A RESOLUTION REAPPOINTING PATRICIA GILLUM TO THE CITY OF MODESTO PLANNING COMMISSION

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

WHEREAS, the Economic Development Committee met on March 30, 2011, and recommended reappointment of Patricia Gillum to the Modesto Planning Commission.

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

SECTION 1. Patricia Gillum is hereby reappointed to the Planning Commission with a term expiration of January 1, 2015.

SECTION 2. The City Clerk is hereby directed to transmit a copy of this resolution to the reappointed member of the Modesto Planning Commission, and the Secretary thereof.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 3rd day of May, 2011, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Marsh, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Burnside, Geer, Hawn, Lopez, Marsh, Muratore

NOES: Councilmembers: None

ABSENT: Councilmembers: Mayor Ridenour

ATTEST: [Signature]

(S SEAL)

APPROVED AS TO FORM:

By: [Signature]

SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL  
RESOLUTION NO. 2011-134  

A RESOLUTION APPOINTING AMY NEUMANN TO THE CITY OF MODESTO PLANNING COMMISSION  

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

WHEREAS, the Economic Development Committee met on March 30, 2011, and recommended appointment of Amy Neumann to the Modesto Planning Commission.  

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

SECTION 1. Amy Neumann is hereby appointed to the Modesto Planning Commission with a term expiration of January 1, 2014.  

SECTION 2. The City Clerk is hereby directed to transmit a copy of this resolution to the appointed member of the Modesto Planning Commission, and the Secretary thereof.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 3rd day of May, 2011, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Marsh, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Burnside, Geer, Hawn, Lopez, Marsh, Muratore

NOES: Councilmembers: None

ABSENT: Councilmembers: Mayor Ridenour

ATTEST: [Signature]

(SEAL)

APPROVED AS TO FORM:

By: [Signature]

SUSANAalcALa WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2011-135

A RESOLUTION APPOINTING GREG MATAS TO THE CITY OF MODESTO BOARD OF ZONING ADJUSTMENT

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

WHEREAS, the Economic Development Committee met on March 30, 2011, and recommended appointment of Greg Matas to the Modesto Board of Zoning Adjustment.

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

SECTION 1. Greg Matas is hereby appointed to the Modesto Board of Zoning Adjustment with a term expiration of January 1, 2015.

SECTION 2. The City Clerk is hereby directed to transmit a copy of this resolution to the appointed member of the Modesto Board of Zoning Adjustment, and the Secretary thereof.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 3rd day of May, 2011, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Marsh, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Burnside, Geer, Hawn, Lopez, Marsh, Muratore

NOES: Councilmembers: None

ABSENT: Councilmembers: Mayor Ridenour

(Seal)

APPROVED AS TO FORM:

By: Susana Alcala Wood, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2011-136

A RESOLUTION APPOINTING JAYLEN FRENCH TO THE CITY OF
MODESTO BOARD OF ZONING ADJUSTMENT

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

WHEREAS, the Economic Development Committee met on March 30, 2011, and
recommended appointment of Jaylen French to the Modesto Board of Zoning
Adjustment.

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

SECTION 1. Jaylen French is hereby appointed to the Modesto Board of Zoning
Adjustment with a term expiration of January 1, 2013.

SECTION 2. The City Clerk is hereby directed to transmit a copy of this
resolution to the appointed member of the Modesto Board of Zoning Adjustment, and the
Secretary thereof.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 3rd day of May, 2011, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Marsh, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Burnside, Geer, Hawn, Lopez, Marsh, Muratore

NOES: Councilmembers: None

ABSENT: Councilmembers: Mayor Ridenour

ATTEST: [Signature]

(SIGNATURE)

APPROVED AS TO FORM:

By: [Signature]

SUSANA ALCALA WOOD, City Attorney
RESOLUTION APPROVING THE PLANS AND SPECIFICATIONS FOR THE HUD CURB RAMP IMPROVEMENT PROJECT, ACCEPTING THE BID, AND APPROVING A CONTRACT WITH NOR-CAL CONCRETE IN THE AMOUNT OF $205,100.00 FOR THE HUD CURB RAMP IMPROVEMENT PROJECT, AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE CONTRACT

WHEREAS, plans and specifications have been prepared for the HUD Curb Ramp Improvement Project and City staff recommends approval by the City Council, and

WHEREAS, the bids received for the HUD Curb Ramp Improvement Project were opened at 11:00 a.m. on April 5, 2011, 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 $205,100.00 received from Nor-Cal Concrete be accepted as the lowest responsible bid and the contract be awarded to Nor-Cal Concrete,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the plans and specifications for the HUD Curb Ramp Improvement Project, accepts the bid of Nor-Cal Concrete in the amount of $205,100.00, and awards Nor-Cal Concrete the contract for the HUD Curb Ramp Improvement 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 meeting of the Council of the City of Modesto held on the 3rd day of May, 2011, 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, Geer, Hawn, Lopez, Marsh, Muratore

NOES: Councilmembers: None

ABSENT: Councilmembers: Mayor Ridenour

ATTEST:  
STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By:  
SUSANA ALCALA WOOD, City Attorney
A RESOLUTION APPROVING THE STREET CLOSURE AND CERTIFIED FARMERS MARKET TO CONDUCT A FARMERS' MARKET ON 10TH STREET BETWEEN H AND I STREETS, IN THE CITY OF MODESTO, SUBJECT TO CERTAIN CONDITIONS

WHEREAS, on June 1, 2011, representatives from Sun Blest Valley Market received the approval of the Council of the City of Modesto for street closure and Certified Farmers' Market on 10th Street, between H and I Streets, in downtown Modesto on Saturdays, and

WHEREAS, Sun Blest Valley Market has requested to change the day and hours of operation of the market from Saturday mornings to Thursday evenings, in the same location and under the same conditions as described in Exhibit A., and

WHEREAS, farmers' markets are a permitted use in all areas designated as commercial zones,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the street closure and Certified Farmers' Market on 10th Street, between H and I Streets, in the City of Modesto, on Thursday evenings subject to the conditions described in Exhibit A.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 3rd day of May, 2011, 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, Geer, Hawn, Lopez, Marsh, Muratore

NOES: Councilmembers: None

ABSENT: Councilmembers: Mayor Ridenour

ATTEST: 

(SEAL)

APPROVED AS TO FORM:

By: 

SUSANA-ALCALA WOOD, City Attorney
Exhibit A
Conditions of Approval

1. The Market may use 10th Street between H and I Streets beginning the first Thursday in May and each Thursday thereafter through the last Thursday in November. The Market will coordinate any schedule conflicts with existing events.

2. The closure of 10th Street between H and I Streets will be from 3:00 p.m. to 9:00 p.m., with the actual hours of operation 4:00 p.m. to 8:00 p.m. The hours of 3:00 p.m. – 4:00 p.m. and 8:00 p.m. to 9:00 p.m. will be used for set up and dismantling and clean-up.

3. Three categories of products may be sold to the public:
   a. Certified agricultural products: defined as raw fruits, nuts, vegetables, honey and eggs in the shell, all in the unprocessed state, grown and sold by a certified farmer with proper documentation.
   b. Non-certified agricultural products: defined as processed food sold by the farmer that grew them.
   c. Non-agricultural products: defined as foods that are not certified or non-certifiable such as baked goods.

4. The Market shall publish a set of market rules and regulations which specify procedural criteria pertaining to:
   a. Admission of any producer to the market;
   b. Admission of any agricultural products to the market; and
   c. Removal of any producer from the market.
   The Market has the authority to establish specific rules and regulations for:
   a. Type and number of producers and certified producers admitted;
   b. Type and number of certified and non-certifiable products admitted; and
   c. Methods of selling certified and non-certifiable agricultural products.

5. The Market's rules and regulations shall be in writing and shall be made available to anyone who requests a copy. They shall contain a clause that states the Market shall implement and enforce all rules and regulations pertaining to the operation of a certified farmers' market in a fair and equitable manner. A copy of the rules and regulations shall be sent to the Department of Food and Agriculture, Fruit and Vegetable Quality Control Standardization and to the Agricultural Commissioner of Stanislaus County.

6. The Market shall obtain a Certified Farmers' Market Certificate in accordance with the provisions of Section 1392.2(a) of the Food and Agriculture Code of the State of California.

7. The Market, as sponsor, shall obtain a business license in accordance with Article 1 of Chapter 1 of Title VI of the Modesto Municipal Code. The business license is applicable to all of the Market's certified agricultural and non-certified agricultural product vendors. The Market will be exempt from the payment of a business license tax, as provided in Section 6-1.106 of the Municipal Code, when the Market has obtained its non-profit designation from the Secretary of State.
8. Each non-agricultural product vendor must obtain a business license from the City of Modesto in accordance with the provisions of Article 1 of Chapter 1 of Title VI of the Modesto Municipal code.

9. The Market shall remove from 10th Street, between H and I Streets, in the City of Modesto and all areas adjacent thereto all trash and debris generated as a result of the farmers’ market. The removal of trash and debris shall be completed by 9:00 p.m. on each Thursday that the farmers’ market is conducted.

10. The Market shall indemnify, defend and hold the City of Modesto, its officers, agents, employees, and volunteers free and harmless from and against all liabilities, judgments, claims, demands, actions, losses, damages, or costs, including litigation costs and attorney fees from every cause arising directly or indirectly out of, or in any way related to, the Market’s use of the area known as 10th Street, between H and I Streets, in the City of Modesto and all areas adjacent thereto. Upon demand, the Market shall, at its own expense, defend the City of Modesto, its officers, agents, employees, and volunteers against all such liabilities, claims, judgments, demands, actions, losses, damages or costs.

11. The Market shall provide at its own expense and maintain at all times the following insurance with insurance companies licensed in the State of California and shall provide evidence of such insurance to the City. The policies or certificates thereof shall provide that, thirty (30) days prior to cancellation or material change in the policy, notices of same shall be given to the Risk Manager of the City by certified mail, return receipt requested, for all of the following stated insurance policies.

   a. General Liability insurance with a minimum limit of liability per occurrence of $1,000,000 for bodily injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. This insurance shall indicate on the certificate of insurance the following coverages and indicate the policy aggregate limit applying to: premises and operations; broad form contractual; independent producers and subcontractors; products and completed operations as applicable.

   b. The Market shall provide the City with a separate endorsement evidencing proof of the City’s additional insured status as to the General Liability insurance policy. The endorsement must include the applicable policy number.

   c. For any claims related to this project, the Market’s insurance coverage shall be the primary insurance as respects the Market, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the market, its officers, officials, employees, or volunteers shall be excess of the Market’s insurance and shall not contribute with it.

12. This authorization shall remain in full force and effect unless and until such time as it is rescinded by the City Council.
RESOLUTION AUTHORIZING THE AWARD OF PROPOSAL FOR THE FURNISHING OF AFTER-HOURS ANSWERING SERVICES FOR THE CITY OF MODESTO TO AARDVARK ANSWERING SERVICE, INC., NEW YORK, NY, FOR A TWO (2) YEAR AGREEMENT WITH THREE (3) ONE-YEAR EXTENSION OPTIONS, AT THE SOLE DISCRETION OF THE CITY, FOR AN ESTIMATED ANNUAL COST OF $21,300

WHEREAS, the City of Modesto requires after-hours answering service for customers to report possible emergencies or concerns related to a wide variety of services including water, wastewater, storm drain, community forestry, parks, streets maintenance, and traffic electrical. The after-hours answering service handles approximately 30,000 calls annually. Water and Wastewater services are the subject of the majority of these calls, and

WHEREAS, Council authorized the Purchasing Manager to issue formal Request for Proposals (RFP) for after-hours answering services, and

WHEREAS, the Purchasing Division issued RFP No. 1011-05 After-hours Answering Service to nineteen (19) prospective proposers, posted the proposal on the City’s website and formally advertised as required by law. None of the nineteen (19) prospective proposers were local vendors, as there are no local vendors which provide the service, and

WHEREAS, RFP’s were formally opened in the City Clerk’s office. Five (5) companies chose to respond. Two (2) companies were disqualified for not providing evaluation criteria, which is a requirement for evaluating proposals. Three (3) companies provided responsive and responsible proposals, and
WHEREAS, an evaluation committee comprised of City staff evaluated and graded the proposals, and

WHEREAS, based on being ranked highest in total evaluation criteria the evaluation committee recommends the award of proposal for the furnishing of after-hours answering services for the City of Modesto, to Aardvark Answering Service, Inc., New York, NY, for a two (2) year agreement with three (3) one-year extension options, at the sole discretion of the City, for an estimated annual cost of $21,300, and

WHEREAS, sufficient funds are budgeted in Fiscal Year 2010-11 in the following appropriation units: 4210-54212-53300, 4100-55110-53300, 4480-54222-53300, 0100-35220-53300, 0100-35010-53300, 5800-35130-53300, 1300-42020-53300, 1700-14540-53300, 1700-53130-53300, 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 proposal for the furnishing of after-hours answering services for the City of Modesto, to Aardvark Answering Service, Inc., New York, NY, 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 proposal for the furnishing of after-hours answering services for the City of Modesto to Aardvark Answering Service, Inc., New York, NY, for a two (2) year agreement with three (3) one-year extension options, at the sole discretion of the City.

BE IT FURTHER RESOLVED that the Purchasing Manager, or his designee, is hereby authorized to issue a purchase agreement for an estimated annual cost of $21,300.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 3rd day of May, 2011, 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, Geer, Hawn, Lopez, Marsh, Muratore

NOES: Councilmembers: None

ABSENT: Councilmembers: Mayor Ridenour

(Seal)

ATTEST: [Signature]

STEVENIE LOPEZ, City Clerk

APPROVED AS TO FORM:

By: [Signature]

SUSANA ALCALA WOOD, City Attorney
RESOLUTION APPROVING AN AMENDMENT TO THE EXISTING ORACLE LICENSING AGREEMENT FOR THE PURCHASE OF THE SUPPLY CHAIN MANAGEMENT (SCM) MODULE IN THE APPROXIMATE AMOUNT OF $7,600 INCLUDING ANNUAL MAINTENANCE; APPROVING AN AMENDMENT/CHANGE ORDER TO THE APPLICATIONS SOFTWARE TECHNOLOGY (AST) ERP SYSTEMS IMPLEMENTATION CONTRACT IN THE APPROXIMATE AMOUNT OF $114,000 FOR THE IMPLEMENTATION OF THE SUPPLY CHAIN MANAGEMENT MODULE INCLUDING BAR CODING HARDWARE; AND AMENDING THE FISCAL YEAR 2010-2011 OPERATING BUDGET TO APPROPRIATE FUNDS IN THE AMOUNT OF $122,000 FROM THE CENTRAL STORES RESERVES TO 5110-12530-53300

WHEREAS, on May 25, 2010, the City Council, by resolution no. 2010-219 authorized the award of proposal and contract for ERP system implementation services to Applications Software Technology (AST) Corporation, Naperville, Ill., and

WHEREAS, A Supply Chain Module with bar coding was a listed desired feature in the initial ERP proposal but was put on hold based on the outcome of a Central Stores re-engineering process, and

WHEREAS, that re-engineering process and decreased staffing levels have shown the need to gain efficiencies, improve accuracy and have accessibility to real time inventory data, and

WHEREAS, the lack of bar coding was listed by the AST implementation consultants as the primary gap for the Oracle Inventory Module, and

WHEREAS, by allowing AST to implement bar coding in the Wave 2 implementation as initially proposed, the City will be afforded a significant savings on implementation costs when compared to a post Wave 3 implementation, and
Whereas, Oracle has offered the City lucrative discounts at a low rate of 65% off its software costs and 60% off of database licensing fees for the Supply Chain Management module, and

WHEREAS, the discounted rate is valid for one year from the original ERP contract signing, or until May 25, 2011, and

WHEREAS, sufficient funds are available in the Central Stores reserves and a budget adjustment will be made to appropriate funds in the amount of $122,000 for the implementation of the Supply Chain Management module including licensing and bar coding hardware, and

WHEREAS, the Fiscal Year 2010-2011 Operating Budget will 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 authorizes an amendment to the existing Oracle Licensing Agreement for the purchase of a Supply Chain Management module in the approximate amount of $7,600 including annual maintenance; an amendment /change order to the Applications Software Technology (AST) ERP Systems Implementation contract in the approximate amount of $114,000 for the implementation of the Supply Chain Management module including bar coding hardware; and amending the Fiscal Year 2010-2011 Operating Budget to appropriate funds in the amount of $122,000 from the Central Stores reserves to 5110-12530-53300.

BE IT FURTHER RESOLVED the City Manager, or his designee, is hereby authorized to execute said amendments and 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 3\textsuperscript{rd} day of May, 2011, 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, Geer, Hawn, Lopez, Marsh, Muratore

**NOES:** Councilmembers: None

**ABSENT:** Councilmembers: Mayor Ridenour

(ATTEST: \[Signature\]

(S Seal)

APPROVED AS TO FORM:

By: \[Signature\]

SUSANA ALCALA WOOD, City Attorney
Request for Budget Adjustment  
(Fiscal Year Operating Cost Centers)

Contact Person: Terri L. Swearingen  
Telephone: 577-5378  
Council Action Date: 5/3/2011

Submitting Department: Finance  
Resolution Number:  
Date Submitted by Dept:  
Fiscal Year being Adjusted: 10/11

Fund Title: Central Stores

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Services Professional and Other

Justification for Budget Adjustment

On May 25, 2010, the City Council, by resolution no. 2010-219 authorized the award of proposal and contract for ERP system implementation services to Applications Software Technology (AST) Corporation for a Supply Chain Module with bar coding. This budget adjustment is necessary to transfer $122,000 from Central Stores Fund Balance Reserves to Central Stores Services Professional and Other for purchase and implementation of Oracle's Supply Chain Module licensing and implementation, and bar coding hardware and implementation.

Authorization 
Administrative Services Officer (if needed) 
Deputy Director (if needed) 
Administrative Analyst II  
Terri L. Swearingen  
4/14/2011 
Budget and Financial Analysis Manager 
Finance Director 
City Manager

To be Completed by Finance Staff
Transfer Number:  
Completed By:  

RESOLUTION AUTHORIZING THE AWARD OF BID FOR THE FURNISHING OF SEWER ROOT CONTROL SERVICES FOR THE DEPARTMENT OF PUBLIC WORKS, WATER QUALITY CONTROL DIVISION, TO ROOT TAMERS, REDDING, CA, FOR A TWO (2) YEAR AGREEMENT WITH THREE (3) ONE-YEAR EXTENSION OPTIONS AT THE SOLE DISCRETION OF THE CITY, AND AUTHORIZING THE PURCHASING MANAGER, OR HIS DESIGNEE, TO ISSUE A PURCHASE AGREEMENT FOR AN ESTIMATED 1ST BUDGET YEAR COST OF $45,000

WHEREAS, the City Manager authorized the Purchasing Manager to issue formal Request for Bids (RFB) for the furnishing of sewer root control services, and

WHEREAS, the Purchasing Division issued RFB No. 1011-09 Sewer Root Control Program to fourteen (14) prospective bidders, 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, all three (3) 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 furnishing of sewer root control services to Root Tamers, Redding, 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 bid for the furnishing of sewer root control services to Root Tamers, Redding, CA, conforms to the Modesto Municipal Code, and

WHEREAS, funds are budgeted for the furnishing of sewer root control services in Appropriation Unit: 4210-54212-53100,
NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby authorizes the award of bid for the furnishing of sewer root control services for the Department of Public Works, Wastewater Division, to Root Tamers, Redding, CA.

BE IT FURTHER RESOLVED that the Purchasing Manager, or his designee, is hereby authorized to issue a purchase agreement for an estimated 1st budget year cost of $45,000.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 3rd day of May, 2011, 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, Geer, Hawn, Lopez, Marsh, Muratore

NOES: Councilmembers: None

ABSENT: Councilmembers: Mayor Ridenour

ATTEST: [Signature]

(SEAL)

APPROVED AS TO FORM:

By: [Signature]

SUSANA ALCALA WOOD, City Attorney
RESOLUTION APPROVING UPDATED NEIGHBORHOOD STABILIZATION PROGRAM 2 (NSP2) LOAN TERMS AND PROGRAM GUIDELINES

WHEREAS, on May 4, 2009, the Department of Housing and Urban Development (HUD) issued a Notice of Funding Availability (NOFA) for the Neighborhood Stabilization Program 2, and

WHEREAS, the City of Modesto made application to HUD for funding and was informed by HUD on January 14, 2010, that the City of Modesto had been granted $25 million under the NOFA for NSP2, and

WHEREAS, the City Council of the City of Modesto accepted the grant award at their meeting of January 25, 2010, and

WHEREAS, the City Manager executed the NSP2 grant agreement on February 17, 2010, and

WHEREAS, staff has developed guidelines for allocating the NSP2 funding based on the activities outlined in the approved City of Modesto Neighborhood Stabilization grant application, and

WHEREAS, these guidelines were updated in April 2011 to provide greater specificity to the closing costs which are paid utilizing Neighborhood Stabilization Program funds and to clarify that the Housing Rehabilitation Loan Committee is responsible for approving all homeownership loans through NSP2, and

WHEREAS, these guidelines and loan terms were reviewed and approved by the Citizen’s Housing and Community Development Committee (CH&CDC) at its April 27, 2011, meeting,
NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the updated loan terms and guidelines for NSP2 as described on Attachment 1, a copy of which is 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 3rd day of May, 2011, by Councilmember Marsh, 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, Hawn, Marsh, Muratore

NOES: Councilmembers: Lopez

ABSENT: Councilmembers: Mayor Ridenour, Muratore

ATTEST: STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney
NEIGHBORHOOD STABILIZATION PROGRAM 2
GUIDELINES & LOAN TERMS

PROPERTY PURCHASES MADE UTILIZING NSP2 FUNDS

- Properties are purchased by for-profit and non-profit developers who have been qualified by CH&CDC
- Properties purchased under the program must meet NSP2 definitions for foreclosed or abandoned residential properties
  - Property acquisition price may not exceed 150% of the area median sales price per (DataQuick) and preference will be given to those properties at or below 100% of the area median sales price.
  - Acquisition cost must be a minimum of 1% under appraised value
- Short sales are permitted per HUD regulation and under the following circumstances
  - Property is owner-occupied and will meet income-eligibility requirements, or
  - Property has been vacant for 90 days
- Separate loans will be made for acquisition and rehabilitation with both approved by a sub-committee of CH&CDC
- All rehabilitation work must be done to HUD Housing Quality Standards (HQS)

FOR-PROFIT DEVELOPER – RENTAL PROPERTIES

- Except for the affordability period and leveraging requirement, the loan terms are the same as NSP1:
  - 25-year affordability period (increased from 15-years)
  - 40-year loan period
  - Payments on acquisition and rehabilitation are deferred for first 5 years with no interest or payments made
    - Year 6 payments begin on acquisition costs amortized over 35 years at 3% interest
    - Year 16 payments begin on rehabilitation costs amortized over 25 years at 3% interest
- Developer leveraging of 20% on total project cost is required (up from 10% in NSP1)
- At the sole discretion of the City, in the event the affordability covenant is fulfilled at the end of the fifteen year term, the rehabilitation portion of the loan will be forgiven if the property is sold to a qualifying low-income household.
NEIGHBORHOOD STABILIZATION PROGRAM 2
GUIDELINES & LOAN TERMS

NON-PROFIT DEVELOPER – RENTAL PROPERTIES

- Except for the longer affordability period, the loan terms are the same as NSP1:
  - Payments are deferred for 25 years (increased from 15 year)
  - If affordability period is maintained, loan is forgiven in full
  - If affordability is not maintained, the loans are immediately due in full

DEVELOPERS – RESALE OF PROPERTIES TO QUALIFIED HOUSEHOLDS

- New appraisal is required after rehabilitation work by developer is complete
- Upon second escrow closing, developer is eligible for developer fee
- For all properties except properties located in census tracts within the Airport Revitalization Strategy Area, the developer fee is:
  - $10,000 per property, or
  - $15,000 per property if property is determined to meet the “blight” definition per Federal regulation and as determined through an acceptable third-party home inspection summary report
- For Airport Neighborhood properties, the developer fee is:
  - $15,000 per property, or
  - $20,000 per property if property is determined to meet the HUD “blight” definition and as determined through an acceptable third-party home inspection summary report.
- The obligations of the developer towards the acquisition and the rehabilitation loans are released when transferred (either fully or partially) to the new buyer at the close of escrow
- Closing costs (includes items such as title fees, broker commissions, inspection reports, etc), new appraisal costs, and developer fees are considered program costs and are not included in either of the developer loans

BLIGHTED STRUCTURE: A structure is blighted when it exhibits objectively determinable signs of deterioration sufficient to constitute a threat to human health, safety, and public welfare.

QUALIFYING HOUSEHOLDS

- Homebuyers will meet criteria similar to that established for the City’s Homebuyer’s Assistance Program, which includes these homebuyer requirements:
  - Must be between 50% and 120% of the area median income
  - Must reside in or work within the city limits of Modesto
NEIGHBORHOOD STABILIZATION PROGRAM 2
GUIDELINES & LOAN TERMS

- Home being purchased must have been purchased and rehabilitated using the City’s NSP2 funds
- Must have a minimum FICO credit score of 620
- Must complete 8 hours of homebuyer counseling through a HUD approved counseling agency
- Must commit 1% of the purchase price

- Homebuyers will have a new loan based on the value established in the second appraisal but not to exceed the total investment in the property (acquisition plus rehabilitation)
- Maximum 30-year loan period (available in 5-year increments)
- Monthly payment may not exceed 30% of qualifying income and total debt to income ratio cannot exceed 43% per FHA standards

- Homebuyers are “qualified” for homes up to a certain value as established by their qualifying income
- Homebuyers will be approved by the Housing Rehabilitation Loan Committee
RESOLUTION NO. 2011-143

RESOLUTION APPROVING THE APPLICATION(S) FOR GRANT FUNDS FOR THE URBAN GREENING GRANT PROGRAM UNDER THE SAFE DRINKING WATER, WATER QUALITY AND SUPPLY, FLOOD CONTROL, RIVER AND COASTAL PROTECTION BOND ACT OF 2006 (PROPOSITION 84)

WHEREAS, the Legislature and Governor of the State of California have provided funds for the Urban Greening Grant Program, and

WHEREAS, the Strategic Growth Council has been delegated the responsibility for the administration of this grant program, establishing necessary procedures, and

WHEREAS, said procedures established by the Strategic Growth Council require a resolution certifying the approval of application(s) by the Applicant’s governing board before submission of said application(s) to the State, and

WHEREAS, the applicant, if selected, will enter into an agreement with the State of California to carry out the Project(s),

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby:

1. Approves the filing of applications, as appropriate, for the following projects:

   A. To purchase, on behalf of the Tuolumne River Regional Park Joint Powers Authority, approximately 1.25 acres near the Tuolumne River Regional Park in order to provide multiple benefits including open space, recreational area and storm water mitigation.

   B. To improve, on behalf of the Tuolumne River Regional Park Joint Powers Authority, Bellenita Park in the Tuolumne River Regional Park in order to provide multiple benefits including recreational area, storm water mitigation and additional riparian forest land.

   C. To complete, on behalf of the Tuolumne River Regional Park Joint Powers Authority, a Master Plan for the Carpenter Road Area of the Tuolumne River Regional Park to provide multiple benefits including storm water mitigation, multi-jurisdictional cooperation, riparian habitat improvements, river access.
D. To develop the Helen White Memorial Trail along the Biggs Ditch.

2. Certifies that applicant understands the assurances and certification in the application, and

3. Certifies that applicant or title holder will have sufficient funds to operate and maintain the project consistent with the land tenure requirements; or will secure the resources to do so, and

4. Certifies that it will comply with the provisions of Section 1771.8 of the State Labor Code regarding payment of prevailing wages on Projects awarded Proposition 84 Funds, and

5. If applicable, certifies that the project will comply with any laws and regulations including, but not limited to, legal requirements for building codes, health and safety codes, disabled access laws, environmental laws and, that prior to commencement of construction, all applicable permits will have been obtained, and

6. Certifies that applicant will work towards the Governor’s State Planning Priorities intended to promote equity, strengthen the economy, protect the environment, and promote public health and safety as included in Government Code Section 65041.1, and

7. Appoints the Parks, Recreation and Neighborhoods Department Director, or designee, as agent to conduct all negotiations, execute and submit all documents including, but not limited to applications, agreements, payment requests and so on, which may be necessary for the completion of the aforementioned project(s).
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 3rd day of May, 2011, by Councilmember Lopez, who moved its adoption, which motion was duly seconded by Councilmember Geer, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Burnside, Geer, Hawn, Lopez, Marsh, Muratore

NOES: Councilmembers: None

ABSENT: Councilmembers: Mayor Ridenour

( SEAL )

ATTEST: 

SUSANA ALCALA WOOD, City Attorney
RESOLUTION APPROVING A SUBRECIPIENT AGREEMENT IN WITH PROJECT SENTINEL AS PROVIDER OF FAIR HOUSING SERVICES FOR THE CITY OF MODESTO FOR FISCAL YEAR 2011-2012, IN AN AMOUNT NOT TO EXCEED $40,000; AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE SUBRECIPIENT AGREEMENT

WHEREAS, as an entitlement community for Housing and Urban Development, the City of Modesto is required to proactively address fair housing issues within the community, and

WHEREAS, in a collaborative effort to further fair housing in Modesto and the surrounding area, the City of Modesto, City of Turlock, and the Stanislaus County Community Development Block Grant Consortium developed a joint Request for Proposals in an effort to streamline fair housing services throughout the County by working with a single, qualified, and experienced fair housing agency, and

WHEREAS, as a result of the RFP process, the Modesto office of Project Sentinel was selected as the service provider of fair housing services for Modesto and the surrounding area, and

WHEREAS, this agreement is initially for Fiscal Year 2011-2012, and may be extended for up to four additional one-year terms upon completion of Fiscal Year 2011-2012, and subject to funding availability, satisfactory quarterly and annual performance reviews, and compliance with local, state, and federal guidelines,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves a subrecipient agreement with Project Sentinel as provider of fair housing services for the City of Modesto for Fiscal Year 2011-2012, in an amount not to exceed $40,000.
BE IT FURTHER RESOLVED, that the City Manager, or his designee, is hereby authorized to execute the subrecipient agreement and any agreement(s) extending the original term.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 3rd day of May, 2011, 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, Geer, Hawn, Lopez, Marsh, Muratore

NOES: Councilmembers: None

ABSENT: Councilmembers: Mayor Ridenour

ATTEST: [Signature]

STEFANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: [Signature]

SUSANA ALCALA WOOD, City Attorney
A RESOLUTION AUTHORIZING THE SOLICITATION FOR QUALIFICATIONS AND PROPOSALS FROM AIRPORT PLANNING FIRMS FOR ENVIRONMENTAL PLANNING SERVICES FOR THE MODESTO CITY-COUNTY AIRPORT

WHEREAS, Modesto City-County Airport is responsible for maintaining protective airspace surrounding the Airport, and

WHEREAS, the Federal Aviation Administration (FAA) and California Department of Transportation – Aeronautics have asked that Modesto Airport pursue obstruction removal for significant tree penetrations into the FAA Part 77 protective airspace surrounding the Airport, and

WHEREAS, because federal grant dollars are being used for this project, the FAA is asking for a permanent solution to this problem, and

WHEREAS, airport environmental planning services are needed to obtain a complete environmental analysis to satisfy NEPA and CEQA requirements before any tree trimming or removal can be done,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby authorizes the solicitation for qualifications and proposals for airport planning firms for environmental planning services for the Modesto City-County Airport.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 3rd day of May, 2011, 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: Councilmember: Burnside, Geer, Hawn, Lopez, Marsh, Muratore
NOES: Councilmember: None
ABSENT: Councilmember: Mayor Ridenour

ATTEST: 

(SEAL)

APPROVED AS TO FORM:

By:  

SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2011-146

RESOLUTION ACCEPTING THE WORK BY WINGARD ENGINEERING, INC. FOR THE "NEW TRAFFIC SIGNALS INSTALLATION – STANDIFORD AVENUE AT HAHN DRIVE, PRESCOTT ROAD AT CHEYENNE WAY" PROJECT AS COMPLETE, AUTHORIZING THE CITY CLERK TO FILE A NOTICE OF COMPLETION WITH THE STANISLAUS COUNTY RECORDER AND AUTHORIZING PAYMENT OF AMOUNTS TOTALING $347,578.97

WHEREAS, a report has been filed by the Director of Utility Planning and Projects that the New Traffic Signals Installation – Standiford Avenue at Hahn Drive, Prescott Road at Cheyenne Way project has been completed by Wingard Engineering, Inc., in accordance with the contract agreement dated January 26, 2010,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the New Traffic Signals Installation – Standiford Avenue at Hahn Drive, Prescott Road at Cheyenne Way project is hereby accepted as complete from said contractor Wingard Engineering, Inc., that the City Clerk is authorized to file a Notice of Completion with the Stanislaus County Recorder, and that payment of amounts totaling $347,578.97 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 3rd day of May, 2011, 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, Geer, Hawn, Lopez, Marsh, Muratore

NOES: Councilmembers: None

ABSENT: Councilmembers: Mayor Ridenour

ATTEST: STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney
RESOLUTION APPROVING AN AGREEMENT WITH WEBSTER ENVIRONMENTAL ASSOCIATES, INC. FOR CONSULTANT SERVICES FOR ODOR AND CORROSION CONTROL FOR CITY OF MODESTO SANITARY SEWER SYSTEM IN AN AMOUNT NOT TO EXCEED $45,184 FOR THE IDENTIFIED SCOPE OF SERVICES, PLUS $4,518 FOR ADDITIONAL SERVICES (IF NEEDED), FOR A MAXIMUM TOTAL AMOUNT OF $49,702, AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE AGREEMENT

WHEREAS, the City of Modesto is experiencing hydrogen sulfide gas (H₂S) related odors and corrosion of its pipes and equipment throughout the City’s sewer collection and treatment systems, and

WHEREAS, as part of the chemical coating maintenance program to control corrosion, and as identified in the Wastewater Collection System Master Plan, City staff is currently considering various solutions, including direct chemical addition to the wastewater, and

WHEREAS, staff has discussed these issues with chemical suppliers who have proposed pilot demonstration projects, and

WHEREAS, Webster Environmental Associates, Inc. (WEA) is an engineering consultant firm that specializes in the testing and control of corrosion and odors, and

WHEREAS, WEA has been involved in similar projects involving odor and corrosion control in various municipalities, and

WHEREAS, WEA will provide support to City staff by evaluating the City sewer system, developing a report with recommendations for the control and mitigation of H₂S related problems, and providing support with chemical vendor pilot demonstrations projects by evaluating the best potential chemicals and setting well defined limits and objectives for the testing of the chemicals, and
WHEREAS, because the project fee is less than $50,000 City staff recommends obtaining consultant services from WEA under the “Minor Projects – Fees Less Than $50,000” provisions of Administrative Directive 3.1, “Selection Procedures for Professional Consultants who Provide Architectural and Engineering Services for Capital Projects”, and

WHEREAS, using outside professional services will enable this project to be completed in a timely manner,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves an Agreement with Webster Environmental Associates, Inc. for consultant services for Odor and Corrosion Control for City of Modesto Sanitary Sewer System for an amount not to exceed $45,184 for the identified scope of services, plus $4,518 for additional services (if needed), for a maximum total amount of $49,702.

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 3rd day of May, 2011, 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, Geer, Hawn, Lopez, Marsh, Muratore

NOES: Councilmembers: None

ABSENT: Councilmembers: Mayor Ridenour

ATTEST: [Signature]

(SEAL)

APPROVED AS TO FORM:

By: [Signature]

SUSANA ALCALA WOOD, City Attorney

STEFANIE LOPEZ, City Clerk
RESOLUTION ACCEPTING THE WORK BY ROSS F. CARROLL, INC. FOR THE “CONSTRUCTION OF RIGHT TURN LANES AT CARPENTER/SISK; ORANGEBURG/SISK; ORANGEBURG/BRIGGSMORE” PROJECT AS COMPLETE, AUTHORIZING THE CITY CLERK TO FILE A NOTICE OF COMPLETION WITH THE STANISLAUS COUNTY RECORDER AND AUTHORIZING PAYMENT OF AMOUNTS TOTALING $592,636.00

WHEREAS, a report has been filed by the Director of Utility Planning and Projects that the Construction of Right Turn Lanes at Carpenter/Sisk; Orangeburg/Sisk; Orangeburg/Briggsmore project has been completed by Ross F. Carroll, Inc., in accordance with the contract agreement dated March 23, 2010,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the Construction of Right Turn Lanes at Carpenter/Sisk; Orangeburg/Sisk; Orangeburg/Briggsmore 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, and that payment of amounts totaling $592,636.00 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 3rd day of May, 2011, 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, Geer, Hawn, Lopez, Marsh, Muratore

NOES: Councilmembers: None

ABSENT: Councilmembers: Mayor Ridenour

(Seal)

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney

ATTEST: STEPHANIE LOPEZ, City Clerk

05/03/2011/JP&P/KOhlson/Item 21
RESOLUTION ACCEPTING THE WORK BY K. J. WOODS CONSTRUCTION, INC., FOR THE "EMERALD TRUNK LINE REHABILITATION" PROJECT AS COMPLETE, AUTHORIZING THE CITY CLERK TO FILE A NOTICE OF COMPLETION WITH THE STANISLAUS COUNTY RECORDER AND TO RELEASE SECURITIES UPON EXPIRATION OF STATUTORY PERIODS, AND AUTHORIZING PAYMENT OF AMOUNTS TOTALING $6,209,276.16

WHEREAS, a report has been filed by the Director of Utility Planning and Projects that the Emerald Trunk Rehabilitation project has been completed by K. J. Woods Construction, Inc., in accordance with the contract agreement dated July 14, 2009,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the Emerald Trunk Rehabilitation project is hereby accepted as complete from said contractor K. J. Woods Construction, Inc., that the City Clerk is authorized to file a Notice of Completion with the Stanislaus County Recorder, release securities upon expiration of statutory periods, and that payment of amounts totaling $6,209,276.16 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 3rd day of May, 2011, 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, Geer, Hawn, Lopez, Marsh, Muratore

NOES: Councilmembers: None

ABSENT: Councilmembers: Mayor Ridenour

ATTEST: 

SEAL

APPROVED AS TO FORM:

By: 

SUSANA ALCALA WOOD, City Attorney
RESOLUTION APPROVING THE DEPOSIT OF 28 EQUIVALENT DWELLING UNITS (EDUs) OF WASTEWATER CAPACITY FROM THE ROSE VILLAS SUBDIVISION INTO THE ECONOMIC DEVELOPMENT WASTEWATER CAPACITY BANK AND MAKING THIS CAPACITY AVAILABLE AT THE CAPACITY BANK RATE OF $3,665 PER EDU

WHEREAS, on January 25, 2011, the City Council, by Resolution No. 2011-28, approved the payment of Sewer Bond Redemption charges in lieu of Wastewater Capacity Charges for the redrawn Rose Villas Vesting Tentative Subdivision Map (Map), and

WHEREAS, the redrawn Map resulted in the development being “downsized” from 142 lots to 114 lots, and

WHEREAS, the original capacity for the Rose Villa development had been allocated and accounted for in the City’s wastewater planning at the 142 lot level, thus 28 EDUs of capacity were made available by the re-mapping, and

WHEREAS, these 28 EDUs can now be deposited in the City’s Economic Development Wastewater Capacity Bank (Capacity Bank) and this capacity can be sold to new industrial and commercial users and/or infill development at the Capacity Bank rate of $3,665 per EDU, and

WHEREAS, the City can then utilize the wastewater capacity to help stimulate economic development and also realize additional revenues to the Wastewater Fund in the amount of $102,620, and

WHEREAS, it should be noted that this capacity cannot be used for new housing development once it is deposited in the Capacity Bank,
NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto
that it hereby approves the deposit of 28 Equivalent Dwelling Units (EDUs) of
wastewater capacity from the Rose Villas Subdivision into the Economic Development
Wastewater Capacity Bank and making this capacity available at the Capacity Bank rate
of $3,665 per EDU.

The foregoing resolution was introduced at a regular meeting of the Council of the
City of Modesto held on the 3rd day of May, 2011, 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, Geer, Hawn, Lopez, Marsh, Muratore

NOES: Councilmembers: None

ABSENT: Councilmembers: Mayor Ridenour

ATTEST: ________________________________

(Seal)

APPROVED AS TO FORM:
By: ________________________________

SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2011-151

A RESOLUTION ACCEPTING THE WORK BY GEORGE REED, INC., FOR
THE "PELANDALE AVENUE WIDENING" PROJECT AS COMPLETE,
AUTHORIZING THE CITY CLERK TO FILE A NOTICE OF COMPLETION
WITH THE STANISLAUS COUNTY RECORDER AND TO RELEASE
SECURITIES UPON EXPIRATION OF STATUTORY PERIODS, AND
AUTHORIZING PAYMENT OF AMOUNTS TOTALING $10,223,863.90

WHEREAS, a report has been filed by the Director of Utility Planning and Projects
that the Pelandale Avenue Widening project has been completed by George Reed, Inc., in
accordance with the contract agreement dated August 12, 2008,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto
that the Pelandale Avenue Widening project is hereby accepted as complete from said
contractor George Reed, Inc., that the City Clerk is authorized to file a Notice of
Completion with the Stanislaus County Recorder, release securities upon expiration of
statutory periods, and that payment of amounts totaling $10,223,863.90 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 3rd day of May, 2011, 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, Geer, Hawn, Lopez, Marsh, Muratore

NOES: Councilmembers: None

ABSENT: Councilmembers: Mayor Ridenour

ATTEST: [Signature]
STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: [Signature]
SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2011-152

RESOLUTION DETERMINING THAT THE PUBLIC INTEREST AND NECESSITY REQUIRE THE ACQUISITION OF CERTAIN PROPERTY INTERESTS AND DIRECTING THE FILING OF EMINENT DOMAIN PROCEEDINGS FOR THE ROSELLE AVENUE ROAD WIDENING PROJECT.

KIMBERLY M. KUPPENS, PROPERTY OWNER, PROPERTY ADDRESS: 3200 ROSELLE AVENUE, APN: 085-064-003 (FORMERLY APN 085-001-048)

WHEREAS, on June 9, 2009, the City Council, by Ordinance No. 3516-C.S., incorporated herein by this reference, approved proceeding with the Proposed Operating and Multi-year budgets and the Capital Improvement Program, and

WHEREAS, as part of the Capital Improvement Program, certain City streets, including Roselle Avenue, have been identified for widening, and

WHEREAS, staff has identified eight parcels along the east side of Roselle Avenue for a widening project to widen Roselle Avenue, between Floyd and Sylvan Avenues, from 3 lanes to 4 lanes, including curb, gutter, sidewalks, median, landscaping and street lighting, to improve traffic circulation and reduce traffic congestion in northeast Modesto, and

WHEREAS, it is desirable and necessary for the City of Modesto’s Roselle Avenue Road Widening Project (“Project”) to acquire title together with all improvements situated thereon and together with all rights appurtenant thereto, and a temporary construction easement, to portions of certain real property on Assessor’s Parcel Number 085-064-003 (formerly APN 085-001-048), to widen and improve a portion of Roselle Avenue in the City of Modesto which will improve circulation and traffic and pedestrian safety, and
WHEREAS, in order to construct the project, the City of Modesto is vested with the power of eminent domain to acquire real property for the Project by virtue of Article 1, Section 19, of the Constitution of the State of California; Government Code sections, 37350.5, 37353, 40401 and 40404; Sections 1240.010, 1240.020, 1240.030, 1240.040, 1240.050, 1240.110, 1240.120, 1240.510, and 1240.610 of the Code of Civil Procedure of the State of California; and California Streets and Highways Code section 10102, and

WHEREAS, the property and property interests described herein and to be acquired are within the Project area and generally located at 3200 Roselle Avenue, City of Modesto, California (the “Subject Property”) and include a fee simple title consisting of 1,826 square feet more particularly described in Exhibit “A,” and depicted in Exhibit “A-1” attached hereto and incorporated herein by this reference, and a temporary construction easement consisting of 1,522 square feet, more particularly described in Exhibit “B” and depicted in Exhibit “B-1”, attached hereto and incorporated herein by this reference, of the Subject Property identified as Assessor’s Parcel No. 085-064-003 (formerly APN 085-001-048), and

WHEREAS, pursuant to the provisions of Section 1245.235 of the Code of Civil Procedure of the State of California, notice has been duly given to all persons whose property is to be acquired by eminent domain and whose names and addresses appear on the last Stanislaus County equalized assessment roll, all of whom have been given a reasonable opportunity to appear and be heard before the City of Modesto on the following matters:

(a) Whether the public interest and necessity require the Project;

(b) Whether the Project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury;
(c) Whether the property sought to be acquired is necessary for the Project;

(d) Whether the property is being acquired for a compatible use under Code of Civil Procedure section 1240.510 in that the City’s use of the property will not interfere with or impair the continued public use as it now exists or may reasonably be expected to exist in the future;

(e) Whether the property is being acquired for a more necessary public use under Code of Civil Procedure 1240.610 in that the City’s use is a more necessary public use than the use to which the property is appropriated or could be appropriated; and

(f) Whether the offer required by Government Code Section 7267.2 has been made to the owner(s) of record.

WHEREAS, pursuant to the provisions of Section 7267.2 of the Government Code of the State of California, the City of Modesto made a written offer to Kimberly M. Kuppens to acquire the subject property for just compensation, and

WHEREAS, the City of Modesto has satisfied the provisions and complied with all requirements of the California Environmental Quality Act (“CEQA”) for the Project, and

WHEREAS, a hearing was held on May 3, 2011, at 5:30 p.m. in the Tenth Street Place Chambers located at 1010 Tenth Street, Modesto, California at which time evidence, both oral and documentary, was received and considered,

NOW, THEREFORE, IT IS FOUND, DETERMINED, ORDERED AND RESOLVED as follows:

1. The public interest and necessity require the Project for the acquisition of the fee simple and the temporary construction easement in and through the above-identified parcel of land.

2. The Project is planned and located in the manner which will be most compatible with the greatest public good and the least private injury.
3. The taking of the fee simple title in and to the real property and other property interests as may be more particularly described in Exhibits “A” and “B” and depicted in Exhibits “A-1” and “B-1” are necessary for the Project.

4. The offer required by Section 7267.2 of the Government Code of the State of California has been made to the owner of record of the real property.

5. The Subject Property is being acquired for a compatible use under California Code of Civil Procedure section 1240.510 in that the City’s use of the Subject Property will not interfere with or impair the continued use of the Subject Property for public utilities as they now exist or may reasonably be expected to exist in the future.

6. The Subject Property is being acquired for a more necessary public use under California Code of Civil Procedure section 1240.610 in that the City’s use of the Subject Property is a more necessary public use that the use to which the property is appropriated now or may be appropriated to in the future.

7. Special Counsel, Meyers, Nave, Riback, Silver & Wilson, is hereby authorized, empowered and directed to acquire, in the name of City of Modesto, by condemnation, the Subject Property in accordance with the provisions of the Eminent Domain Law, the Code of Civil Procedure and the Constitution of California; to prepare, prosecute and conduct to conclusion in the name of the City of Modesto such proceedings in the proper court as are necessary for such acquisition and to take such action as may be deemed advisable or necessary in connection therewith; and, to deposit the probable amount of just compensation to the State Treasurer’s Condemnation Fund based on an appraisal and apply to the Court for an order of prejudgment possession and use for said public uses and purposes as set forth herein.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on 3rd day of May, 2011, 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 vote:

AYES: Councilmembers: Burnside, Geer, Hawn, Lopez, Muratore

NOES: Councilmembers: None

ABSENT: Councilmembers: Marsh, Mayor Ridenour

ATTEST: [Signature]

(SEAL)

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney
LEGAL DESCRIPTION

APN 085-001-048

That certain parcel of land situate in Section 12, Township 3 South, Range 9 East, Mount Diablo Base and Meridian, in the City of Modesto, County of Stanislaus, State of California, being a portion of Parcel 2 shown on a Parcel Map filed on May 3, 1967 in Book 3 of Parcel Maps at Page 67 in the Office of the County Recorder of said Stanislaus County, described as follows:

BEGINNING at the southwesterly corner of said Parcel 2 (3PM67); thence leaving said POINT OF BEGINNING and along the westerly boundary line of said Parcel 2 North 00°21'56" West 304.36 feet to the northwesterly corner of said Parcel 2; thence leaving said northwesterly corner and along the northerly boundary line of said Parcel 2 North 89°49'28" East 6.00 feet; thence leaving said northerly boundary line parallel with and 51.00 feet East of the centerline of Roselle Avenue South 00°21'56" East 304.36 feet to the southerly boundary line of said Parcel 2; thence along said southerly boundary line South 89°49'54" West 6.00 feet to the POINT OF BEGINNING.

CONTAINING 1,826 Square Feet, more or less.

SUBJECT TO all Covenants, Rights, Rights-of-Way and Easements of record.

EXHIBIT "B" attached and by this reference made a part hereof.

Daniel W. Bustamante, P.L.S. 7030
License Expires September 30, 2008

RBF CONSULTING
500 Ygnacio Valley Road, Suite 270
Walnut Creek, California 94596

Exhibit A - Resolution for Kuppens
PARCEL 1
3 PM 67
LANDS OF CENTRAL CALIFORNIA
DEVELOP LLC
DOC. 2007-0039811
APN: 085-001-047

LEGEND
APN ASSESSOR PARCEL NUMBER
C CENTERLINE
P.O.B. POINT OF BEGINNING
S.F. SQUARE FEET

PARCEL 2
3 PM 67
LANDS OF KUPPENS
DOC. 2004-0102452
APN: 085-001-048

LOT 24
43 M 42
LAND OF CERALDE
DOC. 2007-0133025
APN: 085-063-001

EXHIBIT "B"
SKETCH TO ACCOMPANY A LEGAL DESCRIPTION FOR RIGHT OF WAY DEDICATION FOR A PORTION OF PARCEL 2 (3-PM-67)
APN: 085-001-048
AREA: 1,826 S.F. ± STANISLAUS COUNTY

Sheet 1 of 1 Sheets

Exhibit A-1 - Resolution for Kuppens
EXHIBIT "A"

Revised February 28, 2008
February 6, 2008
JN 35-100621

LEGAL DESCRIPTION

TEMPORARY CONSTRUCTION EASEMENT

APN 085-001-048

That certain parcel of land situate in Section 12, Township 3 South, Range 9 East, Mount Diablo Base and Meridian, in the City of Modesto, County of Stanislaus, State of California, being a portion of Parcel 2 shown on a Parcel Map filed on May 3, 1967 in Book 3 of Parcel Maps at Page 67 in the Office of the County Recorder of said Stanislaus County, described as follows:

COMMENCING at the southwesterly corner of said Parcel 2 (3PM67); thence leaving said POINT OF COMMENCEMENT and along the southerly boundary line of said Parcel 2 North 89°49'54" East 6.00 feet to the TRUE POINT OF BEGINNING; thence leaving said southerly boundary line North 00°21'56" West 304.36 feet to the northerly boundary line of said Parcel 2; thence along said northerly boundary line of said Parcel 2 North 89°49'28" East 5.00 feet; thence leaving said northerly boundary line parallel with and 56.00 feet East of the centerline of Roselle Avenue South 00°21'56" East 304.36 feet to the southerly boundary line of said Parcel 2; thence along said southerly boundary line South 89°49'54" West 5.00 feet to the TRUE POINT OF BEGINNING.

CONTAINING 1,522 Square Feet, more or less.

SUBJECT TO all Covenants, Rights, Rights-of-Way and Easements of record.

EXHIBIT "B" attached and by this reference made a part hereof.

Daniel W. Bustamante, P.L.S. 7030
License Expires September 30, 2008

RBF CONSULTING
500 Ygnacio Valley Road, Suite 270
Walnut Creek, California 94596

H:\PDATA\35100621\Admin\Legals\021leg007.doc

Exhibit B - Resolution for Kuppens
EXHIBIT "B"
SKETCH TO ACCOMPANY A LEGAL DESCRIPTION FOR TEMPORARY CONSTRUCTION EASEMENT A PORTION OF PARCEL 2 (3-PM-67)
APN: 085-001-048
AREA: 1,522 S.F. ±
STANISLAUS COUNTY

LOT 24
43 M 42
LAND OF CERALDE
DOC. 2007-0133025
APN: 085-063-001

EXHIBIT "B" - Resolution for Kuppens

WHEREAS, on June 9, 2009, the City Council, by Ordinance No. 3516-C.S., incorporated herein by this reference, approved proceeding with the Proposed Operating and Multi-year budgets and the Capital Improvement Program, and

WHEREAS, as part of the Capital Improvement Program, certain City streets, including Roselle Avenue, have been identified for widening, and

WHEREAS, staff has identified eight parcels along the east side of Roselle Avenue for a widening project to widen Roselle Avenue, between Floyd and Sylvan Avenues, from 3 lanes to 4 lanes, including curb, gutter, sidewalks, median, landscaping and street lighting, to improve traffic circulation and reduce traffic congestion in northeast Modesto, and

WHEREAS, it is desirable and necessary for the City of Modesto’s Roselle Avenue Road Widening Project (“Project”) to acquire title together with all improvements situated thereon and together with all rights appurtenant thereto, and a temporary construction easement, to portions of certain real property on Assessor’s Parcel Number 085-050-001, to widen and improve a portion of Roselle Avenue in the City of Modesto which will improve circulation and traffic and pedestrian safety, and

WHEREAS, in order to construct the project, the City of Modesto is vested with the power of eminent domain to acquire real property for the Project by virtue of Article
WHEREAS, the property and property interests described herein and to be acquired are within the Project area and generally located at 3012 Kodiak Drive, City of Modesto, California (the “Subject Property”) and include a fee simple title consisting of 65 square feet more particularly described in Exhibit “A”, and depicted in Exhibit “A-1” attached hereto and incorporated herein by this reference, and a temporary construction easement consisting of 1,012 square feet, more particularly described in Exhibit “B” and depicted in Exhibit “B-1”, attached hereto and incorporated herein by this reference, of the Subject Property identified as Assessor’s Parcel No. 085-050-001, and

WHEREAS, pursuant to the provisions of Section 1245.235 of the Code of Civil Procedure of the State of California, notice has been duly given to all persons whose property is to be acquired by eminent domain and whose names and addresses appear on the last Stanislaus County equalized assessment roll, all of whom have been given a reasonable opportunity to appear and be heard before the City of Modesto on the following matters:

(a) Whether the public interest and necessity require the Project;

(b) Whether the Project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury;

(c) Whether the property sought to be acquired is necessary for the Project;
Whether the property is being acquired for a compatible use under Code of Civil Procedure section 1240.510 in that the City’s use of the property will not interfere with or impair the continued public use as it now exists or may reasonably be expected to exist in the future;

Whether the property is being acquired for a more necessary public use under Code of Civil Procedure 1240.610 in that the City’s use is a more necessary public use than the use to which the property is appropriated or could be appropriated; and

Whether the offer required by Government Code Section 7267.2 has been made to the owner(s) of record.

WHEREAS, pursuant to the provisions of Section 7267.2 of the Government Code of the State of California, the City of Modesto made a written offer to Mary A. Barnett to acquire the subject property for just compensation, and

WHEREAS, the City of Modesto has satisfied the provisions and complied with all requirements of the California Environmental Quality Act (“CEQA”) for the Project, and

WHEREAS, a hearing was held on May 3, 2011, at 5:30 p.m. in the Tenth Street Place Chambers located at 1010 Tenth Street, Modesto, California at which time evidence, both oral and documentary, was received and considered,

NOW, THEREFORE, IT IS FOUND, DETERMINED, ORDERED AND RESOLVED as follows:

1. The public interest and necessity require the Project for the acquisition of the fee simple and the temporary construction easement in and through the above-identified parcel of land.

2. The Project is planned and located in the manner which will be most compatible with the greatest public good and the least private injury.

3. The taking of the fee simple title in and to the real property and other property interests as may be more particularly described in Exhibits “A” and “B” and depicted in Exhibits “A-1” and “B-1” are necessary for the Project.
4. The offer required by Section 7267.2 of the Government Code of the State of California has been made to the owner of record of the real property.

5. The Subject Property is being acquired for a compatible use under California Code of Civil Procedure section 1240.510 in that the City’s use of the Subject Property will not interfere with or impair the continued use of the Subject Property for public utilities as they now exist or may reasonably be expected to exist in the future.

6. The Subject Property is being acquired for a more necessary public use under California Code of Civil Procedure section 1240.610 in that the City’s use of the Subject Property is a more necessary public use that the use to which the property is appropriated now or may be appropriated to in the future.

7. Special Counsel, Meyers, Nave, Riback, Silver & Wilson, is hereby authorized, empowered and directed to acquire, in the name of City of Modesto, by condemnation, the Subject Property in accordance with the provisions of the Eminent Domain Law, the Code of Civil Procedure and the Constitution of California; to prepare, prosecute and conduct to conclusion in the name of the City of Modesto such proceedings in the proper court as are necessary for such acquisition and to take such action as may be deemed advisable or necessary in connection therewith; and, to deposit the probable amount of just compensation to the State Treasurer’s Condemnation Fund based on an appraisal and apply to the Court for an order of prejudgment possession and use for said public uses and purposes as set forth herein.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 3rd day of May, 2011, 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, Geer, Hawn, Lopez, Muratore

NOES: Councilmembers: None

ABSENT: Councilmembers: Marsh, Mayor Ridenour

ATTEST: 

(SEAL)

APPROVED AS TO FORM:

By: 

SUSANA ALCALA WOOD, City Attorney
EXHIBIT “A”

December 16, 2008
JN 35-100621

LEGAL DESCRIPTION

APN 085-050-001

That certain parcel of land situate in Section 13, Township 3 South, Range 9 East, Mount Diablo Base and Meridian, in the City of Modesto, County of Stanislaus, State of California, being a portion of Lot 1 shown on a Parcel Map filed on May 21, 1973 in Book 16 of Parcel Maps at Page 107 in the Office of the County Recorder of said Stanislaus County, described as follows:

COMMENCING at the southwesterly corner of Lot 2 (16PM107); thence along the westerly boundary line of said Lot 2 North 00°32'12" East 121.50 feet to the northwesterly corner of said Lot 2; thence along the northerly boundary line of said Lot 2 North 89°48'28" East 2.58 feet to the TRUE POINT OF BEGINNING, said point being on a non-tangent curve concave westerly and having a radius of 646.00 feet, a radial line of said curve from said point bears North 84°21'05" West; thence along said curve northerly 31.88 feet through a central angle of 02°49'39" to a point of reverse curvature with a curve concave easterly and having a radius of 50.00 feet, a radial line of said curve from said point bears South 87°10'44" East; thence along said curve northerly 6.33 feet through central angle of 07°15'16"; thence non-tangent from said curve South 00°32'11" East 38.06 feet to the northerly line of said Lot 2; thence South 89°48'27" West 3.42 feet to the TRUE POINT OF BEGINNING.

CONTAINING 65 Square Feet, more or less.

SUBJECT TO all Covenants, Rights, Rights-of-Way and Easements of record.

EXHIBIT “B” attached and by this reference made a part hereof.

Daniel W. Bustamante, P.L.S.
500 Ygnacio Valley Road, Suite 270
Walnut Creek, California 94596

EXHIBIT A - Barnett Resolution
EXHIBIT "B"

ROSELLA AVENUE (R/W WIDTH VARIES)

LEGEND

APN = ASSESSOR PARCEL NUMBER
T.P.O.B. = TRUE POINT OF BEGINNING
P.O.C. = POINT OF COMMENCEMENT
P.O.C. = CENTERLINE

LANDS OF G.K. CONSTRUCTION, INC.

APN: 085-050-001
LANDS OF WRIGHT

APN: 085-050-002

AREA: 65 S.F. ±

CITY OF MODESTO

COUNTY OF STANISLAUS

CONSULTING 925.706.1460 • FAX 925.706.1465

DECEMBER 16, 2006

Exhibit A-1 - Barnett Resolution
EXHIBIT "A"

December 16, 2008
JN 35-100621

LEGAL DESCRIPTION

TEMPORARY CONSTRUCTION EASEMENT

APN 085-050-001

That certain parcel of land situate in Section 13, Township 3 South, Range 9 East, Mount Diablo Base and Meridian, in the City of Modesto, County of Stanislaus, State of California, being a portion of Lot 1 shown on a Parcel Map filed on May 21, 1973 in Book 16 of Parcel Maps at Page 107 in the Office of the County Recorder of said Stanislaus County, described as follows:

COMMENCING at the southwesterly corner of said Lot 2 (16PM107); thence North 00°32'12" West 121.50 to the Northwesterly corner of said Lot; thence along the northerly boundary line of said Lot 2 North 89°48'28" East 6.00 feet to the TRUE POINT OF BEGINNING; thence North 00°32'11" West 38.06 feet to a point on a non-tangent curve concave southeasterly and having a radius of 50.00 feet, a radial line of said curve from said point bears South 79°55'28" East; thence along said curve northerly 13.10 feet through a central angle of 15°00'49" to a point of compound curvature with a curve concave southeasterly and having a radius of 79.00 feet, a radial line of said curve from said point bears South 64°54'39" East; thence along said curve northeasterly 17.86 feet through a central angle of 12°57'21"; thence tangent from said curve North 38°02'42" East 40.27 feet to the beginning of a curve concave northwesterly and having a radius of 64.00 feet; thence along said curve northeasterly 8.27 feet through a central angle of 07°24'19" to a point of reverse curvature with a curve concave southeasterly and having a radius of 50.00 feet, a radial line of said curve from said point bears South 59°21'37" East; thence along said curve northeasterly 36.46 feet through central angle of 41°46'34" to a point of compound curvature with a curve concave southerly and having a radius of 599.00 feet, a radial line of said curves from said point bears South 14°58'16" East; thence along said curve easterly 15.96 feet through a central angle of 14°17'08"; thence non-tangent from said curve South 00°10'02" East 5.00 feet to a point on a non-tangent curve concave southerly and having a radius of 59.00 feet, a radial line of said curve from said point bears South 00°43'47" East; thence along said curve westerly 14.66 feet through a central angle of 14°14'29" to a point of compound curvature with a curve concave southeasterly and having a radius of 599.00 feet, a radial line of said curves from said point bears South 14°58'16" East; thence along said curve westerly 27.32 feet through a central angle of 02°36'47" to a point of compound curvature with a curve concave southeasterly.
and having a radius of 45.00 feet, a radial line of said curves from said point bears South 17°35'03" East; thence along said curve southwesterly 32.81 feet through a central angle of 41°46'33" to a point of reverse curvature with a curve concave northwesterly and having a radius of 69.00 feet, a radial line of said curve from said point bears North 59°21'37" West; thence along said curve southwesterly 8.92 feet through central angle of 07°24'19"; thence tangent from said curve South 38°02'42" West 40.27 feet to the beginning of a tangent curve concave southeasterly and having a radius of 74.00 feet; thence along said curve southeasterly 16.73 feet through a central angle of 12°57'21" to a point of compound curvature with a curve concave southeasterly and having a radius of 45.00 feet, a radial line of said curves from said point bears South 64°54'39" East; thence along said curve southerly 11.34 feet through a central angle of 14°26'17"; thence non-tangent from said curve South 00°32'12" East 32.76 feet; thence North 89°27'48" East 9.00 feet; thence South 00°32'10" East 4.92 feet to the northerly line of said Lot 2; thence along said northerly line South 89°48'29" West 14.00 feet to the TRUE POINT OF BEGINNING.

CONTAINING 1,012 Square Feet, more or less.

SUBJECT TO all Covenants, Rights, Rights-of-Way and Easements of record.

EXHIBIT "B" attached and by this reference made a part hereof.

Daniel W. Bustamante, P.L.S. 7030
License Expires September 30, 2010

RBF CONSULTING
500 Ygnacio Valley Road, Suite 270
Walnut Creek, California 94596
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**LEGEND**

- **APN** - ASSESSOR PARCEL NUMBER
- **T.P.O.B.** - TRUE POINT OF BEGINNING
- **P.O.C.** - POINT OF COMMENCEMENT

**EXHIBIT "B"**

SKETCH TO ACCOMPANY A LEGAL DESCRIPTION FOR TEMPORARY CONSTRUCTION EASEMENT

A PORTION OF LOT 1 (16PM-107)

APN 085-050-001

CITY OF MODESTO
COUNTY OF STANISLAUS

EXHIBIT B-1 - Resolution for Barnett
RESOLUTION APPROVING THE CITY OF MODESTO FISCAL YEAR 2011-2012 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 2011-2012 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 27, 2011 meeting, and

WHEREAS, a duly noticed public hearing was held by the City Council on May 3, 2011, in the Tenth Street Place Chambers located at 1010 Tenth Street, Modesto, California, to consider submission of an application to HUD pertaining to the Fiscal Year 2011-2012 HUD Annual Action Plan, which describes how the City intends to spend Federal assistance received from HUD in the areas of Community Development, Housing
Production and Homeless Assistance, 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 March 29, 2011, and concluded with a public hearing scheduled for the Council meeting of May 3, 2011,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the City of Modesto Fiscal Year 2011-2012 U.S. Department of Housing and Urban Development Annual Action Plan for the use of $2,109,056 in Community Development Block Grant (CDBG) funds, $1,158,162 in HOME Investment Partnerships Program (HOME) funds, and $142,518 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 2011-2012 Annual Action Plan which describes how the City intends to spend Federal assistance received from the U.S. Department of Housing and Urban Development.

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 3rd day of May, 2011, 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, Geer, Hawn, Lopez, Marsh, Muratore

NOES: Councilmembers: None

ABSENT: Councilmembers: Mayor Ridenour

ATTEST: 

(SEAL)

APPROVED AS TO FORM:

By: 

SUSANA ALCALA WOOD, City Attorney
RESOLUTION APPROVING THE ALLOCATION OF FUNDING IN THE AMOUNTS OF $458,165 OF COMMUNITY DEVELOPMENT BLOCK GRANT PUBLIC SERVICE GRANTS AND 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, the City allocates ninety-five percent (95%) of ESG funding to non-profit agencies for eligible activities on a matching fund basis, and

WHEREAS, these allocations are detailed in the City’s AAP, and

WHEREAS, the City released the Fiscal Year 2011-2012 CDBG Public Services and ESG Requests for Proposals (RFP’s) on January 28, 2011 and the proposals were due on March 7, 2011, and

WHEREAS, two technical assistance workshops were held on February 10, 2011, and

WHEREAS, nineteen (19) public service and emergency solutions grant proposals were recommended for either full or partial funding totaling $458,165
including $80,000 in CDBG public service funding be utilized to support eligible City
recreational services, 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 March 29, 2011, and
concluded with a public hearing scheduled for the Council meeting of May 3, 2011,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto
that it hereby approves the allocation of funding in the amounts of $322,773 in
Community Development Block Grant (CDBG) Public Services, $135,392 in Emergency
Solutions Grant (ESG) for Fiscal Year 2011-12.

BE IT FURTHER RESOLVED by the Council of the City of Modesto that it
additionally approves a continued funding commitment to the Public Service and
Emergency Solutions grants recipients through Fiscal Year 2012-13 if entitlement
funding is available.
The foregoing resolution was introduced at a regular meeting of the Council of
the City of Modesto held on the 3rd day of May, 2011, 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, Geer, Hawn, Lopez, Marsh, Muratore

NOES: Councilmembers: None

ABSENT: Councilmembers: Mayor Ridenour

ATTEST: 

APPROVED AS TO FORM:

By: SUSÁNÁ ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2011-156

RESOLUTION APPROVING THE FISCAL YEAR 2011-2012 ANNUAL OPERATING AND CAPITAL IMPROVEMENT BUDGETS TO REFLECT THE APPROVED ALLOCATIONS IN THE DRAFT FISCAL YEAR 2011-2012 ANNUAL ACTION PLAN; AND AUTHORIZING THE FINANCE DIRECTOR, OR HER DESIGNEE, TO TAKE THE NECESSARY STEPS TO IMPLEMENT THESE ACTIONS

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 March 29, 2011, and ended on May 3, 2011, and

WHEREAS, the Citizens' Housing and Community Development Committee (CH&CDC) considered the proposed Draft Fiscal Year 2011-2012 Annual Action Plan at its April 27, 2011, meeting, and recommended that the City Council approve, and

WHEREAS, a duly noticed public hearing was held by the City Council on May 3, 2011 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 2011-2012 Annual Action Plan,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the Draft Fiscal Year 2011-2012 Annual Action Plan, and incorporated herein by reference and authorizes the Finance Director, or her designee, 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 3rd day of May, 2011, by Councilmember Lopez, who moved its adoption, with motion being duly seconded by Councilmember Muratore, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Burnside, Geer, Hawn, Lopez, Marsh, Muratore

NOES: Councilmembers: None

ABSENT: Councilmembers: Mayor Ridenour

ATTEST

(SIGNATURE)

STEFHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2011-157

RESOLUTION CALLING FOR A MEASURE TO BE PLACED ON THE
NOVEMBER 8, 2011, REGULAR MUNICIPAL ELECTION BALLOT FOR THE
PURPOSE OF SUBMITTING TO THE ELECTORS OF THE CITY OF
MODESTO A BALLOT MEASURE AMENDING ARTICLE 9 OF CHAPTER 2
OF TITLE 8 THE MODESTO MUNICIPAL CODE RELATING TO UTILITY
USERS’ TAX

WHEREAS, the health, safety and general welfare of the City depend on
maintaining existing levels of police protection, fire protection, street maintenance,
economic development and parks and recreation services for the public in the City, and

WHEREAS, much of the public services described above are financed with the
City’s General Fund revenues, and

WHEREAS, approximately twenty percent (20%) of the City’s annual General
Fund revenues come directly from the collection of the City’s Utility Users’ Tax, and

WHEREAS, the City Council finds it necessary to amend Article 9 of Chapter 2
of Title 8 of the Modesto Municipal Code relating to Utility Users’ Tax to modernize
outdated provisions in order to avoid legal controversy and to ensure continued collection
of Utility Users’ Tax on traditional and emerging utility technologies in a fair and
equitable manner, and

WHEREAS, pursuant to Proposition 218 (California Constitution, Article XIIIC),
a “change in methodology” of the Utility Users’ Tax requires majority approval of the
qualified voters of the City of Modesto, and

WHEREAS, pursuant to California Elections Code Section 9222, the City
Council may submit to the qualified voters of the City a proposition, without a petition
therefor, by ordinance or resolution, and
WHEREAS, the City intends to hold a General Election on November 8, 2011, and

WHEREAS, the City Council desires to submit to the qualified voters of the City a Measure asking whether to amend Article 9 of Chapter 2 of Title 8 of the Modesto Municipal Code relating to Utility Users’ Tax as described above,

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

SECTION 1. Pursuant to California Elections Code Section 9222 and Section 2(b) of California Constitution Article XIIIC, the Council of the City of Modesto proposes to and does hereby, by its own motion, submit to the qualified electors of the City of Modesto, a measure to amend the Modesto Municipal Code, as follows:

*** ***

ORDINANCE NO. _______C.S.

AN ORDINANCE AMENDING ARTICLE 9 OF CHAPTER 2 OF TITLE 8 OF THE MODESTO MUNICIPAL CODE RELATING TO UTILITY USERS’ TAX.

The Council of the City of Modesto does ordain as follows:

SECTION 1. AMENDMENT OF CODE. Article 9 of Chapter 2 of Title 8 of the Modesto Municipal Code is hereby amended to read as follows:

ARTICLE 9. UTILITY USERS’ TAX.

8-2.901. SHORT TITLE.

This Article 9 shall be known as the “Utility Users’ Tax Law of the City of Modesto”.

8-2.902. DEFINITIONS.
The following words and phrases whenever used in this Article 9, shall be construed as defined in this Section.

(a) “Ancillary telecommunication services” means services that are associated with or incidental to the provision, use or enjoyment of telecommunications services, including but not limited to the following services:

(1) “Conference bridging service” means an ancillary service that links two (2) or more participants of an audio or video conference call and may include the provision of a telephone number. Conference bridging service does not include the telecommunications services used to reach the conference bridge.

(2) “Detailed telecommunications billing service” means an ancillary service of separately stating information pertaining to individual calls on a customer’s billing statement.

(3) “Directory assistance” means an ancillary service of providing telephone number information, and/or address information.

(4) “Vertical service” means an ancillary service that is offered in connection with one or more telecommunications services, which offers advanced calling features that allow customers to identify callers and to manage multiple calls and call connections, including conference bridging services.

(5) “Voice mail service” means an ancillary service that enables the customer to store, send or receive recorded messages. Voice mail service does not include any vertical services that the customer may be required to have in order to utilize the voice mail service.

(b) “Ancillary video services” means services that are associated with or incidental to the provision or delivery of video services, including but not limited to electronic program guide services, recording services, search functions, or other interactive services or communications that are associated with or incidental to the provision, use or enjoyment of video services.
(c) "Billing address" shall mean the mailing address of the service user where the service supplier submits invoices or bills for payment by the customer.

(d) "City" shall mean the City of Modesto.

(e) "Gas" shall mean natural or manufactured gas or any alternate hydrocarbon fuel which may be substituted therefor.

(f) "Individual service" shall mean utility service at a single contiguous location. A service user with more than one meter or billing invoice per utility service at a single contiguous location may combine all billings for purposes of calculating the maximum tax amount.

(g) "Mobile telecommunications service" has the meaning and usage as set forth in the Mobile Telecommunications Sourcing Act (4 U.S.C. Section 124) and the regulations thereunder.

(h) "Month" shall mean a calendar month.

(i) "Non-Utility Service Supplier" means:

(1) a service supplier, other than a supplier of electric distribution services to all or a significant portion of the City, which generates electricity for sale to others, and shall include but is not limited to any publicly-owned electric utility, investor-owned utility, cogenerator, distributed generation provider, exempt wholesale generator (15 U.S.C. Section 79z-5a), municipal utility district, federal power marketing agency, electric rural cooperative, or other supplier or seller of electricity;

(2) an electric service provider (ESP), electricity broker, marketer, aggregator, pool operator, or other electricity supplier other than a supplier of electric distribution services to all or a significant portion of the City, which sells or supplies electricity or supplemental services to electricity users within the City; or

(3) a gas service supplier, aggregator, marketer or broker, other than a supplier of gas distribution services to all or a significant portion of the City, which sells or supplies gas or supplemental services to gas users within the City.
(j) "Paging service" means a “telecommunications service” that provides transmission of coded radio signals for the purpose of activating specific pagers; such transmissions may include messages and/or sounds.

(k) "Person" shall mean, without limitation, any natural individual, firm, trust, common law trust, estate, partnership of any kind, association, syndicate, club, joint stock company, joint venture, limited liability company, corporation (including foreign, domestic, and non-profit), municipal district or municipal corporation (other than the City) cooperative, receiver, trustee, guardian, or other representative appointed by order of any court.

(l) "Place of primary use" means the street address representative of where the customer’s use of the telecommunications service primarily occurs, which must be the residential street address or the primary business street address of the customer.

(m) "Post-paid telecommunication service" means the telecommunication service obtained by making a payment on a communication-by-communication basis either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card, or debit card, or by charge made to a service number which is not associated with the origination or termination of the telecommunication service.

(n) "Prepaid telecommunication service" means the right to access telecommunication services, which must be paid for in advance and which enables the origination of communications using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount.

(o) "Private telecommunication service" means a telecommunication service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels. A communications channel is a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points (i.e., the location where the customer either inputs or receives the communications).
(p) "Service address" means the residential street address or the business street address of the service user. For a telecommunication or video service user, "service address" means either:

(1) The location of the service user's telecommunication equipment from which the telecommunication originates or terminates, regardless of where the telecommunication is billed or paid; or,

(2) If the location in subsection (1) of this definition is unknown (e.g., mobile telecommunications service or VoIP service), the service address means the location of the service user's place of primary use.

(3) For prepaid telecommunication service, "service address" means the location associated with the service number or, if not known, the point of sale of the services.

(q) "Service supplier" shall mean any entity or person, including the City, that provides utility service to a user of such service within the City.

(r) "Service user" shall mean a person required to pay a tax imposed under the provisions of this Article.

(s) "State" shall mean the State of California.

(t) "Streamlined Sales and Use Tax Agreement" means the multi-state agreement commonly known and referred to as the Streamlined Sales and Use Tax Agreement, as it is amended from time to time.

(u) "Tax Administrator" shall have the Finance Director, or his or her designee.

(v) "Telecommunications service" means the transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points, whatever the technology used. The term "telecommunications services" includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code or protocol of the content for purposes of transmission, conveyance or routing without regard to whether such services are referred to as voice over internet protocol (VoIP) services or are classified by the Federal Communications Commission as...
enhanced or value added, and includes video and/or data services that is functionally integrated with “telecommunication services.” “Telecommunications services” include, but are not limited to the following services, regardless of the manner or basis on which such services are calculated or billed: ancillary telecommunication services; intrastate, interstate, and international telecommunication services; mobile telecommunications service; prepaid telecommunication service; post-paid telecommunication service; private telecommunication service; paging service; 800 service (or any other toll-free numbers designated by the Federal Communications Commission); 900 service (or any other similar numbers designated by the Federal Communications Commission for services whereby subscribers who call in to pre-recorded or live service).

(w) “Video programming” means those programming services commonly provided to subscribers by a “video service supplier” including but not limited to basic services, premium services, audio services, video games, pay-per-view services, video on demand, origination programming, or any other similar services, regardless of the content of such video programming, or the technology used to deliver such services, and regardless of the manner or basis on which such services are calculated or billed.

(x) “Video services” means “video programming” and any and all services related to the providing, recording, delivering, use or enjoyment of “video programming” (including origination programming and programming using Internet Protocol, e.g., IP-TV and IP-Video) using one or more channels by a “video service supplier,” regardless of the technology used to deliver, store or provide such services, and regardless of the manner or basis on which such services are calculated or billed, and includes ancillary video services, data services, “telecommunication services,” or interactive communication services that are functionally integrated with “video services.”

(y) “Video service supplier” means any person, company, or service which provides or sells one or more channels of video programming, or provides or sells the capability to receive one or more channels of video programming, including any communications that are ancillary, necessary or common to the provision, use or enjoyment of the video programming, to or from a business or residential address in the City, where some fee is paid, whether directly or included in dues or rental charges for that service, whether or not public rights-of-way are utilized in the delivery of the video programming or communications. A “video
"service supplier" includes, but is not limited to, multichannel video programming distributors (as defined in 47 U.S.C.A. Section 522(13)); open video systems (OVS) suppliers; and suppliers of cable television; master antenna television; satellite master antenna television; multichannel multipoint distribution services (MMDS); video services using internet protocol (e.g., IP-TV and IP-Video, which provide, among other things, broadcasting and video on demand), direct broadcast satellite to the extent federal law permits taxation of its video services, now or in the future; and other suppliers of video services (including two-way communications), whatever their technology.

(z) "VoIP (Voice Over Internet Protocol)" means the digital process of making and receiving real-time voice transmissions over any Internet Protocol network.

(aa) "800 Service" means a "telecommunications service" that allows a caller to dial a toll-free number without incurring a charge for the call. The service is typically marketed under the name "800," "855," "866," "877," and "888" toll-free calling, and any subsequent numbers designated by the Federal Communications Commission.

(bb) "900 Service" means an inbound toll "telecommunications service" purchased by a subscriber that allows the subscriber’s customers to call in to the subscriber’s prerecorded announcement or live service. "900 service" does not include the charge for: collection services provided by the seller of the "telecommunications services" to the subscriber, or service or product sold by the subscriber to the subscriber’s customer. The service is typically marketed under the name "900" service, and any subsequent numbers designated by the Federal Communications Commission.

8-2.903. CONSTITUTIONAL, STATUTORY, AND OTHER EXEMPTIONS.

(a) Nothing in this Article shall be construed as imposing a tax upon any person or service when the imposition of such tax upon such person or service would be in violation of a Federal or State statute, the Constitution of the United States or the Constitution of the State.

(b) Any service user that is exempt from the tax imposed by this Article pursuant to subsection (a) of this Section shall file an application with the Tax Administrator for an exemption;
provided, however, this requirement shall not apply to a service user that is a State or Federal agency or subdivision with a commonly recognized name for such service. Said application shall be made upon a form approved by the Tax Administrator and shall state those facts, declared under penalty of perjury, which qualify the applicant for an exemption, and shall include the names of all service suppliers serving that service user. If deemed exempt by the Tax Administrator, such service user shall give the Tax Administrator timely written notice of any change in service suppliers so that the Tax Administrator can properly notify the new service supplier of the service user’s tax exempt status. A service user that fails to comply with this Article shall not be entitled to a refund of a users’ tax collected and remitted to the Tax Administrator from such service user as a result of such noncompliance.

The decision of the Tax Administrator may be appealed pursuant to Section 8-2.920 of this Article. Filing an application with the Tax Administrator and appeal to the City Administrator, or designee, pursuant to Section 8-2.920 of this Article is a prerequisite to a suit thereon.

(c) The City Council may, by resolution, establish one or more classes of persons or one or more classes of utility service otherwise subject to payment of a tax imposed by this Article and provide that such classes of persons or service shall be exempt, in whole or in part from such tax for a specified period of time.

8-2.904. TELECOMMUNICATION USERS’ TAX.

(a) There is hereby imposed a tax upon every person in the City using telecommunication services. The tax imposed by this Section shall be at the rate of five and eight-tenths percent (5.8%) of the charges made for such services and shall be collected from the service user by the telecommunication services supplier or its billing agent. There is a rebuttable presumption that telecommunication services, which are billed to a billing or service address in the City, are used, in whole or in part, within the City’s boundaries, and such services are subject to taxation under this Section. There is also a rebuttable presumption that prepaid telecommunication services sold within the city are used, in whole or in part, within the City and are therefore subject to taxation under this Section. If the billing address of the service user is different from the service address, the service address of the service user shall be used for purposes of imposing the tax. As used in this Section, the term “charges” shall include the value of any other services, credits, property of every
kind or nature, or other consideration provided by the service user in exchange for the telecommunication services. The maximum annual telecommunication users’ tax payable by any service user for an individual service shall be one thousand five hundred dollars ($1,500.00) for each twelve (12) month period commencing January 1 and ending December 31 of the same calendar year.

(b) “Mobile telecommunications service” shall be sourced in accordance with the sourcing rules set forth in the Mobile Telecommunications Sourcing Act (4 U.S.C. Section 124). The Tax Administrator may issue and disseminate to telecommunication service suppliers, which are subject to the tax collection requirements of this Article, sourcing rules for the taxation of other telecommunication services, including but not limited to post-paid telecommunication services, prepaid telecommunication services, VoIP, and private communication services, provided that such rules are based upon custom and common practice that further administrative efficiency and minimize multi jurisdictional taxation (e.g., Streamlined Sales and Use Tax Agreement).

(c) The Tax Administrator may issue and disseminate to telecommunication service suppliers, which are subject to the tax collection requirements of this Article, an administrative ruling identifying those telecommunication services, or charges therefore, that are subject to or not subject to the tax of subsection (a) above.

(d) As used in this Section, the term “telecommunication services” shall include, but is not limited to, charges for: connection, reconnection, termination, movement, or change of telecommunication services; late payment fees; detailed billing; central office and custom calling features (including but not limited to call waiting, call forwarding, caller identification and three-way calling); voice mail and other messaging services; directory assistance; access and line charges; universal service charges; regulatory, administrative and other cost recovery charges; local number portability charges; and text and instant messaging. “Telecommunication services” shall not include digital downloads that are not “ancillary telecommunication services,” such as music, ring tones, games, and similar digital products.

(e) To prevent actual multi jurisdictional taxation of telecommunication services subject to tax under this Section, any service user, upon proof to the Tax Administrator that the service user has previously paid the same tax in another state or city on such telecommunication services, shall be allowed a credit against
the tax imposed to the extent of the amount of such tax legally imposed in such other state or city; provided, however, the amount of credit shall not exceed the tax owed to the City under this Section.

(f) The tax on telecommunication services imposed by this Section shall be collected from the service user by the service supplier. The amount of tax collected in one month shall be remitted to the Tax Administrator, and must be received by the Tax Administrator on or before the twentieth (20th) day of the following month.

8-2.905. ELECTRICITY USERS' TAX.

(a) There is hereby imposed a tax upon every person using electricity in the City. The tax imposed by this Section shall be at the rate of six percent (6%) of the charges made for such electricity, and for any supplemental services or other associated activities directly related to and/or necessary for the provision of electricity to the service user, which are provided by a service supplier or non-utility service supplier to a service user. The tax shall be collected from the service user by the service supplier or non-utility service supplier, or its billing agent. The maximum annual electricity users' tax payable by any service user for an individual service shall be one thousand five hundred dollars ($1,500.00) for each twelve (12) month period commencing January 1 and ending December 31 of the same calendar year.

(b) As used in this Section, the term “charges” shall apply to all services, components and items that are: i) necessary for or common to the receipt, use or enjoyment of electric service; or, ii) currently are or historically have been included in a single or bundled rate for electric service by a local distribution company to a class of retail customers. The term “charges” shall include, but is not limited to, the following charges:

1. energy charges;
2. distribution or transmission charges;
3. metering charges;
4. stand-by, reserves, firming, ramping, voltage support, regulation, emergency, or other similar charges for supplemental services to self-generation service users;
customer charges, late charges, service establishment or reestablishment charges, demand charges, fuel or other cost adjustments, power exchange charges, independent system operator (ISO) charges, stranded investment or competitive transition charges (CTC), public purpose program charges, nuclear decommissioning charges, trust transfer amounts (bond financing charges), franchise fees, franchise surcharges, annual and monthly charges, and other charges, fees or surcharges which are necessary for or common to the receipt, use or enjoyment of electric service; and,

charges, fees, or surcharges for electricity services or programs which are mandated by the California Public Utilities Commission or the Federal Energy Regulatory Commission, whether or not such charges, fees, or surcharges appear on a bundled or line item basis on the customer billing.

As used in this Section, the term “charges” shall include the value of any other services, credits, property of every kind or nature, or other consideration provided by the service user in exchange for the electricity or services related to the provision of such electricity.

The Tax Administrator, from time to time, may survey the electric service suppliers to identify the various unbundled billing components of electric retail service that they commonly provide to residential and commercial/industrial customers in the City, and the charges therefor, including those items that are mandated by state or federal regulatory agencies as a condition of providing such electric service. The Tax Administrator, thereafter, may issue and disseminate to such electric service suppliers an administrative ruling identifying those components and items which are: i) necessary for or common to the receipt, use or enjoyment of electric service; or, ii) currently are or historically have been included in a single or bundled rate for electric service by a local distribution company to a class of retail customers. Charges for such components and items shall be subject to the tax of subsection (a) above.

As used in this Section, the term “using electricity” shall not include the mere receiving of such electricity by an electrical corporation or governmental agency at a point within the City for resale.
(f) The tax on electricity provided by self-production or by a non-utility service supplier not under the jurisdiction of this Article 9 shall be collected and remitted in the manner set forth in Section 8-2.907 of this Article. All other taxes on charges for electricity imposed by this Section shall be collected from the service user by the electric service supplier or its billing agent. The amount of tax collected in one (1) month shall be remitted to the Tax Administrator, and must be received by the Tax Administrator on or before the twentieth (20th) day of the following month; or, at the option of the person required to collect and/or remit the tax, such person shall remit an estimated amount of tax measured by the tax billed in the previous month or upon the payment pattern of the service user, which must be received by the Tax Administrator on or before the twentieth (20th) day of the following month, provided that such person shall submit an adjusted payment or request for credit, as appropriate, within sixty (60) days following each calendar quarter. The credit, if approved by the Tax Administrator, may be applied against any subsequent remittance that becomes due.

8-2.906. GAS USERS’ TAX.

(a) There is hereby imposed a tax upon every person using gas in the City, which is transported and delivered through a pipeline or by mobile transport. The tax imposed by this Section shall be at the rate of six percent (6%) of the charges made for such gas, including all services related to the storage, transportation and delivery of such gas. The tax shall be collected from the service user by the service supplier or non-utility service supplier, or its billing agent, and shall apply to all uses of gas, including but not limited to, heating, electricity generation, and the use of gas as a component of a manufactured product. The maximum annual gas users’ tax payable by any service user for an individual service shall be one thousand five hundred dollars ($1,500.00) for each twelve (12) month period commencing January 1 and ending December 31 of the same calendar year.

(b) As used in this Section, the term “charges” shall apply to all services, components and items for gas service that are: i) necessary for or common to the receipt, use or enjoyment of gas service; or, ii) currently are or historically have been included in a single or bundled rate for gas service by a local distribution company to a class of retail customers. The term “charges” shall include, but is not limited to, the following charges:

(1) the commodity charges for purchased gas, or the cost of gas owned by the service user (including the actual costs
attributed to drilling, production, lifting, storage, gathering, trunkline, pipeline, and other operating costs associated with the production and delivery of such gas), which is delivered through a gas pipeline distribution system;

(2) gas transportation charges (including interstate charges to the extent not included in commodity charges);

(3) storage charges; provided, however, that the service supplier shall not be required to apply the tax to any charges for gas storage services when the service supplier cannot, as a practical matter, determine the jurisdiction where such stored gas is ultimately used; but it shall be the obligation of the service user to self-collect the amount of tax not applied to any charge for gas storage by the service supplier and to remit the tax to the appropriate jurisdiction;

(4) capacity or demand charges, late charges, service establishment or reestablishment charges, transition charges, customer charges, minimum charges, annual and monthly charges, and any other charges which are necessary for or common to the receipt, use or enjoyment of gas service; and,

(5) charges, fees, or surcharges for gas services or programs which are mandated by the California Public Utilities Commission or the Federal Energy Regulatory Commission, whether or not such charges, fees, or surcharges appear on a bundled or line item basis on the customer billing.

(c) As used in this Section, the term “charges” shall include the value of any other services, credits, property of every kind or nature, or other consideration provided by the service user in exchange for the gas or services related to the delivery of such gas.

(d) The Tax Administrator, from time to time, may survey the gas service suppliers to identify the various unbundled billing components of gas retail service that they commonly provide to residential and commercial/industrial customers in the City, and the charges therefor, including those items that are mandated by state or federal regulatory agencies as a condition of providing such gas service. The Tax Administrator, thereafter, may issue and disseminate to such gas service suppliers an administrative ruling identifying those components and items which are: i) necessary for or common to the receipt, use or enjoyment of gas service; or,
ii) currently are or historically have been included in a single or bundled rate for gas service by a local distribution company to a class of retail customers. Charges for such components and items shall be subject to the tax of subsection (a) above.

(e) There shall be excluded from the calculation of the tax imposed in this Section, charges made for gas which is to be resold and delivered through a pipeline distribution system.

(f) The tax on gas provided by self-production or by a non-utility service supplier not under the jurisdiction of this Article 9 shall be collected and remitted in the manner set forth in Section 8-2.907. All other taxes on charges for gas imposed by this Section shall be collected from the service user by the gas service supplier or its billing agent. The amount of tax collected in one (1) month shall be remitted to the Tax Administrator, and must be received by the Tax Administrator, on or before the twentieth (20th) day of the following month; or, at the option of the person required to collect and/or remit the tax, such person shall remit an estimated amount of tax measured by the tax billed in the previous month or upon the payment pattern of the service user, which must be received by the Tax Administrator on or before the twentieth (20th) day of the following month, provided that such person shall submit an adjusted payment or request for credit, as appropriate, within sixty (60) days following each calendar quarter. The credit, if approved by the Tax Administrator, may be applied against any subsequent remittance that becomes due.

8-2.907. COLLECTION OF TAX FROM SERVICE USERS RECEIVING DIRECT PURCHASE OF GAS OR ELECTRICITY.

(a) Any service user subject to the tax imposed by Section 8-2.905 or by Section 8-2.906 of this Article, which produces gas or electricity for self-use; which receives gas or electricity, including any related supplemental services, directly from a non-utility service supplier not under the jurisdiction of this Article; or which, for any other reason, is not having the full tax collected and remitted by its service supplier, a non-utility service supplier, or its billing agent on the use of gas or electricity in the City, including any related supplemental services, shall report said fact to the Tax Administrator and shall remit the tax due directly to the Tax Administrator within thirty (30) days of such use, based on the charges for, or value of, such gas or electricity, or supplemental services, as provided in subsection (b). In lieu of paying said actual tax, the service user may, at its option, remit to the Tax Administrator within thirty (30) days of such use an estimated
amount of tax measured by the tax billed in the previous month, or upon the payment pattern of similar customers of the service supplier using similar amounts of gas or electricity, provided that the service user shall submit an adjusted payment or request for credit, as appropriate, within sixty (60) days following each calendar quarter. The credit, if approved by the Tax Administrator in writing, may be applied against any subsequent tax bill that becomes due.

(b) The Tax Administrator may require said service user to identify its non-utility service supplier, and otherwise provide, subject to audit: invoices; books of account; or other satisfactory evidence documenting the quantity of gas or electricity used, including any related supplemental services, and the cost or price thereof. If the service user is unable to provide such satisfactory evidence, or if the administrative cost of calculating the tax in the opinion of the Tax Administrator is excessive, the Tax Administrator may determine the tax by applying the tax rate to the equivalent charges the service user would have incurred if the gas or electricity used, including any related supplemental services, had been provided by the service supplier that is the primary supplier of gas or electricity within the City. Rate schedules for this purpose shall be available from the City. The maximum annual electricity or gas users’ tax payable by any such service user for an individual service shall be fifteen hundred dollars ($1,500.00) for each twelve-month period commencing January 1 and ending December 31 of the same calendar year.

8-2.908. VIDEO USERS’ TAX.

(a) There is hereby imposed a tax upon every person in the City using video services. The tax imposed by this section shall be at the rate of three percent (3%) of the charges made for such services and shall be collected from the service user by the video service supplier or its billing agent. There is a rebuttable presumption that video services, which are billed to a billing or service address in the City, are used, in whole or in part, within the City's boundaries, and such services are subject to taxation under this Article. If the billing address of the service user is different from the service address, the service address of the service user shall be used for purposes of imposing the tax. The maximum annual video users’ tax payable by any service user for an individual service shall be fifteen hundred dollars ($1,500.00) for each twelve-month period commencing January 1 and ending December 31 of the same calendar year.
(b) As used in this section, the term “charges” shall include, but is not limited to, charges for the following:

1. regulatory fees and surcharges, franchise fees and access fees (PEG);
2. initial installation of equipment necessary for provision and receipt of video services;
3. late fees, collection fees, bad debt recoveries, and return check fees;
4. activation fees, reactivation fees, and reconnection fees;
5. video programming and video services;
6. ancillary video programming services (e.g., electronic program guide services, search functions, recording functions, or other interactive services or communications that are ancillary, necessary or common to the use or enjoyment of the video services);
7. equipment leases (e.g., remote, recording and/or search devices; converters); and,
8. service calls, service protection plans, name changes, changes of services, and special services.

(c) As used in this section, the term “charges” shall include the value of any other services, credits, property of every kind or nature, or other consideration provided by the service user in exchange for the video services.

(d) The Tax Administrator may issue and disseminate to video service suppliers, which are subject to the tax collection requirements of this Article, an administrative ruling identifying those video services, or charges therefor, that are subject to or not subject to the tax of subsection (a) above.

(e) The tax imposed by this section shall be collected from the service user by the video service supplier, its billing agent, or a reseller of such services. In the case of video service, the service user shall be deemed to be the purchaser of the bulk video service (e.g., an apartment owner), unless such service is resold to individual users, in which case the service user shall be the ultimate purchaser of the video service. The amount of tax collected in one (1) month shall
be remitted to the Tax Administrator, and must be received by the Tax Administrator on or before the twentieth (20th) day of the following month.

8-2.909. WATER USERS’ TAX.

(a) There is imposed a tax upon every person using water in the City which is transported and delivered through a pipeline distribution system. The tax imposed by this section shall be at the rate of six percent (6%) of the charges made for such water. The maximum annual water users’ tax payable by any such service user for an individual service shall be fifteen hundred dollars ($1,500.00) for each twelve-month period commencing January 1 and ending December 31 of the same calendar year.

(b) As used in this section, the term “charges” shall apply to all services, components and items that are: i) necessary for or common to the receipt, use or enjoyment of water service; or, ii) currently are or historically have been included in a single or bundled rate for water service by a local distribution company to a class of retail customers. The term “charges” shall include, but is not limited to, the following charges: water commodity charges (potable and non-potable); distribution or transmission charges; metering charges; customer charges; fire protection services; late charges; service establishment or reestablishment charges; franchise fees; franchise surcharges; annual and monthly charges; and other charges, fees and surcharges which are necessary for or common to the receipt, use or enjoyment of water service; and, charges, fees, or surcharges for water services or programs, which are mandated by a water district or a state or federal agency, whether or not such charges, fees, or surcharges appear on a bundled or line item basis on the customer billing.

(c) As used in this section, the term “charges” shall include the value of any other services, credits, property of every kind or nature, or other consideration provided by the service user in exchange for the water services.

(d) The Tax Administrator, from time to time, may survey the water service suppliers in the City to identify the various unbundled billing components of water retail service that they commonly provide to residential and commercial/industrial customers in the City, and the charges therefor, including those items that are mandated by a water district or a state or federal agency as a condition of providing such water service. The Tax Administrator, thereafter, may issue and disseminate to such water service
suppliers an administrative ruling identifying those components and items which are: i) necessary for or common to the receipt, use or enjoyment of water service; or, ii) currently are or historically have been included in a single or bundled rate for water service by a local distribution company to a class of retail customers. Charges for such components and items shall be subject to the tax of subsection (a) above.

(e) There shall be excluded from the base on which the tax imposed in this section is computed charges made for water which is to be resold and delivered through a pipeline distribution system; and charges made by a municipal water department, public utility or a city or municipal water district for water used and consumed by such department, public utility or water district in the conduct of the business of such department, utility or district.

(f) The tax on water service imposed by this section shall be collected from the service user by the water service supplier or its billing agent. The amount of tax collected in one (1) month shall be remitted to the Tax Administrator, and must be received by the Tax Administrator on or before the twentieth (20th) day of the following month.

8-2.910. BUNDLING TAXABLE ITEMS.

If any nontaxable charges are combined with and not separately stated from taxable service charges on the customer bill or invoice of a service supplier, the combined charge is subject to tax unless the service supplier identifies, by reasonable and verifiable standards, the portions of the combined charge that are nontaxable and taxable through the service supplier’s books and records kept in the regular course of business, and in accordance with generally accepted accounting principles, and not created and maintained for tax purposes. If the service supplier offers a combination of taxable and non-taxable services, and the charges are separately stated, then for taxation purposes, the values assigned the taxable and non-taxable services shall be based on its books and records kept in the regular course of business and in accordance with generally accepted accounting principles, and not created and maintained for tax purposes. The service supplier has the burden of proving the proper valuation and apportionment of taxable and non-taxable charges.

8-2.911. SUBSTANTIAL NEXUS/MINIMUM CONTRACT.

For purposes of imposing a tax or establishing a duty to collect and remit a tax under this Article, “substantial nexus” and “minimum contacts” shall be construed broadly in favor of the imposition, collection and/or
remittance of the utility users' tax to the fullest extent permitted by State and Federal law, and as it may change from time to time by judicial interpretation or by statutory enactment. Any telecommunication service (including VoIP) used by a person with a service address in the City, which service is capable of terminating a call to another person on the general telephone network, shall be subject to a rebuttable presumption that "substantial nexus/minimum contacts" exists for purposes of imposing a tax, or establishing a duty to collect and remit a tax, under this Article. A service supplier shall be deemed to have sufficient activity in the City for tax collection and remittance purposes if its activities include, but are not limited to, any of the following: maintains or has within the City, directly or through an agent or subsidiary, a place of business of any nature; solicits business in the City by employees, independent contractors, resellers, agents or other representatives; solicits business in the City on a continuous, regular, seasonal or systematic basis by means of advertising that is broadcast or relayed from a transmitter with the City or distributed from a location with the City; or advertises in newspapers or other periodicals printed and published within the City or through materials distributed in the City by means other than the United States mail; or if there are activities performed in the City on behalf of the service supplier that are significantly associated with the service supplier’s ability to establish and maintain a market in the City for the provision of utility services that are subject to a tax under this Article.

8-2.912. DUTY TO COLLECT PROCEDURES.

(a) Collection by Service Suppliers: The duty of service suppliers to collect and remit the taxes imposed by the provisions of this Article shall be performed as follows:

(1) The tax shall be collected by service suppliers insofar as practicable at the same time as, and along with, the collection of the charges made in accordance with the regular billing practice of the service supplier. Where the amount paid by a service user to a service supplier is less than the full amount of the charge and tax which was accrued for the billing period, a proportionate share of both the charge and the tax shall be deemed to have been paid. In those cases where a service user has notified the service supplier of refusal to pay the tax imposed on said charges, Section 8-2.916 shall apply.

(2) The duty of a service supplier to collect the tax from a service user shall commence with the beginning of the first regular billing period applicable to the service user where all charges normally included in such regular billing are subject to the provisions of this Article. Where a service
user receives more than one billing, one or more being for
different periods than another, the duty to collect shall arise
separately for each billing period.

(b) **Filing Return and Payment:** Each person required by this Article
to remit a tax shall file a return to the Tax Administrator, on forms
approved by the Tax Administrator, on or before the due date. The
full amount of the tax collected shall be included with the return
and filed with the Tax Administrator. The Tax Administrator is
authorized to require such additional information as he or she
deems necessary to determine if the tax is being levied, collected,
and remitted in accordance with this Article. Returns are due
immediately upon cessation of business for any reason. Pursuant to
Revenue and Tax Code Section 7284.6, the Tax Administrator, and
its agents, shall maintain such filing returns as confidential
information that is exempt from the disclosure provisions of the
Public Records Act.

8-2.913. COLLECTION PENALTIES-SERVICE SUPPLIERS.

(a) Taxes collected from a service user are delinquent if not received
by the Tax Administrator on or before the due date. Should the due
date occur on a weekend or legal holiday, the return must be
received by the Tax Administrator on the first regular working day
following the weekend or legal holiday. A direct deposit, including
electronic fund transfers and other similar methods of
electronically exchanging monies between financial accounts,
made by a service supplier in satisfaction of its obligations under
this Article shall be considered timely if the transfer is initiated on
or before the due date, and the transfer settles into the City’s
account on the following business day.

(b) If the person required to collect and/or remit the utility users’ tax
fails to collect the tax (by failing to properly assess the tax on one
or more services or charges on the customer’s billing) or fails to
remit the tax collected on or before the due date, the Tax
Administrator shall attach a penalty for such delinquencies or
deficiencies at the rate of fifteen percent (15%) of the total tax that
is delinquent or deficient in the remittance, and shall pay interest at
the rate of seventy-five one-hundredths percent (0.75%) per month,
or any fraction thereof, on the amount of the tax, exclusive of
penalties, from the date on which the remittance first became
delinquent, until paid.

(c) The Tax Administrator shall have the power to impose additional
penalties upon persons required to collect and remit taxes pursuant
to the provisions of this Article for fraud or gross negligence in reporting or remitting at the rate of fifteen percent (15%) of the amount of the tax collected and/or required to be remitted, or as recomputed by the Tax Administrator.

(d) For collection purposes only, every penalty imposed and such interest that is accrued under the provisions of this Article shall become a part of the tax herein required to be paid.

(e) Notwithstanding the foregoing, the Tax Administrator may, in his or her discretion, modify the due dates of this Article to be consistent with any uniform standards or procedures that are mutually agreed upon by other public agencies imposing a utility users' tax, or otherwise legally established, to create a central payment location or mechanism.

8-2.914. ACTIONS TO COLLECT.

Any tax required to be paid by a service user under the provisions of this Article shall be deemed a debt owed by the service user to the City. Any such tax collected from a service user which has not been remitted to the Tax Administrator shall be deemed a debt owed to the City by the person required to collect and remit and shall no longer be a debt of the service user. Any person owing money to the City under the provisions of this Article shall be liable to an action brought in the name of the City for the recovery of such amount, including penalties and interest as provided for in this Article, along with any collection costs incurred by the City as a result of the person’s noncompliance with this Article, including, but not limited to, reasonable attorneys’ fees. Any tax required to be collected by a service supplier or owed by a service user is an unsecured priority excise tax obligation under 11 U. S. CA. Section 507(a)(8)(C). Service suppliers who seek to collect charges for service in bankruptcy proceedings shall also include in any such claim the amount of taxes due the City for those services, unless the Tax Administrator determines that such duty is in conflict with any federal or state law, rule, or regulation or that such action would be administratively impractical.
8-2.915. DEFICIENCY DETERMINATION AND ASSESSMENT-
TAX APPLICATION ERRORS.

(a) The Tax Administrator shall make a deficiency determination if he
or she determines that any person required to pay or collect taxes
pursuant to the provisions of this Article has failed to pay, collect,
and/or remit the proper amount of tax by improperly or failing to
apply the tax to one or more taxable services or charges. Nothing
herein shall require that the Tax Administrator institute
proceedings under this Section 8-2.915 if, in the opinion of the Tax
Administrator, the cost of collection or enforcement likely
outweighs the tax benefit.

(b) The Tax Administrator shall mail a notice of such deficiency
determination to the person required to pay or remit the tax, which
notice shall refer briefly to the amount of the taxes owed, plus
interest at the rate of seventy-five one-hundredths percent (0.75%) per
month, or any fraction thereof, on the amount of the tax from
the date on which the tax should have been received by the City.
Within fourteen (14) calendar days after the date of service of such
notice, the person may request in writing to the Tax Administrator
for a hearing on the matter.

(c) If the person fails to request a hearing within the prescribed time
period, the amount of the deficiency determination shall become a
final assessment, and shall immediately be due and owing to the
City. If the person requests a hearing, the Tax Administrator shall
cause the matter to be set for hearing, which shall be scheduled
within thirty (30) days after receipt of the written request for
hearing. Notice of the time and place of the hearing shall be mailed
by the Tax Administrator to such person at least ten (10) calendar
days prior to the hearing, and, if the Tax Administrator desires said
person to produce specific records at such hearing, such notice
may designate the records requested to be produced.

(d) At the time fixed for the hearing, the Tax Administrator shall hear
all relevant testimony and evidence, including that of any other
interested parties. At the discretion of the Tax Administrator, the
hearing may be continued from time to time for the purpose of
allowing the presentation of additional evidence. Within a
reasonable time following the conclusion of the hearing, the Tax
Administrator shall issue a final assessment (or non-assessment),
thereafter, by confirming, modifying or rejecting the original
deficiency determination, and shall mail a copy of such final
assessment to person owing the tax. The decision of the Tax
Administrator may be appealed pursuant to Section 8-2.920 of this
Article. Filing an application with the Tax Administrator and appeal to the City Administrator, or designee, pursuant to Section 8-2.920 of this Article is a prerequisite to a suit thereon.

(e) Payment of the final assessment shall become delinquent if not received by the Tax Administrator on or before the thirtieth (30th) day following the date of receipt of the notice of final assessment. The penalty for delinquency shall be fifteen percent (15%) on the total amount of the assessment, along with interest at the rate of seventy-five one-hundredths percent (0.75%) per month, or any fraction thereof, on the amount of the tax, exclusive of penalties, from the date of delinquency, until paid. The applicable statute of limitations regarding a claim by the City seeking payment of a tax assessed under this Article shall commence from the date of delinquency as provided in this subsection (e).

(f) All notices under this Article may be sent by regular mail, postage prepaid, and shall be deemed received on the third calendar day following the date of mailing, as established by a proof of mailing.

8-2.916. ADMINISTRATIVE REMEDY - NON-PAYING SERVICE USERS.

(a) Whenever the Tax Administrator determines that a service user has deliberately withheld the amount of the tax owed by the service user from the amounts remitted to a person required to collect the tax, or whenever the Tax Administrator deems it in the best interest of the City, he or she may relieve such person of the obligation to collect the taxes due under this Article from certain named service users for specific billing periods. To the extent the service user has failed to pay the amount of tax owed for a period of two (2) or more billing periods, the service supplier shall be relieved of the obligation to collect taxes due. The service supplier shall provide the City with the names and addresses of such service users and the amounts of taxes owed under the provisions of this Article. Nothing herein shall require that the Tax Administrator institute proceedings under this Section 8-2.916 if, in the opinion of the Tax Administrator, the cost of collection or enforcement likely outweighs the tax benefit.

(b) In addition to the tax owed, the service user shall pay a delinquency penalty at the rate of fifteen percent (15%) of the total tax that is owed, and shall pay interest at the rate of seventy-five one-hundredths percent (0.75%) per month, or any fraction thereof, on the amount of the tax, exclusive of penalties, from the due date, until paid.
(c) The Tax Administrator shall notify the non-paying service user that the Tax Administrator has assumed the responsibility to collect the taxes due for the stated periods and demand payment of such taxes, including penalties and interest. The notice shall be served on the service user by personal delivery or by deposit of the notice in the United States mail, postage prepaid, addressed to the service user at the address to which billing was made by the person required to collect the tax; or, should the service user have a change of address, to his or her last known address.

(d) If the service user fails to remit the tax to the Tax Administrator within thirty (30) days from the date of the service of the notice upon him or her, the Tax Administrator may impose an additional penalty of fifteen percent (15%) of the amount of the total tax that is owed.

8-2.917. ADDITIONAL POWERS AND DUTIES OF THE TAX ADMINISTRATOR.

(a) The Tax Administrator shall have the power and duty, and is hereby directed, to enforce each and all of the provisions of this Article.

(b) The Tax Administrator may adopt administrative rules and regulations consistent with provisions of this Article for the purpose of interpreting, clarifying, carrying out and enforcing the payment, collection and remittance of the taxes herein imposed. The administrative ruling shall not impose a new tax, revise an existing tax methodology as stated in this Article, or increase an existing tax, except as allowed by California Government Code Section 53750(h)(2). A copy of such administrative rules and regulations shall be on file in the Tax Administrator’s office. To the extent that the Tax Administrator determines that the tax imposed under this Article shall not be collected in full for any period of time from any particular service supplier or service user, that determination shall be considered an exercise of the Tax Administrator’s discretion to settle disputes and shall not constitute a change in taxing methodology for purposes of Government Code Section 53750 or otherwise. The Tax Administrator is not authorized to amend the City’s methodology for purposes of Government Code Section 53750 and the City does not waive or abrogate its ability to impose the utility users’ tax in full as a result of promulgating administrative rulings or entering into agreements.
(c) Upon a proper showing of good cause, the Tax Administrator may make administrative agreements, with appropriate conditions, to vary from the strict requirements of this Article and thereby: (1) conform to the billing procedures of a particular service supplier so long as said agreements result in the collection of the tax in conformance with the general purpose and scope of this Article; or, (2) to avoid a hardship where the administrative costs of collection and remittance greatly outweigh the tax benefit. A copy of each such agreement shall be on file in the Tax Administrator’s office, and are voidable by the Tax Administrator or the City at any time.

(d) The Tax Administrator may conduct an audit, to ensure proper compliance with the requirements of this Article, of any person required to collect and/or remit a tax pursuant to this Article. The Tax Administrator shall notify said person of the initiation of an audit in writing. In the absence of fraud or other intentional misconduct, the audit period of review shall not exceed a period of three (3) years next preceding the date of receipt of the written notice by said person from the Tax Administrator. Upon completion of the audit, the Tax Administrator may make a deficiency determination pursuant to Section 8-2.915 of this Article for all taxes (and applicable penalties and interest) owed and not paid, as evidenced by information provided by such person to the Tax Administrator. If said person is unable or unwilling to provide sufficient records to enable the Tax Administrator to verify compliance with this Article, the Tax Administrator is authorized to make a reasonable estimate of the deficiency. Said reasonable estimate shall be entitled to a rebuttable presumption of correctness.

(e) Upon receipt of a written request of a taxpayer, and for good cause, the Tax Administrator may extend the time for filing any statement required pursuant to this Article for a period of not to exceed forty-five (45) days, provided that the time for filing the required statement has not already passed when the request is received. No penalty for delinquent payment shall accrue by reason of such extension. Interest shall accrue during said extension at the rate of seventy-five one-hundredths percent (0.75%) per month, prorated for any portion thereof.

(f) The Tax Administrator shall determine the eligibility of any person who asserts a right to exemption from, or a refund of, the tax imposed by this Article.

(g) Notwithstanding any provision in this Article to the contrary, the Tax Administrator may waive any penalty or interest imposed
upon a person required to collect and/or remit for failure to collect the tax imposed by this Article if the non-collection occurred in good faith. In determining whether the non-collection was in good faith, the Tax Administrator shall take into consideration the uniqueness of the product or service, industry practice or other precedence. The Tax Administrator may also participate with other utility users’ tax public agencies in conducting coordinated compliance reviews with the goal of achieving administrative efficiency and uniform tax application determinations, where possible. To encourage full disclosure and on-going cooperation on annual compliance reviews, the Tax Administrator, and its agents, may enter into agreements with the tax-collecting service providers and grant prospective only effect on any changes regarding the taxation of services or charges that were previously deemed by the service provider, in good faith and without gross negligence, to be non-taxable. In determining whether the non-collection was in good faith and without gross negligence, the Tax Administrator shall take into consideration the uniqueness of the product or service, industry practice or other precedence.

8-2.918. RECORDS.

(a) It shall be the duty of every person required to collect and/or remit to the City any tax imposed by this Article to keep and preserve, for a period of at least three (3) years, all records as may be necessary to determine the amount of such tax as he/she may have been liable for the collection of and remittance to the Tax Administrator, which records the Tax Administrator shall have the right to inspect at a reasonable time.

(b) The City may issue an administrative subpoena to compel a person to deliver, to the Tax Administrator, copies of all records deemed necessary by the Tax Administrator to establish compliance with this Article, including the delivery of records in a common electronic format on readily available media if such records are kept electronically by the person in the usual and ordinary course of business. As an alternative to delivering the subpoenaed records to the Tax Administrator on or before the due date provided in the administrative subpoena, such person may provide access to such records outside the City on or before the due date, provided that such person shall reimburse the City for all reasonable travel expenses incurred by the City to inspect those records, including travel, lodging, meals, and other similar expenses, but excluding the normal salary or hourly wages of those persons designated by the City to conduct the inspection.
(c) The Tax Administrator is authorized to execute a non-disclosure agreement approved by the City Attorney to protect the confidentiality of customer information pursuant to California Revenue and Tax Code Sections 7284.6 and 7284.7.

(d) If a service supplier uses a billing agent or billing aggregator to bill, collect, and/or remit the tax, the service supplier shall: 1) provide to the Tax Administrator the name, address and telephone number of each billing agent and billing aggregator currently authorized by the service supplier to bill, collect, and/or remit the tax to the City; and, 2) upon request of the Tax Administrator, deliver, or effect the delivery of, any information or records in the possession of such billing agent or billing aggregator that, in the opinion of the Tax Administrator, is necessary to verify the proper application, calculation, collection and/or remittance of such tax to the City.

(e) If any person subject to record-keeping under this Article unreasonably denies the Tax Administrator access to such records, or fails to produce the information requested in an administrative subpoena within the time specified, then the Tax Administrator may impose a penalty of Five Hundred Dollars ($500.00) on such person for each day following: 1) the initial date that the person refuses to provide such access; or, 2) the due date for production of records as set forth in the administrative subpoena. This penalty shall be in addition to any other penalty imposed under this Article.

8-2.919. REFUNDS.

Whenever the amount of any tax has been overpaid or paid more than once or has been erroneously or illegally collected or received by the Tax Administrator under this Article from a person or service supplier, it may be refunded as provided in this Section as follows:

(a) **Written Claim for Refund:** The Tax Administrator may refund any tax that has been overpaid or paid more than once or has been erroneously or illegally collected or received by the Tax Administrator under this Article from a person or service supplier, provided that no refund shall be paid under the provisions of this Section unless the claimant or his or her guardian, conservator, executor, or administrator has submitted a written claim to the Tax Administrator within one year of the overpayment or erroneous or illegal collection of said tax. Such claim must clearly establish claimant’s right to the refund by written records showing entitlement thereto. Nothing herein shall permit the filing of a claim on behalf of a class or group of taxpayers unless each
member of the class has submitted a written claim under penalty of perjury as provided by this Section.

(b) **Compliance with Claims Act:** The filing of a written claim pursuant to Government Code Section 935 is a prerequisite to any suit thereon. Any action brought against the City pursuant to this Article shall be subject to the provisions of Government Code Sections 945.6 and 946. The Tax Administrator, or the City Council where the claim is in excess of Five Thousand Dollars ($5,000.00), shall act upon the refund claim within the time period set forth in Government Code Section 912.4. If the Tax Administrator/City Council fails or refuses to act on a refund claim within the time prescribed by Government Section 912.4, the claim shall be deemed to have been rejected by the City Council on the last day of the period within which the City Council was required to act upon the claim as provided in Government Code Section 912.4. The Tax Administrator shall give notice of the action in a form which substantially complies with that set forth in Government Code Section 913.

(c) **Refunds to Service Suppliers:** Notwithstanding the notice provisions of subsection (a) of this Section, the Tax Administrator may, at his or her discretion, give written permission to a service supplier, who has collected and remitted any amount of tax in excess of the amount of tax imposed by this Article, to claim credit for such overpayment against the amount of tax which is due the City upon a subsequent monthly return(s) to the Tax Administrator, provided that: 1) such credit is claimed in a return dated no later than one year from the date of overpayment or erroneous collection of said tax; 2) the Tax Administrator is satisfied that the underlying basis and amount of such credit has been reasonably established; and, 3) in the case of an overpayment by a service user to the service supplier that has been remitted to the City, the Tax Administrator has received proof, to his or her satisfaction, that the overpayment has been refunded by the service supplier to the service user in an amount equal to the requested credit.

8-2.920. APPEALS.

(a) The provisions of this Section apply to any decision (other than a decision relating to a refund pursuant to Section 8-2.919 of this Article), deficiency determination, assessment, or administrative ruling of the Tax Administrator. Any person aggrieved by any decision (other than a decision relating to a refund pursuant to Section 8-2.919 of this Article), deficiency determination,
assessment, or administrative ruling of the Tax Administrator, shall be required to comply with the appeals procedure of this Section. Compliance with this Section shall be a prerequisite to a suit thereon. [See Government Code Section 935(b)]. Nothing herein shall permit the filing of a claim or action on behalf of a class or group of taxpayers.

(b) If any person is aggrieved by any decision (other than a decision relating to a refund pursuant to Section 8-2.919 of this Article), deficiency determination, assessment, or administrative ruling of the Tax Administrator; he or she may appeal to the City Administrator, or designee, by filing a notice of appeal with the City Clerk within fourteen (14) days of the date of the decision, deficiency determination, assessment, or administrative ruling of the Tax Administrator which aggrieved the service user or service supplier.

(c) The matter shall be scheduled for hearing before an independent hearing officer selected by the City Administrator, or designee, no more than thirty (30) days from the receipt of the appeal. The appellant shall be served with notice of the time and place of the hearing, as well as any relevant materials, at least five (5) calendar days prior to the hearing. The hearing may be continued from time to time upon mutual consent. At the time of the hearing, the appealing party, the Tax Administrator, and any other interested person may present such relevant evidence as he or she may have relating to the determination from which the appeal is taken.

(d) Based upon the submission of such evidence and the review of the City's files, the hearing officer shall issue a written notice and order upholding, modifying or reversing the determination from which the appeal is taken. The notice shall be given within fourteen (14) days after the conclusion of the hearing and shall state the reasons for the decision. The notice shall specify that the decision is final and that any petition for judicial review shall be filed within ninety (90) days from the date of the decision in accordance with Code of Civil Procedure Section 1094.6.

(e) All notices under this Section may be sent by regular mail, postage prepaid, and shall be deemed received on the third calendar day following the date of mailing, as established by a proof of mailing.

8-2.921. REFUND - ANNUAL GROSS INCOME LESS THAN $8,700.00.
(a) A refund of not to exceed thirty dollars ($30.00) of taxes due and paid under the provisions of this article for utility services rendered in any calendar year shall be made whenever all of the following occur:

1. The annual gross income of the household in which the claimant lives is less than eight thousand seven hundred dollars ($8,700.00) for the claimant's last federal or State personal income tax reporting period.

2. The claimant makes application and files a verified claim in writing with the Finance Director for such refund upon a claim form provided by the Finance Director.

3. The claim is approved by the Finance Director as being in conformance with this section. Only one (1) member of each household may file a claim, and only one (1) claim may be filed for each individual household.

(b) The claimant shall be the person in whose name the bills for utilities services were rendered. Income of the household means all income of the claimant's household while members of such household and related to the claimant as a spouse or as defined in the California Revenue and Taxation Code of Sections 17056 and 17057.

(c) "Gross income" shall mean the sum of adjusted gross income as used for purposes of the California Personal Income Tax Law, together with the net income from all sources of all kinds, including, but not limited to, alimony, support money, cash public assistance and relief, pensions, annuities, social security, interest on securities (including tax-free interest on governmental securities), realized capital gains, workmen's compensation (not including medical benefits), unemployment insurance income, insurance benefits of all kinds (other than medical), and gifts; except that income shall not include Medicare benefits, Medicaid benefits, gifts of food and gifts between members of the household, the receipt of surplus food or other relief in kind supplied by a governmental agency.

(d) The claim for such refund, for the preceding calendar year, shall be made only during the period of January 1 to April 15 of each year, and must be accompanied by a copy of the utility bills, together with proof that the utility taxes have been paid by the claimant or some member of the household. No such refund shall be made on any claim filed or post-marked later than the fifteenth day of April.
(e) No refund shall be made to any person for taxes levied on a utility account for which any utility tax is due and outstanding for the period for which refund is claimed or for any prior period. No refund shall be made of any tax which was paid with public assistance or relief funds which included an allowance to pay the tax.

(f) Nothing in this section shall be construed to require that any utility company has any obligation to make or furnish, for the purpose of the refund provisions hereof, proof of utility taxes due or utility taxes paid.

8-2.922. NO INJUNCTION/WRIT OF MANDATE.

No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action, or proceeding in any court against this City or against any officer of the City to prevent or enjoin the collection under this Article of any tax or any amount of tax required to be collected and/or remitted.

8-2.923. NOTICE OF CHANGES TO ORDINANCE.

If a tax under this Article is added, repealed, increased, reduced, or the tax base is changed, the Tax Administrator shall follow the notice requirements of California Public Utilities Code Section 799.

8-2.924. EFFECT OF STATE AND FEDERAL REFERENCE/AUTHORIZATION.

Unless specifically provided otherwise, any reference to a State or Federal statute in this Article shall mean such statute as it may be amended from time to time, provided that such reference to a statute herein shall not include any subsequent amendment thereto, or to any subsequent change of interpretation thereto by a State or Federal agency or court of law with the duty to interpret such law, to the extent that such amendment or change of interpretation would require voter approval under California law, or to the extent that such change would result in a tax decrease (as a result of excluding all or a part of a utility service, or charge therefor, from taxation). Only to the extent voter approval would otherwise be required or a tax decrease would result, the prior version of the statute (or interpretation) shall remain applicable; for any application or situation that would not require voter approval or result in a decrease of a tax, provisions of the amended statute (or new interpretation) shall be applicable to the maximum possible extent.
To the extent that the City's authorization to collect or impose any tax imposed under this Article is expanded or limited as a result of changes in State or Federal law, no amendment or modification of this Article shall be required to conform the tax to those changes, and the tax shall be imposed and collected to the full extent of the authorization up to the full amount of the tax imposed under this Article.

8-2.925. NO INCREASE IN TAX PERCENTAGE OR CHANGE IN METHODOLOGY WITHOUT VOTER APPROVAL; AMENDMENT OR REPEAL.

This Article 9 of Chapter 2 of Title 8 of the Modesto Municipal Code may be repealed or amended by the City Council without a vote of the People. However, as required by Article XIIIC of the California Constitution, voter approval is required for any amendment provision that would increase the rate of any tax levied pursuant to this Ordinance. The People of the City of Modesto affirm that the following actions shall not constitute an increase of the rate of a tax:

(1) The restoration of the rate of the tax to a rate that is no higher than that set by this Ordinance, if the City Council has acted to reduce the rate of the tax;

(2) An action that interprets or clarifies the methodology of the tax, or any definition applicable to the tax, so long as such interpretation or clarification (even if contrary to some prior interpretation or clarification) is not inconsistent with the language of this Ordinance;

(3) The establishment a class of persons that is exempt or excepted from the tax or the discontinuation of any such exemption or exception (other than the discontinuation of an exemption or exception specifically set forth in this Ordinance); and

(4) The collection of the tax imposed by this ordinance, even if the City had, for some period of time, failed to collect the tax.

8-2.926. INDEPENDENT AUDIT OF TAX COLLECTION, EXEMPTION, REMITTANCE, AND EXPENDITURE.

The City shall annually verify that the taxes owed under this Article have been properly applied, exempted, collected, and remitted in accordance with this Article, and properly expended according to applicable municipal law. The annual verification shall be performed by a qualified independent third party and the review shall employ reasonable, cost-effective steps to assure compliance, including the use of sampling audits. The verification
shall not be required of tax remitters where the cost of the verification may exceed the tax revenues to be reviewed.

8-2.927. REMEDIES CUMULATIVE.

All remedies and penalties prescribed by this Article or which are available under any other provision of law or equity, including but not limited to the California False Claims Act (Government Code Section 12650 et seq.) and the California Unfair Practices Act (Business and Professions Code Section 17070 et seq.), are cumulative. The use of one or more remedies by the City shall not bar the use of any other remedy for the purpose of enforcing the provisions of this Article.

8-2.928. INTERACTION WITH PRIOR TAX.

(a) Collection of Tax by Service Providers. Service providers shall begin to collect the tax imposed by this amended Article 9 as soon as feasible after the effective date of the Article, but in no event later than permitted by Section 799 of the California Public Utilities Code.

(b) Satisfaction of Tax Obligation by Service Users. Prior to April 1, 2012, any person who pays the tax levied pursuant to Article 9 of Chapter 2 of Title 8 of this Code, as it existed prior to its amendment as provided herein, with respect to any charge for a service shall be deemed to have satisfied his or her obligation to pay the tax levied pursuant to Article 9 of Chapter 2 of Title 8 as amended herein, with respect to that charge. The intent of this paragraph is to prevent the imposition of multiple taxes upon a single utility charge during the transition period from the prior Utility Users' Tax ordinance to the amended Utility Users' Tax ordinance (which transition period ends April 1, 2012) and to permit service providers or other persons with an obligation to remit the tax hereunder, during that transition period, to satisfy their collection obligations by collecting either tax.

(c) In the event that a final court order should determine that the election enacting this Article 9 of Chapter 2 of Title 8 (as amended herein) is invalid for whatever reason, or that any tax imposed under this Article 9 of Chapter 2 of Title 8 (as amended herein) is invalid in whole or in part, then the taxes imposed under Article 9 of Chapter 2 of Title 8 of this Code, as it existed prior to its amendment as provided herein, shall automatically continue to apply with respect to any service for which the tax levied pursuant to this Article 9 has been determined to be invalid. Such automatic continuation shall be effective beginning as of the first date of
service (or billing date) for which the tax imposed by this Article is not valid. However, in the event of an invalidation, any tax (other than a tax that is ordered refunded by the court or is otherwise refunded by the City) paid by a person with respect to a service and calculated pursuant to this Article 9 of Chapter 2 of Title 8 (as amended herein) shall be deemed to satisfy the tax imposed under Article 9 of Chapter 2 of Title 8, as it existed prior to its amendment as provided herein, on that service, so long as the tax is paid with respect to a service provided no later than six months subsequent to the date on which the final court order is published.

SECTION 2. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

SECTION 3. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in The Modesto Bee, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the ______ day of ________, 20______, by Councilmember ____________, who moved its introduction and passage to print, which motion being duly seconded by Councilmember ______________, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers:

NOES: Councilmembers:

ABSENT: Councilmembers:

APPROVED: ________________________
SECTION 2. On the ballots to be used at said election, in addition to any other matter required by law to be printed thereon, shall be printed the following question relating to the proposal to amend the Modesto Municipal Code relating to Utility Users’ Tax.

**Measure A: Utility Users’ Tax Reduction and Fairness Measure**

Shall the current Utility Users’ Tax Ordinance be amended to reduce the tax on telecommunications users from 6% to 5.8%; modernize the ordinance to reflect changes in federal and state law and to treat taxpayers the same regardless of technology; preserve funding for essential municipal services like law enforcement, gang and drug prevention programs, and fire protection; and all money staying local for services and facilities in Modesto?

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
</table>

SECTION 3. Pursuant to Section 12114 of the California Elections Code the City Clerk of the City of Modesto is hereby authorized to prepare and sign a Notice of
Measure to be voted on in the form required by law, relating to said measure, and said City Clerk is hereby authorized and directed to publish said Notice in a time and manner required by law in The Modesto Bee, the official newspaper of said City and a newspaper of general circulation printed and published in said City.

SECTION 4. The Council hereby orders the City Clerk to submit said measure to the voters at the General Election on November 8, 2011.

SECTION 5. That the County Election Department is authorized to canvass the returns of the Regular Municipal Election.

SECTION 6. That the City Clerk shall certify the passage and adoption of this resolution and enter into the original book of resolutions.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 3rd day of May, 2011, by Councilmember Marsh, 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, Geer, Hawn, Lopez, Marsh, Muratore

NOES: Councilmembers: None

ABSENT: Councilmembers: Mayor Ridenour

ATTEST: [Signature]

(SEAL)

APPROVED AS TO FORM:

BY: [Signature]

SUSANA ALCALA WOOD, City Attorney
RESOLUTION DIRECTING THE CITY CLERK TO SUBMIT TO THE VOTERS AT THE NEXT REGULAR MUNICIPAL ELECTION TO BE HELD ON NOVEMBER 8, 2011, A BALLOT MEASURE ENTITLED "UTILITY USERS' TAX REDUCTION AND FAIRNESS MEASURE"

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

SECTION 1. Pursuant to Article 11 of Section 3 of the California Constitution and Section 9255(a)(2) of the California Elections Code, and California Government Code Section 34458, the Council of the City of Modesto proposes to and does thereby, on its own motion, submit to the qualified electors of the City of Modesto, at the Regular Municipal Election to be held on November 8, 2011, a ballot measure entitled “Utility Users’ Tax Reduction and Fairness Measure.”

SECTION 2. That a measure is to appear on the ballot as follows:

<table>
<thead>
<tr>
<th>Measure A: Utility Users’ Tax Reduction and Fairness Measure</th>
</tr>
</thead>
<tbody>
<tr>
<td>Shall the current Utility Users’ Tax ordinance be amended to reduce the tax on telecommunications users from 6% to 5.8%; modernize the ordinance to reflect changes in federal and state law and to treat taxpayers the same regardless of technology; preserve funding for essential municipal services like law enforcement, gang and drug prevention programs, and fire protection; and all money staying local for services and facilities in Modesto?</td>
</tr>
<tr>
<td>Yes</td>
</tr>
<tr>
<td>No</td>
</tr>
</tbody>
</table>

SECTION 3. That the City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 3rd day of May, 2011, by Councilmember Marsh, 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, Geer, Hawn, Lopez, Marsh, Muratore

NOES: Councilmembers: None

ABSENT: Councilmembers: Mayor Ridenour

(Seal)

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney

ATTEST: STEPHANIE LOPEZ, City Clerk
MODESTO CITY COUNCIL
RESOLUTION NO. 2011-159

RESOLUTION DIRECTING THE CITY CLERK TO TRANSMIT A COPY OF THE BALLOT MEASURE ENTITLED “UTILITY USERS’ TAX REDUCTION AND FAIRNESS MEASURE” TO THE CITY ATTORNEY FOR THE PURPOSE OF PREPARING AN IMPARTIAL ANALYSIS OF SAID MEASURE

WHEREAS, the Modesto City Council has directed the City Clerk to submit to the voters at the next regular municipal election to be held on November 8, 2011, a measure seeking approval of a ballot measure entitled “Utility Users’ Tax Reduction and Fairness Measure”,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the City Clerk of the City of Modesto is hereby directed pursuant to California Elections Code Section 9280 to transmit a copy of said measure to the City Attorney, who is hereby directed to prepare an impartial analysis of the measure showing the effect of the measure on existing law and the operation of the measure.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 3rd day of May, 2011, by Councilmember Marsh, 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, Geer, Hawn, Lopez, Marsh, Muratore

NOES: Councilmembers: None

ABSENT: Councilmembers: Mayor Ridenour

ATTEST: [Signature]

(SIGNATURE)

APPROVED AS TO FORM:

By: [Signature]

SUSANA ALCALA WOOD, City Attorney
RESOLUTION AUTHORIZING THE MEMBERS OF THE CITY COUNCIL, OR ANY OF THEM, TO FILE WRITTEN ARGUMENTS IN FAVOR OF OR IN OPPOSITION TO THE BALLOT MEASURE ENTITLED “UTILITY USERS' TAX REDUCTION AND FAIRNESS MEASURE”

WHEREAS, the Modesto City Council has directed the City Clerk to submit to the voters at the next regular municipal election to be held on November 8, 2011, a ballot measure entitled “Utility Users’ Tax Reduction and Fairness Measure”,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that pursuant to California Elections Code Section 9282 the members of the City Council, or any of them, are hereby authorized to file written arguments in favor of or in opposition to said measure and to change such arguments until and including the date and time after which no arguments may be filed with the City Clerk.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 3rd day of May, 2011, by Councilmember Marsh, 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, Geer, Hawn, Lopez, Marsh, Muratore

NOES: Councilmembers: None

ABSENT: Councilmembers: Mayor Ridenour

ATTEST: STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

BY: SUSANA ALCALA WOOD, City Attorney
RESOLUTION AUTHORIZING THE AWARD OF BID FOR THE PURCHASE OF BADGER WATER METERS WITH ORION AUTOMATED METER READERS FOR THE DEPARTMENT OF PUBLIC WORKS, WATER DIVISION, TO BADGER METER, INC., MILWAUKEE, WI, FOR A TWO (2) YEAR AGREEMENT WITH THREE (3) ONE-YEAR EXTENSION OPTIONS AT THE SOLE DISCRETION OF THE CITY, AND AUTHORIZING THE PURCHASING MANAGER, OR HIS DESIGNEE, TO ISSUE A PURCHASE AGREEMENT FOR AN ESTIMATED ANNUAL COST OF $1,528,552.

WHEREAS, the City Manager authorized the Purchasing Manager to issue formal Request for Bids (RFB) for the purchase of Badger Meter brand water meters and automated meter readers, and

WHEREAS, the Purchasing Division issued RFB No. 1011-20 Badger Water Meters with Orion Automated Meter Readers to four (4) prospective bidders and formally advertised as required by law, and

WHEREAS, RFB’s were formally opened in the City Clerk’s office, three (3) companies chose to respond, all three (3) 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 Badger water meters with Orion automated meter readers to Badger Meter, Inc., Milwaukee, WI, 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 Badger water meters with Orion automated meter readers to Badger Water Meters, Inc., Milwaukee, WI, conforms to the Modesto Municipal Code, and
WHEREAS, funds shall be budgeted for the purchase of Badger water meters with Orion automated meter readers in Primary Appropriation Unit: 6180-480-W416,

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 Badger water meters with Orion automated meter readers for the Department of Public Works, Water Division, to Badger Water Meters, Inc., Milwaukee, WI.

BE IT FURTHER RESOLVED that the Purchasing Manager, or his designee, is hereby authorized to issue a purchase agreement for an estimated annual cost of $1,528,552.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 3rd day of May 3, 2011, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Marsh, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Burnside, Geer, Hawn, Lopez, Marsh, Muratore

NOES: Councilmembers: None

ABSENT: Councilmembers: Mayor Ridenour

ATTEST:  

(SIGNATURE)

APPROVED AS TO FORM:

By:  

(SIGNATURE)  

SUSANA ALCALA WOOD, City Attorney