RESOLUTION AMENDING THE FISCAL YEAR 2009-2010 ANNUAL OPERATING BUDGET

WHEREAS, a financial analysis has been completed and it has been determined that a budget adjustment is required to the Annual Budget of the City of Modesto for Fiscal Year 2009-2010,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that appropriations, revenues, and transfers for the Fiscal Year 2009-2010 budget have been adjusted as shown in Exhibit A, which is incorporated by reference herein.

BE IT FURTHER RESOLVED that the Director of Finance, or his designee, is hereby authorized to take the necessary steps to implement the provisions of this resolution.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 1st day of June, 2010, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember Lopez, was upon roll call carried and the resolution adopted by the following votes:

AYES: Councilmembers: Geer, Hawn, Lopez, Marsh, Muratore, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: STEPHANIE LOPEZ, City Clerk

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney
EXHIBIT A

FINANCE

This budget adjustment is to recognize $42,846 in revenue received for the insurance claim for the fire at 660 El Vista Avenue. This revenue will be used to fund reopening the City park bathrooms. After the Building Services fund is reimbursed $19,976 for costs incurred for demolition of the damaged building, the remaining $22,870 will be transferred to General Fund to fund $29,128 of costs to open City park bathrooms from March 1, 2010 to June 30, 2010. The remaining portion of the costs to reopen the bathrooms totaling $6,258 will be covered by a transfer from the Parks Development fund.

An adjustment is necessary to reduce appropriations by $114,780 in Capital Improvement Project E330, Traffic Control Upgrades-Gas Tax-Primary and close the account. Additionally, this adjustment will reduce the transfer from the Gas Tax Fund to the Capital Grants – Gas Tax Fund in the amount of $114,780.

An adjustment is necessary to reduce appropriations by $6,175 in Capital Improvement Project E737, Low Cost Traffic Improvements, and close the account. Additionally, this adjustment will reduce the transfer from the Gas Tax Fund to the Capital Grants – Gas Tax Fund in the amount of $6,175.

An adjustment is necessary to reduce appropriations by $95,726 in Capital Improvement Project E602, Traffic Control Devices, and close the account. Additionally, this adjustment will reduce the transfer from the Gas Tax Fund to the Capital Grants – Gas Tax Fund in the amount of $93,185.
WHEREAS, the City has an ongoing need to purchase a data management backup solution utilized by the City of Modesto and managed by the Information Technology Department, and

WHEREAS, the City of Modesto has a need to backup electronic data for future interpretation and analysis, and

WHEREAS, the City of Modesto has a need to provide a data management system that can comprehensively address all data management necessities in an efficient and cost effective manner, 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, and

WHEREAS, there are exceptions to the rule set forth in the Modesto Municipal Code, and

WHEREAS, one exception is Modesto Municipal Code Section 8-3.204(b) which states, “Where the Purchasing Agency’s requirements can be met solely by a single article or process,” and

WHEREAS, staff requests the Purchasing Manager be authorized to purchase through a “sole-source” purchase for a cost not to exceed $252,000.00,
NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto
that the Purchasing Manager is hereby authorized to purchase through “sole-source”
purchase for the purchase of a data management solution in an amount not to exceed
$252,000.00.

The foregoing resolution was introduced at a regular meeting of the Council of
the City of Modesto held on the 1st day of June, 2010, by Councilmember Hawn, 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: Geer, Hawn, Lopez, Marsh, Muratore, Olsen,
Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: ______________________________

(SEAL)

APPROVED AS TO FORM:

BY: ______________________________

SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2010-225

RESOLUTION APPROVING SUBMITTAL OF A GRANT APPLICATION TO THE FEDERAL TRANSIT ADMINISTRATION (FTA) FOR $4.5 MILLION FOR THE NEW BUS MAINTENANCE FACILITY UNDER THE FTA’S STATE OF GOOD REPAIR BUS AND BUS FACILITIES PROGRAM; AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE ALL GRANT APPLICATION AND GRANT AGREEMENT DOCUMENTS

WHEREAS, the Federal Transit Administration (FTA) has been delegated the authority to award Federal financial assistance for transportation-related projects, and

WHEREAS, the City of Modesto has provided all annual certifications and assurances required by the FTA for the new Bus Maintenance Facility (BMF) project, and

WHEREAS, the BMF project is eligible to receive up to 80% of its cost in funds from the FTA’s State of Good Repair (SGR) Bus and Bus Facilities Program, and

WHEREAS, the City of Modesto is eligible to receive up to $4.5 Million (80% of the total cost of the project not funded with other FTA grant funds) for the New BMF project from FTA’s SGR Bus and Bus Facilities Program, and

WHEREAS, the BMF project is included in the Federal Transportation Improvement Program (FTIP) adopted by StanCOG, and

WHEREAS, the grant for Federal assistance will impose certain obligations on the City of Modesto, and may require the City to provide the local share of the project costs,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the submittal of a grant application to the Federal Transit Administration for State of Good Repair Bus and Bus Facilities Program in the amount of $4.5 Million for the new Bus Maintenance Facility.
BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute and file the annual certifications, assurances, and other documents the FTA requires for awarding a Federal assistance grant.

BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute all grant application and grant agreement documents.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 1st day of June, 2010, by Councilmember Hawn, 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: Geer, Hawn, Lopez, Marsh, Muratore, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2010-226

RESOLUTION APPROVING THE SUBMITTAL OF A REVISED TRANSPORTATION DEVELOPMENT ACT (TDA) TRANSIT CLAIM TO THE STANISLAUS COUNCIL OF GOVERNMENTS (STANCOG) FOR FISCAL YEAR 2009-2010 IN THE AMOUNT OF $6,571,678

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

WHEREAS, StanCOG has informed the City that the LTF apportionment for FY2009-10 has been reduced, and

WHEREAS, the City has developed an application for Fiscal Year 2009-2010 TDA reimbursement pursuant to Section 99233.3 of the California PUC, and

WHEREAS, the City’s Transit TDA Claim for Fiscal Year 2009-2010 is $6,571,678, and

WHEREAS, the total Transit Operating Budget for Fiscal Year 2009-2010 is $14,867,906, and

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

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the submittal of a revised Transportation Development Act Transit claim to StanCOG for Fiscal Year 2009-2010 in the amount of $6,571,678.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 1st day of June, 2010, by Councilmember Hawn, 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: Geer, Hawn, Lopez, Marsh, Muratore, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: 

(SEAL)

APPROVED AS TO FORM:

By: 

SUSANA ALCALA WOOD, City Attorney
A RESOLUTION APPROVING AN AGREEMENT WITH MOZAFFARI ENGINEERING (MOZAFFARI) FOR ON-CALL STRUCTURAL ENGINEERING SERVICES FOR VARIOUS CITY PROJECTS FOR ONE YEAR, WITH TWO ONE-YEAR EXTENSION OPTIONS, AT THE SOLE DISCRETION OF THE CITY, IN AN AMOUNT NOT TO EXCEED $45,000 PER YEAR, AND AUTHORIZING THE CITY MANAGER, OR DESIGNEE, TO EXECUTE THE AGREEMENT, AND UP TO TWO ONE-YEAR EXTENSION OPTIONS

WHEREAS, the Utility Planning and Projects Department, Capital Improvement Services Division, performs a number of tasks requiring structural engineering services that, because of workload levels or staff experience, are beyond the ability of City’s engineering staff to accomplish in a timely manner, and

WHEREAS, the Utility Planning and Projects Department, Capital Improvement Services Division, has utilized the services of outside consultant engineers to perform targeted structural engineering services in the past, and

WHEREAS, retaining on-call engineering services allows the Capital Improvement Services Division to have quick access to structural engineering design when needed, using experienced staff and with a quick turnaround, thereby improving system efficiencies and minimizing down time, and

WHEREAS, staff solicited and formally advertised a Request for Qualifications (RFQ) for On-call Structural Engineering Services to local consultants (consultants having offices within the Modesto urbanized area), and

WHEREAS, three (3) Statements of Qualifications were received and the firm of Mozaffari was deemed most qualified to provide the requested on-call structural engineering services, and
WHEREAS, based on the City’s previous experience, Mozaffari has rendered satisfactory services to the City in past projects, and

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

WHEREAS, Mozaffari will perform no service until Capital Improvement Services management has approved the proposed specific task order and a written Notice to Proceed (NTP) is prepared and sent to Mozaffari prior to commencement of services, and

WHEREAS, Mozaffari will be paid on an hourly basis for actual hours required to perform specific task orders at a set rate,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves an agreement with Mozaffari Engineering for On-call Structural Engineering Services for various City projects for one (1) year, with two (2) one year extension options, in an amount not-to-exceed $45,000 per year. Total cost for three years is not to exceed $135,000.

BE IT FURTHER RESOLVED by the Council of the City of Modesto that the City Manager, or his designee, is authorized to execute the Agreement, and up to two one-year extension options.
WHEREAS, based on the City’s previous experience, Mozaffari has rendered satisfactory services to the City in past projects, and

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

WHEREAS, Mozaffari will perform no service until Capital Improvement Services management has approved the proposed specific task order and a written Notice to Proceed (NTP) is prepared and sent to Mozaffari prior to commencement of services, and

WHEREAS, Mozaffari will be paid on an hourly basis for actual hours required to perform specific task orders at a set rate,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves an agreement with Mozaffari Engineering for On-call Structural Engineering Services for various City projects for one (1) year, with two (2) one year extension options, in an amount not-to-exceed $45,000 per year. Total cost for three years is not to exceed $135,000.

BE IT FURTHER RESOLVED by the Council of the City of Modesto that the City Manager, or his designee, is authorized to execute the Agreement, and up to two one-year extension options.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 1st day of June, 2010, by Councilmember Hawn, 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: Geer, Hawn, Lopez, Marsh, Muratore, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST:  
STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2010-228

A RESOLUTION APPROVING THE EXTENSION OF THE DEFERRAL OF CAPITAL FACILITIES FEES (CFF) FOR SINGLE-FAMILY RESIDENTIAL PERMITS UNTIL ISSUANCE OF A CERTIFICATE OF OCCUPANCY FOR A PERIOD OF ONE YEAR; AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO ENTER INTO DEFERRED PAYMENT AGREEMENTS AND NOTICE OF LIENS WITH APPLICANTS

WHEREAS, Modesto Municipal Code Section 8-1.904 currently requires Capital Facilities Fees (CFF) to be paid prior to issuance of any building permit, and

WHEREAS, on or about April of 2008, the Building Industry Association of Central California made a request to defer CFF until issuance of a Certificate of Occupancy, and

WHEREAS, in June 2008, the Economic Development Committee heard this issue and recommended that CFF be deferred until issuance of a Certificate of Occupancy for a period of one year, and

WHEREAS, on January 13, 2009, the City Council approved the deferral of CFF on single-family residential permits until a Certificate of Occupancy is issued for a period of one year, and

WHEREAS, prior to issuance of a building permit, anyone deferring payment of CFF will be required to enter into a deferred payment agreement, and

WHEREAS, a lien will be placed on the property until all CFF is paid, and

WHEREAS, to enter into a deferred payment agreement, an administrative fee must be paid to the City to monitor and ensure that CFF is paid, and

WHEREAS, due to current tough economic considerations times, it is appropriate to continue deferring the payment of CFF on single-family residential permits for one more year,
NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the deferral of Capital Facilities Fees (CFF) for single-family residential permits until issuance of a Certificate of Occupancy, for a period of one year.

BE IT FURTHER RESOLVED that the City Manager, or his designee, is authorized to enter into deferred payment agreements and notice of liens with applicants.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 1st day of June, 2010, 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: Geer, Hawn, Lopez, Marsh, Muratore, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: 

(SEAL)

APPROVED AS TO FORM:

BY: 

SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2010-229

A RESOLUTION APPROVING THE EXPENDITURE OF THE CITY OF MODESTO’S REIMBURSEMENT ALLOCATION IN THE AMOUNT OF $133,782.83 FROM PRIOR STATE SUPPLEMENTAL LAW ENFORCEMENT SERVICES FUNDS (SLESF) FOR DATA CONVERSION FOR THE NEW CAD/RMS PROJECT, A MAINTENANCE SERVICE CONTRACT FOR THE DOWNTOWN CAMERAS, FORENSIC COMPUTER EQUIPMENT FOR HI-TECH CRIMES, CANINE EQUIPMENT AND TRAINING EQUIPMENT; AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE NECESSARY PROGRAM DOCUMENTS

WHEREAS, the Modesto Police Department has been reimbursed $133,782.83 by a vendor that failed to fulfill its contractual obligation to implement technology upgrades, and

WHEREAS, the original technology related purchase was funded with the use of State Supplemental Law Enforcement Services Funds (SLESF) received in Fiscal Years 2005/06 and 2006/07, and

WHEREAS, the Police Department would like to take the reimbursed funds and reallocate them to purchase: Data Conversion for the new CAD/RMS project; a service maintenance contract for the Downtown Camera system; Forensic Computer Lab equipment for Hi-Tech crimes and; Canine and Training equipment, and

WHEREAS, the State of California Controller’s Office Local Government Accounting and Reporting Unit has approved of the reallocation and use of reimbursed SLESF funds, and

WHEREAS, per the agreement, neither party can disclose the terms of the agreement that resulted in the reimbursement of funds, and

WHEREAS, the City Council is required to hold a public hearing to consider and approve or reallocate the SLESF Expenditure Plan,
NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the expenditure of the City of Modesto’s reimbursement allocation in the amount of $133,782.83 from prior State Supplemental Law Enforcement Services Fund (SLESF) for Data Conversion for the new CAD/RMS project, a maintenance service contract for the downtown cameras, forensic computer equipment for Hi-Tech crimes, canine equipment, and training equipment.

BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute the necessary program documents.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 1st day of June, 2010, by Councilmember Hawn, 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: Geer, Hawn, Lopez, Marsh, Muratore, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: 

(SEAL)

APPROVED AS TO FORM:

By: 

SUSANA ALCALA WOOD, City Attorney
WHEREAS, California's water system is outdated and straining to meet the needs of its residents, farms, businesses, and environment. Designed 30 years ago to serve 16 million residents, our water system now serves more than 38 million residents, and

WHEREAS, the challenges facing our water system are significant: severely limited supplies of water; rivers, lakes, streams, groundwater and other sources of drinking water threatened with contamination; water infrastructure - including levees, waterways and pipes - aging and at risk of failure; entire species of fish and wildlife crashing and our environment is at risk; and the Delta - which provides water to 25 million Californians, 2.5 million acres of farms, hundreds of miles of manmade levees that transport fresh water, and hundreds of species of wildlife - is at risk of catastrophic failure, and

WHEREAS, unless action is taken, experts warn that our state will face continued water shortages, the potential for catastrophic failure of our water delivery system, and environmental collapse in areas vital to drinking water and wildlife. The water supply crisis will also continue to harm our state’s economy by slowing job creation, limiting agricultural production, and stalling economic growth, and

WHEREAS, immediate investments are needed to repair and upgrade our network of waterways, levees and other water infrastructure, clean up our sources of drinking water, increase local supplies, expand conservation efforts, and restore key ecosystems, and
WHEREAS, The Safe, Clean, and Reliable Drinking Water Supply Act of 2010 is a $11.14 billion bond on the November 2010 ballot that would provide funding to repair what’s broken with California’s water system, and

WHEREAS, voter approval of this measure will provide funding for programs throughout the state to increase water supply and reliability, address ecological problems in the Delta, add operational flexibility to the state’s water storage and delivery system, and expand water recycling and conservation, and

WHEREAS, San Joaquin River Hydrologic Region, which includes Stanislaus County, will specifically benefit from this bond through funding to enhance local water supply and reliability, to clean up contaminated water supplies, to improve the physical infrastructure of our water system, and to fund environmental and species restorations and protections, and

WHEREAS, the North Valley Regional Recycled Water Project and the proposed Regional Surface Water Supply Project (TID) are both good examples of projects that would qualify for funding and would benefit from the bond,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby supports the Safe, Clean, and Reliable Drinking Water Supply Act of 2010.

BE IT FURTHER RESOLVED that the Council hereby authorizes listing the City of Modesto support of the Safe, Clean and Reliable Drinking Water Supply Act of 2010.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 1st day of June, 2010, 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: Geer, Hawn, Lopez, Marsh, Muratore, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST:  

(SEAL)

APPROVED AS TO FORM:

By:  

SUSANA ALCALA WOOD, City Attorney
MODesto CITY COUNCIL
RESOLUTION NO. 2010-231

A RESOLUTION AMENDING THE POSITION CLASSIFICATION PLAN FOR THE CITY OF MODESTO TO ESTABLISH THE CLASSIFICATIONS OF BUDGET AND FINANCIAL ANALYSIS MANAGER, CUSTOMER SERVICES MANAGER, FINANCIAL ANALYST I, FINANCIAL ANALYST II, FINANCIAL ANALYST III, AND SENIOR FINANCIAL ANALYST, AND DELETE ACCOUNTANT I, ACCOUNTANT II, BUDGET ANALYST I, BUDGET ANALYST II, BUDGET MANAGER, RATE & FEE ANALYST, SENIOR ACCOUNTANT, AND SUPERVISING ACCOUNTANT

WHEREAS, a Position Classification Plan for the City of Modesto was adopted by Modesto City Council Resolution No. 2008-681 pursuant to Rule 2 of the Personnel Rules and Regulations of the City of Modesto, and

WHEREAS, the City Manager, upon request of the Director of Finance, directed the Human Resources Department to conduct a classification study and internal salary relationship review of non-sworn positions within the Finance Department, and

WHEREAS, a review of the City of Modesto Finance Department classifications has been conducted by the Human Resources Department, and staff has made recommendations to the City Manager and Director of Finance for revising said classifications, and

WHEREAS, said recommendations have been reviewed by the City Manager and the Director of Finance, and the City Manager has recommended adoption and the deletion of classifications based on the classification study prepared by the Human Resources Department, and negotiated by Human Resources Department staff with the impacted employee associations representing City employees, and

WHEREAS, Rule 2.2 of the City of Modesto Personnel Rules provides that revisions to the Classification Plan shall be effective upon adoption of resolution of the City Council,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto as follows:
SECTION I. CLASSIFICATIONS CREATED. The Position Classification Plan of the City of Modesto is hereby amended to create classifications and job specifications for the classifications, as shown on the attached exhibits, which are hereby made a part of this resolution by reference, and are hereby approved and made part of the Position Classification Plan of the City of Modesto:

<table>
<thead>
<tr>
<th>CLASSIFICATION</th>
<th>EXHIBIT</th>
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<tbody>
<tr>
<td>BUDGET AND FINANCIAL ANALYSIS MANAGER</td>
<td>“A”</td>
</tr>
<tr>
<td>CUSTOMER SERVICES MANAGER</td>
<td>“B”</td>
</tr>
<tr>
<td>FINANCIAL ANALYST I/II</td>
<td>“C”</td>
</tr>
<tr>
<td>FINANCIAL ANALYST III</td>
<td>“D”</td>
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<tr>
<td>SENIOR FINANCIAL ANALYST</td>
<td>“E”</td>
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</tbody>
</table>

SECTION II. CLASSIFICATIONS DELETED. The Position Classification Plan of the City of Modesto is hereby amended to delete the following classifications:

ACCOUNTANT I
ACCOUNTANT II
BUDGET ANALYST I
BUDGET ANALYST II
BUDGET MANAGER
RATE AND FEE ANALYST
SENIOR ACCOUNTANT
SUPERVISING ACCOUNTANT

SECTION III. EFFECTIVE DATE. This resolution shall become effective on and after June 8, 2010.
The foregoing resolution was introduced in a regular meeting of the Council of the City of Modesto held on the 1st day of June, 2010, by Councilmember Hawn, 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: Geer, Hawn, Lopez, Marsh, Muratore, Olsen, Mayor Ridenour

**NOES:** Councilmembers: None

**ABSENT:** Councilmembers: None

(Seal)

**APPROVED AS TO FORM:**

By: SUSANA ALCALA WOOD, City Attorney

ATTEST: STEPHANIE LOPEZ, City Clerk

06/01/2010/Finance/HR/JPeltier/Item 15  3  2010-231
CITY OF MODESTO
No: 2362

BUDGET AND FINANCIAL ANALYSIS MANAGER

Class specifications are intended to present a descriptive list of the range of duties performed by employees in the class. Specifications are not intended to reflect all duties performed within the job.

DEFINITION

To plan, organize, and direct the activities of the Budget and Financial Analysis Division within the Finance Department; to coordinate division activities with other divisions or departments; and to provide highly responsible technical support to the Director of Finance.

SUPERVISION RECEIVED AND EXERCISED

Receives general direction from upper level management, including the Director of Finance, the City Manager and Mayor.

Exercises direct supervision over assigned supervisory and professional personnel.

ESSENTIAL AND MARGINAL FUNCTION STATEMENTS – Essential and other important responsibilities and duties may include, but are not limited to, the following:

Essential Functions:

Plan, organize and supervise the City’s annual operating and multi-year capital improvement budget process; review budget adjustments and approve changes; prepare costs estimates for budget recommendations.

Plan, prioritize, assign, supervise and review the work of staff involved in the development, preparation and implementation of the City’s annual budget.

Recommend and implement changes in budget format, procedures and processes, including the development of alternative budget systems; evaluate and participate in the design and implementation of management information systems; performs research and recommends best practices

Prepare multi-year forecast of revenues and expenditures.

Analyze actual revenues and expenditures in comparison to budget estimates and allocations; prepares and presents reports.

Oversee the preparation of all budget documents including preliminary, proposed and adopted budget packages

Exhibit A
CITY OF MODESTO
Budget and Financial Analysis Manager
Page 2

Essential Functions: (Continued)

Participate in the review of capital improvement budgets, operating budgets, supplemental budget requests and mid-year budget adjustments; participates in budget presentation to council, commissions and groups.

Perform a variety of complex statistical and financial analyses including cost/benefit and program cost analysis

Review and analyze pending and new legislation to determine fiscal impact to the City.

Consult with management on various operating and CIP budget issues

Review department budget requests and changes to ensure compliance with applicable laws, rules, regulations and policies

Answer questions and provide information to the public as well as internal and external customers; investigate complaints and recommend corrective action as necessary to resolve complaints.

Participate in the selection of staff; coordinate staff training; conduct performance evaluations; recommend discipline; implement discipline procedures as directed.

Assist the City Manager and Director of Finance in assessing budget implications of various long-range projects, plans, and scenarios; oversee staff involved in the process, with particular emphasis on balancing staff resources devoted to budget preparation and monitoring versus long-range financial planning.

Build and maintain positive working relationships with co-workers, other City employees and the public using principles of good customer service.

Marginal Functions:

Perform related duties as assigned.

MINIMUM QUALIFICATIONS

Knowledge of:

Principles and practices of supervision to include team dynamics and team building, leadership, mentoring, etc.

Principles and practices of public administration, organization and management.

Exhibit A
Knowledge of: (Continued)

Principles of accounting and financial management.

Statistical methods.

Principles and practices of municipal budget preparation, administration and monitoring.

Pertinent local, State, Federal rules, regulations and laws.

Practical application of modern information technology to administrative and fiscal management tasks.

Principles and practices of research analysis and management.

Principles and practices of municipal budget development, preparation and administration.

Ability to:

Research, analyze and make recommendations on budgeting, administrative, management and fiscal practices.

Organize and direct the work of administrative, technical and clerical staff.

Perform complex budget analysis, preparation and monitoring.

Research, compile and analyze statistical and financial records and reports.

Write complex reports in a logical, comprehensive and concise manner.

Acquire subject matter expertise in the functions and activities including, but not limited to, laws, rules, regulations, procedures and technical operations.

Effectively represent the department to other departments and/or agencies, and before public bodies.

Make effective oral and written presentations of conclusions and recommendations.

Analyze information technology software as it relates to municipal financing and budgeting issues.

Exhibit A
Ability to: (Continued)

Conduct complex economic and financial analyses; to interpret data and draw sound conclusions.

Forecast economic conditions and the impact thereof on the City budget and operations.

Estimate and project revenues and expenditures.

Interpret and explain pertinent budgetary and financial policies and procedures as well as City and department policies and procedures.

Establish and maintain cooperative working relationships with those contacted in the course of work.

Communicate clearly and concisely, both orally and in writing.

Experience and Training Guidelines

Any combination of education and/or experience which has provided the knowledge, skills, and abilities is qualifying. A typical way to obtain the knowledge and abilities would be:

Experience:

Five years of increasingly responsible experience in accounting, financial management, budgeting, forecasting, or economics; including one year providing technical and functional supervision over assigned personnel.

Training:

Equivalent to a Bachelor's degree from an accredited college or university with major course work in public or business administration, economics, finance or a related field.

A Master's degree with major course work in public or business administration, economics, finance, or a related field is highly desirable.

License or Certificate:

Possession of, or ability to obtain, an appropriate, valid California driver's license.

Exhibit A
PHYSICAL AND MENTAL REQUIREMENTS

**Mobility**: frequent use of keyboard; frequent sitting for long periods of time; occasional bending or squatting. **Lifting**: frequently up to 10 pounds; occasionally up to 25 pounds. **Vision**: constant use of overall vision; frequent reading and close-up work; occasional color and depth vision. **Dexterity**: frequent repetitive motion; frequent writing; frequent grasping, holding, and reaching. **Hearing/Talking**: frequent hearing and talking, in person and on the phone. **Emotional/Psychological**: frequent decision-making and concentration; frequent public and/or coworker contact; occasional working alone. **Environmental**: frequent exposure to noise.

WORKING CONDITIONS

Work is performed in a typical temperature controlled office environment subject to typical office noise and environment. Positions require occasional overtime or weekend work and the ability to travel.

<table>
<thead>
<tr>
<th>Class Spec History</th>
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<tbody>
<tr>
<td>Adopted</td>
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<td>Revised BU</td>
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</tbody>
</table>

Exhibit A
CUSTOMER SERVICES MANAGER

Class specifications are intended to present a descriptive list of the range of duties performed by employees in the class. Specifications are not intended to reflect all duties performed within the job.

DEFINITION

To plan, organize, direct and coordinate the activities of the City’s Customer Services Division within the Department of Finance including Utility Billing, Collections, Accounts Receivable, Citation Processing, Cashiering and Business Licensing; to coordinate Customer Services Division activities with other divisions and departments; and to provide highly responsible staff assistance to the Director of Finance.

SUPERVISION RECEIVED AND EXERCISED

Receives administrative direction from the Director of Finance.

Exercises direct supervision over assigned supervisory and professional, technical and administrative personnel.

ESSENTIAL AND MARGINAL FUNCTION STATEMENTS-

Plan, organize and direct Customer Services Division activities including Utility Billing, Collections, Accounts Receivable, Citation Processing, Cashiering and Business Licensing.

Develop and implement divisional goals, objectives, policies and procedures.

Direct, oversee and participate in the development of the Customer Services Division work plan; assign work activities, projects and programs; monitor work flow; review and evaluate work products, methods and procedures.

Prepare the Customer Services Division budget; assist in budget implementation; participate in the forecast of additional funds needed for staffing, equipment, materials and supplies; administer the approved budget.

Recommend the appointment of personnel; provide or coordinate staff training, conduct performance evaluations; implement discipline procedures as required; maintain discipline and high standards necessary for the efficient and professional operation of the Department.

Develop and implement divisional goals, objectives, policies and procedures.

Exhibit B
Essential Functions: (Continued)

Confer with other City departments regarding Customer Services related issues; implement internal controls to ensure governmental policy and regulations are met.

Build and maintain positive working relationships with co-workers, other City employees and the public using principles of good customer service.

Represent the division and department to outside agencies and organizations; participate in outside community and professional groups and committees; provide technical assistance as necessary.

Manage a variety of software systems.

Research and prepare technical and administrative reports; prepare written correspondence.

Marginal Functions:

Perform related duties as assigned.

MINIMUM QUALIFICATIONS

Knowledge of:

Principles and practices of excellence in customer services.

Principles and practices of leadership, motivation, team dynamics, team building and conflict resolution.

Pertinent local, State and Federal rules, regulations and laws.

Practical application of modern information technology to administrative and fiscal management tasks.

Principles and practices of organizational analysis and management.

Budgeting procedures and techniques.

Principles and practices of supervision, training and personnel management.
Ability to:

Organize and direct the Customer Services Division operations; implement a comprehensive Customer Services strategy to produce the greatest efficiency, service and value to the organization.

Analyze problems, identify alternative solutions, project consequences of proposed actions and implement recommendations in support of goals.

Interpret and apply applicable law, City and department policies, procedures, rules and regulations.

Prepare and administer a divisional budget.

Organize and direct the work of administrative, technical, and clerical staff. Establish and maintain cooperative working relationships with those contacted in the course of work.

Make effective oral and written presentations of conclusions and recommendations.

Experience and Training Guidelines

Any combination of experience and training that would likely provide the required knowledge and abilities is qualifying. A typical way to obtain the knowledge and abilities would be:

Experience:

Five years of increasingly responsible experience in Customer Service/Administrative Management; including one year providing technical and functional supervision over assigned personnel.

Training:

Equivalent to a Bachelor's degree from an accredited college or university with major course work in business administration, public administration, accounting, finance, economics or a related field.

License or Certificate:

Possession of or ability to obtain an appropriate valid California driver's license.

Exhibit B
PHYSICAL REQUIREMENTS & WORKING CONDITIONS

**Mobility:** frequent use of keyboard; frequent sitting for long periods of time; occasional bending or squatting. **Lifting:** frequently up to 10 pounds; occasionally up to 25 pounds. **Vision:** constant use of overall vision; frequent reading and close-up work; occasional color and depth vision. **Dexterity:** frequent repetitive motion; frequent writing; frequent grasping, holding, and reaching. **Hearing/Talking:** frequent hearing and talking, in person and on the phone. **Emotional/Psychological:** frequent decision making and concentration; frequent public and/or coworker contact; occasional working alone. **Environmental:** frequent exposure to noise.

WORKING CONDITIONS

Work is performed in a typical temperature controlled office environment subject to typical office noise and environment. Positions may require occasional overtime or weekend work and travel is rare.
CITY OF MODESTO
No. 3526
No. 3527

FINANCIAL ANALYST I
FINANCIAL ANALYST II

Class specifications are intended to present a descriptive list of the range of duties performed by employees in the class. Specifications are not intended to reflect all duties performed within the job.

DEFINITION

To perform a variety of professional accounting and budgeting duties, financial analysis and research relevant to economic financial data for both internal and external customers.

DISTINGUISHING CHARACTERISTICS

Financial Analyst I – This is the trainee level class in the Financial Analyst series. Positions in this class typically have minimal or no directly related work experience. The Financial Analyst I is distinguished from the II level by the performance of less than the full range of duties assigned to the II level or by performance of a limited scope of duties. Incumbents work under general supervision while learning job tasks, progressing to general direction as the procedures and processes of the assigned area of responsibility are learned. Most positions are allocated at the II level and incumbents advance to the II based on scope, complexity of work and level of independence.

Financial Analyst II - This is the intermediate entry level class in the Financial Analyst series and is distinguished from the I level by the performance of the more routine tasks and duties assigned to positions within this series. Employees at this level are not expected to perform with the same level of independence of direction and judgment on matters allocated to the Financial Analyst III. Employees work under general supervision while learning job tasks. Positions in this class are flexibly staffed and are normally filled by advancement from the I level. This position may supervise a limited number of administrative support personnel.

SUPERVISION RECEIVED AND EXERCISED

Financial Analyst I

Receipts general supervision from higher level management staff.

Financial Analyst II

Receipts direction from higher level management staff. May exercise supervision over assigned technical and/or administrative support personnel.
CITY OF MODESTO
Financial Analyst III
Page 2

ESSENTIAL AND MARGINAL FUNCTION STATEMENTS—Essential and other important responsibilities and duties may include, but are not limited to, the following:

Perform a variety of professional accounting and budgeting duties in support of departments within City government including payroll, investments and budget preparation, utilities and internal service operations.

Prepare and analyze monthly, annual and special financial statements and other documents; develop forecasts and projections; explain variances as directed.

Maintain a variety of complex and detailed records and logs related to the accounting and budgeting functions of an assigned department.

Review and update the City’s budget manual and supplemental procedures; originate communication and distribute budget preparation materials to departments.

Schedule budget preparation tasks to meet established deadlines; coordinate budget related matters with departments for both operating and capital improvement budgets; providing training and guidance when necessary.

Calculate cost and revenue forecasts; maintain statistical and economic data influencing estimates; prepare proformas, worksheets, schedules and exhibits comprising the formal budget documents.

Evaluate the budget during the execution phase; identify variances requiring corrective action; recommend appropriate corrective action.

Prepare staff reports and special analyses as required.

Verify availability of funds to finance intended departmental and Council actions; research and evaluate potential revenue sources.

Review financial documents for accuracy and completion; assure transactions are charged to correct account.

Maintain general ledgers and sub-ledgers; prepare journal entries; reconcile accounts and balances; account for transfers to other funds.

Prepare complex statistical and narrative reports to provide financial information regarding operation of assigned department using personal computer equipment.

Perform a variety of routine duties in the annual budget preparation process of one or more City departments; monitor a variety of financial transactions that affect the budget; assure availability of funds and proper account coding.

Exhibit C
Essential Functions: (Continued)

Prepare a variety of reports and other written materials regarding costs, capital outlay, revenues, cash flow projections, budget preparation procedures, fiscal impact and financial trends.

Perform routine accounting analysis of costs, fund balances, financial statements, budget worksheets and other data.

Assure compliance with established accounting policies, generally accepted accounting principles for municipal enterprises and governments and applicable laws, rules and regulations.

Monitor a variety of data processing reports regarding cash balances, billing, production, profit and loss, revenues and expenses and/or expenditures and other accounting data.

Perform routine fiscal and program analyses and make appropriate recommendations to supervisors.

Develop and maintain the chart of accounts.

Communicate effectively with all levels of staff; build and maintain positive working relationships with co-workers, other City employees and the public using principles of good customer service.

Marginal Functions:

Perform related duties as assigned.

MINIMUM QUALIFICATIONS

Financial Analyst I

Knowledge of:

Principles and practices of budget preparation, analysis & administration.

Various professional accounting standards such as generally accepted auditing standards and generally accepted accounting principles (GAAS, GAAP), generally accepted governmental auditing standards (GAGAS), and standards set by the governmental accounting standards board (GASB), financial accounting standards boards (FASB), general accounting office (GAO), and other regulatory agencies.

Technical report writing procedures.
Knowledge of: (Continued)

Knowledge of statistical methods.

Data processing applications related to routine accounting procedures.

Modern office practices, procedures and equipment including computers, computer applications and software.

Computer applications including spreadsheet, database, word processing and presentation software.

Ability to:

Analyze, verify, prepare, and maintain financial statements, documents, records and reports.

Apply various professional accounting standards to the maintenance of the City’s financial transactions.

Learn governmental accounting principles and practices.

Perform fiscal and program analyses.

Meet schedules and time lines.

Utilize computers and automated equipment to produce worksheets and reports.

Apply accounting principles to the maintenance of financial transactions.

Reconcile and maintain records and files.

Learn and apply Federal, State and local laws and regulations.

Work and control sensitive, confidential information on assignments.

Communicate clearly and concisely, both orally and in writing.

Establish and maintain cooperative working relationships with those contacted in the course of work.

Experience and Training Guidelines

Any combination of experience and training that would likely provide the required knowledge and abilities is qualifying. A typical way to obtain the knowledge and abilities would be:

Experience:

None required. One year of responsible professional accounting, budget preparation or analysis experience is highly desirable.
Training:

Equivalent to a Bachelor's degree from an accredited college or university with major course work in business administration, public administration, accounting, finance, economics or a related field.

License or Certificate:

Possession of or ability to obtain an appropriate valid California driver's license.

Possession of a Certified Public Accountant (CPA) or Certified Management Accountant (CMA) is highly desirable,

Financial Analyst II

In addition to the qualifications for Financial Analyst I:

Knowledge of:

Principles and practices of municipal accounting, grant administration and reporting, and budget preparation and control.

Methods and techniques involved in conducting analytical studies of administrative and management practices and procedures.

Laws and regulations impacting City financial activities.

Ability to:

Apply pertinent Federal, State, and local laws, codes and regulations.

Understand general relationships between local, state and federal governments, public interest groups and private enterprise as the affect the City.

Apply complex laws and regulations impacting City financial activities.

Prepare and deliver clear and concise written and oral presentations.

Supervise, train and evaluate a limited number of assigned staff.

Experience and Training Guidelines

Any combination of experience and training that would likely provide the required knowledge and abilities is qualifying. A typical way to obtain the knowledge and abilities would be:
Experience:

One year of responsible experience equivalent to Financial Analyst I in the City of Modesto. Experience including public sector accounting and budgeting is highly desirable.

Training:

Equivalent to a Bachelor’s degree from an accredited college or university with major course work in business administration, public administration, accounting, finance, economics or a related field.

License or Certificate:

Possession of, or ability to obtain, an appropriate valid California driver’s license.

Possession of a Certified Public Accountant (CPA) or Certified Management Accountant (CMA) is highly desirable.

PHYSICAL REQUIREMENTS & WORKING CONDITIONS

Mobility: frequent use of keyboard; frequent sitting for long periods of time; occasional bending or squatting. Lifting: frequently up to 10 pounds; occasionally up to 25 pounds. Vision: constant use of overall vision; frequent reading and close-up work; occasional color and depth vision. Dexterity: frequent repetitive motion; frequent writing; frequent grasping, holding, and reaching. Hearing/Talking: frequent hearing and talking, in person and on the phone. Emotional/Psychological: frequent decision making and concentration; frequent public and/or coworker contact; occasional working alone. Environmental: frequent exposure to noise.

WORKING CONDITIONS

Work is performed in a typical temperature controlled office environment subject to typical office noise and environment. Positions may require occasional overtime or weekend work and travel is rare.

<table>
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<th>Class</th>
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</table>

Exhibit C
CITY OF MODESTO
No. 3528

FINANCIAL ANALYST III

Class specifications are intended to present a descriptive list of the range of duties performed by employees in the class. Specifications are not intended to reflect all duties performed within the job.

DEFINITION

To perform a variety of complex professional accounting and budgeting duties, financial analysis and research relevant to economic financial data for both internal and external customers.

DISTINGUISHING CHARACTERISTICS

Financial Analyst III is the journey level class in the Financial Analyst series and is distinguished from the Financial Analyst I/II level by the assignment of the full range of duties and the complexity of the duties performed. Employees at this level receive only occasional instruction or assistance as new, unusual or unique situations arise, and are fully aware of the operating procedures and policies within the work unit. Positions in this class are normally filled by advancement from the I/II level. This classification receives direction from higher level management staff and may exercise supervision over assigned technical and/or administrative support personnel.

SUPERVISION RECEIVED AND EXERCISED

Receives direction from higher level management staff. May exercise supervision over assigned professional, technical and/or administrative support personnel.

ESSENTIAL AND MARGINAL FUNCTION STATEMENTS- Essential and other important responsibilities and duties may include, but are not limited to, the following:

Perform a variety of professional accounting and budgeting duties in support of departments within City government including payroll, investments and budget preparation, utilities and internal service operations.

Prepare and analyze monthly, annual and special financial statements and other documents; develop forecasts and projections; explain variances as directed.

Maintain a variety of complex and detailed records and logs related to the accounting and budgeting functions of an assigned department.

Review and update the City’s budget manual and supplemental procedures; originate communication and distribute budget preparation materials to departments.

Exhibit D
Schedule budget preparation tasks to meet established deadlines; coordinate budget related matters with departments for both operating and capital improvement budgets; providing training and guidance when necessary.

Calculate cost and revenue forecasts; maintain statistical and economic data influencing estimates; prepare proformas, worksheets, schedules and exhibits comprising the formal budget documents.

Evaluate the budget during the execution phase; identify variances requiring corrective action; recommend appropriate corrective action.

Prepare staff reports and special analyses as required.

Verify availability of funds to finance intended departmental and Council actions; research and evaluate potential revenue sources.

Review financial documents for accuracy and completion; assure transactions are charged to correct account.

Maintain general ledgers and sub-ledgers; prepare journal entries; reconcile accounts and balances; account for transfers to other funds.

Prepare complex statistical and narrative reports to provide financial information regarding operation of assigned department using personal computer equipment.

Perform a variety of routine duties in the annual budget preparation process of one or more City departments; monitor a variety of financial transactions that affect the budget; assure availability of funds and proper account coding.

Prepare a variety of reports and other written materials regarding costs, capital outlay, revenues, cash flow projections, budget preparation procedures, fiscal impact and financial trends.

Perform routine accounting analysis of costs, fund balances, financial statements, budget worksheets and other data.

Assure compliance with established accounting policies, generally accepted accounting principles for municipal enterprises and governments and applicable laws, rules and regulations.

Monitor a variety of data processing reports regarding cash balances, billing, production, profit and loss, revenues and expenses and/or expenditures and other accounting data.
Perform routine fiscal and program analyses and make appropriate recommendations to supervisors.

Develop and maintain the chart of accounts.

Communicate effectively with all levels of staff; build and maintain positive working relationships with co-workers, other City employees and the public using principles of good customer service.

Marginal Functions:

Perform related duties as assigned.

MINIMUM QUALIFICATIONS

Knowledge of:

Principles and practices of budget preparation, analysis & administration.

Various professional accounting standards such as generally accepted auditing standards and generally accepted accounting principles (GAAS, GAAP), generally accepted governmental auditing standards (GAGAS), and standards set by the governmental accounting standards board (GASB), financial accounting standards boards (FASB), general accounting office (GAO), and other regulatory agencies.

Technical report writing procedures.

Knowledge of statistical methods.

Data processing applications related to routine accounting procedures.

Modern office practices, procedures and equipment including computers, computer applications and software.

Computer applications including spreadsheet, database, word processing and presentation software.

Principles and practices of municipal accounting, grant administration and reporting, and budget preparation and control.

Methods and techniques involved in conducting analytical studies of administrative and management practices and procedures.

Laws and regulations impacting City financial activities.
Ability to:

Analyze, verify, prepare, and maintain financial statements, documents, records and reports.

Apply various professional accounting standards to the maintenance of the City’s financial transactions.

Learn governmental accounting principles and practices.

Perform fiscal and program analyses.

Meet schedules and time lines.

Utilize computers and automated equipment to produce worksheets and reports.

Apply accounting principles to the maintenance of financial transactions.

Reconcile and maintain records and files.

Learn and apply Federal, State and local laws and regulations.

Work and control sensitive, confidential information on assignments.

Communicate clearly and concisely, both orally and in writing.

Establish and maintain cooperative working relationships with those contacted in the course of work.

Apply pertinent Federal, State, and local laws, codes and regulations.

Understand general relationships between local, state and federal governments, public interest groups and private enterprise as the affect the City.

Apply complex laws and regulations impacting City financial activities.

Prepare and deliver clear and concise written and oral presentations.

Supervise, train and evaluate a limited number of assigned staff.

Analyze and prepare complex and technical financial documents and reports.

Perform fiscal and program analysis.

Provide instruction and assistance to others in resolving complex and unusual accounting/budget related problems.

Exhibit D
Ability to: (Continued)

Read and interpret complex laws and regulations impacting City financial activities.

Train and provide effective supervision or lead direction on accounting projects and activities.

Experience and Training Guidelines

Any combination of experience and training that would likely provide the required knowledge and abilities is qualifying. A typical way to obtain the knowledge and abilities would be:

Experience:

Two years of responsible experience equivalent to Financial Analyst II in the City of Modesto. Experience including public sector accounting and budgeting is highly desirable.

Training:

Equivalent to a Bachelor's degree from an accredited college or university with major course work in business administration, public administration, accounting, finance, economics or a related field.

License or Certificate:

Possession of, or ability to obtain, an appropriate valid California driver’s license.

Possession of a Certified Public Accountant (CPA) or Certified Management Accountant (CMA) is highly desirable.

PHYSICAL REQUIREMENTS & WORKING CONDITIONS

Mobility: frequent use of keyboard; frequent sitting for long periods of time; occasional bending or squatting. Lifting: frequently up to 10 pounds; occasionally up to 25 pounds. Vision: constant use of overall vision; frequent reading and close-up work; occasional color and depth vision. Dexterity: frequent repetitive motion; frequent writing; frequent grasping, holding, and reaching. Hearing/Talking: frequent hearing and talking, in person and on the phone. Emotional/Psychological: frequent decision making and concentration; frequent public and/or coworker contact; occasional working alone. Environmental: frequent exposure to noise.

Exhibit D
WORKING CONDITIONS

Work is performed in a typical temperature controlled office environment subject to typical office noise and environment. Positions may require occasional overtime or weekend work and travel is rare.
CITY OF MODESTO
No. 3529

SENIOR FINANCIAL ANALYST

Class specifications are intended to present a descriptive list of the range of duties performed by employees in the class. Specifications are not intended to reflect all duties performed within the job.

DEFINITION

To plan, organize, direct and supervise the work of assigned professional, technical and administrative personnel; and to perform a variety of advanced professional accounting and budgeting duties to include analyzing and processing financial data and preparing financial reports.

DISTINGUISHING CHARACTERISTICS

This is the advanced journey level in the Financial Analyst series. Positions at this level are distinguished from other classes within the series by the level of responsibility assumed, complexity of duties assigned, independence of action taken, by the amount of time spent performing the duties, and by the nature of the interactions. Employees in this class may supervise professional and/or administrative support personnel. Employees perform the most complex, difficult and responsible types of duties assigned to classes within this series, which may include providing direct and/or indirect supervision of assigned personnel and/or units. Employees at this level are required to be fully trained in all procedures related to assigned areas of responsibility.

SUPERVISION RECEIVED AND EXERCISED

Receives direction from higher level management staff.

May exercise technical and/or functional supervision over subordinate professional, technical and/or administrative support personnel.

ESSENTIAL AND MARGINAL FUNCTION STATEMENTS - Essential and other important responsibilities and duties may include, but are not limited to, the following:

Perform accounting functions in support of payroll, investments and budget preparation, cash management, and review general government, utilities and internal service operations.

Maintain general ledger accounts; preparing journal entries, adjustments and closing entries; reconciling accounts.

Recommend and assist in the implementation of goals and objectives; establish methods for performing a variety of professional and technical accounting functions; implement policies and procedures.

Exhibit E
Essential Functions: (Continued)

Review and evaluate laws, controls, grants, and administrative policies for guidelines in performing accounting and fiscal operations.

Plan, prioritize, assign, supervise and review the work of staffing involved in accounting and budgeting activities; serve as a technical advisor and resource to City departments and staff on accounting and budgeting related matters.

Prepare financial analysis, monitor budgets and communicate financial and budget information to data users.

Participate in the preparation of the Comprehensive Annual Financial Report and annual audit process.

Evaluate operations and activities of assigned responsibilities; recommend improvements and modifications; prepare various reports on operations and activities.

Assure compliance with Generally Accepted Accounting Principles, city ordinances and policies, and local, state and federal laws.

Plan, prioritize and review the work of staff assigned to a variety of financial, budgeting, administrative, and clerical work.

Develop schedules and methods to accomplish assignments ensuring work is completed in a timely and efficient manner.

May participate in the selection of staff; provide or coordinate staff training; work with employees to correct deficiencies; implement discipline procedures.

Participate in evaluating the activities of staff, recommending improvements and modifications.

Provide interpretation of administrative policies and technical procedures to other divisions, departments and outside agencies and organizations.

Assist in the preparation of presentation materials for the City Council, committees, outside businesses.

Respond to and resolve sensitive citizen or business inquires and complaints.

Build and maintain positive working relationships with co-workers, other City employees and the public using principles of good customer service.
Marginal Functions:
Perform related duties as assigned.

MINIMUM QUALIFICATIONS

Knowledge of:
Principles and practices of supervision, training, and personnel management.

Principles and practices of managerial accounting, reporting and finance including cost allocation.

Principles and practices of governmental accounting and budget preparation, analysis and administration.

Various professional accounting standards such as generally accepted auditing standards and generally accepted accounting principles (GAAS, GAAP), generally accepted governmental auditing standards (GAGAS), and standards set by the governmental accounting standards board (GASB), financial accounting standards boards (FASB), general accounting office (GAO), and other regulatory agencies.

Pertinent federal, state, and local laws, codes and regulations.

Principles and practices of activity-based costing and management (ABC/M).

Laws, rules and regulations related to accounting procedures.

The use of specialized accounting and budget based information systems.

Technical report writing procedures.

Policies and procedures of cash management.

Capital financing models.

Modern office procedures, methods and computer equipment; standard business software.

Ability to:
Supervise, train, and evaluate assigned staff.

Analyze and prepare complex and technical financial documents and reports.

Understand, analyze and develop utility rate models.
Ability to: (Continued)

Perform complex fiscal and program analyses.

Read, interpret, apply and explain codes, rules, regulations, policies and procedures.

Develop and recommend policies and procedures related to assigned work unit.

Perform the most complex budget-related duties of the work unit.

Calculate and recommend various rates and fees.

Analyze financial data, develop conclusions based on the analysis and recommend one or more needed actions to prevent or solve problems.

Communicate effectively, both orally and in writing.

Establish and maintain effective working relationships with those contacted in the course of work.

Reconcile and maintain records and files.

Experience and Training Guidelines

Any combination of experience and training that would likely provide the required knowledge and abilities is qualifying. A typical way to obtain the knowledge and abilities would be:

Experience:

Three years of professional journey level accounting, auditing or budgeting experience including one year providing technical and functional supervision over assigned personnel. Experience is governmental accounting, grant accounting and auditing is desirable.

Training:

Equivalent to a Bachelor's degree from an accredited college or university with major course work in business administration, public administration, accounting, finance, economics or a related field.

License or Certificate:

Possession of or ability to obtain an appropriate valid California driver's license.

Possession of a Certified Public Accountant (CPA) or Certified Management Accountant (CMA) is highly desirable.
PHYSICAL REQUIREMENTS & WORKING CONDITIONS

**Mobility:** frequent use of keyboard; frequent sitting for long periods of time; occasional bending or squatting. **Lifting:** frequently up to 10 pounds; occasionally up to 25 pounds. **Vision:** constant use of overall vision; frequent reading and close-up work; occasional color and depth vision. **Dexterity:** frequent repetitive motion; frequent writing; frequent grasping, holding, and reaching. **Hearing/Talking:** frequent hearing and talking, in person and on the phone. **Emotional/Psychological:** frequent decision making and concentration; frequent public and/or coworker contact; occasional working alone. **Environmental:** frequent exposure to noise.

WORKING CONDITIONS

Work is performed in a typical temperature controlled office environment subject to typical office noise and environment. Positions may require occasional overtime or weekend work and travel is rare.
MODESTO CITY COUNCIL
RESOLUTION NO. 2010-232

A RESOLUTION AMENDING EXHIBIT “A” OF RESOLUTION NO. 2008-688
TO REVISE THE CLASS RANGE TABLE FOR UNREPRESENTED
MANAGEMENT AND CONFIDENTIAL NON-SWORN CLASSES TO
DELETE BUDGET MANAGER

WHEREAS, the City Council desires to amend Exhibit “A” of Resolution No.
2008-688, which approved the Class Range Table for Unrepresented Management and
Confidential Non-Sworn Classes,

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

SECTION I. AMENDMENT TO RESOLUTION NO. 2008-688. Exhibit "A"
entitled, "City of Modesto Class Range Table Unrepresented Management and
Confidential Non-Sworn Classes Effective January 6, 2009," attached to Resolution No.
2008-688, is hereby amended as shown on the amended Exhibit “A” entitled “City of
Modesto Class Range Table Unrepresented Management and Confidential Non-Sworn
Classes Effective June 8, 2010," which is attached hereto and made a part hereof as
though set forth in full herein. Said amended Exhibit “A” deletes the classification of
Budget Manager.

SECTION II. EFFECTIVE DATE. This resolution shall become effective on
and after June 8, 2010.
The foregoing resolution was introduced in a regular meeting of the Council of the City of Modesto held on the 1st day of June, 2010, by Councilmember Hawn, 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: Geer, Hawn, Lopez, Marsh, Muratore, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST:  

(SEAL)  

APPROVED AS TO FORM:  

By:  

SUSANA ALCALA WOOD, City Attorney
CITY OF MODESTO  
CLASS RANGE TABLE  
UNREPRESENTED MANAGEMENT AND CONFIDENTIAL NON-SWORN CLASSES  
Effective June 8, 2010

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<tr>
<td>2422</td>
<td>Office Supervisor - Personnel</td>
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| 2425  | Executive Assistant to the City Council  
       | Executive Assistant to the City Manager  
       | Paralegal |
| 2427  | Legal Services Administrator |
| 2431  | Equal Opportunity Analyst/Paralegal |
| 2434  | Senior Auditor |
| 2439  | Employee Relations Coordinator |
| 2444  | Deputy City Attorney I  
       | Risk Manager |
| 2448  | Deputy City Attorney II |
| 2452  | **Budget Manager**  
       | Deputy Chief Information Officer  
       | Deputy City Attorney III  
       | Deputy Director of Community and Economic Development  
       | Deputy Director of Cultural and Enterprise Services  
       | Deputy Director of Finance  
       | Deputy Director of Human Resources  
       | Deputy Director of Public Works – Operations  
       | Deputy Director of Recreation and Neighborhoods |
| 2455  | Deputy Director of Utility Planning and Projects |
| 2456  | Senior Deputy City Attorney |
| 2462  | Assistant City Attorney |

Exhibit "A"
MODESTO CITY COUNCIL
RESOLUTION NO. 2010-233

A RESOLUTION AMENDING EXHIBIT “A” OF RESOLUTION NO. 2008-683, TO REVISE THE CLASS RANGE TABLE FOR REPRESENTED MANAGEMENT AND CONFIDENTIAL NON-SWORN CLASSES TO ADD FINANCIAL ANALYST I, FINANCIAL ANALYST II, FINANCIAL ANALYST III, SENIOR FINANCIAL ANALYST, BUDGET AND FINANCIAL ANALYSIS MANAGER, AND CUSTOMER SERVICES MANAGER AND DELETE RATE & FEE ANALYST, ACCOUNTANT II, BUDGET ANALYST I, SENIOR ACCOUNTANT, BUDGET ANALYST II, AND SUPERVISING ACCOUNTANT

WHEREAS, the City Council desires to amend Exhibit “A” of Resolution No. 2008-683, which approved the Class Range Table for Represented Management and Confidential Non-Sworn Classes,

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

SECTION I. AMENDMENT TO RESOLUTION NO. 2008-683. Exhibit "A" entitled, "City of Modesto Class Range Table Represented Management and Confidential Non-Sworn Classes Effective January 6, 2009," attached to Resolution No. 2008-683, is hereby amended as shown on the amended Exhibit “A” entitled “City of Modesto Class Range Table Represented Management and Confidential Non-Sworn Classes Effective June 8, 2010,” which is attached hereto and made a part hereof as though set forth in full herein. Said amended Exhibit “A” establishes the salary ranges for the following “non-exempt” classifications:

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<th>CLASSIFICATION</th>
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<tr>
<td>FINANCIAL ANALYST II</td>
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</table>

Said amended Exhibit “A” establishes the salary ranges for the following “exempt” classifications:
Said amended Exhibit "A" also deletes the classifications of Rate & Fee Analyst, Accountant II, Budget Analyst I, Senior Accountant, Budget Analyst II, and Supervising Accountant.

SECTION II. EFFECTIVE DATE. This resolution shall become effective on and after June 8, 2010.

The foregoing resolution was introduced in a regular meeting of the Council of the City of Modesto held on the 1st day of June, 2010, by Councilmember Hawn, 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: Geer, Hawn, Lopez, Marsh, Muratore, Olsen, Mayor Ridenour

**NOES:** Councilmembers: None

**ABSENT:** Councilmembers: None

ATTEST: 

**APPROVED AS TO FORM:**

By: 

SUSANA ALCALA WOOD, City Attorney
CITY OF MODESTO  
CLASS RANGE TABLE  
REPRESENTED MANAGEMENT AND CONFIDENTIAL NON-SWORN CLASSES  
Effective **June 8, 2010**

<table>
<thead>
<tr>
<th>RANGE</th>
<th>TITLE</th>
</tr>
</thead>
<tbody>
<tr>
<td>407</td>
<td>Administrative Office Assistant II (Confidential)</td>
</tr>
<tr>
<td>411</td>
<td>Administrative Office Assistant III (Confidential)</td>
</tr>
<tr>
<td>412</td>
<td>Police Clerk II (Confidential)</td>
</tr>
<tr>
<td>414</td>
<td>Legal Secretary I</td>
</tr>
</tbody>
</table>
| 415   | Administrative Services Technician I (Confidential)  
Senior Administrative Office Assistant (Confidential) |
| 418   | Legal Secretary II  
Systems Technician I |
| 419   | Administrative Services Technician II (Confidential)  
Workers’ Compensation Claims Assistant |
| 420   | Deputy City Clerk  
Employee Benefits Coordinator  
Executive Assistant  
Senior Legal Secretary |
| 422   | Office Supervisor  
Systems Technician II  
Workers’ Compensation Claims Examiner I |
| 423   | Custodian Supervisor  
Parking Services Supervisor |
| 424   | Buyer |
| 425   | Police Facilities Coordinator  
Public Information Analyst |
| 426   | Assistant Planner  
Central Stores Supervisor  
**Financial Analyst I**  
Senior Systems Technician |

Exhibit “A”
<table>
<thead>
<tr>
<th>RANGE</th>
<th>TITLE</th>
</tr>
</thead>
</table>
| 427   | Administrative Analyst I  
       | Animal Control Supervisor  
       | Human Resources Analyst I  
       | Police Civilian Supervisor  
       | Rate and Fee Analyst  
       | Technology Solutions Analyst I  
       | Workers’ Compensation Claims Examiner II |
| 428   | Accountant II  
       | Assistant City Clerk |
| 430   | Associate Planner  
       | Budget Analyst I  
       | Financial Analyst II  
       | Senior Buyer  
       | Software Analyst I  
       | Systems Engineer I |
| 431   | Administrative Analyst II  
       | Events Coordinator  
       | Human Resources Analyst II  
       | Risk and Loss Control Coordinator  
       | Senior Workers’ Compensation Claims Examiner  
       | Technology Solutions Analyst II |
| 432   | Compost Facility Supervisor  
       | Junior Engineer  
       | Neighborhood Preservation Supervisor  
       | Operations Supervisor  
       | Parks Project Coordinator  
       | Recreation Supervisor  
       | Senior Accountant  
       | Senior Crime and Intelligence Analyst  
       | Wastewater Collection Systems Supervisor  
<pre><code>   | Water Quality Control Plant Maintenance Supervisor |
</code></pre>
<p>| 433   | Water Resources Analyst |</p>
<table>
<thead>
<tr>
<th>RANGE</th>
<th>TITLE</th>
</tr>
</thead>
</table>
| 434   | **Budget Analyst II**  
Customer Services Supervisor  
**Financial Analyst III**  
Recycling Program Coordinator  
Senior Community Development Program Specialist  
Software Analyst II  
**Supervising Accountant**  
Systems Engineer II |
| 435   | Assistant Transportation Planner  
Business Analyst  
Cultural Services Program Manager  
Emergency Medical Services Coordinator  
Facility Supervisor  
Management Analyst  
Organizational Development Coordinator  
Transit Analyst  
Weed and Seed Program Coordinator |
| 436   | Assistant Engineer  
Deputy Fire Marshal  
Electrical Supervisor  
Environmental and Water Quality Laboratory Supervisor  
Housing Rehabilitation Supervisor  
Senior Planner |
| 437   | Senior Human Resources Analyst |
| 438   | Associate Land Surveyor  
Integrated Waste Specialist  
Property Agent  
Public Safety Business Services Analyst  
**Senior Financial Analyst**  
Senior Software Analyst  
Senior Systems Engineer  
Water Distribution and Production Supervisor |
| 439   | Administrative Services Officer  
Associate Transportation Planner  
Senior Business Analyst |
<table>
<thead>
<tr>
<th>RANGE</th>
<th>TITLE</th>
</tr>
</thead>
</table>
| 440   | Associate Engineer  
Environmental Regulatory Compliance Administrator  
Recreation Program Manager  
Water Quality Control Operations Supervisor |
| 441   | Building Maintenance Manager  
Events Supervisor  
Fleet Manager  
Housing and Urban Development Manager  
Infrastructure Financing Program Administrator  
Parks Operations Manager  
Parks Planning and Development Manager  
Streets Manager  
Urban Forestry Manager  
Wastewater Collections Manager |
| 442   | **Budget and Financial Analysis Manager**  
Construction Inspection Supervisor  
**Customer Services Manager**  
Principal Accountant  
Principal Software Analyst  
Principal Systems Engineer  
Purchasing Manager |
| 443   | Associate Civil/Traffic Engineer  
Senior Transportation Planner |
| 444   | Airport Manager  
Building Inspection Program Coordinator  
Building Inspection Supervisor  
Principal Planner  
Solid Waste Program Manager  
Transit Manager |
| 446   | Assistant Chief Building Official  
Information Technology Manager  
Water Quality Control Plant Manager |
| 447   | Traffic Operations Engineer  
Water Systems Manager |
<table>
<thead>
<tr>
<th>RANGE</th>
<th>TITLE</th>
</tr>
</thead>
</table>
| 450   | Business Development Manager  
        | Chief Building Official  
        | Planning Manager  
        | Senior Civil Engineer |
| 452   | City Engineer  
        | Traffic Engineer |
MODESTO CITY COUNCIL
RESOLUTION NO. 2010-234

A RESOLUTION AMENDING EXHIBIT “A” OF RESOLUTION NO. 2008-682 TO REVISE THE CLASS RANGE TABLE FOR GENERAL NON-SWORN CLASSES TO DELETE ACCOUNTANT I

WHEREAS, the City Council desires to amend Exhibit “A” of Resolution No. 2008-682, which approved the Class Range Table for General Non-Sworn Classes,

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

SECTION I. AMENDMENT TO RESOLUTION NO. 2008-682 Exhibit "A" entitled, "City of Modesto Class Range Table General Non-Sworn Classes Effective January 6, 2009," attached to Resolution No. 2008-682, is hereby amended as shown on the amended Exhibit “A” entitled “City of Modesto Class Range Table General Non-Sworn Classes Effective June 8, 2010,” which is attached hereto and made a part hereof as though set forth in full herein. Said amended Exhibit “A” deletes the classification of Accountant I.

SECTION II. EFFECTIVE DATE. This resolution shall become effective on and after June 8, 2010.
The foregoing resolution was introduced in a regular meeting of the Council of the City of Modesto held on the 1st day of June, 2010, by Councilmember Hawn, 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: Geer, Hawn, Lopez, Marsh, Muratore, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: 

(SEAL)

APPROVED AS TO FORM:

By: Susana Alcala Wood, City Attorney
<table>
<thead>
<tr>
<th>RANGE</th>
<th>TITLE</th>
</tr>
</thead>
</table>
| 103   | Administrative Office Assistant I  
|       | Custodian I |
| 107   | Administrative Office Assistant II  
|       | Custodian II  
|       | Exhibits Coordinator |
| 109   | Account Clerk I  
|       | Customer Services Account Clerk I |
| 110   | Maintenance Worker I |
| 111   | Account Clerk II  
|       | Administrative Office Assistant III  
|       | Custodian Crewleader  
|       | Customer Services Account Clerk II |
| 114   | Electrician Assistant I  
|       | Equipment Service Technician  
|       | Maintenance Worker II  
|       | Production Technician  
|       | Storeskeeper |
| 115   | Administrative Services Technician I  
|       | Senior Administrative Office Assistant  
|       | Senior Customer Services Account Clerk |
| 116   | Account Technician  
|       | Airport Maintenance Worker  
|       | Equipment Operator  
|       | Groundskeeper  
|       | Traffic Operations Technician  
|       | Wastewater Collection Systems Operator I  
|       | Water Distribution Operator I |

Exhibit "A"
<table>
<thead>
<tr>
<th>RANGE</th>
<th>TITLE</th>
</tr>
</thead>
</table>
| 118   | Electrician Assistant II  
Fleet Procurement Technician  
Parking Facilities Crewleader  
Parks Maintenance Crewleader  
Recreation Coordinator  
Senior Storeskeeper  
Tree Trimmer  
Water Distribution Operator II |
| 119   | Administrative Services Technician II  
Building Maintenance Technician  
Code Enforcement Officer I -Neighborhood Preservation Unit  
Customer Services Account Technician  
Parks Maintenance Mechanic |
| 120   | Assistant Buyer  
Environmental Compliance Technician  
Laboratory Analyst I  
Senior Equipment Operator  
Traffic Striping Crewleader  
Wastewater Collection System Operator II  
Wastewater Treatment Plant Operator I  
Water Quality Control Technician I  
Water Resource Specialist |
| 121   | Solid Waste Enforcement Officer |
| 122   | Accountant I  
Development Services Technician I  
Electrician Assistant III  
Equipment Mechanic  
Tree Trimmer Crewleader  
Welder/Fabricator |
| 123   | Code Enforcement Officer II -Neighborhood Preservation Unit  
Engineering Assistant Trainee |
<table>
<thead>
<tr>
<th>RANGE</th>
<th>TITLE</th>
</tr>
</thead>
</table>
| 124   | Airport Maintenance Crewleader  
       | Community Development Program Specialist I  
       | Cross Connection Specialist  
       | Development Services Technician II  
       | Environmental Compliance Inspector I  
       | Fire Equipment Mechanic  
       | Head Groundskeeper  
       | Heavy Equipment Mechanic  
       | Laboratory Analyst II  
       | Operations Crewleader  
       | Wastewater Treatment Plant Operator II  
       | Water Conservation Specialist  
       | Water Distribution Operator III  
       | Water Production Operator I  
       | Water Quality Control Technician II  
       | Water Services Equipment Operator I |
| 125   | Parking Adjudication Program Coordinator |
| 126   | Equipment Mechanic Crewleader  
       | Housing Financial Specialist  
       | Housing Rehabilitation Specialist I  
       | Wastewater Collection System Crewleader  
       | Wastewater Treatment Plant Operator III |
| 127   | Engineering Assistant I |
| 128   | Building Inspector I  
       | Community Development Program Specialist II  
       | Electrician - Traffic and Buildings  
       | Electrician - Utilities  
       | Environmental Compliance Inspector II  
       | Heavy Equipment Mechanic Crewleader  
       | Instrumentation Technician  
       | Senior Fire Equipment Mechanic  
       | Water Production Operator II  
       | Water Services Equipment Operator II |
| 130   | Construction Inspector  
       | Housing Rehabilitation Specialist II  
       | Laboratory Analyst III  
<pre><code>   | Senior Wastewater Treatment Plant Operator |
</code></pre>
<table>
<thead>
<tr>
<th>RANGE</th>
<th>TITLE</th>
</tr>
</thead>
<tbody>
<tr>
<td>131</td>
<td>Engineering Assistant II</td>
</tr>
</tbody>
</table>
| 132   | Building Inspector II  
      | Environmental Review Specialist  
      | Senior Environmental Compliance Inspector  
      | Water Division Crewleader |
| 133   | Assistant Land Surveyor  |
| 134   | Plans Examiner  
      | Senior Construction Inspector |
| 135   | Engineering Project Coordinator  |
| 136   | Senior Building Inspector  |
MODESTO CITY COUNCIL
RESOLUTION NO. 2010-235

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, in May, 2010, representatives from SunBlest Valley Market applied for a temporary street closure permit to operate a farmers’ market on 10th Street, between H and I Streets, in downtown Modesto, and

WHEREAS, the temporary permit was issued, however the applicant was advised that City Council approval is required for ongoing authorization to use this location to operate a farmers’ market, and

WHEREAS, the applicant has requested to operate a farmers’ market on 10th Street, between H and I Streets, in downtown Modesto with the conditions described in Attachment A, and

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

WHEREAS, there are currently three (3) farmers’ markets in Modesto: the Certified Farmers’ Market on 16th Street, between H and I Streets; the Farmers’ Market operating on McHenry Avenue; and a third market at Kaiser Permanente Hospital, and

WHEREAS, the Modesto Certified Farmers’ Market received Council approval to operate and close 16th Street between H and I Streets on Thursdays and Saturdays, and

WHEREAS, the markets on McHenry Avenue and at Kaiser Permanente are located on private property and do not require street closure, and
WHEREAS, because Kaiser is located in a Planned Development Zone, an amendment allowing operation of a farmers’ market was approved by Council on March 28, 2009,

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, subject to the conditions described in Attachment A.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 1st day of June, 2010, by Councilmember Hawn, 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: Geer, Hawn, Lopez, Marsh, Muratore, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: 
STEPHANIE LOPEZ, City Clerk

(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 Saturday in May and each Saturday thereafter through the last Saturday 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 6:00 a.m. to 2:00 p.m., with the actual hours of operation 7:30 a.m. to 1:00 p.m. The hours of 6:00 a.m. – 7:30 a.m. and 1:00 p.m. to 2:00 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 2:00 p.m. on each Saturday 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.
MODESTO CITY COUNCIL
RESOLUTION NO. 2010-236

A RESOLUTION OF INTENTION TO LEVY AND COLLECT ASSESSMENTS FOR LANDSCAPE MAINTENANCE ASSESSMENT DISTRICT NO. 2 FOR DRY CREEK MEADOWS SUBDIVISIONS NOS. 7-10, CREEKWOOD MEADOWS SUBDIVISION AND YOSEMITE MEADOWS SUBDIVISION UNITS 1 AND 2, AND SETTING A PUBLIC HEARING ON THE PROPOSED ASSESSMENTS TO BE HELD ON AUGUST 4, 2010

WHEREAS, Resolution No. 89-460 adopted by the Council of the City of Modesto on April 4, 1989, initiated proceedings for the formation of Landscape Assessment District No. 2 for the purpose of administering the maintenance of landscaping in the public right of way within the street medians and adjacent to the access control walls in Dry Creek Meadows Subdivisions Nos. 7-10, Creekwood Meadows Subdivision and Yosemite Meadows Subdivision Units Nos. 1 and 2, and

WHEREAS, said assessment district was formed in accordance with the “Landscaping and Lighting Act of 1972”, (Streets and Highways Code Sections 22500 through 22679), and

WHEREAS, Section 22623 of the Streets and Highways Code requires the City Engineer, the person designated by the Council as Engineer of Work for Assessment District No. 2, to prepare and file an annual report, and

WHEREAS, the City Engineer, said Engineer of Work, has prepared and filed said annual report with the City Clerk, and

WHEREAS, the Council has approved said annual report by motion, and

WHEREAS, Streets and Highways Code Section 22623 requires the Council to adopt a resolution of intention which shall include the following:
a. Declaration of intention of the Council to levy and collect assessments within the assessment district for the fiscal year stated in said annual report.

b. General description of the existing improvements and proposed improvements and any substantial changes proposed to be made in the existing improvements.

c. Reference to the assessment district by its distinctive designation and indication of the general location of the district.

d. Reference to said annual report, on file with the City Clerk, for a full and detailed description of the improvements, the boundaries of the assessment district and any zones therein, and the proposed assessments upon assessable lots and parcels of land within the district.

e. Notice of the time, as fixed by Streets and Highways Code Section 22625, and the place for hearing by the Council on the levy of the proposed assessment,

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

1. The City Council intends to levy and collect assessments within Landscape Maintenance Assessment District No. 2 during Fiscal Year 2010-11.

2. There are no proposed new improvements or any substantial changes in the existing improvements within the existing Landscape Maintenance
Assessment District No. 2, and the existing improvements to be made in said assessment district are generally described as follows:

The City shall provide maintenance, in perpetuity, of landscaping and any and all improvements required for such maintenance including, but not limited to, landscape irrigation systems in the following locations:

a. Street medians in Creekwood Drive
b. Areas adjacent to the access control walls along Creekwood Drive
c. Areas adjacent to the access control walls along Claus Road

3. Landscape Maintenance Assessment District No. 2 is located in the County of Stanislaus, within the City limits of the City of Modesto and is more specifically located on the northeast corner of Yosemite Boulevard and North McClure Road. District 2 is bounded by Yosemite Boulevard on the south, North McClure Road on the west, Yosemite Meadows Drive on the east, and Mechalys Way on the north.

4. Said annual report filed with the City Clerk and approved by the Council by motion does provide a full and detailed description of the improvements, the boundaries of the assessment district and any zones therein, and the proposed assessments upon assessable lots and parcels of land within Landscape Maintenance Assessment District No. 2.

5. On Wednesday, the 4th day of August, 2010, at the hour of 5:30 p.m., the City Council will conduct a public hearing on the question of the levy of the proposed annual assessment. The hearing will be held at the meeting place of the City
Council located in the Tenth Street Place Chambers located at 1010 10th Street, Modesto, California.

6. The City Clerk is authorized and directed to give the notice of hearing required by the “Landscaping and Lighting Act of 1972”.

7. The levy and collection of assessments as set forth in this resolution shall follow the procedural and substantive requirements of Proposition 218 pursuant to Article 13D, Section 5(a) of the California Constitution.

The foregoing resolution was introduced at a special meeting of the Council of the City of Modesto held on the 9th day of June, 2010, by Councilmember Hawn, 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: Geer, Hawn, Lopez, Marsh, Muratore, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

(Seal)

ATTEST: STEPHANIE LOPEZ, City Clerk

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2010-237

A RESOLUTION OF INTENTION TO LEVY AND COLLECT ASSESSMENTS FOR LANDSCAPE MAINTENANCE ASSESSMENT DISTRICT NO. 1 FOR DRY CREEK MEADOWS SUBDIVISIONS NOS. 1 – 6 AND SETTING A PUBLIC HEARING ON THE PROPOSED ASSESSMENTS TO BE HELD ON AUGUST 4, 2010

WHEREAS, Resolution No. 88-935, adopted by the Council of the City of Modesto on December 13, 1988, initiated proceedings for the formation of Landscape Assessment District No. 1 for the purpose of administering the maintenance of landscaping in the public right-of-way within the street medians and adjacent to the access control walls in Dry Creek Meadows Subdivisions Nos. 1-6, and

WHEREAS, said assessment district was formed in accordance with the “Landscape and Lighting Act of 1972”, (Streets and Highways Code Sections 22500 through 22679), and

WHEREAS, Section 22623 of the Streets and Highways Code requires the City Engineer, the person designated by this Council as Engineer of Work for Assessment District No. 1, to prepare and file an annual report, and

WHEREAS, the City Engineer, said Engineer of Work, has prepared and filed said annual report with the City Clerk, and

WHEREAS, the Council has approved said annual report by motion, and

WHEREAS, Streets and Highways Code Section 22623 requires the legislative body (the City Council) to adopt a resolution of intention which shall include the following:
a. Declaration of intention of the legislative body (the City Council) to levy and collect assessments within the assessment district for the fiscal year stated in the annual report.

b. General description of the existing improvements and proposed improvements and any substantial changes proposed to be made in the existing improvements.

c. Reference to the assessment district by its distinctive designation and indication of the general location of the district.

d. Reference to said annual report, on file with the City Clerk, for a full and detailed description of the improvements, the boundaries of the assessment district and any zones therein, and the proposed assessments upon assessable lots and parcels of land within the district.

e. Notice of the time, as fixed by the Streets and Highways Code Section 22625, and the place for hearing by the legislative body (the City Council) on the levy of the proposed assessment.

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

1. The City Council intends to levy and collect assessments within Landscape Maintenance Assessment District No. 1 during the fiscal year 2010-11.

2. There are no proposed new improvements or any substantial changes in existing improvements in Dry Creek Meadows Subdivisions Nos. 1-6 and that
the existing improvements to be made in said assessment district are generally described as follows:

The City shall provide maintenance, in perpetuity, of landscaping and any and all improvements required for such maintenance including, but not limited to, landscape irrigation systems in the following locations:

a. Street medians in Creekwood Drive
b. Areas adjacent to the access control walls along Creekwood Drive
c. Areas adjacent to the access control walls along Claus Road

3. Landscape Maintenance Assessment District No. 1 is located in the County of Stanislaus, within the City Limits of the City of Modesto and is more specifically located on the west side of Claus Road, between Modesto Irrigation District Lateral No. 2 and State Route 132 (Yosemite Boulevard).

4. Said annual report filed with the City Clerk and approved by the Council by motion does provide a full and detailed description of the improvements, the boundaries of the assessment district and any zones therein, and the proposed assessments upon assessable lots and parcels of land within Landscape Maintenance Assessment District No. 1.

5. On Wednesday, the 4th day of August, 2010, at the hour of 5:30 p.m., the City Council will conduct a public hearing on the question of the levy of the proposed annual assessment. The hearing will be held at the meeting place of the City
Council located in the Tenth Street Place Chambers located at 1010 10th Street, Modesto, California.

6. The City Clerk is authorized and directed to give the notice of hearing required by the “Landscape and Lighting Act of 1972”.

7. The levy and collection of assessments as set forth in this resolution are exempt from the procedural and substantive requirements of Proposition 218 pursuant to Article XIII, Section 5(a) of the California Constitution.

The foregoing resolution was introduced at a special meeting of the Council of the City of Modesto held on the 9th day of June, 2010, by Councilmember Hawn, 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: Geer, Hawn, Lopez, Marsh, Muratore, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: ____________________________

(SIGNATURE)

STEFANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: ____________________________

SUSANA ÁLcala WOOD, City Attorney
A RESOLUTION AUTHORIZING THE SOLE SOURCE PROCUREMENT FOR
THE PURCHASE AND INSTALLATION OF MOTOROLA P25 SIMULCAST
CELL, DIGITAL TRUNKING PUBLIC SAFETY COMMUNICATION
EQUIPMENT FOR THE MODESTO POLICE DEPARTMENT AND
STANISLAUS REGIONAL COMMUNICATION CENTER, TO MOTOROLA
COMMUNICATIONS, BURLINGAME, CA, AND DELTA WIRELESS,
TURLOCK, CA; AND AUTHORIZING THE PURCHASING MANAGER, OR
HIS DESIGNEE, TO ISSUE PURCHASE ORDERS FOR AN ESTIMATED
TOTAL COST OF $984,018

WHEREAS, two years ago Stanislaus County hired MACRO Corp. through a
Request for Proposal (RFP) process to perform a countywide communications study, and

WHEREAS, MACRO Corp. recommended a countywide, 14 site, 700-800MHz,
P25, simulcast trunking system be installed to replace all existing communication
systems in the county, and

WHEREAS, this system will provide much needed inter-operability between all
agencies and will improve radio communications countywide, and

WHEREAS, based on MACRO’s recommendations, a committee was formed to
look at available P25 simulcast trunking systems and to select the best system to fit the
needs of all agencies within Stanislaus County, and

WHEREAS, the committee researched P25 standards, manufactures of P25
backbone equipment, and developed a list of minimum requirements, as well as an
outlined plan of the sites that were to be installed first for the new communications
system, and

WHEREAS, the committee unanimously selected the Motorola simulcast solution
over the other two manufacturers, and

RESERVED
WHEREAS, Delta Wireless is the current contracted vendor for radio backbone equipment installation and maintenance for the County and the Cities of Turlock, Ceres and Modesto, and

WHEREAS, the equipment that will be installed in this project is the newest technology available and requires factory trained and authorized technicians to install and maintain, and

WHEREAS, to ensure that our factory warranty is not jeopardized Motorola requires that a Premier Service Provider must install and maintain this equipment, and

WHEREAS, Delta Wireless is the only service provider that meets the qualifications in the Sacramento, Stanislaus, San Joaquin County area, and

WHEREAS, Modesto Municipal Code (MMC) Section 8-3.203 generally requires all purchases, which meet or exceed $50,000 for material, equipment or contractual services to be formally bid, and

WHEREAS, one exception, MMC Section 8-3.204(b) states, “Where the Purchasing Agency’s requirements can be met solely by a single article or process.” The sole source procurement for the purchase and installation of Motorola P25 Simulcast Cell, Digital Trunking Public Safety Communication Equipment for the Modesto Police Department and Stanislaus Regional Communication Center, to Motorola Communications, Burlingame, CA, and Delta Wireless, Turlock, CA, conforms to the Modesto Municipal Code,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves a sole source procurement for the purchase and installation of Motorola P25 Simulcast Cell, Digital Trunking Public Safety Communication Equipment
for the Modesto Police Department and Stanislaus Regional Communication Center, to
Motorola Communications, Burlingame, CA and Delta Wireless, Turlock CA.

BE IT FURTHER RESOLVED that the Purchasing Manager, or his designee, is
hereby authorized to issue purchase orders for an estimated total cost of $984,018.

The foregoing resolution was introduced at a special meeting of the Council of the
City of Modesto held on the 9th day of June, 2010, by Councilmember Hawn, 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: Geer, Hawn, Lopez, Marsh, Muratore, Olsen,
Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2010-239

A RESOLUTION AMENDING THE MULTI-YEAR 2009/10 OPERATING BUDGET ESTIMATING REVENUE OF $350,738 FROM STANISLAUS COUNTY FROM THE 2008 COPS GRANT TO COVER THE REMAINING EXPENSES FOR THIS PURCHASE

WHEREAS, two years ago Stanislaus County hired MACRO Corp. through a Request for Proposal (RFP) process to perform a countywide communications study, and

WHEREAS, MACRO Corp recommended a countywide, 14 site, 700-800MHz, P25, simulcast trunking system be installed to replace all existing communication systems in the County, and

WHEREAS, based on MACRO’s recommendations, a committee was formed to look at available P25 simulcast trunking systems and to select the best system to fit the needs of all agencies within Stanislaus County, and

WHEREAS, the committee unanimously selected the Motorola simulcast solution, and

WHEREAS, Delta Wireless is the current contracted vendor for radio backbone equipment installation and maintenance for the County and the Cities of Turlock, Ceres and Modesto, and

WHEREAS, the estimated total cost for this purchase is $984,018 which will be partially funded through two City of Modesto 2008 and 2009 COPS grants in the amount of $633,280, and

WHEREAS, the additional funding in the amount of $350,738 will be funded through a Stanislaus County 2008 COPS grant, and
WHEREAS, Stanislaus County will be the fiscal agent for this grant and will reimburse the City of Modesto for their portion of the cost for this purchase, and

WHEREAS, the Multi-Year 2009/10 Operating Budget will be amended in the amount of $350,738 and appropriating funds in organization 0410-190-2910 for the Stanislaus County 2008 COPS grant to fund this purchase,

Revenues:

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<th>Code</th>
<th>Description</th>
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**TOTAL** $984,018

Expenses:

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<td>Non-CIP Capital</td>
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</table>

**TOTAL** $984,018

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves amending the Multi-Year 2009/10 Operating Budget estimating revenue of $350,738 from Stanislaus County from the 2008 COPS grant to cover the remaining expenses for this purchase.

BE IT FURTHER RESOLVED that the Director of Finance, or her designee, is hereby authorized to take the necessary steps to implement the provisions of this resolution.
The foregoing resolution was introduced at a special meeting of the Council of the City of Modesto held on the 9th day of June, 2010, by Councilmember Hawn, 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: Geer, Hawn, Lopez, Marsh, Muratore, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2010-240

A RESOLUTION APPROVING AN AGREEMENT WITH THE STATE OF CALIFORNIA, COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING (POST), FOR UP TO $14,490 TO PROVIDE TRAINING FOR 70 STUDENTS IN FOUR-HOUR FORCE OPTIONS SIMULATOR COURSES AND 70 STUDENTS IN FOUR-HOUR MOBILE FORCE OPTIONS SIMULATOR TRAINING COURSES, AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE AGREEMENT

WHEREAS, the Modesto Police Department acquired the Force Options Simulator (FOS) in 1999, and

WHEREAS, the FOS is a 42-foot trailer that contains state-of-the-art video technology, and

WHEREAS, the video scenarios place an officer in a position to make critical decisions regarding the use of force, and

WHEREAS, the FOS training provides the student with practical handling of volatile situations and the proper use of available force options, and

WHEREAS, the training goal is to reduce unnecessary deaths, injuries, liability costs, and improve safety overall for California law enforcement personnel and the public, and

WHEREAS, when the Police Department acquired the FOS, the State of California Commission on Peace Officer Standards and Training (POST) agreed to reimburse the Modesto Police Department for training administered via the FOS, or the Mobile FOS, and

WHEREAS, when the training is conducted locally, the FOS reimbursement is $79.00 per student, and
WHEREAS, when the training is conducted outside the local area, the reimbursement is $128.00 per student, and

WHEREAS, the maximum reimbursement is 70 students locally ($5,530) and 70 students when the simulator is at another jurisdiction ($8,960), and

WHEREAS, the projected total annual reimbursement is $14,490, and

WHEREAS, staff estimates these reimbursements will fully cover the cost of the officer’s salary, per diem, mileage, and routine maintenance expenses for the simulator and transport vehicle, and

WHEREAS, POST is requesting a renewal of the Agreement for the term July 1, 2010 through June 30, 2011, and

WHEREAS, the City of Modesto will realize General Fund Revenue of up to $14,490 into new revenue account 0100-190-1921-3126, Simulator Training Account,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves an Agreement with the State of California, Commission on Peace Officer Standards and Training (POST), for up to $14,490 to provide training for 70 students in four-hour Force Options Simulator Courses and 70 students in four-hour Mobile Force Options Simulator training courses.

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 special meeting of the Council of the City of Modesto held on the 9th day of June, 2010, by Councilmember Hawn, 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: Geer, Hawn, Lopez, Marsh, Muratore, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: 

[Signature]

STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: 

[Signature]

SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2010-241

RESOLUTION AUTHORIZING SUBMISSION OF THE CITY’S TRANSPORTATION DEVELOPMENT ACT TRANSIT CLAIM FOR FISCAL YEAR 2010-2011 TO THE STANISLAUS COUNCIL OF GOVERNMENTS (STANCOG) IN THE AMOUNT OF $6,333,261

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

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

WHEREAS, the City has prepared its TDA claim for Fiscal Year 2010-2011 pursuant to these sections of the California PUC, and

WHEREAS, the City’s Transit TDA Claim for Fiscal Year 2010-2011 is $6,333,261, and

WHEREAS, the total Transit Operating Budget for Fiscal Year 2010-2011 is $14,817,463, and

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

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves submission of the Transportation Development Act transit claim for Fiscal Year 2010-2011 to StanCOG in the amount of $6,333,261.
The foregoing resolution was introduced at a special meeting of the Council of the City of Modesto held on the 9th day of June, 2010, by Councilmember Hawn, 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: Geer, Hawn, Lopez, Marsh, Muratore, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers None

ATTEST: 

STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2010-242

A RESOLUTION APPROVING A LICENSE AGREEMENT BETWEEN THE CITY OF MODESTO AND MODESTO IRRIGATION DISTRICT (MID) FOR THE PURPOSE OF OBTAINING PERMISSION TO MAKE IMPROVEMENTS WITHIN MID LATERAL 3 FOR THE TANK 5 BLENDLINE PROJECT AND THE CITY’S WATER DISTRIBUTION SYSTEM TO USE CERTAIN REAL PROPERTY LOCATED WITHIN MID RIGHT-OF-WAY, AS DESCRIBED IN EXHIBITS A, B, AND C OF THE LICENSE AGREEMENT, AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE AGREEMENT

WHEREAS, the City of Modesto (Licensee) desires to construct improvements for the Tank 5 Blendline project and the City’s Water Distribution System, and

WHEREAS, MID will grant to Licensee, at Licensee’s expense, permission to make improvements within 8,698 square feet of Lateral 3, as described in Exhibits A, B, and C of the License Agreement, as part of Modesto’s Tank 5 Blendline project consisting of the installation of a City water line, hereinafter referred to as the “Improvements,” and

WHEREAS, MID requires a License Agreement prior to allowing construction within its right-of-way, and

WHEREAS, this will allow Licensee to use the MID right-of-way for the Improvements at no cost,

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves a License Agreement between the City of Modesto and Modesto Irrigation District for the purpose of obtaining permission to make improvements within MID Lateral 3 for the Tank 5 Blendline project and the City’s Water Distribution System to use certain real property located within MID right-of-way, as described in Exhibits A, B, and C of the License Agreement.
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 special meeting of the Council of the City of Modesto held on the 9th day of June, 2010, by Councilmember Hawn, 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: Geer, Hawn, Lopez, Marsh, Muratore, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: 

SEAL

APPROVED AS TO FORM:

By: 

SUSANA ALCALA WOOD, City Attorney

STEVENIE LOPEZ, City Clerk
LICENCE AGREEMENT

This Agreement is made and entered into this ___ day of ____________, 20__, by and between Modesto Irrigation District, a California irrigation district (hereinafter, the “District”), and City of Modesto, a municipal corporation (hereinafter, the “Licensee”), and is made with regard to the following facts and circumstances, among others:

A. District has an interest in certain real property within the City of Modesto consisting of a strip of land with certain improvements thereon, which real property is commonly known as and referred to as District’s No. 3, hereinafter referred to as “Lateral 3”.

B. Licensee desires, at Licensee’s expense, permission to install a 12” water main approximately 788 feet in length, hereinafter referred to as the “Improvements” for its Tank 5 Blendline Project.

C. The District, as an accommodation to Licensee, is willing to grant such permission on the terms and conditions set forth herein.

NOW THEREFORE, the parties hereto mutually agree as follows:

1. The District hereby grants to Licensee permission for Licensee to use a ten (10) foot portion of its’ rights-of-way as described in Exhibit A and shown on Exhibit B (the “License Area”), solely for the purpose of installing, operating and maintaining the above referenced City “Improvements” across the District’s “Lateral 3”. The Improvements to be installed and maintained by Licensee shall conform to the plans attached as Exhibit “C” incorporated herein by this reference.

2. The District requires that any trenching maintain a 1:1 horizontal distance from any existing pole determined by the depth of the trench. If trenching encroaches on this requirement, Licensee must identify potentially affected poles and arrange any required pole bracing with the District. The cost for any required pole bracing will be assumed by the Licensee.
3. Except as specifically provided for in this Agreement, no alteration, improvement, installation, construction or use shall be made or permitted by Licensee in, on, under, along, across or in respect to the License Area.

4. This Agreement grants or creates a bare license only, and not a license coupled with an interest. This Agreement does not grant or create an easement, nor does it convey or transfer to Licensee any right, title or interest in or to any property of District. The license granted herein is nonexclusive. All rights granted hereunder are subject and subordinate to all uses and purposes District may now or in the future make of the License Area. Licensee shall have no license, right or privilege with respect to the License Area other than the permission and privileges specifically and expressly granted by this Agreement.

5. Licensee shall not impair the access by District to any of its property or facilities by persons or machines for the purposes of construction, maintenance or operation of its properties or facilities.

6. Licensee shall not use or cause the License Area to be used in any manner that will interfere with, be inconsistent with, or jeopardize the safety of, any use or purpose of District.

7. In the event District shall at any time so require for District’s use or protection of its properties or facilities, Licensee, at Licensee’s expense, shall alter, relocate or cease use of the Improvements.

8. All use by Licensee of the License Area, including the construction, placement, inspection, maintenance, replacement and use of the Improvements, shall comply with all applicable federal, state and local laws, regulations, statutes, ordinances and codes, [including without limitation occupational safety and health acts,] and all orders and decrees of bodies or tribunals having any jurisdiction or authority over the work to be performed under this Agreement (collectively, “laws”).

9. Licensee shall obtain District’s approval of any and all grading and improvement plans and schedules prior to the commencement of any work within the License Area; provided, however, such approval shall not unreasonably be withheld. District may at its discretion, but is not required to, inspect any and all work performed by Licensee, or Licensee’s employees, agents or contractors, within the License Area. District’s rights hereunder to approve and inspect shall not impose any duties or obligations on District, nor shall such rights relieve Licensee of the sole responsibility for the plans, schedules and work, or relieve Licensee of its contractual responsibilities hereunder.

10. In constructing, placing, inspecting, maintaining, and replacing the Improvements, Licensee shall, in addition to all other requirements and limitations set forth herein, comply with each of the following:

A. Licensee shall be solely responsible for the construction, placement, inspection, maintenance, replacement and use of the License Area and the Improvements permitted therein by this Agreement.
B. Licensee shall bear all costs and expenses for placement, maintenance, inspection, replacement, use and removal of the Improvements. The District shall incur no cost or expense in connection with the Improvements.

11. Prior to any excavation by Licensee within the License Area, whether at the time of the installation of Licensee’s Improvements or during subsequent periods or instances of maintenance, Licensee or its Contractor shall contact District and the Underground Service Alert (U.S.A. – 1-800-642-2444) for the purpose of determining the location of underground facilities, equipment and other improvements. Locating all underground improvements shall be Licensee’s sole responsibility.

12. Except as otherwise set forth herein, as between Licensee and District the Improvements shall be the property of the Licensee and the Licensee shall have the sole responsibility and liability for said Improvements. Licensee shall at all times maintain, at its own cost and expense, the Improvements. Licensee agrees to assume the sole and exclusive risk for damage to property or injury or death to any persons, arising from, or in anyway related to, the Licensee’s maintenance of or failure to maintain the Improvements. The District shall have no duty or obligation to maintain the Improvements.

13. Licensee shall not use, generate, manufacture, store or dispose of on, under or about the License Area, or transport to, from, along or across the License Area, any flammable, explosive or radioactive material, toxic substance, hazardous waste, hazardous material, hazardous substance, or the equivalent, as those terms may now or in the future be defined by common practice or by any federal, state or local statute, ordinance or regulation or any governmental body or agency (hereinafter “Hazardous Substance”).

A. Without limiting any remedies District may have, in the event any disposal, release, discharge or spill of a Hazardous Substance or other contamination occurs within the License Area at any time during, or as a result of, Licensee’s use of the License Area, except such spills or contamination to the extent directly caused by the sole negligence or willful misconduct of District, Licensee shall immediately notify District and take all action to mitigate the effects of such disposal, release, discharge, spill or contamination. Licensee shall at Licensees’ own expense, unless otherwise directed by District, remEDIATE such disposal, release, discharge of spill or contamination to District’s satisfaction and in compliance with all applicable laws, rules and regulations. District shall have the option to perform the remediation itself or through any contractor and Licensee shall cooperate with District to complete the remediation and shall reimburse District for all costs and expenses incurred in connection with the remediation.

B. In the event Licensee observes any material Licensee believes or has reason to believe may be a Hazardous Substance or encounters any unknown physical condition of any unusual nature within the License Area, other than disposals, releases, discharges, spills or contamination covered in (A), Licensee shall, without disturbing the condition, immediately cease all use of the License Area and notify District. District shall investigate the condition and take any clean-up or other remedial action District deems necessary in its sole discretion.

C. In the event District or its contractor elects to perform remediation work, Licensee shall upon notice from District, cease use of the License Area as directed in the
notice. District will notify Licensee when the condition has been resolved, at which time, but not before, Licensee may resume its use of the License Area.

D. Licensee agrees to assume liability for and to defend and hold harmless District from and against all injuries or death to any person and damage to any property, and all related expense, including without limitation attorneys’ fees, investigators’ fees, administrative charges, litigation expenses and any judgements, fines, penalties or other charges assessed against District, resulting from Licensee’s failure to comply with this Paragraph and any laws, rules or regulations concerning the subject matter hereof. The provisions of this Paragraph shall survive the expiration and termination of this Agreement.

14. Licensee shall not perform any work within the License Area during any irrigation season which would interfere with the delivery of irrigation water. The parties hereto are mindful of the fact that District’s irrigation season ordinarily, but not necessarily, ends late-October and begins mid-March the following year.

15. The District reserves unto itself the right to travel on, over and across the License Area for all District purposes. District will coordinate with License to the extent practicable when District intends to avail itself of such rights in a manner that will cause damage to the License Area.

16. District shall not be liable to Licensee for and Licensee hereby waives and releases District from any and all claims it may now or at any time in the future have against District for any injury or death of any person or damage to any property, whatsoever, including without limitation damage to the Improvements that may result to any person or property arising from or in any way connected with the exercise of rights granted by this Agreement. Licensee’s waiver does not extend to intentional or gross negligent acts by the District or its agents.

17. If Licensee’s exercise of rights under this Agreement, including the placement, use or maintenance of the Improvements, or any portion thereof, causes damage, injury, impairment or degradation to the License Area, the Improvement, or any property or facilities of District, Licensee shall, at its sole cost and expense, repair said damage, injury or degradation upon notice from the District. Any such repair shall be performed in a timely manner and shall be in strict accordance with plans as acceptable to the District.

18. Licensee shall defend, indemnify and hold District, its directors, officers, agents and employees, and each of them, harmless from and against any and all damages, losses, claims and liabilities arising from any act, omission or negligence of Licensee or Licensee’s agents, contractors or employees, or any of them, or arising from any accident, injury or damage whatsoever caused to any person or property, occurring in the exercise of, or in any manner connected directly or indirectly with, the license granted by this Agreement, and from and against all costs, expenses, liabilities and attorneys’ fees incurred in, or in connection with, any such claim or proceeding brought thereon.

19. Licensee shall promptly pay District, on demand, full money compensation for any damage to any of the District’s property or facilities, or damage to the land, crops, or trees of any irrigator caused by, or in any manner connected directly or indirectly with, the exercise of the license or any rights granted by this Agreement.
20. District acknowledges that Licensee has self-insured its financial obligations imposed by this Agreement; provided, however, that in the event Licensee at any time reduces its General Liability self-insured retention amount below one million dollars, Licensee, at its sole cost and expense, and without limiting any of its other obligations or liabilities, shall obtain and maintain in effect at all times during the performance of the work under this Agreement, coverages and limits of liability insurance reasonable satisfactory to the District, each of which shall be maintained with insurers and under forms of policies reasonably satisfactory to the District and shall include the District as an additional insured.

21. District makes no representation as to, and does not warrant, the condition of the License Area, either at the inception of this Agreement or as to any future point in time. Nothing in this Agreement shall be construed as creating or imposing upon District any duty or obligation to maintain or repair the License Area or the Improvements.

22. This Agreement is made solely for the benefit of Licensee, and it is not made for the benefit of any person, firm, association, corporation or public entity not a party hereto, and no person, firm, association, corporation or public entity other than Licensee shall have any right to enforce this Agreement.

23. This Agreement shall inure to the benefit of and be binding upon the successors and assigns of both parties; provided, however that neither party shall assign its rights or obligations hereunder without the prior written consent of the other party. Any assignment, whether voluntary or involuntary, in violation of this Paragraph shall be void.

24. It is expressly understood and agreed that this Agreement shall operate to give Licensee the rights herein provided for only insofar as District may do so under and by virtue of the rights that District has in that portion of the License Area to which this Agreement applies, and District makes no warranty or representation as to its ownership or land rights in or adjacent to District rights-of-way or the License Area.

25. This Agreement contains all the agreements of the parties hereto and cannot be amended or modified except by a written agreement signed by the parties.

26. All exhibits referred to in this Agreement are attached hereto and incorporated herein by reference.

27. In addition to any right under law or at equity, either party may terminate this Agreement for any reason at any time by giving the other party at least twelve (12) months prior written notice.

28. Any waiver at any time by the District of any of its rights with respect to a breach under this License shall not be deemed a waiver with respect to any subsequent breach or other matter. Any delay in exercising any right hereunder, short of any statutory period of limitation in asserting or enforcing any right, shall not be deemed a waiver of such a right.

29. In the event that the license granted herein is no longer used by Licensee for permitted purposes, the Improvements are no longer used by Licensee for Licensee’s purposes, or this license is in any way terminated, all rights granted to Licensee hereunder shall terminate and Licensee, at its expense, shall remove Licensee’s Improvements, or take other closure action acceptable to District, and restore the License Area to its original condition or to a condition
acceptable to the District. If Licensee fails to comply with the requirements of this Paragraph, District may undertake and complete such removal and restoration at the sole cost and expense of Licensee. Upon the occurrence of any of the above listed events, all rights granted to Licensee hereunder shall terminate.

30. If any of Licensee’s privileges or duties hereunder are to be exercised or performed by any independent contractor or contractors, Licensee shall, effectively and appropriately, bind such contractor or contractors contractually to the duties and obligations of Licensee hereunder. In that connection, Licensee shall, among other requirements, require said contractor or contractors to indemnify and hold District harmless from and against any and all claims, damages, loss, liability and expenses, including court costs and attorney’s fees, arising out of or on account of, any injury to or death of any person or persons, or damage to property of any kind whatsoever and to whomsoever belonging, arising out of, or in any manner directly or indirectly connected with, said contractor or contractors acts, omissions or negligence in exercising Licensee’s privileges or performing Licensee’s duties created by this Agreement. Licensee shall also require said contractor or contractors to maintain sufficient insurance coverages, including general liability insurance covering the indemnity required hereunder.

31. This License shall be governed by the laws of the State of California, excluding any choice of law rules that direct the application of the laws of another jurisdiction.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and year first above written.
EXHIBIT A

LEGAL DESCRIPTION

All that certain real property in the southwest quarter of Section 14, Township 3 South, Range 9 East, Mount Diablo Base and Meridian, City of Modesto, County of Stanislaus, State of California, more particularly described as follows:

Commencing at the southwest corner of Section 14, Township 3 South, Range 9 East, Mount Diablo Base and Meridian; thence on the west line of said Section 14, North 00° 28’ 23” West 424.29 feet to the north line of the 140.00 feet wide Modesto Irrigation District Lateral No. 3; thence on said north line, North 62° 15’ 16” East 6.71 feet to the beginning of a curve concave southerly, having a radius of 543.10 feet and a central angle of 19° 56’ 24”; thence continuing on the north line of the said Modesto Irrigation District Lateral No. 3, northeasterly on the arc of the aforementioned curve 189.01 feet to the POINT OF BEGINNING of this description; thence continuing easterly on the arc of the aforementioned 543.10 feet radius curve and the southerly line of Parcel 1 as shown on the Parcel Map recorded July 16, 1999 in Book 49 of Parcel Maps, at Page 60, Stanislaus County Records, through a central angle of 15° 21’ 48” a distance of 145.63 feet; thence continuing on said north line of Modesto Irrigation District Lateral No. 3, South 82° 26’ 32” East 654.58 feet; thence leaving said north line South 00° 28’ 40” East 10.10 feet; thence parallel with and 10.00 feet southerly of the aforementioned north line of the 140.00 feet wide Modesto Irrigation District Lateral No. 3, North 82° 26’ 32” West 655.99 feet to the beginning of a curve concave southerly having a radius of 533.10 feet and a central angle of
13° 13' 24"; thence westerly on the arc of said curve, parallel with and 10.00 feet southerly of
the north line of said Modesto Irrigation District Lateral No. 3, a distance of 123.03 feet; thence
South 07° 16' 40" East 34.94 feet; thence South 82° 43' 20" West 20.00 feet; thence North 07°
16' 40" West 45.13 feet to the point of beginning.

Containing 8,698 square feet, more or less.
Section 14, Township 3 South, Range 9 East, Mount Diablo Base & Meridian

PARCEL 1

POINT OF BEGINNING

SCALE: 1" = 150'

AREA OF COMMON USE

1. N 62° 15' 16" E 6.71'
2. ∆ = 19° 56' 24" R = 543.10' L = 189.01'
3. ∆ = 15° 21' 48" R = 543.10' L = 145.63'
4. S 82° 26' 32" E 554.58'
5. S 00° 28' 40" E 10.10'
6. N 82° 26' 32" W 655.99'
7. ∆ = 13° 13' 24" R = 533.10' L = 123.03'
8. S 07° 16' 40" E 34.94'
9. S 82° 43' 20" W 20.00'
10. N 07° 16' 40" W 45.13'

AREA = 8,689 ± SQ. FT.
IN WITNESS WHEREOF, the City of Modesto, a municipal corporation, has authorized the execution of this Agreement in duplicate by its City Manager and attestation by its City Clerk under authority of Resolution No. 2010-____, adopted by the Council of the City of Modesto on the _____ day of ________________, 2010, and MODESTO IRRIGATION DISTRICT, an irrigation district, has caused this agreement to be duly executed in duplicate as of the Effective Date.

CITY OF MODESTO, a municipal corporation

By ______________________ __
GREG NYHOFF, City Manager

ATTEST:

By ________________________
STEPHANIE LOPEZ, City Clerk

MODESTO IRRIGATION DISTRICT an irrigation district

By __________________________ _
ALLEN SHORT, General Manager

By __________________________ _
Secretary

By __________________________ _
Assistant General Counsel

APPROVED AS TO FORM:
SUSANA ALCALA WOOD, City Attorney

By __________________________ _
ROLAND R. STEVENS, Assistant City Attorney
MODESTO CITY COUNCIL  
RESOLUTION NO. 2010-243

A RESOLUTION APPROVING THE PLANS AND SPECIFICATIONS FOR THE AIRPORT IRRIGATION WELL PROJECT, ACCEPTING THE BID AND APPROVING A CONTRACT WITH AMERINE SYSTEMS, INC. IN THE AMOUNT OF $119,990 FOR THE AIRPORT IRRIGATION WELL PROJECT, AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE CONTRACT

WHEREAS, plans and specifications have been prepared for the Airport Irrigation Well project and City staff recommends approval by the City Council, and

WHEREAS, the bids received for the Airport Irrigation Well project were opened at 11:00 a.m. on May 4, 2010, and later tabulated by the Director of Utility Planning & Projects for the consideration of the Council, and

WHEREAS, the Director of Utility Planning & Projects has recommended that the bid of $119,990 received from Amerine Systems, Inc. be accepted as the lowest responsible bid and the contract be awarded to Amerine Systems, Inc.,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the plans and specifications for the Airport Irrigation Well project, accepts the bid of Amerine Systems, Inc. in the amount of $119,990, and awards Amerine Systems, Inc. the contract for the Airport Irrigation Well 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 special meeting of the Council of the City of Modesto held on the 9th day of June, 2010, by Councilmember Hawn, 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: Geer, Hawn, Lopez, Marsh, Muratore, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2010-244

A RESOLUTION AMENDING THE FISCAL YEAR 2009-2010 CAPITAL IMPROVEMENT PROGRAM BUDGET IN ORDER TO FULLY FUND THE CONSTRUCTION CONTRACT FOR THE AIRPORT IRRIGATION WELL PROJECT, INCLUDING CONTINGENCY, CONSTRUCTION ADMINISTRATION, AND ENGINEERING/DESIGN/ADMINISTRATION SUPPORT BY CITY STAFF

WHEREAS, certain budgetary transactions are necessary in the amount of $64,000, in order to fully fund the construction contract, including contingency, construction administration, and engineering/design/administration support by City staff for the Airport Irrigation Well project, and

WHEREAS, the Fiscal Year 2009-2010 Capital Improvement Program budget must be amended as shown in Exhibit A, which is incorporated by reference herein,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the amendment of the Fiscal Year 2009-2010 Capital Improvement Program budget as shown in Exhibit A.

BE IT FURTHER RESOLVED that the Director of Finance, or her designee, is hereby authorized to implement the provisions of this resolution.
The foregoing resolution was introduced at a special meeting of the Council of the City of Modesto held on the 9th day of June, 2010, by Councilmember Hawn, 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: Geer, Hawn, Lopez, Marsh, Muratore, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney
REQUEST FOR BUDGET ADJUSTMENT

EXHIBIT A

Contact Person: Gail Clement
Telephone No.: 15538
Department: Utility Planning & Projects
Fund Title: Special Aviation Fund

Council Action Date: 6/9/10
Resolution Number:
FY: 09-10
Transfer No.

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<th>Appr Unit</th>
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COMMENTS/JUSTIFICATION

This adjustment is to amend the budget by 1) transferring in from County Aircraft Tax Fund 6330 the amount of $64,000 to fund the shortfall of funds for CIP Account A785-Airport Irrigation Well Project to cover required bid items to award construction contract including contingency and construction administration to complete this project, and 2) transferring $48,643 from Object 601 Object-Engineering/Design/Administration to Object 6040-Construction in CIP Account CIP Account A785-Airport Irrigation Well. There are sufficient funds in the County Aircraft Tax Reserves to cover the costs of the required reappropriation of funds to Objects 6040, 6050 & 6060 necessary for the project.

DEPUTY DIRECTOR (UP&P)

DEPARTMENT DIRECTOR (UP&P)

DEPARTMENT DIRECTOR (Public Works)

FINANCE DIRECTOR

CITY MANAGER

TRANSFER NO.

PW: AT Interfund Template 7/26/06
RESOLUTION APPROVING THE FILING OF AN APPLICATION WITH THE STANISLAUS LOCAL AGENCY FORMATION COMMISSION TO ANNEX APPROXIMATELY 42.61 ACRES OF PROPERTY LOCATED AT 2706, 2742, AND 2866 KIERNAN AVENUE, AND ADJACENT RIGHT-OF-WAY ON KIERNAN AVENUE/CA-219, TO THE CITY OF MODESTO AND MODESTO MUNICIPAL SEWER DISTRICT NO. 1 (OWNER INITIATED – UNINHABITED) (BENCHMARK ENGINEERING)

WHEREAS, Benchmark Engineering ("Applicant") represents the owners of real property within the Kiernan Business Park Specific Plan area, located at 2706, 2742 and 2866 Kiernan Avenue ("Property"), and

WHEREAS, the City has received a written request from the Applicant to initiate annexation of the Property to the City of Modesto under the Cortese-Knox-Hertzberg Local Reorganization Act of 2000, California Government Code Section 56000, et seq, and

WHEREAS, the Resolution of Application is proposed pursuant to California Government Code Sections 56654 and 56700, and

WHEREAS, the Property proposed for annexation is uninhabited as defined by Government Code Section 56046 (fewer than twelve registered voters), and a description of the boundaries of the subject Property is set forth in Exhibit "A", attached hereto and by this reference incorporated herein, and

WHEREAS, the subject Property proposed for annexation is within Stanislaus County, contiguous to the existing City limits and within the current Sphere of Influence of the City of Modesto, as adopted by Stanislaus Local Agency Formation Commission, Resolution No. 97-11, on December 19, 1994, and
WHEREAS, before an annexation application may be heard by LAFCO, there must be an agreement with the County providing for the sharing of property taxes following an annexation, and

WHEREAS, the proposed annexation area is covered by the Master Property Tax Agreement entered into between the County of Stanislaus and City of Modesto which was approved by Council Resolution No. 96-170, on April 9, 1996, and

WHEREAS, the proposed Property includes one Williamson Act contract involving one parcel that on October 7, 1974 was protested by the City, and on March 29, 1978, the protest was upheld by LAFCO, and

WHEREAS, it is desired that the proposed annexation be subject to the following terms and conditions:

1. The annexation of said Property, as set forth on Exhibits “A” and “B” attached hereto, to the City of Modesto.

2. The Council’s approval by separate resolution of a revenue-sharing agreement between the City of Modesto and the Salida Fire Protection District, to allow both agencies to provide fire and life safety services to the annexation area, in lieu of detachment from the jurisdiction of the Salida Fire Protection District, said revenue-sharing agreement as set forth in Exhibit “D” attached hereto and by this reference incorporated herein.

WHEREAS, the reasons for this proposed annexation to the City of Modesto are as follows:

1. Staff has received a written request from the Applicant, to annex the Property to the City of Modesto.

2. The proposed annexation is consistent with the Urban Area General Plan and can be served by City services.

3. The proposed annexation will result in planned, orderly and efficient development of the area, and provision of services; and
WHEREAS, pursuant to Government Code Section 56653, a plan for providing services is set forth in Exhibit “C”, attached hereto and by this reference incorporated herein, and

WHEREAS, on April 19, 2010, City of Modesto Planning Commission held a duly noticed public hearing in the Chambers, Tenth Street Place, 1010 Tenth Street, Modesto, California, at which time both oral and documentary evidence were received and considered, and

WHEREAS, after said public hearing, the City of Modesto Planning Commission adopted Resolution No. 2010-10, recommending to the City Council that they adopt the Resolution of Application for an annexation of the Property to the City of Modesto and Modesto Sewer District No. 1, and

WHEREAS, said matter was set for public hearing of the City Council to be held on June 9, 2010, in the Tenth Street Place Chambers located at 1010 10th Street, Modesto, California, at which date and time said duly noticed public hearing of the Council was held for the purpose of receiving public comment on the proposed annexation, and

WHEREAS, an Initial Study (Environmental Assessment No. EA/C&ED 2010-09) was prepared by the City of Modesto that analyzed whether the proposed subsequent project may cause any significant effect on the environment that was not examined in the Kiernan Business Park Specific Plan Amendment #4 Program EIR, and

NOW, THEREFORE, the Council of the City of Modesto hereby finds and determines as follows:

1. That the proposed annexation is consistent with the Modesto Urban Area General Plan, because it is consistent with General Plan Urban Growth Policy II.C.1.b., which states “Urban development should be kept as contiguous as possible in order to avoid premature urbanization of valuable farm land, foster resident convenience, and provide for economy
in City services" and because the development resulting from the proposed and annexation is consistent with the General Plan as amended.

2. The type of project is described in Chapter III of the Kieman Business Park Specific Plan Amendment #4 Program EIR (Program EIR).

3. All applicable policies, regulations, and mitigation measures identified in the Program EIR have been applied to the project or otherwise made Conditions of Approval of the project.

4. An Initial Study was prepared by the City of Modesto that analyzed whether the proposed subsequent project may cause any significant effect on the environment that was not examined in the Program EIR and it has been determined that the project was described in the Program EIR as being within the scope of the Program EIR.

5. Based on the Initial Study, the City of Modesto finds and determines:
   a. The proposed subsequent project will have no additional significant effect as defined in CEQA Section 21158 beyond that which was identified in the Program EIR.
   b. No new or additional mitigation measures or alternatives are required.

6. The Initial Study, Environmental Assessment No. EA/C&ED 2010-09, provides the substantial evidence to support findings 2-5 above.

7. An agreement for the sharing of property taxes for the Property was approved by the Master Property Tax Agreement entered into between the County of Stanislaus and City of Modesto which was approved by Council Resolution No. 96-170 on April 9, 1996.

8. An agreement between the City of Modesto and the Salida Fire Protection District for the allocation of District revenues, subject to consideration and approval by the City Council, will allow for the joint provision of Fire and Life Safety service to the annexation area.

9. As determined by the Department of Utility Planning and Projects, there is reasonable certainty that the City will have adequate wastewater capacity to serve the proposed annexation based on the following findings:
   a. The Property is in Sewer Tributary Area 1 (Area 1) of the 2007 Wastewater Master Plan (WWMP) from which is served by both the North Trunk and West Trunk sewers. Wastewater collected by the North Trunk flows into the West Trunk. The West Trunk is approximately nine miles long and will convey approximately 35 percent of the City’s total average dry weather flow (ADWF) at build-out.
b. There will be future peak wet weather flow (PWWF) capacity deficiencies, as well as rehabilitation and reliability improvements along the West Trunk required to serve build-out of Area 1; however, anticipated sewer flow from this annexation area is not expected to trigger those specific Capital Improvement Projects in the near term. The WWMP states that approximately half of the City’s Comprehensive Planning Districts are located in Area 1. Therefore, there will be substantial growth and increased wastewater flows generated from build-out of Area 1. The annexation area is proposed for land uses consistent with those anticipated in the 2007 WWMP, thus no additional Capital Improvement Projects are necessary beyond those already identified to serve the annexation area.

c. The City is planning to implement capacity, new service extensions, rehabilitation, and reliability projects in Area 1. These projects were identified in the 2007 WWMP and were included in the subsequent Sewer Capacity Charge and Sewer Rate Analyses. Therefore, these projects are included in the City’s Capital Improvement Program budget.

d. The City has received a new National Pollutant Discharge Elimination System (NPDES) discharge permit for its wastewater treatment plan. The City is on schedule with the design of its Phase 1 tertiary treatment facilities, which will provide additional treatment capacity beyond the Dissolved Air Flotation facilities. The wastewater treatment capacity needed by the Kiernan Business Park Specific Plan area will be available once the City has completed its Phase 1A Tertiary Treatment Project (expected in early 2010).

e. Therefore, the engineering solution and funding is in place to address wastewater collection system capacity for the Kiernan Business Park Specific Plan area, and the treatment capacity and the City’s wastewater discharge permit are in place. With respect to timing, the proposed Kiernan Business Park Specific Plan area is compatible with the City’s Capital Improvement Project schedule for pipeline and wastewater treatment improvements.

10. The Property is located within Stanislaus County, is within the City’s existing Sphere of Influence, and is contiguous to the existing City limits. The proposed annexation will result in planned, orderly and efficient development of the area and the most efficient provision of City services.

11. The Property proposed to be annexed to the City of Modesto is uninhabited as defined by Government Code Section 56046 (fewer than twelve registered voters), and a description of the boundaries of the subject Property is set forth in Exhibits “A” and “B,” attached hereto and by this reference incorporated herein.
NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the filing of an Application with the Stanislaus Local Agency Formation Commission to annex approximately 42.61 acres of property located at 2706, 2742 and 2866 Kiernan Avenue, and adjacent right of way on Kiernan Avenue/CA-219, to the City of Modesto and Modesto Municipal Sewer District No. 1.

BE IT FURTHER RESOLVED by the Council of the City of Modesto that in accordance with Section 56663(c) of the Cortese-Knox-Hertzberg Act, the City hereby consents to a waiver of conducting authority proceedings.

BE IT FURTHER RESOLVED by the Council of the City of Modesto that the City exercise its option not to succeed to the Williamson Act Contract No. 75-1841 pursuant to California Government Code Section 51243.5, and cancel said contract.

BE IT FURTHER RESOLVED by the Council of the City of Modesto that pursuant to Government Code Section 56653, the City Council submit the plan for providing services as set forth in Exhibit “C”, attached hereto and by this reference incorporated herein.

BE IT FURTHER RESOLVED by the Council of the City of Modesto that the City Council submit the revenue-sharing agreement between the City of Modesto and the Salida Fire Protection District, upon the Council’s consideration and approval of said revenue-sharing agreement, to allow both agencies to provide fire and life safety services to the annexation area in lieu of detachment from the jurisdiction of the Salida Fire Protection District, as set forth in Exhibit “D”, attached hereto and by this reference incorporated herein.
BE IT FURTHER RESOLVED by the Council of the City of Modesto that The
property owners and developers shall, at their sole expense, defend, indemnify and hold
harmless the City of Modesto, its agents, officers, directors and employees, from and
against all claims, actions, damages, losses, or expenses of every type and description,
including but not limited to payment of attorneys’ fees and costs, by reason of, or arising
out of, this development approval. The obligation to defend, indemnify and hold
harmless shall include but is not limited to any action to arbitrate, attack, review, set
aside, void or annul this development approval on any grounds whatsoever. The City of
Modesto shall promptly notify the developer of any such claim, action, or proceeding and
shall cooperate fully in the defense.

The foregoing resolution was introduced at a special meeting of the Council of the
City of Modesto held on the 9th day of June, 2010, by Councilmember Hawn, 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: Geer, Hawn, Lopez, Muratore, Olsen,
Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: Marsh

ATTEST: STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: SUSANA ACALA WOOD, City Attorney
Exhibit "A"

LEGAL DESCRIPTION

All that certain real property in portions of Sections 35 and 36, Township 2 South, Range 8 East and Section 1 Township 3 South, Range 8 East, Mount Diablo Meridian, more particularly described as follows:

Bearings are based on the 1992 adjustment of the California High Precision Geodetic Network, California Coordinate System Zone 3, North American Datum of 1983.

Commencing at the southeast corner of said Section 35; thence coincident with the east line of said Section 35 North 00° 26' 39" West, 94.95 feet to the POINT OF BEGINNING of this description; thence leaving said east line South 89° 33' 21" West, 25.00 feet to a point on the general northerly line of the Kaiser-Cornerstone Reorganization to the City of Modesto recorded October 25, 2004 in Document No. 04-0175542-00; thence coincident with said northerly line the following three (3) courses: 1) South 37° 13' 18" West, 57.65 feet, 2) South 86° 09' 08" West, 420.74 feet, 3) South 89° 34' 39" West, 1186.91 feet to a point on the northerly projected west line of Parcel 2 described in the Grant Deed to Malik, recorded April 29, 2003, as Instrument No. 2003-0066261, Official Records of Stanislaus County; thence coincident with said projected west line North 00° 09' 38" West, 150.56 feet to a point on the northerly Right of Way line of Kiernan Avenue, California State Route 219 as described in the Final Order of Condemnation recorded July 29, 2009 as Instrument No. 2009-0075149-00 Official Records of Stanislaus County; thence coincident with said Right of Way line the following two (2) courses: 1) North 89° 32' 54" East, 1528.20 feet, 2) North 80° 27' 29" East, 57.63 feet; thence leaving said line North 89° 22' 34" East, 162.56 feet to a point on the northerly Right of Way of said Kiernan Avenue as described in the Final Order of Condemnation recorded January 16, 2008 as Instrument No. 2008-000-4624-00 Official Records of Stanislaus County; thence coincident with said northerly Right of Way the following two (2) courses 1) South 85° 52' 47" East, 120.44 feet; 2) North 89° 32' 54" East, 456.13 feet to a point on the east line of Parcel A as shown on the map recorded April 10, 2000 in Volume 50 of Parcel Maps at Page 10, Stanislaus County Records; thence continuing coincident with said northerly Right of Way as described in the Grant Deed to the State of California recorded March 17, 2008 as Document No. 2008-0026745-00, North 89°32' 54" East, 568.65 feet; thence continuing coincident with said northerly Right of Way as described in the Grant Deed to the State of California recorded May 11, 2007 as Document No. 2007-0060146-00 the
following two (2) courses: 1) North 89°32' 54" East, 88.84 feet, 2) South 00° 23' 13" East, 2.83 feet; thence continuing coincident with said northerly Right of Way as described in the Final Order of Condemnation recorded December 18 as Document No. 2008-0132471 Official Records of Stanislaus County, North 89° 44' 13" East, 666.05 feet; to a point on the northerly projected east line of Lot 36 as shown on the map of the Albemarl Tract recorded in Book 4 of Maps at Page 19, Stanislaus County records; thence coincident with said east line South 00° 08' 42" East, 1505.75 feet to the northeast corner of Parcel B as shown on the map recorded in Volume 37 of Parcel Maps at Page 61 Stanislaus County records, said corner also being an angle point in the easterly line of the Kiernan Avenue Reorganization to the City of Modesto recorded January 20, 1999 as Instrument No. 99-0005823-00, Official Records of Stanislaus County; thence coincident with the said line of the Kiernan Avenue Reorganization the following ten (10) courses: 1) South 89° 26' 32" West, 659.32 feet, 2) North 00° 15' 48" West, 666.18 feet, 3) South 89° 35' 04" West, 613.40 feet, 4) North 00° 08' 25" West, 692.71 feet, 5) South 89° 43' 37" West, 223.33 feet, 6) North 86° 51' 46" West, 251.06 feet, 7) North 00° 16' 23" West, 15.07 feet, 8) South 89° 43' 37" West, 173.34 feet, 9) North 38° 06' 17" West, 42.44 feet, 10) South 89° 33' 21" West, 33.07 feet to a point on the east line of said Section 35; thence coincident with said east line North 00° 26' 39" West, 6.50 feet to the POINT OF BEGINNING.

Containing 42.61 Acres, more or less.

James S. Conti
PLS 8001
04/16/2010
Exhibit "B"

ANNEXATION PROPOSAL MAP

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SCALE: 1" = 500'
Exhibit "C"

KIERNAN BUSINESS PARK EAST ANNEXATION
PLAN FOR PROVIDING SERVICES

Pursuant to Government Code Section 56653, the following Plan for Services to be extended to the affected territory has been prepared for the Kiernan Business Park East Annexation.

Project area and service requirements
The project site is comprised of three parcels in addition to adjacent right of way of Kiernan Avenue/CA-219, and is part of the Planned Urbanizing Area as described in the Modesto Urban Area General Plan, adopted August 15, 1999 and subsequently amended. As part of the approval, community facilities and services were analyzed in detail in the Environmental Impact Report (EIR) for the Kiernan Business Park East Specific Plan Amendment No. 4 (SPA) Project (SCH 2007062071). Additionally, the Kiernan Business Park East Facilities Master Plan (FMP), approved with the SPA, defines the public facilities required to service development within the Specific Plan area in accordance to City Standards. These services include traffic and circulation, waste water collection, water delivery, storm water drainage, solid waste disposal, schools, parks, fire protection, and police protection. The City of Modesto is a full service city that intends to provide the following services.

1. Traffic and Circulation: The project site is bounded to the north by Kiernan Avenue/CA-219, approximately 700 feet east of the intersection of Kiernan Avenue/CA-219 and Dale Road and approximately 650 feet west of the intersection of Kiernan Avenue/CA-219 and American Avenue. The annexation area also includes adjacent right-of-way of Kiernan Avenue/CA-219 from the property frontages to the northwest corner of the previously annexed Kaiser-Cornerstone Reorganization Area. The dedication and construction of roadway improvements along the Kiernan Avenue/CA-219 corridor are identified as Mitigation Measures of the EIR; however, the Kiernan Avenue/CA-219 improvements are to be completed by the City of Modesto and CalTrans. The project developers shall be responsible for the dedication and construction of new roadways to serve the project as outlined in the Proposed Circulation Plan of the EIR [Figure III.7] and detailed in the FMP.

2. Waste Water Collection: Upon annexation, the project site will annex to Modesto’s Sewer District No. 1, which is served by the West Trunk line under American Avenue south of Bangs Ave, and the North Trunk line under Bangs Avenue from Dale Road to Carver Road. In 2007 the City approved the Wastewater Master Plan Update, which identified necessary improvements to existing wastewater facilities and construction of new wastewater facilities, including rehabilitation and reliability improvements to the West Trunk. The project site is proposed for land uses consistent with those anticipated in the 2007 Wastewater Master Plan Update, and no additional capital improvement projects are needed beyond those already identified to serve the annexation area. The FMP identifies sewer
improvements to consist of 10- and 12-inch diameter lines that will flow from the project area to the North and West Trunk, the installation of which are to be the responsibility of the project developers. All improvements will be provided according to City Standards.

3. **Water Delivery**: Water service will be provided to the project as identified in the Mitigation Measures of the EIR and the FMP. Project area improvements shall be funded and installed by the project developers. The City shall construct localized system improvements with the project developer paying fair share of localized system improvements through payment of water fees.

4. **Storm Water Drainage**: All stormwater drainage for the project site must be contained on site. Prior to approval of development plans for all new development on the project site, the City must approve stormwater drainage plans to ensure their adequacy.

5. **Solid Waste Disposal**: Weekly pick-up of solid waste will be extended to the project area upon the effective date of annexation.

6. **Fire Protection**: Instead of detachment from the jurisdiction of the Salida Fire Protection District, the City and District propose to enter into a cost-sharing agreement that would allow for both agencies to provide fire and life safety services to the annexation area. Under this agreement, the annexation area is to be served by the closest available Fire and Life Safety resource. City of Modesto Fire Station No. 11 is located at 4225 Carver Road, approximately two miles southeast of the annexation area, and Salida Fire Protection District Station No.1 is located at 4820 Salida Boulevard, approximately two miles west of the annexation area. This cost-sharing agreement is to be considered by the City Council and LAFCO with the proposed annexation.

7. **Police Protection**: The City of Modesto Police Department will serve the area. The project site is located adjacent to Patrol Area 65 in the City’s northwestern area of command.

1 **Level and range of services**
The City of Modesto is a full service provider of municipal services and intends to provide the complete service for those areas identified above.

2 **When can services be provided?**
The above services can be provided upon the effective date of annexation.

3 **Improvements required as a condition of annexation**
No improvements are required as a condition of annexation. The following improvements will be required as a condition of development:

- Prior to issuance of a building permit at the project site, the project developers shall provide for roadway, sewer, water and stormwater improvements as
identified in the Mitigation Measures of the EIR and the FMP, to the satisfaction of the City Engineer.

4 How will services be financed?
Services will be financed through City fees and Capital Facilities Fees provided by project developers. Additionally, a Community Facilities District (CFD) is to be formed for the overall Kiernan Business Park East, which will provide additional funding for localized improvements.
AGREEMENT BETWEEN THE CITY OF MODESTO AND THE SALIDA FIRE PROTECTION DISTRICT FOR THE ALLOCATION OF DISTRICT REVENUE RESULTING FROM THE ANNEXATION OF PROPERTY WITHIN THE KIERNAN BUSINESS PARK TO THE CITY

This agreement ("Agreement") is entered into by and between the City of Modesto ("CITY") and the Salida Fire Protection District ("DISTRICT"), a California special district organized and governed by the Fire Protection Law of 1987 (California Health & Safety Code Section 13800, et seq.).

RECOLLALS

This Agreement is made with reference to the following facts:

A. DISTRICT is responsible for fire suppression and prevention within the territory governed by this Agreement and receives the District Revenue generated within the DISTRICT boundaries;

B. CITY and DISTRICT desire to enter into this Agreement to allocate District Revenues in the event of Annexation of the territory covered by this Agreement to the CITY.

C. CITY and DISTRICT agree it is in the best interest of the area subject to annexation that it receives fire and life safety services jointly from CITY and DISTRICT.

D. CITY and DISTRICT agree it is the intent of both parties, and in the overall public interest, to ensure both agencies receive sufficient District Revenues to provide adequate levels of fire and emergency services within the affected Territory and are able to provide assistance to other fire protection agencies in a cooperative manner; and

E. It is agreed that an equitable sharing of future District Revenue from the Affected Territory will benefit the overall organization of fire protection agencies and their cooperative ability to provide adequate emergency services.

NOW THEREFORE the CITY and DISTRICT hereby agree as follows:

1. Effect of Recitals.
   The foregoing recitals set forth the intent of the CITY and DISTRICT in entering into this Agreement.

2. Definitions.
2.1 “Affected Territory” means that territory defined in the Kiernan Business Specific Plan Amendment #4 for which a change of organization or reorganization is proposed or ordered. The Affected Territory includes APN Nos. 078-015-002, 078-015-012, and 078-005-013. Gov’t Code section 56033. Gov’t Code section 56015.

2.2 “Annexation” means the annexation, inclusion, attachment, or addition of territory to a city or district. Gov’t Code section 56017.

2.3 “Detachment” means the detachment, deannexation, exclusion, deletion, or removal of any portion of the territory of that city or district. Gov’t Code section 56033.

2.4 “Change of Organization” means an Annexation to, or detachment from a city or district. Gov’t Code section 56021.

2.5 “District Revenues” shall mean any allocation of the property tax due the District from the Affected Territory. It shall also include any District special tax as authorized by Health & Safety Code Section 13911, any District special tax as authorized by Health & Safety Code Section 13912, any District special tax for fire protection as authorized by Health & Safety Code Section 13913, any District assessment for fire suppression service as authorized by Health & Safety Code Section 13914, and District assessments to finance capital improvements as authorized by Health & Safety Code Section 13915 and any fee authorized by Health & Safety Code Section 13916 for services of the District levied on an interested party and other public agency, except the City. District Revenues shall not include grants, gifts, bequests or litigation or insurance recoveries.

2.6 “Effective Date” means the date at which the Change of Organization becomes effective. This is the date the Change of Organization is recorded by the Stanislaus LAFCO staff, unless a different Effective Date is set forth in the LAFCO resolution approving the Change of Organization.

2.7 “Fiscal Year” means July 1 of any given year – June 30 of the next year utilized for property tax purposes.

2.8 Upon the Effective Date of the Annexation of the Affected Territory to the CITY, the amount of District Revenue generated from the affected territory in the
calendar year in which the Effective Date occurs shall be designated as the “Base District Revenue”.

3. **Effect of Annexation on Affected Territory.**
   Upon the annexation of Affected Territory to the CITY, the CITY and DISTRICT will jointly be responsible for fire suppression and prevention within the Affected Territory. The Affected Territory will not be Detached from the DISTRICT.

4. **Allocation of District Revenue to CITY.**
   Beginning in the Calendar Year following the calendar year in which Effective Date the District Revenue attributable to DISTRICT from the Affected Territory shall be reapportioned as follows:
   The District shall retain the Base District Revenue for the entire calendar year in which the Effective Date falls. This will likely result in City providing joint fire and life safety services with District in the Affected Territory for a period of several months until District Revenues are received in the normal course of business during the first Fiscal Year after the Effective Date. In the first Fiscal Year following the Effective Date, and in each Fiscal Year thereafter, City shall receive 100% of District Revenues actually received by District in excess of the Base District Revenue. In the first Fiscal Year after the Effective Date in which District Revenues exceed two times the Base District Revenue, and in each Fiscal Year thereafter, the amount of District Revenue actually received by District in excess of two times Base District Revenue shall be split evenly between District and City. The parties intend that all District Revenues will ultimately be split equally between them.

5. **Annual Transfer of Funds From DISTRICT to CITY.**
   In the next Fiscal Year following the Effective Date and in each Fiscal Year thereafter, the DISTRICT shall transfer to CITY, within 60 days of receiving its District Revenue allocations from the County, the amount of District Revenue owed to City in accordance with Section 4 above.

6. **Support for Annexation to the City.**
DISTRICT agrees not to oppose or attempt to frustrate the Annexation of the Affected Territory to the CITY and CITY agrees to not request Detachment of the Affected Territory from the DISTRICT, in any Change of Organization proceeding before LAFCO.

7. **Assurances on Use of Revenue.**

CITY recognizes that District Revenues transferred to it by this Agreement could have been appropriated by DISTRICT to meet public safety service demands. CITY agrees to utilize District Revenues to maintain levels of service in the Affected Territory equal to or greater than levels of service provided by CITY elsewhere. City agrees to ensure funds it receives pursuant to this Agreement will be available to benefit the Affected Territory under mutual aid or other cooperative agreements.

8. **No Restriction on District or City Discretion.**

Nothing in this Agreement is intended or shall be construed to limit or restrain DISTRICT or CITY discretion to make budgetary, legislative or staffing decisions regarding levels of service that it deems necessary for overall safety and welfare of the Affected Territory.

9. **Term of Agreement and Termination.**

The Agreement shall become effective on the date that it becomes approved by both CITY and DISTRICT. It shall terminate only upon the mutual agreement of the parties.

10. **Renegotiation Due to Change in Law.**

In entering into this Agreement, the parties mutually assume the continuation of the existing statutory scheme for the allocation and distribution of available District Revenue to local government. Accordingly, it is mutually understood and agreed that should changes in law occur that materially affect the terms of this Agreement the parties shall meet to attempt to resolve any difficulties that are thereby created. “Materially Effect” as used in this Agreement shall include but not be limited to a decrease in District Revenue of five percent (5%) in any single Fiscal Year and only applies to a change in law, not a change in the facts serving as the basis for this Agreement. Any party contending this section applies shall give written notice pursuant to this section, which notice shall include an
explanation of the reasons for the request to meet and attempt to resolve any claim of Material Effect.

11. **Modification.**

This Agreement may be modified or amended only by a writing duly authorized and executed by CITY and DISTRICT.

12. **Administrative and Ministerial Action.**

City and District will insofar as is legally possible, fully carry out the intent and purposes hereof, if necessary, by administrative and ministerial action independent of their legislative power.

13. **Integration.**

This Agreement is intended to be an integrated agreement and supersedes any and all previous negotiations, proposals, commitments, writings and understandings of any nature whatsoever between CITY and DISTRICT as to the subject matter of this Agreement.

14. **Notice.**

All notices, requests, determinations or other correspondence required or allowed by law or this Agreement to be provided by the parties shall be in writing and shall be deemed given and received when delivered to the recipient by certified mail or by facsimile transmission at the following addresses:

City Manager           Fire Chief
City of Modesto        Salida Fire Protection District
1010 10th Street       P.O. Box 1335
Suite 6100             4820 Salida Boulevard
Modesto, CA 95354      Salida, CA 95368

Fire Chief
Modesto Fire Department
600 11th Street
Modesto, CA 95354
15. **Dispute Resolution.**

Any dispute arising out of or relating to the interpretation or application of this Agreement, or any District Revenue or Base District Revenue calculation hereunder shall be submitted to the respective Fire Chiefs of City and District for resolution. If the dispute is not resolved there, it maybe submitted to mediation upon mutual agreement of City and District. In the event the dispute is not settled by the Fire Chiefs and/or in mediation, within six months after one party gives the other party notice in accordance with this Agreement of the dispute, the matter shall be submitted to final and binding arbitration before one arbitrator in Modesto. The arbitrator will be chosen from a panel of three proposed by the American Arbitration Association by alternate strikes. Arbitration may be requested by either party.

This Agreement to arbitrate shall be specifically enforceable under the jurisdiction of the Superior Court of the State of California in Stanislaus County, but any award rendered by the arbitrator may be entered in any court having jurisdiction. This section shall result in the conclusive, final and binding resolution of arbitrable claims between the parties. Arbitration shall proceed according to the “fast track” rules of the American Arbitration Association then in effect. District and City shall have the right to take no more than three (3) depositions apiece as a matter of right, without regard to the “fast track” rules. The arbitrator shall apply the substantive law of California.

The arbitrator may grant any remedy or relief deemed by the arbitrator just and equitable under the circumstances, whether or not such relief could be awarded in a court of law. The arbitrator shall be empowered to award monetary sanctions against a party for failure of cooperation in the arbitration. The arbitrator shall, in written award, allocate all the costs of the arbitration, including fees of the arbitrator and the reasonable attorney fees of the prevailing party, against the party who did not prevail. The prevailing party shall be the party in whose favor the majority of the central issues in the case are resolved.

Notwithstanding anything in this provision to the contrary, the arbitrator shall have no power to award punitive damages or other damages not measured by the party’s actual damages (excluding litigation costs and fees) against any party.
This limitation of the arbitrator’s powers under this Agreement shall not operate as an exclusion of the issue of punitive damages from this Agreement to Arbitrate sufficient to vest jurisdiction in a court with respect to that issue.

The parties hereby waive any rights provided by Title 9.2 of the California Code of Civil Procedure, Section 1296. The arbitrator’s award shall be deemed final, conclusive and binding to the fullest extent allowed by California law.

16. **Assignment.**

   This Agreement and its terms and conditions shall be binding upon and inure to the benefit of the parties to this Agreement and their respective administrators. This Agreement may not be assigned by either party without written consent of the other party.

17. **Governing Law.**

   This Agreement shall be governed by the laws of the State of California without reference to its choice of law jurisprudence.

18. **Severability.**

   If any provision of this Agreement, is found by any court of competent jurisdiction to be unenforceable or invalid for any reason, such provision shall be severed from the remainder of the Agreement and shall not in any way impair the enforceability of any other provision of this Agreement.

19. **Compliance with Applicable Law.**

   In providing the services required by this Agreement, CITY and DISTRICT shall observe and comply with all applicable federal, state and local laws, ordinances, codes and regulations.

20. **Authority to Contract.**

   CITY and DISTRICT each warrant that they are respectively legally permitted and otherwise have the authority to enter into this Agreement and perform their respective obligations.

21. **Third Party Beneficiaries.**

   Nothing contained in this Agreement shall be construed to create any rights in third parties and the parties do not intend to create any such rights.
22. **No Party Deemed to be Draftsman.**
The parties acknowledge and agree that this Agreement has been arrived at through negotiation and that neither party is to be deemed the party which prepared this Agreement within the meaning of Civil Code section 1654.

23. **Counterparts.**
This Agreement may be executed in multiple counterparts, which may be transmitted by facsimile, each of which shall, for all purposes, be deemed an original, but which together shall constitute one and the same instrument.

24. **Indemnity.**
City agrees to indemnify, defend and hold District harmless with respect to City’s negligence or other wrongful acts arising out of or relating to City’s performance of it’s fire and/or life safety services pursuant to this Agreement without regard to the availability of insurance coverage.

District agrees to indemnify, defend and hold City harmless with respect to District’s negligence or other wrongful acts arising out of or relating to District’s performance of it’s fire and/or life safety services pursuant to this Agreement without regard to the availability of insurance coverage.

25. **Additional Insured Requirement.**
District and City shall each cause the other to be included as an additional insured to their insurance policies offering or potentially offering coverage for fire and/or life safety services.
IN WITNESS WHEREOF, the parties have executed this Agreement as of the last date set forth below.

SALIDA FIRE PROTECTION DISTRICT

By: __________________________ __
   Tom Burns
   Chairman of the Board of Directors

Dated: ______________________, 2010

APPROVED AS TO FORM:

By: __________________________
   William D. Ross
   District Counsel

Dated: ______________________, 2010

CITY OF MODESTO

By: __________________________
   GREG NYHOFF, City Manager

Dated: ______________________, 2010

APPROVED AS TO FORM:

By: __________________________
   Susana Alcala Wood
   Modesto City Attorney

Dated: ______________________, 2010
MODESTO CITY COUNCIL
RESOLUTION NO. 2010-246

A RESOLUTION FINDING THAT THE FOLLOWING PROJECT IS WITHIN THE SCOPE OF THE KIERNAN BUSINESS PARK SPECIFIC PLAN AMENDMENT #4 PROGRAM ENVIRONMENTAL IMPACT REPORT (SCH NO. 2007062071): KIERNAN BUSINESS PARK EAST ANNEXATION

WHEREAS, on September 1, 2009, by Resolution No. 2009-418, the City Council of the City of Modesto certified the Kiernan Business Park Specific Plan Amendment #4 Program Environmental Impact Report ("Program EIR") (SCH No. 2007062071) for the Kiernan Business Park Specific Plan Amendment #4, and

WHEREAS, Benchmark Engineering has proposed the annexation of three properties within the Kiernan Business Park Specific Plan, located at 2706, 2742, and 2866 Kiernan Avenue, and adjacent right-of-way on Kiernan Avenue/CA-219, 42.61 acres total, to the City of Modesto and Modesto Municipal Sewer District #1, and

WHEREAS, Section 21157.1 of the Public Resources Code, relating to reviewing subsequent projects for a Master EIR, states that the lead agency shall prepare an Initial Study on any proposed subsequent project to analyze whether the subsequent project may cause any significant effect on the environment that was not examined in the master environmental impact report and whether the subsequent project was described in the master environmental impact report as being within the scope of the project, and

WHEREAS, the City’s Community & Economic Development Department by Environmental Assessment Initial Study EA/C&ED 2010-09 ("Initial Study") reviewed the proposed annexation to determine whether the project is within the scope of the project covered by the Kiernan Business Park Specific Plan Amendment #4 Program EIR ("Program EIR"), and concluded that the proposed project is within the scope of the
Program EIR and will have no additional significant effect on the environment that was not identified in the Program EIR, and further, that no new additional mitigation measures or alternatives are required, and that, therefore, the proposed project is within the scope of the project covered by the Program EIR, and

WHEREAS, in accordance with CEQA guidelines beginning on Wednesday, May 20, 2010, the City caused to be published a 20-day notice of the City’s intent to make a finding that the proposed project conforms with the Program EIR, and

WHEREAS, said matter was considered by the City Council at a duly noticed public hearing which was held on June 9, 2010, at 5:30 p.m., in the Tenth Street Place Chambers located at 1010 Tenth Street, Modesto, California,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the Council has reviewed and considered the Initial Study prepared for the proposed annexation, a copy of which is attached hereto as Exhibit “A”, and incorporated herein by reference, and based on the substantial evidence included in said Initial Study makes the following findings:

1. That the proposed project is contemplated and described in the Program EIR (SCH No. 2007062071) as being within the scope of the Program EIR.

2. That the project will have no new significant effects on the environment not identified or examined in the Program EIR, and no new or additional mitigation measures are required.

3. That, as per Section 21157.1 of the Public Resources Code, no new environmental document or findings are required by the California Environmental Quality Act (CEQA).

4. That there are no specific features which are unique to the proposed project that require project specific mitigation measures. Accordingly, the certified mitigation measures identified in the Program EIR will be sufficient for this project.
5. That all feasible mitigation measures set forth in the Program EIR which are appropriate to the project shall be incorporated in the project.

BE IT FURTHER RESOLVED by the Council of the City of Modesto that the Community & Economic Development Director is hereby authorized and directed to file a notice of approval or determination within five (5) business days with the Stanislaus County Clerk pursuant to Section 21152 of the Public Resources Code.

The foregoing resolution was introduced at a special meeting of the Council of the City of Modesto held on the 9th day of June, 2010, by Councilmember Hawn, 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: Geer, Hawn, Lopez, Muratore, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: Marsh

(Seal)

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney
EXHIBIT A

Initial Study

EA/C&ED 2010-09
City of Modesto

Determination:
Project within the Scope of the
Kiernan Business Park Specific Plan Amendment #4
Program Environmental Impact Report (SCH# 2007062071)
for the Proposed:

Kiernan Business Park East Annexation
(Benchmark Engineering, Applicant)

Prepared by:

City of Modesto
Community & Economic Development Department
Planning Division

March 9, 2010
This written checklist is prepared pursuant to Section 15168(c) of the CEQA Guidelines, which provides for subsequent activities to be examined in the light of a Program EIR to determine whether an additional environmental document must be prepared. If subsequent activities are determined to be within the scope of a Program EIR, no new environmental document is required. Activities are deemed to be within the scope of a Program EIR when the agency finds that, on the basis of the criteria provided by Section 15162, no new effects could occur or no new mitigation measures would be required as a result of implementation of the activity.

II. Program EIR Information

Program Name: Kiernan Business Park Specific Plan Amendment #4

Program Boundaries: The 153-acre area is bounded on the north by Kiernan Avenue, on the west by Dale Road, on the south by Bangs Avenue, and on the east by a line extending south from American Avenue and parallel to Dale Road.

Program Description: This program includes the following components, as listed on page II.2 of the EIR:

- Adoption of Kiernan Business Park Specific Plan amendments. Proposed amendments would amend the Land Use Plan Diagram to show the change in land use designation from BP to MU and MHDR; would amend the Circulation Plan Diagram to reflect changes to the planned roads and to show new roads; would amend the Bike Paths Figure to reflect changes to the planned bicycle facilities and to show new bicycle facilities; would amend the Illustrative Public Facilities Diagram to reflect changes to the planned water, storm, and sanitary sewer pipeline alignments and to show new water, storm, and sanitary sewer pipelines; would introduce a Street Cross Section Diagram for Healthcare Way, The Plaza Way, and Chopra Parkway; would amend the text of the Land Use chapter of the Specific Plan to include project-specific Development Standards and Design Guidelines; and would amend the text of the Circulation and Access and Public Facilities chapters of the Specific Plan to reflect the proposed changes.

- Adoption of an amendment to the Urban Area General Plan. The proposed amendment would redesignate the 39-acre area proposed to be modified in the Specific Plan of the Kiernan/Carver Comprehensive Planning District (CPD) of the General Plan from BP to MU.

- Approval of a Development Agreement, if applicable.
• Approval of a Tentative Subdivision Map and/or tentative parcel map, if applicable.
• Adoption of a resolution initiating annexation of a 67-acre portion of the project site.
• Adoption of a resolution to approve rezoning.
• Adoption of a Facilities Master Plan and an Infrastructure Financing Plan.
• Formation of a Community Facilities District.
• Approval by the Local Agency Formation Commission (LAFCO). LAFCO will review reorganization of the amended Kiernan Business Park Specific Plan, including the annexation of the 67-acre portion of the 153-acre project site to the City of Modesto and the Modesto Municipal Sanitary Sewer District No. 1, and simultaneously detach this portion of the project site from the Salida Fire Protection District.
• Approval by MID. MID must review the proposed storm water drainage system, which proposes discharge to MID Lateral No. 6. Upon acceptance of the proposed storm water drainage system, MID would enter into a Drainage Agreement with the City.

Program Certification Date: September 1, 2009
State Clearinghouse Number: 2007062071

III. Project Information

Project Name: Kiernan Business Park East Annexation

Project Location: Three parcels located at 2706, 2742, and 2866 Kiernan Avenue, east of Dale Road and southwest of the intersection of Kiernan Avenue and American Avenue (APNs 078-015-002, -012, and -013)

Project Description: Application to annex the above properties comprised of approximately 30.11 acres, plus adjacent right of way along Kiernan Avenue/CA-219, 39 acres total, to the City of Modesto, Modesto Sewer District No. 1, with cost-sharing agreement between the City of Modesto Fire Department and the Salida Fire Protection District in lieu of detachment from the Salida Fire District. The proposed annexation area is a segment of a 67-acre portion of the Kiernan Business Park Specific Plan area not yet annexed to the City, described on Page III.5 of the Kiernan Business Park Specific Plan Amendment #4 Program EIR. No new development is proposed with the application for annexation. All future development shall be by separate application and be analyzed for conformance to the Kiernan Business Park Specific Plan and the Kiernan Business Park Specific Plan Amendment #4 Program EIR.

General Plan Designation: BP

Zoning: Pre-Specific Plan (P-SP)

Lead Agency: City of Modesto, 1010 Tenth St., Modesto, CA. 95354
Contact Person: Katharine Martin, 209-577-5465

Project Applicant: Benchmark Engineering, 213 Sierra Ave., Oakdale, CA 95361

Other Public Agencies whose Approval is Required: None
IV. Determination:

Based on the analysis contained in this document, staff finds that pursuant to Guidelines Section 15168(c) the following is true for the proposed project:

1. There are no substantial changes proposed in the application for annexation which result in new significant environmental effects or a substantial increase in the severity of previously identified significant effects and, therefore, no major revisions to the Kiernan Business Park Specific Plan Amendment #4 EIR are required.

2. No substantial changes have occurred with respect to the circumstances under which the proposed annexation is undertaken which will result in new significant environmental effects or a substantial increase in the severity of previously identified significant effects and, therefore, no major revisions to the Kiernan Business Park Specific Plan Amendment #4 EIR are required.

3. There is no new information of substantial importance which was not known and could not have been known with the exercise of reasonable diligence when the Kiernan Business Park Specific Plan Amendment #4 EIR was adopted which shows any of the following:
   a. one or more significant effects which is not discussed in the Kiernan Business Park Specific Plan Amendment #4 EIR, or
   b. significant effects which were previously examined will be substantially more severe than previously shown, or
   c. previously infeasible mitigation measures or alternatives are now feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative, or
   d. mitigation measures or alternatives which are considerably different from those analyzed in the Kiernan Business Park Specific Plan Amendment #4 EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

4. The Written Checklist, Environmental Assessment No. EA/C&ED No. 2010-09, provides the substantial evidence to support findings 1-3, above, and the City hereby determines that no further environmental documentation is required for the proposed project.

Original signed copy on file with CEDD

Project Manager Date
V. PROJECT EVALUATION:

The following written Checklist serves to document the evaluation of the site and activity of the proposed project pursuant to CEQA Guidelines Section 15168 (c) (4) to determine whether the environmental effects of the operation were covered in the Kiernan Business Park Specific Plan Amendment #4 Program EIR.

<table>
<thead>
<tr>
<th>Potentially Significant Impact</th>
<th>Less than Significant Impact with Mitigation</th>
<th>Less-than-Significant Impact</th>
<th>No Impact</th>
</tr>
</thead>
</table>

I. AESTHETICS. Would the project when compared to the impacts identified in the Program EIR, create new impacts or increase the level of existing impacts that would:

a. Have a substantial adverse effect on a scenic vista? X
b. Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings along a scenic highway? X
c. Substantially degrade the existing visual character or quality of the site and its surroundings? X
d. Create a new source of substantial light or glare that would adversely affect daytime or nighttime views in the area? X

Aesthetic and visual impacts are analyzed on pages 21 through 25 of Appendix A, Notice of Preparation and Initial Study of the EIR certified on September 1, 2009.

Responses to Checklist Questions

a.- b. The Kiernan Business Park Specific Plan Amendment #4 EIR found that there are no identified scenic vistas or scenic resources on or within the vicinity of the project site. Approval of the proposed 39-acre annexation would not impact scenic views from public open spaces or other sites accessible to the general public, nor substantially damage scenic resources. No mitigation is required.

c. The Kiernan Business Park Specific Plan Amendment #4 EIR found that the development within the Specific Plan area would have a less-than-significant impact on the visual character of the area. The proposed annexation would not change the design or layout of the development proposed within the Kiernan Business Park Specific Plan.

d. Future business park development within the annexation area would create new sources of nighttime light. The Design Guidelines of the Kiernan Business Park
Specific Plan would require measures such as shielding and landscaping to reduce the impact to a less-than-significant level.

II. AGRICULTURAL RESOURCES. In determining whether impacts on agricultural resources are significant environmental effects, lead agencies may refer to the California Agricultural Land Evaluation and Site Assessment Model (1997) prepared by the California Department of Conservation. Would the project when compared to the impacts identified in the Program EIR, create new impacts or increase the level of existing impacts that would:

a. Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use? X

b. Conflict with existing zoning for agricultural use or conflict with a Williamson Act contract? X

c. Involve other changes in the existing environment that, due to their location or nature, could result in conversion of Farmland to non-agricultural use? X

Impacts on agricultural resources are analyzed on pages IV.B.6 through IV.B.10 of the EIR certified in 2008.

Responses to Checklist Questions

a. The Kiernan Business Park Specific Plan Amendment #4 EIR found that land designated as Prime Farmland would be lost as a result of development in the project area. This impact was determined to be significant and unavoidable. The City of Modesto adopted a statement of overriding consideration for this impact. A mitigation measure was provided but would not mitigate the loss of Prime Farmland to less-than-significant level.

b. The Kiernan Business Park Specific Plan Amendment #4 EIR identified one parcel subject to a Williamson Act contract in the proposed annexation area. However, the contract was protested by the City on October 7, 1974, and on March 29, 1978 the protest was upheld by LAFCO. The property owner filed for Non-Renewal in August of 2004. The City does not intend to succeed the contract.
and so it will be terminated in conjunction with annexation. The project area has been pre-zoned for consistency with the specific plan, and no lands in the proposed annexation area are zoned for agricultural use.

c. The Kiernan Business Park Specific Plan Amendment #4 EIR identified the conversion of Prime Farmland to new business park, residential, and commercial uses. The Program EIR identified the project would not hinder the continued use of the agricultural lands to the north and east of the project site. Therefore, the project’s impacts on surrounding ongoing agricultural operations would be considered less-than-significant.

The proposed annexation area is a portion of the 67 acres described in the Kiernan Business Park Specific Plan Amendment #4 Program EIR, and therefore is contemplated and consistent with EIR. The analysis and conclusion regarding Agricultural Resources impacts would remain the same as identified in the Program EIR. There are no new significant impacts or increase in severity of previously identified impacts. No new or additional mitigation measures or alternatives are required.

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III. AIR QUALITY. When available, the significance criteria established by the applicable air quality management or air pollution control district may be relied upon to make the following determinations. Would the project when compared to the impacts identified in the Program EIR, create new impacts or increase the level of existing impacts that would:

a. Conflict with or obstruct implementation of the applicable air quality plan? X

b. Violate any air quality standard or contribute substantially to an existing or projected air quality violation? X

c. Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is a nonattainment area for an applicable federal or state ambient air quality standard (including releasing emissions that exceed quantitative thresholds for ozone precursors)? X

d. Expose sensitive receptors to substantial pollutant concentrations? X

e. Create objectionable odors affecting a substantial number of people? X
Impacts on air quality are analyzed on pages IV.D.26 through IV.D.43 of the EIR certified in 2008.

Responses to Checklist Questions

a.- b. The Kiernan Business Park Specific Plan Amendment #4 EIR found that air pollution from project-related construction and during project operation would contribute to existing violations of ambient air quality standards. The impacts were determined to be significant and unavoidable. Partial mitigation for these impacts is included in the Program EIR, and the City of Modesto adopted a statement of overriding consideration for each impact.

c. The Kiernan Business Park Specific Plan Amendment #4 EIR found that the project would cause a cumulatively considerable net increase of pollutants in the San Joaquin Valley is designated as nonattainment. Project related emissions would cumulatively increase mobile source activity and associated regional emissions of ROG, NOx and PM 10. The impacts were determined to be significant and unavoidable. Partial mitigation for these emissions is included in the Program EIR, and the City of Modesto made a statement of overriding consideration for each impact.

d. The proposed annexation area carries the land use designation of BP (Business Park), for which only Business Park uses would be permitted as allowed by the Kiernan Business Park Specific Plan and Section 10-2.1602 of the City’s Municipal Code upon annexation to the City. These uses would not generate substantial TAC emissions that would affect sensitive receptors. The Kiernan Business Park Specific Plan Amendment #4 EIR found that no stationary source of TACs within a one mile radius of the project center has been found to emit TACs at a level that represents an unacceptable increased health risk to the general public.

e. The proposed annexation area carries the land use designation of BP (Business Park), for which only Business Park uses would be permitted as allowed by the Kiernan Business Park Specific Plan and Section 10-2.1602 of the City’s Municipal Code upon annexation to the City. The uses permitted by this designation would not generate objectionable odors during routine operation.

The proposed annexation is a portion of the 67 acres described in the Kiernan Business Park Specific Plan Amendment #4 Program EIR, and therefore is contemplated by and consistent with the Program EIR. The analysis and conclusion regarding Air Quality impacts would remain the same as identified in the Program EIR. There are no new significant impacts or increase in severity of previously identified impacts. No new or additional mitigation measures or alternatives are required.
IV. BIOLOGICAL RESOURCES. Would the project when compared to the impacts identified in the Program EIR, create new impacts or increase the level of existing impacts that would:

a. Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service? X

b. Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service? X

c. Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marshes, vernal pools, coastal wetlands, etc.) through direct removal, filling, hydrological interruption, or other means? X

d. Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites? X

e. Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance? X

f. Conflict with the provisions of an adopted habitat conservation plan, natural community conservation plan, or other approved local, regional, or state habitat conservation plan? X

Impacts on biological resources are analyzed on pages IV.G.9 through IV.G.14 of the EIR certified in 2008.
Responses to Checklist Questions

a. The Kiernan Business Park Specific Plan Amendment #4 EIR found that the proposed development would result in the loss of occupied Burrowing Owl habitat. Mitigation measures are required that would reduce the impacts on this species to less-than-significant levels.

b. The Kiernan Business Park Specific Plan Amendment #4 EIR did not find that any riparian habitat or other designated sensitive natural community present in the project area, and so found that the project would have a less-than-significant impact.

c. The Kiernan Business Park Specific Plan Amendment #4 EIR did not find any protected wetlands on the project site.

d. The Kiernan Business Park Specific Plan Amendment #4 EIR identified migratory birds, including raptors, as nesting in the vicinity. Mitigation measures are provided to reduce the impact to less-than-significant.

e.-f. The Kiernan Business Park Specific Plan Amendment #4 EIR found no local biological resource protection policies, ordinances, habitat conservation plans, or natural community conservation plans that apply to the project area.

The proposed annexation is a portion of the 67 acres described in the Kiernan Business Park Specific Plan Amendment #4 Program EIR, and therefore is contemplated by and consistent with the Program EIR. The analysis and conclusion regarding Biological Resources impacts would remain the same as identified in the Program EIR. There are no new significant impacts or increase in severity of previously identified impacts. No new or additional mitigation measures or alternatives are required.

V. CULTURAL RESOURCES. Would the project when compared to the impacts identified in the Program EIR, create new impacts or increase the level of existing impacts that would:

a. Cause a substantial adverse change in the significance of a historical resource as defined in Section 15064.5? X

b. Cause a substantial adverse change in the significance of an archaeological resource pursuant to Section 15064.5? X

c. Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature? X

d. Disturb any human remains, including those interred X

City of Modesto
KBPE SPA No. 4 EIR Written Checklist 11 Initial Study, KBPE Annexation
EA/C&ED No. 2010-09
March 9, 2010
outside of formal cemeteries?

Cultural resources impacts are analyzed on pages 36 through 41 of Appendix A, Notice of Preparation and Initial Study of the EIR certified on September 1, 2009.

**Responses to Checklist Questions**

a.- d. The Kiernan Business Park Specific Plan Amendment #4 EIR concluded that there are no known historic, archaeological, or paleontological resources in the proposed annexation area. However, the presence of these cultural resources cannot be conclusively ruled out. Implementation of General Plan policies would ensure potential cultural impacts would be less-than-significant.

The proposed annexation is a portion of the 67 acres described in the Kiernan Business Park Specific Plan Amendment #4 Program EIR, and therefore is contemplated by and consistent with the Program EIR. The analysis and conclusion regarding Cultural Resources impacts would remain the same as identified in the Program EIR. There are no new significant impacts or increase in severity of previously identified impacts. No new mitigation measures or alternatives are required.

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**VI. GEOLOGY AND SOILS.** Would the project when compared to the impacts identified in the Program EIR, create new impacts or increase the level of existing impacts that would:

a. Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:

1. Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42. X
2. Strong seismic groundshaking? X
3. Seismic-related ground failure, including liquefaction? X
4. Landslides? X

b. Result in substantial soil erosion or the loss of topsoil? X
c. Be located on a geologic unit or soil that is unstable or that would become unstable as a result of the project? X
and potentially result in an onsite or offsite landslide, lateral spreading, subsidence, liquefaction, or collapse?

d. Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial risks to life or property?  X

e. Have soils incapable of adequately supporting the use of septic tanks or alternative wastewater disposal systems in areas where sewers are not available for the disposal of wastewater? X

Impacts associated with geology and soils are analyzed on pages 41 through 44 of Appendix A, Notice of Preparation and Initial Study of the EIR certified on September 1, 2009.

**Responses to Checklist Questions**

a.- b. The Kiernan Business Park Specific Plan Amendment #4 EIR found that the proposed annexation area is not subject to geologic or soil-related hazards that cannot be adequately mitigated through the implementation of existing city regulations, such as the building code. No significant impacts were identified, and no mitigation measures are required.

c.- d. The Kiernan Business Park Specific Plan Amendment #4 EIR concluded that the underlying soil in the project site is not susceptible to liquefaction, landslides, or shrink/swell or expansion potential. No significant impacts were identified, and no mitigation measures are required.

e. The project site would be served by public sewers. Septic tanks or alternative wastewater disposal systems would not be introduced on the project site and existing septic tanks would have to be removed at time of development.

The proposed annexation is a portion of the 67 acres described in the Kiernan Business Park Specific Plan Amendment #4 Program EIR, and therefore is contemplated by and consistent with the Program EIR. The analysis and conclusion regarding Geology and Soils impacts would remain the same as identified in the Program EIR. There are no new significant impacts or increase in severity of previously identified impacts. No new or additional mitigation measures or alternatives are required.

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**VII. HAZARDS AND HAZARDOUS MATERIALS.** Would the project when compared to the impacts identified in the Program EIR, create new impacts or increase the level of existing impacts that would:

a. Create a significant hazard to the public or the environment through the routine transport, use, or

X
disposal of hazardous materials?

b. Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment? X

c. Emit hazardous emissions or involve handling hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school? X

d. Be located on a site that is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment? X

e. Be located within an airport land use plan area or, where such a plan has not been adopted, be within two miles of a public airport or public use airport, and result in a safety hazard for people residing or working in the project area? X

f. Be located within the vicinity of a private airstrip and result in a safety hazard for people residing or working in the project area? X

g. Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan? X

h. Expose people or structures to a significant risk of loss, injury, or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands? X

Impacts associated with hazards and hazardous materials are analyzed on pages IV.F.6 through IV.F.9 of the EIR certified on September 1, 2009.

**Responses to Checklist Questions**

a.– c. The Kiernan Business Park Specific Plan Amendment #4 EIR identified that the proposed project development would not involve the routine transport, use, or disposal of hazardous materials. Construction activities could result in drainage of hazardous materials but would be mitigated to less-than-significant levels as a result of implementing the adopted Guidance Manual for New Development Stormwater Quality Control Measures.

d. The Kiernan Business Park Specific Plan Amendment #4 EIR concluded there is the potential of exposing construction workers to hazardous substance if contaminated soil or ground water is discovered during construction activities.

City of Modesto
KBPE SPA No. 4 EIR Written Checklist 14

Initial Study, KBPE Annexation
EA/C&ED No. 2010-09
March 9, 2010
mitigation measure is required that would reduce this impact to a less-than-significant level.

e. The project area is located over 7.5 miles from the nearest public airport. There would be no impact. No mitigation is required.

f. The project area is located over 5 miles from the nearest private airport. There would be no impact. No mitigation is required.

g. The Kiernan Business Park Specific Plan Amendment #4 EIR concluded that development of the project area would not interfere with an adopted emergency response plan or emergency evacuation plan. No mitigation is required.

h. The Kiernan Business Park Specific Plan Amendment #4 EIR identified that the surrounding area is largely agricultural or developed. There is no expectation that new development in the project area would expose people or structures to wildland fires. No mitigation is required.

The proposed annexation is a portion of the 67 acres described in the Kiernan Business Park Specific Plan Amendment #4 Program EIR, and therefore is contemplated by and consistent with the Program EIR. The analysis and conclusion regarding Hazards and Hazardous Materials impacts would remain the same as identified in the Program EIR. There are no new significant impacts or increase in severity of previously identified impacts. No new or additional mitigation measures or alternatives are required.

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**VIII. HYDROLOGY AND WATER QUALITY.** Would the project when compared to the impacts identified in the Program EIR, create new impacts or increase the level of existing impacts that would:

a. Violate any water quality standards or waste discharge requirements? X

b. Substantially deplete groundwater supplies or interfere substantially with groundwater recharge, resulting in a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level that would not support existing land uses or planned uses for which permits have been granted)? X

c. Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner that would result in substantial erosion or siltation onsite or offsite? X
d. Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner that would result in flooding onsite or offsite? X

e. Create or contribute runoff water that would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff? X

f. Otherwise substantially degrade water quality? X

g. Place housing within a 100-year flood hazard area, as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map? X

h. Place within a 100-year flood hazard area structures that would impede or redirect floodflows? X

i. Expose people or structures to a significant risk of loss, injury, or death involving flooding, including flooding as a result of the failure of a levee or dam? X

j. Contribute to inundation by seiche, tsunami, or mudflow? X

Impacts associated with hydrology are analyzed on pages IV.H10 through IV.H.17 of the EIR certified on September 1, 2009.

**Responses to Checklist Questions**

a. The Kiernan Business Park Specific Plan Amendment #4 EIR identified the potential for pollutants from construction sites or from future land uses that could be transported to surface waters and groundwater potentially reducing the water quality. Mitigation measures are required that would reduce the impacts to a less-than-significant level.

b. The Kiernan Business Park Specific Plan Amendment #4 EIR found that the construction and operation of the required detention basin system is expected to offset the minor losses of groundwater recharge associated with the increased impervious coverage proposed by the project.

c.– e. The Kiernan Business Park Specific Plan Amendment #4 EIR found that development could substantially alter the existing drainage pattern of the area; however, because there are mitigation measures requiring the project to incorporate an urban storm drain system, the erosion or flooding impacts will be less-than-significant.
f. The Kiernan Business Park Specific Plan Amendment #4 EIR found that existing water supply wells, if not properly managed or decommissioned, could be damaged during construction and cause water quality degradation. A mitigation measure is required that would reduce the impact to a less-than-significant level.

g. The proposed annexation area is not located within any 100-year flood hazard area. The nearest river is the Stanislaus River, approximately 1.88 miles to the north. There would be no additional impact, and no mitigation is required.

j. The project site is located in a flat, inland area not susceptible to seiche, tsunami, or mudflow. There would be no impact. No mitigation is required.

The proposed annexation is a portion of the 67 acres described in the Kiernan Business Park Specific Plan Amendment #4 Program EIR, and therefore is contemplated by and consistent with the Program EIR. The analysis and conclusion regarding Hydrology and Water Quality impacts would remain the same as identified in the Program EIR. There are no new significant impacts or increase in severity of previously identified impacts. No new or additional mitigation measures or alternatives are required.

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**IX. LAND USE AND PLANNING.** Would the project when compared to the impacts identified in the Program EIR, create new impacts or increase the level of existing impacts that would:

a. Physically divide an established community? X

b. Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to, a general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect? X

c. Conflict with any applicable habitat conservation plan or natural community conservation plan?

Impacts associated with land use and planning are analyzed on pages IV.A.9 through IV.A.11 of the EIR certified on September 1, 2009.

**Responses to Checklist Questions**

a.-b. The proposed annexation would not result in any physical changes to the environment beyond those identified in the Kiernan Business Park Specific Plan Amendment #4 EIR. The City has not adopted plans and policies as thresholds for significant impacts. There would be no impact and no mitigation is required.
c. There are no known habitat conservation plans or natural community conservation plans associated with this project. There would be no impact. No mitigation is required.

The proposed annexation is a portion of the 67 acres described in the Kiernan Business Park Specific Plan Amendment #4 Program EIR, and therefore is contemplated by and consistent with the Program EIR. The analysis and conclusion regarding Land Use and Planning impacts would remain the same as identified in the Program EIR. There are no new significant impacts or increase in severity of previously identified impacts. No new mitigation measures or alternatives are required.

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X. MINERAL RESOURCES. Would the project when compared to the impacts identified in the Program EIR, create new impacts or increase the level of existing impacts that would:

a. Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state? X

b. Result in the loss of availability of a locally important mineral resource recovery site delineated on a local general plan, specific plan, or other land use plan? X

Impacts associated with mineral resources are analyzed on pages 52 through 53 of Appendix A, Notice of Preparation and Initial Study of the EIR certified on September 1, 2009.

Responses to Checklist Questions

a.- b. No known mineral resources or important recovery sites are located in the project area. There would be no impact. No mitigation is required.

XI. NOISE. Would the project when compared to the impacts identified in the Program EIR, create new
impacts or increase the level of existing impacts that would:

a. Expose persons to or generate noise levels in excess of standards established in a local general plan or noise ordinance or applicable standards of other agencies?  

b. Expose persons to or generate excessive groundborne vibration or groundborne noise levels?  

c. Result in a substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project?  

d. Result in a substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project?  

e. Be located within an airport land use plan area, or, where such a plan has not been adopted, within two miles of a public airport or public use airport and expose people residing or working in the project area to excessive noise levels?  

f. Be located in the vicinity of a private airstrip and expose people residing or working in the project area to excessive noise levels?  

Impacts associated with noise are analyzed on pages IV.E.12 through IV.E.23 of the EIR certified on September 1, 2009.

Responses to Checklist Questions

a.- c. The Kiernan Business Park Specific Plan Amendment #4 EIR identified that project related traffic would not cause substantial noise levels for sensitive receptors in the project vicinity. However, project related traffic could cause substantial noise levels for sensitive receptors within the project area. New stationary and non-stationary sources associated with the proposed project could generate noise levels incompatible with ordinances or goals for the surroundings. Mitigation measures are required that would reduce the noise impacts to a less-than-significant level.

d. The Kiernan Business Park Specific Plan Amendment #4 EIR found that construction of the proposed project could result in a substantial temporary increase in ambient noise levels. Mitigation measures are required that would reduce the noise impacts to a less-than-significant level.

e.- f. The Kiernan Business Park Specific Plan Amendment #4 EIR found that project area is not located in an airport land use plan area or within 2 miles of a public airport. The nearest private airport is about 5 miles away. There would be no impact. No mitigation is required.
The proposed annexation is a portion of the 67 acres described in the Kiernan Business Park Specific Plan Amendment #4 Program EIR, and therefore is contemplated by and consistent with the Program EIR. The analysis and conclusion regarding Noise impacts would remain the same as identified in the Program EIR. There are no new significant impacts or increase in severity of previously identified impacts. No new or additional mitigation measures or alternatives are required.

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XII. POPULATION AND HOUSING. Would the project when compared to the impacts identified in the Program EIR, create new impacts or increase the level of existing impacts that would:

a. Induce substantial population growth in an area, either directly (e.g., by proposing new homes and businesses) or indirectly (e.g., through extension of roads or other infrastructure)?

   X

b. Displace a substantial number of existing housing units, necessitating the construction of replacement housing elsewhere?

   X

c. Displace a substantial number of people, necessitating the construction of replacement housing elsewhere?

   X

Impacts associated with population and housing are analyzed on pages 56 through 58 of Appendix A, Notice of Preparation and Initial Study of the EIR certified on September 1, 2009.

Responses to Checklist Questions

a. The Kiernan Business Park Specific Plan Amendment #4 EIR concluded that the development of the proposed project would induce population growth but at a less-than-significant level.

b.- c. The Kiernan Business Park Specific Plan Amendment #4 EIR identified 13 home sites would be demolished throughout the project area, of which three are within the proposed 39-acre annexation area. The amount of persons displaced was determined to be less-than-significant by the Program EIR. No mitigation is required.

The proposed annexation is a portion of the 67 acres described in the Kiernan Business Park Specific Plan Amendment #4 Program EIR, and therefore is contemplated by and consistent with the Program EIR. The analysis and conclusion regarding Population and Housing impacts would remain the same as identified in the Program EIR. There are no

City of Modesto Initial Study, KBPE Annexation
KBPE SPA No. 4 EIR Written Checklist 20
EA/C&ED No. 2010-09 March 9, 2010
new significant impacts or increase in severity of previously identified impacts. No new mitigation measures or alternatives are required.

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XIII. PUBLIC SERVICES. Would the project when compared to the impacts identified in the Program EIR, create new impacts or increase the level of existing impacts that would:

a. Result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities or a need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times, or other performance objectives for any of the following public services:

1. Fire protection? X
2. Police protection? X
3. Schools? X
4. Parks? X
5. Other public facilities? X

Impacts on public services are analyzed on pages IV.I.5 through IV.I.20 of the EIR certified on September 1, 2009.

Responses to Checklist Questions

a-1. The nearest City of Modesto Fire Station to the 39-acre proposed annexation area is Station No. 11, located approximately two miles away at Carver Road and Pelandale Avenue. The Kiernan Business Park Specific Plan Amendment #4 EIR found that the existing personnel and apparatus at Station No. 11 would be adequate to meet the need of increased demand for future business park development at the proposed annexation area. Therefore, the physical impact would be at a less-than-significant level. No mitigation is required.

a-2. The Kiernan Business Park Specific Plan Amendment #4 EIR found that upon annexation, the Modesto Police Department would include the 67-acre portion of the project now served by the Stanislaus County Sheriff Department with Patrol Area 65. The portion of the Kiernan Business Park Specific Plan which lies within the City’s incorporated area is already served by this Patrol Area. Future
development of the 39-acre proposed annexation area would result in an increase of MPD officer hours; however, long-range financing strategies are in place for each Comprehensive Planning District, allowing the City to allocate the necessary funds to extend those police services to the proposed annexation area. Therefore, the physical impact would be at a less-than-significant level. No mitigation is required.

a-3-5. The Kiernan Business Park Specific Plan Amendment #4 EIR found that development of the proposed project would result in increased use and demand on school and park facilities but not at a significant level. There would be no impact. No mitigation is required.

The proposed annexation is a portion of the 67 acres described in the Kiernan Business Park Specific Plan Amendment #4 Program EIR, and therefore is contemplated by and consistent with the Program EIR. The analysis and conclusion regarding Public Services impacts would remain the same as identified in the Program EIR. There are no new significant impacts or increase in severity of previously identified impacts. No new or additional mitigation measures or alternatives are required.

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XIV. RECREATION. Would the project when compared to the impacts identified in the Program EIR, create new impacts or increase the level of existing impacts that would:

a. Increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated? \( \times \)

b. Include recreational facilities or require the construction or expansion of recreational facilities that might have an adverse physical effect on the environment? \( \times \)

Impacts associated with recreation are analyzed on pages 61 through 62 of Appendix A, Notice of Preparation and Initial Study of the EIR certified on September 1, 2009.

Responses to Checklist Questions

a.-b. No significant impacts on recreation facilities were identified in the Program EIR.
XV. TRANSPORTATION/TRAFFIC. Would the project when compared to the impacts identified in the Program EIR, create new impacts or increase the level of existing impacts that would:

a. Cause an increase in traffic that is substantial in relation to the existing traffic load and capacity of the street system (i.e., result in a substantial increase in the number of vehicle trips, the volume-to-capacity ratio on roads, or congestion at intersections)?

b. Cause, either individually or cumulatively, exceedance of a level-of-service standard established by the county congestion management agency for designated roads or highways?

c. Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks?

d. Substantially increase hazards because of a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?

e. Result in inadequate emergency access?

f. Result in inadequate parking capacity?

g. Conflict with adopted policies, plans, or programs supporting alternative transportation (e.g., bus turnouts, bicycle racks)?

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Impacts on transportation and traffic are analyzed on pages IV.C.37 through IV.C.85 of the EIR certified on September 1, 2009.

Responses to Checklist Questions

a.- b. The Kiernan Business Park Specific Plan Amendment #4 EIR found that development of the proposed project would result in significant impacts at study intersections and roadway segments. There would also be significant cumulative impacts on road way segments. Mitigation measures were identified in the Program EIR to reduce some of the traffic impacts to a less-than-significant level. Other traffic impacts were determined to be significant and unavoidable because the mitigation measures were found infeasible. The City of Modesto made a statement of overriding considerations for that impact at the time it certified the EIR.

c. Kiernan Business Park Specific Plan Amendment #4 EIR concluded the project would not change air traffic patterns or air traffic related safety. There would be no impact. No mitigation is required.
d. The Kiernan Business Park Specific Plan Amendment #4 EIR determined there would not be a substantial increase in hazards due to a design feature. No mitigation is required.

e. The Kiernan Business Park Specific Plan Amendment #4 EIR did not find that development of the project area would result in inadequate emergency access in the Specific Plan area. Therefore, there would be no impact on emergency service access. No mitigation is required.

f. The Kiernan Business Park Specific Plan Amendment #4 EIR did not find that development of the project area would result in inadequate parking capacity. There would be no impact. No mitigation is required.

g. The Kiernan Business Park Specific Plan Amendment #4 includes bicycle paths and lanes. The proposed annexation does not include any changes related to alternative transportation policies, and would have no impact. No mitigation is required.

The proposed annexation is a portion of the 67 acres described in the Kiernan Business Park Specific Plan Amendment #4 Program EIR, and therefore is contemplated by and consistent with the Program EIR. The analysis and conclusion regarding Transportation and Traffic impacts would remain the same as identified in the Program EIR. There are no new significant impacts or increase in severity of previously identified impacts. No new or additional mitigation measures or alternatives are required.

<table>
<thead>
<tr>
<th>Potentially Significant Impact</th>
<th>Less than Significant with Mitigation Incorporated</th>
<th>Less-than-Significant Impact</th>
<th>No Impact</th>
</tr>
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</table>

**XVI. UTILITIES AND SERVICE SYSTEMS.** Would the project when compared to the impacts identified in the Program EIR, create new impacts or increase the level of existing impacts that would:

a. Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board? X

b. Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects? X

c. Require or result in the construction of new stormwater drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects? X

d. Have sufficient water supplies available to serve the project from existing entitlements and resources, or would new or expanded entitlements be needed? X
e. Result in a determination by the wastewater treatment provider that serves or may serve the project that it has adequate capacity to serve the project’s projected demand in addition to the provider’s existing commitments?  

f. Be served by a landfill with sufficient permitted capacity to accommodate the project’s solid waste disposal needs?  

g. Comply with federal, state, and local statutes and regulations related to solid waste?  

Impacts on utilities and service systems are analyzed on pages IV.H.10 through IV.H.17, pages IV.J.16 through IV.J.11, and pages IV.K.10 through IV.K.17 of the EIR certified September 1, 2009.

**Responses to Checklist Questions**

a. The Kiernan Business Park Specific Plan Amendment #4 EIR identifies that the proposed project would result in an increased demand for wastewater collection, treatment, and disposal but not at a significant level.

b. The Kiernan Business Park Specific Plan Amendment #4 EIR discusses that new project specific water facility would be need to maintain adequate water pressure. The proposed project would not require new wastewater facilities beyond those facilities already anticipated by the Wastewater Master Plan Update. The impact to water and wastewater facilities are found to be less-than-significant.

c. The Kiernan Business Park Specific Plan Amendment #4 EIR discusses the new storm drainage facilities that will be needed in order to accommodate build out of the project area. The EIR found that, with mitigation, there would be no significant impact on storm drainage facilities.

d. The Kiernan Business Park Specific Plan Amendment #4 EIR found that, based on a Water Supply Assessment, there will be sufficient water supply to serve the project area and the impact on water demand would be less-than-significant. No mitigation is required.

f, g. The Kiernan Business Park Specific Plan Amendment #4 EIR found that the Modesto and Stanislaus County Waste-to-Energy Plant has sufficient capacity to accommodate the project’s solid waste disposal needs.

The proposed annexation is a portion of the 67 acres described in the Kiernan Business Park Specific Plan Amendment #4 Program EIR, and therefore is contemplated by and consistent with the Program EIR. The analysis and conclusion regarding Utility and Services System impacts would remain the same as identified in the Program EIR. There are no new significant impacts or increase in severity of previously identified impacts. No new or additional mitigation measures or alternatives are required.
XVII. MANDATORY FINDINGS OF SIGNIFICANCE.

a. Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal, or eliminate important examples of the major periods of California history or prehistory?  

b. Does the project have impacts that are individually limited but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.)

c. Does the project have environmental effects that will cause substantial adverse effects on human beings, either directly or indirectly?  

Responses to Checklist Questions

a. As described above, the proposed annexation of 39 acres, as a portion of the 67 acres described on Page III.5 of the Kiernan Specific Plan Amendment #4 Program EIR, would not result in any significant impacts on the environment over and above those associated with implementation of the Kiernan Business Park Specific Plan Amendment #4 and as analyzed in the Program EIR. The proposed annexation was contemplated by and is consistent with the Program EIR.

b. As described above, the proposed 39-acre annexation would not result in any significant impacts, either on a project or on cumulative level, over and above those associated with implementation of the Kiernan Business Park Specific Plan Amendment #4 and as analyzed in the Program EIR.

c. As described above, the proposed 39-acre annexation would not result in any significant impacts affecting humans over and above those associated with implementation of the Kiernan Business Park Specific Plan Amendment #4 and as analyzed in the Program EIR.
V. MITIGATION APPLIED TO PROJECT

The proposed annexation area is a segment of a 67-acre portion of the Kiernan Business Park Specific Plan area not yet annexed to the City, described on Page III.5 of the Kiernan Business Park Specific Plan Amendment #4 Program EIR. No new development is proposed with the application for annexation. All future development shall be by separate application and be analyzed for conformance to the Kiernan Business Park Specific Plan, and be subject to further environmental review with mitigation measures identified in the Program EIR applied where applicable.

The additional project-specific mitigation measures listed below are necessary to reduce the identified new significant effect:

**Aesthetics Measures:** None.

**Agricultural Resources Measures:** None.

**Air Quality Measures:** None.

**Biological Resources Measures:** None.

**Cultural Resources Measures:** None.

**Geology and Soils Measures:** None.

**Hazard and Hazardous Materials Measures:** None.

**Hydrology and Water Quality Measures:** None.

**Land Use and Planning Measures:** None.

**Mineral Resources Measures:** None.

**Noise Measures:** None.

**Population and Housing Measures:** None

**Public Services Measures:** None.

**Recreation:** None

**Transportation/Traffic Measures:** None.

**Utility and Service System Measures:** None.
MODESTO CITY COUNCIL
RESOLUTION NO. 2010-247

A RESOLUTION APPROVING AN AGREEMENT BETWEEN THE CITY OF MODESTO AND THE SALIDA FIRE PROTECTION DISTRICT FOR THE ALLOCATION OF DISTRICT REVENUE RESULTING FROM THE ANNEXATION OF PROPERTY WITHIN THE KIERNAN BUSINESS PARK TO THE CITY OF MODESTO; AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE AGREEMENT

WHEREAS, the Salida Fire Protection District is responsible for fire suppression and prevention within the area of City’s proposed Kiernan Business Park, and

WHEREAS, City and District desire to enter into an Agreement to allocate District revenues in the event of annexation of the territory within City’s proposed Kiernan Business Park to the City, and

WHEREAS, City and District agree it is in the best interest of the proposed Kiernan Business Park annexation area to receive fire and life safety services jointly from City and District, and

WHEREAS, City and District agree that it is their intent to insure that both agencies receive sufficient District revenues to provide adequate levels of fire and life safety services within the territory of the proposed Kiernan Business Park that is subject to annexation to City, and

WHEREAS, it is agreed that an equitable sharing of future District revenue from the affected Kiernan Business Park territory will benefit the overall organization of fire protection agencies and their cooperative ability to provide adequate emergency services,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves an Agreement between the City of Modesto and the Salida Fire
Protection District for the allocation of district revenue resulting from the annexation of property within the Kiernan Business Park to the City.

BE IT FURTHER RESOLVED by the Council of the City of Modesto that the City Manager, or his designee, is hereby authorized to execute the Agreement.

The foregoing resolution was introduced at a special meeting of the Council of the City of Modesto held on the 9th day of June, 2010, by Councilmember Hawn, 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: Geer, Hawn, Lopez, Muratore, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: Marsh

ATTEST: [Signature]

STEFANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: [Signature]

SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2010-248

A RESOLUTION APPROVING AN AGREEMENT BETWEEN THE CITY OF MODESTO, MODESTO CONVENTION AND VISITORS BUREAU AND BDM PROPERTIES FOR A 65-SQUARE FOOT ELECTRONIC MESSAGE BOARD SIGN TO BE LOCATED ON THE BUILDING AT 1623 J STREET; AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE AGREEMENT

WHEREAS, BDM Properties has approached the City and the Modesto Convention and Visitors Bureau with a proposal to install a 65-square foot “informational” electronic message board sign to be located on the building at 1623 J Street, and

WHEREAS, said sign is to be used for the purpose of advertising community events in Modesto and to be operated by the Modesto Convention and Visitors Bureau, and

WHEREAS, BDM Properties wishes to enter into an agreement with the City of Modesto and Modesto Convention and Visitors Bureau regarding the installation and operation of said sign, and

WHEREAS, as an informational sign authorized by the City of Modesto and operated by the Modesto Convention and Visitors Bureau, the sign is exempt from the provisions of Section 10-2.2102(qq)(2) of Article 21 of Title 10 of the Modesto Municipal Code,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves an Agreement between the City of Modesto, the Modesto Convention and Visitors Bureau and BDM Properties for a 65-square foot electronic message board sign to be located on the building at 1623 J Street.
BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute the Agreement.

The foregoing resolution was introduced at a special meeting of the Council of the City of Modesto held on the 9th day of June, 2010, 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: Geer, Hawn, Lopez, Marsh, Muratore, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney
RESOLUTION AUTHORIZING THE MAYOR OF THE CITY OF MODESTO OR HIS DESIGNEE TO SIGN AN AGREEMENT WITH THE CITY OF MENGZI, CHINA TO ESTABLISH A SISTER CITY RELATIONSHIP

WHEREAS, the City of Modesto and the City of Mengzi, China are interested in establishing a sister city relationship, and

WHEREAS, Modesto Sister Cities International has recommended the relationship, and

WHEREAS, such a relationship will promote cooperation, mutual understanding and friendship between the communities,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves a sister city relationship between the City of Modesto and the City of Mengzi, China,

BE IT FURTHER RESOLVED that the Mayor of the City of Modesto, or designee, is hereby authorized to execute a sister city agreement with Mengzi, China.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 22nd day of June, 2010, by Councilmember Hawn, 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: Geer, Hawn, Lopez, Marsh, Muratore, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: 

(SEAL)

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2010-250

RESOLUTION AMENDING THE FISCAL YEAR 2009-2010 ANNUAL OPERATING BUDGET FOR VARIOUS FUNDS TO REPAY THE TENTH STREET JOINT POWERS AGENCY FOR FUNDS OWED DUE TO AN ACCOUNTING STRUCTURE CHANGE

WHEREAS, a financial analysis has been completed and it has been determined that a budget adjustment is required to the Fiscal Year 2009-2010 Annual Operating Budget of the City of Modesto for various funds to repay the Tenth Street Joint Powers Agency for funds owed due to an accounting structure change,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves amending the Fiscal Year 2009-2010 Annual Operating Budget as shown on Exhibit A, which is incorporated by reference herein.

BE IT FURTHER RESOLVED that the Director of Finance, or her designee, is hereby authorized to take the necessary steps to implement the provisions of this resolution.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 22\textsuperscript{nd} day of June, 2010, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember Marsh, was upon roll call carried and the resolution adopted by the following votes:

AYES: Councilmembers: Geer, Hawn, Lopez, Marsh, Muratore, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

\begin{center}
\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{signature}
\caption{ATTEST: \textit{Stephanie Lopez, City Clerk}}
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((SEAL))

APPROVED AS TO FORM:

By: \textit{Susana Alcala Wood, City Attorney}
**REQUEST FOR BUDGET ADJUSTMENT**

**Contact Person:** DeAnna Herrera  
**Telephone No.:** 577-5387  
**Department:** Finance  
**Fund Title:** Various Funds  
**Council Action Date:**  
**Resolution Number:**  
**FY:** 09-10

**Appr| Unit| Current Budget| Increase/ (Decrease)| Revised Budget| Description of Object**

<table>
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<tr>
<th>Fund-Acty-Org-Object</th>
<th>Appr Unit</th>
<th>Current Budget</th>
<th>Increase/ Decrease</th>
<th>Revised Budget</th>
<th>Description of Object</th>
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</table>

| **COMMENTS/JUSTIFICATION** | | | | | |
| The City of Modesto has been the financial officer for the Tenth Street Joint Power Agency operations since the construction completion of the Tenth Street Place building in 1999. When the accounting setup was created in the City of Modesto’s financial system the JPA was included as part of the Building Services Fund. Since the JPA serves as a separate entity from the City, the creation of a separate fund was made in FY 2003-04 to account for the segregation of the activity between the JPA and the City. When this change occurred, there was $172,248 in JPA fund balance residing in the Building Services Fund at the end of FY 2002-03 which should have been transferred into the new fund. This transaction did not occur and now these funds are due back to the JPA. The Building Services Fund accounted for this fund balance as their own and these funds were absorbed between FY 2003-04 to the current fiscal year on the services being provided by the various City departments. |

**AUTHORIZATION (check if required)**

<table>
<thead>
<tr>
<th>DEPUTY DIRECTOR (Public Works Dept)</th>
<th>SIGNATURE</th>
<th>DATE</th>
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</thead>
<tbody>
<tr>
<td>DEPARTMENT DIRECTOR or AUTHORIZED ASSISTANT (Allocation of Dept Appr to Line-Item Level)</td>
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<tr>
<td>FINANCE DIRECTOR (Transfers to from Internal Service Charges) (All items requiring City Manager’s Approval)</td>
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</table>

**AT/BT #**

**DATE**
MODESTO CITY COUNCIL
RESOLUTION NO. 2010 -251

A RESOLUTION APPROVING THE CALCULATION FOR THE APPROPRIATION LIMIT FOR THE FISCAL YEAR 2010-2011 ANNUAL BUDGET

WHEREAS, Proposition IV of the California State Constitution requires the City to establish an appropriation limit calculation each fiscal year, and

WHEREAS, Article XIIIIB of the California Constitution specifies that appropriations made by State and local governments may increase annually by a factor comprised of the change in population combined with either the change in California per capita personal income or the change in the local assessment roll due to local nonresidential construction, and

WHEREAS, the attached schedule shows the preferred price and population factors to be used and the appropriation limit calculation, and

WHEREAS, the recommended factors in calculating the limit are the price factor of “state growth in per capita income” and the population factor of “growth rate in the City of Modesto”, and

WHEREAS, a copy of said report is on file in the City of Modesto Finance Department,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the appropriation limit calculation is hereby established as shown on Schedule A, attached hereto, and made a part hereof.
BE IT FURTHER RESOLVED that the Director of Finance, or her designee, is hereby authorized to take the necessary steps to implement the provisions of this resolution.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 22nd day of June, 2010, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember Marsh, was upon roll call carried and the resolution adopted by the following votes:

AYES: Councilmembers: Geer, Hawn, Lopez, Marsh, Muratore, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney
Fiscal Year 2010-11

PROPOSITION 4

APPROPRIATION LIMIT CALCULATION

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Adjustment Factors

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<td>Per Capita Personal Income Change</td>
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<td>Population Change (Stanislaus County)</td>
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<td>Per Capita converted to a ratio</td>
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Calculation of factor for FY2010-2011 0.9838

Adjustment

$(5,247,913)

FY2010-2011 Appropriation Limit $318,697,306

Article XIIIIB places a limit on most, but not all, government revenue sources. The limit applies to appropriations from proceeds of taxes from both the general fund and special funds of government entities. Proceeds of taxes include tax revenues, interest earnings on invested tax revenues, and any revenues collected by a regulatory license fee or user charge in excess of the amount needed to cover the cost of providing the regulation, product, or service.

Appropriations from nontax revenues, including the City’s enterprise funds, are not subject to the limit.

* - The FY 09/10 Appropriation Limit Calculation was recalculated using the City of Modesto per capita ratio.
RESOLUTION AUTHORIZING THE AWARD OF BID AND CONTRACT FOR THE FURNISHING OF WATER STORAGE TANK INSPECTION SERVICES AND REPAIRS FOR THE PUBLIC WORKS DEPARTMENT, WATER DIVISION, TO PASO ROBLES TANK, INC., PASO ROBLES, CA, FOR A TWO (2) YEAR AGREEMENT WITH THREE (3) ONE-YEAR EXTENSION OPTIONS AT THE SOLE DISCRETION OF THE CITY, AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE AGREEMENT

WHEREAS, the City Council authorized the Purchasing Manager to issue formal Request for Bids (RFB) for the furnishing of water storage tank inspection services and repairs for the Public Works Department, Water Division, and

WHEREAS, the Purchasing Division issued RFB No. 0910-21 Water Storage Tank Inspection Services and Repairs to thirteen (13) prospective bidders, none of which were local companies, posted the bid on the City’s website and formally advertised as required by law, and

WHEREAS, RFB’s were formally opened in the City Clerk’s office. One company chose to respond. The company provided a responsive and responsible bid, and

WHEREAS, based on providing a responsive and responsible bid, City staff recommends the award of bid and contract for the furnishing of water storage tank inspection services and repairs for the Public Works Department, Water Division, to Paso Robles Tank, Inc., Paso Robles, CA, 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 $32,130, 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 and contract for the furnishing of water storage tank
inspection services and repairs for the Public Works Department, Water Division, to Paso Robles Tank, Inc., Paso Robles, CA, conforms to the Modesto Municipal Code, and

WHEREAS, the Water Fund has funds budgeted for the furnishing of water storage tank inspection services and repairs in Appropriation Unit: 6100-480-5013-0235,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby authorizes the award of bid and contract for the furnishing of water storage tank inspection services and repairs for the Public Works Department, Water Division, to Paso Robles Tank, Inc., Paso Robles, CA.

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 22nd day of June 2010, by Councilmember Hawn, 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: Geer, Hawn, Lopez, Marsh, Muratore, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

(Seal)

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2010-253

A RESOLUTION APPROVING AN AMENDMENT TO THE AGREEMENT WITH THE INTERNATIONAL CITY MANAGEMENT ASSOCIATION RETIREMENT CORPORATION (ICMA-RC) FOR ADMINISTRATIVE SERVICES AND INVESTMENTS OF CITY EMPLOYEES' 401(A) AND 457 DEFERRED COMPENSATION PLANS; AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE AMENDMENT

WHEREAS, the City of Modesto entered into an agreement with The International City Management Association Retirement Corporation (ICMA-RC) on April 5, 2005, to provide administrative services and investments for the City's 401(A) and 457 Deferred Compensation Plans for its employees, and

WHEREAS, the ICMA-RC has worked with the City of Modesto to deliver excellent service, and

WHEREAS, the City wishes to amend the agreement for administrative services and investments wherein ICMA-RC will pay the City an administrative allowance in the amount of $75,000 per year in the first and second year of the agreement, and $100,000 in the third year of the agreement, and

WHEREAS, at its April 26, 2010 meeting, the Finance Committee recommended exercising the City's extension option and entering into the three-year agreement with ICMA-RC,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves an amendment to the agreement for administrative services and investments with ICMA-RC for a three-year period wherein ICMA-RC will pay the City an administrative allowance in the amount of $75,000 per year in the first and second
year of the agreement, and $100,000 in the third year of the agreement. A copy of the Amendment will be on file in the office of the City Clerk.

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

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 22nd day of June, 2010, by Councilmember Hawn, 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: Geer, Hawn, Lopez, Marsh, Muratore, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: 

(SEAL)

APPROVED AS TO FORM

By: 

SUSANA ALCALA WOOD, City Attorney
A RESOLUTION APPROVING A NEW AGREEMENT FOR BROKER OF RECORD SERVICES THROUGH GALLAGHER BENEFIT SERVICES FOR AN ADDITIONAL 24-MONTH PERIOD, COMMENCING ON JULY 1, 2010; AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE AGREEMENT

WHEREAS, the City of Modesto entered into an agreement with Gallagher Benefit Services (GALLAGHER) on November 1, 2005, to provide broker of record services, and

WHEREAS, GALLAGHER has worked with the City of Modesto to deliver excellent service, and

WHEREAS, the City wishes to extend the agreement for broker of record services with GALLAGHER for an additional 24-month period commencing on July 1, 2010, wherein GALLAGHER will reduce its monthly consulting fee from $4083.33 to $3583.33 per month, and

WHEREAS, at its May 24, 2010 meeting, the Finance Committee recommended extending the agreement for broker of record services with GALLAGHER for an additional 24-month period, commencing on July 1, 2010,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves a new agreement for broker of record services with GALLAGHER for an additional 24-month period, commencing on July 1, 2010. A copy of the agreement will be on file in the office of the City Clerk.

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 22nd day of June, 2010, by Councilmember Hawn, 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: Geer, Hawn, Lopez, Marsh, Muratore, Olsen,
Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: [Signature]
STEFANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM

By: [Signature]
SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2010-255

A RESOLUTION AUTHORIZING THE CITY TO EXTEND THE RETIREMENT INCENTIVE, VOLUNTARY SEPARATION PROGRAM AND SEVERANCE PACKAGE TO ELIGIBLE EMPLOYEES; AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO SIGN IMPLEMENTATION DOCUMENTS

WHEREAS, the City has projected a budget shortfall for Fiscal Year 2010-11 and for Fiscal Year 2011-12 as a result of the economic downturn, and

WHEREAS, in order to address the budget shortfall, and in an effort to reduce the number of employees impacted due to budget reductions, the City desires to offer eligible employees, as authorized by the City Manager, and who have been employed by the City for at least five (5) full years of continuous service in a regular position, the option of electing to participate in either a Retirement Incentive Program or Voluntary Separation Program, and

WHEREAS, the layoff of some full time employees is inevitable, and the City desires to establish a severance package to include Severance Pay, Health Benefits and Interview Leave for employees subject to an authorized reduction in force due to budget reductions,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby authorizes the City to extend the Retirement Incentive Program, Voluntary Separation Program and Severance Package to eligible employees upon retirement, separation or layoff as outlined in Exhibit A, entitled, "City of Modesto Retirement Incentive Program," Exhibit B, entitled, "City of Modesto Voluntary Separation Program," and Exhibit C, entitled, "City of Modesto Severance Package for Laid Off Employees."
BE IT FURTHER RESOLVED, that the City Manager, or his designee, is hereby authorized to sign implementation documents.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 22nd day of June, 2010, by Councilmember Hawn, 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: Geer, Hawn, Lopez, Marsh, Muratore, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: 

STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: 

SUSANA ALCALA WOOD, City Attorney
PREVIEW COPY

CITY OF MODESTO
Retirement Incentive Program

SEPARATION AGREEMENT AND RELEASE OF ALL CLAIMS

This Separation Agreement and Release of All Claims (hereinafter referred to as the “Agreement”) is made and entered into by and between the undersigned “Employee,” his/her heirs, representatives, attorneys, successors and assigns, and anyone claiming through Employee and the City of Modesto, a municipal corporation, and its City Council members, officers, agents, employees, administrators, representatives, executors, successors, assigns, and/or other individuals or entities related thereto (hereinafter referred to collectively as “the City”).

WHEREAS,

1. The City has a projected budget shortfall for the remainder of fiscal year 2010-11 and for fiscal year 2011-12 as a result of the economic downturn.

2. In order to address the budget shortfall, the City is offering eligible employees who have been employed by the City for at least five (5) full years of continuous service in a regular position the option of electing to participate in the Retirement Incentive Program described herein.

3. Employee has timely notified the City, in writing by submitting the Letter of Separation/Retirement, attached hereto as Exhibit A, of his/her desire to participate in the City’s Retirement Incentive Program and has been accepted for participation by the City Manager.

4. By opting to participate in the Retirement Incentive Program, Employee agrees to all the terms set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth below and for other valuable consideration, receipt of which is hereby acknowledged, the parties agree as follows:

1. **Effective Date.** This Agreement shall become effective and irrevocable by either party upon the expiration of seven (7) calendar days after this document is signed by both parties, in accordance with the revocation period set forth in paragraph 6(e) below (“Effective Date”).

Exhibit A
2. **Terms of Retirement Incentive Program.**

   a. In consideration for voluntarily retiring from the City between June 30, 2010 and July 30, 2010 (last day on payroll to be no later than July 30, 2010), Employee shall receive compensation based on full years of service with the City as of the Employee’s retirement effective date. The retirement incentive amount shall be calculated based on the employee’s base salary and years of continuous service, with one week’s base pay per completed year of service, up to a maximum of $30,000. Based on this calculation, employee shall receive an incentive of $__________.

   b. The City Manager is authorized to extend Employee’s retirement date, after consulting with the Employee, under the Retirement Incentive Program to meet the needs and objectives of the City. No appeal of the City Manager’s decision shall be permitted.

   c. Employee acknowledges that Employee is voluntarily retiring and, therefore, ineligible for unemployment compensation through the California Employment Development Department.

   d. Employees shall receive all benefits to which the Employee is normally entitled upon retirement from employment with the City.

3. **Employee Representations Regarding Claims.** Employee represents there are no actions at law or administrative proceedings currently pending which concern allegations based on Employee’s hiring, retention, or compensation by the City, or the termination of Employee’s employment, or based on any act or failure to act by the City affecting, involving, or relating to Employee and his/her employment with the City.

4. **No Admission of Liability.** This Agreement and compliance with this Agreement shall not be construed as an admission of any liability by either Employee or the City of any unlawful or wrongful acts by either party, individually or collectively. The parties disclaim liability as to or for any and all wrongful acts against each other.

5. **Waiver and Release.** In exchange for the valuable consideration and compromises set forth in this Agreement, Employee, on behalf of himself/herself and his/her representatives, family members, heirs, administrators, executives, successors, assigns and anyone claiming through Employee, hereby releases and forever discharges the City, its City Council members, officers, directors, agents, and employees (whether former or current), volunteers, successors, assigns, insurers, attorneys, consultants, affiliates, and/or related organizations or entities (all hereafter referred to singularly and collectively as “the parties hereby released”), from any and all actions, claims, judgments, obligations, damages, and liabilities of whatsoever kind and character with Employee may now have or has ever had arising in any way from or during Employee’s employment with the City, including but not limited to:

---

**Exhibit A**

2
a. Any and all claims for wages, salary, paid leave, and/or benefits;

b. Any grievance or other administrative remedy deriving from City policy;

c. Any and all claims for wrongful or constructive discharge and/or reinstatement;

d. Any and all claims relating to any contracts, express or implied, or breach of the covenant of good faith and fair dealing;

e. Any and all tort claims of any nature, including but not limited to, fraud, deceit, misrepresentation, negligent misrepresentation, defamation, invasion of privacy, negligent or intentional infliction of emotional distress;

f. Any and all claims of discrimination, harassment, retaliation or failure to accommodate under federal, state or municipal statute or ordinance, including but not limited to, race, national origin, age, gender, mental or physical disability, medical condition, sexual orientation, marital status, religion, or otherwise, and including any claims under the United States Constitution, California Constitution, California Fair Employment and Housing Act, Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. section 1981, 42 U.S.C. section 1983, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Older Workers’ Benefit Protection Act, the Equal Pay Act, the Family Medical Leave Act, the California Family Rights Act, the Fair Labor Standards Act, the California Labor Code, and any other laws and regulations relating to employment; and

g. Any and all claims for attorney’s fees or costs.

Employee hereby further agrees that this Agreement shall operate as a complete bar against any and all litigation, charges, grievances now pending or contemplated by Employee or which might at any time be filed including but without limiting the foregoing, and any and all matters arising out of or in any manner whatsoever connected with Employee’s employment with and separation of employment from the City up to the date of Employee’s separation from the City.

Employee’s Initials: __________

6. Older Workers Benefit Protection Act. For an Employee 40 years or older and in accordance with the Older Workers Benefit Protection Act, covered Employee acknowledges having been advised by this writing of the following:

   a. Employee acknowledges having been advised to consult an attorney of his/her choosing before executing this Agreement.
b. Employee acknowledges that the compensation provided in this Agreement constitutes independent consideration for the said waiver and is in addition to any other payment to which Employee is entitled.

c. Employee acknowledges that this Agreement is written in a manner designed to be understood by Employee and that Employee has read the Agreement carefully and understands its terms.

d. Employee acknowledges that he/she has up to forty five (45) calendar days from the date of receipt of this Agreement to consider whether to accept it, although Employee may accept it at any time within those 45 calendar days. If Employee accepts and signs the Agreement before the end of the 45 day period, Employee acknowledges doing so voluntarily and waives any further period for consideration.

e. Employee has the right to revoke this Agreement within seven (7) calendar days after signing the Agreement. This Agreement shall not become effective or enforceable until the seven (7) day revocation period has expired. In the event that Employee revokes pursuant to this section, the entire Agreement shall be void and ineffective.

Employee’s Initials (40 years or older): __________

7. **Specific Waiver of Section 1542 of the California Civil Code.** Employee acknowledges that he/she has read, and hereby waives the application of Section 1542 of the Civil Code, which provides:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM, MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH DEBTOR.”

Employee understands and acknowledges that the significance and consequence of this waiver of Section 1542 of the Civil Code is that, even if he/she should eventually suffer or discover damages arising out of Employee’s employment with the City, Employee will not be permitted to make any claim for those damages. Furthermore, Employee acknowledges that he/she intends these consequences even as to claims that may exist as of the date of this release but which Employee does not know exist, and which, if known, would materially affect Employee’s decision to execute this release, regardless of whether Employee’s lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

Employee’s Initials: __________
8. **Protected Rights.** Employee and City agree that nothing in this Agreement is intended to or shall be construed to affect, limit or otherwise interfere with any non-waivable right of Employee under any Federal, state or local law, including but not limited to, the right to enforce this Agreement and recover for any breach of it, rights under California Labor Code Sections 2802 and 2804, the right to file a charge or participate in an investigation or proceeding conducted by the Equal Employment Opportunity Commission (“EEOC”) or to exercise any other right that cannot be waived under applicable law. Employee is releasing, however, his/her right to any monetary recovery or other relief should the EEOC or any other agency pursues claims on his/her behalf. Further, should the EEOC or any other agency obtain monetary recovery or other relief on Employee’s behalf, Employee assigns to City all rights to such monetary recovery or other relief.

Employee’s Initials: ________

9. **Return of Property.** Unless otherwise authorized by the City, on the last day of employment with the City, Employee shall return all City property in Employee’s possession or control, including without limitation any laptop computers, keys, proximity badge, credit cards, cellular telephones, files and documents (and all copies thereof).

10. **No Precedent.** The parties specifically acknowledge and agree that this Agreement is a compromise which shall not operate, nor be considered, as evidence of a practice or past practice of the City or a precedent in the future.

11. **Construction of the Agreement.** The parties agree that in any construction to be made of this Agreement, the same shall not be construed against any party on the basis that the party was the drafter.

12. **Acknowledgement of Voluntary Execution.** Employee has carefully read the Agreement and understands the contents. Employee has been afforded the opportunity to consult with his/her own counsel regarding this Agreement. Employee freely, knowingly, and voluntarily enters into this Agreement without any duress or undue influence on the part of any person released by this Agreement, or by any third party. Employee warrants and represents that he/she has the mental and emotional capacity to understand the provisions of this Agreement and its effects upon his/her legal rights.

Employee’s Initials: __________

13. **Partial Invalidity.** In the event that any of the covenants, duties, or restrictions of this Agreement are found to be illegal, invalid or unenforceable, such provision, if possible, shall be construed so as to render the provision legal, valid and enforceable. In the event such provision cannot be amended or construed to be legal, valid and enforceable, such provision shall be deemed deleted and the remainder of this Agreement shall remain in full force and effect.

**Exhibit A**
14. **Entire Agreement.** This Agreement sets forth the entire agreement between the parties and supersedes any and all prior agreements or understandings, written or oral, between the parties pertaining to the subject matter hereof. No other promises or agreements shall be binding upon the parties with respect to the subject matter of this Agreement unless contained herein or separately agreed to in writing by the parties. This Agreement may not be modified except by a writing signed by Employee and the City Manager.

15. **Applicable Law.** This Agreement shall be governed by the laws of the State of California, and shall in all respects, be interpreted and enforced under the laws of the State of California. Litigation arising out of or connected with this Agreement shall be instituted and maintained in the courts of Stanislaus County in the State of California, and the parties consent to jurisdiction over their person and over the subject matter of any such litigation in such court, and consent to service of process issued by such court.

16. **No Assignment.** Employee warrants that he/she has not assigned, transferred, nor purported to assign or transfer, any claim(s) Employee may have against the City, and he/she will not assign or transfer, nor purport to assign or transfer, any claim(s) he/she may have against the City. The City warrants that it has not assigned, transferred nor purported to assign or transfer any claim(s) it may have against Employee and that it will not assign nor purport to assign or transfer hereafter any claim(s) it may have against Employee.

17. **Waiver.** Waiver by either party of any default, breach or condition precedent shall not be construed as a waiver of any other default, breach or condition precedent or any other right hereunder.

18. **Section Headings.** The section headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

19. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall, for all purposes, be deemed an original and all such counterparts, taken together, shall constitute one and the same instrument.

20. **Attorney’s Fees and Costs.** Each party shall bear all attorney’s fees and costs arising from and/or in any way related to the actions of its own counsel with regard to the negotiation and creation of this Agreement.

---

**Exhibit A**
IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year written below.

By: ___________________________ By: ___________________________
   Employee                              Greg Nyhoff
   City Manager

Date: _________________ Date: _________________

APPROVED AS TO FORM:

By: ___________________________
   Susana Alcala Wood
   City Attorney

Exhibit A
CITY OF MODESTO
Voluntary Separation Program

SEPARATION AGREEMENT AND RELEASE OF ALL CLAIMS

This Separation Agreement and Release of All Claims (hereinafter referred to as the “Agreement”) is made and entered into by and between the undersigned “Employee,” his/her heirs, representatives, attorneys, successors and assigns, and anyone claiming through Employee and the City of Modesto, a municipal corporation, and its City Council members, officers, agents, employees, administrators, representatives, executors, successors, assigns, and/or other individuals or entities related thereto (hereinafter referred to collectively as “the City”).

RECITALS

WHEREAS,

1. The City has a projected budget shortfall for the remainder of fiscal year 2010-11 and for fiscal year 2011-12 as a result of the economic downturn.

2. In order to address the budget shortfall, the City is offering eligible employees who have been employed by the City for at least five (5) full years of continuous service in a regular position the option of electing to participate in the Voluntary Separation Program described herein.

3. Employee has timely notified the City, in writing by submitting the Letter of Separation/Retirement, attached hereto as Exhibit A, of his/her desire to participate in the City’s Voluntary Separation Program and has been accepted for participation by the City Manager.

4. By opting to participate in the Voluntary Separation Program, Employee agrees to all the terms set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth below and for other valuable consideration, receipt of which is hereby acknowledged, the parties agree as follows:

1. **Effective Date.** This Agreement shall become effective and irrevocable by either party upon the expiration of seven (7) calendar days after this document is signed by both parties, in accordance with the revocation period set forth in paragraph 6(e) below (“Effective Date”).

Exhibit B
2. **Terms of Voluntary Separation Program.**

   a. In consideration for voluntarily retiring from the City between June 30, 2010 and July 30, 2010 (last day on payroll to be no later than July 30, 2010), Employee shall receive compensation based on full years of service with the City as of the Employee's separation effective date. The separation incentive amount shall be calculated based on the employee’s base salary and years of continuous service, with one week’s base pay per completed year of service, up to a maximum of $30,000. Based on this calculation, employee shall receive an incentive of $__________.

   b. The City Manager is authorized to extend Employee’s separation date, after consulting with the Employee, under the Voluntary Separation Program to meet the needs and objectives of the City. No appeal of the City Manager’s decision shall be permitted.

   c. Employee acknowledges that Employee is voluntarily retiring and, therefore, ineligible for unemployment compensation through the California Employment Development Department.

   d. Employee agrees not to re-apply for City employment within the twelve (12) months following the effective date of Employee’s separation.

   e. Employees shall receive all benefits to which the Employee is normally entitled upon separation from employment with the City.

3. **Employee Representations: Regarding Claims.** Employee represents there are no actions at law or administrative proceedings currently pending which concern allegations based on Employee’s hiring, retention, or compensation by the City, or the termination of Employee’s employment, or based on any act or failure to act by the City affecting, involving, or relating to Employee and his/her employment with the City.

4. **No Admission of Liability.** This Agreement and compliance with this Agreement shall not be construed as an admission of any liability by either Employee or the City of any unlawful or wrongful acts by either party, individually or collectively. The parties disclaim liability as to or for any and all wrongful acts against each other.

5. **Waiver and Release.** In exchange for the valuable consideration and compromises set forth in this Agreement, Employee, on behalf of himself/herself and his/her representatives, family members, heirs, administrators, executives, successors, assigns and anyone claiming through Employee, hereby releases and forever discharges the City, its City Council members, officers, directors, agents, and employees (whether former or current), volunteers, successors, assigns, insurers, attorneys, consultants, affiliates, and/or related organizations or entities (all hereafter referred to singularly and collectively as “the parties hereby released”), from any and
all actions, claims, judgments, obligations, damages, and liabilities of whatsoever kind and character with Employee may now have or has ever had arising in any way from or during Employee’s employment with the City, including but not limited to:

a. Any and all claims for wages, salary, paid leave, and/or benefits;

b. Any grievance or other administrative remedy deriving from City policy;

c. Any and all claims for wrongful or constructive discharge and/or reinstatement;

d. Any and all claims relating to any contracts, express or implied, or breach of the covenant of good faith and fair dealing;

e. Any and all tort claims of any nature, including but not limited to, fraud, deceit, misrepresentation, negligent misrepresentation, defamation, invasion of privacy, negligent or intentional infliction of emotional distress;

f. Any and all claims of discrimination, harassment, retaliation or failure to accommodate under federal, state or municipal statute or ordinance, including but not limited to, race, national origin, age, gender, mental or physical disability, medical condition, sexual orientation, marital status, religion, or otherwise, and including any claims under the United States Constitution, California Constitution, California Fair Employment and Housing Act, Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. section 1981, 42 U.S.C. section 1983, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Older Workers’ Benefit Protection Act, the Equal Pay Act, the Family Medical Leave Act, the California Family Rights Act, the Fair Labor Standards Act, the California Labor Code, and any other laws and regulations relating to employment; and

g. Any and all claims for attorney’s fees or costs.

Employee hereby further agrees that this Agreement shall operate as a complete bar against any and all litigation, charges, grievances now pending or contemplated by Employee or which might at any time be filed including but without limiting the foregoing, and any and all matters arising out of or in any manner whatsoever connected with Employee’s employment with and separation of employment from the City up to the date of Employee’s separation from the City.

Employee’s Initials: ____________

6. **Older Workers Benefit Protection Act.** For an Employee 40 years or older and in accordance with the Older Workers Benefit Protection Act, covered Employee acknowledges having been advised by this writing of the following:
a. Employee acknowledges having been advised to consult an attorney of his/her choosing before executing this Agreement.

b. Employee acknowledges that the compensation provided in this Agreement constitutes independent consideration for the said waiver and is in addition to any other payment to which Employee is entitled.

c. Employee acknowledges that this Agreement is written in a manner designed to be understood by Employee and that Employee has read the Agreement carefully and understands its terms.

d. Employee acknowledges that he/she has up to forty five (45) calendar days from the date of receipt of this Agreement to consider whether to accept it, although Employee may accept it at any time within those 45 calendar days. If Employee accepts and signs the Agreement before the end of the 45 day period, Employee acknowledges doing so voluntarily and waives any further period for consideration.

e. Employee has the right to revoke this Agreement within seven (7) calendar days after signing the Agreement. This Agreement shall not become effective or enforceable until the seven (7) day revocation period has expired. In the event that Employee revokes pursuant to this section, the entire Agreement shall be void and ineffective.

Employee’s Initials (40 years or older): __________

7. **Specific Waiver of Section 1542 of the California Civil Code.** Employee acknowledges that he/she has read, and hereby waives the application of Section 1542 of the Civil Code, which provides:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM, MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH DEBTOR.”

Employee understands and acknowledges that the significance and consequence of this waiver of Section 1542 of the Civil Code is that, even if he/she should eventually suffer or discover damages arising out of Employee’s employment with the City, Employee will not be permitted to make any claim for those damages. Furthermore, Employee acknowledges that he/she intends these consequences even as to claims that may exist as of the date of this release but which Employee does not know exist, and which, if known, would materially affect Employee’s decision to execute this release, regardless of whether Employee’s lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.
8. **Protected Rights.** Employee and City agree that nothing in this Agreement is intended to or shall be construed to affect, limit or otherwise interfere with any non-waivable right of Employee under any Federal, state or local law, including but not limited to, the right to enforce this Agreement and recover for any breach of it, rights under California Labor Code Sections 2802 and 2804, the right to file a charge or participate in an investigation or proceeding conducted by the Equal Employment Opportunity Commission (“EEOC”) or to exercise any other right that cannot be waived under applicable law. Employee is releasing, however, his/her right to any monetary recovery or other relief should the EEOC or any other agency pursues claims on his/her behalf. Further, should the EEOC or any other agency obtain monetary recovery or other relief on Employee’s behalf, Employee assigns to City all rights to such monetary recovery or other relief.

9. **Return of Property.** Unless otherwise authorized by the City, on the last day of employment with the City, Employee shall return all City property in Employee’s possession or control, including without limitation, laptop computers, keys, proximity badge, credit cards, cellular telephones, files and documents (and all copies thereof).

10. **No Precedent.** The parties specifically acknowledge and agree that this Agreement is a compromise which shall not operate, nor be considered, as evidence of a practice or past practice of the City or a precedent in the future.

11. **Construction of the Agreement.** The parties agree that in any construction to be made of this Agreement, the same shall not be construed against any party on the basis that the party was the drafter.

12. **Acknowledgement of Voluntary Execution.** Employee has carefully read the Agreement and understands the contents. Employee has been afforded the opportunity to consult with his/her own counsel regarding this Agreement. Employee freely, knowingly, and voluntarily enters into this Agreement without any duress or undue influence on the part of any person released by this Agreement, or by any third party. Employee warrants and represents that he/she has the mental and emotional capacity to understand the provisions of this Agreement and its effects upon his/her legal rights.

13. **Partial Invalidity.** In the event that any of the covenants, duties, or restrictions of this Agreement are found to be illegal, invalid or unenforceable, such provision, if possible, shall be construed so as to render the provision legal, valid and enforceable. In the event such provision cannot be amended or construed to be legal, valid and enforceable.

---

**Exhibit B**

5
enforceable, such provision shall be deemed deleted and the remainder of this Agreement shall remain in full force and effect.

14. **Entire Agreement.** This Agreement sets forth the entire agreement between the parties and supersedes any and all prior agreements or understandings, written or oral, between the parties pertaining to the subject matter hereof. No other promises or agreements shall be binding upon the parties with respect to the subject matter of this Agreement unless contained herein or separately agreed to in writing by the parties. This Agreement may not be modified except by a writing signed by Employee and the City Manager.

15. **Applicable Law.** This Agreement shall be governed by the laws of the State of California, and shall in all respects, be interpreted and enforced under the laws of the State of California. Litigation arising out of or connected with this Agreement shall be instituted and maintained in the courts of Stanislaus County in the State of California, and the parties consent to jurisdiction over their person and over the subject matter of any such litigation in such court, and consent to service of process issued by such court.

16. **No Assignment.** Employee warrants that he/she has not assigned, transferred, nor purported to assign or transfer, any claim(s) Employee may have against the City, and he/she will not assign or transfer, nor purport to assign or transfer, any claim(s) he/she may have against the City. The City warrants that it has not assigned, transferred nor purported to assign or transfer any claim(s) it may have against Employee and that it will not assign nor purport to assign or transfer hereafter any claim(s) it may have against Employee.

17. **Waiver.** Waiver by either party of any default, breach or condition precedent shall not be construed as a waiver of any other default, breach or condition precedent or any other right hereunder.

18. **Section Headings.** The section headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

19. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall, for all purposes, be deemed an original and all such counterparts, taken together, shall constitute one and the same instrument.

20. **Attorney’s Fees and Costs.** Each party shall bear all attorney’s fees and costs arising from and/or in any way related to the actions of its own counsel with regard to the negotiation and creation of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year written below.

---

**Exhibit B**

---
By: ___________________________  By: Greg Nyhoff  
   Employee  City Manager  

Date: ____________  Date: ____________  

APPROVED AS TO FORM: 

By: ___________________________  
   Susana Alcala Wood  City Attorney  

Exhibit B 7
A recommended severance pay of 4-8 weeks of salary and health contributions would provide a limited cash payment and health coverage to assist the laid off employee faced with loss of job and income. The recommended interview leave would provide paid leave time for employees to seek other employment prior to their date of layoff. It is further recommended that the City Manager be authorized to postpone an employee's date of layoff or demotion for up to ninety (90) days at his discretion, if deemed necessary to meet the needs of the City.

Eligibility for Severance Pay: All non-sworn employees in regular positions in the classified service shall be provided with severance pay when separating from City service due to an authorized reduction in force. An eligible employee shall be entitled to receive severance pay in addition to any other benefits to which he/she may be entitled under the provisions of the Personnel Rules or appropriate Memorandum of Understanding.

Severance pay in the amount of two (2) pay periods (four weeks) base salary shall be paid to an eligible employee upon separation due to layoff. Such pay shall be calculated based upon the employee's regular base pay, excluding acting pay, assignment pay, shift differential, or other special pays.

In addition, employees with six (6) or more full years of service are eligible for additional severance pay as follows: Employees with six (6) to eight (8) years of service would receive an additional week of severance pay for a total of five (5) weeks, employees with nine (9) to eleven (11) years of service would receive two additional weeks of severance pay for a total of six (6) weeks, employees with twelve (12) to fourteen (14) years of service would receive three additional weeks of severance pay for a total of seven (7) weeks and employees with more than fourteen (14) years of service would receive a total of eight (8) weeks of severance.

At time of separation, an employee shall have the option to receive severance pay in a lump sum payment or in the form of a contribution of equal value by the City to the employee's deferred compensation plan, subject to all appropriate IRS regulations and limitations.

Eligibility for Health Contribution: Employees who receive severance pay shall also be eligible to receive the City's contribution to health, dental and vision premiums for a period of four (4) to eight (8) weeks following layoff. The amount of this contribution shall be the same as that provided to active employees, except that the amount shall not include the equivalent of any in-lieu deferred compensation. The duration of the premium contributions shall be for the same number of weeks as the severance pay provision (4-8 weeks depending on years of service). The contribution shall be paid directly to the insurance carriers.

Eligibility for Counseling Benefit: Employees who receive severance pay shall also be eligible for an extension of the City's Employee Assistance Program (EAP) benefit for a period of six (6) months from date of layoff. Said benefit shall provide for a maximum of six (6) EAP visits per family.
Eligibility for Interview Leave: All non-sworn employees in regular positions in the classified service shall be eligible for interview leave upon notification by their Department Director that they may be laid off. Employees who elect to bump down or demote to a vacancy in lieu of layoff are also eligible for interview leave.

An eligible employee may be granted up to fifteen (15) hours of paid leave for the purpose of participating in employment interviews or examinations with other employers.

As with other leave requests, interview leave is subject to approval, in advance, by the supervisor. Employees must provide supervisors with sufficient advance notice of such a leave and employees may be required to provide verification of the scheduled interview or examination. Interview leave in excess of fifteen hours may be granted with the written approval of the Department Director. Interview leave is not subject to cash out or conversion to any other benefit.

Voluntary Layoff: If an employee volunteers to be laid off and is in the classification or the approved bumping chain of a position authorized for layoff due to an authorized reduction in force, the City Manager may authorize said employee to be laid off, with all rights to receive severance benefits.

Expiration: Eligibility for severance pay, health benefit contributions and interview leave shall terminate September 30, 2010, unless extended by the City Council.
RESOLUTION APPROVING THE CITY OF MODESTO'S APPLICATION FOR NATURE EDUCATION FACILITY PROGRAM FUNDS SAFE DRINKING WATER, WATER QUALITY AND SUPPLY, FLOOD CONTROL, RIVER AND COASTAL PROTECTION BOND ACT OF 2006

WHEREAS, the State Department of Parks and Recreation has been delegated the responsibility by the Legislature of the State of California for the administration of the Nature Education Facilities Program, setting up necessary procedures governing the application, and

WHEREAS, said procedures established by the State Department of Parks and Recreation require the applicant to certify by resolution the approval of application(s) before submission of said application(s) to the State, and

WHEREAS, the applicant will enter into a contract with the State of California to complete the project,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby authorizes the Parks, Recreation and Neighborhoods Director to file an application for the Nature Education Facility Program grant for implementation of the McClure Country House and Nature Center, and

1. Certifies that said applicant has or will have available, prior to commencement of any work on the project included in this application, the sufficient funds to complete the project should this grant be awarded; and

2. Certifies that the applicant has or will have sufficient funds to operate and maintain the project; and

3. Certifies that the applicant has reviewed, understands, and agrees to the General Provisions contained in the contract shown in the Grant Administration Guide; and
4. Certifies that this project is consistent with the applicable city or county, or appropriate planning document, as the case may be; and

5. Delegates the authority to Parks, Recreation and Neighborhoods Department Director to conduct all negotiations, sign and submit all documents, including, but not limited to applications, agreements, amendments, and payment requests, which may be necessary for the completion of the project; and

6. Agrees to comply with all applicable federal, state and local laws, ordinances, rules, regulations and guidelines.

7. The delegation of authority will expire June 30, 2016.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 22nd day of June, 2010, by Councilmember Hawn, 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: Geer, Hawn, Lopez, Marsh, Muratore, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: 

(SEAL)

APPROVED AS TO FORM:

By: 

SUSANA ALCALA WOOD, City Attorney
RESOLUTION APPROVING THE HOUSING AUTHORITY OF THE COUNTY OF STANISLAUS AS THE DEVELOPER FOR THE 412/416 DOWNEY AVENUE PROPERTIES; AND AUTHORIZING STAFF TO DRAFT AN AGREEMENT TO NEGOTIATE EXCLUSIVELY WITH THE SELECTED DEVELOPER

WHEREAS, on December 10, 2008, the Redevelopment Agency (RDA) purchased 416 Downey Avenue and on February 28, 2008, Community Development Block Grant (CDBG) funds purchased 412 Downey Avenue, and

WHEREAS, on February 9, 2010, staff released an Request For Proposal soliciting affordable housing developers to respond on or before March 26, 2010, for affordable housing units with a maximum unit count of 11 and $500,000 of City HOME funds, and

WHEREAS, City HOME funds will be used in the construction of the project, and

WHEREAS, of the four applications received, the Housing Authority of the County of Stanislaus was the only application which met the threshold of the unit count and funding constraints, and,

WHEREAS, on May 26, 2010, the Citizens’ Housing and Community Development Committee approved the Housing Authority of the County of Stanislaus as their recommended developer for the 412/416 Downey Avenue properties,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the Housing Authority of the County of Stanislaus as the selected developer for the 412/416 Downey Avenue Properties.
BE IT FURTHER RESOLVED by the Council of the City of Modesto that staff is hereby authorized to draft an Agreement to Negotiation Exclusively with the selected developer.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 22nd day of June, 2010, by Councilmember Hawn, 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: Geer, Hawn, Lopez, Marsh, Muratore, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: [Signature]

SEAL

APPROVED AS TO FORM:

By: [Signature]

SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2010-258

A RESOLUTION APPROVING A ONE-YEAR AGREEMENT FOR TESTING SERVICES WITH KRAZAN & ASSOCIATES, INC., TO PERFORM CONSTRUCTION MATERIALS TESTING SERVICES FOR VARIOUS PUBLIC WORKS PROJECTS TO BE CONSTRUCTED DURING THE 2010/2011 FISCAL YEAR, WITH TWO (2) ONE-YEAR EXTENSION OPTIONS, AT THE SOLE DISCRETION OF CITY, IN AN AMOUNT NOT-TO-EXCEED $64,650 IN THE FIRST YEAR, $68,340 IN THE SECOND YEAR AND $68,880 IN THE THIRD YEAR; AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE AGREEMENT

WHEREAS, City staff finds it necessary to utilize the services of a materials testing firm during the course of administering the construction on public improvement projects, and

WHEREAS, the testing services are required to help achieve compliance with the specification requirements of the various projects, and

WHEREAS, staff does not have the required equipment or certifications to perform all the required testing services, and

WHEREAS, bids were opened on April 20, 2010, for the Construction Materials Testing Services contract, and

WHEREAS, the firm of Krazan & Associates, Inc., was the low responsive bidder,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves a one-year Agreement for Testing Services between the City of Modesto and Krazan & Associates, Inc., to perform Construction Materials Testing Services for various Capitol Improvement projects to be constructed during the 2010/2011 fiscal year, with two (2) one-year extension options, at the sole discretion of
City, in an amount not-to-exceed $64,650 in the first year, $68,340 in the second year and $68,880 in the third year. Total cost for three years is not to exceed $201,870.

BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute said Agreement and up to two (2) one-year extension options.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 22nd day of June, 2010, by Councilmember Hawn, 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:  Geer, Hawn, Lopez, Marsh, Muratore, Olsen, Mayor Ridenour

NOES:       Councilmembers:  None

ABSENT:     Councilmembers:  None

ATTEST:     STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By:          SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2010-259

A RESOLUTION APPROVING THE PLANS AND SPECIFICATIONS FOR THE
E. ORANGEBURG AVENUE WATER MAIN REPLACEMENT PROJECT,
ACCEPTING THE BID AND APPROVING A CONTRACT WITH ROLFE
CONSTRUCTION IN THE AMOUNT OF $455,935 FOR THE E. ORANGEBURG
AVENUE WATER MAIN REPLACEMENT PROJECT, AND AUTHORIZING
THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE CONTRACT

WHEREAS, plans and specifications have been prepared for the E. Orangeburg
Avenue Water Main Replacement project and City staff recommends approval by the
City Council, and

WHEREAS, the bids received for the E. Orangeburg Avenue Water Main
Replacement project were opened at 11:00 a.m. on May 25, 2010, and later tabulated by
the Director of Utility Planning & Projects for the consideration of the Council, and

WHEREAS, the Director of Utility Planning & Projects has recommended that
the bid of $455,935 received from Rolfe Construction be accepted as the lowest
responsible bid and the contract be awarded to Rolfe Construction,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto
that it hereby approves the plans and specifications for the E. Orangeburg Avenue Water
Main Replacement project, accepts the bid of Rolfe Construction in the amount of
$455,935, and awards Rolfe Construction the contract for the E. Orangeburg Avenue
Water Main Replacement project.

BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby
authorized to execute the contract.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 22nd day of June, 2010, by Councilmember Hawn, 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: Geer, Hawn, Lopez, Marsh, Muratore, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: [Signature]

(SEAL)

APPROVED AS TO FORM:

By: [Signature]

SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2010-260

A RESOLUTION APPROVING THE PREQUALIFIED CONSULTANT LIST, CONSISTING OF BROWN & CALDWELL, HDR, MWH, NOLTE & ASSOCIATES, AND WEST YOST ASSOCIATES, FOR AS-NEEDED ENGINEERING DESIGN SERVICES FOR SEWER & WATER PUMPING STATIONS FOR VARIOUS CAPITAL IMPROVEMENT PROGRAM (CIP) PROJECTS FOR A PERIOD OF THREE YEARS

WHEREAS, over the next several years, based on the Utility Planning & Projects (UP&P) Department's workload and staffing experience, there are a number of technically complex CIP projects that may require outside consultant services, and

WHEREAS, retaining a prequalified as-needed list of consultants allows the department to have quicker access to specific engineering design services when needed, and

WHEREAS, this eliminates the need to send out repetitive Requests for Qualifications for projects of similar scope and/or type, saving man-hours and project costs, and

WHEREAS, staff solicited and formally advertised a Request for Qualifications (RFQ) to 150 engineering design firms for sewer & water pumping station design services, and

WHEREAS, Public Works and UP&P staff reviewed the 24 Statements of Qualifications (SOQs) that were received, and

WHEREAS, following that review, staff recommends approving these prequalified consultants: Brown & Caldwell, HDR, MWH, Nolte & Associates, and West Yost Associates,
NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto
that it hereby approves the prequalified consultant list, consisting of Brown & Caldwell,
HDR, MWH, Nolte & Associates, and West Yost Associates, for As-needed Engineering
Design Services for Sewer & Water Pumping Stations for various Capital Improvement
Program (CIP) projects for a period of three years.

The foregoing resolution was introduced at a regular meeting of the Council of
the City of Modesto held on the 22nd day of June, 2010, by Councilmember Hawn, 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: Geer, Hawn, Lopez, Marsh, Muratore, Olsen,
Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: [Signature]

APPROVED AS TO FORM:

By: [Signature]

SUSANA ALCALA WOOD, City Attorney
RESOLUTION APPROVING A LETTER OF AGREEMENT FOR A
RESTRUCTURED AND EXTENDED MEMORANDUM OF UNDERSTANDING
BETWEEN THE CITY OF MODESTO AND MODESTO POLICE OFFICERS'
ASSOCIATION (MPOA) FOR A TERM ENDING JULY 15, 2013 AND
AUTHORIZING THE DIRECTOR OF HUMAN RESOURCES AND CITY
MANAGER TO TAKE THE NECESSARY ADMINISTRATIVE ACTION TO
IMPLEMENT THE AGREEMENT

WHEREAS, the current Memorandum of Understanding (MOU) between the
City of Modesto (CITY) and the Modesto Police Officers Association (MPOA) expires
on March 28, 2011, and

WHEREAS, representatives of the CITY and the MPOA have met and conferred
in good faith concerning wages, hours, terms and conditions of employment for
employees in said bargaining unit, and

WHEREAS, the CITY and MPOA have reached agreement on a Letter of
Agreement (LOA) for a restructured and extended MOU with a new expiration date of
July 15, 2013 which, upon execution, shall be attached hereto and made a part hereof,
and

WHEREAS, the LOA provides as follows:

SECTION 1. CONTRACT EXTENSION. All terms of the existing MOU are
extended except as detailed below.

SECTION 2. TERM OF MEMORANDUM. Extend the end of the current term
of the MOU from 12:00 a.m. on March 28, 2011 to 12:00 a.m. on July 15, 2013.

SECTION 3. SALARY. Salary increases shall be deferred as follows:

2.0% effective July 31, 2012

3.0% effective July 2, 2013
SECTION 4. MANDATORY UNPAID FURLoughS. Mandatory unpaid furloughs will be taken in FY 2010-11 in the amount of 96 hours, for FY 2011-12 there shall be 72 hours of mandatory unpaid furloughs and for FY 2012-13 96 hours shall be taken as mandatory unpaid furlough.

SECTION 5. SALARY PROGRESSION THROUGH THE STEP RANGES. Progression through step ranges will become temporarily inoperative from the first pay period for FY 2010-11 through the last pay period of FY 2012-13. Therefore, MPOA members will not receive any step increases during this period. Beginning FY 2013-14 progression through step ranges will become operative and employees will move to the next step of the salary range (one step) on the employee's normal anniversary date.

SECTION 6. HEALTH, DENTAL AND VISION INSURANCE. The previously negotiated increases in the City's contribution for Plan Year 2010-11 shall be deferred until January 1, 2013. In January 2011, the City shall increase its monthly contribution to employee only by $25 and for employees with dependent coverage by $50. There will be no increase in the opt out amount.

SECTION 7. RETIREE HEALTH INSURANCE. Section 12 of the MOU shall be amended to include a Defined Contribution Health Reimbursement Account for eligible employees hired on or after January 1, 2011 pursuant to LOA as attached.

SECTION 8. REOPENERS.

A) Two tier retirement discussion for new hires: Agreement is required including the process of impasse/arbitration.

B) Meet and discuss regarding current employees converting from current sick leave to retiree medical trust.
C) Meet and discuss possible additional concession if needed, during term of this contract.

WHEREAS, the Council considered this matter at its meeting of June 22, 2010,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the Council hereby approves the Letter of Agreement for a restructured and extended Memorandum of Understanding with a new expiration date of July 15, 2013 between the City of Modesto and the Modesto Police Officers Association and upon execution of same, a copy of the MOU will be on file in the office of the City Clerk.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 22nd day of June, 2010, by Councilmember Hawn, 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: Geer, Hawn, Lopez, Marsh, Muratore, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: 

STEFANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney
Agreement
Between
City of Modesto
And
Modesto Police Officer’s Association
Regarding Contract Extension
June 10, 2010

The City of Modesto hereby referred to as “City” and the Modesto Police Officer’s Association, hereby referred to as “Association” execute this Contract Extension Agreement modifying the existing Memorandum of Understanding with the term of December 23, 2008 – March 28, 2011. Unless otherwise modified by this contract extension agreement all terms of the MOU shall be extended from March 28, 2011 – July 15, 2013:

The City and the Association agree:

1. **Term of Memorandum** Section 1: shall be amended to extend the end of the current term of the MOU from 12:00 a.m. (midnight) on March 28, 2011 to 12:00 a.m. (midnight) on July 15, 2013.

2. **Salary** Section 4 B.4: shall be amended to defer the effective date of the 2.0% salary range adjustment increase from August 31, 2010 to July 31, 2012.

3. **Salary** Section 4 B.5 shall be amended to defer the effective date of the 3.0% salary range adjustment increase from February 1, 2011 to July 2, 2013.

4. **Mandatory Furloughs** will be taken by each employee in the bargaining unit as follows:
   a. Fiscal Year July 1, 2010 – June 30, 2011 each member shall have 4.6% (4 hours) of pay deducted from his/her paycheck for twenty-four (24) pay periods beginning the pay period of July 20, 2010 and ending on June 20, 2011. Effective pay period beginning July 20, 2010, the City shall create for each member a furlough bank of 96 hours for fiscal year 2010 - 2011.
   b. Fiscal Year July 1, 2011 – June 30, 2012 each member shall have 3.5% (4 hours) of pay deducted from his/her paycheck for eighteen (18) pay periods beginning pay period June 21, 2011 through pay period ending February 27, 2012. Effective pay period beginning June 21, 2011 the City shall advance each member a furlough bank of 72 hours for fiscal year 2011 – 2012.
c. Fiscal Year July 1, 2012 - June 30, 2013 each member shall have 4.6% (4 hours) of pay deducted from his/her paycheck for twenty-four (24) pay periods beginning the pay period of June 19, 2012 through pay period ending on May 20, 2013. Effective pay period beginning June 19, 2012, the City shall advance each member a furlough bank of 96 hours for fiscal year 2012-2013.

d. There is no cash value to the furlough bank hours. Unused furlough bank hours not taken by July 15, 2016 shall be forfeited. MPOA members may use furlough bank hours prior to using sick time or vacation time.

e. The parties agree that the City has the sole discretion to assign overtime and that the City shall not allow members of this bargaining unit to require the City to backfill with overtime to cover furlough hours in order to avoid actual reduction of pay of any employee.

f. Employees who work a reduced work schedule will have the furlough requirements reduced in proportion to their schedules.

g. Employees who separate from City service and has not contributed the salary reduction equivalent to furlough bank hours taken shall authorize the City to reduce the employee’s final check by the amount needed to cover the unpaid furlough bank hours.

5. **Salary Progression through the Step Ranges** Section 4.C.2-4 will become temporarily inoperative from the first pay period of fiscal year 2010 - 2011 through the last pay period of fiscal year 2012 - 2013. Therefore, MPOA members will not receive any step increases during this period. Beginning in fiscal year 2013-2014 Section 4.C.2-4 will become operative and employees will move to the next step of the salary range [one step] on the employees’ normal anniversary date.

6. **Health, Dental and Vision Insurance** Section 13 shall be amended as follows:
   a. The increases in the City’s contribution for fiscal plan year 2010 - 2011 in Section 13 of the MOU shall be deferred until January 1, 2013.
   b. In January 2011 the City shall increase its monthly contribution to employees without dependents by $25.00 and $50.00 for employees with dependents. There will be no increase in the opt out amount currently provided for in the MOU.

7. **Retiree Health Insurance** Section 12 shall be amended to include a new Defined Contribution Health Reimbursement Account for eligible Employees Hired on or after January 1, 2011 as incorporated by this reference to this agreement as Attachment A.

8. **Reopeners:** The City and the Association agree to the following reopeners:
   A. Two tier retirement discussion for new hires; agreement is required including the process of impasse/arbitration.
B. Association agrees to meet and discuss regarding current employees converting from current sick leave to retiree medical trust.

C. The City and the Association agrees to meet and discuss possible additional concession if needed, during the term of this contract.

This Contract Extension Agreement shall become effective upon ratification by the MPOA and adoption by the City Council on its regular agenda in conformance with the Brown Act.

Dated: 6-14-10

For the Association: ____________________

For the City: _____________________

For the Association: ____________________

For the City: _____________________
ATTACHMENT A to Agreement

Between

City of Modesto

And

Modesto Police Officer's Association

Regarding Contract Extension

June 10, 2010

SECTION 12: RETIREE HEALTH INSURANCE

1. Eligible Employees hired on or before January 1, 2011:

A. Employees may elect on a one-time basis at retirement to purchase health, dental and/or vision insurance under a CITY authorized plan and is responsible for all cost. Upon the death of a retired employee enrolled in one of the plans, surviving dependents actively enrolled in plan retains eligibility for enrollment participation in the plans.

B. Leave Conversion

1. Effective fiscal year 1990-91, employees who retire after five (5) continuous years of service in good standing may, on a one time basis, have ninety (90%) percent of their unused sick leave applied by the CITY upon retirement to premiums for health insurance plans covered by the CITY. Said insurance shall be provided in an amount up to that contributed to active employees, as needed to cover the cost of retiree health premiums at the rate of one (1) month of premium CITY contributions for each eight (8) hours of sick leave. The CITY’s contribution to active employees without dependent coverage shall be further defined as that amount contributed to active employees on the lowest priced HMO health plan, including Dental and Vision, for plan years 2009-2010 and 2010-2011. Upon death of the employee, the employee’s spouse, or registered domestic partner, or dependents actively enrolled in plan shall remain eligible to receive the remaining benefit under the same terms and conditions.
2. In addition, effective November 3, 1993, or the closest pay period thereto, for retirees who retired after July 1, 1990, and elect to have dental and/or vision insurance, the CITY shall contribute an amount up to that contributed to the CITY’s dental insurance plan and/or the CITY’s vision insurance plan for active employees, for the same number of months as calculated for health insurance.

3. Employees who select paragraph 1 above may, in addition to converting accrued sick leave to health insurance, convert accrued compensatory time, vacation leave, holiday time, and grand fathered holiday time upon retirement to premiums for health insurance plans covered by the CITY on the same basis as sick leave. Any amount of compensatory time, vacation leave or holiday time so applied shall be subtracted from the cash out of such leaves/times provided for in this MOU.

C. The CITY’s monthly contribution rate towards health, dental and vision insurance for those retirees participating in the sick leave conversion program shall be up to the following amounts, as needed to cover the cost of the premiums:

1. **Up to $535.00 $596** monthly for retirees without dependent coverage, effective August 1, 2008. This contribution rate is subject to change August 1, 2008, and August 1, 2010, pursuant to paragraph B. 1, above. **This amount shall increase to $621 effective January 1, 2011.**

2. **Up to $957.00 $1,050** monthly for retirees with dependent coverage, effective August 1, 2008. **This amount shall increase to $1,100 effective January 1, 2011.**

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<tr>
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Effective August 1, 2003, The CITY’s contribution toward dependent coverage shall not exceed the actual premium amount for the lowest cost HMO for active employees (including Dental and Vision) offered by the CITY, regardless of the health plan selected by the retiree or the contribution amounts listed above.

D. If a retiree’s health premium in any given month is less than the designated CITY contribution, the excess contribution shall be applied on behalf of the retiree to that month’s premiums for dental and/or vision insurance, if the retiree has elected these plans.
At the time a retiree initially moves or during any open enrollment period or IRS-approved life change situation, a retiree who lives out of the HMO service area, or out of state, may elect to use multiple monthly increments (up to a maximum of three (3) months) of their accumulated sick leave conversion benefits to offset higher health insurance premiums for plans sponsored by the CITY. During any subsequent open enrollment, the retiree may reduce the number of multiple increments. Retirees electing this option will be required to sign an acknowledgement form that indicates they understand that they will be using their benefit proportionately.

Effective fiscal year 1994-1995, the CITY will notify retirees of the amount of their insurance premiums on an annual basis and will no longer provide monthly statements. Retirees will be responsible for submitting their appropriate monthly premium.

II. Eligible Employees hired on or after January 1, 2011:

A. Employees may elect on a one-time basis at retirement to purchase health, dental and/or vision insurance under a CITY-authorized plan and is responsible for all costs. Upon the death of a retired employee enrolled in one of the plans, surviving dependents actively enrolled in plan retains eligibility for participation in the plan.

B. For employees hired on or after January 1, 2011, the City shall contribute to a Defined Contribution retiree medical benefit plan for each eligible employee in the form of a deposit into a Health Reimbursement Arrangement (HRA) account, as described below:

1) Eligibility: Regular full time employees and employees in regular positions budgeted less than eighty (80) hours per pay period or job-shared positions are eligible to receive a City HRA contribution, if they have completed two (2) full years of continuous City regular service. If an employee separates employment before meeting the eligibility requirement, the employee shall receive no benefit.

2) City Contribution:

a. Initial Contribution: On the first pay period following completion of two (2) full years of continuous City service, regular full time employees shall receive a lump sum contribution of $2,400 deposited into an HRA account established in their name.
Employees in regular positions budgeted less than eighty (80) hours per pay period or job-shared positions, shall receive a pro-rated lump sum contribution based on their hours worked.

b. Regular City Contribution: After the initial contribution (defined above) is made, the City shall contribute $0.5769 per pay status hour (no more than 80 hours biweekly), not including overtime, for each eligible full time employee up to a maximum of $100.00 per month ($46.15 per pay period) for full time employees. For a full time employee, this equates to a maximum of $1,200 per year after the initial eligibility period is met. Employees hired on or after January 1, 2011 and subject to this defined contribution plan shall not be eligible for any sick leave conversion towards retiree medical premiums of any sort. The City's contribution under this section represents the entire contribution towards employee retiree medical.

3) Access to Account Balance:

a) Participants may access the balance in their HRA account upon termination of employment and attainment of age 50 or retirement from CalPERS Retirement System, whichever is earlier.

b) Participants may defer accessing the account balance to any time beyond the earliest date described in (a).

c) Amounts that remain in the account balance are available to reimburse the participant for the same permitted medical expenses for the spouse and any other dependent covered under the retiree medical plan subject to the limitations and maximums as stipulated by law, however, federal regulations at this time does not permit the inclusion of expenses for domestic partners.

4) Survivors of eligible retirees with account balances:

a) Spouses and eligible dependent children or dependent adults that are disabled may continue to access account balances after the death of the retiree subject to the limitations and maximums as stipulated by law.

b) Domestic partners are not permitted access to the account balances of the participant at this time by virtue of
restrictions in the federal regulations that govern these types of accounts.

5) Forfeiture of account balance:

a) If an active employee dies prior to retirement, the amount of account balance is available to eligible spouses and dependents to reimburse them for medical expenses permitted under the applicable section of the Internal Revenue code.

b) Account balances in part or in total for active participants or retirees without any eligible spouse or dependent or unused account balances after the death of the last eligible spouse or dependent will be forfeited and returned to all other active and retired participants in the form of a dividend allocated in direct proportion to the amount to be distributed divided by the total account balance for all participants applied to each individual account balance.

6) This benefit will be subject to regulation under section 105(b) of the Internal Revenue Code and subject to revenue rulings for these types of plans as promulgated.
RESOLUTION APPROVING LANGUAGE CHANGES FOR A SUCCESSOR MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF MODESTO AND MODESTO CONFIDENTIAL AND MANAGEMENT ASSOCIATION (MCMA) FOR A TERM OF JUNE 22, 2010 TO JUNE 18, 2012 AND AUTHORIZING THE DIRECTOR OF HUMAN RESOURCES AND CITY MANAGER TO TAKE THE NECESSARY ADMINISTRATIVE ACTION TO IMPLEMENT THE AGREEMENT

WHEREAS, the current Memorandum of Understanding (MOU) between the City of Modesto (CITY) and the Modesto Confidential and Management Association (MCMA) will expire on June 21, 2010, and

WHEREAS, representatives of the CITY and the MCMA have met and conferred in good faith concerning wages, hours, terms and conditions of employment for employees in said bargaining unit, and

WHEREAS, the CITY and MCMA have reached agreement on language changes for a successor MOU which, upon execution, shall be attached hereto and made a part hereof, and

WHEREAS, the MOU provides as follows:

SECTION 1. TERM. The term of the MOU shall be from June 22, 2010 to June 18, 2012.

SECTION 2. REOPENER.

A) Meet and confer on further concessions, if deemed necessary.

B) Meet and confer through impasse and implementation process on pension reform no later than August 2, 2010.

C) Meet and confer on Sick Leave and Retiree Medical Conversion Program Restructuring no later than August 2, 2010.
SECTION 3. MANDATORY FURLoughs. For FY 2010-11 and FY 2011-12, each bargaining unit member shall take 96-hours of mandatory furloughs per year. Two furlough days shall be non-fixed so that employees can schedule them in the manner as vacation is scheduled. The remaining ten days shall be scheduled as fixed dates. The dates for FY 2010-11 will be July 2, September 3, November 22, 23, 24, December 27, 28, 29, 30 and February 14. The corresponding dates for FY 2011-12 shall be determined once the 2011-2012 holiday schedule is available.

SECTION 4. PAY PERIOD DEFINITION. The first full pay period under the MOU shall commence at 12:01 a.m., Tuesday, June 22, 2010.

SECTION 5. APPROVED WORK SCHEDULES. The Four-Eleven Work Schedule shall be eliminated as an approved alternate work schedule.

SECTION 6. HOLIDAYS. The elimination of the Four-Eleven Schedule necessitates language changes pertaining to holidays. The exact language of this provision shall be set forth in the MOU between the City and MCMA.

SECTION 7. EXEMPT MANAGEMENT LEAVE.

A) There is no cash value to the management leave and shall not be subject to cash out provisions. Management Leave shall be for exempt employees only.

B) Commencing January 1, 2011, employees in exempt regular positions shall be granted 40 hours of Management Leave each January and July of each calendar year to be taken at the discretion of the employee and upon approval by the Department Director, and shall be prorated for less than full-time employees. Said leave shall be advanced with the first paycheck in January and July and must be taken off prior to the next advance. Exceptions may be
considered should the request for use be submitted, approved and scheduled within 60 days of the next advance, either January or July or each calendar year. Leave not used before the end of the calendar year period for which it is advanced will be forfeited.

C) An exempt employee hired after Management Leave has been advanced for the calendar year shall be eligible for a pro-rated portion of Leave.

SECTION 8. SICK LEAVE. The Retirement provision to have 90% of unused sick leave up to 2,200 hours applied to premiums for health, dental and vision insurance plans shall apply to employees hired on or before December 31, 2010 and shall be for those employees who retire in good standing after five years of continuous service.

SECTION 9. LEAVES OF ABSENCE. Language changes to include language as required by state and federal law pertaining to Family and Medical Leave, Parental Participation in Children's School Activities, Leave for Victims of Domestic Violence or Sexual Assault, and Victims of Crime.

SECTION 10. HEALTH, DENTAL, VISION INSURANCE. The CITY’s contribution to employees’ Health, Dental and Vision coverage shall be as follows:

<table>
<thead>
<tr>
<th></th>
<th>Total Contributions (monthly)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>7/1/09</td>
</tr>
<tr>
<td>Family</td>
<td>$1050</td>
</tr>
<tr>
<td>Employee Only</td>
<td>596</td>
</tr>
<tr>
<td>Opt Out</td>
<td>450</td>
</tr>
</tbody>
</table>

SECTION 11. RETIREE HEALTH INSURANCE. For employees hired on or after January 1, 2011 the CITY shall contribute to a Defined Contribution retiree medical benefit plan for each eligible employee in the form of a deposit into a Health reimbursement Arrangement (HRA) account up to a maximum of $100 per month. The
employees subject to this defined contribution plan shall not be eligible for any sick leave
conversion towards retiree medical premiums of any sort. The City's contribution under
this section represents the entire contribution towards employee retiree medical.

SECTION 12. LAYOFF AND DEMOTION PROCEDURES.

A) Clarifies language regarding transfer of an affected employee to a vacancy in
the same classification, if any, in the employee's department, and employees
with the least continuous service shall be transferred first.

B) Clarifies language with respect to affected employees bumping from a higher
to lower classification within the employee's department within the same
classification the employee previously held or in the same classification series
provided the employee has more length of continuous service. All persons
laid off shall have their names placed on the classification reinstatement
eligible list for one year. Departments will be encouraged to consider
employees on reinstatement lists for vacant positions.

C) The use of performance evaluations for purposes of determining seniority has
been eliminated.

SECTION 13. CONTINUATION OF REMAINING PROVISIONS. Except as
provided above, the remaining provisions of the July 22, 2008, through June 22, 2009,
MOU between the CITY and MCMA shall continue in the new MOU.

The exact language of all provisions shall be set forth in the MOU between the
CITY and MCMA.

WHEREAS, the Council considered this matter at its meeting of June 22, 2010,
NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the Council hereby approves the language changes for a successor Memorandum of Understanding between the City of Modesto and the Modesto Confidential and Management Association, which covers a term from June 22, 2010 through June 18, 2012, and upon execution of same, a copy of the MOU will be on file in the office of the City Clerk.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 22nd day of June, 2010, by Councilmember Hawn, 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: Geer, Hawn, Lopez, Marsh, Muratore, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: [Signature]

APPROVED AS TO FORM:

By: [Signature]

SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2010-263

RESOLUTION APPROVING A LETTER OF UNDERSTANDING FOR A RESTRUCTURED AND EXTENDED MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF MODESTO AND THE MODESTO CITY FIRE FIGHTERS’ ASSOCIATION (MCFFA) FOR A TERM ENDING JUNE 30, 2013 AND AUTHORIZING THE DIRECTOR OF HUMAN RESOURCES AND CITY MANAGER TO TAKE THE NECESSARY ADMINISTRATIVE ACTION TO IMPLEMENT THE AGREEMENT

WHEREAS, the current Memorandum of Understanding (MOU) between the City of Modesto (CITY) and the Modesto City Fire Fighters Association (MCFFA) expires on December 20, 2010, and was modified and extended pursuant to Resolution # 2009-269, and

WHEREAS, representatives of the CITY and the MCFFA have met and conferred in good faith concerning wages, hours, terms and conditions of employment for employees in said bargaining unit, and

WHEREAS, the CITY and MCFFA have reached agreement on a Letter of Understanding (LOU) for a restructured and extended MOU with a new expiration date of June 30, 2013 which, upon execution, shall be attached hereto and made a part hereof, and

WHEREAS, the LOU provides as follows:

SECTION 1. CONTRACT AND LETTER OF UNDERSTANDING EXTENSION. All terms of the MOU and the 2009 LOU shall be extended to June 30, 2013 unless otherwise amended by this agreement.

SECTION 2. BROWN OUT OF ENGINE 21. The 2009 LOU shall be amended to provide that the City, at the sole discretion of the Fire Chief, may “brown out” from operations Engine 21 for the period May 1, 2010 through June 30, 2010.
SECTION 3. ELIMINATE ENGINE 21. Eliminate from service Engine 21 and simultaneously consistently staff one apparatus assigned to the downtown with four personnel comprised of one captain, one engineer and two firefighters.

SECTION 4. SALARY INCREASES. Employees shall defer wage increases as follows:

a. 3% - July 5, 2011
b. 3% - July 3, 2012
c. 2.5% - June 18, 2013

SECTION 5. EMT PAY. Employees who are certified as Emergency Medical Technicians (EMT-1), shall be increased by 1% salary for their classification.

SECTION 6. VACATION BOARD. For the period of July 1, 2010 through December 31, 2012, and except for Thanksgiving, Christmas Eve and Christmas Day, only, the positions available on the vacation board shall be reduced from five (5) to four (4).

SECTION 7. HEALTH, DENTAL, VISION BENEFITS. Effective January 1, 2011, the City’s monthly allowance for the cafeteria plan shall be increased by $25 for employee only and $50 for all other categories except those employees who “Opt Out.” Effective January 1, 2013, the City’s monthly allowance for the cafeteria plan, except as to those employees who “Opt Out,” shall be increased by $25, provided, however, that if the General Fund revenues for FY 2011-12, exclusive of transfers, exceeds General Fund revenues for FY 2010-11 by six percent (6%) or more, any increase in the City’s monthly allowance shall be determined by negotiations between the City and the Union and the MOU shall reopen for negotiation over the City’s monthly allowance for the cafeteria plan.
SECTION 8. REOPENERS. Upon request by the City by June 30, 2011, the parties shall reopen the MOU for negotiations concerning retirement benefits for prospective employees, in accordance with City Charter Section 1206.

SECTION 9. AGENCY SHOP. Effective July 1, 2010, agency fee shop provisions shall exist as a matter of contract between the CITY and MCFFA pursuant to the LOU as attached hereto.

WHEREAS, the Council considered this matter at its meeting of June 22, 2010,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the Council hereby approves a Letter of Understanding for a restructured and extended Memorandum of Understanding between the City of Modesto and the Modesto City Fire Fighters’ Association (MCFFA) for a term ending June 30, 2013 contingent upon an affirmative ratification vote by MCFFA membership, and upon execution of same, a copy of the MOU will be on file in the office of the City Clerk.
The foregoing resolution was introduced at a regular meeting of the Council of
the City of Modesto held on the 22nd day of June, 2010, by Councilmember Hawn, 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: Geer, Hawn, Lopez, Marsh, Muratore, Olsen,
Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: 

(SIGNATURE)

APPROVED AS TO FORM:

By: 

SUZANA ALCALA WOOD, City Attorney
Letter of Understanding

Between

City of Modesto

and

Modesto Professional Firefighters, IAFF Local 1289

Regarding Contract Extension

The City of Modesto, hereby referred to as “City” and the Modesto Professional Firefighters, IAFF Local 1289, hereby referred to as “Union” execute this Letter of Understanding (“LOU”) on this ____ day of __________ 2010 regarding the extension of the existing Memorandum of Understanding (“MOU”) as modified by the June 2009 LOU by and between the City and the Union.

The City and the Union agree:

1. Except as modified herein, all terms of the MOU and the 2009 LOU shall be extended from December 19, 2011 to June 30, 2013.

2. The 2009 LOU shall be amended to provide that the City, at the sole discretion of the Fire Chief, may “brown out” from operations Engine 21 for the period May 1, 2010 through June 30, 2010.

3. Effective as soon as practicable upon the ratification of this LOU, the City shall offer a cash severance incentive to employees of the bargaining unit represented by the Union up to $30,000 per individual employee. If more than nine (9) employees accept the offer of cash severance, the number of employees eligible to participate shall be
determined by the City Manager, provided the most senior nine (9) department employees shall be granted the cash severance.

4. At the Fire Chief's sole and exclusive discretion, the City will consistently staff one apparatus assigned to the downtown (station 1) with four (4) personnel comprised of one captain, one engineer and two firefighters. Consistent staffing means that the firefighter in seat four (4) is not backfilled if that firefighter uses any accrued leave (e.g., vacation, sick or holiday leave). The firefighter in seat four (4) shall not be used to fill any other constant staffing positions. If fiscal conditions require, the City may reduce the consistent staffing on this apparatus from four (4) personnel to three (3) personnel, however, the City shall first notify the Union of this need in order to permit the parties to discuss potential alternatives.

5. Effective July 1, 2010, Article 17 Section A of the MOU is amended to provide that there shall be a minimum of thirty-six (36) suppression personnel on duty each shift composed of three (3) employees per engine (Captain, Engineer and Firefighter) and three (3) employees per truck company (Captain, Engineer and Firefighter). The Crash Fire Rescue at Station 8 shall be unstaffed.

6. Notwithstanding anything to the contrary in the MOU or the 2009 LOU, employees of the bargaining unit shall receive the following wage
increases beginning in the first full pay period of each listed month, except for June 30, 2013:

a. July 2011 - 3%

b. July 2012 - 3%

c. June 18, 2013 - 2.5%

7. Effective June 22, 2010, Article 5, paragraph c) of the MOU is amended to provide that employees who are certified as Emergency Medical Technicians (EMT-1), shall receive a monthly allowance equivalent to five percent (5%) of the base salary for their classification, which will be based upon one hundred and twelve (112) hours per pay period for shift employees.

8. For the period of July 1, 2010 through December 31, 2012, and except for Thanksgiving, Christmas Eve and Christmas Day, only, the positions available on the vacation board shall be reduced from five (5) to four (4) beginning January 1, 2013 the vacation board returns to five (5).

9. Effective January 1, 2011, the City's monthly allowance for the cafeteria plan under Article 20 of the MOU shall be increased by $25.00 for employee only and $50.00 for all other categories except those employees who "Opt Out". Effective January 1, 2013, the City's monthly allowance for the cafeteria plan, except as to those employees who "Opt Out," shall be increased
by $25.00 for all other categories, provided, however, that if the City’s General Fund revenues for FY 12, exclusive of transfers, exceeds General Fund revenues for FY 10 by six percent (6%) or more, any increase in the City’s monthly allowance shall be determined by negotiations between the City and the Union and the MOU shall reopen for negotiation over the City’s monthly allowance for the cafeteria plan under Article 20 of the MOU effective January 1, 2013.

10. Upon request by the City by June 30, 2011, the parties shall reopen the MOU for negotiations concerning retirement benefits for prospective employees, in accordance with City Charter Section 1206.

11. Effective July 1, 2010, the following agency fee shop provisions shall exist as a matter of contract between the City and the Union:

A current employee in the bargaining unit employed as of July 1, 2010, and any new employee in the Unit, as a condition of continuing employment with the City, shall execute a payroll deduction authorization form as furnished by the Union, and thereby shall become and remain a member in good standing in the Union. New employees shall execute an authorization under this paragraph within 30 calendar days of employment. In the alternative to membership, the employee shall execute a
payroll deduction authorization form as furnished by the Union, and thereby pay to the Union an initial fee equal to the regular initiation fee and, thereafter, a monthly service fee equal to the regular monthly Union dues; or, in the case of employees who certify that they are members of a bona fide religion, body or sect which has historically held conscientious objections to joining or financially supporting public employee organizations, execute a payroll deduction form as furnished by the Union, and thereby pay sums equal to Union dues, initiation fees, or service fees to only the: (1) International Association of Firefighters’ Burn Foundation; (2) UC Davis Firefighters Burn Unit; or (3) Muscular Dystrophy Association.

Upon seven (7) days’ notice to the City from the Union that an employee described above has failed to maintain the bargaining unit member’s membership in good standing or has failed to maintain the bargaining unit member’s current service fee for payments or has failed to maintain the bargaining unit members’ current charitable contribution payments to one of the three (3) charities designated above, then the City shall: (1)
counsel the employee regarding the bargaining unit member's obligation under this provisions; and (2) inform the employee that further failure to maintain the appropriate payments shall subject the employee to discharge.

Annually, the Union will provide an explanation of the fee and sufficient financial information to enable the service fee payer to gauge the appropriateness of the fee. As a condition precedent to deducting the service fee or taking any action against an employee for failure to authorize service fee payments, the City must receive certification from the Union that the Union has provided all fee payers with the financial disclosure required by law, including an independently audited financial disclosure of the Union's chargeable expenses. The Union will provide a reasonable, prompt opportunity to challenge the amount of the fee before an impartial decision maker not chosen by the Union and will make provision for an escrow account to hold amounts reasonably in dispute while challenges are pending.

The Union shall indemnify and hold harmless the City, its officers and employees, from and against any and all
loss, damages, costs, expenses, claims, attorney fees, demands, actions, suits, judgments, and other proceedings arising out of any discharge action resulting from this provision.

This Letter of Understanding shall become effective upon ratification by the effective membership of the Union and by the Modesto City Council.

Dated: _________________

MODESTO FIREFIGHTERS, IAFF LOCAL 1289

By: ______________________

Dated: _________________

CITY OF MODESTO

By: ______________________
MODESTO CITY COUNCIL
RESOLUTION NO. 2010-264

A RESOLUTION SUSPENDING MANAGEMENT LEAVE CASHOUT FOR 2010, CONTINUING UNPAID FURLOUGHS THROUGH FISCAL YEAR 2010-11, AND IMPLEMENTING A DEFINED CONTRIBUTION RETIREE MEDICAL BENEFIT PLAN FOR NEWLY HIRED UNREPRESENTED MANAGEMENT AND CONFIDENTIAL EMPLOYEES, INCLUDING CHARTER OFFICERS AND EXECUTIVES EFFECTIVE JANUARY 1, 2011 AND INCORPORATING PREVIOUSLY AUTHORIZED BENEFITS BY AMENDING SECTIONS 1, 6, 7, AND 21 OF RESOLUTION NO. 2009-233 AND ADDING SECTION 25

WHEREAS, the City is seeking employee concessions as part of the effort to balance the City budget and address the City's budget shortfall, and

WHEREAS, Unrepresented employees and Charter Officers have agreed to take 96 hours of unpaid furloughs, and

WHEREAS, Unrepresented employees and Charter Officers have agreed to forego cash out of Management and Confidential Leave for 2010,

WHEREAS, the City will implement a Defined Contribution Retiree Medical Benefit Plan for all Unrepresented employees and Charter Officers hired on or after January 1, 2011,

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

SECTION 1. HEALTH, DENTAL AND VISION BENEFITS. The City’s contribution to health, dental and vision benefits for Unrepresented Management and Confidential employees, including Charter Officers and Executives, is hereby designated to be the following:

RESCINDED

JUN 7 2011

THIS RESOLUTION WAS RESCINDED BY MODESTO CITY COUNCIL RESOLUTION NO. 2011-197
The City shall deposit into the employee’s deferred compensation account any balance remaining from the above listed contributions not needed to pay for the employee’s health, dental or vision premiums. Effective July 22, 2008, for employees enrolled in the City-sponsored High Deductible Health Plan, any balance of said contributions shall be directed to the employee’s Health Savings Account.

Effective July 26, 2005, the City's contribution toward unrepresented employees with Family coverage shall not exceed the actual premium amount for the lowest cost health (HMO Plan), dental and vision plans offered by the City, regardless of the health plan selected by the employee or the contribution amounts listed above.

SECTION 2. REGISTERED ENGINEER PAY. Effective January 6, 2009, those employees in the classifications of Deputy Director who possess a current registration as a Professional Civil or Traffic Engineer in the State of California shall no longer be eligible to receive 7.5% Registered Engineer Pay as the pay has been incorporated into the base pay for the classifications.

SECTION 3. UNIFORM ALLOWANCES. Uniform allowances for unrepresented Management and Confidential employees who are required to wear a uniform, are as follows:

<table>
<thead>
<tr>
<th>Positions</th>
<th>Effective Date</th>
<th>Allowance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sworn Police</td>
<td>January 1, 2008</td>
<td>$94.00 (Per Reso. No. 2005-602)</td>
</tr>
<tr>
<td>Sworn Fire Management</td>
<td>July 1, 2007</td>
<td>$85.00</td>
</tr>
</tbody>
</table>
SECTION 4. DEFERRED COMPENSATION 401(a) MONEY PURCHASE PLANS. The 401(a) Money Purchase Plans shall provide for a City-paid contribution and equal mandatory employee contribution, effective January 1, 2006, of 5% for Charter Officers, 3% for Executives other than Charter Officers, and 2% for all other unrepresented Management and Confidential employees.

SECTION 5. COMPENSATORY TIME OFF CAP. Management and Confidential employees who are overtime-eligible shall be paid quarterly for all CTO over their established cap. For employees hired on or after December 6, 2005, the CTO cap shall be 100 hours. For employees hired before December 6, 2005, the cap shall be 160 hours.

SECTION 6. MANAGEMENT LEAVE. Commencing January 1, 2011, management employees in exempt regular positions shall be advanced 40 hours of Management Leave (Fire Battalion Chiefs on a 56-hour schedule shall be advanced 56 hours) each January and July of each calendar year to be taken at the discretion of the employee and upon approval of City Manager, and shall be prorated for less than full-time employees. Said leave shall be advanced with the first paycheck in January and July and must be taken off prior to the next advance. Exceptions may be considered should the request for use be submitted, approved and scheduled within 60 days of the next advance, either January or July or each calendar year. Leave not used before the end of the calendar year period for which it is advanced will be forfeited. An exempt employee hired after Management Leave has been advanced for the calendar year shall be eligible for a pro-rated portion of Leave.

In the event of separation from City employment of any person who has taken
Management Leave prior to the time all of said leave is earned, the employee shall be required to make full restitution to the City for that portion of leave taken but remaining unearned on the date of termination of employment. Employees separating from City service will be paid for earned Management Leave credit.

SECTION 7. MANAGEMENT AND CONFIDENTIAL LEAVE ANNUAL CASHOUT. For calendar year 2010 no employee will be permitted to cash out Management or Confidential Leave.

The maximum number of hours available for cash out each December shall be 40 hours annually for Management employees, except that for overtime-eligible Management employees the maximum cash out shall be 20 hours effective calendar year 2006. Maximum annual cash out shall be 18 hours for Confidential employees.

Effective December 2007, the maximum annual cash out shall be 80 hours for Executives and Charter Officers, and 60 hours for Police Captains, Fire Battalion Chiefs, Fire Division Chiefs, Deputy Directors, Assistant City Attorney and Deputy City Attorney I/II/III/Senior. For Fire Battalion Chiefs on a 56-hour schedule, the maximum cash out shall be 84 hours.

SECTION 8. FIRE CHIEF OFFICER SHIFT STIPEND. Effective December 27, 2005, Fire Battalion Chiefs and Fire Division Chiefs assigned to work extra shifts in order to maintain a consistent staffing of two (2) Battalion Chiefs to the extent possible, may receive a stipend of one thousand dollars ($1,000) per 24-hour shift. Criteria for assignment to extra shifts with the stipend shall be at the discretion of the Fire Chief, who shall also determine when staffing at the level of one Battalion Chief is acceptable. The Fire Chief shall annually determine the maximum number of assignments available for
stipend, subject to funds budgeted and the needs of the City. As FLSA Exempt management employees, Fire Battalion Chiefs and Fire Division Chiefs may be required to work both emergency and non-emergency assignments without additional compensation.

SECTION 9. NEGATIVE VACATION. Effective March 7, 2006, use of negative vacation will be permitted only for extenuating circumstances and will require the approval of the City Manager, or designee.

SECTION 10. PROBATIONARY PERIOD. All original and promotional appointments to positions in the Classified Service shall be tentative and subject to a probationary period of one year from the date of appointment to the position. The purpose of the probationary period is to train, observe and evaluate the employee on conduct, performance, attitude, adaptability and job knowledge.

Initial Probation: It is understood that the probationary period will normally last for one year from the date of appointment, but may last longer than the one year if absences, either paid or unpaid, cause the probationary employee to work less than 1680 hours. In the event that an employee works less than 1680 hours in the first twelve months of employment, then the employee’s probation shall be extended until he/she has worked 1680 hours.

Promotional Probation: It is understood that the probationary period, upon promotion, will normally last for one year from the date of promotion, but may last longer than the one year if absences, either paid or unpaid, cause the probationary employee to work less than 1560 hours. In the event that an employee works less than
1560 hours during the twelve months following his/her promotion, then the employee’s probation shall be extended until he/she has worked 1560 hours.

During the probationary period an employee may be released at any time without right of appeal. Written notice of release shall be furnished to the probationer. An employee released during or at the conclusion of probation following a promotion, shall be reinstated to the position previously held, at the former salary step, except if the reasons for release are cause for dismissal.

SECTION 11. DEFERRED COMPENSATION SERVICE DATES. The CITY shall continue to provide access to a 457 deferred compensation program authorized by the City Council for the voluntary participation of City employees. In addition, the CITY shall match on behalf of a participating employee in a regular position, one and one-half percent (1.5%) of an employee's regular rate of pay on a bi-weekly basis; provided, the employee is contributing at least one and one-half percent (1.5%). For such employees who have been continuously employed by the CITY for nine (9) or more years, the CITY shall contribute two and one-half percent (2.5%); provided the employee is contributing at least two and one-half percent (2.5%). Effective January 1, 2006, this increase in the City's contribution shall be effective with the first pay period to begin in the month following completion of nine (9) years of service, provided that the employee has completed any required documents.

SECTION 12. DOMESTIC PARTNERS. Benefits applicable to spouses shall be extended to registered domestic partners, as required by law.

SECTION 13. MEDICAL LEAVES OF ABSENCE. Effective December 6, 2005, employees requesting an Authorized Medical Leave of Absence without pay, due
to a medical incapacity to perform the duties of their position, must provide written medical verification of a long-term disability, illness or injury.

SECTION 14. CATASTROPHIC LEAVE. Effective December 6, 2005, employees requesting Catastrophic Leave donations must provide a written medical verification of long term illness or injury, or verification of a family member's illness or injury.

SECTION 15. HAZARDOUS MATERIALS CERTIFICATION PAY. Effective July 1, 2003, one (1) Fire Department Battalion Chief or Division Chief shall be authorized five (5%) percent Haz Mat Pay, when certified as a Hazardous Materials Specialist and assigned to administer the City of Modesto's participation in the Regional Hazardous Materials Response Team. This pay replaced the annual Haz Mat Stipend.

SECTION 16. MASTERS DEGREE INCENTIVE PAY. Effective June 29, 2004, employees who possess a Masters Degree or Juris Doctor from an accredited institution, shall be granted one and one half (1.5%) percent Masters Pay, subject to criteria as established by the City.

SECTION 17. REGISTRATION AND CERTIFICATION FEES. Effective July 1, 2003, when an employee is required by the City to obtain or renew a certificate, license or registration in order to carry out their assigned duties, except a California Class C Driver's License, the City will pay the fee for the actual certificate, license or registration, (and exam fee, if any).

SECTION 18. LEAVE CASHOUTS FOR SWORN FIRE MANAGEMENT EMPLOYEES. Sworn Fire Management employees in the classifications of Fire Battalion Chief, Fire Division Chief and Fire Chief working a 40 hour schedule shall be
afforded the opportunity to cash out up to 61 hours of vacation leave per calendar year (at straight time rates) and up to 88 hours of holiday leave per calendar year (at time and one-half), effective July 1, 2003. Employees in the classification of Fire Battalion Chief working a 56 hour schedule shall be afforded the opportunity to cash out up to 72 hours of vacation leave per calendar year (at straight time rates) effective June 20, 2000, and up to 132 hours of holiday leave per calendar year (at time and one-half). Holiday leave may not be carried over year-to-year regardless of the schedule worked.

SECTION 19. VEHICLE ALLOWANCE. Per Resolution No. 2001-271 effective July 1, 2001, the vehicle allowance for Executives and Charter Officers who receive an allowance, shall be $400/month, and the City Manager is authorized to grant Deputy Directors either an assigned City vehicle or a vehicle allowance in the amount of $300/month. The City Manager is also authorized to grant selected Management employees a vehicle allowance of $100-$200/month based on Department Director recommendation and an annual justification relating to extensive use of a personal vehicle while conducting City business. Effective May 27, 2008, per Resolution 2008-305, the vehicle allowance for Charter Officers is increased to a maximum of $500/month.

SECTION 20. SICK LEAVE CASHOUT FOR SWORN FIRE MANAGEMENT EMPLOYEES. Effective June 22, 1999, Sworn Fire management employees who leave City service in good standing (other than retirement) after five (5) years of continuous service, shall be paid the first twenty-two hundred (2,200) hours of their current unused sick leave, reduced by hours previously converted to Deferred Compensation, as follows: (1) Ninety (90%) percent of accrued sick leave hours as of the date of the employee's
initial promotion to a management classification shall be paid out at the current regular rate of pay (top step) for Fire Captain, and (2) In addition, twenty-five (25%) percent of the remaining sick leave hours accruing after promotion to a management classification shall be paid out at the employee’s then current regular rate of pay.

SECTION 21. FURLOUGH. Effective June 22, 2010 all employees (except Fire Battalion Chief working a 56 hour schedule) shall take ninety six (96) hours of mandatory furloughs in fiscal year 2010-2011. For the pay period beginning July 20, 2010 through pay period ending June 20, 2011, each employee shall have four (4) unpaid furlough hours deducted from his/her paycheck. Effective pay period beginning June 22, 2010, the City shall create for each employee a furlough bank of ninety-six (96) hours for fiscal year 2010-2011. There is no cash value to the furlough bank hours. Unused furlough bank hours not taken by June 20, 2011 shall be forfeited. An employee who separates from City service and has not contributed the salary reduction equivalent to furlough bank hours taken shall authorize the City to reduce the employee’s final check by the amount needed to cover the unpaid furlough bank hours.

Employees in the classification of Fire Battalion Chief working a 56 hour schedule shall be required to take 134.24 hours of mandatory furloughs in fiscal year 2010-2011. For the pay period beginning July 20, 2010 through pay period ending June 20, 2011, Fire Battalion Chiefs shall have 5.36 unpaid furlough hours deducted from his/her paycheck. Effective pay period beginning June 22, 2010, the City shall create for each Fire Battalion Chief working a 56 hour schedule a furlough bank of 134.24 hours for fiscal year 2010-2011. There is no cash value to the furlough bank hours. Unused furlough bank hours not taken by June 20, 2011 shall be forfeited. An employee who separates from City
service and has not contributed the salary reduction equivalent to furlough bank hours taken shall authorize the City to reduce the employee’s final check by the amount needed to cover the unpaid furlough bank hours.

SECTION 22. EMERGENCY MEDICAL TECHNICIAN CERTIFICATION

PAY. Effective July 1, 1990, sworn Fire Management employees in the classifications of Fire Battalion Chief and Fire Division Chief who are certified as Medical First Responders, shall receive a monthly allowance equivalent to two and one-half percent (2.5%) of the base salary for their classification. Employees who are certified as Emergency Medical Technicians (EMT-I), shall receive a monthly allowance equivalent to four percent (4.0%) of the base salary for their classification. The EMT-I allowance shall be in lieu of the Medical First Responder allowance.

SECTION 23. MUTUAL AID ASSIGNMENT. Per Resolution 2001-485, effective September 25, 2001, Sworn Fire Management employees in the classification of Fire Battalion Chief and Fire Division Chief shall receive a stipend when assigned to fill Strike Team and Task Force Leader assignments. Fire Battalion Chiefs assigned as Strike Team or Task Force Leader or Strike Team or Task Force Leader Trainee shall receive a stipend of $1000 for a 24 hour period. Fire Division Chiefs assigned as Strike Team or Task Force Leader or Strike Team or Task Force Leader Trainee shall receive a stipend of $1200 for a 24 hour period subject to the following conditions:

1. The assignment results from a request through the California Office of Emergency Services.

2. The assignment is subject to reimbursement through the “Cooperative Agreement for Local Government Fire Suppression.”
3. Regularly scheduled work hours are not included and partial periods are pro-rated to the nearest hour.

The City Manager is authorized to adjust the stipend amount, from time to time, consistent with increases in overall Fire Management salaries and reimbursement rates.

SECTION 24. ASSISTANT CHIEF OF POLICE ASSIGNMENT PAY.

Effective May 26, 1998, subject to the approval of the City Manager, the Police Chief may appoint employees currently employed by the Police Department in the classification of Police Captain to the assignment of Assistant Chief of Police. Such appointment may be made without competitive examination and shall continue at the will and pleasure of the Police Chief. The Police Chief may end the assignment at any time and such employee shall return to an assignment as Police Captain (unless removed due to dismissal) at a step no lower than the step the employee held at time of assignment. The total number of assignments shall be at the sole discretion of the City Manager.

SECTION 25. RETIREE HEALTH INSURANCE. Employees may elect on a one-time basis at retirement to purchase health, dental and/or vision insurance under a City-authorized plan and are responsible for all cost.

For employees hired on or before December 31, 2010 and who retire after five (5) years of continuous service in good standing may, on a one-time basis, exercise the option to have ninety percent (90%) of their unused sick leave, up to twenty-two hundred (2,200) hours, applied by the City upon retirement to premiums for health, dental and vision insurance plans covered by the CITY. Said insurance shall be provided in an amount up to that contributed to active employees subject to changes in
the median priced health HMO plan for active employees, as needed to cover the cost of retiree health, dental and vision premium at the rate of one month of CITY contribution for each eight hours of sick leave.

For employees hired on or after January 1, 2011, the City shall contribute to a Defined Contribution retiree medical benefit plan for each eligible employee in the form of a deposit into a Health Reimbursement Arrangement (HRA) account. An employee is eligible to receive a City HRA contribution upon completion of two full years. If an employee separates employment before meeting eligibility requirement, the employee shall receive no benefit. On the first pay period following completion of two full years of continuous City service, the CITY shall deposit $2,400 into an HRA account established in the employee’s name. Employees in regular positions budgeted less than eighty (80) hours per pay period or job-shared positions, shall receive a pro-rated lump sum contribution based on hours worked. After the initial contribution is made, the City shall contribute $0.5769 per pay status hour (no more than 80 hours biweekly), not including overtime, for each eligible full time employee, up to a maximum of $100 per month ($46.15 per pay period). Employees hired on or after January 1, 2011 and subject to this defined contribution plan shall not be eligible for any sick leave conversion towards retiree medical premiums of any sort. The City’s contribution under this section represents the entire contribution towards employee retiree medical.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 22nd day of June, 2010, by Councilmember Hawn, 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: Geer, Hawn, Lopez, Marsh, Muratore, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: [Signature]

APPROVED AS TO FORM:

By: [Signature]
SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2010-265

A RESOLUTION AUTHORIZING THE CLOSURE OF CITY OFFICES
PURSUANT TO MEMORANDA OF UNDERSTANDING WITH EMPLOYEE
ASSOCIATION CONTRACT LANGUAGE RELATING TO MANDATORY
UNPAID WORK FURLoughs

WHEREAS, the City has projected a budget shortfall for Fiscal Year 2010-11 as a
result of the economic downturn, and

WHEREAS, in order to address the budget shortfall, the City met and conferred
with its employee bargaining units and Unrepresented employees and negotiated 96 hours
or 12 days of mandatory unpaid work furlough for affected bargaining units, and

WHEREAS, 16 hours or two days of the mandatory furlough hours will be non-
fixed and scheduled by employees like vacation, 10 of the mandatory furlough dates are
fixed and tied to currently scheduled holiday closures and said dates coincide with
furlough dates scheduled for Stanislaus County employees.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto
that it hereby authorizes the closure of City Offices on the following dates:

Friday, July 2, 2010
Friday, September 3, 2010
Monday through Wednesday, November 22, 23, and 24, 2010
Monday through Thursday, December 27, 28, 29, and 30, 2010
Monday, February 14, 2011
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 22nd day of June, 2010, by Councilmember Hawn, 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: Geer, Hawn, Lopez, Marsh, Muratore, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: [Signature]
STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: [Signature]
SUSANA ALCAHA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2010-266

A RESOLUTION APPROVING BUDGET GOALS AND BUDGET PRINCIPLES AS OUTLINED IN THE MAYOR’S BUDGET MESSAGE AND RECOMMENDED BY THE CITY COUNCIL FINANCE COMMITTEE AS PART OF THE FY 2010-11 BUDGET DEVELOPMENT PROCESS

WHEREAS, as part of the Mayor’s Proposed Budget for FY 2010-11, the Mayor included Proposed Budget Goals and Budget Principles for the Council’s consideration, and

WHEREAS, each year the City Council’s Finance Committee makes recommendations regarding the upcoming Fiscal Year operating budget and capital improvement program, and

WHEREAS, in the development of the FY 2010-11 operating budget, the Finance Committee reviewed and recommended for City Council consideration the attached Proposed Budget Goals and Budget Principles,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the Proposed Budget Goals and Budget Principles as shown in Exhibits 1 and 2, which are incorporated by reference herein.
The foregoing resolution was introduced at a regular meeting of the Council of
the City of Modesto held on the 22nd day of June, 2010, by Councilmember Hawn, 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: Geer, Hawn, Lopez, Marsh, Muratore, Olsen,
Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: [Signature]

(SEAL)

APPROVED AS TO FORM:

By: [Signature]
SUSANA ALCALA WOOD, City Attorney
FY 2010-11 Proposed Budget Goals

Focus resources on vital public services.

Continue efforts which will result in long-term structural budget changes.

Reduce deferred maintenance.

Increase the City’s economic opportunities.
Recommended Budget Principles

1. **Annually Adopt a Structurally Balanced Budget**
   A structurally balance budget means on-going revenues and on-going expenditures are in balance with on-going revenues meeting or exceeding expenditures during the same time period. If a structural imbalance occurs, a plan must be developed and implemented to bring the budget back into balance.

2. **Use of One-Time Resources**
   Once brought into balance, one-time revenues (excess reserves about reasonable risk calculations, revenue spikes, prior year budget savings, sale of property, etc) shall not be used for current or new on-going operating costs. Examples of appropriate uses of one-time revenues include early retirement of debt, capital expenditures without significant operating or maintenance costs, and other non-reoccurring expenditures.

3. **Budget Revisions**
   New programs, services, or staffing requests are considered in light of the Council's priorities and shall include a spending offset at the time of the request so that the request has a net-zero impact on the budget.

4. **Reserves**
   All City funds must maintain an adequate reserve level and/or ending fund balance as determined annually as appropriate for each fund. For the General Fund, the contingency reserve amount, which a minimum of 8% of the operating budget shall be maintained. Any use of the General Fund contingency reserve will require a majority vote of the Council.

5. **Debt Issuance**
   Long-term General Fund debt will not be incurred to support on-going operating costs (other than debt service) unless such issuance achieves net operating cost savings and such savings can be independently verified. All General Fund debt issuances shall identify a method of repayment or have a dedicated revenue source.

6. **Employee Compensation**
   Recognizing that employees are the City's major resource, negotiations for employee compensation shall focus on the total compensation costs (e.g. increases in salary, steps, and benefit costs) while considering the City's fiscal condition, revenue growth, and changes in the cost of living.

7. **Capital Improvement Projects**
   Capital Improvement Projects shall not proceed for projects with annual operating and maintenance costs in the General Fund without City Council certification that funding will be available in the applicable year of the cost impact. Certification shall demonstrate that the entire cost of the project, including operating and maintenance costs, will not require a decrease in the City's core services.

8. **Fees and Charges**
   The development of fees and fee increases shall be utilized where appropriate to assure fee program costs are fully recovered by fee revenue.
9. Grants
Staff will seek out, apply for, and effectively administer grants that address the City’s priorities, policy objectives, and provide an overall positive benefit to the City. Before a grant is pursued, staff shall provide a detailed fiscal analysis addressing both the immediate and long-term costs and benefits of the grant. With the exception of pilot projects, one-time grant revenues shall not be used to begin or support the costs of ongoing programs.

10. General Plan
The General Plan is the primary long-term fiscal planning tool. Recommendations to create new development capacity beyond the existing General Plan shall be analyzed to ensure that capital improvements and operating/maintenance costs are within the City’s financial capabilities.

11. Performance Measurement
All requests for funding shall include performance measure data so funding requests can be reviewed and approved in light of anticipated service level outcomes.
WHEREAS, pursuant to the Charter of the City of Modesto, the Mayor presented the Proposed Operating Budget for Fiscal Year 2010-11 to the Finance Committee at workshops held on May 17, 2010 and June 2, 2010, and

WHEREAS, during these workshops the Finance Committee was presented with a policy issue affecting both the Proposed Fiscal Year 2010-11 budget and the Fiscal Year 2009-10 operating budget, and

WHEREAS, the Finance Committee approved the policy issue for consideration by the full City Council during its meeting held on June 2, 2010, and

WHEREAS, the City Council has considered the policy recommendation brought before it and has approved the item and desires to have them incorporated into the Fiscal Year 2009-10 operating budget,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the amendment of the Fiscal Year 2009-10 Operating Budget as shown in Exhibit A which is incorporated by reference herein.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 22nd day of June, 2010, by Councilmember Hawn, 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: Geer, Hawn, Lopez, Marsh, Muratore, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: [Signature]

(SEAL)

APPROVED AS TO FORM:

By: [Signature]

SUSANA ALCALA WOOD, City Attorney
<table>
<thead>
<tr>
<th>Fund #</th>
<th>Fund Name</th>
<th>FY 09/10 Current Worker's Comp Budget</th>
<th>1/2 Yr Workers Comp Holiday</th>
<th>FY 09/10 Adjusted Worker's Comp Budget</th>
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<tr>
<td>0100 Total</td>
<td>General Fund</td>
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<td>0370 Total</td>
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<td>1130 Total</td>
<td>CDBG - Direct Program</td>
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<td>1170 Total</td>
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<td>2900 Total</td>
<td>Infrastructure Fin Prgm Admin</td>
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<td>6000 Total</td>
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<td>6100 Total</td>
<td>Water Fund</td>
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<td>Wastewater Fund</td>
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<td>Compost Operations</td>
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<td>Centre Plaza</td>
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<td>7120 Total</td>
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<td>8500 Total</td>
<td>JPA - Tenth Street Place</td>
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<td>8850 Total</td>
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<td>5,469</td>
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<td>8900 Total</td>
<td>TRRP</td>
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<td>132</td>
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<td><strong>Grand Total</strong></td>
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<td><strong>4,500,310</strong></td>
<td><strong>2,250,155</strong></td>
<td><strong>2,250,155</strong></td>
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</table>
MODESTO CITY COUNCIL
RESOLUTION NO. 2010-268

A RESOLUTION AUTHORIZING THE AWARD OF BID AND CONTRACT FOR THE PROVISION OF THIRD PARTY ADMINISTRATION OF WORKERS’ COMPENSATION CLAIMS SERVICES TO YORK INSURANCE SERVICES GROUP, INC.; AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE CONTRACT

WHEREAS, the City of Modesto provides workers’ compensation benefits to its employees, and

WHEREAS, the City of Modesto issued a Request For Proposal for third party administrative services to adjust workers’ compensation claims, and

WHEREAS, York Insurance Services Group, Inc. provided a responsive and responsible submittal, and

WHEREAS, York Insurance Services Group, Inc. was selected by the evaluation committee as the service provider that best meets the City’s needs, and

WHEREAS, York Insurance Services Group, Inc. will provide a cost-effective and enhanced service delivery system, and

WHEREAS, the City of Modesto desires to enter into an Agreement with York Insurance Services Group, Inc. to serve as the provider of third party administrative services for workers’ compensation claims,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the award of bid and contract for the provision of third party administration of workers’ compensation claims services to York Insurance Services Group, Inc. for a two-year contract, with three one-year extension options, for a total cost over five years of $1,646,126.
BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute the contract.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 22nd day of June, 2010, by Councilmember Marsh, 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: Geer, Hawn, Lopez, Marsh, Muratore, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: ____________________________

STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM

By: ____________________________

SUSANA ALCALA WOOD, City Attorney
RESOLUTION AMENDING THE FISCAL YEAR 2010-2011 RISK ADMINISTRATION AND WORKERS’ COMPENSATION BUDGETS TO FULLY FUND THE FIRST YEAR COST OF WORKERS’ COMPENSATION THIRD PARTY ADMINISTRATION SERVICES

WHEREAS, the City has authorized the award of bid and contract for the administration of workers’ compensation claims services to York Insurance Services Group, Inc., and

WHEREAS, the City will realize a reduction in salary expense in the Risk Administration Fund, and

WHEREAS, Risk Administration Fund reserves will be added to the salary savings, and

WHEREAS, the salary savings and Risk Administration Fund reserve will be used to fund the first year administrative service fee of $306,972,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves amending the Fiscal Year 2010-2011 Risk Administration and Workers’ Compensation Internal Service Fund as shown in Exhibit A.

BE IT FURTHER RESOLVED that the Director of Finance, or her designee, is hereby authorized to implement the provisions of this resolution.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 22nd day of June, 2010, by Councilmember Marsh, 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: Geer, Hawn, Lopez, Marsh, Muratore, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: [Signature]

APPROVED AS TO FORM:

By: [Signature]

SUSANA ALCALA WOOD, City Attorney
## Exhibit A

**Fund Name:**  
**Risk Admin Fund**

<table>
<thead>
<tr>
<th>Revenue Account Adjustments</th>
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<tr>
<td>7310-030-0372-4909</td>
<td>Inter-fund Labor Charges</td>
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</table>

<table>
<thead>
<tr>
<th>Expense Account Adjustments</th>
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<tbody>
<tr>
<td>7310-030-0372-0184</td>
<td>Salary Adjustment (Decrease)</td>
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<tr>
<td>7310-030-0372-0194</td>
<td>Benefit Adjustment (Decrease)</td>
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<tr>
<td>7310-800-8000-8003</td>
<td>Risk Admin Reserves</td>
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**Workers’ Comp Fund**

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<tr>
<th>Expense Account Adjustments</th>
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<td>7320-030-6610-0235</td>
<td>Services Professional and Other</td>
</tr>
<tr>
<td>7320-030-6610-0235</td>
<td>Inter-fund Service Credit</td>
</tr>
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</table>
RESOLUTION APPROVING A COMMITMENT OF REDEVELOPMENT AGENCY HOUSING SET-ASIDE (RDA) AND CITY HOME FUNDS FOR THE PROJECT LOCATED AT 17TH & G STREETS, ALSO KNOWN AS "TOWER PARK", IN THE AMOUNT OF $2.7 MILLION

WHEREAS, on June 27, 2006, by Resolution No. 7-2006, the Redevelopment Agency (RDA) approved the purchase of 17th & G Streets also referred to as "Tower Park", and

WHEREAS, the RDA Housing Set-Aside Fund owns "Tower Park" and has maintained the parcel as a park with the intent to build an affordable housing project on site, and

WHEREAS, on April 22, 2009, staff released a Request for Quotations (RFQ) soliciting affordable housing developers, and Satellite Housing and American Baptist Homes of the West was selected as the preferred developer, and

WHEREAS, a funding commitment from the City will allow the developer to submit a request for other funding such as HUD 202 funds which has a submittal deadline of July 2010, and

WHEREAS, on May 26, 2010, the Citizens’ Housing and Community Development Committee (CH&CDC) approved the commitment of RDA Housing Set-Aside and City HOME funds for the project located at 17th & G Streets also known as "Tower Park" in the amount of $2.7 million,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves a commitment of Redevelopment Agency Housing Set-Aside
(RDA) and City HOME funds for the project located at 17th & G Street, also known as “Tower Park”, in the amount of $2.7 million.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 22nd day of June, 2010, by Councilmember Geer, 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: Geer, Hawn, Lopez, Marsh, Muratore, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: [Signature]

APPROVED AS TO FORM:

By: [Signature]

SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2010-271

RESOLUTION AUTHORIZING STAFF TO DRAFT A PRE-CONSTRUCTION
LOAN AGREEMENT AND A DISPOSITION AND DEVELOPMENT
AGREEMENT, WHICH WILL BE BROUGHT BACK TO THE COUNCIL FOR
FINAL APPROVAL

WHEREAS, on June 27, 2006, by Resolution No. 7-2006, the Redevelopment
Agency (RDA) approved the purchase of 17th & G Streets, also referred to as “Tower
Park”, and

WHEREAS, the RDA Housing Set-Aside Fund owns “Tower Park” and has
maintained the parcel as a park with the intent to build an affordable housing project on
site, and

WHEREAS, on April 22, 2009, staff released a Request for Quotations (RFQ)
soliciting affordable housing developers, and Satellite Housing and American Baptist
Homes of the West was selected as the preferred developer, and

WHEREAS, a funding commitment from the City will allow the developer to
submit a request for other funding such as HUD 202 funds which has a submittal
deadline of July 2010, and

WHEREAS, on May 26, 2010, the Citizens’ Housing & Community
Development Committee (CH&CDC) approved the commitment of RDA Housing Set-
Aside and City HOME funds for the project located at 17th & G Streets, also known as
“Tower Park”, in the amount of $2.7 million,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto
that it hereby authorizes staff to draft a Pre-Construction Loan Agreement to be brought
back to Council for final approval.
AND BE IT FURTHER RESOLVED by the Council of the City of Modesto that it hereby authorizes staff to draft a Disposition and Development Agreement which will be brought back to Council for final approval.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 22nd day of June, 2010, by Councilmember Geer, 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: Geer, Hawn, Lopez, Marsh, Muratore, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney
AMENDED

MODESTO CITY COUNCIL
RESOLUTION NO. 2010-272

A RESOLUTION AMENDING AND RESTATING RESOLUTION NO. 2006-055,
AND UPDATING THE 2006 CAPITAL FACILITIES FEES PROGRAM TO
DECREASE LAND VALUES FOR PROPERTY ACQUISITION

WHEREAS, California Government Code Section 66000 et seq., and Modesto
Municipal Code Sections 8-1.904 et seq. authorize the City Council, by resolution, to
establish a Capital Facilities Fees Program (CFF) for the construction and acquisition of
certain public facilities, and

WHEREAS, on June 24, 2003, the City Council, by Resolution No. 2003-309,
amended Resolution No. 88-649, as amended, and adopted the 2003 CFF Update Report
and on file with the City Clerk for City facilities associated with capital items related to
police, fire, parks, transit, streets, air quality, and governmental facilities and,
administration of the CFF, and

WHEREAS, on January 24, 2006, the City Council, by Resolution No. 2006-055
amended and restated Resolution No. 2003-309 which increased land values for property
acquisition, increased funding available to acquire right of way for expressways, and
established the 2006 CFF Program, and

WHEREAS, the fees collected pursuant to this resolution will be used to finance
the public capital facilities identified in the 2003 CFF Update Report and some additional
right of way acquisition which is necessary to construct expressways identified in the
2003 CFF Update Report, and

WHEREAS, due to market conditions, land values have decreased dramatically,
and

06/22/2010/C&ED/AGedney/Item 22

RESCEINDED

MAY 7 2013

THIS RESOLUTION WAS
RESCINDED BY MODESTO
CITY COUNCIL RESOLUTION
NO. 2010-272

06/22/2010/C&ED/AGedney/Item 22

RESCEINDED

MAY 7 2013

THIS RESOLUTION WAS
RESCINDED BY MODESTO
CITY COUNCIL RESOLUTION
NO. 2010-272
WHEREAS, the Council has asked that any significant increases or decreases be presented on an ongoing basis to make certain that development is paying its share, and

WHEREAS, an appraisal documenting typical land values in the City of Modesto and County of Stanislaus has been prepared and City staff have studied the impact of those land values on the City’s 2006 CFF, a copy of which is attached as Exhibit A (Appraisal), and

WHEREAS, based on the decreases in land values, the staff proposes that the 2006 CFF should be adjusted to reflect these changes in costs, and

WHEREAS, the Notice of Public Hearing was published in the Modesto Bee on June 2, 2010, and

WHEREAS, the matter was set for public hearing on June 22, 2010, at 5:30 p.m., in the City Council Chambers, Basement Level, located at 1010 Tenth Street, at which date time said hearing was opened and closed, and

WHEREAS, the Council has determined that it is necessary and appropriate to update the 2006 CFF in order to reflect the decrease in land value costs, and

WHEREAS, Resolution No. 2006-055 is hereby amended solely with respect to the land values associated with acquisition of right of way and the establishment of new 2010 CFF to reflect these decreased land value costs,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that Resolution No. 2006-055 is hereby amended, and that Council hereby finds and determines as follows:

A. That 2010 Capital Facilities Fees shall be established to reflect these decreased land value costs, and
B. That the implementation and payment of the 2010 Capital Facilities Fees shall be for all new development and maps vested after September 3, 2003.

D. This resolution shall become effective on and after the date of its adoption, and that the fees shall become effective 60 days from the adoption of this resolution.

BE IT FURTHER RESOLVED by the Council of the City of Modesto that Resolution No. 2006-055 is hereby reaffirmed and restated herein in its entirety as follows:

A. Overview of Fees Determination: Capital Facilities Fees levied by the City shall be the result of two factors described in this paragraph:

1. The Full Recovery Fees reflect the full cost allocation to each category of new development of capital facilities necessary to serve growth.

2. The annual inflation adjustment will escalate fees by the amount of inflation.

B. Full Recovery Capital Facilities Fees: The Full Recovery Capital Facilities Fees (CFF) levied on each category of development in the City of Modesto shall be the fees levied per Attachment A. Land use categories shall have the definition contained in Item G-2 below.

C. Automatic Annual Inflation Adjustment: All fees shall be automatically adjusted for inflation by the City’s Director of Utilities Projects and Planning (formerly known as Engineering and Transportation and/or Public Works). The annual adjustment shall be based on the annual change in the San Francisco Bay Area Engineering News Record (ENR) Construction Cost Index through the proceeding December.
BE IT FURTHER RESOLVED, that

A-1. There is a reasonable relationship between the need for the public facilities designated in the reports and analysis, and in the City’s General Plan and Specific Plans generated in accordance with that plan, and the City’s Capital Improvement Plan, and the impacts of the type of development for which the corresponding fees are charged.

B-1. There is a reasonable relationship between the fees, uses, and the types of development for which the fee is charged.

C-1. There is a reasonable relationship between the amount of the various fees and the cost of the public facilities or portions of the public facilities attributable to the development and types of development upon which the various fees are imposed.

D-1. The cost estimates set forth in the reports and analysis are reasonable cost estimates for constructing these facilities, and the fees expected to be generated by future development will not exceed the total costs of constructing the public facilities just referenced.

E-1. The 2003 CFF Update Report and analysis establish a linkage or nexus between development in the City’s Annexation Areas (unincorporated area of the City’s General Plan Area) and the need for additional public facilities or improvements to existing public facilities within the City of Modesto as well as within the Annexation Areas. Therefore, the term “development” as used in the preceding four subparagraphs shall include
but not be limited to, development in the City’s Annexation Areas that may be approved or allowed by Stanislaus County, prior to the annexation of said Annexation Areas or portions thereof to the City of Modesto.

Because of this clearly established nexus, it is the intention of the City Council of the City of Modesto that the fees created by this resolution for streets facilities, air quality facilities, and public transportation facilities be imposed by the County of Stanislaus on development approved of or allowed by the County of Stanislaus in the City’s Annexation Areas area and collected by the City of Modesto, and

BE IT FURTHER RESOLVED that:

A-2. The 2006 Capital Facilities Fees are hereby adopted as shown in Exhibit B, and

B-2. The City Council finds that only projects shown in the adopted 2003 CFF Update Report including the acquisition of all right of way necessary to develop the expressways identified in the 2003 CFF Report, are eligible for receipt of CFF funds and individual projects shall be flexibly budgeted within total dollar limits of the capital programs of the two principal fee components as follows:

a. Fees for Community Facilities, which include Police, Fire, Parks, Government and Administration.

b. Fees for Transportation, which include Streets, Transit and Air Quality.
As long as the overall dollar amounts of the capital programs for these two components are not exceeded, individual eligible projects may vary from the estimates shown in the CFF Update Report, and

C-2. The Council of the City of Modesto establishes the following guidelines for implementation and payment of the 2003 Capital Facilities Fees, so that a development project that is not vested under State law would be subject to the fees in place prior to adoption of Resolution No. 2003-309 on September 1, 2003, if the development project meets any of the following criteria:

a. The development is the subject of a written Development Agreement (as defined by Government Code Section 65864, et seq.) between the City and the proposed developer, if within City limits, or the County, if outside City limits but within the Sphere of Influence, and the Development Agreement expressly vests the project at a specific, pre-September 3, 2003, CFF rate.

b. The development is the subject of a building permit application which has been deemed complete by the City, if within City limits, or the County, if outside City limits but within the City’s Sphere of Influence, prior to September 3, 2003; or, for development which is not subject to permit by the City or County, e.g., a hospital, an application equivalent to a building permit application which has been
deemed complete by the State permitting agency prior to September 3, 2003.

c. All vesting tentative subdivision and parcel maps for which an application is deemed complete, and approved, prior to September 3, 2003, until the expiration of the map’s vesting status, and

D-2 The Council of the City of Modesto establishes the following guidelines for implementation and payment of the 2006 Capital Facilities Fees, so that a development project that is not vested under State law would be subject to the fees in place prior to January 25, 2006, if the development project meets any of the following criteria:

a. The development is the subject of a written Development Agreement (as defined by Government Code Section 65864, et seq.) between the City and the proposed developer, if within City limits, or the County, if outside City limits but within the Sphere of Influence, and the Development Agreement expressly vests the project at a specific, pre-January 25, 2006, CFF rate.

b. The development is the subject of a building permit application which has been deemed complete by the City, if within City limits, or the County, if outside City limits but within the City’s Sphere of Influence, prior to January 25, 2006; or, for development which is not subject to permit by
the City or County, e.g., a hospital, an application 
equivalent to a building permit application which has been 
deemed complete by the State permitting agency prior on 
or before March 25, 2006.

c. All vesting tentative subdivision and parcel maps for which 
an application is deemed complete, and approved, on or 
before January 24, 2006, until the expiration of the map’s 
vesting status, and

E-2. CFF shall be due and payable at the time a building permit is issued, 
unless otherwise approved by Council resolution, as set forth in Modesto 
Municipal Code Section 8-1.904, and

F-2. The City Council shall annually review one or more components of the 
capital program that form the basis of calculating the Capital Facilities 
Fees. This policy in no way prevents the upward adjustment of fees due to 
an annual inflation, and

G-2. For purposes of the fees the following definitions of land use development 
categories shall apply. Uses not defined in these definitions shall be 
charged at rates to be determined by the CFF Administrator using land use 
determinations and trip generation estimates acceptable to the 
Administrator.

**RESIDENTIAL**

**Single Family:** Typically single family detached homes on 
individual lots, such as in residential subdivisions, but could also 
be in planned developments. Density of development may vary, 
but is typically ten (10) dwellings per acre or less.
Multiple Family: Includes multiple family dwelling units of several types, including high and low rise apartments, high and low rise condominiums, and multi-family residential planned unit developments greater than a density of ten (10) units per acre. This category also applies to mobile homes and hotel/motel uses.

Medium Density: Shall mean duplex or triplex buildings located on a single lot designed for occupancy by two or three families.

Senior Housing: Includes retirement communities restricted to adults or senior citizens, congregate care facilities, and similar residential uses.

INDUSTRIAL
Manufacturing/Light Industrial/Industrial Park – facilities in which the primary activity is the production of finished items through manufacture, fabrication, processing, packaging, or treatment of raw materials or parts, except heavy industrial uses. Uses which are considered to be in this category include uses such as those listed below:
1) Electronics assembly, paper products
2) Metal fabricator
3) Bottling plant
4) Cabinet shop
5) Machine shop
6) Sheet-metal shop
7) Welding shop
8) Wholesale shop
9) Printing plant
10) Material testing labors manufacturer
11) Food processor, brewery, bakery
12) Recycling facility
13) Burning operations for lumber and wood products
14) Junk handling, processing, storage
15) Landfill, waste products disposal or transfer station
16) Manufacture, fabrication, processing, packaging and treatment of explosives, oil and great products, chemicals and chemical products.
17) Rock crushing
18) Pulp and paper mill
19) Reduction, processing and storage of offal, dead animals, bones or similar materials
20) Septic tank, cesspool servicing
21) Stockyard
22) Tannery
23) Vehicle salvaging, wrecking
Mixed Industrial Uses – when a development proposal contains more than an incidental mixture of uses, the general type of uses should be segregated and treated separately for the purpose of calculating development fees.

WAREHOUSE DISTRIBUTION/HEAVY

Warehouse Distribution – Facilities in which the primary activity is the storage of materials or in which the primary activity is receiving and shipping materials. Use which are considered to be in this category include uses such as those listed below:
1) Freight
2) Warehousing
3) Corporation yard, freight yard
4) Equipment rental yard
5) Moving and storage service
6) Bulk feed storage
7) Lumberyard
8) Sand, gravel, building materials dealer

OFFICE

Medical: Offices and clinics devoted to the practice of medical and dental professions or providing medical or dental services, including pseudo-medical services, but excluding hospitals and nursing homes, which are treated separately.

General: All other types of general and professional offices.

COMMERCIAL

Small Retail (less than 50,000 square feet)
Convenience markets, often with on-site gasoline pumps, usually 24-hours or extended hours.

Fast-food restaurants with or without sit-down facilities and with or without drive-up windows; generally food is ordered and taken to be consumed outside the restaurant building, although some on-site seating is usually provided.

Sit-down restaurants where food is ordered and consumed in the restaurant, and customers generally stay less than one hour; frequently belong to chains and typically serve breakfast, lunch and dinner. This category also includes all drinking establishments—bars and cocktail lounges—except those in conjunction with low turnover restaurants. The latter are charged the low turnover rate.
Sit-down restaurants which generally have turnover rates of one hour or longer, typically do not serve breakfast, and may or may not serve lunch.

Banks – full service banking institutions with or without drive-up windows.
Savings and Loan institutions, including thrift and credit unions, with or without drive-up windows, which typically offer fewer financial services than banks and are typically smaller in gross floor area than banks. If a given Savings and Loan is 5,000 gross square feet or more, or provides full banking services, it should be treated as a bank.

Other retail includes a wide range of retail and service uses, both free-standing and in shopping centers, including but not limited to supermarkets, drug stores, department stores, general merchandise, building materials or lumber stores, specialty retail stores, discount stores, hardware/paint stores, video arcades, and new car sales. May include uses in small retail category if in a shopping center.

OTHER
Church: Structures primarily designed as a place for public worship.

Day Care and School: An educational, vocational or day care facility.

Hospital: A structure designed for health services, both inpatient and outpatient; that includes surgical care of the sick or injured of the physically ill and/or therapeutic treatment for the mentally ill. Included as an integral part of a hospital or laboratories, outpatient departments, training facilities, central service facilities, and hospital staff offices on the same site. The preceding ancillary uses are considered “professional offices” if located off-site, unless a multi-site campus is covered by a P-D Zone or hospital uses. A separate set of offices on the same site for physicians is considered “professional offices”.

Mini-Warehouse: A personal storage facility not associated with industrial use.

Nursing Home: Structures designed for use as a convalescent hospital, or a retirement home, or a twenty-four hour care center for seven or more persons in addition to members of the family.
For purposes of interpreting these definitions, the term “Commercial Use” shall mean those uses designated as permitted or conditional uses in the C-1, C-2 and C-3 Zones of Title 10 of the Modesto Municipal Code.

BE IT FURTHER RESOLVED by the City Council that the Director of Community and Economic is authorized to present proposals to the City Council for transfer of CFF waiver from existing buildings to other locations based upon the following criteria:

A. The project involves commercial/industrial job retention of at least 25 jobs or redevelopment of blighted areas.

B. The beneficiary of the transfer is the owner of the existing building or the existing building is demolished and was not given a waiver when rebuilt.

BE IT FURTHER RESOLVED by the City Council that the findings of Initial Study EA C&ED No. 2003-20 are hereby acknowledged, namely,

A. The proposed 2003 CFF Update is within the scope of the General Plan covered by the Modesto Urban Area General Report Plan 2003 Final Master Environmental Impact Report (SCH#1999082041) (FMEIR).

B. The proposed 2003 CFF Update will have no new additional significant effect on the environment not addressed in the FMEIR and no new or additional mitigation measures are required.

C. As per Public Resources Code Section 21157.1, no new environmental document nor findings pursuant to Section 21081 shall be required by the California Environmental Quality Act for the 2003 CFF Update.

D. There are no specific features that are unique to the proposed project that require project specific mitigation measures. All feasible mitigation
measures set forth in the FMEIR Update that are appropriate to the 2003 CFF Update shall be incorporated in the 2003 CFF Update.

E. No new or additional mitigation measures are required for the proposed 2003 Update. All certified mitigation measures identified in the FMEIR will apply citywide including this project as appropriate.

F. The initial study EA/C&ED 2003-20 provides substantial evidence to support findings A through E above.

BE IT FURTHER RESOLVED, by the City Council that in addition to other findings made by this resolution, the City Council further finds that the California Environmental Quality Act (CEQA) does not apply to the adoption of this resolution pursuant to Sections 10561 and 15273 of the State CEQA Guidelines because:

A. The fees established by this resolution will be collected, in part, for the purpose of obtaining funds to be used for capital projects which are necessary to maintain the current level of services within the City, including the construction of police, fire facilities, parks and recreation facilities, other city facilities, air quality facilities, public transportation facilities and street facilities as well as the purchase of certain items of capital equipment.

B. However, the addition of capital facilities to new neighborhoods will not take effect until there has been CEQA review of the development projects which will pay for said capital facilities via the Capital Facilities Fee mechanism established or increased by this resolution. Such CEQA review will take place at the annexation, zoning, and/or subdivision stages.
of each development project. In addition, the construction of each capital facility will be subject to CEQA review. It is therefore reasonably certain that this resolution which either established or increased Capital Facilities Fees to fund Capital Facilities that will be necessary in the event growth continues to occur will not, by itself, have any possibility of causing a significant effect on the environment.

BE IT FURTHER RESOLVED by the City Council that should any fee provision, clause, paragraph or subparagraph be held invalid or unconstitutional, that invalidity or unconstitutionality shall not affect other provisions or applications thereof which can be given effect with the invalid fee, provision, clause, paragraph or subparagraph, and to this end, the provisions of this resolution are declared severable. By adopting this resolution, the City Council hereby declares that it would have adopted this resolution without that fee, provision, clause, paragraph or subparagraph.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 22nd day of June, 2010, 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: Geer, Hawn, Lopez, Marsh, Muratore, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: [Signature]

(SEAL)

APPROVED AS TO FORM:

By: [Signature]

SUSANA ALCALAWOOD, City Attorney
April 29, 2010

Amy S. Gedney
IFP Administrative Officer
City of Modesto
Infrastructure Financing Program
Office of the City Manager
1010 Tenth Street, Suite 6100
Post Office Box 642
Modesto, CA 95353

Re: CFF Update – City Wide and Sphere of Influence Land Values

Dear Ms. Gedney:

In response to your request and authorization we have proceeded with the necessary investigation and analysis in order to determine stabilized land values within the City of Modesto and sphere of influence. The function and intended use of this analysis is to assist the City of Modesto in updating Capital Facility Fees. A number of stabilized land values were provided for various land uses consisting of residential, commercial, industrial, and land located within the sphere of influence having higher use potential upon annexation.

For the purpose of this study the market was researched over a fifteen year period, taking into account the highs and lows of markets over that time period. The present real estate market is depressed with very little market activity. The only activity that does exist appears to be from speculators who are able to pay cash given the difficulty in achieving financing. As a result, the present values experienced in this market are a far cry from the values experienced at the height of the real estate market in 2005 to 2007. It is our opinion that stabilizing the highs and lows over this time period reflecting the cycles in the real estate market is the most accurate way to determine values in order to establish fees.
For the purpose of this consulting assignment the scope includes the following:

- Research of the market over a period of from 1995 to 2010 for sales and listings of various land uses within the City of Modesto and sphere of influence

- Land uses researched consisted of various forms of residential, commercial, and industrial, as well as land within the sphere of influence surrounding Modesto having future development potential upon annexation

- Sources for this research consisted of CoStar, Inc., Loopnet, Board of Realtors, Multiple Listing Service, County Assessor's office, interviews with real estate brokers and other appraisers, and data collected in our plant over this time period

- Interviews with city officials regarding zoning, general plan, utilities, and development requirements

- Analysis of the data found in order to determine stabilized value conclusions for the various property types within the City of Modesto and surrounding area
Based upon the market study, the concluded stabilized values for the various property types are as follows:

<table>
<thead>
<tr>
<th>Land Uses</th>
<th>Stabilized Values</th>
</tr>
</thead>
<tbody>
<tr>
<td>Subdivision Land – Within the City</td>
<td>$200,000 to $250,000 Per Acre</td>
</tr>
<tr>
<td>(Infill Properties)</td>
<td></td>
</tr>
<tr>
<td>Subdivision Land – Within the Village Neighborhoods</td>
<td>$150,000 to $200,000 Per Acre</td>
</tr>
<tr>
<td>Paper Lot Values in Modesto Area</td>
<td>$45,000 to $50,000 Per Lot</td>
</tr>
<tr>
<td>Land Within City of Modesto Sphere of Influence (VR, BP, RC, I)</td>
<td>$75,000 to $100,000 Per Acre</td>
</tr>
<tr>
<td>Developed Industrial Sites</td>
<td>$4.00 to $6.00 Per Square Foot</td>
</tr>
<tr>
<td>R-2 and R-3 (Multi Residential) Parcels (Infill Parcels)</td>
<td>$150,000 to $200,000 Per Acre</td>
</tr>
<tr>
<td>Office Building Sites</td>
<td>$10.00 to $12.00 Per Square Foot</td>
</tr>
<tr>
<td>Large Shopping Center Land Values</td>
<td>$8.00 to $10.00 Per Square Foot</td>
</tr>
<tr>
<td>Retail Pads (.50 to 2 Acres)</td>
<td>$13.00 to $15.00 Per Square Foot</td>
</tr>
</tbody>
</table>
We trust this study and concluded values are sufficient for your immediate needs. We have not included the sales data used in valuing the various components given the fact that there were several sales and a large amount of data analyzed over a fifteen year time period. This data can be made readily available upon written request. Once again, it is important to note that our analysis took into account the highs and lows of the real estate cycles experienced between the years of 1995 and 2010. The stabilized values stated are not reflective of current land values, given the depressed nature of the market. It is our opinion and upon direction by the client (City of Modesto), that stabilizing values over this time period is the most accurate and fair method to determine fees. If you have any questions concerning this analysis or our conclusions, please do not hesitate to contact us.

Thank you for this opportunity to be of service.

Respectfully,

COGDIll & GIOMI, INC.

David R. Giomi, MAI, RM

David E. Cogdill, Jr.
APPRAISAL QUALIFICATIONS
David R. Giomi, MAI, RM
1317 1 Street
Modesto, CA 95354

PROFESSIONAL EDUCATION
Reedley College, Agri-business
Fresno State College, Agri-business

Courses Completed:
American Institute of Real Estate Appraisers Courses:
Course 1A: Basic Appraisal Principles, Methods and Techniques
Course 1B: Capitalization Theory and Techniques
Course 8-2: Residential Valuation, Match Pair Analysis
Course 6: Computer Assisted Investment Analysis
Business Practices & Ethics

Modesto Junior College:
Appraisal of Single Family Residences; Complete Function of Applied Principles and Techniques for the Valuation of Single Family Residential Properties

American Society of Farm Managers and Rural Appraisers
Course of Advanced Case Studies in Rural Valuation
Fractional Interest Valuation

Recent Workshops and Classes:
1. California OREA Federal and State Law
2. Several USPAP Update and Review
3. “Appraising The Tough Ones” Seminar
4. Subdivision Analysis Seminar
5. Dynamics of Office Building Valuation
6. Standards of Professional Appraisal Practice (A & B & C)
7. Vineyard Valuation (1 & 2)
8. Real Estate Updates
9. Eminent Domain Case Law
10. USPAP Update Course
11. Dairy Facility Appraisal

EXPERIENCE
May 1, 1981 to Dec. 2007: Principal, Cogdill & Giomi
1971-1974: Asst. Vice President and Branch Manager of Investors Thrift.
Part-time appraiser with all work completed on residential properties.

I have completed appraisals for the U.S. Forest Service, Caltrans, General Services Administration, City of Turlock, City of Modesto, Stanislaus County, Modesto Irrigation District, Turlock Irrigation District, City of Ripon, Bank of America, Bank of California, Wells Fargo Bank, Modesto Commerce Bank, Pacific State Bank, WestAmerica Bank, Bank of the West, and various individuals including attorneys and accountants.

Qualified as Expert Witness in various hearings, Municipal Court and Superior Court, State of California.

Appraisals have covered the areas of residential subdivisions, commercial, industrial, agricultural and recreational properties, as well as eminent domain cases

MEMBERSHIPS
The Appraisal Institute (MAI, RM)
Professional Member of the American Society of Farm Managers and Rural Appraisers
Modesto Board of Realtors (Affiliate Member)
State of California “Certified General Real Estate Appraiser” Certificate No. AG004978

ACTIVITIES
Instructor - Farm Appraisal, Modesto Junior College
Past Board of Director of the Appraisal Institute Chapter 11 (Northern California Chapter)
Past Member Advisory Committee for Real Estate, Modesto Junior College
Instructor - Residential and Commercial Properties, Modesto Junior College
APPRAISAL QUALIFICATIONS
David E. Cogdill, Jr.
1317 I Street
Modesto, CA 95354

EDUCATION
California State University, Stanislaus - Bachelor of Arts Degree
Modesto Junior College - Associate in Arts Degree

PROFESSIONAL COURSES
Courses Completed and Passed, 1989 to Present:

American Institute of Real Estate Appraisers:
Course 8-1: Real Estate Appraisal Principles, June, 1990
Course 120: Appraisal Procedures, March, 1996
Course 310: Basic Income Capitalization, August, 1996
Course 320: General Applications, June, 1997
Course 410: Standards of Professional Practice (USPAP), October, 1995
Course 420: Standards of Professional Practice (Part B), October, 1995
Course 430: Standards of Professional Practice (Part C), March, 2001
Course 510: Advanced Income Capitalization, October, 1998
Course 520: Highest and Best Use and Market Analysis, March, 1998
Course 530: Advanced Sales Comparison and Cost Approach, June, 1999
Course 540: Report Writing and Valuation Analysis, October, 2003
Course 550: Advanced Applications (Case Studies), November, 2003
USPAP Update Seminar, November, 1999
Course 710: Condemnation Appraising: Principles and Applications, June, 2000

American Society of Farm Managers and Rural Appraisers:
Fractional Interest Valuation, February, 1998

Modesto Junior College:
Real Estate Residential Appraisal, Modesto Junior College, 1989

EXPERIENCE
January 1, 2007 to Present: President of Cogdill & Giomi, Inc., Real Estate Appraisers
June 1995 to December 2006: Associate Appraiser, Cogdill & Giomi, Real Estate Appraisers
May 1989 to May 1995: Researcher, Cogdill & Giomi, Real Estate Appraisers

I have completed appraisals for Caltrans, City of Modesto, City of Oakdale, City of Turlock, City of Manteca, City of Ripon, Stanislaus County, San Joaquin County, Modesto Irrigation District, Wells Fargo Bank, Bank of the West, West America Bank, Bank of Stockton, Modesto Commerce Bank, U.S. Bank, Bank of Agriculture and Commerce, County Bank, Farmers & Merchants Bank, Central Valley Community Bank, and various other real estate developers, individuals, accountants and attorneys.

Appraisals have covered the area of residential, commercial, industrial, agricultural, recreational and special use properties.

In addition to my 18 years of real estate appraisal experience, I served two years on the City of Modesto Planning Commission and Board of Zoning Adjustment. I have a real estate broker’s license issued by the California Department of Real Estate and have represented buyers and sellers of residential, commercial, industrial and agricultural properties.

CERTIFICATION
Certified General Real Estate Appraiser by the State of California, AG025634, dated September 30, 1998
Real Estate Broker License issued by Department of Real Estate, State of California, dated July 16, 1999

PROFESSIONAL AFFILIATION & MEMBERSHIPS
Associate Member in the Appraisal Institute Pursuing MAI Designation
Central Valley Association of Realtors
Modesto Chamber of Commerce
Modesto Rotary Club
City of Modesto Planning Commissioner 2004 - 2006
City of Modesto Charter Review Committee 2006 - Present
MODESTO CITY COUNCIL
RESOLUTION NO. 2010-273

RESOLUTION APPROVING A THIRD AMENDMENT TO THE U. S.
DEPARTMENT OF HOUSING & URBAN DEVELOPMENT ANNUAL ACTION
PLAN FOR FISCAL YEAR 2009-2010

WHEREAS, the City Council, on May 12, 2009, by Resolution No. 2009-212,
adopted the Annual Action Plan for FY 2009-2010, and

WHEREAS, this is the third substantial amendment to the Annual Action Plan,
and

WHEREAS, any substantial amendments to the Annual Action Plan require City
Council approval, and

WHEREAS, this amendment was made available for public review and comment
beginning June 7, 2010, and will close with a City Council public hearing on June 22,
2010, and

WHEREAS, any remaining funds from the NSPI homebuyers assistance activity
after June 22, 2010, and currently estimated at $491,031, will be reallocated to the
acquisition and rehabilitation activity for targeted sites,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto
that it hereby approves a third amendment to the U. S. Department of Housing & Urban
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 22nd day of June, 2010, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember Olsen, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Geer, Hawn, Lopez, Marsh, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: Muratore

ATTEST:  

(SEAL)

APPROVED AS TO FORM:

By:  

SUSANA ALCALA WOOD, City Attorney
RESOLUTION AMENDING THE FISCAL YEAR 2009-2010 ANNUAL OPERATING BUDGET TO REFLECT APPROVED CHANGES TO THE U. S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT ANNUAL ACTION PLAN FOR FISCAL YEAR 2009-2010

WHEREAS, the City Council, on May 12, 2009, by Resolution No. 2009-212, adopted the Annual Action Plan for FY 2009-2010, and

WHEREAS, this is a third substantial amendment to the Annual Action Plan, and

WHEREAS, any substantial amendments to the Annual Action Plan require City Council approval, and

WHEREAS, this third amendment will reallocate any remaining funds from the NSPI homebuyers’ assistance activity after June 22, 2010, and currently estimated at $491,031, to the acquisition and rehabilitation activity for targeted sites,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the Fiscal Year 2009-2010 Annual Operating budget is hereby amended to reallocate any remaining funds from the NSPI homebuyers’ assistance activity after June 22, 2010, and currently estimated at $491,031, to the acquisition and rehabilitation activity for targeted sites.

BE IT FURTHER RESOLVED that the Director of Finance, or her designee, is hereby authorized to take the necessary steps to implement the provisions of this resolution.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 22nd day of June, 2010, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember Olsen, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Geer, Hawn, Lopez, Marsh, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: Muratore

ATTEST: [Signature]
STEPHANIE LOPEZ, City Clerk

(S SEAL)

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2010-275

A RESOLUTION APPROVING THE APPOINTMENTS OF COUNCILMEMBER BRAD HAWN AND COUNCILMEMBER GARRAD MARSH TO THE REGIONAL SURFACE WATER SUPPLY PROJECT (RSWSP) STEERING COMMITTEE

WHEREAS, on March 24, 2010, a Joint Agency Council Workshop was held to provide information on the RSWSP including project history, project value and next steps needed to move forward, and

WHEREAS, the Mayors of the four cities consisting of Hughson, Turlock and Modesto agreed to the formation of a Councilmember-based Steering Committee on the RSWSP to provide policy direction and fiscal decisions, and

WHEREAS, the RSWSP Steering Committee will consist of two appointed Councilmembers from each City, and

WHEREAS, Mayor Ridenour has selected Councilmembers, Brad Hawn and Garrad Marsh, to serve on this committee, and

WHEREAS, each member will have equally weighted votes in the process (length of service to be determined), and

WHEREAS, the proposed members for the RSWSP Steering Committee are:

Councilmember: Brad Hawn
Councilmember: Garrad Marsh

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the appointments of Councilmember Brad Hawn and Councilmember Garrad Marsh to the Regional Surface Water Supply Project (RSWSP) Steering Committee.
The foregoing resolution was introduced at a regular meeting of the Council of
the City of Modesto held on the 22nd day of June, 2010, by Councilmember Hawn, 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: Geer, Hawn, Lopez, Marsh, Muratore, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: 

(SEAL)

APPROVED AS TO FORM:

By: 

SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2010-276

A RESOLUTION APPROVING A COST SHARING AGREEMENT BETWEEN THE CITIES OF CERES, HUGHSON, MODESTO, AND TURLOCK FOR DEVELOPMENT OF AN INTEGRATED REGIONAL WATER MANAGEMENT PLAN, AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE AGREEMENT

WHEREAS, the Turlock Irrigation District (TID) and the cities of Ceres, Hughson, Modesto, and Turlock have been working together for several years on a joint project to supply each agency with treated TID supplied surface water, and

WHEREAS, in December 2008, TID gave formal notice that they would no longer plan, finance, own, and operate the treatment plant, including related transmission facilities, and then sell treated surface water to the four cities, and

WHEREAS, in January 2009, the cities of Ceres, Hughson, Modesto and Turlock formed a technical advisory committee (TAC) to continue discussion on the issues of a future Regional Surface Water Supply Project (RSWSP) under a possible joint financed, owned and operated project, and

WHEREAS, on May 26, 2009, by Resolution No. 2009-225, the City Council directed staff to continue working with TID and the three other cities in the development of a Joint Powers Authority (JPA) responsible for decisions pertaining to the future Regional Surface Water Supply Project (RSWSP), and

WHEREAS, in December 2009, the TAC initiated a discussion of exploring grant and loan opportunities to assist in funding the RSWSP and the development of an Integrated Regional Water Management Plan (IRWMP) in order to qualify for such grants and loans, and
WHEREAS, on March 24, 2010, a Joint Agency Council Workshop was held to provide information on the RSWSP including project history, project value and next steps needed to move forward, including sharing costs to develop an IRWMP, and

WHEREAS, City staff recommends approving a Cost Sharing Agreement between the Cities of Ceres, Hughson, Modesto and Turlock for development of an IRWMP,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves a Cost Sharing Agreement with the cities of Ceres, Hughson, and Turlock to cover costs, including a two-percent (2%) administrative cost of up to $4,312, for development of an Integrated Regional Water Management Plan.

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 22nd day of June, 2010, by Councilmember Hawn, 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: Geer, Hawn, Lopez, Marsh, Muratore, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: 

(SEAL)

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2010-277

A RESOLUTION APPROVING AN AGREEMENT WITH RMC WATER AND ENVIRONMENT FOR CONSULTANT SERVICES TO PREPARE THE INTEGRATED REGIONAL WATER MANAGEMENT PLAN IN AN AMOUNT NOT TO EXCEED $215,580 FOR THE IDENTIFIED SCOPE OF SERVICES, PLUS $21,558 FOR ADDITIONAL SERVICES (IF NEEDED), FOR A MAXIMUM TOTAL AMOUNT OF $237,138, AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE AGREEMENT

WHEREAS, concurrently heard on June 22, 2010, by Resolution No. 2010-276, the City Council approved a Cost Sharing Agreement between the Cities of Ceres, Hughson, Modesto, and Turlock for the development of an Integrated Regional Water Management Plan (IRWMP), and

WHEREAS, in compliance with Administrative Directive 3.1, Selection Procedures for Professional Consultants Who Provide Architectural and Engineering Services for Capital Projects, and in coordination with the three other cities, a Request for Proposals was sent to a qualified short list of five consultants, of which three responded, and

WHEREAS, a selection committee reviewed the proposals for compliance with the project's scope of work and interviews were conducted with the three firms, and

WHEREAS, based on the proposals and interviews, RMC Water and Environment (RMC), of Walnut Creek, was selected as the most qualified consultant to develop the IRWMP, and

WHEREAS, RMC is very familiar with the region's water resources and has completed a number of IRWMP's throughout the state over the last few years, and

WHEREAS, Exhibit A to the consultant agreement outlines RMC's scope of work, and
WHEREAS, the City of Modesto will be the lead agency on the IRWMP effort and will manage the agreement with RMC, and

WHEREAS, City staff recommends approving an agreement with RMC as the City does not have the staffing level or subject matter expertise to prepare the IRWMP, and current workload levels do not provide for timely in-house solutions/responses,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves an agreement with RMC Water and Environment for consultant services to prepare the Integrated Regional Water Management Plan in an amount not to exceed $215,580 for the identified scope of services, plus $21,558 for additional services (if needed), for a maximum total amount of $237,138.

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 22nd day of June 2010, by Councilmember Hawn, 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: Geer, Hawn, Lopez, Marsh, Muratore, Olsen, Mayor Riderour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: 

(S SEAL)

APPROVED AS TO FORM:

By: 

SUSANA ALCALA WOOD, City Attorney
Scope of Work

Our scope of work for achieving the goals of the IRWM planning effort is outlined below. This scope is divided into three distinct phases to facilitate implementation. However, tasks and activities from each phase can be readily combined or exchanged in response to changes made by DWR to the final IRWM program guidelines or recommendations made by the City for other reasons.

- **Phase I**
  - Task 1: Establish Regional Water Management Group
  - Task 2: Region Acceptance Process
  - Task 3: Phase I Project Management

- **Phase II**
  - Task 4: Initial IRWMP Development Management Group
  - Task 5: IRWMP Projects
  - Task 6: IRWMP Preparation
  - Task 7: Phase II Project Management

- **Phase III**
  - Task 8: Planning Grant Application

**Phase I**

Phase I consists of the tasks required to initiate the Integrated Regional Water Management Planning (IRWMP) process. First and foremost, Modesto and other interested agencies and cities must formally establish the Regional Water Management Group and define their associated IRWM region. In order to be eligible to apply for funding through the Proposition 84 IRWM process, they must have the region approved by DWR.

**Task 1: Establish Regional Water Management Group**

**Subtask 1.1: Define RWMG**

The Region Acceptance Process (RAP), discussed in more detail in Task 2, requires discussion of the Regional Water Management Group (RWMG) responsible for overseeing development and implementation of the region’s IRWMP. The form and format for RWMG and governance structure development and operation vary with region and there are multiple examples from which the cities can draw information in order to develop the best RWMG structure for its new region. RMC’s approach to facilitating development of an effective RWMG includes the following:

- Comprehensive review of pros and cons of the various RWMG alternatives to ensure that the most effective and appropriate structure is selected for the region
• Early involvement of public and other key stakeholders to establish support for the IRWMP process
• Ensure participation by a diverse group of stakeholders to ensure a broad range of water management interests are represented in the process.

Determining a governance structure is not only a requirement for region acceptance through RAP, but it will ensure effective communication and progression forward during development of the IRWMP and beyond. It will be important to establish a governance structure—including ground rules and communication pathways to the RWMG—that is inclusive and transparent. The governance structure should consider decision making practices for:

• Establishing IRWMP goals and objectives
• Implementing plan activities
• Soliciting and prioritizing projects
• Revising the IRWMP in the future
• Financing RWMG activities
• Hiring and managing consultants

The governance structure includes not only how decisions are made, but who is involved in making those decisions. A balance must be maintained in which various parties are engaged in the process, regardless of their ability to contribute financially; public workshops and the development of the advisory committee will help ensure this.

RMC understands that the RWMG will include the Cities of Modesto, Ceres, Hughson, and Turlock, but the public must be allowed to participate in the IRWM process. Public participation is a key element of IRWMP and must begin with the initial conception of the Regional Water Management Group (RWMG). Participation early in the development process provides individuals in the public a sense of ownership in the process and development of the plan. A portion of the Region Acceptance Process, discussed in more detail in Task 2, is to document that stakeholders, including disadvantaged and Native American communities, are invited to participate in the IRWM process.

As part of Task 1, RMC will meet with the cities to present various alternatives for RWMG structure and governance. Based on RMC experience, RMC will present different RWMG governance structures, and will apply lessons learned to help Modesto, Ceres, Hughson and Turlock identify the RWMG structure that is most appropriate for the region. RMC will summarize the basis for the selected RWMG governance structure in a brief memorandum that will later serve as a section in the RAP submittal. A draft memorandum will be provided to the steering committee for review, following which RMC will finalize the document based on comments received.

Once a format for the RWMG structure has been formulated, RMC will facilitate an initial public workshop, budgeted under Subtask 3.1 to notify interested parties that the RWMG is developing an Integrated Regional Water Management Plan (IRWMP), to educate stakeholders and interested parties in the IRWM process, and to solicit future participation in the RWMG governance organization.
As Part of Task 1, RMC will develop a proposed list of advisory committee members for review, discussion, and input by the four cities. It is anticipated that the advisory committee would likely be made up of representatives from the water supply, wastewater, recycling, stormwater management, flood control, and environmental conservation sectors. The RWMG may also consider inviting members of the public at-large, chamber of commerce, business and industry, farm bureau, regulatory agencies, adjacent IRWM regions, and other interested parties. Special consideration should be made in inviting representatives of DAC and Native American Communities to join the advisory committee.

Upon confirmation of the appropriate stakeholders, RMC will develop a contact list for each of the stakeholders, coordinate inviting members to join the advisory committee and modify the list of members based on replies.

It is anticipated that the advisory committee will meet periodically (e.g., on bimonthly basis), when necessary to support development of the IRWMP and funding applications. These meetings are important to maintaining ongoing communication between the RWMG and the primary stakeholder group. In addition, these meetings are critical to gathering input needed from the advisory committee to make key program decisions. To assist with these meetings, RMC will establish Principles of Participation for advisory committee members as it relates to meeting conduct and speaker recognition. RMC will also develop Roles and Responsibilities for advisory committee members so they understand the importance of their role in decision-making.

RMC will provide drafts of both documents to the RWMG for review prior to finalizing.

**Subtask 1.1 Deliverables:**

- Draft and Final Governance Structure memorandum
- Draft and Final advisory committee invitation list and email contact list
- Draft and Final Principles of Participation for the advisory committee
- Draft and Final Roles and Responsibilities for the advisory committee

**Subtask 1.2: Define RWMG Coordination Activities**

**Outreach and Communications Plan**

RMC will prepare a Stakeholder Outreach and Communications Plan identifying a proposed methodology and approach to ensure dissemination of information associated with preparation and implementation of an IRWMP. The Outreach and Communications Plan will contain a special focus on outreach to disadvantaged communities (DACs), environmental justice (EJ) representatives, Native American tribes, and conservation organizations. Further, the Outreach and Communications Plan will define the general topics and timing of stakeholder workshops necessary to develop the IRWMP. In general, RMC finds that general stakeholder workshops are best held on a quarterly basis.

As part of this task, the RMC team will work with RWMG to identify disadvantaged communities in the Region. Once these communities have been identified, RMC will work with the RWMG to contact and obtain DAC and EJ representatives in the Region.
Inter-Regional Dialogue
This subtask will also include initiating dialogue with existing IRWM regions surrounding the potential region. The existing regions directly adjacent to the potential region include:

1. Central California
2. Eastern San Joaquin
3. Merced
4. Mokelumne/Amador/Calaveras
5. Tuolumne/Stanislaus
6. Westside – San Joaquin

The governance structure will take into account communication, resolving conflicts, and coordinating inter-regional projects with surrounding regions.

Subtask 1.2 Deliverables:
- List of DACs and representatives in the region
- Draft and Final Outreach and Communications Plan

Task 2: Region Acceptance Process
In anticipation of an accepted IRWM region, RMC will prepare and submit a Region Acceptance Process (RAP) application to DWR for ‘official’ recognition of the region.

Subtask 2.1: Identify Water Management Issues
RMC will collect information sources in support of the specific data needs outlined in the Final RAP Program Guidelines. Available Geographic Information Systems (GIS) data layers from the cities will be required in order to develop the regional boundary and prepare necessary maps for the RAP submittal. RMC will need to gather other information as well, such as information related to groundwater basins, population density, land cover, adjacent IRWM regions, and water management within the region. RMC will develop a list of requested information that will be required to develop the RAP submittal including the report and associated maps. Examples of information requests include, but are not limited to:

- Hughson General Plan (2005)
- City of Ceres General Plan (1997)
RMC will review the planning documents and studies that are available to serve as background and foundation documents for the Modesto IRWMP; review of these documents will help RMC identify and become familiar with potential water-related issues within the region. RMC will meet with the advisory committee to identify issues and conflicts within the region that should be addressed in the IRWMP; the meeting will also allow for introduction to the governance structure of the RWMG including a description of the steering committee and advisory committee, Principles of Participation of the advisory committee, and Roles and Responsibilities of the advisory committee. This meeting is budgeted under Subtask 3.1.

**Subtask 2.1 Deliverables:**
- List of information requests

**Subtask 2.2: Prepare RAP Submittal**
RMC will prepare a Draft RAP Submittal clearly addressing DWR reviewer’s information needs identified in Table 1 of the Final RAP Guidelines. The primary topics that must be included in the RAP materials include, but are not limited to:

1. Composition of the RWMG including who the members are, other participants in developing and implementing the IRWMP, and a description of the working relationship between the RWMG and stakeholders
2. Stakeholder participation, including how stakeholders, including DACs are invited to participate
3. Public outreach
4. The Region’s governance structure
5. The regional boundary
6. History of the IRWM efforts in the region, regional water management issues, and conflicts in the region
7. Relationships & coordination with nearby IRWM regions

RMC will develop a report covering the topics listed above and will incorporate the RWMG and governance documents prepared under Task 1 into the RAP application documentation for submittal to DWR, as well as the water management issues identified during Subtask 2.1. As part of the submittal, RMC will prepare maps using the GIS layers obtained in Subtask 2.1. The purpose of the maps will be to effectively describe the regional boundary’s relationship to other boundaries such as political boundaries. RMC envisions the IRWM region to fill in the gap created by the surrounding regions. There is a clear need for integrated planning within this area and the boundaries would be clearly defined.

The Draft RAP Submittal will be provided to the RWMG for review. RMC will facilitate a meeting with the RWMG to review the RAP requirements, obtain input on specific language to be used for some of the submittal.
responses, and discuss comments on the draft RAP submittal. The meeting with the steering committee will be conducted via conference call, while the meeting with the advisory committee will be face-to-face; these meetings will ensure an accurate representation of the region and the RWMG to DWR. The conference call and meeting are budgeted under Task 3.1. RMC will then finalize the RAP submittal based on comments received from the RWMG and provide copies to DWR for review and approval.

Subtask 2.2 Deliverables:

- One electronic copy (.PDF) of the Draft RAP Submittal for RWMG review.
- DWR required Final RAP Submittal of 3 hard copies and 5 electronic copies in Microsoft Word on 5 CDs. Maps will be submitted on a separate CD with UTM Zone 10, NAD 27 format.
- One hard copy and one electronic copy of all materials submitted to DWR for the RWMG.

Subtask 2.3: DWR Coordination

In order to be eligible to apply for Proposition 84 IRWM grant funds, acceptance and approval of the IRWM region by DWR is required. Submittals for the first RAP were due April 29, 2009. Although DWR stated they will conduct RAP on at least an annual basis, the timing of the next RAP and associated deadlines are unknown at this time. Because Modesto and the partnering cities of Ceres, Hughson and Turlock must have an approved region prior to applying for IRWM grant funding, it is imperative that dialogue between DWR and the RWMG begins immediately.

As part of this task, RMC will coordinate with DWR to determine if and when another RAP will take place, or if there is the possibility that DWR could review the RAP application prior to the implementation grant funding cycle. RMC understands from its on-going communications with DWR that staffing availability is the primary limitation to RAP application review; therefore, RMC has planned implementation of this task and the scope of work, to best coincide with anticipated lulls in staff loading at DWR in anticipation of negotiating DWR’s review. This subtask also includes RMC’s participation in a meeting with the RWMG and DWR to discuss the RAP submittal.

Subtask 2.3 Deliverables:

- Meeting notes from telephone calls with DWR and/or other sources of communication

Task 3: Phase I Project Management

Subtask 3.1: Phase I Meetings and Workshops

RMC will have an initial kickoff meeting with the City of Modesto, and if directed by the City, with other possible members of the RWMG, to review the scope, budget, and RMC’s approach. The kickoff meeting will establish lines of communication, confirm overall project goals and expectations, identify project roles, obtain and discuss available documents and information for use in completing the project, and define a strategy for completing the project within the proposed schedule. This task will include on-going support to the City and RWMG. RMC will
implement the organization, coordination, and facilitation of stakeholder meetings (also referred to as public
workshops). The intent of these meetings is to provide stakeholders with an opportunity to provide input into
the process and ensure their views are heard, and when possible, incorporated into the process. It is anticipated
that RMC’s role will include, but not be limited to:

- Preparing and sending out public meeting notices and invitations (either electronic and/or paper
invitations) for publication and distribution to a variety of stakeholder groups identified by the RWMG
and through other means
- Preparing and maintaining an electronic database of all potential stakeholders including at a minimum,
their contact information, organizational affiliation, and record of meeting attendance
- Preparing PowerPoint presentations and customizing them to applicable stakeholder groups if deemed
warranted by the RWMG
- Providing meeting facilitation services for a variety of stakeholder outreach meetings, as directed by the
RWMG
- Preparing meeting handouts and materials, as directed by the RWMG
- Preparing a comment/feedback questionnaire to be distributed at the meetings
- Compiling public responses obtained during the meetings and summarizing key points and themes
- Preparing and disseminating meeting minutes to all stakeholders no later than two weeks from the
meeting dates

All meeting-specific deliverables (i.e., notices, agendas, presentations, and meeting notes) for each Phase are
budgeted by associated task in that Phase, including Subtasks 3.1 and 7.1. Therefore, the various meetings
mentioned throughout Phase I are budgeted under Subtask 3.1. These meetings include:

1. One public workshop to notify interested parties that the RWMG is developing an IRWMP, to educate
stakeholders and interested parties in the IRWM process, and to solicit future participation in the
RWMG governance organization (Subtask 1.1).

2. Two meetings with the advisory committee; one will be to identify water management issues, review
the governance structure, and ground rules, and one meeting to discuss the draft RAP submittal
(Subtasks 2.1 and 2.2).

3. One meeting with the steering committee, held via conference call, to discuss comments on the draft
RAP submittal (Subtask 2.2).

Subtask 3.1 Deliverables:
- Meeting agendas and handouts, conference call-in information (when necessary), meeting notes
- Electronic database of all potential stakeholders
• Assumptions: Facilities for advisory committee meetings and public workshops will be arranged by RWMG members. Workshops would be held at variable times of day (some evenings and weekends) and in different geographic locations within the Region.

Subtask 3.2: Phase I Project Management, Invoices, Progress Reports
Under this task, RMC will monitor progress of Phase I. RMC will prepare monthly progress reports and invoices for the contract manager and the RWMG that report on the scope, cost and schedule status of the project. In Phase I, up to two invoices and progress reports will be prepared.

Subtask 3.2 Deliverables:
• Monthly progress report and invoice
• Assumption: Includes project management for two months (July to August 2010).

Phase II
Phase II encompasses the required steps leading up to the IRWMP formation through preparation of the IRWMP. Specifically, this phase involves coordination of regional goal setting, development of a project identification, prioritization, and ranking process for the IRWM program, as well as compilation of all work-to-date into a completed IRWMP for the Region.

Task 4: Initial IRWMP Development

Subtask 4.1: Define IRWM Goals, Objectives, and Priorities
RMC will support the RWMG in identifying regional IRWM program goals, objectives, and priorities. Goals setting will be the highlight of an advisory committee meeting, as needed to reach consensus, budgeted under Subtask 7.1. The basis for determining the goals, objectives, and priorities will have been outline through the development of the governance structure in Subtask 1.2.

Subtask 4.1 Deliverables:
• Draft and final goals, objectives and priorities summary.

Subtask 4.2: Targeted Outreach to Disadvantaged Communities and Tribes
The RMC team will conduct targeted outreach to the tribal and other special interest groups within the IRWM Region to understand and focus their water management related issues and needs. We will also prepare and facilitate one meeting with tribes and other special interest groups, targeted at identifying and documenting the major issues and priorities of those communities. Additionally, coordinated individual meetings with tribal leaders and staff will be held if needed.
Subtask 4.2 Deliverables:

- One DAC / EJ outreach meeting and one meeting with tribes, including meeting agendas and handouts, presentations (if applicable), coordination of speakers/presenters (if applicable), meeting notes
- Assumptions: Assumes two in-person meetings with DACs and tribes. Facilities for general public meetings and DAC / EJ meetings will be arranged by RWMG members and/or DAC / EJ representatives

Subtask 4.3: IRWM Website Development and Maintenance

This task will include developing a new program website for use in disseminating IRWM program information to a wide audience. This task will also include approximately bi-monthly updates to the website to maintain current meeting information and post project updates, press releases, meeting materials, and other items of interest.

Subtask 4.3 Deliverables:

- Draft and final content for the IRWMP website
- Approximately bi-monthly updates, including upload of meeting agendas, handouts, presentations, and notes from public workshops and advisory committee meetings
- Assumptions: The domain name will be owned by, and the site hosted by, a RWMG agency and will be renewed by the RWMG, if necessary.

Task 5: IRWMP Projects

Subtask 5.1: Develop and Implement Project Solicitation Process

RMC will develop and implement a project solicitation process to gather potential projects for the IRWMP and associated grant applications. RMC will develop a project information template that provides the RWMG with the necessary information to understand, rank and prioritize individual project and programs in the IRWMP. RMC will also provide a schedule and work plan for project solicitation.

The project solicitation process will be implemented by distributing the Project Information Template to interested stakeholders via electronic and/or paper format, as appropriate. This outreach process will include the DACs, EJ representatives, tribes, and conservation organizations previously identified. Following receipt of the project information, RMC will develop a project database that contains relevant information on every submitted project for use in the prioritization and ranking processes.

Subtask 5.1 Deliverables:

- Draft and final project solicitation work plan, including schedule
- Draft and final Project Information Template
- Compiled database of projects submitted for IRWMP (Excel format)
Subtask 5.2: Develop IRWMP Project Prioritization Process

RMC will work with the RWMG to develop and document a project selection approach, methodology and process. The project prioritization process will form the basis for projects submitted for inclusion in the IRWMP. Based on the Draft Proposition 84 IRWM Guidelines released by DWR in March 2010, the project prioritization process may consider the following factors:

1. If the projects are consistent with the IRWMP’s goals and objectives, established in Subtask 4.3
2. How the projects are related to resource management strategies selected for use in the IRWMP
3. Technical feasibility of the project
4. Specific benefits to DACs
5. EJ considerations
6. Project costs and financing
7. Economic feasibility, including benefits to water quality and water supply
8. Project status
9. Strategic consideration for IRWMP implementation
10. Contribution of the projects to reducing greenhouse gas emissions and adapting to the effects of climate change

This task will include working in conjunction with steering committee members to finalize the process and establish final weights in the prioritization process.

Subtask 5.2 Deliverables:
- Draft and final project prioritization process for IRWMP

Subtask 5.3: Develop IRWMP Project Rank List

RMC will apply the approved prioritization process from Subtask 5.2 to all the listed projects, and draft evaluations describing how the established process impacted each project’s ranking. This task will include working in conjunction with RWMG members to compile a draft and final project priority list for grant application purposes. RMC will facilitate a workshop with the advisory committee, budgeted under Subtask 7.1, to review the projects, prioritization process and project rankings. Based on input from the advisory committee, RMC will finalize the project ranking list.

Subtask 5.3 Deliverables:
- Draft and final project evaluations for all submitted projects
- Draft and final project ranking list
Subtask 5.4: Assessment of Project Integration and Implementation

Following development of the draft and final project ranking lists, RMC will assess the projects with an eye towards integration and enhancement, such that the maximum benefits are achieved by the projects. RMC will then prepare a written assessment of the overall IRWMP benefits that will be achieved through project integration and implementation. This assessment will identify projects that offer the greatest synergies in integrated water management. This assessment will also be included within the IRWMP document and on the IRWMP website to illustrate the added value of integrated regional planning.

Subtask 5.4 Deliverables:

- Draft and final Assessment of Project Integration and Implementation

Task 6: IRWMP Preparation

Subtask 6.1: Prepare Draft IRWMP

RMC will prepare an administrative draft IRWMP to be submitted to the RWMG for review. The IRWMP will be in compliance with DWR’s IRWMP specifications, including the final guidelines that will be released in 2010. The administrative draft IRWMP will contain the following required components as outlined in the draft Proposition 84 IRWM Guidelines:

- Governance
- Impacts and Benefits
- Habitat Improvement
- Relation to Local Water Planning
- Region Description
- Increase Water Supply
- Flood Management
- Relation to Local Land Use Planning
- Objectives
- Water Quality Improvement
- Plan Performance
- Stakeholder Involvement
- Monitoring
- Data Management
- Groundwater Improvements
- Resource Management Strategies

EXHIBIT A
• Coordination within the Region and with neighboring IRWM Regions
• Water Conservation and Reuse
• Integration
• Finance
• Project Review Process
• Climate Change
• Watershed Rehabilitation
• Technical Analysis

As part of the Plan preparation process, RMC will document how the Plan meets State goals and priorities. The Plan will contain a clear description outlining the location of all content as required by DWRs’ IRWMP Guidelines. The IRWMP will also clearly articulate steps for evaluation and measurement of Plan success.

RMC will host a meeting with the advisory committee to receive feedback on the administrative draft IRWMP, present Plan changes in response to comments, and solicit agreement from RWMG parties on the proposed changes; this meeting is budgeted under Subtask 7.1. RMC will compile all RWMG comments into a response to comment matrix for discussion.

Based on one round of RWMG review and comments, RMC will prepare a public review draft IRWMP for review and consideration by the RWMG and stakeholders. RMC will then hold one public workshop to present and discuss the draft IRWMP, budgeted under Subtask 7.1. We will facilitate review and discussion of the draft Plan with stakeholders, including collecting and compiling their comments into a comments matrix for RWMG review.

**Subtask 6.1 Deliverables:**

• Administrative and public review draft IRWMP, in accordance with State Guidelines and RWMG needs
• Two additional RWMG meetings, as needed
• Compiled response to comments matrix from RWMG, advisory committee, and stakeholders
• Assumptions: RMC will submit the administrative draft in electronic format (.PDF) to the RWMG and print four hard copies, one for each city, of the public review draft. Production of any additional hard copy versions will be done by the RWMG if desired.

**Subtask 6.2: Prepare Final IRWMP**

During a conference call with the steering committee, RMC will review comments on the public review draft IRWMP, present Plan changes in response to comments, and solicit agreement from RWMG parties on the proposed changes. Based on the comments reviewed from the advisory committee and general public, RMC will prepare a draft final IRWMP to be submitted to the RWMG for one more round of review. RMC will finalize the
Plan and provide assistance with Plan adoption. Each member of the RWMG must adopt the Plan; it is assumed the council/board meetings held for Plan adoption will be open to the public.

**Subtask 6.2 Deliverables:**

- Draft final and final IRWMP
- Assumptions: RMC will submit the draft final in electronic format (.PDF) to the RWMG and print four hard copies, one for each city, of the final version. Production of any additional hard copy versions will be done by the RWMG if desired.

**Task 7: Phase II Project Management**

**Subtask 7.1: Phase II Meetings and Workshops**

Upon completion of Phase I, the RWMG will have an established set of ground rules that will guide decision-making for the IRWM program. It is suggested the steering committee meet on a monthly basis. To use the group’s time effectively, RMC proposes that the majority of meetings be held via conference call; RMC has budgeted for three face-to-face meetings with the steering committee. These meetings are critical to maintaining ongoing communication among steering committee members. This task will include continued support of the RWMG, including preparation for, facilitation of, and participation in monthly steering committee meetings.

Throughout Phase II, there will be three meetings with the advisory committee, in addition to the monthly meetings with the steering committee. As important as the advisory committee will be to the IRWM program’s legitimacy, other stakeholders and the general public who were not chosen to represent water management interests on the advisory committee will also need to be involved in the IRWM program. A public workshop will be held to engage this larger group of stakeholders, disadvantaged communities (DACs), conservation organizations, businesses, and the general public. These workshops are important for getting information out about the IRWM program to a larger audience than agency staffers.

Under Subtask 7.1, RMC has budgeted to facilitate a total of 4 meetings for Phase II, in addition to the monthly steering committee conference calls. These meetings include:

1. Three meetings with the advisory committee; one to reach a consensus on the IRWMP goals, objectives, and priorities (Subtask 4.1), one to review the projects, prioritization process and project rankings (Subtask 5.3), and one to discuss the administrative draft of the IRWMP (Subtask 6.1).

2. One public workshop to solicit for comments on the draft IRWMP (Subtask 6.1).

**Subtask 7.1 Deliverables:**

- Coordination and facilitation of three advisory committee meetings and one public workshop
- Meeting agendas and handouts, presentations (if applicable), coordination of speakers/presenters (if applicable), and meeting notes
Subtask 7.2: Phase II Project Management, Invoices, Progress Reports

Under this task, RMC will monitor progress and performance. RMC will prepare monthly progress reports and invoices for the contract manager and the RWMG that report on the scope, cost and schedule status of the project. In Phase II, up to four invoices and progress reports will be prepared. Ongoing project management services will be provided to the City and RWMG under this subtask.

Subtask 7.2 Deliverables:

- Monthly progress report and invoice
- Assumption: Includes project management for 12 months (August 2010 to July 2011).

Phase III

Phase III will include the necessary tasks to aid the City of Modesto and the RWMG take advantage of implementation grant opportunities under Proposition 84.

Task 8: Grant Application

Although the schedule for both planning and implementation grant proposal solicitation by DWR is unknown at this time, RMC believes if the City of Modesto can expedite Phase I and II, they may be eligible to apply for the first round of planning grant monies. In order to submit a planning grant application, Modesto would need an approved region and RWMG.

Subtask 8.1: Prepare Planning Grant Application

RMC will prepare the Planning Grant Application in accordance with DWR’s application submittal guidelines, using information developed from the RAP Submittal and input from the RWMG. RMC will also assist the RWMG in preparing for funding discussions with DWR staff. This task will include, but not be limited to:

- Coordinating, organizing, and participating in a public workshop with the RWMG and State agencies in order to solicit input and ensure grant application compliance
- Preparing and maintaining a project schedule noting key project milestones, meetings, and deadlines to ensure timely submittal of the grant application and for stakeholder outreach purposes
- Compiling and producing all data and information needed for grant application submittal
- Preparing and providing one electronic draft copy of the Planning Grant Application to the RWMG for review
- Submitting a final, revised copy of the Planning Grant Application to the project manager prior to final document production and submittal to the state agencies
- Submitting the Grant Application, including figures and appendices using BMS as requested by DWR
Subtask 8.1 Deliverables:

- Draft and final Planning Grant Application
- Assumptions: RMC will submit the draft application in electronic format (.PDF) and print four hard copies of the final grant application. Production of additional hard copy versions will be done by the RWMG.
1. The individual hourly rates include salary, overhead, and profit.

2. Subconsultants will be billed at actual cost plus 10%.

3. Other direct costs (ODCs) such as reproduction, delivery, mileage (with BCP) will be billed at actual cost plus 10%.

4. RMC reserves the right to adjust its hourly rate structure and ODC markup at the beginning of the calendar year for all ongoing contracts.

5. Phase 3 schedule is currently undetermined. Budget assumes any Phase 3 meetings will be conducted in conjunction with those proposed under Phase 1 and 2.
FINANCIAL INTEREST DISCLOSURE FORM

PROJECT: Integrated Regional Water Management Plan

All persons included within the meaning of either of the following tests have a material financial interest in an agreement, or application for development rights, submitted for approval or disapproval by the City Council, and shall be identified by the applicant, by name.

Tests of Materiality:

1. Whether it is foreseeable to a reasonable person that the value of their interest in property available for use by an applicant, or their interest in the applicant itself, may increase or decrease by an amount greater than $2,000.00 as a direct or indirect result of Council action on the applicant’s agreement or application for development rights.

2. Whether it is foreseeable to a reasonable person that the person’s gross income from the applicant may increase or decrease by a sum greater than $2,000.00 as a direct or indirect result of Council action on the agreement or application for development rights.

It is the legal obligation of all applicants for approval of an agreement or of an application for development rights to verify in writing, under penalty of perjury, that the identity of each person having a material financial interest in the agreement or application or development rights is true, correct and complete. The applicant understands that this information is provided under penalty of perjury, and that intentionally supplying misinformation or deception may result in either invalidation of the agreement or application, or criminal prosecution for misdemeanor violation of the Modesto Municipal Code, or both. Negligent provision of misinformation shall be grounds for invalidation. In accordance with the Modesto Municipal Code, each applicant has a continuing obligation to maintain the truth, accuracy and completeness of the financial interest disclosure information provided below until after final consideration by the City Council of any matter arising out of or relating to the agreement or application.

RMC Water and Environment
BUSINESS NAME

[Signature]
APPLICANT SIGNATURE

Sr. Vice President

Questions concerning the application of either test to particular facts should be resolved in advance of Council action by agreement with the department head recommending approval of its agreement/application.

[Signature]
DIRECTOR OF UTILITY PLANNING & PROJECTS

Individuals’ Names:

(See attached list)
PROJECT: Integrated Regional Water Management Plan

INDIVIDUALS' NAMES

BUSINESS NAME: RMC Water and Environment

Dave Richardson
Leslie Dumas
Lindsey Clark
Erin Payne

O'Dell Engineering
Dylan Crawford
Jason White

Cardoza & Associates, Inc.
Carrie Cardoza

M. Cubed
David Mitchell
MODESTO CITY COUNCIL
RESOLUTION NO. 2010-278

A RESOLUTION AUTHORIZING THE CITY OF MODESTO WATER FUND TO POST COLLATERAL UP TO $18 MILLION WITH A THIRD-PARTY TRUSTEE UNDER TERMS OF SWAP AGREEMENT WITH JP MORGAN FOR THE MODESTO IRRIGATION DISTRICT REVENUE BONDS RELATED TO THE DOMESTIC WATER TREATMENT AND DELIVERY SYSTEM

WHEREAS, in May 2007 the Council adopted Resolution 2007-275 approving the issuance of revenue bonds by the Modesto Irrigation Financing Authority related to the financing of Phase 2 of the Domestic Water Treatment and Delivery System of the Modesto Irrigation District, and

WHEREAS, this debt issue included an interest rate SWAP feature with Bear Sterns, which was subsequently acquired by JP Morgan, and

WHEREAS, the purpose of a SWAP is to create a synthetic fixed interest rate that holds each party harmless as the variable interest rate moves up or down, and

WHEREAS, if a SWAP agreement is terminated during a time when interest rates are higher than they were when the City entered into the agreement, then the SWAP counterparty, in this case JP Morgan, would have to pay the City a termination payment, and

WHEREAS, if the SWAP agreement is terminated during a period when interest rates are lower than they were when the City entered into the agreement, then the City would be required to make a termination payment to JP Morgan, and

WHEREAS, due to current economic conditions, interest rates are at their lowest levels when compared to the last 20 years, therefore creating a SWAP termination value of approximately $18 million that the City would be required to pay to JP Morgan, if this agreement was terminated, and
WHEREAS, under the existing SWAP agreement if three conditions exist, then
the City can be required to post collateral with an independent trustee to assure JP
Morgan’s financial interests in the event the agreement is terminated, and

WHEREAS, these conditions include: 1) the credit rating of the bond and SWAP
payment insurer (MBIA) must fall below AAA category. Currently, the credit rating for
MBIA is in the BBB category. 2) The lowest credit rating for the Modesto Irrigation
District revenue bonds is below the AA category. These bonds have a credit rating of
AA-/A+. 3) The SWAP agreement Pledger’s Threshold against the City is greater than $5
million. Currently, it is approximately $18million, and

WHEREAS, if these three conditions exist, then the City is responsible under the
terms of the agreement to post collateral with a third-party trustee, and

WHEREAS, the ownership of this collateral will reside with the City, including
any interest earnings, and is used in case the SWAP agreement is terminated and the City
failed to pay the termination payment, and

WHEREAS, while these conditions have existed for approximately a year, JP
Morgan has not asserted its right to have the City post termination collateral, and

WHEREAS, on June 17, 2010, the City was informed that JP Morgan intended to
require the City to post this collateral in the immediate future. JP Morgan, Modesto
Irrigation District and the City have tentatively negotiated a revision to the SWAP
Agreement which would change the Pledger’s Threshold from $5 million to $20 million,
and

WHEREAS, in the event that JP Morgan actually requires the City to immediately
post collateral under the terms of the current SWAP agreement, staff is seeking Council’s
approval to do so for an amount up to $18 million, which is the current termination
payment amount, and

WHEREAS, staff intends to bring a report back on July 6, 2010 updating Council
on the current status of this situation, the actual amount placed on deposit with the trustee
and recommend appropriate action to formalize an agreement to increase the Pledger’s
Threshold to $20 million.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto
that it hereby approves the City of Modesto Water Enterprise Fund to post collateral with
a third-party trustee for an amount up to $18 million under terms of a SWAP Agreement
with JP Morgan for the Modesto Irrigation District Revenue Bonds related to the
Domestic Water Treatment and Delivery System..

The foregoing resolution was introduced at a regular meeting of the Council of
the City of Modesto held on the 22nd day of June, 2010, by Councilmember Hawn, 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:  Geer, Hawn, Lopez, Marsh, Muratore, Olsen,
                    Mayor Ridenour

NOES: Councilmembers:  None

ABSENT: Councilmembers: None

ATTEST:  STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney