MODESTO CITY COUNCIL
RESOLUTION NO. 2006-457

A RESOLUTION DETERMINING THAT THE PUBLIC INTEREST AND NECESSITY REQUIRE THE ACQUISITION OF CERTAIN PROPERTY INTERESTS AND DIRECTING THE FILING OF EMINENT DOMAIN PROCEEDINGS FOR THE PELANDALE AVENUE CAPITAL IMPROVEMENT PROJECT

Vintage Faire Christian Center Church, Property Owner
Property Address: 4204 Dale Road, Modesto, California
Assessor’s Parcel No.: 078-018-035

WHEREAS, the City’s Capital Improvement Program (CIP), amended on February 22, 2005, by Council Resolution No. 2005-118, included a project to widen Pelandale Avenue to six lanes, the Pelandale Avenue Widening Project (the “Project”), and

WHEREAS, the City of Modesto and the County of Stanislaus entered into the Pelandale Avenue Joint Powers Agreement on December 6, 2005, to facilitate cooperation between the City and the County for the improvement of Pelandale Avenue between State Route 99 and a point 1,400 feet east of McHenry Avenue for the Project, which Project area is partially located within the City limits and partially within the unincorporated area of the County, and

WHEREAS, pursuant to the Pelandale Avenue Joint Powers Agreement, the County of Stanislaus consents to the acquisition of Project rights-of-way by the City outside its boundaries in the unincorporated area of the County, and

WHEREAS, the Pelandale Avenue Joint Powers Agreement gives the City of Modesto the right and power to acquire, by purchase or eminent domain, all property or rights-of-way necessary for completion of the Project, including property outside its boundaries in the unincorporated area of the County, and

WHEREAS, the Project, when completed, will improve traffic circulation within the City and the County and to areas east of Coffee Road, and

WHEREAS, the City of Modesto is vested with the power of eminent domain to acquire real property for the Project by virtue of Article 1, Section 19, of the Constitution of the State of California, Government Code Sections 37350.5, 37353, 39792, 40401 and 40404, and Sections 1240.010, 1240.020, 1240.030, 1240.040, 1240.050, 1240.110, 1240.120, 1240.140, 1240.150, and 1240.350 of the Code of Civil Procedure of the State of California and the Pelandale Avenue Joint Powers Agreement by and between the City of Modesto and the County of Stanislaus, and

WHEREAS, it is desirable and necessary for the City of Modesto to acquire certain real property interests on Assessor’s Parcel No. 078-018-035, including fee title together with all improvements situated thereon and together with all rights appurtenant thereto, as described in Exhibits A and A-1 hereto, and a temporary construction easement as described in Exhibits B and B-1 hereto, which exhibits are attached hereto and made a part hereof by this reference and
hereinafter referenced as the “Subject Property,” in order to construct, widen and/or improve Pelandale Avenue between Dale Road and McHenry Avenue in the City of Modesto and the County of Stanislaus (the “Project”), and

WHEREAS, pursuant to the provisions of Section 1245.235 of the Code of Civil Procedure of the State of California, notice has been duly given to all persons whose property is to be acquired by eminent domain and whose names and addresses appear on the last Stanislaus County equalized assessment roll, all of whom have been given a reasonable opportunity to appear and be heard before the City of Modesto on the following matters:

(a) Whether the public interest and necessity require the Project;

(b) Whether the Project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury;

(c) Whether the property sought to be acquired is necessary for the Project;

(d) Whether the offer required by Government Code Section 7267.2 has been made to the owner(s) of record, and

WHEREAS, pursuant to the provisions of Section 7267.2 of the Government Code of the State of California, the City of Modesto has made an offer to the owner or owners of record to acquire the Subject Property for just compensation, and

WHEREAS, the City of Modesto has satisfied the provisions and complied with all requirements of the California Environmental Quality Act (“CEQA”) for the Project,

NOW, THEREFORE, IT IS FOUND, DETERMINED, AND ORDERED as follows:

1. The public interest and necessity require the Project for the acquisition of the fee simple and the temporary construction easement in and through the above-identified parcel of land.

2. The Project is planned and located in the manner which will be most compatible with the greatest public good and the least private injury.

3. The taking of the fee simple title in and to the real property or other interests as may be more particularly described in Exhibits A and B and depicted in Exhibits A-1 and B-1 are necessary for the Project.

4. The offer required by Section 7267.2 of the Government Code of the State of California has been made to the owner or owners of record of the real property.

5. The Subject Property is being acquired for a compatible use under California Code of Civil Procedure Section 1240.510 in that the City’s use of the Subject Property will not interfere with or impair the continued use of the Subject
Property for public utilities as they now exist or may reasonably be expected to exist in the future.

6. The Subject Property is being acquired for a more necessary public use under California Code of Civil Procedure Section 1240.610 in that the City's use of the Subject Property is a more necessary public use than the use to which the property is appropriated.

7. The Office of the City Attorney of the City of Modesto and Special Counsel, Meyers, Nave, Riback, Silver & Wilson, are hereby authorized, empowered and directed to acquire in the name of the City of Modesto, by condemnation, the Subject Property in accordance with the provisions of the Eminent Domain Law, the Code of Civil Procedure and the Constitution of California; to prepare, prosecute and conduct to conclusion in the name of the City of Modesto such proceedings in the proper court as are necessary for such acquisition and to take such action as may be deemed advisable or necessary in connection therewith; and, to deposit the probable amount of just compensation based on an appraisal.

8. An order for prejudgment possession may be obtained in said actions and warrants issued to the State Treasury Condemnation Fund, in the amounts determined by the Court to be so deposited, as a condition to the right of immediate possession and use the Subject Property for said public uses and purposes.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 11th day of July 2006, 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: Dunbar, Hawn, Keating, Marsh, O'Bryant, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: Jean Morris, City Clerk

APPROVED AS TO FORM:

By

SUSANA ALCALA WOOD, City Attorney

07/11/2006/PW/L Dumas/Item 29F 3 2006-457
EXHIBIT A

DESCRIPTION OF
RIGHT-OF-WAY
APN: 078-018-035

A portion of that certain real property of the Lands of Vintage Faire Christian Center Church, a Non-Profit Corporation as described in Book 3120 Stanislaus County Records, at page 407 and also being a portion of Parcel "B" on that certain Parcel Map filed for record in Book 47 of Parcel Maps, at Page 46, Stanislaus County Records, in the City of Modesto, State of California and being more particularly described as follows:

BEGINNING at the most southwest corner of said Parcel "B", thence from the TRUE POINT OF BEGINNING, northerly along the westerly line, North 00'19'30" West, 6.24 feet; thence leaving said west line of Parcel "B", North 89'27'51" East, 485.66 feet; thence North 89'17'58" East, 474.52 feet to the easterly line of said Parcel "B"; thence southerly along said east line South 00'52'45" East, 8.38 feet to the southeast corner of aforesaid Parcel "B"; thence leaving the aforementioned easterly line along the south line of Parcel "B" and being a portion of the northerly right-of-way of Pelandale Avenue, South 89'07'03" West, 507.27 feet; thence South 89'57'03" West, 453.02 feet to the point of beginning.

Containing 0.19 acres of land, more or less.

The Basis of Bearings for this description is the west line of Section 1, T.3S, R.8E, M.D.M. as shown on that certain Parcel Map in Book 47, at page 46, Stanislaus County Recorders, State of California and being North 0'19'30" West.

See Exhibit "A-1", plat to accompany description, attached hereto and made a part hereof.

Douglas R. Owyang P.L.S. 6046
Expires June 30, 2007

Wood-Rodgers, Inc.
EXHIBIT A-1

PLAT TO ACCOMPANY DESCRIPTION

Land of Vintage Faire Christian Center Church
a Non Profit Corporation

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COUNTY OF STANISLAUS, STATE OF CALIFORNIA

SEE DESCRIPTION FOR COURSE INFORMATION

SCALE: 1"=200'
EXHIBIT B
A portion of that certain real property of the Lands of Vintage Faire Christian Center Church, a Non-Profit Corporation as described in Book 3120 at page 407, Stanislaus County Records, and also being a portion of Parcel “B” on that certain Parcel Map filed for record in Book 47 of Parcel Maps, at Page 46, Stanislaus County Records, in the City of Modesto, State of California and being more particularly described as follows:

BEGINNING at the most southwest corner of said Parcel “B”, thence northerly along the westerly line, North 00°19'30" West, 6.24 feet to the TRUE POINT OF BEGINNING; thence from said True Point of Beginning along said west line of Parcel “B”, North 00°19'30" West, 10.00 feet; thence leaving said west line of Parcel “B”, North 89°27'51" East, 485.61 feet; thence North 89°17'58" East, 474.48 to the easterly line of said Parcel “B”; thence southerly along said east line, South 00°52'45" East, 10.00 feet; thence leaving the aforementioned easterly line along the Northerly line of Pelandale Avenue as described in Doc No. South 89°17'58" West, 474.52 feet; thence South 89°27'51" West, 485.66 feet to the True Point of Beginning.

Containing 9601 square feet of land, more or less.

Temporary Construction Easement Expiration Date:

The Basis of Bearings for this description is the west line of Section 1, T.3S, R.8E, M.D.M. as shown on that certain Parcel Map in Book 47, at page 46, Stanislaus County Recorders, State of California and being North 0°19'30" West.

See Exhibit “A-1”, plat to accompany description, attached hereto and made a part hereof.

Douglas R. Owyang P.L.S. 6046
Expires June 30, 2007

Wood-Rodgers, Inc.
EXHIBIT A-1
PLAT TO ACCOMPANY DESCRIPTION

PELLANDALE AVE. WIDENING
TEMPORARY CONSTRUCTION EASEMENT
APN: 078-018-035
TOTAL AREA: 9601 sq. ft.
CITY OF MODESTO
COUNTY OF STANISLAUS, STATE OF CALIFORNIA

LANDS OF VINTAGE FAIRE CHRISTIAN CENTER CHURCH
a Non Profit Corporation

078-018-035
PARCEL B (47 PM 46)

SCALE: 1"=200'

LEGEND:
T.C.E. - TEMPORARY CONSTRUCTION EASEMENT
T.P.O.B. - TRUE POINT OF BEGINNING
P.O.B. - POINT OF BEGINNING

SEE DESCRIPTION FOR COURSE INFORMATION

WOOD RODGERS
ENGINEERING • MAPPING • PLANNING • SURVEYING
3301 C ST, BLDG. 100-B Tel 916.341.7780
Sacramento, CA 95816 Fax 916.341.7787

EXHIBIT B-1
A RESOLUTION DETERMINING THAT THE PUBLIC INTEREST AND NECESSITY REQUIRE THE ACQUISITION OF CERTAIN PROPERTY INTERESTS AND DIRECTING THE FILING OF EMINENT DOMAIN PROCEEDINGS FOR THE PELANDALE AVENUE CAPITAL IMPROVEMENT PROJECT

Hans J. Wagner, Donald E. Wagner, Trustee of The Donald E. Wagner Trust,
Property Owners
Property Address: Northwest Corner of Pelendale Avenue and American Avenue,
Modesto, California
Assessor’s Parcel No.: 078-018-021

WHEREAS, the City’s Capital Improvement Program (CIP), amended on February 22, 2005, by Council Resolution No. 2005-118, included a project to widen Pelendale Avenue to six lanes, the Pelendale Avenue Widening Project (the “Project”), and

WHEREAS, the City of Modesto and the County of Stanislaus entered into the Pelendale Avenue Joint Powers Agreement on December 6, 2005, to facilitate cooperation between the City and the County for the improvement of Pelendale Avenue between State Route 99 and a point 1,400 feet east of McHenry Avenue for the Project, which Project area is partially located within the City limits and partially within the unincorporated area of the County, and

WHEREAS, pursuant to the Pelendale Avenue Joint Powers Agreement, the County of Stanislaus consents to the acquisition of Project rights-of-way by the City outside its boundaries in the unincorporated area of the County, and

WHEREAS, the Pelendale Avenue Joint Powers Agreement gives the City of Modesto the right and power to acquire, by purchase or eminent domain, all property or rights-of-way necessary for completion of the Project, including property outside its boundaries in the unincorporated area of the County, and

WHEREAS, the Project, when completed, will improve traffic circulation within the City and the County and to areas east of Coffee Road, and

WHEREAS, the City of Modesto is vested with the power of eminent domain to acquire real property for the Project by virtue of Article 1, Section 19, of the Constitution of the State of California, Government Code Sections 37350.5, 37353, 39792, 40401 and 40404, and Sections 1240.010, 1240.020, 1240.030, 1240.040, 1240.050, 1240.110, 1240.120, 1240.140, 1240.150, and 1240.350 of the Code of Civil Procedure of the State of California and the Pelendale Avenue Joint Powers Agreement by and between the City of Modesto and the County of Stanislaus, and

WHEREAS, it is desirable and necessary for the City of Modesto to acquire certain real property interests on Assessor’s Parcel No. 078-018-021, including fee title together with all improvements situated thereon and together with all rights appurtenant thereto, as described in Exhibits A and A-1 hereto, and a temporary construction easement as described in Exhibits B
and B-1 hereto, which exhibits are attached hereto and made a part hereof by this reference and herinafter referenced as the "Subject Property," in order to construct, widen and/or improve Pelandale Avenue between Dale Road and McHenry Avenue in the City of Modesto and the County of Stanislaus (the "Project"), and

WHEREAS, pursuant to the provisions of Section 1245.235 of the Code of Civil Procedure of the State of California, notice has been duly given to all persons whose property is to be acquired by eminent domain and whose names and addresses appear on the last Stanislaus County equalized assessment roll, all of whom have been given a reasonable opportunity to appear and be heard before the City of Modesto on the following matters:

(a) Whether the public interest and necessity require the Project;
(b) Whether the Project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury;
(c) Whether the property sought to be acquired is necessary for the Project;
(d) Whether the offer required by Government Code Section 7267.2 has been made to the owner(s) of record, and

WHEREAS, pursuant to the provisions of Section 7267.2 of the Government Code of the State of California, the City of Modesto has made an offer to the owner or owners of record to acquire the Subject Property for just compensation, and

WHEREAS, the City of Modesto has satisfied the provisions and complied with all requirements of the California Environmental Quality Act ("CEQA") for the Project,

NOW, THEREFORE, IT IS FOUND, DETERMINED, AND ORDERED as follows:

1. The public interest and necessity require the Project for the acquisition of the fee simple and the temporary construction easement in and through the above-identified parcel of land.

2. The Project is planned and located in the manner which will be most compatible with the greatest public good and the least private injury.

3. The taking of the fee simple title in and to the real property or other interests as may be more particularly described in Exhibits A and B and depicted in Exhibits A-1 and B-1 are necessary for the Project.

4. The offer required by Section 7267.2 of the Government Code of the State of California has been made to the owner or owners of record of the real property.

5. The Subject Property is being acquired for a compatible use under California Code of Civil Procedure Section 1240.510 in that the City's use of the Subject Property will not interfere with or impair the continued use of the Subject
Property for public utilities as they now exist or may reasonably be expected to exist in the future.

6. The Subject Property is being acquired for a more necessary public use under California Code of Civil Procedure Section 1240.610 in that the City's use of the Subject Property is a more necessary public use than the use to which the property is appropriated.

7. The Office of the City Attorney of the City of Modesto and Special Counsel, Meyers, Nave, Riback, Silver & Wilson, are hereby authorized, empowered and directed to acquire in the name of the City of Modesto, by condemnation, the Subject Property in accordance with the provisions of the Eminent Domain Law, the Code of Civil Procedure and the Constitution of California; to prepare, prosecute and conduct to conclusion in the name of the City of Modesto such proceedings in the proper court as are necessary for such acquisition and to take such action as may be deemed advisable or necessary in connection therewith; and, to deposit the probable amount of just compensation based on an appraisal.

8. An order for prejudgment possession may be obtained in said actions and warrants issued to the State Treasury Condemnation Fund, in the amounts determined by the Court to be so deposited, as a condition to the right of immediate possession and use the Subject Property for said public uses and purposes.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 11th day of July 2006, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember Dunbar, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: [Signature]
JEAN MORRIS, City Clerk

APPROVED AS TO FORM:

By [Signature]
SUSANA ALCALA WOOD, City Attorney

07/11/2006/PWL Dumas/Item 29G
EXHIBIT A
EXHIBIT A

DESCRIPTION OF RIGHT-OF-WAY
APN: 078-018-021

A portion of that certain real property of the Lands of Hans J. Wagner and Donald E. Wagner, trustee of Donald E. Wagner Trust, as described in Doc. No. 1990-075780 Stanislaus County Records, in the City of Modesto, State of California and being more particularly described as follows:

BEGINNING at the southwest corner of said Lands of Hans J. Wagner and Donald E. Wagner; thence from the TRUE POINT OF BEGINNING, northerly along the west line of said Lands of Wagner; North 00°36'02" West, 63.57 feet; thence leaving said westerly line, North 88°20'06" East, 365.40 feet; thence North 89°17'58" East, 70.51 feet to a point of curvature; thence 7.86 feet along a 40.00 foot radius curve to the left through a central angle of 11°15'30"; thence North 78°02'28" East, 21.29 feet to a point of curvature; thence 11.79 feet along a 60.00 foot radius curve to the right through a central angle of 11°15'30"; thence North 89°17'58" East, 50.00 feet to a point of curvature; thence 9.61 feet along a 60.00 foot radius curve to the right through a central angle of 09°10'44"; thence South 81°31'18" East, 54.66 feet to a point of curvature; thence 6.41 feet along a 40.00 foot radius curve to the left through a central angle of 09°10'44"; thence North 89°17'58" East, 39.98 feet to a point of curvature; thence 28.18 feet along the a 18.00 foot radius curve to the left through a central angle of 89°42'18"; thence North 00°24'20" West, 70.28 feet; thence North 89°35'40" East, 27.33 feet to the westerly right-of-way of American Avenue, as described in Doc. No. 2001-0025109 Stanislaus County Records; thence southerly along said right-of-way, South 00°24'20" East, 94.07 feet; thence leaving said westerly right-of-way of American Avenue and continuing along the northerly right-of-way of Pelandale Avenue, as described in Doc. No. 2001-0025108 Stanislaus County Records, South 79°59'02" West, 86.47 feet; thence South 87°45'20" West, 305.17 feet to the centerline of Pelandale Avenue; thence along said centerline, South 89°48'47" West, 270.76 feet to the true point of beginning.

Containing 1.078 acres of land, more or less.

The Basis of Bearings for this description being the same as shown on that certain Parcel Map filed for Record in Book 50, at page 13, Stanislaus County Records.

See Exhibit "A-1", plat to accompany description, attached hereto and made a part hereof.

Douglas R. Owyang P.L.S. 6046
Expires June 30, 2007

Wood-Rodgers, Inc.
EXHIBIT A-1
EXHIBIT A-1

PLAT TO ACCOMPANY DESCRIPTION

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CURVE TABLE

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SCALE: 1" = 200'
EXHIBIT A

DESCRIPTION OF TEMPORARY CONSTRUCTION EASEMENT
APN: 078-018-021

All that certain real property being a portion of the Lands of Hans J. Wagner and Donald E. Wagner, trustee of Donald E. Wagner Trust, as described in Doc. No. 1990-075780, Stanislaus County Records, City of Modesto, State of California, for use as a temporary easement for construction purposes and being more particularly described as follows:

BEGINNING at the southwest corner of said Lands of Hans J. Wagner and Donald E. Wagner; thence along the West line of said Lands of Wagner, North 00°36'02" West, 63.57 feet to the TRUE POINT OF BEGINNING; thence from said True Point of Beginning, North 00°36'02" West, 10.00 feet; thence leaving said westerly line, North 88°20'06" East, 365.30 feet; thence North 89°17'58" East, 76.41 feet; thence South 00°11'13" East, 4.32 feet; thence North 89°48'47" East, 202.00 feet; thence North 00°11'13" West, 17.82 feet; thence North 89°35'40" East, 10.37 feet to the Northerly right-of-way of Pelandale Avenue as described in Doc. No. __________, Stanislaus County Records; thence along said right-of-way South 00°24'20" East, 16.28 feet to a point of curvature; thence 28.18 feet along a 18.00 foot radius curve to the right through a central angle of 89°42'18"; thence South 89°17'58" West, 39.98 feet; thence 6.41 feet along a 40.00 foot radius curve to the right through a central angle of 09°10'44"; thence North 81°31'18" West, 54.66 feet; thence 9.61 feet along a 60.00 foot radius curve to the left through a central angle of 09°10'44"; thence South 89°17'58" West, 50.00 feet; thence 11.79 feet along a 60.00 foot radius curve to the left through a central angle of 11°15'30"; thence...
South 78°02'28" West, 21.29 feet; thence 7.86 feet along the arc of a 40.00 foot radius curve to the right through a central angle of 11°15'30"; thence South 89°17'58" West, 70.51 feet; thence South 88°20'06" West, 365.40 feet to the True Point of Beginning.

Containing 7085 square feet of land, more or less.

Temporary Construction Easement Expiration Date: ___________

The Basis of Bearings for this description being the same as shown on that certain Parcel Map filed for Record in Book 50, at page 13, Stanislaus County Records.

See Exhibit "A-1", plat to accompany description, attached hereto and made a part hereof.

Douglas R. Dwyang, P.L.S. 6046
Expires June 30, 2007

Wood-Rodgers, Inc.
EXHIBIT A-I
PLAT TO ACCOMPANY DESCRIPTION

LINE TABLE

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LANDS OF HANS J. WAGNER AND DONALD E. WAGNER

APN: 078-018-021

CURVE TABLE

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<td>C5</td>
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LEGEND:

T.C.E. - TEMPORARY CONSTRUCTION EASEMENT
T.P.O.B. - TRUE POINT OF BEGINNING
P.O.B. - POINT OF BEGINNING

SEE DESCRIPTION FOR COURSE INFORMATION

SCALE: 1"=100'

EXHIBIT B-1
A RESOLUTION DETERMINING THAT THE PUBLIC INTEREST AND NECESSITY REQUIRE THE ACQUISITION OF CERTAIN PROPERTY INTERESTS AND DIRECTING THE FILING OF EMINENT DOMAIN PROCEEDINGS FOR THE PELANDALE AVENUE CAPITAL IMPROVEMENT PROJECT

Reza Vossoughi and Sharon Ann Vossoughi; Mehdi Vossoughi; Ataollah Ahsani; Shahram Sharafi and Fatemeh Falahat-Pisheh (Sharafi); Zahra Sharafi (Mohebbi); Mana Developments, Property Owners

Property Address: North side of Pelandale Avenue, One Parcel West of American Avenue, Stanislaus County, California

Assessor’s Parcel No.: 078-018-027

WHEREAS, the City’s Capital Improvement Program (CIP), amended on February 22, 2005, by Council Resolution No. 2005-118, included a project to widen Pelandale Avenue to six lanes, the Pelandale Avenue Widening Project (the “Project”), and

WHEREAS, the City of Modesto and the County of Stanislaus entered into the Pelandale Avenue Joint Powers Agreement on December 6, 2005, to facilitate cooperation between the City and the County for the improvement of Pelandale Avenue between State Route 99 and a point 1,400 feet east of McHenry Avenue for the Project, which Project area is partially located within the City limits and partially within the unincorporated area of the County, and

WHEREAS, pursuant to the Pelandale Avenue Joint Powers Agreement, the County of Stanislaus consents to the acquisition of Project rights-of-way by the City outside its boundaries in the unincorporated area of the County, and

WHEREAS, the Pelandale Avenue Joint Powers Agreement gives the City of Modesto the right and power to acquire, by purchase or eminent domain, all property or rights-of-way necessary for completion of the Project, including property outside its boundaries in the unincorporated area of the County, and

WHEREAS, the Project, when completed, will improve traffic circulation within the City and the County and to areas east of Coffee Road, and

WHEREAS, the City of Modesto is vested with the power of eminent domain to acquire real property for the Project by virtue of Article 1, Section 19, of the Constitution of the State of California, Government Code Sections 37350.5, 37353, 39792, 40401 and 40404, and Sections 1240.010, 1240.020, 1240.030, 1240.040, 1240.050, 1240.110, 1240.120, 1240.140, 1240.150, and 1240.350 of the Code of Civil Procedure of the State of California and the Pelandale Avenue Joint Powers Agreement by and between the City of Modesto and the County of Stanislaus, and

WHEREAS, it is desirable and necessary for the City of Modesto to acquire certain real property interests on Assessor’s Parcel No. 078-018-027, including fee title together with all improvements situated thereon and together with all rights appurtenant thereto, as described in Exhibits A and A-1 hereto, and a temporary construction easement as described in Exhibits B.
WHEREAS, pursuant to the provisions of Section 1245.235 of the Code of Civil Procedure of the State of California, notice has been duly given to all persons whose property is to be acquired by eminent domain and whose names and addresses appear on the last Stanislaus County equalized assessment roll, all of whom have been given a reasonable opportunity to appear and be heard before the City of Modesto on the following matters:

(a) Whether the public interest and necessity require the Project;

(b) Whether the Project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury;

(c) Whether the property sought to be acquired is necessary for the Project;

(d) Whether the offer required by Government Code Section 7267.2 has been made to the owner(s) of record, and

WHEREAS, pursuant to the provisions of Section 7267.2 of the Government Code of the State of California, the City of Modesto has made an offer to the owner or owners of record to acquire the Subject Property for just compensation, and

WHEREAS, the City of Modesto has satisfied the provisions and complied with all requirements of the California Environmental Quality Act ("CEQA") for the Project,

NOW, THEREFORE, IT IS FOUND, DETERMINED, AND ORDERED as follows:

1. The public interest and necessity require the Project for the acquisition of the fee simple and the temporary construction easement in and through the above-identified parcel of land.

2. The Project is planned and located in the manner which will be most compatible with the greatest public good and the least private injury.

3. The taking of the fee simple title in and to the real property or other interests as may be more particularly described in Exhibits A and B and depicted in Exhibits A-1 and B-1 are necessary for the Project.

4. The offer required by Section 7267.2 of the Government Code of the State of California has been made to the owner or owners of record of the real property.

5. The Subject Property is being acquired for a compatible use under California Code of Civil Procedure Section 1240.510 in that the City's use of the Subject Property will not interfere with or impair the continued use of the Subject Property.
Property for public utilities as they now exist or may reasonably be expected to 
exist in the future.

6. The Subject Property is being acquired for a more necessary public use under 
California Code of Civil Procedure Section 1240.610 in that the City's use of the 
Subject Property is a more necessary public use than the use to which the property 
is appropriated.

7. The Office of the City Attorney of the City of Modesto and Special Counsel, 
Meyers, Nave, Riback, Silver & Wilson, are hereby authorized, empowered and 
directed to acquire in the name of the City of Modesto, by condemnation, the 
Subject Property in accordance with the provisions of the Eminent Domain Law, 
the Code of Civil Procedure and the Constitution of California; to prepare, 
prosecute and conduct to conclusion in the name of the City of Modesto such 
proceedings in the proper court as are necessary for such acquisition and to take 
such action as may be deemed advisable or necessary in connection therewith; 
and, to deposit the probable amount of just compensation based on an appraisal.

8. An order for prejudgment possession may be obtained in said actions and 
warrants issued to the State Treasury Condemnation Fund, in the amounts 
determined by the Court to be so deposited, as a condition to the right of 
immediate possession and use the Subject Property for said public uses and 
purposes.

The foregoing resolution was introduced at a regular meeting of the Council of 
the City of Modesto held on the 11th day of July 2006, by Councilmember Dunbar, 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: Dunbar, Hawn, Keating, Marsh, O'Bryant, Olsen, 
Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: ________________________
JEAN MORRIS, City Clerk

APPROVED AS TO FORM:

By: ________________________
SUSANA ALCALA WOOD, City Attorney
EXHIBIT A
EXHIBIT A

DESCRIPTION OF
RIGHT-OF-WAY
APN: 078-018-027

A portion of that certain real property of the Lands of Reza Vossoughi and Sharron Ann Vossoughi, husband and wife, as Joint Tenants, et al, as described in Document No. 2000-47693, Stanislaus County Records and also being a portion of Parcel “C” of that certain Parcel Map filed for Record in Book 27 of Parcel Maps, at Page 102, Stanislaus County Records, in the City of Modesto, State of California and being more particularly described as follows:

Commencing at the southwest corner of said Parcel “C”; thence North 00°52'54" West, 50.00 feet to the TRUE POINT OF BEGINNING; thence from said true point of beginning along the west line, North 00°52'54" West, 13.39 feet to a point on said west line; thence leaving said west line, North 89°17'58" East a distance of 524.54 feet; thence North 88°20'06" East, 134.74 feet to a point on the east line of said Parcel “C”; thence along said east line, South 00°36'02" East, 13.57 feet; thence leaving said east line, South 89°07'05" West, 658.95 feet to the true point of beginning.

Containing 8291 square feet of land, more or less.

The Basis of Bearings for this description is the west line of Section 1, T.3S, R.6E, M.D.B&M. as shown on that certain Parcel Map in Book 27, at page 102, Stanislaus County Recorders, State of California and being North 0°19'30" West.

See Exhibit “A-1”, plat to accompany description, attached hereto and made a part hereof.

Douglas R. Owyang P.L.S. 6046
Expires June 30, 2007

Wood-Rodgers, Inc.
EXHIBIT A-1
PLAT TO ACCOMPANY DESCRIPTION

Pelandale Ave. Widening
Right-of-Way
APN: 078-018-027
TOTAL AREA: 8291 square feet
COUNTY OF STANISLAUS, STATE OF CALIFORNIA

LANDS OF VOSSOUGH, et al.

078-018-027
2000 S.C.R. 47683
PARCEL C (27 PM 102)

EXHIBIT A-1

SCALE: 1" = 200'
EXHIBIT A

DESCRIPTION OF
TEMPORARY CONSTRUCTION EASEMENT
APN: 078-018-027

A portion of that certain real property of the Lands of Reza Vossoughi and Sharron Ann Vossoughi, husband and wife, as Joint Tenants, et al, as described in Document No. 2000-47693, Stanislaus County Records and also being a portion of Parcel “C” of that certain Parcel Map filed for Record in Book 27 of Parcel Maps, at Page 102, Stanislaus County Records, in the City of Modesto, State of California and being more particularly described as follows:

Beginning at the southwest corner of said Parcel “C”; thence North 00°52'54" West, 63.39 feet to the TRUE POINT OF BEGINNING; thence from said True Point of Beginning along the west line, North 00°52'54" West, 10.00 feet to a point on said west line; thence leaving said west line, North 89°17'58" East, 524.48 feet; thence North 88°20'06" East, 134.84 feet to a point on the east line of said Parcel “C”; thence along said east line, South 00°36'02" East, 10.00 feet; thence leaving said east line along the Northerly right-of-way of Pelandale Avenue as described in Doc. No. South 88°20'06" West, 134.74 feet; thence South 89°17'58" West, 524.54 feet to the True Point of Beginning.

Containing 6593 square feet of land, more or less.

Temporary Construction Easement Expiration Date: __________

The Basis of Bearings for this description is the west line of Section 1, T.3S, R.8E, M.D.B&M. as shown on that certain Parcel Map in Book 27, at page 102, Stanislaus County Recorders, State of California and being North 0°19’30" West.

See Exhibit “A-1”, plat to accompany description, attached hereto and made a part hereof.

Douglas R. Owyang P.L.S. 6046
Expires June 30, 2007

Wood-Rodgers, Inc.
MODESTO CITY COUNCIL
RESOLUTION NO. 2006-460

A RESOLUTION DETERMINING THAT THE PUBLIC INTEREST AND NECESSITY REQUIRE THE ACQUISITION OF CERTAIN PROPERTY INTERESTS AND DIRECTING THE FILING OF EMINENT DOMAIN PROCEEDINGS FOR THE PELANDALE AVENUE CAPITAL IMPROVEMENT PROJECT

JWG McHenry, LLC, Property Owner
Property Address: Southeast Corner of Claratina Avenue and McHenry Avenue, Modesto, California
Assessor’s Parcel No.: 082-010-008

WHEREAS, the City’s Capital Improvement Program (CIP), amended on February 22, 2005, by Council Resolution No. 2005-118, included a project to widen Pelandale Avenue to six lanes, the Pelandale Avenue Widening Project (the “Project”), and

WHEREAS, the City of Modesto and the County of Stanislaus entered into the Pelandale Avenue Joint Powers Agreement on December 6, 2005, to facilitate cooperation between the City and the County for the improvement of Pelandale Avenue between State Route 99 and a point 1,400 feet east of McHenry Avenue for the Project, which Project area is partially located within the City limits and partially within the unincorporated area of the County, and

WHEREAS, pursuant to the Pelandale Avenue Joint Powers Agreement, the County of Stanislaus consents to the acquisition of Project rights-of-way by the City outside its boundaries in the unincorporated area of the County, and

WHEREAS, the Pelandale Avenue Joint Powers Agreement gives the City of Modesto the right and power to acquire, by purchase or eminent domain, all property or rights-of-way necessary for completion of the Project, including property outside its boundaries in the unincorporated area of the County, and

WHEREAS, the Project, when completed, will improve traffic circulation within the City and the County and to areas east of Coffee Road, and

WHEREAS, the City of Modesto is vested with the power of eminent domain to acquire real property for the Project by virtue of Article 1, Section 19, of the Constitution of the State of California, Government Code Sections 37350.5, 37353, 39792, 40401 and 40404, and Sections 1240.010, 1240.020, 1240.030, 1240.040, 1240.050, 1240.110, 1240.120, 1240.140, 1240.150, and 1240.350 of the Code of Civil Procedure of the State of California and the Pelandale Avenue Joint Powers Agreement by and between the City of Modesto and the County of Stanislaus, and

WHEREAS, it is desirable and necessary for the City of Modesto to acquire certain real property interests on Assessor’s Parcel No. 082-010-008, including fee title together with all improvements situated thereon and together with all rights appurtenant thereto, as described in Exhibits A and A-1 hereto, and a temporary construction easement as described in Exhibits B and B-1 hereto, which exhibits are attached hereto and made a part hereof by this reference and
hereinafter referenced as the “Subject Property,” in order to construct, widen and/or improve Pelandale Avenue between Dale Road and McHenry Avenue in the City of Modesto and the County of Stanislaus (the “Project”), and

WHEREAS, pursuant to the provisions of Section 1245.235 of the Code of Civil Procedure of the State of California, notice has been duly given to all persons whose property is to be acquired by eminent domain and whose names and addresses appear on the last Stanislaus County equalized assessment roll, all of whom have been given a reasonable opportunity to appear and be heard before the City of Modesto on the following matters:

(a) Whether the public interest and necessity require the Project;

(b) Whether the Project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury;

(c) Whether the property sought to be acquired is necessary for the Project;

(d) Whether the offer required by Government Code Section 7267.2 has been made to the owner(s) of record, and

WHEREAS, pursuant to the provisions of Section 7267.2 of the Government Code of the State of California, the City of Modesto has made an offer to the owner or owners of record to acquire the Subject Property for just compensation, and

WHEREAS, the City of Modesto has satisfied the provisions and complied with all requirements of the California Environmental Quality Act (“CEQA”) for the Project,

NOW, THEREFORE, IT IS FOUND, DETERMINED, AND ORDERED as follows:

1. The public interest and necessity require the Project for the acquisition of the fee simple and the temporary construction easement in and through the above-identified parcel of land.

2. The Project is planned and located in the manner which will be most compatible with the greatest public good and the least private injury.

3. The taking of the fee simple title in and to the real property or other interests as may be more particularly described in Exhibits A and B and depicted in Exhibits A-1 and B-1 are necessary for the Project.

4. The offer required by Section 7267.2 of the Government Code of the State of California has been made to the owner or owners of record of the real property.

5. The Subject Property is being acquired for a compatible use under California Code of Civil Procedure Section 1240.510 in that the City’s use of the Subject Property will not interfere with or impair the continued use of the Subject
Property for public utilities as they now exist or may reasonably be expected to exist in the future.

6. The Subject Property is being acquired for a more necessary public use under California Code of Civil Procedure Section 1240.610 in that the City's use of the Subject Property is a more necessary public use than the use to which the property is appropriated.

7. The Office of the City Attorney of the City of Modesto and Special Counsel, Meyers, Nave, Riback, Silver & Wilson, are hereby authorized, empowered and directed to acquire in the name of the City of Modesto, by condemnation, the Subject Property in accordance with the provisions of the Eminent Domain Law, the Code of Civil Procedure and the Constitution of California; to prepare, prosecute and conduct to conclusion in the name of the City of Modesto such proceedings in the proper court as are necessary for such acquisition and to take such action as may be deemed advisable or necessary in connection therewith; and, to deposit the probable amount of just compensation based on an appraisal.

8. An order for prejudgment possession may be obtained in said actions and warrants issued to the State Treasury Condemnation Fund, in the amounts determined by the Court to be so deposited, as a condition to the right of immediate possession and use the Subject Property for said public uses and purposes.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 11th day of July 2006, 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: Dunbar, Hawn, Keating, Marsh, O'Bryant, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: Jean Morris, City Clerk

APPROVED AS TO FORM:

By Susana Alcala Wood, City Attorney

07/11/2006/PW/L Dumas/Item 29I 2006-460
EXHIBIT A

DESCRIPTION OF
RIGHT-OF-WAY
APN: 082-010-008

A portion of that certain real property of the Lands of BFC Properties, a California Corporation and Berberian Properties, LLC, a California Corporation as described in Book 2004 Stanislaus County Records, at Page 62999, in the City of Modesto, State of California and also being a portion of Parcel 1 of that certain Parcel Map filed for Record in Book 53 of Parcel Maps, at Page 67, Stanislaus County Records and being more particularly described as follows:

Commencing at point on the north line of Parcel 1 at the westerly terminus of a course shown as "N 89°30'48" W, 248.48'", of said Parcel Map; thence easterly along said north line, South 89°30'48" East a distance of 27.39 feet to the TRUE POINT OF BEGINNING; thence from said true point of beginning, South 89°30'48" East a distance of 145.71; thence leaving said north line of Parcel 1, South 79°17'10" West a distance of 33.41 feet to a point of curvature; thence 11.82 feet along the arc of a 60.00 foot radius curve to the right through a central angle of 11°17'00"; thence North 89°25'51" West a distance of 50.00 feet to a point of curvature; thence 9.60 feet along the arc of a 60.00 foot radius curve to the right through a central angle of 09°09'52"; thence North 80°16'00" West a distance of 42.19 feet to the true point of beginning.

Containing 782 square feet of land, more or less.

The Basis of Bearings for this survey being the same as that certain Parcel Map filed for record in Book 53 of Parcel Maps, at Page 67, Stanislaus County Records.

See Exhibit "A-1", plat to accompany description, attached hereto and made a part hereof.

Douglas R. Owyang P.L.S. 6046
Expires June 30, 2007

Wood-Rodgers, Inc.
EXHIBIT A-1

Pelandale Ave. Widening
Right-of-Way
APN: 082-010-008
TOTAL AREA: 782 sq. ft.
COUNTY OF STANISLAUS, STATE OF CALIFORNIA

SEE DESCRIPTION FOR COURSE INFORMATION

SCALE: 1" = 100'

WOOD RODGERS
ENGINEERING - MAPPING - PLANNING - SURVEYING
3301 C St., Bldg. 100-B Tel 916.341.7760
Sacramento, CA 95816 Fax 916.341.7767

EXHIBIT A-1
EXHIBIT A

DESCRIPTION OF
TEMPORARY CONSTRUCTION EASEMENT
APN: 082-010-008

A portion of that certain real property of the Lands of BFC Properties, a California Corporation and Berberian Properties, LLC, a California Corporation as described in Book 2004 Stanislaus County Records, at Page 62999, in the City of Modesto, State of California and also being a portion of Parcel 1 of that certain Parcel Map filed for Record in Book 53 of Parcel Maps, at Page 67, Stanislaus County Records and being more particularly described as follows:

BEGINNING at the north line of Parcel 1 at the westerly terminus of a course shown as “N 89°30'48" W, 248.48’’, on said Parcel Map; thence from said True Point of Beginning, Easterly along said Northerly line and Southerly right-of-way of Pelandale Avenue, South 89°30'48" East, 27.39 feet; thence leaving said Northerly line of said Parcel 1 along the Southerly right-of-way of Pelandale Avenue as described in Document No., Stanislaus County Records, South 89°15'59" East, 42.19 feet to a point of curvature; thence 9.60 feet along a 60.00 foot radius curve to the left through a central angle of 09°09'52"; thence South 89°25'51" East, 50.00 feet to a point of curvature; thence 11.82 feet along a 60.00 foot radius curve to the left through a central angle of 11°17'00"; thence North 79°17'10" East, 33.41 feet to the North line of said Parcel 1; thence along said North line, South 89°30'48" East, 51.48 feet; thence South 79°17'10" West, 83.91 feet to a point of curvature; thence 13.79 feet along a 70.00 foot radius curve to the right through a central angle of 11°17'00"; thence North 89°25'51" West, 50.00 feet to a point of curvature; thence 11.20 feet along the arc of a tangent 70.00 foot radius curve to the right through a central angle of 09°09'52"; thence North 80°15'59" West, 85.40 feet to the North line of said Parcel 1 and a point of curvature; thence from a radial line which bears South 19°13'01" East, 17.19 feet along the arc of a non-tangent 50.00 foot radius curve to the right through a central angle of 19°13'01" to the Point of Beginning.

Containing 2005 square feet of land, more or less.

Temporary Construction Easement Expiration Date: ______________________

The Basis of Bearings for this survey being the same as that certain Parcel Map filed for record in Book 53 of Parcel Maps, at Page 67, Stanislaus County Records.

See Exhibit “A-1”, plat to accompany description, attached hereto and made a part hereof.

Douglas R. Owyang P.L.S. 6046
Expires June 30, 2007
Wood-Rodgers, Inc.
EXHIBIT A-1
PLAT TO ACCOMPANY
DESCRIPTION

Pelandale Ave. Widening
Temporary Construction Easement
APN: 082-010-008
TOTAL AREA: 2005 sq. ft.
CITY OF MODESTO
COUNTY OF STANISLAUS, STATE OF CALIFORNIA

CLARATINA AVENUE

LANDS OF BFC Properties et al.
082-010-008
2004 S.C.R. 62999
PARCEL 1 (53 PM 67)

110' HETCH - HETCHY R/W

LINE TABLE

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CURVE TABLE

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LEGEND:
T.P.O.B. - TRUE POINT OF BEGINNING
T.C.E. - TEMPORARY CONSTRUCTION EASEMENT

SEE DESCRIPTION FOR COURSE INFORMATION

SCALE: 1"=100'

WOOD RODGERS
ENGINEERING - MAPPING - PLANNING - SURVEYING
3301 C St. Bldg. 100-B Tel 916.341.7760
Sacramento, CA 95816 Fax 916.341.7797

EXHIBIT B-1