, Muratore, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: 

(SEAL)

APPROVED AS TO FORM:

By: 

SUSANA ALCALÁ WOOD, City Attorney
EXHIBIT A

An appropriation transfer in the amount of $68,000 to Sewer Collections Account 4210-54212-53101 is necessary in order to fully fund the one-time Cost Share Program (CSP) improvements. These one-time improvements are:

<table>
<thead>
<tr>
<th>Item</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Update CSP Guidance Documents</td>
<td>$16,150</td>
</tr>
<tr>
<td>Develop Standard Operating Procedures for Administration of CSP</td>
<td>$21,100</td>
</tr>
<tr>
<td>Establish Unit Cost for Lateral Replacement Components</td>
<td>$13,750</td>
</tr>
<tr>
<td>Develop and Implement a Loan Option for CSP Participants</td>
<td>$17,000</td>
</tr>
<tr>
<td><strong>Total Cost</strong></td>
<td><strong>$68,000</strong></td>
</tr>
</tbody>
</table>
RESOLUTION AUTHORIZING THE AWARD OF BID FOR THE PURCHASE OF A THREE (3) REGENERATIVE-AIR HIGH-DUMP STREET SWEEPERS FOR THE PUBLIC WORKS DEPARTMENT, STREET SWEEPING DIVISION, THROUGH THE FLEET SERVICES DIVISION, TO MUNICIPAL MAINTENANCE EQUIPMENT, INC., SACRAMENTO, CA, FOR AN ESTIMATED TOTAL COST OF $626,000

WHEREAS, the City Manager authorized the Purchasing Manager to issue formal Request for Bids (RFB) for new vehicles and heavy equipment, for the Fleet Services Division through various competitive processes, with the Purchasing Division coming back to Council for award authorization. The three (3) Regenerative-Air High-Dump Street Sweepers are included in the new vehicles and heavy equipment list authorized by the City Manager, and

WHEREAS, the Regenerative-Air High-Dump Street Sweepers were included in the FY 11/12 new vehicles and heavy equipment budget approved by Council on June 7, 2011 (No. 3550-C.S.), and

WHEREAS, these sweepers are replacing units that are at the end of their useful life and fall under the Air Resources Board (ARB) on-road diesel vehicle regulations. The ARB compliance program rules require that these Street Sweepers be retired, replaced or retrofitted to meet new air quality standards. A review of the options revealed that retrofitting these Street Sweepers will not meet the compliance criteria due to their operational profile. As a result the compliance program requires that the sweepers be replaced, and
WHEREAS, the Purchasing Division issued RFB No. 1112-27 for the purchase of three (3) Regenerative-Air High-Dump Street Sweepers to nine (9) prospective bidders, posted the bid on the City’s website and formally advertised as required by law, and

WHEREAS, RFB’s were formally opened in the City Clerk’s office. Of the nine (9) prospective bidders, two (2) companies chose to respond. No local vendors can provide this type of equipment. Both companies provided responsive and responsible bids, and

WHEREAS, based on providing the lowest responsive and responsible bid, City staff recommends the award of bid for the purchase of three (3) Regenerative-Air High-Dump Street Sweepers to Municipal Maintenance Equipment, Inc., Sacramento, CA, for an estimated cost of $626,000, and

WHEREAS, sufficient funds are budgeted in Fiscal Year 2011-12 in the following appropriation unit: 5410-53241-57003-000000-000000-000000, 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 purchase of three (3) Regenerative-Air High-Dump Street Sweepers to Municipal Maintenance, Inc., Sacramento, CA, for the Public Works Department, Street Sweeping Division, through the Fleet Services Division, conforms to the Modesto Municipal Code,

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 three (3) Regenerative-Air High-Dump Street Sweepers for the Public Works Department, Street Sweeping
Division, through the Fleet Services Division to Municipal Maintenance Equipment, Inc., Sacramento, 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 $626,000.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 1st day of May, 2012, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Burnside, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Burnside, Cogdill, Geer, Gunderson, Lopez, Muratore, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: [Signature]

(SEAL)

APPROVED AS TO FORM:

By: [Signature]

SUSANA ALCALA WOOD, City Attorney
RESOLUTION AUTHORIZING THE AWARD OF BIDS FOR THE PURCHASE OF CONCRETE AND CAST IRON BOXES COVERS AND FRAMES FOR THE DEPARTMENT OF PUBLIC WORKS, WATER DIVISION, TO FERGUSON WATERWORKS, MODESTO, CA AND PACE SUPPLY CORP., STOCKTON, CA, FOR A ONE-YEAR AGREEMENT WITH FOUR (4) ONE-YEAR EXTENSION OPTIONS AT THE SOLE DISCRETION OF THE CITY, AND AUTHORIZING THE PURCHASING MANAGER, OR HIS DESIGNEE, TO ISSUE PURCHASE AGREEMENTS FOR AN ESTIMATED ANNUAL COST OF $175,000

WHEREAS, the City Manager authorized the Purchasing Manager to issue formal Request for Bids (RFB) for the purchase of concrete and cast iron boxes covers and frames, and

WHEREAS, the Purchasing Division issued RFB No. 1112-19 Concrete and Cast Iron Boxes Covers and Frames to seventeen (17) prospective bidders, eight (8) of which were local vendors, posted the bid on the City’s website and formally advertised as required by law, and

WHEREAS, bids were formally opened in the City Clerk’s Office. Three (3) companies chose to respond, one of which was a local vendor. All three (3) companies provided responsive and responsible bids, and

WHEREAS, Modesto Municipal Code 8-3.206 Support of Local Vendors (SLV) allows the lowest bid or quote submitted by a local business that is within five percent (5%) of the lowest bid, the opportunity to match the lowest bid price. Ferguson Waterworks, Modesto, CA qualified for SLV on a list of inventory items and agreed to match lowest bid price for those items, which represents an additional $90,000 of product purchased annually through the local vendor, and
WHEREAS, based on providing lowest responsive and responsible bids, City staff recommends the award of bids for the purchase of concrete and cast iron boxes covers and frames to Ferguson Waterworks, Modesto, CA and Pace Supply Corp., Stockton, CA, 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 bids for the purchase of concrete and cast iron boxes covers and frames to Ferguson Waterworks, Modesto, CA and Pace Supply Corp., Stockton, CA, conforms to the Modesto Municipal Code, and

WHEREAS, funds shall be budgeted for the purchase of concrete and cast iron boxes covers and frames in Appropriation Units: 4100-55050-53150 and 4100-55080-53150,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby authorizes the award of bids for the purchase of concrete and cast iron boxes covers and frames for the Department of Public Works, Water Division, to Ferguson Waterworks, Modesto, CA and Pace Supply Corp., Stockton, CA.

BE IT FURTHER RESOLVED that the Purchasing Manager, or his designee, is hereby authorized to issue purchase agreements for an estimated annual cost of $175,000.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 1st day of May, 2012, 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: Burnside, Cogdill, Geer, Gunderson, Lopez, Muratore, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: 

(SIGNATURE)

APPROVED AS TO FORM:

By: 

(SIGNATURE)

SUSANA ALCALA WOOD, City Attorney
RESOLUTION APPROVING THE AGREEMENT FOR PARTICIPATION IN
THE STANISLAUS OPERATIONAL AREA ORGANIZATION; AND
AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO SIGN THE
AGREEMENT

WHEREAS, Senate Bill (SB) 1871 (Petris) resulted from the impact of the
Oakland/Berkeley Hills Fire of 1991, and requires each County in California to formally
organize as an “Operational Area” for the purposes of enhancing large-scale emergency
management concepts and plans, and

WHEREAS, Government Code Article 9, Section 8605, establishes the authority
of this “Operational Area” and provides the means for the appropriate parties, the County
and all cities within the County, to form an “Operational Area Council” to coordinate and
manage emergency management issues on behalf of the public and selected private
agencies within Stanislaus County, and

WHEREAS, in June 1998, the City Council and Board of Supervisors adopted the
initial “Agreement for the establishment and participation in the Stanislaus Operational
Area Organization,” along with the other eight cities, and

WHEREAS, in April 2008, the Board of Supervisors adopted an ordinance that
restructured the Disaster Council and Operational Area County which resulted in changes
to the Operational Area Organizational Agreement,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto
that it hereby approves the Agreement for Participation in the Stanislaus Operational
Area Organization.
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 1st day of May, 2012, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Burnside, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Burnside, Cogdill, Geer, Gunderson, Lopez, Muratore, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney
A RESOLUTION APPROVING A MEMORANDUM OF AGREEMENT
BETWEEN THE COUNTY OF STANISLAUS AND THE CITY OF MODESTO
FOR THE EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT
(JAG) FORMULA PROGRAM FISCAL YEAR 2012 LOCAL SOLICITATION
AUTHORIZING A JOINT APPLICATION WITH THE COUNTY OF
STANISLAUS, AND AUTHORIZING THE CITY MANAGER, OR HIS
DESIGNEE, TO EXECUTE THE MEMORANDUM OF AGREEMENT

WHEREAS, the allocation of Edward Byrne Memorial Justice Assistance Grant
(JAG) is based on a formula of population and violent crime statistics, in combination
with a minimum allocation to ensure that each state and territory received an appropriate
share of funding, and

WHEREAS, the JAG Program allows states, tribes and local governments to
support a broad range of activities to prevent and control crime based on their own local
needs and conditions, and

WHEREAS, the City of Modesto Police Department is eligible to apply for
$108,818 and Stanislaus County is eligible for $36,895, and

WHEREAS, the City of Modesto Police Department is considered a “disparate”
under the terms of this grant because the City is eligible to receive one and one-half times
more than a County (150% more than the County with concurrent jurisdiction), and

WHEREAS, the Modesto Police Department and Stanislaus County are required
to submit a joint application for the total eligible allocation of $145,713 and

WHEREAS, recommended distribution of the 2012 JAG funds are as follows:

<table>
<thead>
<tr>
<th>Category</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Probation</td>
<td>$10,054</td>
</tr>
<tr>
<td>Sheriff</td>
<td>$26,841</td>
</tr>
<tr>
<td>Sheriff (Administrative Fee)</td>
<td>$3,265</td>
</tr>
<tr>
<td>Modesto Police Department</td>
<td>$105,553</td>
</tr>
</tbody>
</table>
WHEREAS, the City of Modesto will use its allocation to purchase personnel scheduling and tracking software program and personal video recording devices for patrol officers.

WHEREAS, there is no match required for this grant, and

WHEREAS, the awards are made in the first fiscal year of the appropriation and may be expended during the following three years for a total of four years, and

WHEREAS, Stanislaus County will be the fiscal agent for this grant, and

WHEREAS, the County will charge the City a three percent (3%) administrative fee in the amount of $3,265 to cover the reporting costs associated with the grant, and

WHEREAS, the administrative fee reduces the City's total projected grant award to $105,553 ($108,818 less the 3% administrative fee of $3,265), and

WHEREAS, the grant requires that a trust fund must be established for fund deposits, and funds cannot be commingled with funds from any other source, and

WHEREAS, the Memorandum of Agreement states that the City agrees to provide the County a quarterly financial and programmatic report not later than five calendar days after the end of the quarter, and

WHEREAS, grant requires a signed Memorandum of Agreement for the application,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the Memorandum of Agreement between the County of Stanislaus and the City of Modesto for the Edward Byrne Memorial Justice Assistance Grant (JAG) Formula Program Fiscal Year 2012 Local Solicitation, authorizing a joint application with the County of Stanislaus.
BE IT FURTHER RESOLVED that the City Manager, or his designee, 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 1st day of May, 2012, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Burnside, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Burnside, Cogdill, Geer, Gunderson, Lopez, Muratore, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney
RESOLUTION APPROVING A SECOND AMENDMENT TO AGREEMENT WITH STANTEC CONSULTING SERVICES INC. (FORMERLY STANTEC CONSULTING INC.) FOR DESIGN SERVICES FOR THE SCENIC LIFT STATION PROJECT IN THE AMOUNT OF $6,123, FOR A MAXIMUM TOTAL AGREEMENT AMOUNT OF $179,367, AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE SECOND AMENDMENT TO AGREEMENT

WHEREAS, the Scenic Lift Station, located at 2812 Scenic Bend, pumps wastewater under Dry Creek to the gravity pipeline near Lincoln Avenue, and

WHEREAS, the lift station was last upgraded in 1986, and

WHEREAS, the tributary area of the station includes Village I and the proposed Tivoli development, and

WHEREAS, as these developments build-out, the increased sewage flow will make the need for this lift station more critical, and

WHEREAS, on September 3, 2003, by Resolution No. 2003-521, the City Council approved an Agreement for Consultant Services with Stantec Consulting Inc. (Stantec) to design the rehabilitation of the Scenic Lift Station in the amount of $64,170, and

WHEREAS, on July 24, 2007, by Resolution No. 2007-456, the City Council approved the Preliminary Design Report dated June 2007 as complete, and

WHEREAS, on February 26, 2008, by Resolution No. 2008-137, the City Council approved an agreement with Stantec to prepare a final project design for the Scenic Lift Station project in the amount of $143,387, and
WHEREAS, on December 1, 2009, by Resolution No. 2009-565, the City Council approved an amendment to agreement with Stantec, for additional work which was identified during final design, in the amount of $29,857, and

WHEREAS, total estimated cost for the final design portion of the project was $173,244, and

WHEREAS, the completed final design was received September 1, 2010, but the construction was deferred due to budget constraints, and

WHEREAS, funds were recently allocated to fully fund this project and the City can now proceed with construction, and

WHEREAS, the Public Works Department requested minor modifications to the project, so it was necessary to have Stantec modify the final project bid documents, and

WHEREAS, these requested modifications could produce minor construction and future operational cost savings: 1) Bathroom: Removal of the water closet, hot water heater and the partition panel; 2) Bypass pumping: Provide pipe fittings and facilities; and 3) Pump specification: Modify to allow for an additional manufacturer; and 4) Modify the construction cost estimate as necessary for these items, and

WHEREAS, the agreement with Stantec needs to be amended to provide additional mechanical, electrical, and civil engineering, architectural design, and construction support for the completion of the plans and specifications, and

WHEREAS, City staff recommends approving a second amendment to agreement with Stantec Consulting Services Inc. (formerly Stantec Consulting Inc.) as the City does not have the staffing level or subject matter expertise to provide final design services for
the Scenic Lift Station project, and current workload levels do not provide for timely in-
house solutions/responses, and

WHEREAS, given that the design changes are additional services, City staff
recommends approving the requested Second Amendment to Agreement for Design
Services in the amount of $6,123,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto
that it hereby approves a second amendment to agreement with Stantec Consulting
Services Inc. for design services of Scenic Lift Station project in the amount of $6,123
for additional services not included in the original agreement.

BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby
authorized to execute the second amendment to agreement.

The foregoing resolution was introduced at a regular meeting of the Council of
the City of Modesto held on the 1st day of May, 2012, by Councilmember Lopez, who
moved its adoption, which motion being duly seconded by Councilmember Burnside,
was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Burnside, Cogdill, Geer, Gunderson, Lopez,
Muratore, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: [Signature]

SEAL

APPROVED AS TO FORM:

By: [Signature]

SUSANA ALCALA WOOD, City Attorney
RESOLUTION APPROVING THE PLANS AND SPECIFICATIONS FOR THE WATER QUALITY CONTROL FACILITY OFFICE REMODEL PROJECT, ACCEPTING THE BID, AND APPROVING A CONTRACT WITH NETBUILDS OF MARYSVILLE, CALIFORNIA IN THE AMOUNT OF $86,814, AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE CONTRACT

WHEREAS, plans and specifications have been prepared for the Water Quality Control Facility Office Remodel project and City staff recommends approval by the City Council, and

WHEREAS, the bids received for the Water Quality Control Facility Office Remodel project were opened at 11:00 a.m. on April 3, 2012, and later tabulated by the Director of Utility Planning & Projects for the consideration of the Council, and

WHEREAS, the Director of Utility Planning & Projects has recommended that the bid of $86,814, received from Netbuilds of Marysville, California, be accepted as the lowest responsive and responsible bid and the contract be awarded to Netbuilds,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the plans and specifications for the Water Quality Control Facility Office Remodel project, accepts the bid of Netbuilds of Marysville, California, in the amount of $86,814, and awards Netbuilds the contract for the Water Quality Control Facility Office Remodel 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 1st day of May, 2012, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Burnside, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Burnside, Cogdill, Geer, Gunderson, Lopez, Muratore, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: _______________________

(SEAL)

APPROVED AS TO FORM:

By: _______________________

SUSANA ALCALA WOOD, City Attorney
RESOLUTION ACCEPTING THE WORK BY BOND BLACKTOP, INC., FOR THE "2011 MICROsurfacing" PROJECT AS COMPLETE, AUTHORIZING THE CITY CLERK TO FILE A NOTICE OF COMPLETION WITH THE STANISLAUS COUNTY RECORDER UPON RECEIPT OF APPROVED WARRANTY BOND, AND AUTHORIZING PAYMENT OF AMOUNTS TOTALING $953,119.33

WHEREAS, a report has been filed by the Director of Utility Planning and Projects that the 2011 Microsurfacing Project has been completed by Bond Blacktop, Inc., in accordance with the contract agreement dated March 8, 2011,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the 2011 Microsurfacing Project is hereby accepted as complete from said contractor Bond Blacktop, Inc., that the City Clerk is authorized to file a Notice of Completion with the Stanislaus County Recorder upon receipt of approved Warranty Bond, and that payment of amounts totaling $953,119.33 is authorized as provided in the contract.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 1st day of May, 2012, by Councilmember Burnside, who moved its adoption, which motion being duly seconded by Councilmember Cogdill, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Burnside, Cogdill, Geer, Gunderson, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: Lopez, Muratore

(Seal)

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney

ATTEST: STEPHANIE LOPEZ, City Clerk
A RESOLUTION AMENDING AND RESTATING RESOLUTION NO. 2007-287 TO ALLOW A CREDIT OF $2,915 FOR PAST PAID UNCONNECTED SEWER CHARGES TOWARD WASTEWATER CAPACITY CHARGES FOR EXISTING UNCONNECTED RESIDENTIAL PROPERTIES CONNECTING TO THE SEWER SYSTEM, RESCINDING RESOLUTION NO. 2007-287, ITEM 5 OF RESOLUTION 2011-106, AND RESOLUTION NO. 2011-231

WHEREAS, Section 5-6.801 of the Modesto Municipal Code provides that the Council may establish by resolution charges for the Connection of property to the sewage system, and

WHEREAS, engineering consultants have recommended certain improvements to the City’s Wastewater Transmission and Treatment System and estimated the total cost both of the improvements and of the correction of existing deficiencies, and

WHEREAS, rate consultants have apportioned the costs among the City’s wastewater user classifications in accordance with Unit costs attributable to sewage Flow, Strength, and Solids Content, and

WHEREAS, a method of administration for adjustment of Capacity Charges to account for inflation in construction projects should be specified, and

WHEREAS, there is a need for policies to deal consistently with calculation of Capacity Charges for transitional properties, and

WHEREAS, between 1969 and 2007, all dwelling units that were required to connect to the sewage system, but did not connect, were charged a current monthly sewer service charge and a monthly fee for inspections to “insure that the continued use of septic tanks does not cause a health hazard or nuisance”, and
WHEREAS, Section 5-6.302 of the Modesto Municipal Code requires that properties must connect to the sewage system within five years of the system becoming available; however, there are no penalties or enforcement actions within the Code if they do not connect, and

WHEREAS, Resolution No. 2007-287 is amended below with respect to clean-up language in “Definitions” and Section 4, and is reaffirmed and restated in every other respect, and

WHEREAS, a method of administration for a credit for past paid unconnected sewer charges towards Wastewater Capacity Charges should be specified, and

WHEREAS, there is a need for a policy to deal consistently with allowing a credit for past paid unconnected sewer charges towards Wastewater Capacity Charges for existing unconnected residential properties connecting to the sewer system, the City Council does amend and restate Resolution No. 2007-287 to rescind “Definitions” and Section 4 below, and to add additional sections as follows, and

WHEREAS, the California Environmental Quality Act requires analysis for changes in Capacity Charges, and such analysis was completed in the Master Environmental Impact Report (SCH No. 2006052076) certified by the Council on March 13, 2007,

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

Definitions:

Capacity Charge – A one-time charge to be paid by or on behalf of a prospective
wastewater discharger for new or modified facilities existing in or planned to be added to the City Wastewater System, minus Deficiencies.

**City Wastewater System** – The City's physical assets dedicated to the provision of wastewater transmission and treatment, including assets for the collection, treatment, pumping, storage, land application, metering, testing and reporting of wastewater, within or connected to physical assets in City’s Municipal Sewer District No. 1.

**Connection** – The attachment of pipe facilities to the City Wastewater System to commence wastewater transmission and treatment service.

**Deficiencies** – Wastewater facilities required by law or recommended by generally recognized authority as being necessary to the provision of a modern, safe, adequate wastewater system of the City’s size, with prudent reserves of transmission and treatment infrastructure to meet reasonable foreseeable contingencies that are absent from the City Wastewater System at any particular point in time.

**Director** – This definition as stated in Resolution 2007-287 is hereby rescinded in its entirety, and a new and different definition is amended in its place, enacted, and set forth in full as follows:

The City officer(s) or designee(s) in charge of utilities.

**Equivalent Dwelling Unit or EDU** – A single family equivalent dwelling unit based upon standardized, estimated discharge characteristics of a typical single family dwelling of 290 gallons per day (gpd), 200 milligrams per liter (mg/L) of strength Five Day Biochemical Oxygen Demand (BOD), and 200 mg/L of Total Suspended Solids content (TSS).
Flow – the actual or estimated maximum daily quantity of wastewater being transmitted for treatment expressed in gallons per day.


Solids Content – A synonym for Total Suspended Solids (TSS), the primary indicator of the cost of treatment and/or removal of the solid components of wastewater expressed in pounds per day.

Strength – A synonym for Five Day Biochemical Oxygen Demand (BOD), the primary indicator of the cost of treatment of the organic content of wastewater expressed in pounds per day.

Unit Cost – The cost in dollars and/or cents per gallon or pound, as appropriate, to transmit and/or treat wastewater or its constituent components.

Wastewater – For purposes of interpreting this resolution, the term sewer and wastewater are interchangeable.

SECTION 1. Capacity Charges

1. The Capacity Charge for an EDU on or after August 1, 2007, shall be $4,876.00.

2. The Unit Cost capacity charges for connecting dischargers classified as commercial or industrial on and after August 1, 2007, shall be 14.073 dollars per gallon per day of Flow, $1,299.175 per pound of BOD per day (organic strength), and $345.209 per pound of TSS per day (solids content).

SECTION 2. The Capacity Charge for residential construction set forth above shall be paid at a time a building permit is issued for a building or structure. In those cases where a building exists, the Capacity Charge shall be collected at the time at which...
a plumbing permit is issued to connect the building or structure to the City Wastewater System. The Capacity Charge for industrial and commercial property set forth above shall be paid at the time an encroachment permit is issued for the connection. The Council may, by resolutions adopted from time to time, establish conditions under which a Capacity Charge may be spread over time and paid in installments.

SECTION 3. Schedule of Charges

SCHEDULE OF CHARGES
FOR CONNECTION TO CITY WASTEWATER SYSTEM

<table>
<thead>
<tr>
<th>MMC Reference</th>
<th>Name of Charge and Itemization</th>
<th>Charge</th>
</tr>
</thead>
<tbody>
<tr>
<td>5-6.802</td>
<td>Subtrunk Extension Charge:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Residential &amp; Commercial</td>
<td>$645.00 per gross acre</td>
</tr>
</tbody>
</table>

The acreage used to determine wastewater subtrunk connection fees shall be as follows:

The acreage used to determine the wastewater subtrunk fee shall be the total area developed or being developed which is owned, leased, or controlled by the user.

In those instances where the total acreage owned, leased, or controlled by the user is greater than that developed, the Director is authorized to determine the acreage to be used in determining the subtrunk extension charge. The remaining acreage shall pay a subtrunk extension charge at such time as that acreage is developed.

Notwithstanding anything to the contrary contained in Chapter 6 of Title V of the MMC and this resolution, the Council shall have the power to determine, by agreement, the total acreage developed or being developed which is owned, leased, or controlled by a user meeting the criteria set forth below:

(1) The user will establish a new industry or expand an existing industry within the Modesto Municipal Sewer District that results in more than 225 (two hundred twenty-five) new, permanent, on-site, full-time employees; and
(2) The user will construct a new industrial building or building addition with total floor space in excess of one hundred seventy-five thousand (175,000) square feet with total project costs in excess of twenty million dollars ($20,000,000).

If the property is later developed beyond that development approved by the Council, the developer shall pay a wastewater subtrunk charge on the additional acreage developed, including any portion of the property that has already been developed but, for whatever reason, has not been included in the calculation of wastewater subtrunk redemption charges. If the user fails to meet either of the criteria after development, the agreement shall be void and a wastewater subtrunk charge shall be paid based on the total acreage developed or being developed had the above criteria not been applied.

SECTION 4. Policies affecting applicable wastewater Capacity Charges in various circumstances:

1. Commercial and Industrial Capacity Charges shall be based solely upon estimated or actual wastewater Flow, Strength, and Solids Content.

2. Section 4.2 of Resolution 2007-287 and Resolution 2011-106 No. 5 are hereby rescinded in its entirety, and a new and different subsection 2 is amended in its place, enacted, and set forth in full as follows:

   The Director shall develop a schedule of estimated Flow, Strength, and Solids Content for new or modified connections which shall be reviewed annually by staff and the Finance Committee.

3. The Director shall also develop a schedule of estimated or actual Flow, Strength, and Solids Content for any proposed changes in use, building or structure footprint, size of a parcel, or partial development of a larger parcel which, in the reasonable discretion of the Director, could result in a net change in wastewater Flow, Strength, and/or Solids Content.
4. Where use or size changes or partial development result in an estimated net change in estimated or actual Flow, Strength, and Solids Content, the Capacity Charge shall be calculated using the appropriate EDU or Unit Costs for that net charge.

5. When the remainder of a partially developed parcel is improved, the Capacity Charge for the improved portion of the parcel shall be calculated based upon estimated Flow, Strength, and Solids Content.

6. Section 4.6 of Resolution 2007-287 is hereby rescinded in its entirety, and a new and different subsection 6 is amended in its place, enacted, and set forth in full as follows:

   The Director may review the actual water use for each commercial and industrial account approximately 12 months post-connection to verify the original Flow estimate.

7. The Director may review the Flow, Strength, and Solids Content of commercial and industrial accounts approximately 12 months post-connection to verify the original estimates.

8. If any of the above post-connection reviews reveals a variance of at least plus or minus 10% from the estimated Capacity Charges components, additional Capacity Charges or refund of the variance shall result based on the entire variance.

9. Where the bond redemption charges has been paid for an entire parcel which is not completely developed, the Capacity Charge for the undeveloped portion shall be calculated based on the estimated Flow, Strength, and Solids Content expected from the land to be developed, and reduced by the part of the previously paid bond redemption charge proportional to the previously undeveloped area of the entire parcel.
10. If a parcel contains more than one use, the Capacity Charge shall be based on the sum of the estimated Flow, Strength, and Solids Content from each expected use. In cases where the specific future use is not known, the Director shall develop a composite estimated Flow, Strength, and Solids Content based on similar type developments.

SECTION 5. Inflator Index: The Capacity Charge components set forth above shall be re-examined every two years by engineers, consultants, and professionals competent in their field. Such engineers, consultants, and professionals shall provide a report to the City updating Flow, Strength, and Solids Content Unit Costs, as appropriate, and as recommended by the Council by the Finance Director and the Director. After June 30, 2008, the Director shall have the authority, on an annual basis, effective July 1 of each year, to adjust Flow, Strength, and/or Solids Content based costs by an amount not to exceed the annual percentage increase reported in the month of April in the Construction Cost Index found in the Engineering News Record for the San Francisco region.

SECTION 6. Wastewater Capacity Charge Deferral Program for Existing Residential Units Seeking to Connect to the City’s Wastewater Treatment System

1. Existing residential units connecting to the City’s wastewater treatment system shall be required to pay ten percent (10%) of the wastewater capacity charge at the time of connection.

2. Existing residential units connecting to the City’s wastewater treatment system shall be required to pay the remaining ninety percent (90%) over a ten-year period with interest.
SECTION 7. Credit for Past Paid Unconnected Sewer Charges:

1. A credit in the amount of $2,915 towards payment of the Wastewater Capacity Charge is available to all residential properties that paid sewer charges in the past but were not connected to the sewer. A list of the properties that fit this description is available in the City of Modesto Utility Planning and Projects Department.

2. This credit is not retroactive to any properties that may have paid a Wastewater Capacity Charge prior to Council approval of this credit on May 1, 2012.

3. If sufficient evidence is provided that a property paid sewer charges but was not previously connected, that property may be added to the list of eligible properties administratively by the Director.

4. Under the provisions of the Wastewater Deferral Program, 90% of the Wastewater Capacity Charge may be deferred. This is being increased to 100% of the remaining balance and administrative fees for these properties.

5. The credit can only be applied towards the payment of Wastewater Capacity Charges for previously unconnected residential properties that have paid sewer charges in the past. No refunds or credits towards monthly sewer charges will be allowed.

6. The credit is available to the current owner of the property regardless of who actually paid the sewer charges in the past.

7. If it is determined that a dwelling does not exist on a property shown on the list retained in the Utility Planning and Projects Department at the time of Council approval on May 1, 2012, the property shall be removed from the list and will not be eligible for the credit.
8. The credit shall be available for a period of three years from the date of Council approval, which is May 1, 2012. Unless further Council action is taken the credit shall not be available towards Wastewater Capacity Charges paid after April 30, 2015.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 1st day of May, 2012, 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: Burnside, Cogdill, Geer, Gunderson, Lopez, Muratore

NOES: Councilmembers: None

ABSENT: Councilmembers: Mayor Marsh

ATTEST: [Signature]

(SEAL)

APPROVED AS TO FORM:

By: [Signature]

SUSANA ALCALA WOOD, City Attorney
A RESOLUTION ESTABLISHING CITY OF MODESTO COMMUNITY FACILITIES NO. 2012-1 (KIERNAN BUSINESS PARK SOUTH), AUTHORIZING THE LEVY OF SPECIAL TAXES THEREIN AND ESTABLISHING AN ANNUAL APPROPRIATIONS LIMIT

WHEREAS, on March 27, 2012, pursuant to petitions filed by all of the landowners within the proposed Community Facilities District (defined below) (the “Petitioners”) this City Council adopted a resolution (the “Resolution of Intention”) stating its intention to form City of Modesto Community Facilities District No. 2012-1 (Kiernan Business Park South) (the “Community Facilities District”) pursuant to the Mello-Roos Community Facilities Act of 1982, as amended (the “Act”), and

WHEREAS, a copy of the Resolution of Intention, setting forth a description of the proposed boundaries of the Community Facilities District, the facilities and services to be financed by the Community Facilities District and the rate and method of apportionment of special tax proposed to be levied within the Community Facilities District, is on file with the City Clerk and is incorporated herein by reference, and

WHEREAS, notice was published and mailed as required by law relative to the intention of the City to form the Community Facilities District, and

WHEREAS, there has been filed with the City Clerk a report containing a description of the facilities and services necessary to meet the needs of the Community Facilities District and an estimate of the cost of such facilities and services as required by Section 53321.5 of the Government Code (the “Report”), and

WHEREAS, the City Council has held a public hearing as required by law to determine whether it should proceed with the formation of the Community Facilities District and authorize the rate and method of apportionment of special taxes to be levied
within the Community Facilities District for the purposes described in the aforesaid resolution, and

WHEREAS, at said hearing all persons desiring to be heard on all matters pertaining to the formation of the Community Facilities District and the levy of special taxes to pay for the cost of the proposed Facilities and Incidental Expenses were heard, and a full and fair hearing was held, and

WHEREAS, at the public hearing evidence was presented to the City Council on the matters before it, and the proposed special taxes to be levied within the Community Facilities District was not precluded by a majority protest of the type described in Government Code Section 53324, and the City Council is sufficiently advised as to all matters relating to the formation of the Community Facilities District and the levy of the special taxes, and

WHEREAS, there have been fewer than twelve registered voters residing in the proposed boundaries of the Community Facilities District for the statutory period, and the qualified electors in the Community Facilities District are the landowners within the Community Facilities District, and

WHEREAS, on the basis of all of the foregoing, the City Council has determined at this time to proceed with the establishment of the Community Facilities District and to call an election therein to authorize (i) the levy of special taxes pursuant to the rate and method of apportionment of special tax, as set forth in Attachment A hereto, and (ii) the establishment of an appropriations limit for the Community Facilities District,

NOW, THEREFORE, BE IT RESOLVED that the Council of the City of Modesto hereby finds and determines as follows:
SECTION 1. The above recitals are true and correct.

SECTION 2. A community facilities district designated "City of Modesto Community Facilities District No. 2012-1 (Kiernan Business Park South)" is hereby established pursuant to the Act. The City Council hereby finds and determines that all prior proceedings taken with respect to the establishment of the Community Facilities District were valid and in conformity with the requirements of law, including the Act. This finding is made in accordance with the provisions of Section 53325.1(b) of the Act.

SECTION 3. The boundaries of the Community Facilities District and the proposed future annexation areas to the Community Facilities District are established as shown on the map designated "Boundary Map of Proposed City of Modesto Community Facilities District No. 2012-1 (Kiernan Business Park South)," which map is on file in the office of the City Clerk and, pursuant to Sections 3111 and 3113 of the Streets and Highways Code, was recorded in the Book of Maps of Assessment and Community Facilities Districts in the Office of the County Recorder of Stanislaus County in Book No. 5 AM, at Page 13, as Instrument No. 12-0028816-00.

Parcels within the future annexation areas shall be annexed to the Community Facilities District only with the unanimous approval of the owner or owners of each parcel or parcels at the time that parcel or those parcels are annexed, without any requirement for further public hearings or additional proceedings.

SECTION 4. The facilities authorized to be provided for the Community Facilities District are those identified as the "Facilities" in the recitals of this resolution and the services authorized to be paid for by the Community Facilities District are those set forth in Appendix A to the Resolution of Intention (the "Services").
SECTION 5. It is the intention of the City Council, subject to the approval of the qualified electors of the Community Facilities District, to levy the proposed special taxes at the rates set forth in Attachment A hereto on all non-exempt property within the Community Facilities District sufficient to pay for (i) the Services, (ii) the Facilities, and (iii) the other Incidental Expenses, including the costs of forming the Community Facilities District and administering the levy and collection of the special tax and all other administrative costs of the special tax levy. The City expects to incur, and in certain cases has already incurred, incidental expenses in connection with the creation of the Community Facilities District, the levying and collecting of the special taxes, the provision of the Services, the completion and inspection of the Facilities and the annual administration of the Community Facilities District. The rate and method of apportionment of special tax is described in detail in Attachment A hereto and incorporated herein by this reference, and the City Council hereby finds that Attachment A contains sufficient detail to allow each landowner within the Community Facilities District to estimate the maximum amount that may be levied against each parcel. As described in greater detail in the Report, which is incorporated by reference herein, the special taxes are based generally on area of each parcel of real property within the Community Facilities District and, accordingly, is hereby determined to be reasonable. The annual facilities special tax shall be levied on each assessor's parcel for a period not to extend beyond fiscal year 2062-63. The special taxes are apportioned to each parcel on the foregoing basis pursuant to Section 53325.3 of the Act, and such special taxes are not on or based upon the ownership of real property. Under no circumstances shall the special taxes against any parcel used for private residential
purposes be increased by more than 10% as a consequence of delinquency or default by
the owner of any other parcel or parcels within the Communities Facilities District.

The City’s Administrator, Infrastructure Financing Programs, 1010 Tenth Street,
Modesto, California 95353, telephone number (209) 577-5211, will be responsible for
preparing annually, or authorizing a designee to prepare, a current roll of special tax levy
obligations by assessor’s parcel number and will be responsible for estimating future
special tax levies pursuant to Section 53340.2 of the Act.

SECTION 6. In the event that a portion of the property within the Community
Facilities District shall become for any reason exempt, wholly or partially, from the levy
of the special taxes specified in Attachment A, the City Council shall, on behalf of the
Community Facilities District, increase the levy (to the extent necessary and permitted by
law and these proceedings) upon the remaining property within the Community Facilities
District which is not exempt. The amount of the special taxes will be set in accordance
with the rate and method of apportionment of special tax attached hereto as
Attachment A.

SECTION 7. Upon recordation of a notice of special tax lien pursuant to
Section 3114.5 of the Streets and Highways Code, a continuing lien to secure each levy
of the special taxes shall attach to all non-exempt real property in the Community
Facilities District, and this lien shall continue in force and effect until the special tax
obligation is either prepaid and permanently satisfied and the lien canceled in accordance
with law or until collection of the special tax by the Community Facilities District ceases.

SECTION 8. It is hereby further determined that there will be no ad valorem
property tax levied on property within the Community Facilities District for the exclusive
purpose of paying the principal of or interest on bonds or other indebtedness incurred to
finance the construction of capital facilities which provide the same services to the
territory of the Community Facilities District as are proposed to be provided by the
Facilities to be financed by the Community Facilities District.

SECTION 9. The City may accept advances of funds or work-in-kind from any
source, including, but not limited to, the Petitioners and other private persons or private
entities, for any authorized purpose, including, but not limited to, paying any cost
incurred by it in creating the Community Facilities District. The City may enter into an
agreement with the person or entity advancing the funds or work-in-kind, to repay all or a
portion of the funds advanced, or to reimburse the person or entity for the value, or cost,
whichever is less, of the work-in-kind, as determined by the City, with or without
interest.

SECTION 10. Written protests against the establishment of the Community
Facilities District have not been filed by one-half or more registered voters within the
boundaries of the Community Facilities District or by the property owners of one-half
(1/2) or more of the area of land within the Community Facilities District. The City
Council hereby finds that the proposed special taxes have not been precluded by a
majority protest pursuant to Section 53324 of the Act.

SECTION 11. The annual appropriations limit (as defined in Section 8(h) of
Article XIII B of the California Constitution) of the Community Facilities District is
hereby established at $20,000,000.

SECTION 12. An election is hereby called for the Community Facilities District
on the propositions of levying the special taxes on the property within the Community
Facilities District and establishing the appropriations limit for the Community Facilities District pursuant to Section 53325.7 of the Act. The language of the proposition to be placed on the ballot is attached hereto as Attachment B.

SECTION 13. The date of the election for the Community Facilities District on the proposition of authorizing the levy of the special taxes and establishing the appropriations limit for the Community Facilities District shall be May 1, 2012. The City Clerk shall conduct the election. Except as otherwise provided by the Act, the election shall be conducted by personally delivered or mailed ballot and in accordance with the provisions of law regulating elections of the City insofar as such provisions are determined by the City Clerk to be applicable.

The City Council having found that there have been fewer than twelve persons registered to vote within the territory of the Community Facilities District for each of the ninety days preceding the close of the public hearing described above, pursuant to Section 53326 of the Government Code each landowner who is the owner of record on the date hereof or the authorized representative thereof shall have one vote for each acre or portion thereof that he or she owns within the Community Facilities District.

SECTION 14. The preparation of the Report is hereby ratified. The Report, as submitted, is hereby approved and is made a part of the record of the public hearing regarding the formation of the Community Facilities District, and is ordered to be kept on file with the transcript of these proceedings and open for public inspection.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 1st day of May, 2012, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Muratore, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Burnside, Cogdill, Geer, Gunderson, Lopez, Muratore, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: 

(Seal)

APPROVED AS TO FORM:

By: 

SUSANA ALCALA WOOD, City Attorney
ATTACHMENT A

CITY OF MODESTO
COMMUNITY FACILITIES DISTRICT NO. 2012-1
(KIERNAN BUSINESS PARK SOUTH)

RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAX

Special Taxes applicable to each Assessor’s Parcel in Community Facilities District No. 2012-1 (Kiernan Business Park South) shall be levied and collected according to the tax liability determined by the City Council of the City of Modesto, through the application of the appropriate amount or rate for Taxable Property, as described below. All of the property in CFD No. 2012-1, unless exempted by law or by the provisions of Section G below, shall be taxed for the purposes, to the extent, and in the manner herein provided, including property subsequently annexed to CFD No. 2012-1 unless a separate Rate and Method of Apportionment of Special Tax is adopted for the annexation area.

A. DEFINITIONS

The terms hereinafter set forth have the following meanings:

“Acre” or “Acreage” means the land area of an Assessor’s Parcel as shown on an Assessor’s Parcel Map, or if the land area is not shown on an Assessor’s Parcel Map, the land area shown on the applicable Final Map or other Subdivision Map.

“Administration Component” means the portion of the Maximum One-Time Facilities Special Tax that is for administrative costs incurred by the City throughout the term of the One-Time Facilities Special Tax including, but not limited to, costs associated with the preparation and oversight of reimbursement agreements, accounting, and tracking of credits. For Original Parcels, the Administration Component is shown in Attachment I to this RMA. Beginning in January 2013 and each January thereafter, the Administration Component shall be adjusted annually by the greater of: (i) the percentage increase, if any, in the construction cost index for the San Francisco region for the prior twelve (12) month period as published in the Engineering News Record or other comparable source if the Engineering News Record is discontinued or otherwise not available; or (ii) four percent (4.0%). Each annual adjustment of the Administration Component shall become effective on January 1 of the calendar year for which the annual adjustment was made.

“Administrative Expenses” means any or all of the following: expenses incurred by the City in carrying out its duties with respect to CFD No. 2012-1, including, but not limited to, levying and collecting the Special Taxes; the fees and expenses of legal counsel; charges levied by the County Auditor’s Office, Tax Collector’s Office, and/or Treasurer’s Office; costs related to annexing property into the CFD; costs related to property owner inquiries regarding the Special Taxes; and all other costs and expenses of the City in any way related to the establishment or administration of the CFD.

“Administrator” means the person or firm designated by the City to administer the Special Taxes according to this Rate and Method of Apportionment of Special Tax.
"Annual Maintenance Special Tax" means a special tax levied in any Fiscal Year to pay the Annual Maintenance Special Tax Requirement, as defined below.

"Annual Maintenance Special Tax Requirement" means that amount necessary in any Fiscal Year to: (i) pay for Authorized Services, (ii) pay for Administrative Expenses, and (iii) cure any delinquencies in the payment of Annual Maintenance Special Taxes levied in prior Fiscal Years or (based on delinquencies in the payment of Annual Maintenance Special Taxes which have already taken place) are expected to occur in the current Fiscal Year.

"Assessor's Parcel" or "Parcel" means a lot or parcel shown on an Assessor's Parcel Map with an assigned Assessor's Parcel number.

"Assessor's Parcel Map" means an official map of the County Assessor designating parcels by Assessor’s Parcel number.

"Authorized Facilities" or "Authorized Facility" means those facilities that are authorized to be funded by CFD No. 2012-1, including land purchases for right-of-way and a storm drainage basin, and any other land that is acquired to construct an Authorized Facility.

"Authorized Services" means those services that are authorized to be funded by CFD No. 2012-1.

"Base Maximum One-Time Facilities Special Tax" means the greatest amount of One-Time Facilities Special Tax that can be levied on an Assessor’s Parcel in any Fiscal Year not including the Administration Component. For Original Parcels, the Base Maximum One-Time Facilities Special Tax is shown in Attachment 1 to this RMA. Beginning in January 2013 and each January thereafter, the Base Maximum One-Time Facilities Special Tax shall be adjusted annually by the greater of: (i) the percentage increase, if any, in the construction cost index for the San Francisco region for the prior twelve (12) month period as published in the Engineering News Record or other comparable source if the Engineering News Record is discontinued or otherwise not available; or (ii) four percent (4.0%). Each annual adjustment of the Base Maximum One-Time Facilities Special Tax shall become effective on January 1 of the calendar year for which the annual adjustment was made.

"Base Year" means the year in which Authorized Facilities dedicated by a Builder/Developer were accepted by the City. The Administrator shall keep track of the Base Year for each Authorized Facility the City accepts.

"Building Permit" means a permit issued by the City’s Building Department for construction, reconstruction, or expansion of a vertical building structure, or for construction of the foundation of such structure.

"Builder/Developer" means a person or entity that is a property owner, builder, or developer of any Parcel or Parcels within CFD No. 2012-1.

"CFD" or "CFD No. 2012-1" means the City of Modesto Community Facilities District No. 2012-1 (Kiernan Business Park South).

"CFD Formation" means the date on which the Resolution of Formation to form CFD No. 2012-1 was adopted by the City Council.
“City” means the City of Modesto.

“City Council” means the City Council of the City of Modesto, acting as the legislative body of CFD No. 2012-1.

“County” means the County of Stanislaus.

“Credit/Reimbursement Amount” means the Authorized Facilities costs that have been paid in advance by a Builder/Developer (including land dedications for which the Builder/Developer will receive credits and/or reimbursements) and have not yet been reimbursed to that Builder/Developer through one of the following: (i) the application of Special Tax Credits (as defined below) or (ii) payments to the Builder/Developer from One-Time Facilities Special Taxes collected from other Builders/Developers in the CFD. The Credit/Reimbursement Amount outstanding at any point in time will be determined pursuant to Section D below.

“Developed Property” means, in any Fiscal Year, all Parcels for which one or more of the following events have occurred: (i) a Building Permit was issued prior to June 30 of the preceding Fiscal Year; or (ii) the City has accepted improvements, infrastructure, or public facilities that were constructed as a condition of development of the Parcel (not including the acceptance of land by the City for public right-of-ways that will be a site for future improvements, infrastructure, or public facilities) and were constructed, or paid to be constructed, by the owner of such Parcel. Notwithstanding the foregoing, the Parcel identified at CFD Formation as APN 078-018-036 shall not be classified as Developed Property until such time as a connection to the City’s storm drainage system occurs, and it shall be at the discretion of the City to determine whether or not such a connection has occurred. In addition, a Parcel that had an existing building, or had a Building Permit issued, prior to CFD Formation shall not be classified as Developed Property until such time as a new Building Permit is issued for the Parcel that creates a new vertical structure or structures if such new structures do not simply support or represent an addition to the building that occupied the Parcel or had a Building Permit issued prior to CFD Formation.

“Final Map” means a final map, parcel map, or portion thereof, approved by the City pursuant to the Subdivision Map Act (California Government Code Section 66410 et seq.) that creates lots which do not need to be further subdivided prior to issuance of a Building Permit for a residential or non-residential structure.

“Fiscal Year” means the period starting July 1 and ending on the following June 30.

“Maximum Annual Maintenance Special Tax” means the greatest amount of Annual Maintenance Special Tax that can be levied on an Assessor’s Parcel in any Fiscal Year determined in accordance with Section C below.

“Maximum CFD Maintenance Cost” means $80,053 in Fiscal Year 2012-13 dollars, and includes the estimated annual cost of Administrative Expenses. Beginning in January 2013 and each January thereafter, the Maximum CFD Maintenance Cost Tax shall be adjusted annually by the greater of: (i) the percentage increase, if any, in the construction cost index for the San Francisco region for the prior twelve (12) month period as published in the Engineering News Record or other comparable source if the Engineering News Record is
discontinued or otherwise not available; or (ii) four percent (4.0%). Each annual adjustment of the Maximum CFD Maintenance Cost shall become effective on July 1 of the calendar year for which the annual adjustment was made.

"Maximum One-Time Facilities Special Tax" means the greatest amount of One-Time Facilities Special Tax that can be levied on an Assessor’s Parcel in any Fiscal Year, which is equal to the sum of the Base Maximum One-Time Facilities Special Tax and the Administration Component for the Parcel. For Original Parcels, the Maximum One-Time Facilities Special Tax is shown in Attachment 1 to this RMA. Notwithstanding the foregoing, the City may allow adjustments to the Maximum One-Time Facilities Special Tax assigned in Attachment 1 if all of the following occur: (i) there are changes in the Net Taxable Acreage estimates for Original Parcels, (ii) based on those changes, the City concludes that a redistribution of the Maximum One-Time Facilities Special Tax is appropriate, and (iii) written confirmation is received from the owner of each Parcel that will be affected by the redistribution. Once all these items have occurred, the Administrator shall prepare a new Attachment 1 which shall henceforth be the operative RMA for purposes of calculating the Maximum One-Time Facilities Special Tax. For all other Parcels, the Maximum One-Time Facilities Special Tax is determined in accordance with Section C below.

"Maximum Special Taxes” means, collectively, the Maximum One-Time Facilities Special Tax and Maximum Annual Maintenance Special Tax.

"Net Taxable Acre" or "Net Taxable Acreage" means the total gross Acreage within a Final Map or Parcel less road right-of-ways and property that is identified in the Final Map for use as a park site, school site, or City-owned or CFD-owned storm drainage basin. If a Subdivision Map is recorded which is not a Final Map for some or all Parcels created by a subdivision, the Administrator shall calculate the Net Taxable Acreage of such Parcels by identifying the Acreage of the Parcel and (i) adding a portion of the acreage of any right-of-way that fronts the Parcel determined by drawing lines at right angles to the right-of-way, and (ii) subtracting a portion of the acreage of any right-of-way that fronts the Parcel determined by drawing lines at right angles to the right-of-way. The Net Taxable Acreage of a Parcel or Final Map shall be determined at the sole discretion of the City.

"One-Time Facilities Special Tax" means a special tax levied and collected in full by the City prior to a Building Permit being issued for new construction on Taxable Property.

"Original Parcel" means any of the Assessor’s Parcels that were included in the CFD at the time of CFD Formation, as identified in Attachment 1 to this RMA. A Parcel that was created from the subdivision of an Original Parcel and is being further subdivided shall also be considered an Original Parcel for purposes of determining the Maximum Special Taxes pursuant to Section C.

"Proportionately" means, for Developed Property, that the ratio of the actual Annual Maintenance Special Tax levied in any Fiscal Year to the Maximum Annual Maintenance Special Tax authorized to be levied in that Fiscal Year is equal for all Assessor’s Parcels of Developed Property.
“Public Property” means any property within the boundaries of CFD No. 2012-1 that is owned by the federal government, State of California, County, City, or other public agency.

“RMA” means this Rate and Method of Apportionment of Special Tax.

“Special Tax Credit” means a waiver of the creditable portion of the Base One-Time Facilities Special Tax that would otherwise be due from a Parcel in the CFD if the Builder/Developer of that Parcel did not have an outstanding Credit/Reimbursement Amount.

“Special Taxes” means, collectively, the One-Time Facilities Special Tax and the Annual Maintenance Special Tax.

“Subdivision Map” means a Final Map, large lot subdivision map, tentative map, or other map recorded with the County and/or approved by the City that results in the subdivision of a Parcel or a change in the quantity or type of proposed land uses.

“Taxable Property” means all of the Assessor’s Parcels within the boundaries of CFD No. 2012-1 which are not exempt from the Special Taxes pursuant to law or Section G below.

“Taxable Public Property” means, in any Fiscal Year, all Parcels of Public Property within CFD No. 2012-1 that: (i) based on a tentative map or other Subdivision Map, were expected to be Taxable Property; and (ii) based on this expectation, Maximum Special Taxes were assigned to the Parcels in a prior Fiscal Year. However, if Parcels designated as Public Property based on a tentative map or other Subdivision Map are relocated, the new Public Property will again become exempt. If such relocation occurs, the Acreage previously designated as Public Property will become Taxable Property and the Acreage that becomes Public Property will not be taxed. This trading of Acres of Public Property will be permitted to the extent that there is no net loss in Maximum Special Tax revenues.

“Undeveloped Property” means, in any Fiscal Year, all Parcels of Taxable Property within CFD No. 2012-1 that are not Developed Property.

B. DATA FOR ANNUAL ADMINISTRATION

On or about July 1 of each Fiscal Year, the Administrator shall identify the current Assessor’s Parcel numbers for all Parcels of Taxable Property. The Administrator shall also determine: (i) whether each Assessor’s Parcel of Taxable Property is Developed Property or Undeveloped Property; (ii) the Net Taxable Acreage for each Parcel; and (iii) the Annual Maintenance Special Tax Requirement. In addition, the Administrator shall update Attachment I to this RMA pursuant to Section C as Original Parcels are subdivided.

In any Fiscal Year, if it is determined that (i) a Final Map for a portion of property in the CFD was recorded after January 1 of the prior Fiscal Year (or any other date after which the Assessor will not incorporate the newly-created Parcels into the then current tax roll), (ii) because of the date the Final Map was recorded, the Assessor does not yet recognize the new Parcels created by the Final Map, and (iii) one or more of the newly-created Parcels meets the definition of Developed Property, the Administrator shall calculate the Special Taxes for the property affected by recordation of the Final Map by determining the Special
Taxes that apply separately to each newly-created Parcel, then applying the sum of the individual Special Taxes to the Parcel that was subdivided by recordation of the Final Map.

C. **CALCULATING MAXIMUM SPECIAL TAXES**

The Administrator shall use the procedures set forth below to calculate the Maximum Special Taxes for each Parcel in CFD No. 2012-1 in each Fiscal Year, including the Maximum One-Time Facilities Special Tax and the Maximum Annual Maintenance Special Tax.

1. **Maximum One-Time Facilities Special Tax**

The Maximum One-Time Facilities Special Tax for each Original Parcel in CFD No. 2012-1 at the time of CFD Formation is shown in Attachment 1 to this RMA. Each time a Subdivision Map is approved within the CFD or when Parcels are otherwise subdivided or reconfigured, the Administrator shall reallocate the Maximum One-Time Facilities Special Tax assigned to each Original Parcel to the newly-created Parcel(s) within the Subdivision Map as follows:

**Step 1.** For any given point in time, calculate the Base Maximum One-Time Facilities Tax and the Administration Component applicable to the Original Parcel being subdivided.

**Step 2.** Determine the Net Taxable Acreage of each Parcel created by the approval of the Subdivision Map.

**Step 3.** Sum the Net Taxable Acreage from Step 2 for all newly-created Parcels to determine the total Net Taxable Acreage resulting from the subdivision of the Original Parcel.

**Step 4.** For each newly-created Parcel, divide the Net Taxable Acreage determined in Step 2 by the total Net Taxable Acreage of the Original Parcel determined in Step 3 to calculate a percentage.

**Step 5.** For each newly-created Parcel, multiply the percentage calculated in Step 4 by the amounts calculated in Step 1 to determine the Base Maximum One-Time Facilities Special Tax and Administration Component to be allocated to each newly-created Parcel.

**Step 6.** For each newly-created Parcel, add the Base Maximum One-Time Facilities Special Tax and the Administration Component calculated in Step 5 to determine the Maximum One-Time Facilities Special Tax. Attachment 1 of this RMA will be updated by the Administrator each time an Original Parcel is subdivided to show the Base Maximum One-Time Facilities Special Tax, the Administration Component, and the Maximum One-Time Facilities Special Tax for each newly-created Parcel.

*Under no circumstances shall the sum of the Maximum One-Time Facilities Special Tax for all Parcels created by the subdivision or reconfiguration of an*
Original Parcel ever be less than the Maximum One-Time Facilities Special Tax of the Original Parcel.

2. Annual Maintenance Special Tax

Each Fiscal Year, the Maximum Annual Maintenance Special Tax shall be determined for each Parcel of Developed Property using the following methodology:

Step 1. For any Fiscal Year, calculate the total Maximum CFD Maintenance Cost.

Step 2. Determine the Net Taxable Acreage of all Parcels of Developed Property.

Step 3. Divide the Net Taxable Acreage of each Parcel of Developed Property by the total Net Taxable Acreage of all Parcels of Developed Property calculated in Step 2 to obtain a percentage for each Parcel.

Step 4. Multiply the percentage calculated in Step 3 by the Maximum CFD Maintenance Cost in Step 1 to determine the Maximum Annual Maintenance Special Tax for each Parcel of Developed Property for the then-current Fiscal Year.

D. IMPLEMENTATION OF CREDIT/REIMBURSEMENT PROGRAM

Certain Builders/Developers may be required to construct, pay for, or provide Authorized Facilities that are ultimately intended to be funded from One-Time Facilities Special Tax revenues. The City shall implement a Special Tax Credit and reimbursement program, so that Builders/Developers that construct, pay for or provide Authorized Facilities will receive a credit against their Base Maximum One-Time Facilities Special Tax and/or be reimbursed for Authorized Facilities costs, if revenues are available.

At the request of the landowners at the time this RMA was prepared and CFD No. 2012-1 was formed, all credits and reimbursements to Builders/Developers who construct, pay for, or provide Authorized Facilities shall be based on the actual cost of those Authorized Facilities, with the exception of right-of-way and storm drainage basin land costs, which shall be reimbursed at fair market value at the time of dedication, as determined by the City. Pursuant to this request, if the cost of the Authorized Facility constructed, paid for, or provided is less than the Builder/Developer’s Base Maximum One-Time Facilities Special Tax, the Builder/Developer shall receive a Special Tax Credit against their Base Maximum One-Time Facilities Special Tax equal to the actual cost of the Authorized Facility constructed, paid for, or provided, and the remaining Base Maximum One-Time Facilities Special Tax shall be paid by the Builder/Developer in addition to the full Administration Component.

Alternatively, if the cost of the Authorized Facility constructed, paid for, or provided exceeds the Builder’s/Developer’s Base Maximum One-Time Facilities Special Tax, the Builder/Developer will qualify for a Special Tax Credit and/or a reimbursement from the
collection of future One-Time Facilities Special Taxes, as set forth below; the Builder/Developer must still pay the full Administration Component. Notwithstanding the foregoing, there is no guarantee that future One-Time Facilities Special Taxes will be available to reimburse the Builder/Developer. All Credit/Reimbursement Amounts shall be determined by the City based on evidence of costs provided to the City by the Builder/Developer.

The landowners at the time this RMA was prepared and CFD No. 2012-1 was formed also requested that a Builder/Developer not receive any Special Tax Credits if other Builders/Developers have unpaid Credit/Reimbursement Amounts outstanding that have a higher priority for reimbursement. In other words, any outstanding Credit/Reimbursement Amounts for Builders/Developers that have a higher reimbursement priority shall be fully paid prior to Special Tax Credits being applied to a Builder/Developer with a lower reimbursement priority.

The following steps shall be applied to implement the credit/reimbursement program summarized above:

1. On an Ongoing Basis
   a. In January 2013 and each January thereafter, the Administrator shall escalate the Maximum One-Time Facilities Special Tax assigned to each Parcel and the Credit/Reimbursement Amount outstanding for any Builder/Developer by the greater of: (i) the percentage increase, if any, in the construction cost index for the San Francisco region for the prior twelve (12) month period as published in the Engineering News Record or other comparable source if the Engineering News Record is discontinued or otherwise not available; or (ii) four percent (4.0%). Each annual adjustment shall become effective on January 1 of the calendar year for which the annual adjustment was made.
   b. The City shall determine whether One-Time Facilities Special Tax revenues are available to reimburse Builders/Developers that have an outstanding Credit/Reimbursement Amount. If such revenues are available, the City shall pay reimbursements on a “first-incurred/first-paid” basis, as determined by the Base Year for each Authorized Facility accepted by the City. Once the Builder/Developer with first priority is fully reimbursed, the Builder/Developer with second priority will be able to take Special Tax Credits against their One-Time Facilities Special Tax and, if a Credit/Reimbursement Amount is still outstanding, be paid such outstanding Credit/Reimbursement amount if and when One-Time Facilities Special Tax revenues are available. Such reimbursement shall continue until the earlier of (i) the date on which all outstanding Credit/Reimbursement Amounts are paid, or (ii) the date on which no One-Time Facilities Special Tax revenues are available to pay outstanding Credit/Reimbursement Amounts and no additional One-Time Facilities Special Tax revenues are anticipated to be received by the City. There is no guarantee that
all Credit/Reimbursement Amounts will be paid to Builders/Developers.

2. At any time that Authorized Facilities are accepted by the City

The Administrator shall apply the following steps each time Authorized Facilities are dedicated to the City and the City accepts such dedication(s):

   Step 1. Determine the total cost of Authorized Facilities accepted by the City. This total cost shall be the Credit/Reimbursement Amount applicable to the Builder/Developer that dedicated the Authorized Facilities.

   Step 2. Identify and record the Base Year for the Authorized Facilities and determine priority for the Builder/Developer’s Credit/Reimbursement Amount relative to outstanding Credit/Reimbursement Amounts owed to other Builders/Developers.

   Step 3. Beginning in the calendar year that commences after the Base Year, the Administrator shall escalate the Credit/Reimbursement Amount determined in Step 1 each year as outlined in Section D.1 above. If a Builder/Developer constructed, paid for, or provided Authorized Facilities with different Base Years, the Credit/Reimbursement Amount shall be escalated taking the different Base Years into account.

3. Prior to issuance of a Building Permit

When a Builder/Developer requests issuance of a Building Permit, the Administrator shall determine if the Builder/Developer has an outstanding Credit/Reimbursement Amount and apply the appropriate subsection below to determine the Credit/Reimbursement Amount and remaining One-Time Facilities Special Taxes (if any) for the Builder/Developer:

   a. A Credit/Reimbursement Amount is outstanding for the Builder/Developer requesting issuance of a Building Permit, and the Builder/Developer has first priority with respect to their Credit/Reimbursement Amount.

   For any Fiscal Year, the Administrator shall apply the following steps to determine the Maximum One-Time Facilities Special Tax, if any, that is due from the subject Parcel(s):

   Step 1. Identify the Base Maximum One-Time Facilities Special Tax that would have been paid by the Parcel(s) if no Credit/Reimbursement Amount were outstanding.

   Step 2. If the Base Maximum One-Time Facilities Special Tax determined in Step 1 is less than the outstanding Credit/Reimbursement
Amount for the Builder/Developer, the Administration Component shall be collected and the Builder/Developer shall be given a Special Tax Credit against the Base Maximum One-Time Facilities Special Tax for that Parcel(s). After the Special Tax Credit has been calculated, the Administrator shall subtract the aggregate amount of such Special Tax Credits from the outstanding Credit/Reimbursement Amount for the Builder/Developer, and the Builder/Developer shall qualify for reimbursement of the remaining Credit/Reimbursement Amount to the extent One-Time Facilities Special Tax revenues are available.

If the Base Maximum One-Time Facilities Special Tax is greater than the outstanding Credit/Reimbursement Amount for the Builder/Developer, the Administrator shall subtract the outstanding Credit/Reimbursement Amount from the Base Maximum One-Time Facilities Special Tax to determine the net amount of the Base Maximum One-Time Facilities Special Tax that must be paid by the Builder/Developer. In addition, the Builder/Developer must pay the full Administration Component assigned to the Parcel(s) for which the Building Permit is being issued. The Administrator shall update the CFD records to reflect a zero Credit/Reimbursement Amount for that Builder/Developer.

b. A Credit/Reimbursement Amount is outstanding for the Builder/Developer requesting issuance of a Building Permit, and the Builder/Developer does not have first priority with respect to their Credit/Reimbursement Amount.

For any Fiscal Year, the Administrator shall apply the following steps to determine the Maximum One-Time Facilities Special Tax, if any, that is due from the subject Parcel(s):

Step 1. Identify the Base Maximum One-Time Facilities Special Tax that would have been paid by the Parcel(s) if no Credit/Reimbursement Amount were outstanding.

Step 2. Identify the aggregate outstanding Credit/Reimbursement Amounts that have a higher priority than the amount due the Builder/Developer requesting issuance of a Building Permit.

Step 3. If the Base Maximum One-Time Facilities Special Tax determined in Step 1 is less than the Credit/Reimbursement Amounts that are due other Builders/Developers as determined in Step 2, the Base Maximum One-Time Facilities Special Tax and the Administration Component shall be collected from the Builder/Developer requesting issuance of a Building Permit. The Base One-Time Facilities Special Tax collected shall be used to reimburse Builders/Developers with higher reimbursement
priority, and the Administration Component collected shall be retained by the City. The Builder/Developer requesting issuance of a Building Permit shall then qualify for a reimbursement of their entire Credit/Reimbursement Amount and be placed in order of priority behind any remaining Builders/Developers that still have outstanding Credit/Reimbursement Amounts.

If the Base Maximum One-Time Facilities Special Tax determined in Step 1 is greater than the Credit/Reimbursement Amounts that are due all other Builders/Developers as determined in Step 2, the Administration Component and the amount of the aggregate Credit/Reimbursement Amounts that are due other Builder/Developers shall be collected from the Builder/Developer requesting issuance of a Building Permit. The outstanding Credit/Reimbursement Amounts due all other Builder/Developers shall be subtracted from the Base Maximum One-Time Facilities Special Tax to determine the net amount of the Base Maximum One-Time Facilities Special Tax that must be paid by the Builder/Developer. Using this net amount of the Base Maximum One-Time Facilities Special Tax as the starting point, the steps in Section D.3.a shall be applied to determine the remaining One-Time Facilities Special Tax and/or outstanding Credit/Reimbursement amount, if any, applicable to the Builder/Developer requesting issuance of a Building Permit.

c. No Credit/Reimbursement Amount is outstanding for the Builder/Developer requesting issuance of a Building Permit

If no Credit/Reimbursement Amount is outstanding for the Builder/Developer requesting issuance of a Building Permit, then the Maximum One-Time Facilities Special Tax as calculated pursuant to Section C.1 above shall be due and payable to the City.

E. METHOD OF LEVY OF THE SPECIAL TAX

1. One-Time Facilities Special Tax

The Maximum One-Time Facilities Special Tax determined pursuant to Sections C and D above shall be levied on all Taxable Property in CFD No. 2012-1 and shall be collected as set forth in Section F below.

2. Annual Maintenance Special Tax

Each Fiscal Year, the Administrator shall determine the Annual Maintenance Special Tax Requirement for that Fiscal Year. The Annual Maintenance Special Tax shall be levied Proportionately on each Parcel of Developed Property within the CFD up to 100% of the Maximum Annual Maintenance Special Tax for each Parcel for such Fiscal Year;
F. COLLECTION OF SPECIAL TAX

The Maximum One-Time Facilities Special Tax shall be collected prior to a Building Permit being issued for new construction on Taxable Property within CFD No. 2012-1, and shall be immediately delinquent if not so paid.

The Annual Maintenance Special Tax for CFD No. 2012-1 shall be collected in the same manner and at the same time as ordinary ad valorem property taxes; provided, however, that the City may directly bill, collect at a different time or in a different manner, and/or collect delinquent Annual Maintenance Special Taxes through foreclosure or other available methods.

The Annual Maintenance Special Tax will continue to be levied and collected unless and until the City determines that the Annual Maintenance Special Tax no longer needs to be levied to pay for Authorized Services and Administrative Expenses.

G. EXEMPTIONS

Notwithstanding any other provision of this Rate and Method of Apportionment of Special Tax, no Special Taxes shall be levied on Public Property, except Taxable Public Property, as defined herein. Special Taxes shall not be levied on Parcels that are owned by a public utility for an unmanned facility or on Parcels that are subject to an easement that precludes any other use on the Parcels. In addition, no Annual Maintenance Special Tax shall be levied on any Parcel of Undeveloped Property.

H. INTERPRETATION OF SPECIAL TAX FORMULA

The City reserves the right to make minor administrative and technical changes to this document that do not materially affect the rate and method of apportioning the Special Taxes. In addition, the interpretation and application of any section of this document shall be left to the City's discretion. Interpretations may be made by the City by ordinance or resolution for purposes of clarifying any vagueness or ambiguity in this Rate and Method of Apportionment of Special Tax.

I. ENFORCEMENT

All delinquent Annual Maintenance Special Taxes billed off the County tax roll shall be subject to an immediate 10% penalty plus interest charges of 1.5% as of the first day of the month after the delinquency date and on the first day of each month thereafter. Any such delinquent Special Taxes shall, at the City’s discretion, be placed on the next secured property tax roll. The amount placed on the roll shall include the 10% penalty and the interest charges through the following January 1. This shall not prevent the City from simultaneously pursuing the delinquency by an action on a contract of guarantee against a third party who promised to pay the taxes, or from assigning such right of action to the property owner or other appropriate party.
ATTACHMENT 1

City of Modesto Community Facilities District No. 2012-1
(Kiernan Business Park South)
Maximum One-Time Facilities Special Tax
at CFD Formation

<table>
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<tr>
<th>Assessor’s Parcel Number (Original Parcels)</th>
<th>Net Taxable Acreage</th>
<th>Base Maximum One-Time Facilities Special Tax</th>
<th>Administration Component</th>
<th>Maximum One-Time Facilities Special Tax</th>
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<td>$11,372,045</td>
<td>$118,341</td>
<td>$11,490,386</td>
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</table>

1/ At the time of CFD Formation, APN 078-018-021 was anticipated to be subdivided into two separate parcels based on a preliminary parcel map submitted to the City. Attachment 2 to this RMA shows the geographic locations of APN 078-018-021 (1) and APN 078-018-021 (2) based on this preliminary parcel map. The Maximum One-Time Facilities Special Taxes shown above for these two Parcels were calculated based on this preliminary parcel map.

2/ Represents the Base Maximum One-Time Facilities Special Tax and the Administration Component at the time of CFD Formation. Beginning in January 2013 and each January thereafter, the Base Maximum One-Time Facilities Special Tax and the Administration Component shall be adjusted annually by the greater of: (i) the percentage increase, if any, in the construction cost index for the San Francisco region for the prior twelve (12) month period as published in the Engineering News Record or other comparable source if the Engineering News Record is discontinued or otherwise not available; or (ii) four percent (4.0%). Each annual adjustment of the Base Maximum One-Time Facilities Special Tax and the Administration Component shall become effective on January 1 of the calendar year for which the annual adjustment was made.

3/ At the time of CFD Formation, APN 078-018-031 was not included in the CFD. This Parcel may or may not annex to the CFD at a future date, and it will not pay its Maximum One-Time Facilities Special Tax until such time as it annexes to the CFD and a Building Permit is issued for construction on the Parcel.
ATTACHMENT B

BALLOT PROPOSITION

CITY OF MODESTO
COMMUNITY FACILITIES DISTRICT NO. 2012-1 (KIERNAN BUSINESS PARK SOUTH)

SPECIAL ELECTION

MEASURE SUBMITTED TO VOTE OF VOTERS: Shall City of Modesto Community Facilities District No. 2012-1 (Kiernan Business Park South) (the "Community Facilities District") be authorized to levy special taxes in accordance with a rate and method of apportionment as provided in the Resolution of Formation to finance (i) the costs of planning, designing, constructing, acquiring, modifying, expanding, improving, furnishing, equipping or rehabilitating certain real and other tangible property with an estimated useful life of five years or longer, consisting of certain storm drain system, transportation, landscaping and lighting system improvements and appurtenances and appurtenant work and to finance the incidental expenses associated therewith, all as further provided in the resolution of the Council of the City of Modesto establishing the Community Facilities District (the "Resolution of Formation"), (ii) certain administrative expenses and (iii) the cost of maintaining parkways, landscaped medians, bike paths, well sites, storm drainage pumps and basins, and related facilities, and shall the annual appropriations limit of Community Facilities District No. 2012-1 (Kiernan Business Park South) be established in the amount of $20,000,000?

YES___

NO ___

05/01/2012/C&ED/TRocha/Item 14                 23                2012-165
MODESTO CITY COUNCIL
RESOLUTION NO. 2012-166

A RESOLUTION CALLING A SPECIAL ELECTION FOR THE CITY OF MODESTO COMMUNITY FACILITIES DISTRICT NO. 2012-1 (KIERNAN BUSINESS PARK SOUTH)

WHEREAS, on this date, this City Council adopted a resolution entitled “A Resolution Establishing City of Modesto Community Facilities District No. 2012-1 (Kiernan Business Park South), and Authorizing the Levy of Special Taxes Therein and Establishing an Annual Appropriations Limit” (the “Resolution of Formation”), which established the City of Modesto Community Facilities District No. 2012-1 (Kiernan Business Park South) (the “Community Facilities District”), authorized the levy of special taxes therein, and established an annual appropriations limit, and

WHEREAS, pursuant to the provisions of the Resolution of Formation, a proposition to authorize the levy of special taxes within the Community Facilities District and to establish an appropriations limit of the Community Facilities District is to be submitted to the qualified electors of the Community Facilities District as required by the Mello-Roos Community Facilities Act of 1982, as amended (the “Act”),

NOW, THEREFORE, BE IT RESOLVED that the Council of the City of Modesto, acting as the legislative body of the City of Modesto Community Facilities District No. 2012-1 (Kiernan Business Park South), hereby finds and determines as follows:

SECTION 1. The City Council has heretofore found that fewer than twelve persons have been registered to vote within the territory of the Community Facilities District for the ninety days preceding the close of the public hearing heretofore held by the City Council for the purposes of these proceedings. Accordingly, the vote shall be by
the land owners of the Community Facilities District, and each owner of record at the close of such public hearing, or the authorized representative thereof, shall have one vote for each acre or portion of an acre that he or she owns within the Community Facilities District.

SECTION 2. The date of the election shall be May 1, 2012, and the City Clerk shall conduct the election. The election shall be conducted by personally delivered or mailed ballots and in accordance with the provisions of law regulating elections of the City insofar as such provisions are determined by the City Clerk to be applicable. The voted ballots shall be returned to the City Clerk not later than 9:00 p.m. on May 1, 2012; provided that if all of the qualified electors have voted prior to such time, the election may be closed by the City Clerk.

SECTION 3. The form of the ballot for the election is attached hereto as Exhibit A and by this reference incorporated herein. The City Clerk shall cause to be delivered to each of the qualified electors of the Community Facilities District a ballot in said form. Each ballot shall indicate the number of votes to be voted by the respective elector based upon the number of acres of land owned by such elector as set forth above. The identification envelope for return of the ballot shall be enclosed with the ballot, shall have the postage prepaid and shall contain (a) the name and address of the landowner, (b) a declaration, under penalty of perjury, stating that the elector is the owner of record, or the authorized representative thereof, and is the person whose name appears on the identification envelope, (c) the printed name, signature and address of the elector, (d) the date of signing and place of execution of the declaration described above and (e) a notice
that the envelope contains an official ballot and is to be opened only by the canvassing board. Analysis and arguments with respect to the ballot proposition are hereby waived.

SECTION 4. The City Clerk shall accept the ballots of the qualified electors in the office of the City Clerk to and including 9:00 p.m. on May 1, 2012 whether said ballots shall be personally delivered or received by mail.

SECTION 5. There is on file with the City Clerk a written instrument executed by each qualified elector of the Community Facilities District requesting a shortening of the time for the special election in order to expedite the process of formation of the Community Facilities District and waiving any requirement for analysis and arguments in connection therewith.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 1st day of May, 2012, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Muratore, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Burnside, Cogdill, Geer, Gunderson, Lopez, Muratore, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney

05/01/2012/C&ED/TRocha/Item 14 3 2012-166
EXHIBIT A

OFFICIAL BALLOT

CITY OF MODESTO
COMMUNITY FACILITIES DISTRICT NO. 2009-1 (KIERNAN BUSINESS PARK SOUTH)

May 1, 2012

SPECIAL ELECTION

This ballot is for a special, landowner election. You must return this ballot in the enclosed envelope to the office of the City Clerk of the City of Modesto no later than 9:00 p.m. on May 1, 2012, either by mail or in person. The City Clerk’s offices are located at 1010 Tenth Street, Modesto, California 95353.

INSTRUCTIONS TO VOTERS:

To vote on the measure, make a “+,” “x” or other distinguishing mark on the line after the word “Yes” or on the line after the word “No.” If you wrongly mark, tear or deface this ballot, return it to the City Clerk and obtain another.

MEASURE SUBMITTED TO VOTE OF VOTERS: Shall City of Modesto Community Facilities District No. 2012-1 (Kiernan Business Park South) (the “Community Facilities District”) be authorized to levy special taxes in accordance with a rate and method of apportionment as provided in the Resolution of Formation to finance (i) the costs of planning, designing, constructing, acquiring, modifying, expanding, improving, furnishing, equipping or rehabilitating certain real and other tangible property with an estimated useful life of five years or longer, consisting of certain storm drain system, transportation, landscaping and lighting system improvements and appurtenances and appurtenant work and to finance the incidental expenses associated therewith, all as further provided in the resolution of the Council of the City of Modesto establishing the Community Facilities District (the “Resolution of Formation”), (ii) certain administrative expenses and (iii) the cost of maintaining parkways, landscaped medians, bike paths, well sites, storm drainage pumps and basins, and related facilities, and shall the annual appropriations limit of Community Facilities District No. 2012-1 (Kiernan Business Park South) be established in the amount of $20,000,000?

YES______

NO______
MODESTO CITY COUNCIL
RESOLUTION NO. 2012-167

A RESOLUTION DECLARING THE RESULTS OF A SPECIAL ELECTION
AND APPROVING CERTAIN RELATED ACTIONS PERTAINING TO CITY OF
MODESTO COMMUNITY FACILITIES DISTRICT NO. 2012-1 (KIERNAN
BUSINESS PARK SOUTH)

WHEREAS, this City Council, acting as the legislative body of the City of
Modesto Community Facilities District No. 2012-1 (Kiernan Business Park South) (the
“Community Facilities District”), called and duly held an election of the Community
Facilities District pursuant to resolutions adopted by the City Council on May 1, 2012 for
the purpose of presenting to the qualified electors within the Community Facilities
District a proposition (the “Proposition”) for (a) the levy of special taxes in accordance
with the rate and method of apportionment of special tax set forth in the resolution
forming the Community Facilities District and (b) the establishment of an appropriations
limit for the Community Facilities District, and

WHEREAS, there has been presented to the City Council a Certificate of the City
Clerk as to the Results of the Canvass of the Election Returns, a copy of which is
attached hereto as Attachment “A”,

NOW, THEREFORE, BE IT RESOLVED that the Council of the City of
Modesto, acting as the legislative body of the City of Modesto Community Facilities
District No. 2012-1 (Kiernan Business Park South), hereby finds and determines as
follows:

SECTION 1. The above recitals are true and correct.

SECTION 2. Two-thirds or more of the votes cast by the qualified
electors of the Community Facilities District at the special election held on May 1, 2012
on the Proposition were cast in favor of the Proposition, and the Proposition carried. The
City Council, acting as the legislative body of the Community Facilities District, is hereby authorized to take the necessary steps to levy the special taxes authorized by the Proposition.

SECTION 3. The City Clerk is hereby authorized and directed to execute and cause to be recorded in the office of the County Recorder of Stanislaus County a notice of special tax lien in the form required by law, said recording to occur no later than fifteen days following adoption of this Resolution.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 1st day of May, 2012, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Muratore, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Burnside, Cogdill, Geer, Gunderson, Lopez, Muratore, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: 

(SIGNATURE)

APPROVED AS TO FORM:

By: 

SUSANA ALCALA WOOD, City Attorney
ATTACHMENT “A”

CERTIFICATE OF CITY CLERK

AS TO RESULTS OF THE CANVAS OF ELECTION RETURNS

STATE OF CALIFORNIA )

) ss.

COUNTY OF STANISLAUS )

As City Clerk of the City of Modesto, I do hereby certify that I have examined the returns of the special election for City of Modesto Community Facilities District No. 2012-1 (Kiernan Business Park South) (the “Community Facilities District”). With my concurrence, the election was conducted on May 1, 2012. On or prior to said date I had mailed or personally delivered a ballot to the landowner listed on the latest equalized assessment roll prepared by the Stanislaus County Assessor prior to May 1, 2012 or otherwise known by me to own the property within the boundaries of the Community Facilities District. The landowner was given one vote for each acre, or portion thereof, that the landowner owns within the Community Facilities District.

I further certify that the results of said election and the number of votes cast for and against the Proposition are as follows:

YES: __

NO: __

TOTAL NUMBER OF VOTES CAST: _____

Dated this 1st day of May, 2012.

Stephanie Lopez,
City Clerk of the City of Modesto
RESOLUTION APPROVING A LETTER OF AGREEMENT FOR A RESTRUCTURED AND EXTENDED MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF MODESTO AND MODESTO POLICE MANAGEMENT ASSOCIATION (MPMA) FOR A TERM ENDING SEPTEMBER 30, 2013 AND AUTHORIZING THE DIRECTOR OF HUMAN RESOURCES AND CITY MANAGER TO TAKE THE NECESSARY ADMINISTRATIVE ACTION TO IMPLEMENT THE AGREEMENT

WHEREAS, the current Memorandum of Understanding (MOU) between the City of Modesto (CITY) and the Modesto Police Management Association (MPMA) expired on June 22, 2009, and

WHEREAS, representatives of the CITY and the MPMA met and conferred in good faith concerning wages, hours, terms and conditions of employment for employees in said bargaining unit, and

WHEREAS, the CITY and MPMA have reached agreement on a Letter of Agreement (LOA) for a restructured and extended MOU with a new expiration date of September 30, 2013 which, upon execution, shall be attached hereto and made a part hereof, and

WHEREAS, the LOA provides as follows:

SECTION 1. CONTRACT EXTENSION. All terms of the existing MOU are extended except as detailed below.

SECTION 2. TERM OF MEMORANDUM. Extend the end of the current term of the MOU from 12:00 a.m. on July 1, 2010 to 12:00 a.m. on September 30, 2013.

SECTION 3. SALARY. There shall be no salary increases for the term of this MOU except where the City and the Modesto Police Officers agree to salary increases or decreases. In that event, the City and MPMA will negotiate the equivalent increase or
decrease. If the parties fail to reach agreement on the implementation of equivalent increases or concessions, the parties will engage the assistance of a neutral to determine how the equivalent increase or concession shall be implemented. This process differs from interest arbitration under the City Charter. Interest arbitration pursuant to the terms of the City Charter is inapplicable to disputes under this provision.

SECTION 4. SALARY. The City shall undertake a study on the compaction, if any, between the ranks represented by the Modesto Police Officers Association (MPOA) and the ranks represented by the MPMA. This study shall be completed before June 30, 2013.

SECTION 5. OTHER COMPENSATION. Cash-out of management leave will be suspended for the term of the MOU. Lieutenants shall continue to be eligible to receive management leave, but will not be able to cash it out in December.

SECTION 6. RETIREMENT. Section 11 of the MOU shall be amended to include a second tier retirement formula and benefit will be implemented for new hires.

SECTION 7. HEALTH, DENTAL AND VISION INSURANCE. Effective March 1, 2012, the City shall increase its monthly contribution to employee only by $25 and for employees with dependent coverage by $50. The City will also provide a contribution of $50 to a health saving account for employees in the high deductible health plan. There will be no increase in the opt out amount.

SECTION 8. RETIREE HEALTH INSURANCE. Section 12 of the MOU shall be amended to include a Defined Contribution Health Reimbursement Account for eligible employees hired on or after January 1, 2011 pursuant to LOA as attached.
SECTION 9. LAYOFF & DEMOTION PROCEDURES. Section 29 of the
MOU shall be amended to include modifications to the layoff and demotions procedures
for the MPMA. These modifications include: layoff and demotion by seniority;
increasing the length of time an individual can remain on the reinstatement list from two
years to three; and modification of the probationary period when employees are hired
back from the reinstatement list.

WHEREAS, the Council considered this matter at its meeting of March 27, 2012,
NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto
that the Council hereby approves the Letter of Agreement for a restructured and extended
Memorandum of Understanding with a new expiration date of September 30, 2013
between the City of Modesto and the Modesto Police Management Association and upon
execution of same, a copy of the MOU will be on file in the office of the City Clerk.

The foregoing resolution was introduced at a regular meeting of the Council of
the City of Modesto held on the 1st day of May, 2012, by Councilmember Cogdill, 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: Burnside, Cogdill, Geer, Gunderson, Lopez,
                   Muratore, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: 

(SUSANA ALCALA WOOD, City Attorney)
RESOLUTION APPROVING THE ALLOCATION OF I) HOME COMMUNITY HOUSING DEVELOPMENT ORGANIZATION (CHDO) OPERATING FUNDS IN THE AMOUNT OF $50,000 TO STANCO AND $50,000 TO HABITAT FOR HUMANITY, STANISLAUS; AND II) $100,000 IN CHDO SET ASIDE FUNDS TO HABITAT FOR HUMANITY

WHEREAS, a CHDO is a specific type of private nonprofit entity, and

WHEREAS, CHDOs must meet certain requirements pertaining to their legal status; organizational structure; and capacity and experience, and

WHEREAS, applicants for CHDO set-aside and operating funds must be an approved CHDO through the City of Modesto and act as owner, developer or sponsor as required by HOME regulations, and

WHEREAS, as part of the HOME program, a minimum of fifteen percent (15%) must be allocated for housing development activities in which qualified Community Housing Development Organizations (CHDOs) are the owners, developers and/or sponsors of the housing, and

WHEREAS, the HOME funds set aside for CHDO activities may be used to acquire and/or rehabilitate rental housing and homebuyer properties or to construct rental or homebuyer properties, and

WHEREAS, to be eligible for CHDO operating funds, it must be anticipated that the CHDO will be receiving CHDO set-aside funds within 24 months of receiving the funds for operating expenses, and

WHEREAS, the City of Modesto released a Request for Proposals for CHDO Operating Funds and CHDO set aside funds on November 15, 2011, and
WHEREAS, the proposals were due on January 3, 2012, with the City receiving a proposal from STANCO for funds for operating expenses and Habitat for Humanity for operating expenses and CHDO set aside funds for a project located at 112 James Avenue in Modesto, to develop five single family units, and

WHEREAS, both organizations are certified CHDOs for the City of Modesto, and submitted the required recertification along with the proposals, and

WHEREAS, a sub-review committee from the CH&CDC reviewed the proposals and recommended to allocate $50,000 to each organization for CHDO operating activities and $100,000 to Habitat for Humanity for CHDO set aside activities but with some specific conditions, and

WHEREAS, it was recommended Habitat receive up to $50,000 in a reimbursable basis for architectural and engineering expenses and prior to the release of the remaining $50,000, Habitat’s architect must submit to the City for approval, a Statement of Probable Cost along with plans for the James Avenue project, and

WHEREAS, the sub-review committee will meet to review the required documentation and approve the release of the remaining funds, and

WHEREAS, the Citizens’ Housing and Community Development Committee (CH&CDC) considered the proposed recommendation at its April 18, 2012, meeting, and recommended that the City Council approve,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the allocation of $50,000 in CHDO operating funds to both STANCO and Habitat for Humanity and the allocation of CHDO set aside funds in the
amount of $100,000 to Habitat for Humanity with the conditions set by the sub-review committee.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 8th day of May, 2012, by Councilmember Lopez, who moved its adoption, with motion being duly seconded by Councilmember Gunderson, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Burnside, Cogdill, Geer, Gunderson, Lopez, Muratore, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney
RESOLUTION APPROVING THE CITY OF MODESTO FISCAL YEAR 2012-2013 U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT ANNUAL ACTION PLAN FOR THE USE OF THE COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG), HOME INVESTMENT PARTNERSHIPS PROGRAM (HOME), AND EMERGENCY SOLUTIONS GRANT (ESG) FUNDS; AUTHORIZING SUBMISSION OF AN APPLICATION TO THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT PERTAINING TO THE FISCAL YEAR 2012-2013 ANNUAL ACTION PLAN; 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, as an entitlement community for Housing and Urban Development, the City of Modesto is required to develop an Annual Action Plan (AAP) that describes anticipated uses of Community Development Block Grant (CDBG), Emergency Solutions Grant (ESG) and HOME Investment Partnerships Program (HOME) funds, and

WHEREAS, the City receives these grants annually because of its population size, number of households living below the poverty line, and the number of housing units that are considered substandard, and

WHEREAS, submittal of an AAP is required to receive the City’s entitlement grants from the U.S. Department of Housing and Urban Development (HUD), and

WHEREAS, the Citizens’ Housing and Community Development Committee recommended support of this item at its April 18, 2012 meeting, and

WHEREAS, preparation of the AAP requires a citizens participation element, including a 30-day public comment period, and

WHEREAS, on April 3, 2012, a public notice was submitted and concluded with a public hearing on May 8, 2012, 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 it hereby approves the City of Modesto Fiscal Year 2012-2013 U.S. Department of Housing and Urban Development Annual Action Plan for the use of $1,703,833 in Community Development Block Grant (CDBG) funds, $671,157 in HOME Investment Partnerships Program (HOME) funds, and $228,321 in Emergency Solutions Grant (ESG) funds, a copy of which is on file in the Office of the City Clerk.

BE IT FURTHER RESOLVED that City staff is hereby authorized to submit an application to the U.S. Department of Housing and Urban Development pertaining to the Fiscal Year 2012-2013 Annual Action Plan.

BE IT FURTHER RESOLVED that the City Manager, or his designee, is authorized to execute 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 8th day of May, 2012, by Councilmember Cogdill, who moved its adoption, which motion being duly seconded by Councilmember Geer, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Burnside, Cogdill, Geer, Gunderson, Lopez, Muratore, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: 

(SEAL)

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney
RESOLUTION APPROVING THE ALLOCATION OF FUNDING IN THE AMOUNT OF $256,880 IN COMMUNITY DEVELOPMENT BLOCK GRANT PUBLIC SERVICE GRANTS AND $228,321 EMERGENCY SOLUTIONS GRANTS; AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE AGREEMENTS

WHEREAS, as an entitlement community for Housing and Urban Development, the City of Modesto is required to develop an Annual Action Plan (AAP) that describes anticipated uses of Community Development Block Grant (CDBG), Emergency Solutions Grant (ESG) and HOME Investment Partnerships Program (HOME) funds, and

WHEREAS, the City is obligated to allocate up to fifteen percent (15%) of the CDBG entitlement funds (plus fifteen percent (15%) of program income received during the prior year), to provide a wide range of public service activities to benefit low and moderate-income residents, and

WHEREAS, beginning in FY 2011-12, the City Council approved a two-year funding cycle for CDBG Public Services and ESG grants, which are competitively awarded through a request for proposals (RFP) process, and

WHEREAS, new federal regulations for the ESG program released in late 2011 changed the program focus from emergency shelter and transitional housing to permanent supportive housing for individuals and families experiencing homelessness, and those at risk of experiencing homelessness, and

WHEREAS, a second ESG allocation announced in the middle of the FY 2011-12 increased ESG funding in FY 2012-2013, and

WHEREAS, the City carried out a separate RFP as a result of new ESG requirements, and
WHEREAS, the Council-appointed Citizens’ Housing & Community Development Committee (CH&CDC) reviews these proposals and makes funding recommendations, and

WHEREAS, the grant amounts of the CDBG Public Services and ESG funding recommendations have been adjusted for the second year of this two-year funding cycle to reflect the available funding for FY 2012-13, and

WHEREAS, these allocations are detailed in the City’s AAP, and

WHEREAS, preparation of the AAP requires a citizens participation element, including a 30-day public comment period, and

WHEREAS, the 30-day public comment period began on April 3, 2012, and concluded with a public hearing scheduled for the Council meeting of May 8, 2012,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the allocation of funding in the amount of $256,880 in Community Development Block Grant (CDBG) Public Services, $228,321 in Emergency Solutions Grant (ESG) along with any carryover over from Fiscal Year 2011-12 for Fiscal Year 2012-13.

BE IT FURTHER RESOLVED by the Council of the City of Modesto that it approves a continued funding commitment to the Public Service and Emergency Solutions grant recipients through Fiscal Year 2012-13.

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 agreements.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 8th day of May, 2012, by Councilmember Cogdill, who moved its adoption, which motion being duly seconded by Councilmember Geer, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Burnside, Cogdill, Geer, Gunderson, Lopez, Muratore, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL  
RESOLUTION NO. 2012-172

RESOLUTION AMENDING THE FISCAL YEAR 2012-2013 ANNUAL OPERATING AND CAPITAL IMPROVEMENT BUDGETS TO REFLECT THE APPROVED ALLOCATIONS IN THE DRAFT FISCAL YEAR 2012-2013 ANNUAL ACTION PLAN; AND AUTHORIZING THE FINANCE DIRECTOR, OR HER DESIGNEE, TO TAKE THE NECESSARY STEPS TO IMPLEMENT THE PROVISIONS OF THIS RESOLUTION

WHEREAS, the City of Modesto receives several Federal grants from the United States Department of Housing and Urban Development (HUD), and

WHEREAS, notice has been duly given to the community of the proposed amendment to the HUD Annual Action Plan, and to provide a 30-day comment period, which began April 3, 2012, and ended on May 8, 2012, and

WHEREAS, the Citizens’ Housing and Community Development Committee considered the proposed Draft Fiscal Year 2012-2013 Annual Action Plan at its April 18, 2012, meeting, and recommended that the City Council approve, and

WHEREAS, a duly noticed public hearing was held by the City Council on May 8, 2012 at 5:30 p.m., in the Tenth Street Place Chambers, located at 1010 Tenth Street, to consider approval of the proposed Draft Fiscal Year 2012-2013 Annual Action Plan,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the Draft Fiscal Year 2012-2013 Annual Action Plan.

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 8th day of May, 2012, by Councilmember Cogdill, who moved its adoption, with motion being duly seconded by Councilmember Geer, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Burnside, Cogdill, Geer, Gunderson, Lopez, Muratore, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2012-173

A RESOLUTION (I) AFFIRMING COUNCIL POLICY WITH REGARD TO OUTSIDE SEWER SERVICE AGREEMENTS FOR THE BEARD INDUSTRIAL DISTRICT; AND (II) REQUESTING THAT STANISLAUS LOCAL AGENCY FORMATION COMMISSION AMEND POLICY 15 AND PROVIDE AN EXCEPTION TO LAFCO RESOLUTION NO. 2011-11, CONDITION 1.B AS IT RELATES TO NEW SEWER USERS WITHIN THE BEARD INDUSTRIAL DISTRICT CONSENT TO ANNEXATION

WHEREAS, businesses outside the City of Modesto City Limits requesting new sewer extensions were required to obtain an Out of Boundary Service Agreement (aka Outside Service Agreement, OSA) from the City of Modesto, and

WHEREAS, approvals for these OSA’s are also required by the Stanislaus Local Agency Formation Commission (LAFCO), and

WHEREAS, in addition, LAFCO requires that individual owners agree to consent to future annexation as a condition of granting an OSA, and

WHEREAS, past City Council policy and actions demonstrate that the intent has been to exempt businesses within Beard from securing individual OSA’s and exempt individual property owners from the requirement of executing an agreement to consent to annex, and

WHEREAS, Resolution No. 66-489 was approved on July 5, 1966, which created the Modesto Municipal Sewer District Number 1, geographically including the Beard Industrial District and was clearly created to permit the extension of sewer services within the specified area, and

WHEREAS, Council Policies 5.001 and 5.002 were created to provide guidance to the City Manager in establishing conditions for the extension of water and sewer services to areas of the City limits, and
WHEREAS, Policy 5.001 (Adopted: 1959; Revised: 1998), allows for the extension of water service to properties outside of the City limits, outside the Sphere of Influence and inside, contiguous to and near the former service areas of the Del Este Water Company, and

WHEREAS, Policy 5.002 (Adopted: 1986) defines the conditions for the extension of sewer service to property outside of the City limits and provides a key definition and implementation condition, and

WHEREAS, Policy 5.002 does not require properties located within the Modesto Municipal Sewer District Number 1 to enter into an Outside Service Agreement or execute an agreement to consent to annex as a condition for receiving sewer service, and

WHEREAS, Council action of June 27, 2006 affirmed the position that property owners within the District were exempt from the condition to execute an agreement to consent to annex, and

WHEREAS, in spite of these policies and actions, LAFCO has historically not recognized the relationship between the City and Beard; or acknowledged the existence of Modesto Sewer District Number 1 as a type of District subject to LAFCO jurisdiction, and

WHEREAS, therefore, individual businesses were required to apply to LAFCO for OSA approvals and comply with the consent to annex condition, and

WHEREAS, this process extends the development approval process by at least 30 days causing added expense, delays and uncertainty to the individual business, and
WHEREAS, in an effort to remedy this, City staff initiated a proposal to LAFCO in August 2011 requesting in essence a blanket OSA approval for all remaining properties within the Beard District, and

WHEREAS, LAFCO approved the request on August 24, 2011 by Resolution 2011-11; however, also included in the Resolution is Condition 1.B, requiring new owners to execute an agreement to consent to a future annexation, and

WHEREAS, Beard Industrial District and the City of Modesto object to the position and action taken by LAFCO with respect to condition 1.B, as it works against the intent of past City Council action and policy stated above, and serves to constrain the continued business relationship between the City, Beard, and future business prospects,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it formally requests Stanislaus Local Agency Formation Commission to amend Policy 15 and provide an exception to LAFCO Resolution No. 2011-11, Condition 1.B, eliminating the requirement for new sewer users within the Beard Industrial District to execute agreements consenting to annexation, and thereby affirming the City’s long-standing position and policies.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 8th day of May, 2012, by Councilmember Cogdill, who moved its adoption, which motion being duly seconded by Councilmember Burnside, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Burnside, Cogdill, Geer, Gunderson, Lopez, Muratore, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney
RESOLUTION APPROVING THE PLANS AND SPECIFICATIONS FOR THE SYLVAN AVENUE RECONSTRUCTION PROJECT, ACCEPTING THE BID, AND APPROVING A CONTRACT WITH DSS COMPANY DBA KNIFE RIVER CONSTRUCTION OF STOCKTON, CALIFORNIA IN THE AMOUNT OF $1,425,697.36 AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE CONTRACT

WHEREAS, plans and specifications have been prepared for the Sylvan Avenue Reconstruction project and City staff recommends approval by the City Council, and

WHEREAS, the bids received for the Sylvan Avenue Reconstruction project were opened at 11:00 a.m. on April 17, 2012, 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 $1,425,697.36, received from DSS Company dba Knife River Construction of Stockton, California, be accepted as the lowest responsive and responsible 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 Sylvan Avenue Reconstruction project, accepts the bid of DSS Company dba Knife River Construction of Stockton, California, in the amount of $1,425,697.36, and awards DSS Company dba Knife River Construction the contract for the Sylvan Avenue Reconstruction 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 8th day of May, 2012, by Councilmember Burnside, who moved its adoption, which motion being duly seconded by Councilmember Geer, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Burnside, Cogdill, Geer, Gunderson, Lopez, Muratore, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: 

(SEAL)

APPROVED AS TO FORM:

By: 

SUSANA ALCALA WOOD, City Attorney