MODESTO CITY COUNCIL
RESOLUTION NO. 2009-082

A RESOLUTION GRANTING A ONE-TIME EXCEPTION TO THE TIVOLI SPECIFIC PLAN TO PERMIT CONSTRUCTION OF A 4,900 SQUARE FOOT AGRICULTURAL STORAGE BUILDING AT 3941 ROSELLE AVENUE AND TO NOT REQUIRE THE PARCEL TO FORM A COMMUNITY FACILITIES DISTRICT (CFD) IN THE TIVOLI SPECIFIC PLAN AREA AT THIS TIME

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

WHEREAS, on February 26, 2008, the City Council, by Ordinance No. 3479-C.S. adopted the Tivoli Specific Plan, to guide the development of 454 acres located in northeast Modesto, and

WHEREAS, Tom Trombetta (“Applicant”) contacted the City to construct a 4,900 square foot agricultural storage building at 3941 Roselle Avenue (“Parcel”), and

WHEREAS, said Parcel resides within the Tivoli Specific Plan Area, and

WHEREAS, the Tivoli Specific Plan states that no area plan, final map, final development plan, building permit or other development entitlement for currently unvested property shall be consistent with this Specific Plan until and unless the affected parcel is required to form or annex to the Tivoli CFD, and

WHEREAS, the Tivoli Specific Plan does allow City to defer the requirement to form or annex to the Tivoli CFD if it meets the following criteria:

1) Residential properties of less than two acres, until there is a land division, addition of any dwelling unit or change of use, or
2) The existing commercial properties at the northeast corner of Oakdale Road and Sylvan Avenue and the southeast corner of Oakdale Road and Mable Avenue, until there is a change of use, physical expansion of the existing building, construction of new buildings or division of property, and

WHEREAS, since Applicant does not meet above-referenced deferral criteria, staff recommends Council approve a one-time exception to the Tivoli Specific Plan for the following reasons:

1) Applicant does not trigger the need for preparation of an Area Plan.

2) It is unreasonable to require Applicant to form the Tivoli CFD and pay a one-time special facilities tax in excess of $156,000 in order to construct a warehouse valued at $245,100, and

3) The existing agricultural use was operating on the site before the Parcel was annexed into the City limits, and

WHEREAS, upon future development, Parcel will be required to adhere to the Tivoli Specific Plan.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that is hereby grants a one-time exception to the Tivoli Specific Plan to permit construction of a 4,900 square foot agricultural storage building at 3941 Roselle Avenue and to not require the parcel to form a Community Facilities District (CFD) in the Tivoli Specific Plan Area at this time.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 24th day of February, 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, Lopez, Marsh, O'Bryant, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: Keating

ATTEST: [Signature]

APPROVED AS TO FORM:

By: [Signature]

SUSANA ALCALA WOOD, City Attorney
A RESOLUTION APPROVING AND AUTHORIZING SUBMISSION OF THE FISCAL YEAR 2007-2008 LOCAL TRANSPORTATION FUND (LTF) NON-TRANSIT CLAIM FOR $552,785 AND CARRYOVER LTF IN THE AMOUNT OF $3,080,898 TO THE STANISLAUS COUNCIL OF GOVERNMENTS (STANCOG)

WHEREAS, on June 3, 2008, the City Council approved the revised Fiscal Year 2007-2008 annual claim for Local Transportation Funds (LTF) for transit purposes only, and

WHEREAS, on March 25, 2008, the Stanislaus Council of Governments (StanCOG), pursuant to California State Public Utility Code (PUC) Section 99701.6, determined that there are no unmet transit needs or that there are no unmet transit needs that are reasonable to meet, and

WHEREAS, StanCOG has informed the Finance Department that it has allocated the Annual LTF for pedestrian, bicycle and street projects, pursuant to PUC Sections 99233.3 and 99234, and

WHEREAS, the City of Modesto had a combined carryover of $3,080,898 of Fiscal Year 2006-2007 LTF funds to Fiscal Year 2007-2008, and

WHEREAS, Council action authorizing the carryover is required by StanCOG pursuant to PUC Section 99621.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves and authorizes the execution and submission of the claim for apportionment of the Annual LTF in the amount of $552,785 and Carryover LTF in the amount of $3,080,898.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 24th day of February, 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, Lopez, Marsh, O’Bryant, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: Keating

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney

(SEAL)
MODESTO CITY COUNCIL
RESOLUTION NO. 2009-084

A RESOLUTION APPROVING AND AUTHORIZING SUBMISSION OF THE FISCAL YEAR 2008-2009 LOCAL TRANSPORTATION FUND (LTF) NON-TRANSIT CLAIM FOR $1,393,154 AND CARRYOVER LTF IN THE AMOUNT OF $993,026 TO THE STANISLAUS COUNCIL OF GOVERNMENTS (STANCOG)

WHEREAS, on June 3, 2008, the City Council approved the Fiscal Year 2008-2009 annual claim for Local Transportation Funds (LTF) for transit purposes only, and

WHEREAS, on March 25, 2008, the Stanislaus Council of Governments (StanCOG), pursuant to California State Public Utility Code (PUC) Section 99701.6, determined that there are no unmet transit needs or that there are no unmet transit needs that are reasonable to meet, and

WHEREAS, StanCOG has informed the Finance Department that it has allocated the Annual LTF for pedestrian, bicycle and street projects, pursuant to PUC Sections 99233.3 and 99234, and

WHEREAS, the City of Modesto had a combined carryover of $993,026 of Fiscal Year 2007-2008 LTF funds to Fiscal Year 2008-2009, and

WHEREAS, Council action authorizing the carryover is required by StanCOG pursuant to PUC Section 99621.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves and authorizes the execution and submission of the claim for apportionment of the Annual LTF in the amount of $1,393,154 and Carryover LTF in the amount of $993,026.
The foregoing resolution was introduced at a regular meeting of the Council of
the City of Modesto held on the 24th day of February, 2009, by Councilmember Lopez,
who moved its adoption, which motion being duly seconded by Councilmember Hawn,
wash upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Keating

ATTEST: [Signature]
STEPHANIE LOPEZ, City Clerk
(SEAL)

APPROVED AS TO FORM:

By: [Signature]
SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2009-085

A RESOLUTION APPOINTING SIX (6) STUDENTS FROM MODESTO HIGH SCHOOLS TO THE CITY OF MODESTO YOUTH COMMISSION FOR A TERM OF TWO YEARS

WHEREAS, City Council Resolution No. 86-1369 established the City of Modesto Youth Commission, and authorized the City Council to appoint members to the Youth Commission. and

WHEREAS, City Council Resolution No. 89-443, authorized the principals of each of the high schools in Modesto to recommend the names of students who are interested in serving on the Commission to the City Council for appointment as Commissioners.

NOW, THEREFORE, BE IT HEREBY RESOLVED by the Council of the City of Modesto that it hereby approves the appointment of the following high school students to the City of Modesto Youth Commission for a term of two years:

Beyer High School
Amanda Duvall

Big Valley Christian High School
Breiana Theodore

Downey High School
Chanell Heslop

Enochs High School
Sonam Virk

Modesto High School
Viodolorosa Stanley

Modesto Christian High School
Jennifer Giannosa

The City Clerk is hereby directed to transmit a copy of this Resolution to the newly appointed members of the City of Modesto Youth Commission, and the Secretary thereof.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 24th day of February, 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, Lopez, Marsh, O'Bryant, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: Keating

ATTEST: 

(Seal)

APPROVED AS TO FORM:

By: 
SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2009-086

A RESOLUTION APPROVING AN AGREEMENT WITH STANISLAUS COUNTY BEHAVIORAL HEALTH AND RECOVERY SERVICES (BHRS) IN THE AMOUNT OF $41,500, TO PROVIDE PARTY PATROL POLICE OFFICERS TO CONDUCT JUVENILE ALCOHOL EDUCATION, PREVENTION AND INTERVENTION PROGRAMS FOR THE CITY OF MODESTO AND STANISLAUS COUNTY, AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE ALL NECESSARY DOCUMENTS

WHEREAS, Stanislaus County Behavioral Health and Recovery Services (BHRS) requires Party Patrol Police Officers to contact, identify and hold accountable minors drinking illegally at home parties and in violation of the law, and

WHEREAS, the Modesto Police Department has developed a first-time offender juvenile alcohol education, prevention and intervention program, and

WHEREAS, minors contacted by the Party Patrol will be cited and required to attend diversion classes with their parents, and

WHEREAS, the goal of the class is to educate minors and parents of the dangers related to minors consuming alcohol, and

WHEREAS, the Modesto Police Department has seen a reduction in alcohol related injuries and deaths related to juveniles and alcohol since the Party Patrol was established, and

WHEREAS, the Modesto Police Department will also provide a marketing campaign, including placing ads in newspapers, yearbooks, as well as produce posters to educate youth about the harmful effects of alcohol, and

WHEREAS, the Modesto Police Department will prepare reports on enforcement actions taken related to juvenile alcohol consumption offenses, and
WHEREAS, the term of this Agreement is January 1, 2009 through December 31, 2009, and

WHEREAS, the City shall be compensated in the amount of $41,500 for the services of Party Patrol Police Officers to conduct juvenile alcohol education, prevention and intervention program, and

WHEREAS, there is no fiscal impact to the City of Modesto.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves an Agreement with Stanislaus County Behavioral Health and Recovery Services (BHRS) in the amount of $41,500 to provide Party Patrol Police Officers to conduct juvenile alcohol education, prevention and intervention programs for the City of Modesto and Stanislaus County.

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 24th day of February, 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, Lopez, Marsh, O’Bryant, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: Keating

ATTEST: [Signature]

(SIGNATURE)

APPROVED AS TO FORM:

By: [Signature]

SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NUMBER 2009-087

A RESOLUTION AMENDING THE MULTI-YEAR BUDGET ESTIMATING REVENUE OF $41,500 FOR OVERTIME AND REIMBURSEMENT FOR THE PARTY PATROL AGREEMENT WITH THE COUNTY OF STANISLAUS BEHAVIOR HEALTH AND RECOVERY SERVICES (BHRS)

WHEREAS, since May 2, 2006, the City of Modesto Police Department has had an annual Party Patrol Agreement with the County of Stanislaus Behavioral Health and Recovery Services (BHRS) to allow for completion of services/activities related to Party Patrol, Reduction of Binge Drinking and Related Problems among Youth and Young Adults, and

WHEREAS, this Agreement is to provide Party Patrol Police Officers and conduct juvenile alcohol education, prevention and intervention programs to reduce underage drinking parties and activities throughout Modesto and Stanislaus County, and

WHEREAS, the term of the new Agreement is January 1, 2009 through December 31, 2009, and

WHEREAS, the multi-year budget must be amended to reflect the Agreement revenues associated with this program as shown in Exhibit A, which is incorporated by reference herein, and

WHEREAS, there is no local match required for this program.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the multi-year budget is hereby amended estimating revenue of $41,500 for overtime and reimbursement for the Party Patrol Agreement with the County of Stanislaus Behavioral Health and Recovery Services (BHRS).
BE IT FURTHER RESOLVED that the Finance Director is hereby authorized to take the necessary steps to implement the provisions of this resolution.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 24th day of February, 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, Lopez, Marsh, O’Bryant, Olsen.

Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: Keating

(Seal)

APPROVED AS TO FORM:

By: SUSANA ALCALÁ WOOD, City Attorney
## Exhibit A

<table>
<thead>
<tr>
<th>Expense:</th>
<th>Revenue:</th>
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<tr>
<td>To: 0420-190-2094-0130 $41,500</td>
<td>To: 0420-190-2094-3730 $41,500</td>
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<tr>
<td>Officers’ Overtime Hours Cost</td>
<td>School/County Contribution</td>
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MODESTO CITY COUNCIL
RESOLUTION NO. 2009-088

A RESOLUTION APPROVING AN AGREEMENT WITH BLACKBURN CONSULTING FOR CONSTRUCTION MANAGEMENT AND INSPECTION SERVICES OF THE EMERALD TRUNK REHABILITATION PROJECT IN AN AMOUNT NOT TO EXCEED $886,395.02, AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE AGREEMENT

WHEREAS, the Emerald Trunk Line conveys raw wastewater in the City’s Service Area 2 along the Emerald Avenue corridor and consists of approximately 17,000 feet of pipe, and

WHEREAS, the City is now undergoing this project to rehabilitate the Emerald Trunk Line to protect it from further corrosion damage and extend its service life, and

WHEREAS, the City Council, on April 1, 2008, by Resolution No. 2008-190, approved an Agreement with Brown and Caldwell to prepare the final project design of this project, and

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

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

WHEREAS, City staff recommends an agreement with Blackburn Consulting, a local Modesto firm, as the City does not have the staffing level or subject matter expertise to perform construction management and inspection services for the following: constructability review, valued engineering, bid evaluation, construction administration, processing and tracking of submittals and requests for information, coordination associated with inspections, coordination with City staff, documentation of daily and
weekly field activities, and project closeout for the Emerald Trunk Rehabilitation 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 Blackburn Consulting for construction management and inspection services for the Emerald Trunk Rehabilitation project in an amount not to exceed $886,395.02.

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 24th day of February, 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, Lopez, Marsh, O'Bryant, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: Keating

ATTEST: [Signature]

SEAL

APPROVED AS TO FORM:

By: [Signature]

SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2009-089

A RESOLUTION AMENDING THE FISCAL YEAR 2008-2009 CAPITAL IMPROVEMENT PROGRAM BUDGET IN ORDER TO FULLY FUND THE AGREEMENT FOR CONSTRUCTION MANAGEMENT AND INSPECTION SERVICES OF THE EMERALD TRUNK REHABILITATION PROJECT

WHEREAS, a budget adjustment in the amount of $200,000 is necessary to fully fund the Agreement with Blackburn Consulting for construction management and inspection services and staff administration of the Emerald Trunk Rehabilitation project, and

WHEREAS, the project is fully funded and a line item transfer is required, and

WHEREAS, the Fiscal Year 2008-2009 Capital Improvement Program budget must be amended as shown in Exhibit A, which is incorporated by reference herein.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the amendment of the Fiscal Year 2008-2009 Capital Improvement Program budget as shown in Exhibit A.

BE IT FURTHER RESOLVED that the Finance Director, or his designee, is hereby authorized to implement the provisions of this resolution.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 24th day of February, 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, Lopez, Marsh, O'Bryant, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: Keating

ATTEST: STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney
**Exhibit A**

**FUND:**

Wastewater Fund

**EXPENDITURES:**

<table>
<thead>
<tr>
<th>Project Description</th>
<th>Code</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Emerald Trunk Rehab</td>
<td>6210-480-B808-6050</td>
<td>($200,000)</td>
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<tr>
<td>Emerald Trunk Rehab</td>
<td>6210-480-B808-6060</td>
<td>$200,000</td>
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MODESTO CITY COUNCIL
RESOLUTION NO. 2009-090

A RESOLUTION APPROVING AN AGREEMENT WITH WRA, INC. FOR PRE-CONSTRUCTION BIOLOGICAL SURVEY SERVICES OF THE PRIMARY OUTFALL REHABILITATION PROJECT IN AN AMOUNT NOT TO EXCEED $10,300, AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE AGREEMENT

WHEREAS, the Primary Outfall Pipeline transports primary effluent wastewater from the City’s Sutter Avenue Primary Water Quality Control Plant to the Jennings Road Secondary Plant and consists of approximately 6.5 miles of 60-inch pipeline, and

WHEREAS, the City is now undergoing this project to rehabilitate the Primary Outfall Pipeline to protect it from further corrosion damage and extend its service life, and

WHEREAS, the Finding of Conformance along with the City’s 2007 Wastewater Master Plan requires a biological survey prior to start of construction, and

WHEREAS, WRA, Inc. was selected for this project since they performed the biological survey for other sanitary sewer projects for the City, and therefore they are familiar with the natural setting of the area, and

WHEREAS, City staff recommends an Agreement with the consulting firm of WRA, Inc. be approved to perform pre-construction biological survey services in order to identify burrowing owl, nesting raptor and Swanson Hawk foraging habitats along the pipe’s alignment.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves an Agreement with WRA, Inc. for pre-construction biological survey services for the Primary Outfall Rehabilitation project in an amount not to exceed $10,300.00,
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 24th day of February, 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, Lopez, Marsh, O'Bryant, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: Keating

ATTEST: SUSANA ALCALA WOOD, City Attorney

(SEAL)

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney
A RESOLUTION ACCEPTING THE WORK BY TEICHERT CONSTRUCTION FOR THE PROJECT TITLED “TUOLUMNE RIVER REGIONAL PARK GATEWAY PHASE 1.2” 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 $2,683,866.97

WHEREAS, a report has been filed by the Public Works Director that the project titled “Tuolumne River Regional Park Gateway Phase 1.2” has been completed by Teichert Construction in accordance with the contract agreement dated September 4, 2007,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the project titled “Tuolumne River Regional Park Gateway Phase 1.2” is hereby accepted as complete from said contractor Teichert Construction, that the City Clerk is authorized to file a Notice of Completion with the Stanislaus County Recorder and to release securities upon expiration of statutory periods, and that payment of amounts totaling $2,683,866.97 is authorized as provided in the contract.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 24th day of February, 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, Lopez, Marsh, O’Brien, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: Keating

ATTEST: [Signature]

(Seal)

APPROVED AS TO FORM:

By: [Signature]

SUSANA ALCALÁ WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NUMBER 2009-092

A RESOLUTION AMENDING THE FISCAL YEAR 2008/2009 OPERATING BUDGET REDUCING GENERAL FUND REVENUES BY $290,000 DUE TO DELAYED IMPLEMENTATION OF THE FRANCHISE TOW PROGRAM

WHEREAS, the City spends more than $2,000,000 annually on costs associated with non-consensual towing, and

WHEREAS, in Fiscal Year 2008/2009, the General Fund operating budget includes revenue, estimated at $360,000 over 12 months, from the fees associated with the towing of these vehicles, and

WHEREAS, due to delayed implementation of the franchise tow program, this revenue is now estimated at $70,000 based on an anticipated start date of April 1, 2009, and

WHEREAS, as proposed under the franchise tow contracts, the per vehicle tow fee is set at $40 with an estimated 7,000 tows per year, and

WHEREAS, on April 1, 2010, the fee increases to $45 and to $50 in April 1, 2011.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the Fiscal Year 2008/2009 Operating Budget reducing General Fund revenues by $290,000 due to delayed implementation of the Franchise Tow Program is hereby amended as shown in the Budget Adjustment (attached), which is incorporated by reference herein.

BE IT FURTHER RESOLVED that the Finance Director, or his designee, is hereby authorized to take the necessary steps to implement the provisions of this resolution.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 24th day of February, 2009, by Councilmember Marsh, who moved its adoption, which motion being duly seconded by Councilmember Olsen, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Keating

ATTEST: [Signature]

(SIGNATURE)

APPROVED AS TO FORM:

By: [Signature]

SUSANA ALCALA WOOD, City Attorney
REQUEST FOR BUDGET ADJUSTMENT

Contact Person: Polly Findlen
Telephone No.: 29318
Department: POLICE
Fund Title: General Fund

Council Action Date: __________________________
Resolution Number: __________________________
Adjustment to FY: 08-09 __________________________

<table>
<thead>
<tr>
<th>Fund-Agcy-Org-Object</th>
<th>Appr Unit Budget</th>
<th>Increase/ (Decrease) Revised Budget</th>
</tr>
</thead>
</table>

DEPARTMENTAL REVENUES/INCLUDES TRANSFERS IN

FROM
0100-190-1921-1314 $360,000 ($290,000) $70,000 City Towing

TO

APPROPRIATIONS/INCLUDES TRANSFERS OUT

FROM
0100-800-8000-8003 0100R $1,628,558 ($290,000) $1,338,558 Appropriated Reserve

TO

COMMENTS/JUSTIFICATION (USE ADDITIONAL PAGES AS NECESSARY)

At the time the 09 budget was prepared, the Franchise tow program was expected to be implemented by 7/1/08. It is anticipated that the $40 per tow revenue that will offset the program costs will be ready to begin 4/1/09. This adjustment reflects the expected revenue from April 1 to June 30, 2009.

AUTHORIZATION SIGNATURE DATE

(Authority levels reflected on back)

DEPARTMENT DIRECTOR or
AUTHORIZED DESIGNEE (Attach Delegation Authorization)

DEPUTY DIRECTOR (If needed)

ADMINISTRATIVE SERVICES OFFICER (If needed)

FINANCE DIRECTOR

CITY MANAGER

TRANSFER NUMBER __________________________

BY ___________ DATE ___________
ITEMS REQUIRING COUNCIL ACTION:

1. Appropriation of undesignated reserves
2. Appropriation of new revenues
   a. Does not include Developer Payment
3. Budgeting inter-fund transfers
   a. Does not include adjustments to budgeted transfers where the intent is to subsidize an enterprise operation
4. Creation of inter-fund loans
5. Creation of, or increase in, any multi-year appropriation
6. Addition of permanent staff positions
7. Appropriation of payments for new indebtedness including operating leases
8. All other budgetary actions not delegated to another official

ITEMS DELEGATED TO CITY MANAGER:

1. Transfer appropriations between departments within a fund
2. Changing any capital equipment appropriation
3. Changing appropriations for temporary agency labor
4. Transfer appropriations to or from salary line items
5. Appropriate reserves for litigation on a case-by-case basis
6. Revoke multi-year appropriations
7. Transfer appropriations from a primary capital project to create or modify the budget of a related secondary capital project without increasing the total appropriations
8. Transfer appropriations between two or more related secondary capital projects without increasing the total appropriations
9. Close Capital Improvement Program projects
10. Adjustments to inter-fund transfers intended to balance enterprise fund operations
11. Appropriate Developer Payments not previously budgeted
    a. Annexation Deposits
    b. Special District Formation Deposits
    c. Developer Deposits to be recognized as revenue

ITEMS DELEGATED TO FINANCE DIRECTOR:

1. Appropriate unbudgeted grant interest
2. Revise the allocation of Internal Service Fund charges between departments, provided that the total allocated amount does not increase (any such changes to the allocation shall not result in an increase of decrease to the total amount of discretionary appropriations provided to the affected department(s)
3. Make technical budget corrections to implement the intent of Council-approved actions and resolutions
4. Transfer appropriations between sub-funds of a single fund (except where this changes appropriation amounts for temporary agency labor and/or capital equipment purchases)

ITEMS DELEGATED TO DEPARTMENT DIRECTORS:

1. Transfer appropriations between non-salary line items within a department, within a single fund (excludes appropriations related to capital equipment, capital improvement program projects and temporary labor)
MODESTO CITY COUNCIL
RESOLUTION NO. 2009-096

A RESOLUTION APPROVING THE PROSPECTIVE BIDDER PREQUALIFICATION LIST FOR THE EMERALD TRUNK REHABILITATION PROJECT CONSISTING OF THE FOLLOWING CONTRACTORS: COLICH & SONS L.P.; D’ARCY & HARTY CONSTRUCTION, INC.; INSITUFORM TECHNOLOGIES, INC.; K.J. WOODS CONSTRUCTION, INC.; MICHELS CORPORATION, DBA MICHELS PIPELINE CONSTRUCTION; SUPER EXCAVATORS, INC.; AND EBERT MCGUIRE AND HESTER A JOINT VENTURE

WHEREAS, the Emerald Trunk Rehabilitation Project involves the rehabilitation of approximately 20,700 feet of existing 24 to 36-inch reinforced concrete sewer pipeline, and

WHEREAS, the project is located in a busy corridor with numerous roadway, railroad, utility, and canal crossings, 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 December 23, 2008, and

WHEREAS, on January 13, 2009, by Resolution No. 2009-040, the City Council approved the Prospective Bidder Prequalification Appeals Panel for the Emerald Trunk Rehabilitation Project, and
WHEREAS, the City received Statements of Prequalifications from ten 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 Ebert McGuire and Hester a Joint Venture, used a project manager who did not qualify for the project, and

WHEREAS, Ebert McGuire and Hester requested a protest hearing that was held on February 19, 2009, and

WHEREAS, in their revised submittal, Ebert McGuire and Hester changed the project manager dedicated to the assignment, and therefore the joint venture also qualified, and

WHEREAS, as a result the following prospective bidders qualified to submit bids on the project: Colich & Sons L.P.; D’Arey & Harty Construction, Inc.; Insituform Technologies, Inc.; K.J. Woods Construction, Inc.; Michels Corporation, dba Michels Pipeline Construction; Super Excavators, Inc.; and Ebert McGuire and Hester a Joint Venture, 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 Emerald Trunk Rehabilitation Project consisting of: Colich & Sons L.P.; D’Arey & Harty Construction, Inc.; Insituform Technologies, Inc.; K.J. Woods Construction, Inc.;
Michels Corporation, dba Michels Pipeline Construction: Super Excavators, Inc.; and Ebert McGuire and Hester a Joint Venture.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 3rd day of March, 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)

STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: 

SUSANA ÁLcala WOOD, City Attorney
A RESOLUTION APPROVING AN ELECTRIC UTILITY POLE RELOCATION AGREEMENT WITH MODESTO IRRIGATION DISTRICT FOR THE RELOCATION OF TWO UTILITY POLES AND ASSOCIATED UNDERGROUND CONDUIT LOCATED ON SISK ROAD NORTH OF PELANDALE AVENUE FOR THE PELANDALE AVENUE AT SISK ROAD AND SR99 NORTHBOUND ON-RAMP PROJECT IN THE AMOUNT NOT TO EXCEED $89,300, AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE AGREEMENT

WHEREAS, the Pelandale Avenue at Sisk Road and SR99 Northbound On-ramp project is needed to comply with the Kaiser Development Agreement, the City’s Circulation Element of the City’s General Plan, as well as regional transportation needs, and

WHEREAS, there are high voltage electrical lines along the east side of Sisk Road north of Pelandale Avenue that must be moved in order to construct the project per the Kaiser Development Agreement, and

WHEREAS, the Modesto Irrigation District will move the poles in accordance with the terms of the agreement, and

WHEREAS, the current budgeted amount of $89,300 for the agreement is available in CIP account 1410-430-11424 “Pelandale Sisk to 99 Improvements” to cover the cost for these services.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves an Agreement between the City of Modesto and Modesto Irrigation District (MID), for the relocation of electric utility poles and associated underground conduit located on Sisk Road north of Pelandale Avenue in an amount not to exceed $89,300.
BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute said Agreement.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 3rd day of March, 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

ATTEST: STEPHANIE LOPEZ, City Clerk

(SEAL)
A RESOLUTION APPROVING THE THIRD AMENDMENT TO THE AGREEMENT WITH AVAIL TECHNOLOGIES, INC. FOR THE DEVELOPMENT AND INSTALLATION OF A COMPUTER-AIDED DISPATCH/AUTOMATIC VEHICLE LOCATION SYSTEM FOR THE MODESTO AREA EXPRESS BUS SYSTEM IN AN AMOUNT NOT TO EXCEED $6,200, AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE AMENDMENT TO THE AGREEMENT

WHEREAS, on March 6, 2007, City Council, by Resolution 2007-161, approved an agreement with Avail Technologies, Inc. for the development and installation of a Computer-Aided Dispatch/Automatic Vehicle Location (CAD/AVL) system for the Modesto Area Express (MAX) bus fleet, and

WHEREAS, on June 3, 2008, City Council, by Resolution 2008-327, approved the First Amendment to the Agreement with Avail Technologies, Inc. increasing the original Agreement by $175,600 to incorporate system upgrades, and

WHEREAS, on August 12, 2008, City Council, by Resolution 2008-471, approved the Second Amendment to the Agreement with Avail Technologies, Inc. increasing the original Agreement by $21,500 to incorporate additional system upgrades, and

WHEREAS, during further CAD/AVL development, it has been determined that additional system enhancements are both feasible and cost effective to link the voice and date system emergency notification systems, and

WHEREAS, funds are budgeted in Account No. 6510-165-A044 for this Third Amendment to the Agreement with Avail Technologies, Inc.
NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the Third Amendment to the Agreement with Avail Technologies, Inc. for the development and installation of a computer-aided dispatch/automatic vehicle location system for the Modesto Area Express (MAX) bus system in an amount not to exceed $6,200.

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

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 3rd day of March, 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]

STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: [Signature]

SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2009-099

A RESOLUTION APPOINTING SEVEN (7) MEMBERS AND TWO (2) ALTERNATE MEMBERS TO THE ENTERTAINMENT COMMISSION

WHEREAS, Section 1101 of the Charter of the City of Modesto authorizes the City Council to appoint members to various Boards and Commissions, and

WHEREAS, the Entertainment Establishment Ordinance, effective August 1, 2008, created an Entertainment Commission to oversee the entertainment permit process, including dance and processing of special event requests within the City of Modesto, and

WHEREAS, appointment of the members of the Commission shall be made upon recommendation by the City Council Safety & Communities Committee, and

WHEREAS, the Safety & Communities Committee met on September 29 & 30, 2009 to interview applicants to the Commission, and accordingly recommend appointment of SUSANNA MENDIETA BEASLEY, SARA LYTLE-PINHEY, MITCHELL MAISETTI, DAN PARK, DON BEAN, REGINALD RUCKER and CHRIS RICCI to the Entertainment Commission.

WHEREAS, the Safety & Communities Committee further recommended that two alternates, JENNIFER ALLSUP and LES KNOLL, also be appointed to ensure a quorum at all meetings.

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

SECTION 1. The following members and alternates, with term expiration dates respectively, are hereby appointed to the Entertainment Commission:

SUSANNA MENDIETA BEASLEY. January 1, 2013
SARA LYTLE-PINHEY. January 1, 2013
SECTION 2. The City Clerk is hereby directed to transmit a copy of this resolution to the newly appointed members of the Entertainment Commission, and the Secretary thereof.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 10th day of March, 2009, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember Olsen, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Hawn, Keating, Lopez, Marsh, O’Bryan, 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. 2009-100

A RESOLUTION ACCEPTING THE PUBLIC IMPROVEMENTS FOR THE HILLGLEN SUNRISE SUBDIVISION IN THE VILLAGE ONE SPECIFIC PLAN AREA, AUTHORIZING THE CITY CLERK TO FILE A NOTICE OF COMPLETION AND TO RELEASE SECURITIES UPON EXPIRATION OF STATUTORY PERIODS

WHEREAS. PPC. Sunrise LLC. a California Limited Liability Company ("SUBDIVIDER"), is the subdivider of the HILLGLEN SUNRISE SUBDIVISION ("SUBDIVISION"), and

WHEREAS. SUBDIVIDER has filed irrevocable subdivision bonds to secure faithful performance and payment for labor and materials in the amounts of $1,111,427. and $555,713.50, respectively, and

WHEREAS. SUBDIVIDER has filed a warranty bond in the amount of $111,142.70 to guarantee public improvements in the SUBDIVISION, and

WHEREAS. the Public Works Director. in a memorandum to Council. indicates that all work required by the Subdivision Agreement has been completed to the satisfaction of the Public Works Department. and

WHEREAS. the Public Works Director has indicated that it would be in order for the City Council to accept the public improvements in the SUBDIVISION as complete, authorize the City Clerk to file a Notice of Completion. and release the securities upon expiration of the statutory periods.

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

1) The public improvements in the SUBDIVISION are hereby accepted. and 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 subdivision bond for faithful performance in the amount of $1,111,427 upon recordation of the Notice of Completion.

3) The City Clerk is hereby authorized to release the subdivision bond for labor and materials in the amount of $555,713.50 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 bond to guarantee SUBDIVISION improvements in the amount of $111,142.70 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 regular meeting of the Council of the City of Modesto held on the 10th day of March, 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: STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney
A RESOLUTION ACCEPTING THE PUBLIC IMPROVEMENTS FOR THE THOMAS TERRACE SUBDIVISION IN THE VILLAGE ONE SPECIFIC PLAN AREA, AUTHORIZING THE CITY CLERK TO FILE A NOTICE OF COMPLETION AND TO RELEASE SECURITIES UPON EXPIRATION OF STATUTORY PERIODS

WHEREAS, PPC, Sunrise LLC, a California Limited Liability Company ("SUBDIVIDER"), is the subdivider of the THOMAS TERRACE SUBDIVISION ("SUBDIVISION"), and

WHEREAS, SUBDIVIDER has filed irrevocable subdivision bonds to secure faithful performance and payment for labor and materials in the amounts of $150,617, and $75,308.50, respectively, and

WHEREAS, SUBDIVIDER has filed a warranty bond in the amount of $15,061.70 to guarantee public improvements in the SUBDIVISION, and

WHEREAS, the Public Works Director, in a memorandum to Council, indicates that all work required by the Subdivision Agreement has been completed to the satisfaction of the Public Works Department, and

WHEREAS, the Public Works Director has indicated that it would be in order for the City Council to accept the public improvements in the SUBDIVISION as complete, authorize the City Clerk to file a Notice of Completion, and release the securities upon expiration of the statutory periods.

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

1) The public improvements in the SUBDIVISION are hereby accepted, and 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 subdivision bond for faithful performance in the amount of $150,617 upon recordation of the Notice of Completion.

3) The City Clerk is hereby authorized to release the subdivision bond for labor and materials in the amount of $75,308.50 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 bond to guarantee SUBDIVISION improvements in the amount of $15,061.70 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 regular meeting of the Council of the City of Modesto held on the 10th day of March, 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: 

(Seal)

APPROVED AS TO FORM:

By: 

SUSANA ALCA LA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2009-102

A RESOLUTION AFFIRMING THE CITY'S CO-SPONSORSHIP OF "EARTH DAY IN THE PARK FESTIVAL, 2009" AT GRACEADA PARK AND APPROVING THE SALE OF MERCHANDISE IN THE PARK DURING THE EVENT

WHEREAS, in 1970 Earth Day was established to make the public aware of programs successful in protecting the environment and conserving natural resources, and

WHEREAS, on March 24, 1992, the City Council, by Resolution No. 92-129, acknowledged “Earth Day in the Park” as an annual event, and

WHEREAS, the Citizen’s Advisory Committee on Recycling (CACOR) sponsors the event, and the 20th Annual “Earth Day in the Park” will be held on Saturday, April 18, 2009, at Graceada Park, and

WHEREAS, the event provides a forum for merchants to display and sell their "environmentally friendly" merchandise, and for the creation of a "festival atmosphere", while giving the public an opportunity to make purchases of positive benefit to the environment, and

WHEREAS, “Earth Day in the Park Festival, 2008” had over 100 vendor booths, and approximately 8,000 attendees, and

WHEREAS, as in prior years’ events, the Committee seeks Council approval for the sale of merchandise in the park during the event.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby affirms the City’s co-sponsorship of “Earth Day in the Park Festival, 2009”, at Graceada Park.
BE IT FURTHER RESOLVED by the Council that it hereby approves the sale of merchandise at Graceada Park during the “Earth Day in the Park Festival, 2009” event.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 10th day of March, 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]

STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: [Signature]

SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2009-103

A RESOLUTION AMENDING SECTION 2.2 OF PERSONNEL RULE 2 OF THE CITY OF MODESTO RELATING TO THE REVISION OF THE POSITION CLASSIFICATION PLAN

WHEREAS, Section 1202 of Article XII of the Charter of the City of Modesto provides that the Personnel System provided by said Article shall be implemented by such rules and regulations governing the administration thereof as are adopted by the City Council upon recommendation of the City Manager, and

WHEREAS, the City Council has adopted Personnel Rules as authorized by the City Charter, and

WHEREAS, the City Council established Personnel Rule 2 on July 7, 1954 by adoption of Resolution 54-204, and

WHEREAS, the City Manager has recommended an amendment to Personnel Rule 2.2, and

WHEREAS, the City Council finds that said proposed amendment promotes the purposes and objectives of the Personnel System.

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

SECTION I. PERSONNEL RULE AMENDED. Personnel Rule 2 of the City of Modesto is hereby amended to revise Section 2.2 as follows: “The classification plan or major revisions to the plan which affect any classification title or salary shall be effective only upon adoption by City Council resolution. Minor material modifications may be made by the City Manager or their designee to include adjustments of Essential & Marginal functions, Distinguishing Characteristics and/or Minimum Qualifications as
appropriate. Personnel Rule 2 is hereby approved and made part of the Personnel Rules of the City of Modesto."

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 10th day of March, 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. 2009-104

A RESOLUTION AMENDING THE CITY’S ALCOHOL AND DRUG TESTING POLICY AND PROCEDURE AND RENAMING IT THE ANTI-DRUG/ALCOHOL MISUSE PROGRAM TO ENSURE CONTINUED COMPLIANCE WITH REGULATIONS OF THE FEDERAL DEPARTMENT OF TRANSPORTATION

WHEREAS, the Omnibus Transportation Employee Testing Act of 1991 requires drug and alcohol testing of safety-sensitive transportation employees in transportation industries. and

WHEREAS, on December 13, 1994, by Resolution No. 94-695, the Council of the City of Modesto approved the original Alcohol and Drug Testing Policy and Procedure, and

WHEREAS, on December 16, 1996, by Resolution No. 96-716, the Council of the City of Modesto approved amending the Alcohol and Drug Testing Policy and Procedure, and

WHEREAS, the City of Modesto Alcohol and Drug Testing Policy and Procedure is governed by both the Federal Motor Carrier Safety Administration and the Federal Transit Administration, and

WHEREAS, as a result of a recent audit, there is a need to revise the City’s Alcohol & Drug Testing Policy and Procedure to ensure compliance with the Federal regulations of the Department of Transportation, and rename it the Anti-Drug/Alcohol Misuse Program.

NOW, THEREFORE, BE IT HEREBY RESOLVED by the Council of the City of Modesto as follows:
SECTION I. POLICY AMENDMENT AND TITLE. The City's Alcohol and Drug Testing Policy and Procedure is hereby renamed the Anti-Drug/Alcohol Misuse Program. The Anti-Drug/Alcohol Misuse Program attached hereto is hereby approved.

SECTION II. EFFECTIVE DATE. This resolution shall become effective on and after March 10, 2009.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 10th day of March, 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
City of Modesto
Department of Public Works
Department of Parks, Recreation, & Neighborhoods

Anti-Drug Program/Alcohol Misuse Program

Summary: This policy covers city government and it contains language on FTA and FMCSA anti-drug and alcohol misuse policies and establishes an anti-drug and alcohol misuse program for Commercial Vehicle Operators, and Transit Division Employees that complies with the Department of Transportation's (DOT) 49 CFR parts 382, 655, and 40.
City of Modesto
Department of Public Works
Department of Parks, Recreation, & Neighborhoods

ANTI-DRUG PROGRAM/ALCOHOL MISUSE PROGRAM
As required by the Department of Transportation

Revision Dates:
FMCSA - Anti-Drug/Alcohol Misuse revised January 1995, December 1996, Pending
FTA - Anti-Drug/Alcohol Misuse revised January 1995, December 1996, Pending

I. INTRODUCTION
The City of Modesto has written and implements its Anti-Drug / Alcohol Misuse Program to ensure compliance with Federal Regulations of the Department of Transportation. This Program is implemented in addition to the City’s Drug-Free Workplace Program. In the event that Federal Regulations conflict with the City’s Drug-Free Workplace Program, the Federal Regulations shall prevail. In the event that Federal Regulations fail to provide language for a particular situation, the employee shall be subject to the City’s Drug-Free Workplace Program or other applicable City Policies.

The Public Works Department is comprised of multiple divisions that provide a wide variety of services. This diversity has resulted in the Department being regulated by two different operating authorities of the Department of Transportation. This has made writing a policy for the Department challenging because the operating authorities’ rules differ in some places. This Program will inform the reader in the places where the rules differ by having different categories or another clear method of separating the rules.

DOT allows the City’s program to be stricter than their regulations as long as language specific to the City’s program is identified. Therefore, where this program goes beyond the requirements of DOT, the text below is highlighted in bold print.

A. Policy Statement

1. The purpose of this policy is to establish an Anti-Drug Program / Alcohol Misuse Program for Commercial Vehicle Operators, and Transit Division Employees that complies with the Department of Transportation’s (DOT) 49 CFR parts 382, 655, and 40. Part 382 requires employers to test drivers who are required to obtain a commercial driver’s license (CDL) for the illegal use of alcohol and controlled substances and was effective on January 1, 1995. Part 655 requires that Transit Employees who maintain, operate, or control the movement of transit vehicles be tested for controlled substances and alcohol. Effective August 1, 2001, Part 655 replaces Parts 653 and 654, which went into effect on January 1, 1996. DOT has also published 49 CFR Part 40, as amended, that sets standards for the collection and testing of urine and breath specimens. This policy incorporates the DOT requirements for DOT covered safety-sensitive employees.
Participation in this program is a requirement of all safety sensitive employees, and therefore, is a condition of employment.

2. It is the policy of the City of Modesto to attract and maintain a work force that is free of alcohol or drugs which may impair judgment and job performance and may result in accident or injury to self, other employees, or the general public. For the purpose of this Program an employee who tests positive on a drug test, as defined by DOT, shall be considered impaired.

3. Employees shall not utilize or be under the influence of alcohol or drugs while in City vehicles, at work locations or while on duty or paid standby; shall not possess alcohol or drugs while on duty, or in City vehicles; shall not sell or provide or participate in or arrange for the selling or provision of prescription or illegal drugs to any other employee or to any person while such employee is on duty or paid standby; nor have their ability to work impaired as a result of the use of alcohol or drugs. Employees must be able to perform their duties safely and efficiently, in the interest of the public and their fellow workers, as well as themselves. The influence of drugs and alcohol on employees is not consistent with this objective.

4. Any questions in relation to this program should be directed to the Risk Manager, who serves as the City’s DOT Program Manager, telephone number: 209-577-5251. (E-mail humanresources@modestogov.com) Additional information regarding DOT regulations can also be found at www.dot.gov/ost/dapc/oamanagers.

II. PROHIBITED BEHAVIOR

A. Controlled Substances: Covered employees are prohibited by the Department of Transportation from using marijuana (includes all hemp products), cocaine, opiates, phencyclidine (PCP), and amphetamines at any time. The City prohibits the use of any controlled substance or other performance-altering drug that cannot be substantiated by medical evidence of legitimate drug use. The City also prohibits any employee from engaging in unlawfully manufacturing, distributing, dispensing, possessing, or using controlled substances in the workplace. Additionally, it is the employee’s obligation to notify his/her supervisor of any therapeutic drug use that may alter their ability to perform safety sensitive functions. It is imperative that an employee informs his/her supervisor if the prescription indicates that one should not drive, operate machinery, or engage in hazardous activities. In making this notification the employee need not divulge any confidential medical information to the supervisor, such as underlying medical condition, symptoms, etc. In the event that an employee’s drug screen comes back positive due to a prescription drug, it shall be the employee’s responsibility to provide the Medical Review Officer with proof of a valid prescription in order for test results to be ruled negative. An employee who is convicted of a
drug or alcohol violation occurring in the work place must notify his/her supervisor within 5 days.

B. Alcohol: An employee will be removed from performing safety-sensitive functions:

1. When test results indicate an alcohol concentration of 0.04 or greater;
2. Within four hours after using alcohol;
3. While using alcohol on the job;
4. During the 8 hours following an accident if their involvement has not been discounted as a contributing factor in the accident or until they are tested;
5. If they refuse to submit to required alcohol tests; and
6. If they are in possession of alcohol while driving.

If an employee is found to have an alcohol concentration of 0.02 or greater but less than 0.04, or if the employee is under the influence of or impaired by alcohol, as indicated by behavior, speech and performance indicators of alcohol misuse, and a reasonable suspicion alcohol test cannot be obtained, the employee will have to be removed from safety-sensitive duties for 24 hours under FMCSA regulations or 8 hours under FTA regulations. An employee with a positive drug test shall be removed from covered functions until an evaluation is held, recommendations of evaluation carried out, and the employee has passed a return-to-duty test.

C. The City of Modesto prohibits the use of controlled substances and alcohol while on the job or subject to duty. Use of controlled substances and/or alcohol while on the job or subject to duty, even if the alcohol concentration is 0.02 or greater but less than 0.04 may result in disciplinary action up to and including termination in accordance with the applicable MOU and personnel policies.

D. No employee shall report for duty or remain on duty when the employee uses any controlled substance, except when use is pursuant to the instructions of a physician who has advised the employee that the substance does not adversely affect the employee’s ability to safely operate a commercial vehicle.

An employee taking prescribed drugs who has knowledge of or has been advised that they have the potential to interfere with safe work performance shall report this possibility to the supervisor before beginning work. Failure to notify a supervisor may result in disciplinary action, up to and including termination in accordance with the applicable MOU and personnel policies. The employee may be require to provide a statement from a licensed physician, nurse practitioner or physician assistant, that the employee is able
to work safely while taking the prescribed medication. The statement should not and need not contain confidential medical information, such as diagnosis, medical history, symptoms, etc., but should only describe the employee's job-related functional limitations, if any. An employee who is not cleared to work will not be permitted to work unless an alternative work assignment is granted under the City's modified duty assignment policy. If no alternative work assignment is available, the employee may use sick leave, accrued time off, or approved leave of absence until released for work by a licensed physician, nurse practitioner or physician assistant.

III. DRUG AND ALCOHOL TESTING REQUIREMENTS

A. Employee Categories: The following employee positions are subject to FMCSA or FTA drug and alcohol testing as outlined in this policy.

- Employee positions that require a CDL to perform job tasks and are covered by FMCSA and can be found on Appendix A.
- Employee positions that are covered by FTA:

  The following positions perform maintenance duties:
  - Bus Fueler – hourly position
  - Heavy Equipment Mechanic – Bus Shop

B. Types of Drug Testing: Employees subject to this drug-testing program are required to be tested under the following six types of tests:

1. Pre-Employment Testing
   a) A pre-employment drug test will be conducted when an individual is selected to be hired for a position listed in this policy. Said individual will not perform covered safety-sensitive functions until he/she passes the pre-employment drug test.
   b) A pre-employment drug test will be conducted when a current employee transfers from a position not covered by this policy into a position listed in this policy. An employee who was previously separated from a Part 382 or 655 anti-drug program position, will be pre-employment tested prior to performing safety-sensitive duties.
   c) A pre-employment drug test will be conducted when a current employee or applicant has not performed a safety-sensitive function for 90 consecutive days regardless of the reason and the employee has not been in the employer’s random selection pool during that time.
   d) If a pre-employment test is canceled, the applicant is required to submit to and pass another test. Pre-employment drug tests for disabled individuals unable to provide sufficient volume can be reported as negative if medical examination shows no evidence of illegal drug use.
   e) Applicants who are offered a position covered by this policy will be tested before being employed. If applicant’s drug test is
positive, then the matter will be referred to the MRO for review (see Section 6 - Medical Review Officer). Pre-employment job applicants or employees seeking a transfer into a position covered by this policy who test positive will not be hired unless and until the City receives an opinion from the MRO explaining that the positive test result should not be a bar to employment or transfer. Applicants and employees transferring into a covered position have the option to have their sample retested if their request is made to the MRO within 72 hours of the receipt of the final test result from the MRO.

f) If an employee or applicant has previously failed or refused a pre-employment drug test the employee must provide proof of having successfully completed a referral, evaluation and treatment plan as described in 49 CFR § 655.62.

g) Employees working in a position covered by this policy on the effective date and who continue to work in a covered position do not require a pre-employment test.

h) In the event that the MRO was not able to contact the applicant to discuss the results of their drug test, the City shall notify the applicant of the results of the pre-employment drug test, if the applicant requests such results within 60 calendar days of being notified of the disposition of the employment application. The applicant will be referred to a qualified SAP.

2. Random Testing

a) All employees working in a position covered by this policy are subject to unannounced testing based on random selection. This includes temporary employees performing work in a covered position. A covered employee may be randomly tested for prohibited drug use anytime while on duty.

b) The number of employees randomly selected for drug/alcohol testing during the calendar year shall be not less than the percentage rates established by Federal regulations for those safety-sensitive employees subject to random testing by Federal regulations. A person may be randomly picked more than once or not picked at all during the annual period.

c) To assure that the selection process is random, all employees covered by this policy will be placed in a common pool. All full time and hourly employees will be in this pool. Employees remain in the random selection pool at all times, regardless of whether or not they have been previously selected for testing.

d) The random selection procedure will be a computer-based random number generator.

e) Random testing will be done on at least a monthly basis. Testing will be conducted on different days of the week throughout the annual cycle to prevent employees from matching their drug use patterns to the schedule for collection. Collection for monthly random testing will be spread out over the month. Selected employees will not be notified until immediately prior to the time
that they are due at the collection site. If an employee is unavailable during a draw period due to long-term absence, a replacement number can be drawn using the computerized random number generator to select additional numbers. If an employee is temporarily unavailable, or it is their day off, the number should be held until their next shift within the same testing period. No employee shall be excused because of operational difficulties.

f) Random alcohol testing will be performed at a rate of at least 10% of the average number of covered positions. This rate is subject to adjustment by DOT as based on the industry's violation rate. Random alcohol testing will be done on a monthly basis with the number of draws based on the size of the random pool.

g) An employee shall only be tested for alcohol while the employee is performing, just before the employee is to perform, or just after the employee has performed safety-sensitive functions. It is the City’s position that employees that are hired to drive a commercial motor vehicle are expected to be available to drive that vehicle, or perform safety sensitive functions, anytime that they are at work; unless they have a medical excuse that advises that they do not drive.

h) Random notifications should be conducted as discreetly as possible in order to ensure the confidentiality and integrity of the process.

3. Post-Accident Testing:

All employees working in positions covered by this policy whose performance either contributed to an accident or cannot be completely discounted as a contributing factor to the accident will be tested.

a) Time Frame for Testing Employees

(1) The employee will be tested for controlled substances as soon as possible, but no later than 32 hours after the accident. Because certain drugs or drug metabolites do not remain in the body for extended periods of time, testing should be as soon as possible. Alcohol tests should be conducted within 2 hours and must be performed within 8 hours.

(2) As soon as practicable following an accident, the City shall test each surviving covered employee for alcohol if that employee's performance of a covered function either contributed to the accident or cannot be completely discounted as a contributing factor to the accident. If an alcohol test is required, but is not administered within two (2) hours following the accident, the City shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If a required test is not administered within eight (8) hours following the accident, the City
shall cease attempts to administer an alcohol test and shall state in the record the reasons for not administering the test. These records shall be made available to FMCSA, or FTA upon request.

(3) The decision not to administer a test shall be based on the City's determination, using the best available information at the time of the determination that the covered employee's performance could not have contributed to the accident.

(4) A covered employee who is subject to post-accident testing who fails to remain readily available for such testing, including notifying his/her supervisor of his/her location if he/she leaves the scene of the accident prior to submission to such test, may be deemed by the supervisor to have refused to submit to testing. Nothing in this section shall be construed to require the delay of necessary medical attention for injured people following an accident or to prohibit a covered employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident or to obtain necessary emergency medical care.

(5) All reasonable steps will be taken to obtain a urine sample for the testing of controlled substances from an employee after an accident. In case of a conscious but hospitalized employee, the hospital or medical facility will be requested to obtain a sample and if necessary, reference will be made to the DOT drug testing requirements.

(a) If an employee who is subject to post-accident testing is conscious, able to urinate normally (in the opinion of a medical professional) and refuses to be tested, that is a test refusal.

b) Process for Obtaining Specimen Collection/Documentation:

(1) Supervisor shall discreetly inform the employee that there is reason to believe that their performance contributed to the accident or cannot be completely discounted as contributing factor to the accident. Remind the employee that a request for a test is not an accusation; it is only a request for additional objective data.

(2) The potentially affected employee will not be allowed to proceed alone to or from the collection site. A supervisor or other appropriate personnel shall accompany him/her to and from the collection site.

(3) After returning from the collection site, the employee should not be allowed to perform covered functions pending the results of the drug
test/alcohol test.

(4) Record the activity performed that support the determination to conduct a post-accident test. This documentation should be prepared and signed by the supervisor within 24 hours of the accident or before the results of the tests are released, whichever is earlier, if possible (Post-Accident Record of Decision form is located at the end of this section in Appendix B).

(5) Drivers shall be provided with necessary post-accident information, procedures, and instructions prior to the driver operating a CMV so that drivers will be able to comply with the requirements of Part 382.

(a) FMCSA regulations stipulate that the results of breath or blood test for the use of alcohol or a urine test for the use of controlled substances, conducted by Federal, State or local officials having independent authority for the test, shall be considered to meet the requirements of Part 382, provided such tests conform to applicable Federal, State, or local requirements, and that the results of the tests are obtained by the employer. In the event that the City is unable to conduct a FTA post-accident alcohol and/or drug test due to circumstances beyond its control (i.e. employee is unconscious, incarcerated, etc.), results from local or state law enforcement officers may be used in lieu of FTA tests if provided results are consistent with state and local law.

(6) After-hour random or holiday post-accident tests shall be collected @ DNT Health.

4. Reasonable Suspicion Testing

a) When there is reasonable suspicion to believe that an employee covered by this policy is using a prohibited drug or using alcohol while on duty, the employee will be required to take a test for controlled substances and/or alcohol. The required observations for alcohol and/or controlled substances reasonable suspicion testing shall be made by a supervisor or city official who is trained in drug use symptoms. A decision to test must be based on specific contemporaneous articulable observations concerning the appearance, behavior, speech, or body odors of the employee. The observations may include indications of the chronic and withdrawal effects of controlled substances. Alcohol testing is authorized only if the observations are made during, just preceding or just after the period of the workday that the employee is performing a covered function.

b) If an alcohol test is required, but is not administered within two (2)
hours following the request for the test, the City shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If a required test is not administered within eight (8) hours following the request, the operator shall cease attempts to administer an alcohol test and shall state in the record the reasons for not administering the test. These records shall be completed by the employee’s supervisor and forwarded to the Risk Manager for inclusion in the drug and alcohol files. These records shall also be made available to FMCSA, and FTA upon request.

c) Process for Obtaining Specimen Collection/Documentation:

(1) Supervisor shall discreetly inform the employee that there is reason to believe that some substance is affecting their performance. Ask the employee to explain the suspected behavior and to describe the events that took place from their perspective. If there is still a reasonable belief that drugs or alcohol are a factor in the situation, a request for testing should be made; if no reasonable belief is determined, then no request for testing should be made. If a decision is made to test, inform the employee that they are being requested to accompany the appropriate official to the specimen collection site to provide a urine/breath specimen. Inform the employee that the consequences of refusal to submit to testing is equivalent to having a positive test result.

(2) The potentially affected employee should not be allowed to proceed alone to or from the collection site. A supervisor, or other appropriate personnel, shall accompany him/her to and from the collection site.

(3) After returning from the collection site, the employee shall not be allowed to perform covered functions pending the results of the drug/alcohol test. The employee should not be allowed to operate any motor vehicle due to the reasonable belief that they may be under the influence of alcohol or a drug(s).

(4) Record the activity performed that supports the determination to conduct a reasonable suspicion test. This documentation should be prepared and signed by the supervisor within 24 hours of the request for test or before the results of the tests are released, whichever is earlier, if possible. A copy should be forwarded to the Risk Manager for filing in the Drug and Alcohol Program Files. A copy shall be delivered to the employee.

(5) Notwithstanding the absence of a reasonable suspicion alcohol and/or drug test under this section, no
employee shall report for duty or remain on duty requiring the performance of safety-sensitive functions while the employee is under the influence of or impaired by alcohol or drugs, as shown by the behavioral, speech, and performance indicators of alcohol misuse or drug use, nor shall the City permit the employee to perform or continue to perform safety sensitive functions until:

(a) Negative drug test results are reported;
(b) An alcohol test is administered and the driver's alcohol concentration measures less than 0.02; or twenty-four hours have elapsed following the determination that there was reasonable suspicion to believe that the employee had violated the alcohol prohibitions of this program (8 hours for FTA). Test results greater than 0.02 or positive drug tests may result in disciplinary actions up to and including termination in accordance with the applicable MOU.

5. Return To Duty Testing

Return to Duty Testing and Follow-up Testing assumes that the City has elected to retain the employee and has not exercised its authority to terminate the employee in accordance with the applicable MOU.

Controlled Substances: Before a covered employee returns to duty requiring the performance of a safety sensitive function after engaging in prohibited conduct, the employee shall undergo a return to duty controlled substance test that results in a verified negative test result. An employee may not return to duty until they:

(1) Have been recommended by the SAP for return to duty,
(2) Pass a DOT drug test, and
(3) Not failed a drug test required by Part 382 or 655 after returning to duty.

b) Alcohol: The City shall ensure that before a covered employee returns to duty requiring the performance of a covered function after engaging in conduct prohibited by this Program, the employee shall undergo a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02 and have been recommended by the SAP for return to duty.

6. Follow-up Testing

a) Following the determination that a covered employee is in need of assistance in resolving problems associated with alcohol misuse or drug use, the City shall ensure that the employee is subject to
unannounced follow-up alcohol and/or drug testing as directed by a substance abuse professional (SAP). The SAP will recommend education, treatment or both.

b) Follow-up testing for alcohol shall be conducted when the covered employee is performing covered functions; just before the employee is to perform covered functions; or just after the employee has ceased performing such functions. Follow-up testing for drugs shall be conducted anytime the covered employee is on duty.

c) A minimum of 6 unannounced, follow-up tests must be administered within the first 12 months after the employee has returned to duty. The SAP can direct additional testing during this period or for an additional period up to a maximum of 60 months from the date that the employee returned to duty. The SAP can terminate the requirement for the follow-up testing in excess of the minimum at any time, if the SAP determines that the testing is no longer necessary.

d) The City may direct the employee to undergo return-to-duty and follow-up testing for both alcohol and controlled substances, if the SAP determines that it is necessary for that particular employee.

e) An employee who is undergoing follow-up testing shall remain in the random pool and be tested if his/her number is selected.

f) The SAP shall not reveal the employee's confidential medical information (such as diagnosis or medical history) to the City when making his/her recommendation for education and/or treatment, or at any other time without specific consent.

g) The City shall not require the employee to sign an authorization for release of confidential medical information to the city in connection with any evaluation by the SAP.

h) The employee shall be promptly given a copy of the final recommendations.

7. Blind Performance Testing

As an employer with fewer than 2,000 DOT-covered employees, the City is not required to provide blind specimens for performance testing.

8. Notice to Employees

The City shall notify an employee of the results of any tests for controlled substances if the test results are verified as positive. The City shall also inform the employee which controlled substance or substances were verified as positive. Upon request the City shall provide the employee with a copy of the custody and control form of the laboratory results and documents concerning the chain of custody of the samples.

9. Compensation

Time spent by City employees in conjunction with post-accident, random and reasonable suspicion testing shall be considered hours worked and shall be paid time. The City shall also pay the
cost of these tests. The City shall pay the cost of the initial evaluation by the SAP. Cost of SAP recommendations follow-up testing, SAP recommended treatment and time spent while testing for return to duty and follow-up testing shall be borne by the employee.

IV. TESTING PROCEDURES

Analytical urine drug testing and breath testing for alcohol may be conducted when circumstances warrant or as required by Federal regulations. Drug tests can be performed any time an employee is on duty. An alcohol test can be performed when the employee is actually performing a safety-sensitive duty, just before, or just after the performance of a safety-sensitive duty.

Testing shall be conducted in a manner to assure a high degree of accuracy and reliability and using techniques, equipment, and laboratory facilities, which have been approved by the U.S. Department of Health and Human Services (DHHS). All testing will be conducted with the procedures put forth in 49 CFR Part 40, as amended. The procedures will be performed in a private, confidential manner and every effort will be made to protect the employee, the integrity of the testing procedure, and the validity of the test result.

Drug Tests: The drugs that will be tested for include marijuana, cocaine, opiates, amphetamines, and phencyclidine. Urine specimens will be collected using the split specimen collection method described in 49 CFR Part 40. Each specimen will be accompanied by a DOT Chain of Custody and Control Form and identified using a unique identification number that attributes the specimen to the correct individual. Copies of the completed DOT chain of Custody and Control Form shall be given to the employee. An initial drug screen will be conducted on the primary specimen. For those specimens that are not negative, a confirmatory Gas Chromatography/Mass Spectrometry (GC/MS) test will be performed. The test will be considered positive if the amounts present are above the minimum thresholds established in 49 CFR Part 40, as amended. The test results from the laboratory will be reported to a Medical Review Officer (MRO). The MRO will review the test results to ensure the scientific validity of the test and to determine whether there is a legitimate medical explanation for a confirmed positive test result. The MRO will contact the employee, notify the employee of the positive laboratory result, and provide the employee with an opportunity to explain the confirmed test result. The MRO will subsequently review the employee’s medical history/medical records to determine whether there is a legitimate medical explanation for a positive laboratory result. If no legitimate medical explanation is found, the test will be verified positive and reported to the program manager. If a legitimate explanation is found, the MRO will report the test result as negative.

The split specimen will be stored at the initial laboratory until the analysis of the primary specimen is completed. If the primary specimen is negative, the split will be discarded. If the primary is positive, the split will be retained for testing if so requested by the employee through the Medical Review Officer.

In instances where the employee produces a dilute specimen, he or she must undergo a second test.
An applicant who is offered initial employment in or promotion to a position covered by this policy will be required to report to the drug testing collection site within 24 hours of notification, or at a specific pre-designated date and time, and provide a specimen of his/her urine.

Upon notification that a drug test is required, an employee will report immediately after notification to the drug collection site and provide a specimen of his/her urine. The employee is required to report to the collection site within 60 minutes of receiving notification. Failure to report within the specified time frame without good cause is considered a refusal to test.

The City may choose to test for other substances under its separate (non-DOT) substance abuse policy; however, it may not do so under DOT pretenses or using the same specimen that is being collected for DOT requirements.

Alcohol Tests: Tests for breath alcohol concentration will be conducted utilizing a National Highway Traffic Safety Administration (NHTSA)-approved testing device operated by a trained technician. If the initial test indicates an alcohol concentration of 0.02 or greater, a second test will be performed to confirm the results of the initial test. The confirmatory test will be performed using a NHTSA-approved evidential breath testing device (EBT) operated by a trained breath alcohol technician (BAT). The EBT will identify each test by a unique sequential identification number. This number, time, and unit identifier will be provided on each EBT printout. The EBT printout along with an approved alcohol testing form will be used to document the test, the subsequent results, and to attribute the test to the correct employee. The employee, upon request, will receive a copy of the EBT printout along with the completed alcohol testing form. The test will be performed in a private, confidential manner as required by 49 CFR Part 40 as amended. The procedure will be followed as prescribed to protect the employee and to maintain the integrity of the alcohol testing procedures and validity of the test result.

An employee who has a confirmed alcohol concentration of greater than 0.02 but less than 0.04 will be removed from his/her position for eight hours (FTA) or 24 hours (FMCSA) unless a retest results in a concentration measure of less than 0.02.

V. REFUSALS TO TEST AND UNCOMPLETED TESTS

A. Controlled Substances

1. Compliance with this drug/alcohol testing plan is a condition of employment. Refusal to take a required drug/alcohol test or failure of a drug/alcohol test shall result in removal from performing covered functions. Refusing to test may lead to disciplinary action up to and including termination from the City in accordance with the applicable MOU.

Refusal includes the following and applies to both drug and alcohol testing:
- An inability to provide a specimen or breath sample without a
valid medical reason (confirmed by a physician);
- Tampering, adulterating, or substituting specimen;
- Delaying arrival at a designated collection site;
- Leaving the collection site prior to test completion;
- Failure to permit an observed or monitored collection when required;
- Failure to undergo a medical evaluation when required;
- Failure to cooperate with any part of the testing process;
- Once test is underway, failing to remain at site and provide a specimen;
- Failure to sign Step 2 of alcohol test form; and
- Leaving the scene of an accident without just cause prior to submitting to a test. (An employee may leave the scene of an accident in order to obtain medical assistance for those injured in the accident. Failure to return to the scene will be regarded as a refusal to test.)
- Failure to or refusal to take a second test when directed by the employer or collector

2. Prohibitions on use: The City shall not use an employee in a function covered by Part 382 or 655 who:
   a) Fails a drug test as verified by the MRO, or
   b) Refuses to take a drug test required by this Program.

3. Shy Bladder: If an employee is unable to provide at least 45 milliliters of urine, collection site personnel shall direct the individual to drink not more than 40 ounces of fluids and, after a period up to three (3) hours time, attempt to provide a complete sample. If employee is still not able to give an adequate sample, the MRO shall refer the individual for a medical evaluation to determine if individual’s inability to provide a sample is a genuine medical condition or constitutes a refusal to test. An employee’s refusal to be examined by a physician shall be regarded as a refusal to test.

4. Options for Return-To-Duty. An employee may be given an opportunity to retain his or her employment, provided they first:
   a) Have been evaluated by the SAP and successfully completes the SAP’s recommended program.
   b) Have been recommended by the SAP for return to duty,
   c) Pass a DOT drug test or alcohol test, and have
   d) Not failed a drug test required by Part 382 or 655 after returning to duty.

B. Alcohol:

1. Compliance with this drug/alcohol testing plan is a condition of employment. Refusal (see Section V. A. 1) to take a required alcohol test or failure of an alcohol test shall result in removal from performing covered functions. Refusing to test, failing a test, attempting to
adulterate a sample, not reporting to the collection site in the time allotted, or leaving the scene of an accident before the tests have been directed will result in removal from a covered function and may lead to disciplinary action up to and including termination from the City in accordance with the applicable MOU. An employee may leave the scene of an accident in order to obtain medical assistance for those injured in the accident. Failure to return to the scene will be regarded as a refusal to test.

2. Prohibitions on use: The City shall not use an employee in a function covered by Part 382 or 655 who:
   a) Has a breath alcohol concentration of 0.04 or greater.
   b) Has consumed alcohol within four hours prior to performing safety sensitive duties, or, if an employee is called to respond to an emergency, within the time period after the employee has been notified to report to duty.
   c) Has consumed alcohol while on-call. An employee who acknowledges use of alcohol within four hours of the time the employee is called to duty must report such use and the inability to perform safety sensitive duties. If the employee acknowledges use of alcohol but claims to be able to perform safety sensitive duties, the employee shall be required to successfully pass a alcohol test before being permitted to perform safety sensitive duties. Employees on "stand by" must be "ready to perform safety-sensitive functions"; therefore, failure to be available due to alcohol use while on standby will result in disciplinary action up to and including termination in accordance with the applicable MOU.
   d) Is using alcohol on the job.
   e) Uses alcohol eight hours following an accident if employee’s involvement cannot be discounted as a contributing factor to the accident, unless they have been tested.
   f) Refuses to be tested.
      (1) Insufficient Breath on alcohol screens: If the BAT reports the employee has not provided a sufficient amount of breath, the employee will be directed to obtain within five days, an evaluation from a licensed physician who is acceptable to the City and who has expertise in the medical issues raised by the employee’s failure to provide a sufficient specimen. The City will provide information and instructions as contained in 49CFR Part 40.265. If the physician determines the medical condition could have or did preclude the employee from providing a sufficient amount of breath, the test is cancelled. Otherwise it constitutes a refusal to test. The City shall not request the physician to reveal the employee’s confidential medical information (e.g. diagnosis, history, symptoms, etc.) to the City when reporting his/her determination.
   g) Employees having a BAC of 0.02 or greater but less than 0.04 will
be removed from a covered function for at least 24 hours under FMCSA rules and 8 hours for FTA rules. Employees with a BAC of 0.04 or greater will be removed from a covered function and referred to the SAP for evaluation.

3. **The City reserves the right to discipline employees who test greater than 0.02, up to and including termination.**

VI. **MEDICAL REVIEW OFFICER (MRO)**

A. The MRO must be a licensed physician who is responsible for receiving laboratory results generated by the drug-testing program, and who meets all the requirements of 49 CFR 40.121 as amended.

B. The MRO will perform responsibilities, perform notifications, and retain confidential records as required by 49 CFR Part 40 as amended.

VII. **TESTING LABORATORY**

The City shall use a drug-testing laboratory certified under DHHS Mandatory Guidelines for Federal Workplace Drug Testing Programs; 53 FR 11970, April 11, 1988 and subsequent amendments.

The testing laboratory will comply with all methods and procedures of 49 CFR Parts 40, 382, and 655, as amended. The laboratory shall have a qualified individual to assume professional, organizational, educational, and administrative responsibility for the laboratory’s urine drug testing facility.

VIII. **EMPLOYEE AND SUPERVISOR TRAINING**

A. Every employee covered by this policy will receive the following drug use/alcohol misuse education:

1. Drug/alcohol information will be periodically distributed and displayed in the work areas.

2. Copies of this policy will be displayed in the work area. This information will be discussed at the time that it is handed out so that the employees understand its content. Every new employee receives a copy of the entire Program.

3. The hot line telephone number for employee assistance is 1-800-992-5465, 24 hours per day, seven days a week.

B. A list of supervisory and management positions that shall receive training for detecting symptoms of drug use/alcohol misuse is located in Appendix B. Supervisors will receive 60 minutes of reasonable suspicion training on the physical, behavioral, and performance indicators of probable drug use and 60 minutes of additional reasonable suspicion training on the physical, behavioral, speech, and performance indicators of probable alcohol misuse.
IX. EVALUATION/REHABILITATION

No employee shall perform safety sensitive functions who has engaged in conduct prohibited by this policy and procedure. An employee who fails a drug test, alcohol test (0.04 or greater), or refuses to be tested shall be removed from safety sensitive duties and placed on a non-paid leave pending disciplinary review. Additionally the employee shall be referred to a Substance Abuse Professional (SAP) who must be a licensed physician, licensed or certified psychologist, social worker, employee assistance professional; or an addiction counselor certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission or the International Certification Reciprocity Consortium/Alcohol and other Drug Abuse. The SAP shall determine what assistance the employee needs in resolving problems associated with alcohol misuse or drug use. Applicants not hired or employees who are to be terminated as a result of a violation of this policy shall also be referred to the SAP. Each employee identified as needing assistance in resolving problems associated with alcohol misuse or controlled substances use shall be evaluated by a substance abuse professional to determine that the employee has properly followed any rehabilitation program and shall be subject to unannounced follow-up alcohol and controlled substances tests. The SAP will perform responsibilities and retain confidential records as required by 49 CFR Part 40, as amended. The SAP shall comply with all provisions of HIPPA.

Participation in rehabilitation through the EAP will not result in disciplinary action. However, successful completion of an SAP recommended program, if it is determined that participation in such a program is needed, will be required for the employee to continue in the employment of the City of Modesto. The employee shall be placed on sick leave, vacation leave, or leave without pay if sick or vacation leave is not available, in order to enter into an approved rehabilitation program.

Participation in rehabilitation through the EAP will not waive disciplinary action where warranted for violations of rules and regulations unrelated to participation in the EAP program.

Reinstatement will be conditioned upon consent for substance/alcohol retesting as scheduled by the SAP for a time period not to exceed 60 months. Positive results on a follow-up test or other evidence of relapse will be grounds for dismissal in accordance with the applicable MOU.

The SAP's recommendation that an employee is medically qualified to be returned to duty does not waive the City's authority to impose disciplinary action in accordance with the applicable MOU.

Employees who voluntarily request treatment to resolve an alcohol misuse or drug use problem or have been recommended by the SAP to undergo such treatment shall be referred to the City's Employee Assistance Program. This referral does not waive the City's authority to impose disciplinary actions that may include termination, upon the employee in accordance with the applicable MOU.
X. RECORDKEEPING

A. The City of Modesto will keep the following records for the periods specified. These records will be maintained in the Office and under the supervision of the Program Manager.

1. Five years. The following records shall be maintained for a minimum of five years:
   a) Records of employee alcohol test results that indicate an alcohol concentration of 0.02 or greater,
   b) Records of employee verified positive controlled substances test results,
   c) Documentation of refusals to take required alcohol and/or controlled substances tests.
   d) Calibration documentation;
   e) Employee evaluation and referrals shall be maintained for a minimum of five years, and
   f) A copy of each annual calendar year MIS summary.
   g) Employee evaluation and referrals shall be maintained for a minimum of five years, and
   h) A copy of each annual calendar year MIS summary.

2. Two years. Records related to the alcohol and controlled substances collection process (except calibration of EBT devices) and training shall be maintained for a minimum of two years.

3. One year. Records of negative and canceled controlled substances test results and alcohol test results with a concentration of less than 0.02 shall be maintained for a minimum of one year.

B. Types of Records. The following specific records shall be maintained:

1. Records related to the collection process:
   a) Collection log books if used.
   b) Calibration documentation for evidential breath testing devices.
   c) Documentation of breath alcohol technician training.
   d) Documents generated in connection with decisions to administer reasonable suspicion alcohol tests.
   e) Documents generated in connection with decisions on post-accident tests.
   f) Documents verifying existence of a medical explanation of the inability of a covered employee to provide adequate breath for testing.
   g) Consolidated annual calendar year (MIS) summaries.

2. Records related to test results:
   a) The employer's copy of the alcohol test form, including the results of the test.
   b) The employer's copy of the chain of custody and control form.
c) Documents sent by the MRO to the employer, including those required by § 382.407(a).

d) Documents related to the refusal of any covered employee to submit to a required alcohol test.

e) Documents presented by a covered employee to dispute the result of an alcohol or controlled substances test.

f) Documentation of SAP referrals for all positive tests.

3. Records related to evaluations:
   a) Records pertaining to a determination by a substance abuse professional concerning a covered employee's need for assistance.
   b) Records concerning a covered employee's compliance with the recommendations of the substance abuse professional.

4. Record(s) related to the employer's MIS annual testing data.

5. Records related to education and training:
   a) Materials on alcohol misuse awareness, including a copy of the operator's policy on alcohol misuse.
   b) Documentation of compliance with the requirements of § 382.601 Employer obligation to promulgate a policy on the misuse of alcohol and use of controlled substances, including the driver's signed receipt of education materials.
   c) Documentation of training provided to supervisors for the purpose of qualifying the supervisors to make a determination concerning the need for alcohol and/or controlled substances testing based on reasonable suspicion.
   d) Certification that any training conducted complies with DOT's requirements for such training.

6. Records related to drug testing:
   a) Agreements with collection site facilities, laboratories, medical review officers, and consortia;
   b) Names and positions of officials and their role in the employer's alcohol and controlled substances testing programs;
   c) Quarterly laboratory statistical summaries of urinalysis required by § 40.111;
   d) The employer's drug testing policy and procedures.

C. Location of Records: All records required shall be made available for inspection at the City within two business days after a request has been made by an authorized representative of the Research and Special Programs Administration, Federal Highway Administration or the Federal Transit Administration.

D. Access to Facilities and Records
1. Except as required by law or expressly authorized or required by DOT, the City shall not release covered employee information that is contained in the records required to be maintained in § 382.401.

2. A covered employee is entitled, upon written request, to obtain copies of any records pertaining to the employee's use of drugs or misuse of alcohol, including any records pertaining to his or her drug or alcohol tests. The City shall promptly provide the records requested by the employee. Access to employee's records shall not be contingent upon payment for records other than those specifically requested.

3. The City is required to obtain pursuant to an employee's consent, information on the employee's alcohol tests with a concentration result of 0.04 or greater, positive controlled substances test results, and refusals to be tested within the preceding two years, which are maintained by the driver's previous DOT covered employers.
   a) This information shall be maintained and reviewed by the City no later than 14 calendar days after the first time a driver performs safety-sensitive functions for an employer, if it is not feasible to obtain the information prior to the driver performing safety-sensitive functions.
   b) If the driver stops performing safety-sensitive functions for the employer before expiration of the 14 day period or before the employer has obtained the required information, the City must still obtain the information.
   c) The City must provide to each of the driver's DOT-covered employers within the two preceding years the driver's specific, written authorization for release of the information.
   d) The release of any information may take the form of personal interviews, telephone interviews, letters, or any other method of obtaining information that ensures confidentiality. The City shall maintain a written, confidential record with respect to each past employer contacted.
   e) The City may not use a driver to perform safety-sensitive functions if the employer obtains information on the driver's alcohol test with a BAC of 0.04 or greater, verified positive controlled substances test result, or refusal to be tested, by the driver, without obtaining information on a subsequent substance abuse professional evaluation and/or determination under § 40.25.

XI. REPORTING OF ANTI-DRUG / ALCOHOL TESTING RESULTS

A. The City shall prepare and maintain an annual calendar year summary of the results of its alcohol and controlled substances testing programs. By March 15 of each year, the City shall complete the annual summary covering the previous calendar year.

B. If the City is notified, during the month of January, of a request by the FMCSA and/or FTA to report the employer's annual calendar year summary
information, the City shall prepare and submit the report to FMCSA and/or FTA by March 15 of that year. The report shall be in the form and manner prescribed by FMCSA and/or FTA in its request. When the report is submitted to FMCSA and/or FTA by mail or electronic transmission, the information requested shall be typed, except for the signature of the certifying official. The City is required by RSPA to complete and send to RSPA the City's annual calendar year summary information in the form and manner prescribed by RSPA. The report shall be completed and sent to RSPA by the 15th of March and will contain the summary information for the prior calendar year.

C. Each annual calendar year summary containing information on controlled substances and alcohol screening test results shall include the following informational elements:

1. Number of covered employees subject to parts 382 & 655;

2. Number of covered employees subject to testing under the anti-drug rules or alcohol misuse rules of more than one DOT agency, identified by each agency;

3. Number of urine specimens collected by type of test;

4. Number of positive test results, verified by a MRO, by type of test and type of drug;

5. Number of negative controlled substance tests verified by a MRO by type of test;

6. Number of persons denied a position as an employee following a pre-employment verified positive controlled substances test and/or a pre-employment alcohol test that indicates an alcohol concentration of 0.04 or greater;

7. Number of employees with tests verified positive by a medical review officer for multiple controlled substances;

8. Number of employees who refused to submit to an alcohol or drug test required by this program;
   a) Number of screening alcohol tests by type of test; and
   b) Number of confirmation alcohol tests, by type of test;

9. Number of confirmation alcohol tests indicating an alcohol concentration of 0.02 or greater but less than 0.04 by type of test;

10. Number of confirmation alcohol tests indicating an alcohol concentration of 0.04 or greater, by type of test;
11. Number of employees who were returned to duty (having complied with the recommendations of a MRO/SAP), in the reporting period, who previously:
   a) Had a verified positive controlled substance test result, or
   b) Engaged in prohibited alcohol misuse under the provisions of this program;

12. Number of employees who were administered alcohol and drug tests at the same time, with both a verified positive drug test result and an alcohol test result indicating an alcohol concentration of 0.04 or greater; and

13. Number of employees who were found to have violated any non-testing prohibitions and any action taken in response to the violation.

XII. CONTRACTORS HIRED BY PUBLIC WORKS

A. Contractors hired by Public Works that fall under sections 49 CFR Part 655 shall be required to submit a copy of their Anti-Drug / Alcohol Misuse Program and may also be required to submit quarterly reports that state: number of employees tested, type of test, number of positive drug tests and resulting action for those that tested positive, number of alcohol tests that indicated a BAC of 0.04 or greater and resulting action, number of alcohol tests that indicated a BAC of 0.02 or greater, but less than 0.039 and resulting action, for that period. The contractor shall make clear the job titles of employees who will perform any work or functions covered by Part 655 under said contract. Names may also be included if clarification is necessary. Failure to submit an Anti-Drug/Alcohol Misuse Program that complies with DOT Part 655 and Part 40 may result in the rejection of offerer's bid. Failure to submit quarterly reports or annual MIS reports may result in a default of contract as stated in the project's specifications and contract documents. Although not required by FMCSA, the City may require contractors to show evidence of compliance with Part 382.

B. The contractor shall allow access to property and records by a City representative, FMCSA, FTA or any DOT agency with regulatory authority over the operator for the purpose of monitoring the operator's compliance with the requirements of Parts 382, 655, and 40, as amended.

XIII. CONFIDENTIALITY

A. Each individual's record of testing and results under this policy will be maintained private and confidential. Except as provided by law or expressly authorized by DOT regulations, the results of individual drug/alcohol tests will not be released to anyone without the specific, written consent of a safety-sensitive employee authorizing release of the information to an identified person. Prior to testing, the individual will be informed about who will receive test data (e.g., testing laboratory, MRO, Program Manager, Supervisor if removal from a safety-sensitive function is necessary).
B. All written records will be stored in locked containers or in a secure location with access available only by the Program Manager and DOT upon request.

C. Drug and alcohol testing and/or rehabilitation records shall only be released to subsequent DOT covered employers upon written consent from the covered employee. Then only the specific information requested by the employee shall be released.

XIV. EMPLOYEE INFORMATION ON THE EFFECTS OF ALCOHOL MISUSE / CONTROLLED SUBSTANCE USE

A. Effects of alcohol and controlled substances on a person's health, work, and personal life include: Disruption of sleep; changes in eating patterns, commonly not eating as much and therefore, weight loss; mood swings; depression; increased physical ailments (i.e., headaches, colds, stomach problems); decreased motivation; withdrawal from family and friends; quicker to anger; neglects obligations and is not as attentive; does not handle stress; changes friends; excuses use of alcohol.

B. Signs and symptoms of controlled substance use or alcohol misuse which could effect work performance include: Reporting to work late; calling in sick often; unauthorized absences; smell of alcohol on a person; taking long or frequent breaks; change in personality - more angry or less friendly; decreased motivation: an "I don't care" attitude; thinking and concentration not as sharp; more prone to accidents; forgetfulness; less attentive to appearance; appearing tired; sleeping on the job.

For additional information, see attached fact sheets in Appendix D.

XV. TERMS AND DEFINITIONS

Accident - the definition of an accident can be found under Post-Accident Testing.

Air Blank - A reading by an EBT of ambient air containing no alcohol.

Alcohol - the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohol including methyl and isopropyl alcohol.

Alcohol Concentration - the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath testing device.

Alcohol use - the consumption of any beverage, mixture, or preparation, including any medication, containing alcohol.

Blind Sample or Blind Performance Test - A urine specimen submitted to a laboratory for quality control testing purposes, with a fictitious identifier, so that the laboratory cannot distinguish it from employee specimens, and which is spiked with known quantities of specific drugs or which is blank, containing no drugs.
Breath Alcohol Technician - An individual who instructs and assists individuals in the alcohol testing process and operates an EBT.

Canceled or Invalid Test - In drug testing, a drug test that has been declared invalid by a Medical Review Officer. A canceled test is neither a positive nor a negative test. A sample that has been rejected for testing by a laboratory is treated the same as a canceled test. In alcohol testing, a test that is deemed to be invalid under §40 Subpart N – Problems in Alcohol Testing.

Certification - A recipient's (of federal funds) written statement, authorized by the organization's governing board or other authorizing official, that the recipient has complied with the provisions of this part. (FTA)

Chain of Custody - procedures to account for the integrity of each urine specimen by tracking its handling and storage from point of specimen collection to final disposition of the specimen. These procedures shall require that an appropriate drug testing custody form from a Department of Health & Human Services (DHHS) certified laboratory be used from time of collection to receipt by the laboratory.

Collection Site - A place designated by the employer where individuals present themselves for the purpose of providing a specimen of their urine to be analyzed for the presence of drugs.

Collection Site Person - A person who instructs and assists individuals at a collection site and who receives and makes a screening examination of the urine specimen provided by those individuals.

Commercial Motor Vehicle (CMV) - means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle

1) Has a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight of more than 10,000 pounds; or
2) Has a gross vehicle weight rating of 26,001 pounds; or
3) Is designed to transport 16 or more passengers, including the driver; or
4) Is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations (49 CFR part 172, subpart F).

Confirmation Test - For alcohol testing means a second test, following a screening test with a result of 0.02 or greater that provides quantitative data of alcohol concentration. For controlled substances testing it means a second analytical procedure to identify the presence of a specific drug or metabolite which is independent of the screen test and which uses a different technique and chemical principle from that of the screen test in order to ensure reliability and accuracy.

Contractor - A person or organization that provides a service for a recipient, sub-recipient, employer, or operator consistent with a specific understanding or arrangement.
Covered Position (Safety-sensitive position) - A duty position or job category that requires the performance of safety-sensitive (covered) function(s) as described below.

Covered Function (safety-sensitive function) means:
1) FMCSA: operation of a commercial motor vehicle.
2) FTA:
   (A) Operating a revenue service vehicle, including when not in service;
   (B) Operating a non-revenue service vehicle, when required to be operated by a holder of a Commercial Driver’s License;
   (C) Controlling dispatch or movement of a revenue service vehicle;
   (D) Maintaining a revenue service vehicle or equipment used in revenue service, unless the recipient receives sections 18 funding and contracts out such services;
   (E) Carrying a firearm for security purposes;
   (F) A volunteer who operates a vehicle designed to transport sixteen or more passengers, including the driver.

Dilute Specimen - a specimen with creatinine and specific gravity values that are lower than expected for human urine.

DOT Agency - An agency of the United States Department of Transportation administering regulations related to drug or alcohol testing. The Federal Motor Carrier Safety Administration and Federal Transit Administration are DOT agencies.

Drug Metabolite - The specific substance produced when the human body metabolizes a given drug as it passes through the body and is excreted in the urine.

Drug Test - The laboratory analysis of urine specimen collected in accordance with 49 CFR part 40 and analyzed in a DHHS-approved laboratory.

Education - Efforts that include the display and distribution of informational materials, a community service hot-line telephone number for employee assistance, and the City’s policy(ies) regarding drug use in the workplace.

Employee Assistance Program (EAP) - A program provided to assist employees in dealing with drug or alcohol dependency and other personal problems. Rehabilitation and reentry to the work force are usually arranged through an EAP.

Employer or operator -
1) FMCSA: means any person who owns or leases a commercial motor vehicle or assigns persons to operate such a vehicle.
2) FTA: A recipient or other entity that provides mass transportation service or which performs a safety-sensitive function for such recipient or other entity. This term includes sub-recipients, operators, and contractors.

Evidential breath testing device (EBT) - An EBT approved by the National Highway Traffic Safety Administration (NHTSA) for evidential testing of breath and placed on NHTSA’s conforming products list of evidential breath measurement devices (CPL), and identified on the CPL as confirming with the model specifications available from the
National Highway Traffic Safety Administration, office of Alcohol and State Programs.

*Federal Motor Carrier Safety Administration (FMCSA)* - The DOT operating authority that regulates commercial motor vehicles.

**Large Operator** -
1) **FMCSA**: An employer who has more than 50 covered employees.
2) **FTA**: A recipient or sub-recipient primarily operating in an area of 200,000 or more in population.

**Medical Review Officer (MRO)** - A licensed physician responsible for receiving laboratory results generated by an employer's drug testing program who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result together with his or her medical history and any other relevant biomedical information.

**Performing a covered function** - An employee is considered to be performing a covered function during any period in which he or she is actually performing, ready to perform, or immediately available to perform such covered functions.

**Permanent Employee** - An employee hired for a period of more than 120 days (FTA).

**Post-Accident Test** - A drug test administered to an employee when an accident has occurred and the employee performed a safety-sensitive function that either contributed to the accident, or cannot be completely discounted as a contributing factor in the accident.

**Pre-Employment Test** - A drug test given to an applicant or employee who is being considered for a safety-sensitive position. The applicant or employee must be informed of the purpose for the urine collection prior to actual collection.

**Prohibited Drug** - marijuana (including all hemp products), cocaine, opiates, phencyclidine (PCP), and amphetamines.

**Random Test** - A drug test of safety-sensitive employees who are selected on a scientifically defensible random and unannounced basis. The number of tests performed is based on a percentage of safety-sensitive employees as directed by DOT.

**Reason to Believe** - Objective information indicating that a particular individual may alter or substitute a urine specimen.

**Recipient** - FTA: An entity receiving Federal financial assistance under Section 3, 9, or 18, of the FT Act, or under Section 103(e)(4) of Title 23 of the United States Code.

**Refuse to submit or test** - means that a covered employee
1) fails to provide adequate breath for testing without a valid medical explanation after he/she has received notice of the requirement for breath testing;
2) fails to provide adequate urine for controlled substances testing without a valid medical explanation after he/she has received notice of the requirement for urine testing; or
3) engages in conduct that clearly obstructs the testing process.

Return to Duty Test - An initial drug or alcohol test prior to return to duty and additional unannounced drug tests (Follow-up Tests) given to employees performing in safety-sensitive functions who previously tested positive, or refused, a drug/or alcohol test and are returning to safety-sensitive positions.

Revenue Service Vehicle - A vehicle used to transport passengers, including a bus, van, car, railcar, locomotive, trolley car, trolley bus, ferry boat, or a vehicle used on a fixed guide-way or inclined plane.

Screening test (initial test) - In alcohol testing, it means an analytical procedure to determine whether a covered employee may have a prohibited concentration of alcohol in his/her system. In controlled substances testing, it means an immunoassay screen to eliminate "negative" urine specimens from further consideration.

Small Operator -
1) FMCSA: An employer who has less than 50 covered employees.
2) FTA: A recipient or sub-recipient primarily operating in an area of less than 200,000 in population

Specimen Bottle - The bottle that, after being labeled and sealed, is used to transmit a urine sample to the laboratory.

Split Specimen - An additional specimen collected with the original specimen, to be tested in the event the original specimen tests positive.

Substance Abuse Professional (SAP) - The Substance Abuse Professional for this program must be a:
1) licensed physician (medical doctor) licensed or certified psychologist, social worker, employee assistance professional; or
2) an addiction counselor certified by the National Association of alcoholism and Drug Abuse Counselors Certification Commission or the International Certification Reciprocity Consortium/Alcohol and other Drug Abuse.

Training - Providing information about the effects and consequences of drug use on personal health, safety, and the work environment; and about manifestations and behavioral clues that may indicate drug use and abuse.

Verified Positive (drug test result) - A drug test result reviewed by a Medical Review Officer and determined to have evidence of prohibited drug use.

Volunteer - A permanent, temporary, or part-time worker who is not compensated for his/her service. Volunteers are included in the requirements of FTA drug and alcohol regulations if a CDL is required to operate the vehicle.
MODESTO CITY COUNCIL
RESOLUTION NO. 2009-105

A RESOLUTION APPROVING AN AGREEMENT WITH RMC WATER AND ENVIRONMENT FOR VALUE ENGINEERING SERVICES FOR THE PHASE 2 BIOLOGICAL NUTRIENT REMOVAL (BNR)/TERTIARY PROJECT IN AN AMOUNT NOT TO EXCEED $106,557 FOR THE IDENTIFIED SCOPE OF SERVICES, PLUS $10,655.70 FOR ADDITIONAL SERVICES (IF NEEDED), FOR A MAXIMUM TOTAL AMOUNT OF $117,212.70 AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE AGREEMENT

WHEREAS, on April 25, 2008, the State Regional Water Quality Control Board (RWQCB) issued a new tentative waste discharge permit (Permit No. CA0079103), which contained limits more restrictive than those indicated in the City 2007 Wastewater Master Plan (WWMP), and

WHEREAS, the new permit includes unprecedented limits for seasonal secondary effluent discharges into the San Joaquin River and the City is required to meet the effluent discharge limits by June 2013, and

WHEREAS, due to the anticipated high cost and complexity of the project, staff recommends that the Phase 2 Preliminary Design Report (PDR) undergo a value engineering analysis, and

WHEREAS, value engineering will provide the City with an independent review of the Phase 2 facility design and construction approach, and the outcome would provide efficient and cost effective recommendations to the Phase 2 design, and

WHEREAS, in compliance with Administrative Directive 3.1, based on the complex nature of the project, the Public Works Director approved a short-list of eight engineering firms that have extensive experience with wastewater treatment design, and

WHEREAS, on October 28, 2008, a Request for Proposals (RFP) was sent to those eight engineering firms, and
WHEREAS, two proposals were submitted and subsequently reviewed by the Selection Committee, which consisted of three City staff, one member of the Building Industry Association of Central California, and one member of the Manufacturer’s Council of the Central Valley, and

WHEREAS, following the consultant interviews, the Selection Committee determined that RMC Water and Environment of Walnut Creek, is the most qualified firm to perform the value engineering services for the Phase 2 BNR/Tertiary project, and

WHEREAS, City staff recommends an agreement with RMC Water and Environment to perform the value engineering services for the Phase 2 BNR/Tertiary project as the engineering division does not have sufficient staff resources or subject matter expertise available to enable this project to move forward in a timely manner.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves an Agreement with RMC Water and Environment for value engineering services for the Phase 2 Biological Nutrient Removal (BNR)/Tertiary project in an amount not to exceed $106,557, for the identified scope of services, plus $10,655.70 for additional services (if needed), for a maximum total amount of $117,212.70.

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 10th day of March, 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:  

(Seal)

APPROVED AS TO FORM:

By:  

SUSANA ALCALA WOOD, City Attorney
RESOLUTION AUTHORIZING THE SUBMITTAL OF A GRANT APPLICATION TO THE GOVERNOR’S OFFICE OF HOMELAND SECURITY (OHS) REQUESTING $119,000 IN FY 2008-09 CALIFORNIA TRANSIT SECURITY GRANT PROGRAM (CTSGP) FUNDS FOR THE PURCHASE AND INSTALLATION OF A VIDEO SURVEILLANCE SYSTEM, AUTOMATIC VEHICLE LOCATION EQUIPMENT, AND RADIOS IN SIX (6) FIXED ROUTE BUSES

WHEREAS, California voters approved the Highway Safety, Traffic Reduction, Air Quality and Port Security Bond Act of 2006 (Proposition 1B) in the November 7, 2006 General Election, and

WHEREAS, Proposition 1B provided the Stanislaus County region with a funding allocation of $413,426 in FY 2008-09, and

WHEREAS, these funds may only be used for transit system capital projects that are focused on security, and may not be used for ongoing operations, and

WHEREAS, StanCOG is responsible for the apportionment of these funds to the transit agencies within the county, and these funds are apportioned on a collaborative basis, not by formula, and

WHEREAS, on January 29, 2009, the StanCOG Policy Board approved the $93,394 for the City of Modesto, and

WHEREAS, Proposition 1B also makes the City of Modesto eligible for a local allocation of $25,606 in FY 2008-09, and

WHEREAS, City staff proposed combining both apportionments and submit a grant application for a total of $119,000 to purchase and install video surveillance systems, automatic vehicle location systems, and radios in six fixed route buses that are currently on order, and
WHEREAS, the Governor’s Office of Homeland Security has a March 18, 2009 deadline to submit grant applications for these funds.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby authorizes submittal of a grant application to the Governor’s Office of Homeland Security (OHS) requesting $119,000 in FY 2008-09 California Transit Security Grant Program (CTSGP) Funds for the purchase and installation of a video surveillance system, automatic vehicle location equipment, and radios in six (6) fixed route buses.

BE IT FURTHER RESOLVED that the City Manager, or his designee, is authorized to execute all necessary grant documents with the Governor’s Office of Homeland Security on behalf of the City of Modesto.

BE IT FURTHER RESOLVED that the City Manager may designate the Director of Public Works to execute all grant application and grant agreement documents.

BE IT FURTHER RESOLVED that the City Manager may designate the Deputy Director of Transportation Services to execute all grant application and grant agreement documents.

BE IT FURTHER RESOLVED that the City Manager may designate the Transit Manager to execute all grant application and grant agreement documents.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 10th day of March, 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)
RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE MONTH-TO-MONTH LEASE AGREEMENTS TO PROVIDE INTERIM FLIGHT TRAINING AND RELATED SERVICES AT THE MODESTO CITY-COUNTY AIRPORT PENDING THE COMPLETION OF A REQUEST FOR PROPOSALS (RFP) TO PROVIDE PERMANENT SERVICES

WHEREAS, the recent and sudden closure of the airport’s only flight school has left a void in the General Aviation (GA) community at the Modesto City-County Airport, and

WHEREAS, in addition to flight training provided by the business, pilots have also lost a source for pilot support and supplies, and

WHEREAS, a hub for GA activity is no longer present at the Airport, and these losses not only deprive the local pilots of necessary services, it also represents lost revenue to the Airport, and

WHEREAS, several parties have come forward and expressed interest in providing these services, and

WHEREAS, staff will be bringing to Council an RFP to solicit proposals to provide a flight training school and a wider range of aviation services, and

WHEREAS, because it takes time to solicit proposals to replace these services, it is very possible that those seeking to continue flight training and/or purchase these other services will seek them at another venue, and

WHEREAS, staff proposed interim lease agreements between the City and various vendors who are willing and able to continue providing the desired services while a permanent solution is pursued, and
WHEREAS, this interim arrangement will allow individuals who meet all of the City's requirements to lease space for the purpose of providing flight training and pilot services at Modesto City-County Airport during the time needed for the City to conduct a formal RFP process, and

WHEREAS, this interim lease would be granted on a month-to-month basis, with the understanding that the agreement could be terminated by the City when a successful RFP applicant has been selected.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby authorizes the City Manager to execute month-to-month lease agreements to provide interim flight training and related services at the Modesto City-County Airport pending the completion of a Request for Proposals (RFP) to provide permanent services.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 10th day of March, 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: 

(SEAL)

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney
RESOLUTION AUTHORIZING THE SOLICITATION OF REQUEST FOR PROPOSALS (RFP) TO OPERATE A FLIGHT TRAINING SCHOOL AND PROVIDE RELATED SERVICES AT THE MODESTO CITY-COUNTY AIRPORT

WHEREAS, the recent and sudden closure of the airport’s only flight school has left a void in the General Aviation (GA) community at the Modesto City-County Airport, and

WHEREAS, in addition to flight training provided by the business, pilots have also lost a source for pilot support and supplies, and

WHEREAS, a hub for GA activity is no longer present at the Airport, and these losses not only deprive the local pilots of necessary services, it also represents lost revenue to the Airport, and

WHEREAS, several parties have come forward and expressed interest in providing these services, and

WHEREAS, under separate action, staff proposed interim month-to-month lease agreements between the City and various vendors who are willing and able to continue providing the desired flight training and pilot services while a permanent solution is pursued.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby authorizes the solicitation of Request for Proposals (RFP) for professional services to operate a flight training school and provide related services at the Modesto City-County Airport.
The foregoing resolution was introduced at a regular meeting of the Council of
the City of Modesto held on the 10th day of March, 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: Stephani Lopez, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: Susana Alcala Wood, City Attorney
RESOLUTION APPROVING THE SUBMITTAL OF THE AIRPORT CAPITAL IMPROVEMENT PLAN (ACIP) UPDATE TO THE FEDERAL AVIATION ADMINISTRATION (FAA) AND CALTRANS AERONAUTICS

WHEREAS, Modesto City-County Airport is a commercial service airport that is a part of the federal airport system and is eligible for federal funding, and

WHEREAS, as airport sponsor, the City is eligible for discretionary funding from the Federal Airport Improvement Program (AIP), and

WHEREAS, the Federal Aviation Administration (FAA) requires that the City submit a revised 5-year ACIP on an annual basis to maintain eligibility for future project funding, and

WHEREAS, in addition to updating cost estimates, the ACIP annual update is intended to reflect ongoing changes in City priorities, airport needs, and/or federal mandates, and

WHEREAS, keeping the ACIP current helps the FAA plan for the airport’s long-term funding needs and better distribute the funds on a priority rating, and

WHEREAS, Caltrans uses the ACIP submission to develop the State Capital Improvement Plan (SCIP), and

WHEREAS, the Modesto City-County Airport ACIP update will be focusing on several mandated safety and compliance issues (obstruction removal, instrument security fencing, and runway safety areas), current infrastructure needs, and planning for future airport needs, and

WHEREAS, the total package of capital improvements submitted to the FAA for the five fiscal year period ending in 2014 is estimated to cost $24,010,525. and
WHEREAS, funding will be borne by the FAA at 95% ($22,809,999) with the Airport Fund providing the remaining 5% ($1,200,526) mostly through Passenger Facility Fees, and

WHEREAS, the Council Economic Development Committee, at its February 9, 2009 meeting, recommended forwarding this item to full Council for consideration.

NOW THEREFORE BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the submittal of the Airport Capital Improvement Plan (ACIP) Update to the Federal Aviation Administration (FAA) and Caltrans Aeronautics.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 10th day of March, 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: 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: SUSAN V. ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2009-110

A RESOLUTION APPROVING AN AGREEMENT WITH JES ENGINEERING TO PROVIDE ENGINEERING DESIGN SERVICES FOR THE WATER QUALITY CONTROL COMMUNICATIONS PROJECT, IN AN AMOUNT NOT TO EXCEED $37,209 FOR THE IDENTIFIED SCOPE OF SERVICES, PLUS $3,720.90 FOR ADDITIONAL SERVICES (IF NEEDED), FOR A MAXIMUM TOTAL AMOUNT OF $40,929.90, AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE AGREEMENT

WHEREAS, the scope of services to be provided under this agreement includes updating the path survey, structural analysis of existing tower structure, preparation of designs, specifications and construction cost estimate, as well as providing bidding support and permit processing, and

WHEREAS, the purpose of this project is to provide adequate network bandwidth connection between the Jennings Treatment Plant and the City network, and

WHEREAS, the current available network bandwidth connecting the Jennings Treatment Plant to the City network is inadequate for the security upgrades being made to the facility, and

WHEREAS, due to the remote location, it is cost prohibitive to extend the City’s fiber optic network to that location, and

WHEREAS, staff concluded that wireless network technology was the better option as it is substantially less costly and just as efficient, and

WHEREAS, the City does not have the staffing level or subject matter expertise to complete the engineering design for the Water Quality Control Communications Project, and current workload levels do not provide for timely in-house solutions/responses, and
WHEREAS the Public Works Engineering staff and Wastewater Operations staff reviewed a proposal from JES Engineering in reference to the discussed scope of services, and

WHEREAS, City staff recommends an agreement with JES Engineering, Inc. based on their experience and expertise in telecommunications.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves an agreement with JES Engineering to provide engineering design services for the Water Quality Control Communications Project, in an amount not to exceed $37,209 for the identified scope of services, plus $3,720.90 for additional services (if needed), for a maximum total amount of $40,929.90.

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 10th day of March, 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'Byant, 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. 2009-111

A RESOLUTION ACCEPTING THE WORK BY TOP GRADE CONSTRUCTION, INC. FOR THE PROJECT TITLED “2004-2005 PAVEMENT REHABILITATION PROGRAM - SYLVAN AVENUE RECONSTRUCTION 71’ EAST OF MCHENRY AVENUE TO 365’ WEST OF COFFEE ROAD” 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 $1,962,493.42

WHEREAS, a report has been filed by the Public Works Director that the project titled “2004-2005 Pavement Rehabilitation Program - Sylvan Avenue Reconstruction 71’ East of McHenry Avenue to 365’ West of Coffee Road” has been completed by Top Grade Construction, Inc. in accordance with the contract agreement dated March 4, 2008.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the project titled “2004-2005 Pavement Rehabilitation Program - Sylvan Avenue Reconstruction 71’ East of McHenry Avenue to 365’ West of Coffee Road” is hereby accepted as complete from said contractor Teichert Construction, 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 $1,962,493.42 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 10th day of March, 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)

APPROVED AS TO FORM:

By: 

(SIGNATURE)

SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2009-112

A RESOLUTION AUTHORIZING PAYMENT OF SALES TAX IN THE
AMOUNT OF $334,271 FOR THE PURCHASE OF THE MEMBRANE
BIOREACTOR EQUIPMENT FOR THE PHASE 1A TERTIARY
WASTEWATER TREATMENT FACILITY PROJECT

WHEREAS, the City of Modesto operates and maintains a secondary treatment
system and wastewater reclamation facility at 7007 Jennings Road, and

WHEREAS, based on the analysis prepared for the Wastewater Master Plan, the
City expects that tertiary treatment will be required to meet anticipated regulatory
requirements, and

WHEREAS, the City Council, on February 26, 2008, by Resolution 2008-140,
approved an Agreement with Zenon Environmental Corporation for the purchase of
Membrane Bioreactor Equipment for the Phase 1A Tertiary Wastewater Treatment
Facility project, and

WHEREAS, the Agreement with Zenon Environmental Corporation for the
purchase of Membrane Bioreactor Equipment for the Phase 1A Tertiary Wastewater
Treatment Facility project specifically excluded sales tax, and

WHEREAS, the City Council, on September 23, 2008, by Resolution 2008-563,
approved the plans and specifications for the Phase 1A Tertiary Wastewater Treatment
Facility project and accepted the bid and approved a $19,148,562.50 contract with Pacific
Mechanical Corporation, and

WHEREAS, the City Council, on September 23, 2008, by Resolution 2008-565
budgeted funds for the sales tax and other project costs but did not authorize the actual
payment of the sales tax, and
WHEREAS, the contract with Pacific Mechanical Corporation includes the assignments of the agreements with Zenon Environmental Corporation, and

WHEREAS, the contract with Pacific Mechanical Corporation does not include the payment of sales tax, and

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby authorizes payment of sales tax in the amount of $334,271 for the purchase of the Membrane Bioreactor Equipment for the Phase 1A Tertiary Wastewater Treatment Facility Project.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 10th day of March, 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: STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney
A RESOLUTION AUTHORIZING PAYMENT OF SALES TAX IN THE AMOUNT OF $23,861 FOR THE PURCHASE OF THE OXIDATION AERATION AND MIXING EQUIPMENT FOR THE PHASE 1A TERTIARY WASTEWATER TREATMENT FACILITY PROJECT

WHEREAS, the City of Modesto operates and maintains a secondary treatment system and wastewater reclamation facility at 7007 Jennings Road, and

WHEREAS, based on the analysis prepared for the Wastewater Master Plan, the City expects that tertiary treatment will be required to meet anticipated regulatory requirements, and

WHEREAS, the City Council, on June 10, 2008, by Resolution 2008-343, approved an Agreement with WesTech Engineering, Inc. for the purchase of Oxidation Ditch Aeration and Mixing Equipment for the Phase 1A Tertiary Wastewater Treatment Facility project, and

WHEREAS, the Agreement with WesTech Engineering, Inc. for the purchase of Oxidation Ditch Aeration and Mixing Equipment for the Phase 1A Tertiary Wastewater Treatment Facility project specifically excluded sales tax, and

WHEREAS, the City Council, on September 23, 2008, by Resolution 2008-563, approved the plans and specifications for the Phase 1A Tertiary Wastewater Treatment Facility project and accepted the bid and approved a $19,148,562.50 contract with Pacific Mechanical Corporation, and

WHEREAS, the City Council, on September 23, 2008, by Resolution 2008-565 budgeted funds for the sales tax and other project costs but did not authorize the actual payment of the sales tax, and
WHEREAS, the contract with Pacific Mechanical Corporation includes the assignments of the agreements with WesTech Engineering, Inc., and

WHEREAS, the contract with Pacific Mechanical Corporation does not include the payment of sales tax, and

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby authorizes payment of sales tax in the amount of $23,861 for the purchase of the Oxidation Aeration and Mixing Equipment for the Phase 1A Tertiary Wastewater Treatment Facility Project.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 10th day of March, 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: 

(Seal)

APPROVED AS TO FORM:

By: 

SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2009-114

A RESOLUTION FINDING THAT THE FOLLOWING PROJECT IS WITHIN
THE SCOPE OF THE PROJECT COVERED BY THE MODESTO URBAN
AREA GENERAL PLAN MASTER ENVIRONMENTAL IMPACT REPORT
(SCH NO. 2007072023): AMENDING SECTION 23-3-9 OF THE ZONING MAP
TO REZONE FROM MEDIUM-HIGH DENSITY RESIDENTIAL ZONE, R-3, TO
PROFESSIONAL OFFICE ZONE, P-O, PROPERTY LOCATED AT 1108
OAKDALE ROAD. (TRINITY VENTURES, LLC)

WHEREAS, on October 14, 2008, the City Council of the City of Modesto
certified the Final Master Environmental Impact Report ("Master EIR") (SCH No.
2007072023) for the Modesto Urban Area General Plan, and

WHEREAS, Trinity Ventures, LLC has proposed that the zoning designation for
the property located on the southeast corner of Oakdale Road and Peppermint Drive, be
amended to rezone from Medium-High Density Residential Zone, (R-3), to Professional
Office Zone, (P-O), and

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

WHEREAS, the City’s Community & Economic Development Department by
Environmental Assessment Initial Study E&A/C&ED 2009-01 ("Initial Study") reviewed
the proposed amendment to the Zoning Map and rezoning Medium-High Density
Residential Zone, R-3 to Professional Office Zone, P-O project to determine whether the
project is within the scope of the project covered by the Modesto Urban Area General
Plan Master EIR ("Master EIR"), and concluded that the proposed project is within the scope of the Master EIR and will have no additional significant effect on the environment that was not identified in the Master EIR, and further, that no new additional mitigation measures or alternatives are required, and that, therefore, the proposed project is within the scope of the project covered by the Master EIR, and

WHEREAS, in accordance with CEQA guidelines beginning on February 18, 2009 the City caused to be published a 20-day notice of the City’s intent to make a finding that the proposed project conforms with the Master EIR, and

WHEREAS, said matter was considered by the City Council at a duly noticed public hearing which was held on March 10, 2009, at 5:30 p.m., in the Tenth Street Place Chambers located at 1010 Tenth Street, Modesto, California,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the Council has reviewed and considered the Initial Study prepared for the proposed rezoning from Medium-High Density Residential Zone, R-3 to Professional Office Zone, P-O, a copy of which is attached hereto as Exhibit “A”, and incorporated herein by reference, and based on the substantial evidence included in said Initial Study makes the following findings:

1. That the proposed project is contemplated and described in the Master EIR (SCH No. 2007072023) as being within the scope of the Master EIR.

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

3. That, as per Section 21157.1 of the Public Resources Code, no new environmental document or findings are required by the California Environmental Quality Act (CEQA).
4. That there are no specific features which are unique to the proposed project that require project specific mitigation measures. Accordingly, the certified mitigation measures identified in the Master EIR will be sufficient for this project.

5. That all feasible mitigation measures set forth in the Master EIR which are appropriate to the project shall be incorporated in the project.

BE IT FURTHER RESOLVED by the Council of the City of Modesto that the Community & Economic Development Director is hereby authorized and directed to file a notice of approval or determination within five (5) business days with the Stanislaus County Clerk pursuant to Section 11152 of the Public Resources Code.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 10th day of March, 2009, by Councilmember Marsh, who moved its adoption, which motion being duly seconded by Councilmember Olsen, was upon roll call carried and the resolution adopted by the following vote:

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

NOES:   Councilmembers:  None

ABSENT: Councilmembers:  None

ATTEST:  

APPROVED AS TO FORM:

By:  

SUSANA ALCALA WOOD, City Attorney
EXHIBIT A

Initial Study

EA/C&FD 2009-01
City of Modesto

Finding of Conformance to General Plan Master EIR:

Initial Study Environmental Checklist C&ED No. 2009-01

For the proposed:

P-RZN-08-001
Rezone R-3 to P-O

1108 Oakdale Road
APN: 067-027-021

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

December 12, 2008
City of Modesto
Master EIR Initial Study Environmental Checklist

I. PURPOSE

CEQA allows for the limited environmental review of subsequent projects under the City's Master Environmental Impact Report ("Master EIR" or "MEIR"). This Initial Study Environmental Checklist ("Initial Study") is used in determining whether RZN-08-001 Rezone R-3 to P-O is "within the scope" of the project analyzed in the Modesto Urban Area General Plan Master EIR (SCH# 2007072023) (Public Resources Code section 21157.1). When the Initial Study supports this conclusion, the City will issue a finding of conformance.

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

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

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

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

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

II. PROJECT DESCRIPTION

A. Title: RZN-08-001, Rezone R-3 to P-O

B. Address or Location: 1108 Oakdale Road, Modesto, CA 95355

C. Applicant: Trinity Ventures, LLC

D. City Contact Person: Rita Doscher, Associate Planner

Project Manager: Rita Doscher, Associate Planner
Department: Community and Economic Development Department
Phone Number: 209-577-5267
E-mail address: rdoscher@modestogov.com

E. Current General Plan Designation(s): MU, Mixed Use

F. Current Zoning Classification(s): R-3, Medium-High Density Residential

G. Surrounding Land Uses:
   North: 26-unit Apartment Complex - Medium Density Residential
   South: P-D(525) including Rite Aid and C-1 uses
   East: Single-Family Residential
H. Project Description, including the project type listed in Section II.C (Anticipated Future Projects) of the Master EIR:

The applicant proposes to convert the undeveloped 1.5 acre medium-high density residential (R-3) zoned lot into a future professional-office (P-O) zone. The applicant has indicated that development of the parcel is not planned; however, any future development would require subsequent staff level approval through the Development Plan Review process.

I. Other Public Agencies Whose Approval is Required: none

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

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

   A. The type of project is described in Chapter II of the MEIR.

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

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

   D. Based on the Initial Study, the City of Modesto finds and determines:
      a) The proposed subsequent project will have no additional significant effect as defined in CEQA Section 21158 that was not identified in the MEIR.
      b) No new or additional mitigation measures or alternatives are required.

   E. The criteria for currency of the MEIR were reviewed (section 5 below) and it was determined that the MEIR is current for all areas of the Initial Study.

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

   A. The type of project is described in Chapter II of the MEIR.

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

   C. The project will have one or more potential new significant effects on the environment that were not addressed as significant effects in the MEIR. New or additional mitigation

City of Modesto Finding of Conformance
General Plan Master EIR
Initial Study
2009-01
December 12, 2008
measures are being required of the project that will reduce the effects to a less-than-significant level.

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

A. The type of project is described in Chapter II of the MEIR.

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

C. The project will have one or more new significant effects on the environment that were not addressed as significant effects in the MEIR. New or additional mitigation measures or alternatives are required as a result.
4. Within the Scope Analysis of this Document:

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

(1) The lead agency for subsequent projects shall be the City of Modesto or a responsible agency identified in the MEIR.  

(2) City policies which reduce, avoid, or mitigate environmental effects will continue to be in effect and therefore would be applied to subsequent projects where appropriate. The policies are described in the list of policies in place and mitigation measures attached to the Initial Study template. 

(3) Federal, State, regional, and Stanislaus County regulations do not change in a manner that is less restrictive on development than current law (that is, would not offer the same level of protection assumed under the MEIR).

(4) No specific information concerning the known or potential presence of significant resources is identified in future reports, or through formal or informal input received from responsible or trustee agencies or other qualified sources. 

(5) The development will occur within the boundaries of the City's planning area as established in this Urban Area General Plan.

(6) Development within the project will comply with all appropriate mitigation measures contained and enumerated in the General Plan MEIR.

5. Currency of the Master EIR Document

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

(1) Certification of the General Plan MEIR occurred less than five years prior to the filing of the application for this subsequent project. 

(2) This project is described in the MEIR and its approval will not affect the adequacy of the MEIR for any subsequent project because the City can make the following findings:

(a) No substantial changes have occurred with respect to the circumstances under which the MEIR was certified. 

(b) No new information, which was not known and could not have been known at the time the MEIR was certified as complete, has become available. 

(c) Policies remain in place that require site-specific mitigation, and avoidance or other mitigation of impacts as a prerequisite to future development.
IV. ENVIRONMENTAL ANALYSIS

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

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

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

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

1. TRAFFIC AND CIRCULATION

a. Significant Effects Identified in the Master EIR

The MEIR identified the following significant and unavoidable traffic and circulation impacts:

Effect: Increased traffic will result in certain roadway segments operating at LOS D or worse.

Effect: The substantial increase in traffic relative to the existing load and capacity of the street system will cause, violation, either individually or cumulatively, of an LOS standard established by the County CMP for designated roads and highways.

Effect: Creation of need for Capacity-enhancing modifications to existing facilities.

Effect: Increase in energy consumption associated with the operation of highway projects, rail improvements, and aviation facilities.

Effect: Severe contrast with existing neighborhood or area character caused by highway and transit projects.

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

Traffic and Circulation mitigation measures that are pertinent to this project are found on MEIR pages V-1-15 through V-1-21. All feasible measures appropriate to the project – including any new measures - will be incorporated into or made conditions of approval of this project and will be listed in Section V, Mitigation Measures Applied to Project.

Discussion: No new or additional mitigation measures or alternatives are required.
c. Project-Specific Effects

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

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

- (1) The project exceeds the MEIR's traffic generation assumptions for this site and City Engineering and Transportation staff has determined that the project would have additional project-specific effects that are not avoided or reduced by the MEIR's program of mitigation measures.

- (2) Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g. farm equipment).

- (3) Result in inadequate emergency access.

- (4) Result in inadequate parking capacity.

Discussion:

- (1) Engineering and Transportation Staff reviewed the proposed project and have the following comments:
  
  A. Oakdale Road is designated as a 6-lane principal arterial street in the Modesto General Plan. Peppermint Drive is a collector street. Prior to development the project shall dedicate the street right-of-way, per City of Modesto Standard Detail No. 382. No traffic study is required.

  B. No access on Oakdale Road. One access on Peppermint Drive and One reciprocal access with the property to the south to utilize the traffic signal at the Oakdale/Rite Aid Driveway. A site access study is not required for this project.

- (2) The project will not substantially increase hazards due to a design feature (for example, sharp curves or dangerous intersections) or incompatible uses.

- (3) Police and Fire staff reviewed this proposal. Development of this property shall conform to the requirements of City of Modesto Standards and 2007 California Fire Code for Fire department access to buildings.

- (4) Proposal to rezone from R-3, Medium-High Density Residential to P-O, Professional Office. Development of the site is not currently planned.

2. DEGRADATION OF AIR QUALITY

a. Significant Effects Identified in the Master EIR

The MEIR identified the following significant environmental impacts relative to air quality:

Effect: Projected traffic levels will result in increased ambient carbon monoxide (CO) levels in the project area. This is a significant and unavoidable impact.
Effect: Projected traffic levels will result in increased ROG and NOx levels in the project area. This is a significant and unavoidable impact.

These are also cumulative impacts on air quality.

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

Air Quality mitigation measure(s) pertinent to the project being analyzed in this Initial Study are found on pages V-2-11 through V-2-18 of the MEIR. All feasible measures appropriate to the project will be incorporated into or made conditions of approval of this project and are listed in Section V, Mitigation Measures Applied to Project:

Discussion:

The appropriate mitigation to be applied to this project includes AQ-17 from the MEIR, and no new or additional mitigation measures or alternatives are required.

c. Project-Specific Effects

Section V-2.B of the MEIR provides analysis of Air Quality impacts of development of the General Plan, the following is an analysis of whether the proposed project would result in a new, significant, project-specific effect not previously analyzed in the MEIR.

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

1. The project exceeds the emissions thresholds established for CO and NOx by the San Joaquin Valley Unified Air Pollution Control District’s (SJUAPCD) adopted CEQA Guidelines.

   The project does not incorporate the best management practices for reduction established by the SJUAPCD.

2. The project does not comply with the air quality policies of the Modesto Urban Area General Plan.

3. The project would expose sensitive receptors to substantial pollutant concentrations.

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

Discussion:

1. The project was referred to the San Joaquin Valley Unified Air Pollution Control District who determined that the project would not exceed their Thresholds of Significance for these emissions.

2. The proposed project is consistent with the Urban Area General Plan, and is a proposal to rezone from R-3, Medium-High Density Residential to P-O, Professional Office. Development of the site is not currently planned.
3. GENERATION OF NOISE

a. Significant Effects Identified in the Master EIR

The MEIR identified the following significant and unavoidable environmental impacts relative to noise:

Effect: Traffic noise levels for future conditions in the plan area have the potential to result in exceedances of the City's Noise Significance Standards (see Table 3-3 of the MEIR).

Effect: Noise level projections based on the traffic levels anticipated in the General Plan indicate that noise will exceed the City's General Plan and noise ordinance standards.

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

Noise policies and mitigation measures pertinent to the project being analyzed in this Initial Study are found on pages V-3-10 through V-3-15 of the MEIR. All feasible measures appropriate to the project will be incorporated into or made conditions of approval of this project. and any new measures are listed in Section V, Mitigation Applied to Project:

Discussion:

The appropriate mitigation to be applied to this project includes N-4, N-5, N-6, and N-9 from the MEIR, and no new or additional mitigation measures or alternatives are required.

c. Project-Specific Effects

Section V-3.B of the MEIR provides analysis of noise impacts of development of the General Plan, the following is an analysis of whether the proposed project would result in a new, significant, project-specific effect not previously analyzed in the MEIR.

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

1. The project will exceed the standards for noise level and hours of operation established by the Modesto noise ordinance.

2. The project will exceed the noise policies of or otherwise be inconsistent with the Modesto Urban Area General Plan.

3. The project will result in a substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project.

4. The project will result in a substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project.

Discussion:

1. The proposed project is consistent with the Urban Area General Plan, and is a proposal to rezone from R-3, Medium-High Density Residential to P-O, Professional Office. Development of the site is not currently planned.
a. Significant Effects Identified in the Master EIR

The MEIR identified the following significant environmental impacts relative to agricultural lands:

Effect: Development within the urbanized Baseline Developed Area and Redevelopment Area will have a less-than-significant impact on agricultural lands.

Effect: Conversion of agricultural land will occur as available developable land is occupied within the City. This is a significant and unavoidable impact.

Effect: Growth within Modesto’s planning area would contribute considerably to the loss of agricultural land within Stanislaus County. This is a significant and unavoidable cumulative impact.

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

Agricultural Land mitigation measure(s) pertinent to the project being analyzed in this Initial Study are found on pages V-4-7 and V-4-8 of the MEIR. All feasible measures appropriate to the project and any new mitigation to be incorporated into or made conditions of approval of this project are listed in Section V, Mitigation Applied to Project:

Discussion:

The site is not zoned for agriculture or designated on the General Plan for future agricultural use. The proposed project will not affect areas zoned for agriculture or designated on the General Plan for future agricultural use. The project is an infill development and the surrounding properties are located within a fully developed urbanized area.

c. Project-Specific Effects

Section V-4.B of the MEIR provides analysis of Agricultural Lands impacts of development of the General Plan, the following is an analysis of whether the proposed project would result in a new, significant, project-specific effect not previously analyzed in the MEIR.

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

1. The project is inconsistent with the Modesto Urban Area General Plan.  
2. The project will directly result in the development of land outside the March 2003 planning area boundaries.  
3. The project will Conflict with existing zoning for agricultural use, or a Williamson Act contract.  
4. The project will Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use.

Discussion:

(1) The proposed project is consistent with the Urban Area General Plan, and is a proposal to rezone from R-3, Medium-High Density Residential to P-O, Professional Office. Development of the site is not currently planned.
5. INCREASED DEMAND FOR LONG-TERM WATER SUPPLIES

a. Significant Effects Identified in the Master EIR

The MEIR identified the following significant environmental impacts relative to water supply:

Effect: Urban Area General Plan policies are established to limit groundwater extractions to the safe yield of the aquifer and thereby avoid aquifer over drafting. In addition, the UWMP requires that new urban development would proceed in conjunction with the availability of water supplies and distribution facilities. It is assumed that increased entitlement of surface water supplies such as a water transfer from another water purveyor would undergo independent environmental review pursuant to CEQA. This is a less-than-significant impact.

Effect: Development to the future projected City population would require expansion of the MRWTP to its full 60 mgd capacity, development of additional groundwater wells, and construction of additional water distribution and treatment facilities. Construction of some of the required facilities would most likely require site-specific environmental impact assessments to be conducted under CEQA. Consequently, the potential environmental impacts of the Urban Area General Plan are considered less than significant.

Effect: During drought years, despite available options, significant water shortages are forecast for the San Joaquin River basin by the year 2020. Modesto would make a cumulatively considerable contribution to the cumulative impact on water supply under drought conditions. This is a significant and unavoidable cumulative impact.

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

Water Supply mitigation measure(s) pertinent to the project being analyzed in this Initial Study are found on pages V-S-7 through V-S-8 of the MEIR. All feasible measures appropriate to the project to be incorporated into or made conditions of approval of this project are listed in Section V, Mitigation Measures Applied to Project:

Discussion:

There are no mitigation measures applicable to this project.

c. Project-Specific Effects

Section V-5.B of the MEIR provides analysis of Water Supply impacts of development of the General Plan, the following is an analysis of whether the proposed project would result in a new, significant, project-specific effect not previously analyzed in the MEIR.

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

YES NO

(1) The project is inconsistent with the Modesto Urban Area General Plan.

(2) Sufficient water supplies are not available to serve the project from existing entitlements and resources, new or expanded entitlements are needed.
Discussion:

(1) The proposed project is consistent with the Urban Area General Plan, and is a proposal to rezone from R-3, Medium-High Density Residential to P-O, Professional Office. Development of the site is not currently planned.

6. INCREASED DEMAND FOR SANITARY SEWER SERVICES

a. Significant Effects Identified in the Master EIR

The MEIR identified the following significant environmental impacts relative to sanitary sewer services:

Effect: The City has already begun to implement the provisions of the Wastewater Master Plan (WMP) to meet future demand for sanitary sewer services. As City wastewater treatment facilities are expanded to meet the needs of the Baseline Developed, Redevelopment, and Planned Urbanizing Areas, the City will obtain the necessary wastewater discharge and NPDES permits from the Central Valley RWQCB, as required under Urban Area General Plan Policy V-D.2(a). Implementing the WMP, requirement of Best Management Practices for post-construction activities, as well as the Urban Area General Plan policy cited above, will avoid violation of wastewater discharge requirements. As a result, this impact would be less than significant.

Effect: The City has adopted the WMP specifically to ensure that sewer capacity will match the level of growth projected by the Urban Area General Plan. Development within the Baseline Developed and the Planned Urbanizing Areas that is consistent with the Urban Area General Plan will not have a significant effect on capacity. Urban Area General Plan Policy III-D.1(d) will ensure that development in the Planned Urbanizing Area will fund the necessary improvements. This is a less-than-significant impact.

Note on the WMP MEIR. The WMP MEIR identified a number of impacts and mitigation measures. Its mitigation measures have been adopted by the City and are being implemented by the City under the WMP. Those impacts are being independently addressed under that MEIR and do not need to be considered under this Initial Study. Refer to the WMP MEIR for details.

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

Sewer Service mitigation measure(s) pertinent to the project being analyzed in this Initial Study are found on pages V-6-4 through V-6-7 of the MEIR. All feasible measures appropriate to the project to be incorporated into or made conditions of approval of this project are listed in Section V, Mitigation Measures Applied to Project:

Discussion:

There are no mitigation measures applicable to this project.

c. Project-Specific Effects

Section V-6.B of the MEIR provides analysis of Sanitary Sewer Service impacts of development of the General Plan, the following is an analysis of whether the proposed project would result in a new, significant, project-specific effect not previously analyzed in the MEIR.

Determination of project effects will be based on the following thresholds. The project-specific effects will be less than significant unless:
(1) The project is inconsistent with the Modesto Urban Area General Plan.  

(2) The project will result in a determination by the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments.

Discussion:

(1) The proposed project is consistent with the Urban Area General Plan, and is a proposal to rezone from R-3, Medium-High Density Residential to P-O, Professional Office. Development of the site is not currently planned.

7. LOSS OF SENSITIVE WILDLIFE AND PLANT HABITAT

a. Significant Effects Identified in the Master EIR

The MEIR identified the following significant environmental impacts relative to sensitive wildlife and plant habitat:

Effect: Although many sensitive species live in riparian habitats within the planning area, the policies of the plan will ensure that impacts of the Urban Area General Plan will be less than significant.

Effect: Requiring higher residential density than the suburban norm and a compact pattern of growth within the designated planning area to the year 2025 will minimize the City's contribution to the cumulative loss of habitat. Nonetheless, this is a significant and unavoidable impact.

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

Wildlife and Plant Habitat mitigation measure pertinent to the project being analyzed in this Initial Study are found on pages V-7-19 through V-7-21. All feasible measures appropriate to the project to be incorporated into or made conditions of approval of this project are listed in Section V, Mitigation Measures Applied to Project:

Discussion:

There are no mitigation measures applicable to this project regarding sensitive wildlife and plant habitat.

c. Project-Specific Effects

Section V-7.B of the MEIR provides analysis of Wildlife and Plant Habitat impacts of development of the General Plan, the following is an analysis of whether the proposed project would result in a new, significant, project-specific effect not previously analyzed in the MEIR.

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

(1) The project is inconsistent with the Modesto Urban Area General Plan.

(2) Consultation with the California Department of Fish and Game or the U.S. Fish and Wildlife Service determines that the project would have a significant effect.
on special status species.

(3) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance.

Discussion:

(1) The proposed project is consistent with the City of Modesto Urban Area General Plan, because the project site is located within a Regional Commercial area which accommodates the type of development proposed, and it does not represent an increase in intensity of use or development beyond that which is already allowed by the existing zoning of the site. The project is a proposal to rezone from R-3, Medium-High Density Residential to P-O, Professional Office. Development of the site is not currently planned.

(2) The project site is located within the Baseline Developed Area of the City and is therefore completely surrounded by developed urban area. It is not a biologically sensitive site as defined by Figures V-7-1a through V 7-1e of the MEIR. The California Department of Fish and Game and the U.S. Fish and Wildlife Service were consulted in the production of the MEIR.

(3) There is no conflict with any local policies or ordinances protecting biological resources.

8. DISTURBANCE OF ARCHAEOLOGICAL/HISTORICAL SITES

a. Significant Effects Identified in the Master EIR

The MEIR identified the following significant environmental impacts relative to archaeological or historical sites:

**Effect:** If a site-specific project involves the modification or demolition of a qualifying structure more than 50 years in age, then the impact will be significant.

**Effect:** Areas of high probability for archaeological resources are located within the riparian corridors along the Tuolumne River, Dry Creek, and the Stanislaus River. There, the potential impact comes from earthmoving activities that could result in disturbance of resources or human remains. There is a low probability that archaeological resources will be uncovered in areas outside of the riparian corridors.

**Effect:** The City Zoning Ordinance requires that when substantial changes to a structure are proposed, the development will be required to comply with other Zoning Ordinance provisions such as parking or landscaping requirements. This could result in modifications to the structure, which substantially reduce its historical significance. This would be a less-than-significant impact with the imposition of new mitigation measure Cultural-1.

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

Archaeological or Historic mitigation measures pertinent to the project being analyzed in this Initial Study are found on page V-8-13 and V-8-14 of the MEIR. All feasible measures appropriate to the project to be incorporated into or made conditions of approval of this project are listed in Section V, Mitigation Applied to Project:
Discussion:
The appropriate mitigation to be applied to this project includes AH-9 and AH-10 from the MEIR, and no new or additional mitigation measures or alternatives are required.

c. Project-Specific Effects
Section V-8.B of the MEIR provides analysis of Archaeological/Historical impacts of development of the General Plan, the following is an analysis of whether the proposed project would result in a new, significant, project-specific effect not previously analyzed in the MEIR.

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

(1) The project is inconsistent with the Modesto Urban Area General Plan. 

YES NO

☐ ☒

(2) The project would adversely affect a cultural resource that is either listed or eligible for listing in the California Register of Historical Resources, or that is listed by the City of Modesto as a Designated Landmark Preservation Site.

Discussion:
(1) The proposed project is consistent with the Urban Area General Plan, and is a proposal to rezone from R-3, Medium-High Density Residential to P-O, Professional Office. Development of the site is not currently planned.

(2) The project would not adversely affect a cultural resource that is either listed or eligible for listing in the California Register of Historical Resources, or that is listed by the City of Modesto as a Designated Landmark Preservation Site.

9. INCREASED DEMAND FOR STORM DRAINAGE

a. Significant Effects Identified in the Master EIR
The MEIR identified the following significant environmental impacts relative to storm drainage:

Effect: The potential impacts on storm water drainage that could occur from the project were qualitatively evaluated with respect to several factors including: extent of the projected increase in urban surface area compared to undeveloped ground; magnitude of projected changes to hydrologic and physical site characteristics of the study area compared to existing conditions; regulatory criteria and guidelines; and professional judgment. Because the Urban Area General Plan includes policies that require new development in all three sections of the planning area to install approved drainage facilities, the potential impacts of the Urban Area General Plan on storm water drainage are considered less than significant.

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

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

Storm Drainage mitigation measure(s) pertinent to the project being analyzed in this Initial Study are found on pages V-9-4 through V-9-8. All feasible measures appropriate to the project to be incorporated into or made conditions of approval of this project are listed in Section V, Mitigation Measures Applied to Project:

Discussion:

The appropriate mitigation to be applied to this project includes SD-7 from the MEIR, and no new or additional mitigation measures or alternatives are required.

c. Project-Specific Effects

Section V-9.B of the MEIR provides analysis of Storm Drainage impacts of development of the General Plan; the following is an analysis of whether the proposed project would result in a new, significant, project -specific effect not previously analyzed in the MEIR.

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

(1) The project is inconsistent with the Modesto Urban Area General Plan.

(2) The project would substantially increase the rate or amount of surface runoff in a manner that would result in flooding on- or offsite.

(3) Create or contribute runoff water that would exceed the capacity of existing or planned storm water drainage systems or provide substantial additional sources of polluted runoff.

Discussion:

(1) The proposed project is consistent with the Urban Area General Plan, and is a proposal to rezone from R-3, Medium-High Density Residential to P-O, Professional Office. Development of the site is not currently planned.

10. FLOODING AND WATER QUALITY

a. Significant Effects Identified in the Master EIR

The MEIR identified the following significant environmental impacts relative to flooding and water quality:

Effect: Increased runoff can accelerate soil erosion, stream channel scouring, and sedimentation of channels, and also increase pollutant transport to waterways. The potential impacts of the project on flooding are considered less than significant because the Urban Area General Plan Update includes policies to restrict development in the floodplain and therefore
would avoid exposing persons and property to flood hazards. In addition, new development under the Urban Area General Plan is required to install storm water drainage facilities that restrict the amount of post-development runoff from exceeding pre-development conditions.

**Effect:** The potential impacts of the project on surface-water quality are considered less than significant because the City policies and capital improvement projects for storm water drainage facilities would minimize discharges of urban pollutants to natural waterways. The City drainage program policies require new development to prepare drainage plans and implement urban runoff control measures; larger Specific Plan developments must have storm drainage systems designed to control pollutant runoff. The City's implementation policies for the municipal NPDES storm water permit require new development to implement an appropriate selection of permanent pollution control measures. Permanent erosion control measures such as seeding and planting vegetation for new cut-and-fill slopes, directing runoff through vegetation, or otherwise reducing the offsite discharge of particulates and sediment are the most effective method of controlling offsite discharges of urban pollutants.

**Effect:** The City's future development will contribute to cumulative water quality effects. EPA regulations for NPDES storm water permits and new proposed regulatory additions to the rules have become much more comprehensive in recent years and are being implemented to reduce pollutant runoff from both large- and small-scale activities. Implementation of NPDES-permitting programs throughout the county will reduce potential water-quality impacts to a less-than-significant level.

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

Flooding and Water Quality mitigation measure(s) pertinent to the project being analyzed in this Initial Study are found on pages V-10-7 through V-10-10 of the MEIR. All feasible measures appropriate to the project will be incorporated into or made conditions of approval of this project are listed in Section V, Mitigation Applied to Project:

**Discussion:**

The appropriate mitigation to be applied to this project includes FWQ-14 from the MEIR, and no new or additional mitigation measures or alternatives are required.

**c. Project-Specific Effects**

Section V-10.8 of the MEIR provides analysis of Flooding and Water Quality impacts of development of the General Plan, the following is an analysis of whether the proposed project would result in a new, significant, project-specific effect not previously analyzed in the MEIR.

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

1. The project is inconsistent with the Modesto Urban Area General Plan. □ YES □ NO
2. The project does not comply with the regulatory requirements of the federal Clean Water Act or the State Porter-Cologne Act. □ YES □ NO
3. The project does not comply with Modesto's Guidance Manual for New Development Storm water Quality Control Measures. □ YES □ NO
(4) The project would create or contribute runoff water, which would exceed the capacity of existing or planned storm water drainage systems or provide substantial additional sources of polluted runoff.

Discussion:

(1) The proposed project is consistent with the Urban Area General Plan, and is a proposal to rezone from R-3, Medium-High Density Residential to P-O, Professional Office. Development of the site is not currently planned.

11. INCREASED DEMAND FOR PARKS AND OPEN SPACE

a. Significant Effects Identified in the Master EIR

The MEIR identified the following significant environmental impacts relative to parks and open space:

Effect: Within the Baseline Developed and Redevelopment Areas, the Urban Area General Plan does not propose any elimination of existing park and/or open space land. Impacts on parks and open space will be less than significant.

Effect: The projected population of the Planned Urbanizing Area is 148,600, requiring 149 acres of neighborhood parks and 298 acres of community parks. The required minimum acreages can be met through the application of existing policies and regulations, including Government Code Section 66474, which require developers to pay Parks Capital Facilities Fees to fund the acquisition of appropriate parkland acreage. This impact is less than significant.

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

Parks and Open Space Mitigation Measure(s) pertinent to the project being analyzed in this Initial Study are found on pages V-11-4 through V-11-19 MEIR. All feasible measures appropriate to the project to be incorporated into or made conditions of approval of this project, are listed in Section IV, Mitigation Applied to Project:

Discussion:

There are no mitigation measures applicable to this project. It is not near any of the riparian area identified by Figures V-7-1a through V-7-1e of the MEIR.

c. Project-Specific Effects

Section V-11.B of the MEIR provides analysis of Parks and Recreation impacts of development of the General Plan, the following is an analysis of whether the proposed project would result in a new, significant, project -specific effect not previously analyzed in the MEIR.

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

(1) The project is inconsistent with the Modesto Urban Area General Plan.

Discussion:
The proposed project is consistent with the Urban Area General Plan, and is a proposal to rezone from R-3, Medium-High Density Residential to P-O, Professional Office. Development of the site is not currently planned.

12. INCREASED DEMAND FOR SCHOOLS

a. Significant Effects Identified in the Master EIR

The MEIR identified the following significant environmental impacts relative to schools:

Effect: The estimated increase in population over 1994/1995 would generate an additional 29,200 elementary school students, 7,330 middle school students, and 14,640 high school students above those enrollments. Assuming that existing facilities cannot sufficiently accommodate this increase and that all of the new students would require new school facilities, build out of the General Plan would result in the need for approximately 37 elementary schools, 8 middle schools, and 7 high schools beyond 1994/1995 levels. This would result in a significant impact on schools in that it would exceed current capacity. By statute, this impact is considered to be mitigated below a level of significance by payment of school impact fees and exercise of any or all of the financing options set out in Government Code Section 65997.

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

The MEIR did not identify any new mitigation measures. Mitigation relies upon the implementation of the policies in place under the Modesto Urban Area General Plan.). As long as all anticipated subsequent projects apply these policies, no new mitigation is necessary. Further, payment of school impact fees and compliance with SB 50 is statutorily deemed to be full mitigation of school impacts (Government Code Section 65995). The proposed additional school policy will address the situation that would arise should AB 50 be repealed. It will authorize impact fees or other methods to finance additional school facilities.

The following schools mitigation measure(s) are pertinent to the project being analyzed in this Initial Study. See pages V-12-4 through V-12-7 of the MEIR. All feasible measures appropriate to the project will be incorporated into or made conditions of approval of this project. Those measures will be listed in Section V, Mitigation Applied to Project:

Discussion:

There are no mitigation measures applicable to this project.

c. Project-Specific Effects

Section V-12.B of the MEIR provides analysis of Schools impacts of development of the General Plan, the following is an analysis of whether the proposed project would result in a new, significant, project -specific effect not previously analyzed in the MEIR.

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

YES NO

(1) The project is inconsistent with the Modesto Urban Area General Plan. ☐ ☒

(2) The project does not comply with SB 50/Proposition 1A funding provisions, or succeeding measures which provide that compliance results in less-than-
significant impacts on schools.

Discussion:

(1) The proposed project is consistent with the Urban Area General Plan, and is a proposal to rezone from R-3, Medium-High Density Residential to P-O, Professional Office. Development of the site is not currently planned.

13. INCREASED DEMAND FOR POLICE SERVICES

a. Significant Effects Identified in the Master EIR

The MEIR identified the following significant environmental impacts relative to police services:

Effect: The 1995 MEIR identified two impacts on the demand for police services; however, it concluded that no significant impact, based on the mitigation measures identified in the 1995 Master EIR, would occur. Those mitigation measures are now policies of the Urban Area General Plan. The impact is less than significant.

Effect: Within the Planned Urbanizing Area, complying with the Urban Area General Plan policies, particularly the policy that requires a long-range financing strategy for each Comprehensive Plan Area, will allow the City to provide the resources necessary to extend service to the newly growing Planned Urbanizing areas. These policies reduce the impact to a less-than-significant level.

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

Police Services mitigation measure(s) pertinent to the project being analyzed in this Initial Study are found on pages V-13-3 and V-13-4 MEIR. All feasible measures appropriate to the project to be incorporated into or made conditions of approval of this project are listed in Section IV, Mitigation Measures Applied to Project:

Discussion:

There are no mitigation measures applicable to this project.

c. Project-Specific Effects

Section V-13.B of the MEIR provides analysis of police services impacts of development of the General Plan, the following is an analysis of whether the proposed project would result in a new, significant, project-specific effect not previously analyzed in the MEIR.

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

(1) The project is inconsistent with the Modesto Urban Area General Plan.

(2) The project would result in the need for construction of new or significantly altered facilities which could cause new significant environmental impacts in order to maintain acceptable service ratios, response times or other performance objectives.

Discussion:
(1) The proposed project is consistent with the Urban Area General Plan, and is a proposal to rezone from R-3, Medium-High Density Residential to P-O, Professional Office. Development of the site is not currently planned.

14. INCREASED DEMAND FOR FIRE SERVICES

a. Significant Effects Identified in the Master EIR

The MEIR identified the following significant environmental impacts relative to fire services:

Effect: The Baseline Developed Area and Redevelopment Area are already developed. Impacts on fire services of development in these areas will be less than significant.

Effect: In the Planned Urbanizing Area, the Urban Area General Plan would result in the need for additional fire protection services due to increases in the number of employees, permanent population, and associated improvements. City policy requires that fire protection be in place concurrent with construction in the Planned Urbanizing Area. This policy will be implemented with the adoption of future Comprehensive Plans in the Planned Urbanizing Area. This impact would be less than significant.

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

The MEIR did not identify any new mitigation measures. Mitigation relies upon the implementation of the policies in place under the Modesto Urban Area General Plan. These are identified and described in the list of policies in place and MEIR mitigation measures attached to the Initial Study template.

Fire Services mitigation measure(s) pertinent to the project being analyzed in this Initial Study are found on pages V-14-3 through V-14-5 MEIR. No mitigation measures were required as a result of the North Beyer Park Specific Plan MND. All feasible measures appropriate to the project to be incorporated into or made conditions of approval of this project are listed in Section IV, Mitigation Measures Applied to Project:

Discussion:

No mitigation measures are applicable to this project.

c. Project-Specific Effects

Section V-14.B of the MEIR provides analysis of fire services impacts of development of the General Plan, the following is an analysis of whether the proposed project would result in a new, significant, project-specific effect not previously analyzed in the MEIR.

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

1. The project is inconsistent with the Modesto Urban Area General Plan.
2. The project would result in the need for construction of new or significantly altered facilities which could cause new significant environmental impacts in order to maintain acceptable service ratios, response times or other performance objectives.
Discussion:

(1) The proposed project is consistent with the Urban Area General Plan, and is a proposal to rezone from R-3, Medium-High Density Residential to P-O, Professional Office. Development of the site is not currently planned.

15. GENERATION OF SOLID WASTE

a. Significant Effects Identified in the Master EIR

The MEIR identified the following significant environmental impacts relative to solid waste:

Effect: It is projected that by 2025, the City will have generated and disposed of 1.5 million tons of solid waste in a landfill. Stanislaus County and its other cities are projected to generate another 3.3 million tons by 2025, for a total of 4.8 million tons requiring disposal. This total takes into consideration current diversion rates and use of the Stanislaus Resource Recovery Facility (SRRF) waste-to-energy facility for the majority of solid waste that is not source reduced, recycled, or composted. At the current loading rate, the Fink Road Landfill has a remaining life of 41 years. This landfill’s remaining capacity of 6 million tons can accommodate the projected cumulative total of 4.8 million tons, and some of this total may go to other landfills. Since continued development under the Urban Area General Plan would not exceed the existing landfill capacity, and a 129-acre future expansion of the landfill has been approved, the General Plan’s potential impact on solid waste disposal is considered less than significant.

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

Solid Waste Mitigation Measure(s) pertinent to the project being analyzed in this Initial Study are found on pages V-15-5 and V-15-6 MEIR. No mitigation measures were required as a result of the North Beyer Park Specific Plan MND. All feasible measures appropriate to the project to be incorporated into or made conditions of approval of this project are listed in Section IV, Mitigation Applied to Project:

Discussion:

No mitigation measures are applicable to this project.

c. Project-Specific Effects

Section V-15.B of the MEIR provides analysis of solid waste impacts of development of the General Plan, the following is an analysis of whether the proposed project would result in a new, significant, project-specific effect not previously analyzed in the MEIR.

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

YES NO

|   1) The project is inconsistent with the Modesto Urban Area General Plan. |
|-----------------------------|---|
|  (            )           | X |

|   2) The County is unable to expand its solid waste disposal capacity and the project would result in waste stream levels that exceed disposal capacity. |
|-----------------------------|---|
|  (            )           | X |

Discussion:
(1) The proposed project is consistent with the Urban Area General Plan, and is a proposal to rezone from R-3, Medium-High Density Residential to P-O, Professional Office. Development of the site is not currently planned.

(2) The proposed project was referred to the City's Solid Waste Division and the County for review, and there was no indication of a problem in serving the project.

16. GENERATION OF HAZARDOUS MATERIALS

a. Significant Effects Identified in the Master EIR

The MEIR identified the following significant environmental impacts relative to hazardous materials:

Effect: The impacts of the project relative to hazardous materials are less than significant, based on the existing regulatory framework. New development will be required to comply with regulations monitoring and controlling the handling and use of hazardous and toxic materials.

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

The MEIR did not identify any new mitigation measures. Mitigation relies upon the implementation of the policies in place under federal, state and county policies and regulations, and the Modesto Urban Area General Plan. These are identified and described in the list of policies in place and MEIR mitigation measures attached to the Initial Study template.

Hazardous Materials Mitigation Measure(s) pertinent to the project being analyzed in this Initial Study are found on pages V-16-9 through V-16-12 MEIR. No mitigation measures were required as a result of the North Beyer Park Specific Plan MND. All feasible measures appropriate to the project to be incorporated into or made conditions of approval of this project are listed in Section IV, Mitigation Measures Applied to Project:

Discussion:

No mitigation measures are applicable to this project.

c. Project-Specific Effects

Section V-16.B of the MEIR provides analysis of hazardous materials impacts of development of the General Plan, the following is an analysis of whether the proposed project would result in a new, significant, project-specific effect not previously analyzed in the MEIR.

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

YES  NO

(1) The project is inconsistent with the Modesto Urban Area General Plan.

(2) The proposed project would emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school.

(3) The proposed project would be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section
65962.5 and, as a result, would create a significant hazard to the public or the environment.

(4) The proposed project would be constructed on a contaminated site not known to the State of California as of March 2008.

Discussion:

(1) The proposed project is consistent with the Urban Area General Plan, and is a proposal to rezone from R-3, Medium-High Density Residential to P-O, Professional Office. Development of the site is not currently planned.

(2) The proposed project would not emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school.

(3) The project would not be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5.

(4) The project site is not known to contain any contaminants.

17. GEOLOGY, SOILS, AND MINERAL RESOURCES

a. Significant Effects Identified in the Master EIR

The MEIR identified the following significant environmental impacts relative to landslides and seismic activity:

Effect: There are areas of known sand and gravel resources within the Baseline Developed Area and Redevelopment Area. Future development will be subject to SMARA requirements, therefore, the project impact will be less than significant.

Effect: There are areas of known sand and gravel resources within the Planned Urbanizing Area. Future development will be subject to SMARA requirements, therefore, the project impact will be less than significant.

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

The MEIR did not identify any new mitigation measures. Mitigation relies upon the implementation of the policies in place under the Modesto Urban Area General Plan. These are identified and described in the list of policies in place and MEIR mitigation measures attached to the Initial Study template.

Landslide and Seismic Activity Mitigation Measure(s) pertinent to the project being analyzed in this Initial Study are found on pages V-17-6 and V-17-7 of the MEIR. All feasible measures appropriate to the project to be incorporated into or made conditions of approval of this project are listed in Section V, Mitigation Measures Applied to Project:

Discussion:

No mitigation measures are applicable to this project.
c. Project-Specific Effects

Section V-17.B of the MEIR provides analysis of landslides and seismic impacts of development of the General Plan, the following is an analysis of whether the proposed project would result in a new, significant, project-specific effect not previously analyzed in the MEIR.

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

1. The project is inconsistent with the Modesto Urban Area General Plan.
2. The project would be located on soil that is unstable, or that would become unstable as a result of the project, and potentially result in on or off-site landslide, lateral spreading, subsidence, liquefaction or collapse.

Discussion:

1. The proposed project is consistent with the Urban Area General Plan, and is a proposal to rezone from R-3, Medium-High Density Residential to P-O, Professional Office. Development of the site is not currently planned.

2. The project would not be located on soil that is unstable, or that would become unstable as a result of the project.

18. ENERGY

a. Significant Effects Identified in the Master EIR

The MEIR identified the following significant environmental impacts relative to energy:

Effect: The Baseline Developed Area and Redevelopment Area are already developed. New development within the Redevelopment Area will comply with Title 24 standards as well as City Urban Area General Plan policies. Impacts on energy by development in these areas (i.e., changes in levels of use above the current baseline) will be less than significant.

Effect: Build out under the Urban Area General Plan will utilize an estimated 1,400 million cubic feet per month of natural gas, 1,300 million kilowatt hours (kwh) of electricity per year and 650,000 gallons of gasoline per day. PG&E has indicated that they have at the current time sufficient supplies of natural gas to serve the increased natural gas demands of the project. At present, gasoline supplies are apparently sufficient to serve the gasoline demands of the project. Title 24 of the California Code of Regulation, which ensures that the project will not exceed local, state, and federal energy standards. The impact is less than significant.

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

The following energy mitigation measure(s) are pertinent to the project being analyzed in this Initial Study. See page V-18-3 of the MEIR. All feasible measures appropriate to the project will be incorporated into or made conditions of approval of this project. Those measures will be listed in Section V, Mitigation Applied to Project:

Discussion:

No mitigation measures are applicable to this project.
c. Project-Specific Effects

Section V-18.B of the MEIR provides analysis of energy impacts of development of the General Plan, the following is an analysis of whether the proposed project would result in a new, significant, project-specific effect not previously analyzed in the MEIR.

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

(1) The proposed project is inconsistent with policies relating to visual resources in the Urban Area General Plan. YES NO

Discussion:

The proposed project is consistent with the Urban Area General Plan, and is a proposal to rezone from R-3, Medium-High Density Residential to P-O, Professional Office. Development of the site is not currently planned.

19. EFFECTS ON VISUAL RESOURCES

a. Significant Effects Identified in the Master EIR

The MEIR discloses the following residual significant and unavoidable impacts on visual resources expected after application of mitigations/policies:

Effect: New development in the Planned Urbanizing Area will occur in areas that are in agricultural production or are otherwise lightly developed, which could lead to the introduction of light and glare in areas that have little nighttime illumination.

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

The following visual resources mitigation measures pertinent to the proposed project are found on pages V-19-3 and V-19-4 in the MEIR. All mitigation measures appropriate to the proposed project will be incorporated into or made conditions of approval of this project. Those measures will be listed in Section V, Mitigation Applied to Project.

Discussion:

No mitigation measures are applicable to this project.

c. Project-Specific Effects

Section V-18.B of the MEIR discloses impacts of implementing the Urban Area General Plan on energy resources. The following is an analysis of whether the proposed project would result in a new, significant, project-specific effect not disclosed in the MEIR.

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

(1) The proposed project is inconsistent with policies relating to visual resources in the Urban Area General Plan. YES NO

(2) The proposed project would degrade views from riverside areas and parks to a greater degree than assumed in the Urban Area General Plan.
(3) The proposed project would degrade views of riverside areas from public roadways and nearby properties to a greater degree than assumed in the Urban Area General Plan.

Discussion:
The proposed project is consistent with the Urban Area General Plan, and is a proposal to rezone from R-3, Medium-High Density Residential to P-O, Professional Office. Development of the site is not currently planned.

20. LAND USE AND PLANNING

a. Significant Effects Identified in the Master EIR
The MEIR discloses the following residual significant and unavoidable impacts pertaining to land use and planning expected after application of mitigations/policies:

Effect: No residual significant direct or cumulative impacts were disclosed in the MEIR.

b. Master EIR and/or New Mitigation Measures Applied to the Project
The following land use and planning mitigation measures pertinent to the proposed project are found on pages V-20-6 through V-20-17 in the MEIR. All mitigation measures appropriate to the project will be incorporated into or made conditions of approval of this project. Those measures will be listed in Section V, Mitigation Applied to Project.

Discussion:
No mitigation measures are applicable to this project.

c. Project-Specific Effects
Section V-20.B of the MEIR discloses impacts of implementing the Urban Area General Plan on land use and planning. The following is an analysis of whether the proposed project would result in a new, significant, project-specific effect not disclosed in the MEIR.

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

1. The proposed project is inconsistent with land use and planning policies in the Urban Area General Plan.

2. The proposed project would physically divide an established community in a way not assumed in the Urban Area General Plan.

3. The proposed project conflicts with a land use plan, policy or regulation established for the purpose of avoiding or mitigating an environmental impact by an agency that has jurisdiction over the proposed project.

4. The proposed project conflicts with an applicable habitat conservation plan or natural community conservation plan.
Discussion:

(1) The proposed project is consistent with the Urban Area General Plan, and is a proposal to rezone from R-3, Medium-High Density Residential to P-O, Professional Office. Development of the site is not currently planned.

(2) The project is infill development which will not divide an established community.

(3) The proposed project does not represent a conflict with any land use plan, policy or regulation established for the purpose of avoiding or mitigating an environmental impact by an agency that has jurisdiction over the proposed project.

(4) The proposed project is not subject to any habitat conservation plan or natural community conservation plan.

21. CLIMATE CHANGE

a. Significant Effects Identified in the Master EIR

The MEIR discloses the following residual significant and unavoidable impacts pertaining to climate change expected after application of mitigations/policies:

Direct Impacts

Effect: Impacts resulting from implementation of the Urban Area General Plan are not substantial enough to result in a significant direct impact on climate change, as disclosed in the MEIR.

Cumulative Impacts

Effect: Implementation of the Urban Area General Plan will have a cumulatively considerable impact on climate change.

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

The following climate change mitigation measures pertinent to the proposed project are found on pages V-21-7 through V-21-10 in the MEIR. All mitigation measures appropriate to the project will be incorporated into or made conditions of approval of this project. Those measures will be listed in Section V, Mitigation Applied to Project.

Discussion:

No mitigation measures are applicable to this project.

c. Project-Specific Effects

Section V-18.B of the MEIR discloses impacts of implementing the Urban Area General Plan on climate change. The following is an analysis of whether the proposed project would result in a new, significant, project-specific effect not disclosed in the MEIR.

Significance Criteria: Determination of project effects will be based on the following thresholds. The project-specific effects will be less than significant unless:
1. The proposed project is inconsistent with policies relating to climate change in the Urban Area General Plan. 

2. The proposed project would result in average automobile trip lengths or CO2 emissions higher than those assumed in the MEIR.

3. The proposed project would conflict with the Sustainable Communities Strategy that the Air Resources Board has agreed will achieve the goals of AB 32.

Discussion:
The proposed project is consistent with the Urban Area General Plan, and is a proposal to rezone from R-3, Medium-High Density Residential to P-O, Professional Office. Development of the site is not currently planned.

V. MITIGATION MEASURES APPLIED TO THE PROJECT

If the Initial Study results in a determination that a Finding of Conformance can be adopted for the proposed project, Section A below applies. If the Initial Study results in a determination that a Finding of Conformance cannot be adopted and a Mitigated Negative Declaration/EIR must be prepared for the project, Section B below applies.

A. Master EIR Mitigation Measures Applied to the Project

Pursuant to CEQA Section 21157.1(c), in order for a Finding of Conformance to be made, all feasible measures from the MEIR appropriate to the project shall be incorporated into the project. The following adopted General Plan Policies and MEIR Mitigation Measures shall be made part of the project prior to approval by means of conditions of project approval or incorporation into the appropriate document or plan:

All applicable and appropriate mitigation measures have been applied to the project (see mitigation measures listed below).

Traffic and Circulation:
None

Degradation of Air Quality:
None

Generation of Noise:
None

Effects on Agricultural Lands:
None

Increased Demand for Long-Term Water Supplies:
None
Increased Demand for Sanitary Sewer Services:
None

Loss of Sensitive Wildlife and Plant Habitat:
None

Disturbance of Archaeological/Historic Sites:
None

Increased Demand for Storm Drainage:
None

Flooding and Water Quality:
None

Increased Demand for Parks and Open Space:
None

Increased Demand for Schools:
None

Increased Demand for Police Services:
None

Increased Demand for Fire Services:
None

Generation of Solid Waste:
None

Generation of Hazardous Materials:
None

Geology, Soils, and Mineral Resources:
None

Energy:
None

Effects on Visual Resources:
None

Land Use and Planning:
None

**Climate Change:**

None
MODESTO CITY COUNCIL
RESOLUTION NO. 2009-115

A RESOLUTION FINDING THAT THE FOLLOWING PROJECT IS WITHIN
THE SCOPE OF THE PROJECT COVERED BY THE MODESTO URBAN
AREA GENERAL PLAN MASTER ENVIRONMENTAL IMPACT REPORT
(SCH NO. 2007072023): AMENDING SECTION 23-3-9 OF THE ZONING MAP
TO REZONE FROM LOW DENSITY RESIDENTIAL ZONE, R-1, TO
PROFESSIONAL OFFICE ZONE, P-O, PROPERTY LOCATED AT 2220 E.
ORANGEBURG AVENUE. (TRINITY VENTURES, LLC)

WHEREAS, on October 14, 2008, the City Council of the City of Modesto
certified the Final Master Environmental Impact Report (“Master EIR”) (SCH No.
2007072023) for the Modesto Urban Area General Plan, and

WHEREAS, Trinity Ventures, LLC has proposed that the zoning designation for
the property located on the south side of E. Orangeburg Avenue east of Oakdale Road, be
amended to rezone from Low Density Residential Zone, (R-1), to Professional Office
Zone, (P-O), and

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

WHEREAS, the City’s Community & Economic Development Department by
Environmental Assessment Initial Study EACED 2009-02 (“Initial Study”) reviewed
the proposed rezone from Low Density Residential Zone, R-1 to Professional Office
Zone, P-O to determine whether the project is within the scope of the project covered by
the Modesto Urban Area General Plan Master EIR (“Master EIR”), and concluded that
the proposed project is within the scope of the Master EIR and will have no additional significant effect on the environment that was not identified in the Master EIR, and further, that no new additional mitigation measures or alternatives are required, and that, therefore, the proposed project is within the scope of the project covered by the Master EIR, and

WHEREAS, in accordance with CEQA guidelines beginning on February 18, 2009 the City caused to be published a 20-day notice of the City's intent to make a finding that the proposed project conforms with the Master EIR, and

WHEREAS, said matter was considered by the City Council at a duly noticed public hearing which was held on March 10, 2009, at 5:30 p.m., in the Tenth Street Place Chambers located at 1010 Tenth Street, Modesto, California,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the Council has reviewed and considered the Initial Study prepared for the proposed rezoning from Low Density Residential Zone, R-1 to Professional Office Zone, P-O, a copy of which is attached hereto as Exhibit "A", and incorporated herein by reference, and based on the substantial evidence included in said Initial Study makes the following findings:

1. That the proposed project is contemplated and described in the Master EIR (SCH No. 2007072023) as being within the scope of the Master EIR.

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

3. That, as per Section 21157.1 of the Public Resources Code, no new environmental document or findings are required by the California Environmental Quality Act (CEQA).
4. That there are no specific features which are unique to the proposed project that require project specific mitigation measures. Accordingly, the certified mitigation measures identified in the Master EIR will be sufficient for this project.

5. That all feasible mitigation measures set forth in the Master EIR which are appropriate to the project shall be incorporated in the project.

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

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 10th day of March, 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

ATTEND:

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney
EXHIBIT A

Initial Study

EA/C&ED 2009-02
Finding of Conformance to General Plan Master EIR:

Initial Study Environmental Checklist
C&ED No. 2009-02

For the proposed:

P-RZN-08-002
Rezone R-1 to P-O

Oakdale Road & E. Orangeburg Avenue
APN: 067-029-057

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

December 30, 2008
City of Modesto  
Master EIR Initial Study Environmental Checklist

I. PURPOSE

CEQA allows for the limited environmental review of subsequent projects under the City's Master Environmental Impact Report ("Master EIR" or "MEIR"). This Initial Study Environmental Checklist ("Initial Study") is used in determining whether RZN-08-002, Rezone R-1 to P-O is "within the scope" of the project analyzed in the Modesto Urban Area General Plan Master EIR (SCH# 2007072023) (Public Resources Code section 21157.1). When the Initial Study supports this conclusion, the City will issue a finding of conformance.

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

1. it will have no additional significant effects on the environment that were not addressed as significant effects in the Master EIR; and
2. no new or additional mitigation measures or alternatives are required.

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

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

II. PROJECT DESCRIPTION

A. Title: RZN-08-002, Rezone R-1 to P-O

B. Address or Location: South Side of E. Orangeburg Avenue East of Oakdale Road, Modesto, CA 95355

C. Applicant: Trinity Ventures, LLC

D. City Contact Person: Rita Doscher, Associate Planner

   Project Manager: Rita Doscher, Associate Planner
   Department: Community and Economic Development Department
   Phone Number: 209-577-5267
   E-mail address: rdoscher@modestogov.com

E. Current General Plan Designation(s): MU, Mixed Use

F. Current Zoning Classification(s): R-1, Low Density Residential

G. Surrounding Land Uses:
   North: P-D(127) Century Center Shopping Center with C-2 uses
   South: Single-Family Residential
H. Project Description, including the project type listed in Section II.C (Anticipated Future Projects) of the Master EIR:

The applicant proposes to convert the undeveloped 1.475 acre low density residential (R-1) zoned lot into a future professional-office (P-O) zone. The applicant has indicated that development of the parcel is not currently planned; however, any future development would require subsequent staff level approval through the Development Plan Review process.

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

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

   A. The proposed project is of a type described in Chapter II of the Master EIR.

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

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

   D. Based on the Initial Study, the City of Modesto finds and determines:
      a) The proposed subsequent project will have no additional significant effect as defined in CEQA Section 21158 that was not identified in the MEIR.
      b) No new or additional mitigation measures or alternatives are required.

   E. The criteria for currency of the Master EIR were reviewed (section 5 below) and it was determined that the Master EIR is current for all areas of the Initial Study.

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

   A. The proposed project is of a type described in Chapter II of the Master EIR.
B. All applicable policies, regulations, and mitigation measures identified in the Master EIR have been applied to the project or otherwise made conditions of approval of the project.

C. The project will have one or more potential new significant effects on the environment that were not addressed as significant effects in the Master EIR. New or additional mitigation measures are being required of the project that will reduce the effects to a less-than-significant level.

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

A. The proposed project is of a type described in Chapter II of the Master EIR.

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

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

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**Original Signed copy on File in CEDD**  
Project Manager  
Associate Planner  
Title  
Date  
December 30, 2008
4. Within the Scope Analysis of this Document:
The MEIR permits projects to be found within the scope of the MEIR if certain criteria are met. If
the following statements are found to be true for all 21 impact categories included in this Initial
Study, then the proposed project is addressed by the MEIR analysis and is within the scope of the
MEIR. Any "No" response must be discussed.

(1) The lead agency for subsequent projects shall be the City of Modesto or a
responsible agency identified in the MEIR. ☑ ☐

(2) City policies which reduce, avoid, or mitigate environmental effects will continue to
be in effect and therefore would be applied to subsequent projects where
appropriate. The policies are described in the list of policies in place and mitigation
measures attached to the Initial Study template. ☑ ☐

(3) Federal, State, regional, and Stanislaus County regulations do not change in a
manner that is less restrictive on development than current law (that is, would not
offer the same level of protection assumed under the MEIR). ☑ ☐

(4) No specific information concerning the known or potential presence of significant
resources is identified in future reports, or through formal or informal input received
from responsible or trustee agencies or other qualified sources. ☑ ☐

(5) The development will occur within the boundaries of the City's planning area as
established in this Urban Area General Plan. ☑ ☐

(6) Development within the project will comply with all appropriate mitigation measures
contained and enumerated in the General Plan MEIR. ☑ ☐

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

(1) Certification of the General Plan MEIR occurred less than five years prior to the filing
of the application for this subsequent project. ☑ ☐

(2) This project is described in the MEIR and its approval will not affect the adequacy of
the MEIR for any subsequent project because the City can make the following
findings:

(a) No substantial changes have occurred with respect to the circumstances under which
the MEIR was certified. ☑ ☐

(b) No new information, which was not known and could not have been known at the
time the MEIR was certified as complete, has become available. ☑ ☐

(c) Policies remain in place that require site-specific mitigation, and avoidance or other
mitigation of impacts as a prerequisite to future development. ☑ ☐
IV. ENVIRONMENTAL ANALYSIS

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

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

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

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

1. TRAFFIC AND CIRCULATION

a. Significant Effects Identified in the Master EIR

The MEIR identified the following significant and unavoidable traffic and circulation impacts:

Effect: Increased traffic will result in certain roadway segments operating at LOS D or worse.

Effect: The substantial increase in traffic relative to the existing load and capacity of the street system will cause, violation, either individually or cumulatively, of an LOS standard established by the County CMP for designated roads and highways.

Effect: Creation of need for Capacity-enhancing modifications to existing facilities.

Effect: Increase in energy consumption associated with the operation of highway projects, rail improvements, and aviation facilities.

Effect: Severe contrast with existing neighborhood or area character caused by highway and transit projects.

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

Traffic and Circulation mitigation measures that are pertinent to this project are found on MEIR pages V-1-15 through V-1-21. All feasible measures appropriate to the project – including any new measures - will be incorporated into or made conditions of approval of this project and will be listed in Section V, Mitigation Measures Applied to Project.

Discussion: No new or additional mitigation measures or alternatives are required.
c. Project-Specific Effects

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

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

1. The project exceeds the MEIR's traffic generation assumptions for this site and City Engineering and Transportation staff has determined that the project would have additional project-specific effects that are not avoided or reduced by the MEIR's program of mitigation measures.
2. Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g. farm equipment).
3. Result in inadequate emergency access.
4. Result in inadequate parking capacity.

**Discussion:**

1. The proposed project is consistent with the Urban Area General Plan, and is a proposal to rezone from R-1, Low Density Residential to P-O, Professional Office. Development of the site is not currently planned.

2. **DEGRADATION OF AIR QUALITY**

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

The MEIR identified the following significant environmental impacts relative to air quality:

**Effect:** Projected traffic levels will result in increased ambient carbon monoxide (CO) levels in the project area. This is a significant and unavoidable impact.

**Effect:** Projected traffic levels will result in increased ROG and NOX levels in the project area. This is a significant and unavoidable impact.

These are also cumulative impacts on air quality.

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

Air Quality mitigation measure(s) pertinent to the project being analyzed in this Initial Study are found on pages V-2-11 through V-2-18 of the MEIR. All feasible measures appropriate to the project will be incorporated into or made conditions of approval of this project and are listed in Section V, Mitigation Measures Applied to Project:

**Discussion:**

The appropriate mitigation to be applied to this project includes AQ-17 from the MEIR, and no new or additional mitigation measures or alternatives are required.
c. Project-Specific Effects

Section V-2.B of the MEIR provides analysis of Air Quality impacts of development of the General Plan, the following is an analysis of whether the proposed project would result in a new, significant, project-specific effect not previously analyzed in the MEIR.

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

1. The project exceeds the emissions thresholds established for CO and NOx by the San Joaquin Valley Unified Air Pollution Control District’s (SJVUAPCD) adopted CEQA Guidelines.
   - YES ☐ NO ☒

2. The project does not incorporate the best management practices for reduction established by the SJVUAPCD.
   - PM10 YES ☐ NO ☒

3. The project does not comply with the air quality policies of the Modesto Urban Area General Plan.
   - YES ☐ NO ☒

4. The project would expose sensitive receptors to substantial pollutant concentrations.
   - YES ☐ NO ☒

5. The proposed project would create objectionable odors affecting a substantial number of people.
   - YES ☐ NO ☒

Discussion:

1. The proposed project is consistent with the Urban Area General Plan, and is a proposal to rezone from R-1, Low Density Residential to P-O, Professional Office. Development of the site is not currently planned.

3. GENERATION OF NOISE

a. Significant Effects Identified in the Master EIR

The MEIR identified the following significant and unavoidable environmental impacts relative to noise:

Effect: Traffic noise levels for future conditions in the plan area have the potential to result in exceedances of the City’s Noise Significance Standards (see Table 3-3 of the MEIR).

Effect: Noise level projections based on the traffic levels anticipated in the General Plan indicate that noise will exceed the City’s General Plan and noise ordinance standards.

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

Noise policies and mitigation measures pertinent to the project being analyzed in this Initial Study are found on pages V-3-10 through V-3-15 of the MEIR. All feasible measures appropriate to the project will be incorporated into or made conditions of approval of this project, and any new measures are listed in Section V, Mitigation Applied to Project:

Discussion:
The appropriate mitigation to be applied to this project includes N-4, N-5, N-6, and N-9 from the MEIR, and no new or additional mitigation measures or alternatives are required.

c. Project-Specific Effects

Section V-3.B of the MEIR provides analysis of noise impacts of development of the General Plan, the following is an analysis of whether the proposed project would result in a new, significant, project-specific effect not previously analyzed in the MEIR.

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

1. The project will exceed the standards for noise level and hours of operation established by the Modesto noise ordinance.
2. The project will exceed the noise policies of or otherwise be inconsistent with the Modesto Urban Area General Plan.
3. The project will result in a substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project.
4. The project will result in a substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project.

Discussion:

1. The proposed project is consistent with the Urban Area General Plan, and is a proposal to rezone from R-1, Low Density Residential to P-O, Professional Office. Development of the site is not currently planned.

4. EFFECTS ON AGRICULTURAL LANDS

a. Significant Effects Identified in the Master EIR

The MEIR identified the following significant environmental impacts relative to agricultural lands:

Effect: Development within the urbanized Baseline Developed Area and Redevelopment Area will have a less-than-significant impact on agricultural lands.

Effect: Conversion of agricultural land will occur as available developable land is occupied within the City. This is a significant and unavoidable impact.

Effect: Growth within Modesto's planning area would contribute considerably to the loss of agricultural land within Stanislaus County. This is a significant and unavoidable cumulative impact.

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

Agricultural Land mitigation measure(s) pertinent to the project being analyzed in this Initial Study are found on pages V-4-7 and V-4-8 of the MEIR. All feasible measures appropriate to the project and any new mitigation to be incorporated into or made conditions of approval of this project are listed in Section V, Mitigation Applied to Project:

Discussion:
The site is not zoned for agriculture or designated on the General Plan for future agricultural use. The proposed project will not affect areas zoned for agriculture or designated on the General Plan for future agricultural use. The project is an infill development and the surrounding properties are located within a fully developed urbanized area.

c. Project-Specific Effects

Section V-4.B of the MEIR provides analysis of Agricultural Lands impacts of development of the General Plan, the following is an analysis of whether the proposed project would result in a new, significant, project-specific effect not previously analyzed in the MEIR.

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

1. The project is inconsistent with the Modesto Urban Area General Plan.
2. The project will directly result in the development of land outside the March 2003 planning area boundaries.
3. The project will Conflict with existing zoning for agricultural use, or a Williamson Act contract.
4. The project will Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use.

Discussion:

(1) The proposed project is consistent with the Urban Area General Plan, and is a proposal to rezone from R-1, Low Density Residential to P-O, Professional Office. Development of the site is not currently planned.

5. INCREASED DEMAND FOR LONG-TERM WATER SUPPLIES

a. Significant Effects Identified in the Master EIR

The MEIR identified the following significant environmental impacts relative to water supply:

Effect: Urban Area General Plan policies are established to limit groundwater extractions to the safe yield of the aquifer and thereby avoid aquifer over drafting. In addition, the UWMP requires that new urban development would proceed in conjunction with the availability of water supplies and distribution facilities. It is assumed that increased entitlement of surface water supplies such as a water transfer from another water purveyor would undergo independent environmental review pursuant to CEQA. This is a less-than-significant impact.

Effect: Development to the future projected City population would require expansion of the MRWTP to its full 60 mgd capacity, development of additional groundwater wells, and construction of additional water distribution and treatment facilities. Construction of some of the required facilities would most likely require site-specific environmental impact assessments to be conducted under CEQA. Consequently, the potential environmental impacts of the Urban Area General Plan are considered less than significant.
Effect: During drought years, despite available options, significant water shortages are forecast for the San Joaquin River basin by the year 2020. Modesto would make a cumulatively considerable contribution to the cumulative impact on water supply under drought conditions. This is a significant and unavoidable cumulative impact.

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

Water Supply mitigation measure(s) pertinent to the project being analyzed in this Initial Study are found on pages V-5-7 through V-5-8 of the MEIR. All feasible measures appropriate to the project to be incorporated into or made conditions of approval of this project are listed in Section V, Mitigation Measures Applied to Project:

Discussion:

There are no mitigation measures applicable to this project.

c. Project-Specific Effects

Section V-5.B of the MEIR provides analysis of Water Supply impacts of development of the General Plan, the following is an analysis of whether the proposed project would result in a new, significant, project-specific effect not previously analyzed in the MEIR.

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

(1) The project is inconsistent with the Modesto Urban Area General Plan. YES NO

(2) Sufficient water supplies are not available to serve the project from existing entitlements and resources, new or expanded entitlements are needed. YES NO

Discussion:

(1) The proposed project is consistent with the Urban Area General Plan, and is a proposal to rezone from R-1, Low Density Residential to P-O, Professional Office. Development of the site is not currently planned.

6. INCREASED DEMAND FOR SANITARY SEWER SERVICES

a. Significant Effects Identified in the Master EIR

The MEIR identified the following significant environmental impacts relative to sanitary sewer services:

Effect: The City has already begun to implement the provisions of the Wastewater Master Plan (WMP) to meet future demand for sanitary sewer services. As City wastewater treatment facilities are expanded to meet the needs of the Baseline Developed, Redevelopment, and Planned Urbanizing Areas, the City will obtain the necessary wastewater discharge and NPDES permits from the Central Valley RWQCB, as required under Urban Area General Plan Policy V-D.2(a). Implementing the WMP, requirement of Best Management Practices for post-construction activities, as well as the Urban Area General Plan policy cited above, will avoid violation of wastewater discharge requirements. As a result, this impact would be less than significant.
Effect: The City has adopted the WMP specifically to ensure that sewer capacity will match the level of growth projected by the Urban Area General Plan. Development within the Baseline Developed and the Planned Urbanizing Areas that is consistent with the Urban Area General Plan will not have a significant effect on capacity. Urban Area General Plan Policy III-D.1(d) will ensure that development in the Planned Urbanizing Area will fund the necessary improvements. This is a less-than-significant impact.

Note on the WMP MEIR. The WMP MEIR identified a number of impacts and mitigation measures. Its mitigation measures have been adopted by the City and are being implemented by the City under the WMP. Those impacts are being independently addressed under that MEIR and do not need to be considered under this Initial Study. Refer to the WMP MEIR for details.

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

Sewer Service mitigation measure(s) pertinent to the project being analyzed in this Initial Study are found on pages V-6-4 through V-6-7 of the MEIR. All feasible measures appropriate to the project to be incorporated into or made conditions of approval of this project are listed in Section V, Mitigation Measures Applied to Project:

Discussion:

There are no mitigation measures applicable to this project.

c. Project-Specific Effects

Section V-6.B of the MEIR provides analysis of Sanitary Sewer Service impacts of development of the General Plan, the following is an analysis of whether the proposed project would result in a new, significant, project-specific effect not previously analyzed in the MEIR.

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

(1) The project is inconsistent with the Modesto Urban Area General Plan. YES NO

(2) The project will result in a determination by the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the project’s projected demand in addition to the provider’s existing commitments. YES NO

Discussion:

(1) The proposed project is consistent with the Urban Area General Plan, and is a proposal to rezone from R-1, Low Density Residential to P-O, Professional Office. Development of the site is not currently planned.

7. LOSS OF SENSITIVE WILDLIFE AND PLANT HABITAT

a. Significant Effects Identified in the Master EIR

The MEIR identified the following significant environmental impacts relative to sensitive wildlife and plant habitat:

Effect: Although many sensitive species live in riparian habitats within the planning area, the policies of the plan will ensure that impacts of the Urban Area General Plan will be less than significant.
Effect: Requiring higher residential density than the suburban norm and a compact pattern of growth within the designated planning area to the year 2025 will minimize the City's contribution to the cumulative loss of habitat. Nonetheless, this is a significant and unavoidable impact.

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

Wildlife and Plant Habitat mitigation measure pertinent to the project being analyzed in this Initial Study are found on pages V-7-19 through V-7-21. All feasible measures appropriate to the project to be incorporated into or made conditions of approval of this project are listed in Section V, Mitigation Measures Applied to Project:

Discussion:

There are no mitigation measures applicable to this project regarding sensitive wildlife and plant habitat.

c. Project-Specific Effects

Section V-7.B of the MEIR provides analysis of Wildlife and Plant Habitat impacts of development of the General Plan, the following is an analysis of whether the proposed project would result in a new, significant, project-specific effect not previously analyzed in the MEIR.

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

YES NO

(1) The project is inconsistent with the Modesto Urban Area General Plan. □ ☒

(2) Consultation with the California Department of Fish and Game or the U.S. Fish and Wildlife Service determines that the project would have a significant effect on special status species. □ ☒

(3) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance. □ ☒

Discussion:

(1) The proposed project is consistent with the City of Modesto Urban Area General Plan, because the project site is located within a Regional Commercial area which accommodates the type of development proposed, and it does not represent an increase in intensity of use or development beyond that which is already allowed by the existing zoning of the site. The project is a proposal to rezone from R-1, Low Density Residential to P-O, Professional Office. Development of the site is not currently planned.

(2) The project site is located within the Baseline Developed Area of the City and is therefore completely surrounded by developed urban area. It is not a biologically sensitive site as defined by Figures V-7-1a through V-7-1e of the MEIR. The California Department of Fish and Game and the U.S. Fish and Wildlife Service were consulted in the production of the MEIR.

(3) There is no conflict with any local policies or ordinances protecting biological resources.
8. DISTURBANCE OF ARCHAEOLOGICAL/HISTORICAL SITES

a. Significant Effects Identified in the Master EIR

The MEIR identified the following significant environmental impacts relative to archaeological or historical sites:

Effect: If a site-specific project involves the modification or demolition of a qualifying structure more than 50 years in age, then the impact will be significant.

Effect: Areas of high probability for archaeological resources are located within the riparian corridors along the Tuolumne River, Dry Creek, and the Stanislaus River. There, the potential impact comes from earthmoving activities that could result in disturbance of resources or human remains. There is a low probability that archaeological resources will be uncovered in areas outside of the riparian corridors.

Effect: The City Zoning Ordinance requires that when substantial changes to a structure are proposed, the development will be required to comply with other Zoning Ordinance provisions such as parking or landscaping requirements. This could result in modifications to the structure, which substantially reduce its historical significance. This would be a less-than-significant impact with the imposition of new mitigation measure Cultural-1.

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

Archaeological or Historic mitigation measures pertinent to the project being analyzed in this Initial Study are found on page V-8-13 and V-8-14 of the MEIR. All feasible measures appropriate to the project to be incorporated into or made conditions of approval of this project are listed in Section V, Mitigation Applied to Project:

Discussion:

The appropriate mitigation to be applied to this project includes AH-9 and AH-10 from the MEIR, and no new or additional mitigation measures or alternatives are required.

c. Project-Specific Effects

Section V-8.B of the MEIR provides analysis of Archaeological/Historical impacts of development of the General Plan, the following is an analysis of whether the proposed project would result in a new, significant, project-specific effect not previously analyzed in the MEIR.

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

1. The project is inconsistent with the Modesto Urban Area General Plan.
2. The project would adversely affect a cultural resource that is either listed or eligible for listing in the California Register of Historical Resources, or that is listed by the City of Modesto as a Designated Landmark Preservation Site.

Discussion:
The proposed project is consistent with the Urban Area General Plan, and is a proposal to rezone from R-1, Low Density Residential to P-O, Professional Office. Development of the site is not currently planned.

The project would not adversely affect a cultural resource that is either listed or eligible for listing in the California Register of Historical Resources, or that is listed by the City of Modesto as a Designated Landmark Preservation Site.

9. **INCREASED DEMAND FOR STORM DRAINAGE**

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

The MEIR identified the following significant environmental impacts relative to storm drainage:

**Effect:** The potential impacts on storm water drainage that could occur from the project were qualitatively evaluated with respect to several factors including: extent of the projected increase in urban surface area compared to undeveloped ground; magnitude of projected changes to hydrologic and physical site characteristics of the study area compared to existing conditions; regulatory criteria and guidelines; and professional judgment. Because the Urban Area General Plan includes policies that require new development in all three sections of the planning area to install approved drainage facilities, the potential impacts of the Urban Area General Plan on storm water drainage are considered less than significant.

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

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

Storm Drainage mitigation measure(s) pertinent to the project being analyzed in this Initial Study are found on pages V-9-4 through V-9-8. All feasible measures appropriate to the project to be incorporated into or made conditions of approval of this project are listed in Section V, Mitigation Measures Applied to Project:

**Discussion:**

The appropriate mitigation to be applied to this project includes SD-7 from the MEIR, and no new or additional mitigation measures or alternatives are required.

**c. Project-Specific Effects**
Section V-9.B of the MEIR provides analysis of Storm Drainage impacts of development of the General Plan; the following is an analysis of whether the proposed project would result in a new, significant, project-specific effect not previously analyzed in the MEIR.

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

1. The project is inconsistent with the Modesto Urban Area General Plan.
2. The project would substantially increase the rate or amount of surface runoff in a manner that would result in flooding on- or offsite.
3. Create or contribute runoff water that would exceed the capacity of existing or planned storm water drainage systems or provide substantial additional sources of polluted runoff.

Discussion:
(1) The proposed project is consistent with the Urban Area General Plan, and is a proposal to rezone from R-1, Low Density Residential to P-O, Professional Office. Development of the site is not currently planned.

10. FLOODING AND WATER QUALITY

a. Significant Effects Identified in the Master EIR

The MEIR identified the following significant environmental impacts relative to flooding and water quality:

Effect: Increased runoff can accelerate soil erosion, stream channel scouring, and sedimentation of channels, and also increase pollutant transport to waterways. The potential impacts of the project on flooding are considered less than significant because the Urban Area General Plan Update includes policies to restrict development in the floodplain and therefore would avoid exposing persons and property to flood hazards. In addition, new development under the Urban Area General Plan is required to install storm water drainage facilities that restrict the amount of post-development runoff from exceeding pre-development conditions.

Effect: The potential impacts of the project on surface-water quality are considered less than significant because the City policies and capital improvement projects for storm water drainage facilities would minimize discharges of urban pollutants to natural waterways. The City drainage program policies require new development to prepare drainage plans and implement urban runoff control measures; larger Specific Plan developments must have storm drainage systems designed to control pollutant runoff. The City's implementation policies for the municipal NPDES storm water permit require new development to implement an appropriate selection of permanent pollution control measures. Permanent erosion control measures such as seeding and planting vegetation for new cut-and-fill slopes, directing runoff through vegetation, or otherwise reducing the offsite discharge of particulates and sediment are the most effective method of controlling offsite discharges of urban pollutants.

Effect: The City's future development will contribute to cumulative water quality effects. EPA regulations for NPDES storm water permits and new proposed regulatory additions to the rules have become much more comprehensive in recent years and are being implemented to reduce
pollutant runoff from both large- and small-scale activities. Implementation of NPDES-permitting programs throughout the county will reduce potential water-quality impacts to a less-than-significant level.

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

Flooding and Water Quality mitigation measure(s) pertinent to the project being analyzed in this Initial Study are found on pages V-10-7 through V-10-10 of the MEIR. All feasible measures appropriate to the project will be incorporated into or made conditions of approval of this project are listed in Section V, Mitigation Applied to Project:

Discussion:
The appropriate mitigation to be applied to this project includes FWQ-14 from the MEIR, and no new or additional mitigation measures or alternatives are required.

c. Project-Specific Effects

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

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

1. The project is inconsistent with the Modesto Urban Area General Plan. ☐ YES ☒ NO
2. The project does not comply with the regulatory requirements of the federal Clean Water Act or the State Porter-Cologne Act. ☐ ☒
3. The project does not comply with Modesto’s Guidance Manual for New Development Storm water Quality Control Measures. ☐ ☒
4. The project would create or contribute runoff water, which would exceed the capacity of existing or planned storm water drainage systems or provide substantial additional sources of polluted runoff. ☐ ☒

Discussion:
1. The proposed project is consistent with the Urban Area General Plan, and is a proposal to rezone from R-1, Low Density Residential to P-O, Professional Office. Development of the site is not currently planned.

11. INCREASED DEMAND FOR PARKS AND OPEN SPACE

a. Significant Effects Identified in the Master EIR

The MEIR identified the following significant environmental impacts relative to parks and open space:
Effect: Within the Baseline Developed and Redevelopment Areas, the Urban Area General Plan does not propose any elimination of existing park and/or open space land. Impacts on parks and open space will be less than significant.

Effect: The projected population of the Planned Urbanizing Area is 148,600, requiring 149 acres of neighborhood parks and 298 acres of community parks. The required minimum acreages can be met through the application of existing policies and regulations, including Government Code Section 66474, which require developers to pay Parks Capital Facilities Fees to fund the acquisition of appropriate parkland acreage. This impact is less than significant.

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

Parks and Open Space Mitigation Measure(s) pertinent to the project being analyzed in this Initial Study are found on pages V-11-4 through V-11-19 MEIR. All feasible measures appropriate to the project to be incorporated into or made conditions of approval of this project, are listed in Section IV, Mitigation Applied to Project:

Discussion:

There are no mitigation measures applicable to this project. It is not near any of the riparian area identified by Figures V-7-1a through V-7-1e of the MEIR.

c. Project-Specific Effects

Section V-11.B of the MEIR provides analysis of Parks and Recreation impacts of development of the General Plan, the following is an analysis of whether the proposed project would result in a new, significant, project-specific effect not previously analyzed in the MEIR.

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

(1) The project is inconsistent with the Modesto Urban Area General Plan. [ ] [X]

Discussion:

(1) The proposed project is consistent with the Urban Area General Plan, and is a proposal to rezone from R-1, Low Density Residential to P-O, Professional Office. Development of the site is not currently planned.

12. INCREASED DEMAND FOR SCHOOLS

a. Significant Effects Identified in the Master EIR

The MEIR identified the following significant environmental impacts relative to schools:

Effect: The estimated increase in population over 1994/1995 would generate an additional 29,200 elementary school students, 7,330 middle school students, and 14,640 high school students above those enrollments. Assuming that existing facilities cannot sufficiently accommodate this increase and that all of the new students would require new school facilities, build out of the General Plan would result in the need for approximately 37 elementary schools, 8 middle schools, and 7 high schools beyond 1994/1995 levels. This would result in a significant impact on schools in that it would exceed current capacity. By statute, this impact is
considered to be mitigated below a level of significance by payment of school impact fees and exercise of any or all of the financing options set out in Government Code Section 65997.

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

The MEIR did not identify any new mitigation measures. Mitigation relies upon the implementation of the policies in place under the Modesto Urban Area General Plan. Further, payment of school impact fees and compliance with SB 50 is statutorily deemed to be full mitigation of school impacts (Government Code Section 65995). The proposed additional school policy will address the situation that would arise should AB 50 be repealed. It will authorize impact fees or other methods to finance additional school facilities.

The following schools mitigation measure(s) are pertinent to the project being analyzed in this Initial Study. See pages V-12-4 through V-12-7 of the MEIR. All feasible measures appropriate to the project will be incorporated into or made conditions of approval of this project. Those measures will be listed in Section V, Mitigation Applied to Project:

Discussion:
There are no mitigation measures applicable to this project.

c. Project-Specific Effects

Section V-12.B of the MEIR provides analysis of Schools impacts of development of the General Plan, the following is an analysis of whether the proposed project would result in a new, significant, project-specific effect not previously analyzed in the MEIR.

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

(1) The project is inconsistent with the Modesto Urban Area General Plan. YES NO
(2) The project does not comply with SB 50/Proposition 1A funding provisions, or succeeding measures which provide that compliance results in less-than-significant impacts on schools.

Discussion:
(1) The proposed project is consistent with the Urban Area General Plan, and is a proposal to rezone from R-1, Low Density Residential to P-O, Professional Office. Development of the site is not currently planned.

13. INCREASED DEMAND FOR POLICE SERVICES

a. Significant Effects Identified in the Master EIR

The MEIR identified the following significant environmental impacts relative to police services:

Effect: The 1995 MEIR identified two impacts on the demand for police services; however, it concluded that no significant impact, based on the mitigation measures identified in the 1995 Master EIR, would occur. Those mitigation measures are now policies of the Urban Area General Plan. The impact is less than significant.
**Effect:** Within the Planned Urbanizing Area, complying with the Urban Area General Plan policies, particularly the policy that requires a long-range financing strategy for each Comprehensive Plan Area, will allow the City to provide the resources necessary to extend service to the newly growing Planned Urbanizing areas. These policies reduce the impact to a less-than-significant level.

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

Police Services mitigation measure(s) pertinent to the project being analyzed in this Initial Study are found on pages V-13-3 and V-13-4 MEIR. All feasible measures appropriate to the project to be incorporated into or made conditions of approval of this project are listed in Section IV, Mitigation Measures Applied to Project:

Discussion:

There are no mitigation measures applicable to this project.

**c. Project-Specific Effects**

Section V-13.B of the MEIR provides analysis of police services impacts of development of the General Plan, the following is an analysis of whether the proposed project would result in a new, significant, project-specific effect not previously analyzed in the MEIR.

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

1. The project is inconsistent with the Modesto Urban Area General Plan.
2. The project would result in the need for construction of new or significantly altered facilities which could cause new significant environmental impacts in order to maintain acceptable service ratios, response times or other performance objectives.

Discussion:

(1) The proposed project is consistent with the Urban Area General Plan, and is a proposal to rezone from R-1, Low Density Residential to P-O, Professional Office. Development of the site is not currently planned.

**14. INCREASED DEMAND FOR FIRE SERVICES**

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

The MEIR identified the following significant environmental impacts relative to fire services:

**Effect:** The Baseline Developed Area and Redevelopment Area are already developed. Impacts on fire services of development in these areas will be less than significant.
Effect: In the Planned Urbanizing Area, the Urban Area General Plan would result in the need for additional fire protection services due to increases in the number of employees, permanent population, and associated improvements. City policy requires that fire protection be in place concurrent with construction in the Planned Urbanizing Area. This policy will be implemented with the adoption of future Comprehensive Plans in the Planned Urbanizing Area. This impact would be less than significant.

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

The MEIR did not identify any new mitigation measures. Mitigation relies upon the implementation of the policies in place under the Modesto Urban Area General Plan. These are identified and described in the list of policies in place and MEIR mitigation measures attached to the Initial Study template.

Fire Services mitigation measure(s) pertinent to the project being analyzed in this Initial Study are found on pages V-14-3 through V-14-5 MEIR. No mitigation measures were required as a result of the North Beyer Park Specific Plan MND. All feasible measures appropriate to the project to be incorporated into or made conditions of approval of this project are listed in Section IV, Mitigation Measures Applied to Project:

Discussion:

No mitigation measures are applicable to this project.

c. Project-Specific Effects

Section V-14.B of the MEIR provides analysis of fire services impacts of development of the General Plan, the following is an analysis of whether the proposed project would result in a new, significant, project-specific effect not previously analyzed in the MEIR.

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

1. The project is inconsistent with the Modesto Urban Area General Plan.

2. The project would result in the need for construction of new or significantly altered facilities which could cause new significant environmental impacts in order to maintain acceptable service ratios, response times or other performance objectives.

Discussion:

(1) The proposed project is consistent with the Urban Area General Plan, and is a proposal to rezone from R-1, Low Density Residential to P-O, Professional Office. Development of the site is not currently planned.

15. GENERATION OF SOLID WASTE

a. Significant Effects Identified in the Master EIR

The MEIR identified the following significant environmental impacts relative to solid waste:
Effect: It is projected that by 2025, the City will have generated and disposed of 1.5 million tons of solid waste in a landfill. Stanislaus County and its other cities are projected to generate another 3.3 million tons by 2025, for a total of 4.8 million tons requiring disposal. This total takes into consideration current diversion rates and use of the Stanislaus Resource Recovery Facility (SRRF) waste-to-energy facility for the majority of solid waste that is not source reduced, recycled, or composted. At the current loading rate, the Fink Road Landfill has a remaining life of 41 years. This landfill's remaining capacity of 6 million tons can accommodate the projected cumulative total of 4.8 million tons, and some of this total may go to other landfills. Since continued development under the Urban Area General Plan would not exceed the existing landfill capacity, and a 129-acre future expansion of the landfill has been approved, the General Plan’s potential impact on solid waste disposal is considered less than significant.

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

Solid Waste Mitigation Measure(s) pertinent to the project being analyzed in this Initial Study are found on pages V-15-5 and V-15-6 MEIR. No mitigation measures were required as a result of the North Beyer Park Specific Plan MND. All feasible measures appropriate to the project to be incorporated into or made conditions of approval of this project are listed in Section IV, Mitigation Applied to Project:

Discussion:

No mitigation measures are applicable to this project.

c. Project-Specific Effects

Section V-15.B of the MEIR provides analysis of solid waste impacts of development of the General Plan, the following is an analysis of whether the proposed project would result in a new, significant, project-specific effect not previously analyzed in the MEIR.

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

1. The project is inconsistent with the Modesto Urban Area General Plan. YES NO
2. The County is unable to expand its solid waste disposal capacity and the project would result in waste stream levels that exceed disposal capacity.

Discussion:

1. The proposed project is consistent with the Urban Area General Plan, and is a proposal to rezone from R-1, Low Density Residential to P-O, Professional Office. Development of the site is not currently planned.

2. The proposed project was referred to the City’s Solid Waste Division and the County for review, and there was no indication of a problem in serving the project.

16. GENERATION OF HAZARDOUS MATERIALS

a. Significant Effects Identified in the Master EIR
The MEIR identified the following significant environmental impacts relative to hazardous materials:

**Effect:** The impacts of the project relative to hazardous materials are less than significant, based on the existing regulatory framework. New development will be required to comply with regulations monitoring and controlling the handling and use of hazardous and toxic materials.

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

The MEIR did not identify any new mitigation measures. Mitigation relies upon the implementation of the policies in place under federal, state and county policies and regulations, and the Modesto Urban Area General Plan. These are identified and described in the list of policies in place and MEIR mitigation measures attached to the Initial Study template.

Hazardous Materials Mitigation Measure(s) pertinent to the project being analyzed in this Initial Study are found on pages V-16-9 through V-16-12 MEIR. No mitigation measures were required as a result of the North Beyer Park Specific Plan MND. All feasible measures appropriate to the project to be incorporated into or made conditions of approval of this project are listed in Section IV, Mitigation Measures Applied to Project:

**Discussion:**

No mitigation measures are applicable to this project.

**c. Project-Specific Effects**

Section V-16.B of the MEIR provides analysis of hazardous materials impacts of development of the General Plan, the following is an analysis of whether the proposed project would result in a new, significant, project-specific effect not previously analyzed in the MEIR.

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

1. The project is inconsistent with the Modesto Urban Area General Plan.
2. The proposed project would emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school.
3. The proposed project would be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would create a significant hazard to the public or the environment.
4. The proposed project would be constructed on a contaminated site not known to the State of California as of March 2008.

**Discussion:**

(1) The proposed project is consistent with the Urban Area General Plan, and is a proposal to rezone from R-1, Low Density Residential to P-O, Professional Office. Development of the site is not currently planned.
(2) The proposed project would not emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school.

(3) The project would not be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5.

(4) The project site is not known to contain any contaminants.

17. GEOLOGY, SOILS, AND MINERAL RESOURCES

a. Significant Effects Identified in the Master EIR

The MEIR identified the following significant environmental impacts relative to landslides and seismic activity:

Effect: There are areas of known sand and gravel resources within the Baseline Developed Area and Redevelopment Area. Future development will be subject to SMARA requirements, therefore, the project impact will be less than significant.

Effect: There are areas of known sand and gravel resources within the Planned Urbanizing Area. Future development will be subject to SMARA requirements, therefore, the project impact will be less than significant.

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

The MEIR did not identify any new mitigation measures. Mitigation relies upon the implementation of the policies in place under the Modesto Urban Area General Plan. These are identified and described in the list of policies in place and MEIR mitigation measures attached to the Initial Study template.

Landslide and Seismic Activity Mitigation Measure(s) pertinent to the project being analyzed in this Initial Study are found on pages V-17-6 and V-17-7 of the MEIR. All feasible measures appropriate to the project to be incorporated into or made conditions of approval of this project are listed in Section V, Mitigation Measures Applied to Project:

Discussion:

No mitigation measures are applicable to this project.

c. Project-Specific Effects

Section V-17.B of the MEIR provides analysis of landslides and seismic impacts of development of the General Plan, the following is an analysis of whether the proposed project would result in a new, significant, project-specific effect not previously analyzed in the MEIR.

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

(1) The project is inconsistent with the Modesto Urban Area General Plan. √

(2) The project would be located on soil that is unstable, or that would become unstable. √
unstable as a result of the project, and potentially result in on or off-site landslide, lateral spreading, subsidence, liquefaction or collapse.

Discussion:

(1) The proposed project is consistent with the Urban Area General Plan, and is a proposal to rezone from R-1, Low Density Residential to P-O, Professional Office. Development of the site is not currently planned.

(2) The project would not be located on soil that is unstable, or that would become unstable as a result of the project.

18. ENERGY

a. Significant Effects Identified in the Master EIR

The MEIR identified the following significant environmental impacts relative to energy:

Effect: The Baseline Developed Area and Redevelopment Area are already developed. New development within the Redevelopment Area will comply with Title 24 standards as well as City Urban Area General Plan policies. Impacts on energy by development in these areas (i.e., changes in levels of use above the current baseline) will be less than significant.

Effect: Build out under the Urban Area General Plan will utilize an estimated 1,400 million cubic feet per month of natural gas, 1,300 million kilowatt hours (kwh) of electricity per year and 650,000 gallons of gasoline per day. PG&E has indicated that they have at the current time sufficient supplies of natural gas to serve the increased natural gas demands of the project. At present, gasoline supplies are apparently sufficient to serve the gasoline demands of the project. Title 24 of the California Code of Regulation, which ensures that the project will not exceed local, state, and federal energy standards. The impact is less than significant.

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

The following energy mitigation measure(s) are pertinent to the project being analyzed in this Initial Study. See page V-18-3 of the MEIR. All feasible measures appropriate to the project will be incorporated into or made conditions of approval of this project. Those measures will be listed in Section V, Mitigation Applied to Project:

Discussion:

No mitigation measures are applicable to this project.

c. Project-Specific Effects

Section V-18.B of the MEIR provides analysis of energy impacts of development of the General Plan, the following is an analysis of whether the proposed project would result in a new, significant, project-specific effect not previously analyzed in the MEIR.

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

(1) The project is inconsistent with the Modesto Urban Area General Plan.

Discussion:
The proposed project is consistent with the Urban Area General Plan, and is a proposal to rezone from R-3, Medium-High Density Residential to P-O, Professional Office. Development of the site is not currently planned.

19. EFFECTS ON VISUAL RESOURCES

a. Significant Effects Identified in the Master EIR
The MEIR discloses the following residual significant and unavoidable impacts on visual resources expected after application of mitigations/policies:

Effect: New development in the Planned Urbanizing Area will occur in areas that are in agricultural production or are otherwise lightly developed, which could lead to the introduction of light and glare in areas that have little nighttime illumination.

b. Master EIR and/or New Mitigation Measures Applied to the Project
The following visual resources mitigation measures pertinent to the proposed project are found on pages V-19-3 and V-19-4 in the MEIR. All mitigation measures appropriate to the proposed project will be incorporated into or made conditions of approval of this project. Those measures will be listed in Section V, Mitigation Applied to Project.

Discussion:
No mitigation measures are applicable to this project.

c. Project-Specific Effects
Section V-18.B of the MEIR discloses impacts of implementing the Urban Area General Plan on energy resources. The following is an analysis of whether the proposed project would result in a new, significant, project-specific effect not disclosed in the MEIR.

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

1. The proposed project is inconsistent with policies relating to visual resources in the Urban Area General Plan.

2. The proposed project would degrade views from riverside areas and parks to a greater degree than assumed in the Urban Area General Plan.

3. The proposed project would degrade views of riverside areas from public roadways and nearby properties to a greater degree than assumed in the Urban Area General Plan.

Discussion:
The proposed project is consistent with the Urban Area General Plan, and is a proposal to rezone from R-1, Low Density Residential to P-O, Professional Office. Development of the site is not currently planned.
20. LAND USE AND PLANNING

a. Significant Effects Identified in the Master EIR

The MEIR discloses the following residual significant and unavoidable impacts pertaining to land use and planning expected after application of mitigations/policies:

Effect: No residual significant direct or cumulative impacts were disclosed in the MEIR.

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

The following land use and planning mitigation measures pertinent to the proposed project are found on pages V-20-6 through V-20-17 in the MEIR. All mitigation measures appropriate to the project will be incorporated into or made conditions of approval of this project. Those measures will be listed in Section V, Mitigation Applied to Project.

Discussion:

No mitigation measures are applicable to this project.

c. Project-Specific Effects

Section V-20.B of the MEIR discloses impacts of implementing the Urban Area General Plan on land use and planning. The following is an analysis of whether the proposed project would result in a new, significant, project-specific effect not disclosed in the MEIR.

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

(1) The proposed project is inconsistent with land use and planning policies in the Urban Area General Plan. YES NO

(2) The proposed project would physically divide an established community in a way not assumed in the Urban Area General Plan. YES NO

(3) The proposed project conflicts with a land use plan, policy or regulation established for the purpose of avoiding or mitigating an environmental impact by an agency that has jurisdiction over the proposed project. YES NO

(4) The proposed project conflicts with an applicable habitat conservation plan or natural community conservation plan. YES NO

Discussion:

(1) The proposed project is consistent with the Urban Area General Plan, and is a proposal to rezone from R-1, Low Density Residential to P-O, Professional Office. Development of the site is not currently planned.

(2) The project is infill development which will not divide an established community.

(3) The proposed project does not represent a conflict with any land use plan, policy or regulation established for the purpose of avoiding or mitigating an environmental impact by an agency that has jurisdiction over the proposed project.
(4) The proposed project is not subject to any habitat conservation plan or natural community conservation plan.

21. CLIMATE CHANGE

a. Significant Effects Identified in the Master EIR

The MEIR discloses the following residual significant and unavoidable impacts pertaining to climate change expected after application of mitigations/policies:

**Direct Impacts**

**Effect:** Impacts resulting from implementation of the Urban Area General Plan are not substantial enough to result in a significant direct impact on climate change, as disclosed in the MEIR.

**Cumulative Impacts**

**Effect:** Implementation of the Urban Area General Plan will have a cumulatively considerable impact on climate change.

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

The following climate change mitigation measures pertinent to the proposed project are found on pages V-21-7 through V-21-10 in the MEIR. All mitigation measures appropriate to the project will be incorporated into or made conditions of approval of this project. Those measures will be listed in Section V, Mitigation Applied to Project.

**Discussion:**

No mitigation measures are applicable to this project.

c. Project-Specific Effects

Section V-18.B of the MEIR discloses impacts of implementing the Urban Area General Plan on climate change. The following is an analysis of whether the proposed project would result in a new, significant, project-specific effect not disclosed in the MEIR.

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

1. The proposed project is inconsistent with policies relating to climate change in the Urban Area General Plan.
2. The proposed project would result in average automobile trip lengths or CO$_2$ emissions higher than those assumed in the MEIR.
3. The proposed project would conflict with the Sustainable Communities Strategy that the Air Resources Board has agreed will achieve the goals of AB 32.
Discussion:

The proposed project is consistent with the Urban Area General Plan, and is a proposal to rezone from R-1, Low Density Residential to P-O, Professional Office. Development of the site is not currently planned.

V. MITIGATION MEASURES APPLIED TO THE PROJECT

If the Initial Study results in a determination that a Finding of Conformance can be adopted for the proposed project, Section A below applies. If the Initial Study results in a determination that a Finding of Conformance cannot be adopted and a Mitigated Negative Declaration/EIR must be prepared for the project, Section B below applies.

A. Master EIR Mitigation Measures Applied to the Project

Pursuant to CEQA Section 21157.1(c), in order for a Finding of Conformance to be made, all feasible measures from the MEIR appropriate to the project shall be incorporated into the project. The following adopted General Plan Policies and MEIR Mitigation Measures shall be made part of the project prior to approval by means of conditions of project approval or incorporation into the appropriate document or plan:

All applicable and appropriate mitigation measures have been applied to the project (see mitigation measures listed below).

Traffic and Circulation:
None

Degradation of Air Quality:
None

Generation of Noise:
None

Effects on Agricultural Lands:
None

Increased Demand for Long-Term Water Supplies:
None

Increased Demand for Sanitary Sewer Services:
None

Loss of Sensitive Wildlife and Plant Habitat:
None
**Disturbance of Archaeological/Historic Sites:**
None

**Increased Demand for Storm Drainage:**
None

**Flooding and Water Quality:**
None

**Increased Demand for Parks and Open Space:**
None

**Increased Demand for Schools:**
None

**Increased Demand for Police Services:**
None

**Increased Demand for Fire Services:**
None

**Generation of Solid Waste:**
None

**Generation of Hazardous Materials:**
None

**Geology, Soils, and Mineral Resources:**
None

**Energy:**
None

**Effects on Visual Resources:**
None

**Land Use and Planning:**
None

**Climate Change:**
None