A RESOLUTION APPROVING LICENSE AND ENVIRONMENTAL INDEMNITY AGREEMENTS WITH BEARD LAND IMPROVEMENT COMPANY IN THE AMOUNT OF $2,790 PER MONTH AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENTS AND TO ENTER INTO RENTAL AGREEMENTS FOR A MODULAR BUILDING AND OTHER TEMPORARY SUPPORT FACILITIES FOR THE PURPOSE OF HOUSING A SATELLITE CORPORATION YARD AT 236 CODONI AVE

WHEREAS, for several years the City has sought sufficient funding to support design and construction of a new Bus and Vehicle Maintenance Facility and recently received a federal allocation to support the bulk of this project, and

WHEREAS, construction of the Bus and Vehicle Maintenance Facility will displace current uses in the City’s Corporation Yard, and

WHEREAS, a Satellite Corporation Yard has been contemplated for a number of years due to space limitations at the existing Corporation Yard facility and to better support growth areas on the City’s east and north sides, and

WHEREAS, staff has identified an optimal site for a temporary Satellite Corporation Yard in the Beard Industrial Tract at 236 Codoni Avenue, and

WHEREAS, the Codoni site is located on approximately 4 acres and has security, fencing and room for expansion, and

WHEREAS, Beard Land Improvement Company is prepared to lease the Codoni site on a month-to-month basis for the sum of $2,790 per month, and

WHEREAS, development of a Satellite Corporation Yard at the Codoni Avenue location will require leasing modular and other temporary facilities, and
WHEREAS, the Economic Development Committee considered the possibility of developing a Satellite Corporation Yard at the Codoni Avenue site and recommended approval by the City Council at its January 13, 2003 meeting,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the License and Environmental Agreements for Lease of the Codoni Avenue facility as a Satellite Corporation Yard, copies of which are attached hereto as Exhibits A and B and authorizes the City Manager, or his designee, to execute the agreements.

BE IT FURTHER RESOLVED by the Council of the City of Modesto that it hereby authorizes the City Manager to enter into Rental Agreements for a Modular Building and other temporary support facilities for the Codoni Avenue Satellite Yard.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 25th day of March, 2003, by Councilmember Frohman, who moved its adoption, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Fisher, Frohman, Jackman, Keating, O’Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: Conrad

ATTEST: Jean Zahr, City Clerk

APPROVED AS TO FORM

MIKE MILICH, City Attorney
LICENSE AGREEMENT

THIS LICENSE AGREEMENT (the "License Agreement") is made as of March 25, 2003 (the "Effective Date") by and between BEARD LAND IMPROVEMENT COMPANY, a California corporation ("Licensor"), and CITY OF MODESTO, a municipal corporation ("Licensee").

RECITALS

A. Licensor is the owner of that certain real property (A.P.N. 009 19 36) shown on Exhibit A attached hereto (the "Property").

B. For the purposes of this License Agreement, the "Business Use" means parking, occasional loading, unloading, repair and maintenance of commercial trucks and related truck-trailers owned and/or operated by Licensee and/or agents, representatives or contractors of Licensee ("Trucks"), but specifically excludes any fueling and servicing (including, without limitation, oil changes and lubrication work) of any Trucks, and any storage. For the purposes of this License Agreement, "Facilities" mean and include certain facilities, improvements and equipment of the Licensed Area.

C. Licensee desires to use on a non-exclusive basis that portion of the Property described in Exhibit B attached hereto and shown in the site map attached hereto as Exhibit C (the "Licensed Area") for the Business Use.

D. Licensor and Licensee desire to enter into this License Agreement to provide Licensee a personal, revocable license to use the Licensed Area for the Business Use subject to and in accordance with the terms and conditions contained herein, with the express understanding and agreement that this License Agreement is not intended to be, nor is it, a license coupled with an interest, nor is it intended to, nor does it, confer upon Licensee any exclusive rights of possession or occupancy whatsoever in connection with the Licensed Area.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. License. Subject to all the terms and conditions of this License Agreement, Licensee shall have from Licensor a non-exclusive, non-transferable, personal and revocable license (the "License") to use the Licensed Area only for the Permitted Uses.

2. License Consideration.

2.1 License Fee. Licensee shall pay Licensor a license fee (the "License Fee") in the amount of Two Thousand Ninety Dollars ($2,790.00) per month. The License Fee shall be payable in advance. The first payment shall be due and payable on the Effective Date, and subsequent payments shall be made on or before the first day of each month thereafter until the termination or revocation of the License. Any
License Fee that is allocable to a partial calendar month shall be prorated using a 30-
day month.

2.2 Late Charge. Licensee and Licensor agree that it would be impossible or
extremely impracticable to determine the actual amount of damages Licensor would
sustain in the event Licensee fails to pay the License Fee or any other License
Consideration due under this License Agreement within the times required hereunder.
Therefore, if Licensor fails to receive any License Fee or other License Consideration
payable by Licensee on the due date therefor, then Licensee shall pay to Licensor a late
charge equal to six percent (6%) of such amounts not paid by the due date therefor
(“Late Charge”) as liquidated damages to compensate Licensor for its administrative
costs resulting from such nonreceipt. Receipt of any Late Charge shall not be deemed
consent by Licensor to late payment, nor a waiver of Licensor’s right to insist upon
timely payment at any time, nor a waiver of any remedies to which Licensor is entitled
as a result of the late payment of any License Consideration. Licensor may apply any
payments received from Licensee to any obligations of Licensee then accrued.

2.3 Late Interest. If any payment of the License Fee or any other License
Consideration (including without limitation any Late Charge above) is not received by
Licensor by the date when due, the amount of such late payment shall bear interest until
paid on an annualized basis at the rate of the lower of (i) the announced prime rate
established by Wells Fargo Bank, N.A., in San Francisco, California, as of the date such
sums are due; and (ii) the maximum interest rate allowed by law. Interest payable
under this Section 2.3 shall be payable in addition to any Late Charge.

2.4 Use of the Licensed Area After License Revocation or Termination. If
Licensee or any property attributable to Licensee remains on or about the Licensed
Area after the revocation or termination of the License: (a) Licensee shall continue to
be subject to all of Licensee’s obligations under this License Agreement but shall not
have any rights under this License Agreement; and (b) Licensee shall be a trespasser
and at Licensor’s election, shall be (i) liable for damages attributable to such trespass;
or (ii) liable for, and shall pay, on a monthly basis, a License Fee to Licensor equal to
125% of the License Fee that was in effect immediately preceding the revocation or
termination of the License. Acceptance of any such License Fee shall not be deemed
to be any consent to extend or modify the License. No use of the Licensed Area by
Licensee after any termination or revocation of the License shall give it any rights
whatsoever under the License Agreement or the License or in connection with the
Licensed Area. If Licensor elects that Licensee shall pay the License Fee set forth in
Section 2.4(b)(ii), Licensee shall pay an entire month’s License Fee for any portion of a
month that it or its property remains on or about the Licensed Area after the revocation
or termination of the License.

2.5 License Consideration. For purposes of this License Agreement,
"License Consideration" shall include the License Fee (as defined below) and any
other amounts that Licensee is obligated to pay Licensor pursuant to this License
Agreement. License Consideration shall be paid to Licensor in the lawful currency of
the United States of America, at Licensor’s address or at such other place and/or
directly to such account as Licensor may designate by written notice. License
Consideration shall be paid without any prior demand or notice therefor, except for such notice as may be expressly required elsewhere in this License Agreement, and shall in all events be paid without any deduction, set-off or counterclaim, except as expressly set forth in this License Agreement.

3. **Permitted Use of Licensed Area; Applicable Requirements.**

3.1 **Permitted Use.** Licensee shall use the Licensed Area and the Facilities only for the Business Use and the installation, operation, maintenance, use and repair of the Facilities solely in connection with the Business Use (the "Permitted Uses"). For purposes of this License Agreement, the Licensed Area, together with the Facilities, shall be referred to as the "Site."

3.2 **Applicable Requirements.** Licensee shall comply at its sole cost and expense with all Applicable Requirements, whether or not such compliance is required because of any use of all or any portion of the Property by Licensor, or any agent, invitee, contractor, tenant, licensee, affiliate, subsidiary, or parent company of Licensor, changes in Applicable Requirements, or whether compliance necessitates structural changes or improvements to all or any portion of the Site, or interferes with Licensee’s use of all or any portion of the Site. For purposes of this License Agreement, "Applicable Requirements" shall mean and include:

(a) **Laws and Regulations.** All statutes, codes, decrees, judgments, rules, regulations and other legal requirements, as amended, supplemented or replaced from time to time, which are applicable to the maintenance, repair, alteration, use, safety or operation of all or any portion of the Site; including without limitation the condition or use of the Facilities and/or the Licensed Area; and/or Licensee’s business and/or operations on, about or in connection with the Site, as presently conducted or as may be conducted in the future, irrespective of whether any of the foregoing are foreseen or unforeseen, ordinary or extraordinary, minor or substantial.

(b) **Third Party Requirements.** All reasonable requirements of Licensor’s insurance underwriters, applicable fire rating bureaus or similar bodies, now or hereafter in effect, pertaining to Licensee’s use of and/or business or operations on or about all or any portion of the Site; and

(c) **Title Requirements.** All liens, encumbrances, restrictions, rights and conditions of record or otherwise actually known to Licensee, or reasonably ascertainable by inspection or survey.

(d) **Government Permits.** All permits, approvals and licenses (including, without limitation, all terms and conditions thereof) from any governmental or quasi-governmental agency, authority or entity.

3.3 **Prohibited Activities.** Notwithstanding anything to the contrary in this License Agreement, and without limiting the generality of any other provision in this License Agreement, Licensee shall not: (i) disturb or interfere with Licensor or Licensor’s activities at, on or about the Property, or with any tenant or any other
licensee, occupant or invitee of any other part of the Property; (ii) cause, maintain, or suffer any waste or nuisance in, on or about all or any part of the Site, including, without limitation, storage or maintenance of any substance or material that presents a fire, explosion, or other hazard; (iii) use the Site in any manner so as to cause either cancellation of Licensor’s insurance policies now or hereafter in effect, or any increase in the premiums in connection therewith; and (iv) place any signs or other markings in or upon any externally visible portions of the Site or the Property without Licensor’s prior written consent (which consent may be withheld or conditioned in Licensor’s reasonable discretion).

3.4 **Licensor’s Access.** Licensor and its authorized representatives shall have the right, but not the duty, at any time to enter upon the Site in order to monitor or inspect Licensee’s activities, assess whether Licensee is in compliance with the provisions of this License Agreement, or for any other purpose, including without limitation installing, maintaining, repairing or replacing utilities, facilities, or other infrastructure and improvements, or conducting invasive tests; provided, however, that Licensor shall use reasonable efforts to minimize the impact of such activities on the operation of the Site.

3.5 **Reservation of Rights.** Licensor further reserves and retains all rights of possession and ownership in connection with the Licensed Area, including without limitation the right to grant and/or enter into, from time to time, such easements, encumbrances, licenses, leases, rights of way, and dedications in connection with and/or including the Licensed Area, as Licensor deems necessary or advisable, in its sole and absolute discretion. Neither this License Agreement, the License nor any use by Licensee or any Licensee Parties shall confer or be construed to confer upon Licensee or any Licensee Parties any rights of possession or ownership whatsoever in or in connection with the Licensed Area, and Licensee shall not claim or assert anything to the contrary.

3.6 **Safety.** Without limiting the generality of any other provision in this License Agreement, Licensee shall take all steps necessary or advisable to ensure safety at or about the Site, whether or not such steps are required by any Applicable Requirements. Licensor, at Licensee’s cost and expense, shall have, upon five days’ notice, the right, but not the obligation, to immediately commence and prosecute to completion any cure of any failure by or on behalf of Licensee to comply with any provisions of this Section 3.6. In the event Licensor determines, in its reasonable discretion, that any condition or situation exists at the Site that poses or may reasonably pose any imminent threat to the safety of any persons or property at or adjacent to the Site or to public health and welfare, Licensor shall have the right, but not the obligation, to immediately, at Licensee’s cost and expense: (i) perform any work to remedy or mitigate any such imminent threat; and/or (ii) take any actions to remedy or mitigate any such imminent threat, including, without limitation, requiring Licensee to suspend or cease business operations and suspending or revoking the License.
4. **Revocation and Termination.**

4.1 **Termination by Licensee.** Licensee may terminate the License in the event of any of the following: (i) for any or no reason, upon 90 days’ prior written notice to Licensor; or (ii) any failure by Licensor to comply with any material term or condition of this License Agreement, and such failure is not cured within 15 days after written notice thereof to Licensor or, in the event of a cure which requires in excess of 15 days to complete, if Licensor has not commenced such cure within 15 days of such notice and thereafter does not diligently prosecute the cure to completion.

4.2 **Revocation by Licensor.** Licensor may revoke the License upon the occurrence of any of the following: (i) any failure by Licensee to pay any License Consideration required hereunder when due, if such failure shall continue for more than five business days after delivery to Licensee of notice of such failure to make timely payment (a “Monetary Default”); or (ii) any failure by Licensee to comply with any term or condition of this License Agreement, other than the payment of License Consideration (a “Non-Monetary Default”), if such Non-Monetary Default is not cured within 15 days after written notice thereof is given to Licensee, or in the event of a cure which requires more than 15 days to complete, if Licensee has not commenced such cure within 15 days of such notice and thereafter does not diligently and continuously prosecute the cure to completion; (iii) any failure by Licensee to comply with any provision of that certain Environmental Indemnity License Agreement entered into by and between Licensor and Licensee of even date herewith (the “Environmental Indemnity Agreement”), immediately upon written notice to Licensee; or (iv) for any or no reason upon 90 days’ prior written notice to Licensee. Without limiting the generality of Section 12, immediately upon any such revocation, Licensor shall have the right to remove Licensee and/or any and all of Licensee’s property from the Licensed Area at Licensee’s sole cost and expense.

4.3 **Effective Date of Termination or Revocation.** For purposes of this License Agreement, the last day of any notice period set forth in Sections 4.1 and 4.2 after which the License shall terminate or be revoked shall be referred to as the effective date of termination or revocation.

5. **Maintenance and Repair.** Licensee, at its sole cost and expense, shall maintain and keep the Site or any portion thereof in good working order, condition, and repair, and in a clean and sanitary condition. In the event that any repairs or maintenance to or for the Site or any portion thereof are required, Licensee shall promptly arrange for the same through Licensee’s contractors, provided Licensor shall have the right to approve, in its reasonable discretion, such contractors in writing. All such repairs and maintenance shall be performed in a first class, workmanlike manner and such repairs and maintenance shall be of a quality and class equal to or better than the original work or item. If Licensee fails to perform any of its obligations under this Section 5, Licensor shall have the right, but not the obligation, to perform such obligations at Licensee’s expense upon 48 hours notice to Licensee. The costs incurred by Licensor therefor shall be reimbursed as License Consideration by Licensee within 15 days after invoice by Licensor.
6. **Alterations.**

6.1 Licensee shall not make any alterations, improvements, additions, replacements, changes, or installations (collectively "Alterations") in, on or about all or any portion of the Site without Licensor's prior written consent (which consent may be granted or withheld in Licensor's sole and absolute discretion). In connection with any such proposed Alterations, Licensor shall have the right to (i) approve, in its reasonable discretion, Licensee's contractors; and (ii) require Licensee to provide Licensor, at Licensee's sole cost and expense, a lien and completion bond in an amount equal to one and one-half times the estimated cost of such Alterations, to insure Licensor against any liability for mechanic's and materialmen's liens and to ensure completion of the work. All Alterations shall be performed in a first-class, workmanlike manner. Should Licensee make any Alterations without the prior approval of Licensor, Licensor shall have the right to require that Licensee immediately remove any or all of such Alterations.

6.2 Any proposed Alterations in or about all or any portion of the Site that Licensee shall desire to make shall be presented to Licensor in written form, with proposed detailed plans. If Licensor shall give its consent, the consent shall be deemed conditioned upon Licensee acquiring all necessary permits and governmental approvals, the furnishing of a copy thereof to Licensor prior to the commencement of the work, and the compliance by Licensee with all Applicable Requirements and all conditions of said permits and approvals in a prompt and expeditious manner.

6.3 Licensee shall pay, when due, all claims for labor or materials furnished or alleged to have been furnished to or for Licensee at or for use in or at all or any portion of the Site, which are or may be secured by any mechanic's or materialmen's lien against all or any portion of the Site or any interest therein. Licensee shall give Licensor not less than 15 days' notice prior to the commencement of any work at all or any portion of the Site, and Licensor shall have the right to post notices of non-responsibility in or on all or any portion of the Site as provided by law. If Licensee, in good faith, shall contest the validity of any such lien, claim or demand, then Licensee shall, at its sole cost and expense, defend itself and Licensor against the same and shall pay and satisfy any such adverse judgment that may be rendered thereon before the enforcement thereof against the Licensor or the Licensed Area or Site. On written request from Licensor, Licensee shall furnish a release bond as provided under California Civil Code Section 3143 or any successor statute, which shall release such lien from the Licensed Area or Site. In addition, Licensor may require Licensee to pay Licensor's attorney's fees and costs in participating in such action if Licensor shall decide it is in its best interest to do so.

7. **Impositions; Utilities; Security.**

7.1 **Impositions.** Licensee shall be responsible for and pay prior to delinquency all taxes, assessments, rates, charges, license fees, municipal liens, levies, excises or imposts, whether general or special, ordinary or extraordinary, of every name, nature and kind whatsoever, imposed by any public agency or other authority or entity, that may be levied, assessed, charged or imposed or may be or become a lien or
charge upon any part of the Licensed Area, the License Consideration, the use of the Licensed Area or the use and operation of the Site, or upon any Alterations, Facilities or other improvements, equipment or other personal property on the Licensed Area, including, without limitation, any License Consideration tax, sales tax, service tax, transfer tax, or value tax (collectively, "Impositions"). The foregoing notwithstanding, Impositions shall not include any real property taxes or assessments (if any), except that Impositions shall include real property taxes or assessments to the extent increases in said real property taxes or assessments are attributable directly to the value of any Alterations, Facilities, equipment or improvements placed upon the Licensed Area by or on behalf of Licensee. Licensee shall give Licensor prompt written notice of any real property taxes or assessments levied against Licensee that are attributable directly to the Licensed Area or the value of the Site, Alterations, Facilities, or other improvements.

7.2 Utilities, Security. Licensee shall be responsible for and pay when due all sums in connection with any and all water, gas, heat, power, telephone, cable, communication and other utilities and services supplied to the Licensed Area, together with any taxes thereon. Licensee, at its sole cost and expense, shall provide the necessary janitorial and security services to maintain the Site in a good orderly manner at all times during the License. Licensee shall pay the cost of any required governmental inspections of improvements to the Site. Licensee assumes all responsibility for the protection of the Site, Licensee, any Licensee’s Parties and the property of Licensee and any Licensee Parties from all acts of third parties.

8. Condition of Licensed Area; Release.


8.2 Release. As part of its agreement to accept each of the Licensed Area and the Facilities in its "As Is, With All Faults" condition, Licensee, on behalf of itself and its employees, officers, agents, contractors, guests, invitees, partners, members, shareholders, affiliates, parent company, subsidiaries, successors and assigns (collectively, the "Licensee Parties"), hereby waives any right to recover from Licensor, and forever releases, acquits and discharges Licensor of and from, any and all past,
present and future claims, damages, liabilities, suits, losses, costs and expenses (including without limitation attorneys' and expert witness fees and costs of collection), whether direct or indirect, known or unknown, foreseen or unforeseen (collectively, "Claims"), arising from and after the Effective Date, that Licensee may now have or that may arise in the future on account of or in any way connected with the Site and/or any portion thereof, including, without limitation: (i) the physical, geotechnical or environmental condition of all or any portion of the Site, including, without limitation, the condition of the Facilities, any seismic, structural, or other deficiencies or defects in connection with the Licensed Area and/or the Facilities, and the presence of any lead-based paint, asbestos or other Hazardous Materials in, on, under or above the Site or any portion thereof (including, without limitation, any soils and groundwater conditions); (ii) the quality, nature or adequacy for Licensee’s intended use of all or any portion of the Site and/or existing water, sewer, electric, telecommunications or other utility systems serving the Site; (iii) the Removed Property and/or the Remaining Property (each as defined in Section 12.2); and (iv) any laws or other rules applicable thereto, including, without limitation, laws relating to Hazardous Materials. Notwithstanding anything to the contrary in this License Agreement, the foregoing release: (i) shall not apply to the breach of any express representation, warranty or covenant made by Licensor elsewhere in this License Agreement; (ii) shall not apply to any fraud by Licensor; and (iii) shall survive any revocation or termination of the License or this License Agreement.

8.3 Waiver. Licensee acknowledges, for itself and on behalf of each of the Licensee Parties, that it is aware that it, and/or any of the other Licensee Parties, may hereafter discover facts in addition to or different from those which it now knows or believes to be true with respect to the subject matter of this License Agreement and/or the License, but that it is Licensee’s intention to hereby fully, finally and forever waive, assume the risk of, release and discharge each and all of the Claims released under Section 8.2, and to bind all of the Licensee Parties to this release, assumption of risk, discharge and waiver. In furtherance of this intention, the releases set forth in this Section 8 shall be and remain in effect as full and complete general releases notwithstanding the discovery or existence of any such additional or different claim or fact. Licensee, on behalf of itself and all of the Licensee Parties, hereby waives application of California Civil Code Section 1542, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

Licensee’s Initials
9. **Insurance and Indemnity.**

9.1 **Insurance.** Licensee, at Licensee’s sole cost and expense, shall obtain and maintain:

   (a) Comprehensive broad form general public liability insurance, with limits of not less than $1,000,000 combined single limit for personal injury, bodily injury or death, or property damage or destruction (including loss of use thereof) for any one occurrence. Such insurance shall be on an occurrence basis, shall name Licensor as an additional insured and shall include endorsements for Licensee’s indemnity obligations hereunder.

   (b) Workers’ compensation insurance as required by law.

   (c) Primary, noncontributory “all-risk” property insurance covering the Licensed Area, the Site, the Facilities, any Alterations, and Licensee’s equipment, other personal property, business records, fixtures and equipment at the Site, for damage or other loss caused by fire or other casualty or cause, including, but not limited to, vandalism and malicious mischief, theft, water damage of any type, explosion and other insurable risks in amounts not less than the full insurable replacement value thereof.

9.2 **Insurance Certificates.** Licensee shall provide Licensor with certificates evidencing the insurance required pursuant to Section 9.1 prior to the Effective Date, which shall state that such insurance may not lapse, be changed, amended, canceled or otherwise terminated without at least 15 days’ prior written notice to Licensor. Licensee shall provide renewal certificates to Licensor at least 15 days prior to the expiration of such policies. Should Licensee fail to provide any such renewal certificate within such 15-day period, or to pay the premium for any insurance policy required of Licensee hereunder, then Licensor shall have the right, but not the obligation, to obtain, renew or replace any such policy at Licensee’s cost and expense. The amount of any premium paid by Licensor and any costs and expenses incurred by Licensor under this Section 9.2 shall constitute License Consideration.

9.3 **Payment of Premium Increase.** Licensee shall pay to Licensor the amount of any increase in premiums for any insurance carried by Licensor if such premium increase is specified by Licensor’s insurance carrier as being caused by the nature of Licensee’s use of the Site, or any portion thereof, or any act or omission of Licensee. Licensee shall pay any such premium increases to Licensor within 30 days after receipt by Licensee of a copy of the premium statement or other evidence of such premium increase.

9.4 **Insurance Policies.** Licensee shall not do or permit to be done anything which shall invalidate the insurance policies referred to in this Section 9. All insurance required to be maintained by Licensee under this Section 9 shall be in a form and carry deductibles reasonably satisfactory to Licensor from time to time.

9.5 **Waiver of Subrogation.** Licensee and Licensor shall cause the insurance company issuing their respective property insurance to waive any
subrogation rights that those companies may have against Licensee or Licensor, respectively, as long as the insurance is not invalidated by the waiver. Provided the waivers of subrogation are contained in their respective insurance policies, Licensor and Licensee waive any right that either may have against the other on account of any loss or damage that is insured under their respective property insurance policies or would have been insured against had the party carried the insurance as required by this License.

9.6 Licensee’s Assumption of Risk and Waiver; Exculpation.

(a) Except to the extent such matter is not covered by the insurance required to be maintained by Licensee under this License and such matter is attributable to the gross negligence or willful misconduct of Licensor, and without limiting the generality of any provision of this License Agreement, Licensor shall not be liable to Licensee or any Licensee Parties for: (i) any damage to property of Licensee, or of any Licensee Parties or others, located in, on or about the Licensed Area; (ii) the loss of or damage to any property of Licensee or any Licensee Parties or others by theft or otherwise; (iii) any injury or damage to persons or property resulting from fire, explosion, steam, gas, electricity, water, rain or leaks from any part of the Licensed Area; or (iv) any such damage caused by other tenants, occupants, licensees or persons in the Property, tenants, licensees or occupants of adjacent property, or the public, or caused by operations in construction of any private, public or quasi-public work.

(b) Licensor shall in no event be liable for any consequential damages or loss of business or profits and Licensee hereby waives any and all claims for any such damages. The obligations of Licensor under this License Agreement do not constitute personal obligations of the directors, officers, employees, agents or shareholders of Licensor or Licensor’s affiliates, subsidiaries or partners, and Licensee shall not seek recourse against any such directors, officers, employees, agents, shareholders or affiliates, subsidiaries or partners, or any of their personal assets, for satisfaction of any liability or obligation with respect to this License or this License Agreement.

9.7 Indemnity. Licensee shall fully indemnify, defend, protect and hold Licensor, any affiliate, subsidiary, parent company, partner or shareholder of Licensor, any successor in interest to any of the foregoing, and the respective officers, directors, trustees, employees, agents, assigns, and insurers of any of the foregoing (collectively, “Licensor Indemnitees”), harmless from and against any Claim (including, without limitation, any Claim existing or arising after the Effective Date), which may arise from or be related in any way, directly or indirectly, in whole or in part, to the License and the License Agreement, including, without limitation: (i) Licensee’s failure to comply with the terms and conditions of this License Agreement; (ii) any acts or omissions of Licensee and/or the Licensee Parties; (iii) the use of all or any portion of the Site and the conduct of Licensee’s business by Licensee and/or any of the Licensee Parties; and (iv) the Facilities, any Removed Property and any Remaining Property (each as defined below). Licensee expressly acknowledges and agrees that it has an immediate and independent obligation to defend Licensor and/or the Licensor Indemnitees from any
Claim which actually or potentially falls within this Section 9.7, regardless of whether any such Claim is, or may be, groundless, fraudulent or false, and that Licensee shall defend Licensor and/or the Licensor Indemnitees with counsel approved in writing by Licensor, which approval shall not be unreasonably withheld. Notwithstanding the foregoing, nothing in this License Agreement shall require Licensee to indemnify Licensor in connection with any Claims to the extent directly resulting from Licensor’s breach of any representation, warranty or covenant set forth in this License Agreement, or any intentional fraud by Licensor. Licensee’s obligations under this Section 9.7 shall arise at the time any such Claim is tendered to the Licensee by Licensor and shall continue until discharged through performance or judicial determination. Licensee shall not settle any claim without the consent of Licensor and any Licensor Indemnitees that may incur liability in connection with such claim under or following such settlement, which consent shall not be unreasonably withheld.

9.8 Alternative Insurance. As an alternative to paragraphs 9.1 – 9.4, subject to the written approval of Licensor which approval shall not be unreasonably withheld, City may self-insure for the losses described therein, upon provision to Licensor of written documentation signed by the City’s Risk Manager stating the City has sufficient available and unencumbered assets to cover any loss that may arise.

10. Mechanics’ Liens. Without limiting the generality of any other provision of this License Agreement, Licensee shall keep the Licensed Area and the Property free from any liens arising out of any work performed, materials furnished or obligations incurred by Licensee, its consultants, contractors, subcontractors or suppliers, and any of their employees, laborers and suppliers. If any such lien shall at any time be filed against the Licensed Area or the Property, Licensee shall cause the same to be discharged of record within thirty (30) days after the date of recording by payment, deposit or bond. If Licensee has not so discharged any such lien, Licensor shall have the right, but not the obligation, to pay or otherwise discharge such lien at Licensee’s expense, and all such costs incurred by Licensor shall constitute License Consideration and shall be payable within thirty (30) days after invoice therefor. Licensor shall have the right to post and keep posted on or about the Site any notices (including without limitation any notices of nonresponsibility) that may be provided by law or which Licensor may deem proper in order to protect Licensor, the Licensed Area or the Property from any such liens.

11. Damage and Destruction. Under no circumstances shall Licensor have any obligation to repair, restore or replace all or any portion of the Site following any damage or destruction to or affecting the Site, and Licensee shall be solely responsible for all costs and other obligations incurred in connection with any repairs, restoration or replacements in connection with any such damage or destruction.

12. Surrender, Restoration.

12.1 Surrender. No later than the revocation or termination of the License, Licensee shall (i) remove all Alterations and any other personal property and equipment installed or located at the Licensed Area as of the effective date of any termination or revocation of the License and shall be responsible to repair any damage resulting from any such removal, and (ii) shall restore and surrender the Licensed Area in a clean,
sanitary and debris-free condition and in at least as good order and condition as existed immediately prior to the Effective Date, except for reasonable wear and tear.

12.2 Title to and Removal of Licensee's Equipment. Subject to Licensor's rights under Section 12.1, the Alterations shall be and remain the property of Licensee at all times, and Licensee shall, upon the revocation or termination of the License, remove the Alterations and all of Licensee's other personal property from the Licensed Area. If Licensee fails to perform any repairs or restoration or fails to remove any Alterations and other personal property and equipment from the Licensed Area as required by this License Agreement, including, without limitation, Section 12.1, within 15 days after receipt of Licensor's written notice to do so, Licensor may do so on Licensee's behalf, and Licensee shall pay Licensor the cost of such repair, removal or restoration within 15 days after receipt of Licensor's invoice. All property remaining on the Licensed Area after the effective date of any termination or revocation of the License that is removed from the Licensed Area by Licensor pursuant to any provisions of this License Agreement or any Applicable Requirements may be used, handled, disposed of or stored by Licensor at Licensee's sole risk and expense (such property, the "Removed Property"). All property not removed from the Licensed Area by Licensee or Licensor, or claimed from storage by Licensee within 30 days after revocation or termination of the License (the "Remaining Property") shall, at Licensor's option without notice, conclusively be deemed to have been conveyed by Licensee to Licensor, as if by bill of sale, as part of the License Consideration. Unless prohibited by Applicable Requirements, Licensor shall have a lien against all such Remaining Property for the costs incurred in removing and storing the same.

13. Assignment and Sublicensing. Licensee shall not voluntarily or by operation of law assign, sublicense, otherwise transfer or encumber all or any part of Licensee's interest in this License Agreement or the License, or allow or suffer any person or entity to use or occupy the Licensed Area or any portion thereof ("Transfer"), without Licensor's prior written consent, which Licensor may grant or withhold in its sole and absolute discretion. Any Transfer shall not relieve Licensee (or any other transferor) of its obligations under this License Agreement. Any transferee shall assume and be bound to perform all of the obligations of Licensee under this License Agreement and the Environmental Indemnity License Agreement. Any transfer not in accordance with this Section 13 shall be null and void.

14. Dispute Resolution.

14.1 Arbitration. If a dispute arises relating to the interpretation of, enforcement of or compliance with any or all of the terms of this License Agreement or the License, including, without limitation, this Section 14 (a "Dispute"), such Dispute shall be resolved by binding arbitration, which may be initiated by delivering written notice to all other parties to the Dispute. All parties to the Dispute shall attend and participate in, and shall be bound by the results of, the arbitration proceeding. The arbitration award shall be the sole and exclusive remedy between the parties regarding any Dispute. Notwithstanding anything to the contrary in this License Agreement, the arbitration shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA"). During the pendency of any arbitration
proceeding, the parties shall continue to perform all undisputed obligations under this License Agreement. All arbitration proceedings shall be held in Modesto, California. The arbitrator shall be selected by mutual agreement of the parties from a panel provided by the office of the American Arbitration Association located in Modesto or the city closest to Modesto in which an AAA office is located, or if the parties are unable to agree on the identity of the arbitrator within 15 days after arbitration is first requested, in accordance with AAA rules. The arbitrator shall have at least ten years' experience in real estate matters. The arbitrator shall set the Dispute for hearing within 30 days after the date the arbitrator is selected and shall try any and all issues of law or fact that are the subject of the arbitration and report a statement of decision upon them, if possible, within 45 days of the date the arbitrator was selected or as soon thereafter as is practicable. Neither party shall have the right to conduct discovery in connection with the arbitration proceeding unless authorized by the arbitrator. The arbitrator shall be empowered to: (i) enter equitable as well as legal relief, including, without limitation, injunctive relief and any and all remedies available to Licensor to remove Licensee from the Licensed Area upon termination or revocation of the License; (ii) provide all temporary and/or provisional remedies; and (iii) enter equitable orders that will be binding upon the parties; however, the arbitrator may not impose punitive or exemplary damages under any circumstances. The arbitrator shall issue a single written decision at the close of the arbitration proceeding which shall dispose of all of the claims of the parties that are the subject of the arbitration, and an order or judgment upon that decision may be obtained by either party in a court of competent jurisdiction. The presentation of evidence from any expert or consultant shall not waive any attorney-client or other privilege or exclusionary rule a party may later seek to assert in another proceeding.

14.2 Other Remedies. All applicable statutes of limitation, repose and similar rules of law regarding the time for giving notice, filing and appealing claims, and commencing legal proceedings shall be tolled during the period that the arbitration procedure described in this Section 14 is in progress. Except as provided in the immediately preceding sentence, this dispute resolution procedure shall not in any way affect any statutes of limitation relating to any claim, dispute or other matter or question arising out of or relating to this License Agreement or the breach thereof.

15. Miscellaneous.

15.1 Notices. Every notice required by this License Agreement shall be given in writing and shall be deemed given and effective upon receipt provided that such are delivered in accordance with the provisions of this Section. Notices shall be delivered either by: (a) personal delivery (including delivery by an overnight courier service which obtains confirmation of receipt); or (b) by facsimile, provided that such transmission is followed by delivery by an overnight courier service which obtains confirmation of receipt; or (c) postage prepaid, return receipt requested, certified mail addressed to the address set forth below, or to such other address as a party may designate by written notice given in accordance with the provisions of this Section:
15.2 Amendment. This License Agreement may be supplemented, amended or otherwise modified only by a written instrument signed by both parties.

15.3 Waiver. No provision of this License Agreement shall be deemed waived by either party unless expressly waived in writing signed by the waiving party. No waiver shall be implied by delay or any other act or omission of either party. No waiver by either party of any provision of this License Agreement shall be deemed a waiver of such provision with respect to any subsequent matter relating to such provision, and Licensor's consent or approval respecting any action by Licensee shall not constitute a waiver of the requirement for obtaining Licensor's consent or approval respecting any subsequent action. Acceptance of License Consideration by Licensor shall not constitute a waiver of any breach by Licensee of any term or provision of this License Agreement. No acceptance of a lesser amount of License Consideration than the amount herein stipulated shall be deemed a waiver of Licensor's right to receive the full amount due, nor shall any endorsement or statement on any check or payment or any letter accompanying such check or payment be deemed an accord and satisfaction, and Licensor may accept such check or payment without prejudice to Licensor's right to recover the full amount due.

15.4 Interpretation. Each party has consulted with counsel, or has had the opportunity to consult with counsel and determined that such consultation is unnecessary, and each party has determined that this License Agreement accurately and completely reflects the agreement of the parties. This License Agreement has been reviewed by both Licensor and Licensee, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this License Agreement. The headings used in this License Agreement and the table of contents, if any, are for convenience only and shall not affect the interpretation of this License Agreement. No drafts of this License Agreement or any other document shall be used or argued to interpret the meaning of this License Agreement or any provision thereof, or the parties' intent.

15.5 Entire Agreement. This License Agreement is an integrated document that contains the entire understanding between the parties relating to the subjects it covers, and supersedes all prior drafts, applications, correspondence and agreements, whether oral or written, concerning the subject matter of this License Agreement.
15.6 **Severability.** If any term, covenant or condition of this License Agreement is held by a court or regulatory body or agency of competent jurisdiction to be invalid, void, or unenforceable, the remaining terms, covenants and conditions shall continue in full force and effect unless a material failure of consideration would result, in which case the License Agreement shall terminate.

15.7 **Survival.** Sections 2, 3, 8, 12 and 14, and any other provision that expressly states that it survives the termination or revocation of this License Agreement or the License shall survive the revocation or termination of the License and/or this License Agreement.

15.8 **Remedies.** Each remedy set forth in this License Agreement is cumulative of and in addition to any other remedy in this License Agreement or available at law or in equity. The exercise, partial exercise or failure to exercise any remedy by any party shall not be an election of remedies and such party shall not be precluded from exercising any other remedy under this License Agreement or other remedy available at law or in equity.

15.9 **Time is of the Essence.** Time is of the essence in the performance of each party’s respective obligations under this License Agreement.

15.10 **Attorneys’ Fees.** The Prevailing Party in any action or proceeding (including without limitation any arbitration under Section 14) brought to enforce this License Agreement shall be entitled to recover from the other party its reasonable attorneys’ fees, costs, and expenses paid or incurred in good faith in connection with such action or proceeding (including, without limitation, expert witness fees and costs of collection, including those fees and costs incurred in enforcing this Section and those fees and costs incurred in connection with any appeal). For purposes of this License Agreement, the “Prevailing Party” shall be deemed to be that party which obtains substantially the relief sought, whether by dismissal or by award or judgment.

15.11 **No Partnership.** Nothing contained in this License Agreement shall be construed as making Licensor and Licensee joint venturers or partners.

15.12 **Third Party Beneficiaries.** There are no third party beneficiaries to this License Agreement, except as expressly provided herein.

15.13 **Governing Law.** This License and this License Agreement shall be governed by the internal laws of the State of California.

15.14 **Brokers.** Licensee shall indemnify, defend and hold Licensor harmless from and against any Claims for brokerage commissions, finder fees or related costs incurred by Licensee or arising from any commitments or agreements alleged to have been made by Licensee relating to this License or the License Agreement. Licensor shall indemnify, defend and hold Licensee harmless from and against any Claims for brokerage commissions, finder fees or related costs incurred by Licensor or arising from any commitments or agreements alleged to have been made by Licensor relating to this License.
15.15 **Counterparts.** This License Agreement may be executed in multiple counterparts, each of which shall be deemed an original and may be transmitted by facsimile. Counterpart signature pages may be assembled to form a single original document.

15.16 **Successors and Assigns.** Subject to Section 13, and except as otherwise expressly provided herein, all of the covenants, conditions and provisions of this License Agreement shall be binding upon, and shall inure to the benefit of, the parties and their respective successors and assigns.

15.17 **Exhibits.** The following attached exhibits are incorporated into and made a part of this License Agreement by this reference:

- Exhibit A  Parcel Map of the Property
- Exhibit B  Legal Description of the Licensed Area
- Exhibit C  Site Plan Showing Licensed Area

**IN WITNESS WHEREOF,** the parties hereto have entered into this License Agreement as of the Effective Date.

**LICENSEE:**

**CITY OF MODESTO,**
a municipal corporation

By:  
Title:  City Manager
Printed Name:  Jack Crist

Attest:  
By:  
Title:  City Clerk
Printed Name:  Jean Zahr

**LICENSOR:**

**BEARD LAND IMPROVEMENT COMPANY,** a California corporation

By:  
Title:  President
Printed Name:  J. D. Mackrell

Attest:  
By:  
Title:  Vice President
Printed Name:  Kenneth H. Board II

**APPROVED AS TO FORM**

Roland R. Stevens  
Assistant City Attorney
EXHIBIT A
The Property

All that portion of the East half of Section 31, Township 3 South, Range 10 East, M. D. B. & M., situated in Stanislaus County, California, and bounded and particularly described as follows, to wit:

BEGINNING at a point bearing South 33 feet from the quarter section corner between Sections 30 and 31, Township 3 South, Range 10 East, M. D. B. & M.; thence South on the quarter line 51.96 chains; thence East 19.78 chains to fence corner; thence North along fence 51.73 chains to South line of County Road; thence West along South line of road 19.63 chains to POINT OF BEGINNING.

EXCEPTING THEREFROM the Westerly 20 feet thereof as conveyed to the County of Stanislaus for road purposes, also excepting therefrom that portion conveyed to Bertha H. Veneman, by Deed from D. Van Konyenburg and wife recorded April 3, 1929, Instrument No. 4498, Stanislaus County Records.

ALSO EXCEPTING THEREFROM that portion thereof conveyed to the Modesto Irrigation District, an Irrigation District, by Deed recorded March 1, 1957 in Book 1413, page 485 of Official Records, as Instrument No. 5762.

ALSO EXCEPTING THEREFROM the North 40 feet as conveyed to Modesto Interurban Railway, (now Modesto and Empire Traction Co.) by deed recorded July 7, 1920 in Volume 317 of Deeds, page 129.
EXHIBIT B

LEGAL DESCRIPTION OF THE LICENSED AREA

All that certain piece of land situate in and being a portion of the northeast quarter of Section 31, Township 3 South, Range 10 East, Mount Diablo Meridian, County of Stanislaus, State of California, being more particularly described as follows:

COMMENCING at the southeast corner of the property as filed for record in Volume 2570 of Grant Deed, at Page 560, Instrument number 4463 dated August 1, 1973, of Stanislaus County Records, also as shown in Book 8 of Surveys, at Page 14, recorded on October 9, 1959, of Stanislaus County Records, said point being on the north right of way line of Modesto Irrigation District Lateral No.1; thence northwest along a said north line of Lateral No. 1 North 84°30'12" West, a distance of 627.04 feet; thence north along a chainlink fence line North 1°18'36" West, a distance of 1188.52 feet to a fence corner; thence southwest along a chainlink fence line South 88°53'02" West, a distance of 90.45 feet to a fence gate; thence north along a two-way fence gate North 1°53'40" West, a distance of 472.71 feet to THE POINT OF BEGINNING; thence the following Thirteen (13) courses along chainlink fences:

(1) North 1°16'42" West, a distance of 430.40 feet; (2) North 37°19'19" West, a distance of 132.31 feet; (3) South 58°52'01" West, a distance of 37.17 feet; (4) South 19°14'55" East, a distance of 13.75 feet; (5) South 26°25'01" East, a distance of 17.30 feet; (6) South 36°48'01" East, a distance of 40.43 feet; (7) South 29°27'00" East, a distance of 30.39 feet; (8) South 1°15'46" East, a distance of 99.93 feet; (9) South 88°50'39" West, a distance of 501.33 feet; (10) South 1°16'25" East, a distance of 304.22 feet; (11) North 88°53'02" East, a distance of 91.32 feet; (12) South 1°06'19" East, a distance of 24.43 feet; (13) North 88°55'56" East, a distance of 472.71 feet to THE POINT OF BEGINNING.

SUBJECT TO all easements and/or rights-of-way, of record. Containing 4.48 acres, more or less.
A RESOLUTION APPROVING AN EMERGENCY PUBLIC WORKS CONTRACT WITH IONICS ULTRA-PURE WATER FOR TEMPORARY LEASE OF NITRATE TREATMENT SYSTEM FOR GRAYSON COMMUNITY WATER SYSTEM.

WHEREAS, the City of Modesto is the potable water provider for the community of Grayson, and
WHEREAS, there are only two wells sites serving this community and both require nitrate treatment to meet water quality standards, and
WHEREAS, the electrodialysis reversal treatment system currently in use has failed on a number of occasions and is considered unreliable, and
WHEREAS, the City of Modesto received a compliance order from the California Department of Health Services mandating that a new treatment system be obtained for the two wells, and
WHEREAS, a contract was approved by the City Council on November 6, 2002, to evaluate treatment options, and
WHEREAS, this contractual work and the related construction will not be completed until the fall of 2003, and
WHEREAS, this timing does not meet the compliance order schedule so an extension of time has been requested, and
WHEREAS, it is the City’s obligation to provide and maintain an adequate water supply to this area for public health and safety, and
WHEREAS, City staff, understanding the unreliable nature of the existing equipment, arranged for lease from Ionics Ultra-Pure Water for a portable nitrate treatment system, and

WHEREAS, the lease terms are considered acceptable to the City,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves an emergency public works contract with Ionics Ultra-Pure Water in an amount not to exceed $184,420 for the lease of a portable nitrate treatment system.

BE IT FURTHER RESOLVED that execution of the Ionics Ultra-Pure Water contract by the City Manager or his designee is hereby authorized.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 25th day of March, 2003, by Councilmember Frohman, who moved its adoption, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Fisher, Frohman, Jackman, Keating, O’Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: Conrad

ATTEST: [Signature]
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:
By [Signature]
MICHAEL D. MILICH, City Attorney
A RESOLUTION APPROVING THE APPLICATION FOR $300,000 IN HOUSING CODE ENFORCEMENT ASSISTANCE GRANT FUNDING AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE APPLICATION

WHEREAS, under Senate Bill 1227 (Chapter 26, Statutes of 2002), HSC section 53533(a)(6), funding was approved as part of Proposition 46 (2002), for Housing Code Enforcement Assistance Grants through the Department of Housing and Community Development (HCD), Division of Codes and Standards, and

WHEREAS, the City is applying for $300,000 to equip 37 vehicles with wireless technology, $100,000 of which will be used to install equipment in the vehicles, and $200,00 for wireless infrastructure, and

WHEREAS, effective code enforcement is necessary to protect public health and safety, to preserve affordable housing that could otherwise be lost through closure or demolition, and to avoid displacement of owners and renters, and

WHEREAS, staff will monitor and report for a three-year grant period as required by the grant agreement,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the Council hereby approves the filing of an application for Housing Code Enforcement Assistance Grant funding in the amount of $300,000.

BE IT FURTHER RESOLVED that the City Manager or his designee is hereby authorized to execute the grant application.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 25th day of March, 2003, by Councilmember Frohman, who moved its adoption, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Fisher, Frohman, Jackman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: Conrad

Attest: Jean Zahr
JEAN ZAHR, City Clerk

APPROVED AS TO FORM:

By: Michael D. Milich, City Attorney
RESOLUTION APPROVING AN AMENDMENT WITH
RRM DESIGN GROUP TO PROVIDE ADDITIONAL SERVICES RELATED TO
THE PREPARATION OF THE CONSTRUCTION DOCUMENTS FOR
MADDOX YOUTH CENTER IMPROVEMENTS AT A COST NOT TO EXCEED
$40,374 PLUS A $2,000 CONTINGENCY AND AUTHORIZING THE CITY
MANAGER TO EXECUTE THE AMENDMENT TO AGREEMENT.

WHEREAS, the City of Modesto owns the Maddux Youth Center located at 619
Sierra Drive in César Chávez Park, and

WHEREAS, on August 14, 2001, the City entered into an agreement with RRM
Design Group ("RRM") to provide a Schematic Design Report and Construction
Documents for the Maddux Youth Center for a total contract amount of $58,200, and

WHEREAS, on February 26, 2002, the City amended the agreement to expand
the project scope from a 2,000 square foot addition to 6,000 square feet to include a
Police Activities League (PAL) boxing arena, a multi-purpose room, a computer
classroom, restroom and entry lobby, at a total contract amount of $112,626, and

WHEREAS, staff now desires to expand RRM’s scope of work further to include:
additional demolition costs to the existing building, including the removal of interior
walls within the existing office, computer and weight rooms and some preparation work
for the added perimeter hallway on the south side of the building; additional interior
partitions to be constructed within the existing building; window treatments in the budget
for replacement windows; the addition of a PA system; and additional kitchen equipment
for a small kitchenette, and

WHEREAS, the Second Amendment provides for a total contract cost of
$155,000, which includes $2,000 as a contingency in the event additional, but
unanticipated, services become necessary, and

WHEREAS, staff recommends a Second Amendment to the Agreement with
RRM to provide the additional work as described in Exhibit "A", attached hereto and
incorporated by reference, and

WHEREAS, the Safety and Communities Committee met on February 3, 2003,
and supported staff’s recommendation to approve a Second Amendment to the
Agreement with RRM to provide the additional work as described in Exhibit "A", at a cost not to exceed $40,374, plus the $2,000 contingency fund, for a total contract amount not to exceed $155,000,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the Council hereby approves a Second Amendment to Agreement with RRM Design Group to provide additional services related to the preparation of the construction documents for Maddux Youth Center at an additional cost not to exceed $40,374, plus $2,000 as a contingency fund.

BE IT FURTHER RESOLVED that the City Manager is hereby authorized to execute the Second Amendment to Agreement.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 25th day of March, 2003, by Councilmember Frohman, who moved its adoption, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Fisher, Frohman, Jackman, Keating, O’Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: Conrad

APPROVED AS TO FORM:

By: MICHAEL D. MILICH, City Attorney

Attest: JEAN ZAHN, City Clerk
EXHIBIT A-2

REvised Project Scope

Include Modifications to the Maddux Youth Center:

The Maddux Youth Center is in need of renovation and expansion. The existing 7,200 sf facility, built between 1950 and 1952 requires some strategic modifications as well as a 6,125 sf addition to the east and north sides of the building to house a P.A.L. boxing facility, Multipurpose room (for up to 50 persons), computer classroom for 8 students plus teacher, new entry and additional restrooms and support rooms. The construction budget for the project was originally established at $500,000 with funding having been obtained through Federal grants. However, there has been additional project scope added and a schematic construction budget that included this additional scope totaled $2.3 million. After reviewing the schematic estimate twice, the construction budget has been modified and set at +/- $1.6 million. The project is anticipated to have final construction documentation completed and filed by June of 2003, with occupancy by June 2004.

The revised scope of the project shall add the preparation of construction documents by the Consultant for the following work items:

- Additional demolition work and new interior partitions within the existing building.
- The addition of a hallway on the south side of the existing gymnasium to improve circulation.
- New window treatments
- A new public address system
- Additional kitchen equipment for a small kitchenette

The fee proposal includes the aforementioned work scope and project approach as outlined in the project proposal dated June 7, 2001. The fee proposal also includes the work scope as outlined in Exhibits “A” and “A-1” of the original Agreement and the Amended Agreement. The fee shall include the following design aspects: architecture, civil, geotechnical, structural, mechanical, electrical engineering and cost estimating. The City shall provide an electronic copy of the survey and geotechnical report to the architect for use in the design of the new facility.
EXHIBIT B-2

SCHEDULE OF FEES AND RATES FOR BASIC SERVICES

<table>
<thead>
<tr>
<th>Task</th>
<th>Description</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>PROJECT MANAGEMENT PLAN</td>
<td>$1,300.00</td>
</tr>
<tr>
<td>B</td>
<td>PROGRAM, CONCEPTUAL DESIGN AND SITE ANALYSIS</td>
<td>$13,115.00</td>
</tr>
<tr>
<td>C</td>
<td>SCHEMATIC PLANS, SPECIFICATION OUTLINE &amp; COST ESTIMATE</td>
<td>$23,640.00</td>
</tr>
<tr>
<td>D</td>
<td>DESIGN DEVELOPMENT/CONSTRUCTION DOCUMENTS AND COST ESTIMATE</td>
<td>$94,217.00</td>
</tr>
<tr>
<td>E</td>
<td>BIDDING</td>
<td>$5,281.00</td>
</tr>
<tr>
<td>F</td>
<td>CONSTRUCTION ADMINISTRATION</td>
<td>$11,847.00</td>
</tr>
<tr>
<td>G</td>
<td>REIMBURSABLES*</td>
<td>$3,600.00</td>
</tr>
<tr>
<td></td>
<td>TOTAL – (TASKS A THROUGH G)</td>
<td>$153,000.00</td>
</tr>
</tbody>
</table>

*Not-to-exceed amount

This fee does not include the following:

- Landscape Architecture
- Surveying (by City)
- Existing Condition Drawings (by City)
- Hazardous Materials Studies (by others)
MODESTO CITY COUNCIL
RESOLUTION NUMBER 2003-155

A RESOLUTION AMENDING THE FISCAL YEAR 2002/2003 ANNUAL BUDGET ESTIMATING REVENUE AND APPROPRIATING FUNDS

WHEREAS, the Police Department acquired a grant award from the federal COPS Office for a 2002 COPS MORE Grant in the amount of $500,000, and

WHEREAS, the City’s match for this federal grant program is $125,000 and will be made from two California Law Enforcement Equipment Programs and the General Fund Reserve, and

WHEREAS, at its meeting on March 3, 2003, the Safety and Communities Committee unanimously supported this action,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the 2002/2003 Annual Budget is hereby amended as indicated below:

<table>
<thead>
<tr>
<th>Expense:</th>
<th>2002 COPS MORE Grant $500,000</th>
</tr>
</thead>
<tbody>
<tr>
<td>To:</td>
<td>0400-190-2987-5000</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Revenue:</th>
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<tbody>
<tr>
<td>From:</td>
</tr>
<tr>
<td>0400-190-2982-3132 2002 CLEEP $85,040</td>
</tr>
<tr>
<td>0400-190-2921-3132 2000 CLEEP $6,898</td>
</tr>
<tr>
<td>0100-700-2987-7040 General Fund $33,062</td>
</tr>
<tr>
<td>0400-190-2987 COPS MORE $375,000</td>
</tr>
</tbody>
</table>

BE IT FURTHER RESOLVED that the Finance Director is hereby authorized to take the necessary steps to implement the provisions of this resolution.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 25th day of March, 2003, by Councilmember Frohman, who moved its adoption, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Fisher, Frohman, Jackman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: Conrad

APPROVED AS TO FORM:

By: Michael D. Milich, City Attorney

(Seal)

ATTEST: Jean Zahr

City Clerk
A RESOLUTION VACATING AND ABANDONING THE ALLEY AND PUBLIC UTILITY EASEMENT IN BLOCK NO. 69 (STANISLAUS COUNTY)

WHEREAS, the City of Modesto owns a right of way easement for the purpose of maintaining an alley and public utility easement in Block No. 69 of the City of Modesto, and

WHEREAS, Stanislaus County has filed an application to vacate and abandon the alley in Block No. 69, and

WHEREAS, Streets and Highways Code Section 8320 et seq. prescribes the procedures to vacate and abandon public streets and alleys, and

WHEREAS, Stanislaus County submitted a title report with the abandonment request which vests the underlying fee title to the alley in Stanislaus County, as the adjacent land owners, and

WHEREAS, Stanislaus County is a proponent of the abandonment, and

WHEREAS, all utilities in the alley have been removed and relocated to the satisfaction of the affected utilities, and

WHEREAS, the proposed alley abandonment has been referred to affected City departments and local utility companies, and no objection to the abandonment has been received, and

WHEREAS, Government Code Section 65402 requires that prior to abandoning a public street, the Planning Commission shall make a determination as to whether the abandonment is consistent with the General Plan, and
WHEREAS, on December 2, 2002, the City of Modesto Planning Commission held a public hearing in the Tenth Street Chambers, located at 1010 Tenth Street, Modesto, California, at which hearing evidence was received and considered regarding the proposed vacation and abandonment, and conformance with the City’s General Plan pursuant to Government Code Section 65402 and Streets and Highways Code Section 8313, and

WHEREAS, by Resolution No. 2002-51, the Planning Commission found that abandonment of the alley is in conformance with the City’s General Plan, and recommended that Council vacate and abandon the alley, and

WHEREAS, a duly noticed public hearing was held by the Council of the City of Modesto on Tuesday, March 25, 2003, at 5:30 p.m., in the Tenth Street Place Chambers located at 1010 Tenth Street, Modesto, California, at which time all persons interested in or objecting to the proposed vacation and abandonment of the alley were afforded the opportunity to appear, and

WHEREAS, three notices were posted in the alley for two weeks prior to the hearing, and notice was published in the Modesto Bee for two successive weeks prior to the hearing, per Streets & Highways Code sections 8323 and 8332, respectively, and

WHEREAS, all things and acts necessary to be done as required by the State of California Streets and Highways Code, Sections 8300 through 8363: Public Streets, Highways and Service Easements Vacation Law, in order to vacate and abandon the subject alley have been done and accomplished,

NOW, THEREFORE, BE IT RESOLVED that the Council of the City of Modesto finds and determines as follows:

1. That the alley and public utility easement to be abandoned will be unnecessary for present or prospective pedestrian, vehicular, or public utility use after all existing utilities have been removed from the alley.
2. That Environmental Assessment No. C&ED 2002-64 judged this project to be within the scope of the General Plan Master EIR.

3. That the vacation and abandonment of the alley and public utility easement in Block No. 69 is in conformance with the City of Modesto General Plan, provided that the conditions set forth below are fully satisfied.

BE IT FURTHER RESOLVED that the City Council hereby orders and declares the vacation and abandonment of the alley and public utility easement in Block No. 69, bounded by H, I, 10th & 11th Streets, subject to the following conditions:

1. No abandonment of the alley or the public utility easement contained therein shall occur until and unless all utilities have been removed from the alley. These utilities include a Modesto Irrigation District high tension line and a secondary line, and Pacific Gas & Electric gas lines.

2. The City Clerk shall not be authorized to record the resolution of abandonment and vacation of the alley and public utility easement until at least five (5) working days after the City Clerk has received written releases from all of the following agencies and utilities stating that their respective facilities have been relocated from the alley and that they consent to the abandonment of the alley and public utility easement: City of Modesto Engineering & Transportation Department, Modesto Irrigation District, Pacific Gas & Electric Company, and AT&T Broadband.

3. If the above conditions have not been satisfied by March 25, 2004, then the conditional approval for abandonment of the alley and public utility easement shall automatically expire and have no further force and effect.

The legal description of the alley and public utility easement to be conditionally vacated and abandoned by this resolution is more particularly described in Exhibit “A” attached hereto, and by this reference made a part hereof as though set forth in full herein.

BE IT FURTHER RESOLVED that the City Clerk shall hold this resolution of abandonment until conditions 1 through 3 above have been fully satisfied, and when not less than five (5) working days after said conditions have been fully satisfied, the City Clerk shall cause a certified copy of this resolution, attested under seal of the City, to be recorded in the Office of the County Recorder of Stanislaus County.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 25th day of March, 2003, by Councilmember Jackman, 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: Fisher, Frohman, Jackman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: Conrad

ATTEST: [Signature]
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: [Signature]
MICHAEL D. MILICH, City Attorney
Exhibit "A"
LEGAL DESCRIPTION
Block 69 Alley Abandonment

All that certain real property in Block 69 as shown on the map recorded December 21, 1942 in Volume 15 of Maps, Stanislaus County Records, lying in the southeast quarter of Section 29, Township 3 South, Range 9 East, Mount Diablo Base and Meridian, City of Modesto, County of Stanislaus, State of California, more particularly described as follows:

Commencing at the north corner of said Block 69, thence South 46° 30’ 30” West on the southeasterly line of I Street, 140.00 feet to the northeasterly line of a 20.00 feet wide alley running southeasterly through said Block 69 and the POINT OF BEGINNING of this description; thence South 43° 29’ 30” East on said northeasterly line, 400.00 feet to the northwesterly line of H Street; thence South 46° 30’ 30” West 20.00 feet to the southwesterly line of said 20.00 feet wide alley; thence North 43° 29’ 30” West on said southwesterly line, 400.00 feet to the southeasterly line of I Street; thence North 46° 30’ 30” East 20.00 feet to the point of beginning.

Containing 8000 square feet, more or less.

Date Signed: February 14, 2003
AREA MAP OF PROPOSED ALLEY ABANDONMENT
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. 92052017): VACATION AND ABANDONMENT OF THE ALLEY AND PUBLIC UTILITY EASEMENT IN BLOCK NO. 69 (STANISLAUS COUNTY)

WHEREAS, on August 15, 1995, the City Council of the City of Modesto certified the Final Master Environmental Impact Report ("Master EIR") (SCH No. 92052017) for the Modesto Urban Area General Plan, and

WHEREAS, the County of Stanislaus has proposed that the alley and public utility easement in Block No. 69, in the City of Modesto be conditionally vacated and abandoned ("the project") to facilitate development of the Gallo Performing Arts Center, and

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

WHEREAS, the City's Community & Economic Development Department by Environmental Assessment Initial Study EA/C&ED 2002-64 ("Initial Study") reviewed the proposed 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 or additional mitigation measures or alternatives are required, and that, therefore, the proposed project is within the scope of the project covered by the Master EIR, and

WHEREAS, in accordance with CEQA guidelines beginning on February 10, 2003, the City caused to be published a 20-day notice of the City’s intent to make a finding that the proposed project conforms with the Master EIR, and

WHEREAS, said matter was considered by the City Council at a duly noticed public hearing which was held on March 25, 2003, 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 project, 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. 92052017) as being within the scope of the Master EIR report.

2. That the project will have no new additional significant effects on the environment not identified 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 unique to the proposed project that require project specific mitigation measures. Accordingly, the
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 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 25th day of March, 2003, by Councilmember Jackman, 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: Fisher, Frohman, Jackman, Keating, O’Bryant, Mayor Sabatino
NOES: Councilmembers: None
ABSENT: Councilmembers: Conrad

ATTEST: Jean Zahr, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: Michael D. Milich, City Attorney
EXHIBIT A

Initial Study

EA/C&ED 2002-64
City of Modesto
Initial Study

Abandon Alley in Block No. 69, Downtown Modesto

EA/CDD 2002-64
November 8, 2002

I. PURPOSE

Section 21157.1 of the Public Resources Code, allows for limited environmental review of subsequent projects under a Master EIR, provided that certain findings are made. The Modesto Urban Area General Plan Master EIR (SCH No. 92052017), adopted August 15, 1995, allows such limited review for projects in the Baseline Developed Area that are consistent with the General Plan and existing zoning.

This Initial Study, in accordance with Section 21157.1(b) of the Public Resources Code, analyzes whether this project may cause any significant effects on the environment that were not examined in the General Plan Master EIR. This Initial Study also provides documentation that the project is within the scope of the General Plan Master EIR.

II. PROJECT DESCRIPTION

A. Project title:
Public Hearing – Application of Stanislaus County, to abandon the alley in Block No. 69, Downtown Modesto

B. Lead agency name and address:
City of Modesto, PO Box 642, Modesto, CA 95353

C. Contact person, address and phone number:
Brad Wall
City of Modesto Community Development Department
1010 10th Street, Suite 3100
Modesto, CA 95353
(209) 577-5282

D. Project Location:
Block No. 69, Downtown Modesto

E. Project Sponsor:
County of Stanislaus
P.O. Box 3404
Modesto, CA 95353

F. General Plan Designation:
Redevelopment Planning District (RPD)

G. Current Zoning:
General Commercial (C-2)
H. Description of Proposed Project:
This is an application to abandon the alley in Block No. 69, in downtown Modesto. The surrounding area is developed with commercial and government land uses. The purpose of the proposed abandonment is to allow development of the planned Gallo Performing Arts Center.

I. Surrounding land uses: (See “H.” above.)

J. Other public agencies whose approval is required: None.

III. ANALYSIS OF CONFORMANCE WITH THE MASTER EIR

There are eighteen subject areas in the Master EIR (MEIR) for the General Plan. Following is an analysis of how this project conforms to the analysis contained within the MEIR.

A. Traffic and Circulation

The proposed abandonment will not contribute to increased traffic in the area, and it is consistent with the Traffic and Circulation Needs section of the MEIR. Therefore, the Existing Conditions, Impacts Analysis and Mitigation Measures listed in the MEIR for Traffic and Circulation Needs (pages IV-1-1 through IV-1-38) are still valid.

B. Degradation of Air Quality

The air quality impacts for the proposed project are directly related to the traffic impacts. Since traffic impacts are no greater than those anticipated in the Master EIR, the proposed abandonment will not cause additional impacts to air quality beyond those described in the Degradation of Air Quality section of the MEIR. Therefore, the Existing Conditions, Impacts Analysis and Mitigation Measures listed in the MEIR for Degradation of Air Quality (pages IV-2-1 through IV-2-25) are still valid.

C. Generation of Noise

The proposed project is adjacent to and surrounded by urban development. The adjacent developed neighborhood contains a mixture of government and commercial uses. No significant noise impacts will be generated as a result of the proposed abandonment, nor will the adjacent neighborhood be impacted as a result of this project. It will not create additional significant impacts and Mitigation Measures listed in the MEIR for Generation of Noise (pages IV-3-1 through IV-3-33) are therefore still valid.

D. Loss of Productive Agricultural Land

The project area is located in an urbanized portion of Modesto, and there are no agricultural lands affected by this project. Therefore, the Existing Conditions, Impacts Analysis, and Mitigation Measures listed in the MEIR for Loss of Productive Agricultural Land (pages IV-4-1 through IV-4-16) are still valid.

E. Increased Demand for Water Supplies

The proposed project is consistent with the General Plan in land use and intensity, and will provide the necessary infrastructure (if any) to provide water service to the site. Therefore, the Existing Conditions, Impacts Analysis and Mitigation Measures listed in the
MEIR for Increased Demand for Water Supplies (pages IV-5-1 through IV-5-11) are still valid.

F. Increased Demand for Sanitary Sewer Services

The proposed project is consistent with the General Plan in land use and intensity, and will provide the necessary infrastructure (if any) to provide sanitary sewer service to the project site. Therefore, the Existing Conditions, Impacts Analysis and Mitigation Measures listed in the MEIR for Increased Demand for Sanitary Sewer Services (pages IV-6-1 through IV-6-9) are still valid.

G. Loss of Sensitive Wildlife and Plant Habitat

The proposed project is in a built-up urban area and will not impact sensitive wildlife or any plant habitat above and beyond that which was identified in the Loss of Sensitive Wildlife and Plant Habitat section of the MEIR. Therefore, the Existing Conditions, Impacts Analysis and Mitigation Measures listed in this section of the MEIR (pages IV-7-1 through IV-7-30) are still valid.

H. Disturbance of Archaeological and Historic Sites

Figure 8-1 of the MEIR indicates that the proposed project is not within the Archaeological Resource Study Area, which shows areas that may require additional site-specific investigations. Therefore, the Existing Conditions, Impacts Analysis and Mitigation Measures listed in the MEIR for Disturbance of Archaeological or Historical Sites (pages IV-8-1 through IV-8-21) are still valid.

I. Drainage, Flooding and Water Quality

The proposed project will not present any new impacts that have not already been addressed in the MEIR. The mitigation measures will reduce the impacts of increased runoff within the baseline developed area to a less than significant level. Therefore, the Existing Conditions, Impacts Analysis and Mitigation Measures listed in the MEIR for the Drainage, Flooding, and Water Quality (pages IV-9-1 through IV-9-23) are still valid.

J. Increased Demand for Storm Drainage

The proposed project is consistent with the General Plan in land use and intensity, and will provide the necessary infrastructure to provide for adequate storm drainage. The mitigation measures contained in the Master EIR will not reduce the impacts of increased runoff within the baseline developed area to a less than significant level. In adopting the Master EIR, the City Council adopted a finding of overriding findings for this impact. The Existing Conditions, Impacts Analysis and Mitigation Measures listed in the MEIR for the Increased Demand for Storm Drainage (pages IV-10-1 through IV-10-8) are still valid.

K. Increased Demand for Parks and Open Space

The MEIR concluded that demand for parks and open space would be mitigated through the payment of Capital Facilities Fees (CFF) for new development, which would be used for the development of new parks. As a result, the Existing Conditions, Impacts Analysis and Mitigation Measures listed in the MEIR for the Increased Demand for Parks and Open Space (pages IV-11-1 through IV-11-11) are still valid.
L. **Increased Demand for Schools**

The MEIR concluded that demand for schools would be mitigated by collection of fees by the affected school districts. Since this project would be required to pay these fees, as applicable, the Existing Conditions, Impacts Analysis, and Mitigation Measures listed in the MEIR for the Increased Demand for Schools (pages IV-12-1 through IV-12-11) are still valid.

M. **Increased Demand for Police Services**

The proposed project is consistent with the General Plan in land use and intensity. Therefore, the Existing Conditions, Impacts Analysis and Mitigation Measures listed in the MEIR for the Increased Demand for Police Services (pages IV-13-1 through IV-13-8) are still valid.

N. **Increased Demand for Fire Services**

The proposed project is consistent with the General Plan in land use and intensity. Therefore, the Existing Conditions, Impacts Analysis and Mitigation Measures listed in the MEIR for the Increased Demand for Fire Services (pages IV-14-1 through IV-14-9) are still valid.

O. **Generation of Solid Waste**

The proposed project is consistent with the General Plan in land use and intensity. Therefore, the Existing Conditions, Impacts Analysis and Mitigation Measures listed in the MEIR for the Generation of Solid Waste (pages IV-15-1 through IV-15-10) are still valid.

P. **Generation of Hazardous Materials**

The proposed project is consistent with the General Plan in land use and intensity. Therefore, the Existing Conditions, Impacts Analysis and Mitigation Measures listed in the MEIR for the Generation of Hazardous Materials (pages IV-16-1 through IV-16-15) are still valid.

Q. **Landslides and Seismic Activity**

The proposed project will result in no additional potential for exposing people to landslides or earthquake related hazards such as liquefaction beyond those identified in the MEIR. Therefore, the Existing Conditions, Impacts Analysis and Mitigation Measures listed in the MEIR for the Landslides and Seismic Activity (pages IV-17-1 through IV-17-11) are still valid.

R. **Energy**

The proposed project is consistent with the General Plan in land use and intensity. Therefore, the Existing Conditions, Impacts Analysis and Mitigation Measures listed in the MEIR for Energy (pages IV-18-1 through IV-18-6) are still valid.
IV. CONCLUSIONS/DETERMINATIONS OF FINDINGS

A. The proposed project is within the scope of the General Plan Master EIR (SCH No. 92052017), which analyzed the potential impacts of buildout of the Baseline Developed Area.

B. No additional significant environmental effects will occur as a result of the proposed project that were not previously examined in the General Plan Master EIR.

C. No new mitigation measures or alternatives will be required as a result of the proposed project that were not previously considered in the General Plan Master EIR.

D. There are no specific features unique to this project that require specific mitigation measures. All certified mitigation measures identified in the MEIR will apply Citywide, including this project, as appropriate.

E. This Initial Study provides substantial evidence to support findings A, B, C, and D above.

Signature:

Brad Walt,
Associate Planner
A RESOLUTION OF THE CITY OF MODESTO AMENDING THE FY 02-03 BUDGET TO APPROPRIATE $602,000 FROM THE GENERAL FUND CONTINGENCY RESERVE AND APPROVING A LOAN BETWEEN THE MODESTO REDEVELOPMENT AGENCY AND THE CITY OF MODESTO IN THE AMOUNT OF $602,000 FOR THE PURPOSE OF FUNDING CERTAIN PUBLIC IMPROVEMENTS FOR THE GALLO ARTS CENTER

WHEREAS, the Gallo Arts Center (Center) is a $31 million project by the County of Stanislaus (County), planned for the block between 10th and 11th streets and H and I streets in downtown Modesto, which will feature a 1,200-seat theater, a 400-seat theater and art gallery, and

WHEREAS, on August 9, 2002, the City received a letter from the County requesting financial participation in said Center street, streetscape and curb improvements, and

WHEREAS, at their hearing of February 4, 2003 the City Council approved providing funding support for the Center in the amount of $1,030,000, and

WHEREAS, the City Council authorized use of various funding sources for said Center improvements, including Sewer, Water, Storm Drain and Technical Equipment Replacement Funds, and

WHEREAS, the City Council determined that use of Gas Tax revenues as a funding source for the street and streetscape improvements for said Center is not a preferred alternative, and
WHEREAS, said Center property is located within the boundaries of the Modesto Redevelopment Agency (Agency) Project Area and the expenditure of redevelopment tax increment revenues for public improvements is a permitted use of such funds, and

WHEREAS, City has determined that the tax increment revenue portion of the funding support for said Center is $602,000, as specified in Attachments A and B, and

WHEREAS, the current debt obligation of the City’s Redevelopment Agency (RDA) exceeds the Agency’s annual net tax increment revenue and necessitates an appropriation from the General Fund Reserves in the amount of $602,000 to fund certain public improvements for the Gallo Arts Center, and

WHEREAS, the City has determined that a loan in the amount of $602,000 be allocated to reimburse the County in the amount of $473,000 and the City in the amount of $129,000 for construction of curb, gutter and streetscape improvements, as reflected in Attachments A and B, which are attached hereto and made a part hereof by this reference, and

WHEREAS, the City of Modesto and the Agency have established budget policies whereby the City of Modesto can advance money to the Agency, and

WHEREAS, the proposed loan was reviewed by the Finance Committee at their meeting on February 24, 2003 and was recommended for approval to the City Council and Agency.
NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Modesto that the FY 02-03 Budget is hereby amended to appropriate the amount of $602,000 from the General Fund Contingency Reserve funds and approve a loan between the Modesto Redevelopment Agency and the City of Modesto in the amount of $602,000 for the purposes of funding street, curb, streetscape and traffic signal improvements for said Center as follows:

1) City of Modesto General Fund Contingency Reserve shall be reduced by $602,000 (Account No. 0100-800-8000-8003).

2) Said $602,000 shall be placed into the Modesto Redevelopment Agency Capital Improvement Account – Gallo Arts Center Public Improvements (Account No. 9080-140-Q260).

3) The Finance Director shall take appropriate steps to document the indebtedness owed by the RDA to the City of Modesto, including principal and interest at 7% per-annum.

4) Said documentation shall show the date of each draw down.

5) Repayment of the principal and interest of said loan will be made in accordance with the provisions of the policies set-forth in the FY 02/03 Budget.
The foregoing resolution was introduced at a regular meeting of the City Council of the City of Modesto held on the 25th day of March, 2003, by Council member Fisher, who moved its adoption, which motion being duly seconded by Council member Frohman, was upon roll call carried and the resolution adopted by the following vote:

AYES: Council members: Fisher, Frohman, Jackman, Keating, Mayor Sabatino

NOES: Council members: O’Bryant

ABSENT: Council members: Conrad

ATTEST: [Signature]
JEAN ZAHR, City Clerk

APPROVED AS TO FORM:

[Signature]
MICHAEL D. MILICH, City Attorney
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### STREET CIP ESTIMATE

**PERFORMING ARTS IMPROVEMENTS - MANDATORY CITY IMPROVEMENTS**

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#### ASPHALT OVERLAY THICKNESS
- **THICKNESS** 0.2 ft = 2.40 in

#### BASE THICKNESS
- **THICKNESS** 0 ft = 0.00 in

#### NO. DESCRIPTION | QUANTITY | UNITS | UN/PRICE | EXTENSION |
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<tr>
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<td>500</td>
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<td>6. INSTALL TWO WATER SERVICES</td>
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<td>7. AC GRINDING - 11TH STREET</td>
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<td>14. INSTALL 10' VCP</td>
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<tr>
<td>15. TRAFFIC CONTROL</td>
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<tr>
<td>16. BUDGET CONTINGENCY</td>
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#### EXPENDITURE CODE

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<tr>
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**PROJECT TOTAL** $554,000

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**PORTION OF MANDATORY COSTS FUNDED BY RDA:**

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<tr>
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<td>18. BUDGET CONTINGENCY</td>
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#### EXPENDITURE CODE

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**PROJECT TOTAL** $129,000

---

*Performing Arts Mandatory March 03*
A RESOLUTION REVISING THE POSITION CLASSIFICATION PLAN FOR THE CITY OF MODESTO.

WHEREAS, a Position Classification Plan for the City of Modesto was adopted by Modesto City Council Resolution 88-338 pursuant to Rule 2 of the Personnel Rules and Regulations of the City of Modesto, and

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

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

WHEREAS, this item was brought before the Finance Policy Committee on February 23, 2003, and

WHEREAS, the Finance Policy Committee unanimously approved the classification and salary range for the Senior Business Analyst, and

WHEREAS, the Finance Policy Committee voted 2 to 1 to approve the classification and salary range for the Business Development Division Manager.

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

SECTION I. CLASSIFICATIONS CREATED. The Position Classification Plan of the City of Modesto is hereby amended to establish the following classifications:

Senior Business Analyst

Recreate the job classification of Senior Business Analyst at Range 438 ($4,813-5,854/month) that was deleted by Council action in June of 2001 with the creation of a Business Development Manager.
Business Development Division Manager

Recreate the Business Development Division Manager at Range 447 ($6,011-7,323/mo.) as a single position class, and moving the incumbent into the Division Manager position.

The specification for the management classification of Senior Business Analyst, (Range 438), as shown on the attached Exhibit “A”, and the specification for the management classification of Business Development Division Manager (Range 447), as shown on attached Exhibit “B”, assigned to the Management and Confidential Bargaining Unit, which are hereby made a part of this resolution by reference, are hereby approved and made a part of the Position Classification Plan of the City of Modesto.

SECTION 2. EFFECTIVE DATE. This resolution shall become effective on and after March 25, 2003.

The foregoing resolution was introduced in a regular meeting of the Council of the City of Modesto held on the 25th day of March, 2003, by Councilmember Fisher, who moved its adoption, which motion being duly seconded by Councilmember Frohman, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Fisher, Frohman, Jackman, Keating, O'Bryant
Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: Conrad

ATTEST: 
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM: 

By 
MICHAEL D. MILICH, City Attorney

03/25/03/CED/B Kilger
DEFINITION

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

To assist the Business Development Division Manager in the planning, coordination, and implementation of activities which promote the City’s economic development and redevelopment efforts with emphasis on the recruiting and attracting new business and industry, the retention of current business investments and the expansion of the community’s economic base; to supervise and administer staff involved in these functions; to assist in the preparation of operating and capital budgets; and to provide complex staff assistance to the Director.

SUPERVISION RECEIVED AND EXERCISED:

Receives general direction from the Business Development Division Manager. Exercises direct supervision over professional, technical and clerical staff as assigned by the Division Manager.

ESSENTIAL AND MARGINAL FUNCTION STATEMENTS

Essential and other important responsibilities may include, but are not limited to, the following:

Recruit business prospects; assist them in the setting and permitting of their businesses both within the redevelopment area and citywide.

Work with existing businesses, both in the redevelopment area and citywide, to protect and expand their investments in the local economy.

Assist the Division Manager in the development of the economic development workplan; assign work activities, projects and programs; monitor workflow; implement policies and procedures.

Assist Department Director with the evaluation of proposals containing incentives to help broaden the local tax bases, generate or attract new capital, increase business activity, produce jobs and diversify the local economy.
ESSENTIAL FUNCTIONS, Continued

Develop and manage databases pertinent to business retention and recruitment efforts.

Develop and implement public relations and marketing programs to communicate and promote City to prospective businesses through trade shows, publications and exhibits.

Research and maintain a variety of information regarding properties, economic and land use data within the City and provide information to prospective businesses.

Investigates economic and redevelopment grants from Federal, State and regional economic development entities to assist in furthering the City's business attraction and retention, affordable housing construction and rehabilitation, downtown revitalization, marketing, and brownfield remediation activities.

Responsible for preparing grant applications and administering grants acquired.

Create and analyze proformas and other financial documents; analyze real estate transactions; analyze business loan and grant requests, incentive proposals and return on investment analyses.

Negotiate, prepare, and supervise the processing of documents such as disposition and development agreements, owner participation agreements, contract, resolutions, and requests for proposals/qualifications.

Coordinate the City's and Redevelopment Agency's business development activities with other public and private agencies, including the rest of the City organization.

Participate in recommending the appointment of personnel; provide or coordinate staff training; work with employees to correct deficiencies; implement discipline procedures; recommend employee terminations.

Participate in the development and implementation of the City's and Redevelopment Agency's operating and capital improvement budgets.

Research redevelopment and economic development problems and solutions and prepare a variety of comprehensive reports.
CITY OF MODESTO
Senior Business Analyst

MARGINAL FUNCTIONS:
Perform related duties and responsibilities, as required.

QUALIFICATIONS

Knowledge of:

Principles and practices of business development, redevelopment, financing programs and real estate.

Pertinent laws, codes and regulations relating to land acquisition, real estate transactions and environmental issues.

Principles and practices of organization, administration, supervision, training and personnel management.

Methods and techniques of statistical analysis, effective technical report preparation and presentation (both oral and graphic).

Principles of budget preparation and expenditure control.

Property values and effect of economic trends on value and price.

General legal authority and parameters for carrying out bonds, grants, assessment, loans and other financial transactions.

Ability to:

Gather and analyze a variety of complex data, including economic studies, financial statements, marketing studies, plans, specifications, and bid documents; prepare comprehensive written and oral reports.

Negotiate and manage contracts, leases, agreements, loans, and rebates with Business Development customers and clients.

Identify and respond to community and City Council issues, concerns, and needs.

Communicate clearly and concisely, both orally and in writing.
Ability to, Continued

Establish and maintain cooperative-working relationships with those contacted in the course of work, including a variety of City and other government officials, consultants, realtors, community groups, business owners, and the general public.

Supervise, evaluate and train assigned staff.

Assist with the preparation and administration of departmental operating and capital improvement budgets and monitoring systems.

Analyze economic studies, financial statements, marketing studies, plans, specifications and bid documents.

Ensure project and grant compliance with Federal, State and local rules, laws and regulations.

Prepare and analyze technical and administrative reports, statements and correspondence.

Experience and Training Guidelines

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

Experience:

Four years of increasingly responsible experience in business and community development, redevelopment project management, or real estate finance and development, including at least one year of administrative and supervisory experience.

Education:

Equivalent to a Bachelor's degree from an accredited college or university with major course work in business or public administration, economics, engineering or a closely related field.

License:

Possession of, or the ability to obtain, an appropriate and valid California driver's license.
WORKING CONDITIONS

Environmental Conditions:

Office Environment.

Physical Conditions:

Essential and marginal functions may require maintaining physical condition necessary for sitting for prolonged periods of time.
BUSINESS DEVELOPMENT DIVISION MANAGER

DEFINITION

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

To manage, supervise and administer the division; to assist in the preparation of operating and capital improvement budgets; and to provide complex staff assistance to the department Director on economic development, redevelopment, workforce development and affordable housing programs, projects and activities.

SUPERVISION RECEIVED AND EXERCISED:

Receives administrative direction from the Community and Economic Development Director.

Exercises direct supervision over professional, technical and clerical staff in assigned area.

ESSENTIAL AND MARGINAL FUNCTION STATEMENTS

Essential and other important responsibilities may include, but are not limited to, the following:

Manage, direct and organize division activities in the areas of development finance, asset management, redevelopment, business retention and recruitment, business loans, work force development and development regulations.

Implement goals, objectives, policies and priorities for the City's economic and redevelopment programs; identify resource needs.

Supervise negotiation and preparation of documents such as disposition and development agreements, owner participation agreements, contracts, resolutions, and requests for proposals/qualifications.

Monitor activities of City consultants, including preparing and administering contracts.

Negotiate development agreements with proponents of private development projects.
ESSENTIAL FUNCTIONS, Continued

Administer property management and land acquisition policies and strategies.

Evaluate complex revenue and other financial analysis studies used in financial and budgetary planning, assessment districts, tax increment financing, and business loans.

Evaluate revenue projects; investigate and recommend appropriate sources of funding for projects relating to the division.

Review impact of economic and redevelopment regulations and laws; make recommendations for legislative amendments; and represent the City with regulatory and other governmental agencies.

Evaluate proposals containing incentives to help broaden the local tax bases, generate or attract new capital, increase business activity, produce jobs and diversify the local economy.

Participate in recommending the appointment of personnel; provide or coordinate staff training; work with employees to correct deficiencies; implement discipline procedures; recommend employee terminations.

Administer the division budget; direct the forecast of funds needed for departmental goals; monitor and approve expenditures; implement mid-year adjustments.

Direct, oversee and participate in the development of the division's workplan; assign work activities, projects and programs; monitor workflow; implement policies and procedures.

Appeal before the City Council, the Redevelopment Agency, boards, commissions, local business representatives and related governmental, non-profit and civic organizations, representing the Division.

Coordinate Division activities with those of other departments and outside agencies and organizations; prepare and present staff reports and other necessary correspondence.

Marginal Functions:

Perform related duties as assigned.
CITY OF MODESTO
Business Development Division Manager

QUALIFICATIONS

Knowledge of:

Principles and practices of business development, redevelopment, financing programs and real estate.

Property values and effect of economic trends on value and price.

Pertinent laws, codes and regulations relating to land acquisition, real estate transactions and environmental issues.

Principles and practices of organization, administration, supervision, training and personnel management.

Methods and techniques of statistical analysis, effective technical report preparation and presentation (both oral and graphic).

Principles of budget preparation and expenditure control.

General legal authority and parameters for carrying out bonds, grants, assessment, loans and other financial transactions.

Ability to:

Assist with the preparation and administration of departmental operating and capital improvement budgets and control budget expenditures.

Effectively manage assigned areas of the departmental program.

Analyze economic studies, financial statements, marketing studies, plans, specifications and bid documents.

Supervise, evaluate and train assigned staff.

Interpret and apply pertinent laws, rules and regulations.

Ensure project and grant compliance with Federal, State and local rules, laws and regulations.
Ability to, Continued:

Prepare and analyze technical and administrative reports, statements and correspondence.

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

Communicate clearly and concisely, both orally and in writing.

Experience and Training Guidelines:

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

Experience:

Five years increasingly responsible experience in development finance, business development, redevelopment or a related field including at least two years of administrative and supervisory experience.

Training:

Equivalent to a Bachelor's degree from an accredited college or university with major course work in business development, redevelopment, public or business administration, business/development finance, or a related field.

License or Certificate:

Possession of, or ability to obtain, an appropriate, valid California driver's license.

WORKING CONDITIONS

Environmental Conditions:

Office Environment.

Physical Conditions:

Essential and marginal functions may require maintaining physical condition necessary for sitting for prolonged periods of time.
MODESTO CITY COUNCIL
RESOLUTION NO. 2003-160


WHEREAS, the City Council desires to amend Exhibit “A” of Resolution No. 2002-307, and

WHEREAS, this item was brought before the Finance Policy Committee on February 23, 2003, and

WHEREAS, the Finance Policy Committee unanimously approved the classification and salary range for the Senior Business Analyst, and

WHEREAS, the Finance Policy Committee voted 2 to 1 to approve the classification and salary range for Business Development Division Manager.

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

SECTION I. AMENDMENT TO RESOLUTION NO. 2002-307. Exhibit “A” entitled “City of Modesto Class Range Table Management and Confidential Non-Sworn Classes Effective June 18, 2002”, is hereby amended as shown on the amended Exhibit “A” entitled “City of Modesto Class Range Table Management and Confidential Non-Sworn Classes Effective March 25, 2003, which is attached hereto and made a part hereof as though set forth in full herein. Said amended Exhibit “A” establishes the salary range for Senior Business Analyst at Range 438 and Business Development Division Manager at Range 447.
SECTION 2. EFFECTIVE DATE. This resolution shall become effective on and after March 25, 2003.

The foregoing resolution was introduced in a regular meeting of the Council of the City of Modesto held on the 25th day of March, 2003, by Councilmember Fisher, who moved its adoption, which motion being duly seconded by Councilmember Frohman, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Fisher, Frohman, Jackman, Keating, O'Bryant Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: Conrad

ATTEST: Jean Zahr
JEAN ZAHN, City Clerk

(SEAL)

APPROVED AS TO FORM:

By Michael D. Milich, City Attorney
CITY OF MODESTO  
CLASS RANGE TABLE  
MANAGEMENT AND CONFIDENTIAL NON-SWORN CLASSES  
Effective March 25, 2003

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<td>Administrative Office Assistant I (Confidential)</td>
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<td>407</td>
<td>Administrative Office Assistant II (Confidential)</td>
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| 411   | Administrative Office Assistant III (Confidential)  
       | Police Clerk II (Confidential) |
| 412   |       |
| 413   | Senior Personnel Clerk |
| 414   |       |
| 415   | Senior Administrative Office Assistant (Confidential) |
| 416   |       |
| 417   |       |
| 418   | Legal Secretary |
| 419   | Police Training and Records Technician (Confidential)  
       | Public Information Technician (Confidential) |
| 420   | Accountant I (Confidential)  
       | Deputy City Clerk  
       | Employee Benefits Coordinator  
       | Executive Secretary  
       | Legal Services Technician  
       | Systems Technician  
<pre><code>   | Workers’ Compensation Claims Examiner I |
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<p>| 421   |       |</p>
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| 422   | Office Supervisor  
        Utility Dispatch Supervisor |
| 423   | Custodian Supervisor |
| 424   | Assistant Planner  
        Buyer  
        Workers' Compensation Claims Examiner II |
| 425   | Administrative Analyst I  
        Executive Assistant  
        Paralegal |
| 426   | Police Support Services Supervisor  
        Stores Manager |
| 427   | Assistant City Clerk/Auditor  
        Legal Services Administrator |
| 428   | Accountant II  
        Customer Services Specialist  
        Customer Services Supervisor  
        Senior Buyer |
| 429   | |
| 430   | Associate Planner  
        Events Supervisor I  
        Junior Civil Engineer  
        Senior Crime Analyst  
        Social Services Program Supervisor |
| 431   | Administrative Analyst II  
        Assistant Risk Manager  
        Budget Analyst I  
        Geographic Information Systems Analyst  
        Personnel Analyst  
        Recycling Program Coordinator  
        Senior Community Development Program Specialist  
        Systems Analyst |
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| 432    | Communications Specialist  
Industrial Waste Supervisor  
Neighborhood Preservation Supervisor  
Operations and Maintenance Supervisor  
Recreation Supervisor II  
Senior Accountant  
Water Quality Control Maintenance Supervisor  
Water Quality Control Operations Supervisor  
Youth Program Supervisor |
| 433    | Organizational Development Specialist |
| 434    | Arborist  
Assistant Civil Engineer  
Assistant Traffic Engineer  
Budget Analyst II  
Electrical Supervisor  
Events Supervisor II  
Geographic Information Systems Coordinator  
Operations Supervisor  
SCADA Supervisor  
Senior Housing Rehabilitation Specialist  
Senior Programmer Analyst |
| 435    | Business Analyst  
Cultural Services Manager  
Integrated Waste Specialist  
Management Analyst  
Senior Personnel Analyst |
| 436    | Senior Planner |
| 437    | Deputy City Attorney I |
| 438    | Budget Officer  
Communications and Marketing Manager  
Development and Operations Coordinator  
Financial/Investment Officer  
Housing Program Supervisor  
Land Surveyor  
Property Agent  
Purchasing Supervisor  
Senior Business Analyst |
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| 438 (continued) | Systems Engineer  
Transportation Planner |
| 439 | Administrative Services Officer  
Community Facilities Districts Administrative Officer |
| 440 | Associate Civil Engineer  
Associate Traffic Engineer |
| 441 | Airport Manager  
Assistant Personnel Director  
Building Maintenance Superintendent  
Deputy City Attorney II  
Fire Marshal  
Fleet Manager  
Golf Services Manager  
Parks Operations Superintendent  
Parks Planning and Development Manager  
Police Records Manager  
Recreation Superintendent  
Risk Manager  
Solid Waste Program Manager  
Streets Engineer  
Transit Manager  
Urban Forestry Superintendent  
Wastewater Collections Superintendent  
Water Superintendent |
| 442 | Customer Services Division Manager  
Information Services Manager  
Manager of Budget and Financial Analysis  
Supervising Building Inspector  
Supervising Construction Inspector |
| 443 | Senior Deputy City Attorney I |
| 444 | Business Development Manager  
Deputy Chief Building Official  
General Services Manager  
Principal Planner |
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<td>Housing and Neighborhoods Division Manager</td>
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<td>Water Quality Control Superintendent</td>
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<td>447</td>
<td>Assistant to City Manager</td>
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<td>Chief Building Official</td>
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<td>Planning Division Manager</td>
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<td>Senior Civil Engineer</td>
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<td>Traffic Engineer</td>
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<td>449</td>
<td>Senior Deputy City Attorney II</td>
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<td>452</td>
<td>Deputy Director -- Cultural and Enterprise Services</td>
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<td>Deputy Director -- Engineering &amp; Transportation</td>
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<td>Deputy Director -- Operations and Maintenance</td>
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<td>Deputy Director -- Recreation and Neighborhoods</td>
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<tr>
<td>455</td>
<td>Assistant City Attorney</td>
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A RESOLUTION AUTHORIZING APPROVAL OF THE WATER SUPPLY ASSESSMENT STUDY (WSA) PREPARED FOR THE RIVER RANCH SPECIFIC PLAN AREA AND DIRECTING CITY STAFF TO FORWARD THE WSA TO STANISLAUS COUNTY

WHEREAS, Senate Bill 610 (SB 610) requires water suppliers to conduct Water Supply Assessment (WSA) studies for projects meeting the legislative criteria, and

WHEREAS, the City of Modesto received a request from Stanislaus County to conduct such a study for the proposed River Ranch Specific Plan area near Salida, and

WHEREAS, Engineering and Transportation staff completed the WSA, and

WHEREAS, a determination was made that an adequate water supply is not available at this time for the River Ranch Specific Plan (RRSP) project, generally located near the community of Salida, and

WHEREAS, this item was discussed at the Economic Development Committee meeting on March 10, 2003, and a favorable recommendation was made to forward the WSA to the Council for consideration,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the Water Supply Assessment Study for the proposed River Ranch Specific Plan area near Salida is hereby approved determining that an adequate water supply is not available at this time for the River Ranch Specific Plan project.

BE IT FURTHER RESOLVED that City staff is hereby directed to forward the Water Supply Assessment Study to Stanislaus County, as required by SB610.
The foregoing resolution was introduced at a regular meeting of the Council of
the City of Modesto held on the 25th day of March, 2003, by Councilmember Fisher,
who moved its adoption, which motion being duly seconded by Councilmember
Jackman, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Fisher, Frohman, Jackman, Keating, O'Bryant,
Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: Conrad

APPROVED AS TO-FORM:

By

MICHAEL D. MILICH, City Attorney

ATTEST: JEAN ZAHN, City Clerk

WHEREAS, on November 5, 1997, the City Council approved the City of Modesto Drought Contingency Plan via Resolution No. 91-666, which provides for the staged response to conditions of projected shortfall in the City’s water supply system, and

WHEREAS, the Drought Contingency Plan of the City of Modesto provides that when the City determines that a minor shortage potential exists that a Stage One drought condition can and shall be declared, and

WHEREAS, Section 11-1.14 of the Modesto Municipal Code authorizes the City Council to establish rules and regulations by resolution concerning the City’s municipal water system, the use of water, and water conservation, and

WHEREAS, on July 21, 1998, the City Council adopted Resolution No. 98-380 entitled, “A Resolution Revising Guidelines for Water Use During Stage One Drought Conditions, and Rescinding Resolution No. 91-666” which eliminated the requirement that outdoor water use occur only on certain days of the week based on the street address, and

WHEREAS, on March 10, 2003, the City Council Economic Development Committee approved a staff recommendation to implement the City’s Stage One Drought Contingency Plan and to reinstate the alternate day outdoor water use schedule based on the street address effective May 1, 2003,
NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the Council hereby approves the implementation of Stage One of the Drought Contingency Plan effective May 1, 2003, to include the requirement for alternate day outdoor water use schedule based on a street address, as follows:

SECTION 1. The Operations & Maintenance Department, or its agents, shall implement the strategies and enforcement procedures applicable during a Stage One Drought Condition as provided in the City's Drought Contingency Plan.

SECTION 2. In accordance with the Drought Contingency Plan, the following rules and regulations are established for use during a Stage One Drought Condition. Violations of these regulations shall be considered water waste.

1. Outdoor water use shall be prohibited daily from 12:00 p.m. to 7:00 p.m.
2. Odd-numbered addresses shall water outdoors only on Wednesdays, Fridays, and Sundays.
3. Even-numbered addresses shall water outdoors only on Tuesdays, Thursdays, and Saturdays.
4. No outdoor water use is permitted on Mondays.
5. City residents shall not wash cars without the use of a quick-acting positive shut-off nozzle or permit others to do so on their behalf. In addition, car washing must be done in compliance with the schedule for outdoor water use. There shall be no washing of building exteriors, mobile home exteriors, recreational vehicle exteriors, sidewalks, patios, driveways, gutters, or other exterior surfaces unless a permit is issued by
the Operations & Maintenance Director or his designee and the washing is done with a quick-acting positive shut-off nozzle on the hose.

6. City residents shall not have leaky faucets or plumbing fixtures on their premises for more than 24-hours after the leak has been identified or notice has been received from the City, whichever comes first.

7. Eating establishments are encouraged to serve water only at the customer’s request.

8. New landscaping installations must comply with all applicable landscape ordinances.

9. Exceptions to the regulations set forth herein may be made by the Operations & Maintenance Director or his authorized designee upon a showing of good cause and necessity.

10. The following penalties may be added to the utility service customer’s account upon violation of the above regulations:

   a. A penalty in the sum of $50 upon the second violation within one year after having received a Notice of Violation.

   b. A penalty of $200 upon the third violation within said one-year period.

      i. Upon the third violation within one year of having received a Notice of Violation, the resident shall also have a water meter installed if one is not present and metered billing shall commence.
c. A penalty of $250 upon the fourth and any subsequent violations within said one-year period.

d. The customer shall be advised of these charges through a Notice of Intention to Impose a Penalty.

BE IT FURTHER RESOLVED that Resolution No. 98-380 is hereby rescinded effective April 30, 2003.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 25th day of March, 2003, by Councilmember Frohman, who moved its adoption, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Fisher, Frohman, Jackman, Keating, O’Brien, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: Conrad

ATTEST: Jean Zahr, City Clerk

(SEAL)

APPROVED AS TO FORM:

By Michael D. Milich, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2003-163

A RESOLUTION APPROVING A MUNICIPAL MASTER LEASE ("AS AMENDED") WITH DELL MARKETING L.P FOR INFORMATION TECHNOLOGY HARDWARE PRODUCTS AND SERVICES FOR A PERIOD OF 36 MONTHS AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE MUNICIPAL MASTER LEASE AND AMENDMENT TO MUNICIPAL MASTER LEASE AGREEMENT.

WHEREAS, five years ago the City established a Technology and Equipment Replacement Fund (TERF) for the purpose of replacing obsolete tech equipment, and

WHEREAS, in the five years since the replacement fund was established, 326 of our total inventory of 920 personal computers have been replaced through the fund, and

WHEREAS, the customers that IT supports have not been serviced appropriately by this cycle and have had to use their own funds to meet their technology needs, and

WHEREAS, in 1999 the City went through a formal bid process to establish a computer standard throughout the city, and

WHEREAS, Dell Marketing was the lowest responsive and responsible bidder to the formal bid process, and

WHEREAS, the City is desirous of entering into a Municipal Master Lease ("as Amended") with Dell Marketing for Information Technology Hardware Products and Services for a period of 36 months, and

WHEREAS, in reviewing the Dell leasing program, it has been determined that the City could adopt a 3 year replacement program for an annual investment of $396,158 as (compared to the average $487,748 that the City has been spending for technical replacement), and
WHEREAS, the leasing program would allow us to begin the three year replacement program immediately, thereby saving approximately $420,000 during the first two years of the program, based on the ramp-up factor of the lease, and

WHEREAS, IT views this program as a cost effective measure for the City, emphasizing reduction of the Total Cost of Ownership (TCO) for our technology equipment and helping streamline the City's technology refresh program that affects all departments, and

WHEREAS, Dell Marketing has been providing personal computers to the City for the past three years, and

WHEREAS, during that time the City has received Dell contractual pricing by taking advantage of the Western States Contracting Alliance (WSCA) pricing, and

WHEREAS, WSCA is a coalition of fifteen western states which was formed as a means by which participating states could join together to receive cost effective pricing on personal computers based on economies of scale, and

WHEREAS, last year during the budget process Council instructed the IT Department to explore the lease vs. buy option for the City's personal computers, and

WHEREAS, this 3 year lease program has been approved by the Finance Committee to go to Council for full review.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves a Municipal Master Lease ("as amended") with Dell Marketing L.P. for Information Technology hardware products and services for a period of 36 months (an annual report will be submitted to the Finance Committee).
BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute a Municipal Master Lease and Amendment to Municipal Master Lease Agreement.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 25th day of March, 2003, by Council member Keating, who moved its adoption, which motion being duly seconded by Council member Jackman, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Fisher, Frohman, Jackman, Keating, O’Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: Conrad

ATTEST: Jean Zahr, City Clerk

APPROVED AS TO FORM:

BY: Michael D. Milich, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2003-164

A RESOLUTION APPROVING A THREE (3) YEAR CONTRACT WITH MAZE & ASSOCIATES TO PROVIDE EXTERNAL AUDIT SERVICES TO PERFORM ANNUAL FINANCIAL AUDITS OF THE CITY OF MODESTO, WITH THE OPTION TO EXTEND THE CONTRACT FOR TWO (2) ONE YEAR TERMS, IN THE AMOUNT OF $104,405 FOR FY 2003, $107,645 FOR FY 2004, AND $110,979 FOR FY 2005, AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT.

WHEREAS, by Resolution No. 2003-28 the City Council, on January 14, 2003, directed the Audit Committee, with assistance from the City Clerk & Auditor and Finance Department staff, to obtain proposals for audits of the City of Modesto financial statements, and

WHEREAS, the Audit Committee has received seven responses to its Requests for Proposals for these audit services, and

WHEREAS, on March 13, 2003, the Audit Committee has interviewed the four audit firms best qualified, in its judgment, to perform these audit services, and

WHEREAS, the Audit Committee has recommended Maze and Associates, An Accountancy Corporation, as the audit firm best qualified to perform these audit services,

WHEREAS, Maze and Associates will perform said audit services for the contract price of $104,405 for FY 2003, $107,645 for FY 2004, and $110,979 for FY 2005,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approved a three (3) year contract with Maze & Associates, with the option to extend the contract for two (2) one-year terms, at the contract price of $104,405 for FY 2003, $107,645 for FY 2004, and $110,979 for FY 2005,
BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute the contract.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 1st day of April, 2003, by Councilmember Jackman, who moved its adoption, which motion being duly seconded by Councilmember Conrad, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Frohman, Jackman, Keating, O’Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: 

APPROVED AS TO FORM:

BY:
MICHAEL D. MILICH, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2003 -165

A RESOLUTION APPROVING AN AMENDMENT TO A PROFESSIONAL SERVICE AGREEMENT WITH SHUTT MOEN ASSOCIATES, DATED SEPTEMBER 24, 2002, THAT ALLOWS THE NAME CHANGE OF THE CONSULTANT FROM SHUTT MOEN ASSOCIATES TO MEAD & HUNT, INC.; INCREASING THE CONTRACT AMOUNT $13,000.00 FOR ADDITIONAL WORK; AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THIS AMENDMENT TO THE AGREEMENT ON BEHALF OF THE CITY.

WHEREAS, the City Council approved on September 24, 2002 an agreement with Shutt Moen Associates to perform engineering services for the reconstruction of Runway 10L/28R at Modesto City-County Airport, and

WHEREAS, the firm of Shutt Moen Associates recently merged with the firm of Mead & Hunt, Inc., and

WHEREAS, Shutt Moen Associates is requesting that the name of the engineering firm on the agreement be changed from Shutt Moen Associates to Mead & Hunt, Inc., and

WHEREAS, Shutt Moen Associates has notified the City that the principals completing the project will be the same as listed in the agreement dated September 24, 2002, and

WHEREAS, this amendment also includes an increase of $13,000.00 to complete the following additional work:

1. Additional engineering to prepare plans and specifications for the runway light replacement - $8,000.00; and
2. Update of the airport's master record - $5,000.00, and

WHEREAS, the Federal Aviation Administration has given verbal approval to increase the runway reconstruction engineering and include the replacement of the high intensity runway lights, as well as update the airport master record, and

WHEREAS, the Council Economic Development Committee approved the Amendment to the Agreement at their meeting on March 10, 2003,
NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves an Amendment to the Agreement with Shutt Moen Associates, dated September 24, 2002, that allows a change in the name of the consultant firm to Mead and Hunt, Inc., and

BE IT FURTHER RESOLVED by the Council of the City of Modesto that it hereby approves an increase of $13,000.00 in the engineering fees to Mead and Hunt, Inc., for completion of plans and specifications for the replacement of the airport's high intensity runway lights, and updating the airport's master record, and

BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute the Amendment to the Agreement with Mead & Hunt, Inc., 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, 2003, by Councilmember Jackman, who moved its adoption, which motion being duly seconded by Councilmember Conrad, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Frohman, Jackman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: ________________

JEAN ZAHN, City Clerk

(SEAL)

APPROVED AS TO FORM:

by ________________

MICHAEL D. MILICH, City Attorney

04/01/03/E&T/H Cook
MODESTO CITY COUNCIL
RESOLUTION NO. 2003-166

A RESOLUTION ACCEPTING THE BID AND AWARDING AMERINE SYSTEMS, INC. THE CONTRACT FOR THE PROJECT TITLED “WELL 312, SOUTH STREET, EMPIRE”

WHEREAS, the bids received for Well 312, South Street, Empire, were opened at 11:00 a.m. on July 16, 2002, and later tabulated by the Engineering and Transportation Director for the consideration of the Council, and

WHEREAS, the Engineering and Transportation Director has recommended that the bid of $230,888 received from Amerine Systems, Inc., be accepted as the lowest responsible bid and the contract be awarded to AMERINE SYSTEMS, INC.,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby accepts the bid of AMERINE SYSTEMS, INC., and hereby awards AMERINE SYSTEMS, INC., the contract titled “Well 312, South Street, Empire” in the amount of $230,888.

BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute the contract.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 1st day of April, 2003, by Councilmember Jackman, who moved its adoption, which motion being duly seconded by Councilmember Conrad, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Frohman, Jackman, Keating, O’Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: Jean Zahr, City Clerk

APPROVED AS TO FORM:

By Michael D. Milich, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2003-167

A RESOLUTION ACCEPTING THE BID AND AWARDING R. E. MCCOLLUM
THE CONTRACT FOR THE PROJECT TITLED "PUMP STATION 65 AT
TANK 5"

WHEREAS, the bids received for "Pump Station 65 at Tank 5" were opened at
11:00 a.m. on September 10, 2002, and later tabulated by the Engineering and
Transportation Director for the consideration of the Council, and

WHEREAS, all four (4) of the bids received exceeded the engineer's estimate but
reflect the current market for the work, with R.E. MCCOLLUM submitting the lowest
bid for the project, and

WHEREAS, the Engineering and Transportation Director has recommended that
the bid of $501,467.00 received from R. E. MCCOLLUM, be accepted as the lowest
responsible bid, and the contract be awarded to R.E. MCCOLLUM,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto
that it hereby accepts the bid of R.E. MCCOLLUM, and hereby awards R.E.
MCCOLLUM the contract titled "Pump Station 65 at Tank 5" in the amount of
$501,467.00.

BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby
authorized to execute the contract.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 1st day of April, 2003, by Councilmember Jackman, who moved its adoption, which motion being duly seconded by Councilmember Conrad, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Frohman, Jackman, Keating, O’Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: 

JEAN ZAHR, City Clerk

APPROVED AS TO FORM:

By 

MICHAEL D. MILICH, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2003-168

A RESOLUTION ACCEPTING WASTE MANAGEMENT'S OFFER OF A USED WATER TRUCK VALUED AT APPROXIMATELY $90,000 TO COMPENSATE THE CITY OF MODESTO CO-COMPOST FACILITY FOR LOST REVENUES AND DAMAGES AS A RESULT OF WASTE MANAGEMENT'S FAILURE TO MEET THE PERFORMANCE REQUIREMENTS OF THEIR SERVICE AGREEMENT WITH THE CITY.

WHEREAS, on November 1, 1997, the City of Modesto executed a Service Agreement with Modesto Garbage Company, Inc., D.B.A. Modesto Disposal Service, which was a subsidiary of USA Waste of California. USA Waste’s parent company later acquired Waste Management, and changed the name of the corporate parent to Waste Management, and

WHEREAS, Section x 3 of that Service Agreement states: “Containerized yard waste collected under the terms of this Agreement will be taken to the CITY’s composting facility or such other locations as directed by the Engineering and Transportation Director. COLLECTOR shall be responsible for the removal of contaminants from the yard waste to an acceptable level as determined by the CITY. The cost of said removal, where reasonable and necessary as determined by the CITY, will be made a component of the maximum rate. The CITY reserves the right to reject or direct to alternative disposal any loads determined to be too contaminated to process,” and

WHEREAS, the Modesto Municipal Code Section 5-5.32 prohibits any part of a Service Agreement from being assigned to another party without the prior written approval of the City Council. If a hauler wants to use a contractor to provide some of the services it is obligated to provide, it has to get the City’s permission in advance.
Performance breaches of the Service Agreement are subject to penalties, including termination of the Agreement and/or fines, and

WHEREAS, in August, 2002, the City became aware that Waste Management was not bringing all of the green waste it collects in the City to the City’s composting facility, and that the local District Manager at that time, began hauling the City’s green waste to other facilities beginning in January, 2002, without City approval, and

WHEREAS, it was determined that approximately 4,687 tons of the City’s green waste had been diverted to other facilities, impacting the City’s ability to meet deliveries of compost under its contracts and losing approximately 5,624 cubic yards of finished product, and

WHEREAS, by Waste Management failing to bring the green waste to the City’s compost facility for composting, the facility suffered damages of approximately $90,000, the current sales price of $15 per cubic yard and a monetary damage value to the loss of long-term relationships with clients and our inability to meet deliveries, and

WHEREAS, Waste Management has changed its local management as a result of the City’s investigation, and in order to resolve this matter, the new District Manager, Mr. Desi Reno, has proposed Waste Management compensate the City for economic losses at the facility caused by the diversion by purchasing a used water truck for the facility, and

WHEREAS, the permits for the compost facility require that a water truck be on site at all times for dust control, however, competing needs for this type of equipment from other City operations have strained the City’s ability to meet this requirement for dust suppression, and during recent inspections by the Air Board, the inspectors have reiterated that it is necessary to have a water truck on site at all times to meet their permit
requirements. Non-compliance with this permit condition could result in the issuance of a Notice of Violation, and

WHEREAS, compost facility staff have determined that it would be possible to obtain a water truck in good condition of the type and capacity to meet the facility’s needs for approximately $90,000 and had been proposing to include funds for such a purchase in the 2003 budget, and

WHEREAS, Mr. Reno has proposed that Waste Management compensate the City for economic losses at the facility by purchasing a water truck for the facility for approximately $90,000, and

WHEREAS, at its March 10, 2003, meeting, the Economic Development Committee recommended its support of Waste Management’s offer to purchase a water truck for the City,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto, that it hereby accepts Waste Management’s offer of a used water truck valued at approximately $90,000 to compensate the City’s co-compost facility for lost revenues and damages as a result of Waste Management’s failure to meet the performance requirements of its Service Agreement with 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, 2003, by Councilmember Jackman, who
moved its adoption, which motion being duly seconded by Councilmember Conrad, was
upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Frohman, Jackman, Keating,
       O’Bryan, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: Jean Zahr
       JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: Michael D. Milich, City Attorney
A RESOLUTION REJECTING THE PROPOSALS RECEIVED FROM AVIS RENT A CAR SYSTEM, INC., AND THE HERTZ CORPORATION TO OPERATE A RENTAL CAR CONCESSION IN THE PASSENGER TERMINAL AT MODESTO CITY-COUNTY AIRPORT AND AUTHORIZING CITY STAFF TO REDRAF A NEW RFP BASED ON CURRENT MARKET CONDITIONS FOR COUNCIL CONSIDERATION

WHEREAS, on October 8, 2002, the City Council approved the solicitation of Request for Proposals (RFPs) from car rental companies interested in operating a rental car concession in the Modesto City-County Airport passenger terminal, and

WHEREAS, the RFP specified the minimum amount the City would accept as payment for the privilege of doing business at the airport, and

WHEREAS, airport staff received four inquiries from interested car rental companies; however, only AVIS RENT A CAR SYSTEMS, INC., and THE HERTZ CORPORATION submitted their proposals by the required deadline of January 22, 2003, and

WHEREAS, neither the proposal from AVIS RENT A CAR SYSTEMS, INC., nor THE HERTZ CORPORATION met the City’s advertised required minimums, and

WHEREAS, ENTERPRISE RENT-A-CAR intended to submit a proposal but was unable to do so by the City’s deadline, and

WHEREAS, City staff believes that recent changes in the economy have changed the car rental marketplace and the attractiveness of the airport outlet to car rental companies, and staff further believes that if the RFP is updated to current market conditions more interest in the airport concession may be shown,
NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Modesto that it hereby rejects the proposals received from AVIS RENT A CAR SYSTEMS, INC., and THE HERTZ CORPORATION.

BE IT FURTHER RESOLVED that City staff is hereby authorized to redraft a new RFP based on current market conditions for Council’s consideration.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 1st day of April, 2003, by Councilmember Jackman, who moved its adoption, which motion being duly seconded by Councilmember Conrad, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Frohman, Jackman, Keating, O’Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: Jean Zahr, City Clerk

(SEAL)

APPROVED AS TO FORM:

by Michael D. Milich, City Attorney
A RESOLUTION OF INTENTION TO CONSIDER THE REQUEST OF RUDY BONZI, INC. TO ENTER INTO A SERVICE AGREEMENT WITH THE CITY OF MODESTO FOR THE COLLECTION OF INDUSTRIAL GARBAGE, SALVAGEABLE WASTE, AND INDUSTRIAL RECYCLABLES AND SETTING A PUBLIC HEARING ON APRIL 22, 2003, TO CONSIDER SAID MATTER.

WHEREAS, on January 8, 2003, the City Clerk received a permit application request from Rudy Bonzi, Inc. to obtain a license to collect industrial garbage, salvageable waste, and industrial recyclables in the City of Modesto, and

WHEREAS, on March 10, 2003, the Economic Development Committee met and supported the request of Rudy Bonzi, Inc., and

WHEREAS, Modesto Municipal Code section 5-5.17 requires that collection companies enter into Service Agreements with the City in order to provide solid waste collection services, and

WHEREAS, pursuant to Modesto Municipal Code Section 5-5.24, the City Council shall hear such requests at a public hearing, on Tuesday, April 22, 2003, at 5:30 p.m. in the Tenth Street Place Chambers located at 1010 10th Street, Modesto, California,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that Tuesday, April 22nd, 2003, at 5:30 p.m., in the Tenth Street Chambers located at 1010 10th Street, Modesto, California, is hereby set as the date, time and place for a public hearing to be held to consider the request of Rudy Bonzi, Inc., to enter into a service agreement with the City of Modesto for the collection of industrial garbage, salvageable waste, and industrial recyclables.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 1st day of April, 2003, by Councilmember Jackman, who moved its adoption, which motion being duly seconded by Councilmember Conrad, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Frohman, Jackman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: Jean Zahr
JEAN ZAHN, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: Michael Milich
MICHAEL D. MILICH, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2003-171

A RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR NATIONAL ASSISTANCE TO FIREFIGHTERS GRANT PROGRAM FUNDS IN THE AMOUNT OF $256,297 AND TO EXECUTE THE NECESSARY GRANT APPLICATION DOCUMENTS.

WHEREAS, the Congress, under Public Law 107-73, has authorized the establishment of the Federal Fire Protection and Control Act and has appropriated $360 million dollars to carry out the Assistance to Firefighter's Grant Program, and

WHEREAS, the Federal Emergency Management Agency (FEMA) is responsible for administration of the program, setting up necessary rules and procedures governing application by local agencies under the program, and

WHEREAS, said adopted procedures established by the Federal Emergency Management Agency require the applicant to provide 30% local matching funds, and

WHEREAS, the City of Modesto and Modesto Fire Department qualify to submit a grant request, and

WHEREAS, the Public Safety Committee met on March 31, 2003 and recommended support for this grant application,

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

1. Authorizes the filing of an application for Assistance to Firefighter's Grant Program funds.

2. Certifies that said agency has matching funds from the following source: Fire Department Operating Budget, and can finance 100 percent of the project, 70% of which will be reimbursed.
3. Authorizes the City Manager, or designee, as agent of the City to execute and submit the necessary grant application documents.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 1st day of April, 2003, by Councilmember Jackman, who moved its adoption, which motion being duly seconded by Councilmember Conrad, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Frohman, Jackman, Keating, O’Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

Attest: ____________________________
JEAN ZAHR, City Clerk

APPROVED AS TO FORM:

By: ________________________________
MICHAEL D. MILICH, City Attorney
A RESOLUTION AMENDING THE FISCAL YEAR 2002-2003 ANNUAL BUDGET

WHEREAS, a monthly financial analysis has been completed and it has been determined that certain adjustments are required to the Annual Budget of the City of Modesto for the Fiscal Year 2002-2003,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that appropriations, revenues, and transfers for the 2002-2003 budget have been adjusted as shown in Schedule A.

BE IT FURTHER RESOLVED that the Finance Director is hereby authorized to take the necessary steps to implement the provisions of this resolution.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 1st day of April, 2003, by Councilmember Jackman, who moved its adoption, which motion being duly seconded by Councilmember Conrad, was upon roll call carried and the resolution adopted by the following votes:

AYES: Councilmembers: Conrad, Fisher, Frohman, Jackman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSEN'T: Councilmembers: None

ATTEST: JEAN ZAHR, City Clerk

APPROVED AS TO FORM:

By: MIKE MILICH, City Attorney
## Budget Adjustments for the Month of March 2003

### Department: Parks, Recreation & Neighborhood

| Type of Account | Description | Fund | Agency | Org | Revenue Unit | Object/ Org | Budget ($) | Adjust ($) | Rev. ($) | FY 02-03 Adjustments |
|-----------------|-------------|------|--------|-----|--------------|-------------|------------|------------|----------|----------|---------------------|
| Appropriation   | parks/other facilities CFF | 2300 | 320 | N995 | 6010 | N995 | $104,000 | $(75,000) | $29,000 | 02-03 Adjustment |
| Appropriation   | construction | 2300 | 320 | N995 | 6040 | N995 | $416,000 | $(270,149) | $145,652 | 02-03 Adjustment |
| Appropriation   | contingency | 2300 | 320 | N995 | 6050 | N995 | $64,000 | $(41,592) | $22,408 | 02-03 Adjustment |
| Appropriation   | constr admin | 2300 | 320 | N995 | 6060 | N995 | $64,000 | $(41,592) | $22,408 | 02-03 Adjustment |
| Revenue         | transfer in from fund 0100 | 2300 | 700 | N995 | 9010 | na | $30,000 | $(50,000) | 0 | 02-03 Adjustment |
| Appropriation   | transfer out to fund 2300 | 0100 | 700 | N995 | 7230 | N995H | $50,000 | $(50,000) | 0 | 02-03 Adjustment |
| Revenue         | transfer in from fund 1130 | 2300 | 700 | N995 | 9113 | na | $598,000 | $(373,920) | $224,080 | 02-03 Adjustment |
| Appropriation   | transfer out to fund 2300 | 1130 | 700 | N995 | 7230 | N995G | $598,000 | $(373,920) | $224,080 | 02-03 Adjustment |

**Justification**: N995 includes FY01-02 and FY02-03 ADA Curb Ramps, and FY02-03 ADA Signal Devices. HUD requires that we report funding for activities by year, so it is necessary to split N995 to a total of three (3) separate projects. These projects are not CIP by definition; therefore, operating project numbers 3210 & 3211 were created.

### 3210 - 02-03 ADA Curb Ramps

<table>
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<tr>
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<th>Description</th>
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<th>Agency</th>
<th>Org</th>
<th>Revenue Unit</th>
<th>Object/ Org</th>
<th>Budget ($)</th>
<th>Adjust ($)</th>
<th>Rev. ($)</th>
<th>FY 02-03 Adjustments</th>
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<tbody>
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<td>eng/dsgn/adm</td>
<td>1130</td>
<td>320</td>
<td>3210</td>
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<tr>
<td>Appropriation</td>
<td>construction</td>
<td>1130</td>
<td>320</td>
<td>3210</td>
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<td>320</td>
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<td>3250</td>
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<td>1130</td>
<td>320</td>
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**Justification**: Same as item 1.

### 3211 - 02-03 ADA Signal Devices

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<th>Revenue Unit</th>
<th>Object/ Org</th>
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<th>Adjust ($)</th>
<th>Rev. ($)</th>
<th>FY 02-03 Adjustments</th>
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<td>320</td>
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<td>6010</td>
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<td>1130</td>
<td>320</td>
<td>3211</td>
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<td>3250</td>
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**Justification**: Same as item 1.

### Department: Operations & Maintenance

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<th>Revenue Unit</th>
<th>Object/ Org</th>
<th>Current ($)</th>
<th>Adjust ($)</th>
<th>Rev. ($)</th>
<th>FY 02-03 Adjustments</th>
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<td>800</td>
<td>8000</td>
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<td>0100R</td>
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<td>$(2,241,344)</td>
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<td>part-time labor</td>
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<td>480</td>
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<td>0140</td>
<td>4800A</td>
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<td>$(36,592)</td>
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<td>480</td>
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<td>0230</td>
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**Justification**: Appropriation transfer from General Fund Reserve to Community Forestry operating accounts to fund the unexpected costs of mitigating Wooly Hackberry Aphid infestation which occurred during the summer/fall of 2002.

<table>
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<th>Agency</th>
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<th>Revenue Unit</th>
<th>Object/ Org</th>
<th>Current ($)</th>
<th>Adjust ($)</th>
<th>Rev. ($)</th>
<th>FY 02-03 Adjustments</th>
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<td>other facilities cff</td>
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<td>8000</td>
<td>8003</td>
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<td>transfer to 7200</td>
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<td>700</td>
<td>7000</td>
<td>7720</td>
<td>1380G</td>
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<td>$150,000</td>
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<tr>
<td>Transfer/Rev</td>
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<td>700</td>
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<td>4804</td>
<td>4789</td>
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**Justification**: Appropriation money from CFF fund to fund 7200 for light vehicle maintenance building. Transfer was shown in the proforma, but it was not entered into the CIP book and no Blue Sheet was done to carryout the Transfer.
### Type of Account Description Fund Agency Orgn Revenue Unit Budget ($) Current Amount ($) Revised Budget ($)

#### Appropriation

<table>
<thead>
<tr>
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<th>Agency</th>
<th>Orgn</th>
<th>Revenue</th>
<th>Unit</th>
<th>Current Budget ($)</th>
<th>Adjustments Amount ($)</th>
<th>Revised Budget ($)</th>
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<td>3)</td>
<td>Appropriation Gas Tax-Reserve</td>
<td>0700</td>
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<td>8000</td>
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<td>0700R</td>
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<td></td>
<td>Move budget for contracts to K&amp;D Enterprises from FY01-02 that were paid in FY02-03.</td>
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#### Department: Engineering & Transportation

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<th>Revenue</th>
<th>Unit</th>
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<th>Adjustments Amount ($)</th>
<th>Revised Budget ($)</th>
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<td>160</td>
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<td>6040</td>
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<td>On 1/14/03, the CC approved construction of the Bowen Roundabout by City forces, not to exceed $150k. There were funding involved, but never made.</td>
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<tr>
<td>2a)</td>
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<td>These two projects include the local match for FY2004 CMAQ projects</td>
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</tbody>
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#### Justification

- Appropriation Gas Tax-Reserve: Move budget for contracts to K&D Enterprises from FY01-02 that were paid in FY02-03.
- Appropriation Fleet Services Corporation Yard: Transfer funds from Operations Budget to CIP.
- Appropriation Roundabouts Various: On 1/14/03, the CC approved construction of the Bowen Roundabout by City forces, not to exceed $150k. There were funding involved, but never made.
- Appropriation Two Traffic Signals Modifications: These two project budgets were reversed as part of a blue sheet entry.
- Appropriation CFF: These two projects include the local match for FY2004 CMAQ projects.
### MONTHLY FY 02-03 ADJUSTMENTS - WORKSHEET

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<th>Fund</th>
<th>Agency</th>
<th>Type</th>
<th>Org</th>
<th>Object/ Unit</th>
<th>App</th>
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<th>Current Adjustment Amount ($)</th>
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| 5a)      | Appropriation | 2001/02 Federal Pavement Maintenance | 2300 | 430 | M146 | 6010 | M146 | $111,124 | ($19,000) | $92,124 |
| 5a)      | Appropriation | 2001/02 Federal Pavement Maintenance | 2300 | 430 | M146 | 6040 | M146 | $2,340,000 | ($900,000) | $1,440,000 |
| 5a)      | Appropriation | 2001/02 Federal Pavement Maintenance | 2300 | 430 | M146 | 6060 | M146 | $232,529 | ($90,000) | $142,529 |
| 5a)      | Appropriation | 2001/02 Federal Pavement Maintenance | 2300 | 430 | M146 | 6050 | M146 | $117,000 | ($45,000) | $72,000 |
| 5a)      | Appropriation | Fd 2300 Reserve | 2300 | 800 | 8000 | 8003 | 2300R | $793,659 | |
| Appropriation | Sub-total | | | | | | | $2,800,653 | ($260,341) | $2,540,312 |
| 5b)      | Appropriation | 2002/03 Federal Pavement Maintenance | 2300 | 430 | N130 | 6010 | N130 | $95,000 | $0 | $95,000 |
| 5b)      | Appropriation | 2002/03 Federal Pavement Maintenance | 2300 | 430 | N130 | 6040 | N130 | $0 | $900,000 | $900,000 |
| 5b)      | Appropriation | 2002/03 Federal Pavement Maintenance | 2300 | 430 | N130 | 6060 | N130 | $0 | $90,000 | $90,000 |
| 5b)      | Appropriation | 2002/03 Federal Pavement Maintenance | 2300 | 430 | N130 | 6050 | N130 | $0 | $45,000 | $45,000 |
| Appropriation | Fd 2300 Reserve | 2300 | 800 | 8000 | 8003 | 2300R | | $0 | $11,000 | $11,000 |
| Appropriation | Sub-total | | | | | | | $95,000 | $1,065,000 | $1,160,000 |
| 6)      | Appropriation | Airport Master Plan & EIR | 6320 | 160 | M254 | 6081 | M254 | $300,000 | $5,084 | $305,084 |
| Appropriation | Airport Reserve | 6310 | 800 | 8000 | 8003 | 6310R | ($33,833) | ($5,084) | ($38,917) |
| Justification | Authorized by FAA to spend PFC (Passenger Facility Fees) on M254 Project. |

| 7)      | Appropriation | Phase 2 9th Street RR removal project | 0700 | 430 | K265 | 6040 | K265 | $149,934 | $1,172,550 | $1,322,484 |
| Appropriation | Phase 2 9th Street RR removal project | 0700 | 430 | K265 | 6060 | K265 | $0 | $300,000 | $500,000 |
| Appropriation | Phase 2 9th Street RR removal project | 0700 | 800 | 8000 | 8003 | 0700R | ($33,833) | ($53,649) | ($53,649) |
| Appropriation | Sub-total | | | | | | | $149,934 | $1,618,901 | $1,768,835 |

| 7)      | Revenue | Phase 2 9th Street RR removal project | 0700 | 430 | K265 | 3137 | K265 | $277,500 | ($277,500) | $0 |
| Revenue | Phase 2 9th Street RR removal project | 0700 | 430 | K265 | 3705 | K265 | $0 | $372,729 | $372,729 |
| Revenue | Phase 2 9th Street RR removal project | 0700 | 430 | K265 | 3536 | K265 | $4,440,000 | $1,523,672 | $5,963,672 |
| Revenue | Sub-total | | | | | | | $4,717,500 | $1,618,901 | $6,336,401 |
### MONTHLY FY 02-03 ADJUSTMENTS - WORKSHEET

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**File:** Budget2003\monthly_adjustments_template

**Justification:**

We recently closed 0700-430-D265 and made a large expense adjustment moving funds between D265 TO E265 & F265. The result of this activity is that additional funds were made available in K265 which is phase 2 of the 9th street RR removal project.

8) Appropriation

- **N265 Design**
  - 0700 430 N265 6010 N265 1,000,000 (1,000,000) 0
  - Appropriation 0700 Reserve 0700 800 8000 8003 0700R 835,478

- Appropriation Sub-total 1,000,000 (164,522) 0

- Revenue N265 Revenue 0700 430 N265 3761 N265 10,000 (10,000) 0

- Revenue N265 Revenue 0700 430 N265 3536 N265 154,522 (154,522) 0

- Revenue Sub-total 164,522 (164,522) 0

**Justification:** To inactivate program and transfer Federal funding to projects where funds can be utilized.

**Department:** City Manager

1) Appropriation

- **Design**
  - 2680 430 M208 6010 M208 $6,000 (6,000) $0
  - Appropriation Land 2680 430 M208 6030 M208 $53,000 (53,000) $0
  - Appropriation Construction 2680 430 M208 6040 M208 $48,000 (48,000) $0
  - Appropriation Contingency 2680 430 M208 6050 M208 $3,000 (3,000) $0
  - Appropriation Construction Administration 2680 430 M208 6060 M208 $5,000 (5,000) $0

- Appropriation Design 2600 430 M208 6010 M208 $0 $6,000 $6,000
- Appropriation Land 2600 430 M208 6030 M208 $0 $53,000 $53,000
- Appropriation Construction 2600 430 M208 6040 M208 $0 $48,000 $48,000
- Appropriation Contingency 2600 430 M208 6050 M208 $0 $3,000 $3,000
- Appropriation Construction Administration 2600 430 M208 6060 M208 $0 $5,000 $5,000

**Justification:** CIP M208 should be in Fund 2600 instead of 2680.

**Department:** City Clerk

1) Appropriation

- **Carryover for City Clerk's Dept.**
  - 0100 860 8000 8003 0100R ($2,213,641) ($100,000) ($2,313,641)
  - Appropriation for Auditing Services 0100 050 0503 0235 0503C $102,070 $102,070

**Justification:** FY 02 Carryover to FY 03 to fund CFD Audit.
MODESTO CITY COUNCIL
RESOLUTION NO. 2003-173

A RESOLUTION TO CONSIDER THE USAGE OF $500,000 FROM THE CABLE ONE SETTLEMENT AND APPROVING A GENERAL FUND LOAN IN THE AMOUNT OF $1.6 MILLION TO UPGRADE THE CITY INSTITUTIONAL NETWORK (INET)

WHEREAS, the current I-Net was built over 25 years ago, as part of an agreement between the City of Modesto and their cable franchise provider, Cable One (Cable One was succeeded by AT&T who has since been acquired by Comcast), and

WHEREAS, over the past several years, the I-Net has been problematic and unreliable, as the result of a limited network capacity and an aging network technology, and

WHEREAS, Comcast has undertaken a major capital project to replace its existing subscriber network with fiber optic technology (the “Project”), and

WHEREAS the project will also provide the City with the unique opportunity to upgrade and extend the internal I-Net at a significantly reduced price, since Comcast will bear the costs of all construction and most materials in the areas of the city where they are actively rebuilding their subscriber network, and

WHEREAS, the overall cost of the I-Net rebuild is estimated at $4.0 million, of which $1.6 million is for the City portion of the network, and

WHEREAS, once installed, Comcast would be responsible for routine support of the network at no cost to the City, and

WHEREAS, this pricing structure is available to the City as a part of the subscriber rebuild and requires that we officially notify Comcast of our commitment no later than March 31, 2003, and

WHEREAS, $500,000 shall be funded from the cable settlement set aside reserve and $1.1 million shall be funded by a $1.1 million loan from the General Fund reserve, and

WHEREAS, the Public Safety Committee reviewed a recommendation of $1.5 million general fund loan at its meeting on January 6th, 2003, and

WHEREAS, based on revised pricing from Comcast the amount of the rebuild has been revised to $1.6 million, and
NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves a general fund loan in the amount of $1.1 million and the usage of $500,000 of the Cable settlement fee to upgrade the City's INET.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 1st day of April, 2003, by Councilmember Frohman, who moved its adoption, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Fisher, Frohman, Jackman, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: Conrad, Keating

ATTEST: 
JEAN ZAHR City Clerk

APPROVED AS TO FORM:

BY: 
MICHAEL D. MILICH, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2003-174

A RESOLUTION APPROVING AGREEMENTS WITH COMCAST OF CALIFORNIA XII, INC. (COMCAST), AND AGREEMENTS WITH VARIOUS PUBLIC ENTITIES RELATING TO THE INSTALLATION OF FIBER AND CONDUIT NETWORK FOR CITY AND OTHER PUBLIC AGENCY USE AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THOSE AGREEMENTS ON BEHALF OF THE CITY.

WHEREAS, the Modesto City Council approved a cable television franchise agreement with Comcast on November 18, 2002, and

WHEREAS, the franchise requires that Comcast, among other things, construct a fiber and conduit network (INET) for City and other public agency use (the project) subject to the terms and conditions of the franchise, and

WHEREAS, the project will provide the City and other public agencies with a unique opportunity to upgrade and extend the INET to facilitate telecommunications within the City at a significantly reduced price, since Comcast will bear the cost of all construction and most materials in the areas of the City where they are actively rebuilding their subscriber network, and

WHEREAS, the overall cost of the INET rebuild is estimated at $4,200,000 of which $1.6 million is for the City portion of the INET, and

WHEREAS, the following public agencies are considering participating in the project and, if they do choose to so participate, will reimburse the City for their proportionate share of the cost: Sylvan Union School District, Yosemite Community College District, County of Stanislaus, Modesto City Schools, Empire School District, and Stanislaus Union School District,
NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves an agreement with Comcast to provide for the construction and maintenance of the INET project.

BE IT FURTHER RESOLVED by the Council of the City of Modesto that it hereby approves agreements with any of the other public agencies listed above who chose to participate in the project.

BE IT FURTHER RESOLVED by the Council of the City of Modesto that the City Manager, or his designee, is hereby authorized to execute said agreements on behalf of the City, subject to any minor conforming, technical or clarifying changes approved by the City Attorney.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 1st day of April, 2003, by Councilmember Frohman, who moved its adoption, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Fisher, Frohman, Jackman, O’Bryant, Mayor Sabatino

NOES: Councilmembers: Conrad, Keating

ABSENT: Councilmembers: None

ATTEST: [Signature]
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:
By [Signature]
MICHAEL D. MILICH, City Attorney

04/01/03 IT/J Engberg
2003-174
MODESTO CITY COUNCIL
RESOLUTION NO. 2003-175

A RESOLUTION AMENDING RESOLUTION NO. 91-371 ENTITLED "A RESOLUTION APPROVING A DEVELOPMENT PLAN FOR PREZONED PLANNED DEVELOPMENT ZONE, P-PD(483). (RULE DEVELOPMENT)" (RANDY BREKKE).

WHEREAS, on June 4, 1991, the Modesto City Council, by Ordinance No. 2768-C.S., established Planned Development Zone, P-D(483), to allow a single family home subdivision with commercial uses permitted on the southeast corner of the P-D, at the intersection of Dale Road and Pelandale Avenue, and

WHEREAS, on June 4, 1991, the Modesto City Council adopted City Council Resolution No. 91-371, approving the development plan for Planned Development Zone, P-D(483), and the conditions of approval thereof, and

WHEREAS, on December 15, 1997, the City of Modesto Planning Commission adopted Planning Commission Resolution No. 97-101, amending Planned Development Zone, P-D(483), to approve a new development plan for the development of a Rite-Aid at the southern portion of the area zoned for commercial uses, and

WHEREAS, a verified application for an amendment to Planned Development Zone, P-D(483), was filed by Randy Brekke, on December 9, 2002, to add office condominiums as a permitted use in the P-D and to approve a revised site plan that will allow for the development of professional office condominiums in place of the commercial use previously approved for the site, and

WHEREAS, after a duly noticed public hearing held on March 3, 2003, in the Tenth Street Place Chambers located at 1010 10th Street, Modesto, California, the City of Modesto Planning Commission, by Resolution No. 2003-14, recommended that the City Council approve the proposed amendment to P-D(483) as requested, and that the Council
determine that the proposed amendments are required by public necessity, convenience, and general welfare for the following reasons:

1. The proposed office development is consistent with the current land use designation for the site.

2. Conditions of approval will ensure compatibility with surrounding land uses.

WHEREAS, said matter was considered by the City Council at a duly noticed public hearing on April 1, 2003, at 5:30 p.m. in the Tenth Street Place Chambers located at 1010 Tenth Street, Modesto, California, at which hearing evidence both oral and documentary was received and considered, and

WHEREAS, after said public hearing the Council found and determined that the application of Randy Brekke for an amendment to Planned Development zone, P-D(483), should be granted as consonant with public necessity, convenience and general welfare for the reasons set forth above, and

WHEREAS, the Council has introduced Ordinance No. 3294-C.S. on the 1st day of April, 2003, amending Section 2 of Ordinance No. 2768-C.S. to add professional office condominiums as a permitted use in the P-D zone.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that Modesto City Council Resolution No. 91-371 entitled "A Resolution Approving a Development Plan for Prezoned Planned Development Zone, P-PD(483). (Rule Development)" is hereby amended to read as follows:
"SECTION 1. DEVELOPMENT PLAN. The development plan for Planned Development Zone, P-D(483), is hereby approved subject to the following conditions:

1. All development shall conform to the plot plan and elevations titled "Pelandale Professional Park" as amended in red, stamped approved by the City Council.

2. Prior to the issuance of a building permit, a landscaping and irrigation plan shall be approved by the Chief Building Official. Evergreen, screen landscaping shall be installed along the north and west property lines. Landscaping and the irrigation system shall be installed and maintained in accordance with the approved plan.

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

4. Prior to issuance of a building permit, improvement plans for required improvements shall be prepared by a Registered Civil Engineer and approved by the Engineering and Transportation Director. Improvements shall be constructed in accordance with the approved plans.

5. Prior to occupancy of any building, irrigation, electrical, gas and domestic water lines shall be removed, relocated, or protected as required by the Engineering and Transportation Director and/or the utility companies, and easements for utility lines to remain shall be dedicated.

6. All existing street and property monuments within or abutting this project site shall be preserved. If, during construction of onsite or offsite improvements, monuments are damaged or destroyed, the applicant/developer shall retain a qualified licensed land surveyor or civil engineer to reset those monuments per City Standards and file the necessary information with the County Recorder's Office as required by AB1414.

7. Prior to issuance of a building permit, the developer shall show on the plans submitted to Building Inspection 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.
8. Ten-foot-wide public utility easements, and planting easements located within the ten-foot-wide public utility easements, shall be dedicated along all street frontages as required by the Engineering and Transportation Director.

9. Prior to the issuance of a building permit, the developer shall submit a plan for approval by the Operations and Maintenance Director to provide on-site treatment of storm water in accordance with the guidance manual for new development storm water quality control measures. Storm drain improvements shall be constructed in accordance with the approved plans.

10. The developer shall indemnify, defend and hold harmless the City of Modesto, its agents, officers, and employees from any and all claims, actions, or proceedings against the City of Modesto, its agents, officers, and employees to arbitrate, attack, review, set aside, void, or annul, any approval by the City of Modesto of a development approval. The City of Modesto shall promptly notify the developer of any claim, action, or proceeding and shall cooperate fully in the defense. If the City fails to do so, the developer shall not thereafter be responsible to defend, indemnify, or hold City harmless.

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

12. All signs shall comply with the sign requirements of the P-O Zone.

13. Trash bins shall be kept in enclosures in accordance with the approved plan and in accordance with plans approved by the Operations and Maintenance Department Director. 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.

14. All outdoor lighting shall be shielded from adjacent residential properties as required by the Engineering and Transportation Director.

15. Prior to the issuance of a building permit the developer shall, in a manner approved by the City Attorney, provide a vehicular accessway for on-site traffic circulation for the benefit of the property to the south substantially as shown in red on the plot plan.
SECTION 2. DEVELOPMENT SCHEDULE. The following revised development schedule is hereby approved for said Planned Development Zone, P-D(483):

The entire construction program for the office condominium portion of P-D (483) shall be accomplished in one phase, construction to begin on or before April 1, 2005, and be completed by not later than April 1, 2006.

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."

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 1st day of April, 2003, by Councilmember Jackman, 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: Conrad, Fisher, Frohman, Jackman, Keating, O’Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: 

JEAN ZAHN, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: MICHAEL D. MILICH, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2003-176

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 PLANNED DEVELOPMENT ZONE, P-D (483), PROPERTY LOCATED ON THE SOUTHWEST CORNER OF DALE ROAD AND FLEUR DE LIS DRIVE, TO ALLOW FOR THE DEVELOPMENT OF PROFESSIONAL OFFICE CONDOMINIUMS

WHEREAS, on August 15, 1995, 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, Randy Brekke has proposed an amendment to Planned Development zone, P-D(483), to allow for the development of professional office condominiums, property located on the southwest corner of Dale Road and Fleur de Lis Drive, in the City of Modesto (the "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 & Economic Development Department by Environmental Assessment Initial Study EA/C&ED 2003-11(a) ("Initial Study") reviewed the proposed Amendment to Planned Development zone, P-D(483), to determine whether the Project is within the scope of the project covered by the Modesto Urban Area General Plan Master EIR, and made the determination that the proposed Project 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, said matter was considered by the City Council at a duly noticed public hearing which was held on April 1, 2003, 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 Amendment to Planned Development zone, P-D(483), 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, 2003, by Councilmember Jackman, 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: Conrad, Fisher, Frohman, Jackman, Keating, O’Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: Jean Zahr, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: Michael D. Milich, City Attorney
EXHIBIT A

Initial Study

EA/C&ED 2003-11
I. PURPOSE

Section 21157.1 of the Public Resources Code, allows for limited environmental review of subsequent projects under a Master EIR, provided that certain findings are made. The Modesto Urban Area General Plan Master EIR (SCH No. 1999082041), adopted March 4, 2003, allows such limited review for projects in the Baseline Developed Area that are consistent with the General Plan and existing zoning.

This Initial Study, in accordance with Section 21157.1(b) of the Public Resources Code, analyzes whether this project may cause any significant effects on the environment that were not examined in the General Plan Master EIR. This Initial Study also provides documentation that the project is within the scope of the General Plan Master EIR.

II. PROJECT DESCRIPTION

A. Project title:
   Amendment to P-D (483)

B. Lead agency name and address:
   City of Modesto, PO Box 642, Modesto, CA 95353

C. Contact person and phone number:
   Josh Bridegroom, Community and Economic Development Department, (209) 571-5540

D. Project Location:
   West Side of Dale Road, North of Pelandale Avenue

E. Project Sponsor:
   Randy Brekke, 1127 Lone Palm Avenue, Modesto, Ca.

F. General Plan Designation:
   Residential

G. Current Zoning:
   Planned Development, P-D (483)

H. Description of Proposed Project:
   This is an application to amend P-D (483) to allow for the development of professional office condominiums.

I. Surrounding land uses:
   The project is surrounded by a Walgreens Drug Store to the south, residential to the west and north and Dale Road to the east.
J. **Other public agencies whose approval is required:**
   None

### III. ANALYSIS OF CONFORMANCE WITH THE MASTER EIR

There are eighteen subject areas in the Master EIR for the General Plan. Following is an analysis of how this project conforms with the analysis contained within the Master EIR.

#### A. Traffic and Circulation

The General Plan designates the project site as commercial. The project is consistent with this designation in land use and intensity and will therefore not generate traffic greater than projected by the MEIR. Furthermore, Engineering and Transportation staff have determined that the project will generate 73 peak-hour-trips, which is less than the 100-peak-hour-trip threshold of significance for further analysis under the Engineering and Transportation Department's Traffic Study Policy (attached) and that no additional traffic analysis is required. Therefore, there would be no change needed in the Traffic and Circulation section of the EIR. Therefore, the Existing Conditions, Impacts Analysis and Mitigation Measures listed in the MEIR for Traffic and Circulation Needs (pages V-1-1 through V-1-33) are still valid.

#### B. Degradation of Air Quality

The air quality impacts for this abandonment are directly related to the traffic impacts. Since traffic impacts are no greater than those anticipated in the Master EIR, this development will not cause additional impacts to air quality beyond those described in the Degradation of Air Quality section of the MEIR. The Existing Conditions, Impacts Analysis and Mitigation Measures listed in the MEIR for Degradation of Air Quality (pages V-2-1 through IV-2-26) are therefore still valid.

#### C. Generation of Noise

The General Plan MEIR assumed that there would be further mixed-use development and thus, noise generation within the Baseline Developed Area. Therefore, the Mitigation Measures listed in the MEIR for Generation of Noise (pages V-3-1 through V-3-22) are still valid.

#### D. Loss of Productive Agricultural Land

This area is located in an urbanized portion of Modesto, and there are no agricultural lands affected by this project. The Existing Conditions, Impacts Analysis, and Mitigation Measures listed in the MEIR for Loss of Productive Agricultural Land (pages V-4-1 through IV-4-12) are still valid.

#### E. Increased Demand for Water Supplies

The General Plan MEIR assumed that there would be further development and thus, increased demand for Water Supplies within the Baseline Developed Area. Beyond this, professional offices do not generally use much water and the necessary water supply infrastructure already exists. Therefore, the Existing Conditions, Impacts Analysis and the
Mitigation Measures listed in the MEIR for Increased Demand for Water Supplies (pages V-5-1 through IV-5-13) are therefore still valid.

F. Increased Demand for Sanitary Sewer Services

The project is consistent with the General Plan Designation for the site in land use and intensity and will therefore not increase demand for sanitary sewer service beyond that projected by the MEIR. Therefore, the Existing Conditions, Impacts Analysis and the Mitigation Measures listed in the MEIR for Increased Demand for Sanitary Sewer Services (pages V-6-1 through V-6-12) are still valid.

G. Loss of Sensitive Wildlife and Plant Habitat

The project is located in a built-up urban area and is not located in a Potential Biological Resource Study Area, as presented in Figure V-7-1 of the MEIR. Therefore, the project will not impact sensitive wildlife or any plant habitat above and beyond that which was identified in the Loss of Sensitive Wildlife and Plant Habitat section of the MEIR. Therefore, the Existing Conditions, Impact Analysis, and the Mitigation Measures listed in this section of the MEIR (pages V-7-1 through V-7-29) are still valid.

H. Disturbance of Archaeological and Historic Sites

This project will not disturb any archaeological or historic sites that have been identified in the Disturbance of Archaeological or Historical Sites section of the 1995 MEIR, as sited in the 2003 MEIR. Figure 8-1 of the 1995 MEIR, as sited in the 2003 MEIR, indicates that this project is also outside the Archaeological Resource Study Area, which shows areas that may require additional site-specific investigations. Therefore, the Existing Conditions, Impacts Analysis and the Mitigation Measures listed in the MEIR for Disturbance of Archaeological or Historical Sites (pages V-8-1 through V-8-22) are still valid.

I. Increased Demand for Storm Drainage

The General Plan MEIR assumed that there would be further development and thus, increased demand for Storm Drainage within the Baseline Developed Area. This project is consistent in land use and intensity with the General Plan designation for the site, and the project complies with the adopted storm drainage policies from the various agencies listed in the MEIR. Therefore, the Existing Conditions, Impacts Analysis and the Mitigation Measures listed in the MEIR for Increased Demand for Storm Drainage (pages V-9-1 through V-9-13) are still valid.

J. Flooding and Water Quality

The General Plan designates the project site as mixed-use. The project is consistent with this designation in land use and intensity and will therefore not generate drainage, flooding or water quality problems greater than projected by the MEIR. Therefore, the Existing Conditions, Impacts Analysis and the Mitigation Measures listed in the MEIR for the Drainage, Flooding, and Water Quality (pages V-10-1 through V-10-16) are still valid.
K. Increased Demand for Parks and Open Space

The General Plan MEIR assumed that there would be further development and thus, increased demand for Parks and Open Space within the Baseline Developed Area. This project is consistent with the General Plan in terms of land use and intensity. Therefore, the Existing Conditions, Impacts Analysis and the Mitigation Measures listed in the MEIR for the Increased Demand for Parks and Open Space (pages V-11-1 through V-11-14) are still valid.

L. Increased Demand for Schools

This project, being non-residential, would not generate any additional demand for schools. Therefore, the Existing Conditions, Impacts Analysis and the Mitigation Measures listed in the MEIR for the Increased Demand for Schools (pages V-12-1 through V-12-11) are still valid.

M. Increased Demand for Police Services

The General Plan MEIR assumed that there would be further development and thus, increased demand for police services within the Baseline Developed Area. The proposed project is consistent with the General Plan with regard to land use and intensity. Therefore, the Existing Conditions, Impacts Analysis and the Mitigation Measures listed in the MEIR for the Increased Demand for Police Services (pages V-13-1 through V-13-7) are still valid.

N. Increased Demand for Fire Services

The General Plan MEIR assumed that there would be further development and thus, increased demand for fire services within the Baseline Developed Area. The MEIR concludes that adopted policies in the City of Modesto and County of Stanislaus would reduce the impact of new projects on Fire Services to a less than significant level. Therefore, the Existing Conditions, Impacts Analysis and the Mitigation Measures listed in the MEIR for the Increased Demand for Fire Services (pages V-14-1 through V-14-9) are still valid.

O. Generation of Solid Waste

The General Plan MEIR assumed that there would be further development and thus, increased generation of solid waste within the Baseline Developed Area. This project is consistent in land use and intensity with the General Plan designation for the site. Therefore, the Existing Conditions, Impacts Analysis and the Mitigation Measures listed in the MEIR for the Generation of Solid Waste (pages V-15-1 through V-15-10) are still valid.

P. Generation of Hazardous Materials

The General Plan MEIR assumed that there would be further development and thus, increased generation of hazardous materials within the Baseline Developed Area. This project is consistent in land use and intensity with the General Plan designation for the site. Therefore, the Existing Conditions, Impacts Analysis and the Mitigation Measures listed in the MEIR for the Generation of Hazardous Materials (pages V-16-1 through V-16-15) are still valid.
Q. **Landslides and Seismic Activity**

This project will result in no additional potential for exposing people to landslides or earthquake related hazards such as liquefaction beyond those identified in the MEIR. The Existing Conditions, Impacts Analysis and the Mitigation Measures listed in the MEIR for the Landslides and Seismic Activity (pages V-17-1 through V-17-12) are therefore still valid.

R. **Energy**

The MEIR concludes that adopted policies in the City of Modesto and County of Stanislaus would reduce the impact of new projects on Energy to a less than significant level. Therefore, the Existing Conditions, Impacts Analysis and the Mitigation Measures listed in the MEIR for Energy (pages V-18-1 through IV-18-7) are still valid.

IV. **CONCLUSIONS/DETERMINATIONS OF FINDINGS**

A. The proposed project is within the scope of the General Plan Master EIR (SCH No. 1999082041).

B. No additional significant environmental effects will occur as a result of the proposed project that were not previously examined in the General Plan Master EIR.

C. No new mitigation measures or alternatives will be required as a result of the proposed project that were not previously considered in the General Plan Master EIR.

D. There are not specific features unique to this project that require project specific mitigation measures. All certified mitigation measures identified in the MEIR will apply city wide, including this project as appropriate.

E. This initial study provides substantial evidence to support findings A, B, C, and D above.

Signature:

[Signature]

Josh Bridegroom,
Assistant Planner
As requested I check the trip generation of the proposed medical condominiums on Dale Road between Fleur De Lis Drive and the Walgreen's store.

The total square footage of the proposed development is 20,000 sf per the site plan dated 12/3/02.

The traffic generation rate for a medical office at the p.m. peak hour of the adjacent traffic is 3.66 trips/1000 sf. Thus,

\[ 3.66 \text{ trip} \times \frac{20,000}{1000} = 73 \text{ trips}. \]

This project does not need a traffic study.

Helen Wang

CC: Brad Wall; Firoz Vohra; Josh Bridegroom
MODESTO CITY COUNCIL
RESOLUTION NO. 88-876

A RESOLUTION ADOPTING REVISED CRITERIA FOR TRAFFIC IMPACT STUDIES.

WHEREAS, the Institute of Transportation Engineers (ITE) has published a summary report on proposed recommended practice for Traffic Access and Impact Studies for Site Development in its August 1988 issue of the Institute of Transportation Engineers Journal (extract attached in Appendix A), and

WHEREAS, the Institute of Transportation Engineers' recommended procedure and the Federal Highway Administration (FHWA) Site Impact Traffic Evaluation Methodology both recommend that a complete Traffic Access/Impact Study should be conducted whenever a proposed development and/or addition or extension of an existing development generates one hundred (100) or more peak hour trips to or from the site during the adjacent roadway's peak hour or the development's peak hour, and

WHEREAS, the present criteria that the City of Modesto Environmental Assessment Committee uses requires a Traffic Study for proposed developments generating three hundred (300) or more vehicle trips during the p.m. peak hour, and

WHEREAS, the proposed criteria has been discussed with the Construction Industry Liaison Committee and the Modesto Chamber of Commerce Transportation Committee, and

WHEREAS, the Requirement for Traffic Access and Impact Studies shall not be applicable to any neighborhood which is annexed in its entirety subsequent to this resolution. The term neighborhood includes each area
depicted and individually named on the map of the Modesto Urban Area General Plan.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the Criteria for a Traffic Impact Study is hereby adopted as attached hereto marked Exhibit A and incorporated herein by reference.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 15th day of November, 1988, by Councilmember McGrath, who moved its adoption, which motion being duly seconded by Councilmember Lang, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Irizarry, Lang, McGrath, Patterson, Sutton, Mayor Whiteside

NOES: Councilmembers: None

ABSENT: Councilmembers: Muratore

ATTEST: NORRINE COYLE, City Clerk

(SEAL)

APPROVED AS TO FORM:

By STAN T. YAMAMOTO, City Attorney
CRITERIA FOR A TRAFFIC IMPACT STUDY

A Traffic Study shall be performed when:

1. The proposed development and/or addition or extension of an existing development produces 100 or more peak hour trips, and/or,

2. The proposed development and/or addition or extension of an existing development’s traffic is 5% or more of the service volume of an intersection approach in the study area.

The Site Impact Issues and Analysis Methodology for a Traffic Impact Study shall include but not be limited to the following elements, and shall be as approved by the Traffic Engineer/Transportation Planner prior to commencing the Traffic Study.

SITE IMPACT ISSUES

a) SIZE OF STUDY AREA

The size of the study area shall be dependent on the size of the development. All intersections where the site traffic is 5% or more of the service volume on any approach shall be included in the study area.

b) MAGNITUDE OF TRAFFIC GROWTH FACTORS

Growth rate shall be computed by using historical growth rate and exponential projection.

c) TRIP GENERATION RATES

The ITE Trip Generation Manual current edition shall be used to estimate trips generated by the proposed project.

d) RATE OF BUILDOUT

The Traffic Study shall identify the proposed project’s buildout rate. The buildout rate for other proposed projects in the study area shall be estimated from the information provided by the City Planning and Community Development Department.

e) PASS-BY TRIPS

Rate of pass-by trips shall be as per the lower limits of the range stipulated by the ITE Trip Generation Manual.

Exhibit A
ANALYSIS METHODOLOGY

The analysis methodology shall be as per the following flow chart (Figure 1) in phases described below.

PHASE I

Establish existing traffic conditions without the site. Calculate existing Level of Service (LOS) and capacity* for existing traffic flow conditions.

PHASE II

Forecast future traffic conditions (Study Horizon) without the site. The selection of year for which the study results are to be analyzed will be dependent on the size of proposed development. Table 1 suggests the study horizons that may be appropriate for development of various sizes.

PHASE III

Forecast future Site-Only traffic conditions.

PHASE IV

Determine Total future traffic condition (II+III).

PHASE V

Evaluate alternative improvements/mitigations.

PHASE VI

Prepare cost estimates for implementing mitigations and discuss project participation in funding the mitigations.

* The Highway Capacity Manual (HCM), as published by the National Research Council, shall be used to analyze intersection capacity and LOS. Intersections that are currently signalized shall be analyzed using the HCM operational method.
### Table 1: Appropriate Study Horizons

<table>
<thead>
<tr>
<th>Development Size</th>
<th>Suggested Horizon(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Small (generating less than 500 peak hour trips)</td>
<td>Anticipated opening year, assuming full buildout and occupancy or 5 years, whichever is more.</td>
</tr>
<tr>
<td>Moderate, single phase (500-1000 peak hour trips)</td>
<td>1. Anticipated opening year, assuming full buildout and occupancy or 5 years, whichever is more.</td>
</tr>
<tr>
<td></td>
<td>2. Adopted transportation plan horizon year if the development is significantly larger than that included in the adopted plan or in forecasts for the area.</td>
</tr>
<tr>
<td>Large, single phase (over 1000 peak hour trips)</td>
<td>1. Anticipated opening year, assuming full buildout and occupancy or 5 years, whichever is more.</td>
</tr>
<tr>
<td></td>
<td>2. Adopted transportation plan horizon year.</td>
</tr>
<tr>
<td>Moderate or large, multiple phase</td>
<td>1. Anticipated opening years, of each major phase, assuming buildout and full occupancy of each phase.</td>
</tr>
<tr>
<td></td>
<td>2. Anticipated year of complete buildout and occupancy or 5 years, whichever is more.</td>
</tr>
<tr>
<td></td>
<td>3. Adopted transportation plan horizon year.</td>
</tr>
<tr>
<td></td>
<td>4. Additional years when major area transportation improvement is completed.</td>
</tr>
</tbody>
</table>

**Note:** Trips generated based on rates in ITE Trip Generation Manual.
A RESOLUTION APPROVING SPECIFIC PLAN AMENDMENT NO. 17 TO
THE VILLAGE ONE SPECIFIC PLAN TO ALLOW FOR A REVISED
INFRASTRUCTURE FINANCING PLAN FOR VILLAGE ONE, INCLUDING
THE FORMATION OF A NEW COMMUNITY FACILITIES DISTRICT FOR
REMAINING UNDEVELOPED, UNVESTED PROPERTY IN VILLAGE ONE

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

WHEREAS, on October 16, 1990, the City Council by Resolution No. 90-828A
adopted the Village One Specific Plan, to guide the development of 1,780 acres located in
northeast Modesto, and

WHEREAS, Government Code Section 65453 permits the amendment of specific
plans as often as deemed necessary by the legislative body, and

WHEREAS, the City Council on June 18, 1991, by Resolution No. 91-405,
adopted Specific Plan Amendment No. 1 to the Village One Specific Plan to adopt an
amended Affordable Housing Program, and

WHEREAS, the City Council on May 5, 1992, by Resolution No. 92-222, adopted
Specific Plan Amendment No. 2 to the Village One Specific Plan to improve technical
correctness, readability, and comprehension, and

WHEREAS, the City Council on February 1, 1994, by Resolution No. 94-72,
adopted Specific Plan Amendment No. 3 to the Village One Specific Plan to rewrite and
reorganize the Plan to be more implementation oriented, and
WHEREAS, the City Council on May 24, 1994, by Resolution No. 94-297, certified the Final Supplemental EIR for Village One (SCH No. 90020181) which provided environmental analysis for the revisions in Specific Plan Amendment No. 4, and

WHEREAS, the City Council on May 24, 1994, by Resolution No. 94-298, adopted Specific Plan Amendment No. 4 to the Village One Specific Plan to widen Floyd Avenue from three-to-five lanes, realign the Claus/Sylvan intersection, delete the non-potable water supply for public landscaping, and integrate mitigation monitoring into the Specific Plan, and

WHEREAS, the City Council on June 28, 1994, by Resolution No. 94-372, adopted Specific Plan Amendment No. 5 to the Village One Specific Plan to revise the Residential Design Policies for cul-de-sacs, alleys, garage orientation, and plan processing, and

WHEREAS, the City Council on June 28, 1994, by Resolution No. 94-373, adopted Specific Plan Amendment No. 6 to the Village One Specific Plan to revise the school and park sites within the Specific Plan and redistribute residential units among the Village One Precise Plan Areas, and

WHEREAS, the City Council on October 10, 1995, by Resolution No. 95-487, adopted Specific Plan Amendment No. 7 to the Village One Specific Plan to reduce costs and to implement recommendations to increase the marketability of development within the Village One area, and
WHEREAS, the City Council on May 14, 1996, by Resolution No. 96-245, adopted Specific Plan Amendment No. 7.1 to the Village One Specific Plan to delete the multiple-family development designation from Precise Plan Areas Nos. 8 and 33, and Resolution No. 26-246 to amend the Design Standard portion of the Village One Specific Plan pertaining to single-family dwelling setbacks and three-car garages, limited to Precise Plan Areas Nos. 8, 32, and 33, and

WHEREAS, the City Council on June 4, 1996, by Resolution No. 96-295, adopted Specific Plan Amendment No. 8 to the Village One Specific Plan to incorporate changes previously approved in Specific Plan Amendment No. 7 into the Specific Plan document itself, to make minor editorial changes to the Specific Plan, and to incorporate changes resulting from development of a revised Village One Facilities Master Plan, and

WHEREAS, the City Council on August 13, 1996, by Resolution No. 96-453, adopted Specific Plan Amendment No. 9 to the Village One Specific Plan to modify the standards for dwelling setbacks and three-car garages for the entire Specific Plan area, and

WHEREAS, the City Council on May 6, 1997, by Resolution No. 97-225, adopted Specific Plan Amendment No. 10 to the Village One Specific Plan to eliminate redundancy with the General Plan Housing Element policies and to eliminate language that was too restrictive, and
WHEREAS, the City Council on June 3, 1997, by Resolution No. 97-300, adopted Specific Plan Amendment No. 11 to the Village One Specific Plan to exempt public facilities from precise plan requirements, to streamline the Specific Plan amendment process, and to provide minor clarification to various policies and diagrams, and

WHEREAS, the City Council on October 21, 1997, by Resolution No. 97-602, adopted Specific Plan Amendment No. 12 to the Village One Specific Plan to allow changes in public service providers, delete the requirement for a business park market study, revise Amtrak station language, revise the business park precise plan diagram, and allow regional commercial uses in the business park, and

WHEREAS, the City Council on February 17, 1998, by Resolution No. 98-97, adopted Specific Plan Amendment No. 13 to the Village One Specific Plan to redesignate 9.8 acres in Precise Plan Area No. 3 from Multi-Family Residential to Village Residential, and

WHEREAS, the City Council on August 17, 1999, by Resolution No. 99-416, adopted Specific Plan Amendment No. 14 to the Village One Specific Plan to modify the mix of land uses allowed in the southeast quadrant of Precise Plan Area No. 20, and

WHEREAS, the City Council on September 26, 2000, by Resolution No. 2000-507, adopted Specific Plan Amendment No. 15 to the Village One Specific Plan to reduce the noise setback along Claus Road, and

WHEREAS, the City Council on May 7, 2002, by Resolution No. 2002-230, adopted Specific Plan Amendment No. 16 to the Village One Specific Plan to move 4.1 acres from Precise Plan Area No. 6 to Precise Plan Area No. 7, and
WHEREAS, in 2001 the City of Modesto contracted with Goodwin Consulting Group to study the infrastructure financing for Village One and provide a plan for the timely funding of facilities needed as the development of Village One progresses, and

WHEREAS, on May 28, 2002, the City Council accepted the draft Infrastructure Financing Plan which concluded that there would be a substantial infrastructure funding shortfall in Village One, and recommended measures to correct this shortfall, and

WHEREAS, the City Council, on June 4, 2002, adopted Ordinance No. 3263-c.s., an emergency interim ordinance imposing a moratorium on the approval of new precise plans, tentative subdivision maps, tentative parcel maps, plot plans, use permits, rezonings, final development plans, and any other land use entitlement in Village One for 45 days, and

WHEREAS, the City Council, on July 9, 2002, adopted Ordinance No. 3265-c.s. extending this moratorium for an additional ten months and fifteen days, and

WHEREAS, the City Council directed City staff to prepare the necessary amendments to the Village One Specific Plan, Facilities Master Plan and Financing Plan, to address the identified infrastructure financing shortfall, and

WHEREAS, City staff is proposing an amendment to the Village One Specific Plan to allow for a revised infrastructure financing plan for Village One, including the formation of a new community facilities district for remaining undeveloped, unvested property in Village One, and
WHEREAS, on February 24, 2003, the Planning Commission held a duly noticed public hearing in the Tenth Street Place Chambers located at 1010 Tenth Street, Modesto, California, at which hearing evidence both oral and documentary was received and considered regarding the Village One Specific Plan amendment, and.

WHEREAS, after said public hearing, the Modesto City Planning Commission by Resolution No. 2003-11, recommended to the City Council approval of an amendment to the Village One Specific Plan to allow for a revised infrastructure financing plan for Village One, including the formation of a new community facilities district for remaining undeveloped, unvested property in Village One, and

WHEREAS, said matter was considered by the City Council at a duly noticed public hearing on April 1, 2003, at 5:30 p.m., in the Tenth Street Place Chambers located at 1010 Tenth Street, Modesto, California, at which hearing evidence both oral and documentary was received and considered, and

WHEREAS, the proposed specific plan amendment is not a project under CEQA, as it concerns policy decisions regarding funding mechanisms, and no changes are proposed to infrastructure or land uses.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby finds and determines that the proposed amendment No. 17 to the Village One Specific Plan to allow for a revised infrastructure financing plan for Village One, including the formation of a new community facilities district for remaining undeveloped, unvested property in Village One is consistent with the Modesto Urban Area General Plan and the Village One Specific Plan is hereby amended to read as shown on Exhibit "A" attached hereto and incorporated herein by reference.
BE IT FURTHER RESOLVED by the Council that the City Clerk is hereby
authorized and directed to send certified copies of this resolution and said amendment to
the Village One Specific Plan to the Board of Supervisors of the County of Stanislaus.

The foregoing resolution was introduced at a regular meeting of the Council of the
City of Modesto held on the 1st day of April, 2003, by Councilmember Frohman, who
moved its adoption, which motion being duly seconded by Councilmember Conrad, was
upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Conrad, Frohman, Jackman, Keating, O’Bryant,
                   Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: Fisher

ATTEST:  

JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By:  

MICHAEL D. MILICH, City Attorney
AMENDMENTS TO CHAPTER II
Storm water drainage may be needed for the distribution of storm water throughout the retention basins located along the MID Canal. The purpose of the retention basins at this location is to promote infiltration of storm water, and recharging of groundwater.

Groundwater recharge is not well served by conduits that convey storm water out of an area. A basin located within a drainage area helps to replenish groundwater by allowing storm water to percolate into the ground. The sensitivity of surface waters to urban storm drainage and its potential to carry contaminants, is currently being addressed by the Environmental Protection Agency and the State Water Quality Control Board.

The Environmental Protection Agency issued regulations on storm water drainage, which took effect in 1990. As a result of the EPA regulations, the City is required to submit a permit application to the Regional Water Quality Control Board. The associated permit program is expected to have numerical water quality objectives which, as yet, are not specifically defined. However, it is likely that treatment of urban runoff would be required for the Village One area, if a retention basin is not used.

Although the general location of storm water drainage facilities have been indicated on Figure II-27, certain deviations will be necessary as logical adaptations to specific site considerations.

a) Design Principles

1. Storm drainage system shall be developed that replenishes the groundwater by means of a retention basin. The use of a retention basin will allow percolation through the soil profile, thus replenishing the groundwater supply.

2. Storm drainage for individual projects shall utilize the permanent storm drain facilities as shown in the Facilities Master Plan. Temporary storm drainage retention basins may be allowed at the discretion of the Engineering and Transportation Department Director, until such time as the necessary components of the storm drainage system are in place to serve the particular development.

Construction of the storm drainage basin is dependent on the collection of fees to pay construction costs. Consequently, many homes will need to be built prior to the time that the storm drainage system will be operational. Temporary basins allow added flexibility for properties to develop.

3. A Storm Drainage Master Plan shall be established for Village One, prior to any development within the area.

The construction of individual drainage sub-systems must relate to a master plan to ensure a functional transition from a temporary to a permanent system. A master plan would establish the necessary grade and elevation criteria to evaluate temporary sub-system designs.
AMENDMENTS TO CHAPTER IV
Chapter IV

Implementation

This Chapter responds to the requirements of Section 65451(a)(4) of the Government Code by providing public works projects, financing measures, and development review programs necessary to implement the requirements of Chapter I-III.

A. Public Works Projects/Public Infrastructure

1. Facilities Master Plan – Overview

Development of the public infrastructure and facilities required to support Village One will occur in a variety of ways and methods. The general requirements for infrastructure and facilities, and the likely methods of funding, are described in Sections IV-A and IV-B. Prior to approval of any development plans a detailed Facilities Master Plan shall be prepared and adopted by the City Council, consistent with, but separately from the Specific Plan. Implementation of the Facilities Master Plan can be assured by inclusion of provisions in development approvals and/or development agreements that require adherence to the plan.

The engineering design for the water, sewer, and storm drainage facilities, and the precise alignments of the major streets and roads, is necessary to allow for the preparation of the Precise Plans for each residential area, the Village Center, and the Business Park. This work shall be of sufficient detail to serve as the basis for financial cost estimates.

2. Facilities Master Plan – Service Standards

Village One will conform to all existing City-wide standards expressed in the General Plan except for standards set exclusively for Village One in the Specific Plan. Projects developed in Village One will pay all required fees and taxes established by City-wide fee ordinances for infrastructure and public facilities.

The Specific Plan for Village One sets new standards for road design and park development compared with City-wide development standards for the City of Modesto. The increased cost of implementing these standards will be a cost borne by the property owners of new developments within Village One.

Facilities with enhanced service standards in Village One include:

a) Streets

Right-of-way widths, median requirements, and landscaping requirements in setbacks have been increased or enhanced above present standards.
b) Parks

Park acreage has been increased due to linear recreational trails along Briggsmore Avenue and Claus Road. Linear recreational trails along Briggsmore Avenue and Claus Road provide recreational features in addition to the neighborhood parks and community park that meet the City's General Plan standard for parks and trails.

3. Facilities Master Plan – Infrastructure Categories

The general requirements for infrastructure and facilities, and the likely methods of funding, are described in the following paragraphs. The infrastructure and public facilities required to serve Village One can be grouped into three categories:

a) Backbone Infrastructure

This group includes expressways, expressway interchanges, arterial streets, sanitary sewer trunk system, water delivery system, and the storm drainage system.

b) Community Facilities

This group includes parks, schools, and fire facilities.

c) In-Tract Subdivision Infrastructure

This group includes connector streets and residential streets, sewer, water, storm drainage, setback landscaping and street trees.

Backbone infrastructure items and community facilities serve all land uses within the project area and are primarily funded through a financing system that spread the costs fairly to each benefiting land use combination of Community Facilities District taxes, Capital Facilities Fees, Sewer and Water fees and developer exactions. In-tract subdivision infrastructure benefits only a specific development and the costs are allocated only to the benefiting properties within that development.

In recent years, public agencies have been severely restricted in their ability to fund infrastructure to serve new development. New development within Village One is being required to fully fund not only the in-tract improvements that serve the project, but also the costs of the backbone infrastructure.

4. Facilities Master Plan – Infrastructure Phasing

IV-2
a) An infrastructure Sequencing Program shall be prepared as part of the Facilities Master Plan and the Village One Infrastructure Financing Plan, that will allow orderly development throughout the Specific Plan area. This program may contain the adopted Village One Infrastructure Financing Plan as the prioritization of street and storm drain projects. All funding for the construction of public improvements within Village One, including any reimbursements for infrastructure installed out of sequence, shall be made available only in accordance with the policies and procedures of the adopted Village One Infrastructure Financing Plan.

The sequencing program will prioritize street, sewer, water drainage, and electrical facilities that must be in place prior to specific levels of development being permitted.

The sequencing program may, at the discretion of the Engineering and Transportation Director, permit temporary solutions to drainage problems, such as temporary retention basins, for certain areas to allow development prior to the completion of the full drainage system serving the area.

b) The infrastructure Sequencing Program shall provide for flexibility to permit specific areas to develop ahead of the basic sequencing program, if the developer advances the necessary infrastructure costs and constructs the facilities necessary to extend service to the area.

A reimbursement agreement should be included as part of the development agreement explaining the conditions under which the reimbursements are distributed.

B. Public Facilities Financing Measures

1. Public Facilities Village One Infrastructure Financing Plan – Overview

The Village One Specific Plan process is a new approach to the design and implementation of development projects for the City of Modesto. In the past, the City approved residential neighborhood developments, which conformed to citywide development standards and funded the development costs of necessary infrastructure. These developments were not required to fund the full burden of the impacts the projects placed on the City in terms of the City-wide circulation system, public parks, and police and fire facilities. As a result of these prior development patterns, the City is now faced with costly deficiencies in much of its public infrastructure and services.

The comprehensive planning process for Village One, as set forth in the 1989 City Council revised Urban Growth Policy, calls for the preparation of a Financing Plan that identifies all infrastructure costs and requires development to pay its own way. The preparation of a Financing Plan that identifies all infrastructure costs and requires development to pay its own way.
Financing Plan is designed to provide a framework for orderly development, attainment of standards, and mitigation of adverse environmental and financial impacts.

The Financing Plan for Village One is complicated due to the large number of parcels and ownerships within the Specific Plan area. There is great diversity of opinion as to whether or not owners want to develop their property or maintain it in its current use for an indefinite period. The timing of developments is unknown for those property owners who wish to develop in accordance with the permitted land uses within the Village One Specific Plan. This uncertainty means that the financing plan and the infrastructure sequencing program must be flexible.

2. Public Facilities Village One Infrastructure Financing Plan — Facility Funding Methods

The Facility Village One Infrastructure Financing Plan will determine the appropriate mix of Facility funding methods, based upon the facilities listed below:

a) Expressway System

The expressway system will be funded primarily by the City of Modesto's Capital Facilities Fee Program (CFF). Briggsmore Avenue and Claus Road are planned expressways including planned Claus/Sylvan/Briggsmore interchange. All development will be charged at the time building permits are issued. The traffic portion of this fee is divided between the expressway system and arterial streets, traffic signals, air quality mitigation, and transit.

b) Arterial Streets

Arterial streets within the Specific Plan area include Oakdale road, Sylvan Avenue, Roselle Avenue and Floyd Avenue. The City’s CFF will fund a portion of the Roselle Avenue improvements. Improvements to the other major streets will be paid for by a combination of developer financing for abutting roadway frontages and an "area of benefit" charge that covers the entire Specific Plan area. Assessment districts or Mello Roos Community Facilities Districts may be considered in place of, or in combination with, the "area of benefit" charge. Landscape maintenance within public right of way may be funded by a property owners association or a Landscape and Lighting District. Construction and landscape maintenance of the arterial streets will be funded primarily by one or more Community Facilities Districts (CFD's), but other funding sources may be utilized, as specified in the Village One Infrastructure Financing Plan.

c) Local Connector Streets and Residential Streets
Construction of local connector streets and residential streets will be the responsibility of developers within each Precise Plan. Landscape maintenance on connector streets within public rights-of-way may be funded by a property owners association or a Landscape and Lighting District CFD's, or other funding sources as specified in the Village One Infrastructure Financing Plan.

d) Police and Fire Facilities

Police and Fire facilities will be funded primarily through the City of Modesto's Capital Facilities Fee Program, one or more CFD's, or other funding sources as specified in the Village One Infrastructure Financing Plan. All new developments will be charged a fee at the time building permits are issued. Construction of the police and fire facilities will be required prior to buildout of Village One, so a portion of the cost of these facilities will be funded through bond financing.

e) Schools

Development within the Specific Plan area will be required to mitigate the impact on the elementary, middle, and high schools. The schools will be funded through a combination of development fees, local general obligation bonds, the State School Building Program, and one or more Mello-Roos Community Facilities Districts CFD's. A school facilities financing plan will be included as part of the detailed public services and facilities financing plan prepared for Village One and will include a pedestrian over crossing over Sylvan Avenue. A pedestrian over crossing for the high school at Sylvan Avenue and Millbrook Avenue will be a shared responsibility between the City and Modesto City School District, or other funding source as specified in the Village One Infrastructure Financing Plan.

f) Pedestrian Paths and Trails

All pedestrian paths and trails within public street rights-of-way and public open space areas will be publicly owned and maintained. Pedestrian paths along public streets will be constructed in conjunction with the installation of these streets. Landscape maintenance within the public rights-of-way will be funded through a Lighting and Landscaping District one or more CFD's or property owners associations, or other funding sources as specified in the Village One Infrastructure Financing Plan.

g) Parks

Neighborhood, community, and regional parks will be funded primarily through the City of Modesto's Capital Facilities Fee Program.
h) Water, Sanitary Sewer, and Storm Drainage Systems

Except for certain major water, sanitary sewer, and storm drainage trunk lines, construction of all utilities infrastructure will proceed in conjunction with development of Precise Plans in the Specific Plan area.

The need for most of the utility systems will be triggered by the approval of tentative maps for residential subdivisions within Precise Plan Areas or by the approval of a final development plan for commercial and multi-family properties.

Prior to the recording of final maps, detailed improvement plans and funding mechanisms consistent with the general design described in this Specific Plan shall be prepared and approved by the City. Developers will pay the sanitary sewer and water and storm drainage fees at the filing of the final map. Advance funding may be provided by the City through revenue bonds if the fees for a specific project are insufficient to cover the costs of extensions to the project due to over sizing of facilities or other factors.

Developers may also be required to initially fund costs if nearby areas are not funding their share of the costs of infrastructure extensions due to the timing of development of specific projects. Depending on the funding source and the type of infrastructure being constructed, developers who initially fund the costs above their fair share shall be reimbursed when adequate fee revenues are collected or other developments tie into the lines or in accordance with the sequencing program as set forth in the Village One Infrastructure Financing Plan. Reimbursement agreements will be approved by the City governing the contributions and repayment requirements.

i) Street Lights

Street lights will be installed along all expressways, major, connector, and residential streets as specified in the Specific Plan. Street lighting may shall be funded as part of the road improvements or may be funded through a Lighting and Lighting District. Street lights for arterial...
3. Public Facilities Village One Infrastructure Financing Plan - Policies

The following policies shall guide the development of the Village One Infrastructure Financing Plan:

a) The full costs of the on-site and off-site public infrastructure and public services required to support development in Village One shall be funded from revenues generated by development within Village One. Public services shall also include reimbursement to the City of Modesto for the Planning and Engineering required for the Village One Specific Plan Area as permitted by State Gov. Code Sec. 65456(a).

Property owners within Village One will be required to pay their fair share of the expressways, Citywide circulation system improvements, local streets, neighborhood and community parks, water, sanitary sewer, storm drainage, schools, and public services that are required to serve the area.

The Village One Infrastructure Financing Plan will identify the specific revenue sources to pay for each of the infrastructure improvements and public services and will describe a cost allocation methodology to distribute the costs of the infrastructure and public services required to serve the Specific Plan area.

b) The backbone infrastructure costs shall be allocated to property within Village One based on general principles of benefit received, with consideration to the financial feasibility of the proposed land use.

The Financing Plan will describe a cost allocation methodology to distribute the cost of the infrastructure required to serve Village One to the benefiting land uses.

Development projects will then be required to pay their fair share of these costs. Conditions for payment will be stated in the Financing Plan for each Precise Plan Area and may be implemented through the development agreement, or other means.

c) The City shall create an Area of Benefit for Village One using the City's "Procedural Ordinance for Financing Public Facilities," Article 8 of Title 7 of Modesto City Code. As part of the formation of the Area of Benefit, a fair share cost allocation for public improvements required for the development of Village One will be established for each parcel. All parcel owners who develop land within Village One will be required to pay their fair share of costs based on the cost allocation methodology.
The Area of Benefit is a method to establish the cost allocation or benefit of each parcel without forming an assessment district.

The formation of an Area of Benefit notifies all property owners that they cannot avoid paying their fair share of infrastructure costs by waiting until the infrastructure has been installed by other developers before developing their project. Payment of the Area of Benefit charge by those parcels developing late in the build out of Village One provides the funds to reimburse those properties within Village One that were built early in the process and were required to advance the costs of the infrastructure.

The Area of Benefit charge shall establish a contingent lien on those properties within Village One that wish to remain in their present land use. The Area of Benefit charge shall not be paid until development occurs on the parcel.

The required Area of Benefit charge may be satisfied by payment of a fee at the time of final map or building permit, or participation in a financing district such as a Mello Roos Community Facilities District or an Assessment District.

All property owners who develop land within Village One shall be required to pay their fair share of costs for installing and maintaining the necessary backbone infrastructure and community facilities based on the cost allocation and methodology contained in the Village One Local Infrastructure Financing Plan and the Village One Community Facilities District, and through payment of CFF, water, sewer and other City development fees. Payment of these fees and taxes provides the funds to construct and maintain the backbone infrastructure and community facilities necessary to serve the Specific Plan area, and to reimburse those property owners who build out of sequence and are required to advance the costs of the infrastructure or community facilities.

d) The City shall use pay as you go financing to the extent possible. Debt financing shall be used only when essential to provide facilities necessary to permit development or to maintain service standards.

Pay as you go financing reduces the net costs of development by minimizing financing costs.

Debt financing should be used only when essential to guarantee that facilities are constructed to meet the requirements of the infrastructure sequencing plan. Debt financing may also be used when it proves more cost-effective than pay as you go financing due to interest rate advantages of tax-exempt financing and tax deductibility of the repayments.
The pay-as-you-go financing will include development-impact fees, developer/landowner dedications and exactions, and private-sector financing. Certain facilities may be required in advance of development or specific areas to ensure an orderly development program or to mitigate potential traffic problems. A Melio Rees Community Facilities District or an assessment district may be formed to issue bonds to pay for facilities called for in this Specific Plan.

In 1996, the City created the Village One Community Facilities District No. 1996-1 (Village One CFD) in order to fund certain backbone infrastructure and community facilities for the Village One Specific Plan area. It is acknowledged, however, that there is a severe shortfall in the funding that was to be provided through the existing Village One CFD. It is the intent of the City Council to create a new special tax district (Tax Area B) within the Village One CFD which will encompass all undeveloped and unvested property within the Village One Specific Plan area, as more particularly shown in the public report to be prepared for Tax Area B. The purpose of Tax Area B will be to ensure the City is collecting all funds necessary to construct and maintain the backbone infrastructure and community facilities in order to remedy the shortfall. The public report for Tax Area B and the Village One Infrastructure Financing Plan shall establish the cost allocation and methodology for establishing the tax structure for all currently undeveloped and unvested properties within the Specific Plan area. It is the further intent of the City Council that no new development may occur without forming or annexing to the Village One CFD at the tax rates established for Tax Area B, as shown in the public report to be developed for Tax Area B, and actually paying all applicable CFD taxes at the rate established by Tax Area B.

Based on the above history and statements of intent, no precise plan, final map, final development plan, building permit or other development entitlement for currently unvested property shall be deemed consistent with this Specific Plan until and unless the affected parcel is required to form or annex to the Village One CFD at the tax rates established for Tax Area B and pay all applicable CFD taxes at the rate established by the New District.

Therefore, as a condition of approval for development of any parcel within the Specific Plan area, the property owner and/or developer shall be required to take all actions necessary to impose all CFD taxes on the land as are required of parcels within the Tax Area B, including but not limited to annexation to the existing Village One CFD at the tax rates established for the new Tax Area B, securing and establishing the new special tax district as shown in the Village One Infrastructure Financing Plan and the public report for the new Tax Area B, or, if Tax Area B has already been established, annexing the property to the Village One CFD at the tax rates established for Tax Area B, and actually paying all CFD taxes at the rate established by Tax Area B.
Development projects in the Specific Plan shall be required to fund any oversizing of facilities required by the City, subject to reimbursement from future developments benefiting from the oversizing.

Village One may be required to fund improvements outside the project area that will be subject to later reimbursement if other projects are approved for development. For example, Village One will be required to fund the widening of Sylvan Avenue. Half of this cost would be allocated to properties along the northern border of Sylvan Avenue.

The City may establish a reimbursement plan to Village One from other development areas, as part of the Financing Plan. These reimbursements would only be available if the other areas are permitted to develop at some future date.

It is essential to provide the necessary backbone infrastructure and community facilities at the earliest possible opportunity in order to ensure orderly development, mitigate potential traffic issues, and maintain appropriate service standards for the Specific Plan area. Debt financing shall be used in the New District, and is the preferred method for funding the construction of remaining backbone infrastructure and community facilities necessary to serve the Specific Plan area. Debt financing is essential to guarantee that facilities will be constructed to meet the requirements of the Infrastructure sequencing and prioritization plan.

Pay-as-you-go financing shall only be used to the extent it is applicable to payment of CFF, sewer and water fees and other development fees, and for the provision of in-tract subdivision infrastructure or on-site property improvements which only benefit a specific development.

Developers of Specific Plan Area properties that proceed ahead of the planned infrastructure sequencing plan contained in the Village One

IV-10
The development plan for Village One allows for this type of development but requires the developers to advance the funding needed to extend the infrastructure to their projects. Reimbursements will be available when the properties that were bypassed eventually develop based on the sequencing and prioritization contained in the Village One Infrastructure Financing Plan.

The City shall require dedication of land for road improvements and construction of road improvements consistent with citywide policies, the Facilities Master Plan and the Village One Infrastructure Financing Plan.

Existing City policies govern the dedication of land for road improvements and require developers of a given road frontage to construct the first forty feet of the road, curb and gutter, measured from the property line.

The City shall pay for the acquisition of dedicated property required for arterial streets and connectors that exceed 40 feet of the road, curb and gutter measured from the property line or 25 percent of the gross acreage of any existing parcel whichever is less. Arterial roads are defined as Oakdale Road, Sylvan Avenue, Roselle Avenue, Floyd Avenue, Briggsmore Avenue, and Claus Road. The City shall acquire parcels that are left without any economic or beneficial use as a result of the land dedication requirements.

Land dedications for public improvement development projects are typically twenty percent to twenty-five percent of gross acreage. In Village One, some of the smaller parcels may require dedications in excess of typical requirements due to the layout of the backbone infrastructure. This policy protects those parcels from a disproportionate share of the burden for land dedications.

The acquisition of property covered by this policy will be funded through the Area of Benefit charge, and the cost spread to all developable parcels in Village One or more CFD’s or other funding sources as specified in the Public Facilities Finance Plan. The City may establish a list of small parcels unlikely to develop further that are adjacent to critical street segments for the purposes of property acquisition in conjunction with development of these street segments as part of the Village One Infrastructure Financing Plan.
4. The City may defer payment from owners of small parcels (less than ten acres) for the cost of infrastructure required to develop the Specific Plan Area, until the owners develop the parcels according to the land uses assigned by the Land Use Element.

j) Notwithstanding the provisions of Section d), the City may defer the requirement to form or annex to the Village One CFD for:

1) Residential properties of less than ten acres, until there is a land division, addition of any dwelling unit or change of use, or

2) The existing commercial properties in Precise Plan Area No. 2 as defined in Section IV.C.2.d) of the Specific Plan; until there is a change of use, physical expansion of the existing buildings, construction of new buildings, or division of property.

Parcel owners will be subject to charges for CFD, water and sewer fees, and other applicable development fees, and for specific infrastructure items that provide direct benefit to their property, such as a sanitary sewer line.

These parcels owners will be required to pay their fair share of the infrastructure costs at the time a development project for the parcel is approved, as established by the Area of Benefit Charge CFD's for the Specific Plan area or the CFD, water and sewer fees, or other funding sources as specified in the Village One Infrastructure Financing Plan.

4. Long Term Facilities Management

a) City of Modesto

The City of Modesto will provide the majority of public services to the Specific Plan Area, including: Police, fire, parks, water, sewer, streets and roads, median landscaping, street lighting, storm drainage, and general government services.

b) Landscape and Lighting District and/or Other Assessment Districts

Community Facilities Districts

A landscape and lighting district and/or other similar district(s) Community Facilities Districts will be formed to manage and fund pedestrian and bicycle trails installation and maintenance, median landscaping installation and maintenance, landscape corridor installation and maintenance, and any other facilities deemed appropriate.

Regardless of the actual maintenance districts established to perform these services, the City shall ensure that public facility
maintenance service provided to Village One residents does not diminish service capabilities to other parts of the City. To achieve this objective, the landscaping and lighting district(s) and/or other assessment districts, Community Facilities Districts shall include adequate provisions, to the satisfaction of the City Attorney and Public Works Engineering and Transportation Director, for general liability insurance, administration and adherence to safe design standards.

c) **Property Home Owners Associations**

Property Private Home Owners Associations may be created in some neighborhoods to manage and fund landscape corridor installation and maintenance, and alley maintenance when there are advantages over inclusion in the Landscape and Lighting District as a CPD obligation.

d) **Sylvan Union School District**

This district will provide elementary and middle schools to serve the Specific Plan area.

e) **Modesto City Schools**

This district will provide high schools to serve the Specific Plan areas.

f) **Modesto Irrigation District**

This district will provide electrical service to the Specific Plan Area. The district will also maintain water lines to irrigate lands that remain in agricultural use.

g) **Pacific Gas and Electric**

PG&E will provide natural gas service to the Specific Plan area.

h) **Cable TV**

Post Newsweek AT&T Broadband (the current franchise holder) will provide Cable TV service to the Specific Plan area.

i) **Garbage Collection**

Modesto Disposal (the current franchise holder) will provide service to the Specific Plan area.

WHEREAS, effective September 9, 2002, the City of Modesto (CITY) recognized the Modesto Confidential and Management Association (MCMA) as the official representative of a newly formed bargaining unit, and

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

WHEREAS, pursuant to an Agenda Report dated April 1, 2003, a copy of which report is on file in the office of the City Clerk, the CITY and MCMA have reached agreement on their first Memorandum of Understanding (MOU) which, upon execution, shall be attached hereto and made a part hereof, and

WHEREAS, the MOU provides as follows:

SECTION 1. SALARY INCREASES. Across-the-board salary increases of 3.5% will be effective July 1, 2003 and 3.75% effective June 29, 2004.

SECTION 2. HEALTH, DENTAL AND VISION BENEFITS. The City's contribution to employees' Health, Dental and Vision coverage for employees with Family coverage shall be increased in the amount of $85 per month effective August, 2003 and an additional $75 per month increase effective August, 2004, in addition to previously authorized increases. These increases will bring the City's Family contribution to $571.76 effective August, 2003 and to $676.76 effective August, 2004.
SECTION 3. CERTIFICATION INCENTIVES. Employees in designated classifications and divisions who voluntarily obtain certain certifications beyond those required of their positions, will be eligible for certification pay ranging from 2.5% to 7.5% of salary, effective July 1, 2003. These certifications are in the areas of Water Distribution, Water Treatment, Wastewater Collection, Water Quality, Pest Control and Playground Safety.

SECTION 4. REGISTRATION FEES. The City shall pay registration and renewal fees for designated certifications and licenses, effective April 8, 2003.

SECTION 5. SHIFT PAY. The City shall pay shift pay in the amounts of $5.00 and $7.00 for Custodian Supervisor or Police Support Services Supervisor required to work swing or graveyard shifts, effective April 8, 2003.

SECTION 6. MASTERS DEGREE. The City shall pay an additional 1.5% of salary, effective June 29, 2004, for employees with Masters Degrees, subject to criteria as established by the City, and

WHEREAS, the Council considered this matter at its meeting of April 1, 2003,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the Council hereby approves the Memorandum of Understanding (MOU) between the City of Modesto and the Modesto Confidential and Management Association (MCMA), which covers a term from April 8, 2003 through June 27, 2005, and upon execution of same, a copy of the MOU will be on file in the office of the City Clerk.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 1st day of April, 2003, by Councilmember Fisher, who moved its adoption, which motion being duly seconded by Councilmember Frohman, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Fisher, Frohman, Jackman, Keating, O’Bryant,

NOES: Councilmembers: Conrad, Mayor Sabatino

ABSENT: Councilmembers: None

ATTEST:  

(SEAL)

APPROVED AS TO FORM:

By  

MICHAEL D. MILICH, City Attorney
A RESOLUTION APPROVING A LEASE AGREEMENT BETWEEN THE CITY OF MODESTO AND GRACEADA MANSION PARTNERSHIP FOR THE LEASE OF A PORTION OF WELL SITE NO. 2 LOCATED AT 110 POPLAR AVENUE AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE LEASE AGREEMENT.

WHEREAS, when the Graceada Mansion Partnership built the office complex at 110 Poplar Avenue, additional parking was needed, and

WHEREAS, the City agreed to lease the Graceada Mansion Partnership a portion of Well Site No. 2, located across the alley from the office complex, for parking, and

WHEREAS, the original lease was for a ten-year period and expired in March, 1998, and

WHEREAS, a five-year extension of that original lease agreement expired March 3, 2003, and

WHEREAS, staff is supportive of continuing this lease agreement for an additional five-year period commencing on March 3, 2003, at the rental rate of $130.00 per month,

NOW THEREFORE, BE IT RESOLVED, by the Council of the City of Modesto that it hereby approves the Lease Agreement between the City of Modesto and Graceada Mansion Partnership for a portion of Well Site No. 2 located at 110 Poplar Avenue for a five-year period commencing on March 3, 2003.

BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute the Lease 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, 2003, by Councilmember Conrad, who moved its adoption, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Frohman, Jackman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: 

(SEAL)

APPROVED AS TO FORM:

By 

MICHAEL D. MILICH, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2003-180

A RESOLUTION ACCEPTING THE PROJECT TITLED “EXPAND ATMS NORTHEAST” AS COMPLETE

WHEREAS, a report has been filed by the Engineering & Transportation Director that the project titled “Expand ATMS Northeast”, has been completed by Golden State Utility Company, in accordance with the contract agreement dated November 20, 2001,

NOW, THEREFORE, BE IT RESOLVED that the “Expand ATMS Northeast” project be accepted from said contractor, Golden State Utility Company, that the notice of completion be filed with the Recorder of Stanislaus County and that payment of amounts due totaling $543,081.67 as provided in the contract, be authorized.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 8th day of April, 2003, by Councilmember Conrad, who moved its adoption, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Frohman, Jackman, Keating, O’Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: JEAN ZAHN, City Clerk

(SEAL)

APPROVED AS TO FORM:

By MICHAEL D. MILICH, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2003-181

A RESOLUTION ACCEPTING THE PROJECT TITLED “2000-2001 PAVEMENT MAINTENANCE” AS COMPLETE

WHEREAS, a report has been filed by the Engineering & Transportation Director that the project titled “2000-2001 Pavement Maintenance”, has been completed by George Reed, Inc., in accordance with the contract agreement dated August 14, 2001,

NOW, THEREFORE, BE IT RESOLVED that the “2000-2001 Pavement Maintenance” project be accepted from said contractor, George Reed, Inc., that the notice of completion be filed with the Recorder of Stanislaus County and that payment of amounts due totaling $1,227,700.77 as provided in the contract, be authorized.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 8th day of April, 2003, by Councilmember Conrad, who moved its adoption, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Frohman, Jackman, Keating, O’Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: Jean Zahr, City Clerk

(SEAL)

APPROVED AS TO FORM:

By Michael D. Milich, City Attorney
A RESOLUTION APPROVING A HOUSING MAINTENANCE PROGRAM (HMP) LOAN FOR PATRICIA LANGLEY AND EGIonio M. OLIVEIRA, SECURED BY THE HOME AT 422 OAK STREET, IN THE AMOUNT OF $89,170, AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT.

WHEREAS, the City of Modesto has a Housing Maintenance Program (HMP) funded through Federal Community Development Block Grant (CDBG) and proceeds from previous loans, and

WHEREAS, the City Council must approve all loans under this program for over $25,000, and

WHEREAS, staff recommends approving a loan to Patricia Langley and Egidio M. Oliveira, for a 5%, 15-year amortized loan with a minimum monthly payment of $705.15, and

WHEREAS, this property is located in Target Area #4 and requires mandatory repairs, and

WHEREAS, the Housing Rehabilitation Loan Committee (HRLC) met on March 20, 2003, and supported and recommended the loan amount and terms,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the Council hereby approves the request for a Housing Maintenance Program (HMP) loan to Patricia Langley and Egidio M. Oliveira, secured by the home at 422 Oak Street, in the amount of $89,170.00.
BE IT FURTHER RESOLVED that the recommendation for terms of the loan of 5% interest, a 15-year amortization and monthly payments of $705.15 is hereby approved.

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

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 8th day of April, 2003, by Councilmember Conrad, who moved its adoption, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Frohman, Jackman, Keating, O’Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

Attest: Jean Zahr, City Clerk

APPROVED AS TO FORM:

By: Michael D. Milich, City Attorney
WHEREAS, the City of Modesto receives a Community Development Block Grant (CDBG), and

WHEREAS, for Fiscal Year 2002-2003, $50,000 has been allocated for the purposes of providing funding to neighborhood-based groups or individuals to do beautification or capital projects in their neighborhoods that will result in an improvement in the quality of life for the residents of that neighborhood, and

WHEREAS, $20,000 has been allocated for two projects, leaving $30,000 to be allocated, and

WHEREAS, a Request for Proposal (RFP) for up to $10,000 per project was released, and

WHEREAS, three neighborhood-based groups or individuals submitted RFPs, and

WHEREAS, a review committee met on March 7, 2003, to review the proposals and submitted recommendations to the Citizen’s Housing & Community Development Committee (CH&CDC), and

WHEREAS, the CH&CDC met on March 21, 2003, and supported and recommended the approval of the proposals for the Habitat for Humanity “United Communities” and Volunteer Center/PACE “Hands on the Future,”
NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the Council hereby approves funding in the amount of $10,000 each for the Habitat for Humanity “United Communities” and Volunteer Center/PACE “Hands on the Future” proposals.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 8th day of April, 2003, by Councilmember Conrad, who moved its adoption, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Frohman, Jackman, Keating, O’Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

Attest: Jean Zahr

JEAN ZAHR, City Clerk

APPROVED AS TO FORM:

By: MICHAEL D. MILICH, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2003-184

A RESOLUTION APPROVING ALLOCATION OF $190,745 COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) FUNDING AND $43,850 IN EMERGENCY SHELTER GRANT (ESG) FUNDING FOR FISCAL YEAR 2003-2004 AND AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO SIGN AND EXECUTE THE AGREEMENTS.

WHEREAS, the City of Modesto receives several Federal grants from the United States Department of Housing and Urban Development (H.U.D.), 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 of the City’s available CDBG entitlement grant may be allocated for the purposes 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, in Fiscal Year 2003-2004, fifteen percent of the City’s available CDBG entitlement is $433,500, and

WHEREAS, in 2000, the City Council recommended that the Modesto Police Department be allocated funds for the Crime Free Multi-Housing Project funded through CDBG Public Service funds for three years at $150,000 per year, and

WHEREAS, staff has reduced the amount of CDBG funding available to non-profits by $150,000 to $283,500 in order to fund the third year of the Crime Free Multi-Housing Program, with $260,633 in available funds recommended by the Citizens Housing and Community Development Committee (CH&CDC) for allocation to
qualified non-profit agencies, with the balance to be allocated through a second RFP process, and

WHEREAS, the City allocates one hundred percent of its annual ESG to local non-profit organizations for the purposes of providing assistance that is consistent with the functions of ESG funding to very-low, low and moderate income persons and families residing within the city limits of Modesto, and

WHEREAS, in Fiscal Year 2003-2004, the City’s ESG grant is $88,261, of which $70,250 is recommended for allocation by the CH&CDC, with the balance of $18,011 to be allocated through a second RFP process, and

WHEREAS, local non-profit organizations were invited to submit Requests for Proposals (RFPs) for the balance of available CDBG Public Service funds in the amount of $283,500 and for $88,261 in ESG funds, and

WHEREAS, at a public meeting on March 21, 2003, the Citizens Housing and Community Development Committee recommended funding as set forth in Exhibits “A” and “B” attached hereto and incorporated herein by reference, and

WHEREAS, since that time, staff has had cause to recommend that the $69,888 in CDBG and $26,400 in ESG funding recommended for allocation to Community Housing and Shelter Services be withheld pending further review of this organization,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the Council hereby approves the allocation of $190,745 in Fiscal Year 2003-2004 Community Development Block Grant funding and $43,850 in Emergency Shelter Grant funding as set forth in Exhibits “A” and “B” attached hereto and incorporated by reference.
BE IT FURTHER RESOLVED by the Council of the City of Modesto that the Council hereby approves the allocation of $150,000 to the Modesto Police Department for the Crime Free Multi-Housing Program.

BE IT FURTHER RESOLVED by the Council of the City of Modesto that the City Manager or his authorized designee is hereby authorized to execute any documents with respect to implementation of the allocation of Fiscal Year 2003-2004 CDBG/ESG Public Service Grant funding.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 8th day of April, 2003, by Councilmember Conrad, who moved its adoption, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Frohman, Jackman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

Attest: 
JEAN ZAHR, City Clerk

APPROVED AS TO FORM:

By: 
MICHAEL D. MILICH, City Attorney
<table>
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<tr>
<th>Agency</th>
<th>Program Name</th>
<th>Request Amounts</th>
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<td>Center for Human Services</td>
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<td>Center for Human Services</td>
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Total Requests/Recommendations: 126,465 43,850 88,261

The Citizens Housing and Community Development Committee recommended a total allocation of $70,250 in ESG funding. Total ESG funding available is $88,261, leaving $18,011 still remaining to allocate. However, staff is recommending that Funding to Community Housing and Shelter Services be withheld pending investigation of issues that were brought to light after the CH&CDC meeting.
<table>
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<tr>
<th>Agency</th>
<th>Program Name</th>
<th>Funding Request</th>
<th>Recommended Amounts</th>
<th>Available CDBG</th>
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<td>Food Assistance Program</td>
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<td>Salvation Army</td>
<td>Subsidized Childcare</td>
<td>20,000</td>
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<td>Stanislaus Community Assistance Project</td>
<td>Prevention for Positive Education &amp; Counseling</td>
<td>55,637</td>
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<td>DRAIL</td>
<td>Assistive Technology Services</td>
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<td>Interfaith Ministries</td>
<td>Redwood Family Center</td>
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<td>15,000</td>
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<td>Healthy Aging Association</td>
<td>Young at Heart</td>
<td>20,942</td>
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<td>Comm. Hsg. &amp; Shelter</td>
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<td>37,440</td>
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<td>Parenting Basics Project</td>
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<tr>
<td>Victory Life Center</td>
<td>Warehouse &amp; Lift Training/Cert Program</td>
<td>47,403</td>
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Total Requests/Recommendations by CH&CCDC

564,868 | 190,745 | $283,500

The Citizens Housing and Community Development Committee is recommending a total allocation of $260,633 in CDBG funding. Total CDBG funding available is $283,500, leaving $22,867 still remaining to allocate. However, staff is recommending that funding to Community Housing and Shelter Services be withheld pending investigation of issues that were brought to light after the CH&C.
A RESOLUTION AUTHORIZING THE PURCHASING SUPERVISOR TO ISSUE A REQUEST FOR BIDS FOR WATER VALVES AND FIRE HYDRANTS

WHEREAS, the Finance Department - Central Stores Division and the Operations and Maintenance Department - Water Division has requested the purchase of water valves and fire hydrants, and

WHEREAS, the term of any resulting contract(s) shall be from August 1, 2003, through July 31, 2004, with the City reserving the right to extend the contract for two one-year contract extensions, up to and including July 31, 2006, contingent upon the availability of continuous funding for said purpose, and

WHEREAS, the City’s fire hydrants are being replaced at a rate of 30 per week, and

WHEREAS, water valves are used to replace existing valves which may be non-operable, to extend existing water lines, and for new service to new businesses, and

WHEREAS, by soliciting formal bids, the Finance Department - Purchasing Division will comply with Section 8-3.204 of Modesto Municipal Code, formal bid procedures, thereby obtaining the best value for the City,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto as follows:
SECTION 1. The City Clerk is hereby authorized to call for public competitive sealed bids for the furnishing of water valves and fire hydrants to be opened in the office of the City Clerk, 1010 10th Street, in the City of Modesto. The City Clerk is hereby directed to give notice inviting such sealed bids in the time, form and manner provided by law.

SECTION 2. After the bids are opened, they shall be tabulated and analyzed and a report submitted to the Council at its regular meeting.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 8th day of April, 2003, by Councilmember Conrad, who moved its adoption, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Frohman, Jackman, Keating, O’Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: Jean Zahr, City Clerk

APPROVED AS TO FORM:

By: Michael D. Milich, City Attorney
A RESOLUTION AUTHORIZING THE PURCHASING SUPERVISOR TO ISSUE A REQUEST FOR BID (RFB) FOR ONE (1) FORD SUPER DUTY F550 TRUCK, WITH UTILITY BODY AND AERIAL MAN LIFT, FOR AN ANTICIPATED COST OF $85,537.00

WHEREAS, the Operations and Maintenance Department-Fleet Services has requested the purchase of a Ford Super Duty F550 truck, with utility body and aerial man lift, and

WHEREAS, this new truck will be used in the repair of streetlights and traffic signals, and

WHEREAS, the Fleet Services Division has identified this vehicle as a critical need in the performance of its work, and

WHEREAS, the estimated total cost of this purchase is $85,537.00, and

WHEREAS, the Modesto Municipal Code generally requires all purchases exceeding $50,000 for materials and equipment of this type to be formally bid,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that formal solicitation of bids for a Ford Super Duty F550 truck is hereby approved as follows:

SECTION 1. The City Clerk is hereby authorized to call for public competitive sealed bids for a Ford Super Duty F550 truck to be opened in the office of the City Clerk, 1010 10TH Street, in the City of Modesto. The City Clerk shall be directed to give notice inviting such sealed bids in the time, form, and manner provided by law.

SECTION 2. After the bids are opened, they shall be tabulated and analyzed and a report submitted to Council.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 8th day of April, 2003, by Councilmember Conrad, who moved its adoption, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Frohman, Jackman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: Jean Zahr, City Clerk

APPROVED AS TO FORM:

By: Michael D. Milich, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2003 - 187

A RESOLUTION APPROPRIATING FUNDS RECEIVED FROM THE CONVENTION & VISITORS BUREAU TO THE PARKS, RECREATION & NEIGHBORHOODS DEPARTMENT

WHEREAS, the Modesto Convention & Visitors Bureau (CVB) has delivered a check to the City of Modesto in the amount of $42,659.54, and

WHEREAS, the Parks, Recreation & Neighborhoods Department has incurred expenses related to the CVB organization, and

WHEREAS, City staff suggests that funds from the CVB in the amount of $42,659.54 be appropriated into the Parks, Recreation and Neighborhoods Department, and

WHEREAS, as its meeting of March 24, 2003, the Finance Committee referred this item to the City Council for approval,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that funds in the amount of $42,659.54 be appropriated into the Parks, Recreation & Neighborhood Department accounts to offset expenses incurred for the Convention & Visitors Bureau.

BE IT FURTHER RESOLVED that the Finance Director is hereby authorized to take the necessary steps to implement the provisions of this resolution.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 8th day of April, 2003, by Councilmember Conrad, who moved its adoption, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and the resolution adopted by the following votes:

**AYES:** Councilmembers: Conrad, Fisher, Frohman, Jackman, Keating, O'Bryant, Mayor Sabatino

**NOES:** Councilmembers: None

**ABSENT:** Councilmembers: None

ATTEST: _______________________
JEAN ZAHR, City Clerk
(seal)

APPROVED AS TO FORM:
By: _______________________
MIKE MILICH, City Attorney
A RESOLUTION APPROVING AGREEMENTS BETWEEN THE CITY OF MODESTO AND DAVID G. AND AUDREY A. GRAHAM FOR THE ACQUISITION OF PROPERTY, BEING A PORTION OF ASSESSORS PARCEL NO. 085-0246, FOR THE SHARON AVENUE WIDENING PROJECT

WHEREAS, on March 12, 2002, the City Council of the City of Modesto directed staff to enter into negotiations with the Grahams to purchase the necessary right-of-way for the widening of Sharon Avenue to improve ingress and egress to the adjacent school site, and

WHEREAS, right of way needs to be acquired for this widening project, and

WHEREAS, as a part of the construction process, a ten-foot (10’) temporary construction easement is required from the Grahams, and

WHEREAS, agreements are needed for the acquisition of the needed right of way and temporary construction easement.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that Agreements between City of Modesto and David G. and Audrey A. Graham for the acquisition of property and use of a temporary construction easement, being a portion of Assessors Parcel No. 085-0246, for the Sharon Avenue widening project are hereby approved.

BE IT FURTHER RESOLVED THAT the execution of said Agreements by the City Manager on behalf of the City of Modesto is hereby authorized.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 8th day of April, 2003, by Councilmember Conrad, who moved its adoption, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Frohman, Jackman, Keating, O’Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

Approved as to Form:

MICHAEL D. MILICH, City Attorney

ATTEST: JEAN ZAHR, City Clerk
MODESTO CITY COUNCIL
RESOLUTION NO. 2003-189

A RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN AN ACCEPTANCE FORM FOR A GRANT DEED FOR THE ACQUISITION OF PROPERTY OWNED BY DAVID G. AND AUDREY A. GRAHAM, BEING A PORTION OF ASSESSORS PARCEL NO. 085-0246, FOR THE SHARON AVENUE WIDENING 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 right of way from David G. and Audrey A. Graham, being a portion of Assessors Parcel No. 085-0246 for the Sharon Avenue Widening Project.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the City Manager is hereby authorized to sign an acceptance form on behalf of the City of Modesto for a Grant Deed for the acquisition of property owned by David G. and Audrey A. Graham, being a portion of Assessors Parcel No. 085-0246 for the Sharon Avenue Widening Project.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 8th day of April, 2003, by Councilmember Conrad, who moved its adoption, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Frohman, Jackman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED AS TO FORM:

MICHAEL D. MILICH, City Attorney

ATTEST:  
JEAN ZAHN, City Clerk
A RESOLUTION APPROVING AGREEMENT BETWEEN THE CITY OF MODESTO, SYLVAN UNION SCHOOL DISTRICT AND GREG AVERY, INC. FOR ACQUISITION OF PROPERTY, CONSTRUCTION OF STREET IMPROVEMENTS AND SEWER EXTENSIONS FOR THE SHARON AVENUE WIDENING PROJECT

WHEREAS, Sylvan Union School District ("District") owns real property located at the southwest intersection of Sharon Avenue and Fine Avenue ("Property"), and

WHEREAS, District proposes to construct a new elementary school on said Property, and

WHEREAS, Greg Avery, Inc. ("Developer") is in the process of developing a residential subdivision at the northeast corner of Fine Avenue and Sharon Avenue, commonly known as Banyon Estates ("Subdivision"), and

WHEREAS, as a condition of developing said Subdivision and in order to provide sewer service to said Subdivision, Developer is required to extend the 10" sewer line along Sharon Avenue, approximately three-hundred feet (300') to the intersection of Sharon Avenue and Fine Avenue, and

WHEREAS, in conjunction with the construction of the school, District and the City of Modesto desire that a full width street be constructed along the north boundary of said Property, and

WHEREAS, a portion of the street improvements are located on said Property and also on a portion of a private property owned by David and Audrey Graham ("Grahams"), and

WHEREAS, City has negotiated a property acquisition agreement with the Grahams to acquire 0.23 acres (10,228 square feet) of Grahams property for a public
utility easement and street right of way and City and Developer have agreed to share in the property acquisition cost, and

WHEREAS, Developer has agreed to construct the sewer extension along Sharon Avenue at Developer’s sole expense and District has agreed to construct the street improvements along Sharon Avenue at District’s sole expense.

WHEREAS, an Agreement is needed to approve the acquisition of the needed right of way, the sewer extension and the street improvements.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the Agreement between the City of Modesto, Sylvan Union School District and Greg Avery, Inc. for the acquisition of property, construction of street improvements and a sewer extension for the Sharon Avenue widening project is hereby approved.

BE IT FURTHER RESOLVED THAT the execution of said Agreement by the City Manager on behalf of the City of Modesto is hereby authorized.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 8th day of April, 2003, by Councilmember Conrad, who moved its adoption, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Frohman, Jackman, Keating, O’Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: Jean Zahr, City Clerk

Approved as to Form:

Michael D. Milich, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2003 – 191

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MODESTO
FINDING THAT THE PROJECT LOCATED AT SHARON AVENUE AND FINE
AVENUE IN MODESTO, CALIFORNIA IS CONSISTENT WITH THE FINAL
PROGRAM ENVIRONMENTAL IMPACT REPORT FOR THE VILLAGE ONE
SPECIFIC PLAN (SCH #90020181)

WHEREAS, on September 11, 1990, the Modesto City Council certified a Final
Program Environmental Impact Report for the Village One Specific Plan (SCH#
90020181), as modified by the Supplemental EIR. This Program EIR analyzed the
impacts of build-out of the Village One Specific Plan, which includes the area in which
this project is proposed, and

WHEREAS, the City’s Community and Economic Development Department
reviewed the project to determine if said project might have a significant effect on the
environment other than those effects identified in the EIR, and

WHEREAS, by the Initial Study, attached hereto as “Exhibit A” and made a part
hereof by this reference, findings have been made that the proposed project is within the
scope of the Final Program Environmental Impact Report for the Village One Specific
Plan (SCH# 90020181), as modified by the Supplemental EIR.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of
Modesto that the City has completed the Initial Study for the widening of Sharon Avenue
at Fine Avenue and the City Council hereby makes the following findings:

1. No substantial changes are proposed in the project which will require major
   revisions of the environmental impact report.

2. There are no substantial changes proposed in the project that will require
   major revisions of the Final Program Environmental Impact Report for the
   Village One Specific Plan, as modified by the Supplemental EIR.

3. There are no substantial changes occurring with respect to the circumstances
   under which the project is being undertaken which will require major
   revisions in the Final Program Environmental Impact Report for the Village
   One Specific Plan, as modified by the Supplemental EIR.
4. No new information, which was not known and could not have been known at the time the Final Program Environmental Impact Report for the Village One Specific Plan, as modified by the Supplemental EIR, was certified as complete, has become available.

5. This initial study provides substantial evidence to support findings 1, 2, and 3 above.

6. There are no new or different mitigation measures or alternatives which would substantially reduce one or more significant effects on the environment. All relevant mitigation measures have been applied to this project.

7. Said Project is in substantial conformance with the Final Program Environmental Impact Report for the Village One Specific Plan, as modified by the Supplemental EIR.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 8th day of April, 2003, by Councilmember Conrad, who moved its adoption, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Frohman, Jackman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: Jean Zahr
JEAN ZAHR, City Clerk

(SEAL)
APPROVED AS TO FORM:

By MICHAEL D. MILICH, City Attorney
City of Modesto
Initial Study

ACQUISITION OF THIRTY FIVE (35) FEET OF STREET RIGHT-OF-WAY AND TEN (10) FEET OF TEMPORARY CONSTRUCTION EASEMENT ON SHARON AVENUE, FROM FINE AVENUE TO THREE HUNDRED (300) FEET WEST OF FINE AVENUE, IN THE VILLAGE ONE SPECIFIC PLAN AREA

EA/E&T 2003-03
March 6, 2003

I. PURPOSE

On September 11, 1990, the Modesto City Council certified a Final Program Environmental Impact Report for the Village One Specific Plan (SCH# 90020181). This Program EIR analyzed the impacts of build-out of the Village One Specific Plan, which includes the area in which this project is proposed.

Subsequently, on May 24, 1994, the City Council certified a Supplement to the Village One Program EIR. This supplement updated and modified the original EIR.

Section 15168 (c) (2) of the California Environmental Quality Act (CEQA) Guidelines states that for a Program EIR if the agency finds that pursuant to Section 15162, no new effects could occur or no new mitigation measures would be required, the agency can approve the activity as being within the scope of the project covered by the program EIR, and no new environmental document would be required.

Section 15162 of the CEQA Guidelines states that when an EIR has been certified for a project no subsequent EIR shall be prepared for that project, if the following findings can be made:

A. No substantial changes are proposed in the project, which will require major revisions of the environmental impact report.

B. No substantial changes are occurring with respect to the circumstances under which the project is being undertaken which will require major revisions in the environmental impact report.

C. No new information, which was not known and could not have been known at the time the environmental impact report was certified as complete, becomes available.

The purpose of this Initial Study is to provide the substantial evidence for the above findings.
II. PROJECT DESCRIPTION

A. Project title:
Acquisition of Thirty Five (35) Feet of Street Right-of-Way and Ten (10) Feet of Temporary Construction Easement on Sharon Avenue, from Fine Avenue to Three Hundred (300) feet West of Fine Avenue, in the Village One Specific Plan area.

B. Lead agency name and address:
City of Modesto, PO Box 642, Modesto, CA 95353

C. Contact person and phone number:
Robert Granberg, City of Modesto, Engineering and Transportation Department, (209) 577-5259.

D. Project Location:
The Village One Specific Plan area between Sylvan and Brigsmore Avenues and Claus Road and Roselle Avenue.

E. Project Sponsor:
City of Modesto, 1010 Tenth Street, Modesto, CA 95354

F. General Plan Designation:
Village Residential (VR)

G. Current Zoning:
Specific Plan-Holding (SP-O) Zone

H. Description of Proposed Project:
Acquisition of thirty five (35) feet of street right-of-way and ten (10) feet of construction easement on Sharon Avenue, between Fine Avenue and three hundred (300) feet west of Fine Avenue to facilitate the widening of Sharon Avenue to its full Village Connector street width in the Village One Specific Plan Area. The right-of-way will be acquired from the property depicted on APN 085-33-68, as shown on the attached exhibit.

I. Surrounding Land Uses:
Existing ranchette properties and developing single-family subdivisions surround the subject parcels in the project area.

J. Other Public Agencies whose approval is required:
None

III. ANALYSIS OF CONFORMANCE WITH SECTION 15162 FINDINGS

A. No substantial changes are proposed in the project which will require major revisions of the environmental impact report.

Following is an analysis of how there are no substantial changes proposed in the project which would require major revisions of the Village One Program EIR, as modified by the Supplemental EIR:
1. **Traffic and Circulation**

Impacts to traffic and circulation are discussed on pages III-40 through III-44 of the Supplemental EIR. The proposed public right-of-way acquisition is consistent with and proposes no major revisions to the Village One Specific Plan in alignment, land use and intensity. Therefore, impacts to traffic and circulation for this project are consistent with the analysis presented in the Village One Specific Plan Program EIR, as modified by the Supplemental EIR.

2. **Degradation of Air Quality**

Impacts to air quality are analyzed on pages III-45 through III-54 of the Supplemental EIR. Air quality impacts for this project are directly related to traffic impacts. The proposed public right-of-way acquisition is consistent with and proposes no major revisions to the Village One Specific Plan in alignment, land use and intensity. Therefore, the project is consistent with the Village One Specific Plan EIR. Project air quality impacts are thus consistent with the analysis presented in the Village One Specific Plan Program EIR, as modified by the Supplemental EIR.

3. **Generation of Noise**

Noise impacts are analyzed on pages III-55 through III-67 of the Supplemental EIR. The proposed public right-of-way acquisition is consistent with and proposes no major revisions to the Village One Specific Plan in alignment, land use and intensity. Therefore, the noise impacts of this project are consistent with the analysis presented in the Village One Specific Plan Program EIR, as modified by the Supplemental EIR.

4. **Vegetation and Wildlife**

Impacts to vegetation and wildlife are analyzed on pages III-68 through III-79 of the Supplemental EIR. The proposed public right-of-way acquisition is consistent with and proposes no major revisions to the Village One Specific Plan in alignment, land use and intensity. Therefore, the impacts to vegetation and wildlife of this project are consistent with the analysis presented in the Village One Specific Plan Program EIR, as modified by the Supplemental EIR.

5. **Land Use**

Land use impacts are analyzed on pages III-80 through III-94 of the Supplemental EIR. The proposed public right-of-way acquisition is consistent with and proposes no major revisions to the Village One Specific Plan in alignment, land use and intensity. Therefore, the land use impacts of this project are consistent with the analysis presented in the Village One Specific Plan Program EIR, as modified by the Supplemental EIR.
6. Population, Employment and Housing

Impacts to population, employment and housing are analyzed on pages III-95 through III-99 of the Supplemental EIR. The proposed public right-of-way acquisition is consistent with and proposes no major revisions to the Village One Specific Plan in alignment, land use and intensity. Therefore, the impacts to population, employment and housing of this project are consistent with the analysis presented in the Village One Specific Plan Program EIR, as modified by the Supplemental EIR.

7. Urban Design and Visual Quality

Impacts to urban design and visual quality are analyzed on pages III-101 through III-103 of the Supplemental EIR. The proposed public right-of-way acquisition is consistent with and proposes no major revisions to the Village One Specific Plan in alignment, land use and intensity or design. Therefore, the impacts to urban design and visual quality of this project are consistent with the analysis presented in the Village One Specific Plan Program EIR, as modified by the Supplemental EIR.

8. Geology and Soils

Impacts to geology and soils are analyzed by the Supplemental EIR on pages III-105 through III-108. The proposed public right-of-way acquisition consistent with and proposes no major revisions to the Village One Specific Plan in alignment, land use and intensity. Therefore, the impacts to geology and soils of this project are consistent with the analysis presented in the Village One Specific Plan Program EIR, as modified by the Supplemental EIR.

9. Hydrology

Hydrology impacts are analyzed on pages III-109 through III-119 of the Supplemental EIR. The proposed public right-of-way acquisition is consistent with and proposes no major revisions to the Village One Specific Plan in alignment, land use and intensity. Therefore, the impacts to hydrology of this project are consistent with the analysis presented in the Village One Specific Plan Program EIR, as modified by the Supplemental EIR.

10. Public Services

Impacts to public services are analyzed on pages III-121 through III-158 of the Supplemental EIR. The proposed public right-of-way acquisition is consistent with and proposes no major revisions to the Village One Specific Plan in alignment, land use and intensity. Therefore the proposed project would not create any additional demand for public services that are in excess of those analyzed by the Village One EIR. Therefore, the impacts to public services of this project are consistent with the analysis presented in the Village One Specific Plan Program EIR, as modified by the Supplemental EIR.
11. Fiscal Impacts

Fiscal impacts are analyzed on pages III-159 through III-160 of the Supplemental EIR. The proposed public right-of-way acquisition is consistent with and proposes no major revisions to the Village One Specific Plan in alignment, land use and intensity. Therefore, the fiscal impacts of this project are consistent with the analysis presented in the Village One Specific Plan Program EIR, as modified by the Supplemental EIR.

12. Cumulative Impacts

Cumulative impacts are analyzed on page III-161 of the Supplemental EIR. The proposed public right-of-way acquisition is consistent with and proposes no major revisions to the Village One Specific Plan in alignment, land use and intensity. Therefore, the cumulative impacts of this project are consistent with the analysis presented in the Village One Specific Plan Program EIR, as modified by the Supplemental EIR.

13. Growth Inducing Impacts

Growth inducing impacts are analyzed by the Supplemental EIR on page III-161. The proposed public right-of-way acquisition is consistent with and proposes no major revisions to the Village One Specific Plan in alignment, land use and intensity. Therefore, the growth-inducing impacts of this project are consistent with the analysis presented in the Village One Specific Plan Program EIR, as modified by the Supplemental EIR.

IV DISCUSSION OF SECTION 15162 FINDINGS

A. No substantial changes are proposed in the project which will require major revisions of the environmental impact report.

The Village One Program EIR was certified by the Modesto City Council on September 11, 1990, and the Supplemental EIR was certified on May 24, 1994. The proposed Sharon Avenue right-of-way acquisition remains consistent with Figure II-27 of the Village One Specific Plan. Therefore, there have been no substantial changes with respect to the development or infrastructure proposed for the Village One project under which this project is being undertaken which will require major revisions in the Village One Program EIR.

B. No substantial changes are occurring with respect to the circumstances under which the project is being undertaken which will require major revisions in the environmental impact report.

The Village One Program EIR was certified by the Modesto City Council on September 11, 1990, and the Supplemental EIR was certified on May 24, 1994. The proposed Sharon Avenue right-of-way acquisition remains consistent with Figure II-27 of the Village One Specific Plan. Therefore, there have been no
substantial changes with respect to the circumstances under which this project is being undertaken which will require major revisions in the Village One Program EIR.

C. No new information, which was not known and could not have been known at the time the environmental impact report was certified as complete, becomes available.

The Village One Program EIR was certified by the Modesto City Council on September 11, 1990, and the Supplemental EIR was certified on May 24, 1994. The proposed Sharon Avenue right-of-way acquisition remains consistent with Figure II-27 of the Village One Specific Plan. Therefore, there is no new information, which was not known at the time the Program EIR was certified, that has become available, that would change the conclusions of the EIR.

V. CONCLUSIONS/DETERMINATIONS OF FINDINGS

A. This project is within the scope of the project covered by the Village One Program EIR, as modified by the Supplemental EIR.

B. There are no substantial changes proposed in the project, which will require major revisions of the Village One Program EIR, as modified by the Supplemental EIR.

C. There are no substantial changes occurring with respect to the circumstances under which the project is being undertaken which will require major revisions in the Village One Program EIR, as modified by the Supplemental EIR.

D. No new information, which was not known and could not have been known at the time the Village One Program EIR, as modified by the Supplemental EIR, was certified as complete, has become available.

E. This initial study provides substantial evidence to support findings A, B and C, above.

Signature:

Robert L. Granberg
Senior Civil Engineer

Date: 03/06/03
EXHIBIT A
LEGAL DESCRIPTION
RIGHT OF WAY

All that portion of Lot B as shown in Volume 29 of Parcel Maps, Page 140, Stanislaus County Records lying in Section 13, Township 3 South, Range 9 East, Mount Diablo Base and Meridian, City of Modesto, County of Stanislaus, State of California, more particularly described as follows:

BEGINNING at the southwest corner of said Parcel B, thence North 0° 22’ 28” West on the west line of said Parcel B, 35.00 feet to the southeast corner of Lot C in Block 11376 of Legends Village No. 5 as shown on map recorded in Volume 39 of Maps, Page 79, Stanislaus County Records; thence parallel with and 35.00 feet north of the south line of the aforementioned parcel B, North 89° 51’ 53” East 239.80 feet; thence North 79° 10’ 55” East 25.92 feet to the beginning of a curve concave to the northwest, having a radius of 12.00 feet and a central angle of 69° 00’ 30”; thence northeasterly on the arc of said curve 14.45 feet; thence North 10° 10’ 25” East 27.59 feet to a point 32.00 west of the centerline of 60.00 feet wide Fine Avenue; thence North 89° 37’ 32” East 2.00 feet to the west line of said Fine Avenue and the east line of aforementioned Parcel B; thence South 0° 22’ 28” West on said east line of Parcel B, parallel with and 30.00 feet west of the centerline of said Fine Avenue, 76.60 feet to the south line of said Parcel B; thence South 89° 51’ 53” West on said south line, 281.97 feet to the point of beginning.

Containing 10,228 square feet (0.235 Acres) more or less.
Parcel A
29-PM-140

Parcel B
29-PM-140

L1. N 79°10'55" E 25.92'
L2. N 10°10'25" E 27.59'
L3. N 89°37'32" E 2.00'

\[ \begin{align*}
\Delta &= 69'00'30" \\
R &= 12.00 \\
L &= 14.45' \\
C &= 13.60' \\
T &= 8.25'
\end{align*} \]

AREA = 10,228 sq. ft.

Right-of-Way
Sharon Ave. at Fine Ave.
All that portion of Parcel B as shown in Volume 29 of Parcel Maps, Page 140, Stanislaus county Records lying in Section 13, Township 3 South, Range 9 East, Mount Diablo Base and Meridian, City of Modesto, County of Stanislaus, State of California, more particularly described as follows:

Commencing at the southwest corner of said Parcel B, thence North 0° 22’ 28” West on the west line of said Parcel B, 35.00 feet to the southeast corner of Lot C in Block 11376 of Legends Village No. 5 as shown on map recorded in Volume 39 of Maps, Page 79, Stanislaus County Records and the POINT OF BEGINNING of this description; thence parallel with and 35.00 feet north of the south line of the aforementioned parcel B, North 89° 51’ 53” East 239.80 feet; thence North 79° 10’ 55” East 25.92 feet to the beginning of a curve concave to the northwest, having a radius of 12.00 feet and a central angle of 69° 00’ 30”; thence northeasterly on the arc of said curve 14.45 feet; thence North 10° 10’ 25” East 27.59 feet to a point 32.00 west of the centerline of 60.00 feet wide Fine Avenue; thence North 89° 37’ 32” East 2.00 feet to the west line of said Fine Avenue and the east line of aforementioned Parcel B; thence North 0° 22’ 28” West on said west line of Fine Ave. 10.00 feet; thence South 89° 37’ 32” West 10.31 feet; thence South 10° 10’ 25” West 35.90 feet; thence South 79° 10’ 55” West 24.99 feet; thence South 89° 51’ 53” West 238.91 feet to the west line of the aforementioned Parcel B; thence South 0° 22’ 28” East 10.00 feet to the point of beginning.

Containing 3112 square feet, more or less.