A RESOLUTION APPOINTING RICHARD LAURENZ TO THE GOLF COURSES ADVISORY COMMITTEE

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

WHEREAS, the Sons in Retirement Golf Club recommends RICHARD LAURENZ, as its representative, to the Golf Courses Advisory Committee.

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

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

SECTION 2. The City Clerk is hereby directed to transmit a copy of this resolution to the newly appointed member of the Golf Courses Advisory Committee and the Secretary thereof.
The foregoing resolution was introduced at a regular meeting of the Council of
the City of Modesto held on the 6th day of January, 2009, by Councilmember Hawn, who
moved its adoption, which motion being duly seconded by Councilmember Lopez, was
upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED AS TO FORM:

By:  
SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2009-002

A RESOLUTION APPOINTING A MEMBER OF THE PLANNING COMMISSION TO THE CITIZENS HOUSING & COMMUNITY DEVELOPMENT COMMITTEE

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

WHEREAS, on December 1, 2008, the Planning Commission recommended CAROLINA BERNAL as its representative to the Citizens Housing and Community Development Committee.

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

SECTION 1. CAROLINA BERNAL, as representative of the Planning Commission, is hereby appointed to the Citizens Housing & Community Development Committee with a term expiration of January 1, 2010.

SECTION 2. The City Clerk is hereby directed to transmit a copy of this resolution to the appointed member of the Citizens Housing & Community Development and the Secretary thereof.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 6th day of January, 2009, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember Lopez, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: [Signature]

STEFANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: [Signature]

SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2009-003

A RESOLUTION APPOINTING A MEMBER OF THE PLANNING COMMISSION TO THE CITIZENS REDEVELOPMENT ADVISORY COMMISSION

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

WHEREAS, on December 1, 2008, the Planning Commission recommended PATRICIA GILLUM as its representative to the Citizens Redevelopment Advisory Commission.

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

SECTION 1. PATRICIA GILLUM, as representative of the Planning Commission, is hereby appointed to the Citizens Redevelopment Advisory Commission with a term expiration of January 1, 2010.

SECTION 2. The City Clerk is hereby directed to transmit a copy of this resolution to the appointed member of the Citizens Redevelopment Advisory 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 6th day of January, 2009, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember Lopez, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: 

STEFANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By:  

SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2009-004

A RESOLUTION REAPPOINTING A MEMBER OF THE PLANNING COMMISSION TO THE BOARD OF ZONING ADJUSTMENT

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

WHEREAS, the Planning Commission met on December 1, 2008, and recommended reappointment of TED BRANDVOLD as its representative to the Board of Zoning Adjustment.

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

SECTION 1. TED BRANDVOLD, as representative of the Planning Commission, is hereby reappointed to the Board of Zoning Adjustment with a term expiration of January 1, 2010.

SECTION 2. The City Clerk is hereby directed to transmit a copy of this resolution to the appointed member of the Board of Zoning Adjustment, and the Secretary thereof.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 6th day of January, 2009, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember Lopez, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: ____________________________

SUSANA ALCALÁ WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2009-005

A RESOLUTION REAPPOINTING BRUCE NORRIS TO THE BOARD OF
BUILDING APPEALS

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

WHEREAS, the Economic Development Committee met on December 8, 2008,
and recommended reappointment of BRUCE NORRIS to the Board of Building Appeals.

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

SECTION 1. BRUCE NORRIS is hereby reappointed to the Board of Building
Appeals with a term expiration of January 1, 2013.

SECTION 2. The City Clerk is hereby directed to transmit a copy of this
resolution to the reappointed member of the Board of Building Appeals, and the
Secretary thereof.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 6th day of January, 2009, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember Lopez, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: SUSANA ALCAI.A WOOD, City Attorney
A RESOLUTION REAPPOINTING AMY NEUMANN AND HENRY POLLARD TO THE BOARD OF ZONING ADJUSTMENT

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

WHEREAS, the Economic Development Committee met on December 8, 2008, and recommended reappointment of AMY NEUMANN and HENRY POLLARD to the Board of Zoning Adjustment.

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

SECTION 1. AMY NEUMANN and HENRY POLLARD are hereby reappointed to the Board of Zoning Adjustment with term expirations of January 1, 2013.

SECTION 2. The City Clerk is hereby directed to transmit a copy of this resolution to the reappointed members of the Board of Zoning Adjustment, and the Secretary thereof.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 6th day of January, 2009, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember Lopez, was upon roll call carried and the resolution adopted by the following vote:

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

**NOES:** Councilmembers: None

**ABSENT:** Councilmembers: None

(Seal)

ATTEST: 
STEPHANIE LOPEZ, City Clerk

APPROVED AS TO FORM

By: 
SUSANA ALCALA WOOD, City Attorney
A RESOLUTION REAPPOINTING MEMBERS TO THE CITIZENS HOUSING & COMMUNITY DEVELOPMENT COMMITTEE

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

WHEREAS, the Economic Development Committee met on December 8, 2008, and recommended reappointment of DANA CULBERTSON, CHARLES CHITURAS and MICHAEL PRATT to the Citizens Housing & Community Development Committee.

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

SECTION 1. DANA CULBERTSON, CHARLES CHITURAS and MICHAEL PRATT are hereby reappointed to the Citizens Housing & Community Development Committee with a term expiration of January 1, 2013.

SECTION 2. The City Clerk is hereby directed to transmit a copy of this resolution to the reappointed members of the Citizens Housing & Community Development Committee, and the Secretary thereof.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 6th day of January, 2009, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember Lopez, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: [Signature]

STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: [Signature]

SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2009-008

A RESOLUTION REAPPOINTING CAROL DOLAN AND KIRK STOCKHAM TO THE COMMUNITY QUALITIES FORUM

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

WHEREAS, the Economic Development Committee met on December 8, 2008, and recommended reappointment of CAROL DOLAN and KIRK STOCKHAM, Councilmember Keating’s selection, to the Community Qualities Forum.

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

SECTION 1. CAROL DOLAN and KIRK STOCKHAM are hereby reappointed to the Community Qualities Forum with term expirations of January 1, 2013.

SECTION 2. The City Clerk is hereby directed to transmit a copy of this resolution to the reappointed members of the Community Qualities Forum, and the Secretary thereof.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 6th day of January, 2009, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember Lopez, was upon roll call carried and the resolution adopted by the following vote:


NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED AS TO FORM:

By: 
SUSANA ALCALA WOOD. City Attorney

(Seal)

ATTEST: STEPHANIE LOPEZ. City Clerk
A RESOLUTION REAPPOINTING ALICE INGHAM RICHARDS TO THE CULTURE COMMISSION

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

WHEREAS, the Economic Development Committee met on December 8, 2008, and recommended reappointment of ALICE INGHAM RICHARDS to the Culture Commission,

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

SECTION 1. ALICE INGHAM RICHARDS is hereby reappointed to the Culture Commission with a term expiration of January 1, 2013.

SECTION 2. The City Clerk is hereby directed to transmit a copy of this resolution to the reappointed member of the Culture 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 6th day of January, 2009, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember Lopez, was upon roll call carried and the resolution adopted by the following vote:


NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD. City Attorney
A RESOLUTION REAPPOINTING ERIC BENSON AND ANDREW MENDLIN TO THE DOWNTOWN IMPROVEMENT DISTRICT ADVISORY BOARD

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

WHEREAS, the Economic Development Committee met on December 8, 2008, and recommended reappointment of ERIC BENSON and ANDREW MENDLIN to the Downtown Improvement District Advisory Board.

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

SECTION 1. ERIC BENSON and ANDREW MENDLIN are hereby reappointed to the Downtown Improvement District Advisory Board with term expirations of January 1, 2013.

SECTION 2. The City Clerk is hereby directed to transmit a copy of this resolution to the reappointed members of Downtown Improvement District Advisory Board, and as Secretary thereof.
The foregoing resolution was introduced at a regular meeting of the Council of
the City of Modesto held on the 6th day of January, 2009, by Councilmember Hawn, who
moved its adoption, which motion being duly seconded by Councilmember Lopez, was
upon roll call carried and the resolution adopted by the following vote:

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

**NOES:** Councilmembers: None

**ABSENT:** Councilmembers: None

(Seal)

**APPROVED AS TO FORM:**

By: 

SUSANA ALCALÁ WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2009-011

A RESOLUTION REAPPOINTING HARINDER GREWAL TO THE EQUAL OPPORTUNITY/DISABILITY COMMISSION

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

WHEREAS, the Economic Development Committee met on December 8, 2008, and recommended reappointment of HARINDER GREWAL to the Equal Opportunity/Disability Commission.

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

SECTION 1. HARINDER GREWAL is hereby reappointed to the Equal Opportunity/Disability Commission with a term expiration of January 1, 2013.

SECTION 2. The City Clerk is hereby directed to transmit a copy of this resolution to the reappointed member of the Equal Opportunity/Disability 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 6th day of January, 2009, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember Lopez, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney

ATTEST: STEPHANIE LOPEZ, City Clerk

(SEAL)
MODESTO CITY COUNCIL
RESOLUTION NO. 2009-012

A RESOLUTION REAPPOINTING JEANNIE McDONALD TO THE GOLF COURSES ADVISORY COMMITTEE

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

WHEREAS, the Economic Development Committee met on December 8, 2008, and recommended reappointment of JEANNIE McDONALD to the Golf Courses Advisory Committee.

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

SECTION 1. JEANNIE McDONALD is hereby reappointed to the Golf Courses Advisory Committee with term expiration of January 1, 2013.

SECTION 2. The City Clerk is hereby directed to transmit a copy of this resolution to the reappointed member of the Golf Courses Advisory Committee, and the Secretary thereof.
The foregoing resolution was introduced at a regular meeting of the Council of
the City of Modesto held on the 6th day of January, 2009, by Councilmember Hawn, who
moved its adoption, which motion being duly seconded by Councilmember Lopez, was
upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: [Signature]

(SEAL)

APPROVED AS TO FORM:

By: [Signature]

SUSANA ALCALA WOOD, City Attorney
A RESOLUTION REAPPOINTING VERONNA SIMRIL TO THE HOUSING REHABILITATION LOAN COMMITTEE

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

WHEREAS, the Economic Development Committee met on December 8, 2008, and recommended reappointment VERONNA SIMRIL to the Housing Rehabilitation Loan Committee.

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

SECTION 1. VERONNA SIMRIL is hereby reappointed to the Housing Rehabilitation Loan Committee with a term expiration of January 1, 2013.

SECTION 2. The City Clerk is hereby directed to transmit a copy of this resolution to the reappointed member of the Housing Rehabilitation Loan Committee, and the Secretary thereof.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 6th day of January, 2009, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember Lopez, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED AS TO FORM:

By: 

SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2009-014

A RESOLUTION REAPPOINTING DOLORES NIEMI TO THE LANDMARK PRESERVATION COMMISSION

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

WHEREAS, the Economic Development Committee met on December 8, 2008, and recommended reappointment of DOLORES NIEMI to the Landmark Preservation Commission.

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

SECTION 1. DOLORES NIEMI is hereby reappointed to the Landmark Preservation Commission with a term expiration of January 1, 2013.

SECTION 2. The City Clerk is hereby directed to transmit a copy of this resolution to the reappointed member of the Landmark Preservation 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 6th day of January, 2009, by Councilmember Hawn, who
moved its adoption, which motion being duly seconded by Councilmember Lopez, was
upon roll call carried and the resolution adopted by the following vote:

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

NOES:  Councilmembers:  None

ABSENT:  Councilmembers:  None

(SEAL)

APPROVED AS TO FORM:

By:  
      SUSANA ALCALA WOOD, City Attorney

ATTEST:  STEPHANIE LOPEZ, City Clerk
A RESOLUTION REAPPOINTING CHRIS MURPHY TO THE LOCAL CABLE PROGRAMMING COMMITTEE

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

WHEREAS, the Economic Development Committee met on December 8, 2008, and recommended reappointment of CHRIS MURPHY to the Local Cable Programming Committee,

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

SECTION 1. CHRIS MURPHY is hereby reappointed to the Local Cable Programming Committee with a term expiration of January 1, 2013.

SECTION 2. The City Clerk is hereby directed to transmit a copy of this resolution to the reappointed member of the Local Cable Programming Committee, and the Secretary thereof.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 6th day of January, 2009, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember Lopez, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: [Signature]

(SEAL)

APPROVED AS TO FORM:

By: [Signature]

SUSANA ALCALA WOOD, City Attorney
A RESOLUTION REAPPOINTING TOM BERGLUND TO THE PLANNING COMMISSION

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

WHEREAS, the Economic Development Committee met on December 8, 2008, and recommended reappointment of TOM BERGLUND to the Planning Commission.

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

SECTION 1. TOM BERGLUND is hereby reappointed to the Planning Commission with a term expiration of January 1, 2013.

SECTION 2. The City Clerk is hereby directed to transmit a copy of this resolution to the reappointed member of the Planning Commission, and the Secretary thereof.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 6th day of January, 2009, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember Lopez, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2009-017

A RESOLUTION REAPPOINTING JIM PATTON TO THE SOLID WASTE ADVISORY COMMITTEE

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

WHEREAS, the Economic Development Committee met on December 8, 2008, and recommended reappointment of JIM PATTON to the Solid Waste Advisory Committee,

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

SECTION 1. JIM PATTON is hereby reappointed to the Solid Waste Advisory Committee with a term expiration of January 1, 2013.

SECTION 2. The City Clerk is hereby directed to transmit a copy of this resolution to the reappointed member of the Solid Waste Advisory Committee, and the Secretary thereof.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 6th day of January, 2009, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember Lopez, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: SUSANA ALCALÁ WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2009-018

A RESOLUTION REAPPOINTING MARGARET LEAMAN AND MARY GROGAN TO THE TUOLUMNE RIVER REGIONAL PARK CITIZENS ADVISORY COMMITTEE

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

WHEREAS, the Economic Development Committee met on December 8, 2008, and recommended reappointment of MARGARET LEAMAN and MARY GROGAN to the Tuolumne River Regional Park Citizens Advisory Committee,

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

SECTION 1. MARGARET LEAMAN and MARY GROGAN are hereby reappointed to the Tuolumne River Regional Park Citizens Advisory Committee with a term expiration of January 1, 2011.

SECTION 2. The City Clerk is hereby directed to transmit a copy of this resolution to the reappointed members of the Tuolumne River Regional Park Citizens Advisory Committee, and the Secretary thereof.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 6th day of January, 2009, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember Lopez, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL  
RESOLUTION NO. 2009-019  

A RESOLUTION AUTHORIZING THE AWARD OF CONTRACT TO DELTA WIRELESS, STOCKTON, CA, FOR THE FURNISHING OF MOBILE AND PORTABLE 2-WAY COMMUNICATION RADIO REPAIR AND SERVICE, BY ACCESSING THE TERMS OF A COMPETITIVELY BID CONTRACT FROM STANISLAUS COUNTY, AGREEMENT NO. 10766, AND AUTHORIZING THE PURCHASING MANAGER TO ISSUE A PURCHASE AGREEMENT FOR A TERM OF TWO (2) YEARS, WITH FIVE (5) ONE-YEAR EXTENSION OPTIONS, AT THE SOLE DISCRETION OF THE CITY, FOR AN ESTIMATED ANNUAL COST NOT TO EXCEED $120,000  

WHEREAS, on May 30, 2008, Stanislaus County, GSA Purchasing Division, went through a competitive bid process for the furnishing of services to repair and maintain its public safety radio communication system, and  

WHEREAS, the lowest responsive and responsible bidder was Delta Wireless, Stockton, CA, and  

WHEREAS, the City’s current agreement for Mobile and Portable 2-Way Communication radio repair and service is due to expire on February 9, 2009, and  

WHEREAS, by accessing the terms from a competitively bid Stanislaus County contract, the City of Modesto maintains service for the repair of the City’s public safety radio communication system, and  

WHEREAS, Modesto Municipal Code (MMC) Section 8-3.203 generally requires all purchases, which meet or exceed $50,000.00 for material, equipment or contractual services to be formally bid. However, there are exceptions to the rule set forth in the Modesto Municipal Code, and  

WHEREAS, one exception, MMC Section 8-3.204(d), is available where the Purchasing Manager, in his or her discretion, determines that a process other than the
usual formal bid procedure set forth in MMC Section 8-3.203 will result in procurement for the City at the lowest possible cost commensurate with the desired quality, and

WHEREAS, acting within his discretion, the Purchasing Manager invoked that exception for this purchase. The furnishing of mobile and portable 2-way communication radio repair and service to the City’s mobile and portable radios by “accessing the terms” of Stanislaus County Agreement No. 10766 with Delta Wireless, Stockton, CA, conforms to MMC Section 8-3.204(d), and

WHEREAS, sufficient funds are budgeted in Fiscal Year 2008-09 in Appropriation C Discretionary accounts: 0100-180-1810, 7200-480-5812, 0100-190-1961, 6100-480-5012,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby authorizes the award of bid and contract to Delta Wireless, Stockton, CA, for the furnishing of mobile and portable 2-way communication radio repair and service, by accessing the terms of a competitively bid contract from Stanislaus County, Agreement No. 10766.

BE IT FURTHER RESOLVED that the Purchasing Manager is hereby authorized to issue a Purchase agreement for a term of two (2) years, with five (5) one-year extension options, at the sole discretion of the City, for an estimated annual cost not to exceed $120,000.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 6th day of January, 2009, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember Lopez, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney
DESIGNATION OF APPLICANT'S AGENT RESOLUTION FOR NON-STATE AGENCIES

BE IT RESOLVED BY THE City Council of the City of Modesto, California

THAT

City Manager Greg Nyhoff, OR

Fire Chief James L. Miguel, OR

Deputy City Manager Judith Ray

is hereby authorized to execute for and in behalf of the City of Modesto, a public entity established under the laws of the State of California, this application and to file it in the Office of Emergency Services for the purpose of obtaining certain federal financial assistance under P.L. 93-288 as amended by the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1988, and/or state financial assistance under the California Disaster Assistance Act.

THAT the City of Modesto, a public entity established under the laws of the State of California,

hereby authorizes its agent(s) to provide to the State Office of Emergency Services for all matters pertaining to such state disaster assistance the assurances and agreements required.

This is a universal resolution and is effective for all open and future disasters.

☐ This is a disaster specific resolution and is effective for only disaster number(s)

Passed and approved this 6th day of January, 2009

Jim Ridenour, Mayor
(Name and Title of Governing Body Representative)

Kristin Olsen, Vice Mayor Brad Hawn, Councilmember Janice Keating, Councilmember Dave Lopez, Councilmember Garrad Marsh, Councilmember Will O'Bryant, Councilmember
(Name and Title of Governing Body Representative)

CERTIFICATION

I, Stephanie Lopez, duly appointed and City Clerk of the City of Modesto, do hereby certify that the above is a true and correct copy of a resolution passed and approved by the City Council of the City of Modesto, California on the 6th day of January, 2009.

Steph [Signature]
City Clerk
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 6th day of January, 2009, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember Lopez, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: [Signature]

(SEAL)

APPROVED AS TO FORM:

By: [Signature]

SUSANA ALCALA WOOD, City Attorney
PROJECT APPLICATION FOR FEDERAL ASSISTANCE

SUBGRANTEE'S NAME: City of Modesto

ADDRESS: 1010 10th Street

CITY: Modesto STATE: California ZIP CODE: 95354

TELEPHONE: (209) 577-5404 FAX NUMBER: (209) 571-5128

AUTHORIZED AGENT: Greg Nyhoff TITLE: City Manager

EMAIL ADDRESS: gnyhoff@modestogov.com

ASSURANCES - CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to all of your projects. If you have questions, please contact the Governor's Office of Emergency Services. Further, certain federal assistance awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the subgrantee named above:

1. Has the legal authority to apply for federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the state, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the assistance; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will not dispose of, modify the use of, or change the terms of the real property title, or other interest in the site and facilities without permission and instructions from the awarding agency. Will record the federal interest in the title of real property in accordance with awarding agency directives and will include a covenant in the title of real property acquired in whole or in part with federal assistance funds to assure nondiscrimination during the useful life of the project.

4. Will comply with the requirements of the assistance-awarding agency with regard to the drafting, review and approval of construction plans and specifications.

5. Will provide and maintain competent and adequate engineering supervision at the construction site to ensure that the complete work conforms with the approved plans and specifications and will furnish progress reports and such other information as may be required by the assistance awarding agency or state.

6. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

7. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gains.

8. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.), which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

9. Will comply with all federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683 and 1685-1686) which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794) which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107) which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 93-255) as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616) as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records;
(h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for federal assistance is being made, and (j) the requirements on any other nondiscrimination statute(s) which may apply to the application.

10. Will comply, or has already complied, with the requirements of Titles I and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provides for fair and equitable treatment of persons displaced or whose property is acquired as a result of federal and federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of federal participation in purchases.

11. Will comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $5,000 or more.

12. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.O. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved state management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.O. 93-205).


15. Will comply with Standardized Emergency Management (SEMS) requirements as stated in the California Emergency Services Act, Government Code, Chapter 7 of Division 1 of Title 2, Section 8607.1(e) and CCR Title 19, Sections 2445, 2446, 2447 and 2448.

16. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984 and the Single Audit Act Amendments of 1996.

17. Will comply with all applicable requirements of all other federal laws, Executive Orders, regulations and policies governing this program.

18. Has requested through the State of California, federal financial assistance to be used to perform eligible work approved in the subgrantee application for federal assistance. Will, after the receipt of federal financial assistance, through the State of California, agree to the following:

a. The state warrant covering federal financial assistance will be deposited in a special and separate account, and will be used to pay only eligible costs for projects described above;

b. To return to the State of California such part of the funds so reimbursed pursuant to the above numbered application, which are excess to the approved actual expenditures as accepted by final audit of the federal or state government;

c. In the event the approved amount of the above numbered project application is reduced, the reimbursement applicable to the amount of the reduction will be promptly refunded to the State of California.

19. Will not make any award or permit any award (subgrant or contract) to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549 and 12689, "Debarment and Suspension."

The undersigned represents that he/she is authorized by the above named subgrantee to enter into this agreement for and on behalf of the said subgrantee.

[Signature]

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL

City Manager Jan 6, 2009

OES $9 (Rev 1/05)
TITLE DATE
A RESOLUTION APPROVING GRANT APPLICATIONS TO THE CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD (CIWMB) FOR ALL USED OIL AND HAZARDOUS WASTE GRANTS, ACCEPTING GRANT AWARDS, AMENDING THE ANNUAL BUDGET, AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE ALL GRANT-RELATED DOCUMENTS

WHEREAS, the State of California collects fees which in turn provide funds to cities and counties for establishing and maintaining used oil and hazardous waste programs throughout the State, and

WHEREAS, the California Integrated Waste Management Board (CIWMB) has the responsibility for the administration of recycling programs within the State, and setting up necessary procedures governing application by cities and counties under these programs, and

WHEREAS, to simplify the application process, the CIWMB allows jurisdictions to adopt a single resolution authorizing a designated official to execute and submit applications and related documents for such funding for up to a five-year period.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that grant applications to the California Integrated Waste Management Board (CIWMB) for used oil and hazardous waste recycling programs and the acceptance of grant awards are hereby approved.

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

BE IT FURTHER RESOLVED that this resolution shall remain in full force and effect for five years from the date of adoption.
BE IT FURTHER RESOLVED to amend the current budget to reflect increases in revenue from grant awards.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 6th day of January, 2009, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember Lopez, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NUMBER 2009-022

A RESOLUTION APPROVING AN AGREEMENT WITH THE STATE OF CALIFORNIA, COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING (POST), FOR UP TO $20,700 TO PROVIDE TRAINING FOR 100 STUDENTS IN FOUR-HOUR FORCE OPTIONS SIMULATOR COURSES AND 100 STUDENTS IN FOUR-HOUR MOBILE FORCE OPTIONS SIMULATOR TRAINING COURSES, AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE AGREEMENT

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

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

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

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

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

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

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

WHEREAS, the maximum reimbursement is 100 students locally ($7,900) and 100 students when the simulator is at another jurisdiction ($12,800), and

WHEREAS, the projected total annual reimbursement is $20,700, and

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

WHEREAS, POST is requesting a renewal of the Agreement for the term July 1, 2008 through June 30, 2009, and

WHEREAS, the City of Modesto will realize General Fund revenue of up to $20,700 into the 0100-190-1921-3126 Simulator Training Account.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves an Agreement with the State of California, Commission on Peace Officer Standards and Training (POST), for up to $20,700 to provide training for 100 students in four-hour Force Options Simulator Courses and 100 students in four-hour Mobile Force Options Simulator training courses.

BE IT FURTHER RESOLVED by the Council of the City of Modesto that the City Manager, or his designee, is hereby authorized to execute the Agreement.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 6th day of January, 2009, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember Lopez, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: ____________________________

STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: ________________________________

SUSANA ALCALA WOOD, City Attorney
MODesto city council
resolution no. 2009-023

A resolution amending the fiscal year 2008/2009 operating budget realizing general fund revenue of up to $20,700 for the training agreement with the state of california, commission on peace officer standards and training (POST)

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

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

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

Whereas, the FOS Training provides the student with practical handling of volatile situations and the use of proper force options that are available, and

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

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

Whereas, when the training is conducted locally, the FOS reimbursement is $79.00 per student, and

Whereas, when the training is conducted outside the local area, the reimbursement is $128.00 per student, and
WHEREAS, the maximum reimbursement is 100 students locally ($7,900) and 100 students when the simulator is at another jurisdiction ($12,800), and

WHEREAS, the projected total annual reimbursement is $20,700, and

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

WHEREAS, POST is requesting a renewal of the Agreement for the term July 1, 2008 through June 30, 2009, and

WHEREAS, the City of Modesto will realize General Fund Revenue of up to $20,700 into new revenue account 0100-190-1921-3126, Simulator Training Account.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves amending the Fiscal Year 2008/2009 Operating Budget realizing General Fund revenue of up to $20,700 for the Agreement with the State of California, Commission on Peace Officer Standards and Training (POST).

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 6th day of January, 2009, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember Lopez, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By SUSANA ALCALA WOOD, City Attorney
A RESOLUTION APPROVING A PURCHASE AGREEMENT, COUNTER ADDENDUM, MOLD ADDENDUM, AND EXISTING CONDITION ACKNOWLEDGEMENT (“AS-IS, WHERE IS” PROVISION) FOR THE ACQUISITION OF A PROPERTY LOCATED AT 3200 NIGHTINGALE DRIVE, OWNED BY HSBC MORTGAGE SERVICES, INC. (APN: 076-001-037) TO BE PURCHASED BY THE CITY OF MODESTO FOR THE HAHN LIFT STATION PROJECT IN THE AMOUNT OF $155,000, AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE PURCHASE AGREEMENT, COUNTER ADDENDUM, MOLD ADDENDUM, AND EXISTING CONDITION ACKNOWLEDGEMENT (“AS-IS, WHERE IS” PROVISION)

WHEREAS, the Hahn Lift Station is currently located on the southeast corner of Nightingale Drive and Honey Creek Road and is identified on the City’s 2007 Wastewater Master Plan for rehabilitation, and

WHEREAS, a condition and performance assessment was performed and concluded the following: 1) the lift station is susceptible to flooding during storm events. Currently both pumps operate during heavy storm events; 2) the ventilation system is inadequate and does not meet code since the only ventilation is through the manhole cover. As a result, the lift station pumps burn out about every two years due to improper ventilation; and 3) the existing wet pit is located in the middle of the Nightingale/Honey Creek intersection, and poses traffic problems when accessed and is a danger to the workers who maintain the system, and

WHEREAS, the City Council directed staff to acquire property to facilitate the rehabilitation of the Hahn Lift Station, and

WHEREAS, the City Council directed staff to enter into negotiations with HSBC Mortgage Services, Inc. to purchase a property located at 3200 Nightingale Drive for the Hahn Lift Station Project, and
WHEREAS, the City has evaluated the cost and time benefit of acquiring the property, and

WHEREAS, the property has been appraised and an offer to acquire the property rights at fair market value has been accepted by HSBC Mortgage Services, Inc.,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the Purchase Agreement, Counter Addendum, Mold Addendum, and Existing Condition Acknowledgement ("As-Is, Where Is" Provision) for the acquisition of a property located at 3200 Nightingale Drive, owned by HSBC Mortgage Services, Inc. (APN: 076-001-037) to be purchased by the City of Modesto for the Hahn Lift Station Project in the amount of $155,000.

BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute the Purchase Agreement, Counter Addendum, Mold Addendum, and Existing Condition Acknowledgement ("As-Is, Where Is" Provision).

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 6th day of January, 2009, by Councilmember Hawn, who moved its adoption. which motion being duly seconded by Councilmember Lopez, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: [Signature]

(SEAL)

APPROVED AS TO FORM:

By [Signature]

SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2009-025

A RESOLUTION AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO SIGN AN ACCEPTANCE FORM FOR THE GRANT DEED FOR THE ACQUISITION OF A PROPERTY LOCATED AT 3200 NIGHTINGALE DRIVE, OWNED BY HSBC MORTGAGE SERVICES, INC. (APN: 076-001-037) TO BE PURCHASED BY THE CITY OF MODESTO FOR THE HAHN LIFT STATION PROJECT

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

WHEREAS, the City of Modesto desires to acquire a property located at 3200 Nightingale Drive owned by HSBC Mortgage Services (APN: 076-001-037) to be purchased by the City of Modesto for the Hahn Lift Station Project.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the City Manager, or his designee, is hereby authorized to sign an acceptance form on behalf of the City of Modesto for one (1) Grant Deed for the acquisition of a property located at 3200 Nightingale Drive owned by HSBC Mortgage Services (APN: 076-001-037) to be purchased by the City of Modesto for the Hahn Lift Station Project.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 6th day of January, 2009, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember Lopez, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By SUSANA ALCALA WOOD, City Attorney
A RESOLUTION APPROVING AN AGREEMENT WITH COFFMAN ASSOCIATES INC. FOR AIRPORT PLANNING SERVICES TO PREPARE A NEW AIRPORT LAYOUT PLAN/NARRATIVE REPORT AND AIRLINE PASSENGER TERMINAL COMPLEX STUDY IN THE AMOUNT OF $237,500 FOR MODESTO CITY-COUNTY AIRPORT, AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE AGREEMENT

WHEREAS, the Airport Layout Plan (ALP) is to be maintained and updated every two (2) years per Federal Aviation Administration (FAA) guidance, and

WHEREAS, the Modesto Airport ALP was last updated in May 2005, and

WHEREAS, the Modesto Airport does not have a current Airport Master Plan document, and

WHEREAS, senior FAA officials recommended that Modesto pursue development of a five-year Program Narrative Summary (a short-term airport development master plan), and

WHEREAS, the Airport’s terminal building was constructed in 1946, with small updates and expansions in 1971 and 1991, and

WHEREAS, FAA planning officials also recommended that Modesto Airport pursue an Airline Passenger Terminal Complex Study, and

WHEREAS, the City advertised to obtain the services of an airport and aviation planning firm to provide Airport Planning for future projects at Modesto City-County Airport, and

WHEREAS, Coffman Associates, Inc., proposed to provide airport planning services to prepare a new Airport Layout Plan/Narrative Report and Airline Passenger Terminal Complex Study for Modesto City-County Airport, and
WHEREAS, Coffman Associates, Inc.'s proposal was selected as the best qualified applicant for this project.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves an Agreement with Coffman Associates, Inc., for an amount not to exceed $237,500, to provide airport planning services to prepare a new Airport Layout Plan/Narrative Report and Airline Passenger Terminal Complex Study for Modesto City-County Airport.

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 6th day of January, 2009, by Councilmember O'Bryant, who moved its adoption, which motion being duly seconded by Councilmember Keating, was upon roll call carrier and the resolution adopted by the following vote:

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

NOES: Councilmember: None

ABSENT: Councilmember: None

ATTEST: SUSANA ALCALA WOOD, City Attorney

(SEAL)

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2009-027

A RESOLUTION AUTHORIZING STAFF TO DECLARE THE CITY-OWNED PROPERTY LOCATED AT 1517 10TH STREET (APN: 105-047-002) AS SURPLUS PROPERTY AND AUTHORIZING THE CITY’S PROPERTY AGENT TO PROCEED WITH THE SALE OF THIS PROPERTY

WHEREAS, the City of Modesto owns the property at 1517 10th Street (APN: 105-047-002), and

WHEREAS, the Kansas-Needham Overhead Project constructed an overhead crossing from the intersection of College and Needham Avenues and 10th Street to the intersection of Franklin and Beech Streets, the future connection to Highway 132, and

WHEREAS, the project design produced a remnant parcel with some degree of limited use, due to the location and limited access, and

WHEREAS, the property is surplus to the City’s needs and there are no other City uses for this property, and

WHEREAS, the property located at 1517 10th Street (APN: 105-047-002) has been appraised at $463,000, and

WHEREAS, staff recommends the site be sold as surplus property, and

WHEREAS, staff recommends the City’s property agent proceed with the sale of this property,

NOW, THEREFORE, BE IT RESOLVED by the City Council of Modesto that it hereby authorizes staff to declare the City-owned property (APN 105-047-002) known as 1517 10th Street as surplus property.

BE IT FURTHER RESOLVED that the Council hereby authorizes the City’s property agent to proceed with the sale of this property.
The foregoing resolution was introduced at a regular meeting of the Council of
the City of Modesto held on the 6th day of January, 2009, by Councilmember Hawn, who
moved its adoption, which motion being duly seconded by Councilmember Lopez, was
upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: [Signature]

(Seal)

APPROVED AS TO FORM:

By: [Signature]

SUSANA ALCALA WOOD, City Attorney
A RESOLUTION APPROVING THE PLANS AND SPECIFICATIONS FOR THE T-HANGAR L CONSTRUCTION AT THE MODESTO CITY-COUNTY AIRPORT PROJECT, ACCEPTING THE BID AND APPROVING A CONTRACT WITH APPLEGATE JOHNSTON, INC., IN THE AMOUNT OF $611,011.50, FOR THE T-HANGAR L CONSTRUCTION AT THE MODESTO CITY-COUNTY AIRPORT PROJECT, AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE CONTRACT

WHEREAS, plans and specifications have been prepared for the T-Hangar L Construction at the Modesto City-County Airport project and City staff recommends approval by the City Council, and

WHEREAS, the bids received for the T-Hangar L Construction at the Modesto City-County Airport project were opened at 11:00 a.m. on December 2, 2008, and later tabulated by the Public Works Director for the consideration of the Council, and

WHEREAS, the Public Works Director has recommended that the bid of $611,011.50 received from Applegate Johnston, Inc. be accepted as the lowest responsible bid and the contract be awarded to Applegate Johnston, Inc.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the plans and specifications for the T-Hangar L Construction at the Modesto City-County Airport project, accepts the bid of Applegate Johnston, Inc. in the amount of $611,011.50, and awards Applegate Johnston, Inc. the contract for the T-Hangar L Construction at the Modesto City-County Airport project.

BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute the contract with Applegate Johnston, Inc., in the amount of $611,011.50, for the T-Hangar L Construction at the Modesto City-County Airport project.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 6th day of January, 2009, by Councilmember Keating, who moved its adoption, which motion being duly seconded by Councilmember Lopez, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Hawn

ATTEST: STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2009-029

A RESOLUTION FINDING THAT THE FOLLOWING PROJECT IS WITHIN THE SCOPE OF THE PROJECT COVERED BY THE MODESTO CITY-COUNTY AIRPORT MASTER PLAN FINAL ENVIRONMENTAL IMPACT REPORT (SCH NO. 90020512): T-HANGAR “L” CONSTRUCTION AT THE MODESTO CITY-COUNTY AIRPORT

WHEREAS, on April 20, 1993, the City Council, by Resolution No. 93-229, certified the Final Environmental Impact Report (“EIR”) for the Modesto City-County Airport Master Plan (SCH No. 90020512), and

WHEREAS, the City of Modesto proposes to construct T-Hangar “L” at the Airport in substantially the location identified on the adopted Airport Master Plan Project Elements diagram and in the EIR, and

WHEREAS, Section 15168 of the CEQA Guidelines, relating to reviewing subsequent projects for a Program EIR, states that the lead agency shall prepare a written checklist or similar device 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 Program EIR and whether the subsequent project was described in the Program EIR as being within the scope of the project, and

WHEREAS, the City’s Public Works Department by Environmental Assessment Initial Study EA/PW 2007-11 reviewed the proposed T-hangar construction project to determine whether the project is within the scope of the project covered by the Modesto City-County Airport Master Plan Final EIR, and made the determination that the proposed project will have no additional significant effect on the environment that was not identified in the Final EIR and, further, that no new or additional mitigation measures
or alternatives are required, and that therefore, the proposed project is within the scope of
the project covered by the Final EIR, and

WHEREAS, in accordance with CEQA guidelines on December 7, 2007, the City
caused to be published a 30-day notice of the City’s intent to make a finding that the
proposed project conforms with the Final EIR, and

WHEREAS, said matter was considered by the City Council at a regular meeting
on January 6, 2009, at 5:30 p.m., in the Tenth Street Place Chambers, 1010 Tenth Street,
Modesto, California.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto
that it has reviewed and considered the Initial Study prepared for the proposed Project, a
copy of which it 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. The type of Project under consideration is described in the Final EIR.

2. All applicable policies, regulations, and mitigation measures identified in
the Final EIR have been applied to the Project.

3. 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 PEIR. It has been
determined that the project was described in the PEIR and is within the
scope of the PEIR (SCI No. 90020512), which analyzed the potential
impacts of build out of the Airport Master Plan.

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

5. The Initial Study, Environmental Assessment No. EA/PW 2007-11,
   provides the substantial evidence to support findings 1 through 4, above.
BE IT FURTHER RESOLVED by the Council of the City of Modesto that the Public Works Director is hereby authorized and directed to file a notice of 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 6th day of January, 2009, by Councilmember Keating, who moved its adoption, which motion being duly seconded by Councilmember Lopez, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Hawn

ATTEST: 

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney

(S Seal)
Exhibit "A"

INITIAL STUDY
EA/PW 2007-11
Determination:
Project within the Scope of the
Modesto City-County Airport Master Plan
Program Environmental Impact Report
for the

T-Hangar “L” Project

Prepared for:
City of Modesto
P.O. Box 642
Modesto, CA 95353
Contact: Dean Phillips
209/577-5260

Prepared by:
Mel Funtila, Associate Civil Engineer
City of Modesto
Public Works Department
209/571-5181

November 2007
WRITTEN CHECKLIST

EA/PW No. 2007-11

I. PURPOSE

This written checklist is prepared under the CEQA Guideline regulations regarding use of a Program EIR with Later Activities, where activities in the program must be examined in the light of the Program EIR to determine whether an additional environmental document must be prepared. Pursuant to CEQA Guidelines Section 15168 (C) (4), this checklist serves to make a determination where subsequent activities of a Program EIR involve site-specific operations, based on evaluation of the site and the activity to determine whether the environmental effects of the operation were covered in the program EIR. Based on a review of the project and the criteria in Section 15162(a), this determination would permit the lead agency (City of Modesto) to approve the activity as being within the scope of the project covered by the Program EIR. This determination includes whether any new environmental document is required beyond the adopted Airport Master Plan Program EIR (SCH# 90020512) for the proposed T-hangar construction.

The 1994 Program EIR is the document reviewed for projects undertaken in implementation of the Airport Master Plan. A summary of significant impacts and their mitigation measures from the 1994 EIR is attached as Exhibit "A". Where appropriate those feasible mitigation measures developed in the Program EIR shall be incorporated into the proposed project.

II. PROJECT INFORMATION

1. Project Title: T-Hangar "L" Construction at the Modesto City-County Airport

2. Lead Agency Name and Address: City of Modesto

3. Contact Person and Phone Number: Mel Funtila
City of Modesto, Public Works Department
209/571-5181

4. Project Location: Modesto City-County Airport, 617 Airport Way,
Modesto, Stanislaus County, CA
5. **Project Sponsor’s Name and Address:** Modesto City-County Airport/City of Modesto Department of Public Works

6. **General Plan Designation:** Industrial (Airport)

7. **Zoning:** M-1, Light Industrial

8. **Description of Project:** Pursuant to the adopted Airport Master Plan (Exhibit A), the City is proposing to construct an additional 10-bay T-hangar space for private aircraft. The proposed hangars would be located in the same general area with the other T-hangars as shown on the adopted Airport Master Plan Project Elements diagram (see item No. 22, 1995 Master Plan Projects, Exhibit B). The T-hangar would measure approximately 11,700 to 11,900 square feet.

9. **Surrounding Land Uses and Setting:** The proposed project site is entirely within and surrounded by the developed Airport. The Airport is surrounded by industrial development to the northeast, residential and commercial uses to the north, open space, parkland, and residential to the south and southwest.

10. **Other Public Agencies whose Approval Is Required:** Stanislaus County

**III. DETERMINATION:**

Based on the analysis contained in this document, staff finds that pursuant to Guidelines Section 15168 (c)(4) the following is true for the proposed project:

1. There are no substantial changes proposed in the project which result in new significant environmental effects or a substantial increase in the severity of previously identified significant effects and, therefore, no major revisions to the Airport Master Plan Program EIR are required.

2. No substantial changes have occurred with respect to the circumstances under which the project is undertaken which will result in new significant environmental effects or a substantial increase in the severity of previously identified significant effects and, therefore, no major revisions to the Airport Master Plan Program EIR are required.

3. There is no new information of substantial importance which was not known and could not have been known with the exercise of reasonable diligence when the Airport Master Plan Program EIR was adopted which shows any of the following:
a. one or more significant effects which is not discussed in the Airport Master Plan Program EIR; or,

b. significant effects which were previously examined will be substantially more severe than previously shown; or,

c. previously infeasible mitigation measures or alternatives are now feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or,

d. mitigation measures or alternatives which are considerably different from those analyzed in the Airport Master Plan Program EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

4. The Initial Study, Environmental Assessment No. EA/PW 2007-11, provides the substantial evidence to support findings 3-5, above, and the City hereby determines that no further environmental documentation is required for the proposed project.

Mel Funtila, Project Manager
Date 12-5-07

City of Modesto
Written Checklist 3
EA/PW No. 2007-11
November 2007
IV. PROJECT EVALUATION:

The following written Checklist based on Appendix G of the CEQA Guidelines serves to document the evaluation of the site and activity of the proposed project pursuant to CEQA Guidelines Section 15168 (c) (4) to determine whether the environmental effects of the operation were covered in the Program EIR.

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I. **AESTHETICS.** Would the project:

a. Have a substantial adverse effect on a scenic vista?

   - [ ] Potentially Significant Impact
   - [ ] Less than Significant with Mitigation Incorporated
   - [ ] Less-than-Significant Impact
   - [ ] No Impact

b. Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings along a scenic highway?

   - [ ] Potentially Significant Impact
   - [ ] Less than Significant with Mitigation Incorporated
   - [ ] Less-than-Significant Impact
   - [ ] No Impact

c. Substantially degrade the existing visual character or quality of the site and its surroundings?

   - [ ] Potentially Significant Impact
   - [ ] Less than Significant with Mitigation Incorporated
   - [ ] Less-than-Significant Impact
   - [ ] No Impact

d. Create a new source of substantial light or glare that would adversely affect daytime or nighttime views in the area?

   - [ ] Potentially Significant Impact
   - [ ] Less than Significant with Mitigation Incorporated
   - [ ] Less-than-Significant Impact
   - [ ] No Impact

Aesthetic and visual impacts are analyzed on pages II-6 of the Program EIR.

**Responses to Checklist Questions**

a.-c. The proposed project will add a single-story structure to house aircraft to an area currently developed with asphalt for parking of aircraft. The project is surrounded by similar construction and has no potential to affect scenic vistas or other scenic resources, or to degrade the existing visual character of the site or its surroundings. No mitigation is required.

d. The proposed development is consistent with the Airport Master Plan. For this reason, impacts associated with additional light and glare would remain the same as those identified in the program EIR. There would be no additional impact. No additional mitigation is required.
II. **AGRICULTURAL RESOURCES.** In determining whether impacts on agricultural resources are significant environmental effects, lead agencies may refer to the California Agricultural Land Evaluation and Site Assessment Model (1997) prepared by the California Department of Conservation. Would the project:

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

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

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

Impacts on agricultural resources are not analyzed in the Program EIR.

**Responses to Checklist Questions**

a.-c  The proposed project will add a single-story structure to house aircraft to an area currently developed with asphalt for parking of aircraft. The project is surrounded by similar construction and has no potential to affect agricultural land or resources. No mitigation is required.
III. AIR QUALITY. When available, the significance criteria established by the applicable air quality management or air pollution control district may be relied upon to make the following determinations. Would the project:

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

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

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

d. Expose sensitive receptors to substantial pollutant concentrations?

e. Create objectionable odors affecting a substantial number of people?

Impacts on air quality are analyzed on pages II-45 through II-58 of the Program EIR.

Responses to Checklist Questions

a.-e. The Airport Master Plan program EIR found that air pollution from project-related traffic and aircraft operations would contribute to existing air quality violations. Traffic and aircraft emissions would contribute to violation of the state and federal 8-hour carbon monoxide (CO) and the federal ozone standard in the Modesto Urban Area and the San Joaquin Valley Air Basin. Jet aircraft operations would increase the frequency of detectable jet exhaust in areas adjacent to the airfield. Partial mitigation for these impacts is included in the program EIR (Mitigation Measures 3–5) and in the Modesto urban Area General Plan Master EIR, and the City of Modesto has adopted a statement of overriding consideration for Air Quality impacts in conjunction with the General Plan Master EIR. The proposed project would not change the amount of development and construction in the project area, so trips generated by the project would not
be affected and the types of land uses would not change. There would be no additional impact. No new mitigation is required.

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IV. **BIOLOGICAL RESOURCES.** Would the project:

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

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

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

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

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

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

Impacts on biological resources are analyzed on page II-64 of the Program EIR.
Responses to Checklist Questions

a.-f. The proposed site for the T-hangar construction is in an area that is currently paved and is well separated from the edges of the airport. There is no potential for effect on habitat or species; furthermore, there will be no alteration of drainage patterns as the area is currently paved. There are no applicable local ordinances or conservation plans. No mitigation is required.

V. CULTURAL RESOURCES. Would the project:

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

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

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

d. Disturb any human remains, including those interred outside of formal cemeteries? □ □ □ ☑

Impacts on cultural resources are analyzed on pages II-4 through II-5 of the Program EIR.

Responses to Checklist Questions

a.-d. The project consists of construction of T-hangars over existing paved area. There are no structures within the area to be developed. The proposed project would not change the locations or types of construction in the project area nor the boundaries of the project area.

Since no archaeological, or paleontological resources were found in the previous document to be located in the project area, and since the proposed project would not have a significant impact on historic structures, there would be no impact. No new mitigation is required.
VI. **GEOLOGY AND SOILS.** Would the project:

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

1. Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42.

2. Strong seismic groundshaking?

3. Seismic-related ground failure, including liquefaction?

4. Landslides?

b. Result in substantial soil erosion or the loss of topsoil?

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

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

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

Impacts associated with geology and soils are analyzed on page II-1 of the program EIR.
Responses to Checklist Questions

a.-d. The program EIR found that the project area is not subject to geologic or soil-related hazards that cannot be adequately mitigated through the implementation of existing city regulations, such as the building code. No significant impacts were identified, and no mitigation measures were required. The proposed project would not change the locations or types of construction in the project area nor the boundaries of the project area. There would be no additional impact. No mitigation is required.

e. The Airport is served by public sewers. No septic tanks or alternative wastewater systems are proposed. The proposed project would not change the proposed method of wastewater disposal. There would be no impact. No mitigation is required.

VII. HAZARDS AND HAZARDOUS MATERIALS.
Would the project:

a. Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?

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

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

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

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

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

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

Impacts on Safety are analyzed on pages II-36-II-44 of the Program EIR.

Responses to Checklist Questions

a.–c. The proposed T-hangar project does not involve the use of hazardous materials. There would be no impact. No mitigation is required.

d. No hazardous materials are stored at or near the project site. No mitigation is required.

e. The proposed T-hangar project is located in the airport and is a part of the public airport. There would be no impact. No mitigation is required.

f. The proposed T-hangar project is not in the vicinity of a private airstrip. No mitigation is required.

g. City emergency plans are developed with the assumption that the Airport Master Plan will be implemented. The proposed project would not change construction, land use, or other physical attributes of the implementation of the Airport Master Plan. There would be no impact. No mitigation is required.

h. The project site is located on the Airport, in an area that is not adjacent to wildlands. There would be no impact. No mitigation is required.
VIII. HYDROLOGY AND WATER QUALITY.
Would the project:

a. Violate any water quality standards or waste discharge requirements? [☐] [☐] [☐] [☒]

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

c. Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner that would result in substantial erosion or siltation onsite or offsite? [☐] [☐] [☐] [☒]

d. Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner that would result in flooding onsite or offsite? [☐] [☐] [☐] [☒]

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

f. Otherwise substantially degrade water quality? [☐] [☐] [☐] [☐]

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

h. Place within a 100-year flood hazard area structures that would impede or redirect floodflows? [☐] [☐] [☐] [☐]
i. Expose people or structures to a significant risk of loss, injury, or death involving flooding, including flooding as a result of the failure of a levee or dam?

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

Impacts associated with hydrology and water quality are analyzed on pages II-2 through II-3 of the Program EIR.

Responses to Checklist Questions

a. The proposed T-hangar project would not violate any water quality standards or waste discharge requirements. The proposed project is consistent with the Airport Master Plan, so there would be no additional impacts. No mitigation is required.

b. The proposed T-hangar project would not change the amount of impervious surface in the Specific Plan area or proposed storm drain facilities. There would be no additional impact. No mitigation is required.

c.-e. The proposed T-hangar project will not alter the existing drainage pattern of the area. The proposed project would not change the amount of impervious surface or the proposed storm drain facilities. There would be no additional impact. No mitigation is required.

f. The Airport Master Plan Program EIR includes measures to ensure adequate drainage and spill control. The proposed T-hangar project would be consistent with development contemplated by the Master Plan. The proposed project would not change water use or discharge associated with the buildout of the Master Plan. There would be no additional impact. No new mitigation is required.

g.-i. According to the Village One Specific Plan program EIR, the project site is not situated in a 100-year flood hazard area or downstream from a levee or dam. There would be no impact. No mitigation is required.

j. The project site is located in a flat, inland area not susceptible to seiche, tsunami, or mudflow. There would be no impact. No mitigation is required.
IX. LAND USE AND PLANNING. Would the project:

a. Physically divide an established community? □ □ □ √

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

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

Impacts associated with land use and planning are analyzed on pages II-7 through II-9 of the Program EIR.

Responses to Checklist Questions

a- c. The proposed T-hangar project is within the established airport property; therefore, the project would not divide an established community. The Airport is a component of the Modesto General Plan. There are no other applicable land use or conservation plans for the project area. There would be no impact. No mitigation is required.

X. MINERAL RESOURCES. Would the project:

a. Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state? □ □ □ □
b. Result in the loss of availability of a locally important mineral resource recovery site delineated on a local general plan, specific plan, or other land use plan?

Impacts on mineral resources are not analyzed in the Program EIR.

** Responses to Checklist Questions **

a., b. No known mineral resources or important recovery sites are located on the Airport. There would be no impact. No mitigation is required.

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** XI. NOISE. ** Would the project:

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

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

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

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

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

Impacts associated with noise are analyzed on pages II-10 through II-35 of the Program EIR.

Responses to Checklist Questions

a.-d. The proposed T-hangar project would not change Airport-related noise-generating activities. There would be no additional impact. No mitigation is required.

e.-f. The proposed T-hangar project is located within and is a part of a public airport. There would be no impact. No mitigation is required. The proposed T-hangar project is not in the vicinity of a private airstrip. No mitigation is required.

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XII. POPULATION AND HOUSING. Would the project:

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

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

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

Impacts associated with population and housing are not addressed in the Program EIR.

Responses to Checklist Questions

a.-c. The proposed T-hangar project would not induce population growth and will not displace any housing units or persons. No mitigation is required.
XIII. PUBLIC SERVICES. Would the project:

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

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<tr>
<td>Fire protection</td>
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<td>Police protection</td>
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<td>Schools?</td>
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Impacts on public services are analyzed on pages II-65 through II-66 of the Program EIR.

Responses to Checklist Questions

a. The proposed T-hangar project would not change demand for or provision of public services as compared to the Airport Master Plan. There would be no additional impact. No mitigation is required.
XIV. **RECREATION.** Would the project:

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

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

Impacts associated with recreation are not addressed in the Program EIR.

**Responses to Checklist Questions**

a., b. The proposed T-hangar project is a public facility and will have no effect on demand for recreational facilities.

XV. **TRANSPORTATION/TRAFFIC.** Would the project:

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

b. Cause, either individually or cumulatively, exceedance of a level-of-service standard established by the county congestion management agency for designated roads or highways?
c. Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks?

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

e. Result in inadequate emergency access?

f. Result in inadequate parking capacity?

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

Impacts on transportation and traffic are analyzed on pages II-59 through II-63 of the Program EIR.

Responses to Checklist Questions

a., b. The proposed T-hangar project would result in negligible increases in traffic. There would be no additional impact. No mitigation is required.

c. The proposed T-hangar project implements the Airport Master Plan. There would be no impact. No mitigation is required.

d.-g. The proposed T-hangar project would not affect any traffic design features, affect emergency access, affect parking capacity, or conflict with any adopted policies supporting alternative transportation. There would be no impact. No mitigation is required.

Potentially Significant Impact | Less than Significant Impact with Mitigation Incorporated | Less-than-Significant Impact | No Impact

XVI. UTILITIES AND SERVICE SYSTEMS.

Would the project:

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

City of Modesto
Written Checklist 19

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

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

d. Have sufficient water supplies available to serve the project from existing entitlements and resources, or would new or expanded entitlements be needed? ☑ ☑ ☑ ☐

e. Result in a determination by the wastewater treatment provider that serves or may serve the project that it has adequate capacity to serve the project’s projected demand in addition to the provider’s existing commitments? ☑ ☑ ☑ ☐

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

g. Comply with federal, state, and local statutes and regulations related to solid waste? ☑ ☑ ☑ ☐

Impacts associated with utilities are addressed on pages II-65 through II-66 of the Program EIR.

Responses to Checklist Questions

a., b., c. The City provides sewer services to the Airport. All wastewater would be directed to city wastewater treatment facilities. No wastewater discharges would occur in the project area. The proposed project would not significantly increase the amount of wastewater that will be generated at the Airport. There would be no additional impact. No mitigation is required.

c. The proposed T-hangar project is located on a currently-paved area and as such would not result in any new or additional storm drainage.

d. The City currently provides domestic water at the Airport. There would be no additional impact resulting from the proposed project. No mitigation is required.
The proposed T-hangar project would not result in any generation of additional solid waste. There would be no impact. No mitigation is required.

### XVII. MANDATORY FINDINGS OF SIGNIFICANCE.

**a.** Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal, or eliminate important examples of the major periods of California history or prehistory?

- [ ] Potentially Significant Impact
- [ ] Less than Significant Impact
- [ ] Less-than-Significant Impact
- [ ] No Mitigation

**b.** Does the project have impacts that are individually limited but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.)

- [ ] Potentially Significant Impact
- [ ] Less than Significant Impact
- [ ] Less-than-Significant Impact
- [ ] No Mitigation

**c.** Does the project have environmental effects that will cause substantial adverse effects on human beings, either directly or indirectly?

- [ ] Potentially Significant Impact
- [ ] Less than Significant Impact
- [ ] Less-than-Significant Impact
- [ ] No Mitigation

Cumulative impacts are analyzed on page III-1 of the 1994 Supplement.

**Responses to Checklist Questions**

**a.** As described above, the proposed T-hangar project implements a component of the Airport Master Plan and does not have the potential to degrade the quality of the environment.
b. As described above, the proposed project would not result in any significant impacts, either on a project or on cumulative level, over and above those associated with implementation of the Airport Master Plan and as analyzed in the Airport Master Plan program EIR. There are no significant cumulative impacts.

c. As described above, the proposed project would not result in any significant impacts affecting humans over and above those associated with implementation of the Airport Master Plan and as analyzed in the Airport Master Plan program EIR.

V. MITIGATION APPLIED TO PROJECT

The following mitigation measures developed in the Airport Master Plan Program EIR are appropriate to the project and will be incorporated into the project. With incorporation of the following measures, the environmental effects of the project were covered by the program EIR.

1. Aesthetics/Light and Glare: Mitigation as set forth in Section II. D. 3:

   All lighting plans for airport development projects shall comply with FAA standards and shall be reviewed by the Airport Operator to ensure that no conflicts develop. Fixtures shall be shielded and/or directed downward in such a fashion as to eliminate glare.

2. Air Quality: Construction of the T-hangars shall implement PM10 control measures as set forth in the Program EIR at pages II-57-58 and Modesto Urban Area General Plan Mitigation Measures Air-1 and Air-2, pages V-2-24 and 25, as applicable.

3. Cultural Resources: Mitigation as set forth in Section II.C.3:

   All construction personnel shall be alerted to the potential for uncovering artifacts and human remains. Should distinct cultural objects, significant changes in soil color, be observed or human remains discovered, construction shall be halted and a specialist and/or the County Coroner, as appropriate, shall be called in to evaluate the potential of any find.

4. Water Quality: Mitigation as set forth in Section II.B.3:

   Adequate measures to minimize/eliminate the potential for accidental discharge into any waterway shall be taken. Measures shall also be taken to ensure that the spillage of potential hazardous materials would be contained within the project boundaries. Development plans shall include drainage and spill containment measures that ensure discharges onto off-airport property do not take place. Proper grading and drainage plans for new development shall be submitted to the City for review and approval prior to the issuance of any building permit. Drainage plans shall also include provisions to route runoff and spills away from existing dry wells.
MODESTO CITY COUNCIL
RESOLUTION NO. 2009-030

A RESOLUTION DESIGNATING COUNCILMEMBER OLSEN TO SERVE AS VICE MAYOR FOR THE ENSUING YEAR PURSUANT TO SECTION 603 OF THE CHARTER OF THE CITY OF MODESTO

BE IT RESOLVED by the Council of the City of Modesto that Councilmember Olsen is hereby designated to serve as Vice Mayor for the ensuing year pursuant to Section 603 of the Charter 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 6<sup>th</sup> day of January, 2009, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember Keating, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: _______________________

STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: _______________________

SUSANA ALCALA WOOD, City Attorney
A RESOLUTION RECOMMENDING THE STANISLAUS COUNCIL OF GOVERNMENTS SUBMIT THE “GENERAL PLAN DENSITIES” GROWTH SCENARIO TO THE SAN JOAQUIN VALLEY BLUEPRINT PLANNING PROCESS AS THE STANISLAUS COUNTY PREFERRED SCENARIO

WHEREAS, Blueprint planning is being conducted in various regions in the State of California by Metropolitan Planning Organizations to address the population growth anticipated in California in the next several decades, and

WHEREAS, the Councils of Governments (COGs) in the San Joaquin Valley have agreed to develop a coordinated plan, the San Joaquin Valley Regional Blueprint ("Blueprint"), and

WHEREAS, the goal of the Blueprint process is to develop a 2050 vision for the San Joaquin Valley that is created and shared by its citizens, and

WHEREAS, the San Joaquin Valley Blueprint will formulate an approach to long-term regional planning that addresses land use, housing, transportation, environmental issues, and economic development interests in the San Joaquin Valley, and

WHEREAS, the Blueprint process examines alternative illustrative scenarios and identifies a conceptual “preferred scenario” that represents the long-term vision for the future of Stanislaus County through 2050, and

WHEREAS, the Stanislaus Council of Governments (StanCOG) conducted fourteen (14) Blueprint Phase II Community Outreach Workshops in all cities and in the unincorporated areas of Stanislaus County, and
WHEREAS, during the Blueprint Community Outreach Workshops, the Moderate Change 2050 Conceptual Growth Scenario received the highest number of votes from among the four options presented (No Change, Some Change, Moderate Change, and Major Change), and

WHEREAS, StanCOG asked its member agencies to recommend and/or modify the “Moderate Change” scenario for use in development of the Blueprint Valley-wide scenarios, and report the results to StanCOG for presentation to the StanCOG Policy Board, and

WHEREAS, StanCOG subsequently adopted a resolution at its November 12, 2008, meeting to submit the “No Change” (“General Plan Densities”) scenario to the San Joaquin Valley Blueprint process as the Stanislaus County Preferred Conceptual Growth Scenario, and

WHEREAS, the action by the Modesto City Council to recommend to the StanCOG Policy Board the “General Plan Densities” scenario as the Stanislaus County Preferred Conceptual Growth Scenario is not a project under the California Environmental Quality Act, and

WHEREAS, the City Council finds that the “General Plan Densities” scenario of the Blueprint Valley-wide scenarios supports goals, policies and strategies of the City of Modesto Urban Area General Plan and the Strategic Plan.

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Modesto that it hereby recommends that StanCOG submit the “General Plan Densities” growth scenario to the San Joaquin Valley Blueprint planning process as the Stanislaus County Preferred Scenario.
The foregoing resolution was introduced at the regular meeting of the Council of the City of Modesto held on the 6th day of January, 2009, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember Keating, was upon roll call carried and the resolution adopted by the following vote:

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

Noes: Councilmembers: Marsh

Absent: Councilmembers: None

ATTTEST: [Signature]

(SEAL)

APPROVED AS TO FORM:

By: [Signature]

SUSANÁ ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2009-032

A RESOLUTION APPROVING A SEVERANCE PACKAGE FOR EMPLOYEES
AUTHORIZING SEVERANCE PAY, HEALTH BENEFITS AND INTERVIEW
LEAVE FOR EMPLOYEES SUBJECT TO AN AUTHORIZED REDUCTION IN
FORCE THROUGH JANUARY 30, 2009

WHEREAS, the City of Modesto again faces a budget crisis which has resulted in
elimination of filled positions, and

WHEREAS, the City Council desires to establish a severance package to include
Severance Pay, Health Benefits and Interview Leave for employees subject to an
authorized reduction in force from January 1, 2009 through January 30, 2009, and

WHEREAS, current Personnel Rules and Memoranda of Understanding provide
that employees who are laid off receive only those benefits to which any departing
employee would be entitled, and

WHEREAS, City staff is recommending to the Council that laid off employees
should receive Severance Pay equivalent to a minimum of four (4) weeks of the
employee’s salary and City health contribution upon the effective date of the layoff and
thereby provide a limited cash payment to assist the laid off employee who is faced with
loss of job and income, and

WHEREAS, City staff is also recommending that employees who are notified of
pending lay off should receive Interview Leave which would provide paid leave time for
employees to seek other employment prior to their date of layoff, and

WHEREAS, City staff is recommending that where an employee volunteers to be
laid off and is in the classification or the approved bumping chain of a position
authorized for layoff due to an authorized reduction in force, the City Manager may authorize said employee to be laid off, with all rights to receive severance benefits.

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

SECTION 1. Eligibility for Benefits: City employees who are laid off due to an authorized reduction in force shall be eligible to receive severance benefits subject to the terms and conditions as set forth below. All severance benefit entitlements shall be in addition to any other benefits to which the employee would otherwise be entitled pursuant to the City’s Personnel Rules or appropriate Memorandum of Understanding. The City Manager is authorized to postpone an employee's date of layoff or demotion for up to ninety (90) days, at his discretion, if deemed necessary to meet the needs of the City.

SECTION 2. Eligibility for One Hundred and Sixty (160) Work Hours of Severance Pay: All non-sworn employees in regular positions in the classified service who are laid off due to a reduction in force shall be entitled to receive upon separation from service, severance pay equivalent to One Hundred Sixty (160) work hours. Severance pay shall be calculated based upon the employee’s regular base pay, excluding acting pay, assignment pay, shift differential, or other special pays.

SECTION 3. Eligibility for Additional Severance Pay: All non-sworn employees in regular positions in the classified service who are laid off due to a reduction in force and who have six (6) or more complete years of continuous service are eligible for additional severance pay as follows:

A. Employees with six (6) to eight (8) years of service shall receive severance pay equivalent to forty (40) work hours
B. Employees with nine (9) to eleven (11) years of service shall receive severance pay equivalent to eighty (80) work hours.

C. Employees with twelve (12) to fourteen (14) years of service shall receive severance pay equivalent to one hundred twenty (120) work hours.

D. Employees with fifteen (15) or more years of service shall receive severance pay equivalent to one hundred and sixty (160) work hours.

Additional severance pay shall be calculated based upon the employee’s regular base pay, excluding acting pay, assignment pay, shift differential, or other special pays.

SECTION 4. Severance Pay Options: At the time of separation, an employee may elect to receive severance pay in a lump sum payment or in the form of a contribution to the employee’s deferred compensation plan or a combination thereof subject to all appropriate IRS regulations and limitations.

SECTION 5. Eligibility for Health Contribution: Employees who receive severance pay shall also be eligible to receive the City’s contribution to health, dental and vision premiums for a period of four (4) to eight (8) weeks following layoff. The amount of this contribution shall be the same as that provided to active employees, except that the amount shall not include the equivalent of any in-lieu deferred compensation. The duration of the premium contributions shall be for the same number of weeks as the severance pay provision (4-8 weeks depending on years of service). The contribution shall be paid directly to the insurance carriers.

SECTION 6. Eligibility for Counseling Benefit: Employees who receive severance pay shall also be eligible for an extension of the City’s Employee Assistance
Program (EAP) benefit for a period of six (6) months from date of layoff. Said benefit shall provide for a maximum of six (6) EAP visits per family.

SECTION 7. Eligibility for Interview Leave: All non-sworn employees in regular positions in the classified service who are provided notice by his/her Department Director that the employee may be laid off due to a reduction in force shall be entitled, prior to separation, to a maximum of fifteen (15) work hours of paid leave time for purposes of participating in employment interviews or examinations with any other employer.

Authorized interview leave shall be subject to prior written approval of the employee’s supervisor and with consideration for the needs of the City. Written verification of scheduled interviews or examinations may be required by the employee’s supervisor. Interview leave in excess of fifteen (15) work hours may be granted with the prior written approval of the employee’s Department Director. Interview leave shall not be subject to cashout or conversion to any other benefit.

SECTION 8. Voluntary Layoff: The City Manager may authorize any non-sworn employee in a regular position in the classified service who volunteers to be laid off, and is in the classification or the approved bumping chain of a position authorized for layoff, to be laid off, with all rights to receive severance pay, health contributions and interview leave as provided herein.

SECTION 9. Term: Severance benefits, as set forth in this Resolution shall terminate effective January 30, 2009, unless extended by resolution of the Modesto City Council.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 6th day of January, 2009, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember Lopez, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

(Seal)

APPROVED AS TO FORM:

By: ____________________________
   SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2009-033

A RESOLUTION APPROVING A POLICY FOR THE HOUSING AND URBAN DEVELOPMENT (HUD) FUNDED PUBLIC SERVICE GRANTS TO PLACE A CAP OF $40,000 ON PUBLIC SERVICE GRANT AWARDS, TO ESTABLISH A SEPARATE AWARD PROCESS FOR FAIR HOUSING SERVICES, INCLUDING A $40,000 CAP, AND TO ALLOCATE PUBLIC SERVICE FUNDING FOR CITY OF MODESTO RECREATION PROGRAMS; AND AUTHORIZING STAFF TO MOVE FORWARD WITH THE CHANGES FOR FISCAL YEAR 2009/2010

WHEREAS, the City of Modesto receives several Federal grants from the United States Department of Housing and Urban Development (HUD), and

WHEREAS, the City receives a Community Development Block Grant (CDBG), and

WHEREAS, the City is required to obligate fifteen percent (15%) of the City’s available CDBG entitlement for the purpose of providing public service grants to serve very low, low and moderate income persons and families residing within the city limits of Modesto, and

WHEREAS, the Citizens Housing and Community Development Committee (CH&CDC) met in January 2009, and recommended a policy for the HUD funded public service grants to place a cap of $40,000 on public service grant awards, to establish a separate award process for fair housing services including a $40,000 cap, and to allocate public service funding for City of Modesto recreation programs.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the Council hereby approves a policy for the Housing and Urban Development (HUD) funded public service grants to place a cap of $40,000 on public service grant awards, to establish a separate award process for fair housing services including a
$40,000 cap. and to allocate public service funding for City of Modesto recreation programs.

BE IT FURTHER RESOLVED by the Council of the City of Modesto that it hereby authorizes staff to move forward with the changes for Fiscal Year 2009/2010.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 13th day of January, 2009, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Keating, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Hawn, Keating, Lopez, Marsh, 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. 2009-034
RESOLUTION OF INTENTION
TO APPROVE AN AMENDMENT TO CONTRACT
BETWEEN THE
BOARD OF ADMINISTRATION
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM
AND THE
CITY COUNCIL
CITY OF MODESTO

WHEREAS, the Public Employees' Retirement Law permits the participation of public agencies and their employees in the Public Employees' Retirement System by the execution of a contract, and sets forth the procedure by which said public agencies may elect to subject themselves and their employees to amendments to said Law; and

WHEREAS, one of the steps in the procedures to amend this contract is the adoption by the governing body of the public agency of a resolution giving notice of its intention to approve an amendment to said contract, which resolution shall contain a summary of the change proposed in said contract; and

WHEREAS, the following is a statement of the proposed change:

To provide Section 2118 (Partial Service Retirement) for local miscellaneous members.

NOW, THEREFORE, BE IT RESOLVED that the governing body of the above agency does hereby give notice of intention to approve an amendment to the contract between said public agency and the Board of Administration of the Public Employees' Retirement System, a copy of said amendment being attached hereto, as an "Exhibit" and by this reference made a part hereof.

By ____________________________
Presiding Officer Jim Ridenour

Mayor – City of Modesto
Title

January 13, 2009
Date adopted and approved
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 13th day of January, 2009, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Keating, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

(Seal)

ATTEST: [Signature]

STEFANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: [Signature]

SUSANA ALCALA WOOD, City Attorney
AMENDMENT TO CONTRACT

Between the
Board of Administration
California Public Employees’ Retirement System
and the
City Council
City of Modesto


A. Paragraphs 1 through 13 are hereby stricken from said contract as executed effective August 1, 2008, and hereby replaced by the following paragraphs numbered 1 through 13 inclusive:

1. All words and terms used herein which are defined in the Public Employees’ Retirement Law shall have the meaning as defined therein unless otherwise specifically provided. “Normal retirement age” shall mean age 55 for local miscellaneous members and age 50 for local safety members.
2. Public Agency shall participate in the Public Employees' Retirement System from and after August 1, 1946 making its employees as hereinafter provided, members of said System subject to all provisions of the Public Employees' Retirement Law except such as apply only on election of a contracting agency and are not provided for herein and to all amendments to said Law hereafter enacted except those, which by express provisions thereof, apply only on the election of a contracting agency.

3. Employees of Public Agency in the following classes shall become members of said Retirement System except such in each such class as are excluded by law or this agreement:

   a. Local Fire Fighters (herein referred to as local safety members);
   b. Local Police Officers (herein referred to as local safety members);
   c. Employees other than local safety members (herein referred to as local miscellaneous members).

4. In addition to the classes of employees excluded from membership by said Retirement Law, the following classes of employees shall not become members of said Retirement System:

   a. POLICE COURT EMPLOYEES;
   b. ALL HOURLY RATED OR HOURLY BASIS EMPLOYEES HIRED ON AND AFTER OCTOBER 1, 1962; AND
   c. CITY COUNCIL MEMBERS ELECTED INTO OFFICE ON OR AFTER AUGUST 1, 2008.

5. Assets heretofore accumulated with respect to members in the local retirement system have been transferred to the Public Employees' Retirement System and applied against the liability for prior service incurred thereunder. That portion of the assets so transferred which represent the accumulated contributions (plus interest thereof) required of the employees under said local system has been credited to the individual membership account of each such employee under the Public Employees' Retirement System.
6. The percentage of final compensation to be provided for each year of credited prior and current service for local miscellaneous members shall be determined in accordance with Section 21354 of said Retirement Law, subject to the reduction provided therein for service on and after January 1, 1956, the effective date of Social Security coverage, and prior to June 30, 1978, termination of Social Security, for members whose service has been included in Federal Social Security (2% at age 55 Full and Modified).

7. The percentage of final compensation to be provided for each year of credited prior and current service as a local safety member shall be determined in accordance with Section 21362.2 of said Retirement Law (3% at age 50 Full).

8. Public Agency elected and elects to be subject to the following optional provisions:


   b. Section 21222.2 (One-Time 5% Increase - 1971). Legislation repealed said Section effective January 1, 1980.

   c. Section 21319 (One-Time 15% Increase for Local Miscellaneous Members Who Retired or Died Prior to July 1, 1971). Legislation repealed said Section effective January 1, 2002.

   d. Section 21572 (Increased Level of 1959 Survivor Benefits) for local miscellaneous members only.

   e. Section 20042 (One-Year Final Compensation).

   f. Section 21427 (Improved Nonindustrial Disability Allowance) for local miscellaneous members only.

   g. Sections 21624, 21626 and 21628 (Post-Retirement Survivor Allowance) for local safety members and those local miscellaneous members entering membership on or prior to October 20, 1981.

   h. Section 21325 (One-Time 3% to 15% Increase For Local Miscellaneous Members and Local Safety Members Who Retired or Died Prior to January 1, 1974). Legislation repealed said Section effective January 1, 2002.
i. Section 20475 (Different Level of Benefits). Sections 21624, 21626 and 21628 (Post-Retirement Survivor Allowance) are not applicable to local miscellaneous members entering membership for the first time in the miscellaneous classification after October 20, 1981.

j. Section 21322 (One-Time 4% Increase For Local Miscellaneous Members and Local Safety Members Who Retired or Died Prior to January 1, 1981). Legislation repealed said Section effective January 1, 2002.

k. Section 21317 (One-Time 15% Increase for Certain Local Safety Members Who Retired for Service Retirement). Legislation repealed said Section effective January 1, 2002.

l. Section 21024 (Military Service Credit as Public Service).

m. Section 21574.5 (Indexed Level of 1959 Survivor Benefits) for local safety members only.

n. Section 21547.7 (Alternate Death Benefit for Local Fire Members Credited with 20 or More Years of Service).

o. Section 21118 (Partial Service Retirement) for local miscellaneous members only.

9. Public Agency, in accordance with Government Code Section 20790, ceased to be an "employer" for purposes of Section 20834 effective on March 28, 1978. Accumulated contributions of Public Agency shall be fixed and determined as provided in Government Code Section 20834, and accumulated contributions thereafter shall be held by the Board as provided in Government Code Section 20834.

10. Public Agency shall contribute to said Retirement System the contributions determined by actuarial valuations of prior and future service liability with respect to local miscellaneous members and local safety members of said Retirement System.

11. Public Agency shall also contribute to said Retirement System as follows:

a. Contributions required per covered member on account of the 1959 Survivor Benefits provided under Section 21574.5 of said Retirement Law. (Subject to annual change.) In addition, all assets and liabilities of Public Agency and its employees shall be pooled in a single account, based on term insurance rates, for survivors of all local safety members.
b. A reasonable amount, as fixed by the Board, payable in one installment within 60 days of date of contract to cover the costs of administering said System as it affects the employees of Public Agency, not including the costs of special valuations or of the periodic investigation and valuations required by law.

c. A reasonable amount, as fixed by the Board, payable in one installment as the occasions arise, to cover the costs of special valuations on account of employees of Public Agency, and costs of the periodic investigation and valuations required by law.

12. Contributions required of Public Agency and its employees shall be subject to adjustment by Board on account of amendments to the Public Employees' Retirement Law, and on account of the experience under the Retirement System as determined by the periodic investigation and valuation required by said Retirement Law.

13. Contributions required of Public Agency and its employees shall be paid by Public Agency to the Retirement System within fifteen days after the end of the period to which said contributions refer or as may be prescribed by Board regulation. If more or less than the correct amount of contributions is paid for any period, proper adjustment shall be made in connection with subsequent remittances. Adjustments on account of errors in contributions required of any employee may be made by direct payments between the employee and the Board.

B. This amendment shall be effective on the __ day of __________, ______

BOARD OF ADMINISTRATION
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

CITY COUNCIL
CITY OF MODESTO

BY
LORI MCGARTLAND, CHIEF
EMPLOYER SERVICES DIVISION
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

BY
PRESIDING OFFICER

Witness Date

Attest:

________________________________________

Clerk
MODESTO CITY COUNCIL
RESOLUTION NO. 2009-035

A RESOLUTION REVISING THE POSITION CLASSIFICATION PLAN FOR THE CITY OF MODESTO TO AMEND THE JOB SPECIFICATION FOR THE CLASSIFICATION OF WATER RESOURCE SPECIALIST

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

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

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

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

SECTION I. CLASSIFICATION AMENDED. The Position Classification Plan of the City of Modesto is hereby amended to revise the classification of Water Resource Specialist. The job specification for this classification is being amended to change the job duties to more accurately reflect the assigned essential functions. The job specification for the classification of Water Resource Specialist, as shown on the attached Exhibit “A,” which is made a part of this resolution by reference, is hereby approved and made part of the Position Classification Plan of the City of Modesto.

SECTION II. EFFECTIVE DATE. This resolution shall become effective on and after January 13, 2009.
The foregoing resolution was introduced in a regular meeting of the Council of the City of Modesto held on the 13th day of January, 2009, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Keating, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Hawn, Keating, Lopez, Marsh, 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
CITY OF MODESTO  
NO. 3343  

WATER RESOURCE SPECIALIST  

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

DEFINITION:  

To provide technical support, reporting and analysis for environmental compliance; to perform research, statistical and other analytical work; to serve as a liaison between the City and state/federal regulatory agencies in the areas pertaining to environmental compliance for water quality.  

SUPERVISION RECEIVED AND EXERCISED  

Receives direction from and reports to management staff.  

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

Essential Functions:  

Preparation of regulatory reports, including drinking water assessments and testing waivers.  

Serve as liaison to water quality testing laboratories; schedule water quality testing by site and prepare documentation related to testing, such as chain of custody.  

Investigate, analyze, develop and prepare special studies or projects, as requested.  

Answer questions and provide information/reports for release to the public, outside agencies and City staff, including preparation of the Consumer Confidence Report and other public notices and reports.  

Assist with documentation and reporting related to legal actions.  

Analyze reports and flag discrepancies and/or issues of concern.  

Research and advise staff on equipment purchases, write specifications or justifications, and order materials or services.  

Maintain databases pertinent to the management of water quality, disinfection, treatment, operations and distribution.  

Exhibit A
Essential Functions: (Continued)

Develop and analyze databases pertinent to the management of water quality, disinfection, treatment, operations and distribution.

Investigate water quality problems in the distribution system.

Monitor system flow and pressure in response to consumer demands.

Marginal Functions:

Perform related duties, as assigned.

MINIMUM QUALIFICATIONS

Knowledge of:

Modern office procedures, methods and computer equipment.

Technical and public report writing procedures.

Statistical methods and methods of graphic presentation.

Computer applications including database, spreadsheet and word processing.

Applicable Federal, State and local laws, codes and regulations.

Procedures and methods for environmental compliance monitoring.

Procedures and policies relating to the public bidding process.

Database management of water quality, disinfection, treatment, operations and distribution data.

Ability to:

Learn procedures and methods used in environmental compliance monitoring.

Interpret and apply Federal, State and local policies, procedures, laws and regulations.

Analyze facts and make sound recommendations.

Learn the principles of chemistry, biology and related sciences as they pertain to Environmental compliance.

Exhibit A
Ability to (Continued):

Use and operate a personal computer including applicable software.

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

Schedule and deliver water certification training.

Communicate clearly and concisely, both orally and in writing.

Identify and respond to public issues and concerns.

Understand and determine proper chemical dosage rates for wellhead disinfection.

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

Experience and Training Guidelines

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

Experience:

One year of increasingly responsible administrative, related analytical and/or technical experience with a private or public agency, preferably in the area of environmental compliance, or a related field.

Training:

An Associate of Science Degree from an accredited college or a Certificate in Water Technology that includes 15 units of college coursework from an accredited college in physical, chemical, or biological science, or a related field.

Equivalent to an Associate of Arts Degree from an accredited college in public administration, business administration, environmental science, biology, chemistry or a related field.

License or Certificate:

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

Exhibit A
PHYSICAL AND MENTAL REQUIREMENTS

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

WORKING CONDITIONS

Work is performed in a typical temperature controlled office environment subject to typical office noise and environment. Some positions may be assigned to remote locations. Positions may require occasional overtime and weekend work and travel is rare.

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<td>Adopted  7/03</td>
</tr>
<tr>
<td>Revised  12/08</td>
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<tr>
<td>BU    Gen NS</td>
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Exhibit A
A RESOLUTION APPROVING AN OFFICE OF EMERGENCY SERVICES (OES) ANTI-DRUG ABUSE PROGRAM GRANT OF $298,739 FOR THE STANISLAUS DRUG ENFORCEMENT AGENCY (SDEA) TO COMBAT MAJOR DRUG TRAFFICKING AND MANUFACTURING, AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE NECESSARY PROGRAM DOCUMENTS

WHEREAS, in April 2008, the Modesto Police Department applied for funding from the Governor’s Office of Emergency Services (OES) for the Stanislaus Anti-Drug Task Force, and

WHEREAS, the Stanislaus Anti-Drug Abuse Enforcement Program is part of the Stanislaus Drug Enforcement Agency (SDEA), and

WHEREAS, this program will integrate federal, state, and local law enforcement agencies, prosecutors, and probation officers for the purpose of enhancing inter-agency coordination and intelligence and facilitating multi-jurisdictional investigations to combat major drug trafficking and manufacturing, and

WHEREAS, SDEA has been a recipient of the OES grant for the past 18 years, and

WHEREAS, the grant is used to pay for personnel and needed equipment within the countywide Joint Powers Agreement unit, and

WHEREAS, the SDEA is responsible for compliance with all regulations pertaining to the OES grant, including all reporting requirements.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby accepts the Office of Emergency Services (OES) Anti-Drug Abuse
Enforcement Program Grant of $298,739 for the Stanislaus Drug Enforcement Agency (SDEA) to combat major drug trafficking and manufacturing.

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

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 13th day of January, 2009, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Keating, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED AS TO FORM:

By: 

SUSANA ALCALA WOOD, City Attorney

(Seal)
A RESOLUTION AMENDING THE FISCAL YEAR 2008/2009 MULTI-YEAR BUDGET TO APPROPRIATE REVENUES AND EXPENDITURES OF $298,739 FROM THE OFFICE OF EMERGENCY SERVICES (OES) FOR THE STANISLAUS DRUG ENFORCEMENT AGENCY (SDEA) TO COMBAT MAJOR DRUG TRAFFICKING AND MANUFACTURING

WHEREAS, in April 2008, the Modesto Police Department applied for funding from the Governor’s Office of Emergency Services (OES) for the Stanislaus Anti-Drug Task Force, and

WHEREAS, the Stanislaus Anti-Drug Abuse Enforcement Program is part of the Stanislaus Drug Enforcement Agency (SDEA), and

WHEREAS, this program will integrate federal, state, and local law enforcement agencies, prosecutors, and probation officers for the purpose of enhancing inter-agency coordination and intelligence and facilitating multi-jurisdictional investigations to combat major drug trafficking and manufacturing, and

WHEREAS, the SDEA has been a recipient of the OES grant for the past 18 years, and

WHEREAS, the grant is used to pay for personnel and needed equipment within the countywide Joint Powers Agreement unit.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the 2008/2009 Multi-Year Budget is hereby amended as indicated in attached Budget Adjustment, 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 13th day of January, 2009, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Keating, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED AS TO FORM:

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

Contact Person: Polly Findlen
Council Action Date: 
Telephone No.: 29518
Resolution Number: 
Department: POLICE
Adjustment to FY: FY 09

<table>
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<tr>
<th>Fund-Agency-Org-Object</th>
<th>Appr Unit</th>
<th>Current Budget</th>
<th>Increase/ Decrease</th>
<th>Revised</th>
<th>Description of Object</th>
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DEPARTMENTAL REVENUES/INCLUDES TRANSFERS IN

FROM

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APPROPRIATIONS/INCLUDES TRANSFERS OUT

FROM

TO

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<th>$157,727</th>
<th>Misc Services (for GF share of grant positions)</th>
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<td>0100-190-1970-0260</td>
<td>1900C</td>
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<td></td>
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COMMENTS/JUSTIFICATION (USE ADDITIONAL PAGES AS NECESSARY)

The SDLA budgeted that some grant revenue would be received or that SDEA would cover $200,000 of on-going grant positions. Therefore, revenue was budgeted at $200K and will be amended to $298,739 (grant amount). A new adjustment is needed for the amount of salary not reimbursed by the grant for two PD positions. This amount will be charged to the general fund as an in-kind MPD contribution to SDLA.

<table>
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<tr>
<th>AUTHORIZATION</th>
<th>SIGNATURE</th>
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<td>(Authority levels reflected on back)</td>
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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)
A RESOLUTION ACCEPTING A MINI GRANT IN THE AMOUNT OF 
$17,895.76 FROM THE OFFICE OF TRAFFIC SAFETY (OTS) SOBRIETY 
CHECKPOINT MINI-GRANT PROGRAM, TO CONDUCT SOBRIETY 
CHECKPOINTS, AND AUTHORIZING THE CITY MANAGER, OR HIS 
DESIGNEE, TO EXECUTE THE NECESSARY PROGRAM DOCUMENTS 

WHEREAS, on June 16, 2008, the Modesto Police Department received an 
announcement for the solicitation of applications for the “Sobriety Checkpoint Mini-
Grant Program for Local Law Enforcement Agencies” from the Office of Traffic Safety 
(OTS), through the National Highway Traffic Safety Administration (NHTSA), and 

WHEREAS, the mini-grant is for personnel overtime costs to conduct sobriety 
checkpoints during the Winter Holiday Period, which fell between December 22, 2008 
and January 3, 2009, and the Labor Day period in August/September 2009, and 

WHEREAS, staff was unable to bring to Council for acceptance of award before 
the Winter Holiday mandated period so checkpoints were conducted on December 31, 
2008 and January 2, 2009, and 

WHEREAS, on November 5, 2008, the Modesto Police Department received 
notification that it was awarded $17,895.76 for the operation of up to four sobriety 
checkpoints in Modesto; however, the notification was sent to the Patrol Division and 
delayed this staff report resulting in the necessity to work checkpoints prior to 
acceptance, and 

WHEREAS, the goal of the statewide sobriety checkpoint program is to reduce 
the number of people killed in alcohol-related collisions, and 

WHEREAS, sobriety checkpoints have proven to be one of the most important 
DUI countermeasures available to law enforcement agencies, and
WHEREAS, this mini grant will result in increased grant revenue of $17,895.76 to the City.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto, that it hereby accepts a mini grant in the amount of $17,895.76 from the Office of Traffic Safety (OTS) Sobriety Checkpoint Mini-Grant Program to conduct sobriety checkpoints.

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

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 13th day of January, 2009, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Keating, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST:  

STEFANIA LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: 

SUSANA ALCALA WOOD, City Attorney
A RESOLUTION AMENDING THE FISCAL YEAR 2008/2009 MULTI-YEAR BUDGET TO APPROPRIATE REVENUES AND EXPENDITURES OF $17,895.76 TO CONDUCT SOBRIETY CHECKPOINTS

WHEREAS, on June 16, 2008, the Modesto Police Department received an announcement for the solicitation of applications for the “Sobriety Checkpoint Mini-Grant Program for Local Law Enforcement Agencies” from the Office of Traffic Safety (OTS), through the National Highway Traffic Safety Administration (NHTSA), and

WHEREAS, the mini-grant is for personnel overtime costs to conduct sobriety checkpoints during the Winter Holiday Period, which fell between December 22, 2008 and January 3, 2009, and the Labor Day period in August/September 2009, and

WHEREAS, staff was unable to bring to Council for acceptance of award before the Winter Holiday mandated period so checkpoints were conducted on December 31, 2008 and January 2, 2009, and

WHEREAS, on November 5, 2008, the Modesto Police Department received notification that it was awarded $17,895.76 for the operation of up to four sobriety checkpoints in Modesto; however, the notification was sent to the Patrol Division and delayed this staff report resulting in the necessity to work checkpoints prior to acceptance, and

WHEREAS, the goal of the statewide sobriety checkpoint program is to reduce the number of people killed in alcohol-related collisions, and

WHEREAS, sobriety checkpoints have proven to be one of the most important DUI countermeasures available to law enforcement agencies, and

WHEREAS, this results in increased grant revenue of $17,895.76 to the City.
NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto, that it hereby amends the Fiscal Year 2008/2009 multi-year budget to appropriate revenues and expenditures of $17,895.76 for overtime to conduct sobriety checkpoints, as listed in Exhibit A.

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 13th day of January, 2009, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Keating, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: [Signature]

SUSANA ALCALA WOOD, City Attorney

APPROVED AS TO FORM:

By: [Signature]
Exhibit A

The Fiscal Year 2008/2009 Operating Budget will be applied to:

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<thead>
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<th>Revenue</th>
<th>Increase/(Decrease)</th>
<th>Description</th>
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<td>2008/09 OTS Sobriety Checkpoint Mini Grant</td>
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<th>Expense</th>
<th>Increase/(Decrease)</th>
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<tr>
<td>To: 0410-190-2972-0130</td>
<td>$17,896</td>
<td>Overtime</td>
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MOHESTO CITY COUNCIL
RESOLUTION NO. 2009-0-10

A RESOLUTION APPROVING THE PROSPECTIVE BIDDER
PREQUALIFICATION APPEALS PANEL FOR THE EMERALD TRUNK
REHABILITATION PROJECT CONSISTING OF NICHOLAS PINHEY,
PUBLIC WORKS DIRECTOR, RICHARD ULM, PUBLIC WORKS DEPUTY
DIRECTOR, AND MARK AVERELL, PURCHASING MANAGER

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 roadways,
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 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, the City will evaluate the prospective bidders’ qualifications and the
qualified bidders will be placed on the bidder’s list included in the project bid documents,
and
WHEREAS, contractors who receive ratings below that necessary to pre-qualify,
may file an appeal with the City within seven calendar days of receiving notification, and
WHEREAS, a hearing must be held by an appeals panel within ten calendar days
of such appeal being filed, and
WHEREAS, the City Council has the authority to name the appeals panel consisting of at least three persons, and

WHEREAS, staff recommends Nicholas Pinhey, Public Works Director, Richard Ulm, Public Works Deputy Director, and Mark Averell, Purchasing Manager to serve in this capacity, upon Council approval. and

WHEREAS, in addition to the persons listed above, the Mayor will appoint a Councilmember to observe any appeal hearings.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the Prospective Bidder Prequalification Appeals Panel for the Emerald Trunk Rehabilitation Project consisting of Nicholas Pinhey, Public Works Director, Richard Ulm, Public Works Deputy Director, and Mark Averell, Purchasing Manager.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 13th day of January, 2009, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Keating, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: 

(Seal)

APPROVED AS TO FORM:

By 

SUSANA ALCALA WOOD, City Attorney
A RESOLUTION APPROVING THE FOURTH AMENDMENT TO AGREEMENT WITH GEOLOGICAL TECHNICS, INC. FOR ENVIRONMENTAL CONSULTANT SERVICES FOR THE POLICE HEADQUARTERS BUILDING AT 10TH & G STREET PROJECT, IN AN AMOUNT NOT TO EXCEED $9,340.00, AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE FOURTH AMENDMENT TO AGREEMENT

WHEREAS, during the course of constructing the Police Headquarters Facility at 10th and G Streets, the contractor encountered contaminated soil that had to be monitored, and

WHEREAS, on April 12, 2004, the City entered into an Agreement with Geological Technics, Inc., a local environmental services firm, to monitor the soil and groundwater contamination that was discovered, and

WHEREAS, on September 8, 2005, the First Amendment to the Agreement was executed for additional geological services that were necessary to complete the scope of services provided for under the original Agreement, and

WHEREAS, on May 9, 2006, the Second Amendment to the Agreement was executed for additional geological services that were necessary to complete the scope of services provided for under the original Agreement, and

WHEREAS, on January 22, 2008, the Third Amendment to the Agreement was executed for additional geological services that were necessary to complete the scope of services provided for under the original Agreement, and

WHEREAS, it was determined that additional services would be needed from Geological Technics, Inc. to allow final closure of the contamination site and additional required reporting, and
WHEREAS, staff recommends execution of a Fourth Amendment to the Agreement with Geological Technics, Inc. for services associated with the closure of the contamination site at the Police Headquarters Facility at 10th and G Streets.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the Fourth Amendment to the Agreement with Geological Technics, Inc. for additional services related to soil and groundwater contamination discovered during construction of the Police Headquarters Facility at 10th and G Streets, in the amount of $9,340.00, thereby increasing the total not to exceed amount to $94,063.00 for consultant services in conjunction with groundwater monitoring and site closure.

BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute the Fourth Amendment to Agreement with Geological Technics, Inc.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 13th day of January, 2009, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Keating, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: 

APPROVED AS TO FORM:

By 

SUSANA ALCALA WOOD, City Attorney
A RESOLUTION AMENDING THE FY 08-09 CAPITAL IMPROVEMENT PROGRAM BUDGET IN ORDER TO FULLY FUND THE FOURTH AMENDMENT TO AGREEMENT WITH GEOLOGICAL TECHNICS, INC. FOR ENVIRONMENTAL CONSULTANT SERVICES FOR THE POLICE HEADQUARTERS BUILDING AT 10TH & G STREET PROJECT FOR ADDITIONAL DESIGN AND CONSTRUCTION ADMINISTRATION STAFF CHARGES NEEDED FOR PROJECT COMPLETION

WHEREAS, certain budgetary transactions are necessary in the amount of $10,000, in order to provide funding necessary for additional geological services that were required by the State and County regulating agencies overseeing the site for the Police Headquarters Building at 10th and G Streets project, and

WHEREAS, the Fiscal Year 2008-2009 Capital Improvement Program budget must be amended by transferring funds from Object 6041-City Forces to Object 6040-Construction in the amount of $10,000 in CIP Account 6180-480-W615 “Modesto System Improvements-Secondary.”

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves amending the Fiscal Year 2008-2009 Capital Improvement Program budget as shown on Exhibit A, which is attached hereto and incorporated by reference herein.

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 13th day of January, 2009, by Councilmember Lopez,
who moved its adoption, which motion being duly seconded by Councilmember Keating.
was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: [Signature]

APPROVED AS TO FORM:

By [Signature]

SUSANA ALCALA WOOD, City Attorney
Exhibit A

FUND:
Water Fund

EXPENDITURES:  Increase/(Decrease)

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<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<td>$10,000</td>
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RESOLUTION NO. 2009-043

A RESOLUTION APPROVING AN AGREEMENT WITH KIMLEY-HORN AND ASSOCIATES, INC. FOR AIRPORT DESIGN AND CONSTRUCTION MANAGEMENT SERVICES FOR APRON REHABILITATION DESIGN – PHASE 2 FOR THE MODESTO CITY-COUNTY AIRPORT IN THE AMOUNT OF $112,365, AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE AGREEMENT

WHEREAS, the City has approved numerous Airport Capital Improvement Plan (ACIP) projects planned over approximately the next five years at the Modesto City-County Airport, and

WHEREAS, skilled airport engineering, design, construction and inspection assistance will be required to move forward with those projects, and

WHEREAS, on May 16, 2008, the City solicited professional services for an airport consulting engineer to provide airport engineering, design, construction and inspection, and

WHEREAS, Kimley-Horn and Associates, Inc. (KHA), proposed to provide said services for the Modesto City-County Airport, and

WHEREAS, KHA was selected by the City as the best qualified applicant, and

WHEREAS, KHA has proposed an Agreement to provide design services and assist with advertising for the project to rehabilitate portions of the East General Aviation Area (East Apron) of the Modesto City-County Airport.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves an Agreement with Kimley-Horn Associates, Inc. to provide design and construction management services for Apron Rehabilitation – Phase 2 for the Modesto City-County Airport in an amount not to exceed $112,365.
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 15th day of January, 2009, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Keating. was upon roll call carrier and the resolution adopted by the following vote:

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

NOES: Councilmember: None

ABSENT: Councilmember: None

ATTEST: STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By

SUSANA ALCALA WOOD, City Attorney
A RESOLUTION APPROVING AN AGREEMENT WITH KIMLEY-HORN AND ASSOCIATES, INC. TO PROVIDE DESIGN SERVICES AND ASSIST THE CITY WITH ADVERTISING TO ENHANCE RUNWAY 10R SAFETY AREA FOR THE MODESTO CITY-COUNTY AIRPORT IN THE AMOUNT OF $110,000, AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE AGREEMENT

WHEREAS, the City has approved numerous Airport Capital Improvement Plan (ACIP) projects planned over approximately the next five years at the Modesto City-County Airport, and

WHEREAS, skilled airport engineering, design, construction and inspection assistance will be required to move forward with those projects, and

WHEREAS, on May 16, 2008, the City solicited professional services for an airport consulting engineer to provide airport engineering, design, construction and inspection, and

WHEREAS, Kimley-Horn and Associates, Inc. (KHA), proposed to provide said services for Modesto City-County Airport, and

WHEREAS, KHA was selected by the City as the best qualified applicant, and

WHEREAS, KHA has proposed an Agreement to provide design services and assist with advertising for the project to Enhance Runway 10R Safety Area for the Modesto City-County Airport,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves an Agreement with Kimley-Horn and Associates, Inc. to provide design and construction management services to Enhance Runway 10R Safety Area for the Modesto City-County Airport for an amount not to exceed $110,000.
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 13th day of January, 2009, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Keating, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmember: None

ABSENT: Councilmember: None

ATTEST: SUSANA ALCALA WOOD, City Attorney

(SEAL)

APPROVED AS TO FORM:

By

SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2009-045

A RESOLUTION APPROVING PLANS AND SPECIFICATIONS FOR THE
STATE ROUTE 219 WIDENING FROM WEST OF DALE ROAD TO MORROW
ROAD PROJECT, ACCEPTING THE BID AND APPROVING A $3,349,138.40
CONTRACT WITH GEORGE REED, INC. FOR THE STATE ROUTE 219
WIDENING FROM WEST OF DALE ROAD TO MORROW ROAD PROJECT
CONDITIONED UPON RECEIVING, WITHIN 120 DAYS OF THIS ACTION,
CONFIRMATION THAT STATE FUNDING IS AVAILABLE FOR THE
PROJECT, AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE,
TO EXECUTE THE CONTRACT AFTER THE CITY HAS RECEIVED
CONFIRMATION THAT STATE FUNDS ARE AVAILABLE FOR THE
PROJECT

WHEREAS, plans and specifications have been prepared for the State Route 219
Widening from West of Dale Road to Morrow Road project and City staff recommends
approval by the City Council, and

WHEREAS, the bids received for the State Route 219 Widening from West of
Dale Road to Morrow Road project were opened at 11:00 a.m. on December 23, 2008,
and later tabulated by the Public Works Director for the consideration of the Council, and

WHEREAS, the Public Works Director has recommended that the bid of
$3,349,138.40 received from George Reed, Inc. be accepted as the lowest responsible bid
and the contract be awarded to George Reed, Inc., and

WHEREAS, a significant portion of the funding for this project comes from the
Regional Improvement Program (RIP), and

WHEREAS, the RIP funds were allocated in early 2008 by the California
Transportation Commission and require that the project be awarded no later than January
31, 2009, and
WHEREAS, because of the uncertainty with all sources of State funding, staff is recommending that the award be made contingent upon receiving confirmation from the State that the funds will be available.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the plans and specifications for the State Route 219 Widening from West of Dale Road to Morrow Road project, accepts the bid of George Reed, Inc. in the amount of $3,349,138.40, and awards George Reed, Inc. the contract for the State Route 219 Widening from West of Dale Road to Morrow Road project conditioned upon receiving, within 120 days of this action, confirmation that State funding is available for the project.

BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute the contract with George Reed, Inc. in the amount of $3,349,138.40, for the State Route 219 Widening from West of Dale Road to Morrow Road project after the City has received confirmation that State funds are available for the project.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 13th day of January, 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
A RESOLUTION AMENDING THE FISCAL YEAR 2008-2009 CAPITAL
IMPROVEMENT PROGRAM BUDGET IN ORDER TO PROVIDE FUNDING
NECESSARY FOR CONSTRUCTION CONTINGENCIES BY TRANSFERRING
FUNDS FROM OBJECT 6040-CONSTRUCTION TO OBJECT 6050-
CONTINGENCY IN THE AMOUNT OF $155,214 IN CIP ACCOUNT 2370-430-
H930 “DALE/KIERNAN INTERSECTION IMPROVEMENTS”

WHEREAS, certain budgetary transactions are necessary in the amount of
$155,214, in order to provide funding necessary for construction contingencies for the
State Route 219 Widening from West of Dale Road to Morrow Road project, and

WHEREAS, the Fiscal Year 2008-2009 Capital Improvement Program budget
must be amended by transferring funds from Objects 6040-Construction to Object 6050-
Contingency in the amount of $155,214 in CIP Account 2370-430-H930 “Dale/Kiernan
Intersection Improvements.”

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 13th day of January, 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, Marsh, O'Bryant, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

(Seal)

APPROVED AS TO FORM:

By

SUSANA ALCALA WOOD, City Attorney
Exhibit A

FUND:
Capital Grants-Gas

EXPENDITURES: Increase/(Decrease)

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dale/Kiernan Intersection Improvements</td>
<td>2370-430-11930-6040</td>
<td>($155,214)</td>
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<td>Dale/Kiernan Intersection Improvements</td>
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<td>$155,214</td>
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MODESTO CITY COUNCIL
RESOLUTION 2009-047

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

WHEREAS, Modesto Municipal Code Section 8-1.206 currently requires Capital Facilities Fees (CFF) to be paid prior to issuance of any building permit, and

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

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

WHEREAS, the City has determined that it is appropriate to defer payment of CFF for a period of one year, and

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

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

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

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the deferral of Capital Facilities Fees (CFF) until issuance of any Certificate of Occupancy, for a period of one year.
BE IT FURTHER RESOLVED that the City Manager, or his designee, is
authorized to enter into deferred payment agreements and notice of liens with applicants.

The foregoing resolution was introduced at a regular meeting of the Council of
the City of Modesto held on the 15th day of January, 2009, by Councilmember Hawn,
who moved its adoption, which motion being duly seconded by Councilmember Lopez.
was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: 

SEAL

APPROVED AS TO FORM:

BY: 

SUSANA ALCALA WOOD, City Attorney
RESOLUTION AUTHORIZING THE PURCHASING MANAGER TO ISSUE A FORMAL REQUEST FOR PROPOSAL (RFP) FOR AUDITOR SERVICES FOR THE CITY OF MODESTO FOR A FOUR (4) YEAR AGREEMENT WITH A ONE (1) YEAR OPTION TO EXTEND

WHEREAS, the City of Modesto entered into a contract with Maze & Associates (Maze) on April 1, 2003, to perform its annual financial statement audits, and

WHEREAS, the contract called for Maze to perform audit services for three years, with an option to extend the contract for an additional two years, and

WHEREAS, on May 6, 2008, by Resolution No. 2008-249 the City Council approved an additional one year extension to the contract with Maze so the annual financial audit could be performed for the Fiscal Year ending June 30, 2008, and

WHEREAS, Section 1306 of the Modesto City Charter requires the Council to employ independent auditors to perform the annual financial audits for the City, and

WHEREAS, the Audit Committee, at its January 5, 2009, meeting recommended Council adopt a resolution requesting the Purchasing Manager to issue a Request for Proposal to perform annual financial statement audits for the City of Modesto.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby authorizes the Purchasing Manager to issue a formal Request for Proposal for auditor services for the City of Modesto for a four (4) year agreement with a one (1) year extension option.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 27th day of January, 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, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: O’Bryant

ATTEST: 

(SEAL)

APPROVED AS TO FORM:

By: 

SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2009-049

A RESOLUTION APPROVING A CITY/COUNTY DISASTER COUNCIL AND THE DECISION MAKING PROCESS, APPOINTING ONE MEMBER OF THE CITY COUNCIL TO SERVE ON THE CITY/COUNTY DISASTER COUNCIL, AND APPOINTING THE FIRE CHIEF, OR HIS DESIGNEE, AS THE EMERGENCY MANAGER FOR THE CITY TO SERVE ON THE OPERATIONAL AREA COUNCIL

WHEREAS, Stanislaus County and the City of Modesto have, in the past, each had separate Disaster Councils, and

WHEREAS, the purpose of the Disaster Council was to oversee the disaster preparedness activities including the preparation of emergency and disaster plans, policies and procedures, and

WHEREAS, Government Code Section 8610 also allows for Disaster Councils to be created that can be a combination of cities and counties for the entire operational area, and

WHEREAS, Government Code Section 8559 defines an operational area as an intermediate level of the state emergency services organization, consisting of a county and all political subdivisions within the county area, and

WHEREAS, the Stanislaus County Board of Supervisors adopted the Stanislaus Operational Area Decision Process for Emergency Planning in April 2008 for the purpose of clarifying memberships, purpose, roles and responsibilities of the Disaster Council and Operational Area Council, and

WHEREAS, this Emergency Planning Decision Process is based upon the FIRESCOPE Decision Process that is the model used by the Federal Government when developing the National Incident Management System (NIMS), and
WHEREAS, benefits to re-establishing and re-defining the Disaster Council include effective use of resources by establishing one Disaster Council instead of 10, maintaining NIMS/SEMS compliance for grant funding and recovery funding after an emergency event/incident, maintaining local control by membership on the single Disaster Council with ultimate approval for city plans remaining with the Modesto City Council, maximum use of resources in planning, preparedness, response and recovery to emergencies in the Operational Area, and access to the public for input, inclusion, collaboration, coordination, and communication.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves a City/County Disaster Council and the Decision Making process, the appointment of one member of the City Council to serve on the City/County Disaster Council, and appointment of the Fire Chief, or his designee, as the Emergency Manager for the City to serve on the Operational Area Council.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 27th day of January, 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, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: O’Bryant

ATTEST: ________________________________

STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: ________________________________

SUSANA ALCALA WOOD, City Attorney
A RESOLUTION APPROVING THE FOURTH AMENDMENT TO THE ON-CALL ENGINEERING SERVICES AGREEMENT WITH CAROLLO ENGINEERS IN THE AMOUNT OF $30,000, FOR A TOTAL AMOUNT NOT TO EXCEED $74,000 FOR FY 2008-09, AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE FOURTH AMENDMENT TO THE AGREEMENT

WHEREAS, on January 3, 2006, by Resolution No. 2006-012, the City Council approved an On-Call Engineering Services Agreement with Carollo Engineers (Carollo) in the amount of $44,000 annually for wastewater-specific services, and

WHEREAS, on January 2, 2007, by Resolution No. 2007-034, the City Council approved a First Amendment to the Agreement with Carollo in the amount of $70,000 to pay for additional engineering services, increasing the amount to $114,000 for FY 2006-07, and

WHEREAS, Modesto’s Wastewater Treatment Plant is rated as a Class V Facility and is required by the State to have a Chief Plant Operator (CPO) with a Class V certification on staff, and

WHEREAS, due to staffing changes in 2007, it was necessary to contract with Carollo to provide CPO services under the On-Call Engineering Agreement to ensure that the City was in compliance with the Grade V operator requirement, and

WHEREAS, on November 27, 2007, by Resolution No. 2007-705, the City Council approved a Second Amendment to the Agreement with Carollo in the amount of $78,000 for CPO services, increasing the amount to $122,000 for FY 2007-08, and

WHEREAS, on May 27, 2008, by Resolution No. 2008-308, the City Council approved the Third Amendment to the Agreement with Carollo in the amount of $75,000
for continued CPO services, increasing the amount to $197,000 for FY 2007-08, and

WHEREAS, it will be necessary to retain the CPO services of Carollo to maintain compliance with State requirements, and

WHEREAS, the proposed Fourth Amendment provides for continued CPO services through June 2009, increasing the annual agreement amount to $74,000 for FY 2008-09.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the Fourth Amendment to the On-Call Engineering Services Agreement with Carollo Engineers in the amount of $30,000, for a total amount not to exceed $74,000 for FY 2008-09.

BE IT FURTHER RESOLVED that the City Manager, or his designee, is authorized to execute the Fourth Amendment to the Agreement.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 27th day of January, 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, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: O'Bryant

ATTEST: [Signature]

(S:AL)

APPROVED AS TO FORM:

BY: [Signature]

SUSANA ALCALA WOOD, City Attorney
RESOLUTION NO. 2009-051

A RESOLUTION DECLARING THE INTENTION OF THE CITY COUNCIL TO CONSIDER THE APPLICATIONS FOR NON-EXCLUSIVE NON-CONSENSUAL TOW FRANCHISES, GIVING NOTICE OF THE HEARING ON THE APPLICATIONS, AND DIRECTING THE CITY CLERK TO PUBLISH THE NOTICE, ALL IN ACCORDANCE WITH MODESTO MUNICIPAL CODE SECTIONS 11-2.01 ET SEQ

WHEREAS, non-consensual tows include, but are not limited to: vehicles towed pursuant to arrest, for investigation of a crime, suspended driver’s license, no driver’s license, expired registration and violations of various other California Vehicle Code and Modesto Municipal Code sections, and

WHEREAS, in April 2004, Modesto Police Department (MPD) staff began work to improve the non-consensual tow program with several objectives: 1) provide more responsive service; 2) reduce officer and citizen complaints; and 3) offset the growing cost of the program, and

WHEREAS, the Police Department has encountered many problems with the current towing system including safety violations, thefts of personal items in towed/stored vehicles, overcharging, lien sale violations, auto theft, drug arrests, poor service, and rude and inappropriate behavior, and

WHEREAS, the current agreement for tow services has not adequately addressed the needs of the City, and

WHEREAS, establishing a new non-exclusive, non-consensual Franchise Tow Agreement with specific requirements, including tow driver permits and tow truck inspections for which a fee has been established by City Council Resolution No. 2008-
406, will help ensure safe, prompt, reliable and professional service for the Police Department and the citizens of Modesto, and

WHEREAS, California Vehicle Code Section 12110 allows a public entity to charge a fee in connection with the award of a franchise for towing vehicles on behalf of that public entity, in an amount not to exceed actual and reasonable costs incurred in connection with the towing program, and

WHEREAS, as proposed, the franchise tow fee will allow for partial reimbursement of expenses incurred by the Modesto Police Department in connection with the non-consensual towing program.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby declares its intention to consider the applications for Non-Exclusive, Non-Consensual Tow Franchises, giving notice of the hearing on the applications, and directing the City Clerk to publish the notice, all in accordance with Modesto Municipal Code Section 11-2.01, et. seq.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 27th day of January, 2009, by Councilmember Marsh, who moved its adoption, which motion being duly seconded by Councilmember Lopez, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: O'Bryant

ATTEST: [Signature]

(SEAL)

APPROVED AS TO FORM:

By: [Signature]

SUSANA ALCALA WOOD. City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2009-052

A RESOLUTION APPROVING AN AGREEMENT FOR PROGRAM MANAGEMENT SERVICES FOR THE BUS MAINTENANCE FACILITY WITH RBF CONSULTING IN THE AMOUNT OF $136,265 TO ASSIST IN THE COMPLETION OF DESIGN DOCUMENTS FOR THE PROJECT TITLED, “NEW BUS MAINTENANCE FACILITY,” AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE AGREEMENT

WHEREAS, on March 28, 2000, the City Council, by Resolution No. 2000-144, approved the design concept of the new Bus Maintenance Facility, and

WHEREAS, on July 2, 2002, the City Council, by Resolution No. 2002-321, approved an agreement with Parsons Brinckerhoff Quade and Douglas, Inc. (PB) for the negotiated price of $610,280 (including fixed fee) to design the new Bus Maintenance Facility, prepare construction documents, and provide support services during bidding and construction, and

WHEREAS, on August 4, 2004, the City Council, by Resolution No. 2004-404, approved an Amendment to the Agreement which increased the total agreement amount to $707,238, and

WHEREAS, the amendment included the design of a canopy to cover eight of the 65 bus parking spaces, a land survey of the site, oversight of the demolition of the buildings on the property purchased for the project, and phasing of the project for construction in two segments, and

WHEREAS, the Transportation Policy Committee reviewed the preliminary design proposal in February 2003, to ensure that the maintenance building met the City’s aesthetic requirements, and

WHEREAS, PB proposed horizontal deep rib siding to achieve the desired look, and the Committee approved this design attribute, and
WHEREAS, in 2005, staff conveyed concerns of late notification of change in project scope and increase in fees with PB, and

WHEREAS, these discussions resulted in PB agreeing to an agreement cost reduction, but still required a $350,000 Second Amendment to the Agreement to complete design, and

WHEREAS, in February 2006, Council decided that it was not in the City's best interest to complete the design with PB, and did not approve the Second Amendment to the Agreement, and

WHEREAS, a Request for Qualifications and Proposals was initiated to complete project design, and

WHEREAS, the Request for Qualifications was sent to two hundred (200) engineering and architectural firms, and

WHEREAS, there were three (3) firms that provided Qualification Statements and all three (3) were interviewed, and

WHEREAS, RBF Consulting was chosen as the most qualified since they have completed the design and construction management of various bus maintenance facilities in the area, and

WHEREAS, RBF Consulting has also provided design and construction management assistance for a similar PB designed bus maintenance structure built for the Valley Transit Authority in Santa Clara, California, and

WHEREAS, RBF Consulting is needed for their expertise in bus maintenance facility design and construction, Federal Transit Administration guidelines, and to keep the project moving as an extension of City staff, and
WHEREAS, using outside professional services will enable this project to be completed in a timely manner, and

WHEREAS, City staff recommends an agreement with RBF Consulting as the City does not have the staffing level or subject matter expertise to complete the program management services of the new Bus Maintenance Facility, 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 for Program Management Services of the Bus Maintenance Facility with RBF Consulting in the amount of $136,265, to assist in the completion of design documents for the project titled, “New Bus Maintenance Facility.”

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 27th day of January, 2009, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember Lopez, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: Keating

ABSENT: Councilmembers: O’Bryant

ATTEST: [Signature]

[Name]

(SHAIL)

APPROVED AS TO FORM:

By: [Signature]

[SUSANA ALCALA WOOD, City Attorney]
MODESTO CITY COUNCIL
RESOLUTION NO. 2009-053

A RESOLUTION APPROVING A DEVELOPMENT PLAN FOR PLANNED
DEVELOPMENT ZONE, P-D(589). (RENATA ENTERPRISES)

WHEREAS, a verified application for an amendment to Section 7-3-9 of the
Zoning Map was filed by Renata Enterprises on July 14, 2008, to reclassify from General
Commercial (C-2), Professional Office (P-O), and Planned Development, P-D(133), to a
new Planned Development zone, P-D(589), to allow for a two-phase development
consisting of a car wash in phase one, and three options (including professional offices,
expansion of adjacent mini-storage, or RV storage) for a future phase two, the property
located at 3619 Tully Road, described as follows:

C-2 to P-D(589)

All that certain real property situated in the City of Modesto, County of
Stanislaus, State of California, being a portion of the Northeast quarter of
Section 7, Township 3 South, Range 9 East, Mount Diablo Base and
Meridian, more particularly described as follows:

Commencing at the East quarter corner of Section 7, being also the
intersection of the centerlines of Tully Road and Standiford Avenue;
thence North 1°14′15″ West along the east line of said Section 7, and the
centerline of Tully Road, a distance of 567.74 feet to the Point of
Beginning for this description; thence South 88°45′45″ West, 228.8 feet;
thence North 1°14′15″ West, 180.0 feet to the north line of Parcel “A” as
shown on the map filed in Volume 3 of Parcel Maps at Page 64, Stanislaus
County Records; thence North 88°45′45″ East along said north line, a
distance of 228.8 feet to the centerline of Tully Road; thence returning
South 1°14′15″ East, along said centerline, a distance of 180.0 feet to the
Point of Beginning.

P-O to P-D(589)

All that certain real property situated in the City of Modesto, County of
Stanislaus, State of California, being a portion of the Northeast quarter of
Section 7, Township 3 South, Range 9 East, Mount Diablo Base and
Meridian, more particularly described as follows:

Commencing at the East quarter corner of Section 7, being also the
intersection of the centerlines of Tully Road and Standiford Avenue; thence
North 1°14'15" West along the east line of said Section 7, and the centerline of Tully Road, a distance of 497.74 feet to the easterly prolongation of the south line of Parcel “A” as shown on the map filed in Volume 3 of Parcel Maps at Page 64, Stanislaus County Records; thence South 88°45'45" West along said prolongation and said south line of Parcel “A”, a distance of 228.8 feet to the Point of Beginning for this description; thence continuing South 88°45'45" West along said south line, a distance of 279.7 feet to the southwest corner thereof; thence North 0°24'59" West along the west line of said Parcel “A” a distance of 250.03 feet to the northwest corner thereof; thence North 88°45'45" East along the north line of said Parcel “A”, a distance of 276.12 feet; thence returning South 1°14'15" East, a distance of 250 feet to the Point of Beginning.

WHEREAS, after a public hearing held on December 1, 2008, in the Tenth Street Place Chambers located at 1010 Tenth Street, Modesto, California, it was found and determined by the Planning Commission, by its Resolution No. 2008-47, that rezoning the portion of the property at 3619 Tully Road currently zoned Professional Office (P-O) to a new Planned Development (P-D) Zone is not appropriate at this time without a definite development plan for phase two, and that the rezoning should be limited to the portions of the property at 3619 Tully Road currently zoned General Commercial (C-2) and Planned Development, P-D(133), and
WHEREAS, said matter was set for a public hearing of the City Council to be held on January 27, 2009, in the Tenth Street Place Chambers located at 1010 Tenth Street, Modesto, California, at which date and time said duly noticed public hearing was held, and

WHEREAS, after said public hearing the Council found and determined that the application of Renata Enterprises for a Planned Development Zone should be granted for the entire property as described above, provided that only one of the three options for phase two development be allowed, subject to staff review of the development plan, and that the option allowed shall be RV storage, and the Council also found and determined that the rezone should be granted as consonant with public necessity, convenience, and general welfare for the following reasons:

1. The proposed rezone will eliminate having more than one zoning designation on a single parcel in this location, and it will amend the zoning map such that the boundaries of the existing P-D(133) will correspond to existing property lines; and
2. The proposed rezone will not allow an increase in the intensity of use or development beyond that which is already allowed by the existing zoning of the site; and
3. The recommended Conditions of Approval will ensure the proposed project will comply with all appropriate development standards and be compatible with surrounding land uses.

WHEREAS, the Council has introduced Ordinance No. 3502-C.S. on the 27th day of January, 2009, reclassifying the above-described property at 3619 Tully Road from General Commercial (C-2), Professional Office (P-O), and Planned Development, P-D(133), to Planned Development Zone, P-D(589).

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto as follows:
SECTION 1. DEVELOPMENT PLAN. The development plan for Planned Development Zone, P-D(589), is hereby approved subject to the following conditions:

1. All development for Phase 1 and Phase 2 shall conform to the plan titled “Development Plan for Renata Plaza” showing the RV storage option for Phase 2, as amended in red and stamped approved by the City Council, provided that prior to issuance of a building permit for any Phase 2 construction, the developer shall submit the necessary plans to obtain Development Plan Review approval of Phase 2 in accordance with Article 30 of the Modesto Municipal Code, Title 10, and all development for Phase 2 shall conform to this subsequent approval.

2. All Phase 1 construction of the carwash, as well as façade improvements to the existing O'Brian's Tavern, also shall conform to the plans and elevations titled “Sparkles Car Wash #2” as amended in red and stamped approved by the City Council.

3. Prior to issuance of a building permit, the developer shall provide, to the satisfaction of the City Attorney and the City Engineer, an Irrevocable Offer of Dedication (IOD) of right-of-way to the City of Modesto for the future widening of Tully Road as shown on the approved plans.

4. Prior to issuance of a building permit, the developer shall, in a manner approved by the City Attorney, provide for a vehicular accessway across the southern property line, as shown in red on the approved plan.

5. Prior to issuance of a building permit, Landscape and Irrigation plans shall be submitted for review and approval by the Parks, Recreation and Neighborhoods Department Director or designee. The approved plans shall provide for each of the following requirements:

   a. Landscape and Irrigation plans shall conform to MMC requirements for parking lot shading (one shade tree per eight stalls for 50% shading in ten years).

   b. Landscape and Irrigation plans shall include appropriate landscaping sufficient to screen the vacuum islands from view from the street to a minimum height of three feet.

6. Prior to Certificate of Occupancy, the landscaping and irrigation system shall be installed in accordance with the approved plans.

7. Prior to issuance of a building permit, the plans shall include decorative lighting fixtures at the vacuum islands equivalent to those provided at the other Sparkles carwash facility at 3941 Coffee Road to the satisfaction of the C&ED Director or designee.

8. Prior to issuance of a building permit, all parking areas shall be designed to incorporate the required 2½ feet of vehicle overhang into the adjacent...
landscape/hardscape areas at the head of parking spaces, instead of using separate individual wheel stops, wherever possible.

9. Prior to issuance of a building permit, the improvement plans shall provide for each of the following requirements:

a. Trash enclosures for the project shall be elevated or bermed to prevent stormwater run-on and graded to drain to adjacent landscape areas.

b. The pet wash area and self-service carwash bays shall be elevated to prevent run-on of stormwater, and covered and plumbed to sanitary sewer through an approved grease interceptor.

c. Identified proprietary sand/oil or Fats/Oil/Grease generating waste streams within the development should be plumbed separate, with individual accessible monitoring points, prior to a single connection into the City's wastewater system, to accommodate pretreatment requirements and to provide for suitable monitoring and capture of potential wastewater discharges that impact the system.

10. Prior to issuance of a building permit, the developer shall obtain coverage for the project under the General Construction Activity Storm Water Permit (General Permit) issued by the State Water Resources Control Board (SWRCB), as follows:

a. To obtain coverage under the General Permit, a Notice of Intent (NOI) shall be filed with the SWRCB. Submit one copy of the NOI to Land Development Engineering (LDE). Stormwater, when filed.

b. Upon receipt of the NOI, the SWRCB will issue a Waste Discharge Identification (WDID) number to the construction project. Submit one copy of the WDID number to LDE. Stormwater.

c. The General Permit requires the developer to prepare and implement a Storm Water Pollution Prevention Plan (SWPPP) for the project. Submit one copy of the SWPPP to LDE. Stormwater, for review.

11. Prior to issuance of a grading or building permit, developer shall provide an owner-signed and notarized Stormwater Treatment Device Access and Maintenance Agreement to LDE. Stormwater, for recording.

12. Prior to issuance of a grading or building permit, development plans shall provide for permanent, post-construction treatment (Stormfilters by Contech) to remove pollutants from the first ½" of stormwater run-off from the site, with calculations for sizing of Stormfilters submitted to Land Development Engineering (LDE) for review and approval.
13. Prior to issuance of a building permit, the proposed drainage pond shall be designed to meet the requirements in the City of Modesto Guidance Manual for New Development Stormwater Quality Control Measures.

14. Prior to issuance of a building permit, on-site storm drainage facilities shall be designed to contain the volume of a 100-year, 24-hour storm event (R=2.88") completely on site and percolated within 48 hours. (Project is located within a rockwell area of the City of Modesto)

15. Prior to issuance of a building permit, developer shall pay any applicable water/sewer and plan-check fees to the City of Modesto.

16. Prior to any work within the public right-of-way, the developer shall obtain an Encroachment Permit.

17. Prior to issuance of a building permit or an encroachment permit, the improvement plans shall be designed to current City of Modesto Standard Specifications and prepared, stamped and signed by a California Registered Civil Engineer, acceptable to the City Engineer.

18. Prior to issuance of a building permit or encroachment permit, the southern driveway shall be designed to the satisfaction of the City Engineer, Traffic Engineer, and Fire Marshall. The design of the southern driveway shall not interfere in any way with the use of the easement area established by and for the purpose set forth in the “Reciprocal Easement for Access Agreement”, recorded September 30, 2003, as Instrument No. 2003-0167266-00, Official Records of Stanislaus County.

19. Prior to issuance of an encroachment permit, the northern driveway shall be designed as drop-curb type with a minimum width of 30 feet at the property line after street right-of-way dedication.

20. Prior to the City Engineer signing the improvement plans, all required easements, dedications, and Irrevocable Offers of Dedication (IOD) to the City of Modesto shall be recorded to the satisfaction of the City Engineer.

21. Prior to issuance of a building permit, the developer shall dedicate public utility easements as required by the utility companies, Modesto Irrigation District (MID), and the City Engineer or designee. The approved improvement plans shall provide for the following requirements:
   a. All existing underground and aboveground utilities, irrigation and electrical lines shall be removed, relocated, or protected as required by the respective utility company, Modesto Irrigation District (MID), and/or the City Engineer or designee.
   b. If any construction activity is proposed along the rear (west) property line of the subject property, the relevant improvement plans shall be submitted to the MID Irrigation Engineering Dept for review, and if deemed necessary in conjunction with any such
work, the existing abandoned-in-place concrete irrigation pipeline which is located along this property line (as noted on 28-PM-6) shall be sand slurry filled or removed to the satisfaction of the Modesto Irrigation District and the City Engineer.

22. Prior to the issuance of a building permit, all existing and proposed fire hydrants, Fire Department Connections (FDC), check-valves, and the size and location of underground fire mains shall be shown on the plans. Approved plans shall provide for the following requirements:
   a. An approved automatic fire sprinkler system shall be required for all new construction exceeding 5,000 SF of floor area under one roof.
   b. Fire hydrant spacing and distribution for these projects is 300 feet on center.
   c. FDC shall be accessible from a fire access roadway or public street and located within 90 feet of a fire hydrant.
   d. Fire Department access lanes shall be 20 feet unobstructed width and shall afford a minimum inside turning radius of 25 feet with an outside radius of 45 feet.

23. Prior to Certificate of Occupancy, all required fire lanes shall be identified and marked as follows:
   a. With approved signs posted along roadways every 25 feet, or
   b. Curbs shall be painted red and the words, in 6-inch high block letters, "FIRE LANE, NO PARKING" shall be stenciled in white every 25 feet.

24. Prior to certificate of occupancy, all damaged or deteriorated curb, gutter, sidewalk, and other existing public improvements at the project site shall be repaired or replaced as required for the public health and safety as determined by the City Engineer or designee in accordance with City of Modesto Standard Specifications.

25. Prior to certificate of occupancy, all exterior lighting shall be shielded from adjacent residential properties as required by the City Engineer.

26. Signs shall be allowed in accordance with the requirements of the C-3 zone, subject to compliance with the Design Guidelines for Commercial and Industrial Development, adopted September 12, 2006.

27. All landscaping, irrigation systems, fences and walls shall be maintained, and the premises shall be kept free of weeds, trash, and other debris, and all exposed wall surfaces shall be kept free of graffiti.

28. The property owner and developer shall, at their sole expense, defend, indemnify and hold harmless the City of Modesto, its agents, officers,
directors and employees, from and against all claims, actions, damages, losses, or expenses of every type and description, including but not limited to payment of attorneys’ fees and costs, by reason of, or arising out of, this development approval. The obligation to defend, indemnify and hold harmless shall include but is not limited to any action to arbitrate, attack, review, set aside, void or annul this development approval on any grounds whatsoever. The City of Modesto shall promptly notify the developer of any such claim, action, or proceeding and shall cooperate fully in the defense.

In addition, the following recommended Conditions of Approval are mitigation measures from the Modesto Urban Area General Plan Master Environmental Impact Report that should be applied to the project:

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

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

31. Within urban areas, track-out shall be immediately removed when it extends 50 feet or more from the site and at the end of each workday.

32. The developer shall implement measures to prevent carryout or trackout that may otherwise occur in conjunction with construction activities.

33. All operations shall limit or expeditiously remove the accumulation of mud or dirt from adjacent public streets at the end of each workday. The use of dry rotary brushes is expressly prohibited except where preceded or accompanied by sufficient wetting to limit the visible dust emissions. Use of blower devices is expressly forbidden.

34. All disturbed areas, including storage piles, which are not being actively utilized for construction purposes, shall be effectively stabilized of dust emissions using water, chemical stabilizer/suppressant, covered with a tarp or other suitable cover or vegetative ground cover.

35. Following the addition of materials to, or the removal of materials from, the surface of any outdoor storage piles, said piles shall be effectively stabilized of fugitive dust emissions utilizing sufficient water or chemical stabilizer/suppressant.

36. The City’s noise ordinance (Modesto Municipal Code Section 4-9.101) prohibits the “loud and raucous discharge into the open air of the steam of any steam equipment or exhaust from any stationary internal-combustion
engine. Construction equipment and vehicles should be equipped with properly operating mufflers according to manufacturers' recommendations. Air compressors and pneumatic equipment should be equipped with mufflers, and impact tools should be equipped with shrouds or shields.

37. The noise ordinance prohibits also the loud and raucous operation or use of any of the following before 7:00 a.m. or after 9:00 p.m. daily (or before 9:00 a.m. or after 9:00 p.m. on Saturdays and Sundays and State or Federal holidays):

a. A hammer or any other device or implement used to pound or strike an object.

b. An impact wrench or any other tool or equipment powered by compressed air.

c. A hand-powered saw.

d. Any tool or piece of equipment powered by an internal combustion engine such as, but not limited to, chain saw, backpack blower, and lawn mower.

e. Any electrically powered (whether by alternating current or direct current electricity) tool or piece of equipment used for cutting, drilling, or shaping wood, plastic, metal, or other materials or objects, such as, but not limited to, a saw, drill, lathe, or router.

f. Any of the following: heavy equipment (such as but not limited to bulldozer, steam shovel, road grader, backhoe), ground drilling and boring equipment (such as but not limited to derrick or dredge), hydraulic crane and boom equipment, portable power generator or pump, pavement equipment (such as but not limited to pneumatic hammer, pavement breaker, tamper, compacting equipment), pile-driving equipment, vibrating roller, sand blaster, gunite machine, trencher, concrete truck, and hot kettle pump.

g. Any construction, demolition, excavation, erection, alteration, or repair activity. In the case of urgent necessity and in the interest of public health and safety, the Chief Building Official may issue a permit for exemption from these. Such period shall not exceed three (3) working days in length while the emergency continues but may be renewed for successive periods of three (3) days or less while the emergency continues. The Chief Building Official may limit such permit as to time of use and/or permitted action, depending upon the nature of the emergency and the type of action requested.

h. Construction equipment and vehicles should be equipped with properly operating mufflers according to the manufacturers' recommendations. Air compressors and pneumatic equipment
should be equipped with mufflers, and impact tools should be equipped with shrouds or shields.

38. If archeological resources are discovered at any time during construction, all activity shall cease until the site is surveyed by a qualified archeologist. The survey shall include mitigation measures, which shall be implemented before construction resumes. The survey shall follow the criteria presented in Appendix K of the MEIR.

39. The developer shall implement pre- and post-construction best management practices (BMPs) to minimize pollutants entering the storm system.

SECTION 2. DEVELOPMENT SCHEDULE. The following development schedule is hereby approved for said Planned Development Zone, P-D(589):

Phase 1: construction to begin on or before two years from the date of approval, and completion to be not later than three years from the date of approval.

Phase 2: construction to begin on or before three years from the date of approval, and completion to be not later than four years from the date of approval.

SECTION 3. CHANGES IN DEVELOPMENT PLAN. Any changes in the above approved development plan shall be made in accordance with the provisions of Section 10-2.1709 of the Modesto Municipal Code.

SECTION 4. COMPLIANCE WITH CODE PROVISIONS, ETC. In all other respects said planned development shall be accomplished in accordance with and in strict adherence to the provisions of Article 17 of Title 10 of the Modesto Municipal Code relating to Planned Development Zones and other applicable City laws, rules, regulations and procedures.

SECTION 5. EFFECTIVE DATE. This resolution shall not become effective unless and until the ordinance reclassifying the above-described property to Planned Development Zone, P-D(589), becomes effective.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 27th day of January, 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, Olsen, Mayor Ridenour
NOES: Councilmembers: None
ABSENT: Councilmembers: O'Bryant

ATTEST: [Signature]

(SEAL)

APPROVED AS TO FORM:

By: [Signature]
SUSANA ALCALA WOOD, City Attorney

APPROVED AS TO LEGAL DESCRIPTION

By: [Signature]
Community & Economic Development Department
Planning Division
City of Modesto Zoning Map
7-3-9

Ordinance No. 3502-C.S.

February 13, 2009
MODESTO CITY COUNCIL
RESOLUTION NO. 2009-054

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 7-3-9 OF THE ZONING MAP TO REZONE
FROM GENERAL COMMERCIAL, C-2, PROFESSIONAL OFFICE, P-O, AND
PLANNED DEVELOPMENT, P-D(133), TO PLANNED DEVELOPMENT ZONE,
P-D(589), PROPERTY LOCATED AT 3619 TULLY ROAD.
(RENATA ENTERPRISES)

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, Renata Enterprises has proposed that the zoning designation for the
property located at 3619 Tully Road be amended to rezone from General Commercial
Zone, C-2, Professional Office Zone, P-O, and Planned Development Zone, P-D(133), to
Planned Development Zone, P-D(589), and

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

WHEREAS, the City’s Community & Economic Development Department by
Environmental Assessment Initial Study EA/C&E D 2008-40 (“Initial Study”) reviewed
the proposed amendment to the Zoning Map and Planned Development 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 January 7, 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 January 27, 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 rezone to Planned Development Zone, P-D(589), 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 27th day of January, 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, Olsen, Mayor Ridenour

NOES:

ABSENT: Councilmembers: O'Bryant

ATTEST: [Signature]

(SEAL)

APPROVED AS TO FORM:

By: [Signature]

SUSANA ALCALA WOOD, City Attorney
EXHIBIT A

Initial Study

EA/C&ED 2008-40
City of Modesto

Finding of Conformance to General Plan Master EIR:

Initial Study Environmental Checklist C&ED No. 2008-40

For the proposed:

Planned Development
Application No. PDZ-08-003
(Renata Enterprises, applicant)

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

November 4, 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 Planned Development PDZ-08-003 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: Planned Development, P-PDZ-08-003

B. Address or Location: 3619 Tully Road, Modesto, CA

C. Applicant: Renee Ellis, Renata Enterprises, 3719 Tully Road, Modesto, CA

D. City Contact Person: Philip Reed, Associate Planner

Project Manager: Philip Reed, Associate Planner
Department: Community & Economic Development Department
E-mail address: preed@modestogov.com
Phone Number: 209-577-5267

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

F. Current Zoning Classification(s): C-2, P-O, and P-D(133)
**G. Surrounding Land Uses:**

- **North:** P-D(527) — Self-storage mini-warehouse complex
- **South:** P-D(133) — Retail commercial center, “Frontier Town”
- **East:** P-D(172) — Residential, condominium development
- **West:** R-3 zone — Residential, mobile home park

**H. Project Description,** including the project type listed in Section II.C (Anticipated Future Projects) of the Master EIR (Attach additional maps/support materials as needed for complete record):

The project consists of rezoning to a new Planned Development (P-D) zone to allow a two-phase development on 2.62 acres. Phase 1 consists of a self-serve car wash to be developed on the front half of the property. An existing restaurant/bar on the site will be retained and incorporated into the Phase 1 development plan. Phase 2 consists of three options for future development on the rear half of the property: a professional office development of approximately 18,000 square feet in three buildings; an expansion of the adjacent existing self-storage facility from the north, with approximately 26,000 square feet in two buildings; or an RV storage facility, possibly only as an interim use.

**I. Other Public Agencies Whose Approval is Required:** none

**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. The following items are found to be true:

   A. The type of project is 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 items are found to be true:

   A. The type of project is 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. The following items are found to be true:

   A. The type of project is 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.

Signed, Original copy on file in CEDD

Project Manager

Title

Date
4. Within the Scope Analysis of this Document:

The Master EIR 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 Master EIR.

(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 Master EIR.

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 Master EIR is current as long as the following circumstances have not changed. Any no response must be discussed.

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

(2) This project is described in the Master EIR and its approval will not affect the adequacy of the Master EIR 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 Master EIR was certified.

   (b) No new information, which was not known and could not have been known at the time the Master EIR 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 Master EIR (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 Master EIR 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.
The appropriate mitigation to be applied to this project includes none from the MEIR, and 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:

YES  NO

(1) The project exceeds the Master EIR'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 Master EIR'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) Traffic Engineering staff has reviewed the project and determined that the project is within the scope of the Master EIR and that no further traffic study is required.

(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 have reviewed this proposal. The project will not result in, cause, or provide inadequate emergency access.

(4) The project has been evaluated for compliance to the City of Modesto Parking regulations. The project will provide all required parking on site in compliance with both City standards and ADA (Americans with Disability Act) standards.

2. DEGRADATION OF AIR QUALITY

a. Significant Effects Identified in the Master EIR

The Master EIR 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.

(2) The project does not incorporate the best management practices for PM10 reduction established by the SJVUAPCD.

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

(4) The project would expose sensitive receptors to substantial pollutant concentrations.

(5) 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) This project incorporates the best management practices for PM10 reduction established by the SJVUAPD (see mitigation measures above).
Applicable General Plan Policies will be applied to the project; therefore, project-specific effects will be less than significant for this impact (see mitigation measures above).

The land uses proposed are not in themselves significant contributors to air pollution levels and therefore the primary source of air pollution associated with the development would be traffic related. Since the traffic impacts are within the scope of the MEIR, so are the traffic-related air quality impacts. The PM10 emissions created through construction activities will be mitigated as called for by the MEIR with the mitigation measure listed above.

The proposed project will not produce objectionable odors.

3. GENERATION OF NOISE

a. Significant Effects Identified in the Master EIR

The Master EIR 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 City’s noise policy is incorporated into conditions of approval as mitigations.

(2) The project is consistent with the noise policies of the General Plan. The noise mitigation measures called for by the General Plan for projects within the Baseline Developed Area are incorporated into the conditions of approval for the project.

(3) The only permanent noise levels produced by the project would be associated with traffic. The increased traffic levels are within the scope of what the MEIR assumed for the site. Therefore, this project will not result in a substantial permanent increase in ambient noise levels.

(4) The project will not result in a substantial temporary or periodic increase in ambient noise levels in the project vicinity. There will be some construction related noise, but the noise mitigation measures called for by the General Plan for projects within the Baseline Developed Area are incorporated into the conditions of approval for the project.

4. EFFECTS ON AGRICULTURAL LANDS

a. Significant Effects Identified in the Master EIR

The Master EIR 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 appropriate mitigation to be applied to this project includes none from the MEIR, and no new or additional mitigation measures or alternatives are required.

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.  
   - YES  
   - NO

2. The project will directly result in the development of land outside the March 2003 planning area boundaries.  
   - YES  
   - NO

3. The project will Conflict with existing zoning for agricultural use, or a Williamson Act contract.  
   - YES  
   - NO

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.  
   - YES  
   - NO

Discussion:

1. The proposed project is consistent with the City of Modesto Urban Area General Plan, because the project site is located within a Mixed Use 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.

2. The project is located within the Baseline Developed Area of the City and therefore will not result in the development of land outside the March 2003 planning area boundaries.

3. The project site is not zoned for agriculture nor is it under Williamson Act contract.

4. The project will not involve changes to the existing environment that could result in the conversion of farmland to non-agricultural uses. The project is located within the Baseline Developed Area and is completely surrounded by developed urban area.

5. INCREASED DEMAND FOR LONG-TERM WATER SUPPLIES

a. Significant Effects Identified in the Master EIR

The Master EIR 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:**

The appropriate mitigation to be applied to this project includes none from the MEIR, and no new or additional mitigation measures or alternatives are required.

### 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:

<table>
<thead>
<tr>
<th></th>
<th>YES</th>
<th>NO</th>
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<tr>
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</table>

**Discussion:**

(1) The proposed project is consistent with the City of Modesto Urban Area General Plan, because the project site is located within a Mixed Use 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.
(2) The project is within the scope of the Modesto Urban Area General Plan and will not generate demands beyond that already anticipated for the area. Public Works staff evaluated the project and determined that adequate capacity exists to serve the project.

6. INCREASED DEMAND FOR SANITARY SEWER SERVICES

a. Significant Effects Identified in the Master EIR

The Master EIR 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 Master EIR. The WMP Master EIR 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 Master EIR and do not need to be considered under this Initial Study. Refer to the WMP Master EIR 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:

The appropriate mitigation to be applied to this project includes none from the MEIR, and no new or additional mitigation measures or alternatives are required.

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 City of Modesto Urban Area General Plan, because the project site is located within a Mixed Use 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.
2. The project is within the scope of the Modesto Urban Area General Plan and will not generate demands beyond that already anticipated for the area. Public Works staff evaluated the project and determined that adequate pipe capacity and wastewater treatment plant capacity exists to serve the project.

7. LOSS OF SENSITIVE WILDLIFE AND PLANT HABITAT

a. Significant Effects Identified in the Master EIR

The Master EIR 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:
The appropriate mitigation to be applied to this project includes none from the MEIR, and no new or additional mitigation measures or alternatives are required.
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 Mixed Use 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.

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 Master EIR 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-12 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:

(1) The proposed project is consistent with the City of Modesto Urban Area General Plan, because the project site is located within a Mixed Use 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.

(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 Master EIR 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.

City of Modesto Finding of Conformance
General Plan Master EIR 17
Initial Study
Insert EA No. 2008-40 11/4/08
Discussion:

(1) The proposed project is consistent with the City of Modesto Urban Area General Plan, because the project site is located within a Mixed Use 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.

(2) The project proposes to increase the impervious surface. However, it will be designed to meet the standards contained in the "Guidance Manual for New Development-Storm Water Quality Control Measures," adopted by the City as required by the above-listed mitigation measures. With the application of the appropriate mitigation, the effect will be less than significant.

(3) The project will contribute additional water runoff. However, with the application of the mitigation measures called for in the conditions of approval for the project, the effect will be less than significant.

10. FLOODING AND WATER QUALITY

a. Significant Effects Identified in the Master EIR

The Master EIR 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.

(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 City of Modesto Urban Area General Plan, because the project site is located within a Mixed Use 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.

(2) The proposed project would comply with the Federal Clean Water Act and the Porter Cologne Act requirements.

(3) Mitigation Measures called for by FWQ-14 will be applied to the proposed project so that it will comply with the Guidance Manual for New Development Storm Water Quality Control Measures.

(4) The project would not create or contribute to runoff water in excess of the capacity of existing or planned storm water drainage systems or provide additional sources of polluted runoff. The appropriate mitigation measures will be applied to the project.
11. INCREASED DEMAND FOR PARKS AND OPEN SPACE

a. Significant Effects Identified in the Master EIR

The Master EIR 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 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 none from the MEIR, and no new or additional mitigation measures or alternatives are required.

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:

<table>
<thead>
<tr>
<th>YES</th>
<th>NO</th>
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</thead>
<tbody>
<tr>
<td>(1)</td>
<td>The project is inconsistent with the Modesto Urban Area General Plan.</td>
</tr>
</tbody>
</table>

Discussion:

(1) The proposed project is consistent with the City of Modesto Urban Area General Plan, because the project site is located within a Mixed Use 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.

12. INCREASED DEMAND FOR SCHOOLS

a. Significant Effects Identified in the Master EIR
The Master EIR 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 Master EIR 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:**

The appropriate mitigation to be applied to this project includes none from the MEIR, and no new or additional mitigation measures or alternatives are required.

**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.  
   - YES NO

**Discussion:**

1. The proposed project is consistent with the City of Modesto Urban Area General Plan, because the project site is located within a Mixed Use 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.
(2) The project was referred to Modesto City Schools who indicated no opposition to the project. The project includes no residential student-gathering component.

13. INCREASED DEMAND FOR POLICE SERVICES

a. Significant Effects Identified in the Master EIR

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

Effect: The 1995 Master EIR 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 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:

The appropriate mitigation to be applied to this project includes none from the MEIR, and no new or additional mitigation measures or alternatives are required.

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. YES  NO

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. NO

Discussion:
(1) The proposed project is consistent with the City of Modesto Urban Area General Plan, because the project site is located within a Mixed Use 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.

(2) The project would not 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. The project meets City Standards for emergency services access.

14. INCREASED DEMAND FOR FIRE SERVICES

a. Significant Effects Identified in the Master EIR

The Master EIR 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 Master EIR 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 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:

The appropriate mitigation to be applied to this project includes none from the MEIR, and no new or additional mitigation measures or alternatives are required.

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 City of Modesto Urban Area General Plan, because the project site is located within a Mixed Use 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.

(2) The project would not 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. The project meets City Standards for emergency services access.

15. GENERATION OF SOLID WASTE

a. Significant Effects Identified in the Master EIR
The Master EIR 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 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 none from the MEIR, and no new or additional mitigation measures or alternatives are required.
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.  
   YES  NO
   ☑

Discussion:

1. The proposed project is consistent with the City of Modesto Urban Area General Plan, because the project site is located within a Mixed Use 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.

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 Master EIR 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 Master EIR 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 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:

The appropriate mitigation to be applied to this project includes none from the MEIR, and no new or additional mitigation measures or alternatives are required.
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 City of Modesto Urban Area General Plan, because the project site is located within a Mixed Use 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.

(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 Master EIR 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 Master EIR 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:

The appropriate mitigation to be applied to this project includes none from the MEIR, and no new or additional mitigation measures or alternatives are required.

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:

YES  NO

(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 City of Modesto Urban Area General Plan, because the project site is located within a Mixed Use 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.

(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 Master EIR 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:

The appropriate mitigation to be applied to this project includes none from the MEIR, and no new or additional mitigation measures or alternatives are required.

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:

<table>
<thead>
<tr>
<th>Threshold</th>
<th>YES</th>
<th>NO</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) The project is inconsistent with the Modesto Urban Area General Plan.</td>
<td></td>
<td>X</td>
</tr>
</tbody>
</table>

Discussion:

(1) The proposed project is consistent with the City of Modesto Urban Area General Plan, because the project site is located within a Mixed Use 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.

19. EFFECTS ON VISUAL RESOURCES

a. Significant Effects Identified in the Master EIR

The Master EIR 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 Master EIR. 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:
The appropriate mitigation to be applied to this project includes none from the MEIR, and no new or additional mitigation measures or alternatives are required.

c. Project-Specific Effects

Section V-18.B of the Master EIR 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 Master EIR.

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:

(1) The proposed project is not inconsistent with policies relating to visual resources in the Urban Area General Plan.

(2) The proposed project is not located within view from any riverside areas or parks.

(3) The proposed project is not located where it could affect the view of any riverside areas or parks from public roadways or nearby properties.

20. LAND USE AND PLANNING

a. Significant Effects Identified in the Master EIR

The Master EIR 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 Master EIR.

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 Master EIR. 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:
The appropriate mitigation to be applied to this project includes none from the MEIR, and no new or additional mitigation measures or alternatives are required.

c. Project-Specific Effects

Section V-20.B of the Master EIR 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 Master EIR.

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 City of Modesto Urban Area General Plan, because the project site is located within a Mixed Use 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.
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 Master EIR 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 Master EIR.

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 Master EIR. 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:

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

c. Project-Specific Effects

Section V-18.B of the Master EIR 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 Master EIR.

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. YES NO
(2) The proposed project would result in average automobile trip lengths or CO₂ emissions higher than those assumed in the Master EIR. NO
(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. NO

Discussion:

(1) The proposed project is not inconsistent with policies relating to climate change in the Urban Area General Plan.
(2) The proposed project would not result in average automobile trip lengths or CO₂ emissions higher than those assumed in the MEIR.

(3) The proposed project would not conflict with the Sustainable Communities Strategy that the Air Resources Board has agreed will achieve the goals of AB 32.

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 Master EIR appropriate to the project shall be incorporated into the project. The following adopted General Plan Policies and Master EIR 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:

N/A

Degradation of Air Quality:

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

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

3. Within urban areas, track-out shall be immediately removed when it extends 50 feet or more from the site and at the end of each workday.

4. All operations shall limit or expeditiously remove the accumulation of mud or dirt from adjacent public streets at the end of each workday. The use of dry rotary brushes is expressly prohibited except where preceded or accompanied by sufficient wetting to limit the visible dust emissions. Use of blower devices is expressly forbidden.

5. All disturbed areas, including storage piles, which are not being actively utilized for construction purposes, shall be effectively stabilized of dust emissions using water, chemical stabilizer/suppressant, covered with a tarp or other suitable cover or vegetative ground cover.
6. Following the addition of materials to, or the removal of materials from, the surface of outdoor storage piles, said piles shall be effectively stabilized of fugitive dust emissions utilizing sufficient water or chemical stabilizer/suppressant.

**Generation of Noise:**

7. The City’s noise ordinance (Modesto Municipal Code Section 4-9.101) prohibits “loud and raucous discharge into the open air of the steam of any steam equipment or exhaust from any stationary internal-combustion engine.” Construction equipment and vehicles should be equipped with properly operating mufflers according to the manufacturers’ recommendations. Air compressors and pneumatic equipment should be equipped with mufflers, and impact tools should be equipped with shrouds or shields.

8. The noise ordinance prohibits also the loud and raucous operation or use of any of the following before 7:00 a.m. or after 9:00 p.m. daily (or before 9:00 a.m. or after 9:00 p.m. on Saturdays and Sundays and State or federal holidays):
   a. A hammer, or any other device or implement used to pound or strike an object.
   b. An impact wrench, or other tool or equipment powered by compressed air.
   c. A hand-powered saw.
   d. Any tool or piece of equipment powered by an internal-combustion engine such as, but not limited to, chain saw, backpack blower, and lawn mower.
   e. Any electrically powered (whether by alternating current electricity or by direct current electricity) tool or piece of equipment used for cutting, drilling, or shaping wood, plastic, metal, or other materials or objects, such as, but not limited to, a saw, drill, lathe, or router.
   f. Any of the following: heavy equipment (such as but not limited to bulldozer, steam shovel, road grader, back hoe), ground drilling and boring equipment (such as but not limited to derrick or dredge), hydraulic crane and boom equipment, portable power generator or pump, pavement equipment (such as but not limited to tamper, pneumatic hammer, pavement breaker, or compacting equipment), pile-driving equipment, vibrating roller, sand blaster, gunite machine, trencher, hot kettle pump, and concrete truck.
   g. Any construction, demolition, excavation, erection, alteration, or repair activity.
   In the case of urgent necessity and in the interest of public health and safety, the Chief Building Official may issue a permit for exemption from these. Such period shall not exceed three (3) working days in length while the emergency continues but may be renewed for successive periods of three (3) days or less while the emergency continues. The Chief Building Official may limit such permit as to time of use and/or permitted action, depending upon the nature of the emergency and the type of action requested.

**Effects on Agricultural Lands:**

N/A
Increased Demand for Long-Term Water Supplies:
N/A

Increased Demand for Sanitary Sewer Services:
N/A

Loss of Sensitive Wildlife and Plant Habitat:
N/A

Disturbance of Archaeological/Historic Sites:
9. If archaeological resources are discovered at any time during construction, all activity shall cease until a qualified archaeologist surveys the site. The survey shall include mitigation measures, which shall be implemented before construction resumes. The survey shall follow the criteria presented in Appendix K of the CEQA Guidelines.

Increased Demand for Storm Drainage:
10. The developer shall implement pre- and post-construction best management practices (BMPs) to minimize pollutants entering the storm system.

Flooding and Water Quality:
11. The developer shall implement pre- and post-construction best management practices (BMPs) to minimize pollutants entering the storm system.

Increased Demand for Parks and Open Space:
N/A

Increased Demand for Schools:
N/A

Increased Demand for Police Services:
N/A

Increased Demand for Fire Services:
N/A

Generation of Solid Waste:
N/A

Generation of Hazardous Materials:
N/A

Geology, Soils, and Mineral Resources:
N/A
Energy:
N/A

Effects on Visual Resources:
N/A

Land Use and Planning:
N/A

Climate Change:
12. The developer shall provide shade trees as required by Modesto Municipal Code.

B. New or Additional Mitigation Measures or Alternatives Required

Where the project’s effects would exceed the significance criteria for each environmental impact category, a mitigated negative declaration or Focused EIR must be prepared. Staff has reviewed the project against the significance criteria thresholds established in the Master EIR for all applicable categories in this Initial Study. The following additional project-specific mitigation measures are necessary to reduce the identified new significant effect: none.
RESOLUTION APPROVING THE WELL LEASE TERMINATION AGREEMENT BETWEEN THE CITY OF MODESTO AND FMC CORPORATION FOR WELL SITE LOCATED AT 1200 GRAPHICS DRIVE, AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE SAID AGREEMENT AND ANY RELATED DOCUMENTS

WHEREAS, beginning in 2002, the Redevelopment Agency of the City of Modesto (the “Agency”) has partnered with FMC Corporation (“FMC”) in the development of a business park on FMC’s site located on three (3) parcels along the east side of Graphics Drive, east of State Route 99 and more specifically identified as Stanislaus County Assessors Parcel Numbers: 029-013013; 029-013012; 029-014010 with a total acreage of 45.04 Acres located within the Agency Project Area (Location: 1200 Graphics Drive - the “Project Site”); and

WHEREAS, the Agency and FMC are contemplating entering into a property acquisition agreement wherein FMC will sell the Project Site to the Agency, and

WHEREAS, on May 26, 1992, the City of Modesto (the “City”) entered into a Well Lease Agreement with FMC for a portion of said Project Site containing an existing deep water well which leased well site is approximately 1,765 square feet and which domestic well has been in use by the City as a municipal well for approximately 16 years (“Well No. 56”); and

WHEREAS, as part of said property acquisition between the Agency and FMC, the Well Lease between the City and FMC for said Well No. 56 site must terminate as of the date of the close of escrow between the Agency and FMC; and

WHEREAS, subsequent to the close of escrow for said Project Site sale, the Well No. 56 site will belong to the Agency and the Agency will then negotiate with the City to
convey the Well No. 56 site to the City, and

WHEREAS, the City and FMC have prepared a Well Lease Termination Agreement to provide for the termination of said Well Lease prior to said property sale which Agreement is attached hereto as "Exhibit A" and made a part hereof by this reference.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Modesto that the Well Lease Termination Agreement by and between the City of Modesto and FMC Corporation, Inc. is hereby approved.

BE IT FURTHER RESOLVED that the City Council does hereby authorize and direct its City Manager, or his designee, to execute on behalf of the City said Well Lease Termination Agreement, and any other related documents with FMC for termination of the Well Lease between the City of Modesto and FMC Corporation for a well site located at 1200 Graphics Drive.

The foregoing resolution was introduced at a regular meeting of the City Council of the City of Modesto held on the 27th day of January, 2009, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Marsh, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Hawn, Keating, Lopez, Marsh, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: O'Bryan

ATTEST: STEPHANIE LOPEZ, City Clerk

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney
LEASE TRANSFER AND TERMINATION AGREEMENT

This LEASE TRANSFER AND TERMINATION AGREEMENT ("Agreement") is dated as of __________, 2009 ("Effective Date") and is entered into by and between FMC CORPORATION, a Delaware corporation ("FMC"), and the CITY OF MODESTO, a public body, corporate and politic ("City").

RECITALS

A. FMC is the owner of certain real property located at 1200 Graphics Drive in Modesto, California ("Property"). Two water wells, known as FMC Water Well No. 5 and FMC Water Well No. 6, together with pumps, piping, equipment and machinery owned by FMC and located on the Property and used or formerly used by FMC in the operation and maintenance of such water wells (collectively, the "Water Wells"), currently exist on the Property. FMC and the City entered into that certain Lease Agreement dated May 26, 1992 ("Lease") for the lease by the City of a portion of the Property consisting of a well site containing approximately 1,765 square feet and referred to in the Lease as "FMC Production Well No. 5." In connection with the Lease, the City recorded a Memorandum of Lease on __________, 1992 as Document No. ____ in the Official Records of Stanislaus County, California ("Memorandum").

B. Concurrently with the execution of this Agreement, FMC is conveying the Property to the Redevelopment Development Agency of the City of Modesto ("Agency"). In connection with FMC’s conveyance of the Property to the Agency, FMC and the City desire to terminate the Lease and FMC desires to convey the Water Wells to the City, subject to the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the foregoing recitals, the terms and mutual covenants contained herein, and for other consideration, the sufficiency of which is hereby acknowledged, FMC and the City hereby agree as follows:

AGREEMENT

1. Termination of Lease. FMC and the City hereby agree that the Lease shall terminate as of the Effective Date set forth above. As of the Effective Date, FMC and the City each hereby waive any and all of their respective rights and obligations under the Lease, whether such rights and obligations have accrued prior to or arise after the termination of the Lease, and further agree that all such rights and obligations shall cease and be of no further force and effect from and after the Effective Date.

2. Termination of Memorandum. Concurrently with the execution of this Agreement, FMC and the City shall execute, acknowledge and cause to be recorded in the Official Records of Stanislaus County, California, a Termination of Memorandum of Lease in the form attached as Exhibit A hereto to remove the Memorandum from title to the Property.

3. Conveyance of Wells. FMC hereby sells, transfers and conveys the Water Wells to the City.
4. As-Is Conveyance. THE CITY ACKNOWLEDGES THAT THE CITY HAS MADE ITS OWN INSPECTION OF THE WATER WELLS. THE CITY FURTHER ACKNOWLEDGES THAT FMC IS SELLING AND THE CITY IS PURCHASING THE WATER WELLS ON AN "AS IS WITH ALL FAULTS" BASIS. THAT THE CITY IS RELYING ON ITS OWN INSPECTION OF THE WATER WELLS AND THAT THE CITY IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, FROM FMC, ITS AGENTS, OR BROKERS AS TO ANY MATTERS CONCERNING THE WATER WELLS, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

5. Closure of Water Wells. The City covenants to FMC to promptly undertake, upon the permanent cessation of use of the Water Wells, all actions that may be necessary for the proper closure of the Water Wells in accordance with all applicable federal, state and local laws, statutes, ordinances and regulations, including the sealing and filling of the Water Wells with appropriate material. The City shall indemnify, defend and hold FMC harmless from any and all loss, cost, damage, liability, judgments or expenses, including consultants’ and attorneys’ fees, arising out of or in any way connected with (i) the use and operation of the Water Wells after the Effective Date, and (ii) the closure of such Water Wells upon permanent cessation of use thereof in accordance with all then-applicable laws, statutes, ordinances and regulations. The foregoing covenant and indemnity obligation of the City shall survive the conveyance of the Water Wells.

6. Miscellaneous. This Agreement shall be governed by and construed in accordance with the laws of the State of California. This Agreement will be binding upon and inure to the benefit of FMC and the City and their respective successors and assigns. This Agreement constitutes the entire agreement of the parties hereto with respect to the specific subject matter hereof, and supersedes and replaces any and all prior negotiations and agreements between the parties, whether written or oral, as well as any contemporaneous oral negotiations and agreements. This Agreement may only be amended by a written agreement executed by both parties. Any waiver of any portion of this Agreement must be in writing executed by the waiving party. This Agreement may be executed in counterpart originals, each of which, and all of which together, shall constitute one and the same agreement.

IN WITNESS WHEREOF, FMC and City have executed this Agreement on the date first written above.

“FMC”

FMC CORPORATION,

a Delaware corporation

By: ________________________________
Name: ______________________________
Title: ______________________________
“CITY”

CITY OF MODESTO, a public body, corporate and politic

By: ____________________________________________

___________________________________________

Approved as to form:

___________________________________________
City Attorney

ATTEST:

___________________________________________

___________________________________________
RECORJ)ING REQUESTED BY

WHEN RECORDED MAIL TO

City of Modesto
1010 Tenth Street, Suite ___
Modesto, CA 95354
Attn: __________

SPACE ABOVE THIS LINE FOR RECORDER'S USE

THIS DOCUMENT IS RECORDED FOR THE BENEFIT OF THE CITY OF MODESTO AND IS ENTITLED TO BE RECORDED FREE OF CHARGE IN ACCORDANCE WITH SECTION 6103 AND 27383 OF THE GOVERNMENT CODE

APN 29-13-13

TERMINATION OF MEMORANDUM OF LEASE

1. This Termination of Memorandum of Lease (Memorandum”) is entered into by the City of Modesto, a public body, corporate and politic (“City”) and FMC Corporation, a Delaware corporation (“FMC”) as of this ___ day of ________, 2009.

2. On __________, 1992, City and FMC caused to be recorded as document number _________ in the Official Records of Stanislaus County, California, a Memorandum of Lease (the “Original Memorandum”) in connection with the City’s lease from FMC of certain real property located in Modesto, California and more particularly described on Exhibit “A” attached hereto. The Lease Agreement in the Original Memorandum has been terminated by the City and FMC pursuant to that certain Lease Termination Agreement dated as of ___________ (the “Termination Agreement”), the terms and conditions of which are made a part of this Memorandum by this reference.

3. This Memorandum is prepared for the purpose of recordation, and it in no way modifies the provisions of the Termination Agreement referenced in Section 2 of this Memorandum above.

Executed on the date set forth below.

Dated: ________________
“FMC”

FMC CORPORATION, a Delaware corporation

By: ____________________________
Name: __________________________
Title: __________________________

“CITY”

CITY OF MODESTO, a public body, corporate and politic

By: ____________________________

Approved as to form:

_____________________________________
City Attorney

ATTEST:

_____________________________________

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LEGAL DESCRIPTION

Real property in the City of Modesto, County of Stanislaus, State of California, described as follows:

PARCEL NO. 1:

BEGINNING AT A POINT IN THE WEST LINE OF THE PARCEL OF LAND DESCRIBED IN THE DEED FROM D-V-Q PRODUCTS, INC., TO THE CENTRAL PACIFIC RAILWAY COMPANY DATED NOVEMBER 5, 1925 AND FILED FOR RECORD JULY 20, 1926 IN VOLUME 180 OF OFFICIAL RECORDS OF SAID COUNTY OF STANISLAUS AT PAGE 462, DISTANT SOUTH, 7.02 FEET THEREON FROM THE MOST NORTHERLY CORNER OF SAID PARCEL OF LAND; THENCE SOUTHERLY FROM A TANGENT THAT BEARS SOUTH 25° 44' 57" EAST ALONG A CURVE TO THE RIGHT OF A RADIUS OF 562.22 FEET, A DISTANCE OF 457.90 FEET; THENCE SOUTH 21° 53' WEST, 41.07 FEET TO THE SOUTHERLY END OF THAT PORTION OF THE EAST LINE OF THE LAND OF BARLUM PRODUCTS, LTD. THAT BEARS NORTH AND SOUTH; THENCE NORTH ALONG THE EAST LINE OF THE LANDS OF BARLUM PRODUCTS, LTD., 491.90 FEET TO THE POINT OF BEGINNING.

PARCEL NO. 2:

BEGINNING AT THE MOST SOUTHERLY CORNER OF THE ABOVE DESCRIBED PARCEL NO. 1; THENCE SOUTH 21° 53' WEST, 93.98 FEET; THENCE SOUTHERLY FROM A TANGENT THAT BEARS SOUTH 21° 53' WEST ALONG A CURVE TO THE LEFT OF A RADIUS OF 583.14 FEET, A DISTANCE OF 222.72 FEET; THENCE SOUTH, TANGENT TO SAID CURVE, 464.27 FEET; THENCE SOUTH 8° 10' WEST, 98.55 FEET; THENCE WEST, 113.00 FEET TO THE EAST LINE OF MICHIGAN AVENUE; THENCE NORTH ALONG SAID EAST LINE, 500.00 FEET TO THE SOUTH LINE OF THE LAND OF BARLUM PRODUCTS, LTD.; THENCE EAST, ALONG SAID SOUTH LINE, 151.70 FEET TO THE SOUTHEASTERLY LINE OF THE LAND OF BARLUM PRODUCTS, LTD.; THENCE NORTH 31° 13' EAST THEREON, 101.00 FEET TO THE POINT OF BEGINNING.

PARCEL NO. 3:

BEGINNING AT THE SOUTHWEST CORNER OF THE LAND OF D-V-Q PRODUCTS, INC., A CORPORATION, AT A POINT IN THE EAST LINE OF MICHIGAN AVENUE, SAID POINT BEING DISTANT 20 FEET AT RIGHT ANGLES EAST FROM THE CENTER LINE OF SAID AVENUE AND 1840 FEET, MORE OR LESS, NORTHERLY FROM THE EAST AND WEST QUARTER SECTION LINE OF SAID SECTION 30; THENCE EAST 205.0 FEET ALONG THE SOUTH LINE OF SAID D-V-Q PRODUCTS, INC., PROPERTY TO A POINT; THENCE SOUTH 215.82 FEET TO A POINT; THENCE SOUTH 31° 13' WEST 101.0 FEET TO A POINT; THENCE WEST 152.66 FEET TO A POINT IN THE SAID EAST LINE OF MICHIGAN AVENUE; THENCE NORTH ALONG THE SAID EAST LINE OF MICHIGAN AVENUE, A DISTANCE OF 302.2 FEET TO THE POINT OF BEGINNING.

PARCEL NO. 4:

BEGINNING A POINT BEARING EAST 14.69 CHAINS FROM A POINT IN THE NORTH AND SOUTH QUARTER SECTION LINE, WHICH POINT BEARS NORTH 27.88 CHAINS FROM THE SOUTHWEST CORNER OF THE NORTHEAST QUARTER OF SECTION 30; THENCE NORTH 524.70 FEET AND PART ALONG THE CENTER OF A ROAD TO THE WESTLY RIGHT OF WAY LINE OF THE SOUTHERN PACIFIC RAILROAD; THENCE SOUTH 42° 38' EAST 716.95 FEET AND ALONG SAID RIGHT OF WAY LINE; THENCE WEST 458.70 FEET TO THE POINT OF BEGINNING, AND LAST
MENTIONED COURSE IS ALSO AT RIGHT ANGLES FROM THE FIRST MENTIONED COURSE.

EXCEPTING THEREFROM THE WEST TWENTY (20) FEET.

ALSO EXCEPTING THEREFROM THE FOLLOWING:

ALL THAT PORTION OF THE EAST HALF OF SECTION 30, IN TOWNSHIP 3 SOUTH, RANGE 9 EAST, MOUNT DIABLO BASE AND MERIDIAN, BOUNDED AND PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE SOUTHWESTERN BOUNDARY LINE OF THE CENTRAL PACIFIC RAILWAY COMPANY'S RIGHT OF WAY, SAID POINT BEING DISTANT 330.00 FEET, MEASURED SOUTH 42° 58' EAST ALONG SAID SOUTHWESTERLY BOUNDARY LINE FROM ITS INTERSECTION WITH THE CENTER LINE OF A ROAD AS LAID OUT ALONG THE WEST SIDE OF THE PROPERTY OF THE D-V-O PRODUCTS, INC.; THENCE SOUTH 42° 58' EAST 386.90 FEET ALONG SAID BOUNDARY LINE; THENCE WEST 263.70 FEET; THENCE AT RIGHT ANGLES NORTH 283.10 FEET TO THE POINT OF BEGINNING.

PARCEL NO. 6:

BEGINNING AT A POINT MARKING THE NORTHWEST CORNER OF THE 1.002 ACRE PARCEL OF LAND DESCRIBED IN THE DEED TO THE STATE OF CALIFORNIA DATED AUGUST 23, 1955 AND RECORDED SEPTEMBER 29, 1955 IN VOLUME 1318 OF OFFICIAL RECORDS, AT PAGE 461, AS INSTRUMENT NO. 29114, SAID CORNER LYING ON THE EAST LINE OF BENNETT ROAD (ALSO KNOWN AS MICHIGAN AVENUE, AND BEING 40 FEET IN WIDTH); THENCE ALONG THE NORTH LINE OF SAID 1.002 ACRE PARCEL, SOUTH 89° 47' EAST 113.67 FEET TO THE MOST NORTHEASTERLY CORNER OF SAID PARCEL; THENCE ALONG THE EASTERN BOUNDARY OF SAID PARCEL THE FOLLOWING COURSES: SOUTH OF 11° 40' EAST 20.04 FEET; SOUTH 89° 47' EAST 14.07 FEET; AND SOUTH OF 11° 40' EAST, 231.60 FEET; THENCE LEAVING SAID EASTERN BOUNDARY NORTH 49° 22' 30" WEST, 140.20 FEET; THENCE NORTH 37° 2' 10" WEST, 35.78 FEET TO THE WESTERLY LINE OF SAID 1.002 ACRE PARCEL (ALSO BEING THE EASTERLY LINE OF SAID BENNETT ROAD); THENCE ALONG SAID WESTERLY LINE NORTH OF 11° 40' WEST, 132.41 FEET TO THE POINT OF BEGINNING.

RESERVING THEREFROM SUCH INTEREST IN THAT PORTION OF THE EAST 15.00 THEREOF, AS WAS RESERVED FOR RAILROAD PURPOSES IN THE DEED FROM CENTRAL PACIFIC RAILROAD COMPANY AND SOUTHERN PACIFIC COMPANY, DATED AUGUST 21, 1947 AND RECORDED OCTOBER 22, 1947 IN VOLUME 910 OF OFFICIAL RECORDS, AT PAGE 406, AS INSTRUMENT NO. 27554, STANISLAUS COUNTY RECORDS.

ALSO EXCEPTING AND RESERVING THEREFROM ALL PETROLEUM, OIL, NATURAL GAS AND PRODUCTS DERIVED THEREFROM, WITHIN OR UNDERLYING THE SAID LAND OR THAT MAY BE PRODUCED THEREFROM, AND ALL RIGHTS THERETO, AS RESERVED IN THE DEED FROM CENTRAL PACIFIC RAILWAY COMPANY AND SOUTHERN PACIFIC COMPANY, DATED AUGUST 21, 1947 AND RECORDED OCTOBER 22, 1947 IN VOLUME 910 OF OFFICIAL RECORDS, AT PAGE 406, AS INSTRUMENT NO. 27554, STANISLAUS COUNTY RECORDS. SAID RIGHTS SHALL NOT INCLUDE USE OF THE SURFACE OF SAID LAND.

PARCEL NO. 6:

LOTS 1 TO 9, INCLUSIVE, IN BLOCK 5072 OF THE GRANGE TRACT, ACCORDING TO THE OFFICIAL MAP THEREOF, FILED SEPTEMBER 14, 1940 IN THE OFFICE OF THE COUNTY RECORDER OF STANISLAUS COUNTY, CALIFORNIA IN VOLUME 14 OF MAPS AT PAGE 5.
RECORDS.

Also excepting therefrom that certain land described as parcel No. 2 in the deed from Frank J. Mitchell, et ux., and Fred Sampson, et ux., to the State of California, recorded September 12, 1958 in Volume 1502 of Official Records, at page 446, as instrument No. 22893, Stanislaus County Records.

Also excepting from the above parcel Nos. 6,7,8,9, and 10, all those portions of land conveyed to the County of Stanislaus in deeds recorded December 4, 1951 in Book 1059 of Official Records, page 480 and recorded January 25, 1952 in Book 1067 of Official Records page 558.

Also excepting from the above parcel Nos. 9 and 10, all that portion lying southerly of the northerly lines of land conveyed to State of California in deed recorded December 28, 1961 in Book 1731 of Official Records, page 691.

Parcel No. 11:

Beginning at a point in the northerly line of that certain parcel of land described as parcel No. 2 in the deed to the State of California dated June 25, 1958 and recorded September 12, 1958 in Volume 1502 of Official Records, at page 446, Stanislaus County Records, said point lying south 89° 47' east, 99.73 feet along said northerly line from the northwest corner of said parcel; thence south 43° 07' 30" east, 27.93 feet to a point in the southerly line of said parcel; thence along said southerly line, south 89° 47' east, 282.23 feet to the westerly line of Bennett Road (also known as Michigan Avenue, and being 40 feet in width); thence north along said westerly line, 20.31 feet; thence along said northerly line of said parcel described in said deed dated June 25, 1958, north 89° 47' west, 301.25 feet to the point of beginning.

Parcel No. 12:

Beginning at a point in the northerly line of that certain parcel of land described as parcel No. 1 in the deed to the State of California dated June 25, 1958 and recorded September 12, 1958 in Volume 1502 of Official Records, at page 446, Stanislaus County Records, said point lying south 89° 47' east, 118.75 feet along said north line from the northwest corner of said parcel No. 1; thence along said north line, south 89° 47' east, 282.33 feet to a point in the westerly line of Bennett Road (also known as Michigan Avenue, and being 40 feet in width); thence south along said westerly line, 243.08 feet; thence north 89° 47' 15" west, 49.26 feet; thence from a tangent that bears north 46° 42' 51" west, along a curve concave to the northeast, having a radius of 1972 feet, through an angle of 3° 35' 21" a distance of 123.53 feet; thence north 43° 07' 30" west, 214.42 feet to the point of beginning.

Parcel No. 13:

Beginning at the point of intersection of the southerly line of Caldwell Avenue, formerly Woodland Avenue, with the southwesterly line of the land described in deed dated March 7, 1873 from John T. Maze to Central Pacific Railroad Company, recorded May 3, 1873 in Book 10 of Deeds, at page 542, Stanislaus County Records; thence south 42° 53' 30" east along said southwesterly line of said land, 392.96 feet to a point in the easterly line of
THE 2.09 ACRE PARCEL OF LAND DESCRIBED IN DEED DATED JUNE 20, 1924 FROM WILLIAM DAGGS, SR. AND LOUISE DAGGS, HIS WIFE TO CENTRAL PACIFIC RAILWAY COMPANY, RECORDED JULY 17, 1924 IN VOLUME 74 OF OFFICIAL RECORDS AT PAGE 134, STANISLAUS COUNTY RECORDS; THENCE SOUTH ALONG SAID EASTERLY LINE, 1406.01 FEET TO A POINT; THENCE WEST, AT RIGHT ANGLES FROM SAID EASTERLY LINE, 40.00 FEET TO A POINT IN THE WESTERLY LINE OF SAID 2.09 ACRE PARCEL OF LAND; THENCE NORTH ALONG SAID WESTERLY LINE 1390.30 FEET TO A POINT IN A LINE PARALLEL WITH AND DISTANT SOUTHWESTERLY, 40.00 FEET, MEASURED AT RIGHT ANGLES FROM SAID SOUTHWESTERLY LINE OF SAID LAND DESCRIBED IN SAID DEED DATED MARCH 7, 1873; THENCE NORTH 42° 53' 30" WEST ALONG SAID PARALLEL LINE, 415.45 FEET TO A POINT IN THE SOUTHERLY LINE OF SAID CALDWELL AVENUE; THENCE SOUTH 89° 12' 30" EAST, ALONG THE SOUTHERLY LINE OF CALDWELL AVENUE, 55.31 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED PARCEL OF LAND BEING A PORTION OF BENNETT AVENUE (SOMETIMES KNOWN AS MICHIGAN AVENUE), ABANDONED BY THE STANISLAUS COUNTY BOARD OF SUPERVISORS BY SUPERVISORS' ORDER RECORDED JULY 11, 1951 IN VOLUME 1039 OF OFFICIAL RECORDS, AT PAGE 97, STANISLAUS COUNTY RECORDS AS INSTRUMENT NO. 16289.

EXCEPTING AND RESERVING THEREFROM ALL MINERALS AND MINERAL ORES OF EVERY KIND AND CHARACTER NOW KNOWN TO EXIST OR HEREAFTER DISCOVERED UPON, WITHIN OR UNDERLYING SAID LAND OR THAT MAY BE PRODUCED THEREFROM INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, ALL PETROLEUM, OIL, NATURAL GAS AND OTHER HYDROCARBON SUBSTANCES AND PRODUCTS DERIVED THEREFROM, TOGETHER WITH THE EXCLUSIVE AND PERPETUAL RIGHT OF INGRESS AND EGRESS BENEATH THE SURFACE OF SAID LAND TO EXPLOR FOR, EXTRACT, MINE AND REMOVE THE SAME, AS RESERVED IN THE INDENTURE BETWEEN CENTRAL PACIFIC RAILWAY COMPANY AND SOUTHERN PACIFIC COMPANY, DATED NOVEMBER 8, 1951 AND RECORDED NOVEMBER 14, 1951 IN VOLUME 1056 OF OFFICIAL RECORDS, AT PAGE 445, STANISLAUS COUNTY RECORDS.

PARCEL NO. 14:

BEGINNING AT THE NORTHWEST CORNER OF THE 5.55 ACRE PARCEL OF LAND DESCRIBED IN INDENTURE DATED APRIL 5, 1961 FROM SOUTHERN PACIFIC COMPANY TO THE STATE OF CALIFORNIA, RECORDED MARCH 19, 1962 IN VOLUME 1750 OF OFFICIAL RECORDS, AT PAGE 445, AS INSTRUMENT NO. 10481, STANISLAUS COUNTY RECORDS; SAID NORTHWEST CORNER ALSO BEING A POINT ON THE WEST LINE OF LAND DESCRIBED IN INDENTURE DATED JUNE 20, 1924 FROM WILLIAM DAGGS, SR., AND LOUISE DAGGS TO CENTRAL PACIFIC RAILWAY COMPANY AND RECORDED JULY 17, 1924 IN VOLUME 74 OF OFFICIAL RECORDS, AT PAGE 134, AND RECORDED AUGUST 11, 1924 IN VOLUME 77 OF OFFICIAL RECORDS, AT PAGE 256, STANISLAUS COUNTY RECORDS; THENCE NORTH ALONG SAID WEST LINE 243.08 FEET TO A POINT IN THE MOST SOUTHERLY LINE OF THE 1.655 ACRE PARCEL OF LAND DESCRIBED IN INDENTURE DATED NOVEMBER 8, 1951 FROM CENTRAL PACIFIC RAILWAY COMPANY AND SOUTHERN PACIFIC COMPANY TO BARUM PRODUCTS, LTD., RECORDED NOVEMBER 14, 1951 IN VOLUME 1655 OF OFFICIAL RECORDS, AT PAGE 445, AS INSTRUMENT NO. 26538; THENCE EAST, ALONG LAST SAID LINE, 49.0 FEET TO A POINT IN THE EAST LINE OF LAND DESCRIBED IN SAID INDENTURE DATED JUNE 20, 1924; THENCE SOUTH, ALONG SAID EAST LINE, 243.08 FEET TO A POINT ON THE NORTHERLY LINE OF LAND DESCRIBED IN SAID INDENTURE DATED APRIL 5, 1961; THENCE NORTH 89° 35' 35" WEST, ALONG SAID NORTHERLY LINE, A DISTANCE OF 40.00 FEET TO THE POINT OF BEGINNING.

EXCEPTING AND RESERVING THEREFROM ALL OF THE MINERALS AND MINERAL ORES OF EVERY KIND AND CHARACTER NOW KNOWN TO EXIST OR HEREAFTER DISCOVERED UPON, WITHIN OR UNDERLYING SAID LAND OR THAT MAY BE PRODUCED THEREFROM, INCLUDING, WITHOUT

PARCEL NO. 15:

ALL THAT PORTION OF THE NORTHEASTERLY QUARTER OF SECTION 20, TOWNSHIP 3 SOUTH, RANGE 9 EAST, MOUNT DIABLO BASE AND MERIDIAN, AS PER THE APPROVED U.S. GOVERNMENT SURVEY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST NORTHERLY CORNER OF LAND DESCRIBED IN INDENTURE DATED NOVEMBER 5, 1925 FROM D-V-O PRODUCTS, INC. TO CENTRAL PACIFIC RAILWAY COMPANY (NOW SOUTHERN PACIFIC COMPANY), RECORDED JULY 29, 1926, IN VOLUME 180, AT PAGE 462, OFFICIAL RECORDS OF SAID COUNTY; THENCE SOUTH 42° 53' 30" EAST, ALONG THE NORTHEASTERLY LINE OF LAND DESCRIBED IN SAID INDENTURE, PARALLEL WITH AND DISTANT 50.0 FEET SOUTHWESTERLY, MEASURED AT RIGHT ANGLES, FROM THE ORIGINAL LOCATED CENTER LINE OF SOUTHERN PACIFIC COMPANY'S MAIN TRACK (LATHROP TO FRENSO), 376.50 FEET; THENCE SOUTHERLY ON A CURVE TO THE RIGHT HAVING A RADIUS OF 372.25 FEET, THROUGH A CENTRAL ANGLE TO 22° 79' 08" (CHORD OF SAID CURVE BEARS SOUTH 11° 14' 34" EAST, 145.15 FEET), AN ARC DISTANCE OF 146.09 FEET; THENCE SOUTH, TANGENT TO SAID CURVE, 685.99 FEET TO THE NORTHEAST CORNER OF THE 107.836 SQUARE FOOT PARCEL OF LAND DESCRIBED AS PARCEL 2 IN INDENTURE DATED AUGUST 21, 1947, FROM CENTRAL PACIFIC RAILWAY COMPANY AND SOUTHERN PACIFIC COMPANY TO MODESTO PRODUCE PACKING COMPANY, RECORDED OCTOBER 22, 1947, IN BOOK 910, AT PAGE 406, OFFICIAL RECORDS OF SAID COUNTY, AS INSTRUMENT NO. 2754; THENCE WEST, ALONG THE NORTHERLY LINE OF SAID LAST MENTIONED LAND, 329.00 FEET TO THE NORTHEAST CORNER THEREOF; THENCE SOUTH, ALONG THE WESTERN LINE OF LAND DESCRIBED AS PARCEL 2, IN SAID INDENTURE DATED AUGUST 21, 1947, A DISTANCE OF 260.08 FEET TO A POINT ON THE NORTHEASTERLY LINE OF 0.116 ACRE PARCEL OF LAND DESCRIBED AS PARCEL NO. 2 IN INDENTURE DATED APRIL 5, 1961, FROM SOUTHERN PACIFIC COMPANY TO THE STATE OF CALIFORNIA, RECORDED SEPTEMBER 12, 1961, IN VOLUME 1707, AT PAGE 496, OFFICIAL RECORDS OF SAID COUNTY, AS INSTRUMENT NO. 28718; THENCE NORTH 49° 10' 50" WEST ALONG LAST SAID NORTHEASTERLY LINE 44.93 FEET TO A POINT ON EASTERN LINE OF THE 43.654 SQUARE FOOT PARCEL OF LAND DESCRIBED AS PARCEL NO. 1 IN SAID INDENTURE DATED AUGUST 21, 1947; THENCE ALONG SAID EASTERN LINE, THE FOLLOWING COURSES AND DISTANCES: NORTH 230.71 FEET; WEST, 14.00 FEET; AND NORTH, 20.00 FEET; THENCE ALONG THE EASTERN LINE OF THE 2.404 ACRE PARCEL OF LAND DESCRIBED AS PARCEL NO. 2 IN INDENTURE DATED MARCH 15, 1943, FROM CENTRAL PACIFIC RAILWAY COMPANY AND SOUTHERN PACIFIC COMPANY TO BARRUM PRODUCTS, LTD., RECORDED JULY 20, 1943, IN BOOK 776, AT PAGE 91, OFFICIAL RECORDS OF SAID COUNTY, AS INSTRUMENT NO. 10746, THE FOLLOWING COURSES AND DISTANCES: NORTH 8° 10' EAST, 98.55 FEET; NORTH 484 21 FEET; NORTHERLY, ON A CURVE TO THE RIGHT HAVING A RADIUS OF 583.14 FEET, THROUGH A CENTRAL ANGLE OF 21° 53' (CHORD OF LAST SAID CURVE BEARS NORTH 10° 56' 30" EAST, 221.37 FEET), AN ARC DISTANCE OF 222.72 FEET; AND NORTH 21° 53' EAST, TANGENT TO LAST SAID CURVE, 91.98 FEET TO THE NORTHEAST CORNER OF SAID 2.404 ACRE PARCEL OF LAND, LAST SAID NORTHEAST CORNER ALSO BEING THE MOST SOUTHERLY CORNER OF THE 0.422 ACRE PARCEL OF LAND DESCRIBED AS PARCEL NO. 1 IN SAID INDENTURE DATED MARCH 15, 1943; THENCE ALONG THE EASTERN LINE OF SAID 0.422 ACRE PARCEL OF LAND, THE FOLLOWING COURSES AND DISTANCES: NORTH 21° 53' EAST, 41.07 FEET; AND NORTHERLY, ON A CURVE TO THE LEFT HAVING A RADIUS OF 562.22 FEET,
THROUGH A CENTRAL ANGEL OF 47° 37' 57" (CHORD OF LAST SAID CURVE BEARS NORTH 1° 55' 59" WEST, 454.05 FEET), AN ARC DISTANCE OF 467.40 FEET TO A POINT IN THE WEST LINE OF LAND DESCRIBED IN SAID INDEED ON THE 3RD DAY OF NOVEMBER A.D. 1925, THENCE NORTH, ALONG LAST SAID LINE, 7.02 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM ALL OF THE MINERALS AND MINERAL ORES OF EVERY KIND AND CHARACTER NOW KNOWN TO EXIST OR HEREAFTER DISCOVERED UPON, WITHIN OR UNDERLYING SAID LAND OR THAT MAY BE PRODUCED THEREFROM, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, ALL PETROLEUM, OIL, NATURAL GAS AND OTHER HYDROCARBON SUBSTANCES AND PRODUCTS DERIVED THEREFROM, TOGETHER WITH THE EXCLUSIVE AND PERPETUAL RIGHT OF INGRESS AND EGRESS BENEATH THE SURFACE OF SAID LAND TO EXPLORE FOR, EXTRACT, MINE AND REMOVE THE SAME, AS EXPECTED AND RESERVED IN THE DEED FROM SOUTHERN PACIFIC COMPANY, A CORPORATION, RECORDED NOVEMBER 26, 1965 IN VOLUME 2071 OF OFFICIAL RECORDS, AT PAGE 75, STANISLAUS COUNTY RECORDS.

PARCEL NO. 16:

ALL THAT PORTION OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN THE DEED TO THE STATE OF CALIFORNIA DATED AUGUST 29, 1958 AND RECORDED OCTOBER 31, 1958 IN VOLUME 1511 OF OFFICIAL RECORDS, AT PAGE 12, AS INSTRUMENT NO. 27377, AND LOCATED IN THE NORTHEAST QUARTER OF SECTION 30, TOWNSHIP 9 SOUTH, RANGE 9 EAST, MOUNT DIABLO BASE AND MERIDIAN, AS PER THE APPROVED U.S. GOVERNMENT SURVEY, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EASTERN LINE OF SAID PARCEL OF LAND DESCRIBED IN SAID DEED, SAID POINT LYING NORTH 0° 11' 45" WEST, 135.20 FEET FROM THE SOUTHEAST CORNER OF SAID PARCEL OF LAND; THENCE NORTH 49° 37' 30" WEST, 436.91 FEET TO A POINT ON THE WESTERLY BOUNDARY OF SAID PARCEL; THENCE ALONG SAID WESTERLY BOUNDARY, NORTH 0° 11' 40" WEST, 250.77 FEET TO THE NORTHWEST CORNER OF SAID PARCEL; THENCE ALONG THE NORTHELY BOUNDARY OF SAID PARCEL, SOUTH 89° 44' EAST, 330.65 FEET TO THE NORTHEAST CORNER OF SAID PARCEL; THENCE ALONG THE AFORESAID EASTERN LINE, SOUTH 0° 11' 45" EAST, 544.00 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM ALL PETROLEUM, OIL, NATURAL GAS AND PRODUCTS DERIVED THEREFROM, WITHIN OR UNDERLYING SAID LAND OR THAT MAY BE PRODUCED THEREFROM, AND ALL RIGHTS THEREOF, PROVIDED THE GRANTOR, THEIR SUCCESSORS OR ASSIGNS, SHALL NOT USE THE SURFACE OF SAID LAND IN THE EXERCISE OF ANY OF SAID RIGHTS, AS EXPECTED AND RESERVED IN THE DEEDS FROM CENTRAL PACIFIC RAILWAY COMPANY, A CORPORATION, AND SOUTHERN PACIFIC COMPANY, A CORPORATION, RECORDED SEPTEMBER 13, 1946 IN VOLUME 865 OF OFFICIAL RECORDS, AT PAGE 141, AS INSTRUMENT NO. 25760, AND RECORDED OCTOBER 22, 1947 IN VOLUME 910 OF OFFICIAL RECORDS, AT PAGE 406, AS INSTRUMENT NO. 27554, STANISLAUS COUNTY RECORDS.

ALSO EXCEPTING THEREFROM THAT PORTION OF THE EASTERN 15 FEET THEREOF WHICH LIES SOUTH OF THE NORTH 327.77 FEET, AS EXPECTED AND RESERVED FOR THE CONSTRUCTION, RECONSTRUCTION, MAINTENANCE AND OPERATION OF RAILROAD TRACKS AND APPURTENANCES THEREON, IN SAID DEED RECORDED SEPTEMBER 13, 1946 IN VOLUME 865 OF OFFICIAL RECORDS, AT PAGE 141, AS INSTRUMENT NO. 25760, STANISLAUS COUNTY RECORDS.

ALSO EXCEPTING THEREFROM SUCH INTEREST IN THE WEST 15 FEET OF THE NORTH 327.77 FEET OF SAID PARCEL NO. 2, LESS THE NORTH 20 FEET THEREOF, AND EXCEPTING THEREFROM SUCH INTEREST IN THE EAST 15 FEET OF THE NORTH 327.77 FEET OF SAID PARCEL NO. 2, LESS THE NORTH 20 FEET THEREOF.
PARCEL NO. 2, LESS THE NORTH 20 FEET THEREOF, RESERVED FOR RAILROAD PURPOSES IN THE SAID DEED RECORDED OCTOBER 22, 1947 IN VOLUME 910 OF OFFICIAL RECORDS, AT PAGE 406, AS INSTRUMENT NO. 27554, STANISLAUS COUNTY RECORDS.

RESOLUTION APPROVING THE WASTEWATER DISCHARGE AGREEMENT BETWEEN THE CITY OF MODESTO AND FMC CORPORATION FOR ACCEPTANCE OF THE CONTINUED DISCHARGE OF WASTEWATER GENERATED FROM GROUNDWATER TREATMENT FACILITIES LOCATED AT 1200 GRAPHICS DRIVE, AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE SAID AGREEMENT AND ANY RELATED DOCUMENTS

WHEREAS, beginning in 2002, the Redevelopment Agency of the City of Modesto (the “Agency”) has partnered with FMC Corporation (“FMC”) in the development of a business park on FMC’s site located on three (3) parcels along the east side of Graphics Drive, east of State Route 99 and more specifically identified as Stanislaus County Assessors Parcel Numbers: 029-013013; 029-013012; 029-014010 with a total acreage of 45.04 Acres located within the Agency Project Area (the “Project Site”), and

WHEREAS, said Project Site is a “brownfield” which is a site where the soil and groundwater have been contaminated as a result of the previous industrial use by FMC, and

WHEREAS, said Project Site development includes the remediation of both the soil and groundwater contamination, and

WHEREAS, the Agency and the City of Modesto (the “City”) have identified said Project Site as having a high potential for development which will achieve multiple objectives, including: (1) Developing a vacant and blighted brownfield site within the Project Area. (2) Increasing the amount of annual tax increment from the Project Site. (3) Creating new jobs in a blighted area, and (4) Redeveloping a one-half mile frontage along State Route 99, and
WHEREAS, beginning in 1996, FMC operated a groundwater extraction and treatment system (the “Treatment System”) for remediation of the Project Site’s groundwater contamination which includes the extraction of groundwater from the contaminated underground aquifer, treatment per a hydrogen peroxide oxidation process and discharge into the City’s wastewater treatment system, and

WHEREAS, a key feature of said Treatment System is the chemical conversion of sulfides found in the extracted groundwater into sulfates before discharging to the City’s wastewater system at acceptable levels, which sulfates are commonly measured as “salts” or “electrical conductivity”, and

WHEREAS, FMC operates said Treatment System under an approved City industrial waste permit which permit is issued by the City under its authority as the Publicly Owned Treatment Works (the “POTW”), and

WHEREAS, as the POTW, the City’s wastewater system must meet State- and Federally-mandated limits on many constituents including the Total Maximum Daily Load (the “TMDL”) which measures salts in various forms, including measurement of electrical conductivity in the wastewater discharge, and

WHEREAS, FMC’s Treatment System is in place in order to slowly diminish the TMDL levels in the remediated discharge over many years, and

WHEREAS, the long-term TMDL treatment of the wastewater discharge is an integral part of the Project Site development and is critical to the long-term operation and maintenance of the remediation process, and

WHEREAS, in order to continue operating said Treatment System, the State of California Regional Water Quality Control Board (the “Regional Board”) mandates that
FMC provide a guaranteed discharge plan that will ensure the discharge of the treated groundwater into the POTW for the duration of the groundwater remediation process which could be 40-50 years, and

WHEREAS, the City has determined that the State will likely continue to reduce the allowable TMDL levels for the POTW’s system-wide discharge permit into the future and the City will be required to meet these lower TMDL levels, and

WHEREAS, the City has determined that the acceptance of the discharge from FMC’s Treatment System will not have a measurable effect on the TMDL levels for the entire POTW, which effect has been thoroughly reviewed by the City as it relates to the potential long-term risks, costs and liability resulting from the processing of this long-term discharge and,

WHEREAS, while there is no reasonable means of assessing the precise risk for 40-50 years, the City has performed a reasonable risk analysis of the potential long-term effect of accepting FMC’s TMDL levels based on FMC’s industrial waste permit in effect as of March 1, 2008, and the potential for increased discharge volumes by FMC on the entire wastewater system, and

WHEREAS, based on said risk analysis, the City has determined if the Agency acquires the Project Site, the continued acceptance of FMC’s wastewater discharge, based on the TMDL levels permitted as of March 1, 2008 and in accordance with the proposed Discharge Agreement, into the City’s wastewater treatment system is an acceptable risk, and

WHEREAS, FMC has not been willing to sell the Project Site to the Agency unless it could be assured that the City would continue to accept FMC’s wastewater
discharge after conveyance of the Project Site; and

WHEREAS, in order to facilitate said business park development and to guarantee a wastewater discharge plan to said Regional Board, the City and FMC have mutually agreed to enter into a Wastewater Discharge Agreement (the “Discharge Agreement”) which is attached hereto as “Exhibit A” and made a part hereof by this reference, and

WHEREAS, the approval of said Discharge Agreement qualifies as a Class I Categorical Exemption EA/CED No. 2008-17 pursuant to the California Environmental Quality Act Section 15301 – Existing Facilities because it is a continuation of an existing activity and industrial waste permit and does not have a significant effect on the environment.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Modesto that the Wastewater Discharge Agreement by and between the City of Modesto and FMC Corporation, Inc. is hereby approved; and

BE IT FURTHER RESOLVED that the City Council does hereby authorize and direct its City Manager to execute on behalf of the City, as a condition for the purchase of the Project Site by the Agency, said Wastewater Discharge Agreement, and any other related documents with FMC for acceptance of FMC’s wastewater discharge from properties located at 1200 Graphics Drive.
The foregoing resolution was introduced at a regular meeting of the City Council of the City of Modesto held on the 27th day of January, 2009, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Marsh, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Hawn, Keating, Lopez, Marsh, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: O’Bryant

(ATTTEST:)

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney
DISCHARGE AGREEMENT

This DISCHARGE AGREEMENT (the "Agreement") is dated for reference purposes only as of this ___ day of ___, 2009, by and between FMC CORPORATION, a Delaware corporation ("FMC") and THE CITY OF MODESTO, a public body, corporate and politic ("City").

RECATALS

A. Until the Effective Date, FMC was the owner of that certain real property located at 1200 Graphics Drive in the City of Modesto, Stanislaus County, California, and more particularly described in Exhibit "A" attached hereto and made a part hereof (the "Property").

B. As a result of former operations on the Property by FMC and its predecessors, groundwater beneath the Property has been contaminated by, among other materials, total dissolved solids, particularly sulfates. Certain chemicals are present in the groundwater of the Property as more particularly described in the Environmental Reports listed on Exhibit B attached hereto and made a part hereof. The Property is currently subject to Cleanup and Abatement Order No. 98-274 adopted on June 26, 1998 ("Order") by the California Regional Water Quality Control Board, Central Valley Region ("Water Board"). The Order requires FMC to operate, and FMC currently operates, a groundwater remediation system on the Property including monitoring and extraction wells and a treatment facility (the "Remediation System"). The Remediation System extracts groundwater from extraction wells and conveys the groundwater to a treatment facility which treats the groundwater. Following treatment, the treated groundwater ("Wastewater") is discharged into the City's publicly-owned wastewater treatment works ("POTW") under a Conditional and Revocable Permit, No. GW-96-2, issued to FMC by the City of Modesto, Public Works Department, Environmental Compliance Section ("Permit"). The current Permit was effective January 1, 2007 and expires December 31, 2009.

C. Since 2001, the Redevelopment Agency of the City of Modesto ("RDA") has been negotiating with FMC for the purchase of the Property. The RDA desires to purchase the Property to facilitate its redevelopment as the Kansas-Woodland Business Park ("Business Park"). The RDA believes the redevelopment of the Property will benefit the economy of Modesto and will stimulate job creation and economic growth in the Modesto area. The City concurs in this belief.

D. FMC has not been willing to sell the Property until the final remedial measures for groundwater remediation have been determined. FMC is concerned that additional requirements could be imposed upon FMC by the Water Board, the California Department of Toxic Substances Control or another Environmental Agency, or that pending or future state and federal Total Maximum Daily Load regulations imposed on the City's POTW, could require (i) alterations or modifications to FMC's Remediation System, (ii) new or additional remediation measures or (iii) the installation of new remediation equipment that would require the use of additional portions of the Property. Although FMC will continue to operate the Remediation System in accordance with the RAP and the Order (both as defined below) and will be granted the Remediation Facilities Easement, as described in the Purchase Agreement (defined below)
between the RDA and FMC, once FMC sells the Property to the RDA, FMC will not have available land for any modifications or alterations that could be required to be made to the Remediation System or for the installation of new or supplemental remediation equipment that might be necessary to comply with such additional requirements or regulations. As a result, in order to comply with the Order, FMC will become dependent on its ability to continually discharge the Wastewater from the Remediation System to the City’s POTW without the ability to modify the Remediation System to comply with any such additional requirements or regulations. Under these circumstances, FMC has not been willing to sell the Property to the RDA unless FMC receives adequate assurances from the City that it would continue to have the ability to discharge Wastewater from the Remediation System to the POTW in order to comply with the RAP and the Order.

E. As of the Effective Date, the RDA is acquiring the Property from FMC pursuant to that certain Purchase and Sale Agreement dated ____________, 2009 between FMC and the RDA (“Purchase Agreement”). FMC’s agreement to sell the Property to the RDA pursuant to the Purchase Agreement is conditioned upon the City entering into this Agreement on the terms and conditions contained herein concurrently with FMC’s conveyance of the Property to the RDA. City is willing to enter into this Agreement with FMC so that the RDA can acquire the Property from FMC for redevelopment into the Business Park.

F. FMC and the City desire to set forth in this Agreement the terms and conditions on which FMC may continue to discharge Wastewater from the Remediation System to the City’s POTW and the rights, responsibilities and obligations of the parties with respect to any future regulations that adversely affect FMC’s ability to discharge the Wastewater into the POTW during the term of this Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals and other consideration, the receipt and sufficiency of which are hereby acknowledged, City and FMC hereby agree as follows:

1. Definitions. The following terms, as used herein, shall be defined as follows:

   (a) “Business Park” shall mean the Kansas-Woodland Business Park to be constructed on the Property and adjacent property subsequent to the acquisition of the Property by the RDA.

   (b) “CERCLA” shall mean the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. section 9601, et seq., as amended in effect as of the Effective Date.

   (c) “DTSC” shall mean the State of California Environmental Protection Agency, Department of Toxic Substances Control, or any successor agency thereto.

   (d) “Effective Date” shall mean the date on which the RDA acquires fee title to the Property pursuant to the Purchase Agreement, which shall also be the date that this Discharge Agreement becomes effective.
(c) “Environmental Agency” shall mean the Water Board, DTSC and/or any other federal, state, or local governmental agency charged with enforcing Hazardous Materials Laws and having jurisdiction with respect to the Property.

(f) “Environmental Reports” shall mean the documents describing the Groundwater Contamination listed on Exhibit “B” attached hereto.

(g) “Groundwater Contamination” shall mean those certain chemicals in the groundwater at the Property as of the Effective Date as more particularly described in the Environmental Reports.

(h) “Hazardous Materials” shall mean any substance, material or waste which is (1) defined as a “hazardous waste,” “hazardous material,” “hazardous substance,” “extremely hazardous waste,” or “restricted hazardous waste” under any provision of California law; (2) designated as a “hazardous substance” pursuant to Section 311 of the Clean Water Act, 33 U.S.C. Section 1251 et seq. (33 U.S.C. Section 1321) or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. Section 1317); (3) defined as a “hazardous waste” pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq. (42 U.S.C. Section 6903) or its implementing regulations; (4) defined as a “hazardous substance” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 et seq. (42 U.S.C. Section 9601); or (5) determined by DTSC, RWQCB or any other California, federal or local governmental authority (other than the City or the RDA) to be capable of posing a risk of injury to health, safety or property.

(i) “Hazardous Materials Laws” shall mean CERCLA, RCRA, or any other federal, state, or local law governing (i) Hazardous Materials, (ii) any Remedial Work obligation imposed upon FMC by an Environmental Agency, or (iii) the release of Hazardous Materials into the soil or groundwater.

(j) “Land Use Covenant” shall mean that certain Covenant to Restrict Use Environmental Restriction approved by the DTSC and the Water Board and recorded against the Property prior to conveyance of the Property to the RDA, as required by the RAP.

(k) “New Regulations” shall mean any regulations, standards, requirements, amendments, laws, statutes or ordinances enacted, promulgated or imposed on or after, or becoming effective after, March 1, 2008, by any federal, state, regional or local governmental entity having jurisdiction with respect to the Property, including any Environmental Agency, and the City acting under its power to regulate health and safety, that establishes additional limits, terms or conditions based on or to implement TMDL requirements regarding the discharge to or from the POTW, including regulations, standards or requirements imposed by the City with respect to the wastewater discharged to the POTW to allow the City to meet TMDL requirements at the POTW.

(l) “Operation and Maintenance Agreement” or “OMA” shall mean that certain agreement entered into by and between the RDA, FMC, DTSC and the Water Board and which shall become effective on the Effective Date relative to the operation and maintenance of
the infrastructure for the final remedial action(s) approved under the RAP, both with respect to soil and groundwater conditions, and including monitoring, inspection and reporting obligations.

(m) “Operation and Maintenance Plans” or “OMPs” shall mean the separate plans for soil and groundwater that are developed by FMC in accordance with the Purchase Agreement and approved by the DTSC and the Water Board prior to the Effective Date for the long-term operation and maintenance of the final remedial action(s) approved under the RAP.

(n) “Order” shall mean that certain Cleanup and Abatement Order No. 98-724 adopted on June 26, 1998 by the Water Board.

(o) “Permit” shall mean that certain Conditional and Revocable Groundwater Discharge Permit No. GW-96-2 effective January 1, 2007, issued to FMC by the City of Modesto, Public Works Department, Environmental Compliance Section.

(p) “POTW” shall mean the publicly-owned wastewater treatment works operated by the City.

(q) “Prior Orders” shall mean those certain Cleanup and Abatement Orders Nos. 93-202 and 96-063 adopted by the Water Board.

(r) “RAP” shall mean the Remedial Action Plan submitted by FMC to the DTSC and the Water Board under the VCA and the Order and approved by the DTSC and the Water Board on __________, 2009.

(s) “RCRA” shall mean the Resource Conservation and Recovery Act of 1976, 42 U.S.C. §6901 et seq., as amended, in effect as of the date of this Agreement.

(t) “RDA” shall mean the Redevelopment Agency of the City of Modesto, a public body, corporate and politic.

(u) “Regulatory Documents” shall mean the Land Use Covenant, the Operation and Maintenance Agreement, the Operation and Maintenance Plans and the Soil Management Plan, all of which are referenced in the RAP and which will be developed by FMC in accordance with the Purchase Agreement and approved by the DTSC and/or RWQCB prior to the Effective Date.

(v) “Remedial Work” shall mean any and all investigation, remediation, mitigation, monitoring, reporting, and other obligations required or which may be required of FMC by the DTSC pursuant to the VCA, the RAP, the Operation and Maintenance Agreement, the Operation and Maintenance Plan for groundwater or by the Water Board pursuant to the Order or the Prior Orders, as the VCA, the RAP, the Operation and Maintenance Agreement, the Operation and Maintenance Plan for groundwater, the Order or the Prior Orders may be amended or supplemented from time to time, or pursuant to any other order of the DTSC, Water Board or another Environmental Agency which imposes obligations on FMC with respect to groundwater conditions relative to the Property or the Groundwater Contamination consistent with the cleanup and use of the Property for commercial/industrial purposes.
(w) "Remediation System" shall mean the groundwater extraction and treatment system located on the Property as of the Effective Date, consisting of monitoring and extraction wells, conveyance piping and a treatment facility, together with any additional remediation facilities thereafter required to be located on the Property and electric, domestic water and storm drain utility lines from the utility supplier to such system. A description of the existing Remediation System is attached hereto as Exhibit C and incorporated herein by reference.

(x) "Remediation Facilities Easement" shall mean that portion of the Property on which an easement shall be granted by the RDA to FMC under the Right of Entry Agreement for the purposes specified in the Right of Entry Agreement.

(y) "Right of Entry Agreement" shall mean the Right of Entry Agreement, Easement and Environmental Restriction between the RDA and FMC to be recorded against the Property upon conveyance of the Property to the RDA, as set forth in the Purchase Agreement, pursuant to which Right of Entry Agreement the RDA shall grant FMC the Remediation Facilities Easement and a right of entry to perform Remedial Work.

(z) "TMDL" shall mean the Total Maximum Daily Load established by the Water Board in implementation of the federal Clean Water Act and the California Porter-Cologne Water Quality Control Act, to control pollutants and achieve certain water quality standards in the wastewater discharge from point sources as it relates to the operation of the POTW owned and operated by the City.

(aa) "VCA" shall mean the Voluntary Cleanup Agreement effective as of July 8, 2002, by and between FMC and DTSC, as amended or supplemented from time to time.

(bb) "Wastewater" shall mean the treated groundwater discharged to the POTW from the Remediation System.

(cc) "Water Board" shall mean the State of California Regional Water Quality Control Board, Central Valley Region, or any successor agency thereto.

All other defined terms used in this Agreement shall be defined where first appearing in this Agreement.

2. Consideration. The City acknowledges that the RDA desires to acquire the Property for redevelopment into the Business Park in order to benefit the economy of Modesto and to stimulate job creation and economic growth in the City of Modesto. FMC has not been willing to sell the Property to the RDA until the final remedial measures for the Groundwater Remediation have been determined because, upon FMC’s conveyance of the Property, FMC will not be able to make any modifications or alterations to the Remediation System or to install new or supplemental remediation equipment that requires the use of additional land to comply with New Regulations. The City further acknowledges that FMC is not willing to sell the Property to the RDA unless FMC receives contractual assurances from the City that, after conveyance, FMC would continue to have the right to discharge the Wastewater into the POTW even if such discharge to the POTW does not comply with the New Regulations and that the City will assume the obligation to comply with any New Regulations on FMC’s behalf. The Purchase Agreement
provides that FMC is to receive as consideration for the sale of the Property (i) a cash payment from the RDA which is significantly below the market value of the Property; and (ii) an agreement with the City to permit FMC to continue to discharge the Wastewater to the POTW, subject to the terms and conditions contained herein, and under which the City would assume the obligation to comply with any New Regulations on FMC's behalf with respect to FMC's discharge of the Wastewater to the POTW. City acknowledges that FMC is not obligated to sell the Property to the RDA unless the foregoing conditions are satisfied. City further acknowledges that FMC is relying upon the City's performance of the contractual obligations undertaken by the City pursuant to this Agreement in consummating the sale of the Property to the RDA and that FMC has not agreed to consummate such sale, and would not consummate such sale, without the City undertaking its contractual agreements under this Agreement.

City acknowledges and agrees that even though the City will not obtain title to the Property, the RDA's acquisition of the Property for redevelopment into the Business Park will benefit the City by providing economic benefits to the City in the form of new businesses, new jobs, increased tax revenue, redevelopment of unused property into productive use and increased economic activity for existing businesses in the City of Modesto. City further acknowledges that FMC is receiving the value of the Property through the rights and benefits granted to FMC and the obligations undertaken by the City pursuant to this Agreement, and that the City is providing the major portion of the consideration to FMC for the sale of the Property to the RDA. City further acknowledges that the above-described economic benefits made possible by FMC's conveyance of the Property to the RDA for redevelopment into the Business Park is fair and adequate consideration for the rights and benefits granted by the City to FMC under this Agreement.

3. Groundwater Condition. FMC and its predecessors in interest in the Property variously operated manufacturing facilities on the Property for the production of barium and strontium chemicals. These operations included the use from the early 1950's to the late 1970's of on-site evaporation ponds to manage residual solids from the ore processing units and air pollution control equipment which solids were slurried with water and discharged to the ponds. These ponds were closed by removal of residue material and backfilling during 1979-81. The operation of the ponds resulted in contamination of the groundwater, including in particular with total dissolved solids, including sulfates. In addition, the soils under the former pond areas are impacted with sulfates and related compounds that continue to migrate into the upper groundwater aquifer. The Property is currently subject to the Order and the Prior Orders. Starting in the early 1960's, FMC installed a number of groundwater monitoring wells, both on and off the Property, and has routinely reported on the results of samples from these wells to the Water Board under the terms of the Order and the Prior Orders. Under the Order and associated Monitoring and Reporting Program (No. 98-805, adopted by the Water Board on June 26, 1998), FMC currently samples and reports sampling results for some 33 monitoring wells, located both on and off the Property. Since 1996, FMC has operated the Remediation System on the Property, which Remediation System discharges to the City's POTW under the terms of discharge permits issued by the City. The current Permit was issued by the City on January 1, 2007 and is effective until December 31, 2009. Pursuant to the Order, the RAP, the Operation and Maintenance Agreement and the Operation and Maintenance Plan for groundwater, FMC will be required to perform groundwater remediation and to maintain and operate the
Remediation System on the Property for an indefinite period of time anticipated to run a number of years after December 31, 2009.

The Water Board and the DTSC have approved the RAP which, among other things, requires the continued operation of the Remediation System to address groundwater conditions at the Property. FMC acknowledges that, pursuant to the RAP, it has prepared the Operation and Maintenance Plan for groundwater and entered into the Operation and Maintenance Agreement with the RDA, DTSC and the Water Board, which describes, among other things, FMC's ongoing responsibilities for the operation and maintenance of the Remediation System. In addition, pursuant to the RAP, FMC recorded the Land Use Covenant against the Property that, among other things, restricts the use of the Property to commercial and industrial purposes, imposes notification requirements and restrictions with respect to activities that would result in exposure to soils and restricts the use of groundwater and the disturbance of certain covered areas of the Property.

4. Discharge Permit.

(a) Compliance with Discharge Permit. During the term of this Agreement, FMC shall continue to comply with all of the terms, conditions and requirements imposed upon FMC and in effect under the existing Permit as of March 1, 2008 with respect to the discharge of the Wastewater to the POTW, except as otherwise provided in this Agreement. To the extent that New Regulations are imposed on the discharge of Wastewater upon renewal of the Permit or prior thereto with respect to terms and conditions contained in the existing Permit, but made effective after March 1, 2008, then compliance with such New Regulations shall be subject to Section 7 below.

(b) Permit Renewal. So long as this Agreement is in effect, and FMC needs to discharge Wastewater to the POTW, FMC will make timely application to the City for the renewal of the Permit. FMC shall pay the customary permit fees imposed by the City upon users of the POTW for the same type of waste as FMC discharges in its Wastewater from the Remediation System, as such fees are established by City ordinance on a non-discriminatory basis.

5. Total Maximum Daily Load Regulations. During the term of this Agreement, FMC and the City anticipate that the Water Board will adopt, and from time to time modify, New Regulations that will limit or restrict the discharge of certain chemicals or constituents from the City’s POTW. Specifically, as of the Effective Date, FMC and the City anticipate that the Water Board will impose New Regulations that will limit or restrict the quantity (either in terms of mass or concentration) of sulfates and other dissolved solids or salts that may be discharged from the POTW. In the future, additional New Regulations might limit or prohibit the quantity of other chemicals or constituents that can be discharged from the POTW. Further, FMC understands that to satisfy these New Regulations, the City may have to impose new and more stringent limits on the discharge of certain chemicals or constituents to the POTW. FMC is concerned that the amount of sulfates and other dissolved solids or salts in FMC’s Wastewater discharged to the POTW might exceed the amount of sulfates and other dissolved solids or salts permitted by New Regulations to meet the TMDL governing salinity management (i.e., the Central Valley Salinity Alternatives for Long-Term Sustainability (“CV-SALT(S”). In addition,
the quantity of other chemicals or constituents in the Wastewater might exceed limits imposed by New Regulations to meet other future TMDL requirements. Based on information available to FMC as of the Effective Date, FMC believes that in order to comply with the anticipated and/or future New Regulations relating to the TMDL, imposed upon the City’s POTW, FMC might need to either substantially alter the Remediation System or develop an alternative method of remediating the Groundwater Contamination. Either course of action would require FMC to make more extensive use of the Property for the location and/or installation of supplemental and/or new remediation facilities. Once FMC sells the Property to the RDA, FMC will not be able to use any additional land for alterations to the existing Remediation System or the development of an alternative remediation system, and therefore would not be able to comply with any New Regulations imposed by the Water Board or another Environmental Agency and/or the City to the requirements of the New Regulations. To the extent that FMC’s inability to comply with the New Regulations would limit or prohibit the discharge of the Wastewater from the Remediation System to the POTW, FMC could be in violation of the orders or directives issued by the Environmental Agencies, including the Order, the RAP and the Operation and Maintenance Agreement and the Operation and Maintenance Plan for groundwater. Therefore, the City hereby agrees that, during the term of this Agreement, and except as provided below, the City will continue to accept the discharge of the Wastewater to the POTW based on the same terms and conditions of the Permit in effect as of March 1, 2008 (and including an increased volume of Wastewater as described in Section 6 below), notwithstanding that the quantity of chemicals or constituents contained in FMC’s Wastewater discharged to the POTW may exceed the levels set forth in the New Regulations with respect to the discharge from the POTW. The City hereby assumes the responsibility to take such action as may be necessary to treat FMC’s Wastewater at the POTW for sulfates and other dissolved solids or salts or other chemicals or constituents which are restricted or limited by New Regulations relative to the discharge from the City’s POTW. Notwithstanding the foregoing, if the Water Board and/or the DTSC has issued a cease and desist order, cleanup and abatement order and/or order for corrective action based on a finding of imminent and substantial endangerment in connection with any Remedial Work obligation where such order impacts the Wastewater discharged to the POTW (such order is hereafter referred to as a “Violation Order”), then the City may temporarily suspend the acceptance of the Wastewater until such time as FMC has performed or commenced to perform and is diligently prosecuting to completion the Remedial Work obligation that is the subject of the Violation Order, but only if: (i) the enforcement of the Violation Order has not been stayed by the order of a reviewing administrative agency or a court of competent jurisdiction; (ii) FMC is not appealing the judgment of a court of competent jurisdiction sustaining the enforcement of the Violation Order; and (iii) the Water Board and/or the DTSC have not used the financial assurances provided by FMC pursuant to the Operation and Maintenance Agreement to perform the Remedial Work obligation that is the subject of the Violation Order on FMC’s behalf. The City shall again accept FMC’s discharge of Wastewater to the POTW upon receipt of written notice from FMC that it is performing the Remedial Work obligation that is the subject of the Violation Order, and shall continue to accept such Wastewater unless notified by FMC or the Environmental Agency that issued the Violation Order that FMC has ceased to perform this obligation prior to completion. In no event shall the City revoke the Permit due to the issuance of a Violation Order.

6. Increased Wastewater Volume. The City acknowledges that, during the term of this Agreement, additional Remedial Work obligations may be imposed on FMC or the Property...
pursuant to the VCA, the RAP or the Order with respect to the Groundwater Contamination. Such obligations could include increased extraction and/or treatment of groundwater through the Remediation System which could result in a volume of Wastewater being discharged by FMC to the POTW in excess of the daily and monthly discharge limits set forth in the existing Permit. At least thirty (30) days prior to discharging any such increased volume to the POTW in excess of the daily and monthly discharge limits, FMC shall notify the City in writing that the Wastewater discharge shall exceed the volume limits set forth in the Permit and provide the City with a copy of the letter or other written directive from the Water Board, DTSC or another Environmental Agency setting forth the additional Remedial Work obligation requiring the additional volume discharge. City agrees that it shall accept into the POTW any increased volume of Wastewater resulting from FMC's compliance with such additional Remedial Work obligation, even if the increased volume of Wastewater exceeds the daily and monthly discharge limits set forth in the Permit. Any discharge of any increased volume of Wastewater shall be subject to the terms and conditions of the Permit in effect as of March 1, 2008, except for any daily or monthly discharge limits on volume. FMC shall not discharge a volume of Wastewater to the POTW in excess of the daily and monthly discharge limits set forth in the Permit unless such discharge is required for FMC to comply with an additional Remedial Work obligation imposed on FMC or the Property pursuant to the VCA, the RAP or the Order with respect to the Groundwater Contamination.

7. New Regulations. FMC and the City acknowledge that the imposition of New Regulations during the term of this Agreement could affect FMC's ability to discharge Wastewater from the Remediation System to the POTW in the manner permitted under the Permit as of March 1, 2008. By way of example only, the New Regulations could require (i) a reduction or limitation in the quantity of a constituent of the Wastewater, (ii) additional treatment to reduce or limit the quantity or concentration of one or more constituents in the Wastewater or (iii) a reduction in the volume of Wastewater FMC is permitted to discharge to the POTW. FMC shall give written notice to the City of any New Regulation that adversely affects FMC's ability to discharge Wastewater from the Remediation System to the POTW in the manner permitted under the Permit as of March 1, 2008 ("FMC Notice"). The FMC Notice shall specify how FMC's discharge of the Wastewater is affected by the New Regulation. Within thirty (30) days after receipt of the FMC Notice, or on such later date that the New Regulation becomes effective, the City shall take such actions as may be necessary at the POTW to comply with the New Regulations on behalf of FMC at the City's sole cost and expense. In such event, FMC may continue to discharge the Wastewater to the POTW in the manner permitted by the Permit as of March 1, 2008. Notwithstanding the foregoing, FMC shall be responsible, at FMC's sole cost and expense, for complying with any other regulations, orders, requirements, laws, statutes or ordinances adopted, enacted or imposed after March 1, 2008 by any federal, state, regional or local governmental entity, including any Environmental Agency and the City, acting under its power to regulate health and safety, and having jurisdiction with respect to the discharge of the Wastewater to the POTW that do not relate to TMDL: provided, however, that any such new regulations imposed by the City on discharge to the POTW shall be regulations of general application to all users similarly situated.

8. Inability to Discharge. If FMC cannot discharge Wastewater from the Remediation System to the POTW in the manner permitted under the Permit as of March 1, 2008 for any of the following reasons:
(a) FMC is unable to renew the Permit due to the imposition of New Regulations and the City fails or is unable to comply with the New Regulations on behalf of FMC pursuant to this Agreement in a manner that will allow for the renewal of the Permit:

(b) The Water Board, the DTSC or another Environmental Agency imposes an additional Remedial Work obligation upon FMC that requires an increase in the volume of Wastewater discharged by FMC to the POTW, as set forth in Section 6 hereof, and the City is unable or declines to accept such increased volume of Wastewater; or

(c) The City fails or is unable to accept FMC’s Wastewater in the manner permitted under the Permit as of March 1, 2008 due to any New Regulations imposed on the City’s discharge from the POTW and the City is unable or fails to comply on behalf of FMC with any New Regulations at the POTW that would allow the City to accept FMC’s Wastewater:

and the Water Board, the DTSC or other applicable Environmental Agency requires FMC to provide an alternative method for remediation of the Groundwater Contamination in order to comply with the Order or applicable Remedial Work obligation imposed by such Environmental Agency, then the City shall indemnify and hold FMC harmless from any and all costs incurred by FMC for the development, construction, operation and maintenance of an alternative remediation system that will allow FMC to continue to remediate the Groundwater Contamination and comply with the Order.

Under any of the circumstances described in subsections (a) through (c) of this Section 8, FMC shall give the City copies of any written notice from the Water Board, the DTSC or another Environmental Agency requiring FMC to develop an alternative remediation system for the Groundwater Remediation. The City acknowledges that, as of the Effective Date, the feasibility, location and technology for an alternative remediation system are unknown. FMC contemplates that in order to develop an alternative remediation system, it could be necessary for FMC to acquire real property and/or other real property interests for the location of the alternative remediation system. In such event, City agrees it shall cooperate with FMC in acquiring such real property and/or other real property interests, including any real property interest owned or controlled by the City or the RDA. Such cooperation shall include paying deposits, the purchase price, acquisition costs and closing costs in any transaction in which FMC acquires real property or a real property interest for the location and operation of such alternative remediation system.

In addition, FMC would need to perform engineering studies and tests including, as appropriate, modeling to determine the design, operation and effectiveness of the alternative remediation system. Further, FMC would need plans and specifications to be prepared for the alternative remediation system for submittal to the Water Board or other applicable Environmental Agency for approval. FMC may also need to obtain a building permit and other approvals from applicable governmental authorities. Prior to commencement of construction of such alternative remediation system, FMC shall cause to be prepared and submitted to the City, a detailed cost estimate for all costs associated with the development and construction of such alternative remediation system and provide periodic updates of the actual costs of development and construction incurred by FMC. Upon receipt of approval of plans and specifications from the Water Board or other applicable Environmental Agency, and upon receipt of a building permit and all other applicable approvals, FMC shall commence and thereafter diligently prosecute the construction of the alternative remediation system to completion. Upon completion of
construction of the alternative remediation system. FMC shall present the City with a detailed invoice showing all costs actually incurred and paid by FMC to third parties for the development and construction of the alternative remediation system. Such costs shall include all consultant, engineering and legal fees incurred for acquisition of real property or real property interests for the location and operation of the alternative remediation system, the costs of tests, studies and modeling, the cost of obtaining approval of the alternative remediation system by the Water Board or other applicable Environmental Agency, the costs of building permits or other governmental approvals, the costs of plans and specifications and any revisions or change orders thereto, construction costs and any increased costs of operation and maintenance of the alternative remediation system in excess of similar costs paid for the operation and maintenance of the Remediation System. FMC shall provide the City with copies of actual invoices, bills, receipts, statements, contract disbursement requests, bids, purchase orders and other written evidence showing all actual costs incurred by FMC and paid to third parties for the development and construction of the alternative remediation system. To the extent not previously paid, City shall pay all such costs shown on FMC’s statement within thirty (30) days after FMC delivers such statement to the City. If City fails to pay the costs shown on FMC’s statement within said thirty (30) day period, then FMC shall have all rights and remedies available at law or equity to enforce the City’s payment of the amounts due to FMC.

9. City’s Representations and Warranties. The City hereby makes the following representations and warranties to FMC, all of which are being relied upon by FMC as a material inducement to enter into this Agreement:

(a) The City has the full power and authority to enter into this Agreement and to perform the obligations of City hereunder.

(b) The execution and delivery of this Agreement has been duly approved by all requisite action of the City Council of the City.

(c) The execution and delivery of this Agreement by the City, and the performance of the obligations of the City hereunder, do not violate any applicable law, statute, ordinance, code or regulation of any federal, state or local governmental authority to which the City is subject, including the Municipal Code of the City of Modesto and any City ordinances.

(d) The performance of its obligations hereunder does not prohibit the City from exercising its constitutional powers to protect and regulate the health and safety of the citizens of the City, including the regulation of the POTW.

10. Assumption of Risk. City acknowledges that the extent of the obligations to be undertaken by the City pursuant to this Agreement and the costs that may be incurred to perform such obligations are unknown as of the Effective Date and the actual extent of such obligations and the costs incurred by the City in performing such obligations under this Agreement may be much greater than anticipated as of the Effective Date. Notwithstanding the foregoing, the City hereby freely enters into this Agreement and assumes the risk that the obligations it incurs under this Agreement may be greater than the benefits received by the City as a result of the sale of the Property and redevelopment of the Property into the Business Park.
11. **Duration of Agreement.** The rights and obligations of FMC and the City hereunder shall terminate upon the date that is sixty (60) days after the date that the last Environmental Agency requiring FMC to perform Remedial Work with respect to the Groundwater Contamination provides FMC with written notice that no further Remedial Work obligation shall be required with respect to the Groundwater Contamination. Each covenant, agreement and obligation contained in this Agreement shall remain effective until such date.

12. **Attorneys’ Fees.** In the event of a judicial or administrative proceeding or action by one party against the other party with respect to the interpretation or enforcement of this Agreement, the prevailing party shall be entitled to recover reasonable costs and expenses, including attorneys' fees and expenses, whether at the investigative, pretrial, trial or appellate level. The prevailing party shall be determined by the court based upon an assessment of which party's major arguments or position prevailed.

13. **Notices.** All notices, demands, requests and other communications required hereunder shall be in writing, shall be deemed to be duly given if mailed by United States registered or certified mail, with return receipt requested, postage prepaid, or by United States Express Mail, or if sent by a national courier service or if personally served, and the same is sent to a party at its address set forth below:

If to FMC:  
FMC Corporation  
1735 Market Street  
Philadelphia, PA 19103  
Attn: Real Estate Manager

With a copy to:  
FMC Corporation  
1735 Market Street  
Philadelphia, PA 19103  
Attention: General Counsel

To City:  
City of Modesto  
1010 Tenth Street, Suite ______  
Modesto, CA 95354  
Attn: ______________________

With a copy to:  
City of Modesto  
1010 Tenth Street, Suite ______  
Modesto, CA 95354  
Attn: City Attorney

Notices will be effectively served upon personal delivery, or if mailed or sent by courier, upon receipt or refusal to accept delivery. Any party may designate a change of address by written
notice to the others given at least ten (10) days before such change of address is to become effective.

14. **Severability.** The parties hereto intend and believe that each provision in this Agreement comports with all applicable federal, state and local laws and judicial decisions. If, however, any provision of this Agreement is found by a court of law to be in violation of any applicable federal, state or local law, ordinance, statute, administrative or judicial decision, or public policy, or if in any other respect such a court declares any such provision to be illegal, invalid, unlawful, void or unenforceable as written, then it is the intent of all parties hereto that, consistent with and with a view towards preserving the economic and legal arrangements among the parties hereto as expressed in this Agreement, such provision shall be given force and effect to the fullest possible extent, and that the remainder of this Agreement shall be construed as if such illegal, invalid, unlawful, void or unenforceable provision were not contained herein, and that the rights, obligations and interests of the parties under the remainder of this Agreement shall continue in full force and effect.

15. **Modification.** This Agreement may not be modified, amended or otherwise changed in any manner, except by a written amendment executed by both City and FMC.

16. **Successors and Assigns.** All provisions, covenants, conditions and obligations contained in this Agreement shall be binding upon and inure to the benefit of the parties hereto, and to their respective heirs, successors (by merger, consolidation, or otherwise) and assigns.

17. **Controlling Laws.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of California.

18. **Effect on Third Parties.** The rights, benefits and obligations conferred hereunder are for the benefit of the parties hereto and not for the benefit of any third party.

19. **Entire Agreement.** This Agreement constitutes the entire agreement of the parties with respect to the specific subject matter hereof, and all prior negotiations, agreements and understandings between FMC and City with respect to the specific subject matter hereof are merged into this Agreement.

20. **Counterparts.** This Agreement may be executed in counterparts, all of which together constitute one and the same agreement.
IN WITNESS WHEREOF, FMC and the City have executed this Discharge Agreement as of the date first above written.

"FMC"

FMC CORPORATION,
a Delaware corporation

By: ____________________________
Name: __________________________
Title: __________________________

"CITY"

CITY OF MODESTO, a public body, corporate and politic

By: ____________________________

Approved as to form:

_____________________________________
City Attorney

ATTEST:

_____________________________________

-14-
LEGAL DESCRIPTION

Real property in the City of Modesto, County of Stanislaus, State of California, described as follows:

PARCEL NO. 1:

BEGINNING AT A POINT IN THE WEST LINE OF THE PARCEL OF LAND DESCRIBED IN THE DEED FROM D-V-O PRODUCTS, INC. TO THE CENTRAL PACIFIC RAILWAY COMPANY DATED NOVEMBER 5, 1925 AND FILED FOR RECORD JULY 29, 1926 IN VOLUME 180 OF OFFICIAL RECORDS OF SAID COUNTY AT PAGE 460; DISTANT SOUTH 7.02 FEET THEREON FROM THE MOST NORTHERLY CORNER OF SAID PARCEL OF LAND; THEN SOUTH FROM A TANGENT THAT BEARS SOUTH 25° 44' 57" EAST ALONG A CURVE TO THE RIGHT OF A RADIUS OF 562.22 FEET; THEN SOUTH 21° 53' WEST, 41.07 FEET TO THE SOUTHERLY END OF THAT PORTION OF THE EAST LINE OF THE LANDS OF BARIUM PRODUCTS, LTD. THAT BEARS NORTH AND SOUTH; THEN NORTH ALONG THE EAST LINE OF THE LANDS OF BARIUM PRODUCTS, LTD., 491.90 FEET TO THE POINT OF BEGINNING.

PARCEL NO. 2:

BEGINNING AT THE MOST SOUTHERLY CORNER OF THE ABOVE DESCRIBED PARCEL NO. 1; THEN SOUTH 21° 53' WEST, 93.98 FEET; THEN SOUTH FROM A TANGENT THAT BEARS SOUTH 21° 53' WEST ALONG A CURVE TO THE LEFT OF A RADIUS OF 562.22 FEET, A DISTANCE OF 461.40 FEET; THEN SOUTH, TANGENT TO SAI'D CURVE, 461.23 FEET; THEN SOUTH, 21° 53' WEST, 93.98 FEET TO THE SOUTHERLY END OF THAT PORTION OF THE EAST LINE OF MICHIGAN AVENUE; THEN NORTH ALONG SAID EAST LINE, 800.00 FEET TO THE SOUTH LINE OF THE LAND OF BARIUM PRODUCTS, LTD.; THEN EAST, ALONG SAID SOUTH LINE, 151.70 FEET TO THE SOUTHEASTERLY LINE OF THE LAND OF BARIUM PRODUCTS, LTD.; THEN NORTH 31° 13' EAST THEREON, 101.00 FEET TO THE POINT OF BEGINNING.

PARCEL NO. 3:

BEGINNING AT THE SOUTHWEST CORNER OF THE LAND OF D-V-O PRODUCTS, INC., A CORPORATION, AT A POINT IN THE EAST LINE OF MICHIGAN AVENUE, SAID POINT BEING DISTANT 20 FEET AT RIGHT ANGLES EAST FROM THE CENTER LINE OF SAID AVENUE AND 1,840 FEET, MORE OR LESS, NORTHERLY FROM THE EAST AND WEST QUARTER SECTION LINE OF SAID SECTION 30; THEN EAST 295.00 FEET ALONG THE SOUTH LINE OF SAID D-V-O PRODUCTS, INC., PROPERTY TO A POINT; THEN SOUTH 215.82 FEET TO A POINT; THEN SOUTH 31° 13' WEST 101.00 FEET TO A POINT; THEN WEST 152.66 FEET TO A POINT IN THE SAID EAST LINE OF MICHIGAN AVENUE; THEN NORTH ALONG THE SAID EAST LINE OF MICHIGAN AVENUE, A DISTANCE OF 302.2 FEET TO THE POINT OF BEGINNING.

PARCEL NO. 4:

BEGINNING A POINT BEARING EAST 14.69 CHAINS FROM A POINT IN THE NORTH AND SOUTH QUARTER SECTION LINE OF THE SOUTHERN PACIFIC RAILROAD, WHICH POINT BEARS NORTH 27.88 CHAINS FROM THE SOUTHEASTERLY CORNER OF THE NORTHEAST QUARTER OF SECTION 30; THEN NORTH 524.70 FEET AND PART ALONG THE CENTER OF A ROAD TO THE WESTERLY RIGHT OF WAY LINE OF THE SOUTHERN PACIFIC RAILROAD; THEN SOUTH 45° 38' EAST 7.16.95 FEET AND ALONG SAID RIGHT OF WAY LINE, THEN WEST 485.70 FEET TO THE POINT OF BEGINNING, AND LAST
MENTIONED COURSE IS ALSO AT RIGHT ANGLES FROM THE FIRST MENTIONED COURSE.

EXCEPTING THEREFROM THE WEST TWENTY (20) FEET.

ALSO EXCEPTING THEREFROM THE FOLLOWING:

ALL THAT PORTION OF THE EAST HALF OF SECTION 30, IN TOWNSHIP 3 SOUTH, RANGE 9 EAST, MOUNT DIABLO BASE AND MERIDIAN, BOUNDED AND PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE SOUTHWESTERLY BOUNDARY LINE OF THE CENTRAL PACIFIC RAILWAY COMPANY’S RIGHT OF WAY, SAID POINT BEING DISTANT 330.0 FEET, MEASURED SOUTH 42° 58’ EAST ALONG SAID SOUTHWESTERLY BOUNDARY LINE FROM THE PROPERTY OF THE D·V·O PRODUCTS, INC.; THENCE SOUTH 42° 58’ EAST 386.90 FEET ALONG SAID BOUNDARY LINE; THENCE SOUTH 263.70 FEET; THENCE AT RIGHT ANGLES NORTH 283.10 FEET TO THE POINT OF BEGINNING.

PARCEL NO. 6:

BEGINNING AT A POINT MARKING THE NORTHWEST CORNER OF THE 1.002 ACRE PARCEL OF LAND DESCRIBED IN THE DEED TO THE STATE OF CALIFORNIA DATED AUGUST 23, 1955 AND RECORDED SEPTEMBER 29, 1955 IN VOLUME 1318 OF OFFICIAL RECORDS, AT PAGE 461, AS INSTRUMENT NO. 29114, SAID CORNER LYING ON THE EAST LINE OF BENNETT ROAD (ALSO KNOWN AS MICHIGAN AVENUE, AND BEING 40 FEET IN WIDTH); THENCE ALONG THE NORTH LINE OF SAID 1.002 ACRE PARCEL, SOUTH 47° 11’ EAST 113.67 FEET TO THE MOST NORTHEASTERLY CORNER OF SAID PARCEL; THENCE ALONG THE EASTERLY BOUNDARY OF SAID PARCEL THE FOLLOWING COURSES: SOUTH 0° 11’ 40” EAST, 20.04 FEET; SOUTH 89° 47’ EAST, 14.07 FEET; AND SOUTH 0° 11’ 40” EAST, 231.60 FEET; THENCE LEAVING SAID EASTERLY BOUNDARY NORTH 37° 24’ 39” WEST, 35.78 FEET TO THE WESTERLY LINE OF SAID 1.002 ACRE PARCEL (ALSO BEING THE EASTERLY LINE OF SAID BENNETT ROAD); THENCE ALONG SAID WESTERLY LINE NORTH 0° 11’ 40” WEST, 132.41 FEET TO THE POINT OF BEGINNING.

RESERVING THEREFROM SUCH INTEREST IN THAT PORTION OF THE EAST 15.00 THEREOF, AS WAS RESERVED FOR RAILROAD PURPOSES IN THE DEED FROM CENTRAL PACIFIC RAILROAD COMPANY AND SOUTHERN PACIFIC COMPANY, DATED AUGUST 21, 1947 AND RECORDED OCTOBER 22, 1947 IN VOLUME 910 OF OFFICIAL RECORDS, AT PAGE 406, AS INSTRUMENT NO. 27554, STANISLAUS COUNTY RECORDS.

ALSO EXCEPTING AND RESERVING THEREFROM ALL PETROLEUM, OIL, NATURAL GAS AND PRODUCTS DERIVED THEREFROM, WITHIN OR UNDERLYING THE SAID LAND OR THAT MAY BE PRODUCED THEREFROM, AND ALL RIGHTS THERETO, AS RESERVED IN THE DEED FROM CENTRAL PACIFIC RAILWAY COMPANY AND SOUTHERN PACIFIC COMPANY, DATED AUGUST 21, 1947 AND RECORDED OCTOBER 22, 1947 IN VOLUME 910 OF OFFICIAL RECORDS, AT PAGE 406, AS INSTRUMENT NO. 27554, STANISLAUS COUNTY RECORDS. SAID RIGHTS SHALL NOT INCLUDE USE OF THE SURFACE OF SAID LAND.

PARCEL NO. 6:

LOTS 1 TO 9, INCLUSIVE, IN BLOCK 5072 OF THE GRANGE TRACT, ACCORDING TO THE OFFICIAL "MAP THEREOF", FILED SEPTEMBER 14, 1940 IN THE OFFICE OF THE COUNTY RECORDER OF STANISLAUS COUNTY, CALIFORNIA IN VOLUME 14 OF MAPS AT PAGE 5.
ALSO, LOTS 1 TO 8, INCLUSIVE, IN BLOCK 5043 OF THE GRANGE TRACT, ACCORDING TO THE MAP HEREINABOVE REFERRED TO.

PARCEL NO. 7:

ALL OF ABANDONED DULUTH AVENUE, BEING A 60 FOOT STRIP OF LAND RUNNING EAST AND WEST, LYING WITHIN AND AS SHOWN ON THE MAP OF THE GRANGE TRACT FILED SEPTEMBER 14, 1940, IN VOLUME 14 OF MAPS, PAGE 5, IN THE OFFICE OF THE COUNTY RECORDER OF STANISLAUS COUNTY, CALIFORNIA.

PARCEL NO. 8:

BEGINNING AT A POINT ON THE NORTH AND SOUTH QUARTER SECTION LINE IN SAID SECTION 30, BEARING NORTH 99.32 CHAINS FROM THE SOUTHWEST CORNER OF THE NORTHEAST QUARTER OF SAID SECTION; AND BEING THE SOUTHWEST CORNER OF THAT CERTAIN TRACT OF LAND CONVEYED TO THE GRANGE COMPANY BY DEED RECORDED JUNE 26, 1923, RECORDED IN VOLUME 23 OF OFFICIAL RECORDS, AT PAGE 331; RUN THENCE NORTH ALONG THE SAID QUARTER SECTION LINE 135 FEET; THENCE EAST 110 FEET; THENCE SOUTH 135 FEET TO SOUTH LINE OF LAND CONVEYED TO SAID GRANGE COMPANY; THENCE WEST ALONG SOUTH LINE OF SAID LAND SO CONVEYED TO THE GRANGE COMPANY 110 FEET TO THE POINT OF BEGINNING.

PARCEL NO. 9:

COMMENCE AT THE INTERIOR QUARTER CORNER OF SAID SECTION 30; THENCE NORTH 0° 33' 37" WEST ALONG THE NORTH AND SOUTH QUARTER SECTION LINE OF SAID SECTION 30; A DISTANCE OF 1604.26 FEET TO THE NORTHWEST CORNER OF THAT CERTAIN PARCEL OF LAND CONVEYED TO D. D. CAMPIN IN VOLUME 797 OF OFFICIAL RECORDS, AT PAGE 500; RUN THENCE SOUTH 0° 46' 30" EAST ALONG THE NORTH QUARTER SECTION LINE OF SAID SECTION 30, A DISTANCE OF 950.97 FEET TO THE NORTHEAST CORNER OF SAID CAMPIN PARCEL, SAID CORNER BEING ON THE EAST LINE OF 40 FOOT ROAD KNOWN AS BENNETT AVENUE; THENCE NORTH 0° 42' 30" WEST, ALONG THE WEST LINE OF SAID 40 FOOT ROAD, A DISTANCE OF 334.45 FEET TO THE SOUTHEAST CORNER OF THE GRANGE TRACT, ACCORDING TO THE OFFICIAL MAP THEREOF FILED FOR RECORD IN THE OFFICE OF THE COUNTY RECORDER OF STANISLAUS COUNTY IN VOLUME 14 OF MAPS, AT PAGE 5; THENCE NORTH 89° 55' 30" WEST, ALONG THE SOUTH LINE OF SAID GRANGE TRACT AND THE EXTENSION THEREOF, A DISTANCE OF 952.68 FEET TO THE SAID NORTH AND SOUTH ONE-QUARTER SECTION LINE; THENCE SOUTH 0° 33' 30" EAST AND ALONG THE NORTH AND SOUTH QUARTER SECTION LINE OF SAID SECTION 30, A DISTANCE OF 332.16 FEET TO THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION.

PARCEL NO. 10:

BEGINNING AT A POINT ON THE NORTH AND SOUTH QUARTER SECTION LINE AT A POINT BEARING NORTH 13.85 CHAINS FROM THE SOUTHWEST CORNER OF THE NORTHEAST QUARTER OF SAID SECTION 30; THENCE NORTH ON SAID QUARTER SECTION LINE 10.417 CHAINS; THENCE EAST 14.40 CHAINS; THENCE SOUTH 10.417 CHAINS; THENCE WEST 14.40 CHAINS TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM THAT CERTAIN LAND DESCRIBED IN THE DEED FROM BARUM PRODUCTS, LTD., TO ELIZABETH B. RAVEN BAKER, RECORDED MAY 23, 1956, IN VOLUME 1365 OF OFFICIAL RECORDS, AT PAGE 558, AS INSTRUMENT NO. 14454, STANISLAUS COUNTY.
RECORDS.

ALSO EXCEPTING THEREFROM THAT CERTAIN LAND DESCRIBED AS PARCEL NO. 2 IN THE DEED FROM FRANK J. MITCHELL, ET UX, AND FRED SAMPSO, ET UX, TO THE STATE OF CALIFORNIA, RECORDED SEPTEMBER 12, 1958 IN VOLUME 1502 OF OFFICIAL RECORDS, AT PAGE 446, AS INSTRUMENT NO. 22893, STANISLAUS COUNTY RECORDS.

ALSO EXCEPTING FROM THE ABOVE PARCEL NOS. 6, 7, 8, AND 10, ALL THOSE PORTIONS OF LAND CONVEYED TO THE COUNTY OF STANISLAUS IN DEEDS RECORDED DECEMBER 4, 1951 IN BOOK 1502 OF OFFICIAL RECORDS, PAGE 480 AND RECORDED JANUARY 25, 1952 IN BOOK 1059 OF OFFICIAL RECORDS PAGE 598.

ALSO EXCEPTING FROM THE ABOVE PARCEL NOS. 9 AND 10, ALL THAT PORTION LYING SOUTHWESTERLY OF THE NORTHEASTERLY LINES OF LAND CONVEYED TO THE STATE OF CALIFORNIA IN DEED RECORDED DECEMBER 28, 1961 IN BOOK 1731 OF OFFICIAL RECORDS, PAGE 691.

PARCEL NO. 11:

BEGINNING AT A POINT IN THE NORTHERLY LINE OF THAT CERTAIN PARCEL OF LAND DESCRIBED AS PARCEL NO. 2 IN THE DEED TO THE STATE OF CALIFORNIA DATED JUNE 25, 1958 AND RECORDED SEPTEMBER 12, 1958 IN VOLUME 1502 OF OFFICIAL RECORDS, AT PAGE 446, STANISLAUS COUNTY RECORDS, SAID POINT LYING SOUTH 89° 41' EAST, 99.73 FEET ALONG SAID NORTHERLY LINE FROM THE NORTHWEST CORNER OF SAID PARCEL; THENCE ALONG SAID NORTHERLY LINE, SOUTH 89° 47' EAST, 27.93 FEET TO A POINT IN THE SOUTHERLY LINE OF SAID PARCEL; THENCE ALONG SAID SOUTHERLY LINE, SOUTH 89° 47' EAST, 282.33 FEET TO THE WESTERLY LINE OF BENNETT ROAD (ALSO KNOWN AS MICHIGAN AVENUE, AND BEING 40 FEET IN WIDTH); THENCE NORTH ALONG SAID WESTERLY LINE, 20.31 FEET; THENCE ALONG SAID NORTHERLY LINE OF SAID PARCEL DESCRIBED IN SAID DEED DATED JUNE 25, 1958, NORTH 89° 47' WEST, 301.25 FEET TO THE POINT OF BEGINNING.

PARCEL NO. 12:

BEGINNING AT A POINT IN THE NORTHERLY LINE OF THAT CERTAIN PARCEL OF LAND DESCRIBED AS PARCEL NO. 1 IN THE DEED TO THE STATE OF CALIFORNIA DATED JUNE 25, 1958 AND RECORDED SEPTEMBER 12, 1958 IN VOLUME 1502 OF OFFICIAL RECORDS, AT PAGE 446, STANISLAUS COUNTY RECORDS, SAID POINT LYING SOUTH 89° 47' EAST, 118.25 FEET ALONG SAID NORTHERLY LINE FROM THE NORTHWEST CORNER OF SAID PARCEL NO. 1; THENCE ALONG SAID NORTH LINE, SOUTH 89° 47' EAST, 282.33 FEET TO A POINT IN THE WESTERLY LINE OF BENNETT ROAD (ALSO KNOWN AS MICHIGAN AVENUE, AND BEING 40 FEET IN WIDTH); THENCE SOUTH ALONG SAID WESTERLY LINE, 243.08 FEET; THENCE NORTH 89° 47' 15' WEST, 49.26 FEET; THENCE FROM A TANGENT THAT BEARS NORTH 46° 42' 51" WEST, ALONG A CURVE CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 1972 FEET, THROUGH AN ANGLE OF 3° 35' 21" A DISTANCE OF 123.53 FEET; THENCE NORTH 43° 07' 30" WEST, 214.42 FEET TO THE POINT OF BEGINNING.

PARCEL NO. 13:

BEGINNING AT THE POINT OF INTERSECTION OF THE SOUTHERLY LINE OF CALDWELL AVENUE, FORMERLY WOODLAND AVENUE, WITH THE SOUTHWESTERLY LINE OF THE LAND DESCRIBED IN DEED DATED MARCH 7, 1871 FROM JOHN T. MAZE TO CENTRAL PACIFIC RAILROAD COMPANY, RECORDED MAY 5, 1873 IN BOOK 10 OF DEEDS, AT PAGE 342, STANISLAUS COUNTY RECORDS; THENCE SOUTH 42° 53' 33" EAST ALONG SAID SOUTHWESTERLY LINE OF SAID LAND, 392.96 FEET TO A POINT IN THE EASTERLY LINE OF
THE 2.09 ACRE PARCEL OF LAND DESCRIBED IN DEED DATED JUNE 20, 1924 FROM WILLIAM DAGGS, SR. AND LOUISE DAGGS, HIS WIFE TO CENTRAL PACIFIC RAILWAY COMPANY, RECORDED JULY 17, 1924 IN VOLUME 74 OF OFFICIAL RECORDS AT PAGE 134, STANISLAUS COUNTY RECORDS; THEREFORE SOUTH ALONG SAID EASTERY LINE, 1406.01 FEET TO A POINT; THENCE WEST, AT RIGHT ANGLES FROM SAID EASTERY LINE, 40.00 FEET TO A POINT IN THE WESTERLY LINE OF SAID 2.09 ACRE PARCEL OF LAND; THENCE NORTH ALONG SAID WESTERY LINE 1390.30 FEET TO A POINT IN A LINE PARALLEL, WITH AND DISTANT SOUTHWESTERLY, 40.00 FEET, MEASURED AT RIGHT ANGLES FROM SAID SOUTHWESTERLY LINE OF SAID LAND DESCRIBED IN SAID DEED DATED MARCH 7, 1873; THENCE NORTH 42° 53' 30" WEST ALONG SAID PARALLEL LINE, 415.45 FEET TO A POINT IN THE SOUTHERLY LINE OF SAID CALDWELL AVENUE; THENCE SOUTH 89° 12' 30" EAST, ALONG THE SOUTHERLY LINE OF CALDWELL AVENUE, 55.31 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED PARCEL OF LAND BEING A PORTION OF BENNETT AVENUE (SOMETIMES KNOWN AS MICHIGAN AVENUE), ABANDONED BY THE STANISLAUS COUNTY BOARD OF SUPERVISORS BY SUPERVISOR'S ORDER RECORDED JULY 11, 1951 IN VOLUME 1039 OF OFFICIAL RECORDS, AT PAGE 97, STANISLAUS COUNTY RECORDS AS INSTRUMENT NO. 16289.

EXCEPTING AND RESERVING THEREFROM ALL MINERALS AND MINERAL ORES OF EVERY KIND AND CHARACTER NOW KNOWN TO EXIST OR HEREAFTER DISCOVERED UPON, WITHIN OR UNDERLYING SAID LAND OR THAT MAY BE PRODUCED THEREFROM INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, ALL PETROLEUM, OIL, NATURAL GAS AND OTHER HYDROCARBON SUBSTANCES AND PRODUCTS DERIVED THEREFROM, TOGETHER WITH THE EXCLUSIVE AND PERPETUAL RIGHT OF INGRESS AND EGRESS BENEATH THE SURFACE OF SAID LAND TO EXPLORE FOR, EXTRACT, MINE AND REMOVE THE SAME, AS RESERVED IN THE INDENTURE BY CENTRAL PACIFIC RAILWAY COMPANY AND SOUTHERN PACIFIC COMPANY, DATED NOVEMBER 8, 1951 AND RECORDED NOVEMBER 14, 1951 IN VOLUME 1056 OF OFFICIAL RECORDS, AT PAGE 445, STANISLAUS COUNTY RECORDS.

PARCEL NO. 14:

BEGINNING AT THE NORTHWEST CORNER OF THE 5.55 ACRE PARCEL OF LAND DESCRIBED IN INDENTURE DATED APRIL 5, 1951 FROM SOUTHERN PACIFIC COMPANY TO THE STATE OF CALIFORNIA, RECORDED MARCH 19, 1962 IN VOLUME 1750 OF OFFICIAL RECORDS, AT PAGE 445, AS INSTRUMENT NO. 19483, STANISLAUS COUNTY RECORDS; SAID NORTHWEST CORNER ALSO BEING A POINT ON THE WEST LINE OF LAND DESCRIBED IN INDENTURE DATED JUNE 20, 1924 FROM WILLIAM DAGGS, SR., AND LOUISE DAGGS TO CENTRAL PACIFIC RAILWAY COMPANY AND RECORDED JULY 17, 1924 IN VOLUME 74 OF OFFICIAL RECORDS, AT PAGE 134, AND RE-RECORDED AUGUST 11, 1924 IN VOLUME 77 OF OFFICIAL RECORDS, AT PAGE 256, STANISLAUS COUNTY RECORDS; THENCE NORTH ALONG SAID WEST LINE 243.08 FEET TO A POINT IN THE MOST SOUTHERLY LINE OF THE 1.653 ACRE PARCEL OF LAND DESCRIBED IN INDENTURE DATED NOVEMBER 8, 1951 FROM CENTRAL PACIFIC RAILWAY COMPANY AND SOUTHERN PACIFIC COMPANY TO BARUM PRODUCTS, LTD., RECORDED NOVEMBER 14, 1951 IN VOLUME 1056 OF OFFICIAL RECORDS, AT PAGE 445, AS INSTRUMENT NO. 26538; THENCE EAST, ALONG LAST SAID LINE, 49.0 FEET TO A POINT IN THE EAST LINE OF LAND DESCRIBED IN SAID INDENTURE DATED JUNE 20, 1924; THENCE SOUTH, ALONG SAID EAST LINE, 243.08 FEET TO A POINT ON THE NORTHERLY LINE OF LAND DESCRIBED IN SAID INDENTURE DATED APRIL 5, 1951; THENCE NORTH 89° 35' 35" WEST, ALONG SAID NORTHERLY LINE, A DISTANCE OF 40.00 FEET TO THE POINT OF BEGINNING.

EXCEPTING AND RESERVING THEREFROM ALL OF THE MINERALS AND MINERAL ORES OF EVERY KIND AND CHARACTER NOW KNOWN TO EXIST OR HEREAFTER DISCOVERED UPON, WITHIN OR UNDERLYING SAID LAND OR THAT MAY BE PRODUCED THEREFROM, INCLUDING, WITHOUT

PARCEL NO. 15:

ALL THAT PORTION OF THE NORTHEAST QUARTER OF SECTION 30, TOWNSHIP 3 SOUTH, RANGE 9 EAST, MOUNT DIABLO BASE AND MERIDIAN, AS PER THE APPROVED U.S. GOVERNMENT SURVEY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST NORTHERLY CORNER OF LAND DESCRIBED IN INDENTURE DATED NOVEMBER 5, 1925 FROM D-V-O PRODUCTS, INC. TO CENTRAL PACIFIC RAILWAY COMPANY (NOW SOUTHERN PACIFIC COMPANY), RECORDED JULY 29, 1926, IN VOLUME 180, AT PAGE 462, OFFICIAL RECORDS OF SAID COUNTY; THENCE SOUTH 42° 53' 30" EAST, ALONG THE NORTHEASTERLY LINE OF LAND DESCRIBED IN SAID INDENTURE, PARALLEL WITH AND DISTANT 50.0 FEET SOUTHWESTERLY, MEASURED AT RIGHT ANGLES, FROM THE ORIGINAL LOCATED CENTER LINE OF SOUTHERN PACIFIC COMPANY'S MAIN TRACK (LATHROP TO FREMONT), 378.50 FEET; THENCE SOUTHERLY ON A CURVE TO THE RIGHT HAVING A RADIUS OF 372.25 FEET, THROUGH A CENTRAL ANGLE TO 22° 29' 08" (CHORD OF SAID CURVE BEARS SOUTH 11° 14' 34" EAST, 145.15 FEET), AN ARC DISTANCE OF 145.09 FEET; THENCE SOUTH, TANGENT TO SAID CURVE, 985.59 FEET TO THE NORTHEAST CORNER OF THE 107,836 SQUARE FOOT PARCEL OF LAND DESCRIBED AS PARCEL 2 IN INDENTURE DATED AUGUST 21, 1947, FROM CENTRAL PACIFIC RAILWAY COMPANY AND SOUTHERN PACIFIC COMPANY TO MODesto PRODUCE PACKING COMPANY, RECORDED OCTOBER 22, 1947, IN BOOK 910, AT PAGE 406, OFFICIAL RECORDS OF SAID COUNTY, AS INSTRUMENT NO. 27554; THENCE WEST, ALONG THE NORTHERLY LINE OF SAID LAST MENTIONED LAND, 329.00 FEET TO THE NORTHWEST CORNER THEREOF; THENCE SOUTH, ALONG THE WESTERLY LINE OF LAND DESCRIBED AS PARCEL 2, IN SAID INDENTURE DATED AUGUST 21, 1947, A DISTANCE OF 260.08 FEET TO A POINT ON THE NORTHEASTERLY LINE OF 0.116 ACRE PARCEL OF LAND DESCRIBED AS PARCEL NO. 2 IN INDENTURE DATED APRIL 5, 1961, FROM SOUTHERN PACIFIC COMPANY TO THE STATE OF CALIFORNIA, RECORDED SEPTEMBER 12, 1961, IN VOLUME 1707, AT PAGE 496, OFFICIAL RECORDS OF SAID COUNTY, AS INSTRUMENT NO. 28718; THENCE NORTH 49° 10' 50" WEST ALONG LAST SAID NORTHEASTERLY LINE 44.93 FEET TO A POINT ON EASTERN LINE OF THE 43,654 SQUARE FOOT PARCEL OF LAND DESCRIBED AS PARCEL NO. 1 IN SAID INDENTURE DATED AUGUST 21, 1947; THENCE ALONG SAID EASTERN LINE, THE FOLLOWING COURSES AND DISTANCES: NORTH 230.71 FEET; WEST, 14.00 FEET; AND NORTH, 22.00 FEET; THENCE ALONG THE EASTERN LINE OF THE 2,404 ACRE PARCEL OF LAND DESCRIBED AS PARCEL NO. 2 IN INDENTURE DATED MARCH 15, 1943, FROM CENTRAL PACIFIC RAILWAY COMPANY AND SOUTHERN PACIFIC COMPANY TO BARJUM PRODUCTS, LTD., RECORDED JULY 20, 1943, IN BOOK 776, AT PAGE 91, OFFICIAL RECORDS OF SAID COUNTY, AS INSTRUMENT NO. 10746, THE FOLLOWING COURSES AND DISTANCES: NORTH 10° 56' 30" EAST, 98.55 FEET; NORTH 484.21 FEET; NORTHERLY, ON A CURVE TO THE RIGHT HAVING A RADIUS OF 583.14 FEET, THROUGH A CENTRAL ANGLE OF 21° 53' (CHORD OF LAST SAID CURVE BEARS NORTH 1° 56' 30" EAST, 221.37 FEET), AN ARC DISTANCE OF 222.72 FEET; AND NORTH 21° 53' EAST, TANGENT TO LAST SAID CURVE, 93.96 FEET TO THE NORTHEAST CORNER OF SAID 2,404 ACRE PARCEL OF LAND, LAST SAID NORTHEAST CORNER ALSO BEING THE MOST SOUTHERLY CORNER OF THE 0.422 ACRE PARCEL OF LAND DESCRIBED AS PARCEL NO. 1 IN SAID INDENTURE DATED MARCH 15, 1943; THENCE ALONG THE EASTERN LINE OF SAID 0.422 ACRE PARCEL OF LAND, THE FOLLOWING COURSES AND DISTANCES: NORTH 21° 53' EAST, 41.07 FEET; AND NORTHERLY, ON A CURVE TO THE LEFT HAVING A RADIUS OF 562.22 FEET,
THROUGH A CENTRAL ANGEL OF 47° 37' 57" (CHORD OF LAST SAID CURVE BEARS NORTH 1° 55' 59" WEST, 454.05 FEET), AN ARC DISTANCE OF 467.40 FEET TO A POINT IN THE WEST LINE OF LAND DESCRIBED IN SAID INDENTURE DATED NOVEMBER 5, 1925, THENCE NORTH, ALONG LAST SAID LINE, 7.02 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM ALL OF THE MINERALS AND MINERAL ORES OF EVERY KIND AND CHARACTER NOW KNOWN TO EXIST OR HEREAFTER DISCOVERED UPON, WITHIN OR UNDERLYING SAID LAND OR THAT MAY BE PRODUCED THEREFROM, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, ALL PETROLEUM, OIL, NATURAL GAS AND OTHER HYDROCARBON SUBSTANCES AND PRODUCTS DERIVED THEREFROM, TOGETHER WITH THE EXCLUSIVE AND PERPETUAL RIGHT OF INGRESS AND EGRESS BENEATH THE SURFACE OF SAID LAND TO EXPLORE FOR, EXTRACT, MINE AND REMOVE THE SAME, AS EXPECTED AND RESERVED IN THE DEED FROM SOUTHERN PACIFIC COMPANY, A CORPORATION, RECORDED NOVEMBER 26, 1965 IN VOLUME 2071 OF OFFICIAL RECORDS, AT PAGE 75, STANISLAUS COUNTY RECORDS.

PARCEL NO. 16:

ALL THAT PORTION OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN THE DEED TO THE STATE OF CALIFORNIA DATED AUGUST 29, 1958 AND RECORDED OCTOBER 31, 1958 IN VOLUME 1511 OF OFFICIAL RECORDS, AT PAGE 12, AS INSTRUMENT NO. 27377, AND LOCATED IN THE NORTHEAST QUARTER OF SECTION 30, TOWNSHIP 3 SOUTH, RANGE 9 EAST, MOUNT DIABLO BASE AND MEHIDIAN, AS PER THE APPROVED U.S. GOVERNMENT SURVEY, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EASTERNLY LINE OF SAID PARCEL OF LAND DESCRIBED IN SAID DEED, SAID POINT LYING NORTH 0° 11' 45" WEST, 135.20 FEET FROM THE SOUTHEASTERLY CORNER OF SAID PARCEL OF LAND; THENCE NORTH 49° 22' 30" WEST, 436.91 FEET TO A POINT ON THE WESTERLY BOUNDARY OF SAID PARCEL; THENCE ALONG SAID WESTERLY BOUNDARY, NORTH 0° 11' 40" WEST, 260.77 FEET TO THE NORTHWEST CORNER OF SAID PARCEL; THENCE ALONG THE NORTHEASTERLY LINE OF SAID PARCEL, SOUTH 89° 47' EAST, 330.65 FEET TO THE NORTHEAST CORNER OF SAID PARCEL; THENCE ALONG THE AOI'RESAID EASTERNLY LINE, SOUTH 0° 11' 45" EAST, 544.00 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM ALL PETROLEUM, OIL, NATURAL GAS AND PRODUCTS DERIVED THEREFROM, WITHIN OR UNDERLYING SAID LAND OR THAT MAY BE PRODUCED THEREFROM, AND ALL RIGHTS THEREOFT, PROVIDED THE GRANTOR, THEIR SUCCESSORS OR ASSIGNS, SHALL NOT USE THE SURFACE OF SAID LAND IN THE EXERCISE OF ANY OF SAID RIGHTS, AS EXPECTED AND RESERVED IN THE DEEDS FROM CENTRAL PACIFIC RAILWAY COMPANY, A CORPORATION, AND SOUTHERN PACIFIC COMPANY, A CORPORATION, RECORDED SEPTEMBER 13, 1946 OF VOLUME 865 OF OFFICIAL RECORDS, AT PAGE 141, AS INSTRUMENT NO. 25760, AND RECORDED OCTOBER 22, 1947 IN VOLUME 910 OF OFFICIAL RECORDS, AT PAGE 406, AS INSTRUMENT NO. 27554, STANISLAUS COUNTY RECORDS.

ALSO EXCEPTING THEREFROM THAT PORTION OF THE EASTERNLY 15 FEET THEREOF WHICH LIES SOUTH OF THE NORTH 327.77 FEET, AS EXPECTED AND RESERVED FOR THE CONSTRUCTION, RECONSTRUCTION, MAINTENANCE AND OPERATION OF RAILROAD TRACKS AND APPURTENANCES THEREON, IN SAID DEED RECORDED SEPTEMBER 13, 1946 IN VOLUME 865 OF OFFICIAL RECORDS, AT PAGE 141, AS INSTRUMENT NO. 25760, STANISLAUS COUNTY RECORDS.

ALSO EXCEPTING THEREFROM SUCH INTEREST IN THE WEST 15 FEET OF THE NORTH 327.77 FEET OF SAID PARCEL NO. 2, LESS THE NORTH 20 FEET THEREOF, AND EXCEPTING THEREFROM SUCH INTEREST IN THE EAST 15 FEET OF THE NORTH 327.77 FEET OF SAID

EXHIBIT "B"

LIST OF ENVIRONMENTAL REPORTS [GROUNDWATER]
EXHIBIT “C”

DESCRIPTION OF REMEDIATION SYSTEM

Modesto Groundwater Remediation System

The groundwater Remediation System is designed to monitor groundwater quality and groundwater flow, extract and treat groundwater at the Site, and discharge treated groundwater to the City of Modesto POTW in accordance with the City of Modesto Conditional and Revocable Groundwater Discharge Permit No. GW 96-2. The Remediation System includes the groundwater extraction and treatment system located on the Site as of the Effective Date, consisting of extraction wells, conveyance piping and a treatment facility, as well as monitoring wells, and electric, domestic water and storm drain lines from the utility supplier to such system.

The groundwater extraction and treatment component of the Remediation System includes three groundwater extraction wells (E-1, E-2, and E-3), each of which has a submersible pump connected to a pressure pipeline that conveys water from the well to the treatment facility. The extraction wells may require and be fitted with anti-scalent systems at their wellheads to prevent scale accumulation.

Upon entering the treatment system, groundwater from the three extraction wells is treated with hydrogen peroxide to convert sulfides into sulfates. Treated groundwater is subsequently discharged to the City of Modesto POTW. A gravity flow discharge pipeline begins at the treatment facility and extends to a sewer manhole. A line extends from the manhole to the sewer main on Graphics Drive.
MODESTO CITY COUNCIL
RESOLUTION NO. 2009-057

A RESOLUTION APPROVING THE RECOMMENDED CRITERIA FOR EVALUATING RECYCLED WATER PROPOSALS

WHEREAS, California is faced with unprecedented water shortages due to increased water demands and dry weather conditions, and

WHEREAS, the overall drought conditions coupled with judicial reductions in water exports from the San Joaquin Delta have resulted in significant water shortages for agricultural and municipal water users throughout the state, and in particular, on the “West Side” of the San Joaquin Valley, and

WHEREAS, the City of Modesto is currently in the initial stages of upgrading its wastewater treatment facilities to include tertiary treatment at its Jennings Road secondary wastewater treatment site, and

WHEREAS, the tertiary treatment process will produce high quality recycled water that can be used for a variety of municipal, industrial, and agricultural uses, and

WHEREAS, the City’s Jennings Road site is located adjacent to the San Joaquin River and in close proximity to the West Side, and

WHEREAS, the program to upgrade the City’s wastewater treatment facilities has generated interest in the use of recycled water, and

WHEREAS, Public Works has received a number of inquiries about the use of its recycled water, ranging from municipal irrigation use, industrial use, to possible agricultural uses where permitted, and

WHEREAS, given the interest in the City’s recycled water, staff proposes to issue a Request for Proposals for possible recycled water use as the recycled water becomes available, and
WHEREAS, to facilitate the review of the proposals, staff developed criteria for evaluating proposals for the use of the City’s recycled water, and

WHEREAS, this criteria would be used as a means to determine if a proposal warrants serious investigation, and perhaps the development of a use agreement that would be presented to Council for consideration, and

WHEREAS, the Council Finance Committee, at its October 27, 2008 meeting, recommended forwarding this item to Council for consideration.

NOW, THEREFORE, BE IT HEREBY RESOLVED by the Council of the City of Modesto that it hereby approves the recommended criteria for evaluating recycled water proposals.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 27th day of January, 2009, by Councilmember Marsh, who moved its adoption, which motion being duly seconded by Councilmember Hawn. was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Hawn, Keating, Lopez, Marsh, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: O’Bryant

APPROVED AS TO FORM:

By: 

SUSANA ALCALA WOOD, City Attorney

(SEAL)

ATTEST: ________________________________

STEPHANIE LOPEZ, City Clerk
A RESOLUTION APPROVING A COOPERATIVE AGREEMENT BETWEEN THE CITY OF MODESTO AND THE CALIFORNIA STATE DEPARTMENT OF TRANSPORTATION (CALTRANS) FOR THE PREPARATION OF PLANS, SPECIFICATIONS AND ESTIMATES (PS&E) FOR THE STATE ROUTE 99/PELANDALE AVENUE INTERCHANGE RECONSTRUCTION PROJECT, AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE AGREEMENT

WHEREAS, the State Route 99/Pelandale Interchange improvement project is a Caltrans project to address the traffic congestion problem at Pelandale Avenue and Highway 99 Interchange, and

WHEREAS, in an effort to accelerate the planning and construction of the interchange improvements, the City Council in their Fiscal Year 2005-06 Capital Improvement Program approved $1.3M, and subsequently approved staff’s request to explore the City taking the lead on the State Route 99/Pelandale Avenue Interchange Improvements – Project Approval and Environmental Document (PA&ED), and

WHEREAS, in addition, both StanCOG and Caltrans have agreed to the City of Modesto assuming Lead Agency Status, and

WHEREAS, this Cooperative Agreement is required by Caltrans and formalizes the City’s Lead Agency status and outlines the agreement between the agencies.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves a Cooperative Agreement between the City of Modesto and the California State Department of Transportation (Caltrans) for the preparation of plans, specifications and estimates (PS&E) for the State Route 99/Pelandale Avenue Interchange Reconstruction Project.
BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute the Agreement.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 3rd day of February, 2009, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Marsh, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Hawn, Keating, Lopez, Marsh, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: O'Bryant

ATTEST: STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney
A RESOLUTION ACCEPTING THE PUBLIC IMPROVEMENTS FOR THE VILLAGE ONE TOWN CENTER HOMES 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, the Housing Authority of the County of Stanislaus ("SUBDIVIDER"), is the subdivider of the VILLAGE ONE TOWN CENTER HOMES SUBDIVISION ("SUBDIVISION"), and

WHEREAS, SUBDIVIDER has filed irrevocable subdivision bonds to secure faithful performance and payment for labor and materials in the amounts of $504,574, and $252,287, respectively, and

WHEREAS, SUBDIVIDER has filed a warranty bond in the amount of $50,457,40 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. 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 $504,574 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 $252,287 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 $50,457.40 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 3rd day of February, 2009, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Marsh, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Hawn, Keating, Lopez, Marsh, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: O'Bryant

ATTEST: [Signature]

STEFHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: [Signature]

SUSANA ALCALA WOOD, City Attorney
RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MODESTO
AMENDING THE FISCAL YEAR 2008-2009 ANNUAL BUDGET

WHEREAS, a monthly financial analysis has been completed and it has been
determined that certain adjustments are required to the Annual Budget of the City of
Modesto for the Fiscal Year 2008-2009.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto
that appropriations, revenues, and transfers for the 2008-2009 budget have been adjusted
as shown on the Budget Request form(s).

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 3rd day of February, 2009, by Councilmember Lopez, who
moved its adoption, which motion being duly seconded by Councilmember Marsh, was
upon roll call carried and the resolution adopted by the following votes:

AYES:    Councilmembers:    Hawn, Keating, Lopez, Marsh, Olsen,
        Mayor Ridenour

NOES:    Councilmembers:    None

ABSENT:  Councilmembers:    O’Bryant

ATTEST:  STEPHANIE LOPEZ, City Clerk

(SEAL)
APPROVED AS TO FORM:

By:     SUSANA ALCALA WOOD, City Attorney
RESOLUTION AWARDING A CONTRACT FOR PERSONAL PROTECTIVE EQUIPMENT (PPE) CARE AND MAINTENANCE SERVICES FOR THE MODESTO FIRE DEPARTMENT TO SCOTT'S PPE RECON OF LODI, CA FOR A TWO (2) YEAR AGREEMENT WITH THREE (3) ONE-YEAR EXTENSION OPTIONS FOR AN ESTIMATED ANNUAL COST OF $25,000

WHEREAS, firefighters are required to wear personal protective equipment (PPE), and

WHEREAS, PPE’s minimize exposure to biological, chemical, and environmental contaminants, and

WHEREAS, these contaminants become trapped in fibers of PPE’s, posing a health hazard to anyone in contact with them long after the incident has occurred, and

WHEREAS, these contaminants are considered hazardous until proper decontamination has been performed, and

WHEREAS, PPE’s are damaged at times and require repairs, and

WHEREAS, repairs must be made by certified personnel using the same fabric, thread and stitch pattern used by the manufacturer, and

WHEREAS, the Modesto Fire Department, in an effort to meet current laws and regulations, wishes to create a care and maintenance program, and

WHEREAS, this will bring the Modesto Fire Department into compliance with current standards and keep our firefighters safe from hazards outside of their control, and

WHEREAS, in order to meet the requirements of the Municipal Code, bids were solicited for personal protective equipment maintenance and replacement from six (6) prospective facilities, none of which are local companies, and
WHEREAS, the Request for Bids (RFB) was posted on the City’s web site and formally advertised by the City Clerk’s office as required by law, and

WHEREAS, the RFB’s were opened in the City Clerk’s office on December 9, 2008, and

WHEREAS, three (3) companies responded with bids. Of the three companies that responded, Scott’s PPE Recon submitted the lowest responsive and responsible bid.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the award of contract for personal protective equipment care and maintenance services for the Modesto Fire Department to Scott’s PPE Recon of Lodi, CA for a two (2) year agreement, with three (3) one-year extension options, for an estimated annual cost of $25,000.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 3rd day of February, 2009, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Marsh, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Haewn, Keating, Lopez, Marsh, Olsen. Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: O’Bryant

ATTEST: ______________________

(SIGNATURE)

APPROVED AS TO FORM:

By: ______________________

SUSANA ALCALA WOOD, City Attorney
CONSIDER ISSUING FORMAL REQUEST FOR BIDS (RFB) FOR PERSONAL PROTECTIVE EQUIPMENT (PPE) FOR THE MODESTO FIRE DEPARTMENT, FOR A TWO (2) YEAR AGREEMENT, WITH THREE (3), ONE-YEAR EXTENSION OPTIONS AT THE SOLE DISCRETION OF THE CITY, AT AN ESTIMATED ANNUAL COST OF $100,000.00

WHEREAS, personal protective equipment (PPE) is paramount to the well-being of line personnel at the Modesto Fire Department, and
WHEREAS, PPE include turnout pants and jackets, structure boots, hoods, helmets, gloves, self-contained breather equipment, EMS gloves, etc., and
WHEREAS, the City provides PPE to line personnel at the time of hire, and
WHEREAS, PPE is replaced when it no longer meets safety standards,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby authorizes the issuance of Request For Bids (RFB) for personal protective equipment (PPE) for the Modesto Fire Department, for a two (2) year agreement, with three (3), one-year extension options at the sole discretion of the City, at an estimated annual cost of $100,000.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 3rd day of February, 2009, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Marsh, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Hawn, Keating, Lopez, Marsh, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: O'Bryant

APPROVED AS TO FORM:

By: 

SUSANA ALCALA WOOD, City Attorney

(Seal)
MODESTO CITY COUNCIL
RESOLUTION NO. 2009-063

A RESOLUTION AUTHORIZING THE AWARD OF BID AND APPROVING A TWO (2) YEAR AGREEMENT WITH AG TRANSMISSION FOR ALLISON TRANSMISSION REPAIRS, WITH THREE (3) ONE-YEAR EXTENSION OPTIONS, AT THE SOLE DISCRETION OF THE CITY, FOR AN ESTIMATED ANNUAL COST OF $20,000, AND A POTENTIAL FIVE (5) YEAR COST OF $100,000, AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE AGREEMENT

WHEREAS, as part of the Fire Department’s budget reductions, the Department has reduced the mechanic staffing from two to one, and

WHEREAS, each year the fire engines and trucks used by the Fire Department experience mechanical problems, and

WHEREAS, the in-house mechanic does not have the time to mediate these problems or the problems require more advanced facilities and certifications, and

WHEREAS, due to the types of repairs involved and the timeliness of the repairs needed, it has not been prudent to solicit bids for the work needed at the time it has arisen, and

WHEREAS, in the past the apparatus have been sent to local repair shops that are the factory authorized repair centers for the type of transmission or engine in a particular piece of apparatus, and

WHEREAS, formal Request for Bids were issued to thirteen (13) vendors as well as posted on the City’s website and legally advertised by the City Clerk’s office, and

WHEREAS, eight (8) vendors responded, with AG Transmission submitting the lowest responsive and responsible bid for Allison Transmission Repairs.
NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby authorizes the award of bid and approves a two (2) year Agreement with AG Transmission for Allison Transmission repairs, with three (3) one-year extension options, at the sole discretion of the City, for a estimated annual cost of $20,000, and potential five (5) year cost of $100,000.

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

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 3rd day of February, 2009, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Marsh, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Hawn, Keating, Lopez, Marsh, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: O'Bryant

ATTEST: STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney
A RESOLUTION AUTHORIZING THE AWARD OF BID AND APPROVING A TWO (2) YEAR AGREEMENT WITH INTERSTATE TRUCK CENTER FOR INTERNATIONAL ENGINE REPAIRS, WITH THREE (3) ONE-YEAR EXTENSION OPTIONS, AT THE SOLE DISCRETION OF THE CITY, FOR AN ESTIMATED ANNUAL COST OF $20,000, AND A POTENTIAL FIVE (5) YEAR COST OF $100,000, AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE AGREEMENT

WHEREAS, as part of the Fire Department's budget reductions, the Department has reduced the mechanic staffing from two to one, and

WHEREAS, each year the fire engines and trucks used by the Fire Department experience mechanical problems, and

WHEREAS, the in-house mechanic does not have the time to mediate these problems, or the problems require more advanced facilities and certifications, and

WHEREAS, due to the types of repairs involved and the timeliness of the repairs needed, it has not been prudent to solicit bids for the work needed at the time it has arisen, and

WHEREAS, in the past the apparatus have been sent to local repair shops that are the factory authorized repair centers for the type of transmission or engine in a particular piece of apparatus, and

WHEREAS, Request for Bids were issued to thirteen (13) vendors as well as posted on the City's website and legally advertised by the City Clerk's office, and

WHEREAS, eight (8) vendors responded, with Interstate Truck Center submitting the lowest responsive and responsible bid for International Engine repairs.
NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby authorizes the award of bid and approves a two-year Agreement with Interstate Truck Center for International Engine repairs, with three (3) one-year extension options, at the sole discretion of the City, for an estimated annual cost of $20,000, and potential five (5) year cost of $100,000.

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

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 3rd day of February, 2009, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Marsh, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Hawn, Keating, Lopez, Marsh, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: O'Bryant

ATTEST: STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney
A RESOLUTION AUTHORIZING THE AWARD OF BID AND APPROVING A TWO (2) YEAR AGREEMENT WITH R & L DIESEL FOR DETROIT DIESEL REPAIRS, WITH THREE (3) ONE-YEAR EXTENSION OPTIONS, AT THE SOLE DISCRETION OF THE CITY, FOR AN ESTIMATED ANNUAL COST OF $40,000, AND A POTENTIAL FIVE (5) YEAR COST OF $200,000, AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE AGREEMENT

WHEREAS, as part of the Fire Department’s budget reductions, the Department has reduced the mechanic staffing from two to one, and

WHEREAS, each year the fire engines and trucks used by the Fire Department experience mechanical problems, and

WHEREAS, the in-house mechanic does not have the time to mediate these problems, or the problems require more advanced facilities and certifications, and

WHEREAS, due to the types of repairs involved and the timeliness of the repairs needed, it has not been prudent to solicit bids for the work needed at the time it has arisen, and

WHEREAS, in the past the apparatus have been sent to local repair shops that are the factory authorized repair centers for the type of transmission or engine in a particular piece of apparatus, and

WHEREAS, Request for Bids were issued to thirteen (13) vendors as well as posted on the City’s website and legally advertised by the City Clerk’s office, and

WHEREAS, eight (8) vendors responded, with R & L Diesel submitting the lowest responsive and responsible bid for Detroit Diesel repairs.
NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby authorizes the award of bid and approves a two-year Agreement with R & L Diesel for Detroit Diesel repairs, with three (3) one-year extension options, at the sole discretion of the City, for an estimated annual cost of $40,000, and potential five (5) year cost of $200,000.

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

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 3rd day of February, 2009, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Marsh, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers:  Hawn, Keating, Lopez, Marsh, Olsen, Mayor Ridenour

NOES: Councilmembers:  None

ABSENT: Councilmembers:  O'Bryant

ATTEST:  

(SIGNATURE)

APPROVED AS TO FORM:

By:  

SUSANA ALCAIA WOOD, City Attorney
A RESOLUTION AUTHORIZING THE AWARD OF BID AND APPROVING A TWO (2) YEAR AGREEMENT WITH BURTON’S FIRE FOR PIERCE APPARATUS REPAIRS, WITH THREE (3) ONE-YEAR EXTENSION OPTIONS, AT THE SOLE DISCRETION OF THE CITY, FOR AN ESTIMATED ANNUAL COST OF $20,000 AND A POTENTIAL FIVE (5) YEAR COST OF $100,000, AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE AGREEMENT

WHEREAS, as part of the Fire Department’s budget reductions, the Department has reduced the mechanic staffing from two to one, and

WHEREAS, each year the fire engines and trucks used by the Fire Department experience mechanical problems, and

WHEREAS, the in-house mechanic does not have the time to mediate these problems, or the problems require more advanced facilities and certifications, and

WHEREAS, due to the types of repairs involved and the timeliness of the repairs needed, it has not been prudent to solicit bids for the work needed at the time it has arisen, and

WHEREAS, in the past the apparatus have been sent to local repair shops that are the factory authorized repair centers for the type of transmission or engine in a particular piece of apparatus, and

WHEREAS, Request for Bids were issued to thirteen (13) vendors as well as posted on the City’s website and legally advertised by the City Clerk’s office, and

WHEREAS, eight (8) vendors responded, with Burton’s Fire submitting the lowest responsive and responsible bid for Pierce Fire Apparatus repairs.
NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby authorizes the award of bid and approves a two (2) year Agreement with Burton's Fire for Pierce Apparatus repairs, with three (3) one-year extension options, at the sole discretion of the City, for an estimated annual cost of $20,000, and potential five (5) year cost of $100,000.

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

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 3rd day of February, 2009, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Marsh, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Hawn, Keating, Lopez, Marsh, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: O'Bryant

ATTEST: STEPHANIE LOPEZ, City Clerk

(SEAL.)

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney
A RESOLUTION AUTHORIZING THE AWARD OF BID AND APPROVING A TWO (2) YEAR AGREEMENT WITH HI-TECH EMERGENCY VEHICLE SYSTEMS FOR WATEROUS WATER PUMP REPAIRS, WITH THREE (3) ONE-YEAR EXTENSION OPTIONS, AT THE SOLE DISCRETION OF THE CITY, FOR AN ESTIMATED ANNUAL COST OF $5,000, AND A POTENTIAL FIVE (5) YEAR COST OF $25,000, AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE AGREEMENT

WHEREAS, as part of the Fire Department’s budget reductions, the Department has reduced the mechanic staffing from two to one, and

WHEREAS, each year the fire engines and trucks used by the Fire Department experience mechanical problems, and

WHEREAS, the in-house mechanic does not have the time to mediate these problems, or the problems require more advanced facilities and certifications, and

WHEREAS, due to the types of repairs involved and the timeliness of the repairs needed, it has not been prudent to solicit bids for the work needed at the time it has arisen, and

WHEREAS, in the past the apparatus have been sent to local repair shops that are the factory authorized repair centers for the type of transmission or engine in a particular piece of apparatus, and

WHEREAS, Request for Bids were issued to thirteen (13) vendors as well as posted on the City’s website and legally advertised by the City Clerk’s office, and

WHEREAS, eight (8) vendors responded, with Hi-Tech Emergency Vehicle Systems submitting the lowest responsive and responsible bid for Waterous Water Pump repairs.
NOW, THEREFORE, BE IT RESOLVED by the Council of the City of
Modesto that it hereby authorizes the award of bid and approves a two (2) year
Agreement with Hi-Tech Emergency Vehicle Systems for Waterous Water Pump repairs,
with three (3) one-year extension options, at the sole discretion of the City, for an
estimated annual cost of $5,000, and potential five (5) year cost of $25,000.

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

The foregoing resolution was introduced at a regular meeting of the Council of
the City of Modesto held on the 3rd day of February, 2009, by Councilmember Lopez,
who moved its adoption, which motion being duly seconded by Councilmember Marsh,
was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Hawn, Keating, Lopez, Marsh, Olsen,
Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: O'Bryant

ATTEST: STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2009-068

A RESOLUTION AUTHORIZING THE AWARD OF BID AND APPROVING A TWO (2) YEAR AGREEMENT WITH HI-TECH EMERGENCY VEHICLE SYSTEMS FOR FOAMPRO SYSTEMS REPAIRS, WITH THREE (3) ONE-YEAR EXTENSION OPTIONS, AT THE SOLE DISCRETION OF THE CITY, FOR AN ESTIMATED ANNUAL COST OF $5,000, AND A POTENTIAL FIVE (5) YEAR COST OF $25,000, AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE AGREEMENT

WHEREAS, as part of the Fire Department’s budget reductions, the Department has reduced the mechanic staffing from two to one, and

WHEREAS, each year the fire engines and trucks used by the Fire Department experience mechanical problems, and

WHEREAS, the in-house mechanic does not have the time to mediate these problems, or the problems require more advanced facilities and certifications, and

WHEREAS, due to the types of repairs involved and the timeliness of the repairs needed, it has not been prudent to solicit bids for the work needed at the time it has arisen, and

WHEREAS, in the past the apparatus have been sent to local repair shops that are the factory authorized repair centers for the type of transmission or engine in a particular piece of apparatus, and

WHEREAS, Request for Bids were issued to thirteen (13) vendors as well as posted on the City’s website and legally advertised by the City Clerk’s office, and

WHEREAS, eight (8) vendors responded, with Hi-Tech Emergency Vehicle Systems submitting the lowest responsive and responsible bid for FoamPro Systems repairs.
NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby authorizes the award of bid and approves a two-year Agreement with Hi-Tech Emergency Vehicle Systems for FoamPro Systems repairs, with three (3) one-year extension options, at the sole discretion of the City, for an estimated annual cost of $5,000, and potential five (5) year cost of $25,000.

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

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 3rd day of February, 2009, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Marsh, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers:  Hawn, Keating, Lopez, Marsh, Olsen, Mayor Ridenour

NOES: Councilmembers:  None

ABSENT: Councilmembers:  O'Bryant

ATTEST:  STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By:  SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2009-069

A RESOLUTION ACCEPTING THE WORK BY CLYDE WHEELER PIPELINE, INC. FOR THE PROJECT TITLED “2008/2009 SANITARY SEWER COLLECTION SYSTEM REplacement” 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 $233,690.50

WHEREAS, a report has been filed by the Public Works Director that the project titled “2008/2009 Sanitary Sewer Collection System Replacement” has been completed by Clyde Wheeler Pipeline, Inc. in accordance with the contract agreement dated September 2, 2008.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the project titled “2008/2009 Sanitary Sewer Collection System Replacement” is hereby accepted as complete from said contractor Clyde Wheeler Pipelines, 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 $233,690.50 is authorized as provided in the contract.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 3rd day of February, 2009, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Marsh, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Hawn, Keating, Lopez, Marsh, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: O'Bryant

ATTEST: [Signature]

(SEAL)

APPROVED AS TO FORM:

By: [Signature]

SUSANA ALCALA WOOD, City Attorney
A RESOLUTION APPROVING AN AGREEMENT WITH PACIFIC VALLEY APPRAISAL INC. FOR ON-CALL APPRAISAL AND CONSULTANT SERVICES FOR VARIOUS PUBLIC WORKS – CAPITAL IMPROVEMENT PROGRAM PROJECTS FOR ONE YEAR, WITH TWO ONE-YEAR EXTENSION OPTIONS, AT THE SOLE DISCRETION OF THE CITY, IN AN AMOUNT NOT TO EXCEED $65,000 PER YEAR, AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE AGREEMENT, AND UP TO TWO ONE-YEAR EXTENSION OPTIONS

WHEREAS, the Public Works Department – Capital Improvement Services Division (CIS) performs a number of tasks requiring appraisal services that are to be separated from acquisition duties that will be performed by the City’s property agent, and

WHEREAS, CIS has found it necessary to utilize the services of specialized consulting appraisal firms, and

WHEREAS, retaining an on-call appraisal consultant allows the division to have quick access to specific appraisal and consultant services when needed, and

WHEREAS, capital improvement projects presently scheduled for review and processing by City staff continue to rise at a rapid rate, and

WHEREAS, using an experienced appraisal firm provides a quick turnaround, which is essential to efficient response to the large undertaking of numerous projects, and

WHEREAS, the goal in having an on-call appraisal consultant is to standardize the outcome of the review process, reduce response time, and promote project cost savings, which positively impacts the Capital Improvement Program (CIP) budget, and

WHEREAS, on October 22, 2008, in compliance with Administrative Directive 3.1, Selection Procedures for Professional Consultants Who Provide Architectural and
Engineering Services for Capital Projects, a Request for Qualifications and Proposals was initiated to perform on-call appraisal services, and

WHEREAS, the Request for Qualifications was sent to five (5) appraisal firms, there were five (5) firms that provided Qualification Statements, and all five (5) were interviewed, and

WHEREAS, the consulting firm of Pacific Valley Appraisal Inc. is licensed by the State and has over 25 years experience in government appraisal preparation, and

WHEREAS, Pacific Valley Appraisal Inc., of Modesto, has 32 years of experience and an intimate knowledge of coordinating with City and agency staff to complete appraisal services and conferring with and advising City staff regarding appraisal laws, regulations, and policies, and

WHEREAS, Pacific Valley provided prior services and has demonstrated satisfactory services to the City on past projects, and

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

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

WHEREAS, City staff recommends an On-call Appraisal and Consultant Services Agreement with Pacific Valley Appraisal Inc. be approved, and

WHEREAS, Pacific Valley will be paid on an hourly basis for actual hours and set bids required to perform specific task orders at a set rate.
NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves an Agreement with Pacific Valley Appraisal Inc. for On-call Appraisal and Consultant Services for various Public Works – Capital Improvement Program projects for one year, with two one-year extension options at the sole discretion of the City in an amount not to exceed $65,000 per year. Total cost for three years is not to exceed $195,000.

BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute said Agreement with Pacific Valley Appraisal Inc., and up to two one-year extension options.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 3rd day of February, 2009, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Marsh, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Hawn, Keating, Lopez, Marsh, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: O'Bryant

ATTEST: [Signature]

STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: [Signature]

SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2009-071

A RESOLUTION APPROVING AN AGREEMENT WITH COGDILL & GIOMI, INC. FOR ON-CALL APPRAISAL AND CONSULTANT SERVICES FOR VARIOUS PUBLIC WORKS – CAPITAL IMPROVEMENT PROGRAM PROJECTS FOR ONE YEAR, WITH TWO ONE-YEAR EXTENSION OPTIONS, AT THE SOLE DISCRETION OF THE CITY, IN AN AMOUNT NOT TO EXCEED $65,000 PER YEAR, AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE AGREEMENT, AND UP TO TWO ONE-YEAR EXTENSION OPTIONS

WHEREAS, the Public Works Department – Capital Improvement Services Division (CIS) performs a number of tasks requiring appraisal services that are to be separated from acquisition duties that will be performed by the City's property agent, and

WHEREAS, CIS has found it necessary to utilize the services of specialized consulting appraisal firms, and

WHEREAS, retaining an on-call appraisal consultant allows the division to have quick access to specific appraisal and consultant services when needed, and

WHEREAS, capital improvement projects presently scheduled for review and processing by City staff continue to rise at a rapid rate, and

WHEREAS, using an experienced appraisal firm provides a quick turnaround, which is essential to efficient response to the large undertaking of numerous projects, and

WHEREAS, the goal in having an on-call appraisal consultant is to standardize the outcome of the review process, reduce response time, and promote project cost savings, which positively impacts the Capital Improvement Program (CIP) budget, and

WHEREAS, on October 22, 2008, in compliance with Administrative Directive 3.1, Selection Procedures for Professional Consultants Who Provide Architectural and
Engineering Services for Capital Projects, a Request for Qualifications and Proposals was initiated to perform on-call appraisal services, and

WHEREAS, the Request for Qualifications was sent to five (5) appraisal firms, there were five (5) firms that provided Qualification Statements, and all five (5) were interviewed, and

WHEREAS, the consulting firm of Cogdill & Giomi, Inc. is licensed by the State and has over 25 years experience in government appraisal preparation, and

WHEREAS, Cogdill & Giomi, Inc., of Modesto, has 27 years of experience and an intimate knowledge of coordinating with City and agency staff to complete appraisal and consultant services and conferring with and advising City staff regarding appraisal laws, regulations, and policies, and

WHEREAS, Cogdill & Giomi provided prior services and has demonstrated satisfactory services to the City on past projects, and

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

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

WHEREAS, City staff recommends an On-call Appraisal and Consultant Services Agreement with Cogdill & Giomi, Inc. be approved, and

WHEREAS, Cogdill & Giomi will be paid on an hourly basis for actual hours and set bids required to perform specific task orders at a set rate.
NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves an Agreement with Cogdill & Giomi, Inc. for On-call Appraisal and Consultant Services for various Public Works – Capital Improvement Program projects for one year, with two one-year extension options at the sole discretion of the City in an amount not to exceed $65,000 per year. Total cost for three years is not to exceed $195,000.

BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute said Agreement with Cogdill & Giomi, Inc., and up to two one-year extension options.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 3rd day of February, 2009, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Marsh, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Hawn, Keating, Lopez, Marsh, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: O’Bryant

ATTEST: [Signature]

STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: [Signature]

SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2009-072

A RESOLUTION APPROVING AN AGREEMENT WITH WRIGHT APPRAISALS INC. FOR ON-CALL APPRAISAL AND CONSULTANT SERVICES FOR VARIOUS PUBLIC WORKS – CAPITAL IMPROVEMENT PROGRAM PROJECTS FOR ONE YEAR, WITH TWO ONE-YEAR EXTENSION OPTIONS, AT THE SOLE DISCRETION OF THE CITY, IN AN AMOUNT NOT TO EXCEED $65,000 PER YEAR, AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE AGREEMENT, AND UP TO TWO ONE-YEAR EXTENSION OPTIONS

WHEREAS, the Public Works Department – Capital Improvement Services Division (CIS) performs a number of tasks requiring appraisal services that are to be separated from acquisition duties that will be performed by the City’s property agent, and

WHEREAS, CIS has found it necessary to utilize the services of specialized consulting appraisal firms, and

WHEREAS, retaining an on-call appraisal consultant allows the division to have quick access to specific appraisal and consultant services when needed, and

WHEREAS, capital improvement projects presently scheduled for review and processing by City staff continue to rise at a rapid rate, and

WHEREAS, using an experienced appraisal firm provides a quick turnaround, which is essential to efficient response to the large undertaking of numerous projects, and

WHEREAS, the goal in having an on-call appraisal consultant is to standardize the outcome of the review process, reduce response time, and promote project cost savings, which positively impacts the Capital Improvement Program (CIP) budget, and

WHEREAS, on October 22, 2008, in compliance with Administrative Directive 3.1, Selection Procedures for Professional Consultants Who Provide Architectural and...
Engineering Services for Capital Projects, a Request for Qualifications and Proposals was initiated to perform on-call appraisal services, and

WHEREAS, the Request for Qualifications was sent to five (5) appraisal firms, there were five (5) firms that provided Qualification Statements, and all five (5) were interviewed, and

WHEREAS, the consulting firm of Wright Appraisals Inc. is licensed by the State and has over 25 years experience in government appraisal preparation, and

WHEREAS, Wright Appraisals Inc., of Sonora. CA. has over 30 years of experience and extensive appraisal experience for roads, easements, partial takes and utilities, and

WHEREAS, the firm has worked with many governmental agencies and has an extensive resume, and

WHEREAS, they have also performed work in the Modesto area, and

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

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

WHEREAS, City staff recommends an On-call Appraisal and Consultant Services Agreement with Wright Appraisals Inc. be approved, and

WHEREAS, Wright Appraisals will be paid on an hourly basis for actual hours and set bids required to perform specific task orders at a set rate.
NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves an Agreement with Wright Appraisals Inc. for On-call Appraisal and Consultant Services for various Public Works – Capital Improvement Program projects for one year, with two one-year extension options at the sole discretion of the City in an amount not to exceed $65,000 per year. Total cost for three years is not to exceed $195,000.

BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute said Agreement with Wright Appraisals Inc., and up to two one-year extension options.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 3rd day of February, 2009, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Marsh, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Hawn, Keating, Lopez, Marsh, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: O'Bryant

ATTEST: STEPHANIE LOPEZ, City Clerk

(S Seal)

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney
A RESOLUTION DECLARING AS SURPLUS FROM FEBRUARY 1, 2009 THROUGH JANUARY 31, 2010, THE FOLLOWING ITEMS: LOST, STOLEN, UNCLAIMED AND/ OR SEIZED PROPERTY FROM THE POLICE DEPARTMENT, EXCESS PROPERTY ACCUMULATED BY THE CITY AND SURPLUS CITY VEHICLES AND EQUIPMENT, AND AUTHORIZING THE PURCHASING DIVISION TO SELL SAME BY SEALED BID, CONSIGNMENT, PUBLIC AUCTION, ON-LINE AUCTION, ON LINE OR AS SCRAP

WHEREAS, Section 801 of the City Charter authorizes the City Manager to sell obsolete, unclaimed, or surplus personal property of the City with the approval of the City Council, and

WHEREAS, the City’s surplus items consist of: (1) lost, stolen, unclaimed and/or seized property from the Police Department. (2) excess property accumulated by the City; and (3) surplus City vehicles and equipment, and

WHEREAS, currently the City’s auctioneering services are provided by the Auction House, and

WHEREAS, the Purchasing Division will also sell selected surplus property on line through PublicSurplus.com, an on-line auction company, or directly on line, and

WHEREAS, the items sold on line would consist of surplus items that could possibly bring a higher price over use of a conventional auction, and

WHEREAS, revenues from the sale of surplus Fleet vehicles/equipment (less administrative fees) are deposited into the Fleet Replacement Fund, 7210, and

WHEREAS, all revenues received (less administrative fees) from the sale of non-rolling stock are deposited in the General Fund.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto as follows:
SECTION 1. The City Council in accordance with Section 801 of the City Charter and Section 2.7.06 of the Modesto Municipal Code hereby declares as surplus from February 1, 2009, through January 31, 2010, the property items set forth above.

SECTION 2. The City Manager, or the Purchasing Manager, acting as the City Manager's designated representative, is hereby authorized and directed to sell same by sealed bid, consignment, public auction, on-line auction, online or as scrap.

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

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney
A RESOLUTION APPROVING AN AGREEMENT WITH O'DELL ENGINEERING FOR THE PREPARATION OF A PRELIMINARY DESIGN REPORT FOR THE SHACKELFORD AREA SANITARY SEWER CROSSING OF THE TUOLUMNE RIVER FOR AN AMOUNT NOT TO EXCEED $73,936 FOR THE IDENTIFIED SCOPE OF SERVICES, PLUS $7,394 FOR ADDITIONAL SERVICES (IF NEEDED), FOR A MAXIMUM TOTAL AMOUNT OF $81,330, AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE AGREEMENT

WHEREAS, the scope of services to be provided under this agreement includes completing the 40% design for the Shackelford Area Sanitary Sewer Crossing of the Tuolumne River and summarizing the project scope and cost estimates in a Preliminary Design Report (PDR), and

WHEREAS, the purpose of the project is to replace the existing sewer pipe (siphon) across the Tuolumne River since it has reached the end of its useful design life, and

WHEREAS, this project will replace the existing 18-inch siphon with two 18-inch siphons which will connect to an existing inlet structure, and

WHEREAS, the desired method for the new installation is horizontal directional drilling (HDD), and

WHEREAS, HDD is a steerable trenchless method of installing underground pipes along a prescribed bore path by using a surface launched drilling rig, and

WHEREAS, the advantage of this method is the minimal impact on the surrounding area, especially to the Tuolumne River, and

WHEREAS, the cost of the PDR for Shackelford Crossing is slightly higher because the complexity of trenchless crossing across the Tuolumne River, and
WHEREAS, this method requires more analysis upfront, thus pushing the design past the typical 35% to upwards of 40% plus, and

WHEREAS, to ensure that the project is feasible, it is critical to complete a full geotechnical survey to properly understand the existing conditions, especially for river crossings, and

WHEREAS, a preliminary assessment of installation factors must be performed to confirm that the preliminary siphon layout is feasible and presents acceptable risk and construction cost to the City of Modesto, and

WHEREAS, in accordance with the Public Works Department Major Scope Policy approved on September 26, 2006, all projects exceeding $1,000,000 are required to be presented at Council at the preliminary design report stage if the projected cost estimate is expected to exceed the approved project budget by more than 10%, and

WHEREAS, in compliance with Administrative Directive 3.1. Selection Procedures for Professional Consultants Who Provide Architectural and Engineering Services for Capital Projects, six (6) Request for Proposals (RFPs) were sent to local design firms, and

WHEREAS, the proposals were submitted and subsequently reviewed by the Selection Committee which consisted of Public Works Engineering staff and Wastewater Operations staff, and

WHEREAS, following the consultant interviews, the Selection Committee determined that O'Dell Engineering is the most qualified to prepare the PDR of the Shackelford Area Sanitary Sewer Crossing of the Tuolumne River, and
WHEREAS, O’Dell’s team included Bennett Trenchless, a sub-consultant whose expertise is trenchless design, and

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

WHEREAS, City staff recommends an agreement with O’Dell Engineering, Inc. as the City does not have the staffing level or subject matter expertise to complete the Preliminary Design Report for the Shackelford Crossing 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 for Preliminary Design Report for the Shackelford Crossing with O’Dell Engineering, Inc. for an amount not to exceed $73,936 for the identified scope of services, plus $7,394 for additional services (if needed), for a maximum total amount of $81,330 for the project titled, “Shackelford Crossing.”

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 February, 2009, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember Lopez, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: __________________________

SUSANA ALCALA WOOD, City Attorney
A RESOLUTION AMENDING THE FISCAL YEAR 2008-2009 CAPITAL IMPROVEMENT PROGRAM BUDGET IN ORDER TO FULLY FUND THE AGREEMENT FOR THE PRELIMINARY DESIGN REPORT FOR SHACKELFORD CROSSING

WHEREAS, certain budgetary transactions are necessary in the amount of $36,717, in order to fully fund the Agreement for Preliminary Design Report for Shackelford Crossing project including engineering/design/administration for staff support, 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 10th day of February, 2009, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember Lopez, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST:

(SEAL.)

APPROVED AS TO FORM:

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

**FUND:**

Wastewater Fund

**EXPENDITURES:**

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<tr>
<td>Collection System Reliability Improvements</td>
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<td>($27,300)</td>
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<tr>
<td>Shackelford Crossing</td>
<td>6210-430-N143-6000</td>
<td>($9,417)</td>
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<tr>
<td>Shackelford Crossing</td>
<td>6210-430-N143-6010</td>
<td>$36,717</td>
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</tbody>
</table>
A RESOLUTION APPROVING THE EXPANSION OF THE CONSULTANT LIST FOR ENGINEERING DESIGN SERVICES FOR STREET PROJECTS

WHEREAS, the Public Works Department performs several Capital Improvement Projects (CIPs) that require engineering design that are beyond the City’s current staffing levels and workload to accomplish in a timely manner, and

WHEREAS, staff has found it necessary to utilize the services of engineering firms with experience designing road improvement projects, and

WHEREAS, on November 12, 2008, the City Council, by Resolution No. 2008-630, approving several short-listed firms to perform engineering design work and construction inspection services, and

WHEREAS, one of the lists approved was specifically for the design of street projects and this list contained the four (4) most qualified firms, and

WHEREAS, only one of the firms on the approved list was local, and

WHEREAS, several engineering firms voiced their concern about the lack of local firms on the short list, and

WHEREAS, staff met with the engineering firms on January 14, 2009, to discuss their concerns regarding the City’s procedures for hiring consultants, and

WHEREAS, staff agreed to add the next four (4) highest-ranking, local firms to the short list, bringing the total number of firms on the list to eight (8), and

WHEREAS, for each CIP, a written proposal outlining the scope of services, design schedule and cost estimate will be submitted by the selected consultant, and
WHEREAS, the selected consultant will perform no service until the City has approved the proposal and contract, and a written Notice to Proceed is prepared and sent to the selected consultant, and

WHEREAS, the selected consultant will be determined on a CIP project basis once a scope of work and contract have been negotiated with the most qualified firm(s) from the short lists for each particular CIP project, and

WHEREAS, City staff recommends approving the expansion of the prequalified consultant list for engineering design services for street projects to include four (4) additional local firms.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the expansion of the prequalified consultant list for engineering design services for street projects.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 10th day of February, 2009, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember Lopez, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST:  

(SIGNATURE)

APPROVED AS TO FORM:

By:  

(SIGNATURE)

SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2009-077

A RESOLUTION APPROVING THE RETURN OF $1.055 MILLION IN CAPITAL FACILITY FEE (CFF) PROJECT SAVINGS FROM THE CLARATINA EXPRESSWAY EXTENSION FROM COFFEE TO OAKDALE ROAD, CAPITAL IMPROVEMENT PROJECT (CIP) TO CFF RESERVES AND REALLOCATING THE FUNDS TO A NEW CIP PROJECT FOR THE DESIGN AND RIGHT-OF-WAY (ROW) ACQUISITION RELATED TO INTERSECTION IMPROVEMENTS AND A NEW ROUNDBOY AT COFFEE ROAD AND CLARATINA AVENUE

WHEREAS, on June 24, 2008, Council, by Resolution No. 2008-374, awarded a contract to Teichert Construction, Inc., in the amount of $1,083,508, for the construction of Claratina Avenue between Coffee Road and Oakdale Road, and

WHEREAS, the bid amount was significantly lower than the Engineer’s Estimate and as a result, there is $1.055 million available to fund the Claratina Avenue at Coffee Road Roundabout project, and

WHEREAS, at its March 8, 2005 meeting, Council directed staff to install an interim landscaped roundabout with a life expectancy of 20-plus years at the intersection of Coffee Road and Claratina Avenue, and

WHEREAS, the roundabout was to be part of the Claratina Extension project from Coffee Road to Oakdale Road, and

WHEREAS, right-of-way delays caused the extension to move forward without the roundabout, and

WHEREAS, staff is in negotiations with the property owner for the right-of-way acquisition at the southeast corner, and

WHEREAS, the Finance Committee at its December 11, 2008 meeting, reviewed and concurs with staff’s recommendation to return $1.055 million in Capital Facility Fee...
(CFF) project savings from the Claratina Expressway Extension from Coffee to Oakdale Road. Capital Improvement Project (CIP) to CFF reserves and reallocating the funds to a new CIP project for the design and right-of-way (ROW) acquisition related to construction of intersection improvements and a new roundabout at Coffee Road and Claratina Avenue as follows:

- **Design** 6010 $75,000
- **ROW Acquisition** 6030 $30,000
- **Roadway Improvements** 6040 $639,936
- **Construction of RAB** 6040 $185,000
- **Contingencies** 6050 $60,000
- **Construction Admin** 6060 $65,000

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the return of $1.055 million in Capital Facility Fee (CFF) project savings from the Claratina Expressway Extension from Coffee to Oakdale Road, Capital Improvement Project (CIP) to CFF reserves and reallocating the funds to a new CIP project for the design and right-of-way (ROW) acquisition related to construction of intersection improvements and a new roundabout at Coffee Road and Claratina Avenue.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 10th day of February, 2009, by Councilmember Olsen, who moved its adoption, which motion being duly seconded by Councilmember Marsh, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED AS TO FORM:

By: [Signature]

SUSANA ALCALA WOOD, City Attorney
A RESOLUTION APPROVING THE DRAFT FINAL NOISE COMPATIBILITY PROGRAM AND SUPPORTING DOCUMENTATION FOR THE MODESTO CITY-COUNTY AIRPORT PART 150 NOISE COMPATIBILITY STUDY, AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE SPONSOR'S CERTIFICATION DOCUMENT

WHEREAS, in response to concerns regarding environmental impacts of aviation noise, Congress provides federal funding for certain projects related to aircraft noise issues under the 1979 Aviation Safety and Noise Abatement Act, and

WHEREAS, the Federal Aviation Administration (FAA) established program guidelines under 14 CFR Part 150 to set minimum standards for the preparation of noise compatibility studies, and

WHEREAS, the Modesto Noise Compatibility Program (NCP) is intended to promote aircraft noise control and land use compatibility, and

WHEREAS, on December 11, 2001, the Council, by Resolution 2001-635, approved a Professional Services Agreement with Coffman and Associates to complete an Airport Master Plan for Modesto City-County Airport, and

WHEREAS, 95% funding for a Part 150 Study and environmental review was subsequently approved by the FAA in Airport Improvement Program grant No. AIP 3-06-0153-30, which was accepted by Council on July 11, 2006, by Resolution No. 2006-445, and

WHEREAS, on October 24, 2006, Council, by Resolution No. 2006-680, approved an amendment to the agreement with Coffman Associates to reflect the revised Scope of Services and revised Final Cost Estimate to include the NCP Update, and
WHEREAS, on May 13, 2008, Council by Resolution No. 2008-274, approved Part I of the draft Part 150 Study, the draft Final Noise Exposure Maps, and supporting documentation, and

WHEREAS, after concluding four public workshops presenting Part Two of the draft Part 150 Study to the public, Coffman Associates, Inc. conducted a Public Hearing on November 17, 2008 to solicit further input from interested parties, and

WHEREAS, a final draft Part 150 Study, incorporating comments and suggestions, has been prepared by Coffman Associates.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the Draft Final Noise Compatibility Program and supporting documentation for the Modesto City-County Airport Part 150 Noise Compatibility Study, and

BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute the Sponsor’s Certification document.
The foregoing resolution was introduced at a regular meeting of the Council of
the City of Modesto held on the 10th day of February, 2009, by Councilmember Hawn.
who moved its adoption, which motion being duly seconded by Councilmember Lopez.
was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmember: None

ABSENT: Councilmember: None

ATTEST: STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney
A RESOLUTION APPOINTING KENT FAULKNER TO THE LANDMARK PRESERVATION AS THE CULTURE COMMISSION’S REPRESENTATIVE

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

WHEREAS, on January 26, 2009, the Culture Commission unanimously recommended KENT FAULKNER as its representative to the Landmark Preservation Commission.

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

SECTION 1. KENT FAULKNER, as representative of the Culture Commission, is hereby appointed to the Landmark Preservation Commission with a term expiration of January 1, 2012.

SECTION 2. The City Clerk is hereby directed to transmit a copy of this resolution to the appointed member of the Landmark Preservation 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 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, Lopez, Marsh, O’Brien, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: Keating

ATTEST: 

(SIGNATURE)

APPROVED AS TO FORM:

By: 

(SIGNATURE)

SUSANA ALCAI A WOOD, City Attorney
A RESOLUTION DENYING THE APPEAL OF MIKA TELECOM ON BEHALF OF OMNIPOINT COMMUNICATIONS DBA T-MOBILE TO A BOARD OF ZONING ADJUSTMENT DECISION DENYING A CONDITIONAL USE PERMIT FOR A 75' CELLULAR TOWER LOCATED AT 3120 MCHENRY AVENUE

WHEREAS, Section 10-2.1207(g) requires a Conditional Use Permit by the Board of Zoning Adjustment for structures taller than 35' in height within the C-3 Highway Commercial Zone, and

WHEREAS, on June 11, 2008, Mika Telecom on behalf of Omnipoint Communications DBA T-Mobile submitted plot plans and elevations for a 75' cellular tower facility located at 3120 McHenry Avenue, and

WHEREAS, a public hearing was held by the Board of Zoning Adjustment on August 28, 2008, in the Tenth Street Place Chambers, located at, 1010 Tenth Street, Modesto, California, at which meeting, evidence, both oral and documentary, was received and considered, and

WHEREAS, the Board of Zoning Adjustment continued the public hearing to September 25, 2008, to allow the applicant to provide additional information regarding co-location opportunities, and

WHEREAS, a public hearing was held by the Board of Zoning Adjustment on September 25, 2008, in Chambers, Tenth Street Place, 1010 Tenth Street, Modesto, California, at which hearing evidence both oral and documentary was received and considered, and

WHEREAS, by Resolution No. 2008-08, the Board of Zoning Adjustment denied the Conditional Use Permit, and
WHEREAS, on October 8, 2008, Mika Telecom on behalf of Omnipoint Communications DBA T-Mobile filed an appeal to the decision of the Board of Zoning Adjustment pursuant to Section 10-2.2801 of the Municipal Code, and

WHEREAS, said appeal was set for a duly noticed public hearing before the City Council to be held on December 9, 2008, at 5:30 pm in the Tenth Street Place Chambers located at 1010 Tenth Street, Modesto, California, at which time said public hearing was held, and evidence both oral and documentary was received and considered, and

WHEREAS, the City Council continued the public hearing to February 3, 2009, to allow the applicant to provide additional information regarding the feasibility of co-location at an existing cellular tower located at 3105 McHenry Avenue, and

WHEREAS, the public hearing was held by the City Council of Modesto on February 3, 2009, in Chambers, Tenth Street Place, 1010 Tenth Street, Modesto, CA, at which hearing evidence both oral and documentary was received and considered, and

NOW, THEREFORE, BE IT RESOLVED by the City Council of Modesto that it finds and determines, based on substantial evidence and testimony in the administrative record, that the appeal of Mika Telecom on behalf Omnipoint Communications DBA T-Mobile to the decision of the Board of Zoning Adjustment should be denied and the decision of the Board of Zoning Adjustment should be affirmed because while there is a significant gap in the applicant’s service coverage, the proposed cellular tower would not be the least intrusive means to fill the gap, and

BE IT FURTHER RESOLVED by the City Council of Modesto that the appeal of Mika Telecom on behalf of Omnipoint Communications DBA T-Mobile to a Board of Zoning Adjustment decision denying the Conditional Use Permit for a 75’ cellular tower
facility at 3120 McHenry Avenue is denied, and the decision of the Board of Zoning Adjustment is hereby affirmed for the reason set forth above, and

BE IT FURTHER RESOLVED by the City Council of Modesto that the application fee for a new Conditional Use Permit by Mika Telecom on behalf of Omnipoint Communications DBA T-Mobile for a co-location upon an existing cellular tower located at 3105 McHenry Avenue be waived.

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 Hawn, who moved its adoption, which motion being duly seconded by Councilmember Lopez, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Hawn, Lopez, O’Bryant, Olsen, Mayor Ridenour
NOES: Councilmembers: None
ABSENT: Councilmembers: Keating, Marsh

ATTEST: STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2009-081

A RESOLUTION OF INTENTION TO ANNEX TERRITORY TO COMMUNITY FACILITIES DISTRICT NO. 2007-2 (KIERNAN BUSINESS PARK WEST) AND TO AUTHORIZE THE LEVY OF SPECIAL TAXES THEREIN (ANNEXATION No. 1)

WHEREAS, pursuant to Chapter 3.5 Division 2 of Title 5 (commencing with Section 53311) of the California Government Code, commonly known as the “Mello-Roos Community Facilities Act of 1982” (the “Act”), proceedings for the annexation of territory to an existing community facilities district may, pursuant to Chapter 3.5 of the Act, be instituted by the adoption by the legislative body of a resolution of intention to annex such territory, and

WHEREAS, pursuant to the Act, this Council did, by its Resolution No. 2007-584, adopted on October 2, 2007 (the “Resolution of Formation”), establish the City’s Community Facilities District No. 2007-2 (Kiernan Business Park West) (“the District”), and

WHEREAS, this Council hereby determines that the public convenience and necessity require the annexation of certain territory to the District, and

WHEREAS, the territory to be annexed is within the City limits.

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

SECTION 1. The above recitals are true and correct.

SECTION 2. The boundaries of the District are shown on a map entitled “Boundary Map of City of Modesto Community Facilities District No. 2007-2 (Kiernan
Business Park West) of the City of Modesto, County of Stanislaus, State of California on file with the County Recorder of the County of Stanislaus, at Book 4 of Maps of Assessment and Community Facilities Districts, at Page 96.

SECTION 3. The territory proposed to be annexed to the District (the "Territory") is described in Exhibit A.

SECTION 4. The boundaries of the Territory are also shown on the map thereof, entitled "Annexation Map No. 1 of Community Facilities District No. 2007-2 (Kiernan Business Park West) of the City of Modesto, County of Stanislaus, State of California," on file in the office of the City Clerk, hereby approved and adopted. Pursuant to Sections 3110.5 and 3113 of the California Streets and Highways Code, the City Clerk shall endorse her certificate on the original and one copy of the map evidencing the date and adoption of this Resolution, file the original in her office and, not later than ten days after the adoption of this Resolution, file a copy of the map with the County Recorder of the County of Stanislaus. The map shall contain the legends provided in Sections 3110 and 3110.5 of the California Streets and Highways Code, including a reference to the title, book, page and recording date of the original boundary map of the District.

SECTION 5. The public facilities and services to be provided for the District are set forth in the Resolution of Formation. It is intended that these same facilities and services be provided to the Territory.

SECTION 6. The special taxes to be levied in the District are also set forth in the Resolution of Formation. It is intended that the same special taxes be levied in the Territory.
SECTION 7. A public hearing on this Resolution will be held at 5:30 p.m., or as soon thereafter as practicable, on Tuesday, March 24, 2009, at the regular meeting place of the City Council, City Council Chambers, Basement Level, 1010 Tenth Street, Modesto, California 95354, such time being not less than 30 or more than 60 days following the adoption hereof.

SECTION 8. At the hearing, any interested persons for or against the annexation of the Territory to the District, and the levy of the special taxes therein, may appear and will be heard and considered. Any protest may be made orally or in writing. However, any protests pertaining to the regularity or sufficiency of the proceedings shall be in writing and clearly set forth the irregularities and defects to which the objection is made. All written protests shall be filed with the City Clerk on or before the time fixed for the public hearing. Written protests may be withdrawn in writing at any time before the conclusion of the hearing.

SECTION 9. The City Clerk is directed to publish, not later than seven days prior thereto, a notice of the hearing, in the form required by the Act, in a newspaper of general circulation published in the area of the District, being The Modesto Bee, and otherwise in accordance with Section 6061 of the California Government Code, stating (a) the text or a summary of this Resolution, (b) the time and place of the hearing, and (c) that all interested persons for or against the annexation of the Territory to the District or the levying of the special taxes in the Territory will be heard.

SECTION 10. (a) If a majority (but at least six) of the registered voters residing within the District or a majority (but at least six) of the registered voters residing within the Territory, or the owners of one-half or more of the area of the land in the District and
not exempt from the special tax, or the owners of one-half or more of the Territory, file written protests against the proposed annexation, and the protests are not withdrawn so as to reduce the value of the protests to less than a majority, no further proceedings to annex the Territory to the District, or to levy in the Territory the special taxes to be levied in the District, shall be taken for a period of one year from the date of the decision of the Council on the issues discussed at the hearing.

SECTION 11. At the conclusion of the hearing, if the Council determines to annex the Territory to the District, it will submit the levy of the special taxes to the qualified electors of the Territory in a special election.

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
EXHIBIT A

ANNEXATION NO. 1 TO
COMMUNITY FACILITIES DISTRICT NO. 2007-2 (Kiernan Business Park West)
EXHIBIT A

CITY OF MODESTO
COMMUNITY FACILITIES DISTRICT NO. 2007-2
(KIERNAN BUSINESS PARK WEST)

DESCRIPTION OF AUTHORIZED SERVICES AND FACILITIES TO BE FUNDED BY
COMMUNITY FACILITIES DISTRICT NO. 2007-2

The authorized services to be funded by special tax revenues include maintenance and repair of parkways, landscaped medians, the bike path, well site, storm drainage pump and basin, and related facilities, including but not limited to, concrete curbs and walks, trees, shrubs, vines, ground cover, turf, lights and irrigation systems. The services to be provided include, but are not limited to, litter and debris removal, graffiti abatement, painting repairs to landscape structures, pruning, staking, fertilizing, plant replacement and restoration, fire and weed control, erosion control, mowing of lawns, trimming of vegetation, and maintenance, repair and replacement of lighting systems.

The facilities described below are the facilities which the CFD is authorized to fund:

- Dale Road between Kiernan Ave. and Pelandale Ave. This road segment includes a landscaped median and a landscaped parkway strip.
- Healthcare Way between Dale Road and the western edge of the Kaiser facility. This road segment includes a landscaped median.
- Bangs Avenue from Dale Road to American Avenue. This road segment includes a landscaped median and a landscaped parkway strip.

The installation of authorized facilities may, but will not necessarily include, concrete curbs and walks, trees, shrubs, ground cover, lights, and irrigation systems.

The District may also fund any of the following: (i) administrative fees of the City related to the District, including costs associated with preparing the annual special tax levy, or (ii) costs associated with legal services, advertising, legal notices, and mailings related to formation or administration of the District.