MODESTO CITY COUNCIL  
RESOLUTION NO. 2009-342  

A RESOLUTION AUTHORIZING STAFF TO SUMBIT AN APPLICATION TO THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD) FOR $25.0 MILLION IN FUNDING THROUGH THE NEIGHBORHOOD STABILIZATION PROGRAM 2 UNDER THE AMERICAN RECOVERY AND REINVESTMENT ACT, 2009 (PUBLIC LAW 111-005) (RECOVERY ACT), AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE ALL RELATED DOCUMENTS.

WHEREAS, on May 4, 2009, the Federal Government released a Notice of Funding Availability announcing the Neighborhood Stabilization Program 2 (NSP2) under the American Recovery and Reinvestment Act, 2009 for additional activities under Title III of Division B of the Housing and Economic Recovery Act, 2008 (HERA). Emergency Assistance for the Redevelopment of Abandoned and Foreclosed Homes, named Neighborhood Stabilization Program 2 (NSP2) is a competitive grant process, and

WHEREAS, NSP funding is considered a special allocation of CDBG funds, funding must be targeted to areas with greatest need. HUD requires that 25% of this funding amount must be spent to serve households that are at or below 50% of the Median Area Income. 10% of the funding can be spent on administrative activities, and all requests for funding must be submitted by July 17, 2009, and

WHEREAS, NSP funds may only be used to establish financing mechanisms for the purchase and redevelopment of foreclosed upon homes and residential properties; purchase and rehabilitate homes and residential properties that have been abandoned or foreclosed upon, in order to sell, rent, or redevelop homes and properties; establish land banks for homes that have been foreclosed upon; demolish blighted structures and redevelop demolished or vacant properties. and
WHEREAS, staff is recommending that the NSP application be for $25,000,000 and partner with Center for Human Services and the Housing Authority for $6,000,000 to purchase and rehabilitate properties for transitional foster and homeless youth that are between the ages of 18-26; and also partner with Stanislaus Community Assistance Project (SCAP) for $6,000,000 to acquire and rehabilitate homes to help service those with mental health or substance abuse issues; and provide $5,500,000 for Down Payment Assistance and issue an RFQ for $5,000,000 in funding to be used to purchase and rehabilitate foreclosures, and allocate $2,500,000 for administration and planning of the program, including property inspections, abatement issues, and review and monitoring of grants and loans issued under the program, and

WHEREAS, the Citizen’s Housing and Community Development Committee met on July 7, 2009, and supported the Neighborhood Stabilization Program 2 application, and

WHEREAS, a report dated July 13, 2009 from the Parks, Recreation & Neighborhoods Department, a copy of which is on file in the office of the City Clerk, sets forth said recommendations, and

WHEREAS, said matter was set for a public hearing of the City Council to be held at 5:30 p.m. on July 14, 2009, in the Tenth Street Place Chambers, located at 1010 Tenth Street, Modesto, California, at which date and time a duly noticed public hearing was held, at which time evidence, both oral and documentary was received and considered.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby authorizes staff to submit an Application to the United States Department of
Housing and Urban Development for $25 million in funding through the Neighborhood Stabilization Program 2 under the American Recovery and Reinvestment Act of 2009 (Public Law 111-05) (Recovery Act), a copy of which 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 related documents.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 14th day of July, 2009, by Councilmember Hawn, 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, O’Bryant, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: Marsh

ATTEST: 

APPROVED AS TO FORM:

By: 

SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2009-343

A RESOLUTION APPROVING A FEE OF $30.00 PER HOUR FOR BALL FIELD LIGHTING AT DAVIS, DOWNEY, MELLIS, BEARD BROOK, THURMAN AND BEYER PARKS

WHEREAS, the City of Modesto has six (6) parks with ball field lighting: Davis, Downey, Mellis, Beard Brook, Thurman and Beyer, and

WHEREAS, the City currently does not charge for use of the ball field lights by participants, and

WHEREAS, the cost of electricity in 2008 to run the ball field lights was $48,616.26 annually, $29.95 per hour, and

WHEREAS, in order to recoup the cost of the electricity for the ball field lights staff is requesting that a $30.00 per hour charge be applied to the ball field lighting at the six (6) parks, and

WHEREAS, at their May 2009 budget hearings the Finance Committee unanimously endorsed the plan to charge for ball field lighting in order to recoup the electrical expenses.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves a ball field lighting fee of $30.00 per hour at Davis, Downey, Mellis, Beard Brook, Thurman and Beyer Parks.
The foregoing resolution was introduced at a regular meeting of the Council of
the City of Modesto held on the 14th day of July, 2009, by Councilmember Lopez, 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, O'Bryant, Olsen,
Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: Marsh

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney

ATTEST: STEPHANIE LOPEZ, City Clerk

(SEAL)
MODESTO CITY COUNCIL
RESOLUTION NO. 2009-344

RESOLUTION APPROVING SUBMITTAL OF A GRANT APPLICATION TO
THE FEDERAL TRANSIT ADMINISTRATION (FTA) REQUESTING $1,205,346
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 $1,205,346 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, the grant for Federal assistance will impose certain obligations on
the City of Modesto, and may require the City to provide the local share of the project
costs, and
WHEREAS, a public hearing was held on July 14, 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 (FTA) for CMAQ funds in the amount of
$1,205,346 authorized by 49 U.S.C. Chapter 53, Title 23, United States Code, 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 meeting of the Council of the City of Modesto held on the 14th day of July, 2009, by Councilmember O’Bryant, 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, O’Bryant, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: Marsh

ATTEST: [Signature]

(SEAL)

APPROVED AS TO FORM:

By: [Signature]

SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2009-345

A RESOLUTION APPROVING AN AGREEMENT WITH HDR ENGINEERING, INC. FOR DESIGN SUPPORT DURING CONSTRUCTION FOR EL RIO SEWER REPLACEMENT IN AN AMOUNT NOT TO EXCEED $51,027, AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE AGREEMENT

WHEREAS, the existing El Rio sewer line currently runs along the east bank of Dry Creek behind the houses on El Rio Avenue, and

WHEREAS, this 6-inch line is more than 50 years old and is subject to constant erosion due to the frequent flooding, and

WHEREAS, there is the high potential of pipe failure due to the creek erosion that could result in uncontrolled discharges, subsequent fines, and clean-up costs, and

WHEREAS, the alignment is through a riparian corridor with limited or no access for maintenance, making it difficult to perform routine monitoring of the pipe and bank condition, and

WHEREAS, on December 7, 2004, by Resolution No. 2004-644, the City Council approved a Second Amendment to the La Loma Lift Station Project with HDR Engineering to complete the design for the replacement of the El Rio sewer line, and

WHEREAS, on September 26, 2006, by Resolution No. 2006-624, the City Council adopted a resolution changing the procedures that Public Works uses for projects with a total CIP budget of more than $1 million, and

WHEREAS, because the anticipated budget of the El Rio Sewer Replacement Project exceeded $1 million, HDR Engineering was directed to change the scope of work to develop a 35% design effort and a Preliminary Design Report (PDR) for the project, and
WHEREAS, the PDR served as the basis of design for the El Rio Sewer Replacement project and the final PDR was accepted by Council on July 24, 2007, and

WHEREAS, on August 6, 2008, by Resolution No. 2008-444, the City Council approved an Agreement with HDR Engineering, Inc. to prepare a final project design for the El Rio Sewer Replacement project, and

WHEREAS, the final project design was completed and bids were solicited in June 2009, and

WHEREAS, the City opened bids for the construction of El Rio Sewer Replacement project on June 16, 2009, and

WHEREAS, design support services are required during the construction of the project to provide technical support to the construction manager, and

WHEREAS, HDR completed the preliminary design and final design of the project satisfactorily, and

WHEREAS, City staff recommends approving an agreement with HDR Engineering for design support during construction as this agreement will allow for the design support during the construction period for the project, and

WHEREAS, City staff recommends approving an Agreement with HDR Engineering as the City does not have the staffing level or subject matter expertise to provide design support during construction for the El Rio Sewer Replacement project, and current workload levels do not provide for timely in-house solutions/responses.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves an Agreement with HDR Engineering for design support during construction for El Rio Sewer Replacement project in an amount not to exceed $51,027.
BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute the Agreement.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 14th day of July, 2009, by Councilmember Lopez, 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, O’Bryant, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: Marsh

ATTEST: [Signature]

(SEAL)

APPROVED AS TO FORM:

By: [Signature]

SUSANA ALCALA WOOD, City Attorney
A RESOLUTION APPROVING THE PLANS AND SPECIFICATIONS FOR THE EL RIO SEWER REPLACEMENT PROJECT, ACCEPTING THE BID AND APPROVING A CONTRACT WITH D.A. WOOD CONSTRUCTION, INC. IN THE AMOUNT OF $963,739.88, FOR THE EL RIO SEWER REPLACEMENT PROJECT, AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE CONTRACT

WHEREAS, plans and specifications have been prepared for the El Rio Sewer Replacement project and City staff recommends approval by the City Council. and

WHEREAS, the bids received for the El Rio Sewer Replacement project were opened at 11:00 a.m. on June 16, 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 $963,739.88 received from D.A. Wood Construction, Inc. be accepted as the lowest responsible bid and the contract be awarded to D.A. Wood 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 El Rio Sewer Replacement project, accepts the bid of D.A. Wood Construction, Inc. in the amount of $963,739.88, and awards D.A. Wood Construction, Inc. the contract for the El Rio Sewer Replacement project.

BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute the contract with D.A. Wood Construction, Inc. in the amount of $963,739.88, for the El Rio Sewer Replacement project.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 14th day of July, 2009, by Councilmember Lopez, 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, O’Bryant, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: Marsh

(Seal)

APPROVED AS TO FORM:

By: SUSAN ALCALA WOOD, City Attorney

ATTEST: STEPHANIE LOPEZ, City Clerk
MODESTO CITY COUNCIL
RESOLUTION NO. 2009-347

A RESOLUTION APPROVING A LETTER OF AGREEMENT BETWEEN THE
CITY OF MODESTO AND THE MODESTO POLICE MANAGEMENT
ASSOCIATION FOR A TERM OF JUNE 23, 2009 THROUGH JUNE 30, 2010

WHEREAS, the current Memorandum of Understanding (MOU) between the
City of Modesto (CITY) and the Modesto Police Management Association (MPMA)
expired on June 22, 2009, and

WHEREAS, representatives of the CITY and the MPMA have met and conferred
in good faith concerning wages, hours, terms and conditions of employment for
employees in said bargaining unit, and

WHEREAS, pursuant to an Agenda Report dated July 13, 2009, a copy of which
report is on file in the office of the City Clerk, the CITY and MPMA have reached
agreement on a letter of agreement which, upon execution, shall be attached hereto and
made a part hereof, and

WHEREAS, the letter of agreement provides as follows:

SECTION 1. The letter of agreement (Agreement) shall be effective from date of
adoption by the City Council on its regular agenda until June 30, 2010, and only covers
the subject matters in the Agreement. The parties will continue to meet and confer over
negotiations for a successor MOU to the one that expired on June 22, 2009.

SECTION 2. MANDATORY FURLoughS. For fiscal year 2009-2010, each
bargaining unit member shall take forty-seven (47) hours of mandatory furloughs. For
the pay period beginning July 7, 2009, each unit member shall have one (1) furlough hour
deducted from his/her pay check received on July 23, 2009. Two (2) unpaid furlough
hours shall be deducted for the following twenty-three (23) pay periods. for a total of
forty-seven (47) hours during fiscal year 2009-2010. Effective July 7, 2009 the City shall create for each member a furlough bank of forty-seven (47) hours. Between July 7, 2009 and April 7, 2011, the Police Chief shall ensure that all members exhaust all forty-seven (47) hours in the furlough bank in a manner that does not result in an increase in overtime cost due to the vacancy left by the furloughed employee. The Police Chief shall by October 31, 2009 work with employees to generate a schedule for the use of furlough hours in order to ensure that each member will exhaust all forty-seven (47) hours in his or her furlough bank. Furlough hours that have been deducted and banked but have not been taken as time off by June 30, 2011, shall be forfeited by the employee and shall not be cashed out. During this designated furlough deduction period, the City will continue to report each employee’s full base pay rate (without reduction for furlough deductions) to CalPERS each pay period. In addition, an employee’s percentage-based special incentive pay (if any) will continue to be paid based on the employee’s regular schedule and will not be impacted by the furlough deductions. Therefore, these percentage-based special pays will be fully reported to CalPERS. The exact language of this provision shall be set forth in the Agreement between the City and MPMA.

SECTION 3. HEALTH, DENTAL AND VISION BENEFITS. The CITY’s contribution to employees’ Health, Dental and Vision coverage shall be as follows:

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<td>7/22/08</td>
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<tr>
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The exact language of this provision shall be set forth in the Agreement between the City and MPMA.

SECTION 4. COST SAVINGS. For fiscal year 2009-2010, MPMA unit members agree to the following cost savings without any corresponding time off:

1. Elimination of City’s contribution for deferred compensation for fiscal year 2009-2010;
2. A freeze for all step increases for fiscal year 2009-2010 and in fiscal year 2010-2011, employees will be eligible to move one step on their normal schedule for step increases;
3. Elimination of City paid annual physicals;
4. A freeze for management leave cash out for fiscal year 2009-2010;
5. Elimination of City contribution for term life insurance for fiscal year 2009-2010. This shall be accomplished by canceling all life insurance (base and optional) for FY 09-10 or by all unit members paying the full cost of the insurance. The decision shall be made by MPMA.

SECTION 5. CONTINUED NEGOTIATIONS. The parties will continue to meet and confer over negotiations for a successor MOU to the one that expired on June 22, 2009.

WHEREAS, the MPMA membership has already ratified this Agreement.

WHEREAS, the Council considered this matter at its meeting of July 14, 2009.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the Council hereby approves the Agreement between the City of Modesto and the
Modesto Police Management Association, and upon execution of same, a copy of the Agreement will be on file in the office of the City Clerk.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 14th day of July, 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, O’Bryant, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: Marsh

ATTEST: [Signature]

(SEAL)

APPROVED AS TO FORM:

By: [Signature]

SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2009-348

A RESOLUTION APPOINTING RICHARD ANDERSON TO THE CITY OF MODESTO CITIZENS ADVISORY COMMITTEE ON RECYCLING

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

WHEREAS, the Economic Development Committee met on July 6, 2009, and recommended appointment of RICHARD ANDERSON to the Citizens Advisory Committee on Recycling.

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

SECTION 1. RICHARD ANDERSON is hereby appointed to the Citizens Advisory Committee on Recycling with a term expiration of January 1, 2013.

SECTION 2. The City Clerk is hereby directed to transmit a copy of this resolution to the appointed member of the Citizens Advisory Committee on Recycling, and the Secretary thereof.
The foregoing resolution was introduced at a special meeting of the Council of the City of Modesto held on the 5th day of August, 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. 2009-349

A RESOLUTION APPOINTING TONY TAM TO THE CITY OF MODESTO CITIZENS ADVISORY COMMITTEE ON RECYCLING

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

WHEREAS, the Economic Development Committee met on July 6, 2009, and recommended appointment of TONY TAM to the Citizens Advisory Committee on Recycling.

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

SECTION 1. TONY TAM is hereby appointed to the Citizens Advisory Committee on Recycling with a term expiration of January 1, 2011.

SECTION 2. The City Clerk is hereby directed to transmit a copy of this resolution to the appointed member of the Citizens Advisory Committee on Recycling, and the Secretary thereof.
The foregoing resolution was introduced at a special meeting of the Council of the City of Modesto held on the 5th day of August, 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
MODESTO CITY COUNCIL
RESOLUTION NO. 2009-350

A RESOLUTION APPOINTING ZACHARY SHARP TO THE CITY OF MODESTO CITIZENS ADVISORY COMMITTEE ON RECYCLING

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

WHEREAS, the Economic Development Committee met on July 6, 2009, and recommended appointment of ZACHARY SHARP to the Citizens Advisory Committee on Recycling.

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

SECTION 1. ZACHARY SHARP is hereby appointed to the Citizens Advisory Committee on Recycling with a term expiration of January 1, 2013.

SECTION 2. The City Clerk is hereby directed to transmit a copy of this resolution to the appointed member of the Citizens Advisory Committee on Recycling, and the Secretary thereof.
The foregoing resolution was introduced at a special meeting of the Council of the City of Modesto held on the 5th day of August, 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]

SUSANA ALCALA WOOD, City Attorney

APPROVED AS TO FORM:
MODESTO CITY COUNCIL
RESOLUTION NO. 2009-351

A RESOLUTION APPOINTING KATHLEEN ENNIS TO THE CITY OF
MODESTO CITIZENS ADVISORY COMMITTEE ON RECYCLING

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

WHEREAS, the Economic Development Committee met on July 6, 2009, and recommended appointment of KATHLEEN ENNIS to the Citizens Advisory Committee on Recycling.

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

SECTION 1. KATHLEEN ENNIS is hereby appointed to the Citizens Advisory Committee on Recycling with a term expiration of January 1, 2013.

SECTION 2. The City Clerk is hereby directed to transmit a copy of this resolution to the appointed member of the Citizens Advisory Committee on Recycling, and the Secretary thereof.
The foregoing resolution was introduced at a special meeting of the Council of the City of Modesto held on the 5th day of August, 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
MODESTO CITY COUNCIL
RESOLUTION NO. 2009-352

A RESOLUTION APPOINTING ALITA ROBERTS TO THE CITY OF MODESTO CITIZENS HOUSING & COMMUNITY DEVELOPMENT COMMITTEE

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

WHEREAS, the Economic Development Committee met on July 6, 2009, and recommended appointment of ALITA ROBERTS to the Citizens Housing & Community Development Committee.

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

SECTION 1. ALITA ROBERTS is hereby appointed to the Citizens Housing & Community Development Committee with a term expiration of January 1, 2013.

SECTION 2. The City Clerk is hereby directed to transmit a copy of this resolution to the appointed member of the Citizens Housing & Community Development Committee, and the Secretary thereof.
The foregoing resolution was introduced at a special meeting of the Council of the City of Modesto held on the 5th day of August, 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. 2009-353

A RESOLUTION APPOINTING AMANDA FISHER TO THE CITY OF MODESTO CULTURE COMMISSION

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

WHEREAS, the Economic Development Committee met on July 6, 2009, and recommended appointment of AMANDA FISHER to the Culture Commission.

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

SECTION 1. AMANDA FISHER is hereby appointed to the Culture Commission with a term expiration of January 1, 2010.

SECTION 2. The City Clerk is hereby directed to transmit a copy of this resolution to the appointed member of the Culture Commission, and the Secretary thereof.
The foregoing resolution was introduced at a special meeting of the Council of the City of Modesto held on the 5th day of August, 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 ALCALÁ WOOD, City Attorney

ATTEST: STEPHANIE LOPEZ, City Clerk
MODESTO CITY COUNCIL
RESOLUTION NO. 2009-354

A RESOLUTION APPOINTING CRAIG CHAMBERLIN TO THE CITY OF MODESTO DISABLED ACCESS APPEALS BOARD

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

WHEREAS, the Economic Development Committee met on July 6, 2009, and recommended appointment of CRAIG CHAMBERLIN to the Disabled Access Appeals Board.

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

SECTION 1. CRAIG CHAMBERLIN is hereby appointed to the Disabled Access Appeals Board with a term expiration of January 1, 2013.

SECTION 2. The City Clerk is hereby directed to transmit a copy of this resolution to the appointed member of the Disabled Access Appeals Board, and the Secretary thereof.
The foregoing resolution was introduced at a special meeting of the Council of the City of Modesto held on the 5th day of August, 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
MODESTO CITY COUNCIL
RESOLUTION NO. 2009-355

A RESOLUTION APPOINTING AMANDEEP BAHIA TO THE CITY OF MODESTO EQUAL OPPORTUNITY/DISABILITY COMMISSION

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

WHEREAS, the Economic Development Committee met on July 6, 2009, and recommended appointment of AMANDEEP BAHIA to the Equal Opportunity/Disability Commission.

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

SECTION 1. AMANDEEP BAHIA is hereby appointed to the Equal Opportunity/Disability Commission with a term expiration of January 1, 2013.

SECTION 2. The City Clerk is hereby directed to transmit a copy of this resolution to the appointed member of the Equal Opportunity/Disability Commission, and the Secretary thereof.
The foregoing resolution was introduced at a special meeting of the Council of the City of Modesto held on the 5th day of August, 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: __________________________

SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2009-356

A RESOLUTION APPOINTING NICHOLAS SOTTERO TO THE CITY OF
MODESTO EQUAL OPPORTUNITY/DISABILITY COMMISSION

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

WHEREAS, the Economic Development Committee met on July 6, 2009, and
recommended appointment of NICHOLAS SOTTERO to the Equal
Opportunity/Disability Commission.

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

SECTION 1. NICHOLAS SOTTERO is hereby appointed to the Equal

SECTION 2. The City Clerk is hereby directed to transmit a copy of this
resolution to the appointed member of the Equal Opportunity/Disability Commission, and
the Secretary thereof.
The foregoing resolution was introduced at a special meeting of the Council of the City of Modesto held on the 5th day of August, 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: ____________________________

SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2009-357

A RESOLUTION APPOINTING BOB ARIVETT TO THE CITY OF MODESTO GOLF COURSES ADVISORY COMMITTEE

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

WHEREAS, the Economic Development Committee met on July 6, 2009, and recommended appointment of BOB ARIVETT to the Golf Courses Advisory Committee.

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

SECTION 1. BOB ARIVETT is hereby appointed to the Golf Courses Advisory Committee with a term expiration of January 1, 2013.

SECTION 2. The City Clerk is hereby directed to transmit a copy of this resolution to the appointed member of the Golf Courses Advisory Committee, and the Secretary thereof.
The foregoing resolution was introduced at a special meeting of the Council of the City of Modesto held on the 5th day of August, 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. 2009-358

A RESOLUTION APPOINTING RICHARD HORNING TO THE CITY OF MODESTO GOLF COURSES ADVISORY COMMITTEE

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

WHEREAS, the Economic Development Committee met on July 6, 2009, and recommended appointment of RICHARD HORNING to the Golf Courses Advisory Committee.

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

SECTION 1. RICHARD HORNING is hereby appointed to the Golf Courses Advisory Committee with a term expiration of January 1, 2012.

SECTION 2. The City Clerk is hereby directed to transmit a copy of this resolution to the appointed member of the Golf Courses Advisory Committee, and the Secretary thereof.
The foregoing resolution was introduced at a special meeting of the Council of the City of Modesto held on the 5th day of August, 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 ÁLCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2009-359

A RESOLUTION APPOINTING KIT JORY TO THE CITY OF MODESTO
GOLF COURSES ADVISORY COMMITTEE

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

WHEREAS, the Economic Development Committee met on July 6, 2009, and recommended appointment of KIT JORY to the Golf Courses Advisory Committee.

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

SECTION 1. KIT JORY is hereby appointed to the Golf Courses Advisory Committee with a term expiration of January 1, 2011.

SECTION 2. The City Clerk is hereby directed to transmit a copy of this resolution to the appointed member of the Golf Courses Advisory Committee, and the Secretary thereof.
The foregoing resolution was introduced at a special meeting of the Council of the City of Modesto held on the 5th day of August, 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
MODESTO CITY COUNCIL
RESOLUTION NO. 2009-360

A RESOLUTION APPOINTING JOEL MENSONIDES TO THE CITY OF MODESTO GOLF COURSES ADVISORY COMMITTEE

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

WHEREAS, the Economic Development Committee met on July 6, 2009, and recommended appointment of JOEL MENSONIDES to the Golf Courses Advisory Committee.

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

SECTION 1. JOEL MENSONIDES is hereby appointed to the Golf Courses Advisory Committee with a term expiration of January 1, 2010.

SECTION 2. The City Clerk is hereby directed to transmit a copy of this resolution to the appointed member of the Golf Courses Advisory Committee, and the Secretary thereof.
The foregoing resolution was introduced at a special meeting of the Council of the City of Modesto held on the 5th day of August, 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
MODESTO CITY COUNCIL
RESOLUTION NO. 2009-361

A RESOLUTION APPOINTING CHRIS HARRIGFELD TO THE CITY OF MODESTO HOUSING REHABILITATION LOAN COMMITTEE

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

WHEREAS, the Economic Development Committee met on July 6, 2009, and recommended appointment of CHRIS HARRIGFELD to the Housing Rehabilitation Loan Committee.

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

SECTION 1. CHRIS HARRIGFELD is hereby appointed to the Housing Rehabilitation Loan Committee with a term expiration of January 1, 2013.

SECTION 2. The City Clerk is hereby directed to transmit a copy of this resolution to the appointed member of the Housing Rehabilitation Loan Committee, and the Secretary thereof.
The foregoing resolution was introduced at a special meeting of the Council of the City of Modesto held on the 5th day of August, 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. 2009-362

A RESOLUTION APPOINTING DENZIL WALKER TO THE CITY OF
MODESTO LANDMARK PRESERVATION COMMISSION

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

WHEREAS, the Economic Development Committee met on July 6, 2009, and
recommended appointment of DENZIL WALKER to the Landmark Preservation
Commission.

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

SECTION 1. DENZIL WALKER is hereby appointed to the Landmark
Preservation Commission with a term expiration of January 1, 2013.

SECTION 2. The City Clerk is hereby directed to transmit a copy of this
resolution to the appointed member of the Landmark Preservation Commission, and the
Secretary thereof.
The foregoing resolution was introduced at a special meeting of the Council of the
City of Modesto held on the 5th day of August, 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
MODESTO CITY COUNCIL
RESOLUTION NO. 2009-363

A RESOLUTION APPOINTING JACK DOOLEY TO THE CITY OF MODESTO LANDMARK PRESERVATION COMMISSION

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

WHEREAS, the Economic Development Committee met on July 6, 2009, and recommended appointment of JACK DOOLEY to the Landmark Preservation Commission.

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

SECTION 1. JACK DOOLEY is hereby appointed to the Landmark Preservation Commission with a term expiration of January 1, 2013.

SECTION 2. The City Clerk is hereby directed to transmit a copy of this resolution to the appointed member of the Landmark Preservation Commission, and the Secretary thereof.
The foregoing resolution was introduced at a special meeting of the Council of the City of Modesto held on the 5th day of August, 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. 2009-364

A RESOLUTION ACCEPTING WITH REGRET THE RESIGNATION OF DANIEL PARK FROM THE ENTERTAINMENT COMMISSION

WHEREAS, Daniel Park was appointed a member of the Entertainment Commission on March 10, 2009, and

WHEREAS, Daniel Park has tendered his resignation from the Entertainment Commission, and

NOW, THEREFORE, BE IT RESOLVED that the resignation of Daniel Park from the Entertainment 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 Daniel Park 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 5th day of August, 2009, by Councilmember Hawn, 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

(SEAL)

ATTEST: STEPHANIE LOPEZ, City Clerk

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2009-365

A RESOLUTION APPROVING A SECOND ADDENDUM TO THE AGREEMENT WITH RENNE SLOAN HOLZMAN SAKAI, LLP; AND AUTHORIZING THE CITY MANAGER AND CITY ATTORNEY TO EXECUTE THE SECOND ADDENDUM TO AGREEMENT

WHEREAS, the City of Modesto entered into an Agreement for outside Legal Services with the Law Firm of Renne Sloan Holzman Sakai, LLP on January 1, 2009, for specialized legal and consultant services in the area of labor, employment and personnel matters, and

WHEREAS, as a result of the City of Modesto’s Voluntary Separation Incentive Program of 2009 the Human Resources Director participated in the program and retired on June 1, 2009, and

WHEREAS, in response to the City Council’s direction to review all positions and departments in the City and made recommendations regarding efficiencies in operation, the City Manager sought the opportunity to conduct such a review by engaging a Human Resources consultant to oversee the daily operations of the Human Resources Department for a limited term. As Interim Human Resources Director, the consultant will make recommendations to the City Manager regarding operations and other process efficiencies, and

WHEREAS, Renne Sloan Holtzman Sakai, LLP also associates in a number of non-attorney professionals who are highly experienced former public agency directors and managers to provide technical assistance to their clients as needed, and

WHEREAS, the original Agreement with Renne Sloan Holtzman Sakai, LLP for outside legal services was executed pursuant to the authority granted to the City Attorney
under Modesto City Charter Section 902 for engagement of legal services and so the City Attorney recommended, out of an abundance of form, that the Council approve the expanded scope of that Agreement to include the technical services to be provided by the consultant, and

Whereas, the City Council, on May 26, 2009, by Resolution No. 2009-215, authorized the City Attorney and City Manager to execute an Addendum to the Renne Sloan Holtzman Sakai, LLP Agreement to engage the services of Mark Gregersen, a consultant associated with their firm who has over 25 years of City and County experience in Human Resources and Finance to assist the City Manager in this regard. Mr. Gregersen has been performing these duties since May 27, 2009, and in addition to handling the day to day work of the Human Resources Department, also continues to work on the recommendations to the City Manager. The City requires him to continue this work for a longer period, as well as assist in the executive recruitments of several key vacancies, and

WHEREAS, the Addendum provided for an amount not to exceed $40,000, which shall be allocated in amounts no greater than $4,000 per week, and that amount will soon be expended. It is therefore necessary to revise the Addendum to include this additional work at a not-to-exceed total amount of $80,000,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves a Second Addendum to the Agreement for Legal Services with the Law Firm of Renne Sloan Holtzman Sakai, LLP to expand the scope as provided herein.

BE IT FURTHER RESOLVED that the City Manager and the City Attorney are hereby authorized to execute the Second Addendum to Agreement.
The foregoing resolution was introduced at a special meeting of the Council of the City of Modesto held on the 5th day of August, 2009, by Councilmember Lopez, 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 ACCEPTING THE PUBLIC IMPROVEMENTS FOR THE BANK OF STOCKTON, LOCATED IN THE KIERNAN BUSINESS PARK SOUTH AREA, AUTHORIZING THE CITY CLERK TO FILE A NOTICE OF COMPLETION, AND TO RELEASE SECURITIES UPON EXPIRATION OF STATUTORY PERIODS

WHEREAS, Miner Joaquin Building Corporation ("DEVELOPER"), is the developer of Bank of Stockton project ("DEVELOPMENT"), and

WHEREAS, all required improvements (PUBLIC IMPROVEMENTS) by the DEVELOPMENT have been completed to the satisfaction of the Public Works Department, and

WHEREAS, the Construction Administration Office of the Public Works Department has verified that all required PUBLIC IMPROVEMENTS for this DEVELOPMENT have been satisfactorily completed, and all inspection fees have been paid, and

WHEREAS, upon acceptance of the PUBLIC IMPROVEMENTS, the Public Works Department will assume maintenance responsibilities, and

WHEREAS, DEVELOPER has filed three instruments of credit to secure faithful performance for a total of $1,005,473.53 for said PUBLIC IMPROVEMENTS, and

WHEREAS, DEVELOPER has filed three instruments of credit to secure payment for labor and materials for a total of $1,005,473.53 for said PUBLIC IMPROVEMENTS, and

WHEREAS, this project encompassed infrastructure that is programmed in the Capital Facilities Fee program and in the future Community Facilities District for the Kiernan Business Park South area, and
WHEREAS, staff found that there was some overlap in the three separate performance and payment securities provided for the project, and

WHEREAS, to account for this overlap and make adjustments with respect to the issuance of the warranty securities, a comprehensive exhibit, attached hereto as Exhibit "A", was prepared, and

WHEREAS, this comprehensive exhibit identifies the infrastructure for which a security must be provided and under which agreement the security should be issued, and

WHEREAS, DEVELOPER has filed three irrevocable letters of credit for a total of $52,239.00 to guarantee the PUBLIC IMPROVEMENTS in the DEVELOPMENT.

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

1. The City Clerk is hereby authorized to file a Notice of Completion for the PUBLIC IMPROVEMENTS.

2. The City Clerk is hereby authorized to release the following securities for faithful performance after recordation of the Notice of Completion, provided no claim is made thereon:
   i. The Instrument of Credit in the amount of $455,160.43.
   ii. The Instrument of Credit for Miner Joaquin Building Corporation, a California Corporation, in the amount of $6,470.10 and dated March 5, 2008.
   iii. The Instrument of Credit for Miner Joaquin Building Corporation, a California Corporation, in the amount of $543,843 and dated January 3, 2008.

3. The City Clerk is hereby authorized to release the following securities for labor and materials sixty (60) days after recordation of the Notice of Completion, provided no claim is made thereon:
   i. The Instrument of Credit in the amount of $455,160.43.
ii. The Instrument of Credit for Miner Joaquin Building Corporation, a California Corporation, in the amount of $6,470.10 and dated March 5, 2008.

iii. The Instrument of Credit for Miner Joaquin Building Corporation, a California Corporation, in the amount of $543,843 and dated January 3, 2008.

4. The City Clerk is hereby authorized to release the following warranty securities to guarantee PUBLIC IMPROVEMENTS one year and one day after the effective date of this resolution, provided no claim is made thereon:

i. The Irrevocable Letter of Credit issued by the Bank of Stockton in the amount of $21,592.

ii. The Irrevocable Letter of Credit issued by the Bank of Stockton in the amount of $647.01.

iii. The Irrevocable Letter of Credit issued by the Bank of Stockton in the amount of $30,000.

The foregoing resolution was introduced at a special meeting of the Council of the City of Modesto held on the 5th day of August, 2009, by Councilmember Lopez, 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
Exhibit “A”
## MODesto CommerCE Bank: Off-site Improvements
### Opinion of Probable Cost
#### Comprehensive Exhibit 'A'
To be Used For Determination Of Warranty Securities

<table>
<thead>
<tr>
<th>LINE</th>
<th>DESCRIPTION</th>
<th>QTY</th>
<th>UNIT</th>
<th>UNIT PRICE</th>
<th>LINE TOTAL</th>
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<td>LS</td>
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<td>$ 5,000.00</td>
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<td>Clear, Grub, and Mobilization</td>
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### Demolition

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<td>Remove Concrete Sidewalk and Driveway</td>
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<td>SF</td>
<td>$ 2.75</td>
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<td>5</td>
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<td>LF</td>
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<td>LF</td>
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<td>LF</td>
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<td>Remove Post</td>
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<td>SF</td>
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<td>13</td>
<td>Remove and Store Signs</td>
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### Road Construction

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<th>UNIT PRICE</th>
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<td>PVC Median and Islands</td>
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<td>637</td>
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<td>32</td>
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</tr>
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<td>PVC Sidewalk</td>
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### Signage & Striping

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<tr>
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<tr>
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### Utility

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<th>LINE TOTAL</th>
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<tr>
<td>47</td>
<td>3&quot; Fire Water Ductile Iron Pipe</td>
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<td>LF</td>
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<tr>
<td>50</td>
<td>Catch Basin</td>
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### Traffic Signal

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### Electrical

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### Other

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<td>$ 215,924.00</td>
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**Note:** Items with strike-through are included in CFD security.
MODESTO CITY COUNCIL
RESOLUTION NO. 2009-367

A RESOLUTION ACCEPTING THE PUBLIC IMPROVEMENTS FOR THE CARMAX PROJECT LOCATED ON THE NORTHEAST CORNER OF MCHENRY AND CLARATINA AVENUES, AUTHORIZING THE CITY CLERK TO FILE A NOTICE OF COMPLETION, AND TO RELEASE SECURITIIES UPON EXPIRATION OF STATUTORY PERIODS

WHEREAS, CARMAX AUTO SUPERSTORES CALIFORNIA, LLC, a California limited liability company (CARMAX), is the owner of the CARMAX Project ("DEVELOPMENT"), and

WHEREAS, all required improvements (PUBLIC IMPROVEMENTS) by the DEVELOPMENT have been completed to the satisfaction of the Public Works Department, and

WHEREAS, the Construction Administration Office of the Public Works Department has verified that all required PUBLIC IMPROVEMENTS for this DEVELOPMENT have been satisfactorily completed, and all inspection fees have been paid, and

WHEREAS, upon acceptance of the PUBLIC IMPROVEMENTS, the Public Works Department will assume maintenance responsibilities, and

WHEREAS, DEVELOPER has filed a security to secure faithful performance in the amount of $374,343 for said PUBLIC IMPROVEMENTS, and

WHEREAS, DEVELOPER has filed a security to secure payment for labor and materials in the amount of $187,172 for said PUBLIC IMPROVEMENTS, and

WHEREAS, DEVELOPER has filed a security in the amount of $37,434 to guarantee the PUBLIC IMPROVEMENTS in the DEVELOPMENT,
NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that:

1. The City Clerk is hereby authorized to file a Notice of Completion for the PUBLIC IMPROVEMENTS.

2. The City Clerk is hereby authorized to release the security for faithful performance in the amount of $374,343 immediately after recordation of the Notice of Completion, provided no claim is made thereon.

3. The City Clerk is hereby authorized to release the security for labor and materials in the amount of $187,172 sixty (60) days after recordation of the Notice of Completion, provided no claim is made thereon.

4. The City Clerk is hereby authorized to release the warranty security to guarantee PUBLIC IMPROVEMENTS in the amount of $37,434 one year and one day after the effective date of this resolution, provided no claim is made thereon.

The foregoing resolution was introduced at a special meeting of the Council of the City of Modesto held on the 5th day of August 2009, by Councilmember Lopez, 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: SUSANNA ALCALA WOOD, City Attorney
RESOLUTION APPROVING CHANGES TO THE FISCAL YEAR (FY) 2009-10 CAPITAL IMPROVEMENT PROGRAM (CIP) BUDGET TO INCLUDE CHANGES TO PROJECTS MADE DURING THE LAST SIX MONTHS OF FY 2008-09 WHICH DID NOT APPEAR IN THE ADOPTED CAPITAL IMPROVEMENT PROGRAM BUDGET AS PER ATTACHED EXHIBIT

WHEREAS, Council adopted the FY 2009-10 Capital Improvement Program (CIP) budget on June 2, 2009, and

WHEREAS, this approval did not include Council approved changes made to existing CIP projects between January 2009 and June 2009, and

WHEREAS, CIP projects are multi-year projects that need to be adopted every year during the budget process including any changes to previously approved projects.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the changes to the Fiscal Year 2009-10 Capital Improvement Program budget to include changes to projects made during the last six months of FY 2008-09 which did not appear in the Adopted CIP budget as per the attached exhibit.
The foregoing resolution was introduced at a special meeting of the Council of the City of Modesto held on the 5th day of August, 2009, by Councilmember Lopez, 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
Addendum #2 to the FY09-10 Capital Improvement Program Proposed Budget

<table>
<thead>
<tr>
<th>CIP NAME</th>
<th>FUND</th>
<th>AGENCY</th>
<th>ORG</th>
<th>OBJECT</th>
<th>APPR UNIT</th>
<th>ORIGINAL AMOUNT</th>
<th>INCREASE OR DECREASE</th>
<th>REVISED AMOUNT</th>
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<td>W133</td>
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</table>

8/6/2009
RESOLUTION APPROVING A REQUEST FROM THE ASSOCIATION OF UNITED PAGANS FOR AMPLIFIED MUSIC AT MANCINI BOWL, GRACEADA PARK, FOR THEIR ANNUAL STANISLAUS PAGAN UNITY FESTIVAL, TO BE HELD ON OCTOBER 3, 2009

WHEREAS, on July 7, 2009, the Parks, Recreation and Neighborhoods Department received a request from The Association of United Pagans for amplified music at Mancini Bowl, Graceada Park, for their annual Stanislaus Pagan Unity Festival, to be held on October 3, 2009, from 9:00 am to 7:00 pm (amplified music from 10:00 am to 4:00 pm only), and

WHEREAS, the use of amplified music requires approval from the City Council, and

WHEREAS, The Association of United Pagans will be responsible for all fees related to the event,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves a request from The Association of United Pagans for amplified music at Mancini Bowl, Graceada Park, for their annual Stanislaus Pagan Unity Festival, to be held on October 3, 2009, from 9:00 am to 7:00 pm (amplified music from 10:00 am to 4:00 pm only).
The foregoing resolution was introduced at a special meeting of the Council of the City of Modesto held on the 5th day of August, 2009, by Councilmember Lopez, 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'Bryan, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

(Seal)

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney

(Seal)

ATTEST: STEPHANIE LOPEZ, City Clerk
RESOLUTION APPROVING A REQUEST FROM STANISLAUS PRIDE CENTER FOR AMPLIFIED MUSIC AT MANCINI BOWL, GRACEADA PARK, FOR THEIR ANNUAL STANISLAUS PRIDE DAY, TO BE HELD ON SEPTEMBER 19, 2009

WHEREAS, on January 16, 2009, the Parks, Recreation and Neighborhoods Department received a request from Stanislaus Pride Center for amplified music at Mancini Bowl, Graceada Park, for their annual Stanislaus Pride Day, to be held on September 19, 2009, from 11:00 am to 7:00 pm, and

WHEREAS, the use of amplified music requires approval from the City Council, and

WHEREAS, Stanislaus Pride Center will be responsible for all fees related to the event.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves a request from Stanislaus Pride Center for amplified music at Mancini Bowl, Graceada Park, for their annual Stanislaus Pride Day, to be held on September 19, 2009.
The foregoing resolution was introduced at a special meeting of the Council of the City of Modesto held on the 5th day of August, 2009, by Councilmember Lopez, 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
MODESTO CITY COUNCIL
RESOLUTION NO. 2009-371

A RESOLUTION AMENDING THE FISCAL YEAR 2009/2010 OPERATING BUDGET REALIZING GENERAL FUND REVENUE OF $65,500 FROM THE SAN JOAQUIN VALLEY AIR POLLUTION CONTROL DISTRICT REMOVE II PROGRAM

WHEREAS, on April 28, 2009, by Resolution No. 2009-169, the Council authorized staff to apply for a San Joaquin Valley Air Pollution Control District grant for the Virginia Corridor Trailway Phase V project, and

WHEREAS, the San Joaquin Valley Air Pollution Control District has awarded the City of Modesto a REMOVE II Program Grant in the amount of $65,500 for Phase V of the Virginia Corridor Trailway, and

WHEREAS, the City of Modesto will see General Fund Revenue of $65,500 into revenue account 2300-310-A087-3196.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves amending the Fiscal Year 2009/2010 Operating Budget realizing General Fund revenue of $65,500 from the San Joaquin Valley Air Pollution Control District Remove II Program.

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 special meeting of the Council of the City of Modesto held on the 5th day of August, 2009, by Councilmember Lopez, 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. 2009-372

A RESOLUTION AMENDING THE POSITION CLASSIFICATION PLAN FOR THE CITY OF MODESTO TO AMEND THE CLASSIFICATION OF RATE AND FEE ANALYST

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

WHEREAS, the City Manager has recommended to the Council amendments to the Position Classification Plan, and

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

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

SECTION I. CLASSIFICATION AMENDED. The Position Classification Plan of the City of Modesto is hereby amended to amend the job specification of Rate and Fee Analyst to more accurately reflect the needs of the position. The job specification for Rate and Fee Analyst, as shown on the attached Exhibit “A,” which is hereby made a part of this resolution by reference, is hereby approved and made part of the Position Classification Plan of the City of Modesto.

SECTION II. EFFECTIVE DATE. This resolution shall become effective on and after August 5, 2009.
The foregoing resolution was introduced in a special meeting of the Council of
the City of Modesto held on the 5th day of August, 2009, by Councilmember Lopez, 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
CITY OF MODESTO
No. 3520

RATE AND FEE ANALYST

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

DEFINITION

To research and make recommendations on rate and fee structures, services, policies and economic issues related to City services and to provide administrative staff assistance and perform special assignments as assigned.

SUPERVISION RECEIVED AND EXERCISED

Receives general supervision from the department director or higher level management staff.

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

Essential Functions:

Collect and research data and prepare reports related to various city services and utility rates.

Review financial data to identify potential errors and omissions, which could affect the revenue generation of a utility operation or other program.

Analyze financial data to identify trends in revenue and expenditures related to utility programs and/or fee based programs.

Answer questions and provide information to the public, outside agencies and city staff related to the analyses performed on financial data of fee-based programs and/or utilities.

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

Monitor departmental compliance with laws, rules, policies and procedures.

Prepare less complex rate studies for various fee-based programs.

Work with consultants to assist in the preparation of fee studies and may monitor consultant performance.

Exhibit A
Essential Functions: (Continued)

Prepare special studies or reports as requested.

Prepare written and oral presentations, including statistical information in a clear, concise manner; identify and defend recommendations.

Develop information, including various statistics, to support the issuance of debt supported by various revenue sources.

May attend City Council, Commission, task force and other governmental meetings.

Draft various documents such as agenda items and resolutions for City Council action.

May serve on various committees and task forces, as necessary.

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

Marginal Functions:

Perform other duties as assigned.

MINIMUM QUALIFICATIONS

Knowledge of:

Statistical analysis methods and modes of graphic presentation.

Modern office procedures, methods and computer equipment.

Basic principles of governmental financial reporting.

Generally accepted writing practices in a professional and technical environment.

Generally accepted principles and practices for setting fees related to fee-based programs.

Ability to:

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

Exhibit A
Ability to: (Continued)

Establish effective financial monitoring practices and tools to track financial trends in fee-based programs.

Identify cost/benefit relationships; establish nexus between functions.

Work with and control sensitive and confidential information.

Accurately estimate and project revenues and expenditures.

Plan, initiate and complete work assignments with a minimum of direction.

Modern office procedures, methods and computer equipment.

Communicate clearly, concisely and confidently, both orally and in writing.

Promote positive and effective working relationships with those contacted in the course of work, including the public and governing body members.

Experience and Training Guidelines

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

Experience:

One year of analytical experience involving the review and analyses of financial data, rates and fees, financial auditing or a closely related function is desirable.

Training:

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

PHYSICAL AND MENTAL REQUIREMENTS

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

**WORKING CONDITIONS**

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

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<th>Class Spec History</th>
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<td>Revised</td>
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MODESTO CITY COUNCIL
RESOLUTION NO. 2009-373

A RESOLUTION AMENDING THE CLASS RANGE TABLE FOR REPRESENTED MANAGEMENT AND CONFIDENTIAL NON-SWORN CLASSES TO CHANGE THE SALARY RANGE FOR RATE AND FEE ANALYST FROM SALARY RANGE 435 TO SALARY RANGE 427

WHEREAS, the on December 9, 2008 the City amended Exhibit “A” of Resolution No. 2008-504, which approved the Class Range Table for Represented Management and Confidential Non-Sworn Classes, and

WHEREAS, the salary range for Rate and Fee Analyst is being changed from salary range 435 to salary range 427;

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

SECTION I. AMENDMENT TO RESOLUTION NO. 2008-504 Exhibit "A" entitled, "City of Modesto Class Range Table Represented Management and Confidential Non-Sworn Classes Effective January 6, 2009," attached to Resolution No. 2008-504, is hereby amended as shown on the amended Exhibit “A” entitled “City of Modesto Class Range Table Represented Management and Confidential Non-Sworn Classes Effective August 5, 2009,” which is attached hereto and made a part hereof as though set forth in full herein.

SECTION II. EFFECTIVE DATE. This resolution shall become effective on and after August 5, 2009.
The foregoing resolution was introduced in a special meeting of the Council of the City of Modesto held on the 5th day of August, 2009, by Councilmember Lopez, 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]

(SEAL)

APPROVED AS TO FORM:

By: [Signature]

SUSANA ALCALA WOOD, City Attorney
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Exhibit A
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Exhibit A
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| 441   | Building Maintenance Manager  
|       | Events Supervisor  
|       | Fleet Manager  
|       | Housing and Urban Development Manager  
|       | Infrastructure Financing Program Administrator  
|       | Parks Operations Manager  
|       | Parks Planning and Development Manager  
|       | Streets Manager  
|       | Urban Forestry Manager  
|       | Wastewater Collections Manager |
| 442   | Construction Inspection Supervisor  
|       | Principal Accountant  
|       | Principal Software Analyst  
|       | Principal Systems Engineer  
|       | Purchasing Manager |
| 443   | Associate Civil/Traffic Engineer  
|       | Senior Transportation Planner |
| 444   | Airport Manager  
|       | Building Inspection Program Coordinator  
|       | Building Inspection Supervisor  
|       | Principal Planner  
|       | Solid Waste Program Manager  
|       | Transit Manager |
| 446   | Assistant Chief Building Official  
|       | Information Technology Manager  
|       | Water Quality Control Plant Manager |
| 447   | Traffic Operations Engineer  
|       | Water Systems Manager |
| 450   | Business Development Manager  
|       | Chief Building Official  
|       | Planning Manager  
|       | Senior Civil Engineer |
| 452   | City Engineer  
|       | Traffic Engineer |

Exhibit A
MODESTO CITY COUNCIL
RESOLUTION NO. 2009-374

RESOLUTION APPROVING A MEMORANDUM OF UNDERSTANDING (MOU) AND LEASE AGREEMENT WITH MODESTO IRRIGATION DISTRICT (MID) FOR A RENEWABLE RESOURCE FUEL CELL CO-GENERATION FACILITY AT THE SUTTER TREATMENT PLANT; AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE MOU AND LEASE AGREEMENT

WHEREAS, on September 26, 2006, the City Council, by Resolution No. 2006-622, approved an agreement with the California Energy Commission (CEC) to perform energy audits of the Sutter and Jennings Treatment Plant Facilities, and

WHEREAS, on September 26, 2006, the City Council, by Resolution 2006-623, approved an agreement with Carollo Engineers for consultant services assistance in the preparation of a Preliminary Design Report and development of a Request for Proposals for a Digester Gas Fired Co-Generation System (System) that would produce renewable energy at the Sutter Treatment Plant (STP), and

WHEREAS, staff was also in discussions with MID regarding its purchase of excess power produced by the proposed System, and

WHEREAS, in July 2008, MID approached City staff about MID building a Renewable Resource Fuel Cell Co-Generation Facility (Facility) at the STP that would produce electrical energy using methane gas as the fuel source, and

WHEREAS, staff from Public Works and the City Attorney’s Office, in conjunction with MID representatives, developed a Memorandum of Understanding (MOU) and Lease Agreement for the Facility, and
WHEREAS, under the MOU, the City will work with MID to utilize the Self-Generation Incentive Program through PG&E to fund approximately 50% of the Facility, and

WHEREAS, MID will lease property at the STP to build the Facility utilizing methane gas that is produced by digesters, and

WHEREAS, MID will pay the full cost of construction, operation, and maintenance for the 900 KW Facility, and

WHEREAS, the Facility will eliminate most of the current waste gas burner flaring of digester gas to the atmosphere, and

WHEREAS, MID will also compensate the City for the use of water, and for energy produced by digester gas supplied by the STP, and

WHEREAS, an added benefit to this project is that it will allow the City to promote its regional partnership with MID; thereby potentially bringing additional grant funds for other projects into the City.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves a Memorandum of Understanding and Lease Agreement with Modesto Irrigation District for a Renewable Resource Fuel Cell Co-Generation Facility at the Sutter Treatment Plant.

BE IT FURTHER RESOLVED that the City Manager, or his designee, is authorized to execute the Memorandum of Understanding and Lease Agreement.
The foregoing resolution was introduced at a special meeting of the Council of the City of Modesto held on the 5th day of August, 2009, by Councilmember Lopez, 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
MODESTO CITY COUNCIL
RESOLUTION NO. 2009-375

A RESOLUTION APPROVING THE PLANS AND SPECIFICATIONS FOR THE ELLISON DRIVE SANITARY PIPELINE REPLACEMENT PROJECT, ACCEPTING THE BID, AND APPROVING A CONTRACT WITH PRESTON PIPELINES, INC. IN THE AMOUNT OF $541,718 FOR THE ELLISON DRIVE SANITARY PIPELINE REPLACEMENT PROJECT, AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE CONTRACT

WHEREAS, plans and specifications have been prepared for the Ellison Drive Sanitary Pipeline Replacement project and City staff recommends approval by the City Council, and

WHEREAS, the bids received for the Ellison Drive Sanitary Pipeline Replacement project were opened at 11:00 a.m. on June 9, 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 $541,718 received from Preston Pipelines, Inc. be accepted as the lowest responsible bid and the contract be awarded to Preston Pipelines, Inc..

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the plans and specifications for the Ellison Drive Sanitary Pipeline Replacement project, accepts the bid of Preston Pipelines, Inc. in the amount of $541,718, and awards Preston Pipelines, Inc. the contract for the Ellison Drive Sanitary Pipeline 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 special meeting of the Council of the City of Modesto held on the 5th day of August, 2009, by Councilmember Lopez, 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'Bryan, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: [Signature]

SUSANA ALCALA WOOD, City Attorney

APPROVED AS TO FORM:

By: [Signature]

SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2009-376

A RESOLUTION ACCEPTING THE WORK BY MCFADDEN CONSTRUCTION, INC. FOR THE PROJECT TITLED “NEIGHBORHOOD CENTER AT MARSHALL PARK” AS COMPLETE, AUTHORIZING THE CITY CLERK TO FILE A NOTICE OF COMPLETION WITH THE STANISLAUS COUNTY RECORDER AND AUTHORIZING PAYMENT OF AMOUNTS TOTALING $4,786,874.29

WHEREAS, a report has been filed by the Director of Public Works that the project titled “Neighborhood Center at Marshall Park” has been completed by McFadden Construction, Inc. in accordance with the contract agreement dated April 4, 2006.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the project titled “Neighborhood Center at Marshall Park” is hereby accepted as complete from said contractor McFadden Construction, Inc., that the City Clerk is authorized to file a Notice of Completion with the Stanislaus County Recorder, and that payment of amounts totaling $4,786,874.29 is authorized as provided in the contract.

The foregoing resolution was introduced at a special meeting of the Council of the City of Modesto held on the 5th day of August, 2009, by Councilmember Lopez, 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

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney
A RESOLUTION APPROVING A LICENSE AGREEMENT BETWEEN THE CITY OF MODESTO AND MODESTO IRRIGATION DISTRICT (MID) FOR THE PURPOSE OF OBTAINING PERMISSION TO MAKE IMPROVEMENTS WITHIN MID LATERAL 3 FOR THE VIRGINIA CORRIDOR PROJECT AND THE CITY’S WATER DISTRIBUTION SYSTEM TO USE CERTAIN REAL PROPERTY AS DESCRIBED IN EXHIBITS A, B, AND C OF THE LICENSE AGREEMENT

WHEREAS, the City of Modesto (Licensee) desires to construct improvements for the Virginia Corridor project and the City’s water distribution system, and

WHEREAS, MID (“District”) has an interest in certain real property within the City of Modesto consisting of a sixty (60) foot portion of real property referred to as Lateral No 3, and

WHEREAS, District will grant to Licensee, at Licensee’s expense, permission to make improvements within 4,800 square feet of Lateral 3, as described in Exhibits A, B, and C of the License Agreement, as part of Modesto’s Virginia Corridor project consisting of landscaping, a pedestrian bike path, a City water line, and a City sewer pipeline, hereinafter referred to as the “Improvements,” and

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

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

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves a License Agreement between the City of Modesto and Modesto Irrigation District for the purpose of obtaining permission to make improvements within MID Lateral 3 for the Virginia Corridor project and the City’s water distribution system
to use certain real property as described in Exhibits A, B, and C of the License Agreement.

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

The foregoing resolution was introduced at a special meeting of the Council of the City of Modesto held on the 5th day of August, 2009, by Councilmember Lopez, 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
LICENSE AGREEMENT

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

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

B. Licensee desires, at Licensee’s expense, permission to install a pedestrian bridge and to make certain improvements as part of the City of Modesto’s Virginia Corridor Project consisting of landscaping, a pedestrian bike path, a City water line and a City sewer pipeline, hereinafter referred to as the “Improvements”.

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

NOW THEREFORE, the parties hereto mutually agree as follows:

1. The District hereby grants to Licensee permission for Licensee to use a sixty (60) foot portion of its’ rights-of-way as described in Exhibit A and shown on Exhibit B (the “License Area”), solely for the purpose of installing, operating and maintaining the above referenced City “Improvements” across the District’s “Lateral 3”. The Improvements to be installed and maintained by Licensee shall conform to the construction specifications as noted on the final and approved Virginia Corridor Phase V construction plans to be attached as Exhibit “C” incorporated herein by this reference.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and year first above written.
IN WITNESS WHEREOF, the City of Modesto, a municipal corporation, has authorized the execution of this Agreement in duplicate by its City Manager and attestation by its City Clerk under authority of Resolution No. 2009-____, adopted by the Council of the City of Modesto on the _____ day of ______________, 2009, and MODESTO IRRIGATION DISTRICT, an irrigation district, has caused this agreement to be duly executed in duplicate as of the Effective Date.

CITY OF MODESTO,  
a municipal corporation

By ______________________  
GREG NYHOFF, City Manager

MODESTO IRRIGATION DISTRICT  
an irrigation district

By ______________________  
ALLEN SHORT, General Manager

ATTEST:

By ______________________  
STEPHANIE LOPEZ, City Clerk

By ______________________  
Secretary

By ______________________  
Assistant General Counsel

APPROVED AS TO FORM:
SUSANA ALCALA WOOD, City Attorney

By ______________________  
ROLAND R. STEVENS, Assistant City Attorney
EXHIBIT A

Legal Description

A strip of land 60.00 feet in width, being a portion of the south half of Section 17, Township 3 South, Range 9 East, Mount Diablo Base and Meridian, being more particularly described as follows:

Commencing at the northwest corner of Lot 1 as shown on that map filed for record in Volume 27 of Maps at Page 72, Stanislaus County Records, said point being on the north-south quarter section line of said Section 17; thence along said quarter section line North 00°18'24" West 60.00 feet to the Point of Beginning, said point being on the south line of the 80.00 foot wide M.I.D. Lat. No. 3 as shown on said map; thence along said south line South 89°56'02" West 60.00 feet; thence parallel with and 60.00 feet westerly of said quarter section line North 00°18'24" West 80.00 feet to the north line of said 80.00 foot wide M.I.D. Lat. No. 3; thence along said north line North 89°56'02" East 60.00 feet to said quarter section line; thence along said quarter section line South 00°18'24" East 80.00 feet to the Point of Beginning all as shown on the attached "EXHIBIT B" made a part hereof and containing 4,800 square feet, more or less.

END DESCRIPTION.
AREA = 4,800 S.F.
MODESTO CITY COUNCIL
RESOLUTION NO. 2009-378

A RESOLUTION APPROVING A LICENSE AGREEMENT BETWEEN THE CITY OF MODESTO AND MODESTO IRRIGATION DISTRICT (MID) FOR THE PURPOSE OF OBTAINING PERMISSION TO MAKE IMPROVEMENTS WITHIN MID LATERAL 6 (MCHENRY AVENUE) FOR THE CITY’S WATER DISTRIBUTION SYSTEM TO USE CERTAIN REAL PROPERTY AS DESCRIBED IN EXHIBITS A AND B OF THE LICENSE AGREEMENT, AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE AGREEMENT

WHEREAS, the City of Modesto (Licensee) desires to construct improvements for the City’s water distribution system, and

WHEREAS, MID (“District”) has an interest in certain real property within the City of Modesto consisting of a thirty (30) foot portion of real property referred to as Lateral No. 6 (McHenry Avenue), and

WHEREAS, District will grant to Licensee, at Licensee’s expense, permission to make improvements within 3,602 square feet of Lateral 6, as described in Exhibits A and B of the License Agreement, as part of the City’s water distribution system, hereinafter referred to the “Improvements,” and

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

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

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves a License Agreement between the City of Modesto and Modesto Irrigation District for the purpose of obtaining permission to make improvements within
MID Lateral 6 (McHenry Avenue) for the City’s water distribution system to use certain real property as described in Exhibits A and B of the License Agreement.

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

The foregoing resolution was introduced at a special meeting of the Council of the City of Modesto held on the 5th day of August, 2009, by Councilmember Lopez, 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
LICENSE AGREEMENT

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

A. District is the owner in possession of certain real property within the City of Modesto consisting of a strip of land with certain improvements thereon, which real property is commonly known as and referred to as District’s Lateral No. 6, hereinafter referred to as "Lateral 6".

B. Licensor desires permission to use portions of District’s property for the purpose of making certain improvements to its’ domestic water facilities.

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

NOW THEREFORE, the parties hereto mutually agree as follows:

1. The District hereby grants to Licensor permission for Licensor to use a thirty (30) foot portion of its’ rights-of-way as described in Exhibit A and shown on Exhibit B (the “License Area”), solely for the purpose of installing and maintaining certain underground pipeline improvements to its’ domestic water facilities (the “Improvements”) near the District’s Lateral 6.

2. Prior to any construction, Licensor shall submit construction plans for review and approval by the Irrigation and Electrical Divisions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and year first above written.
IN WITNESS WHEREOF, the City of Modesto, a municipal corporation, has authorized the execution of this Agreement in duplicate by its City Manager and attestation by its City Clerk under authority of Resolution No. 2009-____, adopted by the Council of the City of Modesto on the ______ day of __________________, 2009, and MODESTO IRRIGATION DISTRICT, an irrigation district, has caused this agreement to be duly executed in duplicate as of the Effective Date.

CITY OF MODESTO, a municipal corporation

By ____________________________
GREG NYHOFF, City Manager

MODESTO IRRIGATION DISTRICT an irrigation district

By ____________________________
ALLEN SHORT, General Manager

ATTEST:

By ____________________________
STEPHANIE LOPEZ, City Clerk

By ____________________________
Secretary

By ____________________________
Assistant General Counsel

APPROVED AS TO FORM:
SUSANA ALCALA WOOD, City Attorney

By ____________________________
ROLAND R. STEVENS, Assistant City Attorney
EXHIBIT A
Legal Description

A strip of land 30.00 feet in width, being those portions of the south half of Sections 4 and 5, Township 3 South, Range 9 East, Mount Diablo Base and Meridian, County of Stanislaus, State of California, being more particularly described as follows:

Commencing at the intersection of the north line of the 120.00 foot wide M.I.D. Lateral No. 6 and the west line of the 110.00 foot wide McHenry Avenue (Hwy 108), said point also being the southeast corner of Parcel 1 as shown on that Parcel Map filed for record at Book 49 of Parcel Maps at Page 88, Stanislaus County Records; thence along the easterly prolongation of said north line North 88°45'55" East 40.00 feet to the Point of Beginning and being 15.00 feet westerly of the centerline of said McHenry Avenue (Hwy108); thence North 88°45'55" East 30.00 feet; thence parallel with and 15.00 feet easterly of the centerline of said McHenry Avenue (Hwy 108) South 01°14'05" East 120.07 feet to the intersection of the easterly prolongation of the south line of said 120.00 foot wide M.I.D. Lateral No. 6; thence along said prolongation South 88°45'55" West 30.00 feet; thence parallel with and 15.00 feet westerly of the centerline of said McHenry Avenue (Hwy 108) North 01°14'45" West 120.07 feet to the Point of Beginning all as shown on the attached “EXHIBIT B” made a part hereof and containing 3,602 square feet, more or less.

END DESCRIPTION

[Stamp]

15120-S-leg_30%MID McHenry.doc
10/09/2008
AREA = 3,602 ± S.F.
A RESOLUTION APPROVING A LICENSE AGREEMENT BETWEEN THE CITY OF MODESTO AND MODESTO IRRIGATION DISTRICT (MID) FOR THE PURPOSE OF OBTAINING PERMISSION TO MAKE IMPROVEMENTS WITHIN MID LATERAL 6 (WELLS AVENUE) FOR THE VIRGINIA CORRIDOR PROJECT AND THE CITY’S WATER DISTRIBUTION SYSTEM TO USE CERTAIN REAL PROPERTY AS DESCRIBED IN EXHIBITS A AND B OF THE LICENSE AGREEMENT, AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE AGREEMENT

WHEREAS, the City of Modesto (Licensee) desires to construct improvements for the Virginia Corridor project and the City’s water distribution system, and

WHEREAS, MID (“District”) has an interest in certain real property within the City of Modesto consisting of a sixty (60) foot portion of real property referred to as Lateral No. 6 (Wells Avenue), and

WHEREAS, District will grant to Licensee, at Licensee’s expense, permission to make improvements within 7,680 square feet of Lateral No. 6, as described in Exhibits A and B of the License Agreement, as part of Modesto’s Virginia Corridor Project consisting of landscaping, a pedestrian bike path, a City water line, and a City sewer pipeline, hereinafter referred to the “Improvements,” and

WHEREAS, the District requires License Agreements prior to allowing construction within its right-of-way, and

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

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves a License Agreement between the City of Modesto and Modesto Irrigation District for the purpose of obtaining permission to make improvements within
MID Lateral 6 (Wells Avenue) for the Virginia Corridor project and the City’s water distribution system to use certain real property as described in Exhibits A and B of the License Agreement.

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

The foregoing resolution was introduced at a special meeting of the Council of the City of Modesto held on the 5th day of August, 2009, by Councilmember Lopez, 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 ALCÁLA WOOD, City Attorney
LICENSE AGREEMENT

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

A. District has an interest in certain real property within the City of Modesto consisting of a strip of land with certain improvements thereon, which real property is commonly known as and referred to as District’s Lateral No. 6, hereinafter referred to as “Lateral 6”.

B. Licensee desires, at Licensee’s expense, permission to make certain improvements as part of the City of Modesto’s Virginia Corridor Project consisting of landscaping, a pedestrian bike path, a City water line and a City sewer pipeline, hereinafter referred to as the “Improvements”.

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

NOW THEREFORE, the parties hereto mutually agree as follows:

1. The District hereby grants to Licensee permission for Licensee to use a sixty (60) foot portion of its’ rights-of-way as described in Exhibit A and shown on Exhibit B (the “License Area”), solely for the purpose of installing and maintaining the above referenced City “Improvements” across the District’s “Lateral 6”.

2. The District requires that any trenching maintain a 1:1 horizontal distance from any existing pole determined by the depth of the trench. If trenching encroaches on this requirement, Licensee must identify potentially affected poles and arrange any required pole bracing with the District. The cost for any required pole bracing will be assumed by the Licensee.

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

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

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

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

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

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

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

   A. Licensee shall be solely responsible for the construction, placement, inspection, maintenance, replacement and use of the License Area and the Improvements permitted therein by this Agreement.

   B. Licensee shall bear all costs and expenses for placement, maintenance, inspection, replacement, use and removal of the Improvements. The District shall incur no cost or expense in connection with the Improvements.

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

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

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

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

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

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

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

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

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

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

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

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

20. Licensee shall promptly pay District, on demand, full money compensation for any damage to any of the District’s property or facilities, or damage to the land, crops, or trees of any irrigator caused by, or in any manner connected directly or indirectly with, the exercise of the license or any rights granted by this Agreement.

21. District acknowledges that Licensee has self-insured its financial obligations imposed by this Agreement; provided, however, that in the event Licensee at any time reduces its General Liability self-insured retention amount below one million dollars, Licensee, at its sole cost and expense, and without limiting any of its other obligations or liabilities, shall obtain and maintain in effect at all times during the performance of the work under this Agreement, coverages and limits of liability insurance reasonable satisfactory to the District, each of which
shall be maintained with insurers and under forms of policies reasonably satisfactory to the District and shall include the District as an additional insured.

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

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

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

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

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

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

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

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

30. In the event that the license granted herein is no longer used by Licensee for permitted purposes, the Improvements are no longer used by Licensee for Licensee's purposes, or this license is in any way terminated, all rights granted to Licensee hereunder shall terminate and Licensee, at its expense, shall remove Licensee's Improvements, or take other closure action acceptable to District, and restore the License Area to its original condition or to a condition acceptable to the District. If Licensee fails to comply with the requirements of this Paragraph, District may undertake and complete such removal and restoration at the sole cost and expense of Licensee. Upon the occurrence of any of the above listed events, all rights granted to Licensee hereunder shall terminate.
31. If any of Licensee’s privileges or duties hereunder are to be exercised or performed by any independent contractor or contractors, Licensee shall, effectively and appropriately, bind such contractor or contractors contractually to the duties and obligations of Licensee hereunder. In that connection, Licensee shall, among other requirements, require said contractor or contractors to indemnify and hold District harmless from and against any and all claims, damages, loss, liability and expenses, including court costs and attorney’s fees, arising out of or on account of, any injury to or death of any person or persons, or damage to property of any kind whatsoever and to whomsoever belonging, arising out of, or in any manner directly or indirectly connected with, said contractor or contractors acts, omissions or negligence in exercising Licensee’s privileges or performing Licensee’s duties created by this Agreement. Licensee shall also require said contractor or contractors to maintain sufficient insurance coverages, including general liability insurance covering the indemnity required hereunder.

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

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and year first above written.
IN WITNESS WHEREOF, the City of Modesto, a municipal corporation, has authorized the execution of this Agreement in duplicate by its City Manager and attestation by its City Clerk under authority of Resolution No. 2009-_____, adopted by the Council of the City of Modesto on the _____ day of __________________, 2009, and MODESTO IRRIGATION DISTRICT, an irrigation district, has caused this agreement to be duly executed in duplicate as of the Effective Date.

CITY OF MODESTO, a municipal corporation

By ______________________________
GREG NYHOFF, City Manager

MODESTO IRRIGATION DISTRICT, an irrigation district

By ______________________________
ALLEN SHORT, General Manager

ATTEST:

By ______________________________
STEPHANIE LOPEZ, City Clerk

By ______________________________
Secretary

By ______________________________
Assistant General Counsel

APPROVED AS TO FORM:
SUSANA ALCALA WOOD, City Attorney

By ______________________________
ROLAND R. STEVENS, Assistant City Attorney
EXHIBIT A

Legal Description

A strip of land 60.00 feet in width, being a portion of the south half of Section 5, Township 3 South, Range 9 East, Mount Diablo Base and Meridian, being more particularly described as follows:

**Beginning** at the northeast corner of Lot 1 as shown on that map filed for record in Volume 27 of Maps at Page 85, Stanislaus County Records, said point being on the southeasterly line of the 120.00 foot wide M.I.D. Lat. No. 6 as shown on said map; thence parallel with and 30.00 feet westerly of the north-south quarter section line of said Section 5 North 01°10'47" West 128.00 feet to the northwesterly line of said 120.00 foot wide M.I.D. Lat. No. 6; thence along said northwesterly line North 68°27'20" East 64.00 feet; thence parallel with and 30.00 feet easterly of said quarter section line South 01°10'47" East 128.00 feet to the southeasterly line of said 120.00 foot wide M.I.D. Lat. No. 6; thence along said southeasterly line South 68°27'22" West 64.00 feet to the Point of Beginning all as shown on the attached "EXHIBIT B" made a part hereof and containing 7,680 square feet, more or less.

END DESCRIPTION.

[Signature]

10/9/08
AREA = 7,680 S.F.

120' M.I.D. LAT NO. 6

SCALE: 1"=50'
DRAWN BY: JT

PLOTTED: 10.9.2008 3:47 PM
FILE: 1085006_60_ease 120' MID lat 6.dwg
DATE: 4/15/08

EXHIBIT B
RESOLUTION APPROVING AN INCENTIVE BASED AGREEMENT WITH SIXEL CONSULTING GROUP TO PROVIDE AIR SERVICE DEVELOPMENT WORK WITH THE GOAL TO SECURE ADDITIONAL AIRLINE SERVICE FOR MODESTO CITY-COUNTY AIRPORT, AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE AGREEMENT

WHEREAS, additional air service for Modesto City-County Airport (MOD) would benefit local travelers and our community, and

WHEREAS, Sixel Consulting Group (SCG) offers a unique program whereby they will serve as MOD’s consultant, pursuing targeted airline recruitment efforts, and

WHEREAS, SCG has agreed to be paid only if they are successful in obtaining new air services, and

WHEREAS, the incentive-based Agreement proposed by SCG will have a total cost not to exceed $2.00 per each enplaned passenger on new air service operations at MOD for a two-year period, and

WHEREAS, SCG will prepare and apply for annual U.S. Department of Transportation Small Community Air Service Development Program grants at a reduced cost for the duration of the Agreement, and

WHEREAS, as part of the agreement with SCG, the City commits to an active role in airline service development with consultant.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves an incentive-based agreement with Sixel Consulting Group to provide air service development work with the goal to secure additional airline service for Modesto City-County Airport, for an amount not to exceed $2.00 per each enplaned
passenger on new air service operations at Modesto City-County Airport for a two-year period.

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

The foregoing resolution was introduced at a special meeting of the Council of the City of Modesto held on the 5th day of August, 2009, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Hawn, was upon roll call carrier and the resolution adopted by the following vote:

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

NOES: Councilmember: None

ABSENT: Councilmember: None

ATTEST: STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney
RESOLUTION APPROVING SUBMITTAL OF A GRANT APPLICATION TO THE U.S. DEPARTMENT OF TRANSPORTATION FOR THE SMALL COMMUNITY AIR SERVICE DEVELOPMENT PROGRAM

WHEREAS, U.S. Department of Transportation (DOT) will be soliciting grant applications for the Small Community Air Service Development Program (SCASDP), and

WHEREAS, SCASDP has been a source of funding for cities desiring to enhance their commercial air service, and

WHEREAS, DOT has traditionally issued $20 million annually nationwide in grants to approximately 40 communities to support improved air service initiatives at local airports, and

WHEREAS, the City, as the airport sponsor, was awarded a SCASDP grant in 2005 that provided $550,000 in funding which was used to obtain additional air service between Modesto and Los Angeles, resulting in record passenger enplanements in 2008, and

WHEREAS, airports are eligible to reapply for this grant every two years,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves submittal of a grant application to the U.S. Department of Transportation for the Small Community Air Service Development Program.

BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute the Agreement.
The foregoing resolution was introduced at a special meeting of the Council of the City of Modesto held on the 5th day of August, 2009 by Councilmember Lopez, 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: Councilmember: Hawn, Keating, Lopez, Marsh, O’Bryant, Olsen, Mayor Ridenour

NOES: Councilmember: None

ABSENT: Councilmember: None

ATTEST: STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2009-382

RESOLUTION ACCEPTING AN AIRPORT IMPROVEMENT PROGRAM
GRANT OFFER (AIP PROJECT NO. 3-06-0153-32/34) IN THE AMOUNT OF
$1,305,000 FROM THE FEDERAL AVIATION ADMINISTRATION (FAA) FOR
PROJECTS SUBMITTED IN GRANT APPLICATION #34, AND AUTHORIZING
THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE
ACCEPTANCE OF THE GRANT

WHEREAS, the City Council, on March 24, 2009, by Resolution No. 2009-131,
authorized the submittal of a Federal Airport Improvement Program (AIP) Grant
application for $1,286,251 to the Federal Aviation Administration (FAA), and

WHEREAS, verbal notification has been received from the FAA Program
Manager extending a Grant Offer to the City of Modesto in response to Grant Application
#34 for Modesto City-County Airport, and

WHEREAS, the Grant Offer must be accepted by the City on or before August
14, 2009,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto
that it hereby accepts an Airport Improvement Program Grant Offer in the amount of
$1,305,000 from the Federal Aviation Administration (FAA) for projects submitted in
Grant Application #34.

BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby
authorized to execute the acceptance of the Grant.
The foregoing resolution was introduced at a special meeting of the Council of the City of Modesto held on the 5th day of August, 2009, by Councilmember Lopez, 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: Councilmember: Hawn, Keating, Lopez, Marsh, O’Bryant, Olsen, Mayor Ridenour

NOES: Councilmember: None

ABSENT: Councilmember: None

APPROVED AS TO FORM:

By: __________________________

SUSANA ÁLCALA WOOD, City Attorney

ATTEST: __________________________

STEPHANIE LOPEZ, City Clerk

(SEAL)
MODESTO CITY COUNCIL
RESOLUTION NO. 2009-383

A RESOLUTION AUTHORIZING CITY MANAGER, OR DEPUTY CITY MANAGER, TO SIGN FUNDING AGREEMENT AND AMENDMENTS AND ALL RELATED DOCUMENTS, EXCEPT AS NOTED OTHERWISE HEREIN, FOR FUNDING UNDER THE CALIFORNIA SAFE DRINKING WATER STATE REVOLVING FUND AND THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009, UPON RECEIPT AND APPROVAL OF THE FUNDING AGREEMENT BY THE CITY MANAGER; AUTHORIZING CITY MANAGER, OR DEPUTY CITY MANAGER, TO SIGN ALL CERTIFICATIONS AND REPORTS REQUIRED FOR SUCH FUNDING; AUTHORIZING CITY MANAGER, OR DEPUTY CITY MANAGER, TO APPROVE CLAIMS FOR REIMBURSEMENT; AUTHORIZING SENIOR CIVIL ENGINEER RESPONSIBLE FOR THE PROJECT TO EXECUTE BUDGET AND EXPENDITURE SUMMARY; AUTHORIZING CITY MANAGER, OR DEPUTY CITY MANAGER, TO SIGN THE CONTRACTOR’S RELEASE FORM, AND SENIOR CIVIL ENGINEER RESPONSIBLE FOR THE PROJECT TO SIGN THE CERTIFICATION OF PROJECT COMPLETION; AND DEDICATING REVENUES FROM WATER FUND AS THE SOURCE OF REVENUE TO REPAY SAID LOAN

WHEREAS, on August 5, 2009, the City of Modesto made application to the California Department of Public Health for funding under the California Safe Drinking Water State Revolving Fund and the federal American Recovery and Reinvestment Act of 2009 for a Project commonly known and described as Wellhead Treatment and Blending Lines – Wells 283 & 236 (herein the Project), and

WHEREAS, on August 5, 2009, said City of Modesto Council adopted a Project budget totaling $800,000.00, and

WHEREAS, it is anticipated that the Funding Agreement under the California Safe Drinking Water State Revolving Fund and the federal American Recovery and Reinvestment Act of 2009 will provide for a loan in the amount of $800,000.00, of which $400,000.00 will be provided as additional subsidization in the form of principle
forgiveness, and $400,000.00 shall be repaid to the California Department of Public
Health over a 20 year repayment period at a 2.5017 percent interest rate, and

WHEREAS, prior to the California Department of Public Health’s issuance of
said Funding Agreement, City of Modesto Council is required to pass a resolution
authorizing an officer to execute said Funding Agreement and amendments, authorizing
an officer to execute all certifications and reports required of funding recipients under the
California Safe Drinking Water State Revolving Fund and the federal American
Recovery and Reinvestment Act of 2009; designating a person to approve claims for
reimbursement, designating a person (Senior Civil Engineer) to sign the Budget and
Expenditure Summary, designating a person (Senior Civil Engineer) to sign Certification
of Project Completion, and designating a person to sign the Contractor’s Release Form.

NOW, THEREFORE. BE IT RESOLVED AND ORDERED. that the City
Manager, or Deputy City Manager, is hereby authorized to sign the Safe Drinking Water
State Revolving Fund and American Recovery and Reinvestment Act of 2009 Funding
Agreement and any amendments or related documents. except as noted otherwise herein.
upon receipt and approval of the Funding Agreement by the City Manager. for the Project
thereto.

BE IT FURTHER RESOLVED AND ORDERED, that the City Manager. or
Deputy City Manager. is hereby authorized to sign all certifications and reports required
of funding recipients under the California Safe Drinking Water State Revolving Fund
program and/or the federal American Recovery and Reinvestment Act of 2009.
BE IT FURTHER RESOLVED AND ORDERED, that the City Manager, or Deputy City Manager, is hereby authorized to approve Claims for Reimbursement of Project costs submitted pursuant to the terms of said funding agreement.

BE IT FURTHER RESOLVED AND ORDERED, that the Senior Civil Engineer responsible for the project is hereby authorized to execute the Budget and Expenditure Summary for said Project.

BE IT FURTHER RESOLVED AND ORDERED, that the City Manager, or Deputy City Manager, is hereby authorized to sign the Contractor’s Release Form to be provided pursuant to requirements of said funding agreement.

BE IT FURTHER RESOLVED AND ORDERED, that the Senior Civil Engineer responsible for the project is hereby authorized to certify that the Project is complete and ready for final inspection.

BE IT FURTHER RESOLVED AND ORDERED, that the City of Modesto hereby designates Water Enterprise Fund revenues as the dedicated source of revenue to repay any non-subsidized loan principle amount of the Safe Drinking Water State Revolving Fund loan. This dedication shall remain in full force and effect until said loan is fully discharged, unless modification or change of such dedication is approved in writing by the California Department of Public Health. If for any reason, the dedicated source of revenues proves insufficient to satisfy the debt obligation of said loan, sufficient funds shall be raised through increased water rates, user charges, or assessments or any other legal means available to meet this loan obligation and to operate and maintain the Project.
BE IT FURTHER RESOLVED AND ORDERED, that the Project infrastructure investment is an appropriate use of taxpayer dollars.

BE IT FURTHER RESOLVED AND ORDERED, that the City of Modesto does hereby covenant to establish water rates and charges in amounts sufficient to generate net revenues to meet the requirements of the Safe Drinking Water State Revolving Fund and American Recovery and Reinvestment Act of 2009 Funding Agreement.

The foregoing resolution was introduced at a special meeting of the Council of the City of Modesto held on the 5th day of August, 2009, by Councilmember Lopez, 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]

(SSEAL)

APPROVED AS TO FORM:

By: [Signature]

SUSANA ÁLCAIPA WOOD, City Attorney
A RESOLUTION APPROVING ADJUSTMENTS TO THE MAXIMUM CHARGE SCHEDULE FOR CITY RESIDENTIAL, COMMERCIAL, AND INDUSTRIAL SOLID WASTE COLLECTION SERVICES, TO BECOME EFFECTIVE AUGUST 1, 2009, AND RESCINDING RESOLUTION NO. 2009-121

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/Energy Information Agency (DOE/EIA), 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, and

WHEREAS, on December 27, 2007, by Resolution No. 2007-729, the Council approved the assessment of a Carpenter Road Landfill Mitigation fee on the haulers to be used for mitigation and monitoring at the closed Carpenter Road landfill, and

WHEREAS, the financial statements submitted by the haulers reflect only 6 months of this fee, and an adjustment to this component of the maximum rates is therefore necessary, and

WHEREAS, on November 25, 2008, by Resolution No. 2008-650, the Council approved the assessment of an AB 939 Green Waste Diversion fee that would be assessed on a per ton basis on residential, commercial bin, and drop box wastes generated in the City of Modesto, and

WHEREAS, the financial statements submitted by the haulers do not reflect this fee, and an adjustment to this component of the maximum rates is therefore necessary, and

WHEREAS, the City’s Service Agreements with the collection companies prohibit them from littering public rights of way in the process of collecting solid waste in the City, and in the event litter is caused by collection activities, the collector is responsible to make sure the litter is cleaned up, and

WHEREAS, litter that blows from the areas around commercial bins/containers and litter blown from collection vehicles as they move about the City collecting
residential and commercial wastes are major contributors to roadside litter on the City's main thoroughfares, and

WHEREAS, the City uses an Honor Farm crew to clean litter from the major thoroughfares, medians, and planter areas, and

WHEREAS, the litter abatement crew is essential to maintain the appearance of the City, and the cost of this litter abatement currently costs approximately $125,000 annually, and

WHEREAS, it would be impractical and unsafe for the collection companies to remove these materials from the rights of way themselves, and

WHEREAS, during the budget review process and at a Finance Committee on June 16, 2009, the Committee approved moving forward to Council with a recommendation to begin charging the collection companies a fee equivalent to $0.15 per residential account per month and $0.05 per cubic yard for waste from commercial bins for litter abatement caused by collection activities, and

WHEREAS, the above noted fees and charges to the collection companies have been incorporated into the recommended schedules of maximum rates shown as Exhibit I hereto, and

WHEREAS, a report dated June 19, 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, said matter was set for a public hearing of the City Council to be held at 5:30 p.m. on August 5, 2009, in the Tenth Street Place Chambers, located at 1010
Tenth Street, Modesto California, at which date and time a duly noticed public hearing was held at said time and place, at which time evidence, both oral and documentary, was received and considered, 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.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves an adjustment to 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 August 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. 2009-121 is hereby rescinded, effective August 1, 2009.
The foregoing resolution was introduced at a special meeting of the Council of the City of Modesto held on the 5th day of August, 2009, by Councilmember Lopez, 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]

(S Seal)

APPROVED AS TO FORM:

By: [Signature]

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
- Blue bag recycling
- 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 **$22.37 per month** regardless of size of container. A fuel component of $0.71 per month is included in the maximum rate for the quarter beginning January 1, 2009 and ending March 31, 2009. The fuel component may be adjusted quarterly.
   b. The maximum rate for each additional garbage container shall be **$16.65 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 **$18.72 per month**. A fuel component of $0.71 per month is included in the maximum rate for the quarter beginning January 1, 2009 and ending March 31, 2009. The fuel component may be adjusted quarterly.
   b. The maximum rate for each additional 60-gallon garbage container shall be **$16.22 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>$41.29</td>
<td>$72.09</td>
<td>$102.86</td>
<td>$133.64</td>
<td>$164.43</td>
<td>$195.22</td>
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<td>$72.09</td>
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<td>$287.57</td>
<td>$379.91</td>
<td>$472.28</td>
<td>$564.62</td>
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<tr>
<td>4 CY</td>
<td>$133.64</td>
<td>$256.79</td>
<td>$379.91</td>
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<td>5 CY</td>
<td>$164.43</td>
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<td>$472.28</td>
<td>$626.19</td>
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<tr>
<td>6 CY</td>
<td>$195.22</td>
<td>$379.91</td>
<td>$564.62</td>
<td>$749.33</td>
<td>$934.04</td>
<td>$1,118.75</td>
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<table>
<thead>
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<th>Container Size</th>
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<th>3</th>
<th>4</th>
<th>5</th>
<th>6</th>
</tr>
</thead>
<tbody>
<tr>
<td>2 CY</td>
<td>$54.07</td>
<td>$100.23</td>
<td>$146.42</td>
<td>$192.59</td>
<td>$238.76</td>
<td>$284.93</td>
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<tr>
<td>4 CY</td>
<td>$100.23</td>
<td>$192.59</td>
<td>$284.93</td>
<td>$377.29</td>
<td>$469.64</td>
<td>$562.00</td>
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<tr>
<td>5 CY</td>
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<td>$354.21</td>
<td>$469.64</td>
<td>$587.34</td>
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<td>6 CY</td>
<td>$146.42</td>
<td>$284.93</td>
<td>$423.47</td>
<td>$562.00</td>
<td>$700.53</td>
<td>$839.06</td>
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<tr>
<td>90-gallon</td>
<td>$16.78</td>
<td>$33.56</td>
<td>$50.33</td>
<td>$67.11</td>
<td>$83.89</td>
<td>$100.67</td>
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</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 $0.62 per cubic yard per month ($0.14 per cubic yard) for a 1 cubic yard container collected once a week is included in the maximum rate for the quarter beginning January 1, 2009 and ending March, 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>$308.57</td>
</tr>
<tr>
<td>4 CY</td>
<td>$400.93</td>
</tr>
<tr>
<td>6 CY</td>
<td>$585.66</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>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>
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</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. 2009-385

A RESOLUTION APPROVING A COST SHARING AGREEMENT FOR ASSOCIATED TASK ITEMS OF WORK TO SHARE CERTAIN COSTS BETWEEN THE CITIES OF CERES AND MODESTO FOR THE DEVELOPMENT OF A REGIONAL WASTEWATER SYSTEM FEASIBILITY STUDY, AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE AGREEMENT

WHEREAS, the City of Modesto and the City of Ceres are part of an agreement where the City of Modesto provides wastewater treatment for a defined area of North Ceres, and

WHEREAS, this agreement has been in place since the early 1970’s and has proved beneficial to both agencies, and

WHEREAS, representatives from Modesto and Ceres have been meeting to discuss the concept of developing a regional wastewater system that would serve both cities, and

WHEREAS, this regional system would be broader than the current contractual arrangement, and

WHEREAS, preliminary staff reviews indicate that there are several advantages for regionalizing the wastewater that make it worthy of further analysis, and

WHEREAS, while the advantages are fairly easy to identify at the conceptual level, a greater degree of analysis is needed to make a decision whether or not to pursue a regional wastewater system partnership between the cities of Ceres and Modesto, and

WHEREAS, staff recommended securing consultant services to perform a Regional Wastewater System Feasibility Study (Study) for further analysis, and
WHEREAS, the estimated cost for this Study is $100,000, and the cost sharing between the City of Ceres and Modesto will be fifty (50) percent, or $50,000 each.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves a Cost Sharing Agreement for associated task items of work to share certain costs between the cities of Ceres and Modesto for the development of a Regional Wastewater System Feasibility Study.

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

The foregoing resolution was introduced at a special meeting of the Council of the City of Modesto held on the 5th day of August, 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:  

SUSANA ÁLCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2009-386

A RESOLUTION APPROVING THE TRANSFER OF $50,000 FROM WASTEWATER FUND RESERVES TO CAPITAL IMPROVEMENT PROJECT (6210-480-B120) TO PAY FOR A REGIONAL WASTEWATER SYSTEM FEASIBILITY STUDY

WHEREAS, the City of Modesto and the City of Ceres are part of an agreement where the City of Modesto provides wastewater treatment for a defined area of North Ceres, and

WHEREAS, this agreement has been in place since the early 1970’s and has proved beneficial to both agencies, and

WHEREAS, representatives from Modesto and Ceres have been meeting to discuss the concept of developing a regional wastewater system that would serve both cities, and

WHEREAS, this regional system would be broader than the current contractual arrangement, and

WHEREAS, preliminary staff reviews indicate that there are several advantages for regionalizing the wastewater that make it worthy of further analysis, and

WHEREAS, while the advantages are fairly easy to identify at the conceptual level, a greater degree of analysis is needed to make a decision whether or not to pursue a regional wastewater system partnership between the cities of Ceres and Modesto, and

WHEREAS, staff recommended securing consultant services to perform a Regional Wastewater System Feasibility Study (Study) for further analysis, and
WHEREAS, under separate Council action, a cost sharing agreement with the City of Ceres for this Study was approved, with each city contributing fifty (50) percent, or $50,000 each, and

WHEREAS, staff is requesting a transfer from Wastewater Fund Reserves (6210-800-8000-8003) in the amount of $50,000 into a Capital Improvement Project (6210-480-B120) to pay for the proposed Regional Wastewater System Feasibility Study.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the transfer of $50,000 from Wastewater Fund Reserves to Capital Improvement Project (6210-480-B120) to pay for a Regional Wastewater System Feasibility Study.

The foregoing resolution was introduced at a special meeting of the Council of the City of Modesto held on the 5th day of August, 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

APPROVED AS TO FORM:

By: /SUSANA ALCALA WOOD, City Attorney

(Seal)
MODESTO CITY COUNCIL
RESOLUTION NO. 2009-387

A RESOLUTION AUTHORIZING THE ISSUANCE OF A REQUEST FOR PROPOSALS TO SECURE PROFESSIONAL SERVICES TO COMPLETE A REGIONAL WASTEWATER SYSTEM FEASIBILITY STUDY FOR AN ESTIMATED COST OF $100,000

WHEREAS, the City of Modesto and the City of Ceres are part of an agreement where the City of Modesto provides wastewater treatment for a defined area of North Ceres, and

WHEREAS, this agreement has been in place since the early 1970’s and has proved beneficial to both agencies, and

WHEREAS, representatives from Modesto and Ceres have been meeting to discuss the concept of developing a regional wastewater system that would serve both cities, and

WHEREAS, this regional system would be broader than the current contractual arrangement, and

WHEREAS, preliminary staff reviews indicate that there are several advantages for regionalizing the wastewater that make it worthy of further analysis, and

WHEREAS, while the advantages are fairly easy to identify at the conceptual level, a greater degree of analysis is needed to make a decision whether or not to pursue a regional wastewater system partnership between the cities of Ceres and Modesto, and

WHEREAS, staff recommended securing consultant services to perform a Regional Wastewater System Feasibility Study (Study) for further analysis, and
WHEREAS, under separate Council action, a cost sharing agreement with the City of Ceres for the Study was approved, with each city contributing fifty (50) percent, or $50,000 each, and

WHEREAS, under separate Council action, staff is requesting a transfer of funds from Wastewater Fund Reserves (6210-800-8000-8003) in the amount of $50,000 into a Capital Improvement Project Account (6210-480-B120) to pay for the proposed Regional Wastewater System Feasibility Study, and

WHEREAS, the City of Modesto will issue the Request for Proposals and a joint panel representing both cities will select the consultant to perform the study.

WHEREAS, the City of Modesto will be the lead agency for managing the consultant services agreement.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby authorizes the issuance of a Request for Proposals to secure professional services to complete a Regional Wastewater System Feasibility Study for an estimated cost of $100,000.
The foregoing resolution was introduced at a special meeting of the Council of the City of Modesto held on the 5th day of August, 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

(SEAL)

ATTEST: STEPHANIE LOPEZ, City Clerk

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2009-388

A RESOLUTION AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE ANY FUTURE AMENDMENTS TO THE COST SHARING AGREEMENT OR TASKS RELATED TO THE REGIONAL WASTEWATER FEASIBILITY STUDY FOR AMOUNTS NOT TO EXCEED $50,000

WHEREAS, the City of Modesto and the City of Ceres are part of an agreement where the City of Modesto provides wastewater treatment for a defined area of North Ceres, and

WHEREAS, this agreement has been in place since the early 1970’s and has proved beneficial to both agencies, and

WHEREAS, representatives from Modesto and Ceres have been meeting to discuss the concept of developing a regional wastewater system that would serve both cities, and

WHEREAS, this regional system would be broader than the current contractual arrangement, and

WHEREAS, preliminary staff reviews indicate that there are several advantages for regionalizing the wastewater that make it worthy of further analysis, and

WHEREAS, while the advantages are fairly easy to identify at the conceptual level, a greater degree of analysis is needed to make a decision whether or not to pursue a regional wastewater system partnership between the cities of Ceres and Modesto, and

WHEREAS, staff recommended securing consultant services to perform a Regional Wastewater System Feasibility Study (Study) for further analysis, and
WHEREAS, under separate Council action, a cost sharing agreement with the City of Ceres for this Study was approved, with each city contributing fifty (50) percent, or $50,000 each, and

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby authorizes the City Manager, or his designee, to execute any future amendments to the cost sharing agreement or tasks related to the Regional Wastewater System Feasibility Study for amounts not to exceed $50,000.

The foregoing resolution was introduced at a special meeting of the Council of the City of Modesto held on the 5th day of August, 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. 2009-389

A RESOLUTION ACCEPTING THE COPS HIRING RECOVERY PROGRAM (CHR\P) GRANT IN THE AMOUNT OF $4,474,782, FROM THE UNITED STATES DEPARTMENT OF JUSTICE, OFFICE OF COMMUNITY ORIENTED POLICING, TO FUND 13 POLICE OFFICER POSITIONS FOR THREE YEARS; AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE NECESSARY GRANT DOCUMENTS.

WHEREAS, the Community Oriented Policing Services (COPS) Office was appropriated $1 billion through the Recovery Act to make grants to create or save state, local and tribal law enforcement jobs, and

WHEREAS, the COPS program is part of the $787 billion stimulus package passed earlier this year, and

WHEREAS, on July 28, 2009, the City of Modesto received notification from the United States Department of Justice, Office of Community Oriented Policing Services (COPS) Office that the City of Modesto will receive funding for 13 police officer positions, and

WHEREAS, the Fiscal Year 2009/10 Police Department operating budget will be amended to include budget for the salaries and benefits for eight officers from August 4, 2009 to June 30, 2010, and

WHEREAS, the funding for the remaining five positions awarded with this grant will remain on hold and a more detailed report on the Police Department’s plan to hire an additional five officers will be brought back to the Council within 30 days, and

WHEREAS, the estimated amount of federal funds to be awarded to the City of Modesto over the three-year grant period is $4,474,782.00, and

WHEREAS, the grant award start date is July 1, 2009, and
WHEREAS, grantees must retain all sworn officer positions awarded under the COPS Hiring Recovery Program (CHRP) grant for a minimum of 12 months following the 36-month federal funding period, and

WHEREAS, the retained CHRP-funded positions should be added to the Police Department’s budget with state and/or local funds, over and above the number of locally-funded positions that would have existed in the absence of the grant, and

WHEREAS, there is no local match required for this program, however, grantees must retain all sworn officer positions awarded under the CHRP grant for a minimum of 12 months following the 36-month federal funding period, and

WHEREAS, this item was reviewed at a Special Finance Committee meeting on July 31, 2009.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby accepts the COPS Hiring Recovery Program (CHRP) Grant in the amount of $4,474,782, from the U.S. Department of Justice, Office of Community Oriented Policing, to fund 13 police officer positions for three years.

BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute the necessary grant documents.
The foregoing resolution was introduced at a special meeting of the Council of the City of Modesto held on the 5th day of August, 2009, by Councilmember Olsen, 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

ATTES: [Signature]

(SEAL)

APPROVED AS TO FORM:

By: [Signature]

SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2009-390

A RESOLUTION AMENDING THE FISCAL YEAR 2009/2010 OPERATING BUDGET ESTIMATING REVENUE OF $4,474,782, AND APPROPRIATING FUNDS IN ORGANIZATION 0415-190-2973 UPON ACCEPTANCE OF THE COPS HIRING RECOVERY PROGRAM GRANT

WHEREAS, the Community Oriented Policing Services (COPS) Office was appropriated $1 billion through the Recovery Act to make grants to create or save state, local and tribal law enforcement jobs, and

WHEREAS, the COPS Program is part of the $787 billion stimulus package passed earlier this year, and

WHEREAS, on July 28, 2009, the City of Modesto received notification from the United States Department of Justice, Office of Community Oriented Policing Services (COPS) that the City of Modesto will receive funding for 13 police officer positions, and

WHEREAS, the Fiscal Year 2009/2010 Operating Budget will be amended to include budget for the salaries and benefits for eight police officers from August 4, 2009 to June 30, 2010, and

WHEREAS, the funding for the remaining five police officer positions awarded with this grant will remain on hold, and a more detailed report on the Police Department’s plan for an additional five officers will be brought back to the Council within 30 days, and

WHEREAS, the estimated amount of federal funds to be awarded to the City of Modesto over the three-year grant period is $4,474,782.00, and

WHEREAS, the grant award start date is July 1, 2009, and
WHEREAS, grantees must retain all sworn officer positions awarded under the COPS Hiring Recovery Program grant for a minimum of 12 months following the 36-month federal funding period, and

WHEREAS, the retained CHRP-funded positions should be added to the Police Department’s budget with state and/or local funds, over and above the number of locally-funded positions that would have existed in the absence of the grant, and

WHEREAS, there is no local match required for this program, however, grantees must retain all sworn officer positions awarded under the CHRP grant for a minimum of 12 months following the 36-month federal funding period, and

WHEREAS, this item was reviewed at a Special Finance Committee meeting on July 31, 2009,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the Fiscal Year 2009/2010 Operating Budget is hereby amended estimating revenue of $4,474,782 as indicated on the attached Request for Budget Adjustment.

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.
REQUEST FOR BUDGET ADJUSTMENT

Contact Person: Polly Findlen
Telephone No.: 2-9518
Department: Police Department
Fund Title: Special Revenue (0415) \ General Fund(0100)

<table>
<thead>
<tr>
<th>Fund-Acct-Org-Object</th>
<th>Appr Unit</th>
<th>Current Budget</th>
<th>Increase/Decrease</th>
<th>Revised Budget</th>
<th>Description of Object</th>
</tr>
</thead>
<tbody>
<tr>
<td>FROM</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>TO</td>
<td>MY-0415-190-2800-3650</td>
<td>N/A</td>
<td>$4,474,782</td>
<td></td>
<td>COPS HIRING RECOVERY GRANT (CHRP) ARR A REIMBURSEABLE GRANT</td>
</tr>
</tbody>
</table>

APPROPRIATIONS

FROM

TO
10-0100-190-1962-0181 | 1900A | $432,272 | $432,272 | COPS HIRING RECOVERY GRANT (CHRP) SALARIES FOR 8 OFFICERS
10-0100-190-1962-0191 | 1900A | $336,884 | $336,884 | BENEFITS FOR 8 OFFICERS |

TRANSFERS BETWEEN FUNDS

FROM
MY-0415-700-2800-7010 | 0415G | $769,156 | $769,156 | COPS HIRING RECOVERY GRANT (CHRP) TRANSFER OUT TO GENERAL FUND |

TO
10-0100-700-1962-9041 | N/A | $769,156 | $769,156 | TRANSFER IN FROM SPECIAL REVENUE |

COMMENT/SJUSTIFICATION

To budget revenue and expenditures for ARRA - Cops Hiring Recovery Grant, which will fund 13 Police Officers.
At this time only 8 Officers are being rehired, this budget adjustment is to reflect the salary and benefits for those 8 Officers.
Grant is in MY-0415-190-2800, the positions are in 10-0100-190-1962.
Transfer from MY-0415-700-2800-7010 to 10-0100-700-1962-9041 to cover salary and benefits for 8 Officers in org 1962, FY 09/10

AUTHORIZATION (check if required) SIGNATURE DATE

ADMIN SVCS OFF/ADMIN ANALYST II

DEPUTY DIRECTOR (Public Works Dept)

DEPARTMENT DIRECTOR or AUTHORIZED ASSISTANT

(ALlocation of Dept Appr to Line-item Level)

FINANCE DIRECTOR

(Transfers to/from Internal Service Charges)

(ALl items requiring City Manager's Approval)

CFF/CFD ADMINISTRATOR

When necessary for CIP

CITY MANAGER

(Transfers between Budgeted Activities of Departments within Funds)

(Appropriation of Unbudgeted Dept Revenues)

(Transfers into Personnel Services)

PW: AT winterfund Template 7/28/2005
The foregoing resolution was introduced at a special meeting of the Council of the City of Modesto held on the 5th day of August, 2009, by Councilmember Olsen, 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: 

SUSANÅ ALCALA WOOD, City Attorney

(Seal)

(Seal)
MODESTO CITY COUNCIL
RESOLUTION NO. 2009-391

A RESOLUTION APPROVING SUPPORT FOR SENATE BILL 532, AS A NECESSARY COMPONENT TO FACILITATE THE NORTH COUNTY CORRIDOR STATE ROUTE 108 EAST ROUTE ADOPTION

WHEREAS, the City of Modesto is a member agency of the North County Corridor Transportation Expressway Authority, which consists of the Stanislaus Council of Governments (StanCOG), the cities of Oakdale and Riverbank and the County of Stanislaus, and

WHEREAS, the North County Corridor State Route (SR) 108 East Route Adoption will enhance traffic safety and improve transportation network performance by accommodating regional growth, promoting balanced traffic circulation, reducing congestion, and reducing travel times and vehicle hours of delay, and

WHEREAS, Senate Bill (SB) 532 is a necessary component to facilitate the North County Corridor SR 108 East Route Adoption, and

WHEREAS, SB 532 authorizes inclusion of specified miles east of Oakdale to be included within the limits of SR 108 as necessary to facilitate the North County Corridor SR 108 East Route Adoption, and

WHEREAS, SB 532 authorizes specified portions of SR 108 to be included in the State’s Interregional Route System (IRRS) as necessary to facilitate the North County Corridor SR 108 East Route Adoption,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves support for SB 532, as a necessary component to facilitate the North County Corridor SR 108 East Route Adoption.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 11th day of August, 2009, by Councilmember Hawn, 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, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: O’Bryant, Olsen

ATTEST: 

(SEAL)

APPROVED AS TO FORM:

By: 

SUSANA ALCALA WOOD, City Attorney
RESOLUTION APPROVING A HOME LOAN AGREEMENT BETWEEN THE
CITY OF MODESTO AND EAH, INC. FOR THE ALLOCATION OF HOME
INVESTMENT PARTNERSHIP PROGRAM ENTITLEMENT FUNDS IN THE
AMOUNT OF $1,000,000.00 FOR THE DEVELOPMENT OF A 150-UNIT
AFFORDABLE HOUSING COMPLEX, ALSO REFERRED TO AS ARCHWAY
COMMONS, AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE,
TO EXECUTE THE AGREEMENT AND RELATED DOCUMENTS

WHEREAS, on November 1, 2007, a Request for Qualifications (RFQ) was
released to solicit proposals for either the development of new construction or the
rehabilitation of existing market rate housing to be converted to affordable units for low-
income households, and

WHEREAS, proposals were due on January 14, 2008, with a total of eight
(8) proposals received. Six (6) projects qualified for funding. Five (5) of the six
(6) projects were fully or partially funded, leaving only the Archway Commons
project for future review, and

WHEREAS, The Citizen’s Housing & Community Development
Committee (CH&CDC) review subcommittee met on June 17, 2009, to review the
Archway Commons project to provide affordable rental housing to a mix of
household types, including single individuals, couples, households with children
as well as seniors, and

WHEREAS, the CH&CDC review subcommittee recommended to the
CH&CDC at their July 7, 2009 meeting to allocate $1,000,000 for the
development of this project. Only 11 out of the 150 units will be HOME units,
therefore the investment per HOME unit will be $90,909.
NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves a Home Loan Agreement between the City of Modesto and EAH, Inc. for the allocation of HOME Investment Partnership Program Entitlement Funds in the amount of $1,000,000.00 for the development of a 150-unit affordable housing complex, also referred to as Archway Commons.

BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute the Home Loan Agreement and related documents.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 11th day of August 2009, by Councilmember Lopez, 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, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: O'Bryant

ATTEST: STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2009-393

A RESOLUTION ACCEPTING THE WORK BY CALIFORNIA TRENCHLESS, INC. FOR THE “CELESTE/ROSE/SCENIC SANITARY SEWER IMPROVEMENTS PROJECT” AS COMPLETE, AUTHORIZING THE CITY CLERK TO FILE A NOTICE OF COMPLETION WITH THE STANISLAUS COUNTY RECORDER AND TO RELEASE SECURITIES UPON EXPIRATION OF STATUTORY PERIODS, AND AUTHORIZING PAYMENT OF AMOUNTS TOTALING $3,852,501.84

WHEREAS, a report has been filed by the Director of Public Works that the Celeste/Rose/Scenic Sanitary Sewer Improvements Project has been completed by California Trenchless, Inc. in accordance with the contract agreement dated March 7, 2006,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the project titled “Celeste/Rose/Scenic Sanitary Sewer Improvements Project” is hereby accepted as complete from said contractor California Trenchless, Inc., that the City Clerk is authorized to file a Notice of Completion with the Stanislaus County Recorder and to release securities upon expiration of statutory periods, and that payment of amounts totaling $3,852,501.84 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 11th day of August, 2009, by Councilmember Lopez, 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, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: O'Bryant

(Seal)

APPROVED AS TO FORM:

By: ____________________________

SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2009-394

A RESOLUTION APPROVING THE PROSPECTIVE BIDDER PREQUALIFICATION LIST FOR THE PRIMARY OUTFALL REHABILITATION PROJECT CONSISTING OF THE FOLLOWING CONTRACTORS: COLICH & SONS L.P.; EBERT MCGUIRE AND HESTER; INSITUFORM TECHNOLOGIES, INC.; KENNY CONSTRUCTION COMPANY; MICHELS CORPORATION DBA MICHELS PIPELINE CONSTRUCTION; AND SPINIELLO COMPANIES

WHEREAS, the Primary Outfall Rehabilitation Project involves the rehabilitation of approximately 11,872 feet of an existing 60-inch diameter primary effluent pipeline, and

WHEREAS, in order to limit project impacts, the City will use trenchless technologies to rehabilitate and optimize the capacity of the existing system, and

WHEREAS, because of the nature and complexity of the project, City staff are prequalifying contractors for the proposed work based on prior experience with projects of similar size and complexity, and

WHEREAS, the deadline for prospective bidders to submit a prequalification package to bid on the project was July 1, 2009, and

WHEREAS, on June 15, 2009, by Resolution No. 2009-291, the City Council approved the Prospective Bidder Prequalification Appeals Panel for the Public Works’ projects, and

WHEREAS, the City received Statements of Prequalifications from seven contractors and evaluated the prospective bidders’ qualifications based on experience with projects of similar size and complexity consistent with State law, and

WHEREAS, in their initial submittal Michels Corporation dba Michels Pipeline Construction (Michels) used a project manager who did not qualify for the project, and
WHEREAS, as a result, Michels requested a protest hearing, which was held on August 3, 2009, and

WHEREAS, in their revised submittal, Michels changed the project manager dedicated to the assignment, therefore Michels also qualified, and

WHEREAS, as a result, the following prospective bidders qualified to submit bids on the project: Colich & Sons L.P.; Ebert McGuire and Hester; Insituform Technologies, Inc.; Kenny Construction Company; Michels Corporation dba Michels Pipeline Construction; and Spiniello Companies, and

WHEREAS the qualified bidders will be placed on the bidders’ list included in the project bid documents, and

WHEREAS, any contractors who wish to submit subcontracting proposals to the pre-qualified bidders will be allowed to obtain bid documents.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the Prospective Bidder Prequalification List for the Primary Outfall Rehabilitation Project consisting of: Colich & Sons L.P.; Ebert McGuire and Hester; Insituform Technologies, Inc.; Kenny Construction Company; Michels Corporation dba Michels Pipeline Construction; and Spiniello Companies.
The foregoing resolution was introduced at a regular meeting of the Council of
the City of Modesto held on the 11th day of August, 2009 by Councilmember Lopez, 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, Olsen, Mayor Ridenour
NOES: Councilmembers: None
ABSENT: Councilmembers: O’Bryant

ATTEST: [Signature]

(SERIAL)

APPROVED AS TO FORM:

By: [Signature]
SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2009-395

A RESOLUTION APPROVING AN AMENDMENT TO AGREEMENT WITH WEST YOST ASSOCIATES, INC. FOR ADDITIONAL SERVICES RELATED TO THE ENGINEER’S REPORT FOR WATER RATE AND CONNECTION FEE UPDATE STUDY IN AN AMOUNT NOT TO EXCEED $121,690, AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE AMENDMENT TO AGREEMENT

WHEREAS, on October 23, 2007, by Resolution No. 2007-614, the City Council approved an agreement with West Yost Associates, Inc. (WYA) for professional services to develop an Engineer’s Report to support a subsequent Water Rate and Capacity Charges Study (conducted by another firm), and

WHEREAS, the City now requires additional services to complete the Engineer’s Report for Water Rate and Connection Fee Update Study, and

WHEREAS, having an up-to-date Engineer’s Report on the water system is the critical supporting document needed to conduct a new Water Rate and Capacity Charge Study, and

WHEREAS, this study is essential to ensure that rates accurately reflect the cost to provide the necessary operational services, capital improvements, and system maintenance to deliver safe and reliable water, and

WHEREAS, the main elements of the Engineer’s Report include: 1) Updating current and build-out water demands; 2) Identifying and justifying the various capital improvements needed to provide and maintain reliable water service; 3) Developing cost estimates and prioritizing the proposed improvements; 4) Determining the cost allocations of the needed improvements between the existing rate payers and future users, and
WHEREAS, in general, the scope of work originally envisioned to develop the Engineer’s Report was underestimated by City staff and the consultant, and

WHEREAS, specifically, the collection, verification, and analysis of the City-provided data was much greater and more difficult to utilize than anticipated, and

WHEREAS, in some cases, the data did not even exist and had to be culled out from other sources or generated for the first time, and

WHEREAS, in other cases, the data was not entirely accurate and had to be reconciled, and

WHEREAS, beyond the original scope, some of the other factors that required additional work by the consultant include: expansion of the study area boundary part way through the analysis; the incorporation of reduced future water demands due to the installation of residential water meters; more meetings and increased management oversight to reconcile missing or inaccurate data; additional cycles of submitted and reviewed draft documents; and additional items asked for by City staff to strengthen the defensibility of the documents, and

WHEREAS, due to the above referenced delay and time sensitivity of much of the data, new tasks are included in the amended scope of work for WYA that will give the City the option of updating the data that was originally collected and analyzed, and

WHEREAS, on or about July 15, 2009, WYA submitted to the City a revised scope of services and fee proposal for additional services for the Engineer’s Report for Water Rate and Connection Fee Update Study.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves an Amendment to Agreement with West Yost Associates, Inc. for
additional services for the Engineer’s Report for Water Rate and Connection Fee Update Study in the not-to-exceed amount of $121,690.00.

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

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 11th day of August, 2009, by Councilmember Lopez, 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, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: O’Bryant

ATTEST: [Signature]

SEAL

APPROVED AS TO FORM:

By: [Signature]

SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2009-396

A RESOLUTION APPROVING AN AMENDMENT TO AGREEMENT WITH
FCS GROUP, INC. FOR ADDITIONAL SERVICES TO CONDUCT AN UPDATE
TO THE WATER RATE AND CAPACITY CHARGE STUDY IN AN AMOUNT
NOT TO EXCEED $57,515 FOR THE IDENTIFIED SCOPE OF SERVICES,
PLUS $13,717 FOR ADDITIONAL SERVICES (IF NEEDED), FOR A MAXIMUM
TOTAL AMOUNT OF $71,232, AND AUTHORIZING THE CITY MANAGER,
OR HIS DESIGNEE, TO EXECUTE THE AMENDMENT TO AGREEMENT

WHEREAS, on February 5, 2008, by Resolution No. 2008-087, the City Council
approved an agreement with FCS Group, Inc. (FCS Group) to conduct the Update to the
Water Rate and Capacity Charge Study, and

WHEREAS, in general, the scope of work originally envisioned to conduct the
Water Rate and Capacity Charge Study was underestimated by City staff and the
consultant, and

WHEREAS, specifically, the collection, verification, and analysis of the City-
provided data was much greater and more difficult to utilize than anticipated, and

WHEREAS, in some cases, the data did not even exist and had to be culled out
from other sources or generated for the first time, and

WHEREAS, in other cases, the data was not entirely accurate and had to be
reconciled, and

WHEREAS, beyond the original scope, some of the other factors that required
additional work by the consultant include: expansion of the study area boundary part way
through the analysis; the incorporation of reduced future water demands due to the
installation of residential water meters; more meetings and increased management
oversight to reconcile missing or inaccurate data; additional cycles of submitted and
reviewed draft documents; and additional items asked for by City staff to strengthen the
defensibility of the documents, and

WHEREAS, due to the above-referenced delay and time sensitivity of much of
the data, new tasks are included in the amended scope of work for FCS Group that will
give the City the option of updating the data that was originally collected and analyzed,
and

WHEREAS, the City now requires additional services for updating the Water
Rate and Capacity Charge Study; and

WHEREAS, on or about July 8, 2009, FCS Group submitted to the City a revised
scope of services and fee proposal for additional services for updating the Water Rate and
Capacity Charge Study.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto
that it hereby approves an Amendment to Agreement with FCS Group, Inc. for additional
services to conduct an update to the Water Rate and Capacity Charge Study in an amount
not to exceed $57,515 for the identified scope of services, plus $13,717 for additional
services (if needed), for a maximum total amount of $71,232.

BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby
authorized to execute the Amendment to Agreement.
The foregoing resolution was introduced at a regular meeting of the Council of
the City of Modesto held on the 11th day of August, 2009, by Councilmember Lopez,
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, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: O'Bryant

ATTEST: STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2009-397

A RESOLUTION APPROVING THE FEDERAL FISCAL YEAR (FFY) 2009/2010 DISADVANTAGED BUSINESS ENTERPRISE (DBE) RACE-CONSCIOUS IMPLEMENTATION PROGRAM PLAN AGREEMENT FOR FEDERALLY-FUNDED STREET, AIRPORT, TRANSIT AND PARKS PROJECTS AND ESTABLISH AN ANNUAL ANTICIPATED DBE PARTICIPATION LEVEL (AADPL) FOR FFY 2009/2010 OF 5.93%; AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE ANNUAL SUBMITTAL FORM

WHEREAS, the City of Modesto, in order to receive federal funding from the U.S. Department of Transportation (DOT) through the California Department of Transportation (Caltrans) is required to sign the California Department of Transportation’s Disadvantaged Business Enterprise (DBE) Race-Conscious Implementation Agreement for federally funded street, airport, and transit projects, and

WHEREAS, the City of Modesto has approved the FY 2009/2010 Disadvantaged Business Enterprise (DBE) Race-Conscious Implementation Agreement and desires to adopt the Federal Fiscal Year 2009/2010 Annual Anticipated DBE Participation Level (AADPL) goal of 5.93%, which includes 2.15% Race Neutral and 3.78% Race Conscious.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the Federal Fiscal Year 2009/2010 Disadvantaged Business Race-Conscious Implementation Program Plan Agreement for federally-funded street, airport, transit and parks projects.

BE IT FURTHER RESOLVED by the Council of the City of Modesto that it establishes an Annual Anticipated DBE Participation Level for FFY 2009/2010 of 5.93%.

BE IT FURTHER RESOLVED by the Council of the City of Modesto that it authorizes the City Manager, or his designee, to execute the Annual Submittal Form.
The foregoing resolution was introduced at a regular meeting of the Council of
the City of Modesto held on the 11th day of August, 2009, by Councilmember Lopez,
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, Olsen,
Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: O'Bryant

ATTEST: [Signature]

(S Seal)

APPROVED AS TO FORM:

By: [Signature]

SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2009-398

A RESOLUTION APPROVING SUPPORT OF THE REALIGNMENT OF STATE
ROUTE 108, AS A NECESSARY COMPONENT TO FACILITATE THE NORTH
COUNTY CORRIDOR STATE ROUTE 108 EAST ROUTE ADOPTION

WHEREAS, the City of Modesto is a member agency of the North County
Corridor Transportation Expressway Authority, which consists of the Stanislaus Council
of Governments (StanCOG); the cities of Oakdale and Riverbank; and the County of
Stanislaus, and

WHEREAS, the North County Corridor State Route (SR) 108 East Route
Adoption will enhance traffic safety and improve transportation network performance by
accommodating regional growth, promoting balanced traffic circulation, reducing
congestion, and reducing travel times and vehicle hours of delay, and

WHEREAS, the realignment of a portion of State Route 108 is necessary to
facilitate the North County Corridor SR 108 East Route Adoption, and

WHEREAS, the realignment of a portion of State Route 108 will allow for
interregional connectivity from McHenry/SR 108, north of Modesto, east and north
easterly, to an area east of the SR 120/108 junction.

NOW, THEREFORE. BE IT RESOLVED by the Council of the City of Modesto
that it hereby approves support of the realignment of State Route 108, as a necessary
component to facilitate the North County Corridor SR 108 East Route Adoption.
The foregoing resolution was introduced at a regular meeting of the Council of
the City of Modesto held on the 11th day of August 2009, by Councilmember Hawn, 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, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: O'Bryant, Olsen

ATTEST: [Signature]

(S Seal)

APPROVED AS TO FORM:

By: [Signature]
SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2009-399

RESOLUTION APPROVING AN AMENDED AND RESTATED DISPOSITION AND DEVELOPMENT AGREEMENT WITH EAH, INC. PROVIDING FINANCIAL ASSISTANCE NOT TO EXCEED $6,749,000 FOR THE PROPOSED DEVELOPMENT OF A 150-UNIT AFFORDABLE HOUSING COMPLEX, ALSO REFERRED TO AS ARCHWAY COMMONS

WHEREAS, the Redevelopment Agency of the City of Modesto (the “Agency”) is carrying out the Redevelopment Plan for the Modesto Redevelopment Project (the “Redevelopment Project”); and

WHEREAS, in conformance with Health and Safety Code Section 33490, the Agency adopted a five-year Implementation Plan (the "Implementation Plan") for the Redevelopment Project; and

WHEREAS, the Agency previously entered into a Disposition and Development Agreement ("Existing DDA"), dated as of June 2, 2009, with EAH, Inc. ("Developer") providing an option for the Developer to either purchase or ground lease from the Agency certain property ("Site") for the development of a 150-unit affordable housing project (the "Housing Project"; and

WHEREAS, in light of current facts, conditions and circumstances, the Agency and Developer have cooperated in the preparation of an Amended and Restated Disposition and Development Agreement (the “Amended DDA”) to clarify that the Developer will purchase the Site from the Agency, and make other conforming changes related thereto; and

WHEREAS, the Amended DDA also provides for Agency assistance for the Housing Project in an amount not to exceed $6,749,000.00 (the "Agency Loan"), which consists of three elements, including a Predevelopment Loan in the amount of $900,000;
a Development Loan, not to exceed $1,869,900; and a Purchase Loan for the purchase
price in the amount of $3,980,000, which amounts are consistent with the Agency
Assistance provided for under the Existing DDA; and

WHEREAS, on April 29, 2009, by Resolution No. 10-2009, the Agency approved
a Purchase Agreement to acquire three (3) of four (4) parcels (the "Site") needed for the
development of an affordable housing complex, also referred to as Archway Commons
(the "Housing Project"); and

WHEREAS, on April 29, 2009, by Resolution No. 10-2009, the Agency approved
a Purchase Agreement to acquire three (3) of four (4) parcels (the "Site") needed for the
development of an affordable housing complex, also referred to as Archway Commons
(the "Housing Project"); and

WHEREAS, on April 29, 2009, by Resolution No. 10-2009, the Agency approved
a Purchase Agreement to acquire three (3) of four (4) parcels (the "Site") needed for the
development of an affordable housing complex, also referred to as Archway Commons
(the "Housing Project"); and

WHEREAS, on April 29, 2009, by Resolution No. 10-2009, the Agency approved
a Purchase Agreement to acquire three (3) of four (4) parcels (the "Site") needed for the
development of an affordable housing complex, also referred to as Archway Commons
(the "Housing Project"); and

WHEREAS, a Purchase Agreement was approved on June 2, 2009, by Resolution
No. 13-2009, for the acquisition of the fourth and final parcel needed for the Housing
Project; and

WHEREAS, the Agency closed escrow on the first three (3) parcels of the Site on
May 21, 2009, and escrow closed on the fourth parcel on July 1, 2009; and

WHEREAS, the Agency has received a proposed Amended Disposition and
Development Agreement (the “DDA”) from the Developer which provides for the sale of
the Site to the Developer for development of the Housing Project; and

WHEREAS, the proposed Amended DDA further provides that the Developer
will develop the Housing Project on the Site, consisting of approximately 150 affordable
housing units; and

WHEREAS, the proposed Amended DDA also provides for Agency assistance for
the Housing Project in an amount not to exceed $6,749,000 (the "Agency Assistance"),
of which $3,980,000 has already been expended for the acquisition of all four parcels for
the Site and the remaining $2,769,000 is to provide additional financial assistance for the planning and development of the Housing Project; and

WHEREAS, the Community Redevelopment Law of the State of California (Health and Safety Code Section 33000, et seq.) provides in Section 33431 that any sale or lease of Agency property may be made only after a public hearing of the Agency after publication of notice as provided by law; and

WHEREAS, the Community Redevelopment Law further provides in Section 33433 that before any property acquired, in whole or in part, with tax increment monies, is sold or leased for development pursuant to a redevelopment plan, such sale or lease shall first be approved by the legislative body after a public hearing, that notice of the time and place of the hearing shall be published in a newspaper of general circulation in the community for at least two (2) successive weeks prior to the hearing, and that the Agency shall make available for public inspection a copy of the proposed sale or lease and a report containing specified information and the financial aspects of the proposal; and

WHEREAS, notice of a joint public hearing of the City Council of the City of Modesto (the “City Council”) and the Agency was published on July 27, August 3 and August 10, 2009, and a joint public hearing was held on August 11, 2009, to consider and act on the sale of the Site pursuant to the Amended DDA; and

WHEREAS, prior to approval of the Existing DDA, the Agency prepared a report pursuant to Section 33433 of the Health and Safety Code (the “Original Report”), describing the cost of the Amended DDA to the Agency, the value of the property interest to be conveyed, the purchase price and other information required by said Section 33433, and has prepared a Supplement to the Original Report ("Supplemental Report")
addressing the changes made through the Amended DDA, the Original Report and Supplemental Report, together with the Amended DDA, was made available to the public for inspection;

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

Section 1. The City Council hereby finds and determines that the sale of the Site by the Agency to the Developer and development of the Housing Project on the Site pursuant to the Amended DDA will assist in the elimination of blight and will provide housing for very-low and low-income households and is consistent with the Five-Year Implementation Plan adopted by the Agency pursuant to Health and Safety Code Section 33490. This finding is based upon the facts and information contained in the Original Report and the Supplemental Report prepared by the Agency pursuant to Health and Safety Code Section 33433.

Section 2. The City Council hereby finds and determines that the consideration for the Site to be paid by the Developer under the Amended DDA is not less than the fair reuse value at the use and with the covenants and conditions and development costs authorized by the Amended DDA. This finding is based upon the facts and information contained in the Original Report and the Supplemental Report prepared by the Agency pursuant to Health and Safety Code Section 33433.

Section 3. The City Council hereby approves the Amended DDA in substantially the form on file with the City Clerk. The City Council further approves and authorizes the sale of the Site to the Developer and the funding of the Agency Assistance, all as provided for under the Amended DDA.
Section 4. The Agency is hereby authorized to execute the Amended DDA, subject to any minor conforming, technical or clarifying changes approved by Agency Counsel. The Agency is hereby further authorized to undertake such further actions and execute such documents as are necessary to carry out and complete the obligations of Agency under the Amended DDA, including without limitation the execution of deeds trust agreement, and all other actions and documents necessary for the sale of the Site to the Developer, and funding of the remainder of the Agency Assistance, all as provided for in the Amended DDA.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 11th day of August, 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, Mayor Ridenour
NOES: Councilmembers: None
ABSENT: Councilmembers: O'Bryant, Olsen

ATTEST: [Signature]

(Seal)

APPROVED AS TO FORM:

By: [Signature]

SUSANA ALCALA WOOD, City Attorney
RESOLUTION APPROVING SUBMITTAL OF GRANT APPLICATIONS TO
THE FEDERAL TRANSIT ADMINISTRATION (FTA) REQUESTING $453,406
IN FTA JOB ACCESS AND REVERSE COMMUTE FUNDS AND $218,719 IN
FTA NEW FREEDOM FUNDS; AND AUTHORIZING THE CITY MANAGER,
OR HIS DESIGNEE, TO EXECUTE ALL GRANT APPLICATION AND GRANT
AGREEMENT DOCUMENTS

WHEREAS, City is applying for Job Access and Reverse Commute (JARC) and
New Freedom funds on behalf of the Modesto Urbanized Area, as requested by the
Federal Transit Administration (FTA), and

WHEREAS, StanCOG would typically be the agency to apply for these funds, but
it has not yet achieved the status of a federally recognized “eligible grantee” for this type
of funding, and

WHEREAS, the FTA asked the City of Modesto to act as the grantee for these
funds and pass them through to StanCOG, and

WHEREAS, StanCOG will maintain financial responsibility for these monies if
the grant applications are approved, and

WHEREAS, JARC was established by the federal government to address the
unique transportation challenges faced by low-income persons seeking employment and
keeping their jobs, and

WHEREAS, the New Freedom program was authorized to support public
transportation services beyond those required by the Americans With Disabilities Act of
1990, and
WHEREAS, a public hearing was held on August 11, 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 submittal of grant applications to the Federal Transit Administration (FTA) requesting $453,406 in FTA Job Access and Reverse Commute funds and $218,719 in FTA New Freedom funds.

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

The foregoing resolution was introduced at a meeting of the Council of the City of Modesto held on the 11th day of August, 2009, by Councilmember Marsh, 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, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: O'Bryant, Olsen

ATTEST: STEPHANIE LOPEZ, City Clerk (SEAL)

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2009-401

A RESOLUTION DETERMINING THAT THE PUBLIC INTEREST AND NECESSITY REQUIRE THE ACQUISITION OF A THREE-MONTH EXTENSION OF AN EXISTING TEMPORARY CONSTRUCTION EASEMENT.

PROPERTY OWNER: BRIGHT DEVELOPMENT, A CALIFORNIA CORPORATION, PROPERTY ADDRESS: NORTHEAST CORNER OF PELANDALE AVENUE AND SISK ROAD, MODESTO, CALIFORNIA, ASSESSOR’S PARCEL NUMBER: 135-29-019 (PORTION)

WHEREAS, the City of Modesto is vested with the power of eminent domain to acquire property by virtue of Article 1, Section 19, of the Constitution of the State of California; California Code of Civil Procedure Sections 1240.010 - 1240.050, 1240.110, 1240.120, and 1240.140; California Government Code Sections 37350.5, 37353, 39792, 40401 and 40404; Streets and Highways Code Section 1810; and the Pelandale Avenue at Sisk/SR99 Improvements Joint Powers Agreement by and between the City of Modesto and the County of Stanislaus, dated November 8, 2007, and

WHEREAS, on May 27, 2008, the City Council of the City of Modesto, after a public hearing, consideration of the comments, reports, documents, and information presented to it, adopted and approved a Resolution of Necessity, Resolution No. 2008-314, determining that the public interest and necessity require the acquisition of the subject real property, as set forth in Resolution No. 08-314 and its attachments after making all of the findings required by it under the law, and directing the filing of Eminent Domain proceedings, and

WHEREAS, Resolution No. 2008-314 is incorporated into this resolution as though fully set forth herein, and
WHEREAS, pursuant to the provisions of Section 7267.2 of the California Government Code, the City has made an offer to the owner of the Subject Property for just compensation prior to the adoption of Resolution No. 2008-314, and

WHEREAS, after adoption of Resolution No. 2008-314, the City was unable to settle with the Property Owner, and

WHEREAS, the City filed a Complaint in Eminent Domain on June 9, 2008, to acquire the subject real property interests for the benefit of its Project, and

WHEREAS, the real property interests being acquired are within the Project area, and include a temporary construction easement consisting of 5,300 square feet (0.1217 acres), more or less, in and to a portion of the subject property, also identified as Assessor’s Parcel Number 135-29-019, and

WHEREAS, the temporary construction easement being acquired through the pending eminent domain action, as more particularly described and depicted in Exhibit “A” attached hereto, and incorporated by this reference, is for a term of 12 months, and

WHEREAS, pursuant to the Court’s Order for Prejudgment Possession on file in the eminent domain action regarding the subject property and subject property acquisitions, the City has been in possession of the subject property interests, including the temporary construction easement, since October 20, 2008, and

WHEREAS, due to circumstances beyond its control, the City has determined that it needs a three-month extension of the existing temporary construction easement in and to a portion of the subject property approved by the Council on May 27, 2008, Resolution No. 2008-314, and
WHEREAS, the City of Modesto through its counsel, engaged a qualified appraiser who has prepared an appraisal of the three-month extension of the existing temporary construction easement, and

WHEREAS, on June 29, 2009, the City of Modesto made the written offer required by Section 7267.2 of the Government Code for the extended term of the temporary construction easement (the additional three months), and

WHEREAS, pursuant to the provisions of Section 1245.235 of the Code of Civil Procedure, notice has been duly given to the property owner as set forth herein, who has been given a reasonable opportunity to appear and be heard before the City Council of the City of Modesto on the following matters:

(a) Whether the public interest and necessity require the Project;
(b) Whether the Project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury;
(c) Whether the extended term of the existing temporary construction easement (the additional three months) is necessary for the Project; and
(d) Whether the offer required by Government Code Section 7267.2 has been made to the owner of the property; and

WHEREAS the City has completed the environmental review process for the Project in that the Project is consistent and within the scope of the City's Urban Area General Plan and Final Master Environmental Impact Report, and no additional California Environmental Quality Act clearance was needed.

NOW. THEREFORE. THE CITY OF MODESTO FINDS. DETERMINES. AND ORDERS as follows:

1. The above recitals are facts on which these findings are based.
2. The public purpose for which the property interests as stated herein are to be acquired is for implementation of the Pelandale Avenue at Sisk Road/SR 99 Improvement Project.

3. For the foregoing reasons, the City of Modesto finds and determines that:

   (a) The public interest and necessity require the Project;
   (b) The Project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury:
   (c) The taking of the three-month extension of the existing temporary construction easement in and to the subject property described in Exhibit "A" is necessary for the Project;
   (d) The offer required by Government Code Section 7267.2 has been made to the owner of the subject property;

4. The City's counsel will continue to do whatever is necessary to proceed with the filed eminent domain action in order to acquire the property and property interests necessary for the Project.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 11th day of August, 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, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: O'Bryant, Olsen

ATTEST: [Signature]

(SEAL)

APPROVED AS TO FORM:

By: [Signature]

SUSANA ALCALA WOOD, City Attorney
LEGAL DESCRIPTION AND PLAT MAP: TEMPORARY CONSTRUCTION EASEMENT
A parcel of land in the Southeast 1/4 of Section 3, Township 3 South, Range 8 East, Mount Diablo Meridian, in Stanislaus County, State of California, and further described in the Grant Deed to Bright Development, a California Corporation recorded December 7, 1987 as Instrument No 134987 of Official Records of Stanislaus County; said parcel of land further described as:

A strip of land 10.00 feet in with lying contiguous to and to the generally northeasterly of the following described line:

Commencing at the southeast corner of said Parcel recorded on December 7, 1987 and on the northerly line of Pelandale Avenue (lying 20.00 feet northerly of centerline) as shown upon the map filed on December 7, 1987 in Book 17 of Surveys at Page 71; thence along the easterly line of said Parcel, North 00°26'54" West 59.50 feet to the Point of Beginning; thence South 89°33'06" West 94.38 feet; thence along the arc of a tangent curve concave to the northeast having a radius of 51.50 feet, a chord bearing North 54°38'45" West 60.25 feet through a central angle of 71°36'20", an arc length of 64.36 feet to a point of reverse curvature; thence along the arc of a tangent curve concave to the southwest having a radius of 633.82 feet, a chord bearing North 22°34'23" West 82.47 feet, through a central angle of 7°27'37", an arc length of 82.53 feet to a non-tangent curve concave to the southwest having a radius of 509.50 feet, a chord bearing North 39°20'06" West 229.64 feet; through a central angle of 25°49'27", an arc length of 229.64 feet; thence North 52°14'50" West 58.57 feet to the southwest corner of said parcel and the Point of Terminus.

The sidelines of said strip shall be lengthened or shortened so as to terminate at the property lines of said lot.

Containing 5,300 square feet (0.1217 Acres) more or less.

This real property description has been prepared at Mark Thomas & Company, Inc., by me or under my direction, in conformance with the Professional Land Surveyors Act.

[Signature]
Albert De Leon  
L.S. 7716  
February 22, 2007  
Date
This exhibit is for graphic purposes only. Any errors or omissions shall not effect the deed descriptions.
MODESTO CITY COUNCIL
RESOLUTION NO. 2009-402


WHEREAS, the current Memorandum of Understanding (MOU) between the City of Modesto (CITY) and the Modesto Police Non Sworn Association (MPNSA) expired on June 22, 2009, and

WHEREAS, representatives of the CITY and the MPNSA have met and conferred in good faith concerning wages, hours, terms and conditions of employment for employees in said bargaining unit, and

WHEREAS, the CITY and MPNSA have reached agreement on a new MOU which, upon execution, shall be attached hereto and made a part hereof, and

WHEREAS, the MOU provides as follows:

SECTION 1. MANDATORY FURLoughS. For fiscal year 2009-2010, each bargaining unit member shall take 96-hours of mandatory furloughs. For twenty-four (24) pay periods beginning August 4, 2009, each bargaining unit member shall have four (4) unpaid furlough hours deducted from his/her paycheck, for a total of ninety-six (96) hours during fiscal year 2009-2010. Effective August 4, 2009 the CITY shall create for each member a furlough bank of ninety-six (96) hours. Between August 4, 2009 and June 30, 2010, the Department Director or designated representative shall ensure that all members exhaust all ninety-six (96) hours in the furlough bank in a manner that does not result in an increase in overtime cost, where applicable, due to the vacancy left by the furloughed employee. Furlough hours that have been deducted and banked but have not
been taken as time off by June 30, 2010, shall be forfeited by the employee and shall not be cashed out.

SECTION 2. HEALTH, DENTAL AND VISION BENEFITS. The CITY’s contribution to employees’ Health, Dental and Vision coverage shall be as follows:

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<tr>
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<td>Opt Out</td>
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The agreement removes the provision that the CITY’s contribution for Employee Only coverage will be 100% of the premium for the lowest cost HMO plan (including dental and vision).

SECTION 3. LAYOFF AND DEMOTION PROCEDURES. Several revisions including using time in classification instead of total City service to determine seniority and minor revisions to reflect current practice.

SECTION 4. HEALTH STUDY. The CITY agrees to engage a consultant to conduct a comprehensive review of health insurance plans and options for all active and retired employees. The review will consider options and shall include but not be limited to PERS health. Upon receipt of the study, the City and MPNSA agree to reopen on the topic of health plan options for actives and retirees. The reopener is on the issue of health plans and is not a reopener of total City contribution. The parties may mutually agree to reopen on other provisions affected by the issue of health plans.

SECTION 5. ADDITIONAL CHANGES. Changes to the MOU also include removing references to IBN from the agreement, removing references to the market study, amending language on pay differentials to remove the forty-eight (48) hour limit on paying the differential on sick leave, allowing squad bidding for Patrol and shift and
squad bidding for Records subject to the department’s needs and approval, and amending
the advance notice requirements for leave usage.

WHEREAS, the MPNSA membership has already ratified this Agreement, and
WHEREAS, the Council considered this matter at its meeting of August 11, 2009.
NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto
that the Council hereby approves the Agreement between the City of Modesto and the
Modesto Police Non Sworn Association and upon execution of same, a copy of the
Agreement will be on file in the office of the City Clerk.

The foregoing resolution was introduced at a regular meeting of the Council of
the City of Modesto held on the 11th day of August, 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, Keating, Lopez, Marsh, Mayor Ridenour
NOES: Councilmembers: None
ABSENT: Councilmembers: O’Bryant, Olsen

ATTEST: [Signature]
STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: [Signature]
SUSANA ALCALA WOOD, City Attorney