MODESTO CITY COUNCIL
RESOLUTION NO. 2008-185

A RESOLUTION APPROVING AN AGREEMENT FOR THE ACQUISITION OF A PORTION OF A PARCEL OF LAND ALONG PELANDALE AVENUE AT SISK ROAD (4201 SISK ROAD) OWNED BY OKADA BROTHERS (APN: 135-029-039), INCLUDING A TEMPORARY CONSTRUCTION EASEMENT (TCE) TO BE PURCHASED BY THE CITY OF MODESTO FOR THE PELANDALE AVENUE/SISK ROAD TO STATE ROUTE 99 IMPROVEMENTS PROJECT IN THE AMOUNT OF $60,000, AND AUTHORIZING THE INTERIM CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE AGREEMENT

WHEREAS, on September 7, 2004, the City Council by Resolution No. 2004-451 adopted the 2004/2005 Capital Improvement Program, and

WHEREAS, the 2004/2005 Capital Improvement Program included an intersection improvement project titled, “CIP H424: Pelandale Avenue - Sisk Road to SR99 Northbound On-Ramp,” and

WHEREAS, the Pelandale Avenue/Sisk Road/SR 99 Improvement Project is scheduled to commence in fiscal year 2007/2008, and

WHEREAS, the project scope of work requires (1) acquisition of additional permanent right-of-way along the north roadside, and (2) temporary construction easements outside the permanent right-of-way limits on the north side of the roadway, and

WHEREAS, the City has evaluated the cost and time benefit of acquiring the additional right-of-way, and

WHEREAS, a 1,327 sq ft partial right-of-way take was identified for permanent acquisition and a 3,094 sq ft Temporary Construction Easement was identified for a limited duration on a parcel at Pelandale Avenue at Sisk Road owned by Okada Brothers, (APN: 135-029-039), and
WHEREAS, the City Council directed staff to enter into negotiations with Okada Brothers to purchase the portion of its parcel of land along Pelandale Avenue at Sisk Road (4201 Sisk Road) for the Pelandale Avenue/Sisk Road/SR/99 Improvement Project, and

WHEREAS, the property has been appraised and an offer to acquire the property has been accepted by Okada Brothers,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the Agreement for the acquisition of a portion of a parcel of land along Pelandale Avenue at Sisk Road (4201 Sisk Road) owned by Okada Brothers (APN: 135-029-039) for the Pelandale Avenue/Sisk Road to State Route 99 Improvements Project in the amount of $60,000.

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

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 1st day of April, 2008, 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

APPROVED AS TO FORM:

By ____________________________

SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2008-186

A RESOLUTION AUTHORIZING THE INTERIM CITY MANAGER, OR HIS DESIGNEE, TO SIGN ACCEPTANCE FORMS FOR THE GRANT DEED FOR THE ACQUISITION OF A PORTION OF THE PARCEL ALONG PELANDALE AVENUE AT SISK ROAD (4201 SISK ROAD) OWNED BY OKADA BROTHERS (APN: 135-029-039), AND A TEMPORARY CONSTRUCTION EASEMENT TO THE CITY OF MODESTO FOR THE PELANDALE AVENUE/SISK ROAD TO STATE ROUTE 99 IMPROVEMENTS PROJECT

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

WHEREAS, the City of Modesto desires to acquire a portion of a parcel (APN: 135-029-039) for the Pelandale Avenue/Sisk Road/State Route 99 Improvement Project,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the Interim 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 portion of a property owned by Okada Brothers, (APN: 135-029-039) and one (1) Temporary Construction Easement (APN: 135-029-039) for the Pelandale Avenue/Sisk Road to State Route 99 Improvements Project.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 1st day of April, 2008, 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, Acting City Clerk
MODESTO CITY COUNCIL
RESOLUTION NO. 2008-187

A RESOLUTION APPROVING AN AGREEMENT WITH CAROLLO ENGINEERS, P.C. FOR PROFESSIONAL ENGINEERING SERVICES TO PREPARE A WASTEWATER MASTER PLAN SUPPLEMENT IN AN AMOUNT NOT TO EXCEED $133,500, AND AUTHORIZING THE INTERIM CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE AGREEMENT

WHEREAS, typically, municipal Wastewater Management Plans (WWMP) are updated every five to seven years to incorporate additional growth, current operations, and new planning data, and

WHEREAS, having a current and comprehensive WWMP is a critical step in keeping the City ahead of the replacement requirements of an aging infrastructure system and the pressures of expanding urban growth, and

WHEREAS, the City Council, on January 27, 2004, by Resolution No. 2004-050, approved an agreement with Carollo Engineers, P.C. (Carollo), of Walnut Creek, California, to update the City’s WWMP, and it was completed and adopted in 2007, and

WHEREAS, the 2007 WWMP was prepared using City-furnished population growth rates available from 2005-2006, and

WHEREAS, the plan relied upon anticipated wastewater discharge permit conditions for the Jennings Road Secondary Treatment Facility based on several meetings and lengthy discussions with staff of the Regional Water Quality Control Board (RWQCB), and

WHEREAS, recent housing and resultant near-term population growth has slowed considerably in the last 12 months, and
WHEREAS, the RWQCB issued a new tentative waste discharge order (TO) on January 15, 2008, with limits more restrictive than those indicated from previous communications, and

WHEREAS, the TO includes unprecedented limits for seasonal secondary effluent discharges into the San Joaquin River, and

WHEREAS, the City will need to meet the new limits for ammonia, nitrate, and carbon tetrachloride, approximately 5 years from the permit’s effective date (anticipated in 2013), and

WHEREAS, it may be likely that the net effect of the TO will be to advance the timeframe required to achieve tertiary treatment and year-round river discharge (Phase 1B and Phase 2) from 2016 to 2014, and

WHEREAS, as a result, a WWMP Supplement is necessary to revise the City’s strategic plan to meet these new discharge requirements and accommodate revised growth projections, reprioritize the capital improvement program and revise the projected cash flow curve, to be used by others, to update future wastewater rates, and

WHEREAS, the City does not currently have the staffing level or expertise to complete the WWMP Supplement work in-house, and

WHEREAS, due to Carollo’s familiarity with the City’s wastewater treatment facilities, as well as their ongoing work with the Phase 1A Tertiary Treatment Facility and their current task of analyzing alternatives to meet new discharge permit requirements, Carollo is best suited to provide professional services that will enable this project to be completed in a timely manner, and
WHEREAS, City staff recommends an agreement with the consulting firm of Carollo Engineers, P.C. be approved to provide professional engineering services to prepare a Wastewater Master Plan supplement as current workload levels do not provide for timely in-house solutions/responses, and

WHEREAS, City staff recommends that City Council approve an agreement with Carollo Engineers, P.C. to provide professional engineering services to prepare a Wastewater Master Plan supplement in an amount not to exceed $133,500, and

WHEREAS, Carollo will be paid on a time and materials basis for actual hours required performing individual tasks at a set rate,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves an agreement with Carollo Engineers, P.C. to provide professional engineering services to prepare a Wastewater Master Plan supplement in an amount not to exceed $133,500.

BE IT FURTHER RESOLVED that the Interim City Manager, or his designee, is hereby authorized to execute the Agreement.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 1st day of April, 2008, 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, Acting City Clerk

(SEAL)

APPROVED AS TO FORM:

By SUSANÂ ALCALA WOOD, City Attorney
A RESOLUTION APPROVING AN AGREEMENT WITH BROWN AND CALDWELL TO PREPARE A FINAL PROJECT DESIGN FOR THE PRIMARY OUTFALL REHABILITATION PROJECT IN AN AMOUNT NOT TO EXCEED $787,401 FOR THE IDENTIFIED SCOPE OF SERVICES, PLUS $78,740 FOR ADDITIONAL SERVICES (IF NEEDED) FOR A MAXIMUM TOTAL AMOUNT NOT TO EXCEED $866,141, AND AUTHORIZING THE INTERIM CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE AGREEMENT

WHEREAS, the City of Modesto (City) owns and operates approximately 6.5 miles of 60-inch diameter pipeline that transports primary effluent from the Sutter Avenue Primary Water Quality Control (WQC) Plant (Primary Plant) to the Jennings Road Secondary WQC Plant (Secondary Plant), and

WHEREAS, the existing Primary Outfall pipeline was constructed in 1969, and

WHEREAS, the condition of the Primary Outfall pipe has deteriorated over its operational life due to internal hydrogen sulfide-induced corrosion that has resulted in pipe repairs, and

WHEREAS, although approximately 7,000 feet of the Primary Outfall has been rehabilitated in two locations along the alignment, subsequent spot inspections by the City have identified a continuing deterioration in the Primary Outfall and the need for corrective action, and

WHEREAS, the City Council, on March 13, 2007, by Resolution No. 2007-178, approved certifying the Final Master Environmental Impact Report for the City of Modesto Wastewater Master Plan Update, which identified that the Primary Outfall has insufficient capacity under its current operating condition for projected Peak Dry
Weather Flow, and recommended changing the operating condition from a gravity system to a continuous force main, and

WHEREAS, this project will not only rehabilitate the Primary Outfall, but will also increase its hydraulic capacity, improve reliability, and reduce future maintenance, and

WHEREAS, the City Council, on June 12, 2007, by Resolution No. 2007-350, approved an Agreement with Brown and Caldwell to complete the 35% design effort and a Preliminary Design Report (PDR) for the Primary Outfall Rehabilitation Project, and

WHEREAS, the PDR summarizes existing facilities, details proposed project elements and rehabilitation method descriptions, presents preliminary engineering drawings, and provides estimated cost and schedule projections for project implementation, and

WHEREAS, the PDR has been completed and will serve as the basis of final design for the Primary Outfall Rehabilitation project, and

WHEREAS, City staff recommends an agreement with the consulting firm of Brown and Caldwell be approved to perform the final design services as the City does not have the staffing level or subject matter expertise to complete the final design of the Primary Outfall Rehabilitation project and current workload levels do not provide for timely in-house solutions/responses, and

WHEREAS, selecting Brown and Caldwell to complete the final design services will maximize benefits to the City related to utilizing knowledge gained through the preliminary design effort, and
WHEREAS, Brown and Caldwell will be paid on a time and materials basis for actual hours required performing individual tasks at a set rate,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves an Agreement with Brown and Caldwell to prepare a final project design for the Primary Outfall Rehabilitation project in an amount not to exceed $787,401 for the identified scope of services, plus $78,740 for additional services (if needed) for a maximum total amount not to exceed $866,141.

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

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 1st day of April, 2008, 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, Acting City Clerk
(SEAL)

APPROVED AS TO FORM:

By SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2008-189

A RESOLUTION AMENDING THE CURRENT CAPITAL IMPROVEMENT PROGRAM (CIP) BUDGET BY APPROVING A TRANSFER OF FUNDS IN THE AMOUNT OF $263,175 FROM ACCOUNT 6210-800-8000-8003 “WASTEWATER FUND-RESERVES” TO CIP ACCOUNT 6210-430-B812-6010 “PRIMARY OUTFALL REHABILITATION” IN ORDER TO FULLY FUND THE AGREEMENT WITH BROWN AND CALDWELL TO PERFORM THE REQUIRED FINAL DESIGN SERVICES TO COMPLETE THE PRIMARY OUTFALL REHABILITATION PROJECT

WHEREAS, certain budgetary transactions are necessary to fully fund the agreement with Brown and Caldwell (B&C) in an amount not to exceed $787,401, for the identified scope of services, plus $78,740 for additional services (if needed) for a maximum total amount not to exceed $866,141 to perform the required final design services to complete the Primary Outfall Rehabilitation project, and

WHEREAS, to fully fund the agreement to prepare a final project design for the Primary Outfall Rehabilitation project in the maximum not-to exceed amount of $866,141, plus $78,740 for project administration services by City staff, the current Capital Improvement Program (CIP) budget must be amended by transferring $263,175 from Account 6210-800-8000-8003 “Wastewater Fund-Reserves” to CIP Account 6210-430-B812-6010 “Primary Outfall Rehabilitation” to perform the required final design services to complete the Primary Outfall Rehabilitation project,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the transfer of funds as set forth herein to fully fund the agreement with Brown and Caldwell to perform the required final design services to complete the Primary Outfall Rehabilitation project.
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 1st day of April, 2008, 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, Acting City Clerk

(SEAL)

APPROVED AS TO FORM:

By SUSANA ALCALA WOOD, City Attorney
A RESOLUTION APPROVING AN AGREEMENT WITH BROWN AND CALDWELL TO PREPARE A FINAL PROJECT DESIGN FOR THE EMERALD TRUNK REHABILITATION PROJECT IN AN AMOUNT NOT TO EXCEED $663,278, FOR THE IDENTIFIED SCOPE OF SERVICES, PLUS $66,327 FOR ADDITIONAL SERVICES (IF NEEDED) FOR A MAXIMUM TOTAL AMOUNT NOT TO EXCEED $729,605, AND AUTHORIZING THE INTERIM CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE AGREEMENT

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

WHEREAS, the Emerald Trunk has experienced three recent collapses that required expedited and costly pipe replacement projects, and

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

WHEREAS, the project is located in a busy corridor with numerous roadway, railroad, utility, and channel crossings, as well as a variety of residential, commercial, and school properties, and

WHEREAS, the City Council, on June 12, 2007, by Resolution No. 2007-349, approved an Agreement with Brown and Caldwell to complete the 35% design effort and a Preliminary Design Report (PDR) for the Emerald Trunk Rehabilitation Project, and

WHEREAS, the PDR summarizes existing facilities, details proposed project elements and rehabilitation method descriptions, presents preliminary engineering drawings, and provides estimated cost and schedule projections for project implementation, and
WHEREAS, to limit project impacts to Emerald Avenue, the PDR considered rehabilitation methods that utilize trenchless technologies such as slip lining or cured-in-place pipe (CIPP), and

WHEREAS, the PDR has been completed and will serve as the basis for the final design of the Emerald Trunk Rehabilitation project, and

WHEREAS, City staff recommends an agreement with the consulting firm of Brown and Caldwell be approved to perform the final design services as the City does not have the staffing level or subject matter expertise to complete the final design of the Emerald Trunk Rehabilitation Project and current workload levels do not provide for timely in-house solutions/responses, and

WHEREAS, selecting Brown and Caldwell to complete the final design services will maximize benefits to the City related to utilizing knowledge gained through the preliminary design effort, and

WHEREAS, Brown and Caldwell will be paid on a time and materials basis for actual hours required performing individual tasks at a set rate,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves an agreement with Brown and Caldwell to prepare a final project design for the Emerald Trunk Rehabilitation project in an amount not to exceed $663,278, for the identified scope of services, plus $66,327 for additional services (if needed) for a maximum total amount not to exceed $729,605.

BE IT FURTHER RESOLVED that the Interim City Manager, or his designee, is hereby authorized to execute the Agreement.
The foregoing resolution was introduced at a regular meeting of the Council of
the City of Modesto held on the 1st day of April, 2008, 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 AMENDING THE CURRENT CAPITAL IMPROVEMENT PROGRAM (CIP) BUDGET BY APPROVING A TRANSFER OF FUNDS IN THE AMOUNT OF $273,262 FROM ACCOUNT 6210-800-8000-8003 “WASTEWATER FUND-RESERVES” TO CIP ACCOUNT 6210-430-B808-6010 “EMERALD TRUNK REHABILITATION” IN ORDER TO FULLY FUND THE AGREEMENT WITH BROWN AND CALDWELL TO PERFORM THE REQUIRED FINAL DESIGN SERVICES TO COMPLETE THE EMERALD TRUNK REHABILITATION PROJECT

WHEREAS, certain budgetary transactions are necessary to fully fund the agreement with Brown and Caldwell (B&C) in an amount not to exceed $663,278, for the identified scope of services, plus $66,327 for additional services (if needed) for a maximum total amount not to exceed $729,605 to perform the required final design services to complete the Emerald Trunk Rehabilitation project, and

WHEREAS, to fully fund the agreement to prepare a final project design for the Emerald Trunk Rehabilitation project in the maximum not-to exceed amount of $729,605, plus $66,328 for project administration services by City staff, the current Capital Improvement Program (CIP) budget must be amended by transferring $273,262 from Account 6210-800-8000-8003 “Wastewater Fund-Reserves” to CIP Account 6210-430-B808-6010 “Emerald Trunk Rehabilitation” to perform the required final design services to complete the Emerald Trunk Rehabilitation project,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the transfer of funds as set forth herein to fully fund the agreement with Brown and Caldwell to perform the required final design services to complete the Emerald Trunk Rehabilitation project.
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 1st day of April, 2008, 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, Acting City Clerk

(SEAL)

APPROVED AS TO FORM:

By SUSANA ALCALA WOOD, City Attorney
A RESOLUTION AUTHORIZING PUBLIC WORKS DEPARTMENT STAFF TO NEGOTIATE A FIVE-YEAR AGREEMENT WITH STORER TRANSIT SYSTEMS (STORER) TO OPERATE THE MODESTO AREA DIAL-A-RIDE (DAR) SERVICE AND BRING TO COUNCIL FOR CONSIDERATION.

WEREAS, the existing agreement with Storer Transit Systems to operate the Modesto Area Dial-A-Ride (DAR) service expires June 27, 2008, and

WEREAS, the City wishes to continue providing Dial-A-Ride service to the citizens of Modesto, and

WEREAS, the City Council authorized staff to solicit Request for Proposals for a new five-year contract to be effective June 28, 2008, and

WEREAS, Storer Transit Systems submitted a proposal that was determined to be reasonable and cost effective, and

WEREAS, by an agenda report to the City Council dated March 11, 2008, the Public Works Director recommended approval of the contract with Storer Transit Systems,

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby authorizes the Public Works staff to negotiate a five-year agreement with Storer Transit Systems to operate the Modesto Area Dial-A-Ride service and bring to Council for consideration.

BE IT FURTHER RESOLVED that staff is authorized to prepare a final agreement with Storer Transit Systems for consideration by the City Council.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 1st day of April, 2008 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, Acting City Clerk

(Seal)

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2008–193

A RESOLUTION AUTHORIZING A TRANSFER OF $23,900 FROM WASTEWATER RESERVES TO FUND ONE ADDITIONAL ENVIRONMENTAL COMPLIANCE INSPECTOR I/II IN ORGANIZATION 6210-480-5217 FOR THE REMAINDER OF FY 2007/08.

WHEREAS, on July 1, 2007, an Environmental Compliance Inspector I/II (ECI) position allocated to Public Works Department was reallocated to the Community and Economic Development Department (C&ED), and

WHEREAS, this position is responsible for the review of plans and specifications for the Public Works Department, as required for compliance with the City’s Stormwater National Pollutant Discharge Elimination Permit (NPDES), and

WHEREAS, this position is currently utilizing service credits for work performed for Environmental Services through the Storm Drain Fund, and

WHEREAS, it is anticipated that these costs will be covered under new fees currently being developed by C&ED, and

WHEREAS, the Environmental Services Section of the Public Works Department has responsibilities outlined in both of the City’s Wastewater and Stormwater NPDES Permits, and

WHEREAS, with the reallocation of this position to C&ED, Environmental Services is currently down one (1) ECI, and

WHEREAS, there are currently five (5) ECI positions allocated to Org. 5217 in the Wastewater Fund, and

WHEREAS, ECI’s are responsible for the protection of the treatment and collection systems, as well as worker health and safety related to pretreatment processes, and

WHEREAS, with the growth of the City of Modesto, including the state imposing new collection system waste discharge requirements, an additional ECI is required to support the
regulatory and permit requirements, as well as responding to illicit discharges and the changing needs of the industries, and

WHEREAS, the addition of one ECI position will assist in ensuring the City is meeting the needs of the NPDES permits, its citizens, industries, and governing agencies,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby authorizes the transfer of $23,900 from Wastewater Reserves to fund one additional Environmental Compliance Inspector I/II in organization 6210-480-5217.

The foregoing resolution was introduced at a special meeting of the Council of the City of Modesto held on the 1st day of April, 2008, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember Lopez, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: 

(SEAL)

APPROVED AS TO FORM:

BY: 

SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2008-194

A RESOLUTION APPROVING A JOINT POWERS AUTHORITY AGREEMENT WITH THE COUNTY OF STANISLAUS AND THE CITIES OF OAKDALE AND RIVERBANK FOR ROUTE ADOPTION OF THE NORTH COUNTY CORRIDOR TRANSPORTATION EXPRESSWAY, AND AUTHORIZING THE INTERIM CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE AGREEMENT

WHEREAS, east and west traffic congestion in northern Stanislaus County has increased dramatically in recent years, and

WHEREAS, to identify potential solutions to address this issue, the StanCOG Policy Board contracted with Nolte and Associates to complete a feasibility study of a potential northern transportation corridor in this area, and

WHEREAS, the draft study has identified several alternative alignments to assist in alleviating traffic congestion in this portion of the County, and

WHEREAS, these alignments are northerly and southerly of Kiernan/Claribel Roads, extending easterly from State Route 99 and terminating south and easterly of the City of Oakdale, and

WHEREAS, a future expressway in this area would help address Stanislaus County’s (County) needs for an east-west connector, and

WHEREAS, the North County Corridor (Corridor) has also been identified as a priority corridor by the County and the cities of Modesto, Oakdale, and Riverbank, and

WHEREAS, the proposed roadway would be built in unincorporated Stanislaus County and is not anticipated to cross any current city boundaries; however, portions of it may travel less than one mile south of Riverbank and Oakdale, and less than one mile north of Modesto, and
WHEREAS, a portion of the project would also traverse the designated sphere of influence for Modesto and future spheres for Riverbank and Oakdale, and

WHEREAS, in November 2007 each of these entities, along with StanCOG, agreed to contribute $30,000 each to the completion of a Project Study Report (PSR), and

WHEREAS, subsequent to the PSR, the Project Approval and Environmental Documentation (PA/ED) will provide more comprehensive design to solicit additional public input and recommend a “preferred alternative”, and

WHEREAS, the County and cities of Modesto, Oakdale, and Riverbank have been meeting and discussing how to develop a precise alignment for the Corridor, and

WHEREAS, it was determined that the formation of a Joint Powers Authority (JPA) would be the best mechanism to complete the PA/ED stage, which would commence upon completion of the PSR, and

WHEREAS, the proposed JPA Agreement will create a “North County Corridor Transportation Expressway Authority” (Authority), and

WHEREAS, under the terms of the JPA Agreement, the County will be responsible for 40% of the project activities and expenses and each participating city will be responsible for 20%, and

WHEREAS, the JPA Agreement requires that within 60 days of execution, the Authority shall adopt a budget to operate the Authority until June 30, 2009, and

WHEREAS, by March 1, 2009 and each year thereafter, the Authority shall adopt a budget for the coming fiscal year and transmit to each participant its coming fiscal year obligation, and

WHEREAS, the JPA Agreement also states that the County Public Works Director will be designated as the Authority’ Manager, the County Auditor-Controller
will be designated the Authority’s controller, and the County Treasurer will be designated as the Authority’s treasurer, and

WHEREAS, reasonable costs, as determined by the Stanislaus County Board of Supervisors, will be charges to the Authority for these officers’ services, and

WHEREAS, the exact costs associated with completing the PA/ED are not known at this time and will be established after completion of the currently funded PSR and circulation of a Request for Proposals for the PA/ED stage, and

WHEREAS, it is anticipated that the cost for the PA/ED work will be met through a combination of funds from the State Transportation Improvement Program (STIP) and Public Facilities Fees (PFF), and

WHEREAS, the City of Modesto is not anticipating any monetary contributions, yet there may be in-kind staff time contributions, and

WHEREAS, the Draft Expenditure Plan for the propose Transportation Sales Tax Initiative also identifies this critical corridor for funding,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves a Joint Powers Authority Agreement with the County of Stanislaus and the cities of Oakdale and Riverbank for Route Adoption of the North County Corridor Transportation Expressway.

BE IT FURTHER RESOLVED that the Council hereby authorizes the Interim City Manager, or his designee, to execute the agreement.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 1st day of April, 2008, 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, Acting City Clerk
MODESTO CITY COUNCIL
RESOLUTION NO. 2008-195

A RESOLUTION ACCEPTING THE WORK BY GEORGE REED, INC. FOR THE PROJECT TITLED “FLOYD AVENUE IMPROVEMENTS – OAKDALE ROAD TO GROUSE CROSSING WAY” AS COMPLETE, AUTHORIZING THE ACTING CITY CLERK TO FILE A NOTICE OF COMPLETION WITH THE STANISLAUS COUNTY RECORDER AND TO RELEASE SECURITIES UPON EXPIRATION OF STATUTORY PERIODS, AND AUTHORIZING PAYMENT OF AMOUNTS TOTALING $2,601,621.60.

WHEREAS, a report has been filed by the Public Works Director that the project titled “Floyd Avenue Improvements – Oakdale Road to Grouse Crossing Way” has been completed by George Reed, Inc., in accordance with the contract agreement dated May 25, 2005,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the project titled “Floyd Avenue Improvements – Oakdale Road to Grouse Crossing Way” is hereby accepted as complete from said contractor George Reed, Inc, that the Acting City Clerk is authorized to file a Notice of Completion with the Stanislaus County Recorder and to release securities upon expiration of statutory periods, and that payment of amounts totaling $2,601,621.60 is authorized as provided in the contract.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 1st day of April, 2008, 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, Acting City Clerk
MODESTO CITY COUNCIL
RESOLUTION NO. 2008-196

A RESOLUTION ACCEPTING THE WORK BY MCM CONSTRUCTION, INC. FOR THE PROJECT TITLED “SYLVAN AVENUE PEDESTRIAN OVERCROSSING” AS COMPLETE, AUTHORIZING THE ACTING CITY CLERK TO FILE A NOTICE OF COMPLETION WITH THE STANISLAUS COUNTY RECORDER AND TO RELEASE SECURITIES UPON EXPIRATION OF STATUTORY PERIODS, AND AUTHORIZING PAYMENT OF AMOUNTS TOTALING $1,614,794.26.

WHEREAS, a report has been filed by the Public Works Director that the project titled “Sylvan Avenue Pedestrian Overcrossing” has been completed by MCM Construction, Inc., in accordance with the contract agreement dated October 24, 2006,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the project titled “Sylvan Avenue Pedestrian Overcrossing” is hereby accepted as complete from said contractor MCM Construction, Inc, that the Acting City Clerk is authorized to file a Notice of Completion with the Stanislaus County Recorder and to release securities upon expiration of statutory periods, and that payment of amounts totaling $1,614,794.26 is authorized as provided in the contract.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 1st day of April, 2008, 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, Acting City Clerk

(SEAL)

APPROVED AS TO FORM:  

By  

SUSANA ALCALA WOOD, City Attorney
A RESOLUTION ACCEPTING A PROPOSAL FROM BANK OF AMERICA, N.A. TO PROVIDE A STANDBY BOND PURCHASE AGREEMENT AND AUTHORIZING THE INTERIM CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE SAID AGREEMENT

WHEREAS, pursuant to the City of Modesto Water Revenue Bond Law, constituting Chapter 6 of Title VIII of the Modesto Municipal Code (the “Bond Law”), the City of Modesto, California (the “City”) is authorized to issue revenue bonds to provide funds to finance the costs of the acquisition, construction and equipping of improvements to the water system of the City (the “Enterprise”) or for the purpose of refunding bonds issued for such purposes, and

WHEREAS, the City previously approved the issuance of the 2006 Water Revenue Certificates of Participation to pay for the cost of certain downstream water system improvements, and

WHEREAS, current investment market conditions require the outstanding 2006 Water Revenue Certificates of Participation to be refinanced in order for the City to maintain the cost savings associated with the original debt issue, and

WHEREAS, the City Council appointed a bond financing team to refinance the 2006 Water Revenue Certificates of Participation at the March 4, 2008 City Council meeting, and

WHEREAS, the bond financing team is recommending the use of a bond purchase agreement as part of the refinancing strategy for the 2006 Water Revenue Certificates of Participation, and

WHEREAS, Bank of America has offered acceptable and competitive terms to provide a Standby Bond Purchase Agreement in its proposal dated April 1, 2008.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto, that it hereby accepts the proposal from Bank of America to provide a Standby Bond Purchase
Agreement and the Interim City Manager, or his designee, is authorized to sign the proposal on behalf of the city.

BE IT FURTHER RESOLVED that the bond financing team is authorized to negotiate the final terms of the Standby Bond Purchase Agreement and present them to the City Council for ratification at a future date. Interim City Manager, or his designee, is authorized to sign the proposal on behalf of the city.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 1st day of April, 2008, 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: O'Bryant

ABSENT: Councilmembers: None

ATTEST: [Signature]

STÉPHANIE LOPEZ, Acting City Clerk

(SEAL)

APPROVED AS TO FORM:

SUSAN ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2008-198

A RESOLUTION APPROVING A TAX-EXEMPT BOND FINANCING TO BE
 ISSUED BY THE CALIFORNIA STATEWIDE COMMUNITIES
 DEVELOPMENT AUTHORITY TO BENEFIT SUTTER HEALTH AND ITS
 AFFILIATES

WHEREAS, Sutter Health, Sutter Gould Medical Foundation and certain other
affiliates of Sutter Health, each a nonprofit public benefit corporation (collectively, the
“Health Institutions”), have requested that the California Statewide Communities
Development Authority (the “Authority”) issue bonds in one or more series in an
aggregate principal amount not to exceed $300,000,000 (the “Bonds”) for the purpose of,
among other things, financing or refinancing the acquisition, improvement and equipping
(the “Financing”) of certain health facilities owned or operated by the Health Institutions,
including Sutter Gould Medical Foundation (the “Facilities”) located in the City of
Modesto (the “City”), and

WHEREAS, pursuant to Section 147(f) of the Internal Revenue Code of 1986 (the
“Code”), the issuance of the Bonds by the Authority must be approved by the City
because the Facilities are located within the territorial limits of the City, and

WHEREAS, the City Council of the City (the “Council”) is the elected legislative
body of the City and is one of the applicable elected representatives required to approve
the issuance of the Bonds under Section 147(f) of the Code, and

WHEREAS, the Authority has requested that the Council approve the issuance of
the Bonds by the Authority in order to satisfy the public approval requirement of Section
147(f) of the Code and the requirements of Section 9 of the Amended and Restated Joint
Exhibit of Powers Agreement, dated as of June 1, 1988 (the "Agreement"), among certain local agencies, including the City, and

WHEREAS, pursuant to Section 147(f) of the Code, the Council has, following notice
duly given, held a public hearing regarding the issuance of the Bonds, and now desires to approve the issuance of the Bonds by the Authority,

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

SECTION 1. The Council hereby approves the issuance of the bonds by the Authority. It is the purpose and intent of the Council that this Resolution constitute approval of the issuance of the Bonds by the Authority, for the purposes of Section 147(f) of the Code by the applicable elected representative of the governmental unit having jurisdiction over the area in which the Facilities are to be located, in accordance with said Section 147(f) and Section 9 of the Agreement.

SECTION 2. The Interim City Manager, or his designee, is hereby authorized and directed, jointly and severally, to do any and all things and to execute and deliver any and all documents which they deem necessary or advisable in order to carry out, give effect to and comply with the terms and intent of this Resolution and the financing transaction approved hereby.

SECTION 3. This Resolution shall take effect immediately upon its adoption.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 1st day of April, 2008, by Councilmember Keating, 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: Keating, Lopez, Marsh, O’Bryant, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: Hawn

ATTEST: 

SEAL

APPROVED AS TO FORM:

By

SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2008-199

A RESOLUTION APPROVING A DEVELOPMENT PLAN FOR PLANNED DEVELOPMENT ZONE, P-D(584). (HORIZON CONSULTING/JEFFREY AND MARLENE COWAN)

WHEREAS, a verified application for an amendment to Section 21-3-9 of the Zoning Map was filed by Horizon Consulting on March 22, 2007, to reclassify from Neighborhood Commercial Zone, C-1, and General Commercial Zone, C-2, to Planned Development Zone, P-D(584), to allow for the addition of a 3,360-square-foot warehouse at the existing House of Carpets retail flooring and home furnishings business, property located on the southeast corner of McHenry Avenue and Roseburg Avenue, described as follows:

C-1 to P-D(584)
All that certain real property situated in the City of Modesto, County of Stanislaus, State of California, and being a portion of the northwest quarter of the southwest quarter of Section 21, Township 3 South, Range 9 East, Mount Diablo Base and Meridian, more particularly described as follows:

The east 80 feet of the northerly 118 feet of the west 267 feet of Lot 1 as shown on the Map of Miles Colony filed May 14, 1906 in the Office of the County Recorder of Stanislaus County, California, in Volume 2 of Maps, at Page 26.

C-2 to P-D(584)
All that certain real property situated in the City of Modesto, County of Stanislaus, State of California, and being a portion of the northwest quarter of the southwest quarter of Section 21, Township 3 South, Range 9 East, Mount Diablo Base and Meridian, more particularly described as follows:

Parcel A as shown on that Parcel Map filed June 16, 1970 in the Office of the County Recorder of Stanislaus County, California, in Volume 9 of Parcel Maps, at Page 20;

Also including the southerly half of Roseburg Avenue and the easterly half of McHenry Avenue all being immediately adjacent to the above described property.
WHEREAS, after a public hearing held on February 11, 2008, in the Tenth Street Place Chambers located at 1010 10th Street, Modesto, California, it was found and determined by the Planning Commission, by its Resolution No. 2008-10, that rezoning of the property as requested is required by public necessity, convenience, and general welfare for the following reasons:

1. The proposed rezone will facilitate the infill of an undeveloped lot in the Baseline Developed Area to compliment the uses of the adjacent lot;

2. The proposed rezoning will facilitate the improvement of the driveways to and from the existing business, and the improvement of the adjacent Roseburg Avenue frontage with new curb, gutter, sidewalk, and landscaping.

3. The proposed rezoning is consistent with the Modesto Urban Area General Plan because the use is consistent with the Commercial, (C), designation for the site.

and

WHEREAS, said matter was set for a public hearing of the City Council to be held on the 1st of April, 2008, in the Tenth Street Place Chambers located at 1010 10th 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 Horizon Consulting for a Planned Development Zone should be granted as consonant with public necessity, convenience and general welfare for the reasons set forth in Planning Commission Resolution No. 2008-10 and quoted above, and

WHEREAS, the Council has introduced Ordinance No. 3482-C.S. on the 1st day of April, 2008, reclassifying the above-described property from Neighborhood Commercial Zone, C-1, and General Commercial Zone, C-2, to Planned Development Zone, P-D(584).
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(584), is hereby approved subject to the following conditions:

1. All development shall conform to the site plan and building elevations titled "House of Carpets" as amended in red, stamped approved by the City Council.

2. Prior to the issuance of a building permit, improvement plans for any required improvements shall be prepared by a Registered Civil Engineer and approved by the City Engineer or designee. Improvements shall be constructed in accordance with the approved plans.

3. The driveway at the Roseburg Avenue frontage shall be improved to drop-curb type in accordance to City Standards or to the satisfaction of the City Engineer or designee.

4. The driveway at the McHenry Avenue frontage shall be restricted to a one-way parking lot entrance. The driveway surface shall be improved with new one-way travel markings and signage at the McHenry frontage to identify it as an "Entrance Only" driveway.

5. Prior to the issuance of a building permit, the developer shall obtain from the California Department of Transportation an encroachment permit, if required.

6. Roseburg Avenue frontage improvements shall be installed at the existing location and include the following:
   a. New curb and gutter;
   b. New five-foot-wide sidewalk;
   c. New five-foot-wide landscape area between the sidewalk and parking area.

7. Roseburg Avenue street and frontage improvements shall be made prior to the issuance of a building permit or at any time requested by the City Engineer or designee to alleviate a health, safety, or traffic problem in the area.

8. Prior to the issuance of a building permit, the developer shall submit a plan to provide on-site treatment of storm water, as approved by the Public Works Director or designee. Storm drain improvements shall be constructed in accordance with the approved plans.

10. The Developer shall provide permanent, post-construction treatment (grass swale, vegetative strip, or other approved proprietary device) to remove pollutants from the first 1/2-inch of stormwater runoff from the site.

11. Prior to the issuance of a building permit, the developer shall provide an owner-signed and notarized Stormwater Treatment Device Access and Maintenance Agreement to Development Services, Stormwater, for recording, if treatment system is required.

12. Prior to the issuance of a building permit, the developer shall obtain coverage for the project under the General Construction Activity Storm Water Permit (General Construction 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 Development Services, Stormwater, when filed.
   b. The General Construction Permit requires the Developer to prepare and implement a Storm Water Pollution Prevention Plan (SWPPP) for project. Submit one copy of SWPPP to Development Services, Stormwater, for review.

13. The trash enclosure for the site shall be elevated or bermed to prevent stormwater run-on and graded to drain into adjacent landscape areas.

14. An eight-foot decorative masonry wall with decorative cap shall be constructed along the property line at the east side of the project site. Construction drawings shall indicate materials, colors, and height of the masonry wall.

15. The landscape planter at the east side of the project site shall be eight feet in width, and planted with a multi-level screen planting that includes a mixture of trees which at five years of growth would reach a height of fifteen to twenty feet and at maturation reach a height of twenty to fifty feet.

16. The developer shall install street trees, per direction from the City’s Urban Forestry Division, along the Roseburg Avenue frontage.

17. The parking lot design shall meet current shade tree requirements, including size of shade tree planters and parking lot shading.

18. Prior to issuance of a building permit, a landscaping and irrigation plan shall be approved by the Parks, Recreation and Neighborhood Director or designee. Landscaping and the irrigation system shall be installed and maintained in accordance with the approved plan.

19. Prior to issuance of a building permit, the applicant shall satisfy the Fire Chief of the following:
a. The developer shall install automatic fire sprinklers in accordance with NFPA 13. Plans shall be submitted to the fire department for approval.
b. The building shall meet the requirements of Chapter 5 of the California Building Code for limitations based on location of the property.

20. Prior to issuance of a building permit, the developer shall dedicate public utility easements as required by the utility companies and the City Engineer or designee.

21. All existing underground and aboveground utilities, irrigation, and electrical lines shall be protected, relocated, or removed as required by the respective utility company, Modesto Irrigation District, and/or City Engineer or designee. Easements for utilities, irrigation, and electrical lines to remain shall be dedicated as required.

22. 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.

23. All landscaping, 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.

24. 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:

25. 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.

26. 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.
27. 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.

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

29. 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.

30. 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.

31. 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.

32. 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 recommendation. Air compressors and pneumatic equipment should be equipped with mufflers, and impact tools should be equipped with shrouds or shields.

33. 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 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.

34. 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.

35. 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(584):

The entire construction program be accomplished in one phase, construction to begin on or before March 1, 2011, and completion to be not later than March 1, 2012.

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. EXCEPTION FROM DESIGN STANDARDS. An exception from City Design Standards shall be applied specifically and only to the curb cut of the McHenry Avenue driveway entrance, and the location of the curb, gutter, and sidewalk improvements on the Roseburg Avenue frontage.

SECTION 5. 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 6. EFFECTIVE DATE. This resolution shall not become effective unless and until the ordinance reclassifying the above-described property to Planned Development Zone, P-D(584), becomes effective.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 1st day of April, 2008, 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, Acting City Clerk

(SEAL)

APPROVED AS TO FORM:

By: ________________
SUSANA ALCALA WOOD, City Attorney

APPROVED AS TO LEGAL DESCRIPTION

By ________________
Community & Economic Development Department
Planning Division
MODESTO CITY COUNCIL
RESOLUTION NO. 2008-200

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. 1999082041): AMENDING SECTION 21-3-9 OF THE ZONING MAP TO REZONE FROM NEIGHBORHOOD COMMERCIAL ZONE, C-1, AND GENERAL COMMERCIAL ZONE, C-2, TO PLANNED DEVELOPMENT ZONE, P-D(584), PROPERTY LOCATED ON THE SOUTHEAST CORNER OF MCHENRY AVENUE AND ROSEBURG AVENUE (HORIZON CONSULTING/ JEFFREY AND MARLENE COWAN)

WHEREAS, on March 4, 2003, the City Council of the City of Modesto certified the Final Master Environmental Impact Report ("Master EIR") (SCH No. 1999082041) for the Modesto Urban Area General Plan, and

WHEREAS, Horizon Consulting has proposed that the zoning designation for the property located on the southeast corner of McHenry Avenue and Roseburg Avenue, be amended from Neighborhood Commercial Zone, C-1, and General Commercial Zone, C-2, to Planned Development Zone, P-D(584), in the City of Modesto, to allow for the addition of a 3,360-square-foot warehouse at the existing House of Carpets retail flooring and home furnishings business, 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 and Economic Development Department by Environmental Assessment Initial Study EA/C&ED 2008-05 ("Initial Study") reviewed
the proposed rezone 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 March 7, 2008 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 April 1, 2008, 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, 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. 1999082041) 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 1st day of April, 2008, 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, Acting City Clerk

(SEAL)

APPROVED AS TO FORM:

By: ____________________________

SUSANA ALCALA WOOD, City Attorney
EXHIBIT A

Initial Study

EA/C&ED 2008-05
Finding of Conformance to General Plan Master EIR:

Initial Study Environmental Checklist
C&ED No. 2008-05

For the proposed:
Rezone from C-1 (Neighborhood Commercial) and C-2 (General Commercial) to Planned Development

P-PDZ-07-003
House of Carpets, 1120 McHenry Ave
(J. Cowan/ Horizon Consulting)

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

January 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 EIR. This Initial Study Environmental Checklist ("Initial Study") is used in determining whether the Rezoning from C-1 and C-2 to Planned Development (project P-PDZ-07-003), is "within the scope" of the project analyzed in the Modesto Urban Area General Plan Master EIR (SCH# 1999082041) (Public Resources Code section 21157.1). When the Initial Study supports this conclusion, the City will issue a finding of conformity.

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. (State CEQA Guidelines Section 15384)

II. PROJECT DESCRIPTION

A. Title: Rezone from C-1 and C-2 to Planned Development, P-PDZ-07-003

B. Address or Location: 1120 McHenry Avenue, SE corner of McHenry and Roseburg Avenue

C. Applicant: Horizon Consulting, PO Box 1448, Modesto, CA 95353

D. City Contact Person: Katharine Martin

Project Manager: Katharine Martin, Assistant Planner
Department: Community and Economic Development, Planning Division
Phone Number: 209-577-5267
E-mail address: kamartin@modestogov.com

E. Current General Plan Designation(s): "C" Commercial
F. Current Zoning Classification(s): "C-1" Neighborhood Commercial and "C-2" General Commercial

G. Surrounding Land Uses:
   North: Planned Development, P-D(421) with "C-3" Highway Commercial Uses, retail tire and wheel sales
   South: "C-2" General Commercial, restaurant and car wash/detailing service
   East: "R-1", Single-Family detached home
   West: "C-2" General Commercial, retail drug store

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):

   This is a rezoning to Planned Development Zone as described in Section II.C of the Master EIR for the City of Modesto's General Plan. This application is to rezone two adjacent parcels under the same ownership from "C-1" Neighborhood Commercial and "C-2" General Commercial into one Planned Development zone to allow for the construction and use of a 3,360 square-foot warehouse addition to an existing 11,340 square-foot home flooring and furnishings retail building. The warehouse is to be used exclusively by the existing retail business as an inventory storage area.

I. Other Public Agencies Whose Approval is Required:

   None.
III. FINDINGS/DETERMINATION (SELECT ONE ON THE BASIS OF THE ANALYSIS IN SECTION IV)

1. **Within the Scope** - The project is within the scope of the 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.

Project Manager

Assistant Planner, January 14, 2008
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. Basically, if the following statements are found to be true for all 20 sections of this Initial Study, then the project was covered 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 (i.e., would not offer the same level of protection assumed under the Master EIR).

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 mitigation measures identified 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 20 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 was 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:

3. No substantial changes have occurred with respect to the circumstances under which the Master EIR was certified.

4. 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.
IV. ENVIRONMENTAL ANALYSIS

This Initial Study, in accordance with Section 21157.1(b) of the Public Resources Code, analyzes whether this 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 Master EIR.

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 a notice of conformity after completion of the Initial Study fulfills the City's obligation in that situation.

All environmental effects cited reflect year 2025 buildup of the Urban Area General Plan as identified in the MEIR.

The Master EIR for the General Plan organizes its analysis of environmental impacts into eighteen subject areas. The following analysis is based on the impact analyses contained in Chapter V of the Master EIR. For ease of cross-reference, the sections are numbered in the same order as the analyses in Chapter V.

In addition to the 18 Master EIR subject areas, the Initial Study checklist addresses the issues of land use/planning and aesthetics. The reason for including these additional issues is to ensure that consideration is being given to the full range of subjects of importance contained in Appendix G of the CEQA Guidelines. The format for the land use/planning and aesthetics sections differs from that of the other 18 subject areas since these two subjects were not addressed as distinct subjects in the Master EIR.

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.

**Discussion:**

This is an application is to rezone two commercially-zoned properties into a Planned Development of commercial uses to allow for the addition of a 3,360 square-foot warehouse to an existing 11,340 square-foot retail building, with the intention of using the warehouse space for the inventory of the existing retail building. The project does not exceed the 100 peak-hour trip threshold of the MEIR.

**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:

<table>
<thead>
<tr>
<th>YES</th>
<th>NO</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) The project exceeds the Master EIRs 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 EIRs program of mitigation measures.</td>
<td>☒</td>
</tr>
<tr>
<td>(2) Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g. farm equipment).</td>
<td>☒</td>
</tr>
<tr>
<td>(3) Result in inadequate emergency access.</td>
<td>☒</td>
</tr>
<tr>
<td>(4) Result in inadequate parking capacity.</td>
<td>☒</td>
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</tbody>
</table>

**Discussion:**

(1) Engineering and Transportation Department has reviewed the project and determined that the project is within the scope of the Master EIR and no further traffic study is required.

(2) The project will not substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g. farm equipment)

(3) Modesto Police and Fire staff have reviewed the project and have not indicated that
there are any emergency access issues.

(4) Per City of Modesto Municipal Code, the requirements for the combined retail and warehouse uses at this project site is 29 spaces. The parking area will be deficient by two spaces from this requirement. However, the project will expand the existing parking area, bringing the overall count of spaces from twenty-two (22) to twenty-seven (27). The deficiency of two parking spaces per Code is not a significant impact as the warehouse is to be used by the employees of the existing business for inventory storage only, and no need for additional parking beyond what currently exists for employees is anticipated.

2. 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:

Mitigation Measures appropriate to this project include: AQ-17, Air Quality Measures to Reduce Construction Impacts.

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 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 (SJVUAPCD) for comment and no indication was given that the project would exceed emissions thresholds.

(2) This project will incorporate the best management practices for PM10 reduction established by the SJVUAPD (see mitigations measures above).

(3) Applicable General Plan Policies will be applied to the project. Therefore, project specific effects will be less than significant for this impact (see mitigations measures above).

(4) The project involves a rezoning to allow the addition of a 3,360 square-foot warehouse to an existing retail business for inventory storage, and is not a significant contributor to pollution levels. PM10 emissions created through the construction phase will be mitigated as called for by the MEIR (see mitigation measures above).

(5) The project will not create objectionable odors.

3. 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 and N-6 from the MEIR.

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 policies are incorporated into the conditions of approval as a mitigation measure.

2. The project is consistent with the noise policies of the General Plan. Noise mitigation measures required for projects within the Baseline Developed Area of the General Plan are incorporated into the conditions of approval for the project.

3. The only permanent noise levels produced by the project would be associated with the use of the warehouse as a storage facility for the inventory of the existing business. The increased 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 required for projects within the Baseline Developed Area of the General Plan are incorporated into the conditions of approval for the project.
4. 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:**

This project is an infill area within the Baseline Developed Area of the General Plan, surrounded by existing urbanized area, and is not zoned for agricultural use or designated for future agricultural use in the General Plan. This project will not affect areas zoned for agricultural use or designated for future agricultural use. Therefore, 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 project is consistent in use and intensity with the "C" Commercial land use designation in the General Plan.

(2) The project is within the Baseline Developed Area of the General Plan and is surrounded by existing urban uses.

(3) The project area is not zoned for agricultural use nor is under a Williamson Act contract.

(4) The project does not involve changes that would convert farmland to a non-agricultural use. The project is an infill area that is surrounded by existing urban uses.

5. WATER SUPPLY

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:

There are no mitigation measures applicable to this project.

c. Project-Specific Effects

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

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

<table>
<thead>
<tr>
<th>YES</th>
<th>NO</th>
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(1) The project is inconsistent with the Modesto Urban Area General Plan.

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

Discussion:

(1) This project is consistent with the General Plan in both use and intensity.

(2) This project was referred to the Department of Public Works for comment and no determination was made that there would be insufficient water capacity to serve the project area.

6. 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:

There are no mitigation measures applicable to this project.

c. Project-Specific Effects

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

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

(1) The project is inconsistent with the Modesto Urban Area General Plan. YES NO

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

Discussion:

(1) This project is consistent with the General Plan in both use and intensity.

(2) This project was referred to the Department of Public Works for comment and no determination was made that there would be insufficient sewer service capacity to serve the project area.
7. 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:

As this project is an infill area within the Baseline Developed Area outside of the Tuolumne River and Dry Creek Comprehensive Planning Districts, and is consistent with the General Plan in use and intensity, no further study is needed.

c. Project-Specific Effects

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

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

(1) The project is inconsistent with the Modesto Urban Area General Plan. YES NO ☐ ☒

(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 project is consistent in use and intensity with the General Plan.

(2) The project site 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 local ordinances or policies regarding the protection of biological resources.

8. ARCHAEOLOGICAL OR 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:

Mitigation Measures applicable to this project include: AH-8, Master EIR.
c. Project-Specific Effects

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

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

1. The project is inconsistent with the Modesto Urban Area General Plan. YES NO □ ☒
2. The project would adversely affect a cultural resource that is either listed or eligible for listing in the California Register of Historical Resources, or that is listed by the City of Modesto as a Designated Landmark Preservation Site. □ ☒

Discussion:

1. The project is consistent in use and intensity with the General Plan.

2. The project site is outside of an archeological resource study area as depicted by Figure V-8-2 of the General Plan, and is not listed by the City of Modesto as a Designated Landmark Preservation Site. The project is a 3,360 square-foot warehouse addition to an existing retail business, and would not involve the moving or demolition of a building older than fifty years of age.

9. 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. This mitigation measure is addressed in the conditions of approval.

c. Project-Specific Effects

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

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

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

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

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

Discussion:

(1) The project is consistent in use and intensity with the General Plan.

(2) An increase in impervious surface will be from the improvement of an unimproved lot of 7,838 square feet at the project site into a new driveway, parking area and landscaped area; however, the project will 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.

(3) The project will not create or contribute to runoff water that would exceed the capacity of existing or planned storm water drainage systems, or provide substantial sources of polluted runoff.
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 project area is outside of the Flood Potential Study Area as shown on Figure V-10-1 of the General Plan. Mitigation measures appropriate to the project include FWQ-14(1) for single-family residential development.
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 project proposes the addition of a 3,360 square foot warehouse addition for the inventory storage of an existing retail business, and therefore is consistent in use and intensity to the "C" Commercial designation of the area in the General Plan.

2. The project would comply with the federal Clean Water Act and the State Porter-Cologne Act.


4. The project will not create or contribute to runoff water that would exceed the capacity of existing or planned storm water drainage systems, or provide substantial sources of polluted runoff.

11. 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:

No mitigation measures are applicable to this project. It is not within or adjacent to any park sites, nor is it within or near any of the riparian areas identified by Figures V-7-1a through V-7-1e of the MEIR.

c. Project-Specific Effects

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

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

YES NO

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

Discussion:

(1) The project is consistent with the Modesto Urban Area General Plan "C", Commercial Land Use designation in both land use and intensity.

12. 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, eight 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:

No mitigation measures are applicable to this project.

c. Project-Specific Effects

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

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

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

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

Discussion:

(1) The project is consistent to the General Plan in use and intensity.

(2) The project was referred to Modesto City Schools who indicated no opposition to the project.
13. 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:

No mitigation measures are applicable to this project.

c. Project-Specific Effects

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

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

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

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

(1) The project is consistent to the General Plan "C" Commercial land use designation in use and intensity.

(2) The project was referred for comments to the Modesto Police Department, and no opposition or need for construction of new or significantly altered facilities was indicated. The project meets City Standards for emergency services access.

14. 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:

No mitigation measures are applicable to the project.

c. Project-Specific Effects

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

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

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 project is consistent with the General Plan Residential "C" Commercial designation in use and intensity.

(2) The project was referred for comments to the Modesto Fire Department, and no opposition or need for construction of new or significantly altered facilities was indicated. The project meets City Standards for emergency services access.

15. SOLID WASTE

a. Significant Effects Identified in the Master EIR

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

Effect: Since the project would exceed available landfill capacity, it is identified as a significant impact. The Fink Road Landfill may be closed by the time the City reaches build out, unless an expansion is approved by the County and the Integrated Waste Management Board. As the waste stream generated increases with population, additional landfills and methods for diversion would have to be utilized. The project will also generate the need for additional collection and transfer facilities. This impact is significant and unavoidable. The impact would be less than significant at such time as the Fink Road Landfill expansion is approved.

Effect: The project makes a considerable contribution to the cumulative impact on landfill capacity of development in Stanislaus County. This impact is significant and unavoidable.

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:

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

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

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

1. The project is inconsistent with the Modesto Urban Area General Plan. [ ] YES [ ] NO

2. The County is unable to expand its solid waste disposal capacity and the project would result in waste stream levels that exceed disposal capacity. [ ] YES [ ] NO

Discussion:

1. The project is consistent to the General Plan Residential “C” Commercial designation in use and intensity.

2. This project was referred to the County and Solid Waste Division of the Engineering and Transportation Division for review, and no determination was made that there would be insufficient solid waste disposal service capacity to serve the project area.

16. 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:

No mitigation measures are applicable to the project.

c. Project-Specific Effects

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

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

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

(2) The project does not comply with all applicable federal, state, and county standards and regulations relative to the handling, storage, disposal, and transport of hazardous or toxic materials or wastes.

(3) The project contains a contaminated site not identified as of March 2003.

(4) The 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.

(5) The 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.

Discussion:

(1) The project is consistent with the General Plan in use and intensity.

(2) The project is an infill area within the Baseline Developed Area of the General Plan that involves the addition of a 3,360 warehouse to be used as a storage unit for the inventory of a retail home furnishings business. No hazardous materials are involved in the project.

(3) The project site is not known to contain any hazardous materials or contaminants.

(4) The project would not emit hazardous emissions, or handle hazardous or acutely hazardous materials, substances, or waste.

(5) 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 and as a result, would not create a significant hazard to the public or the environment.
17. LANDSLIDES AND SEISMIC ACTIVITY

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:

No mitigation measures are applicable to the project.

c. Project-Specific Effects

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

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

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(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 project is consistent to the General Plan in use and intensity.

(2) The project is not located on soil that is unstable, or 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:

No mitigation measures are applicable to this project.

c. Project-Specific Effects

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

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

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

(1) The project is consistent with the General Plan in use and intensity.

19. PLANNING AND LAND USE

The Master EIR was certified for the Modesto Urban Area General Plan. The significant effects described in the 18 subject areas contained in the Master EIR are based on the planning policies and diagrams adopted as part of the General Plan. Planning and land use were not among the 18 subject areas analyzed in the Master EIR because they essentially defined the project being evaluated in the EIR.

a. Project-Specific Effects

Determination of project effects will be based on the following threshold. A project-specific effect is less than significant unless:

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Discussion:

(1) The project is consistent with the General Plan in use and intensity.

(2) The project does not require an amendment to the General Plan.

(3) The project is a 3,360 square foot warehouse addition to an existing retail business within the Baseline Developed Area, and will not physically divide an established residential area.

20. AESTHETICS

The Master EIR was certified for the Modesto Urban Area General Plan. The significant effects described in the 18 subject areas contained in the Master EIR, are based on the planning policies and diagrams adopted as part of the General Plan. At that level of detail, no significant effects on aesthetics were identified.

a. Project-Specific Effects

Determination of project effects will be based on the following threshold. A project-specific effect is less than significant unless:
The project is inconsistent with the Modesto Urban Area General Plan.  [X]

The project would have a substantial adverse effect on a scenic vista.  [X]

The project would substantially degrade the existing visual character or quality of the project site and its surroundings.  [X]

The project would create a new source of substantial light and glare, which would adversely affect day or nighttime views in the area.  [X]

Discussion:

(1) The project is consistent with the General Plan in use and intensity.

(2) There are no scenic vistas from the location of the project area. The project is an infill area within the Baseline Developed Area and is completely surrounded by urbanization. Clear views of the Diablo and Sierra Nevada mountain ranges are already precluded from this site and the surrounding area.

(3) The project would not substantially degrade the existing visual character or quality of the project site and its surroundings.

(4) The project would not create a substantial source of light or glare that would adversely affect daytime or nighttime views in the area.

V. MITIGATION MEASURES APPLIED TO THE PROJECT

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

Not applicable.

Air Quality Measures:
1. 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.

2. 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.

3. 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.

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. 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.

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

7. Install wheel washers for all exiting trucks, or wash off all trucks and equipment leaving the site.

8. Suspend excavation and grading activity when winds exceed 20 mph.

**Noise Measures:**

1. 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."

   The noise ordinance prohibits the loud and raucous operation or use of any of the following before 7:00 a.m. or after 9:00 p.m. daily (except Saturday and Sunday and State or Federal holidays, when the prohibited time shall be before 9:00 a.m. and after 9:00 p.m.):

   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 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.

**Agricultural Land Measures:**
Not Applicable

**Water Supply Measures:**
Not applicable

**Sanitary Sewer Service Measures:**
Not applicable

**Sensitive Wildlife and Plant Habitat Measures:**
Not applicable.

**Archaeological or Historic Sites Measures:**

1. 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.
Storm Drainage Measures:

1. The developer shall implement pre- and post-construction best management practices (BMPs) to minimize pollutants entering the storm system.

Flooding and Water Quality Measures:

1. The developer shall implement pre- and post-construction best management practices (BMPs) to minimize pollutants entering the storm system.

Parks and Open Space Measures:

Not applicable.

Schools Measures:

Not applicable.

Police Services:

Not applicable.

Fire Services:

Not applicable.

Generation of Solid Waste

Not applicable.

Generation of Hazardous Materials

Not applicable.

Potential for Landslides and Seismic Activity

Not applicable.

Energy

Not applicable.

Planning and Land Use

Not applicable.

Aesthetics

Not applicable.
B. New or Additional Mitigation Measures or Alternatives Required

Where the project's effects would exceed the specific thresholds defined for each environmental category, a mitigated negative declaration or Focused EIR must be prepared. Staff has reviewed the project against those thresholds set forth in the Master EIR for all applicable categories in this Initial Study.

No additional study is needed.
MODESTO CITY COUNCIL
RESOLUTION NO. 2008-201

A RESOLUTION APPROVING A DEVELOPMENT PLAN FOR PLANNED DEVELOPMENT ZONE, P-D(585). (STANCO)

WHEREAS, a verified application for an amendment to Section 26-3-9 of the Zoning Map was filed by STANCO on October 15, 2007, to reclassify from Medium Density Residential Zone, R-2, to Planned Development Zone, P-D(585) to facilitate development of an 18-unit senior housing development, property located on the north side of Poppypatch Drive, west of Lincoln Avenue, 421 Lincoln Avenue, described as follows:

R-2 to P-D(585)

All that certain real property situated in the City of Modesto, County of Stanislaus, State of California, and being a portion of the Southeast quarter of Section 26, Township 3 South, Range 9 East, Mount Diablo Base and Meridian, more particularly described as follows:

All of Lot 6 in Block 2472 as shown on that Map of Lincoln Square, as filed March 29, 1973 in Volume 24 of Maps, Page 36, Stanislaus County Records;

also including the westerly half of Lincoln Avenue, all being immediately adjacent to the above described property.

WHEREAS, after a public hearing held on February 25, 2008 in the Tenth Street Place Chambers located at 1010 10th Street, Modesto, California, it was found and determined by the Planning Commission, by its Resolution No. 2008-16, that rezoning of the property as requested is required by public necessity, convenience, and general welfare for the following reasons:

1. The proposed Zone change to P-D is consistent with the Modesto Urban Area General Plan. The General Plan designates this area as "MU" (Mixed-Use), and the rezoning to allow a senior housing development will be consistent with the General Plan land use and intensity.
2. The Conditions of Approval will ensure that the proposed project is compatible with the adjacent residential uses.

3. The proposed project will provide needed affordable housing in Modesto and contribute towards meeting the City’s share of the Regional Housing Needs Allocation.

WHEREAS, said matter was set for a public hearing of the City Council to be held on April 1, 2008, in the Tenth Street Place Chambers located at 1010 10th 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 STANCO for a Planned Development Zone should be granted as consonant with public necessity, convenience and general welfare for the reasons set forth in Planning Commission Resolution No. 2008-16 and quoted above, and

WHEREAS, the Council has introduced Ordinance No. 3483-C.S. on the 1st day of April, 2008, reclassifying the above-described property from Medium Density Residential Zone, R-2, to Planned Development Zone, P-D(585).

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(585), is hereby approved subject to the following conditions:

1. All development shall conform to the plot plan titled "Lincoln Senior Housing (File No. P-PDZ-07-006)" as amended in red, stamped approved by the City Council on April 1, 2008.

2. Fences or walls shall be constructed prior to occupancy and shall be as follows:

   A six-foot-high concrete-masonry wall with decorative cap along the property line to the west, adjacent to or as a replacement of the existing wood fence.
3. Prior to the issuance of a building permit, the applicant shall submit a landscaping and irrigation plan conforming to current City of Modesto specifications and standards for review and approval by the Parks, Recreation and Neighborhood Director or designee. Landscaping and the irrigation system shall be installed and maintained in accordance with the approved plan.

4. The applicant shall provide screen landscaping along the west property line adjacent to the residential housing units, to the satisfaction of the Parks, Recreation and Neighborhood Director or designee.

5. The applicant shall provide sufficient parking lot shade trees to meet current Modesto Municipal Code requirements.

6. Prior to issuance of a building permit, improvement plans for required improvements shall be prepared by a Registered Civil Engineer and approved by the City Engineer or designee. Improvements shall be constructed in accordance with the approved plans.

7. All private streets and parking areas shall be constructed in accordance with the standard structural section for residential streets as contained in the City of Modesto Standard Specifications.

8. All-weather, hard-surfaced roadways shall be constructed and maintained free of obstructions prior to and at all times during construction.

9. Prior to issuance of a building permit, the developer shall dedicate public utility easements as required by the utility companies and the City Engineer or designee.

10. Electric facilities and overhead lines shall be removed, relocated, or protected as required by the Modesto Irrigation District and the City Engineer or designee. Appropriate easements for electrical facilities shall be granted as required. Relocation or installation of electric facilities shall conform to the District’s Electric Service Rules. Costs for relocation and/or undergrounding the District’s facilities at the request of others will be borne by the requesting party.

11. Trash bins shall be kept in enclosures in accordance with the approved plan and in accordance with plans approved by the Public Works Director or designee. Enclosures shall be constructed of building materials consistent with those used in the major buildings as approved by the Community and Economic Development Department Director or designee.

12. Trash enclosures shall be of a size and design to permit the storage and removal of required recyclable material receptacles, or a separate enclosure of the collection for recyclable materials shall be provided as approved by the Public Works Director or designee.
13. Trash enclosures for the project shall be bermed to prevent storm water run-off and graded to drain to adjacent landscape areas.

14. The developer shall provide permanent, post-construction treatment (grass swale, vegetative strip, or other approved proprietary device) to remove pollutants from the first 1/2" of stormwater run-off from site.

15. Prior to the issuance of a building permit, the developer shall submit a plan to provide on-site treatment of storm water, as approved by the City Engineer or designee. Storm drain improvements shall be constructed in accordance with the approved plans.

16. Prior to issuance of a building permit, the property owner shall provide owner-signed and notarized Stormwater Treatment Device Access and Maintenance Agreement to Development Services, Stormwater for recording.

17. Prior to issuance of a building permit, the developer shall show on the plans submitted to Building Safety Division all fire hydrants as required by the Fire Chief. All hydrants required by the Fire Chief shall be installed and operable prior to construction of any structures.

18. The applicant shall install fire sprinkler systems as required by the 2001 California Fire Code (CFC) and the 2001 California Building Code (CBC) for R-1 occupancies with an occupant load of eleven or more.

19. Fire Department Connections (FDC) shall be accessible to the Fire Department and within 90 feet of a fire hydrant.

20. All landscaping, fences, and walls shall be maintained and the premises shall be kept free of weeds, trash, and other debris.

21. Prior to issuance of a building permit the applicant shall record a covenant restricting the project to senior housing in accordance with Civil Code section 51.3, to the satisfaction of the City Attorney or designee.

22. Prior to issuance of a building permit, the developer shall record an affordability covenant in accordance with the Modesto Municipal Code Density Bonus Provisions (Title 10 Article 3) in a form acceptable to the City Attorney. Five (5) percent of the units are required to be maintained at prices affordable to Very-Low Income persons or households as defined in Section 10-3.401(a) for a period of 30 years beginning when the units are first available for occupancy.

23. 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.

24. The Capital Facilities Fees payable at the time of the issuance of a building permit for any construction in this development shall be based on the rates in effect at time of issuance of the building permit.

25. Prior to issuance of a building permit, the applicant shall submit a cross-section drawing for approval, showing how all rooftop equipment is to be screened from view (including dimensions, materials, colors, etc.) to the satisfaction of the Director of Community and Economic Development or designee.

26. Roof-mounted equipment, including but not limited to air conditioners, fans, vents, antennas, and dishes should be set back from the roof edge and placed behind a parapet wall or in a wall, so they are not visible to motorists or pedestrians. Screening for equipment should be integrated into the building and roof design by the use of compatible materials, colors and forms. Wood lattice and fence-like coverings are not allowed for screening.

27. All ground mounted utility structures such as transformers, HVAC equipment and back flow prevention valves shall be located out of view from a public street or adequately screened though the use of screening or masonry walls.

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:

28. 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.

29. All land clearing, grubbing, scraping, excavation, land leveling, grading, cut and 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. 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.

32. 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.

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

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

35. 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.”

36. The Noise Ordinance prohibits the loud and raucous operation or use of any of the following before 7:00 a.m. or after 9:00 p.m. daily (except Saturday and Sunday and State or Federal holidays, when the prohibited time shall be before 9:00 a.m. and after 9:00 p.m.):

   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, 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.

37. 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.

38. The developer shall implement pre- and post-construction best management practices (BMP) 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(585): The entire construction program shall be accomplished in one phase, construction to begin on or before April 1, 2010, and completion to be not later than April 1, 2011.
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(585), becomes effective.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 1st day of April, 2008, by Councilmember O'Bryant, 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

APPROVED AS TO LEGAL DESCRIPTION

By 

Community & Economic Development Department
Planning Division

STEFANIE LOPEZ, Acting City Clerk
MODESTO CITY COUNCIL  
RESOLUTION NO. 2008-202

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. 1999082041): AMENDING SECTION 26-3-9 OF THE ZONING MAP TO REZONE FROM MEDIUM-DENSITY RESIDENTIAL ZONE, R-2, TO PLANNED DEVELOPMENT ZONE, P-D(585), PROPERTY LOCATED ON THE NORTH SIDE OF POPPYPATCH DRIVE, WEST OF LINCOLN AVENUE, 421 LINCOLN AVENUE. (STANCO)

WHEREAS, on March 4, 2003, the City Council of the City of Modesto certified the Final Master Environmental Impact Report ("Master EIR") (SCH No. 1999082041) for the Modesto Urban Area General Plan, and

WHEREAS, STANCO has proposed that the zoning designation for property located on the north side of Poppypatch Drive, west of Lincoln Avenue at 421 Lincoln Avenue be amended to rezone from Medium-Density Residential Zone, R-2, to Planned Development Zone, P-D(585), in the City of Modesto ("the Project") to allow for a senior housing project, 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 and Economic Development Department by Environmental Assessment Initial Study EA/C&ED 2008-09 ("Initial Study") reviewed the proposed amendment to the Zoning Map and Planned Development project to
determine whether the project is within the scope of the project covered by the Modesto Urban Area General Plan Master EIR ("Master EIR"), and concluded that the proposed project is within the scope of the Master EIR and will have no additional significant effect on the environment that was not identified in the Master EIR, and further, that no new additional mitigation measures or alternatives are required, and that, therefore, the proposed project is within the scope of the project covered by the Master EIR, and

WHEREAS, in accordance with CEQA guidelines beginning on March 7, 2008 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 April 1, 2008, 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(585), 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. 1999082041) 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 1st day of April, 2008, by Councilmember O’Bryant, who moved its adoption, which motion being duly seconded by Councilmember Keating, was upon roll call carried and the resolution adopted by the following vote:

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

**NOES:** Councilmembers: None

**ABSENT:** Councilmembers: None

**ATTEST:** [Signature]

(SEAL)

APPROVED AS TO FORM:

By: [Signature]

SUSANA ALCALA WOOD, City Attorney
EXHIBIT A

Initial Study

EA/C&ED 2008-09
MODESTO CITY COUNCIL
RESOLUTION NO. 2008-203

A RESOLUTION AUTHORIZING THE SUBMITTAL OF A GRANT APPLICATION TO THE FEDERAL TRANSIT ADMINISTRATION (FTA) REQUESTING $1,230,567 IN CONGESTION MITIGATION AND AIR QUALITY (CMAQ) FUNDS FOR THE PURCHASE OF TWO BUSES ($584,298 FEDERAL) AND THE CONSTRUCTION OF THE NEW BUS MAINTENANCE FACILITY ($646,269 FEDERAL), AND AUTHORIZING THE INTERIM CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE ALL GRANT APPLICATION AND GRANT AGREEMENT DOCUMENTS

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

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

WHEREAS, the Stanislaus County Council of Governments (StanCOG) is the Designated Recipient for Congestion Mitigation and Air Quality funding, and

WHEREAS, on December 12, 2006, the StanCOG Policy Board approved providing $584,298 in federal fiscal year 2007-08 CMAQ funds for the purchasing of two new buses, and

WHEREAS, on January 15, 2008, the StanCOG Policy Board approved providing $646,269 in federal fiscal year 2007-08 CMAQ funds for the construction of a new bus maintenance facility, and

WHEREAS, the project funds for the Bus Maintenance Facility and the two new bus purchases are included in the Federal Transportation Improvement Program (FTIP) adopted by StanCOG, and

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

WHEREAS, by a report to the Council dated March 7, 2008, from the Public Works Department, City staff recommended submitting a grant application for the Bus Maintenance Facility and the purchase of two new buses, and
WHEREAS, a public hearing was held on April 1, 2008, at 5:30 p.m., in the Tenth Street Place Chambers located at 1010 Tenth Street, Modesto, California, in accordance with FTA regulations,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby authorizes the submittal of a grant application to the Federal Transit Administration (FTA) for Federal assistance authorized by 49 U.S.C. Chapter 53, Title 23, United States Codes, or other Federal statues authorizing a project administered by the FTA requesting $1,230,568 in Congestion Mitigation and Air Quality (CMAQ) funds for the purchase of two buses ($584,298 Federal) and the construction of the new Bus Maintenance Facility ($646,269 Federal).

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

BE IT FURTHER RESOLVED that the Interim City Manager, or his designee, is authorized to execute and file the annual certifications and assurances and other documents the FTA requires for awarding a federal assistance grant.

BE IT FURTHER RESOLVED that the Interim City Manager, or his designee, is authorized to execute all necessary grant documents with the FTA on behalf of the City of Modesto.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 1st day of April, 2008, by Councilmember Marsh, who moved its adoption, which motion being duly seconded by Councilmember Keating, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Lopez

ATTEST: STEPHANIE LOPEZ, Acting City Clerk

(SEAL)

APPROVED AS TO FORM:

By: Susana Alcâla Wood, City Attorney
A RESOLUTION AUTHORIZING THE SUBMITTAL OF A GRANT APPLICATION TO THE FEDERAL TRANSIT ADMINISTRATION (FTA) REQUESTING $245,000 IN FY 2008 FTA SECTION 5309 FUNDS FOR THE CONSTRUCTION OF THE BUS MAINTENANCE FACILITY, AND AUTHORIZING THE INTERIM CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE ALL GRANT APPLICATION AND GRANT AGREEMENT DOCUMENTS

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

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

WHEREAS, the City of Modesto had an approved FTA Section 5309 grant with three amendments for $8,448,608 in federal funds for the new Bus Maintenance Facility, and

WHEREAS, in fiscal year 2006 $495,000 in FTA Section 5309 funds had been earmarked by Congress for the Bus Maintenance Facility under SAFETEA-LU, and

WHEREAS, the Bus Maintenance Facility project funds in the FTA Section 5309 grant application are included in the Federal Transportation Improvement Program (FTIP) adopted by StanCOG, and

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

WHEREAS, by a report to the Council dated March 7, 2008, from the Public Works Department, City staff recommended submitting a FTA Section 5309 grant application for the Bus Maintenance Facility, and

WHEREAS, a public hearing was held on April 1, 2008, at 5:30 p.m., in the Tenth Street Place Chambers located, at 1010 Tenth Street, Modesto, California, in accordance with FTA regulations,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby authorizes submittal of a grant application to the Federal Transit
Administration (FTA) for Federal assistance authorized by 49 U.S.C. Chapter 53, Title 23, United States Codes, or other Federal statues authorizing a project administered by the FTA requesting $245,000 in FTA Section 5309 funds for the construction of the new bus maintenance facility.

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

BE IT FURTHER RESOLVED that the Interim City Manager, or his designee, is authorized to execute and file the annual certifications and assurances and other documents the FTA requires for awarding a federal assistance grant.

BE IT FURTHER RESOLVED that the Interim City Manager, or his designee, is authorized to execute all necessary grant documents with the FTA on behalf of the City of Modesto.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 1st day of April, 2008, by Councilmember Marsh, who moved its adoption, which motion being duly seconded by Councilmember Keating, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Lopez

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney

ATTEST: STEPHANIE LOPEZ, Acting City Clerk
MODESTO CITY COUNCIL
RESOLUTION NO. 2008-205

A RESOLUTION AUTHORIZING THE SUBMITTAL OF A GRANT APPLICATION TO THE FEDERAL TRANSIT ADMINISTRATION (FTA) REQUESTING $495,000 IN FY 2006 FTA SECTION 5309 FUNDS FOR THE CONSTRUCTION OF THE BUS MAINTENANCE FACILITY, AND AUTHORIZING THE INTERIM CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE ALL GRANT APPLICATION AND GRANT AGREEMENT DOCUMENTS.

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

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

WHEREAS, the City of Modesto had an approved Federal Transit Administration (FTA) Section 5309 grant with four amendments for $8,448,608 in federal funds for the new Bus Maintenance Facility, and

WHEREAS, in fiscal year 2008 $245,000 in FTA Section 5309 funds have been earmarked by Congress for the Bus Maintenance Facility under SAFETEA-LU, and

WHEREAS, the Bus Maintenance Facility project funds in the FTA Section 5309 grant application are included in the Federal Transportation Improvement Program (FTIP) adopted by StanCOG, and

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

WHEREAS, by a report to the Council dated March 7, 2008, from the Public Works Department, City staff recommended submitting a FTA Section 5309 grant application for the Bus Maintenance Facility, and

WHEREAS, a public hearing was held on April 1, 2008, at 5:30 p.m., in the Tenth Street Place Chambers located at 1010 Tenth Street, Modesto, California, in accordance with FTA regulations,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby authorizes submittal of a grant application to the Federal Transit
Administration (FTA) for Federal assistance authorized by 49 U.S.C. Chapter 53, Title 23, United States Codes, or other Federal statues authorizing a project administered by the FTA requesting $495,000 in FY2006 FTA Section 5309 funds for the construction of the new bus maintenance facility.

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

BE IT FURTHER RESOLVED that the Interim City Manager, or his designee, is authorized to execute and file the annual certifications and assurances and other documents the FTA requires for awarding a federal assistance grant.

BE IT FURTHER RESOLVED that the Interim City Manager, or his designee, is authorized to execute all necessary grant documents with the FTA on behalf of the City of Modesto.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 1st day of April, 2008, by Councilmember Marsh, who moved its adoption, which motion being duly seconded by Councilmember Keating, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Lopez

ATTEST: STEPHANIE LOPEZ, Acting City Clerk

(SEAL)

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney
A RESOLUTION ADOPTING THE TURLOCK GROUNDWATER BASIN ASSOCIATION’S GROUNDWATER MANAGEMENT PLAN FOR THE TURLOCK SUB-BASIN

WHEREAS, a portion of the City of Modesto overlies a part of the Turlock Groundwater Sub-basin and receives some of its annual water supply from wells located within the Sub-basin, and

WHEREAS, in 1992 and 2002, the California Legislature passed Assembly Bill (AB) 3030 and Senate Bill (SB) 1938 respectively, which provided local public agencies increased management authority over their groundwater resources and encouraged them to work cooperatively together in the adoption of a Groundwater Management Plan (GMP), and

WHEREAS, on October 9, 2001, the City Council approved Resolution No. 2001-514 adopting a Memorandum of Understanding with other local water supply agencies to re-form the Turlock Groundwater Basin Association (TGBA) within the Turlock Sub-Basin to coordinate water resource planning efforts and develop a GMP, and

WHEREAS, a Public Hearing was held on April 1, 2008, at 5:30 p.m. in the Tenth Street Place Chambers located in the basement at 1010 Tenth Street, Modesto, California, for public comments regarding the adoption of the GMP,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby adopts the Turlock Groundwater Basin Association’s Groundwater Management Plan for the Turlock Sub-basin.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 1st day of April, 2008, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember O’Bryant, 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: Lopez

ATTEST: STEPHANIE LOPEZ, Acting City Clerk

(SEAL)

APPROVED AS TO FORM:

By SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2008-207

A RESOLUTION AUTHORIZING THE MAYOR TO SIGN A THREE-YEAR EMPLOYMENT AGREEMENT WITH GREG A. NYHOFF TO SERVE AS CITY MANAGER OF THE CITY OF MODESTO, AT AN ANNUAL SALARY OF $195,000

WHEREAS, the City Council desires to enter into a three-year employment agreement with Greg A. Nyhoff to serve as City Manager of the City of Modesto, at an annual salary of $195,000.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby authorizes the Mayor to sign a three-year employment agreement with Greg A. Nyhoff to serve as City Manager of the City of Modesto, at an annual salary of $195,000. Said employment agreement is attached hereto as Exhibit “A” and incorporated herein by this reference.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 8th day of April, 2008, 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, Marsh, O’Bryant, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

(SEAL)

APPROVED AS TO FORM:

By SUSANA ALCALA WOOD, City Attorney

4/18/2008/CMO/JRidenour/item07 1 2008-207
INTRODUCTION.

This agreement is made and entered into this ______ day of __________ , 2008, by and between the CITY OF MODESTO, a municipal corporation, (hereinafter called “Employer”), and GREG A. NYHOFF (hereinafter called “Employee”), an individual who has the education, training and experience in local government management and who, as a member of ICMA, is subject to the ICMA Code of Ethics, both of whom agree as follows:

SECTION 1: TERM.

The term of this Agreement shall be for an initial period of three (3) years from June 1, 2008 to June 1, 2011. This Agreement shall automatically be renewed on its anniversary date for a one (1) year term unless notice that the Agreement shall terminate is given at least two (2) months before the expiration date. In the event the Agreement is not renewed, all compensation, benefits and requirements of the Agreement shall remain in effect until the expiration of the term of the Agreement unless Employee voluntarily resigns.

SECTION 2: DUTIES AND AUTHORITY.

Employer agrees to employ Greg A. Nyhoff as City Manager to perform the functions and duties specified in the Modesto Charter and the California Government Code, and to perform other legally permissible and proper duties and functions.

SECTION 3: COMPENSATION.

A. Base Salary: Employer agrees to pay Employee an annual base salary of One Hundred Ninety-Five Thousand Dollars ($195,000.00) payable in installments at the same time that the other employees of the Employer are paid.

B. Consideration shall be given on an annual basis to increase compensation in conjunction with an Annual Performance Evaluation.

SECTION 4: RELOCATION AND MOVING EXPENSES.

A. Employer agrees to reimburse reasonable expenses associated with moving the Employee and Employee’s family and personal property to Modesto. Employee will obtain three (3) bids for moving expenses, and provide these copies to Employer. Employee shall keep track of actual costs, and submit to Employer with receipts. Employer will reimburse up to the lowest of the actual costs of the three (3) bids.
B. Employer agrees to reimburse Employee temporary monthly housing (rent) until such time as the Employee purchases a new home, sells his home in Colorado or the end of six (6) months whichever is first. Such payment shall be no more than $1,500.00 per month.

C. In accordance with the City policy on travel and reimbursement expenses, Employer agrees to reimburse for reasonable expenses incurred by Employee and Employee’s spouse for a maximum of two (2) house hunting trips.

SECTION 5: SHORT TERM AND LONG TERM DISABILITY AND LIFE INSURANCE BENEFITS.

A. The Employer agrees to provide and to pay the premiums for health, hospitalization, surgical, vision, dental and comprehensive medical insurance for the Employee and his/her dependents equal to that which is provided to all other Management and Confidential employees of the City of Modesto or, in the event no such plan exists, to provide coverage for the Employee and dependents. Notwithstanding any provision, policy or provision to the contrary, such benefits shall be provided as of June 1, 2008.

B. The Employer agrees to put into force and to make required premium payments for long term disability coverage for the Employee.

C. The Employee may elect to submit once per calendar year to a complete physical examination by the City medical provider or by the Employee’s physician under the Employee’s group insurance plan with City reimbursement for Employee’s out-of-pocket costs.

D. The Employer shall pay the amount of premium due for a term life insurance policy of $225,000. The Employee shall name the beneficiary of the life insurance policy.

SECTION 6: VACATION, SICK, AND MANAGEMENT/EXECUTIVE LEAVE.

A. The Employee shall then accrue sick and vacation leave on an annual basis at the highest rate provided to non-sworn management employees.

B. The Employee shall be provided with one (1) physical exam per year at Employer’s expense.

C. The Employee is entitled to accrue all unused leave, without limit, and in the event the Employee’s employment is terminated, either voluntarily or involuntarily, the Employee shall be compensated for all accrued vacation time, all paid holidays, management/executive leave, and other benefits to date.

D. The Employee shall receive one hundred and twenty hours (120) of vacation leave annually. Upon assuming office the Employee shall be credited with sixty (60) hours
of vacation leave. An additional sixty (60) hours will be credited after six (6) months of employment.

E. The Employee shall on January 1st of each calendar year be credited with eighty (80) hours of executive/management leave, forty (40) hours of which shall be credited upon assuming office. Employee may cash out up to eighty (80) hours of unused leave in accordance with City policy.

SECTION 7: AUTOMOBILE ALLOWANCE.

The Employer agrees to pay to the Employee, during the term of this Agreement and in addition to other salary and benefits herein provided, the sum of $6,000 per year, payable in equal monthly installments, as a vehicle allowance to be used to purchase, lease, or own, operate and maintain a vehicle. The Employee shall be responsible for paying for liability, property damage, and comprehensive insurance coverage upon such vehicle and shall further be responsible for all expenses attendant to the purchase, operation, maintenance, repair, and regular replacement of said vehicle. The Employer shall reimburse the Employee at the IRS standard mileage rate for any business use of the vehicle beyond the greater Modesto area. For purposes of this Section, use of the car within the greater Modesto area is defined as travel to locations within a 75-mile radius of the Modesto City Hall.

SECTION 8: RETIREMENT.

A. The Employer agrees to enroll the Employee into the California Public Employees Retirement System (PERS). Employer shall pay 6.6% and Employee shall pay 0.40% of the total 7% “Employee’s share,” and Employer shall pay 100% of “Employer’s share” on behalf of the Employee.

B. In addition to the Employer’s payment to the state retirement system (as applicable) referenced above, Employer agrees to execute all necessary agreements provided by ICMA Retirement Corporation (ICMA-RC) or other Section 457 deferred compensation plan for Employee’s continued participation in said supplementary retirement plan and, in addition to the base salary paid by the Employer to Employee, Employer agrees to pay an amount equal to one and one-half percent (1.5%) of Employee’s base salary, or greater, into the designated plan on the Employee’s behalf, in equal proportionate amounts each pay period. The parties shall fully disclose to each other the financial impact of any amendment to the terms of Employee’s retirement benefit.

SECTION 9: GENERAL BUSINESS EXPENSES.

A. In its discretion, Employer shall budget for and pay travel and subsistence expenses of Employee for professional and official travel, meetings, courses, institutes and seminars to continue his professional development and to adequately pursue necessary official and other functions on behalf of the Employer, including but not
limited to, the annual conference of the League of California Cities, the International City/County Management Association, and such other regional, state, and local governmental groups and committees.

B. The Employer acknowledges the value of having Employee, at Employer's discretion, participate and be directly involved in local or regional clubs, associations and organizations necessary and desirable for employee's continued professional participation, growth and advancement, and for the good of Employer. Accordingly, Employer shall pay for the reasonable membership fees and/or dues to enable the Employee to become an active member in local civic clubs or organizations, including but not limited to, professional dues and subscriptions to the International City/County Management Foundation (ICMA), the California City Management Foundation (CCMF).

SECTION 10: TERMINATION.

For the purpose of this Agreement, termination shall occur when:

A. The majority of the governing body votes to terminate the Employee at a duly authorized closed or open meeting.

B. If the Employer, citizens or legislature acts to amend any provisions of the Charter pertaining to the role, powers, duties, authority, responsibilities of the Employee's position that substantially changes the form of government, the Employee shall have the right to declare that such amendments constitute termination.

C. If the Employer reduces the base salary, compensation or any other financial benefit of the Employee, unless it is applied in no greater percentage than the average reduction of all City employees, such action shall constitute a breach of this Agreement and will be regarded as a termination.

D. If the Employee resigns following an offer to accept resignation, whether formal or informal, by the Employer as representative of the majority of the governing body that the Employee resign, then the Employee may declare a termination as of the date of the suggestion.

E. Breach of contract declared by either party within a 30-day cure period for either Employee or Employer. Written notice of a breach of contract shall be provided in accordance with the provisions of Section 20.

SECTION 11: SEVERANCE.

A. Severance shall be paid to the Employee when employment is terminated as defined in Section 10.
B. In the event the Employer terminates this agreement during which time Employee is ready, willing and able to perform the functions and duties set forth herein, then, in that event, Employer agrees to:

1. Provide Employee with six (6) months salary, including benefits.

2. The parties acknowledge that pursuant to Section 800 of the Modesto City Charter the Employee shall not be removed from office during or within a period of ninety (90) days next succeeding the election of a member of the Council.

SECTION 12: RESIGNATION.

In the event that the Employee voluntarily resigns his/her position with the Employer, the Employee shall provide a minimum of sixty (60) days advance notice unless the parties agree otherwise.

SECTION 13: PERFORMANCE EVALUATION.

Employer shall annually review the performance of the Employee in June subject to a process, form, criteria, and format for the evaluation, which shall be mutually agreed upon by the Employer and Employee. The process at a minimum shall include the opportunity for both parties to: (1) prepare a written evaluation, (2) meet and discuss the evaluation, and (3) present a written summary of the evaluation results. The final written evaluation should be completed and delivered to the Employee within thirty (30) days of the evaluation meeting.

SECTION 14: HOURS OF WORK.

It is recognized that the Employee must devote a great deal of time outside the normal office hours on business for the Employer, and to that end Employee shall be allowed to establish an appropriate work schedule.

SECTION 15: OUTSIDE ACTIVITIES.

The employment provided for by this Agreement shall be the Employee’s sole employment. Recognizing that certain outside consulting or teaching opportunities provide indirect benefits to the Employer and the community, the Employee may elect, with the prior written approval of the City Council, to accept limited teaching, consulting or other business opportunities with the understanding that such arrangements shall not constitute interference with nor a conflict of interest with his responsibilities under this Agreement.

SECTION 16: RESIDENCY.

Employee agrees to maintain residence within the corporate boundaries of the City of Modesto.
SECTION 17: INDEMNIFICATION.

Beyond that required under Federal, State or Local Law, Employer shall defend, save harmless and indemnify Employee against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Employee’s duties as City Manager, or resulting from the exercise of judgment or discretion in connection with the performance of program duties or responsibilities, unless the act or omission involved willful or wanton conduct. The Employee may request and the Employer shall not unreasonably refuse to provide independent legal representation at Employer’s expense and Employer may not unreasonably withhold approval. Legal representation, provided by Employer for Employee, shall extend until a final determination of the legal action including any appeals brought by either party. The Employer shall indemnify employee against any and all losses, damages, judgments, interest, settlements, fines, court costs and other reasonable costs and expenses of legal proceedings including attorneys fees, and any other liabilities incurred by, imposed upon, or suffered by such Employee in connection with or resulting from any claim, action, suit, or proceeding, actual or threatened, arising out of or in connection with the performance of his or her duties. Any settlement of any claim must be made with prior approval of the Employer in order for indemnification, as provided in this Section, to be available.

Employee recognizes that Employer shall have the right to compromise or settle a claim or suit. However, if the Employee is a named party to the suit, Employee’s written consent must be given for the compromise or settlement. Further, Employer agrees to pay all reasonable litigation expenses of Employee throughout the pendency of any litigation to which the Employee is a party, witness or advisor to the Employer. Such expense payments shall continue beyond Employee’s service to the Employer as long as litigation is pending. Further, Employer agrees to pay Employee reasonable consulting fees and travel expenses when Employee serves as a witness, advisor or consultant to Employer regarding pending litigation if those services occur after Employee is no longer an Employee of the Employer.

SECTION 18: BONDING.

Employer shall bear the full cost of any fidelity or other bonds required of the Employee under any law or ordinance.

SECTION 19: OTHER TERMS AND CONDITIONS OF EMPLOYMENT.

The Employer, only upon agreement with Employee, shall fix any such other terms and conditions of employment, as it may determine from time to time, relating to the performance of the Employee, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the Modesto Charter or any other law.
Except as otherwise provided in this Agreement, the Employee shall be entitled to the highest level of benefits that are enjoyed by other non-sworn management employees of the Employer as provided in the Charter, Code, Personnel Rules and Regulations or by practice.

SECTION 20: NOTICES.

Notice pursuant to this Agreement shall be given by depositing in the custody of the United States Postal Service, postage prepaid, addressed as follows:

EMPLOYER: City Clerk, City of Modesto, P. O. Box 642, Modesto, CA 95353
EMPLOYEE: Greg A. Nyhoff

Alternatively, notice required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial practice. Notice shall be deemed given as of the date of personal service or as the date of deposit of such written notice in the course of transmission in the United States Postal Service.

SECTION 21: GENERAL PROVISIONS.

A. Integration. This Agreement sets forth and establishes the entire understanding between the Employer and the Employee relating to the employment of the Employee by the Employer. Any prior discussions or representations by or between the parties are merged into and rendered null and void by this Agreement. The parties by mutual written agreement may amend any provisions of this agreement during the life of the agreement. Such amendments shall be incorporated and made a part of this agreement.

B. Binding Effect. This Agreement shall be binding on the Employer and the Employee as well as their heirs, assigns, executors, personal representatives and successors in interest.

C. Effective Date. This Agreement shall become effective on June 1, 2008.

D. Severability. The invalidity or partial invalidity of any portion of this Agreement will not affect the validity of any other provision. In the event that any provision of this Agreement is held to be invalid, the remaining provisions shall be deemed to be in full force and effect as if they have been executed by both parties subsequent to the expungement or judicial modification of the invalid provision.
IN WITNESS WHEREOF, the CITY OF MODESTO, a municipal corporation, has authorized the execution of this Agreement in duplicate by its Mayor and attestation by its City Clerk under authority of Resolution No. __________ adopted by the Council of the City of Modesto on the __ day of ____________, 2008, and EMPLOYEE has caused this Agreement to be duly executed.

CITY OF MODESTO
A Municipal Corporation

EMPLOYEE

By: Jim Ridenour, Mayor Greg A. Nyhoff

ATTEST:

By: __________________________
Stephanie Lopez, Acting City Clerk
(SEAL)

APPROVED AS TO FORM:

By: __________________________
Susana Alcala Wood, City Attorney
MODesto CITY COUNCIL
RESOLUTION No. 2008-208

A RESOLUTION ACCEPTING PUBLIC IMPROVEMENTS FOR THE EVERGREEN SUBDIVISION CONSISTING OF PARTIAL GRECIAN AVENUE IMPROVEMENTS (ADJACENT TO PARCEL 1 OF PARCEL MAP 53PM67), AND ALL OTHER SUBDIVISION IMPROVEMENTS (INCLUDING THE STORM DRAIN BASIN EXPANSION), AUTHORIZING THE CITY CLERK TO FILE A NOTICE OF COMPLETION, AND TO RELEASE SECURITIES UPON EXPIRATION OF STATUTORY PERIODS

WHEREAS, Valley Ventures IV, LLC, a California Limited Liability Company; Meritage Homes of California, Inc., a California Corporation; BFC Properties, a California Corporation; and Berberian Properties, LLC, a California Limited Liability Company (collectively “SUBDIVIDER”) are the subdividers of the EVERGREEN SUBDIVISION (“SUBDIVISION”), and

WHEREAS, on or about June 20, 2005, the City of Modesto, a Municipal Corporation of the State of California, (“CITY”) and SUBDIVIDER entered into a Subdivision Agreement (“AGREEMENT”), and

WHEREAS, pursuant to the AGREEMENT, SUBDIVIDER filed with CITY a
Subdivision Faithful Performance Bond in the amount of $110,848.00 for the Partial Grecian Avenue Improvements (Adjacent to Parcel 1 of Parcel Map 53PM67), and

WHEREAS, pursuant to the AGREEMENT, SUBDIVIDER filed with CITY a
Subdivision Payment Bond in the amount of $55,423.78 for the Partial Grecian Avenue Improvements (Adjacent to Parcel 1 of Parcel Map 53PM67), and

WHEREAS, pursuant to the AGREEMENT, SUBDIVIDER filed with CITY Subdivision Faithful Performance Bonds in the amounts of $906,589.85 and $425,405.75 for all other Subdivision Improvements (including the Storm Drain Basin Expansion), and
WHEREAS, pursuant to the AGREEMENT, SUBDIVIDER filed with CITY Subdivision Payment Bonds in the amounts of $453,294.93 and $212,702.88 for all other Subdivision Improvements (including the Storm Drain Basin Expansion), and

WHEREAS, pursuant to the AGREEMENT, SUBDIVIDER filed with CITY a Subdivision Maintenance/Warranty Bond in the amount of $11,084.75 for the Parcel Grecian Avenue Improvements (Adjacent to Parcel 1 of Map 53PM67) to guarantee said public improvements in the SUBDIVISION, and

WHEREAS, pursuant to the AGREEMENT, SUBDIVIDER filed with CITY a Subdivision Warranty Bond in the amount of $90,658.99 and a Subdivision Warranty Bond in the amount of $42,540.58 for all other Subdivision Improvements (including the Storm Drain Basin Expansion) to guarantee said public improvements in the SUBDIVISION, and

WHEREAS, the Public Works Director in a memorandum to Council indicates that all work required for the Partial Grecian Avenue Improvements (Adjacent to Parcel 1 of Map 53PM67) and all other Subdivision Improvements (including the Storm Drain Basin Expansion) have 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 Partial Grecian Avenue Improvements (Adjacent to Parcel 1 of Map 53PM67) and all other Subdivision Improvements (including the Storm Drain Basin Expansion) in the SUBDIVISION as complete, authorize the City Clerk to file a Notice of Completion and to 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 Partial Grecian Avenue Improvements (Adjacent to Parcel 1 of Map 53PM67) and all other Subdivision Improvements (including the Storm
Drain Basin Expansion) are hereby accepted, and the City Clerk is hereby authorized to file a Notice of Completion for said public improvements.

2. The City Clerk is hereby authorized to release the Subdivision Faithful Performance Bonds in the amounts of $110,848.00, $906,589.85 and $425,405.75 upon recordation of the Notice of Completion.

3. The City Clerk is hereby authorized to release the Subdivision Payment Bonds in the amounts of $55,423.78, $453,294.93 and $212,702.88 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 Subdivision Maintenance/Warranty Bond in the amount of $11,084.75, the Subdivision Warranty Bond in the amount of $90,658.99 and the Subdivision Warranty Bond in the amount of $42,540.58 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 8th day of April, 2008, 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, 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
MODESTO CITY COUNCIL
RESOLUTION NO. 2008-209

A RESOLUTION ACCEPTING PUBLIC IMPROVEMENTS FOR THE WATER IMPROVEMENTS RELATED TO THE VILLAGE CORNERS COMMERCIAL CENTER LOCATED 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, Peter Reece, Joseph Pimentel, and Stephen Hughes (collectively “DEVELOPERS”), are the developers of the Village Corners Commercial Center (“DEVELOPMENT”), and

WHEREAS, as a condition of the DEVELOPMENT, the DEVELOPERS were to construct 1623 linear feet of water line and appurtenances thereto located on Sylvan Avenue between Summer Drive and Claus Road, and Claus Road between Sylvan Avenue and 5 linear feet beyond the south property line of the project as shown in Exhibit A attached hereto (“PUBLIC IMPROVEMENTS”), located within the DEVELOPMENT, and

WHEREAS, said PUBLIC IMPROVEMENTS, included in the Water Main Reimbursement Agreement (“AGREEMENT”) between the City of Modesto (“CITY”) and the DEVELOPERS, have been completed to the satisfaction of the Public Works Department, and all inspection fees have been paid, and

WHEREAS, the Public Works Director has verified that all required PUBLIC IMPROVEMENTS for this commercial project have been satisfactorily completed and all inspection fees have been paid, and

WHEREAS, the Public Works Department will assume maintenance responsibilities upon acceptance of PUBLIC IMPROVEMENTS, and
WHEREAS, DEVELOPERS have filed an irrevocable bond to secure payment for labor and materials in the amount of $66,846.00 for said PUBLIC IMPROVEMENTS, and

WHEREAS, DEVELOPERS have filed a warranty bond in the amount of $13,369.20 to guarantee the PUBLIC IMPROVEMENTS in the DEVELOPMENT, and

WHEREAS, the Land Development Engineering Department has indicated that it would be in order for the City Council to accept said PUBLIC IMPROVEMENTS in said DEVELOPMENT as complete, and authorize the City Clerk to record a Notice of Completion,

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

1. The Water line public improvements, 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 bond for labor and materials in the amount of $66,846.00 sixty (60) days after recordation of the Notice of Completion, provided no claim is made thereon.
3. The City Clerk is hereby authorized to release the warranty bond to guarantee development improvements in the amount of $13,369.20 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 8th day of April, 2008, 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, O’Bryant, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By SUSANA ALCALA WOOD, City Attorney
EXHIBIT "A"
PLAT TO ACCOMPANY REIMBURSEMENT
FOR VILLAGE CORNERS
12" WATERLINE EXTENSION
CLAUS ROAD AT SYLVAN AVENUE.
OCTOBER 18, 2005
MODESTO, CA
MODESTO CITY COUNCIL
RESOLUTION NO. 2008-210

A RESOLUTION AMENDING THE CURRENT CAPITAL IMPROVEMENT PROGRAM (CIP) BUDGET BY APPROVING A TRANSFER OF FUNDS IN THE AMOUNT OF $133,692 FROM ACCOUNT 6101-800-8000-8003 “WATER DEVELOPMENT FEES RESERVES” TO CIP ACCOUNT 6101-430-W006-6040 “VILLAGE CORNERS WATER MAIN REIMBURSE-SECONDARY” IN ORDER TO FULLY FUND THE WATER MAIN REIMBURSEMENT AGREEMENT WITH JOSEPH PIMENTEL, PETER REECE, AND STEPHEN HUGHES (“DEVELOPERS”)

WHEREAS, the City Council, on March 28, 2006, by Resolution 2006-177, approved a Water Main Reimbursement Agreement with Joseph Pimentel, Peter Reece, and Stephen Hughes (“Developers”) to perform the required water improvements for the Village Corners project, and

WHEREAS, funds were not included in the current budget to pay for the water improvements associated with the Water Main Reimbursement Agreement with Developers required for the Village Corners project, and

WHEREAS, certain budgetary transactions are necessary to fully fund the Water Main Reimbursement Agreement with Developers in the amount of $133,692 to perform the required installation of 1623 lineal feet of 12” water main for the Village Corners project, and

WHEREAS, to fully fund the Water Main Reimbursement Agreement to reimburse Developers, the current Capital Improvement Program (CIP) budget must be amended by transferring $133,692 from Account 6101-800-8000-8003 “Water Development Fees Reserves” to CIP Account 6101-430-W006-6040 “Village Corners Water Main Reimburse-Secondary”,

4/8/08/PW/GClement/item09  2008-210
NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves amending the CIP Budget by approving a transfer of funds in the amount of $133,692 from account 6101-800-8000-8003 “Water Development Fees Reserves” to CIP account 6101-430-W006-6040 “Village Corners Water Main Reimburse-Secondary” in order to fully fund the Water Main Reimbursement agreement with Joseph Pimentel, Peter Reece, and Stephen Hughes (“Developers”)

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 8th day of April, 2008, 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, O’Bryant, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: [Signature]

STEFHANIE LOPEZ, Acting City Clerk
(SEAL)

APPROVED AS TO FORM:

By [Signature]

SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2008-211

A RESOLUTION AUTHORIZING THE AWARD OF BID AND CONTRACT FOR THE FURNISHING OF LANDSCAPE MAINTENANCE SERVICES FOR THE PUBLIC WORKS DEPARTMENT, STORMWATER COLLECTIONS DIVISION AND WASTEWATER DIVISION, TO GROVER LANDSCAPE SERVICES, MODESTO, CA, AND AUTHORIZING THE PURCHASING MANAGER TO ISSUE AN ANNUAL PURCHASE AGREEMENT FOR A PERIOD OF TWO (2) YEARS, WITH THREE (3) ONE-YEAR EXTENSION OPTIONS AT THE SOLE DISCRETION OF THE CITY, FOR AN ESTIMATED ANNUAL TOTAL COST OF $38,400

WHEREAS, the Public Works Department requires landscape maintenance services for Wastewater Collections, Water Quality Control (WQC) Primary and Secondary Plants, and

WHEREAS, the Wastewater Collections, WQC locations require weekly maintenance to maintain a professional appearance of these City facilities, and

WHEREAS, the Wastewater Collections Division has eight (8) locations, six (6) sewer lift stations (Emerald, Orangeburg, Rose/Celeste, Scenic, Thousand Oaks and Woodland) and two (2) storm basin locations (Carpenter Rd. and Cassidy Ct.), and

WHEREAS, on April 24, 2007, the City Council, by Resolution No. 2007-241, authorized the Purchasing Manager to issue formal Request for Bids (RFB) for the furnishing of landscape maintenance services for the Public Works Department, Stormwater Division and Wastewater Division, for a two (2) year agreement with three (3) one-year extension options at the sole discretion of the City, and

WHEREAS, on October 12, 2007, the Purchasing Division issued Request for Bid No. 0708-07 for the furnishing of landscape maintenance services to thirty (30) prospective bidders, sixteen (16) of which were local companies, posted the bid on the City’s web site, and formally advertised as required by law, and
WHEREAS, on October 22, 2007, a bidders conference was held and eight (8) companies were in attendance, and

WHEREAS, on November 20, 2007, RFB’s were formally opened in the City Clerk’s office. Of the thirty (30) prospective bidders, eleven (11) companies chose to respond, and ten (10) companies submitted responsive and responsive bids, and

WHEREAS, based on providing a responsive and responsible bid, City staff recommends the award of bid and contract for the furnishing of landscape maintenance services for the Public Works Department, Stormwater Division and Wastewater Division, to Grover Landscape Services, Modesto, CA, and

WHEREAS, Modesto Municipal Code Section 8-3.203 generally requires all purchases, which meet or exceed $50,000 for material, equipment or contractual services to be formally bid. The award of bid and contract for the furnishing of landscape maintenance services for the Public Works Department, Stormwater Division and Wastewater Division, conforms to the Modesto Municipal Code, and

WHEREAS, funds are budgeted and available in account number 6210-480-5208-0212, 6210-480-5213-0235, 6210-480-5214-0235 and 6280-480-5312-0212 for the furnishing of landscape maintenance services in FY 07/08,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby authorizes the award of bid and contract for the furnishing of landscape maintenance services for the Public Works Department, Stormwater Division and Wastewater Division, to Grover Landscape Services, Modesto, CA.

BE IT FURTHER RESOLVED that the Purchasing Manager is hereby authorized to issue an annual purchase agreement for a period of two (2) years, with three (3) one-
year extension options at the sole discretion of the City, for an estimated annual total cost
of $38,400.

The foregoing resolution was introduced at a regular meeting of the Council of
the City of Modesto held on the 8th day of April, 2008, 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, 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
MODESTO CITY COUNCIL
RESOLUTION NO. 2008-212

A RESOLUTION REJECTING ALL BIDS FOR THE PURCHASE OF WATER QUALITY CONTROL LABORATORY EQUIPMENT FOR THE PUBLIC WORKS DEPARTMENT, WATER QUALITY CONTROL DIVISION AND AUTHORIZING THE PURCHASING MANAGER TO RE-ISSUE FORMAL REQUEST FOR BIDS FOR THE PURCHASE OF WATER QUALITY CONTROL LABORATORY EQUIPMENT AT A FUTURE DATE, FOR AN ESTIMATED TOTAL COST OF $342,750

WHEREAS, the purchase of the water quality control laboratory equipment is being coordinated with another capital improvement project for the remodeling of the laboratory, and

WHEREAS, on November 27, 2007, the City Council, by Resolution No. 2007-708, approved canceling the construction project for the laboratory remodel (CIP #B584) with Gwinn Construction Inc., and

WHEREAS, Engineering will be redesigning the lab and taking it back out to bid in the future, and

WHEREAS, at this time, it is unknown when this project will be started, and

WHEREAS, if bids were awarded for the laboratory equipment and the equipment ordered, the warranty on the equipment could expire prior to its installation, and

WHEREAS, due to the cancellation of the current construction contract, staff has determined that it is in the best interest of the City to reject all bids for the purchase of water quality control laboratory equipment and re-issue formal Request for Bids at a future date when a new construction contract is awarded, and

WHEREAS, Modesto Municipal Code Section 8-3.203 generally requires all purchases, which meet or exceed $50,000 for material, equipment or contractual services
to be formally bid. The issuance of a formal Request for Bids for the purchase of water quality control laboratory equipment for the Public Works Department, Water Quality Control Division, conforms to the Modesto Municipal Code, and

WHEREAS, funds will remain budgeted in account number 6210-480-B584-6070,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby rejects all bids for the purchase of water quality control laboratory equipment for the Public Works Department, Water Quality Control Division.

BE IT FURTHER RESOLVED that the Purchasing Manager is hereby authorized to re-issue formal Request for Bids for the purchase of water quality control laboratory equipment at a future date, for an estimated total cost of $342,750.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 8th day of April, 2008, 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, 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
A RESOLUTION RESCINDING MODESTO CITY COUNCIL RESOLUTION NO. 2007-549.

WHEREAS, on September 25, 2007, the City Council, by Resolution No. 2007-549, approved the award of bid and contract for the purchase and installation of a walk-in freezer storage unit and walk-in cooler storage unit for the Modesto Police Department to Diversified Contracting Solutions Inc., El Dorado Hills, CA, for an estimated total cost of $71,464, and authorized the City Manager, or his designee, to execute the agreement, and

WHEREAS, on October 1, 2007, City staff sent Diversified Contracting Solutions Inc. the “Notice to Proceed” letter informing them the agreement had been fully executed, and

WHEREAS, on January 28, 2008, Diversified Contracting Solutions Inc. notified the City that they had encountered serious financial difficulties and were filing for bankruptcy and would be unable to execute the agreement,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby rescinds Resolution No. 2007-549, effective upon adoption of this resolution.
The foregoing resolution was introduced at a regular meeting of the Council of
the City of Modesto held on the 8th day of April, 2008, 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, 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
MODESTO CITY COUNCIL
RESOLUTION NO. 2008-214

A RESOLUTION AUTHORIZING THE AWARD OF BID AND CONTRACT FOR THE PURCHASE AND INSTALLATION OF A WALK-IN FREEZER STORAGE UNIT AND WALK-IN COOLER STORAGE UNIT FOR THE MODESTO POLICE DEPARTMENT TO DEHART PLUMBING, HEATING & AIR, INC, MODESTO, CA, FOR AN ESTIMATED TOTAL COST OF $73,131, AND AUTHORIZING THE INTERIM CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE AGREEMENT

WHEREAS, The Modesto Police department uses refrigeration units in the Property and Evidence Facility for the cold storage of biological evidence, and

WHEREAS, currently the department uses one industrial and four (4) household refrigerators, two (2) freezer chests and three (3) up-right freezers to provide cold storage, and

WHEREAS, these units have inefficient storage capabilities, they are costly to operate, and consume more square footage than a walk-in unit, and

WHEREAS, the units are not alarmed and provide no warning if the cooling units malfunction, and

WHEREAS, the refrigeration units that are currently in use are at full capacity and no longer efficient for storing biological evidence, and

WHEREAS, on April 24, 2007, the City Council, by Resolution No. 2007-235, authorized the Purchasing Manager to issue formal Request for Bids (RFB) for the purchase of a walk-in freezer unit and walk-in cooler storage unit for the Police Department, and

WHEREAS, on May 25, 2007, the Purchasing Division issued Request for Bid No. 0607-56, for the purchase and installation of a walk-in freezer storage unit and walk-in cooler storage unit to eight (8) prospective bidders, seven (7) of which were local
companies, posted the bid on the City’s web site, and formally advertised as required by law, and

WHEREAS, on June 6, 2007, a bidder’s conference was held, and three (3) companies were in attendance, and

WHEREAS, on July 3, 2007, RFB’s were formally opened in the City Clerk’s office. Of the eight (8) prospective bidders, two (2) companies chose to respond, and

WHEREAS, both companies submitted responsive and responsible bids, and

WHEREAS, based on being deemed the lowest responsive and responsible bid, City staff recommended the award of bid and contract for the purchase and installation of a walk-in freezer storage unit and walk-in cooler storage unit for the Police Department, to Diversified Contracting Solutions Inc., El Dorado Hills, CA, for an estimated total cost of $71,464, and

WHEREAS, on September 25, 2007, the City Council, by Resolution No. 2007-549, authorized the award of bid and contract for the purchase and installation of a walk-in freezer storage unit and walk-in cooler storage unit for the Modesto Police Department to Diversified Contracting Solutions Inc., El Dorado Hills, CA, for an estimated total cost of $71,464, and authorized the City Manager, or his designee, to execute the agreement, and

WHEREAS, on October 1, 2007, City Staff sent Diversified Contracting Solutions Inc. the “Notice to Proceed” letter informing them the agreement had been fully executed, and
WHEREAS, on January 28, 2008, Diversified Contracting Solutions notified the City that they had encountered serious financial difficulties and were filing for bankruptcy and would be unable to execute the agreement, and

WHEREAS, on January 29, 2008, City staff contacted the second position bidder, DeHart Plumbing, Heating & Air, Inc. regarding the project, and

WHEREAS, DeHart Plumbing, Heating & Air, Inc. expressed their interest in performing the scope of work and receiving a contract for the project, and

WHEREAS, based on providing a responsive and responsible bid, City staff recommends the award of bid and contract for the purchase and installation of a walk-in freezer storage unit and walk-in cooler storage unit for the Modesto Police Department, to DeHart Plumbing, Heating & Air, Inc., Modesto, CA, for an estimated total cost of $73,131, and

WHEREAS, Modesto Municipal Code Section 8-3.203, generally requires all purchases, which meet or exceed $50,000 for material, equipment or contractual services to be formally bid. The award of bid and contract for the purchase and installation of a walk-in freezer storage unit and walk-in cooler storage unit for the Modesto Police Department, to DeHart Plumbing, Heating & Air, Inc., Modesto, conforms to the Modesto Municipal Code, and

WHEREAS, funds are budgeted and available in account numbers 0400-190-2933-5012 and 0400-190-2923-5016 for the purchase and installation of a walk-in freezer storage unit and walk-in cooler storage unit,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby authorizes the award of bid and contract for the purchase and installation of
a walk-in freezer storage unit and walk-in cooler storage unit for the Modesto Police
Department, to DeHart Plumbing, Heating & Air, Inc., Modesto, CA, for an estimated
total cost of $73,131.

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

The foregoing resolution was introduced at a regular meeting of the Council of
the City of Modesto held on the 8th day of April, 2008, 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, O’Bryant, Olsen,
Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST:  

APPROVED AS TO FORM:

By: 

SUSANA ALCALA WOOD, City Attorney

040808/Finance/KMassaso/item13  4  2008-214
MODESTO CITY COUNCIL
RESOLUTION NO. 2008-215

A RESOLUTION APPROVING AN AGREEMENT WITH THE HOUSING AUTHORITY OF STANISLAUS COUNTY IN THE AMOUNT OF $52,183 TO PROVIDE A COMMUNITY POLICE OFFICER FOR THE WESTVIEW GARDENS HOUSING COMPLEX FOR A PERIOD OF TWELVE (12) MONTHS FROM JANUARY 1, 2008 THROUGH DECEMBER 31, 2008, WITH AN OPTION TO EXTEND THE AGREEMENT FOR AN ADDITIONAL TWELVE (12) MONTHS, AND AUTHORIZING THE INTERIM CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE AGREEMENT

WHEREAS, the Housing Authority of Stanislaus County operates the Westview Gardens Housing Complex in Modesto, California, and

WHEREAS, by agreement, the Modesto Police Department has assigned a Police Officer to the Housing Complex for sixteen (16) years, and

WHEREAS, the Housing Authority is desirous to continue this police service which will provide for the presence of one police officer for 24.75 hours per week for patrol, investigation, response to calls, presentation of community crime resistance education, drug traffic suppression and drug education, graffiti abatement program education and coordination of the exchange of information between residents and other services of the City, and

WHEREAS, the term of this Agreement is January 1, 2008 through December 31, 2008, and

WHEREAS, this Agreement shall automatically renew for one (1) year, until December 31, 2009, unless terminated by 30-day’s written notice by either party, and

WHEREAS, the cost of providing this service to the Westview Gardens Housing Complex is $52,183 and will be reimbursed for by the Housing Authority of Stanislaus County, and to the police department.
NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves an Agreement with the Housing Authority of Stanislaus County in the amount of $52,183 to provide a Community Police Officer for the Westview Gardens Housing Complex for a period of twelve (12) months, from January 1, 2008 through December 31, 2008, with an option to extend the Agreement for twelve (12) months.

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

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 8th day of April, 2008, 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, 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. 2008-216

A RESOLUTION ACCEPTING THE WORK BY TEICHERT CONSTRUCTION FOR THE PROJECT TITLED “RECONSTRUCTION OF THE SYLVAN AVENUE AND ROSELLE AVENUE INTERSECTION” AS COMPLETE, AUTHORIZING THE CITY CLERK TO FILE A NOTICE OF COMPLETION WITH THE STANISLAUS COUNTY RECORDER AND TO RELEASE SECURITIES UPON EXPIRATION OF STATUTORY PERIODS, AND AUTHORIZING PAYMENT OF AMOUNTS TOTALING $3,176,425.22

WHEREAS, a report has been filed by the Public Works Director that the project titled “Reconstruction of Sylvan Avenue and Roselle Avenue Intersection” has been completed by Teichert Construction in accordance with the contract agreement dated July 5, 2006,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the project titled “Reconstruction of the Sylvan Avenue and Roselle Avenue Intersection” is hereby accepted as complete from said contractor Teichert Construction, that the City Clerk is authorized to file a Notice of Completion with the Stanislaus County Recorder and to release securities upon expiration of statutory periods, and that payment of amounts totaling $3,176,425.22 is authorized as provided in the contract.
The foregoing resolution was introduced at a regular meeting of the Council of
the City of Modesto held on the 8th day of April, 2008, by Councilmember Lopez, who
moved its adoption, which motion being duly seconded by Councilmember Marsh, was
upon roll call carried and the resolution adopted by the following vote:

AYES:       Councilmembers:  Hawn, Lopez, Keating, 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. 2008-217

A RESOLUTION APPROVING A SECOND AMENDMENT TO THE AGREEMENT WITH COLE MANAGEMENT & ENGINEERING, INC. FOR CONTINUED CONSTRUCTION MANAGEMENT, IN THE AMOUNT OF $12,080, FOR THE PROJECT TITLED “CELESTE/ROSE/SCENIC SANITARY SEWER IMPROVEMENTS,” AND AUTHORIZING THE INTERIM CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE SECOND AMENDMENT TO THE AGREEMENT.

WHEREAS, on March 7, 2006, by Resolution 2006-133, the City Council awarded a construction contract in the amount of $3,707,105 to California Trenchless, Inc. to construct the Celeste/Rose/Scenic Sanitary Sewer Improvements project, and

WHEREAS, the Celeste/Rose/Scenic Sanitary Sewer Improvements project is a large specialized project that requires augmentation of the City’s capacity and requires construction management and inspection, and

WHEREAS, the City Council on April 4, 2006, by Resolution 2006-213, approved an agreement with Cole Management & Engineering, Inc. (CME), a construction management firm specializing in these types of inspections, to assist with this project, and

WHEREAS, the City Council on January 9, 2007, by Resolution No. 2007-056, approved the First Amendment to the Agreement with CME for construction management services that were necessary to complete the scope of services provided for under the original agreement, and

WHEREAS, the City has been officially notified of a pending construction claim by California Trenchless, Inc., and

WHEREAS, City staff recommends that CME continue to provide construction management services for claims assistance and project closeout, and

WHEREAS, this Second Amendment to the Agreement with CME will allow for claims mitigation and resolution, including potential arbitration, and
WHEREAS, the City’s consultant agreement with CME is a time and materials contract, and

WHEREAS, staff recommends execution of a Second Amendment to the Agreement with Cole Management & Engineering, Inc. for services associated with the construction management of this project,

WHEREAS, there are sufficient funds available in CIP Account 6210-430-A049 “Celestel/Rose/Scenic Sewer Improvements” for the additional services, and

WHEREAS, the original Agreement was for $205,784, and

WHEREAS, the additional work associated with the First Amendment was for $56,800, and

WHEREAS, the additional work associated with this Second Amendment is $12,080, which will increase the total Agreement to an amount not-to-exceed $274,664,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the Second Amendment to the Agreement between City of Modesto and Cole Management & Engineering, Inc. for additional services related to the Celeste/Rose/Scenic Sanitary Sewer Improvements Project in the amount of $12,080.

BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute said Second Amendment to the Agreement.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 8th day of April, 2008, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Marsh, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

(SEAL)

APPROVED AS TO FORM:

By: ____________________________

SUSANA ALCALA WOOD, City Attorney

ATTEST

STEFANIE LOPEZ, City Clerk
MODESTO CITY COUNCIL
RESOLUTION NO. 2008-218

A RESOLUTION AMENDING THE WATER FUND OPERATING BUDGET FOR FISCAL YEAR 2007/2008 TO APPROPRIATE $93,947 FOR THE INSTALLATION OF FOUR (4) LARGE WATER METERS AT THE VINTAGE FAIRE MALL AND $351,840 FOR INCREASED ELECTRICAL UTILITY COSTS RELATED TO WELL PUMPS AND TANKS, AND AUTHORIZING THE TRANSFER OF FUNDS IN THE TOTAL AMOUNT OF $445,787 FROM WATER FUND RESERVES.

WHEREAS, it has been determined that the water infrastructure serving the Vintage Faire Mall (Mall) does not meet metering and backflow standards, and

WHEREAS, the City and the Mall management reached an agreement to upgrade four (4) large meters at a cost of $93,947, and

WHEREAS, in 2007, two new high capacity wells were installed and put into production, and

WHEREAS, due to the increased pumping of wells and upgrading to larger pumps an additional $351,840 will be needed over what was budgeted in FY2007-08, and

WHEREAS, funds are available in Water Fund Reserves to fund the $93,947 for the remainder of FY 2007/08 and $351,480 annually thereafter,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby authorizes amending the Water Fund Operating Budget for Fiscal Year 2007/2008 to appropriate 93,947 for the installation of four (4) large water meters at the Vintage Faire Mall and $351,840 for increased electrical utility costs related to well pumps and tanks.

BE IT FURTHER RESOLVED that the Council hereby authorizes the transfer of funds in the total amount of $445,787 from Water Fund Reserves.
The foregoing resolution was introduced at a special meeting of the Council of the City of Modesto held on the 8th day of April, 2008, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Marsh, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Hawn, Lopez, Keating, 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. 2008-219

A RESOLUTION ACCEPTING THE PRELIMINARY DESIGN REPORT FOR THE MODESTO REGIONAL WATER TREATMENT PLANT TIER 2 – WEST TANK IMPROVEMENTS, DATED MARCH 2008, AS COMPLETE

WHEREAS, the Modesto Irrigation District and the City of Modesto have been planning for the expansion of the Modesto Regional Water Treatment Plant, and

WHEREAS, the Modesto Regional Water Treatment Plant will double in capacity, and

WHEREAS, the City has determined that its existing water distribution system needs additional improvements, and

WHEREAS, construction of a 4-million gallon storage tank is needed on the westerly portion of the City, and

WHEREAS, the City Council on December 12, 2007, by Resolution No. 2007-742, approved an Agreement with West Yost Associates, Inc. to complete the 35% design effort and a Preliminary Design Report (PDR) for the Modesto Regional Water Treatment Plant Tier 2 – West Tank Improvements, and

WHEREAS, the PDR summarizes existing facilities, details proposed project elements and rehabilitation method descriptions, presents preliminary engineering drawings, and provides estimated cost and schedule projections for project implementation, and

WHEREAS, the PDR has been successfully completed and will serve as the basis for the final design of the West Tank Improvement Project,
NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby accepts the Preliminary Design Report for the Modesto Regional Water Treatment Plant Tier 2 – West Tank Improvements, dated March 2008, as complete.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 8th day of April, 2008, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Marsh, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Hawn, Lopez, Keating, 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. 2008-220

A RESOLUTION APPROVING AN AGREEMENT WITH WEST YOST ASSOCIATES, INC. TO PREPARE A FINAL PROJECT DESIGN FOR THE MODESTO REGIONAL WATER TREATMENT PLANT TIER 2 – WEST TANK IMPROVEMENTS IN AN AMOUNT NOT TO EXCEED $562,731, FOR THE IDENTIFIED SCOPE OF SERVICES, PLUS $56,273 FOR ADDITIONAL SERVICES (IF NEEDED) FOR A MAXIMUM TOTAL AMOUNT NOT TO EXCEED $619,004, AND AUTHORIZING THE INTERIM CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE AGREEMENT

WHEREAS, the Modesto Irrigation District and the City of Modesto have been planning for the expansion of the Modesto Regional Water Treatment Plant, and

WHEREAS, the Modesto Regional Water Treatment Plant will double in capacity, and

WHEREAS, the City has determined that its existing water distribution system needs additional improvements, and

WHEREAS, construction of a 4-million gallon storage tank is needed on the westerly portion of the City, and

WHEREAS, the City Council on December 12, 2007, by Resolution No. 2007-742, approved an Agreement with West Yost Associates, Inc. to complete the 35% design effort and a Preliminary Design Report (PDR) for the Modesto Regional Water Treatment Plant Tier 2 – West Tank Improvements, and

WHEREAS, the PDR summarizes existing facilities, details proposed project elements and rehabilitation method descriptions, presents preliminary engineering drawings, and provides estimated cost and schedule projections for project implementation, and
WHEREAS, the PDR has been successfully completed and will serve as the basis for the final design of the West Tank Improvement Project, and

WHEREAS, City staff recommends an agreement with the consulting firm of West Yost Associates, Inc. be approved to perform the final design services as the City does not have the staffing level to provide for timely completion, and

WHEREAS, selecting West Yost Associates, Inc. to complete the final design services will maximize benefits to the City related to knowledge gained through the preliminary design effort,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves an agreement with West Yost Associates, Inc. to prepare a final project design for the Modesto Regional Water Treatment Plant Tier 2 – West Tank Improvements, in an amount not to exceed $562,731, for the identified scope of services, plus $56,273 for additional services (if needed) for a maximum total amount not to exceed $619,004.

BE IT FURTHER RESOLVED that the Interim City Manager, or his designee, is hereby authorized to execute the Agreement.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 8th day of April, 2008, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Marsh, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST:  

STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By SUSANA ALCALA WOOD, City Attorney
A RESOLUTION APPROVING THE DRAFT 20-YEAR COUNTYWIDE TRANSPORTATION HALF-CENT SALES TAX MEASURE FINANCIAL EXPENDITURE PLAN 2008, WHICH INCLUDES THE CITY OF MODESTO'S LIST OF PRIORITY PROJECTS, FOR THE UPCOMING NOVEMBER BALLOT

WHEREAS, per the direction of the StanCOG Policy Board, the Public Works Department has prepared a draft expenditure plan for the proposed Transportation Sales Tax Measure that addresses areas within the city of Modesto, and

WHEREAS, as proposed, the Transportation Sales Tax Measure (Sales Tax Measure) will result in an estimated annual revenue of $6.9 million to be used for pavement maintenance and traffic improvement projects, and

WHEREAS, the proposed plan covers the following aspects of street maintenance in Modesto:

- Pavement Repair & Rehabilitation
- Pothole Patching & Minor Repair
- Preventive Maintenance – Slurry Seal Treatments
- Traffic Improvements at Key Intersections
- Interchange Widening and Improvement Projects
- Match Funds to leverage Federal/State Highway Funds, and

WHEREAS, the Sales Tax Measure, if approved by the voters, will be active for the next 20 years and will enhance the City’s ability to maintain its street infrastructure, and

WHEREAS, the draft expenditure plan details the first ten years, and

WHEREAS, the City and Stanislaus County are jointly preparing a Pavement Management System (PMS), which will include a detailed assessment of the current conditions of Modesto’s street system, and the recommended corrective treatment necessary to maintain the pavement infrastructure, and
WHEREAS, the contractor is expected to deliver the PMS in the spring of 2008, and staff may make project priority revisions on the project list based on the PMS recommendations, and

WHEREAS the last PMS, which was developed in 2002, identified a street maintenance need of $250 million and also recommended a yearly budget of $15 million of pavement maintenance to maintain the current state of roadway condition, and

WHEREAS, the City’s combined budgets, including federal, state and local resources, have allowed the City an annual average of $4 to $6 million for pavement maintenance, and

WHEREAS, StanCOG has included the City of Modesto’s draft expenditure plan in the Draft 20-Year Countywide Transportation Half-Cent Sales Tax Measure Financial Expenditure Plan 2008, which also includes draft expenditure plans for the other eight cities within Stanislaus County and the County unincorporated areas,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the Draft 20-Year Countywide Transportation Half-Cent Sales Tax Measure Financial Expenditure Plan 2008.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 8th day of April, 2008, by Councilmember Olsen, who moved its adoption, which motion being duly seconded by Councilmember Marsh, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: Keating, O’Bryant

ABSENT: Councilmembers: None

ATTEST: STEPHANIE LOPEZ, City Clerk

(SIGNATURE)

APPROVED AS TO FORM:

BY: SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2008-222

A RESOLUTION APPROVING THE REQUEST FOR APPLICATION (RFA) AND AUTHORIZING THE PURCHASING MANAGER TO ISSUE THE REQUEST FOR APPLICATION FOR CITY OF MODESTO NON-EXCLUSIVE NON-CONSENSUAL FRANCHISE TOWING SERVICES

WHEREAS, on March 1, 2004, the Safety and Communities Committee received a report from the Police Department requesting endorsement for the issuance of a Request for Application (RFA) for City Council approval of Non-Exclusive Non-Consensual Franchise Tow Services, and

WHEREAS, in April 2004, Police Department staff embarked on formulating an improved contract for the City that would provide optimum service, fewer complaints, and offset the growing cost of the City’s Non-Consensual Towing Program, and

WHEREAS, it is the intent of the Modesto Police Department to secure safe and reliable towing services and a manageable contract that will also offset the City’s costs of its Non-Consensual Towing Program, and

WHEREAS, the Police Department has encountered many problems with the current towing system—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, establishing a Non-Exclusive Non-Consensual Franchise Towing Service Agreement with specific requirements, including tow driver permits and tow truck inspections, for which a fee will be established, will ensure safe, prompt, reliable and professional service to the Police Department and the citizens of Modesto, and
WHEREAS, recommendation for contract awards will be made for all companies that meet the financial/business/insurance and application requirements, and

WHEREAS, financial/business and insurance requirements will be reviewed by the Finance Director and the Risk Manager, and

WHEREAS, the Modesto Police Department will review the RFA,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves THE Request for Application (RFA) and authorizes the Purchasing Manager to issue the Request for Application for City of Modesto Non-Exclusive Non-Consensual Franchise Towing Services.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 8th day of April, 2008, by Councilmember O'Bryant, 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, Keating, Marsh, O’Bryant, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST:  

(SIGNATURE)

(STEPHANIE LOPEZ, City Clerk)

(SEAL)

APPROVED AS TO FORM:

By  

(SIGNATURE)

SUSANA ALCALA WOOD, City Attorney
A RESOLUTION RESCINDING MODESTO CITY COUNCIL RESOLUTION NO. 2005-365

WHEREAS, on July 12, 2005, the City Council, by Resolution No. 2005-365, approved the Position Allocation for the Modesto Police Department be increased by one Community Service Officer, subject to additional revenues collected, and

WHEREAS, it is necessary to rescind City Council Resolution No. 2005-365 because the Modesto Police Department management staff feels it needs a Community Service Officer immediately to implement the Non-Exclusive Non-Consensual Franchise Towing Program,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby rescinds Resolution No. 2005-365, effective upon adoption of this resolution.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 8th day of April, 2008, by Councilmember O’Bryant, 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, Keating, Marsh, O’Bryant, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST:  

(Seal)

APPROVED AS TO FORM:

By:  

SUSANA ALCALA WOOD, City Attorney
CITY OF MODESTO
RESOLUTION 2008-224

A RESOLUTION IN OPPOSITION TO PROPOSITION 98 AND AUTHORIZING THE USE OF THE CITY’S NAME BY THE NO ON PROPOSITION 98 CAMPAIGN

WHEREAS, California faces a water crisis which threatens our economy, our environment and could affect water supplies in every region of the state because of record dry conditions and court-ordered cuts in water delivery, and

WHEREAS, California needs to invest today in water projects that protect and restore the environment and ensure healthy economic growth for our future in order keep up with population growth and demand for water in California, and

WHEREAS, Proposition 98, a constitutional amendment measure on the June 2008 ballot, defines “private use” of resources in a way that could effectively make it unlawful to use eminent domain to acquire land and water to develop public water projects, and

WHEREAS, this measure could jeopardize a great number of water infrastructure projects that we need to meet the water needs of California’s residents, businesses, environment and agriculture, and

WHEREAS, the Association of California Water Agencies and the Western Growers Association both oppose Proposition 98 because it will have a negative impact on water quality and supply in California, and

WHEREAS, Proposition 98 also contains harmful provisions that would negatively impact the local land-use planning process and usurp the authority of cities and counties to make land-use decisions to promote the local economy, and protect the community, and
WHEREAS, these provisions in Proposition 98 make no exception for actions taken to protect the public health and safety, which threaten the ability of law enforcement to keep the public safe, and is one of the reasons the California Police Chiefs Association opposes the measure, and

WHEREAS, the No on Proposition 98 campaign is represented by the League of California Cities, California State Association of Counties, League of California Homeowners, California School Boards Association, California Alliance for Retired Americans and other leading state associations who oppose Proposition 98,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby opposes Proposition 98 for the June 2008 ballot.

BE IT FURTHER RESOLVED by the Council of the City of Modesto that it hereby authorizes the use of the City’s name by the No on Proposition 98 campaign.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 22nd day April, 2008 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 final vote:

AYES: Councilmembers: Hawn, Lopez, Marsh, Mayor Ridenour
NOES: Councilmembers: Keating, O’Bryant, Olsen
ABSENT: Councilmembers: None

ATTEST: Stephanie Lopez, City Clerk

APPROVED AS TO FORM:

BY: Susana Alcala Wood, City Attorney

042208/CMO/JRay/item05 2 2008-224
MODESTO CITY COUNCIL
RESOLUTION NO. 2008-225

A RESOLUTION APPROVING AN AMENDMENT TO AGREEMENT FOR CONSULTANT SERVICES WITH TURNSTONE CONSULTING CORPORATION FOR THE PREPARATION OF A DRAFT ENVIRONMENTAL IMPACT REPORT (DEIR) FOR THE KIERNAN BUSINESS PARK EAST PROJECT AREA, IN AN AMOUNT NOT TO EXCEED $136,031, AND AUTHORIZING THE INTERIM CITY MANAGER TO EXECUTE THE AMENDMENT TO AGREEMENT

WHEREAS, Dr. Aruna Chopra, has applied for a specific plan amendment and associated applications, to the Kiernan Business Park East project, to allow for orderly future development within the approximate 155-acre planning area located on the east side of Dale Road, between Kiernan Avenue and Bangs Avenue, and

WHEREAS, the Kiernan Business Park East project will also involve the following associated entitlements: prezoning a portion of the area to a Specific Plan-Overlay (SP-O) Zone; annexation of a portion of the area; amendment of the Kiernan Business Park Specific Plan; a General Plan Amendment to modify the land use mix within the Kiernan Business Park East area; preparation of a Facilities Master Plan and associated Finance plan, formation of a Capital Facilities District (CFD); development agreement; and applicable subsequent approvals such as Tentative Subdivision or Parcel Maps, other Conditional Use Permits/Final Development Plan or plan approvals, and

WHEREAS, Section 21080.1 of the California Public Resources Code requires the City of Modesto, as lead agency, to make a determination of whether an environmental impact report is required for projects, and

WHEREAS, the City has determined that an environmental impact report (EIR) is required for the proposed Kiernan Business Park East project and related applications, and
WHEREAS, the City has determined that the EIR for the Kiernan Business Park East project should be completed in phases with Phase I being preparation of a Notice of Preparation and Initial Study and preparation of the Draft EIR, and Phase II will be preparation of the Final EIR, and

WHEREAS, on December 10, 2002, the City Council, by Resolution No. 2002-622, approved a list of environmental service providers, including the firm of Turnstone Consulting Corporation (Turnstone), to assist with the preparation of environmental impact reports and other environmental documents, and

WHEREAS, City staff selected Turnstone to prepare the environmental impact report for the Kiernan Business Park East project because of their extensive experience on similar projects in other jurisdictions, and

WHEREAS, on May 9, 2006, the City Council, by Resolution No.2006-289 approved an Agreement with Turnstone for the preparation of a Draft Environmental Impact Report (DEIR) for the proposed Kiernan Business Park East project, and

WHEREAS, during preparation of the DEIR issues arose that required additional analysis and services beyond the scope of the Agreement, requiring an Amendment to the Agreement, in an amount not to exceed $136,031,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves an Amendment to Agreement for Consultant Services with Turnstone Consulting Corporation for the preparation of a Draft Environmental Impact Report (DEIR) for the Kiernan Business Park East Project area, in an amount not to exceed $136,031.
BE IT FURTHER RESOLVED that the Interim City Manager, or his designee, is hereby authorized to execute the Amendment to Agreement.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 22nd day of April, 2008, by Councilmember Marsh, who moved its adoption, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED AS TO FORM:

BY: Susana Alcala Wood, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2008-226

A RESOLUTION APPROVING AN AMENDMENT TO THE STANDARD CONSULTANT AGREEMENT BETWEEN THE CITY OF MODESTO AND SHIBUMI CONSULTING SERVICES, LLC, FOR AN ADDITIONAL $30,000 FOR FISCAL YEAR 2007/2008; AND AUTHORIZING THE INTERIM CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE AMENDMENT TO AGREEMENT

WHEREAS, on May 25, 2006, the City entered into a Standard Agreement for Consultant Services with Shibumi Consulting Services, LLC, to provide on-call software services for the Customer Services Division of the Finance Department, for two years, not to exceed $50,000 per Fiscal Year, and

WHEREAS, Mr. Roberts has assisted the City of Modesto Finance Department and other City departments with the HTE Utility Billing System and special projects for the past nine years, and

WHEREAS, there is an ongoing demand for detailed data mining from other departments outside of Customer Services, exceeding the contract limit and leaving no resources for the Customer Services Division of the Finance Department for the remainder of Fiscal Year 2007/2008, and

WHEREAS, in order to satisfy on-going needs, the Customer Services Division of the Finance Department is proposing an Amendment to the Standard Agreement for Consultant Services with Shibumi Consulting Services, LLC, for an additional amount of $30,000, for Fiscal Year 2007/2008,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves an Amendment to the Standard Agreement for Consulting Services between the City of Modesto and Shibumi Consulting Services, LLC, for an additional $30,000 for Fiscal Year 2007/2008.

BE IT FURTHER RESOLVED that the Interim City Manager, or his designee, is hereby authorized to execute the Amendment to Agreement.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 22nd day of April, 2008, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember Marsh, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED AS TO FORM:

By

SUSANA ALCALA WOOD, City Attorney
A RESOLUTION AMENDING THE 2007/2008 BUDGET FOR THE INFORMATION TECHNOLOGY DEPARTMENT TO INCREASE APPROPRIATIONS IN THE GENERAL FUND AND PROGRAM OFFSETTING REVENUES IN THE WASTEWATER AND WATER FUNDS TO FUND ONE (1) SYSTEMS ENGINEER I/II IN THE APPLICATIONS DEVELOPMENT DIVISION (ORG. 0742) FOR THE REMAINDER OF THE CURRENT FISCAL YEAR AND FOR A FULL YEAR BEGINNING IN FY 2008-09

WHEREAS, the SCADA Supervisor position was created in 2001 to manage and administer the Supervisory Control and Data Acquisition (SCADA) System for the Water and Water Quality Control Divisions of the Public Works Department, and

WHEREAS, the SCADA system is a client-server based computer system used to monitor and control the remote facilities associated with the Water and Water Quality Control utilities (wells, lift station, reservoirs, and treatment facilities), and

WHEREAS, the SCADA Supervisor currently manages the SCADA system relatively independently of the Information Technology Department and there is no existing arrangement for cross-training other information technology professionals, and

WHEREAS, the Information Technology Department currently manages and maintains all other City computer system applications, and

WHEREAS, the Systems Engineer I/II position in the Information Technology Department has similar duties and responsibilities to the SCADA Supervisor, and the recently completed classification study confirms this internal relationship, and

WHEREAS, this request was reviewed and approved by Public Works management staff, and

WHEREAS, this reallocation request is made based upon departmental needs and changing workload demands, and
WHEREAS, this reallocation request will centralize and standardize Information Technology Department resources, assist in meeting the growing support requirements for the City, and provide the opportunity for career growth for staff assigned to this function, and

WHEREAS, annualized salary and benefits for the SCADA Supervisor position (Range 434) are budgeted at $102,746 for FY 07-08 and $106,556 in the proposed budget for FY 08-09, and

WHEREAS, annualized salary and benefits for a Systems Engineer I in Range 434 are $83,689 - $101,966 at ultimate build-out. Annualized salary and benefits for a Systems Engineer II in Range 438 are $92,375 - $112,525 at ultimate build-out, and

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby authorizes amending the 2007/2008 budget to increase appropriations in the General Fund and program offsetting revenues in the Wastewater and Water Funds to fund one (1) Systems Engineer I/II in the Applications Development Division (Org. 0742) for the remainder of the current fiscal year and for a full year beginning in FY 2008-09.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 22\textsuperscript{nd} day of April, 2008, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember Marsh, was upon roll call carried and the resolution adopted by the following vote:

- **AYES:** Councilmembers: Hawn, Keating, Lopez, Marsh, O’Bryant, Olsen, Mayor Ridenour
- **NOES:** Councilmembers: None
- **ABSENT:** Councilmembers: None

**APPROVED AS TO FORM:**

By: SUSANA ALCALA WOOD, City Attorney

**ATTEST:** STEPHANIE LOPEZ, City Clerk
A RESOLUTION AUTHORIZING THE PURCHASING MANAGER TO ISSUE FORMAL REQUEST FOR BIDS (RFB) FOR THE PURCHASE OF LIGHT FIXTURES FOR THE 9TH AND 11TH STREET PARKING GARAGES, FOR A TOTAL ESTIMATED COST TO THE PARKING FUND OF $131,548

WHEREAS, the Parks, Recreation and Neighborhoods Department, Building and Parking Services Division, maintains the City’s parking garages and surface parking lots, and

WHEREAS, this division is responsible for providing adequate lighting for the safety and security of parking garage patrons, and

WHEREAS, the existing lighting fixtures within the 9th and 11th Street parking garages are outdated, and

WHEREAS, improved features on newer lighting fixtures will result in lower maintenance and electrical costs, and

WHEREAS, by issuing formal RFB’s, the City will achieve the best value possible for newer lighting fixtures, and

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

WHEREAS, the issuance of formal RFB’s for the purchase of light fixtures conforms to the Modesto Municipal Code,

NOW, THEREFORE, BE IT HEREBY RESOLVED by the Council of the City of Modesto that it hereby authorizes the Purchasing Manager to issue formal Request for
Bids for the purchase of light fixtures for the 9th and 11th Street garages, for a total estimated cost to the Parking Fund of $131,548.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 22nd day of April, 2008, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember Marsh, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: [Signature]

STEPHANIE LOPEZ, City Clerk

APPROVED AS TO FORM:

By: [Signature]

SUSANA ALCALA WOOD, City Attorney
A RESOLUTION AUTHORIZING STAFF TO: 1) IMPLEMENT A STRUCTURED PARKING VALIDATION SYSTEM FOR DOWNTOWN BUSINESSES INVOLVING LIMITS BASED ON TYPE OF RETAIL TENANT AND/OR TENANT NEED; 2) PURCHASE AND SUPPLY RETAIL TENANTS WITH VALOMETER® MACHINES; AND 3) TRACK AND MONITOR VALIDATION USAGE FOR A TOTAL ESTIMATED COST OF $7,500 TO THE PARKING FUND (FUND 6000)

WHEREAS, in September 2005, the City hired Walker Parking Consultants (Walker) to complete an assessment of the City owned parking facilities, and

WHEREAS, Walker’s assessment included the implementation of a structured parking validation system, and

WHEREAS, on September 12, 2006, by Resolution No. 2006-558, the Council authorized the Parks, Recreation and Neighborhoods Department to move forward with implementation of the Walker recommendations, and

WHEREAS, the Finance Committee met on February 25, 2008, and supported the recommendation to implement a structured parking validation system, and

WHEREAS, the 9th, 10th, and 11th street parking garages and surface parking lots are to be upgraded to include the installation of an automated attendant system, and

WHEREAS, the implementation of a structured parking validation system would coincide with the installation of the automated attendant system, and

WHEREAS, parking validation would be based on type of retail tenant and/or tenant need as follows: retail shops, two (2) hours of validated parking; movie theater, four (4) hours of validated parking; quality restaurants, two (2) hours of validated parking; fast food and coffee shops, one (1) hour of validated parking, and
WHEREAS, parking validations would continue to be limited to the businesses located at 1010 10th Street, 1020 10th Street, and the Brendan Theater complex excluding the retail tenant located at the Northwest corner of 10th and J Streets, and

WHEREAS, funds are budgeted in Capital Improvement Project 6000-350-P597-6040, and

WHEREAS, the Finance Committee met on February 25, 2008, and supported the implementation of a structured parking validation system,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the Council hereby approves the implementation of a structured parking validation system that will coincide with the installation of the new automated attendant system.

BE IT FURTHER RESOLVED that the Council hereby authorizes staff to purchase and supply retail tenants with Valometer ® machines for a total estimated cost of $7,500 to the Parking Fund (Fund 6000).

BE IT FURTHER RESOLVED that the Council hereby directs staff to track and monitor validation usage.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 22nd day of April, 2008, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember Marsh, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED AS TO FORM:

By:

SUSANA ALCALA WOOD, City Attorney

ATTEST: STEPHANIE LOPEZ, City Clerk
MODESTO CITY COUNCIL
RESOLUTION NO. 2008-230

A RESOLUTION APPROVING A HOME LOAN IN THE AMOUNT OF
$1,000,000 TO THE HOUSING AUTHORITY OF STANISLAUS COUNTY TO
PURCHASE A 40-UNIT MULTI-FAMILY HOUSING DEVELOPMENT
LOCATED AT 201 E. COOLIDGE, FOR RENTAL TO LOW-INCOME
HOUSEHOLDS AND AUTHORIZING THE INTERIM CITY MANAGER, OR
HIS DESIGNEE, TO EXECUTE THE LOAN AGREEMENT AND RELATED
DOCUMENTS

WHEREAS, the City has a great need for more affordable housing for very low
and low-income households, and

WHEREAS, as indicated in the City of Modesto Housing Element, the City’s
share of regional housing needs for very-low income households is 3,360 units, and for
low-income households is 2,609 units, and

WHEREAS, on September 12, 2007, the Citizens Housing and Community
Development Committee (CH&CDC) accepted staff’s recommendation to solicit
proposals for qualifications for the development of new construction or rehabilitation of
existing market rate housing to be converted to affordable units for low-income
households, and

WHEREAS, the RFQ required that the project be located in the City limits, that it
must have site control, and that the City’s financial assistance be used to leverage other
funding sources, and

WHEREAS, bonus points were given to home ownership, mixed income, mixed
use projects, services and amenities within the project and projects proposing multi-
family housing, due to the tremendous need in this area, and

WHEREAS, a total of approximately $2,000,000 of assistance is available,
consisting of up to $1,000,000 in HOME entitlement funds per project, and
WHEREAS, up to $250,000 may be use for predevelopment activities in compliance with HOME regulations, and

WHEREAS, the federal HOME program provides these funds; therefore, all funding recipients will be governed by HOME regulations, and

WHEREAS, the RFQ for Affordable Housing Developers was issued on November 1, 2007, and proposals were due on January 14, 2008, and

WHEREAS, a total of eight (8) proposals were submitted, including requests for CHDO set-aside funds, and $7,499,566 in HOME funds, and a total of 331 units were proposed, and

WHEREAS, an RFQ sub-committee was appointed by the CH&CDC on September 12, 2007; in addition, Wayne Padilla, the City’s Finance Director, agreed to assist in reviewing the financial portion of the proposals, and

WHEREAS, the sub-committee made a recommendation to submit a report to the CH&CDC presenting the Housing Authority acquisition project located at 201 E. Coolidge Avenue, also known as Palm Valley Apartments, and

WHEREAS, the Housing Authority is requesting $1,000,000 in HOME funds for the acquisition of 40 units of existing housing. This project consists of 20 2-bedroom units with 897 square feet, 12 1-bedroom units with 628 square feet and 8 1-bedroom units with 467 square feet. All units have one bath, and

WHEREAS, the Housing Authority’s intention is to rent the units to low and very low-income households, and

WHEREAS, the purchase of the Palm Valley Apartments will help preserve the affordable housing stock in Modesto, and
WHEREAS, the cost of the acquisition is $3,900,000. The closing fees, bond cost, appraisal, etc are $70,000. The Housing Authority is also seeking $125,000 to convert one unit to a disabled accessible unit and to add a security gate; there are also other expenses of $30,000, bringing the total estimated cost of the project to $4,095,000 or $138 per square foot, and

WHEREAS, The Housing Authority is proposing an affordability mix of 19 units to be rented to tenants who are at 80% Area Median Income level, 11 units to be rented to tenants who are at 65% Area Median Income level, 10 units to be rented to tenants who are at 50% Area Median Income level, and

WHEREAS, to achieve this affordability mix, the Housing Authority has requested that the City provide a loan of $1,000,000, with: a Loan Maturity of 55 Years; an interest rate of 3% for the first 30 years, residual receipt loan with 50% of the cash flow to be paid to the City annually; a interest rate of 3% for the last 25 years, fully amortized payments on remaining loan balance; and an affordability period of 55 years, and

WHEREAS, the remaining financing for the Palm Valley Apartments will be provided by a Housing Authority Tax Exempt Note in the amount of $2,250,000 and capital contribution from the Housing Authority in the amount of $20,000, and

WHEREAS, the proposed acquisition of Palm Valley Apartments will provide 40 units of quality affordable rental housing in an expedient fashion at a per unit cost of approximately $102,375, including fees and development costs (a cost of approximately $138 per square foot), and
WHEREAS, the CH&CDC met on February 27, 2008, and supported staff’s recommendation to provide $1,000,000.00 in HOME Funds to the Housing Authority of Stanislaus County to purchase a 40-unit multi-family housing development located at 201 E. Coolidge for rental to low-income households,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the Council hereby approves a HOME loan in the amount of $1,000,000 to the Housing Authority of Stanislaus County to purchase a 40-unit multi-family housing development located at 201 E. Coolidge, for rental to low-income households.

BE IT FURTHER RESOLVED that the Interim City Manager, or his designee, is hereby authorized to execute the loan agreement and related documents.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 22nd day of April, 2008, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember Marsh, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney

Attest: STEPHANIE LOPEZ, City Clerk
MODESTO CITY COUNCIL
RESOLUTION NO. 2008-231

A RESOLUTION AMENDING THE FY 07-08 OPERATING BUDGET TO
APPROPRIATE $1,000,000 IN FY 06-07 HOME ENTITLEMENT FUNDS FROM
1170-800-8000-8003, HOME FUND RESERVE, TO 1170-320-3259-0497, DIRECT
LOANS, TO FULLY FUND THE PALM VALLEY APARTMENTS PROJECT

WHEREAS, the City has a great need for more affordable housing for very low
and low-income households, and

WHEREAS, on September 12, 2007, the Citizens Housing and Community
Development Committee (CH&CDC) accepted staff’s recommendation to solicit
proposals for qualifications for the development of new construction or rehabilitation of
existing market rate housing to be converted to affordable units for low-income
households, and

WHEREAS, the RFQ for Affordable Housing Developers was issued on
November 1, 2007, and proposals were due on January 14, 2008, and

WHEREAS, a total of eight (8) proposals were submitted, including requests for
CHDO set-aside funds, and $7,499,566 in HOME funds, and a total of 331 units were
proposed, and

WHEREAS, an RFQ sub-committee was appointed by the CH&CDC on
September 12, 2007; in addition, Wayne Padilla, the City’s Finance Director, agreed to
assist in reviewing the financial portion of the proposals, and

WHEREAS, the sub-committee made a recommendation to submit a report to the
CH&CDC presenting the Housing Authority acquisition project located at 201 E.
Coolidge Avenue, also known as Palm Valley Apartments, and
WHEREAS, the Housing Authority is requesting $1,000,000 in HOME funds for the acquisition of 40 units of existing housing, and

WHEREAS, the Housing Authority’s intention is to rent the units to low and very low-income households, and

WHEREAS, the purchase of the Palm Valley Apartments will help preserve the affordable housing stock in Modesto, and

WHEREAS, the proposed acquisition of Palm Valley Apartments will provide 40 units of quality affordable rental housing in an expedient fashion at a per unit cost of approximately $102,375, including fees and development cost (a cost of approximately $138 per square foot), and

WHEREAS, funds are available in the HOME Fund (Fund 1170 Reserve) to fully fund this loan, and

WHEREAS, the CH&CDC met on February 27, 2008, and supported staff’s recommendation to provide $1,000,000.00 in HOME Funds to the Housing Authority of Stanislaus County to purchase a 40-unit multi-family housing development located at 201 E. Coolidge for rental to low-income households,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the Council hereby approves amending the FY 07-08 operating budget to appropriate $1,000,000 in FY 06-07 HOME Entitlement Funds from 1170-800-8000-8003, HOME Fund Reserve, to 1170-320-3259-0497, Direct Loans, to fully fund the Palm Valley Apartments project.
BE IT FURTHER RESOLVED that the Finance Director, or his designee, is hereby authorized to take the necessary steps to implement the provisions of this resolution.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 22nd day of April, 2008, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember Marsh was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED AS TO FORM:

By:  

SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2008-232

A RESOLUTION APPROVING THE ALLOCATION OF FUNDING IN THE AMOUNTS OF $355,234 IN COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PUBLIC SERVICES FUNDS, $31,185 IN CDBG REVOLVING LOAN FUNDS FOR HOMELESS SERVICES, AND $105,346 IN EMERGENCY SHELTER GRANT (ESG) FUNDS FOR FY 2008-2009, AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE AGREEMENTS

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 an Emergency Shelter Grant (ESG), and

WHEREAS, the City receives these grants annually because of its population size, number of households living below the poverty level, and the number of housing units that are considered substandard, and

WHEREAS, a maximum of fifteen percent (15%) of the City’s available CDBG entitlement plus an amount up to 15% of the prior year’s program income, and up to 15% of the prior year’s program income from the Revolving Loan Fund may be allocated for the purpose of providing assistance that is consistent with the functions of CDBG funding to very-low, low and moderate income persons and families residing within the city limits of Modesto, and

WHEREAS, for Fiscal Year 2008-2009, 15% of the CDBG entitlement and program income is $355,234, and 15% of the prior year program income from the Revolving Loan Fund is $31,185, and

WHEREAS, the available ESG entitlement for Fiscal Year 2008-2009 is $105,346, and
WHEREAS, at its April 9, 2008, meeting, the Citizens Housing & Community Development Committee (CH&CDC) recommended allocation of $355,234 in available CDBG entitlement and program income funds to qualified non-profit agencies for public services as set forth in Exhibit “1”, attached hereto and incorporated by reference, and

WHEREAS, the CH&CDC also recommended that $31,185 be allocated for services for the homeless as set forth in Exhibit “2”, attached hereto and incorporated by reference, and

WHEREAS, the CH&CDC recommended $105,346 be allocated for emergency shelter services as set forth in Exhibit “3”, attached hereto and incorporated by reference, and

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the Council hereby approves the allocation of $355,234 in Community Development Block Grant (CDBG) funds for public services for Fiscal Year 2008-2009 as set forth in Exhibit “1”.

BE IT FURTHER RESOLVED that the Council hereby approves the allocation of $31,185 in CDBG Revolving Loan funds for services for the homeless for Fiscal Year 2008-2009 as set forth in Exhibit “2”.

BE IT FURTHER RESOLVED that the Council hereby approves the allocation of Emergency Shelter Grant (ESG) funds of $105,346 for emergency shelter services for Fiscal Year 2008-2009 as set forth in Exhibit “3”.

BE IT FURTHER RESOLVED by the Council of the City of Modesto that the Interim City Manager, or his authorized designee, is hereby authorized to execute the agreements.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 22\textsuperscript{nd} day of April, 2008, 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
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<th>Program</th>
<th>Request</th>
<th>Reductions</th>
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<td>Emergency Shelter Svces</td>
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<td>Families In Recovery</td>
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<td>Agency</td>
<td>Program</td>
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<td>Reductions</td>
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<tr>
<td>Healthy Aging Association</td>
<td>Young at Heart</td>
<td>$34,159</td>
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<td>Nutritional Supplement</td>
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<td>West Modesto English Tutoring</td>
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<td>$471,432</td>
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* A portion of the funding allocated to Project Sentinel for Fair Housing Services ($42,661) will come out of the CDBG Administration Budget. The balance of $6,990 will be paid by Public Service funding.
### FY 08-09 Public Service Grants

#### ESG Entitlement

<table>
<thead>
<tr>
<th>Agency</th>
<th>Program</th>
<th>Funding Available</th>
<th>Funding Requested</th>
<th>Difference</th>
<th>Funding Recommended</th>
<th>Difference</th>
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#### Agency Programs

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<th>Funding</th>
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<tbody>
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<td>Hutton House</td>
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<table>
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<tr>
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<th>Proportionate</th>
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<tbody>
<tr>
<td>Center for Human Svce</td>
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<table>
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<tr>
<td>Center for Human Svce</td>
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<tr>
<td>Salvation Army</td>
<td>$6,419</td>
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</table>

#### Recommendations

- Eliminate Admin overhead ($1,338), Tree Trimming ($775), Sprinkler Repair ($1,200) Floor Grout ($3200)
- Eliminate telephone ($1,000), Postage ($200), Insurance ($750) 1/2 Office Supplies ($1,250)

- Reduce funding by 1/2. Fund $4233 out of CDBG

#### Total Funding Allocated

<table>
<thead>
<tr>
<th>Total Funding Allocated</th>
<th>$105,346</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agency</td>
<td>Program</td>
</tr>
<tr>
<td>-------------------------------</td>
<td>--------------------------------</td>
</tr>
<tr>
<td>Children's Crisis Center</td>
<td>Cricket Shelter</td>
</tr>
<tr>
<td>Community Housing and Shelter Services</td>
<td>Supportive Services for Housing</td>
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<tr>
<td>Community Housing and Shelter Services</td>
<td>Supportive Services for Homeless Svces</td>
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<tr>
<td>Salvation Army</td>
<td>Emergency Winter Shelter</td>
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<tr>
<td></td>
<td></td>
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</table>

* Due to limited funding some applications were transferred in part or full to ESG based on eligibility.