MODESTO CITY COUNCIL
RESOLUTION NO. 2009-403

RESOLUTION AUTHORIZING THE AWARD OF BID AND CONTRACT FOR THE PURCHASE OF TWO (2) DUMP TRUCKS FOR THE PUBLIC WORKS DEPARTMENT, FLEET SERVICES DIVISION, TO VALLEY PETERBILT, TURLOCK, CA, FOR A TOTAL ESTIMATED COST OF $113,902 AND DELTA TRUCK CENTER, MODESTO, CA, FOR A TOTAL ESTIMATED COST OF $109,647 AND AUTHORIZING THE PURCHASING MANAGER TO ISSUE PURCHASE ORDERS FOR A TOTAL ESTIMATED COST OF $223,549

WHEREAS, on October 28, 2008, the City Council, by Resolution No. 2008-592, authorized the Purchasing Manager to issue formal Request for Bids (RFB) for new vehicles and heavy equipment throughout FY 08/09 through various competitive processes, with the Purchasing Division coming back to Council for award authorization, and

WHEREAS, the two (2) dump trucks for the Compost Division and the Water Division were included in the FY 08/09 new vehicles and heavy equipment list authorized by Council, and

WHEREAS, on April 17, 2009, the Purchasing Division issued RFB No. 0809-23 for the purchase of two (2) dump trucks to thirty-three (33) prospective bidders, posted the bid on the City’s web site and formally advertised as required by law, and

WHEREAS, based on providing the lowest responsive and responsible bids, City staff recommends the award of bid and contract for the purchase of two (2) dump trucks for the Public Works Department, Fleet Services Division, to Valley Peterbilt, Turlock, CA, for a total estimated cost of $113,902 and Delta Truck Center, Modesto, CA, for a total estimated cost of $109,647, and authorizing the Purchasing Manager to issue a purchase order for a total estimated cost of $223,549, 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 purchase of two (2) dump trucks for the Public Works Department, Fleet Services Division, to Valley Peterbilt, Turlock, CA, and Delta Truck Center, Modesto, CA, conforms to the Modesto Municipal Code, and

WHEREAS, funds are budgeted in Fiscal Year 2009-10 in the following Fleet Equipment Replacement Fund accounts: 7210-480-5814-5856 for $113,902 and 7210-480-5814-5516 for $109,647.

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 purchase of two (2) dump trucks for the Public Works Department, Fleet Services Division, to Valley Peterbilt, Turlock, CA for a total estimated cost of $113,902 and Delta Truck Center, Modesto, CA, for a total estimated cost of $109,647.

BE IT FURTHER RESOLVED that the Purchasing Manager, or his designee, is hereby authorized to issue purchase orders for a total estimated cost of $223,549.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 1st day of September, 2009, by Councilmember Marsh, who moved its adoption, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Hawn, Keating, Lopez, Marsh, O’Bryant, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: [Signature]

APPROVED AS TO FORM:

By: [Signature]

SUSANA ALCALA WOOD, City Attorney
RESOLUTION AMENDING THE FISCAL YEAR 2008-2009 AND FISCAL YEAR 2009-2010 ANNUAL BUDGETS

WHEREAS, a monthly financial analysis has been completed and it has been determined that certain adjustments are required to the Annual Budget of the City of Modesto for Fiscal Year 2008-2009 and 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 2008-2009 and Fiscal Year 2009-2010 budgets have been adjusted as shown in Exhibit A, which is incorporated by reference herein.

BE IT FURTHER RESOLVED that the Finance Director, 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 September, 2009, by Councilmember Marsh, who moved its adoption, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and the resolution adopted by the following votes:

AYES: Councilmembers: Hawn, Keating, Lopez, Marsh, O’Bryant, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: 

APPROVED AS TO FORM:

By: 

SUSANA ALCALA WOOD, City Attorney
EXHIBIT A

COMMUNITY AND ECONOMIC DEVELOPMENT
This budget adjustment transfers funds from Reserves to the CFD Annual Maintenance account in the NorthPointe CFD fund for necessary repairs to the NorthPointe storm basin.

APPROPRIATIONS

FROM:
2750-800-8000-8003  Contingency Reserves  ( 50,000)

TO:
2750-140-0207-0223  Repair & Maintenance  50,000

REDEVELOPMENT AGENCY
This budget adjustment returns funds from Fund 9060 (RDA Low to Moderate Income Housing) to Fund 9050 (RDA Administration) and Fund 9080 (RDA Project Fund) for an Excess Surplus Penalty Refund.

APPROPRIATIONS

FROM:
9060-140-K743-6030  Land/ROW Acquisition  ( 112,355)

TO:
9050-800-8000-8003  Contingency Reserves - RDA Admin  19,174
9080-800-8000-8003  Contingency Reserves – RDA Project Plan  93,181

TRANSFERS BETWEEN FUNDS

FROM:
9060-700-K743-7905  Transfer Out to Fund 9050  19,174
9060-700-K743-7908  Transfer Out to Fund 9080  93,181

TO:
9050-700-K743-9906  Transfer In from Fund 9060  19,174
9080-700-K743-9906  Transfer In from Fund 9060  93,181

**This budget adjustment transfers funds into the Debt Service Fund (9450) from the General Fund (0100) and the Redevelopment Agency (9020) for Debt Service charges associated with the 2008 Lease Revenue Bonds.

APPROPRIATIONS

FROM:
0100-800-8000-8003  Contingency Reserves  ( 76,845)
9020-800-8000-8003  Contingency Reserves – RDA COP Debt Service  ( 31,098)

TO:
9450-120-DS27-0468  Remarketing Agent Fees  107,973

**TRANSFERS BETWEEN FUNDS**

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<tr>
<th>FROM</th>
<th>TO</th>
<th>Amount</th>
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<tr>
<td>9020-700-7000-7945</td>
<td>Transfer Out to Fund 9450</td>
<td>31,098</td>
</tr>
<tr>
<td>9450-700-7000-9010</td>
<td>Transfer In from Fund 0100</td>
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<tr>
<td>9450-700-7000-9902</td>
<td>Transfer In from Fund 9020</td>
<td>31,098</td>
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</tbody>
</table>

**FINANCE**

This budget adjustment recognizes unbudgeted Interfund Labor revenue in the General Fund and re-appropriates these funds to offset overtime expenses in the Water Fund.

**REVENUES**

TO:
0100-120-1225-4909  InterFund Labor  30,157

**APPROPRIATIONS**

TO:
6100-120-5023-0255  Services City Forces  30,157

**PARKS, RECREATION AND NEIGHBORHOODS**

This budget adjustment transfers funds from Centre Plaza FF&E Reserves to Furniture Fixtures & Equipment for specific projects and purchases that were not completed in FY2008-09.

**APPROPRIATIONS**

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<thead>
<tr>
<th>FROM</th>
<th>TO</th>
<th>Amount</th>
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<tbody>
<tr>
<td>6710-800-8000-8003</td>
<td>Contingency Reserves</td>
<td>( 8,180)</td>
</tr>
<tr>
<td>6710-340-3420-0223</td>
<td>FF&amp;E Repair &amp; Maintenance</td>
<td>8,180</td>
</tr>
</tbody>
</table>

This budget adjustment appropriates the donation made by the Mansion Foundation to the McHenry Mansion basement brick foundation study.

**REVENUES**
FROM
0100-360-3611-8122 Mansion Foundation Donation 50,000

**This budget adjustment transfers funds from Green Waste Diversion Fund Reserves and appropriates these funds to the Green Waste Diversion Fund (Fund 0370) Fiscal Year 2008-09 Operating Budget for expenditures due to the January 1, 2009 fees increase.**

**APPROPRIATIONS**

FROM:
0370-800-8000-8003 Green Waste Diversion Fund Reserves (45,540)

TO:
0370-355-4444-0181 Salary Adjustment – Increase 21,990
0370-355-4444-9991 Service Credit – Intrafund (11,311)
0370-355-4444-0218 Equip. Pool Rental 13,919
0370-355-4444-0235 Services Professional & Other 20,942

**POLICE**
This budget adjustment recognizes unbudgeted revenue from the Avoid the 12 Grant and appropriates these funds to offset overtime expenses.

**REVENUES**

TO:
0100-190-1969-4025 Contract Police Services 13,700

**APPROPRIATIONS**

TO:
0100-190-1969-0130 Overtime 13,700

In Fiscal Year 2008-09, significant reductions were made to the Supplemental Law Enforcement Services Fund (SLESF) limiting the amount cities and counties received to $100,000. This budget adjustment allows the City of Modesto to meet this requirement.

**REVENUES**

FROM:
0400-190-2925-3188 SLESF (86,341)

**APPROPRIATIONS**

TO:
0400-190-2925-0130 Overtime (86,341)
PUBLIC WORKS
This budget adjustment allows for the creation of a new organization in fund 6540 to provide a record of grant administration costs related to the Federal Transportation Administration (FTA) Grants.

APPROPRIATIONS

FROM: 6540-165-1672-9991 Intrafund Labor (100,000)

TO: 6540-165-1680-0259 Services City Forces 100,000

This budget adjustment recognizes unbudgeted revenue from the sale of real property at 1517 10th Street, and appropriates these revenues to General Fund Revenues, 0100-800-8000-8003, and Capital Improvement Project W011, Kansas-Needham Soil Remediation, 6180-430-W011-6010.

REVENUES

TO: 0100-510-9510-8101 Sale of Real Property 233,959
6180-430-W011-8101 Sale of Real Property 4,569

APPROPRIATIONS

TO: 0100-800-8000-8003 General Fund Reserves 233,959
6180-430-W011-6010 Engineering/Design/Administration 4,569

This budget adjustment closes the Capital Improvement Project, Detector Loops 2370-160-E667, and returns the unused Gas Tax Match funding to Gas Tax Reserves.

APPROPRIATIONS

FROM: 2370-160-E667-8014 Detector Loops – Secondary (302)

TO: 2370-800-8000-8003 Contingency Reserves 302

TRANSFERS BETWEEN FUNDS

FROM: 0700-700-E667-7237 Transfer Out to Fund 2370 (886)

TO:
This budget adjustment closes the Capital Improvement Project, Lighted Crosswalks 2370-160-E662-8014, and returns the unused Gas Tax Match funding to Gas Tax Reserves.

**APPROPRIATIONS**

**FROM:**
2370-160-E662-8014 Lighted Crosswalks – Secondary ( 29,503)

**TO:**
2370-800-8000-8003 Contingency Reserves 29,503

**TRANSFERS BETWEEN FUNDS**

**FROM:**
0700-700-E662-7237 Transfer Out to Fund 2370 ( 35,393)

**TO:**
2370-700-E662-7070 Transfer Out to Fund 0700 ( 35,393)

This budget adjustment closes the Capital Improvement Project, Scenic and Bodem Right Turn Lane 2300-160-N060-8014, and returns the unused funding to the Capital Grants Fund Reserves.

**APPROPRIATIONS**

**FROM:**
2300-160-N060-8014 Scenic and Bodem Right Turn Lane ( 122,798)

**TO:**
2300-800-8000-8003 Contingency Reserves 122,798

**TRANSFERS BETWEEN FUNDS**

**FROM:**
1410-700-N060-7230 Transfer Out to Fund 2300 ( 106,890)

**TO:**
2300-700-N060-7141 Transfer Out to Fund 1410 ( 106,890)

This budget adjustment recognizes PCE Settlement Revenue and Interest, and appropriates these funds in the Water PCE Litigation Fund Reserves.

**REVENUES**

**TO:**
6112-440-5042-8121 PCE Settlement Trust Account 1,282,718
6112-440-5042-6101 Interest 43,946
**APPROPRIATIONS**

TO:
6112-800-8000-8003 Water PCE Fund Reserves 1,326,664

This budget adjustment recognizes unbudgeted revenue to the Police Department from the Water Fund and Sewer Fund, and appropriates these funds to offset the costs of a police officer stationed in the Customer Services Lobby of TSP. Monies will be appropriated from the Water and Sewer Fund Reserves to offset the expense.

**REVENUES**

TO:
0100-190-1961-4909 Interfund Labor 55,564

**APPROPRIATIONS**

FROM:
6210-800-8000-8003 Contingency Reserves 27,782
6100-800-8000-8003 Contingency Reserves 27,782

TO:
6210-480-5217-0255 Services City Forces 27,782
6100-120-5023-0255 Services City Forces 27,782
0100-800-8000-8003 Contingency Reserves 55,564

The 2006 Wastewater bond issue resulted in $15,600,000 in net bond proceeds which was budgeted to fund three Wastewater projects. This budget adjustment allows for the closure of Capital Improvement Project (CIP) A215, Dissolved Air Flotation, and combines Capital Improvement Projects B806, Wastewater Phase 1B Tertiary, and B061, Wastewater Phase 2 Tertiary, so that CIP B806 can be closed.

**TRANSFERS BETWEEN FUNDS**

FROM:
6240-700-A215-7621 Transfer Out to Fund 6210 (3,189,178)
6240-700-B805-7621 Transfer Out to Fund 6210 5,141,946
6240-700-B806-7621 Transfer Out to Fund 6210 (1,952,768)

TO:
6210-700-A215-9624 Transfer In From Fund 6240 (3,189,178)
6210-700-B805-9624 Transfer In From Fund 6240 5,141,946
6210-700-B806-9624 Transfer In From Fund 6240 (1,952,768)

** This budget adjustment is necessary to close Capital Improvement Project B627, 2005 Annual Sewer Rehabilitation, return the unused funding to the Wastewater Fund Reserves, and transfers funds from the Wastewater Fund Reserves to a Secondary Capital Improvement
Project B778, Collection System Rehabilitation Improvements, for future secondary project expenditures.

**APPROPRIATIONS**

FROM:
6210-430-B627-8014  2005 Annual Sewer Rehab Closure (137,788)
6210-800-8000-8003  Wastewater Reserves (137,788)

TO:
6210-800-8000-8003  Wastewater Reserves 137,788
6210-430-B778-6052  Collection System Rehab 137,788

**This budget adjustment recognizes Garbage Service Fee revenue in the Gas Tax Fund, and appropriates these funds in object 0360, Real Property Maintenance and Repair to maintain city streets.**

**REVENUES**

TO:
0700-480-4617-1307  Garbage Service Fees 189,949

**APPROPRIATIONS**

TO:
0700-480-4617-0360  Real Property Maintenance & Repair 189,949

**This budget adjustment transfers funds adopted in the Fiscal Year 2009-10 Enterprise Fleet Replacement Sub Funds to the primary Fleet Fund. Purchases will be handled on an individual basis and the purchasing department will reimburse the Fleet Fund for the total cost.**

**APPROPRIATIONS**

FROM:
6109-480-5080-5515  Truck with Air Compressor (126,000)
6109-480-5080-5516  Truck with Air Compressor #2 (110,000)
6109-480-5080-5517  Truck ¾ Ton Full Size (32,000)
6109-480-5080-5521  Truck with Effer Crane #2 (125,000)
6219-480-5280-5518  Truck with Utility Body & Crane (84,000)
6289-480-5380-5519  Truck with Effer Crane (115,000)

TO:
7210-480-5814-5515  Truck with Air Compressor 126,000
7210-480-5814-5516  Truck with Air Compressor #2 110,000
7210-480-5814-5517  Truck ¾ Ton Full Size 32,000
7210-480-5814-5521  Truck with Effer Crane #2 125,000
7210-480-5814-5518  Truck with Utility Body & Crane 84,000
7210-480-5814-5519  Truck with Effer Crane 115,000
MODESTO CITY COUNCIL
RESOLUTION NO. 2009-405

A RESOLUTION APPROVING AN AGREEMENT WITH CPS HUMAN RESOURCE SERVICES (CPS) TO CONDUCT THE RECRUITMENT FOR THE POSITION OF DIRECTOR OF HUMAN RESOURCES; AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE AGREEMENT

WHEREAS, the City desires to retain the services of CPS Human Resource Services (CPS) to conduct the recruitment for the position of Director of Human Resources, and

WHEREAS, on March 12, 2007, the City entered into a Master Consulting Services Agreement with CPS, and

WHEREAS, the City has previously contracted with CPS under the Master Consulting Services Agreement to conduct the searches for City Manager, City Clerk and City Auditor, and

WHEREAS, the City desires to contract with CPS under this Master Consulting Services Agreement to conduct the search for the position of Director of Human Resources at an additional cost not to exceed $24,500, and

WHEREAS, CPS is specially trained, experienced and competent to provide executive search services for the City, and

WHEREAS, the public interest, economy and general welfare will be served by this Agreement,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves an Agreement with CPS Human Resource Services to conduct the recruitment for the position of Director of Human Resources.

BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute the Agreement.
The foregoing resolution was introduced in a regular meeting of the Council of the City of Modesto held on the 1st day of September, 2009, by Councilmember Marsh, who moved its adoption, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and the resolution adopted by the following vote:

AYES:  Councilmembers:  Hawn, Keating, Lopez, Marsh, O’Bryant, Olsen, Mayor Ridenour

NOES:  Councilmembers:  None

ABSENT:  Councilmembers:  None

APPROVED AS TO FORM:

By:  SUSANA ALCALA WOOD, City Attorney

(S Seal)
MODESTO CITY COUNCIL
RESOLUTION NO. 2009-406

A RESOLUTION APPROVING A MEMORANDUM OF UNDERSTANDING WITH STANISLAUS COUNTY OFFICE OF EDUCATION IN THE AMOUNT OF $112,000 FOR THE SERVICES OF ONE MODESTO POLICE OFFICER/SCHOOL RESOURCE OFFICER AT PETERSEN ALTERNATIVE CENTER FOR EDUCATION CAMPUSS TO PROVIDE DIRECT LAW ENFORCEMENT SERVICES, EXPERTISE AND TRAINING; AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE MEMORANDUM OF UNDERSTANDING

WHEREAS, the Stanislaus County Office of Education (SCOE) requires one Modesto police officer to provide direct law enforcement services, expertise and training, and to act as a School Resource Officer at Petersen Alternative Center for Education (P.A.C.E.) campus, and

WHEREAS, the Modesto Police Department can provide a specially trained, uniformed police officer who can take any enforcement action at the school site, if warranted, and

WHEREAS, the officer’s presence with the students provides mentoring and protection of youth in our community, and

WHEREAS, the City will be compensated by the SCOEd in the amount of $112,000 for the services of one Modesto police officer, and

WHEREAS, the term of this MOU is August 17, 2009 to June 3, 2010,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves a Memorandum of Understanding with Stanislaus County Office of Education in the amount of $112,000 for the services of one Modesto Police Officer/ School Resource Officer salary and benefits at Petersen Alternative Center for Education campus to provide direct law enforcement services, expertise and training.
BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby
authorized to execute the Memorandum of Understanding.

The foregoing resolution was introduced at a regular meeting of the Council of
the City of Modesto held on the 1st day of September, 2009, by Councilmember Marsh,
who moved its adoption, which motion being duly seconded by Councilmember Hawn,
was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Hawn, Keating, Lopez, Marsh, O’Bryant, 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. 2009-407

A RESOLUTION APPROVING AN AGREEMENT BETWEEN THE CITY OF MODESTO AND MODESTO CITY SCHOOLS IN AN AMOUNT NOT TO EXCEED $448,000 FOR THE SERVICES OF FOUR MODESTO POLICE OFFICERS/SCHOOL RESOURCE OFFICERS TO PROVIDE DIRECT LAW ENFORCEMENT SERVICES AT 11 SCHOOL SITES; AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE AGREEMENT

WHEREAS, Modesto City Schools (MCS) would like to have the services of four Modesto police officers to provide prevention, intervention, and enforcement services to students, their families and staff at the following schools: Beyer, Davis, Downey, Johansen, Modesto, Enochs, Elliott, Hanshaw, Mark Twain, Roosevelt and LaLoma, and

WHEREAS, the Modesto Police Department can provide specially trained, uniformed police officers to provide campus supervisor training, in-services, and consultations with site staff and District administrators, and

WHEREAS, the police officers can act as liaisons between the Modesto Police Department and MCS, and

WHEREAS, the police officers can direct law enforcement action at the district school sites, if warranted, and

WHEREAS, the police officers’ presence with the students provides mentoring and protection of youth in our community, and

WHEREAS, the term of this Agreement is July 1, 2009, to June 30, 2010, and

WHEREAS, the City shall be compensated by Modesto City Schools in an amount not to exceed $448,000 for the services of four Modesto police officers.

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 Modesto City
Schools in an amount not to exceed $448,000 for the services of four Modesto Police Officers/School Resource Officers (SROs) to provide direct law enforcement services at 11 school sites.

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

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 1st day of September, 2009, by Councilmember Marsh, who moved its adoption, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Hawn, Keating, Lopez, Marsh, O'Bryant, 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. 2009-408

A RESOLUTION ACCEPTING THE SELECTIVE TRAFFIC ENFORCEMENT PROGRAM (STEP) GRANT IN THE AMOUNT OF $298,770 FROM THE OFFICE OF TRAFFIC SAFETY (OTS) TO INCREASE ENFORCEMENT FOR SPEED, DUI, AND MOTORCYCLE COLLISIONS/VIOLATIONS, WHILE ALSO REDUCING COLLISIONS WITH SPEED, DUI, AND FAILURE TO YIELD VIOLATIONS; AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE NECESSARY AWARD DOCUMENTS

WHEREAS, the City of Modesto Police Department desires to undertake a certain project designated as the Selective Traffic Enforcement Program (STEP) grant from the Office of Traffic Safety (OTS), and

WHEREAS, the Police Department was awarded a grant in the sum of $298,770 from OTS, and

WHEREAS, acceptance of said $298,770 grant will increase enforcement for speed, DUI, and motorcycle collisions/violations, while also reducing collisions with speed, DUI, and failure to yield violations, and

WHEREAS, OTS will pay 100% of the salary for an existing full-time Traffic Unit Community Services Officer (CSO), overtime for officers, and equipment to assist in traffic studies and other traffic related enforcement/investigation equipment, and

WHEREAS, the term of this grant will be from October 1, 2009 through September 30, 2010,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby accepts the Selective Traffic Enforcement Program (STEP) Grant in the amount of $298,770 from the Office of Traffic Safety (OTS) to increase enforcement for speed, DUI, and motorcycle collisions/violations, while also reducing collisions with speed, DUI, and failure to yield violations.
BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute the necessary award documents.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 1st day of September, 2009, by Councilmember Marsh, who moved its adoption, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Hawn, Keating, Lopez, Marsh, O’Bryant, 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 NUMBER 2009-409

A RESOLUTION AMENDING THE FISCAL YEAR 2009/2010 OPERATING AND MULTI-YEAR GRANT BUDGET TO REFLECT REVENUE AND EXPENSES IN THE AMOUNT OF $298,770 RELATED TO THE SELECTIVE TRAFFIC ENFORCEMENT PROGRAM (STEP) GRANT TO INCREASE ENFORCEMENT FOR SPEED, DUI, AND MOTORCYCLE COLLISIONS / VIOLATIONS

WHEREAS, the Police Department acquired a grant award in the sum of $298,770 from the Office of Traffic Safety (OTS) to increase enforcement for speed, DUI, and motorcycle collisions/violations, and

WHEREAS, the grant will pay 100% of the salary for an existing full-time Traffic Unit Community Services Officer (CSO), overtime for officers, and equipment to assist in traffic studies and other traffic related enforcement/investigation equipment, and

WHEREAS, there is no local match required for this grant, and

WHEREAS, the term of this grant will be from October 1, 2009 through September 30, 2010,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the Fiscal Year 2009/2010 Operating and Multi-Year Budget is hereby adjusted as indicated below to initiate said grant project:

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<th>Expense</th>
<th>TO: 0100-190-1954-0181</th>
<th>$38,385</th>
<th>Salary for CSO for 12 months</th>
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<td>0100-190-1954-0191</td>
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<td>Benefits for CSO</td>
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<td>0410-190-2100-0207</td>
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<td>0410-190-2100-0255</td>
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<td>0410-190-2100-0356</td>
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<td>0410-190-2100-0351</td>
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<td>Camera and Video Equipment</td>
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<td></td>
<td>0410-190-2100-0308</td>
<td>21,010</td>
<td>Checkpoint supplies, Accelerometer and PAS Devices</td>
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</table>
BE IT FURTHER RESOLVED that the Finance Director, 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 September, 2009, by Councilmember Marsh, who moved its adoption, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Hawn, Keating, Lopez, Marsh, O’Bryant, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: 

APPROVED AS TO FORM:

By: 

SUSANNA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2009-410

A RESOLUTION ACCEPTING THE WORK BY SUNWORLD FOR THE PROJECT TITLED “PAMELA MONTEROSSO PARK” AS COMPLETE, AUTHORIZING THE CITY CLERK TO FILE A NOTICE OF COMPLETION WITH THE STANISLAUS COUNTY RECORDER AND TO RELEASE SECURITIES UPON EXPIRATION OF STATUTORY PERIODS, AND AUTHORIZING PAYMENT OF AMOUNTS TOTALING $523,984.97

WHEREAS, a report has been filed by the Director of Public Works that the project titled “Pamela Monterosso Park” has been completed by Sunworld in accordance with the contract agreement dated December 12, 2007.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the project titled “Pamela Monterosso Park” is hereby accepted as complete from said contractor Sunworld, that the City Clerk is authorized to file a Notice of Completion with the Stanislaus County Recorder, and that payment of amounts totaling $523,984.97 is authorized as provided in the contract.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 1st day of September, 2009, by Councilmember Marsh, who moved its adoption, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Hawn, Keating, Lopez, Marsh, O’Bryant, 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
A RESOLUTION APPROVING THE PLANS AND SPECIFICATIONS FOR THE RSA ENHANCEMENT AND APRON REHABILITATION PROJECT, ACCEPTING THE BID, AND APPROVING A CONTRACT WITH GEORGE REED, INC. IN THE AMOUNT OF $702,772.50 FOR THE RSA ENHANCEMENT AND APRON REHABILITATION PROJECT, AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE CONTRACT

WHEREAS, plans and specifications have been prepared for the RSA Enhancement and Apron Rehabilitation project and City staff recommends approval by the City Council, and

WHEREAS, the bids received for the RSA Enhancement and Apron Rehabilitation project were opened at 11:00 a.m. on July 28, 2009, and later tabulated by the Director of Public Works for the consideration of the Council, and

WHEREAS, the Director of Public Works has recommended that the bid of $702,772.50 received from George Reed, Inc. be accepted as the lowest responsible bid and the contract be awarded to George Reed, Inc.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the plans and specifications for the RSA Enhancement and Apron Rehabilitation project, accepts the bid of George Reed, Inc. in the amount of $702,772.50, and awards George Reed, Inc. the contract for the RSA Enhancement and Apron Rehabilitation project.

BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute the contract.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 1st day of September, 2009, by Councilmember Marsh, who moved its adoption, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Hawn, Keating, Lopez, Marsh, O’Bryant, 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
A RESOLUTION AMENDING THE FISCAL YEAR 2009-2010 CAPITAL IMPROVEMENT PROGRAM BUDGET IN ORDER TO FULLY FUND THE CONTRACT FOR THE RSA (RUNWAY SAFETY AREA) ENHANCEMENT AND APRON REHABILITATION PROJECT

WHEREAS, multiple budget adjustments to the Capital Improvement Projects in the Special Aviation Fund are necessary to fully fund the contract with George Reed, Inc. for the RSA Enhancement and Apron Rehabilitation project along with engineering / design / administration support by City staff, contingency and construction administration, 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 Finance Director, or his/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 1st day of September, 2009, by Councilmember Marsh, who moved its adoption, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Hawn, Keating, Lopez, Marsh, O'Brien, 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
Exhibit A

FUND: Special Aviation

This budget adjustment increases FAA Capital Grant revenues in Capital Improvement Project A004, Enhance Runway 10R Safety Area to appropriately populate funding for the correct bid item for the project titled, “RSA Enhancement and Apron Rehabilitation”, and transfers funds from County Aircraft Tax Fund to Special Aviation Fund. This adjustment reappropriates these funds to offset expenses in the Special Aviation Fund.

REVENUES: Increase/(Decrease)
FROM:
6320-440-A004-3613 $98,246

APPROPRIATIONS:

TO:
6320-440-A004-6040 Construction $82,733
6320-440-A004-6050 Contingency $20,410
6320-440-A004-6060 Construction Admin. $274

TRANSFERS BETWEEN FUNDS:

FROM:
6330-700-A004-7632 Transfer out to Fund 6320 $5,171

TO:
6320-700-A004-9633 Transfer in from Fund 6330 $5,171

This budget adjustment increases FAA Capital Grant revenues in Capital Improvement Project A005, Replace/Update Airfield Windcone to appropriately populate funding for the correct bid item for the project titled, “RSA Enhancement and Apron Rehabilitation”, and transfers funds from County Aircraft Tax Fund to Special Aviation Fund. This adjustment reappropriates these funds to offset expenses in the Special Aviation Fund.

REVENUES: Increase/(Decrease)
FROM:
6320-440-A005-3613 $24,959
**APPROPRIATIONS:**

TO:
6320-440-A005-6040  Construction  $21,618
6320-440-A005-6050  Contingency  $4,193
6320-440-A005-6060  Construction Admin.  $462

**TRANSFERS BETWEEN FUNDS:**

FROM:
6330-700-A005-7632  Transfer out to Fund 6320  $1,314

TO:
6320-700-A005-9633  Transfer in from Fund 6330  $1,314

This budget adjustment decreases FAA Capital Grant revenues in Capital Improvement Project A011, Apron Rehabilitation Design to appropriately populate funding for the correct bid item for the project titled, “RSA Enhancement and Apron Rehabilitation”, and transfers previously received funds in the Special Aviation Fund back to the County Aircraft Tax Fund. This adjustment decreases these funds to offset expenses in the Special Aviation Fund.

**REVENUES:**

FROM:
6320-440-A011-3613  ($97,128)

**APPROPRIATIONS:**

TO:
6320-440-A011-6040  Construction  ($81,792)
6320-440-A011-6050  Contingency  ($4,268)
6320-440-A011-6060  Construction Admin.  ($16,179)

**TRANSFERS BETWEEN FUNDS:**

FROM:
6330-700-A011-7632  Transfer out to Fund 6320  ($5,111)

TO:
6320-700-A011-9633  Transfer in from Fund 6330  ($5,111)
This budget adjustment decreases FAA Capital Grant revenues and Passenger Facility Charges in Capital Improvement Project A015, Airport Sec. 28R Approach End to appropriately populate funding for the correct bid item for the project titled, “RSA Enhancement and Apron Rehabilitation”, and decreases these funds to offset expenses in the Special Aviation Fund.

**REVENUES:**

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<td>6320-440-A015-3613</td>
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**APPROPRIATIONS:**

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<td>Contingency</td>
<td>$4,083</td>
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<td>6320-440-A015-6060</td>
<td>Construction Admin.</td>
<td>$2,722</td>
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</tbody>
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A RESOLUTION AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE RIGHT-OF-WAY CERTIFICATIONS FOR FEDERALLY FUNDED PROJECTS

WHEREAS, the City of Modesto uses various federally funded programs for construction projects, and

WHEREAS, these federal funds are controlled by the State of California through its agency, Caltrans, and

WHEREAS, the preliminary engineering phase of a project includes Caltrans’ approval of certification of right-of-way, and

WHEREAS, a separate right-of-way certification must be completed by the City for each project, even if no right-of-way is required for the project, and

WHEREAS, authorizing the City Manager, or his designee, to sign right-of-way certifications is required for the City to continue use of federally funded programs.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby authorizes the City Manager, or his designee, to sign right-of-way certifications for federally funded projects.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 1st day of September, 2009, by Councilmember Marsh, who moved its adoption, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Hawn, Keating, Lopez, Marsh, O’Bryant, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: SUSAN ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2009-414


WHEREAS, Section 27281 of the Government Code requires a public agency to accept real property prior to the recordation of a deed or adopt a resolution accepting real property, and

WHEREAS, the City of Modesto desires to acquire a portion of a property located on Pelandale Avenue (APN: 078-018-021) owned by Hans J. Wagner and Donald E. Wagner, trustee of Donald E. Wagner Trust to be purchased by the City of Modesto for the Pelandale Avenue Widening project, and

WHEREAS, the City of Modesto desires to grant a portion of excess property that was acquired for the Pelandale Widening Project located on American Avenue (APN: 078-018-021) owned by Hans J. Wagner and Donald E. Wagner, trustee of Donald E. Wagner Trust not necessary for the Pelandale Avenue Widening project,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves an Agreement for Purchase and Sale of Real Property (Fee, Grant Deed) between the City of Modesto and Hans J. Wagner and Donald E. Wagner, trustee of Donald E. Wagner Trust, et al, in the amount of $30,500, for the acquisition of a portion of property located at the northwest corner of Pelandale Avenue (APN: 078-018-
BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute the Agreement, a Grant Deed conveying excess property, and all related documents required to close escrow.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 1st day of September, 2009, by Councilmember Marsh, who moved its adoption, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Hawn, Keating, Lopez, Marsh, O'Bryant, 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. 2009-415

A RESOLUTION AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO SIGN AN ACCEPTANCE FORM FOR THE GRANT DEED FOR THE ACQUISITION OF A PORTION OF PROPERTY LOCATED AT THE NORTHWEST CORNER OF PELANDALE AVENUE (APN: 078-018-021), OWNED BY HANS J. WAGNER AND DONALD E. WAGNER, TRUSTEE OF DONALD E. WAGNER TRUST, ET AL TO BE PURCHASED BY THE CITY OF MODESTO FOR THE PELANDALE AVENUE WIDENING PROJECT

WHEREAS, Section 27281 of the Government Code requires a public agency to accept real property prior to the recordation of a deed or adopt a resolution accepting real property, and

WHEREAS, the City of Modesto desires to acquire a portion of property located at the northwest corner of the Pelandale Avenue (APN: 078-018-021), owned by Hans J. Wagner and Donald E. Wagner, trustee of Donald E. Wagner Trust, et al, to be purchased by the City of Modesto for the Pelandale Avenue Widening project.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the City Manager, or his designee, is hereby authorized to sign an acceptance form on behalf of the City of Modesto for the Grant Deed for the acquisition of a portion of property located at the northwest corner of Pelandale Avenue (APN: 078-018-021), owned by Hans J. Wagner and Donald E. Wagner, trustee of Donald E. Wagner Trust, et al, to be purchased by the City of Modesto for the Pelandale Avenue Widening project.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 1st day of September, 2009, by Councilmember Marsh, who moved its adoption, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Hawn, Keating, Lopez, Marsh, O’Bryant, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: Stephani Lopez, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney
RESOLUTION NO. 2009-416

A RESOLUTION APPROVING A NEW CAPITAL IMPROVEMENT PROGRAM (CIP) ACCOUNT FOR THE PROJECT TITLED, “ARRA CAPE & SLURRY SEAL ON VARIOUS STREETS”, CONTINGENT UPON RECEIPT OF AUTHORIZATION TO PROCEED (“FNM-76”) FROM FEDERAL HIGHWAY ADMINISTRATION (FHWA), WHICH DID NOT APPEAR IN THE ADOPTED CAPITAL IMPROVEMENT PROGRAM FOR FISCAL YEAR 2009-2010

WHEREAS, on April 28, 2009, the City Council was presented with the details of the Cape/Slurry Seal project, and

WHEREAS, this project was put together quickly to capture American Recovery and Reinvestment Act (ARRA) funds, and

WHEREAS, City staff submitted the Request for Authorization for construction of the Cape/Slurry Seal project to Caltrans on May 8, 2009, and

WHEREAS, this project was not included in the adopted CIP for Fiscal Year 2009-2010, and

WHEREAS, City staff recommends approving a new CIP Account 0530-430-H013 for the project titled, “ARRA Cape & Slurry Seal on Various Streets”, contingent upon receipt of Authorization to Proceed (“FNM-76”) from Federal Highway Administration (FHWA).

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves a new Capital Improvement Program (CIP) Account 0530-430-H013 for the project titled, “ARRA Cape & Slurry Seal on Various Streets”, contingent upon receipt of Authorization to Proceed (“FNM-76”) from Federal Highway Administration (FHWA).
BE IT FURTHER RESOLVED that the Finance Director, or his/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 1st day of September, 2009, 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: Hawn, Keating, Lopez, Marsh, O'Bryant, 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. 2009-417

A RESOLUTION AMENDING THE FISCAL YEAR 2009-2010 CAPITAL IMPROVEMENT PROGRAM BUDGET, CONTINGENT UPON RECEIPT OF AUTHORIZATION TO PROCEED (“FNM-76”) FROM FEDERAL HIGHWAY ADMINISTRATION (FHWA), IN ORDER TO FULLY FUND THE CONSTRUCTION ACTIVITIES FOR THE AMERICAN RECOVERY AND REINVESTMENT ACT (ARRA) FUNDED CAPE/SLURRY SEAL PROJECT

WHEREAS, a budget adjustment in the amount of $3,211,414 is necessary to fully fund the construction activities for the ARRA funded Cape/Slurry Seal project along with contingency and construction administration, and

WHEREAS, the Fiscal Year 2009-2010 Capital Improvement Program budget must be amended, contingent upon receipt of Authorization to Proceed (“FNM-76”) from Federal Highway Administration (FHWA), 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, contingent upon receipt of Authorization to Proceed (“FNM-76”) from Federal Highway Administration (FHWA), as shown in Exhibit A.

BE IT FURTHER RESOLVED that the Finance Director, or his/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 1st day of September, 2009, 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: Hawn, Keating, Lopez, Marsh, O'Bryant, 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

FUND:
ARRA Reimbursable Grant – PW Streets

REVENUES:
ARRA Reimbursable Grant – PW Streets 0530-430-H013-3650-53 $3,211,414

EXPENDITURES: Increase/(Decrease)
ARRA Cape & Slurry Seal on Various Sts 0530-430-H013-6040 $2,636,901
ARRA Cape & Slurry Seal on Various Sts 0530-430-H013-6050 $263,690
ARRA Cape & Slurry Seal on Various Sts 0530-430-H013-6060 $310,823
A RESOLUTION MAKING CERTAIN FINDINGS CONCERNING MITIGATION MEASURES, ADOPTING A MITIGATION MONITORING AND REPORTING PROGRAM, MAKING FINDINGS CONCERNING ALTERNATIVES, ADOPTING A STATEMENT OF OVERRIDING CONSIDERATIONS, AND CERTIFYING THE FINAL ENVIRONMENTAL IMPACT REPORT FOR THE KIERNAN BUSINESS PARK SPECIFIC PLAN AMENDMENT NO. 4 (SCH NO. 2007062071)

WHEREAS, on November 26, 2006, Dr. Aruna Chopra filed applications for amendments to the Kiernan Business Park Specific Plan and the Urban Area General Plan of the City of Modesto to re-designate property located in the Kiernan Carver Comprehensive Planning District from Business Park (BP) to Mixed Use (MU) and to amend the Kiernan Business Park Specific Plan to provide for mixed-use and medium-high-density residential development on the east side of Dale Road, between Kiernan Avenue and Bangs Avenue ("the Project"), and

WHEREAS, the City of Modesto ("the City"), on June 15, 2007, published an Initial Study and a Notice of Preparation for the Project, which identified potentially significant environmental impacts attributable to the Project, on which basis the City determined that an Environmental Impact Report ("EIR") was required for the Project, and

WHEREAS, the Notice of Preparation provided notice of the City’s determination, and solicited public input on the proposed scope and content of the EIR for the Project, and

WHEREAS, on June 27, 2007, the City held a public scoping meeting to receive public comments on the scope and content of the EIR, and
WHEREAS, the City published and distributed a Draft EIR for the Kiernan Business Park Specific Plan Amendment #4 (SCH No. 2007062071) ("DEIR") for public comment on December 17, 2008, in accordance with Section 21091 of the California Environmental Quality Act ("CEQA"), and

WHEREAS, the DEIR was available for public comment for a period of 45 days as required by Section 21091 of CEQA, the close of the public comment period being February 2, 2009, and

WHEREAS, during the 45-day public comment period the City received fifteen letters commenting on the DEIR, and

WHEREAS, the City prepared written responses to all written comments received on the DEIR, said responses being contained in a Final EIR for the Kiernan Business Park Specific Plan Amendment No. 4 (SCH No. 2007062071) ("FEIR") prepared pursuant to Section 15089 of the CEQA Guidelines, and

WHEREAS, the FEIR was published and distributed on June 26, 2009, and consists of the Draft EIR, a list of persons, organizations and public agencies commenting on the Draft EIR, copies of all written comments received, responses to those comments that raise environmental issues, and any revisions to the text of the Draft EIR made in response to the comments, as required by Section 15132 of the CEQA Guidelines, and

WHEREAS, the Project would include approval of the following: an amendment to the General Plan; an amendment to the Kiernan Business Park Specific Plan; annexation of a portion of the project site to the City of Modesto; adoption of a Facilities
Master Plan and an Infrastructure Finance Plan and the formation of an associated
Community Facilities District; and subsequent entitlements, and

WHEREAS, CEQA requires that, in connection with the approval of a project for
which an EIR has been prepared which identifies one or more significant environmental
effects, the decision-making agency make certain findings regarding those effects, and

WHEREAS, a public hearing on the Project was held by the Planning
Commission on July 20, 2009, in the Chambers, Tenth Street Place, 1010 Tenth Street,
Modesto, California, at which hearing evidence both oral and documentary was received
and considered, and

WHEREAS, after said public hearing, the Modesto City Planning Commission
adopted Resolution No. 2009-21, recommending to the City Council adoption of certain
findings and certification of the FEIR, and

WHEREAS, said matter was set for a public hearing of the City Council to be
held on September 1, 2009, 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 evidence both oral and documentary was received and considered, and

WHEREAS, the City Council has received and considered the FEIR for the
Kiernan Business Park Specific Plan Amendment No. 4 (SCH No. 2007062071) that
analyzed the potential environmental effects of the proposed Project,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto
that it hereby finds and determines in respect to the FEIR:
1. That the FEIR has been completed in compliance with CEQA; that the City Council has reviewed and analyzed the FEIR and other information in the record and has considered the information contained therein, including the written and oral comments received at the public hearings on the FEIR and the Project, prior to acting upon or approving the Project; and that the FEIR represents the independent judgment of the City of Modesto; and

2. That the Findings and Statements set forth in Exhibit “A”, and incorporated herein by reference, be made by the Council as the City’s findings under the California Environmental Quality Act (“CEQA”) (Pub. Resources Code § 21000 et seq.) and the CEQA Guidelines (Cal. Code Regs., title 14, § 15000 et seq.) relating to the Project. The Findings provide the written analysis and conclusions of the Council regarding the Project’s environmental impacts, mitigation measures and alternatives to the Project.

3. That pursuant to Public Resources Code Section 21081 and CEQA Guidelines Sections 15091 et seq., the City Council of the City of Modesto adopts and makes the following statement of overriding considerations regarding the remaining unavoidable impacts of the Project and the anticipated economic, social and other benefits of the Project.

a. Significant Unavoidable Impacts

With respect to the foregoing findings, as set forth in Exhibit A, and in recognition of those facts which are included in the record, the City has determined the following:

- that the Project will cause significant, unavoidable impacts to Agricultural Resources, Transportation and Circulation, Air Quality; and

- that the Project will contribute to significant, unavoidable cumulative impacts to Agricultural Resources, Transportation and Circulation, Air Quality, and Noise; and

These impacts cannot be avoided or substantially reduced by feasible changes or alterations to the Project, other than the changes or alterations already adopted.

b. Overriding Considerations

The City Council specifically adopts and makes this Statement of Overriding Considerations that this Project includes all feasible measures that would eliminate or substantially lessen the significant impacts of the Project on the environment, and that the remaining significant, unavoidable impacts of the Project are acceptable in light of the environmental, economic, social and other considerations set forth herein because the benefits of the
Project outweigh the significant and adverse impacts of the Project. The City Council finds that each of the overriding considerations set forth below constitutes a separate and independent ground for finding that the benefits of the Project outweigh its significant adverse environmental impacts and sets forth an overriding consideration warranting approval of the Project. These matters are supported by evidence in the record.

c. Benefits of Proposed Project

The City Council has considered the FEIR, the public record of proceedings on the proposed Project and other written materials presented to the City as well as oral and written testimony at all public hearings related to the Project, and does hereby determine that implementation of the Project as specifically provided in the Project documents would result in the substantial public benefits set forth below.

The City Council has weighed the benefits of the proposed Project against its unavoidable environmental risks and adverse environmental effects identified in the FEIR and hereby determines that those benefits outweigh the risks and adverse environmental effects and, therefore, further determines that these risks and adverse environmental effects are acceptable.

(i) The project would create a mixed use area adjacent to the Kaiser Modesto Medical Center which will serve the hospital and its visitors, the immediate business park area, and residential areas. Provide a vibrant village atmosphere which provides a safe, pedestrian-friendly environment.

(ii) The project would create an extended-hours community by balancing business park and medical center uses with residential and retail to provide greater safety through increased surveillance and activity.

(iii) The project would attract small businesses that provide support services to the hospital and business park uses.

(iv) The project would provide multi-family residential uses, both apartments and condominiums, to provide housing choices for doctors and nurses, hospital employees and support staff, visitors, single parents, business owners and employees, and independent seniors.

(v) The project would be designed as a healthy, smart growth development that increases physical activity via walking and bicycling, reduces dependence on automobiles, and increases transit use.
(vi) The project would provide incentives to reduce traffic through the use of shared parking and reduced automobile parking standards. Balance the supply and management of parking to address the needs of the businesses, residents, and employees.

(vii) The project would incorporate an efficient infrastructure system designed to accommodate all phases of development.

(viii) The project would provide for employment-intensive uses in an attractive “campus-like” setting that is consistent with the needs of the target industries identified in the Kiernan Business Park Specific Plan.

4. The Mitigation and Monitoring and Reporting Program for the Kiernan Business Park Specific Plan Amendment #4 is attached to this resolution as Exhibit “B” and is incorporated and adopted as part of this resolution herein. The Program identifies impacts of the Project, corresponding mitigation, designation of responsibility for mitigation implementation and the agency responsible for the monitoring action.

5. The City Council hereby finds and recognizes that the FEIR contains additions, clarifications, modifications and other information in its responses to comments on the Draft Environmental Impact Report for the Project (“DEIR”) and also incorporates information obtained by the City since the DEIR was issued. This Council hereby finds and determines that such additions, clarifications, modifications and other information are not significant new information as that term is defined under the provisions of the California Environmental Quality Act, because such additions, clarifications, modifications and other information do not indicate that any new significant environmental impacts not already evaluated would result from the Project and do not reflect any substantial increase in the severity of any environmental impact; that no feasible mitigation measures considerably different from those previously analyzed in the DEIR have been proposed that would lessen significant environmental impacts of the Project; and that no feasible alternatives considerably different from those analyzed in the DEIR have been proposed that would lessen significant environmental impacts of the Project. Accordingly, this Council hereby finds and determines that recirculation of the FEIR for further public review and comment is not warranted; and

6. The City Council does hereby designate the Community and Economic Development Director of the City of Modesto, at his office at 1010 Tenth Street, Modesto, California 95354 as the custodian of documents and record of proceedings on which the decision is based; and
7. The City Council does hereby make the foregoing findings with respect to the significant effects on the environment of such Project, as identified in the FEIR, with the stipulations that all information in these findings is intended as a summary of the full administrative record supporting the FEIR, which full administrative record should be consulted for the full details supporting these findings, and that any mitigation measures and/or alternatives that were suggested by comments submitted on the DEIR and were not adopted as part of the FEIR are hereby expressly rejected for the reasons stated in the responses to the comments set forth in the FEIR and elsewhere in the record.

BE IT FURTHER RESOLVED by the Council that it hereby certifies the Final Environmental Impact Report for the Kiernan Business Park Specific Plan Amendment No. 4 (SCH No. 2007062071), on file in the office of the Community and Economic Development Department and incorporated herein by reference.

BE IT FURTHER RESOLVED that the project applicant shall indemnify, defend, and hold harmless the City of Modesto, its agents, officers, and employees from any and all claims, actions, or proceedings against the City of Modesto, its agents, officers, and employees to attack, set aside, void, or annul, any approval by the City of Modesto and its advisory agency, appeal board, or a legislative body concerning the environmental impact report for the Kiernan Business Park Specific Plan Amendment #4 Project (File No. EIR-06-001). The City of Modesto shall promptly notify the applicant of any claim, action, or proceeding and shall cooperate fully in the defense. If the City fails to do so, the applicant shall not thereafter be responsible to defend, indemnify, or hold City harmless.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 1st day of September, 2009, by Councilmember Marsh, who moved its adoption, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Hawn, Keating, Lopez, Marsh, O’Bryant, Olsen. Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: [Signature]

(STEPHANIE LOPEZ, City Clerk)

(SEAL)

APPROVED AS TO FORM:

By: [Signature]

(SUSANA ACALA WOOD, City Attorney)
Exhibit “A”

FINDINGS AND STATEMENTS ON THE KIERNAN BUSINESS PARK SPECIFIC PLAN AMENDMENT NO. 4 FEIR
Exhibit “B”

MITIGATION MONITORING AND REPORTING PROGRAM
KIERNAN BUSINESS PARK SPECIFIC PLAN AMENDMENT # 4 PROJECT ENVIRONMENTAL IMPACT REPORT (SCH# 2007062071)

FINDINGS AND STATEMENTS REQUIRED UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (Public Resources Code, Section 21000 et seq.)

I. Introduction

On behalf of the City of Modesto (the “City”), and pursuant to the California Environmental Quality Act (“CEQA”), Turnstone Consulting prepared a Draft Environmental Impact Report (the “DEIR”) for the Kiernan Business Park Specific Plan Amendment # 4 Project and other related approvals described below (collectively, the “Project”). The City of Modesto prepared a Final Environmental Impact Report (the “FEIR”) in accordance with CEQA, which incorporated the DEIR prepared by Turnstone Consulting. The City is the lead agency for the FEIR.

To support its certification of the FEIR and approval of the Project, the City Council of the City of Modesto (the “City Council”) makes the following findings of fact and statements of overriding considerations (collectively, the “Findings”). These Findings contain the City Council’s written analysis and conclusions regarding the Project’s environmental effects, mitigation measures, alternatives to the proposed Project, and the overriding considerations which, in the City Council’s view, justify the approval of the Project despite its potential environmental effects. These Findings are based upon the entire record of proceedings for the FEIR, as described below.

The Project is Amendment #4 to the Kiernan Business Park Specific Plan setting out the framework for development of the 614-acre business park. Amendment #4 proposes the redesignation of approximately 39 acres of the existing 153-acre Business Park land use to 23 acres of Mixed Use and 16 acres of Medium High Density Residential Land uses. Development of the Mixed Use sub-area would include 80 dwelling units, 371,000 gross square feet (gsf) of retail area, including uses such as restaurants, pharmacies, and health clubs, 79,000 gsf of office area, and a 170-room hotel. The Medium High Density Residential sub-area would allow for 262 residential units. To support these new uses, the Project includes revisions to the Specific Plan’s Circulation Plan to improve existing traffic and circulation conditions, including extensions and reclassification of existing bicycle paths and the additions of new bicycle paths. The Project also provides for new utilities as well as the extension of existing electrical, water, and sewer lines and storm drainage facilities.

The Project site location is partially within the City of Modesto (about 86 acres) and partially in an unincorporated area of Stanislaus County, within the City’s Sphere of Influence (about 67 acres).

The approvals necessary for implementation of the Kiernan Business Park Specific Plan Amendment #4 include:
1. Adoption of Kiernan Business Park Specific Plan amendments to:

   A. Change the land use designation for the 39-acre project area from Business Park (BP) to Mixed Use (MU) and Medium High Density Residential (MHDR);

   B. Remove the Pelandale Expressway cross section;

   C. Reclassify Dale Road from a four-lane minor arterial to a six-lane principal arterial between Kiernan Avenue and Bangs Avenue;

   D. Reclassify Bangs Avenue from a two-lane industrial connector to a four-lane major collector;

   E. Reclassify Healthcare Way from a two-lane industrial connector to a two-lane minor collector east of Dale Road;

   F. Redesign cross sections for four-lane minor arterials;

   G. Redesign cross sections for two-lane minor collectors;

   H. Extend planned bicycle facilities and add new ones;

   I. Change planned water, storm, and sanitary sewer pipeline alignments and add new ones consistent with the change in use from BP to MU and MHDP;

   J. Implement new development standards and design guidelines for the MU and MHDR areas to provide a framework and direction for development within these areas;

   K. Revise the Land Use Plan Diagram, the Circulation Plan Diagram, the Bike Paths Figure, and the Illustrative Public Facilities Plan Diagram in the Specific Plan to reflect the proposed changes to the Specific Plan.

2. Adoption of an amendment to the Urban Area General Plan to redesignate the 39-acre project area contained within the Kiernan/Carver Comprehensive Planning District of the General Plan from BP to MU.

3. Adoption of a resolution annexing a 67-acre portion of the project site into the City of Modesto, including approval by the Local Agency Formation Commission and, absent a negotiated agreement on service delivery and revenue sharing, simultaneous detachment of the 67 acres from the Salida Fire Protection District.

4. Adoption of a resolution to approve rezoning.

5. Adoption of a Facilities Master Plan and an Infrastructure Financing Plan for the project area.
6. Approval of a Development Agreement, if applicable, to guide development in the area.

7. Formation of a Community Facilities District to fund the construction of "backbone" public infrastructure, maintenance of applicable public facilities, and applicable public services.

8. Approval by the Modesto Irrigation District of the proposed storm water drainage system, and finalization of a Drainage Agreement between the Irrigation District and the City.

9. Subsequent entitlements, including approval of a Tentative Subdivision Map and/or tentative parcel map, if applicable.

II. General Findings and Overview

A. Record of Proceedings and Custodian of Record

The record of proceedings for the City’s findings and determination is available for review by responsible agencies and interested members of the public during normal business hours at 1010 Tenth Street, Suite 4100, Modesto, California. The custodian of these documents is the City’s Director of Community and Economic Development.

B. Preparation and Consideration of the FEIR and Independent Judgment Findings

The City Council finds, with respect to the City’s preparation, review and consideration of the FEIR, that:

- The City retained the independent firm of Turnstone Consulting ("Turnstone") to prepare the DEIR, and Turnstone prepared the DEIR under the supervision and at the direction of the City of Modesto.

- The City circulated the DEIR for review by responsible agencies and the public and submitted it to the State Clearinghouse for review and comment by state agencies.

- The FEIR has been completed by the City of Modesto in compliance with CEQA.

- The Project will have significant, unavoidable impacts as described and discussed in the FEIR.

- The FEIR is adequate under CEQA to address the potential environmental impacts of the Project.

- The FEIR has been presented to the City Council, and the City Council has independently reviewed and considered information contained in the FEIR.
• The FEIR reflects the independent judgment of the City.

By these Findings, the City Council ratifies, adopts and incorporates the analyses, explanations, findings, responses to comments, and conclusions of the FEIR, except as specifically described in these Findings.

C. Findings Regarding Less-Than-Significant Impacts.

By these Findings, the City Council ratifies and adopts the FEIR’s conclusions for the following potential environmental impacts which, based on the analyses in the FEIR, this City Council determines to be less than significant:

1. Land Use

• Impact A.1 – The proposed project would introduce new land use designations that would conflict with existing land use plans, policies, and/or regulations.

2. Agricultural Resources

• Impact B.2 – Development of the proposed project may burden continued agricultural operations surrounding the project site, and within the project site, prior to development under the proposed Specific Plan.

3. Air Quality

• Impact D.3 – Motor vehicle emissions would locally contribute to elevated concentrations of carbon monoxide.

• Impact D.4 – Implementation of the proposed project would cause sensitive receptors to be exposed to toxic air contaminants.

• Impact D.5 – Implementation of the proposed project would cause sensitive receptors to be exposed to objectionable odors.

4. Noise

• Impact E.1 – Project-related traffic could cause a substantial increase in noise levels for existing sensitive receptors adjacent to the project area.

5. Hazardous Materials

• Impact F.1 – Demolition of existing buildings could cause release of hazardous materials, causing potential hazards to the public and environment.
• Impact F.3 – Transportation of contaminated soil and/or building materials removed from the project site could result in accidental release of hazardous materials.

6. Hydrology and Water Quality

• Impact H.2 – Operation-phase use of the site could result in degradation of water quality in receiving waters by reducing the quality of storm water runoff.

• Impact H.4 – Implementation of the proposed project could place new development within an area potentially subject to dam failure inundation and/or inundation associated with spring/early summer snowmelt runoff.

• Impact H.5 – Implementation of the project could result in depletion of groundwater resources.

7. Community Services

• Impact 1.1 – Development of the project site would result in an increased demand for Modesto Police Department officer hours due to the potential for increased on-site criminal activity and increased number of traffic incidents near the site.

• Impact 1.2 – Development of the project site would result in an increase in the volume of emergency calls.

• Impact 1.3 – Development of the mixed-use and high-density residential components of the proposed project with building heights over 30 feet could result in insufficient water pressure for firefighting.

• Impact 1.4 – Build out of the Kiernan Business Park Specific Plan Amendment #4 area would result in an increase in the number of elementary (K-6), middle (7-8), and high (9-12) school students and could require the construction of new or physically altered school facilities.

8. Utility and Services Systems

• Impact J.1 – Development of the proposed Kiernan Business Park Specific Plan Amendment #4 area would result in an increased demand for wastewater collection, treatment, and disposal.

• Impact J.2 – Development of the proposed Kiernan Business Park Specific Plan Amendment #4 area would contribute to future cumulative increases in demand on the wastewater collection, treatment, and disposal system.
9. Water Supply

- Impact K.1 – Implementation of the Kiernan Business Park Specific Plan Amendment #4 could increase the demand for potable water.

- Impact K.3 – Development of the proposed project could contribute to cumulative demand for potable water in the City of Modesto water service area.

- Impact K.4 – Development of the proposed project would contribute to the potential for cumulative demand to result in overdraft of groundwater supplies.

III. Findings and Recommendations Regarding Significant Environmental Impacts

A detailed analysis of the potential environmental impacts and the proposed mitigation measures for the Kiernan Business Park Specific Plan Amendment #4 Project is set forth in Sections IV.A through IV.K of the DEIR, as incorporated into the FEIR. The DEIR evaluated the Project’s potential environmental impacts in 11 separate categories, and also evaluated the Project’s potential cumulative impacts. The City Council concurs with the conclusions in the DEIR, as incorporated into the FEIR, that:

(i) a majority of the Project’s significant and potentially significant impacts will be rendered less than significant by the mitigation measures described and discussed below; and

(ii) for those impacts that will not be rendered less than significant by such mitigation measures, there are overriding considerations that make those impacts acceptable to the City.

IV.B. Agricultural Resources

Impact B.1 Implementation of the proposed project would directly result in the permanent loss of Prime Farmland.

a) Potential Impact. The impact identified above is described and discussed on page IV.B.7 of the DEIR.

b) Mitigation Measures. The following mitigation measures are hereby adopted and will be implemented as provided by the Mitigation Monitoring and Reporting Program:

FEIR Mitigation Measure B.1. (pp. IV.B.7 and IV.B.8 of the DEIR).

c) Findings. Based on the FEIR and the entire record before the City, the City Council finds that:

(i) Effects of Mitigation. Although it is possible that mitigation measure B.1, which provides that the City Council consider
creation of a farmland mitigation program that would require compliance as a condition precedent to the issuance of building permits, could partially compensate for the loss of Prime Farmland, it would not fully mitigate the loss resulting from the project to a less-than-significant level.

(ii) **Remaining Impacts.** As explained above, although implementation of Mitigation Measure B.1 could partially mitigate the environmental effects of the permanent loss of Prime Farmland, such impacts will remain significant even with mitigation. Because there are no feasible measures available to further mitigate this significant impact, it is considered significant and unavoidable.

(iii) **Overriding Considerations.** The environmental, economic, social and other benefits of the Project override any remaining significant adverse impacts of the Project relating to the permanent loss of Prime Farmland, as set forth in the Statement of Overriding Considerations below.

Impact B.3  Implementation of the proposed project would incrementally contribute to the cumulative loss of Prime Farmland in Stanislaus County and in the Modesto area.

a) **Potential Impact.** The impact identified above is described and discussed on page IV.B.9 to IV.B.10 of the DEIR.

b) **Mitigation Measures.** The following mitigation measures are hereby adopted and will be implemented as provided by the Mitigation Monitoring and Reporting Program:

FEIR Mitigation Measure B.3 (the same as Mitigation Measure B.1, above).

c) **Findings.** Based on the FEIR and the entire record before the City, the City Council finds that:

(i) **Effects of Mitigation.** Although it is possible that mitigation measure B.3, which provides that the City Council consider creation of a farmland mitigation program that would require compliance as a condition precedent to the issuance of building permits, could partially compensate for the loss of Prime Farmland, it would not fully mitigate the loss resulting from the project to a less-than-significant level.

(ii) **Remaining Impacts.** As explained above, although implementation of Mitigation Measure B.3 could partially mitigate the environmental effects of the permanent loss of Prime Farmland, such impacts will remain significant even with mitigation. Because there are no feasible measures available to further mitigate this significant impact, it is considered significant and unavoidable.
Farmland. such impacts will remain significant even with mitigation. Because there are no feasible measures available to further mitigate this significant impact, it is considered significant and unavoidable.

(iii) **Overriding Considerations.** The environmental, economic, social and other benefits of the Project override any remaining significant adverse impacts of the Project relating to the permanent loss of Prime Farmland, as set forth in the Statement of Overriding Considerations below.

### IV.C. Transportation and Circulation

**Impact C.1** Construction and occupancy of the project site would result in significant impacts at study intersections adjacent to and near the project site under the existing plus project scenario.

a) **Potential Impact.** The potential impacts to study intersections related to construction and occupancy of the project site at adjacent and nearby intersections are described and discussed on page IV.C.44 to IV.C.47 of the DEIR.

b) **Mitigation Measures.** The following mitigation measures are hereby adopted and will be implemented as provided by the Mitigation Monitoring and Reporting Program:

FEIR Mitigation Measures C.1b, c, d, f, and k (pp. IV.C.47 through IV.C.52 of the DEIR) shall be implemented in full. FEIR Mitigation Measures C.1a, e, g, h, i, j, and l are potentially infeasible, but shall be implemented to the extent that they later prove to be feasible.

c) **Findings.** Based on the FEIR and the entire record before the City, the City Council finds that:

(i) **Effects of Mitigation.** Mitigation Measures C.1b, c, d, f and k require construction or installation of various traffic improvements that would improve LOS at five different study intersections to less than significant levels. These five intersections are: Kiernan Avenue and Sisk Road; Kiernan Avenue and Stoddard Road; Kiernan Avenue and Dale Road; Bangs Avenue and American Avenue; Pelandale Avenue and Sisk Road.

Mitigation Measures C.1a, e, g, h, i, j and l also require construction or installation of traffic improvements that would improve LOS at seven additional intersections. These intersections are Kiernan Avenue and SR 99 Southbound Ramps; Kiernan Avenue and Carver Road; Bangs Avenue and Prescott
Road; Bangs Avenue and Carver Road; Bangs Avenue and Tully Road; Pelandale Avenue and SR 99 Southbound Ramps; Pelandale Avenue and Sisk Road; and Standiford Avenue and SR 99 Southbound Ramps.

However, as described below, these mitigation measures are potentially infeasible. Mitigation Measures C.1a and C.1e involve intersections that are under the jurisdiction of CalTrans. While CalTrans has plans to construct some of these improvements, and is working with Stanislaus County to realize others, there is no guarantee that funding for construction will be available in time for the improvements to be completed for the proposed project, or that funding will become available within the near future. Mitigation Measures C.1j and C.1l are also under the jurisdiction of CalTrans. CalTrans has no funds to construct these improvements. The City and CalTrans are engaged in a joint effort to implement the improvements set out in C.1j, but design has not yet begun for that measure, or for those set out in Mitigation Measure C.1k. Since the City has no jurisdiction to design or implement these mitigation measures, they are infeasible, and the decrease in LOS is significant and unavoidable.

For Mitigation Measures C.1g, C.1h and C.1i, the City has no final designs that would allow these improvements to be completed by the time the proposed project is begun, and no guarantee of fair share contributions from other developments that would benefit from these improvements. The applicant for the proposed project will contribute its required fair share, but that would not be enough to fund the entire cost of the improvements. While it is anticipated that these improvements will be pursued by the City as it builds out, the City cannot guarantee their completion at this time. Therefore, these mitigation measures are infeasible and the decrease in LOS is significant and unavoidable.

The DEIR also identified potentially significant impacts at the intersection of Kiernan Avenue and American Avenue. However, these impacts will be eliminated by planned improvements to this intersection to be made by CalTrans, and no additional mitigation will be needed.

(ii) **Remaining Impacts.** As explained above, although implementation of Mitigation Measures C.1a through C.1l will reduce the impacts related to construction and occupancy of the project site, seven of these measures are not feasible, and impacts at seven study intersections would thus remain significant. Because there are no feasible measures available to further
mitigate these significant impacts, they are considered significant and unavoidable.

(iii) Overriding Considerations. The environmental, economic, social and other benefits of the Project override any remaining significant adverse impacts of the Project relating to construction and occupancy of the project site, as set forth in the Statement of Overriding Considerations below.

Impact C.2 Construction and occupancy of the project site would result in significant impacts on freeway and roadway segments adjacent to and near the project site under the existing plus project scenario.

a) Potential Impact. The potential impacts to freeway and roadway segments adjacent to and near the project site identified above are described and discussed on pages IV.C.52 through IV.C.56 of the DEIR.

b) Mitigation Measures. The following mitigation measures are hereby adopted and will be implemented as provided by the Mitigation Monitoring and Reporting Program:

FEIR Mitigation Measure C.2e (pp. IV.C.52 through IV.C.55 of the DEIR) shall be implemented in full. The lane construction specified in Mitigation Measure C.2e was completed after the preparation of the traffic impact analysis; therefore the adoption of that Mitigation Measure is not necessary. Mitigation Measures C.2a, 2b, and 2d are potentially infeasible but shall be implemented to the extent that they later prove to be feasible.

c) Findings. Based on the FEIR and the entire record before the City, the City Council finds that:

(i) Effects of Mitigation. For Mitigation Measures 2a and 2b (improvements to Kiernan Avenue in various locations and to Pelandale Avenue between the SR 99 Southbound Ramps and Northpointe Shopping Center), the recommended improvements are under the jurisdiction of CalTrans. CalTrans currently has plans to construct some of the improvements specified, and is working closely with the City to construct others, but the City cannot guarantee that the improvements will be funded or completed prior to construction of the proposed project, therefore these Mitigation Measures are infeasible. For Mitigation Measure 2c (improvements to Pelandale Avenue between Dale Road and Tully Road), the recommended improvement is currently under construction and will reduce the impact on this roadway segment to less than significant. For improvements recommended in Mitigation Measure 2d (improvements to Bangs
Avenue between American Avenue and Prescott Road), the construction is currently unfunded. Construction could be partially funded by a fair share contribution from the project applicant, but fair share contributions from other developments would be necessary to complete funding, and there is no assurance that this funding would become available prior to completion of the proposed project. This Mitigation Measure is therefore infeasible.

(ii) Remaining Impacts. Although the completion of Mitigation Measure C.2c will reduce the impact on Pelandale Avenue between Dale and Tully Roads to less than significant, the Mitigation Measures recommended to reduce the impact to Kiernan Avenue (C.2a), the Pelandale Avenue interchange with SR 99 (C.2b) and Bangs Avenue (C.2d) are considered infeasible. Because there are no feasible measures available to further mitigate these significant impacts, they are considered significant and unavoidable.

(iii) Overriding Considerations. The environmental, economic, social and other benefits of the Project override any remaining significant adverse impacts of the Project relating to impacts on freeway and roadway segments adjacent to and near the project site, as set forth in the Statement of Overriding Considerations below.

Impact C.3 Construction and occupancy of the project site would result in significant impacts on freeway ramp merge/diverge interchanges near the project site under the existing plus project scenario.

a) Potential Impact. The potential impacts to freeway ramp merge/diverge interchanges near the project site related to construction and occupancy of the site identified above are described and discussed on page IV.C.56 of the DEIR.

b) Mitigation Measures. The following mitigation measures are hereby adopted and will be implemented as provided by the Mitigation Monitoring and Reporting Program:

FEIR Mitigation Measure C.3 (p. IV.C.56 of the DEIR) is potentially infeasible, but it shall be implemented to the extent that it later proves to be feasible.

c) Findings. Based on the FEIR and the entire record before the City, the City Council finds that:

(i) Effects of Mitigation. While CalTrans has plans to improve the SR 99 merge/diverge interchanges identified in Impact C.3, the
improvements have not yet been designed or funded. The City
does not have the authority to complete the improvements since
these interchanges are under the jurisdiction of CalTrans, so this
mitigation measure is considered potentially infeasible and the
impact remains significant and unavoidable.

(ii) **Remaining Impacts.** As explained above, because there are no
feasible measures available to mitigate this significant impact, it
is considered significant and unavoidable.

(iii) **Overriding Considerations.** The environmental, economic,
social and other benefits of the Project override any remaining
significant adverse impacts of the Project on freeway ramp
merge/diverge interchanges near the Project site, as set forth in
the Statement of Overriding Considerations below.

**Impact C.4.** Construction and occupancy of the project site would result in
significant impacts at study intersections adjacent to and near the project site under
the near-term baseline plus project scenario.

a) **Potential Impact.** The impact of construction and occupancy of the
project site at study intersections adjacent to and near the site
identified above is described and discussed on page IV.C.65 through
IV.C.66 of the DEIR.

b) **Mitigation Measures.** The following mitigation measures are hereby
adopted and will be implemented as provided by the Mitigation
Monitoring and Reporting Program:

FEIR Mitigation Measures C.4.c and d (pp. IV.C.66 through IV.C.72
of the DEIR) shall be implemented in full. Mitigation Measures C.4 a,
b, e, f, g, h, j, k, and l are potentially infeasible but shall be
implemented to the extent that they later prove to be feasible.
Mitigation Measure C.4.i is not physically feasible and will not be
implemented.

c) **Findings.** Based on the FEIR and the entire record before the City,
the City Council finds that:

(i) **Effects of Mitigation.** Mitigation Measures C.4a through C.4l
provide for construction or installation of a set of traffic
improvements that would improve LOS at the 12 affected
intersections analyzed in the EIR. For two intersections (Dale
Road and Kaiser Main Entrance; Bangs Avenue and American
Avenue), the implementation of Mitigation Measures would
improve the LOS so as to mitigate the impacts to less than
significant levels (C.4e, C.4d). However, at nine of the
remaining ten intersections the Mitigation Measures are
potentially infeasible due to issues relating to lack of funding and/or jurisdiction, and the impact would remain significant and unavoidable. Some of the Mitigation Measures are potentially infeasible because the location is outside the jurisdiction of the City of Modesto, but the City is working with the jurisdictions in question to try to see that the improvement is implemented (C.4a, C.4b, C.4h, C.4k). In some instances, the intersection is within the jurisdiction of the City, but the proposed project's fair share contribution to the recommended improvements is small in relation to the total cost and the City cannot legally require the project to fund the entire cost (C.4e, C.4f, C.4g, C.4i, C.4l). Mitigation Measure C.4j has received CalTrans approval, but also is still not adequately funded. And finally, for Mitigation Measure C.4i, the improvements cannot be constructed within the existing right of way and this measure is thus not physically feasible. Therefore, although the Mitigation Measures identified above would reduce the project impacts, most are infeasible, and the impacts at the following intersections remain significant and unavoidable:

Kiernan Avenue and SR 99 southbound ramps (C.4a)
Kiernan Avenue and Sisk Road (C.4b)
Bangs Avenue and Prescott Road (C.4e)
Bangs Avenue and Carver Road (C.4f)
Bang Avenue and Tully Road (C.4g)
Pelandale Avenue and SR 99 Southbound Ramps (C.4h)
Pelandale Avenue and Dale Road (C.4i)
Standiford Avenue and SR 99 Southbound Ramps (C.4j)
Standiford Avenue and SR 99 Northbound Ramps (C.4k)
Standiford Avenue and Sisk Road (C.4l)

(ii) Remaining Impacts. As explained above, although two of the Mitigation Measures set out above would reduce impacts to less than significant, the majority of the mitigation measures are potentially infeasible or actually infeasible. Because there are not feasible measures available to further mitigate these significant impacts, they are considered significant and unavoidable.

(iii) Overriding Considerations. The environmental, economic, social and other benefits of the Project override any remaining significant adverse impacts of the Project on study intersections adjacent to and near the project site, as set forth in the Statement of Overriding Considerations below.

Impact C.5 Construction and occupancy of the project site would result in significant impacts on freeway and roadway segments adjacent to and near the
project site under the near-term baseline plus project scenario.

a) Potential Impact. The impact of construction and occupancy of the project site on freeway and roadway segments adjacent to and near the site identified above is described and discussed on pages IV.C.72 through IV.C.73 of the DEIR.

b) Mitigation Measures. The following mitigation measures are hereby adopted and will be implemented as provided by the Mitigation Monitoring and Reporting Program:

FEIR Mitigation Measures C.5.a through C.5.d (pp. IV.C.73 through IV.C.75 of the DEIR) are potentially infeasible but shall be implemented to the extent they later prove to be feasible. Mitigation Measure C.5.e is not physically feasible and will not be implemented.

c) Findings. Based on the FEIR and the entire record before the City, the City Council finds that:

(i) Effects of Mitigation. Mitigation Measures C.5.a through C.5.e identify the addition of lanes to affected freeway and roadway segments that would reduce the project’s impact on LOS to less than significant levels. However, these Mitigation Measures are infeasible for the following reasons: either the City does not have jurisdiction to design and construct improvements (Mitigation Measures C.5.a and C.5.b) or funding is not anticipated to be available to construct the improvements before project completion (Mitigation Measure C.5.c, C.5.d and C.5.e). In addition, Mitigation Measure C.5.e cannot be constructed within the existing right of way. Because the Mitigation Measures are considered potentially infeasible, the impacts on 14 roadway and freeway segments identified in the EIR remain significant and unavoidable.

(ii) Remaining Impacts. As explained above, although implementation of Mitigation Measures C.5.a through C.5.e to widen roadways and freeways would reduce the impacts identified above, these Mitigation Measures are infeasible. Because there are no other feasible measures that would mitigate these significant impacts, they are considered significant and unavoidable.

(iii) Overriding Considerations. The environmental, economic, social and other benefits of the Project override any remaining significant adverse impacts of the Project on freeway and roadway segments adjacent to or near the Project site, as set forth in the Statement of Overriding Considerations below.
Impact C.6  Construction and occupancy of the project site would result in significant impacts on freeway ramp merge/(diverge) areas near the project site under the near-term baseline plus project scenario.

a) Potential Impact. The impact of construction and occupancy of the project site on freeway ramp merge/(diverge) areas near the site identified above is described and discussed on page IV.C.76 of the DEIR.

b) Mitigation Measures. The following mitigation measures are hereby adopted and will be implemented as provided by the Mitigation Monitoring and Reporting Program:

FEIR Mitigation Measure C.6 (p. IV.C.76 of the DEIR) is potentially infeasible but it shall be implemented to the extent it later proves to be feasible.

c) Findings. Based on the FEIR and the entire record before the City, the City Council finds that:

(i) Effects of Mitigation. Mitigation Measure C.6 identifies interchange improvements to SR 99 that will mitigate the impact of construction and occupancy of the project site. However, the improvements have not been approved, designed, or funded by CalTrans. Since SR 99 is within CalTrans’ jurisdiction, the City does not have the authority to implement this Mitigation Measure, and it is deemed infeasible.

(ii) Remaining Impacts. For the reasons identified above, this Mitigation Measure is potentially infeasible, and will not mitigate the impact identified above, which remains significant and unavoidable.

(iii) Overriding Considerations. The environmental, economic, social and other benefits of the Project override any remaining significant adverse impacts on nearby freeway ramp merge/merge/diverge areas related to construction and occupancy of the Project site, as set forth in the Statement of Overriding Considerations below.

Impact C.7  Construction and occupancy of the project site would result in significant impacts on freeway and roadway segments adjacent to and near the project site under the cumulative baseline plus project scenario.

a) Potential Impact. The impact on freeway and roadway segments adjacent to and near the project site related to construction and occupancy of the site is described and discussed on page IV.C.77 through IV.C.80 of the DEIR.
b) Mitigation Measures. The following mitigation measures are hereby adopted and will be implemented as provided by the Mitigation Monitoring and Reporting Program:

FEIR Mitigation Measure C.7 (pp. IV.C.80 to IV.C.81 of the DEIR) shall be implemented.

c) Findings. Based on the FEIR and the entire record before the City, the City Council finds that:

(i) Effects of Mitigation. The transportation demand management (TDM) program identified in Mitigation Measure C.7 would potentially minimize single occupant vehicle trips, thereby reducing the severity of project impacts. However, given the uncertainty of vehicle trip reductions associated with TDM programs, this impact would remain significant and unavoidable.

(ii) Remaining Impacts. Although implementation of the TDM program identified in Mitigation Measure C.7 could potentially lessen the impact of the project on adjacent and nearby freeway and roadway segments, it is impossible to identify the effect of this Mitigation Measure with certainty, and this impact remains significant and unavoidable.

(iii) Overriding Considerations. The environmental, economic, social and other benefits of the Project override any remaining significant adverse impacts on freeway and roadway segments adjacent to and near the Project site, as set forth in the Statement of Overriding Considerations below.

Impact C.8 Construction-related traffic activity could have a significant although temporary impact.

a) Potential Impact. The impact of construction-related traffic activity identified above is described and discussed on page IV.C.81 of the DEIR.

b) Mitigation Measures. The following mitigation measures are hereby adopted and will be implemented as provided by the Mitigation Monitoring and Reporting Program:

FEIR Mitigation Measure C.8 (pp. IV.C.81 through IV.C.82 of the DEIR).

c) Findings. Based on the FEIR and the entire record before the City, the City Council finds that: Mitigation Measure C.8 will substantially lessen the temporary impact of construction-related traffic by requiring the project sponsor to develop a construction management plan to be
approved by the City Public Works Department and the Community Development Department.

IV.D. Air Quality

Impact D.1. Emissions of criteria pollutants during project construction would contribute to existing violations of the ambient air quality standards in the region.

a) Potential Impact. The impact of emissions of criteria pollutants during project construction identified above is described and discussed on pages IV.D.29 through IV.D.31 of the DEIR.

b) Mitigation Measures. The following mitigation measures are hereby adopted and will be implemented as provided by the Mitigation Monitoring and Reporting Program:

FEIR Mitigation Measure D.1 (pp. IV.D.32 through IV.D.33 of the DEIR).

c) Findings. Based on the FEIR and the entire record before the City, the City Council finds that:

(i) Effects of Mitigation. The implementation of San Joaquin Valley Air Pollution Control District recommendations to minimize emission during construction phases required by Mitigation Measure D.1 would reduce impacts of construction related PM\textsubscript{10} and ozone precursors from construction equipment exhaust, but would not prevent a net increase in emissions.

(ii) Remaining Impacts. As explained above, this Mitigation Measure would not prevent a net increase in the emissions of criteria pollutants, and this impact would not be reduced to a less-than-significant level. Because there are no feasible measures available to further mitigate the significant impact identified above, it is considered significant and unavoidable.

(iii) Overriding Considerations. The environmental, economic, social and other benefits of the Project override any remaining significant adverse impacts of the Project relating to the emission of criteria pollutants during project construction, as set forth in the Statement of Overriding Considerations below.

Impact D.2 Emissions of criteria pollutants during project operation would contribute to existing violations of the ambient air quality standards in the region.

a) Potential Impact. The impact of the emission of pollutants during project operation identified above is described and discussed on page IV.D.33 through page IV.D.35 of the DEIR.
b) **Mitigation Measures.** The following mitigation measures are hereby adopted and will be implemented as provided by the Mitigation Monitoring and Reporting Program:

FEIR Mitigation Measures D.2a, D.2b and D.2c (pp. IV.D.35 through IV.D.37 of the DEIR).

c) **Findings.** Based on the FEIR and the entire record before the City, the City Council finds that:

(i) **Effects of Mitigation.** Mitigation Measure D.2a requires the project developers to incorporate into the site design a set of provisions to reduce emissions from motor vehicles. Mitigation Measure D.2b requires the project developers to prepare a trip reduction plan to reduce emissions from motor vehicle activity to be reviewed and approved by the City of Modesto. Mitigation Measure D.2c requires the project developers to incorporate into the site design a set of provisions to reduce emissions from energy consumption. Although implementation of these measures would reduce the impact identified above, it would not substantially lessen or avoid this impact, which would therefore remain significant even with mitigation.

(ii) **Remaining Impacts.** Because there are no feasible measures available to further mitigate the significant impact identified above, it is considered significant and unavoidable

(iii) **Overriding Considerations.** The environmental, economic, social and other benefits of the Project override any remaining significant adverse impacts of the Project relating to the contribution of criteria pollutants emitted during Project operation to existing violations of ambient air quality standards in the region, as set forth in the Statement of Overriding Considerations below.

**Impact D.6.** The project would cause a cumulatively considerable net increase of pollutants for which the San Joaquin Valley is designated as nonattainment.

a) **Potential Impact.** The impact identified above is described and discussed on page IV.D.39 of the DEIR.

b) **Mitigation Measures.** The following mitigation measures are hereby adopted and will be implemented as provided by the Mitigation Monitoring and Reporting Program:

FEIR Mitigation Measure D.6 (p. IV.D.39 of the DEIR).
c) **Findings.** Based on the FEIR and the entire record before the City, the City Council finds that:

(i) **Effects of Mitigation.** Mitigation Measure D.6 incorporates by reference Mitigation Measures D.2a and D.2b (requiring the project developers to incorporate into the site design provisions to reduce emissions from motor vehicles to prepare a trip reduction plan to reduce motor vehicle emissions). Although implementation of these measures would reduce the impact identified above, it would not substantially lessen or avoid this impact, which would therefore remain significant even with mitigation.

(ii) **Remaining Impacts.** Because there are no feasible measures available to further mitigate the significant impact identified above, it is considered significant and unavoidable.

(iii) **Overriding Considerations.** The environmental, economic, social and other benefits of the Project override any remaining significant adverse impacts of the Project relating to the Project’s potential contribution to a cumulatively considerable net increase of pollutants for which the San Joaquin Valley is designated as nonattainment, as set forth in the Statement of Overriding Considerations below.

**Impact D.7** The proposed project, including annexation of the proposed parcels to the City of Modesto and changes to adopted community plans, could conflict with or obstruct implementation of the ozone and PM$_{10}$ attainment plans.

a) **Potential Impact.** The impact identified above is described and discussed on pages IV.D.40 to IV.D.41 of the DEIR.

b) **Mitigation Measures.** The following mitigation measures are hereby adopted and will be implemented as provided by the Mitigation Monitoring and Reporting Program:

FEIR Mitigation Measure D.7 (p. IV.D.41 of the DEIR).

c) **Findings.** Based on the FEIR and the entire record before the City, the City Council finds that:

(i) **Effects of Mitigation.** Mitigation Measure D.7 incorporates by reference Mitigation Measures D.2a through D.2c (requiring the project developers to incorporate into the site design provisions to reduce emissions from motor vehicles and energy consumption and to prepare a trip reduction plan to reduce motor vehicle emissions). Although implementation of these measures would reduce the impact identified above, it would not
substantially lessen or avoid this impact, which would therefore remain significant even with mitigation.

(ii) Remaining Impacts. Because there are no feasible measures available to further mitigate the significant impact identified above, it is considered significant and unavoidable.

(iii) Overriding Considerations. The environmental, economic, social and other benefits of the Project override any remaining significant adverse impacts of the Project relating to its contribution to delaying the region’s progress in attaining the standards set out in the ozone and PM$_{10}$ attainment plan, as set forth in the Statement of Overriding Considerations below.

Impact D.8 The proposed project, including annexation of the proposed parcels to the City of Modesto and changes to adopted community plans, could increase greenhouse gas emissions and potentially accelerate the effects of greenhouse gases on global climate change.

a) Potential Impact. The impact of the proposed project on greenhouse gas emissions identified above is described and discussed on pages IV.D.41 through IV.D.43 of the DEIR. Due to the global nature of greenhouse gas/climate change impacts, and the relatively small contribution of this Project to such global impacts, the City Council does not find that the Project’s impacts, without mitigation, are significant. However, to ensure that greenhouse gas emissions are nonetheless reduced to the maximum extent practicable, the City Council is nonetheless imposing mitigation requirements for this impact.

b) Mitigation Measures. The following mitigation measures are hereby adopted and will be implemented as provided by the Mitigation Monitoring and Reporting Program:

FEIR Mitigation Measure D.8 (page IV.D.43 of the DEIR).

c) Findings. Based on the FEIR and the entire record before the City, the City Council finds that:

The implementation of Mitigation Measure D.8, which requires energy-efficient lighting and other steps to minimize the use of fossil fuels, in combination with the proposed project’s “Smart Growth” orientation, as well as other measures already incorporated into the project to reduce greenhouse gas emissions, will ensure that the Project’s cumulative impacts relating to greenhouse gas emissions will be at a less-than-significant level.

IV.E. Noise
Impact E.2. Project-related traffic could cause a substantial increase in noise levels or an exceedence of “Normally Acceptable” noise levels for sensitive receptors within the project area.

a) **Potential Impact.** The impact of a potential increase in noise levels identified above is described and discussed on pages IV.E.16 through IV.E.18 of the DEIR.

b) **Mitigation Measures.** The following mitigation measures are hereby adopted and will be implemented as provided by the Mitigation Monitoring and Reporting Program:

FEIR Mitigation Measures E.2a and E.2b (p. IV.E.18 of the DEIR).

c) **Findings.** Based on the FEIR and the entire record before the City, the City Council finds that: Mitigation Measure E.2a requires the construction of noise barriers and the use of sound insulation, as determined by a qualified acoustical consultant. The use of such barriers and sound insulation would reduce this impact to a less-than-significant level.

Impact E.3. New stationary sources of noise associated with the proposed project could generate noise levels incompatible with ordinances or goals for the surroundings.

a) **Potential Impact.** The impact identified above is described and discussed on pages IV.E.19 to IV.E.20 of the DEIR.

b) **Mitigation Measures.** The following mitigation measures are hereby adopted and will be implemented as provided by the Mitigation Monitoring and Reporting Program:

FEIR Mitigation Measures E.3 (pp. IV.E.19 to IV.E.20 of the DEIR).

c) **Findings.** Based on the FEIR and the entire record before the City, the City Council finds that: Implementation of Mitigation Measure E.3 will substantially lessen or avoid Project impacts related to new stationary sources of noise by requiring the developers of any project involving commercial uses or multi-family residential buildings that would include outdoor mechanical equipment to retain a qualified acoustical engineer to review and prepare a report on the project to ensure that noise levels will not exceed City Standards. The report shall be submitted to the City prior to approval of building permits. Implementation of this mitigation measure would reduce the impacts from stationary noise generated by the project site to a less-than-significant level.

Impact E.4. Pile-driving activities related to construction of taller buildings
in the Mixed Use area could temporarily generate noise and/or ground-borne vibration levels incompatible with ordinance or goals for the surroundings.

a) **Potential Impact.** The impact of pile-driving activities identified above is described and discussed on page IV.E.20 of the DEIR.

b) **Mitigation Measures.** The following mitigation measures are hereby adopted and will be implemented as provided by the Mitigation Monitoring and Reporting Program:

FEIR Mitigation Measure E.4 (p. IV.E.21 of the DEIR).

c) **Findings.** Based on the FEIR and the entire record before the City, the City Council finds that: Mitigation Measure E.4 requires limiting pile driving to typical working hours and requires monitoring of vibrations to protect the nearby use of vibration-sensitive equipment. Implementation of this mitigation measure would reduce the impacts from construction noise at the project site to a less-than-significant level.

**Impact E.5.** Non-stationary sources of noise associated with the proposed project could generate noise levels incompatible with ordinance or goals for the surroundings.

a) **Potential Impact.** The impact identified above is described and discussed on pages IV.E.21 to IV.E.22 of the DEIR.

b) **Mitigation Measures.** The following mitigation measures are hereby adopted and will be implemented as provided by the Mitigation Monitoring and Reporting Program:

FEIR Mitigation Measures E.5 (pp. IV.E.22 to IV.E.23 of the DEIR).

c) **Findings.** Based on the FEIR and the entire record before the City, the City Council finds that: Implementation of Mitigation Measure E.5 will substantially lessen or avoid Project impacts related to non-stationary sources of noise by requiring the project developers to retain a qualified acoustical engineer to review site plans and building designs for proposed commercial activities to be located adjacent to sensitive residential land uses and to identify a complete list of measures what will reduce noise levels at the nearest residential property line to an $L_{dn}$ of 65 dB or less. Implementation of this mitigation measure would reduce the impacts from non-stationary sources of noise at the project site to a less-than-significant level.

**Impact E.6.** Cumulative development could lead to noise conflicts between incompatible land uses.

a) **Potential Impact.** The impact identified above is described and
b) **Mitigation Measures.** The following mitigation measures are hereby adopted and will be implemented as provided by the Mitigation Monitoring and Reporting Program:

FEIR Mitigation Measure E.6 (pp. IV.F.25 of the DEIR).

c) **Findings.** Based on the FEIR and the entire record before the City, the City Council finds that:

(i) **Effects of Mitigation.** Mitigation Measure E.6 incorporates by reference Mitigation Measures E.2a and E.2b, which include the performance of noise analyses conducted by qualified acoustical consultants. Mitigation Measure E.6 requires that such analyses include consideration of cumulative year 2025 conditions.

(ii) **Remaining Impacts.** Because there are no feasible measures available to further mitigate the significant impact identified above, it is considered significant and unavoidable.

(iii) **Overriding Considerations.** The environmental, economic, social and other benefits of the Project override any remaining significant adverse impacts of the Project relating to its contribution to cumulatively significant noise conflicts between incompatible land uses, as set forth in the Statement of Overriding Considerations below.

IV.F. **Hazards**

**Impact F.2.** Excavation for installation of utilities and other construction on the project site could encounter contaminated soil and/or groundwater and expose workers and the public to hazardous substances.

a) **Potential Impact.** The impact identified above is described and discussed on page IV.F.8 of the DEIR.

b) **Mitigation Measures.** The following mitigation measure is hereby adopted and will be implemented as provided by the Mitigation Monitoring and Reporting Program:

FEIR Mitigation Measure F.2 (p. IV.F.8 to IV.F.9 of the DEIR).

c) **Findings.** Based on the FEIR and the entire record before the City, the City Council finds that: Implementation of Mitigation Measure F.2 will substantially lessen or avoid the impact identified above by requiring completion of Phase I Environmental Site Assessments for all parcels for which a Phase I has not yet been performed, Phase II studies for parcels where indicated, and remediation of any discovered
chemical contamination, underground storage tanks, abandoned drums, or other hazardous materials or wastes under the direction of the City and the County Health Services Department. With the implementation of Mitigation Measure F.2, the impact of potential release of, and exposure to, hazardous materials would be less than significant.

IV.G. Biological Resources

Impact G.1. Implementation of the Specific Plan would result in loss of occupied burrowing owl habitat.

a) Potential Impact. The impact identified above is described and discussed on pages IV.G.10 to IV.G.11 of the DEIR.

b) Mitigation Measures. The following mitigation measures are hereby adopted and will be implemented as provided by the Mitigation Monitoring and Reporting Program:

FEIR Mitigation Measures G.1a and G.1b (pp. IV.G.11 to IV.G.12 of the DEIR).

c) Findings. Based on the FEIR and the entire record before the City, the City Council finds that: Mitigation Measure G.1a requires preparation of a habitat assessment on the project site and within a 500-foot buffer zone prior to the start of construction. In the event that suitable Burrowing Owl habitat is discovered, the measure requires implementation of a set of mitigation measures designed by CDFG to avoid disturbance, injury or death of owls. In the event that it is infeasible to avoid development of areas containing occupied Burrowing Owl habitat, Mitigation Measure H.6b requires that the developers provide habitat compensation on off-site mitigation lands. Together, implementation of these mitigation measures will substantially lessen or avoid the Project’s impacts related to the loss of occupied Burrowing Owl habitat.

Impact G.2. Implementation of the Specific Plan would result in disturbance of nesting raptors and migratory birds.

a) Potential Impact. The impact identified above is described and discussed on page IV.G.12 of the DEIR.

b) Mitigation Measures. The following mitigation measures are hereby adopted and will be implemented as provided by the Mitigation Monitoring and Reporting Program:

FEIR Mitigation Measures G.2a and G.2b (pp. IV.G.12 and IV.G.13 of the DEIR).
c) **Findings.** Based on the FEIR and the entire record before the City, the City Council finds that: Mitigation Measures G2a and G2b provide for a construction schedule that avoids the nesting season, or if that schedule is impracticable, provide for pre-construction surveys conducted by a qualified ornithologist or wildlife biologist to identify and create construction-free buffer zones around nests. These measures would reduce the potential for significant impact to a less-than-significant level.

**Impact G.3.** Implementation of the Specific Plan would result in cumulative loss of Swainson’s hawk and burrowing owl habitat.

a) **Potential Impact.** The impact identified above is described and discussed on page IV.G.13 to IV.G.14 of the DEIR.

b) **Mitigation Measures.** The following mitigation measures are hereby adopted and will be implemented as provided by the Mitigation Monitoring and Reporting Program:

FEIR Mitigation Measures G.3 (pp. ___ of the FEIR).

c) **Findings.** Based on the FEIR and the entire record before the City, the City Council finds that: Implementation of Mitigation Measure G.3 (which incorporates by reference Mitigation Measures G.1a and G.1b) will reduce cumulative impacts on burrowing owl habitat to a less-than-significant level. Implementation of Mitigation Measure G.2, which requires providing suitable off-site habitat management (HM) lands protected by fee title acquisition or conservation easement to provide foraging habitat, as well as long-term management of HM lands through a management endowment funded by project sponsors, will reduce cumulative impacts on Swainson’s hawk habitat to a less-than-significant level.

**IV.H. Hydrology and Water Quality**

**Impact H.1.** Construction activities could result in degradation of water quality in nearby surface water bodies by causing accidental spills and/or by reducing the quality of storm water runoff.

a) **Potential Impact.** The impact identified above is described and discussed on page IV.H.11 of the DEIR.

b) **Mitigation Measures.** The following mitigation measure is hereby adopted and will be implemented as provided by the Mitigation Monitoring and Reporting Program:

FEIR Mitigation Measure H.1 (pp. IV.H.11 and IV.H.12 of the DEIR).

c) **Findings.** Based on the FEIR and the entire record before the City.
the City Council finds that: Implementation of Mitigation Measure H.1 will substantially lessen to a less-than-significant level or avoid the impact identified above by requiring the developers to prepare a Storm Water Pollution Prevention Plan (SWPPP) for each development project (or one master SWPPP for all development) designed to reduce potential impacts to surface water quality during the construction period. The mitigation measure requires that the SWPPP emphasize measures designed to minimize erosion and off-site sedimentation, include specific and detailed Best Management Practices to mitigate construction-related pollutants and reduce erosion, provide for regular meetings of site supervisors to discuss pollution prevention, and include provisions for a monitoring program.

Impacts

Impact H.3. Implementation of the project could alter drainage patterns at the site, potentially causing runoff to exceed the capacity of existing conveyances and result in localized flooding.

a) Potential Impact. The impact identified above is described and discussed on pages IV.H.13 to IV.H.14 of the DEIR.

b) Mitigation Measures. The following mitigation measures are hereby adopted and will be implemented as provided by the Mitigation Monitoring and Reporting Program:

FEIR Mitigation Measures H.3a and H.3b (pp. IV.H.14 and IV.H.15 of the DEIR).

c) Findings. Based on the FEIR and the entire record before the City, the City Council finds that: Mitigation Measure 1.3a requires the developer to acquire written approval from the Modesto Irrigation District to discharge runoff to the MID Lateral No. 6, or in the alternative, develop and alternative plan for disposal of storm water in accordance with the City of Modesto standards for storm water runoff. Mitigation Measure 1.3b requires that every proposed development: a) include adequately-sized detention facilities designed by a licensed professional engineer to accommodate anticipated runoff associated with a 100-year storm event, with such drainage plan to be reviewed and approved by the City of Modesto Department of Public Works; b) include drainage components designed in compliance with City of Modesto standards; and c) establish a funding mechanism for maintenance and annual inspections of the detention basin, drainage ditches, and drainage inlets, with an annual report of inspections and remedial action to be submitted to the City of Modesto Public Works Department. Implementation of Mitigation Measures 1.3a and 1.3b will substantially lessen to a less-than-significant level or avoid the impact described above.

Impact H.6. Existing water supply wells within the Specific Plan area, if not
properly managed or decommissioned, could be damaged during construction, potentially resulting in impacts to groundwater quality.

a) **Potential Impact.** The impact on existing water supply wells identified above is described and discussed on page IV.H.16 of the DEIR.

b) **Mitigation Measures.** The following mitigation measures are hereby adopted and will be implemented as provided by the Mitigation Monitoring and Reporting Program:

FEIR Mitigation Measure H.6 (pp. IV.H.16 and IV.H.17 of the DEIR).

c) **Findings.** Based on the FEIR and the entire record before the City, the City Council finds that: Mitigation Measure H.6 requires that a survey shall be conducted to locate existing water supply wells and that each identified well shall be either properly abandoned or properly sealed in compliance with California Well Standards. Implementation of this Mitigation Measure will reduce this impact to a less-than-significant level.

IV.K. Water Supply

**Impact K.2. Demand from the project would cause water pressure problems within the City’s water distribution system.**

a) **Potential Impact.** The impact identified above is described and discussed on page IV.K.14 of the DEIR.

b) **Mitigation Measures.** The following mitigation measures are hereby adopted and will be implemented as provided by the Mitigation Monitoring and Reporting Program:

FEIR Mitigation Measure K.2 (p. IV.K.15 of the DEIR).

c) **Findings.** Based on the FEIR and the entire record before the City, the City Council finds that: Implementation of Mitigation Measure K.2, which requires the currently proposed project infrastructure be supplemented by the installation of an additional pipeline and which recognizes system improvements currently planned to be installed by the City, will reduce this impact to a less-than-significant level.

IV. Findings Regarding Project Alternatives.

A. Identification of Project Objectives.

The CEQA Guidelines state that the “range of potential alternatives to the proposed project shall include those that could feasibly accomplish most of the basic purposes of the project and could avoid or substantially lessen one or more of the
significant effects” of the Project. CEQA Guidelines § 15126.6(c). Thus, an evaluation of the Project objectives is key to determining which alternatives should be assessed in the EIR.

The DEIR lists eight specific objectives for the Project (pages III.2 and III.3):

1. Create a mixed-use area adjacent to the Kaiser Modesto Medical Center which will serve the hospital and its visitors, the immediate business park area, and residential areas. Provide a vibrant village atmosphere which provides a safe, pedestrian-friendly environment.

2. Create an extended hours community by balancing business park and medical center uses with residential and retail to provide greater safety through increased surveillance and activity.

3. Attract small businesses that provide support services to the hospital and business park uses.

4. Provide multi-family residential uses, both apartments and condominiums, to provide housing choices for doctors and nurses, hospital employees and support staff, visitors, single parents, business owners and employees, and independent seniors.

5. Design a healthy, smart growth development that increases physical activity via walking and bicycling, reduces dependence on automobiles, and increase transit use.

6. Provide incentives to reduce traffic through the use of shared parking and reduced automobile parking standards. Balance the supply and management of parking to address the needs of the businesses, residents, and employees.

7. Provide for employment-intensive uses in an attractive “campus-like” setting that is consistent with the needs of the target industries identified in the Kiernan Business Park Specific Plan.

B. Alternatives Analyzed in the FEIR.

The CEQA Guidelines state that the range of potential alternatives to the proposed project shall include those that could feasibly accomplish most of the basic purposes of the project and could avoid or substantially lessen one or more of the significant effects of the Project. The City evaluated the alternatives listed below.

1. No Project Alternative.

   a) Findings. The No Project Alternative is discussed at pages VI.2 of the DEIR. The No Project Alternative is rejected as an alternative, because it would not feasibly achieve the objectives of the Project.

   b) Explanation. Under the No Project Alternative, the Project site would not be developed in accordance with the proposed Kiernan Business
Park Specific Plan Amendment #4 and physical conditions on the project site would remain as they currently are. The 86 acres within City of Modesto limits would continue in existing agricultural, residential, and commercial uses. The 67 acres in the County’s land use designation and zoning would not be incorporated into the City of Modesto’s boundaries and would remain in current agricultural and residential land use. Although the No Project Alternative would avoid the Project’s significant impacts, it would not further the City’s Project objectives of: creating a safe, pedestrian-friendly and vibrant mixed-use area to serve the Kaiser Modesto Medical Center and the immediate business park area; attracting small business and promoting employment-intensive uses consistent with the needs identified in the Kiernan Business Park Specific Plan; and designing a healthy, smart growth development that reduces automobile dependence and traffic.

2. Existing Kiernan Business Park Specific Plan Alternative

a) Findings. The Existing Kiernan Business Park Specific Plan Alternative is discussed at pages VI.3 through VI.15 of the DEIR. The Existing Kiernan Business Park Specific Plan Alternative is rejected as an alternative, because it would not feasibly achieve the objectives of the Project.

b) Explanation. The Existing Kiernan Business Park Specific Plan Alternative would result in the site being developed in accordance with the existing Kiernan Business Park Specific Plan Business Park (BP) land use designation, which allows for business park, office, and regional commercial development, but no residential uses. Impacts resulting from development under the existing Business Park Specific plan would be slightly greater than, but similar to, those identified for the proposed project. Additional mitigation measures in the area of transportation and circulation would be necessary to alleviate the traffic impacts of the existing Business Park Specific plan, and yet the alternative would not achieve the proposed project’s objectives that arise from including residential uses within the Business Park Specific Plan: creating a safer, extended hours community; smart growth development that reduces dependence on automobiles; and creating a mixed-use area in the immediate business park that provides a safe, pedestrian-friendly environment as well as housing for hospital and business park staff and business owners.

3. Reduced Intensity Alternative.

a) Findings. The Reduced Intensity Alternative is discussed at pages VI.15 through VI.28 of the DEIR. The Reduced Intensity Alternative is rejected as an alternative, because it would not feasibly achieve the objectives of the Project.

a) Explanation. Under the Reduced Intensity Alternative, the western portion of the project site would be developed with BP, MU and MHDR land uses. About 40 percent less land area would be developed than is proposed with the Kiernan Business Park Specific Plan Amendment #4. Compared to the proposed project, the Reduced Intensity Alternative would have roughly 40 percent less BP space, 40 percent less MU space, but 92 more residential units in the MHDR land use area. Although the Reduced Intensity Alternative would result in reduced, though similar, impacts as compared to the Project, and although the DEIR identifies this alternative as
the environmentally superior alternative, it would diminish the Project objectives of attracting small businesses that provide support services to Kaiser Modesto and the business park and providing for employment-intensive uses consistent with the needs of the target industries identified in the Kiernan Business Park Specific Plan. Reducing the MU space by 40 percent would substantially lessen the opportunity for development of small businesses that provide support services to Kaiser Modesto and the business park. Reducing the BP space by 40 percent would substantially reduce the project’s ability to provide for employment-intensive uses and be inconsistent with the anticipated General Plan intensity of .40 FAR overall.

V. Statement of Overriding Considerations.

Pursuant to Public Resources Code Section 21081 and CEQA Guidelines Section 15093, this City Council adopts and makes the following Statement of Overriding Considerations regarding the remaining significant unavoidable impacts of the Project, as discussed above, and the anticipated economic, social and other benefits of the Project.

The City finds and determines that: (i) the majority of the significant impacts of the Project will be reduced to acceptable levels by the mitigation measures recommended in these Findings; (ii) the City’s approval of the Project as proposed will result in certain significant adverse environmental effects that cannot be avoided even with the incorporation of all feasible mitigation measures into the Project; and (iii) there are no other feasible mitigation measures or other feasible Project alternatives that would further mitigate or avoid the remaining significant environmental effects. The significant effects that have not been mitigated to a less-than-significant level and are therefore considered significant and unavoidable are:

- IV.B.1 – Agricultural Resources – Implementation of the proposed project would directly result in the permanent loss of Prime Farmland.
- IV.B.3 – Agricultural Resources – Implementation of the proposed project would incrementally contribute to the cumulative loss of prime agricultural land in the Modesto area and in Stanislaus County.
- IV.C.1 – Transportation and Circulation – Construction and occupancy of the project site would result in significant impacts at study intersections adjacent to and near the project site under the existing plus project scenario.
- IV.C.2 – Transportation and Circulation – Construction and occupancy of the project site would result in significant impacts on freeway and roadway segments adjacent to and near the project site under the existing plus project scenario.
- IV.C.3 – Transportation and Circulation – Construction and occupancy of the project site would result in significant impacts on freeway ramp merge/diverge interchanges near the project site under the existing plus project scenario.
- IV.C.4 – Transportation and Circulation – Construction and occupancy of the project site would result in significant impacts at study intersections adjacent to and near the project site under the near-term baseline plus project scenario.

- IV.C.5 – Transportation and Circulation – Construction and occupancy of the project site would result in significant impacts on freeway and roadway segments adjacent to and near the project site under the near-term baseline plus project scenario.

- IV.C.6 – Transportation and Circulation – Construction and occupancy of the project site would result in significant impacts on freeway ramp merge/diverge areas near the project site under the near-term baseline plus project scenario.

- IV.C.7 – Transportation and Circulation – Construction and occupancy of the project site would result in significant impacts on freeway and roadway segments adjacent to and near the project site under the cumulative baseline plus project scenario.

- IV.D.1 – Air Quality – Emissions of criteria pollutants during project construction would contribute to existing violations of the ambient air quality standards in the region.

- IV.D.2 – Air Quality – Emissions of criteria pollutants during project operation would contribute to existing violations of the ambient air quality standards in the region.

- IV.D.6 – Air Quality – The project would cause a cumulatively considerable net increase of pollutants for which the San Joaquin Valley is designated as nonattainment.

- IV.D.7 – Air Quality – The proposed project, including annexation of the proposed parcels to the City of Modesto and changes to adopted community plans, could conflict with or obstruct implementation of the ozone and PM10 attainment plans.

- IV.E.6 – Noise – Cumulative development could lead to noise conflicts between incompatible land uses.

The following statement identifies the reasons why, in the City’s judgment, the benefits of the Project outweigh the significant and unavoidable effects. The substantial evidence supporting the enumerated benefits of the Project can be found in the preceding findings, which are herein incorporated by reference, in the Project itself, and in the record of proceedings as defined in Section II.A. Each of the overriding considerations set forth below constitutes a separate and independent ground for finding that the benefits of the Project outweigh its significant adverse environmental effects and is an overriding consideration warranting approval.
The City finds that the Project, as conditionally approved, would have the following economic, social, technological, and environmental benefits:

1. **Growth Consistent With General Plan.** The City’s General Plan provides an overall framework for the City’s growth. The Kiernan Business Park Specific Plan, as amended, provides an area-specific comprehensive framework for attractive and distinctive development within the Kiernan Avenue area that is consistent with the goals and policies of the General Plan.

2. **Housing.** The Kiernan Business Park Specific Plan Amendment #4 allows for 342 dwelling units in a variety of residential housing types and configurations. 262 of the dwelling units may be developed as Medium High Density Residential, at 18 to 24 units per acre. The variety and range of housing types allowed under the Specific Plan will increase opportunities for entry level and step-up housing, and provide for a balance of housing with business and retail to create a vibrant, extended-hours community.

3. **Infrastructure Needs.** The Kiernan Business Park Specific Plan Amendment #4 provides for the public facilities and infrastructure necessary to support smart growth in the Kiernan Avenue area, emphasizing pedestrian, bicycle and transit uses, and allowing for the incorporation of residences near work sites to minimize dependence on automobile usage.

4. **Economic Development and Job Creation.** The Kiernan Avenue area is a prime job-creating location because of its proximity to Highway 99 and North Modesto. The Kiernan Business Park Specific Plan Amendment #4 provides for commercial and residential development that will serve enhance Modesto’s local economy, generate jobs for residents, and create a better jobs/housing balance.

5. **Public Revenues.** The Kiernan Business Park Specific Plan Amendment #4 provides for new small business development opportunities on the north side of Modesto, which in turn will enhance the City’s economic base through increased property and sales tax revenue.
KIERNAN BUSINESS PARK SPECIFIC PLAN AMENDMENT #4 PROJECT MITIGATION MONITORING AND REPORTING PROGRAM

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<td><strong>Agricultural Resources</strong></td>
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<tr>
<td>B.1: Prior to any actual development in the Kiernan Business Park Specific Plan area, the City Council would consider creation of a farmland mitigation program to determine whether such a program could feasibly provide partial mitigation for the loss of prime farmland.</td>
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<tr>
<td>Project Developers and City of Modesto</td>
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<tr>
<td>City of Modesto shall finalize review and consideration of the adoption of a farmland mitigation program. Project Developers shall implement applicable portions of the program, if approved by City.</td>
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<td>Community and Economic Development Department shall ensure farmland mitigation program is considered and instituted, if approved by the City Council.</td>
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<td>The consideration of a farmland mitigation program shall be prior to issuance of certificate of occupancy for the first building within the plan area.</td>
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<tr>
<td>B.3: Prior to any actual development in the Kiernan Business Park Specific Plan area, the City Council would consider creation of a farmland mitigation program to determine whether such a program could feasibly provide partial mitigation for the loss of prime farmland. (Same as Mitigation Measure B.1)</td>
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<p>| <strong>Transportation and Circulation</strong> |
| C.1b: Kiernan Avenue and Sisk Road: Widen Kiernan Avenue to provide two through lanes in each direction. |
| City of Modesto and Caltrans |
| The identified road improvements shall be completed by Caltrans and City of Modesto. |
| City Engineer shall verify completion of improvements. |
| Improvements shall be completed prior to issuance of a building permit for the final building within the first phase of development. |
| C.1c: Kiernan Avenue and Stoddard Road: Widen Kiernan Avenue to provide two through lanes in each direction. Signalize the intersection. |
| City of Modesto and Caltrans |
| The identified road improvements shall be completed by Caltrans and City of Modesto. |
| City Engineer shall verify completion of improvements. |
| Improvements shall be completed prior to issuance of a building permit for the final building within the first phase of development. |</p>
<table>
<thead>
<tr>
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<tr>
<td>C.1d: Kiernan Avenue and Dale Road:</td>
<td>City of Modesto and Caltrans</td>
<td>The identified road improvements shall be completed by Caltrans and City of Modesto.</td>
<td>City Engineer shall verify completion of improvements.</td>
<td>Improvements shall be completed prior to issuance of a building permit for the final building within the first phase of development.</td>
</tr>
<tr>
<td>C.1f: Bangs Avenue and American Avenue:</td>
<td>Project Developers and the City of Modesto</td>
<td>Project Developers shall either construct the improvements or pay their fair share and the improvements will be constructed by the City of Modesto.</td>
<td>City Engineer shall verify completion of improvements per City specifications.</td>
<td>Improvements shall be completed prior to issuance of a building permit for the final building within the second phase of development.</td>
</tr>
<tr>
<td>C.1k: Pelendale Avenue and Sisk Road:</td>
<td>City of Modesto</td>
<td>The identified road improvements shall be completed by the City of Modesto.</td>
<td>City Engineer shall verify completion of improvements.</td>
<td>Improvements shall be completed prior to issuance of a building permit for the final building within the first phase of development.</td>
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<tr>
<td>C.2c: Pelandale Avenue:</td>
<td>City of Modesto</td>
<td>The identified road improvements shall be completed by the City of Modesto.</td>
<td>City Engineer shall verify completion of improvements.</td>
<td>Improvements shall be completed prior to issuance of a building permit for the final building within the first phase of development.</td>
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<tr>
<td>C.4c: Dale Road and Kaiser Main Entrance/The Plaza Way:</td>
<td>Project Developers and Kaiser Modesto Medical Center</td>
<td>Kaiser Modesto Medical Center shall build the southbound lane. Project Developers shall construct the northbound lane.</td>
<td>City Engineer shall verify completion of improvements per City specifications.</td>
<td>Improvements shall be completed prior to issuance of a building permit for the final building within the first phase of development.</td>
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<td><strong>C.4d: Bangs Avenue and American Avenue:</strong> Construct a two-lane roundabout with a northbound by-pass lane; or install a traffic signal and add an eastbound through lane, an eastbound left-turn pocket, a westbound through lane, a westbound left-turn pocket, a northbound left-turn lane, a northbound through lane, a northbound right-turn only lane, a southbound left-turn lane, and a southbound shared through/right-turn lane.</td>
<td>Project Developers</td>
<td>Project Developers shall either construct the improvements or pay their fair share and the improvements will be constructed by the City of Modesto</td>
<td>City Engineer shall verify completion of improvements per City specifications.</td>
<td>Improvements shall be completed prior to issuance of a building permit for the final building within the third phase of development.</td>
</tr>
<tr>
<td><strong>C.7: Pelandale Avenue and Dale Road:</strong> No physical improvements are recommended for these roadways beyond the planned maximum cross-section. Other measures, such as signal timing coordination and transportation demand management measures, should be implemented to maximize through traffic efficiency and minimize single occupant vehicle trips. The project sponsor shall prepare a transportation demand management program to the satisfaction of City staff.</td>
<td>Project Developers</td>
<td>Project Developers shall prepare a transportation demand management program to the satisfaction of staff. Project Developers shall implement the provisions of the program in conjunction with development.</td>
<td>City Traffic Engineer and Transit Manager shall review and approve transportation demand management program, and monitor its use through the imposition of conditions of approval upon future development.</td>
<td>Transportation demand management program shall be instituted prior to development entitlement for any building within the plan area.</td>
</tr>
<tr>
<td><strong>C.8: Construction-related traffic activity:</strong> The project sponsor shall develop a construction management plan for review and approval by the City Public Works Department and the Community Development Department.</td>
<td>Project Developers</td>
<td>Project Developers shall prepare a construction management plan to the satisfaction of staff. Project Developers shall implement the provisions of the program in conjunction with development.</td>
<td>Public Works Director and Community &amp; Economic Development Director or designees shall review and approve a construction management plan, and monitor its provisions through the imposition of conditions of approval upon future development.</td>
<td>Construction management program shall be instituted prior to development entitlement for any building or tentative map within the plan area.</td>
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### Mitigation Measure

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<tr>
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<td>C.9: C.1a, e, g, h, i, j, and l, C.2a, 2b, and 2d, C.3, C.4 a, b, e, f, g, h, j, k, and l, C.5.a, b, c, d and e, C.6: Potentially Infeasible Mitigations: Construct roadway segment, intersection and interchange improvements as specified in the subject sections of the EIR, where they become feasible.</td>
<td>City</td>
<td>The City shall ensure that these improvements are made when timing, jurisdictional and funding issues are resolved and shall require the project to provide a fair-share contribution to the off-site facilities, as specified in the FEIR, through payment to the project CFD.</td>
<td>C&amp;ED Director</td>
<td>Prior to Adoption of the CFD by City Council and ongoing.</td>
</tr>
</tbody>
</table>

### Air Quality

**D.1:** The construction plans for each group of buildings shall incorporate the following recommendations from the District to minimize emissions during construction phases:

- The project developers shall review Regulation VIII of the San Joaquin Valley Air Pollution Control District regulations and submit a compliance plan to the San Joaquin Valley Air Pollution Control District prior to commencing any phase of construction. The compliance plan must demonstrate that the current requirements of Regulation VIII will be implemented.

  **Project Developers**

  Project Developers shall review Regulation VIII and submit a compliance plan to the San Joaquin Valley Air Pollution Control District. The compliance plan shall be incorporated in construction contracts and implemented by developers.

  Project Developers shall provide draft compliance plan to the Community and Economic Development Department for review and approval.  

  Compliance plan shall be submitted to and approved by the San Joaquin Valley Air Pollution Control District prior to the issuance of a grading or building permit, whichever occurs first.

- Prior to the issuance of construction contracts, the project developers shall perform a review of new technology, as it relates to heavy-duty equipment, to determine what, if any, advances in emissions reduction are available for use. It is anticipated that in the near future both NOx and PM10 control equipment will be available. The San Joaquin Valley Air Pollution Control District should be consulted during this process.

  **Project Developers**

  Project Developers shall consult with SJVAPCD and identify available new technology and shall incorporate requirements for new technology in construction contracts. At minimum, future development shall achieve average emissions equal to or less than Tier II standards of 4.8 g/hp-hr for NOx, based on current

  Project Developers shall report to the San Joaquin Valley Air Pollution Control District on new technology to be included.

  The Project Developers shall incorporate available new technology in construction contracts.
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<tr>
<td>Dust suppression shall be implemented on all disturbed areas, including inactive</td>
<td>Project Developers</td>
<td>Construction foreman or liaison shall implement necessary dust suppression</td>
<td>Construction foreman or liaison shall assign personnel to</td>
<td>Implement measures throughout the construction</td>
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<tr>
<td>outdoor storage piles, by application of water, chemical stabilizer suppressant, or</td>
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<td>activities in conjunction with project development</td>
<td>dust suppression duties and record techniques used in</td>
<td>duration.</td>
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<td>covering with a tarp, vegetative ground cover, or other suitable cover.</td>
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<td>daily construction log and submit results in a monthly</td>
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<td>report to the San Joaquin Valley Air Pollution Control</td>
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<tr>
<td>• Dust suppression shall be implemented following the addition of materials to, or the removal of materials from, the surface of outdoor storage piles using water or chemical stabilizer/suppressant.</td>
<td>Project Developers</td>
<td>Construction foreman or liaison shall implement necessary dust suppression activities in conjunction with project development</td>
<td>Construction foreman or liaison shall assign personnel to dust suppression duties and record techniques used in daily construction log and submit results in a monthly report to the San Joaquin Valley Air Pollution Control District.</td>
<td>Implement measures throughout the construction duration</td>
</tr>
<tr>
<td>• Dust suppression shall be implemented on all on-site unpaved roads, and off-site unpaved access roads used during the construction phase, using water or chemical stabilizer/suppressant.</td>
<td>Project Developers</td>
<td>Construction foreman or liaison shall implement necessary dust suppression activities in conjunction with project development</td>
<td>Construction foreman or liaison shall assign personnel to dust suppression duties and record techniques used in daily construction log and submit results in a monthly report to the San Joaquin Valley Air Pollution Control District.</td>
<td>Implement measures throughout the construction duration</td>
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(cont'd.)
### Mitigation Measure

- All land clearing, grubbing, scraping, excavation, land leveling, grading, cut and fill, and demolition activities shall be effectively controlled of fugitive dust emissions by application of water during the activity or by presoaking.

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<td></td>
<td>Project Developers</td>
<td>Construction foreman or liaison shall implement necessary dust suppression activities in conjunction with project development</td>
<td>Construction foreman or liaison shall assign personnel to dust suppression duties and record techniques used in daily construction log and submit results in a monthly report to the San Joaquin Valley Air Pollution Control District.</td>
<td>Implement measures throughout the construction duration</td>
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</table>

- When materials are transported off site, all material shall be covered, or effectively wetted to limit visible dust emissions, and at least six inches of freeboard space from the top of the container shall be maintained.

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<td></td>
<td>Project Developers</td>
<td>Construction foreman or liaison shall implement necessary dust suppression activities in conjunction with project development</td>
<td>Construction foreman or liaison shall assign personnel to dust suppression duties and record techniques used in daily construction log and submit results in a monthly report to the San Joaquin Valley Air Pollution Control District.</td>
<td>Implement measures throughout the construction duration</td>
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<td>• The project developers shall limit traffic speed on unpaved roads to 15 miles per hour.</td>
<td>Project Developers</td>
<td>The construction foreman or liaison shall post speed limit signs and ensure that construction vehicle operators travel at or less than 15 mph.</td>
<td>The construction foreman or liaison shall monitor speed limits. Project Developers shall monitor compliance throughout the construction duration.</td>
<td>The Project Developers shall install speed limit signs as part of the site preparation process prior to issuance of a grading permit. Implement measures throughout the construction duration.</td>
</tr>
<tr>
<td>• The project developers shall install sandbags or other control measures to prevent silt runoff to public roadways from sites with a slope greater than 1 percent.</td>
<td>Project Developers</td>
<td>All slopes shall be measured by the Project Developers and identified on the building permit plan set submitted. The construction foreman or liaison shall oversee the placement of sandbags or other runoff control measure(s) on all slopes determined to have a slope greater than 1 percent.</td>
<td>The construction foreman or liaison shall monitor runoff control measure(s) and shall conduct weekly runoff control measure(s) inspections and shall submit results in a monthly report to the San Joaquin Valley Air Pollution Control District.</td>
<td>The building permit submittal shall identify slope measurements. Implement measures throughout the construction duration.</td>
</tr>
<tr>
<td>• The project developers shall install wheel washers for all exiting trucks, or wash off all trucks and equipment leaving the site, to prevent track-out of soil to public roadways.</td>
<td>Project Developers</td>
<td>The construction foreman or liaison shall ensure that wheel washers and/or equipment washers are in place at all points of exit from the site and are correctly implemented.</td>
<td>Construction foreman or liaison shall record inspections in a daily construction log and submit results in a monthly report to the San Joaquin Valley Air Pollution Control District.</td>
<td>The washers shall be provided prior to issuance of grading or building permit, whichever occurs first. Implement measures throughout the construction duration.</td>
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<td>• The project developers shall install windbreaks at windward sides of construction areas, if necessary to prevent wind-blown dust.</td>
<td>Project Developers</td>
<td>Windbreaks shall be installed by the Project Developers. The construction foreman or liaison shall ensure that windbreaks are correctly placed and implemented.</td>
<td>The construction foreman or liaison shall inspect installed windbreaks on a weekly basis and record inspections in the construction log. Inspection results shall be submitted in a monthly report to the San Joaquin Valley Air Pollution Control District.</td>
<td>Windbreaks shall be installed by the Project Developers prior to the issuance of grading or building permit, whichever occurs first. Implement measures throughout the construction duration.</td>
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<tr>
<td>• The project developers shall suspend excavation and grading activity when winds exceed 20 miles per hour.</td>
<td>Project Developers</td>
<td>Project developers shall install wind speed measuring devices and ensure that these devices are correctly located and calibrated.</td>
<td>The construction foreman shall cease all excavating and grading activities when wind speed measuring devices indicate speeds over 20 mph. Suspension of construction activity due to wind speeds shall be recorded in the construction log. Construction reports shall be submitted to the San Joaquin Valley Air Pollution Control District on a monthly basis.</td>
<td>Wind speed measuring devices shall be installed by the Project Developers prior to the issuance of grading or building permit, whichever occurs first. Implement measures throughout the construction duration.</td>
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<tr>
<td>- The project developers shall limit the area subject to excavation, grading, and other construction activity at any one time.</td>
<td>Project Developers</td>
<td>The project sponsor shall provide a written statement with any request for development permits or other permits involving movement of soil supporting a determination that the request minimizes the amount of exposed soil on the project site during the relevant construction period. The Community and Economic Development Director will either accept the report or require additional means to reduce the amount of exposed soil, such as hydroseeding or planting vegetation with irrigation, in areas that are proposed to be exposed for more than 20 days with no construction activity. Construction shall comply with the General Construction Permit.</td>
<td>The construction foreman or liaison shall ensure that construction activities do not exceed the allowable area of excavation and grading activity permitted on the site and shall oversee implementation of any required best management practices. The construction foreman or liaison shall record excavation and grading activities in a construction log on a daily basis and submit results in a monthly report to the San Joaquin Valley Air Pollution Control District.</td>
<td>Project Developer shall provide a plan to reduce soil exposure prior to the issuance of grading or building permit, whichever occurs first. Implement measures throughout the construction duration.</td>
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<td>- The project developers shall ensure that the accumulation of mud or dirt is</td>
<td>Project Developers</td>
<td>The construction foreman or liaison shall establish and implement a daily street</td>
<td>The construction foreman or liaison shall monitor daily street sweeping and provide a daily log.</td>
<td>Project Developer shall provide a daily street sweeping schedule prior</td>
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<td>expeditiously removed from adjacent public streets at least once every 24 hours</td>
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<td>sweeping schedule during construction activities that involve movement of soil.</td>
<td>Results shall be submitted in a monthly report to the San Joaquin Valley Air Pollution Control</td>
<td>to the issuance of grading or building permit, whichever occurs first.</td>
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<td>when construction activities are occurring (the use of dry rotary brushes is</td>
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<td>District.</td>
<td>Implement measures throughout the construction duration.</td>
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<td>expressly prohibited except where preceded or accompanied by sufficient wetting</td>
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<td>to limit the visible dust emissions).</td>
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<td></td>
<td>Project Developers</td>
<td>Project Developers shall consult with SJVAPCD to identify feasible goals for</td>
<td>The Project Developers shall report to the San Joaquin Valley Air Pollution Control District.</td>
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<td>equipment use. These goals shall be incorporated into construction contracts.</td>
<td>the alternative-fuel equipment to be used in each phase.</td>
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<td>The Project Developers shall use alternative-fuel construction equipment</td>
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<td>throughout the construction duration, where feasible.</td>
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<td>Project Developers</td>
<td>The construction foreman or liaison shall limit idling time on the construction</td>
<td>The construction foreman or liaison shall monitor idling.</td>
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<td>site to a 10-minute maximum.</td>
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<td>site to a 10-minute maximum.</td>
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<tr>
<td>• The project developers shall limit the hours of operation of heavy-duty equipment and/or the amount of equipment in use to the minimum practical.</td>
<td>Project Developers</td>
<td>The construction foreman or liaison shall limit the hours of heavy-duty equipment and/or the amount of equipment in use on the construction site.</td>
<td>The construction foreman or liaison shall monitor hours and use of heavy-duty equipment.</td>
<td>Implement measures throughout the construction duration.</td>
</tr>
<tr>
<td>• The project developers shall replace fossil-fueled equipment with electrically driven equivalents (provided they are not run via a portable generator set), where feasible.</td>
<td>Project Developers</td>
<td>Project Developers shall incorporate requirements to replace fossil-fueled equipment with electrically driven equivalents, where feasible.</td>
<td>Project Developers shall report to the San Joaquin Valley Air Pollution Control District about electrically driven equipment to be used in each phase.</td>
<td>The Project Developers shall use electrically driven equipment throughout the construction duration, where feasible.</td>
</tr>
<tr>
<td>• The project developers shall take steps to curtail construction activity during periods of high ambient pollutant concentrations; this may include reducing construction activity during the peak hour of vehicular traffic on adjacent roadways or ceasing construction activity during days declared as Spare the Air days by the San Joaquin Valley Air Pollution Control District.</td>
<td>Project Developers</td>
<td>The construction foreman or liaison shall comply with traffic control programs to curtail construction activities during periods of high ambient pollution based on advisories from the the San Joaquin Valley Air Pollution Control District, such as on declared ‘Spare the Air’ days.</td>
<td>The construction foreman or liaison shall curtail or cease construction activity based on the San Joaquin Valley Air Pollution Control District advisories.</td>
<td>During advisory periods, such as ‘Spare the Air’ days, construction activity shall be curtailed or stopped.</td>
</tr>
<tr>
<td>• The project developers shall implement activity management to reduce cumulative short-term impacts.</td>
<td>Project Developers</td>
<td>Project Developers shall submit and implement an activity management plan.</td>
<td>The San Joaquin Valley Air Pollution Control District shall review the activity management plan.</td>
<td>Activity management plan shall be submitted to and approved prior to the issuance of a grading or building permit, whichever occurs first. Implement measures throughout the construction duration.</td>
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<tr>
<td><strong>D.2a:</strong> Implementation of design features to reduce emissions from motor vehicle activity:</td>
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<tr>
<td>• The project developers shall incorporate improvements for transit service, including bus turnouts, transit loading areas, and shelters.</td>
<td>Project Developers</td>
<td>Project Developers shall provide a plan for bus turnouts, loading and shelters along perimeter streets.</td>
<td>The Transit Manager shall review and approve the plan.</td>
<td>Review and approval of transit service improvements shall occur prior to development entitlement for any building or tentative map within the plan area. All improvements shall be completed prior to certificate of occupancy or recordation of tentative map, or as determined by the FMP and IFP.</td>
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<td>• The project developers shall incorporate sidewalks and bicycle paths throughout the site and connect those facilities to any nearby pedestrian and bicycle facilities, including those located at open space areas, parks, schools, or commercial areas.</td>
<td>Project Developers</td>
<td>Project Developers shall submit plans to the Community and Economic Development Department that identify the appropriate locations of all pedestrian and bicycle facilities elements and implement the plans.</td>
<td>The Community and Economic Development Department shall review and approve plans and ensure the improvements are constructed accordingly.</td>
<td>Review and approval of pedestrian and bicycle facilities shall occur prior to development entitlement for any building within the plan area. All improvements shall be completed prior to certificate of occupancy, or as determined by the FMP and IFP.</td>
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<td>Mitigation Measure</td>
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<tr>
<td>• The project developers shall incorporate secure bicycle storage and parking facilities throughout the site.</td>
<td>Project Developers</td>
<td>Project Developers shall submit plans to the Community and Economic Development Department that identify all the bicycle storage and parking facilities on the project site and implement the plans.</td>
<td>The Community and Economic Development Department shall review and approve plans and ensure the improvements are constructed accordingly.</td>
<td>Review and approval of bicycle storage facilities shall occur prior to development entitlement for any building within the plan area. All improvements shall be completed prior to certificate of occupancy, or as determined by the FMP and IFP.</td>
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**D.2b:** The project developers shall prepare a trip reduction plan for review and approval by the City of Modesto prior to occupation of each phase of the proposed project. To be compliant with the policies of the *Urban Area General Plan*, the trip reduction plan shall address how the following features will be implemented:

- Providing matching services (for participants in carpools and vanpools) by employers with over 100 weekday employees or coordination with Caltrans' “Commuter Computer” program;
- Employer-based dissemination of commute information;
- A program to guarantee rideshare participants a ride home in case of emergency;
- Flex-time scheduling;
- Site plan design which encourages pedestrian movement between adjacent land uses;
- Incentives such as preferred location of four percent of parking for carpoolers and hybrid or other clean-fuel vehicles;
- Encouraging submission of site plans featuring mixed land uses or “neo-traditional” design; and
- Encouraging employers to experiment with telecommuting options, where feasible.

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<td>D.2c: The site design shall fulfill the following requirements to reduce emissions from energy consumption:</td>
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<td>• The project developers shall incorporate energy-efficient building design features including automated control systems for heating and air conditioning and energy efficiency to achieve a 20 percent reduction beyond the requirements of the Building Code (Title 24, California Code of Regulations), increased wall and ceiling insulation beyond Building Code requirements, light-colored roof materials to reflect heat, and energy-efficient lighting and lighting controls.</td>
<td>Project Developers</td>
<td>Project developers shall submit construction drawings showing energy efficient building design features and implement the measures</td>
<td>The Building Division shall review and approve all construction plans to ensure that all energy efficiency measures are included and implemented.</td>
<td>Prior to issuance of building permit for any building, construction plans shall show that all energy efficient measures are included. Prior to certificate of occupancy for any building, all energy efficient design features included in construction plans shall be implemented.</td>
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<td>• The project developers shall orient buildings to the north to maximize natural cooling and heating.</td>
<td>Project Developers</td>
<td>Project developers shall submit site plans demonstrating northern orientation of buildings and construct the buildings in accordance with the approved plans.</td>
<td>The Planning Division shall confirm appropriate building orientation in conjunction with development plan review. The Building Division shall ensure buildings are constructed in accordance with the approved plans.</td>
<td>Building orientation shall be reviewed prior to development plan approval for any building within the plan area.</td>
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<tr>
<td>• The project developers shall incorporate approved deciduous trees to provide shade on the south- and west-facing sides of buildings.</td>
<td>Project Developers</td>
<td>Project Developers shall submit site plans showing shade trees on the south- and west-facing sides of buildings and implement the plans.</td>
<td>The Department of Parks, Recreation and Neighborhoods shall review and approve all landscape plans.</td>
<td>Prior to building permit issuance of each project, landscape plans shall be approved. Implement measures prior to certificate of occupancy.</td>
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<td>Mitigation Measure</td>
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<td>• Natural gas burning units for space and water heating in the residential units shall use low-NOx space heaters and water heaters.</td>
<td>Project Developers</td>
<td>Project developers shall show low-NOx space and water heaters in construction drawings for natural gas burning residential units and implement the measures.</td>
<td>The Building Divisions shall review and approve all construction plans to ensure that low-NOx space and water heaters are included.</td>
<td>Prior to issuance of building permit for any residential building, construction plans shall be provided demonstrating the use of low-NOx space and water heaters.</td>
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<td>• All access roads, driveways, and parking areas serving the Business Park (BP) shall be constructed with materials that minimize particulate emissions in accordance with the requirements of SJVAPCD Regulation VIII and are appropriate to the scale and intensity of use.</td>
<td>Project Developers</td>
<td>Project developers shall demonstrate access roads, driveways and parking areas are in compliance with the requirements of Regulation VIII for particulate emissions</td>
<td>The San Joaquin Valley Air Pollution Control District shall review and approve plans for access roads driveways and parking areas</td>
<td>Prior to the issuance of a grading permit improvements plans shall be reviewed and approved by the San Joaquin Valley Air Pollution Control District.</td>
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<tr>
<td>D.8: The project shall implement the following measures to reduce the project impacts on global climate change:</td>
<td>Project Developers</td>
<td>Project Developers shall provide plans demonstrating compliance with global climate change measures to the Community and Economic Development Department for review and approval.</td>
<td>The Planning Division shall review and approve the plans. The Building Division shall ensure development is constructed in accordance with the approved plans.</td>
<td>Plans demonstrating consistency with global climate change measures shall be reviewed and approved prior to development entitlement for any building within the plan area.</td>
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<td>• For lighting in public streets, parking areas, and recreation areas, use of energy-efficient light and mechanical, computerized, or photocell switches to reduce unnecessary energy use;</td>
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<td>• Use of alternative, non-fossil-fuel-based energy systems;</td>
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<td>• Orientation of lots to maximize natural energy conservation;</td>
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<td>• Provision of bike racks and changing rooms for commercial development;</td>
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<td>• Planting of large-canopy, deciduous shade trees that are designed to fit in planters that are large enough to contain them without disrupting public improvements at project buildout.</td>
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Kiernan Business Park Specific Plan Amendment #4 Project Mitigation Monitoring and Reporting Program

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<td><strong>Noise</strong></td>
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| E.2a: To reduce noise levels at significantly impacted proposed residential land uses would require the construction of noise barriers up to approximately six feet in height and properly locating outdoor-use areas to be partially shielded by project proposed buildings. Specific noise barrier heights required to reduce noise levels to a less-than-significant noise level depend on the setback distance and exposure to the adjacent roadway and are to be determined by a qualified acoustical consultant. Noise barriers may need to be constructed at the following locations:
  - Along Healthcare Way
  - Along The Plaza Way
  - Along Dale Road
Since noise barriers typically provide noise reduction for receivers at a first-story height, some façades at higher elevations would likely be exposed to noise levels that require sound-rated windows to meet Building Code requirements. With the additional sound insulation to be determined by a qualified acoustical consultant, interior noise levels would achieve the applicable standards of an Lₐₜ less than 45 dB. | Project Developers shall submit plans demonstrating compliance with community noise standards by locating buildings and outdoor activity areas for residential land uses outside the 65dBA noise contour, as dimensioned on page IV.E.17 of the EIR; or Project Developers shall commission a noise study, if buildings or outdoor activity areas are proposed within the 65dBA contour, to determine appropriate sound attenuation measures. These measures shall be incorporated into the development plans | The Planning Division shall review development plans and noise studies, where required, to ensure buildings and outdoor activity areas meet community noise standards. The Building Division shall ensure development is constructed in accordance with the approved plans | Prior to development entitlement for any building, development plans demonstrating compliance with community noise standards shall be provided. Prior to building permit issuance for any building, construction plans shall show all noise control features. The noise control features shall be installed prior to certificate of occupancy. |
| E.2b: The City and state do not specify interior noise standards for commercial uses. Commercial land uses located more than approximately 130 feet from the Kiernan Avenue centerline, 50 to 70 feet of the Dale Road centerline (depending on location along Dale Road, see Table IV.E.4), and 45 feet from the Bangs Avenue centerline would be exposed to noise levels interpreted by the City as "Normally Acceptable", and would be considered less-than-significant impacts. A qualified acoustical consultant should prepare a supplemental noise analysis for any commercial building located at closer distances (i.e., exposed to greater than 70 dB Lₐₜ) to these roadways. The noise analysis should include an interior noise goal specific to the building and mitigation necessary to meet the goal. | Project Developers shall submit plans demonstrating compliance with community noise standards by locating buildings for commercial land uses outside the 70dBA noise contour, as dimensioned on page IV.E.17 of the EIR; or Project Developers shall commission a noise study, if buildings are proposed within the 70dBA contour, to determine appropriate sound attenuation measures. These measures shall be incorporated into the development plans. | The Planning Division shall review development plans and noise studies, where required, to ensure buildings and outdoor activity areas meet community noise standards. The Building Division shall ensure development is constructed in accordance with the approved plans | Prior to development entitlement for any building, development plans demonstrating compliance with community noise standards shall be provided. Prior to building permit issuance for any building, construction plans shall show all noise control features. The noise control features shall be installed prior to certificate of occupancy. |
### Mitigation Measure

**E.3:** Each development project that involves commercial uses or multi-family residential buildings that would include outdoor mechanical equipment shall carry out the following:

- Retain a qualified acoustical engineer to prepare a noise study for submission to the City, ensuring that noise levels will not exceed City Standards. The following noise reduction measures should be considered by the acoustical engineer:
  - Use of acoustical silencers on inlet and discharge openings of mechanical equipment,
  - Installation of parapets or enclosures with louvers or other barriers to shield noise,
  - Orientation of equipment so that it faces away from sensitive receptors, and
  - Orientation or setback of buildings to increase distance from sensitive receptors.

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<td>Project Developers</td>
<td>Project Developers shall submit a noise report to the Community and Economic Development Department and implement the features where outdoor mechanical equipment is proposed.</td>
<td>The Community and Economic Development Department shall review and approve the noise report.</td>
<td>A noise report shall be provided and approved prior to development entitlement for any commercial or residential building within the plan area. Prior to building permit issuance of each project, construction plans shall show all noise reduction features are included. The noise reduction features shall be implemented prior to certificate of occupancy.</td>
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**E.4:** Construction-related pile driving activities shall be conducted in accordance with the following:

- Limit the operation or use of pile-driving equipment to the hours between 7:00 a.m. and 9:00 p.m. daily (except Saturday and Sunday and state or federal holidays, when the prohibited time shall be before 9:00 a.m. and after 9:00 p.m.):
- Perform vibration measurements at MRI locations during pile driving to assess the potential for interference with the equipment. This should be conducted as a "mock-up" test to assess the potential for vibration impacts. A compatible schedule may need to be developed for pile-driving activities that would allow for the non-impacted operation of the MRI equipment.

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<td>Project Developers</td>
<td>Project Developers shall limit operations of pile driving equipment to between the hours of 7:00 a.m. and 9:00 p.m. on weekdays, and 9:00 a.m. and 9:00 p.m. on holidays and weekends. Project Developers shall perform a vibration measurements test at MRI locations in coordination with Kaiser Medical Center, and, if interference would occur, schedule pile driving activities around the use of MRI equipment.</td>
<td>Project Developers shall perform a vibration measurement test at the location closest to MRI facilities to determine if interference would occur and establish a schedule for review and approval by the building division for pile driving activities. The construction foreman or liaison shall ensure that pile driving only occurs during approved hours.</td>
<td>A pile driving schedule shall be established prior to the issuance of a building permit for the first building within the project area.</td>
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| E.5: A qualified acoustical engineer shall be retained to review the site plans and building designs for proposed commercial activities when located adjacent to sensitive residential land uses. The acoustical engineer shall consider the following measures, and shall identify a complete list of measures that will reduce noise levels at the nearest residential property line to an $L_{eq}$ of 65 dB:  
• Limiting loading and exterior warehouse activities to daytime hours from 7:00 a.m. to 9:00 p.m.  
• Requiring loading and trash compacting and collection activities to be fully enclosed.  
• Location and orientation of parking lot areas with respect to noise sensitive land uses.  
• Establishing minimum setback distances between common open space for multi-family residential buildings and locations of loading docks, warehousing activity areas, and trash compaction and collection areas in commercial developments. | Project Developers | Project Developers shall submit a noise report to the Community and Economic Development Department and implement the noise features. | The Community and Economic Development Department shall review and approve final noise report and building plans demonstrating compliance with the identified noise features. | Prior to development entitlement for any commercial building, a noise study shall be reviewed and approved. Prior to building permit issuance, construction plans shall show all noise reduction features specified by the noise study. The noise reduction features shall be implemented prior to certificate of occupancy. |
<p>| E.6: Acoustical recommendations prepared to address Impact E.2 should also consider cumulative year 2025 conditions. | Project Developers | Noise studies required as a result of mitigation measures E.2a and E.2b. shall include a cumulative 2025 analysis | The Planning Division shall ensure that a cumulative 2025 analysis is performed on required noise studies | Prior to development entitlement, a noise analysis including cumulative 2025 conditions shall be reviewed and approved by the Planning Division. |</p>
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<td>F.2: Conduct Phase I Environmental Site Assessments, conduct site investigations, and implement remediation as necessary.</td>
<td>Project Developers</td>
<td>Project Developers shall retain a registered environmental assessor to conduct Phase I Environmental Site Assessments on properties where the assessment was not previously prepared, conduct further site investigations, where necessary, and implement the remediation.</td>
<td>The Community and Economic Development Department shall review and approve the Phase I Environmental Site Assessments, other necessary site investigations and remediation in collaboration with the Stanislaus County Environmental Review Committee and County Health Services Department.</td>
<td>Conduct Phase I Environmental Site Assessments and other necessary site investigations prior to issuance of grading or building permit, whichever occurs first. Remediation shall be implemented prior to issuance of grading or building permit or as determined by the Phase I ESA and/or other site investigations.</td>
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## Biological Resources

### G.1a: Implementation of formal CDFG guidelines (Staff Report on Burrowing Owl Mitigation) to avoid and minimize impacts to Burrowing Owls.

In conformance with federal and state regulations regarding the protection of raptors, a habitat assessment in accordance with CDFG guidelines for Burrowing Owls should be completed prior to the start of construction. Burrowing Owl habitat on the project site and within a 500-foot (150 m) buffer zone should be assessed. If the habitat assessment concludes that the site and immediate vicinity lack suitable Burrowing Owl habitat, no additional action would be warranted. However, if suitable habitat is located on, or immediately adjacent to, the site, all Burrowing Owl habitat should be mapped at an appropriate scale, and the following mitigation measures should be implemented:

1. In conformance with federal and state regulations regarding the protection of raptors, a pre-construction survey for Burrowing Owls, in conformance with CDFG guidelines, should be completed no more than 30 days prior to the start of construction within suitable habitat. Three additional surveys should also be completed per CDFG guidelines prior to construction.

2. No Burrowing Owls will be evicted from burrows during the nesting season (February 1 through August 31). Eviction outside the nesting season may be permitted pending evaluation of eviction plans and receipt of formal written approval from the CDFG authorizing the eviction.

3. A 250-foot (76 m) buffer, within which no new activity will be permissible, will be maintained between project activities and nesting Burrowing Owls during the nesting season. This protected area will remain in effect until August 31, or at the CDFG’s discretion and based upon monitoring evidence, until the young owls are foraging independently.

4. If accidental take (disturbance, injury, or death of owls) occurs, the CDFG will be notified immediately.

### Schedule

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<td>Project Developers</td>
<td>Project Developer shall retain a qualified biologist to conduct pre-construction survey for breeding or resident burrowing owls in pastures, fallow fields, canal rights of way and other areas where ground squirrels occupy or have occupied burrows or pipes or other locations that could be used by burrowing owls. If found, establish and implement construction schedule to avoid nesting season, identify buffer areas, and report accidental take to CDFG.</td>
<td>CDFG shall review the habitat assessment and mitigation measures.</td>
<td>Complete survey and establish and implement construction schedule and buffer area prior to issuance of the first grading or building permit, whichever occurs first, and monitor during construction.</td>
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| G.1b: Compensation for loss of Burrowing Owl habitat. If pre-construction surveys determine that Burrowing Owls occupy the site and avoiding development of occupied areas is not feasible, then habitat compensation on off-site mitigation lands should be implemented. Habitat Management (HM) lands comprising existing Burrowing Owl foraging and breeding habitat should be acquired and preserved. An area of 6.5 acres (2.6 ha) (the amount of land found to be necessary to sustain a pair or individual owl) should be secured for each pair of owls, or individual in the case of an odd number of birds. As part of an agreement with the CDFG, the project applicant should secure the performance of its mitigation duties by providing the CDFG with security in the form of funds that would:  
- Allow for the acquisition and/or preservation of 6.5 acres (2.6 ha) of HM lands;  
- Provide initial protection and enhancement activities on the HM lands, potentially including, but not limited to, such measures as fencing, trash clean-up, artificial burrow creation, grazing or mowing, and any habitat restoration deemed necessary by CDFG;  
- Establish an endowment for the long-term management of the HM lands; and  
- Reimburse the CDFG for reasonable expenses incurred as a result of the approval and implementation of this agreement. | Project Developers and Project Biologist | If avoidance is not feasible, work with CDFG to secure a habitat mitigation agreement. | CDFG shall review and approve the habitat mitigation plan. | Habitat mitigation agreement shall be secured prior to issuance of the first grading or building permit, whichever occurs first. |
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<td>G.2a: Compensation for the disturbance of nesting raptors and migratory birds. To the extent practicable, construction should be scheduled to avoid the nesting season, January through August.</td>
<td>Project Developers</td>
<td>Project Developers shall retain a qualified ornithologist or wildlife biologist to conduct a survey no more that 14 days prior to demolition or construction activities occurring January through April and no more than 30 days prior to demolition or construction activities occurring May through August. The ornithologist, in consultation with the CDFG, shall determine potential for impact to nesting raptors and migratory birds and establish a construction-free buffer zone accordingly in consultation with the CDFG.</td>
<td>CDFG shall review the habitat assessment and proposed construction buffer zone.</td>
<td>Construction-free buffer zone shall be established prior to issuance of the first grading or building permit, whichever occurs first.</td>
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<tr>
<td>G.2b: If it is not possible to avoid the nesting season, pre-construction surveys shall be conducted to ensure that no nests of rare or protected species would be disturbed during project implementation. Surveys shall be conducted no more than 14 days prior to construction during the early part of the breeding season (January through April) and no more than 30 days during the late part of the breeding season (May through August). Surveys shall include all potential nest substrates in and adjacent to the construction area. If an active nest is found close enough to a construction area to be disturbed, the project ornithologist, in conjunction with CDFG, shall determine the extent of a buffer-free zone around the nest.</td>
<td>Project Developers</td>
<td>Project Developers shall retain a qualified ornithologist or wildlife biologist to conduct a survey no more that 14 days prior to demolition or construction activities occurring January through April and no more than 30 days prior to demolition or construction activities occurring May through August. The ornithologist, in consultation with the CDFG, shall determine potential for impact to nesting raptors and migratory birds and establish a construction-free buffer zone accordingly in consultation with the CDFG.</td>
<td>CDFG shall review the habitat assessment and proposed construction buffer zone.</td>
<td>Construction-free buffer zone shall be established prior to issuance of the first grading or building permit, whichever occurs first.</td>
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<td>G.3: Same as Mitigation Measures G.1a and G.1b for burrowing owls; the cumulative loss of habitat for Swainson's hawks should be mitigated by providing 0.25 acre of off-site HM lands comprising irrigated row crops, ruderal areas, fallow fields, and irrigated pasture. All HM lands protected under this requirement may be protected through fee title acquisition or conservation easement (acceptable to CDFG) on agricultural lands or other suitable habitats that provide foraging habitat for Swainson's hawks. Management Authorization holders/project sponsors shall provide for the long-term management of HM lands by funding a management endowment (the interest on which shall be used for managing the HM lands) at a rate agreed upon by CDFG.</td>
<td>Project Developers</td>
<td>Same as Mitigation Measures G.1a and G.1b, and Project Developers shall provide 0.25 acre of off-site HM lands comprising irrigated row crops, ruderal areas, fallow fields, and irrigated pasture through fee title acquisition or conservation easement, and provide a funding management endowment at a rate agreed upon by the CDFG.</td>
<td>CDFG shall review the habitat assessment and approve the mitigation measures.</td>
<td>Same as Mitigation Measures G.1a, G.1b, and provide 0.25 acre of off-site HM lands and management endowment prior to first grading or building permit, whichever occurs first.</td>
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<td>Hydrology and Water Quality</td>
<td>Project Developers</td>
<td>Project Developers shall prepare and implement SWPPP.</td>
<td>The City Engineer shall review and approve the SWPPP.</td>
<td>Complete the SWPPP prior to issuance of a grading or building permit, whichever occurs first, for each project. SWPPP measures shall be implemented during grading and construction for each project.</td>
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<td>H.I: The project proponent shall prepare an SWPPP for each development project under the Specific Plan (or one master SWPPP for all development) designed to reduce potential impacts to surface water quality through the construction period of all of the project components (whether or not the particular portion of the project disturbs more than 1 acre). The project SWPPP shall include and adequately address all elements in the State General Construction Permit (Waste Discharge Requirements for Discharges of Stormwater Runoff Associated with Construction Activity, State Water Resources Control Board Order Number 99-08-DWO).</td>
<td>Project Developers</td>
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<td>H.I.3a: As a condition of approval of the final grading and drainage plans for the first project proposed in the Specific Plan area, the developer must acquire written approval from the MID to discharge runoff to the MID Lateral No. 6 (up to 5.0 cubic feet per second), and provide this documentation to the City of Modesto Public Works Department. If approval from MID cannot be obtained then an alternative plan for disposal for stormwater would need to be developed and accepted in accordance with the City of Modesto standards for stormwater runoff.</td>
<td>Project Developers</td>
<td>Project Developers shall secure written approval from MID for discharge into canal Alternative stormwater drainage design must be approved if MID approval is not obtained.</td>
<td>City Engineer shall review and approve the agreement with MID or review and approve an alternative design if necessary.</td>
<td>The MID agreement or alternative design shall be in place prior to issuance of a grading permit for the first development within the plan area.</td>
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| **H.3b:** As a condition of approval of the final grading and drainage plans for all projects proposed within the Specific Plan area, detailed hydraulic analysis must demonstrate that implementation of the proposed drainage plans will:  
  - Include adequately sized detention facilities to accommodate anticipated runoff associated with the 100-year storm event. A licensed professional engineer shall prepare the final drainage plan for the project and plans must be submitted to the City of Modesto Public Works Department for review and approval.  
  - Include drainage components that are designed in compliance with City of Modesto standards. The grading and drainage plans shall be reviewed for compliance with these requirements by the Public Works Department.  
  - Establish a funding mechanism for maintenance and annual inspections of the detention basin, drainage ditches, and drainage inlets. Any accumulation of sediment or other debris shall be promptly removed. An annual report documenting the inspection and any remedial action conducted shall be submitted to the City of Modesto Public Works Department for review. | Project Developers | Project Developers shall prepare a drainage plan that demonstrates compliance with City Standards and implement the plan. | The City Engineer shall review and approve the drainage plan. | Prior to issuance of a grading permit for any development within the plan area, or where appropriate as determined by the FMP and IFP, final grading and drainage plans meeting City Standards shall be reviewed and approved. Grading and drainage facilities shall be developed and maintained in accordance with the approved plans. |
| **H.6:** Before a grading plan for development of a particular parcel within the plan area is approved, a well survey shall be conducted by a State-registered geologist or engineer to determine the location and characteristics of each well for that particular parcel. The survey results shall be submitted to the City for review. The water supply wells shall either be:  
  1. Properly abandoned in compliance with the California Department of Water Resources, California Well Standards and Stanislaus County Code, Chapter 9.36 prior to final approval of the grading plan, or  
  2. Inspected by a qualified professional to determine whether each well is properly sealed at the surface to prevent infiltration of water-borne contaminants into the well casing or surrounding gravel pack. The California Well Standards require an annular surface seal of at least 20 feet. If any of the wells are found not to comply with this requirement, the applicant shall retain a qualified well driller to install the required seal. Documentation of the inspections and seal installations, if any, shall be provided to the City prior to final approval of the grading plan. | Project Developers | Project Developers shall conduct a well survey to determine location and characteristics of each well. The survey shall be conducted by a state-registered geologist or engineer, and results shall be submitted to the City Engineer and implemented by the developers. | The City Engineer shall review the well survey and determine whether the well be abandoned or sealed. | The well survey shall be conducted prior to issuance of a grading survey for any development within the plan area and shall be implemented prior to certificate of occupancy. |
### Mitigation Measure

#### Water Supply

**K.2:** In order to maintain adequate water pressure in the City’s delivery system, it would be necessary to design and construct project specific, local, and system-wide water facility improvements. There are three categories of improvements:

- Project-specific improvements funded by the project sponsor,
- Localized system improvements that would be funded by the City’s Ongoing Strengthening and Repairing Water Pipelines Program,
- System-wide Improvements funded by the City’s Connection Fee Program.

The localized system improvements and system-wide improvements are currently planned to be installed by the City. In addition to the project infrastructure currently proposed by the project sponsor (i.e., 10 inch to 12 inch water distribution pipelines would be installed following the alignments of Healthcare Way, The Plaza Way, Chopra Parkway, and other planned roads within the project site), a 12-inch diameter pipeline should be constructed in Kiernan Avenue along the entire northern boundary of the project site. This pipeline is recommended in order to enhance system reliability to the project by providing a system loop and an alternative route for delivery of water supplies. Installation of the recommended pipeline would not create any new impacts within the Kiernan Business Park Specific Plan Amendment #4 project site.

<table>
<thead>
<tr>
<th>Mitigation Measure</th>
<th>Mitigation Responsibility</th>
<th>Monitoring Actions</th>
<th>Monitoring / Reporting Responsibility</th>
<th>Schedule</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>K.2:</strong> In order to maintain adequate water pressure in the City’s delivery system, it would be necessary to design and construct project specific, local, and system-wide water facility improvements. There are three categories of improvements:</td>
<td>Project Developers and City of Modesto</td>
<td>Project Developers shall fund and install project specific water facility improvements. The project developer shall pay fair share of localized system improvements through payment of water fees. The City shall construct the localized system improvements and system-wide improvements necessary to serve the project.</td>
<td>City of Modesto Public Works Department</td>
<td>Project-specific improvements shall be approved prior to issuance of a grading permit for any development within the plan area. Project-specific improvements shall be installed prior to certificate of occupancy for any building within the plan area. Modesto Public Works Department to install system-wide improvements as needed</td>
</tr>
</tbody>
</table>

**General Notes:**

The Capital Facilities Fee and other applicable fee programs identify regional infrastructure improvements (such as roads, sewer, water, etc.) that are based on the buildout of the City’s Urban Area General Plan. These projects are identified in the City’s Capital Improvement Program. If a development project occurs in the project area that requires infrastructure improvements be constructed in advance of the CIP schedule, then the development will be responsible to construct the identified improvement. The developer will enter into a reimbursement agreement with the City, construct the project, and will be reimbursed per the terms of the agreement.
MODESTO CITY COUNCIL
RESOLUTION NO. 2009-419

A RESOLUTION APPROVING AN AMENDMENT TO THE MODESTO URBAN AREA GENERAL PLAN REGARDING THE KIERNAN BUSINESS PARK SPECIFIC PLAN AMENDMENT NO. 4, PROPERTY LOCATED ON THE EAST SIDE OF DALE ROAD, BETWEEN KIERNAN AVENUE AND BANGS AVENUE (CHOPRA)

WHEREAS, on August 15, 1995, by Resolution No. 95-408, the City Council certified the Final Master Environmental Impact Report (“Master EIR”) (SCH No. 92052017) for the Modesto Urban Area General Plan, and

WHEREAS, a General Plan for the City of Modesto entitled “City of Modesto Urban Area General Plan”, was adopted by the City Council by Resolution No. 95-409 on August 15, 1995, in accordance with Section 65300 of the Government Code, and


WHEREAS, Government Code Section 65358 permits the amendment of General Plans by the legislative body up to four times per year, and

WHEREAS, Aruna Chopra (“Applicant”) of Chopra Development Enterprises, LLC, submitted the Kiernan Business Park Specific Plan Amendment No. 4 (“Project”) application (File No. P-SPA-06-002) to facilitate the development of Mixed Use and Medium-High Density Residential land uses on property located on the east side of Dale Road, between Kiernan Avenue and Bangs Avenue, (“Property”), and
WHEREAS, City staff determined that this Specific Plan would require an amendment to the General Plan; and

WHEREAS, the Applicant has filed a General Plan Amendment (File No. GPA-06-003) to re-designate a portion of the Kiernan Carver Comprehensive Planning District from Business Park (BP) to Mixed Use (MU); and

WHEREAS, a Final Environmental Impact Report was prepared for the Kiernan Business Park Specific Plan Amendment No. 4 (SCH No. 2007062071) and the proposed General Plan Amendment which analyzed the potential environmental effects of the proposed Project; and

WHEREAS, on July 29, 2009, the Planning Commission held a duly noticed public hearing in the Tenth Street Place Chambers located at 1010 Tenth Street, Modesto, California, at which hearing evidence both oral and documentary relating to this proposed amendment to the Modesto Urban Area General Plan was considered; and

WHEREAS, after said public hearing, the Modesto Planning Commission adopted Resolution No. 2009-22, recommending to the City Council adoption of the proposed amendment to the General Plan as described in Exhibit “A”, attached hereto and incorporated herein by reference; and

WHEREAS, said matter was set for a public hearing of the City Council to be held on September 1, 2009, in the Tenth Street Place Chambers located at 1010 Tenth Street, Modesto, California, at which date and time said duly noticed public hearing of the City Council was held for the purpose of receiving public comment on the proposed amendment to the Modesto Urban Area General Plan as described in Exhibit “A”, attached hereto and incorporated herein by reference.
NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Modesto that it hereby finds and determines that the proposed amendment to the Modesto Urban Area General Plan as described in Exhibit “A”, attached hereto and incorporated herein by reference is required for the public health, safety and welfare of the citizens of Modesto.

BE IT FURTHER RESOLVED by the Council of the City of Modesto that the proposed amendment to the Modesto Urban Area General Plan is consistent with the Final Environmental Impact Report for the Kiernan Business Park Specific Plan Amendment No. 4 (SCH No. 2007062071) and has been adequately analyzed by the EIR.

BE IT FURTHER RESOLVED by the Council of the City of Modesto that it hereby adopts the proposed amendment to the General Plan as described in Exhibit “A”, attached hereto and incorporated herein by reference.

BE IT FURTHER RESOLVED by the Council of the City of Modesto that the Community & Economic Development Department Director is hereby authorized and directed to forward certified copies of this resolution and said amendment to the General Plan to the Board of Supervisors, and file a notice of determination within five (5) business days with the Stanislaus County Clerk pursuant to Section 21152 of the Public Resources Code.

BE IT FURTHER RESOLVED that the project applicant shall indemnify, defend, and hold harmless the City of Modesto, its agents, officers, and employees from any and all claims, actions, or proceedings against the City of Modesto, its agents, officers, and employees to attack, set aside, void, or annul, any approval by the City of Modesto and its advisory agency, appeal board, or a legislative body concerning a general plan.
amendment for the specific plan (File No. GPA 06-003), and related files. The City of Modesto shall promptly notify the applicant of any claim, action, or proceeding and shall cooperate fully in the defense. If the City fails to do so, the applicant shall not thereafter be responsible to defend, indemnify, or hold City harmless.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 1st day of September, 2009, by Councilmember Marsh, who moved its adoption, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Hawn, Keating, Lopez, Marsh, O'Bryant, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: 

SEAL

APPROVED AS TO FORM:

By: SUSANA ACA LA WOOD, City Attorney
Exhibit "A"

URBAN AREA GENERAL PLAN AMENDMENT
FOR THE KIERNAN BUSINESS PARK SPECIFIC PLAN AMENDMENT #4

Existing/Proposed GP Land Use Diagrams

Existing

Proposed
MODESTO CITY COUNCIL
RESOLUTION NO. 2009-420

A RESOLUTION APPROVING AN AMENDMENT NO. 4 TO THE KIERNAN BUSINESS PARK SPECIFIC PLAN TO FACILITATE THE DEVELOPMENT OF MIXED USE AND MEDIUM HIGH DENSITY RESIDENTIAL DEVELOPMENT (CHOPRA)

WHEREAS, Government Code Section 65450 et. seq. permits cities and counties to adopt specific plans for the systematic implementation of the General Plan and to provide for a greater level of detail in planning sites or areas of special interest or value, and

WHEREAS, on April 1, 1997, the City Council by Resolution No. 97-159 adopted the Kiernan Business Park Specific Plan, and

WHEREAS, Government Code Section 65453 permits the amendment of specific plans as often as deemed necessary by the legislative body, and

WHEREAS, on November 4, 1997, the City Council by Resolution No. 97-631 adopted Amendment No. 1 to the Kiernan Business Park Specific Plan to add language to allow for changes in utility service providers, and

WHEREAS, on April 7, 1998, the City Council by Resolution No. 98-170 adopted Amendment No. 2 to the Kiernan Business Park Specific Plan to add language to permit indoor theaters in the Regional Commercial Designation within a Planned Development Zone, and

WHEREAS, on August 10, 2004, the City Council by Resolution No. 2004-37 adopted Amendment No. 3 to the Kiernan Business Park Specific Plan to modify the Land Use and Circulation diagrams and development standards for the Kaiser Medical
Center Site, to revise the planned street system in the future business park and to incorporate design standards into the Specific Plan, and

WHEREAS, Chopra Development Enterprises has filed an application to amend the Kiernan Business Park Specific Plan to modify the Land Use, Circulation and Utility diagrams and associated text, to revise portion of the planned roadway system, to add design standards and guidelines for Mixed Use and Medium-High Density Residential land uses and to reformat the Specific Plan in accordance with the Specific Plan Procedures and Preparations Guide, and

WHEREAS, in connection with public circulation and review of the Draft Environmental Impact Report for the Kiernan Business Park Specific Plan Amendment No. 4 (SCH No. 2007062071), the proposed amendments to the Kiernan Business Park Specific Plan were released for public review and comment for a 45-day period from December 17, 2008 to February 2, 2009, and

WHEREAS, on July 20, 2009, the Planning Commission held a duly noticed public hearing in the Tenth Street Place Chambers located at 1010 10th Street, Modesto, California, relating to this proposed amendment to the Kiernan Business Park Specific Plan, and

WHEREAS, after said public hearing, the Modesto City Planning Commission adopted Resolution No. 2009-23, recommending to the City Council an amendment to the Kiernan Business Park Specific Plan to modify the Land Use, Circulation and Utility diagrams and associated text, to revise portion of the planned roadway system, to add design standards and guidelines for Mixed Use and Medium-High Density Residential
land uses and to reformat the Specific Plan in accordance with the Specific Plan
Procedures and Preparations Guide, and

WHEREAS, said matter was set for a public hearing of the City Council to be
held on September 1, 2009, 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
amendment to the Kiernan Business Park Specific Plan, and

WHEREAS, the proposed specific plan amendment was analyzed by the Final
EIR for the Kiernan Business Park Specific Plan Amendment No. 4 (SCH No.
2007062071), and the City Council by Resolution No. 2009-418 has certified the Final
EIR.

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

1. The proposed amendment to the Kiernan Business Park
Specific Plan is consistent with the General Plan, because:

a. The amendment would result in a mix of compatible land uses
within close proximity, provide a range of jobs, and provide for
diversity of housing, among other things (Section III.C.3).

b. The proposed changes to the Circulation System are
consistent with the General Plan Circulation System
(Sec. V.B.2.):

2. The proposed Specific Plan Amendment is within the scope of the
Kiernan Business Park Specific Plan Amendment #4 Final EIR
(SCH No. 2003072085) and has been adequately analyzed by the
EIR.
BE IT FURTHER RESOLVED by the Council of the City of Modesto that the Kiernan Business Park Specific Plan Amendment No. 4, on file in the office of the Community and Economic Development Department and incorporated herein by reference, is hereby adopted.

BE IT FURTHER RESOLVED by the Council that the City Clerk is hereby authorized and directed to send certified copies of this resolution and said amendment to the Kiernan Business Park Specific Plan to the Board of Supervisors of the County of Stanislaus.

BE IT FURTHER RESOLVED that the project applicant shall indemnify, defend, and hold harmless the City of Modesto, its agents, officers, and employees from any and all claims, actions, or proceedings against the City of Modesto, its agents, officers, and employees to attack, set aside, void, or annul, any approval by the City of Modesto and its advisory agency, appeal board, or a legislative body concerning the specific plan (File No. SPA-06-002). The City of Modesto shall promptly notify the applicant of any claim, action, or proceeding and shall cooperate fully in the defense. If the City fails to do so, the applicant shall not thereafter be responsible to defend, indemnify, or hold City harmless.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 1st day of September, 2009, by Councilmember Marsh, who moved its adoption, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Hawn, Keating, Lopez, Marsh, O'Bryant, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: [Signature]

STEFANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: [Signature]

SUSANA ACALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2009-421

A RESOLUTION APPROVING A NEW CAPITAL IMPROVEMENT PROGRAM (CIP) ACCOUNT FOR THE PROJECT TITLED, "ARRA STREET OVERLAY AND ADA CURB RAMP IMPROVEMENTS", CONTINGENT UPON RECEIPT OF AUTHORIZATION TO PROCEED ("FNM-76") FROM FEDERAL HIGHWAY ADMINISTRATION (FHWA), WHICH DID NOT APPEAR IN THE ADOPTED CAPITAL IMPROVEMENT PROGRAM FOR FISCAL YEAR 2009-2010

WHEREAS, the City proposes to utilize American Recovery and Reinvestment Act (ARRA) funds to design and construct a street overlay and Americans with Disabilities Act (ADA) curb ramp improvements project, and

WHEREAS, a list was quickly prepared to include overlay candidate streets and locations requiring ADA curb ramp upgrades, and

WHEREAS, City staff utilized a list maintained by Public Works containing public requests for new or upgraded curb ramps, and

WHEREAS, in addition, the curb ramps adjacent to the streets that will be receiving an asphalt overlay will be required to be upgraded to current ADA standards, and

WHEREAS, City staff submitted the Request for Authorization for preliminary engineering to Caltrans on August 6, 2009, and

WHEREAS, there is an extremely short amount of time to prepare plans and specifications, and receive Authorization to Proceed with construction, and

WHEREAS, per ARRA funding guidelines, we must receive the Authorization to Proceed with construction no later than March 2, 2010, and

WHEREAS, this project was not included in the adopted CIP for Fiscal Year 2009-2010, and
WHEREAS, City staff will attempt to complete plans and specifications by mid-January allowing ample time for Caltrans staff to review and obligate the funds by the March 2nd deadline, and

WHEREAS, the total amount of funding expected for both design and construction of this project is $3,269,225, and

WHEREAS, this project was not included in the adopted CIP for Fiscal Year 2009-2010, and

WHEREAS, City staff recommends approving a new CIP Account 0530-430-H014 for the project titled, “ARRA Street Overlay & ADA Curb Ramp Improvements”, contingent upon receipt of Authorization to Proceed (“FNM-76”) from Federal Highway Administration (FHWA).

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves a new Capital Improvement Program (CIP) Account 0530-430-H014 for the project titled, “ARRA Street Overlay & ADA Curb Ramp Improvements”, contingent upon receipt of Authorization to Proceed (“FNM-76”) from Federal Highway Administration (FHWA).

BE IT FURTHER RESOLVED that the Finance Director, or his/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 1st day of September, 2009, 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: Hawn, Keating, Lopez, Marsh, O’Bryant, 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
A RESOLUTION AMENDING THE FISCAL YEAR 2009-2010 CAPITAL IMPROVEMENT PROGRAM BUDGET, CONTINGENT UPON RECEIPT OF AUTHORIZATION TO PROCEED (“FNM-76”) FROM FEDERAL HIGHWAY ADMINISTRATION (FHWA), IN ORDER TO FULLY FUND THE DESIGN ACTIVITIES FOR THE AMERICAN RECOVERY AND REINVESTMENT ACT (ARRA) FUNDED STREET OVERLAY AND ADA CURB RAMP IMPROVEMENTS PROJECT

WHEREAS, a budget adjustment in the amount of $380,000 is necessary to fully fund the design activities for the ARRA funded Street Overlay and ADA Curb Ramp Improvements project along with engineering/design/administration support from City staff, and

WHEREAS, the Fiscal Year 2009-2010 Capital Improvement Program budget must be amended, contingent upon receipt of Authorization to Proceed (“FNM-76”) from Federal Highway Administration (FHWA), 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, contingent upon receipt of Authorization to Proceed (“FNM-76”) from Federal Highway Administration (FHWA), as shown in Exhibit A.

BE IT FURTHER RESOLVED that the Finance Director, or his/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 1st day of September, 2009, 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: Hawn, Keating, Lopez, Marsh, O’Bryant, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney

(SEAL)

ATTEST: STEPHANIE LOPEZ, City Clerk
FUND:
ARRA Reimbursable Grant – PW Streets

REVENUES:
ARRA Reimbursable Grant – PW Streets 0530-430-H014-3650-53 $380,000

EXPENDITURES:
ARRA Street Overlay & ADA Curb Ramp Improv 0530-430-H014-6010 $380,000
REQUEST FOR BUDGET ADJUSTMENT

Contact Person: Gail Clement
Telephone No.: 15538
Department: Public Works
Fund Title: ARRA-PW Streets

Council Action Date: 9/1/09
Resolution Number: ____________________________

DEPARTMENTAL REVENUES

FROM

TO
MY-0530-430-H014-3650-53 H014 $ - $380,000 $380,000 ARRA Reimbursable Grant-PW Streets

APPROPRIATIONS

FROM

TO
MY-0530-430-H014-6010 H014 $ - $380,000 $380,000 ARRA Street Overlay & ADA Curb Ramp Eng/Desgn/Admin

COMMENTS/JUSTIFICATION

This adjustment is to amend the budget by increasing American Recovery and Reinvestment Act (ARRA) revenues in the amount of $380,000, and appropriating funds to Object 6010-Engineering/Design/Administration in CIP Account H014-ARRA Street Overlay & ADA Curb Ramp Improvements to provide funding for design activities for the project. A copy of the ARRA Authorization to Proceed is attached.

AUTHORIZATION (check if required) SIGNATURE DATE

DEPUTY DIRECTOR (Public Works) [Signature] [Signature] 8/11/09
DEPARTMENT DIRECTOR or AUTHORIZED ASSISTANT [Signature] [Signature] 8/11/09
FINANCE DIRECTOR

CITY MANAGER

TRANSFER NO. ______________________

BY: ___________________ DATE: ________________

PW: AT Template 8/16/05
RESOLUTION AUTHORIZING THE AWARD OF BID AND CONTRACT FOR THE PURCHASE OF ONE BIN LOADER TRUCK FOR THE PUBLIC WORKS DEPARTMENT, FLEET SERVICES DIVISION, TO INTERSTATE TRUCK CENTER, LLC, STOCKTON, CA, AND AUTHORIZING THE PURCHASING MANAGER TO ISSUE A PURCHASE ORDER FOR A TOTAL ESTIMATED COST OF $149,179

WHEREAS, on October 28, 2008, the City Council, by Resolution No. 2008-592, authorized the Purchasing Manager to issue formal Request for Bids (RFB) for new vehicles and heavy equipment, throughout FY 08/09 through various competitive processes, with the Purchasing Division coming back to Council for award authorization, and

WHEREAS, the bin loader truck for the Street Sweeping Division is included in the FY 08/09 new vehicles and heavy equipment list authorized by Council, and

WHEREAS, on March 28, 2009, the Purchasing Division issued RFB No. 0809-22 for the purchase of one bin loader truck to twenty-three (23) prospective bidders, posted the bid on the City’s web site and formally advertised as required by law, and

WHEREAS, based on providing the lowest responsive and responsible bid, City staff recommends the award of bid and contract for the purchase of one bin loader truck for the Public Works Department, Fleet Services Division, to Interstate Truck Center, LLC, Stockton, CA, and authorizing the Purchasing Manager to issue a purchase order for a total estimated cost of $149,179, 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 purchase of one bin loader truck
for the Public Works Department, Fleet Services Division, to Interstate Truck Center, LLC, Stockton, CA, conforms to the Modesto Municipal Code, and

WHEREAS, funds are budgeted in FY 09/10 for the amount of $149,179, in the Fleet Equipment Replacement Fund in account 7210-480-5814-5856.

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 purchase of one bin loader truck for the Public Works Department, Fleet Services Division, to Interstate Truck Center, LLC, Stockton, CA.

BE IT FURTHER RESOLVED that the Purchasing Manager, or his designee, is hereby authorized to issue a purchase order for a total estimated cost of $149,179.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 8th day of September, 2009, 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: Hawn, Keating, Lopez, Marsh, O'Bryant, 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. 2009-424

A RESOLUTION APPROVING A LICENSE AGREEMENT WITH THE MODESTO IRRIGATION DISTRICT FOR UTILIZATION OF A 40-FOOT PORTION OF ITS RIGHT-OF-WAY FOR THE PURPOSE OF INSTALLING, OPERATING AND MAINTAINING A CLASS I BICYCLE TRAIL; AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE AGREEMENT

WHEREAS, the City of Modesto Non-Motorized Transportation Master Plan was adopted by Council in 2006, and

WHEREAS, the Virginia Corridor Trail is included in the adopted Modesto Non-Motorized Transportation Master Plan, and

WHEREAS, the Virginia Corridor Trail is a 4.2-mile Class I bicycle and pedestrian trail, with eight phases of construction planned for the trail, and

WHEREAS, Phases I through IV have been completed, from downtown Modesto to Granger Avenue, or about 1.4 miles, and

WHEREAS, Phase V of the project will link Granger and Bowen Avenues, via a bike/pedestrian bridge over Briggsmore Avenue, and

WHEREAS, construction of Phase V of the Virginia Corridor Trail will occupy a 40-foot portion of the Modesto Irrigation District’s right-of-way, and

WHEREAS, in order to plan for installation and maintenance of Phase V of the trail, a License Agreement with MID is needed,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves a License Agreement with the Modesto Irrigation District for utilization of a 40-foot portion of its right-of-way for the purpose of installing, operating and maintaining a Class I bicycle trail.
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 8th day of September, 2009, 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: Hawn, Keating, Lopez, Marsh, O'Bryant, 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. 2009-425

A RESOLUTION APPROVING THE CITIZENS HOUSING AND COMMUNITY DEVELOPMENT COMMITTEE RECOMMENDED LIST OF APPRAISERS TO BE USED ON A ROATING AS-NEEDED BASIS TO ASSIST THE CITY WITH THE PREPARATION AND REVIEW PROCESS OF APPRAISAL AND ACQUISITION DOCUMENTS, RELATED TO THE NEIGHBORHOOD STABILIZATION PROGRAM

WHEREAS, on May 26, 2009, by Resolution 2009-220, the City Council adopted guidelines for the Housing and Urban Development (HUD) funded Neighborhood Stabilization Program (NSP), for the purpose of allocating funds to organizations and individuals to purchase and rehabilitate foreclosed homes in order to stabilize neighborhoods, and

WHEREAS, acquisitions financed with NSP grant funds are subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA), and its implementing regulations at 49 Code of Federal Regulations (CFR) Part 24, and the requirements set forth in the NSP Notice that was published in the Federal Register on October 6, 2008, and

WHEREAS, HUD anticipates that most of these transactions will qualify as voluntary acquisitions under the applicable regulations of 49 CFR 24.101(b), and

WHEREAS, the NSP Notice requires appraisals to be performed with respect to the NSP funded acquisition of foreclosed upon homes and residential properties, even though they may be considered voluntary under the URA, and

WHEREAS, in those cases, the URA appraisal requirements of 49 CFR 24.103 must be met, and
WHEREAS, the URA and its implementing regulations (49 CFR Part 24) set forth minimum requirements for real property acquisition appraisals for Federal and federally-assisted programs, and

WHEREAS, appraisals subject to the URA must be prepared according to these requirements, and

WHEREAS, in order to assure compliance with the real property acquisition appraisal requirements, the Parks, Recreation and Neighborhoods Department completed a Request for Proposal (RFP), and

WHEREAS, on June 5, 2009, the Parks, Recreation and Neighborhoods Department solicited Request for Proposal (RFP) No. RPAS for appraisal services for the City of Modesto from sixty (60) prospective proposers, posted the proposal on the City’s website, and formally advertised as required by law, and

WHEREAS, on June 24, 2009, the evaluation committee comprised of internal staff met to evaluate and score each proposal, and

WHEREAS, on August 17, 2009, the Citizens Housing and Community Development Committee recommended approving the following appraisers for inclusion on the eligible vendor list: Prime Time Appraisals, W.F. Bambas Appraisal Company, Pacific Valley Appraisal, Inc. Cogdill & Giomi, Inc., and AR/WS,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the eligible vendor list of appraisers to be used on a rotating, as-needed basis to provide appraisal services to assist the City of Modesto with the preparation and review process of appraisal and acquisition documents, related to the Neighborhood Stabilization Program.
The foregoing Resolution was introduced at a regular meeting of the Council of
the City of Modesto held on the 8th day of September 2009, 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: Hawn, Keating, Lopez, Marsh, O’Bryant, 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. 2009-426

A RESOLUTION APPROVING A PURCHASE AND SALE AGREEMENT BETWEEN ACACIA MEMORIAL PARK ASSOCIATION OF MODESTO AND THE CITY OF MODESTO FOR REAL PROPERTY LOCATED AT 800 E. MORRIS AVENUE (APN 111-057-022); AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE PURCHASE AND SALE AGREEMENT, GRANT DEED AND ANY RELATED DOCUMENTS

WHEREAS, the City of Modesto owns the property at 800 E. Morris Avenue (APN 111-057-022), and

WHEREAS, in 2005 the City declared the property as surplus, and now desires to sell the property, and

WHEREAS, the building on the property burned down in 2006 and the City cleared the debris and leveled the property, and

WHEREAS, a proposal of $400,000 for the purchase of the property was offered by Acacia Memorial Park Association of Modesto.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves a Purchase and Sale Agreement between Acacia Memorial Park Association of Modesto and the City of Modesto for real property located at 800 E. Morris Avenue (APN 111-057-022).

BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute the Purchase and Sale Agreement, Grant Deed and any related documents.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 8th day of September, 2009, 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: Hawn, Keating, Lopez, Marsh, O’Bryant, 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. 2009-427

A RESOLUTION AUTHORIZING CITIZEN’S HOUSING AND COMMUNITY DEVELOPMENT COMMITTEE TO APPROVE STATEMENT OF QUALIFICATIONS SUBMITTED FOR THE HOUSING AND URBAN DEVELOPMENT FUNDED NEIGHBORHOOD STABILIZATION PROGRAM, AND ALSO TO REVIEW AND APPROVE FUNDING ASSOCIATED WITH THE NEIGHBORHOOD STABILIZATION PROGRAM FOR THE PURCHASE AND REHABILITATION OF FORECLOSED HOMES; AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE REQUIRED DOCUMENTS

WHEREAS, on July 30, 2008, the President signed Title III of Division B of the Housing and Economic Recovery Act, 2008 (HERA). Section 2301-Emergency Assistance for the Redevelopment of Abandoned and Foreclosed Homes, named Neighborhood Stabilization Program (NSP) allocated $8.1 million to the City of Modesto. NSP funding is considered a special allocation of Community Development Block Grant funds, and

WHEREAS, the Citizens’ Housing and Community Development Committee (“CH&CDC”) originally reviewed the Annual Action Plan Amendment for the NSP funds on November 12, 2008, and it was approved by City Council on November 25, 2008, by Resolution No. 2008-649. The City Manager executed the NSP grant agreement on March 23, 2009, and

WHEREAS, staff developed guidelines for allocating the funding based on four areas and approved as part of the City of Modesto NSP which was approved by City Council on May 12, 2009, by Resolution No. 2009-220, and

WHEREAS, staff recommends that due to time constraints and volatility of the real estate market, as well as the tight constraints to allocate the NSP funds, that the
CH&CDC have authorization to approve Request For Qualifications applications as well as review and approve funding requests for the NSP, and

WHEREAS, the CH&CDC established an NSP Sub-committee at its August 17, 2009, meeting.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby authorizes the Citizen’s Housing and Community Development Committee to approve Statement of Qualifications submitted for the Housing and Urban Development funded Neighborhood Stabilization Program, and also to review and approve funding associated with the Neighborhood Stabilization Program for the purchase and rehabilitation of foreclosed homes.

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

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 8th day of September, 2009, 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:    Hawn, Keating, Lopez, Marsh, O’Bryant, 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. 2009-428

RESOLUTION APPROVING THE REPORT RESPONDING TO THE
STANISLAUS COUNTY 2008-2009 CIVIL GRAND JURY REPORT
REGARDING LEASING PRACTICES AT THE MODESTO CITY/COUNTY
AIRPORT, AND AUTHORIZING THE MAYOR TO EXECUTE THE
RESPONSE LETTER TO THE GRAND JURY

WHEREAS, a report from the Stanislaus County 2008-2009 Civil Grand Jury
contained findings to Case No. 09-06C arising from a complaint alleging that the
Modesto City Council approved ground and hangar leases without appropriate review,
and

WHEREAS, the report made five recommendations regarding the leasing
practices at the Modesto City/County Airport, and

WHEREAS, under State law, the City of Modesto has until September 29, 2009,
to provide a written response to Jack M. Jacobson, Presiding Judge, Stanislaus County
Superior Court.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Modesto
that it hereby accepts the report responding to the Stanislaus County 2008-2009 Civil
Grand Jury Report regarding leasing practices at the Modesto City/County Airport.

BE IT FURTHER RESOLVED that the Mayor is authorized to execute the
response letter.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 8th day of September, 2009 by Councilmember Hawn, who moved its adoption, which motion be duly seconded by Councilmember Lopez, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Hawn, Keating, Lopez, Marsh, O’Bryant, 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. 2009-429

A RESOLUTION FINDING THAT THE ROSELLE AVENUE WIDENING
PROJECT BETWEEN FLOYD AVENUE AND SYLVAN AVENUE IS WITHIN
THE SCOPE OF THE PREVIOUSLY CERTIFIED VILLAGE ONE SPECIFIC
PLAN PROGRAM EIR, AS AMENDED BY THE VILLAGE ONE
SUPPLEMENTAL EIR AND THE ADDENDUM TO THE EIR (SCH No.
90020181)

WHEREAS, Council has received and considered the Written Checklist,
Environmental Assessment No. EA/PW No. 2009-13, that concludes that the project
entitled “Roselle Avenue Widening Project between Floyd Avenue and Sylvan Avenue,”
is within the scope of the previously certified Village One Specific Plan Program EIR, as
amended by the Village One Supplemental EIR and the Addendum to the EIR (SCH No.
90020181), and that, pursuant to Sections 15168(c) and 15162 of the CEQA Guidelines,
no new environmental review is required.

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

1. As per Sections 15168(c) and 15162 of the California
   Environmental Quality Act ("CEQA") Guidelines, this Project is
   within the scope of the projects covered by the Village One
   Program EIR, as amended by the 1994 Supplemental EIR and the
   2003 Addendum to the EIR ("Program EIR") and no new
   environmental document or findings are required by CEQA.

2. There are no substantial changes proposed in the Project 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 Program EIR are required.

3. No substantial changes have occurred with respect to the circum­
   stances under which the Project 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 Program EIR, are required.
4. There is no new information of substantial importance that was not known and could not have been known with the exercise of reasonable diligence when the Program EIR, was adopted which shows any of the following:

   a. one or more significant effects which is not discussed in the Program 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 Program EIR would substantially reduce one or more significant effects on the environment, but the Project proponents decline to adopt the mitigation measure or alternative.

The City Council has received and considered the Written Checklist Environmental Assessment EA/PW No. 2009-13, which provides the substantial evidence to support findings 1-4 above.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 8th day of September, 2009, 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: Hawn, Keating, Lopez, Marsh, O’Bryant, 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. 2009-430

A RESOLUTION AUTHORIZING CHANGE ORDERS IN THE AMOUNT OF $112,406.28 FOR THE “CLARATINA AVENUE EXTENSION BETWEEN COFFEE ROAD AND OAKDALE ROAD” PROJECT

WHEREAS, the City Council, on June 24, 2008, by Resolution No. 2008-374, awarded a $1,083,508.05 contract to Teichert Construction to construct the Claratina Avenue Extension project between Coffee Road and Oakdale Road, and

WHEREAS, additional work not included in the original bid needed to be added to the project to allow completion of the project, and

WHEREAS, the cost of the extra work has been estimated to be $112,406.28, an amount which exceeds the Director’s authority for the project as established by the Council’s Change Order Approval Policy adopted by Resolution No. 94-443, on July 19, 1994, and

WHEREAS, the Director of Public Works currently has authority to approve change orders up to a cumulative amount of $86,680.64,

NOW, THEREFORE BE IT RESOLVED by the Council of the City of Modesto that it hereby authorizes change orders in the amount of $112,406.28 for the Claratina Avenue Extension between Coffee Road and Oakdale Road project.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 8th day of September, 2009, 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:  Hawn, Keating, Lopez, Marsh, O'Bryant, 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. 2009-431

A RESOLUTION ACCEPTING THE WORK BY TEICHERT CONSTRUCTION FOR THE PROJECT TITLED “CLARATINA AVENUE EXTENSION BETWEEN COFFEE ROAD AND OAKDALE ROAD” AS COMPLETE, AUTHORIZING THE CITY CLERK TO FILE A NOTICE OF COMPLETION WITH THE STANISLAUS COUNTY RECORDER AND AUTHORIZING PAYMENT OF AMOUNTS TOTALING $1,195,914.33

WHEREAS, a report has been filed by the Director of Public Works that the project titled “Claratina Avenue Extension project between Coffee Road and Oakdale Road” has been completed by Teichert Construction in accordance with the contract agreement dated June 24, 2008,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the project titled “Claratina Avenue Extension project between Coffee Road and Oakdale Road” is hereby accepted as complete from said contractor Teichert Construction, that the City Clerk is authorized to file a Notice of Completion with the Stanislaus County Recorder, and that payment of amounts totaling $1,195,914.33 is authorized as provided in the contract.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 8th day of September, 2009, 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: Hawn, Keating, Lopez, Marsh, O'Bryant, 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 APPROVING THE CITY OF MODESTO CONSOLIDATED ANNUAL PERFORMANCE AND EVALUATION REPORT (CAPER) FOR FISCAL YEAR 2008-2009, AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE ALL DOCUMENTS RELATED TO THE SUBMISSION OF THE CAPER, AND AUTHORIZING STAFF TO FORWARD THE REPORT TO THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD) FOR THEIR REVIEW AND APPROVAL.

WHEREAS, the City of Modesto receives several Federal grants from the U.S. Department of Housing and Urban Development (HUD), and

WHEREAS, the City of Modesto Consolidated Annual Performance and Evaluation Report (CAPER) reflects the activities of the City and its sub-recipients for the period of July 1, 2008, through June 30, 2009, and

WHEREAS, each year the City must review and report on the performance of activities funded under the Community Development Block Grant (CDBG), HOME Investment Partnership Grant, and Emergency Shelter Grant (ESG) funds, and

WHEREAS, the CAPER must be made available for public review and comment for a minimum 15-day period, and

WHEREAS, the CAPER was made available for public review and comment from August 19, 2009, through September 08, 2009, and

WHEREAS, all public comments, and staff responses to these comments, must be presented to the City Council for review and approval, and

WHEREAS, the Citizens Housing and Community Development Committee (CH&CDC) met on August 17, 2009, and reviewed and recommended the CAPER, and
WHEREAS, a duly noticed public hearing was held by the Council on September 08, 2009, at 5:30 p.m., in the Tenth Street Place Chambers located at 1010 Tenth Street, Modesto, California, to consider approval of the CAPER.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the City of Modesto Consolidated Annual Performance and Evaluation Report (CAPER) for Fiscal Year 2008-2009, and a copy of said report is 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 all documents related to the submission of the CAPER.

BE IT FURTHER RESOLVED that staff is hereby authorized to forward the report to the U.S. Department of Housing and Urban Development (HUD).

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 8th day of September, 2009, 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: Hawn, Lopez, Marsh, O’Bryant, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: Keating

ATTEST

(S SEAL)

APPROVED AS TO FORM:

By

SUSANA ALCALA WOOD, City Attorney
RESOLUTION APPROVING SUBMITTAL OF A GRANT APPLICATION TO THE FEDERAL TRANSIT ADMINISTRATION (FTA) REQUESTING $4.5 MILLION IN CONGESTION MITIGATION AND AIR QUALITY (CMAQ) FUNDS FOR THE NEW BUS MAINTENANCE FACILITY PROJECT; 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 authority to award federal financial assistance for transportation related projects, and

WHEREAS, the City of Modesto has provided all annual certifications and assurances to the FTA required for the projects, and

WHEREAS, the City of Modesto has received authority from the Designated Recipient, StanCOG, to apply for CMAQ funds in the amount of $4,500,000 for the New Bus Maintenance Facility project, and

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

WHEREAS, StanCOG recently advised staff that CMAQ funds might be available for projects that are ready or nearly ready, to begin construction, and

WHEREAS, these State CMAQ funds are not currently designated for local projects, and

WHEREAS, City does not know the amount of available funds or if the City has a realistic opportunity to receive funding, and

WHEREAS, City needs to submit a grant application and secure state and federal approval before the end of September to have any possibility of obtaining these funds, and
WHEREAS, a public hearing was held on September 8, 2009, at 5:30 p.m., in the Tenth Street Place Chambers located, at 1010 Tenth Street, Modesto, California, in accordance with FTA regulations.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the submittal of an application on behalf of the City of Modesto with the Federal Transit Administration for CMAQ funds in the amount of $4,500,000 authorized by 49 U.S.C. Chapter 53, Title 23. or other Federal statutes authorizing a project administered by the Federal Transit Administration.

BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute and file the annual certifications and 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 necessary grant documents with the FTA on behalf of the City of Modesto.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 8th day of September, 2009, by Councilmember Olsen, 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: Hawn, Lopez, Marsh, O’Bryant, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: Keating

(Seal)

APPROVED AS TO FORM:

By: 

SUSANA ALCALA WOOD, City Attorney

ATTEST: STEPHANIE LOPEZ, City Clerk
MODESTO CITY COUNCIL
RESOLUTION NO. 2009-434

A RESOLUTION APPROVING CHANGES TO VARIOUS AIRPORT RATES AND FEES FOR SPECIFIC ACTIVITIES AND SERVICES AT THE MODESTO CITY-COUNTY AIRPORT, EFFECTIVE OCTOBER 1, 2009, AND RESCINDING RESOLUTION NO. 2008-291

WHEREAS, Section 7-3.401 of the Modesto Municipal Code authorizes the Council, by resolution, to establish rental charges and fees for activities and services at the Modesto City-County Airport/Harry Sham Field, and

WHEREAS, Modesto City Council Resolution No. 2003-267 provides for Airport rate increases based upon the Consumer Price Index (CPI) for All Urban Consumers for the western United States, and

WHEREAS, Modesto City Council Resolution No. 2008-291 established the current Airport Rental Charges and Fees and contains provisions for rate increases which went into effect July 1, 2008, based upon an increase in the CPI, and

WHEREAS, during the past year the CPI of the western United States decreased by 0.2%, and

WHEREAS, certain Airport rates and fees for specific activities and services are recommended for adjustment unrelated to the current CPI, and

WHEREAS, aircraft landing fees were increased in 2008 (for the first time since 1994) by $0.02 from $0.66 to $0.68 per thousand pounds of gross weight, and

WHEREAS, recent surveys indicate that Modesto’s rate is still well below the survey average of $1.26 per thousand pounds of gross weight charged to aircraft carrying passengers and/or cargo for hire, and

RESCINDED
MAR 1 2 2013
THIS RESOLUTION WAS RESCINDED BY MODESTO CITY COUNCIL RESOLUTION NO. 2009-434
WHEREAS, during the 2008 review process, staff agreed to increase the rate gradually to a level more comparable with other airports, and

WHEREAS, staff proposes increasing the fee by $.20 to $.88 per thousand pounds, and

WHEREAS, construction of new aircraft storage T-hangars (hangar row “L”) will require new rates be established for the rental of each of the ten new units, as well as an attached end storage unit, and

WHEREAS, based on current rates for comparable hangars at Modesto City-County Airport, staff proposes a rate of $245 per unit per month for each hangar in row “L”, and a rate of $45 per month for the end storage unit in hangar row “L”, and

WHEREAS, while reviewing existing rates and fees, variables and discrepancies were noted, and

WHEREAS, there is no specific provision for helicopter use of Airport tie-downs, and staff proposes adding them to the existing rate schedule, and

WHEREAS, current monthly charges for leased office space are based solely on a square footage rate, with utilities billed to the Airport for some office spaces, and to tenants for other office spaces, and

WHEREAS, staff recommends tenants be billed quarterly for utility costs based on actual usage when the building’s utilities are paid by the Airport, and

WHEREAS, existing language for off-airport car rental operators states that they have an option of paying for terminal advertisement space and callboard phone service in lieu of 10% of gross receipts, and

WHEREAS, staff recommends removal of such language, and
WHEREAS, a duly noticed public hearing was held by the Council on September 8, 2009 at 5:30 p.m. in the Tenth Street Place Chambers located at 1010 Tenth Street, Modesto, California, at which hearing all interested persons were given the opportunity to be heard relative to the proposed changes to various rates and fees for specific activities and services at the Modesto City-County Airport.

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

SECTION 1. HANGARS. Rental charges for the rental of hangars at the Modesto City-County Airport/Harry Sham Field are hereby established as follows, payable in advance:

(a) T-Hangars

<table>
<thead>
<tr>
<th>Hangar</th>
<th>End Units</th>
<th>Rate per month</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hangar A</td>
<td></td>
<td>$129/157</td>
</tr>
<tr>
<td>End Units</td>
<td></td>
<td>$149/178</td>
</tr>
<tr>
<td>Hangar B</td>
<td></td>
<td>$155/184</td>
</tr>
<tr>
<td>End Units</td>
<td></td>
<td>$192/221</td>
</tr>
<tr>
<td>Hangar C</td>
<td></td>
<td>$163/193</td>
</tr>
<tr>
<td>End Units</td>
<td></td>
<td>$198/226</td>
</tr>
<tr>
<td>Hangar D</td>
<td></td>
<td>$147/176</td>
</tr>
<tr>
<td>End Units</td>
<td></td>
<td>$175/205</td>
</tr>
<tr>
<td>Hangar E</td>
<td></td>
<td>$214</td>
</tr>
<tr>
<td>End Units</td>
<td></td>
<td>$250</td>
</tr>
<tr>
<td>Hangar F</td>
<td></td>
<td>$214</td>
</tr>
<tr>
<td>End Units</td>
<td></td>
<td>$250</td>
</tr>
<tr>
<td>Hangar G</td>
<td></td>
<td>$214</td>
</tr>
<tr>
<td>Hangar H</td>
<td></td>
<td>$214</td>
</tr>
<tr>
<td>Hangar I</td>
<td></td>
<td>$418</td>
</tr>
</tbody>
</table>
Hangar J ................................ $214 unit per month
Hangar K ................................ $241 unit per month
End Unit .................................. $359 unit per month
Hangar L .................................. $245 unit per month
End Unit .................................. $45 per month
Storage ................................... $85 per month
Portables - Land Rent ............... $63 unit per month

(* T-Hangars A – D with electrical service)

(b) Storage Hangars:
   Hangar No. 1 .... $1,568.00 per month
   Hangar No. 2 .... $1,309.00 per month
   Hangar No. 3 .... $ 689.00 per month
   Hangar No. 4 .... $1,173.00 per month
   Hangar No. 5 .... $1,167.00 per month
   Hangar No. 6 .... $ 684.00 per month

A five percent (5%) discount will be made in any of the above rental charges when a year’s lease is entered into and the year’s rental charges are paid in advance.

SECTION 2. TIE-DOWN FEES. Tie-down charges and fees at the Modesto City-County Airport/Harry Sham Field are hereby established as follows, payable in advance:

(a) Tail-in Tie-Down – Permanent, helicopter, light single and multi-engine (under 12,500 lbs.) $39.00 per month

(b) Taxi-in Tie-Down – Permanent, helicopter, light single and multi-engine (under 12,500 lbs.) $63.00 per month

(c) Taxi-in Tie-Down – Permanent, helicopter, large multi-engine (over 12,500 lbs.) $.05 per square foot per month
(d) Taxi-in Tie-Down – Transient, helicopter/single-engine aircraft $7.20 per day

(e) Taxi-in Tie-Down – Transient, helicopter/twin-engine aircraft (under 12,500 lbs.) $9.25 per day

(f) Taxi-In Tie-Down – Transient, helicopter/twin-engine aircraft (over 12,000 lbs.) $13.50 per day

(g) Jets – $13.50 per day

A five-percent (5%) discount will be made in the rental charges set forth in subparagraphs (a), (b), and (c) above when a year’s lease is entered into and the year’s rental charges are paid in advance.

A volume discount may be given to Fixed Base Operators (FBO) that operate flight schools for light single and multi-engine aircraft (under 12,500 lbs.) for tie-down spaces as set forth in subsections (a) and (b) above. For every two tail-in spaces the FBO agrees to lease, one taxi-in tie-down may be leased for the same price as a tail-in tie-down.

Overnight tie-down of aircraft belonging to or in the custody or possession of a lessee at the Modesto City-County Airport/Harry Sham Field shall be subject to the normal tie-down charge as specified by this section.

SECTION 3. OFFICE SPACE. The monthly charge for office spaces at the Modesto City-County Airport/Harry Sham Field are hereby established as follows:

(a) Old Administration Building .......................... $.86 per square foot Utilities paid by Airport. Tenants will be billed quarterly for use based on actual charges.

(b) Office Building No. 1 .......................... $.86 per square foot Utilities paid by tenant

(c) Office Building No. 2 .......................... $.86 per square foot Utilities paid by tenant
(d) Hangar Office Space .......................... $.50 per square foot
Utilities paid by tenant

SECTION 4. TEMPORARY USE OF AIRPORT PASSENGER TERMINAL.

Organization and service providers desiring to temporarily use the passenger terminal will be charged a daily rate:

(a) Ticket counter ................................. $.092 per square foot
(b) Other areas ................................. $.092 per square foot

SECTION 5. AIRCRAFT CARRYING PASSENGERS AND/OR CARGO FOR HIRE. Aircraft landing at the Modesto City-County Airport/Harry Sham Field shall pay a landing fee as follows:

(a) All light single, multi-engine aircraft and helicopters - $10.00 per landing
(b) All large single and multi-engine aircraft – $.88 per 1,000 pounds of gross weight, but not less than $10.00 per landing
(c) All transient aircraft owned and operated by individuals, companies, and corporations carrying their own products shall not be charged for the first two (2) trips per calendar months. All other trips for the same calendar month shall be charged for at the same rates applied to nonscheduled aircraft carrying cargo for hire.
(d) No landing fee shall be charged for any aircraft, which lands at the airport due to any mechanical or other emergency, except weather, provided that such emergency is reported to the Airport Control Tower prior to landing.

SECTION 6. PASSENGER FACILITY CHARGE (PFC). Commercial air carrying passengers excluding “frequent flyers” or similar airline bonus award enplaning at Modesto City-County Airport/Harry Sham Field shall pay a PFC as approved by Federal Aviation Regulations (FAR) Part 158.

(a) Enplaned passenger by airline - $4.50 per ticketed passenger.
SECTION 7. ADVERTISEMENT CALLBOARD. Firms wishing to advertise in the airport passenger terminal shall have an approved agreement with the City of Modesto. A monthly charge shall be assessed for the use of the advertisement callboard as follows:

<table>
<thead>
<tr>
<th>Display Size</th>
<th>Display Only</th>
<th>Display &amp; Telephone</th>
</tr>
</thead>
<tbody>
<tr>
<td>7.5” x 9.5”</td>
<td>$15.00</td>
<td>$25.00</td>
</tr>
<tr>
<td>7.5” x 21”</td>
<td>$35.00</td>
<td>$55.00</td>
</tr>
<tr>
<td>19” x 21”</td>
<td>$45.00</td>
<td>$65.00</td>
</tr>
</tbody>
</table>

SECTION 8. FAX SERVICE. Persons wishing to use the airport administration office fax machine shall be charged for the service. Airport personnel are authorized to collect as follows:

(a) Incoming Service  .................... $0.50 per page

(b) Outgoing Service  ..................... Area code 209 - $1.00 per page
                                           Other domestic area codes - $2.00
                                           first page: $1.50 all other pages

SECTION 9. PERMANENTLY BASED COMMERCIAL SERVICES. Any person engaging in a commercial enterprise permanently based at the Modesto City-County Airport/Harry Sham Field shall pay to the City a fee equivalent to the City Business License Fees set forth in Chapter 1 of Title 6 of the Modesto Municipal Code, except that a minimum fee of $100 will be paid for each aircraft sold, for the privilege of engaging in business in the City of Modesto and on the Airport. Said sum shall be payable at the time and in the manner provided for in Chapter 1 of Title 6 of the Modesto Municipal Code.

SECTION 10. FUEL FLOWAGE FEES. A fuel flowage fee of seven cents ($0.07) per gallon of fuel sold or dispensed on the Airport shall be collected for the City of
Modesto by the fuel vendors, except that reduced fuel flowage fees collected from scheduled air carriers can be negotiated for volume purchases.

SECTION 11. TEMPORARILY BASED COMMERCIAL SERVICES. Any person engaging in a commercial enterprise, temporarily based at the Modesto City-County Airport/Harry Sham Field, shall pay to the City a license fee in the sum of Two Hundred and no/100ths ($200.00) Dollars, payable in advance.

Each such operator shall also pay to the City as a minimum an additional sum of Ninety and no/100ths ($90.00) Dollars per month, or any portion thereof, payable in advance, for the privilege of using the Airport and its facilities.

SECTION 12. OFF-AIRPORT CAR RENTAL OPERATOR FEE. Off-airport operators picking up customers at the Modesto City-County Airport/Harry Sham Field will pay to the City of Modesto ten percent (10%) of gross on time mileage of vehicles rented. Additionally, the operators will be assessed a parking fee at the same rate on-airport car rental operators are charged for vehicles left in the public parking area overnight.

SECTION 13. MOTOR VEHICLE STORAGE CHARGES. Any person who parks a motor vehicle at the Modesto City-County Airport/Harry Sham Field for longer than thirty (30) days at a time shall pay to the City a parking fee of Twenty-five and no/100ths ($25.00) Dollars per month, payable in advance.

SECTION 14. PENALTIES. A five percent (5%) per month penalty charge shall be made on any of the charges and fees established by this resolution when such charges and fees are not paid within thirty (30) days after they are due and payable. No penalties will be collected on the PFC.
SECTION 15. ANNUAL ADJUSTMENT OF RENTS, FEES AND CHARGES.

Commencing July 1, 2003, the rents, fees and charges set forth in Sections 1, 2, and 4 of this resolution may be adjusted annually as of the first day of July.

Said rents, fees, and charges shall be adjusted in the following manner: The base for computing the adjustment is the National Consumer Price Index for the West Urban (all urban consumers), published by the United States Department of Labor, Bureau of Labor Statistics ("Index"), with a base year of 1982 – 1984 = 100 ("Beginning Index"). The Index published most immediately preceding the Adjustment Date in question ("Adjustment Index") is to be used in determining the amount of the adjustment. If the Adjustment Index has increased over the Beginning Index, the rents, fees and charges set forth in this resolution shall be set by multiplying the rents, fees and charges set forth in this resolution by a fraction, the numerator of which is the Adjustment Index and the denominator of which is the Beginning Index.

In no case shall the minimum rents, fees and charges be less than existing approved and adopted rents, fees and charges nor shall any increase in a year be greater than five (5%) percent. If the indexes change so that the base year differs from that in effect on July 1, 2008, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised at any time after the effective date of this resolution, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised.
SECTION 16. EFFECTIVE DATE. This resolution shall go into effect and be in full force and operation on October 1, 2009.

SECTION 17. RESCIND. This resolution rescinds Council Resolution No. 2008-291.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 8th day of September, 2009, 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: Councilmember: Hawn, Lopez, Marsh, O’Bryant, Olsen, Mayor Ridenour

NOES: Councilmember: None

ABSENT: Councilmember: Keating

ATTEST: STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney
RESOLUTION ACCEPTING WITH REGRET THE RESIGNATION OF AMANDA FISHER FROM THE CULTURE COMMISSION

WHEREAS, Amanda Fisher was appointed a member of the Culture Commission on August 5, 2009, and

WHEREAS, Amanda Fisher has tendered her resignation from the Culture Commission, and

NOW, THEREFORE, BE IT RESOLVED that the resignation of Amanda Fisher from the Culture Commission be, and hereby is accepted with regret.

BE IT FURTHER RESOLVED that the Council of the City of Modesto, on its own behalf, and on behalf of the citizens of the City, hereby expresses its sincere appreciation to Amanda Fisher for her service to the community.

The foregoing resolution was introduced at a special meeting of the Council of the City of Modesto held on the 22nd day of September, 2009, 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 Hawn, Keating, Lopez, Marsh, O'Bryant, Olsen, Mayor Ridenour.

NOES: Councilmembers None.

ABSENT: Councilmembers None.

ATTEST: STEPHANIE LOPEZ, City Clerk

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2009-436

RESOLUTION ACCEPTING WITH REGRET THE RESIGNATION OF
RICHARD HORNING FROM THE GOLF COURSES ADVISORY COMMITTEE

WHEREAS, Richard Horning was appointed a member of the Golf Courses
Advisory Committee on August 5, 2009, and

WHEREAS, Richard Horning has tendered his resignation from the Golf Courses
Advisory Committee, and

NOW, THEREFORE, BE IT RESOLVED that the resignation of Richard Horning
from the Golf Courses Advisory Committee be, and hereby is accepted with regret.

BE IT FURTHER RESOLVED that the Council of the City of Modesto, on its
own behalf, and on behalf of the citizens of the City, hereby expresses its sincere
appreciation to Richard Horning for his service to the community.

The foregoing resolution was introduced at a special meeting of the Council of the
City of Modesto held on the 22nd day of September, 2009, 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:

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. 2009-437

A RESOLUTION APPROVING THE APPOINTMENT OF BRAD HAWN, CHRIS TYLER, KEVIN YOUNG, RON JESKE, MICHAEL BRINTON, JIM MIGUEL, NICK PINHEY, BRENT SINCLAIR, JULIE HANNON, RICH ULM, BILL SANDHU, JEFF BARNES, AMY GEDNEY AND VICKEY DION TO THE CAPITAL IMPROVEMENT PROGRAM TASK FORCE

WHEREAS, in 2008, the City Council initiated the process to evaluate and prioritize capital improvement projects for the annual preparation of the Capital Improvement Program (CIP), and

WHEREAS, the process included a CIP Task Force consisting of a City Councilmember, a City Planning Commission member, and Airport Advisory Committee member, two representatives of the public-at-large, and interdepartmental staff, and

WHEREAS, the goal of the CIP Task Force is to obtain the input and participation from a broader range of stakeholders, and

WHEREAS, the CIP Task Force will engage in evaluating and prioritizing projects using evaluation criteria and an evaluation protocol, and

WHEREAS, each member will have equally weighted votes in the process and serve from September 2009 through September 2010, and

WHEREAS, the proposed members for the CIP Task Force are:

Councilmember: Brad Hawn
Planning Commission member: Chris Tyler
Airport Advisory Committee member: Kevin Young
Citizen members: Ron Jeske, Michael Brinton

Staff members: Jim Miguel, Nick Pinhey, Brent Sinclair, Julie Hannon, Rich Ulm, Bill Sandhu, Jeff Barnes, Amy Gedney and Vickey Dion

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto
that it hereby approves the appointment of Brad Hawn, Chris Tyler, Kevin Young, Ron Jeske, Michael Brinton, Jim Miguel, Nick Pinhey, Brent Sinclair, Julie Hannon, Rich Ulm, Bill Sandhu, Jeff Barnes, Amy Gedney and Vickey Dion to the Capital Improvement Program Task Force.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 22nd day of September, 2009, 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: Hawn, Keating, Lopez, Marsh, O’Bryant, 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. 2009-438

RESOLUTION AUTHORIZING THE AWARD OF BID AND CONTRACT FOR THE PURCHASE OF ROCK, SAND AND GRAVEL FOR THE PUBLIC WORKS DEPARTMENT, TO CENTRAL VALLEY CONCRETE, INC., MERCED, CA, FOR A ONE YEAR AGREEMENT WITH FOUR (4) ONE-YEAR EXTENSION OPTIONS AT THE SOLE DISCRETION OF THE CITY, FOR AN ESTIMATED ANNUAL COST OF $306,314, AND FOR AN ESTIMATED COST OVER FIVE YEARS OF $1,531,570

WHEREAS, on May 26, 2009, the City Council, by Resolution No. 2009-218, authorized the Purchasing Manager to issue formal Request for Bids for the purchase of rock, sand and gravel for the Public Works Department, for a one year agreement with four (4) one-year extension options at the sole discretion of the City, and

WHEREAS, on June 23, 2009, the Purchasing Division issued Request for Bid (RFB) No. 0809-27 rock, sand and gravel to eighteen (18) companies, seven (7) of which were local companies, posted the bid on the City’s website and formally advertised as required by law, and

WHEREAS, on August 11, 2009, RFB’s were formally opened in the City Clerk’s office. Of the eighteen (18) prospective bidders, five (5) companies chose to respond. The City received two (2) responsive and responsible bids, and

WHEREAS, based on providing the lowest responsive and responsible bid, City staff recommends the award of bid and contract for the purchase of rock, sand and gravel for the Public Works Department, to Central Valley Concrete, Inc., Merced, CA. The purchase agreement shall be for a one year period with four (4) one-year extension options at the sole discretion of the City, for an estimated annual cost of $306,314, 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. The award of bid and contract for the purchase of rock, sand and gravel for the Public Works Department, to Central Valley Concrete, Merced, Inc., CA, conforms to the Modesto Municipal Code, and

WHEREAS, sufficient funds are budgeted in Fiscal Year 2009-10 in appropriation Unit: 7110-120-8311-0439,

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 purchase of rock, sand and gravel for the Public Works Department, to Central Valley Concrete, Inc., Merced, CA.

BE IT FURTHER RESOLVED that the Purchasing Manager, or his designee, is hereby authorized to issue a purchase agreement for a one year period, with four (4) one-year extension options at the sole discretion of the City, for an estimated annual cost of $306,314.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 22nd day of September, 2009, 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: Hawn, Keating, Lopez, Marsh, O’Bryant, Olsen, Mayor Ridenour

NOES: Councilmembers: None.

ABSENT: Councilmembers: None.

ATTEST: [Signature]
STEPHANIE LOPEZ, City Clerk

APPROVED AS TO FORM:

By: [Signature]
SUSANA ALCALA WOOD, City Attorney
RESOLUTION AUTHORIZING THE AWARD OF BID AND CONTRACTS FOR THE PURCHASE OF THREE (3) PICKUP TRUCKS AND ONE UTILITY TRUCK FOR THE PUBLIC WORKS DEPARTMENT, FLEET SERVICES DIVISION, TO DOWNTOWN FORD, SACRAMENTO, CA, FOR AN ESTIMATED TOTAL COST OF $38,733, AND SERRAMONTE FORD, COLMA, CA, FOR AN ESTIMATED TOTAL COST OF $90,262; AND AUTHORIZING THE PURCHASING MANAGER, OR HIS DESIGNEE, TO ISSUE PURCHASE ORDERS FOR A TOTAL ESTIMATED COST OF $128,995

WHEREAS, on October 28, 2008, the City Council, by Resolution No. 2008-592, authorized the Purchasing Manager to issue formal Request for Bids (RFB) for new vehicles and heavy equipment throughout FY 08/09 through various competitive processes, with the Purchasing Division coming back to Council for award authorization, and

WHEREAS, the three (3) pickup trucks and one utility truck are replacement vehicles for the Wastewater Division and Water Division, and were included in the FY 08/09 new vehicles and heavy equipment list authorized by Council, and

WHEREAS, on April 30, 2009, the Purchasing Division issued RFB No. 0809-24 for the purchase of three (3) pickup trucks and one utility truck to forty-two (42) prospective bidders, four of which were local companies, posted the bid on the City’s web site and formally advertised as required by law, and

WHEREAS, based on providing the lowest responsive and responsible bids, City staff recommends the award of bid and contracts for the purchase of three (3) pickup trucks and one utility truck for the Public Works Department, Fleet Services Division, to Downtown Ford, Sacramento, CA, for an estimated total cost of $38,733, and Serramonte Ford, Colma, CA, for an estimated total cost of $90,262, 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 contracts for the purchase of three (3) pickup trucks and one utility truck for the Public Works Department, Fleet Services Division, to Downtown Ford, Sacramento, CA, and Serramonte Ford, Colma, CA, conforms to the Modesto Municipal Code, and

WHEREAS, funds were originally budgeted in Fiscal Year 2008-09 and have rolled into Fiscal Year 2009-10, in the following Fleet Equipment Replacement Fund accounts: 7210-480-5814-5848, 7210-480-5814-5850, 7210-480-5814-5847, 7210-480-5814-5844.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby authorizes the award of bid and contracts for the purchase of three pickup trucks and one utility truck for the Public Works Department, Fleet Services Division, to Downtown Ford, Sacramento, CA, for a total estimated cost of $38,733, and Serramonte Ford, Colma, CA, for a total estimated cost of $90,262.

BE IT FURTHER RESOLVED that the Purchasing Manager, or his designee, is hereby authorized to issue purchase orders for a total estimated cost of $128,995.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 22nd day of September, 2009, 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: Hawn, Keating, Lopez, Marsh, O’Bryant, 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. 2009-440

A RESOLUTION AUTHORIZING FIVE (5) DESIGNATED CITY OF MODESTO STAFF TO SERVE AS GENERAL SERVICES ADMINISTRATION SURPLUS PROPERTY SCREENERS

WHEREAS, the Federal Property and Administrative Services Act of 1949, as amended, provides for the transfer of federal surplus personal property to the State Agency for Surplus Property (SASP) within each state, and

WHEREAS, the Department of General Services (DGS) is the State of California’s State Agency for Surplus Property (SASP), and

WHEREAS, surplus General Services Administration (GSA) personal property is made available to the City of Modesto at a reduced cost through the donation program administered by the State of California, DGS, and

WHEREAS, federal surplus personal property can be used by all City departments, and includes all types and categories of property including, but not limited to, the following: airplanes, boats, communication equipment, furniture, tools, and motor vehicles, and

WHEREAS, Council approval is required by the State of California, Department of General Services, Office of Procurement-Surplus Property, to authorize designated City of Modesto personnel to review (screen) and obtain surplus Federal personal property that is available through the GSA Federal Surplus Personal Property Program, and

WHEREAS, the City’s approval to participate in the program has expired and needs to be renewed, and

WHEREAS, the City’s approval to participate in the program has expired and needs to be renewed, and
WHEREAS, a requirement of that renewal process is to authorize no more than five (5) designated City of Modesto staff to serve as “screeners”, and

WHEREAS, the five (5) City staff designated as screeners are: Mark L. Averell, Jim Richards, Lori Martinez, Jolene Gonzales, and Cindy Medley,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby authorizes the following five (5) City staff to serve as General Services Administration surplus property screeners: Mark L. Averell, Jim Richards, Lori Martinez, Jolene Gonzales, and Cindy Medley.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 22nd day of September, 2009, 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: Hawn, Keating, Lopez, Marsh, O’Bryant, 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. 2009-441

RESOLUTION AUTHORIZING THE AWARD OF BIDS AND CONTRACTS FOR THE PURCHASE AND INSTALLATION OF LABORATORY EQUIPMENT FOR THE PUBLIC WORKS DEPARTMENT, WATER QUALITY CONTROL DIVISION, TO SHIMADZU SCIENTIFIC INSTRUMENTS, PLEASANTON, CA AND VARIAN, INC, WALNUT CREEK, CA; AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO ISSUE CONTRACTS FOR AN ESTIMATED TOTAL COST OF $256,402.95

WHEREAS, on April 8, 2008, the City Council, by Resolution No. 2008-212, rejected all bids for the purchase and installation of laboratory equipment for the Public Works Department. Water Quality Control Division, and authorized the Purchasing Manager to re-issue formal Request for Bids (RFB) for the purchase and installation of laboratory equipment at a future date, and

WHEREAS, on June 1, 2009, the Purchasing Division issued RFB No. 0809-25 Water Quality Control Laboratory Equipment 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, on June 23, 2009, RFB’s were formally opened in the City Clerk’s office. Of the thirteen (13) prospective bidders, two (2) companies chose to respond. Both companies provided responsive and responsible bids, and

WHEREAS, based on providing the lowest responsive and responsible bids, City staff recommends the award of bids and contracts for the purchase and installation of laboratory equipment for the Public Works Department, Water Quality Control Division, to Shimadzu Scientific Instruments, Pleasanton, CA and Varian, Inc., Walnut Creek, CA, for an estimated total cost of $256,402.95, and
WHEREAS, Modesto Municipal Code Section 8-3.203 generally requires all purchases, which meet or exceed $50,000 for material, equipment or contractual services to be formally bid. The award of bids and contracts for the purchase and installation of laboratory equipment for the Public Works Department, to Shimadzu Scientific Instruments, Pleasanton, CA and Varian, Inc., Walnut Creek, CA, conforms to the Modesto Municipal Code, and

WHEREAS, sufficient funds are budgeted in Fiscal Year 2009-10 in appropriation Unit: 6210-480-B584-6070,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby authorizes the award of bids and contracts for the purchase and installation of laboratory equipment for the Public Works Department, Water Quality Control Division, to Shimadzu Scientific Instruments, Pleasanton, CA and Varian, Inc., Walnut Creek, CA.

BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to issue contracts for an estimated total cost of $256,402.95.
The foregoing resolution was introduced at a regular meeting of the Council of
the City of Modesto held on the 22nd day of September, 2009, 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: Hawn, Keating, Lopez, Marsh, O’Bryant, Olsen,
Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: [Signature]

(SEAL)

APPROVED AS TO FORM:

By: [Signature]

SUSANA ALCALA WOOD, City Attorney
RESOLUTION AUTHORIZING THE AWARD OF BID AND CONTRACT FOR THE PURCHASE OF THREE (3) REPLACEMENT VERTICAL MIXED-FLOW PROPELLER PUMPS FOR THE PUBLIC WORKS DEPARTMENT, WASTEWATER DIVISION, TO JM SQUARED ASSOCIATES, INC., CONCORD, CA, AND AUTHORIZING THE PURCHASING MANAGER TO ISSUE A PURCHASE ORDER FOR AN ESTIMATED TOTAL COST OF $196,291

WHEREAS, on October 28, 2008, the City Council, by Resolution No. 2008-604, authorized the Purchasing Manager to issue formal Request for Bids (RFB) for the purchase of three (3) vertical mixed-flow propeller pumps, and

WHEREAS, on April 27, 2009, the Purchasing Division issued RFB No. 0809-20 for the purchase of three (3) vertical mixed-flow propeller pumps to twenty-nine (29) prospective bidders, none of which were local companies, posted the bid on the City’s web site and formally advertised as required by law, and

WHEREAS, on June 30, 2009, RFB’s were formally opened in the City Clerk’s office. Of the twenty-nine (29) prospective bidders, one company chose to respond, and

WHEREAS, based on receiving a responsive and responsible bid, City staff recommends the award of bid and contract for the purchase of three (3) vertical mixed-flow propeller pumps to JM Squared Associates, Inc., Concord, CA, and

WHEREAS, Modesto Municipal Code Section 8-3.203 generally requires all purchases, which meet or exceed $50,000 for material, equipment or contractual services to be formally bid. The award of bid and contract for the purchase of three (3) vertical mixed-flow propeller pumps for the Public Works Department, Wastewater Division, to JM Squared Associates, Inc., Concord, CA, conforms to the Modesto Municipal Code, and
WHEREAS, funds are budgeted in Fiscal Year 09/10, in the following Sewer Fund CIP Equipment replacement account, 6210-480-B103-6070.

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 purchase of three (3) vertical mixed-flow pumps for the Public Works Department, Wastewater Division, to JM Squared Associates, Inc., Concord, CA.

BE IT FURTHER RESOLVED that the Purchasing Manager, or his designee, is hereby authorized to issue a purchase order an estimated total cost of $196,291.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 22nd day of September, 2009, by Councilmember ?, who moved its adoption, which motion being duly seconded by Councilmember ?, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Hawn, Keating, Lopez, Marsh, O’Bryant, 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
MODESTO CITY COUNCIL
RESOLUTION NO. 2009-443

A RESOLUTION APPROVING AN APPLICATION IN THE AMOUNT OF $350,000 TO THE RECREATIONAL TRAILS PROGRAM TO FUND THE CONSTRUCTION AND INSTALLATION OF THE ARROYO WILLOW AND COTTONWOOD TRAILS IN THE TUOLUMNE RIVER REGIONAL PARK GATEWAY PARCEL; AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO SIGN ALL APPROPRIATE GRANT DOCUMENTS

WHEREAS, the “Safe, Accountable, Flexible, Efficient Transportation Equity Act. A Legacy for Users” provides funds to the State of California for Grants to federal, state, local and non-profit organizations to acquire, develop and/or maintain motorized and non-motorized trail projects, and

WHEREAS, the California Department of Parks and Recreation has been delegated the responsibility for the administration of the program within the State, setting up necessary procedures governing project application under the program, and

WHEREAS, said procedures established by the California Department of Parks and Recreation require the City of Modesto to certify by resolution the approval of the application before submission of said application to the State, and

WHEREAS, the City of Modesto 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 as follows:

1. Approves the filing of an application for the Recreational Trails Program, and

2. Certifies that the project is consistent with the applicant’s general plan or the equivalent planning document, and
3. Certifies that the City of Modesto has or will have available prior to commencement of any work on the project, included in this application, sufficient funds to operate and maintain the project, and

4. Certifies that the applicant has reviewed, understands, and agrees to the general provisions contained in the contract shown in the Procedural Guide, and

5. Appoints the City Manager, or his designee, as agent to conduct all negotiations, execute and submit all documents, including, but not limited to, applications, agreements, amendments, payment requests and so on, which may be necessary for the completion of the project.

6. Agrees to comply with all applicable federal, state and local laws, ordinances, rules, regulations and guidelines.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 22nd day of September, 2009, 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: Hawn, Keating, Lopez, Marsh, O’Bryant, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST:  

APPROVED AS TO FORM:

By:  

SUSANA ALCALA WOOD, City Attorney
RESOLUTION AMENDING THE CITY’S FINANCIAL POLICIES TO AUTHORIZE THE CITY MANAGER OR HIS DESIGNEE TO APPROVE THE ALLOCATION OF PRIVATE DONATIONS AND GRANTS OF UP TO $25,000 MADE THROUGH THE FUND DEVELOPMENT PROGRAM OF THE PARKS, RECREATION, & NEIGHBORHOODS DEPARTMENT FOR PROGRAMMING, FACILITY PRESERVATION, SPECIAL EVENTS AND PARK MAINTENANCE PER THE DONOR’S SPECIFIED REQUEST

WHEREAS, the Council of the City of Modesto has authorized a Fund Development Program for the Parks, Recreation and Neighborhoods Department, and

WHEREAS, the Parks, Recreation and Neighborhoods Department Fund Development Program authorizes staff to actively seek and receive donations and grants for Parks, Recreation and Neighborhoods Department programs, facility preservation, and park beautification, and

WHEREAS, grants and donations are considered new revenue, and

WHEREAS, the City’s existing Financial Policies require Council to authorize the appropriation of all new revenue, and

WHEREAS, private donations and grants made through the Fund Development Program may only be used for the purpose specified by the donor, and

WHEREAS, the Parks, Recreation and Neighborhoods Department seeks to allocate said donations and grants to their appropriate revenue accounts as they are received so they may be utilized in a timely manner, and

WHEREAS, this will require an amendment to the City’s Financial Policies.

NOW, THEREFORE. BE IT RESOLVED by the Council of the City of Modesto that it hereby amends to the City’s existing Financial Policies to authorize the City Manager or his designee to approve the allocation of private donations and grants of up to
$25,000.00 to the appropriate revenue accounts and to modify the budget to recognize appropriate donations and expenditures to the Parks, Recreation and Neighborhoods Department per donor’s specific request.

BE IT FURTHER RESOLVED that in accordance with the Fund Development Program, the Parks, Recreation and Neighborhoods Department will submit an annual Fund Development Report for Council approval.

The foregoing Resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 22nd day of September, 2009, 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: Hawn, Keating, Lopez, Marsh, O’Bryant, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: [Signature]
STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2009-445

A RESOLUTION APPROVING ADJUSTMENTS TO THE MAXIMUM SCHEDULE FOR CITY RESIDENTIAL, COMMERCIAL, AND INDUSTRIAL SOLID WASTE COLLECTION SERVICES, TO BECOME EFFECTIVE OCTOBER 1, 2009, INCLUDING FUEL COST, AND RESCINDING RESOLUTION NO. 2009-384

WHEREAS, with the adoption of Ordinance No. 3068-C.S. in November of 1997, the City no longer sets rates for the collection of garbage in Modesto, and instead performs a comprehensive review of cost information submitted by the contract garbage haulers, and

WHEREAS, the City sets a maximum rate that the haulers may charge for the various types of services provided under the contracts based on cost data provided by the lowest cost hauler, and

WHEREAS, Section f (2) of the City’s Service Agreements with its solid waste collectors requires that when the City makes adjustments to the collection services provided under the Agreements, any additional costs should be covered by adjustments to the maximum rates, and

WHEREAS, in addition, maximum rates for solid waste collection services are reviewed annually as requested by the City’s garbage collection companies, and

WHEREAS, the City conducted an analysis using the audited financial statements provided by the garbage haulers, supplemental data provided by the garbage haulers, and fuel price information and forecast prices developed by the United States Department of Energy, and
WHEREAS, new maximum rates were calculated, and a recommendation for a new maximum rate schedule was developed, which included a recommendation that quarterly adjustments to the fuel component of the maximum rates be made, and

WHEREAS, a report dated September 22, 2009, from the Parks, Recreation and Neighborhoods Department, a copy of which is on file in the office of the City Clerk, sets forth said recommendations, and

WHEREAS, it was found and determined by the Council of the City of Modesto that the existing schedules of rates and charges for garbage service in the City of Modesto should be revised as recommended, and that quarterly adjustments to the fuel component of the maximum rates should be made, and

WHEREAS, staff has adjusted the fuel component of the maximum rates and has incorporated the fuel component adjustment into the schedule of Maximum Charges for Garbage Service attached hereto, marked Exhibit “1” and incorporated herein by reference.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the adjustments to the Maximum Charges for Garbage Service as attached hereto, marked Exhibit “1” and incorporated herein by reference. Said Maximum Charges for Garbage Service includes twice-a-year bulky item pickup for residential customers and all other residential services as stipulated in the Service Agreements and shall become effective October 1, 2009, and shall remain in effect until revised by Council.
BE IT FURTHER RESOLVED that any person who has prepaid garbage service charges for residential garbage service shall be entitled to receive garbage service for the balance of said prepaid period at the prepaid rates.

BE IT FURTHER RESOLVED that Resolution No. 2009-384 is hereby rescinded, effective October 1, 2009.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 22nd day of September, 2009, 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: Hawn, Keating, Lopez, Marsh, O'Bryant, 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
MAXIMUM CHARGES FOR GARBAGE SERVICE

STANDARD CONTAINERS
Maximum Monthly Rates
(Once a Week Pickup Service)

Standard container service shall include the following:
- One, 96-gallon container for garbage/recyclables
- One, 96-gallon container for green waste, food, paper, and other organics
- Countertop container for kitchen scraps
- Drop-off of old TV and computer tubes
- Two bulky item collections per year by appointment
- Pruned Refuse Collection

Standard container service customers may opt for smaller containers; however, maximum rates apply. Containers must be placed in a location set forth in Section 5-5.111 of the Municipal Code.

1. **Standard container service** –
   a. The maximum rate for new sign ups for service or changes in service that occur after July 1, 1996, shall be $22.45 per month regardless of size of container. A fuel component of $0.79 per month is included in the maximum rate for the quarter beginning April 1, 2009 and ending June 30, 2009. The fuel component may be adjusted quarterly.
   b. The maximum rate for each additional garbage container shall be $16.73 per month, and $9.50 per month for each additional green waste container.

2. **60-gallon container service (grandfathered customers)** –
   a. The maximum rate for customers with 60-gallon containers who subscribed to service at an address prior to July 1, 1996 and who have not changed their service address shall be $18.80 per month. A fuel component of $0.79 per month is included in the maximum rate for the quarter beginning April 1, 2009 and ending June 30, 2009. The fuel component may be adjusted quarterly.
   b. The maximum rate for each additional 60-gallon garbage container shall be $16.30 per month.

3. **Fuel Component adjustments** - The fuel component shall be analyzed quarterly and adjustments shall be made as necessary. The adjustment shall be based on the average price of fuel for a preceding quarter as follows: July 1/January-March; October 1/April-June; January 1/July-September; April 1/October-December. Average prices shall be determined based on published prices for California from the Department of Energy, Energy Information Agency.
**DETACHABLE CONTAINERS***

Maximum Monthly Rates

<table>
<thead>
<tr>
<th>Container Size</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
<th>6</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 CY</td>
<td>$41.36</td>
<td>$72.23</td>
<td>$103.07</td>
<td>$133.92</td>
<td>$164.78</td>
<td>$195.64</td>
</tr>
<tr>
<td>2 CY</td>
<td>$72.23</td>
<td>$133.92</td>
<td>$195.64</td>
<td>$257.35</td>
<td>$319.05</td>
<td>$380.75</td>
</tr>
<tr>
<td>3 CY</td>
<td>$103.07</td>
<td>$195.64</td>
<td>$288.20</td>
<td>$380.75</td>
<td>$473.33</td>
<td>$565.88</td>
</tr>
<tr>
<td>4 CY</td>
<td>$133.92</td>
<td>$257.35</td>
<td>$380.75</td>
<td>$504.18</td>
<td>$627.59</td>
<td>$751.01</td>
</tr>
<tr>
<td>5 CY</td>
<td>$164.78</td>
<td>$319.05</td>
<td>$473.33</td>
<td>$627.59</td>
<td>$784.87</td>
<td>$936.14</td>
</tr>
<tr>
<td>6 CY</td>
<td>$195.64</td>
<td>$380.75</td>
<td>$565.88</td>
<td>$751.01</td>
<td>$936.14</td>
<td>$1,121.27</td>
</tr>
</tbody>
</table>

**FORK Participants Container Maximum Rates**

<table>
<thead>
<tr>
<th>Container Size</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
<th>6</th>
</tr>
</thead>
<tbody>
<tr>
<td>2 CY</td>
<td>$54.17</td>
<td>$100.44</td>
<td>$146.73</td>
<td>$193.01</td>
<td>$239.29</td>
<td>$285.56</td>
</tr>
<tr>
<td>3 CY</td>
<td>$77.30</td>
<td>$146.73</td>
<td>$216.15</td>
<td>$285.56</td>
<td>$355.00</td>
<td>$424.41</td>
</tr>
<tr>
<td>4 CY</td>
<td>$100.44</td>
<td>$193.01</td>
<td>$285.56</td>
<td>$378.14</td>
<td>$470.69</td>
<td>$563.26</td>
</tr>
<tr>
<td>5 CY</td>
<td>$123.59</td>
<td>$239.29</td>
<td>$355.00</td>
<td>$470.69</td>
<td>$588.65</td>
<td>$702.11</td>
</tr>
<tr>
<td>6 CY</td>
<td>$146.73</td>
<td>$285.56</td>
<td>$424.41</td>
<td>$563.26</td>
<td>$702.11</td>
<td>$840.95</td>
</tr>
<tr>
<td>90-gallon</td>
<td>$16.87</td>
<td>$33.74</td>
<td>$50.60</td>
<td>$67.47</td>
<td>$84.34</td>
<td>$101.21</td>
</tr>
</tbody>
</table>

* A detachable container rental rate of $10.00 per month is included in the above schedules.

1. **Weekly rental/Detachable Containers** - Shall not exceed the rate for 1 pickup per week for each size container.

2. **Fuel Component** - A fuel component of $0.69 per cubic yard per month ($0.16 per cubic yard) for a 1 cubic yard container collected once a week is included in the maximum rate for the quarter beginning April 1, 2009 and ending June 30, 2009. The fuel component shall be analyzed quarterly and adjustments shall be made as necessary. The adjustment shall be based on the average price of fuel for a preceding quarter as follows: July 1/January-March; October/April-June; January 1/July-September; April 1/October-December. Average prices shall be determined based on published prices for California from the Department of Energy.

**DROP BOX CONTAINERS**

1. **Pick up charge** - $210.95 per pick up
2. **Rental**
   - $0.85 per day up to 7 day maximum rental
   - $3.00 per day for boxes kept 7 or more days without servicing
   - $10.00 per day for boxes kept 21 or more days without servicing
3. **Disposal charge** - Actual charge to be paid by customer. Garbage company will provide up to 40 CY Drop Box containers for above stated charges subject only to load limit of transfer vehicle. An AB 939 Green Waste Diversion Fee of $8.40 per ton will be added to the disposal charges.
COMPACTORS

Front Loader Type:

<table>
<thead>
<tr>
<th>Container Size</th>
<th>NUMBER OF COLLECTIONS PER WEEK</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1</td>
</tr>
<tr>
<td>3 CY</td>
<td>$309.21</td>
</tr>
<tr>
<td>4 CY</td>
<td>$401.76</td>
</tr>
<tr>
<td>6 CY</td>
<td>$586.92</td>
</tr>
</tbody>
</table>

Roll-Off Type:
1. 6 CY to 40 CY: $210.95 per pickup
2. Medical waste compactors: $265.00 per pickup
3. Washing compactor: $30.00
4. Disposal Charge: Actual charge to be paid by customer
5. AB 939 Green Waste Diversion Fee: $8.40 per ton

EXTRA PICKUPS
1. Standard containers or equivalent: $3.50 plus $1.38/container
2. Detachable containers: $12.00 plus $2.75/cubic yard

SPECIAL SERVICE CONDITIONS
In situations where none of the above maximum rates reasonably apply, the cost of service is to be negotiated between the garbage company and the customer.

DETACHABLE CONTAINER ONLY
REPLACEMENT AND CLEANING SERVICE

<table>
<thead>
<tr>
<th>Container Size</th>
<th>1 CY</th>
<th>1½ CY</th>
<th>2 CY</th>
<th>3 CY</th>
<th>4 CY</th>
<th>5 CY</th>
<th>6 CY</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$10.12</td>
<td>$11.00</td>
<td>$12.10</td>
<td>$15.40</td>
<td>$20.24</td>
<td>$25.08</td>
<td>$29.92</td>
</tr>
</tbody>
</table>

NOTATIONS
1. The above maximum rates include a $0.25 per month residential recycling fee; a $0.05 per cubic yard ($0.22/cubic yard/month) commercial recycling fee; and a $5.00 per pull ($0.25 per ton) industrial recycling fee.
2. The above residential maximum rates include a $1.33 per month per household AB 939 Green Waste Diversion Fee.
3. The above commercial bin and front-loader compactor maximum rates include an AB 939 Green Waste Diversion Fee of $2.36 per yard/month.
4. Pursuant to Section 11-6.16(c)(2) of the Modesto Municipal Code, the garbage company may require a deposit equivalent to two (2) months service charge from customers prior to beginning service. The deposit will be credited back to the customer after 18 months under specified conditions.
MODESTO CITY COUNCIL
RESOLUTION NO. 2009-446

A RESOLUTION APPROVING AN AGREEMENT BETWEEN THE CITY OF MODESTO AND MIWALL CORPORATION FOR THE REMOVAL AND PURCHASE OF EXPENDED BULK BRASS SHELL CASINGS FROM THE TACTICAL GUN FIRING RANGE; AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE AGREEMENT

WHEREAS, the Modesto Police Department has a Tactical Gun Firing Range at 3000 West Main Street, Turlock, California, and

WHEREAS, the Police Department would like to remove and recycle the expended bulk brass shell casings from the firing range, and

WHEREAS, the City of Modesto would like to enter into an Agreement with Miwall Corporation (Miwall), Grass Valley, California, to remove and weigh all expended bulk brass shell casings, and

WHEREAS, Miwall will credit the City of Modesto Police Department $1.25 per pound for all expended bulk brass shell casings collected, and

WHEREAS, the projected annual revenue will fluctuate depending on the amount of shell casings expended and the current market price of brass, and

WHEREAS, it is estimated that the brass currently on hand at $1.25 per pound will generate approximately $7,000 in revenue for FY 2009/2010, and

WHEREAS, credit for the expended bulk brass shell casings given to the Modesto Police Department by Miwall will be used by the Police Department for future purchases from Miwall for firing range equipment, and

WHEREAS, credit for expended brass shell casings will be posted in account 0100-0190-1961-8166, Brass/Lead Exchange, and
WHEREAS, expenses for future purchases by the Police Department of firing range equipment will be posted in account 0100-0190-1961-0356, Police Equipment, and

WHEREAS, the term of the contract will be for one year with four (4) one-year extension options, at the sole discretion of the City, for a total of five (5) years.

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 Miwall Corporation for the removal and purchase of expended bulk brass shell casings from the Tactical Gun Firing Range.

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 September, 2009, 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: Hawn, Keating, Lopez, Marsh, O'Bryant, 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
MODESTO CITY COUNCIL
RESOLUTION NO. 2009-447

A RESOLUTION AMENDING THE FISCAL YEAR 2009/2010 OPERATING BUDGET TO APPROPRIATE REVENUES AND EXPENDITURES OF $7,000 FOR BRASS/LEAD EXCHANGE

WHEREAS, the Modesto Police Department has a Tactical Gun Firing Range at 3000 West Main Street, Turlock, California, and

WHEREAS, the Police Department would like to remove and recycle the expended bulk brass shell casings from the firing range, and

WHEREAS, the City of Modesto would like to enter into Agreement with Miwall Corporation (Miwall), Grass Valley, California, to remove and weigh all expended bulk brass shell casings, and

WHEREAS, Miwall will credit the City of Modesto Police Department $1.25 per pound for the expended brass shell casings, and

WHEREAS, it is estimated that the brass currently on hand at $1.25 per pound will generate approximately $7,000 in revenue for FY 2009/2010, and

WHEREAS, credit for the expended bulk brass shell casings given to the Modesto Police Department will be used by the Police Department for future purchases made to Miwall for firing range equipment, and

WHEREAS, the term of the Agreement shall be for one year, with four one-year extension options, at the sole discretion of City, for a total of five years, and

WHEREAS, credit for expended brass shell casings will be posted in account 0100-0190-1961-8166, Brass/Lead Exchange, and

WHEREAS, expenses for future purchases by the Police Department of firing range equipment will be posted in account 0100-0190-1961-0356, Police Equipment.
NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto, that it hereby amends the Fiscal Year 2009/2010 Operating Budget to appropriate revenues and expenditures of $7,000 for brass/lead exchange.

BE IT FURTHER RESOLVED that the Finance Director, 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 22nd day of September, 2009, 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: Hawn, Keating, Lopez, Marsh, O'Bryant, 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. 2009-448

A RESOLUTION APPROVING AN ON-CALL LIST FOR CLOSED CIRCUIT TELEVISION (CCTV) INSPECTION SERVICES FOR WASTEWATER COLLECTION SYSTEMS AND STORM WATER COLLECTION SYSTEMS CONSISTING OF THE FOLLOWING FIRMS: IPI, COASTLINE WATER RESOURCES, AND NOR CAL PIPELINE INSPECTION, FOR A PERIOD NOT TO EXCEED THREE YEARS

WHEREAS, the City of Modesto will be rehabilitating and constructing sanitary collection and storm drain collection systems over the next several years, and

WHEREAS, several of these systems consist of larger diameter pipelines, such as the Cannery Segregation Line, which ranges from 24 inches to 66 inches in diameter, and

WHEREAS, in order to assess and examine the conditions of existing and new pipelines, the City will require CCTV inspection services from firms with established experience in wastewater collection systems and storm water collection systems, and

WHEREAS, on May 27, 2009, in compliance with Administrative Directive 3.1, Selection Procedures for Professional Consultants Who Provide Architectural and Engineering Services for Capital Projects, a Request for Qualifications was sent to sixteen (16) firms, including one local firm, that specialize in CCTV Inspection Services, and

WHEREAS, the City received qualification statements from six (6) firms, and

WHEREAS, a selection committee, comprised of City staff, determined that three of the firms: IPI, Coastline Water Resources, and Nor Cal Pipeline Inspection, were the most qualified as they demonstrated a thorough understanding of the issues involving wastewater and storm water collection systems, and
WHEREAS, the staff Selection Committee recommends that all three firms be included on the list.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the on-call list for Closed Circuit Television (CCTV) Inspection Services for wastewater collection systems and storm water collection systems consisting of the following firms: IPI, Coastline Water Resources, and Nor Cal Pipeline Inspection, for a period not to exceed 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 September, 2009, 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: Hawn, Keating, Lopez, Marsh, O’Bryant, 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 APPROVING A MEMORANDUM OF UNDERSTANDING WITH THE CITY OF RIPON FOR THE CITY OF MODESTO TO ACT AS THE RECIPIENT OF FEDERAL TRANSIT ADMINISTRATION SECTION 5307 FORMULA FUNDS ON BEHALF OF THE CITY OF RIPON; AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE MEMORANDUM OF UNDERSTANDING

WHEREAS, Federal Transit Administration (FTA) Section 5307 funds are apportioned to the Modesto Urbanized Area (UZA) using a formula based on population and other factors, and

WHEREAS, the City of Modesto is designated by the FTA as the recipient of Section 5307 funds for the Modesto UZA, and

WHEREAS, Ripon is a part of the Modesto UZA and the amount of money received by the UZA is partially based on the population of the City of Ripon, and

WHEREAS, the City of Ripon and the FTA have asked the City of Modesto to act as a pass through for Section 5307 funds for the City of Ripon, and

WHEREAS, the City of Modesto is prepared to accept the responsibility as grant recipient of FTA Section 5307 funds on behalf of the City of Ripon subject to approval of an Memorandum Of Understanding (MOU) with the City of Ripon that describes the responsibilities of the cities of Ripon and Modesto.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves an MOU with the City of Ripon for the City of Modesto to act as the recipient of FTA Section 5307 funds on behalf of the City of Ripon.

BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute the MOU.
The foregoing resolution was introduced at a regular meeting of the Council of
the City of Modesto held on the 22nd day of September, 2009, 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: Hawn, Keating, Lopez, Marsh, O’Bryant, Olsen,
Mayor Ridenour

NOES: Councilmembers: None

ABSENT Councilmembers: None

(SIGNATURE)

ATTEST: STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney
A RESOLUTION APPROVING THE PLANS AND SPECIFICATIONS FOR THE
PROJECT TITLED, “2009 SANITARY SEWER COLLECTION SYSTEM
REPLACEMENT,” ACCEPTING THE BID AND APPROVING A CONTRACT
WITH FERMIN SIERRA CONSTRUCTION, INC. IN THE AMOUNT OF
$467,430, AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE,
TO EXECUTE THE CONTRACT

WHEREAS, plans and specifications have been prepared for the 2009 Sanitary
Sewer Collection System Replacement project and City staff recommends approval by
the City Council, and

WHEREAS, the bids received for the 2009 Sanitary Sewer Collection System
Replacement project were opened at 11:00 a.m. on September 1, 2009, and later tabulated
by the Director of Public Works for the consideration of the Council, and

WHEREAS, the Director of Public Works has recommended that the bid of
$467,430 received from Fermin Sierra Construction, Inc. be accepted as the lowest
responsible bid and the contract be awarded to Fermin Sierra Construction, Inc.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto
that it hereby approves the plans and specifications for the 2009 Sanitary Sewer
Collection System Replacement project, accepts the bid of Fermin Sierra Construction,
Inc. in the amount of $467,430, and awards Fermin Sierra Construction, Inc. the contract
for the 2009 Sanitary Sewer Collection System 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 September, 2009, 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: Hawn, Keating, Lopez, Marsh, O’Bryant, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

(SIGNATURE)

APPROVED AS TO FORM:

By: 

SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2009-451

A RESOLUTION APPROVING THE PLANS AND SPECIFICATIONS FOR THE
PROJECT TITLED, “PARK LIGHTING UPGRADE AT 6 SITES,” ACCEPTING
THE BID AND APPROVING A CONTRACT WITH MODESTO EXECUTIVE
ELECTRIC, INC. IN THE AMOUNT OF $237,692.15, AND AUTHORIZING THE
CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE CONTRACT

WHEREAS, plans and specifications have been prepared for the Park Lighting
Upgrade at 6 Sites project and City staff recommends approval by the City Council, and

WHEREAS, the bids received for the Park Lighting Upgrade at 6 Sites project
were opened at 11:00 a.m. on August 18, 2009, and later tabulated by the Director of
Public Works for the consideration of the Council, and

WHEREAS, the Director of Public Works has recommended that the bid of
$237,692.15 received from Modesto Executive Electric, Inc. be accepted as the lowest
responsible bid and the contract be awarded to Modesto Executive Electric, Inc.,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto
that it hereby approves the plans and specifications for the Park Lighting Upgrade at 6
Sites project, accepts the bid of Modesto Executive Electric, Inc. in the amount of
$237,692.15, and awards Modesto Executive Electric, Inc. the contract for the Park
Lighting Upgrade at 6 Sites 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 September, 2009, by Councilmember Olsen, who moved its adoption, which motion being duly seconded by Councilmember Keating, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Hawn, Keating, Lopez, Marsh, O'Bryant, 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. 2009-452

A RESOLUTION APPROVING A NEW CAPITAL IMPROVEMENT PROGRAM ACCOUNT FOR THE PROJECT TITLED, “DESIGN OF STREET OVERLAY AND ADA CURB RAMP IMPROVEMENTS”, WHICH DID NOT APPEAR IN THE ADOPTED CAPITAL IMPROVEMENT PROGRAM FOR FISCAL YEAR 2009-2010

WHEREAS, in order to avoid co-mingling of American Recovery and Reinvestment Act (ARRA) funds with Local Transportation Funds (LTF) for grant reporting purposes, it has been determined that the design piece of this project should be programmed in a separate Capital Improvement Program (CIP) account from the construction account, and

WHEREAS, a list was quickly prepared to include overlay candidate streets and locations requiring Americans with Disabilities Act (ADA) curb ramp upgrades, and

WHEREAS, City staff utilized a list maintained by Public Works containing public requests for new or upgraded curb ramps, and

WHEREAS, in addition, the curb ramps adjacent to the streets that will be receiving an asphalt overlay will be required to be upgraded to current ADA standards, and

WHEREAS, City staff submitted the Request for Authorization for preliminary engineering to Caltrans on August 6, 2009, and

WHEREAS, there is an extremely short amount of time to prepare plans and specifications, and receive Authorization to Proceed with construction, and

WHEREAS, per ARRA funding guidelines, we must receive the Authorization to Proceed with construction no later than March 2, 2010, and
WHEREAS, this project was not included in the adopted CIP for Fiscal Year 2009-2010, and

WHEREAS, City staff will attempt to complete plans and specifications by mid-January, allowing ample time for Caltrans staff to review and obligate the funds by the March 2nd deadline, and

WHEREAS, the total amount of funding expected for both design and construction of this project is $3,269,225, and

WHEREAS, City staff recommends approving a new CIP Account 0510-430-H015 for the project titled, “Design of Street Overlay and ADA Curb Ramp Improvements.”

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves a new Capital Improvement Program Account 0510-430-H015 for the project titled, “Design of Street Overlay and ADA Curb Ramp Improvements.”

BE IT FURTHER RESOLVED that the Finance Director, or his/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 September, 2009, 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: Hawn, Keating, Lopez, Marsh, O’ Bryant, 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
A RESOLUTION AMENDING THE FISCAL YEAR 2009-2010 CAPITAL IMPROVEMENT PROGRAM BUDGET IN ORDER TO FUND THE DESIGN ACTIVITIES FOR THE DESIGN OF THE “STREET OVERLAY AND ADA CURB RAMP IMPROVEMENTS” PROJECT

WHEREAS, a budget adjustment in the amount of $200,000 is necessary to fund the design activities for the Design of the “Street Overlay and ADA Curb Ramp Improvements” project, along with engineering/design/administration support from City staff, 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 Finance Director, or his/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 September, 2009, 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: Hawn, Keating, Lopez, Marsh, O’Bryant, 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
**Exhibit A**

**FUND:**
Local Transportation (LTF) Funds-Streets & Roads

**EXPENDITURES:**

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Increase/Decrease</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>LTF Streets &amp; Roads Fund</td>
<td>0510-800-8000-8003</td>
<td>($200,000)</td>
<td></td>
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<tr>
<td>Design of Street Overlay &amp; ADA Curb Ramp Imprv</td>
<td>0510-430-H015-6010</td>
<td>$200,000</td>
<td></td>
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MODESTO CITY COUNCIL
RESOLUTION NO. 2009-454

A RESOLUTION APPROVING A PRIORITIZED STREET LIST FOR THE
PROJECT TITLED, “STREET OVERLAY AND ADA CURB RAMP
IMPROVEMENTS”

WHEREAS, the City proposes to utilize American Recovery and Reinvestment
Act (ARRA) funds to design and construct a street overlay and Americans with
Disabilities Act (ADA) curb ramp improvement project (Project), and

WHEREAS, on July 30, 2009, City staff was asked by StanCOG for a list of
streets and curb ramp locations that would be included in the Project, and

WHEREAS, this list was needed as soon as possible so that StanCOG could
prepare the required certification paperwork, and

WHEREAS, staff quickly prepared a list of overlay candidates and locations
needing curb ramp upgrades, and

WHEREAS, staff utilized the City’s Pavement Management System data to select
the overlay candidates, and

WHEREAS, staff utilized a list maintained by Public Works containing public
requests for new or upgraded curb ramps, and curb ramps adjacent to the streets that will
be receiving an asphalt overlay will be required to be upgraded to current ADA
standards, and

WHEREAS, the overlay candidates were prioritized based on the condition of the
pavement, and the segments with the lowest pavement condition rating are given the
highest priority on the list, and

WHEREAS, during the design process, staff may determine that the pavement
condition is so poor that an overlay may not be the appropriate treatment, and
WHEREAS, it is expected that there will not be sufficient funds available to overlay all of the street segments on the list, and

WHEREAS, City staff recommends approving a prioritized street list for the "Street Overlay and ADA Curb Ramp Improvements" project, 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 a prioritized street list for the "Street Overlay and ADA Curb Ramp Improvements" project, as shown in Exhibit A.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 22nd day of September, 2009, 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: Hawn, Keating, Lopez, Marsh, O'Bryant, 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
Exhibit A
Street Overlay and ADA Curb Ramp Improvements (ARRA Project) City of Modesto

Overlays Candidates

<table>
<thead>
<tr>
<th>Priority</th>
<th>Street</th>
<th>From</th>
<th>To</th>
<th>Average Pavement Condition Index</th>
<th>Length(miles)</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>E. Roseburg Ave.</td>
<td>McHenry Ave.</td>
<td>Sunrise Ave.</td>
<td>10</td>
<td>0.50</td>
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<tr>
<td>2</td>
<td>Virginia Ave.</td>
<td>Needham St.</td>
<td>Roseburg Ave.</td>
<td>10</td>
<td>1.00</td>
</tr>
<tr>
<td>3</td>
<td>Sylvan Ave</td>
<td>Coffee Rd.</td>
<td>Oakdale Rd.</td>
<td>13</td>
<td>1.00</td>
</tr>
<tr>
<td>4</td>
<td>Orangeburg Ave.</td>
<td>McHenry Ave.</td>
<td>Coffee Rd.</td>
<td>19</td>
<td>1.00</td>
</tr>
<tr>
<td>5</td>
<td>Carver Rd.</td>
<td>Standiford Ave.</td>
<td>Snyder</td>
<td>20</td>
<td>0.50</td>
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<tr>
<td>6</td>
<td>Oakdale Rd.</td>
<td>Scenic Dr.</td>
<td>Mable Ave.</td>
<td>20</td>
<td>3.00</td>
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<tr>
<td>7</td>
<td>Neece Rd.</td>
<td>Tuolumne Rd.</td>
<td>Rouse Ave.</td>
<td>21</td>
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<tr>
<td>8</td>
<td>Tully Rd.</td>
<td>9th St.</td>
<td>Pelandale Ave.</td>
<td>22</td>
<td>3.60</td>
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<tr>
<td>9</td>
<td>Tuolumne Rd.</td>
<td>Paradise Rd.</td>
<td>9th St.</td>
<td>22</td>
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<tr>
<td>10</td>
<td>I St.</td>
<td>10th St.</td>
<td>Downey</td>
<td>24</td>
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<tr>
<td>11</td>
<td>Sisk Rd.</td>
<td>Standiford Ave.</td>
<td>Pelandale Ave.</td>
<td>34</td>
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<tr>
<td>12</td>
<td>Bowen Ave</td>
<td>McHenry Ave.</td>
<td>Tully Rd</td>
<td>38</td>
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<tr>
<td>13</td>
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<td>Coffee Rd.</td>
<td>Beyer Park Dr</td>
<td>44</td>
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<tr>
<td>14</td>
<td>W. Roseburg Ave.</td>
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<tr>
<td>15</td>
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<td>Prescott Rd</td>
<td>Carver Rd</td>
<td>51</td>
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<tr>
<td>16</td>
<td>Scenic Dr.</td>
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<td>57</td>
<td>2.06</td>
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<td></td>
<td><strong>Total</strong></td>
<td><strong>19.95</strong></td>
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Curb Ramp Candidates

<table>
<thead>
<tr>
<th>Street</th>
<th>From</th>
<th>To</th>
</tr>
</thead>
<tbody>
<tr>
<td>10th St.</td>
<td>H St.</td>
<td>I St.</td>
</tr>
<tr>
<td>11th St.</td>
<td>I St.</td>
<td>K St</td>
</tr>
<tr>
<td>12th St.</td>
<td>G St.</td>
<td>H St</td>
</tr>
<tr>
<td>Alice St</td>
<td>Olive Ave</td>
<td>Magnolia Ave</td>
</tr>
<tr>
<td>Beyer Park Dr</td>
<td>Sylvan Meadows Dr</td>
<td>Forest Glenn Dr</td>
</tr>
<tr>
<td>Bowen Ave</td>
<td>McHenry Ave</td>
<td>Tully Rd</td>
</tr>
<tr>
<td>Forest Glenn Dr</td>
<td>Sylvan Meadows Dr</td>
<td>Sylvan Ave</td>
</tr>
<tr>
<td>Guinevere Ln</td>
<td>Charlemagne Way</td>
<td>King Arthur Way</td>
</tr>
<tr>
<td>H St.</td>
<td>10th St.</td>
<td>11th St.</td>
</tr>
<tr>
<td>Hackberry Ave</td>
<td>W. Morris Ave</td>
<td>Needham St</td>
</tr>
<tr>
<td>Kearney Ave</td>
<td>Coldwell Ave</td>
<td>Princeton Ave</td>
</tr>
<tr>
<td>King Arthur Way</td>
<td>Guinevere Ln</td>
<td>Prince Valiant Ln</td>
</tr>
<tr>
<td>Kodiak Dr</td>
<td>Litt Rd</td>
<td>Fine Ave</td>
</tr>
<tr>
<td>Lancelot Ln</td>
<td>King Arthur Way</td>
<td>E. Rumble Rd</td>
</tr>
<tr>
<td>Magnolia Ave</td>
<td>W. Morris Ave</td>
<td>Needham St</td>
</tr>
<tr>
<td>Mount Vernon Dr</td>
<td>Prescott Rd</td>
<td>Carver Rd</td>
</tr>
<tr>
<td>Muirwood Way</td>
<td>Wylie Dr</td>
<td>Landini Way</td>
</tr>
<tr>
<td>Park Ave</td>
<td>Stoddard Ave</td>
<td>Needham St</td>
</tr>
<tr>
<td>Poplar Ave</td>
<td>Stoddard Ave</td>
<td>Needham St</td>
</tr>
<tr>
<td>Prince Valiant Ln</td>
<td>Charlemagne Way</td>
<td>King Arthur Way</td>
</tr>
<tr>
<td>Scenic Dr.</td>
<td>Claus Rd.</td>
<td>Oakdale Rd</td>
</tr>
<tr>
<td>Semple St</td>
<td>Maynell Ave</td>
<td>Downey Ave</td>
</tr>
<tr>
<td>Sharon Ave</td>
<td>Maid Mariane Ln</td>
<td>Fine Ave</td>
</tr>
<tr>
<td>Stoddard Ave</td>
<td>Orange Ave</td>
<td>Magnolia Ave</td>
</tr>
<tr>
<td>Sylvan Meadows Dr</td>
<td>Coffee Rd</td>
<td>Beyer Park Dr</td>
</tr>
<tr>
<td>Wright St</td>
<td>Olive Ave</td>
<td>Magnolia Ave</td>
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</table>